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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO
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11 MICHAEL SHAMES, an individual;
12 Plaintiff,
13 v.
14 UTILITY CONSUMERS' ACTION
NETWORK, DAVID PEPPER, AND
15 DOES 1 TO 50.
16 Defendants.

- CASE NO.
VERIFIED COMPLAINT FOR DAMAGES
1. LIBEL
 2. LIBEL PER SE
 3. MALICIOUS PROSECUTION
 4. I N T E N T I O N A L INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS
 5. BLACKLISTING
 6. UNAUTHORIZED COMPUTER USE AND ACCESS
 7. INVASION OF PRIVACY
 8. CIVIL CONSPIRACY
 9. WRONGFUL TERMINATION
 10. FAILURE TO INDEMNIFY COSTS
 11. BREACH OF CONTRACT AND DECLARATORY RELIEF

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24 PARTIES

- 25 1. Plaintiff is an individual and is now, and at all times mentioned in this
26 complaint was, a resident of San Diego County, California.
27 2. Defendant, Utility Consumers' Action Network (UCAN) , is now, and at
28 all times mentioned in this complaint was, a corporation organized and existing under

1 10. Plaintiff has during all this time enjoyed a good reputation, both generally
2 and in his occupation.

3 11. In 2010, Plaintiff explained to UCAN staff members that he was leaving
4 UCAN at the end of the SDG&E General Rate Case (estimated departure, end of 2011)
5 and began a process to hire an assistant executive director to replace him. Certain
6 UCAN employees were resistant to the hiring of a new executive director from outside
7 of existing UCAN staff.

8 12. In anticipation of staff resistance, on September 29, 2010, Plaintiff
9 explained to the Board the need for an orderly succession and secured approval at that
10 Board meeting to hire an assistant executive director immediately as to begin that
11 succession process.

12 13. Plaintiff found a suitable assistant executive director in November 2010
13 but the staff opposed the hiring and initiated a conspiracy to take control of UCAN after
14 Plaintiff's departure in 2011.

15 14. In or about November 2010, Defendant Peffer and DOES 1-50 informed
16 UCAN employees that they planned to "take over" UCAN and threatened any
17 employees who interfered in that endeavor.

18 15. On or about March 3, 2011, Defendant Peffer submitted a "whistleblower"
19 complaint just one day before he was to be terminated by Plaintiff. He made a written
20 submission to the UCAN Board alleging statutory violations by Plaintiff that were
21 untrue and unfounded.

22 16. In response to the "whistleblower" complaint, Plaintiff explained to the
23 UCAN Board that he was leaving at the end of 2011 (or when the SDG&E rate cases
24 ended). He recommended that the Board not override his decision to terminate
25 Defendant Peffer. He explained that if the Board chose to override, that it would have
26 to take on much of the administrative tasks at UCAN and, ultimately, operational
27 control when Plaintiff left UCAN. The Board opposed any termination until a
28 whistleblower investigation had been completed by an independent attorney.

1 17. On or about April 18, 2011, Attorney Michael Aguirre, who subsequently
2 served as counsel for Defendant Peffer in a March 2012 complaint, made written
3 allegations before the Public Utilities Commission that Plaintiff was not a member of
4 the State Bar and could not practice before the Commission. This allegation repeated
5 the false allegation made by Defendant Peffer in his whistleblower accusation.

6 18. On or about May 2011, Defendant Peffer and DOES 1-10 submitted a
7 motion to the Public Utilities Commission alleging that Plaintiff was prohibited from
8 practicing before that regulatory body because he was an inactive member of the State
9 Bar. This allegation was identical to the one published by the whistleblower allegations
10 made by Defendant Peffer two months earlier and echoed the allegations made by
11 Aguirre one month earlier.

12 19. On May 27, 2011, the Public Utilities Commission rejected both the
13 Aguirre and May 2011 motion of DOES 1-10 stating that the Commission does not
14 require all those who appear before it to possess a valid law license.

15 20. By June 2011, the UCAN investigation had been completed by the
16 independent attorney and found the whistleblower allegations baseless. At that time,
17 Plaintiff informed the Board that their failure to terminate Mr. Peffer and some other
18 employees would lead to the deconstruction of UCAN and that Plaintiff would remain
19 at UCAN only to finish the cases that he'd begun in 2010 and to assist his successor or
20 in some other transfer of his executive director duties.

21 21. Even though the allegation that Plaintiff was illegally practicing law
22 before the Commission was rejected by the administrative body and by Defendant
23 UCAN, Defendant Peffer and DOES 1-10 continued to publish this allegation, including
24 in local newspapers in March 2012.

25 22. The SDG&E rate cases were subject to delays that caused the litigation to
26 continue into and through 2012. In the interim, Defendant Peffer and DOES 1-50
27 continued to issue false and defamatory complaints to the Board about Plaintiff. UCAN
28 incurred significant legal and accounting fees (exceeding \$900,000) in order to

1 investigate and address the various complaints, allegations and other defamations
2 made by Defendants Peffer and DOES 1-10.

3 23. During this time, Plaintiff's relationship with UCAN Board Chairman
4 Kendall Squires soured as Plaintiff consistently opposed Mr. Squires' extravagant
5 spending decisions and administrative decisions. It was very apparent to Plaintiff that
6 Mr. Squires was not acting in the interests of UCAN. Instead, his actions were
7 designed to acting to protect his own personal interests. It also became apparent to
8 Plaintiff that Mr. Squires had decided to cast Plaintiff as the responsible party for the
9 outcomes that Plaintiff had warned would be the consequences of decisions made by Mr.
10 Squires.

11 24. In early 2012, it became apparent that the SDG&E rate cases would not
12 end by mid-2012. It was also apparent to Plaintiff that UCAN had spent most all of its
13 reserves on defending against the groundless accusations made by Defendant Peffer and
14 DOES 1-10. Plaintiff informed the President of the UCAN Board and UCAN's COO
15 that he was committed to completing the rate case litigation, whether UCAN survived
16 or not. He explained that, if necessary, he'd use his own savings to complete the cases
17 because of the long-term importance of the cases upon SDG&E customer rates.

18 25. In or about May 2012, UCAN Board members, including DOES 1-50,
19 decided to enter into a settlement with Defendant Peffer and his attorney Michael
20 Aguirre to settle a membership derivative complaint. Plaintiff vigorously opposed the
21 settlement terms and refused to be part of the settlement. He also refused to sign a
22 waiver of liability agreement which Squires asked that he sign which would have held
23 UCAN harmless for any actions it had taken to injure Plaintiff.

24 26. In May 2012, the UCAN Board finally hired a replacement for Plaintiff.
25 Plaintiff offered to continue as a part-time employee to complete the rate cases. That
26 offer was accepted. However, it became clear within a few weeks that the new executive
27 director – who was not an attorney – was unwilling to defer to Plaintiff's role as lead
28 litigator in the cases. Conflict ensued. Plaintiff was terminated without cause on June

1 20, 2012, and he promptly created a new nonprofit organization to complete the
2 litigation and fill the advocacy role that UCAN had provided to San Diego until such
3 time that UCAN had reestablished its capacity to provide expert representation on
4 behalf of SDG&E ratepayers.

5 27. Beginning in June 2012, UCAN began a systematic process of defaming
6 Plaintiff with the objective of undermining his ability to complete the SDG&E rate
7 cases or conduct any other advocacy on behalf of SDG&E customers before the state
8 Public Utilities Commission. UCAN released internal e-mails, invaded Plaintiff's
9 privacy, violated federal and state Internet protection laws, made defamatory per se
10 assertions and waged a one-sided war in the media to impugn Plaintiff's reputation.
11 UCAN also took action at the Public Utilities Commission to impede and undermine
12 Plaintiff's professional activities on behalf of SDG&E customers at the Commission.

13 28. In doing so, UCAN intentionally withheld from the public the findings by
14 the professional investigations by its independent counsel and auditors which
15 exonerated Plaintiff of most all of the allegations made by Defendants. UCAN also
16 made a number of defamatory allegations relating to Plaintiff's professional reputation
17 to the Commission.

18 29. Between July and November 2012, Plaintiff made three formal demands
19 to the UCAN Board for retraction of public statements made by UCAN and its agents.
20 All three times, the UCAN Board declined to issue a public retraction, thus making this
21 lawsuit necessary.

22 30. Defendant UCAN's vendetta against Plaintiff has become so consuming
23 that UCAN has recently perjured itself in efforts to oppose Plaintiff's efforts on behalf
24 of San Diego Gas & Electric customers before the state Public Utilities Commission.

25 SUMMARY OF DEFAMATORY STATEMENTS

26 31. On or about December 28, 2011, Defendant Peffer and DOES 1-10
27 represented to the UCAN Board members that Plaintiff had conspired with assorted
28 class action attorneys to receive kickbacks from those attorneys in exchange for

1 providing them with plaintiffs for consumer class action cases. On December 28, 2011,
2 Plaintiff was informed by UCAN Board President Kendall Squires of these allegations
3 and that Plaintiff was obligated to respond to these allegations in writing. Defendant
4 Peffer and DOES 1-10 did not offer any factual support for this allegation.

5 32. Squires represented that the allegation would be investigated by UCAN's
6 independent counsel. The allegations suggested illegal and professionally unethical
7 action by Plaintiff that was designed to irreparably harm Plaintiff's reputation and
8 ability to continue his advocacy on behalf of SDG&E customers.

9 33. UCAN's independent counsel investigated and informed Plaintiff that he
10 found no basis to support the allegation. However, the UCAN Board declined to make
11 public that exoneration by the independent counsel.

12 34. This allegation of Defendants Peffer and DOES 1-10 was shared by the
13 UCAN Board with UCAN's subsequent executive director, Kim Malcolm. In June 2012,
14 Malcolm demanded in writing that Plaintiff cease referring cases to private class action
15 attorneys even though UCAN's Board had found that there was no factual basis to
16 support the allegations. Malcolm further demanded that Plaintiff prove that he was not
17 attempting to personally profit off of class actions based upon complaints received by
18 UCAN.

19 35. UCAN and its agents subsequently leaked documents to the media
20 suggesting that Plaintiff had improperly used private class action lawsuits as a source
21 of personal income without any facts supporting such allegations.

22 36. On or about January 15, 2012, UCAN COO Robert Ames informed Plaintiff
23 that Defendant Peffer and DOES 1-10 stated to him that Plaintiff had placed software
24 in their computers that allowed Plaintiff to track all correspondence and any other
25 writings on those computers. They insisted that the software be removed as a condition
26 for them doing any further work although they offered no facts to support the
27 allegation. Ames reported this allegation to the UCAN Board President. UCAN found
28 the allegations to be merit less but declined to put that finding in writing.

1 37. Sometime prior to January 1, 2012, Defendant and DOES1-10 submitted
2 false and defamatory information to UCAN's independent counsel suggesting that
3 Plaintiff conspired with Nucor Foundation and Peter Navarro to engage in illegal tax
4 evasion and money-laundering schemes. He investigated the allegations and found no
5 support for the allegations. At a Board meeting held after January 1, 2012, UCAN
6 Board member Niel Lynch repeated the allegations to the UCAN Board members and
7 insisted that Plaintiff had engaged in illegal money laundering activities subject to
8 criminal prosecution.

9 38. Prior to February 20, 2012, Defendant and DOES1-10 submitted false and
10 defamatory information to the U.S. Attorney's office suggesting that Plaintiff conspired
11 with Nucor Foundation and Peter Navarro to engage in illegal tax evasion and money-
12 laundering schemes. In fact, the activities in question were fully lawful.

13 39. On or about February 28, 2012, Defendants and DOES 1-10 leaked a
14 confidential subpoena of records served upon UCAN by the U.S. Attorney's office to the
15 media and stated that Plaintiff was being investigated by the Grand Jury. In fact,
16 Defendant UCAN was being investigated, but Plaintiff had not been the subject of the
17 investigation. As of the filing of this complaint, some 10 months later, the U.S.
18 Attorney's office has not sought contact with or any additional information from
19 Plaintiff. The allegations that Plaintiff was the target of a U.S. Attorneys' investigation
20 were false.

21 40. The allegations that Plaintiff was the target of a U.S. Attorneys' office
22 criminal investigation has been repeated by Defendants and the media and has been
23 used by others to discredit Plaintiff. Yet, there is no truth to the allegation and no
24 action by the U.S. Attorney's office to support the allegation.

25 41. Subsequent to June 2012, Plaintiff is informed that Defendants made
26 additional false allegations to the U.S. Attorney's office about files that had been stolen
27 or misappropriated by Plaintiff. Defendants made these allegations to the media. Yet,
28 they are false and unsupported by fact. Plaintiff has not been contacted by the U.S.

1 Attorney's office in regards to any missing files, notwithstanding Defendants'
2 allegations to the media.

3 42. Defendant Peffer and DOES 1-10 continued to publish on the Internet and
4 in local media that Plaintiff had engaged in a tax evasion and money laundering
5 scheme linked to Nucor Foundation. They offered no facts to support this allegation.

6 43. On or about August 29, 2012, Kendall Squires sent a letter to Plaintiff
7 stating that UCAN files were missing, that Plaintiff was custodian of documents during
8 the entirety of his tenure and that the unidentified missing files were in Plaintiff's
9 possession. Mr. Squires' letter maintains that the records sought pertain to past
10 intervenor compensation decisions that were to be subject to an audit by the State
11 Auditor.

12 44. This letter was released to the media prior to delivering it to Plaintiff.
13 Plaintiff learned about this letter on September 5th (following the Labor Day weekend)
14 by a U-T San Diego reporter who provided Plaintiff with an electronic version of the
15 letter. The letter had been sent to the reporter from the UCAN scanner – the file name
16 on the document indicated it came from the Sharp scanner used at UCAN. Plaintiff
17 received the letter from Squires in the mail the following day.

18 45. Mr. Squires also published said letter by sending it to the President of the
19 Public Utilities Commission and an Assembly member representing California's Central
20 Valley.

21 46. Mr. Squires made this allegation even though UCAN had been advised
22 twice in July 2012, by Plaintiff's attorney Suzy Moore, that Plaintiff had complied with
23 Defendant UCAN's written demand that all requested UCAN files (electronic and
24 paper) in the possession of Plaintiff had returned to UCAN and electronic versions of
25 them had been destroyed.

26 47. Defendant UCAN's letter was false. Mr. Squires knew that Plaintiff had
27 been relieved as custodian of documents in mid-2011. Mr. Squires directed Robert
28 Ames (UCAN's COO) to take control of all documents except for payroll records.

1 Mr. Ames did and, with Mr. Squires consent, removed many of UCAN's records and
2 brought them to his house in light of the evidence that UCAN files had been tampered
3 with by DOES 1-10 and Defendant Peffer.

4 48. Mr. Squires had been alerted many times by Mr. Ames and Plaintiff that
5 UCAN's records were missing and that UCAN employees were stealing documents. On
6 or about April 2012, Mr. Squires directed Mr. Ames to send a formal letter to UCAN
7 staff persons demanding that UCAN documents in his possession be returned to UCAN.
8 According to representations made by Mr. Ames, the employees refused to return the
9 documents. Mr. Ames stated to Plaintiff that he was not authorized by Mr. Squires to
10 pursue the matter any further.

11 49. The August 29th letter was also false because all of the documentation
12 that supports UCAN's past compensation awards are provided to the CPUC and are
13 posted on the CPUC web site. They are all public documents and had been fully
14 provided to the Commission. Moreover, the CPUC does not award compensation absent
15 full documentation of all costs, expenses and attorney timesheets. Mr. Squires knew
16 and should have reasonably known that no compensation-related documents could have
17 been missing as they had all been delivered to the Commission and are all publicly
18 available documents.

19 50. The letter was also false because Mr. Squires demanded all employee
20 timesheets between 2006 and 2012 even though he had first-hand knowledge that
21 UCAN did not require its employees to maintain timesheets with the exception of
22 attorneys logging their time on cases.

23 51. Mr. Squires' publicly-disseminated accusations that Plaintiff wrongfully
24 possessed financially-related UCAN records and/or that such records were missing due
25 to Plaintiff's malfeasance bear directly upon Plaintiff's occupational reputation.

26 52. Mr. Squires' publication of this allegation includes his mailing a copy of
27 this August 29th letter to the Public Utilities' Commission, where Plaintiff continues
28 to practice ratepayer advocacy on behalf of SDG&E customers.

1 53. On September 27, 2012, Plaintiff informed Mr. Squires and Defendant
2 UCAN's counsel, Eugene Iredale, that on Yom Kippur Day he arrived home to find two
3 binders located at the base of his stairs. One binder contained the payroll journal and
4 related papers from November 2010-April 2011. The second binder contained similar
5 documents from January --October 2010. These represent two "missing" files that
6 allegedly were required for the CPUC's audit of the compensation program and were
7 sought in Mr. Squires August 29th demand letter. Mr. Iredale informed Plaintiff's
8 attorney that the records would be promptly "ppicked up by a UCAN employee". In the
9 three-month period between Plaintiff's notice about the purloined files and the filing of
10 this complaint, these "essential" financial records still remain in Plaintiff's custody. He
11 has never been contacted by Defendant regarding the files and Defendant has made no
12 effort to retrieve the files.

13 54. In a letter dated October 3 2012, Mr. Squires, demanded that Plaintiff
14 return \$474,019 in past incentive payments, citing Government Code Section 12586 as
15 the basis for this demand. As has been his practice, Mr. Squires sent the letter to the
16 media before providing it to Plaintiff. Plaintiff was notified about this letter by a U-T
17 San Diego reporter in the morning of October 4th. The letter was leaked to the media
18 the day after it was written and before Plaintiff had even had a chance to see it.

19 55. The issue of incentive payments made to Plaintiff was brought to the
20 Board's attention in the aforementioned "whistleblower" complaint by Defendant Peffer
21 in March 2011. The Board investigated this matter through the services of an
22 independent counsel who, after investigating, found that the incentive payments did not
23 violate any law. He documented his findings in June 2011 in a report to the Board and
24 a letter to the complainant. He relied, in part, upon minutes from a February 2008
25 UCAN Board meeting which explicitly approved the continuation of a long-standing
26 incentive policy that awards 10% of fees earned or monies raised by all employees at
27 UCAN.

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1 56. The incentive program referenced in Mr. Squires' letter has been in place
2 at UCAN for since the mid-1990s, has been repeatedly endorsed by precedent UCAN
3 Boards on which Mr. Squires sat and the methodology has been unchanged during that
4 almost twenty year time period.

5 57. In fact, every annual budget adopted by the Board since 2004 contains a
6 separate line item projecting expected bonuses to be paid, per each month, and the
7 methodology by which the bonus is calculated.

8 58. All UCAN employees were eligible for the incentives, not just Plaintiff.
9 This was not part of Plaintiff's specific compensation plan but a program for all UCAN
10 employees who brought in revenues to the organization to encourage their efforts to
11 attract revenues to UCAN.

12 59. UCAN's independent counsel advised the Board to conduct a compensation
13 reasonableness study to fully satisfy Government Code section 12586 requirements.
14 In December 2011, Mr. Squires authorized the expenditure of approximately \$17,000
15 to undertake such a study. Plaintiff provided Mr. Squires with information about for a
16 comparable job being advertised at that time by the Los Angeles Department of Water
17 and Power. The salary and benefits for the LADWP ratepayer advocate director
18 exceeded \$220,000 per year for an executive position nearly identical to that of UCAN's
19 executive director but with fewer employees to supervise, no litigation requirements
20 and half the size of UCAN's budget. Thereafter, UCAN canceled the compensation
21 study process that had begun and no further action was taken on that matter while
22 Plaintiff was employed at UCAN.

23 60. When apprised of this issue in March 2011, the Board took no action to
24 revise the incentive program then in place. Plaintiff continued to receive bonuses
25 through 2011 and 2012.

26 61. On or about February 3, 2012 Plaintiff specifically inquired with UCAN's
27 independent counsel as to his findings in regards to the incentive payments. Counsel
28 responded to Plaintiff with an e-mail stating that:

1 "DIRECTOR'S SALARY WERE NOT FORMALLY
2 APPROVED WITH THE PRECISION REQUIRED BY
3 CALIFORNIA GOVERNMENT CODE SECTION 12586. WE
4 ALSO REACHED THE PRELIMINARY CONCLUSION -
5 BUT NOT AS AN APPRAISAL EXPERT BUT RATHER
6 MERELY AS ATTORNEYS IN THE COMMUNITY -- THAT
7 (I) THE COMPENSATION ACTUALLY PAID TO MICHAEL
8 SHAMES DID NOT SEEM TO US TO BE SO LARGE AS TO
9 BE UNREASONABLE PER SE, AND (II) ALTHOUGH WE
10 FELT THE BOARD'S COMPLIANCE WITH 12586 NEEDS
11 TO BE IMPROVED AND FORMALIZED, BASED UPON
12 SUCH DOCUMENTATION AS WAS AVAILABLE AND
13 UPON INTERVIEWS WITH MULTIPLE BOARD
14 MEMBERS, WE CONCLUDED THAT AN ARGUMENT
15 COULD BE MADE THAT THE SPIRIT, IF NOT EVEN THE
16 REQUIREMENTS, OF 12586 WERE SATISFIED. IN
17 SUMMARY, OUR ASSESSMENT WAS THAT IF THERE
18 WAS A VIOLATION OF 12586 WE THINK IT COULD
19 ARGUED TO BE A TECHNICAL VIOLATION BASED
20 UPON INSUFFICIENT RECORD KEEPING, BUT WITH
21 NO SUBSTANTIVE HARM LIKELY TO HAVE
22 OCCURRED."

23 62. Mr. Squires wrote and published the October 3rd letter even though he had
24 knowledge of all of the information stated above, including the February 3, 2012 e-mail
25 by UCAN's independent counsel that indicated a technical violation with no substantive
26 harm. Mr. Squires wrote and published the letter even though the Board had publicly
27 stated in February 28, 2012 in a posting on its web site that the assorted allegations
28 raised by the "whistleblowers" complaints relating to Plaintiff's incentive payments
were without merit. It stated that "no evidence confirming such allegations was
provided by those lodging allegations, nor discovered by any of the professionals
retained by UCAN's board." Mr. Squires' public publication of his October 3rd demand
letter could achieve nothing other than impugning Plaintiff's reputation.

63. On or about November 3, 2012, Defendants Peffer and DOES 1-10 leaked
internal UCAN e-mails to the media and used them to suggest that the entirety of a
2005 UCAN investment with Red Rock Capital was lost, with a bulk of the monies
unaccounted for. Based upon the leaked e-mails, a San Diego media outlet ran a story
that states: "The \$1 million investment sank in value by \$287,000 within a year. The

1 rest was withdrawn in a series of transactions, leaving a zero balance by the close of
2 2006, according to documents obtained by The Watchdog.”

3 64. Mr. Squires is quoted in the media story as saying that he didn't remember
4 approving the investment and that he was "troubled by it" and that he thinks "it is a
5 pool to be examined." Another media outlet repeated the story on its news program and
6 stated that the entire \$1 million investment was lost and the monies unaccounted.

7 65. On or about November 2, 2012, the San Diego Reader ran a story titled
8 "more damning emails surface," in which more UCAN e-mails were leaked to the media.
9 In that story, Mr. Squires is quoted as stating: "At a minimum it [the Red Rock
10 transaction] is questionable." He made these public statements even though Mr.
11 Squires approved the transaction as a Board member and had been informed previously
12 by other Board members that the Board had been involved in investigating approving
13 the transaction.

14 66. In fact, the Board approved all of the transactions relating to Red Rock
15 Capital and the balance of the fund was returned to UCAN's investment account when
16 the Fund closed. Squires' suggestion that there was some impropriety had no basis in
17 fact.

18 67. In fact, allegations relating to the Red Rock Capital fund were made by
19 Defendants Peffer and DOES 1-10 to the UCAN Board in February 2012 and
20 subsequently investigated by the Board and UCAN's independent counsel. In March
21 2012, the UCAN Board and UCAN's counsel found all monies relating to the Red Rock
22 Capital investment were fully accounted. This investigation was overseen by Mr.
23 Squires, yet he withheld the findings of that investigation in the November 2 and 3rd
24 media stories in which he is quoted.

25 68. On or about November 30, 2012, Defendants David Peffer and UCAN filed
26 a motion to exclude comments submitted by Plaintiff on behalf of SDG&E consumers
27 that pointed to expert testimony that benefitted SDG&E customers. UCAN's comments
28 in A. 10-07-009 argued to the Commission that Plaintiff's comments should be

1 disregarded on the basis that UCAN had made a "strategic decision" not to file opening
2 comments in that proceeding. This representation to the Public Utilities Commission
3 was false. In fact, UCAN did not file opening comments because Defendant Peffer was
4 on vacation and no one at UCAN knew enough to submit informed comments in
5 response to a proposed decision by the ALJ in that case. Defendants chose to lie to the
6 Commission rather than see Plaintiff be allowed to submit informed and expert
7 comments upon a pending decision that would impact SDG&E customers.

8 FIRST CAUSE OF ACTION

9 Libel Against All Defendants and DOES 1-50

10 69. Paragraphs 31-68 are re-alleged and incorporated herein by reference.

11 70. Each of the allegations made by Defendants listed in paragraphs 31-68
12 were false and defamatory. Moreover, they had no basis in fact. Defendants were
13 aware, when they published the statements, that they were false.

14 71. Defendants and their agents placed documents on the Internet that repeat
15 many of these defamatory allegations. In doing so, Defendants have actively and
16 aggressively distributed false and defamatory information about Plaintiffs to thousands
17 of individuals in around the United States, including persons in the State of California
18 and around the world. The object of these activities is to destroy the Plaintiffs' good
19 reputation and to make them objects of ridicule, hatred, and personal attack.

20 72. At all times herein mentioned, Plaintiff enjoyed good reputation in the
21 community and general public.

22 73. As a proximate result of the above-described publication, plaintiff has
23 suffered loss of his reputation, shame, mortification, and injury to his feelings, all to his
24 damage in an amount that will be established by proof at trial.

25 74. The above-described publications were not privileged. They were
26 published by Defendants with the state of mind and malice, hatred and ill will toward
27 Plaintiff and the desire to injure him. Because of Defendants' malice in publishing,
28 Plaintiff seeks punitive damages to be established by proof at trial.

1 83. Many of the allegations were malicious, whereas the Defendants had
2 information or knowledge that contradicted the allegations and/or they knew that they
3 had no facts to support the allegations that they made.

4 84. The above-referenced conduct of said Defendants was and is willful,
5 malicious, fraudulent, outrageous and in conscious disregard and indifference to
6 Plaintiffs' rights. Plaintiff, for the sake of example and by way of punishing said
7 Defendants, seeks punitive damages according to proof.

8 85. At all times herein mentioned, Plaintiff enjoyed good reputation in the
9 community and general public.

10 86. As a direct and proximate result thereof, Plaintiff has suffered the injuries
11 and damages previously alleged.

12 87. As a proximate result of the above-described publication, Plaintiff has
13 suffered loss of his reputation, shame, mortification, and injury to his feelings, all to his
14 damage in an amount that will be established by proof at trial.

15 88. The above-described publications were not privileged. They were
16 published by Defendants with the state of mind and malice, hatred and ill will toward
17 Plaintiff and the desire to injure him. Because of Defendants' malice in publishing,
18 Plaintiff seeks punitive damages to be established by proof at trial.

19 89. Between July and November 2012, Plaintiff served upon Defendant UCAN
20 three letters demanding retractions of each of the defamatory statements made by all
21 Defendants. UCAN declined to issue any retractions.

22 90. Plaintiff is entitled to recover his actual damages because Defendants'
23 wrongful conduct was a substantial factor in causing harm to Plaintiff's property,
24 business, trade, profession, or occupation, expenses that he had to pay as a result of the
25 defamatory statements, harm to Plaintiff's reputation; and/or shame, mortification, or
26 hurt feelings.

27 91. Plaintiff has suffered assumed harm and is entitled to receive
28 compensation for this assumed harm in whatever sum the Court deems reasonable.

1 92. Plaintiff is entitled to recover damages to punish Defendants because of
2 the clear and convincing evidence that Defendants acted with malice, oppression, or
3 fraud.

4 **THIRD CAUSE OF ACTION**

5 **Malicious Prosecution - Defendant Peffer and DOES 1-50**

6 93. Plaintiff re-alleges paragraphs 17-21 and incorporates them herein by
7 reference.

8 94. Defendant Peffer and DOES 1-10 were actively involved in bringing an
9 administrative proceeding against Plaintiff challenging Plaintiff's ability to practice
10 before the Public Utilities Commission.

11 95. The Commission investigated the allegations made by Defendants and
12 rejected their assertions finding that Plaintiff was entitled to practice before that body.

13 96. Moreover, no reasonable person would have believed that Plaintiff was
14 authorized to practice before the Commission. The Commission's rule were abundantly
15 clear. Defendants acted primarily for a purpose other than succeeding on the merits of
16 the claim, as evidenced by their continuing publications of the allegations even after the
17 administrative body found that they had no merit.

18 97. Plaintiff suffered harm from the administrative action brought by
19 Defendants. Defendants' conduct was a substantial factor in causing harm to Plaintiff.

20 **FOURTH CAUSE OF ACTION**

21 **Intentional Interference with Prospective Business Relations Against all**
22 **Defendants and DOES 1-50**

23 98. Plaintiff re-alleges paragraphs 17-69 and incorporate them herein by
24 reference.

25 99. Defendants intentionally interfered with an economic relationship between
26 Plaintiff and the Public Utilities Commission, before which Plaintiff practices as an
27 attorney/advocate.

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1 100. Defendants directly contacted the Public Utilities Commission in writing
2 and personal meetings as well as indirectly contacted them through media stories with
3 the intent to disrupt Plaintiff's ability to practice before the state agency.

4 101. Defendants engaged in wrongful conduct through defamation.

5 102. That relationship between Plaintiff and the Public Utilities Commission
6 was disrupted, thus making it more difficult for Plaintiff to practice his profession.

7 103. Plaintiff was harmed and Defendants' wrongful conduct was a substantial
8 factor in causing Plaintiff's harm.

9 **FIFTH CAUSE OF ACTION**

10 **Blacklisting Against Defendant UCAN and DOES 1-50**

11 104. Paragraphs 17-69 are re-alleged and incorporated herein by reference.

12 105. Plaintiff claims the Defendant UCAN made false representations to
13 prevent him from obtaining employment.

14 106. After Plaintiff's employment with UCAN, Defendant UCAN made the false
15 allegations to the media so as to alert prospective employers about the allegations.

16 107. Defendants knew these representations were not true when they made the
17 allegations.

18 108. That Defendant UCAN made the allegations with the intent of preventing
19 Plaintiff from obtaining employment.

20 109. Plaintiff was harmed and Defendant's conduct was a substantial factor in
21 causing Plaintiff's harm.

22 **SIXTH CAUSE OF ACTION**

23 **Unauthorized Computer Use and Access, Violations of 18 U.S.C. Section**
24 **1030 and California Penal Code Section 502(d) and Trespass to Chattels**

25 **Against all Defendants**

26 110. On July 19, 2012, Plaintiff discovered that the password to his personal
27 GoDaddy Internet domain management account had been changed and that four
28 UCAN-related domains had been transferred out of his personal account. This

1 GoDaddy account housed Plaintiff's personal domains as well as those that he'd
2 maintained on behalf of UCAN. Plaintiff was responsible for the management of the
3 domains and was in the process of legally transferring said domains to Defendant when
4 the unauthorized access occurred.

5 111. GoDaddy informed Plaintiff that a UCAN employee and DOES 1-10 gained
6 unauthorized access into the GoDaddy account and transferred the domains to a
7 personal domain management account registered to Ms. Malcolm, UCAN's new
8 Executive Director.

9 112. Twice, Plaintiff had to contact GoDaddy to restore the proper pass codes
10 in order to manage his account.

11 113. Plaintiff also learned that the UCAN employee and DOES 1-10 may have
12 had access to Mr. Plaintiff's account prior to July 19, 2012 and UCAN was monitoring
13 the activities in Plaintiff's personal account. GoDaddy records show that Defendants
14 changed the password to the account earlier in July and June 2012.

15 114. At no time had Plaintiff ever given any UCAN employee the password or
16 access information to his GoDaddy account. Moreover, he'd never given any UCAN
17 employee authorization to change the password or transfer domains in that account.

18 115. In a letter to Plaintiff's attorney, Ms. Malcolm represented that Plaintiff
19 had given UCAN authorization to make the transfer. This representation is false and
20 has no factual basis.

21 116. Plaintiff informed Defendant about this illegal action by its employees and
22 asked for an investigation into what appeared to be a blatantly illegal act by UCAN
23 employees. Defendant declined to respond to Plaintiff's request and indicated that
24 Plaintiff's concerns had no merit.

25 117. Plaintiff was harmed by this intrusion and Defendants' contact was a
26 substantial factor in causing this harm.

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1 118. Defendants' unauthorized access to Plaintiff's domain management
2 account violates federal and state laws prohibiting such access without express
3 authorization.

4 119. On February 17 2011, Mr. Squires informed Plaintiff, in front of two
5 witnesses, that Defendant Peffer's attorney, Michael Aguirre, had shown Mr. Squires
6 personal e-mails between Plaintiff and Plaintiff's ex-wife. Mr. Squires also explained
7 that Mr. Aguirre showed him other internal UCAN e-mails and UCAN documents at
8 that same meeting.

9 120. Plaintiff informed Mr. Squires that Plaintiff had not consented to give
10 access to his personal e-mails to anyone affiliated with UCAN. At that meeting,
11 Plaintiff asked Mr. Squires to secure the e-mails and document control and to determine
12 the source of the unauthorized access. The source of the leaked and missing documents
13 was not identified.

14 121. Plaintiff was harmed by Defendants statutory and common law violations
15 referenced above.

16 122. Plaintiff is entitled to statutory damages pursuant to 18 U.S.C. Section
17 1030 and California Penal Code Section 502(d).

18 **SEVENTH CAUSE OF ACTION**

19 **Invasion of Privacy Against all Defendants and DOES 1-50**

20 123. On or about March 17, 2011, Plaintiff held a meeting of UCAN managers.
21 At the meeting, Defendant Peffer and DOES 1-10 asked if they could record the
22 meeting. Plaintiff indicated that they could not.

23 124. Notwithstanding Plaintiff's refusal to authorize recording of that meeting,
24 on or about March 12, 2012, Defendant Peffer and DOES 1-10 filed a lawsuit against
25 UCAN officers. Pages 20-21 of that lawsuit contained verbatim quotes from that March
26 17, 2011 meeting that could not be reported other than through unauthorized recording
27 of the meeting.

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1 125. Defendant UCAN has taken no action against either plaintiff for the
2 unauthorized recording of that meeting.

3 126. Plaintiff claims that the acts of Defendants violated his right to privacy.
4 Defendants intentionally recorded Plaintiff's conversation using an electronic device
5 without authorization.

6 127. In fact, Plaintiff expressly forbid the recording of the meeting and,
7 therefore, had a reasonable expectation that the conversation was not being overheard
8 or recorded.

9 128. On June 19, 2012, Plaintiff was contacted by a media reporter inquiring
10 about Plaintiff taking a vacation in Costa Rica. Plaintiff notified Defendant UCAN that
11 his whereabouts and activities while taking vacation time from UCAN constituted
12 personal information that had been improperly provided to the media by Defendant and
13 printed in a story dated June 20th. Moreover, the information was false; Plaintiff was
14 not taking a 'vacation' in Costa Rica. He was working on a non-profit project in which
15 he'd been engaged for numerous years on his personal time.

16 129. UCAN's then-executive director responded in a July 21st e-mail that she
17 was the only person at UCAN to speak to the reporter yet denied having told the
18 reporter about Plaintiff's whereabouts. Subsequently, Plaintiff secured written
19 confirmation from said reporter who admitted that UCAN's then-executive director was
20 the source of the information about Plaintiff's location. Plaintiff requested in writing
21 that UCAN contact any and all media that were falsely informed of Plaintiff's status
22 and require that they print a retraction. Defendant declined.

23 130. Plaintiff's reputation was harmed by the release of personal and
24 unauthorized information and Defendants' conduct was a substantial factor in causing
25 Plaintiff's harm.

26 131. Plaintiff's incurred financial harm by the release of personal and
27 unauthorized information and Defendants' conduct was a substantial factor in causing
28 Plaintiff's harm.

1 132. Plaintiff is entitled to statutory damages of \$5,000 as per Penal Code
2 Section 637.2 (a)(1).

3 EIGHTH CAUSE OF ACTION

4 **Civil Conspiracy by all Defendants and DOES 1-50**

5 133. Paragraphs 17-69 are re-alleged and incorporated herein by reference.

6 134. Plaintiff was harmed by Defendants' defamation and interference with
7 prospective business and are responsible for the harm because they were part of a
8 conspiracy to commit these torts.

9 135. At various times, in various combinations, the Defendants conspired with
10 each other to engage in the acts as alleged in this complaint.

11 136. At various times, in various combinations, the Defendants conspired with
12 each other to engage in the acts as alleged in this complaint. The purposes of this
13 conspiracy have been to harm Plaintiff.

14 137. Defendants were aware that each of them intended to harm Plaintiff and
15 cooperated with each other so as to enable the wrongful acts to be committed.

16 NINTH CAUSE OF ACTION

17 **Wrongful Termination Against Defendant UCAN**

18 138. Plaintiff's employment ended on June 20, 2012 through termination
19 initiated by Defendant UCAN.

20 139. Defendant failed to pay all wages due until August 20, 2012. Defendant
21 willfully failed to pay these wages because of mistakes in calculating accrued vacation
22 time and intentional intransigence. Defendant also willfully withheld reimbursement
23 of expenses incurred in the discharge of Plaintiff's duties.

24 140. Plaintiff was forced to retain counsel to negotiate full and proper payment
25 of wages and reimbursables. In so doing, Plaintiff incurred legal costs of \$3,000.

26 141. Plaintiff is also owed statutory damages based the equivalent to the
27 employee's daily wages for up to a total of 30 days.

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TENTH CAUSE OF ACTION

Failure to Indemnify Costs Against Defendant UCAN

142. On or about March 2012, the UCAN Board Chair instructed Plaintiff to retain his own criminal counsel to represent him in regards to the investigation initiated by the U.S. Attorney's office in February 2012.

143. Plaintiff retained Attorney Steven Feldman to represent him exclusively in regards to this matter. Plaintiff initially incurred costs of \$1400 which UCAN paid to Plaintiff on July 23, 2012.

144. Plaintiff incurred additional costs of \$2,240 due to Defendants' false allegations about missing files. On October 26, 2012, Plaintiff made a written demand upon Defendant UCAN for indemnification of legal costs incurred

145. Plaintiff made these expenditures in direct consequence of the discharge of his duties, and at the direction of the employer. These costs were necessary and had, up until the October demand, been paid by Defendant pursuant to Labor Code Section 2802. Defendant has declined to make payment on the outstanding balanced owed to the criminal counsel.

ELEVENTH CAUSE OF ACTION

Breach of Contract and Declaratory Relief Against Defendant UCAN

146. Paragraphs 54-63 are re-alleged and incorporated herein by reference.

147. Plaintiff is informed that UCAN has received a check for \$50,239.58 from SDG&E as ordered by the Commission in D. 12-06-013. Under the incentive plan in effect while Plaintiff worked on that case, he would be entitled to 10% of the full award, or \$5,023.96.

148. On August 30, 2012, Plaintiff made a written demand upon Defendant UCAN for payment of these incentives in accord with the terms of the UCAN policy in place at the time that Plaintiff worked on said case.

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1 149. Plaintiff also asked in that letter whether UCAN had any intention of
2 tendering any incentive payments based upon any future compensation awards ordered
3 by the CPUC.

4 150. Defendant UCAN did not respond directly to Plaintiff's August 30th
5 demand. But in a letter dated October 3, 2012 (referenced above in Paragraph 54)
6 Defendant UCAN demanded return of all past bonuses.

7 151. Defendant has not specifically denied that it will tender the \$5,023.96
8 incentive payment however it has not tendered the non-discretionary bonus demanded
9 by Plaintiff in August and required pursuant to the incentive program in force at
10 UCAN.

11 152. Plaintiff did all, or substantially all, of the significant work that the
12 incentive contract required him to do, resulting in a large award of attorney's fees to
13 Defendant by the Public Utilities Commission.

14 153. Plaintiff's performance of these contractually obligated duties was
15 predicated upon the receipt of the incentives if Plaintiff's performance was effective.

16 154. Plaintiff therefore seeks all payments due as of time of judgment and a
17 declaration that Plaintiff has a right to future payments as they become due.

18 WHEREFORE, Plaintiff demands judgment against Defendants, and each of
19 them, for:

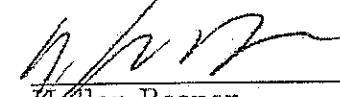
- 20 1. Compensatory damages according to proof;
- 21 2. For general damages, according to proof;
- 22 3. For special damages, according to proof;
- 23 4. For exemplary and/ or punitive damages
- 24 5. For plaintiff's cost of suit
- 25 6. Such other and further relief as this court may deem just and
26 proper

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1 DATED: December 27, 2012

ROSNER, BAREY & BABBITT, LLP

By: 
Ellen Rosner
Attorney for Plaintiff

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VERIFICATION

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2 I, Michael Shames, am the Plaintiff in the above-entitled action. I have read
3 the foregoing complaint and know the contents thereof. The same is true of my own
4 knowledge, except as to those matters which are therein alleged on information and
5 belief, and as to those matters, I believe it to be true.
6
7

8 I declare under penalty of perjury that the foregoing is true and correct and
9 that this declaration was executed at San Diego, California on December 27, 2012.
10

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12 By: 

13 Michael Shames
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