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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

| | |
|---|---|
| Coordinated Proceeding, Special Title (Rule 1550(b)) | Judicial Council Coordination Proceeding No.: 4408 |
| ANTELOPE VALLEY GROUNDWATER CASES. | LASC Case No. BC325201 |
| | Santa Clara Sup. Court Case No.: 1-05-CV-049053 Assigned to Hon. Jack Komar, Judge of the Santa Clara County Superior Court |
| | **JOHNNY LEE AND JEANETTE ZAMRZLA'S CLOSING BRIEF** |

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## I. INTRODUCTION

Johnny Lee and Jeanette Zamrzla were never served with notice of the Antelope Valley Groundwater Adjudication. They do not appear on the list of Small Pumper Class Members. They do not meet the definition of Small Pumper Class Members. Yet, incredibly, the Settling Parties and Watermaster ("SP & WM") claim Johnny Lee and Jeanette Zamrzla are parties to the judgment.

Johnny Lee and Jeanette Zamrzla are not, and never have been, parties to the adjudication. They ask the Court to issue an order acknowledging that fact.

## II. FACTUAL BACKGROUND

Johnny Lee and Jeanette Zamrzla have owned their property, located at 8165 West Avenue D8, Lancaster, California, since the mid 2000's, and moved on to the property in approximately 2009. (316:16-317:18, 358:1-24 – 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 property is a 10-acre parcel, and in 2014 they purchased an adjacent 10-acre parcel. (317:19-318:2, 337:5-27; SWM Exh. 51.)

They have a well on their property, the "Pasture Well," which is used to supply the house, trees, livestock, and growing some grass on the pasture for the livestock to consume. (318:3-319:12.) The Zamrzlas have regularly used in excess of 25 acre feet since they have lived on the property. (319:13-23; Z Exh. 1, 2, 5, 8, 11 & 12.)

The evidence establishes that Johnny Lee and Jeanette Zamrzla did not know they were subject to the groundwater adjudication until they received a letter from the Watermaster in 2018. (325:21-327:2, 328:26-329:3, 358:25-359:25.)

At no point prior to December 2015 did anyone tell Johnny Lee or Jeanette they were subject to the adjudication. (327:3-328:1, 328:21-329:3, 358:25-359:25.) Although Johnny Lee had conversations with Delmar Van Dam about the adjudication before 2015, Delmar never told Johnny Lee that he was subject to the adjudication. Rather, he told Johnny Lee to keep doing what he was doing, and he would get a water right. (330:15-331:4.)

Further, once the Zamrzlas received the letter from the Watermaster in 2018, they diligently acted to protect their interests. In response to the Watermaster's letter, the Zamrzlas promptly

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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; 95:7-15, 96:8-97:5, 245:11-17, 329:4-330:10.)

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, 329:4-330:10.)

On October 28, 2021, the Watermaster moved for monetary, declaratory, and injunctive relief against the Zamrzlas. (Z Exh. 19, pages 17-19; 300:28-302:25, 329:4-330:10.) 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.) Another hearing was held in December 2022, which was followed by the March 15-16, 2023 evidentiary hearing.

## 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 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 – detailed 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

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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.

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

No person shall be deprived of life, liberty, or property, without due process of law. (USCS Const. Amend. 5.) No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (USCS Const. Amend. 14 § 1.) A person may not be deprived of life, liberty, or property without due process of law… (Cal. Const., Art. I § 7.) The fundamental requisite of due process of law is the opportunity to be heard. (*Grannis v. Ordean* (1914) 234 U.S. 385, 394.)

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice 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. 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 [internal citations omitted].) Personal service of written notice within the jurisdiction is the classic form of notice always adequate in any type of proceeding. (*Mullane, supra*, at p. 313.)

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

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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.)

During the two-day evidentiary hearing, the SP & WM offered no evidence at all that Johnny Lee and Jeanette Zamrzla were ever served with notice of the adjudication:

*1. There is No Dispute that Johnny Lee and Jeanette Zamrzla Were Never Served Personally*

Despite many parties to the adjudication being personally served, Johnny Lee and Jeanette Zamrzla were never personally served with notice of the adjudication. (326:17-19, 359:11-14.) No evidence has been offered by any party to the contrary.

*2. There is No Dispute that Johnny Lee and Jeanette Zamrzla Were Never Served by Mail*

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 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 that any mailed notice of any kind was ever sent to Johnny Lee and Jeanette Zamrzla. As they have testified, they never received any mailed notice of any kind relating to the adjudication. (325:26-326:16, 359:6-10.)

*3. There Was No Service by Publication*

The SP & WM's contentions against Johnny Lee and Jeanette appear to rest entirely on whether Johnny Lee and Jeanette were served by publication. However, service by publication was never effected on Johnny Lee and Jeanette Zamrzla. SP & WM have provided no evidence that the Zamrzlas were served by publication. At the hearing, 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 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.

There is simply no evidence to support that notice by publication occurred and is binding on Johnny Lee and Jeanette. Certainly, these notices of proposed settlement, late in the litigation, do not meet the standard of notice that is "reasonably calculated, under all the circumstances, to

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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.) Indeed, Johnny Lee and Jeanette also both testified they never saw such notices. (326:20-23, 359:15-18.)

**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

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> 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.

Because the notice language materially differs from the class definition in the judgment, even had Johnny Lee and Jeanette been sent the mail notice – which they were not – the notice cannot be construed as giving sufficient notice of the litigation. 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 this deficient mail notice, that they were never sent and never received. The Zamrzlas would have had no reason to believe themselves to be part of any litigation based on this notice, and certainly would

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not have understood they were bound by any Small Pumper Class judgment or settlement. (317:19-319:23, 321:11-325:25; Z Exh. 26-30.)

**D. The Zamrzlas are Not Small Pumpers Do Not Appear on the Small Pumper Class List.**

*1. Johnny Lee and Jeanette Zamrzla are Not Small Pumpers*

Johnny Lee and Jeanette Zamrzla are not Small Pumpers. The amount of water the Zamrzlas pumped was established in a study by Rick Koch, of Southern California Edison. (COE Ex. 4.) 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. (DI No. 12095). Mr. Koch, a Technical Specialist in the Hydraulic Services Department of Southern California Edison ("SCE"), performed a pump test on the well located on Johnny Lee and Jeanette's property (the "Pasture 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 the well. SCE testing and calculation methods have been accepted by the Court to establish water usage history. (Z Exh. 1, 2, 5, 8, 11 & 12.)

Mr. Koch calculated the number of acre-feet of water produced by Johnny Lee and Jeanette's well:

| YEAR | PASTURE WELL |
|---|---|
| | ACRE-FEET PUMPED |
| 2008 | 2.1 |
| 2009 | 38.6 |
| 2010 | 25.2 |
| 2011 | 34.4 |
| 2012 | 15.2 |
| 2013 | 30.0 |
| 2014 | 21.4 |
| 2015 | 60.0 |

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| | |
|---|---|
| 2016 | 79.4 |
| 2017 | 48.9 |
| 2018 | 18.4 |

(Z Exh. 1, 2, 5, 8, 11 & 12.)

Johnny Lee Zamrzla also testified extensively about his water usage, clearly establishing the Zamrzlas do not meet the Small Pumper class definition. They frequently used more than 25 acre feet per year since they moved to the property in 2008 until they received the Watermaster's letter in 2018. (317:19-319:23, 321:11-325:25; Z Exh. 26-30.)

*2. Johnny Lee and Jeanette Zamrzla Are Not 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 initially 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 led 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 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.)

Johnny Lee and Jeanette do not appear on the Small Pumper Class list in the Judgment. (Z Exh. 21; 328:2-20.) Based on the Wildermuth and McLachlan declarations, one can conclude that

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after the initial list of potential Small Pumper class members was created, it was never updated with follow-up data to account for changes in property ownership. Thus, Johnny Lee and Jeanette appear to have been missed entirely in the adjudication. Accordingly, Johnny Lee and Jeanette Zamrzla are not parties to the adjudication.

*3. The Small Pumper Class was Closed on December 23, 2015, and Johnny Lee and Jeanette Zamrzla are Not Small Pumper Class Members*

Pursuant to the Judgment, the Small Pumper Class is closed: "5.1.3.5 The Small Pumper Class shall be permanently closed to new membership upon issuance by the Court of its order granting final approval of the Small Pumper Class Settlement (the "Class Closure Date"), after the provision of notice to the Class of the Class Closure Date. Any Person or entity that does not meet the Small Pumper Class definition prior to the Class Closure Date is not a Member of the Small Pumper Class." (Z Exh. 21, section 5.1.3.5.) The Judgment Approving Small Pumper Class Settlements was signed by Judge Jack Komar on December 23, 2015, and provides, "IT IS HEREBY ORDERED ADJUDGED AND DECREED: 1. The Settling Parties are released forever as to the Released Claims as provided for in the Settlement Agreement. *Any claims or rights not specifically released are retained by the Settling Parties*." (Z Exh. 22 [emphasis added].) Further, pursuant to the Wood Class Stipulation of Settlement, "The release set forth in paragraph VII.A, above, does not include claims by any of the Settling Plaintiffs other than the claims set forth therein. In particular, the Settling Parties recognize that many persons own more than one parcel of land within the Basin. The foregoing release only binds Small Pumper Class Members and only with respect to those properties within the Basin on which they have pumped or are pumping within the terms of the class definition." (Z Exh. 63, Stipulation of Settlement section VII., A. 2.)

Johnny Lee and Jeanette exceeded 25 acre feet in 2009, 2010, 2011, 2013, and 2015 before the class closure. Johnny Lee and Jeanette are not Small Pumper class members, cannot be Small Pumper class members, and because they are not, are not bound by the Judgment or Settlement, and by the terms of the Judgment and Settlement have not released any claims or rights.

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

Although the SP & WM have attempted to establish that Johnny Lee and Jeanette Zamrzla knew they were subject to the adjudication prior to the 2015 judgment, there has been no evidence to prove this contention. To the contrary, all available evidence establishes that the Zamrzlas did not know they were subject to the adjudication until they received the letter from the Watermaster in 2018. (325:21-327:2, 328:26-329:3, 358:25-359:25.)

At no point prior to December 2015 did anyone tell Johnny Lee or Jeanette they were subject to the adjudication. (327:3-328:1, 328:21-329:3, 358:25-359:25.) Although Johnny Lee had conversations with Delmar Van Dam about the adjudication before 2015, Delmar never told Johnny Lee that he was subject to the adjudication. Rather, he told Johnny Lee to keep doing what he was doing, and he would get a water right. (330:15-331:4.)

Further, once the Zamrzlas received the letter from the Watermaster in 2018, they diligently acted to protect their interests. In response to the Watermaster's letter, the Zamrzlas 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; 95:7-15, 96:8-97:5, 245:11-17, 329:4-330:10.)

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On October 28, 2021, the Watermaster moved for monetary, declaratory, and injunctive relief against the Zamrzlas. (Z Exh. 19, pages 17-19; 300:28-302:25, 329:4-330:10.) 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.

## IV. CONCLUSION

Johnny Lee and Jeanette never received notice of the Antelope Valley Groundwater litigation. They do not appear on any service list or mailing list, and there is no evidence, of any kind that they were ever served by any method. Even had they received the notice, the notice cannot be construed as sufficient as it materially differs from the language in the final judgment. Johnny Lee and Jeanette by definition are not members of the small pumper class. Johnny Lee and Jeanette are not parties to the 2015 judgment and request the Court issue an order clarifying as much.

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 LEE AND JEANETTE 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