

ORIGINAL

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F I L E D
Clerk of the Superior Court
MAR 14 2005

FILED
MAR 14 2005

5 Attorneys for Defendants UCAN and
6 Michael Shames
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10 Special Counsel for Defendants
11

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN DIEGO**

VIA FAX

14 THERMOVIEV INDUSTRIES INC. OF
15 CALIFORNIA, a California Corporation

CASE NO. GIC 808576

16 Plaintiff,

**DECLARATION OF RICHARD M.
PEARL IN SUPPORT OF
DEFENDANTS' COUNSELS' FEE
APPLICATION**

17 v.

18 UTILITY CONSUMERS ACTION
19 NETWORK, a California non-profit
corporation; MICHAEL SHAMES, an
20 individual; and DOES 1-100, Inclusive,

Date: April 15, 2005
Time: 1:30 p.m.
Dept.: 72
I/C Judge: Kevin A. Enright

21 Defendants.

Complaint Filed: April 14, 2003

22 I, RICHARD M. PEARL, declare:

23 1. I am an attorney licensed to practice in the State of California. I specialize on attorney
24 fee issues in California, and am the author of the treatise *California Attorney Fee Awards, 2d ed.*
25 Continuing Education of the Bar 2004. A copy of my Resume is attached hereto as Exhibit A. I
26 have personal knowledge of the facts stated herein and could competently testify thereto if called
27 upon to do so.
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1 2. I was one of the counsel of record for the appellee/defendant in *Ketchum v. Moses*
 2 (2001) 24 Cal.4th 1122. I was lead appellate counsel in the Court of Appeal and co-counsel in the
 3 Supreme Court phase.

4 3. As reflected in the Supreme Court's decision in that case, the trial court had awarded
 5 fees of \$78,188.00 on the SLAPP motion, \$57,822.00 for the original fee application, and
 6 \$108,120 for a supplemental fee application (all excluding costs). In the course of doing so, the
 7 trial court approved as reasonable the expenditure of 139.5 attorney hours on the SLAPP motion
 8 proceeding, plus 40.1 law student hours, for a total of 179.6 hours. The court also approved an
 9 expenditure of 116.7 attorney hours on the original fee motion, plus 185 attorney hours and 68
 10 law student hours on the supplemental fee application. Both the Court of Appeal and the Supreme
 11 Court affirmed these lodestar determinations.

12 4. The trial court awards included a 2.0 multiplier applied to all time, which was reversed
 13 in part by the Supreme Court primarily as to the time spent on the fee application. There was not
 14 a supplemental determination by the trial court, as the matter settled upon remand.

15 5. The hourly rates approved by the trial Court were between \$240 and \$450 per hour
 16 back in 1996. Based upon my experience, hourly rates have increased significantly around the
 17 state since that time.

18 I declare under penalty of perjury under the laws of the State of California that the
 19 foregoing is true and correct. Executed this 10 day of March, 2005 in Berkeley California.

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 22 RICHARD M. PEARL
 23 Declarant

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