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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

Coordinated Proceeding,
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER CASES.

Judicial Council Coordination Proceeding No.: 4408

LASC Case No. BC32501

Santa Clara Sup. Court Case No.: 1-05-CV-049053
Assigned to Hon. Jack Komar, Judge of the Santa Clara County Superior Court

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JOHNNY AND PAMELLA ZAMRZLA'S MOTION TO SET ASIDE OR MODIFY JUDGMENT

Date: **May 3, 2022**
Time: **9:00 a.m.**

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I. INTRODUCTION

Defendants Johnny and Pamella Zamrzla bring this motion to set aside or modify the Judgment and Physical Solution, by removing their names from the Small Pumper Class, on the basis that they were denied due process because they were never served notice of the litigation.

Johnny and Pamella Zamrzla have lived in Lancaster for more than 50 years, where they own 119 acres of land. Despite the requirement that owners of more than 100 acres, and pumpers of more than 25 acre-feet per year (AFY), be personally served with notice of the Antelope Valley Groundwater litigation, the Zamrzlas were never personally served. In fact, they were never served by any method. Although Watermaster and other parties claim the Zamrzlas were served by mail, the evidence in support of such service is inadmissible and is contradicted by the Zamrzlas' declarations.

Further, the alleged mailed notice was defective on its face, because it failed to correctly describe the small pumper class. It cannot be considered to have properly notified the Zamrzlas of the litigation and its potential effect on their rights. The Watermaster and other parties now claim the Zamrzlas are subject to the Antelope Valley Groundwater Cases Judgment and Physical Solution (the "Judgment"), despite this lack of notice. As a matter of due process, the Zamrzlas cannot be subject to the Judgment.

Finally, even if the Zamrzlas were properly served (they were not), and such service was not defective (it was), the Zamrzlas still cannot be bound by the Judgment as it pertains to small pumpers because the Zamrzlas do not fall within the definition of the small pumper class. The irrefutable evidence establishes the Zamrzlas exceeded the 25 AFY threshold every year they owned the subject property.

The Watermaster's attempt to impose on the Zamrzlas exorbitant fees for allegedly over-pumping their allocation as "small pumpers" is both unjustified and unconstitutional. The reduction in the Zamrzlas' pumping rights without the right to be heard amounts to an unconstitutional taking without due process. The fundamental requisite to due process is proper notice and the right to be heard. The Zamrzlas have not been afforded that right. Accordingly, they cannot be bound by the judgment, and it should be modified so as not to include the Zamrzlas, or be set aside as to them.

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II. FACTUAL AND PROCEDURAL BACKGROUND

Johnny and Pamella Zamrzla first purchased property in the Antelope Valley more than 50 years ago, in 1970, and have owned and lived on that same property without interruption. They own three contiguous parcels, totaling 119 acres. The Zamrzlas' are prominent members of the community. Over the past 51 years, the Zamrzlas have used their property variously for ranching and farming, including raising cattle, horses, and mules, as well as growing alfalfa, onions, carrots, and pasture grasses. The Zamrzlas own and operate a successful and well-known roofing contracting business in the community. They have donated the use of their home and property for community events and hosted annual fundraising events for local charities and organizations, and are well-known in the community. (Compendium of Evidence "COE" Ex. 1-2.)

The entire history of the Antelope Valley Groundwater litigation is too lengthy to recount here, but the following facts are relevant to the discrete issue raised by the instant motion: whether the Zamrzlas were afforded their constitutional right to due process and are bound by the Judgment and Physical Solution. After years of litigation, the Court entered Judgment on December 23, 2015, and adopted the Judgment and Physical Solution. (COE Ex. 7.) On the same date, the Court signed the Judgment Approving Small Pumper Class Action Settlements, which affected the pumping rights of members of the small pumper class. (COE Ex. 8.) However, the Zamrzlas were never personally served with notice of the Antelope Valley Groundwater litigation, and never received notice of the litigation by mail. (COE Ex. 1-2.)

Earlier in this litigation, efforts were made, pursuant to Court Order, to personally serve 1) any landowner owning more than 100 acres, and 2) any landowner that pumped more than 25 acre-feet per year. On December 11, 2006, Los Angeles County Waterworks District No. 40 filed a declaration listing the 216 parties that had been personally served, pursuant to the Court's Order regarding personal service. (COE Ex. 9.) On July 2, 2007, Los Angeles County Waterworks District No. 40 filed a declaration stating that 321 parties had been personally served, again noting that owners of over 100 acres must be personally served, pursuant to court order. (COE Ex. 10.)

On September 12, 2008, Los Angeles County Waterworks District No. 40, filed a detailed declaration regarding status of service of process. In the declaration noted the Court had ordered

personal service of landowners owning over 100 acres, and also of any landowners who pump more than 25 AFY. At that time, they had apparently personally served 449 of 630 identified large landowners, and 29 of 38 additional landowners pumping more than 25 AFY. (COE Ex. 11.)

On November 21, 2008, Los Angeles County Waterworks District No. 40 filed a Case Management Conference Statement referencing that the "Court ordered personal service be completed upon landowners pumping more than 25 acre feet of water annually, or owning more than 100 acres of land." The Water District indicated it had personally served 547 landowners and had identified another 120 to be served. (COE Ex. 12.) The same day, the Public Water Suppliers filed an ex parte application requesting permission to serve by publication. (COE Ex. 13.) The Court signed an order permitting service by publication on November 25, 2008. The attached list of parties to be served by publication did not include the Zamrzlas. (COE Ex. 14.)

On September 29, 2021, the Watermaster filed a Motion for Monetary, Declaratory and Injunctive Relief Against Zamrzlas. (DI No. 12095). In its motion, the Watermaster alleged that Johnny and Pamella Zamrzla were members of the Small Pumper Class with an allocation of 6 acre-feet per year, that they had pumped at least 69.29 acre-feet in 2018, and that they, therefore, owed Replacement Water Assessments totaling $28,755.35, plus interest, attorney's fees, and costs of collection. (DI No. 12095, pp. 5, 9, 10). The Zamrzlas filed their opposition to the Watermaster's motion on November 12, 2021, arguing, among other things, that they had never received notice of their inclusion in the Small Pumper Class and therefore were absent persons with respect to the Judgment and not bound by it. (DI No. 12125, pp. 11-14). The Zamrzlas also argued that they were not, by definition, members of the Small Pumper Class. (DI. No. 12125, pp. 14-15). The Watermaster filed its reply on December 3, 2021. (DI No. 12153).

At a hearing held on the Watermaster's motion on December 10, 2021, the Court asked the parties to attempt to stipulate to a resolution of the dispute and adjourned the hearing. The parties appeared again for hearings on January 25, 2022, and on February 18, 2022, and the Court again instructed them to attempt to resolve the dispute through a stipulated agreement. When the parties next appeared at a hearing on March 4, 2022, the Court noted that the "proper way" for the Zamrzla's to contest their inclusion in the Small Pumper Class would be for them to file a motion,

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supported by evidence, to enable the Court to make a finding as to their "historic entitlement." (COE Ex. 6 p. 11.) The Court further noted that if any of the Zamrzla parties had been included in the Small Pumper Class "by error," then "that is an error that needs to be corrected," and that there were "processes in equity" that could be employed to correct the error. (COE Ex. 6 p. 15.)

The parties and the Court agreed that the hearing would be adjourned to May 3, 2022, and that the Zamrzlas would file a motion seeking their removal from the Small Pumper Class before that date in accordance with the Code of Civil Procedure. (COE Ex. 6 p. 25.) The Zamrzlas do so here.

III. LEGAL ARGUMENT

A. The Court Has the Inherent Power in Equity to Modify or Set Aside the Judgment.

California courts have inherent equity power under which, apart from statutory authority, the court has the power to grant relief from a judgment where there has been extrinsic fraud or mistake. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 855; *Hill v. Johnson* (1961) 194 Cal.App.2d 779, 782 [default set aside more than six months after judgment where record showed extrinsic mistake on the part of defendant that prevented him from having a fair adversary hearing]; *Hallett v. Slaughter* (1943) 22 Cal.2d 552, 557 ["Plaintiff was prevented by extrinsic accident and mistake of fact from presenting her defense in the municipal court action. That such accident and mistake furnish a ground for equitable intervention under the circumstances of this case is clear."])

Equity's jurisdiction to interfere with final judgments is based upon the absence of a fair, adversary trial in the original action. "It was a settled doctrine of the equitable jurisdiction -- and is still the subsisting doctrine except where it has been modified or abrogated by statute . . . that where the legal judgment was obtained or entered through fraud, mistake, or accident, or where the defendant in the action, having a valid legal defense on the merits, was prevented in any manner from maintaining it by fraud, mistake, or accident, and there had been no negligence, laches, or other fault on his part, or on the part of his agents, then a court of equity will interfere at his suit, and restrain proceedings on the judgment which cannot be conscientiously enforced. . . . The ground for the exercise of this jurisdiction is that there has been no fair adversary trial at law." Typical of

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the situations in which equity has interfered with final judgments are the cases where the lack of a fair adversary hearing in the original action is attributable to matters outside the issues adjudicated therein which prevented one party from presenting his case to the court, as for example, where there is extrinsic fraud or extrinsic mistake. (*Olivera v. Grace* (1942) 19 Cal.2d 570, 575 [internal citations omitted].) Where the court that rendered the judgment possesses a general jurisdiction in law and in equity, the jurisdiction of equity may be invoked by means of a motion addressed to that court. (*Id*., at p. 576.)

Here, as described in more detail below, the Zamrzlas are purported to be bound by the 2015 Judgment and Physical Solution, despite never being served notice of the ligation, and therefore being denied their right to an adversarial hearing and proceeding concerning their water pumping rights. As shown below, the Zamrzlas were never served with notice of the underlying litigation, therefore, their inclusion as "small pumpers" bound by the Judgment and Physical Solution is improper and violates their right to due process under both the United States and California Constitutions. As a matter of equity, the Court has the power to revisit the judgment vis-a-vis the Zamrzlas.

B. The Judgment Should be Set Aside Because Johnny and Pamella Zamrzla Have Been Denied Due Process as They Were Never Served Notice of the Antelope Valley Groundwater Litigation.

No person shall be deprived of life, liberty, or property, without due process of law. (USCS Const. Amend. 5.) No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (USCS Const. Amend. 14 § 1.) A person may not be deprived of life, liberty, or property without due process of law… (Cal. Const., Art. I § 7.) The fundamental requisite of due process of law is the opportunity to be heard. (*Grannis v. Ordean* (1914) 234 U.S. 385, 394.)

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their

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objections. The notice must be of such nature as reasonably calculated to convey the required information, and it must afford a reasonable time for those interested to make their appearance. (*Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314 [internal citations omitted].) Personal service of written notice within the jurisdiction is the classic form of notice always adequate in any type of proceeding. (*Mullane, supra*, at p. 313.)

Peralta v. Heights Medical Center, Inc., involved a Texas lawsuit to recover a guaranteed $5,600 hospital debt. Citation issued, the return showing personal, but untimely, service. Appellant Peralta did not appear or answer, and default judgment was entered for the amount claimed, plus attorney's fees and costs. Two years later, appellant began a bill of review proceeding in the Texas courts to set aside the default judgment and obtain other relief. Appellant alleged he was never personally served, and thus the judgment was void. The Texas courts held that to have the judgment set aside, appellant was required to show that he had a meritorious defense, apparently on the ground that without a defense, the same judgment would again be entered on retrial, and hence appellant had suffered no harm from the judgment entered without notice. The *Peralta* court held this reasoning was untenable. As Peralta asserted, had he had notice of the suit, he might have impleaded the employee whose debt had been guaranteed, worked out a settlement, or paid the debt. He would also have preferred to sell his property himself in order to raise funds rather than to suffer it sold at a constable's auction. The *Peralta* court also found there was no doubt that the entry of the judgment itself had serious consequences, as the judgment was entered on the county records, became a lien on appellant's property, and was the basis for issuance of a writ of execution under which appellant's property was promptly sold, without notice. Even if no execution sale had yet occurred, the lien encumbered the property and impaired appellant's ability to mortgage or alienate it; and state procedures for creating and enforcing such liens are subject to the strictures of due process. (*Peralta v. Heights Medical Center, Inc.* (1988) 485 U.S. 80, 84-86.)

Thus, the *Peralta* court held that due process demanded that only "wiping the slate clean . . . would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place." (*Peralta, supra*, 485 U.S. at p. 86 quoting *Armstrong v. Manzo* (1965) 380 U.S. 545, 552.) The Court held that failure to give notice violates the most

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rudimentary demands of due process of law. (*Peralta, supra*, 485 U.S. at p. 84.)

Since *Mullane* was decided, California has regularly turned to it when confronted with questions regarding the adequacy of the method used to give notice. (*People v. Gonzalez* (2003) 31 Cal.4th 745, 754.) *Mullane* requires a reviewing court to determine whether the method of notice is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (*Id*., citing *Mullane, supra*, 339 U.S. at p. 314.) Water rights are subject to due process. Once rights to use water are acquired, they become vested property rights. As such, they cannot be infringed by others or taken by governmental action without due process and just compensation. (*United States v. State Water Res. Control Bd.* (1986) 182 Cal.App.3d 82, 101.) Due process principles require reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest. (*Horn v. Cty. of Ventura*, (1979) 24 Cal.3d 605, 612.) It is well settled that "the judgment in a class action binds only those class members who had been notified of the action and who, being so notified, had made no request for exclusion." (*Steen v. Fremont Cemetery Corp.* (1992) 9 Cal.App.4th 1221, 1227.) The notice requirement is not only important and essential to the correct determination of the main issue it is, above all, jurisdictional. (*Id*., at p. 1227-1228.)

Here, Johnny and Pamella Zamrzla were never personally served (as required by Court order) with notice of the litigation despite owning more than 100 acres of land in the Antelope Valley and pumping more than 25 AFY on a yearly basis. In the years following the Court's order, the record shows District 40 claimed personal service to landowners was occurring in 2006, 2007, 2008, 2009, and 2010. The Zamrzlas were never personally served. Although the Zamrzlas are alleged to have been served with mail notice in later years after the Court certified the Classes, the mail notice was not, in fact, ever received by the Zamrzlas, and even had it been received, the mail notice was defective to put the Zamrzlas on notice of the threat to their pumping rights posed by the litigation.

1. The Judgment Should be Set Aside Because Johnny and Pamella Zamrzla Were Never Personally Served, in Violation of the Court's Order.

Johnny and Pamella Zamrzla first purchased property in the Antelope Valley more than 50

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years ago, in 1970, and have owned and lived on that same property without interruption. They own three contiguous parcels, totaling 119 acres. However, the Zamrzlas were never personally served with notice of the Antelope Valley Groundwater litigation, despite the Court's requirement that any landowners owning 100 acres or more, or pumping in excess of 25 AFY, be personally served with notice of the litigation. It is clear from the record that the parties have relied upon an order from the Court requiring personal service of any landowners owning 100 acres or more, or pumping in excess of 25 AFY.

By way of example, on December 11, 2006, Los Angeles County Waterworks District No. 40 filed a declaration listing the 216 parties that had been personally served, pursuant to the Court's Order regarding personal service. The Zamrzlas do not appear on this list. On July 2, 2007 Los Angeles County Waterworks District No. 40 filed a declaration stating that 321 parties that had been personally served, again noting that owners of over 100 acres must be personally served.

On September 12, 2008, Jeffrey Dunn, counsel for Los Angeles County Waterworks District No. 40, filed a detailed declaration regarding status of service of process. In his declaration Mr. Dunn noted the Court had ordered personal service of landowners owning more than 100 acres, and also of any landowners who pump more than 25 acres feet annually. At that time, they had apparently personally served 449 of 630 identified large landowners, and 29 of 38 additional landowners pumping more than 25 AFY.

On November 21, 2008, Los Angeles County Waterworks District No. 40 filed a Case Management Conference Statement referencing that the "Court ordered personal service be completed upon landowners pumping more than 25 acre feet of water annually, or owning more than 100 acres of land." The Water District indicated it had personally served 547 landowners, and had identified another 120 to be served. The same day, the Public Water Suppliers filed an ex parte application requesting permission to serve by publication. The Court signed an order permitting service by publication on November 25, 2008. The attached list of parties to be served by publication did not include the Zamrzlas.

These are just a few examples acknowledging the court-ordered requirement that any landowner owning more than 100 acres within the Antelope Valley Groundwater Adjudication

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Boundary, and any other landowner known to pump more than 25 AFY, be personally served with notice of the litigation. The order requiring personal service makes sense. The litigation could (and indeed has) significantly diminish any given landowner's right to pump from the aquifer. For many landowners, the reduction in water rights could pose an existential threat to their livelihood and the value of their property. Because water rights, once acquired, are vested property rights, the litigation amounted to a taking and required due process. To impose severe water pumping restrictions without adequate notice of the litigation, and affording a landowner the right to be heard, would be not only inherently unfair but also constitute a clear violation of said landowner's constitutional rights.

Importantly, the admissible evidence is that neither the Watermaster nor any other party to the litigation has claimed the Zamrzlas were personally served. The Zamrzlas appear to have been completely missed in the effort to personally serve landowners and large pumpers. However, no explanation for the failure to personally serve the Zamrzlas has been forthcoming, and the failure to do so is particularly strange given the Zamrzlas' prominent standing in the community. Over the past 51 years, the Zamrzlas have used their property variously for ranching and farming, including raising cattle, horses, and mules, as well as growing alfalfa, onions, carrots, and pasture grasses. The Zamrzlas own and operate a successful and well-known roofing contracting business in the community. They volunteer and serve in many local organizations. The Zamrzlas have donated the use of their home and property for community events and hosted annual fund-raising events to support local charities. They are well-known, prominent community members, and meet the personal service requirement both by acreage and by water pumping amount.[1] Any argument that the Zamrzlas could not be located or identified as landowners subject to the personal service order is absurd on its face.

Indeed, the Zamrzlas would have been incredibly easy to identify, locate, and personally serve. The Zamrzlas' inclusion on the alleged "mail service" list and the final list of "small pumpers" in the Judgment, shows they were known to the Water District and other parties to the litigation. What is unknown is why the Zamrzlas were never personally served, despite meeting

[1] Evidence regarding the Zamrzlas' pumping history can be found at Section D., below.

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both requirements for personal service.

As the *Mullane* court held, personal service of written notice within the jurisdiction is the classic form of notice always adequate in any type of proceeding. (*Mullane, supra*, at p. 313.) Had the Zamrzlas been personally served, the entire present situation could have been avoided. However, because the Zamrzla's were not personally served they cannot be bound by the Judgment. Binding the Zamrzlas to the Judgment would violate their right to due process. It is on this basis the Zamrzlas request the Court exercise its inherent power in equity to either modify or set aside the Judgment such that the Zamrzlas are not bound by it.

2. Johnny and Pamella Zamrzla Were Never Served by Mail.

Not only were the Zamrzlas never personally served, but they were never served by mail either. On September 2, 2008, the Court issued an order certifying the Small Pumper class. After various revisions, the Court eventually approved Small Pumper Notice of Class Action, which was dated June 26, 2009. (COE Ex. 17.) This notice was allegedly mailed to Johnny and Pamella Zamrzla, however, the Zamrzlas never received the notice. (Pamella Decl. ¶ 6, Johnny Decl. ¶ 6.)

In fact, the only evidence thus far offered to show the Notice was mailed to the Zamrzlas is through the declaration of LA County Water District No. 40's attorney, Jeffrey Dunn, dated December 2, 2021, and attached to the Watermaster's Reply Brief in support of the Motion against the Zamrzlas. In that Declaration, Mr. Dunn claims:

> On July 2, 2009, my office received the mailing list used by the vendor to provide the 2009 Notice, which lists Johnny Zamrzla's and Pamella Zamrzla's ("Zamrzla") mailing address as "48910 80TH ST W, LANCASTER, CA 93536-8740." I am informed and therefore believe that a copy of the 2009 Notice was mailed to Zamrzla in late June or early July 2009 at that address

As detailed in the Zamrzlas' Evidentiary Objections to the Dunn Declaration (COE Ex. 4), Mr. Dunn's statement that the 2009 Notice was actually mailed to the Zamrzlas constitutes hearsay. Mr. Dunn did not complete the mailing himself, but rather, his firm hired an unidentified third-party vendor to handle the mailing. He then bases his belief that the Zamrzlas received the mailing on the list from the third-party vendor, which ostensibly includes the Zamrzlas. Thus, Dunn's statement that the Zamrzlas were served, is hearsay because he is simply repeating information

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from the third-party vendor.

Further, because Mr. Dunn has no personal knowledge that the 2009 Notice was actually mailed to the Zamrzlas, it also lacks foundation. Mr. Dunn cannot claim to know personally that the Zamrzlas were served. He admits his "knowledge" is based on the information provided by the unidentified third-party vendor. This inadmissible evidence is insufficient to support the contention that the Zamrzlas received the Notice by mail, particularly in the face of admissible declarations from the Zamrzlas that they never received the notice.

There is no admissible evidence that the Zamrzlas ever received the Notice – no certified mail, no return receipt, no Declaration from anyone actually involved in the mailing. Certainly, if such evidence existed it would have been presented to the Court by now. The fact that it has never been presented is telling. In fact, the only admissible evidence (the Zamrzlas' declarations) is that they were not.

Thus, even if it were appropriate to serve the Zamrzlas by mail – which by Court order it was not – no one has shown that the Zamrzlas were, in fact, served by mail.

C. Even if Johnny and Pamella Zamrzla Had Been Served by Mail, Service Was Defective.

The right to due process has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to contest. (*Traverso v. People ex rel. Dept. of Transportation* (1993) 6 Cal.4th 1152, 1163 quoting *Goss v. Lopez* (1975) 419 U.S. 565, 579 and *Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306, 314.) The notice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance. (*Mullane, supra,* 339 U.S. at p. 314; *People v. Gonzalez* (2003) 31 Cal.4th 745, 754.)

The June 26, 2009 Notice of Class Action, which was never actually mailed to the Zamrzlas, was also defective for multiple reasons. First, it materially differs from the Court's order regarding small pumpers. On September 2, 2008, the Court issued an order certifying the Small Pumper

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class. The Court described the class as all persons "that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present." (COE Ex. 15.) However, the Notice of Class Action for the "Small Pumper" Class Action, dated June 26, 2009, states:

> ARE YOU A MEMBER OF THE CLASS?
>
> You have been designated as a possible class member because records show that you may own improved property in the Antelope Valley. The class includes all private (i.e., non-governmental) landowners within the Antelope Valley Groundwater Basin that have pumped groundwater on their property at any time since 1946, with certain exceptions set out below.
>
> You are NOT in the Class if you fall within one of the categories set forth below. BUT YOUR RIGHTS MAY BE AFFECTED UNLESS YOU RETURN THE ATTACHED RESPONSE FORM AND MAKE CLEAR THAT YOU ARE NOT IN THE CLASS. HENCE, IT IS IMPORTANT THAT YOU RETURN THE RESPONSE FORM AS PROMPTLY AS POSSIBLE, EVEN IF YOU ARE NOT A CLASS MEMBER.
>
> YOU ARE NOT IN THE CLASS WITH RESPECT TO ANY GIVEN PARCEL OF PROPERTY IF THAT PARCEL FALLS WITHIN ANY OF THE FOLLOWING CATEGORIES:
>
> 1. You have pumped 25 acre-feet or more of groundwater for use on a that parcel in any calendar year since 1946; or
>
> 2. You are a shareholder in a mutual water company in the Antelope Valley; or
>
> 3. You are already a party to this litigation (but, in that event, you may elect to join the Class).

Per section 1 of the Small Pumper Notice, a landowner is not a member of the class if, in *any* year since 1946 the landowner pumped 25 acre-feet or more. This definition thus materially differs from the definition in the class certification order. It also differs from the definition of the Small Pumper Class found at section 3.5.44 of the Judgment and Physical Solution, which states small pumpers are those persons "that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present." This discrepancy in the class definition renders the notice deficient on its face, as it would mislead anyone reading the notice regarding who is properly a member of the small pumper class. Such discrepancies between the notice and the class

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definition cannot be said to have been reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Nor does such notice reasonably convey the required information. The notice thus fails the basic test of *Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306 regarding the sufficiency of notice.

Further, even if the notice was not deficient in its description of the class, the Zamrzlas regularly exceeded 25 acre-feet per year, as conclusively shown below in Section D. Thus, even had the Zamrzlas received this mail notice, upon reading the class definition, they would have immediately understood themselves not to be members of the Small Pumper Class, as the notice explicitly excludes those persons who "have pumped 25 acre-feet or more of groundwater for use on a that parcel in any calendar year since 1946." The Zamrzlas would have had no reason to believe themselves to be part of any litigation based on this notice, and certainly would not have understood they were bound by any Small Pumper Class judgment or settlement.

A notice that fails to actually notify is tantamount to no notice at all. As a matter of due process, the Zamrzlas cannot be bound by the deficient mail notice, that they never even received.

D. Johnny and Pamella Zamrzla do Not Meet the Small Pumper Class Definition and Should Not be Subject to the Small Pumper Water Pumping Limits.

Apart from the notice deficiencies, another critical problem in this case is that the Zamrzlas do not fit the definition of the Small Pumper class.[2] The amount of water the Zamrzlas pumped was established in a study by Rick Koch, of Southern California Edison. (COE Ex. 3.)

The Koch study, and accompanying declaration dated November 3, 2021, were filed in connection with the Zamrzlas' opposition to the Watermaster's Motion for Monetary, Declaratory and Injunctive Relief Against Zamrzlas. (DI No. 12095). Mr. Koch, a Technical Specialist in the Hydraulic Services Department of Southern California Edison ("SCE"), performed pump tests on the two wells located on Johnny and Pam's properties (the "Farm Well" and the "Domestic Well") between January 2013 and September 2018. The SCE test results and kWh consumed are used to

[2] As discussed in section C., above, there is a discrepancy in the definition of the Small Pumper Class, between the mailed notice and the class certification and Judgment. For purposes of this argument, defendants assume the Judgment and Physical Solution accurately defines the class, but make no adoption or admission of such. Regardless, as is shown, under either class definition, the Zamrzlas are not small pumpers.

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calculate the number of acre-feet of water produced by each well. SCE testing and calculation methods have been accepted by the Court to establish water usage history. Mr. Koch calculated the number of acre-feet of water produced by each well every year from 2011 through 2020. According to Mr. Koch's analysis, the Farm Well produced significantly more than 25 acre-feet per year every year during the studied period, with the exception of 2018 when the Zamrzlas did not produce water from the Farm Well. The Zamrzlas' water production for the years prior to 2011 exceeded or equaled the average water produced from 2011 to 2020. Water production historical reports will be provided at the evidentiary hearing for the Zamrzlas to prove up their water production entitlement.

Mr. Koch's analysis also showed that the Domestic Well pumped in excess of 25 acre-feet every year during the studied period, with the exception of 2014 when it pumped 23.7 acre-feet. Mr. Koch's results, summarized in the following table, show that this analysis is not a close call—the Zamrzlas have consistently pumped far in excess of the 25 acre-feet per year maximum required for inclusion in the Small Pumper Class:

YEAR	FARM WELL	DOMESTIC WELL
	ACRE-FEET PUMPED	ACRE-FEET PUMPED
2011	318.2	126.3
2012	358.4	111.3
2013	462.8	49.5
2014	443.0	23.7
2015	592.1	66.6
2016	466.3	31.6
2017	349.2	48.0
2018	0	75.8

The Watermaster's Motion for Monetary, Declaratory and Injunctive Relief Against Zamrzlas (DI No. 12095) is wholly inconsistent with an argument that the Zamrzlas were properly included in the Small Pumper Class. In that motion, the Watermaster relied in part on a 2019 memorandum issued by the Watermaster Engineer that estimated the Zamrzlas had pumped 490 acre-feet in 2018. (See DI No. 12095 at p. 6, and DI No. 12095, Exhibit B). Although the Zamrzlas dispute the Watermaster's Engineer's report for the year 2018, the Watermaster's reference to its own Engineer's report reveals the inherent contradiction in the Watermaster's motion. The

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Watermaster's motion aptly illustrates why the Zamrzlas do not belong in the Small Pumper Class. The Small Pumper Class was formed to protect the rights and determine the obligations of "small pumpers." Yet, the Watermaster's motion alleges that the Zamrzlas pump a substantial volume of water, far in excess of the definition of a "small pumper." The Watermaster has offered no explanation for the sharp contrast between the purported findings of its own engineer on the one hand, and the Watermaster's repeated insistence that the Zamrzlas are small pumpers.

Thus, the evidence overwhelmingly establishes that the Zamrzlas do not fit the definition of the Small Pumper Class, and have been erroneously included therein. Not only did the Zamrzlas not receive notice of the Small Pumper Class Action, but they were never small pumpers under the class definition, and thus would not be subject to the Judgment and Physical Solution as small pumpers, even had they received notice of the litigation.

IV. CONCLUSION

The Zamrzlas have spent more than fifty years building their lives in the Antelope Valley. Now, the Watermaster seeks to take the Zamrzlas' water rights from them, without due process. The Zamrzlas were never served with notice of this litigation. The Zamrzlas simply ask the Court to "wipe the slate clean," and give them the opportunity they have been thus far denied: to fairly litigate their water rights in an adversarial hearing. The Constitutions of both the State of California and the United States, demand no less.

Dated: April 11, 2022

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