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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

Coordination Proceeding, Special Title (Rule 1550(b))	Judicial Council Coordination Proceeding No. 4408
ANTELOPE VALLEY GROUNDWATER CASES	LASC Case No.: BC 325201 Santa Clara Court Case No. 1-05-CV-049053 Assigned to the Hon. Jack Komar, Judge of the Santa Clara Superior Court
	WATERMASTER'S OPPOSITION TO JOHNNY AND PAMELLA ZAMRZLA'S MOTION TO SET ASIDE OR MODIFY JUDGMENT
AND ALL RELATED ACTIONS	Date: December 13-14, 2022 Time: 9:00 a.m. Dept: 17

I. Introduction

The motion by Johnny and Pamella Zamrzla ("**J&P**" or the "**Zamrzlas**") to set aside or modify the Judgment ("**Motion**") must be denied because J&P are Parties to the Judgment and subject to the jurisdiction of this Court as Small Pumper Class Members. The legal issues in the Motion have already been decided by this Court based on almost identical facts, and this important precedent should not be disturbed. By seeking to relitigate their alleged water rights, the Zamrzlas attempt an impermissible collateral attack to overturn the finality and certainty of the Judgment, threatening to irreversibly jeopardize the outcome of nearly two decades of litigation. This would adversely affect the groundwater rights of virtually every landowner within

the Basin, and would essentially require the litigation to start anew.

II. This Court Has Already Decided the Legal Issues at Hand in the Long Valley Motion

On October 9, 2018, Long Valley Road, L.P. ("**Long Valley**"), a Small Pumper Class Member identified on Exhibit C to the Judgment, filed a motion for leave to intervene in this adjudication, claiming that it is not a Party to the Judgment and was erroneously included in the list of Small Pumper Class Members because it allegedly historically pumped more than 25 acre-feet per year (AFY). (RJN Exh. 6-9, 16.) By way of its motion, Long Valley sought to "rectify" this purported error by "intervening" to become an Exhibit 4 Party, and thereafter quantifying and memorializing its alleged water rights through an amendment to the Judgment. Long Valley argued that it was never served with any notice of the Small Pumper Class action, and that even if it had received any of the notices, it would have reasonably believed the notices did not apply to it based on unsubstantiated evidence of historical groundwater use, and therefore would not be bound by the terms of the Judgment as a Small Pumper Class Member. Long Valley cited to constitutional water rights protections as an overlying landowner, as well as due process concerns, in support of its argument that it is not bound by the terms of the Judgment or the Court's jurisdiction without proper notice and an opportunity to be heard. (*Ibid.*)

The Watermaster and various Parties filed oppositions to Long Valley's motion, arguing that (1) the form and service of class notice was adequate as to Long Valley and all other Small Pumper Class Members identified in Exhibit C to the Judgment, (2) Long Valley's motion constituted an impermissible collateral attack on the Judgment, and (3) allowing Long Valley to intervene and relitigate its water rights years after final entry of the Judgment would set a dangerous precedent and adversely affect the water rights of all Parties who participated in the adjudication. (RJN Exh. 10 - 15.)

After a hearing on November 1, 2018, the Court denied Long Valley's motion in its entirety, confirming its status as a Small Pumper Class Member subject to the terms of the Judgment and the Court's jurisdiction, and ordering it to comply with the terms of the Judgment and the Watermaster Rules & Regulations. (RJN Exh. 17.)

The Zamrzlas are in the same situation as Long Valley: they are both identified by name

in Exhibit C to the Judgment, and they both concede that the Small Pumper Class list sets forth their correct mailing address. The Zamrzlas also raise the exact same legal arguments as Long Valley, based on similarly specious and conclusive facts: (1) they allege that they never actually received notice, and in any event were not properly served with notice of the Small Pumper Class action or the underlying adjudication; (2) they allege that even if they had been served with notice of the Small Pumper Class action, such notice would not have applied to them nor would they be bound by its terms because their alleged—yet entirely unsubstantiated—historical groundwater production amounts exceeded 25 AFY; and (3) they repeatedly cite to constitutional water rights protections and due process concerns in an effort to avoid the jurisdiction of the Court and their obligation to comply with the Judgment as Small Pumper Class Members.

Each legal argument raised by the Zamrzlas was rejected by this Court in the Long Valley motion. The Court should not disturb this well-founded precedent with respect to a Party in the exact same situation as Long Valley.

III. The Zamrzlas Attempt an Impermissible Collateral Attack on the Judgment

Just like Long Valley, the Zamrzlas attempt a collateral attack to overturn the finality and certainty of the Judgment, which implicates the rights of virtually every groundwater user within the adjudicated area. Attacks on a judgment in the trial court are generally classified as either "direct" or "collateral." (8 Witkin, Cal. Proc. (6th ed. 2021) Attack on Judgment, § 1.) A direct attack on a judgment must be made by one of the recognized statutory methods, such as a motion for new trial or to vacate the judgment. (*Id.* § 2.) A motion to directly attack the judgment must be made within 15 days after notice of entry of judgment or, if no notice is served, within 180 days after judgment. (*See* Code Civ. Proc. § 663a.) All other attacks in the trial court after the statutory time period has run are collateral attacks. (8 Witkin, Cal. Proc. (6th ed. 2021) Attack on Judgment, § 6 and 8.) Here, the Judgment was entered on December 23, 2015, and Notice of Entry of Judgment was served by posting on December 28, 2015. Thus, the time within which the Zamrzlas could make a direct attack has long since passed.

The Zamrzlas further attempt to collaterally attack the Judgment based upon inadmissible extrinsic evidence in order to establish that they did not receive adequate notice and/or do not

satisfy the definition of a Small Pumper Class Member. (COE Exh. 1 at 2:24 – 3:3; COE Exh. 2 at 2:24 – 3:1.) This attack fails because a judgment of a court of general jurisdiction is presumed to be valid, *i.e.*, the court is presumed to have jurisdiction of the subject matter and the person, and to have acted within its jurisdiction. (8 Witkin, Cal. Proc. (6th ed. 2021) Attack on Judgment, § 5.) Since the Zamrzlas' attack is collateral, the presumption of jurisdiction is conclusive and extrinsic evidence is not admissible to rebut the presumption that this Court has jurisdiction over them as Small Pumper Class Members.

"Where a collateral attack is made on a California judgment, the presumption of jurisdiction is conclusive if the jurisdictional defect does not appear on the face of the record. Hence, the validity of the judgment cannot be challenged by collateral attack unless a jurisdictional defect appears on the judgment roll." (*Id.* § 11 (citations omitted).)

Because the jurisdictional facts as to the Small Pumper Class—including the Court's findings as to the adequacy of class notice–are set forth in Exhibit C to the Judgment, nothing in the Judgment Roll (C.C.P. § 670) evidences a lack of jurisdiction. Given the absence of a timely authorized "direct attack," the findings of jurisdiction are now conclusive, and the proffered extrinsic evidence attached as exhibits to the Zamrzlas' Motion is inadmissible and cannot be considered. On this basis, the Watermaster objects to the entirety of the Declarations of Johnny Zamrzla, Pamella Zamrzla and Rick Koch made in support of the Zamrzlas' Motion, and all of the exhibits attached thereto or referred to therein, as set forth in the Watermaster's Evidentiary Objections filed concurrently herewith.

IV. The Zamrzlas Are a Small Pumper Class Member and Are Bound by The Judgment

Just like Long Valley, the Zamrzlas claim that they are not properly included in the Small Pumper Class list in Exhibit C to the Judgment because they were never served with notice of the ligation, and were therefore denied the right to an adversarial hearing and proceeding concerning their water rights. They claim they should have been personally served, that service by mail was improper, and that even if service by mail was legally sufficient, they never actually received any such notice. The Zamrzlas further take the position that, even if they had received the Small Pumper Class Action notices, they would not have had any reason to believe they would be bound

by any such judgment or settlement because they do not fit into the definition of a Small Pumper Class Member, alleging they regularly pumped more than 25 AFY on their properties.

As with Long Valley, which raised the exact same arguments, J&P are currently a Party to the Judgment as a Small Pumper Class Member. (*See* Judgment at Exh. C, Exh. A at pp. 24, 36, 50 ("List of Known Small Pumper Class Members for Final Judgment").) J&P were properly served with notice of their designation as a Small Pumper Class Member, and notified of the opportunity to opt-out and join the adjudication as an overlying Producer. Had J&P taken action any time prior to the deadline stated in the 2013 notice sent to Small Pumper Class Members, they could have attempted to prove-up any alleged overlying Production Rights along with those who timely joined the adjudication as Exhibit 4 Parties. J&P failed to timely do so, and are now bound by the terms of the Judgment as a Small Pumper Class Member. Any overlying Production Rights J&P may now claim cannot alter, amend or modify the rights to the Native Safe Yield allocated by the Court to the Parties under the Judgment.

A. J&P Were Properly Served With Notice of the Small Pumper Class Action

Parties identified as members of the Small Pumper Class were served with notice of the Small Pumper Class Action in 2009, 2013 and 2015 by first-class mail and publication. (RJN Exh. 1 at ¶¶ 3, 5; RJN, Exh. 2-5, 18.) The "List of Known Small Pumper Class Members for Final Judgment," attached as Exhibit A to Exhibit C to the Judgment, is a replication of the Small Pumper Class notice list, and evidence that J&P were properly served with notice.

The 2009 notice informed all recipients that they have been designated as possible class members, that they must submit a response form no later than September 9, 2009 if they contend they are not a class member for any reason (including if they have pumped in excess of 25 AFY in any calendar year since 1946), and that "[a]ll persons who receive this Notice should respond, so that the parties and the Court will know whether you are a class member or not." (RJN Exh. 1 at Exh. B.)

The 2013 notice stated that recipients of the notice have been designated as class members, and "[i]f you do nothing, you will remain in the class and be bound by the terms of the settlement." The 2013 notice further provided an opportunity for recipients to respond with a

request for exclusion by no later than December 2, 2013. (RJN, Exh. 2.)

The 2015 notice explained that the recipients have been designated as class members and are not in the class only if: (1) their property is connected to and receives water from a public water system, public utility or mutual water company; (2) they are already a party to the litigation; or (3) they have timely excluded themselves from the class and have not rejoined. The 2015 notice also set forth the final terms of settlement and explained that recipients were no longer able to opt-out of the class because they were given two prior opportunities to do so. (RJN, Exh. 4.)

The 2009, 2013 and 2015 notices were each properly mailed to J&P's address at 48910 80th Street W, Lancaster, CA 93536-8740. (RJN Exh 1, 2, 4, 18.) This is the correct address for J&P as admitted by J&P. (COE Exh. 1 at 2:7-17; COE Exh. 2 at 2:7-17.) In fact, Exhibit C to the Judgment identifies J&P's correct address three separate times: once for Johnny Zamrzla, once for Pamella Zamrzla, and once for the "Zamrzla Family." On December 23, 2015, the Judgment was entered by the Court, and in the following years J&P admit they continued to produce in excess of the 3 AFY allowed for Small Pumper Class Members under the Judgment.

The trial court has virtually complete discretion as to the manner of giving notice to class members. (*Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 57; *City of San Diego v. Haas* (2012) 207 Cal. App. 4th 472, 502.) The standard is whether the notice has a reasonable chance of reaching a substantial percentage of the class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 251 ("it is not necessary to show that each member of a nationwide class has received notice").) 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.) In this case, the "belt-and-suspenders" approach was followed, and the Court ordered the notice of Small Pumper Class action be served by first class mail and publication in each instance. (Judgment, Exh. C at 3:14-15, 18-20 and 26-27), and this Court conclusively determined that each such notice "was given in an adequate and sufficient manner, and constituted the best practicable notice under the

circumstances." (*Id.* at 3:18-20 and 27-28.)

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*, *supra*, 162 Cal. App. 4th at 58–59.)

Each of the three Small Pumper Class notices clearly explained that J&P, as a recipient, had been named as a class member and must respond in writing by a specific date if they believed they had been erroneously included in the class. (RJN Exh 1-5.) There was no option to do nothing in response in the 2009 notice, and the 2013 notice stated that "[i]f you do nothing, you will remain in the class and be bound by the terms of the settlement." (RJN Exh 1-2). These notices clearly complied with California law governing notices of class action, and the manner of service was in excess of legal requirements and was approved by the Court.

B. The Time Has Passed for the Zamrzlas to Challenge the Adequacy of Notice

The Zamrzlas allege that the declaration of Jeffrey V. Dunn regarding the mailing of the 2009 notice constitutes hearsay, lacks foundation, and does not prove that the notice was actually served. (Motion at 10:23 – 11:12.) Notwithstanding these objections, the Court need not rely on Mr. Dunn's declaration in order to reject the Zamrzlas' arguments as to the adequacy of notice. The Court has finally and conclusively ruled that both the form and the service of the notices of the Small Pumper Class Member action were proper and adequate under the circumstances, and the Zamrzlas cannot collaterally attack the finality of this Court's order seven years later.

In support of its Judgment Approving Small Pumper Class Action Settlements dated December 23, 2015, attached as Exhibit C to the Judgment, the Court found that : (1) it has "jurisdiction over all parties to the Settlement Agreement including those who did not timely opt out of the Settlement"; (2) "[n]otice of the pendency of this class action was initially provided to

the Class by mail and publication, with a final opt out date of December 4, 2009"; (3) notice "was given in an adequate and sufficient manner, and constituted the best practicable notice under the circumstances"; (4) "[n]o Class member timely filed an objection to the 2015 Settlement"; and (5) "[a]ll members of the Class who did not opt out of the Class shall be subject to all the provisions of the 2013 Partial Settlement, the 2015 Settlement, and this Judgment as entered by the Court." (Judgment, Exh. C at pp. 2-4.) The Court then ordered, adjudged and decreed that "[t]he Small Pumper Class members are bound by the Judgment and Physical Solution, and their rights and obligations [ ] relative to future groundwater use are set forth therein." (Judgment, Exh. C at p. 5.) As discussed in Section III above, the time has long passed for the Zamrzlas to challenge the final determinations and orders of the Court as to the form and service of notice.

C. The Water Pumped by the Zamrzlas is Irrelevant and Unsubstantiated

The Zamrzlas suggest that the relevant inquiry is whether a person who owns property within the Basin pumped less than 25 acre-feet of water from beneath their property in any year between 1946 and 2008. (Motion. at p. 13, line 17 – p. 15, line 11.) To the contrary, the relevant inquiry for the purposes of determining a Party's status as a Small Pumper Class Member is whether such person or entity was properly served with notice of the Small Pumper Class action and failed to timely opt-out. (*See* Judgment at Exh. C at 2:14-15 ("The Court has jurisdiction over all parties to the Settlement Agreement including Class members who did not timely opt out of the Settlement."); *see also id.* at 4:9-10 ("All members of the class who did not opt out of the Class shall be subject to all the provisions of . . . this Judgment as entered by the Court.").)

Confirming the Zamrzlas' status as Small Pumper Class Members would not violate their due process rights. "[T]o hold that due process requires a second opportunity to opt out after the terms of the settlement have been disclosed to the class would impede the settlement process so favored in the law." (*Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 634–35 (9th Cir. 1982) (discussing FRCP Rule 23(b)(3).) As discussed below, the Zamrzlas are seeking not only a second, but a third opportunity to change their status.

It is important to note that the Zamrzlas rely upon inadmissible and unreliable evidence of their historical pumping because, to date, they have yet to install water meters on any of their

wells, in direct violation of the Judgment and the Watermaster Rules & Regulations. (Parton Decl., Exh. A at pp. 258-259.) Instead, the declaration of Rick Koch sets forth a speculative and misleading estimate of water usage based on only two pump tests and relatively recent electrical records. In their only evidence of alleged historical pumping, Mr. Koch misleadingly says that his hydraulic tests on each of the twos Zamrzla wells (the "Domestic Well" and the "Farm Well") were performed "over the period between January 2013 and September 2018." (COE Exh. 3, p. 3:1-3.) In fact, Mr. Koch conducted only two such tests on two identical days for the Domestic well: one on January 25, 2013, and the other on September 21, 2018. Two tests separated by more than five years. Mr. Koch conducted three tests on the Farm Well: one on January 25, 2013, one on February 28, 2014, and one on January 25, 2017. Mr. Koch also reviewed SCE electric records for the two wells for the period between 2011 and 2021. (COE Exh. 3 at p. 3:11-13.) At best this means Mr. Koch has reason to speculate as to the Zamrzlas' recent water usage based on electric records since 2011. However the Zamrzlas have owned their property since 1970. (COE Exh. 1 at p. 4, line 4.) Where, then, is the "five decades" of evidence of water usage which "conclusively" shows "the Zamrzlas regularly exceeded 25 AFY"? (Motion at 13:6-7; COE Exh. 1 at 5:7.) No evidence has been submitted to support any Zamrzla water usage from before 2011, even though the Zamrzlas claim to have continually pumped water on their property since 1971. Although each of J&P's declarations do claim that they "pumped more than 25 acre-feet every year from 1970 to 2018 on our property" (COE Exh. 1 at 3:fn1), this presents nothing more than conclusory, unsubstantiated and self-serving statements, none of which can be relied upon by this Court in ruling on the Motion.

D. The Number of Acres Owned by the Zamrzlas is Irrelevant

The Zamrzlas also claim that they should have been personally served with notice of the adjudication because they own more than 100 acres of land within the Basin. (Motion at 7:28 - 10:8.) As discussed above, the relevant inquiry as to a Party's status as a Small Pumper Class Member is whether they were included in the list of class members set forth in Exhibit C to the Judgment, and whether they timely opted out of the class. It is irrelevant whether they pumped in excess of 25 AFY, or whether they owned more than 100 acres within the Basin. By way of

example, as of 2006 Long Valley owned 135 acres of land on five contiguous parcels located within the Basin. (RJN Exh. 6 at p.1:25-26.) Long Valley was not personally served with notice of the adjudication, and the Court nevertheless found that Long Valley is a Small Pumper Class Member. (RJN Exh. 17 at p. 2:12-16.) This well-reasoned precedent should not be disturbed.

V. The Zamrzlas Were Given an Opportunity to Join the Adjudication

The Zamrzlas claim they were never served with any notice of the adjudication and are therefore not bound by the Judgment. (Motion. at 5:8-15.) To the contrary, the 2009 notice stated that "[t]he case has been combined with other cases to determine all the groundwater rights in the Basin." (RJN Exh. 1 at Exh. B.) The 2013 notice further explained that "[t]his lawsuit is coordinated with several other lawsuits pending before a single judge, the Honorable Jack Komar," and "[t]hose other lawsuits involve many other parties who also claim the right to pump groundwater in the Antelope Valley." (RJN, Exh. 2.) The 2015 notice likewise explained that "[t]he case has been combined with other cases to determine all the groundwater rights in the Basin," and "[t]he Court has not yet decided the case." (RJN, Exh. 4.)

All of these notices more than sufficiently advised J&P of the adjudication, clearly set forth the need to opt-out of the Small Pumper Class if they believed they were incorrectly included, and notified them of the opportunity to seek to join in the adjudication as an overlying Producer if they so desired. J&P elected not to, and are now bound by the terms of the Judgment as a Small Pumper Class Member. They should not be rewarded for their failure to act timely and participate in the adjudication.

The plain terms of the Judgment preclude the Zamrzlas from claiming that they are not bound by it. "All real property owned by the parties within the Basin is subject to [the] Judgment." (Judgment at 3:25.) "The Court required that all Persons claiming any right, title or interest to Groundwater within the Basin be notified of the Action," and "[n]otice has been given pursuant to the Court's order." (Judgment at Exh. A, ¶ 3.2.) The Physical Solution "is a fair and reasonable allocation of Groundwater rights in the Basin after giving due consideration to water rights priorities and the mandate of Article X, section 2 of the California Constitution," and "is a remedy that gives due consideration to applicable common law rights and priorities to use Basin

water . . . without substantially impairing such rights." (Judgment at Exh. A, ¶ 3.4; *see also* Judgment at Exh. A, ¶ 7.1.) The Judgment itself is defined as a "judgment . . . determining *all rights to Groundwater in the Basin*, establishing a Physical Solution, and *resolving all claims in the Action*." (Judgment at Exh. A, ¶ 3.5.13 (emphasis added).) Within this framework, the Zamrzlas were given more than an adequate opportunity to participate in the adjudication and claim overlying Production rights. The Zamrzlas cannot now challenge the finality of the litigation by claiming—years after the Judgment became final—that the Court lacks jurisdiction based on due process concerns.

The Zamrzlas argue that "[t]o impose severe water pumping restrictions without adequate notice of the litigation, and affording a landowner the right to be heard, would be not only inherently unfair but also constitute a clear violation of said landowner's constitutional rights." (Motion at p. 9, lines 6-9.) This is incorrect. All interested parties—including the Zamrzlas—were provided with notice and opportunity to assert alleged overlying rights to groundwater in the Basin. "Courts are vested with not only the power but also the affirmative duty to suggest a physical solution where necessary, and [they have] the power to enforce such solution regardless of whether the parties agree." (*California Am. Water v. City of Seaside* (2010) 183 Cal. App. 4th 471, 480 (quotations and citations omitted).) "The solution must not, of course, unreasonably or adversely affect the existing legal rights and respective priorities of the parties," but "a trial court nonetheless has discretion to implement its physical solution within the bounds of its authority." (*Ibid.*) Enforcing the Judgment against the Zamrzlas as members of the Small Pumper Class is fully within the Court's jurisdiction. To hold otherwise would dangerously undermine the legitimacy and efficacy of the Judgment as a comprehensive Physical Solution for "satisfaction of all water rights in the Basin." (Judgment at Exh. A, ¶ 7.1.)

VI. Granting the Motion Would Be Inequitable and Reward Disingenuous Behavior

In seeking to set aside or modify the Judgment, both as to the Court's jurisdiction and their status as Small Pumper Class Members, the Zamrzlas ask the Court to exercise its "inherent equity power under which, apart from statutory authority, the court has the power to grant relief from a judgment where there has been extrinsic fraud or mistake." (Motion at 4:12 – 5:15.) But he

who seeks equity must do equity, and the Zamrzlas do not come to the Court with clean hands. In support of their argument, the Zamrzlas rely upon *Olivera v. Grace* (1942) 19 Cal. 2d 570, 575, which explains that 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." (Motion at 4:24-25.) 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.) "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 (internal quotations and citations omitted).)

It is undisputed that the Zamrzlas knew about both the Small Pumper Class Action and the underlying adjudication prior to the Court's entry of the final Judgment. (Parton Decl., Exh. A at pp. 70 – 74.) J&P acquired their property in 1970, long before the first notice of Small Pumper Class Action was mailed out. (COE Exh. 1 at 2:8; COE Exh. 2 at 2:8.) At all times relevant they were high-profile members of the Antelope Valley, deeply engrained in the local agricultural and business community. (Motion at 2:2-10; COE Exh. 1 at 3:6-22; COE Exh. 2 at 3:6-22.) Although the Zamrzlas' declarations are replete with conclusory assertions that they did not actually receive any of the Small Pumper Class notices, they conspicuously omit any statement as to whether and when they were made aware of the Small Pumper Class action and/or the adjudication. The Zamrlzas cannot avail themselves of the Court's equitable powers after sticking their heads in the sand while an all-encompassing groundwater adjudication was ongoing in their community for years, now claim ignorance, and be allowed to pump groundwater from the Basin with impunity.

It is also indisputable that the Zamrzlas have been well aware of their inclusion in the list Small Pumper Class Members—and of the Watermaster's assertion that they are bound by the Judgment and subject to the jurisdiction of the Court—since at least as early as July 2018, when the Zamrzlas admit they received the Watermaster General Counsel's letter indicating as much. (COE Exh. 1 at 4:16-21; COE Exh. 2 at 3:13 – 4:18; Parton Decl., Exh. A at p. 186:21-24.)

Thereafter the Zamrzlas regularly communicated with the Watermaster regarding their outstanding Assessments. The Zamrzlas communicated with the Watermaster both directly at monthly Board meetings, and through their then counsel of record, Robert H. Brumfield, who had been involved in the Adjudication representing other water users in the Basin since before entry of final Judgment. (*Ibid.*) Moreover, the Long Valley motion challenging its status as a Small Pumper Class Member was filed after the Zamrzlas began communicating with the Watermaster about past-due Assessments. Yet the Zamrzlas have waited four years to challenge their status under the Judgment, raising the exact same legal arguments based on the same facts as Long Valley.

The Zamrzlas' long and unexcused delay in bringing the instant motion would cause considerable harm to the Watermaster and other Parties to the Judgment if the motion is granted. Had the Watermaster known that the Zamrzlas disputed the Court's jurisdiction over them, the Watermaster immediately would have brought a motion to confirm such jurisdiction exists, and if the Court had found that service of the class notification was defective in any way, the Watermaster immediately would have re-served the Zamrzlas. Either way, the jurisdictional issue would have been resolved, the Judgment would indisputably apply to the Zamrzlas, and the Zamrzlas clearly would have been obligated to pay Assessments for the water they have pumped.

Instead, for the past four years the Zamrzlas have forced the Watermaster to incur substantial attorneys' fees in an effort to compel compliance with the Judgment and recover past-due Assessments. All the while the Zamrzlas never disputed their status as Parties under the Judgment and subject to the Court's jurisdiction. It was only after the Watermaster pursued Court intervention that the Zamrzlas sought to modify the Judgment as to their status as Small Pumper Class Members, first in their opposition to the Watermaster's original motion to collect delinquent Assessments, and now in the instant Motion. As the California Supreme Court held in *Weitz v. Yankosky* (1966) 63 Cal. 2d 849, 856 (a case relied upon by the Zamrzlas in their Motion), a defendant must act diligently in making his motion to set aside a judgment. Waiting at least four years, and forcing the Watermaster to incur substantial attorneys' fees in good faith reliance the Zamrzlas' failure to raise any objections to the finality of the Judgment, is antithetical to this

requirement.

The Zamrzlas are now seeking a third bite at the apple: (1) first they ignored their opportunity to opt-out of the Small Pumper Class after notice of the Small Pumper Class action, notice of partial settlement, and notice of the final Judgment had been properly served; (2) then they negotiated, directly and through their counsel, with the Watermaster for almost four years in an attempt to avoid their responsibility to pay Assessments as Parties under the Judgment, never once challenging their status as Small Pumper Class Members; and (3) now that the Watermaster has sought Court intervention in an effort to compel compliance with the Judgment, the Zamrzlas are attempting a collateral attack to set aside the Judgment under a legal theory that would undo the framework that binds the Judgment and Physical Solution together.

VII. Allowing the Zamrzlas to Avoid the Judgment Would Set a Dangerous Precedent

As set forth above, all Small Pumper Class Members were properly served with notice of the Small Pumper Class Action. Likewise, numerous Parties failed to respond timely, or at all, to the Public Water Suppliers' cross-complaint, as amended, and their defaults were entered by the Court. (Judgment at Exh. A, ¶ 1.6.) Allowing Parties like the Zamrzlas to produce groundwater with impunity based solely on unsubstantiated and improbable allegations that they never received notice of the adjudication would set a dangerous precedent. It would strongly incentivize other Small Pumper Class Members (and even defaulted and non-Parties) simply to allege a lack of notice without any supporting evidence, and thereby claim immunity from paying Assessments and complying with other requirements imposed by the Judgment.

All of the Parties to the Judgment participated in good faith in each phase of trial in order to prove-up their Groundwater rights and calculate the Safe Yield. Allowing the Zamrzlas to alter the Judgment would adversely and impermissibly affect the other Parties bound by the Judgment and would send the wrong message to other Small Pumper Class Members, defaulted Parties and non-Parties who have also failed to pay Assessments and comply with other requirements of the Judgment.

VIII. Injunctive and Declaratory Relief is Warranted

To date it is unclear exactly how much groundwater the Zamrzlas have historically used

on their properties, or how much groundwater they are currently pumping from their wells, in part because, as admitted in their Motion, the Zamrzlas still have not installed meters on any of their wells despite almost four years of repeated requests from the Watermaster that they do so. Because both metering and Production reporting are essential to collection of Replacement Water Assessments, the Judgment authorizes the Watermaster to seek Court intervention to compel compliance and an injunction to prevent further Production until meter installation and Production reporting obligations are fully satisfied. (*See* Judgment at Exh. A, ¶ 18.4.12; R&Rs § 19.b.i.) Injunctive and declaratory relief is necessary and warranted in this case to prevent any further Production by the Zamrzlas until they comply with their obligations under the Judgment.

IX. The Judgment Provides the Basis for Recovery of Attorneys' Fees and Interest

Paragraph 18.4.12 of Exhibit A of the Judgment and Section 19.g of the Watermaster's Court-approved Rules and Regulations explicitly authorize: (1) collection of interest on delinquent RWAs at the applicable real property rate for the county of the property in question, and (2) recovery of attorneys' fees incurred in collection thereof. The Watermaster has engaged legal counsel since 2018 in an attempt to bring the Zamrzlas into compliance with their obligations as Parties under the Judgment, specifically to collect past-due Assessments and enforce metering and reporting requirements. In denying the Zamrzlas' Motion and awarding monetary and injunctive relief as set forth herein, the Court should award the Watermaster its attorneys' fees incurred as well as all accrued interest on past-due Assessments.

X. Conclusion and Prayer for Relief

For the above-stated reasons, the Watermaster respectfully requests that the Court:

(1) deny the Zamrzlas' Motion in its entirety;

(2) find and declare that the Zamrzlas are Parties to the Judgment as Small Pumper Class Members and bound by its terms;

(3) order the Zamrzlas to pay the monetary relief requested in the Watermaster's original motion dated September 29, 2021, including all past-due Assessments, interest thereon and attorneys' fees;

(4) order the Zamrzlas to immediately cease all Groundwater Production from the Basin

until all past-due Assessments, interest and fees are paid in full;

(5) order the Zamrzlas to immediately install water meters on all their wells in accordance with Watermaster Rules & Regulations and timely report all Groundwater Production past and present; and

(6) declare that the Zamrzlas are not entitled to Produce any Groundwater from the Basin until all such past-due Assessments, interest and fees are paid in full, and until the Zamrzlas fully comply with all such metering and Production reporting requirements.

Respectfully submitted,

Dated: October 12, 2022

PRICE, POSTEL & PARMA LLP

By: _____

CRAIG A. PARTON
TIMOTHY E. METZINGER
CAMERON GOODMAN
Attorneys for
Antelope Valley Watermaster

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I am employed in the County of Santa Barbara, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 200 East Carrillo Street, Fourth Floor, Santa Barbara, California 93101.

On October 12, 2022, I served the foregoing document described **WATERMASTER'S OPPOSITION TO JOHNNY AND PAMELLA ZAMRZLA'S MOTION TO SET ASIDE OR MODIFY JUDGMENT** on all interested parties in this action by placing the original and/or true copy.

☒ **BY ELECTRONIC SERVICE:** I posted the document(s) listed above to the Santa Clara County Superior Court Website @ www.scefiling.org and Glotrans website in the action of the Antelope Valley Groundwater Cases.

☒ (*STATE*) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ (*FEDERAL*) I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on October 12, 2022, at Santa Barbara, California.

Signature
Elizabeth Wright