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6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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9 F. G. CROSTHWAITE, et al., as Trustees of
10 the OPERATING ENGINEERS HEALTH
AND WELFARE TRUST FUND, et al.,

No. C 11-02866 JSW

11 Plaintiffs,

12 v.

13 COOPER CRANE & RIGGING, INC., a
14 California Corporation dba ASSOCIATED
DOCK ENTERPRISES, INC. and dba
15 WESTERN DOCK ENTERPRISES,

Defendants.

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18 **ORDER DENYING TEMPORARY
RESTRANDING ORDER AND
APPLICATION FOR WRIT OF
ATTACHMENT**

19 Now before the Court for consideration is the *ex parte* application for a temporary
20 restraining order (“TRO”) filed by Plaintiffs, or in the alternative, an application for a writ of
21 attachment. In order to obtain a temporary restraining order or preliminary injunctive relief,
22 Plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer
23 irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
24 favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Defense
Council*, 555 U.S. 7, 129 S. Ct. 365, 374 (2008) (citations omitted). The *Winter* court also
25 noted that because injunctive relief is “an extraordinary remedy,” it “may only be awarded upon
26 a clear showing that the plaintiff is entitled to such relief.” 129 S.Ct. at 375-76 (citing *Mazurek
v. Armstrong*, 520 U.S. 968, 972 (1997) (*per curiam*)). Thus “[i]n each case, courts ‘must
27 balance the competing claims of injury and must consider the effect on each party of the
28 granting or withholding of the requested relief.’” *Id.* at 376 (citing *Amoco Production Co. v.*

1 *Gambell*, 480 U.S. 531, 542 (1987)). On an ex parte motion for a TRO, the moving plaintiff
2 must allege “specific facts in an affidavit or a verified complaint clearly show that immediate
3 and irreparable injury, loss, or damage will result to the movant before the adverse party can be
4 heard in opposition.” Fed. R. Civ. Proc. 65(b)(1)(A). Plaintiffs fail to meet this standard.

5 On October 18, 2011, Magistrate Judge Laurel Beeler issued a report and
6 recommendation (“Report”) to award Plaintiffs \$697,317.37 in delinquent contributions and
7 \$31,508.50 in attorneys’ fees. Pursuant to the Report, as well as Federal Rule of Civil
8 Procedure 72(b), Defendant has fourteen days to file any objections to the Report. However,
9 because Plaintiffs served Defendant with a copy of the Report by mail (*see* Docket No. 36),
10 Defendant’s time to file objections was extended three more days. *See* Fed. R. Civ. P. 6(d).
11 Therefore, Defendant’s objections, if any, are not due to be filed until November 4, 2011.

12 Moreover, Plaintiffs fail to demonstrate that they will suffer irreparable harm if the
13 Court does not issue the TRO. Plaintiffs argue that “[o]ver the past few weeks, it has become
14 clear that events which are likely to have a direct effect upon Defendant’s debts to Plaintiffs
15 have begun to rapidly escalate.” However, the facts Plaintiffs present show that Defendant will
16 soon have a greater ability to pay any debt to Plaintiffs, not less. Accordingly, the Court
17 DENIES Plaintiffs’ application for a TRO. The Court FURTHER DENIES Plaintiffs’
18 alternative application for a writ of attachment without prejudice to refiling once a judgment is
19 entered.

20 **IT IS SO ORDERED.**

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22 Dated: November 2, 2011


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JEFFREY S. WHITE
24 UNITED STATES DISTRICT JUDGE
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