

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

KATHLEEN BREEN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 05-cv-654 (PLF)
	)	
ANTHONY FOXX, SECRETARY OF	)	
TRANSPORTATION, DEPARTMENT OF	)	
TRANSPORTATION, et al.,	)	
	)	
Defendants.	)	
	)	

**PLAINTIFFS’ THIRD STATUS REPORT**

Pursuant to the Court’s December 14, 2016 Memorandum and Order, Plaintiffs, by and through their undersigned counsel, hereby submit this Status Report regarding the status of the Plaintiffs in this case and the efforts made by The Law Offices of Gary M. Gilbert & Associates (“GMGA”) and Cohen Milstein Sellers & Toll (“Cohen Milstein”) (collectively “Plaintiffs’ Counsel”) to contact the Plaintiffs.

**I. Background**

The Plaintiffs in this case may currently be divided into four general categories: (1) Active Plaintiffs, (2) *Pro Se* Plaintiffs, (3) Dismissed Plaintiffs, and (4) Joinder Plaintiffs. When Plaintiffs’ Counsel first entered the case, there were 197 Active Plaintiffs who were not proceeding *pro se*. In addition, when Plaintiffs’ Counsel entered the case, there were 27 Plaintiffs who were proceeding *pro se*. As detailed below, most of these formerly *pro se* individuals are now represented by Plaintiffs’ Counsel. There are 654 Plaintiffs who were named in the Complaints to the Court, but were subsequently dismissed for failure to respond to

the Court's show-cause orders. On October 31, 2016, Plaintiffs asked the Court to reconsider the dismissal of these Plaintiffs. *See* Dkt. 317.

There are also 20 Plaintiffs who seek reconsideration on the denial of their motion to join this case. *See* Dkts. 122 and 316. Plaintiffs' Counsel represents 17 of these Joinder Plaintiffs.

## **II. Active Plaintiffs Before the Court**

Plaintiffs' Counsel now represents 215 Plaintiffs, of which 191 had previously been represented by prior counsel, the law firm of Gebhardt & Associates (G&A), and 24 had been proceeding *pro se*. A list of these represented individuals is appended as Attachment 1.

Six Plaintiffs who were previously represented by G&A have not yet retained Plaintiffs' Counsel. Two have indicated that they wish to retain Plaintiffs' Counsel, and one has informed Plaintiffs' Counsel that he wishes to proceed *pro se* or voluntarily withdraw from the case. Plaintiffs' Counsel have been notified that one of these Plaintiffs, Herbert Nagel is deceased. *See* Attachment 2 (Obituary of H. Nagel). Plaintiffs' Counsel are making efforts to reach Mr. Nagel's estate, and will update the Court, in accordance with Federal Rule of Civil Procedure 25. Plaintiffs' Counsel have been unable to contact two of these individuals, but are continuing to make efforts to locate their current contact information.

## **III. Pro Se Plaintiffs**

There are 24 individuals who were proceeding *pro se* in this action who have retained Plaintiffs' Counsel. At this point in time, three *pro-se* individuals have not retained Plaintiffs' Counsel: Tom Domingo, John Lynch and Julia Greenway. Mr. Domingo has informed Plaintiffs' Counsel that he wishes to continue to proceed *pro-se*. Plaintiffs' Counsel have spoken to Mr. Lynch, and he continues to consider their offer of representation. Plaintiffs' Counsel have made numerous attempts to reach Ms. Greenway but have not been able to contact her.

**IV. Joinder Plaintiffs**

There are 20 individuals who sought to join this action, 17 of whom have retained Plaintiffs' Counsel. A list of these individuals is appended as Attachment 3. Three Joinder Plaintiffs have not yet retained Plaintiffs' Counsel. Plaintiffs' Counsel will continue to update the Court regarding the status of these proposed Joinder Plaintiffs.

**V. Dismissed Plaintiffs**

Of the 654 Plaintiffs that have been dismissed from the above-captioned case, Plaintiffs' Counsel have been in touch with 356 individuals. 272 of these Dismissed Plaintiffs have retained Plaintiffs' Counsel. A list of these individuals is appended as Attachment 4. Plaintiffs' Counsel have been in touch with an additional 77 Dismissed Plaintiffs, who are considering Plaintiffs' Counsel's offer of representation. A list of these individuals is appended as Attachment 5. Of the first-class mailings Plaintiffs' Counsel have sent to the Dismissed Plaintiffs, 122 have been returned as undeliverable. A list of these individuals is appended as Attachment 6. There are 185 Dismissed Plaintiffs for whom Plaintiffs' Counsel have neither received a response, nor a returned mailing. A list of these individuals is appended as Attachment 7. 7 Dismissed Plaintiffs have informed Plaintiffs' Counsel that they are not interested in pursuing this law suit. A list of these individuals is appended as Attachment 8.

**VI. Attempts to Reach the Dismissed Plaintiffs**

Plaintiffs' Counsel continue to make efforts to contact the Dismissed Plaintiffs, and continue to receive and respond to emails and phone calls from Dismissed Plaintiffs about the case. As a result, Plaintiffs' Counsel have successfully contacted a majority of the Dismissed Plaintiffs. *See* Attachments 4, 5. The number of Dismissed Plaintiffs who have contacted

Plaintiffs' Counsel continuously increases, and Plaintiffs' Counsel will continue to update the Court accordingly.

In addition, Plaintiffs' Counsel have purchased the domain name [www.faacase.com](http://www.faacase.com), and are in the process of setting up a publicly available website to provide information about contacting Plaintiffs' Counsel about this case.

Plaintiffs' Counsel believe the Dismissed Plaintiffs whom Plaintiffs' Counsel have not yet reached could be located and contacted with additional assistance from Defendants. Plaintiffs' Counsel have spoken to a private investigator, who advised that the most effective way to locate these individuals would be to obtain their social security numbers of these individuals. Accordingly, on December 16, 2016, Plaintiffs' Counsel asked Defendants whether they would release the social security numbers for these Plaintiffs, subject to an appropriate confidentiality agreement. *See* Attachment 9. On January 3, 2017, Defendants provided a response regarding their position, which they have asked be presented to the Court as they drafted it:

We are not comfortable releasing the [social security numbers] for non-represented plaintiffs and former plaintiffs based on the prior protective order that had governed discovery [Dkt. 56]. So I suggested that, if you desire that information, you should move for a protective order that will allow the judge to specifically address this particular request.

We will not oppose the motion if (1) you can let us see a copy of your proposed protective order before filing and we don't have any problems with the details; and (2) you include a sentence along the following lines: Defendants advise that, under the unique procedural circumstances of this case, they take no position on whether the Court should enter a protective order focused on the particularized disclosures proposed by this motion.

Plaintiffs propose that they formulate, with the concurrence of Defendants, an appropriate order protecting the social security numbers and submit the proposed order along with a motion asking the Court's approval no later than January 13, 2017.

Dated: January 4, 2017

Respectfully Submitted,  
/s/ Linda A. Kincaid  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served via the CM/ECF electronic filing system on this 4<sup>th</sup> day of January, 2017, and thereby served upon the parties and/or their counsel. The following individuals, who are not served via the CM/ECF electronic filing system, were served via first-class mail:

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By: s/ Linda A. Kincaid  
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