

No. 26-28

IN THE
Supreme Court of the United States

JOHNNY ZAMRZLA, *et al.*,

Petitioners,

v.

ANTELOPE VALLEY WATERMASTER, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF
APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

BRIEF IN OPPOSITION

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DISCLOSURE STATEMENT

Respondent Antelope Valley Watermaster is a governmental entity created by the Superior Court of the State of California and accordingly has no disclosures to make under Supreme Court Rule 29.6.

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INTRODUCTION

In 2015, after more than 15 years of litigation, a California trial court entered a judgment comprehensively adjudicating the competing claims of thousands of individuals and entities to water in the Antelope Valley Groundwater Basin (“Basin”), an underground aquifer in northern Los Angeles County and southern Kern County in California that was in severe overdraft. The judgment imposed substantial water reductions on all parties and created a five-member Antelope Valley Watermaster board (“Watermaster”) to enforce the judgment and levy Replacement Water Assessments (“RWAs”) against any parties who pump in excess of their annual allotted quantity of water. The RWAs are used to import water from outside the basin to the address excessive pumping and maintain the safe yield of the aquifer.

Among other things, the judgment defined the rights and obligations of a Small Pumper Class, which included appellants Johnny Zamrzla (“Johnny”), Pamela Zamrzla (“Pamella”), Johnny Lee Zamrzla (“Johnny Lee”) and Jeanette Zamrzla (“Jeanette”). (Johnny, Pamela, Johnny Lee and Jeanette will be referred to collectively as “the Zamrzlas”).

In this proceeding, a California intermediate court of appeal unanimously held in an unpublished opinion that the trial court did not abuse its discretion, which under both California and federal law is extremely broad, in determining the manner of service of process for the Small Pumper Class. The court of appeal further held that the evidence supported the trial court’s findings that the Zamrzlas were members of the Small Pumper

Class and that they had been properly served with class notice. Finally, the court of appeal rejected the Zamrzlas' assertion that the trial court should have granted them relief on equitable grounds given the Zamrzlas' knowledge of the adjudication and long delay in asserting their rights.

Following this appeal, the Zamrzlas sought discretionary review by the California Supreme Court, which unanimously denied such review.

Further review of this case is unwarranted for at least two reasons. First, the decision of both the trial court and the court of appeal concerning the adequacy of the class notice given was proper and in accordance with this Court's holding in *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 313-314 (1950) (*Mullane*).

Secondly, and most importantly, further review would not be appropriate given the institutional role of this Court, which is to maintain harmony among the federal circuits and state supreme courts interpreting federal law, to decide important constitutional questions, and to interpret federal law. 28 U.S.C. § 1254; Supreme Court Rule 10. Contrary to the petition, the California court of appeal's decision does not present "an important question of law," nor was it based on a novel interpretation of law. The decision was instead based on the court of appeal's determination that the trial court did not abuse its discretion in determining that the Zamrzlas were properly served and that the Zamrzlas' extensive knowledge of the litigation and concomitant failure to take any action until forced to do so years after they gained such knowledge precluded equitable relief from the judgment. The decision necessarily turned on the unique facts and circumstances

of this case as presented to the trial court in a two-day evidentiary hearing. This determination was factual in nature and has little applicability to third parties. Further, the court of appeal's decision does not deviate from established law, and even if it did, it creates no conflict in the case law because the decision was unpublished and cannot be cited as authority in any jurisdiction.

For all of these reasons, the petition for writ of certiorari should be denied.

STATEMENT OF THE CASE

A. The Antelope Valley Groundwater Cases and the Antelope Valley Adjudication Area

Approximately 26 years ago the first lawsuits were filed in California that ultimately evolved into the Antelope Valley Groundwater Cases ("AVGC"). 2 AA 499.¹ The AVGC proceeding litigated whether water supply from natural and imported sources, which replenishes an aquifer from which many parties obtain groundwater, was inadequate to meet the competing annual demands of those groundwater producers, thereby creating an overdraft condition. *Ibid.* This aquifer, consisting of several hydrologically interconnected subbasins, underlies the Antelope Valley Adjudication Area ("AVAA"). 2 AA 505; *Antelope Valley Groundwater Cases*, 62 Cal.App.5th

1. As used herein, "AA" refers to the Appellant's Appendix, "RA" refers to the Respondent's Appendix, "RT" refers to the Reporter's Transcript, "Opn" refers to the California court of appeal's opinion, "Petition" refers to the Zamrzlas' Petition for a Writ of Certiorari, and "App" refers to the appendices submitted to this Court by the Zamrzlas.

992, 1003 (2021). The AVAA spans two counties (Kern County and Los Angeles County) in Southern California and is home to over 450,000 people, extensive agricultural development, industrial and mining operations, and Edwards Air Force Base. *Ibid.*

The aquifer has been in a state of overdraft—meaning that long-term extractions from the aquifer have exceeded the amount of water replenishing the aquifer—for decades prior to the commencement of the present litigation in 1999. The declining water levels have caused significant long-term damage, including subsidence and lost aquifer storage capacity. While the estimated average annual safe yield from all sources of recharge, including natural sources such as precipitation and external sources such as imported water and return flows, was 110,000 acre-feet per year (“afy”), the parties which pumped groundwater from the basin were annually extracting between 130,000 and 150,000 afy. *Antelope Valley Groundwater Cases*, *supra*, 62 Cal.App.5th at 1003.

Numerous parties asserted that, without a comprehensive adjudication of all competing parties’ rights to produce groundwater from the aquifer, this continuing overdraft would continue to negatively impact the health of the aquifer. After the California Judicial Council ordered all then-pending lawsuits consolidated into this single proceeding, the trial court embarked on an 11-year process of resolving these claims, which it divided into six distinct phases:

Phase 1: Determining the Geographic boundaries of the AVAA:

The trial court conducted a trial in October 2006 to establish the jurisdictional boundaries for the AVAA. Establishing boundaries was essential to determine what parties and entities with claims to the groundwater would be necessary parties to the litigation, as either owners with overlying rights or as appropriators, so that a comprehensive adjudication of all claims could be made in later proceedings. *Antelope Valley Groundwater Cases, supra*, 62 Cal.App.5th at 1006.

Phase 2: Determining Hydraulic Connectivity Within the AVAA:

In the second phase, the trial court heard evidence to assess the hydrologic nature of the aquifer within the geographic boundaries of the AVAA. The trial court concluded that there was enough hydraulic connectivity within the AVAA basin as a whole to obviate any claim that certain sections should be treated as separate basins. *Antelope Valley Groundwater Cases, supra*, 62 Cal. App.5th at pp. 1006-1007.

Phase 3: Determining Safe Yield and Overdraft:

In the third phase, the trial court determined that the AVAA was in a state of overdraft and that annual extractions had significantly exceeded average recharge for decades, causing a steady lowering of water levels and accompanying subsidence since 1951. The trial court further determined that the average total safe yield from all sources was 110,000 afy for the AVAA as a whole and

that current annual extractions from the AVAA ranged between 130,000 afy and 150,000 afy, thus exceeding average annual recharge by 20,000 afy to 40,000 afy. *Antelope Valley Groundwater Cases, supra*, 62 Cal. App.5th at pp. 1011-1012.

Phase 4: Determining Groundwater Production by the Claimants:

In the fourth phase, the trial court determined how much groundwater the various major stakeholders pumped from the AVAA basin in the relevant years. The trial court's findings in this regard were based on stipulations and evidence presented by the parties concerning the amounts pumped during this time period. *Antelope Valley Groundwater Cases, supra*, 62 Cal.App.5th at p. 1012.

Phase 5: Determination of Federal Reserve Rights and Imported Water Return Flow Rights:

The trial court ordered a fifth phase of the trial to ascertain federal reserve water rights and any claimed rights to recapture and use any return flows from water imported into the AVAA. While this phase was being tried, however, the vast majority of the parties agreed to a proposed global settlement of their respective groundwater claims. The settlement included an agreement on the parameters of a basin-wide groundwater management plan to implement a physical solution to the AVAA basin's overdraft conditions that recognized the groundwater rights of the parties to the global settlement. *Antelope Valley Groundwater Cases, supra*, 62 Cal.App.5th at pp. 1012-1013.

Phase 6: The Physical Solution

In early 2015 the settling parties presented a stipulation containing a proposed plan, the Physical Solution, for the entire AVAA, which was agreed upon by the vast majority of the parties to the consolidated actions. The proposed judgment contained an allocation of the safe yield among the numerous parties. *Antelope Valley Groundwater Cases, supra*, 62 Cal.App.5th at p. 1014.

In the Fall of 2015, the trial court commenced a sixth phase of the trial on the proposed Physical Solution. The trial court heard evidence from a historian on the overdraft conditions in the area; it also heard evidence from several experts, including experts in hydrology and civil engineering, concerning the efficacy of the proposed Physical Solution to bring the basin back into hydrologic balance. *Antelope Valley Groundwater Cases, supra*, 62 Cal.App.5th at pp. 1014-1015.

B. The Small Pumper Class Certification and Notification

One of the class actions which had been consolidated into the adjudication had been filed in 2008 on behalf of overlying landowners who had pumped small quantities of water. On September 2, 2008, the trial court certified this class (“Small Pumper Class”) in an order defining the class as follows:

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. 2 AA 564.

Following certification, the trial court approved three Small Pumper Class notices:

1. 2009 Opt-Out Class Notice

In 2009, the trial court approved a Small Pumper Class notice (“2009 Notice”) which identified the members of the class, provided a general explanation of the adjudication, and required landowners to submit a response form, so the parties and court would know who was a class member. 1 AA 265-267. The 2009 Class Notice required the recipient to “opt out” of the class. *Id.* The court approved the dissemination of the 2009 Notice by mail and publication by newspaper and internet. 1 AA 262-263. The 2009 Notice was mailed to a list of potential Small Pumper Class members, which included Johnny and Pamela at their home address. 1 AA 259-274.

2. 2013 Class Partial Settlement Notice

In 2013 the trial court approved a second Small Pumper Class notice (“2013 Notice”) which informed landowners of a proposed partial settlement of the Small Pumper Class action. 1 AA 284-287. The 2013 Notice stated that the settlement could impact future claimed water rights, and that small pumpers would remain in the class if they took no action. *Id.* The notice included opt-out instructions. *Id.* The court approved the dissemination of 2013 Notice by mail and publication by newspaper and internet. 8 AA1952-1956. The 2013 Notice was mailed in 2013 to the certified list of Small Pumper Class members,

which included Johnny and Pamela at their home address. 1 AA 279-289.

3. 2015 Class Settlement Notice

In 2015 the trial court approved a third Small Pumper Class notice (“2015 Notice”) which informed landowners of the proposed settlement for the Small Pumper Class action and how they could object to the proposed settlement. 8 AA 2057-2062. The court approved the dissemination of the 2015 Notice by mail and by publication in newspaper and internet. 8 AA 2046-2050. The 2015 Notice was mailed to the certified list of Small Pumper Class members, which included Johnny and Pamela at their home address. 8 AA 2052-2062.

4. Notice to Small Pumper Class By Publication

The trial court further ordered that the 2009, 2013 and 2015 opt-out Notices be published to provide notice to all class members. 8 AA 1890-1892, 1952-1956, 2046-2050; 1 AA 262-263. The court required that notice “be published on at least 4 separate occasions (including at least two Sundays and two weekdays) in each of the following newspapers of general circulation: the *Antelope Valley Press*, the *Los Angeles Times*, and the *Bakersfield Californian*.” 8 AA 1890-1892; 1 AA 262-263. Each class notice was published as ordered by the court. 2 AA 639-643; 1 AA 291-298, 312-320. The Zamrzlas admitted they subscribed to and read the Antelope Valley Press for decades prior to and during the adjudication. 5 RT 115:28-116:22, 122:20-125:8; 6 RT 338:16-19.

The order granting Preliminary Approval of Class Action and Partial Settlement and Notice to the Class found that “Dissemination of the 2009 Class Notice, as directed by this Order, constitutes the best notice practicable under the circumstances and sufficient notice to all Class Members. The contents of the Class Notice and the manner of its dissemination satisfy the requirements of Rule 3.769 of the California Rules of Court, other applicable California laws, and state and federal due process.” 8 AA 1955:5-9.

C. The Final Judgment and Adoption of the Physical Solution

The trial court’s final judgment, entered on December 23, 2015 (“Judgment”), incorporated its findings from the prior phases, and found that, because the native safe yield was well below the amounts used for reasonable and beneficial purposes by parties with overlying, appropriative, prescriptive, or reserved rights, it was necessary to allocate the native safe yield among these rights holders to protect the AVAA basin for existing and future users. 2 AA 561-617; *Antelope Valley Groundwater Cases, supra*, 62 Cal.App.5th at 1016-1017.

The trial court concluded that the evidence presented supported the conclusion that the Physical Solution, which required these rights holders to severely reduce the amount of water they used and created an overarching water management plan for the AVAA basin, fairly allocated the available water supplies and would protect the AVAA basin while preserving the ability of existing rights holders to continue using the available water.

Antelope Valley Groundwater Cases, *supra*, 62 Cal. App.5th at 1017.

The Judgment included a Judgment Approving Small Pumper Class Action (Small Pumper Class Judgment), which in turn included a list of known class members, including Johnny and Pamela. 2 AA 567-617. Johnny Zamrzla received a copy of the 2015 Judgment in early 2016. 5 RT 194-197.

D. Creation of the Watermaster

The Judgment provides for the creation of the Watermaster to administer the provisions of the judgment. 2 AA 512. The Watermaster's administrative duties include, among other things, the imposition and collection of RWAs on those parties required to make such payments under the provisions of the Judgment. *Ibid.*

E. The Judgment Has Survived Three Appeals and is Now Final

Prior to the instant case, the Judgment has previously withstood three separate substantive appeals: *Phelan Pinon Hills Community Services District v. California Water Service Company* (2020) 59 Cal.App.5th 241; *Antelope Valley Groundwater Cases* (2021) 62 Cal.App.5th 992; and *Los Angeles County Waterworks District No. 40 v. Tapia* (2021) 63 Cal.App.5th 17. Each of these appeals was unsuccessful, and under California law the Judgment is now final.

F. The Zamrzlas and their Pumping Activities

Johnny and Pamela own three parcels within the Basin, two of which have water wells. 19 AA 4796. Parcel No. 3220-006-026 (“Parcel 26”) was purchased in 1970 and includes one well referred to as the “Domestic Well.” 19 AA 4796. Parcel No. 3220-006-003 (“Parcel 3”) was acquired in 1986 and includes one well referred to as the “Farm Well.” 19 AA 4796. Parcel No. 3220-006-002 (“Parcel 2”) was also acquired in 1986 and has no operable well. *Ibid.*

Johnny Lee and Jeanette purchased a 10-acre parcel in 2008 within the Basin designated Parcel No. 3220-001-028 (Parcel 28”) on which they operate a well referred to as the “Pasture Well.” 19 AA 4797. Johnny Lee and Jeanette also own a 10-acre parcel designated Parcel No. 3220-001-27 (“Parcel 27”) which has no well and no pumping history. *Ibid.*

G. The Watermaster’s Motion to Recover Unpaid RWAs from The Zamrzlas

On September 29, 2021, the Watermaster filed a motion (“Watermaster Motion”) seeking, among other things, \$28,755.35 in delinquent Replacement Water Assessments for the year 2018 as to Johnny and Pamela, \$6,415.90 in delinquent Replacement Water Assessments for the year 2018 as to Johnny Lee and Jeanette; and an injunction prohibiting the Zamrzlas from producing any further groundwater from the Basin until all such delinquent 2018 Replacement Water Assessments with interest and fees are paid in full. 1 AA 28-67. The Watermaster also sought an order requiring the Zamrzlas to install water flow meters on all of their respective wells and submit

Annual Water Production Reports for years 2016 through 2020. The Watermaster Motion sought this relief on the basis that the Zamrzlas are members of the Small Pumper Class under the Judgment, that they produced water in excess of the Small Pumper Class allowance in the year 2018, and that they failed to provide production reports for other years. *Ibid.*

The Zamrzlas opposed the Watermaster Motion in part on the ground that they are not properly named as members of the Small Pumper Class and hence are not subject to the Court's jurisdiction under the Judgment. 2 AA 386-387.

H. The Zamrzlas' Motion to Vacate the Judgment

On April 11, 2022, the Zamrzlas filed Motions to Set Aside or Modify the Judgment and Physical Solution 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 trial court had the inherent power in equity to set aside or modify the Judgment. 3 AA 707-708. The Zamrzlas' motions were 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 Watermaster. 19 AA 4815.

Following an opportunity for discovery, the motions were fully briefed by the parties and set for hearing on December 13, 2022. 19 AA 4794. At the December 13,

2022, hearing, the trial court requested live testimony to help resolve the factual issues raised by the motions. *Ibid.* 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. *Ibid.* 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. 19 AA 4815.

The evidentiary hearing on the Zamrzlas’ motions took place on March 15 and 16, 2023. 19 AA 4794. The trial court heard live testimony from Johnny Zamrzla, Pamela Zamrzla, their son Johnny Lee Zamrzla, and Johnny Lee’s wife, Jeanette Zamrzla. 19 AA 4794-4795. The trial court received documentary evidence as reflected in the record and testimony by way of declarations from Jeffrey Dunn of Best, Best & Krieger; Michael McLachlan, Small Pumper Class counsel; and Rick Koch of Southern California Edison. The trial court also took judicial notice of many records on file in this proceeding. Following the close of evidence, the trial court received extensive post-trial briefing from all parties. 19 AA 4816.

On June 9, 2023, the trial court issued a written Order Denying the Zamrzlas’ Motions (the “Order”). 19 AA 4792.

I. The Court of Appeal's Affirmance of the Trial Court's Order

The Zamrzlas' filed an appeal of the Order on June 23, 2023. 19 AA 4881. In their appeal, the Zamrzlas asserted that the trial court (1) violated due process by finding that they received legally adequate notice of the litigation, (2) erroneously determined that they were members of the Small Pumper Class (3) improperly denied them equitable relief from the Judgement, and (4) failed properly to rule on their motions. (Opn. p. 4.)

On December 15, 2025, the California court of appeal (Second Appellate District, Division One) affirmed the Order, holding that notice by mail and publication to the class members constituted "the best notice practicable under the circumstances." In that regard, the court found:

Given the large size of the class and the difficulty in identifying and locating its members, the [trial] 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. (Opn. p. 16.)

The court further held that the Small Pumper Class definition was unambiguous, and that the trial court had properly determined, based on the evidence presented at the hearing, that the Zamrzlas were members of that class.

With respect to the Zamrzlas' claim for equitable relief, the court held that the trial court did not abuse its discretion by denying such relief given the extensive evidence of the Zamrzlas' knowledge of the adjudication and failure to act until almost six years after the Judgment was entered. Johnny, Pamella and Johnny Lee knew about the adjudication in 2009 and were invited by a friend to join a coalition of parties. Johnny admitted that he was given a copy of the Judgment soon after it issued. Yet, 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 Judgement, to assert their rights in court, and then only because the Watermaster invoiced them for producing more water than the Judgment allowed. Opn. 19-20. "Under these circumstances, the [trial] court could reasonably conclude that the Zamrzlas were negligent in preserving their rights and could thereupon deny them equitable relief." Opn. p. 20.

The court also ruled that the equities did not otherwise favor the Zamrzlas' position. The AVAA aquifer had been in overdraft for decades before the litigation commenced, causing significant long-term damage. The Judgment solved this problem by allotting the Basin's finite supply of water to thousands of individuals and class members who were required to reduce their usage severely. These allotments had been litigated while the Zamrzlas slept on their rights. Allowing the Zamrzlas to increase their allotment now would necessarily involve reducing allotments to other parties who had acted diligently and whose rights had been finalized in the Judgment. The court ruled that "given these circumstances it was well

within the [trial] court’s discretion to deny equitable relief.” Opn. p. 20.

The court of appeal’s opinion was not published, and under California law it cannot be cited or relied on as authority in any legal proceeding. California Rules of Court, Rule 8.1115(a); *Schmier v. Supreme Court of Calif.*, 78 Cal.App.4th 703, 706 (2000).

J. The California Supreme Court’s Denial of Review

The California Supreme Court unanimously denied review of the court of appeal’s opinion on March 18, 2026. App. 71.

REASONS FOR DENYING THE PETITION

A. The California Court Of Appeal Correctly Determined That The Trial Court’s Rulings Concerning Class Notice Were Not An Abuse Of Discretion

1. Due Process Does Not Require Actual Notice To Class Members For a Judgment To Be Binding

The Zamrzlas assert that they were denied due process because they were not personally served with the class notices. Their position lacks merit under established law and does not warrant further review by this Court.

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. *Silber v. Mabon*, 18 F.3d 1449, 1453-1454 (9th Cir. 1994); California Rules of Court, Rule 3.766(f) (“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); Fed. Rules Civ. Proc., Rule 23(c)(2)(B) (class members are entitled to “the best notice that is practicable under the circumstances”).

Mullane, *supra*, 339 U.S. 306, provides the touchstone for assessing how due process informs the provision of notice in the context of a class action. This Court in *Mullane* recognized that “[a]n 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. [Citations.] The notice must be of such nature as reasonably to convey the required information, [citation], and it must afford a reasonable time for those interested to make their appearance [citations].” *Id.*, at 314. Significantly, this Court drew the following line: “But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied. ‘The criterion is not the possibility of conceivable injury but the just and reasonable character of the requirements, having reference to the subject with which the statute deals.’” *Id.*, at 314-315.

Applying these principles, *Mullane* held that in connection with a particular judicial settlement of accounts, notice by personal mail was required for beneficiaries whose identities and mailing addresses were

actually known. *Id.* at 318. Yet, “in view of the character of the proceedings and the nature of the interests” involved, notice by publication would suffice for those beneficiaries “whose interests or whereabouts could not with due diligence be ascertained.” *Id.* at 317. Likewise, “more certain notice” could be dispensed with for those beneficiaries “whose interests are either conjectural or future or, although they could be discovered upon investigation, do not in due course of business come to knowledge of the common trustee.” *Ibid.* This notice scheme was “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.’” *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), quoting *Mullane* at 314-315.

California has adopted a similarly practical approach, in which the circumstances of each case determine what forms of notice will adequately address due process concerns. *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 981 (2019). Under this standard, actual notice to class members is not required for a judgment to be binding. *Id.* at 981. “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.” (*Id.* at 981.) Instead, “the law adopts a more nuanced and pragmatic approach, consistent with the general principal 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.’” (*Id.* at 981.)

2. The Trial Court Had Broad Discretion As To The Manner of Giving Notice To Class Members

Under both federal and California law, the trial court is accorded very considerable latitude in determining the manner of service in class action cases. *Grunin v. International House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975); *City of San Diego v. Haas*, 207 Cal.App.4th 472, 502 (2012) [“The trial court has virtually complete discretion as to the manner of giving notice to class members.”]. The standard is whether the notice has a reasonable chance of reaching a substantial percentage of the class members. *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 251 (2001). If personal notification is unreasonably expensive or if it appears that all members of the class cannot be notified personally, the trial court may order a means of notice reasonably calculated to apprise class members of the pendency of the action. *Wershba, supra*, at 251. These means include “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.” Cal. Rules of Court, Rule 3.766(f).

3. The Trial Court’s Rulings Concerning the Class Notices Can Be Overturned Only For A Manifest Abuse of Discretion

Under California law, a trial court’s denial of a motion to modify or vacate a judgment or order is subject to the deferential abuse of discretion standard of review. *Bae v. T.D. Service Co. of America*, 245 Cal.App.4th 89, 97-98

(2016). Discretion is abused only when, in its exercise, the trial court “exceeds the bounds of reason, all of the circumstances before it being considered.” *Denham v. Superior Court*, 2 Cal.3d 557, 566 (1970). “A ruling that constitutes an abuse of discretion has been described as one that is so irrational or arbitrary that no reasonable person could agree with it.” *Sargon Enterprises, Inc v. University of Southern Calif.*, 55 Cal.4th 747, 773 (2012).

In situations where the exercise of discretion turns on factual findings, there normally is no practical difference between the abuse of discretion standard and the sufficiency of the evidence standard. *In re Caden C.*, 11 Cal.5th 614, 641 (2021) Both standards of review entail “considerable deference to the fact-finding tribunal.” (*Department of Parks & Recreation v. State Personnel Bd.*, 233 Cal.App.3d 813, 830-831 (1991). Under either standard, the reviewing court accepts all evidence supporting the trial court’s order and disregards contrary evidence. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court. *Schmidt v. Superior Court*, 44 Cal.App.5th 570, 581 (2020); *Walker v. Superior Court*, 53 Cal.3d 257, 272 (1991).

In an appeal challenging a discretionary trial court ruling, it is the appellant’s burden to establish a clear abuse of discretion. *Blank v. Kirwan*, 39 Cal.3d 311, 331 (1985).

4. Zamrzlas Were Properly Served With Notice of the Small Pumper Class Action by Mail and/or Publication

In this case, the trial court adopted a “belt-and-suspenders” approach for class notice by ordering notice of Small Pumper Class action to be served by first class mail and publication in each instance. 2 RA 247. The trial court determined that each such notice “was given in an adequate and sufficient manner, and constituted the best practicable notice under the circumstances.” *Ibid.*

The parties identified as members of the Small Pumper Class were served with notice of the Small Pumper Class Action in 2009, 2013 and 2015 by first-class mail and publication. 8 AA 1890-1892; 1AA262-263; 8 AA 1952-1956; 8 AA 2046-2050; 16 AA 4293. The “List of Known Small Pumper Class Members for Final Judgment,” attached as Exhibit A to Exhibit C to the Judgment, is a replication of the Small Pumper Class notice list, and evidence that Johnny and Pamella were properly served with notice. 2 AA 567-617.

The 2009 notice informed all recipients that they have been designated as possible class members, that they must submit a response form no later than September 9, 2009 if they contend they are not a class member for any reason (including if they have pumped in excess of 25 AFY in any calendar year since 1946), and that “[a]ll persons who receive this Notice should respond, so that the parties and the Court will know whether you are a class member or not.” 1 AA 265-267.

The 2013 notice stated that recipients of the notice have been designated as class members, and “[i]f you do nothing, you will remain in the class and be bound by the terms of the settlement.” The 2013 notice further provided an opportunity for recipients to respond with a request for exclusion by no later than December 2, 2013. 1 AA 284-287.

The 2015 notice explained that the recipients have been designated as class members and are not in the class only if: (1) their property is connected to and receives water from a public water system, public utility or mutual water company; (2) they are already a party to the litigation; or (3) they have timely excluded themselves from the class and have not rejoined. The 2015 notice also set forth the final terms of settlement and explained that recipients were no longer able to opt-out of the class because they were given two prior opportunities to do so. 8 AA 2057-2062.

5. Substantial Evidence Supports the Trial Court’s Finding that Johnny and Pamella Were Served by Mail and By Publication

In their petition for writ of certiorari, Johnny and Pamella continue to deny that they received the class notices by mail and incorrectly claim that they were unaware of the Small Pumper Class during the pendency of the litigation. Petition at 9. Extensive evidence was presented, however, that the 2009, 2013 and 2015 notices were each properly mailed to Johnny and Pamella’s address at 48910 80th Street W, Lancaster, CA 93536–8740. 1 AA 279-289, 8 AA 2052-2062, 4-5 AA 1443-1550, 16 AA 4293. Johnny and Pamella admitted at the evidentiary hearing that this is their correct address. 6 RT 60-62. In

fact, the Small Pumper Class Judgment identifies Johnny and Pamela's correct address three separate times: once for Johnny Zamrzla, once for Pamela Zamrzla, and once for the "Zamrzla Family." 2 AA 567-617.

Johnny and Pamela admitted at the evidentiary hearing that did not experience any problems receiving their mail during the period in which the class notices were served. 6 RT 127, 254. They further testified that they regularly check and sort their mail, including other class notices that they have received. 6 RT 254; 16 AA 4294. Johnny and Pamela conceded that it is "possible" such notices were in fact delivered to their address. 6 RT 285. There was no evidence that the mailed notices were ever returned to class counsel as undeliverable or with a forwarding address. 16 AA 4304) As the court of appeal found, this evidence was more than sufficient to support the trial court's factual finding that the notices had been received.

The trial court also ordered that the 2009, 2013 and 2015 notices be published to provide additional notice to Small Pumper Class members. 8 AA 1890-1892; 1 AA 262-263; 8 AA 1952-1956; 8 AA 2046-2050; 16 AA 4293. 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*." 8 AA 1890-1892; 1 AA 262-263; 16 AA 4293. Each class notice was published as ordered by the trial court. 2 AA 639-643; 1 AA 291-289; 16 AA 4293. The trial 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.” 8 AA 1952-1956; 8 AA 2046-2050; 16 AA 4293. The trial 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.*; 16 AA 4294.

Johnny and Pamela have subscribed to the *Antelope Valley Press* at their business office located in the Basin for decades leading up to the Judgment. 16 AA 4294; 5 RT 115-116, 122-125. Johnny testified that he would check the obituaries to see if any of his clients passed away and read the sports and community news. 16 AA 4295; 5 RT 117. He also advertised in the newspaper. *Ibid.* He testified that he recalls reading stories about the groundwater adjudication and “[p]robably did because normally water stuff is on the front page.” 16 AA 4295; 5 RT 117-118.

Based on this evidence, the trial court found that Johnny and Pamela had failed to show that service of the Small Pumper Class notice was deficient. As the court of appeal determined, the trial court’s findings are abundantly supported by the record and were properly affirmed.

6. Substantial Evidence Supports the Trial Court’s Finding that Johnny Lee and Jeanette Were Served by Publication

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.” 2 AA 516-517. 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.*” 2 AA 517 [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. As the trial court found, 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 the Small Pumper Class Judgment lists “[t]he known Small Pumper Class members” 2 AA 567-617, 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 the class in Paragraph 3.5.44. 2 AA 511.

As discussed above, the trial 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 trial court would have jurisdiction over them without requiring intervention.

The trial court required that notice “be published on at least 4 separate occasions (including at least two Sundays and two weekdays) in each of the following newspapers of general circulation: the *Antelope Valley Press*, the *Los Angeles Times*, and the *Bakersfield Californian*.” 8 AA 1890-1892; 1 AA 262-263.

The evidence presented in this case shows that service on Johnny Lee and Jeanette by publication in the *Antelope Valley Press*, the *Los Angeles Times*, and the *Bakersfield Californian* was adequate service. The Zamrzlas have subscribed to the *Antelope Valley Press* at their business office located in the Basin for decades leading up to the final Judgment. 19 AA 4802; 5 RT 115-116; 122-125. Their business also advertised in the newspaper. 16 AA 4295; 5 RT 1177. 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. 6 RT 338, 19 AA 4802. As the court of appeal found, this evidence is more than sufficient to support the trial court’s determination that Johnny Lee and Jeanette were properly served.

7. The Zamrzlas Would Have Been Personally Served If They Had Complied With State Law And Reported Their Groundwater Pumping

An important point omitted by the Zamrzlas in their petition for writ of certiorari is that the trial court found that they would have been personally served if they had

reported their groundwater production as required by state statute. App at 15. California Water Code section 5001 requires anyone who produces more than 25 acre-feet of water per to report the extraction to the California Water Resources Control Board. California Water Code section 5004 provides that failure to file a groundwater extraction notice “shall be deemed equivalent for all purposes to nonuse.”

The public water agencies which initiated this action conducted “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. 8 AA 1880. These agencies “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.” 8 AA 1880-1881.

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. 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. It is undisputed that the Zamrzlas failed to file any of these notices. 5 RT 182-183; 6 RT 260-261; 6 RT1 339. As the trial court found, if the Zamrzlas had complied with their legal obligation to report pumping exceeding 25 acre-feet per year, they would have been known to the water agency plaintiffs in this case and would have been personally served. App. at 15.

B. The California Court Of Appeal's Decision Is Not Citable As Authority And Creates No Conflict In The Law For This Court To Resolve

Because the court of appeal's opinion in this case was unpublished, it cannot, under California law, be cited or relied on as authority by any party or court in any other action. California Rules of Court 8.111(a); *Schmier v. Supreme Court of Calif.*, 78 Cal.App.4th 703, 706 (2000). Since they cannot be cited, unpublished opinions necessarily have no precedential effect. *Id.* at 712.

In their petition for writ of certiorari, the Zamrzlas admit that the court of appeal's opinion was unpublished, but go on to state that it is "reported" on Westlaw. Petition, 4. This is immaterial and misleading. The rule that an unpublished California opinion cannot be cited or relied on as authority—not even as persuasive authority—applies even if the opinion is available through online databank services such as Westlaw. *Schmier v. Supreme Court of Calif.*, 96 Cal.App.4th 873, 882 (2000).

Because the court of appeal's decision cannot be relied on as authority by any party or court, it does create any conflict in the law for this Court to resolve. Further review of this matter is therefore inappropriate given the institutional role of this Court. Supreme Court Rule 10.

CONCLUSION

The Zamrzlas' attempt to present the court of appeal's decision as a departure from previous decisions is ineffective. Given the large size of the class and the difficulty in identifying and locating its members, the court

of appeal correctly held that the trial court acted 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. Class members who reported their pumping to the California Water Resources Control Board were personally served, and if the Zamrzlas similarly had reported their pumping, as they were legally obligated to do, they too would have been personally served. The trial court's determinations were based on the unique facts of this case and have little applicability to other cases. Further review of this case is accordingly unwarranted under Supreme Court Rule 10.

For all of the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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