

1 ERIC N. ROBINSON, State Bar No. 191781

*erobinson@kmtg.com*

2 STANLEY C. POWELL, State Bar No. 254057

*spowell@kmtg.com*

3 JENIFER N. RYAN, State Bar No. 311492

*jryan@kmtg.com*

4 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD

A Professional Corporation

5 1331 Garden Highway, 2nd Floor

Sacramento, California 95833

6 Telephone: (916) 321-4500

Facsimile: (916) 321-4555

7 MICHAEL N. FEUER, State Bar No. 111529

8 Los Angeles City Attorney

JULIE CONBOY RILEY, General Counsel, Water and Power

9 BRIAN C. OSTLER, General Counsel, Los Angeles World Airports

NARGIS CHOUDHRY, Deputy City Attorney, Los Angeles World Airports

10 Attorneys for Defendant CITY OF LOS ANGELES and

LOS ANGELES WORLD AIRPORTS

11 Attorneys for Cross-Defendants City of Los

12 Angeles and Los Angeles World Airports

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF LOS ANGELES**

16 Coordination Proceeding

17 ANTELOPE VALLEY GROUNDWATER  
18 CASES,

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

21 Los Angeles County Waterworks District No.  
22 40 v. Diamond Farming Co.

23 Wm Bolthouse Farms, Inc. v. City of  
24 Lancaster

25 Diamond Farming Co. v. City of Lancaster

26 Diamond Farming Co. v. Palmdale Water  
27 District,

28 AND RELATED ACTIONS

Judicial Council Coordination  
Proceeding No. 4408

**SETTLING PARTIES' OPPOSITION TO  
THE ZAMRZLAS' MOTIONS TO SET  
ASIDE OR MODIFY JUDGMENT**

Date: December 13, 2022

Time: 9:00 a.m.

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

Riverside County Superior Court

Lead Case No. RIC 344436

Case No. RIC 344668

Case No. RIC 353840

Los Angeles Superior Court Case  
No. BC 325201

Kern County Superior Court Case  
No. S-1500-CV-254348

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1 **I. INTRODUCTION**

2 This Court has two separate, but related motions before it. Defendants Johnny and Pamela  
3 Zamrzla are named parties to the Small Pumper Class Judgment incorporated into the 2015 Judgment  
4 and Physical Solution (“Judgment”). Johnny Lee and Jeanette Zamrzla are Unknown Small Pumper  
5 Class Members.

6 After the Watermaster discovered that Johnny and Pamela Zamrzla and Johnny Lee and  
7 Jeanette Zamrzla (collectively, the “Zamrzlas”) were pumping water far in excess of their rights under  
8 the Judgment, the Watermaster brought an enforcement action. Rather than pay for the water they  
9 pumped, the Zamrzlas filed respective motions to set aside or modify the Judgment and requesting  
10 that the Court remove their names from the Small Pumper Class on the grounds that (1) they were  
11 denied due process because they were never served notice of the litigation by any method, (2) the  
12 Small Pumper Class notice is defective on its face, and (3) even if they were properly served, the  
13 Zamrzlas cannot be bound by the Judgment because they pump more than 25 acre-feet per year and do  
14 not meet the class definition.

15 The Judgment on its face is binding on the Zamrzlas, and the Court specifically found that all  
16 class members received adequate notice, so the Zamrzlas’ motions are a collateral attack on the  
17 Judgment, which makes extrinsic evidence inadmissible. (Appendix of Exhibits in Support of Settling  
18 Parties’ Opposition to the Zamrzlas’ Motions to Set Aside or Modify the Judgment [“Appx.”] Exs. 6,  
19 9; Appx. Ex. 27, Judgment, Exhibit C.) There also is overwhelming evidence that Johnny and Pamela  
20 Zamrzla were served with three separate Small Pumper Class notices and failed to opt-out. Johnny  
21 Lee and Jeanette Zamrzla received notice by publication. Had the Zamrzlas opted-out as required,  
22 they would have been personally served with summons and complaint as required by this Court’s prior  
23 orders. Further, assuming for sake of argument that the Zamrzlas’ pumping exceeded 25-acre feet per  
24 year, the Zamrzlas concealed their pumping by failing to file annual notices of groundwater extraction  
25 required by Water Code section 5001. Had they complied with the reporting requirements – again,  
26 they would have been personally served. Water Code section 5004 prohibits the Zamrzlas from now  
27 claiming the alleged pumping they failed to report.

28 Johnny and Pamela Zamrzla claim to be well-connected socialites in the Antelope Valley and

1 Johnny reads the local newspaper, but they either deny or can only “vaguely” recall hearing, reading  
2 or talking about the then-pending groundwater adjudication that ultimately included more than 4,000  
3 parties plus the Small Pumper Class members, and brought to issue the Antelope Valley Basin’s entire  
4 groundwater supply and rights spanning approximately 1,390 square miles. (Judgment, 3.3.) Their  
5 story is not credible. In fact, during their depositions, Johnny, Pamella and Johnny Lee Zamrzla  
6 admitted that they received actual notice of the pending groundwater adjudication from (i) a  
7 representative of the Los Angeles County Board of Supervisors, (ii) Eugene Nebeker, an Exhibit 4  
8 party and part of the Antelope Valley Ground Water Agreement Association (“AGWA”) who asked  
9 Johnny and Pamella Zamrzla to join their group, and/or (iii) their next-door neighbor and friend  
10 Delmar Van Dam, whose family participated heavily in the adjudication and now holds Exhibit 4  
11 water rights. Based on Delmar Van Dam’s advice, the Zamrzlas made a tactical business decision to  
12 avoid the adjudication. Given the facts in this case equity will not save the Zamrzlas from their own  
13 dilatory conduct or the binding force of the Judgment.

14 This Court previously rejected a nearly identical claim for relief in its November 1, 2018  
15 “Order Denying Long Valley Road, L.P.’s Motion for Leave to Intervene in Judgment,” where the  
16 Long Valley Road Limited Partnership (“Long Valley”) sought to challenge its Judgment status as a  
17 Small Pumper Class member and argued they should be allowed to pursue a Production Right claim.  
18 (Appx. Ex. 26.) Just like Johnny and Pamella Zamrzla, Long Valley was expressly identified as a  
19 Small Pumper Class member in the Judgment, yet argued it had not been served in the litigation and  
20 was not a member of the Small Pumper Class. The Watermaster documented that Long Valley was  
21 served with at least three notices as members of the Small Pumper Class, and that Long Valley could  
22 and should have opted out of the class and pursued an Exhibit 4 production right while the litigation  
23 was underway. The Court denied Long Valley’s motion in its entirety, and confirmed “Long Valley  
24 Road, L.P.’s status as a Small Pumper Class Member subject to the terms of the Judgment ....” (*Id.*)

25 The facts and evidence against the Zamrzlas are even more compelling than in Long Valley  
26 and dictate a similar result.

27 If the Zamrzlas’ motions are granted, it has potential far-reaching and negative implications for  
28 the Judgment’s continuing vitality. Years after the Judgment became final, other similar landowners in

1 the basin who put their head in the sand during the adjudication effectively would be invited to come  
2 forward with a bare declaration claiming they were never served with summons and complaint and  
3 never received notice and demand to have their water rights determined. This Court protected the  
4 Judgment by resisting such an attempt before and should do so again now.

## 5 **II. HISTORY OF ADJUDICATION AND NOTICE TO LANDOWNERS**

### 6 **A. Notice On Class Members And Opt Outs**

7 The record shows that the three Small Pumper Class notices approved by the Court were  
8 mailed to Johnny and Pamella Zamrzla at their home address.

#### 9 **1. 2009 Class Notice**

10 The 2009 Small Pumper Class notice (“2009 Class Notice”) identified class characteristics,  
11 gave a general explanation of the adjudication and required landowners to submit a response form, so  
12 the parties and Court would know who was a class member. (Appx. Ex. 1.) The 2009 Class Notice  
13 required the recipient to “opt out” of the class. This Court approved the notice and its dissemination  
14 by mail, publication in newspaper and internet. (Appx. Exs. 2-3.) The 2009 Class Notice was mailed  
15 in 2009 to a list of potential Small Pumper Class members, which included Johnny and Pamella  
16 Zamrzla at their home address. (Appx. Ex. 4.)

#### 17 **2. 2013 Class Notice**

18 The 2013 Small Pumper Class notice (“2013 Class Notice”) informed landowners of a  
19 proposed partial settlement of the Small Pumper Class action. (Appx. Ex. 5.) The 2013 Class Notice  
20 informed recipients that the settlement could impact their future claimed water rights and that they  
21 will remain in the class if they take no action. The notice included opt-out instructions. This Court  
22 approved the 2013 Class Notice and its dissemination by mail, publication in newspaper and internet.  
23 (Appx. Ex. 6.) The 2013 Class Notice was mailed in 2013 to the certified list of Small Pumper Class  
24 members, which included Johnny and Pamella Zamrzla at their home address. (Appx. Ex. 7.)

#### 25 **3. 2015 Class Notice**

26 The 2015 Small Pumper Class notice (“2015 Class Notice”) informed landowners of the  
27 proposed settlement for the Small Pumper Class action and how they could object to the proposed  
28 settlement. (Appx. Ex. 8.) This Court approved the 2015 Class Notice and its dissemination by mail,

1 publication in newspaper and internet. (Appx. Ex. 9.) The 2015 Class Notice was mailed to the  
2 certified list of Small Pumper Class members, which included Johnny and Pamella Zamrzla at their  
3 home address. (Appx. Ex. 10.)

#### 4                   **4.       Notice By Publication**

5           The Court ordered that the 2009, 2013 and 2015 Class Notices be published to provide notice  
6 by publication to all class members. (Appx. Exs. 2-3, 6, 9.) The Court required that notice “be  
7 published on at least 4 separate occasions (including at least two Sundays and two weekdays) in each  
8 of the following newspapers: *The Antelope Valley Press*, *The Los Angeles Times*, and *The Bakersfield*  
9 *Californian*.” (Appx. Exs. 2-3.) Each class notice was published as ordered by the Court. (Appx. Exs.  
10 11-12.)

#### 11                   **B.       Notice Was Sufficient As To All Class Members**

12           This Court, upon granting preliminary approval of the partial and final class action settlement  
13 for the Small Pumper Class, concluded that “[t]he dissemination of the Class Notice, as directed by  
14 this Order, constitutes the best notice practicable under the circumstances and sufficient notice to all  
15 Class Members. The contents of the Class Notice and the manner of its dissemination satisfy the  
16 requirements of Rule 3.769 of the California Rules of Court, other applicable California laws, and  
17 state and federal due process.” (Appx. Exs. 6, 9.)

18           The Judgment provides: “Each member of the Small Pumper Class can exercise an overlying  
19 right pursuant to the Physical Solution. The Judgment Approving Small Pumper Class Action  
20 Settlements is attached as Exhibit C (“Small Pumper Class Judgment”) and is incorporated herein by  
21 reference.” (Judgment, ¶ 3.d.) Exhibit C to the Judgment is the “Judgment Approving Small Pumper  
22 Class Action Settlements.” It includes the following findings:

23           “A. The Court has jurisdiction over all parties to the Settlement Agreement including Class  
24 members who did not timely opt out of the Settlement.”

25           ...

26           “G. Notice of the pendency of this class action was initially provided to the Class by mail and  
27 publication, with a final opt out date of December 4, 2009.”

28           ...



1 “H. On October 25, 2013, the Court issued an order preliminarily approving the 2013 Partial  
2 Settlement. Notice of this Settlement was provided in accordance with the Court’s order preliminarily  
3 approving the settlement and the terms of the Settlement Agreement. Notice was given in an adequate  
4 and sufficient manner, and constituted the best practicable notice under the circumstances. ...”

5 ...

6 “I. On April 6, 2015, the Court issued an order preliminarily approving the 2015 Settlement.  
7 Notice of this Settlement was provided in accordance with the Court’s order preliminarily approving  
8 the settlement and the terms of the Settlement Agreement. Notice was given in an adequate and  
9 sufficient manner, and constituted the best practicable notice under the circumstances, as set forth in  
10 the Declarations of Jennifer M. Keough and Michael D. McLachlan, both filed June 4, 2015. No class  
11 member timely filed an objection to the 2015 Settlement.”

12 ...

13 K. All members of the Class who did not opt out of the Class shall be subject to all the  
14 provisions of the 2013 Partial Settlement, the 2015 Settlement, and this Judgment as entered by the  
15 Court (the “Settlement Class” members). The known Small Pumper Class members are listed in  
16 Exhibit A, attached hereto.”  
17 (Judgment, Exhibit C, Appx. Ex. 27.)

18 The Court, on the basis of the findings in the Small Pumper Class Judgment, ordered that class  
19 members are bound by the Judgment. (Judgment, Exhibit C, Appx. Ex. 27.)

20 **C. Pumpers Reporting Production Were Personally Served**

21 The Public Water Suppliers initiated “numerous rounds of service,” including service on those  
22 pumpers in Los Angeles County reporting their annual groundwater extractions as required by the  
23 California Water Code. (Appx. Ex. 14 at ¶ 2.) The Zamrzlas’ land is located in Los Angeles County.  
24 (See Appx. Exs. 15, 23.) Since 1955, any person who extracts more than 25 acre-feet per year of  
25 groundwater in Los Angeles County has been required to file a Notice of Extraction with the State  
26 Water Resources Control Board (“State Water Board”) pursuant to California Water Code section  
27 5001. (Wat. Code §§ 5000, 5001; see Appx. Ex. 14 at ¶ 7.) Accordingly, the Public Water Suppliers  
28 “obtained a compilation of the Annual Notices of Extraction for Los Angeles County from the State

1 Water Resources Control Board” and used that information to identify additional parties “that were  
2 pumping water in the Basin but had not been served.” (Appx. Ex. 14 at ¶ 7.)

3 **D. Johnny And Pamella Zamrzla**

4 Johnny and Pamella Zamrzla do not dispute that their home address of 50 years, 48910 80<sup>th</sup>  
5 Street West, Lancaster, California, appears on the Small Pumper Class Notice mailing list. (Appx. Ex.  
6 16 at p. 221-22, Deposition Transcript of Johnny Zamrzla, June 3, 2022, [“Johnny Transcript”] at  
7 24:12-26:1; Appx. Ex. 17 at p. 251-52, Deposition Transcript of Pamella Zamrzla, Vol. 2, Aug. 18,  
8 2022 [“Pamella Transcript Vol. 2”] at 68:6-70:20.) The Zamrzlas did not report problems receiving  
9 their mail when the class notices were mailed. (Appx. Ex. 17 at p. 242-43, Pamella Transcript, Vol. 1,  
10 at 12:22-16:10.) They regularly check and sort their mail, including other class notices they have  
11 received. (Appx. Ex. 16 at p. 220-21, Johnny Transcript at 20:17-22:12, 23:11-24:8; Appx. Ex. 17 at  
12 p. 243, Pamella Transcript, Vol. 1, at 16:11-17:18.)

13 For some 40 years, Johnny and Pamella Zamrzla have subscribed to the Antelope Valley Press  
14 at their business office in the Basin. (Appx. Ex. 16 at p. 223, Johnny Transcript at 35:16-36:10.)  
15 Johnny Zamrzla testified that he would check the Antelope Valley Press for obituaries to see if any of  
16 his clients passed away and read the sports and some community news. (*Id.*, at 37:7-11.) He also  
17 advertised in the newspaper. (*Id.* at 37:13-15.) He testified that he vaguely recalls reading stories  
18 about the adjudication and “[p]robably did because normally water stuff is on the front page.” (*Id.* at  
19 p. 224, Johnny Transcript at 42:11-17.)

20 Johnny and Pamella Zamrzla together had a phone conversation with Eugene Nebeker about  
21 joining the adjudication while Mr. Nebeker was a party to the adjudication as a part of the Antelope  
22 Valley Ground Water Agreement Association (“AGWA”). The conversation between Johnny and  
23 Pamella and Mr. Nebeker took place in either 2014 or 2015, when Mr. Nebeker talked to them about  
24 the pending adjudication and encouraged them to join Mr. Nebeker’s group. (Appx. Ex. 16 at p. 231,  
25 Johnny Transcript at 81:8-15; Appx. Ex. 17 at p. 246-47, Pamella Transcript, Vol. 1, at 37:3-38:21.)  
26 Johnny and Pamella Zamrzla said they considered joining the pending adjudication but ultimately did  
27 not join, deciding that it did not involve them. (*Id.*) They also decided against consulting an attorney  
28 to advise them in their decision concerning their water rights. (Appx. Ex. 16 at p. 238, Johnny

1 Transcript at 239:23-240:6.) Instead, they acted on the advice of their neighbor and Johnny Zamrzla's  
2 personal best friend Delmar Van Dam, who advised the Zamrzlas to stay out of the adjudication  
3 because it was for the "big farmers." (Appx. Ex. 16 at p. 229, Johnny Transcript at 70:15-71:4, 72:9-  
4 23; see Appx. Ex. 17 at p. 246, Pamella Transcript, Vol. 1, at 37:18-25.) He told the Zamrzlas to keep  
5 pumping and they would get an allocation. (App. Ex. 16 at p. 229, Johnny Transcript at 72:9-23)

6 With respect to their claimed groundwater use, Johnny and Pamella Zamrzla now testify that  
7 they own and operate two wells on two of their three parcels. There is one well on Parcel No. 3220-  
8 006-026, which is referred to as the "Domestic Well," while the second well is on Parcel No. 3220-  
9 006-003 and is referred to as the "Farm Well." The pumping records now produced by Johnny and  
10 Pamella Zamrzla show purported use from approximately 2000 to 2018. (Appx. Exs. 20-21.)

11 Although Johnny and Pamella Zamrzla now claim pumping on their parcels, including  
12 continuously pumping on parcel No. 3220-006-026 for "over five decades," and from their other well  
13 on parcel No. 3220-006-003, since at least 2011, they admit they never filed with the State Water  
14 Board the legally required Notices of Groundwater Extraction and Diversion. (Appx. Ex. 16 at p. 238,  
15 Johnny Transcript at 240:12-23; Appx. Ex. 17 at p. 250, 253-54, Pamella Transcript Vol. 2 at 61:21-  
16 62:2; 112:22-114:11; Memorandum of Points and Authorities in Support of Johnny and Pamella  
17 Zamrzla's Motion to Set Aside or Modify the Judgment at 14 ["J&P MPAs"]; Declaration of Johnny  
18 Zamrzla re Opposition by the Zamrzla's to the Watermaster's Motion for Monetary, Declaratory and  
19 Injunctive Relief Against Zamrzla's ["Johnny Decl."] at ¶ 11.)

20 As a 50-year resident of the Antelope Valley, Johnny Zamrzla describes himself as an "active  
21 volunteer in my Antelope Valley Community" involved in many community organizations. (Johnny  
22 Decl. at ¶ 8.) He "was active in many of these organizations during the time frame of the ongoing  
23 Antelope Valley Water Litigation cases and remains active and involved today." (*Id.*) He cites his  
24 long-standing involvement in his community to point out that he and his wife "are hardly difficult to  
25 locate." (*Id.*) In fact, they were located and included on the Small Pumper Class mailing list used to  
26 serve at least three Court-approved documents providing notice to the class. Despite all the long-time  
27 involvement in what he describes as "my Antelope Valley Community," Johnny Zamrzla only  
28 vaguely recollects hearing about the adjudication during its 15-year pendency and when many of the

1 members of the organizations he was so actively involved in were parties to the adjudication. (Appx.  
2 Ex. 16, p. 225-27, 230, 232-35 Johnny Transcript at [Blue Ribbon Committee: 48:21-25; 53:8-54:6;  
3 55:20-56:2]; [Farm Bureau: 77:12-13; 86:1-90:25]; [Fair Board: 94:3-100:11].)

4 Pamella Zamrzla states that “[w]e have always given back to our Antelope Valley, the  
5 community that we’ve loved and supported for over fifty years” and have been “active volunteers.”  
6 (Declaration of Pamella Zamrzla re Opposition by the Zamrzla’s to the Watermaster’s Motion for  
7 Monetary, Declaratory and Injunctive Relief Against Zamrzla’s [“Pamella Decl.”] at ¶ 10.) Pamella  
8 Zamrzla, however, testified that she was involved in just one community organization since 2000.  
9 (Appx. Ex. 17 at p. 246, Pamella Transcript, Vol. 1, at 34:21-35:1.) And despite attending several  
10 community fundraisers as part of that organization from approximately 2004 to 2007 that sometimes  
11 included 150 or so people, Pamella Zamrzla claims she never talked to anyone or overheard  
12 conversations about the adjudication—one of the largest single events ever impacting “our Antelope  
13 Valley.” (*Id.* at p. 244-45, Pamella Transcript, Vol. 1, at 29:21-32:9.)

#### 14 **E. Johnny Lee And Jeanette Zamrzla**

15 Johnny Lee and Jeanette Zamrzla built their home after acquiring property from Johnny Lee’s  
16 parents, Johnny and Pamella Zamrzla. (Declaration of Johnny Lee and Jeanette Zamrzla re Opposition  
17 by the Zamrzla’s to the Watermaster’s Motion for Monetary, Declaratory and Injunctive Relief  
18 Against Zamrzla’s [“Johnny Lee Decl.”] at ¶¶3-5; Appx. Ex. 23.)<sup>1</sup> They have lived in their Lancaster,  
19 California, home across the street from Johnny and Pamella Zamrzla, since approximately 2007.  
20 (Johnny Lee Decl. at ¶¶3-5; Appx. Ex. 18 at p. 257, Johnny Lee Transcript at 15:17-20 [estimating  
21 that he moved into the home on Parcel No. 3220-001-028 in 2008].) Johnny and Pamella Zamrzla had  
22 owned Parcel No. 3220-001-028 since 1999. (Johnny Lee Decl. at ¶ 4.) In 2014, Johnny Lee and  
23 Jeanette purchased the adjoining 10-acre parcel identified as Parcel No. 3220-001-027. (*Id.* at ¶ 8.)  
24 Johnny Lee has worked for his parent’s local roofing business since he graduated from high school in  
25

26 <sup>1</sup> Jeanette Zamrzla testified that she signed but never read her own declaration filed in opposition to  
27 the Watermaster’s Motion for Monetary, Declaratory and Injunctive Relief Against Zamrzla’s. (Appx.  
28 Ex. 19 at p. 270, Deposition Transcript of Jeanette Zamrzla, Aug. 18, 2022, at 48:2-23.) Rather, her  
husband, Johnny Lee, allegedly told her to sign it, which she allegedly did without reading it. (*Id.*)

1 1979 and is currently the president of their company. (Appx. Ex. 18 at p. 259, Johnny Lee Transcript  
2 at 26:21-27:16.)

3 Johnny Lee also recalls a conversation between Delmar Van Dam and Johnny Lee's father  
4 when Delmar Van Dam advised the Zamrzlas that they did not need to join the adjudication, but  
5 should just keep pumping and they would somehow have water rights in the end. (Appx. Ex. 18 at p.  
6 260, Johnny Lee Transcript at 30:6-32:8.) Johnny Lee also talked to one of Delmar's sons, Gary Van  
7 Dam, about the pending adjudication to try to understand where it was headed. (*Id.* at p. 261, Johnny  
8 Lee Transcript at 34:13-21.)

9 Johnny Lee has lived in Lancaster for more than 20 years. (*Id.* at p. 258, Johnny Lee Transcript  
10 at 15:15-20.) For approximately 20 years and up until recently, he has volunteered at the California  
11 High School Rodeo Association rodeos held at the Antelope Valley fairgrounds. (*Id.* at p. 260, Johnny  
12 Lee Transcript at 32:19-33:5.) As a volunteer, he would see and talk to friends, neighbors and other  
13 community members. (*Id.* at 33:20.) Yet he, too, claims not to recall hearing about the adjudication  
14 from a single soul. (*Id.* at p. 260-61, Johnny Lee Transcript at 33:24-34:3.)

15 Johnny Lee and Jeanette Zamrzla own and operate one well that served both of their parcels  
16 together at one point and currently serves one parcel. This well is referred to as the "Pasture Well."  
17 The pumping records for the Pasture Well show purported use from approximately 2008 to 2021.  
18 (Appx. Ex. 22.)

### 19 **III. HISTORY OF THIS PROCEEDING**

20 The Zamrzlas' motions attacking the 2015 Judgment and Physical Solution arise from the  
21 Antelope Valley Watermaster's enforcement efforts against the Zamrzlas that began in approximately  
22 2019. On September 29, 2021, the Watermaster filed a Motion for Monetary, Declaratory and  
23 Injunctive Relief Against Zamrzlas, alleging that Johnny and Pamella Zamrzla, as Small Pumper Class  
24 members, and Johnny Lee and Jeanette Zamrzla, as unknown Small Pumper Class members, owed  
25 delinquent Replacement Water Assessments and accrued interest dating back to 2018. (Watermaster's  
26 Motion for Monetary, Declaratory and Injunctive Relief Against Zamrzlas; Declarations of Craig A.  
27 Parton and Patricia Rose, Exhibit A-E, Sept. 29, 2021, Glo-Trans No. ["GTN"] 12095.) The Zamrzlas  
28 opposed the Watermaster's enforcement efforts.

1 In March, the Court ordered the parties to determine the “[s]tatus of the Zamrzla parties in the  
2 judgment as small pumper class members” and “[a] process to determine the amount of water right  
3 allocation to which the Zamrzla parties may be entitled” for a May 3, 2022, hearing on the  
4 Watermaster’s motion. (Order regarding Zamrzla Motion, GTN 12248, March 7, 2022.) The Court  
5 also ordered counsel to “confer to the extent possible with the Public Water Producers and Land  
6 Owner parties who have appeared and participated in the hearings on the motion to date as well as any  
7 others with an interest in the matter.” (*Id.*)

8 In April, the Zamrzlas filed their motions to set aside or modify the judgment. (GTNs 12251-  
9 63.) The Settling Parties filed and the Court granted their ex parte application to continue the May 3  
10 hearing and to conduct limited discovery as to whether the Zamrzlas are bound by the 2015 Judgment  
11 and Physical Solution (Phase 1). (Order Granting Defendants’ Ex Parte Application to Continue  
12 Hearing on Zamrzlas’ Motions to Set Aside or Modify the Judgment, April 19, 2022, GTN 12294;  
13 Stipulation Regarding Zamrzlas’ Hearing, Discovery and Briefing Schedule; Order, June 29, 2022,  
14 GTN 12322.) The evaluation of the Zamrzlas’ production rights, if any, is deferred to a later hearing  
15 (Phase 2). (GTN 12322.)

16 Pursuant to that order and a later Court-approved stipulation, the Settling Parties, the Zamrzlas,  
17 and Watermaster conducted limited discovery and are filing briefs in preparation for an evidentiary  
18 hearing before the Court regarding Phase 1 only. (GTN 12322.)

#### 19 **IV. ARGUMENT**

##### 20 **A. The Judgment Is Valid On Its Face And Must Be Upheld**

##### 21 **1. The Judgment Is Valid On Its Face, So The Motion To Set Aside The** 22 **Judgment Is An Improper Collateral Attack**

23 The Zamrzlas ask this Court to set aside or modify the Judgment to avoid its enforcement  
24 against them. (J&P MPAs at 1; Memorandum of Points and Authorities in Support of Johnny Lee and  
25 Jeanette Zamrzla’s Motion to Set Aside or Modify the Judgment [“J&J MPAs”] at 1.) The Zamrzlas’  
26 motions are a defense to the Antelope Valley Watermaster’s enforcement proceeding filed against  
27 them in September 2021. (GTN 12095.) That makes the Zamrzlas’ motions a collateral attack on the  
28 2015 Judgment and Physical Solution. And that means the Court need not even reach the Zamrzlas’

1 equity arguments and can instead decide this issue as a matter of law.

2 A proceeding to prohibit the enforcement of a judgment is considered a collateral attack on the  
3 judgment. (*Hogan v. Superior Court of California in and for the City and County San Francisco*  
4 (1925) 74 Cal.App. 704, 708.) “A collateral attack is made, not in a proceeding brought for the  
5 specific purpose of attacking the judgment, but in some other proceeding having a different purpose –  
6 it is an attempt to avoid the effect of a judgment or order made in some other proceeding.” (*Gonzales*  
7 *v. State of California* (1977) 68 Cal.App.3d 621, 632 [abrogated on other grounds by, *City of Stockton*  
8 *v. Superior Court* (2007) 42 Cal.4th 730].) “In a collateral attack the invalidity of the former judgment  
9 or order must appear on the face of the record and if such invalidity or want of jurisdiction does not  
10 appear on the face of the record, it will be presumed in favor of the former judgment or order.” (*Id.*)  
11 “In a collateral attack the judgment comes up only incidentally, and may be effectively challenged  
12 only if it is completely invalid as to require no ordinary review to annul it.” (*Id.*)

13 In *Hogan, supra*, the moving party, a debtor, sought a writ of prohibition against the  
14 enforcement of a money judgment. (*Hogan*, 74 Cal.App. at 706.) Such a proceeding, “to prohibit the  
15 enforcement of a judgment, constitutes a collateral attack upon that judgment.” (*Id.* at 707.) In  
16 *Gonzales, supra*, the issue was, in part, whether the plaintiffs were challenging the validity of prior  
17 misdemeanor convictions in a separate class action lawsuit. (*Gonzales*, 68 Cal.App.3d at 632.) If so,  
18 then the plaintiffs would be attempting to challenge the validity of their prior convictions in a separate  
19 action, which would amount to a collateral attack. (*Id.* at 632-33.)

20 Here, the Zamrzlas are launching a collateral attack on the 2015 Judgment and Physical  
21 Solution, because they are trying to prohibit the Watermaster’s enforcement action by attacking the  
22 2015 Judgment and Physical Solution. (See *Hogan*, 74 Cal.App. at 706-709.) Further, the Zamrzlas  
23 are challenging the validity of the 2015 Judgment and Physical Solution in an action by the  
24 Watermaster to enforce the Replacement Water Assessment against the Zamrzlas, which is a collateral  
25 attack. (See *Gonzales, supra*, 68 Cal.App.3d at 632.) As the Zamrzlas are launching a collateral attack,  
26 the judgment “must be held valid” unless the Court’s record shows otherwise. (See *Hogan, supra*, 74  
27 Cal.App. at 706-709.)

28 ///

1                   **2.       Extrinsic Evidence Is Not Admissible In A Collateral Attack, So The**  
2                   **Court May Only Look To The Record Supporting The Judgment**

3           In a collateral attack, like the Zamrzlas', "[t]he validity of the judgment on its face may be  
4 determined only by a consideration of the matters constituting part of the judgment roll." (*Superior*  
5 *Motels, Inc. v. Rinn Motor Hotels, Inc.* (1987) 195 Cal.App.3d 1032, 1049 [internal quotations and  
6 citations omitted]; see *Hogan, supra*, 74 Cal.App. at 708-709.) "The record is the judgment roll, and  
7 upon collateral attack it is the only evidence that can be considered in determining the question of  
8 jurisdiction." (*Id.* [internal quotations and citations omitted].) In "a collateral attack, the judgment  
9 must be held to be valid unless the record thereof, the judgment roll, shows it to be void – unless, as  
10 the authorities put it, it is void upon its face." (*Hogan*, 74 Cal.App. at 708 [internal quotations and  
11 citations omitted].) "In determining the question, we are restricted to the evidence afforded by the  
12 judgment roll." (*Id.* [internal quotations and citations omitted].) "Every presumption and intendment is  
13 in favor of the validity of the judgment, and any condition of facts consistent with the validity of the  
14 judgment will be presumed to have existed, rather than one which will defeat it." (*Id.*) "In other words,  
15 to be attackable collaterally for lack of jurisdiction, the judgment must be void on its face, and it is not  
16 void on its face unless the record affirmatively shows that the court was without jurisdiction to render  
17 the judgment." (*Id.*) "The true rule is not whether jurisdiction has been legally exercised, but whether  
18 it was obtained at all." (*Id.* at 709) "Once the trial court has obtained jurisdiction of both the res and  
19 the parties, its subsequent proceedings cannot be collaterally attacked, unless it be ascertained from  
20 the judgment roll that jurisdiction was thereafter lost." (*Id.*)

21           In *Superior Motels, Inc., supra*, the defendants did not appeal from the default judgment  
22 entered against them. (*Superior Motels, Inc., supra* 195 Cal.App.3d at 1049.) They instead appealed  
23 from the order denying their petitions for relief from forfeiture. (*Id.* at 1048.) Thus, they "mounted a  
24 collateral attack upon the default judgment." (*Id.* at 1049.) The defendants alleged that because service  
25 was not made upon the proper person, that service was defective and the default judgment was void.  
26 (*Id.*) While the defendants could bring a "challenge based as it is upon a perceived jurisdictional  
27 infirmity making the judgment void on its face ... They do not, however, appreciate the very stringent  
28 rules governing such a claim." (*Id.* [internal quotations and citations omitted].) The defendants relied



1 on an order appointing another individual as receiver, another state’s statutes, and testimony from the  
2 individual appointed as receiver to support the defendants’ contention that default judgment entered  
3 against them was void because of defective service. (*Id.* at 1049-50.) Looking to the judgment roll for  
4 the default judgment, the court concluded that “[d]efendants’ contention founders because it is not  
5 based upon the judgment roll as so defined.” (*Id.* at 1049.) The defendants could not rely on extrinsic  
6 evidence to try to prove their claim. (*Id.* at 1050.)

7       In *Hogan, supra*, the trial court’s jurisdiction was “complete” because “[t]he judgment roll []  
8 shows that the trial court acquired jurisdiction over the parties and of the subject of the action; the  
9 judgment is regular upon its face, and embraces only such matters as were within the power of the trial  
10 court to adjudicate and within the scope of the pleadings.” (*Hogan, supra*, 74 Cal.App at 709.) Thus,  
11 the facts that the petitioner alleged in its pleading that were “admittedly matters of fact not appearing  
12 in any part of the judgment roll, but depending for their establishment upon extrinsic proof, which as  
13 we have already seen, is wholly inadmissible in a collateral attack, cannot be allowed to impeach the  
14 integrity of the judgment.” (*Id.*)

15       Here, the Zamrzlas are launching a collateral attack on the 2015 Judgment and Physical  
16 Solution, so the Court may look only to the record as evidence in analyzing the Zamrzlas’ attack on  
17 the 2015 Judgment and Physical Solution. (See *Superior Motels, Inc., supra*, 195 Cal.App.3d at 1048-  
18 49; *Gonzales, supra*, 68 Cal.App.3d at 632; *Hogan*, 74 Cal.App. at 708.) The Court may not consider  
19 the Zamrzlas’ declarations or other extrinsic evidence in deciding the Zamrzlas’ motions. (See  
20 *Superior Motels, Inc., supra*, 195 Cal.App.3d at 1048-50.) Rather, as the record reflects, the Court  
21 found that Johnny and Pamella Zamrzla were members of the Small Pumper Class, and all class  
22 members, including Johnny Lee and Jeanette Zamrzla, received adequate notice. (Appx. Exs. 6, 9;  
23 Appx. Ex. 27, Judgment, Exhibit C.) The Judgment is binding on the Zamrzlas on its face. (*Id.*; see  
24 *Superior Motels, Inc.*, 195 Cal.App.3d at 1049; see *Hogan*, 74 Cal.App. at 708-709.) The Zamrzlas’  
25 claims must fail.

26 ///

27 ///

28 ///



1 In *Bartholomae, supra*, evidence of a carbon copy showing that a demand was mailed and  
2 properly addressed with postage prepaid was “ample evidence” and “sufficient to show that a demand  
3 was duly made,” despite defendant’s claim that the demand was never received. (*Bartholomae*, 106  
4 Cal.App. at 66-67.)

5 Here, the record shows that all three class notices were duly mailed to Johnny and Pamela  
6 Zamrzla at their home address. (Appx. Exs. 4, 7, 10.) A single notice properly mailed is ample  
7 evidence to show the notice was received by Johnny and Pamela Zamrzla. (See Evid. Code § 641;  
8 *Bartholomae, supra*, 106 Cal.App. at 66-67.) Moreover, the record shows that three notices were  
9 separately mailed to Johnny and Pamela’s residence, further supporting the presumption that Johnny  
10 and Pamela Zamrzla received notice of the litigation. (See Evid. Code § 641; *Craig*, 84 Cal.App.4th  
11 at 419-422 [evidence of two notices mailed sufficient]; *Bartholomae*, 106 Cal.App. at 66-67 [evidence  
12 of one notice mailed “ample” evidence].) The Court may only rely on the evidence in the record,  
13 which means the Zamrzlas’ declaration statements are inadmissible as to whether they received  
14 sufficient notice. (See *Superior Motels, Inc., supra*, 195 Cal.App.3d at 1048-50; *Hogan, supra*, 74  
15 Cal.App. at 709.) Accordingly, based on the record, notice by mail of the three separate Small Pumper  
16 Class notices was effective and sufficient as to Johnny and Pamela Zamrzla. (See Evid. Code § 641;  
17 *Craig, supra*, 84 Cal.App.4th at 419-422; *Bartholomae, supra*, 106 Cal.App. at 66-67.)

18 **2. The Court Approved Notice By Publication To Provide Sufficient Notice**  
19 **To Water Rights Claimants In The Basin, Like The Zamrzlas**

20 “The trial court has virtually complete discretion as to the manner of giving notice to class  
21 members.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1390 [internal  
22 quotations and citations omitted].) A court may order notice by publication in a newspaper “as a  
23 means of notice reasonably calculated to apprise the class members of the pendency of the action” if  
24 “it appears that all members of the class cannot be notified personally.” (Cal. Rules of Court, Rule  
25 3.766(f).) “If the court has certified the action as a class action, notice of the final approval hearing  
26 must be given to the class members in the manner specified by the court.” (Cal. Rules of Court, Rule  
27 3.769(f).)

28 In *Cellphone Termination Fee Cases, supra*, the settlement agreement provided for three forms

1 of notice including mail, notice by publication in print media and notice by publication online.  
2 (*Cellphone Termination Fee Cases*, 186 Cal.App.4th at 1387.) Although the petitioner did not directly  
3 challenge the manner of notice, the court still analyzed the manner and concluded that the “trial court  
4 did not abuse its discretion in the manner of giving notice.” (*Id.* at 1393.) “We do not look for  
5 perfection.” (*Id.* at 1392.) “A large body of case law reflect[s] the view that the whole concept of a  
6 large class-action might easily be stultified by insistence upon perfection in actual notice to class-  
7 members.” (*Id.* [internal quotations and citations omitted].)

8         Here, the Court approved notice by mail and notice by publication to notify Small Pumper  
9 Class members of the pending adjudication, the partial settlement and the settlement. (Appx. Exs. 2-3,  
10 6, 9.) The Court, upon granting preliminary approval of the partial and final class action settlement for  
11 the Small Pumper Class, concluded that “[t]he dissemination of the Class Notice, as directed by this  
12 Order, constitutes the best notice practicable under the circumstances and sufficient notice to all Class  
13 Members. The contents of the Class Notice and the manner of its dissemination satisfy the  
14 requirements of Rule 3.769 of the California Rules of Court, other applicable California laws, and  
15 state and federal due process.” (Appx. Exs. 6 at ¶ 6, 9 at ¶ 6; Appx. Ex. 27, Judgment, Exhibit C.)  
16 Each notice was published as ordered by this Court. (Appx. Exs. 11-13.)

17         The Court, acting within its broad discretion to do so, determined the appropriate manner of  
18 notice for the Small Pumper Class members, which included notice by publication. (See *Cellphone*  
19 *Termination Fee Cases*, 186 Cal.App.4th at 1390, 1392-93.) Thus, notice by publication was sufficient  
20 notice to the Zamrzlas.

21                 **3. The Zamrzlas’ Claims That Personal Service Was Required Fail Because**  
22                 **The Zamrzlas Did Not Opt Out Of The Class Or File Notices Of**  
23                 **Groundwater Extraction With The State Water Board**

24         The Zamrzlas claim they should have received personal service of process of the pending  
25 litigation. That claim fails because the Zamrzlas failed to either opt out of the Small Pumper Class as  
26 required by the notice, or to report their groundwater production with the State Water Board. As  
27 described above, the class notice required the recipient to opt out of the class if they did not belong  
28 and asked the recipient to respond to the notice, so that the parties and the Court would know whether  
the recipient is a class member or not. The Zamrzlas neither responded to the notices nor opted out of

1 the class. Had the Zamrzlas opted out from the Small Pumper Class, the Public Water Suppliers would  
2 have served the Zamrzlas as individual defendants, (Appx. Ex. 1 at p. 8; Ex. 11), thus providing them  
3 the personal service of process they claim was lacking. Regardless of the Zamrzlas' claims to the  
4 contrary, notice was not defective.

5 The Zamrzlas also would have received service of process had they reported their groundwater  
6 production as required by state statute. California Water Code section 5001 requires that each person  
7 who extracts ground water in excess of 25 acre-feet in any year within the counties of Riverside, San  
8 Bernardino, Los Angeles and Ventura shall file with the State Water Board a Notice of Extraction and  
9 Diversion of Water that describes their annual groundwater production. (Cal. Wat. Code §5001.) The  
10 notice must state the name of the person extracting ground water, the quantity of water taken, the  
11 measurement method, the location of each water source, and a general description of the area in which  
12 the water has been used, among other facts. (Cal. Wat. Code § 5002.) The California Legislature  
13 required these reporting provisions due to a combination of "light rainfall, concentrated population,  
14 the transition of considerable areas of land from agricultural use to urban use, and a similar  
15 dependence on ground water supplies which prevails in the Counties of Riverside, San Bernardino,  
16 Los Angeles, and Ventura, together with the fact that most such underground water supplies are  
17 overdrawn." (Cal. Wat. Code § 4999.) Failure to file a groundwater extraction notice "shall be deemed  
18 equivalent for all purposes to nonuse." (Cal. Wat. Code § 5004.)

19 The Zamrzlas claim they have three wells that have produced in excess of 25 acre-feet per year  
20 at various times during their ownership history. (Appx. Ex. 24.) In each year in which claimed  
21 production exceeded 25 acre-feet, the Zamrzlas were required to file a notice of extraction with the  
22 State Water Board. Yet, the Zamrzlas failed to make any of these filings. (*Id.*; Appx. Ex. 16 at p. 238,  
23 Johnny Transcript at 240:12-23; Appx. Ex. 17 at p. 250, 253-54, Pamella Transcript Vol. 2 at 61:21-  
24 62:2; 112:22-114:11.) The failure to file the notice of extraction "shall be deemed equivalent for all  
25 purposes to nonuse" (Cal. Wat. Code §5004) and the failure to file prevented the identification of the  
26 Zamrzlas as needing to be personally served. In a declaration dated August 7, 2008, and filed with the  
27 Court, Stefanie Hedlund, attorney for Public Water Suppliers Los Angeles County Waterworks  
28 District No. 40 and Rosamond Community Services District, described how the Public Water

1 Suppliers obtained a compilation of the Annual Notices of Extraction for Los Angeles County from  
2 the State Water Board. (Appx. Ex. 14 at ¶ 7.) Using this information, the Public Water Suppliers  
3 identified additional parties that were pumping water in the Basin but had not been served. (*Id.*) The  
4 Public Water Suppliers attempted service on all of these additional parties and successfully served the  
5 majority of them. (*Id.*) Had the Zamrzlas filed the required notices of extraction with the State Water  
6 Board, other parties in the adjudication would have been on notice of the Zamrzlas' claimed  
7 production and the Public Water Suppliers would have personally served the Zamrzlas with the  
8 complaint.

9 **C. Equities Do Not Favor Granting Relief To The Zamrzlas Because They Had**  
10 **Notice Of The Adjudication Prior To Entry Of Judgment In Time To Pursue**  
**Their Claimed Water Rights**

11 Even if the Court were to consider extrinsic evidence, the Zamrzlas' arguments that they did  
12 not have notice of the adjudication and are entitled to equitable relief fail. The Zamrzlas assert that the  
13 Court may grant relief from a judgment where there has been extrinsic fraud or mistake. (J&P MPAs  
14 at 4; J&J MPAs at 3.) They ask that the Court exercise its equity power because the Zamrzlas claim  
15 they "were never served with any documents" of the adjudication and "never received" any Small  
16 Pumper Class documents. (Johnny and Pamella Decls. at ¶ 6; Johnny Lee Decl. at ¶ 17; J&P MPAs at  
17 5; J&J MPAs at 4.)

18 "Relief on the ground of extrinsic fraud or mistake is not available to a party if that party has  
19 been given notice of an action yet fails to appear, without having been prevented from participating in  
20 the action." (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 503.) "Although the policy of  
21 the law is to favor a hearing on the merits of a case, courts are not required to set aside default  
22 judgments for defendants who flagrantly ignore the responsibility to present a defense." (*Id.* [internal  
23 quotations and citations omitted].) "The burden of a party who has had a default entered against him is  
24 not limited to merely articulating the existence of a meritorious case." (*Id.* at 503-504 [internal  
25 quotations and citations omitted].) "The defendant must also demonstrate a satisfactory excuse for not  
26 responding to the original action in a timely manner." (*Id.* at 504 [internal quotations and citations  
27 omitted].) Additionally, "the moving party must demonstrate diligence in seeking to set aside the  
28 default once ... discovered." (*Id.* at 503 [internal quotations and citations omitted].) "Excusable

1 mistake exists when the ground for relief is not so much the fraud or other misconduct of one of the  
2 parties as it is the excusable neglect of the defaulting party to appear and present his claim or  
3 defense.” (*Id.* at 503.)

4 In *Cruz, supra*, the trial court relied on statements in the defaulted parties’ declarations,  
5 including one declarant who stated he did not receive the summons or complaint, to grant the  
6 defaulted parties relief. (*Id.* at 504.) The appellate court reversed the trial court. The appellate court  
7 noted that the declarant “does not state in his declaration that he was unaware of the lawsuit or that he  
8 had no knowledge of the summons or complaint.” (*Id.*) “Instead, he simply states that he ‘never  
9 received’ the summons and complaint.” (*Id.*) The appellate court concluded that the statement “does  
10 not establish that [the defaulted party] was unable to defend against the action because of lack of  
11 notice of the lawsuit.” (*Id.*) Instead, the plaintiff satisfied his burden of proof to show that service of  
12 process was effectively made, in part, with evidence that the notice was received by someone  
13 authorized to receive mail for the defaulted party. (*Id.* at 505.) Further, the defaulted party admitted  
14 that it was aware of the requested entry of default before it was entered but offered no excuse as to  
15 why it did not try to defend the action or specially appear. (*Id.* at 506.) The appellate court concluded  
16 that the defaulted party “has not established that there was any *extrinsic* mistake that prevented it from  
17 defending against [plaintiff’s] lawsuit.” (*Id.*)

18 The trial court in *Cruz* also relied on the defaulting parties’ declarations to conclude that they  
19 had acted diligently after notice of default. (*Id.* at 506.) The appellate court disagreed, concluding that  
20 the declarations showed the “*lack of diligence*” by the defaulting party. (*Id.*) The defaulting party  
21 delayed nine months before taking action and when it did, it “took action only when it faced a levy on  
22 its accounts receivable,” which, the court concluded, “cannot be considered diligent.” (*Id.* at 508.)

23 Here, the Court approved three separate notices to the Small Pumper Class: the 2009 Class  
24 Notice, the 2013 Class Notice and the 2015 Class Notice. (Appx. Exs. 2, 6, 9.) Each notice was mailed  
25 to the names and addresses on the list of Small Pumper Class members. (Appx. Exs. 4, 7, 10.) The list  
26 included Johnny and Pamella Zamrzla and their home address for each of the three class notices. (*Id.*)  
27 Thus, each notice is presumed to “have been received in the ordinary course of mail.” (See Evid. Code  
28 § 641.) The Zamrzlas’ denials do not overcome that presumption. (See *id.*; *Craig, supra*, 84

1 Cal.App.4th at 419-20; *Bartholomae, supra*, 106 Cal.App. at 66-67.) Accordingly, the record shows  
2 that notice by mail was effective as to Johnny and Pamela Zamrzla. (See *Cruz*, 146 Cal.App.4th at  
3 505.) Additionally, notice by publication was effective for all of the Zamrzlas, including Johnny Lee  
4 and Jeanette Zamrzla, because the Court-approved notices and dissemination were “the best notice  
5 practicable under the circumstances and sufficient notice to all Class Members.” (Appx. Exs. 6, 9;  
6 Appx. Ex. 27, Judgment, Exhibit C.)

7 Further, Johnny and Pamela Zamrzla admit that they did not have any issues receiving their  
8 mail when the notices were mailed. (Appx. Ex. 17, p. 242-43, Pamela Transcript, Vol. 1, at 12:22-  
9 16:10.) They both testified that one or the other regularly reviewed and sorted their mail. (Appx. Ex.  
10 16 at p. 220-21, Johnny Transcript at 20:17-22:12, 23:11-24:8; Appx. Ex. 17, at p. 243, Pamela  
11 Transcript, Vol. 1, at 16:11-17:18.) They both testified that they had previously taken the time to  
12 review other class action notices and similar mail before. (*Id.*)

13 Importantly, while Johnny and Pamela Zamrzla and Johnny Lee and Jeanette Zamrzla declare  
14 they never “received” the notices, they do not declare that they were unaware of the pending  
15 adjudication. (Johnny and Pamela Decls. at ¶ 6; Johnny Lee Decl. at ¶ 17.) Thus, they cannot rely on  
16 non-receipt alone to show they were unable to join the pending adjudication for lack of notice. (See  
17 *Cruz*, 146 Cal.App.4th at 504.)

18 In addition to failing to opt out, and failing to file the Notices of Groundwater Extraction, as  
19 detailed in sections IV.C.1-4, *infra*, other evidence shows that the Zamrzlas have not acted in equity  
20 and are not entitled to equity.

21 Finally, the Zamrzlas did not file their motions to set aside the judgment and make their claim  
22 that it does not apply to them until nearly three years after the Watermaster’s initial communications  
23 with the Zamrzlas that ultimately led to the enforcement action, showing a continued lack of diligence  
24 that negates any relief on the basis of extrinsic mistake. (See *Cruz*, 146 Cal.App.4th at 506-508.)

25 The evidence shows that multiple class notices were properly mailed and presumptively  
26 received by Johnny and Pamela Zamrzla, and they failed to offer sufficient evidence to overcome this  
27 presumption. (See Evid. Code § 641; *Craig, supra*, 84 Cal.App.4th at 419-422; *Bartholomae, supra*,  
28 106 Cal.App. at 66-67.) Additionally, the evidence shows that notice by publication was effective for



1 all of the Zamrzlas, including Johnny Lee and Jeanette Zamrzla. (See *Cellphone Termination Fee*  
2 *Cases*, 186 Cal.App.4th at 1387, 1390-93.) Further, the Zamrzlas’ declarations and other testimony  
3 show a lack of diligence that does not justify relief from the judgment on equity grounds. (See *Cruz*,  
4 146 Cal.App.4th at 503-508.)

5 **1. The Zamrzlas Followed The “Bad Advice” Of A Neighbor Litigant To**  
6 **Ignore The Adjudication**

7 As detailed below, the Zamrzlas testified to having conversations with their neighbors and  
8 friends the Van Dam family about the pending adjudication and how that led the Zamrzlas to decide  
9 against joining the adjudication and pursuing their claimed water rights. The Van Dams were  
10 individual parties to the adjudication, but following their bad advice is no way around the Judgment.

11 Johnny Zamrzla testified that he and Delmar Van Dam “were good friends, probably personal  
12 best friends. I’ve known the boys since they were young. We hunt together. Talk to him all the time.”  
13 (Appx. Ex. 16 at p. 228-29, Johnny Transcript at 68:10-14; 69:10-70:2.) Johnny Zamrzla knew that  
14 Delmar Van Dam was a party to the adjudication. (*Id.*, at 72:2-3; 72:9-23.)

15 Johnny Zamrzla and Delmar Van Dam discussed the adjudication but “not a lot directly, other  
16 than I understood from him it was the big boys that were involved, the big farmers, and I remember,  
17 early on, he said, ‘This is not your gig. You got – you’re not a big farmer.’ And I agreed. And he said,  
18 ‘It’s gonna cost a lotta money,’ and he reiterated that several times over the years, that, ‘Not only did I  
19 tell you it was gonna cost a lot of money, it is costing a lot of money.’ And, at some point, ‘Don’t quit  
20 doing the farming you’re doing. You’ll always be allocated some water.’ I said, ‘Okay.’” (*Id.* at p.  
21 229, Johnny Transcript at 70:15-71:4.)

22 Johnny Lee Zamrzla also recalled that same advice from Delmar Van Dam that they did not  
23 need to join the adjudication. (Appx. Ex. 18 at p. 260, Johnny Lee Transcript at 30:6-32:8.) “Delmar  
24 said that litigation was ongoing, my recollection is that he said to continue doing what you’re doing.  
25 When it all shakes out in the end, you will have your water rights.” (*Id.* at 30:18-21.) “My  
26 understanding from Delmar’s conversation that whatever amount of water people agreed, if it was 40  
27 percent, 50 percent, that we would automatically fall into a 40 or 50 percent range of the water that we  
28 had been using.” (*Id.* at p. 261, Johnny Lee Transcript at 36:7-11.) Johnny Lee also testified that he

1 spoke to Gary Van Dam about the pending adjudication once or twice “trying to get an understanding  
2 of where it was going.” (*Id.* at 34:13-21.) Delmar Van Dam’s son, Nick, would later tell Johnny Lee  
3 that his dad gave them “bad advice.” (*Id.* at 35:19-36:19; p. 262-63, Johnny Lee Transcript at 107:14-  
4 110:2.) Rather than relying on the advice of their neighbors and friends, the Zamrzlas had sufficient  
5 notice to have engaged a lawyer to advise them about the possible risks to their rights by not  
6 participating in the adjudication, yet they chose not to. (*Id.* at p. 260-61, Johnny Lee Transcript at  
7 31:24-32:1; 35:3-10; Appx. Ex. 16 at p. 238, Johnny Transcript at 239:23-240:6.)

8 The preceding deposition testimony shows that both Johnny and Pamela Zamrzla and Johnny  
9 Lee Zamrzla admitted they were aware of the pending adjudication in time to join and pursue their  
10 water rights. Relief cannot be granted on the basis of extrinsic mistake, because the Zamrzlas were  
11 aware of the pending adjudication and declined to join. (See *Cruz*, 146 Cal.App.4th at 506.)

12 **2. Johnny And Pamela Zamrzla Admit They Were Asked To Join The**  
13 **Adjudication While It Was Pending And Declined**

14 Eugene Nebeker, was a party to the adjudication, and as detailed below, approached Johnny  
15 and Pamela Zamrzla about joining Mr. Nebeker’s group, AGWA, represented by Michael Fife of the  
16 Brownstein firm.

17 At some point in 2014 or 2015, Johnny and Pamela Zamrzla had a phone conversation with  
18 Eugene Nebeker in which he asked them to join the adjudication. (Appx. Ex. 16 at p. 231, Johnny  
19 Transcript at 81:2-15; Appx. Ex. 17 at p. 246-47, Pamela Transcript, Vol. 1, at 37:3-38:21.) “[Mr.  
20 Nebeker] had a group, the Antelope Valley Water Group, and we were talking about whether or not  
21 the other parties in his group would consider allowing anyone else to come into his group under the  
22 water litigation. And he gave us some basic information about his group.” (Appx. Ex. 17, at p. 246,  
23 Pamela Transcript, Vol. 1, at 37:12-17.) Pamela Zamrzla testified that they declined to join Mr.  
24 Nebeker’s group because “[w]e didn’t think it involved us... [b]ecause it was with the bigger farmers  
25 and it didn’t involve our water protection.” (*Id.* at 37:18-25.)

26 Johnny Zamrzla testified that he knew Mr. Nebeker since the 1990s and “[g]ot to know him a  
27 lot better when he became Farm Bureau president” in or around 2006 to 2008. (Appx. Ex. 16 at p.  
28 225, Johnny Transcript at 46:3-13.) Johnny Zamrzla also recalled the conversation with Mr. Nebeker

1 in which he talked to Johnny and Pamella about joining the adjudication. (*Id.* at p. 231, Johnny  
2 Transcript at 81:2-15.) “[M]y wife and I both talked to him, and I believe that was just before the  
3 adjudication, in 2014, and he said you know, if we still were interested, he could look into it, but I  
4 said, ‘You know, we don’t think it affects us. We don’t think we’re big farmers. We think we’re  
5 gonna get some allocation, and we’re gonna leave it at that.’ But I do know it was some time, I  
6 believe, in 2014.” (*Id.* at 81:8-15.)

7 The foregoing shows that Johnny and Pamella Zamrzla knew about the adjudication and were  
8 encouraged to join Mr. Nebeker’s group. Johnny and Pamella Zamrzla made the decision not to hire  
9 an attorney and to try to avoid the adjudication. Thus, because they were aware of the pending  
10 adjudication and decided not to join, relief cannot be granted on the basis of extrinsic mistake. (See  
11 *Cruz*, 146 Cal.App.4th at 506.)

12 **3. The Zamrzlas Attended Numerous Community Social Events And**  
13 **Participated In Community Organizations During The Pending**  
14 **Adjudication And Yet Only Vaguely Recollect Hearing About The**  
15 **Adjudication**

16 Johnny and Pamella Zamrzla assert that they are prominent members of the Antelope Valley,  
17 are active participants in many community groups, and have been so for about 50 years. (Johnny Decl.  
18 at ¶ 8; Pamella Decl. at ¶ 10.) They have operated a business out of the community for approximately  
19 40 years. (Pamella Decl. at ¶¶ 11-12.) Yet contrary to these assertions, Johnny and Pamella, and  
20 separately Johnny Lee, cannot seem to clearly recall anyone talking about the pending adjudication or  
21 talking directly to the Zamrzlas about the adjudication during its 15-year pendency. That convenient  
22 lack of memory is suspect given that the 15-year adjudication included more than 4,000 parties as well  
23 as Small Pumper Class members and brought to issue the Basin’s entire groundwater supply and rights  
24 covering approximately 1,390 square miles. (Judgment, 3.3.)

25 One of the community organizations Johnny Zamrzla was a founding member of from 2011 to  
26 approximately 2016 was the Blue Ribbon Committee. (Johnny Decl. at Ex. A; Appx. Ex. 16 at p. 224-  
27 25, 227, Johnny Transcript at 44:6-16; 46:14-47:2; 57:3-13.) The Blue Ribbon Committee was formed  
28 to review the content of a county land-use plan called the Antelope Valley Area Plan. (Johnny Decl. at  
Ex. A.) He testified that then-Los Angeles County Supervisor Michael Antonovich asked Johnny

1 Zamrzla to form the Blue Ribbon Committee. (Appx. Ex. 16 at p. 224, Johnny Transcript at 44:6-16.)  
2 In the early days of his committee membership, Johnny Zamrzla remembers asking Norm Hickling,  
3 then an aide to Supervisor Michael Antonovich, about the adjudication and what advice they might  
4 give the Zamrzlas. (*Id.* at p. 236-37, Johnny Transcript at 203:9-206:10.) “[Norm] said, ‘Well, I’ll talk  
5 to the supervisor.’ I don’t know that he ever talked to the supervisor. I never heard from Mike. So I  
6 don’t know where it went, but was sort of, like, ‘This is outta my pay scale, and I can’t help you.’” (*Id.*  
7 at 206:2-8.) While Mr. Hickling told Johnny Zamrzla that he could not help him, Mr. Hickling did  
8 give Johnny Zamrzla “a whole stack of papers together that was – that he gave to me and said he  
9 couldn’t help me much. It was out of his pay scale.” (*Id.* at 203:15-22.) Johnny Zamrzla testified that  
10 he did not remember details about the documents. (*Id.* at 207:3-10.) He recalled “thumbing through it,  
11 and there was nothing that was directly personal to me. It was kinda general information about [the  
12 adjudication].” (*Id.*)<sup>2</sup> Although Johnny Zamrzla minimized that interaction as “nothing that was  
13 directly personal to me,” the language of Mr. Hickling that “he couldn’t help ... much” because the  
14 adjudication was “out of his pay scale” underscored Johnny Zamrzla’s duty to better inform himself  
15 about the adjudication.

16 Despite his prominent role and involvement in the community, Johnny Zamrzla is otherwise  
17 vague in his stated recollection of whether the adjudication was discussed at the Farm Bureau, Blue  
18 Ribbon Committee and various other groups in which he participated and that, if so, it was only in  
19 generalities. (Appx. Ex. 16, p. 225-27, 230, 232-35 Johnny Transcript at [Blue Ribbon Committee:  
20 48:21-25; 53:8-54:6; 55:20-56:2]; [Farm Bureau: 77:12-13; 86:1-90:25]; [Fair Board: 94:3-100:11].)  
21 For instance, referencing the adjudication as the “water issue,” Johnny Zamrzla testified that while on  
22 the Blue Ribbon Committee he knew “that the water issue was still going on because some of the  
23 people that were on my board were involved with the water issue as well.” (*Id.* at p. 224, Johnny  
24 Transcript at 44:6-19.) Those members of the Blue Ribbon Committee board at the time included Mr.  
25 Nebeker and Craig Van Dam, who were parties to the adjudication who obtained Exhibit 4 production

26 \_\_\_\_\_  
27 <sup>2</sup> Settling Parties served a discovery request for those documents and Johnny Zamrzla responded that  
28 the documents provided by the Supervisor’s aide regarding the adjudication are no longer in the  
Zamrzlas’ possession. (Appx. Ex. 25.)

1 rights. (Johnny Decl. at Ex. A.)

2 Pamela Zamrzla served on the Valley Oasis Amigos Board from 2004 to 2007, which raised  
3 money for the Valley Oasis Women’s Shelter and she attended several community fundraisers and  
4 events with up to 150 community members present. (Appx. Ex. 17 at p. 244-45, Pamela Transcript,  
5 Vol. 1, at 29:21-32:9.) Pamela Zamrzla said there was never talk about the pending adjudication at  
6 the events, no one talked to her about it and she did not over hear any conversations about the  
7 adjudication. (*Id.* at 31:17-32:9.) Despite her declaration statement that she and her husband have been  
8 “active volunteers” in the community, Pamela Zamrzla further testified that she was not involved in  
9 any other community organizations since 2000. (*Id.* at p. 246, Pamela Transcript, Vol. 1, at 34:21-  
10 35:1; Pamela Decl. at ¶10.)

11 Johnny Lee Zamrzla volunteered for more than 20 years for the California High School Rodeo  
12 Association for rodeos held at the Antelope Valley fairgrounds until recently. (Appx. Ex. 18 at p. 260,  
13 Johnny Lee Transcript at 32:19-33:5.) During his time volunteering, he would see and talk to friends,  
14 neighbors and other community members. (*Id.* at 33:20.) Incredibly, at no time during the course of  
15 his 20 years of volunteering and talking to community members, friends and neighbors could Johnny  
16 Lee stated recall anyone ever talking to him about the pending adjudication. (*Id.* at p. 260-61, Johnny  
17 Lee Transcript at 33:24-34:3.)

18 The Zamrzlas cannot have it both ways – be both prominent community members active in  
19 groups whose members were affected by the groundwater adjudication – but have only a vague  
20 recollection of a comprehensive court adjudication defining rights and obligations of more than 4,000  
21 community members across 1,390 square miles over 15 years of trial and negotiations. (Judgment,  
22 3.3.) The Zamrzlas’ conflicting statements are incredible and provide no support for equitable relief.

## 23 **V. CONCLUSION**

24 The Judgment is valid on its face and binding on the Zamrzlas. They are Small Pumper Class  
25 members who have vastly exceeded their right to produce groundwater. Although the Zamrzlas plead  
26 equity they have not done equity – they have selfishly thwarted equity. The Zamrzlas had actual notice  
27 of the pending adjudication from a variety of sources, failed to opt out of the Small Pumper Class, and  
28 failed to file the annual required statements of groundwater extraction. Instead, the Zamrzlas made a

1 conscious decision to avoid the burden and expense of participating in the adjudication. That choice  
2 has consequences.

3 This Court has found that there is not enough groundwater in the Antelope Valley to satisfy all  
4 the demands. A line had to be drawn somewhere to cut off additional claims on the groundwater  
5 supply. The Court chose to draw that line at the entry of judgment. There is no basis for making an  
6 exception here.


7 As members of the Small Pumper Class, the Zamrzlas are entitled to pump a sufficient  
8 quantity of water for their domestic needs. If they desire to pump more than that, they can apply for an  
9 additional allocation, on condition that they pay Replacement Water Assessments.

10 The Court should protect the 2015 Judgment and deny the motions.  
11

12 DATED: October 12, 2022

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Professional Corporation

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15 By:

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

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20 DATED: October 12, 2022

LEBEAU THELEN LLP

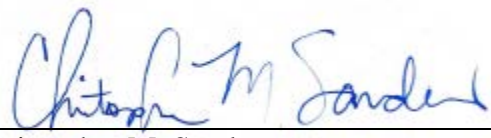
21  
22 By:

  
Robert G. Kuhs  
Attorneys for GRIMMWAY ENTERPRISES

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DATED: October 12, 2022

ELLISON, SCHNEIDER, HARRIS & DONLAN LLP

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

DATED: October 12, 2022

LAGERLOF, LLP

By:   
Thomas S. Bunn  
Attorneys for PALMDALE WATER DISTRICT

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**PROOF OF SERVICE**

**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 October 12, 2022, I served true copies of the following document(s) described as **SETTLING PARTIES' OPPOSITION TO THE ZAMRZLAS' MOTIONS TO SET ASIDE OR MODIFY JUDGMENT** on the interested parties in this action as follows:

**BY ELECTRONIC TRANSMISSION:** By submitting an electronic version of the document(s) to the parties, through the user interface at [avwatermaster.org](http://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 October 12, 2022, at Sacramento, California.



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Terri Whitman