

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 21 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TOMAR, LLC,

Plaintiff - Appellee,

v.

ENCORE D.E.C., LLC; RANDALL E.
SOULE,

Defendants - Appellants,

RESC RENEWABLES HOLDINGS, LLC,
RESC, LLC, GL PART SPV I, LLC,
GREATER NEVADA COMMERCIAL
LENDING, LLC, GREATER NEVADA
CREDIT UNION, SCOT A. CONNER,

Defendants.

No. 26-858

D.C. No.

3:25-cv-00754-MMD-CLB

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Miranda M. Du, District Judge, Presiding

Submitted September 15, 2026**
Phoenix, Arizona

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: M. SMITH and TUNG, Circuit Judges, and KANE, District Judge.***

Defendant-Appellant Randall E. Soule contends that the district court erroneously enjoined him from transferring certain assets “without considering whether to require Plaintiff-Appellee Tomar, LLC [] to post any security bond” in accordance with “Fed. R. Civ. P. 65(c).” We have jurisdiction under 28 U.S.C. § 1292(a)(1), and we now affirm.¹

The parties are familiar with the facts, so we do not recount them here except as necessary for context.

Soule forfeited his Rule 65(c) objection. Because the “purpose” of such bonds is to cover any damages arising from an improper injunction, *Gorbach v. Reno*, 219 F.3d 1087, 1092 (9th Cir. 2000), a district court may set the bond amount at “zero” if “there is no evidence” of such damages, *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 321 F.3d 878, 882 (9th Cir. 2003). And if the defendant “fail[s] to

*** The Honorable Yvette Kane, United States District Judge for the Middle District of Pennsylvania, sitting by designation.

¹ This disposition applies to all parties except Defendant-Appellant Encore D.E.C., LLC, as to which this action is stayed pursuant to 11 U.S.C. § 362(a)(1). Encore’s appeal is thus administratively closed, and we express no opinion on its merits. No mandate will issue in connection with this administrative closure. Nor do we address the second issue raised in the appellants’ opening brief: namely, whether the district court had subject matter jurisdiction over Encore when issuing its preliminary injunction. Within 28 days of any change to the bankruptcy stay affecting this appeal, any party may notify this Court and move to reopen the appeal as to Encore or for any other appropriate relief.

request a bond or submit any evidence regarding [their] likely damages, we will not entertain” a bond request under Rule 65(c) “for the first time on appeal.” *Id.* In other words, a defendant seeking an injunction bond owes an “obligation” to produce evidence of the bond’s necessity. *Id.* at 883.

Soule failed to discharge that obligation here. When moving for an injunction, Plaintiff argued that “the Court may set a bond amount at zero” because Soule adduced “no evidence” that he would “suffer damages from the injunction.” Yet Soule offered no response to this argument, let alone any evidence of harm. Accordingly, “the district court did not abuse its discretion by not reaching the bond issue” in its preliminary-injunction order. *Conn. Gen. Life Ins. Co.*, 321 F.3d at 883.

Soule counters that he adequately preserved the issue by requesting an attachment bond under Nevada law. Not so. “To have been properly raised below, ‘the argument must be raised sufficiently for the trial court to rule on it.’” *Broad v. Sealaska Corp.*, 85 F.3d 422, 430 (9th Cir. 1996) (quoting *In re E.R. Fegert, Inc.*, 887 F.2d 955, 957 (9th Cir. 1989)). Soule’s citation of Nev. Rev. Stat. § 31.030(1) did not give the district court a chance to rule on his newly minted Rule 65(c) argument because federal injunction bonds have different bases, standards, and requirements than Nevada attachment bonds. *Compare Conn. Gen. Life Ins. Co.*, 321 F.3d at 882 (courts have “wide discretion” in setting injunction bond amounts under Rule 65(c) and can decline one altogether if “no evidence” of damages is

presented) *with* Nev. Rev. Stat. § 31.030(1) (courts issuing attachment orders “shall require” the plaintiff to post a bond “in a sum not less than the amount claimed by the plaintiff or the value of the property to be attached, whichever is less”). The Rule 65(c) argument Soule now advances is “far removed from [the] specific and distinct argument” he made before the district court and thus “was not ‘raised sufficiently for the trial court to rule on it.’” *Maverick Gaming LLC v. United States*, 123 F.4th 960, 973 (9th Cir. 2024) (quoting *Cornhusker Cas. Ins. Co. v. Kachman*, 553 F.3d 1187, 1192 (9th Cir. 2009)).²

Nor did Soule preserve the issue by “join[ing]” Defendant GL Part SPV I, LLC’s motion to reconsider the district court’s temporary restraining order. True, GL’s motion asked the court to reconsider its conclusion that “no security bond [was] required” under Rule 65(c) because “GL [would] not be harmed” by the TRO’s issuance. But GL supported that request with a declaration claiming that the TRO might inflict “millions of dollars in damages” on GL because the restrained assets

² The fact that both arguments seek a “bond” is insufficient to preserve the issue. There are numerous bond types under federal and Nevada law. *See, e.g.*, Fed. R. Civ. P. 62(d) (supersedeas bonds); Fed. R. App. P. 7 (appeals bonds); Nev. R. Civ. P. 62(d) (supersedeas bonds); Nev. R. Civ. P. 65(c) (injunction bonds); Nev. Rev. Stat. § 31.030(1) (attachment bonds). Asking for one does not preserve a request for all others in a manner “sufficient[] for the trial court to rule” on the issues. *Broad*, 85 F.3d at 430 (internal quotations omitted); *cf. In re Rains*, 428 F.3d 893, 902 (9th Cir. 2005) (a “vague statement” that fails to articulate an issue “with sufficient clarity” to apprise the court of the issue’s nature does not preserve an issue for review).

were “components in a number of active deals.” When Soule filed his joinder, he offered no comparable evidence of his own “damages” or “active deals.”³ “Without such evidence before it, the district court did not abuse its discretion by not reaching the bond issue” when extending the TRO or converting it to a preliminary injunction. *Conn. Gen. Life Ins. Co.*, 321 F.3d at 883 (citing *Gorbach*, 219 F.3d at 1092).

The district court’s order granting the injunction without requiring Plaintiff to post a bond under Federal Rule of Civil Procedure 65(c) is **AFFIRMED**.⁴

³ We take no position on the sufficiency of GL’s proffered evidence and mention it only as a basis for comparison.

⁴ We deny without prejudice Plaintiff’s request that we take judicial notice of a Nevada state court’s order granting a receiver in (purportedly) related litigation. *See* Dkt. No. 22. The relevance of this order, if any, to the Rule 65(c) issue before us is not apparent. Plaintiff contends that the order sets forth “the state court’s findings as to Soule’s fraud,” and that it “highlights the consistency of the relief provided in both fora.” But neither explanation convinces us that the proffered order bears on Soule’s entitlement to an injunction bond. To the extent Plaintiff believes the order is germane to the district court’s subject matter jurisdiction over Encore, Plaintiff can renew its request for judicial notice if and when the appeal is reopened. *See supra* note 1.