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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES**
14

15 Coordination Proceeding

16 ANTELOPE VALLEY GROUNDWATER
17 CASES,

18 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.

19 Los Angeles County Waterworks District No.
20 40 v. Diamond Farming Co.

21 Wm Bolthouse Farms, Inc. v. City of
Lancaster

22 Diamond Farming Co. v. City of Lancaster

23 Diamond Farming Co. v. Palmdale Water
24 District,

25 AND RELATED ACTIONS
26
27
28

Judicial Council Coordination
Proceeding No. 4408

**DEFENDANTS' EX PARTE
APPLICATION TO CONTINUE
HEARING ON ZAMRZLAS' MOTIONS
TO SET ASIDE OR MODIFY
JUDGMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: April 19, 2022
Time: 1:00 p.m.

The Hon. Jack Komar, Dept. 17
Santa Clara Case No. 105 CV 049053

[Declaration of Jenifer N. Ryan and Proposed
Order Granting Application Filed Concurrently
Herewith]

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **I. APPLICATION**

3 PLEASE TAKE NOTICE that City of Los Angeles, Los Angeles World Airports Grimmway
4 Enterprises, Palmdale Water District, and County Sanitation Districts of Los Angeles County Nos. 14
5 and 20 (collectively, “**Settling Parties**”), will and hereby do apply *ex parte*, pursuant to California
6 Rules of Court, rule 3.1200 et seq., for an order from the Court granting a 90-day continuance of the
7 two Motions to Set Aside or Modify Judgment (**Motions**) filed by Johnny and Pamela Zamrzla, and
8 Johnny Lee and Jeanette Zamrzla (collectively “**Zamrzlas**” or “**defendants**”) currently set for hearing
9 on May 3, 2022.

10 1. Good cause exists to continue the Motions because the Motions raise factual issues as
11 to when the Zamrzlas had
12 notice of this comprehensive adjudication, historic water use, and whether they should be
13 bound by or allowed to collaterally attack the Judgment and Physical Solution and
14 Judgment, approving Small Pumper Class Action Settlements entered by this Court in
15 December of 2015. After years of delay, the Zamrzlas refused the Settling Parties’
16 reasonable request for a modest extension of time even though the Zamrzlas, according
17 to their own admission, will suffer no prejudice by a brief continuance.

18 2. Under Code of Civil Procedure section 128(a)(3), the court has the power to “provide
19 for the orderly conduct of proceedings before it, or its officers.” (Code Civ. Proc., §
20 128(a)(3).) The court also has inherent administrative powers, and inherent power to
21 control litigation before it. (*Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367,
22 1377.) And, since the defendants seek equitable relief, the Court has the equitable
23 power to grant this application.

24 This Application is based on this Application; the accompanying Memorandum of Points and
25 Authorities; the Declaration of Jenifer N. Ryan filed concurrently in support thereof; on the pleadings,
26 files, and records herein; and upon such other oral and documentary evidence as may be submitted at
27 the hearing on the Application.

28


1 DATED: April 18, 2022

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

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3

4

By:  for
Eric N. Robinson
Attorneys for Defendant CITY OF LOS
ANGELES and
LOS ANGELES WORLD AIRPORTS

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DATED: April 18, 2022

LEBEAU THELEN LLP

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By:  for
Robert G. Kuhs
Attorneys for Defendant GRIMMWAY
ENTERPRISES

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DATED: April 18, 2022

LAGERLOF, LLP

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By:  for
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DISTRICT

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DATED: April 18, 2022

ELLISON, SCHNEIDER, HARRIS & DONLAN LLP

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By:  for
Christopher M. Sanders
Attorneys for Defendant COUNTY
SANITATION DISTRICTS OF LOS ANGELES
COUNTY NOS. 14 AND 20

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1 I. MEMORANDUM OF POINTS AND AUTHORITIES

2 A. INTRODUCTION

3 On December 23, 2015, this Court entered the Judgment and Physical Solution (**Judgment**)
4 following 15 years of well-publicized litigation which included the United States, the State of
5 California, two Classes¹, the cities of Lancaster, and Palmdale, numerous mutual water companies and
6 public water suppliers including Los Angeles County Waterworks District No. 40, three State Water
7 Contractors including Antelope Valley-East Kern Water Agency, and countless cattle and farming
8 operations. The Judgment has survived four separate appeals intact.

9 The Small Pumper Class complaint was filed in June 2008. Notice of the pendency of the class
10 action was initially provided to the class by mail and publication, with a final opt-out date of
11 December 4, 2009. (See 12/23/2015 Judgment Approving Small Pumper Class Action Settlement.) In
12 October 2013 the Court approved a partial class settlement and notice was again provided to the class.
13 (*Ibid.*) In April 2015 the Court approved the full class settlement, and again notice was provided to the
14 class. (*Ibid.*) On December 23, 2015, this Court also entered the Judgment Approving Small Pumper
15 Class Action Settlements, finding, inter alia, that “The Court has jurisdiction of all parties to the
16 Settlement Agreement including Class members who did not timely opt out of the Settlement.” Those
17 known small pumpers are listed in Exhibit A to the class Judgment. Johnny and Pamela are listed

18 known	Class	Members.
19 PAMELLA ZAMRZLA	48910 80TH ST W	LANCASTER CA 93536-8740
20 ZAMRZLA JOHNNY; PAMELLA	ZAMRZLA FAMILY 48910 80TH ST W	LANCASTER CA 93536-8740
21 JOHNNY ZAMRZLA	48910 80TH ST W	LANCASTER CA 93536-8740

22 The Zamrzlas, self-styled “prominent members of the community,” who for more than fifty
23 years have raised cattle, horses, mules and grown alfalfa, onions, and carrots, claim that
24 notwithstanding such prominence, they never received notice of the ongoing adjudication and class
25 action and therefore should not be bound by the Judgment. The Settling Parties desire to test these
26 claims through discovery and requested that the Zamrzlas stipulate to continue the hearing for 90 days

27 _____
28 ¹ Richard Wood filed the small pumper class complaint in June 2008.

1 to permit such discovery. The Zamrzlas refused, preferring to stand on their untested declarations. It is
2 difficult to reconcile the Zamrzlas' claimed long-standing involvement in the local community with
3 their steadfast claim that they were completely oblivious to the adjudication of water rights in the
4 Basin. Accordingly, the Settling Parties brought this application to continue the hearing 90 days to
5 allow for limited discovery related to the issues raised in the Motions.

6 Johnny and Pamela Zamrzla are listed as known members of the Small Pumper Class in the
7 Judgment and move to set aside or modify the Judgment on the grounds that (1) they "never received
8 notice of the Antelope Valley Groundwater litigation," (2) the Small Pumper Class notice was
9 defective, and the Zamrzlas are not small pumpers as defined by the class. (Notice of Motion, p. 2.)
10 The Motion is accompanied by a Compendium of Evidence (COE) including the declarations of
11 Johnny and Pamella Zamrzla. (COE, Exs 2 and 3.) Notably absence from the COE are any deeds
12 establishing title to real property or water use history prior to 2011.

13 According to the declarations submitted, Johnny Zamrzla is a founding member of the Blue-
14 Ribbon Committee, formed in 2011 to voice local concerns regarding the Antelope Valley Area Plan,
15 promoted by the Los Angeles Planning Department. (Decl. Johnny Zamrzla, ¶ 8.) Johnny Zamrzla
16 also sat on the Antelope Valley Fair Association Board of Directors with Antelope Valley
17 Watermaster President Rob Parris, and Watermaster Board Member John Calandri. They claim they
18 first learned of the Adjudication nearly four years ago from a July 16, 2018, letter from Mr. Parton,
19 Watermaster counsel. (Decl. Johnny Zamrzla, ¶ 14.)

20 Johnny Lee and Jeanette Zamrzla also filed a motion to set aside or modify the Judgment and
21 on the grounds that (1) they "never received notice of the Antelope Valley Groundwater litigation,"
22 (2) the Small Pumper Class notice was defective, and (3) that they do not fit the Small Pumper Class
23 definition. (Notice of Motion, p. 2.) Notably absence from the COE are any deeds establishing title to
24 the real property or water use history prior to 2011.

25 In order to test the declarations submitted, the Settling Parties requested that the Zamrzlas
26 stipulate to briefly continue the hearing on the Motions for 90 days to permit discovery on the factual
27 issues raised in the Motions. The Zamrzlas refused and the Settling Parties now seek relief from the
28 Court. Under Code of Civil Procedure section 128(a)(3), the court has the power to "provide for the

1 orderly conduct of proceedings before it, or its officers.” (Code Civ. Proc., § 128(a)(3).) The court
2 also has inherent administrative powers, and inherent power to control litigation before it. (*Cottle v.*
3 *Superior Court* (1992) 3 Cal.App.4th 1367, 1377.) And, since the Zamrzlas are seeking equitable
4 relief, this Court has the equitable power to grant the relief requested. As discussed below, the
5 Zamrzlas have known about the Judgment for nearly 4 years before bringing the Motions and cannot
6 possibly claim to be prejudiced by an additional 90 days.

7 **B. GOOD CAUSE EXISTS TO CONTINUE TO HEARING ON THE MOTIONS**

8 Good cause exists to continue to hearing to allow sufficient time to conduct discovery
9 regarding the issues raised in the Motions and to allow the Settling Parties to obtain supporting
10 declarations from third parties.

11 The Zamrzlas’ request to set aside or modify the Judgment is not based on any statutory
12 authority, presumably because no statute authorizes a direct attack on the Judgment nearly seven years
13 after the fact and nearly four years after defendants first claimed to have had notice. Rather, the
14 Zamrzlas seek to invoke the Court’s “inherent equity power” based on extrinsic fraud or mistake.
15 (Motions, p. 4.) The Zamrzlas also request an in-person evidentiary hearing.

16 A judgment is presumed to be valid and the court is “presumed to have jurisdiction over the
17 subject matter and the person and to have acted within its jurisdiction.” (8 Witkin, California
18 Procedure (6th ed. 2021) Attack on Judgment in Trial Court, § 5, p. 590.) The party attacking the
19 judgment has the burden of proof. (*Ibid.*) The presumption may be rebutted by extrinsic evidence
20 when a defendant makes a timely *direct attack* on the judgment. (*Ibid.* at p. 589-590.) However, where
21 a defendant makes a *collateral attack* on the judgment such as for lack of jurisdiction over the person,
22 the presumption of jurisdiction is conclusive if the jurisdictional defect does not appear on the face of
23 the record, and extrinsic evidence is not admissible. (8 Witkin California Procedure (6th ed. 2021)
24 Attack on Judgment in Trial Court, § 11, p. 594.)² Here, the record indicates that Johnny and Pamella
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27 ² The Settling Parties reserve all rights to object to extrinsic evidence submitted in support of the
28 Motions.

1 Zamrzla were mailed notice of the small pumper class,³ failed to opt-out so that they could be
2 personally served, and were identified in the Judgment as small pumper class members.

3 Importantly, the Zamrzlas have requested an in-person evidentiary hearing to prove fraud and
4 mistake. The Zamrzlas seek a full and fair opportunity to develop the issues raised in the Motions.
5 Likewise, the Settling Parties must be provided a full and fair opportunity to test the declarations
6 through deposition testimony and conduct discovery relating to the issues raised in the Motions.

7 A trial court does not abuse its discretion by denying a motion to set aside a judgment when
8 the moving party fails to state that he lacked actual knowledge or show excusable neglect. (See
9 *Sakaguchi v. Sakaguchi* (2009) 173 Cal.App.4th 852, 861-62.) In *Sakaguchi*, the defendant’s affidavit
10 stated that he “never personally received any of the papers and/or documents that [plaintiff’s attorney]
11 is talking about in his declaration.” (*Id.* at 861.) The court did not find this excuse sufficient. (*Id.* at
12 861-62.) “Notably, [the defendant] does not declare that he lacked actual knowledge of the action, nor
13 does the affidavit show that any lack of knowledge was caused by excusable neglect.” (*Ibid.*)

14 Here, the defendants included their individual declarations in their COE. Similar to the
15 defendant in *Sakaguchi*, the defendants claim they were not served in the Adjudication. (*Sakaguchi*,
16 173 Cal.App.4th at 861-62.) Notably, none of the defendants in their respective declarations state that
17 they did not know about the Antelope Valley Groundwater litigation. The Zamrzlas’ actual knowledge
18 of the litigation is grounds for this Court to deny the Motions. (See *ibid.*)

19 Accordingly, the Settling Parties seek an opportunity to investigate facts concerning
20 defendants’ notice of the Adjudication while it was pending and when defendants had an opportunity
21 to defend their claimed water rights.

22 For example, Johnny Zamrzla’s declaration states he was a member of several boards and
23 committees. The documents he attached to his declaration showing his memberships also include
24 current board members to the Antelope Valley Watermaster and others who were aware of the
25 litigation. Settling Parties seek to discover facts regarding whether Johnny Zamrzla had actual
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27 ³ A letter correctly addressed and properly mailed is presumed to have been received in the
28 ordinary course of mail. (Evid. Code, § 641.)

1 knowledge of the litigation based on his “prominence” in the Antelope Valley.

2 Generally, a judgment should not be set aside for extrinsic fraud and mistake where a party’s
3 own negligence allows the fraud or mistake to occur.” (*Kramer v. Traditional Escrow, Inc.* (2020) 56
4 Cal.App.5th 13, 29.) In *Kramer*, the court considered evidence showing that the defendants failed to
5 provide notice of the change of their mailing address. (*Id.* at 29-30.) This, among other failures by the
6 defendants, did “not constitute an exceptional circumstance warranting equitable relief.” (*Id.* at 30.)

7 Here, defendants state they have pumped and used groundwater in the Antelope Valley for
8 years but do not attach any statements of extraction that are required by Water Code section 4999 et
9 seq. Settling Parties seek to investigate whether these statements were filed. If the statements had been
10 filed, then the Zamrzlas would have been properly identified as parties who should be personally
11 served. If the statements were not filed as required by law, then the defendants failure to do so may be
12 a result of their own negligence and not a basis for this Court to exercise its equity powers to set aside
13 the Judgment.

14 The Settling Parties’ discovery is not limited to the examples provided herein but their
15 discovery requests would be directed to obtaining facts regarding notice and water use, including the
16 following:

- 17 1. Whether the Zamrzlas had notice of the Adjudication.
- 18 2. Whether the Zamrzlas unreasonably delayed in bringing their Motions.
- 19 3. Whether there exists any fraud or mistake of fact that would support the relief
20 requested.
- 21 4. Equitable factors relevant to the requested relief.
- 22 5. Water use history prior to 2015 for purposes of establishing whether their water use
23 fits the Small Pumper Class definition. (Some evidence of water use from 2011-2015
24 has been provided.)
- 25 6. Whether the Zamrzlas filed the Recordations of Water Extractions and Diversions
26 required by Water Code section 4999 et seq.
- 27 7. Deeds showing when the Zamrzlas took title and how they hold title.
- 28 8. Correspondence and testing results from Southern California Edison, in addition to the

1 statements already provided.

2 **C. THE ZAMRZLAS WILL NOT BE PREJUDICED BY A BRIEF CONTINUANCE**

3 By their own admission the Zamrzlas have known about the Judgement since at least July
4 2018, and waited nearly four years to bring the Motions. Quite simply the Zamrzlas have not and
5 cannot show prejudice from a brief continuance. In fact, each of the Zamrzlas made it clear in their
6 respective November 12, 2021, declarations that time is NOT of the essence, stating that the
7 Watermaster’s motion “is premature and does not reflect any type of emergency requiring the Motion
8 to be heard and the merits ruled upon at this time . . .” (COE Decl. Johnny Zamrzla., ¶ 14; Pamela
9 Zamrzla, ¶ 33; Decl. of Johnny Lee and Jeanette Zamrzla ¶ 20.)


10 **II. CONCLUSION**

11 As stated in the Declaration of Jenifer N. Ryan submitted herewith good cause exists to
12 continue the hearing on the Motions and allow sufficient time to conduct discovery regarding the
13 factual issues raised in the Motions. Having delayed bringing the Motions for more nearly 4 years, and
14 repeatedly continuing the Watermaster motions against the Zamrzlas for unpaid assessments, the
15 Zamrzlas cannot possibly claim prejudice from a brief continuance.

16 For the foregoing reasons, the Settling Parties respectfully requests that the Court issue the
17 proposed Order Continuing the Hearing on the Motions.


18
19 DATED: April 18, 2022

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

21
22 By:  for
Eric N. Robinson
Attorneys for Defendant CITY OF LOS
ANGELES and
LOS ANGELES WORLD AIRPORTS


1 DATED: April 18, 2022

LEBEAU THELEN LLP

2
3 By:  for
4 Robert G. Kuhs
5 Attorneys for Defendant GRIMMWAY
6 ENTERPRISES


7 DATED: April 18, 2022

LAGERLOF, LLP

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9 By:  for
10 Thomas S. Bunn
11 Attorneys for Defendant PALMDALE WATER
12 DISTRICT

13 DATED: April 18, 2022

ELLISON, SCHNEIDER, HARRIS & DONLAN LLP

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15 By:  for
16 Christopher M. Sanders
17 Attorneys for Defendant COUNTY
18 SANITATION DISTRICTS OF LOS ANGELES
19 COUNTY NOS. 14 AND 20
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PROOF OF SERVICE

**Judicial Council Coordination Proceeding No. 4408
For Filing Purposes Only: Santa Clara County Case No.: 1-05-CV-049053**

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 1331 Garden Hwy, 2nd Floor, Sacramento, CA 95833.

On April 18, 2022, I served true copies of the following document(s) described as **DEFENDANTS' EX PARTE APPLICATION TO CONTINUE HEARING ON ZAMRZLAS' MOTIONS TO SET ASIDE OR MODIFY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: By submitting an electronic version of the document(s) to the parties, through the user interface at avwatermaster.org.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 18, 2022, at Sacramento, California.



Sherry Ramirez