

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FRONT RANGE EQUINE RESCUE,)	
<i>et al.</i> ,)	
)	
)	
Plaintiffs,)	
v.)	Civ. No. 1:13-cv-00639-MCA-RHS
)	
TOM VILSACK, Secretary,)	
U.S. Department of Agriculture, <i>et al.</i> ,)	
)	
)	
Federal Defendants.)	
)	
)	

**DEFENDANT-INTERVENORS VALLEY MEAT COMPANY, LLC’S,
RAINS NATURAL MEATS’, AND CHEVALINE, LLC’S RESPONSE TO
PLAINTIFFS’ EMERGENCY MOTION TO MODIFY THE AMENDED
TEMPORARY RESTRAINING ORDER**

I. DISCUSSION

The Court’s Amended Order Granting the TRO is explicitly limited to the companies of Valley Meat Company, LLC (“VALLEY”) and Responsible Transportation (“RESPONSIBLE”). *See* TRO Order ECF No. 125. Specifically the Court’s Order is, without question, clear in its language that the Federal Defendants (“USDA”) are only enjoined from providing inspectors and inspections to VALLEY and RESPONSIBLE and **only** VALLEY and RESPONSIBLE are directly enjoined from operating.

IT IS FURTHER ORDERED that the Federal Defendants are enjoined from dispatching inspectors to the horse slaughterhouse facilities operated by Intervenor-Defendants Valley Meat and Responsible Transportation until further order of the Court.

IT IS FURTHER ORDERED that the Federal Defendants are ordered to suspend or withhold the provision of horse meat inspection services to Valley Meat and Responsible Transportation until further order of the Court.

IT IS FURTHER ORDERED that Defendants Valley Meat and Responsible Transportation are enjoined from commercial horse slaughter operations until further order of the Court.

Id. at 7.

Defendant-Intervenor Rains Natural Meats (“RAINS”) has never been enjoined by the Order of this Court. RAINS is not covered by the injunction bond that covers VALLEY and RESPONSIBLE. Judge Scott made this abundantly clear at the hearing on the Rule 65 bond that only VALLEY and RESPONSIBLE were enjoined and therefore only these two companies were to be considered for purposes of the injunction bond.

Curiously, Plaintiffs find this progression of events and the fact that RAINS is now again requesting its Grant of Inspection, intending to proceed to begin its lawful business to be “remarkable,” when it should be nothing of the sort to them, nor should it be remarkable to Plaintiffs that RAINS is not running to the Court to ask to be enjoined as Plaintiffs assume they should. RAINS has never offered anything to the Court that should leave any doubt that they were ready to go and intended begin operations by August 5, 2013. *See* Affidavit of David Rains, ECF. No. 56-3. In fact, just like the other companies, RAINS offered to the Court that it believed it would receive its Grant of Inspection before the end of July. There should in fact be no distinguishable difference in the eyes of USDA FSIS between RAINS and VALLEY or RESPONSIBLE. They have been ready to go for months, only waiting on the government to issue their Grant. What might be considered remarkable or curious, however, is that USDA did not issue the

Grant to RAINS when it issued the others. It makes sense that USDA FSIS may have assumed that, in fact, RAINS was *de facto* enjoined by the ban just like the other companies or that RAINS was prevented from opening by a lack of water discharge permit just as Plaintiffs have now on multiple occasions, incorrectly and falsely alleged to the court about VALLEY. But, whatever the reason, it is irrelevant given that common sense would dictate that if RAINS is not specifically enjoined and not specifically covered by a bond as the rules require they cannot be expected to simply sit inoperative, doing nothing. RAINS has now again made demand upon USDA FSIS to act pursuant to the duly passed laws of the United States and issue the Grant of Inspection. Plaintiffs have known even before they ever initiated this action that this was the intention of RAINS and USDA FSIS. The same fact is belied in this very Motion to the Court when Plaintiffs cite to the declarations they filed that reference Gallatin, Missouri and RAINS. *See* Emergency Motion, ECF. No. 156, Pg 3, Footnote #5. Plaintiffs did not raise this issue when the Court issued its Order banning the operations of **only** VALLEY and RESPONSIBLE. USDA FSIS is now appropriately acting under the law with all due consideration to the current findings of this Court to prepare to issue a valid Grant of Inspection in full compliance with all of the applicable laws. It is RAINS' argument and position that it should be allowed to proceed with its lawful business just as it intended to since before August 5, 2013 when this Court enjoined the other two plants from operation.

RAINS respectfully recognizes that as it has pointed out and has been pointed out by USDA FSIS that there is no distinguishable difference nor has there existed a distinguishable difference between RAINS and the other two currently enjoined

companies. Because of this it may be the will of this Court to amend its order, such as been offered by both Plaintiffs and by Federal Defendants, to include RAINS. And in truth, that may be the most equitable course. However, in the alternative to being allowed to begin its lawful operations, RAINS respectfully requests that the mandatory bond of Rule 65 that is currently in place for the protection of VALLEY and RESPONSIBLE be enlarged to reflect the respective losses that RAINS has and will continue to suffer when enjoined. In keeping with findings of Judge Scott in his Order, RAINS offers that for the month of August it will have suffered a net loss of approximately \$100,000.00 dollars, (*See* Affidavit of David Rains, attached hereto as Exhibit A) which is a paltry sum in comparison to the well-heeled financial capacity of Plaintiffs HSUS with gross annual revenues of over \$200 million or Plaintiff-Intervenor New Mexico (whom Judge Scott has correctly found is equally responsible for the bond) to post such a bond.

II. CONCLUSION

For the above reasons, Valley Meat Company, LLC, Rains Natural Meats and Chevaline, LLC respectfully asks the Court to deny the Emergency Motion and allow the *status quo* to remain, such that Rains Natural Meats is allowed to begin its lawful business so that it may conclusively show the Court that the environmental harms alleged by Plaintiffs are without merit. And, in the alternative, if equally enjoined, treat Rains Natural Meats wholly equally by requiring Plaintiffs and Plaintiff-Intervenor to jointly issue additional security in an amount commensurate to loss that will be suffered if the injunction is found to be wrongfully entered of not less than \$100,000.00 per month.

Dated: July 19, 2013

By: - Electronically Signed by – A. Blair Dunn
A. Blair Dunn, (NM Bar #121395)
Attorneys for Proposed Intervenor -Real
Parties in Interest Chevaline, LLC and
Rains Natural Meats
6605 Uptown Blvd, NE Ste 280
Albuquerque, NM 87110
505-881-5155
F: 505-881-5356

CERTIFICATE OF SERVICE

I certify that I filed the foregoing documents on September 20, 2013 using the ECF System, which will send notification to all parties of record.

-Electronically Signed by – A. Blair Dunn
A. Blair Dunn, Esq.