

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

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 OPPOSITION TO
MICHAEL AGUIRRE'S SPECIAL
MOTION TO STRIKE COMPLAINT
PURSUANT TO CODE OF CIVIL
PROCEDURE

"IMAGED FILE"

Date: September 6, 2013
Time: 10:00 a.m.
Judge: Hon. Ronald S. Prager
Dept: C-71

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

26 **BACKGROUND**

27 1. This declaration will lay out the facts behind the following assertion: attorney Michael
28 Aguirre sought to retaliate against Plaintiff's opposition to Aguirre's advocacy at the California

1 Public Utilities Commission. (CPUC) Aguirre joined with two UCAN employees (one of whom was
2 a personal friend of Aguirre's) to take control of the nonprofit group through baseless and scurrilous
3 "whistleblower" allegations. Aguirre's goal: to compel UCAN to terminate me. UCAN spent over
4 \$700,000 to fully vindicate and clear my name. Frustrated by UCAN's resistance, Mr. Aguirre
5 attempted to assassinate my reputation through republication of false assertions in the media.

6 2. Defendant Michael Aguirre and his clients published through leaked emails and
7 anonymous sources the following false and defamatory assertions:

- 8 • That I engaged in theft of UCAN assets and/or monies;
- 9 • That I misdirected grant monies meant to help the poor into a risky hedge-
10 fund; and
- 11 • That I created false bank accounts into which I funneled up to \$260,000
12 UCAN's monies for my own personal use.

13 3. My allegation of malice is based, in part, upon a case before the California Public
14 Utilities Commission (CPUC). Michael Aguirre intervened in a matter in which I was representing
15 UCAN. Mr. Aguirre contributed nothing to the case other than delay and obfuscation in SDG&E's
16 application to recover insurance premium costs due to wildfires. At the end of this case,
17 approximately March 2011, Aguirre filed a request for attorneys' fees and costs in the amount of
18 \$123,522.00. Having participated in the case and having first-hand knowledge of his deficient
19 contributions to the case, I filed an opposition to the Aguirre attorney fees request on the basis that
20 he had failed to make a substantial contribution to the case outcome. SDG&E also opposed the fees
21 request. Both SDG&E and my oppositions were based upon the premise that SDG&E customers
22 should not be charged for fees where an intervenor made no substantial contribution. In December
23 2011, the CPUC fully rejected Mr. Aguirre's application for attorneys fees – he did not receive any
24 compensation. In contrast, UCAN received almost full compensation because UCAN's arguments
25 were found to make a substantial contribution.

26 4. I also present evidence that directly rebuts statements made by Declarants Pepper and
27 Langley on behalf of Aguirre. These two declarants were self-proclaimed "whistleblowers" who
28 were the plaintiffs in an action that Aguirre brought upon their behalf in early 2012. In that action,

1 Aguirre sued the individual Board members and officers of UCAN – rather than the organization
2 itself – so as to make the Board members personally liable for alleged – but false – misdeeds claimed
3 by Aguirre and his two clients. His complaint garnered much public attention initially but within
4 three months after bringing the complaint, Aguirre settled with UCAN for \$100,000 in attorneys fees
5 – which is approximately the amount that Aguirre lost in his April 2011 request to the CPUC.

6 5. I had a number of dealings with Aguirre prior to 2011. Aguirre had worked for
7 UCAN and under my direction, in the 2001-2002 time period as an attorney in a regulatory case
8 before the CPUC. It was a highly unsatisfying partnership because of Aguirre’s unorthodox litigation
9 practices and I promptly terminated his relationship with UCAN. I did not see or hear much from
10 Aguirre after that until the voters removed him as San Diego City Attorney in 2008. When he
11 returned to private practice, he began to intervene in cases before the CPUC. In one such case, A.
12 09-08-019, filed by SDG&E in August 2009, Aguirre objected to SDG&E’s application to recover
13 insurance premium costs due to wildfires. In that case, I frequently clashed with Aguirre in the
14 hearing room. For example, in one instance, Aguirre opposed my request to cross-examine an
15 SDG&E witness early in the proceeding because I was called down to San Diego for a family
16 emergency. Each of the scheduled cross-examiners were more than willing to accommodate me in
17 this unusual circumstance except for Mr. Aguirre who cursed at me and told me that he’d never agree
18 to such a request. The judge in the proceeding overruled Mr. Aguirre’s objections and allowed me
19 to proceed with my cross-examination of SDG&E’s witness. As explained in Paragraph 3 above, I
20 successfully opposed Aguirre’s request for \$123,522.00 in attorneys fees.

21 6. My opposition to Aguirre’s attorneys fees was notable not just for the result but also
22 as it revealed Aguirre’s modus operandi when faced with an obstacle: he attacked. In his reply filing
23 to my attorney fees opposition, Aguirre crafted a biting response in which he falsely alleged that I was
24 not licensed to practice law in California (which he later corrected after I sought sanctions against him
25 for lying), that my legal skills were “laughable”, that I was not a competent litigator, that I had been
26 coopted by SDG&E and – perhaps most revealingly -- that *UCAN was attempting to “restrain*
27 *competition in the representations of ratepayers and consumers.”* (NOL, Exhibit 1 p. 5-6, 20.) In
28 a responsive filing to SDG&E filed two days earlier, Aguirre repeated some of these assertions and

1 added that SDG&E could intimidate UCAN and that his client's interests weren't protected by
2 UCAN. Aguirre also asserted – wrongfully – that his contribution was not duplicative of UCAN's.
3 (NOL, Exhibit 2: p. 11-14 20.) Had his contribution been viewed as duplicative, it would be a basis
4 for his fees to be reduced. However, as noted above, Aguirre was found to have made no
5 contribution and his fees request was rejected in toto.

6 7. In light of the unpleasantness I'd experienced with Aguirre, I sought to avoid him.
7 However, I did cross paths in a chance hallway interaction at the CPUC offices on January 11, 2012.
8 I was in San Francisco for meetings with CPUC staff and then-Commissioner Grueneich and passed
9 Aguirre in a hallway, where he stated to me words to the effect of: "payback". It was presented as
10 a threat and I understood that he held me responsible for what he felt was a \$123,000 loss in income.
11 Two months later, Aguirre filed a meritless civil complaint against me and other UCAN Board
12 members on behalf of Defendant Peffer and Charles Langley. He did not sue UCAN.

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

21 9. During the 2006-2012 time period, UCAN's Board of Directors consisted of between
22 6-8 volunteers who gave of their limited time to assist in the establishing of UCAN policy and
23 overseeing my administration of the organization. These were very accomplished and intelligent
24 professionals, most of whom were either attorneys, educators or, in one case, both. The Board was
25 chaired by Ed Valencia, a regional manager of the state Department of Motor Vehicles, Deborah
26 Berger, a former Deputy City Attorney and then Kendall Squires, a long-experienced business
27 attorney. Mr. Squires assumed the Chairmanship of the Board in 2011, after Ms. Berger removed
28 herself from that position. Other active Board members included Marc Lampe, a lawyer and USD

1 Business School professor, Dan Conaway, an experienced attorney based out of La Mesa and Niel
2 Lynch, a community college educator. All of the Board members were sophisticated professionals
3 who sought to do the best for San Diego consumers. Most of them were individuals who I had invited
4 to apply for the Board positions and with who I had enjoyed a long and productive professional
5 relationship. Notably, the two Board members with whom I had previously clashed – Niel Lynch and
6 Kendall Squires -- ended up being two of the three remaining Board members when the organization
7 fully engaged with Mike Aguirre in 2012.

8 10. In mid-2010, I informed certain UCAN employees that I'd be leaving UCAN, as early
9 as mid-2011. Later that year, I shared that information with some Board members as well. I also
10 pledged to the Board that I would continue serving as Executive Director until the SDG&E General
11 Rate Case was completed. But I sought, and received, permission from the Board to hire an assistant
12 Executive Director who would be groomed to replace me.

13 11. The SDG&E Rate Case was a particularly important case. SDG&E had submitted a
14 petition to the PUC for the largest rate hike in its history -- over one billion dollars from 2012-2015.
15 And the request came at perhaps the worst time in California history, as the San Diego economy was
16 reeling from the effects of the 2008 recession. I had built up a litigation "war chest" of approximately
17 \$700,000 to be used to hire experts to help me fight against SDG&E's rate increase. I estimated that
18 the case would be over in late 2011, however it stretched on into 2013.

19 12. In late 2010, with Board approval, I began a search for an assistant Executive Director
20 who would be groomed to replace me. I interviewed a number of candidates and chose one person
21 who was qualified to take on the responsibilities of running the organization. In meetings with
22 UCAN staff, including Charles Langley, they stated that they did not want me to be replaced by a
23 person outside of the current UCAN staff. I chose not to force this candidate into a hiring that would
24 be opposed by the staff.

25 13. The staff proposed an alternative management proposal (referenced by staff as "UCAN
26 2.0") which precluded the hiring of an assistant executive director. It was largely written by Charles
27 Langley and Defendant David Pepper. In December 2010, during discussions about this "staff
28 proposal", Mr. Langley and Defendant Pepper told me that if I did not accept this proposal, the staff

1 would attempt to unionize to prevent any action I take to hire a successor or change UCAN's
2 management structure. Some other employees indicated to me that they felt as if they were in the
3 midst of a succession battle that made their jobs difficult. It was clear to me that my retirement from
4 UCAN was not going to be easy. I left on a long trip in early January 2011 and indicated to staff that
5 I would address the management issue upon my return in early February 2011.

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

13 15. Kendall Squires began service as Chair in 2011 about the same time as the Pepper
14 whistleblower complaint was lodged by the Board. The then-current UCAN Chair, Deborah Berger,
15 stepped down in response to malicious accusations by Michael Aguirre that she had a romantic
16 relationship with me and thus had unavoidable conflict in serving as UCAN Chair. This accusation
17 was totally false. However, Ms. Berger had served briefly with Mr. Aguirre when she was a San
18 Diego Deputy City Attorney. Mr. Aguirre had been very unpleasant to work with and he fired Ms.
19 Berger when she confronted him on his positions. She told me that she wanted nothing more to do
20 with Mr. Aguirre and turned the UCAN Chair position over to Kendall Squires.

21 16. Mr. Squires had a long-standing professional relationship with Mr. Aguirre and had
22 worked on cases involving Mr. Aguirre in the past. Throughout the 2011-2012 time period, Mr.
23 Squires maintained an on-going discussion with Mr. Aguirre. The two men met frequently, talked
24 by phone continually, shared documents and demonstrated a close working relationship. Mr. Squires
25 assured me that his friendship with Aguirre would work to UCAN's advantage. A number of times,
26 Mr. Squires told me that he personally liked Mr. Aguirre and felt that Aguirre was being misinformed
27 by his UCAN clients. I repeatedly advised Mr. Squires against giving Mr. Aguirre sensitive
28 documents, such as the U.S. Attorney's office subpoena served on UCAN in February 2012, but he

1 rejected my cautions on the basis that the more open we were with Aguirre, the more likely he'd
2 decide not to file a complaint against UCAN. After Mr. Aguirre filed suit against myself and the
3 UCAN directors – including Mr. Squires – Squires continued to have frequent conversations with
4 Aguirre. At that point, I began to distance myself from Squires and reduce correspondence with him
5 on the basis that Mr. Squires appeared to be collaborating with Mr. Aguirre so as to reduce his own
6 personal liability.

7 17. In March 2011, UCAN retained attorney Paul Dostart of Dostart, Clapp & Coveney
8 to conduct an investigation into the whistleblower allegations made by Defendant Peffer.

9 18. In April 2011, the UCAN Board retained the audit services of AKT to review all of
10 UCAN's financial transactions relevant to the whistleblower allegations.

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

15 20. Between the period of March 2011 through February 2012, UCAN's then-Chairman,
16 Kendall Squires, and COO Robert Ames took the lead in overseeing a series of investigative efforts
17 to address first, the Peffer whistleblower complaint submitted to the Board in March 2011 and
18 second, demands made by Aguirre on behalf of unidentified UCAN staff members beginning in
19 around June 2011 through February 2012. During this time period, I was immersed in the \$1 billion
20 SDG&E Rate Case being litigated in San Francisco. I was rarely at the UCAN office, except to meet
21 with staff members that I continued to oversee or to meet with Robert Ames. Mr. Ames was
22 responsible for most all UCAN operations.

23 21. During that 11-month time period, the Board grappled with how to deal with Mr.
24 Aguirre's demands that I be fired and forced to repay monies to UCAN. I was vindicated on all of
25 the Peffer and Aguirre allegations by the independent attorney investigation (Dostart) and the
26 accountant's forensic review of the organization's finances. (AKT). There were some technical
27 problems identified which were readily remediated but Peffer alleged nothing of any substance.
28 However, Aguirre – as is his wont – persisted in demanding my termination and other assorted

1 concessions. Up until that point the Board had spent upwards of \$500,000 that would later surpass
2 \$700,000 dealing with Aguirre's demands for investigations, according to an email sent to me by a
3 UCAN Board member. (NOL, Exhibit 16.) The Board, with my concurrence, decided to begin a
4 dissolution process to wrap up UCAN's activities and, hopefully, force Aguirre to reveal his evidence
5 supporting his vague accusations made in private meetings with Kendall Squires and Robert Ames.
6 We had determined that UCAN could not bring Aguirre's never-ending demands to an end until his
7 hand had been forced by the dissolution.

8 22. At the time that the Board announced the commencement of the dissolution process
9 on February 28, 2012, UCAN posted the following statement on its website. This statement was
10 authored by myself, Mr. Kendall Squires, the Chair of the UCAN Board and Mr. Dostart and was
11 designed to address Aguirre's private (but leaked to the media) allegations that I had diverted monies
12 out of UCAN, created private bank accounts, paid myself bonuses that had not been authorized or
13 earned, practiced law without a license and violated state auditing laws. The statement read:

14 "Among the allegations lodged against UCAN's senior management by such third
15 parties included (a) embezzlement of UCAN funds, directly, through kickbacks or via
16 other routes, (b) private bank accounts in which assets were being siphoned, (c) failure
17 to comply with state audit requirements, (d) engaging in unlicensed legal activities,
18 and (e) entering into illegal contracts. *However, no evidence confirming such*
19 *allegations was provided by those lodging allegations, nor discovered by any of the*
20 *professionals retained by UCAN's board.* The UCAN board engaged several San
21 Diego County firms to assist it in evaluating multiple allegations leveled against
22 UCAN by third parties. Those assisting the UCAN board include law firms: Dostart
23 Clapp & Coveney LLP; Iredale and Yoo APC; among others. In addition, AKT LLP
24 was retained by the UCAN board for forensic accounting, business consulting and
25 auditing services." (Emphasis added: NOL, Exhibit 17.)

26 23. As expected, after the dissolution process commenced, Aguirre attacked back. He
27 filed a "membership derivative" complaint against myself, Robert Ames and UCAN Board members,
28 personally. He did not file an action against UCAN, the corporation. His targets were the personal
assets of the Board members and upper management. He began a systemic media blitz attempting
to try the case in the media rather than in the courts, as will be described below in greater depth. This
was expected; UCAN's independent counsel and I had warned the Board that Aguirre's case would
largely be litigated outside of court and to steel themselves for the assault. (NOL, Exhibit 18, Excerpt
of Exhibit. 3 from Aguirre NOL, footnote 4.) Most importantly, he did not uncover any facts that

1 had not already been investigated by the UCAN attorneys and accountants. As was acknowledged
2 in an email by Kendall Squires to other UCAN Board members, Aguirre had no case other than
3 something that allowed him to bludgeon the Board members and myself in the public domain without
4 fear of legal retribution. (NOL, Exhibit 19.)

5 24. From July 2011 through June 2012, Mr. Aguirre and his clients published a number
6 of lies in the media about UCAN and about me. While none of these defamatory statements are at
7 issue in this case, it demonstrated a pattern of Mr. Aguirre's intent to assassinate my reputation in the
8 public realm.

9 25. I was only tangentially involved in the Aguirre complaint against myself and the
10 UCAN Board members; in March through May 2012, my focus was on the one billion-dollar
11 SDG&E Rate Case which was wrapping up its first phase and beginning a second phase in which I
12 had to prepare additional expert testimony. UCAN's Board and its team of attorneys and auditors
13 worked on the dissolution process and refuting Aguirre's allegations.

14 26. In May 2012, two major developments occurred. UCAN's Board members negotiated
15 a settlement with Michael Aguirre on his membership derivative lawsuit and it hired an executive
16 director to succeed me. Aguirre was paid \$100,000 and dropped the lawsuit. I refused to participate
17 in the settlement, even though I was a defendant. Accordingly, I was excluded from all settlement
18 discussions. I was asked by UCAN to sign a liability waiver agreement but never a non-compete
19 agreement. I declined to sign anything, much to the chagrin of the Chair, Kendall Squires. The
20 settlement was entered into by UCAN and Aguirre on approximately May 16, 2012, (NOL, Exhibit
21 20.) The actual filing of Mr. Aguirre's Request for Dismissal of the Derivative Complaint is dated
22 June 25, 2012. (NOL, Exhibit 21.) I learned subsequently that shortly after the settlement was
23 signed and unbeknownst to me, the UCAN Board voted to terminate me on May 20th. I was not
24 informed of this decision until June 18th and I left UCAN's employment on June 20th. Five days
25 later, Aguirre filed the dismissal of his lawsuit against UCAN's Board members and I promptly began
26 to be the subject of more attacks by Aguirre and his two clients, both of whom continued to work at
27 UCAN.

28 ///

1 27. On June 27, 2012 the UTSanDiego published a story about my creation of a new
2 consumer group. Aguirre states: “What Shames did is theft”. The article quotes him as taking away
3 something – presumably the SDG&E General Rate Case – from UCAN. He then referred to me as
4 an “albatross.” (NOL, Exhibit 6.) This accusation is discussed in greater depth below.

5 28. Aguirre did not specify the theft, but it could have reasonably been viewed by a reader
6 as theft of UCAN property. This is how it was interpreted by my friends and peers who read the
7 article and inquired whether I was going to sue Mr. Aguirre for such an outrageous allegation.

8 29. Shortly thereafter, UCAN employees, in coordination with Aguirre, continued to
9 attack. A series of media articles ran in the San Diego Reader and UTSanDiego containing emails,
10 anonymous allegations and personal attacks. Mr. Aguirre and his clients had possession of the emails
11 that were released to the media. The assaults continued until I filed this complaint against UCAN,
12 Aguirre and David Peffer on February 28, 2013. Below, I will discuss the details of each of the false
13 and defamatory actions of Aguirre.

14 30. Michael Aguirre is an attorney who has demonstrated a pattern of practice to use the
15 media to advance his litigation objectives. Many times Aguirre pushed me to go the media to
16 advance a position that I believed was better suited for civil court. I worked with Aguirre in a class
17 action that was brought against numerous utilities and power producers in 2000, when the California
18 deregulation experiment was being exploited by Enron and other energy companies. At that time,
19 Mr. Aguirre pushed our legal team to leak documents to the press and advance our case through
20 media. Don Bauder, then business editor of the San Diego Union and later a columnist with the San
21 Diego Reader, was closely connected to Mr. Aguirre and a frequent recipient of information gleaned
22 by Mr. Aguirre.

23 31. In April 2012, I was contacted by an attorney, Joshua Gruenberg, who represents
24 Jeffrey Baker in a malpractice case against Aguirre. I spoke to Mr. Gruenberg who confirmed the
25 details reported in the media about the lawsuit against Mr. Aguirre. Mr. Aguirre had encouraged Mr.
26 Baker, a City employee, to leak documents to the San Diego Union-Tribune, relating to the City
27 pension. The reporter to which these documents were leaked was named Jeff McDonald. (NOL,
28 Exhibit 22.)

1 32. Both Mr. McDonald of the Union-Tribune, later the UTSanDiego, and Mr. Bauder of
2 the San Diego Reader, were the primary authors of defamatory news stories about me. They were
3 also the only reporters who wrote stories based upon leaked UCAN documents and anonymous
4 sources within UCAN.

5 33. I had been contacted by other reporters, including those from the North County Times,
6 Voice of San Diego and most all of the news outlets. Each of these printed stories about the Aguirre
7 lawsuit against the UCAN officers and directors, as it was undeniably newsworthy even though the
8 allegations in that suit were meritless. However, none of these other news outlets followed up with
9 articles based upon other allegations discussed in the McDonald/Bauder articles. It was very clear
10 to me that Bauder and McDonald believed everything that Aguirre and his clients told them and that
11 their pre-existing relationships with Aguirre were being exploited by Aguirre.

12 **AGUIRRE IS A COMPETITOR TO PLAINTIFF**

13 34. Before commencing a discussion on the defamatory actions, I offer the following facts
14 that support my contention that Michael Aguirre is a competitor and therefore is exempted from
15 SLAPP protections. I have, at all times since 1985, been primarily engaged in the business of
16 representing San Diego utility ratepayers before the Public Utilities Commission.

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

24 36. At no time during my employment did I sign an employment contract or a non-
25 compete arrangement with UCAN. Thus, I was free to continue advocating on behalf of SDG&E
26 customers before the CPUC.

27 37. Mr. Aguirre had been involved in at least 11 ratepayer cases as an intervenor before
28 the CPUC from 2009 through 2013, with the bulk of those interventions coming in the 2011-2012

1 time period.

2 38. Aguirre viewed both UCAN and, by reference, SDCAN as a competitor and sought
3 to tarnish my reputation in the public and before the regulatory body before which the three groups
4 appear. One example of this is an action taken on November 30, 2012 by UCAN in opposing
5 SDCAN's entry into an on-going proceeding before the CPUC regarding a new pricing program. This
6 case was only tangentially related to the SDG&E Rate Case. I had been involved in this case at UCAN
7 since 2010 and had been the primary force behind a complex settlement of over 14 parties. In late
8 2012, the judge in that proceeding was inquiring into details of that settlement and I sought to
9 intervene as a party so as to better inform the Commission about the details of the settlement and the
10 expectations of the parties. I filed a petition to become a party to this on-going matter in which I'd
11 previously represented UCAN. Inexplicably, UCAN filed an opposition to my petition arguing that
12 my prior service for UCAN in the matter was the reason why SDCAN should be barred from being
13 able to enter the case. UCAN claimed, among other things, that because I was privy to confidential
14 information and UCAN work product I should not be allowed to participate. (NOL, Exhibit 23.) I
15 chose not to respond to the UCAN protest and the Commission denied my petition rendering SDCAN
16 unable to participate in the case. After that decision, Aguirre sent an email to the PUC and all of the
17 parties in the case lauding the decision and supporting the denial of SDCAN's entry into that case.
18 (NOL, Exhibit 5.) I was sent that email by a CPUC employee who described herself as "appalled".

19 39. Advocacy at the Public Utilities Commission is influenced by an Intervenor
20 Compensation program that allows for intervenors to be reimbursed for work in proceedings where
21 that intervenor has made a substantial contribution. Being recognized as an intervenor is not an easy
22 task, as the Commission has rejected intervenor applicants and has reduced compensation for
23 advocates who duplicate the efforts of others. Moreover, reputation for professionalism and fair
24 dealing has a direct impact upon the effectiveness of advocates at the CPUC. It is not coincidence
25 that while I ran UCAN, the organization has almost never been denied compensation or had it
26 substantially reduced. In contrast, I am not aware of any time when Aguirre has been awarded
27 intervenor compensation for any of his intervention at the CPUC. And until the debacle of UCAN's
28 opposition to my entrance into the Dynamic Pricing case discussed at paragraph 15, above, I had

1 never been denied party status in a CPUC case. For these reasons, I understand why UCAN and
2 Aguirre view me as a competitive threat.

3 40. UCAN employee and Aguirre client, David Pepper, submitted a declaration filed on
4 behalf of Aguirre in the SLAPP Motion, which states: "In the summer of 2012 I learned that Mr.
5 Shames was no longer employed at UCAN. Soon thereafter, I learned that Mr. Shames had organized
6 a competing consumer group called the San Diego Consumers' Action Network ("SDCAN"). ..." On
7 June 26, 2012, on behalf of SDGAN, I filed a motion with the California Public Utilities Commission
8 claiming that SDGAN was UCAN's successor and attempting to claim UCAN's interest in the SDGE
9 General Rate case - Phase 2. UCAN's interest included a large investment of attorney time, attorney
10 work product, and expert testimony." (Peffer Dec paras. 20-21.). He indicates that upon learning
11 about this motion, he consulted with Mr. Aguirre. This is a clear admission that Mr. Pepper and,
12 concomitantly, Mr. Aguirre viewed me as a competitor.

13 41. Aguirre also presents a declaration by Charles Langley, another Aguirre client, which
14 echoes the view that UCAN was a competitive threat to UCAN: "I also learned that Mr. Shames had
15 filed paperwork to award his new San Diego Consumers' Action Network a key stake in a rate-hike
16 case pending before the ...CPUC. At the time, I consulted with my attorney, Michael Aguirre, about
17 these matters and what could be done to stop Mr. Shames from taking away UCAN's case before the
18 CPUC." (Langley Dec, para 19.) He indicates that upon learning about this motion, he consulted
19 with Mr. Aguirre.

20 42. While Aguirre did not offer a declaration in this case, he repeatedly complained about
21 competition amongst ratepayer advocate groups. In a filing with the CPUC, Aguirre charged UCAN's
22 2011 objections to his request for intervenor compensation as a veiled attempt to "restrain
23 competition in the representations of ratepayers and consumers". (NOL, Exhibit 1, p. 5-6.)

24 43. Since July 2011, CPUC staffers have frequently approached me and asked questions
25 about the controversy with UCAN. The agency has a daily internal news distribution service which
26 include most, if not all, articles that reference the CPUC or SDG&E. In addition, many staffers have
27 told me that they have received anonymous emails containing articles or documents pertaining to the
28 allegations. One staff person sent me an example of this anonymous email sent to him on January

1 9, 2013 which included a San Diego Reader article and a copy of the complaint I filed against UCAN
2 in December 2012 (which was subsequently replaced by this complaint). I explain to each CPUC
3 staff person who raises the topic that I plan to try this matter in Court rather than in the media.

4 **THEFT ALLEGATION**

5 44. As noted above, on June 27, 2012 the UTSanDiego published a story about my
6 creation of a new consumer group. In that story, Aguirre is quoted as saying: "What Shames did is
7 theft". The article quotes him as taking away something – presumably the SDG&E General Rate
8 Case – from UCAN. (NOL, Exhibit 6.)

9 45. Aguirre expanded his comments in the San Diego Reader where, on June 27, 2012,
10 he is quoted as saying:

11 "Mike Aguirre, attorney for the UCAN whistleblowers *who yesterday settled their*
12 *lawsuit*, says Shames's (sic) actions yesterday reflect a "dictatorship" that has
13 dissolved while the modus operandi remains. Because the board was looking the other
14 way, Shames had carte blanche to do whatever he wanted, including with UCAN
15 financial assets, says Aguirre. Shames is now out, but his behavior remains "You have
16 to have mutuality to have an agreement," says Aguirre. Shames "made a
misrepresentation" to the CPUC by claiming that he was taking over UCAN's
handling of the big SDGE rate case. "*He is attempting to take property rights that
belong to UCAN. This should be reported to the U.S. Attorney.*" (Emphasis added;
NOL, Exhibit 7.)

17 46. I could not accept an attorney accusing another attorney of stealing a case with
18 absolutely no factual basis. In this case, Aguirre's statement is horribly false because UCAN had
19 decided internally that it could not afford the experts for the case. UCAN had no property right to
20 the expert testimony that I had developed; the consultants were under contract to me because UCAN's
21 court-appointed receiver refused to sign a contract with the consultants. The receiver and, afterwards,
22 Ms. Malcolm had also consistently refused to pay any money to the experts for their testimony, so I
23 was obligated to pay them out of my personal savings. Most importantly, UCAN had expressly
24 agreed to my sponsoring the expert testimony that I'd developed while working for UCAN. (NOL,
25 Exhibit 8.) In exchange, UCAN would be entitled to possibly recoup whatever attorneys fees for the
26 time that I spent preparing that testimony while employed by UCAN, if I were successful in
27 prevailing. (Id.)

28 ///

1 47. Aguirre use of the term “property rights”, left an impression that upon a reasonable
2 reader that I had stolen UCAN property. This is exactly how his accusation was interpreted by my
3 friends and peers who read the article subsequently and inquired whether I was going to sue Mr.
4 Aguirre for such an outrageous assertion of fact.

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

6 48. Michael Aguirre was in possession of and had ready access to UCAN emails. At a
7 February 7th 2012 meeting with Messrs. Ames and Squires at my house, I was told by Ames and
8 Squires that Aguirre possessed email correspondence between myself and my then-spouse. Both Mr.
9 Squires and Mr. Ames explained that Aguirre had shown them examples of my personal and
10 professional emails and that I should take steps to avoid using the UCAN email server. Mr. Aguirre
11 showed them the emails to allegedly prove his allegation that I had diverted money from UCAN into
12 a non-profit environmental foundation that I administered. While they told me that the emails to my
13 spouse did not prove Mr. Aguirre’s point, they felt it important that I be aware of the insecurity of my
14 emails. Aguirre’s access to UCAN emails is admitted by Defendant Pepper who testifies in his
15 Declaration at paragraph 25 that in late 2011 or early 2012 “emails were discovered showing that the
16 funds used to make the hedge fund investment may have come from a cy pres award....”.

17 49. In a November 4, 2012 article, Aguirre journalist friend Jeff McDonald alleged I
18 interfered in an independent investigation: “In an April 2011 email to Squires, Shames said Dostart
19 ‘specifically instructed the auditors NOT to investigate any embezzlement or misuse of UCAN
20 monies by me.’ (NOL, Exhibit 9.)

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

23 “I have been reviewing business practices at UCAN for some months now, and I have
24 questions for you about your work for the organization. Specifically, I need to ask you
25 about a record I obtained indicating that you “specifically instructed the auditors NOT
26 to investigate any embezzlement or misuse of UCAN monies” by Michael Shames.
27 This is from an email Mr. Shames sent to Mr. Squires and COO Ames on 4/26/11. I
28 understand through other records from early June 2011 that Mr. Shames 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 9.)

1 In that email, McDonald revealed that many other emails that I'd written while at UCAN had
2 also been leaked to him. He indicated that they all implicated a number of my alleged wrongdoings.

3 51. That same day, I received an email from the Reader reporter asking even more
4 accusatory questions about the same emails: "Why did Dostart specifically instruct the auditors NOT
5 to investigate any embezzlement or misuse of UCAN monies by you? Had you told Dostart to do
6 that?" (NOL, *Id.* Exhibit 10.) He stated that "many more documents have surfaced". These
7 documents could not have come from anyone other than a UCAN employee and/or Aguirre.

8 52. In reviewing these questions by the reporters, I realized that the emails provided to the
9 reporters were selective and didn't include the entirety of the conversations between myself and the
10 recipients, thus creating a false perception of wrongdoing. I have provided the full text of this email.
11 (See NOL, Exhibit 12.) I had reason to believe that these emails had been in the possession of
12 Aguirre and his clients based upon representations made to me by Mr. Squires and Mr. Ames that
13 Aguirre had all of my email correspondence while I was at UCAN. The implications that I'd
14 interfered with an investigation was false as I had absolutely no discretion nor supervisory role in the
15 Dostart investigation, as confirmed in the Declaration of Robert Ames.

16 53. The subsequent stories that ran relied upon these emails and false statements by
17 Aguirre, Langley and Pepper. The stories interpret emails to suggest my interference in the Dostart
18 investigation. Both stories were written by Aguirre's journalist friends.

19 54. Those same news articles referenced a 2005 investment in an "out-of-state" hedge
20 fund. The articles implied that I had pushed the UCAN Board into an illegal and ill-advised
21 transaction investing dedicated grant funds into a risky financial transaction. In the UTSanDiego
22 article, Michael Aguirre is quoted as saying: 'Misdirecting consumer education trust money to an out-
23 of-state hedge fund is a storm warning that regulators cannot prudently ignore,' Aguirre said." (NOL,
24 Exhibit 9.)

25 55. All of the assertions by Aguirre are false. The Red Rock investment matter was raised
26 by Aguirre with Mr. Squires the day of a Board meeting that I recall occurring in February 2012. In
27 response to Aguirre's allegation, Mr. Squires asked that I assist Mr. Ames in bringing any records
28 relating to Red Rock to that Board meeting held later in the afternoon. At the Board meeting, I was

1 asked about the transaction and I explained that the Board had expressly approved the transaction.
2 At least two Board members of the three Board members at the meeting concurred with me and
3 expressed the Board's approval of the investment.

4 56. My almost 30-years in non-profit administration have informed me that investments
5 by non-profits into "hedge funds" is not in the slightest illegal. The key factors to examine is whether
6 the investments are prudent, that the Board be fully informed and that the organization use due care
7 in making investments. In this case, UCAN was independently advised by a recognized expert in
8 finances who also was (and is) a professor of economics at the UC Irvine business school and who had
9 no economic connection with the investment. Ultimately, Aguirre is raising a legal question of
10 prudence/appropriateness and presenting it as *fact, not opinion*. Prior to moving forward on the Red
11 Rock investment, I confirmed that that many charities have large percentages of their endowments
12 in alternative investments. Any analysis must weigh the actual size of the investment, the amount of
13 UCAN's other assets, the projected date of need to convert the funds tied up in the alternative
14 investment to cash, the degree of liquidity of the alternative investment, the investment choices made
15 with respect to UCAN's other investments and the long-term objectives of the organization.
16 Aguirre's published implication that I misdirected grant monies into the Red Rock investment has
17 no factual basis – the monies put into the Red Rock investment were attorney fee awards that had
18 accumulated and were to be used in PUC proceedings in 2007-2008. UCAN possesses the records
19 regarding the Red Rock investment and is in a position to disprove Aguirre's assertion.

20 57. At the Board meetings in which the Red Rock investment was discussed, there was
21 no suggestion by the Board members that I had not fully disclosed the nature of the investment. In
22 fact, the Red Rock investment was initiated by Board members, not I. Two Board members, Niel
23 Lynch and Dan Conaway, sought a greater return on the monies in UCAN's Money Market account
24 and pushed to diversify UCAN's holdings. Up until that point, I had promoted a very conservative
25 policy of holding UCAN monies in cash and the investment in Red Rock was at the behest of Board
26 members and not initiated by myself.

27 58. After this February Board meeting, Mr. Squires asked Mr. Ames to investigate the
28 circumstances around the investment and whether all of the monies were properly accounted. Mr.

1 Ames asked me to provide all of the supporting documents for the transaction, which I was able to
2 do readily. Subsequently, he indicated to me that he found no indication of wrong-doing, nor had
3 UCAN's independent counsel identified any concerns warranting a further investigation. The matter
4 was not raised with me again. This information was conveyed by Mr. Squires to Mr. Aguirre,
5 accordingly to multiple statements made by Mr. Squires to me.

6 59. Monies invested in the Red Rock fund were not trust monies dedicated to consumer
7 education. UCAN possesses all of the records that were available to Aguirre and his clients that show
8 the source of the Red Rock funds.

9 60. On October 17, 2012, I became aware of an article that ran in the San Diego Reader
10 relating to the Utility "Comsumers" Action Network accounts. This is an issue that was raised by
11 Aguirre in the March 2012 complaint that he filed and ultimately settled in May 2012. The October
12 article indicates that "Peffer replied disdainfully that six such misspelled accounts had now been
13 traced to five separate financial institutions. While Dostart had claimed that the accounts involved
14 only nominal amounts, there was one for more than \$262,000." The story quotes Aguirre as well:
15 "Mike Aguirre, attorney for the whistle-blowers, was told by a UCAN accountant that there was only
16 a spot check of the misspelled accounts — not a full audit. The board "decided to go into dissolution
17 rather than do an audit," UCAN employee Charles Langley is also quoted in the story as stating that
18 it "strains credulity to believe that these accounts could have been traced in less than three months."
19 (NOL, Exhibit 10.)

20 61. All of these stories and assertions were printed two months *after* the AKT auditors
21 provided an audit report to the UCAN Board. In regards to alleged missing monies or UCAN assets
22 raised in a number of newspaper stories, I worked directly with the auditing firm of AKT throughout
23 2011 and some of 2012 to ensure that all UCAN assets were fully accounted. In my conversations
24 with Ron Mitchell, who was the lead auditor and partner at AKT, he indicated to me that all UCAN
25 assets were fully accounted and there was no evidence of missing or unaccounted assets. Mr.
26 Mitchell's findings were presented to the UCAN Board in 2012 after I had left UCAN. I was
27 provided a draft of the report by the Auditors but AKT wasn't authorized to give me a final draft. The
28 report identifies the five accounts in question labeled "Utility Comsumers' Action Network". (NOL,

1 Exhibit 12, p. 10.) They are two China Fund equities, two Eaton Vance equities and a BNY Mellon
2 account. As of mid-2011 they were valued at about \$43,000 total. The auditors could not have listed
3 these accounts and made the journal entry adjustments without having fully audited them and account
4 for the accuracy.

5 62. While the truth clearly strains Mr. Langley's incredulity, I had provided documents
6 to Robert Ames in May 2011 that showed that all of UCAN's holdings in Morgan Stanley investment
7 account were labeled "Utility "Comsumers" Action Network". All of our monthly statements were
8 labeled Utility "Comsumers" Action Network going back to 2006. It was a typo that had been
9 brought to the attention of UCAN's Morgan Stanley broker Kevin Shibuya but which he viewed as
10 too inconsequential to bother changing. As determined by the AKT auditors and the Dostart
11 investigators, there was nothing to this but a typo that had been ongoing since 2006 and all accounts
12 were fully tracked by the UCAN bookkeeper and accountant. After the Morgan Stanley account was
13 closed in 2010 and all of the assets were shifted to Wells Fargo, there were a handful of small equity
14 accounts that were not transferred to Wells Fargo because they were direct purchases of stock from
15 the companies that Morgan Stanley could not directly transfer. They amounted to about \$43,000.
16 The public assertions by Aguirre's that the account balances approximated \$260,000 simply are jaw-
17 dropping false.

18 63. This "Comsumers" issue was enough of a non-issue that UCAN posted the findings
19 on the Internet on February 2012 indicating that its independent attorney and auditors found no
20 validity to the allegation that these accounts were illicit. (See paragraph 22 above.). Yet, Mr.
21 Aguirre continued to make an issue out of it through 2012 into 2013.

22 REBUTTAL TO AGUIRRE DECLARATIONS: David Pepper and Charles Langley

23 64. As to the declarations of Defendant Pepper and Mr. Langley, in my dealings with them,
24 I found that both individuals had an indifferent relationship with truthfulness. They twisted the truth
25 constantly to meet their needs. An example of these two individuals' casual relationship with truth
26 is found in their declarations and the Aguirre memo which states at page 4 " With regard to the
27 dispute between Aguirre and Plaintiff, it was the Former Executive Director (Shames) who forced
28 the issue into the public, as reported in a 4 March 2012 San Diego Union Tribune article." The Points

1 and Authorities submitted by Aguirre references Defendant Pepper's declaration at paragraphs 15 and
2 16. In the Pepper Declaration, he references this March 4th UTSanDiego article and states that after
3 reading that article, he "spoke to several reporters" to clarify his allegations. Mr. Langley states the
4 same in his declaration. Defendants Pepper and Aguirre are lying to the Court.

5 65. In fact, Defendants Aguirre and Pepper had publishing defamatory assertions in the
6 media for eight months leading up until March 4, 2012. In a series of articles published by the San
7 Diego Reader beginning in July 27, 2011 then again in August 13 and August 24, 2011 followed by
8 October 12, 2011 and February 27, 2011, Don Bauder referred to a whistleblower providing him
9 documentation about the incentive compensation, "illegal" practice of law at the PUC,
10 "disorganization" within UCAN, including the publication of the June 2011 Dostart preliminary
11 memo delivered to the Board. In August, the Reader also published an in depth article about the
12 Nucor Foundation grant to UCAN citing "Internal UCAN paperwork supplied to me by a whistle-
13 blower shows the money trail." An October 2011 story on the State Bar investigation triggered by
14 Michael Aguirre references a whistleblower. In a February 27, 2012 article published on day before
15 UCAN filed its dissolution petition, Mr. Bauder wrote: "As stated previously in the Reader, a group
16 of whistleblowers within UCAN has protested conditions there and has been especially *concerned*
17 *about what they suspected to have been financial irregularities.*" (Emphasis added.) On February
18 28 – a full six days prior to March 4, 2012 – the UTSanDiego published an article highlighting Mr.
19 Pepper's allegations, referring to his whistleblower complaint and containing multiple quotes from
20 Aguirre saying "Many of the things (Pepper) said were proved to be true." And on March 1, 2012 –
21 three days before Mr. Shames' Facebook posting – Defendant Pepper was highlighted, replete with
22 a photo, discussing his allegation that Plaintiff threatened UCAN staff with "mass firings". (See all
23 of these articles in NOL, Exhibit 24.) The Aguirre declarants' sworn testimony that Plaintiff forced
24 the matter into the public realm on March 4, 2012 is contradicted by all of these publications in which
25 Aguirre expressly participated.

26 66. Another such example is when Mr. Ames inquired with me about Defendant Pepper's
27 allegation that Pepper could not work at the UCAN office and could not use the UCAN computer
28 assigned to him because I had put software on his computer that monitored all of Defendant Pepper's

1 work on that computer and had placed listening devices in his office. Those are the reasons that
2 Defendant Peffer gave for refusing to come to the UCAN office. Mr. Ames asked me if there was
3 any truth to these allegations and I explained that neither accusation was true and, furthermore, both
4 allegations could be easily proven false by the hiring of a technical investigator. I never heard
5 anything about this matter again. I also received a number of complaints from employees who
6 worked with Defendant Peffer on the Water Project that Peffer would make up facts to support his
7 legal theories. When I turned over supervision of the Water Project to Mr. Ames, one employee on
8 the Water Project left UCAN rather than have to stay and work with Defendant Peffer because, as she
9 stated to me, Defendant Peffer had no regard for facts.

10 67. Similarly, Mr. Langley repeatedly twisted truth – sometimes to the extreme. For that
11 reason, I largely wrote and reviewed everything that was sent to UCAN members or made available
12 to the public. The only area in which Mr. Langley had any discretion about public pronouncements
13 was in regards to gas prices. One of the more extreme, but not unique, examples of Mr. Langley’s
14 loose grasp on facts was his repeated statements to me and to staff members at our staff meetings that
15 I had “killed” a UCAN employee who died in early 2011 from a long-diagnosed circulatory problem.
16 This deceased employee’s daughter – who was a physician– assured me and informed Mr. Langley
17 that I had no role in the employee’s death. Nonetheless, Mr. Langley continued making this
18 allegation at the UCAN offices and, I am certain, will do so again in the future when he is deposed.

19 68. Defendant Peffer and Mr. Langley were extremely uncooperative and hostile towards
20 anyone who did not “ally” themselves with their effort to wrest control of UCAN from myself and
21 the UCAN Board. From early 2011 through my departure in 2012, UCAN lost most of its talent
22 because of the baseless allegations being made by these two employees in the media, in internal
23 emails and in staff meetings. These two individuals were very distrustful of any UCAN employee
24 who was continuing to work with me – such as the other attorneys at the organization -- and I took
25 it upon myself to find those UCAN employees jobs at other places because of the hostility and
26 uncooperativeness of Peffer and Langley.

27 69. At paragraph 5 of his Declaration on behalf of Aguirre, David Peffer claims to have
28 “discovered” information including “I discovered Mr. Shames had opened investment accounts in the

1 misspelled name "Utility Consumers Action Network and that hundreds of thousands of dollars had
2 been moved through those misspelled accounts. There is only one way that Defendant Pepper could
3 have "discovered" those accounts. He, or someone he knew, had to have gone into the UCAN
4 financial investment files located in my office and remove those documents from my office. Other
5 than the financial files in my office only two other persons possessed information about the Utility
6 Consumers' Action Network accounts at Morgan Stanley: UCAN's bookkeeper Tony Pettina who
7 reported these accounts in his monthly statements shared with the Board and UCAN's CPA Greg
8 Villard who reviewed and identified those accounts in his annual auditor's review. There is no other
9 way that Defendant Pepper could have "discovered" these accounts and I was assured by both Messrs
10 Pettina and Villard that they'd never been approached or, for that matter, met Pepper.

11 70. Defendant Pepper dissembles again at paragraph 9 when he references a March 17,
12 2011 meeting in which he was not allowed to attend (the majority of UCAN staff was not "allowed"
13 to attend in light of the fact that it was a managers-only meeting) and that he reviewed notes of the
14 meeting. He didn't review any notes because I was at the meeting and no one was taking notes.
15 However, Mr. Langley being a manager at UCAN was invited to attend the meeting. In front of the
16 other managers at the meeting, Langley had asked me if he could record the meeting and I rejected
17 his request on the basis that it would inhibit managers from speaking freely. Mr. Langley took few
18 written notes at the meeting. However, he did surreptitiously record the meeting. I know this because
19 transcribed discussions from the meeting were quoted in the March 9, 2012 complaint filed by
20 Aguirre on behalf of Defendant Pepper and Mr. Langley, to wit:

21 "56. The next day at 11:00 a.m. Mr. Shames convened a meeting attended by six UCAN
22 staff members: Charles Langley, Josh Anaya, Bianca Garcia, Mike Scott, Laura Impastato, and Art
23 Neill. During the meeting Mr. Shames told the staff members present he intended to shut UCAN
24 down because of the employee complaints:

25 So the dilemma that I face, and the concern I have, is I'm going to be meeting with the
26 Board, uh, some of the board members anyhow, ah, on Wednesday. And they want
27 to know what we're gonna do to see that this kinda stuff doesn't continue to happen,
28 and that we're not gonna have even more board, uh, employee complaints. And I told
them I, ah, honestly don't know. I'm totally clueless as to what's going on - um, and -
at this point, my leaning, is to tell the Board on Wednesday that we should just simply
plan on closing UCAN down, that rebuilding the organization doesn't make sense.
I'm tired. I don't want to bother doing it. I've done, I've done, in fact I've told

1 Charles and Sue last year that I was planning on retiring this year. This was going to
2 be my last year at UCAN. And I was just going to turn over the organization to the
3 next generation. I don't need this. So my recommendation right now is just shut, shut
4 UCAN down and uh, we did a great job, and there's nothing more that I wanna do.
Um, the purpose of the meeting actually is to let you guys discuss, what, if anything,
needs to be done - can be done - um, to change my mind."

5 Defendant Pepper did not rely upon any notes; he relied upon an illegal recording of the meeting in
6 which only six of the 15 UCAN staff members participated.

7 71. At paragraph 24, Defendant Pepper testifies that "In summer 2012 I learned that UCAN
8 had received a letter from the California Attorney General of any unauthorized bonus funds paid to
9 Mr. Shames." This testimony clashes somewhat with the sworn testimony of Kim Malcolm who
10 states on behalf of UCAN that she didn't receive such notice until September 5th and didn't share that
11 information with the Board until September 13th. (NOL, Exhibit 25, Malcolm Declaration excerpt,
12 para 21.) Ms. Malcolm further testifies that she didn't "provide information to reporters or the media
13 about Shames' acquisition of incentive/bonus payments except to refer to matters that had already
14 been reported....". (Id, para 22.) However, she is sidestepping the likelihood that she was working
15 with UCAN's two other employees (Langley and Pepper) to release information about AG's letter to
16 the media. My surmise is based upon the San Diego Reader October 12, 2012 report that Mr. Langley
17 had previously sent a letter under the Public Records Act to the Attorney General's office seeking a
18 copy of the letter to which Defendant Pepper refers and that request was rejected. (NOL, Exhibit 26.)
19 This means that UCAN didn't make the demand letter for return of the incentive payments public
20 until October 3rd. Yet, Mr. Langley had already sent a Public Records Act request by mid-September,
21 as the AG has 30 days in which to respond to such requests. All of the evidence points to Ms.
22 Malcolm having given the September 5th Attorney General's (AG) email to Defendant Pepper and/or
23 Mr. Langley. Alternatively, they received the AG's email from a Board member who had received
24 Ms. Malcolm's September 13th notice to the Board. If Mr. Pepper learned that UCAN had received
25 a letter from the AG, it was one week before the end of summer and it came from either Ms. Malcolm
26 or a UCAN Board member. There is only one purpose that either Pepper or Langley would have had
27 in securing that email directly from the AG's office: to get the AG's email into the media without
28 it being traced to Ms. Malcolm.

1 72. At paragraph 25 of his Declaration, David Peffer admits to possession of internal
2 emails that allegedly show investment in an “out of state hedge fund” that “*may*” have come from a
3 cy pres award. Neither Defendants Peffer or Aguirre present said alleged emails as evidence. In fact,
4 neither Defendants have presented *any* evidence showing that the “hedge fund” investment was
5 funded with a cy pres award or any other foundation-based award. Yet, both Defendants have
6 published allegations stating that foundation monies were “misdirected”. (See Paragraphs 54 and 59
7 above.) While I do not have access to these files, they are in UCAN’s possession and, in all
8 likelihood, Aguirre’s possession. His motion contains no evidence to support this allegation.

9 73. In response to the allegations in the Peffer whistleblower complaint and Aguirre’s
10 persistent threats of litigation, UCAN filed a petition for dissolution to compel Aguirre to prove his
11 allegations. In an attempt to prevent the dissolution of UCAN, Defendants Peffer and Aguirre filed
12 a derivative complaint on March 9, 2012.

13 **DAMAGES**

14 74. On or about August 1, 2013, I conducted a web search using Google to determine the
15 extent to which my reputation had been impacted on the Web. I conducted the search using these key
16 words: “Michael Shames, UCAN” . There were 7,260 results, however 22 of the first 25 search
17 results reference the defamatory allegations raised in this case, notwithstanding the fact that I’ve had
18 a high-profile career as a consumer advocate for over 30 years.

19 75. The extent to which my professional reputation has been effected is best reflected by
20 filings at the CPUC by other intervenors who have referenced the conflict between myself and
21 defendants. Late last year, one intervenor commented upon an intervenor compensation rulemaking
22 saying: “It would also be helpful to know more about why the Joint Committee decided to order this
23 audit. It’s likely that the scandal involving UCAN was part of it, but the ALJ also expressed concern
24 about an incident where an employee of the Commission was found to be ghost-writing testimony for
25 an intervenor group. “ (See NOL, Exhibit 27.)

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

1 77. The UTSanDiego published an editorial accusing me of malfeasance and self-dealing
2 shortly after the release of the August 29, 2012 letter by Mr. Squires' that reflected the substance of
3 Mr. Squires' lie but also a cumulation of the previous republished lies by UCAN management and
4 staff. (NOL, Exhibit 13.)

5 78. On April 13, 2013, I received an e-mail from Don Bauder of the San Diego Reader
6 asking whether I'd been profiting from intervenor fees in exchange for not aggressively opposing
7 SDG&E rate requests. (NOL, Exhibit 15.) This e-mail showed the dramatic effect that the Aguirre
8 smear campaign had on this reporter who, just five years previously wrote that I was being
9 dramatically underpaid and could easy command "four times more money" in the private market.
10 (NOL, Exhibit 14.)

11 79. My ability to intervene has been undermined by Aguirre's actions due to the fact that
12 monies that I planned to use to retain experts in regulatory proceedings on behalf of SDCAN have
13 been diverted into this case. Moreover, the "scandal" aspect of this conflict between Aguirre and I
14 has affected the PUC's handling of my interventions.

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

17 Executed in San Diego, California on August 21, 2013

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21 Michael Shames
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