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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-JVS-KES

**DEFENDANT SYMPLE LENDING,  
LLC’S RESPONSE AND  
OPPOSITION TO ORDER TO  
SHOW CAUSE RE: ENTRY OF A  
PRELIMINARY INJUNCTION**

Date: June 17, 2025

Time: 9:00 a.m.

Location: 411 W. 4th St., Santa Ana,  
California, Court Room 10C

District Judge: James V. Selna

Mag. Judge: Karen E. Scott

Complaint Filed: May 30, 2025

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendant Symple Lending, LLC submits this Response and Opposition to  
3 Order to Show Cause Re: Entry of a Preliminary Injunction. The mandatory  
4 preliminary injunction should not issue because Plaintiffs have failed to meet their  
5 heavy burden of showing they are entitled to such extraordinary and drastic relief.

6 **I. BACKGROUND**

7 **A. Plaintiffs’ Alleged Registration & Use of the Claimed Mark**

8 Plaintiffs Eric J. Troutman (“Troutman”) and Troutman Amin, LLP  
9 (“Troutman Amin”) (“Troutman” and “Troutman Amin” are collectively referred  
10 to as “Plaintiffs”) allege that Troutman applied to the USPTO to register a  
11 trademark consisting of a royal blue and yellow gold lion on a crest (the “Claimed  
12 Mark”) in Class 45 for legal services on August 8, 2022, and that the registration  
13 issued on December 5, 2023. (Complaint, Dkt. 1 (“Compl.”) ¶ 6.)

14 Accordingly, Plaintiffs’ claim that Troutman owns an “incontestable” mark  
15 (Compl. ¶ 6) is both false and impossible because the Claimed Mark has only been  
16 registered for a little over a year and a half. (15 U.S.C. § 1065 [an incontestable  
17 trademark must, among other things, have been registered and used continuously  
18 for five consecutive years from the date of registration].)

19 Troutman asserts that he has continuously used the Claimed Mark in  
20 connection with legal services since April 28, 2022, a little over three years.  
21 (Declaration of Eric J. Troutman ISO Plaintiffs’ *Ex Parte* Application for TRO and  
22 OSC Re: Entry of a Preliminary Injunction, Dkt. 10 (“Troutman Decl.”), ¶ 3.)  
23 Troutman is a practicing attorney and partner of the law firm Troutman Amin,  
24 which he founded with Puja J. Amin on May 1, 2023. (Compl. ¶ 20.) Troutman  
25 Amin is a litigation defense and consulting firm based in Irvine, California, that  
26 practices in the areas of telecom law and privacy. (Compl. ¶¶ 2, 26.)

27 Plaintiffs assert they have spent at least seven figures promoting and  
28 marketing the Claimed Mark within the past three years. (Plaintiffs’ *Ex Parte*

1 Application for TRO Order and OSC Re: Entry of a Preliminary Injunction, Dkt.  
2 10 (“App.”), at 12:5-7; Troutman Decl. ¶¶ 8-11.) For example, Troutman Amin has  
3 allegedly spent substantial sums funding advertising campaigns featuring the  
4 Claimed Mark at John Wayne Airport, the Anaheim Ducks’ hockey rink, and the  
5 University of California Berkely’s football field. (Troutman Decl. ¶¶ 8-10.)

6 However, not one of the promotional examples Plaintiffs present in their  
7 pleadings include the Claimed Mark as registered-i.e., standing alone; rather, every  
8 time Plaintiffs use the Claimed Mark in the marketplace it appears in lockup with  
9 some other mark or identifying feature of Plaintiffs’ services, such as “Troutman  
10 Amin,” “Deserve to Win,” “TCPAworld.com” and “CIPworld.com”. (*See e.g.*,  
11 Compl. ¶ 24 [Claimed Mark featured on Plaintiffs’ LinkedIn profile and YouTube  
12 channel in lockup with the phrases “Troutman Amin LLP” and “Deserve to Win”];  
13 Compl. ¶ 30 [Claimed Mark featured on Plaintiffs’ conference booths in lockup  
14 with the phrases “Troutman Amin LLP” and “Deserve to Win”]; Compl. ¶ 33  
15 [Claimed Mark featured on Plaintiffs’ Podcast and Magazine website in lockup  
16 with the phrases “Troutman Amin LLP” and “Deserve to Win”]; Compl. at pg.  
17 11:5-27 [Claimed Mark featured during Anaheim Ducks game in lockup with the  
18 phrases “Troutman Amin LLP” and “Deserve to Win”]; Compl. at pg. 12:5-28  
19 [Claimed Mark featured on the football field at Cal Berkeley Memorial Stadium  
20 and on the basketball court at Berkely’s Haas Pavillion in lockup with the phrases  
21 “Troutman Amin LLP” and “Deserve to Win”]; Compl. at pg. 13:4-12 [Claimed  
22 Mark as sponsor of the Newport Beach International Boat Show in lockup with the  
23 phrases “Troutman Amin LLP”]; Compl. ¶ 36 [Claimed Mark featured in John  
24 Wayne Airport in lockup with the phrases “Troutman Amin LLP,” “Deserve to  
25 Win,” and “From Orange County’s Business Law Firm”]; and Compl. ¶ 37  
26 [Claimed Mark sponsoring a National Hot Rod Association drag race in lockup  
27 with the phrases “Troutman Amin LLP,” and “Deserve to Win”].)  
28

1 **B. Defendant’s Use of Symple’s Lion Symbol**

2 Defendant Symple Lending, LLC (“Defendant” or “Symple Lending”) was  
3 founded by Houston Fraley in January of 2021. (Declaration of Houston Fraley in  
4 Support of Defendant’s Response and Opposition to OSC Re: Entry of Preliminary  
5 Injunction (“Fraley Decl.”) ¶ 4.) Symple Lending has offices in Tampa, Florida,  
6 and Irvine, California. (Fraley Decl. ¶ 5.) Symple Lending operates as a marketing  
7 and sales business in the financial services industry. (*Id.*, ¶ 6.) Plaintiffs’  
8 allegations that Symple Lending sells “high-risk loan products to consumers” are  
9 false and defamatory. (*Id.*, ¶ 7.)

10 Symple Lending has used the image of a lion, which was created from  
11 scratch by an employee in the Florida office, as an internal emblem to promote  
12 company culture since February of 2024. (*Id.*, ¶¶ 9-10.) The lion symbol represents  
13 strength and honor to Symple Lending’s employees and signifies the company’s  
14 ethos of building lasting bonds and banding together with pride as a team. (*Id.*, ¶  
15 9.) Symple Lending has used a few iterations of its lion symbol since its inception  
16 and started using the current at-issue version on a crest (“Symple’s Lion Symbol”)  
17 in February of 2025. (*Id.*, ¶¶ 10-13.)

18 Symple’s Lion Symbol features tannish gold and deep navy colors, which  
19 match the color scheme of Symple Lending’s official logo. (*Id.*, ¶ 14.) Symple has  
20 used this color scheme since at least 2023. A large version of Symple’s Lion  
21 Symbol has been installed on the wall of Symple Lending’s office in Irvine,  
22 California, since March 28, 2025. (*Id.*, ¶ 15.) A previous version of Symple’s lion  
23 logo was painted on the wall of the company’s former office in Santa Ana,  
24 California. The company also has a few banners hanging in their Irvine office that  
25 include Symple’s Lion Symbol and employee team names. (*Id.*) Symple’s Lion  
26 Symbol is also printed on employee-only swag, including stickers, patches,  
27 banners, clothing items, and new-hire welcome kit materials. (*Id.*, ¶ 16.) Symple’s  
28 Lion Symbol was printed on a large faux check one time to commemorate a record

1 high commission payment within the industry. (*Id.*, ¶ 17.) Symple’s founder,  
2 Houston Fraley, and two other Symple Lending employees have tattoos of  
3 Symple’s Lion Symbol to promote and commemorate team unity. (*Id.*, ¶ 18.) To  
4 date, Defendant has spent approximately \$20,000 to \$30,000 featuring Symple’s  
5 Lion Symbol in its offices and on employee swag. (*Id.*, ¶ 19.)

6 As addressed above, Symple’s Lion Symbol is used internally. It is not used  
7 to represent or advertise Symple Lending’s brand or services in commerce; it is not  
8 Symple Lending’s official logo, nor is it featured anywhere on Symple Lending’s  
9 public website. (*Id.*, ¶ 20.) Symple’s Lion Symbol was published online (1) in a  
10 video promoting an employee-only open-house event posted to Symple Lending’s  
11 Instagram page, and (2) in a picture of Symple Lending’s office posted on the  
12 LinkedIn page of a Symple Lending employee, Anastasia Lee (both posts have  
13 been taken down pursuant to this Court’s Order granting Plaintiffs’ Ex Parte  
14 Application for a Temporary Restraining Order). (*Id.*, ¶ 21.)

15 Houston Fraley, who personally commissioned Defendant’s original lion  
16 symbol in February of 2024, first saw Plaintiffs’ Claimed Mark on May 24, 2025,  
17 when Puja J. Amin commented on a LinkedIn post regarding the purported  
18 similarity between the two lion logos. (*Id.*, ¶ 22; *see also* Declaration of Maxwell  
19 Levins in Support of App. (“Levins Decl.”) ¶ 5, Ex. A.)

20 Plaintiffs claim in their Application that they “have direct evidence that at  
21 least one of Defendant’s executives knew of the [Claimed] Mark prior to its  
22 adoption by Defendant” because Plaintiffs allegedly established contact with Mr.  
23 Tsuba as early as 2023. (App. at 27:4-7.) Plaintiffs also claim in their Complaint  
24 that Mr. Tsuji is a founder of Defendant Symple Lending. (Compl. ¶ 47.)

25 The only evidence proffered by Plaintiffs to support their allegations about  
26 Mr. Tsuji is the following statement by their counsel, Maxwell Levins: “On June 2,  
27 2025, I went to the public LinkedIn profile for Tsuba Ted Tsuji. A partner from my  
28

1 office is listed as a mutual connection for Mr. Tsuji. Additionally, Mr. Tsuji posted  
2 that he has attended ASW in Las Vegas.” (Levins Decl. ¶ 11.)

3 First off, Mr. Tsuji is not a founder of Symple Lending. (Declaration of  
4 Tsuba Ted Tsuji in Support of Defendant’s Response and Opposition to OSC Re:  
5 Entry of Preliminary Injunction (“Tsuji Decl.”) ¶ 5; *see also* Fraley Decl. ¶ 25.)  
6 More critically, Mr. Tsuji did not start working for Symple Lending until March  
7 31, 2025, over a year after Houston Fraley commissioned the original lion symbol  
8 and about two months after Defendant started using its current version of Symple’s  
9 Lion Symbol. (Tsuji Decl. ¶ 6; *see also* Fraley Decl. ¶ 24.) In fact, when Mr. Tsuji  
10 started working for Defendant, Symple’s Lion Symbol was already affixed to the  
11 wall of its Irvine office. (Tsuji Decl. ¶ 7.)

12 Plaintiffs provide no proof or context of their alleged contact with Mr. Tsuji  
13 in 2023, and a LinkedIn connection between Mr. Tsuji and an unnamed partner at  
14 Troutman Amin is unconvincing, especially given that Mr. Tsuji has over 500+  
15 connections on his LinkedIn profile, most of which he cannot name from memory.  
16 (Tsuji Decl. ¶ 8.) Mr. Tsuji did attend the ASW marketing conference in January of  
17 2025 (before he started working for Symple Lending), along with over 5,000 other  
18 people this year and Mr. Tsuji did not see Plaintiffs at the conference. (*Id.*)

19 **C. Evidence the Marketplace is Flooded with Lion Head Logos**

20 On June 6, 2025, Defendant’s counsel engaged the services of CompuMark,  
21 a company that provides trademark search services. (Declaration of Sara Escalante  
22 in Support of Defendant’s Response and Opposition to OSC Re: Entry of  
23 Preliminary Injunction (“Escalante Decl.”) ¶ 3.) Defendant’s counsel provided  
24 CompuMark with a hyperlink to Plaintiffs’ Claimed Mark and instructed  
25 CompuMark to conduct an “all classes” U.S. Design search from the USPTO, as  
26 well as a Web Common Law Design search in relation to Plaintiffs’ Claimed  
27 Mark. (Escalante Decl. ¶ 4.)  
28

1 The results from the U.S. Design search are over 1,000 pages and identify  
2 nearly 500 USPTO applications or registrations featuring a lion head similar to  
3 Plaintiffs’ Claimed Mark. (Escalante Decl. ¶ 5, Ex. D.) The results from the Web  
4 Common Law Design search identify twenty lion head logos in current use that are  
5 nearly identical to the color scheme and stylization of Plaintiffs’ Claimed Mark.  
6 (Escalante Decl. ¶ 6, Ex. E.)

7 Although the U.S. Design search results includes abandoned registrations,  
8 which may have never been used in commerce, even if we discount the abandoned  
9 registrations, there are still hundreds of instances of similar marks being used in  
10 the marketplace, including many for Class 45 legal services. (Escalante Decl. ¶ 5,  
11 Ex. D at 162-163, 652-653 [law firm in Irvine, CA (<https://www.ianlilaw.com/>)  
12 with first use date of 2020]; 658-659, and 676-678.)

## 13 II. LEGAL STANDARD

14 “A preliminary injunction is an ‘extraordinary and drastic remedy[.]’ 11A C.  
15 Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948, pp. 129-130  
16 (2d ed. 1995)[.]” *Munaf v. Geren*, 553 U.S. 674, 689-690 (2008). The moving  
17 party “bears the heavy burden of making a ‘clear showing’ that it [is] entitled to a  
18 preliminary injunction.” *Ctr. For Competitive Politics v. Harris*, 784 F.3d 1307,  
19 1312 (9th Cir. 2015). To do so, the movant “must establish that he is likely to  
20 succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
21 preliminary relief, that the balance of equities tips in his favor, and that an  
22 injunction is in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008).

## 23 III. LEGAL ARGUMENT

### 24 A. Plaintiffs’ “Heavy Burden” in Justifying Provisional Relief is Even 25 Higher Here Because They Seek a Mandatory Injunction.

26 There are two types of preliminary injunctions: a prohibitory injunction  
27 prevents a party from taking a specific action, whereas a mandatory injunction  
28

1 compels a party to take affirmative action. *Marlyn Nutraceuticals, Inc. v. Mucos*  
2 *Pharma GmbH & Co.*, 571 F.3d 873, 878-79 (9th Cir. 2009) (“*Nutraceuticals*”).

3 In the case at bar, Plaintiffs seek a mandatory injunction compelling  
4 Defendant to, among other things, remove any social media posts featuring  
5 Symple’s Lion Symbol. (App. at 2:14-17.) Accordingly, Plaintiffs’ “heavy burden”  
6 of showing they are entitled to the “extraordinary and drastic remedy” of  
7 provisional relief is *even higher* here.

8 “A mandatory injunction goes well beyond simply maintaining the status  
9 quo pendente lite and is particularly disfavored. In general, mandatory injunctions  
10 are not granted unless *extreme or very serious damage* will result and are not  
11 issued in doubtful cases where the injury complained of is capable of  
12 compensation in damages.” *Id.* at 879 (internal citations and alterations omitted,  
13 emphasis added); *see also Doe v. Snyder*, 28 F.4th 103, 111 (9th Cir. 2022).

14 The Ninth Circuit explains that the burden in seeking a mandatory injunction  
15 is “doubly demanding” because the moving party “must establish that the law and  
16 facts *clearly favor* her positions, not simply that she is likely to succeed.” *Garcia v.*  
17 *Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis in original).

18 **B. Plaintiffs Have Not Shown the Law & Facts Clearly Favor Their**  
19 **Position Because They Fail to Establish a Likelihood of Confusion.**

20 Plaintiffs contend they are likely to succeed on the merits of their claims for  
21 trademark infringement and false designation of origin. However, since Plaintiffs  
22 do not analyze the merits of their false designation of origin claim (App. at 14:26-  
23 28:23), Defendant only addresses the trademark infringement claim here.

24 To prevail on a claim of trademark infringement under the Lanham Act, 15  
25 U.S.C. § 1114, a plaintiff must prove: (1) that it has a protectible ownership  
26 interest in the mark; and (2) that the defendant’s use of the mark is likely to cause  
27 consumer confusion. *Network Automation, Inc. v. Advanced Sys. Concepts, Inc.*,  
28 638 F.3d 1137, 1144 (9th Cir. 2011) (“*Network Automation*”). Plaintiffs allege they

1 have a protectable ownership interest in the Claimed Mark, so for the purposes of  
2 this Opposition Defendant turns its focus to the likelihood of confusion test.<sup>1</sup>

3 Plaintiffs have failed to show a likelihood of success on the merits (let alone  
4 that the law and facts clearly favor their position) because there is no likelihood of  
5 confusion here. Courts in the Ninth Circuit consider eight factors to determine  
6 whether there is a likelihood of confusion: (1) strength of the mark; (2) proximity  
7 or relatedness of the goods; (3) similarity of the sight, sound, and meaning of the  
8 marks; (4) evidence of actual confusion; (5) degree to which the marketing  
9 channels converge; (6) types of goods and degree of care consumers are likely to  
10 exercise when purchasing them; (7) intent of defendants in selecting the infringing  
11 mark; and (8) likelihood that the parties will expand their product line. *AMF Inc. v.*  
12 *Sleekcraft Boats*, 599 F.2d 341, 348-49 (9th Cir. 1979) (“*Sleekcraft*”). This list is  
13 neither exhaustive nor exclusive. *Id. at 348 fn.11*. It should be applied flexibly. *JL*  
14 *Beverage Co., LLC v. Jim Beam Brands Co.*, 828 F.3d 1098, 1106 (9th Cir. 2016).

15 ***1. Strength of the Mark***

16 “The stronger a mark – meaning the more likely it is to be remembered and  
17 associated in the public mind with the mark’s owner – the greater the protection it  
18 is accorded by the trademark laws.” *Network Automation*, 638 F.3d at 1149  
19 (internal quotation marks and citation omitted). A mark’s strength is evaluated  
20 using two measurements: conceptual strength and commercial strength. *Id.*

21 ***a. Conceptual Strength***

22 Conceptual strength refers to the distinctiveness of the claimed mark. “In  
23 determining the distinctives of a mark one looks to the degree to which the public  
24 associates the mark with a particular source.” *Miss World (UK) Ltd. v. Mrs.*  
25 *America Pageants, Inc.*, 856 F.2d 1445, 1448 (9th Cir. 1988) (“*Miss World*”).

26 \_\_\_\_\_  
27 <sup>1</sup> Defendant does not concede Plaintiffs’ ownership of any trademark rights and  
28 plans on seeking cancellation of Plaintiffs’ registration.

1 Plaintiffs' primary argument with respect to conceptual strength is that the  
2 Claimed Mark is "arbitrary or fanciful" and thus falls on the highest end of the  
3 distinctiveness spectrum. (App. at 17:5-11.) However, "[p]lacement on the  
4 spectrum of distinctiveness does not end the inquiry as to the strength of the mark:  
5 it is only the first step. The second step is to determine the strength of this mark in  
6 the marketplace. That is, its degree of recognition in the minds of the relevant  
7 customer class." *Miss World*, 856 F.2d at 1449 (quoting 1 J. McCarthy,  
8 Trademarks and Unfair Competition § 11:1, at 4343 (2d ed. 1984) ("McCarthy").

9 When a mark exists in a "crowded field" (i.e., one in which several similar  
10 marks co-exist with the claimed mark) "each member of the crowd is relatively  
11 'weak' in its ability to prevent use by others in the crowd." *Id.* (quoting McCarthy  
12 at §11:26, at 511). Indeed, "[w]hen similar marks permeate the marketplace, the  
13 strength of the mark decreases." *One Industries, LLC. V. Jim O'Neal Distributing,*  
14 *Inc.*, 578 F.3d 1154, 1164 (9<sup>th</sup> Cir. 2009); *see also Entrepreneur Media, Inc. v.*  
15 *Smith*, 279 F.3d 1135, 1144 (9<sup>th</sup> Cir. 2002) ("*Entrepreneur Media*") ["that the  
16 marketplace is replete with products using a particular trademarked word indicates  
17 not only the difficulty in avoiding its use but also, and directly, the likelihood that  
18 consumers will not be confused by its use."] (emphasis in original).

19 Here, as discussed in Section I.C. above, the record is replete with evidence  
20 of crowned lion heads and lion crests flooding the marketplace. This  
21 overwhelming evidence of a crowded field brings into question what protectable  
22 rights Plaintiffs have in their Claimed mark, if any, in addition to completely  
23 undermining any likelihood that consumers will be confused by Defendant's use of  
24 Symple's Lion Symbol. Indeed, for over a century, courts have recognized the  
25 ubiquitous use of lion head logos in the marketplace. *See, e.g., Commerce Bank &*  
26 *Trust Co. v. TD Banknorth, Inc.*, 554 F. Supp.2d 77, 81 (D. Mass. 2008) [noting  
27 that "Commerce Bank uses a logo consisting of a stylized lion's head in a circle,  
28 colored blue and gold"]; *Celluloid Manuf'g. Co. v. Read*, 47 F. 712, 715 (D. Conn.

1 1891) [“Thus it has been said that an iron manufacturer who uses a lion’s head as a  
2 trademark cannot prevent a linen manufacturer from using a lion’s head upon his  
3 goods.”]).

4 b. Commercial Strength

5 A mark’s commercial strength depends on “actual marketplace recognition.”  
6 *Network Automation*, 638 F.3d at 1149 (internal quotation marks and citation  
7 omitted). Once again, Plaintiffs only focus on a portion of the inquiry in their  
8 argument regarding commercial strength. In addition to advertising expenditures,  
9 courts look to factors such as "length of exclusive use" and "public recognition"  
10 when determining commercial strength. *See, e.g., Entrepreneur Media*, 279 F.3d at  
11 1144. Here, Plaintiffs have put forth no evidence on either of these factors. With  
12 respect to length of exclusive use, even if Plaintiffs could argue that their use has  
13 been exclusive (which, based on the crowded fields as set forth above, they  
14 cannot), by their own admission they adopted the Claimed Mark just over three  
15 years ago. This is certainly insufficient to show commercial strength for purposes  
16 of a mandatory preliminary injunction. Moreover, Plaintiffs set forth no evidence  
17 that any consumer associates the Claimed Mark with Plaintiffs' legal services,  
18 which is the ultimate question with respect to strength. *See, e.g., Miss World*, 856  
19 F.2d at 1448.

20 Based on the foregoing, Plaintiffs’ Claimed Mark is both conceptually and  
21 commercially weak, thus, Plaintiff’s failure to prove this factor prevents this Court  
22 from finding a likelihood of confusion.

23 **2. Proximity or Relatedness of the Goods**

24 "The proximity of goods is measured by whether the products are: (1)  
25 complementary; (2) sold to the same class of purchasers; and (3) similar in use and  
26 function." *Network Automation*, 638 F.3d at 1150 (citing *Sleekcraft*, 599 F.2d at  
27 350). Here, none of these factors are present because the services are not related.  
28

1 While Plaintiffs pay lip service to this standard, they fail to meaningfully  
2 engage with it. Rather, they spend the bulk of their argument mischaracterizing the  
3 *Rearden* decision. There, as the Ninth Circuit was reviewing a grant of summary  
4 judgment, they evaluated the evidence "in the light most favorable to the" plaintiff,  
5 and even then, merely found "genuine issues of material fact" with respect to the  
6 proximity of the goods. *Rearden LLC v. Rearden Com., Inc.*, 683 F.3d 1190, 1213.  
7 Moreover, the opinion explicitly states, "that a reasonable jury could still rule  
8 against [plaintiffs] with respect to the 'proximity of the goods' factor." *Id.*

9 Indeed, it is telling that Plaintiffs fail to cite a single case where goods and  
10 services like those at issue here (i.e., legal and financial marketing services) were  
11 found to be proximate or related, let alone a case holding that on a preliminary  
12 injunction evaluation. *Cf. Lerner & Rowe PC v. Brown Engstrand & Shely LLC*,  
13 119 F.4th 711, 725 (9th Cir. 2024) ("*Lerner & Rowe*") [affirming summary  
14 judgement for defendant in trademark infringement case involving two law firms,  
15 holding "'the proximity of the goods . . . become[s] less important if advertisements  
16 are clearly labeled or consumers exercise a high degree of care, because rather than  
17 being misled, the consumer would merely be confronted with choices among  
18 similar products.'"] (quoting *Network Automation*, 638 F.3d at 1150).

19 Accordingly, the failure of Plaintiffs to prove this factor prevents this Court  
20 from finding a likelihood of confusion.

### 21 ***3. Similarity of the Marks***

22 As an initial matter, Symple's Lion Symbol and Plaintiffs' Claimed Mark  
23 are distinguishable. Symple's Lion Symbol is muted tannish gold and deep navy,  
24 whereas Plaintiffs' Claimed Mark is bright royal blue and yellow gold. The  
25 features on each lion differ (e.g., Symple's lion is baring teeth, while Plaintiffs' is  
26 not) and they have dissimilar manes and crowns. The two lions are embedded  
27 differently in the crest within a crest (with Plaintiffs' being more prominent in the  
28

1 embedded crest, and Symple's less so), and the outer crest of each features a  
2 different shape and pattern. (*See* Compl. ¶ 43 [side-by-side comparison].)

3 While Plaintiffs note that "similarities between marks weigh more heavily  
4 than differences between marks," (App. at 18), they tellingly omit the other two  
5 "detailed axioms" courts in the Ninth Circuit use to guide the similarity comparison  
6 between two marks: "first, the marks must be considered in their entirety and as  
7 they appear in the marketplace; second, similarity is adjudged in terms of  
8 appearance, sound, and meaning." *CoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d  
9 1199, 1206 (9th Cir. 2000) (emphasis added) (cited by Plaintiffs in App. at 17-18).

10 As Plaintiffs' Complaint and moving papers demonstrate, when the Claimed  
11 Mark is used in the marketplace, it appears in lockup with some other mark or  
12 identifying feature of Plaintiffs' services (e.g., "Troutman Amin LLP; "Deserve to  
13 Win;" "TCPAworld.com" or "CIPAWorld.com"). Plaintiffs have not proffered a  
14 single example of the Claimed Mark being used on its own in the marketplace.  
15 This is not surprising, however, because given how crowded the marketplace is  
16 with similar lion head logos (as discussed above), it is highly unlikely consumers  
17 would recognize the Claimed Mark standing on its own as indicia of the source of  
18 Plaintiffs' legal services.

19 Conversely, to the extent that Symple's Lion Symbol appears "in the  
20 marketplace" at all, it is either in connection with its name, or on its own. Thus, the  
21 prominent feature of the Claimed Mark as used in the marketplace—that is, the  
22 phrases that actually identify Plaintiffs' legal services such as its name or "Deserve  
23 to Win" slogan—are absent from any purported use by Defendant.

24 This same reasoning further supports the conclusion that the marks are  
25 dissimilar under the second axiom (i.e., in terms of appearance, sound, and  
26 meaning). Setting aside the clear dissimilarities between the two designs as  
27 addressed above, when viewed in their entirety—meaning Plaintiff's Claimed  
28

1 Mark along with the locked-up phrases used with it, and Symple's Lion Symbol—  
2 they are quite different in terms of appearance, sound, and meaning.

3 Accordingly, the failure of Plaintiffs to prove this factor prevents this Court  
4 from finding a likelihood of confusion.

#### 5 **4. Evidence of Actual Confusion**

6 Plaintiffs present no evidence of actual confusion. At most, Troutman claims  
7 he had to "clarify" that Plaintiffs are not affiliated with Defendant but provides no  
8 support for this claim. (Troutman Decl. ¶ 13.) The Court need not credit this bald  
9 assertion, particularly when Plaintiffs could have, but failed to, include any  
10 specific information or supporting documentation. Moreover, "clarification" is not  
11 evidence of actual confusion. "Mistaken inquiries about affiliation which are easily  
12 clarified do not constitute evidence of actual confusion for purposes of the  
13 Sleekcraft test." *Punchbowl, Inc. v. AJ Press LLC*, Case No. 2:21-cv-03010-SVW-  
14 MAR, 2024 WL 4005220, at \* 10 (C.D. Cal. Aug. 22, 2024) ("*Punchbowl*").

15 Accordingly, the failure of Plaintiffs to prove this factor prevents this Court  
16 from finding a likelihood of confusion.

#### 17 **5. Degree to Which the Marketing Channels Converge**

18 "The Sleekcraft court considered the locations where the goods were sold,  
19 the price range of the goods, and the types of advertising used." *Yagoubzadeh Law*  
20 *Firm LLP v. Pizano-Diaz*, Case No. CV 23-8299-GW-MARx, 2024 WL 5317300,  
21 at \*7 (C.D. Cal. Dec. 11, 2024) ("*Yagoubzadeh Law*"). "In assessing marketing  
22 channel convergence, courts consider whether the parties' customer bases overlap  
23 and how the parties advertise and market their products." *Pom Wonderful LLC v.*  
24 *Hubbard*, 775 F.3d 1118, 1130 (9th Cir. 2014).

25 Here, Defendant uses Symple's Lion Symbol internally. It is not used to  
26 represent or advertise Symple Lending's brand or services in commerce. (Fraley  
27 Decl. ¶ 20.) Plaintiffs point to only two instances where Symple's Lion Symbol  
28 was published online: (1) in a video promoting an employee-only open-house

1 event posted to Symple Lending’s Instagram and LinkedIn pages, and (2) in a  
2 picture of Symple Lending’s office posted to a Symple Lending employee’s  
3 LinkedIn page. (App. at 12:19-13:8.)

4 "Given the ubiquitous use of the internet, to the extent that both parties  
5 advertised on the internet, such marketing is not afforded much weight."  
6 *Yagoubzadeh Law*, 2024 WL 5317300, at \*7 (citing *Playboy Enterprises, Inc. v.*  
7 *Netscape Commc'ns Corp.*, 354 F.3d 1020, 1028 (9th Cir. 2004) ["Given the broad  
8 use of the Internet today, the same could be said for countless companies. Thus,  
9 this factor merits little weight."]; *see also Lerner & Rowe*, 119 F.4th at 725-26  
10 [noting that "[t]oday, it would be the rare commercial retailer that did not advertise  
11 online, and the shared use of a ubiquitous marketing channel does not shed much  
12 light on the likelihood of consumer confusion." (quoting *Network Automation*, 638  
13 F.3d at 1151)]. Given that Plaintiffs set forth only two instances of Defendant  
14 allegedly using Symple’s Lion Symbol in commerce, and both are on the internet,  
15 Plaintiffs fail to prove this factor which prevents this Court from finding a  
16 likelihood of confusion.

17 **6. Types of Goods and Degree of Care Consumers Will Exercise**

18 "Sophisticated consumers and those shopping for high-value products are  
19 likely to exercise a higher degree of care while shopping and are, therefore, less  
20 likely to be confused by similar marks." *Lerner & Rowe*, 119 F.4th at 722. Legal  
21 services attract sophisticated customers. *Id.* ["acquiring legal services can be  
22 expensive and important"]. Online shoppers are also sophisticated. *Id.* ["when it  
23 comes to online shopping, 'the default degree of consumer care is becoming more  
24 heightened as the novelty of the Internet evaporates and online commerce becomes  
25 commonplace.""] (quoting *Network Automation*, 638 F.3d at 1152); *see also Toyota*  
26 *Motor Sales, U.S.A., Inc. v. Tabari*, 610 F.3d 1171, 1178 (9th Cir. 2010) [finding  
27 internet shoppers generally quite sophisticated about how the internet functions].  
28

1 Here, one can reasonably assume that anyone shopping for the type of  
2 “multi-billion dollar bet-the-company litigation” defense services Plaintiffs  
3 advertise on their website (<https://www.troutmanamin.com/why-you-need-us>) are  
4 sophisticated consumers exercising a high degree of care.

5 In addition, Plaintiffs' reliance on the purported confusion of Symple  
6 Lending's "prospective employees" is misplaced. "It is important to be precise  
7 about the type of confusion that trademark law seeks to prevent because not all  
8 confusion offends trademark law. The relevant confusion is whether members of  
9 the buying public would mistakenly purchase one party's product because they  
10 believed it to be the other party's product." *rearden*, 2024 WL 4005220, at \* 10;  
11 *see also Lang v. Retirement Living Pub. Co., Inc.*, 949 F.2d 576, 583 (2nd Cir.  
12 1991) ["trademark infringement protects only against mistaken purchasing  
13 decisions and not against confusion generally."] (citation omitted).

14 In sum, there is no evidence of customer overlap here. (Fraley Decl. ¶ 30.)  
15 The buying public Plaintiffs rely on are potential clients seeking legal services, not  
16 consumers of financial services or potential employees seeking a job at a  
17 marketing company.

18 Plaintiffs failure to prove this factor prevents this Court from finding a  
19 likelihood of confusion.

20 **7. Defendant's Intent in Selecting the Mark**

21 As addressed above in Section I.C., the record is devoid of any proof that  
22 Defendant had knowledge of Plaintiffs' Claimed Mark before they started using  
23 Symple's Lion Symbol. Accordingly, Plaintiffs failure to prove this factor prevents  
24 this Court from finding a likelihood of confusion.

25 **8. Likelihood that the Parties Will Expand Their Product Line**

26 Defendant cannot expand into legal services and Plaintiffs admit they are not  
27 expanding into financial marketing services. Accordingly, this factor is not neutral,  
28

1 as Plaintiffs argue, but rather prevents this Court from finding a likelihood of  
2 confusion.

3 **C. Plaintiffs Have Not Shown They are Likely to Suffer Irreparable**  
4 **Harm in the Absence of Preliminary Relief.**

5 “Issuing a preliminary injunction based only on a possibility of irreparable  
6 harm is inconsistent with our characterization of injunctive relief as an  
7 extraordinary remedy that may only be awarded upon a clear showing that the  
8 plaintiff is entitled to such relief.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008)  
9 (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curium)).

10 Plaintiffs’ irreparable harm arguments can be broken into two categories: (i)  
11 harm to goodwill; and (ii) harm because of purported negative associations with  
12 Mr. Fraley. Neither of these are supported by anything beyond mere conclusory  
13 assertions of hypothetical harm and are therefore insufficient. (*See, e.g., Pom*  
14 *Wonderful LLC v. Pur Beverages LLC*, 2015 WL 10433693, at \*16 (C.D. Cal.  
15 Aug. 6, 2015) (“Because Pom Wonderful has adduced no evidence that customers  
16 have a negative perception of energy drinks in general or of pûr pôm in particular,  
17 and because it relies solely on Flynn’s conclusory assertions of harm, it has not  
18 adequately demonstrated that it will likely suffer irreparable harm if consumers  
19 associate Hubbard’s pûr pôm product with Pom Wonderful’s.”)

20 In fact, the only evidence presented by Plaintiffs is based on the possibility  
21 of irreparable harm (which is now extinguished because the potentially offending  
22 event has already passed). Specifically, Troutman claimed that “[b]ased on  
23 Defendant’s LinkedIn page, Defendants are hosting an open house event in Orange  
24 County on June 3, 2025, open to the public, where the Infringing Mark is *likely to*  
25 *be prominently displayed*. Such unauthorized use of the Protected Mark *may cause*  
26 *irreparable harm to my brand*.” (Troutman Decl. ¶ 12 (emphasis added).) However,  
27 this event has already taken place, was not open to the public, and Plaintiffs offer  
28 no supplemental proof that it caused them irreparable harm.

1 In the absence of any competent and admissible evidence to demonstrate  
2 irreparable harm, Plaintiffs instead argue they are entitled to a presumption of  
3 irreparable harm because they have established a likelihood of success on the  
4 merits. (App. at 29:20-25.) However, as addressed above, Plaintiffs have not met  
5 their heavy burden to show likelihood of success on the merits, let alone the higher  
6 burden of showing the law and facts *clearly favor* their position as required when  
7 seeking a mandatory injunction. Accordingly, Plaintiffs fail to carry their burden  
8 with respect to this factor.

9 **D. The Balance of Equities Tips in Defendant’s Favor**

10 Given the dearth of evidence Plaintiffs have proffered with respect to their  
11 own harm (particularly because Symple’s Lion Symbol is not used in commerce  
12 and there is no likelihood of customer confusion for the reasons addressed above),  
13 they also fail to show that the balance of the equities favors an injunction. On the  
14 other hand, if the Court issues the mandatory injunction, Defendant will suffer  
15 great harm in that it will be forced to stop using Symple’s Lion Symbol, which is a  
16 source of earned pride and team unity imbued in the company’s culture (so much  
17 so that three key employees for Symple Lending have tattoos of the Lion). Ceasing  
18 use of Symple’s Lion Symbol will hurt employee morale, as well as financially  
19 impact that company in that it has spent approximately \$20,000 to \$30,000  
20 featuring the symbol in its offices and on employee swag. (Fraley Decl. ¶ 19.)  
21 Based on the forgoing, Plaintiffs fail to carry their burden with respect to this  
22 factor.

23 **E. Plaintiffs Have Not Shown the Public Interest Favors Injunction**

24 “First, trademark law protects the public interest by preventing confusion of  
25 customers through the use of confusingly similar marks. See 15 U.S.C. §  
26 1125(a)(1). Second, the public is entitled to a clear understanding of the source of a  
27 product and to distinguish goods among competitors. *Inwood Labs., Inc. v. Ives*  
28 *Labs., Inc.*, 456 U.S. 844, 854 n.14 (1982) (citing legislative history of the Lanham

1 Act).” *AK Futures LLC v. Green Buddha LLC*, No. 8:21-cv-01028-JVS-ADSx,  
2 2021 U.S. Dist. LEXIS 190361, at \*11 (C.D. Cal. Aug. 4, 2021). Again, because  
3 Plaintiffs have proffered no evidence of any actual or potential customer confusion  
4 here, they fail to carry their burden with respect to this factor.

5 **IV. CONCLUSION**

6 The mandatory preliminary injunction should not issue because Plaintiffs  
7 have failed to meet their heavy burden of showing they are entitled to such  
8 extraordinary and drastic relief.

9  
10 Dated: June 10, 2025

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1 The undersigned, counsel of record for Defendant, Symple Lending, LLC,  
2 certifies that this brief contains 5,568 words, which complies with the word limit of  
3 L.R. 11-6.1.

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