

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

FRONT RANGE EQUINE RESCUE,
THE HUMANE SOCIETY OF THE
UNITED STATES, MARIN HUMANE
SOCIETY, HORSES FOR LIFE
FOUNDATION, RETURN TO
FREEDOM, ROMONA CORDOVA,
KRYSTLE SMITH, CASSIE GROSS,
DEBORAH TRAHAN and BARBARA
SINK,

Plaintiffs,

vs.

TOM VILSACK, Secretary U.S.
Department of Agriculture,
ELIZABETH HAGEN, Under Secretary
for Food Safety, U.S. Department of
Agriculture; and ALFRED A.
ALMANZA, Administrator, Food
Safety and Inspection Service, U.S.
Department of Agriculture,

Defendants.

No. 1:13-cv-00639-MCA-RHS

**RESPONSIBLE TRANSPORTATION, L.L.C.’S RESPONSE BRIEF IN OPPOSITION
TO PLAINTIFFS’ EMERGENCY MOTION TO MODIFY THE AMENDED
TEMPORARY RESTRAINING ORDER**

Responsible Transportation, L.L.C. (“RT”), by counsel Patrick J. Rogers LLC (Pat Rogers) and Simmons Perrine Moyer Bergman PLC (Kevin Visser and Kathleen Kleiman), hereby opposes Plaintiffs’ Emergency Motion to Modify the Amended Temporary Restraining Order.

PLAINTIFFS' MOTION SHOULD BE DENIED

Having previously moved the Court to modify the TRO entered so as to exclude RT and VM (and thereby circumvent its obligation to post a bond), Plaintiffs have again altered their theory on enjoining impacted processing facilities. This continuing gamesmanship should not be countenanced, especially where the USDA has clearly demonstrated the application of the NEPA and FSIS's categorical exclusion. See ECF Docket No. 154. Moreover, RT continues to respectfully disagree that Plaintiffs sustained their burden supporting the initial entry of the TRO as to RT *or* VM, and, thus, any such extension of the TRO to Rains Natural Meats would be likewise unsupported and result in another party ultimately being wrongfully enjoined.

I. SHOULD PLAINTIFFS' MOTION TO GRANTED, IT SHOULD BE CONDITIONED UPON THE POSTING OF AN APPROPRIATE BOND.

The plain language of Fed. R. Civ. P. 65(c) provides that a "court may issue a . . . temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." As has been argued and briefed extensively throughout this litigation, Plaintiffs are in no manner exempt from the bond requirement set forth in Rule 65. Therefore, any injunctive relief enjoining Rains Natural Meats can only be entered upon Plaintiffs' posting of a sizable bond.

WHEREFORE, Responsible Transportation respectfully requests that the Court issue an Order *denying* Plaintiffs' Emergency Motion to Modify the Amended Temporary

Restraining Order, and grant whatever further relief is deemed just and necessary, including the posting of an appropriate bond should Plaintiffs' motion be granted.

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Pro Hoc Vice applications pending

Attorneys for Responsible Transportation, L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2013, I filed the foregoing *Responsible Transportation, L.L.C.'S Brief in Opposition to Plaintiffs' Emergency Motion to Modify the Amended Temporary Restraining Order* with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

PATRICK J. ROGERS, LLC

By: /s/ Patrick J. Rogers
Patrick J. Rogers