Law Offices of
**MATHENY SEARS LINKERT & JAIME, LLP**
NICHOLAS R. SHEPARD, ESQ. (SBN 300629)
3638 American River Drive
Sacramento, California 95864
Telephone: (916) 978-3434
Facsimile: (916) 978-3430
nshepard@mathenysears.com

Attorneys for Defendants, JOHNNY ZAMRZLA, PAMELLA ZAMRZLA, JOHNNY LEE ZAMRZLA AND JEANETTE ZAMRZLA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

Coordinated Proceeding,
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER CASES.

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

**ZAMRZLAS' OPPOSITION TO EX PARTE APPLICATION TO CONTINUE HEARING**

**Date:** **April 19, 2022**
**Time:** **1:00 p.m.**



## I. INTRODUCTION

The Settling Parties – aware that the Zamrzlas were going to file the motions to set aside or modify the judgment – now express shock and surprise that the Zamrzlas actually did so. They seek to continue the hearing by 3 months and conduct extensive, unnecessary discovery.

However, the Settling Parties' ex parte application should be denied. As an initial matter, they have failed to show irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte. This is a fundamental prerequisite for ex parte relief, without which, relief

cannot be granted.

Further, the Settling Parties delayed seeking relief from the Court until the absolute last minute – the day before their oppositions are due. Had they sought relief earlier, they may have been able to conduct discovery, without delaying the hearing of the motions at all. The Settling Parties should not be rewarded for their own lack of diligence.

Finally, the discovery requested is overbroad, irrelevant, and in any event not in the possession of the Zamrzlas. For all of these reasons, the ex parte application should be denied.

## II. LEGAL ARGUMENT

### A. The Settling Parties Have Not Shown Grounds Justifying Ex Parte Relief.

An applicant must make an affirmative factual showing in a declaration containing competent testimony based on personal knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte. (Cal. Rules of Court, Rule 3.1202(c).)

Here, the Settling Parties fail to meet the requirements of the Rules of Court. There is no mention in the moving papers of irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte. The Settling Parties do not even attempt to make such a showing. The complete failure to even attempt to comply with this basic prerequisite for ex parte relief warrants denial of the Settling Parties' application.

### B. The Settling Parties Created Their Own Emergency Situation.

The Settling Parties have created their own emergency situation by not seeking relief earlier. The motions filed by the Zamrzlas were contemplated by the Court and parties to this litigation for months prior to their filing. Essentially all of the issues raised by the Zamrzlas' motions were raised in some form in their opposition to the Watermaster's motion, filed in November 2021. Certainly, by the March 4 hearing, it was clear to everyone involved that the Zamrzlas would file these motions, and it was clear what the basis of the motions would be. The Settling Parties cannot now claim – the day before their oppositions are due – to be surprised by the motions and the basis thereof.

Indeed, counsel for Grimmway Enterprises, Robert Kuhs, admitted as much in an email to counsel for the Zamrzlas on April 15, 2022. In that email, Mr. Kuhs stated:

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MATHENY SEARS LINKERT & JAIME, LLP
3638 AMERICAN RIVER DRIVE
SACRAMENTO, CALIFORNIA 95864

> Your clients' decision is duly noted. We asked Mr. Brumfield for limited discovery on the notice issue back in March, and he refused. We proposed a timeline to deal with discovery issues and again he refused. Your office will be accorded similar courtesy in the future. We have reserved Tuesday at 1:00 p.m. for our Ex-Parte application.

(See Declaration of Nicholas R. Shepard, ¶ 3.)

Thus, Mr. Kuhs admits the Settling Parties believed they needed such discovery at least as long ago as March, after the last hearing. Why the Settling Parties waited until this late date to seek relief is unclear. But the Settling Parties cannot claim the timing of their opposition warrants ex parte relief when they could have sought such relief more than a month ago. The Settling Parties fault the Zamrzlas for allegedly waiting four years to bring their motions. However, the Settling Parties have had the same period of time to request to conduct discovery if they so desired. Indeed, they could have brought up this very issue at the March 4 hearing and requested a discovery and hearing schedule that accommodated any discovery needs. They failed to do so.

**C. The Settling Parties Misled Counsel for the Zamrzlas Regarding the Scope of Requested Discovery.**

In the letter to counsel for the Zamrzlas requesting a continuance of the hearing, the Settling Parties specifically stated they wanted to conduct "discovery regarding the notice issue." Counsel requested to confer with the Settling Parties to discuss the scope of this proposed discovery and the request to continue the hearing. At that videoconference the Settling Parties indicated they wanted to conduct very limited discovery on the issue of notice, specifically, constructive notice, to determine if/when the Zamrzlas knew of the litigation, and also to establish chain of title to the subject properties owned by the Zamrzlas. However, the ex parte application filed with the Court envisions a much more extensive scope of discovery.

The Settling Parties should not be permitted to harass the Zamrzlas with needless and irrelevant discovery. The discovery sought is not, and could not, be relevant to the issues raised by the Zamrzlas' motions.[1] The Zamrzlas signed declarations under penalty of perjury stating that they had not received notice of the litigation. No further discovery is necessary from the Zamrzlas.

[1] "[I]n the absence of service of process upon such a party there is no duty on his part even though he has actual knowledge to take any affirmative action at any time thereafter to preserve his right to challenge the judgment. What is initially void is ever void and life may not be breathed into it by lapse of time." (*Los Angeles v. Morgan* (1951) 105 Cal.App.2d 726, 731 [234 P.2d 319].)

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3638 AMERICAN RIVER DRIVE
SACRAMENTO, CALIFORNIA 95864

To the extent information exists that the Zamrzlas were served notice of the litigation (for example, a proof of service), that information would not be in their possession, but rather in the possession of the Settling Parties.

The Settling Parties have two obvious goals here: 1) they wish to harass the Zamrzlas with extensive and irrelevant discovery, forcing them to expend substantial legal fees, and 2) they seek to buy themselves additional time to oppose the Zamrzlas' motions.

## III. CONCLUSION

The Zamrzlas' motions are directed at very discrete, simple issues, to determine whether the Zamrzlas are bound by the Judgment. To the extent evidence exists apart from the evidence offered by the Zamrzlas, it would be in the possession of the Settling Parties, not the Zamrzlas. This ex parte application is merely an attempt to buy more time to oppose the Zamrzlas' motions. The ex parte application should be denied.

Dated: April 18, 2022

**MATHENY SEARS LINKERT & JAIME, LLP**

By: _____
NICHOLAS R. SHEPARD, ESQ.,
Attorney for Defendants, JOHNNY ZAMRZLA, PAMELLA ZAMRZLA, JOHNNY LEE ZAMRZLA AND JEANETTE ZAMRZLA

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