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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordination Proceeding ANTELOPE VALLEY GROUNDWATER CASES, Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Wm Bolthouse Farms, Inc. v. City of Lancaster Diamond Farming Co. v. City of Lancaster Diamond Farming Co. v. Palmdale Water District, AND RELATED ACTIONS	Judicial Council Coordination Proceeding No. 4408 LEAD CASE: LASC Case No. BC 325201 **SETTLING PARTIES' CLOSING BRIEF RE THE ZAMRZLAS' MOTIONS TO SET ASIDE OR MODIFY THE JUDGMENT** The Hon. Jack Komar, Dept. 17 Santa Clara Case No. 105 CV 049053 Riverside County Superior Court Case No. RIC 344436 Case No. RIC 344668 Case No. RIC 353840 Kern County Superior Court Case No. S-1500-CV-254348

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I. INTRODUCTION

Johnny and Pamella Zamrzla and Johnny Lee and Jeanette Zamrzla (collectively, the **Zamrzlas**) moved to set aside or modify the 2015 Judgment and Physical Solution (**Judgment**) on the grounds that (1) they never received notice, (2) the Small Pumper Class Notice was defective, and (3) the Zamrzlas are not by definition Small Pumper Class Members. The Zamrzlas' entire case rests on the false argument about their knowledge of the adjudication and on an outdated class definition that is contrary to the Judgment.

Two days of live testimony confirmed that the motions should be denied since the Zamrzlas pumped less than 25 acre-feet of water in many years between 1946 and 2015 and are indeed Small Pumper Class members by definition. Furthermore, the equities do not favor the Zamrzlas who admittedly knew about the adjudication for more than 14 years and did nothing until caught by the Watermaster. The timeline is undeniable:

- 2009 – The Zamrzlas admitted to knowing about the adjudication and that their claimed water rights were at risk by at least 2009 (same time class notice was mailed).
- 2009-2015 – The Zamrzlas had numerous conversations about the adjudication with friends and neighbors between 2009 and December 2015 when Judgment was entered.
- December 2015 – Judgment entered
- 2016 – The Zamrzlas admitted to having the Judgment in-hand by 2016, and did nothing.
- 2018 – The Zamrzlas' excessive pumping was discovered by the Watermaster in June of 2018.
- 2022 – The Zamrzlas waited until April of 2022 to file their motions to set aside or modify the Judgment.

Critical to this Court's analysis is the definition of Small Pumper Class. The Zamrzlas repeatedly apply the wrong class definition and argue that they are not in the class because they pumped in excess of 25 acre-feet in some years. The definition in the Judgment states just the opposite and defines the class as those who pumped less than 25 acre-feet per year in any year since 1946:

> **3.5.44 <u>Small Pumper Class</u>**. ". . .Persons and entities that own real property within the Basin, as adjudicated, and **have been pumping less than 25 acre-feet per Year on their property during any Year from 1946 to the present**." (Judgment, § 3.5.44, emphasis added, Ex. 21.)

The same definition is found in the Small Pumper Class Judgment. (Judgement, Ex. C, p. 3, lines 7-

8, Ex. 22.) In other words, The Zamrzlas have the burden to prove that they, or their predecessors in interest, **pumped more than 25 acre-feet of water in each year from 1946 through 2015**. They failed to do so. The evidence, including their own expert's declarations, reveals that they pumped less than 25 acre-feet of water in many years between 1946 and 2015 and are by definition Small Pumper Class Members and bound by the Judgment.

Neither the law nor the equities permit the Zamrzlas to set aside the Judgment seven years after entry of Judgment and 14 years after they had actual notice of the pending adjudication. To do so would be an injustice to every party that timely and at great expense participated in this comprehensive adjudication. This court should ordain certainty and finality to the Judgment and deny the motions.

We now turn to a discussion of what the Zamrzlas knew and when they knew it.

II. STATEMENT OF FACTS

A. Notice On Class Members And Opt Outs

The Court, with input from Class counsel and the Public Water Suppliers, developed an robust method of notice to the class. The undisputed evidence shows that at least three Small Pumper Class notices approved by the Court were mailed to Johnny and Pamella Zamrzla at their home address, in 2009, 2013 and 2015. Additionally, notice was published in the newspaper that the Zamrzlas have read for decades.

1. 2009 Class Notice

The 2009 Small Pumper Class notice ("2009 Class Notice") identified class characteristics, gave a general explanation of the adjudication and required landowners to submit a response form, so the parties and Court would know who was a class member. (SPW-4 [2009 Small Pumper Class notice].) The 2009 Class Notice required the recipient to "opt out" of the class. This Court approved the notice and its dissemination by mail, publication in newspaper and internet. (SPW-3-5.) The 2009 Class Notice was mailed in 2009 to a list of potential Small Pumper Class members, which included Johnny and Pamella Zamrzla at their home address. (SPW-16 [Small Pumper Class mailing list].)

2. 2013 Class Notice

The 2013 Small Pumper Class notice ("2013 Class Notice") informed landowners of a proposed partial settlement of the Small Pumper Class action. (SPW-7 [2013 Small Pumper Class notice].) The 2013 Class Notice informed recipients that the settlement could impact their future claimed water rights and that they will remain in the class if they take no action. The notice included opt-out instructions. This Court approved the 2013 Class Notice and its dissemination by mail, publication in newspaper and internet. (SPW-8.) The 2013 Class Notice was mailed in 2013 to the certified list of Small Pumper Class members, which included Johnny and Pamella Zamrzla at their home address. (SPW- 9.)

3. 2015 Class Notice

The 2015 Small Pumper Class notice ("2015 Class Notice") informed landowners of the proposed settlement for the Small Pumper Class action and how they could object to the proposed settlement. (SPW-12 [2015 Small Pumper Class notice].) This Court approved the 2015 Class Notice and its dissemination by mail, publication in newspaper and internet. (SPW-13.) The 2015 Class Notice was mailed to the certified list of Small Pumper Class members, which included Johnny and Pamella Zamrzla at their home address. (SPW-14.)

4. Notice by publication

The Court ordered that the 2009, 2013 and 2015 Class Notices, as requested by counsel for the Small Pumper Class, be published to provide notice by publication to all class members. (SPW-3, 5, 8, 13.) The Court required that notice "be published on at least 4 separate occasions (including at least two Sundays and two weekdays) in each of the following newspapers: The Antelope Valley Press, The Los Angeles Times, and The Bakersfield Californian." (SPW-3, 5.) Each class notice was published as ordered by the Court. (SPW-6, 10, 15.) Johnny and Pamella Zamrzla testified that they have received and read The Antelope Valley Press for many years, including the 2009-2015 time frame. (March 15, 2023, Hearing Transcript, 116:19-22; 116:19-119:11; 158:25-159:9; 161:2-13 [J. Zamrzla]; March 16, 2023, Hearing Transcript, 261:8-10; 313:10-314:10 [P. Zamrzla].)

B. Notice Was Sufficient As To All Class Members

This Court determined, upon granting preliminary approval of the partial and final Small

Pumper Class settlements, that "[t]he dissemination of the Class Notice, as directed by this Order, constitutes the best notice practicable under the circumstances and sufficient notice to all Class Members. The contents of the Class Notice and the manner of its dissemination satisfy the requirements of Rule 3.769 of the California Rules of Court, other applicable California laws, and state and federal due process." (SPW-8, 13.)

The Judgment, which has been final for more than seven years, provides: "Each member of the Small Pumper Class can exercise an overlying right pursuant to the Physical Solution. The Judgment Approving Small Pumper Class Action Settlements is attached as Exhibit C ("Small Pumper Class Judgment") and is incorporated herein by reference." (Judgment, ¶ 3.d., Ex. 21 and Exhibits 37-41, Settling Parties' Amended Request for Judicial Notice in Support of Settling Parties' Opposition to the Zamrzlas' Motions to Set Aside the Judgment ["SP RJN"].) Exhibit C to the Judgment is the "Judgment Approving Small Pumper Class Action Settlements." It includes the following findings relevant here:

"A. The Court has jurisdiction over all parties to the Settlement Agreement including Class members who did not timely opt out of the Settlement."

"G. Notice of the pendency of this class action was initially provided to the Class by mail and publication, with a final opt out date of December 4, 2009."

"H. On October 25, 2013, the Court issued an order preliminarily approving the 2013 Partial Settlement. Notice of this Settlement was provided in accordance with the Court's order preliminarily approving the settlement and the terms of the Settlement Agreement. Notice was given in an adequate and sufficient manner, and constituted the best practicable notice under the circumstances. …"

"I. On April 6, 2015, the Court issued an order preliminarily approving the 2015 Settlement. Notice of this Settlement was provided in accordance with the Court's order preliminarily approving the settlement and the terms of the Settlement Agreement. Notice was given in an adequate and sufficient manner, and constituted the best practicable notice under the circumstances, as set forth in the Declarations of Jennifer M. Keough and Michael D. McLachlan, both filed June 4, 2015. No class member timely filed an objection to the 2015 Settlement."

K. All members of the Class who did not opt out of the Class shall be subject to all the provisions of the 2013 Partial Settlement, the 2015 Settlement, and this Judgment as entered by the Court (the "Settlement Class" members). The known Small Pumper Class members are listed in Exhibit A, attached hereto."

(Judgment, Exhibit C; Ex. 22; SP RJN Ex. 40.)

The Court, on the basis of the findings in the Small Pumper Class Judgment, ordered that class members are bound by the Judgment. (*Id.*)

C. The Zamrzlas Failed To Report Pumping As Required By Water Code Section 4999 Et Seq.

The Public Water Suppliers initiated "numerous rounds of service," including service on those pumpers in Los Angeles County reporting their annual groundwater extractions as required by the California Water Code. (SPW-1 at ¶ 2.) The Zamrzlas' land is located in Los Angeles County. (Ex. 48, SPW-51; March 16, Hearing Transcript, 260:20-22 [P. Zamrzla].) Since 1955, any person who extracts more than 25 acre-feet per year of groundwater in Los Angeles County has been required to file a Notice of Extraction with the State Water Resources Control Board (**State Water Board**) pursuant to California Water Code section 5001. (Wat. Code §§ 5000, 5001; see SPW-1 at ¶ 7.) Accordingly, the Public Water Suppliers "obtained a compilation of the Annual Notices of Extraction for Los Angeles County from the State Water Resources Control Board" and used that information to identify additional parties "that were pumping water in the Basin but had not been served." (SPW-1 at ¶ 7.) The Zamrzlas admitted that they never reported their pumping in excess of 25 acre-feet to the State Water Board. (March 15, 2023, Hearing Transcript, 182:15-183:6 [J. Zamrzla]; March 16, 2023, Hearing Transcript, 260:14-261:1 [P. Zamrzla]; March 16, 2023, Hearing Transcript, 339:10-21 [J.L. Zamrzla].) Had they done so and followed the law they would have been personally served. Furthermore, those who fail to report their pumping in excess of 25 acre-feet are precluded as a matter of law from putting on contrary evidence of their pumping history. (Water Code, § 5004.) Thus, the Zamrzlas are precluded from proving pumping in excess of 25 acre-feet.

D. What Johnny And Pamella Zamrzla Knew And When They Knew It

Johnny and Pamella Zamrzla do not dispute that their home address of 50 years, 48910 80th Street West, Lancaster, California, appears on the Small Pumper Class Notice mailing list. (March 15, 2023, Hearing Transcript, 125:17-131:10 [J. Zamrzla]; March 16, 2023, Hearing Transcript, 255:25-257:18 [P. Zamrzla].) The Zamrzlas did not report problems receiving their mail when the class notices were mailed. (March 15, 2023, Hearing Transcript, 127:22-24 [J. Zamrzla]; March 16, 2023, Hearing Transcript, 254:5-10 [P. Zamrzla].) They regularly check and sort their mail, including other class notices they have received. (March 15, 2023, Hearing Transcript, 125:17-127:21 [J. Zamrzla]; March 16, 2023, Hearing Transcript, 254:11-255:12 [P. Zamrzla].)

For at least 20 years, Johnny and Pamella Zamrzla have subscribed to the Antelope Valley Press at their business office in the Basin. (March 15, 2023, Hearing Transcript, 116:19-22; 158:25-159:9 [J. Zamrzla].) Johnny Zamrzla testified that he would check the Antelope Valley Press for obituaries to see if any of his clients passed away and read the sports and some community news. (*Id.*, at 116:19-119:11.) He read some articles about the adjudication between 2000 and 2010 and knew the adjudication was going on. (*Id.*, at 161:2-13.)

In 2009, Johnny Zamrzla had a conversation about the adjudication with Eugene Nebeker, while Mr. Nebeker was a party to the adjudication as part of the Antelope Valley Ground Water Agreement Association (**AGWA**), a coalition of more than 30 landowners in the Basin represented by a large firm actively involved in the Adjudication. Johnny Zamrzla recalled that Mr. Nebeker told him that some people were going to lose their water rights as a result of the adjudication, (March 15, 2023, Hearing Transcript, 188:8-190:9):

> "Question: People are going to lose their water rights as a result of the adjudication?
>
> [J. Zamrzla] Answer: Well, now you're saying 'water rights.' They're going to lose some of their water rights. Isn't what I said earlier?
>
> Question: No. Your testimony was that Gene had told you that people were going to lose water rights as a result of this adjudication.
>
> [J. Zamrzla] Answer: I wouldn't doubt he said both, yeah."

(March 15, 2023, Hearing Transcript at p. 189:12 to 190:9.)

A few years later while the adjudication was still ongoing, Johnny and Pamella Zamrzla

together had a phone conversation with Mr. Nebeker. The conversation between Johnny and Pamella and Mr. Nebeker took place in either 2014 or 2015, when Mr. Nebeker talked to them about the pending adjudication and encouraged them to join Mr. Nebeker's group. (March 15, 2023, Hearing Transcript, 103:14-108:21 [J. Zamrzla]; March 16, 2023, Hearing Transcript, 251:26-253:16 [P. Zamrzla].) Johnny and Pamella Zamrzla said they considered joining the pending adjudication but ultimately did not join, deciding that it did not involve them:

> "He did mention that if we wanted him to, he was pretty sure his group was too far down the road to want to take anybody in but he would ask if we wanted him to. And we decided at that late date, which was, as I recall, middle -- late 2014, again, it didn't fit us. We hadn't been served. We don't get into arguments unless we're served with some sort of papers, that it didn't fit us." (*Id.* [J. Zamrzla].)

> "We decided that it did not affect us, that we did not need to do that. And based on everything I heard, it was too late anyway. You all had us on a list." (*Id.* [P. Zamrzla].)

Even though Johnny and Pamella's daughter Sherri Zamrzla Greco is a California licensed attorney who participated in this proceeding and is a beneficiary of the Zamrzla's family trust, they also decided against consulting her or any other attorney to advise them in their decision concerning their claimed water rights. (March 15, 2023, Hearing Transcript, 103:14-108:21; 175:2-16 [J. Zamrzla].) Instead, they acted on the advice of their neighbor and Johnny Zamrzla's personal best friend Delmar Van Dam, who advised the Zamrzlas to stay out of the adjudication because it was for the "big farmers." (March 15, 2023, Hearing Transcript, 100:5-103:28 [J. Zamrzla]; March 16, 2023, Hearing Transcript, 330:15-331:10 [J.L. Zamrzla].) Delmar Van Dam holds substantial Production Rights under Exhibit 4 of the Judgment. (Judgment, Ex. A; Ex. 21; SPW RJN Ex. 38.) Delmar told the Zamrzlas to keep pumping and they would get an allocation. (March 15, 2023, Hearing Transcript, 100:5-103:28 [J. Zamrzla]; March 16, 2023, Hearing Transcript, 330:15-331:10 [J.L. Zamrzla].)

Pamella Zamrzla testified regarding Delmar Van Dam's advice. She testified that she thought he said his statement to "[k]eep doing what you're doing" was in light of Delmar's purported experience with other adjudications. (March 16, 2023, Hearing Transcript: 312:5-26 [P. Zamrzla].) In response, the Court asked Pamella Zamrzla her definition of water rights and what she understood at that time:

"THE WITNESS: That – I understood that it was water production cutbacks.

THE COURT: Okay. And that was a reduction of rights, correct?

THE WITNESS: If water production amounts are the same as water rights, then yes."

(March 16, 2023, Hearing Transcript: 312:5-26 [P. Zamrzla].)

Johnny and Pamella Zamrzla testified that they own three parcels, two of which have water wells. Parcel No. 3220-006-026 ("Parcel 26") was purchased in 1970 and includes one well referred to as the "Domestic Well." (Ex. 48.) Parcel No. 3220-006-003 ("Parcel 3") was acquired in 1986 and includes one well referred to as the "Farm Well." (Ex. 49.) Parcel No. 3220-006-002 ("Parcel 2") was acquired in 1986 and has no operable well. (Ex. 49.) The pumping records produced by Johnny and Pamella Zamrzla show purported water pumping from approximately 2000 to 2018. (Exs. 1, 3-4, 6-7, 8, 13-14.)[1]

While Johnny and Pamella Zamrzla claim pumping on their parcels, including pumping for a number of years on parcel No. 3220-006-026 and from their other well on parcel No. 3220-006-003, (see March 15, 2023, Hearing Transcript, 67:22-23 [J. Zamrzla]; 72:3-9 [J. Zamrzla]), the Zamrzlas admit they never filed with the State Water Board the legally required Notices of Groundwater Extraction and Diversion, and never educated themselves on the reporting requirement. (March 15, 2023, Hearing Transcript, 181:27-183:6 [J. Zamrzla]; March 16, 2023, Hearing Transcript, 260:14-261:1 [P. Zamrzla].)

E. What Johnny Lee And Jeanette Zamrzla Knew And When They Knew It

Johnny Lee and Jeanette Zamrzla have lived on their property since 2009 after acquiring it from Johnny Lee's parents, Johnny and Pamella Zamrzla. (March 16, 2023, Hearing Transcript, 317:5-7; 338:13-15.) In 2014, Johnny Lee and Jeanette purchased the adjoining 10-acre parcel identified as Parcel No. 3220-001-027, and from which they never pumped water. (SPW-51; March 16, 2023, Hearing Transcript, 347:28-348:8.) Johnny Lee has worked for his parent's local roofing

[1] The Settling Parties object to the Supplemental Declaration of Rick Koch, Ex. 8, on grounds of improper hearsay (Cal. Evid. Code § 801, 1200), improper legal opinion (Cal. Evid. Code § 801), insufficient foundation (Cal. Evid. Code § 403, 405) and any other such grounds raised during the hearing.

business since he graduated from high school in 1979 and is currently the president of their company. (March 16, 2023, Hearing Transcript, 338:16-19.)

Johnny Lee also recalls a conversation between Delmar Van Dam and Johnny Lee's father when Delmar Van Dam advised the Zamrzlas that they did not need to join the adjudication, but should just keep pumping and they would somehow have water rights in the end. (March 16, 2023, Hearing Transcript, 330:15-331:14; 349:6-350:24; 344:12-28.) Johnny Lee also talked to one of Delmar's sons, Gary Van Dam, about the pending adjudication to try to understand where it was headed. (*Id.*)

Johnny Lee and Jeanette Zamrzla own and operate one well on Parcel No. 3220-001-028 ("Parcel 28") referred to as the "Pasture Well." The other 10-acre parcel, Parcel No. 3220-001-027 ("Parcel 27"), has no well and no pumping history. The pumping records for the Pasture Well show purported pumping from approximately 2008 to 2021. (Exs. 1, 2, 5, 12.) Historic water use from the Pasture Well was repeatedly under the 25 acre-foot threshold. Despite this purported pumping history, Johnny Lee and Jeanette Zamrzla admit they never filed with the State Water Board the legally required Notices of Groundwater Extraction and Diversion. (March 16, 2023, Hearing Transcript, 339:10-21 [J.L. Zamrzla].)

III. HISTORY OF THIS PROCEEDING

The Zamrzlas' motions attacking the Judgment arise from the Antelope Valley Watermaster's enforcement efforts against the Zamrzlas that began in approximately 2018. On September 29, 2021, the Watermaster filed a Motion for Monetary, Declaratory and Injunctive Relief Against Zamrzlas, alleging that Johnny and Pamella Zamrzla, as Small Pumper Class members, and Johnny Lee and Jeanette Zamrzla, as unknown Small Pumper Class members, owed delinquent Replacement Water Assessments and accrued interest dating back to 2018. (Watermaster's Motion for Monetary, Declaratory and Injunctive Relief Against Zamrzlas; Declarations of Craig A. Parton and Patricia Rose, Exhibit A-E, Sept. 29, 2021, Glo-Trans No. ["GTN"] 12095.) The Zamrzlas opposed the Watermaster's enforcement efforts.

In March 2022, the Court ordered the parties to determine the "[s]tatus of the Zamrzla parties in the judgment as small pumper class members" and "[a] process to determine the amount of water

right allocation to which the Zamrzla parties may be entitled" for a May 3, 2022, hearing on the Watermaster's motion. (Order regarding Zamrzla Motion, GTN 12248, March 7, 2022.) The Court also ordered counsel to "confer to the extent possible with the Public Water Producers and Land Owner parties who have appeared and participated in the hearings on the motion to date as well as any others with an interest in the matter." (*Id.*)

In April, the Zamrzlas filed their motions to set aside or modify the judgment. (GTNs 12251-63.) The Settling Parties filed and the Court granted their ex parte application to continue the May 3 hearing and to conduct limited discovery as to whether the Zamrzlas are bound by the 2015 Judgment and Physical Solution (Phase 1). (Order Granting Defendants' Ex Parte Application to Continue Hearing on Zamrzlas' Motions to Set Aside or Modify the Judgment, April 19, 2022, GTN 12294; Stipulation Regarding Zamrzlas' Hearing, Discovery and Briefing Schedule; Order, June 29, 2022, GTN 12322.) The evaluation of the Zamrzlas' production rights, if any, is deferred to a later hearing (Phase 2). (GTN 12322.)

Pursuant to that order and a later Court-approved stipulation, the Settling Parties, the Zamrzlas, and Watermaster conducted limited discovery and filed briefs in preparation for an evidentiary hearing before the Court regarding Phase 1 only, which took place on March 15-16, 2023. (GTN 12322; GTN 12454, GTN 12455.)

IV. ARGUMENT

A. The Zamrzlas' Testimony Undermines Their Claimed Lack Of Knowledge Of The Adjudication

The Zamrzlas claim that they did not receive notice of the pending adjudication to defend their claimed water rights and that they did not know they were subject to the adjudication until 2018. Their claims lack credibility and candor, and their conduct strangely parallels certain events in the adjudication – one might even say calculated and deliberate.

1. The Zamrzlas' pumping history and well test requests track the litigation

Adjudication Event	Zamrzlas' Conduct	Evidence
June 2005 – Court orders coordination and creates Antelope Valley Groundwater	**2000 to 2015** – Johnny Zamrzla reads the Antelope Valley Press, including water	March 15, 2023, Hearing Transcript, 116:19-119:11;

Adjudication Event	Zamrzlas' Conduct	Evidence
Cases, JCCP No. 4008	issues which he testified were usually on the front page.	158:25-159:9; 161:2-13
~June 2009 – Small Pumper Class notice is mailed	**2009** – Johnny Zamrzla talks to Gene Nebeker, a party to the adjudication, and understands the adjudication is ongoing and some would lose their water rights as a result of the adjudication. **2009/2010** – Delmar Van Dam tells Johnny Zamrzla to monitor his pumping. The Zamrzlas stop leasing their land and start to pump water for their own farming on the advice of Delmar Van Dam. The Zamrzlas shift to alfalfa, a water intensive crop.	March 15, 2023, Hearing Transcript, 188:8-190:9 March 15, 2023, Hearing Transcript, 77:20-78:8; 80:4-81:21; 161:26-162:8
December 2012 to Feb. 2013 – Adjudication enters Phase 4. Parties introduce evidence of pumping records through well efficiency tests from Southern California Edison	**January 25, 2013** – Southern California Edison performs well efficiency tests on each of the Zamrzlas' wells: pasture, farm and domestic.	Exs. 1-7
2013 Small Pumper Class notice mailed		
	Feb. 28, 2014 – Southern California Edison performs another well efficiency test on Zamrzlas' farm well.	Ex. 1
2015 Small Pumper Class notice mailed	**~ 2014 or 2015** – Mr. Nebeker talked to Johnny and Pamella Zamrzla about joining his group while the adjudication was pending. They decline.	March 15, 2023, Hearing Transcript, 103:14-108:21 [J. Zamrzla]; March 16, 2023, Hearing Transcript, 251:26-253:16 [P. Zamrzla]
Dec. 28, 2015 – Judgment entered		
	2016 –Johnny Zamrzla asks Norm Hickling with Supervisor Antonovich's Office for help. Norm says there is nothing he can do for Johnny and provides him with	March 15, 2023, Hearing Transcript, 194:18-197:7

Adjudication Event	Zamrzlas' Conduct	Evidence
	a copy of the Judgment.	

2. Johnny Zamrzla had a copy of the Judgment in 2016 and testified inconsistently about it

In 2016, Johnny Zamrzla contacted Norm Hickling, who was an aide to then-Los Angeles County Supervisor Michael Antonovich, about the adjudication. (March 15, 2023, Hearing Transcript, 194:18-197:7.) Johnny Zamrzla admitted under cross-examination that Mr. Hickling sent Johnny Zamrzla a copy of the Judgment in 2016 and the Zamrzlas did absolutely nothing! (*Id.*) Johnny Zamrzla did not hire legal counsel until he received a letter from the Watermaster in June 2018, some two years later. (*Id.*) Despite discovery requests, Johnny Zamrzla refused to provide the Settling Parties with a copy of the records provided by Norm Hickling, and did not reveal his 2016 communication with Mr. Hickling until the March 15, 2023, hearing.

"When a party does not produce ordered documents, the court is entitled to infer the documents would contain evidence damaging to that party's case." (*Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566, 605; see *Kuhns v. State of California* (1992) 8 Cal.App.4th 982, 985, 987-90 [upholding trial court's issue sanction deeming matter admitted after appellant failed to provide relevant information, including on issues of notice.])

Johnny Zamrzla cannot seem to keep his story straight. In 2022, this Court ordered discovery. Johnny Zamrzla was subpoenaed for a deposition and testified under oath that he had requested help from Mr. Hickling before 2015 while Johnny Zamrzla was volunteering on the Blue Ribbon Committee. (March 15, 2023, Hearing Transcript, 110:21-115:27.) In his deposition, he also testified that Mr. Hickling gave Johnny Zamrzla a stack of documents relating to the adjudication. (*Id.*) The Settling Parties subsequently made a discovery request for the documents Mr. Hickling gave to Johnny Zamrzla. (Settling Parties' Opposition to the Zamrzlas' Motions to Set Aside or Modify the Judgment, GTN 12375, at p. 28:2-12; 26-28, and Appendix of Exhibits in Support of Settling Parties' Opposition to the Zamrzlas' Motions to Set Aside or Modify the Judgment (Vol 2), GTN 12377, Appx. Ex. 25.) Johnny Zamrzla responded that he no longer had the documents. (*Id.*)

Johnny Zamrzla signed the errata to his deposition without correcting his testimony regarding Mr. Hickling. (March 15, 2023, Hearing Transcript, 115:16-27 [J. Zamrzla].) The Settling Parties filed an opposition brief raising issues related to Johnny Zamrzla's testimony about Mr. Hickling. The Zamrzlas subsequently filed a reply brief without providing the documents from Mr. Hickling or correcting Johnny Zamrzla's testimony.

On March 15 2023, Johnny Zamrzla testified in Court in this matter. This Court asked during Johnny Zamrzla's testimony if Johnny Zamrzla had "ever review[ed] any of the orders that were made by the Court during the time that – before 2018?" (March 15, 2023, Hearing Transcript, 158:13-15.) Johnny Zamrzla responded: "I got to honestly tell you I don't believe so", "I don't believe so" and "No." (March 15, 2023, Hearing Transcript, 158:16-17; 19; 21.)

After answering the Court's question and testifying that he did not review any Court orders before 2018, Johnny Zamrzla later testified on re-cross for the first time that in early 2016 he had received a copy of the Judgment from Norm Hickling who was an aide at the time to then-Los Angeles County Supervisor Michael Antonovich. (March 15, 2023, Hearing Transcript, 194:18 to 197:7.) Yet he did nothing upon receipt of the Judgment in 2016, until forced to respond to the Watermaster in June 2018. (March 15, 2023, Hearing Transcript, 196:22-197-7.)

Johnny Zamrzla then testified that he "gave bad information" during his deposition and asked his secretary if he had ever sent a message or called Norm Hickling. (March 15, 2023, Hearing Transcript, 194:18 to 197:7.) Johnny Zamrzla testified during the March 15 hearing that his secretary emailed Norm Hickling and Norm Hickling responded. (March 15, 2023, Hearing Transcript, 194:18 to 197:7.) Johnny Zamrzla failed to correct the error in his deposition transcript. (March 15, Hearing Transcript, 110:21-115:27.) Additionally, Johnny Zamrzla never produced the Hickling emails or documents despite the Settling Parties' discovery request. (Settling Parties' Opposition to the Zamrzlas' Motions to Set Aside or Modify the Judgment, GTN 12375, at p. 28:2-12; 26-28, and Appendix of Exhibits in Support of Settling Parties' Opposition to the Zamrzlas' Motions to Set Aside or Modify the Judgment (Vol 2), GTN 12377, Appx. Ex. 25)

The Court may and should conclude that the documents provided to Johnny Zamrzla by Norm Hickling that Johnny Zamrzla failed to produce to Settling Parties are detrimental to his claims

and that Johnny Zamrzla had notice of adjudication and the Judgment long before 2018, including the admission that he had a copy of the Judgment in 2016. (See *Lopez*, 246 Cal.App.4th at 605; *Kuhns*, 8 Cal.App.4th at 985, 987-90.)

3. Pamella and Johnny Lee Zamrzla made inconsistent statements about the timing of their knowledge of the adjudication

The Zamrzlas stated in their trial briefs that "Pamella Zamrzla had no knowledge of the litigation prior to 2018." (Zamrzlas' Brief re March 15-16 Evidentiary Hearing ["Z Trial Brief"], p.4:9, emphasis added.) During the hearing, Pamella Zamrzla, however, testified on cross-examination that the statement in the Zamrzlas' trial brief was false and even after she saw the false statement, she did not ask her attorney to correct it. (March 16, 2023, Hearing Transcript, 252:27-253:16.) Similarly, the Zamrzlas asserted in their trial brief to the Court that "Johnny Lee Zamrzla was *unaware of the litigation* or its effects on his water pumping rights until 2018." (Z Trial Brief, p. 4:6-7, emphasis added.) Johnny Lee Zamrzla, however, admitted during cross-examination that the statement about his lack of knowledge was false. (March 16, 2023, Hearing Transcript, 331:26-332:19.) In the Zamrzlas' October 26, 2022 Reply brief in support of their Motions, the Zamrzlas also stated "In fact, Johnny Lee and Jeanette *did not know about the litigation at all*, as they testified during their depositions." (Reply Brief in Support of Zamrzlas' Motions to Set Aside or Modify the Judgment [In Response to Settling Parties' Opposition], p. 4:11-12, emphasis added.) Johnny Lee Zamrzla testified that that statement was also false. (March 16, 2023, Hearing Transcript, 332:20-27.)

4. Pamella Zamrzla testified that it was possible the Zamrzlas received mail notice

Despite her testimony that she never received any of the class action notices, Pamella Zamrzla testified on cross-examination that she had no reason to believe the US Postal Service did not deliver the notices and that it was possible that Johnny and Pamella Zamrzla may have received the small pumper class action notices in the mail. (March 16, 2023, Hearing Transcript, 285:28-286:26.) When asked whether they ever reported any issues receiving their mail before 2016, Johnny and Pamella Zamrzla testified: No. (March 16, Hearing Transcript, 253:17-254:10; 286:8-26 [P.

Zamrzla] ("No."); March 15, 2023, Hearing Transcript, 127:22-24 [J. Zamrzla] ("I don't remember doing that, no.").)

B. The Court Correctly Determined That The Class Action Notices Satisfied Due Process

In determining the manner of notice to a class, the trial court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the stake of the individual class members; (4) the cost of notifying class members; (5) the resources of the parties; (6) the possible prejudice to class members who do not receive notice; and (7) the res judicata effect on class members. (Cal. R. Ct. 3.766(e).) This Court also carefully considered these factors when it approved the form of notice and the method of service by publication. (SPW-3, 5; Judgment, Exhibit C; Ex. 22; SP RJN Ex. 40.) This Court previously determined as part of the Judgment and the Small Pumper Class Judgment incorporated by reference that the manner of serving the class was proper. (Judgment, Exhibit C; Ex. 22; SP RJN Ex. 40; Ex. 21.) The Judgments are long since final.

The Zamrzlas incorrectly assert—without citation to any applicable legal authority—that "the circumstances of the present case also demand a higher standard of notice" because the "adjudication was not a standard 'class action' wherein a party that failed to opt out, essentially loses nothing." (J&P Reply Brief at 5:9-12.) They further assert that the procedures followed by this Court somehow deprived them of due process and effectuated a taking or infringement of their claimed water rights. (J&P Closing Brief, 5:12-27.) To the contrary, this Court carefully applied the class action notice standards in light of the circumstances and subject matter of this case to determine groundwater rights. The Zamrzlas attempt to make hay out of perceived differences between definitions in the 2009 Class Notice and the Judgment. (J&P Closing Brief, pp. 11-12.)[2] However, their selective focus ignores clear and unambiguous statements in the Class Notice that unquestionably satisfy the Rules of Court, that: (1) the case may affect their rights to pump

[2] The argument regarding differences in the notices is a red herring. The Zamrzlas fail to explain how exactly they relied upon or were misled by notices they claim to have never received. Regardless, the class notices put the Zamrzlas on notice of the adjudication and their obligation to opt out of the class and appear individually. The Zamrzlas simply ignored the notices and buried their heads in the desert sands.

groundwater; (2) the response form must be completed and returned promptly to "MAKE CLEAR THAT YOU ARE NOT IN THE CLASS … EVEN IF YOU ARE NOT A CLASS MEMBER"; and (3) that if they remain in the Class, they will be bound by the decision in the case, whether favorable or unfavorable. (SPW-4; Ex. 23.) Furthermore, it is truly baffling how the Zamrzlas can claim to have been misled by a notice they claim they never received. Their testimony and arguments just do not add up.

California appellate courts consistently recognize the trial courts' broad and virtually complete discretion in approving the form and content of class notices. (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1390; *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 57.) The Zamrzlas' view that the Judgment is unfavorable to them does not disturb the adequacy of the Class notices. No "higher standard of notice" applies to the Zamrzlas.

C. The Zamrzlas Are Members Of The Small Pumper Class

1. Johnny and Pamella Zamrzla are Small Pumper Class members in the Judgment and satisfy the definition

Johnny and Pamella Zamrzla appear on the Small Pumper Class list in the Judgment, and the evidence supports their classification as Small Pumper Class Members.

The Small Pumper Class is defined as "All private (i.e., non-governmental) Persons and entities that own real property within the Basin, as adjudicated, and **that have been pumping less than 25 acre-feet per Year on their property during any Year from 1946 to the present**. … The Small Pumper Class does not include those who opted out of the Small Pumper Class." (Judgment, 3.5.44, emphasis added.)

Johnny and Pamella's own pumping history proves they meet the Small Pumper Class definition, which includes an individual (which where two or more Small Pumper Class Members reside in the same house is treated as a single Small Pumper Class Member for purposes of determining water rights) who meet the Small Pumper Class definition. (Judgment, 3.5.45.) Johnny and Pamella Zamrzla concede that the Small Pumper Class definition in the Judgment controls. (J&P Closing Brief, 14:14-15.) The Small Pumper Class includes any private individual who owns real property in the basin and has pumped ***less than 25 acre-feet a year during any year from 1946***

to present. (Judgment, 3.5.44.)

First, Johnny and Pamella Zamrzla introduced evidence, including late admitted evidence,[3] of their pumping history from Southern California Edison showing they pumped less than 25 acre-feet per year from the well on Parcel 26 in eight separate years, and two years on Parcel 3, between 2000 and 2014, and offered no competent evidence of pumping prior to 2000.[4] (Exs. 1, 3, 4, 6, 7, 8, 13, 14):

Year	Parcel 26 Domestic Well – 40 Acres - Acre-Feet Per Year	Parcel 3 Farm Well – 40 Acres – Acre-Feet Per Year
2014	**23.7**	443
2009	67.6	**0**
2006	**18.3**	298.1
2005	**17.5**	371.1
2004	**20.9**	369.9
2003	**19.2**	255.6
2002	**16.6**	346.5
2001	**14.6**	356.5
2000	**15.7**	**0**
1946-1999	**0**	**0**

Thus, by their own evidence, Johnny and Pamella Zamrzla have met the Small Pumper Class definition because they pumped less than 25 acre feet for any year from 1946 to 2015 (Class Closure Date) (Judgment, § 5.1.3.5; Judgment, Ex. C; Exs. 21-22; SPW RJN Exs. 37-41.) Further, Johnny

[3] The Settling Parties object to the Supplemental Declaration of Rick Koch, Ex. 8, on grounds of improper hearsay (Cal. Evid. Code § 801, 1200), improper legal opinion (Cal. Evid. Code § 801), insufficient foundation (Cal. Evid. Code § 403, 405) and any other such grounds raised during the hearing.

[4] Notably, the 2000 – 2014 timeframe during which Johnny and Pamella almost invariably pumped less than 25 AFY includes the pumping years considered by the Court in the Phase IV Trial that were subsequently utilized in determining Overlying Production Rights in the Judgment.

and Pamella Zamrzla have failed to carry their burden of proof for all years between 1946 to 1999 as they failed to produce evidence of pumping during that time period. (See *Lopez*, 246 Cal.App.4th at 605 [the court may infer documents would contain evidence damaging to a case when not produced]; *Kuhns*, 8 Cal.App.4th at 985, 987-90 [upholding trial court's issue sanction deeming matter admitted after appellant failed to provide relevant information, including on issues of notice.]) Vague statements in Johnny Zamrzla's testimony about the purported history of his parcels were unsupported and he failed to lay the foundation for pumping history prior to 1970. (March 15, 2023, Hearing Transcript, 65:11-67:17 [J. Zamrzla].) The Zamrzlas do not point the Court to any competent evidence of pumping history prior to 1970.

2. Johnny Lee and Jeanette Zamrzla are members of the unknown Small Pumper Class

Johnny Lee and Jeanette Zamrzla are members of the Small Pumper Class under the Judgment. (See Judgment, 5.1.3, et seq.) Specifically, Johnny Lee and Jeanette Zamrzla are unknown Small Pumper Class members and thus subject to the Judgment.

Both the Judgment and the Small Pumper Class Judgment anticipated that in addition to the 3,172 known class members, there were also unknown class members who could not be served by mailed notice and were served by publication. Unknown small pumpers are included as part of the Small Pumper Class Productions Rights starting with section 5.1.3 in the Judgment. (Judgment, 5.1.3, et seq.) "Unknown Small Pumper Class Members are defined as: (1) those Persons or entities that are not identified on the list of known Small Pumper Class Members maintained by class counsel and supervised and controlled by the Court as of the Class Closures Date; and (2) any unidentified households existing on a Small Pumper Class Member parcel prior to the Class Closure Date." (Judgment, 5.1.3.6.)

A Small Pumper Class Member is defined as "Individual members of the Small Pumper Class who meet the Small Pumper Class definition, and for purposes of this Judgment and any terms pertaining to water rights, where two or more Small Pumper Class Members reside in the same household, they shall be treated as a single Small Pumper Class Member for purposes of determining water rights." (Judgment, 3.5.45.)

The Small Pumper Class is defined as "All private (i.e., non-governmental) Persons and entities that own real property within the Basin, as adjudicated, and that have **been pumping less than 25 acre-feet per Year on their property during any Year from 1946 to the present**. … The Small Pumper Class does not include those who opted out of the Small Pumper Class." (Judgment, § 3.5.44, emphasis added.)

Here, Johnny Lee and Jeanette Zamrzla do not appear on the Small Pumper Class list and thus meet the first part of the unknown small pumper class definition. (Judgment, Exhibit C; Ex. 22; SP RJN Ex. 40.) Johnny Lee and Jeanette also meet the second part of the unknown small pumper class definition because they were an unidentified household existing on a Small Pumper Class Member parcel prior to the Class Closure Date in 2015. (Judgment, § 5.1.3.5; Judgment, Ex. C; Exs. 21-22; SPW RJN Exs. 37-41.) A Small Pumper Class Member is an individual (which where two or more Small Pumper Class Members reside in the same house is treated as a single Small Pumper Class Member for purposes of determining water rights) who meet the Small Pumper Class definition. (Judgment, 3.5.45.) Johnny Lee and Jeanette also concede that the Small Pumper Class definition in the Judgment controls. (JL&J Closing Brief, 10:6-7.) The Small Pumper Class includes anyone who owns real property in the basin and has pumped less than 25 acre-feet a year during any year from 1946 to present. (Judgment, 3.5.44.)

Johnny Lee and Jeanette introduced evidence, including late admitted evidence,[5] of their pumping history from Southern California Edison that shows they pumped less than 25 acre-feet a year in at least three separate years from 2000 through 2015 before the Class Closure Date on the only well that Johnny Lee and Jeanette use. (Exs. 1, 2, 5, 8, 12.) Further, they provided no evidence of pumping for the 61 years prior to 2008.

Year	**Parcel 28 – Pasture well - Acre-Feet Per Year**
2014	21.4

[5] The Settling Parties object to the Supplemental Declaration of Rick Koch, Ex. 8, on grounds of improper hearsay (Cal. Evid. Code § 801, 1200), improper legal opinion (Cal. Evid. Code § 801), insufficient foundation (Cal. Evid. Code § 403, 405) and any other such grounds raised during the hearing

2012	15.2
2008	2.1
1946-2007	0

Thus, by their own evidence, Johnny Lee and Jeanette meet the Small Pumper Class definition because for ***any*** year from 1946 to 2015 (Class Closure Date) they pumped less than 25 acre feet. (See Judgment, § 5.1.3.5; Judgment, Ex. C; Exs. 21-22; SPW RJN Exs. 37-41.) Further, Johnny Lee and Jeanette have failed to carry their burden of proof for any years between 1946 to 2007 as they have not provided evidence of pumping during that time period. (See *Lopez*, 246 Cal.App.4th at 605 [the court may infer documents would contain evidence damaging to a case when not produced]; *Kuhns*, 8 Cal.App.4th at 985, 987-90 [upholding trial court's issue sanction deeming matter admitted after appellant failed to provide relevant information, including on issues of notice.])

D. The Judgment Is Valid On Its Face And The Court May Not Consider Extrinsic Evidence

1. The Judgment is valid on its face, the motions to set aside the Judgment are an improper collateral attack

Johnny and Pamela Zamrzla are listed in the Judgment as known Small Pumper Class Members. This Court previously determined that dissemination of the Class Notices was "the best notice practicable under the circumstances and sufficient notice to all Class Members," satisfied Rule 3.769, and that the Court has jurisdiction over the class members. Nevertheless, the Zamrzlas seek to re-litigate the issue seven years after entry of Judgment. Since the Judgment is valid on its face, Johnny and Pamela's motion is a collateral attack on the Judgment. Because it is a collateral attack, and because the Judgment is valid on its face, the Judgment must be upheld as to Johnny and Pamela and the Court is precluded from considering extrinsic evidence.

Attacks on a trial court judgment are generally either a "direct" or "collateral" attack. (8 Witkin, Cal. Proc. 6th Attack § 1 (2023).) A direct attack is made using one of the statutory mechanisms to attack a judgment such as a motion to vacate the judgment or a motion for new trial.

(8 Witkin, Cal. Proc. 6th Attack § 2 (2023).) A motion to make a direct attack against a judgment must be filed within the statutory time limits of, for example, 15 days from notice of entry of judgment or, if no notice is served, within 180 days after judgment. (See Code Civ. Proc. § 663a.) All other attacks on the judgment in the trial court after the statutory time period are collateral attacks. (8 Witkin, Cal. Proc. 6th Attack §§ 6, 8 (2023).)

Here, Judgment was entered on December 23, 2015, and Notice of Entry of Judgment was served by posting on December 28, 2015. The time to make a direct attack on the Judgment as long passed. Thus, the Zamrzlas are making a collateral attack on the Judgment. (See 8 Witkin, Cal. Proc. 6th Attack §§ 6, 8 (2023).)

2. Extrinsic evidence is not admissible in a collateral attack, so the Court may only look to the record supporting the Judgment

In a collateral attack, like the Zamrzlas', "[t]he validity of the judgment on its face may be determined only by a consideration of the matters constituting part of the judgment roll." (*Superior Motels, Inc. v. Rinn Motor Hotels, Inc.* (1987) 195 Cal.App.3d 1032, 1049 [internal quotations and citations omitted]; see *Hogan v. Superior Court of California in and for the City and County San Francisco* (1925) 74 Cal.App. 704, 708-709.) "The record is the judgment roll, and upon collateral attack it is the only evidence that can be considered in determining the question of jurisdiction." (*Id.* [internal quotations and citations omitted].) In "a collateral attack, the judgment must be held to be valid unless the record thereof, the judgment roll, shows it to be void – unless, as the authorities put it, it is void upon its face." (*Hogan, supra*, 74 Cal.App. at 708 [internal quotations and citations omitted].) "In determining the question, we are restricted to the evidence afforded by the judgment roll." (*Id.* [internal quotations and citations omitted].) "Every presumption and intendment is in favor of the validity of the judgment, and any condition of facts consistent with the validity of the judgment will be presumed to have existed, rather than one which will defeat it." (*Id.*)

In *Superior Motels, Inc., supra*, the defendants alleged that because service was not made upon the proper person, that service was defective and the default judgment was void. (*Superior Motels, Inc., supra,*195 Cal.App.3d at 1049.) While the defendants could bring a "challenge based as it is upon a perceived jurisdictional infirmity making the judgment void on its face…They do not,

however, appreciate the very stringent rules governing such a claim." (*Id.* [internal quotations and citations omitted].) The defendants relied on an order appointing another individual as receiver, another state's statutes, and testimony from the individual appointed as receiver to support the defendants' contention that default judgment entered against them was void because of defective service. (*Id.* at 1049-50.) Looking to the judgment roll for the default judgment, the court concluded that "[d]efendants' contention founders because it is not based upon the judgment roll as so defined." (*Id.* at 1049.) The defendants could not rely on extrinsic evidence to try to prove their claim. (*Id.* at 1050.)

In *Hogan*, *supra*, the trial court's jurisdiction was "complete" because "[t]he judgment roll [] shows that the trial court acquired jurisdiction over the parties and of the subject of the action; the judgment is regular upon its face, and embraces only such matters as were within the power of the trial court to adjudicate and within the scope of the pleadings." (*Hogan*, *supra*, 74 Cal.App at 709.) Thus, the facts that the petitioner alleged in its pleading that were "admittedly matters of fact not appearing in any part of the judgment roll, but depending for their establishment upon extrinsic proof, which as we have already seen, is wholly inadmissible in a collateral attack, cannot be allowed to impeach the integrity of the judgment." (*Id.*)

Here, the Zamrzlas are launching a collateral attack on the 2015 Judgment and Physical Solution, so the Court may look only to the record as evidence in analyzing the Zamrzlas' attack on the 2015 Judgment and Physical Solution. (See *Superior Motels, Inc.*, *supra*, 195 Cal.App.3d at 1048-49; *Gonzales v. State of California* (1977) 68 Cal.App.3d 621, 632; *Hogan*, 74 Cal.App. at 708.) The Court may not consider the Zamrzlas' declarations or other extrinsic evidence in deciding the Zamrzlas' motions. (See *Superior Motels, Inc.*, *supra*, 195 Cal.App.3d at 1048-50.) Rather, as the record reflects, the Court found that Johnny and Pamella Zamrzla were members of the Small Pumper Class, and all class members, including Johnny Lee and Jeanette Zamrzla, received adequate notice. (SPW-8, 13; Exs. 21, 22.) The Judgment is binding on the Zamrzlas on its face. (*Id.*; see *Superior Motels, Inc.*, 195 Cal.App.3d at 1049; see *Hogan*, 74 Cal.App. at 708-709.) The Zamrzlas' claims must fail.

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3. The evidence shows that three class action notices were duly mailed to Johnny and Pamella Zamrzla in 2009, 2013 and 2015 and are deemed received

Johnny and Pamella Zamrzla erroneously argue that the 2015 Judgment and Physical Solution should be set aside as to them because they did not receive notice or were never personally served with notice of the adjudication. (J&P Closing Brief, 1:18-21.) They also erroneously argue that only one notice in 2009 is at issue. In fact, all three small pumper class action notices were mailed to Johnny and Pamella Zamrzla and Johnny Lee and Jeanette Zamrzla are covered under notice by publication: the first in 2009, the second in 2013 and the third in 2015. And, contrary to their claims, the 2009 and the 2013 notices required members to opt out. (J&P Closing Brief, 9:2-3; SPW-3-5, 7.)

California Evidence Code section 641 provides that "[a] letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail." (Evid. Code § 641.) "As is true of most presumptions affecting the burden of producing evidence, this one is an expression of common experience, one in which the presumed fact (receipt of that which was mailed) is so likely to be true that the law requires it to be assumed in the absence of contrary evidence." (*Craig v. Brown & Root, Inc.* (2000) 84 Cal.App.4th 416, 421.) "Although the presumption disappears where [] it is met with contradictory evidence, inferences may nevertheless be drawn from the same circumstances that gave rise to the presumption in the first place." (*Id.*) Proof of mailing a document one or more times is "ample" evidence to overcome claims that a document was not received. (See *Bartholomae Oil Corp. v. Oregon Oil & Development Co.* (1930) 106 Cal.App. 57, 66-67; Craig, 84 Cal.App.4th at 421-22.)

In *Craig, supra*, the defendant company twice mailed a memorandum and brochure regarding plaintiff's employee dispute resolution rights to plaintiff's home address, once in 1993 and again in 1994. (*Craig*, 84 Cal.App.4th at 419-20.) Plaintiff claimed in a declaration that she never received any memorandum and brochure regarding her employee dispute resolution rights in 1993 or 1994. (*Id.*) The trial court held for the defendant and the appellate court upheld the trial court's decision. (*Id.* at 421-22.) "The disappearance of the presumption does not mean there is insufficient evidence to support the trial court's finding." (*Id.* at 421.) The defendant's "declarations

and documents (mailing lists) are circumstantial evidence from which the court was entitled to infer that [plaintiff] had received the memorandum and brochure." (*Id.*) Accordingly, there was "substantial evidence," based in part on evidence showing the memorandum and brochure were received by plaintiff twice, that she was bound by the terms of the defendant's dispute resolution program. (*Id.* at 422.)

In *Bartholomae, supra*, evidence of a carbon copy showing that a demand was mailed and properly addressed with postage prepaid was "ample evidence" and "sufficient to show that a demand was duly made," despite defendant's claim that the demand was never received. (*Bartholomae*, 106 Cal.App. at 66-67.)

Here, the record shows that all three class notices were duly mailed to Johnny and Pamella Zamrzla at their home address. (SPW-4, 7, 9, 14, 16.) A single notice properly mailed is ample evidence to show the notice was received by Johnny and Pamella Zamrzla. (See Evid. Code § 641; *Bartholomae*, supra, 106 Cal.App. at 66-67.) Here, the record shows that three notices were separately mailed to Johnny and Pamella's residence, further supporting the presumption that Johnny and Pamella Zamrzla received notice of the litigation. (See Evid. Code § 641; *Craig*, 84 Cal.App.4th at 419-422 [evidence of two notices mailed sufficient]; *Bartholomae*, 106 Cal.App. at 66-67 [evidence of one notice mailed "ample" evidence].) The Court may only rely on the evidence in the record, which means the Zamrzlas' declaration statements are inadmissible as to whether they received sufficient notice. (See *Superior Motels, Inc., supra*, 195 Cal.App.3d at 1048-50; *Hogan*, supra, 74 Cal.App. at 709.) Accordingly, based on the record, notice by mail of the three separate Small Pumper Class notices was effective and sufficient as to Johnny and Pamella Zamrzla. (See Evid. Code § 641; *Craig, supra,* 84 Cal.App.4th at 419-422; *Bartholomae, supra*, 106 Cal.App. at 66-67.)

4. The Court approved notice by publication to provide sufficient notice to water rights claimants in the Basin, like the Zamrzlas

"The trial court has virtually complete discretion as to the manner of giving notice to class members." (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1390 [internal quotations and citations omitted].) A court may order notice by publication in a newspaper "as a

means of notice reasonably calculated to apprise the class members of the pendency of the action" if "it appears that all members of the class cannot be notified personally." (Cal. Rules of Court, Rule 3.766(f).) "If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court." (Cal. Rules of Court, Rule 3.769(f).)

In *Cellphone Termination Fee Cases, supra*, the settlement agreement provided for three forms of notice including mail, notice by publication in print media and notice by publication online. (*Cellphone Termination Fee Cases*, 186 Cal.App.4th at 1387.) Although the petitioner did not directly challenge the manner of notice, the court still analyzed the manner and concluded that the "trial court did not abuse its direction in the manner of giving notice." (*Id.* at 1393.) "We do not look for perfection." (*Id.* at 1392.) "A large body of case law reflect[s] the view that the whole concept of a large class-action might easily be stultified by insistence upon perfection in actual notice to class-members." (*Id.* [internal quotations and citations omitted].)

Here, the Court approved notice by mail and notice by publication to notify Small Pumper Class members of the pending adjudication, the partial settlement and the settlement. (SPW-3-5, 7-8, 10, 12-13.) The Court, upon granting preliminary approval of the partial and final class action settlement for the Small Pumper Class, concluded that "[t]he dissemination of the Class Notice, as directed by this Order, constitutes the best notice practicable under the circumstances and sufficient notice to all Class Members. The contents of the Class Notice and the manner of its dissemination satisfy the requirements of Rule 3.769 of the California Rules of Court, other applicable California laws, and state and federal due process." (SPW-8 at ¶ 6, 13 at ¶ 6; Exs. 21, 22.) Each notice was published as ordered by this Court. (SPW-6, 10, 15.)

The Court, acting within its broad discretion to do so, determined the appropriate manner of notice for the Small Pumper Class members, which included notice by publication. (See *Cellphone Termination Fee Cases*, 186 Cal.App.4th at 1390, 1392-93.) Thus, notice by publication was sufficient notice to the Zamrzlas.

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5. The Zamrzlas' claims that personal service was required fail because the Zamrzlas did not opt out of the class or file notices of groundwater extraction with the State Water Board

The Zamrzlas testified and claim in their brief that the only service in this case that applied to them is personal service of process. That claim fails for several reasons. First, notice by mail and publication of the Small Pumper Class was proper notice in this case. Second, the Zamrzlas failed to opt out of the Small Pumper Class as required by the 2009 and 2013 notices. Third, The Zamrzlas failed to report their groundwater production with the State Water Board – and have still ignored their legal requirements to do so to this day.

The 2009 and 2013 class notices required the recipient to opt out of the class if they did not belong and asked the recipient to respond to the notice, so that the parties and the Court would know whether the recipient is a class member or not. The Zamrzlas neither responded to the notices nor opted out of the class. Had the Zamrzlas opted out from the Small Pumper Class, the Public Water Suppliers would have served the Zamrzlas as individual defendants, (SPW-4, 6), thus providing them the personal service of process they claim was lacking. Regardless of the Zamrzlas' claims to the contrary, notice was not defective.

The Zamrzlas also would have received service of process had they reported their groundwater production as required by state statute. California Water Code section 5001 requires that each person who extracts ground water in excess of 25 acre-feet in any year within the counties of Riverside, San Bernardino, Los Angeles and Ventura shall file with the State Water Board a Notice of Extraction and Diversion of Water that describes their annual groundwater production. (Cal. Wat. Code §5001.) The notice must state the name of the person extracting ground water, the quantity of water taken, the measurement method, the location of each water source, and a general description of the area in which the water has been used, among other facts. (Cal. Wat. Code § 5002.) The California Legislature required these reporting provisions due to a combination of "light rainfall, concentrated population, the transition of considerable areas of land from agricultural use to urban use, and a similar dependence on ground water supplies which prevails in the Counties of Riverside, San Bernardino, Los Angeles, and Ventura, together with the fact that most such underground water supplies are overdrawn." (Cal. Wat. Code § 4999.) Failure to file a groundwater

extraction notice "shall be deemed equivalent for all purposes to nonuse." (Cal. Wat. Code § 5004.)

The Zamrzlas claim they have three wells that have produced in excess of 25 acre-feet per year at various times during their ownership history. (J&P Closing Brief, 14:14-17; JL&J Closing Brief, 10:7-9.) In each year in which claimed production exceeded 25 acre-feet, the Zamrzlas were required to file a notice of extraction with the State Water Board. Yet, the Zamrzlas failed to make any of these filings. (March 15, 2023, Hearing Transcript, 182:15-183:6 [J. Zamrzla]; March 16, 2023, Hearing Transcript, 260:14-261:1 [P. Zamrzla]; March 16, 2023, Hearing Transcript, 339:10-21 [J.L. Zamrzla].) The failure to file the notice of extraction "**shall be deemed equivalent for all purposes to nonuse**" (Cal. Wat. Code §5004, emphasis added.) The Zamrzlas violated the reporting requirements and are estopped to complain about the lack of personal service. In a declaration dated August 7, 2008, and filed with the Court, Stefanie Hedlund, attorney for Public Water Suppliers Los Angeles County Waterworks District No. 40 and Rosamond Community Services District, described how the Public Water Suppliers Los Angeles County Waterworks District No. 40 and Rosamond Community Services District, obtained a compilation of the Annual Notices of Extraction for Los Angeles County from the State Water Board. (SPW-1 at ¶ 7.) Using this information, the Public Water Suppliers identified additional parties that were pumping water in the Basin but had not been served. (*Id.*) The Public Water Suppliers attempted service on all of these additional parties and successfully served the majority of them. (*Id.*) Had the Zamrzlas filed the required notices of extraction with the State Water Board, other parties in the adjudication would have been on notice of the Zamrzlas' claimed production and the Public Water Suppliers would have personally served the Zamrzlas with the complaint.

In their closing brief, Johnny and Pamella Zamrzla make another strawman argument by claiming that the Court ruled against using extraction notices and nothing in Water Code section 5001 et seq. states that a person who fails to file reports will not be served. (J&P Closing Brief, 6:9-12.) That argument misses the point. The notice, which the Zamrzlas are legally required to file and which they still have not filed today, were used to identify property owners in the Basin who claimed to be pumping in excess of 25 acre-feet and should be joined by personal service. (SPW-1, 2.) Additionally, the Court's decision with respect to the Los Angeles County Waterworks District No.

40's motion for Legal Findings on Water Code Requirements to Request Extractions of Groundwater in Los Angeles County that Johnny and Pamella Zamrzla cite in their brief, was denied **without prejudice**. (Ex. 58.)

As of their March 15 and 16, 2023, testimony, the Zamrzlas still had not filed their notices. (March 16, 2023, Hearing Transcript, 293:18-294:14.) It was not the Public Water Supplier's responsibility to guess as the Zamrzlas' water production. Rather, it was the Zamrzlas' responsibility to follow the law and report production.

6. The Zamrzlas' neighbors are not to blame for the Zamrzlas' dilatory conduct

Unable to prove that they are anything other than Small Pumper Class members who sat on their hands for 14 years, the Zamrzlas turn their attention to blaming their neighbors the Van Dams, Gene Nebeker and Grimmway Enterprises for their status. (J&P Brief, pp. 15-17.) The Zamrzlas attempt to deflect blame by arguing that their neighbors knew the Zamrzlas were not Small Pumpers, knew they were on the Small Pumper list, knew the Zamrzlas were not engaged in the litigation, and "did nothing to rectify the situation." (J&P Brief, p. 16, lines 26-28.) The audacity and arrogance of the argument is astounding, and completely eschews any sense of candor or self-responsibility. As a factual matter the Zamrzlas are Small Pumpers – a fact established by their own expert's testimony. Further, the Zamrzlas testified to routinely hiring attorneys and even have an attorney in the family with a beneficial interest in the property, but never bothered to consult an attorney about the litigation. The Zamrzlas had actual notice of the adjudication, had multiple opportunities to opt-out of the class and join the litigation, and even turned down an invitation from Gene Nebeker to join the AGWA group. The Zamrzlas cannot shift the blame to their neighbors and tenants for their inequitable dilatory conduct.

E. The Zamrzlas' Inequitable Actions And Unreasonable Delay In Challenging The Judgment Bars Equitable Relief

1. The Zamrzlas did not act in equity and thus are not entitled to equity

Even if this Court were to consider extrinsic evidence, the Zamrzlas' claim that they did not know they were subject to the adjudication until 2018 and are entitled to equitable relief fails as a

matter of fact and equity. The Zamrzlas refuse to acknowledge the truth. Johnny Zamrzla testified under cross-examination that Norm Hickling provided Johnny Zamrzla with a copy of the Judgment in 2016. (March 15, 2023, Hearing Transcript, 194:18-197:7.) The Judgment includes as Exhibit C, the Small Pumper Class Judgment and the list of known class members, including Johnny and Pamella Zamrzla. To argue, in the face of that evidence, that the Zamrzlas "never knew they were subject to the adjudication until 2018 and have acted diligently" is a false statement demonstrating a complete lack of candor to the Court in the face of undisputed facts.

"Relief on the ground of extrinsic fraud or mistake is not available to a party if that party has been given notice of an action yet fails to appear, without having been prevented from participating in the action." (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 503.) "Although the policy of the law is to favor a hearing on the merits of a case, courts are not required to set aside default judgments for defendants who flagrantly ignore the responsibility to present a defense." (*Id.* [internal quotations and citations omitted].) In *Cruz, su*pra, the trial court relied on statements in the defaulted parties' declarations, including one declarant who stated he did not receive the summons or complaint, to grant the defaulted parties relief. (*Id.* at 504.) The appellate court reversed the trial court. The appellate court noted that the declarant "does not state in his declaration that he was unaware of the lawsuit or that he had no knowledge of the summons or complaint." (*Id.*) "Instead, he simply states that he 'never received' the summons and complaint." (*Id.*) The appellate court concluded that the statement "does not establish that [the defaulted party] was unable to defend against the action because of lack of notice of the lawsuit." (*Id.*) Instead, the plaintiff satisfied his burden of proof to show that service of process was effectively made, in part, with evidence that the notice was received by someone authorized to receive mail for the defaulted party. (*Id.* at 505.) Further, the defaulted party admitted that it was aware of the requested entry of default before it was entered but offered no excuse as to why it did not try to defend the action or specially appear. (*Id.* at 506.) The appellate court concluded that the defaulted party "has not established that there was any extrinsic mistake that prevented it from defending against [plaintiff's] lawsuit." (*Id.*)

The Zamrzlas rely heavily on *Antonsen v. Pacific Container Co.* (1941) 48 Cal.App.2d 535, to assert that they are entitled to equitable relief. (J&P Closing Brief, 4-5; JL&J Closing Brief, 3-4.)

Antonsen is distinguishable and does not apply to the Zamrzlas. Unlike *Antonsen*, there was valid service in this case by mail and publication. (SPW-3-16.) Additionally, when the plaintiff in *Antonsen* discovered the judgment entered against him, he filed a motion to set aside the judgment **within one month** of his discovery – not years later like the Zamrzlas, see section IV.E.2, *infra*. (See *Antonsen*, 48 Cal.App.2d at 537.)

Here, as discussed above, section II, *supra*, the Court approved three separate notices to the Small Pumper Class and each was mailed to Johnny and Pamella Zamrzla. (SPW-3-5, 7-9, 11-14, 16.) Each notice was mailed to the names and addresses on the list of Small Pumper Class members. (Appx. Exs. 4, 7, 10.) The list included Johnny and Pamella Zamrzla and their home address for each of the three class notices. (*Id.*) Thus, each notice is presumed to "have been received in the ordinary course of mail." (See Evid. Code § 641.) The Zamrzlas' denials do not overcome that presumption. (See *id.*; *Craig*, *supra*, 84 Cal.App.4th at 419-20; *Bartholomae*, *supra*, 106 Cal.App. at 66-67.) Accordingly, the record shows that notice by mail was effective as to Johnny and Pamella Zamrzla. (See *Cruz*, 146 Cal.App.4th at 505.) Additionally, notice by publication was effective for all of the Zamrzlas, including Johnny Lee and Jeanette Zamrzla, because the Court-approved notices and dissemination were "the best notice practicable under the circumstances and sufficient notice to all Class Members." (SPW-8, 13; Exs. 21, 22.)

Further, Johnny and Pamella Zamrzla admit that they did not have any issues receiving their mail when the notices were mailed. (March 15, Hearing Transcript, 127:22-24 [J. Zamrzla]; March 16, 2023, Hearing Transcript, 254:5-10 [P. Zamrzla].) They both testified that they regularly reviewed and sorted their mail, including review of other class action notices they received. (March 15, 2023, Hearing Transcript, 125:17-127:21 [J. Zamrzla]; March 16, 2023, Hearing Transcript, 254:11-255:12 [P. Zamrzla].) Additionally, Pamella Zamrzla testified that it was possible that Johnny and Pamella Zamrzla received the notices in the mail. (March 16, 2023, Hearing Transcript, 285:28-286:26.)

Importantly, while Johnny and Pamella Zamrzla and Johnny Lee and Jeanette Zamrzla declare they never "received" the notices, their testimony shows that they were aware of the pending adjudication and its potential to affect claimed water rights. (March 15, 2023, Hearing Transcript,

194:18-197:7 [J. Zamrzla]; March 16, 2023, Hearing Transcript, 265:26-266:6 [P. Zamrzla]; March 16, 2023, Hearing Transcript, 327:3-7; 330:15-331:14; 349:6-350:24; 344:12-28 [J.L. Zamrzla].) Thus, they cannot rely on non-receipt alone to show they were unable to join the pending adjudication for lack of notice. (See *Cruz*, 146 Cal.App.4th at 504.)

In addition to failing to opt out, and failing to file the Notices of Groundwater Extraction, as detailed in section IV.D.5, *supra*, other evidence shows that the Zamrzlas have not acted in equity and are not entitled to equity.

(a) The Zamrzlas followed the "bad advice" of a neighbor litigant to ignore the adjudication but to keep pumping

Johnny Zamrzla and Johnny Lee Zamrzla both testified to conversations with Johnny Zamrzla's long-time best friend and neighbors the Van Dams about the adjudication and how that lead the Zamrzlas to decide against joining the adjudication and pursuing their claimed water rights. The Van Dams were individual parties to the adjudication but following their bad advice is no way around the Judgment.

Johnny Zamrzla testified that around 2009/2010, Del Mar Van Dam advised him to keep pumping but stay out of the adjudication. (March 15, 2023, Hearing Transcript, 77:20-78:8; 80:4-81:21;100:5-103:28; 161:26-162:8 [J. Zamrzla].) Del Mar Van Dam reiterated to Johnny Zamrzla several times over the years that the adjudication was costing a lot of money but told Johnny Zamrzla to keep doing what he was doing, "make sure you keep a record," and "I would get some water at the end of it." (March 15, 2023, Hearing Transcript, 100:5-103:28 [J. Zamrzla].) Johnny Lee Zamrzla testified to hearing the same advice from Del Mar Van Dam. Del Mar Van Dam told Johnny Lee to also keep pumping and he would get a water right in the end. (March 16, 2023, Hearing Transcript, 330:15-331:10 [J.L. Zamrzla].) Rather than relying on the advice of their neighbors and friends, the Zamrzlas had sufficient notice to have engaged a lawyer to advise them about the possible risks to their rights by not participating in the adjudication, yet they chose not to. (March 15, 2023, Hearing Transcript, 100:5-103:28 [J. Zamrzla]; March 16, 2023, Hearing Transcript, 352:2-353:25 [J.L. Zamrzla].)

/ / /

(b) AGWA member Eugene Nebeker told the Zamrzlas their claimed water rights were at stake and invited the Zamrzlas into the adjudication but they declined

Eugene Nebeker was a party to the adjudication and as detailed below, informed Johnny Zamrzla as early as 2009 that the adjudication could affect his claimed water rights. Additionally, Mr. Nebeker approached Johnny and Pamella Zamrzla about joining Mr. Nebeker's group, AGWA, represented by Michael Fife of the Brownstein firm.

In 2009, Mr. Nebeker and Johnny Zamrzla had a conversation about the adjudication and Mr. Nebeker told Johnny Zamrzla that people were going to lose their water rights as a result of adjudication:

> "Question: People are going to lose their water rights as a result of the adjudication?
>
> [J. Zamrzla] Answer: Well, now you're saying 'water rights.' They're going to lose some of their water rights. Isn't what I said earlier?
>
> Question: No. Your testimony was that Gene had told you that people were going to lose water rights as a result of this adjudication.
>
> [J. Zamrzla] Answer: I wouldn't doubt he said both, yeah."

(March 15, 2023, Hearing Transcript at p. 189:12 to 190:9.)

At some point in 2014 or 2015, Johnny and Pamella Zamrzla had a phone conversation with Eugene Nebeker in which he asked them to join the adjudication. (March 15, 2023, Hearing Transcript, 106:7-107:23 [J. Zamrzla]; March 16, 2023, Hearing Transcript, 251:26-253:16 [P. Zamrzla].) "He was discussing his group and what they were doing. And if we were interested in joining his group, that he would see if his group would allow us to join." (March 16, 2023, Hearing Transcript, 252:9-12 [P. Zamrzla].) Pamella Zamrzla testified that they declined to join Mr. Nebeker's group because "[w]e decided that it did not affect us, that we did not need to do that. And based on everything I heard, it was too late anyway. You all had us a on a list." (*Id.* at 252:17-20.)

Johnny Zamrzla testified that he knew Mr. Nebeker since the 1990s. (March 15, 2023, Hearing Transcript, 104:3-6 [J. Zamrzla].) Johnny Zamrzla also recalled the conversation with Mr. Nebeker in which he talked to Johnny and Pamella about joining the adjudication. (March 15, 2023, Hearing Transcript, 106:7-107:23 [J. Zamrzla].) "[M]y wife and I both talked to him, and I believe that was just before the adjudication, in 2014, and he said you know, if we still were interested, he

could look into it, but I said, 'You know, we don't think it affects us. We don't think we're big farmers. We think we're gonna get some allocation, and we're gonna leave it at that.' But I do know it was some time, I believe, in 2014." (March 15, 2023, Hearing Transcript, 106:7-107:23 [J. Zamrzla].)

Despite knowing that people were going to lose water rights in the adjudication as early as 2009, and then despite receiving an inquiry to join the adjudication in 2014 from the same friend who had warned them, Johnny and Pamella Zamrzla consciously declined to join and did not do anything further to investigate, protect their claimed water rights or hire legal counsel. (March 15, 2023, Hearing Transcript, 107:27-108:21 [J. Zamrzla].)

2. The Zamrzlas' unreasonably delayed in bringing their motions and are not entitled to equitable relief

"Extrinsic mistake exists when the ground for relief is not so much the fraud or other misconduct of one of the parties as it is the excusable neglect of the defaulting party to appear and present his claim or defense. [Citation.]" (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 503.) "Relief on the ground of extrinsic fraud or mistake is not available to a party if that party has been given notice of an action yet fails to appear, without having been prevented from participating in the action. [Citation.]" (*Ibid.*; see also *Pulte Homes Corp. v. Williams Mech., Inc.* (2016) 2 Cal.App.5th 267, 276 [Trial court abused its discretion in granting motion to set aside judgment where defendant delaying bringing motion for **19 months** after entry of judgment.].) Thus, one moving in equity to set aside a judgment must act diligently in making his motion after he learns of the judgment. (*Kramer v. Traditional Escrow* (2020) 56 Cal.App.5th 13, 30, 37 [Reversed trial court order granting motion to set aside default judgment where "defendants undeniably knew about this lawsuit" "simply decided not to participate" and waited **7 months** before moving to set aside default.]; *Lee v. An* (2008) 168 Cal.App.4th 558, 566 [Defendant was not entitled to equitable relief where defendant knew of the default judgment **less than one year** after its entry, when plaintiff began collection efforts, and did not move to vacate the judgment until more than two years later.]; *Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488 [Defendant's **nine month** delay was unreasonable where it admits it was aware that plaintiff was seeking entry of default and then took

action only when it faced a levy on its accounts receivable.] (*Stiles v. Wallis* (1983) 147 Cal.App.3d 1143, 1150 [Trial court abused its discretion in setting aside a default judgment where defendant waited almost **20 months** after notice of default.]; *McCreadie v. Arques* (1967) 248 Cal.App.2d 39 [Defendant's delay of **more than one year**, before seeking to set aside a default, could not be considered proper diligence.].)

Here, the evidence shows that the Zamrzlas knew of the lawsuit while it was pending, see sections II.D.E, IV.A.E., *supra*, and after it concluded, yet failed to bring their motions to set aside the judgment only until after the Court ordered them to do so in 2022. (Order regarding Zamrzla Motion, GTN 12248, March 7, 2022.)

In 2016, Johnny Zamrzla obtained a copy of the Judgment from Norm Hickling, an aide at the time to then Los Angeles County Supervisor Michael Antonovich. (March 15, 2023, Hearing Transcript, 194:18-197:7.) In July 2018, the Zamrzlas admit to receiving an enforcement letter from the Watermaster and shortly after retained counsel. (March 15, 2023, Hearing Transcript, 136:5-18 [J. Zamrzla]; March 16, 2023, Hearing Transcript, 263:26-264:5 [P. Zamrzla]; March 16, 2023, Hearing Transcript, 329:4-330:1 [J.L. Zamrzla].) In October and November 2018, this Court decided similar motions as to Long Valley and despite the similarities, the Zamrzlas did not bring their motions to set aside the judgment. (SPW-17-28.) When the Watermaster filed its motion for monetary, declaratory and injunctive relief against the Zamrzlas, they still did not bring their motions. (GTN 12095.) It was not until this Court ordered the Zamrzlas to bring their motions in March 2022 – 7 years after the Judgment in this case was entered, 13 years after Johnny Zamrzla received a copy of the Judgment, and 4 years after the Zamrzlas' calculated admission that they first knew they were "subject to the adjudication" or "subject to the groundwater adjudication." (J&P Closing Brief, 1:5; JL&J Closing Brief, 1:20.) That kind of unreasonable delay does not warrant or deserve equity and their claims for such should be denied.

V. CONCLUSION

There is no basis in law to set aside or modify the Judgment. Johnny and Pamela are known Small Pumper Class members listed on Exhibit A to the Judgment Approving the Small Pumper Class Action Settlements, who the Court determined were given adequate notice, and who, by their

own evidence, pumped less than 25 acre-feet in many years between 1946 and 2015. Johnny Lee and Jeanette are unknown small pumpers who in many years pumped less than 25 acre-feet of water from their land and are therefore Small Pumper Class members. The Zamrzlas made a calculated and deliberate effort to avoid the adjudication until confronted by the Watermaster. Nothing about their conduct is equitable. Allowing these small pumpers to relitigate their rights seven years after the judgment was entered, and 14 years after they knew about the adjudication would undermine the entire Small Pumper Class Settlement, and by extension the Court's jurisdiction over the United States under the McCarren Amendment.

There is no basis to set aside the Judgment for fraud or mistake, and the Judgment cannot be set aside for extreme dilatory negligence and lack of candor. The Zamrzlas knew about the adjudication and its potential to affect their claimed water rights as early as 2009, switched to water intensive alfalfa and pasture crops in 2010, began performing random well efficiency testing in 2014, were invited to join the AGWA group in 2014, were provided a copy of the Judgment in 2016, and claim to have never once consulted an attorney, even their own daughter. They were caught over-producing by the Watermaster in 2018 and waited until 2022 to move to set aside the Judgment. Instead of acknowledging their poor decisions and dilatory conduct, the Zamrzlas blame their neighbors. The Zamrzlas' extreme delay has worked an injustice on all those parties who timely and at great expense appeared and litigated their rights. There is simply no justification to open up the Judgment and allow the Zamrzlas and those similarly situated a second opportunity to relitigate their claimed water rights. The motions should be denied.

This Court should deny the Zamrzlas' motions.

DATED: May 12, 2023

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PROOF OF SERVICE

Antelope Valley Groundwater Cases
Case No. Judicial Council Coordination Proceeding No. JCCP4408
Los Angeles Superior Court Case No. BC 325201

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 1331 Garden Hwy, 2nd Floor, Sacramento, CA 95833.

On May 12, 2023, I served true copies of the following document(s) described as **SETTLING PARTIES' CLOSING BRIEF RE THE ZAMRZLAS' MOTIONS TO SET ASIDE OR MODIFY THE JUDGMENT** on the interested parties in this action as follows:

BY E-MAIL OR ELECTRONIC TRANSMISSION: By submitting an electronic version of the document(s) to the parties, through the user interface at 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 May 12, 2023, at Sacramento, California.

Sherry Ramirez