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7  
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA

10  
11 In the Matter of:

12 DWAIN SANDERS

13 Respondent.

FPPC No. 13/094

14 STIPULATION, DECISION, AND ORDER

15  
16 **STIPULATION**

17 Complainant, the Fair Political Practices Commission (Commission), and respondent Dwain  
18 Sanders (Respondent) hereby agree that this Stipulation will be submitted for consideration by the Fair  
19 Political Practices Commission at its next regularly scheduled meeting.

20 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this  
21 matter and to reach a final disposition without the necessity of holding an additional administrative  
22 hearing to determine the liability of Respondent.

23 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural  
24 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of  
25 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to  
26 personally appear at any administrative hearing held in this matter, to be represented by an attorney at  
27 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to  
28 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over

1 the hearing as a hearing officer, and to have the matter judicially reviewed.

2 It is further stipulated and agreed that Respondent violated the Political Reform Act by failing to  
3 timely report income from his employers on his annual SEI for 2008 in violation of Government Code  
4 sections 87300 and 87302, and making a governmental decision directly relating to a person with whom  
5 he had an arrangement concerning prospective employment, in violation of Section 87407, all as  
6 described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though fully set  
7 forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.  
9 Respondent also agrees to the Commission imposing an administrative penalty in the total amount of  
10 Four Thousand Dollars (\$4,000). Respondent submitted with this Stipulation a cashier's check in said  
11 amount, made payable to the "General Fund of the State of California," as full payment of the  
12 administrative penalty that shall be held by the State of California until the Commission issues its  
13 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to  
14 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the  
15 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in  
16 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and  
17 agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the  
18 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,  
19 shall be disqualified because of prior consideration of this Stipulation.

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23 Dated: \_\_\_\_\_ Gary S. Winuk, on behalf of the Enforcement Division  
24 Fair Political Practices Commission

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26 Dated: \_\_\_\_\_ Dwain Sanders  
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1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Dwain Sanders,” FPPC No. 13/094,  
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political  
4 Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: \_\_\_\_\_  
9 Ann Ravel, Chair  
10 Fair Political Practices Commission  
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## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Dwain Sanders (“Respondent”) served as a Director on the Western Hills Water District (“District”) Board of Directors (“Board”) from 2005 through 2008. The Political Reform Act (the “Act”)<sup>1</sup> requires public officials to file an annual Statement of Economic Interests (“SEI”) disclosing income received by the official during the year. Also, the Act prohibits a public official from participating in a governmental decision directly relating to a future employer. Respondent violated the Act by failing to timely report income from his employers Diablo Grande LP and World International, Inc. (“World”) on his 2008 SEI, and voting on a matter relating to World when he had an agreement to go to work for World.

For the purposes of this Stipulation, Respondent’s violations of the Act are as follows:

**COUNT 1:** Respondent failed to timely report income from Diablo Grande LP and World on his annual SEI for 2008 in violation of Sections 87300 and 87302.

**COUNT 2:** Respondent, in his capacity as a Director for the Board, voted in favor of adopting a resolution waiving delinquency penalties owed to the District on real property World intended to purchase and at that time Respondent had an arrangement for prospective employment with World, in violation of Section 87407.

### **SUMMARY OF THE LAW**

#### **SEI Filing Requirements**

An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the assets and income of public officials, that may be materially affected by their official actions, be disclosed, so that conflicts of interests may be avoided. In furtherance of this purpose, Section 87300 requires every agency to adopt and promulgate a Conflict of Interest Code. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated official or employee shall be deemed a violation of this chapter. (Section 87300.)

Section 82019, subdivision (a), defines “designated employee” to include any officer, employee, member, or consultant of an agency whose position is “designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.” Each Conflict of Interest Code shall require that each designated employee file an annual statement disclosing

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

reportable investments, business positions, interests in real property, and sources of income. (Section 87302.) “Income” is defined, in part, as a payment received, including but not limited to any salary, wage, or gift. (Section 82030, subd. (a).)

Section 87302, subdivision (b), provides that an agency’s Conflict of Interest Code must require each designated employee of the agency to file annual SEI at a time specified in the agency’s conflict of interest code, disclosing investments, income, business positions, and interests in real property, held or received at anytime during the previous calendar year and that the information required to be disclosed describing these interests is the same as that required by Sections 87206 and 87207. An agency’s Conflict of Interest Code may incorporate Regulation 18730, which contains a model conflict of interest code, by reference.

The Western Hills Water District Conflict of Interest Code (“District Code”) in effect at all times relevant to this case incorporated by reference the model code in Regulation 18730 as the code for the District. Board Directors were subject to Disclosure Categories I and II of the District Code which required the Directors to disclose business income from businesses doing business with the District or within the District boundaries. Regulation 18730 requires designated employees to file an SEI each year on or before April 1<sup>st</sup>.

### **Influencing Prospective Employment**

Section 87407 states as follows:

No public official shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.

An official “makes a governmental decision” when the official, acting within the authority of his office, votes on a matter. (See Regulations 18747 and 18702.1, subdivision (a)(1).) A governmental decision “directly relates” to prospective employer if the prospective employer initiates the proceeding or is the subject of the proceeding concerning the decision before the official. (Regulations 18747 and 18704.1, subd. (a)(1) and (2).) An official and a prospective employer are “negotiating” prospective employment when the official interviews or discusses an offer of employment. (Regulation 18747, subd. (c)(1).) An official has an “arrangement concerning prospective employment” when the official accepts an offer of employment. (Regulation 18747, subd. (c)(2).)

## **SUMMARY OF THE FACTS**

### **Background**

The District was formed in 1992 as a water district pursuant to the California Water District Law (Division 13 of the California Water Code) for the purpose of providing water and sewer services to a development in Stanislaus County known as Diablo Grande. Diablo Grande

consists of approximately 5,000 residential lots as well as a golf course and clubhouse. The original developer of Diablo Grande was Diablo Grande LP.

The District has five Directors on its Board as well as a secretary and treasurer who are appointed by the Board. The Directors are elected by the property owners within the District. The District bylaws require that a person must own property in the District to serve as a Director on the Board.

Diablo Grande LP filed for bankruptcy in 2008 before completing the development. World purchased all of Diablo Grande LP's interests in Diablo Grande on October 7, 2008. This included the golf course and clubhouse, a number of undeveloped residential lots, agricultural land, and a commercial property.

### **Respondent's Positions**

Respondent was the Vice President of Development for Diablo Grande LP from May of 2005 until October of 2008 when World bought Diablo Grande LP's interests. As part of the agreement to purchase Diablo Grande LP's assets in bankruptcy, World agreed to hire all employees of Diablo Grande LP upon taking over the development of Diablo Grande. Respondent was employed by Diablo Grande LP until the bankruptcy was finalized and then he immediately began his employment with World in October of 2008. His employment with World ended in May of 2009.

Respondent served as a Director on the District Board from November of 2005 through September of 2008. He was also the President of the Board during that time.

### **SEI Filings**

There is no record of Respondent filing an annual SEI for 2005 or 2006. Respondent filed an annual SEI for 2007 dated May 22, 2008 that disclosed his position as an employee of Diablo Grande LP. On or about April 8, 2009, Respondent filed an annual SEI for 2008. He did not disclose his employment with Diablo Grande LP and World on that SEI. On December 14, 2010, he filed an amended SEI for 2008 that disclosed his employment with Diablo Grande LP and World.

Respondent said his failure to report his employment on his 2008 SEI was an oversight. Upon learning of the complaint in this case, he filed the amended SEI.

### **Resolution Waiving Penalties**

At a special meeting on September 22, 2008, the District Board considered Resolution No. 2008-02 ("Resolution"). The Resolution waived special tax delinquency and redemption penalties owed to the District on real property that World was acquiring under the purchase agreement of Diablo Grande in bankruptcy. According to the Resolution, World requested the

Resolution and the Directors believed it was in the best interest of the District because it helped to ensure that World would proceed with the purchase.

At that meeting, Respondent motioned that the Directors vote to approve the Resolution and he voted in favor of the Resolution. The Resolution passed.

Therefore, Respondent violated the Act as follows:

### **Count 1**

#### **Failure to timely disclose income on a Statement of Economic Interests**

Respondent was employed by Diablo Grande LP and World during 2008. Respondent also served as a Board Director in 2008. Respondent failed to timely report the income he received from his employment with Diablo Grande LP and World during 2008 on his annual SEI for 2008 in violation of Sections 87300 and 87302.

### **Count 2**

#### **Prospective Employment Violation**

Respondent, in his capacity as a Director for the Board, voted in favor of adopting a resolution waiving delinquency penalties owed to the District on real property World intended to purchase. At the time of the vote, Respondent had an employment arrangement in place to work for World when World acquired Diablo Grande LP's interests. By voting in favor of the resolution, Respondent violated Section 87407.

### **CONCLUSION**

This matter consists of two counts, which carry a total maximum administrative penalty of \$10,000.

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission ("Commission") considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether the Respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

**SEI Non-Disclosure:** Violations for failure to disclose an economic interest on an SEI commonly result in a fine of \$1,000 when the official has committed another violation related to the non-disclosed income, or its source. In the case of *In the Matter of Michael Rubio*, FPPC No. 07/293, the respondent, a Kern County Supervisor, failed to timely report on his 2006 SEI his

wife's income from her part-time employment with a non-profit health care service provider. The respondent also voted in May of 2006 to approve a contract between the county and the non-profit organization where his wife worked whereby the organization would provide services to the county. On January 28, 2011, the Commission approved penalties against the respondent of \$1,000 for failure to timely report his wife's income on his annual SEI, and \$2,500 for violating the conflict of interest provisions of the Act by voting on the contract between the county and the non-profit organization. The respondent said he did not initially realize he had to report the income and amended his SEI to report the income a few days after initially filing the SEI.

Similarly, in the case of *In the Matter of Andres Herrera*, FPPC No. 12/027, the respondent, an Oxnard City Councilman, failed to disclose gifts received from a developer who does business in the city on his 2007, 2008, and 2009 SEIs, and failed to disclose gifts received from a municipal bond underwriter who does business with the city on his 2008 SEI. On December 13, 2012, the Commission approved a penalty of \$1,000 per violation for three counts of non-disclosure of gifts on his SEI. The Commission also imposed a fine of \$3,500 against the respondent for violating the conflict of interest provision of the Act when he voted on a matter concerning one of the gift-givers. Respondent stated that he was unaware of the reporting requirements and no evidence was found that the gifts were intentionally omitted.

Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI deprives the public of information about a public official's economic interests and it has the potential to conceal conflicts of interest.

While the comparable cases discussed above concern different forms of income, in each case the undisclosed source of income was also the subject of a governmental decision in which the respondent participated. Similarly, in the case now at issue, Respondent's unreported future employers benefited from his official actions. However, also similar to the cases discussed above, it does not appear Respondent, in failing to report the income, intended to conceal his receipt of the income or deceive the public as to the source of income.

**Prospective Employment:** The only recent case considered by the Commission concerning a violation of Section 87407 is *In the Matter of Daniel Spence*, FPPC No. 03/214. In that case, the respondent was an employee of the state Health and Human Services Agency ("Agency") where he was responsible for procuring information technology products for the Agency. The respondent wanted a raise but there were no promotional opportunities available so management at the Agency devised a plan where a private company would employ respondent as a consultant and the Agency would contract with that company for respondent's consulting services. Legal counsel for the Agency told the respondent that the arrangement would not create a conflict of interest. By participating in negotiations with the private company to contract with the Agency for his consulting services while he also negotiated with the private company for future employment as a consultant, the respondent violated Section 87407. On January 12, 2007, the Commission approved a penalty of \$3,500 against respondent for violating Section 87407.

While *In the Matter of Daniel Spence* is the only recent case involving a violation of Section 87407, making a governmental decision related to prospective employers is similar to conflict of interest violation under Section 87100, except that a violation of Section 87407 involves a source of future income, rather than a source of present or past income. In terms of public harm, this distinction is minor so the conflict of interest violations found in the cases of *In the Matter of Michael Rubio* and *In the Matter of Andres Herrera*, discussed above, are comparable for purposes of determining the appropriate penalty for Respondent's violation. In those cases, the respondents paid fines of \$2,500 and \$3,500, respectively, for making governmental decisions regarding entities that were sources of income to them.

In this case, Respondent stated that at the time he voted on the Resolution, he did not believe that his future employment with World prevented him from voting. In this way, his case is similar to the cases mentioned because in each case the respondents claimed to be unaware that they were violating the Act. Respondent also said he voted in favor of the Resolution because it would expedite the sale of Diablo Grande to World, which he thought was in the best interest of the District. This is a mitigating factor but it does not excuse Respondent's violation.

#### **PROPOSED PENALTY**

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of \$1,000 for Count 1, and \$3,000 for Count 2, for a total penalty of \$4,000, is recommended.