Case No. F089938

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

WESTERN HILLS WATER DISTRICT, a California public agency water district
Plaintiff and Respondent

v.

WORLD INTERNATIONAL, LLC, a Delaware limited liability company; THREE60 LLC, a Delaware limited liability company; ANGELS CROSSING LLC, a California limited liability company; GUILLERMO MARRERO, CARMEN KEARNEY aka CARMEN MILLAN KEARNEY, DOUGLAS KEARNEY
Defendants and Appellants

RESPONDENT'S BRIEF

Appeal from Order Denying Defendant's Motion to Compel Arbitration
In and for the County of Stanislaus
The Hon. Stacey P. Speiller
Stanislaus County Superior Court Case No. CV-24-003049

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TABLE OF CONTENTS

TABLE OF CONTENTS

(Continued)

TABLE OF AUTHORITIES

State Cases

TABLE OF AUTHORITIES
(Continued)

Federal Cases

Statutes

Other

INTRODUCTION

Appellants[1] challenge the Trial Court's ruling that a clause in an Addendum Agreement is severable and applies to only the Fourth Cause of Action in Western Hills Water District's First Amended Complaint. Appellants' attempt to expand the arbitration clause in an agreement between two entities to apply to individual parties who are not in privity with Respondent and to disputes which are unrelated to the arbitrable claims set forth in Section 7 of the parties' Addendum.

Appellants seek to have the reviewing court view the case through their distorted lens in order to achieve the outcome they desire. First, they ignore recent case law regarding public policy that alters the manner in which the courts are now viewing arbitration. Arbitration clauses are no longer automatically unchallenged and are given the same consideration that other contracts receive. Second, Appellants misstate the standard of review. Third, Appellants falsely claim that the only damages Plaintiff seeks consist of missed payments that are carefully articulated in paragraph 7 of the Addendum to the Master Agreement.

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[1] World International LLC, Three60 LLC, Guillermo Marrero, Carmen Kearney and Douglas Kearney hereafter collectively referred to as "Appellants".

Further, as the procedural history in the lower court shows, Appellants continue to use delay tactics, including this appeal, as a means of avoiding their obligations to respond to long-outstanding discovery.

I.

THE PARTIES

The Plaintiff in the trial court is Western Hills Water District ("WHWD"), formed and organized under the laws of the State of California pursuant to the California Water Code, Division 13, §§ 34000 to 38501. [1 AA 16-17; 2 AA 280-281][2] WHWD provides Water, sewer and storm drainage service for the Diablo Grande Development in Stanislaus County. [1 AA 22; 2 AA 286] WHWD is the legislative body of the Water District and the Diablo Grande Community Facilities District located in Stanislaus County near Patterson, California. [1 AA 22; 2 AA 286] WHWD is the Respondent on appeal.

[2] Citations to "AA" refer to the Appellant's Appendix filed by World, Three60, Marrero, C Kearney and D Kearney November 12, 2025. Citations to "RA" refer to the Respondent's (WHWD) Appendix filed concurrently with this brief.

There are six (6) defendants in the trial court action. [1 AA 16; 2 AA 280] Five of the defendants are the Appellants herein (fn1). Angels Crossing LLC[3] has not appeared in the action and is not a party on appeal.

Defendants World International LLC "World" is a Delaware corporation conducting business in Patterson, California during the timeframe alleged in the Complaint. [1 AA 17; 2 AA 281] World is one of the Appellants on appeal.

Defendant Three60 LLC is a California limited liability company with its principal place of business in Patterson, California at all times alleged in the Complaint. [1 AA 17-18; 2 AA 281-282] Three60 LLC is a Delaware limited liability company and is World's parent company. [1 AA 17; 2 AA 281] Three60 has four members: Linda Marcos Dayan, Eliva Marcos Dayan, Francis Marcos Dayan and Rafael Marcos Dayan. [1 AA 17; 2 AA 281] Three60 LLC is one of the Appellants on appeal.

Defendant Guillermo Marrero ("Marrero") is sued as an individual. Marrero is a licensed California attorney who served on WHWD's Board of Directors between 2009 and December 2020. [1 AA 19; 2 AA 283] Marrero's law firm, International Practice Group ("IPG") has served as

[3] Defendant Angels Crossing LLC is a California limited liability company with its principal place of business in Los Angeles County. [1 AA 19; 2 AA 283]

outside counsel for World. [1 AA 19-20; 2 AA 283-284] Marrero is sued for Breach of Fiduciary Duty, Breach of a Statutory Duty, Fraudulent Inducement of Contract, Fraud and Conspiracy to Commit Fraud. [1 AA 36-55; 1 AA 209; 2 AA 309-322] Marrero is one of the Appellants on appeal.

Defendant Carmen Kearney aka Carmen Kearney aka Carmen Millan-Kearney ("C. Kearney") is sued as an individual. C Kearney served on the WHWD Board of Directors from approximately March 2009 to December 2020. [1 AA 17-20; 2 AA 281-284] During the period that C. Kearney was a Board Member for WHWD, she was also World's Chief Financial Officer. [1 AA 19-20; 2 AA 281-284] C. Kearney is sued for Breach of Fiduciary Duty, Breach of Statutory Duty and Conspiracy to Commit Fraud. [2 AA 309-315, 320-322] C. Kearney is one of the Appellants on appeal.

Defendant Douglas Kearney ("D. Kearney") is sued as an individual. D. Kearney served on the WHWD Board of Directors from approximately 2010 to June 2020. [1 AA 20; 2 AA 284] While D. Kearney served as a Board Member for WHWD, he was also an Asset Manager for World. [2 AA 284-285] D. Kearney is sued for Breach of Fiduciary Duty and Breach of a Statutory Duty. [2 AA 301-304, 309-315] D. Kearney is one of the Appellants on appeal.

II.

PROCEDURAL HISTORY

A. Nature of the Action and Decision of the Trial Court

On April 19, 2024, Western Hills Water District ("WHWD") filed its Verified Complaint for Declaratory Relief and Damages. [1 AA 16]

On August 8, 2024, WHWD propounded written discovery to each of the five Defendants/Appellants (hereafter the term "Defendants" refers to the Appellants jointly and excludes Defendant Angels Crossing LLC) in the form of interrogatories. [1 AA 120, 129]

On August 18, 2024, the World Defendants (consisting of World, Three 60, Marrero, C. Kearney and D. Kearney moved to Compel Arbitration and to Stay the Action, setting a hearing date on December 13, 2024. [1 AA 89-104]

Initially Defendants did not seek a stay of discovery. On/about September 12, 2024, Defendants served a non-responsive "statement that discovery was premature pending the motion to compel arbitration." [1 AA 146]

Thereafter, on September 12, 2024, the World Defendants filed a Motion to Stay Discovery pending a Decision on their Motion to Compel Arbitration. [1 AA 117-135]

On September 26, 2024, WHWD opposed the motion to stay discovery asserting that by refusing to respond to discovery, Defendants were seeking to delay and limit disclosure of evidence that would reveal their communications and motives. [1 AA 141–149, 147]

Defendants' Motion to Stay Discovery was continued to October 24, 2024 and thereafter to November 22, 2024.

On October 24, 2024 the Western Hills Water District ("WHWD") filed its Verified First Amended Complaint ("FAC") against World ("World"), Three60, Angels Crossing, Guillermo Marrero, Carmen Kearney, Douglas Kearney and Does 1-100. The FAC seeks monetary damages and judicial declarations regarding the validity of agreement between the parties, including a void May 14, 2009 Addendum ("Addendum") which purports to significantly amend an underlying Master Agreement ("Master Agreement") To Provide Water, Sewer, and Storm Drainage services. The Addendum added provisions are distinctly in World's favor and included an arbitration dispute resolution process favorable to World. It also altered World's assumed obligations under the original Master Agreement. Both changes are substantial revisions to contractual relationship and certainly are not "minor". [2 AA 280-352]

The 1st Cause of Action in the FAC seeks declaratory relief. Plaintiff asks the Court to find that the Addendum is void due to prohibited unlawful

conduct of the defendants in violation of Government Code §§1090 et seq. and related regulatory disclosure statutes and regulations. [2 AA 301-302]

The 2nd and 3rd Causes of Action also seek Declaratory Relief with respect to the Assignment, Assumption and Release Agreement executed by World, WHWD and Angels Crossing on/about April 30, 2020. [2 AA 303-305]

The 4th, 5th, 6th 7th, 8th, 9th, and 10th Causes of Action seek damages for breach of contract, breach of fiduciary and statutory duties, as well as torts including fraud and civil conspiracy to commit fraud. [2 AA 306-322]

The only cause of action that alleges a breach of Section 7 of the Master Agreement (as amended in the Addendum) is the 4th Cause of Action for Breach of Contract alleged against World and Three60. [2 AA 306-307]

On November 22, 2024 while the Motion to Compel Arbitration set for December 13, 2024 was pending, the Court denied the motion to stay all discovery pending arbitration, excepting any discovery "directly concerning operational and capital costs." [2 AA 466; 2 AA 500-501] In its ruling, the Court stated:

> "As for Moving Defendants' original argument-that all discovery should be stayed because it is in the interest of justice and judicial economy – the Court finds it unpersuasive. Plaintiff's pleading raises issues of serious concern for the public, and those concerns warrant prompt exploration." [2 AA 501]

Following this ruling, Defendants filed a Second Motion to Compel Arbitration and to Stay the Entire Action on November 26, 2024 setting a hearing date on February 11, 2025. [2 AA 364-456]

Plaintiff withdrew its first Motion to Compel Arbitration on November 27, 2024. [2 AA 458 - 460]

On December 23, 24 and 30, 2024, Defendants served responses to WHWD's discovery requests; however, the responses were replete with objections that Plaintiff had previously declared waived. [RA 10-11, 76]

On January 10, 2025, WHWD's counsel met and conferred regarding the late and deficient discovery responses. [RA 12-51] Defendants did not respond to the meet and confer. [RA 61-62]

On January 14, 2025, WHWD filed a Motion to Continue the date of the hearing for Defendant's Second Motion to Compel Arbitration in order to complete its discovery in order to confirm the relationships of the various parties for the Court to consider in ruling on Defendant's motion. [RA 6-11]

On January 15, 2025, WHWD filed an Ex-Parte Application to continue the February 11, 2025 Motion to Compel Arbitration hearing date to May 2025 in order to pursue its outstanding discovery to Defendants. [RA 52-59]; See also Declaration of William Neasham in Support of Ex-Parte Application filed January 15, 2025. [RA 60-74] Plaintiff's Motion to

Continue the hearing on Defendant's Motion to Compel Arbitration was continued to February 27, 2025. [RA 120]

Plaintiff WHWD filed its Opposition to the Motion to Compel Arbitration on/about January 29, 2025. [2 AA 462-477] In support of its Opposition, WHWD filed the Declaration of its Board President, Mark Kovich and a Request for Judicial Notice. [2 AA 479-482; 3 AA 495-683]

On February 6, 2025, the Court vacated and re-set the Motion to Compel Arbitration to March 6, 2025 stating:

> "Preliminarily the Court notes that in their opposition to this motion, Defendants accuse Plaintiff of engaging in various tactics designed to delay a ruling on the motion to compel arbitration so that it can obtain discovery to which it is purportedly not entitled. This argument might hold more weight if the Court had not noticed that Defendants have also engaged in a few delaying tactics of their own, such as setting the Motion to Compel Arbitration rather far out from the filing date, then withdrawing that motion close to the hearing date and filing a second motion to compel arbitration, all the while arguing that discovery must be stayed while a motion to compel arbitration is pending....***..." [RA 120]

> "...because the Court wishes to decide this motion before substantively considering the arbitration motion, the Court on its own motion VACATES and RE-SETS the motion to compel arbitration scheduled for February 11, 2025 to March 6, 2025..." [RA 120]

On February 26, 2026, Plaintiff submitted a status report regarding its outstanding discovery requests to Defendants. [RA 121-123]

On February 27, 2025, the Court denied Plaintiff's Motion to Continue Defendants' Motion to Compel Arbitration to May 2025 and confirmed that the hearing date of March 6, 2025 would go forward. [RA 124-125]

The Court heard the Defendants' Motion to Compel Arbitration on March 6, 2025 and took the matter under submission. [RA 127-141; RT[4] 1]

On May 21, 2025, the Court issued its ruling on the Motion to Compel Arbitration. [RA 127-141] The Court previously found that only the Fourth Cause of Action disputes arose out of Section 7 of the Addendum and did not change its position on this point in its Ruling on the Motion to Compel. [RA 139-140] The Trial Court ruled that the issues in the fourth cause of action were discrete and can be severed from the remainder of the Complaint. [RA 140] The Trial Court granted the Motion to Compel only as to the fourth cause of action for breach of contract against World and Three60. [RA 140].

III.

ISSUES ON APPEAL

Defendants do not list their issues on Appeal but rather seek *de novo* review of the entire lower court's ruling. WHWD asserts that the correct

[4] "RT" refers to the Reporter's Transcript of the Hearing that occurred on March 6, 2025.

standard of review is *substantial evidence* and understands the issues on appeal to be:

1. Whether Substantial Evidence exists supporting the Trial Court's Decision to Order Plaintiff WHWD and Defendants World and Three60 only to arbitrate the disputes alleged in the Fourth Cause of Action of the First Amended Verified Complaint which pertain to issues arising out of Section 7 of the Addendum to the Master Agreement between WHWD and World.

2. Whether Substantial Evidence exists supporting the Trial Court's decision to deny the motion to compel arbitration on the 1st through 3rd and 5th through 10th Causes of Action against the Defendants named in each of those causes of action.

3. Whether the Appeal was filed by a motivation to further delay the Case.

IV.

STANDARD OF REVIEW

An aggrieved party may appeal from an order dismissing or denying a petition to compel arbitration. CCP §1294(a).

The first paragraph of Appellant's brief seeks to establish the standard of review as *de novo*. This intentional reference to "*de novo*"

review without citing authority therefor, seeks to color the Court's view of the case from the outset of the appeal. Appellant's statement that *de novo* review applies here is incorrect.

The standard of review on an order dismissing or denying a petition to compel arbitration can be either *substantial evidence* or *de novo*. According to *Carlson v. Home Team Pest Defense, Inc.*, 239 Cal. App. 4th 619, 191 Cal. Rptr. 3d 29 (2015), it is well settled that where the court's order is based on a factual decision, then a substantial evidence standard is adopted. Conversely, if the court's order is based solely on a legal decision, a de novo standard of review is applied.

An instance where substantial evidence is necessary is described in *Craig v. Brown & Root, Inc.* (2000) 84 Cal.App.4th 416, as the order in that case was founded on the trial court's factual determination that the parties did not reach an agreement on arbitration.

In this case, the Trial Court reviewed the facts and circumstances not only as to the parties' varied relationships, the agreements between World, WHWD and Angels Crossing, the arbitration language contained only in an Addendum to the parties' Master Agreement, but also as to the allegations against each defendant in each cause of action before rendering its decision as to which individual or causes of action should be arbitrated. Because the Trial Court's decision weighed the facts to make its decision as opposed to

a decision made purely on a question of law, the substantial evidence standard applies – to all defendants, including the individual defendants who are challenging the ruling.

The substantial evidence standard on appeal is a highly deferential standard of review where the appellate court upholds a lower court or agency's factual findings if they are supported by "more than a mere scintilla" of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. It does not require a preponderance of evidence, but rather enough evidence to render the finding reasonable, even if evidence exists to support a contrary conclusion. The appellate court does not retry the case or weigh evidence; it only reviews the record to ensure the verdict is reasonable.

Appellants must demonstrate that no reasonable person could have reached the same conclusion based on the evidence. The court resolves all conflicts in the evidence in favor of the prevailing party (here Respondent WHWD) and accepts all favorable evidence as true.

"Substantial" means more than a "mere scintilla," often defined as such relevant evidence that a reasonable mind would accept as adequate to support a conclusion. The court may consider the entire record, including evidence that detracts from the decision.

V.

STATEMENT OF FACTS

As set forth above, Western Hills Water District was formed and organized in 1992 under the laws of the State of California pursuant to the California Water Code, Division 13, §§ 34000 to 38501. [1 AA 16-17; 2 AA 280-281] WHWD provides water, sewer and storm drainage service for the Diablo Grande golf resort and residential development in Stanislaus County ("the Development"). [1 AA 22; 2 AA 286]

The Diablo Grande subdivision was approved as a Vesting Tentative Map by the Stanislaus County Board of Supervisors on December 7, 1999. [2 AA 286] The development was initially owned by Diablo Grande LP, which was the sole landowner/developer at the time. [2 AA 286]

WHWD and Diablo Grande LP entered into a "Master Agreement to Provide Water, Sewer and Storm Drainage Services on June 4, 1998. [2 AA 326-328] Diablo Grande LP filed a Petition for Bankruptcy Protection under Chapter 11 on March 10, 2008 after a downturn in the real estate industry. [2 AA 288-289] On September 16, 2008, the Bankruptcy Court authorized the sale of Diablo Grande LP's assets to World. [2 AA 289-290] The sale closed on/about October 7, 2008. [2 AA 289] World purchased the Development out of Bankruptcy and assumed the Master Agreement. [2 AA 290-292]

Section 7 of the Master Agreement provided:

> 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." [2 AA 327]

The Master Agreement did not contain an arbitration provision. [2 AA 326-327].

On/about May 14, 2009, WHWD and World executed an Addendum to the Master Agreement. The Addendum significantly changed the language of paragraph 7 in the Master Agreement to encompass both Operational Costs and Capital Costs. [2 AA 329-334] The amended language of paragraph 7 greatly expanded World's funding requirements to include funding and replacing WHWD infrastructure, some of it discretionary; provided for an annual budget (Paragraphs 7(a) through 7(l) and added dispute resolution procedures in paragraph 7(m) [2 AA 329-332]). The Court's ruling on the Motion to Compel Arbitration recites the language in Paragraph 7 in both the Master Agreement and the Addendum and compares them. [3 AA 713-717] With respect to Arbitration, Paragraph 7(m) in the Addendum states:

"m. Dispute Resolution Procedure.

(1) The parties shall attempt in good faith to resolve any dispute **arising out of or relating to this Section 7** [emphasis added], promptly by negotiation between representatives who have the 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,** [emphasis added] which has not been resolved by the above dispute resolution procedure within twenty (2) 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 an [sic] 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." [2 AA 332; 3 AA 716-717]

Multiple agreements exist between the corporate parties, including the Master Agreement, the Addendum and the Assignment, Assumption and Release Agreement, but the May 14, 2009 Addendum is the only document that contains an arbitration provision. [2 AA 326-328; 329-334; 336-342] The Addendum is the sole basis upon which defendant World seeks to compel arbitration. [2 AA 365] In the lower court, Defendants sought to compel arbitration of all causes of action in the FAC as to all defendants (except Angels Crossing) and to stay discovery on all matters and issues until arbitration. [2 AA 364-386] Not only did the motion seek to compel arbitration of the entire FAC, it also sought an order to compel non-signatory defendants to arbitrate who are not parties to agreements with WHWD. [2 AA 382-383] WHWD never agreed to that form of remedy in

any manner-and certainly not with persons who have defrauded the District. [2 AA 476]

VI.

LEGAL ARGUMENT

A. Standing and the Standard of Review for the Individual Defendants

While the individual defendants may have standing to appeal a decision denying their petition to arbitrate, the standard of review is not necessarily *de novo*. Again, just as the discussion in the Standard of Review section above, the review centers around whether the Court's decision to deny their motion to compel was decided as a matter of law, or whether it was decided on the facts of the case. Respondent contends that the trial court examined the facts and circumstances involving each cause of action and each defendant named in that action to determine whether the alleged claim was arbitrable under Section 7 of the Addendum. Because the Court's decision was based upon facts involving the agreements at issue, the specific defendants and whether the claims against each defendant arose out of Section 7, as opposed to a question of law, the standard of review for denial of the individual defendants' motion to compel arbitration should be ***substantial evidence.***

The case cited for the proposition that review of denial of the individual defendants' motion to compel arbitration should be *de novo*,

Valley Casework, Inc. v. Comfort Construction (1999) 76 Cal. App. 4th 1014, pertained to review of an arbitration award against the Appellant together with an underlying order denying its application for a preliminary injunction for relief from arbitration. Inasmuch as the ruling on the preliminary injunction application turned upon a question of law in that case, the review on appeal was *de novo.*

B. The Trial Court's Ruling on the Motion to Compel Arbitration

While the trial court acknowledged Appellant's arguments that all of the plaintiff's claims "are closely related to the arbitration agreement…", it also acknowledged WHWD's opposition that argued that the Addendum was approved under circumstances that rendered it void. (AOB 22-23) It did not make findings or adopt either position. The parties have the benefit of a detailed ruling in its May 21, 2025 Minute Order that explains that the Court reviewed the FAC, the key agreements, the affidavits and declarations filed in support and opposition to the motion, and the allegations in each cause of action before making its decision regarding what was arbitrable. [3 AA 711-726, 720]

The facts that the Court considered and noted in its ruling pertaining to the Appellants were that there is only one Arbitration provision at issue in this case. It is included in the Addendum to the Master Agreement

between World and WHWD dated May 14, 2009 at paragraph 7. [2 AA 329-334; 3 AA 713-717] This fact is undisputed.

None of the individual defendants (Marrero, C. Kearney or D. Kearney) were signatories to either the Master Agreement or the Addendum. [2 AA 326-328; 329-334] Although the FAC states that the individual defendants are sued in their individual capacities and the FAC contains allegations that they were corporate officers or agents of World, a review of the allegations against Marrero, C. Kearney and D. Kearney by the trial court confirmed that they do not arise out of World's failure to pay operational expenses. (FAC ¶9, 10, 12) [1 AA 283-284; 3 AA 723-724]

As a WHWD Board Member, Marrero, C. Kearney and D. Kearney had fiduciary duties to the WHWD's ratepayers and had statutory duties that they failed to comply with. Likewise claims pertaining to their involvement with World / Three60 in a scheme to fashion a sham agreement with Angels Crossing do not seek recovery of operational expenses from the individual defendants. [3 AA 723-724] These allegations concern factual matters – not questions of law.

The Court's ruling denying Defendants' Motion to Compel Arbitration on all causes of action other the Fourth Cause of Action for Breach of Contract states:

"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.)" [3 AA 723]

"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." [3 AA 723]

"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 Marrero, C. Kearney and D. Kearney of breaching their statutory duties to WHWD. The eighth cause of action alleges fraudulent inducement of contract relating to the execution of the 2020 AA&R Agreement. The ninth cause of action asserts that World, Three60, Angels Crossing and Marrero committed fraud, misrepresentation and fraudulent concealment that harmed WHWD in lead up to the execution of the AA & R Agreement[5]. 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." [3 AA 723-724]

[5] The Eighth and Ninth Causes of Action are only alleged against one individual defendant - Marrero.

None of the individual Defendants are sued for failure to make operational payments to WHWD under Paragraph 7 of the Addendum as alleged in the fourth cause of action of the FAC. (FAC ¶¶127-128, 130-132) [2 AA 306-307] After reviewing all of the motion papers and extensive declarations and requests for judicial notice, the Court determined that other than the fourth cause of action for breach of contract against World and Three60, "In short, none of these causes of action 'arise out of' Section 7 itself." [3 AA 723-724]

WHWD's claims against Marrero, C. Kearney and D. Kearney pertain to their individual conduct, and WHWD's claims against World and Three60 pertaining to fraud and a conspiracy to commit fraud pertains to conduct unrelated to payment of operational expenses; accordingly, the Court's decision that there is no legal or factual basis to compel arbitration of the claims alleged in the 6th through 10th causes of action is based upon facts and should be reviewed under the *substantial evidence* standard. The record in the lower court confirms that the decision to deny the motion to compel arbitration for all but the Fourth Cause of Action is supported by "more than a mere scintilla" of relevant evidence that a reasonable mind might accept as adequate to support that conclusion.

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C. **California Current Law Regarding Consideration of Arbitration Agreements**

World's twice asserted claim of compelled arbitration premised upon the idea "California's public policy favoring arbitration is so strong" was abrogated by the California Supreme Court in its July 24, 2024 decision in *Quach v. California Commerce Club, Inc.* (2024) 2024 16 Cal.5th 562. *Quach* was decided on July 25, 2024-nine (9) days before Defendants filed their initial August 2024 Motion to Compel Arbitration and the defendants have now reiterated it again in the instant motion.

Reflecting a parallel decision to the U.S. Supreme Court's ruling on federal arbitrability favorability in *Morgan* [*Morgan v. Sundance, Inc.* (2022) 596 U.S. 411 (2022)], the *Quach* decision is instructive in the instant case in that the Court declared arbitrability cases are to be treated on an equal basis of any other contract element save upon such grounds as may exist for the revocation of any contract. Here, the issue is even more compelling than revocation-it is voiding of the Addendum.

While dismissing the court-imposed "demonstrated prejudice" requirements which were previously required in a long line of decisions, the California Supreme Court's own analysis is a pertinent and fundamental statement in the Addendum matter that there is no strong California public policy favoring arbitration contracts-they are to be treated on an equal basis of analysis:

> "But an examination of the legislative history reveals that California policy, like federal policy, is fundamentally about making arbitration agreements " 'as enforceable as other contracts, but not more so.' " (*Morgan*, supra, 596 U.S. at p. 418, 142 S.Ct. 1708.).....[Compare § 1281 [an arbitration agreement is "valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract"] with 9 U.S.C. § 2 [arbitration agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract"]; From this shared language and history, it is apparent that the state policy " 'favoring' " arbitration, like the federal policy, "is about treating arbitration contracts like all others, not about fostering arbitration." (*Morgan*, supra, 596 U.S. at p. 418, 142 S.Ct. 1708.)" (See *Quach,* supra, at 2024 16 Cal.5th 579-580)

The *Quach* Court went on to state:

> In sum, we conclude that the procedural rules of the CAA, like those of the FAA, are grounded in a policy of "treating arbitration [agreements] like all others," not one preferring arbitration to litigation. (*Morgan*, supra, 596 U.S. at p. 418, 142 S.Ct. 1708.) Accordingly, in determining whether a party to an arbitration agreement has lost the right to arbitrate by litigating the dispute, a court should treat the arbitration agreement as it would any other contract, without applying any special rules based on a policy favoring arbitration. That is, courts should apply the same procedural rules that they would apply to any other contract. (Ibid.) (*Id.* at 583)

The *Quach* Court also discussed the various defenses a party may assert in response to a motion for arbitration stating:

> In *Morgan*, the (U.S.) Supreme Court indicated that various defenses may be implicated when a party opposes arbitration based on the other party's litigation conduct, including

> **"waiver, forfeiture, estoppel, laches, or procedural timeliness."** (*Morgan*, supra, 596 U.S. at p. 416, 142 S.Ct. 1708; see id. at p. 419, 142 S.Ct. 1708.) *Similarly, under California law, a party may, as a result of its litigation conduct, lose its right to compel arbitration on various grounds.* (Citations omitted here) ***... In ruling on a motion to compel arbitration, a court should separately evaluate each generally applicable state contract law defense raised by the party opposing arbitration.***" (*Id.* at 583-584) (Italicized emphasis added.)

In the instant case, the trial court recognized the holding in *Quach* and the requirement to apply the same procedural rules to an arbitration agreement as they would to any other contract. [3 AA 720] Appellants do not dispute this authority in their appeal.

In accordance with the authorities cited in the Court's ruling (*Rosenthal v. Great Western Fin. Securities Corp.* (1960) 14 Cal 4th 394, 397 and *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal 4th 951, 972 (as modified), WHWD opposed the motion to compel arbitration by arguing that the Addendum was rendered void due to the conduct of the individual defendants and another financially conflicted Board Member who approved the Addendum in May 2009. Plaintiff argued that the Addendum in the instant case was obtained unlawfully, improperly and by deceit and could not be the basis for or be used by defendants to compel arbitration as a benefit of their own misconduct.

Following a review of the evidence submitted and its ruling denying several of WHWD's Requests for Judicial Notice[6], the Court held that WHWD's opposition failed due to evidentiary issues—specifically, it sought *admissible* evidence regarding the date WHWD learned of the §1090 violations which would extend the timeline for voiding a public contract under Govt. Code §1092 beyond the four year statute of limitations. The Court asked when the District's Board changed so that the conflicted Board members were no longer influencing the District. The answer lies in the Sixth Cause of Action – which allegations are verified by Mark Kovich, the director of WHWD's Board of Directors. All three Defendants left the Board between mid-2020 and December 2020. [2 AA 309]. In 2023, WHWD first learned that Marrero had financial conflict of interests when he negotiated and executed the Addendum as a WHWD Board Member. The conflict of interest was discovered when Angels' Crossing filed for Bankruptcy in August 2023. [2 AA 311]. Although the FAC does not fully allege when other conflicts were discovered, the discovery of Marrero's conflicts violative of §1090 alone in 2023 falls well

[6] The Court ruled that Attachments 2, 3, and 6 were not judicially noticeable based upon the Evidence Code sections cited, but that the same evidence could be submitted if properly authenticated in a declaration in another hearing.

within statutory timeline to assert that the Addendum is void or should be voided.

The validity of the Addendum was not resolved in the trial court and is not resolved on appeal of the decision rendered on the Motion to Compel Arbitration. It is still subject to determination in the First Cause of Action for Declaratory Relief.

D. The Validity of the Addendum - Cal. Government Code §1090.

In its opposition to the Motion to Compel Arbitration, WHWD's opposed arbitration in the lower court based on the unlawful means by which the Addendum was obtained **(a)** in contravention of Govt §1090, **(b)** non-compliance with other statutorily required disclosure and conflict notices, **(c)** prohibited participation of conflicted public officers under case law, statutes and regulations, and **(d)** voting by an unqualified (and conflicted) person sitting as one of the two (2) claimed "eligible (WHWD Board) members."

WHWD argued that approval of the Addendum occurred under a false guise of "the rule of necessity" and argued that Defendants had developed a newly crafted "remote interest" argument. Plaintiff argued that declarations of the defendants and the arguments in their declarations recast history by claiming facial compliance with disclosure requirements which WHWD held were patent attempts to uphold the Addendum's provisions.

Appellants spend much time in their brief discussing the applicability of Govt. Code §1090, however, for purposes of the Motion to Compel, the Court did not consider the Addendum void but "voidable."

After clarifying that its ruling was not a final determination on the validity of the 2009 Addendum, the Court stated that it's ruling was "merely based on the evidence that was presented in conjunction with *this motion.*" [3 AA 722]

The Court then reviewed the claims to decide what should be arbitrated. Following its decision that the Fourth Cause of Action was discrete and could be severed for purposes of arbitration, the Court then made a ruling regarding the "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 issued presented by the fourth cause of action are discrete and can be severed from the remainder of the Complaint. Furthermore given that, if the 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." [3 AA 724].

The lower court did not make a decision on the validity of the Addendum. The court granted the Motion to Compel by considering that the Addendum was valid until proven otherwise, but expressly reserved that issue to be determined in another motion or trial on the declaratory relief cause of action before arbitration should proceed.

WHWD did not challenge or appeal the ruling. However, in the event that the Court reviews the trial court's decision de novo WHWD must include its arguments as to why it believes that the Addendum should be voided.

The law is well settled in this area. Government Code §§ 1090 et seq and related public disclosure statutes prohibit members of the Legislature, state, county, district, judicial district, and city officers or employees from being financially interested in any contract made by them in their official capacity, or by anybody or board of which they are members. A contract made in violation of section 1090 is void and unenforceable. Should the Addendum prove to be "voidable" as opposed to "void", WHWD submits that there is admissible evidence in the record to show that it raises this issue within 4 years of the discovery of the unlawful conduct.

It is without question Western Hills Water District is a district within the scope of §1090. When the World defendants became public officers of the District, they put on a different hat and owed their primary duties and undivided loyalty to the public constituency-not their clients, related business affiliated consultants, or income sources. As set forth below-in repeated violations, this Addendum was obtained by the World and its defendant Board members in violation of Government Code §1090 and related financial interest disclosure statutes.[7] Under Govt. Code §1090, any participation or

[7]At the time the Addendum was approved (2008-May 19, 2009), the WHWD Board consisted of **only 3** Directors: **G. Marrero, C. Kearney**

involvement, even in an advisory capacity, by the public official, at any point in time, in the process by which a contract is developed, negotiated, approved, executed, or modified can be a violation of §1090. (*People v. Gnass* (2002) 101 Cal. App. 4th 1271, 1287, n.3, 1292.) Courts have also recognized that Section 1090's prohibition must be broadly construed and strictly enforced. (*Thomson v. Call* (1985) 38 Cal.3d 633)

Section1090 "codifies the long-standing common law rule that barred public officials from being personally financially interested in the contracts they formed in their official capacities." The prohibition is designed to apply to any situation that "would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of the [public entity concerned]." § 1090's goals include eliminating temptation, avoiding the appearance of impropriety, and assuring the public of the official's undivided and uncompromised allegiance. Furthermore, §1090 is intended "not only to strike at actual impropriety, but also to strike at the appearance of impropriety."

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and Bryan Domyan. In addition to §1090 violations, the Addendum approval process was replete with non-disclosures, incomplete, inconsistent or false disclosures, and voting participation by an unqualified person which masked the true purpose and intent from public review. These reporting deficiencies were unlawful, as was participation by a person statutorily unqualified, rendering the 2009 World-dominated WHWD Board approval of the Addendum as null and void and invalidating the Addendum on an additional legal ground (discussed in detail infra).

The following elements are required to prove a violation of §1090: (1) the official participated in the making of a contract in his or her official capacity; (2) the official had a cognizable financial interest in that contract; and (3) the financial interest does not fall within any of the statutory exceptions for remote or non-interests. (*Lexin v. Superior Court* (2010) 47 Cal. 4th 1050, 1074)

The terms/phrases "financial interest" in "any contract made by them in their official capacity…" have been broadly interpreted by California Courts. For example, "making" a public contract does not just mean proposing or voting on it. A public official or public employee who participates in discussions, planning, or negotiations surrounding a contract may be found to have "made" the contract. (See for example, *People v. Honig* (1996) 48 Cal. App. 4th 289 (1996))

Although §1090 does not define what it means to "make" a contract, the courts and the Attorney General have likewise broadly construed the term to apply to participation at any stage of the contracting process. Participation in making a contract includes "any act involving preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids." (*Healy* Adv. Ltr., FPPC No. A-17-159 (Aug. 16, 2017).) [2 AA 511-522]

With respect to "financial interest", case law and Attorney General opinions state that prohibited financial interests may be indirect as well as

direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain." (*Hensley* Advice Letter, FPPC No. A-16-254 (2017).) "However devious and winding the chain may be which connects the officer with the forbidden contract, if it can be followed and the connection made, the contract is void." (*People v. Deysher* (1934) 2 Cal. 2d 141, 146 (citation omitted).) In *Honig*, supra, at 320, the Court stated, "we cannot focus upon an isolated 'contract' and ignore the transaction as a whole…" (Underlining emphasis added.) "[F]orbidden interests extend to expectations of benefit by express or implied agreement and may be inferred from the circumstances." (*Id.* at 315.) That the interest "'might be small or indirect is immaterial so long as it is such as deprives the [people] of his overriding fidelity to [them] and places him in the compromising situation where, in the exercise of his official judgment or discretion, he may be influenced by personal considerations rather than the public good.'" (*Lexin v. Superior Ct.*, supra, at 1075) The penalties for violating Government Code section 1090 are that a contract made in violation of section 1090 is void and unenforceable. (Cal. Gov't Code § 1092(a).)

Here, Defendants engaged prohibited conduct despite conflicts of interest in violation of Government §1090. On or about May 19, 2009 the Addendum to the Master Agreement to Provide Water, Sewer, and Storm

Drainage services was purportedly approved between the WHWD and World.

Contrary to World's claim that the Addendum only consisted of "minor" alterations to Section 7 in the Master Agreement, the Addendum substantially changed and altered the obligations of World under the federal Court and County required-approved Master Agreement for the development.

At the 3-member Board hearing, Mr. Marrero and C. Kearney reportedly admitted their individual conflicts of interests respectively as World's attorney and as World employee[8] and did a "rock, scissors, paper" random selection process of bringing back a conflicted Board member under the "rule of necessity".[9] C. Kearney "won" the process and voted

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[8]Marrero's Form 700 is dated March 23, 2009. Although given notice of his statutory filing requirements as a public officer, he did not timely or fully do so during the critical period re the Addendum approval... C. Kearney's Form 700 is dated April 7, 2009 and contrary to her declarations now states **no** reportable financial interests. Both Marrero and C. Kearney were fined by the FPPC for the violations of the applicable disclosure statutes exactly at this time period. Neither the motion to compel arbitration nor their respective declarations in support of the motion have disclosed this particularly relevant misconduct to the Court. (See Request for Judicial Notice Attachment 5-which was granted over objection by the trial court [2 AA 529-536; 3 AA 719]) (FPPC Stipulated Violations G. Marrero/C. Kearney) The (continuing) inadequate disclosures and false Form 700 SEI statements are discussed infra.

[9] The claim of the "rule of necessity" is also false. There was **no** legal necessity for the amending Addendum because (a) World was already required to assume the Master Agreement obligations under Bankruptcy Order Approving the Diablo Grande-World purchase agreement and (b) the

with Director Domyan whereby the Addendum was approved on a 2-0 majority vote. No conflict disclosures were made as to Bryan Domyan and his March 31, 2009 Form 700 falsely states "No reportable interests".[10] (See request for Judicial Notice Attachment 11 which was granted by the trial court [2 AA 657-662; 3AA 720]).

As a result of this sham approval, Marrero signed the Addendum on behalf of WHWD. Rafael Marco Dayan executed the Addendum as World's Manager at the same time Marrero was also serving as World's attorney and a WHWD President Board member. This phony "approval" of the Addendum was a nullity in altering the terms of the Master Agreement

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only "necessity" was for WHWD to "consent" to World's assumption of the Master Agreement per Master Agreement. See Master Agreement at section "8. Miscellaneous Provisions" which required only a consent for the assignment and did not anything other than a simple consent statement.

It was only for World's benefit, interests and favor that the Addendum amendments significantly changes the already assumed Master Agreement operation expense funding obligations by overlaying a completely new Section 7 (a) through (l) creating a World right of budgetary approval for funding loan subsidy operational expenses and exclusion from World's obligations to advance funds for capital asset expenditures, and likewise a completely new arbitration Section 7(m)(subparagraphs 1 through 6) Dispute Resolution Procedure purportedly requiring arbitration. (See Request for Judicial Notice Attachment 6 – the Master Agreement and Addendum which are attached to the Verified FAC and are undisputed [2 AA 538-541; 3 AA 719]).

[10] Domyan's own application for Board candidacy is completely contrary to this false Form 700 SEI.

to include the subject arbitration clause upon which the World defendants now rely.

1. Conflicts of Interest and Other Disqualifying Contractual Defects of the Addendum Approval

(a) Guillermo Marrero:

Mr. Marrero is an experienced, skilled attorney with a long-term and on-going personal and professional **paid** relationship with the World owners and principals before and during his entire WHWD Board tenure. His participation in the approval of the Addendum starts on and/or before he signs the Bankruptcy Court Order Approving Purchase Sale Agreement between Diablo Grande and World as World's "attorney in fact" (as opposed to an "attorney at law") on September 4, 2008[11] rather than what he disclosed by his application for appointment as a Director of the WHWD. (See Request for Judicial Notice Attachment 13 which was granted by the trial court [2 AA 670-682; 3 AA 720]).

[11] The World-Diablo Grande Purchase Agreement signed by Mr. Marrero as attorney in fact involved the purchase price paid by World of +/- $21,000,000.00 and an assumption of Material Contracts (Schedule 1). It is a complex document and Marrero's involvement is direct. With exhibits, it is approximately 71 pages. A reasonable inference of his central essential participation is that he was well compensated for his involvement and had more than a significant financial interest in his continuing representation of World rather than an undivided loyalty to the WDWD public and its residents.

It is a patent and more than a reasonable inference from his involvement as a World principal and as its attorney that he was paid for his legal services in the Diablo Grande-World Purchase Sale Agreement and would continue to be financially interested as World's attorney in both the World-Diablo Grande Purchase Sale Agreement and in the subject Addendum. Contrary to Mr. Marrero's artful declaration supporting and repeated characterizations by World's counsel in the motion to compel arbitration, the Addendum changes are not "minor alterations" but in fact materially altered the legal obligations of the underlying Master Agreement and World's assumed obligations to the WHWD for the loan subsidy for operational costs and expense. A reasonable inference is Marrero was central in ensuring the Addendum changes were adopted and to be implemented.

California Civil Code §1710 provides **A deceit ...** is either:

> "1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
>
> 2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;
>
> **3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact**; or,
>
> 4. A promise, made without any intention of performing it." (Bold emphasis added.)

Marrero's declaration in support of the motion to compel arbitration is false, deceitful, and designed to mislead the court and public as to the true facts and circumstances of his participation in the illusory approval of the Addendum whereby Mr. Marrero comes to sign the Addendum as President of the WHWD together with his previous and even-then existing World client Rafael Marcos.

In fact, throughout Mr. Marrero's November 2008 to October 2020 tenure on the WHWD Board of Directors, he was both World's "attorney in fact" and World's "attorney at law". There never has been and is no resolution capable of avoiding or changing his conflict of interest in these two roles. This relationship is particularly acute in the instance of approval of the May 14, 2009 Addendum.

Mr. Marrero has had and does have a long-standing (10 years+) personal and professional relationship and shared financial interests with World- and the Three60 Marcos family. Mr. Marro assumed the oath of office and role as a Director on the WHWD Board on November 18, 2008. In his October 29, 2008 statement of qualifications application for appointment Mr. Marrero acknowledged "I serve as outside counsel to World International LLC the developer that acquired the rights to the Diablo Grande Project." While partially truthful, Mr. Marrero has never fully disclosed that he had also acted as the "attorney in fact" for World in the detailed Property Sale Agreement for the Diablo Grande assets and

obligations- a critical legal difference in that it fails to publicly disclose he acted as a principal of World rather than "outside counsel." At the time Mr. Marrero assumed the Director officer position on the WHWD Board in November 2008, the WHWD had a written Conflict of Interest Policy since 1998 which requires Category I, II disclosures for its Board of Directors. [2 AA (See Request for Judicial Notice Attachment 8 – granted by the Court [2 AA 630-646; 3 AA 719]).

Govt. Code §87202 required that Mr. Marrero as a person appointed to the office "shall file …" a [Statement of Economic Interests (SEI)] disclosing the person's investments and interest in real property on the date of assuming office and income received during the 12 months before assuming office not more than 30 days after assuming office. Mr. Marrero failed to timely file the SEI or otherwise fully disclose the required information and violated the Govt. Code § 87202 statutory requirement expressly designed to protect the public interests against other undisclosed financial interests involved.

Upon FPPC investigation and an Administrative Stipulation as to two (2) counts, Mr. Marrero was fined for failing to timely file a SEI within thirty (30) days of assuming office as the WHWD Board President or his 2008 appointment. No required public disclosure during the critical transition period was filed by Mr. Marrero as required by statute and it wasn't until March 23, 2009 that Mr. Marrero did file an SEI. That March

23, 2009 SEI was artful and non-complaint as well. (See Request for Judicial Notice Attachment 5 – granted by the Court [2 AA 529-536; 3 AA 719]).

Govt. Code § 87207 further required Mr. Marrero to timely file income to be reported, including the name and street address of each source aggregating $500 or more in value, and particularly under § 87207(b)(1) and (2) the name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from that person was equal to or greater than ten thousand dollars ($10,000) during a calendar year. Mr. Marrero's March 23, 2009 SEI failed to timely file and fully disclose these required disclosures and violated the Govt. Code § 87207 requirements as well.

Govt. Code § 87209 required Mr. Marrero to timely file and report any "business position" if the business entity or any parent, subsidiary, or otherwise related business entity had an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction or has done business in the jurisdiction at any time during the two years prior to the date the statement is required to be filed. While Marrero statement of candidate qualifications to the Stanislaus County did state he was "outside counsel to World" attorney but did not disclose Marrero's acting as World's "attorney in fact" for the Property Sale Agreement and violated his duty to fully disclose his role and interests.

Within a very short time after Mr. Marrero assumed the Director office position in November 2008, a draft Addendum item was listed on the WHWD Board of Directors January 6, 2009 public agenda. No copy of that January 6, 2009 Addendum is available, and for undisclosed reasons it was continued until May 2009. Mr. Marrero late-filed a dated March 23, 2009 Form 700 SEIs together with Schedule A-2 reporting his "sole proprietor" and "President" business interest in the International Practice Group law firm in San Diego and a business interest in OPT Tech, LLC at the same address. No other business interests, ownership of real property or disclosures as required under Govt. Code § 87207(b) or § 87209 "business position(s)" with an entity doing business in the WHWD jurisdiction were reported. Even though Mr. Marrero is a duly admitted California attorney holding office as a Director of a public agency, Marrero failed to timely file and fully disclose the required disclosure statements required by Govt. Code §§ 87207(b), 87209.

In addition, Marrero was fined by the FPPC for 2 counts (FPPC Case #13097). There is no way a member of the public can identify from his Form 700 SEI his on-going financial relationship with World while acting as a public officer on the WHWD Board.

Mr. Marrero also served as a WHWD Director with an express, written, all-encompassing broad form World indemnification and hold harmless letter by World to Marrero against any claims of causes of action

if he accepted the World nomination to the position on the WHWD accepted. (See Request for Judicial Notice Attachment 13 – granted by the trial court [2 AA 670-682; 3 AA 720]).

(b) C. Kearney:

According to her Form 700 SEI, C. Kearney assumed office as a WHWD Director on March 24, 2009. That SEI is false as she declared "No reportable Interests on any schedule..." but on May 14, 2009 there was a contradiction on the Form 700 SEI when she reportedly orally disclosed she was an employee of World (in fact, during her tenure as a Board Member for WHWD, she was the Chief Financial Officer for World) and conflicted. In addition to her false statements, C. Kearney's Form 700 SEIs also failed to timely disclosure the compensation and income Kearney received from World in violation or otherwise provide the required disclosure information under Govt. Code §§ 87207, 87209. She was fined by the FPPC for 2 counts (FPPC Case #13/095). (See Request for Judicial Notice Attachment 10 – granted by the Court [2 AA 655; 3 AA 719]).

(c) Bryan Domyan:

Bryan Domyan assumed the office of a WHWD Director on November 18, 2008. In his October 29, 2008 application for appointment as Director to the Stanislaus County Board of Supervisor he identified himself as "I am the Development Manager for Laurus which is co-developing Diablo Grande with World International". Laurus corporation was never a holder

of title to land within the District nor was Domyan a representative designated by a holder of title to land within the district, nor did any such holder file with the district written evidence of that designation. Nor was Mr. Domyan a "legal representative" as a person duly authorized to act for, and on behalf of, a holder of title to land that is not a natural person. See Declaration of Mark Kovich Re: Water Code §34700, §34030 and WHWD By-Laws requiring statutory qualification. [2 AA 479-482] Thus, as a matter of law, Domyan was unqualified to serve as a Director of the WHWD and the Addendum approval fails for lack of a valid vote-even under the "rule of necessity" argument. In addition, the Form 700 filed by Mr. Domyan on March 31, 2009 under penalty of perjury directly contradicts his Board application wherein he states he has a financial interest. (See Request for Judicial Notice Attachment 11 – granted by the Trial Court [2 AA 657-662; 3 AA 720]).

E. **Defendants' Appeal was Filed to Further Delay the Action**

As set forth above, the trial court declined to stay discovery in its November 22, 2025 ruling on all causes of action except the fourth cause of action for breach of contract.

Following the Court's ruling on the Motion to Compel Arbitration Defendants filed an Ex-Parte Application seeking a discretionary stay of proceedings pending appeal. Defendants argued that they would

experience irreparable harm if they were required to litigate the claims that were not deemed arbitrable.

WHWD opposed the motion, describing the history of Defendants' failure and refusal to respond to discovery that would clarify the relationships of the parties and result in the production of communications that would show their respective motives in influencing the District's decisions to execute agreements that would absolve Defendants from all liability to WHWD. WHWD contends that the appeal was filed to further delay the action because even if the outcome of the appeal is to declare the Addendum valid, the result would be the same: the Arbitration provision is specific as to the matters that may be arbitrated, and the causes of action are sufficiently discrete so that the claim that arises out of Section 7 of the Addendum can be severed from the remainder of the complaint.

Prior to December 31, 2023, denial of a Motion to Compel Arbitration was immediately appealable under CCP §1294(a) and subject to the automatic stay of trial court proceedings found in CCP §916. This was the previous rule – permitting an appellant to stop all litigation on the merits of a case while the appeal was pending.

The law changed on January 1, 2024 when the California Legislature reversed the historic norm and amended Civil Code of Procedure Section 1294(a) to give trial court judge's discretion to stay or continue proceedings. The amendment took effect on January 1, 2024 after moving

through the Legislature as California Senate Bill No. 365 (SB365) and was approved by Governor Newsom on October 10, 2023.

A review of SB 365's Legislative History shows that the Legislature was concerned about litigants' potential incentive to pursue "meritless appeals that are filed only to delay litigation." (See California Bill Analysis S.B. 365 Sen. 7/12/23.) The legislature found that appeal of Motions to Compel was a common tactic in the California trial courts and likely the motivation for the amendment. The delay tactic was simple. The defendant files a motion to compel arbitration and, after the trial court denied the motion, defendant appealed from its denial automatically staying the case. This litigation tactic, when employed, substantially impairs a case where speedy resolution of the claims is important to the plaintiff, as the appeals process typically takes a year or more to complete.

In order to address this litigation stall tactic, the California legislature added the following clause to the statute: "Notwithstanding Section 916, the perfecting of such an appeal ***shall not*** automatically stay any proceedings in the trial court during the pendency of the appeal." (Cal. Civ. Proc. §1294(a) [emphasis added].

While the denial of a motion to compel arbitration remains an immediately appealable order, it no longer triggers an automatic stay in the Superior Court.

The Court has carefully considered whether to permit Plaintiff to conduct discovery in this case twice. It decided that there were matters of serious public concern that needed addressing sooner rather than years later and denied a stay of the action in November 2024.

After considering the case in significantly more detail in the Motion to Compel Arbitration, the court arrived at the same conclusion that it did in November 2024, that the case should move forward, because as the Court noted in its May 21, 2025 ruling, if Plaintiff prevails on its first Cause of Action, and voids the Amendment to the Master Agreement, the issue of arbitration as to Section 7 would be moot; thus, the sooner this can be decided the better.

Plaintiff set forth the timelines in the Procedural History (above) to demonstrate Defendant's intent to delay the case. Here is a summary of the discovery that has been propounded to date. When the trial court stayed the entire action (pending appeal) on June 23, 2025, the status of discovery is as set forth below:

8/8/2024	Plaintiff WHWD propounded Form Interrogatories to the World Defendants
9/9/2024	World Defendants serve a "Statement [of Objection] to Form Interrogatories No substantive responses were included
11/22/2024	Court denied World's Motion for Stay of Discovery pending Hearing on Motion to Compel Arbitration

12/23/2024	Marrero, Kearney, Kearney serve deficient responses to Form Interrogatories
12/30/2024	World Three60 serve responses to Form Interrogatories
1/2025	WHWD meets and confers regarding Form Interrogatory (Set One) Responses
1/13/2025	WHWD propounds Requests for Admissions, Form Interrogatories, Set 2 (17.1)
2/6/2025	Defendants serve supplemental responses to Form Interrogatories propounded in August 2024
2/14/2025	Defendants serve responses to Requests for Admissions; All objections
2/14/2025	Defendants serve responses to Form Interrogatories Set Two (17.1) All objections
2/15/2025	Plaintiff WHWD meets and confer regarding blanket objections
2/24/2025	Defendants serve supplemental responses to Requests for Admissions, deficient responses to Form Interrogatories Set Two (17.1)
3/25-4/7/2025	WHWD meets and confers re: deficient, unverified responses to Requests for Admissions / Form Interrogatories Set Two (17.1)
5/1 – 5/9/2025	WHWD meets and confers re: deficient unverified responses to Requests for Admission/Form Interrogatories Set Two (17.1)
5/21/2025	Minute Order – Court denies Defendants' Motion for Stay of entire action pending arbitration on 4th Cause of Action for Breach of Contract
5/30/2025	Deadline to file Motion to Compel

	No further supplemental responses received to Form Interrogatories Set Two (17.1)
5/30/2025	Motions to Compel Further Responses to Form Interrogatories Set Two (17.1) Filed (Marrero, C Kearney, D Kearney
8/1/2025	Hearing Date on Motion to Compel Further Responses

[4 AA 828-829]

The foregoing timeline shows that Plaintiff has encountered obstacle after obstacle attempting to obtain even the most basic discovery responses from Defendants. They have sought over and over again to avoid discovery and even when stays have been denied, they have served nothing more than blanket objections or seriously deficient responses objecting to terms of common usage as vague and ambiguous, or failing to identify witnesses or documents.

At the time Defendants filed their appeal, there were motions to compel discovery on calendar. Not a single Defendant has answered the Complaint. As Respondents have shown, even if the Court were to make a determination at this point that the Addendum is valid, it would not change the outcome of the trial court's ruling. There is only one cause of action that arises out of Section 7 of the Addendum that affects the appealing defendants.

Defendants' appeal is yet another example of the exact conduct the Legislature was concerned about--litigants' potential incentive to pursue

"meritless appeals that are filed only to delay litigation," and should be recognized as such.

CONCLUSION

As demonstrated above, there are both factual and legal reasons for denying arbitration in this case. The validity of the Addendum must be determined prior to arbitration. Defendant's appeal has delayed that determination and the entire action.

Plaintiff respectfully requests this Court affirm the Trial Court's Order and remand the case back to the lower Court to lift the stay ordered on June 23, 2025 so that the parties may proceed with the Ordering of Matters as Set Forth in the May 21, 2025 Ruling on the Motion to Compel [3 AA 724].

Dated: January 30, 2026 NEASHAM & KRAMER LLP

By: /s/ Patricia Kramer
Attorneys for Respondent
Western Hills Water District

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.204(c)(1))

The text of this brief consists of 11,658 words as counted by the Microsoft Word processing program used to generate this brief.

Dated: January 30, 2026 NEASHAM & KRAMER LLP

By: /s/ Patricia Kramer
Attorneys for Respondent
Western Hills Water District

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(California Rules of Court, Rule 8.208)

Court of Appeal Case Caption:

Western Hills Water District, a California public agency water district

Respondent herein, Plaintiff below

v.

WORLD INTERNATIONAL, LLC, a Delaware limited liability company; THREE60 LLC, a Delaware limited liability company; ANGELS CROSSING LLC, a California limited liability company; GUILLERMO MARRERO, CARMEN KEARNEY aka CARMEN MILLAN KEARNEY, DOUGLAS KEARNEY

Appellants herein, Defendants below

Court of Appeal Case Number: F089938

Please check here if applicable:

- ✓ There are no interested entities or parties to list in this Certificate per California Rules of Court, Rule 8.208(d)(3).

/s/ Patricia Kramer Date: January 30, 2026
Patricia Kramer
Attorney for Plaintiff/Appellant

Printed Name: PATRICIA KRAMER
BAR No. 155484
Address: 340 Palladio Parkway, Suite 535
Folsom, CA 95630
Tel.: (916) 853-8030

Party Represented: Western Hills Water District

PROOF OF SERVICE

I, Patricia Kramer, declare that:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and am not a party to this action; my business address is 340 Palladio Parkway, Suite 535, Folsom, California 95630. My electronic service address is pkramer@neashamlaw.com.

On January 30, 2026, I caused the within **RESPONDENT'S BRIEF**, the original of which was produced on recycled paper, to be served via:

(_XX_) ELECTRONICALLY – This document was filed electronically to the Court of Appeal of the State of California, First Appellate District, Division Three via the court's Electronic Filing System (TrueFiling) which provides service on all parties on the Court's service list who have registered to receive service by e-mail over the Court's Electronic Filing System and based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail addresses(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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(_XX_) U.S. MAIL – I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. By following ordinary business practice, I placed a true and correct copy thereof enclosed in a sealed envelope for collection and mailing within the United States Postal Service where it would be deposited for first class delivery, postage fully prepaid, in the United Stated Postal Service that same day in the ordinary course of business.

Stanislaus County Superior Court
801 10th Street
Modesto, CA 95354
Attn: The Hon. Stacey P. Speiller

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 30, 2026, at Folsom, California.

/s/ Patricia Kramer
Patricia Kramer