I requested this report because my office, and anyone working under my authority, always must adhere to the highest ethical standards. Toward that end, following Judge Berle’s suggestion, I sought an independent assessment by a leading legal ethics expert, Ellen Pansky, of the legal ethics of attorneys acting under the authority of my office -- City Attorney staff and outside counsel -- in connection with the LADWP billing litigation.

Ms. Pansky’s report is thorough, with her conclusions based on extensive analysis of sworn testimony, court transcripts, court filings, other documents, and statutory and common law. Her conclusions speak for themselves. The outside lawyers about whom issues have been raised withdrew in early March, no longer represent the City and received no compensation from their engagement for legal services.

While it is impossible to effectively oversee behavior that is, at the very least, undisclosed—or to take timely measures to correct actions connected to that conduct—the conduct of outside counsel occurred on my watch. Upon learning about it this year, my responsibility as the leader of this office included getting to the bottom of what happened, then taking action.

Our office is now pursuing the return of legal fees paid to Jack Landskroner (plaintiffs’ class counsel in the billing cases). In addition, while this litigation obviously presented an array of exceptional circumstances, it also offers broad lessons from which we can improve going forward. With those lessons in mind, I’m directing the changes delineated below, and may make others in the future.

The first relates to outside counsel contracts. Here, in the related case against PricewaterhouseCoopers (PwC), our office retained outside counsel without either a competitive process or specific, documented findings, reflecting full consideration of all
relevant factors, that a non-competitive award was justified. Indeed, there was no policy or practice that provided how and by whom such a review should have been completed. There are circumstances that justify the City Attorney’s office recommending a non-competitively selected outside counsel contract for defensive or affirmative representation. And here, the outside lawyers’ qualifications included Mr. Kiesel’s strong and extensive record, his previous retention by the City Attorney’s office under a prior administration, and the lawyers’ possession of information highly relevant to the case ultimately filed against PwC.

The fact remains, however, that Mr. Kiesel was the former law partner of our then-Civil Branch Chief, Mr. Peters. That relationship engendered trust by our office in outside counsel, including both Mr. Kiesel and, by association, his proposed co-outside counsel, Mr. Paradis. It also could have created the appearance of favoritism. By intention or inadvertence, our office must never allow even that appearance.

I am directing that any potential non-competitively awarded outside counsel contract be approved by our Outside Counsel Committee. Before approving such a contract, the Committee must determine that the use of a competitive process would not be practicable or advantageous. For the Committee’s purposes, this determination should be based on factors including, but not limited to, whether (1) the need for representation is so time-sensitive that a bidding process would not be feasible. In such situations, the Committee should explore whether an expedited process could be conducted; (2) the proposed firm possesses, and has shared with our office on a confidential basis, distinctive information not known to the public regarding the matter; and (3) the proposed firm has demonstrated expertise in, or knowledge of, the legal subject area or factual background that is so unique that a competitive process would not be productive and/or the retention of another firm would be significantly less cost-effective. Further, the Committee shall assure there are no potential issues that would make approving such a contract contrary to the City’s best interests. Those findings shall be documented in the Committee’s records and specifically discussed in the recommendation to Council or the appropriate Board.

Next is the matter of an outside attorney, engaged by the City for legal work, who obtains a City contract to consult on non-legal matters at the same time. Here, while engaged as an outside lawyer on the PwC case, Mr. Paradis obtained a no-bid LADWP contract for project management and implementation services relating to the billing system. As a general proposition, as Ms. Pansky points out, there is no ethical preclusion for a lawyer to hold such a contract, and, for that matter, to testify based on expertise related to that contract. Still, simultaneously performing legal work for the City and non-legal work for the City, on related matters, could create potential conflicts, or the appearance of conflicts. For this reason, I am directing that all outside counsel contracts preclude lawyers engaged to represent the City from entering into a City contract for non-legal services for the duration of that legal engagement, absent the approval of our office and specific authorization of the City Council, appropriate Board,
or other person or entity authorized to give final approval to the non-legal services contract.

Then there is the issue of supervision of outside counsel generally. When it comes to affirmative litigation where public law firms retain outside lawyers on a contingent fee basis, the California Supreme Court opinion in *County of Santa Clara v. Superior Court* sets forth basic standards. In any such case, the fee agreement must provide that (1) the public-entity attorneys retain complete control over the course and conduct of the case; (2) government attorneys retain veto power over any decisions made by outside counsel; and (3) a government attorney with supervisory authority be personally involved in overseeing the litigation. The actual working relationship between staff and outside lawyers should reflect these provisions.

Our attorneys typically are heavily involved in overseeing the work of retained outside lawyers, and our staff met the *Santa Clara* standards here. But, as demonstrated here, to be most effective our oversight and coordination must always be even more muscular than required by law, and communication within our office, and by and between outside counsel, must be seamless. Using the *Santa Clara* standards as a starting point, I am instituting mandatory training for all staff attorneys with oversight responsibility for outside counsel—whether operating under contingent fee agreements or otherwise—including proprietary departments, drawing lessons from the LADWP billing and PwC cases. In addition, when our office handles cases that are related, a senior attorney will assure complete, real-time communication between attorneys and legal teams.

I am grateful for Ms. Pansky’s extraordinary efforts, and will continue to do all in my power to assure that everyone under my authority upholds the highest standards of quality and integrity.
ANTWON JONES, on behalf of himself, and all other similarly situated,

Plaintiff,

vs.

CITY OF LOS ANGELES, by and through the Los Angeles Department of Water and Power; and DOES 1 through 50, inclusive,

Defendants.

Case No. BC577267 (Lead case)
[Related to Case Nos. BC536272, BC565618, BC568722, BC571664, BC594049; and BC574690]
Assigned for All Purposes to:
Hon. Elihu M. Berle, Dept. SSC-6

[CLASS ACTION]

NOTICE OF LODGING REPORT OF ELLEN A. PANSKY REGARDING LEGAL ETHICS ISSUES

Action Filed: April 1, 2015
Trial Date: None Set
TO THIS HONORABLE COURT, ALL PARTIES AND COUNSEL OF RECORD

HEREIN:

PLEASE TAKE NOTICE that, pursuant to the Court’s January 23, 2019 request for an internal ethics inquiry, and the undersigned’s March 18, 2019 statements to the Court that the requested inquiry was underway and that the resulting report would be provided to the Court, the City of Los Angeles, by and through the Department of Water and Power (the “City”), hereby lodges the completed Report Of Ellen A. Pansky Regarding Legal Ethics Issues In Connection With Antwon Jones v. City of Los Angeles, dated October 22, 2019 and attached hereto as Exhibit A.

Dated: October 23, 2019

BROWNE GEORGE ROSS LLP

By: Eric M. George
Attorneys for Defendant City of Los Angeles
REPORT OF ELLEN A. PANSKY
REGARDING LEGAL ETHICS ISSUES
IN CONNECTION WITH
ANTWON JONES V. CITY OF LOS ANGELES
SUBMITTED TO THE
LOS ANGELES CITY ATTORNEY'S OFFICE
OCTOBER 22, 2019
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III. ASSIGNMENT AND SCOPE OF REVIEW

I have been retained to analyze, evaluate and opine regarding the conduct of all of the attorneys acting under the auspices of the Los Angeles City Attorney’s office, in connection with related class action proceedings filed against the City of the Los Angeles ("COLA") and its Department of Water and Power ("DWP" or "LADWP"), primarily the case entitled Antwon Jones v. City of Los Angeles, Los Angeles Superior Court Lead Case No. BC577267 ("Jones v. LADWP" or "Jones v. COLA") including the settlement of the Jones class action. I have reviewed and considered assertions of unethical and illegal conduct raised in connection with the action filed by the City of Los Angeles against PricewaterhouseCoopers, LLC ("PwC") entitled City of Los Angeles v. PricewaterhouseCoopers, LLP, et al. Los Angeles Superior Court Case No. BC574690 ("COLA v. PwC"). In particular, I have been asked to review the circumstances surrounding the filing, litigation and settlement of the Antwon Jones v. City of Los Angeles action; the role and conduct of Special Counsel Paul Paradis and his firm, and the role and conduct of Special Counsel Paul Kiesel. I have reviewed the actions of Paul Paradis ("Paradis") and Paul Kiesel ("Kiesel") while each was serving as special counsel for COLA, and have analyzed their respective actions in light of the pre-existing and/or continuing attorney-client relationship between Paradis and Antwon Jones or Kiesel and Jones. I also have reviewed the conduct of various lawyers in the City Attorney’s Office, in light of the assertions being made in the COLA v. PwC action, to the effect that: 1) Paradis and/or Kiesel engaged in the representation of conflicting interests while serving as Special Counsel for the City of Los Angeles; 2) any such alleged conflicts of interest on the part of Paradis and/or Kiesel also extended to the City Attorney’s office; and 3) the manner in which the Jones v. COLA case was settled resulted from improper and unethical collusion between lawyers for COLA and lawyers
for plaintiff Jones. I was not asked to, and have not, analyzed anything relating to the adequacy, propriety or enforceability of the terms of Jones v. COLA class action settlement and/or the effectuation of that settlement; nor have I analyzed the extent to which any of the attorney conduct in connection with the Jones v. COLA litigation and settlement should be found to positively or negatively affect the issues which related to the COLA v. PwC case, which I believe is within the purview of the court.

I have been provided numerous documents to review in connection with conducting my analysis, a comprehensive but not exclusive list of which is described herein at Pages 4-9. Due to the voluminous quantity of documents provided to me for review, it has proven unworkable to separately list each and every document (such as emails and various iterations of drafts of documents, individual filings in Jones v. COLA, and many others), which have been provided to me from various sources. Among the documents I have reviewed were numerous deposition transcripts and scores of exhibits to the numerous deposition transcripts; documents received directly from COLA representatives; documents received from Special Master Ed Robbins, who initiated contact with me and offered to share documents; and, (uninvited and unexpected), documents received from Robert Kehr, Esq., counsel for Paul Kiesel. In the event additional data and information are provided to me in the future, and if requested to do so, I may supplement my opinions and conclusions based upon such additional information.

I have refrained from conducting independent discovery, including interviews of percipient witnesses, in order to avoid basing my analysis on facts that have not been documented through formal discovery in the COLA v. PwC case, and I have not endeavored to resolve factual inconsistencies evidenced by the sworn deposition testimony of various deponents. I have sought to refrain from making credibility determinations. However, in
conducting my analysis and reaching the conclusions set forth in this report, I necessarily had to assume the truth of some disputed facts. In other instances, I have provided alternate conclusions, based on which version of the facts the trier of fact may accept as true.

I am being compensated for my services in this matter at the reduced rate of $700 per hour, (reduced from my current legal ethics expert hourly rate of $895) for the services I am providing in connection with this engagement.
IV. QUALIFICATIONS

My qualifications in connection with evaluating and opining regarding the duties and responsibilities of attorneys practicing law in California, as well as the standards of care and ethical rules applicable to California attorneys, are set forth in my Curriculum Vitae attached as Appendix “A.” I was admitted to the California State Bar in 1977 and have remained a member in good standing continuously since that time. I have been qualified by numerous courts as a legal ethics and professional responsibility expert on many occasions over several decades.

V. DOCUMENTS REVIEWED

I have been provided with voluminous materials for review, including duplicative copies of email exchanges that were attached as exhibits to various deposition transcripts, some but not all of which are separately listed below. A non-exclusive list of documents I reviewed include the following:

A. Emails dated between December 10, 2014 and through March 2015 between Paul Paradis, Esq., Paul Kiesel, Esq., and representatives of the Los Angeles City Attorney’s office, regarding the retention of Paradis by the Los Angeles City Attorney’s office;

B. Redacted emails between Paul Paradis, Esq. and Antwon Jones dated January 9-11, 2015, with an attached undated draft class-action complaint re: Jones v. PricewaterhouseCoopers, LLP;

C. Emails between COLA staff in February, 2015, regarding the class action complaint filed by Blood, Hurst & O’Reardon law firm on behalf of certain named plaintiffs and others, including Sharon Bransford, Steven Shrager and Rachel Tash against the City of Los Angeles on or about January 30, 2015; emails between COLA staff and Alan Himmelfarb, Esq. regarding Morski v. City of Los Angeles; and emails referring to the Kimhi v. City of Los Angeles class action lawsuit;
D. Tolling Agreement executed by Timothy Blood dated January 26, 2015, on behalf of Plaintiff in *Sharon Bransford, et al. v. City of Los Angeles*, Los Angeles Super Court Case No. BC 565618;

E. Tolling Agreement executed by Alan Himmelfarb, Esq. dated January 28, 2015, on behalf of Plaintiff in *Daniel Morski v. LADWP*, Los Angeles Superior Court Case No. BC568722;

F. Letter dated January 30, 2015 from Paul Kiesel, Esq. and Paul Paradis, Esq. to PricewaterhouseCoopers, LLP;

G. February 17, 2015 Memorandum re: DWP Billing System Consumer Class Actions and Related Lawsuits prepared by Angela C. Agrusa, Esq. and Maribeth Annaguey, Esq. of Liner LLP, and related February 19, 2015 email;

H. Memorandum of Understanding re *Jones v. City of Los Angeles Department of Water and Power* executed by Landskroner Greico Merriman LLC, Law Offices of Michael J. Libman, and James Clark on behalf of the City of Los Angeles on June 12, 2015 and Addendum executed July 24, 2015;

I. Draft contracts and final Contract between Department of Water and Power, City of Los Angeles and Kiesel Law LLP and Paradis Law Group, PLLC dated July 13, 2015, as “Special Counsel for Matters Related to a Lawsuit Against PricewaterhouseCoopers LLP, Los Angeles Superior Court Case No. BC574690”;

J. Agreement No. 47361-6 for Project Management Services between the Los Angeles Department of Water & Power and Paradis Law Group, PLLC dated October 19, 2015;

K. Proposed contingency fee agreement between the City of Los Angeles and Kiesel Law LLP and Paradis Law Group, PLLC (undated);

L. Plaintiff Daniel Morski's Opposition and Objections to Motion for Preliminary Approval of Class Action Settlement and Declaration of Alan Himmelfarb in Support thereof, in re *Jones v. City of Los Angeles*, filed August 28, 2015;
M. Plaintiff Daniel Morski’s Opposition and Objections to Plaintiff’s Supplemental Memorandum in Further Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement and Declaration of Alan Himmelfarb in Support thereof, in re Jones v. City of Los Angeles, filed October 26, 2015;

N. Declaration of David E. Bower re Timeline Regarding Attempts to Participate in Settlement Negotiations in re Bransford v. City of Los Angeles, file October 28, 2015;

O. Bransford’s and Fontaine’s Supplemental Joint Opposition to Motion for Preliminary Approval of Class Action Settlement in re Bransford v. City of Los Angeles, filed October 28, 2015;

P. Bransford and Fontaine Plaintiffs’ Joint Opposition to Motion for Preliminary Approval of Revised Class Action Settlement and Declarations of Timothy G. Blood and Leslie E. Hurst in Support thereof, in re Bransford v. City of Los Angeles, filed December 4, 2015;

Q. Morski and Macias Plaintiffs’ Opposition and Objections to Plaintiff’s Supplemental Memorandum in Further Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement and Declaration of Alan Himmelfarb in Support Thereof, in re Jones v. City of Los Angeles, filed December 4, 2015;

R. Morski/Macias Plaintiffs’ Objection to Stipulation to Continue Plaintiff’s Motion for Preliminary Approval in re Jones v. City of Los Angeles, filed April 11, 2016;

S. Amendment No. 1 to agreement between Los Angeles Department of Water & Power and Paradis Law Group, PLLC dated May 23, 2016;

T. Email from Paul Paradis to Paul Bender on May 4, 2017 with the subject line “Bender Report”;

U. Contract between Los Angeles Department of Water & Power and Aventador Utility Solutions, LLC, Adopted as Amended June 6, 2017;

V. Notice of Filing Revised Class Action Settlement Agreement and Limited Release in Jones v. City of Los Angeles, filed November 10, 2016;
W. Response by *Morski/Macias* Plaintiffs’ to Notice of Filing Revised Class Action Settlement Agreement in *Jones v. City of Los Angeles*, filed November 14, 2016;

X. *Bransford and Fontaine* Plaintiffs’ Response to Motion for Preliminary Approval of Revised Class Action Settlement in *Bransford v. City of Los Angeles*, filed November 16, 2016;

Y. *Morski/Macias* Plaintiffs’ Response to *Jones* Notice of Filing Revised Claim Form in *Jones v. City of Los Angeles*, filed December 9, 2016;

Z. Declaration of Jack Landskroner in Support of Plaintiff’s Motion for Final Approval in *Jones v. City of Los Angeles*, dated May 5, 2017;

AA. Declaration of the Hon. Dickran Tevrizian (Ret.) in Support of Plaintiff’s Motion for Final Approval in *Jones v. City of Los Angeles*, dated May 4, 2017;

BB. Minute Order dated July 7, 2017 in *Jones v. City of Los Angeles*;

CC. Order Granting Final Approval of Class Action Settlement and Final Judgment in *Jones v. City of Los Angeles*, filed July 20, 2017;

DD. Plaintiff’s Opposition to Defendant’s Second Motion to Compel and Declaration of Paul Paradis in Support Thereof in *City of Los Angeles v. PricewaterhouseCoopers, LLP, et al.*, filed November 15, 2017;

EE. Reporter’s Transcript of Proceedings taken December 4, 2017 in *City of Los Angeles, acting by and through its Department of Water and Power v. PricewaterhouseCoopers, LLP*;

FF. Defendant PricewaterhouseCoopers LLP’s Notice of Deposition of Plaintiff City of Los Angeles’s Person(s) Most Qualified to Testify re the *Jones v. PwC* Complaint dated April 13, 2018;

GG. Transcript of Deposition of Thomas Peters taken September 13, 2018;

HH. Reporter’s Transcript of Proceedings taken December 6, 2018 in *City of Los Angeles v. PricewaterhouseCoopers, LLP*;
II. Reporter’s Transcript of Proceedings taken December 12, 2018 in City of Los Angeles v. PricewaterhouseCoopers, LLP;

JJ. Reporter’s Transcript of Proceedings taken January 23, 2019 in City of Los Angeles v. PricewaterhouseCoopers, LLP;

KK. Order Granting Defendant PricewaterhouseCoopers LLP’s Motion to Compel re the Person Most Qualified Deposition filed January 24, 2019;

LL. Reporter’s Transcript of Proceedings taken January 30, 2019 in Jones v. City of Los Angeles;

MM. Exhibit 6 to Deposition of Antwon Jones (letter and attachments from Jeffrey B. Isaacs, Esq. dated February 12, 2019);

NN. Transcripts of Deposition of James Clark taken February 26, April 9, and April 29, 2019.

OO. Transcripts of Deposition of Paul Kiesel taken March 13, May 28, May 29, and May 30, 2019 and exhibits;

PP. Transcript of Deposition of Paul Paradis taken April 3, 2019;

QQ. Notice re Documents filed in City of Los Angeles v. PricewaterhouseCoopers, LLP April 26, 2019 and accompanying Metadata Report;

RR. Transcripts of Depositions of Thomas Peters taken September 13, 2018, May 1 and 2, 2019;

SS. Transcript of Depositions of Richard Tom taken on May 15 and 16, 2019;

TT. Transcript of Deposition of Deborah Dorny taken May 17, 2019;

UU. Transcript of Deposition of Richard M. Brown taken May 23, 2019;

VV. Transcript of Deposition of Maribeth Annaguey taken June 5, 2019;

WW. Declaration of James P. Clark, dated June 10, 2019;

XX. Declaration of Thomas Peters, dated June 11, 2019;

YY. Transcript of Deposition of Michael J. Libman taken on July 22, 2019;

ZZ. Transcript of Deposition of David Wright taken on July 23, 2019;
AAA. New Class Counsel’s Status Report filed July 25, 2019;

BBB. Notice of Response to New Class Counsel’s Preliminary Report; Declaration of Hon. Dickran M. Tevrizian (Ret.) filed July 29, 2019;

CCC. Transcript of Deposition of Eskel H. Solomon taken on July 31 and August 1, 2019 and exhibits;

DDD. Transcript of Deposition of Michael Feuer taken on August 13, 2019;
VI. SUMMARY OF FACTS UNDERLYING ANALYSIS CONTAINED IN THIS REPORT

1. Commencing in around September 2013, problems occurred following the implementation of a new billing system by the Los Angeles Department of Water and Power ("LADWP" or "DWP"), resulting in the delivery of many thousands of inaccurate billing statements to LADWP utility customers, also referred to as ratepayers. By February 2014, news reports in the media outlined problems with the LADWP billing system and the DWP had publicly admitted that the system was flawed. DWP representatives publicly acknowledged that the LADWP had overcharged customers, stating "we want to get you your money back or credit your money to your account." Starting in 2014 into early 2015, the City of Los Angeles ("COLA") became the subject of several separate class-action lawsuits filed against it and its affiliated agency, LADWP, in connection with alleged overbilling of ratepayers by LADWP. The Casler action, later renamed Bransford, in which plaintiff's counsel was Blood, Hurst & O'Reardon, was filed on December 4, 2014 and served upon COLA on January 30, 2015; the Morski action, in which plaintiff was represented by Alan Himmelfarb was filed on January 7, 2015; and a third ratepayer action, Fontaine, was filed on February 5, 2015 and was served on COLA on that date. Additionally, there also was an action involving solar power-related claims, Kimhi, that was initially handled separately and later became related to the other class actions. Also, there was a subsequent case filed, the Macias action, which became related to the Morski case. The Jones case, filed on April 1, 2015 will be discussed supra.

2. The essential foundation of most of the lawsuits was that the LADWP substantially overcharged thousands of customers for electric, water, sewage, solar and/or sanitation
services commencing about September 2013 and continuing for a period thereafter. As a separate issue, the LADWP "back-billed" customers who had not received contemporaneous billing statements.

3. COLA and LADWP were aware that the billing irregularities were caused and exacerbated by a faulty billing program which resulted in both overbilling and underbilling of City ratepayers, as well as other billing irregularities. The billing system had been installed by, and the implementation of the new billing system was overseen by, PricewaterhouseCoopers, LLP ("PwC").

4. On or about June 15, 2014, LADWP retained Liner LLP ("Liner," and Liner attorneys Angela Agrusa ("Agrusa") and Maribeth Annaguey ("Annaguey") to serve as outside defense counsel in the anticipated class actions which were expected to be filed relating to the LADWP billings issues.

5. LADWP, in addition to defending the pending cases, was working to stabilize and/or remediate the billing system. LADWP repeatedly stated its commitment to reimbursing all overpayments and correcting the billing errors as soon as possible.

6. At the time the class actions were proceeding, Assistant City Attorney Eskel Solomon, Esq. ("Solomon") served as head of litigation for LADWP, and he and his supervisor Assistant City Attorney Richard Tom Esq. ("Tom") were coordinating the defense of the ratepayer lawsuits (James Clark 4/29/19 Deposition Reporter's Transcript ("R.T.") p. 615). Solomon reported to Assistant General Counsel Richard Tom ("Tom"), and former General Counsel Senior Assistant City Attorney Richard Brown ("Brown"). Prior to that, Assistant City Attorney Joe Brajevich, Esq. had been the Assistant General Counsel. When Brajevich left City service in July 2014, Tom took over as Assistant General Counsel. Mr. Brajevich
returned to the City as the General Counsel upon Brown’s retirement in March 2016, and
Tom remained the Assistant General Counsel. For a period, Solomon had reported to Chief
Assistant City Attorney Gary Geuss, who worked in another building. (Solomon 7/31/19
R.T. pp. 20-21, 74)

7. Deputy City Attorney Deborah Dorny also worked with DWP and reported to Solomon and
Tom. She was assigned by Tom to work with Solomon and the outside counsel on the
Casler complaint (later renamed Bransford) in about November 2014. When she was first
assigned to the matter, Dorny was relatively new to the DWP, and she was directly
supervised by Solomon.

8. Sometime in August 2014, Antwon Jones (“Jones”) wrote a complaint to a consumer affairs
website. (Jones 2/13/19 R.T. p. 40)

9. On or about December 8, 2014, Jones responded to an internet post regarding overcharges to
Los Angeles ratepayers, and he responded to the effect that he wished to be contacted in that
regard; he was subsequently contacted by New York attorney Paul Paradis of Paradis Law
Group (“Paradis”). (Jones 2/13/19 R.T. p. 43-44) Jones knew Paradis was admitted to
practice in New York. (Id., p. 49)

10. Jones asked Paradis to conduct an investigation of the DWP overbilling (Id. p. 50-51).

11. When Jones made his complaint on the consumer affairs website, he referenced LADWP.
He later asked Paradis to investigate PwC. (Id. p. 55)

12. On or about December 9, 2014, Jones entered into a written attorney-client fee agreement
with Paradis Law Group, which has not been produced by either Paradis or Jones. The
document was identified as a fee agreement on Paradis’ privilege log as relating to the Jones
v. PricewaterhouseCoopers LLP (“Jones v. PwC”) case. Jones did not hire any other lawyer
at that time. (Id. p.43) Jones asked Paradis to investigate anything that could arise from the overbilling by LADWP. (Id. p.51) Jones asked Paradis to investigate LADWP, the City of Los Angeles and PricewaterhouseCoopers. (Id. p. 55) Jones testified that he initially thought that Paradis was going to represent him in a case against LADWP (Id. p.98) and he considered other options (p. 99). Regarding whether Jones “was always intent on suing...DWP” Jones testified that he “wouldn’t say ‘always.’ I was going to listen to the advice of my counsel.” (Id. p. 100) Jones testified that he also formed an intention to sue PricewaterhouseCoopers, and that he didn’t sue PwC on the advice of Paradis. (Id. p. 122)

13. At some point in December 2014, Paradis communicated with attorney Paul Kiesel, and advised Kiesel that Paradis had been retained by a ratepayer for a claim which Kiesel testified was “a claim against PwC.” Kiesel has testified that Paradis was looking for additional information that would assist him in preparing a claim against PwC and wanted to meet with COLA to discuss getting evidence or information to assist in a ratepayer case against PwC for the billing problem. (Kiesel March 13, 2019 R.T. pp. 69-71)

14. Kiesel denies that Jones was ever his client or that he ever represented Jones; rather Kiesel describes his involvement as “assisting in the investigation” and “Kiesel Law was certainly working on the matter in which Mr. Jones, as [Kiesel] understood it, had retained Mr. Paradis to pursue a claim against PricewaterhouseCoopers.” (Kiesel 3/13/19 R.T. at p. 51) Kiesel did not consider that Jones had a potential claim against COLA, and Kiesel understood that Jones “was pursuing a claim specifically against PricewaterhouseCoopers...[s]o the City of Los Angeles was not part of that dialogue.” (Id. at 59)
15. Jones did not understand that Kiesel was representing him (Jones 2/13/19 R.T. p. 111, 138, 169) and had never communicated with or met Kiesel before Jones’ 2/13/19 deposition. (Id. at 138)

16. Kiesel had previously represented COLA in other unrelated litigation, and Kiesel contacted COLA to assist Paradis to “get evidence or information to assist in a ratepayer case against PricewaterhouseCoopers for the billing problem.” (March 13, 2019 Kiesel Deposition, R.T. at p. 70)

17. In or about the second week of December, 2014, Kiesel had contact with Thom Peters, then-Chief Assistant City Attorney, to discuss the possibility of filing a lawsuit against PricewaterhouseCoopers, LLP, on the basis that the faulty billing system used by LADWP had been purchased from and implemented by PwC. Peters had previously been a partner in Kiesel’s law firm.

18. On December 11, 2014, Paradis wrote a series of emails to Peters, copying his partner Gina Tufaro and also Kiesel, stating that he and Kiesel “are investigating issues arising from the selection and installation of a new Customer Care & Billing (CC&B) software package for the LADWP and look forward to discussing our findings with you…. ” Paradis also requested copies of documents including LADWP Agreement No. 47976 and a copy of the August 25, 2014 “Root Cause Analysis” prepared by TMG Consulting of Austin, TX. Paradis referred to “our investigation” and “our findings so far,” and said, “I am interested in your reaction to our findings thus far and your thoughts about how we believe we might be able to help the LADWP and its customers.” Peters indicated that he had “asked the chief lawyer for DWP to get the docs to me in time” for a meeting the following week.
19. On December 11, 2014, Peters emailed Chief Deputy City Attorney James Clark, ("Clark"), because Clark was the head of the chain of command of the DWP lawyers (Peters' May 1, 2019 R.T. p. 117); Peters asked if he could reach out to Richard Brown or another DWP lawyer, to obtain the records that Paradis had requested. In the email exchange between Peters and Clark, the subject line referred to “Possible DWP lawsuit against PricewaterhouseCoopers.” Later on December 11, 2014, Peters emailed Brown regarding the request for records, copying Clark, and included as the subject line of the email “Possible Affirmative Suit On Behalf of DWP.” (Peters 5/1/9 Deposition R.T. pp.122-123) Clark testified that Peters told him that Peters wanted to meet with Kiesel and a lawyer from New York, and Clark felt that Brown should be alerted. (Clark 4/9/19 R.T. pp. 413-414)


21. Peters sent a December 17, 2014 email to then LADWP General Counsel Richard Brown, stating: “Hi, Rich, I met with some lawyers who believe DWP may have a case against PricewaterhouseCoopers related to the Consumer Care and Billing software that has been problematic.”

22. After the December 16, 2014 meeting between Peters, Paradis and Kiesel, Paradis sent an email to Peters, copying Kiesel and Tufaro, thanking Peters “for taking the time to meet with us yesterday.” On December 17, 2014, Paradis emailed Peters and stated in part: “As promised, we are already hard at work on preparing the draft Complaint you requested.” Paradis asked for additional documents after “reviewing certain of the documents that you provided to us.” Paradis also confirmed that a number of documents had been provided to him by Peters, including a 12-page document entitled “Los Angeles Department of Water & Power CCB/MWM Stabilization Report.”
23. By December 17, 2014, as reflected by email communications involving Brown, Tom, Peters and Dirk Broersma, there were internal discussions among the lawyers representing the City regarding the possibility that LADWP would bring an affirmative action against PwC. (Tom 5/15/19 R.T. pp. 51-53) Peters referred to a draft Complaint he had requested from the plaintiff’s attorneys he had spoken with (Kiesel and Paradis), and Dirk Broersma was tasked with obtaining certain documents to be forwarded to Peters and the plaintiff’s attorneys. (Tom 5/15/19 R.T. pp. 58-62) Tom was focusing on “on gathering the information with the idea that there was an assessment being made of what to do about a possible lawsuit.” (Id. p. 59)

24. Another meeting occurred with DWP attorneys on about December 18, 2014, attended by Kiesel and Peters. At or about that time, an initial agreement was made to retain Paradis and Kiesel as special counsel to represent COLA against PwC in connection with the faulty billing program and the overbilling actions. Clark testified that the purpose of the meeting was to discuss bringing an action against PwC on behalf of COLA, and not on behalf of a ratepayer. (Clark 4/9/19 R.T. p. 287)

25. Kiesel testified that the December 18, 2014 meeting was set up because “Paradis was looking for additional information and asked me to reach out to the City to see if they could assist us and by us I’ll say assist Mr. Paradis at that time in preparing the complaint against PricewaterhouseCoopers.” (3/13/19 R.T. p. 70)

26. Paradis agreed to prepare a draft complaint in which PwC would be the named defendant in an affirmative civil claim filed by LADWP. Kiesel testified that he had no role in preparing the first draft of a complaint naming COLA, by and through DWP, as plaintiff and PwC as defendant.
27. The initial email communications between Paradis, Kiesel, Peters, and Clark do not refer to any representation by Paradis or Kiesel of any individual ratepayer; they do not refer to Antwon Jones; there is no indication in any document that has been produced in the pending *LADWP v. PwC* lawsuit demonstrating that, at the time that Kiesel initiated contact with Peters regarding a potential civil action against PwC, that Paradis or Kiesel were then contemplating representing any party against COLA. There is no contemporaneous written document that confirms that any of the lawyers in the City Attorney’s office or the Liner lawyers, ever discussed, directed, or authorized either Paradis or Kiesel to assist in the drafting, preparation, filing, service or any other aspect of the *Jones v. COLA* action.

28. On December 19, 2014, Boersma forwarded the first of two batches of appendixed documents for the possible DWP case (Tom 5/15/19 R.T. p. 64) and Peters forwarded the documents to Paradis and Kiesel (Id. p.65). These documents included 13 different Appendices to the TMG Root Cause Report. (Tom 5/15/19 R.T. 145)

29. On December 24, 2014, Paradis emailed Peters, and described the documents that Peters had forwarded to Paradis as “a treasure trove of useful information and are providing great factual specificity that we are incorporating into the draft Complaint.” At that time, Tom was unaware that Paradis was working on a draft *LADWP v. PwC* draft Complaint. (Tom 5/15/19 R.T. p.69)

30. On January 5, 2015, Paradis circulated the initial draft of a complaint styled *City of Los Angeles v. PwC* to Peters, Kiesel and Paradis Law Group attorney Gina Tufaro (“Tufaro”), only.

31. On January 6, 2015, Peters emailed Richard Tom, copying others, and requested: “To further our thinking about the wisdom of suing PricewaterhouseCoopers for breach in
connection with the CIS work they did, it would be useful to see the Class Complaint filed
against DWP in connection with the performance of that system. Can you send it over and
let us know who is defending?” In response, Brown emailed Peters, using the subject line
“Possible DWP Suit,” copying Tom, Clark and Solomon, asking Solomon to forward the
class action complaint.

32. At his deposition, Peters described this request as a “thought experiment,” to assist COLA in
choosing among various litigation options. (Peters 9/13/18 Deposition R.T. pp. 38, 72)

33. On January 7, 2015, Solomon sent “the class action lawsuit you requested” to Peters, Clark,
Brown, Tom and Guess, which was a copy of the Casler/Bransford v. COLA complaint.

34. On January 8, 2015, Solomon advised the same recipients that Blood Hurst & O’Reardon
had replaced plaintiff Casler with plaintiff Sharon Bransford.

35. On January 8, 2015, Solomon sent a copy of the “new Morski matter” class action to various
recipients at LADWP and in the City Attorney’s Office.

36. Feuer was not aware until 2019 that Peters had asked Paradis to draft a complaint in the
name of a ratepayer against PwC; Feuer was not aware of the draft Jones v. PwC complaint
or when it was received by Peters. (Feuer 8/13/19 Deposition R.T. pp. 168-170)

37. In January 2015, Paradis and Kiesel had communicated with plaintiffs’ counsel in
connection with the pending class actions that had been filed against COLA, proposing that,
instead of pursuing direct claims against COLA, that the plaintiffs work together to pursue a
separate action directly against PwC.

38. As of January 8, 2015, Tom had not heard anything about Paradis bringing a possible
consumer class action against PwC, and he did not learn that until a meeting that occurred
39. Kiesel testified that the City of Los Angeles “came up with the plan to seek tolling agreements and dismissal of the existing consumer class actions,” but he could not identify a particular person at COLA who had purportedly “come up with the plan.” (Kiesel 5/28/19 R.T. at p. 46) Kiesel contacted Himmelfarb and Paradis contacted Blood in about the second or third week of January 2015. (Id at p. 47) When Kiesel contacted Himmelfarb, Kiesel was representing his client, the City of Los Angeles, but he did not tell Himmelfarb that he was representing the City; he told Himmelfarb that his client was a ratepayer. (3/13/19 R.T. p. 104) Kiesel had not spoken with Jones and was not directed by Jones. (Id at 105-106)

40. Kiesel did not perceive a conflict at the time he called Himmelfarb: “But I would say I did not view any conflict at the time I was working on behalf of the City of Los Angeles in a claim against PricewaterhouseCoopers and a potential ratepayer claim against PricewaterhouseCoopers.” (3/13/19 RT p. 106).

41. Kiesel testified that no-one in the City Attorney’s Office ever indicated that it would be a conflict for Kiesel to (concurrently) serve as counsel for COLA in its case against PwC and also serve as counsel in the proposed Jones v. PwC case. (Kiesel 5/30/19 R.T. at p. 734)

42. On January 9, 2015, Paradis provided to Antwon Jones, a draft Complaint styled Jones v. PricewaterhouseCoopers. (Jones 2/13/19 R.T. p.144) The draft complaint did not name COLA or LADWP as party defendants. Jones testified that he had seen a draft of the Jones v. PricewaterhouseCoopers Complaint before the Jones v. DWP case was filed (Jones 5/13/19 R.T. p.144-145, 152), and Jones recalled that Paradis, Kiesel and Tufaro were reflected as his counsel on the draft Complaint that is in his possession. (Id., p. 151) The fact that Paradis had sent a draft Jones v. PwC complaint to Jones on January 9, 2015 was
unknown at that time to any person affiliated with COLA or the City Attorney’s Office, and was also unknown to Liner.

43. On January 13, 2015, Paradis forwarded a Confidential Tolling Agreement to Blood. The purpose of the tolling agreement was to sideline the pending putative class actions by ratepayers against COLA, in favor of pursuing coordinated direct claims on behalf of the ratepayers and COLA against PwC. On or about January 26, 2015, a similar Tolling Agreement was provided to Himmelfarb in the Morski case. Both Blood and Himmelfarb initially agreed to have their respective clients join in a direct case against PwC, and to that end, enter into a tolling agreement with COLA and either stay or dismiss the pending Bransford and Morski cases.

44. In mid-January when Paradis and Kiesel were negotiating the tolling agreements, it was thought that Jones would bring a suit against PwC and that Blood, Hurst, and Himmelfarb would be engaged in that action. (Kiesel 5/28/19 RT at p. 183)

45. The initial emails by which Kiesel circulated the proposed Tolling Agreements were not copied on any member of the City Attorney’s Office. It appears that the initial agreements to enter into tolling arrangements and either dismiss or stay the Bransford and Morski consumer lawsuits was made directly between Paradis and Blood and directly between Himmelfarb and Kiesel.

46. The communications regarding the proposed tolling agreements and dismissal/stay of ratepayer actions did not include the Liner firm; Kiesel reasoned that COLA asked Kiesel and Paradis to have the communications (with the Bransford and Morski plaintiffs’ counsel) because of “the relationships we all have with the different plaintiff attorneys who had brought actions against the City of Los Angeles.” (Kiesel 5/28/19 RT at p. 183)
47. On January 17, 2015, Peters advised Brown via email that Peters had “met with some lawyers who believe DWP may have a case against PricewaterhouseCoopers....”

48. Solomon did not know why Paradis had approached Peters with a plan to obtain dismissal of the actions that had been filed against COLA. (Solomon 8/1/19 Deposition R.T. p. 399)

Kiesel and Paradis emailed Clark on January 24, 2015 regarding reaching out to Blood regarding the tolling proposal; Solomon was injured that weekend and was out of the office for approximately ten days thereafter. (Id. p. 401) Solomon was aware of the tolling arrangement; the tolling arrangement was never disclosed to either Mel Levine or Mike Feuer. (Id. p. 403) Solomon did not inform Annaguey that contacts had been made seeking to have counsel in the Bransford and Morski cases withdraw their claims against LADWP and sue PwC instead. (Id. p. 594)

49. According to Feuer, Paradis’ role was to work on the PwC case, not the Jones case, and Feuer never authorized Paradis or Kiesel to seek dismissal of the Bransford or Morski cases. No one conferred with Feuer about Paradis or Kiesel being involved in the Bransford or Morski cases. (Feuer 8/13/19 R.T. pp. 158-159)


51. January 21, 2015 was the first time Clark had seen the draft COLA v. PwC complaint. (Clark 4/29/19 R.T. p. 549)

52. In an email on January 22, 2015 from Paradis to Himmelfarb, Paradis indicated that he was “pushing hard with the City” to agree to the proposed Confidential Tolling Agreement.
Solomon testified that he was unaware that Paradis and/or Kiesel had been “pushing hard with the City.” (Solomon 8/1/19 R.T. p. 411)

53. On January 23, 2015, Peters emailed Solomon, Clark, Brown and Tom regarding scheduling a meeting, pointing out that media outlets were publishing articles about the pending class actions; stating that other plaintiff’s attorneys will also be inspired to file [class actions]; that a qui tam whistleblower action could emerge at any time; and that time was of the essence to decide whether to end the class actions and/or seek recovery for DWP. Peters wanted Marcie [Edwards] and Mel [Levine] “in the room” at the proposed meeting and stated that Kiesel would come answer questions if the others wanted him to participate.

54. A meeting occurred with Peters, Clark, Tom, Solomon, and Dorny on the afternoon of January 23, 2015. Tom described the meeting as a “discussion of various theories under which different suits could be filed on behalf of ratepayers, whether they made sense or not.” (Tom 5/15/19 R.T. p. 121)

55. On January 23, 2015, Tom did not know that Kiesel and Paradis were representing Antwon Jones. (Tom 5/15/19 R.T. p. 138-139)

56. Prior to the January 23, 2015 meeting, Dorny had never had any interaction with Peters in any matter. (Dorny 5/17/19 RT p. 32)

57. Dorny attended the meeting on January 23, 2015, also attended by Tom, Solomon, Peters, Clark and Kiesel, with Paradis participating by phone, to discuss an affirmative action to be filed by COLA against PwC. (Dorny 5/17/18 Deposition R.T. at pp. 39-40) It was not discussed that Paradis and Kiesel had a ratepayer client nor was it discussed that they had drafted a consumer class action complaint to be brought by a consumer. (Id. at p. 41)
58. Dorny testified that there was a discussion of concurrent actions on behalf of COLA against PwC and on behalf of a ratepayer against PwC at the January 23, 2015 meeting; Dorny described a “brainstorming of ideas” at the meeting. (Id., pp 43-44) In late January, 2015, Dorny learned of the plan to have the Bransford and Morski class actions dismissed and to enter into tolling agreements with Blood and Himmelfarb in those actions (Dorny R.T. at pp 104-105), and that the Morski and the Bransford plaintiffs would join in some sort of action against PwC. (Id. at p.107)

59. On January 23, 2015 at 4:31 p.m., approximately 30 minutes after the end of the January 23, 2015 meeting, Paradis emailed Solomon, Tom, Dorny, Kiesel and Tufaro under the subject line: “Jones v. PricewaterhouseCoopers, LLP Consumer Class Action,” thanking them “for the opportunity to discuss this matter earlier this afternoon.” He attached to his email a copy of the draft Antwon Jones v. PwC complaint and referred to “meeting with LADWP people...in order to further hone our allegations as we continue our investigation.”

60. Minutes after Solomon received the draft Jones v. PwC complaint from Paradis on January 23, 2015, Solomon forwarded it to DWP employees Spinn, Walker-Bonelli, Lampe and Grove at 4:34 p.m. Solomon stated that there had been “a significant development in the class action billing case(s) which requires your attendance next week at a meeting.” (Solomon 7/31/19 R.T. pp. 264-265) The email also asked the recipients to refrain from discussing the draft lawsuit with anyone, and requested their advice and input regarding the accuracy of the allegations.

62. A comparison of the draft COLA v. PwC Complaint circulated on January 21, 2015 and the two draft Jones v. PwC Complaints circulated on January 23, 2015 (at 4:34 p.m. and again at 5:01 p.m.) reveals that: the draft Jones v. PwC Complaint sent by Paradis on January 21, 2015 and the draft Jones v. PwC Complaint circulated twice by Solomon on January 23, 2015 are identical copies of the same document; and that the draft COLA v. PwC Complaint emailed by Peters on January 21, 2015 is a substantially different document.

63. It is reasonably clear that Solomon's reference to a "second draft lawsuit" related to the Jones v. PwC Complaint Solomon had received from Paradis on January 23, 2015 at 4:31 p.m. and that the prior draft lawsuit Solomon referenced would have been the COLA v. PwC draft Complaint circulated by Peters on January 21, 2015.

64. On January 26, 2015, Tom emailed to clarify that a meeting was being set "to make LADWP internal staff available to Paul Paradis and Paul Kiesel for purposes of vetting the draft complaints." Clark and Peters had only been included on emails regarding the meeting by mistake. (Tom 5/15/19 R.T. pp.155-157, 160)

65. Kiesel was copied on the email whereby Paradis forwarded a draft Jones v. PwC complaint to individuals in the City Attorney’s Office. (Kiesel 5/28/19 R.T. p. 47) Jones testified that he did not authorize his counsel to send, and that he was not aware that his counsel had sent, a draft of a Jones v. PwC Complaint to either the DWP or the City Attorney’s Office before the filing of the Jones v. COLA lawsuit on April 1, 2015. (Jones 2/13/19 R.T. p. 175-176)

66. By January 26, 2015, Clark advised Kiesel and Paradis that the City had agreed to tolling agreement arrangements. As discussed further, infra, both Blood and Himmelfarb executed formal Tolling Agreements on behalf of their respective clients.
67. On January 27, 2015, a meeting occurred which appears to have included Paradis, Kiesel, and the LADWP employees Walker-Bonelli, Spinn, and Townsend, and also Tom and Solomon. The January 27, 2015 meeting was scheduled so that Kiesel and Paradis could “vet” the complaints against PwC; and at that meeting the CC&B implementation and the problems were discussed. Paradis and someone from Kiesel’s office attended. (Tom 5/15/19 R.T. pp. 184, 185) Neither Peters nor Clark attended that meeting. (Id., p. 186) At that meeting, no decision was made whether a ratepayer action against PwC would be filed. (Id., p. 189)

68. Solomon was overseeing the Bransford and Morski class action cases at that time. (Tom R.T. p. 193)

69. Tom stayed for part of the January 27, 2015 meeting. (Tom 5/15/19 R.T. p. 161) Tom recalls that there was a discussion with Paradis regarding the details of the CC&B implementation, activities, events and process. (Id., p. 163)

70. In an email dated January 29, 2015, Peters wrote to Clark and stated that “the narrative that DWP screwed up… can and should change, and we can begin to make that change now.” Peters also asked whether anything in the DWP/PwC contract precluded COLA from noting that it was looking into holding PwC (“the real culprit”) “to answer for the many problems it has caused.”

71. By email dated January 30, 2015, Paradis forwarded the fully executed signature page of the Morski Tolling Agreement to Alan Himmelfarb, stating: “I am continuing to gather documents and other evidence and interviewing witnesses in order to finalize the draft complaint that I have been working on.” In response, Himmelfarb expressed concern that Paradis had not yet provided the draft Complaint to Himmelfarb to review.
72. According to Kiesel, Paradis delayed providing Himmelfarb with a copy of his draft complaint against PwC because he was still working on it. (Keisel 5/28/19 RT pp. 155-156)

73. By email dated February 1, 2015, Himmelfarb communicated to Paul Kiesel, only, his decision not to join the action against PwC and his decision to litigate Morski as a separate case.

74. The tolling agreement with Blood also fell through, and thereafter the Bransford and Morski cases proceeded unabated. Kiesel cannot recall to whom at the City Attorney’s Office he reported this development (Kiesel 5/28/19 R.T. p. 159): “at the top level it would be Mr. Clark and then it would be Mr. Peters.” (Id. p. 160)

75. As late as November 2, 2015 while COLA’s Further Reply in support of Jones’ motion for preliminary approval of the settlement was pending, Annaguey was not aware that contacts had been made by Paradis and Kiesel with Blood and Himmelfarb, regarding tolling the statutes of limitation and dismissing the pre-existing class actions. (Annaguey 6/5/19 R.T. pp. 116-117)

76. The Bransford action was served on COLA on January 30, 2015. Solomon indicated in an email on February 4, 2015 to Tom, Brown, Dorny, Peters, Kiesel and Paradis that the filing of Bransford was “contrary to [Solomon’s] understanding that the Blood, Hurst & O’Reardon firm was standing down regarding this case....”

77. Jones testified that he never authorized Paradis or Kiesel to provide a copy of the Jones v. PwC Complaint to the City of Los Angeles. (Jones 2/13/19 R.T. p. 152). Before his February 13, 2019 deposition, Jones was not aware that Paradis and Kiesel represented the City. (Id. p. 160)
78. Until the date of her deposition, Agrusa knew nothing about a draft *Jones v. PwC* class action complaint and never saw the January 23, 2015 draft. (Agrusa 6/28/19 R.T. at p. 107).

79. Kiesel testified that both COLA and lawyers at Liner Law knew that Kiesel was working on a ratepayer case involving Antwon Jones' claims against PricewaterhouseCoopers. (Kiesel 3/13/19 RT p. 117)

80. Kiesel testified that by mid-February 2015, the City of Los Angeles wanted to “have an avenue to resolve all of the filed claims ensuring that ratepayers receive back 100 cents on the dollar that they had overpaid. And the City then wanted to have Antwon Jones bring an action against it to resolve the claim.” (Kiesel 5/28/19 R. T. at p.67) Kiesel could not identify any individual who first raised that subject matter and stated that the following individuals were at the meeting where this topic was purportedly discussed: Clark, Peters, Solomon, Dorny, Tom, Brown and maybe others. Kiesel testified that the meeting occurred after the 2/17/15 Liner memo was circulated. (5/28/19 RT pp. 69-71) Kiesel testified that the City wanted to have one comprehensive complaint that would resolve all the causes of action that had been asserted against DWP and provide the ratepayers 100% of their overpayments. (Id. at 73)

81. The lawyers who represented COLA, including Liner lawyers Agrusa and Annaguey, have all denied any knowledge that Paradis had sent a draft complaint *Jones v. PwC* to Jones at any time, and in addition, all of the attorneys who represented the City who have testified under oath in deposition—with the sole exception of Paul Kiesel—have testified that they were completely unaware that either Paradis or Kiesel would be assisting Jones in any manner, after the City declined to permit Kiesel or Paradis to represent any ratepayer in a direct claim against PwC and declined to waive the conflict that would have existed and did
exist between COLA and a ratepayer, including Antwon Jones, had Kiesel and Paradis engaged in concurrent representation of a ratepayer while representing COLA. Except for Kiesel, no person has testified that anyone affiliated with COLA ever asked Paradis and Kiesel to prepare or file the Jones v. COLA action or to utilize a ratepayer case naming Jones as a plaintiff as a vehicle to settle all the cases.

82. By the end of January 2015, COLA had not made any final decision whether to support Paradis' efforts to bring a concurrent lawsuit on behalf of Jones against PwC. (Kiesel 5/28/19 R.T. at p.115) Kiesel testified that COLA was interested in using internal DWP documents to have a complaint against PwC drafted and finalized, and seeing what causes of action a ratepayer could bring against PwC where the ratepayer had no contractual relationship with PwC. (Id p.116)

83. In his Declaration dated November 15, 2017, submitted to the Court in support of Plaintiff's Opposition to Defendant's Second Motion to compel, Paradis represented that: “At the same time the City was evaluating and planning its legal strategy, the City was also discussing and evaluating the possibility of pursuing claims against PwC, either directly or indirectly,” and that “…discussions were had by and among LADWP officials and attorneys from the City Attorney’s Office and outside counsel concerning possible ways in which the City/LADWP might pursue its damage claim against PwC.” Paradis also represented that: “To aid LADWP officials in understanding one possible avenue of recovery against PwC, LADWP officials requested that outside counsel prepare a draft Complaint alleging claims that could be brought by an LADWP ratepayer against PwC.” Paradis continued: “As requested by LADWP officials, outside counsel then researched and drafted Document No. 71 in plaintiff’s revised privilege log, (i.e., the Jones v. PwC Complaint.)”
84. In Plaintiff’s Opposition to Defendant’s Second Motion to Compel filed in the COLA v. PwC action on November 15, 2017, which Kiesel signed, it was stated: “...the Jones v. PwC Complaint was prepared by Plaintiff’s counsel, at the request of Plaintiff, in order to aid Plaintiff’s counsel in rendering legal advice about this litigation. This document was not, as PwC incorrectly contends ‘a draft litigation document for use by Mr. Jones and putative class of LADWP ratepayers’” (pp. 2, 5) [emphasis partly in original and partly added].

85. Kiesel went on to describe in Plaintiff’s Opposition to Defendant’s Second Motion to Compel, paraphrasing from Paradis’ supporting Declaration, that “LADWP officials and attorneys from the City Attorney’s Office and outside counsel” discussed possible ways in which LADWP “might pursue its damage claims against PwC.” Kiesel also stated that, “as requested by LADWP officials, outside counsel then researched and drafted [the draft Jones v. PwC complaint].” (p. 6)

86. Kiesel also stated: “Following these discussions, the City/LADWP ultimately determined to pursue claims against PwC directly by filing this action, rather than indirectly...and no further action was ever taken based on the legal theory proposed in [the draft Jones v. PwC complaint] after the use of this legal theory was rejected by the LADWP.” (p. 6)

87. Kiesel further stated that PwC’s argument that the draft Jones v. PwC complaint was “manifestly a draft litigation document for use by Mr. Jones and a putative class of DWP ratepayers” “...is incorrect as a matter of fact on both issues.” (p. 7)

88. Also, in Footnote 4 on page 7, Kiesel wrote: “PwC’s suggestion that [the draft Jones v. PwC Complaint] supports the notion that the LADWP colluded with Plaintiff Jones in connection with the settlement of the Jones Action is completely baseless.”

29
89. In his statements to the Court in the November 15, 2017 Opposition, Kiesel did not reveal that the “outside counsel” who drafted the *Jones v. PwC* draft complaint was actually Paul Paradis.

90. It is unknown whether Paradis claims that he ever provided a written conflict waiver and consent documents to Jones, or whether Jones ever signed a written waiver of conflict. Jones denies receiving any conflict waiver. Kiesel did not provide or obtain any sort of written conflict waiver from Jones.

91. On January 30, 2015, Kiesel and Paradis transmitted a demand letter on behalf of the City to James Curtin and Thomas McGuiness of PricewaterhouseCoopers, LLP.

92. Into February 2015, the idea of the filing of two complaints against PwC—one by a consumer and one by COLA—was under discussion. (Tom 5/15/19 R.T. at p.480)

93. On or about February 2, 2015, Kiesel emailed to Peters a document entitled *Engagement and Contingency Fee Agreement*. The document included a paragraph entitled “Conflict of Interest” that provided: “In addition, the City represents that it is aware that special counsel has been retained to represent a putative class in an action that will be captioned *Jones v. PricewaterhouseCoopers, LLP* (the “Jones action”) and hereby provides special counsel with approval to proceed with the filing and litigation of the Jones action.” Subsequent to February 2, 2015, revised versions of the *Engagement and Contingency Fee Agreement* were circulated between Kiesel and/or Paradis and the City Attorney’s Office. Eventually, a final version of the *Engagement and Contingency Fee Agreement* was executed and was signed on behalf of the City Attorney on April 9, 2015 by Eskel Solomon; the final version did not include and had removed any reference to a conflict waiver which would have permitted either Kiesel or Paradis to represent a ratepayer while representing COLA.
94. Beginning in February, Paradis had access to DWP offices, staff and documents relating to the CC&B/PwC issues, including a building pass and office space at LADWP offices. The purpose of this access was to pursue the COLA v. PwC action.

95. As of February 4, 2015, Solomon was not aware that Blood and Himmelfarb had decided not to follow through with the Tolling Agreements and would not stay or dismiss their respective consumer class actions against DWP. Apparently, Kiesel and Paradis each neglected to advise Solomon of their communications with Blood and Himmelfarb regarding this proposal.

96. On February 6, 2015, Annaguey and Agrusa first learned that Paradis and Kiesel were possibly going to represent the LADWP against PwC.

97. On February 6, 2015, counsel for PwC, Gibson Dunn & Crutcher, responded to the January 30, 2015 letter signed by Kiesel and Paradis.

98. Beginning on or about February 9, 2015, internal emails exchanged within the City Attorney’s Office identified a potential conflict of interest affecting Clark’s ethical ability to participate in the anticipated case against PwC, resulting from Clark’s status as a retired partner of Gibson Dunn & Crutcher who had a continuing financial connection with that firm. (Clark 4/9/19 R.T. pp. 334-335)

99. According to Kiesel’s deposition testimony, sometime in between mid-February and the end of February 2015, a meeting was held at which Kiesel, Paradis, Clark and Peters were present, and at which Solomon, Dorny and Tom might have been present. At that time, according to Kiesel, Paradis proposed that his client, Antwon Jones, could file an action against COLA, which would provide COLA with a vehicle to accomplish its goal of providing 100% refunds to all the ratepayers, and which would provide a full and complete
release to COLA for all the damages alleged. (Kiesel 5/30/19 R.T. at p. 650). According to Kiesel, both Clark and Peters approved of this idea. (Id p. 653-654.) According to Clark and Peters, this was never discussed, never agreed to, and did not happen. (See, Clark’s June 10, 2019 Declaration and Peters’ June 11, 2019 Declaration) Kiesel states that Paradis suggested that Jack Landskroner, Esq. could represent Jones in an action against COLA (Kiesel 5/30/19 R.T. p.658) because Landskroner had been involved in a CC&B system case in Cleveland, Ohio (Id. 661). Kiesel suggested Michael Libman as Landskroner’s local counsel in California (Id. p. 663). Kiesel thought that Paradis’ suggestion would be a good way to resolve the litigation, carry out LADWP’s goal of returning 100% of what the ratepayers had coming to them as quickly and inexpensively as possible. (Id. p. 664) Kiesel does not recall any discussion of the ethics of the approach that Paradis was recommending (Id pp. 666-667) nor was the phrase “conflict of interest” used. (Id p.668) Kiesel never sought a conflict waiver. (Id p. 679)

100. Jones testified that between December 2014 and April 1, 2015, he instructed his counsel to file a complaint. (Jones 2/13/19 R.T. at 63-64) After reviewing the Complaint, he discussed it with Paradis and Landskroner (Id. p. 65) Jones recalled that Landskroner entered the picture on or about March 26, 2015 (p. 65, 68). Before March 26, 2015, Jones had instructed Paradis to draft a Complaint (p. 70), but he directed both Paradis and Landskroner to file the Complaint. (p. 74)

101. Jones testified that Paradis told Jones that he was bringing in attorney Landskroner, with whom he had worked before, and who had some knowledge of the case because it was a similar situation. (Jones R.T. at pp. 75-76) Jones never met Michael Libman (p.76) and never understood that Libman was his counsel. (p. 77, 114) Jones
thought that Paradis and Landskroner were filing the Complaint. (pp. 78, 80) Jones never
thought that Kiesel was his counsel. (p. 111)

102. Kiesel denied that he participated in the drafting of any complaint against the
City of Los Angeles. (Kiesel 5/30/19 R.T. p. 676)

103. On about February 11, 2015, a meeting occurred at the LADWP which Paradis,
Kiesel, Liner attorneys and others attended, at which Paradis and Kiesel for the first time
advised COLA, the LADWP and the Liner attorneys that Paradis and Kiesel intended to file
a federal consumer class action against PwC on the grounds that the faulty design of the
CC&B billing system sold by PwC to LADWP caused and exacerbated the systematic
overcharging to ratepayers.

104. At the February 11, 2015 meeting, Angela Agrusa and Maribeth Annaguey of
Liner LLP first learned of a proposed strategy to file two lawsuits against PwC: one, a
consumer class action to be filed in federal court on behalf of a ratepayer who would seek to
be a class representative, and one on behalf of COLA. None of the Liner attorneys
defending the class actions pending against COLA were aware of the draft complaints that
had previously been drafted and circulated by Paradis, and they were not involved in the
preparation of the previously circulated draft complaints. The Liner lawyers and the City
Attorneys in attendance understood from the discussion at the February 11, 2015 meeting
that Paradis and Kiesel were proposing potential strategies and the Liner attorneys were not
aware of the proposed individual plaintiff’s name.

105. Kiesel and Paradis were at the February 11, 2015 meeting at DWP with the Liner
attorneys, and Kiesel believes that Clark and Peters were present, and probably Solomon
and maybe Dorny. (Kiesel 5/28/19 R.T. at p. 186)
106. Agrusa understood that Kiesel and Paradis were at the February 11, 2015 meeting to explain to Agrusa and Annaguey that they had been retained by LADWP “to look at two possible courses of additional action involving the billing crisis at the City.” (Agrusa 6/28/19 Deposition R.T. at p. 73)

107. Agrusa testified that Kiesel and Paradis were leading the meeting and providing information about the potential litigation. (Id. at p. 76) At that meeting, it was shared that Blood had agreed to voluntarily dismiss the DWP from the Bransford case and substitute PwC as a defendant. (p. 81)

108. Agrusa recalls that the concept of bringing a putative class action by ratepayers against PwC was “very conceptual and theoretical” in the February 11, 2015 meeting (R.T p. 96); and, it was discussed that, if the Bransford and Morski actions were stayed or dismissed, that Kiesel, Paradis and Blood would have some sort of co-counsel relationship. (pp. 96-97)

109. Agrusa had spoken with Tim Blood before the February 11, 2015 meeting (Id. at p. 83) and was surprised to learn that anyone at COLA had had conversations with Blood without involving Agrusa and Annaguey. (p. 82) She had not learned of the tolling agreements previously. (R.T. at p. 85)

110. At the meeting on February 11, 2015 at which the Liner attorneys first learned that Paradis and Kiesel were considering filing a separate class action against PwC in the name of a ratepayer, Annaguey raised questions; Solomon discussed with Annaguey that Liner should prepare a Memo [outlining concerns raised by the Liner attorneys at the meeting]. (Solomon 8/1/19 R.T. pp. 459-462)
111. Tom attended the meeting and testified that when the Liner lawyers learned of the possibility that Kiesel and Paradis would represent a ratepayer against PwC while representing DWP against PwC, the Liner attorneys expressed concerns; that Kiesel and Paradis had a "spirited discussion" on the subject; and that Kiesel and Paradis expressed that they wanted to go forward with the consumer class action. (Tom 5/15/19 R.T. pp. 298-299)

112. According to a February 13, 2015 email from Tom to Clark and Peters, which was copied on Kiesel, Tom had communicated with DWP Board members Bill Funderburk and Mel Levine regarding a limited briefing to be presented to the Board the following week, for the purpose of gaining support for the filing of "the suit." By context, this appears to refer to the proposed COLA v. PwC lawsuit. In his May 29, 2019 deposition, Kiesel noted that there was no reference in the May 13, 2015 email as to whom the plaintiff was in the reference to the case against PwC. Kiesel understood that the email referred to the DWP v. PwC case. (Id., pp17-19, 22-23)

113. On February 17, 2015, Liner provided a memo to COLA, analyzing Paradis’ and Kiesel’s proposed concurrent representation of ratepayer Jones and of COLA in separate cases to be concurrently filed against PwC. In its February 17, 2015 memo, Liner expressed reservations about the potential concurrent representation by Paradis and Kiesel of an individual ratepayer and COLA in separate civil actions, raised issues relating to procedural complications that would likely arise, and pointed out that conflict of interest issues would have to be addressed in the event that such concurrent representation was agreed to. Liner pointed out that COLA would likely be brought into any ratepayer v. PwC case as a cross-defendant, resulting in additional litigation.
114. The February 17, 2015 Liner Memo was sent via email by Annaguey to Solomon and Dorny. Solomon forwarded the Memo to Tom, within minutes; Solomon did not want to make the decision who else to forward the Memo to, and he expressed concern to Tom that Peters might “leak” the memo to “the two Pauls.” (Solomon 8/1/19 R.T. at pp. 463-465) After receiving the Liner memo, Solomon advised Tom and Dorny: “Frankly, some of it is over my head, and I would suggest that since they [referring to Liner] are concerned, the memo be forwarded directly to Clark for his advice...”

115. Tom forwarded the Liner memo to Clark and Peters, of which Solomon informed Annaguey and Agrusa on February 18, 2015.

116. Clark testified that he was not aware before receiving the February 18, 2015 email that Kiesel and Paradis were contemplating bringing a ratepayer action against PwC, and Clark thought that was not a good idea for the reasons that Annaguey outlined in her February 17, 2015 memo. (Clark 4/9/19 R.T. p. 290) Clark and Tom (and probably Peters too), discussed the Liner Memo, and Kiesel and Paradis were thereafter told that they could not represent a consumer “in the litigation while representing the Department of Water and Power in the PwC litigation. (Clark 4/29/19 R.T. pp. 592-594) This decision was reached by consensus pretty quickly after the Liner memo was received. (Id., p. 595-596)

117. After receiving the February 17, 2015 Liner memo, Dorny had concerns that if there was a ratepayer case brought against PwC, COLA could be brought in on a cross-complaint, thereby creating yet another case in addition to the cases that the City was already defending. (Dorny R.T. at p. 111)

118. Solomon and Dorny spoke with the Liner attorneys on February 18, 2015. (Solomon 8/1/19 R.T. p. 471) On February 19, 2015, Annaguey emailed Solomon and
Dorny, again summarizing certain advice identifying potential and possibly unwaivable conflicts of interest issues in the event that Paradis and Kiesel represented an individual ratepayer in addition to representing COLA. Solomon forwarded the February 19, 2015 email to Tom, who in turn forwarded it on February 21, 2015 to Clark, Peters, Geuss, Brown and Dorny.

119. As of February 21, 2015, Solomon was not aware that any decision had been made to settle [Jones] with Landskroner as opposed to settling with Himmelfarb, Blood or Faruki: “I know that there was a process that was being instituted to talk with Blood, Himmelfarb and others, but I have no idea that a decision has been made.” (Solomon 8/1/19 R.T. pp. 569-570) “They were entertaining all of the possible attorneys as the vehicle to effectuate this global settlement.” (Id p. 573-574)

120. Clark absolutely denies that he ever participated in any meeting or any discussions regarding “facilitating the filing of a lawsuit against the City of Los Angeles. This is categorically untrue. I never participated in any such meeting—not in February 2015, nor at any time…” Clark further declared: “I participated in no such discussion(s), and am also unaware of any such discussion(s) taking place, in February 2015 or at any time.” (Clark’s June 10, 2019 Declaration, para. 3 and 4). Clark likewise categorically denies that the City Attorney’s Office made any decision to authorize the filing of a lawsuit against its client nor was a decision ever “made to proceed with the filing of any significant lawsuit affecting the Los Angeles Department of Water and Power… without authorization from the Board of Commissioners of the LADWP.” (Id., para. 5)

121. Peters absolutely denies that he attended or participated in any way in any meeting at which the participants discussed the possibility that the City would authorize a
lawsuit to be filed against the City, and he at no time gave anyone authorization to file a
lawsuit against the LADWP. (Peters’ June 11, 2019 Declaration)

122. On February 23, 2015, Peters wrote to Clark alone, and stated: “I had thought we
rejected the concept of Kiesel/Paradis defending DWP in any action. I am thus unsure what
Richard wishes to discuss here....”

123. Kiesel has no recollection of any discussion in which he or Paradis would defend
DWP in any action. (Kiesel 5/28/19 R. T. at p. 191.) Kiesel testified that there were
discussions requesting that he obtain agreements in the filed [consumer class] actions for
tolling and for dismissal of those cases. (Id. at p. 192)

124. Agrusa never discussed the February 17, 2015 memo with Peters or Brown. She
never spoke with Feuer at any time. (Agrusa R.T. at p. 100-101)

125. Tom testified that Feuer was not involved in the issues relating to the litigation
against the DWP, the remediation efforts for the CC&B system, or the affirmative lawsuit
against PwC. (Tom 5/15/19 R.T. pp. 222-224, 244)

126. Feuer testified that he delegated the oversight and supervision of the COLA v.
PwC action to his Chief Assistant Peters. (Feuer 8/13/19 R.T. 34, 139) Peters testified that
he was the primary supervisor of COLA v. PwC case until Peters left the City Attorney’s
office in March 2019. (Peters May 1, 2019 R.T. pp. 64-65)

127. Feuer delegated the supervision of the consumer class actions to Clark, who
acted as lead counsel as Feuer’s chief deputy and a very experienced litigator. (Feuer
8/13/19 R.T. p. 143)

128. Kiesel testified that, after Annaguey presented her February 17, 2015 memo in
which she... “recommended against having special counsel have simultaneous claims
against PricewaterhouseCoopers through the City of Los Angeles and through a ratepayer action. And that was the end of discussion with regard to special counsel being involved with a ratepayer action against PricewaterhouseCoopers.” Mr. Kiesel further testified that Paradis may have been the person who advised him that COLA had decided not to have two separate claims against PwC, since Paradis attended far more meetings than Kiesel. Kiesel also testified that the issue was not obtaining a conflict waiver; there was a question about what standing a ratepayer would have to bring an action against PwC, and then issues of potential conflict. Kiesel recalled that it was expressed to him that having a separate action filed against PwC by a ratepayer was “not in the city’s best interest.” (Kiesel 5/30/19 R.T. pp.641-642; 645-646)

129. Sometime between January 9, 2015 when Paradis sent Jones the draft Jones v. PwC complaint and March 26, 2015 when Paradis introduced Jones to Landskroner, a meeting occurred in which Kiesel was told that COLA did not want special counsel representing a ratepayer against PwC, and that ended Kiesel’s involvement with the ratepayer action. (Kiesel 3/13/19 R.T. at p. 97, 5/28/19 R.T. at p. 54)

130. Clark testified on April 29, 2019 that when he previously testified in his PMQ deposition on February 26, 2019 (pp. 104), to the effect that Clark had made certain assumptions, and that Clark actually had no knowledge whether anyone in the City Attorney’s Office had authorized Paradis to bring Landskroner into the case for the purpose of suing LADWP. (4/29/19 R.T. pp.145-147) Clark also testified that he erred in his testimony on February 26, 2019 when he referred to Landskroner having been brought into a case against COLA; Clark clarified that the recommendation was for new counsel for Jones’ case against PwC, not a case against the City. (Id., p. 156)
Clark testified that Kiesel’s public statements to the Los Angeles Daily Journal in April 2019, were completely false to the effect that Kiesel’s “connection” with Libman and Landskroner “was at the express direction of the City Attorney’s office and its lawyers.” (Clark 4/29/19 R.T. pp. 528-529)

Within a week to 10 days after the Liner memorandum was circulated “the City made the determination that there could not be a suit filed in which Paul Paradis’ client, Antwon Jones, would be a plaintiff against PricewaterhouseCoopers or that special counsel could pursue both the case for the City and a case for a ratepayer, therefore, there needed to be a change of position.” (Kiesel 5/28/19 R. T. at p.188) Keisel likely spoke with Clark and Peters, not the DWP, regarding that [the City] “did not want to have a consumer class action pursued against PricewaterhouseCoopers by the same counsel that were going to be representing the City against PricewaterhouseCoopers.” (Id at p.192)

On February 23, 2015, Paradis wrote to Solomon alone, stating that he had “…finished up the initial DWP versus PwC Complaint and am waiting for technical corrections back from the IT department, I would like to discuss with you and Deb about the consumer class case that we are going to be filing....” Solomon replied that Tom and Dorny should also be present at any meeting to discuss this. Solomon testified that the filing of a separate consumer class action against PwC was “amongst discussions.” (Solomon 8/1/19 R.T. p.488) Solomon believes a meeting occurred on February 23, 2015, but he has no recollection of it. (Id. 493-494)

Solomon was injured the following weekend and was out of the office and not involved in the DWP matters between February 24, 2015 and approximately ten days thereafter.
135. Dorny testified that she was not involved in the decision that a consumer class action would not be brought against PwC. She testified that everyone simply stopped talking about it. (Dorny R.T. at p. 118) Tom also testified that, at a certain point, it was clear that no consumer case against PwC was going to be filed. (Tom 5-15-19 R.T. 302)

136. Kiesel testified in his May 30, 2019 deposition that in mid-February [2015] when the retainer agreement “was going back and forth” and the “conflict waiver...in the original drafts were removed,” special counsel’s ability to bring a claim on behalf of a ratepayer ended. (Id. pp. 729-730)

137. Thereafter, Paradis and Kiesel agreed to amend their contingency fee agreement with COLA to remove reference to the representation of a ratepayer, and did do so. Paradis advised COLA that he had disengaged from representation of Jones. At no time before the current 2019 assertions were brought by PwC in connection with the instant matter, City of Los Angeles v. PricewaterhouseCoopers LLP, Los Angeles Superior Court Case No. BC574690, was COLA, LADWP, or the Los Angeles City Attorney’s Office aware that Paradis allegedly had failed to terminate his attorney-client relationship with Jones in about February 2015, or that Jones believed that Paradis continued to serve as his lawyer subsequent to February 2015.

138. Clark testified that he was told that Paradis’ attorney-client relationship with Jones “was severed sometime in late March [2015]...” (Clark 4/9/19 R.T. 264-265)

139. Clark testified that he believes that it was Peters who informed Paradis and Kiesel that they could not continue to represent both the City and Mr. Jones. (Clark 4/9/19 R.T. p. 446)
Solomon sent an email to Tom and Dorny, copying Brown, on March 3, 2015, stating that he had received a phone call from Kiesel, and that Kiesel and Paradis “were more than concerned” that statements might be made at a March 7, 2015 meeting of the Los Angeles Neighborhood Council that “could serve to undermine the LADWP.” Mr. Kiesel stated that he had arranged for the [City of Los Angeles v.] PwC lawsuit to be filed late Thursday/early Friday (3-5/3-6).” Kiesel did not mention anything about the filing of a consumer lawsuit in that call, according to Solomon’s March 3, 2015 email, but Solomon made an assumption that a ratepayer versus PwC would be concurrently filed. Solomon testified in his deposition on August 1, 2019 that he was not aware on March 3, 2015 that the consumer lawsuit was not going to be filed, and that the decision may have already been made as of that date that a consumer action against PwC would not be filed (by Paradis and Kiesel). (Solomon 8/1/19 R.T. p. 500)

Kiesel testified that, by March 3, 2015, it had been decided that there would not be a ratepayer class action filed against PwC, regardless whether Solomon knew of that decision. (Kiesel 5/29/19 R.T. p. 27)

Tom testified that he knew by March 2015 that the Jones v. PwC case was not going to be filed. (Tom 5/15/19 R. T. at p. 474)

Tom testified that prior to April 1, 2015, he understood that Kiesel and Paradis would not be representing a ratepayer against PwC, and also did not know that Paradis and/or Kiesel had arranged to have their DWP consumer represented by Ohio attorney Jack Landskroner. (Tom 5/15/19 R.T. p. 37-38)
144. The LADWP Board authorized a legal services contract whereby Kiesel and Paradis would serve as Special Counsel in the COLA v. PwC action on March 23, 2015, and the contract was approved by the Los Angeles City Council on June 24, 2015.

145. Michael Libman testified that he first started investigating potential claims regarding the overbilling in 2013. (Libman July 22, 2019 Deposition R.T p.136) He reached out to Kiesel and met with him in 2014, and he showed Kiesel Libman’s deceased mother-in-law’s DWP bills. (p. 270-274) At some point, Kiesel told Libman he was not interested in pursuing a class action against DWP. (p. 279)

146. Before his May 28, 2019 deposition, Kiesel contacted Libman because he “wanted to understand how Mr. Libman became aware of the Jones versus Department of Water and Power case.” Kiesel then admitted that the recommendation of Libman as [local] counsel for Jones came from Kiesel. (5/28/19 R.T. pp. 21-22) Kiesel also had admitted in his prior March 13, 2019 deposition that he had recommended Libman. (3/13/19 RT p. 125) Kiesel testified that he had become acquainted with Libman in March 2014 when Libman contacted him regarding high and inaccurate Department of Water and Power bills that had been received at a family member’s residence. (5/28/19 RT p. 35) Kiesel “turned it over to Mr. Paradis,” with whom Kiesel had worked in connection with a Northern California matter involving alleged inaccurate billing by PG&E. (Kiesel 5/30/19 R.T. pp. 36-37)

147. On March 3, 2015, Kiesel wrote to Libman, copying Paradis, stating “we are preparing the Complaint for your review,” asking for Libman’s State Bar number to add to the complaint, and stating that Paradis “is drafting the Complaint.” No lawyers representing COLA were copied on this email. Kiesel admitted in his May 30, 2019 deposition that he
never transmitted his March 2015 email exchange with Libman to anyone in the City
Attorney's Office until he sent them to Peters in January 2019. (Id pp.680-681)

148. Kiesel testified that Clark and Peters asked Paradis whether they could use Jones
as a class representative to assert a case against the City so the City could resolve all of the
billing issues with the class. (Kiesel 5/29/19 R.T. p. 38) Kiesel recalls no such conversations
with the DWP Board or with Feuer. (p. 39-40)

149. Kiesel is confident that a decision was made to go forward with the Jones v.
COLA lawsuit and that Jones was the name used as the individual who would be the named
class representative, but Kiesel cannot recall whether he participated in subsequent meetings
“to make that happen.” (Kiesel 5/30/19 R.T. p. 741-742)

150. Kiesel testified that as of March 5, 2015 both Clark and Peters were aware of the
plan to file the Jones v. COLA lawsuit, but does not recall whether Brown, Dorny or
Solomon knew of such a plan. (5/29/19 R.T. p. 31-32) (This is disputed in its entirety by
Clark in his June 10, 2019 Declaration and by Peters in his June 11, 2019 Declaration.)

151. On March 11, 2015, the draft Engagement and Contingency Fee Agreement
between COLA and Special Counsel Paradis and Kiesel included a reference to Jones v.
PwC action and included the conflict of interest waiver provision.

152. On March 12, 2015, Tom revised the draft Engagement and Contingency Fee
Agreement between LADWP and Special Counsel Paradis and Kiesel, and deleted the
conflict waiver language that referred to Special Counsel being permitted to represent a
ratepayer against PwC. (Tom 5/16/19 R.T. pp.485-488)

153. In mid-March, 2015, Tom was involved with the DWP’s efforts to
remediate/systematically address the systematic problems. On March 15, 2015 he circulated
a “Customer Service Information Remediation Progress Report,” in advance of a meeting to be held on March 17, 2015, to various people including outside counsel, Special Counsel, LADWP lawyers and David Wright. (Tom 5/16/19 R.T. at pp. 551-557)

154. Solomon testified in deposition on August 1, 2019 that, in the weeks before the filing of the Jones complaint on April 1, 2015, most likely Paradis or possibly Kiesel told Solomon that an Ohio attorney with whom they were already acquainted would be filing a consumer class action lawsuit against the DWP. (Solomon 8/1/19 R.T. p. 533-534)

155. Kiesel was consistent in testifying at various sessions of his deposition that he never was in an attorney-client relationship with Jones. In his May 28, 2019 testimony, Kiesel testified that he knew that Paradis had an attorney-client relationship with Antwon Jones, but that Kiesel was “was working in preparing a ratepayer action which I knew...was being considered against PricewatersCoopers [sic] without regard to who the particular client was.” (Id. pp. 31-32) Also on May 28, 2019, Kiesel testified that he never was in an attorney-client relationship with “Antwon Jones of Van Nuys, California.” (Kiesel 5/28/19 R.T. at p. 17)

156. In his prior March 13, 2019 deposition, Kiesel testified that he understood that when Jones retained counsel to conduct an investigation in 2014: “I understood that Mr. Jones was seeking to pursue a claim against PricewaterhouseCoopers only for the overbilling that occurred with his Department of Water and Power bill. And that the purpose of his retention of counsel was to pursue a claim against PricewaterhouseCoopers for that problem not the City of Los Angeles or the Department of Water and Power, that was [my] understanding.” (3/13/19 RT p. 181)
Kiesel testified that Mike Feuer attended one meeting "to further discuss the claims against PricewaterhouseCoopers for the CC&B billing problems," sometime before the COLA v. PwC case was filed at City Hall. (Kiesel 3/13/19 R.T. p. 75) Kiesel explicitly testified that the discussion of possible claims against PwC at this meeting did not come up in the context of a ratepayer lawsuit, and that the possibility of a ratepayer lawsuit against PwC did not come up at the meeting. (Id., pp. 76-77) Feuer did not recall attending a meeting. (Feuer 8/13/19 R.T. p. 41) No other witness put Feuer at such a meeting.

On March 6, 2015, the COLA v. PwC lawsuit was filed by Paradis and Kiesel as Special Counsel for COLA, and included Clark in his capacity as counsel for COLA.

Jones was unaware that Kiesel and Paradis were acting as Special Counsel for the City of Los Angeles and did not learn this fact until December 2018. (Jones 2/13/19 R.T. pp. 207-208)

Jones testified that prior to March 26, 2015, he had instructed Paradis to "draft a Complaint" and prior to the Complaint having been filed, Paradis introduced Jones to Landskroner. (Jones 2/13/19 R.T. pp. 70-71, 74)

By email dated March 24, 2015, Paradis forwarded to Kiesel, a draft letter addressed to the City Clerk Holly Wolcott, captioned "Inaccurate customer bills issued by the Los Angeles Department of Water and Power and Related Billing Practices-NOTICE OF CLAIM," which related to Antwon Jones, in which Paradis asked Kiesel whether he had edits; asked Kiesel to send it to Libman for signature; indicated that Paradis would have Landskroner sign it; and that Paradis "would have Jack [Landskroner] serve it tomorrow." There is no evidence that this March 24, 2015 email or the course of action set forth in it was disclosed to COLA or its staff prior to 2019.
162. Libman testified variously that: he didn’t have any substantive conversations with Paradis about the Jones matter (Libman R.T. at p. 121) and has no recollection of speaking with Paradis in person before any hearing (p. 153); that he did not have substantive conversations with Kiesel about the Jones matter after January 1, 2015 (p. 121); that his statement in his March 27, 2015 email to Kiesel stating “I hope we can make this work,” referred to “working with me on the LADWP overbilling issues” (p.126); that he did not know why he reached out to Kiesel on March 31, 2015 instead of just filing the Jones complaint himself (p. 111); that he did not get a penny from Kiesel or Paradis, but was reimbursed his costs in the Jones matter (p. 122-123); that he did not have a specific understanding of Kiesel’s involvement or duties vis a vis COLA (p. 141) but he knew that Kiesel was involved “on behalf of the City” (p. 111); that he never had communications with Kiesel or Paradis regarding the draft Jones v. PwC complaint, or what to include in the Jones complaint; that Kiesel “was special counsel in some sort of special relationship with the City” (p. 141); that he received Kiesel’s April 22, 2015 email: “Please call my co-counsel to discuss a hearing in front of Judge Berle on April 30 that you and Jack need to attend” (p.144-145); that he did not see any adverse or opposing counsel relationship with Kiesel (p. 265), Kiesel was Special Counsel (p. 281); and that he does not know whether there was any conflict waiver (p. 266).

163. On March 25, 2015, Kiesel sent the Notice of Claim letter to Libman with the message “don’t forget to sign and send the notice letter tonight.” There is no evidence that this March 25, 2015 email or the course of action set forth in it was disclosed to COLA or its staff prior to 2019.
It appears reasonably clear that the date on which Paradis referred Jones to an independent attorney, Jack Landskroner, to represent him in his ratepayer action was March 26, 2015. According to Kiesel, Paradis had worked with Landskroner on a number of unrelated class actions, and Paradis recommended Landskroner. Kiesel recommended a local California lawyer Kiesel knew, Michael Libman. According to Jones, Paradis told Jones that Paradis wanted to bring Landskroner in on the case because Landskroner “had more knowledge of the case or ... had some knowledge of the case because it was a similar situation.” (Jones 2/13/19 R.T. pp. 75-76.)

Landskroner reportedly had prior experience with a PwC billing system located in Cleveland, OH. Paradis told Clark that Landskroner had investigated the DWP billing issues.

Jones was communicating with both Paradis and Landskroner on or about March 26, 2015, before the April 1, 2015 Jones v. DWP case was filed. (Jones 2/13/19 R.T. pp. 64-66, 68)

Kiesel learned that Jones intended to sue the City of Los Angeles “probably around March 26, 2015.” (3/13/19 RT 117, 121-122) At his March 13, 2019 depo, Kiesel testified that when he learned that Jones intended to file suit against COLA, he understood that Paradis would not be involved in that suit because he was then counsel for COLA and therefore would not take action adverse to COLA. (R.T. at p. 120) Kiesel also testified that when Jones did file a lawsuit against COLA “…under no uncertain terms there is a conflict that exist [sic] there...” (Id p. 121) Nonetheless, Kiesel later testified that he “facilitated” the filing of the Jones v. DWP case, which he claims was pursuant to the direction of COLA. (Kiesel R.T. pp. 750-751)
168. Kiesel testified that he ceased assisting Paradis with a ratepayer case to be
brought against PwC before the meeting that Kiesel remembers having occurred before
March 6, 2015; after the City had received the draft Jones v. PwC Complaint and the City
decided that it did not want Paradis or Kiesel serving as Special Counsel to COLA if they
were going to represent a ratepayer, Kiesel stopped assisting Paradis. (Kiesel 3/13/19 R.T.
pp. 77-78) Kiesel testified that one of the reasons that the COLA did not want Paradis to
proceed with the ratepayer action against PwC “... was there might be a conflict between the
ratepayer claims and the City claims, and they didn’t want to have that conflict with their
counsel.” (Kiesel 3/13/19 R.T. p. 131)

169. According to Kiesel’s deposition testimony, as well as by his disclosure to Judge
Berle at the December 12, 2018 hearing, he and Paradis both knew they had a conflict once
they began to represent COLA, and there is no evidence that written disclosure was ever
provided to COLA of the actions taken by Kiesel and Paradis to assist Jones in the Jones v.
COLA action. There never was a written waiver by COLA of Kiesel’s conflict or Paradis’
conflict.

170. On March 29, 2015, Paradis sent a confidential email to Jones, copying
Landskroner, forwarding a draft Jones v. COLA Complaint. (Jones 2/13/19 R.T. pp. 184-
185)

171. Kiesel testified that he believed Paradis drafted the Jones v. DWP Complaint and
sent it to Landskroner. Kiesel didn’t know what role Landskroner had in drafting the
Complaint. (Kiesel 5/29/19 R.T. at 45) Kiesel testified that Libman had no knowledge of
any role either Kiesel or Paradis had as special counsel to COLA prior to April 1, 2015. (Id.
p. 47)
172. As early as March 30, 2015, discussions were occurring in the court between
counsel for the pending class representatives in the previously filed class actions against
COLA, regarding whether the various cases should be consolidated or related.

173. On March 31, 2015, a settlement meeting occurred between Blood and COLA
attorneys, in an effort to resolve all the class claims through the Bransford class action.

174. Annaguey was aware that settlement discussions had occurred in 2014 in
connection with the Kimhi case; she recalled that in February or March [2015], Blood had
reached out to schedule a settlement discussion in connection with the Bransford case
(Annaguey 6/5/19 R.T. at p.168), and the (settlement) meeting occurred in late March (Id. p.
169). The settlement discussion with Blood was attended by Tom, Dorny, Annaguey and
Agrusa, Jillian Wade and perhaps Leslie Hurst. (Id p. 169) Neither Paradis nor Kiesel
attended. (p. 170)

175. Annaguey testified that Tim Blood discussed in the March 31, 2015 meeting
settling all of the pending cases, not just the Bransford case, and that there may have been
further follow-up. (Annaguey 6/5/19 R.T. p. 177, 178) After meeting with Blood, there were
at least a couple of meetings at the DWP set up by Richard Tom to discuss Blood’s
settlement proposal. (Id p.191, 192, 193)

176. As of the date of the settlement meeting with Blood, Annaguey had heard that
there had been a few claims submitted that had not yet been filed, and the City Attorney’s
Office was expecting to be sued in additional cases. (Annaguey R.T. at pp. 173-175)

177. Dorny participated in the settlement meeting with Blood, Agrusa, Annaguey,
Tom and perhaps others on March 31, 2015. (Dorny R.T. at p.160-161) Blood discussed the
number of customers affected. (p. 175) At the end of the March 31, 2015 meeting, Dorny
was impressed with Blood and felt there was a strong possibility that settlement could be reached in the Bransford action. (p. 177)

178. Neither COLA, its attorneys at the City Attorney’s office, nor Liner saw any draft of the Jones v. COLA complaint before it was filed.

179. It is unknown whether and the extent to which Paradis, Kiesel or others provided information and material to Landskroner regarding the CC&B system and the reports that the City had received from consultants in connection with the faulty billing system. It is unknown whether and to what extent Landskroner participated in the drafting of the complaint filed on April 1, 2015 in the Jones v. COLA action.

180. Kiesel testified he did not play a role in drafting the Jones v. LADWP Complaint as far as he can recall, but he was asked to facilitate the filing of the Jones v. LADWP complaint (5/28/19 RT p. 63). Kiesel testified that the concept was “motivated by the City;” (Id. p. 68); he could not “pinpoint” any individual with the City who first raised the subject. (Id. p. 69.)

181. Kiesel testified that he never provided a draft of the Jones v. COLA complaint to any COLA employee or officer prior to April 1, 2015 (5/30/19 R.T. at p.694); that he knows of no written request made to COLA for authorization to file the Jones lawsuit (Id pp. 695, 697, 750); that he is unaware of any writing notifying COLA that Kiesel would be involved in the coordinating of any filing of a ratepayer action against the City of Los Angeles. (Id p. 696)

182. On March 31, 2105 at 7:09 a.m., Libman emailed Kiesel, stating: “I got the draft complaint from Jack Landskroner. He is asking me to file it. costs? Please call me…” Kiesel responded at 7:19 a.m. that he would like to get the complaint “on file today.” At 9:14 a.m.,
Kiesel sent an iPhone message to Libman, saying among other things, "...will call you later and we can coordinate the filing." At 7:08 p.m., Libman emailed Kiesel with the subject line: "Summons Complaint Cover Sheet.pdf."

183. On April 1, 2015, the Jones v. COLA action was filed by Jones' counsel, Landskroner, with local counsel Michael J. Libman. Neither Paradis' name nor Kiesel's name was on the pleading.

184. Jones received a copy of the Jones v. COLA Complaint from Landskroner, and did not notice that Paradis' name was not included. Jones understood that Paradis was still representing him, together with Landskroner. (Jones 2/13/19 R.T. p. 78, 79)

185. During the afternoon and evening of April 1, 2015, there was an email exchange between Libman, Kiesel, and Paradis. At 4:42 p.m., Libman emailed a “Conformed copy of Lawsuit.pdf” to Kiesel. At 5:01 p.m., a CNS “dinger” alert of the Jones v. COLA lawsuit was sent to various individuals, including Solomon and apparently to Liner as well. On April 1, 2015 at 5:03 p.m., Annaguey emailed Tom, Solomon, Dorney and others regarding "another class action [that] was filed today." The email also included case information including the title of the action: Antwon Jones v. COLA, the description “class action for overbilling,” and “Michael Libman.”

186. At 5:14 p.m. on April 1, 2015, Landskroner emailed Tom “a courtesy copy of a Class Action Complaint that was filed earlier today on behalf of my client Antwon Jones....” At 5:45, Tom forwarded Landskroner's email and the attachment to Solomon, Brown and Dorney. At 7:50 p.m., Kiesel forwarded the Jones complaint to Paradis. At 8:31 p.m., Kiesel emailed Paradis: "What shall we do about service of this complaint?" At 5:33 p.m. (presumably Eastern time), Paradis responded to Kiesel: "Please have Michael serve it-
but Landskroner already emailed a courtesy copy to Richard Tom tonight (per Richard’s request to me.)” No other attorney of the Los Angeles City Attorney’s Office and no other COLA staff were copied on this email exchange.

187. Kiesel testified that the City Attorney’s Office had emailed Mr. Paradis the complaints and other consumer class actions that had been previously filed and directed that the Jones complaint include those allegations from the other class action complaints. (Kiesel 5/28/19 R.T. at p. 25-26) He recalled that someone from the City Attorney’s Office used the term “White Knight complaint” but he couldn’t recall which individual had used that term. (Id. p. 27) Kiesel testified that the City Attorney’s Office was the principal strategist in developing the strategy that led to the filing of the Jones v. LADWP complaint on April 1, 2015. (Id. pp. 29-30)

188. Tom testified that he did know what Solomon meant in using the phrase “the expected new class action lawsuit filed April 1, 2015” (Tom 5/15/19 R.T. at p. 34) and Tom did not expect the Jones v. LADWP complaint before it was filed on April 1, 2015. (Id. at p. 35)

189. Annaguey testified that she was not expecting the Jones complaint on April 1, 2015, and that there had been mention of additional claims that were expected, but she did not believe that a lawsuit was imminent (on April 1, 2105). (Annaguey June 5, 2019 R.T. p. 195)

190. Agrusa testified that Liner’s relationship with Kiesel and Paradis “was not close” (Agrusa R.T. at p. 99), although Annaguey did work more closely with Paradis in the execution of the settlement. (Id. p. 99) “The Pauls” had a relationship with DWP as it related to the billing crisis (p. 111), and in the meetings they attended, they did not discuss
that their participation was to potentially participate in an action [by COLA] against PwC; after the lawsuit against the PwC was filed they “didn’t discuss it in these meetings other than its existence.” (Id., p. 113)

191. Annaguey testified that Clark’s initial deposition testimony to the effect that Annaguey had seen the draft Jones v. DWP complaint before it was filed was inaccurate. (Annaguey 6/5/19 R.T. p. 132)

192. Jones instructed Landskroner to explore the “quickest,” “most efficient, effective and expeditious means” to settle the case. (Jones 2/13/19 R.T. p. 81-22, 84; Jones’ May 5, 2017 Declaration) Jones gave this instruction to Landskroner, not to Paradis. (2/13/19 R.T. p. 85.) Jones understood that Landskroner was preparing the settlement proposal. (Id., p. 101)

193. Jones did not ask Paradis to propose settlement “because after this point I just started really having correspondence with Jack.” (R.T. pp.85-86)

194. Jones was referring to Landskroner when he stated in his May 5, 2017 Declaration that his counsel regularly consulted with him while preparing the settlement proposal (Jones R.T. p. 103). When referring in his Declaration to his “counsel” meeting with “officials for the LADWP,” he was referring to Landskroner (p. 106). His counsel who sought his permission to go to mediation was Landskroner (p. 107). In referring to the counsel that Jones was involved in directing, monitoring and supervising, he was referring to Landskroner (p. 109). In referring to his counsel that sought his permission to engage Judge Tevrizian, he was referring to Landskroner (p.111).

195. On April 2, 2015, Annaguey was working on a presentation to be made to DWP regarding Blood’s settlement offer: “...we were going to be meeting with people from
management about the framework that had been discussed with Tim, and we were putting
together material for that meeting.” (Annaguey R.T. at. p. 203, 206)

196. On April 2, 2015, Solomon and Tom received an email from Landskroner
regarding “Jones v. City of Los Angeles-Confidential Settlement Proposal and Request for
Settlement Meeting.” According to Solomon, some weeks before receiving the April 2,
2015 Settlement Proposal, Solomon had a conversation with Paradis, Kiesel or both, to the
effect that they knew a lawyer in Ohio, with whom they had worked previously; that he
would be filing a lawsuit against LADWP; that the lawsuit was expected; and that it would
be a class action lawsuit with respect to the billing matters. (Solomon 8/1/19 R.T. pp. 532-
534) Solomon stated that it would be consistent that he had such a conversation with [most
likely Paradis] at about the same time as Kiesel had written to Libman copying Paradis,
stating: “we are preparing the Complaint for your review.” (Id p. 534) When Solomon had
this conversation, there was no mention of the name of the plaintiff to be included in the
new class action that the Ohio lawyer was expected to file. (Id., p. 536) After Solomon was
given the information that another class action was going to be filed, he did not follow up;
he did not speak with Paradis about it; he did not communicate this information to anyone in
the “front office” which he had previously used as a shorthand phrase referring to Feuer,
Clark and Peters (8/1/19 R.T. p. 322); and Solomon did not recall whether he discussed this
information with Dorny, Tom or the General Counsel. (Id. 536-537)

197. On April 2, 2015, after the confidential Settlement Proposal had been received
from Landskroner re: the Jones case, an email exchange occurred between Annaguey, Tom
and others in which Annaguey stated that she had already left a message for Landskroner,
and that by early the following week, “…we’ll have more intelligence with respect to
Landskroner and Blood, who will have called Angela [Agrusa] about his thoughts on fees.”

(Annaguey R.T. at p.209)

198. Agrusa testified that Annaguey’s April 2, 2015 email to Agrusa, Tom, Solomon and Dorny, in which Annaguey referred to a future conversation in which Blood would have by then called Agrusa “about his thoughts on fees,” reflected the fact that Annaguey had not previously had any experience with class action litigation and that Annaguey “was unfamiliar with the terminology.” (Agrusa R.T. at p. 152) Agrusa implicitly denied that she had any discussion with Blood regarding his class counsel attorney fees.

199. When Tom received the April 2, 2015 settlement proposal from Landskroner, that same day he contacted Agrusa, Annaguey and copied Solomon and Dorny, requesting a meeting “ASAP.” (Tom 5/16/19 R.T. at p. 416) Tom knew he was going to be out for several days and given that DWP had been having conversations to the effect that DWP management was interested in pursuing settlement, as well as the meeting they had had with Blood, it was better to move ahead than not to do so. (Id. at p. 417) Tom also emailed Clark and Peters, made them aware of the receipt of the Landskroner settlement proposal, and he forwarded it to them. (Id. p. 454)

200. In a status report emailed by Tom to Peters, Clark, Dorny, Brown, and Solomon on April 3, 2015, Tom forwarded the Landskroner settlement proposal and also described the settlement discussion that had been had with Blood: “…Tim Blood had earlier contacted the Liner firm requesting a meeting after the initial status conference to discuss the possibility of an early resolution of this case. We participated in that meeting earlier this week to get an initial read on what Mr. Blood was proposing, and it turned out to parallel in significant part to the Landskroner proposal.” Tom continued: “Although still at the very
early stage of discussion, both proposals appear to the legal team to provide good opportunities for a favorable early resolution of DWP’s billing issues. We have begun to brief DWP management about the proposals and possible framework for a settlement in order to determine if they agree that a settlement will serve DWP’s[sic] interests.”

201. Solomon never made reference to the Jones v. COLA case as a “White Knight complaint.” (Solomon 8/1/19 R.T. at p. 542)

202. Around April 1, 2015, Solomon became educated as to the term “White Knight approach,” which he understood to be, “when you have multiple class actions, it was possible to negotiate a full settlement with a particular plaintiff’s class action that would allow your client to globally deal with everything.” Solomon was informed of this approach by Paradis and Kiesel in a face-to-face meeting at the [DWP] Hope Street office. (Solomon 8/1/19 R.T. at pp. 544-545)

203. Solomon spoke with Annaguey or Agrusa, who confirmed that the “White Knight approach” was “kosher,” and it was something they were experienced with in dealing with class actions. (Id. 547-548) Solomon asked Dorny whether she had heard of this type of approach, and he may have spoken with Richard Brown. (Id pp. 556-567)

204. Agrusa never heard the Jones v. LADWP complaint referred to as “the White Knight complaint.” (Agrusa R.T. at p. 151)

205. Kiesel testified on May 30, 2019: “At no point in time after certainly March 6, 2015, when the City of Los Angeles brought a claim against PricewaterhouseCoopers would I ever have thought it appropriate that Mr. Paradis be involved in representation of anybody bringing a claim against the City of Los Angeles without a conflict waiver from the City Los Angeles to allow him to do such a thing.” (5/30/19 R.T. p. 716)
However, Kiesel also testified that he has “no doubt” that the City Attorney’s Office expressly authorized Paradis to be either the exclusive or the principal draftsperson of the notice of claim and the actual summons and complaint in the Jones vs. City of Los Angeles action. (Id. pp. 750-751)

At a December 12, 2018 hearing before Hon. Elihu M. Berle on related issues in connection with COLA’s motion for a protective order and PwC’s motion to compel discovery, the Court inquired regarding the defendant’s request for production of certain documents by COLA. During the hearing, Ms. Tufaro of Paradis’ office and Mr. Kiesel each addressed the court. Tufaro asserted work product privilege for “an agreement between the City and its adversary.” (12/12/18 Hearing R.T. p. 12) In response to the Court’s question: “At no time was Mr. Jones represented by counsel for the City, is that right?” Ms. Tufaro responded: “No, Your Honor. No.” (Id., p. 28) Presumably, Tufaro had no personal knowledge of Paradis’ and Kiesel’s assistance in the preparation, filing, and/or service of the Jones v. COLA action, but this is unknown.

When the Court asked Tufaro whether Jones’ name “was just pulled out of a hat, or was there some earlier communication about it with Jones?” Tufaro asserted work product privilege. (12/12/18 R.T. pp. 37-38)

Following Tufaro’s presentation to the Court, Kiesel asked to be heard; he then requested a brief break. After the break, Kiesel made statements to the Court, including:

“But, I wanted to clarify something so there is nothing inaccurate about the record, Mr. Jones at the time he was considering a case against PwC had actually retained counsel to consider filing suit against PwC, not the City of L.A., but PricewaterhouseCoopers.”
"When it became clear that Mr. Jones wanted to sue the City of L.A., a conflict immediately occurred when Mr. Jones was going to sue the City of L.A. or wanted to seek suit from the City of Los Angeles."

"The City Attorney’s Office never had any relationship to Mr. Jones at all. But I will represent that Special Counsel did have a relationship with Mr. Jones that was not adverse to the City of Los Angeles until Mr. Jones wanted to pursue an action against the City and that was the end of that relationship. The City had nothing to do with that, but I wanted to clarify the record in that regard, Your Honor." (12/12/18 R.T. at p. 42:10-26)

210. When Annaguey received the Jones lawsuit, the name “Antwon Jones” meant nothing to her. (Annaguey R.T. at p.181) She had no understanding whether Solomon, Brown or Dorny were already expecting the Antwon Jones lawsuit before it was filed. (Id p. 184)

211. Tom testified that he saw that the Plaintiff in Jones v. COLA was “Jones,” but not that he knew it was Antwon Jones (whom Paradis had represented). (Tom 5/16/19 R.T. pp.431-432)

212. Agrusa testified that the name “Antwon Jones” never came up in the meetings she had attended prior to the 2-17-15 Liner memo, that she didn’t know there was specific ratepayer plaintiff and that “…these were concepts in the abstract.” (Agrusa R.T. p. 88) Agrusa also testified that “there was never a discussion that there was a plaintiff” for any lawsuit. Agrusa first learned the name Antwon Jones after the Jones v. COLA lawsuit was filed when the “dinger” service notified her of the April 1, 2015 filing. (Agrusa R.T. at pp. 88-89)
213. Dorny first learned of the *Jones v. COLA* case on April 1, 2015. (Dorny R.T. at p.130) She did not recognize the name "Jones;" she had no expectation that a class action would be filed by a Jones Plaintiff at that time. (pp. 134-135) She does not know why Solomon wrote in his April 2, 2015 email that the Jones complaint was "the expected new class action lawsuit...." (p. 137)

214. Dorny did not realize that the "Jones" in the draft *Jones v. PwC* complaint previously circulated by Paradis and the Antwon Jones in the *Jones v. COLA* action filed by Landskroner were the same person until Tom so informed her "about a year ago [i.e., June 2018]." (Dorny R.T. at 139, 140)

215. Solomon did not "connect the dots" in his mind between the connection that the Antwon Jones in the *Jones v. COLA* action was the same Antwon Jones that was the plaintiff in the earlier draft [*Jones v. PwC*] complaint, which he had passed on to others within DWP. (Solomon 8/1/19 R.T. at pp. 559-560) Solomon did not know that Antwon Jones was in an attorney-client relationship with Paradis, until 2018 or 2019 when it was disclosed. (Id, p. 565)

216. Agrusa further testified that she never learned during the meetings of any attorney-client relationship between Paradis and Kiesel and Antwon Jones; prior to the filing of the complaint, the name Antwon Jones never came up in the meetings. (Agrusa R.T. at p. 115) She never subsequently learned of any such relationship with Jones until reading a Daily Journal article. (Id. p.131)

217. As soon as the *Jones v. COLA* case was filed, Agrusa understood that Liner was going to defend it. (Agrusa R.T. at p. 123)
218. Tom testified that supervisory authority for the Jones case initially resided with Solomon, but by the end of 2015 or 2016, supervision changed to Tom. (Richard Tom 5/16/19 R.T. pp. 383-384)

219. After the Jones v. LADWP lawsuit had been filed, Agrusa learned from Clark that Landskroner had had prior experience against PwC or "someone like PwC in a billing software piece of litigation." (Agrusa R.T. at pp. 129-130)

220. The April 2, 2015 settlement letter from Landskroner was not the first time Agrusa heard about a potential settlement of the ratepayer class actions. She testified that: "There had always been from Day 1 the expectation that the litigation would be settled promptly in a manner in which every ratepayer would be refunded the money they overpaid." (Agrusa R.T. at pp 132-133)

221. The initial settlement proposals by Blood and Landskroner "at a high level... were comparable...." (Annaguey R.T. at p. 246) They both proposed using outside consultants. (Id. p. 247) "They both said that they could work with all [plaintiffs'] counsel, and would be undertaking to work with all [plaintiffs'] counsel." (Id at p. 248)

222. By email dated April 3, 2015, Peters forwarded to Tom, Solomon, Dorny, Clark, Kiesel, Paradis and Tufaro, information about the Antwon Jones v. City of Los Angeles filing, in which he said in pertinent part: "Hello. FYI, an attorney named Michael Libman has filed the case listed below, which is described in CNS as 'class action for overbilling.' When we get served, I will ask the lawyers at DWP to please share the complaint with the group."

223. Approximately 11 minutes later, Solomon responded: "Thom: We are aware of the filing w/ the Superior Court, however, neither COLA nor the DWP have been served. A
copy of the lawsuit is attached for your review.” Solomon did not include any reference to
and did not attach a copy of the April 2, 2015 settlement proposal transmitted by
Landskroner to Solomon and Tom.

224. Peters had been on vacation and had just returned by April 3, 2015.

225. At approximately 10:14 a.m. on April 3, 2015, Kiesel emailed Peters and stated
in pertinent part: “On the new class case you mentioned I want to give you the background
on that case...I am aware of it [smiley face emoji].”

226. A meeting was in the process of being scheduled with Landskroner for a day on
or after April 6, 2015; Annaguey was not surprised that the emails scheduling this meeting
did not include Clark or Peters. (Annaguey R.T. at p. 216) Annaguey confirmed a meeting
with Landskroner for April 8, 2015, and she did not copy Clark, Brown, Peters or Kiesel or
Paradis, because she was reporting at that time to Tom, Solomon and Dorny; that was the
general reporting relationship. (Id pp. 220-221)

227. Tom met with Landskroner on April 8, 2015. Tom intended that if a settlement
was to be reached in Jones, it would include claims made in the other pending class actions.
(Tom 5/16/19 R.T. at p. 545)

228. Neither Paradis nor Kiesel were in attendance at the April 8, 2015 meeting with
Landskroner. (Tom, 5-16-19, p. 446) At that meeting, there were positive discussions
regarding refunding the overcharges; this was similar to what had been discussed with
Blood. (Id, pp. 449-450)

229. On or about April 10, 2015, Jones emailed “my lawyers,” Landskroner and
Paradis, advising them that the power to his apartment had been turned off. (Jones 2/13/19
R.T. p 199, 224) Jones believes the power was turned off because he sued DWP. (Id., p. 200)
230. Jones testified that his last communication with Paradis was on April 10, 2015. (Jones 2/13/19 R.T. pp. 28, 85-86, 123)

231. From the "very beginning" Agrusa had a theory for early resolution of the class action cases, and she advised the City to settle the cases, and "from the very, very earliest days...was interested in trying to figure out a mechanism to make the ratepayers, make the customers whole." (Agrusa 6/28/19 R.T. pp. 45, 49, 50-51, 67) Agrusa testified that she had had "...conversations with every one of the lawyers in these [class action] cases that represented a putative class member" referring to Blood and Himmelfarb by name. (Agrusa R.T. at p.135)

232. Agrusa noted that it is not unusual to have "early demand talks" (Agrusa R.T. at p.141); she had been mandated and instructed by the City to have potential early resolution discussions with all plaintiffs' counsel in these cases.” (Id. at p. 142)

233. Annaguey thought that Landskroner's estimation that approximately 67,000 customers had been overbilled was low (Annaguey R.T. at 229); she recalls that there was a problem in figuring out the estimations, and in 2014, Mark Townsend, who was on the technical side, was working on that. (Id. p. 232-234)

234. In conducting settlement discussions with plaintiffs’ counsel, Agrusa testified that she was determining whether opposing counsel had the necessary level of “skill and sophistication.” “It was going to require opposing counsel who had experience and the...
ability to work with us collaboratively, as well as his or her role to protect the class.”

(Agrusa R.T. at p. 146) “... [Y]ou’re not looking for somebody who is a pushover; you’re looking for somebody who is being analytical, and is going to be able to prepare papers and get a system that is approved by a judge, subject to withstand opposition [from] potential objectors.” (Id. p. 147) “It wasn’t about finding the rollover; it was about finding who would be a credible partner in executing a settlement that could withstand court scrutiny. And do the right thing, which was refund the taxpayers, the ratepayers.” (Id.)

235. Agrusa recommended settling with Tim Blood, but Landskroner “seemed credible and he certainly had the experience that was represented to me that he had.” (Id. at p. 148)

236. Agrusa told Blood that COLA had decided to go forward with Landskroner to pursue a global resolution. (Agrusa R.T. p. 176-177) “I think it was their option to choose who their settlement partner was going to be. There was never any exclusion of the other firms .... they were, in fact, part of that mediation if I understand. It was just choosing a primary point of contact.” (Id. p. 177) Agrusa did not tell Tim Blood that she had concerns about the way the entire settlement was being handled. (Id. p. 176)

237. Agrusa recalls a meeting in mid-April 2015 attended by herself, Annaguey, Clark, Peters, Tom, Kiesel and Paradis “at least” (Agrusa R.T. at p.158), at which she understood that Clark, Kiesel and Paradis would be directing how the settlement process was proceeding, and that her role and Liner’s role “would be marginalized.” (Id. p. 159) It was a very long meeting, and they discussed “all of the various moving pieces that would have to be coordinated in order to withstand court scrutiny and provide the relief.” (Id. p.
163) There was no discussion during the meeting about eventually holding PwC responsible. *(Id. p. 164-165)*

238. Agrusa testified that, after the meeting, she may have called Kiesel and told him she “felt he was being critical of the Liner firm and that she felt it was retaliatory and sexist.” *(Agrusa R.T. at p. 161)*

239. After April 2015, Agrusa’s role diminished since the cases were going to be settled rather than litigated. Annaguey had a very instrumental role “in helping with the administrative law side of the coordination of the settlement.” *(Agrusa R.T. at p. 167)* Annaguey’s role expanded so that eventually, she was working full time at the DWP offices. *(Id. pp. 187-188)*

240. It is unknown whether Paradis or Landskroner ever advised Jones that Paradis had terminated his attorney-client relationship with Jones, either orally or in writing. Jones testified inconsistently whether he was ever so advised, and has an unclear memory on this point *(Jones 2/13/19 R.T. p. 95, 97, 123, 125)*, and he testified that he believed that his attorney-client relationship with Paradis continued forward, after the last communication on April 10, 2015. *(Id. p. 123)*

241. Jones would never have hired a lawyer whom he understood to work for the City. *(Jones 2/13/19 R.T. p. 134)*

242. Kiesel did not discuss with Tom the deletion of the “conflict of interest” language referring to Paradis’ representation of Jones, but Kiesel was aware of the deletion before he signed the final retention and contingent fee agreement in April 2015. *(Kiesel 5/29/19 R.T. p. 54)*
243. According to an email from Solomon to Clark and Peters on April 21, 2015, Blood contacted Agrusa to discuss his thoughts on filing an amended complaint in the Bransford case. On April 21, 2015, Solomon authored two emails relating to the Bransford class action, and whether Blood would be filing “a comprehensive amended complaint” (Solomon 8/1/19 R.T. at pp. 566-567, 572).

244. According to Annaguey, probably by April 21, 2015, the decision had been made by Clark on behalf of the City to “explore settlement with Jack Landskroner.” (Annaguey R.T. at p. 258-259).

245. In his February 26, 2019 Deposition, Clark testified that: Landskroner was deemed to be the counsel most advantageous to the City because of his prior experience with PwC in Cleveland (p. 105); that he learned from the Liner people that they had been trying to deal with Blood and Himmelfarb, who were “just intransigent;” and that [Paradis had stated] that Landskroner was more reasonable to deal with (pp. 107, 106).

246. Clark later substantially changed portions of his February 26, 2019 testimony. Clark clarified that, while he did not know that anyone with the City had authorized Paradis to “hand off” Jones to Landskroner, he knew that, once it was concluded that Paradis had a conflict, Paradis referred Jones to Landskroner. Clark also clarified that his understanding was that Landskroner came into the Jones matter sue PwC, and not to sue DWP. (Id. pp. 104-105, as corrected, and 4/9/19 R.T. p. 287.)

247. Clark testified at his April 9, 2019 deposition that he was told that Paradis had severed his relationship with Jones in late March 2015. (Id., p. 264.)

248. On or about April 23, 2015 the final Engagement and Contingency Fee Agreement was approved, identifying COLA and the Los Angeles City Attorney’s Office as
the client, and Kiesel and Paradis as the lawyers serving as special counsel. The “conflict of interest” language had been removed in the final, approved version.

249. Thereafter, Paradis and Kiesel were formally authorized by the Board of Water and Power Commissioners to serve as Special Counsel for matters related to City of Los Angeles v. PricewaterhouseCoopers LLP, Los Angeles Superior Court Case No. BC574690, effective retroactively to January 1, 2015.

250. Landskroner regularly consulted with Jones over a period of months regarding “preparing the settlement.” (Jones R.T. p. 103) In his May 5, 2017 Declaration, Jones was referring to Landskroner when he referred to his counsel that he “was involved in directing, monitoring and supervising…” (Id. 109) Jones received the following information from Landskroner, and took the following actions at the direction of Landskroner: that there was a hearing in which the court agreed to accept the settlement (Jones R.T. p. 24); he received from and returned to Landskroner the executed Declaration of Antwon Jones in Support of Plaintiff’s Motion for Final Approval and Application for an Award of Attorney’s Fees, Costs and Service Awards (Id., p.31); and Jones continued to communicate with Landskroner through January 2019 (Id., p.27).

251. Regarding whether Paradis was still his lawyer, Jones testified: “I … stopped talking to Mr. Paradis and I started talking to Mr. Landskroner so—but I never received an email from Mr. Paradis saying that he wasn’t my attorney anymore.” (Id. p. 97) Through July 2017 when the court gave final approval of the settlement, Jones always thought that Paradis and Landskroner were both his counsel. (Id. p. 98)
Kiesel testified that he did not believe that Paradis continued to have an attorney-client relationship with Jones in (and after) April 2015 based on what Paradis told him and what Kiesel had independently determined. (Kiesel 5/29/19 R.T. at p. 55)

During this general time period in 2015, arrangements were made with the Paradis Law Group to serve as a consultant to LADWP to remediate the faulty billing software issues. Paradis represented himself as having technical expertise to assist LADWP in addressing and correcting the problems with the CC&B software and system.

Tom testified regarding the retention of Paradis Law Group to perform work related to the remediation efforts: Tom was told by Wright that Wright wanted to hire Paradis; Tom discussed the issue with Clark; Tom and Wright discussed whether using Paradis in that role would affect the ongoing litigation in which Paradis was serving as Special Counsel to the City; Paradis represented that he held or was obtaining a Master’s Degree in information technology; and the contract was approved by the Board of Commissioners, after Mr. Dirk Broersma reviewed it as to form and legality. (Tom 5/16/19 R.T. at pp. 564-567, 569-570) The initial approval of the hiring of Paradis to serve as project manager to implement the remediation terms of the Jones settlement occurred in the Fall of 2015. In March, 2017, the LADWP management assessed the tasks that remained to be performed in order to complete the remediation terms included in the Jones settlement, as well as to complete additional improvements to the billing system, providing and monitoring smart grid alternatives, and better utilize certain sustainable resources to provide greater reliability. Subsequently, in June, 2017, the LADWP Board approved a contract with Paradis’ company called Aventador Utility Solutions, LLC, to provide additional project and consulting services to implement the terms of the Jones settlement agreement and to
perform remediation services of the defectively implemented CC&B system, including adding system functionality required to improved system utilization. The Board approved an amount not to exceed $30,000,000 over the following three years. Following the recent litigation proceedings in COLA v. PwC, the Aventador contract was canceled by the LADWP Board.

255. Dorny testified that Paradis was involved in the CC&B remediation process; to the extent that there was overlap with PwC issues “we wanted to make sure he was aware of those things.” (Dorny R.T. at p. 201-202) Dorny did not understand that Paradis had been approved to represent a putative class in an action to be captioned Jones v. PwC. (p. 199)

256. Agrusa testified that Clark had the ultimate authority for COLA over the CC&B litigation [against PwC]. (Agrusa R.T. at 53)

257. Neither Kiesel nor Paradis ever asked Agrusa for copies of the CC&B complaints that were filed against COLA. (Agrusa R.T. at p. 87)

258. Agrusa was aware that Paradis Law Group was approved by the DWP Board under a separate contract to provide remediation services, apart from representing DWP in connection with litigation (Agrusa R.T. at p. 191).

259. On May 3, 2015, Gibson Dunn filed an Answer and Demurrer to the COLA v. PwC Complaint on behalf of PwC.

260. On June 12, 2015, in connection with Jones v. COLA, Landskroner and Libman on behalf of Jones, and James Clark on behalf of the City of Los Angeles, signed a confidential document entitled Draft Memorandum of Understanding, which stated that “this MOU sets forth the material terms of the settlement of the claims asserted in [Kimhi, Bransford, Fontaine and Jones]."
261. Clark recused himself from all involvement in the COLA v. PwC action sometime after Gibson Dunn commenced representation of PwC in the COLA v. PwC case, and was screened from the case.

262. In the Jones v. COLA action, the parties engaged in protracted mediation with the assistance of the Hon. Dickran M. Tevrizian (Ret.).

263. Judge Tevrizian conducted mediation sessions on June 11 and 12, 2015, which resulted in an agreement in principle on the essential terms of the proposed Settlement, including COLA’s confirmation that every LADWP customer that had been overcharged would receive either a credit or refund of 100% of the overcharge.

264. Agrusa remembers the first mediation session with Judge Tevrizian to have been a “dynamic” process that lasted late into the evening. Judge Tevrizian held break-out sessions with the various participants that included Agrusa, Annaguey, Clark, Tom, Paradis, Landskroner and Blood. (Agrusa R.T. at pp. 182-183)

265. At the first session it was clear that they were going to be able to reach a settlement. (Agrusa R.T. at p. 185) “The framework that the DWP proposed was being scrutinized and vetted by the plaintiffs’ side. They made certain contributions and certain demands that required the DWP to go back and reevaluate things.” (Id. p. 186)

266. On June 26, 2015, following a telephonic conversation between Blood, Clark and Feuer, Blood wrote to Clark and Feuer objecting to the settlement negotiations between COLA and Landskroner. Feuer asked Clark to evaluate Blood’s contentions and take appropriate action. (Feuer R.T. p. 144)

267. The parties participated in further sessions of mediation on July 24 and July 31, 2015, to determine and verify the identity of and amounts due to LADWP customers, to
agree on a mechanism to structure subclasses of class members, and to agree upon the mechanisms for compliance with certain remediation protocols.

268. According to Judge Tevrizian’s sworn declaration later prepared in connection with COLA’s opposition to objections raised to the final settlement terms: “...on July 31, 2015, the parties participated in a day long mediation to discuss the payment of attorneys’ fees and the reimbursement of expenses by COLA to Class Counsel. This mediation session was extremely contentious and protracted. The parties engaged in several rounds of proposals and counter-proposals before the parties reached an impasse. I then made a “Mediator’s Proposal” at the conclusion of the session, which after days of discussion by both parties, was ultimately accepted by both parties.”

269. Agrusa testified that she “never discussed class counsel fees with Mr. Landskroner or Mr. Blood. The only time fees were discussed was in the context of the mediation with Mr. Tevrizian.” (Agrusa R.T. at p. 152)

270. The Parties could not agree on the attorney fee award. By August 1, 2015, Judge Tevrizian had made a mediator’s proposal. On the morning of August 1, 2015, Annaguey emailed Clark, Brown, Tom, Solomon, Dorny, copying Agrusa, stating that while “Jim Clark is considering the mediator’s proposal, I thought it would be important to itemize the various issues that were discussed yesterday.” Annaguey set forth “likely objections to the proposed fee amount...” and recommended they “…should, at a minimum, require that Landskroner provide support for the lodestar immediately.” Annaguey also stated: “We understand that the client is seriously considering the fee proposed because of Plaintiff’s threats to leverage the back-billed accounts issue. This feels like nothing short of blackmail. Dave Wright pointed out that this was an issue the Department identified to Landskroner
and offered a solution....” After discussing “impact numbers” for the back-billed accounts, Annaguey concluded with: “We understand that there are policy/public relations issues that may trump our concerns. Ultimately, this is a client decision. Of course, we will abide by the client’s decision and comply with it consistent with our ethical and professional responsibilities.”

271. In response to Annaguey and the people she had included in her email, on August 1, 2015 Clark responded by thanking Annaguey for her superb summary “of the many issues with the fee number Landskroner et al. have come up with.” Clark also raised some inquiries and asked the recipients of the email for their thoughts.

272. Annaguey responded with additional information about the lodestar number for fees for all of the plaintiffs’ lawyers, including Landskroner, Blood, Faruki and Jardini. She also stated: “These numbers look largely inflated. At a minimum, these plaintiff’s lawyers should be required to provide us substantiating information. They will have to provide that information to the Court anyway to get approval.” Among other things, Annaguey also noted that “the actual economic benefit to the class...is difficult to fix and narrow...,” and that they would “drill deeper” to provide updated information as soon as possible.

273. Annaguey had “looped in” Kiesel and Paradis on the August 1, 2015 email string relating to the proposed attorney fee award to Blood, Landskroner, Faruki and Jardini.

274. On or about August 7, 2015, the parties executed a settlement agreement in the Jones v. COLA matter.

275. During the settlement process, the City issued public press releases indicating that COLA intended to pursue claims against PwC.
On August 17, 2015, LADWP General Manager Marcie Edwards made a public statement to the effect that the settlement in the Jones case would “...make whole any customer who was overcharged by our new billing system, no matter how small the error. With this agreement, every customer who was affected will receive one hundred cents on the dollar.”

By the time that the request for preliminary court approval of the Jones case settlement had been made in August, 2015, Tom understood that they were “settling a final settlement of a class action lawsuit involving two million DWP customers and that the name was Jones. Whether it was Antwon Jones or any other Jones it really was not something I was paying any attention to.” (Tom 5/16/19 R.T. at p. 459) Prior to April 1, 2015, Tom didn’t have an understanding that Paradis and/or Kiesel represented a real person with the last name of Jones. (Id p. 498)

Kiesel testified that he had no involvement at all between April 2, 2015 and August 2015 regarding the terms of the settlement in the Jones action. (3/13/19 R.T. p. 158)

Blood, Landskroner and Libman were all provided access to electronic evidence, including during a meeting on September 4, 2015 in Liner’s office for “objector’s counsel and objector’s CC&B billing system expert” to review “the customer data files and 51,000 pages of complex data runs.” (Dorny 10/16/15 Declaration, Dorny 5/17/2019 R.T. pp. 178-180) Outside counsel and a senior DWP representative, Flora Chang, were also present at the September 4, 2015 meeting. (Id. p.182)

Objections were filed to the proposed settlement. Among the objections set forth in the objections filed by the Morski class, it was argued that: “Proponents [of the proposed settlement] are “holding on to...massively lopsided and favorable settlement, oversized
attorney fees, etc. . . ;" the Release was criticized as “limitless and it is impossible to know its true scope;; the class definitions were confusing; the DWP’s 8-17-15 press release was misleading and prejudicial to the public; the proposed Notice to the class was misleading; additional prospective Bane Act claims would be barred in the proposed settlement. Counsel for Morski has requested a carve-out for Bane Act claims.

281. On September 11, 2015, a hearing was held on the request for preliminary approval of the August 7, 2015 settlement agreement. The Court directed the parties to take additional steps to revise the settlement terms and directed counsel to work together to agree upon terms for a settlement in the best interests of the DWP customers.

282. On September 11, 2015, when the preliminary approval process was continued, the Court also ordered that the settlement exclude the Morski claims, specifically describe those claims, and specifically provide that the Morski claims were not included in the Jones/Bransford/Fontaine settlement.

283. Subsequently, input was obtained from the Office of Public Accountability/Ratepayer Advocate for the City of Los Angeles. The Ratepayer Advocate reviewed the settlement agreement and made a recommendation to add an additional provision.

284. On September 11, 2015, Blood sent an email indicating that he had checked with most of the counsel on the plaintiffs’ side, and September 17, 2015 worked best for a meeting. (Kiesel 3/13/19 R.T. p. 154). Kiesel offered to coordinate a video conference (Id. p. 157) Kiesel does not recall such a meeting (Id. p. 158) Kiesel was assisting in filing paperwork on the Jones v. COLA case: “all the cases in front of Judge Berle...and all the
cases were together and there were times I was appearing on behalf of the City versus PwC but the other players were together.” (Id. p. 159)

285. Kiesel acknowledged that he appeared before Judge Berle on November 3, 2015 in the Jones v. COLA case, in his capacity as Special Counsel for COLA in the City v. PwC case. (Kiesel 3/13/19 RT pp. 167-168.) Kiesel did not disclose to the Court that he had worked with Paradis in connection with a potential ratepayer action on behalf of Jones, nor did he consider disclosing to the court Paradis’ prior representation of Jones. (Id p. 175-176)

286. In mid-September 2015, lawyers representing the plaintiffs in pending class actions against COLA other than the Jones case, including Messrs. Himmelfarb and Blood, participated in communications with Landskroner to propose modifications to the terms of the settlement of the Jones case.

287. It was ultimately agreed that the Morski case was to be exempted from the Jones settlement as it involved claims that DWP intentionally violated Municipal Ordinances governing tiered billing (penalties) for residential water and power customers, as opposed to overbilling due to computer software problems (as alleged in the Bransford, Fontaine and actions).

288. A First Amended Complaint was filed in Mactas v. LADWP on October 20, 2015, asserting 60 claims, including 13 tiered billing claims, one Bane Act claim and other claims regarding billing errors, including 39 additional claims for back billing, erroneous disconnections, unread meter claims, defective meter claims and allotment errors.

289. On October 20, 2015, LADWP approved a formal contract with Paradis Law Group, effective July 13, 2015, to provide “Project Management Services” to implement
required mediation measures that were reached in connection with the preliminary settlement of the Jones v. COLA case.

290. On October 26, 2015, counsel for the Morski action filed an Opposition and Objections to the motion for preliminary approval of the Jones settlement.

291. On October 28, 2015, counsel in the Bransford and Fontaine actions filed a 21-page supplemental Joint Opposition to Motion for Preliminary Approval (through counsel Blood Hurst & O’Reardon LLP, Milstein, Adelman LLP and Faruki & Faruki, LLP), which included the following objections:

“it is now crystal clear that this settlement is the product of an improper reverse auction where Defendants pay Antwon Jones’ counsel outrageous fees in exchange for control over every aspect of the settlement, a settlement in which claims for relief and relief amounts are to be determined by and known only to Defendants;”

“The notion that Defendant decides how much it will pay and to whom without any meaningful accountability is absurd;”

“Defendant’s much touted payment of 100% of all damages is a sham;”

“. . .the new settlement takes away the Court’s responsibility to determine if the settlement consideration is fair and reasonable and shifts it to Paul Bender consulting;”
“Paul Bender consulting is conflicted because [it works for public utilities, not ratepayers] it has every incentive to side with the LADWP, the nation’s largest public utility, rather than with ratepayer;”

“The release is also overbroad, with many class members giving up their claims without consideration;”

“The proposed settlement does not follow best practices, is unnecessarily confusing and inconsistent, and fails to detail important aspects of a notice program and claims process;”

“It is also clear that Jones’ counsel has not actually done much of anything;”

“In truth, the broad components of this settlement- refunds, a claim process and practice changes- are the same as those discussed with Bransford’s counsel in March 2015;” and

“The LADWP engaged in a reverse auction so it could choose its opponent. Shortly after Bransford was filed, and many months before Jones and his counsel came onto the scene, the LADWP attorneys attempted to recruit Bransford’s counsel to join its legal team in suing PriceWaterhouseCoopers. Because of the obvious ethical conflict, Bransford’s counsel declined to represent Defendant.”
292. In his Supplemental Declaration in support of the Opposition, Blood asserted:

"Jones’ Motion for Preliminary Approval should be denied and Bransford’s and Fontaine’s pending request for appointment of class counsel should be granted;" and “The LADWP continues to “reverse auction” the settlement with Jones’ counsel who demonstrated his willingness to stand aside without . . . conducting sufficient review and oversight necessary to protect Class Members...”

293. The Supplemental Joint Opposition filed by Blood also questioned the true scope of Landskroner’s work and contributions to the settlement; Bender’s objectivity; payments of millions of dollars to both Landskroner and Paradis for “settlement oversight and implementation services performed through July 12, 2016”; it criticized the proposed Claims Review Process, and the methods and formulas to be used to determine class membership, the sufficiency of the back-billed procedures, the Notice Program, date errors, and other claimed deficiencies in the proposed settlement.

294. Agrusa testified that she has never participated in a reverse auction, and “there was never any discussion of attorneys’ fees before class recovery in these cases.” (Agrusa R.T. at p. 670)

295. On November 3, 2015, Hon. Elihu Berle, Judge of the Los Angeles Superior Court held a hearing on the motion for preliminary approval of the settlement in Jones v. COLA. Agrusa, Annaguey, Paradis, Kiesel, Clark, Solomon, Dorny and Tom were present on behalf of COLA and/or DWP. Landskroner appeared for Jones. Counsel for the other class actions that the court had deemed related to the Jones case were present, including Blood, Hurst, Lee Jackson, Julia Wade, Himmelfarb, Libman and Gary Luckenbacher. Andre Jardini of Knapp, Peterson and Clark, counsel for the Kimhi solar power plaintiffs
appeared and advised the court that they had “approved, in our view, the probity and adequacy of the settlement agreement,” and “we’ve had an active role in what the settlement reads on the solar issues and we are happy to sign off, all three of our clients.” (November 3, 2015 R.T. at pp. 11-12) At the hearing, Himmelfarb and Blood raised objections to the settlement (other than the solar claims), and Wade made objections relating to back-billing issues. Judge Berle heard additional argument regarding approval of the settlement and instructed the parties to make approximately twelve additional revisions to the settlement terms. Paul Paradis was one of the attorneys appearing on behalf of COLA. Paradis did not offer that he had ever been counsel for plaintiff Jones. Kiesel addressed the court at various points; Kiesel did not advise the Court that he had assisted in the filing or service of the Jones v. COLA Compliant.

296. On December 4, 2015, the Blood and Milstein firms filed on behalf of the Bransford and Fontaine plaintiffs, a Joint Opposition to Motion for Preliminary Approval of Revised Class Action Settlement, in which those parties referred to the Court’s encouragement at the prior November 3, 2015 hearing, telling all counsel that “the parties [are to] meet and confer, see if you can resolve these issues and see if you can reach a consensus on some of these issue[s].” The Joint Opposition and Declaration of Leslie E. Hurst submitted in support of the Joint Opposition state that a meeting did occur between counsel from Landskroner’s office and Blood and Hurst, but that full consensus was not reached (particularly on the back-billing issues), and that Ms. Hurst encouraged the Landskroner lawyers “to consider our changes because they were not in fact extensive, made no structural changes to the settlement and could readily be talked through.” (Hurst December 4, 2015 Declaration, p. 3:7-9.)
On December 21, 2015, the Court gave preliminary approval to the settlement, appointed Antwon Jones as Class Representative, appointed Yaar Kimhi as class representative for the related solar power case, appointed Landskroner Grieco Merriman LLC as class counsel, appointed Paul Bender as the independent monitoring expert, appointed Dr. Barbara Barkovitch as Special Master, and ordered additional changes to the settlement agreement.

On May 25, 2016, an Amendment was made to the remediation contract between DWP and Paradis Law Group, extending the term by one year with and increasing funding to $6 Million.

Jones was never informed prior to the time his deposition was noticed in COLA v. PwC that Paradis Law Group had a contract with the City in which he was authorized to be paid more than $6 Million to oversee the City’s performance of the work that was agreed to in the Jones v. COLA case. (Jones 2/13/19 R.T. p. 215)

The Independent CC&B Billing System Monitor conducted site review and document review and analyzed the scope of the number of affected ratepayers and the damages incurred, and the Report of Independent CC&B Systems Monitor Concerning Status of Class Action Settlement for First and Second quarters of 2016 was filed with the court on or about July 17, 2016. In 2016, the Independent Monitor also requested additional time from the court to complete its analysis. Additional time was granted to November 18, 2016.

On October 31, 2016, the Parties in the Jones matter returned to Judge Tevrizian to mediate additional changes to the settlement agreement, including an increase of approximately $22.8 Million to bring the total amount of the settlement to $67.5 Million; to
revise dates by which additional remediation efforts were to occur; to revise certain rules
governing the provision of utility services; to revise some of the claims procedures; to revise
the amount of class counsel’s attorney fees and expenses; and other miscellaneous revisions.

302. Jones understood that Landskroner would be obtaining payment for the attorney
fees component of the settlement (Jones 2/13/19 R.T. p. 114) but he did not know one way
or the other whether Paradis would be obtaining any attorney fees. (Id)

303. On November 10, 2016, a Notice of Filing Revised Class Action Settlement
Agreement and Limited Release was filed by counsel for COLA.

304. On November 16, 2016, the Blood and Milstein firms filed the Bransford and
Fontaine Plaintiffs’ Response to Motion for Preliminary Approval of Revised Class Action
Settlement. In the Response, it was stated inter alia: “...we have forced many changes to the
settlement to comport with basic substantive fairness requirements.” The Response also
stated that the “Bransford and Fontaine plaintiffs’ objections to these procedures have been
consistently stated and are not waived now and continue to be asserted.”

305. On December 30, 2016, the Jones settlement was preliminarily approved by the
Court.

306. In early February 2017, before final approval of the settlement in the Jones
action, counsel for plaintiffs in the Bransford/Shrager/Tash and the Fontaine class actions
filed an ex parte application to lift discovery and conduct discovery regarding procedural
fairness. In the application dated February 3, 2017, counsel for those plaintiffs raised
allegations of collusion based on “...the timing of settlement, the curious relationships
amongst class counsel and counsel for the City, the astronomical attorney fees...and the
City’s payments to Jones’ ‘independent monitor’...”.
307. Agrusa testified that the fact that it took two years to get the structure [of the remediation] in place was based on, “the existence of the subclasses, the identity of the subclasses” which gives “some indication of how the issues were so complex and multilayered.” (Agrusa R.T. at p.154)

308. Jones signed the May 5, 2017 Declaration of Antwon Jones In Support of Plaintiff’s Motion for Final Approval (Jones 2/13/19 R.T. at p. 31) and emailed it to Landskroner. (Id. p. 32) Jones understood that was supporting his counsel’s motion to have the settlement approved by the court. (Id. p. 34) When Jones signed the Declaration, he understood his counsel to be Paradis and Landskroner. (Id. p. 58)

309. On May 5, 2017, independent consultant Bender submitted a declaration to the court, in which he advised that DWP needed more IT support in order to meet the settlement obligations. Based on an email dated May 5, 2017 from Paradis to Bender, it seems clear that Paradis worked with Bender, to finalize Bender’s final report to the court. There is no evidence to suggest that the Court was advised by anyone that Paradis assisted Bender in the drafting of Bender’s final report.

310. On July 7, 2017, a Final Approval Hearing was held. In his May 4, 2017 Declaration submitted in support of the settlement, the mediator, Judge Tevrizian submitted a declaration in connection with the settlement, and stated that, “In my opinion, the proposed Settlement provides an excellent recovery for members of the Settlement Class.” (Tevrizian 5/17/17 Declaration at ¶2)

311. The Minute Order prepared by the Court following the July 7, 2017 hearing states that the Motion for Final Approval of Class Action Settlement and Award of Attorneys’ Fees, Costs and Service Awards was unopposed.
312. On July 20, 2017, Hon Elihu M. Berle issued the court’s Order Granting Final Approval of Class Action Settlement and Final Judgment. A feature of the final settlement terms is that remediation of the billing problems would continue into the future.

313. At a hearing on December 4, 2017, Paradis represented to the Court that he had prepared the draft [Jones v. PwC] Complaint at the request of the City: “We represented the City your Honor. We were actually contemplating different legal strategies, different legal theories, and the City requested that we prepare two different draft complaints: one which was a draft Complaint by the City against PwC, the other on behalf of Mr. Jones against PwC. We had discussions—.” (12/4/17 R.T. p. 18-19) When the Court inquired why Paradis as an attorney representing the City was drafting a complaint on behalf of Mr. Jones, Paradis further explained: “Again, without getting into the details to waive anything, there was a concern on the City’s part that people who were customers be entitled to recover. So the idea was, what are the types of legal theories that might be out there that could be used by the class members if they wanted to recover, what are the theories? ... That draft Complaint had a single allegation, single cause of action. It was never provided to anyone other than the City. And you’ve got a 16-count Complaint that was filed by Mr. Jones, which is very different...” (R.T. p. 19:10-22) In response to Judge Berle’s question why Jones’ name was reflected on a draft complaint rather than a fictional plaintiff, Paradis responded: “Again, Your Honor, without disclosing the privileged communication, there were several people who had been complaining to the Department, at that point in time had been in touch with the Department, and Mr. Jones’s name was one of them.” (R.T. p. 20:10-14).

314. The issue regarding Paradis’ representation of a real person named Antwon Jones came to Tom’s attention in mid-to late 2018. (Tom 5/16/19 R.T. at pp. 500-502).
When Tom became aware of the issue, he brought it to the attention of general counsel Brajevich. (Id., p 505) Tom did not discuss this issue with Clark or Peters. (Id. at p.507) He discussed it with Dorny, and she expressed surprise. (Id at pp. 507-509. Several days later he spoke with Solomon about the issue and Solomon also expressed surprise. (Id at p. 511)

Annaguey first learned that Paradis and Jones had an attorney-client relationship when she read the Jones deposition transcript [in 2019]. (Annaguey R.T. at p. 138) Paradis never told Annaguey that he had had an attorney-client relationship with Jones (Id. p.139), nor did Dorny tell Annaguey that fact (Id. p. 140), nor did Clark tell Annaguey that fact (Id. p.145). Annaguey never spoke with Feuer until March or April 2019 about the DWP overbilling issues and had never spoken to him about those issues previously. (Id. at p.147) Kiesel never told Annaguey that he had an attorney-client relationship with Jones. (Id. p. 161)

On January 30, 2019, Kiesel’s office staff emailed to Peters, a link to a data file captioned “Emails Responsive to PMQ.” Peters denies that he reviewed the documents linked to the email prior to his February 26, 2019 deposition in the City v. PwC case, and an outside forensic data analyst has confirmed that the documents were not opened on Peter’s office computer prior to the date that Peters terminated his employment with the Los Angeles City Attorney’s Office [in March 2019].

Prior to Clark’s deposition on February 26, 2019, Solomon was unaware that Kiesel had provided Peters documents via an electronic folder, entitled “Emails Responsive to PMQ.” Neither Peters, Kiesel, Paradis, or Tufaro have ever spoken to Solomon about the documents that Kiesel provided to Peters. (Solomon 8/1/19 R.T. p. 510)
In March, 2019, Kiesel and Paradis each withdrew from representation of COLA. In March, 2019, the Project Management Services contract with Paradis/Aventador was terminated by the City.
VII. EXECUTIVE SUMMARY OF ANALYSIS AND OPINIONS

A. Conflicts of Interest

1. It is not *per se* unethical for a lawyer or law firm to represent multiple clients against a common adversary, so long as: the concurrent representation can be competently performed; so long as there is adequate and comprehensive disclosure to all affected clients of the circumstances surrounding the conflict(s) of interest and of the possible ramifications of waiving the conflict and of consenting to the concurrent or joint representation; so long as the lawyer's representation of one client is not rendered less effective as a result of the representation of another client; and so long as the affected clients provide written consent to the concurrent, competent representation of the multiple clients and their interests.

2. The representation of multiple clients in the same matter or in closely related matters always invokes a conflict of interest concern, in light of: the likelihood that the clients will share information that otherwise would have been maintained in strict confidence; the possibility that the clients may develop inconsistent objectives or may give the lawyer inconsistent instructions; and because of the fact that, although the clients may not be directly adverse to each other when the representation commences, it is always possible that they may develop unforeseen direct adversity in the future. For these reasons, in California and most other jurisdictions, a written disclosure and written waiver of conflict of interest is required before the lawyer commences concurrent representation of multiple clients in the same or in related matters, even if there are no direct conflicts at the time the concurrent or joint representation commences.
3. On the condition that Paul Paradis and Paul Kiesel had received informed, written consent from each client, either or both Paradis and Kiesel could have provided concurrent legal services and representation to two unrelated clients—Antwon Jones and the Department of Water and Power/City of Los Angeles ("COLA")—in their respective individual but related claims against the same defendant—PricewaterhouseCoopers ("PwC"). There is no evidence that the representation of either one of those clients would have resulted in diminished legal services to the other, and therefore, the conflicts of interest could have been waived by Jones and COLA to permit the same lawyer(s) to represent them in their individual claims against PwC, if informed written consent had been provided.

4. Between December 11, 2014 when Kiesel and Paradis first contacted Thom Peters, who was then serving as a Chief Assistant City Attorney, until about March 3, 2015 (when Kiesel and Paradis were advised that COLA would not authorize them to be hired as Special Counsel for COLA in connection with the litigation COLA was to file against PwC on March 6, 2015 if Paradis and/or Kiesel were going to also represent a ratepayer against PwC), the only draft Complaints that were circulated among the participants in the underlying matter were styled Antwon Jones v. PricewaterhouseCoopers or COLA v. PricewaterhouseCoopers. Until April 1, 2015, when the Jones v. COLA case was filed with Jack Landskroner and Michael Libman reflected as plaintiff’s counsel, there had never been a draft Complaint styled Jones v. COLA sent to or circulated among any lawyer affiliated with the City Attorney’s office, or to any COLA employees, or to the City’s counsel of record in the COLA v. PwC case, Liner, LLP.

5. Because Paradis was in a pre-existing attorney-client relationship with Antwon Jones before Paradis had any contact with COLA, Paradis was duty-bound to fulfill his ethical duties to Jones: Paradis was precluded from accepting representation of another client in the same or
in a related matter, even if such representation would not have been directly adverse to Jones, unless if Jones had provided informed written consent after receiving full disclosure of the nature of the conflict of interest and the ramifications of waiving that conflict.

6. Paradis was ethically precluded from unilaterally dropping Jones as a client (like the proverbial “hot potato”) in order to commence representation of another client i.e., COLA, whose interests potentially conflicted with Jones’ interests. Where the lawyer has received confidential information that could be used against the client such that a conflict of interest arises, even unilateral termination of one of the clients is ineffective to cure the conflict. *Truck Ins. Exchange v. Fireman's Fund Ins. Co.* (1992) 6 Cal.App.4th 1050. Side-switching in the same matter is never permitted. *Henriksen v. Great American Savings & Loan* (1992) 11 Cal.App.4th 109.

7. In this case, Paradis represented Jones in a matter in which COLA was always a potential adverse party in that it was recognized that any action brought by a ratepayer against PwC would surely result in COLA being brought in as cross-defendant. According to Jones, Paradis never advised Jones that he and his colleague Kiesel had begun to represent COLA against PwC in a matter directly related to the CC&B billing issues. At the point at which Jones elected to sue COLA, Paradis again failed to advise Jones that he and Kiesel were then acting as counsel for COLA. Paradis participated in drafting Jones’ consumer class action Complaint against COLA, concealing his acts from COLA. At a minimum, Kiesel assisted in the filing and service of the *Jones v. COLA* action against his then-existing client, COLA. In taking these actions, both Paradis and Kiesel engaged in breaches of their ethical and fiduciary duties owed to COLA as well as their ethical and fiduciary duties owed to Jones.
8. Once COLA declined to consent to Paradis’ concurrent or joint representation of both Jones and COLA against PwC, Paradis had an obligation to procure Jones’ consent to permit Paradis to withdraw from representation of Jones in favor of authorizing Paradis to represent COLA and refer Jones to other counsel for representation. Paradis’ failure to obtain Jones’ consent for Paradis to withdraw from representation and Paradis’ commencement of representation of COLA without Jones’ informed written consent constituted a breach of ethics and a breach of his fiduciary duties owed to Jones.

9. Both Paradis and Kiesel knew or should have known that, once COLA declined to consent to the concurrent representation by Paradis and/or Kiesel of an individual ratepayer in claims against PwC, at the same time that Paradis and/or Kiesel would be representing COLA in its action against PwC Paradis and Kiesel were also ethically precluded from providing any concurrent representation to a ratepayer and to COLA in any matter, absent informed written consent. In contravention of the duty to refrain from such concurrent conflicting representation, both Kiesel and Paradis secretly assisted in preparing, filing and/or serving the Jones v. COLA action without obtaining informed written consent from either client.

10. Other than the uncorroborated claims first made by Kiesel in May, 2019, which contradicted his prior repeated statements to the Court and those made in his March 13, 2019 sworn deposition testimony, there is no evidence that COLA knew that either Paradis or Kiesel were providing any assistance to Jones after about March 26, 2015, nor is there any direct evidence that anyone affiliated with COLA or the Los Angeles City Attorney’s office ever authorized Kiesel or Paradis to assist Jones in a claim against COLA. Prior to May 2019, both Paradis and Kiesel made repeated representations to the Court that the City Attorney’s office never represented Antwon Jones. Even if the trier-of-fact concludes that, according to
Kiesel, "the City" invited Kiesel and Paradis to assist in drafting a ratepayer consumer class action against the City, for the purpose of using said action as a "White Knight" vehicle to consolidate and settle all of the pending class actions against COLA. Paradis and Kiesel were not excused from obtaining the informed written consent of the client's authorized decision-maker, the LADWP Board of Commissioners, as required by the Rules of Professional Conduct.

11. Assuming that "the City," which Kiesel testified referred to Chief Assistant City Attorney Thom Peters and Chief Deputy City Attorney Jim Clark, authorized Paradis and Kiesel to "facilitate" the filing of a "White Knight" action against COLA without the informed written consent of the LADWP Board of Commissioners, then I would conclude that Peters and Clark violated their respective duties of loyalty to the client, COLA, unless they acted with the consent of their client. Both Peters and Clark categorically deny any such agreement and deny any knowledge of any purported agreement to facilitate the filing and service of the Jones v. COLA action; this is a factual issue for a trier-of-fact to resolve.

12. By providing legal services to Jones and for Jones' benefit while concurrently serving in the capacity of Special Counsel for COLA, without receiving the formal, informed written consent of LADWP through its legally authorized Board of Commissioners, both Paradis and Kiesel engaged in the representation of conflicting interests and breached their ethical and fiduciary duties to their client LADWP/COLA.

13. There is virtually no evidence that either Kiesel or Paradis provided any advice, representation or other legal services to or for the benefit of Jones after April 1, 2015. However, in September 2015, Kiesel offered to assist to schedule a meeting of all of the plaintiffs' attorneys in the pending class actions. This suggests that all plaintiffs' counsel had
some knowledge that Kiesel—who by then was identified as Special Counsel for COLA—had some involvement with the ratepayer class action cases. It is unknown whether either Kiesel or Paradis provided additional conflicted legal representation to either Jones or COLA after April 1, 2015.

B. Duty of Candor

14. In addition to misrepresenting to the court on numerous occasions that he and his law firm represented only COLA, Paradis made material misrepresentations by omission, in several respects: (i) Paradis failed to advise the court that he had been retained by Antwon Jones before Paradis ever proposed to represent COLA against PwC; (ii) Paradis failed to advise the court in response to direct questioning that he had directly participated in the selection of Jones’ counsel of record, Landskroner, or that he had assisted in the filing and service the Jones v. COLA lawsuit; (iii) Paradis directly mislead the court in stating that Jones’ name was used in a draft PwC Complaint simply because Jones was one of a number of people who had made claims relating to having been overbilled by LADWP for their utilities; and (iv) Paradis concealed from both the court and from his client, COLA, that in early January 2015, he had prepared a draft Jones v. PwC complaint which he had provided to Jones on January 9, 2015 without the knowledge of anyone affiliated with COLA, and that he later was directly and robustly involved in the drafting of the Jones v. COLA lawsuit that he emailed to Jones on March 29, 2015 and which was subsequently filed on April 1, 2015. By failing to provide truthful, complete and forthright representations to the court, Paradis engaged in repeated violations of his duty of candor.

15. By failing to reveal to his client, LADWP/COLA, through its authorized governing body, the Board of Commissioners, that he was continuing to provide legal services for the benefit of
Antwon Jones after March 6, 2015, or that he was continuing to communicate directly with Jones regarding Jones v. COLA as late as March 29, 2015, or that he was continuing to communicate directly with Jones' counsel Landskroner and Libman as late as March 31, 2015, and by conceding that he directly assisted in the filing and services of the Jones v. COLA action, Paradis breached his fiduciary duties to his client LADWP/COLA and engaged in repeated violations of his duty of candor.

16. Kiesel repeatedly represented to the trial court, over a period of years, that he and Paradis only ever represented a ratepayer (Jones) to the extent that consideration was being given to whether concurrent lawsuits would be filed against PwC — one a consumer class action filed in the name of an individual ratepayer, and the other a direct, affirmative action by COLA against PwC — and that once COLA declined to permit Kiesel and Paradis to represent COLA if they were also going to be representing a ratepayer, Kiesel's and Paradis' representation of Jones "ended." Kiesel made and repeated these representations in writing in an Opposition to PwC's Motion to Compel Discovery dated November 15, 2017 and in open court on December 12, 2017. Kiesel also testified in deposition on March 13, 2019, that he understood that there was a conflict if he and Paradis were to concurrently represent Jones and COLA, such that after COLA declined to waive the conflict and declined to authorize the concurrent representation, it was inconceivable to Kiesel that Paradis would be able to represent a client whose interests conflicted with COLA's interests. Paradis and another lawyer with his office also provided the same description of Kiesel's and Paradis' purported limited role in the preliminary representation of Jones, and made repeated assurances to the Court that this representation "ended" once the City declined to waive the conflict. These statements cannot be reconciled with Kiesel's deposition testimony later in May 2019, to the effect that he was
expressly authorized by the City to represent Jones and to assist Jones to bring suit against COLA. This dispute in the facts must be resolved by the trier-of-fact, but the conflicting accounts of the role of Kiesel and the role of Paradis in assisting Jones in his case against COLA cannot all be true; the directly contradictory statements strongly suggest that misrepresentations of fact were deliberately and repeatedly made to the Court by Kiesel and by Paradis.

17. By representing to the court on numerous occasions that he and his law firm represented only COLA, Kiesel made material misrepresentations by omission, in several respects: i) by concealing from the court that he had directly participated in the selection of Jones' counsel of record, Michael Libman; ii) by concealing from the court that he had assisted Libman in the filing and service of the Jones v. COLA lawsuit; and iii) by repeatedly stating that Special Counsel had only been involved in representing Jones until such time as a conflict of interest had been identified, and that as soon as Jones indicated his intention to sue COLA, the representation of Jones by Special Counsel “ended.”

C. Ethical Considerations Surrounding Settlement of Jones v. COLA

18. The issues relating to whether the mediation and settlement of the Jones v. COLA case were “collusive” as that term is used in the “Reverse Auction” context, and whether the mediation and settlement of Jones were fraudulent or sham proceedings, is an issue separate and distinct from the analysis whether any of the lawyers affiliated with COLA engaged in fraud and/or misrepresentations (which is summarized above). While the evidence amply supports conclusions to the effect that Paradis and Kiesel engaged in repeated misrepresentations to the court, their clients, and to opposing counsel regarding the extent to which Paradis and Kiesel each engaged in the representation of conflicting interests and mislead the Court,
Jones and COLA as to their actions, those acts are separate from the facts underlying the mediation and settlement process in Jones.

19. There is no dispute about the fact that, even before the first ratepayer class action was filed, and as soon as the class actions began to be filed, COLA was highly motivated to and fully intended to quickly settle the litigation by agreeing that every ratepayer would receive 100% in credits or repayment of the amount they had been overcharged as a result of the faulty billing program, and that the City agreed to remediate the problems with the billing system. Liner LLP partner Angela Agrusa testified that it was her early recommendation that the matters be settled as quickly as possible, and that early settlement discussions occurred. Agrusa started discussing settlement with Bransford v. COLA counsel Blood Hurst & O’Reardon, as did other members of the team representing LADWP/COLA before Jones v. COLA was filed. Many of the lawyers who were involved on behalf of LADWP/COLA testified that the City’s top priority was to quickly settle the claims and remediate the billing problems. Settlement discussions were conducted by Liner and the City’s in-house counsel with Bransford plaintiffs’ counsel Blood, Morski plaintiffs’ counsel Himmelfarb and with Landskroner in the respective consumer class actions that had been filed. Lead counsel, Liner partner Agrusa, found Landskroner to be experienced and credible, and although she would have selected Blood to be lead class counsel, she had no criticism of Landskroner’s experience and credibility. Eventually, Clark chose Landskroner as lead counsel. Nonetheless, Blood remained involved in the settlement process, as did Himmelfarb. Agrusa described the respective settlement demands of Blood and Landskroner as similar.

20. The evidence is clear that Liner LLP represented COLA in settlement discussions with Blood, Himmelfarb and Landskroner. Agrusa and Liner partner Maribeth Annaguey testified
at length in deposition as to the role of the Liner lawyers in mediating the case. Kiesel had little if any role in the settlement of Jones v. COLA. After the outline of the settlement was agreed to with the assistance of the mediator, Judge Dickran Tevrizian (Ret.), during the Summer 2015, Agrusa had a lesser role, but Annaguey remained directly involved in the implementation of the settlement terms, even moving into an office at DWP for a time.

Paradis was involved in the remediation of the billing system, and he (and later his company Aventador) served as project manager for the correction and continuing implementation of the billing function.

21. Review of case authorities in various situations in which “friendly,” collusive, and fraudulent settlements have been analyzed, illustrates that there is no per se ethical or legal impropriety where adverse parties work cooperatively to settle cases. As some examples, a defendant can settle with a plaintiff by assigning a bad faith claim against the defendant’s own insurance carrier, coupled with a covenant not to execute on a stipulated judgment; a governmental agency is permitted to participate in a friendly lawsuit, where it is hoped that the plaintiff will prevail in its claim against the government; a plaintiff and a defendant can enter into a sliding scale settlement, in which the settling defendants are treated more favorably than the nonsettling defendants; and parties are entitled to engage in cooperative common interest arrangements, where they confer in secret and prevent other parties in the litigation from accessing their joint communications. Currently in the news is a proposal by certain pharmaceutical companies to join together in a global bankruptcy proceeding in order to settle numerous cases alleging liability on the part of the drugmakers for opioid addiction.

Logic compels the conclusion that a party may wish to cooperate in the speedy resolution of a claim for any of a myriad of reasons, including that liability is clear, and the responsible
party may wish to make amends; an injured family member may be the claimant; concerns
over public interest or public perception may be involved; a party may not have the financial
ability to litigate; or any one of many other considerations.

22. A collusive settlement, sometimes referred to as "Reverse Auction" settlement in the class
action setting, has certain essential features. Typically, the class counsel has little or no
loyalty to the client class and seeks to settle the case in a manner that increases the lawyer's
fees to the detriment of the class. In the very few cases in which courts have actually found
an improper Reverse Auction, the class has received no or virtually no recovery. One feature
of a collusive settlement is that the attorney fees are settled before the terms of the recovery
for the class is negotiated.

23. The reported cases analyzing whether a collusive Reverse Auction occurred have rejected
assertions that collusion is shown because the defendant chose to settle with one class
counsel instead of another, or where simultaneous settlement discussions were occurring with
different classes, and many of the cases refer to the deference that courts show to private
consensual agreement among the parties. Some of the cases have disallowed the settlement
and have remanded to the trial court where the trial court failed to exercise the degree of
court supervision of the settlement that is required in a class action setting. In finding a class
action to have been collusive, the courts analyze whether the settlement provided a
demonstrably inadequate recovery to the class. Applying the case law to the conduct of the
lawyers representing COLA in the Jones v. COLA case, it was not unethical or a breach of
ethical duty to choose to settle the Jones case rather than another class action, nor was it
unethical to cooperate to reach an early settlement.
24. Where counsel has engaged in a breach of legal ethics, the case law has distinguished
between the adequacy of the settlement itself and the ethical improprieties of class counsel.
In situations in which the counsel has engaged in serious ethical breaches e.g., dual
representation of two parties in the litigation, favoring one client over another in the same
litigation, and the like, the remedy often is to disqualify counsel, rather than disapprove the
settlement. On the other hand, where the settlement occurred because class counsel agreed to
dismiss the class action as consideration for the payment of a substantial sum to class
counsel, the settlement would be disapproved.

25. Perhaps the most key issue in analyzing an alleged collusive “Reverse Auction” is the extent
to which the settlement terms were brought before and supervised by the court. Where the
court has engaged in detailed and comprehensive supervision of the settlement and has
overseen final approval, there is no known published case in which a collusive settlement has
been found.

26. Here, the settlement of *Jones v. COLA* was not finalized for approximately 2 years after the
initial settlement was reached. The terms of the settlement were revised on multiple
occasions, with the assistance of an experienced and well-respected judicially trained
mediator and following multiple direct instructions from the trial judge. There is no evidence
that any of the counsel for any of the parties was incompetent, and by several accounts, the
settlement negotiations were rigorous, hotly contested, contentious and protracted.

27. Agrusa was unequivocal that no mention of the attorney fees was made until the parties were
participating in mediation before Judge Tevrizian. Contemporaneous emails reflect that the
City’s lawyers objected to the class counsel’s request for fees. There was no agreement on
the amount of the attorney fee award, and the matter was only resolved after the mediator
made a mediator's proposal. The City's decision whether to accept the mediator's proposal
was influenced by a number of factors, and was determined by the City's governing Board,
and not by either outside defense counsel, the City's in-house City Attorney's office, or by
Special Counsel.

28. Even if it is assumed that attorneys representing COLA in the Jones v. COLA case treated the
Jones case as a friendly lawsuit and coordinated the settlement terms with counsel for Jones,
so long as the class recovery was fair and reasonable and properly supervised by the court,
the attorneys participating in the settlement negotiations of Jones v. COLA did not engage in
any breach of legal ethics or violate any professional responsibilities.

29. The trial judge will decide whether the settlement terms should be upheld and whether there
was impropriety by any of the City's lawyers which infected the settlement process or its
results. I have not been tasked with evaluating the sufficiency of the settlement terms in
Jones v. COLA, nor have I made any effort to do so. Regardless of the court's decision on
those points, I conclude that: neither the City's outside counsel nor the in-house attorneys
working within the City Attorney's office on the Jones v. COLA case engaged in unethical
collusive activity as that term is applied in the context of the settlement of class actions. In
my opinion, other than the fraudulent misrepresentations made to the court, their clients and
opposing parties by Paradis and Kiesel, none of the other lawyers acting under the auspices
of the City Attorney's office acted fraudulently or illegally. In the event that it is determined
by a trier-of-fact that Clark or Peters participated in the bringing of a claim by Antwon Jones
directly against COLA for the ostensible purpose of reaching a global settlement of all of the
ratepayer claims arising from the CC&B billing crisis, without first obtaining the informed
written consent of the client through the legally authorized governing Board of LADWP, that
is an issue of breach of the Rules of Professional Conduct, which would normally be determined by the State Bar of California using the burden of proof: "clear and convincing to a reasonable certainty."

D. Lawyer as Witness

30. Regarding the dual roles served by Paradis in his capacity as Special Counsel for COLA in the COLA v. PwC case, and Paradis’ role as project manager (personally and later through his company Aventador) in connection with the efforts to remediate, correct and implement corrections to the CC&B system, Paradis/Aventador was approved by the LADWP Board of Commissioners to serve in both capacities. The LADWP Board obviously knew that it had approved Paradis as Special Counsel during Spring, 2015, mere months before it initially approved Paradis in Fall, 2015 to serve as project manager of the CC&B remediation process. Under then-applicable CRPC 5-210(b), a California lawyer was free to testify as a witness while serving as advocate for the client, in a non-jury trial; and with informed written consent from the client, the lawyer was free to testify as a witness even while concurrently serving as the client’s advocate in a matter before a jury. Thus, under former rule 5-210(b), there were no ethical constraints upon a lawyer serving as both an advocate and a witness in a non-jury trial, or in a jury trial where, as here, the client provided informed consent to the dual role. Paradis/Aventador’s contract was terminated by the LADWP Board in March, 2019, and both Paradis and Kiesel withdrew as Special Counsel for COLA in March, 2019. Paradis was never called upon to provide testimony relating to the remediation and implementation of corrections to the CC&B system before any tribunal as while he was concurrently serving as counsel for COLA, and he did not testify as a witness for COLA while serving as counsel for COLA. Therefore, the “lawyer as witness” issue never ripened
for determination while Paradis remained counsel for COLA. While the provisions of current CRPC rule 3.7 governing the ethical duties of a lawyer concurrently advocating and serving as a witness for a client are substantially revised from the old rule 5-210 provisions, because Paradis was not called to testify in the capacity of project manager, the ethical issue was not presented for resolution. In any case, there is no question that the client—the LADWP Board—was not precluded from consenting to having Paradis serve in the dual roles as Special Counsel and as project manager of the CC&B remediation process.

VIII. COMPREHENSIVE ANALYSIS AND OPINIONS REGARDING ACTIONS TAKEN BY ATTORNEYS WORKING UNDER THE AUSPICES OF THE LOS ANGELES CITY ATTORNEY’S OFFICE IN CONNECTION WITH LADWP CC&B MATTERS AND OVERBILLING ISSUES INCLUDING THE JONES v. COLA CLASS ACTION CASE

In analyzing the multiple issues that have been raised in the pending COLA v. PwC case, I have focused on the ethical duties owed by lawyers to their clients, to the Court, and to opposing counsel; the application of applicable Rules of Professional Conduct and the State Bar Act to the conduct of the attorneys operating under the auspices of the City Attorney’s Office; as well as the overarching duty of lawyers to uphold the fundamental integrity of the judicial system. Some of the facts underlying the several issues under consideration are crystal clear while other facts are in serious dispute. In particular, the issue of whether or not “the City Attorney’s office” directed Paul Paradis and Paul Kiesel to assist in the filing of the Antwon Jones v. City of Los Angeles case requires analysis of directly contradictory facts. Where the facts are contradictory, confusing, or simply unknown, I have endeavored to apply a reasoned analysis, without assuming that one set of facts is true or untrue.

1. Representation of Conflicting Interests

It is unethical for attorneys to concurrently represent multiple clients in the same or in
related matters, absent informed written consent. All of the lawyers representing COLA, including members of the City Attorney’s Office, Special Counsel Paul Kiesel and Paul Paradis, and outside counsel, Liner, LLP had an ethical duty to refrain from the concurrent representation of clients whose interests either potentially or actually conflicted, absent obtaining informed, written consent of the client. Lawyers have a duty to identify conflicts of interest and to disclose them in writing to each of their clients, and are required to obtain the clients’ informed consent to waive the potential and/or actual conflicts.

Former California Rule of Professional Conduct, Rule 3-310(C) provided in applicable part:

(C) A member shall not, without the informed written consent of each client:
(1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
(2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

Current California Rule of Professional Conduct, Rule 1.7 (a) and (b) provides in applicable part:

(a) A lawyer shall not, without informed written consent from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.

1 Effective November 1, 2108, the California Supreme Court adopted new California Rules of Professional Conduct (“CRPC”) which have supplanted the former rules. The new rules are similar in most respects to the old rules. Historically, the CRPC in effect at the time of the attorney’s acts or omission have been applied. Because some of the attorney conduct occurred pre- November 1, 2018 and some occurred post November 1, 2018, I have included both rules for purposes of my analysis.
(b) A lawyer shall not, without informed written consent from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer’s representation of the client will be materially limited by the lawyer’s responsibilities to or relationships with another client, a former client or a third person, or by the lawyer’s own interests.

As conclusively defined by the California Supreme Court in Flatt v. Superior Court (1994) 9 Cal. 4th 275, 284, attorneys owe their current clients a duty of undivided loyalty, and absent informed written consent, a lawyer is precluded from representing a client in a matter, while concurrently representing that client’s adversary, even in an unrelated matter.

In May, 2019 Kiesel testified in part that he and Paradis had been instructed by “the City” to “facilitate” the filing and service of the Jones v. COLA class action lawsuit, and he further testified that Peters and Clark were the two individuals who authorized him and Paradis to assist Jones. The emails concerning the drafting of the Jones v. COLA Complaint, the filing of that Complaint, and service of that Complaint that were exchanged between about March 24, 2015 and April 1, 2015 between Kiesel, Paradis, Landskroner and Libman were not copied on any other lawyer affiliated with COLA. Every other lawyer who was deposed in this action—including Clark, Peters, Tom, Solomon, Dorny, Annaguey and Agrusa—either testified that they knew nothing about either Kiesel or Paradis providing legal assistance or any assistance at all to Jones after March 3, 2015; and/or testified that they never heard the Jones case referred to as the “White Knight” lawsuit; or were not asked in their depositions anything about Kiesel’s or Paradis’ post-March 3, 2015 assistance to Jones; or, in the case of Clark and Peters, each testified under oath they never participated in any discussions regarding and never authorized anyone to bring an action against COLA. All of the emails referring to or mentioning Jones that had been sent to or which had been copied any of the City’s lawyers prior to April 1, 2015 had referred to a draft Complaint entitled Jones v. PwC. None of the emails between Paradis and Kiesel on one
hand, and any other lawyer or person affiliated with LADWP/COLA on the other hand, referred to a draft complaint to be brought in Jones’ name against the City of Los Angeles. There is no evidence from any source that anyone other than Paradis and Jones were aware, prior to 2019, that on January 9, 2015, Paradis had forwarded to Jones, a draft complaint styled Jones v. PwC. Neither Jones nor the authorized governing body of LADWP/COLA ever authorized any lawyer to assist a ratepayer to bring legal action against LADWP/COLA.

Kiesel consistently testified that he never represented Jones. Apparently, Kiesel believes there is a distinction between “representing” Jones and assisting to “facilitate” the filing service of the Jones v. COLA lawsuit against COLA while actively serving as Special Counsel of record for COLA. Jones testified that he never spoke with Kiesel and did not consider Kiesel to be his lawyer. Jones considered Landskroner and Paradis to be his lawyers in connection with the filing of his case, and in connection with the settlement of his case, Jones v. COLA. Jones testified that he did not communicate with Paradis after April 10, 2015, and that all his communications regarding his case thereafter were with Landskroner. Jones did not consider Libman to be his lawyer.

In Kiesel’s December 12, 2018 representations made to the Court on the record, Kiesel unequivocally stated that the City Attorney never represented Jones, and that “Special Counsel,” without specifying whether he was referring to himself, Paradis or both, had represented Jones regarding “…filing suit against PwC, not the City of L.A., but PricewaterhouseCoopers.” Kiesel also stated that a conflict arose once “Jones wanted to sue the City” and that “Special Counsel did have a relationship with Mr. Jones that was not adverse to the city of Los Angeles until Mr. Jones wanted to pursue an action against the City and that was the end of that relationship. The City had nothing to do with that.” Clearly, Kiesel’s representations to the Court were not accurate, and omitted material facts including that Paradis had initially discussed with Jones a potential claim against LADWP, and that Kiesel had personally and in coordination with Paradis and Landskroner, assisted in the “facilitation” of the Jones v. COLA case, and also that Kiesel (according to Kiesel’s later testimony in May, 2019) had participated in a purported
predetermined plan that the City would assist in the filing of a Jones v. COLA class action and then settle that case as the "White Knight" class action complaint.

Also, in his March 13, 2019 deposition testimony, Kiesel testified that, while he was negotiating the Tolling Agreement with Himmelfarb, Kiesel was representing his client COLA, and he did not perceive that he had a conflict; that the City’s attorneys including Liner attorneys knew that he was working on a ratepayer case against PwC; that once Kiesel was told that the City did not want Special Counsel representing a ratepayer against PwC, that ended Kiesel’s involvement with the ratepayer action; and that he understood that Jones was seeking to pursue a claim against PwC and not a claim against COLA. Kiesel also testified on March 13, 2019 that when he learned on about March 26, 2015 that Jones intended to file a complaint against COLA, Kiesel understood that Paradis could not be involved in that suit because Paradis was then counsel for COLA and could not take action against COLA and that "...under no uncertain terms there is a conflict..." and "I understood there was a conflict."

Based on applicable law and the facts that have been adduced in this case, I have reached to following opinions in connection with the issue of the representation of conflicting interests by lawyers affiliated with COLA:

1) To the extent that the City and the ratepayers had a mutual interest in pursuing the ultimate responsible party to recover for the benefit of the ratepayers, full reimbursement of the amount of the overcharges paid by ratepayers, there was no actual conflict of interest and therefore there was no impropriety on the part of the City Attorney in exploring either joint or separate efforts to recover from the responsible party, 100% of the losses suffered by the ratepayers. Had both Jones and COLA provided informed, written consent to such concurrent representation against PwC, it would have constituted a waivable conflict of interest.

2) When he initially communicated with members of the City Attorney’s office while the City was exploring whether to bring an affirmative lawsuit against PwC, Paradis
represented that he was working to develop claims against PwC; he said nothing about representing any party against COLA; when Peters requested that Paradis prepare a draft complaint in the name of a ratepayer against PwC, it was a “thought experiment”; Paradis did not reveal to any lawyer affiliated with COLA, including the City Attorneys, the DWP attorneys and the Hafer attorneys, that he had also prepared a complaint which he provided on January 9, 2015 to his ratepayer/client Jones. In January, 2015, when two different draft complaints were circulated by Paradis to DWP lawyers and were in turn circulated by Solomon to other attorneys in the City Attorney’s Office, both Complaints listed PwC as the defendant: Jones v. PwC and COLA v. PwC. Had the City agreed that Paradis and Kiesel could concurrently serve as counsel for Jones and as counsel for COLA in their respective claims against PwC, and had Paradis and Kiesel refrained from representing Jones against COLA, then Paradis and Kiesel could have provided such concurrent representation with informed written consent from each client, and so long as the representation of each was competently performed;

3) By March 3, 2015, when the decision was made that COLA would not approve either Kiesel’s or Paradis’ concurrent representation of a ratepayer if they represented COLA as Special Counsel, and it was made clear that COLA would not agree to a conflict waiver to permit Paradis (or Kiesel) to represent Jones, the following duties arose: a) Paradis had a duty to advise Jones that Paradis wished to represent COLA, a party adverse to Jones, and to advise Jones that Paradis could not represent COLA unless Jones consented after being fully informed of the potential adverse consequences of waiving this conflict of interest, and unless Jones provided a written conflict of interest waiver; b) had Jones refused to waive the conflict created when Paradis decided he would rather represent COLA than continue to represent Jones, Paradis would have been ethically precluded from representing COLA; c) assuming Jones would have provided informed consent to Paradis’ withdrawal from representation of Jones (in favor of being referred to other, independent legal counsel) Paradis had a duty to obtain written conflict waivers from both Jones and COLA before commencing representation of COLA. Paradis
violated his duties to Jones and to COLA by failing to comply with any of his ethical duties regarding avoiding the representation of even potentially conflicting interests absent the provision of informed, written consent from all affected clients.

4) The duty to obtain the client(s)' informed written consent to waive conflicts of interest rests upon the lawyer who is representing the client. COLA and its in-house attorneys never provided any legal services to Jones, and never owed him any ethical duties; the City Attorney's office lawyers were reasonable in relying upon Paradis' and Kiesel's implicit representation after March 3, 2015 that only COLA would be the client, rather than any individual ratepayer, and that both Kiesel and Paradis would refrain from representing Jones. No duty to obtain Jones' consent to waive the conflict applies to the Los Angeles City Attorney's lawyers, or COLA's outside counsel.

5) Other than Solomon, who testified that he learned (most likely from Paradis) in the weeks before April 1, 2015 that an unidentified ratepayer was expected to file an additional class action against COLA, there is no evidence that any other lawyer affiliated with the City Attorney's Office knew of this or expected the lawsuit that was filed on April 1, 2105. And, there is no evidence that Solomon knew or should have known that Kiesel or Paradis would be providing assistance of any type to Jones in his case against COLA. To the contrary, Solomon had been told that Paradis had withdrawn from representation of Jones and had referred Jones to an Ohio attorney (Landskroner). There is no evidence to suggest that the outside counsel at Liner had any knowledge at all that Paradis and/or Kiesel provided legal services to Jones or remained in an attorney-client relationship with Jones after about March 3, 2015.

6) Regarding the assertion by Paradis and Kiesel that they were instructed to facilitate the filing of the Jones v. COLA action, I cannot reconcile Kiesel's seriously inconsistent and contradictory statements made pre- and post-May, 2019. Prior to (and even during) his three
deposition sessions in May, 2019, Kiesel consistently affirmed that his and Paradis’ pre-March 26, 2015 discussions with COLA and all of their legal representation with regard to Jones, centered on Jones’ potential class action against PwC, and the possibility that a concurrent companion case against PwC would be filed by COLA. Kiesel also consistently acknowledged that there was at least a potential conflict between Jones on the one hand and the City on the other, which the City decided not to waive, resulting in his conclusion that he and Paradis were conflicted out, and could no longer represent Jones.

Kiesel made multiple representations from 2015 through 2019 to the court to the effect that, as soon as the issue of Jones suing COLA arose, the relationship of both Paradis and Kiesel with Jones “ended,” and that a conflict arose.

Kiesel represented to the Court and parties in the November 15, 2017 Opposition to PwC’s Motion to Compel Discovery, that the draft Jones v. PwC complaint was prepared at COLA’s request, to assist COLA in forming its legal claims; that the draft Jones v. PwC complaint was not prepared as a draft litigation document for Jones; and that as soon as COLA decided not to pursue a joint lawsuit brought by a ratepayer against PwC, “no further action was ever taken.” In that Opposition, Kiesel expressly denied that COLA colluded with Jones.

At the December 12, 2017 hearing, Kiesel advised the Court that when Jones decided to sue the City of Los Angeles instead of suing PwC, “a conflict immediately occurred,” and that “Special Counsel did have [a prior] relationship with Mr. Jones that was not adverse to the City of Los Angeles until Mr. Jones wanted to pursue an action against the City and that was the end of that relationship. The City had nothing to do with that, but I wanted to clarify the record in that regard, Your Honor.”

As late as the March 4, 2019 hearing in the COLA v. PwC case, counsel for Kiesel represented to the court once Landskroner began to represent Jones, Paradis’ attorney-client relationship with Paradis ended. Even in his May 30, 2019 deposition, Kiesel testified that, after the conflict waiver provisions were removed from the draft retainer agreement with LADWP, Special Counsel’s ability to bring a claim on behalf of a ratepayer “ended.” Similarly, Kiesel and
Paradis' office each repeatedly represented to the Court that the City Attorney's office never represented Jones and had nothing to do with the Jones v. COLA case.

Kiesel's various statements made under oath and in open court drastically changed when the April 29, 2019 email was sent from Paradis to Kiesel, stating that "...the City Attorney's office is flat out lying and denying the fact that the City Attorney's Office both knew about and directed the preparation and filing of the Jones consumer class action!" Kiesel's testimony on May 28-30, 2019 regarding when his relationship with Jones "ended," and whether he had any relationship with a ratepayer after March 26, 2015 contradicts his earlier statements in material ways, and in his May 2019 deposition sessions, Kiesel for the first time asserted that he and Paradis were directed by Clark and Peters to assist Jones in filing a class action against the City. I can't avoid noting that there is no corroborating evidence to suggest that anyone else affiliated with COLA or its in-house attorney staff or outside counsel Liner, ever authorized either Kiesel or Paradis to do anything to assist Jones in a claim against the City of Los Angeles: there are no emails, no notes, and no third party corroborating witnesses.

It is also clear that, by March 26, 2015, Kiesel and Paradis were aware that Jones was going to file an action against COLA. Paradis and Kiesel knew that this presented a conflict of interest for them, since they were then, and for months earlier had been representing COLA. The reason that Landskroner came in to represent Jones was that Paradis and Kiesel were conflicted and could not obtain informed written consent from COLA to concurrently represent Jones while serving as Special Counsel for COLA. It strains credulity to believe that Kiesel and Paradis did not understand that this conflict of interest precluded them from concurrently representing Jones versus PwC while representing COLA versus PwC without conflict waivers, yet they believed they could assist Jones versus COLA while representing COLA without conflict waivers. As lawyers, Kiesel and Paradis had to know that this was a prohibited representation of conflicting interests; it is incomprehensible that they concluded that they and/or the City Attorney's Office were permitted to "facilitate" the assertion of the pre-filing Notice of Jones' claim against the City, and/or participate in the drafting, filing and service of the Jones v. COLA Complaint.
Both Kiesel and Paradis were charged with knowing that, once COLA had informed them that it would not waive the conflict and would not permit them to concurrently represent a ratepayer against PwC while representing COLA against PwC, then COLA certainly would not authorize either of them to represent a ratepayer directly against COLA while serving as Special Counsel for COLA. After the City withheld consent to waive the conflict, Kiesel was duty-bound to refrain from assisting Jones. Consequently, to the extent that Paul Kiesel assisted in the representation of Jones, facilitated the filing and/or service of the Jones v. COLA action, and otherwise provided legal services for the benefit of Jones, Kiesel violated his ethical duties to his client, COLA. This is the case regardless whether Kiesel was formally retained by Jones, or whether he considered Jones to be his client: by “facilitating” Jones’ case against COLA, even if this conflict could have been waived (which it probably could not and would not have been), Kiesel owed COLA a duty to disclose his proposed actions before he engaged in it, and to obtain informed written consent. By failing to do anything to properly disclose this conflict, and by failing to seek a waiver of this conflict, Mr. Kiesel violated former CRPC rule 3-310(c.

In my opinion, if the trier-of-fact determines that Paradis drafted the Jones v. COLA and “facilitated” the filing and/or service of the Jones v. COLA action, Paradis had a direct conflict of interest that was likely to be determined by a court to be unwaivable. Even if that conflict could have been waived with informed written consent from COLA (which is hardly likely), at a minimum, before the conflict could have been waived, Paradis was required to provide his client COLA with a full written disclosure of the conflicts of interest between Jones and COLA, including a comprehensive analysis of whether the conflicts of interest were so direct as to be unwaivable. Even if the conflicts between Jones and COLA could have been waived with informed written consent, written disclosures of the potential and actual adverse ramifications of waiving the conflicts and consenting to concurrent representation were required by common law ethics standard as well as explicitly by CRPC rules 3-310 and 1.7. Paradis made no effort to disclose this conflict and COLA did not waive it.
Jones testified that he was entirely unaware that his counsel Paradis was representing COLA and serving as its special counsel. Jones never consented to waive the conflict between himself and COLA. Paradis violated his ethical duties to Jones if Jones is correct that Paradis never advised Jones that Paradis had decided to represent COLA in lieu of representing Jones and by failing to obtain Jones' informed written consent to represent COLA after having commenced representation of Jones.

Here there is no doubt that there was never any written conflict waiver executed by COLA or the DWP Board of Commissions. Even if Kiesel's testimony to the effect that he and Paradis were directed by Clark and/or Peters to assist or facilitate the Jones v. COLA action is taken as true, by actively assisting Jones in his lawsuit against his current client, COLA, Kiesel and Paradis failed to comply with clear ethical duties and violated the rule prohibiting the representation of conflicting interests without informed written consent from an authorized decision-maker for the client. Here, the client was COLA, and the authorized decisionmaker was the DWP Board of Commissioners, and informal direction from Clark and/or Peters to assist Jones was inadequate to constitute waiver of the clear conflict.

Assuming that Paul Kiesel testified truthfully and that Clark and Peters both testified untruthfully regarding whether Clark and/or Peters expressly authorized Kiesel and Paradis to assist in the preparation, filing and service of the Jones v. COLA action, then I conclude that, although Clark and Peters did not violate CRPC 3-310 because they never provided any legal services to Jones, they would have breached their fiduciary duties to COLA by authorizing Paradis and Kiesel to represent Jones in a manner directly adverse to COLA, without obtaining prior informed, formal, written consent from the client, LADWP.
Additionally, it appears that Paradis concealed that he was directly involved in the preparation of the “independent” monitoring report that was to be prepared by Paul Bender. To the extent that Paradis concealed from the City, the Court, and others that he was one of the actual authors of the purported independent report, while concurrently serving as Special Counsel to COLA, Paradis may have engaged in a conflict of interest, in addition to breaching his duty of candor to the court, as discussed further below.

Finally, there is no evidence of any kind to suggest that any of the attorneys working under the auspices of the City Attorney’s Office, or the attorneys working for outside counsel, Liner, LLP and its successor firm, or Kiesel, provided any legal services, encouragement or assistance to Antwon Jones or his counsel of record after April 2, 2015. Thus, in terms of a conflict of interest analysis, the representation of conflicting interests by Kiesel and allegedly on the part of Clark and/or Peters (the only City Attorney’s office lawyers allegedly involved), all ended by April 2, 2015; and there was no continuing representation of conflicting interests in connection with the Jones v. COLA case by these individuals that is supported by any known evidence. Whether Paradis had continuing contact with Landskroner in order to assist Jones in his case against COLA is unknown.

2. Appearance of Impropriety

In conducting my analysis of the conflict of interest issues involved in this matter, I noted that the New Class Counsel’s Preliminary Report Regarding Status of Class Action Settlement filed in Jones v. COLA on July 25, 2019 referred to the “appearance of impropriety” standard (pp. 9-10) in its discussion of the conduct of the attorneys in the Jones case. Appearance of impropriety, a standard sometimes raised in attorney disqualification cases, has been repeatedly

Avoiding the appearance of impropriety has never been used by a California court as the sole basis for disqualification. (Gregori v. Bank of America, supra, 207 Cal.App.3d at pp. 306-308; see also People v. Lopez (1984) 155 Cal.App.3d 813, 823 [202 Cal.Rptr. 333] ["The appearance of impropriety, however, is a malleable factor having the chameleon-like quality of reflecting the subjective views of the percipient. [Citations.]"). But the court in Williams actually grounded its decision on a more concrete test: whether there is a reasonable possibility that some specifically identifiable impropriety occurred that threatens the integrity of the trial process. (Williams v. Trans World Airlines, Inc., supra, 588 F. Supp. at pp. 1042, 1045.) This standard is not inimical to our approach in this case. Nevertheless, we would be reluctant to conclude that free exchange of information between attorney and client constitutes an impropriety threatening the integrity of the judicial process, at least when a nonattorney client is involved. (Compare Bell v. 20th Century Ins. Co., supra, 212 Cal.App.3d at p. 198, with Hull v. Celanese Corporation (2d Cir. 1975) 513 F.2d 568 [staff attorney for corporation sought to intervene as a plaintiff in discrimination suit against corporation, resulting in plaintiffs' counsel being disqualified].)

2 The ABA Model Rules of Professional Conduct were adopted by the ABA House of Delegates in 1983, replacing the 1969 Model Code of Professional Responsibility that contained the Canons. The current Model Rules do not include the language previously set forth in Canon 9, which provided that a "lawyer should avoid even the appearance of professional impropriety." There is no "appearance of impropriety" standard in the current ABA Model Rules. To the contrary, Comment [5] to Model Rule 1.9 expressly provides that "Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9...." And, comment [8] to Rule 1.9 provides: "However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client." In the well-regarded treatise, Lawyer Disqualification [Second Edition, Flamm, 2014], it is noted: "By the early 1980's criticism of the appearance (of impropriety) standard has become so widespread that the drafters of the Model Rules of Professional Conduct made a conscious decision to abandon that standard. (fn. omitted)"

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In *Apple Computer v. Superior Court* (2005) 126 Cal. App. 4th 1253, the court found a conflict of interest based on the fact that class counsel had “placed themselves in a position of divided loyalties—their own financial interest in recovering attorney fees versus their obligation to the putative class to maximize the recovery of monetary and other relief.” [Emphasis in original.]

The opinion also cited with approval *Hetos Investments, Ltd. V. Kurtin* (2003) 110 Cal. App. 4th 36, 37: “Despite the many references to the appearances standard in our case law, and despite occasional judicial statements that "[d]isqualification is proper . . . to avoid any appearance of impropriety" . . . , there is no California case in which an attorney has been disqualified solely on this basis.” [Emphasis in original.]

Similar conclusions have consistently been reached in cases in which a governmental lawyer is alleged to be biased as a result of having advised an opposing party in one or more unrelated matters. The California Supreme Court decision in *Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal. 4th 731 rejected a bright-line appearance of bias rule that would prohibit an agency from relying on its attorney for advice in one matter, when the same attorney advocates or prosecutes an unrelated matter before the same decision-maker. The Morongo tribe, relying on *Quintero v. City of Santa Ana* (2003) 114 Cal.App.4th 810 sought the disqualification of staff counsel for the State Water Resources Board for having a dual prosecutorial and advisory roles of the enforcement team members that created “an inappropriate and impermissible appearance of unfairness and bias sufficient to compel their removal.” The Court of Appeal agreed with Morongo Band’s argument, but the Supreme Court rejected it and reaffirmed the requirement to show actual bias at pp. 741-742:

“The Court of Appeal’s stated rationale for its per se rule is that “[h]uman nature being what it is, the temptation is simply too great for the ... Board members, consciously or unconsciously, to give greater weight to Attorney Olson’s arguments by virtue of the fact she also acted as their legal adviser, albeit in an unrelated matter.” As Justice Robie observed, in his dissenting opinion in the Court of Appeal, the majority’s relationship-bias reasoning “applies far beyond the situation where an attorney is simultaneously acting as
an advocate before an administrative board and an adviser to the board in an unrelated matter.” That reasoning would apply also when the prosecuting agency attorney has acted as an adviser to the agency adjudicator in an unrelated matter at any time in the past. Arguably, the rationale would also require disqualification of an attorney representing a license holder like the Morongo Band if that attorney at any time in the past had served the agency adjudicator in an advisory capacity in an unrelated matter. And in countless other situations when the adjudicator may have formed a favorable opinion of the abilities of one of the litigating attorneys through some previous social or professional interaction, the Court of Appeal's reasoning would require the attorney's disqualification, even though this court has concluded that similar relationships ordinarily are not disqualifying.

* * *

In the absence of financial or other personal interest, and when rules mandating an agency's internal separation of functions and prohibiting ex parte communications are observed, the presumption of impartiality can be overcome only by specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias. Unless such evidence is produced, we remain confident that state administrative agency adjudicators will evaluate factual and legal arguments on their merits, applying the law to the evidence in the record to reach fair and reasonable decisions.”

While not directly on point, Morongo Band’s holding reinforces a conclusion that a lawyer’s prior professional relationships, standing alone, do not constitute bias or an appearance of impropriety which results in an ethical breach or which warrants disqualification.

In my opinion, the appearance of impropriety standard is inapplicable to the attorney conduct in connection with Jones v. COLA. As analyzed supra, there is ample evidence that Paradis and Kiesel engaged in the representation of conflicting interests; the appearance of impropriety is irrelevant. If Kiesel’s testimony to the effect that he was directed by City Attorneys Clark and/or Peters to assist in the filing and service of the Jones complaint against their own client is true (notwithstanding their respective unequivocal denials of same) then those lawyers also engaged in a breach of loyalty and represented conflicting interests. The
proper standard is whether the representation of conflicting interests actually occurred and not whether there is an appearance of an ethical breach.

3. Duty of Candor Owed to the Court, Clients, and Others

It is axiomatic that all attorneys owe a duty to refrain from misleading a judge or judicial officer, as is set forth in Business Professions Code sec. 6068(d): It is the duty of an attorney "... never to seek to mislead a judge or judicial officer by an artifice or false statement of fact or law." Attorney disciplinary cases which find an attorney culpable of ethical misconduct based on misleading statements or concealment of true facts frequently arise from direct misrepresentations and/or material omissions by the attorney directly to the judge in open court. However, it has long been settled that "A member of the bar should not under any circumstances attempt to deceive another." Cutler v. State Bar (1969) 71 Cal. 2d 241. Also see, e.g., In re Kristovich (1976) 18 Cal. 3d 468 (attorney lied under oath); In Re: Cadwell (1975) 15 Cal. 3d 762 and Arm v. State Bar (1990) 50 Cal. 3d 763, 775 (concealing upcoming suspension from practice.). Likewise, misleading other counsel may form the basis of professional discipline. See, e.g., Monroe v. State Bar (1961) 55 Cal.2d 145, 152 and Coviello v. State Bar (1955) 45 Cal. 2d 57, 65-66. Thus, a lack of candor can occur even outside of the courtroom.

This duty is also set forth in former California Rules of Professional Conduct, Rule 5-200:

In presenting a matter to a tribunal, a member:

(A) Shall employ, for the purpose of maintaining the causes confided to the member such means only as are consistent with truth;

(B) Shall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of fact or law;
C) Shall not intentionally misquote to a tribunal the language of a book, statute, or decision;

(D) Shall not, knowing its invalidity, cite as authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional; and

(E) Shall not assert personal knowledge of the facts at issue, except when testifying as a witness.

Similarly, current California Rule of Professional Conduct, Rule 3.3 states in applicable part:

(a) A lawyer shall not:

(1) knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer’s client, or a witness called by the lawyer, has offered material evidence, and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal, unless disclosure is prohibited by Business and Professions Code section 6068, subdivision (e) and rule 1.6. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in a proceeding before a tribunal and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures to the extent permitted by Business and Professions Code section 6068, subdivision (e) and rule 1.6.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding. ...
Additionally, current CRPC rule 3.4 provides in applicable part:

A lawyer shall not:

(a) unlawfully obstruct another party’s access to evidence, including a witness, or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) suppress any evidence that the lawyer or the lawyer’s client has a legal obligation to reveal or to produce;

(c) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(f) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists....

Applying these authorities and ethical standards to the attorney conduct evidenced in this matter, neither Paul Kiesel nor Paul Paradis fulfilled their respective duties of candor to the court; Paradis and Kiesel each made misrepresentations to the court; Paradis and Kiesel made misrepresentations by omissions of material facts to COLA; and Paradis made misrepresentations by omission to his client, Jones.

It is reasonably clear from all of the testimony and the contemporaneous emails and correspondence, that no later than March 3, 2015, COLA had made a decision that Kiesel and Paradis would not be approved as Special Counsel to COLA if either of them concurrently represented a ratepayer. There is no contemporaneous document that refers in any way to
Mr. Paradis or Mr. Kiesel having been authorized by COLA to represent or assist a ratepayer in any matter, while serving as Special Counsel. The final version of the Engagement letter, which had earlier contained a disclosure that Special Counsel was representing a ratepayer in addition to representing COLA, was revised, and the final version deleted that language and deleted the conflict waiver. Kiesel testified that he was well aware that any retainer agreement for Special Counsel to represent COLA was required to be approved by the DWP Board of Commissioners. Kiesel and Paradis knew that the DWP Board did not approve an arrangement that permitted them to represent a ratepayer in addition to representing COLA in an action against PwC.

Once the decision was made by LADWP not to approve the concurrent representation by Kiesel and Paradis of a ratepayer versus PwC, new counsel was located to represent Jones. Paradis arranged for Landskroner and Kiesel arranged for Libman to represent Jones. Presumably, Paradis and Kiesel were each aware that they had an ethical duty of candor to their client COLA, in the event that they sought to concurrently represent and/or assist a ratepayer against COLA while serving as Special Counsel to COLA.

Kiesel and Paradis knew or should have known that each of them had an ethical duty to disclose to both Jones and the City of Los Angeles that either one or both of them was providing concurrent representation, legal assistance and/or “facilitation” services relating to Jones and COLA’s respective claims arising from the LADWP overbilling events. By failing to disclose that, during late March and through April 1, 2015, they were concurrently providing legal services for the benefit of Jones while representing COLA and LADWP, both Kiesel and Paradis violated their duties of candor.
In addition, both Paradis and Kiesel made statements to the Court, both in writing and in oral argument made during various hearings, that were misleading, omitted material facts, or were outright false. For example, during a September 11, 2015 hearing, when Kiesel addressed Judge Berle, he failed to disclose to the Court that he had worked with Paradis in connection with a potential ratepayer action on behalf of Jones and did not disclose to the Court, his knowledge that Paradis had originally been retained by Jones to pursue Jones' individual claims. In his November 15, 2015 Declaration, Paradis neglected to advise the Court that the “draft complaint alleging claims that could be brought by an LADWP ratepayer against PwC” had actually been prepared by Paradis for his then-existing client, Antwon Jones. In his oral argument on December 4, 2015, Paradis responded to Judge Berle’s inquiries as to why the draft complaint had Jones’ name instead a “Doe” or other fictionalized name by stating: “…there were several people who had been complaining to the Department at the point in time, had been in touch with the Department, and Mr. Jones’ name was one of them.” Paradis failed to disclose that Jones was his client, or that he had previously sent a draft Jones v. PwC Complaint to Jones, before sending a draft of the COLA v. PwC complaint to the City. Kiesel made additional statements in open court on December 12, 2018 which mislead the court by concealing material facts about the prior relationship between the Paradis firm and Jones. It is unclear from the evidence what knowledge Gina Tufaro had regarding Paradis’ and Kiesel’s ongoing assistance to Jones in March and April, 2015. Therefore, it cannot be determined whether Tufaro’s December 12, 2015 statements to the Court regarding the claimed cessation by Paradis of legal services for the benefit of Jones were true or misleading.

By concealing the true relationship between Paradis and Jones from the Court, both Paradis and Kiesel violated their duty of candor to the court and committed breaches of ethics.
4. **Duty to Communicate Significant Matters to the Client**

Business and Professions Code Section 6108(m):

It is the duty of an attorney to do all of the following:

(m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

Former California Rules of Professional Conduct, Rule 3-500 provides:

A member shall keep a client reasonably informed about significant developments relating to the employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed.

Current California Rules of Professional Conduct, Rule 1.4 provides in pertinent part:

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client’s informed consent is required by these rules or the State Bar Act;

(2) reasonably consult with the client about the means by which to accomplish the client’s objectives in the representation;

(3) keep the client reasonably informed about significant developments relating to the representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed; and

(4) advise the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

By failing to communicate with Jones numerous significant events that affected Jones' case, including but not limited to the fact that he had commenced representation of COLA and had decided to withdraw from representation of Jones and instead serve as Special Counsel for COLA, Paradis violated his duties of candor as well as his duty to communicate with Jones.

By failing to adequately and properly communicate to COLA, all of the circumstances of their prior and continuing legal services and assistance provided to Jones in March and April 2015, Paradis and Kiesel each violated their duty to communicate significant events to their client, COLA.

By failing to communicate to COLA's legal decision-maker, the LADWP Board of Commissioners, their plan to use the Jones v. COLA case, which they claimed in 2019 that they had "facilitated" as the vehicle or "White Knight" case, to settle all of the claims against LADWP (assuming this plan ever existed), and by failing to communicate the potential adverse consequences of using the Jones class action to settle all of the ratepayer claims, Kiesel and Paradis violated their ethical duties to keep the client reasonably informed regarding the means by which the client's objectives could be accomplished, and failed to permit the client to make informed decisions regarding the pending case.

5. Ethical Propriety Of "Friendly," Cooperative, or Coordinated Settlements

One of the primary issues I have analyzed in this engagement, in addition to the conflict of interest issues, is the assertion that COLA engaged in unethical collusion in connection with the settlement of the Jones class action, that the City in essence "sued itself," and that the
settlement constituted an impermissible "reverse auction." In analyzing these issues, I have reviewed a wide variety of cases in which opposing parties in litigation have cooperated with one another, including where the lawyers have engaged in "pre-packaging," "friendly lawsuits," and have participated in "engineering" settlements and/or have engaged in secret settlement negotiations that are kept confidential from another party in the litigation or pre-litigation proceeding.

It is obvious that not all "friendly" lawsuits are unethical or otherwise improper. A party may wish not to contest a clear liability claim, or may be related to the aggrieved party, or may be concerned about publicity, or there may be any number of other reasons that a speedy, amicable, quiet, mutually agreeable resolution is the goal of both parties.

While many of the cases I reviewed involve issues other than so-called "reverse auction" arrangements, many cases in differing contexts have upheld confidential, cooperative or coordinated dispositions that are adverse to a common adversary or a third party. These situations include the following:

A. "Friendly" Lawsuits Are Not Prohibited

It has always been accepted that "friendly" lawsuits are not improper, and the fact that a party may bring or invite a civil suit hoping that the court will rule in a certain way is not, standing alone, collusive or fraudulent.

Close to 90 years ago, in Golden Gate Bridge etc. Dist. v. Felt, (1931) 214 Cal. 308, an objection was raised by amici curiae, representing certain taxpayers not parties to a case, arising from the refusal by a public official to sign certain bonds as required by statute. It was asserted that the parties wished a certain outcome, and that therefore, the lawsuit was collusive. The
official was legally entitled to refuse to sign a bond if it was invalid. The Supreme Court stated: "It is conceded that respondent secretary is personally desirous of a decision in favor of petitioner. In other words, this is a friendly suit." The court further noted that, "...there is nothing improper in a friendly suit by a party who, though attacking the validity of the bonds, is hopeful that they will be upheld." Finding that the parties were represented by "reputable counsel of high repute," and that the "litigation was fought in good faith with fairness and earnestness...," the Court rejected the claim that the suit was collusive.

In San Francisco v. Boyd (1943) 22 Cal. 2d 685, 693-694, the Supreme Court considered the assertion that a lawsuit was collusive because the opposing parties were authorized to retain lawyers who would each be paid from public funds. However, there was no evidence that the governmental board interfered with the legal services provided by the lawyers. The Boyd court noted: A suit is not condemned by law merely because it is friendly (Price v. Sixth Dist., 201 Cal. 502, 516 [258 P. 387]; Golden Gate Bridge etc. Dist. v. Felt, 214 Cal. 308, 316 [5 P.2d 585]).) It is true, of course, that an action not founded upon an actual controversy between the parties to it, but which is brought for the purpose of securing a determination of a point of law for the gratification of the curiosity of the litigants, or the sole object of which is to settle rights of third persons who are not parties, is collusive and will not be entertained." The court concluded: "The parties here were ably represented and the issues were fully developed and forcefully presented in evident good faith, and as before stated there is no evidence of collusion in this proceeding."

An out-of-state case that is noteworthy for the fact that the complaint and the settlement were initiated on the same day, Carlough v. Amchem Prods., 834 F. Supp. 1437, 1463-1464 (E.D. Pen. October 6, 1993) also considered the issue of "friendly" lawsuits, the propriety of pre-filing negotiations, and determined that the filing of a complaint to initiate a lawsuit the same day as the proposed settlement, did not restrict the justiciability of the lawsuit. The court noted:

B. Assignment of Bad Faith Insurance Claims

In Critz v. Farmers Ins. Group (1964) 230 Cal. App. 2d 788, the court held that a defendant driver may settle the claim of the injured plaintiff, before assigning to the plaintiff the driver/insured's claim against his or her insurance carrier for bad faith refusal to settle, in exchange for the plaintiff's release of the defendant driver of liability. In doing so, the court stated regarding the insured defendant:

Whatever may be his obligation to the carrier, it does not demand that he bare his breast to the continued danger of personal liability. By executing the assignment, he attempts only to shield himself from the danger to which the company has exposed him. He is doubtless less friendly to his insurer than he might otherwise have been. The absence of cordiality is attributable not to the assignment, but to his fear that the insurer has callously exposed him to extensive personal liability. The insurer's breach so narrows the policyholder's duty of cooperation that the self-protective assignment does not violate it. Id. at pp.801-802.

The court in Critz, concluded its decision by holding:

Defendant argues that the hold harmless clause, in effect a covenant not to execute against Arnold, prevented the latter from suffering any damage by reason of the personal judgment against him. If, as a trier of fact may find, the carrier violated its duty of good faith, the damage, however potential, occurred at that time. As noted in the Ivy case, supra, 156 Cal.App.2d at page 662, a covenant not to execute is not a release. (See also Pellet v. Sonotone Corp., supra, 26 Cal.2d 705.) It did not blot out the personal judgment against Arnold or extinguish his claim for breach of contract against the carrier.

We conclude that validity of the assignment turns on the identical fact determination as the claim itself -- did the carrier act in good or bad faith when it rejected the offer to settle at the policy limit? If, after considering the circumstances of the rejection, the fact trier finds that the carrier acted in good
faith, then Mrs. Critz must lose this suit without regard to validity of the assignment. If on the other hand, the fact trier finds that the rejection was characterized by bad faith, the assignment must be upheld. *Id.* at pp.803-804.

In *Pruyn v. Agricultural Ins. Co.* (1995) 36 Cal. App. 4th 500, 508, the court upheld a settlement between plaintiff homeowner against the HOA, where a condition of the settlement included a covenant not to execute on the stipulated judgment against the HOA, which the plaintiff homeowner then used as a basis to file an action against the HOA’s insurance carrier for wrongfully denying coverage. The court noted that the defendant HOA was free to negotiate the best possible settlement for itself, including a covenant by the plaintiff not to execute the settlement judgment against the defendant HOA. The court in *Pruyn* held:

The trial court erred in sustaining the demurrers (or granting judgment on the pleadings) without leave to amend. Plaintiff’s complaint sufficiently alleged (or it is claimed that plaintiff can allege) that (1) RHCA had been wrongfully abandoned by at least some of its liability insurers, and (2) a reasonable settlement had been made. Such allegations, if supported by evidence at trial, would be sufficient to raise a presumption that the settlement reflected the existence and amount of RHCA’s liability to plaintiff. The defendant insurers would at trial then have to bear the burden of proving that the settlement and the resulting stipulated judgment did not represent a reasonable resolution of plaintiff’s claim against RHCA or were the product of fraud or collusion. Unless the defendant insurers are able to meet that proof burden, the stipulated judgment will be binding upon them and they can not avoid liability by reliance on the “no action” clause to bar plaintiff’s suit. *Id.* at p. 531.

C. Sliding-Scale Settlement Agreements (aka “Mary Carter” Agreements)

CA Code of Civ. Proc. § 877.5 expressly permits the negotiation of sliding scale recovery agreements “between a plaintiff or plaintiffs and one or more, but not all, alleged tortfeasor defendants, which limits the liability of the agreeing tortfeasor defendants to an amount which is dependent upon the amount of recovery which the plaintiff is able to recover from the nonagreeing defendant or defendants” (CCP § 877.5(b)) so long as “at least 72 hours prior to
entering into the agreement, a notice of intent to enter into an agreement has been served on all nonsignatory alleged defendant tortfeasors.” (CCP § 877.5(c).) The parties to the agreement must promptly inform the court of its existence and its terms, and if the action is before a jury, the jury need not be informed of the agreement unless a defendant party to the agreement is called as a witness, and the disclosure is limited to the extent necessary to inform the jury of the possibility that the agreement may bias the testimony of the witness. (CCP § 877.5(a).)

*City of Los Angeles v. Superior Court* (1986) 176 Cal. App. 3d 856 involved a situation in which the defendant city was not part of a negotiated sliding-scale settlement agreement between the plaintiff (injured party) and defendants (hospital and individual doctors); the court rejected the city's argument that CCP section 877.5 was unconstitutional by depriving the nonsettling defendant equal protection and a fair trial. The court held at pp. 862-863:

The City’s equal protection argument is that the statutory scheme treats nonsettling defendants under a sliding scale agreement (§ 877.5) differently and to their detriment from nonsettling defendants under the release statute (§ 877).

Under section 877, subdivision (a), a nonsettling defendant is allowed to deduct any previous settlements from the ultimate verdict, whereas a nonsettling defendant under section 877.5 has nothing to deduct. The City contends such a legislative classification violates equal protection principles.

The recent case of *Riverside Steel Construction Co. v. William H. Simpson Construction Co.* (1985) 171 Cal.App.3d 781, 789-792 [...] held section 877.5 does not violate equal protection, even though nonsettling defendants under section 877 are permitted to reduce a judgment against them by the amount of a settlement, while under section 877.5, nonsettling defendants are prohibited from recovering any such set-off. Riverside found sliding scale recovery agreements rationally related to the state's legitimate interest in the disposition of cases, in that they tend to maximize recovery to injured plaintiffs, and encourage complete settlements, and that they do not defeat equitable apportionment of liability among joint or concurrent tortfeasors. (*Id.,* at pp. 789-792.)

We agree with the rationale of Riverside in this regard, and hold that any disparate treatment of nonsettling defendants vis-a-vis settling defendants and plaintiffs requires merely that the distinctions drawn by the statute bear some
rational relationship to a conceivable legitimate state purpose. The disparate
treatment accorded thereby is essential to the very nature of the sliding scale
agreement.

Thus, in a sliding-scale settlement agreement, where one party is treated less generously
than another party as a result of a friendly settlement, there is no propriety or collusive effect.

D. "Common Interest" Confidentiality Agreements

Although cases analyzing "common interest" agreements tend to focus on whether
communication among the parties with common interests are privileged, the holdings in such
cases have some utility in connection with the concept that courts acknowledge that a sub-group
of parties in a case or transaction are permitted to confidentially confer and coordinate their
actions to the detriment of another party in the same matter. Some of these cases include:

In Seahaus La Jolla Owners Assn. v. Superior Court (2014) 224 Cal. App. 4th 754,
communications during HOA litigation meetings related to the HOA’s construction defect
lawsuit were subject to protection under the attorney-client privilege, with the court concluding
the "common interest doctrine" applied even though individual homeowners attended the
litigation meetings. The defendants were barred in the HOA’s lawsuit from seeking discovery
related to the content and disclosures made during meetings between the HOA and the individual
homeowners, notwithstanding the presence of some homeowners who may have had conflicting
loyalties by being affiliated with defendants in the construction defect lawsuit. In deciding the
issue, the court in Seahaus stated at p. 775:

Concededly, the interests of the Association and the individuals will not
always be aligned, and it can be difficult to draw a line between their allied
interests and their adverse interests. (See OXY Resources, supra, 115
Cal.App.4th at p. 896.) However, the Association was seeking to share its
privileged information with homeowners, to the extent that it believes that
they “all have the same goals in mind.” (Smith, supra, 79 Cal.App.4th at
p. 645.)

The court concluded at p. 777:
In reaching this conclusion and granting the petition [for writ of mandate], we do not expand the scope of statutory privileges, but instead apply recognized rules to an unusual set of facts. (Wells Fargo, supra, 22 Cal.4th 201, 206.) The trial court erred in granting Defendants' motion to compel deposition answers from individual homeowners about the content and strategies disclosed to them by the Association or its counsel at the litigation update meetings, and the trial court must deny the motion and issue a protective order concerning the attorney-client privilege in light of the common interest doctrine.

Also see, Hewlett-Packard Co. v. Bausch & Lomb, Inc., 115 F.R.D. 308 (N.D. Cal. 1987), in which common interest privilege was upheld to a party's attorney's opinion letter, which had been voluntarily disclosed to a third party with whom it was negotiating the sale of a business. The court concluded that, in virtually all cases "opposing counsel has an interest in accessing "virtually every document to which any privilege ever attaches," citing cases that acknowledged that communications with non-parties "can retain a protective shield if the parties have a common legal interest" such as where they contemplate joint litigation, even where their interests are similar but not identical.

An out-of-state case discussing the Common Interest doctrine is Audi of Am., Inc. v. Bronsberg & Hughes Pontiac, Inc., 255 F. Supp. 3d 561, 571-572 (M.D. Pa. 2017), where auto dealers were on opposite sides of a commercial transaction for the sale of assets, the adverse dealers shared a common interest in that they shared a legal interest in defending against a lawsuit brought by Audi. Relying on Louisiana Municipal Police Employees Retirement System v. Sealed Air Corporation, 253 F.R.D. 300 (D.N.J. 2008), the court held that the adverse parties' communications could be shielded as privileged communication against Audi's attempt to seek disclosure of such communication in a suit by Audi wherein it argued that the commercial transaction between the two auto dealers involving Audi vehicles was illegal and a breach of contract with Audi. The court held:

As such, the Court is not troubled by finding that the common-interest privilege may shield these discrete pieces of communication between counsel from disclosure, as these documents related directly to the parties' shared legal interests, rather than to their divergent commercial interests.
All of these situations in which "friendly" lawsuits and settlements made for the purpose of assigning a claim against another party, sliding scale agreements which favor the settling party over a non-settling party, and common interest agreements in which some parties share information which is kept confidential from other parties, have been upheld by courts. The cases establish that such settlement arrangements are not per se improper, and that cooperation between adverse litigants is not the same as "collusion" as that concept is defined in case law.

E. "Reverse Auctions" in Class Action Settlements

The principal feature of improper "Reverse Auction" lawsuits is that the class recovery is diminished or disregarded by class counsel who intends to maximize his/her attorney fee to the detriment of the class. *Cal Pak Delivery, Inc. v. United Parcel Service* (1997) 52 Cal. App.4th 1 is a prime example of an improper reverse action situation: Class Counsel Khourie proposed to defendant UPS that Cal Pak, the sole class representative, would abandon and dismiss the class action on the condition that UPS would enter into a "confidential relationship" with Khourie and pay him $8 to $10 Million; the proposal was that the class would receive nothing. Once defense counsel brought this proposal to light and moved to disqualify Khourie, the trial court disqualified Khourie and barred him from receiving any attorney fees. The appellate court found Khourie to have engaged in conduct inimical to the interests of the clients he "ostensibly" represented; upheld the disqualification order; but denied as premature the order barring him from receiving fees for legal services that predated the unethical conduct. Although the *Cal Pak* opinion does not use the term "reverse auction," the decision epitomizes the definition of an improper "reverse auction" settlement: the lawyer sacrifices the class in order to grossly enrich class counsel.
A case often cited for the impropriety of reverse auction class action settlements is *Reynolds v. Beneficial National*, 288 F. 3d 277 (7th Cir. 2002). In *Reynolds*, a class action lawsuit was brought by plaintiff consumers against a bank for nondisclosure of interest rates on loans; the court of appeal reversed the trial court's order approving a class action settlement and award of attorneys' fees where the trial court enjoined another lawsuit filed by non-plaintiff consumers who sought to join the class action to oppose the settlement.

The excluded consumers who appealed argued that the settlement agreement to which they were not parties but nonetheless released their claims, was the product of a "reverse auction" whereby the defendant in a series of class actions chose the most ineffectual class lawyers to negotiate a settlement by paying generous attorneys' fees in exchange for an overall lower settlement, in the hope that the district court would approve a weak settlement that would preclude other claims against the defendant. The trial court found no proof that the settlement was collusive and approved the settlement, but the appellate court reversed and remanded, finding that the trial court did not scrutinize the class action settlement to the necessary degree. The appellate court further found that the trial court should have permitted counsel for the non-plaintiff consumers to notify the class of the status of the litigation to assist them in deciding whether to opt out of the settlement that plaintiffs' class counsel had negotiated. Even so, the appellate court did not conclude that a reverse auction had occurred:

*Although there is no proof that the settlement was actually collusive in the reverse-auction sense, the circumstances demanded closer scrutiny than the district judge gave it. He painted with too broad a brush, substituting intuition for the evidence and careful analysis that a case of this magnitude, and a settlement proposal of such questionable antecedents and circumstances, required. Id. at p.283*
The Reynolds opinion has been considered but not fully adopted in the 9th Circuit Court of Appeals: the 9th Circuit has not imposed the same stringent standards on trial judges to scrutinize class action settlements which are the product of an arms-length, non-collusive negotiation. For example, the Court in Rodriguez v. West Publ'g Corp., 563 F.3d 948, 965 (9th Cir. 2009) found:

We are not persuaded otherwise by Objectors' further submission that the court should have specifically weighed the merits of the class's case against the settlement amount and quantified the expected value of fully litigating the matter. For this they rely on the Seventh Circuit's opinion in Synfuel Techs., Inc. v. DHL Express (USA), Inc., 463 F.3d 646 (7th Cir. 2006), which follows that circuit's precedent requiring district courts to determine the strength of the plaintiff's case on the merits balanced against the amount offered in settlement by “quantifying the net expected value of continued litigation to the class.” Id. at 653 (quoting Reynolds v. Beneficial Nat'l Bank, 288 F.3d 277, 284-85 (7th Cir. 2002)). To do this, the Seventh Circuit directs courts to “estimate the range of possible outcomes and ascribe[...] a probability to each point on the range.” Id. However, our approach, and the factors we identify, are somewhat different. We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution, Hanlon, 150 F.3d at 1027; Officers for Justice, 688 F.2d at 625, and have never prescribed a particular formula by which that outcome must be tested. As we explained in Officers for Justice, “[u]ltimately, the district court's determination is nothing more than an amalgam of delicate balancing, gross approximations and rough justice.” 688 F.2d at 625 (internal quotation marks and citation omitted). The Seventh Circuit also recognizes that precision is impossible, and that even its more structured approach is apt to produce only a “ballpark valuation.” Synfuel, 463 F.3d at 653.

The court in Rodriguez emphasized the limitations upon the Court's ability to scrutinize a settlement, citing Hanlon, 150 F.3d at 1027, quoting Officers for Justice, 688 F.2d at 625, and finding that:

The court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.
The court in *Rodriguez* was not convinced by the argument made by the objectors to the settlement agreement, that the settling parties had colluded based on a “clear sailing” provision, whereby the settling parties agreed not to contest attorney’s fees or incentive awards of no more than $25,000. The court rejected the claim of collusion, where the parties had agreed to a certain sum and were acting consistently with their own interests in minimizing liability. *Id.* at fn. 5.

I have also carefully considered the New Class Counsel’s Preliminary Report, which asserts that a reverse auction likely occurred in *Antwon Jones v. City of Los Angeles*. While I am not opining in any respect on the issue of the fairness, adequacy, and/or appropriateness of the settlement terms in the *Jones v. COLA* case, to the extent that the conduct of the attorneys acting under the auspices of the City Attorney’s office is at issue, I have carefully analyzed this issue and have formed opinions regarding the ethical propriety of the conduct of such lawyers.

New Class Counsel’s Report cites to *Negrete v. Allianz Life Ins. Co.* 523 F.3d 1091, 1099 (9th Cir. 2008) to define a reverse auction as a defendant’s selection of the most ineffectual class counsel to settle a class action suit. In *Negrete*, a company was facing multiple similar lawsuits in various courts; one district court issued an injunction order preventing the company from finalizing a settlement in any other one of the cases without prior approval from that court. The court of appeals reversed the injunction order and rejected Negrete’s arguments that the injunction was necessary to prevent a collusive reverse auction, based upon insufficient evidence of collusion by the company in settling the claims in the related matters. The court explained that if Negrete’s argument was adopted, the “‘reverse auction argument would lead to the conclusion that no settlement could ever occur in the circumstances of parallel or multiple class actions -- none of the competing cases could settle without being accused by another of participating in a collusive reverse auction.’ *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1189 (10th Cir. 2002) (internal quotation marks omitted).” *Negrete*, supra, 523 F.3d at 1100.

The ruling in *Negrete* rejecting the reverse auction claim was cited favorably by the U.S. District Court for the Central District of California in *Salmonson v. Bed Bath & Beyond, Inc.*, 132
2012 U.S. Dist. LEXIS 199384, where the court found no improper reverse auction where the defendant was concurrently negotiating with two separate class groups, stating that “the mere fact that a defendant is discussing settlement with the plaintiffs in parallel proceedings, however, is insufficient to establish that an impermissible ‘reverse auction’ has occurred.”

In a more recent decision by the U.S. District Court for the Northern District of California, In re Tezos Sec. Litig., 2018 U.S. Dist. LEXIS 88513, the lead plaintiff in a class action requested that the court enjoin defendants from engaging in settlement negotiations with other class plaintiffs without first notifying the lead plaintiff and obtaining the court’s approval. Relying on Negrete, the court denied this request because there was no evidence of improper collusion, and ruled that negotiations outside the scope of the lead plaintiff’s case was not enough to warrant an exception to the Anti-Injunction Act, finding that “there is slim to no evidence that Baker, his counsel, or any of the defendants have at any point acted in bad faith.”

The New Class Counsel Report cites to In re General Motors Corp. Pick-Up Truck Fuel Tanks Product Liability Lit. (3d Cir. 1995) 55 F.3d 768, a class action case involving defective motor vehicles, in which the court held that the class settlement was inadequate because the district court did not sufficiently scrutinize the valuations of the settlement: there, the settlement was approved before formal certification of the class (the court having certified the class only for purposes of effectuating the settlement), and the class notice did not fully disclose the agreement between the defendants and attorneys for the class regarding the class attorneys’ fees. The General Motors Corp decision, while discussing the general risks involved in pre-certification negotiations, also discussed important dynamics that favor pre-certification settlements, including the facilitation of early settlements in class action matters before the case is complicated by formal certification, including: decreasing litigation costs; reducing the potential differences among class members; and making class certification more likely to happen. Id. at 790-791. General Motors Corp. explained that strict application of the rules governing class actions should be tempered by the policy favoring settlements:
Increasing the certainty that the settlement will be upheld augments the value of settling to the defendant and consequently the amount defendants will be willing to pay. Thus, delaying certification, in contravention of a strict reading of Rule 23, encourages settlement, an important judicial policy, by increasing the prospective gains to the defendant (and thus potentially to the plaintiffs as well) from exploring a negotiated solution.

The breaches of duty on the part of Paradis and/or Kiesel do not extend vicariously to the attorneys working in the City Attorney’s offices (or outside counsel representing COLA). The duties of Special Counsel Paradis and Kiesel to their client COLA do not vicariously infect the City Attorney’s Office. Among other things, Paradis led the City Attorney’s office to believe that his brief attorney-client relationship with Jones had terminated prior to the filing of the Jones v. COLA action; facts demonstrate that Kiesel and Paradis—for reasons that are not clear—either by design or otherwise, selected what information to convey to various of the City’s attorneys: some information was conveyed by Paradis and Kiesel only to Solomon and Dorny, and other information was conveyed only to Clark and Peters; some information was conveyed to Liner, and much was not; Solomon was unaware when the decision of the City was made not to permit Special Counsel to concurrently represent a ratepayer, and Paradis continued to promote that concept to Solomon after March 3, 2015 and not to Clark and Peters; the City Attorney’s office never had any attorney-client relationship with Jones or any of the other ratepayers who were seeking reimbursement for the overcharges that they had paid and owed no duty to settle one of the pending class actions over another. The City and its in-house and outside counsel were entitled to trust that Special Counsel would fulfill their ethical and fiduciary duties to their client, COLA. The fact that special Counsel failed to fulfill their duties does not result in ethical breaches by other lawyers representing the same client. The fact that the Jones v. COLA case was selected as the lead case for purposes of settlement does not implicate legal ethics issues, and the
facts do not support a claim that either the City Attorney’s Office or the Liner attorneys who negotiated the CC&B class action settlement engaged in collusion or fraud that as defined by applicable class action case law and the definition of a “Reverse Auction.”

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794 is cited in New Class Counsel’s Report for the general proposition that in class action matters, the court undertakes steps to prevent fraud, collusion or unfairness to the class. The Dunk case did not address an issue of reverse auctions. That case involved a class action for defective door construction in Ford vehicles, and issues involving the trial court’s approval of the settlement and the attorneys’ fees. Taking multiple factors into account, including the extent of settlement discussions and discovery, pretrial litigation, and the value of the benefit to individual class members, the court upheld the settlement as fair. In considering the various factors, the court cautioned that “[t]he list of factors is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’” (Id. at 1801.) Although upholding the settlement itself, the court reversed the approval of class counsels’ fees, holding that the percentage method of a common fund approach that was used to determine the amount of fees was a questionable measure and improper because the fund was not easily calculable. The court reasoned that the lodestar method would have been more appropriate in calculating attorneys’ fees. (Id. at 1809-1810.)

Dunk v. Ford is inapplicable to the facts of instant case, since in Jones v. COLA the attorney fee award and the settlement terms were the products of the mediator’s proposal, after years of zealous advocacy. Even if the award of attorney fees to class counsel is revisited or voided, there is no evidence that the class counsel of record in Jones and the related cases represented conflicting interests.
Wershba v. Apple Computer, Inc. (2001) 91 Cal. App. 4th 224, 245 was similarly cited in New Class Counsel’s Report for the general proposition that a court must scrutinize a proposed settlement to ensure the absence of fraud or collusion. While this is axiomatic of course, Wershba did not involve reverse auctions; it addressed objections raised by certain members of the class who claimed that the trial court failed to properly certify the class, failed to protect the rights of absent class members and that the award of attorneys’ fees was improper and excessive. On appeal, the court upheld the class certification, the settlement and the attorneys’ fees, ruling at pp. 250-251:

A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. (See Rebney v. Wells Fargo Bank, supra, 220 Cal. App. 3d at p. 1139 [settlements found to be fair and reasonable even though monetary relief provided was “relatively paltry”]; City of Detroit v. Grinnell Corp., supra, 495 F.2d at p. 455 [settlement amounted to only “a fraction of the potential recovery”].) Compromise is inherent and necessary in the settlement process. Thus, even if “the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,” this is no bar to a class settlement because “the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” (Air Line Stewards, etc., Loc. 550 v. American Airlines, Inc. (7th Cir. 1972) 455 F.2d 101, 109.)

New Class Counsel’s Report also cites to In re Bluetooth Headset Product Liab. Lit. (9th Cir. 2011) 654 F.3d 935, 947 as further illustration of the need for court scrutiny of class action settlements and attorneys’ fees to ensure the attorneys’ self-interests do not adversely impact the interests of the class members. In Bluetooth, the appellants argued that the award of fees was grossly disproportionate to the settlement. On appeal, the court agreed that the gross disparity between the attorneys’ fees and the settlement compensation for class members (which included no monetary compensation at all) raised an inference of unfairness that warranted a remand to the district court to conduct a more extensive inquiry into the fairness of the settlement and the attorneys’ fees. The court noted that even when the defendant agrees to pay class counsel’s fees independently of any monetary award or injunctive relief provided to the class, the class recovery and the agreed-upon class counsel fees should be viewed as a package, because the defendant’s primary concern is the total amount that needs to be paid to dispose of the action and
cares little for the allocation between class payment and the attorneys' fees. Id. at 949. In Bluetooth, the court found further indicia of collusion based on a "clear sailing agreement" whereby defendants agreed not to object to an award of attorneys' fees up to eight times the monetary cy-près relief afforded to the class, and a "kicker" arrangement that reverted unpaid attorneys' fees (allocated attorneys' fees that did not get awarded by the court) back to the defendant rather than to the class. Nonetheless, Bluetooth concluded by clarifying that the elements of a "clear sailing provision" and a "kicker" arrangement are not per se prohibited, nor do they mandate rejection of a class action settlement, but that the "court [is] required to examine the negotiation process with even greater scrutiny than is ordinarily demanded" when such features are present.

In Jones, the monetary recovery to the ratepayers was originally estimated to be $67 Million and has recently been reported to potentially reach $200 Million. The total amount of class counsel's fees may ultimately equal something between 10% and 28% of the class' recovery. The settlement was actively overseen by the court over many court sessions extending over more than two years. The various cases holding that a court failed to exercise sufficient oversight over a class action settlement do not apply to the Jones v. COLA case.

Likewise, the standard applied to determine whether settlement approval should be overturned is abuse of discretion on the part of the trial judge. The recent 9th Circuit Court of appeal in Espinosa v. Ahearn (In re Hyundai & Kia Fuel Econ. Litig.) 926 F.3d 539 (2019) ruled at 556:

In light of the "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned," Allen v. Bedolla, 787 F.3d 1218, 1223 (9th Cir. 2015) (quoting In re Syncor ERISA Litig., 516 F.3d 1095, 1101 (9th Cir. 2008)), we perform an "extremely limited" review of a district court's approval of a class settlement, In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 940 (9th Cir. 2011) (quoting In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 458 (9th Cir. 2000)). Parties seeking to overturn the settlement approval must make a "strong showing" that the district court clearly abused its discretion. Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1238 (9th Cir. 1998) (quoting Class Plaintiffs v. Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992)). As long as the district court applied the correct legal standard to findings that are not clearly erroneous, we will affirm. Bluetooth Headset, 654 F.3d at 940.
The court in Espinosa further addressed the issue of court scrutiny of the settlement by focusing more on the value of the settlement to the class than on a generous fee to class counsel at pp. 569-570:

It is true, as Fetsch and Roland point out, that class action defendants are generally indifferent to the allocation of settlement funds between class and counsel, which can encourage a settlement that is overly generous to counsel at the expense of the class. But here such concerns are out of place. No objector disputes the district court’s finding that the settlement “provides substantial relief,” including a “substantial cash payout, ranging from $240 to $1,420” per class member. The settling parties agreed on the amount of class compensation more than six months before negotiating, “over multiple mediation sessions with a respected and experienced mediator,” the “reasonable” attorney’s fees provided in the settlement agreement. We have previously approved such an approach, see Hanlon, 150 F.3d at 1029, and “[w]e put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution,” Rodriguez, 563 F.3d at 965.

Again, the facts and circumstances underlying the Jones settlement indicate the court was actively involved in the settlement approval process, that settlement negotiations were vigorous and contested, and that the ultimate settlement terms were reached in arm’s length negotiations.

Even when courts have scrutinized class settlements, finding of “reverse auctions” appears rare, as evidenced in the cases cited by New Class Counsel’s Report itself. In Acosta v. Trans Union, LLC, 243 F.R.D. 377 (C.D. Cal. 2007), which involved a class action suit against credit reporting agencies, a motion by class plaintiffs to approve a proposed settlement was denied because the court deemed it unfair based on: the lack of discovery performed before the settlement was negotiated; the fact that class counsel negotiated attorneys’ fees simultaneously with the negotiation of the class relief itself; and also, the fact that defendants originally adamantly refused to include an injunctive relief provision after objections were raised, but defendants ultimately included that provision in the settlement without receiving any consideration. Although the court denied approval of the settlement because of several deficiencies and questionable structuring of the settlement, it expressly provided that it was
hesitant to classify the settlement as a product of “reverse auction”; nor was there any discussion of fraud or collusion.

_Cellphone Termination Fee Cases_ (2009) 180 Cal. App. 4th 1110, was a class action settlement involving the cellphone service provider, Sprint, and its program locking of its phones to prevent customers from using the phone on other service providers. Sprint did not agree to pay any monetary damages despite the $800 million in damages sought by class plaintiffs. Instead, Sprint agreed to inform its customers that its handsets contain software programming locks, and to unlock handsets for those customers who have satisfied their contractual obligations to Sprint. The parties included a provision in the settlement agreement that the amount of the class-plaintiffs’ attorney fee award would be decided by an arbitrator but would fall within a specific range agreed upon by the settling parties ($500,000-$2.95 million). Certain members of the class objected that the fees claimed by class counsel were excessive in light of the limited benefits of the settlement, and they sought to be included in the arbitration regarding the attorneys’ fee. The court held that the inquiry into the fairness of a class action settlement “must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties” and that “due regard should be given to what is otherwise a private consensual agreement between the parties.” _Id._ at 1117-1118. In so ruling, the court held that the trial court misapplied the law and erred in its decision to disapprove the fee arbitration provision of the settlement that did not provide for the participation of the objecting class members in the arbitration, since the amount of the fee award would have had no impact on the benefit received by the class. Notwithstanding that error, the court did not find the error as a basis for rejection of the settlement because Sprint failed to demonstrate actual prejudice.

In addition to case law, I carefully considered the provisions set forth in the _Manual for Complex Litigation, Fourth_, Federal Judicial Center (2004) which describes the typical hallmarks of a reverse auction settlement:
"There are a number of recurring potential abuses in class action litigation that judges should be wary of as they review proposed settlements:

- conducting a “reverse auction,” in which a defendant selects among attorneys for competing classes and negotiates an agreement with the attorneys who are willing to accept the lowest class recovery (typically in exchange for generous attorney fees);
- granting class members illusory nonmonetary benefits, such as discount coupons for more of defendants’ product, while granting substantial monetary attorney fee awards;
- filing or voluntarily dismissing class allegations for strategic purposes (for example, to facilitate shopping for a favorable forum or to obtain a settlement for the named plaintiffs and their attorneys that is disproportionate to the merits of their respective claims);
- imposing such strict eligibility conditions or cumbersome claims procedures that many members will be unlikely to claim benefits, particularly if the settlement provides that the unclaimed portions of the fund will revert to the defendants;
- treating similarly situated class members differently (for example, by settling objectors’ claims at significantly higher rates than class members’ claims);
- releasing claims against parties who did not contribute to the class settlement;
- releasing claims of parties who received no compensation in the settlement;
- setting attorney fees based on a very high value ascribed to nonmonetary relief awarded to the class, such as medical monitoring injunctions or coupons, or calculating the fee based on the allocated settlement funds, rather than the funds actually claimed by and distributed to class members; and
- assessing class members for attorney fees in excess of the amount of damages awarded to each individual."

Notably, none of the “recurring potential abuses” listed in the Manual were present in the Jones settlement: the attorney fees were not negotiated until after the ratepayer refunds were settled upon; the ratepayers received monetary benefits constituting 100% of the overpayments; the remaining class actions were not dismissed strategically; and the eligibility conditions were reasonable and fair as determined by the trial judge overseeing the class action settlement.

New Class Counsel’s Report also discusses the effect of class counsel’s unethical conduct upon a class action settlement, citing to Reliable Money Order v. McKnight Sales Co., Inc. 704
F.3d 489 (7th Cir. 2013), a class action against companies that sent unsolicited advertisements via fax, which violated the federal Telephone Consumer Protection Act. During the discovery phase of the case, class counsel subpoenaed records from the company that had sent the alleged violative fax communications, as a result of which class counsel received data that identified a treasure trove of many more recipients of the alleged improper fax solicitations than were included in the particular class action that had been filed. Despite having assured the provider of the fax lists that the data would be protected as confidential, the class counsel then used that data to solicit persons to bring new class actions, using alleged misleading communications and offering an unapproved $5,000 payment to a witness. McKnight applied the standard of "serious doubt" whether class counsel fairly and adequately represented the interests of the class, to determine whether class counsel acted to "sell out the class by agreeing with the defendant to recommend that a judge approve a settlement involving a meager recovery for the class but generous compensation for the lawyers." The New Class Counsel Report cites McKnight for the proposition that unethical conduct by counsel, even if not prejudicial to the class, raises serious doubt about the adequacy of class counsel when the conduct jeopardizes the court's ability to assess a proper outcome of case. However, McKnight clarified that not every ethical violation automatically establishes inadequacy of class counsel or requires denial of certification:

That does not mean, however, that an ethical violation always requires denial of certification, as McKnight argues. A "slight" or "harmless" breach of ethics will not impugn the adequacy of class counsel. See id. at 918; see also Busby v. JRHBW Realty, Inc., 513 F.3d 1314, 1323-24 (11th Cir. 2008) (noting that even if plaintiff's counsel "violated Rule 7.3 [of the Alabama Rules of Professional Conduct], the district was not then required to find [plaintiff] inadequate to represent the class" (citing Halverson, 458 F.2d at 932)). This conclusion makes sense: the ABA Model Rules, the Illinois Rules, and the Wisconsin Rules all warn that "the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons." (Id. at 499.)

While expressing "distress" over class counsel's actions, the McKnight court found that the improper solicitation of prospective clients by class counsel did not require denial of certification of the class or dismissal of the case.
The facts at bar are significantly distinguishable from McKnight: COLA was represented in the Jones v. COLA case not by Paradis or Kiesel, but by the Liner firm. Agrusa categorically established that: there was never any discussion of class counsel attorney fees before the mediation before Judge Tevrizian; Landskroner was experienced and knowledgeable; Blood participated in the negotiations; there was no mention of a “White Knight” treatment for the Jones case; there was no selection of ineffectual class counsel; Agrusa recommended an early settlement and her partner, Annaguey, was so deeply involved in the negotiations regarding remediation of the billing system that Annaguey had an office at LADWP. There is absolutely no hint of evidence from any source that Annaguey and Agrusa offered or participated in offering an inadequate recovery to the class. Although Landskroner was handpicked by Paradis, according to Judge Tevrizian, Landskroner engaged in vigorous advocacy and the settlement negotiations, particularly regarding attorney fees, was clearly contentious. There was even an observation by Ms. Annaguey on August 1, 2015 that Landskroner attempted to “blackmail” DWP using data that DWP had provided in informal discovery. The attorney fee award resulted from a mediator’s proposal, after the parties were unable to agree. Further, according to Annaguey’s August 1, 2015 memo following the receipt of the mediator’s proposal regarding fees, the decision whether to accept the mediator’s proposal regarding the amount of attorney fees was to made by the “client,” apparently referring to the DWP Board, after consideration of multiple factors including Landskroner’s “threats to leverage the back-billed accounts issue” and the “policy/public relations issues that may trump our concerns.”

6. **Effect of Attorney Conflict of Interest on Resolution of Case**

New Class Counsel’s Report also cites Pennix v. Winton (1943) 61 Cal. App. 2d 761, 771 for the proposition that counsel must withdraw from representation if counsel’s discharge of
duties to one client is in conflict with another client. *Pennix* involved an auto accident wherein the passenger blamed the accident and the resulting injuries on the driver who was alleged to have been intoxicated and fallen asleep at the wheel. In a suit between the passenger and the driver, the court found that the counsel for the defendant driver had a conflict because he was appointed to represent the driver by the driver’s insurance carrier (which ordinarily is not a conflict warranting withdrawal), but in *Pennix*, the counsel had made it apparent throughout the proceeding that his real interest was to protect the insurance carrier, even to the detriment of his client, the defendant driver. The court in *Pennix* observed:

> We have been at pains to set forth numerous excerpts from the transcript and from respondent’s brief in order to show that there is no doubt concerning the attitude of counsel for defendant toward defendant. Both in the trial court and in this court, counsel for defendant has consistently attacked defendant, charging that defendant acted in collusion with plaintiff for the immediate purpose of misleading the trial court and jury and for the ultimate purpose of defrauding defendant’s insurance carrier. The charges made against defendant by his own counsel are of a most serious nature involving as they do specific charges that defendant has been guilty of acts constituting perjury, (Pen. Code, sec. 118) and of acts constituting criminal conspiracy.

In the case at bar, there is absolutely no suggestion or evidence that any of the lawyers representing COLA failed to vigorously represent COLA, nor is there any evidence that any of the lawyers representing COLA ever attempted to prevent LADWP ratepayers from receiving 100% of the overcharges or impeded the ongoing efforts to correct the billing system and provide compensation for other ratepayer damages. The Liner partners Annaguey and Agrusa have never been accused of representing conflicting interests. Kiesel was uninvolved in the settlement negotiations, it appears, and Paradis was involved in the overlapping remediation efforts, it appears.

New Class Counsel’s Report also cites to *Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd.* (1993) 12 Cal.App.4th 74, for the assertion that in certain circumstances, counsel may not represent multiple clients even with the clients’ consent, because the consent to the actual conflict would not be informed. *Tsakos* involved a partnership dispute,
and the court found an actual, unwaivable conflict of interest where the attorney for the partnership also represented one of the managing partners of the partnership against whom the partnership had brought suit. Quoting Klemm v. Superior Court (1977) 75 Cal. App. 3d 893, 898, Tsakos held at p. 97:

As a matter of law, a purported consent to dual representation of litigants with adverse interests at a contested hearing would be neither intelligent nor informed. Such representation would be per se inconsistent with the adversary position of an attorney in litigation, and common sense dictates that it would be unthinkable to permit an attorney to assume a position at a trial or hearing where he could not advocate the interests of one client without adversely injuring those of the other.

While Paradis and Kiesel admittedly continued to represent and assist Jones against COLA after their conflict arose, and they breached their duties to COLA as a result, there is no evidence that any other COLA attorney did so. Tsakos is inapposite.

Applying these principles and cases and the facts on which they are based to the facts underlying the settlement of Jones v. COLA, in the Jones case, this is not a case in which counsel for COLA negotiated the attorney fee issue before the claims of the class were settled; this is not a case in which the class received little or no recovery; and the record reflects vigorous advocacy and disagreement between class counsel and defense counsel. The terms of the initial proposed settlement were negotiated over several mediation sessions with an experienced retired judicial officer; the settlement terms were expanded and revised numerous times; the trial judge was intimately involved in analyzing, evaluating and proposing specific modifications to multiple terms of the settlement; the objectors were afforded multiple opportunities to propose modifications; new settlement terms and additional provisions were added to the settlement in October 2016 and in 2017. The objections to the settlement that are being raised in 2019 are substantially identical to the objections that were raised by the objectors starting in June, 2015 and repeatedly litigated before the court before the ultimate settlement was approved in late
2017. The final settlement was not approved for nearly 2 1/2 years after the initial proposed settlement was reached in August 2015, following many meetings with a number of the different consumer class action counsel, multiple mediation sessions, and the dissemination of source data and records by LADWP staff directly to class counsel and their billing system expert before the terms of final settlement were agreed upon.

7. LADWP Was Free to Approve Paradis To Concurrently Serve as Special Counsel For COLA And As Project Manager For Remediation of the CC&B System

An issue has been raised regarding the role served by Paradis in his capacity as Special Counsel for COLA in the COLA v. Pwc case, and Paradis' concurrent role as project manager (commencing personally during the spring of 2015, and in June, 2017, through his company Aventador Utility Solutions, LLC) in connection with the ongoing efforts to remediate, correct and implement corrections to the CC&B system. Paradis, and subsequently Aventador, were formally approved by the LADWP Board of Commissioners to serve in both capacities. The LADWP Board obviously knew that it had approved Paradis as Special Counsel during the Spring, 2015, mere months before it initially approved Paradis in the Fall of 2015 to serve as project manager of the CC&B remediation process. Under then-applicable CRPC 5-210(b), a lawyer was free to testify as a witness while serving as advocate for the client, in a non-jury trial; and with informed written consent from the client, the lawyer was free to testify as a witness even while concurrently serving as the client's advocate in a matter before a jury. Former CRPC 5-210 reads as follows:

A member shall not act as an advocate before a jury which will hear testimony from the member unless:
(A) The testimony relates to an uncontested matter; or
(B) The testimony relates to the nature and value of legal services rendered in the case; or
(C) The member has the informed, written consent of the client. If the member represents the People or a governmental entity, the consent shall be obtained from the head of the
office or a designee of the head of the office by which the member is employed and shall be consistent with principles of recusal.

Discussion:
Rule 5-210 is intended to apply to situations in which the member knows or should know that he or she ought to be called as a witness in litigation in which there is a jury. This rule is not intended to encompass situations in which the member is representing the client in an adversarial proceeding and is testifying before a judge. In non-adversarial proceedings, as where the member testifies on behalf of the client in a hearing before a legislative body, rule 5-210 is not applicable. Rule 5-210 is not intended to apply to circumstances in which a lawyer in an advocate's firm will be a witness.

Thus, under former rule 5-210(b), there were no ethical constraints upon a lawyer serving as both an advocate and a witness at trial where, as here, the client consented to the dual role. Presumably, to the extent that Paradis would have been called upon to testify in a Los Angeles Superior Court jury trial, COLA would have provided written consent, or, Paradis would not have been called by COLA to testify. Paradis/Aventador's contract was terminated by the LADWP Board and Paradis was also terminated as Special Counsel for COLA in Spring 2019; Paradis was never called upon to provide testimony before any tribunal relating to the remediation and implementation of corrections to the CC&B system as a witness while he was concurrently serving as counsel for COLA. Therefore, former rule 5-210 did not come into play, as Paradis never testified as a remediation witness in COLA v. PwC. While the provisions of current CRPC rule 3.7 (effective November 1, 2018) governing the ethical duties of a lawyer serving as a witness have been substantially revised from the old rule 5-210 provisions, the "lawyer as witness" issue never ripened for determination while Paradis served in dual roles. In any case, there is no question that the client—the LADWP Board—was not proscribed from consenting in 2015 and again in 2017 to having Paradis serve in the dual roles as Special Counsel and as project manager of the CC&B remediation process.
IX. SUMMARY OF CONCLUSIONS

1. By concurrently providing legal representation to Jones and to COLA without the informed written consent of either Jones or COLA, Paradis violated his ethical and fiduciary duties under CRPC 3-310 to both Jones and COLA.

2. By secretly drafting or participating in the drafting of the Jones v. COLA Complaint and failing to reveal his actions to, and/or failing to obtain informed formal consent from COLA and Jones, while serving as Special Counsel for COLA, Paradis breached his ethical duties to both COLA and Jones to refrain from the representation of conflicting interests. Paradis’ direct representation of Jones against COLA could very well be found by a court or the State Bar to constitute an unwaivable conflict of interest.

3. By assisting in the “facilitation” of the Jones v COLA case, without the informed, written consent of the governing body of his client COLA, Kiesel violated his ethical and fiduciary duties to COLA. By failing to obtain the informed written consent from COLA before providing any legal services for the benefit of Jones, Kiesel violated his ethical and fiduciary duties under CRPC 3-310.

4. By repeatedly misrepresenting that once COLA declined to consent to Paradis’ and Kiesel’s joint or concurrent representation of COLA and an individual ratepayer against PwC, and that as soon as Jones made his decision to sue COLA, Paradis’ representation of Jones “ended,” knowing that he had continued to provide legal services for Jones’ benefit, Paradis violated his duty of candor and his duty to refrain from misleading his client, the court and opposing counsel.

5. By repeatedly misrepresenting that once COLA declined to consent to Paradis’ and Kiesel’s joint or concurrent representation of COLA and an individual ratepayer against PwC, and by
misrepresenting that as soon as Jones made his decision to sue COLA, Paradis’ and Kiesel’s representation of Jones “ended,” knowing that both he and Paradis had continued to assist Jones, Kiesel violated his duty of candor and his duty to refrain from misleading his client, the court and opposing counsel.

6. By failing to advise their client COLA that they were continuing to assist Jones in bringing an action against COLA, Paradis and Kiesel each violated their respective duties to COLA to communicate significant events affecting the client’s matter.

7. The City Attorney and the City’s outside counsel violated no ethical duties in seeking to settle the class actions arising from the CC&B problems as soon as practicable. The City Attorney and the City’s outside counsel violated no ethical duties in exploring ways to expeditiously reduce the City’s exposure to civil liabilities. The City Attorney and the City’s outside counsel violated no ethical duties in seeking to obtain the most favorable settlement terms to resolve all of the class claims, in light of the fact that, starting no later than February, 2015, the City conceded its duty to make sure that ratepayers were made “100%” whole for their monetary losses and to make sure that the CC&B system was remediated and corrected.

8. There is no ethical proscription which prevents a lawyer from sending public pleadings previously filed against the lawyer’s client to other legal counsel representing the same client, for any purpose. Even if a lawyer provides opposing counsel with copies of other public pleadings that had been filed against the lawyer’s client, no ethical violation is presented.

9. Lawyers are ethically permitted to participate in “friendly lawsuits,” and to negotiate with one of a group of opposing counsel representing separate litigation adversaries, to the
exclusion of other opposing counsel. COLA, acting through its attorneys, was not ethically constrained from choosing to settle one of several pending lawsuits based on the perceived cooperation of opposing counsel, or other factors. There is no evidence at all that: (1) the settlement of the attorney fees was negotiated before the settlement of the ratepayer claims; (2) that the settlement negotiations were weak or superficial; (3) that the lawyers on either side were ineffectual or incompetent; (4) that the class members did not receive a fair and reasonable recovery; (5) that the class received less than it was entitled to receive; or 6) that the court supervision of the settlement process or the ultimate settlement terms was inadequate. Applying a nonpejorative definition, even if the City Attorney “colluded” with one plaintiff’s counsel to secure a settlement favorable for the City, where the terms of the settlement were fair and reasonable and supervised by the court, the “collusion” did not constitute a violation of ethical duties.

10. It is not unethical for a lawyer to concurrently represent a client which is a plaintiff in one action and defendant in related action. Lawyers are ethically permitted to represent clients in multiple proceedings, including in cases in which the client is both a claimant, and a cross-defendant; this does not constitute any sort of ethical breach. Thus, to the extent that any of the attorneys who represented COLA in the defense of the consumer class actions also concurrently represented COLA in its affirmative claims against PwC, those attorneys did not represent conflicting interests.

11. In the event that the trier-of-fact concludes that either Peters or Clark authorized Special Counsel to prepare, file, and serve a lawsuit against COLA without the consent of the governing Board of LADWP, then Peters or Clark would have breached their respective
duties of loyalty to COLA by authorizing Special Counsel to represent conflicting interests without informed, written consent.

12. The LADWP Board was free to approve Paradis as Special Counsel and also to approve Paradis/Aventador to serve concurrently as project manager for the remediation of the CC&B process. Paradis was never called upon to testify as a witness in his capacity of project manager while he was concurrently serving as Special Counsel for COLA. Therefore, the duty to comply with former CRPC rule 5-210 (or current rule 3.7) never arose.

Dated: October 22, 2019

ELLEN A. PANSKY
Appendix A
ELLEN A. PANISKY
CURRICULUM VITAE

Ellen A. Pansky specializes in the defense of attorneys, bar applicants and other professionals in regulatory and licensure proceedings and represents both plaintiffs and defendants in civil actions. She consults with and advises lawyers in legal ethics and risk management. She frequently serves as an expert witness in legal malpractice proceedings.

Ms. Pansky is a California State Bar Certified Specialist in the area of Legal Malpractice Law.

As a California State Bar certified MCLE provider, Ms. Pansky is a frequent lecturer on legal ethics and professional responsibility. She has presented well over 100 continuing legal education courses. She has been elected as a member of The American Law Institute, and was selected as one of the Inaugural Fellows of the National Institute for Teaching Ethics and Professionalism (NIFTEP). She also was an invited participant in Harvard University Law School’s 2001 focus group on law firm ethics advisors. Ms. Pansky has been a contributor to Legal Malpractice Law Review at legalmalpractice.com.

Ms. Pansky is a member and past-president (1995-1996) of the Association of Professional Responsibility Lawyers, “APRL.” In August, 2016, APRL presented Ms. Pansky with its prestigious Charles W. Kettlewell Legal Ethics Advisor Award, which acknowledges the lifetime achievement of a lawyer who has demonstrated excellence in and dedication to the field of legal ethics and professional responsibility. She has long been active with the Los Angeles County Bar Association, serving as a member of the Board of Trustees (2005-2009) and Assistant Vice President (2009-2012), and has served on several of its committees including: Committee on the State Bar (1989-1995); Ad Hoc CLE Planning Committee (1990); Committee for Evaluation of Professional Standards and the State Bar (1995-2002); Professional Responsibility and Ethics Committee (chair 1996-1997, and member 1992-present); Ethics 2000 Liaison Committee (2000-2007); Judicial Appointments Committee (1999-2002), Ad Hoc Membership Committee (2006-2008); Shattuck-Price Award Committee (2009, 2010); Projects, Inc. Board of Directors (2010-2012); LACBA-WLALA Joint Task Force on the Retention and Promotion of Women Lawyers (co-chair 2010-2011, and member 2010-present). She also served as a member of the Los Angeles County Bar Association Senior Lawyers Division Executive Committee (2010-2013), the Ad Hoc Committee on State Bar Admissions Regulation Reform Proposals (2013-2016) as well as the Ad Hoc President’s Advisory Committee on Women in the Legal Profession (2013-2020).

Ms. Pansky is a longstanding member of the American Bar Association and has been a member of its Practice Management Section and the ABA Women Rainmakers Committee. She served as a member of the Editorial Board of the ABA/BNA Lawyers’ Manual on Professional Conduct (2004-2007), as a liaison member to the ABA Standing Committee on Ethics and Professional Responsibility representing APRL (2006-2008) as well as a full voting member of the SCEPR (2012-2015), and is a charter member of the ABA Center for Professional Responsibility. Ms. Pansky is also a member of The Fellows of the American Bar Foundation.
Additionally, Ms. Pansky previously served as a member of the California State Bar’s Pilot Program Interaction Advisory Committee, addressing the effect of the Lawyer Assistance Program on the State Bar disciplinary system. She served by appointment of the then presiding judge of the State Bar Court as a member of an Advisory Rules Revision Committee of the Executive Committee of the State Bar Court.

Ms. Pansky is a member (2008-2018) and section chair (2009-2015) of the United States District Court, Central District, Standing Committee on Discipline.

Ms. Pansky is a lifetime member and past president (2002-2003) of the National Association of Women Lawyers, and is also a lifetime member of the Women Lawyers’ Association of Los Angeles. Ms. Pansky is a member of the Association of Southern California Defense Counsel. She has been a member of the Steering Committee of the Breakfast Club.

Ms. Pansky is a prior chair of the State Bar of California Committee on Women in the Law (2000-2001), and is a lifetime member and previously served on the Board of Governors of California Women Lawyers (co-chair of Bias in the Law Committee and chair of its Judicial Evaluations Committee).


Between 1985 and 1988, Ms. Pansky was associated with a downtown Los Angeles litigation firm, practicing primarily in the areas of insurance defense litigation and physician peer review proceedings. In 2006, Ms. Pansky was “of counsel” to the law offices of Robie & Matthai. From 2009-2017, Ms. Pansky practiced in a partnership, Pansky Markle Ham LLP.

In 1989, Ms. Pansky and her late husband, R. Gerald Markle, opened the law offices of Pansky & Markle, emphasizing State Bar disciplinary defense and admissions; ethics consultations; professional liability defense and, to a limited extent, prosecution of legal malpractice actions; and expert testimony. Since that time, Ms. Pansky has defended attorneys in numerous cases before both the California Supreme Court and the State Bar Court, as reflected in reported decisions, including Lister v. State Bar (1990) 51 Cal.3d 1117; Sternlieb v. State Bar (1990) 52 Cal.3d 317; Lybbert v. State Bar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297; In Re Paguirigan (2001) 25 Cal.4th 1, and In Re Lesunsky (2001) 25
Additionally, she has briefed and argued many legal malpractice cases before the California courts of appeal with favorable results.

Ms. Pansky was admitted to the California Bar in 1977, and is also admitted to practice before the United States District Courts for the Northern, Central and Southern Districts of California, as well as the Ninth Circuit Court of Appeals. She is a native Southern Californian, having graduated from Hawthorne High School in 1971 with honors. She graduated summa cum laude with a B.A. from the University of California at Los Angeles in 1974. She is a lifetime member of the UCLA Alumni Association. She received her J.D. degree from Loyola University School of Law in Los Angeles in 1977. Ms. Pansky has twice been awarded the Wiley W. Manuel Pro Bono Services Award. In 2006, Ms. Pansky served as a moot court judge in the National Civil Trial Competition sponsored by Loyola Law School. Martindale Hubbell has awarded Ms. Pansky an AV Preeminent rating since 1990, has listed her law firm in its Bar Register of Preeminent Lawyers for many years, and awarded Ms. Pansky its 2015 Judicial Recognition. Additionally, Ms. Pansky has for years been recognized by her peers and ranked as a top litigator in several lawyer surveys, including the Los Angeles Daily Journal, Los Angeles Times Best Lawyers, Los Angeles Magazine, Pasadena Magazine's Top Attorneys, and Super Lawyers. Ms. Pansky has repeatedly been selected as one of the top 50 Women Lawyers in Southern California and one of the top 100 Southern California Lawyers, and has been included in Super Lawyers each year between 2006 through present.

Pansky Markle Attorneys at Law supports various community and charitable entities, including South Pasadena Educational Foundation, South Pasadena Little League, Pancreatic Cancer Action Network, Kings Care, Habitat for Humanity, UCLA, Planned Parenthood, Los Angeles Opera, South Pasadena Concerts in the Park, Friends of the Los Angeles County Law Library, LA Opera, LA Philharmonic, Gloria Kaufman Presents Dance at the Music Center, Muse/fique, and many others.
PROOF OF SERVICE

City of Los Angeles v. Pricewaterhouse Coopers, LLP
LASC, Central Judicial District, Complex - Case No. BC574690

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 2121 Avenue of the Stars, Suite 2800, Los Angeles, CA 90067.

On October 23, 2019, I served true copies of the following document(s) described as

NOTICE OF LODGING REPORT OF ELLEN A. PANSKY REGARDING LEGAL ETHICS ISSUES

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Nasir Khan
7288 Woodrow Wilson Drive
Hollywood, CA 90068
Email: nasirkhanali@gmail.com

Defendant and Cross-Defendant In Pro Per
(Case No. BC574690)

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

Executed on October 23, 2019, at Los Angeles, California.

[Signature]

Marie Ramirez
SERVICE LIST

City of Los Angeles v. Pricewaterhouse Coopers, LLP
LASC, Central Judicial District, Complex - Case No. BC574690
[Related to Case Nos. BC568722, BC536272, BC565618, BC571664, BC577267, and BC594049]

Daniel J. Thomasch (Pro Hac Vice)
Lauren J. Elliot (Pro Hac Vice)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
Tel: (212) 351-4000
Fax: (212) 351-4035
Email: dthomasch@gibsondunn.com
leliott@gibsondunn.com

Attorneys for Defendant and Cross-Complainant:
PricewaterhouseCoopers LLP; and Defendant; James M. Curtin
(Case No. BC574690)

Maurice Suh
James Santiago
Casey McCracken
GIBSON, DUNN & CRUTCHER LLP
333 S. Grand Avenue
Los Angeles, CA 90071
Tel: (213) 229-7000
Fax: (213) 299-7520
Email: msuh@gibsondunn.com
jsantiago@gibsondunn.com
cmccracken@gibsondunn.com

Attorneys for Defendant and Cross-Complainant:
PricewaterhouseCoopers LLP; and Defendant; James M. Curtin
(Case No. BC574690)

Michael N. Feuer
Joseph A. Brajevich
LOS ANGELES CITY ATTORNEY’S OFFICE
221 N. Figueroa Street, Suite 1000
Los Angeles, CA 90012
Tel: (213) 367-4580
Email: mike.feuer@lacity.org
joseph.brajevich@ladwp.com

Attorneys for Defendant
City of Los Angeles (Case No. BC577267)

Attorneys for Defendant
City of Los Angeles (Case No. BC536272)

Attorneys for Defendant
City of Los Angeles (Case No. BC571664)

Attorneys for Defendant
Los Angeles Department of Water and Power (Case No. BC568722)

Attorneys for Defendant
Los Angeles Department of Water and Power (Case No. BC594049)
NOTICE OF LODGING REPORT OF ELLEN A. PANSKY REGARDING LEGAL ETHICS ISSUES

Margaret L. Carter
J. Jorge Deneve
O’MELVENY & MYERS LLP
400 S. Hope Street, 18th Floor
Los Angeles, CA 90071
Tel: (213) 430-6000
Fax: (213) 430-6407
Email: mcarter@omm.com
deneve@omm.com

Attorneys for Defendant:
Trevor LaRoque (Case No. BC574690)

Charles R. Jaeger
David Goldstein
FARMER BROWNSTEIN JAEGGER LLP
235 Montgomery St., Suite 835
San Francisco, CA 94104
Tel: (415) 962-2879
Fax: (415) 520-5678
Email: cjaeger@fbi-law.com
dgoldstein@fbi-law.com

Attorneys for Defendants:
Paul Butler and David Garcia
(Case No. BC574690)

Jeffrey L. Steinfeld
SCHEPER, KIM & HARRIS LLP
601 W. Fifth Street, 12th Floor
Los Angeles, CA 90071
Tel: (213) 613-4655
Fax: (213) 613-4556
Email: jsteinfeld@scheperkim.com

Attorneys for Non-Parties:
Paul O. Paradis; Paradis Law Group, LLC;
and Aventador Utility Solutions, LLC
(Case No. BC574690)

Grant B. Gelberg
HUANG YBARRA GELBERG & MAY LLP
550 S. Hope Street, Suite 1850
Los Angeles, CA 90072
Tel: (213) 884-4900
Fax: (213) 884-4910
Email: Grant.Gelberg@hygmlaw.com

Attorneys for Non-Party:
Gina Tufaro
(Case No. BC574690)

Alan Himmelfarb
LAW OFFICES OF ALAN HIMMELFARB
80 W. Sierra Madre Blvd., Suite 304
Sierra Madre, CA 91024
Tel: (626) 325-3104
Fax: (626) 325-3104
Email: consumerlaw1@earthlink.net

Attorneys for Plaintiffs:
Debra Macias; et al.
(Case No. BC594049)

David C. Parisi
Suzanne Havens Beckman
PARISI & HAVENS LLP
212 Marine St., Suite 100
Santa Monica, CA 90405
Tel: (818) 990-1299
Fax: (818) 501-7852
Email: dparisi@parisihavens.com
shavens@parisihavens.com

Attorneys for Plaintiffs:
Debra Macias, et al.
(Case No. BC594049)

Attorneys for Plaintiff:
Daniel Morski
(Case No. BC568722)
NOTICE OF LODGING REPORT OF ELLEN A. PANISKY REGARDING LEGAL ETHICS ISSUES

Sheri Manning  
Gary Luckenbacher  
MANNING, MANNING & LUCKENBACHER  
20750 Ventura Blvd., Suite 203  
Woodland Hills, CA 91364  
Tel: (818) 883-8000  
Fax: (818) 883-8077  
Email: smanningseshq@aol.com

Jeffrey B. Isaacs  
Paige Shen  
ISAACS FRIEDBERG LLP  
555 S. Flower Street, Suite 4250  
Los Angeles, CA 90071  
Tel: (213) 929-5550  
Fax: (213) 955-5794  
Email: jisaacs@ifcounsel.com  
pshen@ifcounsel.com

Timothy G. Blood  
Leslie E. Hurst  
Jennifer L. MacPherson  
BLOOD HURST & O’REARDON LLP  
501 West Broadway, Suite 1490  
San Diego, CA 92101  
Tel: (619) 338-1100  
Fax: (619) 338-1101  
Email: tblood@bholaw.com  
hurst@bholaw.com  
jmacpherson@bholaw.com

Lee Jackson  
Gillian L. Wade  
Marc A. Castaneda  
MILSTEIN JACKSON FAIRCHILD & WADE LLP  
10250 Constellation Blvd., 14th Floor  
Los Angeles, CA 90067  
Tel: (310) 396-9600  
Fax: (310) 396-9635  
Email: ljackson@majfw.com  
gwade@majfw.com  
mcastaneda@majfw.com

Attorneys for Plaintiffs: Debra Macias, et al.  
(Case No. BC594049)

Attorneys for Plaintiff:  
Daniel Morski  
(Case No. BC568722)

Attorneys for Plaintiff:  
Antwon Jones  
(Case No. BC577267)

Attorneys for Plaintiffs:  
Sharon Bransford, Steven Shrager and  
Rachel Tash  
(Case No. BC565618)
NOTICE OF LODGING REPORT OF ELLEN A. PANSKY REGARDING LEGAL ETHICS ISSUES

Andre E. Jardini
K.L. Myles
KNAPP, PETERSEN & CLARKE
550 North Brand Blvd., Suite 1500
Glendale, CA  91203-1922
Tel:  (818) 547-1922
Fax:  (818) 547-5329
Email: aej@kpclegal.com
klm@kpclegal.com
Attorneys for Plaintiffs:
Yaar Kimhi; Tahl Beckerman
Megerdichian; and Yelena Novak
(Case No. BC536272)

David E. Bower
BOWER LAW GROUP PC
600 Corporate Pointe, Suite 1170
Culver City, CA  90230
Tel:  (213) 446-6652
Cell:  (310) 210-0605
Email: DBower@BowerLawGroup.com
Attorneys for Plaintiff:
Hayley Fontaine
(Case No. BC571664)

Mark T. Drooks
Nithin Kumar
BIRD, MARELLA, BOXER, WOLPERT,
NESSIM, DROOKS LINCENBERG & RHOW,
P.C.
1875 Century Park East, 23rd Floor
Los Angeles, CA  90067
Tel:  (310) 201-2100
Fax:  (310) 201-2110
Email: mdrooks@birdmarella.com
nkumar@birdmarella.com
Attorneys for Non-Party:
Jack Landskroner
(Case No. BC577267)

Edward M. Robbins, Jr.
9150 Wilshire Boulevard, Suite 300
Beverly Hills, CA 90212-3414
Telephone:  (310) 281-3289
Facsimile:  (310) 859-5129
Email: EdR@taxlitigator.com
Special Master in Jones (Case No.
BC577267)
PROOF OF SERVICE

Antwon Jones v City of Los Angeles, et al.
LASC, Central Judicial District, Complex - Case No. BC577267

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 2121 Avenue of the Stars, Suite 2800, Los Angeles, CA 90067.

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Nasir Khan
7288 Woodrow Wilson Drive
Hollywood, CA  90068
Email: nasirkhanali@gmail.com

Defendant and Cross-Defendant In Pro Per
(Case No. BC574690)

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

Executed on October 23, 2019, at Los Angeles, California.

Marie Ramirez
SERVICE LIST

Antwon Jones v City of Los Angeles, et al.
LASC, Central Judicial District, Complex - Case No. BC577267
[Related to Case Nos. BC536272, BC565618, BC568722, BC571664, BC594049, & BC594049]

Jeffrey B. Isaacs
Paige Shen
ISAACS FRIEDBERG LLP
555 S. Flower Street, Suite 4250
Los Angeles, CA 90071
Tel: (213)929-5550
Fax: (213)955-5794
Email: jisaacs@ifcounsel.com
      pshen@ifcounsel.com

Attorneys for Plaintiff:
Antwon Jones (Case No. BC577267)

Brian S. Kabateck
Anastasia K. Mazzella
Brian Hong
KABATECK LLP
633 West Fifth Street, Suite 3200
Los Angeles, CA 90071
Tel: (213) 217-5000
Fax: (213) 217-5010
Email: bsk@kbklawyers.com
      am@kbklawyers.com
      byh@kbklawyers.com

Attorney for Class
Antony Jones (Case No BC577267)

Michael N. Feuer
Joseph A. Brajevich
LOS ANGELES CITY ATTORNEY’S OFFICE
221 N. Figueroa Street, Suite 1000
Los Angeles, CA  90012
Tel: (213)367-4580
Email: mike.feuer@lacity.org
      joseph.brajevich@ladwp.com

Attorneys for Defendant
City of Los Angeles (Case No. BC577267)

Attorneys for Defendant
City of Los Angeles (Case No. BC536272)

Attorneys for Defendant
City of Los Angeles (Case No. BC571664)

Attorneys for Defendant
Los Angeles Department of Water and Power (Case No. BC568722)

Attorneys for Defendant
Los Angeles Department of Water and Power (Case No. BC594049)
NOTICE OF LODGING REPORT OF ELLEN A. PANSKY REGARDING LEGAL ETHICS ISSUES

Daniel J. Thomasch (Pro Hac Vice)
Lauren J. Elliot (Pro Hac Vice)
GIbson, Dunn & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
Tel: (212) 351-4000
Fax: (212) 351-4035
Email: dthomasch@gibsondunn.com
lelliot@gibsondunn.com

Attorneys for Defendant and Cross-
Complainant:
PricewaterhouseCoopers LLP; and
Defendant; James M. Curtin
(Case No. BC574690)

Maurice Suh
James Santiago
Casey McCracken
GIbson, Dunn & CRUTCHER LLP
333 S. Grand Avenue
Los Angeles, CA 90071
Tel: (213) 229-7000
Fax: (213) 299-7520
Email: msuh@gibsondunn.com
jsantiago@gibsondunn.com
cmccracken@gibsondunn.com

Attorneys for Defendant and Cross-
Complainant:
PricewaterhouseCoopers LLP; and
Defendant; James M. Curtin
(Case No. BC574690)

Margaret L. Carter
J. Jorge Deneve
O’MELVENY & MYERS LLP
400 S. Hope Street, 18th Floor
Los Angeles, CA 90071
Tel: (213) 430-6000
Fax: (213) 430-6407
Email: mcarter@omm.com
jdeneve@omm.com

Attorneys for Defendant:
Trevor LaRoque (Case No. BC574690)

Charles R. Jaeger
David Goldstein
FARMER BROWNSTEIN JAEGER LLP
235 Montgomery St., Suite 835
San Francisco, CA 94104
Tel: (415) 962-2879
Fax: (415) 520-5678
Email: cjaeger@fbi-law.com
dgoldstein@fbi-law.com

Attorneys for Defendants:
Paul Butler and David Garcia
(Case No. BC574690)

Jeffrey L. Steinfeld
SCHEPER, KIM & HARRIS LLP
601 W. Fifth Street, 12th Floor
Los Angeles, CA 90071
Tel: (213) 613-4655
Fax: (213) 613-4556
Email: jsteinfeld@scheperkim.com

Attorneys for Non-Parties:
Paul O. Paradis; Paradis Law Group, LLC;
and Aventador Utility Solutions, LLC
(Case No. BC574690)
NOTICE OF LODGING REPORT OF ELLEN A. PANSKY REGARDING LEGAL ETHICS ISSUES