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Superior Court of California
County of Los Angeles

JUL 25 2019

Sherri R. Carter, Executive Officer/Clerk of Court
By ______, Deputy
Steven Drew

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ANTWON JONES, on behalf of himself, and all others similarly situated,

Plaintiff,

v.

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

Defendants.

AND RELATED CASES

Lead Case No.: BC577267 [Related to Case Nos. BC536272, BC565618, BC568722, BC571664, BC594049, BC574690]

NEW CLASS COUNSEL'S PRELIMINARY REPORT REGARDING STATUS OF CLASS ACTION SETTLEMENT (90 DAYS POST APPOINTMENT)

Dept.: 6
Judge: Honorable Elihu M. Berle

New Class Counsel submits the following list of observations of the above-referenced matter, anticipated next steps, and evaluation of the operative settlement.

I. EXECUTIVE SUMMARY

Preliminary Conclusion of Class Counsel

We have concluded that the entire settlement is suspect and deserves a thorough review. It appears that valuable benefits the Class should have received were eliminated from the settlement that transcend mere arm's length negotiations and were either disregarded because they presented a roadblock to quickly completing settlement negotiations that were commenced less than 24 hours after filing the *Jones v. City of Los Angeles* action or did not enhance the lawsuit against Pricewaterhouse Coopers, LLP ("PwC"), or both. In the 90 days since Class Counsel's appointment, we have already identified several areas that were either omitted or overlooked, in whole or in part, which could lead to the return to the Class of more than $50 million in additional refunds beyond what has already been paid. These issues alone could even eclipse the $69 million to be returned to the Class as part of the original settlement.

Consequently, it is highly suspect that other issues which could have resulted in refunds and repayments to class members (customers of the Los Angeles Department of Water and Power ("LADWP")) were omitted, overlooked, reduced, or made impossible to recover. The LADWP received complete releases of all claims from all of its customers for a wide breadth of issues. Because of these facts and the harm to class members/customers/rate payers, it is our belief that the entire settlement must be evaluated and opened up to ensure the Class receives the refunds and credits it is entitled to.

The Series of Class Actions Leading up to the Jones Action

As a result of the LADWP overbilling its customers, a series of class action lawsuits were filed commencing on February 13, 2014, with the case entitled *Kimhi, et al. v. The City of Los Angeles, et al.* (Case No. BC536272) filed by Knapp, Petersen & Clarke, which was followed by a series of additional class action cases:

Bransford, et al. v. City of Los Angeles, et al., Case No. BC565618, with Blood Hurst & O'Reardon LLP and Milstein Adelman LLP as attorneys for plaintiffs, filed on December 4, 2014;

Morski, et al. v. Los Angeles Department of Water and Power, Case No. BC568722, with The Law Offices of Alan Himmelfarb, Manning, Manning & Luckenbacher, and Parisi & Havens LLP as attorneys for plaintiffs, filed on January 7, 2015; and

Fontaine, et al. v. City of Los Angeles et al., Case No. BC571664, with Faruqi & Faruqi, LLP as attorneys for plaintiffs (The Bower Law Group now represents plaintiffs in this action), filed on February 5, 2015.

On April 1, 2015, the action styled *Jones, et al. v. City of Los Angeles, et al.* was filed by Ohio Attorney Jack Landskroner of the firm of Landskroner, Greico Merriman, LLC along with his local counsel, Michael Libman of the Law Offices of Michael Libman, APC. The next day, Landskroner and Libman signed and conveyed a demand letter on Libman's letterhead making a specific demand upon the City and the LADWP to resolve all claims. Liner, LLP was attorney of record for City in the class action cases. Brown George Ross currently represents the City in the class action cases.

<u>Settlement of the Jones Action and Remediation</u>

Messrs. Landskroner and Libman, purportedly on behalf of Jones and the putative class, entered into a series of mediations with the City between the spring and summer of 2015 culminating in a proposed settlement the parties announced to the Court on June 26, 2015. That proposed settlement was immediately objected to by plaintiffs' counsel in the *Bransford* and *Fontaine* actions. On September 10, 2015, plaintiffs' counsel in the *Morski* action filed the *Macias, et al. v. Los Angeles Department of Water & Power, et al.* action (Case No. BC594049). These lawyers eventually received some concessions by way of changes to the settlement and millions of dollars in fees. In at least one case, one of the lawyers received nearly a million dollars and a "carve out" of at least one important issue which should have been resolved in the original *Jones* settlement.

The parties revised the settlement in November 2016. The Court preliminarily approved the settlement on December 30, 2016, and finally approved the settlement on July 20, 2017.

Among other things, the settlement calls for the LADWP to perform remediation work of its

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CC&B system including spending $20 million over an eighteen-month remediation period to retain system consultants and software engineering consultants to assist the LADWP in remediating and stabilizing its system. On October 19, 2015, the City awarded Paradis Law Group a no-bid contract in an amount not to exceed $1,304,090 to "ensure LADWP's full compliance with the mandated Revised Settlement Agreement," and to provide "oversight, project management and implantation services." (Agreement No. 47361-6, at 2.) On June 7, 2016, the LADWP Board amended Agreement No. 47361-6 which increased the contract amount not to exceed $6,029,765. (June 7, 2016, Minutes of the Board of Water and Power, Item No. 16). On June 6, 2017, the LADWP Board awarded a separate no-bid contract which totaled over $36 million to Aventador Utility Solutions, LLC ("Aventador"), an entity owned by Paul Paradis, to provide project management services related to the remediation of the CC&B system. (Agreement No. 47442-7.)

At some point, Paradis allegedly conveyed Aventador (now going by Ardent Cyber Solutions, LLC ("Ardent")) to Ryan Clarke. In April 2019, the City entered into an agreement with Ardent for "cyber security services." (April 19, 2019, LADWP Board Letter of Approval of Short-term Cooperative Purchasing Agreement Nos. 47551A, 47551B, and 47551C.)

The City of LA v. PwC Litigation

At some point in 2014 (at the latest), the City of Los Angeles retained outside counsel, Paul Paradis and Paul Kiesel, to represent it in a lawsuit against PwC. Whether the City retained Paradis or Kiesel for other matters is unknown at this time.

On March 6, 2015, the City filed a lawsuit against PwC. (*City of Los Angeles v. Pricewaterhouse Coopers, LLP, et al.* (Case No. BC574690)). The City laid the blame of the overbilling issue to alleged incompetence of PwC in implementing a new billing program that went into effect on or about September 3, 2013. At the time of the City's lawsuit against PwC, Kiesel and Paradis were special counsel for the City.

As a result of the PwC litigation, PwC's counsel uncovered evidence that Paradis (and possibly Kiesel) originally sought to use Jones for the purpose of bringing a class action against PwC despite the fact that Paradis and Kiesel already represented the City in the *City of LA v. PwC* action.

Paradis and Kiesel later brought in Landskroner and Libman to represent Jones in a class action against the City. There is a dispute as to whether the City orchestrated the switching of Jones from class representative against PwC to class representative against the City itself or whether it was rogue attorneys acting on their own without the contemporaneous knowledge of the City. It matters little to the Class because they were victimized by the City, which effectively filed a lawsuit against itself.

On April 26, 2019, the City released documents which apparently show that Paradis and Kiesel sent a draft demand letter to Libman to be executed by Libman and Landskroner against the City. The production also contains documents which show Paradis apparently drafted the *Jones* complaint that Landskroner and Libman filed in the *Jones* action. During the same PwC litigation, it came to light that these facts were never disclosed to the Court, other plaintiffs' counsel in the other class actions, and Jones.

The Withdrawal of Counsel and Brian Kabateck's New Role as Class Counsel

As a result of PwC uncovering the plan that was hatched, Paradis and Kiesel withdrew from representing the City and Landskroner moved to withdraw as Class Counsel. Libman has yet to file such a motion although he has been terminated by us and instructed to do so. Consequently, Landskroner and Libman continue to be attorneys for the Class in a limited capacity and they continue to be obligated to maintain fiduciary duties to the Class.

On March 20, 2019, the Honorable Elihu Berle, Judge of the Los Angeles Superior Court, issued an order to all counsel in Los Angeles that applications were being accepted for the appointment of new Class Counsel. Among others, Brian Kabateck of Kabateck, LLP applied for and was appointed replacement Class Counsel on April 17, 2019. Since that date, Mr. Kabateck along with Partner Anastasia Mazzella and Senior Associate Brian Hong (as well as other lawyers at the Kabateck, LLP firm) have been actively investigating and reviewing the case as well as overseeing the implementation of the settlement, negotiating with the City, and carrying out the transfer of information, either court ordered or requested by Class Counsel.

On June 17, 2019, this Court appointed Edward M. Robbins, Jr., a principal of the law firm of Hochman Salkin Toscher Perez, P.C., to serve as Special Master to assist the Court in the above-

referenced matter and all related cases. Among other things, the Court tasked Mr. Robbins to investigate and audit of all financial matters relating to payments by the City of Los Angeles in connection with the settlement of the *Jones* action, its remediation of the LADWP billing system, all payments to special counsel Kiesel and Paradis, all payments to every entity in which Paradis or Landskroner have an interest, and all other payments made in connection with the *Jones* action and all related cases. (June 17, 2019, Order re: Appointment of Special Master, 2:18-23.) The Court also tasked Mr. Robbins to investigate and audit relationships among and between counsel of record for the *Jones* action and all related cases that preexisted the filing of such actions. (*Id.*, 4:11-5:7.)

We promised the Court that within 90 days of appointment, we would provide the Court with a 90-day review as well as a road map detailing next steps. The following is Class Counsel's list of anticipated next steps:

1. With respect to Rule 17 or the back-billing of customers by the LADWP, we have already identified approximately $40 million which is owed to the customers. This is in addition to the approximately $69 million that was purportedly refunded to the customers as part of the LADWP's effort for a "100% refund." As noted in our most recent joint status report, the LADWP's provision of credits under its amendment of Rule 17 is underway with a target completion date of September 2019.
2. We are continuing to review Rule 17 (also referred to as "back-billing") and we have determined that other issues, whether covered by the settlement or deliberately excluded from the settlement, involve back-billing during the class period, which the LADWP was either obligated to provide refunds for under the terms of the settlement agreement or were overlooked, carved out, or deliberately omitted from the settlement. Class Counsel is continuing to meet and confer with the City intending to resolve these issues.
3. Per the Court's order of final approval, certain claims were carved out including causes of action 27-32 (concerning "corrected back-billing") in the Third Amended Complaint of the

Macias v. City of LA action.[1] (Order Granting Final Approval of Class Action Settlement and Final Judgment ("Order of Final Approval"), 6:8-15.) In addition, claims arising from back-billing of customers during the period from September 3, 2013, through September 10, 2015, were carved out. (Order of Final Approval, 6:22-23.) The exclusion of these claims makes no sense. As part of the overall aim to refund 100% to the rate payers and maximize recovery, Class Counsel intends to re-open the settlement and request that the foregoing claims be included so the Class may receive an immediate benefit. We are still investigating the circumstances as to why certain claims in the *Morski* and *Macias* actions were excluded, but it appears to Class Counsel they should have been part of the settlement. These total benefits deriving from Rule 17 already will result in the refund of nearly $40 million to class members in the next six months and may well exceed $80 million. We base this estimate on the number of improperly billed accounts known to date. This alone demonstrates the omission of benefits the Class should have received as part of the original global LADWP settlement.

4. We believe it is necessary to test the 100% refund promise which was the cornerstone of the settlement by selecting a statistically relevant sampling to make certain that the LADWP properly read meters, properly evaluated its own service, and properly issued bills to its own customers to fulfill its promise.
5. We recommend reviewing a certain set of pre-September 2013 billing records of LADWP customers to make certain that, before September of 2013, LADWP customers were receiving accurate bills because, if they weren't, such claims should have been brought by prior Class Counsel.
6. Every aspect of the settlement needs to be evaluated including the solar refunds. The Solar Subclass sought compensation for the delay it suffered beyond 30 days after submission of a complete incentive application and supporting documentation and/or indication that the solar

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[1] Referred to as "causes of action 27-32 in the First Amended Complaint filed on October 20, 2015 in the action entitled *Macias v. City of Los Angeles erroneously sued as Los Angeles Department of Water and Power, et al.*, Los Angeles Superior Court Case No. BC59049 . . . which counsel for Plaintiff Macias has represented will also be asserted in the Third Amended Complaint . . . ." in the operative settlement. (Revised Class Action Settlement Agreement and Limited Release, 13:13-18.)

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system was fully permitted and ready for inspection in receiving a reservation confirmation and/or connective the solar system; and/or (ii) having not been billed for energy consumed and/or generated; and/or (iii) have not been credited for the excess energy generated by the customer's solar system. (Revised Class Action Settlement and Limited Release ("RCAS"), 15:24-28.) The *Kimhi* complaint raises issues of delay and the failure by the LADWP to compensate solar customers are the rate they produced solar power back to the system. Class Counsel intends to evaluate what refunds the LADWP provided rate payers and via what method and whether prior Class Counsel fully explored having the LADWP compensate the Solar Subclass for all available claims.

7. If Mr. Robbins determines that ethical violations did occur (which seem imminent and obvious), we would seek the return of attorney fees paid to any lawyer whether directly or indirectly and to return them to the rate payers. Of course, ultimately whether those fees are paid to the Class (who are the rate payers who ultimately paid those fees) or returned to the LADWP, or, as another option, used to benefit the Class through the establishment of an independent office to oversee the LADWP's billing practices will be up to the Court.
8. As noted above, the LADWP contracted with Paradis Law Group and Aventador/Ardent to remedy errors with the LADWP's CC&B billing system and provide security. If the Special Master determines any fees were paid to Paradis as project manager or any other entity under the auspices of fraud, we will also seek appropriate relief on behalf of the Class to return such compensation to the rate payers, back to the LADWP, or to fund some other benefit for the Class.
9. Class Counsel requests that the Court reopen discovery in this matter and all related matters. In order for Class Counsel to be able to evaluate the settlement, Class Counsel must be able to engage in discovery as to any and all available information, documents, and testimony which would inform Class Counsel as to the nature of the claims against the LADWP's CC&B billing system as well as all other available claims, if any, against the LADWP's billing system prior to the CC&B system's implementation in September 2013. We also intend to notice depositions of any and all individuals and entities who had any role in

negotiating the settlement even if previously deposed as part of the *City of LA* v. *PwC* action.

10. It is our preliminary conclusion that the customers and rate payers of the LADWP were in some manner victimized by the City's and/or outside counsel's actions. We make no finding about any liability or exposure to PwC because that is outside the scope of our assignment. Moreover, it is irrelevant to the ratepayers who may have contributed to their overbilling, merely that it occurred through the LADWP's CC&B system is enough. It is also our opinion that there is additional money owed to the rate payers, and other claims were likely waived or eliminated because there was little or no likelihood the City could recover from PwC on those claims. In an abundance of caution, it is our strong recommendation that we be equipped to thoroughly investigate the settlement by retaining appropriate energy utility billing consultants, project managers, a statistician (as noted above), and all other necessary personnel with the City to bear the costs.

II. FACTS WHICH GIVE RISE TO THE APPEARANCE OF IMPROPRIETY.

At this point in time, it is beyond dispute that the rate payers (i.e., class members), Jones, and the Court were deceived because certain parties and/or their counsel failed to completely disclose actual or potential conflicts and the facts and circumstances leading up to the filing of the *Jones* action and settlement. The following is a list of specific facts (which by no means is exhaustive as discovery is ongoing), which should have been disclosed to Jones and/or the Court:

1. Jones originally contacted Paradis as a ratepayer and customer to the LADWP because he had been grossly overbilled.
2. Jones originally retained Paradis (either individually or in connection with Kiesel) to represent Jones in an action against PwC. Jones was not a lawyer and not aware of whether a rate payer would have standing to sue a third-party vendor for the City.
3. No one disclosed to Jones that Paradis concurrently represented the City of Los Angeles.
4. Among other facts not disclosed to Jones, there apparently was a meeting in January 2015 between the City Attorney's Office, LADWP, Paradis, and Kiesel. At that meeting, there was

a discussion of a draft complaint reflecting Jones as the plaintiff and PwC as the defendant. Paradis and/or Kiesel prepared such a draft complaint and provided it to the City. (Deposition of Paul Kiesel, March 13, 2019, 38:5-40:13.)

5. Also, the City engaged in discussions with outside counsel for the City, Liner LLP, and the City noted it intended to have the same lawyers who would prepare a lawsuit on behalf of the City against PwC also file a consumer class action against PwC. In light of that revelation, Liner advised the City such an action could not proceed for a number of reasons including conflicts of interest. (February 17, 2015, Liner Memorandum.) That specific action was then appropriately abandoned.
6. No one disclosed to the Court that Paradis and Kiesel provided Libman and Landskroner with a draft demand and a draft complaint that amalgamated the four other pending class action cases (*Kimhi*, *Bransford*, *Fontaine*, *Morski*) against the City of Los Angeles. (April 26, 2015, Notice re Documents, COLA-LADWP_0005865 through COLA-LADWP_006018.)
7. No one disclosed to Jones that Libman purported to represent Jones in the above-referenced action.
8. No one disclosed to the Court that Jones never executed a conflict waiver.
9. The City, Landskroner, and Libman did not disclose the settlement to other plaintiffs' counsel until the settlement was fait accompli.
10. No one disclosed to the Court that Landskroner had Jones sign a retainer agreement in the summer of 2015 referencing the *Jones v. City of LA* action which was backdated to December of 2014 and had been prepared by Paradis. That same retainer references the contemplated *Jones v. PwC* action.

III. THE APPEARANCE OF IMPROPRIETY LEADS TO THE LIKELIHOOD THE SETTLEMENT AGREEMENT AND THE CITY'S CONTRACTS WITH PARADIS LAW GROUP AND AVENTADOR/ARDENT SHOULD BE SUBJECT TO BEING REOPENED AND/OR THROWN OUT.

The above facts lead to the substantial likelihood that a reverse auction occurred, there were

ethical violations, and prior Class Counsel and the City engaged in collusion. Such findings should serve to reopen or unwind the settlement as well as the City's contracts with Paradis Law Group, and Aventador/Ardent.

A Reverse Auction Likely Occurred

The *Jones* action bears the hallmarks of a reverse auction. Among lawyers and judges who regularly engage in class action practice, there is something called a "reverse auction." A reverse auction occurs when "the defendant in a series of class actions picks the most ineffectual class lawyers to negotiate a settlement with in the hope that the [trial court] will approve a weak settlement that will preclude other claims against the defendant." (*Negrete v. Allianz Life Ins. Co.* (9th Cir. 2008) 523 F.3d 1091, 1099.) There must be an "air of mendacity" about it. (*Id.* at 1100.) "[B]ecause the court does not appoint a class counsel until the case is certified, attorneys jockeying for position might attempt to cut a deal with the defendants by underselling the plaintiffs' claims relative to other attorneys . . . [i]n addition, unauthorized negotiations also result in denying other plaintiffs' counsel information that is necessary for them to make an effective evaluation of the fairness of any settlement that results." (*In re General Motors Corp. Pick-Up Truck Fuel Tanks Product Liability Lit.* (3d Cir. 1995) 55 F.3d 768, 788.) "[U]nethical conduct, not necessarily prejudicial to the class, nevertheless raises a 'serious doubt' about the adequacy of class counsel when the misconduct jeopardizes the Court's ability to reach a just and proper outcome in the case." (*Reliable Money Order v. McKnight Sales Co., Inc.* (7th Cir. 2013) 704 F.3d 489, 499.)

Here, it is apparent the City reverse auctioned by not only settling the "weakest" case but also by bringing in favorable attorneys who were willing to agree to the terms of the settlement which placed the City in control of practically every aspect of the settlement including, but not limited to, the nature of the claims that would be released and how the settlement would be administered in exchange for a considerable pay out in attorneys' fees. That the *Jones* action settled a mere few months after filing with no discovery and ultimately the City paid Landskroner's firm and others a total amount of approximately $15 million further reinforces the likelihood unethical conduct occurred warranting a complete re-evaluation of the operative settlement.

It is irrelevant to Class Counsel and the Class whether, as claimed by attorney Kiesel, the City completely directed the action and the lawyers were simply following the instruction of the City by and through its deputy city attorneys or if, as the City claims, this was a rogue action orchestrated by Kiesel, Paradis, Landskroner, and possibly Libman and the City was unaware. Of course, if the latter is true, the City surely was aware that the Jones in the action entitled *Antwon Jones v. City of Los Angeles* (BC577267) was the same Jones on the draft complaint that had been admittedly circulated to lawyers inside the City Attorney's office. It is irrelevant because, under either scenario, there is a substantial appearance of impropriety and likelihood of a reverse auction.

Potential Ethical Violations to Be Confirmed by the Special Master

There are numerous ethical violations including fraud on the Court and misstatement of facts. Without the informed written consent of each client, a lawyer may not represent a client if the representation is "directly adverse" to another client in the same or a separate matter. (Cal. Rules of Professional Conduct, Rule 1.7(a).) Without the informed written consent of each client, a lawyer is prohibited from representing 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." (Cal. Rules of Professional Conduct, Rule 1.7(b).) Absent the former client's informed written consent, a lawyer "shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client." (Cal. Rules of Prof. Conduct, Rule 1.9(b).) Counsel is ethically obligated to terminate a relationship when he/she has reason to believe that discharge of his duties to one client is in conflict with another. (See *Pennix v. Winton* (1943) 61 Cal.App.2d 761, 774.) In some situations, counsel may not represent multiple clients at a hearing or trial if there is an existing, actual conflict between (or among them) because any purported "consent" to the conflicting representation would be "neither intelligent nor informed" as a matter of law. (*Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd.* (1993) 12 Cal.App.4th 74, 97.)

"Every attorney is guilty of a misdemeanor who . . . is guilty of any deceit or collusion, or

consents to any deceit or collusion, with intent to deceive . . . any party." (Cal. Bus. & Prof. Code § 6128.) "It is the duty of an attorney to . . . employ, for the purposes of maintaining the causes confided to him or her those means only as are consistent with the truth, and never to seek to mislead the judge or any judicial officer by any artifice or false statement of fact or law." (Cal. Bus. & Prof. Code § 6068(d).)

Here, while Kiesel and Paradis represented the City in a lawsuit against PwC, Kiesel and Paradis actively worked with Landskroner and Libman to file an action against the City. This resulted in Kiesel and Paradis actually or potentially representing clients with conflicting interests. It appears Kiesel and Paradis did not obtain informed written consent from Jones. Also, Landskroner and Libman, despite having fiduciary duties to Jones and to the putative class, appears to have engaged in collusion by conferring with Paradis and/or Kiesel regarding the demand letter and what ultimately became the complaint in the *Jones v. City of LA* action. As such, it is highly likely that ethical violations and collusion occurred subject to a finding by the Special Master.

The Existence of a Reverse Auction, Ethical Violations, and Collusion Can Serve to Re-Open or Unwind the Settlement

Case law supports the notion that the existence of a reverse auction, ethical violations, collusion, and the appearance of impropriety can call into question the entire settlement and whether it is in fact fair, reasonable, and adequate. In a class action lawsuit, the Court undertakes fairness to "prevent fraud, collusion, or unfairness to the class." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) "The court must . . . scrutinize the proposed settlement agreement 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.'" (*Wershba v. Apple Computer, Inc.* (2018) 91 Cal.App.224, 245, disapproved of on other grounds.) The Court may find attorney fee awards as part of class action settlements to be unreasonable and bear signs of collusion. (See *In re Bluetooth Headset Product Liab. Lit.* (9th Cir. 2011) 654 F.3d 935, 947-948 (finding in that case the attorney fee agreement bore signs of collusion, there was a failure to provide an adequate explanation for the

award, and that the district court abused its discretion in approving the award).) "Collusion may not always be evident on the face of a settlement, and courts therefore must be particularly vigilant not only for explicit collusion, but also for more subtle signs that class counsel have allowed pursuit of their own self-interests and that of certain class members to infect the negotiations." (*Id.* at 947.)

Here, the existence of collusion and a reverse auction call into question the entire settlement. The City's production of documents on April 26, 2019, as part of its notice re documents reflects collusion occurred between Libman, Landskroner, Paradis, and/or Kiesel. On July 22, 2019, the Federal Bureau of Investigation conducted raids of the LADWP, the City's Attorney's Office, and Kiesel Law LLP related to these class action cases. The high degree of suspicion and the possibility of public corruption evidences former Class Counsel did not conduct a complete and thorough evaluation of the entire settlement. There are also questions about complicity of certain counsel for the City. Other plaintiffs' counsel including counsel for *Bransford* and *Fontaine* objected to the Court, but were prevented from discovering the true facts because the City and its lawyers misrepresented facts and circumstances.

We have not made a final complete determination yet concerning what it believe would be best on behalf of the Class, but, depending on its findings, may request the that Court vacate final approval of the class action settlement and cause it to be re-opened in whole or in part or we may request modification of terms depending upon the City's willingness to cooperate.

The City's Contracts with Paradis Law Group and Aventador Utility Solutions, LLC/Ardent Cyber Solutions, LLC Raise the Prospect of Impropriety

What is also disconcerting is the number and amount of no bid contracts the City awarded to entities owned by Paradis. As noted above, on October 19, 2015, the City awarded Paradis Law Group a no-bid contract in an amount not to exceed $1,304,090 related to remediation of the CC&B system pursuant to the settlement. (Agreement No. 47361-6.) On June 7, 2016, the City executed Amendment No. 1 to the foregoing agreement which increased the amount to $6,029,765. (June 7, 2016, Minutes of the Board of Water and Power, Item No. 16). On June 6, 2017, the City awarded another no-bid contract totaling over $36 million to Aventador for project management services

related to remediation of the CC&B system. (Professional Services Agreement 47442-7.)

Paradis allegedly provided project management, but is a class action lawyer from New York City not admitted to practice in California (admitted pro hac vice) and had no known experience as a project manager for a major metropolitan utility. The fact that Paradis Law Group was paid millions of dollars and Aventador was paid at least $21.9 million as part of a total $30 million in no-bid contracts supports the conclusion that the substantial appearance of impropriety here warrants a complete and thorough investigation.[2]

As noted above, Aventador has changed to Ardent. On May 16, 2019, Clarke executed a declaration as the president and sole owner and member of Ardent. In that declaration, Clarke declared neither Landskroner nor Paradis hold interests in Ardent, that they do not receive any income streams whatsoever from Ardent, and that they do not hold interests in any businesses associated with or affiliated with Ardent in any whatsoever. Apparently, Paradis conveyed the entity to Clarke, but how Paradis did so and for what consideration is unclear.

Also, the City recently entered into a contract with Ardent purportedly for "cybersecurity", which likewise adds to the appearance of impropriety. (April 19, 2019, LADWP Board Letter of Approval of Short-term Cooperative Purchasing Agreement Nos. 47551A, 47551B, and 47551C.) This arrangement should be fully investigated.

Class Counsel's Attempts to Meet and Confer with Jack Landskroner and his firm, Landskroner, Greico, Merriman, LLC and Trace the Money

That Landskroner has taken the 5th amendment and Landskroner Greico Merriman, LLC ("LGM") claims work product protection over certain documents and has failed to produce a complete set of document as ordered adds to the appearance of impropriety.

Ever since the Court issued an order to Landskroner to provide an accounting and a further order on him to provide certain categories of documents related to an accounting, Landskroner has taken the 5th Amendment. Plaintiff has applied *ex parte* to set an OSC re contempt, fines, incarceration,

[2] It appears the City cancelled its contract with Aventador, but not before the City already paid Aventador $21.9 million.

and sanctions against Landskroner for his failure to provide an accounting, which this Court turned into a noticed motion. Landskroner has since opposed Plaintiff's motion and Plaintiff has filed a reply.

On June 3, 2019, this Court ordered LGM to provide an accounting and, on June 7, 2019, entered a supplemental order on LGM to provide certain categories of documents. On June 13, 2019, LGM produced its file composed of its hard file and an electronic set of documents. On July 11, 2019, Class Counsel sent a meet and confer letter to Bird Marella and Kegler Brown + Hill concerning documents which were missing from LGM's accounting production, and noted LGM had yet to produce an accounting.

On July 19, 2019, Class Counsel was contacted by Landskroner's criminal attorney, Ian Freidman. Mr. Friedman indicated that Landskroner and LGM intend to fully comply with the Court's orders to provide accountings and produce all documents as ordered by the Court. Landskroner will not maintain any further privileges other than his 5th Amendment right against self-incrimination as it relates to verbal statements only. Landskroner will no longer exercise his 5th Amendment right against self-incrimination with respect to the production of documents. Upon receipt of an accounting and a full production, Class Counsel intends to further apprise the Court as any findings.

However, on July 23, 2019, Paradis and Paradis Law Group's counsel sent a letter directed to Landskroner and LGM's counsel wherein Paradis and Paradis Law Group are claiming work product protection over all the documents and accountings Landskroner and LGM seeks to produce responsive to this Courts' orders. On July 24, 2019, Paradis and Paradis Law Group's counsel sent a letter directly to Class Counsel demanding that Class Counsel acknowledge it will not require Landskroner and LGM to produce such documents and threatened sanctions.

This is just another attempt by Paradis and his firm to obfuscate and delay to prevent the Class and this Court from being informed as to the nature and extent of Paradis and his firm's machinations. On behalf of the Class, we intend to take all appropriate measures to obtain all such documents and accountings from Landskroner and his firm.

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Class Counsel's Efforts to Obtain Accountings and Documents from Michael Libman and his firm, the Law Offices of Michael Libman, APC

On July 3, 2019, this Court entered revised orders on Libman and his law office to provide accountings, certain categories of documents, and their original files. On July 15, 2019, Libman delivered five boxes of documents. Mr. Libman claims his hard copy production contains his entire original file, an accounting, and all documents responsive to this Court's revised orders. We are currently evaluating Libman's production.

Paul Paradis and Paradis Law Group's Refusal to Provide Testimony and Allow Mr. Jones to Release Documents Raises the Likelihood of Impropriety

As this Court knows, Paradis has taken the 5th amendment at deposition, and has refused to speak to Class Counsel.

Also, although Jones has long sought to produce his file which includes all documents exchanged between him and, among other individuals, Paradis and Landskroner, Paradis and his firm seeks to prevent that. On June 24, 2019, Paradis and his firm applied *ex parte* for a protective order to prevent Jones from producing his file, which this Court denied. On July 2, 2019, Paradis and his firm applied *ex parte* for this Court to stay execution of its prior order which this Court granted. Paradis and his firm petitioned for a writ of mandate in the Court of Appeal. On July 22, 2019, the Court of Appeal noted it is considering the issuance of a peremptory writ, provided the respondent court does not vacate its June 24, 2019, order and enter a new order directing Paradis and Paradis Law Group to submit a more detailed privilege log or, if necessary, to have the Court review the disputed documents in camera.

IV. SUMMARY OF SETTLEMENT AGREEMENT

Monetary Relief

The settlement is composed of two sets of relief: monetary relief and remedial work on the CC&B system. The settlement is composed of seven subclasses: (as described in more detail below) (i)

Overbilled Subclass; (ii) Incorrect Fee Subclass; (iii) Unrefunded Balance Subclass; (iv) Solar Subclass; (v) Premise Condition/Estimated Bill Subclass; (vi) Automatic Bill Payment/Bank Overdraft Charge Subclass; and (vii) Omnibus Subclass.

The parties agreed that members of the Overbilled Subclass, Incorrect Fee Subclass, Unrefunded Balance Subclass and Solar Subclass would all be pre-identified, non-claims made. Specifically, the members would be "pre-identified as members of each of these subclasses from the internal records of the LADWP" with the methodology for identification to be verified and tested by the Court appointed monitor. Based on the LADWP's review of its own records, it would credit (current customers) or refund (former customers) "100%" of any amounts the LADWP overcharged or damaged the foregoing members from September 3, 2013, up to and including December 30, 2016, for electric, water, sewage, and sanitation customers and from February 13, 2010, up to and including December 30, 2016, for members of the Solar Subclass. (RCAS, 17:5-28; Order of Final Approval, 2:21-28.)

The parties also agreed that members of the Premise Condition/Estimated Bill Subclass and Automatic Bill Payment/Bank Overdraft Charge Subclass would be pre-identified, claims made. Specifically, the members would be pre-identified by the LADWP from its own internal records and the Court appointed monitor would verify and test the LADWP's methodology. All members of the foregoing subclasses were required to file a claim (using the form attached to the RCAS) to the Court appointed claims administrator. (RCAS, 18:7-9.) Per the agreement, the Court appointed claims administrator would make initial determinations as to whether claim forms were complete and would turn them over to the LADWP claims processing unit. Ultimately, it would be up to the LADWP determine how much in a credit or refund, if at all, was due to a customer with the aim of refunding "100%." The pertinent recovery period for these subclasses was from September 3, 2013, up to and including December 30, 2016. (RCAS, 18:1-19:6; Order of Final Approval, 2:21-28.)

The last subclass, the Omnibus Subclass, is also claims made, and is specific to the time period from September 3, 2013, through the December 30, 2016, for anyone who believes they were incorrectly assessed a charge of any kind for power, water, sewage or sanitation services, and from February 13, 2010, through December 30, 2016, for anyone who believes they were damaged as a

result for their participation in the LADWP solar incentive program. (RCAS, 19:6-20:18; Order of Final Approval, 2:21-28.)

Remedial Relief

As part of the settlement agreement, the LADWP agreed to adopt certain performance metrics such that it would reach certain service goals for certain tasks by certain dates. (RCAS, 21:12-36:13.)

Pursuant to the settlement agreement, the LADWP also agreed to be subject to the oversight of a CC&B monitor expert. (RCAS, 36:13-39:18.)

Further, the LADWP agreed to create and implement a "tiger team" of customer service representatives who would address complex billing issues. (RCAS, 39:19-40:7.) It also agreed to create and implement an information technology department project management office to manage and implement all future significant technology projects. (RCAS, 40:8-41:5.)

V. RULE 17, ITS AMENDMENT AS PART OF THE SETTLEMENT, AND THE CITY'S PROVISION OF CREDITS UNDER THE NEW AMENDMENT.

The Settlement

Prior to the revised class action settlement, Rule 17 of the Rules Governing Water and Electric Service allowed the LADWP to go back as far as it wanted, seemingly indefinitely, and back-bill residential and commercial customers whom the LADWP had not billed for water, electricity, sewage, and sanitation services.

The revised settlement agreement defines "back-billing" as the "submission of a bill by the LADWP to an account holder that includes more than one billing cycle where the prior billing statements had not previously been billed to the account holder. Back-billing does not include the issuance of a 'Cancel-Rebill.'" (RCAS, 8:12-15.) The settlement defines a "cancel-rebill" as a "bill issued that reconciles a customer's charges from prior bills." (RCAS, 8:16-17.)

As part of the revised class action settlement, the Class and the City agreed to amend Rule 17. In short, the City agreed to amend Rule 17 so that it could not back-bill its residential and commercial

customers for a period of time in excess of (i) 3 billing cycles for customers billed bi-monthly or (ii) 6 billing cycles for customers billed monthly subject to various exceptions. (RCAS, 41:18-42:9.)

The parties also agreed to credit all residential and commercial customers who had been back-billed at any time for the time period from September 11, 2015, through November 18, 2016, for amounts billed in excess of 3 billing cycles for those customers billed bi-monthly, or 6 billing cycles for those customers billed monthly. (RCAS, 42:10-13.)

The parties also agreed that all residential and commercial customers who received a back-bill between September 3, 2013, and the close of the remediation period would have a period of four years from the date on which they received their back-bill to pay the entirety of the back-billed amount without penalty or interest in monthly installments. (RCAS, 42:13-17.)

Class Counsel's Observations

The Court appointed monitor, Paul Bender, reported that on April 9, 2019, he attended a meeting with the LADWP regarding Rule 17. Up until that meeting, he had been told by the LADWP that the total payment to the class under Rule 17 would be approximately $950,000. It was possible that the number could reach $1 million. At the April 9, 2019, meeting, he learned for the first time that the LADWP's provision of credits under the amendment of Rule 17 per the settlement would total at least $24 million. He also learned that the LADWP had not yet completed its determination of Rule 17 adjustments. (Declaration of the Independent CC&B System Monitor Post April 9-11, 2019 Site Visit, 4:24-5:6.)

After we became Class Counsel, we have worked with Bender and established that there is about $38.8 million owed to customers under the first tier of Rule 17 alone, which include situations where the LADWP failed to issue a bill and thereafter issued a bill (a "back-bill") to address its earlier failure to bill a rate payer. We are continuing to work with Bender and the City to ensure that refunds are made to the class members.

Approximately 38,000 of the accounts have been flagged for Rule 17 violations in the amount of $2,000 or less amounting to a total of approximately $8 million in credits. The LADWP applied credits for those accounts via an automated system. The LADWP conducted a manual review of

approximately 6,000 accounts amounting to a total of approximately a little over $30 million in credits.

There is a second tier which falls under Rule 17 concerning zero billed and zero consumption bills which, according to the LADWP's estimation totals up to about $8 million in credits. We have not been able to verify if the amount owed is $8 million or more. LADWP excluded this second tier of credits from its deployment of Rule 17 credits because there is a question as to whether this particular amount should be credited under the agreed upon amendment to Rule 17 in the settlement agreement.

There is a third tier of credits, cancel-rebills, which arguably should fall under the City's amendment of Rule 17. The LADWP has not conducted an analysis as to how much in credits this entails.

As stated above, the revised settlement and order of final approval carved out certain claims including, but not limited to, causes of action 27-32 in the Third Amended Complaint in the *Macias v. City of LA* action and claims arising from back-billing of customers during the period from September 3, 2013, through September 10, 2015. (Order of Final Approval, 6:8-15, 22-23.)

As part of the overall aim to refund 100% to the rate payers and maximize recovery, the second and third tier of claims falling under Rule 17 should be part of any further negotiation with respect to the settlement. The LADWP agreed to provide credits during the period of September 11, 2015, through November 18, 2016, part of the revised settlement agreement in a situation where it failed to issue a bill, but then later on issued a "back-bill." We believe that there is little difference between not receiving a bill then months or years later receiving a bill (back-billing), receiving a bill with a zero-amount owed, receiving a bill noting zero (e.g. electric) had been consumed, and receiving a cancel-rebill only later to be back billed months or years later. We are in the process of meeting and conferring with the City and potentially participating in mediation with the City concerning refunding money to the rate payers under the back-billing (for the period outside of the scope of the settlement), zero billed, zero consumed, and cancel-rebill issues because doing so would immediately benefit the Class. We do not understand how or why the City either believes these issues are not

covered or, in the case of the "cancel-rebills", why they were intentionally excluded from the settlement.

If mediation is not successful, we plan to reopen and litigate the issue of a proper interpretation of Rule 17 and what applicable claims have been resolved as a result of the amendment of Rule 17 in the revised settlement agreement.

We propose bringing in a consultant to review the work of the Paul Bender and his project manager, Siva Thoppe, with respect to their collective verification and testing of the LADWP's methodology. We do not have any reason to believe that Bender and his project manager did anything wrong, but, out of an abundance of caution, we believe having a separate consultant spot checking their work would be appropriate.

VI. THE PRE-IDENTIFIED NON-CLAIMS MADE SUBCLASSES

Overbilled Subclass

The Overbilled Subclass is "comprised of all LADWP customers that were overbilled as a result of being charged an incorrect rate, incorrect amount of consumption, incorrect utility tax rate or who did not have a discount applied." (RCAS, 15:10-12.) The LADWP stated that their policy was to refund 100% of any customer who was overbilled. However, Class Counsel proposes auditing those refunds to determine if the amount was actually refunded to each consumer. It is important to note that the LADWP, in exchange for the "100%" refund, received a waiver for all claims during the period of September 3, 2013, through December 30, 2016.

Among other issues, this Subclass includes the LADWP charging rate payers an incorrect amount of consumption. This is where the LADWP would charge consumers for incorrect consumption, in other words, overcharging them. It is possible that an error was made by assuming that the meter reads were accurate at the time and that it was simply the computer system that led to an overbilling or a billing error. Class Counsel intends to engage in further discovery on this issue and enlist the aid of an energy billing consultant and project managers.

As mentioned in the executive summary, Class Counsel proposes to perform a statistically relevant sampling of meter reads to make certain that the baseline information that the LADWP used

to correctly bill customers was correct in of itself. In order to do this, Class Counsel will retain a statistician to determine the appropriate methodology and number for a statistically relevant sampling. Once the statistically relevant sampling is identified, Class Counsel will hire a consultant to perform an audit to first determine that the baseline information or the meter read information of consumption was accurate. If it was inaccurate, then Class Counsel will need to make an evaluation as to how to determine the accurate meter reads to refund money to the consumers. If the meter reads are accurate, Class Counsel will then conduct its review to make certain that a 100% refund as stated by the City, the LADWP, and their counsel was actually achieved.

Class Counsel also intends to investigate the issue of incorrect rates and intends to retain an energy billing consultant and project manager to conduct an analysis of the statistically relevant sampling.

Incorrect Fee Subclass

The Incorrect Fee Subclass is "comprised of all LADWP customers that were charged an incorrect fee, including but not limited to late payment fees, reconnect fees, and/or start service fees." (RCAS, 15:14-16.) The LADWP purportedly refunded "100%" to such aggrieved customers.

Class Counsel intends to utilize the aid of an energy billing consultant and project manager to analyze a statistically relevant sampling of data to determine all potential incorrect fees and whether a "100%" refund was actually achieved.

Unrefunded Balance Subclass

The Unrefunded Balance Subclass is "comprised of all LADWP customers that: (i) have 'Closed Accounts' with credit balances and (ii) are owed refunds that have been withheld by the LADWP during the period of September 3, 2013 to the present." (RCAS, 15:18-20.) The LADWP purportedly refunded "100%" to such aggrieved customers.

Class Counsel also intends to utilize the aid of an energy billing consultant and project manager to analyze a statistically relevant sampling of data to determine if this was actually achieved.

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Solar Subclass

The Solar Subclass consists of "[a]ll LADWP customers that have installed solar systems and applied to participate in the Solar Photovoltaic Incentive Program from February 13, 2010 to date and: (i) experienced delay beyond 30 days after submission of a complete Incentive Application and Supporting Documentation and/or indication that the solar system was fully permitted and ready for inspection in receiving a reservation confirmation and/or connecting the solar system; and/or (ii) have not been billed for energy consumed and/or generated; and/or (iii) have not been credited for excess energy generated by the customer's solar power system." (RCAS, 15:22-28.)

Class Counsel in his short time since appointment has received a number of complaints from solar customers claiming they were not properly given the credits or refunds due for their solar power. In order to verify this, Class Counsel has obtained a copy of the "white paper" which contains the methodology by which the LADWP determined the credits due to customers. Class Counsel intends to retain a project manager with expertise in solar metering, rates, modeling, and billing to review and verify the LADWP's methodology and determine whether certain claims under this Subclass were released without consideration.

VII. THE PRE-IDENTIFIED CLAIMS MADE SUBCLASSES

Premise Condition/Estimated Bill Subclass

The Premise Condition/Estimated Bill Subclass "is comprised of all LADWP customers that: (i) unbeknownst to the customer, had a premise condition that caused excessive consumption of water and/or power; (ii) received estimated bills for multiple billing periods after September 3, 2013; (iii) because of these estimated bills, were prevented from timely discovering the premise condition; and (iv) were charged for greater quantities of water, power or sewage than they otherwise would have been charged." (RCAS, 16:2-7.)

It is Class Counsel's opinion that this subclass should not have been a claims made settlement class because no rate payer would know how to make such a claim. Further, it appears that it would have been easier for the LADWP to be able to self-identify this issue. Moreover, it appears the

LADWP could track accounts with high bills and determine which ones were not such subject to an overbilling issue leaving it that much more likely that the rate payer was subject to a premise condition causing an excessive consumption of water and power. Class Counsel intends to utilize the expertise of an energy billing consultant and project manager to ascertain whether the LADWP could pre-identify this subclass.

Automatic Bill Payment/Bank Overdraft Charge Subclass

The Automatic Bill Payment/Bank Overdraft Charge Subclass "is comprised of all LADWP customers that: (i) were enrolled in an automatic bill payment plan with a bank and (ii) were charged overdraft fees because the LADWP charged the customer with an incorrect amount, which, in turn, resulted in the customer's bank account being overdrawn." (RCAS, 16:9-12.) The LADWP purportedly refunded "100%" to such aggrieved customers.

It is Class Counsel's understanding that the LADWP paid $0 towards this Subclass. This is extremely disconcerting to Class Counsel. Class Counsel intends to utilize the services of an energy billing consultant and project manager to review the methodology by which the LADWP determined claims were eligible.

VIII. THE OMNIBUS SUBCLASS

This subclass includes "[a]ny current or former LADWP customers, whether 'pre-identified' as a member of any Subclass, or not who nevertheless believe they have been otherwise: (i) overcharged as a result of a billing error made by LADWP at any time since September 3, 2013; or (ii) damaged as a result of their participation in the LADWP's solar incentive program at any time since February 13, 2010 . . . ." (RCAS, 19:10-14.)

Class Counsel is concerned with the nature of this "omnibus" tool because it is claims made. Aside from the fact that claims made settlements are often settlements of last resort, no reasonable consumer would be able to decipher what issue is affecting their account such that he/she is receiving an inaccurate bill. Class Counsel intends to investigate, with the aid of an energy billing consultant

and project manager, what other available subclasses, if any, could be further defined as a result of errors in the CC&B system pre and post September 3, 2013, without putting the onus on the consumer who would have no idea how to navigate the morass that is the LADWP billing system. This subclass secured a complete release of any and all remaining claims related to any billing issues with the DWP. That kind of relief is so broad and substantial it potentially shocks the conscience under these circumstances as now known.

IX. THE BROAD SCOPE OF THE RELEASE.

The revised settlement releases "all claims, damages, suits, demands, liabilities, judgments, losses and causes of action which have accrued as of the date of entry of the Order of Preliminary Approval relating to or arising from the billing issues alleged in the operative pleadings in the Actions, including: [¶] (i) overbilling as a result of charging an incorrect rate, incorrect amount of consumption, incorrect utility tax rate or failing to apply a discount; [¶] (ii) billing incorrect fees, including but not limited to late payment fees, reconnect fees and/or start service fees; [¶] (iii) retaining refunds during the period of September 3, 2013 to the present that were due; [¶] (iv) billing for greater quantities of water, power or sewage than otherwise would have been charged but for the existence of a premise condition; [¶] (v) the assessment of overdraft fees resulting from the LADWP having charged customers an incorrect billing amount; and [¶] (vi) for solar customers, delay in providing a reservation confirmation to and/or connecting the solar system, and/or failure to bill for energy consumed and/or generated; and/or failure to credit for excess energy generated by the customer's solar power system at any time from February 13, 2010, through the date of the entry of the Order of Preliminary Approval . . ." (RCAS, 11:15-12:5.)

The definition of "Released Claims" goes on to note that all such claims include those "sounding in law or equity, seeking damages or any other relief, that are no recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision or in any other manner, based upon any federal or state statutory or common law . . . . and all claims, damages, suits, demands, liabilities, judgments, losses or causes of action which have been, might have been, are

now, or could be asserted by any plaintiff or any Settlement Class Member arising out of, based upon, or related to, in whole or in party, the facts the circumstances underlying the claims and causes of action set forth in the Actions." (RCAS, 12:6-14.)

It further includes all "claims for economic and non-economic damages proximately caused by the LADWP having overbilled its customers during the time period set forth in the operative Complaint in the *Jones Action*. These economic and non-economic damages may be direct, incidental, or consequential and by way of example, include: repair costs; services [sic] costs (e.g., the cost of a plumber or electrician to examine or repair a premise condition;) finance, interest, or overdraft charges imposed by a third party; costs related to or arising from erroneous disconnections; reconnection fees; loss of perishable items; damage to personal property; or loss of wages or business income. **All such losses and damages are expressly deemed Eligible Claims pursuant to this Revised Agreement and a Settlement Class Member is entitled to seek recover of 100% of such losses and damages through the Omnibus claims process**." (RCAS, 12:15-24, emphasis added.)

The definition of Released Claims also includes "claims for economic and non-economic damages that resulted in overbilling to customers and were proximately caused by the LADWP's failure to: (i) timely undertake field investigations, conduct field maintenance, perform meter reads, or provide accurate information concerning actual utilization; (ii) prorate or allot utilization in accordance with applicable rate schedules; and (iii) comply with disconnection rules. **All such losses and damage are expressly deemed Eligible Claims pursuant to this Revised Agreement and a Settlement Class Member is entitled to seek recovery of 100% of such losses and damages through the Omnibus claims process**." (RCAS, 12:25-13:4, emphasis added.)

As noted above, the settlement agreement purports to give Class the opportunity to submit "omnibus" claims for the above-release claims. However, it is hopeless for a rate payer to be able to decipher what would constitute an "omnibus" claim and how he/she could seek relief.

Also, the scope of the release is unquestionably broad. As stated in the executive summary, Class Counsel proposes having the Court allow Class Counsel to engage in discovery of all the claims at issue in the *Jones* action. No discovery has been conducted concerning the nature of the errors associated with the LADWP's implementation of its CC&B billing system in September 2013. Class

Counsel must determine what claims ratepayers could have made against the LADWP and what damages they suffered.

Moreover, we must be able to review what complaints the LADWP received from customers and an appropriate spectrum of data to determine how the CC&B billing system operated and just how many and what kinds of errors it was generating to the detriment of the rate payers.

What is also concerning is the fact that the parties focused on all claims starting from the date the CC&B billing system was first implemented on September 3, 2013. The revised class action settlement does not purport to refund "100%" to ratepayers for any overbilling or damages they suffered prior to the September 2013 CC&B implementation. It doesn't appear any investigation or discovery was conduct concerning available claims prior to September 3, 2013.

X. ANY RECEIPT OF FEES BY JACK LANDSKRONER, MICHAEL LIBMAN, PAUL PARADIS, AND ANY ENTITIES IN WHICH THEY HAVE AN INTEREST

There is no reasonable dispute that the Class, the public and the Court were deceived by prior counsel. "[T]he trial court has an independent duty to determine the reasonableness of the award." (*Garabedian v. Los Angeles Telephone Company* (2004) 118 Cal.App.4th 123, 128.) Courts pay special attention to "whether there is any evidence of fraud or collusion in the fashioning of any agreement as to attorney fees." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) "It is the general rule in conflict of interest cases that where an attorney violates his or her ethical duties to the client, the attorney is not entitled to a fee for his or her services." (*Cal Pak Delivery, Inc. v. United Parcel Service, Inc.* (1997) 52 Cal.App.4th 1, 14.) "Simultaneous representation of clients with conflicting interests (and without written informed consent) is an automatic ethics violation in California" and "[a]n attorney cannot recover fees for such conflicting representation." (*Rodriguez, et al. v. West-Pub'g Corp., et al.* (9th Cir. 2009) 563, F.3d 948, 967-68.)

Landskroner, along with other counsel, applied for a total of about $17.5 million in attorney's fees, which they later reduced to about $15 million. Paul Paradis, through Paradis Law Group and Aventador/Ardent, received considerable contracts through the no-bid process tied to carrying out the eventual settlement. It is unclear as to how all fees were diverted to counsel of record including,

but not limited to, Libman, Paradis, and/or Kiesel, if at all. As indicated in Class Counsel's proposed next steps above, Class Counsel intends to seek an order to disgorge all such fees to the rate payers or back to the LADWP subject to a finding by the Special Master. Class Counsel also suggests the creation of a watchdog oversight agency to investigate claims and complaints concerning billing by energy utilities like the LADWP going into the future.

XI. CLASS COUNSEL'S REQUEST FOR THE CITY TO PAY FOR CONSULTANTS AND INTENT TO APPLY FOR ATTORNEYS' FEES.

As noted in the executive summary, considering the industry specific and highly technical nature of the claims (and unknown, potential claims at issue), Class Counsel intends to utilize the services of consultants with expertise in energy billing and project management to review and analyze an appropriate amount of the LADWP's available data pre and post September 3, 2013. Class counsel also intends to rely on the expertise of a statistician to advise as to an appropriate sampling of such data. Class Counsel will require a billing and payment mechanism by which the LADWP will agree to pay for Class Counsel utilization of such services. Class Counsel should not have to bear the burden of paying for any such consultants' fees and costs. However, should the Court decide otherwise, Class Counsel is prepared to negotiate a payment arrangement such that it will pay a certain percentage of consultants' fees and costs upfront to be reimbursed at a later date.

The operative settlement agreement notes Class Counsel may make any application for attorneys' fees out of future recoveries for the Class. (RCAS, 58:1-7.) We intend to apply for attorneys' fees consistent with the terms of the settlement at a later date to be paid by the City separate and apart from any benefits to be given to the Class. At this point, we believe it would be premature to apply for attorneys' fees as we anticipate working on this matter on behalf of the Class for the foreseeable future.

It is anticipated that the LADWP's roll out of Rule 17 credits will result in almost $40 million in credits to the Class (composed of automation and manual review). As noted above, credits due to the Class under the amendment of Rule 17 is a subject of ongoing negotiation between Class Counsel and the City. Class Counsel does not know whether any further monies will be refunded or credited

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to the Class. In the event that occurs and Class Counsel's role ends prematurely (though given the complexity and number of outstanding issues that seems unlikely), Class Counsel intends to seek the payment of reasonably attorneys' fees via the lodestar method with a reasonable multiplier.

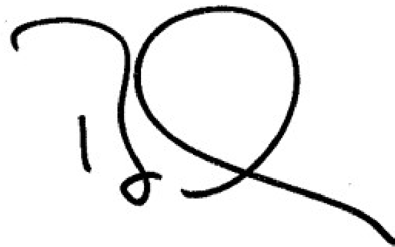
XII. CONCLUSION

Class Counsel is consistently aware of the importance of seeking optimum relief on behalf of the Class. With that aim, Class Counsel anticipates, with the aid of appropriate consultants, to be able to more closely analyze the LADWP's review of its own system and available claims against the LADWP CC&B system pre and post launch.

Class Counsel intends to submit another report by October 25, 2019, to apprise the Court of ongoing efforts to evaluate the operative settlement and determine what would be in the best interests of the Class.

Dated: July 25, 2019

KABATECK LLP



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Attorneys for the Class

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I am over the age of eighteen years and not a party to the within entitled action; my business address is 633 West Fifth Street, Suite 3200, Los Angeles, CA 90071.

On July 25, 2019, I served a copy of the following document(s) described as **NEW CLASS COUNSEL'S PRELIMINARY REPORT REGARDING STATUS OF CLASS ACTION SETTLEMENT (90 DAYS POST APPOINTMENT)** on the interested party(ies) in this action as follows:

[ ] **BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope(s) addressed as above, and placing each for collection and mailing on that date following ordinary business practices. I am "readily familiar" with this business practice for collecting and processing correspondence for mailing. On the same day that correspondence IS placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service in Los Angeles, California, in a sealed envelope with postage fully prepaid.

[ ] **BY OVERNIGHT DELIVERY:** I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed as above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

[X] **VIA FILE AND SERVE:** I caused such documents described herein to be uploaded electronically onto the website www.fileandservexpress.com per a mutual agreement between the parties. I uploaded the above entitled document(s) with the understanding that all parties will have access and be able to download said documents

[X] **STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 25, 2019, Los Angeles, California.

Irma DeLeon

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