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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 VIOLA M. COPPOLA, *et al.*,

12 Plaintiffs,

13 v.

14 GREGORY SMITH, *et al.*,

15 Defendants.  
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**Case No. 11-cv-1257 AWI BAM**

**ORDER GRANTING PLAINTIFFS'  
MOTION TO FILE A SIXTH AMENDED  
COMPLAINT IN PART**

**(Doc. 249)**

18 **INTRODUCTION**

19 On January 9, 2015, Plaintiffs Gary Coppola, the Trust of Anthony M. Coppola and the  
20 Viola M. Coppola Irrevocable Trust (collectively "Coppola"), as an individual and on behalf of  
21 all others similarly situated ("Plaintiffs"), filed a Motion for Leave to File a Sixth Amended  
22 Complaint. Defendants Martin and Martin Properties, LLC ("Martin LLC") filed an Opposition  
23 on January 30, 2015. (Doc. 254). No other party filed an opposition. Plaintiffs filed a Partial  
24 Withdrawal of the Motion and a Reply on February 6, 2015. (Doc. 257). The Court took the  
25 matter under submission without oral argument pursuant to Local Rule 230 (g), and vacated the  
26 hearing set for February 13, 2015. Upon a review of the pleadings, Plaintiffs' motion is  
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1 GRANTED IN PART.

2 **BACKGROUND**

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4 This is an environmental law case arising from the chemical contamination of property  
5 surrounding a dry cleaning business in Visalia, California. More specifically, Coppola has owned  
6 and operated a dry cleaning facility located at 717 W. Main St., Visalia, California (“717 W.  
7 Main”) since 1987. Coppola has used tetrachloroethylene (“PCE”) in their dry cleaning business  
8 since at least 1994. The California Department of Toxic Substances Control (“DTSC”) and the  
9 United States Environmental Protection Agency (“EPA”) investigated the business and concluded  
10 that there was a “release” or a “threatened release” of PCE from 717 W. Main into the soil and  
11 groundwater. In June 2011, DTSC issued an order requiring Coppola to investigate and remediate  
12 the contamination caused by their dry cleaning business.  
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14 Pursuant to this order, Coppola has been investigating the extent of the contamination and  
15 filed the instant lawsuit on November 15, 2010, in the Tulare County Superior Court naming  
16 various parties, including nearby property owners and operators. The case was removed to this  
17 Court on July 28, 2011. (Doc. 1). There have been numerous complaints filed. Currently, the  
18 operative complaint is the Fifth Amended Complaint that names several property owners, the City  
19 of Visalia, California Water Service, and Martin and Martin LLC as Defendants and alleges  
20 violations of the Comprehensive Environmental Response, Compensation, and Liability Act  
21 (“CERCLA”). Defendants have filed numerous counterclaims and cross-claims.  
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23 In this motion, Plaintiffs initially sought to file a Sixth Amended Complaint to add various  
24 claims against William Martin, Linda Martin, and Martin Enterprises, Inc. (collectively, “the  
25 Martin parties”) and the Visalia Unified School District (“V.U.S.D.”). Now, Plaintiffs have  
26 withdrawn that portion of the motion seeking to name the Martin parties based on a recent ruling  
27 made by U.S. District Court Judge Anthony W. Ishii on January 15, 2015. (Docs. 250 and 257, at  
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1 pg. 3). However, they still seek to add V.U.S.D as a party because they allege the school district  
2 contributed to the contamination at issue, most notably by operating ground water supply wells  
3 which has exacerbated the contamination plume. Specifically, Plaintiffs contend V.U.S.D.  
4 transported contaminants through these wells which has increased and will continue to increase  
5 Coppola's response cost.

## 7 DISCUSSION

8 Under Rule 15(a), a plaintiff may amend his complaint once "as a matter of course," and  
9 without leave of court, before a response has been filed. Fed.R.Civ.P. 15(a)(1); *Bonin v.*  
10 *Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). However, a party can only amend the pleading with  
11 the opposing party's written consent or the court's leave once a responsive pleading has been  
12 filed. Fed.R.Civ.P. 15(a)(2). Here, Defendants filed a responsive pleading to Plaintiffs' Fifth  
13 Amended Complaint and have not agreed to the amendment so leave of the court is required.

14 Fed. R. Civ. Proc. 15(a) provides that a court "should freely give leave [to amend] when  
15 justice so requires." The United States Supreme Court has stated:

16 [i]n the absence of any apparent or declared reason – such as undue delay, bad faith or  
17 dilatory motive on the part of the movant, repeated failure to cure deficiencies by  
18 amendments previously allowed, undue prejudice to the opposing party by virtue of  
19 allowance of the amendment, futility of amendment, etc. – the leave sought should, as the  
20 rules require, be "freely given." *Foman v. Davis*, 371 U.S. 178, 182 (1962).

21 This policy is "to be applied with extreme liberality." *Eminence Capital, LLC v. Aspeon,*  
22 *Inc.*, 316 F. 3d 1048, 1052 (9th 2003) (citations omitted). The Ninth Circuit has summarized these  
23 factors to include the following: (1) undue delay; (2) bad faith; (3) prejudice to the opponent; and  
24 (4) futility of amendment. *Loehr v. Ventura County Cmty. Coll. Dist.*, 743 F.2d 1310, 1319 (9th  
25 Cir. 1984). These factors are not of equal weight as prejudice to the opposing party has long been  
26 held to be the most critical factor in determining whether to grant leave to amend. *Eminence*  
27 *Capital, LLC v. Aspeon, Inc.*, 316 F.3d at 1052 ("As this circuit and others have held, it is the  
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1 consideration of prejudice to the opposing party that carries the greatest weight”); *Jackson v.*  
2 *Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir.1990). Additionally, “leave to amend will not be  
3 granted where an amendment would be futile.” *Theme Promotions, Inc. v. News Am. Mktg. FSI*,  
4 546 F. 3d 991, 1010 (9<sup>th</sup> Cir. 2008).

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6 The Court has examined all of the factors listed above. There is no evidence that the  
7 filing of the Sixth Amended Complaint will be futile, that it will cause undue delay, that it was  
8 brought in bad faith, or that there will be prejudice to the Defendants. Moreover, no opposition  
9 has been filed, except as the Martin parties and that portion of Plaintiff’s motion has been  
10 withdrawn. Given that leave to amend is to be applied with extreme liberality, an amendment is  
11 proper.

## 12 CONCLUSION

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14 Accordingly, for the above reasons, IT IS HEREBY ORDERED:

- 15 1) Plaintiff’s Motion to Amend the Complaint is GRANTED IN PART. Plaintiffs are  
16 permitted to amend the operative pleading naming V.U.S.D. as a Defendant;
- 17 2) Plaintiff shall file the Sixth Amended Complaint within five days of this order and  
18 serve the V.U.S.D no later than **February 20, 2015**;
- 19 3) Once the Sixth Amended Complaint is filed, the Clerk of the Court is directed to add  
20 the new parties named in the amended pleading to the docket;
- 21 4) Defendants’ Answers are due 21 days after the filing of the Sixth Amended  
22 Complaint; or the parties may file stipulations that their answers to the Fifth Amended  
23 Complaint are applicable to the Sixth Amended Complaint; and  
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5) The Court will hold a status conference in this case on **Wednesday, April 29, 2015 at 9:00 a.m.** At that conference, the parties should be prepared to discuss whether the case should be set for Scheduling Conference.

IT IS SO ORDERED.

Dated: **February 11, 2015**

/s/ *Barbara A. McAuliffe*  
UNITED STATES MAGISTRATE JUDGE