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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SEI Y. KIM,)	CV 14-4270 RSWL (VBKx)
Plaintiff,)	
)	ORDER re: DEFENDANT
v.)	TRUCK INSURANCE
)	EXCHANGE'S MOTION FOR
TRUCK INSURANCE EXCHANGE)	ORDER REQUIRING
and PEERLESS INSURANCE)	PLAINTIFF SEI Y. KIM TO
COMPANY,)	FILE AN UNDERTAKING [63]
)	
Defendants.)	
)	
)	

Before the Court is Defendant Truck Insurance Exchange's ("Truck" or "Defendant Truck) Motion for Order Requiring Plaintiff Sei Kim to File an Undertaking [63]. The Court, having considered all arguments presented to the Court, **NOW FINDS AND RULES AS FOLLOWS:**

The Court **DENIES** Defendant's Motion.

DISCUSSION

Defendant Truck brings this Motion asserting that because Plaintiff Sei Kim ("Plaintiff" or "Sei Kim") is an out-of-country plaintiff, a security for costs

1 should be required.

2 According to the Ninth Circuit,

3 There is no specific provision in the
4 Federal Rules of Civil Procedure
5 relating to security for costs. However,
6 the federal district courts have
7 inherent power to require plaintiffs to
8 post security for costs. "Typically
9 federal courts, either by rule or by
10 case-to-case determination, follow the
11 forum state's practice with regard to
12 security for costs, as they did prior to
13 the federal rules; this is especially
14 common when a non-resident party is
15 involved."

16 Simulnet E. Assocs. v. Ramada Hotel Operating Co., 37
17 F.3d 573, 574 (9th Cir. 1994) (quoting 10 Wright,
18 Miller & Kane, Federal Practice and Procedure: Civil
19 2nd § 2671).

20 California Code of Civil Procedure § 1030 provides
21 that a defendant may file a motion for a plaintiff who
22 resides out of the state or who is a foreign
23 corporation to secure an award of costs and attorney's
24 fees which may be awarded in the action. Cal. Code
25 Civ. Pro. § 1030(a). The statute requires the
26 defendant to show that there is a "reasonable
27 possibility that the moving defendant will obtain
28 judgment in the action or special proceeding." Id. §

1 1030(b). The "reasonable possibility" standard is
2 relatively low. GeoTag, Inc. v. Zoosk, Inc., No.
3 C-13-0217 EMC, 2014 WL 793526, at *3 (N.D. Cal. Feb.
4 26, 2014). In determining whether to order the posting
5 of a bond, courts consider "(i) the degree of
6 probability/improbability of success on the merits, and
7 the background and purpose of the suit; (ii) the
8 reasonable extent of the security to be posted, if any,
9 viewed from the defendant's perspective; and (iii) the
10 reasonable extent of the security to be posted, if any,
11 viewed from the nondomiciliary plaintiff's
12 perspective." Simulnet, 37 F.3d at 573 (citations
13 omitted). Finally, a defendant must provide the Court
14 a basis for determining a reasonable bond amount to
15 cover costs. GeoTag, 2014 WL at *4-5.

16 Here, it may well be that Defendant Truck can
17 establish that it has a reasonable possibility of
18 obtaining judgment. Truck has failed, however, to
19 provide the Court a reasonable basis on which the Court
20 can determine a reasonable bond amount to cover Truck's
21 anticipated costs in this action. Truck asserts that a
22 bond in the amount of \$92,548.65 should issue, based on
23 already-incurred costs of \$24,198.65 and future costs
24 of \$68,350.00. Def.'s Mot., Decl. of Kathleen Carter ¶
25 16-18. These costs include line-items that are not,
26 under federal rules or local rules, taxable as costs,
27 such as mediation and parking. Id. They also include
28 substantial sums for line-items such as "reproduction

1 of documents" that may or may not be taxable as costs.
2 Finally, they include substantial sums for broad line-
3 items explained only as "depositions" (\$25,000) and
4 "expert depositions" (\$15,000) that are insufficiently
5 broken down to account for those costs which may be
6 taxable (such as a \$40.00/day attendance fee) and those
7 which are not taxable. Id. The Court has no way of
8 determining Defendant's actual taxable current costs,
9 let alone the future costs that Defendant claims amount
10 to substantially more.

11 Finally, other courts have held that a bond is
12 unnecessary where a defendant does not demonstrate that
13 there is a risk it will be unable to recover costs from
14 the plaintiff if it prevails. See Wilson & Haubert,
15 PLLC v. Yahoo! Inc., No. C-13-5879 EMC, 2014 WL
16 1351210, at *4 (N.D. Cal. Apr. 4, 2014); Susilo v.
17 Wells Fargo Bank, N.A., No. CV 11-1814 CAS (PJWx), 2012
18 WL 5896577, at *2 (C.D.Cal. Nov. 19, 2012) ("Without
19 any particularized showing that there is a real risk of
20 defendants being unable to recover costs and attorney's
21 fees to which they are entitled, there is simply no
22 basis on which to require plaintiff to post a bond.");
23 Plata v. Darbun Enterprises, Inc., No. 09cv44-IEG(CAB),
24 2009 WL 3153747, at *12 (denying a section 1030 motion,
25 in part, because "Defendant has not set forth any
26 details regarding its legitimate need for the
27 prophylaxis of a bond in its moving papers"). Here,
28 Defendant Truck has failed to establish a legitimate

1 risk that it will be unable to recover costs from
2 Plaintiff. Thus, because Truck has not provided the
3 Court with a reasonable basis on which the Court can
4 determine a reasonable bond amount, see GeoTag, 2014 WL
5 at *4-5, and because it has failed to demonstrate the
6 need for the bond, Truck's Motion is hereby **DENIED**.

7 **IT IS SO ORDERED.**

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9 DATED: July 8, 2015 RONALD S.W. LEW
10 HONORABLE RONALD S.W. LEW
11 Senior U.S. District Judge
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