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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**08/19/2013** at 03:19:00 PM  
Clerk of the Superior Court  
By Sandra Villanueva, Deputy Clerk

7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

10  
11 MICHAEL SHAMES, an individual,  
12 Plaintiff,

13 v.

14 UTILITY CONSUMERS' ACTION  
NETWORK, DAVID PEFFER,  
15 MICHAEL AGUIRRE, AND DOES 1  
TO 50.

16 Defendants.

17  
18 UTILITY CONSUMERS' ACTION  
NETWORK, DAVID PEFFER,  
19 MICHAEL AGUIRRE; and DOES 1 to  
50,

20 Cross-Complainants,

21 v.

22 MICHAEL SHAMES, an individual,  
23 and DOES 51-100, inclusive,

24 Cross-Defendants.  
25  
26  
27  
28

Case No. 37-2013-00036966-CU-DF-CTL

DECLARATION OF ALAN MANSFIELD  
IN SUPPORT OF PLAINTIFF AND  
CROSS-DEFENDANT'S OPPOSITION  
TO UTILITY CONSUMERS' ACTION  
NETWORK'S SPECIAL MOTION TO  
STRIKE PLAINTIFF'S COMPLAINT  
[PURSUANT TO CODE CIV. PROC.  
SECTION 426.16]

***"IMAGED FILE"***

Date: August 30, 2013  
Time: 10:00 a.m.  
Judge: Hon. Ronald S. Prager  
Dept: C-71

Complaint Filed: February 28, 2013  
Trial Date: None Set

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>Hallen D. Rosner SBN: 109740</b>  <b>Rosner, Barry &amp; Babbit, LLP</b>  <b>10085 Carroll Canyon Rd. Suite 100</b>  <b>San Diego, CA 92131</b></p> <p>TELEPHONE NO.: <b>858-348-1005</b> FAX NO. (Optional):</p> <p>E-MAIL ADDRESS (Optional):</p> <p>ATTORNEY FOR (Name): <b>Michael Shames</b></p>	<p>FOR COURT USE ONLY</p>
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego</b></p> <p>STREET ADDRESS:          MAILING ADDRESS:          CITY AND ZIP CODE:          BRANCH NAME:</p>	
<p>PLAINTIFF/PETITIONER: <b>Michael Shames</b>          DEFENDANT/RESPONDENT: <b>Utility Consumers' Action Network et. al.</b></p>	
<p style="text-align: center;"><b>DECLARATION</b></p>	<p>CASE NUMBER:  <b>37-2013-00036966-CU-DF-CTL</b></p>

I, Alan Mansfield, offer this declaration in support of the complaint brought by Plaintiff. The full text of this declaration is contained in the attached pages. See Attachment 1.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 9, 2013

Alan M. Mansfield

(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

- Attorney for     Plaintiff     Petitioner     Defendant  
 Respondent     Other (Specify):

## Attachment 1

I, Alan M. Mansfield, declare and state as follows:

1. I am an attorney licensed by the State Bar of California. I have specialized in the area of national consumer class action and public interest litigation since 1991, focusing on telecommunications, health care and consumer privacy issues. I have personal knowledge of the facts stated below, and if called as a witness would and could testify as follows.
2. Over the past 20 years I have worked with a number of non-profit organizations, including such public interest organizations as Consumer Watchdog, the Privacy Rights Clearinghouse, the American Civil Liberties Union, the Environmental Law Foundation and the California Medical Association, as well as the Utility Consumers Action Network (“UCAN”). While with my prior firm I was awarded the 2007 Public Service by A Law Firm Award by the San Diego County Bar Association.
3. During the course of my practice, over the past approximately 13 years I represented UCAN and/or its members in a variety of successful class and private Attorney General actions. By way of example, I represented UCAN and one of its members in a class action against Sprint Communications for charging customers telephone fees for data plan communication, resulting in a settlement that fully refunded the vast majority of such charges (*Taylor v. Sprint Communications*, S.D. Cal. Case No. C07-CV-2231-W (RJB)); a case challenging Sprint’s failure to provide a cancellation window when it imposed certain additional fees against customers in July 2003, resulting in a class-wide settlement returning Early Termination Fees that had been charged consumers, as well as improving certain disclosure practices (*UCAN v. Sprint Spectrum LP*, San Diego Superior Court Case No. GIC 814461); a class action captioned *Maycumber v. PowerNet Global Telecommunications*, Case No. 06-cv-1773-H (RBB) (S.D. Cal.), where the action challenged a practice of charging a “Network Access Charge” as a tax when it was not, and PowerNet agreed to recalculate and classify such fees and a class-wide resolution where current customers were able to obtain bill credits for a significant portion of such charges and former customers could obtain cash refunds or calling cards for such amounts, at the customers’ option; an action before the California Public Utilities Commission involving billing for Early Termination Fees, resulting in a refund of over \$18 million in fees to over 100,000 former Cingular Wireless customers (*In Re Cingular Wireless*, CPUC Case No. I.02-06-003); and an action involving the unauthorized billing of consumers for Internet dial-up service that resulted in full refunds of over \$1 million, significant practice changes and financial contributions to the California Consumer Protection Foundation (*UCAN v. Prodigy Communications*, San Diego Superior Court Case No. GIC 779435).
4. In addition to working on these cases with or on behalf of UCAN, I was also engaged in training UCAN staff attorneys in the area of telecommunications class action and private Attorney General litigation, including UCAN staff attorneys Art Neill and Lee Biddle.

5. During the course of the above representation I never was personally aware of any situation where Mr. Shames used these UCAN consumer complaints and attorney work product to pursue personal litigation or lawsuits in which he received a personal benefit other than any compensation UCAN may have received for Mr. Shames acting as a UCAN attorney or expert in PUC proceedings that was expressly approved by the Public Utilities Commission. This is not surprising to me, since in my work with many of the public interest organizations set forth above, these organizations request, and courts and agencies routinely approve, compensation for work performed by their staff attorneys that contributed to the overall resolution of the action. Mr. Shames had never taken a fee to act as a class representative as far as I am aware in any case I was involved in, and consistently indicated to me no desire to deviate from this practice in any other action. This continuing practice is evidenced by the recent decision by Judge Anello in *Shames v. Hertz*, 2012 U.S. Dist. LEXIS 158577, \*24 (Nov. 5, 2012), when the court approved such an award to one of the plaintiffs but Mr. Shames did not request such an award (I am not a counsel of record in that action).
6. In the Fall of 2011, Mr. Bob Ames, then the Chief Operating Officer of UCAN, contacted me and asked me to look into the merits of a potential action being investigated by UCAN and work with Mr. David Peffer, a staff member at the time with UCAN. At the time I was not representing UCAN or Mr. Shames in any pending action. On behalf of UCAN Mr. Ames entered into a retainer agreement with my firm to investigate that matter, using the standard form of retainer agreement I had used with UCAN in the past with no objection. I had not previously worked with or spoken to Mr. Peffer, and to this date have not spoken with him, only exchanging a couple of email communications in connection with that investigation.
7. In the course of my investigation I requested certain background information related to the facts and legal research about this case from Mr. Peffer, which he declined to provide to me on various grounds. In December 2011, when it became evident to me based on such conduct that I could not adequately represent UCAN as I had in the past and work with Mr. Peffer at the same time, pursuant to the provisions of the parties' retainer agreement I withdrew from that continued representation in writing, prior to the completion of my investigation or the filing of any action. I later spoke to Mr. Kendall Squires of UCAN, who contacted me to discuss the circumstances of that limited representation and the reasons for my withdrawal. After that call I had no further conversations with Mr. Ames, Mr. Squires, or Mr. Peffer. I have not represented UCAN or Mr. Shames since that time.
8. To the extent there has been any public claim by Mr. Peffer that Mr. Shames requested or received any "kickback" from any attorney, including in connection with any of the above-listed actions, I can unequivocally state that I have never paid any money to Mr. Shames in connection with a lawsuit, and never would have done so. Nor did Mr. Shames ever request that I do so.