| 1 | Teresa S. Renaker – CA State Bar No. 187800 Lindsay Nako – CA State Bar No. 239090 LEWIS, FEINBERG, LEE, RENAKER & JACKSON P.C. 1330 Broadway, Suite 1800 Oakland, CA 94612 | | |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|--|
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| 4 | Telephone: (510) 839-6824 Facsimile: (510) 839-7839 | | |
| 5 | Attorneys for Plaintiffs | | |
| 6 | | | |
| 7 | IN THE UNITED STATES DISTRICT COURT | | |
| 8 | FOR THE NORTHERN DISTRICT OF CALIFORNIA | | |
| 9 | SAN FRANCISCO DIVISION | | |
| 10 | | | |
| 11 | JERRY VAUGHN and THERESA | Case No. C03-5725 (SC) | |
| | TRAVERS, | STIPULATION AND [PROPOSED] | |
| 13 | Plaintiffs, | ORDER TO PERMIT PLAINTIFFS TO FILE A SECOND AMENDED | |
| 14 15 | v. BAY ENVIRONMENTAL MANAGEMENT) | COMPLAINT | |
| | INC., CAESAR NUTI, DENNIS VARNI, FSC) SECURITIES CORPORATION, and | | |
| 17 | JERROLD N. WEINBERG | | |
| 18 | Defendants. | | |
| 19 | | | |
| 20 | FSC SECURITIES CORPORATION and JERROLD N. WEINBERG, | | |
| 21 | Cross-Claimants, | | |
| 22 | v. (| | |
| 23 | BAY ENVIRONMENTAL MANAGEMENT) INC., ESTATE OF PINA J. BARBIERI,) | | |
| 24 | CAESAR NUTI, and DENNIS VARNI, | | |
| 25 | Cross-Defendants | | |
| 26 | | | |
| 27 | // // | | |
| 28 | | | |
| | STIPULATION AND [PROPOSED] ORDER TO PERMIT COMPLAINT [CASE NO. C03-5725 (SC)] | PLAINTIFFS TO FILE A SECOND AMENDED Page 1 | |

| 1 | WHEREAS the parties have engaged in ongoing discovery on the merits of the | | |
|---------------------------------|----------------------------------------------------------------------------------------------------|--|--|
| 2 | allegations contained in Plaintiffs' First Amended Complaint ("Complaint"); and | | |
| 3 | WHEREAS Defendants Bay Environmental Management Inc., Caesar Nuti, and Dennis | | |
| 4 | Varni ("Bay Environmental Defendants"), and each of them, continue to deny any liability under | | |
| 5 | the Complaint; and | | |
| 6 | WHEREAS Defendants FSC Securities Corporation and Jerrold N. Weinberg also | | |
| 7 | continue to deny any liability under the Complaint, including, but not limited to denying that the | | |
| 8 | are or were fiduciaries to the Plans; and | | |
| 9 | WHEREAS Plaintiffs Jerry Vaughn and Theresa Travers ("Plaintiffs") have determined, | | |
| 10 | based upon Bay Environmental Defendants' discovery responses served on August 21, 2009, that | | |
| 11 | other persons should be identified as defendants and therefore removed from the class; and | | |
| 12 | WHEREAS naming additional defendants at this early stage of discovery in the case will | | |
| 13 | not prejudice Defendants; and | | |
| 14 | WHEREAS the Bay Environmental Defendants and Defendants FSC Securities Corp. and | | |
| 15 | Jerrold N. Weinberg consent under Fed. R. Civ. P. 15(a) to permit Plaintiffs to file the Second | | |
| 16 | Amended Complaint attached hereto as Exhibit A; and | | |
| 17 | WHEREAS the Bay Environmental Defendants and Defendants FSC Securities Corp. and | | |
| 18 | Jerrold N. Weinberg have agreed to waive notice and service of the Second Amended Complaint | | |
| 19 | and | | |
| 20 | NOW, THEREFORE, the parties to this action, by and through their undersigned | | |
| 21 | attorneys, hereby stipulate and respectfully request that the Court order that Plaintiffs file a | | |
| 22 | Second Amended Complaint in the form of the document attached hereto as Exhibit A. | | |
| 23 | Respectfully Submitted, | | |
| 24 | Dated: August 27, 2009 LEWIS, FEINBERG, LEE, | | |
| 25 | RENAKER & JACKSON, P.C. | | |
| 26 | By: <u>/s/</u> Lindsay Nako | | |
| 2728 | Attorneys for Plaintiffs JERRY VAUGHN and THERESA TRAVERS | | |
| _0 | Stipulation and [Proposed] Order to Permit Plaintiffs to File a Second Amended | | |
| | COMPLAINT [CASE No. C03-5725 (SC)] Page 2 | | |

| 1 | Dated: August 27, 2009 | MORGAN LEWIS & BOCKIUS LLP |
|----------|----------------------------------------------|-----------------------------------------------------------------------------|
| 2 | Ву | D. Ward Kallstrom |
| 3 | | Nicole A. Diller Angel T. Lin |
| 4 | | Attorneys for Defendants BAY ENVIRONMENTAL |
| 5 | | MANAGEMENT INC., CAESAR NUTI, |
| 6 | | ESTATE OF PINA J. BARBIERI and DENNIS VARNI |
| 7 | | |
| 8 | | WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP |
| 10 | | |
| | By | Bernard Gehlhar |
| 11 | | Emily Wood Attorneys for Co-Defendants FSC SECURITIES CORPORATION and |
| 12 | | FSC SECURITIES CORPORATION and JERROLD N. WEINBERG |
| 13 | | |
| 14 | | |
| 15 | TROPUSED | <u>ORDER</u> |
| 16 | PURSUANT TO STIPULATION, IT IS SO ORL | DERED. |
| 17 | September 1, 2009 | Hon Samuri Is so ordered |
| 18 19 | | Hon. Samuel Conti |
| 20 | | |
| 21 | | DISTRICTOR |
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| | STIPULATION AND [PROPOSED] ORDER TO PERMIT P | A ANTHEES TO THE A SECOND AMENDED |

ATTESTATION I hereby attest that for all conformed signatures indicated by a /s/, the signatory has concurred in the filing of this document. Dated: August 28, 2009 By: Teresa S. Renaker Teresa S. Renaker Lindsay Nako LEWIS, FEINBERG, LEE, RENAKER & JACKSON P.C. 1330 Broadway, Suite 1800 Oakland, CA 94612 Telephone: (510) 839-6824 Facsimile: (510) 839-7839 STIPULATION AND [PROPOSED] ORDER TO PERMIT PLAINTIFFS TO FILE A SECOND AMENDED COMPLAINT [CASE NO. C03-5725 (SC)] Page 4