

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’ EXPEDITED MOTION TO RECONSIDER AND FOR CLARIFICATION¹

COMES NOW Defendant Intervenors, Rains National Meats, Chevaline LLC and Valley Meats (collectively “Defendant-Intervenors”) and hereby move the court to reconsider the Order (ECF. No. 199) of Judge Scott denying the Motion for a Security Bond to be posted for the substantial economic harm incurred by Rains Natural Meats as a result of the Temporary Restraining Order sought and achieved by Plaintiffs. Further, Defendant-Intervenors seek to have the Court clarify the status of the TRO’s enjoining the operations of the processing plants. It is respectfully requested that this Motion be given expedited consideration because the harm of this situation is occurring every

¹ Pursuant to Local Rule 7.1(a), Defendant-Intervenors have conferred with opposing counsel to obtain their position on this Motion. Plaintiffs and Plaintiff-Intervenor oppose; Federal-Defendants take no position; Defendant-Intervenors IEBA *et al* concur; and the remaining Defendant-Intervenors did not respond.

working day that passes and the lawful business of these companies is being denied without the just protection of bond pursuant Federal Rule of Civil Procedure 65 (C). Further the continued denial of the protection of an injunction bond for equally and identically impaired business contravenes the equal protection that should be afforded to all 3 companies under the Federal Rules of Civil Procedure. The continued delay by the Court in extending the bonds commensurate with the extension of the TRO for all companies represents immediate and potentially irreparable harm without the protection of the proper injunction bonds. In support of this Motion, Defendant-Intervenors state as follows:

I. RAINS NATURAL MEATS IS ENJOINED BY THE ORDERS OF THE COURT AND SHOULD BE AFFORDED THE EQUAL PROTECTION OF A BOND UNDER F. R. CIV. P. 65(C)

The Court's Order of September 25, 2013 (ECF Doc. 168) states:

IT IS HEREBY ORDERED that the Federal Defendants be and hereby are enjoined from dispatching inspectors to the horse slaughterhouse facility operated by Intervenor-Defendant **Rains Natural Meats** 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 **Rains Natural Meats** until October 4, 2013.

IT IS FURTHER ORDERED that this matter is referred to the Honorable Robert H. Scott for an evidentiary hearing to determine if this Order should be extended beyond October 4, 2013. Judge Scott shall submit a report and recommendation to this Court.

IT IS FURTHER ORDERED that the Court reserves jurisdiction to impose an injunction bond as may be necessary and appropriate, and this matter is referred to the Honorable Robert H. Scott for consideration. (*Emphasis added*)

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 an Order (ECF. No. 179) that extends the TRO for Rains Natural Meats pursuant to the Order of September 5, 2013 until October 31, 2013.

It must surely be an inadvertence by Judge Scott to have misconstrued the plain outcome of the Court's Orders that if Federal-Defendants are enjoined from providing the Grant of Inspection and inspectors to Rains Natural Meats that court has directly, by effect, enjoined Rains Natural Meats as well. After all, the Court very specifically names Rains Natural Meats in both Orders (ECF. Docs. 168 and 179) as the party that is prohibited by the enjoining of the Federal Defendants. Surely, it is an inadvertence that Judge Scott would construe the Court's Orders to not be enjoining Rain's Natural Meats when they are so very clearly enjoined by virtue of the fact cannot operate without the Grant of Inspection and the inspectors provided by USDA.

Judge Scott's Order must be reconsidered. The current Order sets up an impermissible situation in which Rain's Natural Meats is denied equal protection under the law by the denial of the protections afforded to other identical parties enjoined by an order of the Court under F. R. Civ. P. 65(C). A clearer example of order warranting reconsideration is hard to fathom. The Orders enjoining Rains Natural Meats was clearly referenced in the Motion of Injunction Bond (ECF. Doc 180.)

Further, Judge Scott erred in his order that Rains Natural Meats did not provide the requisite information on which months should be reflected in the injunction bond or how that was calculated. Defendant-Intervenors concede and apologize in that in the Motion for Injunctive Bond (ECF Doc 180) the Affidavit of David Rains was incorrectly

cited as Document 156-1 when it actually exists as ECF Doc. 161-1 and it is additionally referenced and discussed in the letter directly to Judge Scott in ECF Doc. 162. The requisite information supporting the duration of time and amount for the bond have both been presented to Judge Scott. The Affidavit of David Rains (ECF. Doc. 161-1) accurately reflects the sworn statement of Rains Natural Meats regarding amount of an appropriate bond for the Court's consideration.

II. CLARIFICATION OF STATUS OF TEMPORARY RESTRAINING ORDER

F. R. Civ. P. 65 clearly contains a requirement in Section (C) for a party seeking to enjoin another person or entity from an action by order the Court must post a security. Rule 65 (C) clearly states that a Court should issue a "preliminary injunction or 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.**"(*emphasis added*)

At the present instance, the requisite security has only been tendered for the 30 days found in the month of August, yet the Temporary Restraining Order was enlarged by the Order of the Court to additionally include the months of September and October in order to give the Court the opportunity to conclude its decision on the merits.² As the month of October draws to close no additional bonds have been posted and therefore the requirement of Rule 65(C) has not been met. As such it requires the expedited consideration of the Court to clarify whether the bonds are to be posted or the Temporary Restraining Order dissolved. Economic harm is occurring daily under the Order of this

² The Court^{6b} noted at the telephonic conference were the enlargement took place that it made sense for the security to be similarly enlarged and assigned the matter to Judge Scott.

Court giving warrant to immediate attention of the Court to this matter.

WHEREFORE, Defendant-Intervenors respectfully request that this Court reconsider the Order of Judge Scott (ECF. Doc 199) and clarify the status of the Temporary Restraining Orders by ordering either 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(C).

Dated: October 21, 2013

By: - Electronically Signed by – A. Blair Dunn
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CERTIFICATE OF SERVICE

I certify that I filed the foregoing documents on October 21, 2013 using the ECF System, which will send notification to all parties of record.

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