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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 ERIC J. TROUTMAN and
16 TROUTMAN AMIN, LLP;

17 Plaintiffs,

18 v.

19 SYMPLE LENDING LLC,

20 Defendant.

Case No.: 8:25-cv-01181-CAS-KESx

**DEFENDANT SYMPLE LENDING,
LLC’S OPPOSITION TO
PLAINTIFFS’ EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE RE:
ENTRY OF A PRELIMINARY
INJUNCTION**

Date:
Time:
Location:

District Judge: Hon. Christina A. Snyder
Mag. Judge: Hon. Karen E. Scott
Complaint Filed: May 30, 2025

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant Symple Lending, LLC (“Defendant” or “Symple Lending”)
4 hereby opposes Plaintiffs’ Ex Parte Application for Temporary Restraining Order
5 (“TRO”). Plaintiffs’ TRO must be denied because it fails to make the requisite
6 showing necessary to justify ex parte relief.

7 Procedurally, Plaintiffs’ TRO is an improper “hybrid” form of ex parte
8 communication as denounced by the Court in *Mission Power Engineering*
9 *Company v. Continental Casualty Company* (C.D.Cal. 1995) 883 F.Supp. 488
10 (“*Mission Power*”).

11 Substantively, Plaintiffs’ TRO fails to set forth specific facts in an affidavit
12 or verified complaint clearly showing that immediate and irreparable injury, loss,
13 or damage will result. On the contrary, Plaintiffs’ TRO consists of unsubstantiated
14 hypotheticals inadequate to support the extraordinary relief sought. Based on the
15 foregoing and for the reasons that follow, Plaintiffs’ TRO must be denied.

16 **II. LEGAL ARGUMENT**

17 **A. Venue is Improper in the Central District’s Western Division.**

18 As an initial matter, pursuant to 28 U.S.C. § 1391, Defendant contends
19 venue is improper in the Central District of California’s Western Division because
20 Plaintiffs’ Complaint and TRO allege that a substantial part (if not all) of the
21 events giving rise to the claim occurred in Orange County, California, not Los
22 Angeles County. (*See, e.g.*, TRO at 17:19-22 [“Plaintiffs have major sponsorships
23 in the Orange County area, including at John Wayne International airport and at
24 the Newport Beach International Boat Show...”]; TRO at 20:13-14 [“Troutman
25 Amin, LLP is a trusted business law firm in Orange County...”]; TRO at 33:18-20
26 [“Plaintiffs’ geographic locations directly overlap with defendant, as Defendant’s

1 headquarters are located in Orange County where several of Plaintiffs’ high-profile
2 marketing efforts have been based.”]; Declaration of Eric J. Troutman in support of
3 TRO (“Troutman Decl.”), ¶ 5 [“The Protected Mark has prominently been
4 displayed in Troutman Amin, LLP’s Orange County office...”].) Accordingly,
5 Defendant intends to file a motion to transfer venue to the Southern Division
6 pursuant to 28 U.S.C. §1404.

7 **B. Plaintiffs’ TRO Must be Denied Because it Fails to Make the Requisite**
8 **Showing Necessary to Justify Ex Parte Relief.**

9 1. *Plaintiff’s TRO is an Improper “Hybrid” Ex Parte Because it Fails to*
10 *Address in Separate Papers: (1) Why the Regular Noticed Motion Procedure*
11 *Must Be Bypassed, and (2) the Ultimate Relief Sought.*

12 In *Mission Power*, the Court denounced the overuse of improper “hybrid” ex
13 parte motions, explaining:

14 An ex parte motion should never be submitted by itself. It must
15 always be accompanied by a separate proposed motion for the
16 ultimate relief the party is seeking. Properly designed ex parte motion
17 papers thus contain two distinct motions or parts. The first part should
18 address only why the regular noticed motion procedures must be
19 bypassed. The second part consists of papers identical to those that
20 would be filed to initiate a regular noticed motion (except that they are
21 denominated as a “proposed” motion and they show no hearing date.)
These are separate, distinct elements for presenting an ex parte
motion and should never be combined. The parts should be separated
physically and submitted as separate documents.

22 *Mission Power*, 883 F.Supp. 488, 492 (emphasis in original).

23 Here, Plaintiffs improperly combine their ex parte application for a TRO
24 (which fails to sufficiently address why the regular noticed motion procedures
25 must be bypassed) with the ultimate relief they seek (a preliminary injunction). The
26

1 Court may properly deny Plaintiffs’ ex parte application based on this defect in the
2 papers. *Mission Power*, 883 F.Supp. 448, 492.

3 2. *Plaintiffs’ TRO Fails to Demonstrate with Admissible Evidence that*
4 *Immediate and Irreparable Harm Will Result Absent Ex Parte Relief.*

5 Plaintiffs’ TRO does not show that bypassing the regular noticed motion
6 procedure is necessary. As the *Mission Power* opinion further explains, the
7 “purpose of the first part of the ex parte motion papers is to establish why the
8 accompanying proposed motion for the ultimate relief requested cannot be
9 calendared in the usual manner.” *Mission Power*, 883 F.Supp. 448, 492. It “must
10 show why the moving party should be allowed to go to the head of the line in front
11 of all other litigants and receive special treatment.” *Id.* Moreover, the “reasons
12 stated must be supported by deposition transcripts or by affidavits or declarations
13 whose contents would be admissible if the dependents, affiants, or declaration were
14 testifying in court.” *Id.* Statements “on information and belief” are insufficient. *Id.*

15 Here, the evidence submitted by Plaintiffs in support of their TRO does not
16 “show that the moving party’s cause will be irreparably prejudiced if the
17 underlying motion is heard according to regular noticed motion procedures.” *Id.*
18 The only evidence of irreparable harm presented by Plaintiffs are unfounded
19 allegation based on information and belief. Specifically, the Declaration of Eric J.
20 Troutman in support of Plaintiff’s TRO states, “Based on Defendant’s LinkedIn
21 page, Defendants are hosting an open house event in Orange County on June 3,
22 2025, open to the public, where the Infringing Mark is *likely to be prominently*
23 *displayed*. Such unauthorized use of the Protected Mark *may cause* irreparable
24 harm to my brand.” (Troutman Decl., ¶ 12 (emphasis added).)

25 Hypothetical and conclusory allegations about what is likely to occur or
26 what may happen absent any showing of personal knowledge do not establish the

1 sufficient exigency or irreparable harm necessary to warrant a no-notice ex parte
2 application for TRO. (*See Mission Power*, 833 F.Supp. 488 at 491-492 [“When an
3 ex parte motion is filed... It is assumed that the tomatoes are about to spoil or the
4 yacht is about to leave the jurisdiction and that all will be lost unless immediate
5 action is taken.”].)

6 In the absence of any competent and admissible evidence to demonstrate
7 immediate and irreparable injury, Plaintiffs instead argue they are entitled to a
8 presumption of irreparable harm because they have established a likelihood of
9 success on the merits. (TRO at 29:20-25 [“As Plaintiffs have established a
10 likelihood of success on the merits... Plaintiffs are entitled to a presumption of
11 irreparable harm.”].) However, the case Plaintiffs cite to in support of this
12 conclusion, *AK Futures LLC v. Boud St. Distro, LLC* (9th Cir. 2022) 35 F.4th 682,
13 694, is inapplicable here because it did not involve an ex parte application for
14 TRO, but rather, a noticed motion for preliminary injunction. *Id.* at 687.

15 Moreover, Plaintiffs have not established a likelihood of success on the
16 merits. Over half of Plaintiffs’ TRO is dedicated to arguing that the purportedly
17 infringing mark is likely to cause consumer confusion, but this argument is, again,
18 based on unsubstantiated hypotheticals and conclusions. Looking past the bluster,
19 there is no evidence to support consumer confusion. For example, to establish a
20 federal trademark infringement claim, the plaintiff must show, at a minimum, “that
21 the defendant ‘offers *competing* services to the public.’” *Wash. State Republican*
22 *Party v. Wash. State Grange* (9th Cir. 2012) 676 F.3d 784, 795, quoting *Bosley*
23 *Med. Inst., Inc. v. Kremer* (9th Cir. 2005) 403 F.3d 672, 679. Here, there is no
24 evidence that Plaintiffs and Defendant offer competing services to the public.
25 Plaintiffs are an attorney and a law firm and the trademark at issue is registered
26 under Class 45 for Legal Services. (Troutman Decl. ¶ 2, Ex. A; Complaint, ¶¶ 1-2.)

1 Defendant Symple Lending, on the other hand, is an LLC that markets financial
2 services, including loans. (See Defendant’s website <https://symplelending.com/>.) It
3 is impossible for Plaintiffs to prove Defendant offers competing services to the
4 public because Defendant is not a law firm. Moreover, Plaintiffs present no
5 evidence to support the claim Defendant uses the alleged infringing mark in
6 commerce. Notably, the alleged infringing mark appears nowhere on Defendant’s
7 website and the only example of Defendant’s use of the mark presented by
8 Plaintiffs is at an alleged employee open house and on an alleged employee check.
9 Without being afforded the time (absent a properly noticed motion) to respond to
10 all points raised in Plaintiffs’ TRO regarding their likelihood of success on the
11 merits, it is clear that Plaintiffs have not established that Defendant offers
12 competing services or that purportedly infringing mark is likely to cause consumer
13 confusion.

14 In a final effort to demonstrate irreparable harm, Plaintiffs’ TRO hurls a
15 smear campaign of irrelevant and unfounded derogatory accusations against
16 Defendant and Defendant’s Chief Executive Officer, Mr. Houston Fraley. (TRO at
17 25:16-26:22, 30:24-31:16.) Specifically, Plaintiffs repeatedly refer to Defendant
18 Symple Lending as predatory company that targets consumers with high-interest
19 loans. Further, Plaintiffs dredge up a 22-year-old irrelevant conviction against Mr.
20 Fraley, in addition to a nine-year-old Stipulation to Entry of Final Order in an
21 unrelated case that essentially commits Mr. Fraley to follow the law by not
22 violating the TCPA. Such conduct was chastised as unfair gamesmanship by the
23 *Mission Power* Court:

24 All derogatory allegations about an opponent in motion papers raise
25 ethical problems for the lawyers and the court to the extent that the
26 allegations are subjective or conclusory. When unsupportable
27 allegations are made in regular noticed motions, they can to a great
28 extent be neutralized by a well-prepared rebuttal. In papers prepared

1 on short notice, however, the lawyers too often simply make
2 allegations that have no supporting evidence to back them up. Even
3 more pernicious is another tendency: the advocates draw conclusions
4 that appear to be supported by voluminous exhibits, but are not borne
5 out when the evidence is reviewed with more deliberation and more
6 careful rebuttal than is possible in hasty hearings on ex parte motions.

7 *Mission Power*, 883 F.Supp. 488, 491.

8 The fact that Plaintiffs have resorted to this smear campaign raises the
9 question of whether they are so motivated to publicly attack Defendant because
10 Defendant's competitors are Plaintiffs' clients. More specifically, Plaintiff
11 Troutman Amin LLP is a defense firm that defends companies in connection with
12 TCPA violations. (TRO at 21:14-18.) Accordingly, Plaintiffs' clients are
13 competitors of Defendant (this will be verified with competent evidence in
14 opposition to a properly noticed motion) and a reasonable inference can be drawn
15 that Plaintiffs are therefore incentivized to beat down their clients' competitor,
16 Defendant Symple Lending, which is why they have made such a public crusade
17 on their social media platforms about this issue. (See LinkedIn post by Plaintiff
18 Eric Troutman regarding the issue, tagging Defendant's attorney, Alyssa Milman
19 White, and publishing her email to Plaintiffs' counsel in response to Plaintiffs'
20 demand letter, [https://www.linkedin.com/posts/eric-j-troutman-
21 b311b0239_deservetowin-activity-7333613588009426947-
22 Lfms?utm_source=share&utm_medium=member_desktop&rcm=ACoAAyCZu8
23 BhH6Lef6KdPZVKvvvLGsxkussAIY](https://www.linkedin.com/posts/eric-j-troutman-b311b0239_deservetowin-activity-7333613588009426947-Lfms?utm_source=share&utm_medium=member_desktop&rcm=ACoAAyCZu8BhH6Lef6KdPZVKvvvLGsxkussAIY); see also Plaintiff Eric Troutman's post on
24 his website TCPA World regarding the same
25 [https://tcpaworld.com/2025/05/29/times-up-troutman-amin-llp-will-be-suing-
26 symple-lending-tomorrow-and-it-didnt-have-to-be-this-way/](https://tcpaworld.com/2025/05/29/times-up-troutman-amin-llp-will-be-suing-symple-lending-tomorrow-and-it-didnt-have-to-be-this-way/).)

1 Finally, the parties’ opportunities to prepare are grossly unbalanced here,
2 which is another issue highlighted by the *Mission Power* opinion. *Id.* The
3 declaration of Plaintiffs’ counsel, Maxwell Levins, confirms Plaintiffs did not
4 attempt to give Defendant telephonic notice of the TRO (as required by this
5 Court’s Standing Order) until after business hours, at 6:31 p.m., on June 2, 2024.
6 (Declaration of Maxwell Levins (“Levins Decl.”) ¶ 15.) Moreover, Mr. Levins’
7 declaration states he left this after-hours telephone message for attorney Alyssa
8 Milman White; however, Mr. Levins knows Ms. White is out of town this week
9 because this was discussed in an e-mail correspondence between the attorneys last
10 week wherein Ms. White said she could not substantively respond to Plaintiffs’
11 cease and desist letter until June 11, 2025, when she was back in town. (Levins
12 Decl. ¶ 9, Ex. E, e-mail from Ms. White to Mr. Levins dated May 29, 2025.)
13 Accordingly, Plaintiffs contention that Defendant’s counsel “arbitrarily” set a date
14 of June 11, 2025, to provide a substantive response to Plaintiffs’ cease and desist
15 letter (*see* TRO at 13:20-25) is disingenuous.

16 Based on the foregoing, Plaintiffs’ TRO must be denied because it fails to
17 demonstrate with competent and admissible evidence that immediate and
18 irreparable injury, loss, or damage will result to Plaintiffs before the adverse party
19 can be heard in opposition on properly noticed motion.

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1 **III. CONCLUSION**

2 Plaintiffs’ TRO must be denied because it fails to set forth specific
3 admissible facts clearly showing that immediate and irreparable injury, loss, or
4 damage will result absent ex parte relief.

5
6 Dated: June 3, 2025

ANGELO & WHITE

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8
9 By: /s/Sara Escalante
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14 The undersigned, counsel of record for Defendant Symple Lending, LLC,
15 certifies that this brief contains 1,975 words, which complies with the word limit
16 of L.R. 11-6.1.

17 Dated: June 3, 2025

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