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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 ZAMRZLAS' MOTIONS TO SET ASIDE OR MODIFY JUDGMENT [IN RESPONSE TO SETTLING PARTIES' OPPOSITION]

Date: **December 13, 2022**
Time: **9:00 a.m.**

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I. INTRODUCTION

The Settling Parties cannot connect the factual dots necessary to legally support denying the Zamrzlas' motions. The Settling Parties cannot establish the Zamrzlas were properly served with notice of the Antelope Valley Groundwater litigation. The Settling Parties conflate very generalized knowledge of the existence of litigation with proper notice and due process. They fail to provide any proof of service or any proof that any mailing was actually sent to the Zamrzlas. They implicitly admit the Zamrzlas were not personally served. And, because the Settling Parties cannot meet their burden of establishing the Zamrzlas were properly notified of the litigation, they instead resort to a legally unsupported argument that the Zamrzlas' general awareness of water litigation was notice sufficient to satisfy due process. For the Court to deny the Zamrzlas' requested relief results in even more than a deprivation of due process that occurred earlier by now inflicting the taking of their property right – groundwater.

The Settling Parties cannot explain why the Zamrzlas allegedly ignored the litigation pre-Judgment, but since 2018 have actively and vigorously defended their rights. The Settling Parties cannot explain how the Zamrzlas could have opted out of the Small Pumper Class if they never knew they were part of it. The Settling Parties cannot explain how Johnny Lee and Jeanette could be subject to the Judgment when no party even contends any notice was sent to them, and their names do not appear on any service list or any class list. Perhaps most concerning is the fact that the Settling Parties have personal knowledge of facts establishing Johnny and Pamella Zamrzla are *not* Small Pumpers, and yet incredibly continue to assert the exact opposite to this Court. (See section E below.)

The Zamrzlas seek only the opportunity afforded other parties to this litigation: to establish their proper status 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.

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II. LEGAL ARGUMENT

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

The Settling Parties attempt 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.) The circumstances which deprive an adversary of a fair notice of a hearing or which prevent him from having a fair hearing may be acts of the opponent not amounting to actual or intentional fraud. Extrinsic mistake is sufficient. (*Antonsen v. Pacific Container Co.* (1941) 48 Cal.App.2d 535; *Davis v. Davis* (1960) 185 Cal.App.2d 788, 793, 794.)

Antonsen v. Pacific Container Co. involved a plaintiff that gave his agent power of attorney for the limited purpose of realizing on his interests, without subjecting him to liability. Without the knowledge, direction, or authorization of the plaintiff, the agent hired an attorney to proceed in an action against defendants. The attorney hired by the agent was suspended for one year from the practice of law. Defendants served their answers and cross-complaints upon the attorney. The attorney did not notify anyone of the purported service. Defendants then obtained a default judgment against plaintiff. Plaintiff had no knowledge of the action for approximately five years when defendants commenced an action against him to recover on the default judgment. Plaintiff's motion to set aside the judgment was denied. While plaintiff's appeal was pending, he commenced

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an action in equity to set aside the default judgment based on the lack of service. The trial court entered a judgment for plaintiff. The Court noted that while it was "entirely clear that there was no actual fraud on the part of defendants' counsel, we are of the opinion that plaintiff was entitled to the relief granted." The court affirmed and concluded that it would be a travesty of justice not to set aside the judgment and that plaintiff was not required to show actual fraud. (*Antonsen*, *supra*, 48 Cal.App.2d 535.)

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 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.

*Antonsen v. Pacific Container Co.*is precisely on point with the present case. Like in *Antonsen*, an action was pursued without the Zamrzlas' knowledge of their alleged involvement. Like the plaintiff in *Antonsen*, the Zamrzlas, years later, learned of the action and resulting Judgment. The Zamrzlas do not claim, and need not prove, the Settling Parties fraudulently failed to serve them. Rather, the mere fact of the failure to serve the Zamrzlas is an extrinsic mistake warranting relief in equity.

B. Because They Cannot Otherwise Prevail, the Settling Parties Resort to a Legally Unsupported "Constructive" Notice Argument.

The Settling Parties spend *eight* pages (p. 22-29) of their brief attempting to set forth facts justifying a finding that the Zamrzlas had "constructive" notice of the litigation. They go on for page after page of speculation, hearsay, and conclusory allegations all with the intent to try to establish that the Zamrzlas must have known about the litigation, and its threat to their water rights, notwithstanding the parties' failure to serve them with actual notice.

Yet nowhere in these eight pages does one find *any* legal authorities supporting the contention that general awareness of pending litigation constitutes notice sufficient to satisfy

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constitutional due process. No such authorities are cited, because no such authorities exist. That the Zamrzlas were told about the existence of water litigation by friends or acquaintances is irrelevant to the analysis of the central issue before this court regarding whether the Zamrzlas were given proper notice and whether they are properly part of the Small Pumpers Class.

As the Settling Parties helpfully point out, the Zamrzlas did not participate in the litigation because at that time they "didn't think it involved us… [b]ecause it was with the bigger farmers and it didn't involve our water [production]." (Pamella Zamrzla at 37:18-25, Settling Parties Appx. Ex. 17.) This testimony actually demonstrates the Zamrzlas' honesty and integrity for which the Settling Parties attempt to discredit so that this court disregards sworn testimony of not having received the purportedly mailed notice.

In fact, Johnny Lee and Jeanette did not know about the litigation at all, as they testified during their depositions. While the Settling Parties derisively mock Johnny Lee's testimony as a "convenient lack of memory," it is, nonetheless, the truth. The Settling Parties have no evidence to the contrary, so instead resort to discrediting long-time, hard-working residents who seek to preserve their rights because to accept their testimony as the truth is to accept that notice was not properly given, just as to refuse their testimony as the truth provides a means to avoid the end of having to determine the Zamrzlas' water rights and how they "fit" into the Judgment.

C. The Settling Parties Fail 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 Settling Parties' opposition changes that reality. In fact, the Settling Parties demand the mail notices be "deemed" received because they cannot otherwise prove the notices were, in fact, mailed and received.

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 real property rights. As such, they cannot be infringed by others or taken by governmental action without due process and

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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.)

The circumstances of the present case also demand a higher standard of notice. The adjudication was not a standard "class action" wherein a party that failed to opt out, essentially loses nothing. Rather, a party in this adjudication, who was improperly served and therefore did not opt out faces the loss of substantially all groundwater production rights. Any party erroneously placed in the Small Pumper Class could quite easily go from hundreds of acre-feet in production prior to the adjudication, to being permitted to produce only three acre-feet subsequent to the adjudication. This is a potential water production rights loss of 99% or more.

This is, of course, why the record reveals the Court was rightfully concerned about proper service in this case, and in particular, required personal service for owners of more than 100 acres in the Antelope Valley, such as the Zamrzlas.

1. Personal Service Was Required on Johnny and Pamella Zamrzla

To date, neither the Settling Parties nor the Watermaster have provided any legitimate explanation for why Johnny and Pamella were not, and need not have been, personally served with notice of the litigation. In fact, they do not even contest that personal service of Johnny and Pamella was required. Instead, they attempt to distract from the subject by raising the issue of the groundwater extraction notices required by the Water Code, and that the Zamrzlas did not "opt out" of the Small Pumper Class.

With respect to the groundwater extraction notices required by Water Code section 5001, while the Zamrzlas admit they did not file such notices – again, demonstrating their honesty – the Settling Parties are improperly using the notices for a purpose for which they were not intended.

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Nothing in Water Code section 4999, et seq. provides that failure to file the required notice means a property owner need not be served with notice of litigation affecting the property owner's water rights. The Settling Parties do not cite any such provision in the Water Code because, of course, no such provision exists. Instead, those statutes, evident from section 5003, exist to address acquisition of a prescriptive right to groundwater, which is not at issue for purposes of the underlying motions.

Another issue with the Settling Parties' reasoning is that the extraction notices are required only for persons residing in Riverside, San Bernardino, Los Angeles, and Ventura Counties. (Water Code § 5000.) Given that the Antelope Valley adjudication area also included portions of Kern County, how then could the use of these groundwater extraction notices be an effective method of identifying and classifying landowners for purposes of the adjudication?

Indeed, the Settling Parties are trying to have it both ways. On the one hand, the Zamrzlas should have filed notices of groundwater extraction because they pumped more than 25 acre-feet per year. On the other hand, the Zamrzlas are "Small Pumpers" who pumped less than 25 acre-feet per year. Both of these positions cannot be true, and yet, the Settling Parties do in fact contend both things are true in their opposition. These inherent contradictions reveal the tenuousness of the Settling Parties' position.

However, these arguments are a distraction from one of the most critical issues raised by the Zamrzlas motions: Johnny and Pamella Zamrzla were required to be personally served. Given that land ownership records are publicly available, identifying the Zamrzlas as owners of more than 100 acres of land would have been a simple task.

On September 12, 2008, Jeffrey Dunn filed a declaration regarding the status of service of process. In that declaration, Mr. Dunn indicated that "Pursuant to Court Order, the Public Water Suppliers initiated personal service attempts beginning on October 28, 2005, on over 630 parties." (COE Exh. 24, Docket No. 2011.) Mr. Dunn notes that "the Court directed that personal service be completed upon the landowners owning at least 100 acres and/or known to pump more than 25 acre feet annually." (COE Exh. 24, Docket No. 2011.) Yet, after nearly three years of attempting to complete service the parties evidently failed to not only serve the Zamrzlas, but failed even to

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identify them as 100+ acre landowners.

Given this, it is somewhat bizarre that, during discovery, the Settling Parties requested documentation evidencing ownership of the various parcel of land owned by the Zamrzlas and questioned the Zamrzlas at length concerning land ownership during their depositions. Certainly, land ownership records – which are, of course, publicly available – must have been critical in preparing service/notice lists during the litigation and identifying which parties could be served by which method. If those records were obtained and properly reviewed in preparing service lists, why then did the Settling Parties not already have these documents in their possession?

The failure to properly identify Johnny and Pamella Zamzla as owners of more than 100 acres, to whom personal service was required, so constitutes yet another example of a "mistake" by the parties to the adjudication that supports the Zamrzlas' request for relief in equity.

2. No Zamrzla was served by Mail

The Settling Parties also fail to provide any proof of service to establish the Zamrzlas were served by mail. No party, including the Watermaster, has provided any invoice, receipt, certified mailing, proof of mailing, or other documentation of any kind establishing a mail notice was in fact ever sent to the Zamrzlas.

In fact, the Watermaster and Settling Parties don't even claim to have served Johnny Lee and Jeanette with notice. They also do not appear on the Small Pumpers Class List in the 2015 Judgment.

As noted in the Settling Parties' opposition papers (p. 18), California Evidence Code section 641 creates a presumption that a correctly addressed and properly mailed letter is presumed to have been received. (Evid. Code 641.) However, not only is this presumption rebuttable with contradictory evidence (see *Craig v. Brown & Root, Inc.* (2000) 84 Cal.App.4th 416, 421), but the statute clearly sets forth that the presumption exists only where 1) the mailing is "correctly addressed" and 2) the mailing is "properly mailed."

Here, there is no evidence supporting that *either* requirement was satisfied. The Settling Parties have not introduced into evidence any proof of service, copy of the actual mailing or envelope, return receipt, certified mailing receipt, or any other document that could potentially

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establish that the mailing was "correctly addressed." All they have pointed to is "the list" that was allegedly used for the mailing, and that this has Johnny and Pamella's address on it. However, there is no evidence establishing that the actual mailing itself was properly addressed. Nor is there evidence how the mailing was done, or whether it was "properly mailed." All that has been provided is the declaration of Mr. Berg, who claims he directed employees at his company to "cause[] the Notice to be printed and posted for first class mail, postage prepaid, and delivered to a U.S. Post Office for mailing to each individual/entity identified in the List with a mailing address on or about July 9, 2009." (Berg Decl., ¶ 5, attached as Exhibit 4 to the Settling Parties' Appendix of Exhibits.) This paragraph is so vague and conclusory that it says almost nothing about how the actual mailing was done, and certainly does not prove the mailing was "properly mailed." Mr. Berg does not even claim to have completed the task himself. Rather, some other unknown person or persons purportedly were directed to do so, and thus according to the Settling Parties that person(s) must have done so, and must have done so properly. The lack of any document or any declaration from an individual who *actually* did the mailing means the Settling Parties have not met the threshold requirements for a presumption under Evidence Code section 641. No evidence whatsoever is offered as to any mailing other than the 2009 mailing. And no such evidence actually serves as evidence to support the Zamrzlas' testimony that they did not receive notice.

Direct contradictory evidence exists: the Zamrzlas have declared under penalty of perjury they never received the mailed notices. (See Zamrzlas' declarations in support of motions.) This is clear, direct evidence that the mailings to the Zamrzlas were not completed, thus overcoming the presumption, even if indeed the presumption were adequately established in this instance. But in this instance, where the Settling Parties cannot even meet the basic requirements for the mail presumption, the weight of the evidence leads to only one conclusion: the notices were never mailed to the Zamrzlas.

Further, contrary to the Settling Parties' contention, there was only one opportunity to "opt out," – the 2009 Small Pumper notice. However, the Zamrzlas could not "opt out" of a class they never received notice of and which they were not aware they were being improperly placed into. Here, where Small Pumper Class members in particular faced a Taking of 99% or more of their

water production rights, the contention that a single mailed notice is sufficient, when the Settling Parties have provided no direct evidence that it was actually properly mailed, cannot possibly rise to the standard of "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."

As the Zamrzlas have declared, under penalty of perjury, in both their declarations and depositions, none of them ever received any mail notice. Despite being subjected to hours of deposition interrogation on the topic, they have never wavered. Indeed, 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.

3. Notice by Publication was Insufficient as to the Zamrzlas

Service by publication cannot be effective as to Johnny and Pamella Zamrzla. As owners of more than 100 acres of land they were required to be personally served. Not only do the settling parties essentially admit the Zamrzlas were not personally served, they also failed to even prove they completed mail service on the Zamrzlas. Rather, they now resort to asserting publication notice was sufficient.

In fact, no evidence supporting that the Zamrzlas were served by Publication has been provided beyond the Publication notices themselves. There is no proof of service by publication. There is no publication list on which the Zamrzlas appear. Publication notice to Johnny and Pamella, given their land ownership and water use history, does not meet the standard of notice that is "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.)

Further, as to Johnny Lee and Jeanette, the publication notice refers persons reading it to the Small Pumper class, however, Johnny Lee and Jeanette Zamrzlas do not appear on the list of

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small pumpers. Thus, even had Johnny Lee and Jeanette seen and read the publication notice, they would have understood it not to apply to them.

D. The Settling Parties' Claim that the Zamrzlas Failed to Act Diligently is a Specious Argument Requiring a Misunderstanding of Both Law and Fact.

The Settling Parties cite *Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488 for the proposition that the Zamrzlas cannot pursue relief in equity, because they did not act diligently. However, *Cruz* is distinguishable. *Cruz* involved appellate review of a trial court order finding a judgment was void for lack of effective service.

In *Cruz*, service of a summons and complaint was mailed to an out of state defendant pursuant to Code of Civil Procedure sections 415.40 and 416.10. A valid proof of service was also provided. Although the defendant contended that no one received the mailed summons and complaint, the plaintiff later obtained a declaration from the United States Postal Service establishing that the requested return receipt was signed by an employee of the defendant who regularly received may on the defendant's behalf. (*Cruz, supra,* 146 Cal.App.4th 488.)

It was only upon this evidentiary showing, that the Court then considered whether the defendant had acted diligently in responding to the Complaint. The conclusion that the defendant had *not* acted diligently, inherently relied on the factual conclusion that all of the statutory requirements for effective service of process on a foreign corporation has been met. The Court acknowledged that it reached this factual conclusion based on USPS declaration. (*Cruz, supra,* 146 Cal.App.4th 488, 492, 502.) *Cruz* is thus distinguishable because in *Cruz*, there was no legitimate factual dispute as to the mailing itself. The facts established that the mailing was in fact completed. Here, however, not only do the Zamrzlas dispute the mailing, but the weight of the evidence strongly supports a conclusion that the Zamrzlas were never actually sent a mail notice (much less was any such notice received nor was personal service attempted).

Another critical distinction, which the Settling Parties strategically omit from their brief, is that the summons and complaint in *Cruz* were mailed *return receipt requested*, and the return receipt was signed upon delivery. (*Cruz, supra,* 146 Cal.App.4th 488.) Such documentary

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evidence is woefully lacking here, as the Settling Parties well know.[1]

A brief history of the Zamrzlas' involvement in this litigation since 2018 is important to understanding why *Cruz* does not apply to bar the Zamrzlas from relief in equity. 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 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

[1] As the parties and the Court are aware, procedures for groundwater adjudications, including notice, were codified as of January 1, 2016, at Code of Civil Procedure sections 830, et seq. Mail notices are now required to be sent "registered or certified mail, return receipt requested" to avoid precisely the problem we face here. (Code Civ. Proc., § 836.)

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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 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.[2] On April 12, 2021, the Watermaster send 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 or 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

[2] See Declaration of Dr. Jan Hendrickx, in Support of Zamrzlas' Opposition to Watermaster's Motion, Docket No. 12129.

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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. (Supp. COE, Exh. 18.) 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.

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. It simply makes no sense that the Zamrzlas would have actively litigated and attempted to resolve the issue of their water rights since 2018, as they have, and yet prior to the judgment completely ignore the adjudication, as the Settling Parties claim.

Rather, the only rational conclusion here is that, as the Zamrzlas have repeatedly testified, they did not understand the litigation to involve their rights until after they were contacted by the Watermaster in 2018. This is, of course, because the Zamrzlas were never properly served with notice of the litigation.

To say the Zamrzlas failed to act diligently requires one to accept that they received notice in the first place. The Settling Parties' circular reasoning creates a situation where a party such as the Zamrzlas that did not receive notice of the litigation can never object on the basis of the failure to be served notice. Any such objection will be met with the response that that party cannot obtain relief in equity because they failed to respond to the litigation when they were originally notified. It goes without saying that it would have been impossible for that party to do any differently, as they were, of course, unaware the underlying litigation affected them at all. As far as the Settling Parties are concerned, there is *never* a basis for relief in equity in this litigation. This cannot be, and of course is not, the law.

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E. The Settling Parties Have Taken a Legal Position in Contradiction to Their Own Personal Knowledge.

A concerning issue has arisen during discovery conducted over the past months that must be brought to this Court's attention. As the Court is aware, the Settling Parties take the position that the Zamrzlas are Small Pumpers. However, the Settling Parties, in fact, *know this to be untrue*. Settling Party Grimmway Enterprises has been heavily involved in litigating the case pre-Judgment and more recently post-Judgment against the Zamrzlas. However, Grimmway Enterprises leased land from Johnny and Pamela Zamrzla in 2006 and 2008, and in both years pumped more than 25 acre-feet from the Zamrzlas' well. Grimmway admitted as much in responses to written discovery, indicating that it produced 294 acre-feet from the Zamrzlas' well in 2006, and 475 acre-feet in 2008. (See Supp. COE, Exhs. 23-25.)

Despite having personal knowledge that the Zamrzlas water usage exceeded the threshold amount for the Small Pumper Class, Grimmway and the other settling parties actively participated in drafting the 2015 Judgment which purports to classify the Zamrzlas as Small Pumpers.

And, despite the admitted knowledge of Grimmway Enterprises regarding the Zamrzlas' water use history, Grimmway's counsel signed the Settling Parties' opposition, which argues the Zamrzlas are Small Pumpers, and concludes: "They are Small Pumper Class members who have vastly exceeded their right to produce groundwater." Claiming the Zamrzlas are Small Pumpers, despite personal knowledge that they are not, is a gross misrepresentation of fact. Moreover, the evidence before the Court demonstrates that the Zamrzlas' water usage is in excess of the three acre-feet cap placed upon members of the Small Pumpers, thus exacerbating defective notice by depriving the Zamrzlas of the water right they seek to establish to properly become part of the Judgment.[3]

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

While the Settling Parties do not set forth a specific legal argument regarding the potential res judicata effect of the Court's decision to deny Long Valley Road, L.P.'s Motion for Leave to

[3] Pursuant to the process developed by the Court, Watermaster, Settling Parties and the Zamrzlas, the immediate motions are to be addressed initially, and if granted, the Zamrzlas will be afforded the opportunity to establish their water rights at a time to be determined.

Intervene, the Settling Parties seemingly imply as much on page 6 of their opposition. Accordingly, that contention is addressed here.

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].

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].)

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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 certification and settlement…." (Watermaster's Exh. 6, 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.

Accordingly, the Court should disregard any attempt by the Settling Parties to claim the LVRP ruling has any preclusive effect on the Zamrzlas. The Zamrzlas' motions must be heard, and decided, on their own merits.

G. Granting the Zamrzlas Relief Will Not Have "Negative Implications for the Judgment's Continued Viability."

Finally, the Settling Parties claim "[i]f the Zamrzlas' motions are granted, it has potential far-reaching and negative implications for the Judgment's continued vitality." Nothing could be further from the truth. This scare tactic seeks to influence the Court about the potential effect that the Zamrzlas' proper inclusion in the Judgment might create. However, the fundamental personal and property rights underlying the Zamrzlas' motions far outweigh the inconvenience or purported "precedent" that the Settling Parties claim for a reason to deny the motions.

The Zamrzlas 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 legally 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, and the Settling Parties provide no authority

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for such a contention.

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

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By: _____

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