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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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| Coordinated Proceeding, Special Title (Rule 1550(b))<br><br>ANTELOPE VALLEY GROUNDWATER CASES. | Judicial Council Coordination Proceeding No.: 4408<br><br>LASC Case No. BC325201<br><br>Santa Clara Sup. Court Case No.: 1-05-CV-049053 Assigned to Hon. Jack Komar, Judge of the Santa Clara County Superior Court<br><br>**ZAMRZLAS' OBJECTIONS TO REQUEST FOR STATEMENT OF DECISION AND TO PROPOSED STATEMENT OF DECISION** |

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JOHNNY ZAMRZLA, PAMELLA ZAMRZLA, JOHNNY LEE ZAMRZLA, and JEANETTE ZAMRZLA (collectively "Zamrzlas") hereby submit the following objections to the Settling Parties' and Watermasters' Request for Statement of Decision and Tentative Statement of Decision. Objections are made on both procedural and substantive grounds.

## I. PROCEDURAL OBJECTIONS TO THE REQUEST FOR STATEMENT OF DECISION

The procedure for obtaining a statement of decision is governed by California Rules of Court, Rule 3.1590, and California Code of Civil Procedure section 632. Rule 3.1590 provides that "On the trial of a question of fact by the court, the court must announce its tentative decision by an oral statement, entered in the minutes, or by a written statement filed with the clerk. Unless the announcement is made in open court in the presence of all parties that appeared at the trial, the clerk must immediately serve on all parties that appeared at the trial a copy of the minute entry or written tentative decision." (Cal Rules of Court, Rule 3.1590 (a).) This did not occur.

Section 632 provides "In superior courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision. The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision. After a party has requested the statement, any party may make proposals as to the content of the statement of decision." (Code Civ. Proc. § 632.)

"Within 10 days after announcement or service of the tentative decision, whichever is later, any party that appeared at trial may request a statement of decision to address the principal controverted issues. *The principal controverted issues must be specified in the request.*" (Cal Rules of Court, Rule 3.1590 (a).)

"The main purpose of an objection to a proposed statement of decision is … to bring to the

court's attention inconsistencies between the court's ruling and the document that is supposed to embody and explain that ruling," and "a subsidiary purpose for objections to a statement of decision is also to identify issues presented during the trial which are not addressed in the decision." (*Heaps v. Heaps* (2004) 124 Cal.App.4th 286, 292.)

In this case, the Settling Parties (as they call themselves) and Watermaster's request for a statement of decision is procedurally and substantively defective.

Procedurally, the Statement of Decision process contemplates a request, followed by a tentative statement of decision, followed by the parties' opportunity to respond and object to the tentative decision. Here, rather than request a statement of decision, the Settling Parties and Watermaster instead submitted a proposed order to the Court. The Court did not invite submission of a proposed order. Nonetheless, the Court signed the Settling Parties' proposed order without a single change. Upon the Court's signing of that proposed order, the Settling Parties and Watermaster then submitted their request that the proposed order be deemed a Statement of Decision. This circumvents the entire framework for requesting a statement of decision, submitting a tentative statement of decision, and responding to the tentative statement of decision, as set forth in Rule 3.1590.

The Settling Parties and Watermaster should not be permitted to retroactively obtain a statement of decision, by way of a procedure that is not authorized by any statute, rule of court, or case. Indeed, if the Court is inclined to issue a statement of decision, the Settling Parties and Watermaster's request for a statement of decision should be construed as a concession that the proposed tentative statement of decision (the Court's Order dated June 9, 2023) is just that, a *tentative* decision, and thus neither final nor binding. "The tentative decision does not constitute a judgment and is not binding on the court. If the court subsequently modifies or changes its announced tentative decision, the clerk must serve a copy of the modification or change on all parties that appeared at the trial." (Cal Rules of Court, Rule 3.1590 (b).)

The Court should deny the Settling Parties and Watermaster's request for a statement of decision. If, however, the Court grants the request, the procedures for issuing a tentative statement of decision and providing an opportunity to respond and object to the tentative statement of decision

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must be provided.

## II. SUBSTANTIVE RESPONSES AND OBJECTIONS TO THE "TENTATIVE STATEMENT OF DECISION"

The Zamrzlas offer the following responses and objections to the proposed tentative statement of decision as follows.[1] This should not be construed as a concession that a statement of decision was properly requested or should be issued in this case.

*1. The Tentative Statement of Decision conflates Johnny and Pamella Zamrzla with Johnny Lee and Jeannette Zamrzla.*

The Settling Parties and Watermaster have repeatedly conflated the two sets of Zamrzlas, treating them as one and the same. This tactic appears to be an intentional effort to distract from the undisputed facts that Johnny Lee and Jeanette Zamrzla were not personally served with any notice of the adjudication, were not mailed any notice of the adjudication, do not appear on the small pumper class list, and are not and have never been parties to the adjudication. By conflating the Zamrzlas with each other, the Settling Parties and Watermaster attempt to use evidence – such as the 2009 mailed notice of class action – against Johnny Lee and Jeanette, despite no evidence that that notice (or any other notice) was mailed to Johnny Lee and Jeanette.

The tentative statement of decision continues to conflate the two sets of Zamrzlas, repeating this error. Any final statement of decision must clearly and specifically delineate the differences between the Zamrzlas, separately analyze the various legal issues, and separately rule on those issues as to each party. In fact, if this Court is inclined to issue a statement of decision, there should be two separate statements of decision: one as to Johnny and Pamella Zamrzla, and another as to Johnny Lee and Jeanette Zamrzla.

*2. The Tentative Statement of Decision makes no finding regarding, and completely ignores, the issue raised by the Zamrzlas' motions that the 2009 Notice of Class Action was defective because it materially differs from the 2015 judgment.*

The June 26, 2009 Notice of Class Action materially differs from the Court's order

[1] For purposes of these responses and objections, the Zamrzlas refer to the Court's June 9, 2023 order as the "tentative statement of decision" because the Settling Parties and Watermaster have requested that the June 9 order be considered the tentative statement of decision. This should not be construed as a concession that a statement of decision is appropriate here, or that proper procedures were followed by the Settling Parties and Watermaster.

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regarding small pumpers. 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." 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

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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.

The Settling Parties and Watermaster have never offered *any* explanation for these discrepancies. They did not offer any evidence at the March 15-16 hearing to explain these critical discrepancies in the class definition. The tentative statement of decision likewise omits this issue in its entirety. The statement of decision must address this issue. Because the only evidence offered on this issue has been the Zamrzlas' evidence establishing the discrepancies between the class certification order, the class notice, and the final judgment, the final statement of decision *must* acknowledge that the discrepancies exist and *must find* that the 2009 class notice was defective on its face.

*3. The Tentative Statement of Decision fails to address the fact that under the 2009 Mail Notice definition, the Zamrzlas are not Small Pumpers.*

As defined by the 2009 mailed class notice the Settling Parties and Watermaster so heavily rely on, the Zamrzlas do not fit the definition of the Small Pumper class. According to Rick Koch, of Southern California Edison, the Zamrzlas' 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 Zamrzlas' Domestic Well pumped in excess of 25 acre-feet in most years since 2000.

Likewise, Johnny Lee and Jeanette Zamrzla's well produced more than 25 acre-feet per year in numerous years since they obtained the property and began using the existing well. (Z Exh. 1, 2, 5, 8, 11 & 12.) Mr. Koch's results show that this analysis is not a close call—the Zamrzlas have

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consistently pumped far in excess of the 25 acre-feet per year maximum required for inclusion in the Small Pumper Class. (Z Exh. 1-15.)

When the Settling Parties and Watermaster highlight the occasional year of water production that fell below 25 acre feet, and argue that this means the Zamrzlas meet the class definition in the Judgment, they essentially prove the Zamrzlas' point. How can it be that there are competing definitions of the class? How can it be that there is an argument as to whether or not the Zamrzlas meet the class definition? The contradictory class definitions, and the confusion and inconsistencies that arise therefrom, prove the inadequacy of the 2009 notice.

Indeed, the Court itself acknowledged the Zamrzlas are not small pumpers: "I don't – I don't doubt that they should not have been a small pumper class member. Okay. I don't doubt that at all. That seems to be something that's not really in dispute…." (Transcript of December 12, 2022 hearing, 31:25-32:4.) The tentative statement of decision now takes a contrary position to the Court's own words.

The tentative statement of decision fails to discuss the definition discrepancies (as discussed above). A final statement of decision must address why there are definitional changes across the class certification order, class notice, and final judgment. It must also address how these varying definitions affect the classification of the Zamrzlas. In failing to address these issues, the tentative statement of decision is incomplete.

*4. The Tentative Statement of Decision incorrectly finds the Zamrzlas are not entitled to relief in equity.*

The tentative statement of decision concludes that the Zamrzlas are not entitled to relief in equity because they "admit they knew about the adjudication as early as 2009 and could have retained counsel on numerous occasions to protect and pursue their alleged groundwater rights, yet they did nothing until late 2021." (Page 13, lines 22-24) The tentative statement of decision then proceeds to outline the Zamrzlas' purported knowledge, but reaches conclusions unsupported by the evidence. The evidence establishes as follows:

The Zamrzlas have responded to the adjudication with diligence since they first became aware that it affected their water rights in 2018. The Zamrzlas did not know they were subject to

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the adjudication until they received the letter from the Watermaster in 2018. (95:7-15, 192:12-20, 249:10-22.) The only conversation related to the adjudication that Pamella Zamrzla had prior to 2015 was the single conversation with Gene Nebeker previously discussed at length. (251:2-20.) Johnny Zamrzla was involved in various conversations with friends and acquaintances 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.)

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.)

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; 95:7-15, 96:8-97:5, 245:11-17, 329:4-330:10.) Thus, the initial delays began due to the Watermaster's failure to communicate with the Zamrzlas' counsel.

When the Watermaster finally requested information regarding how much water both sets of Zamrzlas planned to pump in the future, Mr. Brumfield promptly 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. Finally, approximately six months after the letter, 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 willingly produced

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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.) Thus, another two years elapsed as the Watermaster strung the Zamrzlas along with settlement negotiations that, in the end, proved fruitless.

Apparently unwilling to correct the problems with the draft settlement agreement, 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, 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. The tentative statement of decision's conclusion that the Zamrzlas were dilatory and not entitled to relief in equity is not supported by the evidence offered at the hearing, and must be corrected.

*5. The Tentative Statement of Decision incorrectly conflates classification under the 2015 Judgment with proper service.*

The tentative decision correctly states that, "[t]here is no dispute that the Zamrzlas were not personally served with summons and complaint." However, it then bizarrely and incorrectly asserts that "Therefore, proper service turns on whether the Zamrzlas are bound by the Judgment as Small Pumper Class Members." This is a misstatement of the law and an improper conflation of issues in this case. Service is one issue. Classification of the Zamrzlas under the Judgment is another separate issue.

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. The notice must be of such nature as reasonably calculated to convey the required information, and it must afford a reasonable time for those interested to make their appearance. (*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.)

*Peralta v. Heights Medical Center, Inc.*, involved a Texas lawsuit to recover a guaranteed $5,600 hospital debt. Citation issued, the return showing personal, but untimely, service. Appellant Peralta did not appear or answer, and default judgment was entered for the amount claimed, plus attorney's fees and costs. Two years later, appellant began a bill of review proceeding in the Texas courts to set aside the default judgment and obtain other relief. Appellant alleged he was never personally served, and thus the judgment was void. The Texas courts held that to have the judgment set aside, appellant was required to show that he had a meritorious defense, apparently on the ground that without a defense, the same judgment would again be entered on retrial, and hence appellant had suffered no harm from the judgment entered without notice. The *Peralta* court held this reasoning was untenable. As Peralta asserted, had he had notice of the suit, he might have impleaded the employee whose debt had been guaranteed, worked out a settlement, or paid the debt. He would also have preferred to sell his property himself in order to raise funds rather than to suffer it sold at a constable's auction. The *Peralta* court also found there was no doubt that the

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entry of the judgment itself had serious consequences, as the judgment was entered on the county records, became a lien on appellant's property, and was the basis for issuance of a writ of execution under which appellant's property was promptly sold, without notice. Even if no execution sale had yet occurred, the lien encumbered the property and impaired appellant's ability to mortgage or alienate it; and state procedures for creating and enforcing such liens are subject to the strictures of due process. (*Peralta v. Heights Medical Center, Inc.* (1988) 485 U.S. 80, 84-86.)

Thus, the *Peralta* court held that due process demanded that only "wiping the slate clean . . . would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place." (*Peralta, supra*, 485 U.S. at p. 86 quoting *Armstrong v. Manzo* (1965) 380 U.S. 545, 552.) The Court held that failure to give notice violates the most rudimentary demands of due process of law. (*Peralta, supra*, 485 U.S. at p. 84.)

Since *Mullane* was decided, California has regularly turned to it when confronted with questions regarding the adequacy of the method used to give notice. (*People v. Gonzalez* (2003) 31 Cal.4th 745, 754.) *Mullane* requires a reviewing court to determine whether the method of notice 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." (*Id*., citing *Mullane, supra*, 339 U.S. at p. 314.) Water rights are subject to due process. Once rights to use water are acquired, they become vested property rights. As such, they cannot be infringed by others or taken by governmental action without due process and just compensation. (*United States v. State Water Res. Control Bd.* (1986) 182 Cal.App.3d 82, 101.) Due process principles require reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest. (*Horn v. Cty. of Ventura*, (1979) 24 Cal.3d 605, 612.) It is well settled that "the judgment in a class action binds only those class members who had been notified of the action and who, being so notified, had made no request for exclusion." (*Steen v. Fremont Cemetery Corp.* (1992) 9 Cal.App.4th 1221, 1227.) The notice requirement is not only important and essential to the correct determination of the main issue it is, above all, jurisdictional. (*Id*., at p. 1227-1228.)

Importantly, no part of the analysis of whether proper notice has been given is an inquiry into classification of a party under a resulting judgment. Proper notice is a necessary and

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constitutionally required prerequisite to a party being subject to a judgment. What that judgment later says about a given party is an entirely separate issue. The proposed tentative statement of decision improperly purports to claim notice was sufficient based on whether or not the Zamrzlas were classified as Small Pumpers under the final judgment. This substantial error must be corrected in any final statement of decision.

*6. The Tentative Statement of Decision fails to offer a legal explanation why Personal Service was not required (despite the Court's order that it was required) and fails to factually explain why the Zamrzlas were not Personally Served.*

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 noted 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.) The requirement for personal service on such landowners makes sense, of course, given the constitutional rights and taking at issue. As noted above, 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. The notice must be of such nature as reasonably calculated to convey the required information, and it must afford a reasonable time for those interested to make their appearance. (*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.)

Here, the only way to adequately inform large landowners of their rights would be to personally serve them. Personal service would ensure that any notice was "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 *Mullane* Court even noted that personal service is "always adequate." The Parties to the adjudication needed only to take the simple step

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of checking publicly available land ownership records and thereafter personally serving identified large landowners. 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.

The Settling Parties and Watermaster concede that no attempt was made to personally serve Johnny and Pamella Zamrzla with notice of the groundwater adjudication. Whereas the Zamrzlas submitted evidence to the Court establishing that the Court ordered all landowners owning more than 100 acres to be personally served, the Settling Parties and Watermaster have not provided any legitimate explanation for their failure to do so. Rather, they attempt distract from the notice issue by pointing out the Zamrzlas did not file Water Code groundwater extraction notices. The proposed tentative statement of decision – in accepting this distraction – is defective.

While the Zamrzlas admit they did not file extraction notices, the Settling Parties and Watermaster are improperly using the notices for a purpose for which they were not intended. Not only has the Court previously ruled against using the extraction notices, 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. In fact, the Water Code could not do so, as proper notice is a constitutional right. The state legislature cannot enact statutes in contravention of constitutional rights. Likewise, the Settling parties and Watermaster do not cite any provision in the Water Code which actually holds that failure to file extraction notices means a party need not be served proper notice in a water adjudication because, of course, no such provision exists. Instead, the purpose of the Water Code statutes, evident from section 5003, is to address acquisition of a prescriptive right to groundwater, which is not at issue for purposes of the underlying motions. Likewise, the Settling Parties and Watermaster's contention, as stated in the tentative statement of decision, that "Failure to file a groundwater extraction notice 'shall be deemed equivalent for all purposes to nonuse.'" [citing Water Code § 5004] is an incorrect application of the law, as that section is not applicable to the Zamrzlas' situation. These errors must be corrected in any final statement of decision.

By contending the Zamrzlas should have filed extraction notices, the Settling Parties and

Watermaster implicitly admit that the Zamrzlas' are not Small Pumpers. 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 Settling Parties and Watermaster's do in fact contend both things are true and have submitted a tentative statement of decision that inconceivably adopts these contrary realities.

The Settling Parties and Watermaster failed to offer evidence or explanation of any legitimate reason why the Zamrzlas were not personally served. Rather, they focused solely on the distraction of the 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. The tentative statement of decision fails to address, legally, how the failure to personally serve the Zamrzlas can be justified pursuant to constitutional due process.

Because personal service is "always adequate," the failure to personally serve Johnny and Pamella Zamrzla was a critical error by the parties to the adjudication. This failure resulted in the wholesale denial of the Zamrzlas' constitutional right to due process. Any final statement of decision must fully address the failure to personally serve the Zamrzlas, with a complete analysis as to the Zamrzlas' constitutional right to due process. The tentative statement of decision does not do so.

*7. The Tentative Statement of Decision fails to establish notice as to Johnny Lee and Jeanette Zamrzla.*

Johnny Lee and Jeanette are subject to the same due process right to notice as detailed above (Section 5). During the two-day evidentiary hearing, the Settling Parties and Watermaster offered no evidence at all that Johnny Lee and Jeanette Zamrzla were ever served with notice of the adjudication:

*a. 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

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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. The tentative statement of decision fails to adopt this undisputed factual finding.

*b. 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.) The tentative statement of decision fails to adopt this undisputed factual finding that no notice was mailed to Johnny Lee and Jeanette Zamrzla.

*c. There Was No Service by Publication*

The Settling Parties and Watermaster'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. The Settling Parties and Watermaster have provided no evidence that the Zamrzlas were served by publication. At the

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hearing, the Settling Parties and Watermaster 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.

Critically, none of these notices are notices of the litigation itself. None of these notices are intended to identify potential class members and permit them to opt out of the litigation. The Settling Parties and Watermaster 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 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.)

The tentative statement of decision lacks any discussion of these discrepancies, and how the Settling Parties and Watermaster's offering of evidence of two "Notices of Potential Class Action Settlement" can suffice as actual publication notices of pending litigation. Nor does the tentative statement of decision explain how a published class notice containing a definition which would not apply to Johnny Lee and Jeanette, could be considered "reasonably calculated, under all the circumstances, to apprise [Johnny Lee and Jeannette] of the pendency of the action and afford them an opportunity to present their objections," as required by *Mullane*. Any final statement of decision must be corrected to fully address these substantial errors and omissions.

[See additional inaccuracies of the tentative statement of decision with regard to the mail and publication notices below at sections 8 and 9.]

*8. The Tentative Statement of Decision incorrectly claims three Class Action Notices were Mailed.*

"There is extensive evidence before the Court that Johnny and Pamella were served with notice of the class action by mail on three separate occasions. (Exh. 9, 14, 16, 34.)" (Page 7, lines

12-13.) As an initial matter, this conclusion is outright false. There is not "extensive evidence" of such. Indeed, such "extensive evidence" is not cited or referenced.

Further, only one notice of class action is alleged to have been mailed (Exh. 16, 34.). The other alleged mail notices are actually notices of proposed settlement. (Exh. 9, 14.) These "Notice of Proposed Settlement" were allegedly mailed in 2013 and 2015. Neither are notices of litigation, rather they are notices that litigation was potentially ending, with a settlement of the class action. These notices cannot be retroactively construed to provide the notice required by *Mullane*.

The statement of decision must be corrected to address the issue of these notices of proposed settlement. The statement of decision must also be corrected to more particularly described the "extensive evidence" that the Zamrzlas were served with a mailed notice of class action. Or, if it cannot do so because such "extensive evidence" does not exist, the revised statement of decision must re-assess whether mail service on the Zamrzlas was actually effectuated per the required constitutional standards.

*9. The Tentative Statement of Decision incorrectly claims three notices were published.*

As discussed above, the tentative statement of decision incorrectly asserts that three notices of the adjudication were published, and that this constituted valid service on the Zamrzlas, notwithstanding the failure or lack of other service methods. However, the Settling Parties and Watermaster have provided no evidence that the Zamrzlas were served by publication. At the hearing, the Settling Parties and Watermaster 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

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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.

None of these notices are notices of the litigation itself, sent at the outset of the litigation to prospective members of the Wood Class. The Settlign Parties and Watermaster did not offer into evidence any published Notice of Class Action, which would have advised potential Small Pumper Class members of the adjudication. None of these notices of proposed settlement are intended to identify potential class members and permit them to opt out of the litigation. The Settling Parties and Watermaster cannot retroactively convert notices of proposed settlement to service of summons by publication.

The notices of proposed settlement, published late in the litigation, do 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.) All of the Zamrzlas testified they did not see any publication notices.

*10. The Tentative Statement of Decision incorrectly states "Here, the Zamrzlas do not point to Court to any defects appearing on the record and the Judgment appears valid."*

As discussed in detail, above, the Zamrzlas provided substantial evidence establishing that the class certification order, the class notice, and the final judgment all contained materially different definitions of the Small Pumper class. These differences render the notice defective and the judgment invalid. This was a major issue briefed in both the Zamrzlas' moving papers, and trial briefing.

The tentative statement of decision incorrectly states that no such defects were identified.

The tentative statement of decision fails to address the issue of the class definition discrepancies in its entirety and contains no explanation for the absence of this issue.

11. *The Tentative Statement of Decision incorrectly claims the Zamrzlas "admitted" it was possible they received the mail notice.*

"Although Johnny and Pamella say they never received any Small Pumper Class notices,

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they concede it is "possible" such notices were in fact delivered to their address." (Page 7, lines 23-24.) Here, the Settling Parties and Watermaster intentionally take a figure of speech out of context to claim Pamella Zamrzla made an admission which she did not actually make. The testimony cited is as follows:

> Q. Isn't it possible, ma'am, that you received
> the class notice, didn't recognize it for what it was
> and threw it out? Isn't that possible?
> A. *Anything is possible*.

(Transcript, 285:28-286:3.)

As the Settling Parties well know, and as the Court also knows, this response was a figure of speech, made in exasperation in response to a strange and badgering line of questioning, in which counsel for Grimmway appeared to assume that because the Zamrzlas did not stamp as "received" documents that were not received in the mail, they must have been lying about stamping important *mailed* documents "received." The Settling Parties and Watermaster were present at the hearing, know the comment was a figure of speech, and nonetheless chose to misrepresent it to the Court as an admission.

12. *The Tentative Statement of Decision incorrectly places the burden on the Zamrzlas to show pumping history prior to their ownership of the subject properties.*

The tentative statement of decision faults the Zamrzlas for not offering evidence of water pumping history going back to 1946, which includes many years they did not even own the subject properties. The tentative statement of decision cites no legal authority for the conclusion that the Zamrzlas were required to show water pumping history for these years prior to their ownership. However, the Zamrzlas did offer testimony regarding their knowledge of the history of the properties, and that the properties were used as alfalfa farms prior to the Zamrzlas' ownership. Any final statement of decision must correct these errors.

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## III. CONCLUSION

The Zamrzlas object to the issuance of a statement of decision on the grounds identified above. If the Court is inclined to issue a statement of decision, the Zamrlas respectfully request the Court revise the tentative statement of decision to fully address the missing issues and objections identified above.

Dated: June 30, 2023

**MATHENY SEARS LINKERT & JAIME, LLP**

By: _____

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

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**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 June 30, 2023, I served the following documents on the parties in this action described as follows:

**ZAMRZLAS' OBJECTIONS TO REQUEST FOR STATEMENT OF DECISION**

[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 30th day of June 2023 at Sacramento, California.

Kym Green