

EXHIBIT 1

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JERRY VAUGHN and THERESA
TRAVERS,

Plaintiffs,

v.

BAY ENVIRONMENTAL MANAGEMENT
INC., CAESAR NUTI, DENNIS VARNI,
MARIO AQUILINO, LOYD BONFANTE
SR., JOSEPH DELLA ZOPPA, ESTATE OF
RICHARD GRANZELLA SR., EDWARD
MENOSSE, PASQUALE PARENTI, FSC
SECURITIES CORPORATION, AND
JERROLD N. WEINBERG

Defendants.

FSC SECURITIES CORPORATION and
JERROLD N. WEINBERG,

Cross-Claimants,

v.

BAY ENVIRONMENTAL MANAGEMENT
INC., ESTATE OF PINA J. BARBIERI,
CAESAR NUTI, DENNIS VARNI,

Cross-Defendants.

Case No. C03-5725 SC

**STIPULATION AND AGREEMENT OF
COMPROMISE AND SETTLEMENT
OF CLASS ACTION**

1 Subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil
2 Procedure, this Settlement is entered into by Plaintiffs Jerry Vaughn and Theresa Travers,
3 individually and on behalf of the Class, and the Company, the Individual Defendants, the Estate
4 of Pina Barbieri and the FSC Defendants to settle this action on, and subject to, the terms and
5 conditions described below. Capitalized terms and phrases have the meanings provided in
6 Section 1 below.

7 **RECITALS**

8 WHEREAS, Named Plaintiffs commenced the Litigation asserting various claims for
9 relief on behalf of the Class against the Defendants, all of which claims are disputed by the
10 Defendants;

11 WHEREAS, the FSC Defendants filed the Cross-Claim asserting various claims for
12 relief against the Company, Caesar Nuti, Dennis Varni, and the Estate of Pina Barbieri;

13 WHEREAS, the Litigation is pending before the Hon. Samuel Conti of the United
14 States District Court for the Northern District of California;

15 WHEREAS, the Court certified the Named Plaintiffs' claims for treatment as a
16 mandatory class pursuant to Fed. R. Civ. P. 23(b)(1)(A), 23(b)(1)(B), and/or 23(b)(2) and
17 appointed Lewis, Feinberg, Lee, Renaker & Jackson, P.C. as Class Counsel in the Litigation;

18 WHEREAS, discovery is complete in the Litigation;

19 WHEREAS, the Parties are desirous of promptly and fully resolving and settling with
20 finality all of the Released Claims;

21 WHEREAS, to accomplish that goal, the Parties have reached an agreement on the
22 terms and conditions set forth in this Settlement;

23 NOW, THEREFORE, the Parties, in consideration of the promises, covenants and
24 agreements described in this Agreement and for good and valuable consideration acknowledged
25 by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby
26 mutually agree as follows:

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I. DEFINITIONS

1 Except as otherwise specified, the following terms used in this Settlement shall have the
2 meanings ascribed to them as set forth below:

3 1.1. “*Administrator*” means Nicholas L. Saakvitne, pursuant to the terms of this
4 Settlement and the Fiduciary Services Agreement attached as Exhibit E.

5 1.2. “*Complaint*” means the Second Amended Complaint filed in the Litigation on
6 September 2, 2009.

7 1.3. “*BEM Defendants*” mean the Individual Defendants, the Company and the Estate
8 of Pina Barbieri.

9 1.4 “*BEM Releasees*” mean the BEM Defendants and, to the extent applicable by the
10 nature of the entity, his, her or its respective present and former directors, officers, trustees,
11 participating employers, agents, employees, controlling stockholders, insurers, co-insurers,
12 attorneys, accountants, actuaries, advisors, auditors, banks, parent entities, subsidiaries, affiliates,
13 professional advisors, administrators, representatives, partners, and co-venturers, as well as the
14 predecessors, successors, and assigns of all such persons or entities.

15 1.5 “*BEM Releasers*” mean the BEM Defendants and, to the extent applicable by the
16 nature of the entity, his, her or its predecessors, successors, attorneys, partners, heirs, executors,
17 administrators, beneficiaries, representatives, agents and assigns.

18 1.6. “*Class*” means (a) all participants in and beneficiaries of the Pension Plan from
19 January 1, 2000, through the final date on which the Pension Plan’s assets were transferred
20 entirely to interest bearing investments, excluding any participants, any beneficiaries, and any
21 estates of deceased participants or beneficiaries, who are or have previously been named as
22 Defendants in this action; and (b) all participants in and beneficiaries of the Retirement Plan from
23 January 1, 2000, through the final date on which the Retirement Plan’s assets were transferred
24 entirely to interest bearing investments, excluding any participants, any beneficiaries, and any
25 estates of deceased participants or beneficiaries, who are or have previously been named as
26 Defendants in this action.

27 1.7. “*Class Counsel*” means Lewis, Feinberg, Lee, Renaker & Jackson, P.C.

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1.8. “Class Member(s)” means any member of the Class, individually or collectively.

1.9. “Class Notice” means the Notice of Class Action Settlement, substantially in the form attached as Exhibit B.

1.10. “Company” means Bay Environmental Management, Inc.

1.11. “Court” means the United States District Court for the Northern District of California.

1.12. “Cross-Claim” means FSC Securities Corporation and Jerrold N. Weinberg’s First Amended Cross-Claim filed by the FSC Defendants on August 11, 2005.

1.13. “Defendants” means the BEM Defendants and the FSC Defendants.

1.14. “Defendants’ Released Claims” mean any and all claims asserted in the Litigation or the Cross-Claim, including claims relating to the institution or prosecution of the Litigation and claims for contribution or indemnification relating to the Litigation.

1.15. “Effective Date” means the date when all of the following have occurred: (a) the Final Judgment has been entered by the Court; and (b) the time to appeal the Final Judgment has expired or, if appealed, the Final Judgment has been upheld on appeal. In the event no Final Judgment is entered or the Final Judgment is not upheld on appeal, the Effective Date shall not occur and the Settlement shall terminate pursuant to the terms set forth in Paragraph 6.3.

1.16. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001 *et seq.*

1.17. “Escrow Agent” means First Republic Securities Company, LLC.

1.18. “Final Approval and Fairness Hearing” means a hearing by the Court to (a) review this Settlement and determine whether the Court should give final approval to this Settlement; (b) consider any timely objections made pursuant to Paragraph 5.6 and all responses by the Parties; (c) give final approval to this Settlement under Rule 23(e) of the Federal Rules of Civil Procedure; (d) consider the request for attorneys fees and expenses submitted by Class Counsel; and (e) consider the Named Plaintiffs’ requests for incentive awards.

1 1.19. “*Final Judgment*” means the Order of Final Approval of Class Action Settlement
2 and Entry of Final Judgment entered by the Court dismissing the Litigation with prejudice,
3 substantially in the form attached as Exhibit C.

4 1.20. “*FSC Defendants*” means FSC Securities and Jerrold N. Weinberg.

5 1.21. “*FSC Releasees*” means the FSC Defendants and, to the extent applicable by the
6 nature of the entity, his or its respective present and former directors, officers, trustees,
7 participating employers, agents, employees, controlling stockholders, insurers, co-insurers,
8 attorneys, accountants, actuaries, advisors, auditors, banks, parent entities, subsidiaries, affiliates,
9 professional advisors, administrators, representatives, partners, and co-venturers, as well as the
10 predecessors, successors, and assigns of all such persons or entities.

11 1.22. “*FSC Releasers*” means the FSC Defendants and, to the extent applicable by the
12 nature of the entity, his or its predecessors, successors, attorneys, partners, heirs, executors,
13 administrators, beneficiaries, representatives, agents and assigns.

14 1.23. “*Implementation Notice*” means the Notice of Settlement Implementation,
15 substantially in the form attached as Exhibit D.

16 1.24. “*Independent Fiduciary*” means the independent fiduciary retained by Defendants
17 under Paragraph 4.1 to ensure compliance with Prohibited Transaction Class Exemption 2003-39,
18 as amended.

19 1.25. “*Individual Defendants*” means Caesar Nuti, Dennis Varni, Mario Aquilino, Loyd
20 Bonfante, Sr., Joseph Della Zoppa, Estate of Richard Granzella, Sr., Edward Menosse, and
21 Pasquale Parenti.

22 1.26. “*Litigation*” means the above-captioned lawsuit, Civil Case No. C 03-5725-SC
23 (N.D. Cal.), and all contentions, claims, cross-claims, and defenses at issue in that lawsuit.

24 1.27. “*Named Plaintiffs*” means Jerry Vaughn and Theresa Travers.

25 1.28. “*Net Settlement Fund*” means the Settlement Fund after payment of (i) any fees
26 and expenses which the Court may award to Class Counsel; (ii) any incentive awards the Court
27 may award to Named Plaintiffs; (iii) escrow fees; (iv) any taxes on the interest earned on the
Settlement Fund and associated reporting costs; and (v) in the event the IRS fails to issue a

1 compliance statement and a favorable determination on the tax qualified status of the revived
2 Plans, any taxes that must be withheld under federal or state tax laws.

3 1.29. “*Party*” or “*Parties*” means Named Plaintiffs, Defendants, and the Estate of
4 Barbieri, individually or collectively.

5 1.30. “*Pension Plan*” means the Bay Environmental Pension Plan.

6 1.31. “*Plan of Allocation*” means the terms and procedures by which the Settlement
7 Fund shall be distributed among the Class Members, as proposed in the Class Notice, or such
8 other plan of allocation as the Court shall approve.

9 1.32. “*Plans*” mean the Pension Plan and the Retirement Plan.

10 1.33. “*Preliminary Approval Order*” means the [Proposed] Order Preliminarily
11 Approving Class Action Settlement, Directing Notice to Class, and Setting Final Approval and
12 Fairness Hearing, substantially in the form attached as Exhibit A.

13 1.34. “*Released Claims*” means any and all claims of any nature whatsoever, whether
14 accrued or not, whether known or unknown, in law or in equity, which were or could have been
15 asserted in the Complaint or that would be barred by principles of *res judicata* had the claims
16 asserted in the Complaint been fully litigated and resulted in a final judgment or order. Class
17 Counsel represent that they are not aware of any claims against Defendants not included in the
18 Released Claims, other than potential de minimis claims relating to the Securities Settlement
19 referenced in Paragraph 2.1.3.

20 1.35. “*Released Persons*” means Defendants, and, to the extent applicable by the nature
21 of each Defendant, their respective present and former directors, officers, trustees, participating
22 employers, agents, employees, controlling stockholders, insurers, co-insurers, attorneys,
23 accountants, actuaries, advisors, auditors, banks, parent entities, subsidiaries, affiliates,
24 professional advisors, administrators, representatives, partners, and co-venturers, as well as the
25 predecessors, successors, and assigns of all such persons or entities.

26 1.36. “*Releasers*” means Named Plaintiffs and each Class Member, individually and
27 collectively, as well as his, her, or its predecessors, successors, attorneys, partners, heirs,
executors, administrators, beneficiaries, representatives, agents, and assigns.

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1.37. “*Retirement Plan*” means the profit-sharing component of the Bay Environmental Retirement Plan.

1.38. “*Settlement*” means this Stipulation and Agreement of Compromise and Settlement of Class Action, including its exhibits.

1.39. “*Settlement Fund*” means the one million and nine hundred thousand dollar (\$1.9 million) fund established by Defendants pursuant to Paragraph 5.2, below, plus interest earned thereon from the date of deposit into escrow pursuant to Paragraph 5.2 below, to the date of distribution to Class Members.

2. PAYMENT TO THE CLASS MEMBERS

2.1. Payments to Class Members

2.1.1. Following application for, and Court determination of, the amount (if any) of fees and expenses payable to Class Counsel and the incentive awards to Named Plaintiffs, the Escrow Agent shall cause the payment of such awarded amounts from the Settlement Fund in the manner described in Paragraphs 5.10.1.1 and 5.10.1.2.

2.1.2. After a) the Internal Revenue Service’s disposition of the voluntary correction program filing discussed in Paragraph 5.3.1, b) the filing of the 2004 through 2009 Form 5500s with the Department of Labor as discussed in Paragraph 5.3.2, and c) the filing and disposition of the Form 5310s as discussed in Paragraph 5.3.1, the Parties shall provide written authorization to the Escrow Agent to pay the Net Settlement Fund to the Plans. The Administrator shall allocate among and distribute the Net Settlement Fund to the Class Members according to the Plan of Allocation in the manner and at the time described in Paragraphs 5.3.3 and 5.10.1.3. Funds held by the Plans pending distribution will be invested primarily in investments designed to preserve principal consistent with the requirements under ERISA.

1 2.1.3. Along with the Net Settlement Fund, the Administrator shall also distribute
2 the approximately \$35,000 recently received by the Plans in connection with the settlement of
3 securities class claims (the “Securities Settlement”), reduced by taxes, if any, that must be
4 withheld under federal or state tax laws. The Administrator shall bear sole responsibility for
5 determining the method of allocating the Securities Settlement among the Plans’ participants
(including, but not limited to, the Class Members).

6 2.2. Deceased Class Members

7 In the event a Class Member is deceased, payment shall be made to: (a) the Class Member’s
8 designated beneficiary or beneficiaries under the Plans, if such can be ascertained from records of
9 the Plans; or (b) the executor, personal representative, or administrator that has obtained letters of
10 appointment to administer the decedent’s estate through formal or informal appointment
11 procedures; or (c) such other representative that presents legal evidence of entitlement to the
12 decedent’s payment in form and substance satisfactory to the Administrator.

13 2.3. Incapacitated Class Members

14 In the event a Class Member has been determined by a court of competent jurisdiction not to
15 have the capacity to manage such individual’s property, payment shall be made to: (a) the duly
16 appointed conservator or guardian of such legally incompetent person that has obtained letters of
17 appointment to administer such person’s estate through formal or informal appointment
18 procedures, or (b) such other legal representative that presents legal evidence of entitlement to the
19 legally incapacitated person’s payment in form and substance satisfactory to the Administrator.

20 **3. RELEASE AND DISCHARGE**

21 3.1. Release and Discharge by Named Plaintiffs and the Class Members

22 In consideration for the other terms of this Settlement, upon the filing of the
23 Implementation Notice, Named Plaintiffs and each of the Class Members fully, completely and
24 finally settle and discharge the Released Persons from the Released Claims. The Parties stipulate
25 and agree that, by the terms of the Final Order, each Class Member shall have and be deemed to
26 have waived and relinquished, to the fullest extent permitted by law, any and all provisions, rights
27 and benefits conferred by Section 1542 of the California Civil Code or any federal, state, or

foreign law, rule, regulation or common law doctrine that is similar, comparable, equivalent, or identical to, or which has the effect of, Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Notwithstanding the provisions of Section 1542 and any similar provisions, rights and benefits conferred by any law, rule, regulation or common law doctrine of California or in any federal, state or foreign jurisdiction, the Parties understand and agree that the releases to be given pursuant to this Settlement shall include Released Claims that are not known or suspected to exist at the time such releases are given. Nothing herein, however, shall preclude any action or claim related to the implementation and/or enforcement of this Settlement. Named Plaintiffs and each Class Member provide this release individually and on behalf of the Releasers. Upon the filing of the Implementation Notice, Named Plaintiffs and each and every Class Member shall be bound by this Settlement, shall have exclusive recourse to the benefits, rights, and remedies provided by this Settlement regarding the Released Claims and shall be precluded from pursuing any other action, demand, suit, or other claim, in any judicial or administrative forum whatsoever, against the Released Persons with respect to the Released Claims.

3.2. Release and Discharge by the Plans

In consideration for the other terms of this Settlement, upon the filing of the Implementation Notice, the Independent Fiduciary, on behalf of the Plans, fully, completely, and finally settles and discharges the Released Persons from the Released Claims. Upon the filing of the Implementation Notice, the Plans shall be bound by this Settlement, shall have exclusive recourse to the benefits, rights, and remedies provided by this Settlement regarding the Released Claims, and shall be precluded from pursuing any other action, demand, suit, or other claim in any judicial or administrative forum whatsoever, against the Released Persons with respect to the Released Claims.

3.3. Defendant Entities' Mutual Release

1 In consideration for the other terms of this Settlement, upon the filing of the
 2 Implementation Notice, the BEM Releasors absolutely and unconditionally release and forever
 3 discharge the FSC Releasees from Defendants' Released Claims. In consideration for the other
 4 terms of this Settlement, upon the filing of the Implementation Notice, the FSC Releasors
 5 absolutely and unconditionally release and forever discharge the BEM Releasees from
 6 Defendants' Released Claims.

7 **4. INDEPENDENT FIDUCIARY**

8 4.1. Defendants will retain the Independent Fiduciary, who has no relation to or interest
 9 in any of the Parties, to ensure compliance with Prohibited Transaction Class Exemption 2003-39,
 10 as amended, and to provide a release on behalf of the Plans as referenced in Section 3.2, *infra*. In
 11 so doing, the Independent Fiduciary will make determinations that shall include whether: (i) the
 12 Settlement, including the scope of the release and amount of the attorney's fee award to be paid
 13 from the recovery, is reasonable in light of the Plans' likelihood of full recovery, the risks and
 14 costs of litigation, and the value of the claims foregone; (ii) the terms and conditions of the
 15 transaction are no less favorable to the Plans than comparable arms-length terms and conditions
 16 that would have been agreed to by unrelated parties in similar circumstances; and (iii) the
 17 transaction is not part of an agreement, arrangement, or understanding designed to benefit a party
 18 in interest.

19 4.2 The Settlement is contingent on the Independent Fiduciary's approval. All Parties
 20 shall cooperate in providing such information to the Independent Fiduciary as may be required or
 21 requested. The failure of the Independent Fiduciary to approve this Settlement shall render this
 22 Settlement null and void and the Parties shall return to their respective positions as contemplated
 23 in Paragraph 6.3.

24 4.3. Written notice of the Independent Fiduciary's decision to approve or decline to
 25 approve the Settlement shall be given to counsel for each Party no later than 45 days before the
 26 date set for the Final Approval and Fairness Hearing.

1 **5. PROCEDURES AND TIMING FOR APPROVAL AND PAYMENT OF SETTLEMENT FUND**

2 5.1. Preliminary Approval

3 The Parties will submit this Settlement to the Court for preliminary approval of its terms and
4 for approval of the steps to be taken to obtain its final approval. The Parties will request that the
5 Court's preliminary approval of this Settlement be embodied in a Preliminary Approval Order, a
6 proposed form of which is attached as Exhibit A.

7 5.2. Deposit of Settlement Fund

8 Within ten (10) business days after this Settlement is filed with the Court for preliminary
9 approval, Defendants shall pay \$1.9 million into a First Republic Bank escrow account, allocated
10 among Defendants with the BEM Defendants paying \$1,350,000 and the FSC Defendants paying
11 \$550,000. The terms of the agreement governing the escrow account shall be negotiated in good
12 faith by counsel for the Parties. Pending distribution to the Plans, the monies held in the Escrow
13 Account shall be invested solely in direct obligations of the U.S. Government.

14 5.3. Governmental Filings

15 5.3.1. As soon as practicable following the issuance of the Preliminary Approval
16 Order, the Administrator will amend the Plans so as to conform their terms to comply with the
17 changes that have been made to the Internal Revenue Code since the time the Plans were initially
18 terminated. The Administrator will promptly submit the amended Plans to the Internal Revenue
19 Service ("IRS") under the IRS' voluntary compliance program ("VCP") and the Form 5310s
20 under the IRS determination letter program to seek the IRS's approval of the amendments to the
21 Plans and to obtain compliance statements and determination letters from the IRS on the tax
22 qualified status of the Plans. Defendants shall pay any fees, penalties, and excise taxes imposed
23 by any government agency in connection with these filings. No Party guarantees the IRS will
24 issue a favorable ruling and this Settlement shall be fully effective even if the IRS fails to issue a
25 favorable ruling. If the IRS fails to issue a favorable ruling on the tax qualified status of the
26 Plans, all distributions from the Plans may be taxable.

1 5.3.2. As soon as practicable following the issuance of the Preliminary Approval
 2 Order, the Administrator will submit the Annual Return/Report of Employee Benefit Plan Form
 3 5500 for the Plans for Plan Years 2004 through 2009 under the Department of Labor's Delinquent
 4 Filer Voluntary Compliance Program. For 2010 and thereafter, Form 5500 filings for the Plans
 shall be the responsibility of the Administrator.

5 5.3.3. The Administrator shall serve on Class Counsel and counsel for
 6 Defendants at the addresses set forth below copies of (1) all filings and other written
 7 communications to any government agency regarding either or both of the Plans, with the
 8 exception of tax reporting of distributions to Class Members; (2) all written communications from
 9 any government agency regarding the Plans; and (3) all written communications to participants in
 10 either or both of the Plans regarding the Plans, with the exception of tax reporting of distributions.

11 Teresa S. Renaker
 12 Lewis, Feinberg, Lee, Renaker & Jackson, P.C.
 13 476 - 9th Street
 Oakland, CA 94607

14 Nicole Diller
 15 Morgan, Lewis & Bockius LLP
 One Market, Spear Street Tower
 San Francisco, CA 94105

16 5.3.4. The implementation of the Settlement under Paragraph 5.10.1.3 shall not
 17 occur until after the VCP filing referenced in Paragraph 5.3.1 and the Form 5310 filing referenced
 18 in Paragraph 5.3.1 are concluded. In the event that the IRS does not issue a compliance statement
 19 or favorable determination letter on the tax status of the Plans then: a) the Administrator shall
 20 calculate, withhold and properly report all applicable taxes from the distributions of the Net
 21 Settlement Fund from the Plans; and b) the Administrator shall have no obligation under 5.10.1.3
 22 to send Class Members election forms or information relating to the tax consequences of the
 23 Settlement Fund payments. The Administrator shall use reasonable efforts to obtain a compliance
 24 statement and favorable determination letter, provided no such efforts shall require an additional
 25 cost to the Plans' sponsor (except as provided in Section 5.3.1).

5.4 Notice to Class Members

5.4.1. Notice by Mail

Class Counsel shall mail the Class Notice to all Class Members not later than one week (7 days) after entry of the Court's Preliminary Approval Order by first-class mail, postage prepaid. The Parties will ask the Court to approve the Class Notice in the form attached as Exhibit B.

5.4.2. Additional Notices

To request a copy of the Class Notice, any individual or entity that believes he, she, or it is a Class Member and who did not receive a copy of the Class Notice must submit a written request to Class Counsel containing all of the following information: (a) the full name and, if applicable, Social Security Number of (i) the person making the request and (ii) the employee through whose services the person claims to be a Class Member; (b) the name used by such employee as of the time that his or her employment with the Company ended; and (c) the years during which such employee was employed with the Company. The request must be mailed by first-class mail, postage prepaid, to:

Teresa S. Renaker
Lewis, Feinberg, Lee, Renaker & Jackson, P.C.
476 - 9th Street
Oakland, CA 94607

The request must be postmarked on or before thirty (30) days following the entry of the Court's Preliminary Approval Order. Class Counsel shall cause a copy of the Class Notice to be promptly sent by first-class mail, postage prepaid, to each person or entity who submits a timely written request conforming to the requirements of this Paragraph.

5.4.3. Undeliverable Notices

In the event that a Class Notice sent by mail is returned as undeliverable, Class Counsel shall make reasonable efforts to obtain a valid mailing address within five (5) days of the date of the return of the Class Notice. In any event, such efforts must be completed no less than sixty (60) days before the Final Approval and Fairness Hearing date. Following each search that results in a corrected address, Class Counsel shall promptly resend the Class Notice to the Class Member by first-class mail, postage prepaid.

5.5. Filing of Motions for Fees and Expenses and Incentive Awards

1 Pursuant to the requirements of Civil Local Rule 7, Class Counsel shall file a motion for and
2 award of attorney's fees and expenses from the Settlement Fund, which motion shall be heard at
3 the time of the Final Approval and Fairness Hearing. At the time of filing such motion, Class
4 Counsel may also apply for incentive awards from the Settlement Fund on behalf of Named
5 Plaintiffs. Defendants shall not oppose either application.

6 5.6. Objections to Settlement

7 Any Class Member who wishes to object to this Settlement or otherwise to be heard
8 concerning this Settlement, shall timely inform Class Counsel, counsel for the BEM Defendants,
9 and the Court in writing of his, her, or its intent to object to this Settlement and/or appear at the
10 Final Approval and Fairness Hearing by following the procedures set forth in the Class Notice.
11 To be considered timely, the notice must bear a postmark that is within forty-five (45) days after
12 the Class Notice is mailed. The notice must set forth any and all objections to this Settlement and
13 include any supporting papers and arguments. Any person or entity who fails to submit such a
14 timely written notice shall be barred from making any statement objecting to this Settlement,
15 including at said hearing, and shall forever waive his, her, or its objection(s), except by special
16 permission of the Court. Class Counsel shall file the objections with the Court at the time set
17 forth in Paragraph 5.7 for filing the motion for final approval.

18 5.7 Final Approval and Fairness Hearing

19 On the date set forth in the Class Notice, which shall not be less than ninety (90) days after
20 entry of the Preliminary Approval Order, the Court shall hold the Final Approval and Fairness
21 Hearing. Plaintiffs will file their motion for final approval no later than thirty-five (35) days
22 before the hearing.

23 5.8. Final Judgment

24 The Parties shall request that if the Court approves this Settlement at the Final Approval
25 and Fairness Hearing, it enter the Final Judgment in the form attached as Exhibit C.

26 5.9. The terms of a qualified domestic relations order ("QDRO") (as defined in ERISA
27 section 206(d)(3)(B)(i), 29 U.S.C. § 1056(d)(3)(B)(i)) that applied to any distribution from the

1 Plans on or following January 1, 2000, shall be binding for purposes of any distribution from the
2 Net Settlement Fund paid through the Plans, provided that the Class Member seeking to enforce
3 the terms of the QDRO notifies the Administrator of the existence of the QDRO and provides
4 whatever information and/or documentation the Administrator needs to verify the validity of the
5 QDRO. Such notification and submission of a certified copy of the QDRO must be mailed no
6 later than 30 days following entry of the Final Judgment.

7 5.10. Implementation

8 5.10.1. Implementation of this Settlement shall take place following the Effective
9 Date as follows:

10 5.10.1.1. Attorney's fees and expenses awarded by the Court shall be paid
11 by the Escrow Agent from the Settlement Fund to Class Counsel within ten (10) business days
12 after the Effective Date.

13 5.10.1.2. If awarded by the Court, the incentive awards to Named
14 Plaintiffs shall be paid by the Escrow Agent from the Settlement Fund by bank check made
15 payable to Named Plaintiffs within ten (10) business days after the Effective Date and sent via
16 first-class mail to each Named Plaintiff at an address to be specified at that time by Class Counsel
17 in writing.

18 5.10.1.3. After the conclusion of the VCP, Form 5310 and Form 5500
19 filings referenced in Paragraph 5.3.1 and 5.3.2, the Parties shall provide written authorization to
20 the Escrow Agent to pay the Net Settlement Fund to the Plans. The Administrator shall then
21 calculate each Class Member's interest in the Net Settlement Fund according to the Plan of
22 Allocation. The Administrator will send each Class Member an election form, asking them to
23 choose as to whether they wish to (i) roll over their Settlement proceeds into an IRA or other
24 qualified retirement plan, if applicable, (ii) receive a check; or (iii) if applicable, elect another
25 form of benefit. Together with the election form, Class Members will receive a letter explaining
26 their options and the tax consequences of their decision. As soon as practicable after receipt of
27 each Class Member's election form, the Administrator shall pay the distribution by bank check as
directed by the Class Member and sent via first class mail.

1 5.10.2. When this Settlement has been fully implemented, the Administrator will
2 certify to the Court by way of a declaration filed by the Defendants: (1) that the Administrator
3 has used its best and reasonable efforts to properly identify and locate each Class Member;
4 (2) that the amount due to each Class Member has been accurately calculated; and (3) that the Net
5 Settlement Fund has been fully distributed to Class Members. The Parties shall jointly file an
6 Implementation Notice with the Court, substantially in the form attached as Exhibit D. The
7 Implementation Notice shall be accompanied by the declaration described in this Paragraph.
8 Upon filing of the Implementation Notice and the declaration, the condition subsequent in the
9 Final Judgment shall be satisfied.

10 5.11. Responsibility for Payment of Benefits and Administration of this Settlement

11 5.11.1. The Individual Defendants, the Company, and the FSC Defendants shall
12 be responsible for paying the fees and costs incurred by the Independent Fiduciary.

13 5.11.2. The Individual Defendants and the Company shall be responsible for (a)
14 providing data necessary for Class Counsel and the Administrator to identify the Class Members,
15 and (b) paying the fees and costs of the Administrator pursuant to the terms of the Settlement and
16 the Fiduciary Services Agreement attached as Exhibit E.

17 5.11.3. Class Counsel shall be responsible for the dissemination of the Class
18 Notice in accordance with the terms of Paragraph 5.4, including any and all costs incurred in
19 connection with such dissemination.

20 5.11.4. The Administrator shall provide the following services as described in the
21 Fiduciary Services Agreement attached as Exhibit E: (a) preparing any necessary documents to
22 revive the Plans and obtain a compliance statement from the IRS as to the tax qualified status of
23 the revived Plans; (b) preparing and filing Form 5500s and 5310s; (c) computing and distributing
24 the amounts due each Class Member according to the Plan of Allocation; (d) determining the
25 amount due and owing to the Plans' participants from the Securities Settlement and distributing
26 that amount; (e) providing distribution election forms and tax information to each Class Member,
27 unless relieved of this obligation under Paragraph 5.3.3; (f) responding to Class Member inquiries
regarding distributions; (g) completing tax reports of the distributions and making any

1 withholding required by federal or state tax laws; (h) terminating the revived Plans; and (i)
2 ensuring legal compliance with respect to all of the foregoing.

3 **6. TERMINATION OF THIS SETTLEMENT**

4 6.1. This Settlement can be terminated at the discretion of any Party if the Party
5 believes in good faith that one of the following events is material: (a) the Court declines to enter
6 any portion of the Preliminary Approval Order in the form attached as Exhibit A; (b) the Court
7 declines to approve this Settlement; (c) the Court declines to enter the Final Judgment in the form
8 attached Exhibit C; (d) the Court requires changes that are not acceptable to any of the Parties;
9 (e) the Final Judgment is modified or reversed in any material respect on appeal, reconsideration,
10 or rehearing; or (f) the Independent Fiduciary fails to approve the Settlement in accordance with
11 Paragraph 4. Denial of attorney's fees or incentive awards, in whole or in part, shall not be
12 deemed material under this Paragraph.

13 6.2 In the event of judicial modification to the substance of any of the exhibits to this
14 Settlement, each Party shall have fourteen (14) days from the date of receipt of the notice of the
15 modification(s) to provide written notice to counsel for the other Party that the Party does not
16 agree to proceed with this Settlement due to such modification(s). If a Party provides such
17 written notification, this Settlement shall be null and void and without further force and effect.

18 6.3. If this Settlement is terminated or not consummated for any reason, then, except
19 for the obligations of the Parties under this Paragraph, this Settlement shall be deemed null and
20 void and shall have no further force and effect, and neither this Settlement nor the negotiations
21 leading to it shall be used or referred to by any person or entity in this Litigation or in any other
22 action or proceeding for any purpose. The Parties shall then be restored to their respective
23 positions in the Litigation as of July 26, 2010, except that the trial and pretrial dates set on the
24 Court's calendar at that time shall be re-set to future available dates on the Court's calendar. In
25 such event, any judgment or order entered by the Court in accordance with the terms of this
26 Settlement shall be treated as vacated, *nunc pro tunc*.

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7 **7. NO ADMISSION OF LIABILITY**

Each Party understands and agrees that this Settlement is a compromise and settlement of disputed claims and that this Settlement is not and should not be construed as an admission or evidence of liability by any of the Parties regarding any claims. Neither the fact nor the terms of this Settlement shall be offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this Settlement or relating to the Final Order.

8 **8. COOPERATION**

The Parties agree to cooperate fully with one another in seeking Court approval of this Settlement and to use their best efforts to effect its consummation. Such efforts include, without limitation, the execution of any documents reasonably necessary to implement the provisions of this Settlement and cooperation in seeking appropriate orders from the Court. Neither Named Plaintiffs nor Defendants shall evade their good faith obligation to seek approval of this Settlement by virtue of any rulings, orders, governmental reports, or any other developments in any action that might occur after the Parties execute this Settlement that might be deemed to alter the relative strength of any claim or defense in the Litigation.

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16 **9. AMENDMENT OF SETTLEMENT**

This Settlement may be amended or modified only by a written instrument signed by the Parties or their respective successors-in-interest.

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19 **10. WAIVER**

No waiver of any breach of any term or provision of this Settlement shall be construed to be, or shall be, a waiver of any other breach of this Settlement. No waiver shall be binding unless in writing and signed by the Party waiving the breach.

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22
23 **11. SUCCESSORS AND ASSIGNS**

This Settlement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.

12. COUNTERPARTS

1 This Settlement may be executed in one or more counterparts, all and each of which shall
2 be deemed one and the same instrument. Signatures transmitted via facsimile or .pdf shall have
3 the same force and effect as the originals.

4 13. CONSTRUCTION

5 Each Party represents and warrants that he, she, or it has cooperated in the drafting and
6 preparation of this Settlement. The Parties additionally agree that, in any construction of this
7 Settlement, this Settlement shall not be construed against any Party on the basis that the Party
8 may have had a greater part in drafting this Settlement. The Parties also agree that the terms of
9 this Settlement shall be interpreted according to their fair meaning. The headings of sections and
10 paragraphs herein are for convenience of reference only and shall not affect the meaning or
11 interpretation of this Settlement.

12 14. ENTIRE AGREEMENT

13 This Settlement and its accompanying exhibits set forth the entire agreement and
14 understanding of the Parties concerning the subject matter hereof, and supersede and replace all
15 prior negotiations, proposed agreements, and any other agreements, written or oral. Each of the
16 Parties to this Settlement acknowledges that no other Party to this Settlement, nor any agent or
17 attorney of any such Party, has made any statement, promise, representation, or warranty
18 whatsoever, express or implied, not contained in this Settlement, to induce any Party to execute
19 this Settlement. The Parties further acknowledge that they are not executing this Settlement in
20 reliance on any promise, representation, or warranty not contained in this Settlement.

21 15. GOVERNING LAW

22 To the extent not governed by federal law, the rights and obligations of the Parties shall be
23 construed and enforced in accordance with, and governed by, the laws of the State of California,
24 without giving effect to choice of law principles.

25 16. ADVICE OF COUNSEL

26 In entering into this Settlement, the Parties represent that they have relied upon the advice
27 of their attorneys, who are attorneys of their own choice, that the terms of this Settlement have

1 been completely read and explained to them by their attorneys, and that those terms are fully
2 understood and voluntarily accepted by them.

3 **17. SEVERABILITY**

4 If any provision of this Settlement or its application is held invalid, the invalidity shall not
5 affect any other provision or application of this Settlement that can be given effect without the
6 invalid provision(s) or application(s) and, to this end, the Parties declare that the provisions of this
7 Settlement are severable.

8 **18. AUTHORITY**

9 Each person executing this Settlement hereby warrants and represents that he or she has
10 the full authority to do so. Each Party further warrants and represents that he, she, or it has not
11 assigned or transferred to any person any Released Claim, in whole or in part, and that he, she, or
12 it shall defend, indemnify, and hold harmless the other Parties from and against any claim based
13 on or in connection with any such assignment or transfer made, or claimed to have been made, by
14 him, her, or it.

15 **19. COSTS AND EXPENSES**

16 Except as provided in Paragraph 5.10.1.1, each Party shall bear his, her or its own costs,
17 expenses, and fees incurred in and associated with the Litigation and with effectuating the
18 agreement embodied in this Settlement.

19 **20. DISPUTES OVER MEANING OF SETTLEMENT**

20 Each Party consents to the jurisdiction of the United States District Court for the Northern
21 District of California with respect to any proceedings brought to enforce or interpret this
22 Settlement and hereby waives all objections to venue and personal and subject matter jurisdiction
23 in that regard. Any dispute over the meaning or intent of this Settlement, and any proceeding or
24 action to enforce or interpret the terms or provisions of this Settlement, shall be brought in the
25 United States District Court for the Northern District of California.

26 **21. CALCULATION OF TIME PERIODS**

27 The computation of any date or period of time prescribed by this Agreement shall be
governed by Rule 6(a) of the Federal Rules of Civil Procedure, except that when any period of

time prescribed or allowed by the Agreement is less than 11 days, no intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation.

22. PUBLICITY

Other than as otherwise explicitly set forth in this Settlement, the Parties agree not to publicize the fact or terms of the Settlement. No Party shall issue a press release or contact any publisher regarding the Settlement. Class Counsel shall limit all references to the Litigation and the Settlement on Class Counsel’s website to a statement that the Parties have agreed to this Settlement, with links to the Class Notice, this Settlement Agreement and exhibits, and other case filings, including, if issued, the Final Approval Order.

Date: October , 2010 JERRY VAUGHN
By: _____

Date: October , 2010 THERESA TRAVERS
By: _____

Date: October , 2010 BAY ENVIRONMENTAL MANAGEMENT INC.
By: _____
Its: _____

Date: October , 2010 CAESAR NUTI
By: _____

Date: October , 2010 DENNIS VARNI
By: _____

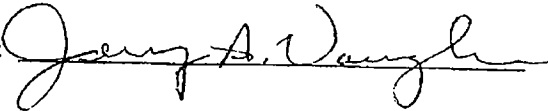
Date: October , 2010 MARIO AQUILINO
By: _____

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Date: October 10, 2010 JERRY VAUGHN

By: 

Date: October , 2010 THERESA TRAVERS

By: _____

Date: October , 2010 BAY ENVIRONMENTAL MANAGEMENT INC.

By: _____
Its: _____

Date: October , 2010 CAESAR NUTI

By: _____

Date: October , 2010 DENNIS VARNI

By: _____

Date: October , 2010 MARIO AQUILINO

By: _____

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Date: October , 2010 JERRY VAUGHN

By: _____

Date: October , 2010 THERESA TRAVERS

By: Theresa Travers

Date: October , 2010 BAY ENVIRONMENTAL MANAGEMENT INC.

By: _____
Its: _____

Date: October , 2010 CAESAR NUTI

By: _____

Date: October , 2010 DENNIS VARNI

By: _____

Date: October , 2010 MARIO AQUILINO

By: _____

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Date: October , 2010 JERRY VAUGHN

By: _____

Date: October , 2010 THERESA TRAVERS

By: _____

Date: October 8, 2010 BAY ENVIRONMENTAL MANAGEMENT INC.

By:  _____
Its: Vice President

Date: October , 2010 CAESAR NUTI

By: _____

Date: October , 2010 DENNIS VARNI

By: _____

Date: October , 2010 MARIO AQUILINO

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Date: October , 2010 JERRY VAUGHN
By: _____

Date: October , 2010 THERESA TRAVERS
By: _____

Date: October , 2010 BAY ENVIRONMENTAL MANAGEMENT INC.
By: _____
Its: _____

Date: October 7, 2010 CAESAR NUTI
By: 

Date: October , 2010 DENNIS VARNI
By: _____

Date: October , 2010 MARIO AQUILINO
By: _____

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Date: October , 2010 JERRY VAUGHN

By: _____

Date: October , 2010 THERESA TRAVERS

By: _____

Date: October , 2010 BAY ENVIRONMENTAL MANAGEMENT INC.

By: _____
Its: _____

Date: October , 2010 CAESAR NUTI

By: _____

Date: October 8, 2010 DENNIS VARNI

By:  _____

Date: October , 2010 MARIO AQUILINO

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Date: October , 2010 JERRY VAUGHN

By: _____

Date: October , 2010 THERESA TRAVERS

By: _____

Date: October , 2010 BAY ENVIRONMENTAL MANAGEMENT INC.

By: _____
Its: _____

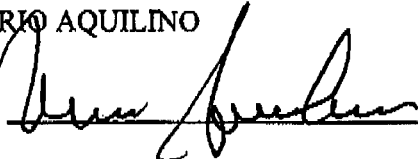
Date: October , 2010 CAESAR NUTI

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Date: October , 2010 DENNIS VARNI

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Date: October 8, 2010 MARIO AQUILINO

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Date: October , 2010

LOYD BONFANTE, SR.

By: Loyd Bonfante Sr.

Date: October , 2010

JOSEPH DELLA ZOPPA

By: _____

Date: October , 2010

ESTATE OF RICHARD GRANZELLA, SR.

By: _____

Date: October , 2010

EDWARD MENOSSE

By: _____

Date: October , 2010

PASQUALE PARENTI

By: _____

Date: October , 2010

ESTATE OF PINA J. BARBIERI

By: _____

Date: October , 2010

FSC SECURITIES

By: _____

Date: October , 2010

JERROLD N. WEINBERG

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Date: October , 2010

LOYD BONFANTE, SR.

By: _____

Date: October 8, 2010

JOSEPH DELLA ZOPPA

By: Joseph Della Zoppa

Date: October , 2010

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JERROLD N. WEINBERG

By: _____

MORGAN, LEWIS &
BOCKIUS LLP
ATTORNEYS AT LAW
SAN FRANCISCO

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Date: October , 2010

LOYD BONFANTE, SR.

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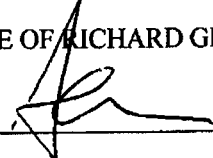
Date: October , 2010

JOSEPH DELLA ZOPPA

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Date: October 8, 2010

ESTATE OF RICHARD GRANZELLA, SR.

By:  _____

Date: October , 2010

EDWARD MENOSSE

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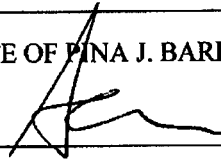
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By: _____

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Date: October , 2010

LOYD BONFANTE, SR.

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Date: October , 2010

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Date: October , 2010

LOYD BONFANTE, SR.

By: _____

Date: October , 2010

JOSEPH DELLA ZOPPA

By: _____

Date: October , 2010

ESTATE OF RICHARD GRANZELLA, SR.

By: _____

Date: October , 2010

EDWARD MENOSSE

By: _____

Date: October 8, 2010

PASQUALE PARENTI

By: *Pasquale Parenti*

Date: October , 2010

ESTATE OF PINA J. BARBIERI

By: _____

Date: October , 2010

FSC SECURITIES

By: _____

Date: October , 2010

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Date: October , 2010

LOYD BONFANTE, SR.

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JOSEPH DELLA ZOPPA

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ESTATE OF RICHARD GRANZELLA, SR.

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EDWARD MENOSSE

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Date: October , 2010

PASQUALE PARENTI

By: _____

Date: October , 2010

ESTATE OF PINA J. BARBIERI

By: _____

Date: October 8, 2010

FSC SECURITIES

By:  _____

Corporate Counsel

Date: October , 2010

JERROLD N. WEINBERG

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Date: October , 2010

LOYD BONFANTE, SR.

By: _____

Date: October , 2010

JOSEPH DELLA ZOPPA

By: _____

Date: October , 2010

ESTATE OF RICHARD GRANZELLA, SR.

By: _____

Date: October , 2010

EDWARD MENOSSE

By: _____

Date: October , 2010

PASQUALE PARENTI

By: _____

Date: October , 2010

ESTATE OF PINA J. BARBIERI

By: _____

Date: October , 2010

FSC SECURITIES

By: _____

Date: October 8, 2010

JERROLD N. WEINBERG

By: Jerrold N Weinberg

MORGAN, LEWIS &
BOCKIUS LLP
ATTORNEYS AT LAW
SAN FRANCISCO

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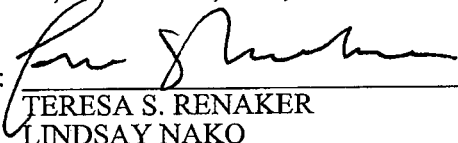
STIPULATION AND AGREEMENT OF
COMPROMISE AND SETTLEMENT
(CASE NO. C03-5725 SC)

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Date: October 12, 2010

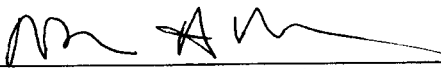
LEWIS, FEINBERG, LEE, RENAHER & JACKSON, P.C.

By: 
TERESA S. RENAHER
LINDSAY NAKO

Attorneys for Plaintiffs and the Class

Date: October 12, 2010

MORGAN LEWIS & BOCKIUS

By: 
D. WARD KALLSTROM
NICOLE A. DILLER
ANGEL T. LIN

Attorneys for BEM Defendants and Estate of Pina Barbieri

Date: October , 2010

WILSON ELSER LLP

By: _____
BERNARD GEHLHAR

Attorneys for FSC Defendants

APPROVED AS TO CONTENT AND FORM:

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Date: October , 2010 LEWIS, FEINBERG, LEE, RENAHER & JACKSON, P.C.

By: _____
TERESA S. RENAHER
LINDSAY NAKO

Attorneys for Plaintiffs and the Class

Date: October , 2010 MORGAN LEWIS & BOCKIUS

By: _____
D. WARD KALLSTROM
NICOLE A. DILLER
ANGEL T. LIN

Attorneys for BEM Defendants and Estate of Pina Barbieri

Date: October 8, 2010 WILSON ELSER LLP

By:  _____
BERNARD GEHLHAR

Attorneys for FSC Defendants