

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.)	
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)	

**DEFENDANT-INTERVENORS’ EXPEDITED MOTION OF FOR ORDER
REQUIRING BOND PURSUANT TO F. R. CIV. P. 65 (c)¹**

COMES NOW Defendant Intervenors, Rains National Meats, Chevaline LLC and Valley Meats (collectively “Defendant-Intervenors”) and hereby move the court to order that a bond be posted for the substantial losses incurred by Rains Natural Meats as a result of the Temporary Restraining Order sought and achieved by Plaintiffs. In support of this Motion, Defendant-Intervenors state as follows:

I. THE COURT HAS ALREADY FOUND THAT THE LOSSES INCURRED BY THE ENJOINED PARTIES ARE SUBSTANTIAL AND THAT A BOND IS APPROPRIATE FOR THE PERIODS OF TIME IN WHICH THE PARTIES ARE ENJOINED

¹ Pursuant to Local Rule 7.1(a), Plaintiffs have conferred with opposing counsel to obtain their position on this Motion. Plaintiffs and Plaintiff-Intervenor oppose; Federal-Defendants take no position; and the other Defendant-Intervenors concur.

This Court has previously found that the imposition of a the TRO against the companies of Defendant-Intervenors Valley Meat Company, LLC and Responsible Transportation, Inc. will cause the companies to “suffer significant economic harm if they are prohibited from operating during the pendency of the present litigation.” Amended Order of August 21, 2103, ECF Doc. 125 and referred the matter to Magistrate Judge Robert Scott for a determination concerning the security bond required under F. R. Civ. P. 65 (c). Judge Scott ordered that a security was to be posted for the initial period of 30 days under the TRO in the requisite amounts by the capable Plaintiffs or any combination of them. *See* Order of August 8, 2013, EFC Doc. 102. Plaintiff subsequently posted the Bond for the initial 30 days. At the expiration of that the 30 days the Court conducted a status conference concerning the expedited schedule to complete the case. At that hearing it was agreed to by the parties and ordered by the Court that the TRO would be extended to the Court’s rendering of a decision on the merits, likely at the end of October. *See* Order of September 5, 2013, ECF Doc. 142. At the hearing the Court agreed that it made sense if the TRO was to be extended that the security bond should likewise be extended, Plaintiffs requested to permission to supply argument that Plaintiffs we incapable posting additional security which was referred to Judge Scott for determination. The parties have since docketed letters with Judge Scott on this issue and his decision is still pending. No explanation or offer that all Plaintiffs are incapable of posting the extended bonds or even greater bonds has been offered. Instead the only offer by Plaintiffs was allegation that two of the individual Plaintiffs were incapable of posting the bonds as the Plaintiffs attempted to shield their multi-million dollar budgets (> than \$200,000,000.00 in net assets and funds for HSUS in 2011 or billion dollar budget in the

case of the State of New Mexico) behind two of their less fortunate clients in an attempt to avoid requirements of Rule 65. *See* Letter of Bruce Wagman to Judge Scott of September 20, 2013, ECF Doc. 167.

On September 25, 2013 the Court ordered, *see* ECF Doc. 168, by way of its Temporary Restraining Order, that Rains Natural Meats was also enjoined from operations identically to Valley Meat Company and Responsible Transportation. The matter was referred to Judge Scott for determination if the TRO should extend beyond the 14 days to October 4, 2013 and on the matter of a security bond. The parties have now stipulated to a Motion *see* ECF Doc. 178 and proposed Order that extends the TRO for Rains Natural Meats pursuant to the Order of September 5, 2013 until October 31, 2013.

II. RAINS NATURAL MEATS SHOULD ENJOY THE EQUAL PROTECTION OF A SECURITY BOND WHEN IT IS EQUALLY ENJOINED FROM OPERATION AND SUFFERING ECONOMIC LOSS

Equal treatment for all parties before the Courts for identical circumstances is beyond argument. Rains Natural Meats has never wavered in offer to the Court that it was prepared, ready and uninhibited to begin its operations well before August 2013. It has participated dutifully in that regard in this litigation and waited patiently for Federal-Defendants and the Court to offer it equal treatment and the equal protection in form a security bond commensurate with the time it has sat unable to begin operations as result of the prohibition of this Court. Because the Stipulation of the parties to enlarge the TRO for Rains in keeping with an earlier Order until October 31, 2013 obviates the need for an evidentiary hearing that was set to be heard October 1, 2103 by Judge Scott the matter of the security bond for Rains remains unresolved. Defendant-Intervenors respectfully offer to the Court that a security bond for Rains Natural Meats should be ordered to be

posted by Plaintiffs. Further, it is offered that information needed to reach this determination is already present in the Court's record. In keeping with findings of Judge Scott in his Order of August 8, 2013, Rains offers that for the month of each of the months it has been enjoined or will be enjoined it will have suffered or will suffer a net loss of approximately \$100,000.00 dollars per each month. *See* Affidavit of David Rains, ECF Doc. 156-1. Accordingly, in terms of equal treatment under the Court's Orders Defendant-Intervenors respectfully move the Court to enter an Order that Plaintiffs should supply a bond in the amount of \$300,000.00 to cover the economic losses suffered by Rains Natural Meats as result of the TRO sought by Plaintiffs.

Further, because Plaintiffs have inferred that should the bonds be enlarged for Valley and Responsible that they may not pay them,² time is of the essence in resolving both the issues of the continuing bond for Valley and Responsible as well now Rains. As it currently stands the lawful business of 3 companies are enjoined causing them major economic loss and harm. They remain enjoined without the security of bond required under Rule 65. And as we near the end of September it is not inconceivable that Plaintiff's will refuse to post the bonds which should in the normal course cause the TRO to dissolve but it will not afford these companies the protection of a bond to cover the losses they have suffered for the month of September or conceivable October. It is for that reason that Defendant-Intervenors seek an expedited decision and resolution of this issue from the Court.

² *See* Letter of Bruce Wagman to Judge Scott, ECF No. 167, "[i]n the event the Court requires an injunction bond for the period from September 1, 2013 through October 31, 2013 and any plaintiffs that may be able to pay do not post such bond,"

WHEREFORE, Defendant-Intervenors respectfully request that this Court order that Plaintiffs immediately post the requisite security bonds for all 3 companies for each of the 3 months immediately or that the TRO be dissolved pursuant to a failure to satisfy F. R. Civ. P. 65.

Dated: September 26, 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 26, 2013 using the ECF System, which will send notification to all parties of record.

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