

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JERRY VAUGHN and THERESA TRAVERS,	)	Case No. 03-5725 SC
	)	
Plaintiffs,	)	SUA SPONTE ORDER FOR NOTICE
v.	)	OF CLASS CERTIFICATION TO
	)	<u>CLASS MEMBERS</u>
	)	
BAY ENVIRONMENTAL MANAGEEMNT, INC., CAESAR NUTI, DENNIS VARNI, MARIO AQUILINO, LOYD BONAFANTE SR., JOSEPH DELLA ZOPPA, ESTATE OF RICHARD GRANZELLA SR., EDWARD MENOSSE, PASQUALE PARENTI, FSC SECURITIES CORPORATION, and JERROLD N. WEINBERG,	)	
	)	
Defendants.	)	
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FSC SECURITIES CORPORATION and JERROLD N. WEINBERG,	)	
	)	
Cross-Claimants,	)	
	)	
v.	)	
	)	
BAY ENVIRONMENTAL MANAGEMENT INC., ESTATE OF PINA J. BARBIERI, CAESAR NUTI, and DENNIS VARNI,	)	
	)	
Cross-Defendants.	)	
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This Court recently certified two classes pursuant to a Motion to Certify Class submitted by Plaintiffs. Docket No. 134 ("Order"). Defendants Bay Environmental Management, Inc., Caesar

1 Nuti, Dennis Varni, the Estate Of Pina Barbieri, FSC Securities  
2 Corporation and Jerold Weinberg do not oppose certification, have  
3 jointly stipulated with Plaintiffs that certification of the  
4 classes is proper.<sup>1</sup> Docket No. 134 ("Order"); Docket No. 112  
5 ("Mot."); Docket No. 133 ("Stipulation"). The Court granted the  
6 request and certified the class pursuant to Rule 23(b)(1)(A),  
7 23(b)(1)(B), and/or 23(b)(2) of the Federal Rules of Civil  
8 Procedure. Docket No. 134.

9 The Court notes that a Rule 23(b)(1)(B) class is particularly  
10 appropriate in cases that involve charges of "a breach of trust by  
11 an indenture trustee or other fiduciary similarly affecting the  
12 members of a large class of beneficiaries, requiring an accounting  
13 or similar procedure to restore the subject of the trust." Ortiz  
14 v. Fibreboard Corp., 527 U.S. 815, 834 (1999) (citation omitted).  
15 Plaintiffs are bringing this suit under section 502(a)(2) of the  
16 Employee Retirement Income Security Act ("ERISA"), 29 U.S.C.  
17 § 1132(a)(2), which permits them only to recover for losses to an  
18 ERISA plan, 29 U.S.C. § 1109(a). Such an ERISA suit is an  
19 appropriate context for certifying a non-opt out class under  
20 23(b)(1)(B). See In re Syncor Erisa Litig., 227 F.R.D. 338, 346-47  
21 (C.D. Cal. 2005) (certifying class under Rule 23(b)(1)(B); see also  
22 Colesberry v. Ruiz Food Prods., No. 04-5516, 2006 U.S. Dist. LEXIS  
23 45024, \*15-16 (E.D. Cal. June 30, 2006) (collecting cases approving  
24 ERISA class actions under Rule 23(b)(1)(A)-(B)). As the classes  
25 are defined, the interests of class members in the current suit are  
26 limited to their interests in the two Plans at issue. Adjudication

27 \_\_\_\_\_  
28 <sup>1</sup> The Court notes that all other named defendants have not yet  
appeared in this matter.

1 relating to the interests of certain class members could therefore  
2 be dispositive of the interests of other members, and at this time  
3 the Court can identify no countervailing considerations that would  
4 render certification under Rule 23(b)(1)(B), with no right to opt  
5 out, inappropriate.

6 Under Rule 23(c)(2), notice is not required for classes that  
7 are certified under Rule 23(b)(1) or 23(b)(2). See Fed. R. Civ. P.  
8 23(c)(2). However, Rule 23(c)(1) allows the court to direct notice  
9 to the class "as appropriate." Id. 23(c)(1). The Court, sua  
10 sponte, finds that it would be appropriate to keep all class  
11 members apprised of the status of this suit, even though the Court  
12 finds no reason to permit members to opt out of the class at this  
13 time. Plaintiffs are ORDERED to prepare and submit to this Court a  
14 Class Notice, within fourteen (14) days of the date of this Order  
15 or sooner if practicable. The Notice will notify all prospective  
16 class members of the certification of this class, and will conform  
17 with the requirements of Rule 23(c)(2)(B) of the Federal Rules of  
18 Civil Procedure (except that it should not notify class members of  
19 a right to be excluded from the class). Plaintiffs will attach a  
20 proposed order approving the Notice and requiring distribution to  
21 the class members.

22  
23 IT IS SO ORDERED

24  
25 Dated: October 2, 2009

26   
UNITED STATES DISTRICT JUDGE