



Utility Consumers' Action Network
3405 Kenyon St., Suite 401, San Diego CA 92110
(619) 610-9001

October 3, 2012

Via Express Mail

Michael Shames, Esq.
6975 Camino Amero
San Diego CA 92111

RE: Executive Bonuses

Dear Mr. Shames,

UCAN's Board of Directors has reviewed its records and addressed the matter of your executive bonuses with Tania Ibanez of the Charitable Trust Section of the California Attorney General's office. On the basis of its review UCAN's Board concludes that your bonuses from 2005 through 2012 were unauthorized and improper. The Board thus demands that you return all sums received by you other than as authorized by the Board.

As you know, UCAN's Board of Directors approved a bonus policy at its February 7, 2008 board meeting. As reported in the meeting minutes, the adopted policy anticipated "an incentive policy that awards 10% of fees earned or monies raised by all employees at UCAN." It appears you relied on this policy description to award yourself more than \$300,000 between 2008 and 2011. The Board can find no record of a board bonus policy or board authorization of bonus payments prior to February 2008, yet UCAN's books of account show you took bonuses between 2005 and 2007 which totaled over \$170,000.

Government Code 12586 requires nonprofit boards to review executive compensation to determine reasonableness whenever the officer's compensation is modified, as follows.

The board of directors of a charitable corporation or unincorporated association, or an authorized committee of the board, and the trustee or trustees of a charitable trust shall review and approve the compensation, including benefits, of the president or chief executive officer and the treasurer or chief financial officer to assure that it is just and reasonable. This review and approval shall occur initially upon the hiring of the officer, whenever the

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term of employment, if any, of the officer is renewed or extended,
and whenever the officer's compensation is modified.

As the attachment shows, your compensation was modified every year since 2004 and yet we find no record that it was modified with the Board's authority.

Nor was UCAN's Board asked to approve the methodology you used to calculate your bonus payments, with a result in which you awarded yourself 10% of revenues, including costs incurred rather than net revenues received to support UCAN operations, a calculation UCAN's adopted policy could never have intended.

1. You did not report the dollar amount of each bonus payment to UCAN's Board before you directed payments to yourself.
2. You did not report the total amount of your annual compensation, including bonuses, in an annual report or in UCAN's Form 990 reports to the Internal Revenue Service.
3. We find no records to show that any individual Board member approved any bonus payment at any time.

Following a review of the annual compensation of nonprofit executive directors in the San Diego area between 2005 and 2011, the Board concludes your base salary was competitive. Moreover, the Board sees a distinction between funds denoted by the phrase "fees earned or monies raised" and such funds as were received by UCAN as interyenor compensation awards stemming from the work of its salaried employees. Absent further documentation the Board cannot conclude the bonuses you directed to be paid to yourself were authorized by the Board or that the total compensation you caused to be received by you between 2005 and 2011 was reasonable.

The duty of the Board is to assure proper management of UCAN's finances and full compliance with the law. This letter demands the return of \$474,019 in unauthorized compensation you arranged to be paid to yourself between 2005 and 2011. The Board requires your response no later than Monday, October 15, 2012.

Very truly yours,

Kendall Squires
Chair, UCAN Board of Directors

cc: Tania Ibanez, Esq.