

1 MIKEL R. BISTROW CA Bar No.102978  
mbistrow@foley.com  
2 KATHRYN M.S. CATHERWOOD CA Bar No.149170  
kcatherwood@foley.com  
3 MATTHEW J. RIOPELLE CA Bar No. 260176  
mriopelle@foley.com  
4 **FOLEY & LARDNER LLP**  
ATTORNEYS AT LAW  
402 W. BROADWAY, SUITE 2100  
SAN DIEGO, CA 92101-3542  
5 TELEPHONE: 619.234.6655  
FACSIMILE: 619.234.3510

6 ATTORNEYS FOR RICHARD M KIPPERMAN, RECEIVER

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN DIEGO**

10 In the Matter of the Voluntary Dissolution ) CASE NO: 37-2012-00092958-CU-PT-CTL  
of )  
11 ) **RECEIVER'S SECOND REPORT; AND**  
12 ) **RECOMMENDATION TO**  
13 ) **TERMINATE RECEIVERSHIP**  
14 )  
15 ) DATE: MAY 25, 2012  
16 ) TIME: 2:00 P.M.  
17 ) DEPT: 61  
18 ) JUDGE: HON. JOHN S. MEYER  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

19 Richard M Kipperman (the "Receiver"), the court-appointed receiver in the above  
20 captioned matter, hereby submits the Receiver's Second Report; and Recommendation to  
21 Terminate Receivership (the "Second Report").

22 On March 27, 2012, the Court appointed the Receiver as receiver in the above  
23 captioned voluntary dissolution of Utility Consumers Action Network, Inc. ("UCAN")  
24 pursuant to this Court's Order Appointing Interim Receiver (the "Receivership Order").  
25 On April 5, 2012, the Receiver filed his First Report; Recommendation to Continue  
26 Receivership; and Request for Imposition of Injunction on All Litigation Against Utility  
27 Consumers Action Network, Inc. (the "First Report"). On April 17, 2012, the Court  
28 ///

1 entered an order confirming the appointment of the Receiver and directing the Receiver  
2 to file this Second Report prior to the hearing on May 25, 2012.

### 3 RECEIVER'S REPORT

4 As this Court is well aware, this started as an extremely contentious case with  
5 numerous parties-in-interest asserting various claims against one another. Throughout  
6 his appointment, the Receiver and his counsel have worked diligently to preserve the  
7 going concern value of UCAN and to meet with the various factions in an effort facilitate  
8 a settlement. The Receiver is pleased to report that through the extensive and cooperative  
9 efforts of all involved, the parties have reached a settlement that will permit UCAN to  
10 emerge from these voluntary dissolution proceedings and continue to perform its  
11 important and necessary role as a utility watch dog. As described in detail below, the  
12 Receiver and his counsel, with the cooperation of the various parties-in-interest, have  
13 negotiated and drafted a settlement agreement that they will present for this Court's  
14 approval on June 29, 2012.

#### 15 **A. The Receiver's Continued Oversight Over UCAN and its Assets.**

16 The Receiver has continued to oversee UCAN's operations and its assets, as  
17 authorized under the terms of the Receivership Order. In particular, the Receiver has  
18 been monitoring the affairs of UCAN including responding to requests from counsel  
19 handling the Public Utility Commission rate cases as well as the wrongful termination  
20 case filed by Philip Moskal. Additionally, the Receiver has, and continues to, meet with  
21 UCAN's staff in connection with general operations.

#### 22 **B. The Settlement Negotiations.**

23 As discussed above, beginning immediately after the April 6, 2012 hearing, the  
24 Receiver and his counsel have worked with various parties-in-interest to resolve the  
25 issues among the parties. The Receiver and his counsel have conducted extensive  
26 settlement discussions with various parties including David Pepper, Charles Langley, Beth  
27 Givens, Privacy Rights Clearinghouse, a California non profit public benefit corporation,  
28 and Death By China. The purpose of these discussions was to facilitate a global

1 resolution of the issues and disputes among these parties to posture the case for dismissal.  
2 The efforts of the Receiver and his counsel were fruitful and the Receiver oversaw the  
3 execution of a term sheet drafted by the Receiver's counsel outlining a potential  
4 settlement. After agreeing to the settlement framework, at the request of the parties, the  
5 Receiver's counsel drafted a global settlement agreement and has worked diligently with  
6 the parties to incorporate changes, as appropriate. A final written settlement agreement  
7 represents the culmination of the extensive efforts of all parties to reach an acceptable  
8 agreement that resolves many of the issues affecting UCAN and will permit UCAN to  
9 emerge from these proceedings. The Receiver expects UCAN to notice out the  
10 settlement in sufficient time for the Court to consider its approval at a hearing on June 29,  
11 2012.

12 In connection with the settlement negotiations, the Receiver has also worked with  
13 the parties to facilitate the hiring of a new executive director and the UCAN Board  
14 believes it is in the final stages of hiring the new executive director. The new executive  
15 director is an essential component of the settlement agreement and the Receiver is  
16 optimistic that the candidate will foster the necessary trust, cooperation and stability to  
17 allow UCAN to emerge from the dissolution proceeding as a strong organization with a  
18 more focused objective for providing public benefit to the community.

19 **C. Termination of Receivership.**

20 The Receiver requests that, in light of the settlement, the Court terminate the  
21 receivership on the earlier of (a) the date that is the start date of the new executive  
22 director for UCAN, and UCAN is directed to provide the Receiver with written notice of  
23 the retention of and start date for the new executive director; or (b) June, 29, 2012, the  
24 proposed date for a hearing to approve the settlement agreement and motion to dismiss  
25 this case. To facilitate the intent of the settlement agreement and minimize ongoing  
26 expenses, the Receiver desires to turn over the operations and control of UCAN to the  
27 new executive director as soon as possible. Therefore, if the new executive director is  
28 retained and starts working prior to the hearing on the settlement and dismissal, the

1 Receiver requests that the Court authorize the Receiver to turn over control to the new  
2 executive director and relieve the Receiver of all duties under the Receivership Order  
3 effective upon the date of the new executive director commencing his/her duties based  
4 upon UCAN's written notice to the Receiver. However, in the event the new executive  
5 director is not retained by June 29, 2012, but the Court approves the settlement, the  
6 Receiver requests that he be terminated at that time and authorized to turn over all  
7 property under the Receivership Order to UCAN.

8 **D. Receiver's Final Report.**

9 In light of the settlement and progress toward retaining a new executive director,  
10 the Receiver expects to file his final report and accounting and notice of his termination  
11 date and exoneration of bond in sufficient time to be heard on June 29, 2012.

12 **CONCLUSION**

13 Since his appointment, the Receiver and his counsel have worked extensively to  
14 facilitate a global settlement and allow UCAN to continue to provide valuable services to  
15 San Diego rate payers. The Receiver and his counsel have invested significant hours in  
16 negotiating and preparing the global settlement that will be presented to the Court in short  
17 order. As a direct result of the Receiver's and his counsel's efforts throughout this case  
18 as well as the cooperation of the various parties, the settlement will allow the dismissal of  
19 the dissolution action and UCAN will continue as a going concern for the benefit of  
20 thousands of consumers positively affected by UCAN's activities.

21 DATE: MAY 22, 2012

22  
23  
24 By: 

25 RICHARD M KIPPERMAN, RECEIVER  
26  
27  
28

1 MIKEL R. BISTROW CA Bar No.102978  
mbistrow@foley.com  
2 KATHRYN M.S. CATHERWOOD CA Bar No.149170  
kcatherwood@foley.com  
3 MATTHEW J. RIOPELLE CA Bar No. 260176  
mriopelle@foley.com  
4 **FOLEY & LARDNER LLP**  
ATTORNEYS AT LAW  
402 W. BROADWAY, SUITE 2100  
SAN DIEGO, CA 92101-3542  
5 TELEPHONE: 619.234.6655  
FACSIMILE: 619.234.3510

6 ATTORNEYS FOR RICHARD M KIPPERMAN, RECEIVER

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN DIEGO**

10 In the Matter of the Voluntary Dissolution of ) CASE NO: 37-2012-00092958-CU-PT-CTL  
11 )  
12 **UTILITY CONSUMERS ACTION** ) **PROOF OF SERVICE**  
13 **NETWORK, INC., A CALIFORNIA** )  
14 **NONPROFIT PUBLIC BENEFIT CORPORATION** )  
15 )  
16 ) **PETITIONER,**  
17 )  
18 ) **DATE: N/A**  
19 ) **TIME: N/A**  
20 ) **DEPARTMENT: 61**  
21 ) **JUDGE: JOHN S. MEYER**

22 I, the undersigned, declare: I am, and was at the time of service hereinafter mentioned,  
23 over the age of 18 years and not a party to the above-entitled cause. My business address is:  
24 Foley & Lardner LLP, 402 West Broadway, Suite 2100, San Diego, CA 92101. I am readily  
25 familiar with this firm's normal business practice for collection and processing of  
26 correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence  
27 is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary  
28 course of business.

On the date set forth below, following ordinary business practice, I served the foregoing document(s) described as:

**1. Receiver's Second Report; and Recommendation to Terminate Receivership**

///

PROOF OF SERVICE  
CASE NO. 37-2012-00092958-CU-PT-CTL

1 on said date at my place of business, I caused the above-referenced document(s) to be service via  
2 the method indicated below, addressed to the parties as follows:

3 **SEE ATTACHED LIST**

- 4  (**BY MAIL**) I caused such envelope(s) with postage thereon fully prepaid to be placed in  
5 the United States mail at San Diego, California.
- 6  (**BY ELECTRONIC SERVICE**) I delivered the document(s) via electronic mail to at  
7 the email address provided.
- 8  (**BY MESSENGER SERVICE**) by consigning the document(s) to an authorized  
9 courier and/or process server for hand delivery on this date.
- 10  (**BY FACSIMILE**) In addition to service by mail as set forth above, a copy of said  
11 document(s) were also delivered by facsimile transmission to the addressee(s).
- 12  (**BY OVERNIGHT DELIVERY**) I caused such envelope(s) to be delivered to an  
13 overnight delivery carrier with delivery fees provided for, addressed to the person(s) on  
14 whom it is to be served.

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

17 Executed on May 23, 2012.

18   
19 Raechelle Hurst

1 **ATTORNEYS FOR C.LANGLEY &**  
2 **D.PEFFER**

3 Michael J. Aguirre, Esq.  
4 Christopher Morris, Esq.  
5 Aguirre, Morris & Severson  
6 444 West "C" St., Suite 210  
7 San Diego, CA 92101  
8 E: [maguirre@amslawyers.com](mailto:maguirre@amslawyers.com)  
9 [cmorris@amslawyers.com](mailto:cmorris@amslawyers.com)

7 **ATTORNEYS FOR DEATH BY CHINA, LLC**

8 Arthur Rieman, Esq.  
9 The Law Firm For Nonprofits PC  
10 4705 Laurel Canyon Blvd., Suite 306  
11 Studio City, CA 91607  
12 [arthur@lfnpc.com](mailto:arthur@lfnpc.com)

11 Adam D.H. Grant  
12 ALPERT, BARR & GRANT, APLC  
13 6345 Balboa Boulevard, Suite I-300  
14 Encino, California 91316-1523  
15 Tel: (818) 881-5000  
16 Fax: (818) 881-1150  
17 [agrant@alpertbarr.com](mailto:agrant@alpertbarr.com)

15 **ATTORNEYS FOR NUCOR**  
16 **CORPORATION**

16 Rolf S. Woolner, Esq.  
17 Winston & Strawn LLP  
18 333 S Grand Ave Fl 38  
19 Los Angeles, CA 90071-1504  
20 [RWoolner@winston.com](mailto:RWoolner@winston.com)

19 Phillip Moskal  
20 PO Box 371414  
21 San Diego, CA 92137  
22 [pmoskal@gmail.com](mailto:pmoskal@gmail.com)

**ATTORNEYS FOR PRIVACY RIGHTS**  
**CLEARINGHOUSE**

Joseph Lavelle, Esq.  
1350 Columbia St., Suite 500  
San Diego, CA 92101  
E: [joe@lavellelawgroup.com](mailto:joe@lavellelawgroup.com)

Elaine A. Rogers, Esq.  
4250 Executive Square, Suite 900  
La Jolla, CA 92037  
E: [erogers@elainerogerslaw.com](mailto:erogers@elainerogerslaw.com)

**ATTORNEY FOR UCAN**

Tomas A. Shpall, Esq.  
Rosenberg, Shpall & Associates  
750 B Street, Suite 3210  
San Diego, CA 92101  
[rsalaw@yahoo.com](mailto:rsalaw@yahoo.com)

Tania Ibanez, Esq.  
State of California  
Attorney General's Office  
300 South Spring Street  
Los Angeles, CA 90013  
E: [Tania.ibanez@doj.ca.gov](mailto:Tania.ibanez@doj.ca.gov)

Paul J. Dostart, Esq.  
Dostart Clapp & Coveney LLP  
4370 La Jolla Village Drive, Suite 970  
San Diego, CA 92122  
[PDostart@sdlaw.com](mailto:PDostart@sdlaw.com)