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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 **JOHNNY AND PAMELLA ZAMRZLA'S CLOSING BRIEF**

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I. INTRODUCTION

After two days of presenting evidence including exhaustive examination of the Zamrzlas, the evidence before the Court amply demonstrates: (1) the Zamrzlas were erroneously included as members of the Small Pumper class given a long history of water usage in excess of the Small Pumper class threshold; (2) they first learned that they were subject to the adjudication in 2018 when the Watermaster sent them a letter claiming they were illegally pumping; and (3) they have actively litigated since 2018 in an attempt to protect their water rights.

Yet, the Settling Parties and Watermaster ("SP & WM") spin a fanciful tale wherein the Zamrzlas allegedly with nefarious intent plotted to circumvent the water adjudication. But they fail to answer the most basic question: To what end? What did the Zamrzlas have to gain by ignoring an adjudication that would affect their water rights – and ultimately their property values and way of life – whether they participated or not?

They have gained nothing and, to the contrary, have paid dearly. They have expended many hundreds of thousands of dollars in legal expenses and hundreds of hours of effort to attempt resolution and to defend their interests in this case. Adding to the honesty in which the Zamrzlas conduct themselves is that they have used only the bare minimum amount of water to run their household since 2018.

Ultimately, the Zamrzlas were erroneously included in the Small Pumper class *and* they were not properly served with notice of the litigation prior to the judgment. These errors, however, can and must as matters of law *and/or* equity be corrected, such as by amending the judgment to remove the Zamrzlas from the Small Pumper class. The Court has the power to correct these errors, and it should do so.

II. FACTUAL BACKGROUND

Johnny and Pamella Zamrzla moved to the Antelope Valley in 1970. They purchased a 40-acre property located at 48910 90th Street West, Lancaster, California. (Z. Exh. 48; 63:8-63:26 – all page:line citations in this brief are citations to the Transcript of the March 15-16 hearing, unless otherwise noted. Cited portions of the transcript have been provided as Exh. A. to the Declaration of Nicholas R. Shepard.) The area was an existing alfalfa farm when they purchased it. (221:6-

17.) The Zamrzlas continued irrigating the property and growing alfalfa for a number of years after the purchase. (67:9-68:26, 221:6-17.)

In 1986 Johnny and Pamella purchased two neighboring 40-acre parcels. These parcels had also been used for alfalfa in the past. (Z Exh. 49; 220:15-221:2.) They later began growing various crops on those parcels themselves, including alfalfa and other grasses, for their livestock. (77:28-78:20, 221:3-5.)

In the early 2000's the Zamrzlas leased their land to various agricultural companies, which used the Zamrzlas' land and water to grow crops such as carrots and onions. (73:7-75:11.) This included Grimmway Enterprises, which leased land and water from the Zamrzlas in 2006 and 2008. In both years, Grimmway pumped far in excess of 25 acre feet out of the Zamrzlas' "Farm Well" located on their property. (Z Exh. 37-42; 72:10-75:11, 87:14-89:23, 214:2-17.) Despite having benefited then from the Zamrzlas for its business operations, Grimmway now opposes the Zamrzlas.

When none of the farming companies leased the Zamrzlas' land in 2009, they decided to convert to growing alfalfa and other grasses for their own animals. (77:28-78:20, 221:3-5.) This process included rebuilding the well and installing water lines. (77:28-80:28.) In summary, the Zamrzlas have a lengthy history of pumping far in excess of the 25 acre feet threshold – they are indisputably not small pumpers. (66:9-68:26, 77:20-81:3; Z Exh. 1-15.)

In 2015 the Court issued Judgment in the Antelope Valley Groundwater Adjudication. (Z Exh. 21.) The Zamrzlas had no knowledge at that time that they were allegedly subject to the judgment. (246:4-247:17.) As the Zamrzlas have repeatedly and consistently testified, they never received any notice of the litigation by mail or by any other method prior to the Judgment. (93:14-95:6, 243:15-21, 248:11-21.)

Since the discovery that their pumping rights were threatened by the 2015 Judgment, the Zamrzlas have acted with diligence in attempting to litigate their rights. The Zamrzlas first received a letter from the Watermaster on July 16, 2018. In response, they promptly retained Mr. Robert 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

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again on August 6, 2018, again no response was given to the request. (Z Exh. 19, pages 17-19; 95:7-15, 96:8-97:5, 245:11-17.)

When the Watermaster requested information regarding how much water both sets of Zamrzlas planned to pump in the future, Mr. Brumfield provided the requested information. Sometime thereafter, the Watermaster began asserting the claim that the Zamrzlas were Small Pumper Class members, which was the first time the Zamrzlas had heard this allegation or were aware of a Small Pumper Class. On January 22, 2019, the Watermaster invoiced the Zamrzlas for the year 2018 in the amount of $273,165, based on erroneous information. Communication between the Watermaster and the Zamrzlas ensued throughout 2019 and 2020. During this time the Zamrzlas produced evidence regarding their actual water use and attempted to reach some sort of reasonable settlement with the Watermaster. The Watermaster even sent the Zamrzlas a draft settlement agreement on April 12, 2021, however, the agreement improperly lumped Johnny and Pamella Zamrzla together with Johnny Lee and Jeanette Zamrzla as if they were one party. (Z Exh. 19, pages 17-19; 300:28-302:25.)

On October 28, 2021, the Watermaster moved for monetary, declaratory, and injunctive relief against the Zamrzlas. This motion was the first time the Watermaster acknowledged 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. (Z Exh. 19, pages 17-19; 300:28-302:25.)

The Zamrzlas opposed the Watermaster's motion. The Watermaster filed a reply brief. Four hearings were held as to the Watermaster's claims: December 10, 2021, January 25, 2022, February 18, 2022, and March 4, 2022. (Z Exh. 19, pages 17-19.) An evidentiary hearing was held on March 15 and 16, 2023.

III. LEGAL ARGUMENT

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

An equitable attack on a judgment or order, whether by motion in the same action or by a

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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 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.)

As demonstrated by the evidence established at the hearing of the Zamrzlas' motions – as explained below – the Zamrzlas were prevented from engaging in the underlying litigation because

the parties to the underlying litigation mistakenly failed to serve the Zamrzlas, or even 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 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.[1]

B. Johnny and Pamella Zamrzla Have Been Denied Due Process as They Were Never Served Notice of the Antelope Valley Groundwater Litigation.

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 treated as real property rights in California and are subject to due process law. 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 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.)

[1] Nonetheless, substantial evidence, discussed at section E below, establishes that multiple parties to the adjudication knew the Zamrzlas were not Small Pumpers and knew the Zamrzlas had not been properly served.

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1. The Zamrzlas Were Required to be Personally Served but Personal Service Was Never Attempted

Based on the evidence submitted at the hearing, the SP & WM must now concede that no attempt was made to personally serve Johnny and Pamella Zamrzla with notice of the groundwater adjudication. Further, the SP & WM have not provided any legitimate explanation for why Johnny and Pamella were not personally served. Rather, they again attempt to distract from the notice issue by pointing out the Zamrzlas did not file Water Code groundwater extraction notices.

However, while the Zamrzlas admit they did not file extraction notices, the SP & WM are improperly using the notices for a purpose for which they were not intended. Not only has this Court previously ruled against using the extraction notices (Z Exh. 55-58), but nothing in Water Code section 4999, *et seq*. provides that failure to file the extraction notices means a property owner need not be served with notice of litigation affecting the property owner's water rights. The SP & WM 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.

In fact, the position taken, by the SP & WM's own words, is that "the public water suppliers reviewed the State Board's records and filings to find out who was pumping more than 25 acre-feet and to serve those parties personally." (44:7-10.) Thus, they contend, had the Zamrzlas filed the extraction notices they would have been personally served. So, in fact, the SP & WM do take the position that because the Zamrzlas did not file extraction notices, the mistaken classification of the Zamrzlas as Small Pumpers should not be corrected by the Court. The argument is nonsensical.

There is also an implicit admission here. If the Zamrzlas were required to file the extraction notices because they pumped more than 25 acre-feet per year, they cannot be "Small Pumpers" who pumped less than 25 acre-feet per year. Both of these positions cannot be true, and yet, the SP & WM do in fact contend both things are true. The SP & WM *know* the Zamrzlas are not Small Pumpers and were erroneously included in the Small Pumper Class.

What the SP & WM failed to address at the hearing, was any legitimate reason why the Zamrzlas were not personally served. Rather, they focused solely on the distraction of the

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extraction notices. It is undisputed that 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. There has been no explanation offered as to why public property ownership records could not have been used to identify the Zamrzlas.

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." (Z Exh. 120, 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." (Z Exh. 120, 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 identify them as 100+ acre landowners.

Finally, as they testified at the hearing, neither Johnny nor Pamella Zamrzla were personally served with any notice relating to the Antelope Valley Groundwater Adjudication. (94:22-27, 248:11-16, 272:18-27.)

2. The Settling Parties and Watermaster have Failed to Establish that Mail Service was Effected on the Zamrzlas, and the Zamrzlas Have Offered Uncontradicted Testimony that No Mail Notice Was Ever Received

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." Likewise, the presumption is rebutted by evidence supporting denial of receipt. (*Wolstoncroft v. County of Yolo* (2021) 68 Cal.App.5th 327, 350 citing *Slater v. Kehoe* (1974) 38 Cal.App.3d 819, 832, fn. 12 and *Craig v. Brown & Root, Inc.* (2000) 84 Cal.App.4th 416, 421-422.) The effect of a presumption affecting the burden of producing evidence is to require the trier of fact to assume the existence of the presumed fact unless and until evidence is introduced which would support a finding of its

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nonexistence, **in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption**. (Evid. Code, § 604 [emphasis added].)

Here, there is no evidence supporting that *either* requirement for the presumption was satisfied. The SP & WM 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 establish that the mailing was "correctly addressed." All they have offered into evidence are declarations regarding the list that was allegedly used for the mailing, and that the list 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." SP & WM offer 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, SWM Exh. 16.) 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 evidence has been offered to contradict the Zamrzlas' undisputed testimony that they did not receive mail notice.

The Zamrzlas have testified they never received the mailed notices. (93:14-95:6, 243:15-21, 248:11-21.) 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 SP & WM 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 and were never received by the Zamrzlas.

Further, there was only one singular opportunity to "opt out" of the Small Pumper Class – 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 SP & WM 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 testified, under penalty of perjury, in both the hearing and their depositions, none of them ever received any mail notice. Despite being subjected to hours of depositions and cross-examination 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. (See Section F, below.) 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. There Was No Service by Publication

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 SP & WM admit the Zamrzlas were not personally served, they also failed to prove they completed mail service on the Zamrzlas. Because both personal and mail notice failed, the SP & WM resort to asserting that publication notice was sufficient.

However, the Settling Parties and Watermaster have provided no evidence that the Zamrzlas were served by publication. The SP & WM offered two exhibits relevant to the issue of service by publication: SWM Exhibits 10 and 15. These exhibits fail to establish service of notice of the

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litigation by publication. Rather, the exhibits show that notices of Proposed Settlement of Class Action were published in a few area newspapers.

Exhibit 10 – Supplemental Declaration of Michael D. McLachlan, dated December 3, 2015 – relates to the publication of Notices of Proposed Partial Class Action Settlement in the Los Angeles Times, the Bakersfield Californian, and the Antelope Valley Press. These notices were variously published on November 3, 10, and 17, 2013.

Exhibit 15 – Declaration of Michael D. McLachlan, dated June 4, 2015 – relates to the publication of Notices of Proposed Class Action Settlement in the Los Angeles Times, the Bakersfield Californian, and the Antelope Valley Press. These notices were published on April 12 and April 19, 2015, only eight months prior to the final Judgment.

Critically, none of these notices are notices of the litigation itself, sent at the outset of the litigation to prospective members of the Wood Class. None of these notices are intended to identify potential class members and permit them to opt out of the litigation. The SP & WM cannot retroactively convert notices of proposed settlement to service of summons by publication.

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.)

4. Johnny and Pamella Zamrzla were Never Served.

The weight of the evidence is therefore clear. No attempt was made to personally serve the Zamrzlas. The claimed publication service is a misrepresentation of the evidence. The only alleged service was the 2009 mail notice. The only evidence the SP & WM have offered to prove the mail notice was sent to the Zamrzlas is the objectionable Declaration of Kevin Berg, as discussed above. However, the uncontroverted evidence establishes the Zamrzlas never received this notice. The Zamrzlas have repeatedly and consistently testified that they never received any notice of the litigation by mail or by any other method. (93:14-95:6, 243:15-21, 248:11-21.)

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C. The 2009 Mail Notice is Defective as it Materially Differs from the Class Definition in the 2015 Judgment.

The right to due process has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to contest. (*Traverso v. People ex rel. Dept. of Transportation* (1993) 6 Cal.4th 1152, 1163 quoting *Goss v. Lopez* (1975) 419 U.S. 565, 579 and *Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306, 314.) The 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. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance. (*Mullane, supra,* 339 U.S. at p. 314; *People v. Gonzalez* (2003) 31 Cal.4th 745, 754.)

The June 26, 2009 Notice of Class Action materially differs from the Court's order regarding small pumpers and the 2015 Judgment. On September 2, 2008, the Court issued an order certifying the Small Pumper class. The Court described the class as all persons "that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present." (Z Exh. 78.) However, the Notice of Class Action for the "Small Pumper" Class Action, dated June 26, 2009, states:

> ARE YOU A MEMBER OF THE CLASS?
>
> You have been designated as a possible class member because records show that you may own improved property in the Antelope Valley. The class includes all private (i.e., non-governmental) landowners within the Antelope Valley Groundwater Basin that have pumped groundwater on their property at any time since 1946, with certain exceptions set out below.
>
> You are NOT in the Class if you fall within one of the categories set forth below. BUT YOUR RIGHTS MAY BE AFFECTED UNLESS YOU RETURN THE ATTACHED RESPONSE FORM AND MAKE CLEAR THAT YOU ARE NOT IN THE CLASS. HENCE, IT IS IMPORTANT THAT YOU RETURN THE RESPONSE FORM AS PROMPTLY AS POSSIBLE, EVEN IF YOU ARE NOT A CLASS MEMBER.
>
> **YOU ARE NOT IN THE CLASS** WITH RESPECT TO ANY GIVEN PARCEL OF PROPERTY IF THAT PARCEL FALLS

WITHIN ANY OF THE FOLLOWING CATEGORIES:

1. **You have pumped 25 acre-feet or more of groundwater for use on a that parcel in any calendar year since 1946**; or

2. You are a shareholder in a mutual water company in the Antelope Valley; or

3. You are already a party to this litigation (but, in that event, you may elect to join the Class).

Per section 1 of the Small Pumper Notice, a landowner is not a member of the class if, in *any* year since 1946 the landowner pumped 25 acre-feet or more. This definition thus materially differs from the definition in the class certification order. It also differs from the definition of the Small Pumper Class found at section 3.5.44 of the Judgment and Physical Solution, which states small pumpers are those persons "that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present." This discrepancy in the class definition renders the notice deficient on its face, as it would mislead anyone reading the notice regarding who is properly a member of the small pumper class. Such discrepancies between the notice and the class definition cannot be said to have been 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. Nor does such notice reasonably convey the required information. The notice thus fails the basic test of *Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306 regarding the sufficiency of notice.

Further, even had the Zamrzlas received this mail notice – which they did not – upon reading the class definition, they would have immediately understood themselves not to be members of the Small Pumper Class, as the notice explicitly excludes those persons who "have pumped 25 acre-feet or more of groundwater for use on a that parcel in any calendar year since 1946." The Zamrzlas would have had no reason to believe themselves to be part of any litigation based on this notice, and certainly would not have understood they were bound by any Small Pumper Class judgment or settlement. (246:4-247:17.)

A notice that fails to actually notify is tantamount to no notice at all. As a matter of due process, the Zamrzlas cannot be bound by the deficient mail notice, that they never even received.

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D. The Zamrzlas are Not Small Pumpers and Were Erroneously Included on the Small Pumper Class List.

1. Johnny and Pamella Zamrzla are Not Small Pumpers

Johnny and Pamella Zamrzla do not fit the definition of the Small Pumper class. The amount of water the Zamrzlas pumped was established in a study by Rick Koch, of Southern California Edison. The Koch study, and accompanying declaration dated November 3, 2021, were filed in connection with the Zamrzlas' opposition to the Watermaster's Motion for Monetary, Declaratory and Injunctive Relief Against Zamrzlas. (Docket No. 12095). A supplemental declaration and additional evidence were provided at the hearing on March 15-16. Mr. Koch, a Technical Specialist in the Hydraulic Services Department of Southern California Edison ("SCE"), performed pump tests on the two wells located on Johnny and Pam's properties (the "Farm Well" and the "Domestic Well") between January 2013 and September 2018. The SCE test results and kWh consumed are used to calculate the number of acre-feet of water produced by each well. SCE testing and calculation methods have been accepted by the Court to establish water usage history. Mr. Koch calculated the number of acre-feet of water produced by each well every year from 2001 through 2018. According to Mr. Koch's analysis, the Farm Well produced significantly more than 25 acre-feet per year every year during the studied period, with the exception of 2009-2010 (when the Zamrzlas were converting from leasing the farmland to their own alfalfa and grass production [see 77:28-81:3] and 2018 forward, when the Zamrzlas stopped producing water from the Farm Well. (78:22-79:6.) The Zamrzlas' water production for the years prior to 2011 exceeded or equaled the average water produced from 2011 to 2020. (Z Exh. 1-15.)

Mr. Koch's analysis also showed that the Domestic Well pumped in excess of 25 acre-feet in most years since 2000. Mr. Koch's results, summarized in the following table, show that this analysis is not a close call—the Zamrzlas have consistently pumped far in excess of the 25 acre-feet per year maximum required for inclusion in the Small Pumper Class:

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YEAR	FARM WELL ACRE-FEET PUMPED	DOMESTIC WELL ACRE-FEET PUMPED
2001	356.5	14.6
2002	346.5	16.6
2003	255.8	19.2
2004	369.9	20.9
2005	371.1	17.5
2006	298.1	18.3
2007	115.6	32.9
2008	204.7	30.0
2009	0	67.7
2010	30.9	71.7
2011	318.2	126.3
2012	358.4	111.3
2013	462.8	49.5
2014	443.0	23.7
2015	592.1	66.6
2016	466.3	31.6
2017	349.2	48.0
2018	0	75.8

(Z Exh. 1-15.)

Johnny and Pamella both testified extensively about their water usage, clearly establishing they do not meet the Small Pumper class definition. They frequently used more than 25 acre feet per year, dating back to their purchase of the initial 40 acres in 1970. (66:9-68:26, 77:20-27.)

2. Johnny and Pamella Zamrzla Were Erroneously Included on the Small Pumper Class List

The Small Pumper Class List was the result of an extensive, years-long process of identifying potential small pumpers in the Antelope Valley. William E. Leever, Jr. of Wildermuth Environmental explained in his declaration dated May 1, 2008, that his organization was initial asked to determine the number of small pumpers in the Antelope Valley Groundwater Basin adjudication area by the Court pursuant to a November 3, 2006 order. In summary, Wildermuth Environmental identified improved parcels as of 2006. They then obtained digital mapping of public water service areas to identify parcels outside the service area of municipal water providers. Parcels within the boundary of state water contractors, water districts, or mutual water companies were excluded. This lead to a list of approximately 7,500 small pumpers. (Z Exh. 17.)

That work was then taken by Mike McLachlan, attorney for the class representative of the

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Wood Class, and further pared down. Mr. McLachlan removed duplicates, individuals who were members of mutual water companies based upon lists provided by the mutual water companies, and customers identified by Palmdale Water District and Los Angeles County Waterworks District No. 40 who had been erroneously included in the original class list generated by Wildermuth. No further efforts were made to pare down the list. Likewise, Water Code extraction notices were never used as a basis for removing individuals from the list. (Z Exh. 16.)

Thus, it appears that Johnny and Pamella Zamrzla were erroneously included on the small pumper list because they fell within these broad categories which were not excluded from the list by Wildermuth or McLachlan. Mr. McLachlan admitted "that inevitably there would be some people on the list who did not meet the Class definition as set by the Court." (Z Exh. 16.)

Indeed, in this massive litigation, involving thousands of parties, and spanning many years, it is impossible to believe that no mistakes were made. In this instance, the Zamrzlas were mistakenly included on the Small Pumper list, when they clearly are not Small Pumpers. That error can, and should, be corrected.

E. Parties to the Litigation Knew the Zamrzlas Were Not Small Pumpers and Knew the Zamrzlas Had Not Been Served.

One of the more concerning issues that has come to light is the fact that multiple parties to the adjudication had personal knowledge that 1) the Zamrzlas were not small pumpers; 2) the Zamrzlas were improperly classified as Small Pumpers; and 3) the Zamrzlas were not actively involved in the adjudication. Despite this knowledge, at no point during the years of ongoing litigation did any of these parties attempt to address or rectify the Zamrzlas' improper classification or absence.

Grimmway Enterprises – one of the larger water producers in the Antelope Valley – leased land and water from the Zamrzlas in 2006 and 2008. In both years, Grimmway pumped far in excess of 25 acre feet out of the Zamrzlas' "Farm Well" located on their property. Grimmway thus had personal knowledge that the Zamrzlas owned and farmed 80 acres of land. Grimmway is well aware of the amount of water required to farm 80 acres. Despite this, Grimmway raised no objection to the Zamrzlas being named as "Small Pumpers" at any point during the lengthy creation

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of the Small Pumper class list, or at any point thereafter. (Z Exh. 37-42; 72:10-75:11, 87:14-89:23, 214:2-17.) Indeed, as the Court is well aware, Grimmway has also taken an active and leading role in litigating against the Zamrzlas with respect to the instant motions. Grimmway has taken the position that the Zamrzlas are Small Pumpers, despite personal knowledge they are not.

The Van Dam family are/were also heavy users of water in the Antelope Valley. Johnny Zamrzla and Delmar Van Dam were longtime neighbors and friends. (80:4-25, 100:5-10.) They had discussions about the adjudication during its pendency, and yet, at no point did Delmar advise Johnny that the Zamrzlas were subject to the adjudication, or had been listed as Small Pumpers. At no point did the Van Dams raise the issue with the Court, that the Zamrzlas were incorrectly included on the Small Pumper list. To the contrary, Delmar specifically told Johnny the adjudication did not affect the Zamrzlas, and that Johnny should continue doing what he was doing. (100:25-102:25, 154:3-13.)

When the Zamrzlas decided to go back to growing alfalfa and grass crops in the 2010 timeframe, Delmar's son, Craig Van Dam was hired by the Zamrzlas to install the water lines on the Zamrzlas' property. Again, at no point did Craig Van Dam advise the Zamrzlas that they were subject to the ongoing adjudication. Apparently, Craig Van Dam also never advised the Court or any other parties that the Zamrzlas were improperly classified as Small Pumpers. (80:4-27, 186:27-187:27.)

Likewise, Eugene Nebeker, a large landowner in the Antelope Valley, was also heavily involved in the adjudication. The SP & WM repeatedly inquired into a conversation that took place between Johnny and Pamella Zamrzla and Mr. Nebeker in approximately 2014 in which the adjudication was discussed. (152:6-153:9, 154:3-13, 188:8-190:9, 251:2-20.) As with Grimmway and the Van Dams, Mr. Nebeker apparently never attempted to correct the Zamrzlas' improper classification as Small Pumpers, or to notify them that they were Small Pumpers and were part of the litigation already.

Thus, the evidence establishes that numerous active parties to the litigation knew the Zamrzlas were not Small Pumpers, knew the Zamrzlas were on the Small Pumper List, knew the Zamrzlas were not engaged in the litigation, and yet did nothing to rectify the situation. This

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knowledge held by other parties provides additional evidence that the Zamrzlas are not properly part of the Small Pumper class. In addition, a party such as Grimmway who held this knowledge and specifically benefitted from leasing the Zamrzlas' land should not now get to wash the dirt from their hands at the Zamrzlas' expense.

F. The Zamrzlas Never Knew They Were Subject to the Adjudication Until 2018 and Have Acted Diligently Since That Time.

Much effort has been made by the SP & WM to try to establish that the Zamrzlas knew they were subject to the adjudication prior to the 2015 judgment. However, no evidence has been provided to establish this fact. Instead it is rhetoric devised by legal counsel to fit the theory of their case. To the contrary, the evidence establishes that the Zamrzlas did not know they were subject to the adjudication until they received the letter from the Watermaster in 2018. (95:7-15, 192:12-20, 249:10-22.) To reject this consistent and repeated sworn testimony of the Zamrzlas is to find that they are lying which is not the case nor consistent with the body of evidence before this Court that establishes tremendous credibility of these individuals and as a family.

Indeed, the only conversation related to the adjudication that Pamella Zamrzla was involved in prior to 2015 was the conversation with Gene Nebeker outlined above. (251:2-20.) Johnny Zamrzla was involved in various conversations with various individuals over the years, including Mr. Nebeker and Delmar Van Dam, but critically, did not have any understanding that the adjudication involved the Zamrzlas or would affect their pumping rights. (152:6-153:9, 251:2-252:20.) Neither Johnny nor Pamella had even heard of the Small Pumper Class until after they actively became involved in litigating the issues raised by the Watermaster in 2018 and onward. (138:2-20, 248:2-10.)

Since the discovery that their pumping rights were threatened by the 2015 Judgment, the Zamrzlas have acted with diligence in attempting to litigate their rights. The Zamrzlas first received a letter from the Watermaster on July 16, 2018. In response, they promptly retained Mr. Robert 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. (Z Exh. 19, pages 17-19;

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95:7-15, 96:8-97:5, 245:11-17.)

When the Watermaster requested information regarding how much water both sets of Zamrzlas planned to pump in the future, Mr. Brumfield provided the requested information. Sometime thereafter, the Watermaster began asserting the claim that the Zamrzlas were Small Pumper Class members, which was the first time the Zamrzlas had heard this allegation or were aware of a Small Pumper Class. On January 22, 2019, the Watermaster invoiced the Zamrzlas for the year 2018 in the amount of $273,165, based on erroneous information. Communication between the Watermaster and the Zamrzlas ensued throughout 2019 and 2020. During this time the Zamrzlas produced evidence regarding their actual water use and attempted to reach some sort of reasonable settlement with the Watermaster. The Watermaster even sent the Zamrzlas a draft settlement agreement on April 12, 2021, however the agreement improperly lumped Johnny and Pamella Zamrzla together with Johnny Lee and Jeanette Zamrzla as if they were one party. (Z Exh. 19, pages 17-19; 300:28-302:25.)

On October 28, 2021 the Watermaster moved for monetary, declaratory, and injunctive relief against the Zamrzlas. This motion was the first time the Watermaster acknowledged 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. (Z Exh. 19, pages 17-19; 300:28-302:25.)

The Zamrzlas opposed the Watermaster's motion. The Watermaster filed a reply brief. Four hearings were held as to the Watermaster's claims: December 10, 2021, January 25, 2022, February 18, 2022, and March 4, 2022. (Z Exh. 19, pages 17-19.)

As the Court is aware, another hearing was held in December, 2022, which was followed by the March 15-16, 2023 evidentiary hearing. Thus, since they received the Watermaster's letter in 2018, the Zamrzlas have actively and diligently pursued a resolution of their water rights.

G. The Settling Parties and Watermaster Tell a Story that Makes no Sense and is Unsupported by the Evidence.

The SP & WM have attempted to craft a story about the Zamrzlas that simply is not

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supported by the evidence. This story can be found woven into their oppositions to the Zamrzlas' motions, the deposition questioning, their trial briefs, and their line of questioning at the March 15-16 hearing. Essentially, the SP & WM claim the Zamrzlas intentionally ignored the adjudication to avoid costly legal fees, and while doing so they also intentionally increased their water production in the years leading up to the Judgment. Of course, the evidence belies these claims.

1. The Claim that the Zamrzlas Ignored the Adjudication to Save Money on Legal Fees.

The SP & WM have repeatedly inquired into the Zamrzlas' efforts to retain counsel and their interactions with counsel both before and after the 2015 judgment. The claim made by the SP & WM is that the Zamrzlas intentionally did not involve themselves in the adjudication as a business decision, an effort to save money by not expending legal fees. (42:1-5.) This contention is absurd on its face, given the substantial expenses the SP & WM know the Zamrzlas have had to expend since 2018.

As Johnny Zamrzla testified, he did not consult with an attorney about the adjudication until he received the letter from the Watermaster in 2018. Prior to 2015, he expended no legal fees relating to the adjudication. (150:17-151:2.) However, subsequent to the 2018 letter, and the Zamrzlas involvement since then, they have expended in excess of $500,000 in legal fees relating to the adjudication. (193:26-194:11.)

The evidence not only does not support the contention that the Zamrzlas intentionally ignored the adjudication to save on legal fees, but it supports the exact opposite conclusion: That the Zamrzlas have so actively fought to protect their water rights since 2018 – at such great expense – proves they didn't know they were subject to the adjudication prior to the 2015 judgment. It simply is not possible to believe that the people who have acted as the Zamrzlas have since 2018 would have knowingly ignored the adjudication before the judgment.

2. The Claim that the Zamrzlas Intentionally Increased their Water Production.

The SP & WM have also attempted to set forth an argument that the Zamrzlas intentionally increased their water production after 2010. It is unclear what the SP & WM believe the motivation for this was, but the evidence again does not support their contention.

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When none of the farming companies leased the Zamrzlas land in 2009, they decided to convert to growing alfalfa and other grasses for their own animals. (77:28-78:20, 221:3-5.) This process included rebuilding the well and installing water lines. (77:28-80:28.)

However, the Zamrzlas did not immediately plant the full 80 acres when they began growing alfalfa and grasses. Rather, the aerial imagery clearly shows a slow and gradual progression over a number of years. The first year, 2011, 40 acres was planted. It is only in 2017 that the full 80 acres were planted. (Z Exh. 26-30; 240:18-241:19.) If this was an attempt by the Zamrzlas to quickly and substantially increase their water usage, why did it take 7 years for the full 80 acres to be planted? Why wouldn't they have immediately planted the full 80 acres, and even from of the acreage on the domestic parcel?

This nefarious plot alleged by the SP & WM – that the Zamrzlas intentionally pumped as much water as possible in the years after 2010 – simply is not supported by the evidence.

IV. CONCLUSION

Why exactly the Zamrzlas were not given proper notice of the adjudication will remain a mystery. But it is clear that mistakes were made in failing to serve the Zamrzlas personally, in including them on the small pumper list, and in failing to notify them by any other means during the pendency of the litigation. Those mistakes can and must be corrected. The Court should grant the Zamrzlas' motion and strike their names from the Small Pumper list and the Judgment.

Dated: April 14, 2023

MATHENY SEARS LINKERT & JAIME, LLP

By: _____

NICHOLAS R. SHEPARD, ESQ., Attorney for Defendants, JOHNNY ZAMRZLA, PAMELLA ZAMRZLA, JOHNNY LEE ZAMRZLA AND JEANETTE ZAMRZLA (collectively "ZAMRZLA'S")

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PROOF OF SERVICE
[Code Civ. Proc. §§ 1011, 1013, 1013(a)(3) & 2015.5]

ANTELOPE VALLEY GROUNDWATER CASES
Case No. 1-05-CV-049053 (For filing purposes only)
JCCP 4408

(STATE OF CALIFORNIA, COUNTY OF SACRAMENTO)

I am a resident of the United States and employed in Sacramento County. I am over the age of eighteen years and not a party to the within entitled action. My business address is 3638 American River Drive, Sacramento, California.

On April 14, 2023, I served the following documents on the parties in this action described as follows:

JOHNNY AND PAMELLA ZAMRZLA'S CLOSING BRIEF; DECLARATION OF NICHOLAS R. SHEPARD IN SUPPORT

[X] **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 this 14th day of April 2023 at Sacramento, California.

Kym Green