SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordination Proceeding ANTELOPE VALLEY GROUNDWATER CASES, Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Wm Bolthouse Farms, Inc. v. City of Lancaster Diamond Farming Co. v. City of Lancaster Diamond Farming Co. v. Palmdale Water District, AND RELATED ACTIONS	Judicial Council Coordination Proceeding No. 4408 LEAD CASE: LASC Case No. BC 325201 **[~~PROPOSED~~] ORDER DENYING THE ZAMRZLAS' MOTIONS TO SET ASIDE OR MODIFY JUDGMENT** 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

I. INTRODUCTION

On April 11, 2022, Johnny and Pamella Zamrzla and Johnny Lee and Jeanette Zamrzla each filed Motions to Set Aside or Modify the Judgment and Physical Solution ("Judgment") entered in this case on December 28, 2015, on the grounds that (1) the Zamrzlas never received personal service of the Antelope Valley Groundwater litigation, (2) the 2009 Small Pumper Class Notice was defective, (3) the Zamrzlas are not, by definition, Small Pumper Class members, and (4) the Court has the inherent power in equity to set aside or modify the Judgment. The Zamrzlas requested an in-person evidentiary hearing on their motions, which are contested by several parties to the Judgment, including the City of Los Angeles and Los Angeles World Airports, Grimmway Enterprises, Palmdale Water District, County Sanitation Districts of Los Angeles County Nos. 14 and 20 (collectively, "Settling Parties") and by the Antelope Valley Watermaster ("Watermaster").

Following an opportunity for discovery the motions were fully briefed by the parties and set for hearing on December 13, 2022. At the December 13, 2022, hearing, the Court requested live testimony to help resolve certain factual issues. Thereafter, the parties submitted a Stipulation and proposed order setting the hearing on the motions for March 15 and 16, 2023, and limited the scope of the issues to (1) whether the Zamrzlas are bound by the Judgment, (2) whether the Zamrzlas had notice of the adjudication, (3) whether the Zamrzlas are members of the Small Pumper Class, and (4) whether the Zamrzlas are entitled to equitable relief from the Judgment. The parties stipulated to reserve for later hearing, if necessary, issues relating to: (1) the quantity of water the Zamrzlas may be allowed to produce from the Antelope Valley Groundwater Basin ("Basin"), and (2) the Watermaster motion to recover unpaid assessments and penalties. The Court entered the Stipulation as an Order on February 17, 2023.

The Zamrzlas' motions came on for evidentiary hearing before this Court on March 15 and 16, 2023. The Zamrzlas were represented by Nicholas R. Shepard and Sherry Lynn Zamrzla-Greco. Craig A. Parton appeared for the Watermaster, Jenifer N. Ryan appeared for the City of Los Angeles and Los Angeles World Airports, Robert G. Kuhs appeared for Grimmway Enterprises, and numerous parties attended the proceeding via remote video conference.

The Court heard live testimony from Johnny Zamrzla, Pamella Zamrzla, their son Johnny

Lee Zamrzla, and Johnny Lee's wife, Jeanette Zamrzla. The Court received documentary evidence as reflected in the record and testimony by way of declaration from: Jeffrey Dunn of Best, Best & Krieger; Michael McLachlan, Small Pumper Class counsel; Rick Koch of Southern California Edison; and also took judicial notice of many records on file in this proceeding. Following the close of evidence the Court received extensive post-trial briefing from all parties.

II. PROCEDURAL HISTORY

The procedural history of this comprehensive groundwater adjudication is well documented. Between late 1999 and early 2000, the first lawsuits were filed by Diamond Farming Co. and W.M. Bolthouse Farms, Inc. concerning competing water rights in the aquifer. (*Antelope Valley Groundwater Cases* (*Willis*) (2021) 62 Cal.App.5th 992, 1005.) In 2004, Los Angeles County Waterworks District No. 40 (District 40) filed its action seeking (1) a comprehensive determination of water rights of the thousands of persons, companies, public water suppliers and public agencies and federal government, and (2) a physical solution to alleviate overdraft in the Basin. (*Id*.) In early 2007, District 40, along with numerous other public water suppliers (collectively "PWS") filed a cross-complaint seeing a comprehensive determination of groundwater rights in the Basin and asserting prescriptive claims against overlying landowners within the Basin. (*Id*. at p. 1006.)

In 2008, Richard Wood filed a class action on behalf of himself and similarly situated parties who had pumped small quantities of water known as the "Small Pumper Class" alleging that the prescriptive claims of the PWS conflicted with the Small Pumper Class's superior overlying rights. (*Id*. at p. 1006.) The Court certified the class on September 2, 2008, and by that order defined the class as:

> All private (i.e. non-governmental) persons and entities that own real property within the Basin, as adjudicated, and that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present. The Class excludes the defendants herein, any person, firm, trust, corporation, or other entity in which any defendant has a controlling interest or which is related to or affiliated with any of the defendants, and the representatives, heirs, affiliates, successors-in-interest or assigns of any such excluded party. The Class also excludes all persons and entities that are shareholders in a mutual water company. (Small Pumper Class Judgment, p. 3.)

Both the so-called Non-Pumper Class and the Small Pumper Class were "opt-out" classes, meaning that class members had an affirmative obligation to opt-out of the class or be bound by the Judgment.

Those who opted out of the classes were personally served and joined as parties in the PWS case. The class actions were coordinated with the other proceedings and designated Proceeding No. 4408.

On December 23, 2015, the Court contemporaneously signed the Judgment and Judgment Approving Small Pumper Class Action Settlements ("Small Pumper Class Judgment"). Attached to the Small Pumper Class Judgment as Exhibit A is a list of "known small pumper class members." Johnny and Pamella Zamrzla are listed individually and together on Exhibit A as known small pumper class members – Johnny Lee and Jeanette Zamrzla are not. The Small Pumper Class Judgment is attached to the Judgment as Exhibit C and incorporated by reference.

The Judgment has withstood three substantive appeals and is final: *Phelan Pinion Hills Community Services District v. California Water Service Company* (2020) 59 Cal.App.5th 241; *Willis v. Los Angeles County Waterworks District No. 40* (2021) 62 Cal.App.5th 992; and *Los Angeles County Waterworks District No. 40 v. Tapia* (2021) 63 Cal.App.5th 17.

There is no dispute that the Zamrzlas were not personally served with summons and complaint. Therefore, proper service turns on whether the Zamrzlas are bound by the Judgment as Small Pumper Class members. For the reasons set forth below, the Court finds that the Zamrzlas are bound by the Judgment as Small Pumper Class Members and denies both motions in their entirety.

III. PUMPING HISTORY CONFIRMS THE ZAMRZLAS MEET THE SMALL PUMPER CLASS DEFINITION

A threshold question is whether the Zamrzlas meet the Small Pumper Class definition. The Zamrzlas are Small Pumper Class Members by definition if, during any year from 1946, until the class closed on December 23, 2015, they pumped less than 25 acre-feet in any year. (Judgment at 3.5.44.)

A. Johnny and Pamella's Historical Pumping

Johnny and Pamella own three parcels, two of which have water wells. Parcel No. 3220-006-026 ("Parcel 26") was purchased in 1970 and includes one well referred to as the "Domestic Well." (Ex. 48.) Parcel No. 3220-006-003 ("Parcel 3") was acquired in 1986 and includes one well referred to as the "Farm Well." (Ex. 49.) Parcel No. 3220-006-002 ("Parcel 2") was also acquired in 1986 and has no operable well. (Ex. 49.)

The pumping records produced by Johnny and Pamella Zamrzla show purported water pumping from approximately 2000 to 2018. (Ex. 1, 3-4, 6-7, 8, 13-14.) Their summary of water production table in their closing brief fails to acknowledge the lack of water production in years 2000 and prior. The evidence shows less than 25 acre-feet of water pumped in year 2000 for the domestic well, and no competent evidence of water use in any prior year for the farm and domestic wells. (Ex. 13-14.) Johnny and Pamella did offer some generalized testimony about prior irrigation between 1970 when they bought the land and year 1999, but were not able to say with any precision how much water was actually pumped in any given year. Further, Johnny and Pamella failed to produce any evidence of water production prior to 1970.

Johnny and Pamella offered the testimony of Rich Koch by declaration, a Southern California Edison employee who performed pump efficiency tests and opined, based on power consumption records as to the amount of water pumped by Johnny and Pamella during certain limited periods of time. The Settling Parties and Watermaster did not contest Mr. Koch's opinions for this phase of the proceeding. According to Mr. Koch, Johnny and Pamella pumped less than 25 acre-feet of water from their domestic well in years 2014, 2006, 2005, 2004, 2003, 2002, 2001 and 2000.

Johnny and Pamella argue that they "frequently used more water than 25 acre feet per year, dating back to their purchase of the initial 40 acres in 1970." (J&P Opening Brief, p. 14.) Frequent water use over 25 acre-feet is not the test, and Johnny and Pamella failed to meet their burden of showing pumping in excess of 25 acre-feet in each year since 1946.

Based on the pumping history presented the Court concludes that Johnny and Pamella meet the Small Pumper Class definition.

B. Johnny Lee and Jeanette's Historical Pumping

Johnny Lee and Jeanette Zamrzla purchased a 10-acre parcel in 2008 designated Parcel No. 3220-001-028 ("Parcel 28") on which they operate a well known as the "Pasture Well." The other 10-acre parcel, Parcel No. 3220-001-027 ("Parcel 27"), has no well and no pumping history. Johnny Lee and Jeanette submitted the declaration of Rick Koch who performed a pump efficiency test on the Pasture Well, reviewed power consumption records and opined as to water produced for years

2008 through 2018. Mr. Koch concluded that the Zamrzlas pumped less than 25 acre-feet of water in years 2008, 2012, and 2014. Johnny Lee and Jeanette offered no evidence of pumping for years 1946 through 2007. (Ex. 1, 2, 5, 12.) Historic water use from the Pasture Well was repeatedly under the 25 acre-foot threshold.

Based on the pumping evidence submitted the Court concludes that Johnny Lee and Jeanette meet the Small Pumper Class definition.

IV. THE ZAMRZLAS WERE SERVED WITH NOTICE OF THE SMALL PUMPER CLASS ACTION BY MAIL AND/OR PUBLICATION

"The trial Court has virtually complete discretion as to the manner of giving notice to class members." (*City of San Diego v. Haas* (2012) 207 Cal. App. 4th 472, 502.) "If personal notification is unreasonably expensive or the stake of individual class members is insubstantial, or if it appears that all members of the class cannot be notified personally, the Court may order a means of notice reasonably calculated to apprise the class members of the pendency of the action—for example, publication in a newspaper or magazine; broadcasting on television, radio, or the Internet; or posting or distribution through a trade or professional association, union, or public interest group." (CRC 3.766(f).)

The California Rules of Court require, among other things, that the notice to class members explain that the Court will exclude the member from the class if the member so requests by a specified date, include a procedure for the member to follow in requesting exclusion from the class, and include a statement that the judgment will bind all members who do not request exclusion. (CRC Rule 3.766(d)(2)-(4).) "There is clearly no legal impediment whatsoever to making it harder to opt out than to stay in," and "requiring class members to take affirmative steps to opt in has been held to be contrary to state and federal class action law and policy." (*Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 58–59.)

Courts have held that "individual notice" is generally required for class actions in which members have a substantial claim, whereas notice by publication is adequate when the damages are minimal. (*Cooper v. Am. Sav. & Loan Assn.* (1976) 55 Cal. App. 3d 274, 285.) "Individual notice" is generally accepted as first-class mailing to each individual class member (*Eisen v. Carlisle &*

Jacquelin (1974) 417 U.S. 156, 174), and in this case the belt-and-suspenders approach was followed by way of service by first class mail and publication. In accordance with this precedent, this Court determined that service of notice to the Small Pumper Class by mail and publication was adequate and sufficient under the circumstances. (Judgment, Ex. C pp. 2-5.)

Parties identified as Small Pumper Class Members were served with notice of the class action in 2009, 2013 and 2015 by first-class mail and publication. (Ex. 9-16.) This Court has determined that service of the notices was adequate and proper under the circumstances, both as to the known and unknown class members. As discussed below, the Zamrzlas were properly served with notice of the class action, and are Small Pumper Class Members and subject to the Court's jurisdiction under the Judgment.

A. Service of Notice on Johnny and Pamella

There is extensive evidence before the Court that Johnny and Pamella were served with notice of the class action by mail on three separate occasions. (Exh. 9, 14, 16, 34.) Evidence Code section 641 provides that "[a] letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail." (Evid. Code § 641.) Proof of mailing a document one or more times is "ample" evidence to overcome claims that a document was not received. (*Bartholomae Oil Corp. v. Oregon Oil & Development Co.* (1930) 106 Cal.App. 57, 66-67; *Craig v. Brown & Root, Inc.*, 84 Cal.App.4th 416, 421-22.)

Johnny and Pamella did not report problems receiving their mail when the class notices were mailed. (Ex. 56 at 12:22-16:10; March 15 and 16, 2023 Hearing Transcript at 127:22-24, 254:8-10.) They regularly check and sort their mail, including other class notices they have received. (Ex. 55 at 20:17-22:12, 23:11-24:8; Ex. 56 at 16:11-17:18; March 16, 2023 Hearing Transcript at 254:11-21.) Although Johnny and Pamella say they never received any Small Pumper Class notices, they concede it is "possible" such notices were in fact delivered to their address. (March 16, 2023 Hearing Transcript at 285:28–286:3.) Furthermore, there is no evidence that the mailed notices were ever returned to class counsel as undeliverable or with a forwarding address. (Ex. 22 at p. 16.)

This Court ordered that the 2009, 2013 and 2015 notices be published to provide notice by publication to all class members. (Ex. 3, 5, 8, 13.) The Court required that notice "be published on

at least four separate occasions (including at least two Sundays and two weekdays) in each of the following newspapers: The Antelope Valley Press, The Los Angeles Times, and The Bakersfield Californian." (Ex. 3, 5.) Each class notice was published as ordered by the Court. (Ex. 6, 10.) The Court determined in each instance that "[t]he dissemination of the Class Notice, as directed by this Order, constitutes the best notice practicable under the circumstances and sufficient notice to all Class Members." (Ex. 8, 15.) The Court further determined that "[t]he contents of the Class Notice and the manner of its dissemination satisfy the requirements of Rule 3.769 of the California Rules of Court, other applicable California laws, and state and federal due process." (*Id.*)

Johnny and Pamella have subscribed to the Antelope Valley Press at their business office located in the Basin for decades leading up to the final Judgment. (Ex. 55 at 35:16-36:10; March 15, 2023 Hearing Transcript at 115:28-116:22; 122:20-125:8.) Johnny testified that he would check the Antelope Valley Press for obituaries to see if any of his clients passed away and read the sports and some community news. (Ex. 55 at 37:7-11; March 15, 2023 Hearing Transcript at 117:6-25.) He also advertised in the newspaper. (Ex. 55 at 37:13-15.) He testified that he vaguely recalls reading stories about the adjudication and "[p]robably did because normally water stuff is on the front page." (Ex. 55 at 42:11-17; March 15, 2023 Hearing Transcript at 117:26-118:26.)

There is insufficient evidence in the record to set aside the Court's 2015 findings as to the adequacy of service of notice on Johnny and Pamella by mail and publication.

B. Service of Notice on Johnny Lee and Jeanette

Johnny Lee and Jeanette qualify as "unknown" Small Pumper Class Members. Paragraph 5.1.3.6 of the Judgment defines unknown Small Pumper Class Members as: "(1) those Persons or entities that are not identified on the list of known Small Pumper Class Members maintained by class counsel and supervised and controlled by the Court as of the Class Closure Date; and (2) any unidentified households existing on a Small Pumper Class Member parcel prior to the Class Closure Date." Pursuant to Paragraph 5.1.3.7 of the Judgment, "whenever the identity of any unknown Small Pumper Class Member becomes known, that Small Pumper Class Member shall be bound by all provisions of this Judgment, including without limitation, the assessment obligations applicable to Small Pumper Class Members." (Emphasis added.)

By virtue of their status under the Judgment, unknown Small Pumper Class Members need not intervene or otherwise take any affirmative action in order to be subject to the Court's jurisdiction. The Small Pumper Class list was inevitably imperfect in that it was impractical to capture the names and addresses of every party in the Basin that qualified as a Small Pumper Class Member prior to entry of Judgment. Exhibit A to Exhibit C to the Judgment lists "[t]he known Small Pumper Class members" (Judgment, Ex. C at 4:11-12 (emphasis added)), and Paragraphs 5.1.3.6 and 5.1.3.7 were incorporated into the Judgment to account for Parties such as Johnny Lee and Jeanette Zamrzla who do not appear on the Small Pumper Class list in Exhibit C, but who satisfy the definition of class in Paragraph 3.5.44.

As discussed above, the Court ruled that service of the Small Pumper Class notices by publication was adequate, which was necessary in part because the Judgment contemplates that unknown Small Pumper Class Members like the Zamrzlas would surface from time to time and the Court would have jurisdiction over them without requiring intervention.

The fact that individual class members may have a substantial economic interest in the litigation does not mean that personal notification is necessarily required. A class member's stake in the action is only one of seven factors under CRC Rule 3.766(e) that the judge must consider when determining the manner of giving notice, and it is not the transcendent consideration. "The rule therefore leaves substantial room for the 'creativity' often needed in the design of an effective means of notifying class members," and a judge may order another form of notice if personal notice is unreasonably expensive. (*Hypertouch, Inc. v. Superior Ct.* (2005) 128 Cal.App.4th 1527, 1551 (citations omitted).) The U.S. Supreme Court has held that notice by personal mail is required for class members whose identities and mailing addresses were actually known, yet in view of the character of the proceedings and the nature of the interests involved, notice by publication will suffice for those class members whose interests or whereabouts could not with due diligence be ascertained. (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 982 (citing *Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306).) "[California] case law has adopted a similarly practical approach, in which the circumstances of each case determine what forms of notice will adequately address due process concerns." (*Ibid.* (citations omitted).) "To summarize, due process does not

invariably require that personal notice be directed to all members of a class in order for a class action to proceed, or for that matter that an individual member of a certified class must receive notice to be bound by a judgment." (*Id.* at 984.)

Johnny Lee and Jeanette have subscribed to the Antelope Valley Press at their business office located in the Basin for decades leading up to the final Judgment. (Ex. 55 at 35:16-36:10; March 15, 2023 Hearing Transcript at 115:28 - 116:22; 122:20 - 125:8.) Their business also advertised in the newspaper. (Ex. 55 at 37:13-15.) Johnny Lee testified that he has been employed by the family business since he graduated high school and is now the president of the company, and that he and Jeanette subscribed to the Antelope Valley Press for some time prior to entry of the final Judgment. (Ex. 57 at 26:1 - 27:16; March 16, 2023 Hearing Transcript at 338:16-19.)

There is insufficient evidence in the record to set aside the Court's 2015 findings as to the adequacy of service of notice on Johnny and Pamella by mail and publication as unknown Small Pumper Class Members.

C. Personal Service Was Not Required

The Zamrzlas argue that the only service in this case that applied to them is personal service of process. As set forth above, this Court determined that notice by mail and publication of the Small Pumper Class was proper, and the Zamrzlas failed to timely opt out of the Small Pumper Class. Had the Zamrzlas opted out from the Small Pumper Class, the PWS would have personally served them as individual defendants.

Moreover, the Zamrzlas also would have received service of process had they reported their groundwater production as required by state statute. (Wat. Code §§ 5001, 5002, 4999.) Failure to file a groundwater extraction notice "shall be deemed equivalent for all purposes to nonuse." (*Id.* § 5004.)

The PWS initiated "numerous rounds of service," including service on those pumpers in Los Angeles County reporting their annual groundwater extractions as required by the California Water Code. (Ex. 1 at ¶ 2.) The Public Water Suppliers "obtained a compilation of the Annual Notices of Extraction for Los Angeles County from the State Water Resources Control Board" and used that information to identify additional parties "that were pumping water in the Basin but had not been

served." (Ex. 1 at ¶ 7.)

The Zamrzlas claim they have three wells that have produced in excess of 25 acre-feet per year at various times during their ownership history. (J&P Closing Brief, 14:14-17; JL&J Closing Brief, 10:7-9.) In each year in which claimed production exceeded 25 acre-feet, the Zamrzlas were required to file a notice of extraction with the State Water Board. Yet, the Zamrzlas failed to make any of these filings. (March 15, 2023, Hearing Transcript, 182:15-183:6; March 16, 2023, Hearing Transcript, 260:14-261:1, 339:10-21.)

The Zamrzlas violated the reporting requirements and are estopped to complain about the lack of personal service.

V. THE MOTIONS ARE A COLLATERAL ATTACK ON THE JUDGMENT AND ARE DENIED ON THIS BASIS AS A MATTER OF LAW

The motions amount to a collateral attack on the Judgment and the Court, in ruling on the motions, cannot consider extrinsic evidence.

An attack on a trial court judgment is generally either a "direct" or "collateral" attack. (8 Witkin, Cal. Proc. (6th ed. 2023) Attack on Judgment, § 1.) A direct attack is made using one of the statutory mechanisms to attack a judgment such as a motion to vacate the judgment or a motion for new trial. (*Id.* at § 2.) A motion directly attacking a judgment must be filed within the statutory time limits of, for example, 15 days from notice of entry of judgment or, if no notice is served, within 180 days after judgment. (See Code Civ. Proc. § 663a.) All other attacks on a judgment in the trial court after the statutory time periods have passed are collateral attacks. (8 Witkin, Cal. Proc. (6th ed. 2023) Attack on Judgment §§ 6, 8.)

Since the Judgment was signed on December 23, 2015, and Notice of Entry of Judgment was served by posting on December 28, 2015, the time to make a direct attack on the Judgment has long passed. Thus, the Zamrzlas are making a collateral attack on the Judgment.

Where the attack is collateral "[t]he validity of the judgment on its face may be determined only by a consideration of the matters constituting part of the judgment roll." (*Superior Motels, Inc. v. Rinn Motor Hotels, Inc.* (1987) 195 Cal.App.3d 1032, 1049 [internal quotations and citations omitted]; see *Hogan v. Superior Court of California in and for the City and County San Francisco*

(1925) 74 Cal.App. 704, 708-709.) "The record is the judgment roll, and upon collateral attack it is the only evidence that can be considered in determining the question of jurisdiction." (*Id.* [internal quotations and citations omitted].) In "a collateral attack, the judgment must be held to be valid unless the record thereof, the judgment roll, shows it to be void – unless, as the authorities put it, it is void upon its face." (*Hogan, supra*, 74 Cal.App. at 708 [internal quotations and citations omitted].) "In determining the question, we are restricted to the evidence afforded by the judgment roll." (*Id.* [internal quotations and citations omitted].) "Every presumption and intendment is in favor of the validity of the judgment, and any condition of facts consistent with the validity of the judgment will be presumed to have existed, rather than one which will defeat it." (*Id.*)

Here, the Zamrzlas do not point the Court to any defects appearing on the record and the Judgment appears valid. The Small Pumper Class is an "opt-out" class and includes both known and unknown class members. Known class members such as Johnny and Pamella Zamrzla are listed on Exhibit A to the Small Pumper Class Judgment each individually and also together. Johnny and Pamella acknowledge that the address shown on Exhibit A is their correct property address. Unknown Small Pumper Class Members include those who meet the class definition, but were not identified in Exhibit A to the Small Pumper Class Judgment. Unknown class members were served by publication. There was no evidence presented that any of the Zamrzlas opted out of the class.

The Court made certain findings in support of the Small Pumper Class Judgment, including that (1) the Court has jurisdiction over all parties, including class members who did not opt out, (2) notice of the pendency of the class was provided by mail and publication, (3) notice of the 2013 Partial Settlement was given in accordance with this Court's order and in an "adequate and sufficient manner, and constituted the best practical notice under the circumstances," (4) notice of the 2015 Settlement was given in accordance with this Court's order and in an "adequate and sufficient manner, and constituted the best practical notice under the circumstances," and (5) the class members who did not opt out are subject to the Small Pumper Class Judgment. (Judgment at Ex. C.) During trial the Court heard the Zamrzlas' evidence conditionally.

The findings of proper notice and jurisdiction as well as the Judgment are binding on the Zamrzlas and extrinsic evidence offered in support of the motions is inadmissible and cannot be

considered. (*Id.*; see *Superior Motels, Inc.*, 195 Cal.App.3d at 1049; see *Hogan*, 74 Cal.App. at 708-709.)

VI. THE COURT CANNOT EXERCISE ITS EQUITY POWERS TO GRANT THE RELIEF REQUESTED BY THE ZAMRZLAS

Even though the Zamrzlas' motions are a collateral attack on the Judgment, unsupportable by extrinsic evidence, the Zamrzlas argue that the Court can and should consider extrinsic evidence and set aside or modify the Judgment on equitable grounds. As discussed below, even if this Court considers extrinsic evidence, the Court concludes that the Judgment is valid and binding on the Zamrzlas as Small Pumper Class Members.

"If the complainant was guilty of negligence in permitting the fraud to be practiced or the mistake to occur, equity will deny relief." (*Kulchar v. Kulchar* (1969) 1 Cal. 3d 467, 473.) A Court of equity will not interfere with a final judgment unless "there had been no negligence, laches, or other fault on [the defendant's] part, or on the part of his agents." (*Olivera v. Grace* (1942) 19 Cal.2d 570, 575.) It follows that, "in demonstrating extrinsic fraud, it is insufficient for a party to come into Court and simply assert that the judgment was premised upon false facts. The party must show that such facts could not reasonably have been discovered prior to the entry of judgment." (*City & Cty. of San Francisco v. Cartagena* (1995) 35 Cal.App.4th 1061, 1068.)

The evidence in the record shows that the Zamrzlas knew about the underlying adjudication long before the Court's entry of the final Judgment, but did nothing to assert their rights until forced to do so by the Watermaster, the Settling Parties, and this Court. The evidence shows that the Zamrzlas have sat on their alleged rights in every instance in which they were notified of the potential impacts of the adjudication on their water rights. They admit they knew about the adjudication as early as 2009 and could have retained counsel on numerous occasions to protect and pursue their alleged groundwater rights, yet they did nothing until late 2021. This undue delay has been to the detriment of the Watermaster, the Parties who participated in the adjudication, and the health of the Basin. Given this conduct, and given that "[t]he law helps the vigilant, before those who sleep on their rights" (Civ. Code § 3527), the Court cannot exercise its equitable powers as a basis to re-open the Judgment and set-aside or modify their status as members of the Small Pumper

Class.

A. Johnny and Pamella's Knowledge

Johnny Zamrzla testified that Delmar Van Dam, an Exhibit 4 Party who participated in the adjudication from the outset, told him on repeated occasions leading up to entry of the final Judgment that: (1) the adjudication was for big farmers, (2) it would be very costly for the Zamrzlas to participate, and (3) the Zamrzlas would eventually obtain a water right, so to just keep pumping groundwater without participating and they "would get some water at the end of it." (Ex. 55 at pp. 70–74; March 15, 2023 Hearing Transcript at 102:7-10, 103:8-9). Johnny further testified that all his conversations with Delmar occurred prior to 2014 (Delmar died in 2014—see March 15, 2023 Hearing Transcript at 101:10-15), and that he never sought the advice of an attorney after having these discussions with Delmar. (*Id.* at 103:18-28.)

Johnny Zamrzla also testified that Eugene Nebeker, also an Exhibit 4 Party who participated in the adjudication, invited the Zamrzlas to join his Antelope Valley Groundwater Agreement Association ("AGWA") as a Party to the adjudication, but that the Zamrzlas declined and thereafter never sought the advice of an attorney, and never investigated the AGWA group further. (Ex. 55 at 81:8-15; March 15, 2023 Hearing Transcript at 108:12-21.)

Finally, Johnny and Pamella testified that in early 2016 Norm Hickling, an aide to Los Angeles County Supervisor Mike Antonovich, provided him with complete copies of the Judgment and Physical Solution, and in response the Zamrzlas did nothing—they did not inquire further into the outcome of the adjudication or whether they were named, they did not inquire into how the Judgment may have impacted their water rights, and they did not seek legal counsel. (March 16, 2023 Hearing Transcript at 196:19–197:7, 279:9-23.)

B. Johnny Lee and Jeanette's Knowledge

Johnny Lee Zamrzla also testified that he had conversations with Delmar Van Dam prior to Delmar's death in 2014, and he was informed and understood, based on his conversations with Delmar, that whatever amount of groundwater usage cutbacks would apply to the parties who participated in the adjudication, would automatically also apply to the Zamrzlas, whether or not they participated. (March 16, 2023 Hearing Transcript at 330:15-21, 349:13–350:5.)

Johnny Lee further testified that around 2014 Nick Van Dam, Delmar's son, told Johnny Lee that Delmar had "given your family bad advice"—meaning that the Zamrzlas' rights to groundwater were not protected under the Judgment. (Ex. 57 at 36:14-19; March 16, 2023 Hearing Transcript at 332:28 – 333:6). Johnny Lee went on to testify that he also had conversations with Delmar's other sons, Gary and Craig Van Dam, in or around 2014 about the adjudication and their ramping down of production. (March 16, 2023 Hearing Transcript at 348:9–351:10.) After learning from Nick that Delmar may have given his family bad advice with respect to their failure to join the adjudication to protect their water rights, Johnny Lee admits he did nothing to further investigate the outcome of the adjudication, and did not retain counsel until after receiving the Watermaster's letter years later. (March 16, 2023 Hearing Transcript at 333:4-18.)

C. The Zamrzlas Had Counsel Prior to the Long Valley Motion

The Zamrzlas admit that they first retained counsel in this matter in July 2018 in response to the Watermaster's first letter regarding compliance with the Judgment. (March 15, 2023 Hearing Transcript at 103:18-21; 108:2-4.) Thereafter, on October 9, 2018, Long Valley Road, L.P. ("Long Valley") filed a motion for leave to intervene in the Judgment. (Ex. 17-20, 27.) The Watermaster and other Parties opposed the Long Valley motion, and the Court eventually denied the Motion on the basis that the time had passed for Long Valley to collaterally attack its status under the Judgment. (Ex. 21-26, 28.) Long Valley submitted the exact same legal arguments based on the same or similar facts as both sets of Zamrzlas, yet the Zamrzlas concede they did nothing to join the Long Valley motion or otherwise seek to vindicate their alleged rights at that time, but instead waited until late 2021 to attempt to challenge their status as Small Pumper Class Members, and only after forced to do so by the Watermaster and eventually this Court. Each legal argument raised by the Zamrzlas was rejected by this Court in the Long Valley motion. The Zamrzlas were represented by counsel throughout the pendency of the Long Valley motion, yet they failed to take any action to join Long Valley's motion or even follow-up with a similar motion of their own.

As the California Supreme Court held in *Weitz v. Yankosky* (1966) 63 Cal.2d 849, a defendant must act diligently in making his motion to set aside a judgment. There is no evidence in the record that the Zamrzlas ever raised any questions about their status as members of the Small

Pumper Class, much less affirmatively sought to protect any additional water rights they may have, until they filed their opposition to the Watermaster's original motion for monetary, declaratory and injunctive relief on or about November 12, 2021. The Zamrzlas admit they knew about the adjudication since at least 2009, received a copy of the Judgment in 2016, and were notified by the Watermaster of their status as Small Pumper Class members as early as 2018.Their long unexcused delay is unreasonable and prejudicial to all other parties, and the Court cannot exercise its equity powers to shield them from the consequences of their actions.

VII. DECISION

The motions by the Zamrzlas to set aside or modify the Judgment or to have the court intervene in equity are denied for the reasons set forth hereinabove.

DATED: June 9, 2023

Hon. Jack Komar