



Form 6. Civil Appeals Docketing Statement

USCA DOCKET # (IF KNOWN)

MAY 9 2011

**UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CIVIL APPEALS DOCKETING STATEMENT**

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL: Taleff, et. al, v. Southwest Airlines Co, et al., (See Attachment for Full Listing)	DISTRICT: North Dist, CA JUDGE: James Ware	
	DISTRICT COURT NUMBER: 11-CV-2179-JW	
	DATE NOTICE OF APPEAL FILED: 5/9/11	IS THIS A CROSS-APPEAL? <input type="checkbox"/> YES
	IF THIS MATTER HAS BEEN BEFORE THIS COURT PREVIOUSLY, PLEASE PROVIDE THE DOCKET NUMBER AND CITATION (IF ANY):	
BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW: Private antitrust action enjoyn merger of Southwest and AirTran. Motion for a TRO was denied by District Court.		
PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL: Appeal of an Interlocutory Order-Denial of TRO.		
DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:		
<input type="checkbox"/> Possibility of settlement		
<input checked="" type="checkbox"/> Likelihood that intervening precedent will control outcome of appeal - <i>Maloney v. UAL - 10-17208</i>		
<input checked="" type="checkbox"/> Likelihood of a motion to expedite or to stay the appeal, or other procedural matters (Specify) _____		
<input type="checkbox"/> Any other information relevant to the inclusion of this case in the Mediation Program _____		
<input type="checkbox"/> Possibility parties would stipulate to binding award by Appellate Commissioner in lieu of submission to judges		

LOWER COURT INFORMATION

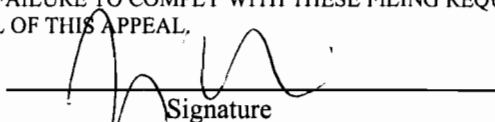
Page 2 of 2

JURISDICTION		DISTRICT COURT DISPOSITION	
FEDERAL	APPELLATE	TYPE OF JUDGMENT/ORDER APPEALED	RELIEF
<input checked="" type="checkbox"/> FEDERAL QUESTION <input type="checkbox"/> DIVERSITY <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> FINAL DECISION OF DISTRICT COURT <input checked="" type="checkbox"/> INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT <input type="checkbox"/> INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY): <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> DEFAULT JUDGMENT <input type="checkbox"/> DISMISSAL/JURISDICTION <input type="checkbox"/> DISMISSAL/MERITS <input type="checkbox"/> SUMMARY JUDGMENT <input type="checkbox"/> JUDGMENT/COURT DECISION <input type="checkbox"/> JUDGMENT/JURY VERDICT <input type="checkbox"/> DECLARATORY JUDGMENT <input type="checkbox"/> JUDGMENT AS A MATTER OF LAW <input checked="" type="checkbox"/> OTHER (SPECIFY): Order Denying TRO	<input type="checkbox"/> DAMAGES: SOUGHT \$ _____ AWARDED \$ _____ <input checked="" type="checkbox"/> INJUNCTIONS: <input type="checkbox"/> PRELIMINARY <input type="checkbox"/> PERMANENT <input type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED <input type="checkbox"/> ATTORNEY FEES: SOUGHT \$ _____ AWARDED \$ _____ <input type="checkbox"/> PENDING <input type="checkbox"/> COSTS: \$ _____

CERTIFICATION OF COUNSEL

I CERTIFY THAT:

- COPIES OF ORDER/JUDGMENT APPEALED FROM ARE ATTACHED.
- A CURRENT SERVICE LIST OR REPRESENTATION STATEMENT WITH TELEPHONE AND FAX NUMBERS IS ATTACHED (SEE 9TH CIR. RULE 3-2).
- A COPY OF THIS CIVIL APPEALS DOCKETING STATEMENT WAS SERVED IN COMPLIANCE WITH FRAP 25.
- I UNDERSTAND THAT FAILURE TO COMPLY WITH THESE FILING REQUIREMENTS MAY RESULT IN SANCTIONS, INCLUDING DISMISSAL OF THIS APPEAL.



 Signature

5/9/11

 Date

COUNSEL WHO COMPLETED THIS FORM

NAME: Jamie L. Miller

FIRM: Alioto Law Firm

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THIS DOCUMENT SHOULD BE FILED IN THE DISTRICT COURT WITH THE NOTICE OF APPEAL
 IF FILED LATE, IT SHOULD BE FILED DIRECTLY WITH THE U.S. COURT OF APPEALS

Taleff, et al., v. Southwest Airlines Co.
11-CV-2179

TITLE IN FULL:

Wayne Taleff, Katherine R. Arcell, Judy Bray, Jose' M. Brito, Jan Marie Brown, Robert D. Conway, Judy Crandell, Rosemary D'Augusta, Brenda K. Davis, Pamela Faust, Carolyn Fjord, Don Freeland, Ted Friedli, Donald V. Fry, Gabriel Garavanian, Harry Garavanian, Yvonne Jocelyn Gardner, Lee M. Gentry, Jay Glikman, Valarie Ann Jolly, Gail S. Kosach, John Lovell, Michael Malaney, Len Marazzo, Lisa McCarthy, Michele McKechnie, Patricia Ann Meeuwsen, Cynthia Prosterman, Deborah M. Pulfer, Dana L. Robinson, Robert A. Rosenthal, Bill Rubinsohn, Sondra K. Russell, Sylvia N. Sparks, June Stansbury, Clyde D. Stensrud, Gary Talewsky, Annette M. Tippetts, Diana Lynn Ultican, J. Michael Walker, Pamela S. Ward, David P. Wendell, Christine O. Whalen,

Plaintiffs,

v.

SOUTHWEST AIRLINES CO., GUADALUPE HOLDINGS CORP., AIRTRAN HOLDINGS, INC.,

Defendants.

PLAINTIFFS' COUNSEL

JOSEPH M. ALIOTO (SBN 42680)
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CERTIFICATE OF SERVICE

I, Jamie L. Miller, hereby declare as follows:

I am a resident of the State of California and over the age of eighteen years and not a party to the within action. My business address is 225 Bush Street, 16th Floor, San Francisco, California 94104.

On May 9, 2011 I served the attached **CIVIL APPEALS DOCKETING STATEMENT** on the following:

Steven Sunshine
Sarah Bensley
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Guadalupe Holdings Corp.
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Sacramento, CA 95833

By sending a sending a .pdf version of the foregoing Civil Appeals Docketing Statement to the email addresses above and placing a true and correct copy in a sealed envelope with first-class postage thereon fully prepaid, addressed as noted above, and deposited in the United States mail for pickup and delivery at San Francisco, California.

Executed on 9th of May, 2011, at San Francisco, California.

I declare under penalty of perjury that the foregoing is true and correct.



Jamie L. Miller

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Wayne Taleff, et al.,

NO. C 11-02179 JW

Plaintiffs,

**ORDER DENYING PLAINTIFFS' EX
PARTE MOTION FOR A TEMPORARY
RESTRAINING ORDER**

v.

Southwest Airlines Co., et al.,

Defendants.

Presently before the Court is Plaintiffs'¹ Motion for a Temporary Restraining Order.²

Plaintiffs allege that Defendants are attempting to effectuate an unlawful combination with Airtran Airlines Corp. ("Airtran"), following Defendants' acquisition of Airtrain on May 2, 2011.³

A temporary restraining order may be issued if the plaintiff has established: (1) a likelihood of success on the merits and the possibility of immediate irreparable injury; or (2) the existence of

¹ Plaintiffs are Wayne Taleff, Katherine R. Arcell, Judy Bray, Jose M. Brito, Jan Marie Brown, Robert D. Conway, Judy Cranwell, Rosemary D'Augusta, Brenda K. Davis, Pamela Faust, Carolyn Fjord, Don Freeland, Ted Friedli, Donald V. Fry, Gabriel Garavanian, Harry Garavanian, Yvonne Jocelyn Gardner, Lee M. Gentry, Jay Glikman, Valarie Ann Jolly, Gail S. Kosach, John Lovell, Michael Malaney, Len Marazzo, Lisa McCarthy, Michele McKechnie, Patricia Ann Meeuwsen, Cynthis Prosterman, Deborah M. Pulfer, Dana L. Robinson, Robert A. Rosenthal, Bill Rubinsohn, Sondra K. Russell, Sylvia N. Sparks, June Stansbury, Clyde D. Stensrud, Gary Talewsky, Annette M. Tippetts, Diana Lynn Ultican, J. Michael Walker, Pamela S. Ward, David P. Wendell and Christine O. Whalen.

² (hereafter, "Application," Docket Item No. 2.)


³ (Memorandum in Support of Plaintiffs' Motion for a Temporary Restraining Order, hereafter, "Motion," Docket Item Nos. 8, 9.)

1 serious questions going to the merits and that the balance of hardships tips heavily in its favor. See
2 Metro Publ'g, Ltd. v. San Jose Mercury News, 987 F.2d 637, 639 (9th Cir. 1993).

3 In this case, Plaintiffs contend that, should the unlawful merger be effectuated, Defendants
4 intend to eliminate first-class seating and to end flights into Dallas/Fort Worth International.
5 (Motion at 5.) Upon review, the Court finds that Plaintiffs have failed to establish that they will be
6 subject to immediate irreparable injury. In particular, while Plaintiffs contend that the unlawful
7 merger will result in concentration of ownership on a number of routes, by Plaintiffs' own reports,
8 Defendants completed acquisition of Airtrain the day before this Motion was filed. (Id. at 3, 5.)
9 Further, although Plaintiffs' contend that Defendants intend to end flights into Dallas/Fort Worth
10 International on an "orderly and reasonable schedule" and to "eventually" cut first-class seating,⁴
11 these contentions lack the sense of immediacy necessary to justify such an extraordinary remedy.
12 Finally, Plaintiffs' contentions that future concentration of the industry could possibly be "a good
13 long-term trend," are equally insufficient to establish that Plaintiffs will be subject to immediate
14 irreparable injury without the requested remedy. (Id. at 6.) Additionally, given the fact that
15 Defendants' acquisition of Airtran was completed the day before this action was filed, Plaintiffs fail
16 to establish likelihood of success on the merits for an action seeking solely prospective relief.

17 Accordingly, the Court DENIES Plaintiffs' Motion for an Temporary Restraining Order.

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19 Dated: May 4, 2011



JAMES WARE
United States District Chief Judge

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27 ⁴ (Id. at 5.)

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Jamie L. Miller jmiller@aliotolaw.com
3 Joseph M. Alioto jmalieto@aliotolaw.com
4 Theresa Driscoll Moore TMoore@aliotolaw.com
Thomas Paul Pier tpier@aliotolaw.com

5 **Dated: May 4, 2011**

Richard W. Wiekling, Clerk

6
7 **By: /s/ JW Chambers**
8 **Susan Imbriani**
9 **Courtroom Deputy**

United States District Court
For the Northern District of California

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