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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))

ANTELOPE VALLEY GROUNDWATER CASES

AND ALL RELATED ACTIONS

Judicial Council Coordination Proceeding No. 4408

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 CLOSING BRIEF IN OPPOSITION TO JOHNNY & PAMELLA ZAMRZLA'S MOTION TO SET ASIDE OR MODIFY JUDGMENT

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I. INTRODUCTION

The Court has two separate but related bases to deny the motion by Johnny and Pamella Zamrzla ("Zamrzlas") to set aside or modify the Judgment ("Motion"): (1) the Motion constitutes a collateral attack on the Judgment that cannot be supported by inadmissible extrinsic evidence, and (2) the Zamrzlas are not entitled to relief under the Court's equity powers because they have acted in bad faith and unduly delayed exercising their alleged water rights.

A. THE MOTION CONSTITUTES AN IMPERMISSIBLE COLLATERAL ATTACK ON THE JUDGMENT AND SHOULD BE DENIED ON THIS BASIS ALONE AS A MATTER OF LAW

The Zamrzlas dismiss the fact that the Court went through a multi-year, multi-phase trial with the Parties who participated in the underlying adjudication to eventually craft an all-inclusive, binding and final Judgment and Physical Solution governing the water rights of every property owner in the Antelope Valley Groundwater Basin.

As to the Small Pumper Class ("SPC") in particular, the Court made numerous findings and final orders as to the identity and scope of the SPC, including but not limited to the adequacy of the form and service of notice of the SPC action. Those findings and orders—including the fact that the Zamrzlas are included in the SPC—were made over seven years ago, and the time has long passed for the Zamrzlas to attempt to modify or set aside the Judgment. This impermissible collateral attack on the Judgment cannot be supported by any of the extrinsic evidence before the Court, and the Motion should be denied on this basis alone.

B. THE ZAMRZLAS ARE NOT ENTITLED TO RELIEF UNDER THE COURT'S EQUITY POWERS BECAUSE THEY HAVE ACTED IN BAD FAITH AND SAT ON THEIR RIGHTS FOR YEARS

In addition, the evidence clearly establishes that the Zamrzlas have acted in bad faith since they first learned of the underlying adjudication, which they admit occurred at least as early as 2009. For this reason the Court cannot exercise its equity powers to set aside or modify the Judgment.

The evidence before the Court demonstrates that the Zamrzlas made a calculated business

decision not to join the adjudication in an effort to avoid paying attorneys' fees and to continue pumping groundwater without limitation for as long as possible. As shown in the deposition and hearing transcripts discussed in detail below, the Zamrzlas chose not to seek any legal counsel to establish their water rights during the ten years of pre-Judgment litigation and trials, even though they admit they knew about the adjudication and its potential to impact their water rights at least six years prior to entry of the final Judgment.

Meanwhile, more than 4,000 Parties, including the State of California, the United States government, the Public Water Suppliers, the entire surrounding farming community, numerous mutual water companies, overlying land owner producers, small and large businesses, and a host of others, incurred substantial attorneys' fees over a decade of litigation, including multiple phases of trial and extensive multi-year settlement talks, commencing in 1999 and eventually culminating with a final Judgment and Physical Solution setting forth allocations of the Native Safe Yield in which everyone who participated agreed to a painful but necessary reduction in their historical groundwater use. To date the final Judgment has withstood three separate appeals. While all of this was pending before the Court—with the Zamrzlas' full knowledge and understanding—the testimony discussed in detail below demonstrates that the Zamrzlas were pumping groundwater aggressively to build up their historical usage, as they were advised to do by several Parties who were actively participating in the adjudication.

The evidence shows that the Zamrzlas ramped-up their groundwater production beginning in 2010 through 2015 in perfect harmony with how the adjudication was proceeding, and in line with the timing of the service of the 2009 and 2013 notices of the SPC action. (Zamrzla Closing Brief at 14:1-13.) This is consistent with the Zamrzlas' testimony that they expected to eventually experience the same percentage reductions of historical pumping as those who participated in the adjudication, showing the motivation for the Zamrzlas to pump as much as possible for as long as possible during those six years prior to the entry of the final Judgment in 2015. For well over seven years following entry of the Judgment in 2015 they have avoided ramping-down their groundwater production, waiting until April 2022 to finally file a motion challenging their status as SPC members under the Judgment, and only after required to do so by the Court. Now in

disregard of the Court's orders, the Zamrzlas seek an Exhibit 4 Overlying Production Right with no rampdown as was endured by virtually all other Parties. Consistent with their approach, the Zamrzlas have submitted exactly zero Production Reports to the Watermaster for any year from 2019 to the present.

The Zamrzlas attempt to re-characterize their historical pumping usage—specifically their reduction in water usage from 2018 to the present—as a cut back to the "bare minimum," which allegedly demonstrates their goodwill. This cannot be reconciled with the evidence in the record. Nothing deterred the Zamrzlas from using as much groundwater as they pleased until they received the Watermaster's first letter in July of 2018 advising them that they were pumping in violation of the Judgment. It is as if the Zamrzlas were caught driving 95 mph in a school zone, and then suddenly started driving 25 mph, and now want to be rewarded.

The Zamrzlas clearly want to have their cake and eat it too. On the one hand, they insist that the SPC notices did not apply to them, and contend that had they received the notices they would have reasonably ignored them because they produced too much groundwater to be included in the SPC. (Zamrzla Closing Brief at 13:3-25.) On the other hand, they contend they produced too little groundwater to have considered joining Eugene Nebeker's group of landowner parties who would eventually comprise the so-called Exhibit 4 Parties with Overlying Production Rights. (March 15, 2023 Hearing Transcript at 193:17-25; Exh. 55 at 81:11-14; Exh. 56 at 37:18-25.)[1] Against this background the Zamrzlas are asking the Court to ignore the fact that they were put on notice—since at least 2009—of both the SPC action and the general adjudication, and to allow them to join the Judgment now almost eight years after the fact as an Exhibit 4 Party with no rampdown. The Zamrzlas cannot have it both ways. The Court should reject their claim to ignorance of the adjudication while admitting on numerous occasions that they were made aware of the adjudication and its impact on their water rights.

What the Zamrzlas seek by their Motion was fully recoverable many years ago had they taken the opportunity to join their Exhibit 4 Overlying Production Right holder neighbors in the

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[1] Unless otherwise noted, all "Exh." citations are citations to exhibits submitted jointly by the Watermaster and the Settling Parties in support of their cases in chief at the hearing on the Motion.

adjudication. They insist their water rights are their most valued property rights, and yet even after they heard on multiple occasions from other Parties such as Eugene Nebeker and Delmar Van Dam that landowners were experiencing a reduction in their water rights as a result of the adjudication, they admit they did not even attempt to seek legal advice at any time prior to receiving the Watermaster's first correspondence in 2018. The Zamrzlas also concede they were handed a complete copy of the Judgment sometime in early 2016, but elected not to take any affirmative action to assert their alleged water rights until over five years later. Their response cannot be rewarded, and is contrary to well-settled precedent precluding a court from exercising its equitable powers when the party seeking equity has caused undue delay and directly caused their own harm by their own negligent and/or intentional misconduct. (See Civ. Code § 3517 ("No one can take advantage of his own wrong.").)

II. ARGUMENT0

A. THE ZAMRZLAS ARE SUBJECT TO THE COURT'S JURISDICTION AS SPC MEMBERS, AND CANNOT NOW COLLATERALLY ATTACK THE FINALITY OF THE JUDGMENT

i. The Final Judgment Approving Small Pumper Class Action Settlements Was Approved by This Court on December 23, 2015

The Judgment at Paragraph 3.d states that "Each member of the Small Pumper Class can exercise an overlying right pursuant to the Physical Solution," and that "[t]he Judgment Approving Small Pumper Class Action Settlements is attached as Exhibit C ('Small Pumper Class Judgment') and is incorporated herein by reference."

The Court took exceeding care in Exhibit C of the Judgment to lay out in great detail the due process that was followed in the SPC action, and recited the history of the notice of class action, finding that all SPC members identified in Exhibit C are bound by the Judgment. Among others, the Court made the following critical findings:

- "The Court has jurisdiction over all parties to the Settlement Agreement including Class members who did not timely opt out of the Settlement." (Zamrzlas' Exh. 21, hereinafter "Judgment" at Exh. C at 2:14-15 (emphasis added).)

- "Notice 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." (*Id.* at 3:14-15 (emphasis added).)
- "On October 25, 2013, the Court issued an order preliminarily approving the 2013 Partial Settlement. Notice of this Settlement was provided in accordance with the Court's order preliminarily approving the settlement and the terms of the Settlement Agreement. Notice was given in an adequate and sufficient manner, and constituted the best practicable notice under the circumstances. Those class members who timely opted out of this Partial Settlement, or in response to the initial class notice in 2009 (and who did not subsequently opt back into the Class) are not bound by the settlements or this Judgment (but may be bound by the final judgment in these coordinated proceedings). On or about January 7, 2014, the Court approved the 2013 Partial Settlement between the Small Pumper Class and the 2013 Settling Defendants." (*Id.* at 3:16-24 (emphasis added).)
- "On April 6, 2015, the Court issued an order preliminarily approving the 2015 Settlement. Notice of this Settlement was provided in accordance with the Court's order preliminarily approving the settlement and the terms of the Settlement Agreement. Notice was given in an adequate and sufficient manner, and constituted the best practicable notice under the circumstances, as set forth in the Declaration of Jennifer M. Keogh and Michael D. McLachlan, both filed June 4, 2015. No class member timely filed an objection to the 2015 Settlement." (*Id.* at 3:25 - 4:2 (emphasis added).)
- "All 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 (the "Settlement Class" members). The known Small Pumper Class members are listed in Exhibit A, attached hereto." (*Id.* at 4:9-12 (emphasis added).)

Based on the foregoing findings, the court ordered, adjudged and decreed, in part, as follows:

- "The Settlement Class members and their heirs, successors, assigns, executors or administrators are permanently barred and enjoined from instituting, commencing,

prosecuting, any Released Claim against any of the Released Parties in any forum, other than claims to enforce the terms of the Settlement Agreement. Each member of the Settlement Class has waived and fully, finally and forever settled and released, upon this Judgment becoming final, any known or unknown, suspected or unsuspected, contingent or noncontingent Released Claim, whether or not concealed or hidden, without regard to the subsequent discovery of different or additional facts." (*Id.* at 4:19-26 (emphasis added).)

- "The Small Pumper Class members are bound by the Judgment and Physical Solution, and their rights and obligations are relative to future groundwater use are set forth therein." (*Id.* at 5:8-10.)

The Zamrzlas are identified three separate times in the "List of Known Small Pumper Class Members for Final Judgment" set forth in Exhibit A to Exhibit C to the Judgment (*See* Judgment at Exh. C, Exh. A at pp. 24, 36, 50).) As discussed below: (1) the Zamrzlas were correctly categorized as members of the SPC, (2) the Zamrzlas were properly served with notice of the SPC action, and (3) the Court's 2015 findings and orders as to the Zamrzlas are final and cannot be collaterally attacked.

ii. The Zamrzlas Are Correctly Categorized as Small Pumper Class Members

The Zamrzlas rely heavily on the argument that the SPC notices and/or the Judgment are somehow defective or ambiguous in their definition of the SPC class. However as discussed below, the Zamrzlas long ago had the opportunity to challenge the adequacy of the SPC notices, and are conclusively bound by the Court's 2015 findings and orders as to their status in the SPC.

Nevertheless, the Zamrzlas fit squarely within the definition of the SPC set forth in Paragraph 3.5.44 of the Judgment, as private persons that own real property within the Basin "that have been pumping less than 25 acre-feet per Year on their property during *any* Year from 1946 to the present." (Emphasis added.) Ironically, the Zamrzlas themselves have presented evidence that they did not pump in excess of 25 AFY in every year prior to entry of the final Judgment, and therefore by definition they fit squarely in the SPC. (*See* Zamrzla Closing Brief at 14:1-13.) If the

Zamrzlas dispute the adequacy of the language in the Judgment and/or the SPC notices, they should have taken it up earlier, as has been suggested by the Court on multiple occasions.

iii. The Zamrzlas Were Properly Served by Mail and 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) (emphasis added).)

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.)

Parties identified as members of the SPC were served with notice of the SPC action in 2009, 2013 and 2015 by first-class mail and publication. (Exh. 9-16.) The 2009 notice informed all recipients that they have been designated as possible SPC members, that they must submit a response form no later than September 9, 2009 if they contend they are not a SPC member for any reason, 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." (Exh. 34 at Exh. B.) The 2013 notice stated that recipients have been designated as class members, "[i]f you do nothing, you will remain in the class and be bound by the terms of the settlement," and provided an opportunity for recipients to respond with a request for exclusion by no later than December 2, 2013. (Exh. 9 at Exh. A.) 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, and 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. (Exh. 14 at Exh. A.)

The 2009, 2013 and 2015 SPC notices were each sent via first class mail to the Zamrzlas' address at 48910 80th Street W, Lancaster, CA 93536-8740. (Exh. 9, 14, 16, 34.) 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." The Zamrzlas attempt to controvert this evidence only with conclusory, self-serving testimony that they never received such notices. (March 15, 2023 Hearing Transcript at 93:10-94:21, 243:19-21.)

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.) There is extensive evidence before the Court that the Zamrzlas were served with notice of the SPC action by mail on three separate occasions. Proof of mailing a document one or more times is "ample" evidence to overcome claims that a document was not received. (See *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.)

The Court also ordered that the 2009, 2013 and 2015 SPC notices be published to provide notice by publication to all class members. (Exh. 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*." (Exh. 3, 5 (emphasis added).) Each class notice was published as ordered by the Court. (Exh. 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." (Exh. 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.*)

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, the Court determined that service of notice to the SPC class by mail and publication was adequate and sufficient under the circumstances. (Judgment, Exh. C pp. 2-5.) At the hearing on the Motion the Court even confirmed that "there's no question that the Court determined proper service could be by publication…with follow-up U.S. Mail." (March 16, 2023 Hearing Transcript at 375:27–376:3.)

The Zamrzlas did not report problems receiving their mail when the class notices were mailed. (Exh. 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. (Exh. 55 at 20:17-22:12, 23:11-24:8; Exh. 56 at 16:11-17:18; March 16, 2023 Hearing Transcript at 254:11-21.) Although the Zamrzlas say they never received any SPC 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 absolutely no evidence that the mailed SPC notices were ever returned to class counsel as undeliverable or with a forwarding address, despite the introduction into evidence by the Zamrzlas of a current declaration on other topics by Mr. McLachlan, SPC counsel, who was obviously in the best position to know and attest if such notices had ever been returned for any reason. (Exh. 22 at p. 16.)

Mr. McLachlan's total silence about whether such notices were ever returned creates a presumption that no such returned mail was ever received by his office. If a party has the means and motive to produce critical evidence proving their position or definitively refuting the opposition and does not do so, then there is a presumption that no such evidence exists. (*See* Evid.

Code §§ 412, 413.) Here Mr. McLachlan clearly has the means and motivation to produce evidence of returned mail yet did not do so, whereas in his declaration in support of the Watermaster's opposition to the Long Valley motion he easily and quickly produced such evidence of non-receipt of returned mail.

In addition, the Zamrzlas have subscribed to the Antelope Valley Press at their business office located in the Basin for decades leading up to the final Judgment. (Exh. 55 at 35:16-36:10; March 15, 2023 Hearing Transcript at 115:28-116:22; 122:20-125:8.) Johnny Zamrzla 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. (Exh. 55 at 37:7-11; March 15, 2023 Hearing Transcript at 117:6-25.) He also advertised in the newspaper. (Exh. 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." Exh. 55 at 42:11-17; March 15, 2023 Hearing Transcript at 117:26-118:26.)

Thus, on the one hand the Court has before it substantial evidence of a carefully crafted series of SPC notices designed to pass constitutional muster and achieve due process, along with a set of declarations on how such notice was achieved, all of which was finally approved by the Court in 2015 as proper and adequate under the circumstances. On the other hand, the Court has seen nothing but conclusory, self-serving declarations from the Zamrzlas that the SPC notices were never received, and some hedging by the Zamrzlas that it is "possible" one or more of the SPC notices were actually delivered to their address.

There is insufficient evidence in the record to set aside the Court's 2015 findings as to the adequacy of notice of the SPC. If the Court were to make such a finding, it would have the potential to unravel the integrity of the Judgment itself.

iv. <u>The Zamrzlas Cannot Collaterally Attack Their Status Under the Judgment</u>

The Zamrzlas are precluded from bringing what amounts to a collateral attack on the Judgment, which has been final now for well over seven years and detrimentally relied upon by more than 4,000 Parties as to their groundwater rights and obligations in the Basin. A judgment of

a court of general jurisdiction is presumed to be valid such that the court is also presumed to have jurisdiction of the subject matter and the person, and to have acted within its jurisdiction. 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 SPC members.

a. The Motion is a Collateral Attack on the Judgment

"A collateral attack is made, not in a proceeding brought for the specific purpose of attacking the judgment, but in some other proceeding having a different purpose – it is an attempt to avoid the effect of a judgment or order made in some other proceeding." (*Gonzales v. State of California* (1977) 68 Cal.App.3d 621, 632.) "In a collateral attack the invalidity of the former judgment or order must appear on the face of the record and if such invalidity or want of jurisdiction does not appear on the face of the record, it will be presumed in favor of the former judgment or order." (*Ibid.*) "In a collateral attack the judgment comes up only incidentally, and may be effectively challenged only if it is completely invalid as to require no ordinary review to annul it." (*Ibid.*)

The Motion amounts to a collateral attack because the Zamrzlas are trying to prohibit the Watermaster's enforcement action by attacking the Judgment. (*Hogan v. Superior Court of California in and for the City and County of San Francisco* (1925) 74 Cal.App. 704, 708.) As the Zamrzlas are launching a collateral attack, the judgment "must be held valid" unless the Court's record shows otherwise. (*Id.* at 706-709.)

b. The Motion Impermissibly Relies on Extrinsic Evidence

In a collateral attack, the 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.) 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. (*Ibid.*) 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 it is void upon its face. (*Hogan*, 74 Cal.App. at 708.) In determining this question, courts are restricted to the evidence afforded by the judgment roll. (*Ibid.*) "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." (*Ibid.*) "In other words, to be attackable collaterally for lack of jurisdiction, the judgment must be void on its face, and it is not void on its face unless the record affirmatively shows that the court was without jurisdiction to render the judgment." (*Ibid.*) "The true rule is not whether jurisdiction has been legally exercised, but whether it was obtained at all." (*Id.* at 709) "Once the trial court has obtained jurisdiction of both the res and the parties, its subsequent proceedings cannot be collaterally attacked, unless it be ascertained from the judgment roll that jurisdiction was thereafter lost." (*Ibid.*).

Here the Court may only look to the face of the Judgment as evidence to analyze the merits of the Motion. (See *Superior Motels, Inc.*, *supra*, 195 Cal.App.3d at 1048-49; *Gonzales*, *supra*, 68 Cal.App.3d at 632; *Hogan*, 74 Cal.App. at 708.) Because the jurisdictional facts as to the SPC—including the Court's findings as to the adequacy of class notice and the Zamrzlas' status as members of the SPC—are set forth in Exhibit C to the Judgment, nothing in the judgment roll evidences a lack of jurisdiction over the Zamrzlas or that they were incorrectly included in the SPC. Therefore the findings of jurisdiction are now conclusive, and the extrinsic evidence offered in support of the Motion 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.)

For these reasons the Motion must be denied in its entirety without even considering the Zamrzlas' equitable claims or examining any of the extrinsic evidence proffered in the moving papers, deposition transcripts and at the hearing on the Motion.

B. THE ZAMRZLAS ARE PRECLUDED FROM SEEKING EQUITABLE RELIEF

The Zamrzlas take the position that extrinsic evidence is allowed to collaterally attack a Judgment if the court is sitting in equity. However, those seeking equity must come to the Court with clean hands. (See *Kulchar v. Kulchar* (1969) 1 Cal. 3d 467, 473 ("[i]f the complainant was guilty of negligence in permitting the fraud to be practiced or the mistake to occur, equity will deny relief").) 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.)

It is undisputed that the Zamrzlas knew about the underlying adjudication long before the Court's entry of the final Judgment, but chose to ignore the potential impacts to their water rights in an effort to save attorneys' fees and maximize their water production.

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. The Zamrzlas 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 they were forced by the Watermaster and eventually the Court to take action. 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 Zamrzlas cannot seek the Court's equitable powers as a basis to re-open the Judgment and set-aside or modify their status as members of the SPC.

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 zero evidence in the record that the Zamrzlas ever raised any questions about their status as members of the SPC, 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. Given that the Zamrzlas knew about the adjudication since at least 2009, and were aware of their status as an SPC member as early as 2018, this constitutes a delay of between three and thirteen years. The Zamrzlas attempt to re-cast this misconduct as mere ignorance, and instead throw blame at the Watermaster and other Parties for not shaking them by the shoulders and waking them up to what was happening to the water

rights of every other member of the community in which they are allegedly so entrenched. The Zamrzlas cannot blame anyone but themselves, and the Court should not exercise its equity powers to shield them from the consequences of their actions.

i. The Zamrzlas Admit to Having Knowledge of the Adjudication as Early as 2009, but Never Asserted Any Rights Until Late 2021

(a) Delmar Van Dam

According to the testimony of Johnny Zamrzla, Delmar Van Dam, an Exhibit 4 Party who participated in the adjudication from the outset, told Mr. Zamrzla 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. (Exh. 55 at pp. 70–74.) Specifically, Johnny Zamrzla recalled as follows: "I understood from [Delmar] it was the big boys that were involved, the big farmers, and I remember, early on, he said, 'This is not your gig. You got – you're not a big farmer.' And I agreed. And he said, 'It's gonna cost a lotta money,' and he reiterated that several times over the years, that, 'Not only did I tell you it was gonna cost a lot of money, it is costing a lot of money.' And, at some point, 'Don't quit doing the farming you're doing. You'll always be allocated some water.' I said, 'Okay.'" (*Id.* at 70:15-71:4.)

This narrative was verified at the hearing on the Motion, when Johnny Zamrzla testified that Delmar "said he was involved [in the adjudication] and that he believed that it didn't affect me; I shouldn't be worried about it; I should do what I'm doing." (March 15, 2023 Hearing Transcript at 102:7-10.) Johnny went on to testify that he understood from Delmar that he could do nothing in the adjudication and "would get some water at the end of it." (*Id.* at 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.)

In addition, Johnny's son, Johnny Lee Zamrzla testified in his deposition and at the hearing that he was informed and understood, based on his conversations with Delmar prior to 2014, 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. (Exh. 57 at 36:7-13; March 16, 2023 Hearing Transcript at 349:13–350:5.)

(b) Eugene Nebeker

Johnny Zamrzla also testified that Eugene Nebeker, an Exhibit 4 Party, invited the Zamrzlas to join his Antelope Valley Groundwater Agreement Association ("AGWA") as a Party to the adjudication, but that the Zamrzlas declined. Specifically, Johnny Zamrzla recalled that, "my wife and I both talked to [Eugene], and I believe that was just before the adjudication, in 2014, and he said you know, if we still were interested, he could look into it, but I said, 'You know, we don't think it affects us. We don't think we're big farmers. We think we're gonna get some allocation, and we're gonna leave it at that.' But I do know it was some time, I believe, in 2014." (Exh. 55 at 81:8-15.)

Johnny Zamrzla testified at the hearing on the Motion that after speaking with Mr. Nebeker about potentially joining the adjudication as part of the AGWA group, he never sought the advice of an attorney, and never investigated the AGWA group further. (March 15, 2023 Hearing Transcript at 108:12-21.)

Johnny Lee Zamrzla 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. (Exh. 57 at 36:14-19; March 16, 2023 Hearing Transcript at 332:28 – 333:6). 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, the Zamrzlas admit they 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) Norm Hickling

Johnny Zamrzla testified at the hearing on the Motion 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 absolutely 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.) Pamella Zamrzla verified that she and her husband received a complete copy of the Judgment from Mr. Hickling in 2016. (March 16, 2023 Hearing Transcript at 279:9-23.)

ii. The Zamrzlas Were Represented by Counsel in 2018 as to the Dispute With the Watermaster, Yet Waited Three Years to Assert Any Water Rights

The Zamrzlas have consistently testified that the first time they sought legal advice and/or retained legal counsel with respect to their alleged water rights was in July 2018, after receiving the Watermaster's first letter. (Hearing Transcript at 103:18-21; 108:2-4; 285:7-8.) The Zamrzlas contend they have acted without undue delay to vindicate their alleged rights ever since receiving the Watermaster's first letter in July of 2018, however they provide no evidence to support this. In fact, the Zamrzlas demonstrably did nothing to vindicate their rights between July 2018 and November 2022 other than to argue with the Watermaster over the *amount* of Assessments owed. The Zamrzlas did not even hint at a challenge to their *SPC classification* until filing their Opposition to the Watermaster's motion in November 2021.

The Zamrzlas point to a red herring that they were agreeable in 2018 to intervening in the Judgment, but that the Watermaster did not reply to any offers to do so. The evidence shows that when the Watermaster sent the first letter to the Zamrzlas dated June 2018, Watermaster General Counsel was unaware that J&P were already listed as SPC members and thus already Parties who did not need to intervene. This was later clarified and all subsequent communications until late 2021 were premised on the assumption that the Watermaster treated the Zamrzlas as SPC members.

The Zamrzlas also point to a Watermaster invoice in the amount of $273,165 that remained posted on the Watermaster's website for most of the pendency of these proceedings. (Zamrzla Closing Brief at 3:7-8, 16-20; 18:6-7, 17-19.) This is also a red herring. The amount of Assessments sought in the Watermaster's original motion (dated September 29, 2021) against all the Zamrzla Parties for delinquent Replacement Water Assessments for 2018 (approximately

$35,000) is based entirely on the numbers that were reported (ironically) by the Zamrzlas themselves, even though they now apparently find *their own numbers* unacceptable. The Watermaster has relied upon these self-reported (and to date unverified) production numbers in calculating the past-due Assessments owed by the Zamrzlas. Moreover the attorneys' fees sought by the Watermaster are now a small fraction of what has been incurred. The public posting of the original invoice—which was also originally calculated based on the Zamrzlas' own, albeit allegedly incorrect, numbers—has no bearing on the merits of the Zamrzlas' Motion. In addition, at the Zamrzlas' request, the Watermaster recently updated the list of delinquent Assessments identifying the Zamrzlas' delinquency as "subject to pending litigation."

iii. The Zamrzlas Are in the Exact Same Situation as Long Valley

Over four years ago the Court was faced with the exact same facts and legal arguments when Long Valley Road, L.P. ("Long Valley") filed a motion for leave to intervene in the Judgment on October 9, 2018. Long Valley alleged that they were incorrectly included in the SPC and therefore not a Party to the Judgment or subject to the Court's jurisdiction. Like the Zamrzlas, Long Valley sought to "rectify" this purported error by "intervening" to become an Exhibit 4 Party, and thereafter sought to quantify and memorialize its alleged water rights by amending the Judgment. Long Valley argued that it was never notified of the SPC action, and that even if it had been notified, it would have reasonably believed it was excluded from the SPC based on unsubstantiated evidence of historical groundwater use. Long Valley cited to constitutional water rights protections as an overlying landowner, as well as due process concerns. (Exh. 17-20, 27.)

As with its opposition to the Zamrzlas' Motion, the Watermaster and various Parties filed oppositions to Long Valley's motion, arguing that: (1) the motion constituted an impermissible collateral attack on the Judgment, (2) the form and service of class notice was adequate as to Long Valley and all other SPC members, and (3) allowing Long Valley to intervene and relitigate its water rights years after final entry of the Judgment would be inequitable and set a dangerous precedent. (Exh. 21-26.)

After a hearing on November 1, 2018, the Court denied Long Valley's motion in its entirety, confirming its status as a SPC member subject to the terms of the Judgment and the

Court's jurisdiction, and ordering it to comply with the Judgment and the Watermaster Rules & Regulations. (Exh. 28.)

The Zamrzlas are in the exact same situation as Long Valley and thus it is understandable why their closing brief makes not so much as even a single argument attempting to distinguish this Court's decision in Long Valley. The Zamrzlas are identified by name in Exhibit C to the Judgment, and they concede that the SPC list sets forth their correct mailing address. Both Parties are family-run businesses with close ties to the Antelope Valley community. (Hearing Transcript at 91:10–92:28, 273:11-15; Exh. 18 at 2:23-28, 5:10-11). The Zamrzlas own two contiguous parcels totaling 120 acres, while Long Valley owns five contiguous parcels totaling 135 acres. (Exh. 17 at 1:25-26.) Both Parties contend that they first learned of their SPC status when they received an identical letter from the Watermaster dated June 9, 2018. (Exh. 18 at Exh. F; Exh. 62.) The Long Valley and Zamrzla motions are so similar in fact that neither moving party could say with absolute certainty that they did not receive the SPC notices —Long Valley alleged that it "may have received [SPC-]related notices," and Pamella Zamrzla testified that it was possible the Zamrzlas received the class notices, didn't recognize them for what they were, and discarded them. (Exh. 17 at 5:21; March 16, 2023 Hearing Transcript at 285:28–286:3.).

Not only are Long Valley and the Zamrzlas factually identical, but the Zamrzlas also raise the exact same legal arguments in their Motion as Long Valley, based on similarly specious facts and conclusory allegations: (1) they allege that they never actually received notice, and in any event were not properly served with the SPC notices or the underlying adjudication; (2) they allege that even if they had been notified of the SPC 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 both the jurisdiction of the Court and their obligation to comply with the Judgment as SPC 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 Parties in the same situation as Long Valley. 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. The Court's determination in the Long Valley motion should be binding precedent for the Zamrzlas' Motion, and further evidences the Zamrzlas' complete failure to take any action to vindicate their rights until forced to do so by the Court—part of the Zamrzlas' ongoing strategy to avoid incurring attorneys' fees until absolutely necessary.

The Zamrzlas also submitted a declaration by Michael McLachlan in support of their Motion which strikingly contradicts Mr. McLachlan's declaration in support of the Watermaster's opposition to the Long Valley motion. Mr. McLachlan originally signed a declaration on October 18, 2018, confirming that the 2013 and 2015 SPC notices were mailed to Long Valley's correct address set forth in Exhibit C to the Judgment and were not returned as undeliverable or with forwarding address information. (Exh. 22 at p. 16.) Mr. McLachlan's October 18, 2018 declaration was submitted in support of the Watermaster's opposition to the Long Valley motion, which took the position that service of the SPC notice was sufficient to bind a Party to the Judgment as an SPC member unless they timely opted out. (Exh. 22 at 7:2-10.) However, in his supplemental declaration in support of the Zamrzlas' current Motion, Mr. McLachlan has apparently changed course and now takes the position that the relevant inquiry is not notice and whether due process was met, but rather the definition of an SPC member as set forth in the Judgment. (Zamrzla Exh. 16.) As discussed above, the Zamrzlas do fit the definition of the SPC as set forth in the Judgment because their own evidence demonstrates that they did not pump in excess of 25 AFY in every year prior to entry of the final Judgment. Moreover the relevant inquiry for the Zamrzlas, as it was for Long Valley, is whether the notices were served and whether the moving party timely took action to opt out of the class. Neither Long Valley nor the Zamrzlas timely took action to remove themselves from the SPC, and are therefore subject to the Court's jurisdiction as members of the SPC.

Mr. McLachlan's declaration in support of the Zamrzlas' Motion should be disregarded because testimony in conflict with Mr. McLachlan's prior testimony demonstrates the unreliability of the witness. Moreover, the declaration constitutes improper hearsay (Exh. 16 at

2:9-11), provides improper legal opinion (*id.* at 2:19-20, 24-28;3:1-2), and lacks sufficient foundation (*id.* at 2:27-28; 3:1-2). (Evid. Code §§ 801, 1200, 403, 405).)

iv. Ruling in Favor of the Zamrzlas Would Have Catastrophic Consequences

The Court's ruling on the Zamrzlas' Motion will have significant implications for the integrity of the Judgment. Ruling in favor of the Zamrzlas will set a dangerous precedent that a Party can simply attest—without any supporting evidence—that they never actually received notice of the SPC action and are not bound by the Judgment. For over seven years more than 4,000 Parties who actively participated in the adjudication have detrimentally relied on the Court's findings and orders as to the adequacy of the SPC notices and the binding nature of the Judgment. In addition, the Watermaster, Long Valley and other similarly situated Parties have relied upon this Court's correct 2018 ruling on the Long Valley motion to the extent it solidified the binding nature of the SPC action as to Parties like Long Valley and Zamrzlas who stuck their heads in the sand for over a decade and attempt to come into the Judgment after the fact without being subject to any of the limitations imposed upon the Parties who participated in the underlying adjudication.

III. CONCLUSION

The evidence clearly shows that the Zamrzlas learned about the adjudication early in the proceedings, were repeatedly warned by various Parties that the adjudication and eventual Judgment would impact their water rights, and yet made the conscious decision to wait on the sidelines until the dust settled and hope to avoid the costs of litigation while pumping groundwater from the Basin without any of the limitations their neighbors agreed to under the Judgment. This conduct on its own suggests the Zamrzlas are being disingenuous when they allege they never received the notices of the SPC action. Even assuming, arguendo, they never actually opened and read the SPC notices that were delivered to their mailing address, the Zamrzlas cannot rely on extrinsic evidence to collaterally attack the Judgment seven years after the fact. Moreover, their negligent and/or intentional disregard for the Judgment and failure to take steps to protect their alleged water rights precludes them from seeking equitable relief from

the Court. For these reasons the Watermaster respectfully requests that the Court deny the Zamrzlas' Motion and set the Watermaster's Motion for a hearing on a determination of the Assessments and other monetary relief owed to the Watermaster by the Zamrzlas as SPC members.

Respectfully submitted,

Dated: May 12, 2023

PRICE, POSTEL & PARMA LLP

By: _____

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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 May 12, 2023, I served the foregoing document described as **WATERMASTER'S CLOSING BRIEF IN OPPOSITION TO JOHNNY & PAMELLA ZAMRZLA'S MOTION TO SET ASIDE ORMODIFY 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 May 12, 2023, at Santa Barbara, California.

Signature
Elizabeth Wright