

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

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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

22 v.

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

24 Cross-Defendants.
25

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

DECLARATION OF MICHAEL SHAMES
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"

Judge: Hon. Ronald S. Prager
Dept: C-71

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

26 **BACKGROUND**

27 1. I created UCAN in 1983 and worked full-time for the organization for 27
28 years. When I left UCAN in 2012 and created a similar consumer advocacy organization

1 to complete the \$1 billion SDG&E General Rate Case and continue San Diego ratepayer
2 advocacy at the CPUC, UCAN's employees and management began spreading lies in
3 the media about my role as attorney and manager. Specifically, UCAN published
4 through leaked documents and anonymous sources the following false and defamatory
5 facts:

- 6 • That I had redirected UCAN assets and information and given them to
7 consumer class action attorneys to pursue cases that enriched myself and
8 impoverished UCAN;
- 9 • That I had the possession of important UCAN files that made it
10 impossible for UCAN to function properly;
- 11 • That as custodian of UCAN's important papers, I was reasonable for
12 ensuring that all files were available to the succeeding executive director;
- 13 • That I had taken unauthorized bonuses and padded my salary in violation
14 of the law and without approval from the UCAN Board;
- 15 • That I interfered with an independent investigation into whistleblower
16 claims by Defendant David Pepper;
- 17 • That I steered UCAN into an investment whose risk was undisclosed to
18 the UCAN Board.

19 2. In this declaration, I explain why these were statements were false and
20 malicious and also present evidence that directly rebuts statements made by Declarants
21 Squires and Malcolm. This declaration also documents outright lies and misleading
22 statements made by these declarants including admissions against interest made by
23 these same declarants.

24 3. I am the former executive director of Utility Consumers' Action Network
25 (UCAN), a position I served from September 1985 until my termination on June 20,
26 2012. I co-founded UCAN in 1983 while I was a law student at University of San
27 Diego. During my 27-years of service at UCAN, I advocated before the CPUC for lower
28 energy and telephone rates as well as in support of policies and procedures that
protected residential and small business consumers. Where the CPUC was not an
appropriate venue for customer relief, I also sought out qualified consumer class action
attorneys to bring actions on behalf of aggrieved consumers. I sought nothing in return
from these class action attorneys other than getting the most and best relief possible.

4. During the 2006-2012 time period, UCAN's Board of Directors consisted
of between 6-8 volunteers who gave of their limited time to assist in the establishing of

1 UCAN policy and overseeing my administration of the organization. These were very
2 accomplished and intelligent professionals, most of whom were either attorneys,
3 educators or, in one case, both. During that seven year time period, the UCAN Board
4 was chaired by Ed Valencia, a regional manager of the state Department of Motor
5 Vehicles, Deborah Berger, a former Deputy City Attorney and then Kendall Squires,
6 a long-experienced business attorney. Mr. Squires assumed the Chairmanship of the
7 Board in 2011, after Ms. Berger removed herself from that position. Other active Board
8 members included Marc Lampe, a lawyer and USD Business School professor, Dan
9 Conaway, an experienced attorney based out of La Mesa and Niel Lynch, a community
10 college educator. All of the Board members were sophisticated professionals who
11 sought to do the best for San Diego consumers.

12 5. The UCAN staff members who I reference in this declaration are Charles
13 Langley, a manager of UCAN's public outreach activities and its Gas Gouging Project
14 and David Pfeffer, an attorney hired to work primarily on the UCAN Water Project.
15 Mr. Pfeffer reported directly to his manager Bianca Garcia. Mr. Pfeffer was hired in
16 September 2010.

17 6. In mid-2010, I informed certain UCAN employees, including Charles
18 Langley, that I'd be stepping down as Executive Director, as early as late-2011. I
19 informed Mr. Langley that with a new Director, it was likely that his position would be
20 cut or scaled back because it was not a profitable enterprise at UCAN. I also shared
21 news about my plans to step down as Executive Director with the UCAN Board
22 members. I sought and received permission from the Board to hire an assistant
23 Executive Director who would be groomed to replace me in 2011. I also pledged to the
24 Board that I would continue serving as Executive Director until the SDG&E General
25 Rate Case was completed. After which, I told them that I'd be available to assist with
26 legal matters, but no longer desired to be Executive Director.

27 7. The SDG&E Rate Case was a particularly important case. SDG&E had
28 submitted a petition to the PUC for the largest rate hike in its history -- over \$1 billion

1 dollars from 2012-2015. And the request came at perhaps the worst time in California
2 history, as the San Diego economy was reeling from the effects of the 2008 recession.
3 I had built up a litigation "war chest" of approximately \$700,000 to be used to hire
4 experts to help me fight against SDG&E's rate increase. I estimated that the case
5 would be over in late 2011, however it stretched on into 2013.

6 8. In late 2010, with Board approval, I began a search for an assistant
7 Executive Director who would be groomed to replace me. I interviewed a number of
8 candidates and chose one person who was qualified to take on the responsibilities of
9 running the organization. In meetings with UCAN staff, including Charles Langley,
10 stated that they did not want me to be replaced by a person outside of the current
11 UCAN staff. During my deliberations with staff about the assistant Executive Director
12 hiring, Mr. Langley and Defendant Pepper told me that they had consulted with an
13 unidentified attorney and had established that the staff could unionize. They felt that
14 by unionizing, they'd be able to stall or kill any management restructuring or
15 retaliatory terminations. They told me point blank that if I tried to hire a successor
16 or tried to change UCAN's management structure it would trigger this unionizing effort
17 by UCAN staff. I chose not to force this candidate into a hiring that would be
18 undermined by the staff.

19 9. The staff proposed an alternative management proposal (referenced by
20 staffed as "UCAN 2.0") which precluded the hiring of an assistant executive director.
21 It was largely written by Charles Langley and Defendant David Pepper. Some other
22 employees indicated to me that they felt as if they were in the midst of a succession
23 battle that made their jobs difficult. It was clear to me that my retirement from UCAN
24 was not going to be easy. I left on a long trip in early January 2011 and indicated to
25 staff that I would address the management issue upon my return in early February
26 2011. I explained to staff that during the December 2010-February 2011 period, they
27 would have an opportunity to try out UCAN 2.0.

28 10. Upon my return in early February, I learned that Defendant Pepper and

1 Mr. Langley had been wreaking havoc at UCAN. The UCAN 2.0 concept was breaking
2 down into internal staff squabbles and dysfunction. Work wasn't getting done and
3 tempers were fraying in an organization where cohesion and cooperation were essential.
4 I initiated a process with my managers to restructure UCAN and eliminate some jobs,
5 including that of Defendant Peffer. His manager informed me that she alerted
6 Defendant Peffer of his impending layoff termination and Peffer had submitted a
7 "whistleblower" complaint with the Board one day before he was to be terminated.

8 11. Kendall Squires began service as Chair in early 2011 after Deborah Berger
9 stepped down in response to malicious accusations by Michael Aguirre that she had a
10 romantic relationship with me and was not suited to serve as UCAN Chair. This
11 accusation was totally false but, out of an abundance of caution and a desire to avoid
12 dealing with Mr. Aguirre, Ms. Berger asked to be replaced. In her career as a Deputy
13 City Attorney at the San Diego City Attorneys' office, Ms. Berger had worked for and
14 been unceremoniously fired by Mr. Aguirre. She told me she had no desire to speak to
15 him, let alone deal with his "craziness". Shortly thereafter, she resigned from the
16 UCAN Board.

17 12. Mr. Squires had a long-standing professional relationship with Mr. Aguirre
18 and had worked on cases involving Mr. Aguirre in the past. Throughout the 2011-2012
19 time period, Mr. Squires maintained an on-going discussion with Mr. Aguirre. The two
20 men met frequently, talked by phone continually, shared documents and demonstrated
21 a close working relationship. Mr. Squires assured me that his friendship with Aguirre
22 would work to UCAN's advantage. A number of times, Mr. Squires told me that he
23 personally liked Mr. Aguirre and felt that Aguirre was being misinformed by Messrs.
24 Peffer and Langley. I repeatedly advised Mr. Squires against giving Mr. Aguirre
25 sensitive documents, such as the U.S. Attorney's office subpoena served on UCAN in
26 February 2012, but he rejected my cautions on the basis that the more open we were
27 with Aguirre, the more likely he'd decide not to file a complaint against UCAN. Shortly
28 thereafter, the US Attorney's subpoena was leaked to the media.

1 13. After Mr. Aguirre filed suit against myself and other UCAN directors in
2 March 2012, Squires continued to have frequent conversations with Aguirre. I objected
3 on the basis that, at that time, we were retained by counsel. At that point, I began to
4 distance myself from Mr. Squires and reduce correspondence with him on the belief that
5 Mr. Squires was collaborating with Mr. Aguirre and no longer had the organization's
6 interests in mind. Squires' later insistence in May 2012 that UCAN settle with Aguirre
7 rather than require an arbitration or court hearing demonstrated that he was more
8 interested in protecting his personal assets than in protecting the organization from a
9 meritless lawsuit. Over my objections, Squires entered into a settlement with Mr.
10 Aguirre that forced me to leave UCAN and retained Langley and Pepper.

11 14. In March 2011, UCAN retained Paul Dostart of Dostart, Clapp & Coveney
12 to conduct an investigation into the whistleblower allegations made by Defendant
13 Pepper. He was retained by Kendall Squires and reported to Mr. Squires until such
14 time as Mr. Ames was hired.

15 15. In April 2011, the UCAN Board retained the forensic audit services of AKT
16 to review all of UCAN's financial transactions relevant to the whistleblower allegations.
17 These auditors were retained by Kendall Squires and reported to Mr. Squires until
18 such time as Mr. Ames was hired.

19 16. In May 2011, UCAN retained attorney Robert Ames to serve as Chief
20 Operating Officer so that I could focus my attention on litigation and avoid interaction
21 with Defendant Pepper and Mr. Langley. Mr. Ames also oversaw the investigation by
22 attorney Paul Dostart and auditors AKT.

23 17. Between the period of March 2011 through February 2012, UCAN's then
24 Chairman, Kendall Squires, and COO Robert Ames took the lead in overseeing a series
25 of investigative efforts to address first, the Pepper whistleblower complaint submitted
26 to the Board in March 2011 and the second, demands made by Defendant Aguirre on
27 behalf of unidentified UCAN staff members beginning in around June 2011 through
28 February 2012. During this time period, I was immersed in the \$1 billion SDG&E

1 Rate Case being litigated in San Francisco. I was rarely at the UCAN office, except to
2 meet with staff members that I continued to oversee or to meet with Robert Ames.

3 18. During that 11-month time period, the Board grappled with how to deal
4 with Mr. Aguirre's demands that I be fired and forced to repay monies to UCAN. I was
5 almost completely vindicated on all of the Peffer and Aguirre allegations by the
6 independent attorney investigation (Dostart) and the accountant's forensic review of the
7 organization's finances. (AKT) . There were some technical problems identified which
8 were readily remediated but nothing of any substance. However, Aguirre – as is his
9 wont – persisted in demanding my termination and other assorted concessions. Up
10 until that point the Board had spent upwards of \$500,000 that would later surpass
11 \$700,000 dealing with Aguirre's demands for investigations, according to an email sent
12 to me by a UCAN Board member. (NOL, Exhibit 1) The Board, with my concurrence,
13 decided to begin a dissolution process to wrap up UCAN's activities and, hopefully, force
14 Aguirre to reveal the evidence supporting his vague accusations made in private
15 meetings with Kendall Squires and Robert Ames.

16 19. At the time that the Board announced the commencement of the
17 dissolution process on February 28, 2012, UCAN posted the following statement on its
18 website. This statement was authored by myself, Mr. Kendall Squires, the Chair of the
19 UCAN Board and Mr. Dostart and was designed to address the allegations that I had
20 diverted monies out of UCAN, created private bank accounts, paid myself bonuses that
21 had not been authorized or earned, practiced law without a license and violated state
22 auditing laws. The statement read:

23 “Among the allegations lodged against UCAN's senior management by
24 such third parties included (a) embezzlement of UCAN funds, directly,
25 through kickbacks or via other routes, (b) private bank accounts in which
26 assets were being siphoned, (c) failure to comply with state audit
27 requirements, (d) engaging in unlicensed legal activities, and (e) entering
28 into illegal contracts. However, no evidence confirming such allegations
was provided by those lodging allegations, nor discovered by any of the
professionals retained by UCAN's board. The UCAN board engaged
several San Diego County firms to assist it in evaluating multiple
allegations leveled against UCAN by third parties. Those assisting the
UCAN board include law firms: Dostart Clapp & Coveney LLP; Iredale
and Yoo APC; among others. In addition, AKT LLP was retained by the

1 UCAN board for forensic accounting, business consulting and auditing
2 services. " (NOL, Exhibit 2.)

3 20. As expected, after the dissolution process commenced, Aguirre attacked
4 back. He filed a "membership derivative" complaint against myself, Robert Ames and
5 UCAN Board members, personally. He did not file an action against UCAN, the
6 corporation. His targets were the personal assets of the Board members and upper
7 management. He began a systemic media blitz attempting to try the case in the media
8 rather than in the courts, as will be described below in greater depth. Most
9 importantly, he did not uncover any facts that had not already been investigated by the
10 UCAN attorneys and accountants. As was acknowledged in an email by Kendall
11 Squires to other UCAN Board members, Aguirre had no case. As per Squires,
12 allegations only gave him legal cover by which to publicly bludgeon the Board members
13 and myself in the public domain without fear of legal retribution. (NOL, Exhibit 3)
14 This was expected; UCAN's independent counsel and I had warned the Board that
15 Aguirre's case would largely be litigated outside of court and to steel themselves for the
16 assault. (NOL, Exhibit 4, Except of Exh. 3 from Aguirre NOL, footnote 4)

17 21. I was only tangentially involved in the Aguirre complaint; in March
18 through May 2012, my focus was on the \$1 billion-dollar SDG&E Rate Case which was
19 wrapping up its first phase and beginning a second phase in which I had to prepare
20 additional expert testimony. UCAN's Board and its team of attorneys and auditors
21 worked on the dissolution process and Aguirre's allegations.

22 22. In May 2012, two major developments occurred. UCAN negotiated a
23 settlement with Michael Aguirre on his membership derivative lawsuit and it hired an
24 executive director to succeed me. I refused to participate in the settlement, even
25 though I was a defendant. Accordingly, I was excluded from all settlement
26 discussions. I was asked by UCAN to sign a liability waiver agreement but never a non-
27 compete agreement. I declined to sign anything, much to the chagrin of the
28 Chairperson, Kendall Squires. The second development was perhaps more dramatic.

1 Kim Malcolm, a non-attorney and former CPUC employee, was hired to run UCAN.
2 As per my request, my role was to be reduced to focus upon the remaining six-eight
3 months of litigating the second phase of the SDG&E General Rate Case and assisting
4 with other litigation at the CPUC. I had not anticipated what happened next: Kim
5 Malcolm and I clashed horribly. Within three weeks, I had been curtly terminated
6 with no explanation and she'd taken a number of steps to wrest the \$1 billion SDG&E
7 Rate Case – upon which I'd worked since 2010 – away from me.

8 23. Shortly thereafter, UCAN began to attack. A series of media articles ran
9 in the San Diego Reader and UTSanDiego containing emails, anonymous allegations
10 and insinuations. A full-scale offense opened upon me on August 27, 2012 with the
11 publication of a letter from Kendall Squires, discussed below, accusing me of having
12 stolen and mismanaged UCAN's documents. The assault continued until I filed this
13 complaint against UCAN, Aguirre and David Peffer on February 28, 2013. Below, I
14 will discuss the details of each of the false and defamatory actions of UCAN.

15 **UCAN IS COMPETITOR TO PLAINTIFF**

16 Before commencing a discussion on the defamatory actions, I offer the following
17 facts that support my contention that UCAN and Aguirre are competitors and therefore
18 are exempted from SLAPP protections.

19 24. I have, at all times since 1985, been primarily engaged in the business of
20 representing San Diego utility ratepayers before the Public Utilities Commission.

21 25. On June 20, 2012, I was terminated by UCAN and was informed that
22 UCAN did not have the resources to pursue the second phase of the SDG&E General
23 Rate Case on which I'd been working since 2010. The next day, I created an
24 organization called San Diego Consumers' Action Network (SDCAN). Five months
25 earlier, I had reserved the SDGAN internet domain name when the UCAN Board was
26 preparing to file a dissolution action. The Board had been informed about my efforts
27 to develop another advocacy group that could continue the SDG&E rate case.

28 26. At no time during my employment did I sign an employment contract or

1 a non-compete arrangement with UCAN.

2 27. Both UCAN and SDCAN were primarily engaged in the business of
3 representing San Diego utility rate payers as intervenors before the CPUC during the
4 2012-2013 time period.

5 28. David Pepper was an employee of UCAN from 2011-2013. After I left
6 UCAN, Pepper's primary responsibility at UCAN was to represent San Diego rate
7 payers as an intervenor before the CPUC on behalf of UCAN.

8 29. Each of these Defendants views SDCAN as a competitor and sought to
9 tarnish my reputation in the public and before the regulatory body before which the
10 three groups appear. One example of this is an action taken on November 30, 2012 by
11 UCAN in opposing SDCAN's entry into an on-going proceeding before the CPUC
12 regarding a new pricing program. This case was only tangentially related to the SDG&E
13 Rate Case. I had been involved in this case at UCAN since 2010 and had been the
14 primary force behind a complex settlement of over 14 parties. In late 2012, the judge
15 in that proceeding was inquiring into details of that settlement and I sought to
16 intervene as a party so as to better inform the Commission about the details of the
17 settlement and the expectations of the parties. I filed a petition to become a party to
18 this on-going matter in which I'd previously represented UCAN. Inexplicably, UCAN
19 filed an opposition to my petition arguing that my prior service for UCAN in the matter
20 was the reason why SDCAN should be barred from being able to enter the case. (NOL,
21 Exhibit 5) I chose not to respond to the UCAN protest and the Commission denied my
22 petition rendering SDCAN unable to participate in the case.

23 30. Advocacy at the Public Utilities Commission is influenced by an Intervenor
24 Compensation program that allows for intervenors to be reimbursed for work in
25 proceedings where that intervenor has made a substantial contribution. Being
26 recognized as an intervenor is not an easy task, as the Commission has rejected
27 intervenor applicants and has reduced compensation for advocates who duplicate the
28 efforts of others. Moreover, reputation for professionalism and fair dealing has a direct

1 impact upon the effectiveness of advocates at the CPUC. It is not coincidence that
2 while I ran UCAN, the organization has almost never been denied compensation or had
3 it substantially reduced. Until the debacle of UCAN's opposition to my entrance into
4 the Dynamic Pricing case discussed at paragraph 15, above, I had never been denied
5 party status in a CPUC case. For these reasons, I understand why UCAN views me as
6 a competitive threat.

7 31. In addition to creating barriers for my participation at the CPUC, UCAN
8 also made false or misleading statements about me. For example, on or about July 13,
9 2013, UCAN's then-Executive Director Kim Malcolm made a false but telling statement
10 in a media publication that: ".....he (Shames) was laying the groundwork for an
11 organization that is apparently UCAN's mirror image – but without all of the liabilities
12 that have been left to UCAN." (NOL, Exhibit 6) Ms. Malcolm's statement was false
13 but it revealed how she viewed the existence of SDCAN.

14 32. UCAN employee Defendant Peffer concedes that UCAN viewed SDCAN
15 as a competitor in his declaration filed on behalf of Defendant Aguirre, which states: In
16 the summer of 2012 I learned that Mr. Shames was no longer employed at UCAN. Soon
17 thereafter, I learned that Mr. Shames had organized a competing consumer group called
18 the San Diego Consumers' Action Network ("SDCAN"). ... On June 26, 2012, Mr.
19 Shames representing SDCAN, filed a motion with the California Public Utilities
20 Commission claiming that SDCAN was UCAN's successor and attempting to claim
21 UCAN's interest in the SDGE General Rate case - Phase 2. UCAN's interest included
22 a large investment of attorney time, attorney work product, and expert testimony.
23 (NOL, Exhibit 7 – excerpt: Peffer Dec paras. 20-21).

24 33. Defendant Aguirre also presents a declaration by Charles Langley which
25 echoes the view that UCAN was a competitive threat to UCAN: "I also learned that Mr.
26 Shames had filed paperwork to award his new San Diego Consumers' Action Network
27 a key stake in a rate-hike case pending before the ...CPUC. At the time, I consulted
28 with my attorney, Michael Aguirre, about these matters and what could be done to stop

1 Mr. Shames from taking away UCAN's case before the CPUC." (NOL, Exhibit 8,
2 excerpt Langley Dec, para 19)

3 34. Since July 2011, CPUC staffers frequently approach me and ask questions
4 about the controversy with UCAN. The agency has a daily internal news distribution
5 service which include most, if not all, articles that reference the CPUC or SDG&E. In
6 addition, many staffers have told me that they have received anonymous emails
7 containing articles or documents pertaining to the allegations. One staff person sent
8 me an example of this anonymous email sent to him on January 9, 2013 which included
9 a San Diego Reader article and a copy of the complaint I filed against UCAN in
10 December 2012 (which was subsequently replaced by the instant complaint). I explain
11 to each CPUC staff person who raises the topic that I plan to try this matter in Court
12 rather than in the media.

13 CLASS ACTION ALLEGATIONS

14 35. Although most of UCAN's activities were focused at the CPUC, numerous
15 times I found that UCAN received complaints where the CPUC was not an appropriate
16 venue for customer relief. In matters pertaining to telecommunications or privacy,
17 CPUC's equitable powers were limited whereas the civil courts were better suited for
18 disgorging ill-gotten profits from companies. In those cases, I also sought out qualified
19 consumer class action attorneys to bring actions on behalf of aggrieved consumers. I
20 sought nothing in return from these class action attorneys other than getting the most
21 and best relief possible and there were absolutely no "reciprocal" arrangements. I
22 began bringing these class actions in the 1990s.

23 36. Through these class actions, I began to develop a positive reputation as a
24 class representative who sought no recompense, who was expert and respected by the
25 courts and who fought for the best possible relief for aggrieved customers. For
26 example, in almost every case in which I was a class representative or UCAN was a
27 plaintiff, I rejected the notion of a "coupon" settlement limiting customers to buying
28 more product or services from a company that had just abused those customers' trust.

1 Class action attorneys from around the nation requested that I serve as a class
2 representative in their actions. Occasionally, where the subject matter seemed
3 appropriate or the attorneys were ones with whom I wanted to work, I would agree to
4 serve as a class representative independent of UCAN's involvement. In each of these
5 cases, I declined any compensation as I viewed that as a potential conflict with my full-
6 time commitment to UCAN.

7 37. Allegations of improprieties in these class action cases was first raised on
8 or about December 27, 2011, when UCAN Chair Kendall Squires presented me with a
9 written allegation that David Peffer sent to two UCAN Board members dated December
10 8, 2011. It made a number of unfounded allegations about my use of class action cases
11 for my "personal benefit" and raised the "specter of a kickback relationship between
12 Alan Mansfield and Shames which to my knowledge has not been investigated by
13 UCAN's Board of Directors".

14 38. Alan Mansfield is a class action attorney with whom had worked on
15 previous UCAN consumer class action cases and who had just that month negotiated
16 a retainer arrangement with Robert Ames to represent both UCAN as well as myself
17 as an individual in a complaint against the City Water Department for illegal
18 estimating meter reads. I had found evidence on my own home water meter that
19 aligned with complaints that UCAN members had lodged with the organization that
20 water meters were not being read even though the bills indicated that they had been
21 read. In the written memo given to me by Mr. Squires and addressed to the two UCAN
22 Board members, Defendant Peffer also alleged that Mr. Mansfield might retaliate
23 against him and argued that the retainer contract negotiated between Robert Ames and
24 Mr. Mansfield was illegal. Notably, Defendant Peffer also raised the concern that the
25 retainer agreement "ensures that Shames would retain significant control over the
26 litigation if he leaves UCAN." (NOL, Exhibit 9 – handwriting on the document is not
27 mine and is likely that of Mr. Ames who gave me the document in 2011) Mr. Squires
28 asked for and I prepared a response to Defendant Peffer's allegations. (NOL, Exhibit

1 10.) Mr. Squires indicated that these allegations would be investigated by Paul
2 Dostart, who was serving as an independent counsel to investigate Defendant Peffer's
3 other accusations. Mr. Squires verbally assured me that I'd receive a response to my
4 written submission rebutting Defendant Peffer's allegations so as to set the record
5 straight. I never received a written response. However, I was told by Robert Ames at
6 some point in 2012 that Defendant Peffer never offered any evidence to support his
7 allegations and that Dostart found no factual basis to support any of Peffer's
8 allegations.

9 39. Subsequently, Mr. Mansfield and Mr. Ames independently informed me
10 that Defendant Peffer's subordination prevented Mr. Mansfield from getting the
11 documents he needed to pursue the action. Peffer's refusal to share the UCAN customer
12 complaints forced Mr. Mansfield to withdraw from the retainer agreement. (See
13 Declarations of Alan Mansfield and Robert Ames, Exhibits C & B) Because of this
14 refusal, the case was not pursued. Defendant Peffer's defiance of Mr. Ames' directions
15 is but one example of how Defendant Peffer sought to prevent me from participating in
16 class actions that I initiated while at UCAN. But it also explains what came next:
17 media stories about class action cases in which I was involved.

18 40. In September and again in October 2012, I was contacted by the
19 UTSanDiego reporter who had apparently been scrutinizing my class action activities.
20 This reporter made a number of outlandish accusations that I had been privately
21 profiting from class action cases. Ultimately, he did not pursue the story after I
22 rebutted his allegations and threatened a defamation suit. (NOL, Exhibit 11).
23 However, the UTSanDiego did end up publishing essentially the same allegations in
24 March 2013, as set forth in the Paragraph 11 exhibits. It referenced its sources as
25 "UCAN employees and directors." (NOL, Exhibit 12)

26 41. The San Diego Reader seized on the class action issue and published at
27 least three stories in October 2012, January 2013 and June 2013. Each of the stories
28 suggest that there were "tit for tat" arrangement in the class action cases. The January

1 story quotes a UCAN employee calling UCAN a “lawsuit generating machine for
2 Shames” and the July 2013 story states that Shames farmed out lawsuits to private
3 attorneys who profited from UCAN’s work. It cites a “cross-complaint” but there was
4 no such allegation in any civil case. However, that story extensively quoted Mr.
5 Langley – a UCAN employee who had previously made that contention to me and
6 others. (NOL, Exhibit 13)

7 42. In this same article, on January 8th, in his online biog. comments, San
8 Diego Reader reporter Don Balder wrote: “In his years, UCAN paid consultants -- often
9 his friends -- extraordinary remuneration. UCAN would come up with scams, then
10 Shames would farm out the class action lawsuits to other attorneys; UCAN would not
11 get what it deserved from settlements. These questions are just a few in addition to the
12 many I have raised since July of 2011, when I began writing about this. Best, Don
13 Balder” (NOL, Exhibit 13).

14 43. In response to the stories published by the Reader, some of the readers
15 commented: “If I were Shames, I would be worried about going to prison” and “This
16 whole scandal and potential fraud makes me wonder if the ratepayers really got a good
17 deal from Shames representation to the PUC or was his goal merely to get enough
18 concessions to guarantee him a good payday from intervenor fees?” The latter response
19 was written by a man with whom I’d worked with for a number of years professionally.
20 Another wrote: “This is the worst possible time for a so-called ratepayer champion to
21 be held in contempt of public trust.”

22 44. The information being fed to these reporters had to have come from
23 Defendant UCAN. Notably, these class action allegations were not raised in the
24 Aguirre complaint against UCAN and thus could not have come from any court-ordered
25 discovery or other official filings. However, shortly after the lawsuit settled in July
26 2012, I began seeing these stories in the media relating to my involvement in class
27 action suits both independent of and as part of my work at UCAN. (NOL, Exhibit 14).

28 45. All of the allegations raised in these stories were false and defamatory.

1 As is attested in the Declarations of David S. Casey, Alan Mansfield and Howard
2 Finkelstein, there was nothing improper with my handling of the class actions cases.
3 Nor were any of these attorneys were “friends” of mine and I never engaged with them
4 socially. I’d never even shared an evening meal with any of these declarants.

5 46. None of the class action cases were withheld from employees or the Board.
6 All Class Action cases, including those in which I served as an individual class
7 representative, not on behalf of UCAN, were disclosed to the Board in quarterly UCAN
8 meeting documents as a matter of policy. Moreover, most of them were subject to
9 publicity and often referenced in the news. UCAN is in possession of these materials.

10 47. At paragraph 9 of the Malcolm Declaration, she references a Board
11 member’s email asking questions about my involvement in class actions. This
12 particular email reveals the depth of the misinformation that had been spread amongst
13 Board members after my departure. This Board member’s misguided belief that I did
14 not work exclusively for UCAN (and no one ever asked me about this point) is an
15 example of the kind of innuendo and misinformation that I witnessed after Ms. Malcolm
16 assumed control of UCAN. (See NOL, Exhibit 15, excerpt Malcolm Declaration, para
17 9 and corresponding Exh. C) In fact, I did not work for anyone other than UCAN from
18 2005 onwards and I reaped no income from any of the class action cases in which I
19 participated. Earlier in that decade, I taught evening classes at University of San
20 Diego Business School.

21 48. This email is also remarkable in that it reveals that the author – who had
22 been a board member for almost a year -- was ignorant about the June 2012 Dostart
23 report which had addressed the alleged violation of Gov. Code Section 12586(g) and
24 advised the Board to conduct a compensation study. (See Declaration of Robert Ames,
25 NOL, Exhibit B, Attachment A, p. 8) As noted above, UCAN commenced exactly such
26 a study in 2011 and then abandoned it.

27 49. At paragraph 11 of the Malcolm Declaration, she states, in part:
28 “...conduct such an investigation. My intent was to determine whether I
could seek remuneration from those attorneys on behalf of UCAN for their

1 use of UCAN work products, consistent with my understanding that a
2 charitable 501(c)(3) organization cannot give away assets for the
3 enrichment of others. I am not aware that UCAN's board of directors
4 investigated the allegations that Mr. Shames had improperly provided
5 UCAN work product at no charge to private attorneys, some of whom,
6 according to court records, made millions of dollars in attorney fees."
7 50. At no point did Ms. Malcolm ever inquire into the nature of the class action
8 cases in which I participated. It was never a topic of conversation or correspondence
9 until after I had been terminated, at which time it suddenly became a major issue for
10 Ms. Malcolm.

11 51. I am further troubled by Ms. Malcolm's assertion that a non-profit
12 consumer group, such as UCAN, is giving away an asset when it retains qualified class
13 action attorneys to litigate a matter that would benefit the membership of that
14 organization and/or the public at large which it represents. Ms. Malcolm is not an
15 attorney and does not have a law degree. She never spoke to me about the basis upon
16 which she arrived at that conclusion. I am very familiar with standards employed by
17 class action counsel and I would not have suggested, let alone demanded, as she does,
18 the requirement of remuneration for use of UCAN work product.

19 52. Moreover, the suggestion that any officer of a 501(c)(3) group is acting
20 improperly when it seeks out class action specialists to remedy an illegal practice by a
21 government or company unless the non-profit is remunerated is personally offensive.
22 In an instance where a nonprofit organization took the posture that some remuneration,
23 aside from Class Representative fees, would be a precondition to litigation, that
24 organization and any attorney associated with such an arrangement would fall afoul
25 of California Rules of Professional Conduct Rule 2-200 and would be subject to State
26 Bar discipline as well as possible legal liability. I do not believe that *any* responsible
27 class action law firm would agree to taking a case on those terms and, as an attorney,
28 I would never have so proposed.

53. Ms. Malcolm's attitude is pervasive in the questions I was asked by the
media after my departure from UCAN. I found my professional reputation was
attacked on the basis that I did what any conscientious non-profit administrator would

1 have done. I identified illegal activities by companies and/or government and found
2 qualified law firms to stop the practice and secure reimbursement for the customers
3 affected by the illegal practice. To view such cases as an asset of the non-profit runs
4 counter to public policy and law to be "sold" to qualified attorneys is deeply troubling.

5 **MISSING FILES**

6 54. On July 6, 2012, UCAN sent a letter to my attorney demanding that I
7 return all UCAN work product, including all financial records, and destroy all electronic
8 versions of those documents that I possessed. (NOL, Exhibit 16) I honored UCAN's
9 request, providing them with all paper and electronic files and erasing those on my
10 computer. This compliance was memorialized in a July 10th letter by Suzy Moore, who
11 was my legal counsel for the UCAN termination process and who stated that I had
12 agreed to this demand. (NOL, Exhibit 17)

13 55. On September 5, 2012, I was notified by a reporter of a letter by Kendall
14 Squires dated August 29 but not received by me until the afternoon of the 5th. The
15 letter made three false accusations regarding my possession files and employee
16 timesheets, my custodianship of files and UCAN's inability to participate in an audit
17 by the California State Auditor's office because of the alleged missing files. (NOL,
18 Exhibit 18) It specifically demanded that I return all files in my possession even though
19 it had made the same demand in July and my attorney had indicated that I had
20 complied. All of these assertions were untrue and implied that my attorney's July
21 representation was a lie. Nor had anyone from UCAN ever asked me to help them
22 locate the allegedly missing files.

23 56. Copies of Mr. Squires' letter were sent to the President of the Public
24 Utilities Commission and to Assembly member Perea of Fresno. Notably, the letter was
25 not "carbon copied" to the California State Auditor's office, which was the agency
26 charged by the Legislature with conducting the audit. The PUC was not involved in
27 the state audit process except to the extent that the State Auditor's office requested
28 documents and interviews with the PUC about how it handled such compensation

1 matters. In a subsequent report, the State Auditor had no problems with UCAN's
2 compensation documentation but focused much of its criticism upon the PUC's poor
3 responsiveness to such requests. (NOL, Exhibit 19)

4 57. In regards to the custodianship of UCAN files, I was not the custodian of
5 the files sought by Mr. Squires in his letter after May 2011. Robert Ames was
6 instructed by Kendall Squires to serve as custodian of most of the financial files, such
7 as "contracts" and "invoices" starting in May 2011. The only files I maintained
8 thereafter were payroll files, since I was still handling the payroll for UCAN through
9 March 2012 until the court-appointed receiver assumed operations of the organization.
10 I was never consulted by UCAN's new Executive Director or by Mr. Squires in regards
11 to the location of any files over which I had custody prior to or even after Mr. Squires'
12 August 29th letter.

13 58. A few weeks earlier, the UTSanDiego ran an article claiming that I was
14 partially responsible for the triggering of a state audit of compensation paid to
15 intervenors by the CPUC. Shortly after that article ran, the same reporter sent me an
16 email (a few hours before I'd received Squires' August 29th letter) repeating the lie that
17 I was custodian of records for UCAN. (NOL, Exhibit 20)

18 59. When I received Mr. Squires' letter stating that I was custodian of records,
19 I passed on the letter to Robert Ames, as he knew that Mr. Squires' statement was
20 untrue. He indicated that he was contacted by a reporter from the UTSanDiego
21 inquiring as to whether he was the custodian of UCAN's records. He told me he was
22 prohibited by the Board from discussing any matters related to UCAN with the media
23 and would be unable to reveal the untruth in Mr. Squires' letter until he was no longer
24 associated with UCAN.

25 60. UCAN's concerns about the state audit process turned out to have been
26 unwarranted in light of the July 2013 publication of the State Auditor's report which
27 found no issues whatsoever with UCAN's file keeping. In this July 2013 report by the
28 State Auditor to the Legislature, it makes no mention of inadequate books and records

1 and presents no evidence that UCAN was not in compliance. (NOL, Exhibit 19,
2 includes an article summarizing findings)

3 61. Mr. Squires knew that I was not involved in the collection of employee
4 timesheets and could not have been in possession of them. Moreover, he knew that
5 timesheets weren't implemented at UCAN until 2011. In that year, the State Labor
6 Department reviewed UCAN's timesheet policy after receiving an anonymous complaint
7 by an employee about our compliance with the Labor Code. I informed Messrs. Squires
8 and Ames, along with UCAN's labor attorney Rod Betts that I did not believe it
9 necessary to have all employees keep timesheets and I met with the Labor Department
10 auditor on this matter. The State reviewed UCAN's policies and did not find any
11 statutory violations. Thereafter, out of an abundance of caution, Mr. Ames, with the
12 approval of Mr. Squires, implemented a policy by which timesheets were required of all
13 employees. He was in charge of that process and received all timesheets from
14 employees – including my own.

15 62. Frequently, Mr. Ames and I discussed the UCAN email server's lack of
16 security. Both of us noticed how facts contained in email discussions that we had were
17 being leaked to the media, albeit in a distorted manner. In October 2011, I was
18 instructed by Messrs. Squires and Ames to begin to correspond amongst ourselves and
19 other UCAN employees using our personal email addresses because of the insecurity
20 of the UCAN email system. At a February 7th 2012 meeting with Messrs. Ames and
21 Squires at my house, I was told by Ames and Squires that Defendant Aguirre possessed
22 email correspondence between myself and my then-spouse. Both Mr. Squires and Mr.
23 Ames explained that Defendant Aguirre had shown them examples of my personal and
24 professional emails and that I should take steps to avoid using the UCAN email server.
25 This fact is admitted by Defendant Pepper who testifies in his Declaration at paragraph
26 25 that in late 2011 or early 2012 "emails were discovered showing that the funds used
27 to make the hedge fund investment may have come from a cy pres award... ."

28 63. The pilfering of the UCAN files was alarming but generally didn't create

1 operational problems because I had long arranged to have electronic back-ups for just
2 about every important operational file. This was necessitated due to my need to run the
3 office while located in hearings in San Francisco. Because of this electronic back-up
4 system, whenever Mr. Ames reported to me that there were missing paper files, I was
5 able to provide back-up files that filled the void of the missing files. I also showed him
6 how I had arranged to have UCAN's bookkeeper and accountant's firm maintained
7 copies of important financial files, such as bank statements in their offices as
8 additional backups. However, by June 2011, the repeated instance of file pilfering by
9 unknown UCAN employees prompted Mr. Squires and Mr. Ames to begin removing
10 some of the more sensitive files from the UCAN offices for storage at Mr. Ames' home.
11 From that point onwards, I no longer maintained UCAN's records, other than payroll
12 records which were largely electronic and stored on Paychex' server.

13 64. Mr. Squires also lied about my possession of UCAN files in his
14 communications with Richard Ravreby, who represented my ex-spouse in a property
15 dispute. Mr. Squires told Mr. Ravreby that I was in possession of files even though
16 UCAN had previously demanded that I surrender all copies of the files in question. Mr.
17 Ravreby and Ms. Wolf relied upon Squires' misrepresentation in their pursuit of
18 litigation and Mr. Ravreby's republication of Mr. Squires lie. (NOL, Exhibits C & D
19 Declarations of Katherine Wolf and Richard Raverby) Mr. Ravreby also relied upon
20 Mr. Squires' defamatory statement when he republished the defamation in an article
21 by the San Diego Reader. (See NOL, Exhibit 21) When I was deposed by Mr. Ravreby
22 on July 31, 2013, Mr. Ravreby and his client first learned that I had been compelled
23 by UCAN to return all files more than a year before and that they'd been lied to by Mr.
24 Squires. Much of the year in litigation with my ex-spouse was focused on locating the
25 files that they thought I possessed.

26 65. There is also the matter of a statement made in UCAN's SLAPP motion
27 regarding my possession of UCAN files that had been surreptitiously planted on my
28 property. As I explained in an email to Mr. Squires on September 26 2012 in a letter

1 written after getting no response from Squires, I explained to him that the previous
2 day I had arrived home to find two binders located at the base of my stairs. One binder
3 contained the payroll journal and related papers from November 2010-April 2011.
4 The second binder contained similar documents from January –October 2010. I
5 recognized at least one of the binders as one that I returned to the UCAN office on May
6 23rd. Yet they “returned” mysteriously to my house just twelve days after the Union
7 Tribune ran a story initiated by UCAN about how I am in possession of UCAN
8 documents. (NOL, Exhibit 22) In that letter, I requested that UCAN come collect the
9 files that had been left at my house. UCAN did not do so. The following month, my
10 attorney also formally requested that UCAN take repossession of the files in a demand
11 letter that he sent to UCAN. Not until March 2013 did UCAN finally collect the files
12 and only after I’d taken them to my attorney’s office and instructed that they be
13 destroyed if not picked up by UCAN within 30 days. They remained in my unwilling
14 possession for the better part of 6 months.

15 66. I wrote UCAN and demanded that they retract the assertions contained
16 in Mr. Squires’ letter. (NOL, Exh. 44) UCAN did not so retract.

17 **UNAUTHORIZED BONUSES ALLEGATION**

18 67. In the early 1990s, the UCAN Board authorized an incentive payment
19 system for attorneys that worked for UCAN. The two primary reasons for the
20 incentive system was because of my strong belief that results should be rewarded and
21 also to allow public interest lawyers working at UCAN to reap higher salaries based
22 upon their performance. I’ve long held that performance-based payments are superior
23 to strict hourly or annual wages. In February 2008, the UCAN Board revisited the
24 incentive payment system and expanded it to all employees who participated in
25 regulatory proceedings in which compensation was paid, even if they were not
26 attorneys.

27 68. On February 7, 2008, the UCAN Board met and discussed compensation
28 of staff persons. I attended that meeting. According to the minutes, Mr. Squires was

1 in attendance at that meeting. I recall that the Board had a fairly extensive discussion
2 about the 10% incentive policy that had been in effect for many years prior to that
3 meeting. At that meeting, the Board discussed and determined that the policy was a
4 sound means by which to incent UCAN staff to effectively advocate and prevail in
5 actions taken at the CPUC. Board Member Deborah Berger specifically encouraged
6 that all UCAN staffers, not just attorneys, should be eligible for the bonuses. Her
7 motion was unanimously adopted. Any suggestion that the Board members who
8 attended that meeting, including Mr. Squires, were unaware of the terms of Mr.
9 Shames' compensation or the basis for the 10% incentive policy does not square with the
10 discussion that occurred at that meeting.

11 69. Each year, the Board received an itemized budget that included line item
12 accounting for annual bonuses to be paid to staff. It was reviewed and adopted by the
13 UCAN Board each year since I have been Executive Director. I have attached an
14 exemplar: the approved budget for 2009. (NOL, Exhibit 23) It shows under Expenses:
15 Salaries under the line item "bonuses" how the incentive payments were projected and
16 disclosed to the Board. For that year, the annual bonus amounts were estimated to be
17 \$98,000. All payments under the incentive policy were subject to the UCAN
18 independent bookkeeper's oversight and monthly report to the Board along with the
19 annual review conducted by UCAN's independent CPA. Board members were fully
20 aware of the incentive program and generally aware of the amount of incentives being
21 paid to the staff. Budgets just like this one were adopted by the Board each year that
22 I served UCAN.

23 70. The validity/legality of that compensation arrangement was challenged in
24 a whistleblower complaint to the Board by Defendant Peffer in about March 2011. Mr.
25 Dostart prepared a preliminary assessment of the matters raised by Defendant Peffer.
26 (Ames' Dec, NOL, Exhibit A) That law firm completed its investigation into the
27 incentive payment matter by June 2011 and informed the Board in a memo stated that
28 it found no merit to Defendant Peffer's assertions. In that memo and in statements that

1 he made to me and the UCAN Board, Mr. Dostart indicated that the incentive payments
2 were not illegal. However Mr. Dostart did recommend that in order to technically
3 comply with the law, the Board would be well served to conduct an Executive
4 Compensation Review. This involved either conducting a survey of the market rates
5 paid to the executive director or retaining an independent consultant to conduct that
6 market survey. In late 2011, Mr. Ames retained the Reward Strategy Group to perform
7 an executive compensation review and asked me for information required to complete
8 that survey. At about that time, I provided Mr. Ames and Mr. Squires with a
9 comparable salary for a Los Angeles-based advocate who would be doing the same
10 things as I did for UCAN however with a smaller staff and no obligation to raise funds
11 or litigate cases. (NOL, Exhibit 24) Shortly after providing them with this
12 comparable showing an even higher salary than my combined salary/incentive income
13 for a job with less responsibility, the work on the Compensation Review was
14 terminated prematurely. An independent compensation review was never completed.
15 The matter was not raised again with me thereafter. I continued to work at UCAN
16 through June 2012 and the incentive payment policy had not been modified or
17 rescinded.

18 71. Moreover, Kendall Squires informed me in November 2011 that he had no
19 problem with the incentive program. In a set of emails he sent to me and to other
20 Board members, Squires stated that "I say this without in any way suggesting that any
21 bonus is inappropriate." (NOL, Exhibit 25) This statement came four months after
22 the Dostart inquiry about this issue and I relied upon this statement in assuming that
23 there was no merit to the bonus issue.

24 72. On October 4, 2012, I received a letter dated October 3rd from Kendall
25 Squires demanding that UCAN return all bonuses that I had been paid from 2005-2012.
26 (NOL, Exhibit 26) The letter claimed that UCAN had conducted an executive
27 compensation review and found that my salary – which ranged between \$86,000-
28 \$128,000 during that time period – was competitive. I was never provided a copy of

1 that compensation review nor has it been lodged with the Court.

2 73. The compensation review upon which the October 2012 letter relied upon
3 has never been made public, to my knowledge. It was not included in any of the NOL
4 exhibits accompanying UCAN's SLAPP motion. It could not have been accurate in
5 light of the documented comparable salary that I provided the Board in November 2011.
6 And its alleged findings that my base salary was commensurate with total
7 compensation paid to like-qualified executive directors are contradicted by the reports
8 that my successor, Kim Malcolm, was paid an annual salary of \$140,000 -- 12% higher
9 than mine -- despite the fact that UCAN's budget was only a fraction of what it was
10 during my tenure, that it had less than half of the employees that I was charged with
11 supervising, that Ms. Malcolm is not an attorney and did not intend to actively
12 advocate before the CPUC as I did, because she was not an attorney she was not
13 authorized to supervise other attorneys who would be working on behalf of UCAN, she
14 had little, if any, media and communication skills and she had no experience in running
15 regulatory advocacy group like UCAN. Her qualifications did not approach those that
16 I possess yet her base salary starting in 2012 was higher any base salary that I'd been
17 paid while running UCAN for 21 years.

18 74. As with the "missing files" letter received two months earlier, I was alerted
19 to Squires' October 3rd demand letter by a UTSanDiego reporter. The UT then
20 published an article that afternoon about Squires' letter, citing the letter extensively.
21 . (NOL, Exhibit 27) The San Diego Reader published its article on the Squires letter
22 a day earlier and did not seek comment from me. It, too, relied upon the letter and
23 also reported about a September 23rd writing from Kim Malcolm to a UCAN Board
24 member. (NOL, Exhibit 28) I am informed that the Board member who received that
25 Malcolm note and who released the letter to Balder is Niel Lynch. As with the
26 UTSanDiego article, the Reader also reported about the confidential FBI investigation.
27 Balder's readers responded to this story concluding that I had no scruples, I had
28 evaded taxes, that I'd be "doing a perp walk" and that UCAN was my private fiefdom.

1 . (NOL, Exhibit 28)

2 75. The Board had been put on full notice about the legitimacy of bonuses
3 awarded to me on March 3, 2011 when it received a whistleblower complaint from
4 David Pepper. It had the matter investigated and received a report about the legitimacy
5 of the arrangement in June 2011. It reaffirmed the legitimacy of the arrangement in
6 November 2011 and again, publicly, on the UCAN web site in February 2012. Robert
7 Ames told me that Charles Langley submitted a complaint to the Attorney General's
8 office in 2011 demanding that the agency initiate an action to recover the compensation
9 paid to me but that office declined to take any action. A full 26 months after being put
10 on notice about this matter it finally filed a complaint that does not specifically mention
11 the bonuses, but merely refers to a vague "breach of fiduciary duty".

12 **FINANCIAL ACCOUNTING/RED ROCK/MISSING MONIES**

13 76. In a November 4, 2012 article, the UTSanDiego also alleged I interfered
14 in an independent investigation: "In an April 2011 email to Squires, Shames said
15 Dostart 'specifically instructed the auditors NOT to investigate any embezzlement or
16 misuse of UCAN monies by me.' (NOL, Exhibit 30)

17 77. I had been alerted to this pending story by an email I received from the
18 reporter on October 31, 2012 when he wrote:

19 "I have been reviewing business practices at UCAN for some months now,
20 and I have questions for you about your work for the organization.
21 Specifically, I need to ask you about a record I obtained indicating that
22 you "specifically instructed the auditors NOT to investigate any
23 embezzlement or misuse of UCAN monies" by Michael Shames. This is
24 from an email Mr. Shames sent to Mr. Squires and COO Ames on 4/26/11.
25 I understand through other records from early June 2011 that Mr. Shames
26 apparently misled you regarding UCAN tax filings for FYEs ending June
2010 and 2011, so perhaps Mr. Shames statement from 4/26/11 was taken
out of context. This is why I'm writing you now. The UT is preparing a
report outlining additional problems/ Issues at UCAN and Mr. Shames'
statement about your direction to auditors is part of this report. Did you
tell UCAN auditors not to investigate possible embezzlement or misuse of
funds at UCAN?" (NOL, Exhibit 31.)

27 In that email, the reporter revealed many other emails that I'd written while at
28 UCAN that had also been leaked to him which also implied baseless wrongdoings.

1 78. That same day, I received an email from the Reader reporter asking even
2 more accusatory questions about the same emails: “Why did Dostart specifically
3 instruct the auditors NOT to investigate any embezzlement or misuse of UCAN monies
4 by you? Had you told Dostart to do that?” (NOL, Exhibit 32) He stated that “many
5 more documents have surfaced”. These documents could not have come from anyone
6 other than a UCAN employee or director.

7 79. In reviewing these questions by the reporters, I realized that the emails
8 provided to the reporters were selective and didn’t include the entirety of the
9 conversations between myself and the recipients, thus creating a false perception of
10 wrongdoing. I have provided the full text of this email. (See NOL, Exhibit 33) The full
11 and complete email that I sent to Messrs. Squires and Ames on April 26, 2011 shows
12 how Dostart didn’t want the audit to go beyond the allegations by the whistleblower
13 with the proviso that “of course, if they find irregularities in their audit, they are free
14 to investigate”.

15 80. The subsequent stories that ran relied upon these emails and false
16 statements by Defendants. The stories interpret emails to suggest my interference in
17 the Dostart investigation. In the November 2nd article by the San Diego Reader ran
18 a story headlined: “More Damning Emails Surface” in which Kendall Squires is quoted
19 as suggesting Plaintiff was misconstruing Dostart’s directions: “Whatever Mr. Shames
20 thought he heard, he did not hear Dostart say that’, says Squires, who agrees that such
21 instructions would be an ethical violation at the least.” Mr. Squires lied because Mr.
22 Dostart gave me no instructions; I did not have any authority to give the auditors
23 “instruction”. (NOL, Exhibit 34)

24 81. What Mr. Squires apparently did not tell the reporters is that Messrs.
25 Squires and Ames had asked that I meet with Dostart and then report to them elements
26 of the meeting. I had no authority to direct the investigation – only to serve as a
27 conduit by which to provide information and assess the accuracy of the findings. Mr.
28 Ames had not been formally retained by UCAN at that point and my job was to lay the

1 groundwork for the coordination that he would perform when he started in May 2011.
2 Based upon the questions I was asked by the reporters and the stories they wrote, it
3 was clear to me that they'd not been given the full email by whoever leaked it to them.
4 Mr. Squires never asked for or received a retraction by the Reader.

5 82. Those same news articles Kendall Squires is quoted as saying "UCAN
6 Chairman Kendall Squires said he does not remember approving the investment in the
7 fund, even though he was copied on an email regarding the buy-in. 'Recognizing that
8 I was unaware of it at the time, as my memory serves now, yes, I'd be troubled by it,'
9 Squires said. 'I think it is a pool to be examined.'" (NOL, Exhibit 35)

10 83. All of the assertions by Squires are false. For one, investment by non-
11 profits into "hedge funds" is not in the slightest illegal. My almost 30-years in non-
12 profit administration have informed me that the key is that the investments be
13 prudent, that the Board be fully informed and that the organization use due care in
14 making investments. In this case, UCAN was independently advised by a recognized
15 expert in finances who also was (and is) a professor of economics at the UCIrvine
16 business school and who had no economic connection with the investment. Ultimately,
17 Squires is raising a legal question of prudence/appropriateness and presenting it as fact.
18 Prior to moving forward on the Red Rock investment, I confirmed that that many
19 charities have large percentages of their endowments in alternative investments. Any
20 analysis must weigh the actual size of the investment, the amount of UCAN's other
21 assets, the projected date of need to convert the funds tied up in the alternative
22 investment to cash, the degree of liquidity of the alternative investment, the investment
23 choices made with respect to UCAN's other investments and the long-term objectives
24 of the organization. Squires' published implication that I misdirected grant monies
25 into the Red Rock investment has no factual basis – the monies put into the Red Rock
26 investment were attorney fee awards that had accumulated and were to be used in PUC
27 proceedings in 2007-2008.

28 84. At paragraph 17, of his Declaration, Mr. Squires references this 2005

1 investment into Red Rock Capital Fund. He states that "certain staff members, and
2 others, questioned whether all aspects of the proposed investment were fully disclosed."
3 The insinuation that "all aspects" may not have been fully disclosed does not square
4 with the facts. At Board meetings held on September 9, 2006 and January 25, 2007
5 which both I and Mr. Squires attended, I briefed the Board specifically about the Red
6 Rock investment. (See NOL, Exhibit 36). Moreover, in quarterly financial reports
7 provided to the Board, UCAN's independent bookkeeper, Tony Pettina, and myself
8 tracked the Red Rock investment for the Board. To the extent that UCAN's files
9 haven't been stolen, its file should show a significant amount of analysis and
10 information about these investments and the meetings leading up to the Red Rock
11 presentation.

12 85. At the Board meetings in which the Red Rock investment was discussed,
13 there was no suggestion by the Board members that I had not fully disclosed the nature
14 of the investment. In fact, the Red Rock investment was initiated by Board members,
15 not by me. Two Board members, Niel Lynch and Dan Conaway, sought a greater return
16 on the monies in UCAN's Money Market account and pushed to diversify UCAN's
17 holdings. Up until that point, I had promoted a very conservative policy of holding
18 UCAN monies in cash and the investment in Red Rock was at the behest of Board
19 members and not initiated by myself. I also explained to the Board that I did not hold
20 myself out as an expert on such investments and brought in Professor Navarro to assist
21 the Board in determining the best investment for the organization.

22 86. The Red Rock investment matter was raised by Defendant Aguirre with
23 Mr. Squires the day of a Board meeting that I recall occurring in February 2012. In
24 response to Defendant Aguirre's allegation, Mr. Squires asked that I assist Mr. Ames
25 in bringing any records relating to Red Rock to that Board meeting held later in the
26 afternoon. At the Board meeting, I was asked about the transaction and I explained
27 that the Board had expressly approved the transaction. At least two Board members
28 of the three Board members at the meeting concurred with me and expressed the

1 Board's approval of the investment. Notably, Mr. Squires indicated that he had
2 absolutely no recollection of the Red Rock transaction and expressed surprise that the
3 other Board members recalled the details of the transaction.

4 87. - After this February Board meeting, Mr. Squires asked Mr. Ames to
5 investigate the circumstances around the investment and whether all of the monies
6 were properly accounted. Mr. Ames asked me to provide all of the supporting
7 documents for the transaction, which I was able to do readily. Subsequently, he
8 indicated to me that he found no indication of wrong-doing, nor had UCAN's
9 independent counsel identified any concerns warranting a further investigation. The
10 matter was not raised with me again. I have seen no suggestion of any illegalities or
11 wrong-doing related to this transaction up until the release of the UCAN emails in late
12 2012.

13 88. On October 17, 2012, I became aware of an article that ran in the San
14 Diego Reader relating to the Utility "Comsumers" Action Network accounts. UCAN
15 employee Charles Langley is quoted in the story as stating that it "strains credulity to
16 believe that these accounts could have been traced in less than three months."

17 89. In a story in the same San Diego Reader a few days later printed the
18 following quote from Kendall Squires: "Squires concedes that the odds of the same
19 keying mistake being made in five separate financial institutions are exceedingly long.
20 'I learned a while ago that the auditors were unable to get the documents,' says Squires.
21 'I went to the bank as chairman asking for them.' The board hopes to find out about
22 those misspelled accounts, he says. (Now, internal researchers have found that one of
23 those misspelled accounts had more than \$600,000 in it. Dostart had initially said that
24 the dollar amounts in the misspelled accounts were low.)" (NOL, Exhibit 37)

25 90. All of these stories and assertions were printed two months after the AKT
26 auditors provided an audit report to the UCAN Board. In regards to alleged missing
27 monies or UCAN assets raised in a number of newspaper stories, I worked directly with
28 the auditing firm of AKT throughout 2011 and some of 2012 to ensure that all UCAN

1 assets were fully accounted. In my conversations with Ron Mitchell, who was the lead
2 auditor and partner at AKT, he indicated to me that all UCAN assets were fully
3 accounted and there was no evidence of missing or unaccounted assets. Mr. Mitchell's
4 findings were presented to the UCAN Board in 2012 after I had left UCAN. I was
5 provided a draft of the report by the Auditors but AKT wasn't authorized to give me a
6 final draft. The report identifies the five accounts in question labeled "Utility
7 Consumers' Action Network". (NOL, Exhibit 38 - excerpt, p. 10) They are two China
8 Fund equities, two Eaton Vance equities and a BNY Mellon account. As of mid-2011
9 they were valued at about \$43,000 total. The auditors could not have listed these
10 accounts and made the journal entry adjustments without having fully audited them
11 and account for the accuracy.

12 91. While the truth clearly strains Mr. Langley's incredulity, I had provided
13 documents to Robert Ames in May 2011 that showed that all of UCAN's holdings in
14 Morgan Stanley investment account were labeled "Utility "Consumers" Action
15 Network". All of our monthly statements were labeled Utility "Consumers" Action
16 Network going back to 2006. It was a typo that had been brought to the attention of
17 UCAN's Morgan Stanley broker Kevin Shibuya but which he viewed as too
18 inconsequential to bother changing. As determined by the AKT auditors and the
19 Dostart investigators, there was nothing to this but a typo that had been ongoing since
20 2006 and all accounts were fully tracked by the UCAN bookkeeper and accountant.
21 After the Morgan Stanley account was closed in 2010 and all of the assets were shifted
22 to Wells Fargo, there were a handful of small equity accounts that were not transferred
23 to Wells Fargo because they were direct purchases of stock from the companies that
24 Morgan Stanley could not directly transfer. They amounted to about \$43,000. The
25 public assertions by Defendants that the account balances approximated \$600,000
26 simply are jaw-dropping false.

27 92. This "Consumers" issue was enough of a non-issue that UCAN posted the
28 findings on the Internet on February 2012 indicating that its independent attorney and

1 auditors found no validity to the allegation that these accounts were illicit. (See
2 paragraph 19 above.)

3 ///

4 **REBUTTAL TO UCAN DECLARATIONS : Kim Malcolm**

5 93. In regards to the Declaration of Kim Malcolm, submitted by UCAN in its
6 SLAPP motion, (hereinafter "Malcolm Declaration") it is riddled with untruths and
7 understatement. Perhaps the primary example of understatement is found at
8 Paragraph 31 in which Ms. Malcolm states that she had disputes with me regarding
9 undisclosed liabilities, consultant contracts and my treatment of Defendant Peffer.
10 Her statement glosses over a slew of disputes that I had with Ms. Malcolm in the three
11 weeks that we worked together, that included disputes over salary (I wanted less than
12 she was paying me), control over the litigation, her disrespectful treatment of the
13 UCAN consultants, amongst other things. When Ms. Malcolm joined UCAN as its
14 Executive Director in May 2012, it became quickly obvious that she presented a tough
15 communication challenges. In an effort to improve communication between us, I
16 focused most of my interaction with her by email. It did not improve things. Finally,
17 I arranged to meet with her at the UCAN offices on a weekend. She was angst-filled
18 and exceedingly reactive. I was terminated within three weeks of her assuming control.
19 In NOL, Exhibit 39, I've provided examples of email correspondence in which she
20 protested when I volunteered to reduce my salary in half so as to preserve UCAN
21 resources, she relied upon Catch-22 logic in regards to consultant contracts that the
22 court-appointed receiver declined to sign, she was cavalier and disrespectful of UCAN
23 consultants who had bent over backwards to work with UCAN during the dissolution
24 process and she made very clear efforts to wrest the \$1 billion SDG&E General Rate
25 Case away from me, notwithstanding her statement, under oath, at paragraph 30 of her
26 declaration to the contrary. Perhaps most bizarre was her written June 18th denial
27 that she was terminating me that I received whilst I was holding a letter in my hand
28 from UCAN informing me that I was terminated as of June 20th. Ultimately, Malcolm

1 inappropriately revealed to a UTSanDiego reporter my alleged “vacation” destination
2 and then denied it even while the reporter indicated that she was his source. Suffice
3 to say, I don’t believe there was any one issue upon which Ms. Malcolm or I saw eye-to-
4 eye in my three weeks of working with her.

5 94. Even more revealing is that Malcolm had been lying to me since she had
6 been retained. In a subsequent email dated June 19th, Ms. Malcolm indicated that the
7 UCAN Board had voted to terminate my position on May 20, 2012 – before Kim had
8 even assumed the Executive Director position. The Board’s action was unbeknownst
9 to me. The entirety of the discussions that Kim and I had over those three weeks in
10 which we worked together was a ruse on her part to take control of the cases upon
11 which I’d worked before implementing the Board’s May 20th termination action. (NOL,
12 Exhibit 40)

13 95. A clear example of Ms. Malcolm’s efforts to prevent me (through SDCAN)
14 from participating in the SDG&E General Rate Case was Ms. Malcolm’s statement
15 above is given greater context by her efforts in June 2013 to give the testimony that I’d
16 spent months preparing with expert consultants to another advocacy group based in
17 San Francisco. I endured an e-mail correspondence with Ms. Malcolm who resisted
18 my efforts to take over the case and submit the testimony on behalf of SDCAN on the
19 specious ground that SDCAN would not have standing. After I arranged with the
20 assigned Judge to be given that standing, Ms. Malcolm then negotiated to give part of
21 the expert testimony to another organization. I intervened with that group and
22 stopped the process; its director explained to me that he was unaware that I had any
23 interest in continuing the case and had not been so informed by Ms. Malcolm.

24 96. Ms. Malcolm’s non-denial denial at paragraph 12 of the Malcolm
25 Declaration that her correspondence with my attorney had been shared with the media
26 ignores the fact that her emails and paper documents were not secure. Repeatedly, I
27 ‘d get questions about the transactions with UCAN from the UTSanDiego reporter
28 relating to conversations my attorney was having with Ms. Malcolm. For example, I

1 was asked by the reporter why I was refusing to return UCAN property, and why
2 whether I was going to file an action about the disputed outstanding bonuses – both
3 questions about which could only be known by Ms. Malcolm or someone with access to
4 her mail. Another example is the payroll records that were surreptitiously dropped off
5 at my house in September. These were documents that she had personally assured me
6 in June would be stored under lock and key. Three months later, the documents over
7 which she had assumed custodianship appeared at my doorstep. At paragraph 15, Ms.
8 Malcolm complains about not being able to find files but never once considered the
9 reality faced by her predecessor Robert Ames that the two UCAN “whistleblowers”
10 continued their document larceny even though I frequently reminded her of the
11 insecurity of UCAN’s paper files. (See also Declaration of Robert Ames, NOL, Exhibit
12 B, paras 25-27)

13 97. Her complaint at paragraph 15 of the Malcolm Declaration that she was
14 unable to find records to support UCAN’s published intervenor compensation requests
15 is false. During my three-week tenure with her, she repeatedly demanded my
16 timesheets in a format that I did not believe was appropriate, so we differed about her
17 expectations about the format of my own personal timesheets. But Ms. Malcolm never
18 indicated to me that she was unable to find contracts or travel expense reports.
19 Moreover, all of the records supporting such requests are submitted to the Public
20 Utilities Commission as exhibits in support of the compensation request. Without such
21 records, the Commission will not award compensation. Her assertion is proved untrue
22 by UCAN’s submission of intervenor compensation awards based upon those same
23 timesheets that she claimed were inadequate or missing. In fact, on July 15, 2012,
24 UCAN sought almost \$1.5 million in compensation, with about \$600,000 of that based
25 upon the timesheets I provided to Ms. Malcolm. In another February 2012 submission,
26 UCAN sought about \$287,000 from the PUC for compensation, of which about \$120,000
27 is based upon the timesheets I provided to Ms. Malcolm.

28 98. At paragraph 16 in the Malcolm Declaration she asserts that I would not

1 return files until she agreed to pay me outstanding bonuses. This is a distortion of a
2 solitary written email dated June 20, 2012, in which I wrote: "Please know that, I will
3 be keeping some of the 'UCAN properties' as collateral until such time as I am fully
4 compensated for the many outstanding *reimbursements* from UCAN that I am
5 owed.....It appears as though we will need to do it through a formalistic legal-driven
6 process rather than what I'd hoped would be two reasonable and public-spirited persons
7 working out a smooth transition." There was never any mention of bonuses, only phone
8 charges and other personal expenses that I'd incurred in the final month before my
9 termination. Shortly thereafter I retained an attorney specializing in termination
10 cases and ended all correspondence with Ms. Malcolm. My attorney called Ms.
11 Malcolm on June 29th and explained that property was not being withheld. Yet, in a
12 follow-up July 6th letter, Ms. Malcolm repeated the false claim that I was holding UCAN
13 property as collateral that threatened prosecution that had been expressly disavowed
14 by my attorney. My attorney responded in writing on July 10th and wrote, in part:

15 The characterization that Mr. Shames engaged in conversion of UCAN
16 property is factually inaccurate and ignores the representations that I
17 made to you on June 29, 2012. As I explained to you on the phone that
18 day, he was unable to consult with me due to my schedule. The delay in
19 returning property was attributable to my unavailability as well as the
20 five days that it took for you to respond to my July 2nd letter. In addition,
21 the return of several years of accumulated property takes time. Mr.
22 Shames has equipment, furniture and several items which require
23 arranging for a professional moving service to transport the items to
24 UCAN. It is his expectation that this will be done by July 13, 2012"
25 (NOL, Exhibit 17)

26 Now, in a declaration to this Court almost a year later, Ms. Malcolm distorts and
27 repeats the claim that was debunked not only by my attorney but by the fact that I did
28 return the property, we worked out the reimbursements and I never once raised the
29 bonus issue with her.

30 99. At paragraph 16, Ms. Malcolm also states: "I do not know whether the
31 files Mr. Shames returned were all of the files Shames had at his residence." This
32 statement undermines Mr. Squires August 29th letter accusing me of possessing files
33 that Ms. Malcolm now says she doesn't know whether I was in possession of them.

1 Notably, I was informed that Ms. Malcolm wrote that August 29th letter for Mr. Squires'
2 signature.

3 100. At paragraph 18, of the Malcolm Declaration, she confirms the insecure
4 status of UCAN files when she admits that she discovered UCAN budgets and agendas
5 in a file cabinet in September after having searched for them the preceding months.
6 I could not have put the files in UCAN's office. When I left UCAN I gave Ms. Malcolm
7 my set of keys to the office and set foot in the offices only once again when I returned
8 UCAN property in July. In that one circumstance, I was let into the offices by an
9 employee. Her insinuation is either that I had access to UCAN files or was being
10 assisted by someone who did have access: both are false accusations. As I noted
11 above, when she assumed control of UCAN in May, I verbally warned her that
12 employees had been taking files and urged her to secure any important files.

13 101. At paragraph 20, Ms. Malcolm claims she became aware that the bonus
14 policy was not applied to all UCAN employees who raised funds. She does not provide
15 any specifics but I am fairly certain that she is referring to Mr. Langley's demand of me
16 that he be given a 10% cut from a grant that he received from a foundation or from
17 memberships sent in response to our periodic fund raising mailers. I'd repeatedly made
18 it clear to all employees for the entirety of my tenure at UCAN that the bonus policy did
19 not apply to income from charitable foundations as it was unethical for anyone to take
20 "commissions" from foundation grants without full disclosure (an arrangement frowned
21 upon by foundations). I also made clear to Mr. Langley that the periodic fundraising
22 mailers were the result of a team effort of a number of employees and was not subject
23 to the incentive policy. Any implication that an employee who was deserving of a
24 bonus did not get it is patently false.

25 102. Ms. Malcolm's repeated disavowals at paragraphs 22, 28 and 36 of having
26 provided documents to the media are disingenuous. During this time period, UCAN
27 documents were being systematically leaked to the media, including email
28 correspondence by other UCAN employees. The letter that she authored for Mr.

1 Squires' signature on August 29th was sent to the UTSanDiego reporter from the UCAN
2 scanner – it has a distinctive identifier which reveals the source of its transmission.
3 While Ms. Malcolm can deny direct culpability, she could not have been unaware that
4 someone with access to UCAN's scanner sent that letter that she authored from UCAN's
5 offices. (NOL, Exhibit 41) The .pdf file emailed me to my the UTSanDiego reporter
6 was labeled: "AR-M450_20120904_164102.pdf". The "AR-M450_20120904" is the code
7 that the UCAN scanner gives to all documents scanned and sent from that machine.

8 103. Ms. Malcolm asserts at paragraph 31: "I also disagreed with Mr. Shames
9 regarding his strategy to isolate and discredit David Pfeffer because of the liabilities it
10 could possibly create for UCAN according to whistleblower statutes." The complete
11 statement is:

12 "I did have disputes with Shames regarding his failure to inform me of
13 hundreds of thousands of dollars in liabilities that were not entered into
14 UCAN's books of account, and his failure to inform me that he had
15 engaged expert witness consultants without a written contract, which I
16 understood was in contravention of the instructions of UCAN's receiver.
17 I also disagreed with Mr. Shames regarding his strategy to isolate and
18 discredit David Pfeffer because of the liabilities it could possibly create for
UCAN according to whistleblower statutes. I was also aware of my
commitment, according to the court-approved settlement in the derivative
lawsuit, to retain Mr. Pfeffer for a least six months and, consistent with
labor law, to treat him with respect and according to his professional
conduct and work products."

19 104. Ms. Malcolm's statement referencing my "strategy to isolate and discredit
20 David Pfeffer" is totally the opposite of what actually happened. All matters pertaining
21 to Defendant Pfeffer were handled by Mr. Ames, Mr. Squires and UCAN's employment
22 legal counsel, Rod Betts. I was not involved and could not have been involved in any
23 matters pertaining to Defendant Pfeffer. I do not see how Ms. Malcolm could attribute
24 to or be in disagreement with a "strategy" with which I had absolutely no connection
25 whatsoever. In fact, in order to minimize my contact with Defendant Pfeffer and Mr.
26 Langley --- both of whom complained that they felt "unsafe" working at UCAN because
27 of my presence, I was instructed to conduct most all of my work from my home office
28 from May 2011, long before Malcolm came to UCAN, through June 2012, when I left

1 UCAN.

2 105. In regards to paragraph 32, stating that while employed at UCAN, I
3 created a website for an organization called “SDCAN”, this statement is not true. I did
4 not create a SDGAN website until after my termination. Ms. Malcolm’s description that
5 I “registered” the domain at paragraph 34 reveals that she knows the difference
6 between registering a domain and creating a website. As she correctly notes at
7 paragraph 34, during my employment, I purchased the domain “SanDiegoCAN.org”.
8 This was done with the knowledge of both Mr. Ames and the Board members about my
9 strong commitment to continue the SDG&E General Rate Case litigation on my own if
10 needed, even if UCAN stopped functioning or ran out of money. In one conversation,
11 early in 2012, I informed Messrs. Ames and Squires that I had raised funds to pay for
12 experts in a second phase of the case and that I was willing to work for no compensation
13 from UCAN, if needed, to complete the case. I also indicated as early as January 2012
14 that I had made provisions to be able to intervene in the General Rate Case in the event
15 that UCAN’s operations were dissolved, as was being contemplated at around the time
16 of those discussions. This was an important matter that was discussed during internal
17 evaluation of the dissolution petition filed by UCAN in March 2012. It was important
18 to all of us that the General Rate Case litigation be continued whether UCAN was
19 functional or not. We also knew that we were burning through resources and were
20 concerned that we’d run out of money. The continuation of that litigation was entirely
21 predictable and consistent with the direction that I had received from Mr. Ames and the
22 UCAN Board. The purchase of the domain ensured that if UCAN were to be dissolved,
23 a successor organization would be readily available to substitute in a legally acceptable
24 advocacy entity and continue, uninterrupted, with the SDG&E rate case.

25 **REBUTTAL TO DECLARATIONS : Kendall Squires**

26 106. At paragraphs 11-15 of the Declaration of Kendall Squires’, submitted by
27 UCAN in its SLAPP motion, (herein after “Squires Declaration”) that relates the Nucor
28 Foundation grant, Mr. Squires statements are misleading by omission or half-truths.

1 Preapproval of grants was never done before or after the Nucor grant. It is true that
2 Mr. Ames brought the matter to the attention of the Board, although I made no effort
3 to hide the transaction. I explained to the Board that it had never asked to approve a
4 grant in the past even though I'd reported many having been received – and for
5 amounts larger than the Nucor Foundation. I also pointed out that UCAN had
6 received another large grant (in excess of \$250,000) to do a similar project just months
7 before the Nucor grant. The Board expressed no interest in reviewing or approving
8 that other large grant. Additionally, months after the discussion about the Nucor grant
9 we sought and received another grant for \$10,000 but the Board did not require
10 preapproval of that grant. The Nucor grant is the only one which the Board sought to
11 approve and only as a precaution because of the threats made by Michael Aguirre to
12 report the transaction to the U.S. Attorney's office as tax evasion.

13 107. In regards to paragraph 16 of the Squires Declaration, he asserts that
14 unavailability of records caused delays in AKT's audit of UCAN, AKT was retained to
15 conduct an audit to assist Mr. Dostart in his investigation and to conduct an audit of
16 expenditures for 2010-2011. Mr. Ames served as the overseer of that auditing process.

17 My job was to provide needed records to Mr. Ames and/or directly to the auditors.
18 Because all of the files were electronic, I usually had any financial record they sought
19 available within minutes, if not hours, of the request. The delays in the audit were
20 largely the result of staffing issues at AKT and the dissolution action that UCAN
21 initiated in March 2012. At no time did the AKT auditors suggest to me that UCAN's
22 financial records were inadequate or unavailable. In fact, in an email by Paul Dostart
23 to myself and UCAN Board members, he affirmed that the delays in AKT's processing
24 of the audit had nothing to do with unavailability of records but with poor
25 administration of the contract by AKT. (See NOL, Exhibit 42)

26 108. I will defer rebutting the remainder of Mr. Squires' assertions because they
27 are largely rebutted in the Declaration of Robert Ames who worked closely with Mr.
28 Squires and had first-hand knowledge about his allegations.

1 DAMAGES

2 109. On or about August 1, 2013, I conducted a web search using Google to
3 determine the extent to which my reputation had been impacted on the Web. I
4 conducted the search using these key words: "Michael Shames, UCAN". There were
5 7,260 results, however 22 of the first 25 search results reference the defamatory
6 allegations raised in this case.

7 110. The extent to which my professional reputation has been effected is best
8 reflected by filings at the CPUC by other intervenors who have referenced the conflict
9 between myself and defendants. Late last year, one intervenor commented upon an
10 intervenor compensation rulemaking saying: "It would also be helpful to know more
11 about why the Joint Committee decided to order this audit. It's likely that the scandal
12 involving UCAN was part of it, but the ALJ also expressed concern about an incident
13 where an employee of the Commission was found to be ghost-writing testimony for an
14 intervenor group." (See NOL, Exhibit 43, p. 4)

15 111. UCAN's lies about my possession of files and existence of hidden bank
16 accounts provoked an unnecessary civil action by ex-spouse who was led to believe by
17 Defendants' allegations that I had been hiding monies and files. I was forced to spend
18 monies that could have been used in CPUC proceedings defending a baseless civil suit
19 premised largely upon the false statements of Defendant UCAN. That case was settled
20 once the plaintiff's realized that they had been misled causing both myself and my ex-
21 spouse to incur substantial attorneys fees.

22 112. As set forth in the Ps&As, reporters who had been strong supporters of my
23 work at UCAN adopted a 180 degree position after being subjected to the lies identified
24 in this complaint as well as many others that I've not included in this complaint.

25 113. Throughout this ordeal, I've attempted a number of times to end the "war"
26 and ask that UCAN tell the truth about these allegations. I wrote the UCAN Board on
27 July 19 and September 12, 2012 and my attorney wrote the Board on November 19,
28 2012. Each time, I indicated that I did not seek to conflict and asked that the

1 organization cease its media attacks. I never received a response addressing my
2 concerns, let alone any retractions. (NOL, Exhibit 44)

3 114. The UTSanDiego published an editorial accusing me of malfeasance and
4 self-dealing shortly after the release of the August 29, 2012 letter by Mr. Squires' that
5 reflected the substance of Mr. Squires' lie but also a cumulation of the previous
6 republished lies by UCAN management and staff. (NOL, Exhibit 45)

7 115. On April 13, 2013, I received an e-mail from Don Balder of the San Diego
8 Reader asking whether I'd been profiting from intervenor fees in exchange for not
9 aggressively opposing SDG&E rate requests. (NOL, Exhibit 46) This e-mail showed
10 the dramatic effect that the UCAN smear campaign had on this reporter who, just five
11 years previously wrote that I was being dramatically underpaid and could easy
12 command "four times more money" in the private market. (NOL, Exhibit 47).

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

15 Executed in San Diego, California on August 15, 2013

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18 Michael Shames
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