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6 Attorneys for Plaintiffs GARY COPPOLA, an individual; GARY COPPOLA, as SUCCESSOR  
7 TRUSTEE OF THE VIOLA M. COPPOLA IRREVOCABLE TRUST; and GARY COPPOLA,  
8 as TRUSTEE OF THE ANTHONY M. COPPOLA TRUST

9 UNITED STATES DISTRICT COURT

10 EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

11 GARY COPPOLA, an individual, GARY  
12 COPPOLA, as SUCCESSOR TRUSTEE OF  
13 THE VIOLA M. COPPOLA IRREVOCABLE  
14 TRUST; and GARY COPPOLA, as  
15 TRUSTEE OF THE ANTHONY M.  
16 COPPOLA TRUST;

17 Plaintiffs,

18 v.

19 PARAGON CLEANERS (formerly sued as  
20 GREGORY SMITH, an individual);  
21 RICHARD LASTER, an individual; THE  
22 JANE HIGGINS NASH TRUST; JANE  
23 NASH AS EXECUTOR OF THE ESTATE  
24 OF DECTAUR HIGGINS A/K/A THE  
25 ESTATE OF MABEL ELAINE HIGGINS;  
26 the CITY OF VISALIA, NASH  
27 PROPERTIES LLC [DOE #1], DAVID H.  
28 NASH, as the successor co-trustee of the  
JANE NASH TRUST, a trust created under  
the terms of the Last Will and Testament of  
Mabel Elaine Higgins Testamentary Trust and  
commonly known as the Jane Higgins Nash  
Trust [DOE #2], RICHARD P. NASH, as the  
successor co-trustee of the JANE NASH  
TRUST, a trust created under the terms of the  
Last Will and Testament of Mabel Elaine  
Higgins Testamentary Trust and commonly  
known as the Jane Higgins Nash Trust [DOE  
#3]

Defendants.

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

**STIPULATION AND [PROPOSED]  
ORDER ON UNDISPUTED MATTERS IN  
LIEU OF SUMMARY JUDGMENT  
BRIEFING**

*Honorable Judge Anthony W. Ishii*

1 Plaintiffs Gary Coppola, an individual, Gary Coppola, as successor trustee of the Viola M.  
2 Coppola Irrevocable Trust, and Gary Coppola as trustee of the Anthony M. Coppola Trust  
3 (“Plaintiffs”) and the City of Visalia (“City”) (collectively, “the Parties”) enter the following  
4 stipulation and request for an Order to narrow the issue for trial and in lieu of briefing these matters  
5 in summary judgment motions. Good cause exists because this stipulation was reached voluntarily  
6 and in good faith following the Parties’ meet and confer efforts made pursuant to the Court’s  
7 Scheduling Order and Local Rule 260 regarding Plaintiffs’ intent to file a motion for partial  
8 summary judgment.

9 The Parties hereby agree, stipulate and request that the Court enter an Order establishing that  
10 the following facts and elements are undisputed and thus require no proof at trial as to Plaintiffs’  
11 CERCLA claims.

- 12 1. The City’s sewer mains and trunks, only (without admission of any other portion of the  
13 sewer system, including the side sewers, laterals and/or wyes), are a facility within the  
14 meaning of CERCLA.
- 15 2. The City is a covered person within the meaning of 42 U.S.C. § 9607 (a)(1) as the owner  
16 and operator of the sewer mains and trunks (facility).
- 17 3. Plaintiffs have incurred at least some necessary response costs to meet the minimal  
18 threshold required for establishing their CERCLA claims against the City.

19 As to Plaintiffs’ CERCLA claims, the Parties specifically dispute the third element of  
20 CERCLA’s prima facie case as to whether “a ‘release’ or ‘threatened release’ of any ‘hazardous  
21 substance’ [occurred] from the facility.” 42 U.S.C. § 9607 – see e.g. *Stevens Creek Assoc. v.*  
22 *Barclays Bank of Cal*, 915 F.2d 1355, 1358 (1990). Additionally, the issues of allocation and/or  
23 damages remain an issue for trial and the Parties’ stipulation is not intended to waive any argument  
24 regarding these matters.

25 The Parties further agree, stipulate and request that the Court enter an Order dismissing,  
26 *without leave to amend*, the thirty-sixth, thirty-seventh, thirty-eighth and fortieth affirmative  
27 defenses, only, raised by the City in its Answer to Plaintiffs’ Eighth Amended Complaint [Document  
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1 406]. All remaining affirmative defenses raised in the City's Answer remain operative. The  
2 dismissal of said affirmative defenses is not intended to operate as an adjudication on the merits, and  
3 no admission shall be construed as a result of the dismissal.  
4

5 Dated: October 14, 2016

GREBEN & ASSOCIATES

7 /s/ Christine Monroe

8 Jan A. Greben

Christine M. Monroe

9 Attorneys for Plaintiffs and Counter Defendants

10 GARY COPPOLA, an individual; GARY

11 COPPOLA, as SUCCESSOR TRUSTEE OF

THE VIOLA M. COPPOLA IRREVOCABLE

12 TRUST; and GARY COPPOLA, as TRUSTEE

OF THE ANTHONY M. COPPOLA TRUST

13 Dated: October 14, 2016

HERR, PEDERSEN & BERGLUND LLP

15 /s/ Ron Statler (*per authorization*)

16 Leonard C. Herr

17 Ron Statler

Attorneys for Defendant CITY OF VISALIA

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20 **[PROPOSED] ORDER**

21 The Court, finding that the Parties have stipulated and agreed, and good cause appearing  
22 thereon, **HEREBY ORDERS:**

- 23 1. With respect to Plaintiffs' CERCLA claims, the following facts and elements are  
24 undisputed and thus require no proof at trial:
- 25 a. The City's sewer mains and trunks, only (without admission of any other portion of  
26 the sewer system, including the side sewers, laterals and/or wyes), are a facility  
27 within the meaning of CERCLA.

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- b. The City is a covered person within the meaning of 42 U.S.C. § 9607 (a)(1) as the owner and operator of the sewer mains and trunks (facility).
  - c. Plaintiffs have incurred at least some necessary response costs to meet the minimal threshold required for establishing their CERCLA claims against the City.
2. The issue of whether “a ‘release’ or ‘threatened release’ of any ‘hazardous substance’ [occurred] from the facility” pursuant to 42 U.S.C. § 9607, remains a disputed issue for trial as to the City’s liability. Additionally, the issues of allocation and/or damages remain an issue for trial and the Parties’ stipulation is not intended to waive any argument regarding these matters.
  3. The City’s thirty-sixth, thirty-seventh, thirty-eighth and fortieth affirmative defenses, as set forth in its Answer to the Eighth Amended Complaint in the above captioned case, are hereby dismissed *without leave to amend*, but the dismissal of said affirmative defenses is not intended to operate as an adjudication on the merits, and no admission shall be construed as a result of the dismissal.
  4. All remaining affirmative defenses raised in the City’s Answer remain operative.

IT IS SO ORDERED.

Dated: October 14, 2016

  
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SENIOR DISTRICT JUDGE