

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

No. C 11-02866 JSW

Plaintiffs,

v.

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

Defendants.

**ORDER DENYING TEMPORARY  
RESTRAINING ORDER AND  
APPLICATION FOR WRIT OF  
ATTACHMENT**

Now before the Court for consideration is the *ex parte* application for a temporary restraining order (“TRO”) filed by Plaintiffs, or in the alternative, an application for a writ of attachment. In order to obtain a temporary restraining order or preliminary injunctive relief, Plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his 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 noted that because injunctive relief is “an extraordinary remedy,” it “may only be awarded upon 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 balance the competing claims of injury and must consider the effect on each party of the 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.**

21  
22 Dated: November 2, 2011

  
JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE