



1           **I.       FACTUAL AND PROCEDURAL BACKGROUND**

2           Plaintiffs allege individual Defendants are former employees of Super Mario. (ECF No.  
3 9-1 at 5.) Plaintiffs allege Defendants founded 5-Star as a competitor to Super Mario, although  
4 Plaintiffs allege 5-Star is not licensed as a plumber. (ECF No. 9-1 at 6.) Plaintiffs allege  
5 Defendants attempted to sabotage Super Mario’s business by trying to bribe Super Mario’s  
6 dispatcher to send its service calls to 5-Star instead, signing up on Angie’s List as a competitor  
7 plumber, and posting fake, negative reviews of Plaintiffs’ services on-line. (ECF No. 9-1 at 5-6.)

8           Plaintiffs allege the fake, negative reviews appeared on-line as early as the beginning of  
9 November 2017. (ECF No. 9-1 at 5.) Plaintiffs allege their business has been reduced 25%  
10 during that time, which they attribute to the reviews. (ECF No. 9-1 at 9.) Plaintiffs allege they  
11 have had to reduce the work hours of two employees, from full-time to part-time, due to the  
12 reduction in business Plaintiffs attribute to Defendants’ alleged conduct. (ECF No. 9-1 at 8.)

13           Plaintiffs allege they know the reviews are fake because the language in many of the  
14 reviews is copied verbatim from older posts about other plumbing companies in different states.  
15 (ECF No. 9-1 at 7.) Plaintiffs allege some of the fake reviews sometimes contain the name of the  
16 other plumbing company. (ECF No. 9-1 at 9.) Plaintiffs allege they know Defendants are  
17 responsible for the fake negative reviews partly because Defendants threatened that action. (ECF  
18 No. 9-1 at 6.) Further, Plaintiffs allege Dechev confronted Verhovetchi, who denied  
19 responsibility, Dechev confronted both individual Defendants and they laughed, and a Super  
20 Mario employee confronted Beledodov and he refused to respond to the accusation. (ECF No. 9-  
21 1 at 8-9; ECF No. 9-3 at 2.)

22           Plaintiffs filed their original complaint on December 1, 2017, and their First Amended  
23 Complaint on December 13, 2017. (ECF Nos. 1, 8.) On December 18, 2017, Plaintiffs filed the  
24 instant motion for a temporary restraining order moving the Court for an order for Defendants to  
25 remove several on-line posts Plaintiffs believe are fake, negative reviews of Plaintiffs’ services  
26 purporting to be from Plaintiffs’ customers, and an order to show cause why a preliminary  
27 injunction should not issue. (ECF No. 9 at 1-2.)

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1           **II.     STANDARD OF LAW**

2           A temporary restraining order is an extraordinary and temporary “fix” that the court may  
3 issue without notice to the adverse party if, in an affidavit or verified complaint, the movant  
4 “clearly show[s] that immediate and irreparable injury, loss, or damage will result to the movant  
5 before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). The purpose  
6 of a temporary restraining order is to preserve the status quo pending a fuller hearing. *See* Fed. R.  
7 Civ. P. 65. It is the practice of this district to construe a motion for temporary restraining order as  
8 a motion for preliminary injunction. Local Rule 231(a); *see also Aiello v. One West Bank*, No.  
9 2:10-cv-0227-GEB-EFB, 2010 WL 406092 at \*1 (E.D. Cal. Jan. 29, 2010) (“Temporary  
10 restraining orders are governed by the same standard applicable to preliminary injunctions.”)  
11 (internal quotation and citations omitted).

12           Injunctive relief is “an extraordinary remedy that may only be awarded upon a clear  
13 showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res. Def. Council, Inc.*, 555  
14 U.S. 7, 22 (2008) (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)). “The  
15 purpose of a preliminary injunction is merely to preserve the relative positions of the parties until  
16 a trial on the merits can be held.” *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981)  
17 (emphasis added); *see also Costa Mesa City Employee’s Assn. v. City of Costa Mesa*, 209 Cal.  
18 App. 4th 298, 305 (2012) (“The purpose of such an order is to preserve the status quo until a final  
19 determination following a trial.”) (internal quotation marks omitted); *GoTo.com, Inc. v. Walt*  
20 *Disney, Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (“The status quo ante litem refers not simply to  
21 any situation before the filing of a lawsuit, but instead to the last uncontested status which  
22 preceded the pending controversy.”) (internal quotation marks omitted). In cases where the  
23 movant seeks to alter the status quo, preliminary injunction is disfavored and a higher level of  
24 scrutiny must apply. *Schrier v. University of Co.*, 427 F.3d 1253, 1259 (10th Cir. 2005).  
25 Preliminary injunction is not automatically denied simply because the movant seeks to alter the  
26 status quo, but instead the movant must meet heightened scrutiny. *Tom Doherty Associates, Inc.*  
27 *v. Saban Entertainment, Inc.*, 60 F.3d 27, 33–34 (2d Cir. 1995).

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1           “A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed  
2 on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief,  
3 [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.”  
4 *Winter*, 555 U.S. at 20. A plaintiff must “make a showing on all four prongs” of the *Winter* test  
5 to obtain a preliminary injunction. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135  
6 (9th Cir. 2011). In evaluating a plaintiff’s motion for preliminary injunction, a district court may  
7 weigh the plaintiff’s showings on the *Winter* elements using a sliding-scale approach. *Id.* A  
8 stronger showing on the balance of the hardships may support issuing a preliminary injunction  
9 even where the plaintiff shows that there are “serious questions on the merits...so long as the  
10 plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the  
11 public interest.” *Id.* Simply put, Plaintiff must demonstrate, “that [if] serious questions going to  
12 the merits were raised [then] the balance of hardships [must] tip[ ] sharply in the plaintiff’s  
13 favor,” in order to succeed in a request for preliminary injunction. *Id.* at 1134–35 (emphasis  
14 added).

#### 15           **I. ANALYSIS**

16           The party moving for a temporary restraining order must clearly show, in an affidavit or  
17 verified complaint, “that immediate and irreparable injury, loss, or damage will result to the  
18 movant before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). This  
19 District’s Local Rules impose additional requirements for a temporary restraining order. Under  
20 Local Rule 231, “courts will consider whether the applicant could have sought relief by motion  
21 for preliminary injunction at an earlier date without the necessity for seeking last-minute relief by  
22 motion for temporary restraining order.” L. R. 231(b). The rule continues, “[s]hould the Court  
23 find that the applicant unduly delayed in seeking injunctive relief, the Court may conclude that  
24 the delay constitutes laches or contradicts the applicant’s allegations of irreparable injury and may  
25 deny the motion solely on either ground.” L. R. 231(b).

26           Nearly 50 days passed between the first posting of a negative review on-line and Plaintiffs  
27 filing their motion for a temporary restraining order. (ECF No. 9 at 1; ECF No. 9-1 at 5.) Even  
28 when Plaintiffs filed their original complaint and their first amended complaint, they did not

1 include a motion for a temporary restraining order with either of those filings. (ECF Nos. 1, 8.)  
2 Plaintiffs have not shown they require urgent action to avoid an irreparable loss such that this  
3 Court must act before Defendants have had an opportunity to respond. The Court concludes that  
4 the length of time between the first posting and Plaintiffs' motion contradicts Plaintiffs' allegation  
5 of immediate, irreparable injury.

6 Further, the movant's attorney must certify "in writing any efforts made to give notice and  
7 the reasons why it should not be required." Fed. R. Civ. P. 65(b)(1)(B). Plaintiffs' attorney has  
8 attached a sworn declaration stating Plaintiffs have not informed Defendants of the instant motion  
9 because time is of the essence, Plaintiffs suffer damages each day, and Defendants may retaliate  
10 against Plaintiffs if they learn of the instant motion. (ECF No. 91-4 at 2.)

11 As discussed above, Plaintiffs have not shown they will suffer irreparable harm over the  
12 next 14 days compared to any harm Plaintiffs might have suffered over the previous 50 days,  
13 during which they did not move for a temporary restraining order (but did request injunctive relief  
14 as to Plaintiffs' sixth cause of action (ECF No. 1 at ¶¶ 39-42) and tenth cause of action (ECF No.  
15 8 at ¶¶ 71-74), respectively). Additionally, Plaintiffs have not offered any reason why  
16 Defendants would retaliate against Plaintiffs on learning of the instant motion but not after  
17 learning of the suit and requests for injunctive relief, with which Defendants were served thirteen  
18 days before Plaintiffs filed this motion. (ECF Nos. 4, 5, 6.) Finally, Plaintiffs did serve  
19 Defendants with copies of the motion on December 18, 2017, the same day Plaintiffs submitted  
20 their motion labeled an "ex parte motion" and accompanying declaration stating Plaintiffs could  
21 not notify Defendants of the motion without fear of retaliation. (ECF No. 10; ECF No. 9-4 at 2.)

22 Plaintiffs have not cited any persuasive reason why this Court should rule on a motion for  
23 a temporary restraining order before Defendants have had an opportunity to respond. Plaintiffs  
24 have also moved the Court to issue a preliminary injunction. (ECF No. 9 at 1-2; ECF No. 9-1 at  
25 5.) Accordingly, the Court will treat Plaintiffs' motion for a temporary restraining order as a  
26 motion for preliminary injunction so Defendants may have the opportunity to respond.

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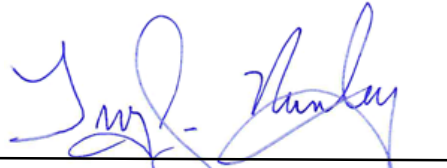
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**II. CONCLUSION**

For the foregoing reasons, the Court DENIES Plaintiffs’ motion for a temporary restraining order and will consider the motion a motion for a preliminary injunction (ECF No. 9). Plaintiffs shall serve Defendants with a copy of this Order within 3 days of the date of this Order. Fed. R. Civ. P. 65(a)(1) (“The court may issue a preliminary injunction only on notice to the adverse party.”). The Court hereby schedules the motion hearing for 9:30 a.m. on January 17, 2018. For the parties’ convenience, the Court notes that under Local Rule 230, any opposition or statement of non-opposition from Defendants must be filed and served no later than 14 days before the noticed hearing date, and any reply by Plaintiffs must be filed and served no later than seven days before that date. L. R. 230(c)-(d).

IT IS SO ORDERED.

Dated: December 26, 2017



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Troy L. Nunley  
United States District Judge