



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FILIA KOURTIS and
CONSTANTINOS KOURTIS,

Plaintiffs,

v.

JAMES CAMERON,
INTERNATIONAL CREATIVE
MANAGEMENT, MARIO KASSAR,
JEFFREY BERG and JOSEPH
ROSENBERG,

Defendants.

CASE NO. CV 02-2906 DT (RNBx)

**ORDER DENYING PLAINTIFFS'
REQUEST TO PROCEED IN FORMA
PAUPERIS**

**ORDER DENYING PLAINTIFFS'
RENEWED MOTION TO VACATE
THE COURT'S ORDER REQUIRING
THE POSTING OF A COSTS BOND
AS TO JAMES CAMERON**

**ORDER GRANTING PLAINTIFFS'
MOTION TO RECONSIDER THE
COURT'S ORDER REQUIRING THE
POSTING OF A COSTS BOND AS
TO MARIO KASSAR**

I. Background

Plaintiffs Filia and Con Kourtis ("Plaintiffs") are authors of the concept of "The Minotaur," an idea for a film. Plaintiffs claim that defendants James Cameron, International Creative Management ("ICM"), Jeffrey Berg, Joseph Rosenberg and Mario Kassir (collectively, "Defendants") copied their idea for a shape-changing character when they created the films "Terminator 2" and "Terminator 3."

A. Factual Summary

The Court is familiar with the facts in this matter, and need recount only those

1 pertinent to this motion. Unfortunately, the parties have taken a long and winding
2 road to arrive at this point.

3 On February 14, 2006, after consideration of a motion on the subject, the
4 Court ordered Plaintiffs to post a costs bond as to Cameron in the amount of
5 \$100,000. Kourtis v. Cameron, Case No. CV 02-2906 DT (RNBx), at p. 9 (C.D. Cal.
6 Feb. 14, 2006) (hereinafter, the "First Costs Bond Order"). In the same Order, the
7 court found that Kassar qualified for a costs bond but denied his motion due to his
8 failure to set forth the nature and amount of costs and attorneys' fees he expected to
9 incur during this matter. Id. at p. 8. Both defendants were entitled to a bond because
10 the Court found there was a reasonable possibility they would ultimately obtain
11 judgment. Id. at p. 6. At the time, Plaintiffs presented minimal information
12 concerning their ability to pay the bond, informing the Court only of their monthly
13 income. Id. at p. 8.

14 Plaintiffs did not post this costs bond as to Cameron, but after the expiration
15 of time to do so, they moved for the Court to vacate its Order. Kourtis v. Cameron,
16 Case No. CV 02-2906 DT (RNBx), at p. 11 (C.D. Cal. May 1, 2006) (hereinafter, the
17 "Second Costs Bond Order"). This motion was based on the filing of an Amended
18 Complaint, and not on any new financial information submitted by Plaintiffs. Id. at
19 p. 13. A few days later, Cameron moved to dismiss the action against him due to
20 failure to post the costs bond. Id. at p. 11. The Court considered these motions in
21 its Second Costs Bond Order, issued on May 1, 2006. Id. In that Order, the Court
22 denied Plaintiffs' motion to vacate the First Costs Bond Order, but exercised its
23 discretion and permitted Plaintiffs ten additional days in which to post the costs bond
24 for Cameron. Id. at pp. 23-24.

25 Plaintiffs still failed to post the costs bond, and on May 15, 2006, Cameron
26 filed a motion to dismiss based on the failure to post this costs bond. Kourtis v.
27 Cameron, Case No. CV 02-2906 DT (RNBx), at p. 4 (C.D. Cal. June 5, 2006)

1 (hereinafter, the "Third Costs Bond Order"). Plaintiffs did not file a timely
 2 Opposition to this motion, and on June 5, 2006, the Court granted Cameron's motion
 3 to dismiss without prejudice. Id. at pp. 4, 8.

4 Meanwhile, on March 20, 2006, Kassar filed a motion to renew or reconsider
 5 his previous motion for a costs bond. Second Costs Bond Order, at p. 6. Along with
 6 this motion, Kassar submitted more detailed information concerning his expected
 7 costs and attorneys' fees, and the Court subsequently granted his motion on May 1,
 8 2006, setting the costs bond amount at \$100,000. Id. at p. 24. Plaintiffs have not yet
 9 posted this costs bond as to Kassar.

10 At this time, Plaintiffs bring what the Court has construed as three separate
 11 motions: (1) a Request to Proceed in Forma Pauperis, titled "Application for Waiver
 12 of Posting of Bond," (2) a Motion to Vacate and Set Aside Order Setting Costs Bond
 13 as to Cameron, and (3) a Motion to Reconsider Order Setting Costs Bond as to
 14 Kassar.¹ Along with these motions, Plaintiffs submit significantly more detailed
 15 information concerning their present financial state than that previously before the
 16 Court.

17 **B. Procedural Summary**

18 On April 9, 2002, Plaintiffs filed their Complaint in the United States District
 19 Court for the Central District of California, and this action was assigned to Judge A.
 20 Howard Matz.

21 On May 3, 2002, the case was transferred to Judge William Matthew Byrne,
 22 Jr. for all further proceedings, pursuant to General Order 224.

23 On July 22, 2002, defendants ICM, Green and Rosenberg filed a Notice of
 24 Motion and Motion to Dismiss for Failure to State a Claim Upon Which Relief Can

25
 26
 27 ¹ The Court clarified that it considered three motions pending in Amended Civil
 Minutes dated May 25, 2006.

1 Be Granted. On August 13, 2002, Kassar was permitted by the Court to join the
2 Motion to Dismiss.

3 On May 2, 2003, the Court granted Defendants' Motion to Dismiss and on
4 June 18, 2003, Judgment was entered on behalf of all defendants.

5 Plaintiffs appealed to the Ninth Circuit Court of Appeals, which issued its
6 decision affirming in part and reversing in part the District Court on August 15,
7 2005.

8 On remand, defendants Cameron and Kassar moved for Plaintiffs to post a
9 costs bond before proceeding with this litigation. Cameron filed his Notice of
10 Motion and Motion on December 9, 2005. Kassar filed a Notice of Joinder and
11 Joinder on December 19, 2005.

12 On January 24, 2006, the case was reassigned to Judge Dickran Tevrizian for
13 all further proceedings.

14 On January 30, 2006, defendant Kassar filed an Answer to the Complaint.

15 Also on January 30, 2006, defendant Cameron filed a Motion of Motion and
16 Motion to Dismiss for Failure to State a Claim upon which Relief can be Granted.
17 On January 31, 2006, defendants ICM, Berg and Rosenberg filed a Notice of Joinder
18 and Joinder to Cameron's Motion to Dismiss.

19 On February 14, 2006, the Court issued its First Costs Bond Order, granting
20 Cameron's Motion for Plaintiffs to Post a Costs Bond and denying Kassar's Motion
21 for the same.

22 On March 6, 2006, the Court granted Cameron, ICM, Berg and Rosenberg's
23 Motion to Dismiss without prejudice and with leave to amend within thirty days.

24 On March 20, 2006, Kassar filed a Notice of Motion and Motion for
25 Reconsideration of the Court's Order denying his Motion for Plaintiffs to Post a
26 Costs Bond.

27 On April 5, 2006, Plaintiffs filed their First Amended Complaint.
28

1 On April 5, 2006, Plaintiffs also filed an Notice of Motion and Motion to
2 Vacate the Court's Order for Plaintiffs to Post a Costs Bond.

3 On April 10, 2006, Cameron filed a Notice of Motion and Motion for
4 Dismissal due to Plaintiff's Failure to Post a Costs Bond.

5 On April 18, 2006, defendants ICM, Berg and Rosenberg filed an Answer to
6 the First Amended Complaint. On the same day, defendant Kassir filed an Answer
7 to the First Amended Complaint.

8 On May 1, 2006, the Court issued its Second Costs Bond Order, (1) denying
9 Plaintiff's Motion to Vacate the Costs Bond Order, (2) denying Cameron's Motion
10 to Dismiss and permitting Plaintiffs ten additional days within which to post the
11 costs bond, and (3) granting defendant Kassir's Renewed Motion for Plaintiffs to
12 Post a Costs Bond.

13 On May 15, 2006, defendant Cameron filed a Notice of Motion and Motion
14 for Dismissal due to Plaintiff's Failure to Post a Costs Bond. Plaintiffs failed to file
15 a timely Opposition.

16 On May 18, 2006, Plaintiffs filed a Notice of Motion and Motion to Vacate
17 the Court's Order for Plaintiffs to Post a Costs Bond as to both Cameron and Kassir,
18 and an Application for Waiver of Posting of Bond due to their Indigence. On June
19 12, 2006, Kassir filed his Opposition to these motions. However, neither Cameron
20 nor the other defendants filed an Opposition. Plaintiffs filed their Reply on June 19,
21 2006.

22 On June 5, 2006, the Court issued its Third Costs Bond Order, granting
23 Cameron's motion for dismissal without prejudice.

24 On June 15, 2006, defendants ICM, Berg and Rosenberg filed a Notice of
25 Motion and Motion for Summary Judgment.

II. Discussion

A. Standard

1. Costs Bonds

Federal courts may require plaintiffs to post a bond in order to provide security for defendants who might prevail in litigation. See Simulnet E. Assocs. v. Ramada Hotel Operating Co., 37 F.3d 573, 574 (9th Cir. 1994). A district court normally follows the forum state's practice, particularly when the party is a non-resident. See id.; In re Merrill Lynch Relocation Mgmt., Inc., 812 F.2d 1116, 1121 (9th Cir. 1987).

In California:

When the plaintiff in an action or special proceeding resides out of the state, or is a foreign corporation, the defendant may at any time apply to the court by noticed motion for an order requiring the plaintiff to file an undertaking to secure an award of costs and attorney's fees which may be awarded in the action or special proceeding. For the purposes of this section, "attorney's fees" means reasonable attorney's fees a party may be authorized to recover by a statute apart from this section or by contract.

Cal. Civ. Proc. Code § 1030(a). The defendant must also show there is a "reasonable possibility" that the defendant will obtain judgment. Id. § 1030(b). The defendant's motion must be accompanied by an affidavit setting "forth the nature and amount of the costs and attorney's fees the defendant has incurred and expects to incur by the conclusion of the action or special proceeding." Id. If the Court determines that grounds for the motion have been established, it shall order the plaintiff to file an undertaking for the amount specified in its order. Id. § 1030(c). California recognizes attorney's fees as costs when properly authorized. Id. § 1033.5(a)(10).

This undertaking must be filed not later than thirty days after service of the

1 court's Order requiring it, or within a greater time allowed by the Court. Id. §
 2 1030(d). If the plaintiff fails to file the undertaking within the time allowed, the
 3 plaintiff's action shall be dismissed as to the defendant in whose favor the Order
 4 requiring the undertaking was made. Id. (emphasis added). However, failure to file
 5 within a proscribed time is not jurisdictional, and the court may accept a late filing
 6 at its discretion. See Boyer v. County of Contra Costa, 235 Cal. App. 2d 111, 115
 7 (1965). Furthermore, a dismissal caused by a failure to file an undertaking only
 8 occurs following a properly-noticed motion. Id.; Shell Oil Co. v. Superior Court of
 9 Sonoma County, 2 Cal. App. 2d 348, 354 (1934).

10 A court may also determine that the amount of a bond is excessive and order
 11 such amount reduced under its discretion, as long as the order is subject to any
 12 limitations in the statute providing for the bond. Cal. Civ. Proc. Code § 996.030(a).
 13 This determination shall be made upon a properly-noticed motion, and the moving
 14 party may then submit a bond in the new amount. Id. §§ 996.030(b)-(c). The court
 15 may, in its discretion, allow this new bond to be posted by the end of a period not
 16 less than five days. Id. § 996.030(b).

17 2. Applications to Proceed in Forma Pauperis

18 28 United States Code section 1915(a)(1) states that

19 [A]ny court of the United States may authorize the commencement,
 20 prosecution or defense of any suit, action or proceeding, civil or criminal, or
 21 appeal therein, without prepayment of fees or security therefor, by a person
 22 who submits an affidavit that includes a statement of all assets such prisoner
 23 possesses that the person is unable to pay such fees or give security therefor.
 24 Such affidavit shall state the nature of the action, defense or appeal and
 25 affiant's belief that the person is entitled to redress.

26 Despite its text, section 1915(a)(1), in practice, is not limited to prisoners but applies
 27 to all individuals otherwise qualified. See Floyd v. United States Postal Serv., 105

1 F.3d 274, 275 (6th Cir. 1997); Whitney v. New Mexico, 113 F.3d 1170, 1171 n.1,
 2 1172 (10th Cir. 1997). An applicant need not be “absolutely destitute” to be granted
 3 this relief. See Adkins v. E.I. du Pont de Nemours & Co., 335 U.S. 331, 339 (1948).
 4 Rather, an “affidavit is sufficient which states that one cannot because of his poverty
 5 ‘pay or give security for the costs . . . and still be able to provide’ himself and
 6 dependents ‘with the necessities of life.’” Id. (citation omitted).

7 Proceeding in forma pauperis is a privilege and not a right. Willer v. Dickso,
 8 314 F.2d 598, 600 (9th Cir. 1963). In a civil action for damages, this should be
 9 allowed only in exceptional circumstances.² Id. A trial court has broad discretion
 10 in deciding whether to grant or deny an application to proceed in forma pauperis.
 11 See, e.g., United States v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981) (per curiam).

12 3. Motion for Reconsideration

13 A motion for reconsideration of the decision of any motion may be made on
 14 one of only three grounds:

15 (a) a material difference in fact or law from that presented to the Court
 16 before such decision that in the existence of reasonable diligence could
 17 not have been known to the party moving for reconsideration at the
 18 time of such decision, or (b) the emergence of new material facts or a
 19 change of law occurring after the time of such decision, or (c) a
 20 manifest showing of a failure to consider material facts presented to the
 21 Court before such decision. No motion for reconsideration shall in any
 22 manner repeat any oral or written argument made in support of or in
 23 opposition to the original motion.

24
 25 ² This may be because, in civil cases for damages, an attorney may take a case
 26 on a contingent fee and advance the costs. See 1 Moore’s Federal Practice § 4.40[1]
 27 (3d ed. 2006). Such a policy, however, does not necessarily contemplate the high
 28 costs bond amount requested in this matter.

1 Local Rule 7-18.

2 **B. Analysis**

3 1. Plaintiffs' Motion to Vacate the Costs Bond as to Cameron

4 Plaintiffs renew their motion to vacate and set aside the costs bond as to
5 defendant Cameron. However, since the filing of Plaintiffs' motion, Cameron has
6 been dismissed from this matter due to Plaintiffs' failure to post their bond within
7 the permitted period of time to do so. See Third Costs Bond Order, at pp. 7-8. For
8 this reason, Plaintiffs' renewed motion is denied as moot.

9 2. Plaintiffs' Application to Proceed in Forma Pauperis

10 Although their intent was somewhat unclear from their filings, the Court
11 determined that Plaintiffs had submitted a proper Application to Proceed in Forma
12 Pauperis under 28 United States Code section 1915(a)(1).³ The Court made this
13 clear to all parties in Amended Civil Minutes dated May 25, 2006, and it will decide
14 Plaintiffs' motion at this time.

15 Defendant Kassar, citing Smart v. Heinze, 347 F.2d 114, 1116 (9th Cir. 1963),
16 argues that, regardless of their financial state, Plaintiffs' case lacks merit, and as
17 such, their request to proceed in forma pauperis should be denied. Kassar states that
18 this is clear because Judge Byrne already determined as a matter of law that "The
19 Minotaur" and "Terminator 2" were not sufficiently similar to support a claim of
20 copyright infringement. See Green v. Schwarzenegger, 1995 U.S. Dist. LEXIS
21 14,031, at *2 (C.D. Cal. July 11, 1995) (Byrne, J.), aff'd, 107 F.3d 877 (9th Cir.
22 1997). Furthermore, he notes that this Court found there was a "reasonable
23 possibility" that Kassar would prevail based on the prior Green litigation. See

24
25 ³ Plaintiffs admit, in their Reply, that they are not indigent in the traditional
26 sense. However, section 1915 is meant to assist such litigants that cannot pay court
27 fees and costs, no matter the amount. Therefore, section 1915 is a proper vehicle for
28 Plaintiffs if they prove they are "unable to pay" the costs bond that this Court has set.

1 Second Costs Bond Order, at p. 20.

2 Kassar's contention is misplaced. First, a finding of non-infringement in this
3 matter based upon the prior Green decision would be erroneous due to the lack of
4 privity between the plaintiffs in the two cases. See Kourtis v. Cameron, 419 F.3d
5 989, 999 (9th Cir. 2005). Second, a "reasonable possibility" of prevailing does not
6 mean there is no possibility at all. Plaintiffs' have listed a great deal of alleged
7 similarities between "The Minotaur" and "Terminator 2" (similarities which the
8 Court assumes they would argue extend to "Terminator 3"), see Complaint, ¶ 54,
9 Exhibit 1, and have stated (without providing any to the Court) that they have
10 additional evidence and arguments not presented in the Green litigation that will
11 bolster their claim. For these reasons, the Court cannot conclude that Plaintiffs'
12 case, on its face, lacks merit such that an application to proceed in forma pauperis
13 may not be granted.

14 The Court has reviewed Plaintiffs' Application to Proceed in Forma Pauperis
15 and its accompanying documentation in order to determine whether they are "unable
16 to pay" the awarded costs bonds in this matter. See 28 U.S.C. § 1915(a)(1). Simply
17 because Plaintiffs are not "absolutely destitute" does not preclude this relief. See
18 Adkins, 335 U.S. at 339. However, in this case, such relief is precluded
19 nonetheless.⁴

20 In their Application, Plaintiffs state that (1) they are not currently employed
21 but earned \$360 Australian per week through part-time employment up to December
22 2005; (2) they jointly receive \$23,560 Australian yearly in unemployment benefits;
23 (3) they hold no savings; and (4) Con Kourtis recently inherited property in Greece
24

25 ⁴ To the extent that the Court might otherwise take into account the costs bond
26 amount set for Cameron, because Cameron has been dismissed from this matter (even
27 if without prejudice), it is irrelevant when determining whether Plaintiffs may
28 proceed indigently because it no longer applies.

1 that he values at \$100,000 to \$120,000 in American dollars. Request to Proceed in
2 Forma Pauperis, at pp. 1-3. Plaintiffs also balance their monthly income of \$2,010
3 with monthly expenses of \$2,000.⁵ Joint Kourtis Decl., at p. 1.

4 Examining this Application, the Court concludes that Plaintiffs have assets
5 valued, in their own words, at least at \$100,000-120,000. As such, as long as
6 Plaintiffs are not required to post a bond in such an amount that they may not
7 provide themselves with the "necessities of life," they may not proceed in forma
8 pauperis. Adkins, 335 U.S. at 339. Allowing a party to proceed in forma pauperis
9 with such assets available to them would be contrary to the purposes of the indigency
10 statute. Similarly, allowing a party to be declared indigent and avoid paying required
11 costs so that they may pay their own counsel, as appears to be at least in part the
12 purpose of Plaintiffs' motion, see Barry Decl., at ¶¶ 4-5, flies in the face of the policy
13 behind such a statute. For these reasons, the Court finds that, taking into account
14 their income and expenses, Plaintiffs have assets sufficient to pay court costs (as
15 modified later in this opinion) and still provide themselves with the "necessities of
16 life." For this reason, Plaintiffs' Application to Proceed in Forma Pauperis is denied.

17 On another note, Plaintiffs informed the Court that, at least under their
18 understanding, the property in Greece cannot be immediately sold upon inheritance,
19 but must first be valued under Greek procedure before being put up for sale (which
20 might then take some time depending on the asking price and current market). Joint
21 Kourtis Decl., at pp. 2-3. The Court agrees that such limits may make it more
22 difficult to sell this property, but, alone, they are not sufficient reasons for the Court
23 to permit Plaintiffs to proceed indigently. However, the delay caused by Greek
24 inheritance procedure is a hurdle in this instance, and is addressed later in this
25 opinion.

26
27 ⁵ It is unclear whether this valuation is in Australian or American dollars.
28

1 3. Plaintiffs' Motion to Reconsider Kassar's Motion for a Costs
2 Bond

3 Plaintiffs caption their motion concerning Kassar as one to reconsider the
4 Court's order setting a \$100,000 costs bond. In doing so, they do not cite to Local
5 Rule 7-18, which deals with motions for reconsideration, but instead to both
6 California Civil Procedure Code section 1030 and 28 United States Code section
7 1915.⁶

8 Kassar argues this is not a proper motion under Local Rule 7-18, because
9 Plaintiffs' motion does not satisfy any of the three exclusive requirements of that
10 Rule. Arguably, the Kourtises' inheritance and attempted sale of the Greek property
11 qualifies as the emergence of "new material facts" occurring after the original Order,
12 although that is unclear. Regardless, even if a motion under Local Rule 7-18 is
13 improper, the Court may still consider Plaintiffs' argument.

14 First, Plaintiffs' motion is properly filed under section 1030 so far as it
15 incorporates California Civil Procedure Code section 996.030. A district court
16 normally follows the forum state's practice regarding the filing of costs bonds,
17 particularly when the party is a non-resident. See Simulnet E. Assocs., 37 F.3d at
18 574; Merrill Lynch Relocation Mgmt., 812 F.2d at 1121. California procedure
19 permits a party to file a motion asking the Court to determine that the amount of a
20 bond is excessive and order such amount reduced under its discretion, as long as the
21 order is subject to any limitations in the statute providing for the bond. Cal. Civ.
22 Proc. Code §§ 996.030(a)-(b). This determination shall be made upon a properly-
23 noticed motion, and the moving party may then submit a bond in the new amount.
24 Id. §§ 996.030(b)-(c). Therefore, the Court deems Plaintiffs' motion as one properly
25 filed under section 996.030, as it relates to California Civil Procedure Code section

26
27 ⁶ Section 1915, as it applies to this matter, has already been discussed.
28

1 1030.

2 Second, Kassar should recall that, when deciding his original costs bond
3 motion, the Court found that he had "not properly set forth 'the nature and amount
4 of the costs and attorney's fees the defendant has incurred and expects to incur by
5 the conclusion of the action.'" First Costs Bond Order, at p. 8 (citing Cal. Civ. Proc.
6 Code § 1030(b)). However, the Court allowed Kassar to renew his earlier motion
7 (or alternatively reconsider it) based on a declaration submitted by his counsel
8 remedying these earlier omissions. Second Costs Bond Order, at p. 12. Here, a
9 similar situation exists. Plaintiffs have always opposed costs bonds in this matter
10 based on their inability to pay. See Con Kourtis Decl. (12/27/05), at ¶ 2 (filed with
11 Plaintiffs' Opposition to the original costs bond motion). Now, they have provided
12 further information regarding Plaintiffs' financial state, including that which
13 remedies areas the Court specifically found lacking in their earlier submissions. See,
14 e.g., First Costs Bond Order, at p. 8. It would be unfair and inequitable for the Court
15 to permit Kassar to renew his earlier motion, yet not to let Plaintiffs effectively act
16 in the same manner.

17 For this reason, the Court will consider Plaintiffs' motion to vacate or reduce
18 the amount of the costs bond as to Kassar, no matter how it is captioned.⁷

19 When setting a costs bond amount, California law requires the Court to
20 consider (1) the validity of the claim, (2) the reasonableness of the bond and (3) the
21 ability of the person to furnish the bond. Gonzales v. Fox, 137 Cal. Rptr. 312, 313
22 (App. Dep't Super. Ct. 1977); see also Beaudreau v. Superior Court of Los Angeles
23 County, 14 Cal. 3d 448, 459 (1975) (same requirements for different undertaking
24 statute). The validity of Plaintiffs' claim has already been addressed in both the First
25

26
27 ⁷ Despite this, the Court wishes both Plaintiffs and Kassar had included their
28 supplemental information last Fall, when this series of motions began.

1 and Second Costs Bond Orders, and the Court expressly adopts its findings in those
2 Orders to the extent they relate to this issue. Similarly, the nature and amount of the
3 bond requested by Kassar was addressed in the Second Costs Bond Order, and the
4 Court likewise expressly adopts its findings to the extent they relate to this issue.
5 Nothing has changed that affects either of these two prongs. However, the new
6 financial information submitted by Plaintiffs changes the Court's consideration of
7 their ability to furnish the bond.

8 In opposing the earlier motions, Plaintiffs only submitted to the Court
9 information to the effect that (1) their joint income was approximately \$1,600 per
10 month⁸ and (2) they could not afford a large costs bond amount. First Costs Bond
11 Order, at p. 8. Now, as noted earlier, Plaintiffs provide information that (1) they are
12 not currently employed but earned \$360 Australian per week due to part-time
13 employment up to December 2005; (2) they jointly receive \$23,560 Australian yearly
14 in unemployment benefits; (3) they hold no savings; and (4) Con Kourtis recently
15 inherited property in Greece that he values at \$100,000 to \$120,000. Request to
16 Proceed in Forma Pauperis, at pp. 1-2. Plaintiffs also balance their monthly income
17 of \$2,010 with monthly expenses of \$2,000. Joint Kourtis Decl., at p. 1. This
18 information, for obvious reasons, allows the Court to properly evaluate Plaintiffs'
19 ability to furnish a costs bond.⁹

20 The Court has now weighed the validity of Plaintiffs' claim, the nature and
21

22 ⁸ In the absence of evidence to the contrary, the Court assumes the discrepancy
23 between this prior amount and that submitted at this time is due to more precise
24 calculations or a slight change in circumstances.

25 ⁹ Additionally, with their Reply, Plaintiffs submit evidence that they have
26 sought assistance from their relatives and friends in Australia to help pay for their
27 lawsuit, but to no avail. See Con Kourtis Decl., at ¶¶ 2-4; Nondas Kourtis Decl., at
28 ¶ 8; Haritos Decl., at ¶ 11. Although the Court accepts these representations, it is not
clear that Plaintiffs have exhausted all avenues of obtaining the costs bond amount.

1 amount of the bond requested, and the Plaintiffs' ability to pay. Taking into account
2 Plaintiffs' ability to pay the costs bond as set forth herein, the Court finds that the
3 previously-set amount of \$100,000 as to Kassir is excessive. Therefore, the amount
4 of Plaintiffs' costs bond as to Kassir is reduced to \$50,000.¹⁰

5 If and when the court reduces a bond amount due to excessiveness, it may, in
6 its discretion, allow this new bond to be posted by the end of a period not less than
7 five days. Cal. Civ. Proc. Code § 996.030(b). Beyond this, the Court recognizes that
8 the lapse in time due to Greek inheritance procedure makes it more difficult for
9 Plaintiffs to post a costs bond, as their only asset of sufficient value is the Greek
10 property. According to Con Kourtis, as of May 2, 2006, the procedure to gain
11 control of his property in Greece should take approximately thirty to forty days; after
12 securing control, he planned to put the property up for sale. Joint Kourtis Decl., at
13 p. 4. Based upon this representation, the property should now be offered for sale and
14 could conceivably have been sold. However, if the process is slower than expected,
15 or the property market weaker, it is conceivable that the Kourtises' attempt to sell the
16 property and finance their lawsuit may drag on indefinitely. Furthermore, the
17 Kourtises claim they can neither get financing in Greece, because they lack
18 citizenship, nor in Australia, because they lack property to pledge as security. Id. at
19 p. 2.

20 Therefore, based on its discretion under California Civil Procedure Code

21
22 ¹⁰ Plaintiffs also imply that, under Simulnet East Associates, Cameron and
23 Kassir unreasonably delayed in moving for a costs bond in this matter. In Simulnet
24 East Associates, the Court ordered a costs bond just five days before trial, after
25 litigation was pending for three years. 37 F.3d 573. Here, Plaintiffs' original lawsuit
26 was quickly dismissed, and defendants first moved for costs bond just a few months
27 following the remand of this case from the Ninth Circuit (which it reached following
28 Judge Byrne's grant of Defendants' Motion to Dismiss for Failure to State a Claim
Upon Which Relief May Be Granted at the onset of the matter). The Court agrees
that Kassir and Cameron did not unreasonably delay in moving for a costs bond.

1 sections 1030(d) and 996.030(b), the Court will permit Plaintiffs thirty days from the
2 date of this Order to file a costs bond in the amount of \$50,000 as to Kassir. This
3 should permit Plaintiffs sufficient time to sell the Greek property or determine an
4 alternative way to secure financing based on the property or otherwise.¹¹ If this
5 length of time does not prove sufficient, Plaintiffs may, upon good cause shown,
6 bring an appropriate, properly-noticed motion to extend this period prior to its
7 expiration.

8 9 **III. Conclusion**

10 This is now the fourth Order by this Court deciding far too many motions
11 pertaining to costs bonds in this matter. The Court hopes it is the last, so that any
12 party may tell the Court, "I'll be back," only in order to address the merits of this
13 action.¹²

14
15 ¹¹ Plaintiffs argue, in their Reply, that it is unfair to force them to post a bond
16 as to Kassir because, even if the bond can be paid by the proceeds from the sale of
17 their property, no attorney would represent them because they could no longer afford
18 to pay for representation. Once again, Plaintiffs are required to post a costs bond as
19 security against any future award of attorneys' fees, not to directly pay Kassir's
20 attorneys. First, the costs bond procedure itself exists to protect the rights of
21 opposing litigants when there is a possibility that awarded costs may not be available
22 at the close of a matter. Not awarding costs bonds because Plaintiffs wish to use their
23 assets in another manner would fly in the face of their purpose. Second, if
24 Defendants prevail in this action, there is no guarantee that any attorneys' fees may
25 be awarded, and even if they are, they may be awarded in a significantly smaller
26 amount. See First Costs Bond Order, at p. 6 n.2. Some or all of the posted bond
27 would be returned to Plaintiffs at the end of this matter, and they could then use that
28 amount to pay their own counsel.

25 ¹² The Court also hopes that the bitterness and sniping that exists between
26 counsel and has permeated recent submissions to the Court will end immediately.
27 See, e.g., Barry Decl. (May 15, 2006), at ¶¶ 7-9; Cameron's Opposition to Plaintiffs'
28 Motion to Vacate Order (April 17, 2006), at p. 8. At the very least, such accusations

For the foregoing reasons, the Court:

- (1) **DENIES** Plaintiffs' Renewed Motion to Vacate the Court's Order Requiring the Posting of a Costs Bond as to James Cameron;
- (2) **DENIES** Plaintiffs' Request to Proceed in Forma Pauperis;
- (3) **GRANTS** Plaintiffs' captioned Motion to Reconsider the Court's Order Granting a Costs Bond as to Mario Kassir and finds the previous amount of \$100,000 excessive; and
- (4) **ORDERS** Plaintiffs to post a costs bond of \$50,000 as to Kassir within thirty days of the entry of this Order.

IT IS SO ORDERED.

DATED: June 27, 2006

DICKRAN TEVRIZIAN

Dickran Tevrizian, Senior Judge
United States District Court

are unprofessional, have been unnecessary to the pending motions, and in effect only upset the Court rather than provide support to the parties' arguments.