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13 ZAMRZLA AND JEANETTE ZAMRZLA
14 (collectively "ZAMRZLA'S")

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF LOS ANGELES - CENTRAL DISTRICT

17 Coordinated Proceeding
18 Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No.: 4408

19 ANTELOPE VALLEY
20 GROUNDWATER CASES.

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

**OPPOSITION TO WATERMASTER'S
RENEWED MOTION FOR MONETARY,
DECLARATORY AND INJUNCTIVE RELIEF
AGAINST ZAMRZLAS; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: November 17, 2023
Time: 9:00 a.m.

21 Johnny Zamrzla, Johnny Lee Zamrzla and Jeanette Zamrzla (collectively "Zamrzlas")
22 hereby submit this Opposition to the Watermaster's Renewed Motion for Monetary, Declaratory or
23 Injunctive Relief. The Zamrzlas maintain that this Court lacks jurisdiction to rule on the
24 Watermaster's Motion as any proceeding against the Zamrzlas is stayed (or should be stayed)
25 pending appeal. A ruling on the Watermaster's Motion would not only impact the effectiveness of
26 the appeal but would further prejudice the Zamrzlas in this matter as they have not been provided a
27 process to litigate the damages sought against them.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Zamrzlas are appealing this Court’s June 9, 2023 order denying their motion to vacate the judgment against them. Accordingly, the issue as to whether the Zamrzlas are bound to the 2015 Judgment and Physical Solution (“Judgment”) remains in dispute and any ruling on the Watermaster’s motion to enforce that judgment would impact the effectiveness of the Zamrzlas’ appeal. The Court, thus, lacks jurisdiction to rule on the Watermaster’s motion as the proceedings against the Zamrzlas are stayed pending appeal.

Moreover, even assuming the matter is not automatically stayed (which is not the case as a matter of law), this Court should stay the proceedings pending appeal. To rule on the Watermaster’s motion while the appeal is pending would only defeat what this Court and the parties sought to avoid when all agreed to first litigate the issue regarding the Zamrzlas’ status under the Judgment. Specifically, the Judgment should not be enforced against the Zamrzlas if they are not bound to the Judgment in the first place. As such, while the issue of the Zamrzlas’ status is under review, any proceedings against them is stayed or should be stayed.

Furthermore, any ruling on the Watermaster’s motion on November 17, 2023 would unduly prejudice the Zamrzlas. By setting the hearing on the Watermaster’s motion on November 17, 2023, approximately five weeks after the Watermaster filed its renewed motion and request for a hearing (but only about four weeks from the time of this Court’s order setting the hearing to the actual hearing date), the Court has precluded a process for the Zamrzlas (and perhaps other parties) to designate experts, and for the Zamrzlas to present expert testimony in defense of the motion and the damages sought against them. Yet, this Court afforded such process to the Zamrzlas for the “notice issue” and to other parties who have come into the case post-Judgment.

Specifically, even if the Zamrzlas owe damages under the Judgment (they maintain they do not as they are not Small Pumpers), the amounts claimed by the Watermaster are not correct. The Zamrzlas dispute the Watermaster’s claim to interest and attorneys’ fees. There has not been an evidentiary hearing on the Watermaster’s motion and as to the amount of water the Zamrzlas’ are

1 allowed to produce. The Watermaster’s original motion which it has now “renewed,” conceded that
2 it does not know how much water the Zamrzlas have produced. (See Watermaster’s Reply to
3 Zamrzlas’ Opposition to Motion for Monetary, Declaratory and Injunctive Relief, at p. 10:2-4.) The
4 parties agreed that the latter issue would be litigated at a later date.

5 Accordingly, contrary to the Watermaster’s contention, the Court cannot just rule on the
6 submitted pleadings. And now the matter must be stayed pending resolution of the appeal. The
7 Watermaster’s request that the Court rule on its motion should be denied.

8 **II. PROCEDURAL HISTORY**

9 On September 29, 2021, the Watermaster filed its Motion for Monetary, Declaratory and
10 Injunctive Relief Against the Zamrzlas (“Watermaster’s Motion”). The Zamrzlas filed their
11 Opposition to the Watermaster’s Motion on November 12, 2021. On December 3, 2021, the
12 Watermaster filed its Reply to the Zamrzlas’ Opposition.

13 On March 4, 2022, the parties appeared for hearing on the Watermaster’s motion against the
14 Zamrzlas. During this hearing, the Court noted the dispute regarding the Zamrzlas’ status as small
15 pumpers and that the issue needed to be resolved before it rules on the Watermaster’s motion.
16 (Declaration of Wesley Miliband [“Miliband Decl.”] at ¶ 2; Exhibit A, pp. 10:15-11:23.)

17 On April 11, 2022, the Zamrzlas filed their motions to set aside or modify the judgment. On
18 April 18, 2022, the Settling Parties filed an ex parte application to continue the hearing on the
19 Zamrzlas’ motions so the parties can conduct discovery. The Court granted the request to continue
20 the Zamrzlas’ motions, and thereafter, the parties filed several stipulations regarding the scope of
21 the evidentiary hearing on the Zamrzlas’ motions. (Miliband Decl., ¶¶ 3-6; Exhibits B thru E.)
22 Specifically, the parties agreed that the “scope of issues for discovery and to be tried at the hearing
23 will be limited to whether the Zamrzlas are bound by the Judgment and Physical Solution entered
24 on December 28, 2015, as raised by the Zamrzlas’ motions. The Zamrzlas’ claims to production
25 rights are deferred to a later hearing.”

26 On December 13, 2022, the parties appeared for hearing on the Zamrzlas’ motions to vacate
27 the judgment and the Watermaster’s motion, wherein the Court stated it needed to hear evidence on

1 the issue of the Zamrzlas’ status under the Judgment and set the matter for an evidentiary hearing.

2 On March 15, 2023, on the first day of the evidentiary hearing on the Zamrzlas’ motions,
3 the Court confirmed that the issue regarding the amounts the Watermaster was seeking from the
4 Zamrzlas was not going to be heard that day. (Miliband Decl., ¶ 7; Exhibit F, at pp. 23:24-24:27;
5 Miliband Decl., ¶ 9.)

6 Following a two-day hearing on March 15 and 16, 2023, the parties submitted closing briefs
7 on the Zamrzlas’ motion to vacate the judgment against them.

8 On June 9, 2023, the Court denied the Zamrzlas' motion to vacate the judgment against them.

9 On July 3, 2023, the Zamrzlas filed their notice of appeal.

10 **III. THE MATTER AGAINST THE ZAMRZLAS ARE STAYED (OR SHOULD BE**
11 **STAYED) PENDING APPEAL**

12 Generally, the filing of a notice of appeal “divests the trial court of further jurisdiction in the
13 cause.” (*In re Estate of Waters* (1919) 181 Cal. 584, 585; see generally *Varian Medical Systems,*
14 *Inc. v. Delfino* (2005) 35 Cal.4th 180 [explicating Code Civ. Proc., § 916].) Code of Civil Procedure
15 section 916(a) sets forth the general rule that, except as provided in specified actions, all of which
16 appear inapplicable here, “the perfecting of an appeal stays proceedings in the trial court upon
17 judgment or order appealed from or upon matters embraced therein or affected thereby, including
18 the enforcement of the judgment or order” (See also *Marriage of Varner* (1998) 68 Cal.App.4th
19 932, 936; *Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 Cal.5th 1030, 1039 [“Today,
20 Code of Civil Procedure section 916 continues to make stay pending appeal the default, ...”].)

21 The purpose of the rule depriving the trial court of jurisdiction during a pending appeal is to
22 protect the appellate court’s jurisdiction by preserving the status quo until the appeal is decided.
23 (*Elsa v. Saberi* (1992) 4 Cal.App.4th 625, 629.) “The rule prevents the trial court from rendering
24 an appeal futile by altering the appealed judgment or order by conducting other proceedings that
25 may affect it. [Citation.]” (Id.) Whether a matter is “embraced” by the action or “affected” depends
26 upon the impact of the particular proceeding on the effectiveness of the appeal. A stay prevents the
27 trial court from rendering an appeal futile by conducting other proceedings that may affect it. (*Betz*

1 v. Pankow (1993) 16 Cal.App.4th 931, 938.)

2 Proceeding on the Watermaster’s Motion for Monetary, Declaratory and Injunctive Relief
3 would impact the effectiveness of the appeal as it seeks to enforce the very judgment that the
4 Zamrzlas are appealing. Indeed, the Watermaster’s motion concedes this as it states that the motion
5 “sought this relief on the basis that the Zamrzlas are members of the Small Pumper Class under the
6 Judgment and subject to the Jurisdiction of this Court ...” (Watermaster’s Renewed Motion at p.
7 2:17-18.) Accordingly, action on the Watermaster’s motion, which seeks to impose damages against
8 the Zamrzlas based on the judgment would render the appeal futile.

9 **IV. THE ZAMRZLAS DISPUTE THE DAMAGES SOUGHT AGAINST THEM BY THE**
10 **WATERMASTER**

11 The Watermaster’s renewed motion requests that the Court “award the injunctive and
12 declaratory relief sought therein, and enter a money judgment in favor of the Watermaster and
13 against the Zamrzlas as follows: (1) \$28,755.35 in delinquent RWAs for the year 2018, plus accrued
14 interest of \$2,875.54 as to J&P; (2) \$6,415.90 in delinquent RWAs for the year 2018, plus accrued
15 interest of \$641.59 as to J&J; and (3) \$147,675.00 in attorneys’ fees as to the Zamrzlas jointly and
16 severally.” (Watermaster’s Renewed Motion, p. 6:21-26.)

17 While the Zamrzlas maintain that the action against them is stayed or should be stayed
18 pending appeal, to the extent the Court proceeds with the hearing, it must deny the declaratory,
19 injunctive and monetary damages the Watermaster seeks against the Zamrzlas, as well as the
20 Watermaster’s improper claim for attorneys’ fees. Indeed, while the Zamrzlas also maintain that the
21 Watermaster is not entitled to attorneys’ fees, any claim for *attorneys’ fees must be considered*
22 *separately as fees are not damages and require a specific process for which the Watermaster has*
23 *not done*. The Watermaster must file a separate motion for attorneys’ fees. Its inclusion of a request
24 for attorneys’ fees in its motion for monetary, declaratory and injunctive relief is improper and
25 should be denied.

26 Moreover, the damages sought against the Zamrzlas have not been litigated. The Zamrzlas
27 dispute the injunctive relief and monetary damages sought against them. As the parties’ previously

1 stipulated, the issue as to the Zamrzlas’ production rights and the quantity of water they may be
2 allowed to produce under the Judgment was to be deferred to a later hearing. Indeed, prior to the
3 Court setting the Zamrzlas’ motion for an evidentiary hearing, the Zamrzlas had retained present
4 counsel to handle the Watermaster Motion, which was previously handled by attorney Robert
5 Brumfield. The parties then also agreed to continue the Watermaster Motion and “meet and confer
6 regarding whether the hearing on the Watermaster Motion will include additional briefing and
7 evidence. If so, the timing, nature and scope of additional briefing and/or evidence by any of the
8 Parties will be determined after the conclusion of the hearing on the Zamrzlas Motions by stipulation
9 of the Parties and approval from the Court, or if a stipulation cannot be reached, then by hearing
10 before the Court.” (Miliband Decl., ¶ 8; Exhibit G.)

11 However, and without waiving their objection to the Court’s jurisdiction to hear the motion
12 against them, the setting of the November 17, 2023 hearing, only with about four weeks notice,
13 precluded a process for the Zamrzlas to even designate experts and/or present expert testimony.
14 Indeed, despite an agreement by the parties to meet and confer whether there will be additional
15 briefing and evidence on the Watermaster’s motion, the Watermaster filed its renewed motion
16 requesting that the Court set the matter for hearing and rule on the previously filed pleadings.

17 The Zamrzlas maintain this matter should be stayed until the Court of Appeal decides on the
18 issue of the Zamrzlas’ status under the Judgment. A hearing on the damages would be premature
19 before then. As such, to the extent the Court proceeds with hearing the Watermaster’s motion on
20 November 17, 2023, it should deny the motion or defer any ruling until after the Court of Appeal
21 has decided the issue as to the Zamrzlas’ status under the Judgment.

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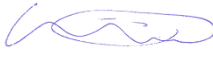
1 **V. CONCLUSION**

2 For the reasons set forth above, the Court should deny the Watermaster’s request that the
3 Court rule on its motion for monetary, declaratory and injunctive relief, as well as its claim for
4 attorneys’ fees. The Court should deny the Watermaster’s motion for monetary, declaratory and
5 injunctive relief, and claim for attorneys’ fees or defer any ruling until after the pending appeal and
6 an evidentiary hearing has been conducted to litigate the damages sought against the Zamrzlas.

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Dated: November 3, 2023

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By: 

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PROOF OF SERVICE

(CODE CIV. PROC. § 1013A(3))

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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.

On November 3, 2023, I served the following document(s) described as **OPPOSITION TO WATERMASTER’S RENEWED MOTION FOR MONETARY, DECLARATORY AND INJUNCTIVE RELIEF AGAINST ZAMRZLAS; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action as follows:

BY ELECTRONIC SERVICE: by posting the document(s) listed above to the Antelope Valley Groundwater Cases to all parties listed on the Santa Clara Superior Court Service List as maintained via Glotrans. Electronic service completed through <http://www.avwatermaster.org>.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 3, 2023, at Pasadena, California.



Ashlie T. Kennedy