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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 KAREY MARTINEZ,

10 Plaintiff,

11 v.

12 SSA MARINE and TOTAL TERMINALS  
INTERNATIONAL LLC,

13 Defendants.  
14  
15

No. C16-1626RSL

ORDER DENYING DEFENDANT  
TOTAL TERMINALS  
INTERNATIONAL LLC'S MOTION  
FOR A TEMPORARY  
RESTRAINING ORDER

16 This matter comes before the Court on defendant Total Terminals International LLC's  
17 motion for a temporary restraining order under Fed. R. Civ. P. 65(b), Dkt. # 15, in which  
18 defendant SSA Marine joins, Dkt. # 16. Having reviewed the motion and the rest of the record  
19 in this case, the Court DENIES defendant's motion for the reasons set forth below.

20 On September 16, 2016, plaintiff Karey Martinez filed a one-page "Notice of Small  
21 Claim" in King County District Court, South Division. Dkt. # 1-1. That claim sought \$515.17  
22 in lost wages from defendants SSA Marine and Total Terminals International LLC ("TTI"). On  
23 October 17, 2016, TTI removed the case to federal court on the grounds that plaintiff's claim for  
24 wages was governed by a collective bargaining agreement and thus preempted by the federal  
25 Labor Management Relations Act, 29 U.S.C. § 185(a), and subject to federal question  
26 jurisdiction under 28 U.S.C. § 1331. Dkt. # 4, ¶¶ 4-6. On October 26, 2016, TTI moved to

27 ORDER DENYING DEFENDANT TOTAL  
28 TERMINALS INTERNATIONAL LLC'S MOTION  
FOR A TEMPORARY RESTRAINING ORDER - 1

1 dismiss the case for failure to state a claim. Dkt. # 9. SSA Marine joined in that motion. Dkt.  
2 # 14.

3 On November 14, 2016, TTI filed a "Motion for an Injunction, Pursuant to 28 U.S.C.  
4 §§ 1446 and 1651, Against Further State Court Proceedings, and a Temporary Restraining Order  
5 (Fed. R. Civ. P. 65; 28 U.S.C. § 1651)." Dkt. # 15. In that motion, TTI states that the King  
6 County District Court has scheduled a hearing on plaintiff's claim for November 17, 2016,  
7 notwithstanding TTI's removal of the case. TTI asks the Court to enjoin the state court  
8 proceedings, including the November 17 hearing, pursuant to its authority under Fed. R. Civ. P.  
9 65 and 28 U.S.C. § 1446(d). See Quackenbush v. Allstate Ins. Co., 121 F.3d 1372, 1378 (9th  
10 Cir. 1997) ("[T]he statute governing removal procedures, 28 U.S.C. § 1446, provides express  
11 authorization to enjoin state proceedings in removed cases."). SSA Marine joined that motion  
12 on November 15, 2016. Dkt. # 16.

13 Motions for a temporary restraining order ("TRO") without notice to and an opportunity  
14 to be heard by the adverse party are disfavored and will rarely be granted. LCR 65(b)(1).  
15 Unless the Court orders otherwise, the adverse party must file its response, if any, within forty-  
16 eight hours after the motion for a TRO is served. The Court may grant a motion for a TRO  
17 without awaiting a response only if the movant meets the requirements of Fed. R. Civ. P. 65(b).  
18 LCR 65(b)(5).

19 According to TTI's certificate of service, TTI served its motion for a TRO on plaintiff,  
20 who is proceeding pro se, by U.S. Mail. Dkt. # 15 at 11. Service originated in Cerritos,  
21 California, and plaintiff's mailing address is in Kent, Washington. Id. This method of service  
22 does not ensure that plaintiff will receive notice of the motion before November 17, and  
23 accordingly does not provide plaintiff with forty-eight hours in which to respond to TTI's  
24 request that the Court enjoin the November 17 state court hearing. Under these circumstances,  
25 the Court must consider TTI's motion as a request to issue a TRO without notice to the adverse  
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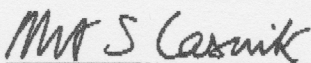


1 party under Fed. R. Civ. P. 65(b)(1).

2 TTI has not met the requirements for an ex parte TRO. It has not certified in writing that  
3 it attempted to notify plaintiff of its motion for a TRO sooner or in a more expeditious manner.  
4 The Court notes that SSA Marine served its notice of joinder on plaintiff via plaintiff's email  
5 address. Dkt. # 16 at 3, 4. Nor has TTI explained why it could not provide timely notice of its  
6 motion for a TRO. See Fed. R. Civ. P. 65(b)(1)(B) (requiring the movant's attorney to certify in  
7 writing "any efforts made to give notice and the reasons why it should not be required"). The  
8 Court will not issue a disfavored ex parte TRO absent compliance with these procedural  
9 requirements.

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11 For all the foregoing reasons, TTI's motion for a temporary restraining order is DENIED.  
12 The Clerk of Court is directed to re-note TTI's motion for a preliminary injunction (Dkt. # 15)  
13 for December 9, 2016, per LCR 7(d)(3). Plaintiff's response, if any, to TTI's motion for a  
14 preliminary injunction must be filed and served no later than Friday, December 2, 2016, if the  
15 response is served by mail. If plaintiff serves the response electronically, the response must be  
16 filed and served no later than Monday, December 5, 2016. LCR 7(d)(3).

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18 SO ORDERED this 15th day of November, 2016.  
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22 Robert S. Lasnik  
23 United States District Judge  
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27 ORDER DENYING DEFENDANT TOTAL  
28 TERMINALS INTERNATIONAL LLC'S MOTION  
FOR A TEMPORARY RESTRAINING ORDER - 3