No. S232946

IN THE SUPREME COURT OF CALIFORNIA

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP,
Plaintiff and Respondent,

v.

J-M MANUFACTURING CO., INC.,
Defendant and Appellant.

After a Decision of the Court of Appeal of the State of California,
Second Appellate District, Division Four, Case No. B256314

The Superior Court of Los Angeles County, Case No. YC067332
The Honorable Stuart M. Rice, Presiding

REPLY BRIEF ON THE MERITS

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INTRODUCTION

J-M seeks to use the Rules of Professional Conduct strategically as a sword to escape an arbitration award requiring it to pay for over 10,000 hours of legal work of undisputed quality. The problems with J-M's gambit extend far beyond unfairness to Sheppard Mullin. The self-serving rules J-M proposes would both jeopardize the viability of arbitration as an efficient means of dispute resolution and significantly disrupt the practice of law in California.

J-M contends that the California Arbitration Act imposes "no limitation" on the ability of courts to invalidate an entire contract containing an arbitration provision as against "public policy." (ABOM at p. 9.) Accepting that interpretation would spawn burdensome and uncertain litigation over arbitrability, and effectively preclude arbitration in many circumstances, including, for example, an alleged violation of any aspect of the comprehensive regulatory scheme embodied by the Rules of Professional Conduct.

Equally problematic is J-M's interpretation of Rule 3-310, which is completely divorced from the realities of the modern legal marketplace. J-M wants to replace a necessarily fact-specific assessment of informed consent with a one-size-fits-all disclosure standard that ignores the client's sophistication, representation by counsel, and actual understanding of a conflict waiver.

J-M takes a similarly absolutist approach to fee forfeiture, brushing off circumstances and context as legally irrelevant. But requiring complete fee forfeiture regardless of the facts would contravene due process and basic fairness and create perverse incentives that would encourage litigation between attorneys and clients.

J-M makes these arguments even though it does not contest that it agreed to arbitrate all disputes with Sheppard Mullin. Nor does J-M contest that its agreement permitted Sheppard Mullin to represent parties adverse to J-M in unrelated matters so long as confidentiality was preserved. J-M also does not contest that its General Counsel and CEO adeptly negotiated a comprehensive agreement, including a deep fee discount, for Sheppard Mullin's services in the qui tam action and any other future matters. Yet having agreed to this contract, J-M now seeks to nullify it to obtain a nearly $4 million windfall.

In J-M's view, a minimal amount of unrelated labor advice by a different lawyer in a different office provided to one of nearly 200 qui tam plaintiffs is all that matters here. That the parties undisputedly agreed to binding arbitration of all disputes is irrelevant to J-M because that unrelated labor advice supposedly rendered the entire engagement agreement illegal. J-M also deems irrelevant its written consent to a comprehensive waiver of conflicts with "current," "existing," "former," and "future" clients of Sheppard Mullin; J-M argues such a waiver is per se invalid even where a sophisticated client represented by independent counsel fully understands the scope, risks, and consequences of the waiver. And equally irrelevant to J-M is the finding by a distinguished panel of arbitrators that Sheppard Mullin at all times acted "honestly and in good faith" (3AA674), the absence of any evidence of injury, and the fact that the firm neither obtained nor used any confidential information. For J-M, the extraordinary and draconian penalty of complete fee forfeiture should be automatic, regardless of the surrounding circumstances.

This Court should reject J-M's effort to obtain an unwarranted windfall through formalism and absolutism, and allow reason, practicality, and proportionality to prevail.

ARGUMENT

I. Courts Cannot Vacate Arbitration Awards Based on Non-Legislative Expressions of Public Policy

Until now, the source for judicial nullification of arbitration awards under the illegality exception has been limited to *legislative* expressions of public policy. Even J-M concedes that illegality challenges to a provision of a contract cannot be based on the Rules of Professional Conduct. J-M nevertheless asserts that "there is no limitation" on the source of illegality if the challenge is directed to the entire contract. (ABOM at p. 9.) This arbitrary and impractical distinction, which has never been adopted by this Court, is contrary to the text and purpose of the California Arbitration Act ("CAA").

A. J-M's "Entire v. Provision" Illegality Distinction Cannot Justify Using the Rules of Professional Conduct to Vacate Arbitration Awards

J-M admits that *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1 (*Moncharsh*) "prohibited judicial review based on violation of the Rules of Professional Conduct," but says that this limitation applies only to situations involving "provision-illegality." (ABOM at p. 16.) According to J-M, "where the question is legality of the entire contract, judicial review is not limited," and illegality challenges can be based on *any* source of public policy, including the Rules of Professional Conduct. (*Id.* at pp. 10, 16.) In other words, J-M contends the definition of "illegality" under the CAA is dramatically different depending on how much of an agreement is challenged. That is not and should not be the law.

1. *Moncharsh* did state that courts, rather than arbitrators, should decide challenges to arbitration awards when it is "claimed [that] the entire contract or transaction was illegal." (*Moncharsh*, *supra*, 3 Cal.4th at p. 32.)

But nothing in *Moncharsh* suggests that this rule applies to illegality challenges premised on *non-legislative* expressions of public policy. Such a rule would make no sense given *Moncharsh*'s instruction that, because "the Legislature has already expressed its strong support for private arbitration and the finality of arbitral awards," "courts should be reluctant to invalidate an arbitrator's award" on illegality grounds unless there is "an explicit legislative expression of public policy." (*Ibid.*)

The Legislature's "strong support for private arbitration" does not magically evaporate if a contract is challenged in its entirety rather than partially. Yet J-M's approach would permit expansive illegality challenges untethered to any legislative enactments—the precise sort of challenges *Moncharsh* held were contrary to the legislative intent behind the CAA—whenever a party purports to challenge the whole of a contract.

The distinction that *Moncharsh* actually made "crystal clear" (ABOM at p. 11) was *not* between entire- and provision-illegality, but between illegality claims based on legislative enactments and those that are not. Indeed, all of the illegality challenges referenced in *Moncharsh* involved assertions of *statutory* violations. (See *Moncharsh*, *supra*, 3 Cal.4th at pp. 29-32.) For example, *Loving & Evans v. Blick* (1949) 33 Cal.2d 603 (*Loving*) involved a "clear violation of the statutes regulating the contracting business." (*Id.* at p. 607.) *Moncharsh* also cited *All Points Traders, Inc. v. Barrington Associates* (1989) 211 Cal.App.3d 723 (*All Points Traders*), which concerned an illegality challenge premised on the "direct contravention of the statute" regulating real estate brokers. (*Id.* at pp. 737-738.)

This Court's post-*Moncharsh* decisions have consistently linked challenges of arbitration awards to the protection of *statutory* rights. (*Richey*

v. AutoNation, Inc. (2015) 60 Cal.4th 909, 916 (*Richey*) ["Arbitrators may exceed their powers by issuing an award that violates a party's unwaivable *statutory rights* or that contravenes an explicit *legislative* expression of public policy"], italics added; *Aguilar v. Lerner* (2004) 32 Cal.4th 974, 982-983 [judicial review permitted where an "agreement to arbitrate contravened both plaintiff's *statutory rights*" and "the public policy underlying the *statute*"], italics added; *Board of Education v. Round Valley Teachers Assn.* (1996) 13 Cal.4th 269, 276-277 [judicial review permitted because "granting finality ... would be inconsistent with a party's *statutory rights*"], original italics.)

Unlike the Court of Appeal here, *Cotchett, Pitre & McCarthy v. Universal Paragon Corp.* (2010) 187 Cal.App.4th 1405 (*Cotchett*) correctly rejected a challenge to an arbitration award based on the Rules of Professional Conduct. J-M trivializes *Cotchett* by claiming that "the only issue was provision-illegality—not entire illegality." (ABOM at p. 17.) But *Cotchett* expressly held that an arbitration award was *not* "reviewable" even if the "underlying contract or transaction was illegal in its entirety," because the source of the claimed illegality was not a legislative enactment, but "a public policy set forth in the Rules of Professional Conduct." (*Cotchett, supra*, 187 Cal.App.4th at p. 1417, fn. 1.)

2. J-M's attempt to tether its distinction between "entire-illegality" and "provision-illegality" to the text of the CAA is baseless. (ABOM at pp. 10-13.) J-M notes that different provisions govern petitions to compel arbitration (sections 1281 and 1281.2) and vacatur/correction of arbitration awards (sections 1286.2 and 1286.6).[1] But those provisions say nothing

[1] Statutory references are to the Code of Civil Procedure unless specified.

about illegality challenges at all, much less J-M's distinction between "entire-illegality" and "provision-illegality."

Equally unavailing is J-M's related argument that "[c]ourts adjudicate entire illegality based on ... sections 1281 and 1281.2, governing petitions to compel arbitration—not the vacatur statute." (ABOM at p. 12.) Both *Loving* and *All Points Traders*, the two "entire-illegality" decisions cited in *Moncharsh*, involved attempts to vacate arbitration awards, *not* petitions to compel arbitration. (See *Loving*, *supra*, 33 Cal.2d at pp. 609-610; *All Points Traders*, *supra*, 211 Cal.App.3d at pp. 736-737.) In fact, the very cases J-M cites as examples of "courts devot[ing] a substantial amount of analysis to whether the legality of the entire contract really is at issue" (ABOM at p. 15)—*Epic Medical Management, LLC v. Paquette* (2015) 244 Cal.App.4th 504 (*Epic Medical*) and *Ahdout v. Hekmatjah* (2013) 213 Cal.App.4th 21 (*Ahdout*)—concerned whether judicial review of final arbitration awards was appropriate under section 1286.2, the vacatur statute.

This Court's linkage of the Legislature's "strong support for private arbitration" with the entirety of "title 9 of the Code of Civil Procedure"—including sections 1281 and 1281.2—also dooms J-M's approach. (*Moncharsh*, *supra*, 3 Cal.4th at p. 32; see also *id.* at p. 9 [describing the "comprehensive statutory scheme regulating private arbitration in this state"].) Like the rest of the CAA, "[s]ections 1281 and 1281.2, which govern petitions to compel arbitration, reflect a 'strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution.'" (*Wagner Construction Co. v. Pacific Mechanical Corp.* (2007) 41 Cal.4th 19, 25, quoting *Moncharsh*, *supra*, 3 Cal.4th at p. 9.) J-M's suggestion that the Legislature's strong support of arbitration is somehow limited *only* to the vacatur provision is both illogical and contrary to this Court's jurisprudence.

J-M further argues that courts can "look to all sources of law" in resolving "entire-illegality" challenges because sections 1281 and 1281.2 provide that an arbitration agreement need not be enforced where there are "grounds" for its "revocation." (ABOM at pp. 12-13.) This argument conflicts with *Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street* (1983) 35 Cal.3d 312, 322-323 (*Ericksen*), which held that even though fraudulent inducement is a ground to revoke a contract, such claims are nonetheless "subject to arbitration" unless they are specifically "directed to the arbitration clause itself." (*Id.* at p. 323.) *Ericksen* refused to broadly construe the "revocation" language of the CAA because doing so would have violated "this state's strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution"—"particularly ... where parties of presumptively equal bargaining power have entered into an agreement containing a commitment to arbitrate by a procedure of unchallenged fairness." (*Ibid.*)

J-M's interpretation of sections 1281 and 1281.2 similarly would frustrate the "strong public policy in favor of arbitration" by committing the time-consuming and expensive adjudication of "preliminary issues" relating to arbitrability "to the courts." (*Ericksen*, *supra*, 35 Cal.3d at pp. 322-323.) If J-M were correct, parties contractually bound to arbitrate their claims could, under the guise of illegality, "assert all possible legal or procedural defenses in court proceedings before the arbitration itself can go forward," and "'the arbitral wheels would very soon grind to a halt.'" (*Id.* at p. 323, citation omitted.) To be sure, *Ericksen* and *Moncharsh* distinguished claims of fraudulent inducement from claims of *statutory* illegality recognized in *Loving*. (*Ericksen*, *supra*, 35 Cal.3d at p. 316, fn. 2; *Moncharsh*, *supra*, 3 Cal.4th at p. 30, fn. 13.) But neither decision addressed an illegality claim of the sort J-M has raised here—one based on a non-legislative expression of

public policy and requiring a fact-intensive analysis akin to a claim of fraudulent inducement.

Even if J-M were correct that its view of the illegality exception is supported by the CAA's provisions governing petitions to compel arbitration (it is not), that would not make any difference here because J-M did not challenge on appeal the trial court's order compelling arbitration. Instead, J-M argued only that the trial court "erred in confirming the arbitration award" under section 1286.2. (J-M's Court of Appeal Opening Br. at p. 1; see also *id.* at pp. 13-28; Opn. at p. 11, fn. 3.) In fact, J-M's briefs in the Court of Appeal did not even *cite* sections 1281 and 1281.2—even though J-M now contends that those provisions are the "statutory reason" for the "two different standards" governing illegality challenges. (ABOM at p. 14.)

3. There is a reason why J-M barely addresses the practicalities of its proposed rule—it would threaten arbitration as an effective means of resolving disputes between attorneys and clients. (OBOM at pp. 17-18, 20-21.) Unlike J-M, this Court has "not close[d]" its "eyes to the practical consequences" of proposed interpretations of the CAA, and has rejected interpretations that would "undermin[e] the advantages of arbitration." (*Ericksen, supra*, 35 Cal.3d at pp. 322-323.) That's exactly what will occur if J-M's view of the illegality exception were adopted. Courts deciding whether to compel arbitration or enforce arbitration awards will become mired in disputes over difficult, fact-intensive questions—including whether a claim of illegality actually goes to the whole or part of an agreement, and whether an attorney has violated the Rules of Professional Conduct. The efficiency of arbitration will be lost.

The policy concerns recognized in *Ericksen* apply here with particular force because J-M's illegality challenge is virtually indistinguishable from a

claim of fraudulent concealment. Indeed, in a transparent effort to avoid *Ericksen*, J-M has simply repackaged the fraudulent inducement claim it initially asserted into an illegality challenge based on an asserted violation of the Rules of Professional Conduct. (See 1RA20-37; 1AA54-58.) J-M's brief to this Court—with its repeated allegations of "concealment"—confirms that J-M's illegality challenge is a thinly veiled claim of fraudulent concealment.[2] J-M's gamesmanship is proof that, if it prevails, others will likewise strategically label their claims to avoid arbitration, thereby undermining *Ericksen*.

Finally, contrary to J-M's assertions, expanding the illegality exception to cover the Rules of Professional Conduct "would thwart arbitration in a wide variety of attorney-client cases." (ABOM at p. 17.) Opening the illegality exception to a set of rules that effectively govern the entirety of the attorney-client relationship would mire myriad attorney-client arbitrations in extensive threshold litigation over arbitrability. Trying to side-step that major flaw in its argument, J-M suggests that only Rule 3-310 would be a permissible basis for an illegality challenge. But there is no principled distinction between alleged violations of Rule 3-310 and the other rules, which clients equally could argue "invalidate an *entire* engagement agreement." (*Ibid.*)

For example, Rule 4-200 prohibits an attorney from "*enter[ing]* into an agreement for ... [an] unconscionable fee." (Italics added.) Under J-M's reasoning, an agreement would be entirely invalid if Rule 4-200 were violated. It is not particularly difficult for a client to argue that the fees it

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[2] Sheppard Mullin disputes any allegation of concealment. The arbitrators found that Sheppard Mullin at all times acted "honestly and in good faith." (3AA674.)

was charged were unconscionable, and that as a result the entire engagement was "illegal." The only way to avoid such a result would be for courts to arbitrarily deem some Rules of Professional Conduct more important than others. The development of such a hierarchy would spawn significant ancillary litigation, undermining the ability of attorneys and clients to efficiently resolve disputes through arbitration.

B. J-M's Illegality Challenge Does Not Relate to the Entire Agreement

Even assuming J-M's interpretation of the CAA were correct, the Court of Appeal's decision still should be reversed because J-M's illegality challenge is not directed to the entire engagement agreement. (OBOM at pp. 25-26.)

J-M asserts that its illegality challenge "vitiates the entire agreement" because Sheppard Mullin's "duty of loyalty" in the qui tam litigation was the "subject of the agreement." (ABOM at p. 18.) But the "subject of the agreement" was much broader than that—it set out terms to govern not just the qui tam litigation, but also any "other engagements for [J-M]." (1AA199.) And those terms included provisions that "survive[d] ... termination of [Sheppard Mullin's] representation of [J-M]," as well as a broad arbitration agreement covering any "claim of any kind regardless of the facts or the legal theories." (1AA200-202.)

J-M dismisses those terms as necessarily linked to the "qui tam engagement" (ABOM at pp. 19-20), but that simply isn't the case given that those terms (and all of the other terms in the agreement) would have applied to *any* representation of J-M. That fact is also fatal to J-M's attempt to distinguish *Ahdout* and *Epic Medical*, which involved broad, multifaceted

agreements similar to the engagement agreement here. (OBOM at pp. 25-26.)

But even if, contrary to its text, the engagement agreement concerned only the qui tam representation, J-M's illegality challenge still would relate only to a particular provision of the agreement: the allegedly insufficient conflict waiver. Unlike *Loving* and *All Points Traders*, where the entirety of the contract never could have been legal because of the lack of appropriate licenses, the engagement agreement undisputedly would have been entirely proper under Rule 3-310 if the conflict waiver provision were sufficient. J-M's illegality challenge thus hinges only on the enforceability of a single contractual provision; it is not the sort of challenge that would have made *any* transaction with J-M inherently impermissible, as would be the case with, for example, an *unlicensed* broker, contractor, or lawyer.

Accordingly, J-M's illegality challenge does not go to the entire agreement and therefore, by J-M's own admission, was properly resolved in arbitration. (ABOM at p. 16.)

II. J-M Gave Informed Written Consent to the Conflict Waiver

Even if judicial review were proper, this Court should reverse the judgment because J-M—a sophisticated client represented by independent counsel—gave its informed written consent to waive any conflict with Sheppard Mullin's current, former, and future clients.

A. J-M Understood the Scope of the Waiver It Signed and the Conflicts It Covered

Because J-M and its General Counsel plainly understood what J-M was waiving—"any conflict of interest" with Sheppard Mullin's "current, former, and future" clients in unrelated matters, including "in litigation or arbitration" (1AA201, 204)—J-M's consent to any conflict arising from

Sheppard Mullin's unrelated labor counseling for South Tahoe was fully informed.

The engagement agreement informed J-M that Sheppard Mullin "may *currently* or in the *future* represent one or more other clients (including *current*, former, and *future* clients) in matters involving [J-M]." (1AA201, italics added.) Sheppard Mullin disclosed that it "has many attorneys and multiple offices" and sought the conflict waiver "to allow [Sheppard Mullin] to meet the needs of *existing* and *future* clients, to remain available to those other clients and to render legal services with vigor and competence." (*Ibid.*, italics added.) And the agreement limited the permitted adversity to unrelated matters and those in which Sheppard Mullin had "not obtained confidential information" of J-M that would be "material to representation of the other client." (*Ibid.*) Within these parameters, J-M agreed Sheppard Mullin could represent other clients "even if the interests of the other client are adverse to [J-M] (including appearance on behalf of another client adverse to [J-M] in litigation or arbitration)." (*Ibid.*)

J-M does not dispute that the conflict at issue—arising from 12 hours of unrelated labor counseling, periodically over 16 months, by a different Sheppard Mullin lawyer in a different office—fell well within the scope of the waiver. There is also no doubt that J-M understood the significance of the conflict waiver. J-M's General Counsel was familiar with such waivers, having refused another firm's request to waive conflicts the very same day J-M agreed to the conflict waiver language in the engagement agreement with Sheppard Mullin. Indeed, before agreeing to that waiver language, "JM had never waived any conflict for any of its other (past or present) attorneys." (1AA192.) And when she executed the engagement agreement on J-M's behalf, J-M's General Counsel confirmed she had "read and underst[ood] this engagement letter and agree[d] that it ... waived *any* conflict of interest

on the part of [Sheppard Mullin] arising out of the representation described above." (1AA204, italics added.) In this context, J-M and its General Counsel certainly understood that J-M was permitting Sheppard Mullin to provide unrelated labor counseling to clients like South Tahoe.

J-M nonetheless asserts, based solely on the self-serving declaration of its General Counsel, that its consent was not informed because a Sheppard Mullin lawyer supposedly said there were no existing conflicts at the outset of the representation. (ABOM at p. 5, citing 1AA191.) But J-M concedes that its General Counsel reviewed, edited, understood, and signed the agreement indicating explicitly that Sheppard Mullin "may *currently* or in the future represent one or more other clients (including *current*, former, and future clients) in matters involving [J-M]." (1AA201, italics added.) It violates bedrock legal principles to allow anyone (much less a lawyer) to knowingly sign a document but then claim she was told the exact opposite of what the document stated. (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264 ["If contractual language is clear and explicit, it governs"].)[3]

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[3] If J-M's General Counsel really had been told there were no current conflicts, she would not have signed a waiver expressly including conflicts with "current" and "existing" clients. Another reason to discount the veracity of her declaration is that it includes other demonstrably false assertions. For example, she claimed that Sheppard Mullin "never disclosed" that it "was offering ... continued representation to South Tahoe to avoid disqualification." (1AA195.) That is indisputably contradicted by an email wherein Sheppard Mullin told J-M's General Counsel and its CEO that it planned to offer South Tahoe "some free labor law advice" in exchange for its agreement to waive conflicts. (MJN Decl., Ex. D.) Resolution of this case does not depend on determining the veracity of the declaration, but notably, J-M continues to repeat this falsehood in its briefing. (ABOM at p. 6.)

J-M also says that it would not have hired Sheppard Mullin had it known about the South Tahoe representation. But the facts prove otherwise. Sheppard Mullin undisputedly told J-M's General Counsel that the firm had previously represented, and had a strong relationship with, the Los Angeles Department of Water and Power—another qui tam intervenor with an exponentially greater stake in the litigation. Far from balking, J-M's General Counsel said that relationship and others like it would be useful in attempting to resolve the qui tam action. (2AA474-475; 2AA490-492.) J-M's post-hoc, litigation-driven claim that it would have been concerned about Sheppard Mullin's past, present, or future relationships with its qui tam adversaries is simply not credible.

Under the circumstances here, J-M gave its "informed written consent" within the meaning of Rule 3-310(C)(3). Rule 3-310(C)(3) allows a lawyer to "[r]epresent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter" as long as the lawyer obtains "the informed written consent of each client." (Rules Prof. Cond., rule 3-310(C)(3).) "'Informed written consent,'" in turn, "means the client's ... written agreement to the representation following written disclosure" of "the *relevant circumstances* and of the actual and reasonably foreseeable adverse consequences to the client[.]" (*Id.*, rule 3-310(A)(1)-(2), italics added.) The informed-consent inquiry must therefore focus on the particular client's understanding of the scope of the waiver, the nature of the conflicts it covers, and the risks it carries.

The Court of Appeal, however, held that informed consent *always* requires specifically identifying any adverse party that the waiver may cover, even if the sophisticated client and its counsel fully understand the scope of the waiver. (Opn. at pp. 21-22.) The ABA, other leading bar associations,

the Restatement, scholars, and numerous courts have all refused to impose such a requirement in situations involving sophisticated clients represented by independent counsel. (OBOM at pp. 29-31.) This consensus recognizes the modern legal marketplace and the current reality that sophisticated, well-represented corporate clients—like J-M here—can fully understand the significance of comprehensive conflict waivers and thus are able to give informed consent to them as part of the contractual bargaining process. (*Id.* at pp. 37-40.)

B. J-M's Attempts to Invalidate the Conflict Waiver Fail

Despite its clear understanding of the scope and significance of the conflict waiver, J-M nonetheless asks this Court to invalidate its contract for a variety of unpersuasive reasons. The Court should reject each of them.

1. J-M assumes that the conflict with South Tahoe was an "existing [or] impending conflic[t]." (See, e.g., ABOM at p. 22.) But the Court of Appeal reached its decision based on the *opposite* assumption—that "Sheppard Mullin was *not* representing South Tahoe at the time it entered into the agreement with J-M." (Opn. at p. 18, italics added.) At most, this is a disputed (and unresolved) issue of fact, and J-M's assertion that the conflict with South Tahoe was a current conflict obviously is not conclusive.

J-M also erroneously suggests that Sheppard Mullin "acknowledged" that South Tahoe was an "existing client" when it started representing J-M. (ABOM at p. 6, citing 2AA284.) J-M's only support for this claim is a hearsay statement in a declaration filed by South Tahoe's counsel in the qui tam action that Sheppard Mullin disputes. (See MJN, Ex. G at p. 160, fn. 6.) In any event, as explained further below, resolution of this factual dispute is not necessary to uphold the validity of the conflict waiver.