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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**
11

12 Coordination Proceeding,
Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

LASC Case No.: BC 325201

14 **ANTELOPE VALLEY**
15 **GROUNDWATER CASES**

Santa Clara Court Case No. 1-05-CV-049053
Assigned to the Hon. Jack Komar, Judge of
the Santa Clara Superior Court

17
18 **AND ALL RELATED ACTIONS**

**WATERMASTER'S CLOSING BRIEF IN
OPPOSITION TO JOHNNY LEE &
JEANETTE ZAMRZLA'S MOTION TO
SET ASIDE OR MODIFY JUDGMENT**

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	4
A. The Motion Amounts to an Impermissible Collateral Attack on the Judgment and Should be Denied on This Basis Alone as a Matter of Law	4
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	4
II. ARGUMENT	7
A. The Zamrzlas are Subject to the Court's Jurisdiction as SPC Members, and Cannot Now Collaterally Attack the Finality of the Judgment.....	7
i. The Final Judgment Approving Small Pumper Class Action Settlements Was Approved by This Court on December 23, 2015	7
ii. The Zamrzlas Are Correctly Categorized as Small Pumper Class Members	9
iii. The Zamrzlas Were Properly Notified of the SPC Action by Publication	10
iv. The Zamrzlas Cannot Collaterally Attack Their Status Under the Judgment.....	14
a. The Motion is a Collateral Attack on the Judgment	14
b. The Motion Impermissibly Relies on Extrinsic Evidence	14
B. The Zamrzlas are Precluded From Seeking Equitable Relief.....	15
i. The Zamrzlas Admit to Having Knowledge of the Adjudication as Early as 2009, but Never Asserted Any Rights Until Late 2021	17
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	19
iii. The Zamrzlas Are in a Similar Situation as Long Valley	20
iv. Ruling in Favor of the Zamrzlas Would Have Catastrophic Consequences.....	22
III. CONCLUSION.....	22

TABLE OF AUTHORITIES

Cases

<i>Bartholomae Oil Corp. v. Oregon Oil & Development Co.</i> (1930) 106 Cal.App. 57	11
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal. App. 4th 43	10
<i>City & Cty. of San Francisco v. Cartagena</i> (1995) 35 Cal.App.4th 1061	16
<i>City of San Diego v. Haas</i> (2012) 207 Cal. App. 4th 472.....	10
<i>Cooper v. Am. Sav. & Loan Assn.</i> (1976) 55 Cal. App. 3d 274.....	12
<i>Craig v. Brown & Root, Inc.</i> , 84 Cal.App.4th 416	11
<i>Eisen v. Carlisle & Jacquelin</i> (1974) 417 U.S. 156.....	12
<i>Gonzales v. State of California</i> (1977) 68 Cal.App.3d 621	14
<i>Hogan v. Superior Court of California in and for the City and County of San Francisco</i> (1925) 74 Cal.App. 704.....	14
<i>Kulchar v. Kulchar</i> (1969) 1 Cal. 3d 467	15
<i>Olivera v. Grace</i> (1942) 19 Cal.2d 570	16
<i>Superior Motels, Inc. v. Rinn Motor Hotels, Inc.</i> (1987) 195 Cal.App.3d 1032.....	14
<i>Weitz v. Yankosky</i> (1966) 63 Cal.2d 849.....	16

Statutes

Civ. Code § 3527	16
CRC 3.766(f).....	10
CRC Rule 3.766(d)(2)-(4).....	10
Evid. Code §§ 412, 413.....	13
Evid. Code §§ 801, 1200, 403, 405.....	23

1 **I. INTRODUCTION**

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

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

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

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

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

24 In addition, the evidence clearly establishes that the Zamrzlas have acted in bad faith since
25 they first learned of the underlying adjudication, which they admit occurred at least as early as
26 2009. For this reason the Court cannot exercise its equity powers to set aside or modify the
27 Judgment.

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

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

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

19 The evidence shows that the Zamrzlas ramped-up their groundwater production beginning
20 in 2010 through 2015 in perfect harmony with how the adjudication was proceeding, and in line
21 with the timing of the service of the 2009 and 2013 notices of the SPC action. (Zamrzla Closing
22 Brief at 9:15–10:5.) This is consistent with the Zamrzlas' testimony that they expected to
23 eventually experience the same percentage reductions of historical pumping as those who
24 participated in the adjudication, showing the motivation for the Zamrzlas to pump as much as
25 possible for as long as possible during those six years prior to the entry of the final Judgment in
26 2015. For well over seven years following entry of the Judgment in 2015 they have avoided
27 ramping-down their groundwater production, waiting until April 2022 to finally file a motion
28 challenging their status as SPC members under the Judgment, and only after required to do so by

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

5 The Zamrzlas are asking the Court to ignore the fact that they were put on notice—since at
6 least 2009—of both the SPC action and the general adjudication, and to allow them to join the
7 Judgment now almost eight years after the fact as an Exhibit 4 Party with no rampdown. The
8 Zamrzlas cannot have it both ways. The Court should reject their claim to ignorance of the
9 adjudication while admitting on numerous occasions that they were made aware of the
10 adjudication and its impact on their water rights.

11 What the Zamrzlas seek by their Motion was fully recoverable many years ago had they
12 taken the opportunity to join their Exhibit 4 Overlying Production Right holder neighbors in the
13 adjudication. They insist their water rights are their most valued property rights, and yet even
14 after they heard on multiple occasions from other Parties such as Eugene Nebeker and Delmar
15 Van Dam that landowners were experiencing a reduction in their water rights as a result of the
16 adjudication, they admit they did not even attempt to seek legal advice at any time prior to
17 receiving the Watermaster's first correspondence in 2018. The Zamrzlas' parents, Johnny and
18 Pamella Zamrzla, have admitted that they were handed a complete copy of the Judgment
19 sometime in early 2016, but elected not to take any affirmative action to assert their alleged water
20 rights until over five years later. Their response cannot be rewarded, and is contrary to well-
21 settled precedent precluding a court from exercising its equitable powers when the party seeking
22 equity has caused undue delay and directly caused their own harm by their own negligent and/or
23 intentional misconduct. (See Civ. Code § 3517 ("No one can take advantage of his own
24 wrong.").)

1 **II. ARGUMENT**

2 **A. THE ZAMRZLAS ARE SUBJECT TO THE COURT’S JURISDICTION AS**
3 **SPC MEMBERS, AND CANNOT NOW COLLATERALLY ATTACK THE**
4 **FINALITY OF THE JUDGMENT**

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

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

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

- 15 • “The Court has jurisdiction over all parties to the Settlement Agreement including Class
16 members who did not timely opt out of the Settlement.” (Zamrzlas’ Exh. 21, hereinafter
17 “Judgment” at Exh. C at 2:14-15 (emphasis added).)
- 18 • “Notice of the pendency of this class action was initially provided to the Class by mail and
19 publication, with a final opt out date of December 4, 2009.” (*Id.* at 3:14-15 (emphasis
20 added).)
- 21 • “On October 25, 2013, the Court issued an order preliminarily approving the 2013 Partial
22 Settlement. Notice of this Settlement was provided in accordance with the Court’s order
23 preliminarily approving the settlement and the terms of the Settlement Agreement. Notice
24 was given in an adequate and sufficient manner, and constituted the best practicable notice
25 under the circumstances. Those class members who timely opted out of this Partial
26 Settlement, or in response to the initial class notice in 2009 (and who did not subsequently
27 opt back into the Class) are not bound by the settlements or this Judgment (but may be
28 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.)

As discussed below: (1) the Zamrzlas qualify as unknown members of the SPC, (2) the

1 Zamrzlas were properly notified of the SPC action by publication, and (3) the Court's 2015
2 findings and orders as to the SPC are final and cannot be collaterally attacked.

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

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

9 Nevertheless, the Zamrzlas fit squarely within the definition of the SPC set forth in
10 Paragraph 3.5.44 of the Judgment, as private persons that own real property within the Basin "that
11 have been pumping less than 25 acre-feet per Year on their property during any Year from 1946
12 to the present." (Emphasis added.) Ironically, the Zamrzlas themselves have presented evidence
13 that they did not pump in excess of 25 AFY in every year prior to entry of the final Judgment, and
14 therefore by definition they fit squarely in the SPC. (See Zamrzla Closing Brief at 9:18 - 10:5.) If
15 the Zamrzlas dispute the adequacy of the SPC definition in the Judgment as compared to the
16 published SPC notices, they should have taken it up earlier, as has been suggested by the Court on
17 multiple occasions.

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

27 Therefore, by virtue of their status under the Judgment, unknown SPC members need not
28 intervene or otherwise take any affirmative action in order to be subject to the Court's

1 jurisdiction. As the Zamrzlas have repeatedly insisted throughout these proceedings, the SPC list
2 was inevitably imperfect—in that it was impractical to capture the names and addresses of every
3 party in the Basin that qualified as a SPC member prior to entry of Judgment. Note that Exhibit A
4 to Exhibit C to the Judgment lists “[t]he known Small Pumper Class members.” (Judgment, Exh.
5 C at 4:11-12 (emphasis added).) Paragraphs 5.1.3.6 and 5.1.3.7 were therefore clearly
6 incorporated into the Judgment to account for Parties such as the Zamrzlas who do not appear on
7 the SPC list in Exhibit C, but who satisfy the definition of class in Paragraph 3.5.44.

8 As discussed above, the Court ruled that service of the SPC notices by publication was
9 adequate, which was necessary in part because the Judgment contemplates that unknown SPC
10 members like the Zamrzlas would surface from time to time and the Court would have
11 jurisdiction over them without requiring intervention. Thus the Zamrzlas treated differently than
12 Parties such as Johnny and Pamella Zamrzla who are listed in Exhibit C to the Judgment only
13 because of the way they qualify as SPC members, not because of the end result: neither category
14 of SPC member need intervene in the Judgment to be subject to the Court’s jurisdiction, and both
15 categories of SPC members are restricted by the limitations set forth in the Judgment.

16 **iii. The Zamrzlas Were Properly Notified of the SPC Action by Publication**

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

25 The fact that individual class members may have a substantial economic interest in the
26 litigation does not mean that personal notification is necessarily required. A class member’s stake in
27 the action is only one of seven factors under CRC Rule 3.766(e) that the judge must consider when
28 determining the manner of giving notice, and it is not the transcendent consideration. “The rule

1 therefore leaves substantial room for the ‘creativity’ often needed in the design of an effective
2 means of notifying class members,” and a judge may order another form of notice if personal notice
3 is unreasonably expensive. (*Hypertouch, Inc. v. Superior Ct.* (2005) 128 Cal.App.4th 1527, 1551
4 (citations omitted).) The U.S. Supreme Court has held that notice by personal mail is required for
5 class members whose identities and mailing addresses were actually known, yet in view of the
6 character of the proceedings and the nature of the interests involved, notice by publication will
7 suffice for those class members whose interests or whereabouts could not with due diligence be
8 ascertained. (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 982 (citing *Mullane v. Central*
9 *Hanover Tr. Co.* (1950) 339 U.S. 306).) “[California] case law has adopted a similarly practical
10 approach, in which the circumstances of each case determine what forms of notice will adequately
11 address due process concerns.” (*Ibid.* (citations omitted).) “To summarize, due process does not
12 invariably require that personal notice be directed to all members of a class in order for a class
13 action to proceed, or for that matter that an individual member of a certified class must receive
14 notice to be bound by a judgment.” (*Id.* at 984.)

15 The California Rules of Court require, among other things, that the notice to class members
16 explain that the court will exclude the member from the class if the member so requests by a
17 specified date, include a procedure for the member to follow in requesting exclusion from the class,
18 and include a statement that the judgment will bind all members who do not request exclusion.
19 (CRC Rule 3.766(d)(2)-(4).) “There is clearly no legal impediment whatsoever to making it harder
20 to opt out than to stay in,” and “requiring class members to take affirmative steps to opt in has been
21 held to be contrary to state and federal class action law and policy.” (*Chavez v. Netflix, Inc.* (2008)
22 162 Cal. App. 4th 43, 58–59.)

23 Parties identified as members of the SPC in Exhibit C to the Judgment were served with
24 notice of the SPC action in 2009, 2013 and 2015 by first-class mail and publication. (Exh. 9-16.)¹
25 Unknown members of the SPC were notified only by publication.
26
27

28 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.

1 The 2009 notice informed all recipients that they have been designated as possible SPC
2 members, that they must submit a response form no later than September 9, 2009 if they contend
3 they are not a SPC member for any reason, and that “[a]ll persons who receive this Notice should
4 respond, so that the parties and the Court will know whether you are a class member or not.” (Exh.
5 34 at Exh. B.) The 2013 notice stated that recipients have been designated as class members, “[i]f
6 you do nothing, you will remain in the class and be bound by the terms of the settlement,” and
7 provided an opportunity for recipients to respond with a request for exclusion by no later than
8 December 2, 2013. (Exh. 9 at Exh. A.) The 2015 notice explained that the recipients have been
9 designated as class members and are not in the class only if (1) their property is connected to and
10 receives water from a public water system, public utility or mutual water company, (2) they are
11 already a party to the litigation, or (3) they have timely excluded themselves from the class and
12 have not rejoined, and also set forth the final terms of settlement and explained that recipients were
13 no longer able to opt-out of the class because they were given two prior opportunities to do so.
14 (Exh. 14 at Exh. A.)

15 The 2009, 2013 and 2015 SPC notices were published to provide notice by publication to all
16 unknown SPC members. (Exh. 3, 5, 8, 13.) The Court required that notice “be published on at least
17 **four separate occasions** (including at least two Sundays and two weekdays) in **each** of the
18 following newspapers: *The Antelope Valley Press*, *The Los Angeles Times*, and *The Bakersfield*
19 *Californian*.” (Exh. 3, 5 (emphasis added).) Each class notice was published as ordered by the
20 Court. (Exh. 6, 10.) The Court determined in each instance that “[t]he dissemination of the Class
21 Notice, as directed by this Order, constitutes the best notice practicable under the circumstances and
22 sufficient notice to all Class Members.” (Exh. 8, 15.) The Court further determined that “[t]he
23 contents of the Class Notice and the manner of its dissemination satisfy the requirements of Rule
24 3.769 of the California Rules of Court, other applicable California laws, and state and federal due
25 process.” (*Id.*) All such findings were well within the Court’s broad discretion determine the
26 appropriate manner of service under the circumstances.

27 Courts have held that “individual notice” is generally required for class actions in which
28 members have a substantial claim, whereas notice by publication is adequate when the damages

1 are minimal. (*Cooper v. Am. Sav. & Loan Assn.* (1976) 55 Cal. App. 3d 274, 285.) “Individual
2 notice” is generally accepted as first-class mailing to each individual class member (*Eisen v.*
3 *Carlisle & Jacquelin* (1974) 417 U.S. 156, 174), and in this case the belt-and-suspenders
4 approach was followed by way of service by first class mail and publication. In accordance with
5 this precedent, the Court determined that service of notice to the SPC class by mail and
6 publication was adequate and sufficient under the circumstances. (Judgment, Exh. C pp. 2-5.) At
7 the hearing on the Motion the Court even confirmed that “there’s no question that the Court
8 determined proper service could be by publication...with follow-up U.S. Mail.” (March 16, 2023
9 Hearing Transcript at 375:27–376:3.) Because only “known” SPC members could be served by
10 mailing, all unknown SPC members were necessarily served by publication only.

11 The Zamrzlas have subscribed to the Antelope Valley Press at their business office located
12 in the Basin for decades leading up to the final Judgment. (Exh. 55 at 35:16-36:10; March 15,
13 2023 Hearing Transcript at 115:28 - 116:22; 122:20 - 125:8.) The Zamrzlas’ business also
14 advertised in the newspaper. (Exh. 55 at 37:13-15.) Johnny Lee Zamrzla testified that he has been
15 employed by the family business since he graduated high school and is now the president of the
16 company, and that he and Jeanette subscribed to the Antelope Valley Press for some time prior to
17 entry of the final Judgment. (Exh. 57 at 26:1 - 27:16; March 16, 2023 Hearing Transcript at
18 338:16-19.)

19 Thus, on the one hand the Court has before it substantial evidence of a carefully crafted
20 series of SPC notices designed to pass constitutional muster and achieve due process, along with a
21 set of declarations on how such notice was achieved, all of which was finally approved by the
22 Court in 2015 as proper and adequate under the circumstances. On the other hand, the Court has
23 seen nothing but conclusory, self-serving declarations from the Zamrzlas that they never saw any
24 of the published SPC notices.

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

28

1 iv. **The Zamrzlas Cannot Collaterally Attack Their Status Under the**
2 **Judgment**

3 The Zamrzlas are precluded from bringing what amounts to a collateral attack on the
4 Judgment, which has been final now for well over seven years and detrimentally relied upon by
5 more than 4,000 Parties as to their groundwater rights and obligations in the Basin. A judgment of
6 a court of general jurisdiction is presumed to be valid such that the court is also presumed to have
7 jurisdiction of the subject matter and the person, and to have acted within its jurisdiction. Since
8 the Zamrzlas' attack is collateral, the presumption of jurisdiction is conclusive, and extrinsic
9 evidence is not admissible to rebut the presumption that this Court has jurisdiction over them as
10 SPC members.

11 a. **The Motion is a Collateral Attack on the Judgment**

12 “A collateral attack is made, not in a proceeding brought for the specific purpose of attacking
13 the judgment, but in some other proceeding having a different purpose – it is an attempt to avoid the
14 effect of a judgment or order made in some other proceeding.” (*Gonzales v. State of California* (1977)
15 68 Cal.App.3d 621, 632.) “In a collateral attack the invalidity of the former judgment or order must
16 appear on the face of the record and if such invalidity or want of jurisdiction does not appear on the
17 face of the record, it will be presumed in favor of the former judgment or order.” (*Ibid.*) “In a
18 collateral attack the judgment comes up only incidentally, and may be effectively challenged only if it
19 is completely invalid as to require no ordinary review to annul it.” (*Ibid.*)

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

25 b. **The Motion Impermissibly Relies on Extrinsic Evidence**

26 In a collateral attack, the validity of the judgment on its face may be determined only by a
27 consideration of the matters constituting part of the judgment roll. (*Superior Motels, Inc. v. Rinn*
28 *Motor Hotels, Inc.* (1987) 195 Cal.App.3d 1032, 1049.) The record is the judgment roll, and upon

1 collateral attack it is the only evidence that can be considered in determining the question of
2 jurisdiction. (*Ibid.*) In a collateral attack, the judgment must be held to be valid unless the record
3 thereof, the judgment roll, shows it to be void – unless it is void upon its face. (*Hogan*, 74
4 Cal.App. at 708.) In determining this question, courts are restricted to the evidence afforded by
5 the judgment roll. (*Ibid.*) “Every presumption and intendment is in favor of the validity of the
6 judgment, and any condition of facts consistent with the validity of the judgment will be
7 presumed to have existed, rather than one which will defeat it.” (*Ibid.*) “In other words, to be
8 attackable collaterally for lack of jurisdiction, the judgment must be void on its face, and it is not
9 void on its face unless the record affirmatively shows that the court was without jurisdiction to
10 render the judgment.” (*Ibid.*) “The true rule is not whether jurisdiction has been legally exercised,
11 but whether it was obtained at all.” (*Id.* at 709) “Once the trial court has obtained jurisdiction of
12 both the res and the parties, its subsequent proceedings cannot be collaterally attacked, unless it
13 be ascertained from the judgment roll that jurisdiction was thereafter lost.” (*Ibid.*).

14 Here the Court may only look to the face of the Judgment as evidence to analyze the
15 merits of the Motion. (See *Superior Motels, Inc.*, *supra*, 195 Cal.App.3d at 1048-49; *Gonzales*,
16 *supra*, 68 Cal.App.3d at 632; *Hogan*, 74 Cal.App. at 708.) Because the jurisdictional facts as to the
17 SPC—including the Court’s findings as to the adequacy of class notice and the Zamrzlas’ status
18 as members of the SPC—are set forth in Exhibit C to the Judgment, nothing in the judgment roll
19 evidences a lack of jurisdiction over the Zamrzlas or that they are incorrectly categorized as
20 unknown SPC members. Therefore the findings of jurisdiction are now conclusive, and the
21 extrinsic evidence offered in support of the Motion is inadmissible and cannot be considered. (*Id.*;
22 see *Superior Motels, Inc.*, 195 Cal.App.3d at 1049; see *Hogan*, 74 Cal.App. at 708-709.)

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

26 **B. THE ZAMRZLAS ARE PRECLUDED FROM SEEKING EQUITABLE**
27 **RELIEF**

28 The Zamrzlas take the position that extrinsic evidence is allowed to collaterally attack a

1 Judgment if the court is sitting in equity. However, those seeking equity must come to the Court
2 with clean hands. (See *Kulchar v. Kulchar* (1969) 1 Cal. 3d 467, 473 (“[i]f the complainant was
3 guilty of negligence in permitting the fraud to be practiced or the mistake to occur, equity will
4 deny relief”).) A court of equity will not interfere with a final judgment unless “there had been no
5 negligence, laches, or other fault on [the defendant’s] part, or on the part of his agents.” (*Olivera*
6 *v. Grace* (1942) 19 Cal.2d 570, 575.) It follows that, “in demonstrating extrinsic fraud, it is
7 insufficient for a party to come into court and simply assert that the judgment was premised upon
8 false facts. The party must show that such facts could not reasonably have been discovered prior
9 to the entry of judgment.” (*City & Cty. of San Francisco v. Cartagena* (1995) 35 Cal.App.4th
10 1061, 1068.)

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

14 The evidence shows that the Zamrzlas have sat on their alleged rights in every instance in
15 which they were notified of the potential impacts of the adjudication on their water rights. The
16 Zamrzlas admit they knew about the adjudication as early as 2009 and could have retained
17 counsel on numerous occasions to protect and pursue their alleged groundwater rights, yet they
18 did nothing until they were forced by the Watermaster and eventually the Court to take action.
19 This undue delay has been to the detriment of the Watermaster, the Parties who participated in the
20 adjudication, and the health of the Basin. Given this conduct, and given that “[t]he law helps the
21 vigilant, before those who sleep on their rights” (Civ. Code § 3527), the Zamrzlas cannot seek the
22 Court’s equitable powers as a basis to re-open the Judgment and set-aside or modify their status
23 as members of the SPC.

24 As the California Supreme Court held in *Weitz v. Yankosky* (1966) 63 Cal.2d 849, a
25 defendant must act diligently in making his motion to set aside a judgment. There is zero evidence
26 in the record that the Zamrzlas ever raised any questions about their status as members of the
27 SPC, much less affirmatively sought to protect any additional water rights they may have, until
28 they filed their opposition to the Watermaster’s original motion for monetary, declaratory and

1 injunctive relief on or about November 12, 2021. Given that the Zamrzlas knew about the
2 adjudication since at least 2009, and were aware of their status as an unknown SPC member as
3 early as 2018, this constitutes a delay of between three and thirteen years. The Zamrzlas attempt
4 to re-cast this misconduct as mere ignorance, and instead throw blame at the Watermaster and
5 other Parties for not shaking them by the shoulders and waking them up to what was happening to
6 the water rights of every other member of the community in which they are allegedly so
7 entrenched. The Zamrzlas cannot blame anyone but themselves, and the Court should not exercise
8 its equity powers to shield them from the consequences of their actions.

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

11 **(a) Delmar Van Dam**

12 According to the testimony of Johnny Zamrzla (Johnny Lee's Father), Delmar Van Dam,
13 an Exhibit 4 Party who participated in the adjudication from the outset, told Johnny Zamrzla on
14 repeated occasions leading up to entry of the final Judgment that: (1) the adjudication was for big
15 farmers, (2) it would be very costly for the Zamrzlas to participate, and (3) the Zamrzlas would
16 eventually obtain a water right, so to just keep pumping groundwater without participating. (Exh.
17 55 at pp. 70–74.) Specifically, Johnny Zamrzla recalled as follows: “I understood from [Delmar]
18 it was the big boys that were involved, the big farmers, and I remember, early on, he said, ‘This is
19 not your gig. You got – you’re not a big farmer.’ And I agreed. And he said, ‘It’s gonna cost a
20 lotta money,’ and he reiterated that several times over the years, that, ‘Not only did I tell you it
21 was gonna cost a lot of money, it is costing a lot of money.’ And, at some point, ‘Don’t quit doing
22 the farming you’re doing. You’ll always be allocated some water.’ I said, ‘Okay.’” (*Id.* at 70:15-
23 71:4.)

24 This narrative was verified at the hearing on the Motion, when Johnny Zamrzla testified
25 that Delmar “said he was involved [in the adjudication] and that he believed that it didn’t affect
26 me; I shouldn’t be worried about it; I should do what I’m doing.” (March 15, 2023 Hearing
27 Transcript at 102:7-10.) Johnny went on to testify that he understood from Delmar that he could
28 do nothing in the adjudication and “would get some water at the end of it.” (*Id.* at 103:8-9).

1 Johnny further testified that all his conversations with Delmar occurred prior to 2014 (Delmar
2 died in 2014—see March 15, 2023 Hearing Transcript at 101:10-15), and that he never sought the
3 advice of an attorney after having these discussions with Delmar. (*Id.* at 103:18-28.)

4 Johnny Lee Zamrzla testified that he also had conversations with Delmar prior to
5 Delmar's death in 2014. (March 16, 2023 Hearing Transcript at 330:15-21.) Johnny Lee testified
6 that he was informed and understood, based on his conversations with Delmar, that whatever
7 amount of groundwater usage cutbacks would apply to the parties who participated in the
8 adjudication, would automatically also apply to the Zamrzlas, whether or not they participated.
9 (Exh. 57 at 36:7-13; March 16, 2023 Hearing Transcript at 349:13–350:5.)

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

20 (b) Eugene Nebeker

21 Johnny Zamrzla also testified that Eugene Nebeker, an Exhibit 4 Party, invited the
22 Zamrzlas to join his Antelope Valley Groundwater Agreement Association (“AGWA”) as a Party
23 to the adjudication, but that the Zamrzlas declined. Specifically, Johnny Zamrzla recalled that,
24 “my wife and I both talked to [Eugene], and I believe that was just before the adjudication, in
25 2014, and he said you know, if we still were interested, he could look into it, but I said, ‘You
26 know, we don't think it affects us. We don't think we're big farmers. We think we're gonna get
27 some allocation, and we're gonna leave it at that.’ But I do know it was some time, I believe, in
28 2014.” (Exh. 55 at 81:8-15.)

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

5 (c) **Norm Hickling**

6 Johnny Zamrzla also testified at the hearing on the Motion that in early 2016 Norm
7 Hickling, an aide to Los Angeles County Supervisor Mike Antonovich, provided him with
8 complete copies of the Judgment and Physical Solution, and in response the Zamrzlas did
9 absolutely nothing—they did not inquire further into the outcome of the adjudication or whether
10 they were named, they did not inquire into how the Judgment may have impacted their water
11 rights, and they did not seek legal counsel. (Hearing Transcript at 196:19–197:7.) Pamela
12 Zamrzla verified that she and her husband received a complete copy of the Judgment from Mr.
13 Hickling in 2016. (March 16, 2023 Hearing Transcript at 279:9-23.)

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

17 The Zamrzlas have consistently testified that the first time they sought legal advice and/or
18 retained legal counsel with respect to their alleged water rights was in July 2018, after receiving
19 the Watermaster’s first letter. (March 15, 2023 Hearing Transcript at 103:18-21; 108:2-4.) The
20 Zamrzlas contend they have acted without undue delay to vindicate their alleged rights ever since
21 receiving the Watermaster’s first letter in July of 2018; however, they provide no evidence to
22 support this. In fact, the Zamrzlas demonstrably did nothing to vindicate their rights between July
23 2018 and November 2022 other than to argue with the Watermaster over the *amount* of
24 Assessments owed. The Zamrzlas did not even hint at a challenge to their *SPC classification* until
25 filing their Opposition to the Watermaster’s motion in November 2021.

26 The Zamrzlas point to a red herring that they were agreeable in 2018 to intervening in the
27 Judgment, but that the Watermaster did not reply to any offers to do so. The evidence shows that
28 when the Watermaster sent the first letter to the Zamrzlas dated June 2018, Watermaster General

1 Counsel was unaware that J&P were already listed as SPC members and thus already Parties who
2 did not need to intervene. This was later clarified and all subsequent communications until late
3 2021 were premised on the assumption that the Watermaster treated the Zamrzlas as SPC
4 members.

5 The Zamrzlas also point to a Watermaster invoice in the amount of \$273,165 that
6 remained posted on the Watermaster's website for most of the pendency of these proceedings.
7 (Zamrzla Closing Brief at 3:7-8, 16-20; 18:6-7, 17-19.) This is also a red herring. The amount of
8 Assessments sought in the Watermaster's original motion (dated September 29, 2021) against all
9 the Zamrzla Parties for delinquent Replacement Water Assessments for 2018 (approximately
10 \$35,000) is based entirely on the numbers that were reported (ironically) by the Zamrzlas
11 themselves, even though they now apparently find *their own numbers* unacceptable. The
12 Watermaster has relied upon these self-reported (and to date unverified) production numbers in
13 calculating the past-due Assessments owed by the Zamrzlas. Moreover the attorneys' fees sought
14 by the Watermaster are now a small fraction of what has been incurred. The public posting of the
15 original invoice—which was also originally calculated based on the Zamrzlas' own, albeit
16 allegedly incorrect, numbers—has no bearing on the merits of the Zamrzlas' Motion. In addition,
17 at the Zamrzlas' request, the Watermaster recently updated the list of delinquent Assessments
18 identifying the Zamrzlas' delinquency as "subject to pending litigation."

19 **iii. The Zamrzlas Are in a Similar Situation as Long Valley**

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

1 rights protections as an overlying landowner, as well as due process concerns. (Exh. 17-20, 27.)

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

8 After a hearing on November 1, 2018, the Court denied Long Valley's motion in its
9 entirety, confirming its status as a SPC member subject to the terms of the Judgment and the
10 Court's jurisdiction, and ordering it to comply with the Judgment and the Watermaster Rules &
11 Regulations. (Exh. 28.)

12 The Zamrzlas are in a similar situation as Long Valley and thus it is understandable why
13 their closing brief makes not so much as even a single argument attempting to distinguish this
14 Court's decision in Long Valley. Both are SPC members, although the Zamrzlas qualify by virtue
15 of their status as unknown SPC members, as discussed above. Both Parties are family-run
16 businesses with close ties to the Antelope Valley community. (March 15 and 16, 2023 Hearing
17 Transcript at 91:10–92:28, 273:11-15; Exh. 18 at 2:23-28, 5:10-11). The Zamrzlas own two
18 contiguous parcels totaling 20 acres, while Long Valley owns five contiguous parcels totaling 135
19 acres. (Exh. 17 at 1:25-26.) Both Parties contend that they first learned of their SPC status when
20 they received an identical letter from the Watermaster dated June 9, 2018. (Exh. 18 at Exh. F;
21 Exh. 62.)

22 Not only are Long Valley and the Zamrzlas factually similar, but the Zamrzlas also raise
23 the same legal arguments in their Motion as Long Valley, based on similarly unsupportable and
24 conclusory allegations: (1) they allege that they never actually received notice, and in any event
25 were not properly served with the SPC notices or the underlying adjudication; (2) they allege that
26 even if they had been notified of the SPC action, such notice would not have applied to them nor
27 would they be bound by its terms because their alleged (yet entirely unsubstantiated) historical
28 groundwater production amounts exceeded 25 AFY; and (3) they repeatedly cite to constitutional

1 water rights protections and due process concerns in an effort to avoid both the jurisdiction of the
2 Court and their obligation to comply with the Judgment as SPC members.

3 Each legal argument raised by the Zamrzlas was rejected by this Court in the Long Valley
4 motion. The Court should not disturb this well-founded precedent with respect to Parties in the
5 same situation as Long Valley. The Zamrzlas were represented by counsel throughout the
6 pendency of the Long Valley motion, yet they failed to take any action to join Long Valley's
7 motion or even follow-up with a similar motion of their own. The Court's determination in the
8 Long Valley motion should be binding precedent for the Zamrzlas' Motion, and further evidences
9 the Zamrzlas' complete failure to take any action to vindicate their rights until forced to do so by
10 the Court—part of the Zamrzlas' ongoing strategy to avoid incurring attorneys' fees until
11 absolutely necessary.

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

14 The Court's ruling on the Zamrzlas' Motion will have significant implications for the
15 integrity of the Judgment. Ruling in favor of the Zamrzlas will set a dangerous precedent that a
16 Party can simply attest—without any supporting evidence—that they never actually received
17 notice of the SPC action and are not bound by the Judgment. For over seven years more than
18 4,000 Parties who actively participated in the adjudication have detrimentally relied on the
19 Court's findings and orders as to the adequacy of the SPC notices and the binding nature of the
20 Judgment. In addition, the Watermaster, Long Valley and other similarly situated Parties have
21 relied upon this Court's correct 2018 ruling on the Long Valley motion to the extent it solidified
22 the binding nature of the SPC action as to Parties like Long Valley and Zamrzlas who stuck their
23 heads in the sand for over a decade and attempt to come into the Judgment after the fact without
24 being subject to any of the limitations imposed upon the Parties who participated in the
25 underlying adjudication.

26 **III. CONCLUSION**

27 The evidence clearly shows that the Zamrzlas learned about the adjudication early in the
28 proceedings, were repeatedly warned by various Parties that the adjudication and eventual

1 Judgment would impact their water rights, and yet made the conscious decision to wait on the
2 sidelines until the dust settled and hope to avoid the costs of litigation while pumping
3 groundwater from the Basin without any of the limitations their neighbors agreed to under the
4 Judgment. This conduct on its own suggests the Zamrzlas are being disingenuous when they
5 allege they were never notified of the SPC action. Even assuming, arguendo, they never actually
6 saw the SPC notices that were published in the local paper which they concede they subscribe to
7 and read regularly, the Zamrzlas cannot rely on extrinsic evidence to collaterally attack the
8 Judgment seven years after the fact. Moreover, their negligent and/or intentional disregard for the
9 Judgment and failure to take steps to protect their alleged water rights precludes them from
10 seeking equitable relief from the Court. For these reasons the Watermaster respectfully requests
11 that the Court deny the Zamrzlas' Motion and set the Watermaster's Motion for a hearing on a
12 determination of the Assessments and other monetary relief owed to the Watermaster by the
13 Zamrzlas as SPC members.

14 Respectfully submitted,

15 Dated: May 12, 2023

PRICE, POSTEL & PARMA LLP

16
17 By: 

18 CRAIG A. PARTON
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21 Attorneys for
22 Antelope Valley Watermaster
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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 LEE & JEANETTE 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.sccfiling.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