

Dept. 22

Stacy Speiller
JUDGE

**STANISLAUS COUNTY
SUPERIOR COURT
STATE OF
CALIFORNIA**

5/21/2025

Misc. Court Order

Christina Gonzalez
Clerk

WESTERN HILLS WATER
DISTRICT vs WORLD
INTERNATIONAL LLC

Case No. CV-24-003049

RULING ON MOTION TO COMPEL ARBITRATION

Having taken this matter under submission on March 6, 2025, the Court now rules as follows: For the reasons set forth below, the motion to compel arbitration is GRANTED in part and DENIED in part. Plaintiff's Request for Judicial Notice is also GRANTED in part and DENIED in part. Moving Defendants' request for a stay of the court action pending arbitration is DENIED.

BACKGROUND:

This case began on April 19, 2024. The operative pleading is the Verified First Amended Complaint (FAC) filed on October 24, 2024.

Parties Involved

- The Plaintiff is the Western Hills Water District (also referred to herein as WHWD). WHWD is a public agency water district in California.
- World International, LLC (also referred to herein as World) is a Delaware limited liability company conducting business in California.
- Three60 LLC is a Delaware limited liability company and the parent company of World.
- Angels Crossing LLC is alleged to be the successor-in-interest to World's interest in the Diablo Grande development.
- Guillermo Marrero, Carmen Kearney, and Douglas Kearney are individuals associated with both World and WHWD. Specifically, Guillermo Marrero and his firm, International Practice Group (IPG), have served as outside counsel for World. Carmen Kearney is alleged to have served as the CFO of World. Douglas Kearney has served as an Asset Manager for World. All three individuals have served as members of the WHWD Board.

History of Diablo Grande and Western Hills Water District

The following statements are drawn from the FAC:

- **Creation of Western Hills Water District:**
 - WHWD was formed in 1992 to serve as the water-sewer-storm drainage service provider for the Diablo Grande golf resort and residential development.

MINUTE ORDER

- **Diablo Grande Development:**

- The Diablo Grande subdivision development project was approved as a Vesting Tentative Map by the Stanislaus County Board of Supervisors on December 7, 1999. The development is located in the hills approximately 8 miles west of Interstate 5 and the City of Patterson within Stanislaus County.
- The development was initially owned by Diablo Grande LP, which was the sole landowner/developer at the time. Mello Roos bonds¹ were issued to build all the facilities of the WHWD and manage other public areas within Diablo Grande.

- **Financial and Legal Arrangements:**

- WHWD issued several bonds to finance new facilities and infrastructure, including the 2001 Bonds, 2002 Bonds, and 2005 Bonds, primarily to construct and acquire public infrastructure improvements of benefit to the District.
- The Master Agreement to Provide Water, Sewer, and Storm Drainage Services was entered into on June 4, 1998, between WHWD and Diablo Grande Limited Partnership. This agreement was later assumed by World International, LLC, following the sale of the Diablo Grande development.

- **Bankruptcy and Ownership Changes:**

- Diablo Grande LP filed for Chapter 11 bankruptcy on March 10, 2008, having been severely impacted by a downturn in the real estate industry. The final order closing the bankruptcy case was issued on July 2, 2011.
- On September 16, 2008, the Bankruptcy Court authorized the sale of assets by Diablo Grande LP to World International, LLC. The sale closed on or about October 7, 2008.

- **Subsequent Events:**

- World experienced financial difficulties beginning in approximately 2018. Despite these difficulties, World indicated in 2019 that it had a prospective buyer for the Diablo Grande project who would assume World's obligations under the Amended Master Agreement: Angels Crossing LLC.

¹ The Mello–Roos Community Facilities Act of 1982 is codified in Title 5, Division 2, Part 1, Chapter 2.5 of the Government Code (§§ 53311- 53368.3). This Act “provides an alternative method of financing certain public capital facilities and services, especially in developing areas and areas undergoing rehabilitation.” (Gov’t Code, § 53311.5.) The Act “authorizes local government agencies ... to form community facilities districts to ‘finance the purchase, construction, expansion, improvement, or rehabilitation of any real or other tangible property with an estimated useful life of five years or longer,’ as well as related planning and design work. (Gov.Code, § 53313.5.) The financed facilities need not be physically located within the Mello–Roos district. (Gov.Code, § 53313.5.) Funding under the Act is through the use of special taxes, submitted to a 2/3 voter approval. (Gov.Code, §§ 53326, 53328.)” (*Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School Dist.* (1992) 9 Cal.App.4th 464, 467.)

- On April 24, 2020, the WHWD Board of Directors conditionally approved the Assignment, Assumption, and Release Agreement concerning World and Angels Crossing, but subsequent issues arose regarding the fulfillment of obligations to WHWD.

Key Contracts

The following agreements are material to this case:

- **1998 Master Agreement**

- WHWD and Diablo Grande LP entered into the “Master Agreement to Provide Water, Sewer, and Storm Drainage Services” (Master Agreement) on June 4, 1998. Pursuant to the terms of the Master Agreement, WHWD agreed to provide permanent water, sewer, and storm drainage services to all agricultural, municipal, and recreational areas within the Diablo Grande project. Diablo Grande LP, in turn, was required to advance funds to WHWD to cover operational costs until WHWD's revenues were sufficient to meet those costs. The advances were treated as loans with an interest rate of 8% per annum. (See 4/19/24 Compl. at pdf pp. 44-46.)
- Of note, Section 7 of the Master Agreement stated,

7. Operational Costs. Diablo Grande agrees to advance funds to Western as necessary to pay for the costs of operation until such time as Western's revenues are sufficient to meet the costs of operation. All such funds shall be treated as a loan to Western by DG which shall bear interest at the rate of eight percent (8%) per annum until paid in full. Western agrees to retire the debt created under this paragraph when its revenues begin to exceed its operation costs. At that time, the parties shall meet and confer to determine an appropriate schedule for repayment of the loan.
- This agreement was assumed by World on acquisition of the Diablo Grande development. (See 2009 Addendum at Recital ¶ C [“Pursuant to the Purchase Agreement, World assumed the Master Agreement.”].)

- **2009 Addendum**

- After Diablo Grande LP's bankruptcy and World's acquisition of the Diablo Grande development, an Addendum was presented to the WHWD Board and entered into effective May 14, 2009.
- Per the Addendum, the parties agreed to modify Section 7 of the Master Agreement to state as follows:

7. Operational and Capital Costs.

- a. In providing services under this Agreement, Western will incur operational costs, costs to replace existing capital assets, and costs for new capital assets. For purposes of this Section 7, "capital assets" shall be generally understood to mean land, buildings, plant and equipment, contract rights to water, patents, and other tangible or intangible assets with a useful life greater than one year. Operational costs shall include principal and interest payments on any outstanding debt other than to World but excluding any debt owed to Veolia North America.
- b. Western shall provide World with a proposed annual budget by November 1 of each year for World's review and comment. The annual budget shall include, among other things, line item detail of proposed operational costs, proposed costs for the replacement of existing capital assets, and proposed costs for the acquisition of new capital assets. The annual budget shall also include the projected timing by month of payments for such operational and capital costs. World agrees to provide Western with its comments/objections within thirty calendar days of receipt of the proposed annual budget.
- c. Upon approval of each annual operational budget by the Western Board of Directors and the approval of each annual capital budget by both Western's Board of Directors and World, World agrees to advance funds in accordance with the approved budget and in accordance with the projected monthly timing of the proposed expenditures contained within the approved budgets.
- d. World is not required to advance funds needed to pay the costs for the replacement of existing capital assets or for the acquisition of new capital assets. World agrees to review the proposed capital expenses and in its discretion to advance funds to acquire said capital assets provided that any such funds advanced shall be secured by the security interest granted to World under Section 7i below.
- e. Notwithstanding anything to the contrary in this Section 7, World shall not be responsible for advancing any funds to Western for any debt owed by Western to any of its vendors, providers, suppliers, lenders, employees or agents, which debt accrued prior to October 7, 2008. World agrees that the \$20,000 that the

Bankruptcy Court approved in settlement of World's administrative claim concerning those pre-October 7, 2008 debts of Western shall be paid to Western for use in settling the pre-October 7, 2008 non-Veolia debts and shall not be considered in any way as an advancement of funds to Western. Western agrees that it shall be responsible for the amount of \$15,461.37 in attorney's fees and costs incurred by World in procuring the \$20,000 settlement, which amount shall be deducted by World from the \$20,000 payable to Western.

f. In the event that Western seeks additional funds above the amount set forth in the approved annual budget for either operations expenditures or capital expenditures, any additional funds requested may be advanced by World in its discretion and any and all sums advanced by World as a result of said increases shall be subject to the mutual agreement of World and Western.

g. Subject to the required periodic audit of Western's financial statements, the parties agree that as of April 30th, 2009, World has advanced to Western the total sum of \$1,043,384.33, excluding all accrued interest, and the parties further agree that by March 1 of each year World will submit a statement of the amount of sums advanced in the preceding 12 months, which statement will be conclusive (subject to the required periodic audit of Western's financial statements) unless within thirty days thereof, Western disputes the amount of sums advanced and submits documentation that supports and confirms the amounts actually advanced. The summary submitted by World shall also include the cumulative total of all sums advanced on a historical basis.

h. All funds advanced shall be treated as a loan from World to Western. All funds advanced shall bear interest at the rate of eight percent (8 %) per annum simple interest until paid in full.

i. Security Interest. Subject to any limitations on the granting of security interests in a public agency's assets and subject to Western's repayment obligation set forth below, in consideration of World's advancing funds in accordance with this Section 7, Western hereby grants to World a security interest in the capital assets funded with World's advances and in such other assets owned by World. The parties agree to enter into a commercially reasonable security agreement or agreements setting forth the specific terms and conditions of the security interest therein.

j. World may elect to cease advancing funds to Western for operating costs if and when World determines that Western's revenues are sufficient to meet the following on an on-going basis: (a) annual costs of operations; (b) annual costs for capital improvements and replacements; (c) an operating reserve fund as determined by Western's Board of Directors and (d) the principal and interest payments on any outstanding debt other than to World. Sums (a) and (c) in this

MINUTE ORDER

subsection shall not exceed ten percent (10.0%) of the prior fiscal year's actual operating expenditures. Sum (b) shall not exceed ten percent (10.0%) of the average of the prior three (3) fiscal years' actual capital expenditures.

k. In the event World elects to cease one hundred per cent (100%) of the funding, it shall provide not less than 18 months advanced, written notice to Western, and such notice shall be timed so that if funding ceases, it ceases at the end of Western's fiscal year. Example: With a World notice dated June 15, 2015, World shall cease advancing funds after December 31, 2016. World's notice shall also include World's proposed repayment plan. World's determination to cease advance funding and World's proposed repayment plan for funds advanced for both operational and capital costs must be reasonable and made in good faith and be based upon Western's audited financial statements and a reasonable three-year projection of Western's revenues and expenses, showing that Western would have sufficient projected revenues to meet the projected expenses set forth in Subsection 7j above.

l. Should Western disagree with World's determination under Subsection 7, Western may invoke the disputes resolution procedure set forth below. The vote by the Western Board of Directors as to whether or not it agrees with World's determination and to invoke the disputes procedure shall be only by those Western directors who do not have a financial interest in the decision in accordance with the District's Conflicts of Interest Code and the regulations of the California Fair Political Practices Commission, including, but not limited to, because the director is employed by or is a consultant to World. World agrees that such a vote by Western's Board may be by less than a majority of a quorum. World further agrees that should all Western directors have a financial interest in the decision, then Western may request the Stanislaus County Superior Court to appoint a qualified representative or representatives to act on behalf of Western for purposes of this Section 7.

m. Disputes Resolution Procedure.

(1) The parties shall attempt in good faith to resolve any dispute **arising out of or relating to this Section 7**, promptly by negotiation between representatives who have authority to settle the controversy. Any party may give the other party written notice of a dispute, which notice shall include a statement of that party's position and a summary of arguments supporting that position. Within fifteen (15) calendar days after receipt of the notice, the receiving party shall respond with a statement of that party's position and a summary of argument supporting that position. All negotiations pursuant to this subsection are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

(2) If the dispute has not been resolved by negotiations within twenty (20) calendar days of the disputing party's notice, the parties shall endeavor to settle the dispute by mutual agreement.

(3) Any dispute **arising out of Section 7**, which has not been resolved by the above dispute resolution procedure within twenty (20) calendar days of the initiation of such procedure, shall be finally resolved by arbitration by a sole arbitrator in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall be qualified by education, training, and experience in public agency finances and shall not have a conflict of interest. As to any dispute over World's determination under Subsection 7j, the arbitrator is only authorized to make a binding determination to approve or disapprove World's determination; however, the arbitrator is also authorized to recommend a non-binding repayment plan for consideration by the parties. The place of arbitration shall be Patterson, California, unless otherwise agreed to by the parties.

(4) The time limits specified in Subsection 7m shall be suspended during the time taken to obtain any action by the Stanislaus County Superior Court.

(5) All arbitrators to be selected pursuant to this Section 7 shall avoid a conflict of interest and the appearance of a conflict of interest at the time of selection and during and after arbitration. A conflict of interest can arise from involvement by an arbitrator with the subject matter of the dispute or from any relationship between him/her and any participant, whether past or present, personal or professional, that reasonably raises a question of his/her impartiality.

(6) The costs for any arbitrator shall be borne equally between the parties. The prevailing party in any arbitration shall not be entitled to be awarded its attorneys' fees and costs.

(4/19/24 Compl., at pp. 54-57 [emphases added].)

- **2020 Assignment, Assumption, and Release Agreement (AA&R Agreement)**
 - The AA&R Agreement facilitates the transfer of World's obligations and liabilities to Angel's Crossing, with WHWD's consent and release of World from any future claims related to the Master Agreement.

MOTION TO COMPEL ARBITRATION:

MINUTE ORDER

On November 26, 2024, Defendants World International, LLC, Three60 LLC, Guillermo Marrero, Carmen Kearney, and Douglas Kearney filed a motion to compel arbitration.²

Motion

In their supporting memorandum, Moving Defendants argue that Western Hills Water District is obligated to arbitrate all claims against them based on a binding arbitration agreement in the Amended Master Agreement, specifically Section 7, which governs operational and capital costs. Defendants assert that the Plaintiff's claims are closely related to the arbitration agreement and should be resolved through arbitration, as the claims seek to hold World liable for costs under Section 7. The motion also requests that the Court stay all litigation pending a decision on the motion and the completion of arbitration, to prevent inconsistent rulings and conserve judicial resources.

Opposition

In opposition, Plaintiff argues, *inter alia*, that the arbitration agreements are void and unenforceable due to violations of California Government Code §1090 and related public disclosure statutes. It notes that the FAC challenges the May 14, 2009 Addendum to the Master Agreement—the agreement that includes the arbitration provision—as void due to unlawful conduct by the Defendants. Plaintiff argues that the Addendum was approved under questionable circumstances, including conflicts of interest and inadequate disclosures by WHWD Board members. Plaintiff contends that, because the Addendum was obtained unlawfully, it cannot be used to enforce arbitration.

Reply

Moving Defendants respond that the case has been pending in the wrong forum for over a year and should be transferred to arbitration based on the valid arbitration provision in the Addendum to the Master Agreement. Moving Defendants accuse WHWD of trying to evade its contractual obligation to arbitrate by appealing to jury sympathies “when seeking to hold the wrong party (World) liable for the debts of another (Angels Crossing), in the name of public interest.” (2/4/25 Reply, at p. 4.) Defendants further assert that Plaintiff’s sole defense against arbitration is based on purported conflicts of interest. According to Defendants, these contentions regarding conflicts are invalid for several reasons, including (1) the FAC is a sham pleading, (2) the argument is time-barred, and (3) there is no legally prohibited financial interest involved. Defendants again argue that all claims against them, except the first cause of action, are subject to arbitration and that the non-signatory Defendants can enforce the arbitration provision under the equitable estoppel doctrine.

Hearing

On March 6, 2025, the Court heard oral argument and took this matter under submission.

DISCUSSION:

² This was the Moving Defendants’ second motion to compel arbitration. The hearing on the first motion was vacated at the Moving Defendants’ request.

Request for Judicial Notice

In support of its opposition, Plaintiff filed a Request for Judicial Notice (RJN) with 13 attachments. Defendants objected to Attachments 2, 3, 6, 10, 11, and 13, contending they are not appropriate for judicial notice because they contain subjective legal opinions, are not facts of common knowledge, and are not reasonably indisputable. Defendants also objected to the Court taking judicial notice of the truth of the facts contained in Attachments 4, 5, 7, and 12.

The Court indicated in its tentative ruling for the March 6, 2025 hearing that it was denying the RJN as to Attachment Nos. 2, 3, 6, 10, 11 and 13. For the reasons explained below, the Court revises its ruling to take judicial notice of the filing and existence of RJN Nos. 10, 11, and 13. As for the remaining items, the Court takes judicial notice of the existence of those documents and their legal effect but not the truth of any hearsay statements contained therein. (See *Fremont Indem. Co. v. Fremont Gen. Corp.* (2007) 148 Cal.App.4th 97, 113; *Arce v. Kaiser Found. Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482-484; *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 752-761, *as modified on denial of reh'g* (Apr. 16, 2013).)

- **Attachment 2** is correspondence to Mr. Marcos from David L. Hobbs Regarding the Addendum to Master Agreement to Provide Water, Sewer and Storm Drainage Services, dated October 14, 2019 and December 22, 2017. Plaintiff has asked the Court to take judicial notice pursuant to Evidence Code § 452, subdivisions (g)—"Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute", and (h)—"Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." In the Court's opinion, these letters do not meet the criteria for either of these categories.
- **Attachment 3** is the Fair Political Practice Commission Advice Letter A-16-254 to Mr. Hensley, City Attorney. Again, Plaintiff has submitted these under Evidence Code § 452(g) and (h). Again, the Court disagrees that this letter qualifies under those subdivisions.
- **Attachment 6** is WHWD's Master Agreement and Addendum to the Master Agreement. The Master Agreement is not an appropriate document for separate judicial notice in this context. With that stated, the Court notes that the Master Agreement was attached as an exhibit to the original verified complaint, and there has been no dispute regarding the authenticity of its contents.
- **Attachment 10** is California Form 700 - Carmen Kearney's Statement of Economic Interests required by Govt §87100 filed with the Clerk of the Board of Supervisors, Stanislaus County signed on April 7, 2009. Plaintiff has asked the Court to take judicial notice under § 452(g) and (h). Actually, because the submission of a Form 700 is part of the official duties of certain public officials and employees, the Court may take judicial notice of the existence and filing of the form pursuant to Evidence Code § 452(c).

- **Attachment 11** is Bryan Domyan's Information for Appointment to the Office of Western Hills Water District and California Form 700-Statement of Economic Interests required by Government Code § 87100 filed with the Clerk of the Board of Supervisors, Stanislaus County signed on March 31, 2009. Plaintiff has asked the Court to take judicial notice under § 452(g) and (h). As with the Form 700, the judicial notice of the existence and filing of an application for appointment to a public office that is submitted to a government agency and is a matter of public record is warranted under Evidence Code § 452(c).
- **Attachment 13** is Guillermo Marrero's Information for Appointment to the Office of Western Hills Water District and Hold Harmless indemnity letters for Marrero and C. Kearney. For the reasons stated above, the Court can take judicial notice of the existence and filing of this document pursuant to Evidence Code § 452(c).

Enforcement of Arbitration Agreements under California Law

California's statutory scheme for enforcing arbitration agreements is part of the California Arbitration Act ("CAA") and is set forth in Code of Civil Procedure §§ 1281-1281.99.

Code of Civil Procedure § 1281 states, "A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract."

"On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that: (a) The right to compel arbitration has been waived by the petitioner; or (b) Grounds exist for rescission of the agreement." (Code Civ. Proc., § 1281.2(a)-(b).)

Courts are to apply the same procedural rules to an arbitration agreement as they would to any other contract. (See *Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 583.)

"Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence. If the party opposing the petition raises a defense to enforcement—either fraud in the execution voiding the agreement or a statutory defense of waiver or revocation—that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense." (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 397; see also *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972, *as modified* (July 30, 1997) [following *Rosenthal* and applying it to an arbitration provision governed by California law].)

Questions regarding the validity or enforceability of an arbitration agreement "are to be resolved by the trial court in the manner provided for the hearing and decision of motions (Code Civ. Proc., § 1290.2), either on the basis of affidavits or declarations or, in the exercise of the court's discretion where necessary to resolve material conflicts in the written evidence, upon live testimony." (*Rosenthal, supra*, 14 Cal.4th, at p. 402.)

Government Code §§ 1090 and 1092

Plaintiff argues in this case that the 2009 Addendum should be deemed void pursuant to Government Code § 1092, which draws from Government Code § 1090.

Government Code § 1090 states,

(a) Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).

(c) As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

Gov't Code § 1092 then states,

(a) Every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein. No such contract may be avoided because of the interest of an officer therein unless the contract is made in the official capacity of the officer, or by a board or body of which he or she is a member.

(b) An action under this section shall be commenced within four years after the plaintiff has discovered, or in the exercise of reasonable care should have discovered, a violation described in subdivision (a).

Plaintiff Failed to Show that the 2009 Addendum Is Still Voidable

There is no dispute that the 2009 Addendum was executed by both parties. Moving Defendants provide evidence of that, and Plaintiff does not dispute this point. Rather, Plaintiff's opposition focuses on the argument that the 2009 Addendum is void due to unlawful conduct on the part of the WHWD then-directors, Defendant Marrero, Defendant C. Kearney, and Bryan Domyan, who either failed to disclose they were financially interested in the contract or who should have been more forthcoming about their financial ties to World.

There are evidentiary issues with Plaintiff's opposition. As noted above, Plaintiff attached to its Request for Judicial Notice several documents that cannot be judicially noticed; rather, the documents should have been filed as exhibits authenticated by an appropriate declaration. Nonetheless, assuming *arguendo* that everything Plaintiff alleges is true and properly supported by evidence, the 2009 Addendum would only be voidable, not void. Government Code § 1092 states that a contract made by a public official who has an improper financial interest in the

agreement “may be avoided,” not that it is void. “ ‘A voidable contract is a contract which, in its inception, is valid and capable of producing the results of a valid contract, but which may be “avoided,” i.e. rendered void at the option of one (or even, though rarely, of both) of the parties.’ P.S. Atiyah, *An Introduction to the Law of Contract* 37–38 (3d ed. 1981).” (CONTRACT, Black's Law Dictionary (12th ed. 2024).)

Moreover, Government Code § 1092(b) mandates that a contract that is voidable under § 1092(a) is subject to a four-year statute of limitations. Because the contract at issue was executed well over four years ago, Plaintiff had the burden of showing that it only discovered the conflicting financial interests of the 2009 Board members within the last four years or that the statute of limitations was tolled for some other reason. At a minimum, Plaintiff should have indicated when the composition of the Board changed such that World-affiliated members no longer comprised the majority of the Board. But Plaintiff's opposition completely fails to address this issue.

Plaintiff (via its counsel) asserted at the hearing on this matter that World-affiliated members controlled the WHWD Board until mid-2020, at least, and that the Court was already aware of this fact from a prior case. (See 3/6/25 Hrg. Tr., at pp. 11:8-12:21.) However, Plaintiff's counsel's representations at the hearing do not constitute admissible *evidence* by which the Court can substantiate the Board member timeline. Furthermore, a review (albeit a quick one) of the complaint and motion for summary judgment in Case No. CV-21-003252 failed to reveal the composition of the Board during the relevant period.

Consequently, Plaintiff's opposition to the motion fails. (See *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 397 [quoted *supra*].)

The Court clarifies that its ruling is not a final determination on the validity of the 2009 Addendum; it is merely based on the evidence that was presented in conjunction with *this* motion.

Bryan Domyan's Purported Ineligibility for Office Does Not Render His Official Acts Void

Plaintiff also contends that Bryan Domyan, one of the WHWD Board members who approved the 2009 Addendum, was never eligible to serve as a Board member. However, this fact does not render his official acts void. California recognizes the de facto officer doctrine: “The de facto doctrine in sustaining official acts is well established. Present a de jure office, ‘Persons claiming to be public officers while in possession of an office, ostensibly exercising their functions

lawfully and with the acquiescence of the public, are de facto officers. * * * The lawful acts of an officer de facto, so far as the rights of third persons are concerned, are, if done within the scope and by the apparent authority of office, as valid and binding as if he were the officer legally elected and qualified for the office and in full possession of it.' [Citations.]" (*In re Bunker Hill Urban Renewal Project 1B of Community Redevelopment Agency of City of Los Angeles* (1964) 61 Cal.2d 21, 42.)

Plaintiff may well counter that, even if serving as a de facto officer, Mr. Domyan's approval of the contract addendum was not "lawful" because he failed to disclose a financial interest in World. But this argument circles back to the statute of limitations issue discussed *supra*.

Scope of Arbitration Clause in 2009 Addendum

One of the points of contention between the parties is the scope of the arbitration clause in the 2009 Addendum. The Court notes that, while the parties agreed to negotiate in good faith regarding any dispute "arising out of or relating to" Section 7 (see 2009 Addendum § 7(m)(1)), they only contractually agreed to arbitrate disputes "*arising out of*" Section 7 (see 2009 Addendum § 7(m)(3) [emphasis added]). This terminology significantly narrows the scope of the arbitration provision. (Cf. *Tracer Research Corp. v. National Environmental Services Co.* (9th Cir. 1994) 42 F.3d 1292, 1295 [finding that the phrase "arising out of," like "arising under," is limited in scope when not coupled with the phrase "relating to"].)

The Court previously determined that only the fourth cause of action, for breach of contract brought against World and Three60, "arises out of" section 7 of the 2009 Addendum. Having again reviewed the allegations of the FAC, the Court's position on this issue remains unchanged.

Specifically, the first cause of action seeks a declaration that the May 2009 Addendum is void "due to prohibited unlawful conduct in violation of Government Code §§ 1090 et seq. re Conflicts of Interests and related regulatory statutes." (10/24/24 FAC at p. 22.) In other words, the cause of action arises out of approval and execution of the 2009 Addendum as a whole, not out of the provisions of Section 7. And indeed, Defendants acknowledge in their reply that, even under their broader interpretation of the arbitration clause, the first cause of action would not be subject to arbitration. (See 2/4/25 Reply, at p. 12.)

Similarly, the second cause of action, also for declaratory relief, arises out of the approval and execution of the 2020 AA&R Agreement. The third cause of action, again for declaratory relief, questions the interpretation and application of an alleged condition precedent in the 2020 AA&R Agreement. The fifth cause of action alleges breach of the 2020 AA&R Agreement. The sixth cause of action contends that Defendants Marrero, C. Kearney, and D. Kearney breached their fiduciary duties to WHWD. The seventh cause of action accuses Defendants Marrero, C. Kearney, and D. Kearney of breaching their statutory duties vis-à-vis WHWD. The eighth cause of action alleges fraudulent inducement of contract relating to execution of the 2020 AA&R Agreement. The ninth cause of action asserts that Defendants World, Three60, Angels Crossing,

and Marrero committed fraud, misrepresentation, and fraudulent concealment that harmed WHWD in lead-up to the execution of the 2020 AA&R Agreement. The tenth cause of action accuses Defendants World, Three60, Angels Crossing, Marrero, and C. Kearney of conspiracy to commit fraud relating to the transfer of obligations from World to Angels Crossing through the 2020 AA&R Agreement. In short, none of these causes of action “arise out of” Section 7 itself.

Additional Issues

The Court recognizes that both the Moving Parties and Opposing Party raised many other arguments in their papers that the Court has not addressed herein. The Court focused on the issues that it deemed most material to its ruling.

Ordering of Matters; Possible Stay

As the Court previously stated in its ruling dated November 22, 2024, it is the Court’s position that the issues presented by the fourth cause of action are discrete and can be severed from the remainder of the complaint. Furthermore, given that, if Plaintiff is successful on its first cause of action, the 2009 Addendum would be deemed void, the Court is of the opinion that the arbitration should be stayed pending a determination on the merits of the rest of the complaint.

The Court notes that a case management conference is set for September 22, 2025. At the CMC, the Court will hear from the parties on whether the arbitration should be stayed pending trial.

Conclusion

For the reasons set forth above, the Court GRANTS the motion to compel arbitration only as to the fourth cause of action. Because the fourth cause of action is discrete and is brought only against Defendants World and Three60, (1) the arbitration shall not involve the claims brought against the other Defendants; and (2) the Court DENIES Defendants’ request to stay the judicial case pending arbitration. Rather, the Court shall discuss with the parties the ordering of events at the next case management conference.

Proposed Order

Moving Defendants are directed to submit a proposed order within five court days that conforms to this ruling.

IT IS SO ORDERED.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS801 10th Street, 4th Floor

Modesto, CA 95355

WESTERN HILLS WATER DISTRICT vs WORLD
INTERNATIONAL LLC

Case #:

CV-24-003049

CLERK'S CERTIFICATE OF MAILING SERVICE

I certify that I am over the age of 18, employed by the Superior Court of the State of California, County of Stanislaus, and not a party to this action. I certify that I served a copy of the attached **RULING ON MOTION TO COMPEL ARBITRATION** by mail service as indicated below.

Recipients Served by Mail

A copy of the item(s) identified above were placed in an envelope addressed to the recipient(s) listed below. Said envelope was then sealed and postage thereon fully prepaid and thereafter was, on **May 21, 2025** deposited in the United States mail at **Modesto, California**.

WILLIAM NEASHAM, ESQ.
NEASHAM & KRAMER LLP
340 PALLADIO PARKWAY, SUITE 535
FOLSOM, CA, 95630

MARK ADAMS, ESQ.
JEFFER MANGELS BUTLER & MITCHELL LLP
3 PARK PLAZA SUITE 1100
IRVINE, CA, 92614

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **May 21, 2025**, at Modesto, California.

By *Christina Gonzalez*

Christina Gonzalez, Deputy Clerk
SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF STANISLAUS

MINUTE ORDER