

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 SAN DIEGO UNIFIED PORT
12 DISTRICT, a public corporation,
13
14 Plaintiff,
15
16 v.
17 MONSANTO COMPANY;
18 SOLUTIA INC., and
19 PHARMACIA CORPORATION,
20
21 Defendants.

Case No.: 15cv578-WQH-AGS

ORDER

18 HAYES, Judge:

19 The matter before the Court is the Joint Motion for Judgment on Partial Findings
20 filed by Plaintiff San Diego Unified Port District and Defendants Monsanto Company,
21 Solutia Inc., and Pharmacia Corporation. (ECF No. 292).

22 **I. BACKGROUND**

23 On March 13, 2015, Plaintiffs San Diego Unified Port District (the Port District) and
24 the City of San Diego (the City) initiated this action by jointly filing a Complaint against
25 Defendants Monsanto Company, Solutia Inc., and Pharmacia Corporation (“collectively,
26 Monsanto”). (ECF No. 1). On August 3, 2015, the Port District filed a First Amended
27 Complaint (FAC) against Monsanto, the operative pleading in the Port District’s action.
28 (ECF No. 25). The Port District alleged causes of action for public nuisance, equitable

1 indemnity, and purpresture against Monsanto relating to PCB contamination of the San
2 Diego Bay (the Bay). *Id.* On September 28, 2016, the Court dismissed the equitable
3 indemnity claims. (ECF No. 81). The Port District proceeds in this litigation on the public
4 nuisance cause of action and the purpresture cause of action.

5 On August 30, 2018, the Court issued an Order (ECF No. 245) denying a motion for
6 leave to file a supplement to the FAC (ECF No. 214) filed by the Port District. The Court
7 stated that “[r]ecovery is limited to abatement in a representative action for public
8 nuisance,” and that “the Port District fails to provide an adequate legal basis for a
9 supplemental pleading for post-filing, pre-judgment damages related to its representative
10 public nuisance cause of action under California Code of Civil Procedure section 731.”
11 (ECF No. 245 at 7, 10). The Court noted that “[i]n its reply, the Port District states that it
12 is entitled to damages in relation to its purpresture claim. (ECF No. 222 at 6 n.3). The Port
13 District’s motion to supplement the FAC sought to include additional allegations related
14 only to its nuisance cause of action. The Court makes no determination as to relief available
15 to the Port District in connection to its purpresture cause of action.” (ECF No. 245 at 8
16 n.4).

17 On January 16, 2019, the parties filed a Joint Motion for Judgment on Partial
18 Findings. (ECF No. 292). The parties request that the Court enter partial judgment
19 pursuant to Fed. R. Civ. P. 56 “dismissing the Port District’s prayer for compensatory
20 damages and limiting its potential recovery to equitable relief.” *Id.* at 2. The parties state
21 that “[g]ood cause exists to grant this unopposed motion because the Court’s August 30,
22 2018 Order ruled that the Port District is limited to seeking equitable relief in its
23 representative capacity for public nuisance, and entering the partial stipulated judgment
24 will narrow the issues for discovery.” *Id.* The parties state that “the Court’s order left
25 undecided whether the Port District could pursue damages under its purpresture claim, but
26 the Port District is not independently arguing for compensatory damages for its purpresture
27 claim apart from the arguments related to the Port District’s representative public nuisance
28 claim rejected by the Court in its August 30 order.” *Id.* at 3. “The parties acknowledge

1 that the Port District does not agree that the foregoing ruling is legally correct, and that . .
2 . the Port District [may] fil[e] an appeal from any final judgment entered in this matter on
3 the ground that the Court’s foregoing ruling is erroneous.” *Id.* at 2.

4 The Court may enter partial summary judgment on individual issues that need not
5 be submitted to a jury for resolution. “If the court does not grant all relief requested” in
6 the summary judgment motion, “it may enter an order stating any material fact — including
7 an item of damages or other relief — that is not genuinely in dispute and treating the fact
8 as established in dispute and treating that fact as established in the case.” Fed. R. Civ. P.
9 56(g); *see, e.g., Hsingching Hsu v. Puma Biotechnology, Inc.*, No.
10 SACV1500865AGJCGX, 2018 WL 4945703, at *5 (C.D. Cal. Oct. 5, 2018) (“By the
11 parties’ agreement that there is no material dispute on the issues of public knowledge,
12 market efficiency, and Plaintiffs’ trading during the relevant period, the Court treats those
13 issues as established in Plaintiffs’ favor for the fraud-on-the-market presumption.”).
14 Federal courts have held that summary judgment as to the availability of a remedy is proper.
15 *See Loft v. Stationary Eng’rs, Local 39 PTF, LLC*, 87 F. Supp. 3d 1138, 1146 (N.D. Cal.
16 2015) (collecting cases).

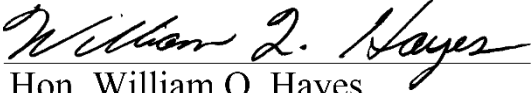
17 The Court having considered its Orders and all other pleadings and papers on file,
18 IT IS HEREBY ORDERED that the Joint Motion (ECF No. 292) is granted in part and
19 denied in part as follows:

- 20 1. Partial judgment is entered for Defendants and against the Port District under
21 Federal Rule of Civil Procedure 56, consistent with the Court’s August 30,
22 2018 Order (ECF No. 245), limiting the relief the Port District may seek in
23 this lawsuit in its representative capacity under a public nuisance theory to
24 equitable relief, including an order to abate and/or the establishment of an
25 abatement fund, and dismissing the Port District’s claims for compensatory
26 damages in its representative capacity under a public nuisance theory.
- 27 2. Consistent with the Court’s August 30, 2018 Order (ECF No. 245), the Port
28 District is precluded in this action from seeking compensatory damages in its

1 representative capacity under a public nuisance theory. The Port District may
2 appeal from any final judgment entered in this matter on the ground that the
3 Court's ruling, that the Port District is precluded in this action from seeking
4 compensatory damages for public nuisance in its representative capacity, is
5 erroneous.

- 6 3. The parties' stipulated request for partial judgment is not a request for a final
7 judgment pursuant to Federal Rule of Civil Procedure 54(b). This partial
8 judgment may become part of any final judgment entered in this matter.
- 9 4. The Joint Motion is otherwise denied.

10 Dated: January 30, 2019


11 Hon. William Q. Hayes
12 United States District Court