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10 Attorneys for Defendant CALIFORNIA WATER SERVICE COMPANY

11  
12 **UNITED STATES DISTRICT COURT**  
13 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**  
14

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

16 Plaintiffs,

17 v.

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

25 Defendants.

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

**AMENDED STIPULATED PROTECTIVE  
ORDER REGARDING CONFIDENTIAL  
INFORMATION (LOCAL RULE 141)**

The Hon. Anthony W. Ishii, Ctrm. 2

Trial Date: None Set

26 AND RELATED CROSS-ACTIONS  
27

1 In order to protect confidential information obtained by the parties in connection with this  
2 case, the parties, by and through their respective undersigned counsel and subject to the approval  
3 of the Court, hereby agree as follows:

4 1. Any party or non-party may designate as "Confidential Information" (by stamping  
5 the relevant page or as otherwise set forth herein) any document or response to discovery which  
6 that party or non-party considers in good faith to contain information involving trade secrets, or  
7 confidential business or financial information, including personal financial information about any  
8 party to this lawsuit or employee of any party to this lawsuit; information regarding any  
9 individual's banking relationship with any banking institution, including information regarding the  
10 individual's financial transactions or financial accounts, and any information regarding any party  
11 not otherwise available to the public, subject to protection under F.R.C.P. Rule 5.2 and/or Rule 26  
12 or under other provisions of Federal and/or California law. Any party, federal, state or local  
13 regulatory agencies also may designate as "Confidential Information" (by stamping the relevant  
14 page or as otherwise set forth herein) any document or response to discovery which Plaintiff or  
15 that agency considers in good faith comprise: (a) protected critical infrastructure information as  
16 described and defined in Presidential Decision Directive 63, Critical Infrastructure Protection  
17 (May 22, 1998) and the Critical Infrastructure Information Act of 2002, 6 U.S.C. §§ 131-134; (b)  
18 vulnerability assessments as described and defined in section 1433 of the Safe Drinking Water  
19 Act, 42 U.S.C. § 300 *et seq.* (as amended by section 401 of the Public Health Security and  
20 Bioterrorism Preparedness and Response Act (Pub.L. 107-188), June 12, 2002); or (c) sensitive  
21 information as described and defined in section 2.6 of the American Water Works Association's  
22 Security Guidance for Water Utilities Overview developed pursuant to the United States  
23 Environmental Protection Agency's Water Infrastructure Security Enhancements program and  
24 available online at [http://www.awwa.oreawwaience/wise/report/AWWA\\_Securities/page2.htm](http://www.awwa.oreawwaience/wise/report/AWWA_Securities/page2.htm).  
25 Where a document or response consists of more than one page, the first page and each page on  
26 which confidential information appears shall be so designated.

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1                   1.1. "Confidential Information" protected by this Order shall not include  
2 information which is either: (a) lawfully received by a party from a source other than through  
3 discovery in this action from the party asserting the claim of confidentiality, or (b) public  
4 knowledge or information, or information which becomes public after disclosure. The existence  
5 of this Order and its terms do not modify any existing public disclosure obligation of a party or a  
6 federal, state or local government agency under the federal Freedom of Information Act, the  
7 California Public Records Act, and/or other federal, state or local law requiring disclosure.

8                   2. A party or non-party may designate information disclosed during a deposition or  
9 in response to written discovery as "Confidential" by so indicating in said responses or on the  
10 record at the deposition and requesting the preparation of a separate transcript of the portions of  
11 the deposition that are confidential. In addition, a party or non-party may designate in writing,  
12 within fourteen (14) calendar days after receipt of said responses or of those portions of the  
13 deposition transcript for which the designation is proposed (or if the transcript or responses are  
14 received within 30 calendar days of the date set for the beginning of trial, within half of the  
15 number of days remaining before the date set for the beginning of trial), that specific pages of the  
16 transcript and/or specific responses be treated as "Confidential Information." Any other party may  
17 object to such proposal, in writing or on the record. Upon such objection, the parties shall follow  
18 the procedures described in Paragraph 8 below. After any designation made according to the  
19 procedure set forth in this paragraph, the designated documents or information shall be treated  
20 according to the designation until the matter is resolved according to the procedures described in  
21 Paragraph 8 below, and counsel for all parties shall be responsible for marking all previously  
22 unmarked copies of the designated material in their possession or control with the specified  
23 designation. A party that makes original documents or materials available for inspection need not  
24 designate them as Confidential Information until after the inspecting party has indicated which  
25 materials it would like copied and produced. During the inspection and before the designation and  
26 copying, all of the material made available for inspection shall be considered Confidential  
27 Information.

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1           3.       All Confidential Information produced or exchanged in the course of this case (not  
2 including information that is publicly available) shall be used by the party or parties to whom the  
3 information is produced solely for the purpose of this case. Confidential Information shall not be  
4 used for any commercial competitive, personal, or other purpose.

5           4.       Except with the prior written consent of the other parties, or upon prior order of this  
6 Court obtained upon notice to opposing counsel, Confidential Information shall not be disclosed to  
7 any person other than:

8                   (a)     counsel for the respective parties to this litigation, including  
9 in-house counsel and co-counsel retained for this litigation;

10                  (b)     employees of such counsel, including copy services;

11                  (c)     individual parties or officers or employees of a party, to the  
12 extent deemed necessary by counsel for the prosecution or defense  
13 of this litigation;

14                  (d)     consultants or expert witnesses retained for the prosecution  
15 or defense of this litigation, provided that each such person shall  
16 execute a copy of the Certification annexed to this Order (which  
17 shall be retained by counsel to the party so disclosing the  
18 Confidential Information and made available for inspection by  
19 opposing counsel during the pendency or after the termination  
20 of the action only upon good cause shown and upon order of  
21 the Court) before being shown or given any Confidential

22 Information, and provided that if the party chooses a consultant  
23 or expert employed by an opposing party, the party shall notify  
24 the opposing party, or designating non-party, before disclosing  
25 any Confidential Information to that individual and shall give  
26 the opposing party an opportunity to move for a protective  
27 order preventing or limiting such disclosure;

28                  (e)     any authors or recipients of the Confidential Information;

1 (f) the Court, court personnel, and court reporters, including  
2 discovery masters or referees appointed by the Court and associated  
3 personnel;

4 (g) witnesses (other than persons described in Paragraph 4(e)).

5 A witness shall sign the Certification before being shown a  
6 confidential document. Confidential Information may be disclosed  
7 to a witness who will not sign the Certification only in a deposition  
8 at which the party who designated the Confidential Information is  
9 represented or has been given notice that Confidential Information  
10 produced by the party may be used. At the request of any party, the  
11 portion of the deposition transcript involving the Confidential  
12 Information shall be designated "Confidential" pursuant to  
13 Paragraph 2 above. Witnesses shown Confidential Information shall  
14 not be allowed to retain copies.

15 (h) private mediators retained in furtherance of settlement or  
16 dismissal; and

17 (i) any person designated by the Court in the interest of justice,  
18 upon such term as the Court may deem proper.

19 5. Any persons receiving Confidential Information shall not reveal or discuss such  
20 information to or with any person who is not entitled to receive such information, except as set  
21 forth herein. If a party or any of its representatives, including counsel, inadvertently discloses any  
22 Confidential Information to persons who are not authorized to use or possess such material, the  
23 party shall provide immediate written notice of the disclosure to the party whose material was  
24 inadvertently disclosed. If a party has actual knowledge that Confidential Information is being  
25 used or possessed by a person not authorized to use or possess that material, regardless of how the  
26 material was disclosed or obtained by such person, the party shall provide immediate written  
27 notice of the unauthorized use or possession to the party whose material is being used or  
28 possessed. No party shall have an affirmative obligation to inform itself regarding such possible

1 use or possession.

2           6.       In connection with discovery proceedings as to which a party submits Confidential  
3 Information, all documents and chamber copies containing Confidential Information which are  
4 submitted to the Court shall be filed with an appropriate "Request to Seal Documents" pursuant to  
5 Local Rule 141(b).

6           7.       A party may designate as "Confidential Information" documents or discovery  
7 materials produced by a non-party by providing written notice to all parties of the relevant  
8 document numbers or other identification within thirty (30) days after receiving such documents  
9 or discovery materials. Any party or non-party may voluntarily disclose to others without  
10 restriction any information designated by that party or nonparty as Confidential Information. If a  
11 party produces materials designated Confidential Information in compliance with this Order, that  
12 production shall be deemed to have been made consistent with any confidentiality or privacy  
13 requirements mandated by local, state or federal laws.

14           8.       If a party contends that any material is not entitled to confidential treatment, such  
15 party may at any time give written notice of its objection to all parties. The objecting and the  
16 designating parties shall promptly confer in an attempt to resolve their differences. If the  
17 designating and objecting parties are unable to resolve their differences, the party or non-party  
18 who designated the material shall have twenty (20) calendar days from the receipt of the written  
19 objection to file with the court a motion for protective order designating the material as  
20 confidential. The party or non-party seeking the order has the burden of establishing that the  
21 document is entitled to protection. In the case of designations received within forty (40) calendar  
22 days of the date set for the beginning of trial, the objecting party shall have half of the remaining  
23 time before trial in which to raise an objection to the designation. If an objection is received  
24 within twenty (20) calendar days of the date set for the beginning of trial, the designating party  
25 must file its motion for protective order on an ex parte basis with a request for an order  
26 shortening time on the hearing in order to attempt to have the matter heard before the beginning  
27 of trial. If the matter has not been heard before trial, the issue may be heard by the trial judge in  
28 pretrial proceedings.

1           9.       Notwithstanding any challenge to the designation of material as Confidential  
2 Information, all documents shall be treated as such and shall be subject to the provisions hereof  
3 unless and until one of the following occurs:

4               (a)     the party or non-party who claims that the material is  
5 Confidential Information withdraws such designation in writing; or

6               (b)     the party or non-party who claims that the material is  
7 Confidential Information fails to apply to the Court for an order  
8 designating the material confidential within the time period  
9 specified above after receipt of a written challenge to such  
10 designation; or

11              (c)     the Court rules the material is not Confidential Information.

12           10.     All provisions of this Order restricting the communication or use of Confidential  
13 Information shall continue to be binding after the conclusion of this action; unless otherwise  
14 agreed or ordered. Upon conclusion of the litigation, a party in the possession of Confidential  
15 Information, other than that which is contained in pleadings, correspondence, and deposition  
16 transcripts, shall either (a) return such documents no later than thirty (30) days after conclusion of  
17 this action to counsel for the party or non-party who provided such information, or (b) destroy  
18 such documents within the time period upon consent of the party who provided the information  
19 and certify in writing within thirty (30) days that the documents have been destroyed.

20           11.     Nothing herein shall be deemed to waive any applicable privilege or work product  
21 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material  
22 protected by privilege or work product protection. Any witness or other person, firm or entity  
23 from which discovery is sought may be informed of and may obtain the protection of this Order by  
24 written advice to the parties' respective counsel or by oral advice at the time of any deposition or  
25 similar proceeding.

26           12.     This Stipulation and Order may be executed by facsimile signature and in  
27 counterparts and each executed counterpart may be combined to create one original document.

28    ///

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13. The parties shall seek appropriate orders for the handling of "Confidential Information" at trial pursuant to Local Rule 141.1(b)(2).

**IT IS SO STIPULATED.**

DATED: January 20, 2015 WOOD, SMITH, HENNING & BERMAN LLP

By: /s/ Patrick S. Schoenburg  
DAVID F. WOOD  
PATRICK S. SCHOENBURG  
Attorneys for Defendant CALIFORNIA WATER SERVICE COMPANY

DATED: January 20, 2015 GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO, LLP

By: /s/ Greg R. McClintock  
GREG R. MCCLINTOCK  
NOAH P. PERCH-AHERN  
Attorneys for Defendant CALIFORNIA WATER SERVICE COMPANY

DATED: January 20, 2015 GREBEN & ASSOCIATES

By: /s/ Jan A. Greben  
JAN A. GREBEN  
BRETT A. BOON  
Attorneys for Plaintiffs VIOLA M. COPPOLA IRREVOCABLE TRUST, GARY COPPOLA and THE TRUST OF ANTHONY M. COPPOLA

DATED: January 20, 2015 GUALCO LAW

By: /s/ Lori J. Gualco  
LORI J. GUALCO  
Attorneys for Defendant RICHARD LASTER



1 DATED: January 20, 2015

WILLIAMS, JORDAN & BRODERSEN LLP

2

3

By:           /s/ Steven R. Williams          

4

STEVEN R. WILLIAMS

5

Attorneys for Defendant and Cross-Complainant, NASH  
PROPERITES, LLC; Cross-Defendants DAVID H.  
NASH and RICHARD P. NASH as the successor co-  
trustees of the WILLIAM P. NASH and JANE H.  
NASH RECOVABLE TRUST

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7

8 DATED: January 20, 2015

ALLEN MATKINS LECK GAMBLE MALLORY &  
NATSIS LLP

9

10

By:           /s/ Emily L. Murray          

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EMILY L. MURRAY  
TIM C. HSU

12

Attorneys for Defendant MARTIN AND MARTIN  
PROPERTIES, LLC

13

14 DATED: January 20, 2015

HERR, PEDERSEN & BERGLUND LLP

15

16

By:           /s/ Leonard C. Herr          

17

LEONARD C. HERR

18

Attorneys for Defendant CITY OF VISALIA

19 DATED: April 24, 2015

NELSON & ROZIER

20

21

By:           /s/ John L. Rozier          

22

JOHN L. ROZIER

23

Attorneys for Defendant and Cross-Complainant  
VISALIA UNIFIED SCHOOL DISTRICT

24

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**EXHIBIT**  
**CERTIFICATION**

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I hereby certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the Amended Stipulation and Protective Order Regarding Confidential Information filed on \_\_\_\_\_, 20\_\_\_\_, in the United States District Court, Eastern District of California, Fresno Division, in the matter of *Coppola v. Smith, et al.*, Case No. 1:11-CV-01257-AWI-BAM ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order. I will not reveal the Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information. I hereby consent to the jurisdiction of the United States District Court, Eastern District of California, Fresno Division for the purpose of enforcing the Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_.

By: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

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**ORDER**

The Court has reviewed the stipulation outlined above (Doc. 317) and adopts the stipulation except that the terms related to judicial intervention on a shortened timeline outlined in paragraph 8 will not be automatic, rather, the Court will determine on a case-by-case basis whether judicial intervention is warranted and whether the Court is able to accommodate shortened or expedited hearings. Relatedly, the parties are strongly encouraged to resolve any disputes arising from this agreement independently and without court involvement.

IT IS SO ORDERED.

Dated: May 7, 2015

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE