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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JOHN FAITRO et al., Plaintiffs and Respondents, v. TOP SURGEONS, LLC, et al., Defendants and Appellants.	B294666 (Los Angeles County Super. Ct. No. BC454464)

APPEAL from an order of the Superior Court of Los Angeles County, Kenneth Freeman, Judge. Affirmed.

Law Office of Francis J. Flynn, Jr., Francis J. Flynn, Jr.; William Welden and Mark Madison for Defendants and Appellants.

Robertson & Associates, Alexander Robertson, IV; Law Offices of John M. Walker and John M. Walker for Plaintiffs and Respondents.

Since the inception of this action in February 2011, attorneys Alexander Robertson and John Walker (collectively, class counsel) have represented the putative plaintiffs in this class action for false advertising and unfair competition arising from defendants' advertising campaign for "lap band" weight loss surgery. Class counsel concurrently represented individual plaintiffs (several of whom are named class representatives) in eight individual cases against defendants alleging wrongful death and medical malpractice, among other claims.

In March 2013, after insisting on a global settlement of the instant class action and all eight individual cases, defendants paid $2,173,001 (collectively) to settle the eight individual cases. Payment of the class settlement was delayed pending preliminary approval by the trial court, which the parties jointly sought for two-and-one-half years and obtained in October 2015. Over this period, defendants made multiple representations to the trial court and class counsel that a $12 million litigation fund was set aside to fund settlement of all the individual cases and the class action.

In 2018, five years after having agreed to (indeed insisted on) the global settlement and having supported class counsel's requests for preliminary approval of the class settlement, defendants pivoted and twice moved to disqualify class counsel and disgorge the individual settlement payments. Defendants asserted that disqualification of class counsel was required because class counsel (1) had conflicts of interest and had failed to disclose their adverse representation to the putative class members seven years earlier, and (2) depleted a designated

settlement fund which, it was finally revealed, never actually existed. The trial found that defendants failed to establish a basis for disqualification and denied both motions. We conclude the trial court committed no error and affirm.

BACKGROUND

I. *Litigation Activity*

In February 2011, John Faitro filed the instant lawsuit on behalf of himself and a putative class (collectively, plaintiffs or the class action) against various individuals and entities (collectively, defendants). Plaintiffs' operative complaint alleges statutory claims for violations of California's false advertising and unfair competition laws arising out of defendants' advertising campaign for "lap band" weight loss surgery. (Bus. & Prof. Code, §§ 17200, et seq., 17500 et seq.; Civ. Code, § 1750 et seq.) Plaintiffs alleged they were the personal representatives for consumers who had called defendants' 1-800-GET-THIN phone number, had attended purportedly "free" seminars, and had contracted with defendants' companies for lap band surgery. They sought injunctive relief and restitution for the alleged statutory violations. The class action plaintiffs did "not seek damages for wrongful death or personal injuries for themselves, their decedents, or represented plaintiffs," but "reserve[d] their individual rights to seek damages in a separate action for wrongful death, medical malpractice, and/or survival actions."

Since 2011, concurrent with class counsel representation of the putative class, class counsel also represented individual claimants

(several of whom were also named class representatives) in eight individual lawsuits against defendants alleging whistleblower claims, and claims for wrongful death, identity fraud, and medical malpractice. Defendants have been aware from the outset that class counsel represented and negotiated settlements on behalf of both putative class members and the individual plaintiffs.

II. *Settlement Proceedings*

In September 2012, following mediation with a retired judge, the parties reached a settlement of the class and all individual actions. Defendants insisted that all the cases be settled in a single, global settlement. In December 2012, defendants deposited $12 million "into the Sheppard, Mullin[1] trust account as a litigation fund . . . for litigation related expenses to numerous and sundry cases, including settlements, including this [class action] to be utilized for costs, expenses, settlement, court fees, arbitration fees and [other] litigation cost[s]." The global settlement was finalized in March 2013. Thereafter, defendants disbursed $2,173,001, collectively, in settlement of all the individual actions. Payment for the class action was delayed pending the trial court's preliminary approval of the class settlement (which ultimately occurred in October 2015).

In April 2013, plaintiffs filed a motion seeking preliminary approval of the settlement. The court raised several concerns for the parties to address, and deferred ruling on the motion. A written

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1 Defendants' former counsel.

settlement agreement was executed by all parties on December 20, 2013. In mid–January 2014, the parties submitted a joint status conference statement addressing the trial court's concerns. The motion seeking preliminary approval was re-submitted on January 31, 2014. In June 2014, after the motion for approval of the settlement had twice more been revised, defendants indicated they did not oppose the motion for preliminary approval of the settlement. Nevertheless, in September 2014, the trial court denied the motion and instructed the parties to address additional issues and re-file the motion for preliminary approval. The parties addressed the court's additional concerns and submitted a joint supplemental brief in support of a motion seeking preliminary approval of settlement of the class action. In October 2015, the court granted preliminary approval of the class action settlement and conditionally certified the class.

III. *Post-Settlement Activity*

In January 2016, the class action plaintiffs moved to enforce the settlement agreement. They argued that defendants had failed to comply with their obligation to provide contact information for the estimated 10,500 class members to the settlement administrator. The trial court issued an order granting the motion to enforce and indicated it would set a final approval hearing. The court observed that "[b]oth sides [had] agreed on the terms of the settlement, and thus, mutual consent was present." Defendants did not deny they had failed to comply with the settlement. Rather, they filed a declaration stating

that two defendants in the class action (Top Surgeons, Inc. [Top Surgeons] and Surgery Center Management, LC [Surgery Center Management]), lacked funds to pay the settlement. Without "issu[ing a] blanket order authorizing discovery," the trial court urged plaintiffs to "seek discovery through appropriate channels."[2]

On May 23, 2016, the court issued an order establishing an implementation schedule adopting deadlines upon which the parties had agreed, for events leading to final approval of the settlement. The court informed defendants that failure to meet those deadlines would result in an order to show cause regarding contempt (OSC). In June 2016, plaintiffs sought application of the OSC, on the ground that defendants' failure to pay the settlement administrator had prevented that administrator from meeting the court's deadline to provide notice to class members.

In September 2016, the trial court lifted the discovery stay and permitted plaintiffs to conduct discovery to ascertain what had happened to funds defendants purportedly set aside in a litigation fund to settle all litigation, including this class action. The court observed that defendants appeared to have played "a shell game of moving assets from here to there." The court requested again that the parties cooperate to determine the facts and continued the hearing on the OSC to December 6, 2016. On December 16, 2016, plaintiffs sought an OSC

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[2] The court noted that the United States Department of Justice (DOJ) had seized $109 million of defendants' assets during a criminal investigation. Class counsel had requested that DOJ release some funds for settlement of the class action.

as to why monetary sanctions should not be imposed against defendants for failure to comply with the court's order.

In mid–February 2017, before that OSC was heard, defendants asked the court to conduct an in-camera review of an accounting of the "Litigation Fund." On April 28, 2017, following its in camera review, the trial court issued an order stating: "Upon reviewing the information in the . . . evidence before the Court, the Court has significant concerns that the trust account may have been utilized to perpetrate a fraud. . . .

"Critically, [the three entities[3] that] deposited the great majority of the funds into the Sheppard Mullin trust account . . . are not parties to this litigation. Outside of the $25,000 deposited by Surgery Center Management, the evidence shows that *none* of the Defendants (including Top Surgeons as the Settling Defendant, and Surgery Center Management as the Guarantying Defendant—the parties who were responsible for paying the settlement under the explicit terms of the settlement agreement) had *any ownership interest* in the remainder of the funds deposited into the client trust account.

"In the Court's view, this all stands as *prima facie* evidence that the use of the Sheppard Mullin trust account resulted in a fraud on the Court. In particular, if neither Top Surgeons, Surgery Center Management, nor any of the other Defendants had any ownership interest in the money deposited into the Sheppard Mullin trust account,

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[3] Golden State Practice Management, Medical Payments Processing and San Diego Ambulatory Surgery Center/Centurion Law.

they could not represent truthfully that money was set aside to fund the settlement. The evidence before the Court, however, is that there *were* representations—made to the Court and Plaintiffs' counsel—that there was money to fund the settlement."

IV. *Defendants Seek to Disqualify Class Counsel*

A. *Initial Motion to Disqualify and Disgorge Settlement Proceeds*

On December 18, 2017, five years after reaching the global settlement, and after repeatedly supporting requests seeking trial court approval of the class action settlement, defendants moved to disqualify class counsel and disgorge prior settlements. They argued that disqualification was required because of class counsel's conflict of interest in representing plaintiffs (including three class representatives) in individual actions against defendants. Defendants claimed class counsel and their individual clients had manipulated allocation of settlement funds from the litigation fund. As a result, class counsel and the individual plaintiffs collectively had received confidential settlements of almost $2.8 million from the global settlement. Defendants argued that amount (1) was "substantially more than the amount the class would receive, (2) came from the $12-million-dollar litigation fund" created in December 2011, and (3) had "depleted the litigation funds to the detriment of the [putative] class members." Defendants argued that "automatic disqualification" was required because class counsel had "violated [its] duty of loyalty to the

absent class members," making settlement of the class action impossible.

On March 1, 2018, the trial court denied defendants' motion to disqualify class counsel. Relying on *Sharp v. Next Entertainment Inc.* (2008) 163 Cal.App.4th 410 (*Sharp*), the court observed that defendants, who were not directly impacted by class counsels' purported conflict, should not be permitted to employ the Rules of Professional Conduct as a strategic mechanism to defeat the purpose of a class proceeding, or to deprive plaintiffs of their chosen counsel.

The court found that disqualification of class counsel would impose a significant hardship on plaintiffs who would bear the expense and burdens of finding sufficiently skilled replacement counsel. This was particularly so where defendants had known all along that class counsel had negotiated settlements of all the cases. Further, the court noted it was not necessary for class counsel to obtain consent of unnamed class members (who ordinarily are not considered clients) before suing the same defendants in an unrelated matter. (See *Sharp, supra*, 163 Cal.App.4th at pp. 433-434.) The court also observed based on its earlier in camera review that, as late as September 2013, the balance in the litigation fund had exceeded $11 million, and defendants' prior counsel had represented that it still held the settlement funds in the Sheppard Mullin trust account. Finally, the court distinguished the cases upon which defendants relied, and noted that defendants had "not cited any California cases specifically on point that would warrant disqualification of class counsel" under the circumstances.

B. *Renewed Motion to Disqualify*

A few months later, in October 2018, defendants renewed their motion to disqualify, asserting that disqualification was required based on the holding of a September 2018 opinion, *Bridgepoint Construction Services, Inc. v. Newton* (2018) 26 Cal.App.5th 966 (*Bridgepoint*). The trial court rejected this assertion.

First, the court found that the factual circumstances of this class action differed from those of *Bridgepoint* (which we discuss below). First, in this action, there was no evidence that funds deposited in the litigation fund actually had been dedicated for settlement of the class action. On the contrary, the evidence indicated that the litigation fund never existed. Thus, "there could have been no depletion of the settlement funds to the class members' detriment" because "there was no settlement fund to begin with."

Second and independently, the court found no conflict existed given the repeated representations made by defendants' counsel to the court and class counsel that adequate funds were set aside at the time of the global settlement to cover both the individual and class actions. Accordingly, unlike *Bridgepoint*, this was not an instance in which class counsels' individual and class clients were vying against one another to recover "damages from the same . . . pool" of money. (See *Bridgepoint, supra,* 26 Cal.App.5th at p. 970.) The renewed disqualification motion was denied. This appeal followed.

DISCUSSION

Relying principally on *Bridgeport, supra*, 26 Cal.App.5th 966, defendants assert that the trial court "committed a clear abuse of discretion by not disqualifying Class Counsel and disgorging . . . prior settlements, because all of Class Counsel's clients in the nine (9) cases against Defendants . . . settled simultaneously [in] . . . 2013, were vying for the same . . . $12 million litigation fund." We conclude otherwise.

I. *Legal Principles Governing Disqualification and the Standard of Review*

In all but a few instances, if "an attorney simultaneously represents two clients with adverse interests, disqualification is automatic." (*Bridgeport, supra,* 26 Cal.App.5th at p. 969; *Flatt v. Superior Court* (1994) 9 Cal.4th 275, 284.) The trial court aptly set forth the delicate balancing process applicable to exceptions in the class action context: "In ruling on a motion to disqualify, the Court is required to weigh: 1) the party's right to counsel of choice; 2) the attorney's interest in representing a client; 3) the financial burden on a client of changing counsel; 4) any tactical abuse underlying a disqualification motion; and 5) the principle that the fair resolution of disputes requires vigorous representation of parties by independent counsel. [*Mills Land & Water Co. v. Golden West Refining Co.* (1986) 186 Cal.App.3d 116, 126.] . . . .

"Courts generally discourage rigid application of disqualification rules in class action cases because of the nature of class representation

and the importance of retaining counsel with the most experience on the case. [Citation, referencing *Sharp, supra,* 163 Cal.App.4th at p. 434.]

"Additionally, . . . '"attorneys now commonly use disqualification motions for purely strategic purposes." [Citation.]' [Citation.]" 'Motions to disqualify counsel present competing policy considerations. On the one hand, a court must not hesitate to disqualify an attorney when it is satisfactorily established that he or she wrongfully acquired an unfair advantage that undermines the integrity of the judicial process and will have a continuing effect on the proceedings before the court . . . . On the other hand, it must be kept in mind that disqualification usually imposes a substantial hardship on the disqualified attorney's innocent client, who must bear the monetary and other costs of finding a replacement. A client deprived of the attorney of his choice suffers a particularly heavy penalty where . . . his attorney is highly skilled in the relevant area of law.' [Citation.]

'"The issue of disqualification "ultimately involves a conflict between the clients' right to counsel of their choice and the need to maintain ethical standards of professional responsibility. The *paramount* concern, though, must be the preservation of public trust in the scrupulous administration of justice and the integrity of the bar. The recognized and important right to counsel of one's choosing must yield to considerations of ethics that run to the very integrity of our judicial process." [Citations.]' [Citation.]"

We review an order denying a motion to disqualify counsel for abuse of discretion. (*Bridgepoint, supra*, 26 Cal.App.5th at p. 969; *Rico v. Mitsubishi Motors Corp*. (2007) 42 Cal.4th 807, 819.) We apply this standard recognizing that trial courts are tasked with the obligation and best positioned to assess witness credibility, make factual findings, and evaluate the consequences of a potential conflict in light of the entirety of a case with which they inevitably will be more familiar than the appellate court, reviewing a cold and limited record. (*Hollywood v. Superior Court* (2008) 43 Cal.4th 721, 729.) Appellants bear the burden to establish an abuse of discretion. (*Dreamweaver Andalusians, LLC v. Prudential Ins. Co. of America* (2015) 234 Cal App.4th 1168, 1171.)

II. *The Trial Court Did Not Err in Denying the Motions to Disqualify*

Defendants contend that payments made from the $12 million litigation fund established in December 2011 to pay confidential settlements (and associated attorney fees) in the eight individual actions have depleted that fund to the detriment of the putative class members, "result[ing] in taking funds away from Defendants, which contributed to settling this class action." The argument that disqualification was required fails for several reasons.

First, for years defendants consistently represented to the trial court and class counsel that funds adequate to cover settlements of all litigation were set aside when the Sheppard Mullin account was created in December 2011. This representation was, at best, misleading.

According to January 2017 deposition testimony by Brian Oxman [testifying as the "person most knowledgeable" on behalf of defendants Top Surgeons and Surgery Management Center], "There never was a settlement fund." Rather, although "Money was deposited into the Sheppard, Mullin trust account as a litigation fund. . . . [*t*]*he money was not deposited for the purpose of settling this class action*. It was deposited for litigation–related expenses to numerous and sundry cases, including settlements, including [this class action]. And [that money] was to be utilized for costs, expenses, settlement, court fees, arbitration fees and every insundry [*sic*] which was associated with a litigation cost." (Italics added.) Oxman further explained:

> "[MR. ROBERTSON (class counsel)]: Okay. At any point in time were the funds deposited into the Sheppard, Mullin client trust account to be used to pay the settlement of . . . this class action?
>
> "MR. KASHIAN [counsel for defendants Michael and Julian Omidi]: Objection. Vague.
>
> "MR. JUBELT [counsel for defendants Top Surgeons and Surgery Management Center]: I'm going to join in that objection as vague and ambiguous. I'm not quite sure what you're asking.
>
> "[MR. OXFAM]: I think I can answer. I think the first answer is no, it was not. Secondly, the funds were deposited long before there was any kind of settlement regarding [this class action], so this was simply one of the cases where it would be used to—as we've said before, facilitate, realize, assist in the litigation, including a settlement, if possible.
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> "[MR. ROBERTSON]: So, if the court had granted final approval of [the] class action while there was [*sic*] still sufficient funds in that

account, would the money in that account have been used to pay the settlement [of the class action]?

"[MR. OXFAM]: Not necessarily. It was available should the people who have a financial interest in that money so approve and direct.

"[MR. ROBERTSON]: Okay. And who were those people that had a financial interest in that money?

"[MR. OXFAM]: The owners of the money in the trust account . . . at the time that a settlement was reached in this case were [nonparties] Medical Payments Processing and Golden State Practice Management."

Based on this evidence the trial court succinctly observed that "there could have been no depletion of the settlement funds to the class members' detriment if there was no settlement fund to begin with."

Second, more than two years passed between March 2013—when settlement payments were made for the individual actions—and October 2015—when the trial court granted preliminary approval of the class action settlement. During that time, defendants' (former) counsel made multiple written representations to the trial court that funds sufficient to satisfy the class settlement had been set aside in the Sheppard Mullin client trust account to fund that settlement, once approved. It was not until the court had conducted an camera review in mid-2017 that the court or class counsel learned defendants' representations had been false. The trial court found that the representations made on behalf of defendants after payment of the individual lawsuit settlements in March 2013, constituted "*prima facie*

evidence that the use of the Sheppard Mullin trust account resulted in [perpetration of] a fraud on the Court."

The basis for defendants' renewed disqualification motion and this appeal was the September 2018 decision in *Bridgepoint, supra*, 26 Cal.App.5th 966. But, as the trial court correctly found, the factual circumstances here differed markedly from *Bridgepoint*, and defendants have not demonstrated a basis for reversing the court's rulings.

In *Bridgepoint, supra*, 26 Cal.App.5th 966, Bridgepoint Construction was as hired by Vista to perform services on a Vista construction project. (*Id*. at p. 968.) Bridgepoint had two shareholders, Salter and Newton, the latter of whom also owned an interest in Vista. Ram was Salter's business associate. (*Ibid*.) Attorney Klein, retained by Bridgepoint and Salter to sue Vista and Newton, alleged that Vista and Newton owed Bridgepoint and Salter approximately $2 million for construction services. (*Ibid*.) Vista cross-complained against Salter and Ram, claiming they had diverted assets from Bridgepoint, depriving Vista of money it was owed. (*Id*. at p. 969.) Klein, who represented Bridgepoint, Salter and Ram, designated an expert (Schulze) to review Bridgepoint's financial records, including records related to the Vista project. Schulze concluded Bridgepoint was owed $2 million. (*Id*. at pp. 968-969.)

In January 2017, Newton successfully moved to disqualify Klein from representing Bridgepoint and Salter. The trial court found that Bridgepoint and Salter had conflicts of interest against one another for indemnity and other claims. (*Bridgepoint, supra*, 26 Cal.App.5th at p.

969.) Bridgepoint then retained the Woolsey law firm. (*Ibid.*) In February 2017, Klein filed a cross-complaint on Ram's behalf against Vista and Newton seeking recovery of money Ram allegedly advanced for the Vista project (which was part of the same $2 million pool that Bridgepoint and Salter sought to recover from Vista and Newton). (*Ibid.*) The court found that the conflict between Klein's simultaneous representation of Bridgeport and Ram was obvious given that "Bridgepoint, Salter and Ram [were] all seeking the same damages from the same $2 million pool. . . . Every dollar that [Klein's current client] Ram obtain[ed] from the pool [was] a dollar that [was] not available to" Klein's former clients. (*Id.* at pp. 969–970.)

In April 2017, the Woolsey firm filed a cross-complaint on behalf of Bridgepoint against Salter and Ram alleging claims for conversion, self-dealing, breach of fiduciary duty and failure to allow inspection of corporate records Schulze had reviewed. Bridgepoint (joined by Newton) moved to disqualify Klein from representing Ram. (*Bridgepoint, supra*, 26 Cal.App.5th at p. 969.) Klein acknowledged having represented Bridgepoint and Salter in a "related" federal case (against a different defendant) in Arizona. (*Ibid.*) The trial court granted the motion to disqualify. It found Klein had conflicts of interest arising from his (1) simultaneous representation of Bridgepoint in the Arizona case and Ram in the California case, and (2) his successive representation of Bridgepoint and Ram in the California case. (*Ibid.*)

Our colleagues in Division Six affirmed. The Court noted that Klein's disqualification was automatic because the attorney represented

two clients with adverse interests. (*Bridgepoint, supra*, 26 Cal.App.5th at p. 969.) In addition: "Where an attorney represents a current client against a former client, the attorney will be subject to disqualification if there is a substantial relationship between the subject matter of the two representations. [Citation.] Disqualification is mandatory in the context of successive representation where the attorney obtains confidential information in the course of representing the former client that is relevant to the representation of the current client. [Citation.]" (*Id*. at p. 969.)

Klein claimed there was no conflict because he did not sue Bridgepoint or Salter. Rather, Bridgepoint, Salter and Ram all sued Vista and Newton. (*Bridgepoint, supra*, 26 Cal.App.5th at p. 970.) Rejecting this argument, the Court stated that Klein ignored the fact "that Bridgepoint, Salter and Ram are all seeking the same damages from the same $2 million pool. The conflict is obvious. Every dollar that Ram obtains from the pool is a dollar that is not available to Bridgepoint or Salter." (*Id*. at pp. 969-970.)

Outlining Klein's multiple conflicting interests, the Court noted: "Klein simultaneously represents Bridgepoint in the Arizona action and Ram in the instant action. Thus, disqualification is automatic. If that is not enough, the trial court reasonably concluded that Klein obtained confidential information from Bridgepoint when he retained Schulze . . . to review Bridgepoint's financial records. Finally, there is a substantial relationship between the subject matter of Klein's former representation of Bridgepoint in [the action against Vista and Newton] and his current representation of Ram. The court had multiple

independent grounds for disqualifying Klein [and] would have abused its discretion had it not [done so]." (*Bridgepoint, supra*, 26 Cal.App.5th at p. 970.)

In the instant case, the trial court correctly concluded that the holding in *Bridgepoint* did not govern here. First, as Oxman conceded and notwithstanding defendants' contrary representations, defendants never created a "settlement fund." The money in the Shepard Mullin "litigation fund" "was not deposited for the purpose of settling this class action." *Bridgepoint* did not require the court to revisit its prior conclusion. The court observed that, "[c]ontrary to Defendants' argument, there could have been no depletion of the settlement funds to the class members' detriment if there was no settlement fund to begin with." This is particularly so where defendants did not even own the $12 million litigation fund and lacked the ability to direct that the money be used to pay the class action settlement. Moreover, the trial court's review of Oxman's accounting demonstrated that defendants paid the settlements for the eight individual cases two-and-one-half years before the October 2015 order granting preliminary approval. The trial court also concluded there was an "important" independent basis to deny the disqualification motion because there was no evidence that, at the time the individual settlements were paid, defendants lacked sufficient funds to pay the class action settlement. Indeed, defendants' prior counsel explicitly and repeatedly represented to the court "that there were funds set aside in the client trust account to pay the class settlement. [Those] representations were made *after* the payments were made in the individual lawsuits." In sum, the money

paid to settle the individual actions in 2013 did not deplete a nonexistent "settlement fund."

There is no indication that, at any point prior to Oxman's January 2017 deposition, class counsel was or should have been aware that defendants had not created and sequestered the litigation settlement fund, let alone that the defendants responsible for paying that settlement lacked ownership or control of the funds in the Sheppard Mullin account. Rather, the trial court and class counsel relied on multiple representations by defendants' counsel that sufficient funds were set aside to pay a class settlement. Only after years of intensive litigation and discovery disputes did class counsel or the court learn those representations were false: no settlement funds for this action actually had been set aside. These facts are quite different from the circumstances in *Bridgepoint* where the attorney's former and subsequent clients competed against one another for the same, existing $2 million pool.

The trial court did not abuse its discretion in concluding that there was no conflict of interest in class counsel's representation of plaintiffs in both the individual and class actions.[4]

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[4] In its ruling denying the initial motion to disqualify, the trial court fully explained why defendants' reliance on *Lou v. Ma Labs, Inc*. (N.D. Cal. 2014) 2014 WL68605, *The Florida Bar v. Adorno* (2011) 60 So.3d 1016, *Sullivan v. Chase Inv. Services of Boston, Inc.* (N.D. Cal. 1978) 79 F.R.D. 246, and *Lofton v. Wells Fargo Home Mortgage* (2014) 230 Cal.App.4th 1050 was misplaced. We adopt and need not repeat that analysis here. Suffice it to say that none of the cases on which defendants rely contain facts similar to those here, had reached the class certification process, or were at the stage of settlement approval. Defendants have not identified any case in which the

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

COLLINS, J.

CURREY, J.

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court disqualified counsel years after approving a settlement, let alone where the circumstances of that attorney's multiple representations were known to the party seeking disqualification from the outset.