

1 ROSNER, BARRY & BABBITT, LLP
Hallen D. Rosner, SBN: 109740
2 Christopher T. Smith, SBN: 281599
10085 Carroll Canyon Road, Suite 100
3 San Diego, CA 92131
TEL: (858) 348-1005
4 FAX: (858) 348-1150

5 Attorneys for Plaintiff
and Cross-Defendant
6 MICHAEL SHAMES

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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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

22 v.

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

24 Cross-Defendants.
25
26
27
28

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

DECLARATION OF JEFFREY R.
KRINSK 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

1 Hallen David Rosner, Esq. (SBN 109740)
2 ROSNER, BARRY & BABBITT, LLP
3 10085 Carroll Canyon Road, 1st Floor
4 San Diego, CA 92131
5 Tel: (858) 348-1005
6 Fax: (858) 348-1150
7 halrosner@aol.com

8 Attorneys for Plaintiff

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

11 MICHAEL SHAMES, an individual,

12 Plaintiff,

13 v.

14 UTILITY CONSUMERS' ACTION
15 NETWORK; DAVID PEFFER; MICHAEL
16 AGUIRRE; and DOES 1 to 50,

17 Defendants.

CASE NO. 37-2013-00036966-CU-DF-CTL

DECLARATION OF JEFFREY R. KRINSK

Filed: February 28, 2013
Dept: C-71
Judge: Hon. Ronald S. Prager
Trial Date: Not yet set

18 AND RELATED CROSS-ACTION(S).

19 I, Jeffrey R. Krinsk, do hereby declare and state:

20 1. I offer the following facts as a direct witness to matters relating to allegations by
21 Defendants that Plaintiff, Michael Shames, engaged in unethical or illegal activities involving class
22 action cases in which UCAN and/or Privacy Rights Clearinghouse was either a party or participant.
23 The declaration of Kim Malcolm proposes an unethical, if not illegal, contractual arrangement
24 between non-profit consumer groups and class-action attorneys which would have a chilling effect
25 upon consumer class-action litigation if it were pursued. Moreover, Ms. Malcolm's declaration
26 implies facts about Mr. Shames and this firm that, based on my experience with Mr. Shames, are
27 patently false.

28 ///

1 2. I am the partner-in-charge at Finkelstein & Krinsk, LLP. The firm works exclusively
2 on plaintiffs' behalf in class action lawsuits. The firm's cases run a broad gambit of cases illustrated
3 by our efforts in *In re Great American Securities Litigation*, (a class action for violations of the
4 securities laws) and *Hurst v. Monarch Equities Corporation*, (a class action for violations of the
5 Commodities and Exchange Act), and *In re State Farm Repair Practices* (a class action against State
6 Farm that ended the defendant's practice in California of using non-OEM car parts). More recently,
7 we ended a pharmacy chains' practice of using confidential prescription information to send patients
8 marketing communications disguised as "re-fill reminders or similar," including so-called "switch
9 programs."

10 3. My law firm has represented UCAN in two class action cases including (*UCAN v.*
11 *Albertsons*, (Case No. GIC 8300069) and the *Natural Gas Anti-Trust Cases* heard before Judge
12 Prager (JCCP 4221/4224/4226&4428) involving contesting a Sempra natural gas price-fixing
13 settlement.

14 4. In response to an allegation made under penalty of perjury by Kim Malcolm, at
15 paragraph 11, Ms. Malcolm states, in part:

16 || conduct such an investigation. My intent was to determine whether I could seek remuneration
17 || from those attorneys on behalf of UCAN for their use of UCAN work products, consistent with
18 || my understanding that a charitable 501 (c)(3) organization cannot give away assets for the
19 || enrichment of others. I am not aware that UCAN's board of directors investigated the allegations
20 || that Mr. Shames had improperly provided UCAN work product at no charge to private attorneys,
21 || some of whom, according to court records, made millions of dollars in attorney fees.
22

23 5. As a partner and attorney in these cases, I can state unequivocally that my law firm
24 never paid Mr. Shames either directly or indirectly in any manner for his role in the class action. He
25 neither asked for such monies nor did we make such an offer. Mr. Shames demonstrated a high level
26 of integrity and principled approach that characterized his dealings with this firm in the past. Any
27 insinuation by Ms. Malcolm to the contrary is from my perspective flat out false.

28 6. I am also troubled by Ms. Malcolm's assertion that a non-profit consumer group, such


1 as UCAN, is giving away an asset when it retains qualified class action attorneys to litigate a matter
2 that would benefit the membership of that organization and/or the public at large which it represents.
3 I am very familiar with standards employed and ethics required of a class action counsel and I would
4 never take on a case on behalf of a public constituency were these such terms as demanded by Ms.
5 Malcolm. Had she made that proposition to me, it would have been rejected outright.

6 7. Moreover, the suggestion that Mr. Shames or any officer of a 501(c)(3) group is acting
7 improperly when it seeks out class action specialists at their cost and expense to remedy illegal
8 practices by a government agency or company unless the non-profit is remunerated is naive,
9 offensive and dysfunctional from a practical viewpoint. When a nonprofit organization takes the
10 position that some remuneration, aside from judicially approved Class Representative incentive fees,
11 is a precondition to litigation, that organization and the attorneys associated with such an arrangement
12 violate California Rules of Professional Conduct Rule 2-200. They would be subject to State Bar
13 discipline and possible legal liability. I do not believe that *any* responsible class action law firm
14 would agree to take a case on such terms.

15 8. I also find it personally offensive and troublesome that Mr. Shames' professional
16 reputation is attacked on the basis that he discharged his responsibilities consistent with what any
17 conscientious non-profit administrator would have done. He identified illegal activities by companies
18 and/or the public sector and found qualified law firms willing to contest the practice and secure
19 reimbursement for the putative class members affected by the improper class action jurisprudence
20 practice. To view such cases as an asset of the non-profit runs contradicts to sound public policy and
21 law.

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

24 Executed this 16th day of August, 2013, at San Diego, California.

25
26 
27 Jeffrey R. Krinsk