

1 Greene, Broillet, Panish & Wheeler
Kevin Boyle, SBN 192718
2 100 Wilshire Blvd., Suite 2100
3 Santa Monica, CA 90407

4 Goodkind Labaton Rudoff
& Sucharow LLP
5 Thomas A. Dubbs (TB 9868)
Richard L. Marasse Cal. Bar (#171058)
6 100 Park Avenue
New York, NY 10017
7 (212) 907-0700

8 Attorneys for Plaintiff

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

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LEONARD ROSENTHAL,)
Individually, and On Behalf of All) CASE NO. CV03-8845 (MMM) (CWx)
Others Similarly Situated,)
Plaintiff,) MEMORANDUM OF LAW IN
-against-) SUPPORT OF MOTION FOR
FARMER BROS. COMPANY,) PRELIMINARY INJUNCTION
GUENTER W. BERGER, LEWIS A.)
COFFMAN, ROY E. FARMER, ROY)
F. FARMER, THOMAS A. MALOOF,)
JOHN M. ANGLIN, JOHN H.)
MERRELL and JOHN SAMORE,)
Defendants.)

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1 **INTRODUCTION**

2 For the past three years, the Farmer family/management group, which
3 controls 53% of Farmer Bros. Company (“Farmer Bros.”), has conducted a
4 sustained, systematic, and continuing campaign of oppression against the Minority
5 Shareholders in an attempt to entrench itself in control of Farmer Bros. As set out
6 in the First Amended Complaint, the Individual Defendants, acting solely on behalf
7 of the small Farmer family/management group and to the detriment of the Minority
8 Shareholders, breached their fiduciary duty and violated the Investment Company
9 Act of 1940 (the “ICA”) by creating a manipulative mechanism -- the Employee
10 Stock Option Plan (“ESOP”) -- which gave them control of enough extra votes to
11 perpetuate their majority.

12 Although the Minority Shareholders have repeatedly protested against this
13 entrenchment campaign, the Farmer family/majority group now scents victory in
14 the air, since it may well finally achieve an absolutely impregnable and
15 unassailable majority, courtesy of a proposed reincorporation plan scheduled to be
16 voted on by Farmer Bros. shareholders at the annual meeting scheduled for January
17 5, 2004. The proposed reincorporation would be accomplished by merging Farmer
18 Bros. (now incorporated in California) into Farmer Bros. Delaware. The proposed
19 Delaware Charter and Bylaws which would then spring into place constitute, as
20 confirmed by Professor Lucian A. Bebchuk, Plaintiff’s Declarant, a “massive array
21 of entrenching arrangements” which, taken together, would transform Farmer
22 Bros. into a company with a structurally insulated Board and a shrunken amount of
23 shareholder power.¹

24 The shares of the ESOP, controlled by the Farmer family/company
25 management group for voting purposes, are significant, because without them, the
26

27 ¹ Prof. Bebchuk’s Declaration (the “Bebchuk Dec.”), which was submitted in a related action arising from the same
28 facts (*In the Matter of Roy E. Farmer I Children’s Trust*, Case No. BP 079060 (Cal. Super. Ct. L.A. County), is
annexed to the accompanying Declaration of Kevin Boyle (the “Boyle Dec.”) as Exhibit B.

1 Farmer family majority would cease to exist. Since those ESOP shares were
2 created by violations of fiduciary duties long recognized by California, and since
3 they are also the product of loans which are illegal under the ICA, Plaintiff herein
4 seeks a Preliminary Injunction to prevent management from voting those tainted
5 shares at the all-important January 5, 2004 meeting, and continuing until such time
6 as Plaintiff's claim for damages and permanent injunctive relief can be heard and
7 decided.

8 ARGUMENT

9 I. PRELIMINARY INJUNCTION STANDARD

10 The standard for granting a preliminary injunction is familiar law in this
11 Circuit. As the Ninth Circuit has summarized it:

12 The standard for a preliminary injunction balances the
13 plaintiff's likelihood of success against the relative
14 hardship to the parties. *Sun Microsystems, Inc. v.*
15 *Microsoft Corp.*, 188 F.3d 115, 199 WL 635783, at *3
16 (9th Cir. 1999). To obtain a preliminary injunction,
17 [plaintiff is] required to demonstrate either (1) a
18 likelihood of success on the merits and the possibility of
19 irreparable injury; or (2) that serious questions going to
20 the merits [are] raised and the balance of hardships tips
21 sharply in its favor. *See id.* These two alternatives
22 represent "extremes of a single continuum," rather than
23 two separate tests. *Id.* (quoting *Sega Enters. v. Accolade,*
24 *Inc.*, 977 F.2d 1510, 1517 (9th Cir. 1992)). Thus the
25 greater the relative hardship to plaintiff, the less
26 probability of success must be shown.

27 *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 731 (9th Cir. 1999).

28 No matter where this matter falls along that continuum, plaintiff has
established his entitlement to a preliminary injunction preventing management
from voting their ESOP shares. We show below that plaintiff establishes a
likelihood of success on the merits (and, barring that, serious questions going
thereto). And given the strong preference for pre-election remedies in corporate
control cases, a balance of hardship tipping sharply toward plaintiff is present – or,
at the least, a significant possibility of irreparable injury.

1 **II. PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION**
2 **BECAUSE HE IS LIKELY TO PREVAIL ON THE MERITS ON**
3 **HIS CLAIM THAT DEFENDANTS BREACHED THEIR**
4 **FIDUCIARY DUTY TO PLAINTIFF**

5 In *Jones v. H.F. Ahmanson & Co.*, 1 Cal. 3d 93, 81 Cal. Rptr. 592, 460 P.2d
6 464 (1969), the California Supreme Court held that majority stockholders have a
7 fiduciary responsibility to the interests of both the corporation and to the minority
8 shareholders. As the Court stated:

9 Majority shareholders may not use their power to control
10 corporate activities to benefit themselves alone in a
11 manner detrimental to the minority. Any use to which
12 they put the corporation or their power to control the
13 corporation must benefit all shareholders proportionately
14 and must not conflict with the proper conduct of the
15 corporation's business.

16 *Ahmanson*, 1 Cal. 3d at 108, 81 Cal. Rptr. at 599, 460 P.2d at 471.

17 The majority shareholders' acts that plaintiffs alleged were improper in
18 *Ahmanson* included creating a holding company in such a way as to make the
19 minority shares unmarketable. The Court found that these majority shareholders
20 had breached their fiduciary duties to the minority shareholders by acting through
21 the Board of Directors "to obtain an advantage not made available to all
22 stockholders [and] without regard to the resulting detriment to the minority
23 stockholders and in the absence of any compelling business purpose" 1 Cal.
24 3d at 114. 81 Cal. Rptr. at 604, 460 P.2d at 476 (emphasis added).

25 The holding in *Ahmanson* of a majority shareholder's fiduciary duty owed to
26 the minority has been followed by several other important California cases: *e.g.*,
27 *Crain v. Electronic Memories and Magnetics Corp.*, 50 Cal. App. 3d 509, 522
28 (1975) (breach of fiduciary duty where the majority shareholders engaged in self-
enriching activities at the expense of minority shareholders who, among other
things, were "locked" into an unalterable minority status); *Smith v. Tele-*
Communication, Inc., et al., 134 Cal. App. 3d 338, 343-44 (1982) (breach of

1 fiduciary duty where a transaction was manipulated to give majority, but not
2 minority shareholders, tax benefits).

3 The facts alleged by Plaintiff here put them squarely within the *Ahmanson*
4 line of cases. Plaintiff has alleged that Defendants, with no valid business purpose
5 in mind, created the ESOP and funded it with illegal loans in order to achieve the
6 twin goals of the Farmer family/management group: entrenchment and
7 minimization of estate taxes for Roy F. Farmer, the 87 year old family patriarch.
8 These acts resulted in disparate treatment for the majority and minority, since the
9 majority receives a benefit (lower estate taxes and ease of entrenchment) such that
10 it is willing to endure a lower share price, while the minority shareholders receive
11 no such benefit.

12 Moreover, the Individual Defendants have done more than give themselves,
13 by way of the ESOP shares, the *means* of entrenching themselves. Their Proxy
14 Statement for the upcoming January 5, 2004 annual meeting (annexed as Ex. 1 to
15 the Boyle Dec.) shows that they are about to use that means to further effect and
16 substantially consolidate the entrenchment. The Proxy Statement proposes a
17 reincorporation of Farmer Bros. from a California to a Delaware corporation. The
18 reason given for this reincorporation is to give the corporation the benefit of the
19 “well-established principles of corporate governance” and the “prominence and
20 predictability” of Delaware corporate law (Proxy Statement at 7). However, the
21 Proxy Statement also proposes, as part of the reincorporation, a series of provisions
22 in the new Delaware Charter and Bylaws that would have the effect of
23 consolidating the entrenchment of management and depriving the non-
24 management shareholders of any significant control over the board of directors or
25 voice in the direction of the corporation – all the while depressing the value of
26 Farmer Bros.’ shares.

1 The accompanying declaration of Prof. Lucian A. Bebchuk of the Harvard
2 Law School (Ex. 2 to the Boyle Dec.) demonstrates that none of these proposed
3 changes to the Charter and Bylaws is necessitated by a change in Farmer Bros.’
4 state of incorporation to Delaware or required by Delaware law. Rather,
5 management is clearly using the proposed reincorporation as a pretext for changing
6 the corporation’s “constitution” to impose new provisions that will entrench them
7 nearly permanently and greatly increase their power at the expense of the minority
8 shareholders’ (Bebchuk Dec. ¶¶ 10-12).

9 Prof. Bebchuk shows in detail the ways in which the new provisions
10 proposed by management in the Proxy Statement (Proxy Statement at 10-16 &
11 Annexes B-D) would, if passed – as they will be if management is permitted to
12 vote the ESOP shares – entrench management, wrest any and all control over the
13 corporation from the non-management shareholders, and depress share prices.
14 More particularly, Prof. Bebchuk shows that the proposed reincorporation would:

- 15 ▪ Entrench Farmer’s current management and weaken the powers of
16 Farmer’s shareholders, by:
 - 17 • Strengthening management’s ability to withstand an attempted
18 takeover by permitting management to issue “blank check preferred”
19 stock, which would allow management to install a poison pill without
20 any need for additional shareholder approval (Bebchuk Dec. ¶ 14).
 - 21 • Preventing shareholders from replacing the board without the passage
22 of at least two annual elections, by creating a “staggered board”
23 (Bebchuk Dec. ¶¶ 15-19).
 - 24 • Eliminating the power of shareholders to act by written consent – for
25 example, to vote on a proposal to remove directors for cause between
26 annual elections (Bebchuk Dec. ¶ 20).

- 1 • Eliminating the power of any shareholders to call a special meeting,
2 reserving it instead to the Chairman, the President, or the Board itself
3 (thus, together with the elimination of shareholders' power to act by
4 written consent, completely eliminating the power of shareholders to
5 act between annual elections) (Bebchuk Dec. ¶ 21).
- 6 • Eliminating shareholders' power to introduce cumulative voting
7 (Bebchuk Dec. ¶ 22).
- 8 • Eliminating shareholders' power to change the size of the board of
9 directors, reserving that power only to the board itself (Bebchuk Dec.
10 ¶ 23).
- 11 • Eliminating shareholders' power to fill vacancies on the board,
12 reserving it instead to management (Bebchuk Dec. ¶ 24).
- 13 • Entrenching management control even if management's holdings fall
14 below a majority, by requiring a supermajority of 80% of the
15 shareholders to amend the Bylaws (Bebchuk Dec. ¶¶ 25-27).
- 16 • Imposing a requirement of advance notice of any shareholder
17 proposals to bring matters to shareholder vote (Bebchuk Dec. ¶ 28).
- 18 ■ Strengthen management's power and decrease that of the shareholders,
19 not only reducing the shareholders' ability to direct the affairs of the
20 company, but also drastically reducing the market value of their shares
21 (Bebchuk Dec. ¶¶ 33-44).

22 Defendants' proposed use of the ESOP shares to cram down these
23 oppressive new provisions on the minority shareholders, by use of the power they
24 attained through the improper ESOP transactions, demonstrates that such
25 oppression is what Defendants intended all along. Their actions are all of a piece,
26 an ongoing scheme in breach of their fiduciary duties to plaintiff. This scheme
27 must not be permitted to succeed.

1 For the reasons stated above, plaintiff is likely to prevail on his claim of
2 breach of fiduciary duty by Defendants.

3
4 **III. PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION**
5 **BECAUSE IT IS LIKELY TO PREVAIL ON THE MERITS ON HIS**
6 **CLAIMS THAT FARMER BROS. HAS VIOLATED THE ICA**

7 In order to prevail on his ICA claims at trial, Plaintiff will need to
8 demonstrate that: (A) he has standing, as a private citizen, to bring this action
9 under the ICA; (B) Farmer Bros. is an unregistered investment company subject to
10 the ICA; and (C) that the loans to the ESOP are prohibited transactions under the
11 ICA.

12 A. A Private Right Of Action Has Been Recognized To Remedy
13 Violations of Sections 7 and 17 of the ICA

14 Plaintiff's standing to bring his claims under the ICA is firmly grounded,
15 since private rights of action to enforce various provisions of the ICA have been
16 frequently affirmed by the Federal Courts.² Here, specifically and crucially, a
17 private right of action for both damages and equitable relief has long been
18 recognized under both of the provisions of the ICA invoked by Plaintiff: Sections
19 7(a) and 17(a). *See, e.g., Krome et al. v. Merrill Lynch & Co.*, 637 F. Supp. 910,
20 917-920 (S.D.N.Y. 1986) (a private right of action exists for both damages and
21 equitable relief under Sections 7 and 17 of the ICA); *Herpich v. Wallace*, 430 F.2d
22 792, 813-816 (5th Cir. 1970) (private right of action for damages under Section
23 7(a)); *Brown v. Bullock*, 194 F. Supp. 207, 221 (S.D.N.Y.), *aff'd*, 294 F.2d 415 (2d
24 Cir. 1961)(same); *Reichert v. Bio-Medicus, Inc.*, 70 F.R.D. 71, 74 (D. Minn. 1974)
25 (motion for class certification for 7(a) claim); *SEC v. General Time Corp.*, 407
26 F.2d 65, 70 (2d Cir. 1968) (private right of action under Section 17 for prohibited

27 ² There should be no dispute that these claims under the ICA, alleging interference with minority shareholder voting
28 rights, allege a separate and distinct injury to Plaintiff and others similarly situated, and so may be brought directly
rather than derivatively. *See, e.g., Ahmanson, Crain, and Smith, supra*, each of which found an individual, rather
than a derivative cause of action to be stated by allegations of breach of fiduciary duty claims involving disparate
treatment and oppression of minority shareholders.

1 dealings between affiliates); *Lessler v. Little*, 857 F.2d 866 (1st Cir. 1988), *cert.*
2 *denied*, 489 U.S. 1016 (1989) (same); *Goodall v. Columbia Ventures, Inc.*, 374
3 F. Supp. 1324, 1327-28 (S.D.N.Y. 1974) (private right of action under 17(a));
4 *Entel v. Allen*, 270 F. Supp. 60, 65 (S.D.N.Y. 1967) (same); *Cogan v. Johnston*,
5 162 F. Supp. 907, 909 (S.D.N.Y. 1958) (private parties had standing to bring
6 action to enjoin violation of the ICA).

7 *Krome, supra*, is on point. There, the Court implied a private right of action,
8 for both damages and equitable relief, for an alleged improper affiliated transaction
9 under Section 17(a) of the ICA, where the defendant had allegedly failed to
10 register as an investment company as required by Sections 7(a) and 8 of the ICA.
11 That is precisely what Plaintiff alleges here. There is thus no doubt that an implied
12 cause of action for the claims asserted herein by Plaintiff has been recognized by
13 the Federal Courts. Therefore, it is highly likely that Plaintiff will succeed on this
14 point.

15 B. Farmer Bros. Is An Unregistered Investment Company Under the ICA

16 The question of whether Farmer Bros. is an unregistered investment
17 company within the meaning of Section 3(a)(1)(A) is analyzed under the five
18 factors set out by the SEC in *Tonopah Mining Company of Nevada*, 26 SEC 426
19 (1947). Under these factors, a determination of whether an entity “is or holds itself
20 out as being engaged primarily . . . in the business of investing, reinvesting or
21 trading in securities” depends on: “(1) the company’s historical development;
22 (2) its public representations of policy; (3) the activities of its officers and
23 directors; and *most important, (4) the nature of its present assets; and (5) the*
24 *source of its present income.*” *Id.* at 427 (emphasis added).³ In applying the
25 *Tonopah* factors, the SEC has specifically advised that “[t]he Commission accords

26 _____
27 ³ The *Tonopah* factors were set out in the context of an evaluation of an exemption pursuant to Section 3(b)(2) of the
28 ICA. However, the SEC has subsequently stated that the test for evaluating “primarily engaged in the business of
investing” under Section 3(a)(1)(A) is the same as that for the identical language in 3(b) (1) and (2); or, in other
words, the *Tonopah* factors. *Investment Co. Act Rel. No. 1093, supra*, at 8.

1 the fourth and fifth factors the most weight.” SEC Release No. IC-19334, 51 SEC
2 322 (1993). An analysis of Farmer Bros. under the *Tonopah* factors should
3 therefore proceed to consider the two “most important” factors first.

4 1. Farmer Bros. Assets.

5 For the purpose of evaluating a company’s asset structure, an SEC Release
6 explains that “section 3(a)(1)(A) applies to companies which invest in any type of
7 security.” *Investment Co. Act Rel. No. 10937*, 1979 SEC Lexis 340, at 5.

8 Based on Farmer Bros. Form 10-k for the fiscal year ended June 30, 2003, as
9 of that date the total assets of Farmer Bros., on a consolidated basis, were
10 \$416,415,000, of which approximately \$274,444,000, or 65.9%, were short term
11 investments in securities “of any type.”

12 Based on Farmer Bros. Form 10-k for the fiscal year ended June 30, 2002, as
13 of that date the total assets of Farmer Bros., on a consolidated basis, were
14 \$417,524,000, of which approximately \$285,540,000, or 68.4%, were short term
15 investments in securities “of any type.”

16 Based on Farmer Bros. Form 10-k for the fiscal year ended June 30, 2001, as
17 of that date the total assets of Farmer Bros., on a consolidated basis, were
18 \$390,395,000, of which approximately \$234,179, or 60%, were short term
19 investments in securities “of any type.”

20 Based on Farmer Bros. Form 10-k for the fiscal year ended June 30, 2000, as
21 of that date the total assets of Farmer Bros., on a consolidated basis, were
22 \$353,467,000, of which approximately \$211,069,000, or 59.7 %, were short term
23 or long term investments in securities “of any type.”

24 Based on Farmer Bros. Form 10-k for the fiscal year ended June 30, 1999, as
25 of that date the total assets of Farmer Bros., on a consolidated basis, were
26 \$324,836,000, of which approximately \$203,773,000 or 62.7%, were short term or
27 long term investments in securities “of any type.”

28

1 Thus, for the past five fiscal years, spanning the entire lifetime of the ESOP,
2 Farmer Bros., although nominally a coffee company, continuously kept nearly two
3 thirds of its total assets in investments. Given the importance that the SEC has
4 placed, for purposes of analysis, on the character of a company's assets, these high
5 numbers alone are a strong indicator that Plaintiff will prevail in his contention that
6 Farmer Bros. is "primarily engaged" as an investment company.

7 2. Farmer Bros. Income.

8 Based on Farmer Bros. Forms 10-k for the fiscal years ended June 30 2003,
9 2002, 2001, 2000, and 1999, Farmer Bros. income derived from investments
10 constituted 36.4 %, 22.6%, 29.3%, 20%, and 24.2% respectively, of net income
11 before taxes. This is a significant percentage of income to be derived from
12 investments by an alleged coffee company, particularly when viewed together with
13 the even more significant percentage that the investments constitute of Farmer
14 Bros.' assets. It is also significant that the trend is upward; Farmer Bros.' income
15 from investments has increased dramatically in the past year.

16 3. The Other Factors.

17 It is probably fair to say that the remaining factors of Historical
18 Development, Public Representations of Policy, and the activities of Directors and
19 Officers which, again, are not considered as material as the first two discussed
20 above, are either neutral, or cut somewhat the other way, since Farmer Bros. does
21 sell coffee, and notwithstanding the diminishing aspect that such activity represents
22 as to its assets and income, management has always publicly proclaimed, in
23 response to shareholder inquiries, that it was, in fact, a coffee company.

24 4. Conclusion. On balance, the extraordinarily
25 high percentage of assets kept as investments, coupled with between a quarter and
26 a third of its income being derived from these assets, with the trend on the rise,
27 cannot be realistically viewed as anything but a red flag indicating that Farmer
28

1 Bros. is “primarily engaged” as an investment company under the ICA. Therefore,
2 Plaintiff is likely to prevail on his claim to that effect.

3 C. The Loans To The ESOP Are Prohibited Transactions Under The ICA

4 The fact that Plaintiff has failed to register as an investment company
5 pursuant to Section 8 of the ICA does not exempt Plaintiff from the requirements
6 of the ICA. Therefore, Plaintiff has violated Section 17(a)(4) of the ICA, which
7 prohibits loans between affiliated companies. Specifically, Section 17(a)(4)
8 provides that “[i]t shall be unlawful for any affiliated person . . . to loan money or
9 other property to such registered company, or to any company controlled by such
10 registered company”

11 Farmer Bros. essentially admits that the loans to the ESOP are prohibited
12 transactions under the ICA. In response to a June 26, 2002 shareholder proposal
13 which sought to require Farmer Bros. to “conduct its business as an investment
14 company subject to the Investment Company Act of 1940,” counsel to Farmer
15 Bros. stated, in an August 26, 2002 letter to the SEC that:

16 [I]f Farmer Bros. were required to register under
17 the ICA, given its current capital structure and assets, it
18 would be in violation of Sections 18, 17, and 23 of the
19 ICA upon registering as an investment company.

20 In addition, Farmer Bros. sponsors an
21 employee stock option plan (an “ESOP”) *to which it*
22 *makes loans and engages in other business which*
23 *would be in violation of the affiliated transaction*
24 *prohibitions of Section 17 of the ICA.*

25 (Emphasis added). A copy of this letter is annexed as Exhibit 3 to the
26 accompanying Boyle Dec.

27 Given this explicit admission that that the loans to the ESOP would be
28 prohibited transactions under the ICA, there is a strong likelihood that Plaintiff will
be able to establish this point at trial.

1 **IV. PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION**
2 **BECAUSE THERE IS A POSSIBILITY OF IRREPARABLE INJURY**

3 Once a showing has been made that plaintiff is likely to prevail (or has at
4 least raised serious questions) on his contention that shares to be voted were
5 obtained improperly, irreparable harm in the absence of an injunction (or a balance
6 of harm tipping sharply to the plaintiff) is found almost as a matter of course. That
7 conclusion results from the fact that once the improper vote has occurred, it is
8 difficult if not impossible to “unscramble the eggs,” either by way of post-election
9 injunctive relief or damages.

10 In granting preliminary injunctive relief in a corporate voting rights case, a
11 court in the Southern District of California held:

12 Generally, this Court has a strong preference for
13 prevention over repair, which may require it to
14 “unscramble the eggs.” As the Supreme Court has noted,
15 “in corporate control contests the stage of preliminary
16 injunctive relief, rather than post-contest lawsuits, ‘is the
17 time when relief can best be given.’” *Piper v. Chris-*
18 *Craft Indus.*, 430 U.S. 1, 41-42, 51 L. Ed. 2d 124, 97 S.
19 Ct. 926 (1976) (citing *Electronic Specialty Co. v.*
International Controls Corp., 409 F.2d 937, 947 (2d Cir.
1969) (Friendly, J.)).

20 While it may be within the power the court to
21 subsequently “fix” any damage caused by an illegitimate
22 change in control, . . . it may not be the preferable
23 remedy if the court has a chance to take some pre-
24 election preventative measures.

25 *Medical Imaging Centers of America, Inc. v. Lichtenstein*, Civil No. 96-0039-
26 B(AJB), 1996 U.S. Dist. LEXIS 22362, at *12-13 (S.D. Cal. Feb. 29, 1996);
27 *accord, e.g., Consolidated Gold Fields PLC v. Minorco, S.A.*, 871 F.2d 252, 261
28 (2d Cir. 1989) (quoting *Sonesta Int’l Hotels Corp. v. Wellington Assocs.*, 483 F.2d
247, 250 (2d Cir. 1973)) (“Erring on the side of granting the injunction becomes
especially imperative in corporate control contests because ‘once the [transaction]
has been consummated it becomes difficult, and sometimes virtually impossible,
for a court to ‘unscramble the eggs.’”).

1 As shown above (*supra* at 2), management’s ESOP shares cause a dilution
2 of plaintiff’s holdings. If management is permitted to vote those shares, it will be
3 able to ramrod through a series of basic changes in the corporate governance of
4 Farmer Bros. that will radically change the balance of power between management
5 and the shareholders, to the great benefit of management and the great detriment of
6 the non-management shareholders (*see supra* at 6-7).

7 Once those management proposals are enacted – as they will be, if
8 management is allowed to vote the ESOP shares – management will have carte
9 blanche to run the company in accordance with their own self-interested agenda,
10 with no consideration given to the interests of the oppressed minority. That is why
11 the election must be stopped. The damage must be prevented before the “eggs”
12 become “scrambled,” so the Court will be spared the difficult and questionably
13 efficacious task of “unscrambling” them after the fact. *See Medical Imaging*
14 *Centers, supra*.

15 The result would be no different if the Court were to consider that part of the
16 analytic continuum where plaintiff must demonstrate a balance of hardships tilting
17 sharply toward him, rather than a possibility of irreparable harm. As one district
18 court in this Circuit ruled in granting a preliminary injunction putting off an annual
19 meeting on grounds of issues relating corporate control, in such cases the minority
20 will most likely suffer irreparable harm if the vote is permitted to proceed, whereas
21 the defendants will only suffer a delay in voting. *Schoen v. Amerco*, CV-N-94-
22 0475-ECR, 1994 U.S. Dist. LEXIS 21588, at *64-65 (D. Nev. Oct. 5, 1994); *see*
23 *Chicago Stadium Corp. v. Scallen*, 530 F.2d 204, 208 (8th Cir. 1976) (balance of
24 hardships favored plaintiff when defendant was about to vote shares whose
25 issuance appeared to have been tainted by breach of fiduciary duty).

26 **WHEREFORE**, Plaintiff prays for relief and judgment, as follows:
27
28

1 Preliminarily enjoining all Defendants from directing the voting of the
2 shares of Farmer Bros.' stock beneficially owned by the ESOP at the shareholders
3 meeting scheduled for January 5, 2004, and until such time as Plaintiff's claims for
4 permanent injunctive relief may be heard.
5

6 Dated: December 10, 2003

7 GREENE, BROILLET, PANISH &
8 WHEELER

9 By 

10 Kevin Boyle

11
12 GOODKIND LABATON RUDOFF
13 & SUCHAROW LLP

14 Thomas A. Dubbs (TB 9868)
15 Richard L. Marasse Cal. Bar (#171058)
16 100 Park Avenue
17 New York, NY 10017
18 Telephone (212) 907-0700

19 Attorneys for Plaintiff
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