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

16 Coordination Proceeding
17
18 ANTELOPE VALLEY GROUNDWATER
CASES,
19
Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
20
Los Angeles County Waterworks District No.
21 40 v. Diamond Farming Co.
22 Wm Bolthouse Farms, Inc. v. City of
Lancaster
23
Diamond Farming Co. v. City of Lancaster
24
Diamond Farming Co. v. Palmdale Water
25 District,
26
27 AND RELATED ACTIONS
28

Judicial Council Coordination
Proceeding No. 4408

LEAD CASE: LASC Case No. BC 325201

SETTLING PARTIES' TRIAL BRIEF

Date: March 15-16, 2023
Time: 9:00 am
Dept.: 3

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

Riverside County Superior Court
Case No. RIC 344436
Case No. RIC 344668
Case No. RIC 353840
Kern County Superior Court Case
No. S-1500-CV-254348

1 **I. INTRODUCTION**

2 The City of Los Angeles (Los Angeles World Airports), Grimmway Enterprises
3 (**Grimmway**), Palmdale Water District, County Sanitation Districts of Los Angeles County Nos. 14
4 and 20 (collectively, **Settling Parties**) submit this opening trial brief in opposition to the two
5 motions filed by Johnny and Pamela Zamrzla, and Johnny Lee and Jeanette Zamrzla (collectively
6 **Zamrzlas**) to set aside or modify this Court’s December 28, 2015, Judgment and Physical Solution
7 (**Judgment**).

8 **A. CASE SUMMARY**

9 On December 28, 2015, this Court, after more than a decade of litigation, entered its
10 Judgment comprehensively adjudicating all rights to produce and store water within the Antelope
11 Valley Groundwater Basin (**Basin**). The Judgment has withstood multiple appeals and is final in all
12 respects.

13 The Judgment established the Antelope Valley Watermaster (**Watermaster**) to administer
14 the Judgment and manage the Basin. In June 2018, the Watermaster discovered that the Zamrzlas
15 were pumping water from the Basin in excess of their rights as Small Pumper Class members. On
16 January 19, 2019, the Watermaster sent the Zamrzlas Replacement Water Assessments for their
17 over-pumping. More than three years later the Zamrzlas still had not paid the Replacement Water
18 Assessments, and on September 29, 2021, the Watermaster filed a motion for monetary, declaratory,
19 and injunctive relief. The Zamrzlas opposed the Watermaster motion, asserting for the first time that
20 they were not bound by the Judgment.

21 On April 11, 2022, Johnny and Pamela Zamrzla and Johnny Lee and Jeanette Zamrzla each
22 filed their respective motions to set aside or modify the Judgment on the grounds that (1) they “never
23 received notice”, (2) the Small Pumper Class notice was defective, and (3) the Zamrzlas are not by
24 definition Small Pumper Class members.

25 Johnny and Pamela are expressly identified in the Judgement as known Small Pumper Class
26 members. Johnny Lee and Jeanette are unknown Small Pumper Class members. Small Pumper Class
27 members are defined in the Judgment as follows:

28 **“3.5.44 Small Pumper Class.** All private (i.e., non-governmental) Persons and

1 entities that own real property within the Basin, as adjudicated, and that have been
2 **pumping less than 25 acre-feet per Year on their property during any Year from**
3 **1946 to the present.** The Small Pumper Class excludes the defendants in Wood v.
4 Los Angeles Co. Waterworks Dist. 40, et al., any Person, firm, trust, corporation, or
5 other entity in which any such defendants has a controlling interest or which is related
6 to or affiliated with any such defendants, and the representatives, heirs, affiliates,
successors-in-interest or assigns of any such excluded party. The Small Pumper Class
also excludes all Persons and entities that are shareholders in a mutual water
company. The Small Pumper Class does not include those who opted out of the Small
Pumper Class.” (Emphasis added.)

7 In February 2023 the parties stipulated, and the Court ordered, that a hearing be set for March 15
8 and 16, 2023, to address “whether the Zamrzlas are bound by the Judgment and Physical Solution
9 entered on December 28, 2015, including, without limitation, whether the Zamrzlas had notice of
10 the adjudication, whether they are members of the Small Pumper Class, and whether the Zamrzlas
11 are entitled to equitable relief.” (Notice of Entry of Order, March 7, 2023, Ex. A at 2.a., Glo-Trans
12 No. 12442.) Issues relating to the quantity of water the Zamrzlas may be allowed to produce in the
13 future, if any, are reserved for a later phase if necessary.

14 **B. TRIAL PROCEEDINGS**

15 **1. Expert Testimony.**

16 No party has identified any retained experts to testify in this phase of the proceeding. The
17 Zamrzlas identified Rick Koch, an employee of Southern California Edison, as a non-retained expert
18 who previously submitted a declaration in support of the motions regarding the Zamrzlas’ power
19 consumption and pump efficiencies. For purposes of this phase only, the Settling Parties do not
20 contest the admissibility of the previously filed declaration and stipulated to its admissibility in lieu
21 of live testimony. (Notice of Entry of Order, March 7, 2023, Ex. A at 2.a., Glo-Trans No. 12442).
22 The Zamrzlas recently disclosed that they may seek to introduce a supplemental declaration of Mr.
23 Koch. Since Mr. Koch was not declared a retained expert, the supplemental declaration is not
24 covered by the Stipulation, and the Settling Parties and Watermaster have not had an opportunity to
25 review the supplemental declaration or take Mr. Koch’s deposition, the Settling Parties object to use
26 of the untimely supplemental declaration.

27 **2. Live Testimony.**

28 The Zamrzla’s have indicated they intend to call Johnny, Johnny Lee and Pamella Zamrzla

1 as live witnesses. The Settling Parties may call one or more of the Zamrzlas in their case-in-chief
2 depending on the scope of direct examination.

3 **3. Other Evidentiary Issues.**

4 The Zamrzlas now are grasping at straws and on the eve of trial signal that they will attempt
5 to introduce last-minute declarations, technical reports and other evidence that they failed to submit
6 in support of their motions or produce back in 2022 in response to the Settling Parties' broad
7 deposition notices, discovery requests and expert disclosure deadlines. This Court should reject the
8 Zamrzlas' improper evidence on grounds of hearsay, insufficient foundation, improper legal
9 opinion, and any other objections that may be raised during trial. The Zamrzlas also raised several
10 new arguments for the first time in their October 26, 2022, reply brief, which this Court should reject
11 as meritless.

12 Despite the Zamrzlas' last-ditch attempts to muddy the record, the record and facts remain
13 the same. Johnny and Pamela are known and named Small Pumper Class members identified in the
14 Judgment. Johnny Lee and Jeanette received notice by publication. The Court specifically found
15 that all class members received adequate notice. The Zamrzlas' motion amounts to a collateral attack
16 on the Judgment, which makes extrinsic evidence inadmissible. It is far too late to open up the
17 Judgment to every class member that desires to relitigate their class status. There is overwhelming
18 evidence that the Zamrzlas had actual notice as Small Pumper Class members of this comprehensive
19 groundwater adjudication while it was pending, and are thus bound by the Judgment. On that record
20 alone, the Court may and should deny the Zamrzlas' motions.

21 Further, this Court may and should deny the Zamrzlas' requests for equitable relief.
22 Discovery in this case revealed that the Zamrzlas have not behaved equitably, neglected their legal
23 obligation to report their groundwater pumping, and had actual knowledge of the pending
24 adjudication from a variety of sources but made a conscious business decision to stick their head in
25 the desert sand and not participate in the litigation. The Zamrzlas failed to bring their motions for
26 years after they admit to actual notice and not until ordered by this Court. Such avoidance and delay
27 does not entitle the Zamrzlas equitable relief.

1 **II. Trial Issues**

2 **A. The Zamrzlas had Notice of the Adjudication and are Bound by the Judgment**

3 The Zamrzlas' motions to set aside or modify the Judgment are a defense to the
4 Watermaster's enforcement proceeding filed against them in September 2021, which makes the
5 Zamrzlas' motions a collateral attack on the 2015 Judgment and Physical Solution. That means the
6 Court need not even reach the Zamrzlas' equity arguments and can instead decide this issue as a
7 matter of law. (*Hogan v. Superior Court of California in and for the City and County San Francisco*
8 (1925) 74 Cal.App. 704; *Gonzales v. State of California* (1977) 68 Cal.App.3d 621 [abrogated on
9 other grounds by, *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730].) The Court need not
10 consider the Zamrzlas' declarations or other extrinsic evidence in deciding the Zamrzlas' motions.
11 (See *Superior Motels, Inc., supra*, 195 Cal.App.3d at 1048-50.) Rather, as the record reflects, the
12 Court found that Johnny and Pamella Zamrzla were listed members of the Small Pumper Class, and
13 all class members, including Johnny Lee and Jeanette Zamrzla as unknown Small Pumper Class
14 members, received adequate notice. The Zamrzlas did not opt out of the Small Pumper Class. Thus,
15 the Judgment is binding on the Zamrzlas on its face, and the Zamrzlas' claims must fail as a matter
16 of law.

17 **B. The Zamrzlas are Not Entitled to Equitable Relief**

18 The Zamrzlas have the burden to prove they are entitled to equitable relief and have failed
19 to do so. (See *Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488.) The Zamrzlas have not
20 acted in equity and are not entitled to equitable relief. (See 13 Witkin, Summary of Cal. Law (11th
21 ed 2017) Equity, § 6 [a party who seeks equity must do equity].)

22 **1. The Zamrzlas knew about the pending adjudication but made a**
23 **conscious tactical decision not to join.**

24 Johnny and Johnny Lee Zamrzla both testified in their depositions as to conversations with
25 Delmar Van Dam regarding the adjudication. Delmar Van Dam was a longtime neighbor and
26 personal best friend of the Zamrzlas, a party to the Adjudication and an Exhibit 4 rights holder.
27 Acting on Delmar Van Dam's advice to stay out of the adjudication, the Zamrzlas made a conscious
28 tactical decision not to join the adjudication.

1 Johnny and Pamella Zamrzla testified that Eugene Nebeker, also a party to the adjudication
2 and Exhibit 4 rights holder, invited them to join the Antelope Valley Ground Water Agreement
3 Association (“AGWA”) Group and participate in the adjudication while it was still pending. The
4 Zamrzlas declined to join.

5 Johnny Zamrzla also testified that he sought help from then-Los Angeles County Supervisor
6 Michael Antonovich regarding the adjudication. When the supervisor’s aide Norm Hickling told
7 Johnny Zamrzla that there was not much he could do as it was out of his pay scale, the Zamrzlas
8 continued to avoid the adjudication and did not seek legal advice regarding their purported water
9 rights.

10 **2. The Zamrzlas failed to file their required groundwater extraction**
11 **reports.**

12 Since 1956 anyone pumping “*in excess of 25 acre-feet in any year*” in Los Angeles County
13 has been required to file with the State Water Resources Control Board (**State Board**) an annual
14 “Notice of Extraction and Diversion of Water.” (Water Code §§ 4999-5002, emphasis added.) The
15 25 acre-feet threshold is no coincidence and was designed to dovetail with the small pumper class
16 definition of persons “*pumping less than 25 acre-feet per Year.*” (See Judgment, § 3.5.44, emphasis
17 added.)

18 The evidence will show that the Public Water Supplies reviewed the notices filed with the
19 State Board to identify parties who should be personally served with the summons and complaint.
20 The Zamrzlas admit that they failed to file their groundwater extraction reports as required by law.
21 Because the Zamrzlas failed to file the mandatory reports, they escaped personal service. Assuming
22 the Zamrzlas’ pumped more than 25 acre-feet of water in a year, the failure to receive personal
23 service is a problem of their own creation. Had they complied with the law they would have been
24 identified and served personally. A fundamental maxim of equity is that no one can take advantage
25 of his own wrong. (Civ. Code, § 3517.) The Zamrzlas cannot now be heard to complain about the
26 consequences of their own dilatory conduct.

27 ///

28 ///

1 (a) **The Watermaster contacted the Zamrzlas in 2018 about their**
2 **pumping in violation of the Judgment but the Zamrzlas failed to**
3 **bring their motions until ordered by the Court in 2022**

4 The Zamrzlas's delay of more than three years in bringing their motions amounts to laches
5 and supports denial of equitable relief. In a June 9, 2018, letter the Watermaster informed Johnny
6 Zamrzla that if he did not have a right to pump under the Judgment, he must immediately comply
7 with Section 20.9 of the Judgment providing for non-parties to intervene and then seek a right to
8 produce groundwater in the Basin. (SPW rebuttal ex. 3.) The Zamrzlas, however, did not seek to set
9 aside the Judgment at that time. It was not until after the Watermaster filed a motion for monetary,
10 declaratory and injunctive relief against the Zamrzlas in September 29, 2021, that the Zamrzlas filed
11 their motions in April of 2022. Simply put, the Zamrzlas knew about the adjudication when it was
12 pending and waited more than seven (7) years, after they got caught, to seek this Court's equity. The
13 law helps the vigilant, before those who sleep on their rights. (Civ. Code, § 3527.) There is simply
no credible basis for equitable relief from such dilatory conduct.

14 (b) **The Zamrzlas' Inequitable Behavior Continues as They Raise**
15 **Erroneous New Arguments on Reply and Seek to Introduce**
16 **Undisclosed Declarations and Expert Reports on the Eve of**
 Trial Despite Settling Parties' Discovery Requests and the
 Parties' Stipulation

17 (i) **Grimmway was not required to report the Zamrzlas'**
18 **water use**

19 The Zamrzlas claimed for the first time in reply that an issue arose during discovery that
20 Grimmway, through its lease of part of the Zamrzlas' property, somehow had knowledge of the
21 Zamrzlas' water use in 2006 and 2008. The issue is a red herring. The Zamrzlas produced a copy of
22 the lease agreement signed in 2007 in discovery and could have raised this issue in their motion. Or
23 better yet, they could have opted out of the Small Pumper Class and timely appeared in the
24 Adjudication prior to Judgment. Further, Grimmway's beneficial use of water does not amount to
25 the Zamrzlas' beneficial use of water.

26 (ii) **The Zamrzlas Attempt to Support their Motions With a**
27 **Declaration Never Read by the Declarant**

28 Johnny Lee and Jeanette filed their motion on April 11, 2022, along with the supporting

1 “Declaration of Johnny Lee Zamrzla and Jeanette Zamrzla, dated November 11, 2021” signed by
2 Jeanette under penalty of perjury. (Glo Trans Doc # 12262: Compendium of Evidence.) Rather
3 astoundingly, Jeanette testified in deposition that she never read her declaration before she signed
4 under penalty of perjury. (SPW Ex. No. 58, Deposition Transcript of Jeanette Zamrzla, Aug. 18,
5 2022, at 48:2-23.) Such cavalier lack of candor to the Court should not be the basis for equitable
6 relief. The Settling Parties will request that Jeanette’s declaration be stricken from the record.

7 **(iii) Undisclosed Supplemental Declaration of Rick Koch**

8 The Zamrzlas have identified in their February 22, 2023, exhibit list, **but refused to**
9 **produce**, a supplemental declaration of Rick Koch. The Settling Parties have not seen the purported
10 declaration, and have not stipulated to its admissibility. (Notice of Entry of Order, March 7, 2023,
11 Glo-Trans No. 12442.) Further, attempting to supply such a declaration on the eve of trial, long after
12 the close of discovery and long after the first scheduled trial amounts to sharp practice and unfair
13 surprise.

14 Accordingly, the Settling Parties object to any supplemental declaration of Mr. Koch on
15 grounds of improper hearsay (Cal. Evid. Code § 801, 1200), improper legal opinion (Cal. Evid.
16 Code § 801), insufficient foundation (Cal. Evid. Code § 403, 405) and any other such grounds as
17 appropriate during trial.

18 **(iv) Post-Motion Declaration of Michael McLachlan**

19 The Zamrzlas produced a declaration from Michael McLachlan on March 2, 2023. The
20 Settling Parties did not stipulate to the admissibility of such declaration and object to any such
21 declaration of Mr. McLachlan on grounds of improper hearsay (Cal. Evid. Code § 801, 1200),
22 improper legal opinion (Cal. Evid. Code § 801), insufficient foundation (Cal. Evid. Code § 403,
23 405) and any other such grounds as appropriate during trial.

24 **(v) Improper Expert Testimony**

25 The Parties expressly limited expert testimony in their stipulation and signed order of this
26 Court. (Notice of Entry of Order, March 7, 2023, Glo-Trans No. 12442.) The Zamrzlas’ exhibit list
27 indicates they intend to try to introduce technical reports (hearsay) that have not been previously
28 disclosed in their motions or in discovery and are outside the scope of the stipulation.

1 Accordingly, the Settling Parties reserve the right to object to such exhibits, including but
2 not limited to Zamrzla Exhibits 1, 8, 15-17, 54, 64, 86-93, 97, 110, and any other such exhibits
3 offered at trial, on grounds of improper hearsay (Cal. Evid. Code § 801, 1200), improper legal
4 opinion (Cal. Evid. Code § 801), insufficient foundation (Cal. Evid. Code § 403, 405) and any other
5 such grounds as appropriate during trial.

6 (vi) **There is no higher standard for notice in a class action**
7 **case, contrary to the Zamrzlas’ novel argument on reply**

8 The Zamrzlas argue for first time on reply that the circumstances of the present case demand
9 a higher standard of class action notice (Reply, p. 5). The argument is meritless. A different standard
10 applies for class action notices. (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 57; *Wershba v.*
11 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251; *Cooper v. Am. Sav. & Loan Assn.* (1976) 55
12 Cal.App.3d 274, 285; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174.) The *Chavez* case
13 made clear that “the trial court ‘has virtually complete discretion as to the manner of giving notice
14 to class members.’” (*Chavez, supra*, 162 Cal.App.4th at 57, quoting *7-Eleven Owners for Fair*
15 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1164.)

16 Further, the Zamrzlas cite to California Code of Civil Procedure section 836 for the first time
17 on reply to try to assert that notice here was required to be like notice in section 836 (eff. Jan. 1,
18 2016). Section 836, adopted as part of the Sustainable Groundwater Management Act and effective
19 January 1, 2016, was not in effect at the time of the Adjudication and the Basin is expressly exempt
20 from the statute. (See §§ 831, 833(b)(4), exempting Antelope Valley Adjudication; see also Water
21 Code § 10720.8(b).)

22 Finally, the Zamrzlas make oblique claims as to the effectiveness of notice by publication
23 and service by publication. As described above, section II.A., *supra*, notice was effective as to all
24 of the Zamrzlas.

25 **III. CONCLUSION**

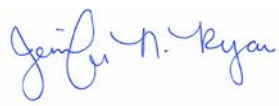
26 The Settling Parties request that the Court deny the Zamrzlas motions on the grounds that
27 (1) Johnny and Pamela Zamrzlas are bound by the Judgment on its face as known Small Pumper
28 Class members, that Johnny Lee and Jeanette are bound by the Judgment as unknown small

1 pumpers, (3) the motion by Johnny and Pamela is a collateral attack on the Judgment, (4) the form
2 and manner of notice to the Class was adequate (as stated in the Judgment), (5) service by
3 publication was adequate notice, (6) the Zamrzlas had actual and constructive notice of the
4 Adjudication prior to entry of Judgment from a variety of sources and made a conscious and
5 deliberate decision not to participate in the Adjudication, (7) given the totality of circumstances the
6 Zamrzlas have not behaved equitably, have prejudiced the rights of the multitude of parties
7 regarding the finality of the Judgment and should not be afforded equitable relief.

8 DATED: March 10, 2023

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14 DATED: March 10, 2023

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14 AND 20

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PROOF OF SERVICE

**Antelope Valley Groundwater Cases
Case No. Judicial Council Coordination Proceeding No. JCCP4408**

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 March 10, 2023, I served true copies of the following document(s) described as **SETTLING PARTIES' TRIAL BRIEF** on the interested parties in this action as follows:

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 March 10, 2023, at Sacramento, California.



Sherry Ramirez