1 2 3 4 5 6 7 8 9 9 0 2 0 10		241283
10       10         11       11         12       11         12       13         13       13         14       13         15       14         16       201         17       16         17       16         17       17         18       19         19       11         19       11         19       11         19       11         19       11         19       11         19       11         19       11         19       11         19       11         19       11         19       12         20       21         21       22         23       24         25       26         27       28         26       27         28       28	MOTION OF JOHNNY ZAMRZLA, JOHNN STAY OF THE PROCEEDINGS RELAT	Judicial Council Coordination Proceeding No.: 4408 LASC Case No. BC325201 Santa Clara Sup. Court Case No.: 1-05-CV 049053 Assigned to Hon. Jack Komar, Judge of the Santa Clara County Superior Court <b>MEMORANDUM OF POINTS AND</b> AUTHORITIES IN SUPPORT OF NOTICE OF MOTION AND MOTION OF JOHNNY ZAMRZLA, JOHNNY LEE ZAMRZLA AND JEANETTE ZAMRZLA FOR STAY OF THE PROCEEDINGS RELATING TO THEM UNTIL THE PENDING APPEAL IS RESOLVED

#### **MEMORANDUM OF POINTS AND AUTHORITIES**

## 2 I. <u>INTRODUCTION</u>

1

10

11

12

13

14

This motion should be granted for at least any one of the following reasons with the
November 17, 2023 hearing vacated as set by the Court through its Minute Order dated October 18,
2023:

6 (1) Good cause exists to grant this motion as pursuant to Code of Civil procedure section
7 916(a) in light of the filing of the notice of appeal of Johnny Zamrzla, Johnny Lee Zamrzla and
8 Jeanette Zamrzla (collectively "Zamrzlas") *automatically staying all trial court proceedings*9 *against them* in this matter;

(2) On equitable grounds, the court should stay any further proceedings against the Zamrzlas because the outcome of the appeal *significantly and directly relates to and affects the very rights at issue in this matter*, and as set forth in the Watermaster's motion for injunctive and monetary relief (*i.e.*, extent of "damages" so to speak, when "liability"/threshold rights issues are on appeal); and

(3) In the interests of justice and to promote judicial efficiency, a stay is appropriate
because the amount of water use (above and beyond the Small Pumper Class limit) is a disputed
issue for which discovery through written and oral discovery including potential experts has not
been completed. To proceed as the Watermaster requests, and the Court to date is allowing, would
impose further injustice on the Zamrzlas to have the underlying Watermaster motion heard.

For several years now, the Zamrzlas have been fighting their alleged status as members of the Small Pumpers Class, which has cost them countless hours and a massive amount of money as called out in testimony earlier this year. The Settling Parties (as they refer to themselves) and Watermaster have vigorously opposed the Zamrzlas every step of the way, forcing lengthy and costly litigation, multiple hearings, and many hours of depositions.

While this Court found against the Zamrzlas and denied their motions to set aside or modify the 2015 Judgment and Physical Solution ("Judgment"), the Zamrzlas are appealing that order, and therefore, the issue is not yet resolved to address the relief sought by the Watermaster as a result of -2-

the order being appealed. Any further proceedings against the Zamrzlas pursuant to the Judgment would further impair their rights and obfuscate the process and record, impacting the current appeal and potentially creating more of an appeal. One aspect that likely can be agreed to is that resolution of the issues is desired; with that principle comes the necessity to follow our system of law and process for jurisprudence for the Court of Appeal to address the precise issues from which the Watermaster seeks its relief in this court.

7 If the action against the Zamrzlas is not stayed during the appeal, the Zamrzlas will be further 8 harmed financially as they will be required to undergo additional discovery and litigate the damages 9 against them before the Court of Appeal determines whether they are bound to the Judgment. While 10 the Zamrzlas will be harmed if a stay is not granted, the proposed stay will not harm the other parties. 11 Indeed, the stay benefits the parties by avoiding the expenditure of wasted time and resources on 12 further discovery, motion work and hearings on issues that may be moot if the Court of Appeal 13 reverses this Court's ruling. In the interests of justice and to promote judicial efficiency, this Court 14 should stay the proceedings during the Zamrzlas' pending appeal. Accordingly, the trial court 15 proceedings against the Zamrzlas must be stayed as a matter of law and/or equity so that the 16 proverbial cart is not placed ahead of the horse.

17 **II.** 

24

25

#### STATEMENT OF RELEVANT FACTS

On June 9, 2023, this Court issued its Order Denying Zamrzla's Motion to Modify and
Vacate the Judgment. On the same date, a Notice of Entry of Order was filed and served on the
Zamrzlas. On July 3, 2023, the Zamrzlas filed a timely Notice of Appeal of the Court's June 9, 2023
Order. (Declaration of Wesley Miliband ["Miliband Decl."] at ¶ 2.) On July 12, 2023, the Notice of
Filing of the Notice of Appeal was filed. (Miliband Decl. at ¶ 3.)

### 23 III. ARGUMENT

## A. <u>The Zamrzlas Filing of their Notice of Appeal Stays All Proceedings Against</u> <u>Them in this Action</u>

Generally, the filing of a notice of appeal "divests the trial court of further jurisdiction in the cause." (*In re Estate of Waters* (1919) 181 Cal. 584, 585; *see generally Varian Medical Systems*, - 3 -

28 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NOTICE OF MOTION AND MOTION OF JOHNNY ZAMRZLA, JOHNNY LEE ZAMRZLA AND JEANETTE ZAMRZLA FOR STAY OF THE PROCEEDINGS RELATING TO THEM UNTIL THE PENDING APPEAL IS RESOLVED 42827169.1

Inc. v. Delfino (2005) 35 Cal.4th 180 [explicating Code Civ. Proc., § 916].) Code of Civil Procedure<sup>1</sup> 1 2 section 916(a) sets forth the general rule that, except as provided in specified actions, all of which 3 are inapplicable here, "the perfecting of an appeal stays proceedings in the trial court upon 4 judgment or order appealed from or upon matters embraced therein or affected thereby, including 5 the enforcement of the judgment or order ...." ([Emphasis added]; see also Marriage of Varner 6 (1998) 68 Cal.App.4th 932, 936; Daly v. San Bernardino County Bd. of Supervisors (2021) 11 7 Cal.5th 1030, 1039 ["Today, Code of Civil Procedure section 916 continues to make stay pending 8 appeal the default, ..."].)

9 The purpose of the rule depriving the trial court of jurisdiction during a pending appeal is to 10 protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided. 11 (Elsea v. Saberi (1992) 4 Cal.App.4th 625, 629.) "The rule prevents the trial court from rendering 12 an appeal futile by altering the appealed judgment or order by conducting other proceedings that 13 may affect it. [Citation.]" (Id.) Whether a matter is "embraced" by the action or "affected" depends 14 upon the impact of the particular proceeding on the effectiveness of the appeal. A stay prevents the 15 trial court from rendering an appeal futile by conducting other proceedings that may affect it. (*Betz.* 16 Pankow (1993) 16 Cal.App.4th 931, 938.)

17 Here, any further proceedings against the Zamrzlas, specifically including the Watermaster's 18 Motion for Monetary, Declaratory and Injunctive Relief ("Watermaster's motion"), would 19 significantly impact the effectiveness of the appeal and jeopardize the Court of Appeal's resources 20 and efforts to address the appeal. Specifically, as to the Watermaster's motion, it seeks to enforce 21 the very judgment that the Zamrzlas are appealing. Indeed, the Watermaster's renewed motion 22 concedes this by stating that the motion "sought this relief on the basis that the Zamrzlas are 23 members of the Small Pumper Class under the Judgment and subject to the Jurisdiction of this Court 24 ..." (Watermaster's Renewed Motion at p. 2:17-18.) Accordingly, action on the Watermaster's 25 motion, which seeks to impose damages against the Zamrzlas based on the Judgment would render

26

28

- 27 <sup>1</sup> Unless indicated otherwise, all statutory references are to the Code of Civil Procedure.
  - MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NOTICE OF MOTION AND MOTION OF JOHNNY ZAMRZLA, JOHNNY LEE ZAMRZLA AND JEANETTE ZAMRZLA FOR STAY OF THE PROCEEDINGS RELATING TO THEM UNTIL THE PENDING APPEAL IS RESOLVED

- 4 -

the appeal futile at the expense not only to the Zamrzlas but the Court of Appeals itself. As such,
the above legal authorities and underlying principles compel that proceedings against the Zamrzlas
in this matter be automatically stayed during the pending appeal.

# B.In the Interests of Justice and to Promote Judicial Efficiency, the Trial CourtShould Use its Inherent Power to Stay the Proceedings Against the Zamrzlas inthis Action

7 A trial court has the inherent power to ensure the orderly administration of justice and to 8 promote judicial efficiency. (Code Civ. Proc., § 128.) "The power to stay proceedings is incidental 9 to the power inherent in every court to control the disposition of the causes on its docket with 10 economy of time and effort for itself, counsel, and for litigants." (Landis v. North American Co. 11 (1936) 299 U.S. 248, 254; Code Civ. Proc., § 128.) This Court may exercise its discretion to stay 12 proceedings when the interests of justice require a stay. (Avant! Corp. v. Superior Court (2000) 79 13 Cal.App.4th 876, 885.) The court also has the statutory power to "stay the enforcement of any 14 judgment or order." (Code Civ. Proc., § 918(a).) Accordingly, even if this Court finds that the filing 15 of the notice of appeal did not automatically stay the case as a matter of law, it should exercise its 16 discretion in favor of a stay. A stay of the proceedings during the appeal promotes judicial efficiency 17 and economy.

Determining whether to grant a motion to stay "calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." (*Landis*, 299 U.S. at 254-255.) These interests include: (1) the possible damage which may result from the granting of a stay; (2) the hardship or inequity that a party may suffer in being required to go forward; and (3) the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law that could be expected to result from a stay. (*CMAX, Inc. v. Hall* (9th Cir. 1962) 300 F.2d 265, 268, citing *Landis*, 299 U.S. at 254-255.)

Here, all of the relevant factors tilt in favor of staying this action during the pendency of
 the Zamrzlas' appeal.

- 27
- 28

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NOTICE OF MOTION AND MOTION OF JOHNNY ZAMRZLA, JOHNNY LEE ZAMRZLA AND JEANETTE ZAMRZLA FOR STAY OF THE PROCEEDINGS RELATING TO THEM UNTIL THE PENDING APPEAL IS RESOLVED 42827169.1

- 5 -

4

5

#### 1. <u>The Proposed Stay Will Not Harm the Other Parties</u>

2 A stay of the trial court proceedings against the Zamrzlas will not harm the other parties to 3 this action. Indeed, according to the Watermaster's Renewed Motion filed on October 11, 2023, it 4 "will agree not to seek to enforce the money judgment against the Zamrzlas during the pendency of 5 the appeal." (Renewed Motion at p. 6:17-19) Moreover, the injunctive relief the Watermaster's 6 motion seeks primarily affects the Zamrzlas. Specifically, the Watermaster seeks an order to prohibit 7 the Zamrzlas "from producing any further groundwater from the Basin until all such delinquent 8 2018 RWAs with interest and fees are paid in full[.]" This order solely affects the Zamrzlas' vested 9 property rights as landowners.

Further, the Watermaster seeks an order for the "Zamrzlas [to] each install water flow meters on all of their respective wells, [as well as] submit Annual Water Production Reports for years 2016 through 2020, and pay RWAs and Administrative Assessments ("AAs") for their respective annual production for the years 2016 through 2020, plus accrued interest thereon." (Renewed Motion at p. 2:11-16.) All of the relief sought impact only the Zamrzlas. Accordingly, a stay of the proceeding will not harm the other parties, though assuming *arguendo* harm is claimed, the Zamrzlas are by far the hardest hit with harm by proceeding in the trial court pending resolution of their appeal.

#### 2. <u>The Proposed Stay Will Avoid Harm to the Zamrzlas</u>

18 If the proposed stay is not granted, however, the Zamrzlas will be harmed in various ways. 19 First, the Zamrzlas are just a family of property owners, who have already spent a large amount of 20 money defending their rights against the Judgment and will be further harmed financially if they are 21 required to continue litigating against a judgment that the Court of Appeal may declare they are not 22 bound to. If the Court proceeds with a hearing on the Watermaster's motion, the Zamrzlas would be 23 required to undergo further discovery, which would require further fees and expenses to be incurred 24 in defending damages against them before the Court of Appeal even determines they are liable for 25 such damages under the judgment.

Second, absent a stay, inevitable inefficiencies would harm the parties and the court. Again,
the parties will be forced to conduct further discovery and spend time and resources to litigate the -6 -

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NOTICE OF MOTION AND MOTION OF JOHNNY ZAMRZLA, JOHNNY LEE ZAMRZLA AND JEANETTE ZAMRZLA FOR STAY OF THE PROCEEDINGS RELATING TO THEM UNTIL THE PENDING APPEAL IS RESOLVED 42827169.1

17

28

1 damages against the Zamrzlas. To avoid duplicative and wasted time and effort, the proceedings 2 against the Zamrzlas should be stayed.

3

5

6

7

8

9

11

12

14

#### 3. The Interests of Justice and Judicial Efficiency Favor a Stay

4 If the action against the Zamrzlas is not stayed prior to a decision by the Court of Appeal, this Court will be called on (has already been called on) to decide monetary damages and order an injunction against the Zamrzlas. In order to decide the damages against the Zamrzlas, a further evidentiary hearing will be required as there has not yet been such a hearing on the issues relating to the quantity of water the Zamrzlas may be allowed to produce pursuant to the Judgment and the monetary, injunctive and declaratory relief to which the Watermaster is claiming it is entitled to. 10 Indeed, on October 7, 2022, the Watermaster, Settling Parties and Zamrzlas stipulated that "[t]he scope of issues for discovery and to be tried at the hearing [of the Zamrzlas' motions] will be limited to whether the Zamrzlas are bound by the Judgement and Physical Solution entered on December 13 28, 2015. ... All issues relating to the quantity of water the Zamrzlas' may be allowed to produce, if any, are deferred to a later hearing." (Miliband Decl. at  $\P 4$ .)

15 Staying the action against the Zamrzlas now avoids a situation where the parties proceed to 16 litigate the damages against the Zamrzlas and the Court of Appeal later reverses this Court's ruling 17 and finds that the Zamrzlas are not bound to the judgment. As such, staying the action against the 18 Zamrzlas serves the interests of justice.

19 Accordingly, in the interests of justice, this Court should exercise its inherent power of 20 discretion and stay the proceedings while the Court of Appeal considers whether the judgment 21 should have been modified or vacated against the Zamrzlas.

22

#### C. The Zamrzlas May Petition for the Court of Appeal to Issue a Stay

23 Demonstrating the law's protection of parties such as the Zamrzlas in this type of procedural 24 scenario, the Zamrzlas have a legal right to seek relief directly from the Court of Appeal through a 25 writ of supersedeas from to maintain the status quo. (Code Civ. Proc., § 923.) An appellate court 26 may, in its discretion, issue a writ of supersedeas to stay, pending an appeal, the operation of an 27 order or judgment not otherwise stayed, if necessary or proper to the complete exercise of its - 7 -28

appellate jurisdiction. (*Food & Grocery Bureau v. Garfield* (1941) 18 Cal.2d 174, 176-177.) An
appellate court can grant a writ of supersedeas when a denial of a stay would deprive the appellant
of the benefit of a reversal of the order against him, provided that a proper showing is made. (*Id.* at
177.) However, the appellant must first seek the stay in the trial court. (*Nuckolls v. Bank of California, National Assn.* (1936) 7 Cal.2d 574, 577.)

6 Here, the Zamrzlas seek this Court's acknowledgment that the matter should be stayed as a 7 matter of law and equity as set forth above. The parties will not be harmed by the grant of stay of 8 the proceedings. In fact, it may even benefit the parties to preclude any further proceedings if the 9 appeal overturns the prior decision of this Court as it would save them additional time and resources. 10 Additionally, the Zamrzlas submit that a stay is necessary to protect them from irreparable injury 11 that they will necessarily sustain in the event their appeal is deemed meritorious. (Mills v. County 12 of Trinity (1979) 98 Cal.App.3d 859, 861.) Ultimately, if this Court denies the Zamrzlas' motion for 13 the stay, the Zamrzlas reserve their right to seek appellate relief for a stay of trial court proceedings.

#### IV. <u>CONCLUSION</u>

For the reasons set forth above, the Zamrzlas respectively move this Court to stay the proceedings against them pending resolution of their appeal.

<sup>18</sup> Dated: October 20, 2023

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By:	

Wesley A. Miliband Attorneys for Defendants JOHNNY ZAMRZLA, PAMELLA ZAMRZLA, JOHNNY LEE ZAMRZLA AND JEANETTE ZAMRZLA (collectively "ZAMRZLAS")

14

15

16

17

19

20

21

22

23

24

25

26

27

(A, RUUD & ROMO DRATION W Suff 300 1101-4869 3-8600 510			
	1	PROOF OF SERVICE	
	2	(CODE CIV. PROC. § 1013A(3))	
	3	STATE OF CALIFORNIA, COUNTY OF LOS ANGELES	
	4 5	I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 201 South Lake Avenue, Suite 300, Pasadena, California 91101-4869.	
	6	On October 20, 2023, I served the following document(s) described as <b>MEMORANDUM</b>	
	7	OF POINTS AND AUTHORITIES IN SUPPORT OF NOTICE OF MOTION AN MOTION OF JOHNNY ZAMRZLA, JOHNNY LEE ZAMRZLA AND JEANETT	
	8	ZAMRZLA FOR STAY OF THE PROCEEDINGS RELATING TO THEM UNTIL THE PENDING APPEAL IS RESOLVED on the interested parties in this action as follows:	
	9		
	10		
	11	BY ELECTRONIC SERVICE: by posting the document(s) listed above to the	
	12	Antelope Valley Groundwater Cases to all parties listed on the Santa Clara Superior Court Service List as maintained via Glotrans. Electronic service completed through	
	13	http://www.avwatermaster.org.	
LOY CORPC S AT LAV VENUE, KNIA 91 583-86	14	I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.	
ATKINSON, ANDELSON, A PROFESSIONAL ATTORNES 201 SOUTH LAKE EAY PASADENA, CALIFOR TELEPHONE: (62 FELEPHONE: (626)	15	Executed on October 20, 2023, at Pasadena, California.	
	16		
	17	Achlia T. Konnady	
	18	Ashlie T. Kennedy	
	19		
	20		
	20		
	21		
	22		
	23 24		
	25		
	26		
	27		
	28		
		PROOF OF SERVICE	
		42827169.1	