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2021 JAN 22 PM 4:16

SHIRLEY ZALOWIN  
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BY: *[Signature]*  
CLERK

1 Case No. CV-2011117

2 Dept. No. 1

3  
4 **IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF**  
5 **NEVADA, IN AND FOR THE COUNTY OF WHITE PINE**

6 \* \* \* \* \*

7 CENTRAL CINEMA OF ELY, INC., a  
8 Nevada Corporation; DON PURINTON, an  
9 individual; and SHIRLEY PURINTON, an  
10 individual,

11 Plaintiff/Petitioners,

12 -vs-

13 THE HONORABLE STEPHEN F.  
14 SISOLAK, as Governor of the State of  
15 Nevada,

16 Defendant/Respondent.

**ORDER SETTING HEARING  
ON APPLICATION FOR  
TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY AND  
PERMANENT INJUNCTION**

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18 On November 20, 2020, Plaintiffs filed a Complaint and an Application for  
19 Temporary Restraining Order and Preliminary and Permanent Injunction and Declaratory  
20 Relief. A stipulation extending Defendant's time to respond was filed on December 16,  
21 2020. Defendant filed an opposition on December 21, 2020. On January 8, 2021,  
22 Plaintiff's filed a Reply and Request for Submission. The court has reviewed the file and  
23  
24  
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26

1 finds that additional briefing and/or a hearing could be helpful to the court in resolving  
2 Plaintiff's Application for a Temporary Restraining Order.<sup>1</sup>

3  
4 **DISCUSSION**

5 The thrust of Plaintiffs' lawsuit and application focuses on Emergency Directives  
6 issued by Defendant in response to the COVID-19 pandemic. Defendant's actions are  
7 purportedly based on powers delegated to his office by the legislature, specifically NRS  
8 Chapter 414. Plaintiffs do not allege that the authority granted in Chapter 414 is improper,  
9 rather that the governor's actions are not authorized and thus violate the separation of  
10 powers doctrine.  
11

12 In seeking a TRO, the applicant must make a showing that if the TRO (or other  
13 injunction) is not issued, the applicant is likely to suffer irreparable harm before a decision  
14 on the merits can be made. Here, Plaintiffs allege direct harm to their business and harm  
15 resulting from the alleged constitutional violations.  
16

17 In opposition, Defendant argues that NRS Chapter 414 is a proper delegation of  
18 authority and he has not usurped legislative power. Defendant also disputes Plaintiffs'  
19 claims of irreparable harm: (1) that the bare allegation of a constitutional violation is  
20 insufficient and (2) that Plaintiffs have not shown the Emergency Directives (ED's) are  
21 causing economic harm to Plaintiffs.<sup>2</sup> Defendant also challenges Plaintiffs standing,  
22 argues there is still an emergency and the public interest weighs against the relief sought.  
23  
24

25 <sup>1</sup> Defendant has not filed an answer to the complaint.

26 <sup>2</sup> Defendant also argues that pure economic harm (monetary losses) are not generally considered irreparable, but notes that in some cases such losses could be.

1 Plaintiffs argue that because they allege unconstitutional action by the governor,  
2 irreparable harm is presumed (or established). Thus, they need only show a likelihood of  
3 success on the merits. The court is not convinced Plaintiffs' case law cited applies to the  
4 facts in this case. Nearly every case cited involves an individual or business alleging the  
5 denial of a specific individual constitutional right flowing to *that party* such as a violation  
6 of the First Amendment, Fourth Amendment, or right to privacy. The court is receptive to  
7 further briefing or argument on this point before a final decision is made.<sup>3</sup>  
8

9 Plaintiffs also argue they can show irreparable harm by "conventional methods."  
10 These allegations are non-specific and consist of various claims such as "massive and  
11 widespread economic damage to Plaintiffs," that they are prohibited from "operating  
12 business as normal" and there are limits on "Plaintiffs otherwise lawful conduct." In the  
13 application for the TRO it is argued that "65% of [Plaintiffs'] business revenue has been  
14 lost" because of the governor's unconstitutional actions, however, this factual assertion is  
15 not supported by affidavit or sworn declaration.  
16

17 Plaintiffs' Reply contains over 20 pages which "clarifies and explains the  
18 Separation of Powers argument" in more detail. This "additional detail and analysis" in  
19 essence adds new arguments which Defendant should have an opportunity to respond  
20 to in writing.  
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22 Based on the foregoing, the court finds it is necessary to hold a hearing on  
23 Plaintiffs' application in order to receive testimony and/or other admissible evidence in  
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25 <sup>3</sup> Although Plaintiffs' complaint makes various references to deprivation of their rights under the Nevada  
26 Constitution or infringement of their civil rights and liberties, it is not clear what constitutional violations  
Plaintiffs are claiming beyond separation of powers.

1 support of Plaintiffs' factual allegations. The court also finds it is appropriate to allow  
2 Defendant to file a response to Plaintiffs' Reply. The court will also entertain argument  
3 regarding the legal issues raised by the parties.

4 Good cause appearing,

5 **IT IS HEREBY ORDERED** that a hearing on the application for TRO shall be held  
6 at 10:00 a.m. on February 4, 2021.

7 **IT IS HEREBY FURTHER ORDERED** that Defendant may, on or before February  
8 1, 2021, file and serve a written response to Plaintiffs' Reply.

9 **IT IS HEREBY FURTHER ORDERED** that the parties and counsel may appear by  
10 audio/visual means by notifying the court's Executive Judicial Assistant on or before  
11 February 1, 2021.

12 DATED this 22 day of January, 2021.

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18 DISTRICT JUDGE  
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