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CENTRAL DISTRICT OF CALIF.
LOS ANGELES

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18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 LEONARD ROSENTHAL,
21 Individually and On Behalf of All
22 Others Similarly Situated,
23
24 Plaintiffs,

25 vs.

26 FARMER BROS. COMPANY,
27 GUENTER W. BERGER, LEWIS A.
28 COFFMAN, ROY E. FARMER,
29 THOMAS A. MALOOF, JOHN M.
30 ANGLIN, JOHN H. MERRELL and
31 JOHN SAMORE,
32 Defendants.

CASE NO. CV03-8845 MMM (CWx)

**DECLARATION OF LEONARD
ROSENTHAL IN SUPPORT OF
PLAINTIFF'S REPLY
MEMORANDUM OF POINTS
AND AUTHORITIES (BY
FACSIMILE)**

**DATE: DECEMBER 23, 2003
TIME: 10:00 A.M.
PLACE: COURTROOM 790**

33 **DECLARATION OF LEONARD ROSENTHAL**

34 I, LEONARD ROSENTHAL, declare as follows:

35 I am the Plaintiff in the above-captioned action. I submit this Declaration in
36 support of Plaintiff's Reply Memorandum of Points and Authorities.
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1 Farmer Bros. current share price, this would amount to a
2 conveyance of more than \$40 million of corporate funds.

3 B. Second, on October 24, 2003, management presented a
4 reincorporation proposal in a preliminary proxy statement filed
5 with the SEC, which, if implemented, would dramatically reduce
6 the rights of shareholders.
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8 6. Taken together, these two events changed my view of Farmer Bros.,
9 since they convinced me that management was not intending to pursue options that
10 would benefit the Company's non-management shareholders. From these two
11 events I concluded that management was instead intending to pursue an
12 entrenchment strategy, based on maintaining majority voting power by its control of
13 an ever-increasing number of ESOP shares, for which it was plainning to use more
14 corporate funds. The proposed reincorporation in Delaware would cement and
15 finalize this entrenchment, and, if put into effect, would make it much more
16 difficult to challenge. In summary, I concluded that unless the entrenchment were
17 ended, it would be impossible for shareholders to ever receive a fair value for their
18 shares.

19 Commencing This Action
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21 7. In view of the two actions taken by management, in early November,
22 2003, I began to consider the possibility of some sort of shareholder lawsuit to end
23 the entrenchment. After thoroughly exploring all alternatives, I retained counsel
24 and commenced this action.

25 8. Based on what I know of the interests of other Farmer Bros.
26 shareholders, I believe that I can fairly and adequately represent those shareholders
27 who, like me, are disadvantaged by management's entrenchment. It is my
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1 intention to actively solicit the advice of a variety of other shareholders, to assure
2 my understanding of all relevant issues.

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4 9. I also note that that my concerns about entrenchment appear to be
5 widely shared by other non-management shareholders. For example, Franklin
6 Mutual Advisors LLC, the largest institutional shareholder of Farmer Bros., and
7 the holder of 9.6% of Farmer Bros. stock, has stated in a press release dated
8 December 8, 2003, which was submitted in a 13D filing with the SEC the
9 following day, that adoption of the management's reincorporation proposal

10 "would result in a very substantial curtailment of the
11 rights of the company's public shareholders which, in our
12 opinion, would serve to entrench the interests of the
13 company's current management and those members of
14 the Farmer family who have long been the company's
15 dominant shareholders."

16 A true copy of this release is attached hereto as Exhibit B.

17 New Developments Disclosed in Defendants' Opposition Papers

18 10.I was surprised to see in defendants' papers in opposition to my motion
19 for a preliminary injunction reference made to new developments that have not
20 been disclosed to shareholders, that contradict Farmer Bros.' most recent SEC
21 filing (of this Monday, December 15, 2003), and that apparently contradict other
22 statements in defendants' opposition papers.

23 11. Thus, in the first (spillover) paragraph on page 23 of defendants
24 Memorandum of Law in opposition to my motion, defendants state that "[t]he
25 ESOP shares are irrelevant to the vote because, until Roy F. Farmer is removed as
26 Trustee of the ESOP, the majority will control the vote." It is unclear what this is
27 supposed to mean, but the apparent meaning is that as long as Roy F. Farmer
28

1 remains the ESOP Trustee, he will retain the power to vote a significant portion of
2 the ESOP shares in accordance with the wishes of the majority shareholders.

3
4 12. In the second full paragraph on page 23 of defendants' Memorandum of
5 Law, however, defendants assert that "[t]he company has instituted pass through
6 voting and there are independent directors on the Management Committee. The
7 ESOP shares thus will be voted in line with the employees' wishes not the desires
8 of management." This is a new development of which the shareholders had not
9 been apprised. It appears to contradict the statement about the majority's
10 "control[ing] the vote" made two paragraphs earlier in defendants' Memorandum.

11 13. The evidentiary basis of defendants' statement regarding "pass through
12 voting" appears in the Declaration of John Samore, Jr. submitted by defendants in
13 opposition to my motion. Mr. Samore, a member of Farmer Bros.' board of
14 directors, states in paragraph 9 of his Declaration that "in order to put an end to the
15 self serving speculation that the Company created the ESOP for the purpose of
16 'entrenching' management, the Board has voted to . . . modify the [ESOP] plan to
17 adopt '**pass through voting.**' Under pass through voting, **employees vote**
18 **their own shares** with unallocated shares voted in the same proportion as allocated
19 shares. Consequently, management plays **no role** in determining how the ESOP's
20 shares are voted." (emphasis in original)

21 14. Mr. Samore does not say when this new plan provision – by Mr.
22 Samore's own admission, adopted in response to the allegations made in my
23 lawsuit – was adopted, or when it will become effective. I can only surmise that it
24 was adopted between last Monday, December 15, 2003, and yesterday (December
25 17, 2003), the date of Mr. Samore's Declaration. The Proxy Statement annexed to
26 a Schedule 14A filed by Farmer Bros. with the SEC on December 15, 2003, which
27 I have reviewed, stated that a substantial number of the ESOP shares were still to
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1 be voted by the ESOP plan committee. A true copy of the Schedule 14A and its
2 attachments is attached hereto as Exhibit C.

3
4 15. Whenever the purported new ESOP plan provision may become
5 effective, based on my knowledge of corporate governance, the stated changes in
6 the control of voting for shares held by the ESOP are not meaningful. Replacing
7 some ESOP committee members with directors who have acted against the
8 interests of minority shareholders, and stated their intent to support their blatantly
9 self-serving reincorporation proposal, does not correct the essential problem.
10 Similarly, allowing the votes of employees who benefit from both the transfer of
11 corporate funds to the ESOP and from the entrenchment of management, and
12 whose very employment is controlled by the company's senior management, does
13 nothing to change the effective control of votes

14 16. In any event, it is unclear what the exact terms of this new provision
15 governing the voting of the ESOP shares are, and when it becomes effective. Most
16 crucially, it is not clear whether it is to be in effect at the time of the scheduled
17 January 5, 2004 annual meeting, or whether it is just window dressing, not
18 effective until after the crucial vote, enacted as a cosmetic concession only to take
19 some of the apparent sting out of the iniquitous and oppressive measures that are to
20 be passed at that meeting. Defendants' counsel will, one hopes, clear this up at the
21 hearing on my motion.

22
23 17. Although I do not understand the relevance of the Company's business
24 performance to the issue of the directors' breaches of duty and violations of law
25 raised in this case, I note with some concern management's assertions on this
26 motion and in past public statements concerning the Company's business
27 performance. In fact, the Company has not performed as well as comparable
28 public companies either in the coffee processing industry (such as Green Mountain

1 Coffee Roasters and Peet's Coffee & Tea) or in the food distribution business
2 (such as Performance Food Group and Sysco). I also note that none of these
3 successful companies requires the substantial cash reserves that Farmer Bros.
4 management claims to need.

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3 I declare under penalty of perjury under the laws of Massachusetts and
4 the United States that the forgoing facts that I have recited are true and correct.

5 Executed this 18th day of December, 2003, at Waltham Massachusetts.
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8 By: Leonard Rosenthal

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10 Leonard Rosenthal
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