

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

----- )  
 )  
In re FXG GROUND PACKAGE ) Cause No. 3:05-MD-527-RM  
SYSTEM, INC., EMPLOYMENT ) (MDL 1700)  
PRACTICES LITIGATION )  
 )  
----- )  
THIS DOCUMENT RELATES TO: )  
 )  
*Dean Alexander, et al. v. FedEx Ground* )  
*Package System, Inc.,* )  
Civil No. 3:05-cv-00528-RLM-CAN (CA) )  
----- )

**PLAINTIFFS’ REPLY MEMORANDUM IN SUPPORT OF  
EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND  
OSC REGARDING PRELIMINARY INJUNCTION**

**INTRODUCTION**

FXG Ground Package System, Inc. (“FXG”) asks this court to turn a blind eye to the reality of its coercive and involuntary mass termination designed to punish approximately 1000 California delivery drivers who won a binding judicial ruling that they are FXG’s employees, and to send a chilling message to those who have followed in their footsteps. Claiming the “right” to reduce the legal risks and liabilities in a manner purportedly “endorsed by the California judiciary,” FXG argues that this Court has no power to protect the *Alexander* plaintiffs, the putative class in *Alexander*, or the entire putative nationwide class in this MDL from its blatant act of retaliation for the drivers’ legal victory. FXG is wrong.

In an effort to avoid the jurisdiction of this court, FXG ignores cogent legal authority supporting Plaintiffs’ request for injunctive relief to stop the coercion of thousands of drivers whose willingness to participate in this case has been directly and deliberately undermined. Instead, FXG directs the court to authority which has been limited and distinguished rather than

more recent, applicable cases. Equally disingenuous, FXG claims that its decision to terminate the California Single Work Area drivers (“SWAs”) – announced on *September 20, 2007* – was somehow motivated by a decision of the California Unemployment Insurance Appeals Board finding the California SWAs to be employees entered a day later, on *September 21<sup>st</sup>*.

Likewise, FXG's claim that it is merely “changing its business model” is purely rhetorical. FXG has not eliminated the myriad controls it daily exercises over all of its drivers’ work, to make them true independent contractors. Despite its claimed intent to “strengthen” its “independent contractor business model,” FXG has actually imposed greater controls than ever before by requiring its multiple work area drivers to execute a new Addendum 10 dictating exactly how they must hire and treat their "new" employee drivers. FXG has provided this court no evidence that its system of controls – which the *Estrada* trial court concluded conferred on FXG virtual “absolute control” over the drivers and their work – has been altered in any way. Rather than change anything about its systematic control over its drivers, FXG simply fired them. This is hardly the kind of lawful change in the FXG business model “the California judiciary” “endorsed.”

Finally, to salvage their nationwide effort to extract legal releases and waivers in the guise of hold harmless clauses from drivers across the nation, FXG now claims that it "never" intended to compel releases of legal claims asserted in this case. The assertion that these releases are entirely voluntary strains credulity: a driver faced with imminent job loss and no other means of support is hardly in a position to turn away \$25,000 or more. While FXG could have explicitly excluded from the scope of the release asserted and unasserted wage and hour claims of the type involved in these proceedings, it chose not to. Instead, the release contains an integration clause precluding reliance on any representations regarding its meaning or scope to

later interpret the document. Plaintiffs and the class they represent are dependent on this Court's equitable powers to stop this injustice pending the completion of this litigation. Plaintiffs cannot properly adjudicate their claims if FXG is permitted to threaten the livelihoods of every witness in this case. Plaintiffs ask the Court to grant the relief they seek.

## ARGUMENT

### **I. THE COURT IS FULLY AUTHORIZED TO ISSUE AN INJUNCTION CLASSWIDE IN SCOPE AND BINDING ON FXG TO EFFECT FULL RELIEF TO THE PLAINTIFFS**

Relying on a quotation taken out of context and plucked from an opinion issued by a divided panel of the Ninth Circuit, *Zepeda v. INS*, 753 F.2d 719, 728 n. 1 (9th Cir. 1983), FXG claims that this Court lacks the authority to enjoin the mass terminations in California because no class certification order has yet issued. (FXG Opp. at 8-9). Notably, FXG ignores the numerous decisions, including those cited in Plaintiffs' opening brief, ordering relief to protect the interests of unnamed putative class members *before* a class was certified, pursuant to the court's duty and authority under Federal Rule of Civil Procedure 23. *Moore v. Summers*, 113 F. Supp. 2d 5, 29 (D.D.C. 2000) (finding preliminary injunction barring retaliatory conduct pre-class certification warranted based on chilling effect such conduct would have on rights of putative class members); *Ladegaard v. Hard Rock Cutters, Inc.*, No. 00 C 5755 (N.D. Ill. Nov. 9, 2001) (declaring void releases of wage claims executed by putative class members); *see also Recinos-Recinos v. Express Forestry, Inc.*, No. Civ. A. 05-1355, 2006 WL 197030, \*11 (E.D. La. Jan. 24, 2006) (barring defendant from communicating with putative class members); *Mevorah v. Wells Fargo Home Mortgages, Inc.*, Case No. C 05-1175, 2005 WL 4813532, \*5-6 (N.D. Cal. Nov. 17, 2005) (barring defendant from communicating with putative class members and ordering corrective notice); *Ralph Oldsmobile, Inc. v. Gen. Motors Corp.*, No. 99 Civ. 4567, 2001 WL 1035132, \*6-7 (S.D.N.Y. Sept. 7, 2001) (requiring corrective notice to putative class members

after defendant unilaterally sought releases of legal claims); *Bublitz v. E.I. Dupont de Nemours and Co.*, 196 F.R.D. 545, 549 (S.D. Iowa 2000) (placing restrictions on defendant's ability to seek releases of legal claims from putative class members); *Hampton Hardware, Inc. v. Cotter & Co.*, 156 F.R.D. 630, 634 (N.D. Tex. 1994) (barring defendant from communicating with putative class members); *c.f. Shelton v. Pargo*, 582 F.2d 1298, 1306 (4th Cir. 1978) (“[T]he District Court would appear to have an ample arsenal to checkmate abuse of the class action procedure if unreasonable prejudice to absentee class members would result, irrespective of the time when the abuse arises”).

Even setting aside these authorities, *Zepeda*, relied upon by FXG, stands for the unremarkable proposition that injunctive relief can only be *binding* on a party before the court, and must be narrowly tailored to remedy the specific harm shown. Moreover, five years later, the Ninth Circuit clarified the reach of its holding in *Zepeda* in *Bresgal v. Brock*, 843 F.2d 1163 (9th Cir. 1988). The *Bresgal* court squarely rejected the argument, asserted by FXG here, that *Zepeda* stands for the broad proposition that a federal court lacks the authority to enter an injunction of class-wide benefit unless and until a class has been certified. *Id.* at 1170-71; *accord Easyriders Freedom FIGHT v. Hannigan*, 92 F.3d 1486, 1501-02 (9th Cir. 1996). As the *Zepeda* majority itself observed: “An injunction should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” 753 F.2d at 729 n.1.

Thus, there is no legitimacy to FXG's claim that the Court lacks authority to issue an injunction binding on a party before the Court, such as FXG here, where the injunction benefits or protects nonparties. The Court's authority is even greater here, where Plaintiffs have on file with the Court a fully briefed motion for class certification as to their FMLA and other claims and are awaiting a ruling. (*See* Dkt. No. 547, filed March 12, 2007 and Dkt. No. 672 filed May

29, 2007.) Contrary to FXG’s argument, “[t]here is no general requirement that an injunction affect only the parties in the suit. Where, as here, an injunction is warranted by a finding of defendants’ outrageous unlawful practices, the injunction is not prohibited merely because it confers benefits upon individuals who were not named plaintiffs or members of a formally certified class.” *McCargo v. Vaughn*, 778 F. Supp. 1341, 1342 (E.D.Pa. 1991). Decisions of the Fourth, Fifth, Sixth and D.C. Circuits agree with the Ninth Circuit in *Bresgal* that preliminary or permanent injunctive relief that benefits non-parties may be awarded, even without formal class certification, if necessary to effect a complete remedy and avoid irreparable harm. *See, e.g. Evans v. Harnett County Bd. of Educ.*, 684 F.2d 304, 306 (4th Cir.1982); *Meyer v. Brown & Root Const. Co.*, 661 F.2d 369, 373 (5th Cir.1981); *Washington v Reno*, 35 F.3d 1093, 1103-04 (6th Cir. 1994); *National Mining Ass’n, et. al., v. U.S. Army Corps of Engineers, et. al.*, 145 F.3d 1399, 1409 (D.C.Cir.1998).<sup>1</sup>

In short, the federal courts have never strayed from the view that a district court has full power to fashion equitable remedies that may benefit nonparties – regardless of whether class claims have been asserted, or where a class certification motion is pending – **“if such breadth is necessary to give the prevailing parties the relief to which they are entitled.”** *Bresgal*, *supra*, 843 F.2d at 1171; *accord Easyriders, supra*, 92 F.2d at 1502; *Image Technical Services, Inc. v Eastman Kodak*, 125 F.3d 1195, 1226 (9th Cir. 1996).

---

<sup>1</sup> The lone Seventh Circuit case cited by FXG, *McKenzie v. City of Chicago*, 118 F.3d 552 (7th Cir. 1997), is distinguishable on its facts. *McKenzie* involved an action brought by owners of abandoned properties challenging a Chicago city ordinance providing for “fast track” demolition of dangerous and abandoned buildings. The Seventh Circuit reversed a preliminary injunction precluding enforcement of the ordinance as against any property. The Court explained that the scope of the injunction was overbroad both because the interests of the named plaintiffs could be effectively protected by an injunctive prohibiting the demolition of their own properties, and because the statute under attack itself prohibited demolition of the plaintiffs’ properties while the case was ongoing. The same was true in *Zepeda*, where the court was careful to note that “the injunctive relief requested could be granted to the individual plaintiffs without the relief inevitably affecting the entire class.” 753 F.2d at 729 n.1. The case before this court is entirely different: Plaintiffs seek to enjoin a course of conduct that – if allowed to proceed as to the group of California SWAs as a whole – will effectively undermine Plaintiffs’ ability to litigate their claims.

*Bresgal* illustrates the point concretely. Plaintiffs were migrant agricultural workers who, along with a worker’s association, brought suit seeking a declaratory judgment that the Farm Labor Contactor Registration Act of 1963 applied to commercial forestry workers, and to enjoin the Secretary of Labor to enforce the protective provisions of the statute to Plaintiffs’ industry. The district court entered a nationwide injunction against the Secretary. 843 F.2d at 1169. On appeal, the Ninth Circuit rejected the Secretary’s argument – premised on *Zepeda* – that nationwide relief was inappropriate because no class had been certified. The court distinguished *Zepeda*, in part, finding that effective relief to the plaintiffs could not be awarded except on a nationwide basis. *Id.* at 1170-71. The court reasoned that “because the Secretary is a party to the suit, an injunction against him requiring enforcement of the Act ... is appropriate.” “The district court has the power to order nationwide relief where it is required.” *Id.* at 1171.

The same is true here. The *Alexander* Plaintiffs seek a TRO and preliminary injunction binding on FXG – a party to this action – to prohibit it from engaging in conduct that will interfere with the rights of the *Alexander* plaintiffs – also parties to this action – to litigate the nationwide claim they have asserted under the FMLA, and the state law claims asserted under the California Labor Code. As discussed in Plaintiffs’ moving papers, FXG’s unprecedented action of terminating all of its California SWA drivers *en masse*<sup>2</sup> sends an unmistakable and chilling message to its drivers everywhere: if they participate or assist the *Alexander* Plaintiffs to obtain a nationwide ruling that the FXG “contractors” are employees – like the California drivers – they too will face job loss and possible financial ruin.

---

<sup>2</sup> Notably, some of the terminated SWA drivers testified as witnesses in the *Estrada* trial; many are *Estrada* class members; and *all* are direct beneficiaries of the appellate court ruling that the California SWAs are *employees* under the California common law test.

Plaintiffs have supplied the Court with an abundance of evidence – dozens of sworn declarations from SWA drivers all over the country – attesting to the fact that FXG has achieved the objective of striking real – and not speculative – fear in the hearts of its drivers nationally through the threatening tactic of terminating the California SWAs.<sup>3</sup> Complete relief to the named Plaintiffs can only be effected by an order enjoining FXG from carrying out its so-called “California Transition” in all respects. An order enjoining only the terminations of the four named *Alexander* Plaintiffs who currently drive for FXG could not prevent the harm threatened by FXG’s retaliatory actions. The chilling effect on this litigation arises from the California Transition program as a whole. The mass terminations of the California SWAs convey the message to FXG’s nationwide workforce – SWAs and MWAs alike – that the Court process is completely ineffective, and that they can only lose for winning no matter what the Court ultimately decides in this case. The injunctive relief Plaintiffs seek is thus narrowly tailored to remedy the threatened harm *pendent lite*, and is absolutely “necessary to give [plaintiffs] the relief to which they are entitled,” i.e. the right and ability to prosecute their claims before this Court and obtain a fair adjudication of their employment status in an atmosphere that is free from coercion and interference in the judicial process.

FXG’s related claim that Plaintiffs seek to “interfere” in the business decisions and relationships of the contractors “without notice or a chance to object” and that Plaintiffs also seek to “force FXG and contractors to remain in agreements that are either due to expire or that they have already agreed to amend or terminate” deserves very short shrift. It is FXG who has interfered with the settled expectations of its incumbent workforce by taking the unprecedented

---

<sup>3</sup> See Dkt. No. 883 – 33 driver declarations, filed 10/1/2007); Dkt. No. 887 (12 driver declarations, filed 10/3/2007); Dkt. Nos. 891 and 892 (21 driver declarations, filed 10/5/2007). FXG deliberately ignores these declarations, all of which attest to the reluctance of named Plaintiffs and putative class members to continue participating in this litigation following FXG’s retaliatory act of terminating the California SWAs *en masse*.

step of eliminating an entire category of workers by terminating their contracts in one fell swoop. The California SWA drivers' contracts were not "due to expire" as FXG claims, but instead were subject to *automatic renewal*. As the 66 driver declarations show, many of these drivers have been with FXG for years on end, with several coming very close to the twenty year mark. During the *Estrada* trial, FXG's key witness – Tim Edmonds – testified that the Company has always exercised its right to "non-renew" the OA of any driver sparingly, and on the same basis that it exercises its right to terminate the OA of individual drivers: for cause. *See* Exhibit A to attached Declaration of Susan E. Ellingstad. Thus, the disruption complained of by Defendant is purely a circumstance of its own making.<sup>4</sup> Plaintiffs filed the instant application for a temporary restraining order and a preliminary injunction at the very earliest opportunity – and before October 26, 2007 when the first terminations become effective – to avoid triggering the complex chain of transactions FXG has attempted to set in motion with the hope that they will be too difficult to unwind as time passes. FXG's attempt to avoid judicial scrutiny of its actions should not be countenanced by the Court.

## **II. FXG HAS TARGETED CALIFORNIA SINGLE WORK AREA DRIVERS WITHOUT ALTERING ITS "BUSINESS MODEL" IN CALIFORNIA OR ELSEWHERE.**

FXG argues that it has not retaliated against the California SWAs and that it has merely exercised its "right to change its business model in reaction to changes in the legal landscape."

---

<sup>4</sup> Defendant's related claims that its business will suffer significant disruption and that the public interest will be injured if the California Transition is enjoined by this Court may be summarily disregarded for the same reason. FXG took a calculated risk – that it could have predicted would be subject to immediate legal challenge – when it elected to terminate the California SWAs *en masse* in the midst of this national litigation. If it were truly concerned about its reputation in the court of public opinion, it would have chosen a non-retaliatory path to reduce its legal exposure. Instead, it elected the most mean-spirited and provocative path possible.

(FXG Opp. at 15).<sup>5</sup> However, the record before this Court shows that FXG has *not* changed its business model at all. FXG has not modified the Operating Agreement it requires all of its drivers to sign. It has not changed the method, manner and means by which its drivers perform their jobs; nor has FXG eliminated any of the comprehensive and extremely detailed policies and procedures that all drivers must follow; nor has FXG relinquished or even lessened its control over the work of its drivers. To the contrary, by adding new mandates for all MWAs in the “Compliance Disclosure” Addendum (i.e., that they must treat any drivers or helpers they hire as employees and submit documentation of such to FXG), FXG is exerting ever greater control over its MWAs than ever. (Faris Decl., Ex. F, filed October 1, 2007).

Finally, and perhaps most disturbingly, FXG managers are telling the terminated California SWAs that they can easily get around FXG’s new rules, and continue to service their own routes as they always have by partnering up with their co-workers to become the employers and employees of one another, at least on paper.<sup>6</sup> Thus, far from changing its “business model,” FXG has made clear that it intends to continue doing business as usual. The drivers will continue to perform the exact same job, under the same working conditions, and FXG will continue to engage SWAs in every other state in the nation. FXG has simply eliminated the “SWA” job category – and the workers who occupy that position – in California alone, where drivers sued and obtained an appellate court ruling in their favor finding them to be employees.

---

<sup>5</sup> In an apparent attempt to mislead the Court into thinking that *Estrada III* was not the primary motivation for FXG’s mass termination program, FXG asserts that a decision from the California Unemployment Insurance Appeals Board also led to the “Transition Program.” However, this decision was issued on September 21, 2007, **the day after** September 20, 2007, when FXG announced the “Transition Program” to its nation-wide driver workforce. See CUIAB Case No. AO-143164 (T) attached as Exhibit B to Ellingstad Decl.

<sup>6</sup> See, e.g. **Dkt. No. 883** -- Ali Dec. ¶11; Depugh Dec. ¶11; Gonzalez Dec. ¶11; Laborde Dec. ¶13; Lancaster Dec. ¶9; Lewis Dec. ¶10; Magana Dec. ¶12; Mason Dec. ¶13; Patton Dec. ¶12; Rose Dec. ¶13; Sahinovic Dec. ¶13; Scarlercio Dec. ¶13; Takeuchi Dec. ¶11; **Dkt. No. 887** – Eder Dec. ¶12; Greenlee Dec. ¶10; Musser Dec. ¶12; Weathers Dec. ¶9; **Dkt. No. 891** – Bradley Dec. ¶10; Enriquez Dec. ¶11, Jones Dec. ¶11, Kersten Dec. ¶10; Ward Dec., ¶8).

*Knutson v. Daily Review, Inc.*, 548 F.2d 795 (9th Cir. 1976), relied upon FXG, actually supports granting the relief Plaintiffs seek here. In *Knutson*, the defendants, who were newspaper publishers, decided to change how they did business by taking the newspaper distribution in-house. For this reason, the publishers terminated all of their contracts with the plaintiff distributors, who sued and sought a preliminary injunction to bar the terminations. The court acknowledged that threats to terminate, or actual termination, of the plaintiffs' distributorship agreements would be coercive if carried out on a selective basis because those singled out for termination would feel coerced to give in to the defendant's demands. *Id.* at 805. The court denied the requested injunctive relief in the case because individual distributors were not selectively terminated. Instead, the distribution agreements were terminated by the defendant publishers on a "wholesale" basis that accompanied a complete overhaul in the defendants' newspaper distribution system. *Id.*; see also *Naify v. McClathy Newspapers*, No. C-76-117, at \*2 n.1 (N.D. Cal. 1977) (cited by FXG and relying upon *Knutson* in *dicta* for the proposition that a manufacturer could lawfully take its entire distribution system in-house). Here, FXG has engaged in precisely the sort of selective terminations that *Knutson* explained are inherently coercive. FXG has *selectively* terminated SWAs in California only, while continuing to operate with SWAs in every other state, and has made no other changes whatsoever in how the drivers must perform their jobs.<sup>7</sup> There is no question that the California SWAs feel tremendous pressure to "give in" to FXG's demands. Indeed, the fact that – according to FXG – 48% of the

---

<sup>7</sup> The other case cited by FXG in support of its position, *House of Materials, Inc. v. Simplicity Pattern Co.*, 298 F.2d 867 (2nd Cir. 1962), relies upon the unique contours of anti-trust law, not at issue here. Moreover, unlike the contracts at issue in *House of Materials*, which could be non-renewed for any reason or no reason at all, FXG has claimed that the Operating Agreements would only be non-renewed for cause, as discussed on the witness stand by FXG's key trial witness, Tim Edmonds. Ellingstad Decl. at Exhibit A.

California SWAs have executed the “release of claims” so very quickly – and long before the October 26 deadline set by Defendant – is strong proof of this.

Misrepresenting the California trial court’s decision in *Estrada*, FXG falsely claims that its “California Transition” has been “endorsed by the California judiciary.” This is entirely untrue. Neither “the California judiciary” nor the trial court in *Estrada* has ever “endorsed” FXG’s plan to terminate the California SWAs *en masse*, to extract releases and waivers of legal rights from its drivers, or even to transition to an all-MWA driver workforce. At best, the *Estrada* trial court recognized that it is not *per se* illegal for a company to conduct business using independent contractors instead of employees, provided that the classification is real and not a sham.<sup>8</sup> FXG could have elected to eliminate the substantial controls it exercises over the method, manner and means used by the so-called contractors to perform their assigned duties as a means of complying with the court’s ruling. Or, it could continue with business as usual and provide to the drivers the legal benefits and protections that go along with their employee status. FXG has done neither. Instead, it has engaged in blatantly retaliatory conduct by creating a sham on a sham designed to use extra-legal means to avoid its legal obligations. FXG’s misrepresentation of Judge Schwab’s decision regarding a single MWA driver, while rejecting the balance of the decision finding SWAs to be employees, only underscores the bad faith nature of FXG’s conduct.<sup>9</sup>

---

<sup>8</sup> Moreover, there was no class claim before Judge Schwab regarding the employment status of MWA drivers and the ruling entered as to the individual MWA who was a party to the *Estrada* case was not appealed. In this case, Plaintiffs have conducted far more extensive discovery and have far more information to support the claim that the MWAs are employees, just like the California SWAs. *See, e.g.* Plaintiffs’ Omnibus Fact Memorandum (Dkt. No. 559) at 6-7.

<sup>9</sup> While FXG points to Judge Schwab’s decision in *Estrada* as having “endorsed” FXG’s “Transition Program,” FXG simultaneously argues that this very same decision finding that all California SWAs are employees (which was affirmed by the California Court of Appeals) is of no consequence to the case at bar because *Estrada* involved “different contractors, different laws, a different period of time, and different circumstances.” *See* FXG Opp. at 12-13. FXG cannot have it both ways.

### **III. THE RECORD BEFORE THE COURT SHOWS THAT DRIVERS ARE BEING UNLAWFULLY COERCED INTO EXECUTING WAIVERS AND RELEASES OF LEGAL CLAIMS**

FXG argues that the dire financial circumstances in which it has placed its California SWAs does not render its campaign to seek waivers and releases of legal claims coercive, citing *Fabert Motors, Inc. v. Ford Motor Co.*, 355 F.2d 888, 891 (7th Cir. 1966). This argument is also disingenuous. There is nothing voluntary about the program, as the court's analysis in *Fabert* illustrates. There, the court found a car dealer's release of legal claims against the manufacturer non-coercive because the dealer "was represented by counsel and executed th[e] instrument only after due deliberation with knowledge of the pertinent facts." *Id.*

Here, by contrast, the release and waiver are impossibly ambiguous and the Court has before it more than fifty declarations from putative class members in California and elsewhere stating that they do not understand these documents and do not know whether and/or to what extent they release claims in *Estrada* or in these MDL proceedings. FXG's recent binding admissions to this Court regarding the scope of the release and waiver have not been disseminated to drivers. Thus, drivers do not have knowledge of the "pertinent facts." Moreover, the "release" includes a broad and unambiguous integration clause prohibiting reliance on any parole evidence to bring clarity to the agreement's unambiguous terms. (See Faris Decl., Ex. B at B17). There is no evidence that any of these individuals, other than the named Plaintiffs, is represented by or consulted with legal counsel. Indeed, given the limited amount of time that has passed since September 20 when the releases were distributed, it is almost certain that few if any of the supposedly 48% of SWAs who have signed the releases, obtained legal advice prior to their execution. Thus, *Fabert* supports invalidating the releases and waivers at issue here.

**CONCLUSION**

For all of the foregoing reasons, and the reasons set forth in Plaintiffs' moving papers and supporting documents, plaintiffs respectfully request that their application for a temporary restraining order and order to show cause regarding preliminary injunction be granted.

Dated: October 8 2007

Respectfully Submitted,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

**s/ Susan E. Ellingstad**

Susan E. Ellingstad  
100 Washington Avenue South, Suite 2200  
Minneapolis, MN 55401  
Tel: (612) 339-6900  
Fax: (612) 339-0981

Lynn Rossman Faris  
LEONARD CARDER, LLP  
1330 Broadway, Suite 1450  
Oakland, CA 94612  
Tel: (510) 272-0169  
Fax: (510) 272-0174

Robert I. Harwood  
HARWOOD FEFFER LLP  
488 Madison Avenue, 8th Floor  
New York, NY 10022  
Tel: (212) 935-7400  
Fax: (212) 753-3630

**PLAINTIFFS' CO-LEAD COUNSEL**