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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 **REPLY BRIEF IN SUPPORT OF JOHNNY LEE AND JEANETTE ZAMRZLA'S MOTION TO SET ASIDE OR MODIFY JUDGMENT [IN RESPONSE TO WATERMASTER OPPOSITION]** **Date: December 13, 2022** **Time: 9:00 a.m.**

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I. INTRODUCTION

The Watermaster's opposition paints an incredulous picture of the Zamrzlas. If the Watermaster is to be believed, the Zamrzlas knew of the Antelope Valley Ground Water litigation being a basin-wide adjudication, knew the litigation could severely curtail or eliminate their water rights that have been part of their lives for decades, and willfully ignored that substantial threat to their water rights for years. The Watermasters' story simply does not add up, nor is it supported by the evidence. Why would the Zamrzlas, who are long-time, upstanding residents in the Antelope Valley, "stick[] their heads in the sand," as the Watermaster claims they did? It is logically inconsistent that the Zamrzlas would knowingly engage in a dangerous and irrational game of chance by ignoring the litigation for years and only now attempt to protect their water rights. The Watermaster would likely respond that the Zamrzlas hoped to escape the adjudication and if caught then to concoct a story for judicial relief. The Watermaster has created a caricature – a distorted image to fit the means most convenient to the Watermaster and other parties, its fictional "status quo" of *now* inserting Johnny Lee and Jeanette Zamrzla into the Small Pumpers class, not even the real status quo of the Zamrzlas not ever being sent the notice, much less receiving notice.

As established by the evidence provided in the support of their motion, Johnny Lee and Jeanette Zamrzla not only were never served notice of the litigation, but no party even alleges they were mailed notice. Their names do not appear on any list of parties to the litigation – Small Pumper or otherwise. Rather, the Watermaster and the Settling Parties seek to impute alleged notice to Johnny and Pamella Zamrzla to their son (Johnny Lee) and daughter-in-law (Jeanette). There is no legal authority to support such a contention. Johnny Lee and Jeanette are not Johnny and Pamella. They do not live at or own the same property. They do not pump water from the same wells. They are completely distinct individuals.

To be clear: Johnny Lee and Jeanette Zamrzla are not parties to the litigation, are not subject to the judgment, and simply seek this Court's affirmation of that fact, given the contrary (and untenable) position taken by the Settling Parties and the Watermaster.

Johnny Lee and Jeanette Zamrzla seek only the opportunity afforded other parties to this litigation: to establish their proper class under the 2015 Judgment and Physical Solution and

establish reasonable water production rights thereunder. Had they been served with notice of the litigation they could have, and would have, litigated those rights previously, but were denied that opportunity. The Court is empowered to provide that opportunity and the Zamrzlas humbly request it do so as this Court sitting in law and equity respectfully should do.

II. LEGAL ARGUMENT

A. The Watermaster Misrepresents the History of the Zamrzlas' Involvement in this Litigation and Has Engaged in Bad Faith Delays and Harassment in its Refusal to Withdraw the Erroneous Invoice.

The Watermaster claims the Zamrzlas had two prior opportunities to object to their status as small pumpers, and thus should be precluded from doing so now. However, the Watermaster's contentions are not based in fact.

First, the Watermaster makes the circular argument that the Zamrzlas cannot object to the judgment because the deadline to do so has passed. However, as the Zamrzlas have proven, they never received notice of the litigation and were unaware it affected their water rights until 2018. Without notice, how could the Zamrzlas have timely objected? The Watermaster, in making this claim, *presumes* notice, despite the issue before the Court concerning proper notice and the related evidence establishing a lack of notice.

Second, since the Zamrzlas first received a letter from the Watermaster on July 16, 2018, a letter dated by the Watermaster as June 9, 2018, the Zamrzlas have actively attempted to address the issue of their water rights. That first letter from the Watermaster notified the Zamrzlas of the Adjudication and informed them that "…the Judgment provides a process for non-parties to intervene in the Judgment to become a party" and "intervening…has a number of potential advantages". The Zamrzlas retained counsel, Mr. Brumfield, who requested on July 24, 2018, that the Watermaster stipulate to the Zamrzlas being permitted to intervene in the litigation. No response was received. Mr. Brumfield followed up again on August 6, 2018, again no response was given to the request.

In response to the Watermasters' request for information regarding how much both sets of Zamrzlas planned to pump in the future, Mr. Brumfield provided the requested information. Only after discussions regarding water production amounts and the intervention process had begun, did

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the Watermaster then claim the Zamrzlas were Small Pumper Class members. That was, in fact, the first knowledge the Zamrzlas had of the existence of a Small Pumper Class. On November 21, 2018, the Watermaster sent two compliance letters to Johnny Zamrzla. On January 22, 2019, the Watermaster invoiced the Zamrzlas for the year 2018 in the amount of $273,165. This invoice was based on an error wherein the Watermaster believed the *estimate* of 650 acre-feet of future water production was the actual produced amount for 2018. Mr. Brumfield clarified to the Watermaster that the actual 2018 production amount was estimated to be less than 50 acre-feet for each of the Zamrzla parties. On March 18, 2019, the Zamrzlas produced documents demonstrating the actual combined 2018 production amount totaled 93.75 acre-feet.

Thereafter counsel for the Zamrzlas engaged in negotiations with the Watermaster in an attempt to resolve the discrepancies concerning the 2018 production amount and settle the issue. The Watermaster refused to withdraw the $273,165 invoice, despite it being clearly erroneous. On May 16, 2019, Mr. Brumfield emailed the Watermaster to request corrected and separate invoicing for each Zamrzla party, explaining that the 2018 invoice was inaccurate as to the Zamrzlas' production and requesting that the Watermaster board review and correct the invoice. On June 26, 2019, the Watermaster sent a "Final Notice" letter to Johnny Zamrzla. The Watermaster finally responded to Mr. Brumfield's May 16, 2019 email more than three months after it was sent, on August 20, 2019, claiming various data and aerial photography shows the Zamrzlas pumped more than they claimed.

On September 5, 2019, eight months after generating the inaccurate invoice the Watermaster produced a memorandum from their water engineer which attempted to validate the Watermaster's inaccurate invoice and claimed the Zamrzlas produced 570 acre-feet in 2018. As a result of this erroneous report by the Watermaster's engineer, the Zamrzlas hired expert Dr. Jan Hendrickx. On October 22 and 25, 2019 Dr. Hendrickx inspected the fields referenced by the Watermaster's engineer, and Dr. Hendrickx later issued his report persuasively refuting the Watermaster report, pointing out errors and mistaken assumptions made by the Watermaster, whose engineer had never inspected the property prior to generating their flawed memorandum.[1] On April

[1] See Declaration of Dr. Jan Hendrickx, in Support of Zamrzlas' Opposition to Watermaster's Motion, Docket No.

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12, 2021, the Watermaster sent Mr. Brumfield a draft settlement agreement, however, Mr. Brumfield noted that the agreement improperly put Johnny and Pamella Zamrzla together with Johnny Lee and Jeanette Zamrzla as if they were one party.

On October 28, 2021, the Watermaster moved for monetary, declaratory, and injunctive relief against the Zamrzlas. Interestingly, this motion is the first time the Watermaster acknowledges its error, now claiming the Zamrzlas owe only $28,755 based on their own reported 2018 pumping. Notwithstanding this admission of error, the invoice for $273,165 remains publicly posted to the Watermaster's website, despite numerous requests that it be withdrawn.

The Court is aware of the timeline from there. The Zamrzlas opposed the Watermaster's motion. The Watermaster filed a reply brief. Four hearings were held as to the Watermaster's claims against the Zamrzlas: December 10, 2021, January 25, 2022, February 18, 2022, and March 4, 2022. At the December 10, 2021 hearing the Court suggested the Zamrzlas attempt to meet and confer with the Watermaster to reach an agreement regarding their water entitlement. (COE, Exh. 7.) The Zamrzlas welcomed that opportunity and the Watermaster quickly agreed and represented to the Court that it would meet and confer with the Zamrzlas to reach an agreement. The Zamrzlas continued meet and confer attempts, to no avail as the Watermaster later claimed it had no authority to reach an agreement. At the hearing on March 4, 2022, the Court ordered the Zamrzlas file an affirmative motion to address their status vis-à-vis the Judgment – i.e., whether they are bound by the Judgment and properly members of the Small Pumpers Class.

This timeline is critical in understanding the Watermaster's bad faith argument that the Zamrzlas delayed in bringing this motion. On the contrary, upon receipt of the first letter from the Watermaster in 2018, the Zamrzlas promptly retained counsel and engaged in discussions with the Watermaster in an attempt to resolve their status with respect to the Judgment and any alleged over-pumping. The Zamrzlas cooperated with the Watermaster, providing requested information, and attempted to negotiate a reasonable settlement. The Watermaster, however, spent years asserting the Zamrzlas pumped such a large amount of water in 2018 that they owed in excess of a quarter million dollars in assessments. The Watermaster has since admitted its error, and in its Reply brief

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on December 2, 2021, the Watermaster admitted the original invoice of $273,165 was "moot" and "entirely irrelevant" but to this day refuses to withdraw the invoice. (See Watermaster's Reply Brief, COE Exh. 26.) Any delay in seeking affirmative relief from the Court regarding their status as to the Judgment was caused by the Watermaster's bad faith in settlement negotiations and obstinance in maintaining a frivolous water assessment invoice.

Thus, it is the Watermaster's own actions that have resulted in this ongoing litigation, costing both the Zamrzlas and the Watermaster ongoing legal fees. The Zamrzlas actively sought to reach a stipulated agreement with the Watermaster, but the Watermaster refused to negotiate in good faith, choosing instead to carry-on an aggressive and costly legal battle. Moreover, it is unclear why the Watermaster is actively litigating against the Zamrzlas at all. Any replacement water assessments owed will inherently derive from whatever the Court (or a settlement) determined to be the Zamrzlas' water production rights under the judgment. Per the Judgment and Physical Solution, section 18.2: "The Watermaster shall carry out its duties, powers, and responsibilities in an impartial manner without favor or prejudice to any Subarea, Producer, Party, or Purpose of Use." (COE, Ex. 7, Docket No. 11020.) The Watermaster's defined duties to perform its role in an impartial and unbiased manner certainly do not require that the Watermaster oppose a motion that humbly asks the Court to correct an error that occurred fifteen years ago; in fact, the opposite is true.

B. The Factual and Legal Issues Raised by the Zamrzlas are Distinguishable from those Raised by Long Valley Road, L.P.

The doctrine of res judicata rests on the ground that a party who has litigated a matter or had an opportunity to do so should not be permitted to litigate it again to the harassment and vexation of his or her opponent. Public policy and the interests of litigants alike require that there be an end to litigation. (*Busick v. Workmen's Comp. Appeals Bd.* (1972) 7 Cal. 3d 967, 972; *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1144 [whether applied as total bar to further litigation or as collateral estoppel, doctrine rests on sound policy of limiting litigation by preventing party that had one fair adversary hearing on issue from drawing it into controversy again and subjecting other party to further expense in its reexamination].

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The rule of res judicata is to prevent vexatious litigation and to require the parties to rest on one decision in their controversy; res judicata bars not only the reopening of the original controversy but also subsequent litigation of all issues that were or could have been raised in the original suit. (*McFadden v. Los Angeles County Treasurer & Tax Collector* (2019) 34 Cal.App.5th 1072, 1079; *Torrey Pines Bank v. Superior Court* (1989) 216 Cal.App.3d 813, 821.)

Issue preclusion precludes relitigation of an issue previously adjudicated when the following requirements are satisfied:

• The issue sought to be precluded must be identical to that decided in a prior proceeding;

• The issue must have been actually litigated in the prior proceeding;

• The issue must have been necessarily decided in the prior proceeding;

• The decision in the former proceeding must be final and on the merits; and

• The party against whom issue preclusion is asserted must be the same as or in privity with the party to the prior proceeding.

(*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501; *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341; *Shuler v. City of Los Angeles* (2021) 62 Cal.App.5th 793, 798.) Further, when the issue is a question of law rather than one of fact, **the prior determination is not conclusive either if injustice would result** or if the public interest requires that relitigation not be foreclosed. (*City of Sacramento v. State of California* (1990) 50 Cal. 3d 51, 64 [emphasis added].)

Here, the Watermaster asks this Court to deny the Zamrzlas' motions based on the contention that the issues were already decided when the Court ruled on Long Valley Road, L.P.'s (LVRP) Motion for Leave to Intervene. Although the Watermaster fails to cite any relevant case law or other legal authorities for this proposition, it is clear the Watermaster is attempting to apply the principles of res judicata. The attempt fails.

The issues raised by the Zamrzlas are not identical to the issues raised by LVRP. Whereas LVRP filed a motion to intervene in the Judgment, the Zamrzlas seek to vacate or amend the judgment. Like the Zamrzlas, LVRP contended it was not properly classified as a Small Pumper, but unlike the Zamrzlas, LVRP did not contend it was never served with notice of the litigation. Indeed, LVRP admitted, "it may have been served with related notices of Small Pumper Class

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certification and settlement…." (Docket No. 11811.) Finally, the Zamrzlas are not LVRP. They are separate parties, and the Zamrzlas have not had a prior opportunity to litigate their claims, and thus res judicata does not apply here. Indeed, even if there was a plausible rationale for res judicata – which there is not – the Zamrzlas would be entitled to avoid any preclusive effect on the basis that injustice would result if res judicata were applied.

C. The Watermaster Fails to Establish the Existence of Notice.

As discussed in the Zamrzlas' moving papers, the key issue, in this case, is the lack of notice of the underlying litigation. As established, the Zamrzlas never received notice, and thus cannot be bound by the Judgment. Nothing in the Watermaster's opposition changes that reality.

Notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (*Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314.) Water rights are subject to due process. Once rights to use water are acquired, they become vested property rights. As such, they cannot be infringed by others or taken by governmental action without due process and just compensation. (*United States v. State Water Res. Control Bd.* (1986) 182 Cal.App.3d 82, 101.) Due process principles require reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest. (*Horn v. Cty. of Ventura*, (1979) 24 Cal.3d 605, 612.)

It is well settled that "the judgment in a class action binds only those class members who had been notified of the action and who, being so notified, had made no request for exclusion." (*Steen v. Fremont Cemetery Corp.* (1992) 9 Cal.App.4th 1221, 1227.) The notice requirement is not only important and essential to the correct determination of the main issue it is, above all, jurisdictional. (*Id*., at p. 1227-1228.)

Johnny Lee and Jeanette Zamrzlas never received notice of any kind. They do not appear on any service list. They do not appear on the Small Pumpers Class List. In fact, while the Watermaster claims Johnny Lee and Jeanette are Small Pumpers, Johnny Lee and Jeanette would not even be able to apply to be Small Pumpers through the current procedures set forth by the Watermaster. Such procedures require an applicant to certify, under penalty of perjury, that "the existing well on the property has been pumping less than 25 acre-feet per year (AFY) during any

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year from 1946 to December 23, 2015." (Supp. COE, Exh. 19.) Thus, the Watermaster's claim that Johnny Lee and Jeanette are "Unknown Small Pumpers" is clearly erroneous.

Indeed, the Watermaster and Settling Parties do not even claim to have served Johnny Lee and Jeanette with notice. As they have declared, under penalty of perjury, in both their declarations and depositions, Johnny Lee and Jeanette never received any notice of any kind relating to the Antelope Valley Groundwater Litigation. The sequence of events since 2018, outlined above, further belies the Watermaster's contention that the Zamrzlas had actual notice of the underlying litigation and its threat to their water rights. Since the first letter from the Watermaster in 2018, the Zamrzlas have actively attempted to litigate and resolve the issue of their water rights under the 2015 Judgment. It strains credulity to conclude the Zamrzlas would have knowingly refused to do anything to protect their rights prior to 2015 had they been served with notice of the litigation.

Johnny Lee and Jeanette are thus not currently subject to the 2015 Judgment.

D. The Court Has the Inherent Power in Equity to Modify or Set Aside the Judgment.

The Watermaster attempts to couch the Zamrzlas' motion as a collateral attack, thus barring extrinsic evidence. However, the Zamrzlas were simply unable to attack the judgment at a prior time, given the lack of notice, and the history of this matter since the Watermasters' letter in 2018. Indeed, extrinsic evidence is permitted in an attack on a judgment based in equity:

An equitable attack on a judgment or order, whether by motion in the same action or by a separate action in equity, is a direct attack on the judgment or order. (*Bennett v. Hibernia Bank* (1956) 47 Cal.2d 540, 558; *Olivera v. Grace* (1942) 19 Cal.2d 570, 575.) Extrinsic evidence is admissible on a direct attack in equity to set aside a judgment on the ground of extrinsic fraud or mistake. (*Bae v. T.D. Service Co.* (2016) 245 Cal.App.4th 89, 98; *Sousa v. Freitas* (1970) 10 Cal.App.3d 660, 667; *Munoz v. Lopez* (1969) 275 Cal.App.2d 178, 183–184.) A mistaken belief of one party preventing proper notice of the action has been held to be a mistake warranting equitable relief. (*Aldabe v. Aldabe* (1962) 209 Cal.App.2d 453, 475.)

Here, the Zamrzlas were prevented from engaging in the underlying litigation because, in the most charitable interpretation, the parties to the underlying litigation mistakenly failed to serve

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the Zamrzlas. (In the less charitable version of events, the parties to the underlying litigation negligently failed to properly serve the Zamrzlas.) In either case, the Zamrzlas were not served and were thus denied their due process when their water rights were taken from them without their knowledge or opportunity for an adversarial hearing. This is precisely the kind of circumstance warranting relief from the judgment in equity.

E. Granting the Zamrzlas Relief Will Not "Set a Dangerous Precedent."

Instead of focusing on the facts and the law relevant to the issues at hand, the Watermaster instead attempts to deploy a scare tactic to influence the Court that granting the relief requested would cause chaos by undermining the judgment issued by this Court. The Watermaster's imagined doomsday scenario is not grounded in reality, nor is it legally justified.

At no point have the Zamrzlas requested they be permitted to "produce groundwater with impunity." They merely seek to establish their proper classification and rights under the Judgment, an opportunity afforded to every other party to the litigation and grounded in their constitutional right to due process. Granting this relief would have no precedential effect on any other parties/non-parties. The present situation is unique to the Zamrzlas based on the specific facts and circumstances applicable to them.

Even if the decision did set some precedent for other parties, consideration of such precedent is not a proper basis for denying the motions. Certainly, the Watermaster provides no authority for such a contention.

F. The Watermaster's Request for Relief is not Ripe.

Pursuant to the stipulation between the Zamrzlas, the settling parties, and the Watermaster, the hearing of this motion was to address *only* the issues raised by this motion. Other issues were explicitly reserved for future hearings. (See Supp. COE Exh. 21, Docket No.12322; and Supp. COE Exh. 22, Docket No.12372.) The rationale for this agreement was to focus the parties' efforts, and limit expenditure of both the parties and the Court's resources, as the Court's decision regarding the Zamrzlas' motions inherently impacts their status vis-à-vis the judgment, their proper classification under the judgment, if any, and their water production rights. Those issues then must be determined to adequately assess the merits of the Watermaster's motion. Accordingly, the

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Watermaster's motion is not ripe for decision, and should not be decided at this time.

III. CONCLUSION

The Zamrzlas humbly request the Court vacate or amend the Judgment *as to them only* and give them the opportunity to fairly litigate their water rights in an adversarial hearing.

Dated: October 26, 2022

MATHENY SEARS LINKERT & JAIME, LLP

By: _____

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