

1 obtain the required undertaking, Plaintiff has been unable to do so as several bonding companies
2 have rejected her request for a bond [see supporting Declaration of XXXX XXXXX (“XXXX
3 XXXXX Decl., ¶ 1-4)]. Additionally, Plaintiff lacks the personal income or assets to post the
4 \$10,000.00 security (“XXXX XXXXX Decl., ¶ 1-4).

5 Code of Civil Procedure § 995.240 authorizes the court to waive the undertaking
6 generally required for a preliminary injunction on the basis of Plaintiff’s indigence or inability to
7 obtain the \$10,000.00 bond. See *Conover v. Hall* (1974) 11 Cal.3d 842, 851-853. The court
8 should exercise this authority and grant Plaintiff’s request for relief from having to post an
9 undertaking herein.
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11 **FACTS**

12 On November 10, 2009, Plaintiff presented her application for a temporary restraining
13 order and order to show cause for a preliminary injunction on the grounds that Plaintiff’s
14 complaint and application demonstrated her entitlement to such relief. The court granted this
15 relief and ordered Plaintiff to post an undertaking in the amount of \$10,000.00 (hereafter, the
16 “Bond”) as security for any resulting harm to Defendants herein.
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18 In a diligent effort to comply with the court’s order to post the Bond, Plaintiff sought the
19 Bond from several bonding companies through her Nationwide Insurance agent, Steven Alveda.
20 Additionally, Plaintiff also attempted to obtain the Bond through insurance agent John Roth.
21 Neither Mr. Alveda nor Mr. Roth could obtain the Bond for Plaintiff, and she also contacted the
22 following bonding companies in her effort to obtain this security: Allstate Surety Bonds located
23 at 1674 Corinth Avenue, West Los Angeles, California 90025; A & B Assurance located at 2400
24 West Carson Street, Torrance, California 90051; and Pearson Surety Insurance located at 1674
25 Corinth Avenue, West Los Angeles, California 90025. Each of these bonding companies
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1 rejected Plaintiff's application for the Bond. Thus, despite this diligent effort to obtain the Bond,
2 Plaintiff has not been able to do so.

3 Additionally, Plaintiff lacks the personal income or assets to post the \$10,000.00 security.
4 See XXXX XXXXX Decl., ¶ 1-4. Plaintiff's monthly social security checks are \$1,130, and her
5 long term disability check is \$1,300 per month. These checks are Plaintiff's sole source of
6 income. Plaintiff's average monthly expenses, without limitation, are as follows: \$340.00 for
7 utilities; \$300.00 for food expenses; \$500.00 for gasoline and automobile expensed; \$198.75 for
8 insurance; \$140.00 for telephone service; \$150.00 for medical co-payments; co-payments for
9 medical; and \$99.00 for cable television service. Plaintiff's overall monthly expenses exceed her
10 limited income each month and she is always short of money.
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13 On the basis of these facts and applicable law, the court should grant Plaintiff's request
14 for relief from having to post the Bond herein.

15 **ARGUMENT**

16 **THE COURT SHOULD GRANT PLAINTIFF'S REQUEST FOR RELIEF FROM** 17 **PROVIDING AN UNDERTAKING UNDER CODE OF CIVIL PROCEDURE § 995.240**

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19 The court has broad discretion to waive a provision for a bond in an action or
20 proceeding and make such orders as may be appropriate as if the bond were given where the
21 principal is unable to give the bond because of indigence or inability to obtain an undertaking
22 required for a preliminary injunction. See Code of Civil Procedure § 995.240; *Conover v. Hall*
23 (1974) 11 Cal.3d 842, 851-853 [a court has discretion to waive the bond requirement for a
24 preliminary injunction on a showing of indigence or inability to obtain the undertaking]. In
25 forma pauperis status is not required before a court can grant such relief, and the court's power to
26 waive a bond requirement applies to both cost and damage bonds. *Id.* at 851-852; see also
27 *Progressive Concrete, Inc. v. Parker* (2006) 136 Cal.App.4th 540.
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1 A litigant’s sworn declaration regarding her financial hardship or indigence combined
2 with a statement of her income and expenses are sufficient to justify a bond waiver, absent
3 something in the declaration giving the court reason to doubt its veracity. *Hood v. Superior*
4 *Court* (1999) 72 Cal.App.4th 446, 449-450; see accord in *Conover v. Hall* (1974) 11 Cal.3d 842,
5 851-853; *Alshafie v. Lallande* (2009) 171 Cal.App.4th 421, 429-437. Even if the enjoined party
6 establishes the grounds for an undertaking, the trial court may waive the requirement if the party
7 required to post the bond establishes indigence or inability to obtain an undertaking required for
8 a preliminary injunction. Code of Civil Procedure § 995.240; *Alshafie v. Lallande* (2009) 171
9 Cal.App.4th 421, 429-437.
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11 As applied herein, the facts and applicable law clearly support Plaintiff’s request for
12 relief from the Bond herein. In addition to providing evidence of her diligent but unsuccessful
13 effort to obtain the Bond, Plaintiff has provided sufficient evidence of her limited income and
14 financial inability to post a \$10,000.00 security on her own. See XXXX XXXXX Decl., ¶ 1-4;
15 *Hood v. Superior Court* (1999) 72 Cal.App.4th 446, 449-450; see accord in *Conover v. Hall*
16 (1974) 11 Cal.3d 842, 851-853; *Alshafie v. Lallande* (2009) 171 Cal.App.4th 421, 429-437.
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19 Accordingly, the court should grant Plaintiff’s requested relief herein.

20 **CONCLUSION**

21 For the foregoing reasons and in view of applicable law, Plaintiff requests that the court
22 grant her requested relief from having to post the Bond herein
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25 Date: November 19, 2009

26 XXXXXX XXXXX
Attorney for Plaintiff
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