



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: July 16, 2008 REPORT NO: 08-116

ATTENTION: Council President and Members of the City Council,  
City Council Meeting of July 28, 2008

SUBJECT: UCAN Bill Inserts Related to *Shames v. City of San Diego* Settlement  
Agreement

REFERENCE: Report to City Council No. 07-153

REQUESTED ACTION:

Approve the City's recommended Bill Insert Language, and not approve UCAN's language in its 5 proposed bill inserts.

STAFF RECOMMENDATION:

Approve the City's recommended Bill Insert Language, and not approve UCAN's language in its 5 proposed bill inserts.

SUMMARY:

On December 6, 2006, the San Diego City Council approved a settlement of *Shames v. City of San Diego*, a class action lawsuit initiated in 2005 seeking corrections for perceived rate imbalances. On May 18, 2007, the Superior Court for the County of San Diego approved an agreement to settle this class action lawsuit over the City's past wastewater service rates. As part of the settlement, the City of San Diego (City) agreed to include in the City's water and sewer bills, solicitations from a non-profit organization to raise funds to hire experts to review and evaluate the City's future sewer and water rate setting activities. A Superior Court Judge, (Judge Prager), selected UCAN as the non-profit to fulfill this role.

Paragraphs 12 and 13 of the Settlement Agreement state the following:

*"12. The City agrees to permit an independent and qualified 501(c)(3) non-profit organization to place a solicitation insert into SFR Account Holder billing statements no more than three times a year for five years. The purpose of these inserts will be to allow the organization to raise funds to be used to hire experts to review and evaluate the City's future sewer and water rate setting activities. The language of the inserts shall be limited to that which is reasonably necessary to raise such funds, and shall be subject to approval by the Mayor of San Diego and City Council, which shall not be unreasonably withheld.*

*No later than twenty (20) days prior to the Fairness Hearing, Plaintiff, on the one hand, and the Mayor of San Diego and City Council, on the other, will exchange up to three recommendations for the non-profit organization. In the event of a dispute over the choice of a non-profit organization or the language of the inserts, then Judge Prager will be tasked with arbitrating the dispute. Access to the City's billing packets will be granted within 60 days of Judge Prager's approval of the non-profit organization. The City also agrees to make information and data relating to the rate setting activities reasonably available to the experts retained by the non-profit organization. The cost of the solicitation inserts will be borne by the non-profit organization, however, attendant postage and insertion costs will not be charged to the organization."*

*13. Within 120 days after the entry of the Final Order, the City shall place \$20,000 of the Settlement Revenues into an interest-bearing account for the benefit of the non-profit organization described in paragraph 12. The non-profit organization shall be entitled to utilize those funds solely for the purpose of organizing and funding its efforts to retain the experts contemplated in paragraph 12. If no non-profit organization is selected within twelve months of the Final Order or the selected non-profit organization declines to engage in these activities, the funds shall be returned to the Settlement Revenues and distributed in accordance with paragraph 10."*

Pursuant to the terms of the settlement agreement, the language of the inserts is subject to the approval by the Mayor and City Council.

UCAN provided the City with 5 proposed bill inserts, and requested that the Mayor and City Council approve all 5 versions for UCAN to have the freedom to use any of them. The Mayor's staff and the Office of the City Attorney met with and dialogued with UCAN regarding the language in UCAN's proposed bill inserts. Although agreement was reached on some language, disagreement remains on the most critical bill insert language.

Following are recommended principles to be adhered to when approving final versions of the UCAN bill inserts:

1. The insert content should be accurate and factual
2. Content should not misrepresent the City, nor the Water and/or Wastewater Departments
3. Language in the solicitation should be limited to, and adhere to the terms and purpose expressed in the settlement agreement, specifically:
4. The content should not mislead the customer/ratepayer

**FISCAL CONSIDERATIONS:**

Per the settlement agreement, the cost of the solicitation inserts will be borne by the non-profit organization (UCAN), however, attendant postage and insertion costs will not be charged to the organization. UCAN has agreed that the bill inserts will be limited to one page, double sided, to ensure that there are no additional mailing costs incurred as part of the regular water/wastewater billing process. However, additional costs may be incurred if the City should need to include additional bill inserts during the same billing cycle that a UCAN insert is included.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On December 6, 2006, the San Diego City Council approved a settlement of *Shames v. City of San Diego*. On October 8, 2007, the San Diego City Council approved the rate increase needed to provide sufficient revenue to meet the court settlement revenue. The proposed bill insert language and principles were presented to IROC.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

None

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

City of San Diego water and wastewater customers will receive the UCAN inserts in their water and sewer bills.



J. M. Barrett  
Director of Public Utilities

Attachments:

1. City's Proposed Language for UCAN Bill Inserts
2. UCAN's Proposed UCAN Bill Inserts
3. Shames Settlement Agreement

000351

**Water Bill Insert Copy Version 1: SIDE A**

HEAD, TOP PANEL, SIDE A

When the San Diego City Council wants to raise your water and sewer charges ...

HEAD, CENTER PANEL, SIDE A

Read this!

Subhead:

(This is not a message from the City of San Diego)

Deliver to: UCAN Water Project  
3100 Fifth Avenue, Suite B  
San Diego, CA 92103

PLACE  
STAMP  
HERE

HEAD, BOTTOM PANEL, SIDE A

It's time to start asking some very tough questions.

**Water Bill Insert Copy Version 1: SIDE B**

TOP AND CENTER PANEL, SIDE B

TEXT UNDER GLUE STRIP: Moisten and Fold Last

COPY: TOP AND CENTER PANEL

Dear Friend:

In December of 2006, San Diego City Council approved 4 years of water and sewer rate increases. UCAN is questioning the rate increases!

UCAN is the **not-for-profit** Utility Consumers' Action Network. For 24 years, UCAN has been fighting unfair utility rate hikes. As part of the settlement in Michael Shames v. City of San Diego, the City of San Diego agreed to include in the City's water and sewer bills solicitations from a non-profit organization to raise funds to hire experts to review and evaluate the City's future sewer and water rate setting activities. A Superior Court judge selected UCAN as the non-profit to fulfill this role.

**Why should YOU contribute to UCAN NOW?**

Because UCAN will use all of the money you send to hire a team of lawyers and utility experts to check - and double check - every cent the City has calculated it needs ... to make sure they get only what's genuinely needed ... **and not a penny more.**

Last year, legal action against the City returned \$35 million (\$152 each, on average) to every eligible single family residential sewer customer. Every dollar you contribute, gets us closer to knowing what the City **NEEDS.**

**But I can't do it without your support.**

Whether you send \$1 or \$1000, every penny will go to fighting unfair rate hikes. So if you're concerned about your water and sewer bill, don't just get mad ... Take action by sending your contribution today!

Sincerely,



Michael Shames  
Executive Director

009353

P.S. This message was written and paid for by ratepayers just like you. We are NOT the City, and we are NOT a part of any government agency.

**BOTTOM PANEL**

YES! I'm ready to TAKE ACTION and contribute to water and sewer rate review. Here's my contribution of \_\_ \$50 \_\_ \$25 \_\_ \$15 \$\_\_ Other Amount

This money will be used exclusively to hire experts to review and evaluate the City's future sewer and water rate setting activities. The City or Court will have the opportunity to audit the funds collected to make sure they are used for these purposes only.

Use this self-mailing envelope to send your contribution.

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

City/Zip \_\_\_\_\_

e-mail: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_  
(We will not call you unless you ask us)

### END TEXT, VERSION #1 ###

Water Bill Insert Copy Version 2: SIDE A

HEAD, TOP PANEL, SIDE A

GIVE YOURSELF THE GIFT THAT KEEPS ON GIVING.....

HEAD, CENTER PANEL, SIDE A

TEXT: The City of San Diego agreed to include this message from UCAN as part of the settlement in Michael Shames v. City of San Diego.

HEAD:

TEXT: This is NOT a message from the City Of San Diego

Deliver to: UCAN Water Project  
3100 Fifth Avenue, Suite-B  
San Diego, CA 92103

PLACE  
STAMP  
HERE

HEAD, BOTTOM PANEL, SIDE A

DON' T COMPLAIN, TAKE ACTION

Subhead:

UCAN is taking action to review your water and sewer rates. When we win, you win... saving you money every single month for years to come. If you haven't contributed yet, see inside!

Water Bill Insert Copy Version 2: SIDE B

TOP AND CENTER PANEL, SIDE B

TEXT UNDER GLUE STRIP: Moisten and Fold Last

**COPY: TOP AND CENTER PANEL**

Dear Friend:

We're UCAN - Utility Consumers' Action Network - the local consumer group that has taken on SDG&E and numerous telephone corporate giants since 1984 and is now prepared to bring oversight to your water and sewer bills! Our team of lawyers and utility experts are working now to determine if the City's utility bills are correct.

So if you don't want to see future water and sewer rate increases without review by UCAN, TAKE ACTION!

Please contribute today!

Sincerely,

Michael Shames  
Executive Director

P.S. This message is written and paid for by ratepayers like you. NOT the City. UCAN pays for the printing of this message and the City agreed to included in the water and sewer bill as part of a settlement agreement. We depend on you to help us take action!

BOTTOM PANEL / ORDER FORM

YES! I'm ready to contribute to water and sewer rate review. Here's my contribution to UCAN of \_\_\_ \$75 \_\_\_ \$25 \_\_\_ \$15 \$ \_\_\_ Other Amount

This money will be used exclusively to hire experts to review and evaluate the City's future sewer and water rate setting activities. The City or Court will have the opportunity to audit the funds collected to make sure they are used for these purposes only.

Use this self-mailing envelope to send your contribution.

NAME: \_\_\_\_\_

000356

ADDRESS: \_\_\_\_\_

City/Zip \_\_\_\_\_

e-mail: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_ - \_\_\_\_  
(We will not call you unless you ask us)

### END TEXT, VERSION #2 ###

CLIX

Water Bill Insert Copy Version 3: SIDE A

HEAD, TOP PANEL, SIDE A

How much has the City of San Diego raised the cost of water?

SUBHEAD:

In December of 2006, the San Diego City Council approved 4 years of water and sewer rate increases to provide sufficient revenues to operate, maintain, repair and replace water and sewer facilities to maintain system reliability, to comply with federal and state environmental rules and guidelines, a water compliance order and a sewer consent decree. Water rate increases (6.5% revenue increase to the system) were approved for FY08, FY09, FY10 and FY11. Wastewater rate increases (8.75% revenue increase to the system) were approved for FY07, FY08, and (7.00% revenue increases to the system) were approved for FY09 and FY10.

HEAD, CENTER PANEL, SIDE A

TEXT: The City agreed to include solicitations from a non-profit organization as part of a settlement in Michael Shames v. City of San Diego. The judge selected UCAN to fulfill this role by the Superior Court of California.

HEAD:

Is increasing water and sewer rates for San Diego businesses and jobs/homeowners and renters justified?

TEXT: This is NOT a message from the City of San Diego.

Deliver to: UCAN Water Project  
3100 Fifth Avenue, Suite B  
San Diego, CA 92103

PLACE  
STAMP  
HERE

HEAD, BOTTOM PANEL, SIDE A

The City has another water and sewer rate increase pending. To find out what this means to you, please read the enclosed message.

Water Bill Insert Copy Version 3: SIDE B

TOP AND CENTER PANEL, SIDE B

TEXT UNDER GLUE STRIP: Moisten and Fold Last

~~TOP & CENTER PANEL~~

Dear Fellow City Utility customer:

Keeping track of the bottom line is important for every- businesses and residents alike.

If you think it is time to question City Hall, contribute today.

UCAN use your contribution to hire independent experts to review and challenge the City's future water and sewer rates.

Sincerely,

Michael Shames  
Executive Director

P.S. This message is written and paid for by ratepayers like you. NOT the City. UCAN pays for the printing of this message and the City agreed to include it as part of a settlement agreement. We depend on you to help us take action!

BOTTOM PANEL / ORDER FORM

YES! I'm ready to contribute to water and sewer rates review as of today. Here's my contribution to UCAN of \_\_\_ \$75 \_\_\_ \$25 \_\_\_ \$15 \$\_\_\_ Other Amount

This money will be used exclusively to hire experts to review and evaluate the City's future sewer and water rate setting activities. The City or Court will have the opportunity to audit the funds collected to make sure they are used for these purposes only.

Use this self-mailing envelope to send your contribution.

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

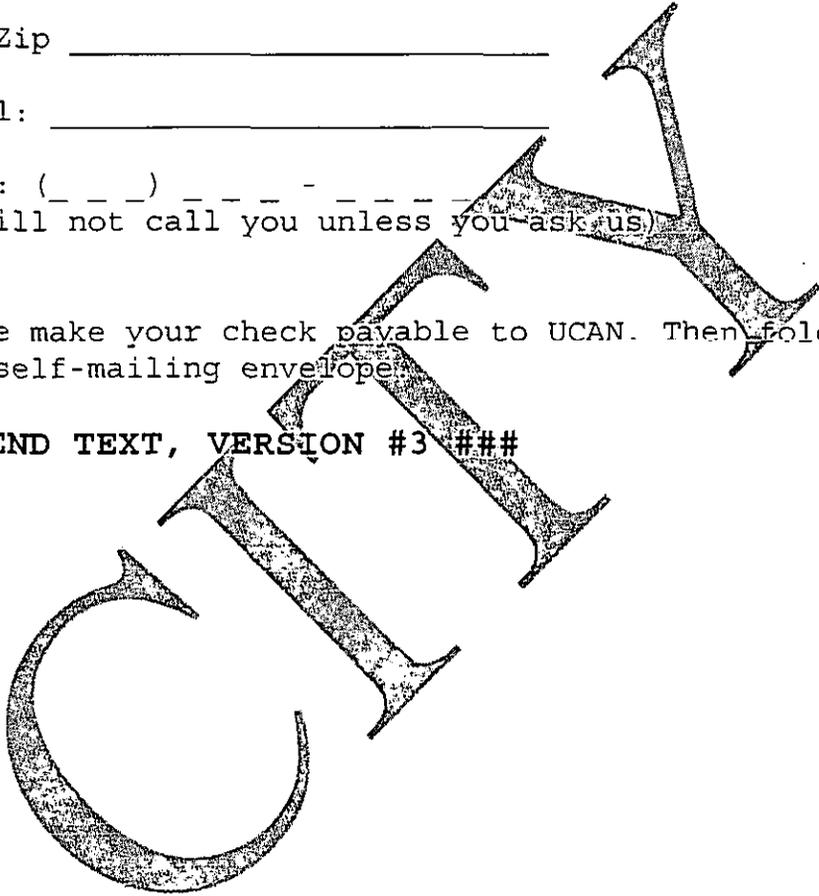
City/Zip \_\_\_\_\_

e-mail: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
(We will not call you unless you ask us)

Please make your check payable to UCAN. Then fold and seal this self-mailing envelope.

### END TEXT, VERSION #3 ###



Water Bill Insert Copy Version 4: SIDE A

HEAD, TOP PANEL, SIDE A

The good news is that UCAN has helped returned more than \$35 million in wrongful Sewer Department charges to every eligible single family residential sewer customer...

SUBHEAD:

But who is going to question future rates.

HEAD, CENTER PANEL, SIDE A

TEXT: The City of San Diego agreed to include this message from UCAN as part of the settlement in Michael Shames v. City of San Diego.

HEAD:

INSIDE:

*The Good News,*  
What you can do about the news on your sewer and water rates.

TEXT: This is NOT a message from the City. This notice has not, and will not cost you a single penny in increased rates.

Deliver to: UCAN Water Project  
3100 Fifth Avenue, Suite B  
San Diego, CA 92103

PLACE  
STAMP  
HERE

HEAD, BOTTOM PANEL, SIDE A

The City of San Diego will be seeking more rate increases!

TEXT: As you read this message UCAN is gearing up to scrutinize the City's next rate proposal. Don't you think its time to take action to make sure future rate hikes are fair and needed?

009361

Water Bill Insert Copy Version 4: SIDE B

TOP AND CENTER PANEL, SIDE B

TEXT UNDER GLUE STRIP: Moisten and Fold Last

**TOP & CENTER PANEL**

Dear City Utility customer:

In 2005 UCAN sued the City over its sewer bills.

The legal case resulted in a judgment that returned more than \$35 million to eligible single family residential sewer customers (\$152 on average)... all because of asking tough questions about your water and sewer rates and bills.

UCAN, the Utility Consumers' Action Network, has been authorized by a Superior Court judge to insert this message into your water and sewer bill.

UCAN's plan is simple: ask you whether you want UCAN to watch over San Diego City water and sewer rates. If you do, send UCAN what you can afford -- \$1. \$100. It doesn't matter how much. All the money that UCAN collects will be used to hire experts to evaluate and challenge the City's numbers.

If you think it is time to question City Hall, contribute today.

Sincerely,

Michael Shames  
Executive Director

P.S. This message is written and paid for by ratepayers like you, NOT the Water Department. The City of San Diego includes it as part of a Superior Court order.

BOTTOM PANEL / ORDER FORM

000362

YES! I'm ready to contribute to water and sewer rate review  
as of today. Here's my contribution to UCAN of \_\_\_ \$75 \_\_\_  
\$25 \_\_\_ \$15 \$\_\_\_ Other Amount

This money will be used exclusively to hire experts to  
review and evaluate the City's future sewer and water rate  
setting activities. The City or Court will have the  
opportunity to audit the funds collected to make sure they  
are used for these purposes only.

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

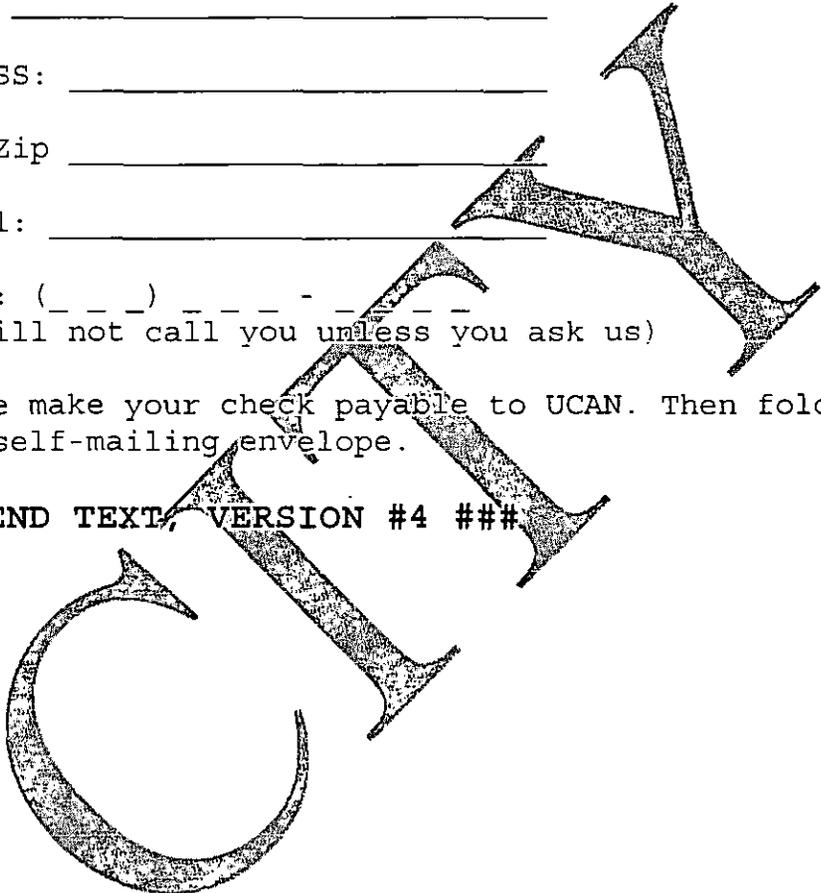
City/Zip \_\_\_\_\_

e-mail: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
(We will not call you unless you ask us)

Please make your check payable to UCAN. Then fold and seal  
this self-mailing envelope.

### END TEXT, VERSION #4 ###



000363

**GENERIC Water Bill Insert Copy SIDE B**

TOP AND CENTER PANEL, SIDE B

TEXT UNDER GLUE STRIP: Moisten and Fold Last

**GENERIC COPY**

Dear Friend:

UCAN sued the city over sewer rate charges. That legal battle against the City of San Diego returned \$35 million to eligible single family residential sewer customers... because UCAN asked some tough questions.

As part of the settlement in Michael Shames v. City of San Diego, the City of San Diego agreed to include in the City's water and sewer bills solicitations from a non-profit organization to raise funds to hire experts to review and evaluate the City's future sewer and water rate setting activities. A Superior Court judge selected UCAN as the non-profit to fulfill this role.

UCAN's message is simple: there's power in numbers. If every one reading this sends just \$1 each year, UCAN would have more than \$200,000 to hire experts to audit and challenge the City's numbers for proposed water and sewer rate increases.

Just as UCAN did with SDG&E in the 1980s, whatever money you send UCAN will pool it all together and use it to hire the independent experts to review and challenge the City's future water and sewer rates.

Your donation, no matter how small, can make a difference.

There is power in numbers. Your voice and your dollars count.

Sincerely,

Michael Shames  
Executive Director

P.S. This message is written and paid for by ratepayers like you. NOT the City. UCAN pays for the printing of this message and the City includes it as part of a settlement agreement. We depend on you to help us take action!

**BOTTOM PANEL / ORDER FORM**

**YES!** I'm ready to **TAKE ACTION** and contribute to water and sewer rate review as of today. Here's my contribution of \_\_\_ \$75 \_\_\_ \$25 \_\_\_ \$15 \$\_\_\_ Other Amount

This money will be used exclusively to hire experts to review and evaluate the City's future water and sewer rate setting activities. The City or Court will have the opportunity to audit the funds collected to make sure they are used for these purposes only.

Use this self-mailing envelope to send your contribution!

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

City/Zip: \_\_\_\_\_

e-mail: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_  
(We will not call you unless you ask us)

Please make your check payable to UCAN. Then fold and seal this self-mailing envelope.

**### END TEXT, GENERIC VERSION ###**

POTENTIAL ENVELOPE COVER (SIDE A) MESSAGES TO GO WITH  
GENERIC TEXT:

1) COURT ORDER

Heading:

Subhead:

2)

Heading:

Subhead:

3)

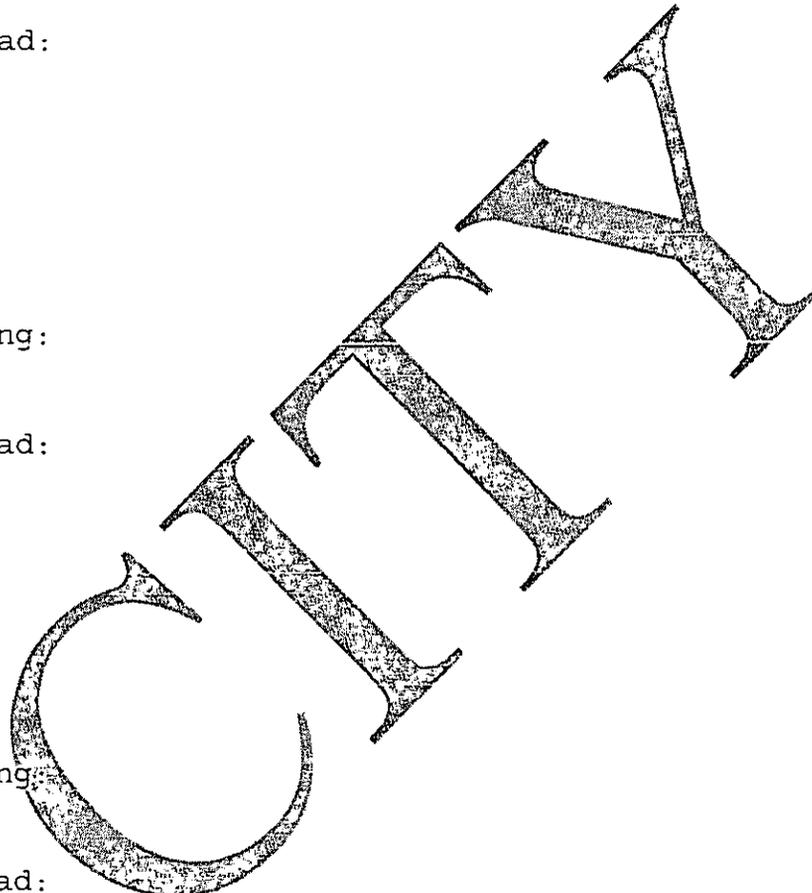
Heading:

Subhead:

4)

Heading:

Subhead:



000366

5)

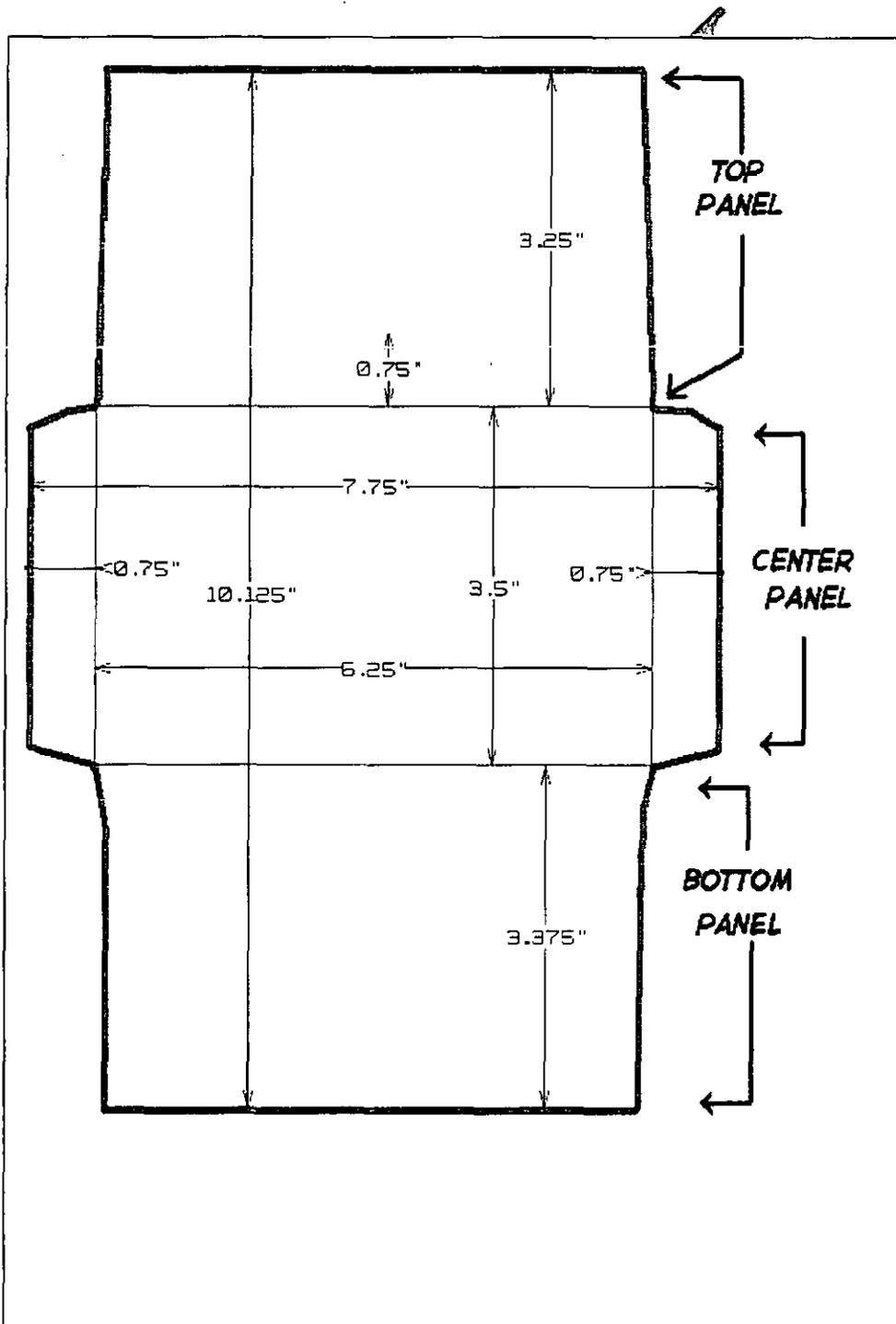
Heading:

Subhead:

CITY

000367

Design of UCAN's insert:  
It is a foldable envelope and self-sealing.



003368

Water Bill Insert Copy Version 1: SIDE A

HEAD, TOP PANEL, SIDE A

When the San Diego City Council wants to raise your water and sewer charges ...

HEAD, CENTER PANEL, SIDE A

Read this before you pay your water and sewer bill!

Subhead:

(this is not a message from the City of San Diego)

Deliver to: UCAN Water Project  
3100 Fifth Avenue, Suite B  
San Diego, CA 92103

PLACE  
STAMP  
HERE

HEAD, BOTTOM PANEL, SIDE A

It's time to start asking some very tough questions.

Water Bill Insert Copy Version 1: SIDE B

TOP AND CENTER PANEL, SIDE B

TEXT UNDER GLUE STRIP: Moisten and Fold Last

COPY: TOP AND CENTER PANEL

Dear Friend:

For each of the past five years, the City has raised water and sewer rates ... and more are on the way. Who is questioning the rate hikes?

UCAN is!

UCAN is the **not-for-profit** Utility Consumers' Action Network. In the last 24 years, UCAN has saved San Diego ratepayers hundreds of millions of dollars by fighting unfair utility rate hikes. So much so that a Superior Court judge selected UCAN to fulfill this role by including this message in your water & sewer bill.

Why should YOU join UCAN NOW?

Because I will use all of the money you send me to hire a crack team of lawyers and utility experts. These experts will check - and double check - every cent the City is demanding ... to make sure they get only what's genuinely needed ... and not a penny more.

Last year, my legal action against the City returned \$35 million (\$152 each, on average) to every eligible residential sewer customer. Every dollar you contribute, gets us closer to knowing what the City **NEEDS**, vs. what the City **wants**.

But I can't do it without your support.

Whether you send \$1 or \$1000, every penny will go to fighting unfair rate hikes. So if you're concerned about your water bill, don't just get mad ... Take action by joining UCAN's 35,000 local members today!

Sincerely,



Michael Shames  
Executive Director

009370

P.S. This message was written and paid for by utility customers just like you. We are NOT the City, and we are NOT a part of any government agency.

**BOTTOM PANEL**

YES MICHAEL! I'm ready to FIGHT utility abuse in San Diego by joining UCAN and supporting your work. Here's my annual membership contribution of  \$50  \$25  \$15  Other Amount (UCAN has a sliding scale membership).

Please use this money to exclusively fight unfair water rate hikes and for better service from the City utility.

Use this self-mailing envelope to send your investment in lower utility bills and rate-hike justice from San Diego utilities.

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

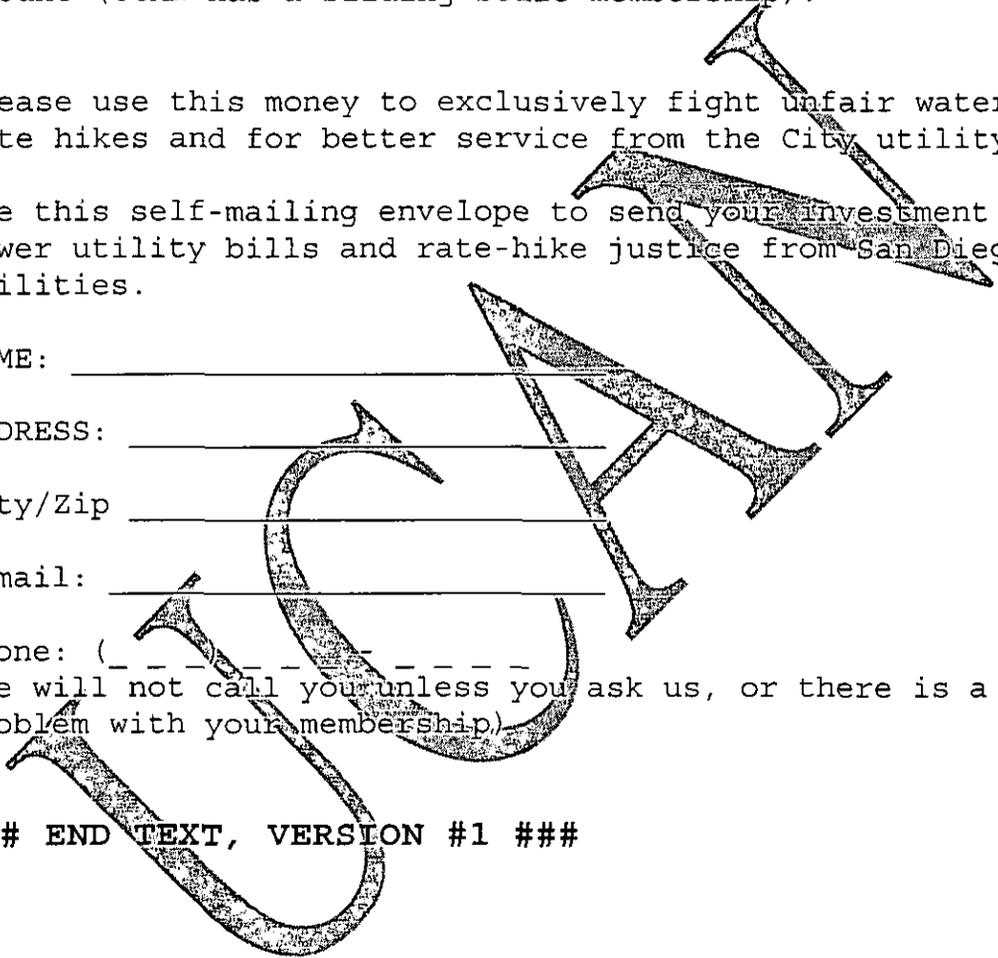
City/Zip \_\_\_\_\_

e-mail: \_\_\_\_\_

Phone: (\_\_\_\_-\_\_\_\_-\_\_\_\_)

(We will not call you unless you ask us, or there is a problem with your membership)

### END TEXT, VERSION #1 ###



000371

Water Bill Insert Copy Version 2: SIDE A

HEAD, TOP PANEL, SIDE A

GIVE YOURSELF THE GIFT THAT KEEPS ON GIVING.....

HEAD, CENTER PANEL, SIDE A

TEXT: The Water and Sewer Departments are required to include this message from UCAN by the Superior Court of California.

HEAD:

WANT TO SAVE MONEY ON YOUR BILL?

TEXT: This is NOT a message from the City's Water/Sewer Departments.

Deliver to: UCAN Water Project  
3100 Fifth Avenue, Suite B  
San Diego, CA 92103

PLACE  
STAMP  
HERE

HEAD, BOTTOM PANEL, SIDE A

DON'T COMPLAIN, TAKE ACTION

Subhead:

UCAN is fighting to lower your utility bills. When we win, you win ... saving you money every single month for years to come. Don't leave your name off our list! If you haven't joined yet, see inside!

Water Bill Insert Copy Version 2: SIDE B

TOP AND CENTER PANEL, SIDE B

TEXT UNDER GLUE STRIP: Moisten and Fold Last

**COPY, TOP AND CENTER PANEL**

Dear Friend:

We're UCAN - Utility Consumers' Action Network - the powerful local consumer group that has taken on SDG&E and numerous telephone corporate giants since 1984 and is now prepared to bring oversight to your water and sewer bills! Our team of lawyers and utility experts are working now to challenge and audit every extra penny the City wants to add to your City utility bills.

So if you don't want to see your bills skyrocket again, join the tens of thousands of San Diegans who have chosen to TAKE ACTION!

Because the more members we have, the stronger we are. Do yourself a holiday favor. Give your family the special gift that keeps on giving ... the gift that can save you money all year long ... a membership in UCAN!

Rising utility bills hurt all of us. Our best defense is UCAN. Please join us today!

Sincerely,

Michael Shames  
Executive Director

P.S. This message is written and paid for by ratepayers like you. NOT the City. UCAN pays for the printing of this message and the Water Sewer Department includes it as part of Superior Court order. We depend on you and you alone to help us fight back!

**BOTTOM PANEL / ORDER FORM**

YES MICHAEL! I'm ready to FIGHT utility rate hikes in San Diego by joining UCAN and supporting your work. Here's my annual membership contribution of  \$75  \$25  \$15 \$  
Other Amount (UCAN has a sliding scale membership).

000373

Please use this money to exclusively fight unfair water rate hikes and for better service from the City utility.

Use this self-mailing envelope to send your investment in lower utility bills and rate-hike justice from San Diego utilities.

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

City/Zip \_\_\_\_\_

e-mail: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
(We will not call you unless you ask us, or there is a problem with your membership)

### END TEXT, VERSION #2 ###

UCAN

Water Bill Insert Copy Version 3: SIDE A

HEAD, TOP PANEL, SIDE A

How much has the City of San Diego raised the cost of water for businesses in four years?

SUBHEAD:

- a) 13%
- b) 20%
- c) 26% (scary, huh?)

HEAD, CENTER PANEL, SIDE A

TEXT: The City is required to include this message from UCAN by the Superior Court of California.

HEAD:

Are the City's water and sewer high rates BAD for San Diego businesses and jobs/homeowners, and renters

TEXT: This is NOT a message from the City of San Diego.

Deliver to: UCAN Water Project  
3100 Fifth Avenue, Suite B  
San Diego, CA 92103

PLACE  
STAMP  
HERE

HEAD, BOTTOM PANEL, SIDE A

The correct answer is "c" 26% The Water Department has raised its rates by 26% in just for the period between 2008 and 2011. And it has raised sewer rates by 8.75% for 2007-2008 and 7% for 2009-2010. To find out what this means to you, please read the enclosed message.

Water Bill Insert Copy Version 3: SIDE B

TOP AND CENTER PANEL, SIDE B

TEXT UNDER GLUE STRIP: Moisten and Fold Last

top & center panel

Dear Fellow City Utility customer:

The San Diego City's water and sewer rates for residential customers are scheduled to rise by 26% over four years. In fact, the Department's sewer rates are scheduled to increase by even more.

If you run or work for a small business you know the kinds of impacts these rates have on your bottom line. If you're a consumer, you've been hurt by high water and sewer bills, too.

Inflated utility prices are a hidden sales tax ... some companies keep costs down by paying lower wages to their employees ... some businesses, with no room to raise prices, either go out of business, or are forced to move their to a region where water is cheap.

That's why UCAN, the Utility Consumers' Action Network, is so wildly popular with San Diego's small business owners - they know UCAN is fighting to hold the line on crippling rate increases.

UCAN thinks the City's water and sewer departments are asking for more money than they may deserve and the City Council is too quick to sign off on those increases. If you agree that unfair, unmonitored rate hikes hurt our local businesses and the economy, then join UCAN today... because high utility bills hurt all of us!

Sincerely,

Michael Shames  
Executive Director

P.S. This message is written and paid for by ratepayers like you. NOT the City. UCAN pays for the printing of this message and the Water/Sewer Department includes it as part of a Superior Court order. We depend on you and you alone to help us fight back!

BOTTOM PANEL / ORDER FORM

YES MICHAEL! I'm ready to FIGHT for fair water and sewer rates as of today. Here's my annual membership contribution

000376

of \_\_\_ \$75 \_\_\_ \$25 \_\_\_ \$15 \$\_\_\_ Other Amount (UCAN has a sliding scale membership).

Please use this money to exclusively fight unfair water rate hikes and for better service from the City utility.

Use this self-mailing envelope to send your investment in lower utility bills and rate-hike justice from San Diego utilities.

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

City/Zip \_\_\_\_\_

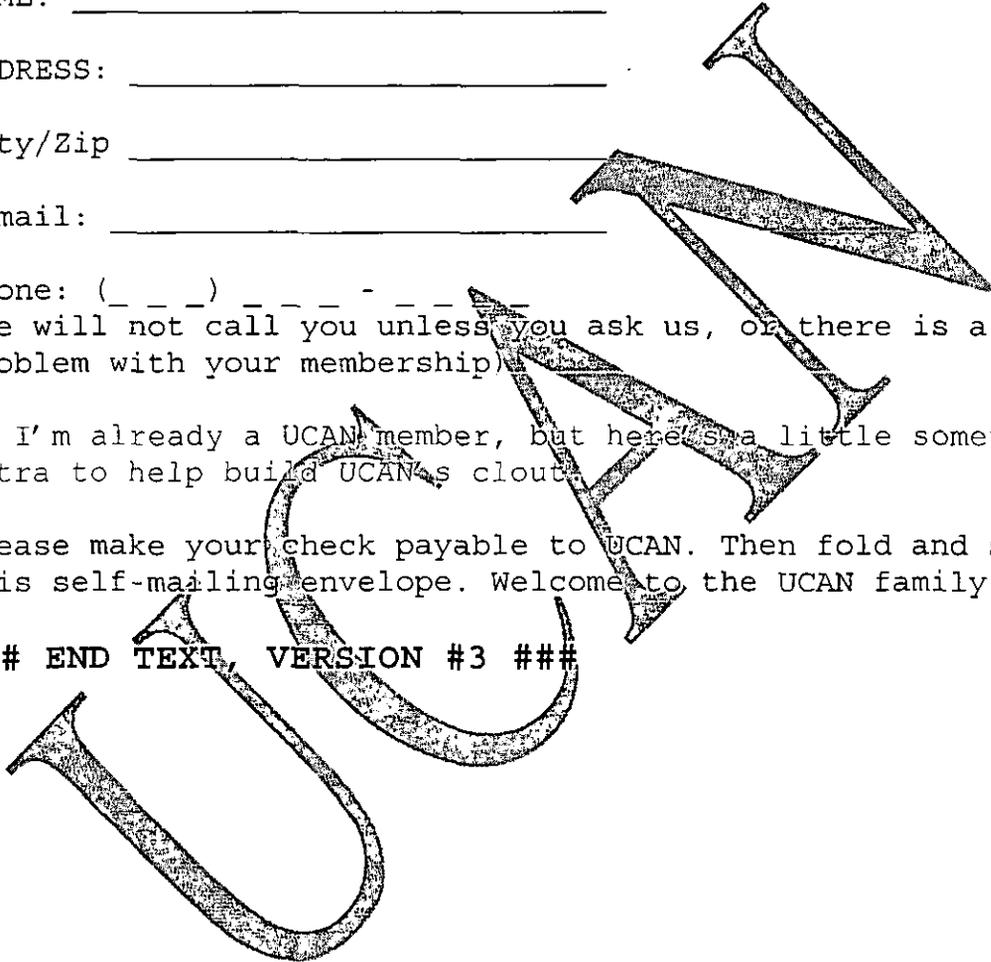
e-mail: \_\_\_\_\_

Phone: (\_\_\_) \_\_\_ - \_\_\_  
(We will not call you unless you ask us, or there is a problem with your membership)

\_\_\_ I'm already a UCAN member, but here's a little something extra to help build UCAN's clout.

Please make your check payable to UCAN. Then fold and seal this self-mailing envelope. Welcome to the UCAN family!

### END TEXT, VERSION #3 ###



Water Bill Insert Copy Version 4: SIDE A

HEAD, TOP PANEL, SIDE A

The good news is that UCAN has helped returned more than \$35 million in wrongful Sewer Department charges to you ...

SUBHEAD:

But who is going to stop the City from trying to get it back?

HEAD, CENTER PANEL, SIDE A

TEXT: The Water and Sewer departments are required to include this message from UCAN by the Superior Court of California.

HEAD:

INSIDE:

The Good News,  
What you can do about the bad news on  
Your Sewer and Water Rates.

TEXT: This is NOT a message from the City. The City is required to include this notice as part of a court-ordered settlement. This notice has not, and will not cost you a single penny in increased rates.

Deliver to: UCAN Water Project  
3100 Fifth Avenue, Suite B  
San Diego, CA 92103

PLACE  
STAMP  
HERE

HEAD, BOTTOM PANEL, SIDE A

The bad news is that Water and Sewer Departments will be seeking more rate and fee increases!

TEXT: As you read this message UCAN is gearing up to scrutinize the City's next rate proposal. Don't you think its time to FIGHT unfair rate hikes?

000378

Water Bill Insert Copy Version 4: SIDE B

TOP AND CENTER PANEL, SIDE B

TEXT UNDER GLUE STRIP: Moisten and Fold Last

**top & center panel**

Dear City Utility customer:

In 2005 when I told the City I would sue them for fraudulent sewer bills, they thought I was just spouting off.

My legal battle against the San Diego City Sewer Department returned more than \$35 million to ratepayers like you (\$152 on average)... all because I started asking tough and even embarrassing questions about the fees and charges on your water and sewer bills.

That's why my consumer group, UCAN, the Utility Consumers' Action Network, has been authorized by a Superior Court judge to insert this message into your water and sewer bill.

My plan is simple: ask you whether you want UCAN to watch over San Diego City utility rates. If you do, send me what you can afford -- \$1. \$100. It doesn't matter how much. I'll pool the money that we collect and hire experts to challenge the City's numbers.

I make this offer because the big special interests encamped at City Hall have had their way with water and sewer rates - the City has caved to their interests rather than protecting yours. That's what our court case proved and that's what I aim to stop **with your help**.

If you think it is time to question City Hall, I invite you to join UCAN today. With your help, we might be able to do it again. Rising utility bills could eventually drown all of us. Please join us today!

Sincerely,

Michael Shames  
Executive Director

P.S. This message is written and paid for by ratepayers like you. NOT the Water Department. The Water Department includes it as part of a Superior Court order. We depend on you and you alone to help us fight back!

000379

BOTTOM PANEL / ORDER FORM

YES MICHAEL! I'm ready to FIGHT for fair water and sewer rates as of today. Here's my annual membership contribution of  \$75  \$25  \$15  \$\_\_\_ Other Amount (UCAN has a sliding scale membership).

Please use this money to exclusively fight unfair water rate hikes and for better service from the City utility.

Use this self-mailing envelope to send your investment in lower utility bills and rate-hike justice from utilities doing business in San Diego County!

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

City/Zip \_\_\_\_\_

e-mail: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

(We will not call you unless you ask us, or there is a problem with your membership)

I'm already a UCAN member, but here's a little something extra to help build UCAN's clout.

Please make your check payable to UCAN. Then fold and seal this self-mailing envelope. Welcome to the UCAN family!

### END TEXT, VERSION #4 ###

009380

GENERIC Water Bill Insert Copy SIDE B

TOP AND CENTER PANEL, SIDE B

TEXT UNDER GLUE STRIP: Moisten and Fold Last

**GENERIC COPY**

Dear Friend:

When I told the city I would sue them for wrongful sewer bill charges, they thought I was kidding. I wasn't.

My legal battle against the San Diego City Water Dept. returned \$35 million to sewer customers because I asked some tough questions and had the ability to get answers.

When I told City Hall that you deserved to have a truly independent utility watchdog, it told me to go away. I didn't. And now the Superior Court has ordered the City to allow Utility Consumers' Action Network (UCAN) to insert this message into your water bill.

My message is simple: there's power in numbers. If every one reading this sends just \$1 each year, I'd have more than \$200,000 to hire experts to audit and challenge the City's numbers.

Just as I did with SDG&E in the 1980s, whatever money you send, I'll pool it all together and use it to hire the independent experts you need to bring some fairness to the City's rates and service.

Your donation, no matter how small, will make a difference, I guarantee it. My court case returned an average of \$152 to every residential ratepayer. Just a few dollars from that refund could make the difference.

There is power in numbers. Your voice and your dollars count. Together, we can FIGHT city hall and WIN!

Sincerely,

Michael Shames

Executive Director

P.S. This message is written and paid for by ratepayers like you. NOT the City. UCAN pays for the printing of this message and the Water/Sewer Department includes it as part of a Superior Court order. We depend on you and you alone to help us fight back!

BOTTOM PANEL / ORDER FORM

YES MICHAEL! I'm ready to FIGHT for fair water and sewer rates as of today. Here's my annual membership contribution of   \$75     \$25     \$15     \$   Other Amount (UCAN has a sliding scale membership).

Please use this money to exclusively fight unfair water rate hikes and for better service from the City utility.

Use this self-mailing envelope to send your investment in lower utility bills and rate-hike justice from utilities doing business in San Diego County!

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

City/Zip \_\_\_\_\_

e-mail: \_\_\_\_\_

Phone: ( \_\_\_\_\_ ) \_\_\_\_\_

(We will not call you unless you ask us, or there is a problem with your membership)

   I'm already a UCAN member, but here's a little something extra to help build UCAN's clout.

Please make your check payable to UCAN. Then fold and seal this self-mailing envelope. Welcome to the UCAN family!

### END TEXT, GENERIC VERSION ###

POTENTIAL ENVELOPE COVER (SIDE A) MESSAGES TO GO WITH  
GENERIC TEXT:

1) COURT ORDER

Heading:

BY ORDER OF THE SAN DIEGO SUPERIOR COURT

Subhead:

This is the notice that the City of San Diego does NOT want  
you to read.

2) 151 REASONS

Heading:

151 Good Reasons to Join UCAN

Subhead:

Does \$151 seem like a lot of money? It is to you....it  
isn't to the City Council.

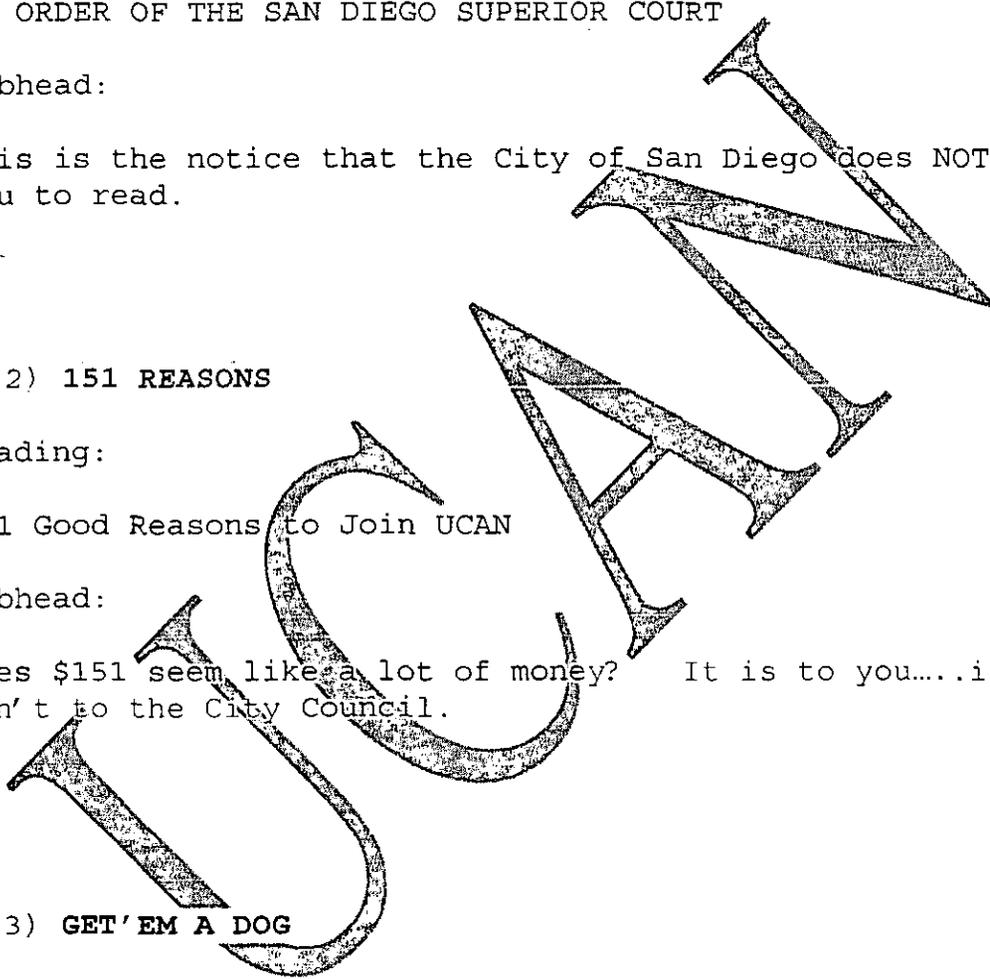
3) GET'EM A DOG

Heading:

DON' T YOU THINK WE SHOULD GET THE CITY NEEDS A DOG?

Subhead:

GET THEM THIS ONE....THE UCAN WATCHDOG. AND LET' S SEE WHO  
YELPS.



4) A NEW SHERIFF

Heading:

THERE' S A NEW SHERIFF IN TOWN

Subhead:

For too long, the City's water and sewer departments have behaved as if they were above the law ... But now, thanks to a major court victory, you have the power to hire a REAL City utility sheriff ... who is beholden to no one but you!

5) RESPECT

Heading:

ISN' T IT TIME THE CITY BEGAN TO TREAT YOUR MONEY WITH A LITTLE MORE RESPECT?

Subhead:

UCAN IS READY TO TEACH THE CITY A LITTLE MORE RESPECT... WITH SOME TOUGH LOVE.

UCAN

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of this 6th day of December 2006, between Michael Shames ("Plaintiff") on behalf of himself and a Settlement Class (defined herein), on the one hand, and the City of San Diego ("the City"); on the other; with respect to the following matters.

WHEREAS, Plaintiff filed a class action lawsuit on June 16, 2004 in the Superior Court for the County of San Diego, captioned *Michael Shames, an individual, on behalf of all others similarly situated v. the City of San Diego*, as Case No. GIC831539 against the City for violation of Cal. Const. art. XIII D, Section 6(b)(3) and breach of contract;

WHEREAS, Plaintiff alleged that the City overcharged Single Family Residential ("SFR") sewer account holders in the City's Municipal System from May 23, 1994 through September 30, 2004, as a result of a failure to include a cost recovery component for biological oxygen demand ("BOD") in the City's sewer rate structure;

WHEREAS, on or about August 27, 2004, the City demurred to the Complaint;

WHEREAS, on or about September 22, 2004, Plaintiff filed a First Amended Complaint ("FAC") revising some of the allegations, but alleging the same two causes of action for violation of Cal. Const. art. XIII D, Section 6(b)(3) and breach of contract;

WHEREAS, on or about October 20, 2004, the City demurred to the FAC;

WHEREAS, on or about December 10, 2004, the Court overruled the City's demurrer to the FAC;

WHEREAS, on or about December 13, 2004, the City filed an Answer to the FAC generally denying all of the allegations;

WHEREAS, Plaintiff seeks to represent a Settlement Class, and the City agrees that a class should be certified solely for the purpose of effectuating this settlement; and

THEREFORE, it is stipulated and agreed by and between the undersigned parties and attorneys that this action be fully and finally settled, on the following terms and conditions:

1. Definitions

As used herein, the following terms shall have the meanings indicated:

a. "Action" means the case pending in the Superior Court for the County of San Diego, captioned *Michael Shames, an individual, on behalf of all others similarly situated v. the City of San Diego*, Case No. GIC831539.

b. "Agreement" means this Settlement Agreement.

c. "Class Counsel" means the law firms Krause, Kalfayan, Benink & Slavens, LLP; Casey Gerry Schenk Francavilla Blatt & Penfield, LLP; Capretz & Associates; and Herman, Herman, Katz & Cotlar LLP.

d. "Class Members" and "Settlement Class" mean all SFR Account Holders in the City's Municipal Sewer system who held sewer accounts during any time period May 23, 1994 through September 30, 2004, inclusive.

e. "Class Period" means the period between May 23, 1994 through September 30, 2004, inclusive.

n. "Net Settlement Revenues" means the revenues remaining to be paid from the Settlement Revenues after distributions are made to Non-Current SFR Customers, Notification Costs are deducted, and costs and expenses (but not Class Counsel fees) are reimbursed.

o. "Non-Current SFR Customers" means SFR Account Holders who do not currently hold sewer accounts in the City's Municipal System and are members of the Settlement Class.

p. "Summary Notice to Class" means the Summary Notice of Class Action Settlement that is attached hereto as Exhibit "B" to be inserted into monthly sewer bills and published in the *San Diego Union-Tribune*.

q. "Notification Costs" means the reasonable cost of mailing and publishing the Notice to Class, and posting the Web Notice, including not but limited to, duplication and printing costs, web hosting and programming, postage, and advertising / publication fees.

r. "Payment Period" means the four-year period beginning the 90<sup>th</sup> day after the rate increase described in paragraph 11.

s. "Preliminary Order" means the order contemplated by Cal Rules of Ct., Rule 1859(d), substantially in the form attached as Exhibit "A" hereto which shall, among other things, i) preliminarily approve the Agreement ii) authorize the form and manner of the notices to the Class and ii) set a date for the Fairness Hearing.

t. "Proof of Claim Form" means the document, a form of which is attached hereto as Exhibit "E," to be provided to and completed by Non-Current SFR Customers.

shall require the City, within 60 days to 1) mail the Summary Notice to Class in the form attached as Exhibit "B" to Current SFR Customers, directing the account holders to the Web Notice. The order shall require the Plaintiff to post the Web Notice in the form attached hereto as Exhibit "C" no later than the date the first Summary Notice to Class is mailed. The order shall also require the City to publish the Summary Notice to Class in the *San Diego Union-Tribune* ten (10) days following the mailing of the Summary Notice. The City shall be entitled to pay for Notification Costs from the Settlement Revenues, but should final approval of the Agreement not be granted for any reason, the City shall bear the burden of the Notification Costs.

4. Thereafter, Plaintiffs' Counsel shall file a motion requesting the Court to enter a Final Order in the form attached as Exhibit "D," granting final approval of the settlement.
5. This Agreement and the obligations herein are conditioned upon the City receiving legal and accounting opinions regarding the propriety of paying Settlement Revenues to SFR Customers from the Wastewater Enterprise Fund. Specifically, the City is discussing the propriety of raising sewer rates for all classes of users to pay for a credit to the SFR Customers. In the event that this payment mechanism violates general accounting standards or the State Water Resources Control Board fails to approve this payment mechanism, both parties' obligations under this Agreement shall be null and void and this Agreement shall not be used or relied upon for any purpose by any party or person.
6. Putative members of the Settlement Class shall be permitted to opt out of the Settlement Class. Persons who timely and properly opt out (as described in the Web Notice) a) shall not participate in any way in this Agreement, b) shall not be deemed to have released the Released

addresses at which they were allegedly overcharged, the Settlement Revenues shall be distributed as follows:

a) For each Non-Current SFR Customer who, within sixty (60) days of the publication of the Notice to Class in the *San Diego Union-Tribune*, submits a Proof of Claim Form (attached hereto as "Exhibit E") under penalty of perjury that establishes that i) the Non-Current SFR Customer is not a Monthly SFR Customer and ii) that the Non-Current SFR Customer was an SFR Account Holder during any period from May 23, 1994 through September 30, 2004, that Non-Current SFR Customer shall be paid \$1.50 for each month the account was open during that period. The City shall, within 90 days of the rate increase described in paragraph 11 below, make a lump sum payment to each Non-Current SFR Customer submitting a qualifying Proof of Claim Form;

b) Subject to Court approval, Class Counsel shall be reimbursed for its reasonable costs and expenses from the Settlement Revenues within 60 days of the rate increase described in paragraph 11 below; and

c) All funds remaining from the Settlement Revenues after Non-Current SFR Customers are paid, the account under paragraph 13 is funded, and Notification Costs and reasonable costs and expenses are deducted (the "Net Settlement Revenues"), shall be distributed as follows to Monthly SFR Customers during the Payment Period beginning within 90 days of the rate increase described in paragraph 11 below.

11. The City represents that it intends to generate Settlement Revenues of \$40,000,000 through sewer rate increases. The State Water Resource Control Board has informed the City that this revenue stream is a cost to the Wastewater Enterprise Fund and must be allocated across all ratepayer classes, including SFR Customers. In order to ensure that SFR Customers will receive a \$40,000,000 benefit, the City will credit Monthly SFR customers who pay this rate increase, an amount equal to the rate increase, plus the amounts described in paragraph 10(c). The City shall use its best efforts to implement this rate increase no later than 90 days following entry of the Final Order.

12. The City agrees to permit an independent and qualified 501(c)(3) non-profit organization to place a solicitation insert into SFR Account Holder billing statements no more than three times a year for five years. The purpose of these inserts will be to allow the organization to raise funds to be used to hire experts to review and evaluate the City's future sewer and water rate setting activities. The language of the inserts shall be limited to that which is reasonably necessary to raise such funds, and shall be subject to approval by the Mayor of San Diego and City Council, which shall not be unreasonably withheld. No later than twenty (20) days prior to the Fairness Hearing, Plaintiff, on the one hand, and the Mayor of San Diego and City Council, on the other, will exchange up to three recommendations for the non-profit organization. In the event of a dispute over the choice of a non-profit organization or the language of the inserts, then Judge Prager will be tasked with arbitrating the dispute. Access to the City's billing packets will be granted within 60 days of Judge Prager's approval of the non-profit organization. The City also agrees to make information and data relating to the rate setting activities reasonably available to the experts retained by the non-profit organization. The cost of the solicitation

negligence, fraud, violations of any state or federal statutes, rules or regulations, and any unknown claims relating to the allegations asserted in this Action that could have been asserted in this or any other forum ("Settled Claims"). Each Class Member who does not opt out on a timely basis hereby covenants and agrees that he or she shall not hereafter assert or continue to assert any claim, suit, cause of action or demand relating to the allegations asserted in the Action, whether individually or on behalf of a class, against the Released Parties.

16. The Parties represent, warrant and agree that they have been fully advised of the content of Section 1542 of the Civil Code of the State of California, which reads as follows:

**"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."** The Parties and the Settlement Class hereby expressly waive and relinquish all rights and benefits under that section and any law or legal principle of similar effect in any jurisdiction with respect to the release granted in this Agreement.

17. Plaintiff and the Settlement Class further agree and stipulate that any rights, claims, or causes of action that they may hold against other non-SFR Account Holders relating to or arising from the allegations in the FAC are hereby assigned to the City of San Diego. Plaintiff and the Settlement Class do not represent whether they hold any such claims or whether such claims are viable. Furthermore, this Agreement is not intended in any way to impact or address any rights, claims, or causes of actions that the City may have against third parties relating to this Action, including the City's cross-complaint filed in the Action against ISP Alginates, Inc., J.M. Huber Corporation, and C.P. Kelco, a business entity.

25. The parties hereto and each Class Member hereby irrevocably submit to the exclusive jurisdiction of this Court for any suit, action, proceeding or dispute arising out of or relating to the Settlement Agreement or the applicability of the Agreement and exhibits thereto.

26. The parties hereto and each Class Member hereby agree that California law shall govern with respect to the enforcement of this Agreement.

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

DATED: \_\_\_\_\_

\_\_\_\_\_  
Michael Shames, Lead Plaintiff,  
Individually and on behalf of the Class

DATED: \_\_\_\_\_

\_\_\_\_\_  
Jerry Sanders, Mayor, on behalf of  
The City of San Diego, Defendant

**EXHIBIT LIST**

A - PROPOSED ORDER CERTIFYING SETTLEMENT CLASS AND PRELIMINARILY APPROVING SETTLEMENT AND FORM AND MANNER OF CLASS NOTICE

B - SUMMARY NOTICE OF CLASS ACTION SETTLEMENT

C - NOTICE TO CLASS OF PENDENCY OF CLASS ACTION SETTLEMENT

D - PROPOSED ORDER OF FINAL JUDGMENT AND DISMISSAL

E - SEWER REFUND PROOF OF CLAIM FORM

000393

Exhibit A

1 follows:

2 All City of San Diego Single Family Residential ("SFR") sewer account holders in  
3 the City's Municipal System who held accounts during any time period from May 23,  
4 1994 through September 30, 2004, inclusive.

5 3. The Court finds the prerequisites to a class action have been satisfied in that:

- 6 a. there are numerous class members so that joinder of their claims is impracticable;  
7 b. the claims of the class representative are typical of those of the other members of the  
8 class;  
9 c. there are questions of fact and law that are common to all members of the class;

10 the class representative will fairly and adequately protect the interests of the class and has retained  
11 counsel experienced in complex class action litigation who have and will continue to adequately  
12 represent the class;

13 d. a class action is superior to other available methods for the fair and efficient adjudication  
14 of this controversy, and

15 e. questions of fact and law common to the members of the class predominate over any  
16 questions affecting only individual members.

17 4. Plaintiff Michael Shames is certified as the class representative. Krause Kalfayan Benink  
18 & Slavens, LLP; Casey Gerry Schenk Francavilla Blatt & Penfield, LLP; Capretz & Associates; and  
19 Herman Herman Katz & Cotlar, LLP are certified as Class Counsel for the Settlement Class.

20  
21 5. The Court will hold a fairness hearing on \_\_\_\_\_, 2006 (115 days after  
22 Preliminary Approval Order) at \_\_\_\_\_, a.m. / p.m. for the following purposes:

23 a. To determine whether the proposed settlement is fair, reasonable and adequate and should  
24 be granted final approval by the Court;

25 b. To consider Class Counsels' application for attorneys fees and reimbursement of costs and  
26 expenses;

27 c. To determine whether a final judgment should be entered dismissing the claims of the  
28 Settlement Class with prejudice, as required by the Settlement Agreement;

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11. All briefs, memoranda, petitions and affidavits to be filed in support of final approval of the settlement and for an award of attorney's fees and expenses by Class Counsel shall be filed not later than five (5) days before the fairness hearing.

12. The Court retains exclusive jurisdiction over this action to consider all further matters arising out of or connected with the Settlement Agreement.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO  
CENTRAL DIVISION

MICHAEL SHAMES, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

THE CITY OF SAN DIEGO; and DOES 1 through 10, inclusive,

Defendants.

) Case No. GIC831539  
) SUMMARY NOTICE OF CLASS ACTION  
) SETTLEMENT

TO ALL SINGLE-FAMILY RESIDENTIAL SEWER CUSTOMERS (WITH ADDRESSES WITHIN THE CITY OF SAN DIEGO LIMITS) WHO PAID SEWER BILLS FROM MAY 23, 1994 THROUGH SEPTEMBER 30, 2004:

If you received this notice in your sewer bill, then you may be entitled to share in a FORTY MILLION DOLLAR (\$40,000,000.00) settlement if you choose to be a member of a Settlement Class provisionally certified by the Superior Court of California, for the County of San Diego. If you are a CURRENT single-family residential sewer customer and you reside at an address that had a water meter in existence as of September 30, 2004, your monthly sewer bill will be credited automatically for the next four years. YOU DO NOT NEED TO DO ANYTHING ELSE TO PARTICIPATE.

009399

Exhibit C

I.  
WHAT WAS THIS LAWSUIT ABOUT?

1  
2 A lawsuit was filed by Lead Plaintiff Michael Shames ("Shames") as a proposed class action  
3 on June 16, 2004 in the Superior Court for the County of San Diego, captioned *Michael Shames,*  
4 *an individual, on behalf of all others similarly situated v. the City of San Diego.* Shames alleged  
5 that the City overcharged Single Family Residential ("SFR") sewer account holders in the City's  
6 Municipal System (those within the City of San Diego limits) from May 23, 1994 through  
7 September 30, 2004, as a result of a deliberate failure to include a cost recovery component for  
8 biological oxygen demand ("BOD") in the City's sewer rate structure. BOD is a measurement of  
9 oxygen needed to break down organic pollutants. The suit alleged that commercial sewer  
10 customers benefitted as a result of this failure because commercial customers generally discharge  
11 organic pollutants into the wastewater system at a higher rate than SFR customers.  
12

13  
14 Shames alleged that the failure to include a BOD cost component in the rate structure  
15 violated the California Constitution, article XIII D, Section 6(b)(3) which prohibits  
16 municipalities, like the City, from charging a fee that exceeds the proportional cost of the service  
17 attributable to the parcel or land on which the service is provided. In other words, each customer  
18 should only pay for the costs associated with the customer's use of the service. Shames also  
19 alleged that the City breached State Revolving Fund loans and Federal Clean Water Act grants  
20 obtained by the City to fund capital projects and that SFR ratepayers were third-party  
21 beneficiaries of those loans and grants.  
22

23 The City asserted numerous defenses to the lawsuit, including, among other things, 1) the  
24 Constitutional article did not provide for a monetary remedy, 2) the sewer fees were not subject  
25 to the Constitutional article because they were not "property-related" fees, 3) the statute of  
26 limitations barred all claims for overcharges older than year one, 4) this action could not be  
27  
28

1 Prior to and during the settlement negotiations, Class Counsel obtained and reviewed  
2 thousands of relevant documents including e-mails, loan and grant documents, wastewater  
3 department memos, third-party records, City Council records, videotapes of City Council sessions,  
4 sewer rate data, and an *August 8, 2006 Report of the Audit Committee of the City of San Diego*  
5 prepared by outside consultants to the City. Class Counsel also retained and conferred with a sewer  
6 rate expert to monitor and assess the City's calculations of the alleged damages arising from the  
7 claims asserted in this lawsuit. The City hired an outside consultant to assist in this process. The  
8 expert, consultant, and employees of the City's Metropolitan Wastewater Department met on  
9 numerous occasions to confer about the alleged damages calculations. The parties also submitted  
10 legal briefs to Judge McCue on their respective legal positions and defenses.  
11

12  
13 The parties engaged in eleven joint mediation sessions over a twelve-month period, and  
14 conferred with Judge McCue separately on dozens of occasions. Issues of damages, and relevant  
15 legal, and factual issues, were thoroughly analyzed and discussed. The parties, Class Counsel and  
16 the mediator agreed that \$40 million was an appropriate settlement considering these issues.  
17 Although the damages calculations were complex, and the City proposed alternate calculation  
18 methods demonstrating lower damages figures, Class Counsel believes that the most SFR customers  
19 were overcharged in any single year, under any calculation method, was approximately \$18.8  
20 million. Thus, \$40 million represents a recovery of an approximately 2.13 year period of the  
21 overcharges.  
22

23 As part of the settlement the City further agreed to ensure its compliance with federal codes  
24 and regulations relating to the rate proportionality in the future and to allow a non-profit  
25 organization, to solicit donations from sewer customers to fund the monitoring of the rate-setting  
26 process by an expert in the future, to ensure that SFR customers are treated properly.  
27  
28

1 envelope must be postmarked no later than xxxxxx, 2007. You will receive \$1.50 for each month  
2 that you held an SFR sewer account from May 23, 1994 through September 1, 2004. You will  
3 receive a lump sum payment in approximately six to nine months.

4 **TO MONTHLY SFR CUSTOMERS:**

5  
6 If you are a **Monthly SFR Customer**, **YOU DO NOT NEED TO DO ANYTHING**. Your  
7 sewer account will be credited on a monthly basis for four years, so long as you hold that account.  
8 If you terminate your account before the end of the four year period (e.g. you move out of the  
9 residence), the next person(s) holding an account at that residence will begin receiving monthly  
10 credits until the end of the four year period.

11  
12 There are approximately 223,326 Monthly SFR Customers. Thus in Years, 2, 3, and 4, the  
13 monthly credit per customer will be approximately xxxx. (Year 1 credits cannot be calculated until  
14 the number of Non-Current Customers submitting Claim Forms is known).

15  
16 **V.**  
**THE FAIRNESS HEARING**

17 The Court has scheduled a Fairness Hearing to be held on xxxxxx before the Hon. Ronald  
18 S. Prager in Department 71 of the San Diego Superior Court, 330 West Broadway, San Diego, CA  
19 92101 to (1) consider and determine the fairness, reasonableness, and adequacy of this Settlement  
20 described above; (2) consider whether to certify the Settlement Class and (3) consider Class  
21 Counsels' application for attorneys fees of \$5,000,000, and reimbursement of reasonable expenses  
22 and costs. The Court may adjourn or continue the Fairness Hearing from time to time without  
23 further notice.

24  
25 If you are a member of the Settlement Class, as defined above, you may appear personally  
26 or through counsel at the Fairness Hearing to object or to express your views regarding the fairness  
27 of the settlement and the application for Class Counsel's fees and reimbursement of costs and  
28

1 which you received sewer service during the time period May 23, 1994 through September 30, 2004  
2 to Class Counsel at the address at the end of this Notice.

3  
4 **VII.**  
5 **ADDITIONAL INFORMATION**

6 This notice is only a general description of the Settlement, the proposed plan of distribution  
7 of the Settlement Fund, and Class Counsel's application for an award of attorneys' fees and  
8 reimbursement of expenses. For the full details of the matters described in this Notice, and for  
9 further information concerning the Action, the public records may be inspected at the San Diego  
10 Superior Court, 330 West Broadway, San Diego, CA 92101 during normal business hours.

11 You may also contact Class Counsel with further questions:

12  
13 CLASS COUNSEL

14 Eric J. Benink, Esq.  
15 Krause Kalfayan Benink & Slavens, LLP.  
16 625 Broadway, Suite 635  
17 San Diego, CA 92101  
18 eric@kkbs-law.com

19 IT IS SO ORDERED.

20 Dated: \_\_\_\_\_

21 Ronald S. Prager  
22 Judge of the Superior Court  
23  
24  
25  
26  
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28

009405

Exhibit D

1 defined in the Settlement Agreement) which in any way relates to the applicability or scope of the  
2 Settlement Agreement or the Final Judgment and Order of Dismissal should be presented  
3 exclusively to this Court for resolution by this Court.  
4

5 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

6 1. The Court has jurisdiction over the subject matter of this litigation, and over all parties  
7 to this litigation, including all members of the Settlement Class.

8 2. The Court certifies a Settlement Class, for settlement with defendant, the City of San  
9 Diego, defined as follows:

10 All City of San Diego Single Family Residential ("SFR") sewer account holders  
11 in the City's Municipal System who held accounts during any time period from  
12 May 23, 1994 through September 30, 2004, inclusive.

13 3. The Settlement Agreement submitted by the parties is finally approved as fair,  
14 reasonable and adequate and in the best interests of the Class, and the parties are hereby directed  
15 to consummate the Settlement Agreement in accordance with its terms and are hereby bound by  
16 the terms therein.

17 4. This action is hereby dismissed on the merits, with prejudice and without costs,  
18 (except as provided by the Settlement Agreement) as to the City of San Diego, and all DOE  
19 defendants.

20 5. The application for attorneys fees in the amount of \$ \_\_\_\_\_ and  
21 reimbursement of \$ \_\_\_\_\_ in costs and expenses is granted. The fees and costs are  
22 to be paid in accordance with terms of the Settlement Agreement.

23 6. Without affecting the finality of this judgment, the Court hereby reserves and retains  
24 jurisdiction over this action, including the administration and consummation of the Settlement  
25 Agreement. Furthermore, Michael Shames, the City of San Diego, and each member of the class  
26 are hereby deemed to have submitted irrevocably to the exclusive jurisdiction of this Court for  
27 any suit, action, proceeding or dispute arising out of or relating to this Order, the Settlement  
28 Agreement or the applicability of the Settlement Agreement.

IT IS SO ORDERED.

000409

Exhibit E



000412

<b>Shames Settlement Agreement</b>	
<i>Claims Filed by Former SFR Account Holders</i>	
Total Number of Claims Received	642
Number of Valid Claims Received	261
Total Eligible Credit Months	18,790
Total Former SFR Account Refunds	\$28,185

000413

**REQUEST FOR COUNCIL ACTION**  
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER  
(FOR AUDITOR'S USE ONLY)

208  
07/28

TO: Council President Scott Peters      2. FROM (ORIGINATING DEPARTMENT): Wastewater Department      3. DATE: July 16, 2008

UCAN Bill Inserts Related to *Shames v. City of San Diego* Settlement Agreement

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)  
Alejandra Gavaldón, C&LS  
(619) 533-3983

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)  
Jim Barrett, Director of Public Utilities  
(619) 533-3755

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED      X

**8. COMPLETE FOR ACCOUNTING PURPOSES**

FUND	n/a				9. ADDITIONAL INFORMATION / ESTIMATED COST: No cost associated with this action.
DEPT.	n/a				
ORGANIZATION	n/a				
OBJECT ACCOUNT	n/a				
JOB ORDER	n/a				
C.I.P. NUMBER	n/a				
AMOUNT	\$0.00				

**10. ROUTING AND APPROVALS**

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	7/16/08	8	DEPUTY CHIEF	<i>[Signature]</i>	7/16/08
2				9	COO		
3	LIAISON OFFICE	<i>[Signature]</i>	7/16/08	10	CITY ATTORNEY		
4				11	ORIGINATING DEPARTMENT		
5				DOCKET COORD: _____ COUNCIL LIAISON: _____			
6				<input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____    COUNCIL DATE: 7/28/08			
7							

11. PREPARATION OF:      X RESOLUTION(S)       ORDINANCE(S)       AGREEMENT(S)       DEED(S)

Approve the City's recommended Bill Insert Language, and not approve UCAN's language in its 5 proposed bill inserts.

11A. STAFF RECOMMENDATIONS:  
Approve requested action

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S):      ALL

COMMUNITY AREA(S):      ALL

ENVIRONMENTAL IMPACT:      THIS ACTIVITY IS NOT A "PROJECT" AND THEREFORE NOT SUBJECT TO CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES SECTION 15060(C)(2)

ATTACHMENTS:    1. City's Recommended Bill Insert Language  
2. UCAN's Proposed Bill Inserts  
3. Shames Settlement Agreement