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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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11

12 In the Matter of) FPPC No. 13/268
13)
14 GEORGE SANEN)
15) STIPULATION, DECISION and
16 Respondent.) ORDER
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18 Complainant Gary S. Winuk, Enforcement Chief of the Fair Political Practices Commission, and
19 Respondent George Sanen agree that this Stipulation will be submitted for consideration by the Fair
20 Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of the Respondent, pursuant to Section 83116 of the Government Code.

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

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent George Sanen violated the Political Reform
4 Act by (1) making a governmental decision concerning a company with whom he was negotiating
5 prospective employment, in violation of Section 87407 of the Government Code (1 count). This Count
6 is described in Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth
7 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 upon him an administrative penalty in the amount
10 of Three Thousand Five Hundred Dollars (\$3,500). A cashier's check from Respondent in said amount,
11 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
12 payment of the administrative penalty, to be held by the State of California until the Commission issues
13 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
14 to 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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22 Dated: _____
23 Gary S. Winuk, Chief of Enforcement
24 Fair Political Practices Commission

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26 Dated: _____
27 George Sanen, Respondent
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1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of George Sanen,” FPPC No. 13/268,
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.

5
6 IT IS SO ORDERED.

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8 Dated: _____

Sean Eskovitz, Vice Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent George Sanen was a Project Manager at Lawrence Berkeley National Laboratory (“LBNL”), a U.S. Department of Energy National Laboratory operated by the University of California, at all times relevant to this complaint. As a LBNL employee, Respondent was a public official and therefore prohibited by Government Code section 87100 of the Political Reform Act¹ (the “Act”) from making, participating in making, or attempting to use his official position to influence any governmental decision in which he had a financial interest.

In this matter, as a Lawrence Berkeley National Laboratory employee, Respondent Sanen failed to disqualify himself from participating in making a governmental decision concerning M+W Group, USA, a company with whom he was negotiating prospective employment.

For the purposes of this Stipulation, Respondent’s violation of the Act is stated as follows:

COUNT 1: On or about and between March 23, 2011 and June 6, 2011, Respondent George Sanen, an employee with the Lawrence Berkeley National Laboratory, participated in making governmental decisions regarding modifications to a \$137,960 contract between the Lawrence Berkeley National Laboratory and M+W Group, USA at a time when he was negotiating, or had an arrangement concerning, prospective future employment with M+W Group, USA, in violation of Section 87407 of the Government Code.

SUMMARY OF THE LAW

Section 81001, subdivision (b) states that public officials should perform their duties in an impartial manner, free from bias caused by their financial interests or the financial interests of persons who have supported them. In order to accomplish this purpose, section 87100 prohibits a public official from making, participating in making, or attempting to use his or her official position to influence any governmental decision in which the official knows or has reason to know that he or she has a financial interest.

Section 87407 provides that 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.

Section 82048 defines “public official” as every member, officer, employee or consultant of a state or local government agency. The LBNL is a state administrative agency, as defined in

¹ 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 18109 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.

section 87400, subdivision (a), and as a Project Manager employed by the LBNL, Respondent Sanen was an employee of a state agency subject to the prohibition in section 87407.

According to regulation 18747, subdivision (b), a governmental decision “directly relates” to a prospective employer when: 1) the prospective employer initiates a proceeding in which the decision will be made by filing an application, claim, appeal or similar request; 2) the prospective employer is a named party in, or is the subject of, a proceeding in which the decision will be made; 3) the proceeding involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the prospective employer; or 4) it is reasonably foreseeable that the governmental decision will have a material financial effect on the prospective employer.

For purposes of this restriction, a “prospective employer” is a person, including a business entity, with whom an official, either personally or through an agent, is negotiating with, or has an arrangement concerning, prospective employment. Under regulation 18747, subdivision (c), a public official is “negotiating” employment when he or she interviews or discusses an offer of employment with an employer or his or her agent, and a public official has an “arrangement” concerning prospective employment when he or she accepts an employer’s offer of employment.

Regulation 18702.2, as it was in effect in 2012, provided that a public official “participates in making a governmental decision” when, acting within the authority of his or her position, the official advises or makes recommendations to the decision-maker either directly or without significant intervening substantive review, by preparing or presenting any report, analysis, or opinion, orally or in writing, which requires the exercise of judgment on the part of the official, and the purpose of which is to influence a governmental decision.

SUMMARY OF THE FACTS

Respondent George Sanen was employed by the Lawrence Berkeley National Laboratory (“LBNL”) as a Project Manager from 2010 through May of 2013. Respondent’s duties as a Project Manager included developing project budgets, managing consultants and contractors, management of project design and construction, and contract negotiation.

In 2009, the Lawrence Berkeley National Laboratory began a project to construct a laser accelerator for use in fusion research. The Berkeley Lab Laser Accelerator (“BELLA”), was to be located within Building 71 at the LBNL campus. Building 71 first needed to be retrofitted in order to accommodate the advanced laser driven particle accelerator.

In October of 2010, the LBNL entered into a contract with M+W Group for the performance of engineering and architectural work in connection with the Bella Project, Building 71 renovation.

On March 8, 2011, Respondent Sanen sent a cover letter and resume to Brian Vandenson with M+W Group, thanking him for providing him with information regarding the opportunity to work for M+W Group and stating that he looks forward to meeting soon.

On May 31, 2011, Respondent received a letter from M+W Group, which included a formal offer of employment, for a position as Senior Project Manager, at a salary of \$136,000 annually.

On June 3, 2011, Respondent received a follow up letter from M+W Group, making a revised formal offer of employment with an increase in salary, to \$140,000 annually, for the Senior Project Manager position.

On June 6, 2011, Respondent declined the employment offer from M+W Group; on the grounds the salary was insufficient.

COUNT 1

FAILURE TO DISQUALIFY HIMSELF FROM PARTICIPATING IN MAKING A GOVERNMENTAL DECISION REGARDING A PROSPECTIVE EMPLOYER

During the time period Respondent Sanen was negotiating employment with M+W Group, on or about March 23, 2011, Respondent received, from Brian Vandenson, Request for Change Order No. 2, which sought the allocation of \$2,540 in additional funds for M+W Group for work on the Bella Project, Building 71. On or about April 6, 2011, Respondent Sanen approved the allocation of \$2,540 for work specified in Request for Change Order No. 2.

By participating in making a governmental decision on or about and between March 23, 2011 and April 6, 2011, regarding the contract between the Lawrence Berkeley National Laboratory and M+W Group, USA, a company with whom he was negotiating prospective employment, Respondent Sanen violated Section 87407 of the Government Code.

CONCLUSION

This matter consists of one count of violating the Act carrying a maximum administrative penalty of \$5,000 for the violation.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division 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): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Respondent Sanen should have known of the prohibition on participating in making a governmental decision involving an entity with whom he was negotiating prospective employment. Respondent has no history of prior violations of the Act.

Participating in making a governmental decision involving an entity with whom the official is negotiating prospective employment is one of the more serious violations of the Act, as it creates the appearance that a governmental decision was made on the basis of public official's financial interest. The typical administrative penalty for a conflict-of-interest violation, depending on the facts of the case, has been in the mid-to-high range of available penalties.

Another similar case regarding a violation of Section 87407 that has been recently approved by the Commission includes:

In the Matter of Daniel Spence, FPPC No. 03/214, a case that involved an employee with the Health & Human Services Agency Data Center, who participated in making a governmental decision regarding a \$345,600 contract between the Health & Human Services Agency Data Center and Shooting Star Solutions, Inc., at a time when he was negotiating, or had an arrangement concerning, prospective future employment with Shooting Star Solutions, Inc. The agreed upon penalty in that case, approved by the Commission on January 12, 2007, was \$3,500.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, the facts of this case and consideration of penalties in prior enforcement actions, the Enforcement Division recommends the imposition of the agreed upon penalty of Three Thousand Five Hundred Dollars (\$3,500).