

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of June ____, 2012, by and between Utility Consumers Action Network, Inc., a California nonprofit public benefit corporation ("UCAN"), including all divisions and dba organizations of UCAN; David Peffer ("Peffer"); Charles Langley ("Langley"); Robert Ames ("Ames"); Kendall Squires, Dan Conaway, Pat Zaharopoulos and Murtaza Baxamusa (collectively, the "Sued Board Members"); (each a "Party," and collectively referred to as the "Parties"), with respect to the following facts:

RECITALS

- A. UCAN is a California nonprofit public benefit corporation based in San Diego. UCAN's activities and mission include representing the interests of residential and small business consumers of regulated and necessary services, such as electric, gas, water, telecommunications, insurance, internet and cable services.
- B. Faced with a threat to its ability to carry on and continue with its mission based upon a variety of factors, including a shortage of funds sufficient to sustain its operations, ongoing contractual obligations and various pending and threatened legal actions. On February 28, 2012, UCAN filed a petition for the winding up and dissolution of UCAN, San Diego Superior Court Case No. 37-2012-00092958-CU-PT-CTL (such action, the "Dissolution Action", and such court, the "Court").
- C. Peffer and Langley are UCAN employees and purport to hold memberships in UCAN. On or about March 12, 2012, Peffer and Langley filed their derivative complaint against Michael Shames ("Shames"), Ames and the Sued Board Members, San Diego Superior Court Case No. 37-2012-00093699-UC-NP-CTL (the "Derivative Action"). Ames was previously the interim acting chief operating officer of UCAN. The Sued Board Members are currently members of the Board.
- D. UCAN is involved in several California Public Utilities Commission ("PUC") related cases (collectively, the "PUC Cases"), including without limitation Case No. A.10-12-005 (the "Main PUC Case"). Among other matters, UCAN has intervened in the Main PUC Case and may, at a future time, receive an award of compensation and reimbursement of costs and expenses from the PUC for its work related to the Main PUC Case (the "Main PUC Case Proceeds"). Shames has devoted substantial time in preparing UCAN's testimony, discovery and pleadings in the Main PUC Case. Based upon presently available information, it is contemplated that an award of the Main PUC Case Proceeds to UCAN will not be made by the PUC until on or after February 2013.

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E. The Parties desire to enter into this Agreement to settle certain claims between them, to settle the Derivative Action, to effect certain payments and transfers, and to eventually dismiss the Dissolution Action, to provide for the on-going operations of UCAN, and to make other agreements between them as further set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth in this Agreement, and for other good and valuable consideration, receipt of which is acknowledged, the Parties to this Agreement covenant and agree as follows:

1. Recitals Incorporated Into Agreement. The Parties incorporate into this Agreement the Recitals set forth above as part of the terms of this Agreement.

2. Shames Employment Separation Agreement.

2.1. Following execution of this Agreement by all Parties, UCAN shall accept Shames' resignation as an officer, employee, lawyer and/or agent of UCAN, without payment from or liability of UCAN or any other person, as more fully set forth in an Employment Separation Agreement to be entered into between UCAN and Shames.

2.2. UCAN may, if it desires, retain Shames as its counsel in the Main PUC Case pursuant to a Retention Agreement to be entered into between UCAN and Shames.

3. Replacement of Certain Board of Director Members.

3.1. The Board currently has five (5) members, consisting of the Sued Board Members and Neil Lynch (the "Current Board Members"). Some of the Current Board Members' terms have expired. Unless the Board takes action sooner, after six (6) months subsequent to entering into this agreement, the Board shall cause a total of at least four (4) of the five (5) Current Board Members to be replaced contingent upon there being suitable replacements, as determined by the Board.

4. Employment of Peffer and Langley.

4.1. Simultaneously with entering into this Agreement, UCAN shall enter into Employment Agreements with Peffer and Langley (the "Employment Agreements").

5. Dismissal of Derivative Action.

5.1. Within five (5) days after entering this agreement, Peffer and Langley shall submit to the Court a request for dismissal with prejudice of the Derivative Action.

5.2. UCAN agrees to pay to the law firm of Aguirre, Morris & Severson (the "Aguirre Firm") as and for attorneys' fees and costs incurred in connection with the Derivative Action, the total sum of \$100,000.00 (the "Aguirre Firm Payment"), which represents a substantial discount of the actual fees and costs incurred in connection with the Derivative Action. The Aguirre Firm Payment shall be paid in one lump sum. Such Aguirre Firm Payment shall be in full satisfaction of any and all claims of the Aguirre Firm against UCAN, the Sued Board Members, Ames, the Board, any of their respective, agents, representatives, successors or assigns, or any other person (other than from Peffer or Langley), and by its consent to this Agreement, the Aguirre Firm acknowledges and agrees to the foregoing provisions of this Section 5.2.

5.3. Effective upon entering into this Agreement, each of Peffer and Langley (collectively, the "Section 5.3 Releasors"), hereby fully and forever waives, releases, acquits and forever discharges UCAN, the Sued Board Members, the Board, all previous, existing and future members of the Board, Ames, and all of such persons' past and present representatives, parent corporations, predecessors-in-interest, affiliates, successors-in-interest, subsidiaries, divisions, agents, attorneys, employees, assigns, shareholders, members, managers, officers, directors, partners, trustees, beneficiaries, insurers, participants, administrators, successors and assigns (collectively, the "Section 5.3 Releasees"), of and from any and all liabilities, obligations, indebtedness, claims, demands, defenses, offsets, debts, sums of money, accounts, compensation, actions, causes of action, breaches of contract, breaches of duty, promises, damages, costs, losses, expenses and rights (contingent, accrued, inchoate, or otherwise), of whatsoever kind, type, nature, description or character, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, that the Section 5.3 Releasors may now have or claim to have against any Section 5.3 Releasee, including claims which directly or indirectly, relates to, results from or arises out of the Derivative Action, the matters stated therein, any claims relating to, resulting from or arising out of the administration or operation of UCAN, PRC, or the Board, or any actions or inactions taken by any Section 5.3 Releasee (each a "Claim" and collectively, the "Claims"). Each Section 5.3 Releasor represents and warrants to the Section 5.3 Releasees that it has not heretofore sold, assigned, hypothecated, or otherwise transferred to any third party any rights or interests in or to any such claims, demands or cause or causes of action or other matters released above. In connection with the foregoing release, each Section 5.3 Releasor hereby waives any and all rights which exist or may exist under Section 1542 of the California Civil Code and any other comparable provisions or principles of state or Federal law, or the common law with respect to the Derivative Claims released hereinabove. Civil Code Section 1542 provides:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS**

**OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

It is understood and agreed that the release set forth hereinabove is a full and final release of any and all Derivative and that the foregoing release extinguishes all such Claims whether known, unknown, foreseen or unforeseen. Each Section 5.3 Releasor understands and acknowledges the significance and consequences of this specific waiver of California Civil Code Section 1542 and any other comparable provision or principle of State or Federal law, or the common law, and hereby assumes full responsibility for any injuries, damages, losses or liabilities that it or any of them may hereafter incur by virtue of this waiver.

Notwithstanding the foregoing provisions of this Section 5.3, nothing in this Agreement shall affect, and the Claims shall not include any obligations arising out of this Agreement.

5.4. Effective upon dismissal of the Derivative Action, each of UCAN, the Sued Board Members and Ames (collectively, the "Section 5.4 Releasors"), hereby fully and forever waives, releases, acquits and forever discharges Peffer and Langley, and each of their respective past and present representatives, successors-in-interest, agents, attorneys, assigns, beneficiaries, successors and assigns (collectively, the "Section 5.4 Releasees") of and from any and all liabilities, obligations, indebtedness, claims, demands, defenses, offsets, debts, sums of money, accounts, compensation, actions, causes of action, breaches of contract, breaches of duty, promises, damages, costs, losses, expenses and rights (contingent, accrued, inchoate, or otherwise), of whatsoever kind, type, nature, description or character, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, that the Section 5.4 Releasors may now have or claim to have against any Section 5.4 Releasee, which in any way, directly or indirectly, relates to, results from or arises out of the Derivative Action, the matters stated therein, any claims relating to, or resulting from or arising out of the filing or prosecution of the Derivative Action, including claims for malicious prosecution (collectively, the "UCAN/Derivative Claims"). Each Section 5.4 Releasor represents and warrants to the Section 5.4 Releasees that it has not heretofore sold, assigned, hypothecated, or otherwise transferred to any third party any rights or interests in or to any such claims, demands or cause or causes of action or other matters released above. In connection with the foregoing release, the Section 5.4 Releasors hereby waives any and all rights which exist or may exist under Section 1542 of the California Civil Code and any other comparable provisions or principles of state or Federal law, or the common law with respect to the UCAN/Derivative Claims released hereinabove. Civil Code Section 1542 provides:

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"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

It is understood and agreed that the release set forth hereinabove is a full and final release of any and all UCAN/Derivative Claims and that the foregoing release extinguishes all such UCAN/Derivative Claims whether known, unknown, foreseen or unforeseen. Each Section 5.4 Releasor understands and acknowledges the significance and consequences of this specific waiver of California Civil Code Section 1542 and any other comparable provision or principle of State or Federal law, or the common law, and hereby assumes full responsibility for any injuries, damages, losses or liabilities that it or any of them may hereafter incur by virtue of this waiver. Notwithstanding the foregoing provisions of this Section 5.4, nothing in this Agreement shall affect, and the UCAN/Derivative Claims released shall not include any obligations or rights arising out of this Agreement.

6. Dismissal of Dissolution Action.

6.1. Within five (5) days after the Receiver's costs have been reviewed whether approved by the Court or not and resolution with another UCAN claimant, UCAN shall submit to the Court a request for dismissal of the Dissolution Action.

6.2. Prior to the dismissal as contemplated by Section 6.1, or as otherwise agreed by UCAN and the Receiver, the Receiver shall file his final report with the Court and shall request approval of such final report and an award and approval of his compensation and compensation of his counsel, Foley & Lardner LLP, and Corporate Management, Inc. (collectively, the "Awards"), and the release of and exoneration of the Receiver's bond. The Awards shall be paid by UCAN prior to the dismissal of the Dissolution Action and in any event within one (1) business day of the Awards being approved by the Court, or as otherwise agreed by UCAN and the Receiver. The Parties agree that the Receiver may request approval of his final report and such Awards on an ex parte basis with notice only to counsel to UCAN, Peffer, Langley and no other notice shall be required. As part of approval of the Receiver's final report and the Awards, the Receiver's bond shall be released and exonerated, and the Receiver shall be discharged from his duties.

7. **Final Agreement.** All Parties agree to accept this with the knowledge that all Parties are bound hereby. Additionally, the settlements set forth in

8. **Entire Agreement/No Modification.** This Agreement and the documents to be executed and delivered in connection herewith (collectively, the "Documents") if any contain the entire agreement and only understanding of the Parties with respect to the subject matter herein. This Agreement may only be waived, modified or amended by the written agreement of all Parties to this Agreement; provided, however, the Parties who are parties to another Document

may waive, modify or amend such Document without the consent or notice to the other Parties not a party to such Document provided any such amendment, modification or waiver is not inconsistent with the terms of this Agreement or the intent hereof. This Agreement supersedes all prior written or oral agreements between the Parties concerning the subject matter of this Agreement. This is an integrated Agreement. The terms of this Agreement are contractual, and not merely recital. This Agreement and the Documents supersede all prior representations and settlement agreements, if any, between the Parties or their legal counsel, with respect to the subject matter therein.

9. Attorneys' Fees. Except as expressly provided in this Agreement, each Party shall bear its own attorneys' fees and costs in connection with this Agreement and all matters referred to herein, including the Dissolution Action and the Derivative Action, and the negotiation and settlement of the issues related to the same; provided, however, for purposes of clarity, nothing herein shall limit the obligation of any Party for the payment of its own counsel fees and costs; and further, the Awards to the Receiver, his counsel Foley & Lardner LLP and Corporate Management, Inc. shall be entitled to be and shall be paid by UCAN and/or out of the receivership estate. However, in any dispute arising from, relating to, or based upon, Agreement or any Documents, whether based in equity or law, the prevailing party shall be entitled to collect its attorneys' fees and costs incurred in the enforcement of its rights under thereunder.

10. Headings. The headings, subheadings and numbering of the different sections of this Agreement are inserted for convenience of reference only and are not to be taken as part of this Agreement or to control or affect the meaning, construction or effect of the same.

11. Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of laws principles.

12. Successors In Interest. This Agreement shall inure to the benefit of, and shall be binding upon, the assigns and successors in interest, of each of the Parties hereto.

13. Necessary Acts. Each Party to this Agreement agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary or requested to carry out the provisions of this Agreement.

14. Authority To Execute This Agreement. Each Party executing this Agreement and a Document represents that it is authorized to execute this Agreement and such Document. Each individual executing this Agreement or a Document on behalf a Party represents that he or she is authorized to execute this Agreement and such Document on behalf of said Party.

15. Construction. Each Party has cooperated in the drafting and preparation of this Agreement. In any construction to be made to this Agreement, or of any of its terms and provisions, the same shall not be construed against any Party.

16. Execution. This Agreement and the other Documents may be executed in one or more counterparts. When each Party has signed and delivered at least one such counterpart to the other Party, as applicable, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement and one of the other Documents, as applicable, which shall be binding upon and effective as to all Parties. Delivery of an executed counterpart of this Agreement and the other Documents by telefacsimile or email shall be equally as effective as delivery of an original executed counterpart of this Agreement and the other Documents. Any Party delivering an executed counterpart of this Agreement or any other Document, as applicable by telefacsimile or email also shall deliver an original executed counterpart of this Agreement and the other Documents, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability and binding effect of this Agreement or any other Document.

17. Voluntary Execution of Agreement. This Agreement and the other Documents are executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto, with the full intent of releasing all claims to the extent set forth herein. The Parties acknowledge that:

- (i) they have read this Agreement and the Documents to which they are also a party;
- (ii) they have been represented in the preparation, negotiation, and execution of this Agreement and the other Documents to which they are also a party, as applicable, by legal counsel of their own choosing, or that they have voluntarily declined to seek such counsel with full knowledge of the potential consequences thereof;
- (iii) they have made such investigation of the facts pertaining to this settlement, this Agreement and the Documents to which they are also a party, and of all the matters pertaining to them, as they deem necessary; and
- (iv) they are fully aware of the legal and binding effect of this Agreement and the Documents to which they are also a party, as applicable, and have sought advice of counsel regarding same.

18. Good Faith Negotiations. The Parties acknowledge that this Agreement and the Documents are the result of extensive good faith negotiations between the Parties and their respective counsel.

19. Construction/Severability. If any provision of this Agreement shall be determined to be invalid, void or illegal, such provision shall be construed and amended in a manner which would permit its enforcement but in no event shall such provision effect, impair or invalidate any other provision hereon.

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20. Waiver and Amendment. No breach of any provision hereof can be waived, unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision(s) hereof. This Agreement may be amended only in a writing executed by the Parties affected by the amendment at the time of the modification.

21. Captions and Interpretation. As used herein: (i) the terms "include," "including" and forms thereof mean inclusive without limitation; (ii) the term "day" means calendar day, except when "business day" is referred to; (iii) the term "person" means any individual, corporation, partnership, limited liability company, trust, governmental authority, or other entity of any kind; (iv) singular words shall connote the plural as well as the singular and vice versa as the context requires; (v) each gender will include any other gender; (vi) the words "herein," "hereof," "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular Section or subdivision hereof; and (vii) references to "Articles," "Sections," "Exhibits" and other parts or subdivisions are to the corresponding Articles, Sections, Exhibits or parts or subdivisions of this Agreement, unless otherwise specified. Captions and paragraph headings are provided solely for convenience and shall not be deemed to restrict or limit the meaning of the text. The language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against any of the Parties. Any reference to any document or exhibit shall mean such document or exhibit as it may from time to time be supplemented, modified, amended or extended in accordance with the terms of this Agreement.

22. Drafting. This Agreement, the other Documents, as applicable, and the releases contained herein, are to be interpreted without regard to which party is deemed the draftsman. The terms and intent of this Agreement, with respect to the rights and obligations of all Parties identified in this Agreement, shall be interpreted and construed on the assumption that all Parties participated equally in its drafting.

23. Authorized Signatures. The Parties hereby acknowledge that they have read and understand the terms and scope of this Agreement, are freely entering into this Agreement, and intend to be legally bound hereby. Each individual signing this Agreement warrants and represents that he or she has authority to enter into this Agreement on behalf of the Party for whom he or she signs.

24. Assignment. Each party hereto warrants that it has made no assignment of any claim, chose in action, right of action or any other right of any kind which is the subject of this Agreement or which is released pursuant to this Agreement, and that no other person has or had any interest of any kind in the claims referred to above and herein.

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25. Notice. Except as otherwise required by applicable law, all notices, demands and other communications required or permitted hereunder shall be in writing, addressed to the appropriate party at its address as follows:

If to UCAN;

Utility Consumers Action Network, Inc.
3405 Kenyon Street, Suite 401
San Diego, CA 92110
Attn: Kendall Squires

If to Peffer:

David Peffer
c/o Christopher S. Morris, Esq.
Aguirre, Morris & Severson LLP
444 West C Street, Suite 210
San Diego, CA 92101

If to Langley:

Charles Langley
c/o Christopher S. Morris, Esq.
Aguirre, Morris & Severson LLP
444 West C Street, Suite 210
San Diego, CA 92101

If to Ames:

Robert Ames
c/o Tomas A. Shpall, Esq.
Rosenberg, Shpall & Associates APLC
750 B Street, Suite 3210
San Diego, CA 92101

If to Kendall Squires:

Kendall Squires
c/o Tomas A. Shpall, Esq.
Rosenberg, Shpall & Associates APLC
750 B Street, Suite 3210
San Diego, CA 92101

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If to Dan Conaway:
Dan Conaway
c/o Tomas A. Shpall, Esq.
Rosenberg, Shpall & Associates APLC
750 B Street, Suite 3210
San Diego, CA 92101

If to Pat Zaharopoulos:
Pat Zaharopoulos
c/o Tomas A. Shpall, Esq.
Rosenberg, Shpall & Associates APLC
750 B Street, Suite 3210
San Diego, CA 92101

If to Murtaza Baxamusa:
Murtaza Baxamusa
c/o Tomas A. Shpall, Esq.
Rosenberg, Shpall & Associates APLC
750 B Street, Suite 3210
San Diego, CA 92101

Addresses for purposes of notice may be changed from time to time by written notice sent to the other party in accordance with this Section 30. All such communications shall be deemed effective upon the earliest of (i) upon actual delivery if delivered by personal delivery or certified postage prepaid mail, (ii) five (5) business days following deposit, first class postage prepaid, with the United States Mail, or (iii) on the next business day after timely and proper deposit with an overnight air courier with request for next business day delivery; provided, however, that service of a notice required by any applicable statute shall be considered effective and complete when the requirements of that statute are met. Failure of a Party to provide a notice to any particular person or courtesy-only copies of notices, demands and other communications shall not impair, modify, limit or otherwise affect the notice given to any other person or the effect thereof or any Party's rights or remedies nor any Party's or any person's obligations under this Agreement or under any other Document nor be a breach or default by any Party under this Agreement or under any other Document.

31. Consent to and Reservation of Jurisdiction. The Parties to this Agreement hereby submit to the jurisdiction of this Court for the purposes of the Court's consideration of the approval of this Agreement. The Parties to this Agreement stipulate, pursuant to California Code of Civil Procedure §664.6, that the Court shall retain jurisdiction over the Parties to enforce the settlement until performance in full of the terms of this Agreement, including all obligations of the Parties under this Agreement and agreements referred herein.

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32. Time of the Essence. Time is of the essence with respect to this Agreement and all of its provisions.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

UCAN

Utility Consumers Action Network, Inc.
a California nonprofit public benefit
corporation

By: _____


Name: _____

Its: _____

Peffer

David Peffer

Langley



Charles Langley

Ames



Robert Ames

Board Member

Kendall Squires

Board Member

Dan Conaway

Board Member

Pat Zaharopoulos

Board Member

Murtaza Baxamusa

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Approved as to Form:

ROSENBERG, SHEPALL & ASSOCIATES, APLC

By: _____

Tomas A. Shpall, Esquire
Counsel to UCAN and the Board

AGUIRRE, MORRIS & SEVERSON, LLP

By: _____

Christopher S. Morris, Esquire
Counsel to Peffer and Langley