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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Norstan Incorporated, d/b/a Black Box  
Network Services; et al.,  
  
Plaintiffs,  
  
vs.  
  
Jennifer N. Lancaster, in her capacity as  
Personal Representative of the Estate of  
James Joseph Lancaster; et al.,  
  
Defendants.

No. CV-12-481-PHX-GMS

**ORDER**

Pending before the Court are four motions filed by Defendants: 1) Defendants’ Motion to Dismiss Defendants Jennifer Lancaster and Estate of Joseph Lancaster (Doc. 32); 2) Defendants’ Motion to Dismiss the Lawyer Defendants (Doc. 33); 3) Defendants’ Request for Summary Disposition of Motion to Dismiss (Doc. 44); and 4) Defendants’ Motion for Leave to Show Cause Why Preliminary Injunction Should Not Issue and Motion for Reconsideration (Doc. 50). For the reasons discussed below, the motions are denied.

**BACKGROUND**

This case involves three actions related to the health care costs of decedent Joseph

1 Lancaster: the instant action in this Court, a state court tort action, and a state court  
2 probate action regarding Lancaster’s Estate. Joseph Lancaster was a member of an  
3 ERISA health care plan (the “Plan”) that he obtained through his employer, Plaintiff  
4 Norstan, Inc. (Doc. 4 at 2). On May 15, 2009, Mr. Lancaster underwent a medical  
5 procedure at Banner Heart Hospital and suffered injury, resulting in his total  
6 incapacitation. (*Id.* at 6). He was in a near vegetative state for months. (Doc. 20 at 2). On  
7 January 20, 2010, a medical malpractice suit was filed on his behalf by his guardian *ad*  
8 *litem* in Maricopa County Superior Court (the “state court tort action”). (Doc. 20 at 2).  
9 On September 7, 2010, Mr. Lancaster died. (Doc. 4 at 6). Between May 11, 2009 and  
10 Lancaster’s death, the Plan paid \$1,144,862 for medical services provided to him.  
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14 On December 16, 2010, an amended complaint was filed in the state court tort  
15 action. (Doc. 20-2, Ex. 1). The amended complaint apparently asserts survivor and  
16 wrongful death claims on behalf of Lancaster’s Estate, parents, and four adult children—  
17 Jennifer, Candice, Christy, and Joseph Lancaster. Jennifer has been appointed as the  
18 Estate’s Personal Representative and is therefore involved in the state court action in both  
19 an individual and representative capacity. The complaint names Jonathan A. Feuer, M.D.,  
20 Valley Anesthesiology Consultants, Ltd., and the Banner Heart Hospital as defendants.  
21 (*Id.*). At some point, all plaintiffs in the state court tort action, including the Estate,  
22 entered into a settlement agreement (the “First Settlement”). Although the terms of the  
23 First Settlement have not been provided to the Court, it apparently purports to extinguish  
24 the plaintiffs’ claims against the Hospital, but does not affect their claims against Feuer  
25 or Valley Anesthesiology.  
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1           On March 8, 2012, Plaintiffs Norstan and Black Box Network Services Employee  
2 Health Plan filed the Complaint in the instant action, bringing a claim against the Estate  
3 for breach of contract. (Doc. 1). The Complaint also brings claims against the Estate and  
4 its counsel for a declaratory judgment pursuant to 29 U.S.C. § 1132(a)(3), constructive  
5 trust, and injunctive relief. (*Id.*). Also on March 8, Plaintiffs filed a Motion for  
6 Temporary Restraining Order and Preliminary Injunctive Relief. (Doc. 4). In this motion,  
7 Plaintiffs asked the Court to 1) enjoin the Estate from dismissing itself as a party with  
8 regards to the remaining claims in the state court action; and 2) order the preservation and  
9 placement in trust of the Plan's reimbursement interest of \$1,144,862 from any settlement  
10 that the Estate and/or its representative and attorneys may receive from the state court  
11 action. (Doc. 4).  
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15           The Court initially denied Plaintiffs' TRO motion. Plaintiffs had argued that  
16 unless the Court enjoined the Estate from dismissing itself as a party in the state court tort  
17 action, the Plan's subrogation rights in the Estate's recovery would be extinguished and  
18 that Plaintiffs would thereby suffer irreparable harm. At that time, however, the probate  
19 court had not yet granted the Estate's motion for leave to dismiss itself in the tort action,  
20 nor had Plaintiffs moved to be dismissed from the tort action. Moreover, the Parties  
21 stipulated at the TRO hearing that the funds from the First Settlement would be held in  
22 trust pending the outcome of this action. The Court—noting the substantial likelihood  
23 that either the probate court might deny the defendants' motion, or the Estate might elect  
24 not to dismiss itself from the tort action and/or assign any interest in its claims to  
25 Plaintiffs—held that Plaintiff had not yet demonstrated that it was likely to suffer  
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1 irreparable harm absent injunctive relief and denied the TRO motion without prejudice.  
2 (Doc. 29).

3 On May 11, 2012, Plaintiffs filed a Renewed Application for Temporary  
4 Restraining Order. (Doc. 37). Plaintiffs provided evidence that the Estate had decided to  
5 settle its remaining claims in the state-court action (the “Second Settlement”)<sup>1</sup> without the  
6 Plan’s approval. In addition, Plaintiffs provided evidence that the probate court had  
7 granted the Estate leave to dismiss itself in the tort action, and that the Estate had failed to  
8 respond to Plaintiffs’ request that the Estate assign its rights to the Plan. The Court  
9 therefore granted Plaintiffs’ motion for a TRO and ordered Defendants to show cause  
10 why the TRO should not stay in effect as a preliminary injunction. (Doc. 48).

11 Defendants now contend that the Estate and its personal representative should be  
12 dismissed from this action for lack of jurisdiction. (Doc. 32). In addition, several of  
13 defendants move to dismiss the claims against them for failure to state a claim. (Doc. 33).  
14 Defendants also contend that the TRO should not remain in effect as a preliminary  
15 injunction, and ask that the Court reconsider its decision to grant Plaintiffs’ application  
16 for a TRO. (Doc. 50).

## 21 DISCUSSION

### 22 I. Motion to Dismiss Defendants Jennifer Lancaster and Estate of Joseph 23 Lancaster 24

25 Defendants contend that the court lacks subject matter jurisdiction over the Estate  
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27 <sup>1</sup> The Parties have stipulated that, like the proceeds from the First Settlement, any  
28 proceeds from the Second Settlement will be held in trust pending the outcome of this  
action. (Doc. 35 at 2).

1 and its personal representative, Jennifer Lancaster, “because there is no case or  
2 controversy” between these defendants and Plaintiffs. (Doc. 32 at 3). Title 29 U.S.C. §  
3 1132(a)(3) states that:

4           A civil action may be brought . . . by a  
5 participant, beneficiary, or fiduciary [of an  
6 ERISA health care plan] (A) to enjoin any act  
7 or practice which violates . . . the terms of the  
8 plan, or (B) to obtain other appropriate  
9 equitable relief (i) to redress such violations or  
or the terms of the plan.

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11 Plaintiffs are apparently the fiduciaries of the Plan. And the Estate now holds Lancaster’s  
12 rights and responsibilities as a Plan beneficiary. Plaintiffs may therefore bring suit in this  
13 Court against the Estate to enforce the terms of the Plan. *See id.*

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15           Under the terms of the Plan, “if a covered person receives a benefit payment from  
16 the plan for an injury caused by a third party, and the covered person later receives any  
17 payment for that same condition or injury from another person, organization or insurance  
18 company, the plan has the right to recover any payments made by the plan to the covered  
19 person.” (Doc. 4, Ex. 1-A at 88). A “covered person” is defined by the Plan to include  
20 “any person acting on behalf of the covered person, including . . . the covered person’s  
21 estate.” (*Id.*). It appears, therefore, that the Plan, which allegedly paid \$1,144,862 for  
22 medical services provided to Lancaster, may have subrogation rights over payments made  
23 by Lancaster’s health care providers to the Estate for injuries the health care providers  
24 caused Lancaster. Moreover, under the Plan, the Estate is not to “accept any settlement  
25 that does not fully compensate or reimburse the plan without its written approval.” (Doc.  
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1 4, Ex. 1-A at 89). The Estate, however, has agreed to a memorandum of settlement  
2 stating settlement terms with Feuer and Valley Anesthesiology in the state-court tort  
3 action without the Plan’s approval. (*See* Doc. 50-1). In this memorandum, the Estate  
4 apparently agrees that it will dismiss its claims against Feuer and Valley Anesthesiology  
5 and will “request that the dismissal be with prejudice.” (*Id.* at ¶ 3).

7 Defendants contend that there is no controversy between the Estate and the Plan  
8 because the Estate disclaimed any rights to settlement proceeds as part of the settlement  
9 agreement. (Doc. 32 at 3–4). In other words, Defendants contend that because the Estate  
10 agreed to dismiss its claims for \$0, there is no settlement over which the Plan can  
11 exercise its subrogation rights or for which the Plan can give written approval. (*See id.*).  
12 That the Estate has agreed to settle its claims for nothing, however, does not extinguish  
13 the Plan’s right to approve or disapprove of that settlement. (*See* Doc. 4, Ex. 1-A at 89).  
14 Indeed, the provision requiring written approval appears to exist for the very purpose of  
15 stopping beneficiaries like the Estate from extinguishing claims which they undervalue.  
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19 Defendants further contend that there is no controversy between the parties  
20 because the settlement payments from Lancaster’s health care providers are being held in  
21 trust and “will not be disbursed without agreement of the parties, or court order.” (Doc.  
22 32 at 3). The Parties, however, dispute both the amount of settlement between the parties  
23 to the state-court action and the allocation of the settlement between the Plan and the  
24 plaintiffs in the state court action. A controversy therefore exists between the Estate and  
25 the Plan, and the Plan’s claims in this action will not be dismissed for lack of subject  
26 matter jurisdiction.  
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1       **II.     Motion to Dismiss for Failure to State a Claim**

2           On April 30, 2012, Defendants Mathew Dana, Mark Andersen, Samantha Garber,  
3 Warren Levenbaum, Steven Cohen, and Geoffery Trachtenberg (the “Lawyer  
4 Defendants”) moved to dismiss Plaintiffs’ claims against them for failure to state a claim.  
5 (Doc. 33). The Parties, however, have since stipulated to the dismissal of the Lawyer  
6 Defendants, and the Court has dismissed them from this action. (Docs. 35, 38). The Court  
7 will therefore deny the Lawyer Defendants’ motion as moot.  
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9       **III.    Preliminary Injunction**

10           Defendants moved for reconsideration of the Court’s TRO determination and the  
11 Court granted Defendants a hearing to show cause why the TRO should not become a  
12 preliminary injunction. (Doc. 50). A plaintiff must establish four elements in order to be  
13 granted a preliminary injunction, including “that he is likely to succeed on the merits, that  
14 he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance  
15 of equities tips in his favor, and that an injunction is in the public interest.” *Winter v.*  
16 *Nat’t Res. Def. Council*, 555 U.S. 7, 22 (2008), *see* FED. R. CIV. P. 65 (emphasis in  
17 original). In granting Plaintiffs’ request for a TRO, the Court determined that Plaintiffs  
18 had established these four elements. (Doc. 48). The only basis provided by Defendants in  
19 their written motion, however, on which they urge the Court to reconsider is their  
20 recharacterization of the Settlement Memorandum in the state-court action as a final  
21 settlement of their remaining claims.  
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23           At the time the Court entered the TRO in this action, Defendants contended that  
24 the Settlement Memorandum signed by the Estate’s representative was essentially an  
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1 agreement to settle the state-court action in the future and that the parties had not  
2 formally settled the case. (*See* Doc. 50 at 2). Defendants now contend that the Settlement  
3 Memorandum is itself the formal settlement agreement between the parties, and that  
4 “[b]ecause there is a settlement in place, the Court cannot enjoin a completed act.” (*Id.*).  
5 The Settlement Memorandum, however, states that the parties to the state-court action  
6 “will execute formal settlement documents at a later date,” that “[t]he formal settlement  
7 documents will include a full and complete release of defendants,” and that “[a]t such  
8 time as a formal settlement agreement is executed, the above-captioned matter will be  
9 dismissed with prejudice.” (Doc. 50-1 at 1, 4). The Settlement Memorandum does not,  
10 therefore, appear to itself be a formal settlement agreement.  
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14 At the preliminary injunction hearing, Defendants argued for the first time that the  
15 Plan documents provided by Plaintiffs may be defective. Defendants accordingly  
16 requested that the Court delay entry of the preliminary injunction and first give  
17 Defendants the opportunity to conduct further discovery into whether Plaintiffs have  
18 indeed failed to produce binding Plan documents. At the hearing, Defendants conceded  
19 that should the documents produced by Plaintiffs be found to be invalid, they are unsure  
20 how this would affect the Plan’s causes of action against the Estate. Accordingly, their  
21 argument is thusfar no more than speculation and does not call into question the Court’s  
22 previous determination that Plaintiffs are likely to succeed on the merits.  
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25 In short, Defendants have not provided the Court with any valid basis on which to  
26 reconsider its determination that Plaintiffs are likely to succeed on the merits, are likely  
27 to suffer irreparable harm without an injunction, that the balance of equities tips in their  
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1 favor, and that an injunction is in the public interest. *See Winter*, 555 U.S. at 22. The  
2 Court will deny Defendants’ motion for reconsideration without prejudice and the TRO  
3 will remain in effect as a preliminary injunction.  
4

### 5 CONCLUSION

6 A justiciable controversy exists between the Plan and the Estate. Given the  
7 Parties’ May 11, 2012 Stipulation, the Lawyer Defendants’ motion to dismiss for failure  
8 to state a claim is moot. Plaintiffs have met the preliminary injunction requirements set  
9 forth in *Winter*.  
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11 **IT IS THEREFORE ORDERED THAT** Defendants’ Motion to Dismiss  
12 Defendants Jennifer Lancaster and Estate of Joseph Lancaster (Doc. 32) is **DENIED**.  
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14 **IT IS FURTHER ORDERED THAT** Defendants’ Motion to Dismiss the  
15 Lawyer Defendants (Doc. 33) is **denied as moot**.  
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17 **IT IS FURTHER ORDERED THAT** Defendants’ Request for Summary  
18 Disposition of Motion to Dismiss (Doc. 44) is **denied as moot**.  
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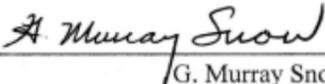
20 **IT IS FURTHER ORDERED THAT** Defendants’ Motion for Leave to Show  
21 Cause Why Preliminary Injunction Should Not Issue and Motion for Reconsideration  
22 (Doc. 50) is **granted in part and denied in part**.  
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24 **IT IS FURTHER ORDERED THAT** the temporary restraining order entered by  
25 the Court on May 30, 2012 (Doc. 48) shall remain in effect as a preliminary injunction  
26 pending final disposition of this matter and that the \$40,000 bond filed by Plaintiffs will  
27 serve as security for both the temporary restraining order and the preliminary injunction.  
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The Estate is enjoined from dismissing its claims against Feuer and Valley

1 Anesthesiology in *Lancaster, et al. v. Feuer, et al.*, CV2010-001614 except for its rights  
2 to recovery above and beyond the reasonable value of services and benefits the Plan  
3 provided to Lancaster. The Estate is also enjoined from accepting any settlement of its  
4 claims against Feuer and Valley Anesthesiology in *Lancaster, et al. v. Feuer, et al.*,  
5 CV2010-001614 that does not fully compensate or reimburse the Plan without the Plan's  
6 written approval.  
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8 Dated this 3rd day of August, 2012.  
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12 G. Murray Snow  
13 United States District Judge  
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