



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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ORDER

WASH.IO WAGE AND HOUR CASES

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SEP 2 - 2016

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

COORDINATION PROCEEDING
SPECIAL TITLE [RULE 3.550]

WASH.IO WAGE AND HOUR CASES

Included actions:

Luqman v. Wash.io Inc. (Los Angeles No
BC592428)

Taranto et al. v. Wash.io, Inc. (San Francisco
No. CGC 15-546584)

Judicial Council Coordination
Proceeding No.: **4857**

ORDER RE: MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT
AND
ORDER DENYING "EMERGENCY EX
PARTE APPLICATION FOR
PRELIMINARY INJUNCTION"
AND RE: TEMPORARY RESTRAINING
ORDER OF AUGUST 31, 2016

I met with the parties today in open court to discuss a variety of significant issues. The parties did not have a court reporter present.

1. The financial condition of defendant appears precarious and must be newly evaluated in order to provide plaintiffs' counsel, and myself, a basis to determine whether to continue with the approval of the current settlement. At today's hearing defendant announced it would not fund the settlement. It would be exceedingly unwise to do as plaintiffs' counsel suggested today, which is to push ahead with the current settlement and current notice. I indicated that the current valuation of the settlement appears to be in error, since among other things some of its value assumes the financial long term viability of the defendant. The financial

facts must be factored into the evaluation of the settlement, the notice, and so on. I provided the parties until September 9, 2016 to provide any further materials including memos and admissible evidence in support of the proposed settlement. I am told the parties are also engaged in further settlement discussions, and they may wish to ask me to take the pending motion for preliminary approval off calendar to be replaced in the future with a different proposed settlement, perhaps after further examination of defendant's financial situation.

2. Yesterday plaintiffs filed an "emergency ex parte application for preliminary injunction". There are a few problems with this. I discuss them in ascending order of importance.

First, plaintiffs never scheduled this motion with the clerk of this department, and it was therefore not on our calendar.¹ Secondly, it is not proper: moving parties should either (1) properly notice (with the full notice period) a motion for preliminary injunction, or (2) ask for a temporary restraining order and also notice a preliminary injunction via either (i) an order to show cause or (ii) a separate motion. See generally Weil & Brown, et al., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶ 9:555 et seq. (Rutter: 2016). As it is, the papers conflate the immediate effect of a TRO (for which no bond is needed) and the lasting effect of preliminary injunction (for which a bond is usually needed). Nor do the papers account for the heightened standards for mandatory injunctions. E.g., Weil & Brown at ¶ 9:550.

Thirdly, the papers assume plaintiffs have enforceable rights under the settlement agreement. That agreement however is *conditioned*, Revised Class Action Settlement and Release ¶ 17 (Suppl. Decl. of M. Carlson dated August 23, 2016), and one of those "material"

¹ All parties know how to calendar motions. Parties in this department are made aware of the User's Manual in the first order that issues, i.e. that deeming the case complex. Their attention is directed to <http://www.sfsuperiorcourt.org/sites/default/files/pdfs/Fireside%20chat%20Jan%202016FINAL.pdf>

conditions (id. ¶ 24) is final approval by the court, entry of judgment, and the like. Id. Of course none of these things have happened.

The motion is denied.

3. The parties and I discussed my temporary restraining order of August 31, 2016. Defendant told me that its terms imposed no hardship on defendant and defendant made no request for modification or early termination.

✕

A last word on formalities. Both sides today asked me to take a variety of unauthorized actions such as to rely on an unauthenticated email from an officer of the defendant (i.e. not a declaration), command the immediate production of financial information without a written motion, on no notice, and without a predicate party discovery demand. I understand counsel are caught up in a rapidly evolving situation, but it is especially important in those situations to take care, and to ensure fairness, which in the end is what notice, and the rules of evidence, are all about.

DATED: September 2, 2016



Curtis E.A. Karnow
Judge Of The Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, DANIAL LEMIRE, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On **SEP 2 - 2016**, I electronically served THE ATTACHED DOCUMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **SEP 2 - 2016**

T. Michael Yuen, Clerk

By: 

DANIAL LEMIRE, Deputy Clerk