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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**04/29/2013** at 03:07:00 PM  
Clerk of the Superior Court  
By Lee McAlister, Deputy Clerk

5 Attorneys for Defendant  
6 UTILITY CONSUMERS' ACTION  
7 NETWORK

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN DIEGO**

11 MICHAEL SHAMES, an individual,  
12  
13 Plaintiff,

14 v.

15 UTILITY CONSUMERS' ACTION  
16 NETWORK, DAVID PEFFER,  
17 MICHAEL AGUIRRE; and DOES 1 to  
18 50,

19 Defendants.

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

**CROSS-COMPLAINT FOR DAMAGES  
BREACH OF FIDUCIARY DUTY**

**IMAGED FILE**

Dept: C-71  
Judge: Hon. Ronald S. Prager  
Complaint Filed: 02/28/2013  
Trial Date: None set

18 UTILITY CONSUMERS' ACTION  
19 NETWORK, DAVID PEFFER,  
20 MICHAEL AGUIRRE; and DOES 1 to  
21 50,

22 Cross-complainant,

23 v.

24 MICHAEL SHAMES, an individual, and  
25 DOES 51-100, inclusive,

26 Cross-defendants.

27 Cross-complainant Utility Consumers' Action Network ("UCAN") alleges as follows:

28 1. At all times mentioned herein, UCAN was, and presently is, a 501(c)(3) nonprofit  
public benefit corporation duly organized and existing under and by virtue of the laws of the

1 State of California.

2 2. At all times mentioned herein, cross-defendant Michael Shames, was, and  
3 presently is, a resident of the County of San Diego, State of California. At all times mentioned  
4 herein up to and including June 12, 2012, cross-defendant Shames was the Executive Director of  
5 UCAN.

6 3. Cross-complainant is unaware of the true names and capacities of cross-  
7 defendants Does 51-100, inclusive, and sues said cross-defendants by such fictitious names for  
8 that reason. When cross-complainant learns the true names and capacities of said cross-  
9 defendants, it will seek leave of court to amend to said true names and capacities.

10 4. Cross-complainant is informed and believes and thereon alleges that at all times  
11 mentioned herein, each of the cross-defendants sued herein was the agent, servant and/or  
12 employee of each of the remaining cross-defendants and in doing each of the acts alleged herein  
13 was acting in such capacity as agent, servant and/or employee.

14 5. The Superior Court of the State of California for the County of San Diego,  
15 Central Division, is the court of proper venue for this action because the tortious and/or negligent  
16 acts committed by said cross-defendants which are the subject of this action were committed in,  
17 and one or more of the cross-defendants resides within, the geographical and jurisdictional  
18 boundaries of said court and division thereof. This action is not subject to the provisions of  
19 sections 1812.10 and/or 1298.4 of the California Civil Code, or subdivision(b) of Section 395 of  
20 the California Code of Civil Procedure, or is an action or proceeding for an unlawful detainer as  
21 defined in Section 1161 of the California Code of Civil Procedure.

22 6. At all times mentioned herein, cross-complainant UCAN acted, and continues to  
23 act, as a consumer advocate on behalf of and for San Diego Gas & Electric (“SDGE”) rate  
24 paying customers concerning utility-related matters, including, but not limited to, participating in  
25 utility-related hearings or proceedings before administrative and regulatory bodies, including the  
26 Public Utilities Commission, on behalf of SDGE rate paying customers.

27 7. At all times mentioned herein up to June 20, 2012, cross-defendant Shames was  
28 the Executive Director of cross-complainant UCAN. In his capacity as Executive Director of

1 UCAN, cross-defendant Shames was exercising full and complete control over the day to day  
2 operations and finances of UCAN, as well as over the strategy, timing and undertaking of legal  
3 actions and advocacy undertaken on behalf of SDGE rate paying customers, before  
4 administrative and regulatory bodies, including the Public Utilities Commission.

5 8. In his capacity as Executive Director of UCAN up to and including June 20, 2012,  
6 cross-defendant Shames was accorded and exercised full and complete control over all UCAN  
7 funds, including funds received for intervener compensation for actions taken before the Public  
8 Utilities Commission, over the payments of fees to participating attorneys, and over any and all  
9 bank and/or other deposit accounts held for the benefit of cross-complainant UCAN.

10 9. At all times mentioned herein up to and including June 20, 2012, and in his  
11 capacity as Executive Director exercising full and complete control over all business operations,  
12 legal proceedings, and financial dealings and monies of cross-complainant UCAN, cross-  
13 defendants Shames and Does 51-100, inclusive, stood in the position of fiduciaries and owed  
14 cross-complainant UCAN a fiduciary duty of trust and confidence requiring said cross-  
15 defendants and each of them to affirm and fully protect the interests of cross-complainant, to  
16 place cross-complainant's interests over their own, and to avoid and refrain from any action that  
17 would impair or injure the rights or interests of cross-complainant herein.

18 10. Plaintiff is informed and believes and thereon alleges that cross-defendants  
19 Shames and Does 51-100, inclusive, prior to and continuing through June 12, 2012, breached  
20 their fiduciary duties owed to cross-complainant UCAN by, among other things, receiving and  
21 collecting unreported, unauthorized, and/or illegal bonus compensation and income derived from  
22 intervener compensation through advocacy by UCAN before regulatory bodies, including before  
23 the Public Utilities Commission on prior and present general rate cases.

24 11. As a direct and proximate result of the breach of fiduciary duty owed to cross-  
25 complainant UCAN by cross-defendants Shames and Does 51-100, inclusive, cross-complainant  
26 has been damaged in amounts to be proven at the time of trial and within the jurisdiction of this  
27 court.

28 12. Cross-complainant is informed and believes and thereon alleges that at all times

1 mentioned herein and in taking some or all of the actions alleged hereinabove, said cross-  
2 defendants, and each of them, were guilty of oppression, fraud and/or malice within the meaning  
3 of California Civil Code Section 3294 and that cross-complainant is entitled to recover punitive  
4 and/or exemplary damages in an amount sufficient to punish and make an example of said cross-  
5 defendants and each of them and to deter other similar conduct in the future.

6 Cross-complainant UCAN prays for judgment as follows:

- 7 1. For damages in amounts to be proven at the time of trial, plus interest thereon;
- 8 2. For punitive and/or exemplary damages in accordance with California Civil Code  
9 Section 3294;
- 10 3. For costs of suit incurred herein; and
- 11 4. For such other and further relief as the court deems just and proper.

12  
13 Klinedinst PC

14  
15 DATED: April 26, 2013

16 By: 

17 James D. Crosby  
18 Attorneys for Defendant  
19 UTILITY CONSUMERS' ACTION  
20 NETWORK

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