

TABLE OF APPENDICES

APPENDIX A

Order of the California Court of Appeal
(January 13, 2026).....App.1

APPENDIX B

Opinion of the California Court of Appeal
(December 15, 2025).....App.3

APPENDIX C

Order of the Superior Court of California
(June 9, 2023)App.26

APPENDIX D

Judgment (Small Pumper class action) of the
Superior Court of California
(December 23, 2015).....App.50

APPENDIX E

Judgment of the Superior Court of California
(December 23, 2015).....App.59

APPENDIX F

Order of the Supreme Court of California
(March 18, 2026).....App.71

APPENDIX G

Excerpts of petitioners' opening brief in the
California Court of Appeal
(July 8, 2024)App.73

APPENDIX H

Excerpts of petitioners' reply brief in the
California Court of Appeal
(August 20, 2025)App.98

APPENDIX I

Petitioners' petition for rehearing to the
California Court of Appeal
(December 30, 2025)App.125

APPENDIX J

Petitioners' petition for review to the
California Supreme Court
(January 23, 2026).....App.137

APPENDIX K

Petitioners' reply to answers to petition for
review to the California Supreme Court
(February 23, 2026)App.160

APPENDIX L

Excerpts of petitioners Johnny and Pamela
Zamrzla’s memorandum in support of motion
in the Superior Court of California
(April 11, 2022)App.174

APPENDIX M

Excerpts of petitioners Johnny Lee and
Jeanette Zamrzla’s memorandum in support
of motion in the Superior Court of California
(April 11, 2022)App.196

APPENDIX N

Excerpts of petitioners Johnny and Pamela
Zamrzla’s closing brief in the Superior Court
of California
(April 14, 2023)App.214

APPENDIX O

Excerpts of petitioners Johnny Lee and
Jeanette Zamrzla’s closing brief in the
Superior Court of California
(April 14, 2023)App.228

APPENDIX P

Excerpts of petitioners Johnny and Pamela
Zamrzla’s closing reply brief in the Superior
Court of California
(May 26, 2023)App.238

APPENDIX Q

Class notice in the Small Pumper class action
(2009)App.242

APPENDIX R

Class notice in the Small Pumper class action
(2013)App.249

APPENDIX S

Class notice in the Small Pumper class action
(2015)App.262

App.1

APPENDIX A

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA SECOND APPELLATE DISTRICT
DIVISION 1

ANTELOPE VALLEY WATERMASTER et al.,

Plaintiffs and Respondents,

v.

JOHNNY LEE ZAMRZLA et al.,

Defendants and Appellants.

B331148

Los Angeles County Super. Ct. No. BC325201,
JCCP4408

COURT OF APPEAL – SECOND DIST.

Filed: January 13, 2026

Eva McClintock, Clerk

Jlozano, Deputy Clerk

ORDER

App.2

THE COURT:

Petition for rehearing is denied.

s/ Frances Rothschild

ROTHSCHILD, P. J.

s/ Helen I. Bendix

BENDIX, J.

s/ Gregory J. Weingart

WEINGART, J.

App.3

APPENDIX B

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA SECOND APPELLATE DISTRICT
DIVISION ONE

ANTELOPE VALLEY WATERMASTER et al.,

Plaintiffs and Respondents,

v.

JOHNNY ZAMRZLA et al.,

Defendants and Appellants.

B331148

(Los Angeles County Super. Ct. Nos. BC325201,
JCCP4408)

COURT OF APPEAL – SECOND DIST.

Filed: December 15, 2025

Eva McClintock, Clerk

Angelica Lopez, Deputy Clerk

OPINION

App.4

Appeal from an order of the Superior Court of Los Angeles County, Jack Komar, Judge. Affirmed.

Atkinson, Andelson, Loya, Ruud & Romo, Mae G. Alberto, Daniel Hargis; Miliband Water Law, Wesley A. Miliband; and Sheri Lynn Zamrzla-Greco for Defendants and Appellants Johnny Zamrzla, Pamella Zamrzla, Johnny Lee Zamrzla and Jeannette Zamrzla.

Price, Postel & Parma, Craig A. Parton and Timothy E. Metzinger for Plaintiff and Respondent Antelope Valley Watermaster.

Kronick, Moskovitz, Tiedemann & Girard, Eric N. Robinson, Stanley C. Powell, Alec D. Tyra; Hydee Feldstein Soto, Los Angeles City Attorney, Nargis Choudhry, Deputy City Attorney; Benjamin Chapman, General Counsel of Los Angeles Department of Water and Power; and Brian C. Ostler, General Counsel of Los Angeles World Airports for Plaintiffs and Respondents City of Los Angeles and Los Angeles World Airports.

Fennemore, Derek Hoffman and Darien Key for Plaintiffs and Respondents Antelope Valley United Mutuals Group members: Antelope Park Mutual Water Company, Aqua-J Mutual Water Company, Averydale Mutual Water Company, Baxter Mutual Water Company, Bleich Flat Mutual Water Company, Colorado Mutual Water Co., El Dorado Mutual Water Company, Evergreen Mutual Water Company, Landale Mutual Water Co., Shadow Acres Mutual Water Company, Sundale Mutual Water Company, Sunnyside Farms Mutual Water Company, Inc., Tierra Bonita Mutual Water Company, West Side Park Mutual Water Co., White Fence Farms Mutual Water Co.; Adams-Bennett Investments,

App.5

LLC; Saint Andrew's Abbey, Inc.; Robertson's Ready Mix, Ltd.; and SCI California Funeral Services, Inc.

Venable, William M. Sloan and Michael Gluk for Plaintiff and Respondent U.S. Borax, Inc.

Climate Edge Law Group and Christopher M. Sanders for Plaintiff and Respondent Los Angeles County Sanitation Districts No. 14 and No. 20.

Best Best & Krieger and Jeffrey V. Dunn for Plaintiff and Respondent Los Angeles County Waterworks District No. 40.

Lagerlof and Thomas S. Bunn III for Plaintiff and Respondent Palmdale Water District.

In 2015, after more than 15 years of litigation, the court entered a judgment that comprehensively adjudicated the diverse, competing claims of thousands of individuals and entities to water in the Antelope Valley Groundwater Basin (the Basin), an underground aquifer in northern Los Angeles County and southern Kern County. The judgment imposed substantial water reductions on all parties and created a five-member Antelope Valley Watermaster board (the Watermaster). The judgment, *inter alia*, defined the rights and obligations of a "Small Pumper Class," to each member of which it allotted three acre-feet of Basin water per year. The judgment empowered the Watermaster to levy assessments against producers who drew more than their allotment.

In 2018, the Watermaster levied assessments against Small Pumper Class members Johnny and Pamella Zamrzla and Johnny Lee and Jeannette

Zamrzla, which they refused to pay.¹ In 2021, the Watermaster filed a motion in the superior court to enforce the assessments. The Zamrzlas opposed the motion, contending the judgment violated their due process rights because they had no notice of it, and they were not members of the Small Pumper Class. In 2022, the court denied them relief but suggested they file motions in equity to modify the judgment, which they did. Ultimately, the court denied those motions, from which the Zamrzlas now appeal.

On appeal, the Zamrzlas contend the court (1) violated due process by binding them to a judgment of which they had no actual or constructive notice, (2) failed to recognize they did not qualify for the Small Pumper Class, (3) applied an incorrect standard in declining to grant them equitable relief, and (4) otherwise failed properly to rule on their motions. We disagree and affirm.

BACKGROUND

A. Adjudication and Judgment

We relate only the germane facts of this comprehensive litigation. A more detailed picture may be found in *Antelope Valley Groundwater Cases* (2020) 59 Cal.App.5th 241 (*Antelope I*), *Antelope Valley Groundwater Cases* (2021) 62 Cal.App.5th 992 (*Antelope II*), and *Antelope Valley Groundwater Cases*

¹ Because appellants share the same surname, we will refer to them individually by their first names and collectively as the Zamrzlas. Johnny and Pamella have died. We granted an unopposed motion to substitute Sheri Lynn Zamrzla-Greco, Trustee of the Johnny and Pamella Zamrzla 1999 Family Trust—Credit Shelter Trust—Trust C, in place of Johnny and Pamella Zamrzla.

(2021) 63 Cal.App.5th 17 (*Antelope III*).

1. *Inception and Organization*

The litigation began in 1999 to determine the production rights of all water users in the “Antelope Valley Adjudication Area” (AVAA), a desert area of over a thousand square miles inhabited by over 450,000 people, a number of agricultural, industrial and mining operations, and Edwards Air Force Base. Water levels in the aquifer underlying the AVAA had been declining for decades due to withdrawals exceeding the available recharge.

After the Judicial Council coordinated several production rights lawsuits, the court consolidated most of them and approved the Small Pumper Class, which included any property owners who pumped “less than 25 acre-feet per year on their property during any year from 1946 to the present.” (Capitalization omitted.) After opt-outs, the Small Pumper Class represented owners of over 3,000 parcels. (*Antelope Valley II, supra*, 62 Cal.App.5th at pp. 1004–1005.)

The court separately adjudicated the overlying rights of larger, non-class water producers and approved a class for non-producers.²

2. *Notices*

Beginning in 2005, the court approved several rounds of service by mail and publication on the thousands of water producers in the AVAA, as well as

² “In a comprehensive adjudication . . . , the court may determine all groundwater rights of a basin, whether based on appropriation, overlying right, or other basis of right.” (Code Civ. Proc., § 834, subd. (a).)

personal service on landowners who owned at least 100 acres and those who had filed annual groundwater extraction notices with the Water Resources Control Board.

In 2009, 2013, and 2015, the court authorized service on the Small Pumper Class by mail, and by publication in the *Antelope Valley Press*, *Los Angeles Times*, and *Bakersfield Californian*. The court found that such notice satisfied both due process and the California Rules of Court and constituted the best notice practicable.

The 2009 and 2013 notices misidentified the class. Under the class definition, an owner who pumped less than 25 acre-feet in any one year since 1946 fell within the Small Pumper Class, whereas both the 2009 and 2013 notices *excluded* from the Small Pumper Class anyone who pumped 25 acre-feet or more in any one year since 1946.

The 2015 notice apprised class members of a proposed global settlement. It summarized the terms of the settlement and informed landowners they could object by filing a notice of intent to appear at a hearing on August 3, 2015. The notice correctly described the class as “landowners . . . who are pumping or have pumped less than 25 acre-feet of groundwater during any year from 1946 to the present,” and stated the recipient could not opt out of the class but could object to the proposed settlement.

3. Trial

The matter went to trial in several phases. The court identified the native safe yield for the AVAA Basin, found that the various stakeholders withdrew much more than the safe yield, and found that a physical solution was necessary to allocate and limit

water production to protect the Basin for existing and future users.³

4. Judgment

In 2014, most parties stipulated to a global settlement of their respective claims and agreed on the contours of a physical solution. The court scheduled individual trials for non-stipulating parties. (*Antelope Valley II*, *supra*, 62 Cal.App.5th at p. 1013.)

On December 23, 2015, the court entered a judgment adopting the proposed physical solution. The judgment bound “all persons having or claiming any right, title or interest to the groundwater within the Basin,” including all water-producing landowners, public water suppliers, and non-producer and Small Pumper Class members. (Capitalization omitted.)

The judgment defined the Small Pumper Class as persons who owned real property within the AVAA and had pumped less than 25 acre-feet per year on that property in any year since 1946.

Production rights were identified discretely as to each parcel. The judgment provided that two or more Small Pumper Class members residing in the same household must be treated as a single class member.

The judgment defined as “unknown” Small Pumper Class members those persons who produced less than 25 acre-feet per year in any one year since

³ A “physical solution” is a resolution of conflicting claims in a manner that advances reasonable and beneficial use of the state’s water supply. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 288; *California American Water v. City of Seaside* (2010) 183 Cal.App.4th 471, 480.)

1946 who had not yet been identified.

a. *Physical Solution*

The physical solution: (1) required water producers to severely reduce production; (2) allocated available water supplies among the competing overlying landholders; and (3) created an overarching water management plan. It allocated 3,806.4 acre-feet per year to the Small Pumper Class, which came out to three acre-feet per parcel, and the remaining native safe yield, totaling 58,322.23 acre-feet per year, to the other producers. The judgment provided that pumpers who exceeded their allotment must pay for replacement water. (*Antelope II*, *supra*, 62 Cal.App.5th at pp. 1012, 1014–1015.)

b. *Watermaster*

The judgment created the five-member Watermaster board and authorized it to levy water replacement assessments against those who exceeded their allotment. (*Antelope II*, *supra*, 62 Cal.App.5th at pp. 1014–1015, 1017, 1046.)

The judgment authorized the Watermaster to reevaluate the native safe yield periodically and recommend to the court that the yield be revised. If the court approved the revision, it could impose a pro-rata increase or decrease in water production on all participants.

The judgment created a procedure by which a non-stipulating party could claim and prove to the court the right to produce water from the Basin, subject to the requirement to pay assessments.

The judgment stated that any owner not party to the judgment who proposed to produce groundwater from the Basin must become a party

through a noticed motion to intervene in the judgment.

B. Water Replacement Assessments on the Zamrzlas

Johnny and Pamella Zamrzla owned two 40-acre, water-producing parcels in the AVAA, purchased in 1970 and 1986, on which they operated a “farm” well and a “domestic” well, respectively, and a third 40-acre parcel that produced no water. Johnny and Pamella’s son, Johnny Lee Zamrzla, and his wife, Jeannette, owned a 10-acre parcel in the AVAA, purchased in 2008, on which they operated a “pasture” well. The Zamrzlas used their parcels for farming and produced more than 25 acre-feet of groundwater on each parcel in some years but less in other years.

In January 2018, the Watermaster invoiced the Zamrzlas for replacement water at a rate of \$415 per acre-foot.

In September 2021, the Watermaster filed a motion in the superior court to enforce the assessments, seeking \$28,755.35 from Johnny and Pamella and \$6,415.90 from Johnny Lee and Jeannette, plus interest and attorney fees. The court invited the parties to resolve the dispute informally but after they failed to do so, in March 2022 advised the Zamrzlas to file a motion in equity to modify the judgment.

C. Motions to Modify the Judgment

In April 2022, the Zamrzlas filed motions to modify or set aside the judgment, contending (1) they were entitled to but never received personal service of the class litigation, and never received actual or constructive notice by mail or publication; (2) the class notices were defective; (3) they did not fall within the

class definition because they pumped more than 25 acre-feet per year, and (4) the court should exercise its equitable power to set aside or modify the judgment, which was obtained through fraud, mistake or accident. On these bases, the Zamrzlas requested they be removed from the Small Pumper Class.

In March 2023, after a two-day hearing, the court denied the motions.

1. *Class Definition*

The threshold question at the hearing was whether the Zamrzlas met the Small Pumper Class definition by producing less than 25 acre-feet of water on each of their parcels during at least one year. The evidence showed they did:

a. *Johnny and Pamella's Farm Well*

Johnny and Pamella testified that dating back to their purchase of a 40-acre parcel in 1970, they produced in “the low three hundreds” of acre-feet per year from their farm well on the parcel, as roughly one acre-foot of water was required per acre, per harvest, and they were growing six or seven harvests each year. They offered records confirming that the farm well produced roughly 300 acre-feet per year from 2001 to 2008 and 2010 to 2017, but produced nothing in 2009, when they shut down the well while reconfiguring the irrigation system, nor 2018, when they shut it down for repairs and upgrades. Johnny testified he would not have shut down the farm well had he known that by doing so he would lose water rights.

b. *Johnny and Pamella's Domestic Well*

Johnny and Pamella produced more than 25 acre-feet from their domestic well in 2007 to 2013 and 2015 to 2018 but less in 2001 to 2006 and in 2014.

c. *Johnny Lee and Jeannette's Pasture Well*

Johnny Lee and Jeannette submitted records and testimony showing they produced more than 25 acre-feet of water from their pasture well in 2009, 2010, 2011, 2013 and 2015, but less in 2008, 2012, and 2014.

d. *Summary*

In sum, Johnny and Pamella produced less than 25 acre-feet of water from their farm well in 2009 and 2018, and from their domestic well in 2001 to 2006 and in 2014. Johnny Lee and Jeannette produced less than 25 acre-feet of water from their pasture well in 2008, 2012, and 2014.

The court concluded that because the Zamrzlas produced less than 25 acre-feet on each parcel in some years, they were Small Pumper Class members as to each of their three parcels.

2. *Notice of the Class Action*

Johnny and Pamella argued they must be removed from the Small Pumper Class because service on them only by mail and publication violated a 2005 court order requiring personal service on anyone owning at least 100 acres. Respondents did not dispute that the court had ordered personal service on larger landowners who, like Johnny and Pamella, owned at least 100 acres.

a. *Notice by Mail*

The court admitted declarations submitted in

the original proceedings by individuals involved in mailing the 2009, 2013 and 2015 notices to the Small Pumper Class:

In 2009, Kevin Berg, an officer of PrintCom, Inc. dba Minuteman Press — Panorama City, which was retained to mail the 2009 notice, declared that under his direction, Minuteman Press mailed the notice to Johnny and Pamella. Also in 2009, Jeffrey Dunn, counsel to one of the parties, declared that he was informed and believed that a third-party vendor mailed the 2009 notice to Johnny and Pamella. The Zamrzlas objected to the Berg and Dunn declarations as inadmissible hearsay. The court never ruled on the objections.

In 2013 and 2015, Jennifer Keough, an officer of Garden City Group, which administered the class action, declared that Garden City Group mailed the 2013 and 2015 notices to the Small Pumper Class. The latter notice was mailed on April 3, 2015. The Zamrzlas did not object to these declarations.

b. Notice by Publication

The court admitted the 2013 and 2015 declarations of Michael D. McLachlan, a counsel in the coordinated proceedings who stated that he caused the 2013 and 2015 notices to be published in the *Bakersfield Californian*, *Antelope Valley Press*, and *Los Angeles Times* in 2013 and 2015. McLachlan attached declarations from the clerks of those publications certifying that the notices were published. The 2015 notice was published on April 12 and 19, 2015. The Zamrzlas did not object to admissibility of the McLachlan declarations or deny that the notices were published.

c. Findings on Notice

The court found that Johnny and Pamela would have been served personally had they filed annual extraction notices with the Water Resources Control Board as required by the Water Code, as those notices were used to identify who was entitled to personal service.⁴ Because they were not so identified, the court found, personal service was not required.

The court noted that the “Small Pumper Class list was inevitably imperfect in that it was impractical to capture the names and addresses of every party in the Basin that qualified as a Small Pumper Class member prior to entry of judgment.” Nonetheless, the court found that service by mail and publication satisfied due process.

3. Equity

The Zamrzlas contended that because they never received actual notice of the coordinated proceedings and acted diligently once apprised of the 2015 judgment, they were entitled to relief from the judgment due to fraud, mistake or accident.

Johnny, Pamela and Johnny Lee admitted that acquaintances informed them about the coordinated proceedings before and immediately after the judgment was entered. Johnny testified that Delmar Van Dam, who participated in the original litigation,

⁴ Water Code section 5001 obligates anyone who produces more than 25 acre-feet of water per year to report the extraction to the Water Resources Control Board. The parties in the coordinated proceedings used extraction reports to identify larger water producers. Despite admittedly producing more than 25 acre-feet per year in the years leading up to 2005, the Zamrzlas never filed an extraction report.

told him on repeated occasions prior to 2014 that the proceedings were only for big farmers, it would be costly for them to become involved, and they “would get some water at the end” even without participating. Eugene Nebeker, another party, invited Johnny to join the Antelope Valley Groundwater Association coalition of parties to the coordinated proceedings, but he declined.

Johnny and Pamela testified that in early 2016, Norm Hickling, an aide to Los Angeles County Supervisor Mike Antonovich, gave them a copy of the 2015 judgment, which included a list of known class members, including themselves. They did not see or read the judgment, which came in “a stack of papers.”

Johnny Lee testified that he also spoke with Van Dam prior to 2014 about the coordinated proceedings and knew that groundwater pumping cutbacks would affect the Zamrzlas. In 2014, Johnny Lee spoke with Van Dam’s sons—Nick, Gary and Craig Van Dam—about the proposed reductions in groundwater production. Nick Van Dam told him that Delmar Van Dam had given Johnny “bad advice” about the Zamrzlas’ water rights.

The court found that the Zamrzlas’ admissions established they knew or could have known about the coordinated proceedings and their status as class members but did not timely opt out, object or otherwise assert their rights, which was detrimental to the Watermaster, the parties, and the health of the Basin. The court therefore declined to exercise its equitable power to modify the judgment.

D. Ruling

The court issued an order denying the Zamrzlas’ motions to modify or set aside the 2015

judgment.

The Zamrzlas appealed.

DISCUSSION

The Zamrzlas contend the court denied them due process by subjecting them to a judgment of which they had no actual or legally adequate notice, and in any case, they were entitled in equity to be excluded from the Small Pumper Class. They ask that the portion of the judgment which includes them be modified or vacated, enabling them to establish their water rights in further proceedings.

A. Standards of Review

We review for abuse of discretion the trial court's manner of giving class notice but review the adequacy of the content of the notice de novo. (*Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 745.) We also review de novo whether the trial court's rulings were based on improper criteria or incorrect legal assumptions. (*Ibid.*) We review for abuse of discretion the trial court's denial of a motion in equity to modify or vacate the judgment. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981.)

B. Due Process Notice Principles

Due process requires notice reasonably calculated under the circumstances to apprise interested parties of the pendency of an action and afford them an opportunity to respond. (*Traverso v. People ex rel. Dept. of Transportation* (1993) 6 Cal.4th 1152, 1169–1170.)

Actual receipt of notice is not required for a

judgment to be binding. (See *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 981 (*Noel*) [“due process does not dictate that certification of a putative plaintiff class invariably must depend on all absent class members being sent (much less receiving) individual notice of the action”]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 270); *Home Sav. & Loan Assn. v. Superior Court* (1974) 42 Cal.App.3d 1006, 1012 [“members of the class must receive ‘the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort’ “—not actual notice]; Cal. Rules of Court, rule 3.766(f); Fed. Rules Civ.Proc., rule 23(c)(2)(B), 28 U.S.C. [class members are entitled to “the best notice that is practicable under the circumstances”].)

“Instead, the law adopts a more nuanced and pragmatic approach, consistent with the general principle that when an important judicial mechanism for advancing the social good is involved, ‘[a] construction of the Due Process Clause which would place impossible or impractical obstacles in the way could not be justified.’ “ (*Noel, supra*, 7 Cal.5th at p. 981.)

A lower court “in a class action ‘ “has virtually complete discretion as to the manner of giving notice to class members.” [Citation.]’ ” (*Martorana v. Marlin & Saltzman* (2009) 175 Cal.App.4th 685, 695.) “If personal notification is unreasonably expensive . . . or if it appears that all members of the class cannot be notified personally, the court may order a means of notice reasonably calculated to apprise the class members of the pendency of the action—for example,

publication in a newspaper or magazine.” (California Rules of Court, rule 3.766(f).)

C. The 2015 Notice Satisfied Due Process

In the coordinated proceedings, the court found that given the size of the class and difficulty in identifying and locating its members, dissemination of the 2015 notice by mail and publication constituted the best notice practicable under the circumstances. The court thereupon ordered that the notice be mailed to known Small Pumper Class members and published in the *Antelope Valley Press*, *Los Angeles Times*, and *Bakersfield Californian*.

At the hearing in these proceedings, the court admitted without objection the declarations of Jennifer Keough, who stated the 2015 notice was mailed to class members, and Michael McLachlan, who stated the notice was published in the three periodicals.⁵ This evidence supports that the 2015 notice was duly served on all of the Zamrzlas by publication and on Johnny and Pamela by mail.

Given the large size of the class and the difficulty in identifying and locating its members, the court acted well within its discretion in determining that personal service on all class members, if possible at all, would have been unreasonably expensive, and that service by mail and publication was the best notice practicable under the circumstances. (*Noel, supra*, 7 Cal.5th at p. 982 [“[o]ur case law has adopted a similarly practical approach, in which the

⁵ The Zamrzlas object to McLachlan’s declaration for the first time in their reply brief on appeal, but they forfeited the objection by failing to raise it below. (*Romero v. Shih* (2024) 15 Cal.5th 680, 704.)

circumstances of each case determine what forms of notice will adequately address due process concerns”].)

1. Due Process Did Not Necessitate Personal Service on Johnny and Pamela

Johnny and Pamela argue that because they owned over 100 acres, they were entitled to personal service under the court’s order that all large landowners be personally served. They argue that failure to comply with this order violated due process. We disagree.

Assuming *arguendo* that the court ordered such service, the Zamrzlas have cited no authority, nor have we found any, that holds that *due process* necessitated the order, nor that the court’s later decision not to insist on personal service violated due process.

2. The Zamrzlas’ Due Process Objection to the 2009 and 2013 Notices Is Untimely

The Zamrzlas argue that assuming they were given constructive notice by mail and publication in 2009 and 2013, those notices violated due process by incorrectly excluding from the Small Pumper Class any owner who produced more than 25 acre-feet in any year since 1946. This description, they claim, would have led them to believe they were not part of the class, and if they had been accurately informed of their potential status they would have opted out in time.

Assuming this is true, the objection is untimely.

The time to object to the proposed global settlement was by August 3, 2015, when the court

held a hearing on the settlement. The time to appeal from the judgment was 60 days from entry of the judgment on December 23, 2015. (Cal. Rules of Court, rule 8.308.) Even if the Zamrzlas were not subject to these time limits, waiting six years from the time of judgment was too long.

Assertion of a constitutional right is subject to a reasonable limitations period. (*Muller v. Muller* (1960) 179 Cal.App.2d 815, 819.) Whether a delay in asserting one's due process rights is reasonable must be determined in light of the applicable circumstances, including prejudice to other parties resulting from the delay. (See *Miller v. Eisenhower Medical Center* (1980) 27 Cal.3d 614, 624.) A procedural due process claim accrues when the claimant is given final actual or constructive notice that he or she will receive no further process. (See *Hoesterey v. City of Cathedral City* (9th Cir. 1991) 945 F.2d 317, 320; *Knox v. Davis* (9th Cir. 2001) 260 F.3d 1009, 1013.)

Here, the Zamrzlas were afforded constructive notice of the litigation no later than April 2015, when notice of the proposed settlement—with the correct class definition—was served on them by mail and publication. The notice informed them they would receive no further process after August 3, 2015, when the court held a hearing on the settlement. The Zamrzlas neither attended the hearing nor appealed from the judgment entered on December 23, 2015. Instead, they waited almost six years, until late 2021, to assert their rights before the court.

While the Zamrzlas waited, the Watermaster administered a comprehensive solution that accounted for all of the Basin's water, sharply curtailing the production rights of thousands of

individuals and class members. Any producers using more than their allotment were subject to water replacement assessments, and anyone seeking expanded rights had to apply to the Watermaster in accordance with the judgment. To permit the Zamrzlas to retroactively undermine the physical solution would negatively impact the other producers in the AVAA, who for years have structured their activities in accordance with the 2015 judgment. Considering this impact, the Zamrzlas' six-year delay in asserting their rights was unreasonable.

D. The Class Definition Is Unambiguous

The Zamrzlas contend for the first time on appeal that they are not members of the Small Pumper Class because even absent the faulty class definition found in the 2009 and 2013 notices, the certified class definition is itself ambiguous in that it could include both landowners who pumped less than 25 acre-feet in *any* year since 1946 and those who pumped less than 25 acre-feet in *each* year since 1946. This is so, they argue, because "25 acre-feet *per* year" means 25 acre-feet each year. They argue the latter interpretation would exclude them. We disagree.

Under the certified definition, Small Pumper Class members include landowners "that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present." Standing alone, the phrase "25 acre-feet per year" does mean 25 acre-feet each year, as the Zamrzlas suggest. But here, "25 acre-feet per year" is modified by the adverbial phrase "during any year from 1946 to the present," making it clear that "25 acre-feet per year" means 25 acre-feet over the course of any one year.

E. The Court Properly Declined to Exercise Its Equitable Power

The Zamrzlas argue that even if constructive notice satisfied due process, equity obligated the court to modify the judgment as to them because they received no actual notice and their empirical water production entitled them to be excluded from the Small Pumper Class. We disagree.

A court has inherent equitable power to set aside a judgment on the ground of extrinsic fraud or mistake. (*Olivera v. Grace* (1942) 19 Cal.2d 570, 576–578.) But a court of equity will not interfere with a final judgment unless “‘there had been no negligence, laches, or other fault on [the objector’s] part.’” (*Id.* at p. 575.)

Here, Johnny, Pamella and Johnny Lee admitted they knew about the coordinated proceedings as early as 2009, were advised by a friend to take no part in it, and were invited by another friend to join a coalition of parties. Johnny admitted he was given a copy of the judgment by an aide to Supervisor Antonovich soon after it was issued. Despite their actual and constructive knowledge of the proceedings, the Zamrzlas waited until late 2021, more than three years after the Watermaster’s January 2018 assessment and almost six years after the judgment, to assert their rights before the court, and did so only after the Watermaster invoiced them for producing more than the judgment allotted.

Under these circumstances, the court could reasonably conclude the Zamrzlas were negligent in preserving their rights and could thereupon deny them equitable relief.

Nor do the equities favor the Zamrzlas otherwise. We acknowledge that had Johnny and

Pamella participated in the litigation, they might have been granted an overlying production right as to their farm well, which produced more than 25 acre-feet of water for nearly 50 years, excepting only two years when the well was down for renovations. But as discussed above, the AVAA aquifer had been overdrafted for decades before the current litigation commenced, causing significant long-term damage.

The court's solution was comprehensive and essentially zero-sum, allotting the Basin's finite supply of water to thousands of individuals and class members who were required to reduce their usage severely. Any later adjustment allotting more water to one party would necessarily involve allotting less to another or the Watermaster importing water from outside the Basin.

Given these circumstances it was well within the court's discretion to deny equitable relief.

F. No Statement of Decision Was Required

The Zamrzlas argue that the court erred by failing to issue a statement of decision pursuant to Code of Civil Procedure section 632 and California Rules of Court, rule 3.1590(a), which require such a statement after trial of a question of fact. We disagree because, as the Zamrzlas acknowledge, a statement of decision is not required after a ruling on a motion. (*In re Marriage of Fong* (2011) 193 Cal.App.4th 278, 294.)

DISPOSITION

The court's order is affirmed. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED

App.25

s/ Frances Rothschild
ROTHSCHILD, P. J.

We concur.

s/ Helen I. Bendix
BENDIX, J.

s/ Gregory J. Weingart
WEINGART, J.

APPENDIX C

**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

**ORDER DENYING THE ZAMRZLAS' MOTIONS
TO SET ASIDE OR MODIFY JUDGMENT**

App.27

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

I. INTRODUCTION

On April 11, 2022, Johnny and Pamela Zamrzla and Johnny Lee and Jeanette Zamrzla each filed Motions to Set Aside or Modify the Judgment and Physical Solution (“Judgment”) entered in this case on December 28, 2015, on the grounds that (1) the Zamrzlas never received personal service of the Antelope Valley Groundwater litigation, (2) the 2009 Small Pumper Class Notice was defective, (3) the Zamrzlas are not, by definition, Small Pumper Class members, and (4) the Court has the inherent power in equity to set aside or modify the Judgment. The Zamrzlas requested an in-person evidentiary hearing on their motions, which are contested by several parties to the Judgment, including the City of Los Angeles and Los Angeles World Airports, Grimmway Enterprises, Palmdale Water District, County Sanitation Districts of Los Angeles County Nos. 14 and 20 (collectively, “Settling Parties”) and by the Antelope Valley Watermaster (“Watermaster”).

Following an opportunity for discovery the motions were fully briefed by the parties and set for hearing on December 13, 2022. At the December 13, 2022, hearing, the Court requested live testimony to help resolve certain factual issues. Thereafter, the parties submitted a Stipulation and proposed order setting the hearing on the motions for March 15 and 16, 2023, and limited the scope of the issues to (1) whether the Zamrzlas are bound by the Judgment, (2) whether the Zamrzlas had notice of the adjudication, (3) whether the Zamrzlas are members of the Small Pumper Class, and (4) whether the Zamrzlas are entitled to equitable relief from the Judgment. The parties stipulated to reserve for later hearing, if necessary, issues relating to: (1) the quantity of water

the Zamrzlas may be allowed to produce from the Antelope Valley Groundwater Basin (“Basin”), and (2) the Watermaster motion to recover unpaid assessments and penalties. The Court entered the Stipulation as an Order on February 17, 2023.

The Zamrzlas’ motions came on for evidentiary hearing before this Court on March 15 and 16, 2023. The Zamrzlas were represented by Nicholas R. Shepard and Sherry Lynn Zamrzla-Greco. Craig A. Parton appeared for the Watermaster, Jenifer N. Ryan appeared for the City of Los Angeles and Los Angeles World Airports, Robert G. Kuhs appeared for Grimmway Enterprises, and numerous parties attended the proceeding via remote video conference.

The Court heard live testimony from Johnny Zamrzla, Pamella Zamrzla, their son Johnny Lee Zamrzla, and Johnny Lee’s wife, Jeanette Zamrzla. The Court received documentary evidence as reflected in the record and testimony by way of declaration from: Jeffrey Dunn of Best, Best & Krieger; Michael McLachlan, Small Pumper Class counsel; Rick Koch of Southern California Edison; and also took judicial notice of many records on file in this proceeding. Following the close of evidence the Court received extensive post-trial briefing from all parties.

II. PROCEDURAL HISTORY

The procedural history of this comprehensive groundwater adjudication is well documented. Between late 1999 and early 2000, the first lawsuits were filed by Diamond Farming Co. and W.M. Bolthouse Farms, Inc. concerning competing water rights in the aquifer. (*Antelope Valley Groundwater Cases (Willis)* (2021) 62 Cal.App.5th 992, 1005.) In 2004, Los Angeles County Waterworks District No. 40

(District 40) filed its action seeking (1) a comprehensive determination of water rights of the thousands of persons, companies, public water suppliers and public agencies and federal government, and (2) a physical solution to alleviate overdraft in the Basin. (*Id.*) In early 2007, District 40, along with numerous other public water suppliers (collectively “PWS”) filed a cross-complaint seeking a comprehensive determination of groundwater rights in the Basin and asserting prescriptive claims against overlying landowners within the Basin. (*Id.* at p. 1006.)

In 2008, Richard Wood filed a class action on behalf of himself and similarly situated parties who had pumped small quantities of water known as the “Small Pumper Class” alleging that the prescriptive claims of the PWS conflicted with the Small Pumper Class’s superior overlying rights. (*Id.* at p. 1006.) The Court certified the class on September 2, 2008, and by that order defined the class 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 Class excludes the defendants herein, any person, firm, trust, corporation, or other entity in which any defendant has a controlling interest or which is related to or affiliated with any of the defendants, and the

representatives, heirs, affiliates, successors-in-interest or assigns of any such excluded party. The Class also excludes all persons and entities that are shareholders in a mutual water company. (Small Pumper Class Judgment, p. 3.)

Both the so-called Non-Pumper Class and the Small Pumper Class were “opt-out” classes, meaning that class members had an affirmative obligation to opt-out of the class or be bound by the Judgment. Those who opted out of the classes were personally served and joined as parties in the PWS case. The class actions were coordinated with the other proceedings and designated Proceeding No. 4408.

On December 23, 2015, the Court contemporaneously signed the Judgment and Judgment Approving Small Pumper Class Action Settlements (“Small Pumper Class Judgment”). Attached to the Small Pumper Class Judgment as Exhibit A is a list of “known small pumper class members.” Johnny and Pamella Zamrzla are listed individually and together on Exhibit A as known small pumper class members – Johnny Lee and Jeanette Zamrzla are not. The Small Pumper Class Judgment is attached to the Judgment as Exhibit C and incorporated by reference.

The Judgment has withstood three substantive appeals and is final: *Phelan Pinion Hills Community Services District v. California Water Service Company* (2020) 59 Cal.App.5th 241; *Willis v. Los Angeles County Waterworks District No. 40* (2021) 62 Cal.App.5th 992; and *Los Angeles County Waterworks District No. 40 v. Tapia* (2021) 63 Cal.App.5th 17.

There is no dispute that the Zamrzlas were not personally served with summons and complaint. Therefore, proper service turns on whether the Zamrzlas are bound by the Judgment as Small Pumper Class members. For the reasons set forth below, the Court finds that the Zamrzlas are bound by the Judgment as Small Pumper Class Members and denies both motions in their entirety.

III. PUMPING HISTORY CONFIRMS THE ZAMRZLAS MEET THE SMALL PUMPER CLASS ACTION

A threshold question is whether the Zamrzlas meet the Small Pumper Class definition. The Zamrzlas are Small Pumper Class Members by definition if, during any year from 1946, until the class closed on December 23, 2015, they pumped less than 25 acre-feet in any year. (Judgment at 3.5.44.)

A. Johnny and Pamella's Historical Pumping

Johnny and Pamella 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 also 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. (Ex. 1, 3-4, 6-7, 8, 13-14.) Their summary of water production table in their closing brief fails to acknowledge the lack of

water production in years 2000 and prior. The evidence shows less than 25 acre-feet of water pumped in year 2000 for the domestic well, and no competent evidence of water use in any prior year for the farm and domestic wells. (Ex. 13-14.) Johnny and Pamella did offer some generalized testimony about prior irrigation between 1970 when they bought the land and year 1999, but were not able to say with any precision how much water was actually pumped in any given year. Further, Johnny and Pamella failed to produce any evidence of water production prior to 1970.

Johnny and Pamella offered the testimony of Rich Koch by declaration, a Southern California Edison employee who performed pump efficiency tests and opined, based on power consumption records as to the amount of water pumped by Johnny and Pamella during certain limited periods of time. The Settling Parties and Watermaster did not contest Mr. Koch's opinions for this phase of the proceeding. According to Mr. Koch, Johnny and Pamella pumped less than 25 acre-feet of water from their domestic well in years 2014, 2006, 2005, 2004, 2003, 2002, 2001 and 2000.

Johnny and Pamella argue that they "frequently used more water than 25 acre feet per year, dating back to their purchase of the initial 40 acres in 1970." (J&P Opening Brief, p. 14.) Frequent water use over 25 acre-feet is not the test, and Johnny and Pamella failed to meet their burden of showing pumping in excess of 25 acre-feet in each year since 1946.

Based on the pumping history presented the Court concludes that Johnny and Pamella meet the Small Pumper Class definition.

**B. Johnny Lee and Jeanette's
Historical Pumping**

Johnny Lee and Jeanette Zamrzla purchased a 10-acre parcel in 2008 designated Parcel No. 3220-001-028 ("Parcel 28") on which they operate a well known as the "Pasture Well." The other 10-acre parcel, Parcel No. 3220-001-027 ("Parcel 27"), has no well and no pumping history. Johnny Lee and Jeanette submitted the declaration of Rick Koch who performed a pump efficiency test on the Pasture Well, reviewed power consumption records and opined as to water produced for years 2008 through 2018. Mr. Koch concluded that the Zamrzlas pumped less than 25 acre-feet of water in years 2008, 2012, and 2014. Johnny Lee and Jeanette offered no evidence of pumping for years 1946 through 2007. (Ex. 1, 2, 5, 12.) Historic water use from the Pasture Well was repeatedly under the 25 acre-foot threshold.

Based on the pumping evidence submitted the Court concludes that Johnny Lee and Jeanette meet the Small Pumper Class definition.

**IV. THE ZAMRZLAS WERE SERVED WITH
NOTICE OF THE SMALL PUMPER
CLASS ACTION BY MAIL AND/OR
PUBLICATION**

"The trial Court has virtually complete discretion as to the manner of giving notice to class members." (*City of San Diego v. Haas* (2012) 207 Cal. App. 4th 472, 502.) "If personal notification is unreasonably expensive or the stake of individual class members is insubstantial, or if it appears that all members of the class cannot be notified personally, the Court may order a means of notice reasonably calculated to apprise the class members of the

pendency of the action—for example, publication in a newspaper or magazine; broadcasting on television, radio, or the Internet; or posting or distribution through a trade or professional association, union, or public interest group.” (CRC 3.766(f).)

The California Rules of Court require, among other things, that the notice to class members explain that the Court will exclude the member from the class if the member so requests by a specified date, include a procedure for the member to follow in requesting exclusion from the class, and include a statement that the judgment will bind all members who do not request exclusion. (CRC Rule 3.766(d)(2)-(4).) “There is clearly no legal impediment whatsoever to making it harder to opt out than to stay in,” and “requiring class members to take affirmative steps to opt in has been held to be contrary to state and federal class action law and policy.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 58–59.)

Courts have held that “individual notice” is generally required for class actions in which members have a substantial claim, whereas notice by publication is adequate when the damages are minimal. (*Cooper v. Am. Sav. & Loan Assn.* (1976) 55 Cal. App. 3d 274, 285.) “Individual notice” is generally accepted as first-class mailing to each individual class member (*Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174), and in this case the belt-and-suspenders approach was followed by way of service by first class mail and publication. In accordance with this precedent, this Court determined that service of notice to the Small Pumper Class by mail and publication was adequate and sufficient under the circumstances. (Judgment, Ex. C pp. 2-5.)

Parties identified as Small Pumper Class

Members were served with notice of the class action in 2009, 2013 and 2015 by first-class mail and publication. (Ex. 9-16.) This Court has determined that service of the notices was adequate and proper under the circumstances, both as to the known and unknown class members. As discussed below, the Zamrzlas were properly served with notice of the class action, and are Small Pumper Class Members and subject to the Court's jurisdiction under the Judgment.

A. Service of Notice on Johnny and Pamela

There is extensive evidence before the Court that Johnny and Pamela were served with notice of the class action by mail on three separate occasions. (Exh. 9, 14, 16, 34.) 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.) Proof of mailing a document one or more times is "ample" evidence to overcome claims that a document was not received. (*Bartholomae Oil Corp. v. Oregon Oil & Development Co.* (1930) 106 Cal.App. 57, 66-67; *Craig v. Brown & Root, Inc.*, 84 Cal.App.4th 416, 421-22.)

Johnny and Pamela did not report problems receiving their mail when the class notices were mailed. (Ex. 56 at 12:22-16:10; March 15 and 16, 2023 Hearing Transcript at 127:22-24, 254:8-10.) They regularly check and sort their mail, including other class notices they have received. (Ex. 55 at 20:17-22:12, 23:11-24:8; Ex. 56 at 16:11-17:18; March 16, 2023 Hearing Transcript at 254:11- 21.) Although Johnny and Pamela say they never received any Small Pumper Class notices, they concede it is

“possible” such notices were in fact delivered to their address. (March 16, 2023 Hearing Transcript at 285:28–286:3.) Furthermore, there is no evidence that the mailed notices were ever returned to class counsel as undeliverable or with a forwarding address. (Ex. 22 at p. 16.)

This Court ordered that the 2009, 2013 and 2015 notices be published to provide notice by publication to all class members. (Ex. 3, 5, 8, 13.) The Court required that notice “be published on at least four 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.” (Ex. 3, 5.) Each class notice was published as ordered by the Court. (Ex. 6, 10.) The Court determined in each instance 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.” (Ex. 8, 15.) The Court further determined that “[t]he 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.” (*Id.*)

Johnny and Pamella have subscribed to the Antelope Valley Press at their business office located in the Basin for decades leading up to the final Judgment. (Ex. 55 at 35:16-36:10; March 15, 2023 Hearing Transcript at 115:28-116:22; 122:20-125:8.) Johnny 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. (Ex. 55 at 37:7-11; March 15, 2023 Hearing Transcript at 117:6-25.) He also advertised

in the newspaper. (Ex. 55 at 37:13-15.) He testified that he vaguely recalls reading stories about the adjudication and “[p]robably did because normally water stuff is on the front page.” (Ex. 55 at 42:11-17; March 15, 2023 Hearing Transcript at 117:26-118:26.)

There is insufficient evidence in the record to set aside the Court’s 2015 findings as to the adequacy of service of notice on Johnny and Pamela by mail and publication.

B. Service of Notice of Johnny Lee and Jeanette

Johnny Lee and Jeanette qualify as “unknown” Small Pumper Class Members. Paragraph 5.1.3.6 of the Judgment defines unknown Small Pumper Class Members 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 Closure Date; and (2) any unidentified households existing on a Small Pumper Class Member parcel prior to the Class Closure Date.” Pursuant to Paragraph 5.1.3.7 of the Judgment, “whenever the identity of any unknown Small Pumper Class Member becomes known, that Small Pumper Class Member **shall be bound by all provisions of this Judgment, including without limitation, the assessment obligations applicable to Small Pumper Class Members.**” (Emphasis added.)

By virtue of their status under the Judgment, unknown Small Pumper Class Members need not intervene or otherwise take any affirmative action in order to be subject to the Court’s jurisdiction. The Small Pumper Class list was inevitably imperfect in that it was impractical to capture the names and

addresses of every party in the Basin that qualified as a Small Pumper Class Member prior to entry of Judgment. Exhibit A to Exhibit C to the Judgment lists “[t]he **known** Small Pumper Class members” (Judgment, Ex. C at 4:11-12 (emphasis added)), and Paragraphs 5.1.3.6 and 5.1.3.7 were incorporated into the Judgment to account for Parties such as Johnny Lee and Jeanette Zamrzla who do not appear on the Small Pumper Class list in Exhibit C, but who satisfy the definition of class in Paragraph 3.5.44.

As discussed above, the Court ruled that service of the Small Pumper Class notices by publication was adequate, which was necessary in part because the Judgment contemplates that unknown Small Pumper Class Members like the Zamrzlas would surface from time to time and the Court would have jurisdiction over them without requiring intervention.

The fact that individual class members may have a substantial economic interest in the litigation does not mean that personal notification is necessarily required. A class member’s stake in the action is only one of seven factors under CRC Rule 3.766(e) that the judge must consider when determining the manner of giving notice, and it is not the transcendent consideration. “The rule therefore leaves substantial room for the ‘creativity’ often needed in the design of an effective means of notifying class members,” and a judge may order another form of notice if personal notice is unreasonably expensive. (*Hypertouch, Inc. v. Superior Ct.* (2005) 128 Cal.App.4th 1527, 1551 (citations omitted).) The U.S. Supreme Court has held that notice by personal mail is required for class members whose identities and mailing addresses were actually known, yet in view of

the character of the proceedings and the nature of the interests involved, notice by publication will suffice for those class members whose interests or whereabouts could not with due diligence be ascertained. (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 982 (citing *Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306).) “[California] case law has adopted a similarly practical approach, in which the circumstances of each case determine what forms of notice will adequately address due process concerns.” (*Ibid.* (citations omitted).) “To summarize, due process does not invariably require that personal notice be directed to all members of a class in order for a class action to proceed, or for that matter that an individual member of a certified class must receive notice to be bound by a judgment.” (*Id.* at 984.)

Johnny Lee and Jeanette have subscribed to the Antelope Valley Press at their business office located in the Basin for decades leading up to the final Judgment. (Ex. 55 at 35:16-36:10; March 15, 2023 Hearing Transcript at 115:28 - 116:22; 122:20 - 125:8.) Their business also advertised in the newspaper. (Ex. 55 at 37:13-15.) Johnny Lee testified that he has been employed by the family business since he graduated high school and is now the president of the company, and that he and Jeanette subscribed to the Antelope Valley Press for some time prior to entry of the final Judgment. (Ex. 57 at 26:1 - 27:16; March 16, 2023 Hearing Transcript at 338:16-19.)

There is insufficient evidence in the record to set aside the Court’s 2015 findings as to the adequacy of service of notice on Johnny and Pamella by mail and publication as unknown Small Pumper Class Members.

C. Personal Service Was Not Required

The Zamrzlas argue that the only service in this case that applied to them is personal service of process. As set forth above, this Court determined that notice by mail and publication of the Small Pumper Class was proper, and the Zamrzlas failed to timely opt out of the Small Pumper Class. Had the Zamrzlas opted out from the Small Pumper Class, the PWS would have personally served them as individual defendants.

Moreover, the Zamrzlas also would have received service of process had they reported their groundwater production as required by state statute. (Wat. Code §§ 5001, 5002, 4999.) Failure to file a groundwater extraction notice “shall be deemed equivalent for all purposes to nonuse.” (*Id.* § 5004.)

The PWS 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. (Ex. 1 at ¶ 2.) 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.” (Ex. 1 at ¶ 7.)

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; March 16, 2023, Hearing Transcript, 260:14-261:1, 339:10-

21.)

The Zamrzlas violated the reporting requirements and are estopped to complain about the lack of personal service.

V. THE MOTIONS ARE A COLLATERAL ATTACK ON THE JUDGMENT AND ARE DENIED ON THIS BASIS AS A MATTER OF LAW

The motions amount to a collateral attack on the Judgment and the Court, in ruling on the motions, cannot consider extrinsic evidence.

An attack on a trial court judgment is generally either a “direct” or “collateral” attack. (8 Witkin, Cal. Proc. (6th ed. 2023) Attack on Judgment, § 1.) 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. (*Id.* at § 2.) A motion directly attacking 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 a judgment in the trial court after the statutory time periods have passed are collateral attacks. (8 Witkin, Cal. Proc. (6th ed. 2023) Attack on Judgment §§ 6, 8.)

Since the Judgment was signed 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 has long passed. Thus, the Zamrzlas are making a collateral attack on the Judgment.

Where the attack is collateral “[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.*)

Here, the Zamrzlas do not point the Court to any defects appearing on the record and the Judgment appears valid. The Small Pumper Class is an “opt-out” class and includes both known and unknown class members. Known class members such as Johnny and Pamella Zamrzla are listed on Exhibit A to the Small Pumper Class Judgment each individually and also together. Johnny and Pamella acknowledge that the address shown on Exhibit A is their correct property address. Unknown Small Pumper Class Members include those who meet the class definition, but were not identified in Exhibit A to the Small Pumper Class Judgment. Unknown class

members were served by publication. There was no evidence presented that any of the Zamrzlas opted out of the class.

The Court made certain findings in support of the Small Pumper Class Judgment, including that (1) the Court has jurisdiction over all parties, including class members who did not opt out, (2) notice of the pendency of the class was provided by mail and publication, (3) notice of the 2013 Partial Settlement was given in accordance with this Court's order and in an "adequate and sufficient manner, and constituted the best practical notice under the circumstances," (4) notice of the 2015 Settlement was given in accordance with this Court's order and in an "adequate and sufficient manner, and constituted the best practical notice under the circumstances," and (5) the class members who did not opt out are subject to the Small Pumper Class Judgment. (Judgment at Ex. C.) During trial the Court heard the Zamrzlas' evidence conditionally.

The findings of proper notice and jurisdiction as well as the Judgment are binding on the Zamrzlas and extrinsic evidence offered in support of the motions is inadmissible and cannot be considered. (*Id.*; see *Superior Motels, Inc.*, 195 Cal.App.3d at 1049; see *Hogan*, 74 Cal.App. at 708-709.)

VI. THE COURT CANNOT EXERCISE ITS EQUITY POWERS TO GRANT THE RELIEF REQUESTED BY THE ZAMRZLAS

Even though the Zamrzlas' motions are a collateral attack on the Judgment, unsupportable by extrinsic evidence, the Zamrzlas argue that the Court can and should consider extrinsic evidence and set

aside or modify the Judgment on equitable grounds. As discussed below, even if this Court considers extrinsic evidence, the Court concludes that the Judgment is valid and binding on the Zamrzlas as Small Pumper Class Members.

“If the complainant was guilty of negligence in permitting the fraud to be practiced or the mistake to occur, equity will deny relief.” (*Kulchar v. Kulchar* (1969) 1 Cal. 3d 467, 473.) A Court of equity will not interfere with a final judgment unless “there had been no negligence, laches, or other fault on [the defendant’s] part, or on the part of his agents.” (*Olivera v. Grace* (1942) 19 Cal.2d 570, 575.) It follows that, “in demonstrating extrinsic fraud, it is insufficient for a party to come into Court and simply assert that the judgment was premised upon false facts. The party must show that such facts could not reasonably have been discovered prior to the entry of judgment.” (*City & Cty. of San Francisco v. Cartagena* (1995) 35 Cal.App.4th 1061, 1068.)

The evidence in the record shows that the Zamrzlas knew about the underlying adjudication long before the Court’s entry of the final Judgment, but did nothing to assert their rights until forced to do so by the Watermaster, the Settling Parties, and this Court. The evidence shows that the Zamrzlas have sat on their alleged rights in every instance in which they were notified of the potential impacts of the adjudication on their water rights. 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. This undue delay has been to the detriment of the Watermaster, the Parties who participated in the

adjudication, and the health of the Basin. Given this conduct, and given that “[t]he law helps the vigilant, before those who sleep on their rights” (Civ. Code § 3527), the Court cannot exercise its equitable powers as a basis to re-open the Judgment and set-aside or modify their status as members of the Small Pumper Class.

A. Johnny and Pamela’s Knowledge

Johnny Zamrzla testified that Delmar Van Dam, an Exhibit 4 Party who participated in the adjudication from the outset, told him on repeated occasions leading up to entry of the final Judgment that: (1) the adjudication was for big farmers, (2) it would be very costly for the Zamrzlas to participate, and (3) the Zamrzlas would eventually obtain a water right, so to just keep pumping groundwater without participating and they “would get some water at the end of it.” (Ex. 55 at pp. 70–74; March 15, 2023 Hearing Transcript at 102:7-10, 103:8-9). Johnny further testified that all his conversations with Delmar occurred prior to 2014 (Delmar died in 2014—see March 15, 2023 Hearing Transcript at 101:10-15), and that he never sought the advice of an attorney after having these discussions with Delmar. (*Id.* at 103:18-28.)

Johnny Zamrzla also testified that Eugene Nebeker, also an Exhibit 4 Party who participated in the adjudication, invited the Zamrzlas to join his Antelope Valley Groundwater Agreement Association (“AGWA”) as a Party to the adjudication, but that the Zamrzlas declined and thereafter never sought the advice of an attorney, and never investigated the AGWA group further. (Ex. 55 at 81:8-15; March 15, 2023 Hearing Transcript at 108:12-21.)

Finally, Johnny and Pamella testified that in early 2016 Norm Hickling, an aide to Los Angeles County Supervisor Mike Antonovich, provided him with complete copies of the Judgment and Physical Solution, and in response the Zamrzlas did nothing—they did not inquire further into the outcome of the adjudication or whether they were named, they did not inquire into how the Judgment may have impacted their water rights, and they did not seek legal counsel. (March 16, 2023 Hearing Transcript at 196:19–197:7, 279:9–23.)

B. Johnny Lee and Jeanette’s Knowledge

Johnny Lee Zamrzla also testified that he had conversations with Delmar Van Dam prior to Delmar’s death in 2014, and he was informed and understood, based on his conversations with Delmar, that whatever amount of groundwater usage cutbacks would apply to the parties who participated in the adjudication, would automatically also apply to the Zamrzlas, whether or not they participated. (March 16, 2023 Hearing Transcript at 330:15–21, 349:13–350:5.)

Johnny Lee further testified that around 2014 Nick Van Dam, Delmar’s son, told Johnny Lee that Delmar had “given your family bad advice”—meaning that the Zamrzlas’ rights to groundwater were not protected under the Judgment. (Ex. 57 at 36:14–19; March 16, 2023 Hearing Transcript at 332:28 – 333:6). Johnny Lee went on to testify that he also had conversations with Delmar’s other sons, Gary and Craig Van Dam, in or around 2014 about the adjudication and their ramping down of production. (March 16, 2023 Hearing Transcript at 348:9–351:10.)

After learning from Nick that Delmar may have given his family bad advice with respect to their failure to join the adjudication to protect their water rights, Johnny Lee admits he did nothing to further investigate the outcome of the adjudication, and did not retain counsel until after receiving the Watermaster's letter years later. (March 16, 2023 Hearing Transcript at 333:4-18.)

C. The Zamrzlas Had Counsel Prior to the Long Valley Motion

The Zamrzlas admit that they first retained counsel in this matter in July 2018 in response to the Watermaster's first letter regarding compliance with the Judgment. (March 15, 2023 Hearing Transcript at 103:18-21; 108:2-4.) Thereafter, on October 9, 2018, Long Valley Road, L.P. ("Long Valley") filed a motion for leave to intervene in the Judgment. (Ex. 17-20, 27.) The Watermaster and other Parties opposed the Long Valley motion, and the Court eventually denied the Motion on the basis that the time had passed for Long Valley to collaterally attack its status under the Judgment. (Ex. 21-26, 28.) Long Valley submitted the exact same legal arguments based on the same or similar facts as both sets of Zamrzlas, yet the Zamrzlas concede they did nothing to join the Long Valley motion or otherwise seek to vindicate their alleged rights at that time, but instead waited until late 2021 to attempt to challenge their status as Small Pumper Class Members, and only after forced to do so by the Watermaster and eventually this Court. Each legal argument raised by the Zamrzlas was rejected by this Court in the Long Valley motion. The Zamrzlas were represented by counsel throughout the pendency of the Long Valley motion, yet they failed to take any action to join Long Valley's motion or even

follow-up with a similar motion of their own.

As the California Supreme Court held in *Weitz v. Yankosky* (1966) 63 Cal.2d 849, a defendant must act diligently in making his motion to set aside a judgment. There is no evidence in the record that the Zamrzlas ever raised any questions about their status as members of the Small Pumper Class, much less affirmatively sought to protect any additional water rights they may have, until they filed their opposition to the Watermaster's original motion for monetary, declaratory and injunctive relief on or about November 12, 2021. The Zamrzlas admit they knew about the adjudication since at least 2009, received a copy of the Judgment in 2016, and were notified by the Watermaster of their status as Small Pumper Class members as early as 2018. Their long unexcused delay is unreasonable and prejudicial to all other parties, and the Court cannot exercise its equity powers to shield them from the consequences of their actions.

VII. DECISION

The motions by the Zamrzlas to set aside or modify the Judgment or to have the court intervene in equity are denied for the reasons set forth hereinabove.

June 9, 2023

s/ JACK KOMAR

HON. JACK KOMAR

APPENDIX D

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF LOS ANGELES

ANTELOPE VALLEY GROUNDWATER CASES

This Judgment Relates to Included Action;
RICHARD WOOD, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40, et al.

Defendants.

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4408

Case No. BC 391869

JUDGMENT APPROVING SMALL PUMPER
CLASS ACTION SETTLEMENTS

THE 2013 PARTIAL SETTLEMENT

By Order dated December 11, 2013, the Court approved the Motion for Final Approval of Settlement for the Small Pumper Class Stipulation of Settlement dated October 17, 2013 (the “2013 Partial Settlement”),¹ by and between City of Lancaster, Palmdale Water District, Phelan Piñon Hills Community Services District, and Rosamond Community Services District, (collectively, “2013 Settling Defendants”), and Richard Wood, on behalf of himself and the Class defined below, in the matter styled *Richard Wood v. Los Angeles County Waterworks District No. 40 et al.*, Los Angeles Superior Court Case Number BC391869 (“Small Pumper Class Action”). Having reviewed and considered the terms and conditions of the 2013 Partial Settlement; having reviewed and heard any timely filed objections to the 2013 Partial Settlement after notice to the class in accordance with the preliminary approval order, and having reviewed and considered the motion of Class Counsel for an award of attorneys’ fees and costs and for an award of compensation to Richard Wood, and having reviewed and considered all opposing papers, the Court approved the 2013 Partial Settlement, based in part, upon the pertinent findings below, and as further reflected in the record for the hearings.

THE 2015 SETTLEMENT

On March 4, 2015, Class Counsel filed Small Pumper Class Stipulation of Settlement, dated

¹ Any capitalized terms in this Judgment that are not defined herein are accorded the definitions set forth in the Settlement Agreements, and exhibits thereto.

February 24, 2015 (the “2015 Settlement”), to which was attached as and incorporated therein as Exhibit A, the Stipulation for Entry of Judgment and Physical Solution. The 2015 Settlement was entered into between Richard Wood, on behalf of the Small Pumper Class, on the one hand, and California Water Service Company, City of Palmdale, Desert Lake Community Services District, Littlerock Creek Irrigation District, Los Angeles Waterworks District No. 40 Palm Ranch Irrigation District, and Quartz Hill Water District (“2015 Settlement Defendants”).²

After reviewed and considered the terms and conditions of the 2015 Settlement and exhibits thereto; having reviewed and heard any timely filed objections to the 2015 Settlement after notice to the class in accordance with the preliminary approval order and a having reviewed and considered all opposing papers; the Court conditionally approved it, as further set forth in the Court’s Order of August 4, 2015, as well as the hearing transcript of that date. The Court subsequently heard evidence and argument in support of and in opposition to the claims presented by various parties, as the proposed Judgment and Physical Solution. On November 4, 2015, the Court issued its oral tentative decision granting final approval to the 2015 Settlement, The Court’s ruling is explained in the resulting Statement of Decision.

² The 2013 Settling Defendants and the 2015 Settling Defendants are jointly referred to below as the “Settling Defendants.” Richard Wood, the Small pumper Class Members, and the Settling Defendants are hereinafter referred to as the “Settling Parties.”

In support of this Judgment, which covers all claims contained in the Small Pumper Class Action, all of which are resolved by the 2013 Partial Settlement and the 2015 Settlement, the Court makes the following FINDINGS:

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

B. For over 15 years, a number of actions have been pending in the Los Angeles County Superior Court and other California Courts seeking an adjudication of various parties' respective rights to the groundwater underlying the Antelope Valley Groundwater Basin (the "Basin").

C. Several of these actions were coordinated by the California Judicial Council, by order dated July 11, 2005, and assigned to the Honorable Jack Komar of the Superior Court for the County of Santa Clara (the "Court").

D. The Court held the first phase of the trial in October of 2006 for the purpose of determining the boundaries of the Basin for the purposes of these coordinated actions, and did so by an Order dated November 3, 2006.

E. The Small Pumper Class Action was filed on June 3, 2008 against certain public water entities asserting claims for declaratory relief, quiet title, and various claims related to the alleged taking of water rights. The Small Pumper Class Action was subsequently added to the Coordinated Cases.

F. By order of September 2, 2008, the Court

certified the Small Pumper Class, appointed Richard Wood as Class representative, and the Law Offices of Michael D. McLachlan APC and the Law Office of Daniel M. O'Leary as counsel for the Class. By that Order, the Court defined the Class 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 Class excludes the defendants herein, any person, firm, trust, corporation, or other entity in which any defendant has a controlling interest or which is related to or affiliated with any of the defendants, and the representatives, heirs, affiliates, successors-in-interest or assigns of any such excluded party. The Class also excludes all persons and entities that are shareholders in a mutual water company.

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 matter, and constituted the best practicable notice under the circumstances. Those class members who timely opted out of this Partial Settlement, or in response to the initial class notice in 2009 (and who did not subsequently opt back into the Class) are not bound by the settlements or this Judgment (but may be bound by the final judgment in these coordinated proceedings). On or about January 7, 2014, the Court approved the 2013 Partial Settlement between the Small Pumper Class and the 2013 Settling Defendants.

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. Keogh and Michael D. McLachlan, both filed June 4, 2015. No class member timely filed an objection to the 2015 Settlement.

J. The 2013 Partial Settlement and the 2015 Settlement are both a product of good faith, arm's length negotiations between the Representative Plaintiff and the Settling Defendants and their counsel, which occurred over a lengthy period of time in this litigation. The 2013 Partial Settlement and the 2015

Settlement, as provided in the Settlement Agreements, are in all respects fair, reasonable, adequate and proper, as between the Settling Parties, and in the best interests of the Class.

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.

On the basis of the foregoing findings and the submissions referred to above, IT IS HEREBY ORDERED AND ADJUDGED AND DECREED:

1. The Settling Parties are released forever as to the Released Claims as provided for in the Settlement Agreement. Any claims or rights not specifically released are retained by the Settling Parties.

2. The Settlement Class members and their heirs, successors, assigns, executors or administrators are permanently barred and enjoined from instituting, commencing, prosecuting, any Released Claim against any of the Released Parties in any forum, other than claims to enforce the terms of the Settlement Agreement. Each member of the Settlement Class has waived and fully, finally and forever settled and released, upon this Judgment becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent Released Claim, whether or not concealed or hidden, without regard to the subsequent discovery of different or

additional facts.

3. The Settling Defendants and their heirs, successors, assigns, executors or administrators are permanently barred and enjoined from instituting, commencing, prosecuting, any Released Claim against any of the Released Parties in any forum, other than claims to enforce the terms of the Settlement Agreement. Each Settling Defendant has waived and fully, finally and forever settled and released, upon this Judgment becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent Released Claim, whether or not concealed or hidden, without regard to the subsequent discovery of different or additional facts.

4. Any prescriptive rights the Settling Defendants may have cannot be exercised to reduce any Overlying Rights the Settlement Class members may have.

5. The Small Pumper Class members are bound by the Judgment and Physical Solution, and their rights and obligations are relative to future groundwater use are set forth therein.

6. The Settling Parties are ordered to timely comply with all other provisions of the 2013 Partial Settlement and the 2015 Settlement.

7. Without affecting the finality of this Judgment, the Court hereby reserves and retains jurisdiction over the 2013 Partial Settlement and the 2015 Settlement, including administration of the Settlement Agreements, as well as any action, proceeding or motion brought to enforce the Settlement Agreements, as well as the ultimate determination of the Settling Parties' water rights. The Settling Parties are subject to the jurisdiction of

this Court for any suit, action, proceeding or dispute arising out of or relating to this Judgment or the Settlement Agreement.

8. The Court will address the award of attorneys' fees, costs and expenses, the incentive award to Richard Wood, as well as the future scope of Class Counsel's duties to the Small Pumper Class, in a separate order after entry of judgment and the filing of the appropriate noticed motion(s).

December 23, 2015

s/ JACK KOMAR
Judge of the Superior Court

[Exhibit A to judgment, approximate 50-page spreadsheet containing names and contact information of thousands of individuals, omitted by petitioners as excessively voluminous]

APPENDIX E

**SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF LOS ANGELES –
CENTRAL DISTRICT**

ANTELOPE VALLEY GROUNDWATER CASES

Included Actions:

Los Angeles County Waterworks District No. 40 v.
Diamond Farming Co., Superior Court of California,
County of Los Angeles, Case No. BC 325201;

Los Angeles County Waterworks District No. 40 v.
Diamond Farming Co., Superior Court of California,
County of Kern, Case No. S-1500-CV-254-348;

Wm. Bolthouse Farms, Inc. v. City of Lancaster,
Diamond Farming Co. v. City of Lancaster, Diamond
Farming Co. v. Palmdale Water Dist., Superior
Court of California, County of Riverside, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

RICHARD WOOD, on behalf of himself and all other
similarly situated v. A.V. Materials, Inc., et al.,
Superior Court of California, County of Los Angeles,
Case No. BC509546

Judicial Council Coordination Proceeding No. 4408

CLASS ACTION

App.60

Santa Clara Case No. 1-05-CV-049053 Assigned to
the Honorable Jack Komar

JUDGMENT

The matter came on for trial in multiple phases. A large number of parties representing the majority of groundwater production in the Antelope Valley Area of Adjudication (“Basin”) entered into a written stipulation to resolve their claims and requested that the Court enter their [Proposed] Judgment and Physical Solution as part of the final judgment. As to all remaining parties, including those who failed to answer or otherwise appear, the Court heard the testimony of witnesses, considered the evidence, and heard the arguments of counsel. Good cause appearing, the Court finds and orders judgment as follows:

1. The Second Amended Stipulation For Entry of Judgment and Physical Solution among the stated stipulating parties is accepted and approved by the Court.
2. Consistent with the December 23, 2015 Statement of Decision (“Decision”), the Court adopts the Proposed Judgment and Physical Solution attached hereto as Exhibit A and incorporated herein by reference, as the Court’s own physical solution (“Physical Solution”). The Physical Solution is binding upon all parties.
3. In addition to the terms and provisions of the Physical Solution the Court finds as follows:
 - a. Each of the Stipulating Parties to the Physical Solution has the right to pump groundwater from the Antelope Valley Adjudication

App.62

Area as stated in the Decision and Physical Solution.

- b. The following entities are awarded prescriptive rights from the native safe yield against the Tapia Parties, defaulted parties identified in Exhibit 1 to the Physical Solution, and parties who did not appear at trial identified in Exhibit B attached hereto, in the following amounts:

Los Angeles County Waterworks District No. 40	17,659.07 AFY
Palmdale Water District	8,297.91 AFY
Littlerock Creek Irrigation District	1,760 AFY
Quartz Hill Water District	1,413 AFY
Rosamond Community Services District	1,461.7 AFY
Palm Ranch Irrigation District	960 AFY
Desert Lake Community Services District	318 AFY
California Water Service Company	655 AFY

App.63

North Edwards Water District 111.67 AFY

No other parties are subject to these prescriptive rights.

- c. Each of the parties referred to in the Decision as Supporting Landowner Parties has the right to pump groundwater from the Antelope Valley Adjudication Area as stated in the Decision and in Paragraph 5.1.10 of the Physical Solution in the following amounts:

- i. Desert Breeze MHP, LLC 18.1 AFY
- ii. Milana VII, LLC dba Rosamond Mobile Home Park 21.7 AFY
- iii. Reesdale Mutual Water Company 23 AFY
- iv. Juanita Eyherabide, Eyherabide Land Co., LLC and Eyherabide Sheep Company, collectively 12 AFY
- v. Clan Keith Real Estate Investments, LLC., dba Leisure Lake Mobile Estates 64 AFY
- vi. White Fence Farms Mutual Water Co. No. 3 4 AFY
- vii. L V Ritter Ranch LLC 0 AFY

viii. Robar Enterprises, Inc., 200 AFY
Hi-Grade Materials Co., and
CJR, a General Partnership
[inserted by hand]

- d. 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.
- e. Cross-defendant Charles Tapia, as an individual and as Trustee of Nellie Tapia Family Trust (collectively, “The Tapia Parties”) has no right to pump groundwater from the Antelope Valley Adjudication Area except under the terms of the Physical Solution.
- f. Phelan Piñon Hills Community Services District (“Phelan”) has no right to pump groundwater from the Antelope Valley Adjudication Area except under the terms of the Physical Solution.
- g. The Willis Class members have an overlying right that is to be exercised in accordance with the Physical Solution.

- h. All defendants or cross-defendants who failed to appear in any of these coordinated and consolidated cases are bound by the Physical Solution and their overlying rights, if any, are subject to the prescriptive rights of the Public Water Suppliers. A list of the parties who failed to appear is attached hereto as Exhibit D.
 - i. [struck out by hand]
- 4. Each party shall designate the name, address and email address, to be used for all subsequent notices and service of process by a designation to be filed within thirty days after entry of this Judgment. The list attached as Exhibit A to the Small Pumper Class Judgment shall be used for notice purposes initially, until updated by the Class members and/or Watermaster. The designation may be changed from time to time by filing a written notice with the Court. Any party desiring to be relieved of receiving notice may file a waiver of notice to be approved by the Court. The Court will maintain a list of parties and their respective addresses to whom notice or service of process is to be sent. If no designation is made as required herein, a party's designee shall be deemed to be the attorney of record or, in

the absence of an attorney of record, the party at its specified address.

5. All real property owned by the parties within the Basin is subject to this Judgment. It is binding upon all parties, their officers, agents, employees, successors and assigns. Any party, or executor of a deceased party, who transfers real property that is subject to this Judgment shall notify any transferee thereof of this Judgment. This Judgment shall not bind the parties that cease to own real property within the Basin, and cease to use groundwater, except to the extent required by the terms of an instrument, contract, or other agreement.

The Clerk shall enter this Judgment.

December 23, 2015

s/ JACK KOMAR
Judge of the Superior Court

Exhibit A to judgment [Physical Solution, excerpts thereof]

. . . .

5.1.3 Small Pumper Class Production Rights.

Subject only to the closure of the Small Pumper Class membership, the Small Pumper Class's aggregate Production Right is 3806.4 acre-feet per Year. Allocation of water to the Small Pumper Class is set at an average Small Pumper Class Member amount of 1.2 acre-feet per existing household or parcel based upon the 3172 known Small Pumper Class Member parcels at the time of this Judgment. Any Small Pumper Class Member may Produce up to and including 3 acre-feet per Year per existing household for reasonable and beneficial use on their overlying land, and such Production will not be subject to Replacement Water Assessment. Production by any Small Pumper Class Member above 3 acre-feet per Year per household or parcel will be subject to Replacement Water Assessment, as set forth in this Judgment. Administrative Assessments for unmetered Production by Small Pumper Class Members shall be set based upon the allocation of 1.2 acre-feet per Year per household or parcel, whichever is the case; metered Production shall be assessed in accord with the actual Production. A Small Pumper Class Member who is lawfully, by permit, operating a shared well with an adjoining Small Pumper Class Member, shall have all of the same rights and obligations under this Judgment without regard to the location of the shared well, and such shared use is not considered a prohibited transfer of a pumping right under Paragraph 5.1.3.3.

. . . .

9.2 Replacement Water Assessment. In order to ensure that each Party may fully exercise its Production Right, there will be a Replacement Water Assessment. Except as is determined to be exempt during the Rampdown period pursuant to the Drought Program provided for in Paragraph 8.4, the Watermaster shall impose the Replacement Water Assessment on any Producer whose Production of Groundwater from the Basin in any Year is in excess of the sum of such Producer's Production Right and Imported Water Return Flow available in that Year, provided that no Replacement Water Assessment shall be imposed on the United States except upon the United States' written consent to such imposition based on the appropriation by Congress, and the apportionment by the Office of Management and Budget, of funds that are available for the purpose of, and sufficient for, paying the United States' Replacement Water Assessment. The Replacement Water Assessment shall not be imposed on the Production of Stored Water, In-Lieu Production or Production of Imported Water Return Flows. The amount of the Replacement Water Assessment shall be the amount of such excess Production multiplied by the cost to the Watermaster of Replacement Water, including any Watermaster spreading costs. All Replacement Water Assessments collected by the Watermaster shall be used to acquire Imported Water from AVEK, Littlerock Creek Irrigation District, Palmdale Water District, or other entities. AVEK shall use its best efforts to acquire as much Imported Water as possible in a timely manner. If the Watermaster encounters delays in acquiring Imported Water which, due to cost increases, results in collected assessment proceeds being insufficient to purchase all Imported Water for which the

Assessments were made, the Watermaster shall purchase as much water as the proceeds will allow when the water becomes available. If available Imported Water is insufficient to fully meet the Replacement Water obligations under contracts, the Watermaster shall allocate the Imported Water for delivery to areas on an equitable and practicable basis pursuant to the Watermaster rules and regulations.

. . . .

18. WATERMASTER

18.1 Appointment of Initial Watermaster.

18.1.1 Appointment and Composition:
The Court hereby appoints a Watermaster. The Watermaster shall be a five (5) member board composed of one representative each from AVEK and District No. 40, a second Public Water Supplier representative selected by District No. 40, Palmdale Water District, Quartz Hill Water District, Littlerock Creek Irrigation District, California Water Service Company, Desert Lake Community Services District, North Edwards Water District, City of Palmdale, City of Lancaster, Palm Ranch Irrigation District, and Rosamond Community Services District, and two (2) landowner Parties, exclusive of public agencies and members of the Non-Pumper and Small Pumper Classes, selected by majority vote of the landowners identified on Exhibit 4 (or their successors in interest) based on their proportionate share of the total Production Rights identified in Exhibit 4. The United States may also appoint a non-voting Department of Defense (DoD) Liaison to the Watermaster committee to represent DoD interests. Participation by the DoD Liaison shall be governed by Joint Ethics Regulation

App.70

3-201. The opinions or actions of the DoD liaison in participating in or contributing to Watermaster proceedings cannot bind DoD or any of its components.

. . . .

App.71

APPENDIX F

IN THE SUPREME COURT OF CALIFORNIA

En Banc

S294961

Court of Appeal, Second Appellate District, Division
One – No. B331148

ANTELOPE VALLEY WATERMASTER et al.,

Plaintiffs and Respondents,

v.

JOHNNY ZAMRZLA et al.,

Defendants and Appellants.

SUPREME COURT OF CALIFORNIA

Filed: March 18, 2026

Jorge Navarrete, Deputy Clerk

ORDER

The petition for review is denied.

App.72

GUERRERO
Chief Justice

App.73

APPENDIX G

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA SECOND APPELLATE DISTRICT
DIVISION 1

Court of Appeal No. B331148

Superior Court Case No. BC325202 / JCCP4408

Johnny Zamrzla, Pamella Zamrzla, Johnny Lee
Zamrzla, Jeanette Zamrzla,

Appellants,

v.

Los Angeles County Waterworks District No. 40, et
al.,

Respondents.

Filed: July 8, 2024

APPEAL FROM AN ORDER AFTER JUDGMENT
OF THE LOS ANGELES COUNTY SUPERIOR
COURT, THE HONORABLE JACK KOMAR

App.74

APPELLANTS' OPENING BRIEF [EXCERPTS]

....

I. INTRODUCTION

This case involves multiple violations of due process sustained by purported members of a class action lawsuit, where Appellants, who are private landowners, were found to be subject to a preexisting judgment that severely curtails their water rights and exposes them to draconian penalties despite a class notice that expressly *excluded* them from the judgment's ambit.¹ At a minimum, there were inconsistent class notices that would have led any reasonable property owner in Appellants' position to conclude they were *not* members of the class. To compound the legal error, Appellants did not learn of the judgment until nearly three years after the judgment was issued.

The trial court committed legal error and abused its discretion when it denied the motions to modify or vacate the preexisting judgment as applied to Appellants and landowners Johnny Zamrzla, Pamella Zamrzla, Johnny Lee Zamrzla and Jeanette Zamrzla.² A 2009 class action notice, styled the 2009

¹ There is a pending motion for the imposition of fees against the Appellants, with a request for attorney's fees, pursuant to the 2015 Judgment and Physical Solution in the Antelope Valley Groundwater Adjudication ("2015 Judgment"), which the Appellants never received notice of. (Volume 1 of Appellants' Appendix ["1AA"], pp.29-70.)

² For clarity purposes, appellants will be referred to by their first names or collectively as "Appellants" or "Zamrzlas." (Pamella Zamrzla has since passed away but is referred to in this appeal as she was a party to the proceedings.) While the appellants are appealing one order, two motions were filed: (1) Johnny and Pamella's motion to modify or vacate the judgment (2AA, pp.386-678); and (2) Johnny Lee and Jeanette's motion to

Notice of the Small Pumper Class Action (“Opt-Out Notice”), explicitly ***excluded*** from the class private landowners who “have pumped 25 acre-feet or more of groundwater for use on ... that parcel in ***any*** calendar year since 1946[.]” (2AA, p.668; emphasis added.) The Zamrzlas regularly pumped 25 acre-feet or more of groundwater a year. This fact is undisputed. Indeed, the trial court verbally acknowledged several times on the record that the Zamrzlas do not fall within the “Small Pumper Class.” (4RT 910:18-23.)

Despite this, and its previous findings on how much the Zamrzlas had been pumping, the trial court erroneously determined the Zamrzlas to be members of the class. It did so based on an ambiguous definition of the class in its certification order that defined the Small Pumper Class *differently* from the 2009 Opt-Out Notice.

Specifically, the certification order defined the class as including private landowners “that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present.” (2AA, pp.664-665.) This definition in the certification order contradicts the Opt-Out Notice, which would have led landowners like the Zamrzlas to believe they were definitively ***not*** members of the Small Pumper Class because they pumped 25 acre-feet or more in any year since 1946.

Further, a 2013 Notice of Partial Settlement of the Small Pumper Class Action provided the same definition as the Opt-Out Notice, thus reinforcing the

modify or vacate the judgment (3AA, pp.707-946). Moreover, while the motions identify the Zamrzlas as defendants, the Zamrzlas are more appropriately objecting parties to the plaintiff class.

belief among landowners that pumped 25 acre-feet or more of groundwater in any year since 1946 that they were not class members.

The trial court erred as a matter of law in finding adequate class notice when the 2009 Opt-Out Notice was defective on its face in that it was inconsistent with the certified class definition.

Apart from the definition in the certification order being *materially different* than how the 2009 Opt-Out Notice and 2013 Notice of Partial Settlement defined the Small Pumper Class, the class definition in the certification order separately failed to provide adequate notice of the class because it itself is confusing and ambiguous. (*Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 747 [“An ambiguous class definition does not provide adequate notice.”].)

Despite the Zamrzlas’ repeated claims about the inconsistent, and in fact incompatible class definitions, the opposing parties³ and trial court failed to directly address this glaring issue. This Court should not: the ambiguous class definition and inconsistent notices in this case deprived the Zamrzlas of due process and are errors that should be corrected and reversed.

The opposing parties have not explained why the class definitions are different, nor would an

³ The opposing parties in this case consists of the Antelope Valley Watermaster (“Watermaster”), who was charged with administering the 2015 Judgment and Physical Solution (1AA, p.31:3-5), and the “Settling Parties,” which consist of the following: City of Los Angeles, Los Angeles World Airports, Grimmway Enterprises, Palmdale Water District and County Sanitation Districts of Los Angeles No. 14 and 20.

explanation now unravel the harm imposed on the Zamrzlas. Rather, the opposing parties have skirted around this issue by arguing that the time for the Zamrzlas to object had passed (but the Zamrzlas had no notice of the class action at the time and even if they did, the Opt-Out Notice excluded them) *or* that if the Zamrzlas had won on this issue, it would reverse the 2015 Judgment. That is not so, nor should centuries-old jurisprudence providing for due process and protection of property rights (including water rights) be ignored for fear or inconvenience imposed by *now* righting the wrong suffered by the Zamrzlas that was imposed *then* by others. The relief sought here would not undo the *entire* 2015 Judgment, nor are the Zamrzlas trying to vacate the entire 2015 Judgment. They instead only seek to modify or vacate that portion of the Judgment that erroneously includes them. They would become, subject to further proceedings to establish their water right, part of an overlying right group of parties that already exists.

Separately, the Zamrzlas were not personally or individually served with notice of the class action despite the substantial claim in this matter, which involves their water rights and exposes them to penalties. The trial court's finding that service of notice was adequate was an abuse of discretion as the trial court also applied an incorrect standard for notice and relied on inadmissible and facially insufficient evidence in support of the ruling.

The trial court's substantive errors are compounded by procedural errors in the issuance of the order denying the Zamrzlas' motions. First, the trial court did not issue an independent ruling on the Zamrzlas' motions. Second, despite its failure to issue an independent ruling that rendered the opposing

parties as the prevailing parties, the trial court signed off on the opposing parties' proposed order denying the motions without affording the Zamrzlas' an opportunity to object or make any proposed changes to the order.

The lack of any independent ruling by the trial court reflects a failure to exercise discretion. While a trial court may sign off on a proposed order submitted by a prevailing party, there was no prevailing party in this matter when the proposed order was submitted. Accordingly, the trial court's adoption of the opposing parties' erroneous legal and factual findings was an abuse of discretion. The Zamrzlas sought for the correct process and procedures to be followed, but to no avail.

To correct the multiple violations of the Zamrzlas' due process rights in this matter, the trial court's order should be reversed and the judgment as it relates against the Zamrzlas should be vacated.

....

V. ARGUMENT

A. The Zamrzlas' Due Process Rights Were Violated When They Were Determined to be Bound by a Class Action Judgment They Had No Notice Of And Was Legally Deficient, Resulting in Devastating Impacts to the Use and Enjoyment of Their Property

Water rights are subject to due process, and legally characterized as a real property right under California law. (*United States v. State Water Res. Control Bd.* (1986) 182 Cal.App.3d 82, 101.) Once

rights to use water are acquired, they become vested property rights. (*Id.*) As such, they cannot be infringed by others or taken by governmental action without due process and just compensation. (*Id.*) Due process principles require reasonable notice and an opportunity to be heard before governmental deprivation of a significant property interest. (*Horn v. Cty. of Ventura* (1979) 24 Cal.3d 605, 612.)

As set forth below, the Zamrzlas were not provided with adequate or reasonable notice of the Small Pumper Class Action to which the trial court ruled they are members of and, therefore, bound to the 2015 Judgment that severely impairs their current and future water rights and exposes them to large monetary liability. The lack of adequate and reasonable notice to the Zamrzlas was a violation of their due process rights.

B. The Opt-Out Notice Expressly Excluded the Zamrzlas

“The principal purpose of notice to the class is the protection of the integrity of the class action process, one of the functions of which is to prevent burdening the courts with multiple claims where one will do.” (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 970.) As for the contents of the notice, it “must fairly apprise the class members of the terms of the proposed compromise and the options open to dissenting class members.” (*Cho, supra*, 177 Cal.App.4th at 746, quoting *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251, disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 2 Cal.5th 260, 269.) Thus, the rules relating to class actions reflect a scheme that is designed to clearly describe class

members who should be notified of the action and may be affected by its resolution. “An order certifying ... a class must contain a description of the class ...” (Cal. Rules of Court, rule 3.765(a).) The rules regarding notice of class actions “*rest upon an assumption that the definition of a plaintiff class will be clear and free from obvious ambiguity.*” (*Cho*, *supra*, 177 Cal.App.4th at 746; emphasis added.)

Here, the class definition in the 2009 Opt-Out Notice *differs materially* from the class definition in the certification order and Judgment. (2AA, pp.401-403; 3AA, pp.720-722.) The class definition in the 2009 Opt-Out Notice, which was the notice sent out to the putative class to inform them of the lawsuit and provided an opportunity to opt out, expressly stated that a private person owning real property was **NOT** in the Small Pumper Class if “[y]ou have pumped 25 acre-feet or more of groundwater for use on a (sic) that parcel in any calendar year since 1946.” (8AA, pp.2175-2176.)

By the express definition in the 2009 Opt-Out Notice, the Zamrzlas are not members of the Small Pumper Class. The evidence shows multiple years where the Zamrzlas pumped significantly over 25-acre feet in a calendar year. (2AA, pp.403-404, 437-439, 462-469; 3AA, pp.722-723.) This evidence is uncontradicted.

Notably, the 2013 Notice of Partial Class Action Settlement for the “Small Pumper” Class Action also repeated the *same exclusion as the 2009 Opt-Out Notice*. It explicitly stated:

You are not in the class if you fall within one of the categories set forth below:

You have pumped 25 acre-feet or more

of groundwater for use on that parcel
in any calendar year since 1946;
(8AA, p.1964.)

Accordingly, while the Zamrzlas' maintain they did not receive notices of the class action, even if they had, the 2009 and 2013 notices, which were the notices that provided an opportunity to opt out or object to the settlement, would have been inadequate because based on the terms of these notices, the Zamrzlas would have been led to believe they were not part of the Small Pumper Class.¹⁵

Indeed, only after the opportunity to opt out had passed was any notice disseminated that would indicate the Zamrzlas were potentially a part of the class.¹⁶ The 2015 Notice of Settlement did not contain the same class definition as the 2009 Opt-Out Notice and 2013 Notice of Partial Settlement. (8AA, pp.2057-2062, 2064-2072.) However, by the time of the 2015 Notice, the time to opt out had already passed. Indeed, the 2015 Notice explicitly stated that "the Court will not permit further opt outs." (8AA, p.2060.)

Despite the Zamrzlas' repeated arguments regarding the inconsistent class definition, the opposing parties and the trial court failed to substantively address this issue. Rather, the opposing parties focused on the passage of time and argued

¹⁵ The Opt-Out Notice was also inadequate in that it failed to notify the putative class that they could be subject to penalties. As shown by the invoice to the Zamrzlas, the potential penalties to the class could be huge.

¹⁶ Separately, as discussed in further detail below, the certified class definition is ambiguous as it could be interpreted to exclude the Zamrzlas as members, and therefore, also failed to provide adequate notice.

that the time for the Zamrzlas to object or challenge the notices had passed or that this argument, “if successful, would unravel the Wood Class Settlement and the judgment in this proceeding.” (5RT 1246:17-20.) However, the former argument completely misses the point because even if the Zamrzlas were served with the notices, the notices were inadequate because they would have led the Zamrzlas to believe they were not members of the Small Pumper Class.

Moreover, as to the latter argument that if the notice was found defective and inadequate it would unravel the Wood Class Settlement and judgment, the Court of Appeal in *Cho, supra*, had this to say when the parties in that case raised a similar argument: “We have no impression that there are large numbers of claimants who will come forward if the class definition and notice are corrected, but the problem with this notice creates more than a remote theoretical possibility that the claims of unsuspecting class members will be brushed aside. ***An ambiguous class definition does not provide adequate notice.*** It was error for the trial court to approve this settlement without correcting the ambiguous definition of the plaintiff class.” (*Cho, supra*, 177 Cal.App.4th at 747; emphasis added.)

Accordingly, as the *Cho* court emphasized, there must be adequate notice. An ambiguous class definition or misleading notice does not provide adequate notice. Here, even if the Zamrzlas were served notice of the class action (they maintain they were not), they would have been led to believe they were not in the class.

The inconsistent notices, which defined the class differently from the certified class, compounded with the ambiguous definition of the certified class,

violated the Zamrzlas' due process rights as they did not provide adequate notice of the class. "[D]ue process requires that the notice not be materially misleading." (*Hege v. Aegon USA, LLC* (D.S.C., Jan. 21, 2011) 780 F.Supp.2d 416, 430 [finding that misleading class notice violates due process and is not binding even if technically correct]; *see also Cho, supra*, 177 Cal.App.4th at 747; *Twigg v. Sears, Roebuck & Co.* (11th Cir. 1998) 153 F.3d 1222, 1227 ["[T]he best notice practicable under the circumstances cannot stop with ... generalities. It must also contain an adequate description of the proceedings written in objective, neutral terms, that, insofar as possible, may be understood by the average absentee class member."]; *Molski v. Gleich* (9th Cir. 2003) 318 F.3d 937, 951-952 (overruled on other grounds by *Dukes v. Wal-Mart Stores, Inc.* (9th Cir. 2010) 603 F.3d 571), [reversed trial court where notice misled the putative class as to what was meant by "personal injury actions"].)

The trial court erred by finding that the Zamrzlas received adequate notice and in finding that the Zamrzlas are Small Pumper Class Members by definition.

C. The Class Definition was Ambiguous and Did Not Provide Adequate Notice of the Class Action, Particularly Given the 25 Acre-Feet Threshold and the Zamrzlas' Historical Significantly Higher Use

"A class definition that is ambiguous presents a problem of class ascertainability that 'goes to the heart of the question of class certification, **which requires a class definition that is 'precise,**

objective and presently ascertainable.” (*Cho, supra*, 177 Cal.App.4th at 746, quoting *Global Minerals & Metals Corp., supra*, 113 Cal.App.4th at 858; emphasis added.) “In the absence of an ascertainable class, it is not possible to give adequate notice to class members or to determine after the litigation has concluded who is barred from relitigating. The goal in defining the class is to use terminology that will convey sufficient meaning to enable persons hearing it to determine whether they are members of the class plaintiff wishes to represent.” (*Cho, supra*, 177 Cal.App.4th at 746; internal citations and quotations omitted.) Accordingly, courts have found that “[a]n ambiguous class definition does not provide adequate notice.” (*Cho, supra*, 177 Cal.App.4th at 747.)

In *Cho*, the plaintiff filed a representative class action against defendant Seagate for falsely overstating in its advertising and packaging the storage capacity of computer disc drives it manufactured for public sale. The case was settled but one David Klausner objected to the settlement, arguing that the class definition was imprecise and misleading. (*Cho, supra*, 177 Cal.App.4th at 737.) The Court agreed that “[b]y its terms, and as evidenced by the changing positions of the parties, the notice is unclear whether an indirect purchaser is within the plaintiff class.” (*Id.* at 746)

While the parties advised the court that they intended to exclude from the settlement only those purchasers who obtained the disc drives from resellers of “fake, grey market, used or stolen drives[,]” the Court found that the “problem is that a fair reading of the class definition and the notice has the potential to lead some of those who purchased

within Seagate's authorized retail channels to conclude they are not members of the class." (*Id.* at 746-747.)

Moreover, while an absence of inquiries or concerns from potential class members was an indication that the class members understood the terms of the settlement and were satisfied with its provisions, "the error [the appellate court] identif[ied] [nonetheless] arises from the ambiguity in the class notice because it creates a real possibility that indirect purchasers who erroneously conclude they are not members of the plaintiff class may never be heard from and the judgment will be res judicata on their claims." (*Id.*) As such, the Court found it was error for the trial court to approve the settlement without correcting the ambiguous definition of the plaintiff class. (*Id.*)

Cho involved the false advertising of computer disc drives, where any judgment from the lawsuit was minimal to the members of the class and yet, the Court found reversible error in the trial court's approval of the settlement without correcting the ambiguous definition of the class.

Here, compared to the facts in *Cho*, the Small Pumper Class action involves the Zamrzlas' water rights and as reflected in the Watermaster's Motion, a judgment that exposes the Zamrzlas to significantly high monetary penalties. (1AA, pp.29-30.) The trial court erred when it found the Zamrzlas are members of the Small Pumper Class based on an ambiguous definition, and that the Zamrzlas are bound to the Judgment based on this ambiguous class definition.

Specifically, the certification order and Judgment defined the class as "[a]ll 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.” (2AA, pp.664-665.) This definition could be read to include as class members private landowners who have pumped less than 25 acre-feet *each* year since 1946, **or** private landowners who have pumped 25 acre-feet in *any* year since 1946.

The former interpretation excludes the Zamrzlas as they regularly pumped over 25 acre-feet a year. The trial court applied the latter interpretation, however, in finding the Zamrzlas are members of the Small Pumper Class. (19AA, p.4797:19-22.) Specifically, the trial court stated that “[f]requent water use over 25 acre-feet is not the test[.]” (19AA, p.4797:18-19.) This statement, however, conflicts with the trial court’s prior comments and expressed understanding of the definition of a small pumper class. (4RT 910:1823; 5RT 1225:28-1226:8.)

Indeed, the trial court’s own confusion as to the class definition reflects its ambiguity. The trial court erred when it certified the class without correcting the ambiguous definition. The errors continued when the trial court approved the defective notice that defined the class differently from the certification order, and then approved the settlements and the Judgment based on the ambiguous class definition that was materially different from the notices sent to the potential members. Reversal of the trial court’s ruling is necessary to correct the errors that violated the Zamrzlas’ due process rights in this case.

D. The Evidence Does Not Support the Trial Court’s Finding that the Zamrzlas Were Served Notice of the

Class Action

“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.” (*Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314.) “The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance.” (*Id.*)

The notice that is required both by statute and by due process is **formal** notice. (*Sass v. Cohen* (2019) 32 Cal.App.5th 1032, 1041.) “The reason for this insistence on formal notice is simple: Formal notice ensures that the ‘maximum judgment’ can be ascertained from the four corners of the operative complaint or statutorily authorized supplemental pleadings, thereby eliminating the messier case-by-case inquiries into what a defendant actually knew or reasonably should have known that would be required if actual or constructive notice were the operative standard.” (*Id.*)

In a class action in which members of the class have a substantial claim, individual notice is required as it is essential for those members to decide whether to remain as members of the class and become bound by the rule of res judicata; whether to intervene with their own counsel; or whether to “opt out” and pursue their independent remedies, particularly when other class actions are pending that include the same cause or causes of action. (*Cooper v. American Sav. & Loan Assn.* (1976) 55 Cal.App.3d 274, 284.)

The trial court has “virtually complete

discretion' in determining how [notice to the class] can most practicably be accomplished." (*Duran v. Obesity Research Institute, LLC* (2016) 1 Cal.App.5th 635, 648, quoting *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.app.4th 1135, 1164.) However, "when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." (*Mullane, supra*, 339 U.S. at 315.)

1. The Zamrzlas Were Not Personally Served

According to a September 2008 declaration by District No. 40's counsel, Dunn, "[a]s the Court certified the Willis and Wood Classes, 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." (8AA, p.1886:11-13.) Johnny and Pamella owned more than 100 acres of land in the Antelope Valley and historically pumped more than 25 acre-feet a year.

Despite repeated arguments and questions by Johnny and Pamella why they were not personally served pursuant to the trial court's order, the trial court failed to address this issue. (2AA, pp.397-400.) The trial court only acknowledged that "[t]here is no dispute that the Zamrzlas were not personally served with summons and complaint." (19AA, p.4796:13-15.) Then, it unreasonably concluded that "proper service turns on whether the Zamrzlas are bound by the Judgment as Small Pumper Class members." (*Id.*) However, courts have found that "until members of the class receive notice of the action they will not be bound by any judgment in the action." (*Cooper, supra*,

55 Cal.App.3d at 284.)

Land ownership records are publicly available, yet there has been no explanation offered by the opposing parties as to why public property ownership records could not have been used to identify Johnny and Pamella as owners of over 100 acres of land, and personally served them with notice of the class action.

The opposing parties only argue that because the Zamrzlas did not opt out of the class action or file notices of groundwater extraction with the State Water Board, the Zamrzlas' argument that they should have been personally served fails. (17AA, pp.4457-4459.) However, the former argument lacks merit and completely misses the point. Johnny and Pamella were not personally served, did not receive notice of the class action, and therefore, were deprived of the opportunity to opt out. Moreover, whether Johnny and Pamella reported their groundwater extraction does not explain why they were not personally served as 100-acre landowners. The failure to personally serve Johnny and Pamella was a violation of their due process rights in this case.

....

3. Service by Publication was Inadequate

Here, the trial court found that the Zamrzlas were served by publication because they have subscribed to the Antelope Valley Press at their business office "for decades leading up to the final Judgment." (19AA, p.4802.) However, "where members of a class have a substantial claim, individual notice is required because it is essential for them to decide whether to remain as members of the class and become bound by the rules of res judicata;

whether to intervene with their own counsel; or whether to ‘opt out’ and pursue their independent remedies.” (*Cooper v. American Sav. & Loan Assn.* (1976) 55 Cal.App.3d 274, 285.)

Cooper was cited with approval by the Supreme Court in *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 983. Specifically, while the Supreme Court noted that “individual notice may not always be required even for absent class members whose whereabouts are known,” it quoted *Cooper* in stating the following: “when the membership of the class is huge, the damages are minimal, and res judicata and ... other problems ... are insignificant, notice by publication is adequate.” This implies that when the opposite facts exist (class is not huge, damages are not minimal, etc.), then personal notice is required.

Here, the class was not huge, and the damages are not minimal (the invoice the Zamrzlas received is proof of this), and therefore, individual notice was required. Johnny Lee and Jeanette were not provided with individual notice of the class action. Indeed, they did not appear in any mailing list and were not served with the 2009 Opt-Out Notice. The notice by publication was inadequate and did not provide reasonable notice to Johnny Lee and Jeanette, as well as Johnny and Pamela.

The trial court’s finding that the Zamrzlas were served with notice of the class action was erroneous and should be reversed.

E. The Trial Court Erred When It Applied An Incorrect Standard for Notice And In Relying On Such Incorrect Standard Found That It Cannot Exercise Its Equity Powers To Grant The Relief Requested

A court sitting in equity can, under certain circumstances, set aside or modify a valid final judgment. (*Kulchar v. Kulchar* (1969) 1 Cal.3d 467, 470.) An equitable attack on a judgment or order is a direct attack, wherein extrinsic evidence is admissible to set aside the judgment on the ground of extrinsic fraud or mistake. (*Bennett v. Hibernia Bank* (1956) 47 Cal.2d 540, 558; *Bae, supra*, 245 Cal.App.4th at 98 [“Because a motion for equitable relief is ‘direct,’ rather than ‘collateral,’ extrinsic fraud or mistake may be demonstrated by evidence not included in the judgment roll or record relating to the judgment”].)

Fraud or mistake is extrinsic when it deprives the unsuccessful party of an opportunity to present his case to the court. (*Roger v. Mulkey* (1944) 63 Cal.App.2d 567, 575.) “In some cases ... the ground of relief is not so much fraud or other misconduct of the defendant as it is the excusable neglect of the plaintiff to appear and present his claim or defense. If such neglect results in an unjust judgment, without a fair adversary hearing, the basis for equitable relief is present, and is often called ‘extrinsic mistake.’” (*Kulchar, supra*, 1 Cal.3d at 471 [internal citations omitted].)

A mistaken belief of one party preventing proper notice of the action can be a mistake warranting equitable relief. (*Aldabe, supra*, 209 Cal.App.2d at 475.) A mistake which led a court to do what it never intended is also extrinsic mistake. (*Id.*)

Here, the trial court determined it “cannot exercise its equitable powers as a basis to re-open the Judgment and set aside or modify [the Zamrzlas] status as members of the Small Pumper Class[]” because the Zamrzlas “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 did nothing until late 2021.” (19AA, p.4805.) This was in error as the evidence the trial court relied on in finding that the Zamrzlas knew about the adjudication does not show actual or formal notice on the Zamrzlas. Indeed, as argued above, not only did the opposing parties fail to show that the Zamrzlas were adequately served with notice of the class action, but the affirmative evidence shows, on the face of the inconsistent notices and ambiguous class definition, that there was inadequate notice in this case.

Accordingly, the trial court’s reliance on the testimonies from Johnny, Pamella and Johnny Lee that they heard from friends and neighbors about a water litigation that involved the “big guys” to support its conclusion that the Zamrzlas had knowledge of the lawsuit and, therefore, it could not exercise its equity powers to grant the Zamrzlas relief was an erroneous application of law. (19AA, pp.4805-4806.)

This is an improper standard for notice to bind the Zamrzlas to the Judgment and for the trial court’s denial of equitable relief. Indeed, this ruling improperly reduces a complainant’s burden to ensure that proper notice is given to an opposing party. Specifically, for the trial court to conclude that because the Zamrzlas heard and spoke about the water litigation with friends and neighbors, they had knowledge about the litigation, and therefore, could not be granted equitable relief, has serious ramifications to due process. To relieve those with the burden to deliver adequate process in circumstances where landowners testify honestly to having heard

about a lawsuit is to circumvent founding and fundamental principles of jurisprudence, and with devastating impacts to their use and enjoyment of their property, by on the one hand, having to pay significant sums of money for water because they are capped by the Class Action limitation on water use, while on the other hand, losing property value by losing water rights that otherwise could be established, *or at minimum they should have the opportunity to establish*.¹⁸

Here, the Zamrzlas' water rights and livelihood are at stake. They should have received personal or individual notice because substantial claims are at

¹⁸ During the Final Phase of the AVGC trial, "Beeby prepared a detailed spreadsheet for over 100 water users, listing their prerampdown average yearly pumping, the range of acres to which the water was applied, and identifying the claimed beneficial use for that water: irrigation, agriculture, municipal/industrial, domestic, reclamation, and wildlife habitat. ... [¶] ... [Beeby] opined that, once water usage was 'ramped down' to the final levels of overlying production rights assigned to these landowners under the Physical Solution, the overlayers would have to alter their farming practices (either by reducing the acreage farmed or switching to crops with a lower crop duty) or import more water, because their ramped down usage levels would be insufficient to continue farming their entire acreage with crops they historically produced." (*Willis, supra*, 62 Cal.App.5th at 1015.) That is the impact of this judgment to the Zamrzlas – a judgment they did not receive notice of. Accordingly, the Zamrzlas were deprived of the opportunity to litigate their production rights and are now locked in a significantly ramped down water usage level that does not reasonably comport to their historical use of their properties. The trial court erred when it found it could not exercise its equitable powers according to an incorrect application of the law on notice and denied the Zamrzlas' motions.

stake evidenced by the amount of money that the Watermaster is claiming they are liable for. This matter is not the typical consumer class action, where a minimal amount of money is at stake. Here, use and enjoyment of real property, and property value itself for having water rights, is at stake. Therefore, the Zamrzlas should have been given personal or individual notice and they were not.

While the Zamrzlas acknowledge that the trial court approved the method of notice in this case, the trial court's approval of the method of notice does not prove that the Zamrzlas were provided with notice. As stated above, the Zamrzlas presented unrefuted testimony that they were never mailed or served with notice of the class action and Judgment. The Zamrzlas did not see any published notice of the class action in a newspaper. While the opposing parties presented third party declarations that notices were mailed out to persons on a mailing list that included Johnny and Pamella, such evidence is not only insufficient but also inadmissible and does not prove notice was mailed out to Johnny and Pamella.

Ultimately, there is no declaration or affidavit from anyone who prepared the mailing that a notice was mailed to Johnny and Pamella. As for Johnny Lee and Jeanette, there is no dispute they do not appear on the mailing list.

Since all exercises of discretion must be guided by applicable legal principles, and here, the trial court's ruling reflects an erroneous understanding of the applicable law on notice and due process, the trial court has not properly exercised its discretion under the law and the order should be reversed. (*See J.N. v. Superior Court, supra*, 23 Cal.App.5th at 714-715.)

The trial court also erroneously found that the

motions are a collateral attack on the judgment because “the time to make a direct attack on the [2015] Judgment has long passed.” However, this ruling not only contradicts the trial court’s prior comments and orders in this case, but the Zamrzlas’ motions were clearly for equitable relief, which is a direct attack on the Judgment. (2AA, pp.386-406; 3AA, pp.707-723.) For the trial court to now rule otherwise reflects an abuse of discretion.

Specifically, the trial court, aware of the Zamrzlas’ claim that they were never served with the 2009 Opt-Out Notice and were not aware of the Judgment’s impact on their rights until the Watermaster’s 2018 letter, suggested and then, indeed ordered the Zamrzlas to file motions in equity to modify and/or vacate the judgment. (2RT 318:15-324:5, 325:2-329:6.) Thereafter, it was also the trial court that ordered an evidentiary hearing.

While arguably these incorrect ruling correlates to the trial court’s finding that the Zamrzlas knew about the adjudication prior to the 2015 Judgment and therefore, the court cannot exercise its equity powers to grant the relief requested, that finding again was based on an incorrect application of the standard on notice and due process. Accordingly, the trial court’s finding that it cannot exercise its equity powers to grant the relief requested is also erroneous.

....

VI. CONCLUSION

The lack of adequate notice and procedural defects in this matter deprived the Zamrzlas of their right to due process. Based on the foregoing reasons,

App.97

the trial court's order should be reversed and the judgment against the Zamrzlas should be vacated.

Respectfully Submitted

s/ Mae G. Alberto

Mae G. Alberto, SBN 228067

Daniel Hargis, SBN 224226

Wesley A. Miliband, SBN 241283

ATTORNEYS FOR

APPELLANTS JOHNNY

ZAMRZLA, PAMELLA

ZAMRZLA, JOHNNY LEE

ZAMRZLA, JEANETTE

ZAMRZLA

App.98

APPENDIX H

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA SECOND APPELLATE DISTRICT
DIVISION ONE

Court of Appeal No. B331148

Superior Court Case No. BC325201 / JCCP4408

JOHNNY ZAMRZLA, PAMELLA ZAMRZLA,
JOHNNY LEE ZAMRZLA, JEANETTE ZAMRZLA,

Appellants,

v.

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40, et al.,

Respondents.

Filed: August 20, 2025

APPEAL FROM AN ORDER AFTER JUDGMENT
OF THE LOS ANGELES COUNTY SUPERIOR
COURT, THE HONORABLE JACK KOMAR

App.99

APPELLANTS' COMBINED REPLY BRIEF TO
RESPONDENTS WATERMASTER'S AND
SETTLING PARTIES' BRIEFS [EXCERPTS]

....

II. ARGUMENT

A. The Zamrzlas' Due Process Rights Were Violated When They Were Determined to be Bound by the Judgment in a Class Action from Which They Were Expressly Excluded

Due process requires that class notice defines the class in a way that recipients can self-identify if they are members of the class and decide if they want to remain part of the class or opt out of the class. (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980.) This principle was violated here. The class definition in the Opt-Out Notice for the Small Pumper Class materially differed from the already deficient class definition in the trial court's class certification order and later Judgment, which led parties such as the Zamrzlas who pumped more than 25 acre-feet of water in any year since 1946 to believe they were not class members and thus had no obligation to opt out or take any other action with respect to the class action.⁴ (See 8-AA-2175-2176 [Opt-Out Notice]; 2-AA-664-665 [2008 Certification Order]; and 2-AA-511 [Judgment].)

To try avoiding this due process violation, Respondents assert it is "[n]ot so" that the class definition in the Opt-Out Notice is materially

⁴ The Zamrzlas never timely received the Opt-Out Notice, but even if they had the language of the notice must still satisfy due process to bind them. (See, e.g., *Twigg v. Sears, Roebuck & Co.* (11th Cir. 1998) 153 F.3d 1222, 1227.)

different than the class definition in the certification order and Judgment, but then do nothing to develop the point. (SP RB, p. 44; see also Watermaster's RB, pp. 30-31.) Respondents do not analyze at all the class definition in the Opt-Out Notice or how it compares to the class definitions in the other documents. (SP RB, pp. 43-45; Watermaster's RB, pp. 30-31.) The reason Respondents elide any such discussion is because it is impossible for Respondents to fairly maintain that the class definition in the Opt-Out Notice is the same as that in the certification order or Judgment.

Instead of addressing the incompatible class definitions, Respondents divert attention to language in the Opt-Out Notice that purported to require any recipient of the notice to return the response form attached to the notice. Respondents argue this imposed an obligation on the Zamrzlas to "affirmatively take action to exclude themselves from the class" with the apparent implication being that the failure to do so somehow transmuted the Zamrzlas into class members even though they were not class members as defined in the Opt-Out Notice. (SP RB, p. 46; Watermaster's RB, pp. 30-31.)

This should be rejected. There is no basis in fact or precedent in law that supports the radical proposition that persons can be bound to a class action judgment by failing to opt out of a class action that the class action notice says they are not a part of the class.

1. **The Opt-Out Notice Did Not Obligate Recipients to Submit a Response, Require Non-Class Members to Opt Out, or Give Notice That Non-Class**

**Members Would Be Liable
Under the Class Action**

At the outset, the Opt-Out Notice is muddled as to whether it “required” any or all recipients to return the response form, including those not part of the defined class. To be sure, the notice includes language that facially required the response form to be returned. (8-AA-2175-2178.) However, other parts of the notice suggest returning the form was not required but rather something that was “important” or something that “should” be done. (*Id.*, p. 2176.) Elsewhere, the notice states that “Class Members should complete and return the attached response form.” (*Id.*) This implies that non-class members did not need to fill out the response form, and even for defined class members suggests that completing the form was not required but simply recommended.

Adding to this is that it is doubtful the trial court had jurisdiction to make an order requiring any recipient to respond. A court must have jurisdiction over a party to order them to act (*Tracy Press, Inc. v. Superior Court* (2008) 164 Cal.App.4th 1290, 1297), and pertinent here, even members of the class are not considered parties before the court unless they intervene. (*Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 263, 266; *Eggert v. Pacific States Savings & Loan Co.* (1942) 20 Cal.2d 199, 201.)

The language in the Opt-Out Notice purporting to require recipients to complete the attached form is best viewed as an exhortation as opposed to a legally enforceable order that should bind any non-class member who failed to respond.

Regardless, what is certain is that nothing in the Opt-Out Notice required non-class members to exclude themselves from the class on pain of being

bound by the class action if they did not do so as Respondents would have it. (SP RB, p. 45; see also *id.*, p. 30 [claiming Opt-Out Notice “required the recipient to ‘opt out’ of the class”]; Watermaster’s RB, pp. 30-31.) Despite their proclamations, Respondents do not and cannot cite any language in the notice or attached response form that required non-class members as defined in the notice to choose whether to remain in or opt out of the class. (*Id.*)

Rather, the notice provides that *only* class members could opt out, stating that “[i]f you are a Class Member, you have the right to remain in the Class or exclude yourself from the Class.” (8-AA-2176.) The plain terms of this language limited the ability to opt out to only “Class Members” as defined in the notice.

The opt out portion of the response form, item 5, is consistent. The form states item 5 need only be completed “if applicable.” (*Id.*, p. 2177.) The “if applicable” term would not have been used if every recipient of the notice was required to complete item 5. Rather, the inclusion of the term shows that item 5 was only applicable to certain recipients, namely class members, given the limitation that only class members could opt out or remain in the class. (Conversely, recipients of the notice who were not class members as defined in the notice would naturally read item 5 as inapplicable to them and thus would not complete any part of item 5, including the opt-out option.)

There was simply no requirement or even ability for persons who were not class members to opt out of the class.⁵

There was also nothing in the Opt-Out Notice that informed non-class members that they would be bound to the results of the class action if they did not complete the response form or somehow opt out. The only consequences the notice indicates non-class members may face if they did not complete the form is the vague notion that “[their] rights may be affected.” (*Id.*, p. 2176.) The notice does not say what this means and, critically, does not say that non-class members who failed to complete the form would in effect become *de facto* class members bound by any settlement, judgment, or other resolution of the class action.

Only class members were told of the potential consequences if they remained in the class or opted

⁵ It was improper for item 5(B) to require class members to opt in. (8-AA-2177; *Hypertouch, Inc. v. Superior Court* (2005) 128 Cal.App.4th 1527, 1550.) Further, though the Opt-Out Notice requests a response from non-class members to “[m]ake clear you are not in the class” (8-AA-2176), providing such information to establish one is not a member of the class is not the same thing as opting out of the class or that the failure to provide such information is tantamount to opting into the class. As a matter of law, only class members can opt out or remain in the class action as discussed further below. As mentioned, the Opt-Out Notice only empowered defined class members to opt out in any event. Further, the only part of the response form that allows one to opt out is item 5. This is separate from items 1-4, which appear geared toward determining class member status. (*Id.*, p. 2177.) The form thus treats opting out of the class to be different than providing information to ascertain if one is in the class. Finally, as a matter of logic, a person cannot opt out of something they are not a part of to begin with.

out. (*Id.*, at “WHAT DO YOU NEED TO DO?”) Most relevant here, the notice – after indicating that only class members have the right to remain in the class or opt out – states that it is only class members who would be “bound by the decision in the case, whether favorable or unfavorable” if they did not opt out. (*Id.*)

The notice does not say non-class members would be similarly bound. In addition, though non-class members were not required to and could not exclude themselves from the class under the terms of the Opt-Out Notice, the statement in the notice that non-class member rights “may be affected” nevertheless failed to meet the minimum requirements for effective class notice under California Rules of Court (“CRC”), rule 3.766, which requires a “statement that the [class] judgment, whether favorable or not, will bind all [those] who do not request exclusion.” (CRC, rule 3.766(d)(4).)

Moreover, the Opt-Out Notice expressly affirms that persons are “**Not in the Class**” if, like the Zamrzlas, they fall within the exceptions that are part of the class definition. (8-AA-2176, emphasis original.) That the notice juxtaposes such non-class members from class members, and then only tells class members what will happen if they remain in the class or exclude themselves, strongly suggests, and would lead non-class members to believe, that the same results would not flow to non-class members.

Ultimately, there was no warning that being bound to the class action would be the consequences of failing to complete the form attached to the Opt-Out Notice by a recipient of the notice who was not a class member under the terms of the notice. Respondents’ position that this outcome is nonetheless proper despite the complete lack of notice

of such consequences would, if accepted, only compound the injustice and due process violations that already emanate from the contradictory class definitions across the documents.⁶

2. The Zamrzlas Had No Legal Duty to Submit An Opt-Out Form in Order to Avoid Liability Because They Were Not Members of the Small Pumper Class as a Matter of Law

As just shown, the facts deny Respondents' position that the Zamrzlas as non-class members as defined in the Opt-Out Notice had to exclude themselves from the class to avoid being bound to the class. So does the law.

Nowhere in their answering brief have Respondents cited any case, statute, or rule that supports their legal theory that the "onus" is on a non-class member to submit an opt-out form or become bound by or subject to liability under a class action settlement or judgment. (See SP RB, p. 44;

⁶ The Notice of Partial Class Action Settlement, which the Zamrzlas did not contemporaneously receive or know about, does not salvage Respondents' position. (SP RB, p. 44-45.) The settlement notice was disseminated years after the deadline to opt out had passed, but, regardless, repeats the same class definition as the Opt-Out Notice. (8-AA-1964.) It thus communicates to persons such as the Zamrzlas that they are not in the class and are strangers to the litigation and settlement. Adding to this is that the settlement notice expressly limited the right to object to the settlement to class members, thus conveying that non-class members could not object. (*Id.*, p. 1966, Item 17.)

Watermaster’s RB, pp. 30-31.) This omission is not surprising because no such legal authority exists.

No matter how stridently Respondents assert otherwise, the Zamrzlas had no legal duty, and indeed had no legal ability, to submit an opt-out form to avoid liability in the underlying class action where they indisputably are not members of the Small Pumper Class under the plain language of the Opt-Out Notice. (See *Fonder v. Sheriff* (C.D. Ill. Feb. 28, 2014) Case No. 12-CV-2115, 2014 WL 812939, at *2 [“it is only class members who can opt out of the class”]; *Fladell v. Wells Fargo Bank, N.A.* (S.D. Fla. 2015) Case No. 13-60721-CIV-MORENO/HUNT, 2015 WL 11144367, at *3 [“[a]ll parties agree that Karen Hicks is not a class member, so she would not have been able to file an opt-out request on her own behalf”]; *In re Wachovia Corp. “Pick-A-Payment” Mortgage Marketing & Sales Practices Litigation* (N.D. Cal. May 17, 2011), Case No. 5:09-md-02015-JF, 2011 WL 1877630, at *6 [“[b]ecause Ms. Jones is not a class member, she has no standing to raise objections ... and her request to opt out is moot”]; *Curtis-Bauer v. Morgan Stanley & Co.* (N.D. Cal. Oct. 22, 2008) Case No. C 06-3903 TEH, 2008 WL 4667090, at *10 fn. 9 [“he is not a Class Member and his opt-out is immaterial”].)

Nothing in the California class action statute or Rules of Court require non-class members to opt out. Code of Civil Procedure section 382 “provides statutory authority for class actions in California,” but “does not prescribe a procedural framework for such suits.” (See *Hypertouch, supra*, 128 Cal.App.4th at 1543.) Rather, unless provided for elsewhere by statute, which is not the situation here, all such suits

“must comply with the California Rules of Court relating to the management of class actions.” (*Id.*)

Regardless of how meticulously it reviews these governing rules the Court will find no provision that supports the trial court’s imposition of liability against the Zamrzlas. (See CRC, rules 3.760-3.771.) Specifically, California law does not provide for the imposition of liability against individuals, like the Zamrzlas, who do not opt out of a class action in which they are not members of the defined class.

Moreover, the function of an opt-out notice is not to create a liability trap for unwary non-class members, which inexorably would lead to abuses of the class action procedure, but instead to inform class members of their right to pursue the class claims and remedies or to opt out for the purpose of pursuing their own individual claims and remedies. (See CRC, rule 3.766(d)(2)-(3); *Cooper v. American Savings & Loan Association* (1976) 55 Cal.App.3d 274, 285; see also *In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 828 “[t]he purpose of class notice in the context of a settlement is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement”].) The materially deficient definition in the Opt-Out Notice did not fulfill this fundamental due process function. On this basis alone, the Judgment entered against the Zamrzlas cannot stand as a matter of law.

Further compelling this conclusion is the maxim “*expression unius est exclusion alterius*,” which is a “canon of construction holding that to express or include one thing implies the exclusion of the other, or of the alternative.” (See *Settle v. State of California* (2014) 228 Cal.App.4th 215, 218, quoting Black’s Law

Dict. (8th ed. 2004, p. 620, col. 2; see also *Bookout v. Local Agency Formation Commission* (1975) 49 Cal.App.3d 383, 389 [*“expressio unius est exclusio alterius”* means “the expression of one thing is the exclusion of another”].)

Applying this maxim here, the Opt-Out Notice’s express exclusion of the Zamrzlas from the Small Pumper Class because they pumped 25 acre-feet or more of groundwater in at least one calendar year since 1946 necessarily precludes any inference that they could fall within the Small Pumper Class. (*Stephenson v. Drever* (1997) 16 Cal.4th 1167, 1175 [“The fact that the contract expressly so provides tends to negate any inference that the parties also intended another consequence to flow from the same event. *Expressio unius est exclusio alterius*”].) Any other conclusion would improperly render mere surplusage the categories of persons excluded in the definition of “Small Pumper Class.” (See *In re Marriage of Nassimi* (2016) 3 Cal.App.5th 667, 688 [courts must avoid constructions that render provisions or words “surplusage”].)

In sum, common sense dictates that the Zamrzlas could not “remain” in the Small Pumper Class by failing to return an opt-out form, as Respondents erroneously assert, when they were never in the class from the outset. (See SP RB, p. 45; Watermaster’s RB, pp. 30-31.) Nothing the Zamrzlas did or did not do could change this result because, as non-class members as defined in the Opt-Out Notice, they were strangers to the underlying class action at all relevant times. To bind the Zamrzlas to the class action despite the defects in the class definition and without notice that as non-class members they could be bound to the class action violates due process. The

Court should reverse the Judgment against the Zamrzlas in its entirety.

....

C. The Trial Court Erred When It Found that the Zamrzlas Received Notice of the Class Action

1. Casually Hearing About Litigation is Not Class Notice

Respondents argue the Zamrzlas had actual notice of the litigation because they heard about a water adjudication from friends and neighbors. (SP RB, p. 52; Watermaster's RB, pp. 42-44.) This is the same incorrect argument that the trial court made in its order. (19-AA-4805-4806.) Notably, neither Respondents nor the trial court cite to any case, statute or rule that states hearing about a litigation from friends and neighbors constitute "notice" that obligates an individual to seek counsel and insert themselves into a lawsuit. They do not cite any authority because there is none.

Indeed, under Civil Code section 18, a notice is actual when it consists of express information of a fact. (Civ. Code § 18.) The adequacy of notice in the context of class action lawsuits is specifically governed by CRC, rule 3.766. Under Rule 3.766(d), the "content of the class notice is subject to court approval" and "if class members are to be given the right to request exclusion from the class," the notice must include the following:

- (1) A brief explanation of the case, including the basic contentions or denials of the parties;
- (2) A statement that the court will exclude the member

from the class if the member so requests by a specified date; (3) A procedure for the member to follow in requesting exclusion from the class; (4) A statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) A statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel.

(CRC, rule 3.766(d).)

Informally hearing about litigation from friends and neighbors is not court approved notice containing the elements needed to comply with Rule 3.766. Further, while the Zamrzlas testified that they heard about “a water adjudication” from friends and neighbors, there is no evidence that the “water adjudication” they heard about involved the Small Pumper Class. The Zamrzlas testified that they did not hear about the Small Pumper Class until 2019, when they were informed by the Watermaster, through their counsel, of the Small Pumper Class. (5RT 1341:1-20, 1395:25-1396:10; 6RT 1627:24-1628:2, 1629:21-1630:3.) Accordingly, even if hearing about the class action from friends and family could constitute “notice” (it does not), there is no evidence that the Zamrzlas were provided with information that is required for adequate class notice of the Small Pumper Class. There is no evidence that the “friends and neighbors” from whom they heard about the water adjudication were even a part of the Small Pumper Class.

. . . .

**4. Johnny Lee and Jeanette
Were Not Served with Notice**

**by Mail and Service by
Publication was Inadequate**

Respondents do not dispute that Johnny Lee and Jeanette were **not** served with any of the class notices by mail. Notably, Respondents fail to address the reason for this failure. Rather, Respondents, again, dismissively argue that the trial court approved service by publication and publication provided adequate notice of the class action.

However, to satisfy due process, notice to class members must be “the best practicable, ‘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.’” (*Consumer Cause, Inc. v. Mrs. Gooch’s Natural Food Markets, Inc.* (2005) 127 Cal.App.4th 387, 399, fn. 9.) “[I]f the class action is to remain effective, members of the class must receive ‘the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.’” (*Home Sav. & Loan Assn., supra*, 42 Cal.App.3d at 1012.)

Again, Respondents do not explain why Johnny Lee and Jeanette could not be identified before the Judgment to be served notice of the class action by mail. “[A]ssertions that direct notice should not be ordered because the cost is unreasonable under the circumstances should be supported by declaration based on personal knowledge, not unsworn statements of counsel. The standard is a notice plan that one would implement if one genuinely wanted to inform someone, all relevant factors considered.” (*Duran, supra*, 1 Cal.App.5th at 649 [court found notice published in national newspaper was not reasonably calculated to reach class members].)

Here, notice by publication was inadequate for Johnny Lee and Jeanette, who were identifiable through reasonable effort. Again, land ownership records are publicly available. Indeed, the Watermaster mailed Johnny Lee and Jeanette separately in 2018. (6RT 1630:4-10.) Accordingly, the Watermaster was able to identify Johnny Lee and Jeanette. Respondents, however, ignore the failure to identify and serve Johnny Lee and Jeanette with notice of the Small Pumper Class Action by mail.

While the trial court generally has discretion as to determining what notice has a reasonable chance of reaching a substantial percentage of class members, “when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.” (*Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 315 [notice by publication was insufficient and did not satisfy requirements of due process with respect to known present beneficiaries of a known place of residence]; see also *Tulsa Professional Collection Services, Inc. v. Pope* (1988) 485 U.S. 478 [notice by publication inadequate as to estate creditors whose identities were known or ascertainable by reasonably diligent efforts]; *Mennonite Bd. of Missions v. Adams* (1983) 462 US. 791 [notice by publication inadequate to inform mortgagee of a proceeding to sell the mortgaged property for nonpayment of taxes].)

Not only was publication inadequate notice for Johnny Lee and Jeanette who were identifiable through reasonable effort, but the publications themselves were inadequate to provide notice of the Small Pumper Class. For example, the Opt-Out

Notice that Respondents claim was published in the LA Times, Bakersfield Californian and Antelope Valley Press did not provide information for adequate class action notice as specified in CRC, rule 3.766(d). (1-AA-270-273.) The notice did not state the “basic contentions or denials of the parties;” that “the court will exclude the member from the class if the member so requests by a specified date;” nor did it state that a “procedure for the member to follow in requesting exclusion from the class;” it did not state “that the judgment, whether favorable or not, will bind all members who do not request exclusion;” and it did not state “that any member who does not request exclusion may, if the member so desire, enter an appearance through counsel.” (See CRC, rule 3.766(d); 1-AA-270-273.) Accordingly, the notice by publication was inadequate in this case. The trial court erred in finding that the Zamrzlas were provided with adequate notice of the Small Pumper Class Action.

....

D. The Trial Court Abused Its Discretion When It Denied the Zamrzlas Equitable Relief

Under federal and California law, a class action judgment is binding on class members in any subsequent litigation, but “the ability to bind absent class members depends on compliance with due process regarding notice and adequate representation.” (*Louie v. BFS Retail & Commercial Operations, LLC* (2009) 178 Cal.App.4th 1544, 1555; see also *Twigg, supra*, 153 F.3d at 1226 [“Before the bar of claim preclusion may be applied to the claim of an absent class member, it must be demonstrated

that invocation of the bar is consistent with due process”].)

“Even where relief is no longer available under statutory provisions, a trial court generally retains the inherent power to vacate a default judgment or order on equitable grounds where a party establishes that the judgment or order was void for lack of due process or resulted from extrinsic fraud or mistake.” (*County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1228-1229 [court abused its discretion when it denied motion to vacate filed six years after judgment because false proof of service deprived appellant of due process and opportunity to be heard in meaningful time and meaningful manner].)

“Extrinsic fraud occurs when a party is deprived of the opportunity to present a claim or defense to the court as a result of being kept in ignorance or in some other manner being fraudulently prevented by the opposing party from fully participating in the proceeding.” (*Id.*) A mistake which led a court to do what it never intended is extrinsic mistake. (*Aldabe v. Aldabe* (1962) 209 Cal.App.2d 453, 475.)

1. Evidence Does Not Show that the Zamrzlas Had Notice of the Small Pumper Class Action Prior to the Judgment

Contrary to Respondents’ contention, the evidence in the record does not support the trial court’s finding that “the Zamrzlas knew about the underlying adjudication long before the Court’s entry of the final Judgment.” (19-AA-4805:18-19.) The trial court’s reliance on testimony that the Zamrzlas heard

about “a water adjudication” from friends or neighbors as supporting evidence the Zamrzlas had notice of the Small Pumper Class Action was an abuse of discretion. Neither Respondents nor the trial court cite to any case, statute or rule that states hearing about a litigation from friends and neighbors constitute “notice.”

However, even if third party hearsay about the litigation is sufficient to provide notice, the evidence Respondents (and the trial court) rely on does not support a finding that the Zamrzlas knew about the Small Pumper Class Action prior to the Judgment. Generally hearing about a water adjudication does not provide adequate notice of the Small Pumper Class Action. (See CRC, rule 3.766(d).)

**a. Johnny and Pamella
Did Not Know About the
Small Pumper Class
Action Prior to the
Judgment**

Johnny and Pamella testified that they did not hear about the Small Pumper Class until approximately February 2019. ⁹ (5RT 1341:15-20,

⁹ The Watermaster’s letter to the Zamrzlas did not mention the Small Pumper Class. (1-AA-98-99.) Correspondence between Zamrzlas’s attorney, Mr. Brumfield, and the Watermaster’s counsel, Mr. Parton, made no mention of the Small Pumper Class. (1-AA-101-107.) Rather, the Watermaster’s letter only generally informed the Zamrzlas about the Judgment and that to the extent the Zamrzlas did not have the right to pump groundwater under the Judgment, to stop unauthorized pumping. The Watermaster’s letter then cited to Section 20.9 of the Judgment regarding intervention in the action to become a party and seek the right to produce groundwater. (1-AA-98.)

1395:12-24; 6RT 1547:4-11, 1551:6-22, 1564:16-20, 1627:24-1628:2; 1-AA-78:16-17.) Respondents' evidence does not refute this fact. Specifically, Respondents rely on Johnny's testimony that he spoke to a Delmar Van Dam that "(1) the adjudication was for big farmers, (2) it would be very costly for the Zamrzlas to participate, and (3) the Zamrzlas should just keep pumping groundwater without participating and they 'would get some water at the end of it.'" (SP RB, p. 66.) This testimony does not show that Johnny and Pamella had knowledge about the Small Pumper Class and/or that they may be members of the Small Pumper Class.

The Small Pumper Class did not involve "big farmers," nor would it have been "costly" for the Zamrzlas to participate in the class. (See 1-AA-267 [the Opt-Out Notice stated that "If you remain in the Class: ... you will not personally be obligated to pay any fees or costs out of your pocket"].) As such, even if this Court were to find that hearing about a litigation satisfies due process, Delmar Van Dam's statements would still not have provided Johnny and Pamella notice of the Small Pumper Class Action. Notably, Respondents also identify Delmar Van Dam as an "Exhibit 4 Party,"¹⁰ and **not** as a Small Pumper Class member.

There was no mention of the Zamrlzas being members of the Small Pumper Class in the Watermaster's letter. (*Id.*)

¹⁰ Exhibit 4 parties are identified in Exhibit 4 of the Judgment, and hence, referred to as "Exhibit 4" parties. (2-AA-509; see also Respondent's Appendix, Vol. 1, pp. 108-112.) "Exhibit 4" parties are not Small Pumper Class members. Rather, they are overlying landowners who are not small domestic use pumpers. The Small Pumpers are domestic users. While the Zamrzlas are not big farmers, they are not domestic users, as they historically

Respondents also argue that Johnny and Pamella knew about the adjudication because Eugene Nebeker, another Exhibit 4 Party, invited the Zamrzlas to join the Antelope Valley Groundwater Association. Again, this evidence does not support the finding that Johnny and Pamella knew about the Small Pumper Class prior to the Judgment. Rather, Johnny's testimony shows that again, he believed that the adjudication involved "big farmers." (See 5RT 1310:10-23.)

Moreover, contrary to Respondents' claim, there is no evidence that Johnny and Pamella received a copy of the Judgment in 2016. Johnny testified that he received a stack of papers from Norm Hickling but did not recall what was in the stack of papers. (5RT 1315:11-1316:15.)

Additionally, the generally referred to "water adjudication" involved multiple lawsuits, groups, and parties that were later coordinated and called the Antelope Valley Groundwater cases ("AVGC"). (AOB, p. 16.) The Small Pumper Class Action was one, out of many cases involved in the AVGC, and the only one relevant in this matter. Generally hearing about a

grew alfalfa and other crops on their property. Exhibit 4 parties were served with notice of the litigation and had their overlying production rights litigated. The Zamrzlas should have been afforded the same treatment as the overlying landowners identified in Exhibit 4 and should have been properly served with notice of the litigation and provided an opportunity to present their pumping history for fair and equitable due process. However, the Zamrzlas were not served with notice of the litigation. Therefore, even if they heard about a "water adjudication" from Delmar Van Dam or Eugene Nebeker, they did not know they were part of a litigation or were identified as Small Pumper Class members.

“water adjudication” does not provide adequate notice of the Small Pumper Class Action.

Respondents fail to point to any substantive evidence that refutes Johnny and Pamela’s testimony that they did not know about the Small Pumper Class Action prior to the Judgment. The trial court abused its discretion when it denied Johnny and Pamela equitable relief based on a finding that they heard about “a water adjudication” from friends and neighbors.

b. Johnny Lee and Jeanette Did Not Know of the Small Pumper Class Action Prior to the Judgment

Similarly, Respondents fail to point to any evidence to refute Johnny Lee and Jeanette’s testimony that they did not know about the Small Pumper Class Action prior to the Judgment.

Johnny Lee testified that the first time he heard about the Small Pumper Class was sometime in 2019 from their attorney, Mr. Brumfield. (6RT 1627:24-1628:2.) Johnny Lee testified that he heard about a water litigation going on, but his understanding was that it involved “the big farmers and the water survey – suppliers trying to work out their water issues.” (6RT 1628:3-13.) At no point in time prior to the Judgment did Johnny Lee receive anything letting him know that he was subject to the Antelope Valley groundwater litigation. (6RT 1629:26-1630:3.)

Jeanette testified that she never even heard about a water litigation prior to receiving the letter from the Watermaster in 2018. (6RT 1660:2-5, 19-25.)

Respondents' reliance on testimony that Johnny Lee talked to Delmar Van Dam's sons, and they told him that Delmar gave his family "bad advice" and there were reductions in groundwater production does not refute Johnny Lee's testimony that he never heard about the Small Pumper Class until approximately 2019. The trial court abused its discretion when it denied Johnny Lee and Jeanette equitable relief because of the erroneous finding that they knew about the water litigation prior to 2015.

. . . .

F. Equity Requires Reversal of the Trial Court's Order

The Zamrzlas are not requesting that the entire Judgment be modified or vacated, nor are the Zamrzlas seeking to disturb the Federal Reserved Water Right and any potentially related McCarran Amendment issues as Respondents claim. Instead, the Zamrzlas seek to have the opportunity to establish their water rights – an opportunity that has not been provided to either Zamrzla household to date.

However, in what appears to be an attempt to impose fear or worry about upholding the Zamrzlas' due process rights, Respondents speculate on what may follow upon reversal. Such arguments are both undeveloped and irrelevant. The Settling Parties do not explain, for instance, why "[u]nreversing the Small Pumper Judgment would" follow from reversal here, or even if that did occur how that would "then unravel the comprehensive nature of the adjudication under the McCarren Amendment and result in lack of jurisdiction over the United States." (See SP RB, p. 70.) In fact, the Small Pumper Class would not be

unraveled whatsoever; instead, the Zamrzlas would seek for the trial court to determine their overlying water rights with the rest of the overlayers (called in the AVGC litigation as the Exhibit 4 Party).

Nor do Respondents expound on how reversal of the trial court's order denying the Zamrzlas' motions would require all parties to relitigate their rights as against the Zamrzlas. (*Id.*) Having the parties litigate the Zamrzlas's water rights is not relitigating all other water rights nor should efforts required for inclusion of the Zamrzlas be a reason to affirm, in any event, an order that erroneously found the Zamrzlas to be members of a class they are not members of, and did not even receive notice of, until four years after the Judgment.

In addition to being unsubstantiated, Respondents' arguments are not proper. Respondents' unspoken message is that the Court should tolerate error because of the hypothetical consequences that may result from reversal. Respondents cite no authority that the ripple effects of reversal, speculative or otherwise, are an allowable consideration or basis to affirm, and indeed they are not. This is so because the class notice violated the Zamrzlas' due process rights both in its failure to reach the Zamrzlas and in its content.¹⁵ This requires reversal *per se*. (See *Litwin v. iRenew Bio Energy Solutions, LLC* (2014) 226 Cal.App.4th 877, 884 [order granting final approval of class action settlement "must be reversed" where class notice violated due process rights]; *Koshak v. Malek* (2011) 200 Cal.App.4th 1540, 1550 [violation of due process "requires us to reverse"]; *Department of Forestry &*

¹⁵

Fire Protection v. Howell (2017) 18 Cal.App.5th 154, 173 [“if due process was not afforded before an order depriving the party of his or her interest was entered, we must reverse the order”], disapproved on other grounds by *Presbyterian Camp & Conference Centers, Inc. v. Superior Court* (2021) 12 Cal.5th 493; see also *Duran, supra*, 1 Cal.App.5th at 638 [judgment “must be reversed” where “class notice failed in its fundamental purpose”].)

The evidence shows that the Zamrzlas were not given notice of the class. They should have received personal or individual notice because substantial claims were at stake evidenced by the amount of money that the Watermaster is claiming they are now liable for.

Moreover, even if notice had been given, the Zamrzlas are **not** members of the Small Pumper Class as defined in the Opt-Out Notice. The Opt-Out Notice expressly excluded the Zamrzlas who regularly pumped more than 25 acre-feet in a calendar year.

The trial court violated the Zamrzlas’ due process rights by, notwithstanding all this, binding them to the class. That reversal may cause further litigation cannot be a reason to allow the deprivation of such core rights. (See, e.g., *Duran, supra*, 1 Cal.App.5th at 638, 642, 653 [reversing class action judgment following settlement even though claims process had already concluded].)

In the end, the Zamrzlas’ water rights and related enjoyment and livelihood with their respective properties are at stake. The Court can intervene in equity to not allow the errors committed below go uncorrected. (See, e.g., Civ. Code, § 3523; see also *Times-Mirror Co. v. Superior Court* (1935) 3 Cal.2d 309, 331 [equity “will assert itself in those

situations where right and justice would be defeated but for its intervention”].) It should exercise such powers here and reverse the trial court’s order denying the Zamrzlas’ motions on equitable grounds. The Zamrzlas should be provided with the opportunity, which they had been denied, to adjudicate their substantive legal rights involving their water rights appurtenant to their land.

III. CONCLUSION

The perpetual lack of adequate notice and procedural defects in this matter deprived the Zamrzlas of their rights to due process to be properly brought into the case and to have their claim to water rights adjudicated. Contrary to Respondents’ contention, while the AVGC Judgment has been subject to three appeals, the issues raised by the Zamrzlas have not been reviewed and determined by the appellate court.

Based on the foregoing reasons, the trial court’s order should be reversed and the Judgment against the Zamrzlas should be vacated with the matter remanded for each of the Zamrzla households to adjudicate their Overlying Production Rights for groundwater.

Respectfully Submitted

s/ Mae G. Alberto

Mae G. Alberto, SBN 228067

Daniel Hargis, SBN 224226

Wesley A. Miliband, SBN 241283

ATTORNEYS FOR
APPELLANTS JOHNNY

App.124

ZAMRZLA, PAMELLA
ZAMRZLA, JOHNNY LEE
ZAMRZLA, JEANETTE
ZAMRZLA

App.125

APPENDIX I

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA SECOND APPELLATE DISTRICT
DIVISION ONE

Court of Appeal Case No. B331148

Superior Court Case No. BC325201 / JCCP4408)

JOHNNY ZAMRZLA, PAMELLA ZAMRZLA,
JOHNNY LEE ZAMRZLA, JEANETTE ZAMRZLA,

Appellants,

v.

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40, et al.,

Respondents.

Dated: December 30, 2025

APPEAL FROM AN ORDER AFTER JUDGMENT
OF THE LOS ANGELES COUNTY SUPERIOR
COURT, THE HONORABLE JACK KOMAR

App.126

PETITION FOR REHEARING

....

I. INTRODUCTION

The Zamrzlas respectfully request rehearing for the following reasons:

First, the Court's opinion relies on grounds concerning the effect of the 2015 class settlement notice that were not raised by the parties, nor for which the Court had requested supplemental briefing. The Zamrzlas request an opportunity to brief those issues.

Adding to this, the Zamrzlas request a rehearing to address what they submit are errors of law in the Court's opinion tied to the 2015 notice. Predominantly, the Court's opinion holds that the Zamrzlas are bound to the 2015 Judgment because of the 2015 settlement notice though they were denied a fair opportunity to opt out of the class action in that or any other notice disseminated in the case. This conflicts with well-established state and federal law, which holds that as a matter of due process a class judgment is invalid—and indeed exceeds a court's jurisdiction with respect to absent class members—when rendered without providing those class members a chance to opt out.

Separately, the Zamrzlas' due process challenge was not untimely where it was asserted as a defense to legal process initiated by the Watermaster.

Moreover, the Zamrzlas request a rehearing on the Court's finding that the trial court properly declined to exercise its equitable power to grant the Zamrzlas relief from the Judgment because it "could reasonably conclude the Zamrzlas were negligent in preserving their rights" as "they knew about the

coordinated proceedings as early as 2009” from hearing about it from their friends. (Opn. pp. 19-20.) Similar to the trial court and respondents, the Court’s opinion does not cite any authority that supports the conclusion that hearing about a lawsuit satisfies actual or legal notice and obligates an individual to investigate and insert themselves into the lawsuit. Indeed, the law states otherwise.

Finally, the Zamrzlas request rehearing to correct mistaken facts in the opinion.

II. DISCUSSION

The Zamrzlas request rehearing to brief the issue of whether the 2015 class settlement notice could excuse the deficiencies in the 2009 and 2013 class notices.

The Court acknowledges that the 2009 and 2013 notices “misidentified the class.” (*Id.* p. 5.) The effect of this is that parties situated like the Zamrzlas would not believe they were members of the class with an obligation to opt out of the class if they did not want to be bound by the class action. Moreover, such parties cannot be bound to a class action judgment by failing to opt out where the opt-out notices say they are not a part of the class to begin with. (See ARB pp. 14-25.)

The Court rejected this challenge, reasoning that the challenge was untimely because the 2015 settlement notice that accurately described the class provided constructive notice of the litigation and the Zamrzlas were late in asserting their rights. (Opn. pp. 17-18.)

This was not an issue that was raised or briefed by either side. (See, generally, AOB, SP RB, RB, and ARB.) The Court relied on authority neither side

cited. (*Id.*; Opn. pp. 17-18.) The Court did not request supplemental briefing on the issue.

Accordingly, the Zamrzlas request an opportunity to brief the issue under Government Code section 68081, which states that before the Court of Appeal renders a decision “based upon an issue which was not proposed or briefed by any party to the proceeding, the court shall afford the parties an opportunity to present their views on the matter through supplemental briefing. If the court fails to afford that opportunity, a rehearing shall be ordered upon timely petition of any party.” (Gov. Code, § 68081.)

Additional briefing is further justified because the Zamrzlas respectfully believe the Court’s opinion contains errors of law related to the 2015 settlement notice. (See *In re Jessup* (1889) 81 Cal. 408, 471-472 [authorizing rehearing due to “any mistake of law or misunderstanding of facts”].)

First, the Court holds that the 2015 Judgment can bind the Zamrzlas notwithstanding that the 2009 and 2013 notices deprived the Zamrzlas of a meaningful opportunity to opt out.

This contradicts core California and federal law that holds a class action judgment cannot bind class members who are not given proper notice of an opportunity to opt out. (*Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 654 [“because class judgments bind absentees with respect to their individual claims for relief and are preclusive as to all claims the class could have brought [] absent [class] members must be afforded [] an opportunity to [] opt out of the class”]; *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 349 [same]; *Los Angeles Gay & Lesbian Center v. Superior Court* (2011) 194

Cal.App.4th 288, 302 [“Under California law, notice to class members in opt-out actions is required to bind absent class members”]; *Home Sav. & Loan Assn. v. Superior Court* (1974) 42 Cal.App.3d 1006, 1010 [notice and opportunity to opt out are required so that class members can decide to remain in class “and become bound by a favorable or unfavorable judgment in the action” or “‘opt out’ of the action and pursue their own independent remedies”]; see also, e.g., *Jones v. Diamond* (5th Cir. 1979) 594 F.2d 997, 1023 [“Without valid notice and an opportunity to opt out of the class, there can be no *res judicata* effect given to judicial determinations of the claims of unrepresented parties”].)

This flows from the rule that due process is violated if the putative class member is not afforded an opportunity to opt out. (*Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338, 363 [“absence of notice and opt out violates due process”]; *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-812 [if “the forum State wishes to bind an absent plaintiff” it must “provide minimal procedural due process protection” and “we hold that due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an ‘opt out’ or ‘request for exclusion’ form”].)

A class judgment rendered without an opportunity to opt out, therefore, is *per se* invalid with respect to absent class members—it is a judgment outside of the court’s jurisdiction. (*Fogel v. Farmers Group, Inc.* (2008) 160 Cal.App.4th 1403, 1421 [“the court does not have jurisdiction over those class members until the class members are notified and given an opportunity to opt out of the lawsuit”]; *Kass*

v. Young (1977) 67 Cal.App.3d 100, 105-106 [proper notice is a jurisdictional requirement and class judgment could not be entered without proper notice; absent class members “are entitled to” notice advising them “that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion” and that these “prejudgment procedures are so connected with due process as to be jurisdictional”]; see also, e.g., *Smith v. Shawnee Library System* (7th Cir. 1995) 60 F.3d 317, 321 [the “class must receive reasonable notice and an opportunity to opt out; that is an absolute requirement for a court to exercise jurisdiction over those class members”]; ARB, pp. 64-65.)

This foundational failure to allow the Zamrzlas to opt out was not remedied by the 2015 settlement notice as that settlement notice explicitly did not allow a recipient to opt out. (Opn. p. 6.) And the opportunity to object to the class settlement as referenced in the 2015 settlement notice is not a cure for the failure to afford the Zamrzlas the opportunity to opt out. (See, e.g., *Penson v. Terminal Transport Co., Inc.* (5th Cir. 1981) 634 F.2d 989, 992, 993, 995 [plaintiff’s action was not barred by earlier class action where settlement notice in earlier action did not apprise plaintiff of right to opt out, but rather only stated class members could object to settlement].) The right of a class member to object to a class settlement is a different right than the constitutionally protected right to exclude oneself from the class in the first place that all putative class members must have. (Cf., e.g., Cal. Rules of Court, rule 3.766(d) with *id.*, rule 3.769(f).)

The Zamrzlas respectfully submit that the Court erred, therefore, in binding the Zamrzlas to the 2015 Judgment when none of the 2009, 2013, or 2015 notices properly gave them notice of their opt-out rights or allowed them to opt out.

Separately and independently, the Zamrzlas also believe the Court erred by holding they untimely asserted their due process challenge in the proceedings below. Untimeliness does not apply in this context. This is so because the Zamrzlas raised their due process challenge in defense to legal process the Watermaster initiated when it filed its Motion for Monetary, Declaratory and Injunctive Relief to enforce the Judgment against the Zamrzlas. (See, e.g., 1-AA-85-86; AOB, pp. 23.) This led to the trial court ordering the Zamrzlas to file a motion in equity to modify the Judgment, where the Zamrzlas again made their due process challenge as a defense to enforcement of the Judgment against them. (See, e.g., 2-RT-318:15-319:11, 320:8-324:8, 329:1-20; 2-AA-401-403; 3-AA-720-722.)

These due process challenges were not untimely as they were asserted defensively against the Watermaster's attempt to enforce the Judgment. (*Styne v. Stevens* (2001) 26 Cal.4th 42, 51 ["Under well-established authority, a defense may be raised at any time, even if the matter alleged would be barred by a statute of limitations if asserted as the basis for affirmative relief"].) The Zamrzlas did not have the obligation to affirmatively raise the issue beforehand. (*Id.*; see also *Whole Woman's Health v. Jackson* (2021) 595 U.S. 30, 36, n. 1 ["applicable federal constitutional defenses always stand fully available when properly asserted"].)

Moreover, contrary to the Court's opinion, the Zamrzlas did not argue any hypothetical wherein constructive notice satisfied due process in this case. The Zamrzlas request rehearing on the Court's finding that the trial court properly declined to exercise its equitable power to grant the Zamrzlas relief from the Judgment because they knew about the coordinated proceedings since 2009 after hearing about it from their friends (Opn. p. 20) and that "Johnny admitted he was given a copy of the judgment[.]" (*Id.* p. 19.)

Neither the trial court, respondents, nor this Court cite any authority that supports the conclusion that hearing about a lawsuit satisfies actual or legal notice and obligates an individual to investigate and insert themselves into the lawsuit. The law is otherwise. (See *City of Los Angeles v. Morgan* (1951) 105 Cal.App.2d 726, 731 ("*Morgan*") ["the rule is equally well established that in the absence of service of process upon such a party there is no duty on his part even though he has actual knowledge to take any affirmative action at any time thereafter to preserve his right to challenge the judgment"].)

The California Supreme Court in *Lapham v. Campbell* (1882) 61 Cal. 296, which was relied upon and quoted at length in *Morgan, supra*, states the following:

No one is called to act in a judicial proceeding in which jurisdiction over his person has not been obtained. And although he be a party named in the proceeding, yet if jurisdiction over him be not obtained, he has no duty to perform in relation to the proceeding, for the non-performance of which he is

chargeable with mistake, inadvertence, surprise, or excusable neglect, and, as he is not chargeable with any of those things, he is not called upon to avail himself of any of them as ground for a motion to set aside the judgment; nor is he chargeable with *laches* or want of diligence for not knowing of the proceedings or judgment. The party procuring a judgment against another without due process of law, or by fraud, takes it as his peril.

(*Id.* at 300.)

Accordingly, the Zamrzlas request rehearing on this issue. Additionally, the Zamrzlas request the Court correct mistaken facts in the Court's opinion.

First, the Court's opinion states that Johnny and Pamella were "given a copy of the judgment by an aide to Supervisor Antonovich soon after it was issued." (Opn. p. 19.) The evidence does not support this finding. Johnny and Pamella did not testify that Norm Hickling gave them a copy of the 2015 Judgment. While Johnny testified he received a stack of papers from Norm Hickling, he did not testify that the stack of papers included the Judgment. He could not recall what was in the stack of papers. (5-RT-1315:11-1316:15.) There is no evidence that Johnny and Pamella received a copy of the Judgment soon after it was issued.

Second, the opinion states that the "threshold question at the hearing was whether the Zamrzlas met the Small Pumper Class definition by producing less than 25 acre-feet of water on each of their parcels during at least one year." (Opn. p. 9.) While the question at the evidentiary hearing was whether the

Zamrzlas were members of the Small Pumper Class and bound by the Judgment, the trial court's understanding of the definition of the Small Pumper Class at the evidentiary hearing was not that it included individuals who produced less than 25 acre-feet of water during at least one year. (This is exemplified, for instance, by Johnny Lee and Jeanette never appearing on any class notice list. [8-AA-2074-2173; 9-AA-2394-2395].) Rather, as the Zamrzlas pointed out in their briefing, based on the exchange between the trial court and the Watermaster's counsel, it was the trial court's understanding that Small Pumpers were those who pumped less than 25 acre-feet each year. (6-RT-1674:26-1675:17.)

For this reason, the Zamrzlas believe the Court is factually incorrect in construing the class definition to be free of ambiguity. (Opn. pp. 18-19.) The Court's understanding of the class definition is not how the trial court understood the definition. The trial court understood the definition to be like that stated in the 2009 and 2013 notices (which, therefore, means it erred in binding the Zamrzlas to the class Judgment where they "produced less than 25 acre-feet on each parcel in some years" [*Id.* p. 10].) The ambiguity in the certified class definition is thus reflected by the Court interpreting it to mean something different than how the trial court understood it.

III. CONCLUSION

Based on the aforementioned reasons, the Zamrzlas request the Court grant rehearing on this matter.

Respectfully Submitted

App.136

s/ Mae G. Alberto

Steven D. Atkinson, SBN 59094

Mae G. Alberto, SBN 228067

Daniel Hargis, SBN 224226

Wesley A. Miliband, SBN 241283

ATTORNEYS FOR

APPELLANTS JOHNNY

ZAMRZLA, PAMELLA

ZAMRZLA, JOHNNY LEE

ZAMRZLA, JEANETTE

ZAMRZLA

App.137

APPENDIX J

IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA

S294961

Court of Appeal, Second Appellate District, Division
One – No. B331148

Johnny Zamrzla, Pamella Zamrzla, Johnny Lee
Zamrzla, Jeanette Zamrzla,

Petitioners,

v.

Los Angeles County Waterworks District No. 40 et
al.,

Respondents.

Dated: January 23, 2026

After a Decision by the Court of Appeal, Second
Appellate District, Division One, Case No. B331148

PETITION FOR REVIEW

....

To the Honorable Chief Justice and Associate Justices of the Supreme Court of California:

Pursuant to California Rules of Court, rule 8.500(a)(1), petitioners Johnny Zamrzla, Pamela Zamrzla,¹ Johnny Lee Zamrzla and Jeanette Zamrzla hereby petition this Court for review of the decision of the Second District Court of Appeal, unpublished Decision dated December 15, 2025, appended hereto as Tab A.

ISSUES PRESENTED FOR REVIEW

9. How must notice be disseminated in a class action when the putative class members may be subjected to monetary penalties or the loss of property rights?

10. Can putative class members be bound by a class judgment when the class members were not given an opportunity to opt out of the class but only an opportunity to raise objections to class settlement?

INTRODUCTION AND NECESSITY FOR REVIEW

¹ Johnny and Pamela Zamrzla have both passed away. On June 24, 2025, the Court of Appeal granted Johnny Lee Zamrzla's and Jeanette Zamrzla's unopposed motion to substitute Sheri Lynn Zamrzla-Greco, Trustee of The Johnny and Pamela Zamrzla 1999 Family Trust–Credit Shelter Trust–Trust C, in place of Johnny and Pamela Zamrzla. However, since the facts of the appeal and this petition predates the deaths of Johnny and Pamela, the Brief will refer to Johnny and Pamela where appropriate.

This case and petition raise unsettled issues of class action jurisprudence that concern the due process to which absent class members are entitled.

Petitioners consist of two families who are landowners in the Antelope Valley. They use their land for farming.

As landowners, they have the right to use groundwater underlying their land. In a class action lawsuit adjudicating water rights in the Valley, the trial court found petitioners were members of a certified plaintiff class bound by the judgment entered in the action, which significantly cut petitioners' water usage rights. It also subjected them to tens of thousands of dollars in penalties for water overuse.

Petitioners did not contemporaneously know they were class members or that their property rights were being affected by the litigation. They only learned of this years later when penalties were assessed against them under the class judgment. The class notices in the case were not properly disseminated and were also substantively deficient.

Petitioners Johnny Lee and Jeanette Zamrzla, one of the petitioner families, were never given any individual notice of the class action—they were not personally served with any class notice nor was any notice mailed to them, emailed to them, or otherwise distributed directly to them in any fashion. The only notice that could have reached them, but did not, was publication in newspapers.

Petitioners Johnny and Pamela Zamrzla, the other petitioner family, were not personally served with class notices. At most, individual notices were sent to them only by regular mail, though they deny

receiving any mailings and there was scant evidence that notices were mailed to them.

Such notice should be deemed inadequate in this type of class action where class members not only face the prospect of the loss of previously enjoyed property rights but are also faced with penalties.

Better methods of providing class notice should be required in such cases, such as personal service or return receipt mailing, for instance. At a minimum, notice by publication, the only notice Johnny Lee and Jeanette Zamrzla could have received, should be found to be insufficient. Even far less sufficient was the hearsay “notice” found by the trial court and affirmed by the appellate court, i.e., that casually hearing about litigation provided legally sufficient notice that obligated petitioners to insert themselves or defend their rights in the class action.

The Court of Appeal nevertheless ruled the trial court did not err, finding the methods used to deliver the class notices to be acceptably within the trial court’s discretion.

A separate problem, though, was that even if the methods of delivering the notices could pass muster, the contents of the notices were incurably defective. This is primarily because the notices deprived petitioners and similarly situated parties of a true opportunity to opt out of the class.

Three class notices were given. The first notice following class certification allowed class members to opt out of the class, but it gravely misidentified the class as the Court of Appeal agrees.

The notice defined the class differently and in contradiction to the class definition in the certification order and the class definition the trial court adopted in enforcing the judgment. The notice

defined the class in a way that would have led petitioners and similarly situated parties to believe they were not class members. It would have thus led them to believe they had no obligation to take any action to exclude themselves from the class.

The second notice followed a partial settlement of the class action. It too allowed class members to opt out of the class, but it also misidentified the class in the same erroneous way as the first notice.

The third notice followed a full settlement of the action. It defined the class consistently with the class certification order (and that would make petitioners and similar parties class members). However, that notice expressly said class members could not opt out of the class. It only allowed them to object to the settlement.

The upshot is that none of the notices gave petitioners or similar parties a real opportunity to opt out—they were not class members as defined in the first two notices and the final notice explicitly did not allow the opportunity to opt out.

The judgment and penalties imposed on petitioners following these defective notices should not have been allowed to stand. Due process requires that class members be given an opportunity to opt out of the class before a class action judgment can bind them. A class judgment rendered without an opportunity to opt out is per se invalid with respect to absent class members and outside of the court's jurisdiction.

Disregarding this, the Court of Appeal found that the last class notice alone satisfied due process though it did not allow opt outs.

The Court should grant review to correct the errors on the delivery and content of the class notices

that had the effect of depriving petitioners of due process.

The case is also appropriate for review so that the Court can provide direction on how class notice should be disseminated. Courts generally recognize that trial courts have broad discretion in determining how to disseminate class notice, but courts also recognize there will be circumstances where individual notice is required.

These two concepts are in tension. The Court has never rendered a decision that provides concrete guidance on at what point individual notice is required. Review would help define this unsettled area and the limits of trial court discretion concerning class notice.

Review is also warranted to address the method by which notice should be distributed when putative class members face a loss of property rights or monetary liability. This too is unsettled.

Finally, review is warranted to address when, if ever, a class judgment can be binding on the class members who were not given a chance to opt out.

Seemingly the answer should be never; the right to opt out is a due process right in this type of case. But the Court of Appeal's opinion presents the novel issue of whether the opt-out requirement can be excused if there is a suitable substitute, such as the right to object to a class settlement.

STATEMENT OF THE CASE AND FACTS

I. The Class Notices that Provided Opt-Out Rights Misstated the Class Definition

This petition arises from the consolidated matter known as the Antelope Valley Groundwater

Cases. The matter considered (and continues to consider) water rights in the Antelope Valley Groundwater Basin. (Opn., p. 3.)

One of the groups that participated in the litigation was called the “Small Pumper Class.” Under California law, property owners have the right to pump and use groundwater underlying their land. (*Center for Biological Diversity v. County of San Bernardino* (2016) 247 Cal.App.4th 326, 336.) The Small Pumper Class emanated from a class action complaint a landowner named Richard Wood brought “to protect his right and those of other landowners in the Basin to pump water on their properties in the future.” (2AA, pp. 501-502, 667-668.)

The trial court certified the Small Pumper Class in 2008. Its certification order defined the class as all non-governmental landowners “that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present.” (*Ibid.*, pp. 664-665.)

The trial court approved notice to class members, and in June 2009 notice ostensibly providing an opt-out right was disseminated. (*Ibid.*, pp. 667-669.)

The 2009 notice, however, “misidentified the class.” (Opn., p. 5.) It “*excluded* from the Small Pumper Class anyone who pumped 25 acre-feet or more in any one year since 1946.” (*Ibid.* [emphasis original].)

This definition is incompatible with the certification order. Under the certification order a landowner pumping less than 25 acre-feet in any year since 1946 was a class member, whereas under the 2009 notice that same landowner would not be in the

class if in any other year they pumped more than 25 acre-feet.

Moreover, the 2009 notice conveyed to recipients that they were not class members—and thus did not have to take any action to exclude themselves—so long as they pumped more than 25 acre-feet in any single year since 1946.

The 2009 notice did not indicate that any judgment could expose class members to penalties. (2AA, pp. 667-669.) The deadline to opt out of the class was September 9, 2009, which was later extended to December 4, 2009. (*Ibid.*; 8AA, pp. 1918:18-19.)

In 2013 the trial court preliminarily approved a partial settlement for the Small Pumper Class. (8AA, pp. 1952-1956.) Notice of the settlement was disseminated. (*Ibid.*, pp. 1963-1966.) That 2013 notice also misidentified the class in the same way as the 2009 notice. (*Ibid.*; Opn., p. 5.)

The 2013 notice did not indicate that any judgment could expose class members to penalties. (8AA, pp. 1963-1966.) It gave class members an opportunity to opt out, which expired on December 13, 2013. (*Ibid.*, p. 1965.) This was the last time a class member could opt out.

In 2015 a final settlement was preliminarily approved in the Small Pumper Class action. (*Ibid.*, pp. 2046-2050.) Notice was disseminated but this time described the class consistently with the 2008 certification order. (*Ibid.*, pp. 2056-2062.)

The 2015 settlement notice indicated class members could object to the settlement—however, it explicitly did not allow a recipient to opt out of the class. (*Ibid.*, p. 2060.)

The trial court entered judgment in the consolidated litigation at large in December 2015,

adopting what is referred to as the Judgment and Physical Solution. (2AA, pp. 492-559.) At the same time, the trial court signed the Judgment Approving Small Pumper Class Action Settlements, which was incorporated into the Judgment and Physical Solution. (*Ibid.*, pp. 488, 561-566.)

The Judgment and Physical Solution capped water usage by class members to three acre-feet per year. (*Ibid.*, p. 515:6-10.) Use above this amount subjected the landowner to monetary penalties imposed by a newly created Antelope Valley Watermaster board (“Watermaster”). (*Ibid.* and p. 542.)

II. Petitioners Are Not Class Members Based on the Definition in the Class Notices that Provided Opt-Out Rights

Petitioners Johnny and Pamela own approximately 120 acres of land overlying the Antelope Valley Groundwater Basin. (5RT, pp. 1267:25-27, 1273:26-1274:23; 6RT, pp. 1517:3-1518:4.) In many years after 1946 they pumped more than 25 acre-feet of water per year; in other years they pumped less than 25 acre-feet per year. (Opn., p. 8; 2AA, pp. 436-439, 462-470; 10AA, pp. 2817-2829.)

Johnny and Pamela are thus simultaneously not Small Pumper Class members under the 2009 and 2013 notices but class members under the 2008 certification order. This creates ambiguity as to the definition of the class.

Petitioner Johnny Lee is the son of Johnny and Pamela. He and Jeanette own approximately 20 acres of land overlying the Basin. (6RT, pp. 1630:20-26, 1618:5-28, 1638:5-27, 1659:12-21.) They also pumped both more and less than 25 acre-feet of water

in particular years after 1946 (Opn., p. 8), thus making them either members of the class or non-members depending on which document is consulted.

III. Petitioners Did Not Receive Contemporaneous Notice of the Class Action

Petitioners did not receive actual notice of the Small Pumper Class action until 2018 when the Watermaster informed them they were illegally pumping water and levied penalties against them. They had not received actual notice of the Small Pumper Class action during the pendency of the action. (5RT, pp. 1296:9-28, 1297:1-4, 1297:21-1298:5, 1394:20-1395:11; 6RT, pp. 1544:15-21, 1549:11-21; 1627:10-23, 1629:26-1630:3, 1659:25-1660:25.)

In 2008, the trial court ordered personal service on landowners owning more than 100 acres of land. (8AA, p. 1886:11-13; Opn., pp. 10-11.) Johnny and Pamella, though owning more than 100 acres, were never personally served. (19AA, p. 4796:13-15.)

The trial court later ordered the 2009 class notice to be distributed by regular U.S. mail. The notice was allegedly sent to approximately 9,884 people that appeared on a mailing list. (8AA, p. 2075:12-19.) The list was part of the record before the trial court. (*Ibid.*, pp. 2074-2173.)

The trial court ordered the 2013 and 2015 settlement notices to be disseminated by regular U.S. mail. The 2013 notice was allegedly mailed to approximately 4,312 individuals pursuant to a mailing list of individuals, and the 2015 notice was allegedly mailed to approximately 4,310 people pursuant to a mailing list. (*Ibid.*, pp. 1959:17-21, 2054:17-20.) The lists, though, were not part of the

record before the trial court. (*Ibid.*, pp. 1958-1961, 2052-2055.)

The 2013 and 2015 notices were also published in the *Antelope Valley Press*, *Los Angeles Times*, and *Bakersfield Californian*. (Opn., p. 11.)

Johnny and Pamella were on a list purporting to state the names of Small Pumper Class members and the mailing list for distribution of the 2009 notice. (8AA, pp. 1986, 2127.) It is unknown if they were on the lists for the 2013 and 2015 notices, which were sent to a considerably smaller group than the 2009 notice. Johnny and Pamella deny ever receiving any of the notices or knowing about the class action, as noted.

The parties do not dispute that Johnny Lee and Jeanette were *not* mailed any notice. Johnny Lee and Jeanette were not on the Small Pumper Class list or the mailing list for the 2009 notice, and there is no indication they were mailed the 2013 or 2015 notices. (*Ibid.*, pp. 2074-2173, 1982-2036.) The trial court made no finding that Johnny Lee and Jeanette were served by mail and acknowledged they were not on any class member list. (19AA, pp. 4800-4802.)

The only potential notice disseminated to Johnny Lee and Jeanette would have been by publication. They too deny contemporaneously knowing about the class action.

IV. The Trial Court Found Petitioners to be Class Members and Bound by the Class Judgment that Subjected Petitioners to Substantial Loss of Property Rights and Tens of Thousands of Dollars in Liability

The Watermaster initiated the piece of litigation from which this petition arises when it filed

a motion in the trial court in September 2021 to enforce the judgment and recover penalties of over \$35,000 plus interest and fees against petitioners. (Opn., p. 8; 1AA, pp. 29-67.) This led to the trial court ordering petitioners to file motions in equity to modify the judgment. (*Ibid.*, p. 9; 2RT pp. 318:15-319:11, 320:8-324:8, 329:1-20; 2AA, pp. 386-678; 3AA, pp. 707-946.) This in turn led to an evidentiary hearing. (Opn., p. 9; 3AA, pp. 986-1012.) The trial court thereafter issued an order denying petitioners' motions and thus subjecting them to the class judgment and penalties. (19AA, pp. 4793-4808.)

The trial court denied petitioners' motions despite remarking during the evidentiary hearing that they were not Small Pumper Class members because they "have for many years pumped far in excess of the limitations that would place them in the small pumping class." (5RT, pp. 1225:28-1226:8.) In other words, the trial court understood the class definition to be as stated in the 2009 and 2013 notices, and not as stated in the 2008 order or 2015 notice.

This was also the view of a different Court of Appeal panel in the same consolidated case in an opinion titled *Antelope Valley Groundwater Cases* (2021) 62 Cal.App.5th 992, 1000. There, the panel characterized the Small Pumper Class as having been formed by the trial court to represent the interests of "landowners who historically had pumped *not more* than 25 acre-feet *per year* (afy) [] during the relevant period." (*Ibid.* [emphasis added].)

This accords with the purpose of the Small Pumper Class, which was for landowners who use small amounts of water for domestic use. It was not intended to apply to land used for farming, like petitioners' land where amounts over 25 acre-feet per

year were frequently pumped. (2AA, pp. 436-439, 462-470; 10AA, pp. 2817-2829.)²

The trial court nevertheless denied petitioners' motions through an order it did not draft. It instead signed without substantive modification a proposed order that was twice submitted by respondents. (18AA, pp. 4726-4745; 19AA, pp. 4776-4791, 4793-4808.)

The order found that Johnny and Pamella were properly served with notice of the class action by U.S. mail and publication. (19AA, pp. 4799-4800.)

It found Johnny Lee and Jeanette, though not served by U.S. mail, were nevertheless properly served by publication. (*Ibid.*, pp. 4800-4802.)

The order also found equitable relief was unavailable because petitioners knew or should have known about the class action based upon generally

² All this reflects on the ambiguity of the certified class definition, which was raised below but discounted by the Court of Appeal. (Opn. pp. 18-19.) The class was defined in the 2008 certification order as all non-governmental landowners "that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present," as noted. Ambiguity arises not only from the disconnect between that definition and the 2009 and 2013 notices, but also internally from the definition in the 2008 order. The internal ambiguity exists because the phrase "less than 25 acre-feet per year," and particularly the term "per year," indicates that landowners must have pumped less than 25 acre-feet each (or per) year since 1946 to be class members. This would align with how the class was defined in the 2009 and 2013 notices. The phrase "during any year from 1946 to the present," however, would suggest that landowners need only have pumped less than 25 acre-feet once since 1946 to be class members.

hearing about the groundwater litigation from friends. (*Ibid.*, pp. 4806-4807.)

The order did not discuss the contradictory class definitions across the 2008 certification order and 2009 and 2013 notices. (*Ibid.*, pp. 4793-4808.) The order did not explain why the trial court changed its mind about petitioners' status as class members. (*Ibid.*)

The impact of the order limiting water consumption substantially diminishes the value and uses of petitioners' property.

V. The Court of Appeal Affirms Notwithstanding Its Recognition that Class Notice Was Defective

On appeal, petitioners argued their due process rights were violated because the class notices were deficient both in the method notice was given and their content. The Court of Appeal disagreed because it found the 2015 settlement notice alone satisfied due process. (Opn., pp. 15-18.)

The court found the trial court acted within its discretion concerning the method notice was given. It found due process was satisfied for Johnny Lee and Jeanette by publication of the 2015 notice. (*Ibid.*, p. 16.) It found regular U.S. mailing and publication satisfied Johnny's and Pamella's due process rights. (*Ibid.*)

For the content, the court agreed with petitioners that the 2009 and 2013 notices were defective as they "misidentified the class." (*Ibid.*, p. 5.) The court nevertheless rejected petitioners' challenge. It reasoned the 2015 notice described the class consistently with the 2008 order, provided constructive notice of the litigation, and that

petitioners were late in asserting their rights. (*Ibid.*, pp. 17-18.)

This rationale was not raised or briefed by either side. (See, generally, appellant's opening brief, respondents' briefs, and appellant's reply brief.) The court relied on authority neither side cited. (*Ibid.*) The court did not request supplemental briefing on the issue.

Petitioners requested rehearing seeking, among other things, an opportunity to brief this new issue under Government Code section 68081. (See petition for rehearing; Gov. Code, § 68081 [providing that the Court of Appeal shall order rehearing before rendering a decision "based upon an issue which was not proposed or briefed by any party" and for which the court did not order supplemental briefing].) The Court of Appeal denied the request for rehearing.

ARGUMENT

I. The Court Should Grant Review to Provide Missing Guidance on How Class Notice Should Be Delivered When Putative Class Members May Be Subject to a Loss of Rights or Liability

Courts recognize trial courts generally have "virtually complete discretion" in determining how to disseminate class notice. (*Duran v. Obesity Research Institute, LLC* (2016) 1 Cal.App.5th 635, 648 (*Duran*)). But courts also recognize that there will be circumstances where individual notice is required.

Namely, courts have opined that "individual notice is required" when the class members have "substantial" interests, but not required when the class is "huge," interests are "minimal" and "res

judicata and the other problems” are “insignificant.” (*Cooper v. American Sav. & Loan Assn.* (1976) 55 Cal.App.3d 274, 285 (*Cooper*).)

This Court has also “observed that individual notice may not *always* be required,” which implies there are situations when individual notice will be required (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 983 [emphasis added; citing *Cooper* as providing elaboration for when individual notice is not necessary]; see also *ibid.* at 984 [“due process does not invariably require that personal notice be directed to all members of a class in order for a class action to proceed”].)

Ultimately, at some threshold, individual notice to class members is required. What is unclear is when. The Court has never issued an opinion that delineates a situation where the threshold is passed. This petition should be granted to begin establishing some benchmarks of when individual notice is required and what situations limit the trial court’s discretion.

On the merits, individual notice should have been mandated for all putative class members. Notice by publication in newspapers, the only notice for Johnny Lee and Jeanette, should be deemed categorically deficient in this type of case. The stakes are too big—loss of property rights and five-figure penalties—for notice to be buried in newsprint.

Individual notice was feasible. There are only approximately 70,000 landowners in the Antelope Valley. (<https://bbklaw.com/resources/appellate-decisions-limiting-groundwater-pumping-i>.) Addresses and land ownership records are publicly available.

Courts have intimated a preference for individual notice, including in larger class actions

with considerably less at stake. (E.g. *Duran, supra*, 1 Cal.App.5th at 637, 639, 647-649 [so noting in consumer class action of between 400,000-600,000 class members who each stood to receive between \$15-\$136 in settlement compensation].)

A method of individual notice beyond simple U.S. mailing should also have been afforded to Johnny and Pamella. U.S. mail is generally considered an acceptable method to distribute class notice in class actions where the stakes for any class member are small and where the members stand to gain from the case.

It is an open issue, however, if such method suffices in class actions that involve something more than a potential money judgment for the plaintiffs, such as cases where a court decree may substantially affect class member rights or in defendant class cases. (*Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-812, n.3 (*Phillips*).)

This is such a case. The class judgment substantially affected, and diminished, class member property rights. It also exposed them to liability for water overuse. This made the class like a defendant class though nominally a plaintiff class.

Given this, the methods class notices were delivered should have been consistent with service of process California law requires to be made on a defendant in a civil action. (Code Civ. Proc., § 415.10 et seq.) U.S. mailing alone is insufficient under that law. (*Ibid.*) Instead, there is a hierarchy of service methods starting with personal service. (*Ibid.*) Lesser methods like U.S. mail or publication are allowed only if accompanied by further protections for the

defendant or after better methods have first been tried. (*Ibid.*)³

This is not to say actual receipt of notice must be the standard. But there should be an attempt to better accomplish actual receipt, such as through personal service or return receipt mailing, before resort is made to simple U.S. mailing, service by publication, or some other less effective method. (E.g., *Chance v. Superior Court of Los Angeles County* (1962) 58 Cal.2d 275, 290 [suggesting service by “registered mail or other like reliable method” is warranted where class member interests are substantial].) The exposure is too great for class members subject to losses to not require more forceful methods of service.

Better methods would also avoid the uncertainty and difficulties of proof that beleaguered the proceedings below concerning if Johnny and Pamella were mailed notice.

Review should be granted, therefore, to help establish (i) the circumstances when individual notice is required and (ii) how notice is to be disseminated when class members face the loss of rights or are subject to penalties.

³ Specifically, a defendant must be personally served with process. (*Ibid.* § 415.10.) If the defendant cannot be personally served, service can be by substitute service where process is delivered to someone at least 18 years old at the defendant’s location and subsequently mailed to the defendant. (*Ibid.* § 415.20.) U.S. mail service is allowed but only if accompanied by a notice of acknowledgment and receipt form that is to be returned to the sender. (*Ibid.* § 415.30.) Service by publication is a last option and allowed only if service cannot be made with reasonable diligence in another manner. (*Ibid.* § 415.50.)

II. The Court Should Grant Review to Make Certain that Class Members Cannot Be Bound by a Class Judgment When They Were Not Given an Opportunity to Opt Out

None of the 2009, 2013, or 2015 class notices gave petitioners a real opportunity to opt out of the class action, either because it misstated class membership or directly barred the option. The Court of Appeal did not express any disagreement with this. It nonetheless held that the error was excused because of the 2015 settlement notice, which only allowed recipients to object to the settlement.

The court reasoned that petitioners could have objected to the settlement. By failing to do so within the time limits established by the notice or within some undefined period thereafter, it found petitioners waived their due process challenges when the Watermaster later came to collect penalties and enforce the class judgment. (Opn., pp. 17-18.)

The court's opinion effectively finds that the ability to object to a class settlement can be a substitute to the opt out right; that a class judgment can still be enforced without affording a chance to opt out so long as there was some alternative.

The opinion further finds that the ability to object begins the running of a de facto limitations period by when class members must assert their due process rights. If they do not, class members cannot raise due process challenges even in defense to proceedings against them.

Petitioners believe this is incorrect. A class judgment exceeds a trial court's jurisdiction and is void at the outset if class members are not given notice of the ability to opt out.

The first principle of class adjudication is that a class action judgment cannot bind class members who are not given proper notice of an opportunity to opt out of the action. (*Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 654 [“because class judgments bind absentees with respect to their individual claims for relief and are preclusive as to all claims the class could have brought [] absent [class] members must be afforded [] an opportunity to [] opt out of the class”]; *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 349 [same]; *Los Angeles Gay & Lesbian Center v. Superior Court* (2011) 194 Cal.App.4th 288, 302 [“Under California law, notice to class members in opt-out actions is required to bind absent class members”]; *Home Sav. & Loan Assn. v. Superior Court* (1974) 42 Cal.App.3d 1006, 1010 [notice and opportunity to opt out are required so that class members can decide whether to remain in the class “and become bound by a favorable or unfavorable judgment in the action” or “‘opt out’ of the action and pursue their own independent remedies”].)

The opt-out option is required by due process. (*Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338, 363 [“absence of notice and opt out violates due process”]; *Phillips, supra*, 472 U.S. at 811-812 [if “the forum State wishes to bind an absent plaintiff” it must “provide minimal procedural due process protection” and “we hold that due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an ‘opt out’ or ‘request for exclusion’ form”].)

A class judgment rendered without the chance to opt out is thus per se invalid and exceeds the court’s jurisdiction. (*Fogel v. Farmers Group, Inc.* (2008) 160

Cal.App.4th 1403, 1421 [“the court does not have jurisdiction over those class members until the class members are notified and given an opportunity to opt out of the lawsuit”]; *Kass v. Young* (1977) 67 Cal.App.3d 100, 105-106 [proper notice is a jurisdictional requirement and class judgment could not be entered without proper notice; absent class members “are entitled to” notice advising them “that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion” and that these “prejudgment procedures are so connected with due process as to be jurisdictional”]; see also, e.g., *Smith v. Shawnee Library System* (7th Cir. 1995) 60 F.3d 317, 321 [the “class must receive reasonable notice and an opportunity to opt out; that is an absolute requirement for a court to exercise jurisdiction over those class members”].)

The opportunity to object to the class settlement, such as in the 2015 settlement notice, is not a cure for the failure to afford petitioners the opportunity to opt out. (E.g., *Penson v. Terminal Transport Co., Inc.* (5th Cir. 1981) 634 F.2d 989, 992, 993, 995 [plaintiff’s action was not barred by earlier class action where settlement notice in earlier action did not apprise plaintiff of right to opt out, but rather only stated class members could object to settlement].)

The right of a class member to object to a class settlement is a different right than the constitutionally protected right to exclude oneself from the class in the first place that all putative class members must have. (Cf., e.g., Cal. Rules of Court, rule 3.766(d) with *ibid.*, rule 3.769(f).)

The Court of Appeal erred, therefore, in binding petitioners to the judgment when no notice properly informed them of their opt-out rights or allowed them to opt out.

The Court of Appeal also erred in finding that petitioners waived their due process challenges by supposedly untimely asserting them. Untimeliness should not apply in this context. This is so because petitioners raised their due process challenges in defense to legal proceedings the Watermaster initiated.

Such due process challenges are not untimely when asserted defensively. (*Styne v. Stevens* (2001) 26 Cal.4th 42, 51 [“Under well-established authority, a defense may be raised at any time, even if the matter alleged would be barred by a statute of limitations if asserted as the basis for affirmative relief”].) Petitioners did not have the obligation to affirmatively raise the issue beforehand. (*Ibid.*; see also *Whole Woman’s Health v. Jackson* (2021) 595 U.S. 30, 36, n. 1 [“applicable federal constitutional defenses always stand fully available when properly asserted”].)

In the end, petitioners’ due process rights were infringed and a judgment made without jurisdiction as to them was improperly enforced.

Review should be granted to provide definitive guidance that (i) a class judgment cannot be enforced when there was no opportunity to opt out and (ii) class members can always raise due process challenges in defense to class proceedings brought against them.

CONCLUSION

For the foregoing reasons, the Court should grant review.

App.159

Respectfully Submitted

s/ Mae G. Alberto

Steven D. Atkinson, SBN 59094

Mae G. Alberto, SBN 228067

Daniel Hargis, SBN 224226

Wesley A. Miliband, SBN 241283

ATTORNEYS FOR
PETITIONERS

....

App.160

APPENDIX K

IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA

Case No. S294961

Johnny Zamrzla, Pamella Zamrzla, Johnny Lee
Zamrzla, Jeanette Zamrzla,

Petitioners,

v.

Los Angeles County Waterworks District No. 40 et
al.,

Respondents.

Dated: February 23, 2026

After a Decision by the Court of Appeal, Second
Appellate District, Division One, Case No. B331148

COMBINED REPLY TO ANSWERS TO PETITION
FOR REVIEW

*Application for Leave to File Submitted Concurrently
Herewith*

....

To the Honorable Chief Justice and Associate Justices of the Supreme Court of California: Petitioners Johnny Zamrzla, Pamella Zamrzla, Johnny Lee Zamrzla and Jeanette Zamrzla, submit this combined reply to the two answers filed in opposition to the petition for review.¹

INTRODUCTION

This case is a prime opportunity for the Court to tangibly illustrate what situations require individual notice to be distributed to absent class members. California law recognizes individual notice is necessary when substantial interests are at play. But this rule lacks applied guidance as the Court has never given an example of when such notice is mandatory. The case is ideal for review because the operative facts are few, simple, and undisputed. It illustrates why the gap in the law leads to mistakes and injustice.

Review would further allow the Court to instruct on another central issue of class notice, namely the extent to which a class member can be bound to a class judgment when not allowed to opt out.

Subsumed within these two questions that go to the fundamentals of class action jurisprudence are

¹ Petitioners will be referred to individually by their first names or collectively as “petitioners.” Their reply responds to the Antelope Valley Watermaster’s (“Watermaster”) answer and the answer of a consortium of other parties that have been referred to on appeal as the “Settling Parties.” An application to file this combined reply is filed concurrently herewith.

other important issues that also lack Court direction, as explained in the petition for review.

Respondents' answers do not refute, or even discuss, the unsettled areas of law the petition raised for why review should be granted. The answers read as merits briefs and thus offer little, if any, justification for why review should be denied.

ARGUMENT

I. The Case Is Ideal to Determine if Class Members Who May Be Subject to a Loss of Rights or Liability Are Entitled to Individual Notice

Individual notice of the class action was never disseminated to Johnny Lee and Jeanette. They nevertheless were decreed bound by the class judgment to their injury—they had thousands of dollars in penalties imposed on them and the amount of water they could use on their farmland was significantly cut.

Respondents do not dispute that Johnny Lee and Jeanette did not get individual notice. (Settling Parties' Answer, generally; Watermaster's Answer, pp. 30-32.) There was no "belt-and-suspenders" notice for them. (Watermaster's Answer, p. 26.)

Yet, respondents claim the result is fine because of the discretionary power trial courts have over class notice. (*Ibid.*, pp. 23-24; Settling Parties' Answer, pp. 25-26.) Respondents treat this discretion as so boundless that, as applied here, it allows a party to be liable and lose rights without individual notice so long as notice is published in the obscure pages of newspapers.

Petitioners believe this is wrong; individual notice should have been required. For purposes of the petition, though, respondents' merits argument does not address the core reason why review on this issue should be granted.

It is true as the petition concedes that trial courts have great discretion over the distribution of class notice. (Petition, p. 19.) It is also true, however, that the discretion is not limitless—at some point individual notice is required when class members have substantial interests. (*Ibid.*, pp. 19-20.)

What is uncertain is what this means practically. The Court has never issued an opinion that elaborates on when individual notice is necessary.

Respondents' answers do not acknowledge this open question, and they do not and cannot claim this Court has clarified the issue. (See Answers, generally.) Indeed, their answers unwittingly recognize the need for guidance. They both cite the Court's statement in *Noel* that due process does not "invariably" require individual notice. (Settling Parties' Answer, p. 12; Watermaster's Answer, p. 23 [both citing *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 981 (*Noel*)].) The Court's formulation indicates individual notice is sometimes required but leaves unanswered when.

There is a void in the law that the Court should address by providing an example of when individual notice is mandatory. This case is optimal for putting down a marker. There are only two material facts on this issue, and they are concise, simple, and undisputed: (i) Johnny Lee and Jeanette did not receive individual notice; (ii) the class judgment

imposes penalties and significantly curbs a previously enjoyed right.

Review and decision will provide a solid guidepost: lower courts will know individual notice is mandatory when putative class members face the significant loss of rights or monetary liability.

Even a ruling adverse to petitioners will give guidance. It will reflect an example of when individual notice is not mandatory even though interests are not minimal. (See *Cooper v. American Sav. & Loan Assn.* (1976) 55 Cal.App.3d 274, 285.)

A. Individual Notice Is Distinct from Personal Service and Actual Notice

In addition to evading a principal basis for review, respondents misconstrue the petition by conflating individual notice with personal service or actual notice. (Settling Parties' Answer, p. 25; Watermaster's Answer, pp. 22-23.)

Individual notice, sometimes referred to as direct notice or personal notice, means class notice that is directed to specific individuals who may possibly be members of the class. (*Noel, supra*, 7 Cal.5th at 979, 981, 984; *Duran v. Obesity Research Institute, LLC* (2016) 1 Cal.App.5th 635, 647-649 (*Duran*).) This contrasts with notice by publication, which is disseminated to no individual in particular, but rather to a large, indistinct group, some of whom may possibly be class members. (E.g., *Duran, supra*, 1 Cal.App.5th at 549-651.)

Individual notice is not the same as personal service. (*Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 319.) Personal service is just a means by which individual notice may be given (*ibid.*), along with other methods such as the several

ways things can be mailed (e.g., certified, registered, return receipt, priority, first-class, and marketing mailing).

Individual notice is also not the same as actual notice. (*Noel, supra*, 7 Cal.5th at 984 [drawing distinction between “personal notice [] directed to all members of a class” and actual receipt of notice by class members].)

The petition for review distinguished between individual notice and personal service. (Petition, pp. 19-22.) The question of when individual notice is required is the threshold issue. Embedded in this is a second issue on the method by which individual notice should be given.

For this case, the threshold issue relates to Johnny Lee and Jeanette—individual notice should have been directed to them. The method by which notice should have been given concerns all petitioners, and the petition challenges the propriety of using regular first-class U.S. mail with respect to Johnny and Pamela. (*Ibid.*, pp. 20-22.) When class members are at risk of substantial loss, more robust methods of delivering notice should first be tried before resorting to regular mailing. (*Ibid.*)

Both issues are important and unsettled, but they are distinct. Respondents, nevertheless, try to dilute them into one issue framing the petition as seeking a rule requiring personal service/actual notice.

That is not correct. The petition is clear that petitioners are not arguing that actual notice be the standard. (*Ibid.*, p. 22.) Nor does the petition argue individual notice requires personal service. (*Ibid.*)

Moreover, respondents’ position is blind to the threshold issue of when individual notice should be

required. This does a disservice to Johnny Lee and Jeanette. They face significant liability and a loss of rights under the judgment without any attempt ever being made to give them individual notice of the lawsuit.

This is unfair and should be addressed (and corrected). Even if the Court accepts no other issue for review, it should consider when individual notice is required where class members are at risk of penalties and losing rights.²

II. Review Is Necessary to Determine Whether Class Members Can Be Bound by a Class Judgment They Could Not Opt Out Of

The 2009, 2013, and 2015 class notices, even if found to have been correctly distributed to petitioners, did not give them a real chance to opt out. Respondents' answers do not disagree. But like the Court of Appeal, they rely on the 2015 notice, which only allowed objections to class settlement, to excuse the failure to allow petitioners to opt out. (Settling

² The merits will be addressed should review be granted, but it is unreasonable that individual notice was not attempted for all potential class members given that address information is public. There are only about 70,000 total landowners in the Antelope Valley according to counsel for one of the respondents. (<https://bbkllaw.com/resources/appellate-decisions-limiting-groundwater-pumping-i>) and the initial estimate of potential class members was less than 10,000 members. (8AA, p. 2075; see *Noel, supra*, 7 Cal.5th at 979 [“When class members’ names and addresses are known or knowable with reasonable effort, notice can be accomplished by first-class mail”]; quoting *Mullins v. Direct Digital, LLC* (7th Cir. 2015) 795 F.3d 654, 665].)

Parties' Answer, pp. 28-29; Watermaster's Answer, p. 34.)

Review is warranted to answer if class members can be bound by a class judgment when not given a chance to opt out but only an opportunity to raise objections to settlement.

The issue goes to a trial court's jurisdiction. As the petition explains, due process requires the right to opt out, and that a class judgment is void and outside of a court's jurisdiction for those members deprived of the right. (Petition, pp. 23-25.) The right to object to settlement should not be a substitute for the due process opt out right. (*Ibid.* p. 25.)

Though petitioners believe the rule should be firm, there is no definitive guidance on this. This Court's review is therefore proper to settle an important question of law.

Respondents' answers ignore the issue and thus offer no grounds against review. Instead, adopting the Court of Appeal's argument, respondents contend petitioners were untimely in raising their due process challenges. (Settling Parties' Answer, pp. 28-29; Watermaster's Answer, p. 34.)

This, however, is a subordinate issue. It skips over whether the trial court had jurisdiction in the first place to enforce the judgment against petitioners. If the trial court lacked jurisdiction over petitioners, the perceived untimeliness of petitioners' due process challenges should not be relevant. (*Law Finance Group, LLC v. Key* (2023) 14 Cal.5th 932, 949-950; *Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd.* (2021) 71 Cal.App.5th 528, 543.)

A. The Court of Appeal Relied on Unbriefed Grounds to Affirm that

**Raise Issues for Which There is No
Clear Court Precedent**

Petitioners urged before the Court of Appeal that the 2009 and 2013 notices violated due process because they misidentified the class, and that the 2015 notice did not remedy this because it did not allow opt outs. (Appellants Opening Brief, pp. 37-42.) Respondents' position was that the contents of the 2009 and 2013 notices were adequate. (E.g., Settling Parties' Respondents' Brief, pp. 44-45; Watermaster's Respondent's Brief, pp. 27-29.) The parties' respective positions were thus diametric and framed the issue as whether the notices that provided opt-outs, the 2009 and 2013 notices, were sufficient.

The Court of Appeal went in a different direction. It tacitly recognized the 2009 and 2013 notices were inadequate because they "misidentified the class." (Opn., p. 5.) But, perhaps to avoid grappling with this, it found petitioners' due process defense to the Watermaster's efforts to enforce the judgment to be untimely because of the 2015 notice even though that notice did not allow opt outs. (*Ibid.*, pp. 17-18.)

The court's opinion essentially finds a class action judgment can be binding based on notice that did not allow opt outs. It also holds that constructive notice of a class action starts the clock for a class member to affirmatively raise due process rights on pain of losing them forever, even in defense to legal process.

These were not issues "proposed or briefed by any party." (Gov. Code, § 68081.) The Court of Appeal should have granted petitioners' request for rehearing. The Court can transfer the matter back to

the Court of Appeal and direct it to rehear the matter. (Cal. Rules of Court, rule 8.500(b)(4).)

On the substance of these issues, respondents adopt the Court of Appeal's argument that the assertion of a constitutional right must be made within a reasonable time, citing the same authorities as the opinion. (Settling Parties' Answer, pp. 28-29; Watermaster's Answer, p. 34; Opn., pp. 17-18.)

In the relevant cases, however, the party asserting the constitutional right initiated the litigation and asserted the constitutional right either as a cause of action or in support of its causes of action. (*Muller v. Muller* (1960) 179 Cal.App.2d 815, 819 [plaintiff who failed to bring action to trial within five years as required by statute was barred by his delay from arguing he was deprived of the constitutional right to prosecute action]; *Hoesterey v. City of Cathedral City* (9th Cir. 1991) 945 F.2d 317, 317 [considering statute of limitations on plaintiff's claim "pursuant to 42 U.S.C. § 1983 for the alleged deprivation of his due process rights"; reversing order that claim was untimely]; *Knox v. Davis* (9th Cir. 2001) 260 F.3d 1009, 1010-1011, 115 [considering timeliness of the plaintiff's 42 U.S.C. section 1983 claim for alleged due process violations].)³

Here, petitioners raised their due process rights in a markedly different circumstance. They first raised them as a defense to the Watermaster's litigation to enforce the judgment against them. To be

³ The opinion and respondents also cite *Miller v. Eisenhower Medical Center* (1980) 27 Cal.3d 614, 624, which did not consider due process or other constitutional rights, but rather whether the plaintiff's claim was barred by laches with the Court finding it was not.

sure, the defense was raised again in petitioners' motions in equity to modify the judgment. The trial court, however, told petitioners they had to file the motions in response to the Watermaster's action to challenge their status as class members bound by the class judgment. (E.g., 2RT, pp. 322:13-323:9; 331:10-22.)

In substance, petitioners' due process challenges were defensive. It should be construed to be within the rule of *Styne v. Stevens* (2001) 26 Cal.4th 42, 51. The case at least presents an opportunity to expound on the scope of *Styne* and whether it or its rule extends to constitutional rights defensively asserted. The need for guidance is shown by the Court of Appeal and respondents resorting to rather inapt authorities that did not address the situation.

III. The Prior Appeals Are Irrelevant and Review Should Not Be Denied Based on the Speculative Impact of Reversal

Respondents' references to the other appeals of the Antelope Valley Groundwater Cases are extraneous. (Settling Parties' Answer, p. 13; Watermaster's Answer, pp. 16-17.) None of the other appeals adjudicated the issues raised here. (*Phelan-Piñon Hills Community Services v. California Water Service Co., et al.* (2020) 59 Cal.App.5th 241 (*Antelope I*) [did not involve the Small Pumper Class but rather whether a public agency organized as a community services district that supplied water to residents outside of the basin acquired a right to the basin groundwater]; *Willis v. Los Angeles County Waterworks District No. 40, et al.* (2021) 62 Cal.App.5th 992 (*Antelope II*) [did not involve the

Small Pumper Class but rather class of overlying landowners who had not pumped water and challenged the Physical Solution's structure as well as the trial court's failure to apportion to the class some part of the basin's native safe yield]; *Los Angeles County Waterworks District No. 40, et al. v. Tapia, et al.* (2021) 63 Cal.App.5th 17 (*Antelope III*) [did not involve the Small Pumper Class but rather an overlying landowner who challenged the Physical Solution's allocation of water rights to public water suppliers while denying his production rights].)

Furthermore, as the petition noted, one of those appeals, *Antelope II*, stands in conflict with the decisions made below. (Petition, p. 16.) It understood the definition of the Small Pumper Class to have a meaning that would place petitioners outside of the class. (*Antelope II, supra*, 62 Cal.App.5th at 1000.)

Finally, petitioners cannot leave without comment respondents' contention to the effect that granting review will "destabilize" groundwater use in the Antelope Valley. (Settling Parties' Answer, p. 31.)

This is unfounded. The act of granting review will have zero impact on groundwater use—it is simply accepting the case for consideration.

What respondents are suggesting is that a merits determination reversing the rulings below may impact groundwater use. But it is premature to speculate on any outcome. The Court may affirm and maintain the status quo if review is granted. And the impact that reversal might have on groundwater use can be raised by the respondents on the merits and considered by the Court if relevant. Guessing what the future consequences may be when the matter has not been addressed on the merits should not be a basis to deny review in the first instance.

Regardless, there is no reason to conclude Antelope Valley groundwater use will be much changed even if the Court reversed. The practical effect for purposes of this litigation, if petitioners obtain the relief they seek, is only that they would not be bound by the Small Pumper Class Judgment and instead will have an opportunity to advocate their separate water use rights. Petitioners are not simple domestic users of water. Their land is used for small farming purposes. Remand would allow petitioners to try to be placed where they properly belong among other water users. It is unlikely that Valley-wide water use would be materially affected by any adjustments to just these two petitioners' usage.

There is also no reason to believe that reversal would cascade through and disrupt the Small Pumper Class or Judgment and Physical Solution. Respondents do not argue, for instance, that any other person is seeking or will seek relief depending on how this case is decided; nothing suggests reversal will open the floodgates. Respondents otherwise offer no specifics on how anything will be undermined.

Even so, the Small Pumper Class ultimately consisted of only around 3,172 class member parcels of the approximately 450,000 people living in the Antelope Valley on property owned by about 70,000 landowners. (2 AA, p. 515; Settling Parties' Answer, p. 13; <https://bbklaw.com/resources/appellate-decisions-limiting-groundwater-pumping-i.>) The class, as the name reflects, is a small user of groundwater relative to other groups as shown in it only being allocated less than five percent of the groundwater under the Judgment and Physical Solution. (See 2AA, pp. 510:4-8, 513:7-9, 515:1-3; see also <https://avwatermaster.net/wp-content/uploads>

/2025/09/2024-AVWM-Annual-Report.pdf, at Fig. 2.) Reversal in a way that might affect the class would not undermine the overall stability of the Judgment and Physical Solution.

Moreover, the Judgment and Physical Solution is meant to be “flexibl[e] and adaptab[le].” (2AA, p. 527:17-19.) It anticipates that changes may be necessary based on unforeseen events occurring later. (*Ibid.*, pp. 526:26-527:5.) The trial court thus retained jurisdiction for such purposes. (*Ibid.*)

Ultimately, the speculation that accepting review or even reversal will unravel the water rights and structure of the Judgment and Physical Solution is specious. Such speculation should not, in any event, be a basis to avoid review and decision on critical issues of due process.

CONCLUSION

Petitioners respectfully request that the Court grant review.

February 23, 2026

Respectfully Submitted

s/ Mae G. Alberto

Steven D. Atkinson, SBN 59094

Mae G. Alberto, SBN 228067

Daniel Hargis, SBN 224226

Wesley A. Miliband, SBN 241283

ATTORNEYS FOR
PETITIONERS

App.174

APPENDIX L

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF LOS ANGELES –
CENTRAL DISTRICT

Coordinated Proceeding, Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER CASES

Judicial Council Coordination Proceeding No.: 4408

LASC Case No. BC32501

Santa Clara Sup. Court Case No.: 1-05-CV-049053
Assigned to Hon. Jack Komar, Judge of the Santa
Clara County Superior Court

Dated: April 11, 2022

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF JOHNNY AND PAMELLA
ZAMRZLA'S MOTION TO SET ASIDE OR MODIFY
JUDGMENT [EXCERPTS]

....

I. INTRODUCTION

Defendants Johnny and Pamela Zamrzla bring this motion to set aside or modify the Judgment and Physical Solution, by removing their names from the Small Pumper Class, on the basis that they were denied due process because they were never served notice of the litigation.

Johnny and Pamela Zamrzla have lived in Lancaster for more than 50 years, where they own 119 acres of land. Despite the requirement that owners of more than 100 acres, and pumpers of more than 25 acre-feet per year (AFY), be personally served with notice of the Antelope Valley Groundwater litigation, the Zamrzlas were never personally served. In fact, they were never served by any method. Although Watermaster and other parties claim the Zamrzlas were served by mail, the evidence in support of such service is inadmissible and is contradicted by the Zamrzlas' declarations.

Further, the alleged mailed notice was defective on its face, because it failed to correctly describe the small pumper class. It cannot be considered to have properly notified the Zamrzlas of the litigation and its potential effect on their rights. The Watermaster and other parties now claim the Zamrzlas are subject to the Antelope Valley Groundwater Cases Judgment and Physical Solution (the "Judgment"), despite this lack of notice. As a matter of due process, the Zamrzlas cannot be subject to the Judgment.

Finally, even if the Zamrzlas were properly served (they were not), and such service was not defective (it was), the Zamrzlas still cannot be bound

by the Judgment as it pertains to small pumpers because the Zamrzlas do not fall within the definition of the small pumper class. The irrefutable evidence establishes the Zamrzlas exceeded the 25 AFY threshold every year they owned the subject property.

The Watermaster's attempt to impose on the Zamrzlas exorbitant fees for allegedly overpumping their allocation as "small pumpers" is both unjustified and unconstitutional. The reduction in the Zamrzlas' pumping rights without the right to be heard amounts to an unconstitutional taking without due process. The fundamental requisite to due process is proper notice and the right to be heard. The Zamrzlas have not been afforded that right. Accordingly, they cannot be bound by the judgment, and it should be modified so as not to include the Zamrzlas, or be set aside as to them.

II. FACTUAL AND PROCEDURAL BACKGROUND

Johnny and Pamela Zamrzla first purchased property in the Antelope Valley more than 50 years ago, in 1970, and have owned and lived on that same property without interruption. They own three contiguous parcels, totaling 119 acres. The Zamrzlas' are prominent members of the community. Over the past 51 years, the Zamrzlas have used their property variously for ranching and farming, including raising cattle, horses, and mules, as well as growing alfalfa, onions, carrots, and pasture grasses. The Zamrzlas own and operate a successful and well-known roofing contracting business in the community. They have donated the use of their home and property for community events and hosted annual fundraising events for local charities and organizations, and are

well-known in the community. (Compendium of Evidence “COE” Ex. 1-2.)

The entire history of the Antelope Valley Groundwater litigation is too lengthy to recount here, but the following facts are relevant to the discrete issue raised by the instant motion: whether the Zamrzlas were afforded their constitutional right to due process and are bound by the Judgment and Physical Solution. After years of litigation, the Court entered Judgment on December 23, 2015, and adopted the Judgment and Physical Solution. (COE Ex. 7.) On the same date, the Court signed the Judgment Approving Small Pumper Class Action Settlements, which affected the pumping rights of members of the small pumper class. (COE Ex. 8.) However, the Zamrzlas were never personally served with notice of the Antelope Valley Groundwater litigation, and never received notice of the litigation by mail. (COE Ex. 1-2.)

Earlier in this litigation, efforts were made, pursuant to Court Order, to personally serve 1) any landowner owning more than 100 acres, and 2) any landowner that pumped more than 25 acre-feet per year. On December 11, 2006, Los Angeles County Waterworks District No. 40 filed a declaration listing the 216 parties that had been personally served, pursuant to the Court’s Order regarding personal service. (COE Ex. 9.) On July 2, 2007, Los Angeles County Waterworks District No. 40 filed a declaration stating that 321 parties had been personally served, again noting that owners of over 100 acres must be personally served, pursuant to court order. (COE Ex. 10.)

On September 12, 2008, Los Angeles County Waterworks District No. 40, filed a detailed

declaration regarding status of service of process. In the declaration noted the Court had ordered personal service of landowners owning over 100 acres, and also of any landowners who pump more than 25 AFY. At that time, they had apparently personally served 449 of 630 identified large landowners, and 29 of 38 additional landowners pumping more than 25 AFY. (COE Ex. 11.)

On November 21, 2008, Los Angeles County Waterworks District No. 40 filed a Case Management Conference Statement referencing that the “Court ordered personal service be completed upon landowners pumping more than 25 acre feet of water annually, or owning more than 100 acres of land.” The Water District indicated it had personally served 547 landowners and had identified another 120 to be served. (COE Ex. 12.) The same day, the Public Water Suppliers filed an ex parte application requesting permission to serve by publication. (COE Ex. 13.) The Court signed an order permitting service by publication on November 25, 2008. The attached list of parties to be served by publication did not include the Zamrzlas. (COE Ex. 14.)

On September 29, 2021, the Watermaster filed a Motion for Monetary, Declaratory and Injunctive Relief Against Zamrzlas. (DI No. 12095). In its motion, the Watermaster alleged that Johnny and Pamella Zamrzla were members of the Small Pumper Class with an allocation of 6 acre-feet per year, that they had pumped at least 69.29 acre-feet in 2018, and that they, therefore, owed Replacement Water Assessments totaling \$28,755.35, plus interest, attorney’s fees, and costs of collection. (DI No. 12095, pp. 5, 9, 10). The Zamrzlas filed their opposition to the Watermaster’s motion on November 12, 2021,

arguing, among other things, that they had never received notice of their inclusion in the Small Pumper Class and therefore were absent persons with respect to the Judgment and not bound by it. (DI No. 12125, pp. 11-14). The Zamrzlas also argued that they were not, by definition, members of the Small Pumper Class. (DI. No. 12125, pp. 14-15). The Watermaster filed its reply on December 3, 2021. (DI No. 12153).

At a hearing held on the Watermaster's motion on December 10, 2021, the Court asked the parties to attempt to stipulate to a resolution of the dispute and adjourned the hearing. The parties appeared again for hearings on January 25, 2022, and on February 18, 2022, and the Court again instructed them to attempt to resolve the dispute through a stipulated agreement. When the parties next appeared at a hearing on March 4, 2022, the Court noted that the "proper way" for the Zamrzla's to contest their inclusion in the Small Pumper Class would be for them to file a motion, supported by evidence, to enable the Court to make a finding as to their "historic entitlement." (COE Ex. 6 p. 11.) The Court further noted that if any of the Zamrzla parties had been included in the Small Pumper Class "by error," then "that is an error that needs to be corrected," and that there were "processes in equity" that could be employed to correct the error. (COE Ex. 6 p. 15.)

The parties and the Court agreed that the hearing would be adjourned to May 3, 2022, and that the Zamrzlas would file a motion seeking their removal from the Small Pumper Class before that date in accordance with the Code of Civil Procedure. (COE Ex. 6 p. 25.) The Zamrzlas do so here.

III. LEGAL ARGUMENT

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

California courts have inherent equity power under which, apart from statutory authority, the court has the power to grant relief from a judgment where there has been extrinsic fraud or mistake. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 855; *Hill v. Johnson* (1961) 194 Cal.App.2d 779, 782 [default set aside more than six months after judgment where record showed extrinsic mistake on the part of defendant that prevented him from having a fair adversary hearing]; *Hallett v. Slaughter* (1943) 22 Cal.2d 552, 557 [“Plaintiff was prevented by extrinsic accident and mistake of fact from presenting her defense in the municipal court action. That such accident and mistake furnish a ground for equitable intervention under the circumstances of this case is clear.”])

Equity’s jurisdiction to interfere with final judgments is based upon the absence of a fair, adversary trial in the original action. “It was a settled doctrine of the equitable jurisdiction -- and is still the subsisting doctrine except where it has been modified or abrogated by statute . . . that where the legal judgment was obtained or entered through fraud, mistake, or accident, or where the defendant in the action, having a valid legal defense on the merits, was prevented in any manner from maintaining it by fraud, mistake, or accident, and there had been no negligence, laches, or other fault on his part, or on the part of his agents, then a court of equity will interfere at his suit, and restrain proceedings on the judgment which cannot be conscientiously enforced. . . . The ground for the exercise of this jurisdiction is that

there has been no fair adversary trial at law.” Typical of the situations in which equity has interfered with final judgments are the cases where the lack of a fair adversary hearing in the original action is attributable to matters outside the issues adjudicated therein which prevented one party from presenting his case to the court, as for example, where there is extrinsic fraud or extrinsic mistake. (*Olivera v. Grace* (1942) 19 Cal.2d 570, 575 [internal citations omitted].) Where the court that rendered the judgment possesses a general jurisdiction in law and in equity, the jurisdiction of equity may be invoked by means of a motion addressed to that court. (*Id.*, at p. 576.)

Here, as described in more detail below, the Zamrzlas are purported to be bound by the 2015 Judgment and Physical Solution, despite never being served notice of the ligation, and therefore being denied their right to an adversarial hearing and proceeding concerning their water pumping rights. As shown below, the Zamrzlas were never served with notice of the underlying litigation, therefore, their inclusion as “small pumpers” bound by the Judgment and Physical Solution is improper and violates their right to due process under both the United States and California Constitutions. As a matter of equity, the Court has the power to revisit the judgment vis-a-vis the Zamrzlas.

B. The Judgment Should be Set Aside Because Johnny and Pamella Zamrzla Have Been Denied Due Process as They Were Never Served Notice of the Antelope Valley Groundwater Litigation

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

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. 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 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.)

Here, Johnny and Pamela Zamrzla were never personally served (as required by Court order) with notice of the litigation despite owning more than 100

acres of land in the Antelope Valley and pumping more than 25 AFY on a yearly basis. In the years following the Court's order, the record shows District 40 claimed personal service to landowners was occurring in 2006, 2007, 2008, 2009, and 2010. The Zamrzlas were never personally served. Although the Zamrzlas are alleged to have been served with mail notice in later years after the Court certified the Classes, the mail notice was not, in fact, ever received by the Zamrzlas, and even had it been received, the mail notice was defective to put the Zamrzlas on notice of the threat to their pumping rights posed by the litigation.

1. The Judgment Should Be Set Aside Because Johnny and Pamella Zamrzla Were Never Personally Served, in Violation of the Court's Order.

Johnny and Pamella Zamrzla first purchased property in the Antelope Valley more than 50 years ago, in 1970, and have owned and lived on that same property without interruption. They own three contiguous parcels, totaling 119 acres. However, the Zamrzlas were never personally served with notice of the Antelope Valley Groundwater litigation, despite the Court's requirement that any landowners owning 100 acres or more, or pumping in excess of 25 AFY, be personally served with notice of the litigation. It is clear from the record that the parties have relied upon an order from the Court requiring personal service of any landowners owning 100 acres or more, or pumping in excess of 25 AFY.

By way of example, on December 11, 2006, Los Angeles County Waterworks District No. 40 filed a

declaration listing the 216 parties that had been personally served, pursuant to the Court's Order regarding personal service. The Zamrzlas do not appear on this list. On July 2, 2007 Los Angeles County Waterworks District No. 40 filed a declaration stating that 321 parties that had been personally served, again noting that owners of over 100 acres must be personally served.

On September 12, 2008, Jeffrey Dunn, counsel for Los Angeles County Waterworks District No. 40, filed a detailed declaration regarding status of service of process. In his declaration Mr. Dunn noted the Court had ordered personal service of landowners owning more than 100 acres, and also of any landowners who pump more than 25 acres feet annually. At that time, they had apparently personally served 449 of 630 identified large landowners, and 29 of 38 additional landowners pumping more than 25 AFY.

On November 21, 2008, Los Angeles County Waterworks District No. 40 filed a Case Management Conference Statement referencing that the "Court ordered personal service be completed upon landowners pumping more than 25 acre feet of water annually, or owning more than 100 acres of land." The Water District indicated it had personally served 547 landowners, and had identified another 120 to be served. The same day, the Public Water Suppliers filed an ex parte application requesting permission to serve by publication. The Court signed an order permitting service by publication on November 25, 2008. The attached list of parties to be served by publication did not include the Zamrzlas.

These are just a few examples acknowledging the court-ordered requirement that any landowner

owning more than 100 acres within the Antelope Valley Groundwater Adjudication Boundary, and any other landowner known to pump more than 25 AFY, be personally served with notice of the litigation. The order requiring personal service makes sense. The litigation could (and indeed has) significantly diminish any given landowner's right to pump from the aquifer. For many landowners, the reduction in water rights could pose an existential threat to their livelihood and the value of their property. Because water rights, once acquired, are vested property rights, the litigation amounted to a taking and required due process. To impose severe water pumping restrictions without adequate notice of the litigation, and affording a landowner the right to be heard, would be not only inherently unfair but also constitute a clear violation of said landowner's constitutional rights.

Importantly, the admissible evidence is that neither the Watermaster nor any other party to the litigation has claimed the Zamrzlas were personally served. The Zamrzlas appear to have been completely missed in the effort to personally serve landowners and large pumpers. However, no explanation for the failure to personally serve the Zamrzlas has been forthcoming, and the failure to do so is particularly strange given the Zamrzlas' prominent standing in the community. Over the past 51 years, the Zamrzlas have used their property variously for ranching and farming, including raising cattle, horses, and mules, as well as growing alfalfa, onions, carrots, and pasture grasses. The Zamrzlas own and operate a successful and well-known roofing contracting business in the community. They volunteer and serve in many local organizations. The Zamrzlas have

donated the use of their home and property for community events and hosted annual fund-raising events to support local charities. They are well-known, prominent community members, and meet the personal service requirement both by acreage and by water pumping amount¹. Any argument that the Zamrzlas could not be located or identified as landowners subject to the personal service order is absurd on its face.

Indeed, the Zamrzlas would have been incredibly easy to identify, locate, and personally serve. The Zamrzlas' inclusion on the alleged "mail service" list and the final list of "small pumpers" in the Judgment, shows they were known to the Water District and other parties to the litigation. What is unknown is why the Zamrzlas were never personally served, despite meeting both requirements for personal service.

As the *Mullane* court held, 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.) Had the Zamrzlas been personally served, the entire present situation could have been avoided. However, because the Zamrzla's were not personally served they cannot be bound by the Judgment. Binding the Zamrzlas to the Judgment would violate their right to due process. It is on this basis the Zamrzlas request the Court exercise its inherent power in equity to either modify or set aside the Judgment such that the Zamrzlas are not bound by it.

¹ Evidence regarding the Zamrzlas' pumping history can be found at Section D., below.

**2. Johnny and Pamela Zamrzla
Were Never Served By Mail.**

Not only were the Zamrzlas never personally served, but they were never served by mail either. On September 2, 2008, the Court issued an order certifying the Small Pumper class. After various revisions, the Court eventually approved Small Pumper Notice of Class Action, which was dated June 26, 2009. (COE Ex. 17.) This notice was allegedly mailed to Johnny and Pamela Zamrzla, however, the Zamrzlas never received the notice. (Pamella Decl. ¶ 6, Johnny Decl. ¶ 6.)

In fact, the only evidence thus far offered to show the Notice was mailed to the Zamrzlas is through the declaration of LA County Water District No. 40's attorney, Jeffrey Dunn, dated December 2, 2021, and attached to the Watermaster's Reply Brief in support of the Motion against the Zamrzlas. In that Declaration, Mr. Dunn claims:

On July 2, 2009, my office received the mailing list used by the vendor to provide the 2009 Notice, which lists Johnny Zamrzla's and Pamela Zamrzla's ("Zamrzla") mailing address as "48910 80TH ST W, LANCASTER, CA 93536-8740." I am informed and therefore believe that a copy of the 2009 Notice was mailed to Zamrzla in late June or early July 2009 at that address

As detailed in the Zamrzlas' Evidentiary Objections to the Dunn Declaration (COE Ex. 4), Mr. Dunn's statement that the 2009 Notice was actually

mailed to the Zamrzlas constitutes hearsay. Mr. Dunn did not complete the mailing himself, but rather, his firm hired an unidentified third-party vendor to handle the mailing. He then bases his belief that the Zamrzlas received the mailing on the list from the third-party vendor, which ostensibly includes the Zamrzlas. Thus, Dunn's statement that the Zamrzlas were served, is hearsay because he is simply repeating information from the third-party vendor.

Further, because Mr. Dunn has no personal knowledge that the 2009 Notice was actually mailed to the Zamrzlas, it also lacks foundation. Mr. Dunn cannot claim to know personally that the Zamrzlas were served. He admits his "knowledge" is based on the information provided by the unidentified third-party vendor. This inadmissible evidence is insufficient to support the contention that the Zamrzlas received the Notice by mail, particularly in the face of admissible declarations from the Zamrzlas that they never received the notice.

There is no admissible evidence that the Zamrzlas ever received the Notice – no certified mail, no return receipt, no Declaration from anyone actually involved in the mailing. Certainly, if such evidence existed it would have been presented to the Court by now. The fact that it has never been presented is telling. In fact, the only admissible evidence (the Zamrzlas' declarations) is that they were not.

Thus, even if it were appropriate to serve the Zamrzlas by mail – which by Court order it was not – no one has shown that the Zamrzlas were, in fact, served by mail.

C. Even if Johnny and Pamela

**Zamrzla Had Been Served by Mail,
Service Was Defective.**

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

The June 26, 2009 Notice of Class Action, which was never actually mailed to the Zamrzlas, was also defective for multiple reasons. First, it materially differs from the Court's order 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." (COE Ex. 15.) However, the Notice of Class Action for the "Small Pumper" Class Action, dated June 26, 2009, states:

**ARE YOU A MEMBER OF THE
CLASS?**

You have been designated as a possible class member because

records show that you may own improved property in the Antelope Valley. The class includes all private (i.e., non-governmental) landowners within the Antelope Valley Groundwater Basin that have pumped groundwater on their property at any time since 1946, with certain exceptions set out below.

You are NOT in the Class if you fall within one of the categories set forth below. BUT YOUR RIGHTS MAY BE AFFECTED UNLESS YOU RETURN THE ATTACHED RESPONSE FORM AND MAKE CLEAR THAT YOU ARE NOT IN THE CLASS. HENCE, IT IS IMPORTANT THAT YOU RETURN THE RESPONSE FORM AS PROMPTLY AS POSSIBLE, EVEN IF YOU ARE NOT A CLASS MEMBER.

YOU ARE NOT IN THE CLASS WITH RESPECT TO ANY GIVEN PARCEL OF PROPERTY IF THAT PARCEL FALLS WITHIN ANY OF THE FOLLOWING CATEGORIES:

1. You have pumped 25 acre-feet or more of groundwater for use on

a that parcel in any calendar year since 1946; or

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

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

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

Further, even if the notice was not deficient in

its description of the class, the Zamrzlas regularly exceeded 25 acre-feet per year, as conclusively shown below in Section D. Thus, even had the Zamrzlas received this mail notice, upon reading the class definition, they would have immediately understood themselves **not** to be members of the Small Pumper Class, as the notice explicitly excludes those persons who “have pumped 25 acre-feet or more of groundwater for use on a that parcel in any calendar year since 1946.” The Zamrzlas would have had no reason to believe themselves to be part of any litigation based on this notice, and certainly would not have understood they were bound by any Small Pumper Class judgment or settlement.

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

. . . .

IV. CONCLUSION

The Zamrzlas have spent more than fifty years building their lives in the Antelope Valley. Now, the Watermaster seeks to take the Zamrzlas’ water rights from them, without due process. The Zamrzlas were never served with notice of this litigation. The Zamrzlas simply ask the Court to “wipe the slate clean,” and give them the opportunity they have been thus far denied: to fairly litigate their water rights in an adversarial hearing. The Constitutions of both the State of California and the United States, demand no less.

April 11, 2022

s/ Nicholas R. Shepard

App.195

Nicholas R. Shepard, Esq.
Matheny Sears Linkert & Jaime,
LLP

Attorney for Defendants Johnny
Zamrzla, Pamela Zamrzla,
Johnny Lee Zamrzla and
Jeanette Zamrzla

App.196

APPENDIX M

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF LOS ANGELES –
CENTRAL DISTRICT

Coordinated Proceeding, Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER CASES

Judicial Council Coordination Proceeding No.: 4408

LASC Case No. BC32501

Santa Clara Sup. Court Case No.: 1-05-CV-049053
Assigned to Hon. Jack Komar, Judge of the Santa
Clara County Superior Court

Dated: April 11, 2022

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF JOHNNY LEE AND JEANETTE
ZAMRZLA'S MOTION TO SET ASIDE OR MODIFY
JUDGMENT [EXCERPTS]

....

I. INTRODUCTION

Defendants Johnny Lee and Jeanette Zamrzla bring this instant motion to set aside or modify the Antelope Valley Groundwater Judgment and Physical Solution, on the basis that they were denied due process because they were never served notice of the litigation and are not parties to the Judgment.

Johnny Lee and Jeanette Zamrzla have owned their property in Lancaster since 2007. They initially jointly acquired a 10-acre parcel, and in 2014 purchased another adjacent 10-acre parcel. The Watermaster and other parties offer no evidence whatsoever that Johnny Lee and Jeanette were ever provided notice of the litigation. The Watermaster claims that Johnny Lee and Jeanette are “clearly Parties to the Judgment as Small Pumper Class Members.” (Watermaster Motion for Monetary, Declaratory and Injunctive Relief, DI No. 12095 p. 13.) However, Johnny Lee and Jeanette were never provided notice by personal service, mail, or by any other means. Their names do not appear on the Small Pumper List. They were not parties to the litigation and cannot be bound by the Final Judgment. The Watermaster has wrongfully and with overwhelming evidence to the contrary, designated Johnny Lee and Jeanette as “Unknown Small Pumpers” without due process and an opportunity to be heard regarding their overlying water production rights.

There is no evidence that Johnny Lee and Jeanette were ever served. They do not appear on any service list of any kind in the entire Antelope Valley Groundwater litigation, prior to the Watermaster’s 2021 motion.

Further, the alleged mailed notice was

defective on its face, because it failed to correctly describe the small pumper class. It cannot be considered to have properly notified Johnny Lee and Jeanette of the litigation and its potential effect on their rights. The Watermaster and other parties now claim Johnny Lee and Jeanette are subject to the Antelope Valley Groundwater Cases Judgment and Physical Solution (the “Judgment”), despite this lack of notice. As a matter of due process, Johnny Lee and Jeanette cannot be subject to the Judgment.

Finally, Johnny Lee and Jeanette cannot be bound by the Judgment as it pertains to small pumpers because they do not fall within the definition of the small pumper class. The irrefutable evidence establishes Johnny Lee and Jeanette exceeded the 25 acre-feet per year (AFY) in numerous years since they acquired the subject property.

The Watermaster’s attempt to impose on Johnny Lee and Jeanette exorbitant fees for allegedly over-pumping their allocation as “small pumpers” is both unjustified and unconstitutional. The reduction in Johnny Lee and Jeanette’s pumping rights without the right to be heard amounts to an unconstitutional taking without due process. The fundamental requisite to due process is proper notice and the right to be heard. Johnny Lee and Jeanette have not been afforded that right. Accordingly, they cannot be bound by the judgment, and it should be modified so as not to include Johnny Lee and Jeanette, or be set aside as to them.

II. FACTUAL AND PROCEDURAL BACKGROUND

Johnny Lee and Jeanette Zamrzla have owned their property in Lancaster since 2007. They initially

jointly acquired a 10-acre parcel, and in 2014 purchased another adjacent 10-acre parcel. (Compendium of Evidence “COE” Ex. 1.)

The entire history of this the Antelope Valley Groundwater litigation is too lengthy to recount here. However, after years of litigation, the Court entered Judgment on December 23, 2015, and adopted the Judgment and Physical Solution. (COE Ex. 8.) On the same date, the Court signed the Judgment Approving Small Pumper Class Action Settlements, which affected the pumping rights of members of the small pumper class. (COE Ex. 9.) There is no evidence that Johnny Lee and Jeanette were ever served with notice of the litigation – personally, by mail, or otherwise. They do not appear on any service list of any kind in the entire Antelope Valley Groundwater litigation, prior to the Watermaster’s 2021 motion.

On September 29, 2021, the Watermaster filed a Motion for Monetary, Declaratory and Injunctive Relief Against Zamrzlas. (DI No. 12095). In its motion, the Watermaster alleged that Johnny Lee and Jeanette were Unknown Small Pumper Class Members with an allocation of 3 acre- feet per year, that they had pumped at least 18.46 acre-feet in 2018, and that they, therefore, owed Replacement Water Assessments totaling \$6,415.90, plus interest, attorney’s fees, and costs of collection. (DI No. 12095, pp. 4, 5, 9, 10). The Zamrzlas filed their opposition to the Watermaster’s motion on November 12, 2021, arguing, among other things, that they had never received notice of their inclusion in the Small Pumper Class and therefore were absent persons with respect to the Judgment and not bound by it. (DI No. 12125, pp. 11-14). The Zamrzlas also argued that they were not, by definition, members of the Small Pumper

Class. (DI. No. 12125, pp. 14-15). The Watermaster filed its reply on December 3, 2021. (DI No. 12153).

At a hearing held on the Watermaster's motion on December 10, 2021, the Court asked the parties to attempt to stipulate to a resolution of the dispute and adjourned the hearing. The parties appeared again for hearings on January 25, 2022, and on February 18, 2022, and the Court again instructed them to attempt to resolve the dispute through a stipulated agreement. When the parties next appeared at a hearing on March 4, 2022, the Court noted that the "proper way" for the Zamrzlas to contest their inclusion in the Small Pumper Class would be for them to file a motion, supported by evidence, to enable the Court to make a finding as to their "historic entitlement." (COE Ex. 7 p. 11.) The Court further noted that if any of the Zamrzla parties had been included in the Small Pumper Class "by error," then "that is an error that needs to be corrected," and that there were "processes in equity" that could be employed to correct the error. (COE Ex. 7 p. 15.)

The parties and the Court agreed that the hearing would be adjourned to May 3, 2022, and that the Zamrzlas would file a motion seeking their removal from the Small Pumper Class before that date in accordance with the Code of Civil Procedure. (COE Ex. 7 p. 25.) Johnny Lee and Jeanette Zamrzla, therefore, do so, here.

III. LEGAL ARGUMENT

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

California courts have inherent equity power under which, apart from statutory authority, the court has the power to grant relief from a judgment where there has been extrinsic fraud or mistake. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 855; *Hill v. Johnson* (1961) 194 Cal.App.2d 779, 782 [default set aside more than six months after judgment where record showed extrinsic mistake on the part of defendant that prevented him from having a fair adversary hearing]; *Hallett v. Slaughter* (1943) 22 Cal.2d 552, 557 [“Plaintiff was prevented by extrinsic accident and mistake of fact from presenting her defense in the municipal court action. That such accident and mistake furnish a ground for equitable intervention under the circumstances of this case is clear.”])

Equity’s jurisdiction to interfere with final judgments is based upon the absence of a fair, adversary trial in the original action. “It was a settled doctrine of the equitable jurisdiction -- and is still the subsisting doctrine except where it has been modified or abrogated by statute . . . that where the legal judgment was obtained or entered through fraud, mistake, or accident, or where the defendant in the action, having a valid legal defense on the merits, was prevented in any manner from maintaining it by fraud, mistake, or accident, and there had been no negligence, laches, or other fault on his part, or on the part of his agents, then a court of equity will interfere at his suit, and restrain proceedings on the judgment which cannot be conscientiously enforced....The ground for the exercise of this jurisdiction is that there has been no fair adversary trial at law.” Typical of the situations in which equity has interfered with final judgments are the cases where the lack of a fair

adversary hearing in the original action is attributable to matters outside the issues adjudicated therein which prevented one party from presenting his case to the court, as for example, where there is extrinsic fraud or extrinsic mistake. (*Olivera v. Grace* (1942) 19 Cal.2d 570, 575 [internal citations omitted].) Where the court that rendered the judgment possesses a general jurisdiction in law and in equity, the jurisdiction of equity may be invoked by means of a motion addressed to that court. (*Id.*, at p. 576.)

Here, as described in more detail below, Johnny Lee and Jeanette are purported to be bound by the 2015 Judgment and Physical Solution, despite never being served notice of the ligation, and therefore being denied their right to an adversarial hearing and proceeding concerning their water production rights. As shown below, Johnny Lee and Jeanette were never served with notice of the underlying litigation, therefore, their inclusion as unknown “small pumpers” bound by the Judgment and Physical Solution is improper and violates their right to due process under both the US and California Constitutions. As a matter of equity, the Court has the inherent power to revisit the judgment vis-a-vis Johnny Lee and Jeanette.

B. The Judgment Should be Set Aside Because Johnny Lee and Jeanette Zamrzla Have Been Denied Due Process as They Were Never Served Notice of the Antelope Valley Groundwater Litigation.

No person shall be deprived of life, liberty, or property, without due process of law. (USCS Const.

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

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. 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 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.)

Here, Johnny Lee and Jeanette were never served with notice of the litigation despite owning land in the Antelope Valley and frequently pumping more than 25 AFY on a yearly basis. No notice was sent to Johnny Lee and Jeanette, and thus Johnny

Lee and Jeanette cannot be found to have received notice of the litigation. Johnny Lee and Jeanette are separate individuals, owning separate property from Johnny and Pamella. Service is effective on the person served, not on some other individual, no matter how closely related.

The Watermaster and other parties offer no evidence whatsoever that Johnny Lee and Jeanette were provided notice. The Watermaster claims that Johnny Lee and Jeanette are “clearly Parties to the Judgment as Small Pumper Class Members.” (DI No. 12095, p. 13.) However, Johnny Lee and Jeanette were never provided notice by personal service, mail, or by any other means. Their names do not appear on the Small Pumper List or any other list that identifies them as Parties in the adjudication. Thus, they were not parties to the litigation and cannot be subject to the Final Judgment.

The Watermaster has wrongfully and with overwhelming evidence to the contrary, designated Johnny Lee and Jeanette as “Unknown Small Pumpers” without due process and without an opportunity to be heard regarding their overlying water production rights. Johnny Lee and Jeanette cooperatively provided their water usage history to the Watermaster. (COE Ex. 1; DI 12126 Ex. J.) The evidence provided to the Watermaster established that Johnny Lee and Jeanette were not “small pumpers.” Nonetheless, the Watermaster reached the unfounded conclusion that “at this point, J&J qualify as Unknown Small Pumper Class Members as defined in 5.1.3.6 of the Judgment, and are likewise Parties bound by the terms of the Judgment.” (DI 12153 p. 3.) Despite the information clearly establishing that they do not meet the definition of

Small Pumper Class Members the Watermaster asserts that Johnny Lee and Jeanette are “Unknown Small Pumper Class Members who have not yet gone through the process to qualify as Small Pumper Class Members.” (DI 12095, Rose Decl.) The Watermaster provides no legal justification for this contention.

The only argument presented by the Watermaster to support their unfounded claim that Johnny Lee and Jeanette are parties to the Judgment is found in the Watermaster’s Reply to Zamrzlas Opposition where the Watermaster disingenuously asserts that “..at all times relevant to the Adjudication were immediately adjacent neighbors, close relatives and business partners with J&P, and therefore undoubtedly received repeated notice of the Adjudication and the need to affirmatively participate in the litigation in order to assert any alleged Overlying Production Rights.” (DI 12153 p. 3.) This assertion by the Watermaster is supported by no legal authority because it is so contrary to any notion of lawful notice that is required to bind a party to a Judgment. (See *Peralta*, *supra*, 485 U.S. 80.) The Watermaster claims it is highly improbable that the Zamrzlas did not receive actual, much less constructive, notice of the Small Pumper Class Action and the Adjudication. (DI 12153 p. 4.) The Zamrzlas have provided sworn declarations that actual notice was never received and the Watermaster has provided no evidence to the contrary. (COE Ex. 1-3.)

Pursuant to the Final Judgment Decree in reference to Jurisdiction and Parties, “The Court required that all Persons having or claiming any right, title or interest to the Groundwater within the Basin be notified of the Action.” (COE Ex. 8, section 3.2.) Parties were defined as “Any Person(s) that has

(have) been named and served or otherwise properly joined, or has (have) become subject to this Judgment any prior judgments of this Court in this Action...” (COE Ex. 8, section 3.5.27.) In no section throughout the 224 pages of the Final Judgment does it purport to bind persons as parties because they might have heard about the litigation and should have interjected themselves into it to maintain their water rights. To rely upon a “constructive notice” conclusion as the Watermaster proposes, would be contrary to the tenets of fairness, equity, and all basic principles of jurisprudence.

“Constructive notice” is not actual notice and is not legally sufficient to bind a person to the Judgment. The Watermaster propounds the absurd argument that “[Johnny Lee and Jeanette], as neighbors, family members, and business partners of [Johnny and Pamella], were likewise put on constructive notice at the very least by way of the notice provided to [Johnny and Pamella], and were obligated to affirmatively assert any claim as overlying Producers by participating in the Adjudication.” (DI 12153 p. 7.) To accept the Watermaster’s “constructive notice” as sufficient notice would not only require this court to disregard the mandatory notice requirements outlined in the Judgment, but also ignore the due process rights afforded by the United States and California Constitutions. This constructive notice theory is not only unsupported by any legal authority, but violates the *Mullane* mandate that the 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. (*Mullane, supra*, 339 U.S. 306, 314.) The Watermaster's "constructive notice" theory is wholly unsupported by any legal authority and violates basic due process requirements.

Here, due process demands nothing less than actual notice when seeking to take overlying property water rights from Johnny Lee and Jeanette. Accordingly, Johnny Lee and Jeanette cannot be bound by the Judgment.

C. Even if Johnny Lee and Jeanette Zamrzla Had Been Served by Mail, Service Was Defective.

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

The June 26, 2009 Notice of Class Action, which was never actually mailed to the Zamrzlas, was also defective for multiple reasons. First, it materially differs from the Court's order 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.” (COE Ex. 9.) 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
that parcel in any calendar year
since 1946; or
2. You are a shareholder in a
mutual water company in the
Antelope Valley; or
3. You are already a party to this
litigation (but, in that event, you
may elect to join the Class).

Per section 1 of the Small Pumper Notice, a landowner is not a member of the class if, in *any* year since 1946 the landowner pumped 25 acre-feet or more. This definition thus materially differs from the definition in the class certification order. It also differs from the definition of the Small Pumper Class found at section 3.5.44 of the Judgment and Physical Solution, which states small pumpers are those persons “that have been pumping less than 25 acre-feet per year on their property during any Year from 1946 to the present.” This discrepancy in the class

definition renders the notice deficient on its face, as it would mislead anyone reading the notice regarding who is properly a member of the small pumper class. Such discrepancies between the notice and the class definition cannot be said to have been reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Nor does such notice reasonably convey the required information. The notice thus fails the basic test of *Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306 regarding the sufficiency of notice.

Further, even had the notice been sent to Johnny Lee and Jeanette, they would not have understood it to apply to them, as they regularly exceeded 25 acre-feet per year, as shown below in Section D. Thus, even had Johnny Lee and Jeanette received the notice, upon reading the class definition, they would have immediately understood themselves **not** to be members of the Small Pumper Class, as the notice explicitly excludes those persons who “have pumped 25 acre-feet or more of groundwater for use on a that parcel in any calendar year since 1946.” Johnny Lee and Jeanette would have had no reason to believe themselves to be part of any litigation based on this notice, and certainly would not have understood they were bound by any Small Pumper Class judgment or settlement.

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

....

IV. CONCLUSION

Johnny Lee and Jeanette never received notice of the Antelope Valley Groundwater litigation. They do not appear on any service list or mailing list, and there is no evidence, of any kind that they were ever served notice. Even had they received notice, the language of the mailed notice would have simply caused them to believe they were not members of the Small Pumper Class, as they frequently pumped more than 25 AFY. Johnny Lee and Jeanette are entitled to due process. The Judgment should be modified or set aside as to them.

April 11, 2022

s/ Nicholas R. Shepard

Nicholas R. Shepard, Esq.
Matheny Sears Linkert & Jaime,
LLP

Attorney for Defendants Johnny
Zamrzla, Pamella Zamrzla,
Johnny Lee Zamrzla and
Jeanette Zamrzla

App.214

APPENDIX N

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF LOS ANGELES –
CENTRAL DISTRICT

Coordinated Proceeding, Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER CASES

Judicial Council Coordination Proceeding No.: 4408

LASC Case No. BC32501

Santa Clara Sup. Court Case No.: 1-05-CV-049053
Assigned to Hon. Jack Komar, Judge of the Santa
Clara County Superior Court

Dated: April 14, 2023

JOHNNY AND PAMELLA ZAMRZLA'S CLOSING
BRIEF [EXCERPTS]

....

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

Notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” (*Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314.) Water rights are treated as real property rights in California and are subject to due process law. Once rights to use water are acquired, they become vested real property rights. As such, they cannot be infringed by others or taken by governmental action without due process and just compensation. (*United States v. State Water Res. Control Bd.* (1986) 182 Cal.App.3d 82, 101.) Due process principles require reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest. (*Horn v. Cty. of Ventura*, (1979) 24 Cal.3d 605, 612.)

It is well settled that “the judgment in a class action binds only those class members who had been notified of the action and who, being so notified, had made no request for exclusion.” (*Steen v. Fremont Cemetery Corp.* (1992) 9 Cal.App.4th 1221, 1227.) The notice requirement is not only important and essential to the correct determination of the main issue it is, above all, jurisdictional. (*Id.*, at p. 1227-1228.)

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

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

However, while the Zamrzlas admit they did not file extraction notices, the SP & WM are improperly using the notices for a purpose for which they were not intended. Not only has this Court previously ruled against using the extraction notices (Z Exh. 55-58), but nothing in Water Code section 4999, *et seq.* provides that failure to file the extraction notices means a property owner need not be served with notice of litigation affecting the property owner's water rights. The SP & WM do not cite any such provision in the Water Code because, of course, no such provision exists. Instead, those statutes, evident from section 5003, exist to address acquisition of a prescriptive right to groundwater, which is not at issue for purposes of the underlying motions.

In fact, the position taken, by the SP & WM's own words, is that "the public water suppliers reviewed the State Board's records and filings to find out who was pumping more than acre-feet and to serve those parties personally." (44:7-10.) Thus, they contend, had the Zamrzlas filed the extraction notices they would have been personally served. So, in fact,

the SP & WM do take the position that because the Zamrzlas did not file extraction notices, the mistaken classification of the Zamrzlas as Small Pumpers should not be corrected by the Court. The argument is nonsensical.

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

What the SP & WM failed to address at the hearing, was any legitimate reason why the Zamrzlas were not personally served. Rather, they focused solely on the distraction of the extraction notices. It is undisputed that Johnny and Pamella Zamrzla were required to be personally served. Given that land ownership records are publicly available, identifying the Zamrzlas as owners of more than 100 acres of land would have been a simple task. There has been no explanation offered as to why public property ownership records could not have been used to identify the Zamrzlas.

On September 12, 2008, Jeffrey Dunn filed a declaration regarding the status of service of process. In that declaration, Mr. Dunn indicated that “Pursuant to Court Order, the Public Water Suppliers initiated personal service attempts beginning on October 28, 2005, on over 630 parties.” (Z Exh. 120, Docket No. 2011.) Mr. Dunn notes that “the Court directed that personal service be completed upon the landowners owning at least 100 acres and/or known

to pump more than acre 25 acre feet annually.” (Z Exh. 120, Docket No. 2011.) Yet, after nearly three years of attempting to complete service, the parties evidently failed to not only serve the Zamrzlas, but failed even to identify them as 100+ acre landowners.

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

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

California Evidence Code section 641 creates a presumption that a correctly addressed and properly mailed letter is presumed to have been received. (Evid. Code 641.) However, not only is this presumption rebuttable with contradictory evidence (see *Craig v. Brown & Root, Inc.* (2000) 84 Cal.App.4th 416, 421), but the statute clearly sets forth that the presumption exists only where 1) the mailing is “correctly addressed” and 2) the mailing is “properly mailed.” Likewise, the presumption is rebutted by evidence supporting denial of receipt. (*Wolstoncroft v. County of Yolo* (2021) 68 Cal.App.5th 327, 350 citing *Slater v. Kehoe* (1974) Cal.App.3d 819, 832, fn. 12 and *Craig v. Brown & Root, Inc.* (2000) 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 supporting that *either* requirement for the presumption was satisfied. The SP & WM have not introduced into evidence any proof of service, copy of the actual mailing or envelope, return receipt, certified mailing receipt, or any other document that could potentially establish that the mailing was “correctly addressed.” All they have offered into evidence are declarations regarding the list that was allegedly used for the mailing, and that the list has Johnny and Pamella’s address on it. However, there is no evidence establishing that the actual mailing itself was properly addressed. Nor is there evidence how the mailing was done, or whether it was “properly mailed.” SP & WM offer the declaration of Mr. Berg, who claims he directed employees at his company to “cause[] the Notice to be printed and posted for first class mail, postage prepaid, and delivered to a U.S. Post Office for mailing to each individual/entity identified in the List with a mailing address on or about July 9, 2009.” (Berg Decl., ¶ 5, SWM Exh. 16.) This paragraph is so vague and conclusory that it says almost nothing about how the actual mailing was done, and certainly does not prove the mailing was “properly mailed.” Mr. Berg does not even claim to have completed the task himself. Rather, some other unknown person or persons purportedly were directed to do so, and thus according to the Settling Parties that person(s) must

have done so, and must have done so properly. The lack of any document or any declaration from an individual who *actually* did the mailing means the Settling Parties have not met the threshold requirements for a presumption under Evidence Code section 641. No evidence whatsoever is offered as to any mailing other than the 2009 mailing. And no evidence has been offered to contradict the Zamrzlas' undisputed testimony that they did not receive mail notice.

The Zamrzlas have testified they never received the mailed notices. (93:14-95:6, 243:15- 21, 248:11-21.) This is clear, direct evidence that the mailings to the Zamrzlas were not completed, thus overcoming the presumption, even if indeed the presumption were adequately established in this instance. But in this instance, where the SP & WM cannot even meet the basic requirements for the mail presumption, the weight of the evidence leads to only one conclusion: the notices were never mailed to the Zamrzlas and were never received by the Zamrzlas.

Further, there was only one singular opportunity to "opt out" of the Small Pumper Class – the 2009 Small Pumper notice. However, the Zamrzlas could not "opt out" of a class they never received notice of and which they were not aware they were being improperly placed into. Here, where Small Pumper Class members in particular faced a Taking of 99% or more of their water production rights, the contention that a single mailed notice is sufficient, when the SP & WM have provided no direct evidence that it was actually properly mailed, cannot possibly rise to the standard of "reasonably calculated, under all the circumstances, to apprise interested parties of

the pendency of the action and afford them an opportunity to present their objections.”

As the Zamrzlas have testified, under penalty of perjury, in both the hearing and their depositions, none of them ever received any mail notice. Despite being subjected to hours of depositions and cross-examination on the topic, they have never wavered. Indeed, the sequence of events since 2018, outlined above, further belies the Watermaster’s contention that the Zamrzlas had actual notice of the underlying litigation and its threat to their water rights. Since the first letter from the Watermaster in 2018, the Zamrzlas have actively attempted to litigate and resolve the issue of their water rights under the 2015 Judgment. (See Section F, below.) It strains credulity to conclude the Zamrzlas would have knowingly refused to do anything to protect their rights prior to 2015 had they been served with notice of the litigation.

3. *There Was No Service by Publication*

Service by publication cannot be effective as to Johnny and Pamella Zamrzla. As owners of more than 100 acres of land they were required to be personally served. Not only do the SP & WM admit the Zamrzlas were not personally served, they also failed to prove they completed mail service on the Zamrzlas. Because both personal and mail notice failed, the SP & WM resort to asserting that publication notice was sufficient.

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

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

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

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

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

Publication notice to Johnny and Pamela, given their land ownership and water use history, does not meet the standard of notice that is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” (*Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314.)

4. *Johnny and Pamela Zamrzla
were Never Served.*

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

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

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

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

ARE YOU A MEMBER OF THE
CLASS?

You have been designated as a possible class member because records show that you may own improved property in the Antelope Valley. The class includes all private (i.e., non-governmental) landowners within the Antelope Valley Groundwater Basin that have pumped groundwater on their property at any time since 1946, with certain exceptions set out below.

You are NOT in the Class if you fall within one of the categories set forth below. BUT YOUR RIGHTS MAY BE AFFECTED UNLESS YOU RETURN THE ATTACHED RESPONSE FORM AND MAKE CLEAR THAT YOU ARE NOT IN THE CLASS.

HENCE, IT IS IMPORTANT THAT YOU RETURN THE RESPONSE FORM AS PROMPTLY AS POSSIBLE, EVEN IF YOU ARE NOT A CLASS MEMBER.

YOU ARE NOT IN THE CLASS WITH RESPECT TO ANY GIVEN PARCEL OF PROPERTY IF THAT PARCEL FALLS WITHIN ANY OF THE FOLLOWING CATEGORIES:

- 1. You have pumped 25 acre-feet or more of groundwater for use on a that parcel in any calendar year since 1946; or**
2. You are a shareholder in a mutual water company in the Antelope Valley; or
3. You are already a party to this litigation (but, in that event, you may elect to join the Class).

Per section of the Small Pumper Notice, a landowner is not a member of the class if, in *any* year since 1946 the landowner pumped 25 acre-feet or more. This definition thus materially differs from the definition in the class certification order. It also differs from the definition of the Small Pumper Class found at section 3.5.44 of the Judgment and Physical Solution, which states small pumpers are those

persons “that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present.” This discrepancy in the class definition renders the notice deficient on its face, as it would mislead anyone reading the notice regarding who is properly a member of the small pumper class. Such discrepancies between the notice and the class definition cannot be said to have been reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Nor does such notice reasonably convey the required information. The notice thus fails the basic test of *Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306 regarding the sufficiency of notice.

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

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

....

IV. CONCLUSION

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

April 14, 2023

s/ Nicholas R. Shepard

Nicholas R. Shepard, Esq.
Matheny Sears Linkert & Jaime,
LLP

Attorney for Defendants Johnny
Zamrzla, Pamella Zamrzla,
Johnny Lee Zamrzla and
Jeanette Zamrzla

App.228

APPENDIX O

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF LOS ANGELES –
CENTRAL DISTRICT

Coordinated Proceeding, Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER CASES

Judicial Council Coordination Proceeding No.: 4408

LASC Case No. BC32501

Santa Clara Sup. Court Case No.: 1-05-CV-049053
Assigned to Hon. Jack Komar, Judge of the Santa
Clara County Superior Court

Dated: April 14, 2023

JOHNNY LEE AND JEANETTE ZAMRZLA'S
CLOSING BRIEF [EXCERPTS]

....

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

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

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” (*Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314 [internal citations omitted].) Personal service of written notice within the jurisdiction is the classic form of notice always adequate in any type of proceeding. (*Mullane, supra*, at p. 313.)

Water rights are treated as real property rights in California and are subject to due process law. Once rights to use water are acquired, they become vested real property rights. As such, they cannot be infringed by others or taken by governmental action without due process and just compensation. (*United States v. State Water Res. Control Bd.* (1986) 182 Cal.App.3d 82, 101.) Due process principles require reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest. (*Horn v. Cty. of Ventura*, (1979) 24 Cal.3d 605, 612.)

It is well settled that “the judgment in a class action binds only those class members who had been notified of the action and who, being so notified, had made no request for exclusion.” (*Steen v. Fremont Cemetery Corp.* (1992) 9 Cal.App.4th 1221, 1227.) The notice requirement is not only important and essential to the correct determination of the main issue it is, above all, jurisdictional. (*Id.*, at p. 1227-1228.)

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

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

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

2. *There is No Dispute that Johnny*

*Lee and Jeanette Zamrzla Were
Never Served by Mail*

California Evidence Code section 641 creates a presumption that a correctly addressed and properly mailed letter is presumed to have been received. (Evid. Code 641.) However, not only is this presumption rebuttable with contradictory evidence (see *Craig v. Brown & Root, Inc.* (2000) 84 Cal.App.4th 416, 421), but the statute clearly sets forth that the presumption exists only where 1) the mailing is “correctly addressed” and 2) the mailing is “properly mailed.” Likewise, the presumption is rebutted by evidence supporting denial of receipt. (*Wolstoncroft v. County of Yolo* (2021) 68 Cal.App.5th 327, 350 citing *Slater v. Kehoe* (1974) 38 Cal.App.3d 819, 832, fn. 12 and *Craig v. Brown & Root, Inc.* (2000) 84 Cal.App.4th 416, 421-422.) The effect of a presumption affecting the burden of producing evidence is to require the trier of fact to assume the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence, **in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption.** (Evid. Code, § 604 [emphasis added].)

Here, there is no evidence that any mailed notice of any kind was ever sent to Johnny Lee and Jeanette Zamrzla. As they have testified, they never received any mailed notice of any kind relating to the adjudication. (325:26-326:16, 359:6-10.)

3. *There Was No Service by
Publication*

The SP & WM’s contentions against Johnny

Lee and Jeanette appear to rest entirely on whether Johnny Lee and Jeanette were served by publication. However, service by publication was never effected on Johnny Lee and Jeanette Zamrzla. SP & WM have provided no evidence that the Zamrzlas were served by publication. At the hearing, the SP & WM offered two exhibits relevant to the issue of service by publication: SWM Exhibits 10 and 15. These exhibits fail to establish service of notice of the litigation by publication. Rather, the exhibits show that notices of Proposed Settlement of Class Action were published in a few area newspapers.

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

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

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

There is simply no evidence to support that

notice by publication occurred and is binding on Johnny Lee and Jeanette. Certainly, these notices of proposed settlement, late in the litigation, do not meet the standard of notice that is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” (*Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314.) Indeed, Johnny Lee and Jeanette also both testified they never saw such notices. (326:20-23, 359:15-18.)

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

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

The June 26, 2009 Notice of Class Action materially differs from the Court’s order regarding small pumpers and the 2015 Judgment. On September 2, 2008, the Court issued an order

certifying the Small Pumper class. The Court described the class as all persons “that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present.” (Z Exh. 78.) However, the Notice of Class Action for the “Small Pumper” Class Action, dated June 26, 2009, states:

ARE YOU A MEMBER OF THE
CLASS?

You have been designated as a possible class member because records show that you may own improved property in the Antelope Valley. The class includes all private (i.e., non-governmental) landowners within the Antelope Valley Groundwater Basin that have pumped groundwater on their property at any time since 1946, with certain exceptions set out below.

You are NOT in the Class if you fall within one of the categories set forth below. BUT YOUR RIGHTS MAY BE AFFECTED UNLESS YOU RETURN THE ATTACHED RESPONSE FORM AND MAKE CLEAR THAT YOU ARE NOT IN THE CLASS. HENCE, IT IS IMPORTANT THAT YOU RETURN THE RESPONSE FORM AS PROMPTLY AS POSSIBLE,

EVEN IF YOU ARE NOT A
CLASS MEMBER.

**YOU ARE NOT IN THE CLASS
WITH RESPECT TO ANY
GIVEN PARCEL OF PROPERTY
IF THAT PARCEL FALLS
WITHIN ANY OF THE
FOLLOWING CATEGORIES:**

- 1. You have pumped 25 acre-
feet or more of
groundwater for use on a
that parcel in any calendar
year since 1946; or**
2. You are a shareholder in a
mutual water company in the
Antelope Valley; or
3. You are already a party to this
litigation (but, in that event, you
may elect to join the Class).

Per section 1 of the Small Pumper Notice, a landowner is not a member of the class if, in *any* year since 1946 the landowner pumped 25 acre-feet or more. This definition thus materially differs from the definition in the class certification order. It also differs from the definition of the Small Pumper Class found at section 3.5.44 of the Judgment and Physical Solution, which states small pumpers are those persons “that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present.” This discrepancy in the class definition renders the notice deficient on its face, as it

would mislead anyone reading the notice regarding who is properly a member of the small pumper class. Such discrepancies between the notice and the class definition cannot be said to have been reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Nor does such notice reasonably convey the required information. The notice thus fails the basic test of *Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306 regarding the sufficiency of notice.

Because the notice language materially differs from the class definition in the judgment, even had Johnny Lee and Jeanette been sent the mail notice – which they were not – the notice cannot be construed as giving sufficient notice of the litigation. A notice that fails to actually notify is tantamount to no notice at all. As a matter of due process, the Zamrzlas cannot be bound by this deficient mail notice, that they were never sent and never received. The Zamrzlas would have had no reason to believe themselves to be part of any litigation based on this notice, and certainly would not have understood they were bound by any Small Pumper Class judgment or settlement. (317:19-319:23, 321:11-325:25; Z Exh. 26-30.

. . . .

IV. CONCLUSION

Johnny Lee and Jeanette never received notice of the Antelope Valley Groundwater litigation. They do not appear on any service list or mailing list, and there is no evidence, of any kind that they were ever served by any method. Even had they received the notice, the notice cannot be construed as sufficient as

it materially differs from the language in the final judgment. Johnny Lee and Jeanette by definition are not members of the small pumper class. Johnny Lee and Jeanette are not parties to the 2015 judgment and request the Court issue an order clarifying as much.

April 14, 2023

s/ Nicholas R. Shepard

Nicholas R. Shepard, Esq.
Matheny Sears Linkert & Jaime,
LLP

Attorney for Defendants Johnny
Zamrzla, Pamela Zamrzla,
Johnny Lee Zamrzla and
Jeanette Zamrzla

App.238

APPENDIX P

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF LOS ANGELES –
CENTRAL DISTRICT

Coordinated Proceeding, Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER CASES

Judicial Council Coordination Proceeding No.: 4408

LASC Case No.: BC32501

Santa Clara Sup. Court Case No.: 1-05-CV-049053
Assigned to Hon. Jack Komar, Judge of the Santa
Clara County Superior Court

Dated: May 26, 2023

JOHNNY AND PAMELLA ZAMRZLA'S CLOSING
REPLY BRIEF [EXCERPTS]

. . . .

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

Strangely, the SP & WM fail to even address the Zamrzlas' argument regarding the defective 2009 notice of class action. As detailed in the Zamrzlas' moving papers and closing brief, the 2009 Class Notice's definition of the Small Pumper Class materially differs from the final judgment definition. This is such a critical issue in this case, the silence of the SP & WM on the issue is shocking.

The June 26, 2009 Notice of Class Action for the "Small Pumper" Class Action, dated June 26, 2009, defined Small Pumpers as follows:

**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 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 materially differs from the definition in the class certification order, which defined the class as all persons “that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present.” (Z Exh. 78.) It also differs from the definition of the Small Pumper Class found at section 3.5.44 of the Judgment and Physical Solution, which states small pumpers are those persons “that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present.” This discrepancy in the class definition renders the notice deficient on its face, as it would mislead anyone reading the notice regarding who is properly a member of the small pumper class. No extrinsic evidence is required to reach such a conclusion. The defect is apparent on the record in the adjudication.

Importantly, this major discrepancy between the notice and the class definition fails to meet constitutional due process for notice because the notice was not 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 notice must be reasonably calculated, under all the circumstances, to

apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance.]

. . . .

May 26, 2023

s/ Nicholas R. Shepard

Nicholas R. Shepard, Esq.
Matheny Sears Linkert & Jaime,
LLP

Attorney for Defendants Johnny
Zamrzla, Pamella Zamrzla,
Johnny Lee Zamrzla and
Jeanette Zamrzla

APPENDIX Q

*****IF YOU RECEIVED A PRIOR CLASS ACTION NOTICE RELATING TO GROUNDWATER RIGHTS IN THE ANTELOPE VALLEY, THAT NOTICE RELATED TO A DIFFERENT LAWSUIT, DEALING WITH A DIFFERENT CLASS OF LANDOWNERS WITH DIFFERENT RIGHTS. *****

***** IMPORTANT: IF YOU PUMP GROUNDWATER OR YOU OR YOUR PREDECESSORS HAVE EVER PUMPED GROUNDWATER ON YOUR PROPERTY, CAREFULLY READ THIS NOTICE - THIS LAWSUIT MAY AFFECT YOUR RIGHTS TO PUMP GROUNDWATER IN THE FUTURE.*****

**SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF LOS ANGELES**

RICHARD A. WOOD, an individual, on
behalf of himself and all others similarly situated,

Plaintiff,

v.

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40; et al.,

Defendants.

JUDICIAL COUNCIL COORDINATION
PROCEEDING No. 4408

**NOTICE OF CLASS ACTION FOR THE
“SMALL PUMPER” CLASS ACTION**

TO CERTAIN ANTELOPE VALLEY
LANDOWNERS: **CAREFULLY READ AND
RESPOND TO THIS NOTICE, AS IT MAY
AFFECT YOUR RIGHT TO PUMP
GROUNDWATER ON YOUR PROPERTY IN
THE FUTURE.**

This notice is to advise you about a pending class action lawsuit, referred to as the “Small Pumper” class action. You may be a member of the Class. **PLEASE TAKE THE TIME TO READ THIS IMPORTANT LEGAL NOTICE. YOU ARE REQUIRED TO RETURN THE ATTACHED RESPONSE FORM, EITHER BY MAIL OR BY THE INTERNET, ON OR BEFORE SEPTEMBER 9, 2009.**

This Class Action lawsuit involves water rights in the Antelope Valley Groundwater Basin. Plaintiff Richard Wood brought this case to protect his right and those of other landowners in the Basin to pump water on their properties in the future. The case has been combined with other cases to determine all the groundwater rights in the Basin. The Court has not yet decided the case. This Notice is intended to inform you of the pendency of this case and advise you

how you can protect your rights. You have been sent this Notice because as a property owner in the Antelope Valley your rights to pump and use groundwater on your property may be affected by this case.

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).

WHAT IS THE CASE ABOUT?

Under California law, property owners have a right to pump and use groundwater (water underneath the surface) on their land. In this case, however, the naturally available supply of water in the Basin may not be adequate to satisfy everyone who wants to use that water. Plaintiff Richard Wood brought this action to protect his right and that of other Antelope Valley landowners to pump and use the water under their properties and to obtain compensation for any wrongful taking of their property rights. Mr. Wood claims that he and other landowners have water rights which are superior to the rights of certain public water suppliers to use that water. The public water suppliers claim that their historical pumping has given them superior water rights. If the public water suppliers win, your rights to use the groundwater under your property may be cut back. The Court has not yet ruled on these claims.

WHAT DO YOU NEED TO DO?

YOU ARE REQUIRED TO SUBMIT the attached RESPONSE FORM, either by mail or on the internet, by September 9, 2009. The instructions for completing this form are below. All persons who receive this Notice should

respond, so that the parties and Court will know whether you are a class member or not.

If you are a Class Member, you have the right to remain in the Class or exclude yourself from the Class. Class Members are defined to include all private (i.e., non-governmental) landowners within the Antelope Valley Groundwater Basin that have pumped groundwater on a given parcel of property at any time since 1946, and who does not fall within any of the exclusions set forth above. Class Members should complete and return the attached response form.

If you remain in the Class:

- You will be bound by the decision in the case, whether favorable or unfavorable.
- Plaintiff Wood and his attorneys will act as your representatives in this case, and you will not personally be obligated to pay any fees or costs out of your pocket.
- You may, but need not, hire your own lawyer at your own expense to represent you.

If you exclude your parcel(s) from the Class:

- Your parcel(s) will not be bound by any decision that affects the Class.
- But you (or your parcel) may be added to the lawsuit as an individual defendant, and you may have to represent yourself or hire a lawyer to represent you.

Please complete the response form on the website for the Small Pumper Class at <http://www.avgroundwater.com/smallpumper/ResponseForm.cfm> by September 9, 2009. Alternatively, you may complete and return the attached response form by mail no later than September 9, 2009 to the following address:

Antelope Valley Groundwater
Litigation
P.O. BOX 12013
Riverside, CA 92502-9839

**WHERE CAN YOU GET ADDITIONAL
INFORMATION?**

The complaint, certain other documents from the litigation, and some other general information are available at: <http://www.avgroundwater.com/smallpumper/wood.cfm>. You may complete and submit the response form on that website. In addition, that website has a list of answers to certain other questions you may have. That website has an e-mail address for you to obtain information if you have further questions. That website will be updated from time to time to advise you of the status of this litigation. Also, all of the documents filed in the case are available on the court's website at: <http://www.scefiling.org/cases/casehome.jsp?caseid=19>

PLEASE DO NOT CALL OR WRITE THE COURT OR CLERK'S OFFICE. IF YOU HAVE ANY QUESTIONS, PLEASE CONSULT YOUR OWN COUNSEL, VISIT THE WEB SITES LISTED

App.248

ABOVE, OR WRITE TO CLASS COUNSEL AT THE
ADDRESS ABOVE.

Dated: June 26, 2009

BY ORDER OF THE SUPERIOR COURT OF
CALIFORNIA FOR THE COUNTY OF LOS
ANGELES

APPENDIX R

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF LOS ANGELES

RICHARD A. WOOD, an individual, on
behalf of himself and all others similarly situated,

Plaintiff,

v.

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40; et al.,

Defendants.

JUDICIAL COUNCIL COORDINATION
PROCEEDING No. 4408

**NOTICE OF PARTIAL CLASS ACTION
SETTLEMENT FOR THE “SMALL PUMPER”
CLASS ACTION**

TO CERTAIN ANTELOPE VALLEY
LANDOWNERS WHO HAVE IN THE PAST, OR
CURRENTLY PUMP GROUNDWATER ON THEIR
PROPERTY: **CAREFULLY READ THIS NOTICE,
AS IT MAY AFFECT YOUR RIGHT TO PUMP**

GROUNDWATER ON YOUR PROPERTY IN THE FUTURE.

GENERAL INFORMATION

1. Why was this notice issued?

You have been sent this Notice because as a property owner in the Antelope Valley, your rights to pump and use groundwater on your property may be affected by this case. The Court issued this notice because you have a right to know about a proposed partial settlement of a class action lawsuit that the Court has preliminarily approved. If the Court grants final approval and any appeals are resolved, this settlement will resolve certain of your rights with the Settling Defendants, and may impact the future determination of your water rights. This notice explains the lawsuit, the partial settlement, your legal rights, who is in the class, and your options.

2. What is this lawsuit about?

This Class Action lawsuit involves water rights in the Antelope Valley Groundwater Basin. Under California law, property owners have a right to pump and use groundwater (water underneath the surface) on their land. In this case, however, the Court has determined that the naturally available supply of water in the Basin may not be adequate to satisfy everyone who wants to use that water.

Plaintiff Richard Wood brought this action to protect his right and that of other Antelope Valley landowners to pump and use the water under their properties and to obtain compensation for any wrongful taking of their property rights. Mr. Wood claims that he and other landowners have water

rights which are superior to the rights of certain public water suppliers to use that water. The public water suppliers claim that their historical pumping has given, them superior water rights. If the public water suppliers win, your rights to use the groundwater under your property may be cut back. The Court has not yet ruled on these claims.

3. Who is involved in this lawsuit?

Plaintiff Richad Wood is the plaintiff and class representative. On his behalf and on behalf of the class he represents, he is suing ten public water suppliers in the Antelope Valley: City of Lancaster; City of Palmdale; Desert Lake Community Services District; Littlerock Creek Irrigation District; Los Angeles County Waterworks District No. 40; North Edwards Water District; Palmdale Water District; Palm Ranch Irrigation District; Phelan Piñon Hills Community Services District; Quartz Hill Water District; and Rosamond Community Services District. Mr. Wood also sued the cities of Lancaster and Palmdale.

This lawsuit is coordinated with several other lawsuits pending before a single judge, the Honorable: Jack Komar. Those other lawsuits involve many other parties who also claim the right to pump groundwater in the Antelope Valley.

4. Why is there a partial settlement?

Some of the defendants wished to resolve their claims with the class at this time, while several others did not wish to settle. Richad Wood is settling with the City of Lancaster, Palmdale Water District, Phelan Piñon Hills Community Services District, and Rosamond Community Services District. Mr. Wood

will continue to litigate all of the claims against the non-settling defendants.

CLASS MEMBERSHIP

5. How do I know if I am part of the class subject to this settlement?

You have been designated as a class member because records show that you own improved property in the Antelope Valley, and otherwise meet the class definition. 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 were sent a class Notice in 2009, and did not choose to opt out of the class at that time.

6. Are there exceptions to being included in the settlement?

You are not in the class if you fall within one of the categories set forth below:

- A. You have pumped 25 acre-feet or more of groundwater for use on that parcel in any calendar year since 1946; *or*
- B. You are a shareholder in a mutual water company in the Antelope Valley; *or*
- C. You are already a party to this litigation.

THE PARTIAL SETTLEMENT OF THIS LAWSUIT

7. Who is included in the settlement?

Richard Wood and the class are settling with six defendants in this lawsuit: City of Lancaster;

Palmdale Water District; Phelan Piñon Hills Community Services District; and Rosamond Community Services District.

8. What does the settlement provide?

Of primary benefit to you is the agreement by the Settling Defendants to drop their prescription claims against you. The prescription claims asserted that these defendants had potentially obtained by way of their adverse historical pumping, a portion of your right to pump water in the Antelope Valley. The Settling Defendants are agreeing not to challenge the class' assertion of the right of class members to pump up to 3 acre-feet of water per year for domestic purposes without having to pay a fee to for doing so. Other parties remain free to challenge that water right, which will be determined in the future. Under the settlement, you are agreeing not to challenge the Settling Defendants' right to pump up to a set amount of groundwater each year. The Settlement Agreement also contains agreements among the parties as to your rights if you pump more than 3 acre-feet per year. The Court has not yet ruled on any of these Settling Parties' water rights, and is not limited in the future by the terms of the settlement. You may read the Settlement Agreement at: <http://www.avgroundwater.com/smallpumper/wood.cfm>.

9. What happens with class claims against the defendants who are not part of the settlement?

Richard Wood and the Class Counsel will continue to pursue all of the claims in the lawsuit against the non-settling defendants until those claims are resolved in a future settlement or by order of the court after trial.

10. Does this settlement give me a water right?

No. This settlement does not provide you with a Court-determined water right. The Court has not yet determined the water rights of any party, but those determinations are expected to be made in future phases of the proceeding. As set forth above, this settlement may impact the determination of your water right at a future date.

11. What claims against the Settling Defendants am I releasing?

As part of the settlement, you will be releasing (giving up) certain of your legal rights against the Settling Defendants only. The release in the Settlement Agreement is as follows.

In addition to the effect of any Judgment entered in accordance with this Stipulation, upon this Stipulation becoming final as set out in Section Paragraph VIII.H of this Stipulation, and in consideration for the settlement consideration set forth above, and for other valuable consideration, the Settling Plaintiffs, except as otherwise expressly provided for herein, shall completely release, acquit and forever discharge the Settling Defendants and their representatives, successors, agents, affiliates, attorneys, employees, supervisors, officers, directors, or shareholders, from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature that Settling Plaintiffs, or each of them, ever had, now has, or hereafter

can, shall, or may have on account of or in any way arising out of, any and all known or unknown, foreseen or unforeseen, suspected or unsuspected injuries, damages, and the consequences thereof in any way arising out of or relating in any way to the matters at issue in the Wood Action ("Released Claims"). Each Settling Plaintiff may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are the subject matter of this Stipulation, but each Settling Plaintiff hereby expressly waives and fully, finally, and forever, settles and releases, upon this Stipulation becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the subject matter of the provisions of Paragraph VII.A of this section of the Stipulation, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

1. As provided in the Release set forth above, the Settling Plaintiffs, including any of Settling Plaintiffs' representatives, successor, agents, affiliates, employees, supervisors, officers, directors, or shareholders, agree to waive and release all rights and benefits which they might otherwise have pursuant to Section 1542 of the

California Civil Code with regard to the release of such unknown, unanticipated or misunderstood claims, causes of action, liabilities, indebtedness and obligations. California Civil Code section 1542, provides that:

A General Release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the Release, which if known by him or her must have materially affected his or her settlement with the debtor.

2. The Release set forth above does not include claims by any of the Settling Plaintiffs other than the claims set forth therein. In particular, the Settling Parties recognize that many persons own more than one parcel of land within the Basin. The foregoing Release only binds Wood Class Members and only with respect to those properties within the Basin on which they have pumped or are pumping within the terms of the class definition.

12. Who are the lawyers for the class?

The lawyers for Richard Wood and the class are:

Michael D. McLachlan
LAW OFFICES OF MICHAEL D.
McLACHLAN, APC
10490 Santa Monica Boulevard
Los Angeles, California 90025

mike@mclachlanlaw.com

Daniel M. O' Leary

LAW OFFICE OF DANIEL M. O'LEARY

10490 Santa Monica Boulevard

Los Angeles, California 90025

dm@anolearylawn.com

13. How will the lawyers be paid?

The lawyers' fees and case costs will be paid by the Settling Defendants. You will not be asked to pay legal fees or case costs. Per the terms of the settlement, the parties have agreed to the amounts of the legal fees and case costs, which are set forth in the Settlement Agreement. The Court will be asked to approve these payments at the time of the final approval hearing.

YOUR OPTIONS

14. What happens if I do nothing at all?

If you do nothing, you will remain in the class and be bound by the terms of the settlement. You will not be able to sue the Settling Defendants for any of the claims being released by this settlement. You will also be bound by the future decisions in the case, whether favorable or unfavorable. Plaintiff Richard Wood and the class attorneys will continue to act as your representatives in this case, and you will not personally be obligated to pay any legal fees or costs of suit.

15. What if I do not want to participate in the settlement?

If you wish to be excluded from the settlement, you must complete and mail a valid request for

exclusion postmarked by no later than December 2, 2013 to the Class Administrator identified below. This exclusion request must contain your name, address, signature, and a statement that you wish to be excluded from the class. If you timely do so, the Court will exclude you from the class. If you do nothing, you will remain in the class.

Your exclusion request must be sent to:

Small Pumper Class Action Administrator

c/o GCG

P.O. Box 35100

Seattle, WA 98124-1100

16. What happens if I exclude myself from the settlement?

If you opt out of the settlement, it is very likely that you will be sued directly by the public waters supplier defendants because the Court may still need to determine your water right in the future. If you are sued, you will either need to hire your own attorney at your expense or represent yourself in Court.

17. How do I tell the Court that I don't like the settlement?

If you're a class member, you can object to the settlement if you do not like it. To object, you must send a letter saying that you object to the settlement in *Richard Wood v. Los Angeles County Waterworks District No. 40, et al.* Be sure to include the case number (J.C.C.P. No. 4408), your name, address, telephone number, your signature, and the reasons why you object to the settlement. You must send the objection to these three different places so that they receive it by December 4, 2013:

COURT:

Clerk of the Court
600 South Commonwealth Avenue
Los Angeles, CA 90005

CLASS COUNSEL:

Michael D. McLachlan
LAW OFFICES OF MICHAEL D. McLACHLAN,
APC
10490 Salta Monica Boulevard
Los Angeles, California 90025
mike@mclachlanlaw.com

DEFENSE COUNSEL:

Thomas S. Bunn III
LAGERLOF, SENEAL, GOSNEY & KRUSE, LLP
301 North Lake Avenue, 10th floor
Pasadena, California 91101
Attorneys for Palmdale Water District

18. When and where will the Court decide whether to grant final approval?

The Court has scheduled a hearing at 9:00 A.M. on December 11, 2013, at Santa Clara Superior Court, Department 1, 191 North First Street, San Jose, California. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court will also rule on the request for attorneys' fees and costs. After the hearing, the Court will decide whether to grant final approval of the settlement.

19. May I speak at the hearing?

You are welcome to come to the hearing at your own expense. If you send a written objection, you don't have to come to Court to talk about it. As long as you send your written objections so that it arrives on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

You may ask the Court for permission to speak at the hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Antelope Valley Groundwater Litigation*." Be sure to include the case number (J.C.C.P. No. 4408), your name, address, telephone number, and signature. This letter must be received no later than December 4, 2013, and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel at the three addresses listed in the answer to Question 17.

GETTING MORE INFORMATION

20. How do I get more information about the settlement?

The Class Action Complaint, certain other documents from the litigation, and some other general information are available at: <http://www.avgroundwater.com/smallpumpe-/wood.cfm>. You may complete and submit the response form on that website. In addition, that website has a list of answers to certain other questions you may have. That website has an e-mail address for you to obtain information if you have further questions. That website will be updated from time to time to advise you of the status of this litigation. Also, all of the documents filed in the case are available on the court's website at: <http://www.scefiling.org/cases/casehome.jsp?caseld=19>.

**PLEASE DO NOT CALL OR WRITE THE
COURT OR CLERK'S OFFICE. IF YOU HAVE
ANY QUESTIONS, PLEASE CONSULT YOUR
OWN COUNSEL, VISIT THE WEB SITES
LISTED ABOVE, OR WRITE TO CLASS
COUNSEL AT THE ADDRESS ABOVE.**

APPENDIX S

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF LOS ANGELES

RICHARD A. WOOD, an individual, on
behalf of himself and all others similarly situated,

Plaintiff,

v.

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40; et al.,

Defendants.

JUDICIAL COUNCIL COORDINATION
PROCEEDING No. 4408

**NOTICE OF PROPOSED SETTLEMENT FOR
THE “SMALL PUMPER” CLASS ACTION AND
SETTLEMENT HEARING**

**TO CERTAIN ANTELOPE VALLEY
LANDOWNERS: CAREFULLY READ AND
RESPOND TO THIS NOTICE, AS IT MAY
AFFECT YOUR RIGHT TO PUMP
GROUNDWATER ON YOUR PROPERTY
IN THE FUTURE.**

1. Why should I read this Notice?2
2. What is this lawsuit about?2
3. Who is covered by the proposed
settlement?2
4. What are the terms of the proposed
settlement?2
5. What do I need to do?3
6. Can I exclude myself from the Class? 4
7. Why, when and where will the
Settlement Hearing take place?4
8. Who represents Plaintiff and the
Class?4
9. Why does Plaintiff's Counsel favor the
Settlement?4
10. How will Plaintiff's Counsel's fees be
paid?4
11. Will I have to pay anything?5
12. Will I receive any monetary
compensation?5
13. What happens if the Settlement is
approved by the Court?5
14. What happens if the Settlement is not
approved by the Court?5
15. Where can I get additional
information?5
16. What are the relevant dates?5

- 17. May I pump water on my property?...5
- 18. What if I pump more than 3 acre-feet
of groundwater per year?.....6
- 19. Will I have to install a water meter on
my property?6
- 20. Will my groundwater use be
monitored?.....6
- 21. What if I sell my property?.....6

1. WHY SHOULD I READ THIS NOTICE?

Available records indicate that you own property in the Antelope Valley Groundwater Basin (the “Basin”). Your property rights may be affected by the proposed settlement of this lawsuit. Your right to object to, or comment on that settlement is described below. In addition, this Notice contains important information about your disclosure obligations in the event you sell your property. ***PLEASE TAKE THE TIME TO READ THIS IMPORTANT LEGAL NOTICE, WHICH IS DIFFERENT FROM THE PRIOR NOTICES SENT TO YOU ABOUT THIS CASE.***

2. WHAT IS THIS LAWSUIT ABOUT?

This Class Action lawsuit involves water rights in the Antelope Valley Groundwater Basin. Plaintiff Richard Wood brought this case to protect his right and those of other landowners (the Wood Class comprises persons who are pumping or have pumped less than 25 acre-feet of groundwater during any year from 1946 to the present) in the Basin to pump water on their properties in the future. The case has been combined with other cases to determine all the groundwater rights in the

Basin. The Court has not yet decided the case.

Property owners have a right to pump groundwater (water underneath the surface) and use it for reasonable and beneficial purposes on their overlying land. The right to use groundwater, however, may be limited during times of groundwater shortage conditions. In this case, the naturally available supply of groundwater is not adequate to meet the groundwater pumping demands of everyone who wants to use that water. For that reason, the Court decides how much water can be pumped by each party under a claim of priority to use the groundwater. Richard Wood claims that he and other such landowners have water rights that are superior to the water rights of certain public water suppliers and entities, listed in the Settlement Agreement (“Settling Defendants”) who have used and continue to use groundwater. The public water suppliers claim that their historical pumping has given them superior water rights for a public water supply as to some or all of the Richard Wood and Wood Class members’ rights to use groundwater.

3. WHO IS COVERED BY THE PROPOSED SETTLEMENT?

You have been designated as a Class member because records indicate that you own property in the Antelope Valley. **The Wood Class includes all private (i.e., nongovernmental) landowners within the Antelope Valley Groundwater Basin who are pumping or have pumped less than 25 acre-feet of groundwater during any year**

from 1946 to the present on their properties, with certain exceptions set out below.

You are not in the Class if you do not own real property within the Basin. In addition, you are **NOT** in the Class if any of the following are true as to you:

1. Your property is connected to and receives water from a public water system, public utility or mutual water company; or
2. You are already a party to this litigation; or
3. You have already timely excluded yourself from the Wood Class and have not rejoined the Class.

4. WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT?

The Small Pumper Class has previously settled its claims with the City of Lancaster, Palmdale Water District, Phelan Piñon Hills Community Services District, and the Rosamond Community Services District. By way of the current settlement, the Small Pumper Class is now attempting to resolve all claims with California Water Service Company, City of Palmdale, Desert Lake Community Services District, Littlerock Creek Irrigation District, Los Angeles County Waterworks District No. 40, North Edwards Water District, Palm Ranch Irrigation District, and Quartz Hill Water District. Through the Stipulation for Entry of Judgment and Physical

Solution, which is incorporated into the Small Pumper Class Stipulation of Settlement, the Small Pumper Class is also resolving its claims with many other parties claiming beneficial interest in the groundwater in the Antelope Valley basin. These additional parties are listed on the signature pages to the Judgment and Physical Solution.

The following is a summary of the basic terms and conditions of the proposed settlement. You may view the complete settlement agreement at www.avgroundwater.com. If you do not have Internet access, you may request a copy of the settlement agreement by writing to the following: Small Pumper Class Settlement, 44 Hermosa Avenue, Hermosa Beach, CA 90254.

In summary, the proposed settlement includes the following terms (capitalized terms are defined in the Settlement Agreement), in addition to other terms discussed in other sections of this Notice:

- A. Members of the Small Pumper Class will have the right to pump up to 3 acre-feet of groundwater per year for reasonable and beneficial use without having to pay any replacement water assessment. Small Pumper Class members pumping between 3 and 25 acre-feet per year will pay a replacement water assessment.
- B. To the extent the Settling

Defendants have obtained water rights by prescription, those rights shall not be exercised to diminish the Small Pumper Class' water rights.

- C. The Parties agree that the United States has a Federal Reserved Right to some portion of the Basin's Native Safe Yield.
- D. The Class agrees not to challenge certain Parties' right to recapture return flows from water that they import. The Class agrees not to contest Settling Defendants' best estimates that agricultural use of imported water results in 34% return flows and municipal and industrial use of imported water results in 39% return flows.
- E. The Settling Parties agree that the Basin has limited water resources and that there is a need for a groundwater management plan for the Basin. The Parties have agreed to be bound by such a plan, which is subject to approval and modification by the Court. This management plan will be supervised and administered by a watermaster engineer and watermaster board, which will report to the Court.
- F. The Settlement contains mutual releases of the claims the Settling Parties have asserted against each

other in the litigation.

5. WHAT DO I NEED TO DO?

You are not required to do anything, unless you wish to object to the settlement. However, if you wish to object to the settlement or to Plaintiffs' Counsel's Application for Fees and Expenses, you must file a Notice of Intent to Appear and Be Heard with the Clerk, Los Angeles County Superior Court, 111 N. Hill Street, Los Angeles, CA 90012. **That Notice must be received by May 15, 2015** for it to be considered and must briefly state the position(s) you wish to take with respect to the settlement and/or any related matters, such as Counsel's fee application. In addition, you must send a copy of that Notice to the following attorneys by that date:

Michael D. McLachlan
mike@mclachlan-law.com
Law Offices of Michael D.
McLachlan 44 Hermosa Avenue
Hermosa Beach, CA 90254
Class Counsel

Jeffrey V. Dunn
jeffrey.dunn@bbklaw.com
Best Best & Krieger LLP
18101 Von Karman Avenue, Suite
1000
Irvine, CA 92614
Liaison Counsel for Defendants

6. CAN I EXCLUDE MYSELF FROM THE CLASS?

No. All Class members have been given two prior opportunities to opt out of the Class, therefore the Court will not permit further opt outs.

7. WHY, WHEN, AND WHERE WILL THE SETTLEMENT HEARING TAKE PLACE?

The Court must approve the proposed settlement after a fairness hearing in order for the settlement to become effective. That fairness hearing will take place on August 3, 2015, at 10:00 a.m. in Room 222 of the Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles, CA 90010. **You are welcome to attend that hearing but you are not required to attend.**

Any Class member may appear in person or through counsel and state his or her comments on or objections to the proposed settlement and/or on counsel's fee application, *but only if he or she files a Notice of Intent to Appear and Be Heard pursuant to the procedures set forth in paragraph 5, above, on or before May 15, 2015.*

8. WHO REPRESENTS PLAINTIFF AND THE CLASS?

Plaintiff and the Class are represented by the following attorneys in this matter:

Michael D. McLachlan
mike@mclachlan-law.com
Law Offices of Michael D.
McLachlan 44 Hermosa Avenue
Hermosa Beach, CA 90254 310.954-
8270

310.954.8271 (fax)

Daniel M. O'Leary

dan@danolearylawn.com

Law Offices of Daniel M. O'Leary

2300 Westwood Boulevard, Suite

105 Los Angeles, CA 90064

310.481.2020

310.481.0049 (fax)

**9. WHY DOES CLASS COUNSEL
SUPPORT THE SETTLEMENT?**

Class Counsel believes that the settlement reflects a reasonable and fair resolution of the claims asserted in this matter. The Settling Defendants assert that they have prescriptive rights to substantially more than 15% of the Basin's Native Safe Yield; the Class asserts that the Settling Defendants have no such prescriptive rights. Counsel believe that the Settlement fairly compromises the parties' positions, and resolves the risk that the class members will lose water rights to the Settling Defendants. Further, the settlement protects the rights of all Class members to use water for domestic use in amounts sufficient to sustain such use without the requirement to pay any replacement water assessment.

**10. HOW WILL PLAINTIFF'S COUNSEL'S
FEES BE PAID?**

Plaintiff's Counsel will petition for an award of fees and expenses to be paid by the Settling Defendants. You *will not be responsible to pay any portion of their fees*. Plaintiff's Counsel have already been paid for

some work on this matter.

Plaintiff's Counsel have worked on this matter for over seven years without being paid and they have advanced considerable amounts to pay for out-of-pocket expenses, including travel, hearing transcripts, consultants, etc. The Court will ultimately determine whether Counsel is entitled to a fee award and the appropriate amount of any such award.

11.WILL I HAVE TO PAY ANYTHING?

You will not be required to pay anything in connection with Plaintiff's Counsel's fees and costs. However, you will have to pay an annual administrative assessment which will be used to fund the watermaster appointed by the Court to implement certain provisions of the settlement. For those pumping in excess of three acre-feet of groundwater per year, the assessment will be up to \$5 per acre-foot, or as ordered by the Court. For those pumping less than three acre-feet per year, the administrative settlement will be based on 1.2 acre-feet of groundwater pumping multiplied by up to \$5 per acre-foot, or as ordered by the Court. You might also be required to pay an additional balance assessment in the future if the watermaster determines it necessary.

**12.WILL I RECEIVE ANY MONETARY
COMPENSATION FROM THE
SETTLEMENT?**

No. The settlement does not provide you with any monetary benefits.

13.WHAT HAPPENS IF THE

SETTLEMENT IS APPROVED BY THE COURT?

If the settlement is approved, and not successfully appealed, the above litigation between and among the settling parties will be over and you will be bound by the stipulation for judgment and physical solution.

14.WHAT HAPPENS IF THE SETTLEMENT IS NOT APPROVED BY THE COURT?

If the settlement is not approved, the settlement agreement will be null and void and the parties will be returned to their prior positions in the litigation.

15.WHERE CAN I GET ADDITIONAL INFORMATION?

The amended complaint and certain other documents from the litigation are available at www.avgroundwater.com. In addition, that website has a list of answers to certain other questions you may have and has an email address for you to obtain information if you have further questions. That website will be updated from time to time to advise you of the status of this litigation. Also, all of the documents filed in the case are available on the court's website at <http://www.scefiling.org/cases/casehome.isp?caseld=19>.

16.WHAT ARE THE RELEVANT DATES?

The Settlement Hearing is scheduled for August 3, 2015. If you wish to be heard at the Hearing, you must file a Notice of Intent to

Appear and Be Heard with the Clerk, Los Angeles County Superior Court, as discussed above in paragraph 5. **That Notice must be received by May 15, 2015** for it to be considered. In addition, by that date, you must send a copy of that Notice to the attorneys identified in paragraph 5, above.

17.MAY I PUMP WATER ON MY PROPERTY?

Yes. There are presently no restrictions on your ability to pump water on your property or the amount that you can pump for reasonable and beneficial uses on your property. However, it is possible that there will be limits imposed on the amount of pumping in the future.

18.WHAT IF I PUMP MORE THAN 3 ACRE-FEET OF GROUNDWATER PER YEAR?

A Class Member will have the right to pump up to 3 acre-feet per year for reasonable and beneficial use on his or her property, without assessment. However, if you pump more than 3 acre-feet per year, you may be required to pay a replacement assessment in the future for any water you pump in excess of 3 acre-feet per year. This settlement does not affect your ability to continue to pump in excess of 3 acre-feet per year, but the Court may limit those rights in future proceedings. The replacement assessments, if any, will be levied by a court-appointed watermaster, who will implement various provisions of this

settlement.

**19.WILL I HAVE TO INSTALL A WATER
METER ON MY PROPERTY?**

If the watermaster develops a reasonable belief that you are pumping more than 3 acre-feet of groundwater per year, you may be required to install a water meter.

**20.WILL MY GROUNDWATER USE BE
MONITORED?**

The watermaster may choose to monitor your water use through aerial photography and/or satellite imagery. The watermaster may also decide to subpoena your electrical usage records from your electrical utility provider. As noted above, if you are pumping less than 3 acre-feet of groundwater per year, you will not be required to install a meter.

**21.WHAT HAPPENS IF I SELL MY
ANTELOPE VALLEY PROPERTY?**

If the settlement is approved by the Court, anyone who acquires your property will be bound by the terms of the settlement. Hence, you should disclose the terms of the settlement to anyone who may acquire your Antelope Valley property.

PLEASE DO NOT CALL OR WRITE THE COURT OR CLERK'S OFFICE. IF YOU HAVE ANY QUESTIONS, PLEASE CONSULT YOUR OWN COUNSEL, VISIT THE WEB SITES LISTED ABOVE, OR WRITE TO CLASS COUNSEL AT THE ADDRESS ABOVE.

App.276

Dated: March 27, 2015

BY ORDER OF THE SUPERIOR COURT OF
CALIFORNIA FOR THE COUNTY OF LOS
ANGELES

**QUESTIONS? VISIT
WWW.AVGROUNWATER.COM.**