

No. 26-28

**In the
Supreme Court of the United States**

JOHNNY LEE ZAMRZLA, JEANETTE ZAMRZLA,
AND SHERI LYNN ZAMRZLA-GRECO,

Petitioners,

v.

ANTELOPE VALLEY WATERMASTER, et al.,

Respondents.

**On Petition for a Writ of Certiorari to the
California Court of Appeal, Second Appellate
District, Division One**

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF

Granting certiorari will allow the Court to address three unsettled due process issues in one case: (i) the rights owed to class members subject to property deprivations more significant than the right to sue for modest money damages; (ii) whether due process requires opt-out rights when the class action is not predominantly about money damages but adjudicates monetary claims concerning class members; and (iii) whether due process mandates opt-out rights for absent class members over whom the forum has an independent basis for personal jurisdiction.

The Watermaster's Brief in Opposition has nothing to say on these topics or the conflicts among circuit and state courts alike on the issues. BIO, *generally*.

The Watermaster further concedes through its silence that all the necessary components for the Court to settle these issues are present. It does not dispute that the property loss here is substantially severe and more than the loss in *Phillips Petroleum Co. v. Shutts*. It makes no mention that the class notices that allowed opt-out rights badly misidentified the class and thus offers no rebuttal that in practice there was no opportunity to opt out. It does not object that the class action was not predominantly about money but had a meaningful monetary element. There is no dispute that all class members are subject to personal jurisdiction in California.

The case is a pristine vehicle. It has the "concrete" circumstances absent from *Shutts. Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 810 n.2 (1985).

Review will also provide an opportunity for the Court to knock out the two other due process issues that will continue to arise in all kinds of class cases.

As the Watermaster's brief offers nothing to contradict the reasons why certiorari should be granted, petitioners will not belabor responding to its merits-like arguments that are not appropriate at the certiorari stage. A few points bear correction, however.

The Watermaster contends the 2009 class notice gave all recipients an opportunity to "submit a response form." BIO.8, 22. The opportunity to submit a response form is no substitute for the right to opt out, to the extent the Watermaster suggests it is. The notice provided 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." App.246. The plain terms limited the ability to opt out to only "Class Members" as described in the notice, which description excluded petitioners. App.244-45.

There was also nothing in the notice that informed people who were not part of the described class that they would be bound by the results of the class action if they did not submit a response. App.242-48. The only consequence the notice indicated non-class members may face if they did not respond was the vague notion that "[their] rights may be affected." App.244. The notice did not say what this meant and certainly did not say that non-class members who failed to respond would become *de facto* class members subject to any settlement, judgment, or other resolution of the class action. App.242-48. Only class members as defined in the notice were told they would be bound by the class results if they did

not opt out. App.246. The notice did not say non-class members would be similarly bound. App.242-48.

Moreover, the California Court of Appeal found the 2009 notice to be deficient. App.8. The only notice the appellate court determined satisfied due process was the 2015 notice, which expressly did *not* allow the opportunity to opt out. App.19-20. The factual posture that will come to the Court should it grant certiorari is that petitioners were bound without the chance to opt out.

The Watermaster also points to the appellate court's statement that the trial court found Johnny and Pamella "would have been served personally" had they filed certain water extraction notices. App.15; BIO.27-28. The Watermaster is mistaken to the extent it is suggesting any of the class notices would have been personally served had water extraction notices been filed.

The only notices to the Small Pumper class members were the 2009, 2013, and 2015 notices. App.8, 35-36. They were never personally served on anyone. They were only distributed by mail or publication. App.8, 35-36.¹

Indeed, the Small Pumper class action was not filed until June 2008 and the class was not certified until September of that year. App.53-54. Prior efforts to serve process on Antelope Valley landowners were thus not attempts to give class notice. App.7-8; Cal. Ct. App. Appellant App. 1880-81. This is true for the service of process on those who filed extraction

¹ While information about the class action was available on the internet (App.242-76), the notices were not disseminated or ordered to be disseminated through the internet. BIO.8-9. The notices were only distributed by mail or publication. App.8, 35-36.

notices, which service occurred before the Small Pumper class was certified. *Compare*, App.53-54 (certification in September 2008) *with* Cal. Ct. App. Appellant App. 1880-81 (service on those who filed water extraction notices occurred at some unspecified time before August 2008).

The Watermaster and the record moreover are entirely silent on what would have been personally served and in what capacity the recipients would have been served. BIO.27-28, App.15, 41-42, Cal. Ct. App. Appellant App. 1880-81. There is thus nothing to suggest that Johnny and Pamella or any other class member would have been personally served with anything akin to a class notice that properly described the class and afforded a chance to opt out of the class if they had filed water extraction notices. Not surprisingly, this issue was irrelevant to the appellate court's finding that due process was met. App.17-22.

Finally, the single point the Watermaster makes against review is the assertion that review is unwarranted because the appellate court's opinion is not published in the official California reports and thus not citable. BIO.2, 17, 29; *see also* Cal. R. Ct. 8.1115(a).²

² The citability of unpublished California appellate opinions is murky. California courts, including the California Supreme Court, do not always abide by any prohibition on citing or relying on unpublished opinions. *See, e.g., Cynthia D. v. Superior Ct.*, 851 P.2d 1307, 1314 & n.9 (1993) (citing to and “adapt[ing]” analysis from concurrence to an unpublished opinion); *Save Lafayette Trees v. City of Lafayette*, 243 Cal. Rptr. 3d 636, 646 & n.11 (2019) (“we adopt as our own” the reasoning of cited unpublished opinion). The Ninth Circuit has also found that courts “may consider unpublished state decisions, even though such opinions have no precedential value.” *Emps. Ins. of Wausau v. Granite State Ins. Co.*, 330 F.3d 1214, 1220 n.8 (9th Cir. 2003);

Whether the opinion is published is inconsequential. *See, e.g., Comm’r of Internal Revenue v. McCoy*, 484 U.S. 3, 7 (1987) (that appellate order “is unpublished carries no weight in our decision to review the case”). The Court frequently reviews opinions that were not officially reported when they raise important questions of law. *See, e.g., Riley v. California*, 571 U.S. 1161 (2014) (granting review of unpublished California Court of Appeal opinion); *Navarette v. California*, 570 U.S. 948 (2013) (same); *Kokkonen v. Guardian Life Ins. Co. of Am.*, 510 U.S. 930 (1993) (granting review of unpublished Ninth Circuit opinion). It should do so here.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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see also Rancho Mirage Mobilehome Cmty., LP v. Coachella Valley Water Dist., 2021 WL 7186852, at *3 (C.D. Cal. Nov. 1, 2021) (finding that Rule 8.1115(a) is not binding on federal courts).