

# **EXHIBIT 1**

1 TROUTMAN AMIN, LLP  
Eric J. Troutman (State Bar # 229263)  
2 Puja J. Amin (State Bar # 299547)  
3 Brittany A. Andres (State Bar # 340856)  
400 Spectrum Center Drive, Suite 1550  
4 Irvine, California 92618  
5 Telephone: +1 949 350 3663  
6 Facsimile: +1 949 203 8689  
7 troutman@troutmanamin.com  
8 amin@troutmanamin.com  
9 brittany@troutmanamin.com

Attorneys for Plaintiffs ERIC J. TROUTMAN  
and TROUTMAN AMIN, LLP

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13 ERIC J. TROUTMAN and  
14 TROUTMAN AMIN, LLP,  
15 Plaintiffs,  
16  
17 VS.  
18 SYMPLE LENDING LLC,  
19 Defendant.

Case No. 8:25-CV-1181-JVS-KES  
**EXPERT REPORT OF ROB  
WALLACE**

1 **I. BACKGROUND, ASSIGNMENT, AND SUMMARY OF OPINIONS**

2 1. I have been retained by counsel for Plaintiff, Eric J. Troutman And  
3 Troutman Amin, LLP to review the complaint<sup>1</sup>, the cited information, herein, and  
4 create a court-compliant survey to determine if the Plaintiff’s trademark and the  
5 Defendant’s graphic logo are perceived to come from the same or affiliated sources,  
6 and therefore, there is a relevant likelihood of confusion between them.

7 2. The following report details the survey conducted, its results, and my  
8 expert opinion based on these results about the issues outlined above. This  
9 preliminary report may be amended based on any additional information provided at  
10 a future date.

11 **II. SUMMARY OF KEY FINDINGS**

12 3. As discussed in detail in this report and supported by the survey results  
13 filed with this report in Appendix A, it is my expert opinion that the Plaintiff’s  
14 trademark and the Defendant’s logo are perceived to come from the same or affiliated  
15 sources by a significant percentage of the relevant public.

16 **III. QUALIFICATIONS AND EXPERIENCE**

17 4. I was the Managing Partner at Wallace Church, Inc., one of the brand  
18 identity industry’s largest and most respected consultancies. There I developed more  
19 than 35 years of expertise in developing aspects of brand identity strategy, brand  
20 naming and logo creation, brand communications and consumer survey analytics for  
21 more than 1,000 national and global brands. I am currently (and have been for 10+  
22 years) the Managing Partner of Best of Breed Branding Consortium, an omni-channel  
23 branding consultancy that also focuses on all the types of branding issues involved  
24 in this case. As a brand identity consultant I have personally designed, supervised,  
25 and conducted more than 1,000 consumer surveys, including more than 90 legal  
26 surveys specifically related to trademark and trade dress matters in federal court  
27 litigation and before the Trademark Trial and Appeal Board (TTAB). My experience

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<sup>1</sup> Troutman Complaint.pdf

1 in the brand consulting industry provides me with extensive knowledge of branding,  
2 consumer behavior, and market dynamics outlined in this report.

3 5. I hold a B.A. from Gettysburg College and did course work toward my  
4 MBA at New York University. My educational background has provided me with  
5 comprehensive training in research methodology, statistical analysis, consumer  
6 behavior, and survey design principles that are directly applicable to trademark and  
7 trade dress litigation matters.

8 6. Throughout my career, I have developed expertise in designing and  
9 evaluating consumer surveys for trademark litigation, including likelihood of  
10 confusion surveys and surveys addressing brand dilution and perceptual damage. I  
11 am thoroughly familiar with the legal standards for admissible survey evidence,  
12 including the principles set forth in the Manual for Complex Litigation<sup>2</sup> and the  
13 Reference Manual on Scientific Evidence<sup>3</sup>. I have been retained as an expert witness  
14 in over 110 cases involving consumer surveys, trademark infringement, trade dress,  
15 and false advertising claims and other Lanham Act matters.

16 7. My professional experience includes developing the brand name and  
17 brand communication architecture for more than 1,000 leading consumer brands As  
18 outlined in my Curriculum Vitae, in Appendix 3 of this report, I have been actively  
19 involved in hundreds of product design, consumer perceptions, brand recognition,  
20 purchasing behavior, market analysis, brand naming, brand identity, and brand  
21 messaging assignments for dozens of leading consumer product and service  
22 companies including Coca-Cola, Procter & Gamble, PepsiCo, Pfizer, Nestle, Johnson  
23 & Johnson, Target, The Home Depot and more than 100 additional national and  
24 global brand owners. As part of my experience as a brand identity strategist, I  
25 participated in developing, fielding and/or analyzing well over one thousand  
26 consumer surveys and research projects. This work has required me to understand  
27

28 <sup>2</sup> See *Manual for Complex Litigation*.

<sup>3</sup> See *Reference Manual on Scientific Evidence*. FEDERAL JUDICIAL CENTER.

1 not only survey methodology but also the practical realities of how consumers make  
2 purchasing decisions and how brands establish distinctiveness in competitive  
3 markets. Based on this experience, I have highly specialized knowledge of how  
4 marketers create, design and establish brands, how consumers interpret brand  
5 trademarks, trade dress and brand messaging, how they develop awareness and  
6 perceptions of brands, and all the other marketing/branding issues in this case.

7 8. This industry-specific knowledge allows me to evaluate not only the  
8 technical aspects of survey design but also whether the assumptions underlying  
9 survey designs accurately reflect market realities and consumer behavior in the  
10 relevant product categories.

11 9. I have taught seminars at numerous marketing industry events and in  
12 academia, focusing on topics such as survey design, research methodology, consumer  
13 behavior and marketing research. Through this teaching experience, I have trained  
14 both students and industry professionals in proper survey design principles, common  
15 survey errors, and how to critically evaluate research studies.

16 10. I am a member of several professional organizations, including the  
17 American Marketing Association. These memberships keep me current with the  
18 latest developments in survey methodology, trademark law, and standards for  
19 consumer research in litigation contexts.

20 11. I served on the Board of Directors of The Design Management Institute,  
21 the largest global organization in the brand design and strategy industry, for 10 years.  
22 There I founded and co-chaired the Design Value Project, which focused on  
23 determining the return on investment of brand messaging and brand identity. I have  
24 delivered keynote presentations on quantifying a brand design's value topic<sup>4</sup> at more  
25 than 50 branding industry symposia across the US, Canada, Europe, Latin America  
26 and Asia. I have lectured at the graduate level at The Columbia School of Business,  
27 The SVA Masters in Branding Program, Georgetown University, University of

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<sup>4</sup><https://blog.housewares.org/2013/12/12/innovation-insights-an-interview-with-rob-wallace-wallace-church/>

1 Texas, Seton Hall, and other educational institutions. My full Curriculum Vitae is  
2 attached in Appendix 3 of this report.

3 12. I have testified as an expert witness in federal courts, state courts, and  
4 before the TTAB on numerous occasions regarding consumer surveys, trademark  
5 infringement, trade dress, likelihood of confusion, secondary meaning, and related  
6 issues. As an expert witness, I have served on more than 110 cases, all of which  
7 involve intellectual property issues like trademark and trade dress infringement. I  
8 have designed, fielded, and analyzed more than 90 surveys to determine secondary  
9 meaning and/or likelihood of confusion and other intellectual property infringement  
10 issues. As a result, I have the relevant experience to qualify and quantify my opinions  
11 regarding court-compliant surveys and reports, as expressed herein. Courts have  
12 consistently found my survey work and testimony to be reliable, methodologically  
13 sound, and helpful to the trier of fact. A list of cases in which I have testified during  
14 the past four years is attached as Appendix 4.

15 13. I have authored or co-authored numerous publications in peer-reviewed  
16 journals and industry publications on topics including survey methodology,  
17 consumer behavior, brand management, and market research as outlined in Appendix  
18 5 of this report.

19 14. My qualifications are particularly relevant to evaluating survey results  
20 regarding trademarks establishing secondary meaning and their likelihood of  
21 confusion with other marks.

22 15. My compensation for this engagement is \$400 per hour for analysis and  
23 report preparation and \$500 per hour for deposition and trial testimony. My  
24 compensation is not contingent on the outcome of this litigation or the substance of  
25 my opinions.

#### 26 **IV. PROPER TWO-ROOM SURVEY FORMAT**

27 16. I conducted a two-room survey, a broadly accepted methodology that is  
28 most useful for factual situations similar to the one in this case. The screener,

1 questionnaire and results of this survey are attached to this report as Exhibits A and  
2 B .

3 17. A two-room survey tests the marks in question as they are represented  
4 and as consumers engage them at the point of engagement, or in this case within their  
5 websites. Half of the 400 selected respondents, the primary set, saw the two marks  
6 in question. The second half of respondents, the control set, engaged the Plaintiff's  
7 mark and a non-infringing mark from a firm within the same short term loan lending  
8 industry as the Defendant. As is required, any source identifying information (e.g.  
9 the company names) were removed from these stimuli so that respondents were  
10 focused only on the mark and the logos themselves. Both the primary and control set  
11 were asked identical questions regarding these stimuli to determine if the marks  
12 engaged are perceived to come from the same or affiliated sources (establishing  
13 likelihood of confusion) and if a negative experience with one company might delude  
14 perceptions of the other company. Again, the full survey screener and questionnaire  
15 and the raw and tabulated data results are submitted as separate documents, attached  
16 as Exhibits A and B to this report.

17 **V. PROPER SCREENER AND QUESTIONNAIRE DESIGN**

18 18. The survey was conducted between May 21 and May 28, 2026 under  
19 my direction in accordance with the principles and standards delineated in the Manual  
20 for Complex Litigation, Fourth Edition, 2004, prepared for the Federal Judicial  
21 Center.<sup>5</sup> These principles provide the best assurance that the data collected is valid  
22 and can be relied upon to draw conclusions regarding consumer opinions. These  
23 principles provide that:

- 24 a. The proper universe(s) should be properly chosen and defined;
- 25 b. The sample of respondents chosen from the proper universe  
26 should be representative of that population;
- 27 c. The questions asked should be clear and not leading;

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<sup>5</sup> Manual for Complex Litigation, Fourth Edition, 2004.

- d. The data gathered should be accurately reported;
- e. The data should be analyzed in accordance with accepted statistical principles;
- f. The surveys should be conducted by qualified persons following proper interview procedures;
- g. The surveys should be conducted in anticipation of litigation and by persons not connected with the parties or counsel or by persons aware of its purpose in the litigation.<sup>6</sup>

19. The sample selection, questions, questionnaire design, and interviewing procedures employed in the survey are designed in accordance with the generally accepted standards and procedures to meet the criteria for survey trustworthiness detailed in the Manual for Complex Litigation.<sup>7</sup> This includes the choice of control questions in the screener so as not to bias the respondent or make them aware of the screening criteria. In my expert opinion, all seven of the standards delineated in *The Manual for Complex Litigation, Fourth Edition, 2004*. were observed in this survey. Furthermore, the following additional safeguards were observed:

- Respondents were told to answer the questions without help or assistance.
- Respondents were told to answer truthfully.
- Respondents were told not to guess at an answer.
- A control protocol was used to account for survey “noise.”
- If respondents had any extraordinary knowledge, e.g. if they or their family members worked at an ad agency, consumer research firm, a law firm, or a firm in the fencing industry, they were emitted from the pool.
- If they were taking the survey on their phone and therefore not able to properly see the stimuli they were emitted from the pool.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

1 - Finally, the survey was “double blinded”: neither the survey company  
2 nor the respondents knew the sponsor or the purpose of the study; thus,  
3 neither could influence the results, if even unwittingly.<sup>8</sup>

4 20. As is the proper requirement, the survey screener selected the relevant  
5 consuming public of the Defendant’s industry, namely men and women between the  
6 ages of 18 and 75 who live in or near Irvine, Santa Ana and Anaheim CA and have  
7 secured short term loans to cover such needs as debt relief, etc. in the last 24 months  
8 and/or plan to do so within the next 24 months. The full survey screener and  
9 questionnaire and its raw and tabulated results are submitted as separate documents  
10 along with this initial report, attached as Exhibits A and B.

11 21. The survey was fielded by Illume, Inc., a widely respected internet  
12 survey firm that programmed the study using Sawtooth Software’s Lighthouse  
13 Studio<sup>9</sup>. The survey employed a “double blind” protocol where neither the survey  
14 programmer nor the respondents knew the sponsor or purpose of the study, and  
15 safeguards were used such: as eliminating speeders and laggards, requirements for  
16 corrective eyewear, prohibition against guessing and outside consultation, and  
17 screening out respondents with industry connections or prior survey exposure.

18 **A. Validating Screening Questions**

19 22. The primary screening question asked:  
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21 In the last 24 months have you secured a short-term loan to cover  
22 such needs as debt relief, etc. and/or do you plan to do so within  
23 the last 24 months?

24  
25 Only those that responded YES were admitted to the survey.

26  
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28 <sup>8</sup> Id.  
<sup>9</sup> <http://www.illume-research.com/aboutus.html>.

1           23. This was followed with a “distractor” question that did not focus  
2 respondents only on the short-term loan industry, it stated:

3  
4           In the last 24 months have you purchased or been involved in the  
5 purchase of golfing equipment, including golf balls, and are you  
6 planning to purchase or be involved in the purchase of a golfing  
7 equipment, including golf balls, in the next 24 months?

8  
9 All responses to this distractor question were admitted into the survey.

10           24. Any respondents with extra ordinary knowledge of these specific issues  
11 beyond that of the relevant consuming public were also extracted from the survey  
12 pool. The extra ordinary knowledge question asked:

13  
14           Have you or anyone in your household ever worked for  
15 (responses were randomized to prevent order bias)  
16 a. An advertising agency  
17 b. A consumer research firm  
18 c. A law firm  
19 d. A short term lender or financial firm

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21           Any YES responses to these questions were extracted from the survey pool. A  
22 distractor response was also added :

23           f. A golf equipment manufacturer or retailer

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25 All responses to this stimulus were admitted to the survey pool.

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27           25. To ensure that respondents could properly see the website stimuli and  
28 read all the type presented within them a screening question asked

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Are you taking this survey on...

- a. A desktop/laptop
- b. A tablet
- c. A phone

Anyone answering “a phone” was terminated from the pool.

26. A final honesty validation question was asked:

Please understand that we are only interested in your opinions or beliefs. If you don’t have an opinion or belief or don’t know the answer to a question, that is an acceptable answer. Do you agree not to guess or get information from the internet or any other source?

Only those who responded Yes were admitted to the survey.

**B. Primary Likelihood of Confusion Question**

27. Those respondents who qualified as among the relevant consuming public with no extra ordinary knowledge and who promised to answer accurately without outside knowledge were then asked the following question to determine any potential likelihood of confusion between the sources of the two logos in question:

Please review the following company logos as if you were searching for a short-term loan lender with the possible intent to engage them to secure a short-term loan.

1 (images were presented in randomized order)

2

3 *Company A*

4



5

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*Company B*



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12 Do you believe that these logos come from the same or affiliated companies  
or sources?

13

14 Responses included:

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16 Based on their overall look, I believe that these two logos are from the same  
or affiliated companies/sources

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19 Based on their overall look, I NO NOT believe that these two logos come  
from the same or affiliated companies/sources

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22 Don't know / Can't tell

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1 The results of this initial question are indicated in the chart below and detailed  
 2 in both the raw and tabulated data files attached in Exhibit B of this report.

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4 **Q12a - Do you believe that these logos come from the same or affiliated companies or sources?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Based on their overall look, I believe that these two logos are from the same or affiliated companies/sources	117	29.3	58.5	58.5
	Based on their overall look, I NO NOT believe that these two logos come from the same or affiliated companies/sources	75	18.8	37.5	96.0
	Don't know / Can't tell	8	2.0	4.0	100.0
	Total	200	50.0	100.0	
Missing	System	200	50.0		
Total		400	100.0		

12 The control set of respondents were asked the same question based on the  
 13 following stimuli:

14 *(images presented in randomized order)*

16 *Company A*



16 *Company B*



The chart below indicates these results:

Q12b - Do you believe that these logos come from the same or affiliated companies or sources?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Based on their overall look, I believe that these two logos are from the same or affiliated companies/sources	60	15.0	30.0	30.0
	Based on their overall look, I NO NOT believe that these two logos come from the same or affiliated companies/sources	117	29.3	58.5	88.5
	Don't know / Can't tell	23	5.8	11.5	100.0
	Total	200	50.0	100.0	
Missing	System	200	50.0		
Total		400	100.0		

In establishing net results, the only results that, in my understanding, courts rely upon when ruling on Lanham Act issues, the control results need to be subtracted from the primary results to as to extract “survey noise”, or responses from those guessing or answering without proper knowledge<sup>10</sup>. **The net results indicate that 28.5% of respondents (58.5% primary minus 30% control) believe that the Plaintiff’s mark and the Defendant’s logo are confusingly similar causing a likelihood of confusion between the brands that they represent.**

29. Again, my 26 year/110+ case experience as an IP infringement expert witness has informed me that this net rate falls well above the standard that courts rule on likelihood of confusion. Courts have often determined that a survey finding 15% or more of net confusion is sufficient to support likelihood of confusion.<sup>11</sup> The net 28.5% rate of confusion in this case is nearly double of the 15% standard used to rule on a likelihood of confusion claim.

<sup>10</sup> J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* 24:106 (5<sup>th</sup> ed, 2020)

<sup>11</sup> See, e.g., *1-800 CONTACTS, INC. v. Lens.com, Inc.*, 722 F. 3d 1229, 1248-49 (10th Cir. 2013)

1           30. These primary questions were then followed by a validating open-ended  
2 question, “Why do you say that?” Typical responses among those that found no  
3 confusion between the marks in question included the following:

- 4           - *It looks like prototypes of one company's logo.*
- 5           - *They come from the same company because the graphics and the look*  
6           *is very similar to another.*
- 7           - *They are almost so comparably the same the same animal and the same*  
8           *like design*
- 9           - *Both logos use a very similar shield, Crowned Lion and blue-gold*  
10           *design style.*

11           31. These open-ended responses are indicative to me that the relevant public  
12 does not recognizes a significant difference between the mark and logo in question  
13 and their sources, and therefore, the public clearly confuses the mark and logo in  
14 question as coming from the same or affiliated sources.

15 **VI. CONCLUSION**

16           32. As an expert in brand communications, I find that the results of the  
17 court-compliant survey strongly demonstrates that there is relevant confusion  
18 between the Plaintiff’s mark and the Defendant’s logo.

19           33. I hold these opinions within a reasonable degree of certainty based on  
20 the survey results and my 40-plus year experience in the branding industry. I  
21 respectfully reserve the right to amend this declaration with further comments in the  
22 event that additional information becomes available.

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1 **Appendix 1: Documents submitted with this report**

2 **Exhibit A: Survey screener/questionnaire**

3 TroutmanMarkSurvey5\_21-26

4 **Exhibit B-1: Survey Results**

5 Troutman Survey Final Data 5-28-26.xlsx

6 **Exhibit B-2. Survey Results**

7 Troutman Survey Final Freqs 5-28-26.xlsx

8 **Appendix 2: Documents Reviewed and Cited**

9 *Complaint 94.pdf*

10 *Manual for Complex Litigation, Fourth Edition 2004*

11 *<https://blog.housewares.org/2013/12/12/innovation-insights-an-interview-with-rob-wallace-wallace-church/>*

12 *Reference Manual on Scientific Evidence. FEDERAL JUDICIAL CENTER.*

13 *<http://www.illumine-research.com/aboutus.html>.*

14 *J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition 24:106 (5<sup>th</sup>*

15 *ed, 2020)*

16 *1-800 CONTACTS, INC. v. Lens. com, Inc., 722 F. 3d 1229, 1248-49 (10th Cir. 2013)*