

CAUSE NO. CV22-12-895

JACOB STRAND as Personal  
Representative of ATHENA STRAND,  
deceased;

*Plaintiffs,*

and

MAITLYN GANDY as Personal  
Representative of ATHENA STRAND,  
deceased;

*Intervenor,*

vs.

TANNER HORNER, BIG TOPSPIN,  
INC., AND FEDEX GROUND  
PACKAGE SYSTEM, INC.

*Defendants.*

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IN THE DISTRICT COURT

271<sup>ST</sup> JUDICIAL DISTRICT

WISE COUNTY, TEXAS

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**PLAINTIFF’S PLEA IN INTERVENTION**

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**TO THE HONORABLE JUDGE OF SAID COURT:**

Pursuant to Texas Rule of Civil Procedure 60, MAITLYN GANDY, (“MAITLYN”) — Intervening Plaintiff — hereby files this *Plea in Intervention* and makes an appearance as a Plaintiff in the above-numbered and styled cause (the “Pending Lawsuit”) — asserting claims against Defendants TANNER HORNER (“HORNER”), BIG TOPSPIN, INC, (“BIG TOPSPIN”) and FEDEX GROUND PACKAGE SYSTEM, INC. (“FEDEX”) collectively, “Defendants.”

## **I. INTRODUCTION**

On Wednesday, November 30, 2022, parents across the world hugged their kids a little tighter as news spread that a 7-year-old little girl was missing in Wise County, Texas. In the following days, many joined the search - civilians and law enforcement - hoping that the young girl would be found alive. That hope was extinguished on Friday, December 2, 2022, when Athena Presley Monroe Strand's body was found. Athena's life had been taken, her very breath extinguished, at the hands of Tanner Lynn Horner, a FedEx delivery driver.

Shock and sorrow reverberated at the news. Tears were shed, hearts were broken, trust was lost. In the days after November 30, 2022, the world started to learn who Athena was - a child, a daughter, a free spirit, someone who brought joy to those around her, a lover of animals, a friend to her classmates, someone who could disarm you with her smile, and a big fan of Disney musicals. America wept because, in Athena, they saw the best of themselves, their children, and their families.

In the days following Athena's death, the question of, "How could they let this happen?" struck a nerve each time a FedEx truck drove by. It still does. For so long, FedEx - the trucks, the uniforms, the logo, the drivers - has been trusted to travel the last mile - to come to our doors, to be welcomed, and so often, to deliver the subject of our desires. As parents hugged their kids on December 2, 2022, they wondered how FedEx became the deliverer of death.

This lawsuit is about Athena Strand - a vibrant young girl who deserves to have her memory live on for the good she brought to the world.



It is about a life that was taken senselessly - a child who could have been any of ours. It is about a loss that could have and should have been prevented. It is about implementing better hiring, training, and supervising practices to prevent vicious killers from arriving at our doorsteps bearing an insignia that has been cultivated to instill trust. It is about preventing billion-dollar organizations from insulating themselves from liability by using fly-by-night contractors instead of acknowledging the responsibility they bear when we trust them to come on our property, to our doorsteps, and even inside our homes.

The tragedy of this loss is compounded by the fact that this was not the first - or last - crime of violence committed by a FedEx driver.

## FedEx contract driver charged with raping woman in van in Middleborough

By **John R. Eilement** Globe Staff, Updated February 15, 2023, 11:21 p.m.



A FedEx contract driver is facing rape charges based on evidence that includes an audio recording of the reported assault, which allegedly took place in the passenger seat of a company delivery van in Middleborough, according to court records and police.

### Former FedEx driver arraigned on murder, arson charges in death of elderly woman

by WRGB STAFF | Thursday, November 3rd 2022



NEWS

## FedEx driver accused of Fulton County murder

News staff

Aug. 3, 2022 | Updated: Aug. 3, 2022 4:44 p.m.

## FedEx employee charged with attempted murder after shooting coworker, police say

FOX13 Memphis News Staff Nov 8, 2022 Updated Feb 10, 2023

HOMICIDE · Published June 29, 2022 1:11pm EDT

## Virginia FedEx worker busted for baffling murder of non-profit founder

NEWS

## Warrant: FedEx driver 'dozed off' before fatal North Canaan head-on crash

This lawsuit is about affecting change at FedEx, in their hiring, training, and supervising of employees and contractors. This lawsuit is about affecting change in the practices of FedEx subcontractors, like Big TopSpin so that these tragic, life-altering and life-ending acts are not repeated.

On or about November 30, 2022, HORNER acting within the course and scope of his employment with BIG TOPSPIN and FEDEX, in his FEDEX uniform, driving his FEDEX-entrusted vehicle bearing the FEDEX logo, set forth on a delivery route established and serviced by BIG TOPSPIN and FEDEX, to deliver a package to Athena's residence. While fulfilling his duties and responsibilities as an employee of BIG TOPSPIN and FEDEX, HORNER abducted Athena from her residence and forced her into the FEDEX vehicle. Inside the FEDEX vehicle, HORNER brutally murdered Athena by strangling, smothering, or asphyxiating Athena.

MAITLYN, Plaintiff, as the mother of 7-year-old Athena and a personal representative of Athena's estate along with Plaintiff JACOB STRAND, has a justiciable interest in the Pending Lawsuit and, thus, a right to intervene.

As such, Plaintiff files this Plea in Intervention, and in support thereof Plaintiff respectfully shows the Court as follows:

## **II. DISCOVERY CONTROL PLAN AND CLAIM FOR RELIEF**

Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4 and affirmatively pleads that this suit is not governed by the expedited actions process in Rule 169 because Plaintiff seeks monetary relief of more than \$1,000,000.00 at this time. Plaintiff implicitly trusts the judgment of the good and fair jury as the representatives of Wise County. Ultimately,

Plaintiff will ask a jury to assess a fair and reasonable amount of monetary damages as compensation for the serious injuries and losses caused by the acts and omissions of Defendants. Plaintiff reserves the right to amend this claim for relief should it become necessary at some time in the future.

### **III. PARTIES**

Plaintiff Maitlyn Gandy, as Personal Representative of Athena Strand, deceased, is an individual residing in Stephens County, Oklahoma. The last three digits of her Oklahoma driver's license number are 495 and the last three digits of her social security number are 327.

Defendant TANNER HORNER is an individual and is a resident of Wise County, Texas. He may be served at 200 Rock Ramsey Dr., Decatur, TX 76234 or where he may be found.

Defendant BIG TOPSPIN, INC. is a Texas for-profit corporation doing business in Dallas County, Texas and may be served with process through its registered agent Richard G. Davis III at 17418 River Hill Dr., Dallas, Texas 75287.

Defendant FEDEX GROUND PACKAGE SYSTEM, INC. is a domestic corporation doing business in Texas and may be served with process by serving its registered agent, CT Corporation, at 1999 Bryant Street, Suite 900, Dallas, Texas 75201.

### **IV. JURISDICTION AND VENUE**

This Court has subject matter jurisdiction over this lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements and the court has personal jurisdiction over each party.

Venue is proper in WISE COUNTY under Texas Civil Practice & Remedies Code

§15.002(a)(1).

**V. FACTS**

Athena Presley Monroe Strand was born on May 23, 2015. She was Maitlyn Gandy's first child. Athena lived with her mother until August 2022. She had a smile that would light up a room, an infectious laugh, and a unique ability to bring joy to those around her. She was loved by her family, teachers and fellow students at Comanche Elementary School in Comanche, Oklahoma.

In August 2022, Athena moved temporarily to live with her father, Jacob Strand in Wise County, Texas, while Maitlyn underwent medical testing and procedures for a then-undiagnosed but debilitating medical condition. Athena attended first grade at Paradise Elementary School in Wise County.

On Wednesday, November 30, 2022, Athena was playing in the front yard of her father's home, a normal activity for anyone her age, particularly in Paradise, Texas where the population hovers just over 500. Her father, Jacob Strand, was out hunting, and her stepmother Elizabeth Strand was home.

Around dinner time, Elizabeth Strand began looking for Athena to come inside for dinner but was unable to find her. Elizabeth Strand grew concerned and called 911 to report that Athena was missing.

With the help of the community and law enforcement, an extensive search commenced to try to locate Athena. Word quickly spread on social media which resulted in an outpouring of support and searchers, despite the fact that an AMBER Alert could not be issued until Thursday afternoon. (Currently an AMBER Alert can only be issued once a child has been confirmed as "taken" or "abducted," as opposed to missing.)

The outstanding investigative work by the Wise County Sheriff's Department led to the

discovery that a FEDEX package had been delivered to Athena’s home around the time she went missing. The delivery was a box of Barbies that would have been a Christmas present for Athena – one that she would never receive.



Wise County Sheriff’s Department also discovered the FEDEX route was serviced by BIG TOPSPIN, a FEDEX contractor. Armed with this information, Wise County Sheriff’s Department was able to obtain video from the FEDEX vehicle that made the delivery to Athena’s home.

Upon reviewing the video, law enforcement was able to identify HORNER, wearing his FEDEX uniform, as the individual who abducted Athena and forced her into the FEDEX vehicle.



What took place inside the FEDEX vehicle is every parent's worst nightmare. HORNER brutally murdered Athena by strangling, smothering, or asphyxiating Athena. HORNER then continued his trail of terror in the FEDEX vehicle by attempting to "dispose" of Athena's body by placing her in a body of water on the side of the road.



HORNER was able to gain access to Athena's home through the course and scope of his duties as an employee of BIG TOPSPIN and FEDEX. HORNER was authorized to wear the FEDEX uniform and drive a vehicle bearing the FEDEX logo and insignia on designated routes serviced by BIG TOPSPIN and FEDEX.

FEDEX retains significant control over the specific manner in which BIG TOPSPIN, its employees and contractors deliver FEDEX packages and maintains significant control over BIG TOPSPIN and its employees and contractors.

**VI. CAUSES OF ACTION**

Plaintiff hereby incorporates all prior sections and paragraphs of this Petition for all purposes.

**a) ASSAULT BY INFLICTION OF BODILY INJURY AS TO DEFENDANT  
TANNER HORNER**

HORNER intentionally, knowingly, and recklessly made contact with Athena Strand's body including, but not limited to, strangling, smothering, or asphyxiating Athena Strand. HORNER's contact caused bodily injury to Athena Strand, resulting in her death.

Defendants BIG TOPSPIN and FEDEX are jointly and severally liable for the acts and/or omissions of HORNER through the theories of *respondeat superior*, ostensible agency, apparent agency, actual agency, and/or other agency and/or vicarious responsibility principles.

At all times, HORNER was acting in the course and scope of his employment with Defendants BIG TOPSPIN and FEDEX, who are sued under a theory of vicarious liability for the acts and/or omissions made by HORNER.

**b) NEGLIGENCE AS TO DEFENDANT BIG TOPSPIN INC. & FEDEX GROUND  
PACKAGE SYSTEM INC.**

Defendants BIG TOPSPIN and FEDEX had a duty to exercise ordinary care, that is, to do what a person of ordinary prudence would have done under the same or similar circumstances. Defendants BIG TOPSPIN and FEDEX did not use the degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

Defendants BIG TOPSPIN and FEDEX breached their duty of care, including but not limited to,

the following ways:

1. In the negligent hiring of HORNER;
2. In failing to properly investigate HORNER'S criminal history, mental history, and prior employment history;
3. In failing to properly train HORNER to work in a safe and prudent manner;
4. In failing to properly supervise HORNER;
5. In the reckless employment of HORNER;
6. In failing to implement and enforce safety policies and procedures.

In addition to the above stated, FEDEX further breached their duty of care, including but not limited to, the following ways:

1. In the negligent hiring of BIG TOPSPIN, INC.;
2. In failing to properly investigate BIG TOPSPIN, INC. hiring practices and procedures;
3. In the reckless employment of BIG TOPSPIN;
4. In failing to properly supervise BIG TOPSPIN.

c) **NEGLIGENT ENTRUSTMENT AS TO DEFENDANT BIG TOPSPIN INC. & FEDEX GROUND PACKAGE SYSTEM INC.**

Defendants BIG TOPSPIN and FEDEX supplied HORNER with the FedEx vehicle, the FedEx uniform, and other FEDEX insignia he used to enter the premises where Athena Strand was playing, without raising suspicion. HORNER these utilized the vehicle supplied by FEDEX and BIG TOPSPIN to kidnap, brutally murder, and dispose of Athena . Defendants BIG TOPSPIN and FEDEX knew or should have known that Defendant TANNER HORNER would use that vehicle in a manner involving an unreasonable risk of harm, as described in the paragraphs above.

**d) GROSS NEGLIGENCE AS TO DEFENDANT BIG TOPSPIN INC. & FEDEX  
GROUND PACKAGE SYSTEM INC.**

Defendants BIG TOPSPIN and FEDEX course of conduct shows a reckless indifference to consequences without the exertion of any substantial effort to avoid them. Defendants BIG TOPSPIN and FEDEX acted willfully, wantonly, and/or with reckless disregard to the consequences to Plaintiff. Defendants BIG TOPSPIN and FEDEX actions and inactions constituted an extreme risk of harm to the public, including Athena Strand. Defendants BIG TOPSPIN and FEDEX had a subjective awareness of this risk and proceeded in spite of the risk with conscious indifference.

Defendants BIG TOPSPIN and FEDEX, as a result of their conduct, policies, failure to investigate, failure to supervise, and other acts and omissions, had a subjective knowledge that hiring and retaining HORNER would involve an unreasonable risk of harm to Defendants BIG TOPSPIN and FEDEX customers and yet hired and retained him in spite of the extreme risk of harm with conscious indifference.

HORNER's conduct resulted from the actions and inaction of corporate officers, directors, and managers of Defendants BIG TOPSPIN and FEDEX in one or more of the following ways:

1. In the negligent hiring of HORNER;
2. In failing to properly investigate HORNER'S criminal history, mental history, and prior employment history;
3. In failing to properly train HORNER to work in a safe and prudent manner;
4. In failing to properly supervise HORNER;
5. In the reckless employment of HORNER;
6. In failing to implement and enforce safety policies and procedures.

In addition to the above stated, Defendant FEDEX as a result of their conduct, policies, failure to investigate, failure to supervise, and other acts and omissions, had a subjective knowledge that hiring and retaining BIG TOPSPIN would involve an unreasonable risk of harm to FEDEX customers and yet hired and retained them in spite of the extreme risk of harm with conscious indifference.

BIG TOPSPIN's conduct resulted from the actions and inaction of corporate officers, directors and managers of Defendant FEDEX. in one or more of the following ways:

1. In the negligent hiring of BIG TOPSPIN;
2. In failing to properly investigate BIG TOPSPIN'S hiring practices and procedures;
3. In the reckless employment of BIG TOPSPIN;
4. In failing to properly supervise BIG TOPSPIN.

## **VII. DAMAGES**

As a proximate cause of the Defendants' negligent acts and/or omissions, Plaintiff will show actual damages within the jurisdictional limits of this Court as follows:

### a) SURVIVAL ACTION

Maitlyn Gandy and Jacob Strand are the biological parents of 7-year-old Athena Presley Monroe Strand, decedent. As a result, Maitlyn Gandy and Jacob Strand are heirs of Athena pursuant to Tex. Est. Code. Section 201.001. There are no outstanding debts or assets that require administration. Therefore, Maitlyn Gandy and Jacob Strand can serve as the estate's personal representatives for the purposes of this survival action.

### b) WRONGFUL DEATH CLAIMS

Athena Presley Monroe Strand was killed as a result of the Defendants' negligent acts and/or omissions in question. As a result of Athena's death, Maitlyn Gandy and Jacob Strand (as surviving

parents) are each entitled to recover, and seek recovery of, the following elements of damage:

1. Pecuniary loss sustained in the past;
2. Pecuniary loss that, in reasonable probability, will be sustained in the future;
3. Loss of companionship and society sustained in the past;
4. Loss of companionship and society that, in reasonable probability, will be sustained in the future;
5. Mental anguish sustained in the past; and
6. Mental anguish that, in reasonable probability, will be sustained in the future;
7. Loss of consortium.

The foregoing damages are in excess of the minimum jurisdictional limits of this Court for which Plaintiff now intervenes. The total amount of damages is a matter that Plaintiff wish to leave solely to the discretion of the jury.

c) **EXEMPLARY DAMGES**

Plaintiff hereby incorporate all prior sections and paragraphs of this Petition for all purposes.

Defendants acted with gross negligence and malice, which justifies an award of punitive damages under Texas Law. The acts or omissions of Defendants constitute gross negligence and malice pursuant to §41.007(7) and §41.007(11) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE. In addition, the limit on exemplary damages pursuant to §41.008 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE does not apply in the above styled cause because Plaintiff seeks recovery of exemplary damages based on conduct described as a felony under Texas Penal Code section 19.03 and 20.04. As evidenced by the following indictments:

No. CR 24559 Court: 271<sup>st</sup> Judicial District Bond \$ \_\_\_\_\_

The State of Texas vs. TANNER LYNN HORNER

Charge: CAPITAL MURDER  
Capital Felony 19.03(a)(2) PC  
Capital Felony 19.03(a)(8) PC  
Person ID 473947

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY, for the County of Wise, State of Texas, duly selected, impaneled, sworn, charged, and organized as such during the January Term A.D. 2023 of the 271<sup>st</sup> Judicial District Court for said County, upon their oaths present in and to said Court at said term that TANNER LYNN HORNER, hereinafter styled Defendant, on or about the 30th day of November, 2022, and before the presentment of this indictment, in the County and State aforesaid, did

**Paragraph 1**

did then and there intentionally cause the death of an individual, Athena Strand by strangling and/or smothering and/or asphyxiating Athena Strand and the Defendant, was in the course of committing or attempting to commit kidnapping of Athena Strand, or

**Paragraph 2**

did then and there intentionally or knowingly cause the death of Athena Strand, an individual younger than 10 years of age, by strangling and/or smothering and/or asphyxiating Athena Strand.

Against the peace and dignity of the State.

*Megan Eleton*  
Foreperson of the Grand Jury

**FILED**  
AM 12:00 PM  
FEB 16 2023  
LOUCRECIA BIGGERSTAFF  
DISTRICT CLERK WISE COUNTY TX  
BY                      DEPUTY

No. 2021558 Court: 271<sup>st</sup> Judicial District Bond \$ \_\_\_\_\_

The State of Texas vs. **TANNER LYNN HORNER**  
Charge: **AGGRAVATED KIDNAPPING**  
**First Degree Felony 20.04(a)(4) and (5)**  
**First Degree Felony 20.04(b)**  
**Person ID 473947**

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY, for the County of Wise, State of Texas, duly selected, impaneled, sworn, charged, and organized as such during the January Term A.D. 2023 of the 271<sup>st</sup> Judicial District Court for said County, upon their oaths present in and to said Court at said term that TANNER LYNN HORNER, hereinafter styled Defendant, on or about the 30th day of November, 2022, and before the presentment of this indictment, in the County and State aforesaid, did

Paragraph 1

then and there, with intent to inflict bodily injury on Athena Strand or with intent to terrorize Athena Strand, intentionally or knowingly abduct Athena Strand, by restricting the movements of Athena Strand without her consent so as to interfere substantially with her liberty, by moving her from one place to another or by confining her, with intent to prevent her liberation, by secreting or holding her in a place she was not likely to be found, or

Paragraph 2

then and there intentionally or knowingly abduct Athena Strand, by restricting the movements of Athena Strand without her consent so as to interfere substantially with her liberty, by moving her from one place to another or by confining her, with intent to prevent her liberation, by secreting or holding her in a place she was not likely to be found, and the defendant did then and there use or exhibit a deadly weapon, namely the defendant's hand, during the commission of the offense.

**FILED**  
AM 5:00 PM  
FEB 16 2023  
LOUGRECIA BIGGERSTAFF  
DISTRICT CLERK WISE COUNTY, TX  
BY [Signature] DEPUTY

The grossly negligent and malicious acts and/or omissions of Defendants were a proximate cause



of actual damages to Plaintiff in an amount within the jurisdiction limits of this Court, which Plaintiff seeks judgement.

**d) JURY DEMAND**

Plaintiff demands a jury trial and tenders the appropriate fee with this filing of this Petition.

**e) MANDATORY DISCLOSURES**

Within thirty (30) days of answering this lawsuit, Defendants must make mandatory disclosures in accordance with Texas Rule of Civil Procedure 194.2.

**f) CONDITIONS PRECEDENT**

All conditions precedent, if any, to Plaintiff's causes of action asserted herein have either occurred, been performed, been waived, or been excused.

**g) NOTICE PURSUANT TO TEXAS RULE OF CIVIL PROCEDURE 193.7**

Plaintiff hereby reserves the right to use any and all documents produced by each party in discovery against that party in any pre-trial hearing or at trial of this matter.

**h) NOTICE PURSUANT TO TEXAS RULE OF CIVIL PROCEDURE 205.3(e)**

Plaintiff hereby requests that Defendants' counsel immediately produce to Plaintiff's counsel copies of any and all third-party discovery documents obtained during the course of this litigation. For any such documents that cannot be produced electronically, and as required by Rule 205.3(e), Plaintiff, by and through their counsel of record, will reimburse reasonable copy costs

upon being presented with an invoice for same. While no issues are anticipated in this regard, should any third-party documents not be provided to Plaintiff (c/o their counsel) in accordance with this request, Plaintiff will seek to exclude said documents from use as evidence in any hearing or at trial.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Court issue citation for Defendants TANNER HORNER, BIG TOPSPIN, INC, and FEDEX GROUND PACKAGE SYSTEM, INC. to appear and answer, and that Plaintiff be awarded a judgment for Plaintiff's damages as set forth above against Defendants for the following:

1. Actual damages in an amount in excess of the jurisdictional limits of this Court;
2. Punitive damages against Defendants in an amount to be determined by the jury;
3. Prejudgment and post-judgement interest at the maximum legal rate;
4. Court costs, including discretionary costs; and
5. All other relief, whether at law or in equity, to which Plaintiff is justly entitled.

Respectfully submitted,

VARGHESE SUMMERSETT INJURY LAW GROUP

*Ty Stimpson*

\_\_\_\_\_  
Ty Stimpson  
State Bar No. 24077464  
Benson Varghese  
State Bar No. 24063683  
Christy Jack  
State Bar No. 10445200  
Audrey Hatcher  
State Bar No. 24122000

300 Throckmorton Street

Suite 1650  
Fort Worth, Texas 76102  
(817) 207-4878 – phone  
(817) 381-5965 – fax  
[litigation@versusinjury.com](mailto:litigation@versusinjury.com)

**ATTORNEYS FOR PLAINTIFF**

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Shantae Haymer on behalf of Benson Varghese  
Bar No. 24063683  
litigation@versusinjury.com  
Envelope ID: 72896759  
Status as of 2/21/2023 12:58 PM CST

Associated Case Party: JACOB STRAND

Name	BarNumber	Email	TimestampSubmitted	Status
Melinda Zamora		melinda@bowles-lawfirm.com	2/17/2023 5:13:48 PM	SENT

Associated Case Party: FEDEX GROUND PACKAGE SYSTEM, INC.

Name	BarNumber	Email	TimestampSubmitted	Status
Bradley E.Chambers		bchambers@bakerdonelson.com	2/17/2023 5:13:48 PM	SENT
Kimberly A.Chojnacki		kchojnacki@bakerdonelson.com	2/17/2023 5:13:48 PM	SENT
Bobbie Stratton		bstratton@bakerdonelson.com	2/17/2023 5:13:48 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Robert Bowles	790349	jason@bowles-lawfirm.com	2/17/2023 5:13:48 PM	SENT
Kevin D.Didway		kevin@holmbambace.com	2/17/2023 5:13:48 PM	SENT
Paul G.Belew		pbelew@gmail.com	2/17/2023 5:13:48 PM	SENT
MARILYN BELEW		belewandbelew@embarqmail.com	2/17/2023 5:13:48 PM	SENT
Kimmie McElrath		kimmie@holmbambace.com	2/17/2023 5:13:48 PM	SENT