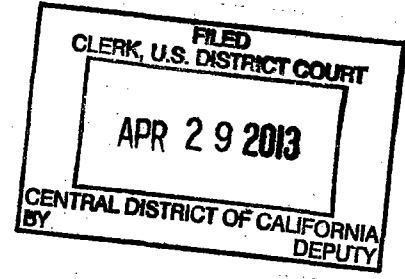


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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 SECURITIES AND EXCHANGE
18 COMMISSION,

19 Plaintiff,

20 vs.

21 CITY OF VICTORVILLE, SOUTHERN
22 CALIFORNIA LOGISTICS AIRPORT
AUTHORITY, KINSELL, NEWCOMB, &
23 DEDIOS; KND AFFILIATES, LLC; J.
JEFFREY KINSELL, JANEES L.
24 WILLIAMS and KEITH C. METZLER,

25 Defendants,

26 and

27 KND HOLDINGS, INC.,

28 Relief Defendant.

Case No. EDCV13-0776

JAC (DTB-x)

COMPLAINT

1 Plaintiff Securities and Exchange Commission (the “SEC”) alleges as
2 follows:

3 **SUMMARY**

4 1. This matter involves a fraud committed by Defendants in connection
5 with the offer and sale of tax increment municipal bonds issued from 2006 to 2008
6 by one of the Defendants, the Southern California Logistics Airport Authority (the
7 “Authority”), which is an agency with redevelopment powers controlled by its co-
8 Defendant, the City of Victorville (the “City”). The Authority was created to
9 redevelop a 132-square mile area in and around a former Air Force base in San
10 Bernardino County, California. It conducted several tax increment bond offerings
11 in connection with this redevelopment. Defendant Kinsell, Newcomb & DeDios,
12 Inc. (“KND”) was the sole underwriter for these bond offerings.

13 2. Tax increment bonds are secured solely by and repaid solely from
14 increases in property tax revenues attributable to increases in the total assessed
15 value of the property located in the redevelopment project area. This means that
16 the “tax increment” – that is, the increase in tax revenue from increases in property
17 value – is critical to the security of the tax increment bonds. Equally important is
18 the metric called the “debt service ratio,” which compares the annual tax increment
19 revenue available to pay the outstanding bonds to the annual debt service on those
20 bonds.

21 3. The Authority used tax increment bond offerings to finance a number
22 of ill-conceived redevelopment projects, including the construction of a power
23 plant and four new airplane hangars (“Hangars”) on the former Air Force base. By
24 late 2007, it needed \$50 million to pay a deposit on a turbine for the power plant,
25 and planned to finance that payment with a new \$68 million tax increment bond
26 offering. However, given the tightening credit market and the subordinate nature
27 of the bonds, prospective bond purchasers demanded that the debt service ratio for
28 this offering be increased to 1.25 (from the 1.10 ratio governing prior bond

1 offerings). As a result, the Authority was forced to downsize its December 2007
2 bond offering from \$68 million to \$42 million. This left the Authority with few
3 resources to continue its redevelopment activities. Indeed, by this time, nearly all
4 of the tax increment available to the Authority had been used to secure its prior
5 bond issuances.

6 4. In February 2008, in an effort to escape from this financial constraint,
7 the Authority borrowed \$35 million in short-term financing. It then publicly
8 offered \$13.3 million of subordinate tax increment bonds in April 2008 to repay
9 part of that short-term debt. This April 2008 financing was premised, in part, on
10 an assessed value of \$65 million for the four Hangars. This \$65 million valuation
11 was used to determine the all-important tax increment for the April 2008 bond
12 offering, and allowed the Authority to satisfy the minimum 1.25 annual debt
13 service ratio for the offering.

14 5. However, the Hangars' \$65 million assessed value was vastly inflated,
15 resulting in the disclosure of false tax increment and debt service ratios in the
16 Official Statement provided to investors in the April 2008 bond offering.
17 Defendant Keith Metzler ("Metzler"), the Director of Economic Development for
18 the City and an agent for the Authority, and the two KND investment bankers—
19 Defendant Jeffrey Kinsell ("Kinsell"), the owner of KND, and Defendant Janees
20 Williams—all knew that the assessed value of the Hangars was inflated, and, as a
21 result, that the tax increment and debt service ratios disclosed to investors were
22 false. Yet they each withheld this information, resulting in materially misleading
23 disclosures and a substantially oversized bond offering.

24 6. Kinsell and KND also engaged in an additional fraudulent scheme to
25 take undisclosed construction and management fees collected on the airport hangar
26 project. In 2006, the Authority retained Defendant KND Affiliates, LLC
27 ("Affiliates"), an entity partially-owned by Kinsell, to manage this project. The
28 Authority agreed to compensate Affiliates and its contractor under a "cost plus

1 10% construction management fee” contract. However, Affiliates exploited this
2 fee arrangement by paying itself at least \$450,000 more in fees than it was owed.

3 7. Affiliates further misappropriated \$2.3 million of bond proceeds
4 through a fictitious 15% monthly “property management fee.” Affiliates
5 transferred over \$1 million of unauthorized property management fees to Relief
6 Defendant KND Holdings (“Holdings”), the parent of KND. KND then used the
7 majority of these fees to finance KND’s operating expenses, including payroll.
8 The Authority never authorized Affiliates to collect these excessive fees, which
9 Affiliates took from bond proceeds intended to complete construction of the
10 Hangars. As a result of the unauthorized construction management fees and
11 property management fees, Affiliates misappropriated a total of approximately
12 \$2.7 million in bond proceeds.

13 8. By engaging in this conduct, the Authority, KND, Affiliates and
14 Kinsell violated Section 10(b) of the Securities Exchange Act of 1934 (the
15 “Exchange Act”) and Rule 10b-5 thereunder, and Section 17(a) of the Securities
16 Act of 1933 (the “Securities Act”), and the City, Metzler, KND, Kinsell and
17 Williams aided and abetted violations of these antifraud provisions of the federal
18 securities laws. Moreover, KND violated Section 15B(c)(1) of the Exchange Act
19 and Municipal Securities Rulemaking Board Rules G-17, G-27 and G-
20 32(a)(iii)(A)(2), Kinsell aided and abetted each of these violations, and Williams
21 aided and abetted KND’s violations of Section 15B(c)(1) and Rule G-17.
22 Therefore, with this action, the SEC seeks permanent injunctions, disgorgement
23 with prejudgment interest and civil penalties against Defendants.

24 **JURISDICTION AND VENUE**

25 9. This Court has jurisdiction over this action pursuant to Sections 20(b),
26 20(d)(1) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a),
27 and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of the Exchange Act, 15 U.S.C.
28 §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa.

1 10. Defendants Authority, KND, Affiliates and Kinsell have, directly or
2 indirectly, made use of the means or instrumentalities of interstate commerce, of
3 the mails, or of the facilities of a national securities exchange in connection with
4 the transactions, acts, practices and courses of business alleged in this Complaint.

5 11. Venue is proper in this district pursuant to Section 22(a) of the
6 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.
7 § 78aa, because certain of the transactions, acts, practices and courses of conduct
8 constituting violations of the federal securities laws occurred within this district.
9 In addition, venue is proper in this district because the City, the Authority and
10 Metzler all reside in this district.

11 **DEFENDANTS**

12 12. **The City of Victorville** is located in southwestern San Bernardino
13 County, approximately 90 miles northeast of Los Angeles, California. As of 2012,
14 the City's population was estimated at approximately 115,000 residents. The City
15 is governed by a five-member council, the members of which also comprise the
16 governing board of the Authority.

17 13. **The Southern California Logistics Airport Authority**, a joint
18 exercise of powers authority under state law, is the issuer of the relevant bonds
19 discussed herein, and is considered a component unit of the City for accounting
20 purposes. The Authority is governed by a five-member commission, which
21 consists of all members of the city council of the City, and the City's
22 administrative staff serves as the Authority's administrative staff. The Mayor
23 serves as the Authority's Chairman, the City Manager serves as the Authority's
24 Executive Director and the City's Finance Director serves as the Authority's
25 Treasurer.

26 14. **Kinsell, Newcomb, & DeDios, Inc.** is a California corporation
27 formed on March 22, 1985 and located in Carlsbad, California. It has been
28

1 registered with the SEC as a broker-dealer since May 30, 1985. It is owned by
2 KND Holdings, which in turn is owned by Kinsell.

3 15. **KND Affiliates, LLC** is located in Carlsbad, California. Affiliates
4 was incorporated in the state of California on October 29, 2002. After June 2006,
5 it was used for the sole purpose of developing the Hangars. Kinsell is one of two
6 managing members, who each have a 50% interest in Affiliates.

7 16. **J. Jeffrey Kinsell**, age 61, resides in Carlsbad, California. He is the
8 owner, Director, President and Chief Compliance Officer of KND. He is the
9 owner of KND Holdings and 50% owner of Affiliates. He has series 7, 24, 53 and
10 63 FINRA licenses.

11 17. **Janees L. Williams**, age 36, resides in San Diego, California. She is
12 the Vice President of KND. She has series 7 and 63 FINRA licenses.

13 18. **Keith C. Metzler**, age 37, of Victorville, California, is the current
14 Assistant City Manager of the City. Although never formally a part of the
15 Authority's staff, during the relevant time period, Metzler was the City's Director
16 of Economic Development, in which capacity he integrated redevelopment
17 activities, marketed industrial and commercial developments in the City, and
18 administered redevelopment related grant programs.

19 **RELIEF DEFENDANT**

20 19. **KND Holdings, Inc.** is located in Carlsbad, California. KND
21 Holdings was incorporated in the state of California on August 15, 2001, by
22 Kinsell. KND Holdings is owned solely by Kinsell and is the parent company of
23 KND.

24 **STATEMENT OF FACTS**

25 **A. The City and the Authority**

26 20. Formerly a small town on the edge of the Mojave Desert, during the
27 2000s, the City became an "ex-urb" of Los Angeles, and saw its population jump
28 from 40,000 in 1990 to 115,000 in 2012, making it one of the fastest growing cities

1 in the nation. The City sought to use its expanding property tax base to establish
2 local industries and create jobs, particularly after the 1992 closure of one of its
3 largest employers, George Air Force Base, located within the City.

4 21. Working in conjunction with the County of San Bernardino and other
5 local communities, the City created the Authority. The Authority adopted a plan
6 under California's redevelopment law to redevelop a 132-square mile project area
7 in and around the former George Air Force Base now known as the Southern
8 California Logistics Airport (the "Airport"). Much of the work on the
9 redevelopment plan was conducted under the auspices of the Authority's
10 predecessor, the Victor Valley Economic Development Authority, which delegated
11 all of its redevelopment powers to the Authority.

12 **B. Tax Allocation, or Tax Increment, Financing**

13 22. Municipalities often raise funds through "general obligation bonds,"
14 which, in general, are secured and their debt service paid by a municipality's its
15 ability to raise revenue through the imposition of taxes.

16 23. However, the Authority does not have the power to levy property
17 taxes. Therefore, instead of general obligation bonds, it relied on "tax allocation"
18 bonds, also known as "tax increment" bonds, to finance the capital projects for the
19 redevelopment of the Airport area.

20 24. Although fairly common in California, tax increment bonds are
21 structured very differently than the more familiar general obligation bonds. Unlike
22 general obligation bonds, tax increment bonds cannot rely on a municipality's
23 general taxing authority to secure and pay the obligation of the bonds. Instead, tax
24 increment bonds are only secured, and their obligations can only be paid, by the
25 "incremental" increase in property tax revenues resulting from an increase in the
26 aggregate assessed value of the property within the relevant redevelopment area.
27 The increased assessed value can result from appreciation in existing properties or
28 new construction.

1 25. Consequently, the amount of tax increment bonds that a
2 redevelopment agency like the Authority can issue is limited to the increase in the
3 aggregate assessed value of the property in the redevelopment area.

4 26. To calculate the amount of the property tax increment available to
5 secure and pay the debt service of tax increment bonds, the assessed value of
6 property in a redevelopment area is first determined for a particular “base” year,
7 typically the year immediately before the redevelopment plan was adopted. The
8 annual tax revenue collected from the property in the area is then divided among
9 the local taxing agencies within the redevelopment project area and the
10 redevelopment agency. Generally, the tax agencies receive the taxes that are
11 generated from the base year valuation of that property, while, subject to various
12 exceptions and carve-outs, the redevelopment agency receives the remainder—that
13 is, the “tax increment”—which is the tax revenue collected on any increase in the
14 assessed value of the project area over the base year valuation of that property.
15 The redevelopment agency may then pledge this tax increment revenue to repay
16 tax increment bonds used to finance or refinance redevelopment projects.

17 27. A redevelopment agency does not typically pledge tax increment to
18 repay a specific bond issuance by that agency. Instead, the aggregate amount of
19 the tax increment in a project area is often “pooled” and pledged to repay all of the
20 associated tax increment bonds issued by the agency. Nevertheless, specific tax
21 increment bonds may have a senior or subordinated claim to the aggregate tax
22 increment pledged by a redevelopment agency. Generally, investors holding
23 subordinate bonds, like the April 2008 bonds that are at the heart of this action, are
24 more sensitive to any changes in the tax increment than those holding senior lien
25 bonds.

26 28. Because the obligations under tax increment bonds are secured by and
27 paid from the incremental increase in property tax revenues, the amount of the
28 increase in the aggregate assessed value of the redevelopment area is material

1 information for the bond investors, especially those holding subordinate bonds.
2 For the same reason, the ability of the agency issuing the bonds to pay the debt
3 service is material information for bond investors, and even more so for
4 subordinated bondholders. One common measure of this ability is the “debt
5 service ratio,” which compares the annual tax increment revenue available to repay
6 bonds to the annual debt service payments on all outstanding bonds. The ratio
7 shows how much the Authority and bondholders would be protected in the event
8 assessed property values in the project area dropped. For example, a debt service
9 ratio of 1.25 means that the tax increment has a 25% cushion above the amount
10 owed on all outstanding bonds. As a result, the debt service ratio was material
11 information to bond investors.

12 **C. The Authority’s Tax Increment Bond Offerings**

13 **1. The Offerings, KND and the Official Statements**

14 29. Between 2006 and 2008, the Authority offered and sold at least four
15 tax increment financings relevant to this action: (1) a \$34,980,000 tax allocation
16 revenue parity bond offering dated November 1, 2006 (the “November 2006 Parity
17 Bonds”); (2) a \$64,165,000 subordinate tax allocation revenue bond offering dated
18 November 21, 2006 (the “November 2006 Revenue Bonds”); (3) a \$42 million
19 subordinate tax allocation bond offering dated December 5, 2007 (the “December
20 2007 Bonds”); and (4) a \$13,334,924.85 subordinate tax allocation bond offering
21 dated April 30, 2008 (the “April 2008 Bonds”).

22 30. For each of the four tax increment bond offerings by the Authority,
23 investors were provided with an “Official Statement” describing the terms and
24 conditions of each bond.

25 31. KND was the underwriter for each of these four tax increment bond
26 offerings. KND was first engaged as the underwriter for the City in 1997, and by
27 2001, it began serving as the sole underwriter for the Authority. Between 2001
28

1 and 2008, KND earned over \$5.1 million in underwriter fees for bonds issued by
2 the Authority and sold by KND to investors.

3 **2. The Tax Increment for the Bonds**

4 32. The assessed valuation of the Airport project area for its 1997-1998
5 base year was \$1.8 billion. Any increase in this assessed valuation, and the
6 resulting tax revenue, subject to various exceptions and carve-outs, represented the
7 tax increment available to the Authority for securing and paying the obligations of
8 its tax increment bonds. However, as discussed below, by the end of 2007, the
9 Authority's total outstanding debt from its previously-issued tax increment bonds
10 was so large that the Authority could not issue any additional tax increment bonds
11 unless the property value in the area increased or there was new development in
12 the area.

13 33. For each offering, the Authority hired a fiscal consultant (the
14 "Consultant") to determine the additional tax increment revenue available to secure
15 the repayment of any new bond issue, and to prepare a report included as an
16 appendix to the Official Statements for the bond offerings.

17 34. In calculating projected tax increment revenues, the Consultant first
18 looked to the county assessor's most recent property rolls to determine the assessed
19 value of property in the area. The county assessor is the municipal official
20 responsible for determining the value of property in the county for tax purposes.

21 35. The assessor's office revises the property tax rolls only once a year,
22 creating a lag time before the current assessed values of properties resulting from
23 new sales or construction appear on the property tax rolls. As a result, the
24 Consultant could not simply compare the county assessor's most recent annual
25 property roll to that for the 1997-1998 base year.

26 36. Rather, the Consultant had to add the new assessed values due to new
27 construction, which had not yet been incorporated onto the annual property roll, to
28 the assessed values reflected on the last annual property roll. The Consultant

1 typically received the increased assessed values regarding new construction for the
2 project area from Metzler's office.

3 37. The Authority's Official Statements referenced the Consultant's
4 reports, which discussed among other things, the current status of development in
5 the project area and the resulting tax increment revenue available to serve as
6 security for the bonds. The Official Statements also attached the Consultant's
7 reports as an appendix. As such, the Consultant's reports were also provided to
8 bond investors.

9 **D. The Fraudulent Official Statement for the April 2008 Bond Offering**

10 **1. The Hangars and the November 2006 Bond Offerings**

11 38. The Authority undertook a variety of ill-conceived projects in
12 connection with its efforts to develop the Airport area. These included the
13 construction of a proposed power plant known as "Victorville 2," an inter-modal
14 rail facility and, at the crux of this action, the Hangars.

15 39. In 2005 and 2006, the Authority issued bonds underwritten by KND
16 in order to build the Hangars, including the November 2006 Parity Bonds and the
17 November 2006 Revenue Bonds. The Authority initially hired an outside
18 developer to develop the Hangars. As discussed in more detail below, however,
19 the Authority eventually hired Affiliates to take over the project.

20 **2. The Downsized December 2007 Bond Offering**

21 40. The Authority initially planned to issue approximately \$68 million of
22 tax increment bonds in late 2007 to finance an initial deposit for an electric turbine
23 for the "Victorville 2" power plant. Ultimately, by the time it issued the December
24 2007 Bonds, the Authority was only able to offer \$42 million in bonds, and netted
25 just \$37 million from the offering.

26 41. The Authority was forced to downsize the December 2007 Bond
27 offering because prospective bond purchasers demanded that the Authority
28 increase the debt service ratio. Bond investors had previously accepted a debt

1 service ratio of 1.10. However, due to the tightening credit market at the time and
2 the subordinate nature of the bonds, prospective bond purchasers demanded a
3 significant increase in the annual debt service ratio to 1.25.

4 42. The debt service ratio is determined by taking the projected annual tax
5 increment revenue available to repay all tax increment bonds and dividing that
6 number by the annual debt service payments on all outstanding tax increment
7 bonds. The debt service ratio was determined from data provided by the consultant
8 and KND. Specifically, the projected annual tax increment revenue available to
9 repay all tax increment bonds was calculated by the Consultant and set forth in the
10 report it issued for the December 2007 Bonds (the “December 2007 Report”). The
11 annual debt service payments on all outstanding tax increment bonds was
12 calculated by KND.

13 43. Although the aggregate tax increment revenue available to pay debt
14 service was substantial, by December 2007, the Authority had already consumed
15 all but a small portion of that amount to service its prior bond issues. Therefore,
16 under the increased debt service ratio of 1.25 required by prospective investors, the
17 Authority was no longer able to service \$68 million in debt. Therefore, it
18 downsized the bond issuance from \$68 million to \$42 million.

19 44. Prospective investors also demanded that, for all of the Authority’s
20 future tax increment bond issuances, the annual debt service ratio for each year all
21 of the bonds are outstanding must be at least 1.25 to comply with the 1.25 annual
22 debt service ratio. This requirement was incorporated in the “additional bonds”
23 covenant under the governing indenture, which generally set limitations on the
24 Authority’s ability to issue new bonds.

25 **3. The Private Placement in February 2008**

26 45. The downsizing of the December 2007 bond issuance from \$68
27 million to \$42 million left the Authority with few resources to continue its
28 redevelopment activities. Indeed, the Authority needed to apply all of the net

1 proceeds of the December 2007 Bonds to make the initial deposit on the
2 “Victorville 2” electric turbine.

3 46. In late November 2007, Kinsell recognized the Authority’s difficult
4 financial situation. He wrote emails stating that the Authority had essentially “put
5 themselves out of the redevelopment business and have few resources to do
6 anything else.” Kinsell also described the Authority as being “panicked” at this
7 time and believed it “needed money right away.” He noted that a third party could
8 emerge to help the Authority obtain funds for other projects.

9 47. Third-party financing is the option the Authority ultimately pursued.
10 In particular, the Authority borrowed \$35 million in a private placement offering of
11 Subordinate Tax Allocation Revenue Notes to a major commercial bank (the
12 “Bank”), on February 29, 2008.

13 48. As part of this private placement, the Bank required the Authority to
14 enter into a forward bond purchase agreement that, in essence, obligated the
15 Authority to issue publicly offered “forward” tax increment bonds, at the time of
16 the Bank’s choosing, for the purpose of repaying, in whole or in part, the \$35
17 million invested by the Bank. The Bank was not obligated to purchase any of
18 those forward bonds, and the Authority’s obligation was dependent on the
19 existence of sufficient tax increment to secure such bonds.

20 **4. The Hangars’ Assessed Value for the Private Placement**

21 49. The Authority needed sufficient tax increment revenue to repay the
22 \$35 million in Subordinate Tax Allocation Revenue Notes held by the Bank.
23 Therefore, during the private placement negotiations, the Bank focused on the
24 estimated additional assessed value and resulting tax increment from any new
25 construction that had not been used to secure the December 2007 Bonds.

26 50. On December 17, 2007, just two days after the December 2007 Bonds
27 closed, the Bank held a conference call with Williams, Metzler and the Consultant
28 to discuss the timing and amount of any new assessments, and, by virtue of being a

1 factor in determining the amount of any new assessed value, the cost of any new
2 development at the Airport. As conditions for closing the private placement, the
3 Bank required, among other things, that: (1) the Consultant certify the estimated
4 tax increment revenues and compliance with the additional bonds test; and (2)
5 Metzler provide an affidavit, attached to his estimates of assessed valuations,
6 certifying that the estimates were correct to the best of his knowledge.

7 51. Metzler prepared a spreadsheet for the Bank that, among other things,
8 set forth the estimated additional assessed values for projects not reflected in the
9 December 2007 Bonds (the "Metzler Spreadsheet"). These projects included the
10 four Hangars, as well as the expansion of a cement factory by one of the largest
11 taxpayers in the project area. The assessed value of these projects was critically
12 important to the Authority's ability to close the private placement with the Bank.

13 52. On January 17, 2008, Metzler reported to the Bank, Kinsell and
14 Williams that the assessor's office informed him the cement factory's additional
15 assessed value was just \$41 million. This was tens of millions less than the
16 anticipated range of \$91 million to \$141 million in additional assessed value from
17 the cement factory expansion.

18 53. That same day, Williams wrote to Kinsell that the Bank was
19 concerned about the unexpectedly low assessed valuation increase. Williams also
20 called Metzler on or about January 17, 2008 to discuss the situation, and cautioned
21 him that his assumptions need to be correct because they related to tax increment.
22 Around this time, Kinsell also expressed concern about the unexpectedly low
23 assessed value of the cement factory.

24 54. Although the increase in the assessed value for the cement factory
25 dropped significantly from the earlier estimates, the estimated assessed value of all
26 four Hangars never changed. On January 17, 2008, Williams told the Bank that the
27 total value of the four Hangars would be \$65 million. This figure had been
28

1 provided by Affiliates, and was purportedly based on the Hangars' construction
2 costs.

3 55. On January 18, 2008, Metzler forwarded an email he received from
4 the assessor's office to Williams showing it had assessed the values of Hangar
5 Nos. 1 and 2 at an aggregate value of only \$8,779,000 for the 2007-2008 fiscal
6 year, and \$8,955,000 for the 2008-2009 fiscal year. The assessor's office also
7 informed Williams that it had not yet assessed the value of Hangar Nos. 3 and 4.

8 56. These assessment figures undermined the \$65 million estimate for all
9 four Hangars. Under this assessment, the remaining two Hangars (Nos. 3 and 4)
10 would have to be valued at approximately \$56 million alone for the previously
11 provided estimate for all four Hangars of \$65 million to have any validity. But the
12 remaining two Hangars could not be assessed at over \$56 million. The four
13 Hangars were too similar for such a disparate valuation to be possible.

14 57. Nevertheless, Williams and Metzler used the \$65 million assessed
15 value for all four Hangars. Metzler included the \$65 million value in a draft of the
16 Metzler Spreadsheet he prepared in advance of a conference call with the Bank,
17 Williams, the Authority's counsel ("Disclosure Counsel") and others. Williams
18 emailed the Metzler Spreadsheet to the meeting participants, as well as to Kinsell.
19 The Metzler Spreadsheet reflected: (1) the estimated \$65 million assessed value
20 for all four Hangars for the 2008-2009 fiscal year; and (2) the \$56,221,000 Hangar
21 valuation available for bonding in 2008-2009 (i.e., the \$65 million estimated
22 assessed value for the Hangars in 2008-2009 minus the \$8.779 million assessed
23 value for Hangars No. 1 and 2 in 2007-2008).

24 58. The Consultant relied on the \$65 million estimated assessed value
25 Metzler provided for the Hangars when it conducted its tax increment analysis.
26 The Consultant prepared a spreadsheet (the "Consultant Spreadsheet") showing the
27 total value of new development at the Airport was \$111,309,322, and that the
28 Hangars constituted \$56,221,000, or over half, of that amount. The Consultant

1 noted in its spreadsheet that the \$56,221,000 valuation was based on “Data
2 Provided By Keith [Metzler].” On February 11, 2008, Williams emailed the
3 Consultant Spreadsheet to the Bank, Kinsell and Metzler. As alleged below, the
4 Consultant used the \$111,309,322 value of the new development at the Airport,
5 which included the inflated \$65 million value of the four Hangars, to determine the
6 tax increment revenue for the April 2008 Bonds.

7 59. On February 19, 2008, the Consultant sent a letter to Metzler,
8 Williams and Disclosure Counsel setting forth the methodology it used to
9 determine its tax increment revenue projection of \$22,606,356. That letter noted
10 that the assessed values in the Airport’s portion of the project area increased by
11 \$111,309,322 due to new construction.

12 60. Metzler and Williams were concerned that the assessor’s office would
13 provide assessed values for Hangar Nos. 3 and 4 that, when added to the assessed
14 values of Hangar Nos. 1 and 2, would reduce the total assessed value of the four
15 Hangars to less than \$65 million. On February 19, 2008, Metzler received an
16 email that attached a voicemail from the assessor’s office alerting him that it had
17 not received construction cost information for Hangar Nos. 3 and 4. Metzler
18 forwarded the email and attached voicemail to Williams that same day and wrote:
19 “Can you follow up and make sure this happens.... My concern is without the
20 construction numbers, they will value the hangars low as the leases are not
21 commensurate with the construction costs.” Williams forwarded the email to
22 Kinsell that same day.

23 61. As part of the closing documents for the private placement on
24 February 29, 2008, Metzler provided the final version of the Metzler Spreadsheet
25 and attached it to a signed certification stating that his estimates were true and
26 accurate based on his personal knowledge and communications with the assessor’s
27 office and the Airport’s master developer. In his certification to the Bank, Metzler
28 noted that: (1) the \$65 million estimate for the Hangars was based on an estimate

1 provided by Affiliates; and (2) it was possible the value could change because the
2 assessor's office had yet to complete its valuation of the Hangars. Notably,
3 Metzler did not make a similar disclosure in connection with the April 2008 Bonds
4 sold to the public.

5 **5. The April 2008 Bond Offering**

6 62. In April 2008, the Bank exercised its option to require the Authority
7 to issue publicly offered bonds to repay part of the \$35 million note.
8 Approximately \$13.335 million in subordinate tax increment bonds were offered
9 on April 30, 2008 to repay part of this debt (the "April 2008 Bonds").

10 63. The April 2008 Bonds are at the crux of this action. The April 2008
11 Bonds were the only forward bonds the Authority was ever able to issue pursuant
12 to its forward bond purchase agreement with the Bank.

13 **6. The Hangars' Assessed Value for the April 2008 Bond Offering**

14 64. When the Authority began preparing for the April 2008 Bond offering
15 to make the required payment to the Bank, the Consultant needed to revisit the
16 amount of available tax increment. For the April 2008 Bonds, the Consultant
17 prepared a supplement to its December 2007 Report (the "April 2008
18 Supplement") that "contain[s] tax increment projections that supplement
19 information contained in" the December 2007 Report. The December 2007 Report
20 and the April 2008 Supplement (collectively, the April 2008 Report") were
21 attached as Appendix D to the Official Statement for the April 2008 Bonds (the
22 "April 2008 Official Statement"). The April 2008 Official Statement also
23 references the April 2008 Report at page 23. The April 2008 Official Statement
24 and the April 2008 Report contained material information for bond investors
25 related to the bonds' tax increment and debt service ratio.

26 65. Like the Consultant's spreadsheet prepared for the February 2008
27 private placement, the April 2008 Supplement included assessed values and
28 resulting increased tax increment derived from new, finalized construction and

1 sales not included in the December 2007 Report. The April 2008 Supplement, at
2 Exhibit 10C on page 4, provided that the increased assessed value due to new
3 development at the Airport was \$111,309,322, the same amount used in the
4 Consultant Spreadsheet prepared for the private placement.

5 66. This \$111,309,322 valuation of new development at the Airport
6 included Williams's and Metzler's inflated \$65 million estimated value for all four
7 Hangars. The Consultant used this \$111,309,322 valuation of new development at
8 the Airport to determine the tax increment revenue for the April 2008 Bonds.

9 67. By April 2008 though, Metzler, Williams and Kinsell knew that the
10 Hangars' \$65 million estimated assessed value was no longer valid. On March 10,
11 2008, Metzler received an email from the assessor's office informing him that
12 Hangar No. 3's 2008-2009 assessed value was only \$9,483,260. The assessor's
13 office also informed Metzler that it had not heard from Affiliates regarding the
14 construction cost of Hangar No. 4. It further noted that if it did not hear from
15 Affiliates, the assessor's office would assess Hangar No. 4 at the same value as
16 Hangar No. 3 because "[b]oth hangars are identical." Metzler directed his assistant
17 to forward the assessor's office's email to Williams with the dictated message:
18 "FYI...lower than we expected." Williams forwarded that email the same day,
19 copying Kinsell, and wrote that "we need to get this done ASAP this week."

20 68. Also on March 10, 2008, Metzler's assistant replied to the assessor's
21 office's email, asking if the assessor's office could re-send the assessed valuations
22 for Hangar Nos. 1 and 2. The assessor's office provided those assessed values to
23 Metzler's assistant that night. Metzler's assistant printed out her March 10, 2008
24 email correspondence with the assessor's office showing the assessed values for
25 Hangar Nos. 1, 2 and 3, as well as the likely assessed value for Hangar No. 4, and
26 gave it to Metzler on or about March 10, 2008.

27 69. On April 16, 2008, Williams sent an email to Metzler asking him to
28 confirm various facts for proposed buyers of the April 2008 Bonds. Among the

1 items she asked Metzler to confirm was “4 Hangars approximately \$65,000,000
2 based on construction value.” Metzler’s assistant responded at his direction to
3 Williams the same day by email, attaching the assessor’s office’s March 10, 2008
4 emails containing the assessed valuations for Hangar Nos. 1, 2 and 3, and the likely
5 assessed valuation for Hangar No. 4. That same day, Williams forwarded the
6 email, along with the attached assessor’s office’s email, to Kinsell.

7 70. Assuming Hangar No. 4 would be assessed at the same value as
8 Hangar No. 3, the total assessed values of the four Hangars would have been \$27.7
9 million for 2007-2008 and \$27.9 million for 2008-2009. In either case, this
10 valuation is less than half the estimated value of \$65 million that was used in the
11 April 2008 Supplement, referenced in and attached to the Official Statement.

12 71. The minimum 1.25 annual debt service ratio for the April 2008 Bond
13 offering was only achieved because the approximate \$111.3 million valuation of
14 new development at the Airport included the inflated \$65 million valuation of the
15 four Hangars.

16 **7. The False and Misleading April 2008 Official Statement**

17 72. Page 24 of the April 2008 Official Statement contained a debt service
18 schedule listing the annual tax increment and debt service ratios for the April 2008
19 Bonds (the “Debt Service Schedule”). One column on that schedule listed the tax
20 increment for every bond year (the “Total Non-Housing Increment”); another
21 column showed an “all-in,” “no growth” debt service ratio of 1.26 for 2008
22 (representing tax increment revenues of \$22,606,356 and total debt service of
23 \$17,825,734), and 1.25 for every bond year thereafter.

24 73. KND, which through Williams and Kinsell knew that the estimated
25 assessed value of the Hangars was inflated, prepared the Debt Service Schedule.
26 The figures KND used in the Total Non-Housing Increment column of the Debt
27 Service Schedule relied on the inflated value of the Hangars, and came from the
28

1 “Total Pledge Revenue” column of Exhibit 10A on page 2 of the Consultant’s
2 April 2008 Supplement, which was attached to the April 2008 Official Statement.

3 74. The statements regarding the tax increment and the debt service ratios
4 in the April 2008 Official Statement and the attached April 2008 Supplement were
5 false and misleading.

6 75. Neither the Consultant nor Disclosure Counsel knew that the tax
7 increment analysis in the April 2008 Report relied on false and inflated Hangar
8 values overstating the tax increment revenue. Williams, Kinsell and Metzler each
9 failed to inform Disclosure Counsel that the \$65 million estimated assessed value
10 of the Hangars was wrong. As a result, the Debt Service Schedule in the April
11 2008 Official Statement and Exhibits 10A and 10C of the April 2008 Supplement
12 overstated the tax increment available to secure those bonds and to repay investors.

13 76. The Debt Service Schedule also overstated the debt service ratio for
14 the offering. The Authority only met the required 1.25 minimum annual debt
15 service ratio because it used the overstated Hangar valuation. Therefore, the Debt
16 Service Schedule failed to disclose a debt service ratio based on an accurate
17 valuation of the four Hangars. Had the Authority used the accurate valuation, it
18 would have failed to meet the minimum 1.25 ratio in every bond year after 2008.

19 77. Moreover, because of the overstated values of the Hangars and
20 resulting false disclosure of the tax increment and annual debt service ratio, the
21 April 2008 Bonds were substantially oversized.

22 78. The tax increment and debt service ratio misrepresentations and
23 omissions in the April 2008 Official Statement and the April 2008 Supplement
24 were material. The tax increment securing the April 2008 Bonds and the annual
25 debt ratios disclosed in the Debt Service Schedule were critical factors investors
26 used to determine how they would be repaid. Moreover, the market required the
27 1.25 debt service ratio, which ensured that the Authority’s total projected annual
28 tax increment revenue would be 25% greater than the total annual debt service

1 payments for each year bonds would be outstanding, thereby providing a safety net
2 in the event assessed property values in the project area suffered unexpected losses.
3 Meeting the annual debt service ratio of 1.25 was also a prerequisite to the issuance
4 of the bonds under the indenture. Moreover, the credit rating agencies focused on
5 the debt service ratio, and a ratio below 1.25 would have affected the credit quality
6 of the April 2008 Bonds.

7 79. The December 2007 Bonds and April 2008 Bonds are currently in
8 default, and as of April 2013 were trading at roughly forty-five cents on the dollar.

9 **3. The Defendants' Roles in the April 2008 Official Statement**

10 **a. The Authority, the City and Metzler**

11 80. As the issuer, the Authority had ultimate authority over all of the
12 contents of the Official Statements and the attached Consultant reports, including
13 the April 2008 Official Statement and the attached April 2008 Supplement.

14 81. Metzler played a significant role in connection with the Authority's
15 tax increment bond offerings, including the April 2008 Bonds. He had intimate
16 knowledge of the projects at the Airport, and understood tax increment financing
17 and how annual debt service ratios are calculated.

18 82. Although the Authority's Official Statements were drafted initially by
19 Disclosure Counsel, these drafts were circulated to an unofficial disclosure
20 committee for comments. Metzler was a member of this committee. Working at
21 the direction of the City Manager, who also served as the Executive Director of the
22 Authority, Metzler worked with the Disclosure Counsel and the underwriters at
23 KND to draft sections of the Official Statements. He took the lead in drafting
24 some of the disclosure language concerning the Authority's redevelopment
25 projects.

26 83. Metzler was the Authority's "point person" concerning its Official
27 Statements for all of the bond issuances, including the April 2008 Official
28 Statement. He communicated with the ratings agencies, gave presentations to

1 potential investors and transmitted the county assessor's most recent assessed
2 value figures to the Consultant. The Executive Director specifically tasked
3 Metzler with obtaining and providing the taxable assessed valuation data to the
4 Consultant, and with reviewing the Official Statements to ensure they were
5 accurate. In signing the April 2008 Official Statement, the Executive Director
6 relied on Metzler's work and due diligence. Disclosure Counsel and the
7 underwriter looked to Metzler as the Authority's representative to approve the
8 Official Statements. As such, Metzler and his employer, the City, substantially
9 assisted in the making of the misstatements and omissions in the April 2008
10 Official Statement regarding the inflated tax increment and debt service ratios.

11 84. Metzler knew, or was reckless in not knowing, that the April 2008
12 Official Statement materially misstated the tax increment and debt service ratio for
13 the April 2008 Bonds. Because he was an employee of the City, and reported to
14 the City Manager, the City had actual knowledge of, or was reckless in not
15 knowing, the falsity and misleading nature of these misstatements.

16 85. Moreover, Metzler was the agent for the Authority with regard to
17 content in the Authority's Official Statements. The Authority authorized him to
18 perform acts and communicate on its behalf in connection with the Authority's
19 bond offerings. Therefore, the Authority had actual knowledge of, or was reckless
20 in not knowing, the falsity and misleading nature of the misstatements concerning
21 the tax increments and the debt service ratio.

22 **b. KND, Kinsell and Williams**

23 86. KND, as the underwriter, had ultimate authority over the portions of
24 the Official Statements it prepared, including the false and misleading Debt
25 Service Schedule in the April 2008 Official Statement. KND's name was also
26 prominently featured on the first page of the Official Statement for each bond
27 offering that it underwrote for the Authority.

1 87. Kinsell and Williams knew that the April 2008 Official Statement
2 materially misstated the tax increment and debt service ratio for the bonds.
3 Williams was a member of the informal disclosure committee for the Official
4 Statement, and both Kinsell and Williams reviewed and commented on draft
5 official statements, the April 2008 Supplement and other documents related to the
6 April 2008 Bonds. Despite knowing that the \$65 million estimated assessed value
7 of the Hangars was wrong, Williams nonetheless used the April 2008 Supplement
8 to determine the size of the April 2008 Bonds and to generate the false Debt
9 Service Schedule in the April 2008 Official Statement. The annual debt service
10 ratios were critical to Williams's sizing calculation because they limited the
11 principal amount of the bond offering. As such, Kinsell and Williams, along with
12 KND, substantially assisted the Authority in making that false and misleading
13 April 2008 Official Statement. Moreover, Kinsell and Williams substantially
14 assisted KND in making the false and misleading Official Statement.

15 88. Because Williams and Kinsell were employees of KND, KND had
16 actual knowledge that the April 2008 Official Statement, the April 2008
17 Supplement attached as an appendix and the Debt Service Schedule were false and
18 misleading.

19 **E. Kinsell, Affiliates and KND's Scheme to Misappropriate Bond Proceeds**

20 89. Kinsell, Affiliates and KND, which underwrote the Authority's bond
21 offerings from November 2006 through 2008, misappropriated over \$2.7 million of
22 bond proceeds from the Authority and bondholders in connection with the project
23 to construct the four Hangars.

24 **1. The Unauthorized Construction Management Fees**

25 90. Affiliates misappropriated bond proceeds of at least \$450,534 from
26 the Authority and the bondholders in the form of unauthorized and excessive
27 construction management fees.
28

1 91. By mid-2006, the Authority and Kinsell learned of allegations that the
2 developer for the Hangars project had not been paying the subcontractors and that
3 the developer's principal had likely diverted some of the bond proceeds from the
4 project for his own personal use.

5 92. Kinsell reached a "handshake deal" in June or July 2006 with the
6 Executive Director of the Authority whereby Kinsell, through Affiliates, would
7 oversee the project. Although formed earlier in 2002, the sole purpose of Affiliates
8 after June 2006 was to develop the Hangars. Kinsell is one of two managing
9 members of Affiliates, each of whom holds a 50% interest in the company. Kinsell
10 had no construction experience but retained a longtime friend as the new contractor
11 to complete construction of the Hangars.

12 93. Although that "handshake deal" was never reduced to a written
13 contract, all of the parties understood that it was a "cost plus 10% construction
14 management fee" arrangement. In a memorandum Kinsell sent on October 18,
15 2006 to Disclosure Counsel and to Authority representatives, Kinsell confirmed
16 that a 10% construction management fee would be charged "where necessary for a
17 general contractor to be involved." He also explained that he was "dividing these
18 monies by eight (8%) to [the new contractor] and two percent (2%) to Affiliates for
19 the overall project coordination." Thus, although Affiliates was not actually
20 building the Hangars, it would be paid this 2% to oversee the use of the funds and
21 to perform "fund control."

22 94. In July 2006, the Authority approved Affiliates's new role, and, over
23 the next two years, made five separate loans totaling \$60.38 million to Affiliates.
24 These loans included \$22.2 million lent in August 2006, which was used: (1) to
25 immediately pay over \$12 million to disgruntled subcontractors and \$6 million to
26 the original developer to resolve various claims; and (2) to pay a portion of the
27 remaining costs necessary to complete the Hangars.

28

1 95. All of the loans made to Affiliates were funded from the proceeds of
2 bonds or notes issued by the Authority and underwritten or placed by KND.
3 Affiliates placed these lump sum amounts into bank accounts in its name, and there
4 was little, if any, oversight regarding how Affiliates spent these bond funds.

5 96. Periodically throughout the construction of the Hangars, Affiliates
6 paid the new contractor the 10% construction management fee that had been
7 earned as of that date. The contractor retained its 8% share of the fee and
8 “rebated” back to Affiliates the 2% fee owed to Affiliates, totaling not more than
9 \$865,990 from October 2006 through October 2010.

10 97. However, Affiliates actually took at least \$1,316,524 as the 2%
11 construction management fee, or at least \$450,534 more than the amount that was
12 “rebated” back to it by the contractor. Affiliates simply took this excess – and
13 unauthorized – construction management fee directly from the bond proceeds the
14 Authority loaned Affiliates to construct the Hangars.

15 98. Affiliates collected the unauthorized 2% construction management fee
16 based on expenses incurred in August 2006 that had nothing to do with the
17 remaining costs of construction, such as the payments to subcontractors for prior
18 work and the payment to the original developer to settle claims. Thus, before
19 KND underwrote bonds for the Authority in November 2006, Kinsell and KND
20 knew, or were reckless in not knowing, that Affiliates planned to charge more than
21 the authorized 2% construction management fee and did not disclose this
22 information to investors.

23 **2. The Unauthorized “Property Management” Fees**

24 99. Affiliates also charged the Authority a fictitious and unauthorized
25 15% “property management fee” to misappropriate an additional \$2.3 million –
26 purportedly to “manage” the Hangars for the Authority.

27 100. Kinsell told Affiliates’s CFO in August 2006 that Affiliates was
28 earning the property management fee as a result of Kinsell’s discussion with the

1 Executive Director of the Authority. This was false. Kinsell never told the
2 Executive Director about the property management fees, and the Authority never
3 authorized or agreed to pay the purported property management fee taken by
4 Affiliates. In addition to the absence of any document confirming the property
5 management fee agreement, the Executive Director lacked the authority to enter
6 into any verbal agreement above \$1,500 and any written agreement exceeding
7 \$125,000 per year, limitations that Kinsell generally understood.

8 101. To keep track of the property management fees, Kinsell directed
9 Affiliates's CFO to begin accruing the 15% property management fee based on
10 what Kinsell claimed were the "market rates" for the Hangar rents, as opposed to
11 the actual rents collected, which were much lower. Affiliates's CFO prepared an
12 internal spreadsheet showing that Affiliates was purportedly accruing the fees as
13 early as March 2006, several months before KND underwrote the November 2006
14 Parity and Revenue Bonds. The Official Statements for these bonds did not
15 disclose this property management fee or the resulting conflict of interest.

16 102. Although Affiliates began accruing these fees as early as March 2006,
17 it did not take any of the property fees until much of the Hangars project was
18 complete. Specifically, the CFO's spreadsheet shows that Affiliates accrued
19 property management fees of \$3,657,540 from March 2006 until June 2011, when
20 the Hangars were finally returned to the Authority. But Affiliates only
21 misappropriated \$2,295,322 of these accrued fees because, as Kinsell explained, by
22 2009 or 2010 "the money ran out." Indeed, Affiliates's bank records confirm that
23 only \$32,187 remained in its accounts as of December 2009.

24 103. Kinsell used a significant portion of the unauthorized property
25 management fees collected by Affiliates to pay the expenses of KND and its parent
26 company, Holdings. In October 2007 Affiliates transferred \$25,000 to Holdings
27 with the notation "payroll" and, just a day before the April 2008 Bonds were
28 issued, Affiliates lent Holdings \$100,000. In July 2008, KND agreed to

1 immediately pay \$4 million to the U.S. Treasury to settle unrelated I.R.S. claims
2 involving advance refunding municipal bonds underwritten by KND between 1993
3 and 2003. Beginning at that time and continuing through at least June 2011,
4 Affiliates transferred over \$1 million in unauthorized property management fees to
5 Holdings. Without the funds from Affiliates, it would have been difficult for KND
6 to pay its employees.

7 **3. Kinsell, KND and Affiliates’s Lulling and Concealment of the**
8 **Property Management Fees from the Authority**

9 104. Throughout the scheme, Kinsell and Affiliates misled Authority
10 representatives and hid the fact that Affiliates was earning a property management
11 fee. For example, in an October 18, 2006 memorandum to the Authority, Kinsell
12 wrote that “KND Affiliates will provide a full accounting to-date of the
13 Authority’s loan proceeds and then on a monthly basis,” but Kinsell never did so.
14 Moreover, on November 2, 2007, Affiliates’s CFO provided the Deputy City
15 Attorney with a spreadsheet showing the operating expenses of each Hangar, but it
16 did not include the 15% monthly property management fee. Further, on May 16,
17 2008, Affiliates’s CFO provided the Authority’s Director of Finance with an
18 “operating expenses spreadsheet,” but it did not include any reference to the
19 property management fee.

20 105. In March 2008, the City hired an independent audit firm to review
21 Affiliates’s books and records and identify all related party transactions.
22 Affiliates’s CFO disclosed the 2% construction management fee to the auditors,
23 but not the property management fee. Around the same time, in February 2008,
24 the Director of Finance personally visited Affiliates’s office to review its books
25 and did not see any indication that Affiliates was earning a property management
26 fee. Kinsell failed to tell the auditors or the Director of Finance about the property
27 management fees.
28

1 106. Kinsell and Affiliates waited until late 2008, after the auditors and the
2 Director of Finance had completed their on-site review of Affiliates's books and
3 records, to begin transferring the unauthorized property management fees out of
4 Affiliates's bank account.

5 107. On October 15, 2008, the Director of Finance emailed Kinsell about
6 transferring the Hangars back to the Authority and confirmed that any unused loan
7 proceeds would revert back to the City, to which Kinsell agreed. In November
8 2008 and September 2009, the contractor hired by Kinsell to construct the
9 Hangars, acting at the direction of Affiliates, provided detailed accountings to the
10 Director of Finance. On November 10, 2008, the contractor provided the Director
11 of Finance with a detailed accounting that stated that Affiliates held excess funds
12 and contingency funds totaling over \$2 million. The September 2009 accounting
13 showed that Affiliates held at least \$1.5 million in excess funds and contingency
14 funds. These accountings, however, were false. As of September 2009, only
15 \$644,391 remained in Affiliates's bank accounts. Kinsell reviewed both
16 accountings but never told the contractor or the Authority that the majority of the
17 excess bond proceeds had already been taken by Affiliates, allegedly as property
18 management fees.

19 108. From 2010 through June 2011, after many key individuals initially
20 involved with the Hangars had left the Authority, Kinsell continued to conceal the
21 property management fees as new Authority representatives negotiated the transfer
22 of the Hangars back to the Authority. Kinsell misled these representatives by
23 repeatedly characterizing himself as the "good guy" and "white knight" who had
24 "bailed the City out of the mess that they were in." He further represented to the
25 new City Manager that he had not made any money on the Hangar transaction. As
26 of February 2010, Kinsell claimed that there were no construction funds left.

27 109. In September 2010, when the new City Manager asked questions
28 about the Hangars, Kinsell told him to look at the report from the independent

1 audit firm that reviewed Affiliates's books and records. Kinsell claimed the report
2 set forth "the fees being charged by KND Affiliates for management services," but
3 Kinsell did not tell him that the report excluded any reference to the property
4 management fees collected by Affiliates because Kinsell had concealed those fees
5 from the auditors.

6 110. After many months of negotiations, the Authority voted and approved
7 paying Kinsell and Affiliates an additional \$40,000 for anticipated tax liabilities
8 Kinsell claimed he would personally incur when the Hangars were transferred back
9 to the Authority.

10 **4. KND and Williams's Lack of Disclosure of the Fees**

11 111. None of the Official Statements for the bonds the Authority issued
12 between November 2006 and April 2008 disclosed to investors that Affiliates
13 received more than the agreed upon 2% construction management fee or that
14 Affiliates, an entity related to Kinsell and KND, was accruing an unauthorized
15 property management fee.

16 112. Affiliates received \$9.9 million of proceeds from the November 2006
17 Parity Bonds, which, for a fee of \$437,250, had been underwritten by KND. The
18 Official Statement for the November 2006 Parity Bonds did not disclose that: (1)
19 Affiliates was acting as construction manager of the Hangars and was receiving a
20 2% construction management fee; (2) Affiliates had already received \$22,200,000
21 in bond proceeds from the Authority; or (3) Affiliates was accruing an
22 unauthorized property management fee.

23 113. On November 21, 2006, the Authority issued the November 2006
24 Revenue Bonds, which KND underwrote for a fee of \$802,000. Affiliates received
25 \$13.6 million of the proceeds from that offering. The Official Statement disclosed
26 that Affiliates had taken over the Hangars from the prior developer and that "[f]or
27 its efforts in overseeing the completion of the Hangar-Facilities, KND Affiliates is
28 in negotiations with the Authority to receive a construction management fee in an

1 amount no greater than 2% of the remaining costs to complete the Hangar
2 Facilities . . .” Although this Official Statement disclosed Affiliates’s anticipated
3 role as construction manager and its 2% fee, KND and Kinsell concealed from
4 investors that Affiliates also charged a 2% fee for costs that were unrelated to the
5 remaining construction and that Affiliates was also accruing an unauthorized 15%
6 monthly property management fee.

7 114. On February 29, 2008, the Authority issued the \$35 million in
8 Subordinate Tax Allocation Revenue Notes in the private placement with the
9 Bank. KND received a fee of \$262,500 as the placement agent. That same date,
10 Affiliates received \$10.4 million of the proceeds from this private placement to
11 build the Hangars.

12 115. During this 2007-2008 time period, KND underwrote other bonds
13 issued by the Authority. Although none of the proceeds of these issuances went to
14 Affiliates, it was not disclosed to investors that Affiliates was taking unauthorized
15 property management and excess construction management fees that came from
16 prior bonds issued by the Authority and underwritten by KND. These include the
17 following bonds: (1) Taxable Housing Set-Aside Revenue Parity Bonds in March
18 2007 in the amount of \$41,460,000 for which KND received an underwriter’s fee
19 of \$518,250; (2) the December 2007 Bonds for which KND received an
20 underwriter’s fee of \$735,000; and (3) the April 2008 Bonds for which KND
21 received an underwriter’s fee of \$133,349.

22 116. The misstatements and omissions in the Official Statements for the
23 Authority’s bonds from November 2006 through April 2008 were material because
24 a reasonable investor would want to know about an undisclosed financial
25 arrangement such as here, where an entity related to the underwriter, like
26 Affiliates, received unauthorized proceeds from bonds underwritten by KND.
27 These misstatements and omissions were also material to the Authority because
28 such fees increased the costs of issuing the bonds.

1 **F. KND's, Kinsell's and Williams's Due Diligence Failures**

2 117. KND, through Williams and Kinsell, served as the underwriter in
3 negotiated offerings with the Authority and therefore substantially participated in
4 the preparation of the Authority's Official Statements for the bonds. KND's name
5 appeared prominently on the first page of each Official Statement. KND also
6 recommended and sold the Authority's municipal securities to investors. In so
7 doing, KND made an implied representation it had reviewed the accuracy of the
8 Authority's Official Statements and formed a reasonable basis for belief in the
9 truthfulness and completeness of the key representations made therein.

10 118. Kinsell and Williams worked on behalf of KND to underwrite the
11 bonds. In that regard, each reviewed and commented on draft Official Statements,
12 the Consultant Reports, indentures and other bond documents. Both Kinsell and
13 Williams had authority to sign the bond purchase agreements. Although Williams
14 was responsible on a day-to-day basis, she made sure to copy Kinsell on emails
15 and to talk to him daily about the bonds. Indeed, the Authority was Kinsell's client
16 and he had hands-on involvement with regard to the Authority's bond offerings.

17 119. Notwithstanding its obligation as an underwriter, KND's implicit
18 representations regarding its due diligence were false. First, as alleged above, the
19 April 2008 Official Statement, the Debt Service Schedule and the April 2008
20 Supplement misstated the tax increment and debt service ratios based on inflated
21 assessed values of the Hangars. Kinsell and Williams substantially assisted in
22 preparing the Official Statement, and each knew the April 2008 Supplement relied
23 on the inflated \$65 million estimated assessed value of the Hangars, but omitted to
24 disclose the estimate was no longer valid. As set forth above, on two separate
25 occasions before the April 2008 Bonds were issued, Williams and Kinsell received
26 emails from the assessor's offices showing that the Hangars' \$65 million estimated
27 assessed value was inflated by more than 100%.

1 use of means or instrumentalities of interstate commerce, of the mails, or of the
2 facilities of a national securities exchange, with scienter, made untrue statements of
3 a material fact or omitted to state a material fact necessary in order to make the
4 statements made, in the light of the circumstances under which they were made,
5 not misleading.

6 125. By engaging in the conduct described above, Defendant Authority
7 violated, and unless restrained and enjoined, will continue to violate, Section 10(b)
8 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b) thereunder, 17 C.F.R.
9 § 240.10b-5(b).

10 **SECOND CLAIM FOR RELIEF**

11 **Fraud in the Offer or Sale of Securities**

12 **Violations of Section 17(a)(2) of the Securities Act**

13 **(against the Authority)**

14 126. The SEC realleges and incorporates by reference paragraphs 1
15 through 121 above.

16 127. The Authority's April 2008 Official Statement, including the Debt
17 Service Schedule and the April 2008 Supplement contained material
18 misrepresentations and omissions to investors regarding, among other things, the
19 tax increment amount available to repay those bonds and the projected annual debt
20 service ratios for every bond year after 2008.

21 128. Defendant Authority by engaging in the conduct described above,
22 directly or indirectly, in the offer or sale of securities by the use of means or
23 instruments of transportation or communication in interstate commerce or by use
24 of the mails, obtained money or property by means of untrue statements of a
25 material fact or by omitting to state a material fact necessary in order to make the
26 statements made, in light of the circumstances under which they were made, not
27 misleading.

1 Affiliates's unauthorized receipt and misappropriation of over \$2.7 million in bond
2 proceeds.

3 135. Defendant KND by engaging in the conduct described above, directly
4 or indirectly, in connection with the purchase or sale of a security, by the use of
5 means or instrumentalities of interstate commerce, of the mails, or of the facilities
6 of a national securities exchange, with scienter, made untrue statements of a
7 material fact or omitted to state a material fact necessary in order to make the
8 statements made, in the light of the circumstances under which they were made,
9 not misleading.

10 136. By engaging in the conduct described above, Defendant KND
11 violated, and unless restrained and enjoined, will continue to violate, Section 10(b)
12 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b) thereunder, 17 C.F.R.
13 § 240.10b-5(b).

14 **FOURTH CLAIM FOR RELIEF**

15 **Fraud in the Offer or Sale of Securities**

16 **Violations of Section 17(a)(2) of the Securities Act**

17 **(against KND)**

18 137. The SEC realleges and incorporates by reference paragraphs 1
19 through 121 above.

20 138. Defendant KND, as underwriter for the Authority's bond offerings,
21 made an implied recommendation that it had reviewed the accuracy of the Official
22 Statements and formed a reasonable basis for belief in the truthfulness and
23 completeness of the key representations made in those offering documents. These
24 implicit representations were false.

25 139. Moreover, Defendant KND obtained money or property by means of
26 material misrepresentations and omissions to investors in the April 2008 Official
27 Statement, including the Debt Service Schedule and the April 2008 Supplement,
28 regarding, among other things, the tax increment amount available to repay those

1 bonds and the projected annual debt service ratios for every bond year after 2008.

2 140. Defendant KND also obtained money or property by means of
3 material misrepresentations and omissions to investors in the Official Statements
4 for the November 2006 Revenue and Parity Bonds regarding, among other things,
5 KND's compensation and the use of bond proceeds.

6 141. Defendant KND also obtained money or property by means of
7 material misrepresentations and omissions to investors in the Official Statements
8 for the Authority's bonds issued from November 2006 through April 2008
9 regarding, among other things, Affiliates's unauthorized receipt and
10 misappropriation of over \$2.7 million in bond proceeds.

11 142. Defendant KND by engaging in the conduct described above, directly
12 or indirectly, in the offer or sale of securities by the use of means or instruments of
13 transportation or communication in interstate commerce or by use of the mails,
14 obtained money or property by means of untrue statements of a material fact or by
15 omitting to state a material fact necessary in order to make the statements made, in
16 light of the circumstances under which they were made, not misleading.

17 143. By engaging in the conduct described above, Defendant KND
18 violated, and unless restrained and enjoined, will continue to violate, Section 17(a)
19 of the Securities Act, 15 U.S.C. § 77q(a).

20 **FIFTH CLAIM FOR RELIEF**

21 **Fraud in the Offer or Sale of Securities**

22 **Violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act**

23 **(against Kinsell, KND and Affiliates)**

24 144. The SEC realleges and incorporates by reference paragraphs 1
25 through 121 above.

26 145. Defendants Kinsell, KND and Affiliates directed a series of acts and
27 events with the principal purpose and effect of creating a false appearance about
28 the true use of the bond proceeds and deceiving the Authority and other third

1 parties to further the scheme to misappropriate bond proceeds.

2 146. Defendants Kinsell, KIND and Affiliates, and each of them, by
3 engaging in the conduct described above, directly or indirectly, in the offer or sale
4 of securities by the use of means or instruments of transportation or
5 communication in interstate commerce or by use of the mails:

6 (a) with scienter, employed devices, schemes, or artifices to
7 defraud; and

8 (b) engaged in transactions, practices, or courses of business which
9 operated or would operate as a fraud or deceit upon the
10 purchaser.

11 147. By engaging in the conduct described above, Defendants Kinsell,
12 KIND and Affiliates, and each of them, violated, and unless restrained and
13 enjoined, will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. §
14 77q(a).

15 **SIXTH CLAIM FOR RELIEF**

16 **Fraud in Connection with the Purchase or Sale of Securities**

17 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c)** 18 **(against Kinsell, KIND and Affiliates)**

19 148. The SEC realleges and incorporates by reference paragraphs 1
20 through 121 above.

21 149. Defendants Kinsell, KIND and Affiliates directed a series of acts and
22 events with the principal purpose and effect of creating a false appearance about
23 the true use of the bond proceeds and deceiving the Authority and other third
24 parties to further the scheme to misappropriate bond proceeds.

25 150. Defendants Kinsell, KIND and Affiliates, and each of them, by
26 engaging in the conduct described above, directly or indirectly, in connection with
27 the purchase or sale of a security, by the use of means or instrumentalities of
28 interstate commerce, of the mails, or of the facilities of a national securities

1 exchange, with scienter:

2 (a) employed devices, schemes, or artifices to defraud; and

3 (b) engaged in acts, practices, or courses of business which
4 operated or would operate as a fraud or deceit upon other
5 persons.

6 151. By engaging in the conduct described above, Defendants Kinsell,
7 KND and Affiliates, and each of them, violated, and unless restrained and
8 enjoined, will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. §
9 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

10 **SEVENTH CLAIM FOR RELIEF**

11 **Aiding and Abetting Violations of Section 10(b)**

12 **of the Exchange Act and Rule 10b-5**

13 **(against the City, KND, Kinsell, Williams and Metzler)**

14 152. The SEC realleges and incorporates by reference paragraphs 1
15 through 121 above.

16 153. Defendant Authority violated Section 10(b) of the Securities Act and
17 Rule 10b-5(b) thereunder by making material misrepresentations and omissions to
18 investors in the April 2008 Official Statement regarding, among other things, the
19 tax increment amount available to repay those bonds and the projected annual debt
20 service ratios for every bond year after 2008.

21 154. Defendants City, Metzler, KND, Kinsell and Williams knowingly
22 provided substantial assistance to the Authority in its violation of Section 10(b) of
23 the Securities Act and Rule 10b-5(b) thereunder in connection with the Authority's
24 April 2008 Bond offering.

25 155. Defendant KND violated Section 10(b) of the Securities Act and Rule
26 10b-5(b) thereunder by making material misrepresentations and omissions to
27 investors (1) in the April 2008 Official Statement regarding, among other things,
28 the tax increment amount available to repay those bonds and the projected annual

1 debt service ratios for every bond year after 2008; (2) in the Official Statements for
2 the November 2006 Revenue and Parity Bonds regarding, among other things,
3 KND's compensation and the use of bond proceeds; (3) in the Official Statements
4 for the Authority's bonds issued from November 2006 through April 2008
5 regarding, among other things, Affiliates's unauthorized receipt and
6 misappropriation of over \$2.7 million in bond proceeds and KND's professional
7 review of the accuracy of the Authority's Official Statements and its reasonable
8 basis for belief in the truthfulness and completeness of the key representations
9 made in those offering documents.

10 156. Defendants Kinsell and Williams knowingly provided substantial
11 assistance to KND in its violation of Section 10(b) of the Securities Act and Rule
12 10b-5(b) thereunder in connection with the Authority's bond offerings from
13 November 2006 through April 2008.

14 157. By engaging in the conduct described above, Defendants City,
15 Metzler, KND, Kinsell and Williams, and each of them, aided and abetted and,
16 unless restrained and enjoined, will continue to aid and abet violations of Section
17 10(b) of the Securities Act and Rule 10b-5 thereunder.

18 **EIGHTH CLAIM FOR RELIEF**

19 **Violations of Section 15B(c)(1) of the Exchange Act and**

20 **MSRB Rules G-17, G-27 and G-32(a)(iii)(A)(2)**

21 **(against KND)**

22 158. The SEC realleges and incorporates by reference paragraphs 1
23 through 121 above.

24 159. Defendant KND, by engaging in the conduct described above, directly
25 or indirectly, by use of means or instrumentalities of interstate commerce, or of the
26 mails, to effect a transaction in, or to induce the purchase or sale of, a municipal
27 security in contravention of Rules promulgated by the Municipal Securities
28 Rulemaking Board ("MSRB"), in particular Rules G-17, G-27 and G-

1 32(a)(iii)(A)(2).

2 160. Defendant KND, by engaging in the conduct described above,
3 directly or indirectly, by use of means or instrumentalities of interstate commerce,
4 or of the mails, to provide advice to or on behalf of a municipal entity with respect
5 to municipal financial products or the issuance of municipal securities in
6 contravention of Rules promulgated by the MSRB, in particular Rules G-17, G-27
7 and G-32(a)(iii)(A)(2).

8 161. By engaging in the conduct described above, Defendant KND
9 violated, and unless restrained and enjoined, will continue to violate, Section 15B
10 of the Exchange Act, 15 U.S.C. § 78o-4.

11 **NINTH CLAIM FOR RELIEF**

12 **Aiding and Abetting Violations of Section 15B(c)(1) of the Exchange Act**
13 **and MSRB Rules G-17, G-27 and G-32(a)(iii)(A)(2)**
14 **(against Kinsell and Williams)**

15 162. The SEC realleges and incorporates by reference paragraphs 1
16 through 121 above.

17 163. By engaging in the conduct alleged above, Defendant KND violated
18 Section 15B(c)(1) of the Exchange Act and MSRB Rules G-17, G-27 and G-
19 32(a)(iii)(A)(2).

20 164. Defendant Kinsell knowingly provided substantial assistance to KND
21 in its violations of Section 15B(c)(1) of the Exchange Act and MSRB Rules G-17,
22 G-27 and G-32(a)(iii)(A)(2).

23 165. Defendant Williams knowingly provided substantial assistance to
24 KND in its violations of Section 15B(c)(1) of the Exchange Act and MSRB Rule
25 G-17.

26 166. By engaging in the conduct described above, Defendant Kinsell aided
27 and abetted and, unless restrained and enjoined, will continue to aid and abet
28 violations of Section 15B(c)(1) of the Securities Act and MSRB Rules G-17, G-27

1 and G-32(a)(iii)(A)(2).

2 167. By engaging in the conduct described above, Defendant Williams
3 aided and abetted and, unless restrained and enjoined, will continue to aid and abet
4 violations of Section 15B(c)(1) of the Securities Act and MSRB Rule G-17.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, the SEC respectfully requests that the Court:

7 **I.**

8 Issue findings of fact and conclusions of law that the Authority, the City,
9 KND, Affiliates, Kinsell, Williams and Metzler committed the alleged violations.

10 **II.**

11 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
12 Civil Procedure, permanently enjoining Defendant Authority and its agents,
13 servants, employees, and attorneys, and those persons in active concert or
14 participation with any of them, who receive actual notice of the judgment by
15 personal service or otherwise, and each of them, from violating Section 17(a) of
16 the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15
17 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §§ 240.10b-5.

18 **III.**

19 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
20 Civil Procedure, permanently enjoining Defendant KND and its agents, servants,
21 employees, and attorneys, and those persons in active concert or participation with
22 any of them, who receive actual notice of the judgment by personal service or
23 otherwise, and each of them, from violating Section 17(a) of the Securities Act, 15
24 U.S.C. § 77q(a), and Sections 10(b) and 15B(c)(1) of the Exchange Act, 15 U.S.C.
25 §§ 78j(b) and 78o-4(c)(1), Rule 10b-5thereunder, 17 C.F.R. §§ 240.10b-5 and
26 MSRB Rules G-17, G-27 and G-32(a)(iii)(A)(2),and from aiding and abetting
27 violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

1 **IV.**

2 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
3 Civil Procedure, permanently enjoining Defendant Affiliates and its agents,
4 servants, employees, and attorneys, and those persons in active concert or
5 participation with any of them, who receive actual notice of the judgment by
6 personal service or otherwise, and each of them, from violating Section 17(a) of
7 the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15
8 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §§ 240.10b-5.

9 **V.**

10 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
11 Civil Procedure, permanently enjoining Defendant City and its agents, servants,
12 employees, and attorneys, and those persons in active concert or participation with
13 any of them, who receive actual notice of the judgment by personal service or
14 otherwise, and each of them, from aiding and abetting violations of Section 10(b)
15 of the Exchange Act, 15 U.S.C. §§ 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §§
16 240.10b-5.

17 **VI.**

18 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
19 Civil Procedure, permanently enjoining Defendant Metzler and his agents,
20 servants, employees, and attorneys, and those persons in active concert or
21 participation with any of them, who receive actual notice of the judgment by
22 personal service or otherwise, and each of them, from aiding and abetting
23 violations of Section 10(b) of the Exchange Act, 15 U.S.C. §§ 78j(b), and Rule
24 10b-5 thereunder, 17 C.F.R. §§ 240.10b-5.

25 **VII.**

26 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
27 Civil Procedure, permanently enjoining Defendant Kinsell and his agents, servants,
28 employees, and attorneys, and those persons in active concert or participation with

1 any of them, who receive actual notice of the judgment by personal service or
2 otherwise, and each of them, from violating Section 17(a) of the Securities Act, 15
3 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. §§ 78j(b), and
4 Rule 10b-5thereunder, 17 C.F.R. §§ 240.10b-5, and from aiding and abetting
5 violations of Sections 10(b) and 15B(c)(1) of the Exchange Act, Rule 10b-5
6 thereunder, and MSRB Rules G-17, G-27 and G-32(a)(iii)(A)(2).

7 **VIII.**

8 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
9 Civil Procedure, permanently enjoining Defendant Williams and her agents,
10 servants, employees, and attorneys, and those persons in active concert or
11 participation with any of them, who receive actual notice of the judgment by
12 personal service or otherwise, and each of them, from aiding and abetting
13 violations of Sections 10(b) and 15B(c)(1) of the Exchange Act, Rule 10b-5
14 thereunder, and MSRB Rule G-17.

15 **IX.**

16 Order Defendants City, Authority, KND, Affiliates, Kinsell, Williams and
17 Metzler and Relief Defendant Holdings to disgorge all ill-gotten gains from their
18 illegal conduct, together with prejudgment interest thereon.

19 **X.**

20 Order Defendants City, Authority, KND, Affiliates, Kinsell, Williams and
21 Metzler to pay civil penalties under Section 20(d) of the Securities Act, 15 U.S.C.
22 § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

23 **XI.**

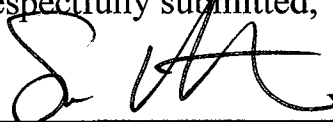
24 Retain jurisdiction of this action in accordance with the principles of equity
25 and the Federal Rules of Civil Procedure in order to implement and carry out the
26 terms of all orders and decrees that may be entered, or to entertain any suitable
27 application or motion for additional relief within the jurisdiction of this Court.
28

XII.

Grant such other and further relief as this Court may determine to be just and necessary.

Dated: April 29, 2013

Respectfully submitted,



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Securities and Exchange Commission