

1 **GREBEN & ASSOCIATES**

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10 Attorneys for Plaintiffs VIOLA COPPOLA, GARY COPPOLA,
11 and THE TRUST OF ANTHONY M. COPPOLA

12 UNITED STATES DISTRICT COURT

13 EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

14 VIOLA COPPOLA, GARY COPPOLA, and THE
15 TRUST OF ANTHONY M. COPPOLA;

16 Plaintiffs,

17 v.

18 GREGORY SMITH, an individual; RICHARD
19 LASTER, an individual; THE JANE HIGGINS
20 NASH TRUST; JANE NASH AS EXECUTOR OF
21 THE ESTATE OF DECATUR HIGGINS A/K/A
22 THE ESTATE OF MABEL ELAINE HIGGINS;
23 HARLEY MILLER, an individual; CHERYL
24 MILLER, an individual; MARTIN AND MARTIN
25 PROPERTIES; CALIFORNIA WATER SERVICE
26 COMPANY; the CITY OF VISALIA; and DOES 1-
27 20, inclusive;

28 Defendants.

Case No.: 1:11-CV-01257-AWI-BAM

**STIPULATION AND ORDER
FOLLOWING MODIFIED SCHEDULING
CONFERENCE**

Date: December 23, 2013
Time: 9:00 a.m. (telephonic conference
call)
Courtroom: 8, 6th Floor
Hon. Barbara A. McAuliffe

RELATED CROSS AND COUNTER-CLAIMS

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1 The Court, having held a modified scheduling conference with the Parties¹ pursuant to
2 Federal Rules of Civil Procedure ("FRCP"), Rule 16, hereby ORDERS as follows:

3 **Written Discovery**

4 Written discovery shall commence consistent with the limitations set forth in the FRCP,
5 including but not limited to (1) interrogatories; (2) requests for production; (3) third party requests
6 for production; and (4) motion practice related to such written discovery, and may commence
7 effective January 1, 2014, prior to the issuance of an FRCP 16(b) scheduling order, except that
8 written discovery will not be propounded to or from Cal Water unless and until (a) the case becomes
9 at issue to Cal Water, in which case discovery may be directed to Cal Water by a party and Cal
10 Water may direct such discovery as it deems necessary to all other parties in the case, or (b) is
11 dismissed from the action, in which case discovery may be directed to Cal Water as a third party.

12 **Depositions**

13 Deposition discovery consistent with the rules of the FRCP, including but not limited to
14 party representative depositions, expert depositions, and third party depositions, shall not commence
15 until the case is at issue as to Cal Water or Cal Water has been finally dismissed from the action, and
16 the Court has completed a FRCP 16(b) scheduling conference and issued a FRCP 16(b) scheduling
17 order. Coppola, Smith, Laster, Nash, Martin, and/or Visalia may move the Court for permission to
18 seek specific deposition discovery upon a showing of good cause, or all Parties may stipulate to
19 conducting specific deposition discovery. Notwithstanding the foregoing, if and when Cal Water
20 answers a then operative complaint, Cal Water shall have the right to re-depose any deponent
21 deposited in this case prior to Cal Water filing such answer.
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26 ¹ The "Parties" are Plaintiffs, Cross defendants, and Counter defendants Viola Coppola, Gary Coppola, the Trust
27 of Anthony M. Coppola (collectively "Coppola"); Defendant, Cross defendant, and Cross claimant Gregory Smith
28 ("Smith"); Defendant, Cross defendant, and Cross claimant Richard Laster ("Laster"); Defendants, Cross defendants, and
Cross claimants the Jane Higgins Nash Trust, Jane Nash as Executor of the Estate of Decatur Higgins aka the Estate of
Mabel Elaine Higgins ("Nash"); Defendant and Counterclaimants Martin and Martin Properties ("Martin"); Defendant
California Water Service Company ("Cal Water"), and Defendant the City of Visalia ("Visalia").

1 **Investigatory Field Work**

2 Investigatory field work may proceed prior to the completion of a FRCP 16(b) scheduling
3 conference and issuance of a FRCP 16(b) order solely with respect to work plans of Parties approved
4 by the regulatory agency, the Department of Toxic Substances Control ("DTSC"), in charge of
5 oversight for the groundwater contamination in the City of Visalia. Such investigatory field work
6 shall be conducted pursuant to the FRCP, including but not limited to the request and response
7 provisions of FRCP 34(a)(2). Results from such investigatory field work shall be shared with all
8 Parties.

9 All Parties reserve their rights to assert evidentiary objections to any and all such
10 investigatory field work and results pursuant to the FRCP and the Federal Rules of Evidence
11 ("FRE"). All Parties reserve their rights to conduct future discovery, investigation, and testing,
12 including duplicate testing, consistent with the FRCP and FRE and/or any directives of the DTSC.
13 Parties whose property is subject to investigatory field work hereunder reserve their right under law
14 to object to any further testing or collection of data on the basis, among other objections, that such
15 work has already been conducted.

16 Investigatory field work on Visalia property shall be subject to the City's permitting process
17 and regulations, as applicable. A Party planning on conducting field work on Visalia property
18 should seek a permit from the Visalia, should such a permit be required under the City's regulations,
19 for such work to proceed. Visalia shall not unreasonably withhold or delay the issuance of such a
20 permit.

21 If there is a dispute regarding investigatory field work, including but not limited to any
22 permitting dispute with the Visalia, the Parties shall meet and confer, and may invoke the informal
23 discovery dispute resolution procedures of the Court.
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25 **Motion Practice**

26 Motion practice may commence consistent with the FRCP.
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1 **Other issues**

2 Except as specifically set forth herein, discovery shall not commence, including but not
3 limited to expert discovery. With respect to electronic data, discovery deadlines, expert deadlines,
4 and other issues not reflected above, the parties shall submit a Joint Scheduling Report pursuant to
5 FRCP 26 within thirty (30) days after Cal Water's motion to dismiss is resolved and the pleadings
6 are fully at issue. At this time, no changes are made to the limits of discovery imposed by the
7 FRCP, including but not limited to those imposed by FRCP 26(b); 30(a)(2)(A), (B); 30(d); or 33(a).

9 Approved as to form by:

10 Dated: January 2, 2014

GUALCO LAW

11
12 /s/ Lori J. Gualco

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14 Lori J. Gualco
15 Attorney for Defendants RICHARD
16 LASTER

15 Dated: January 2, 2014

GUALCO LAW

17
18 /s/ Lori J. Gualco

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20 Lori J. Gualco
21 Attorney for Defendants GREGORY
22 SMITH

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22 ///

23 Dated: January 2, 2014

WILLIAMS, JORDAN, BRODERSEN &
PRITCHETT LLP

24
25 /s/ Steven R. Williams

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27 Steven R. Williams
28 Attorney for Defendant JANE NASH, as
TRUSTEE OF THE JANE HIGGINS
NASH TRUST

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Dated: January 2, 2014

GREBEN & ASSOCIATES

/s/ Jan A. Greben

Jan A. Greben

Brett A. Boon

Attorneys for Plaintiffs VIOLA COPPOLA,
GARY COPPOLA, and the TRUST OF
ANTHONY M. COPPOLA

IT IS SO ORDERED.

Dated: January 3, 2014

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE