

REC'D & FILED

2016 MAR -2 AM 10:43

SUSAN MERRIWETHER
CLERK
BY G. WINDER
DEPUTY

1
2
3
4
5
6 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR CARSON CITY**
8

9 **HELLEN QUAN LOPEZ, individually and**
10 **on behalf of her minor child, C.Q.;**
11 **MICHELLE GORELOW, individually and**
12 **on behalf of her minor children, A.G. and**
13 **H.G.; ELECTRA SKRYZDLEWSKI,**
14 **individually and on behalf of her minor**
15 **child, K.J.; SARAH and BRIAN SOLOMON,**
16 **individually and on behalf of their minor**
17 **children, D.D. and K.S.,**

CASE NO: 15 OC 000207 1B

DEPT.: 2

ORDER TO POST SECURITY

18 **Petitioner,**

19 **v.**

20 **DAN SCHWARZ, in his official capacity as**
21 **Treasurer of the State of Nevada,**

22 **Respondents.**
23 _____ /

24 **SECURITY REQUIREMENT**

25 NRCP 65(c) requires a party who obtains a preliminary injunction to post
26 security in such sum as the court deems proper, for the payment of such costs and
27 damages as may be incurred or suffered by any party who is found to have been
28 wrongfully enjoined or restrained. The purpose of the security requirement is to protect
the enjoined party from damages that may be incurred as a result of an injunction that
proves to be "wrongful". *Am Bonding Co. v. Roggen Enters.*, 109 Nev. 588, 591, 854
P.2d 868, 870-71 (1993). The amount of security is left to the sound discretion of the
court.

1 **ISSUE**

2 What amount of security should the plaintiffs be required to post to protect the
3 Treasurer from damages that may be incurred if it is determined the injunction was
4 wrongfully issued?

5 The Treasurer requested a bond in the amount of \$238,900. The \$238,900 figure
6 is the sum of \$33,900 for expenses the treasurer alleges will be incurred to preserve a
7 database, plus \$200,000 in attorneys' fees.

8 The plaintiffs argued for a "nominal bond" on grounds: 1) requiring more than a
9 nominal bond will deter others from exercising their constitutional rights; and 2) the
10 preliminary injunction will not cause any harm.

11
12 **FINDINGS OF FACT**

13
14 The Treasurer offered conclusory statements rather than evidence to support
15 most of his arguments.

16 The court finds the Treasurer entered into an agreement with i2net Inc. a
17 database vendor for cloud-based storage services.

18 The Treasurer alleged the vast majority of the ESA program data is stored in the
19 i2net Inc. database. The Treasurer provided no evidence upon which the court could
20 assess the significance of that fact.

21 The Treasurer alleged and offered evidence, and the court finds, the Treasurer
22 intends to amend the existing i2net Inc. contract to pay \$2,825 per month to preserve
23 the database and to allow the Treasurer to resume implementation of the ESA program
24 if the pulmonary injunction is dissolved.

25 The Treasurer alleged that if the existing contract is not amended: 1) data will be
26 lost; 2) families would need to reapply to the program; and 3) it would cost hundreds of
27 thousands of dollars and take thousands of hours of manpower to re-create the system,
28 assuming that is even possible. The Treasurer provided no evidence to support these

1 allegations. The copies of contracts attached to the Treasurer's brief as exhibits 4 and 5
2 and the footnotes related to those documents (unsworn statements of counsel are not
3 evidence) do not assist the court in determining what if any damages the preliminary
4 injunction will cause if it is determined the injunction was wrongfully issued. Because
5 the Treasurer provided no evidence upon which the court can make findings regarding
6 those allegations the court makes no findings. The court has no evidence to support a
7 finding that paying \$2,825 per month to preserve the existing database is necessary or
8 reasonable.

9 Turning to the Treasurer's argument regarding attorney's fees, again the
10 Treasurer relies upon conclusory statements: "Based on the prevailing market rates"; "I
11 believe that the fixed discounted fee of \$125,000 is not only reasonable ... but ... a
12 severely discounted fee ..."; and "I estimate that this Office will incur an additional
13 \$75,000 in fees and approximately \$5,000 in costs ...". The Treasurer offered no
14 evidence to support the allegations. The Treasurer offered no evidence as to why the
15 Nevada Solicitor General and other Attorney General personnel cannot adequately
16 represent the Treasurer in this action, and therefore need the Bancroft firm. The
17 Treasurer presented no evidence as to what prevailing market rates are, how many
18 attorney hours will be expended, what the hours will be expended on, what attorneys in
19 the Attorney General's Office earn, or what costs will be incurred. The Treasurer has
20 provided no evidence upon which the court can make findings as to what reasonable
21 attorneys' fees or costs will be.

22 The parties briefed their positions before the oral argument on the application for
23 the preliminary injunction. The parties offered no evidence at the oral argument
24 hearing. What work needs to be done to present the case to the Nevada Supreme Court?
25 The Treasurer has provided no evidence upon which the court can find that attorney's
26 fees of \$200,000 to present the case to the Nevada Supreme Court are necessary or
27 reasonable.

28 The plaintiffs failed to offer any useful evidence to support their argument for

1 why a nominal amount should be awarded or what a nominal amount is in the context of
2 this case.

3
4 **CONCLUSIONS OF LAW**

5 The parties have not presented evidence upon which the court can make a
6 reasoned determination as to the amount of security the plaintiffs should be required to
7 post to protect the Treasurer from damages that may be incurred if it is determined the
8 injunction was wrongfully issued. Nevertheless the rule requires the party obtaining the
9 injunction post security so the court must set an amount.

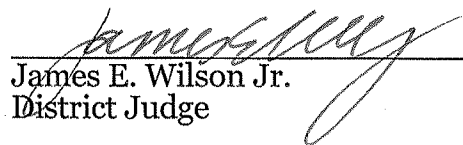
10 The court concludes \$75,000 is a reasonable sum to protect the Treasurer from
11 damages that may be incurred if it is determined the injunction was wrongfully issued.

12
13 **ORDER**

14 **IT IS ORDERED:**

15 Plaintiffs post security in the total amount of \$75,000, cash or bond, not later
16 than March 11, 2016.

17
18 March 1, 2016.

19
20 
21 _____
22 James E. Wilson Jr.
23 District Judge
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

I hereby further certify that on the 2 day of March 2016 I placed a copy of the foregoing order in the United States Mail postage prepaid, addressed as follows:

Lawrence VanDyke, DAG
100 N. Carson Street
Carson City, NV 89701


Don Springmeyer, Esq.
3556 E. Russell Road, Second Floor
Las Vegas, NV 89120

Ketan D. Bhirud, DAG
555 E. Washington Ave, Ste 3900
Las Vegas, NV 89101

Tamerlin Godley, Esq.
Thomas Clancy, Esq.
Samuel Boyd, Esq.
355 S. Grand Avenue, Thirty-Fifth Floor
Los Angeles, CA 90071

Paul Clement, Esq.
500 New Jersey Avenue, NW, 7th Floor
Washington DC 20001

David Sciarra, Esq.
Amanda Morgan, Esq.
60 Park Place, Ste 300
Newark NJ 07102



Gina Winder
Judicial Assistant

