JOHN M. MCCOY III (Cal. Bar No. 166244)
E-mail: mccoyj@sec.gov
DAVID J. VAN HAVERMAAT (Cal. Bar No. 175761)
E-mail: vanhavermaatd@sec.gov
KELLY BOWERS (Cal. Bar No. 164007)
E-mail: bowersk@sec.gov
ALKA N. PATEL (Cal. Bar No. 175505)
E-mail: patelal@sec.gov
CATHERINE W. BRILLIANT (Cal. Bar No. 229992)
E-mail: brilliantc@sec.gov

Attorneys for Plaintiff
Securities and Exchange Commission
Rosalind Tyson, Acting Regional Director
Andrew Petillon, Associate Regional Director
5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036
Telephone: (323) 965-3998
Facsimile: (323) 965-3908

'08 CV 0621 DMS LSP

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. MICHAEL T. UBERUAGA, EDWARD P. RYAN, PATRICIA FRAZIER, TERESA A. WEBSTER, and MARY E. VATTIMO, Defendants.	Case No. **COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS**

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of

the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78(u)(d)(1), 78u(d)(3)(A), 78u(e) & 78aa. Defendants have, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

2. Venue is proper in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because certain of the transactions, acts, practices and courses of conduct constituting violations of the federal securities laws occurred within this district, and four of the Defendants reside and/or are located in this district.

SUMMARY

3. This case involves false and misleading statements by five former officials of the City of San Diego (the "City") during 2002 and 2003 in connection with the City's municipal securities offerings that raised over $260 million, continuing bond disclosures, and 2003 rating agency presentations. These officials were: Defendants Michael T. Uberuaga ("Uberuaga"), the former City Manager; Edward P. Ryan ("Ryan"), the former City Auditor and Comptroller; Patricia Frazier ("Frazier"), the former Deputy City Manager for Finance; Teresa A. Webster ("Webster"), the former Assistant City Auditor and Comptroller; and Mary E. Vattimo ("Vattimo"), the former City Treasurer.

4. During 2002 and 2003, the five Defendants knew, among other things, that the City faced severe difficulty funding its future pension and retiree health care obligations unless new revenues were obtained, pension and health care benefits were reduced, or City services were cut. They also knew that the City's looming financial crisis resulted from (1) the City's intentional under-funding of its pension plan since fiscal year 1997; (2) the City's granting of additional retroactive pension benefits since fiscal year 1980; and (3) the City's use of the pension fund's assets to pay for the additional pension and retiree health care benefits since fiscal

year 1980.

5. Nevertheless, Uberuaga, Ryan, Frazier, Webster, and Vattimo acted recklessly in failing to disclose these and other material facts to investors and to rating agencies.

DEFENDANTS

6. Michael T. Uberuaga is a resident of Meridian, Idaho. Uberuaga was the City's Manager from November 1997 until April 2004.

7. Edward P. Ryan is a resident of El Cajon, California. Ryan was the City's Auditor and Comptroller from 1982 until February 2004. He is a licensed Certified Public Accountant in California.

8. Patricia Frazier is a resident of San Diego, California. Frazier was the City's Deputy City Manager for Finance from 1997 until 2005.

9. Teresa A. Webster is a resident of San Diego, California. Webster was the City's Assistant Auditor and Comptroller from December 1994 to February 2004 and the acting Auditor and Comptroller from February 2004 to March 2005. Webster was also a trustee of the City's pension plan from 1995 until March 2005. She is also a Certified Public Accountant in California.

10. Mary E. Vattimo is a resident of San Diego, California. Vattimo was the City's Treasurer from June 2001 until January 2005. Vattimo was also a trustee of the City's pension plan from 2001 until March 2005.

RELATED PARTIES

11. The City of San Diego, California, is a California municipal corporation with all municipal powers authorized by the California Constitution and laws, including the power to issue debt. The City is the seventh most populous city in the country, with approximately 1.3 million residents.

12. San Diego City Employees' Retirement System ("CERS") is a multiple-employer, defined benefit plan established by the City to provide retirement benefits to its members, *i.e.*, City employees and their beneficiaries.

THE CITY'S PENSION AND RETIREE HEALTH CARE CRISIS

A. The City's Pension Plan

13. The City provides a defined benefit pension plan and retiree health care benefits to its employees through CERS. The actuary retained by CERS determines each year the value of the plan's assets and liabilities and the required pension contributions. The City and the employees each pay a portion of the required contributions.

14. In the disclosure to investors of the City's pension obligations and funding of those obligations, at least three concepts were material:

(a) CERS's funded ratio, *i.e.*, the ratio of its assets to liabilities;

(b) The City's unfunded liability to CERS, *i.e.*, the dollar shortfall between CERS's assets and liabilities; and

(c) The City's net pension obligation, also called the NPO, *i.e.*, the cumulative difference between what the City actually contributed to CERS and the amount that the City would have contributed had it conformed to a funding method recognized by the Government Accounting Standards Board ("GASB"). GASB is the organization that establishes standards of state and local governmental accounting and financial reporting.

15. In 2001 and 2002, as shown on the chart below, as calculated by the CERS actuary, CERS's funded ratio fell substantially, and the City's unfunded liability and net pension obligation increased dramatically. In addition, in February 2003, as also shown on the chart below, the actuary projected that CERS's funded ratio would continue to fall and the City's unfunded liability and net pension obligation would continue to increase substantially:

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Fiscal Year ending	Funded Ratio	Unfunded Liability	Net Pension Obligation
6/30/00	97.3%	$69 million	$23.05 million
6/30/01	89.9%	$284 million	$30.98 million
6/30/02	77.3%	$720 million	$39.23 million
6/30/09 projected	65.6%	$2 billion	$446 million

16. The City conducted its own analysis in mid-2003, which yielded similar projections.

17. This fall in CERS's funded ratio and the increase in the City's unfunded liability and net pension obligation was the result of many factors, including:

(a) CERS twice agreed to permit the city to underfund its annual contributions to CERS, as further alleged below;

(b) The City used so-called surplus earnings to pay additional pension and other non-pension benefits on behalf of CERS's members, as further alleged below (surplus earnings are earnings above CERS's actuarially projected 8% return rate, which pension plans typically retain to support the plan's financial soundness and to make up for years in which earnings fall short of the assumed return rate); and

(c) CERS suffered substantial investment losses in fiscal years 2001 and 2002 - $193.2 million in fiscal year 2001 and $364.8 million in fiscal year 2002.

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1. CERS Agrees To Two Proposals By The City Permitting The City To Underfund Its Annual CERS Contributions

a. CERS Agrees To The City's Proposal In 1997 To Underfund Its Pension Obligations - "Manager's Proposal 1"

18. In fiscal year 1996, the City agreed to increase significantly and retroactively all employees' pension benefits. Because the City could not afford to fund the cost of the benefit increases, it made them contingent on CERS's agreement to the City's underfunding of its annual contribution to CERS.

19. In fiscal year 1997, the City and CERS entered into an agreement, referred to as Manager's Proposal 1, that allowed the City to intentionally underfund its annual liability to CERS in fiscal years 1997 through 2006. This funding method was not approved by GASB. Manager's Proposal 1 also required that if CERS's funded ratio fell below 82.3%, the City would have to increase its CERS contribution.

20. As part of Manager's Proposal 1, CERS, at the City's request, recorded $39.2 million from the surplus earnings as a net pension obligation "reserve" or "NPO Reserve." The amount represented the difference between what the City would have contributed under a GASB-accepted funding rate and what the City actually contributed under Managers Proposal 1. The NPO Reserve, despite its name, was not a true reserve because its creation and funding had no effect on CERS's funded ratio or the City's unfunded liability to CERS.

b. CERS Agrees To The City's Proposal In 2002 To Extend The Time It Would Underfund Its Pension Obligations - "Manager's Proposal 2"

21. In the second half of fiscal year 2002, the City agreed again to increase pension benefits for fiscal year 2003. From as early as October 2001,

however, the City was aware that CERS's funded ratio would likely fall below the 82.3% floor established by Manager's Proposal 1, which would require the City to increase its annual fiscal year 2004 contribution to CERS by at least $25 million. CERS's annual actuarial report as of June 30, 2001, which was issued on February 12, 2002, also confirmed this downward trend in the funded ratio.

22. Concerned about likely having to pay the additional amount, the City conditioned the pension benefit increases on the City's obtaining from CERS relief from the floor of Manager's Proposal 1. Those additional pension benefits included increasing the general members' retirement multiplier from 2.25% to 2.5%. Significantly, this increase raised the Defendants' pensions by thousands of dollars each year. In November 2002, the City and CERS (including Webster in her role as a CERS Board member) agreed to Manager's Proposal 2, which provided that once CERS's funded ratio fell below the 82.3% required by Manager's Proposal 1, the City would have five years to increase its CERS contributions to reach a GASB-accepted funding rate. Manager's Proposal 2 thus effectively allowed the City an additional five years to underfund its annual CERS contribution.

2. <u>The City Uses Surplus Earnings For Non-Pension Purposes</u>

23. For the purpose of the annual actuarial calculations, the CERS actuary assumed a projected 8% rate of return. Any actual earnings above 8% were considered to be surplus earnings to offset years in which the earnings fell below the assumed return rate.

24. Since the early 1980s, the City used CERS's surplus earnings to fund an ever-increasing amount of additional pension and non-pension benefits for CERS members including, but not limited to, making an extra monthly pension payment each year known as the "thirteenth check," paying retiree health care benefits, and funding certain portions of the employee pension contributions. In total, the City used surplus earnings of $150 million as of the end of fiscal year

2001 and an additional $25 million as of the end of fiscal year 2002 primarily to fund non-pension benefits for CERS members. From fiscal years 1997 through 2003, this use by the City of surplus earnings accounted for 17% of the increase in the City's unfunded liability to CERS.

B. Retiree Health Care Benefits

25. As of February 2003, the present value of the City's liability for future health care was in excess of $1.1 billion. The City was paying retiree health care benefits out of CERS's surplus earnings.

THE DEFENDANTS' INVOLVEMENT IN THE FALSE AND MISLEADING DISCLOSURES

A. The City's 2002 and 2003 Municipal Securities Offerings and Continuing Disclosures

26. In 2002 and 2003, the City conducted five municipal securities offerings totaling $261,850,000. These offerings were entitled:

- $25,070,000 Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2002B (Fire and Safety Project) (June 2002);
- $93,200,000 City of San Diego, 2002-03 Tax Anticipation Notes Series A (July 2002);
- $15,255,000 City of San Diego/Metropolitan Transit Development Board Authority 2003 Lease Revenue Refunding Bonds (San Diego Old Town Light Rail Transit Extension Refunding (April 2003);
- $17,425,000 City of San Diego 2003 Certificates of Participation (1993 Balboa Park/Mission Bay Park Refunding) (May 2003); and
- $110,900,000 City of San Diego 2003-04 Tax Anticipation Notes Series A (July 2003).

27. For each of the offerings, the City issued offering documents that purported to disclose the material information regarding the offering and the City

in appendix A, prepared and updated by City officials in the Financing Services Department. The 2002 offering documents included the City's fiscal year 2001 audited financial statements as appendix B, prepared by the Auditor's office and the City's outside auditor. The 2003 offering documents included the City's fiscal year 2002 audited financial statements as appendix B, prepared by the Auditor's office and the City's outside auditor. Information regarding the City's pension and retiree health care obligations was provided in both appendices A and B in each of the offerings.

28. During 2002 to 2003, pursuant to its contractual obligation, the City also filed annual disclosures (otherwise called continuing disclosures) relating to its $2.29 billion in outstanding bonds for the purpose of updating investors on the state of the City's finances. City officials in the Financing Services Department coordinated, reviewed, and filed the 2003 continuing disclosures. Most of these continuing disclosures included the same appendices A and B that were contained in the City's bond offering documents.

B. <u>Rating Agency Presentations</u>

29. The City made presentations to the rating agencies on a yearly basis, both in connection with specific bond offerings and to update the rating agencies on the City's general credit. In 2003, upon the rating agencies' request, the City included information about its pension liabilities in these presentations.

C. <u>The City's False And Misleading Disclosures</u>

30. The City's bond offering documents, continuing disclosures and rating agency presentations included certain information about the City's then current unfunded liability and funded ratio. However, these disclosures omitted other material information.

31. Specifically, the disclosures in appendix A of the City's bond offering documents and continuing disclosures were false and misleading because:

(a) There was no disclosure of the City's looming financial crisis or that it resulted from (i) the City's intentional under-funding of its pension plan since fiscal year 1997; (ii) the City's granting of additional retroactive pension benefits since fiscal year 1980; and (iii) the City's use of the pension fund's assets to pay for the additional pension, non-pension, and retiree health care benefits since fiscal year 1980;

(b) There was no disclosure that certain sums relating to a lawsuit settlement were excluded from the calculation of the unfunded liability, which, if included, would have substantially increased such unfunded liability;

(c) There was no disclosure in 2003 that the City's unfunded liability to CERS was expected to dramatically increase, from $720 million at the beginning of fiscal year 2003 to an estimated $2 billion at the beginning of fiscal year 2009 and its estimated annual pension contribution would grow from $51 million in 2002 to $248 million in 2009;

(d) There was no disclosure that Manager's Proposal 1 and Manager's Proposal 2 were significant contributors to the projected increases in the City's unfunded liability and annual pension contribution to CERS, nor was there any disclosure that Webster voted to approve Manager's Proposal 2 in her capacity as a CERS Board member knowing that its enactment would continue the City's underfunding of CERS while increasing her pension; and

(e) There was no disclosure that (i) the estimated present value of the City's liability for retiree health care was $1.1 billion; (ii) the retiree health care expense was being paid with surplus earnings from CERS; (iii) this surplus earnings reserve was running out of money; and (iv) the City would have to begin paying this substantial expense out of its own budget.

32. Disclosures in appendix B of the City's bond offering documents and continuing disclosures were false and misleading because:

(a) It stated that the City's NPO was funded in a reserve, when, in fact, it was not;

(b) The City's 2002 financial statements reported that the City's NPO was $39.2 million as of the end of fiscal year 2001, but failed to disclose that at the time of the 2003 offerings, the City had already calculated that its NPO for fiscal year 2003 would be $51.9 million;

(c) The 2002 financial statement footnotes falsely stated that the City's method for funding CERS included "a provision to assure the funding level of [CERS] would not drop below a level [CERS's actuary] deem[ed] reasonable to protect the financial integrity of [CERS]." In fact, this statement was false and misleading in that CERS's funded ratio at the end of fiscal year 2002 was 77.3%, which was less than the 82.3% that the CERS actuary deemed reasonable. Further, the footnote failed to disclose that (i) Manager's Proposal 1 had established a trigger level of 82.3% for the funded ratio; (ii) by the latter half of fiscal year 2002, the City was aware that CERS funded ratio would likely fall below this trigger level; and (iii) if Manager's Proposal 2 were not approved, the City would have had to make a large additional payment to CERS;

(d) The 2002 financial statement footnotes also falsely stated that CERS's actuary believed that the City's funding method was an excellent method for the City and was superior to certain GASB-accepted funding methods. In fact, this statement was false and misleading in that the actuary ceased to have this view once CERS's funded ratio fell below 82.3%;

(e) There was no disclosure in the 2002 financial statement footnotes that Manager's Proposal 2 was a significant contributor to the projected increases in the City's unfunded liability and annual pension contribution to CERS, nor was there any disclosure that Webster voted to approve Manager's Proposal 2 in her capacity as a CERS Board member knowing that its enactment would continue the City's underfunding of CERS while increasing her pension;

(f) The 2001 financial statement footnotes also falsely stated that the CERS's actuary "is in the process of requesting the GASB to adopt the [City's] funding method as an approved expending method which would eliminate any reported NPO." In fact, although the CERS actuary had initiated communication with GASB, GASB had never responded; and

(g) The footnote disclosures for the City's financial statements regarding the City's retiree health care obligations, which stated that the City provided such benefits to certain retirees at a cost of $7.2 million in fiscal year 2001 and $8.9 million in fiscal year 2002 and that "expenses for [such retiree health care benefits] are recognized as they are paid." This statement was misleading because there was no disclosure that the retiree health care expense was being paid with surplus earnings from CERS; that this surplus earnings reserve was running out of money; and that the City would have to begin paying this substantial expense out of its own budget.

33. In the 2003 rating agency presentations, the City failed to disclose, among other things, the material facts identified in paragraph 31.

D. Uberuaga, Ryan, Frazier, Webster, and Vattimo Were Reckless In Making the False and Misleading Disclosures

34. Uberuaga, Ryan, Frazier, Webster, and Vattimo had substantial knowledge of the City's pension and retiree health care obligations. Uberuaga, Ryan, Frazier, Webster, and Vattimo were all aware that Manager's Proposal 2 would allow the City to continue to underfund CERS while at the same time increase their pensions. Additionally, they were all aware of (a) the findings of a blue ribbon committee in April 2002 that raised concerns about the City's pension and retiree health care liabilities; and (b) CERS's response to the blue ribbon committee report in February 2003, which highlighted the true reasons for the pension underfunding and further included other relevant information pertaining to the projected NPO. The CERS response also stated that the City was not making

any contributions to CERS to pay for its retiree health care liability, that CERS had been paying for this liability with money in a reserve funded with CERS's surplus earnings from prior years, that the reserve would be depleted by FY 2006, and that in FY 2006, the City would have to pay an estimated $15 million for retiree health care.

35. Additionally, Vattimo and Webster were CERS trustees from 2001 to 2005 and 1995 to 2005, respectively. In that role, both Vattimo and Webster received CERS's actuarial reports and hence were very familiar with the pension underfunding issue, reasons for approving Managers Proposals 1 and 2, and the reasons for the underfunding. Vattimo and Webster were advised in March 2003 by CERS's counsel to nullify Managers Proposal 2 due to its questionable legality.

36. Despite this knowledge, Uberuaga advised the City Council on the issuance of the municipal securities. The City Council delegated the preparation of the final official statement to Uberuaga as the City Manager. Uberuaga recklessly certified in writing that appendix A in the May 2003 Balboa Park/Mission Bay Park Refunding bond offering documents did not contain any false or misleading statements. Uberuaga knew or was reckless in not knowing that this certification was false.

37. Ryan signed the City's FY 2001 and FY 2002 Comprehensive Annual Financial Reports, representing that "[a]ll disclosures necessary to enable the reader to gain an understanding of the City's, and its related agencies', financial activities have been included." Ryan was also one of the signatories to the management representation letters to the outside auditor in FYs 2001 and 2002, in which he confirmed that he was responsible for the City's financial statements and that the financial statements fairly presented the City's financial position. Ryan was reckless in failing to ensure that these representations were true.

38. Frazier oversaw the preparation of the City's appendix A, which contained some of the misleading disclosures, and participated in the City's rating

agency presentations. Accordingly, she knew or was reckless in not knowing that the disclosures in the bond offerings, continuing disclosures and rating agency presentations were misleading. Nevertheless, she recklessly certified that appendix A included in the 2002 Fire and Safety bond offering and the 2003 Balboa Park offering did not contain any false or misleading statements. She was also reckless in signing five continuing disclosures in FY 2003 in which appendix A was included, and in reviewing and making presentations to the rating agencies.

39. Webster recklessly participated in making false and misleading statements in the City's disclosures and in the rating agency presentations. Webster reviewed the relevant disclosures in appendix B, including the pension footnotes in the City's financial statements. She knew or was reckless in not knowing that the statements contained in appendix B were false and misleading. Nevertheless, she failed to correct the misstatements. Additionally, Webster made oral presentations on the pension plan before the rating agencies in 2003 and fielded numerous questions on that topic.

40. Vattimo recklessly participated in making false and misleading disclosures to investors and rating agencies. Vattimo was a member of the transactional financing team that prepared the City's offering documents. The team, consisting of City officials and outside retained consultants, met several times to review, discuss, and ultimately finalize the offering documents at "page-turner meetings." Vattimo also reviewed and edited appendix A as it was updated periodically within the Financing Services Department. Vattimo signed closing letters for two bond offerings in FYs 2002 and 2003 (specifically, the 2002 and 2003 Tax Anticipation Notes) representing that appendix A did not contain any false or misleading statements, when, in fact, it did. She also signed continuing disclosures for six prior bond offerings in FY 2003, which contained appendices A and B. Finally, Vattimo edited the 2003 presentation to the rating agencies relating to the City's pension obligations and participated in other parts of the presentation.

E. The City's Voluntary Disclosure Results In The Lowering Of The Ratings On The City's Bonds

41. The City eventually filed a Voluntary Report of Information on January 27, 2004, which disclosed information regarding CERS's current and estimated future funded status, the City's current and estimated future liabilities to CERS; the reasons for the substantial decrease in CERS's funded ratio and increase in the City's liability to CERS; and the City's previous use of CERS funds to pay for retiree health care and the City's estimated future liabilities for retiree health care.

42. Shortly after the disclosures in the Voluntary Report, the rating agencies lowered their ratings on the City's bonds.

FIRST CLAIM FOR RELIEF

Violations Of Section 17(a) Of The Securities Act
Against Defendants Uberuaga, Ryan, Frazier, Webster and Vattimo

43. The Commission realleges and incorporates by reference paragraphs 1 through 42 above.

44. Defendants Uberuaga, Ryan, Frazier, Webster, and Vattimo, and each of them, by engaging in the conduct described above, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails directly or indirectly:

a. with scienter, employed devices, schemes, or artifices to defraud;

b. obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

45. By engaging in the conduct described above, Defendants Uberuaga, Ryan, Frazier, Webster, and Vattimo violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

SECOND CLAIM FOR RELIEF

Violations Of Section 10(b) Of The Exchange Act And Rule 10b-5 Thereunder Against Defendants Uberuaga, Ryan, Frazier, Webster and Vattimo

46. The Commission realleges and incorporates by reference paragraphs 1 through 42 above.

47. Defendants Uberuaga, Ryan, Frazier, Webster, and Vattimo, and each of them, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter:

a. employed devices, schemes, or artifices to defraud;

b. made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

48. By engaging in the conduct described above, Defendants Uberuaga, Ryan, Frazier, Webster, and Vattimo violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

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PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that defendants Uberuaga, Ryan, Frazier, Webster, and Vattimo committed the alleged violations.

II.

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Uberuaga, Ryan, Frazier, Webster, and Vattimo, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the judgment by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

III.

Order Uberuaga, Ryan, Frazier, Webster, and Vattimo to pay a civil penalty under Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

IV.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

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V.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: April 7, 2008

DAVID J. VAN HAVERMAAT
Attorney for Plaintiff
Securities and Exchange Commission