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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' <sup>1</sup> Motion for a Temporary Restraining Order. <sup>2</sup>

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. <sup>3</sup>

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

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<sup>1</sup> 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 Meeuwesen, 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 and Christine O. Whalen.

<sup>2</sup> (hereafter, "Application," Docket Item No. 2.)

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

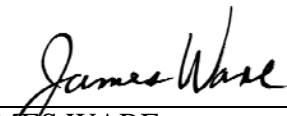
United States District Court  
For the Northern District of California

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,<sup>4</sup>  
 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.

18  
 19 Dated: May 4, 2011

  
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 JAMES WARE  
 United States District Chief Judge

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 27 <sup>4</sup> (Id. at 5.)

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

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3 Joseph M. Alioto jmalio@alitolaw.com  
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5 Thomas Paul Pier tpier@alitolaw.com

6 **Dated: May 4, 2011**

**Richard W. Wieking, Clerk**

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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