No. 21-15792

IN THE

United States Court of Appeals for the Ninth Circuit

ZOOM VIDEO COMMUNICATIONS, INC.,
Plaintiff-Counter-Defendant-Appellee,
v.
RINGCENTRAL, INC.,
Defendant-Counter-Claimant-Appellant.

On Appeal from the United States District Court
for the Northern District of California
No. 5:21-cv-01727-EJD, Hon. Edward J. Davila

OPENING BRIEF OF
COUNTER-CLAIMANT-APPELLANT RINGCENTRAL, INC.
(REDACTED)

Walter F. Brown
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
943 Steiner St.
San Francisco, CA 94117
(415) 291-9432

Brad S. Karp
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000

Andrew D. Silverman
ORRICK, HERRINGTON &
SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000

Clement Seth Roberts
Karen G. Johnson-McKewan
Robert L. Uriarte
Nathan Shaffer
ORRICK, HERRINGTON &
SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105
(415) 773-5700

Counsel for RingCentral, Inc.
(*Additional counsel listed on inside cover*)

Alyssa Barnard-Yanni
ORRICK, HERRINGTON &
SUTCLIFFE LLP
701 Fifth Avenue
Seattle, WA 98104
(206) 839-4300

Benjamin F. Aiken
ORRICK, HERRINGTON &
SUTCLIFFE LLP
1152 15th Street, NW
Washington, DC 20005
(202) 339-8400

Counsel for RingCentral, Inc.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, RingCentral, Inc. states that it has no parent corporation and that no publicly traded company owns more than 10% of its stock.

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INTRODUCTION

RingCentral is a leading provider of cloud-based unified communication and collaboration-services, offering a full package of complementary communications products. In 2013, RingCentral entered into a strategic partnership with Zoom in which RingCentral would sell Zoom's flagship videoconferencing service as the videoconferencing component of RingCentral's slate of communications products. The partnership was a huge success—such a huge success that Zoom and RingCentral extended it again and again and again.

In recent years, however, due in part to its rapid rise in popularity during the global COVID-19 pandemic, Zoom has begun treating RingCentral more like an adversary than a partner. Now Zoom wishes to part ways with RingCentral—but Zoom wants to do so on its own terms and not through the termination process in the parties' agreement. So Zoom has leveraged its newfound market power to take increasingly combative steps, in violation of the parties' agreement, to tarnish RingCentral's reputation and poach RingCentral's customers. Of particular relevance, Zoom announced—first in secret customer solicitations and later in a lawsuit and related PR campaign—that it would block or cut off RingCentral customers from Zoom's videoconferencing service before the termination date of the Zoom-RingCentral agreement. And Zoom has started to make good on that threat. Accordingly, RingCentral now seeks a preliminary injunction to enforce the termination process in the parties' contract and prevent Zoom from blocking customers who purchase Zoom's videoconferencing service through RingCentral.

The parties' contractual obligations are clear cut. When Zoom notified RingCentral of its intent not to renew the parties' agreement, RingCentral invoked the contract's "End of Life" provision. That provision "defer[s] the effective date of termination" for a specified period of time, during which the parties' agreement "remain[s] in effect." In this period (which is currently in force), RingCentral can continue to sell Zoom's videoconferencing service under RingCentral's license, which runs "for the term of [the parties'] Agreement." Only "[u]pon termination" of the parties' agreement does that license terminate. Accordingly, RingCentral retains the ability to sell the Zoom's videoconferencing service to its customers—and Zoom cannot block those customers.

Absent an injunction prohibiting Zoom's abuses, RingCentral is prevented from exercising its license rights and honoring existing customer agreements. This will cause RingCentral irreparable harm by sullying its reputation, undermining its relationships with its customers and business partners, and causing it to lose prospective business that cannot readily be calculated. These are precisely the kinds of harms that this Court has recognized as irreparable. And both the balance of hardships and public interest favor RingCentral, which merely seeks to preserve the status quo by holding Zoom to its contractual obligations, including preventing Zoom from blocking RingCentral's customers from Zoom's videoconferencing service pending resolution of the litigation.

The district court's contrary conclusions were the result of compounding legal errors. Most notably, the district court refused to address the parties' rights under their contract, holding instead that simply because the parties presented "competing and conflicting interpretations of the [agreement] … RingCentral has not established a likelihood of success." 2-ER-154. The district court's other conclusions flowed from this one. But lawyer argument does not make an unambiguous contract ambiguous. The contract's meaning here is a pure question of law that should be resolved, especially in light of the irreparable injuries that RingCentral is suffering as Zoom spreads misinformation to customers and shreds RingCentral's reputation and goodwill.

This Court should reverse and remand with instructions for the district court to enter an injunction preventing Zoom from blocking RingCentral customers from accessing RingCentral's version of Zoom.

JURISDICTIONAL STATEMENT

The district court had jurisdiction over the parties' trademark claims under 28 U.S.C. §§1331 and 1338, and supplemental jurisdiction over the state law claims under 28 U.S.C. §1367. This Court has jurisdiction under 28 U.S.C. §1292(a)(1), as an appeal from an order denying a preliminary injunction. The district court entered the order appealed from on March 29, 2021, and RingCentral timely appealed on April 28, 2021.

STATEMENT OF THE ISSUE

Whether the district court erred in denying RingCentral's request for a preliminary injunction.

STATEMENT OF THE CASE

RingCentral Establishes Itself As A Leader In Enterprise Communication Technology, And Zoom Enters The Industry.

Founded in 1999, RingCentral is headquartered in Belmont, California, and employs over 3,000 people. 2-ER-335. RingCentral has long been an industry leader in cloud communications and collaboration services for businesses and organizations. *Id.* Its products offer a unified communications experience that includes enterprise cloud communications applications for voice meetings, telephone conferencing, videoconferencing, and team messaging and collaboration. *Id.* In 2011, Zoom entered the scene, and recently has become a household name for its videoconferencing platform. 2-ER-300–01; 2-ER-335–36.

In the early years of Zoom's operation, RingCentral and Zoom each had an advantage in different areas of service. RingCentral was a leader in telephone-based meeting and messaging services and had a large commercial customer list but did not offer its own video-based service. 2-ER-335–36. Zoom had a videoconferencing service but lacked an effective telephone-based service. *Id.* Recognizing that they could utilize these complementary differences in capabilities to their mutual advantage, RingCentral and Zoom began discussing ways to partner with each other.

RingCentral And Zoom Enter Into A Nearly Decade-Long Successful "Strategic Alliance."

The cornerstone of the RingCentral-Zoom relationship is the "Strategic Alliance Agreement" (the "Agreement" or "SAA"). 2-ER-160–256. Entered into in October 2013, the SAA marked the beginning of a prosperous, "successful," and "complementary" partnership that lasted nearly a decade. 1-ER-112. What began as a three-year agreement has been renewed and extended repeatedly. *See* 2-ER-218; 2-ER-242. It has also been amended numerous times to reflect the length of the partnership, additional Zoom products and services, and further revenue commitments and increased fee payments by RingCentral. *See* 2-ER-195–256; 2-ER-336.

The basics of the SAA have always remained the same.[1] Zoom appointed RingCentral to "market and resell" what the SAA refers to as Zoom's "Service." 2-ER-161 (§2(a)). To do so, Zoom granted RingCentral "for the term of th[e] Agreement" a "license to … sell, offer to sell, and exploit" the Service—specifically, a white-label version of Zoom

[1] Various amendments to the SAA modify and supersede earlier provisions. Unless expressly stated otherwise, citations in this brief are to the operative provision of the SAA only.

videoconferencing to be branded as RingCentral Meetings or "RCM" and sold in a bundle with RingCentral's other communications products. *Id.*; 2-ER-343. Zoom also granted RingCentral a corresponding license to use Zoom's trademarks in its sales efforts. 2-ER-167 (§9(a)). And Zoom accepted responsibility for, among other things, providing, maintaining, and hosting its Service; ensuring that the Service works; and providing support to RingCentral support personnel. 2-ER-162–63 (§3(a)-(b), (f)); 2-ER-190–94 (Ex. G).

In exchange, RingCentral agreed to pay specified "Service Fees" to Zoom on a per-customer basis and share revenue with Zoom for large meetings and webinars. 2-ER-166 (§6); 2-ER-223–24 (§§5(c), 6(e)); *see also* 2-ER-227 (§12) (RingCentral commitment to guaranteed minimum amount in annual "Service Fees"). Over the years, RingCentral has "drive[n] millions of dollars in revenue to Zoom." 2-ER-336. RingCentral has also invested "millions of dollars … every year" in integrating Zoom's technology into RCM and "marketing Zoom's technology" as RCM "powered by Zoom," 2-ER-163 (§3(e)). *See* 2-ER-336.

As noted, RingCentral's license to "sell, offer to sell, and exploit" Zoom's Service runs "for the term of this Agreement," 2-ER-161 (§2(a)), and does not terminate until the SAA "terminat[es]," 2-ER-172 (§16(e)). The SAA likewise requires Zoom to provide its Service "[t]hroughout the term of this Agreement." 2-ER-161 (§2(b)).

Under the operative version (the Eighth Amendment), the SAA was slated to last for an "Initial Term" of two years until January 31, 2021, and automatically renew for two additional one-year "Renewal Term[s]," with the option for either party to prevent renewal upon six months' written notice. 2-ER-242 (§16(a)).

In the event that Zoom elected not to renew, §16(d) authorizes RingCentral to invoke an "End of Life" or "EOL Period," which "defer[s] the effective date of termination by up to [redacted]." 2-ER-227 (§16(d)). It takes years to develop a videoconferencing product that meets the highest-level standards for "carrier-grade telecommunications software" and to move customers over to that new service. 2-ER-338. And it can take many months, if not years, to negotiate and close deals with enterprise customers. 1-ER-108. Thus, if Zoom were to end its relationship with RingCentral, RingCentral would need sufficient time to catch up and move its customers to an alternative to Zoom.

Accordingly, the EOL Period largely keeps in place the parties' respective rights and obligations for [redacted] As the SAA provides: "This Agreement shall be deemed to continue to remain in effect through the EOL Period." 2-ER-227 (§16(d)). Specifically, "Zoom shall continue to provide the Service in accordance with this Agreement during [the EOL Period]" and "shall continue" to meet its customer-service obligations (i.e., "comply with the SLAs"[2]). 2-ER-227 (§16(d)). Meanwhile, Zoom shall remain "entitled to any amounts due for use of the Service." *Id.*

In addition to the EOL Period, §16(e) of the SAA makes explicit the "[s]urviving [o]bligations and [l]imitations" after the SAA terminates. 2-ER-172. All agree that the SAA terminates at the *end* of the EOL Period. 2-ER-269 (Zoom Opp.) ("'Termination' occurs at the expiration of the EOL Period…."); *accord* 2-ER-227 (§16(d)) (EOL Period "defer[s] the effective date of termination"). Then, "[u]pon termination of this Agreement, all licenses granted hereunder"—namely, RingCentral's licenses to sell the Service and use Zoom's trademarks—"will immediately terminate." 2-ER-172 (§16(e)). The SAA makes clear, however, that

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[2] "SLA" means the "service level agreement" setting forth the level of service that Zoom must provide for contracted services. 2-ER-161 (§1(j)); 2-ER-190–94 (Ex. G).

"termination of this Agreement will not terminate or affect any Customer Agreements[3] entered into prior to termination of this Agreement for the term of each such Customer Agreement in effect at the time of Termination." *Id.*

Zoom Elects Not To Renew The Parties' Agreement, And RingCentral Invokes The End Of Life Period To Defer Its Termination.

The SAA was a win-win for both sides, which is why the parties kept extending it year after year. RingCentral received access to Zoom's videoconferencing service to round out its bundle of communications offerings, and Zoom received substantial revenue from a large, well-established company like RingCentral selling Zoom's product to its many institutional customers. *See* 2-ER-335–36. Under this arrangement, RingCentral and Zoom enjoyed many years of successful and synergistic partnership. As Zoom developed new features (like webinars), the parties amended the SAA to add them to the scope of RingCentral's licenses. 2-ER-221–26 (§§2–9). RingCentral, meanwhile, made further revenue commitments to Zoom. 2-ER-223–27 (§§5(c), 6(e), 12).

[3] "Customer Agreement" means "the agreement between a Customer and RingCentral pursuant to which the Customer obtains the Service." 2-ER-160 (§1(d)).

Starting in 2019, however, the relationship began to sour. *See* 2-ER-337. On July 27, 2020, Zoom provided "formal notice" to RingCentral that it would "not renew the parties' Strategic Alliance Agreement." 1-ER-132. RingCentral responded in writing two days later, informing Zoom that it was "exercising its End of Life Period rights and therefore deferring termination of the [Agreement] to [redacted]." 2-ER-341. Zoom never mentioned in the intervening six months its apparent belief that RingCentral would need to cease selling the Service during the EOL Period. Nor did Zoom take steps, when the EOL Period began, to impede RingCentral's or its customers' access to Zoom's systems.

Zoom Launches A Campaign Of Misinformation To Poach RingCentral Customers.

The SAA explicitly states that "termination of [the SAA] will not terminate or affect any Customer Agreements entered into prior to termination of [the SAA]," 2-ER-172 (§16(e)), which has been deferred under the EOL Period to [redacted]. In the SAA, Zoom also agreed not to contact RingCentral's customers. 2-ER-162–63 (§3(d)). Nevertheless, around February 2021, Zoom salespeople began contacting RingCentral customers and incorrectly informing them that they would lose access to the Zoom Service within six months, and in some instances as little as 30 days—unless, of course, they switched from RingCentral to Zoom. 1-ER-106–07; 2-ER-338–39.

One such email is in the record. In it, a Zoom salesperson "reach[ed] out" on March 2, 2021 to someone she "kn[e]w" to be "a RingCentral customer" to tell the customer it "w[ould] be losing the agreement to utilize Zoom at the end of April" unless it switched over to Zoom. 1-ER-111.

This email was not a one-off; it reported that Zoom has been "switching people over daily." *Id.* It is also consistent with "multiple reports" received by RingCentral executives that "Zoom sales personnel" are fueling "a growing rumor mill … about RingCentral [soon] losing access to Zoom." 1-ER-106–07. Indeed, several of RingCentral's resale partners as well as its customers have contacted RingCentral expressing serious concerns about continuity of service. 1-ER-107–09.

The consequence thus far: Some customers have dropped RCM completely from their deals with RingCentral. 1-ER-107–08. Others have negotiated shorter contracts and early termination clauses or asked for amendments to their contracts to address a contingency in which they lose access to RCM. *Id.* At least one customer abruptly dropped RingCentral entirely (not just RCM) and switched to Zoom, despite never having expressed dissatisfaction with RingCentral. *Id.* Meanwhile, still other deals that should have closed by now are stalled due to customer concerns about access to RCM. 1-ER-108–09.

Zoom Sues RingCentral, But It Is RingCentral That Obtains A Temporary Restraining Order.

Despite *Zoom's* repeated violations of the SAA, on February 24, 2021, Zoom accused *RingCentral* of breach and infringement of Zoom's "intellectual property." 2-ER-348. RingCentral invited Zoom to begin a productive dialogue to resolve any problems and move forward, 1-ER-133–34, but Zoom eschewed conversation and raced to court, *see* 1-ER-128–30.

In its complaint, Zoom repeatedly (and wrongly) asserted that the SAA had "terminated" on January 31, 2021, *e.g.*, 2-ER-343, 2-ER-348, even though it knew RingCentral had invoked the EOL Period which "defer[red] the effective date of termination" by [redacted] to [redacted]. 2-ER-227 (§16(d)). Based on this fundamental error, Zoom claimed that RingCentral was breaching the SAA by selling the Service during the EOL Period. 2-ER-342–59. At the same time, Zoom began "t[aking] technological steps to prevent RingCentral from activating and providing Zoom's Service to new [RingCentral] customers acquired during the EOL Period." 2-ER-150; *accord* 2-ER-350.

On March 15, 2021—just three days after Zoom filed its Complaint and started blocking RingCentral's customers—RingCentral filed counterclaims against Zoom, arguing, *inter alia*, that Zoom breached the SAA by cutting off and refusing to provide the required service to RingCentral's customers. 2-ER-297–310. RingCentral also sought an ex parte temporary restraining order, enjoining Zoom from blocking RingCentral customers from accessing or using Zoom's Service. 2-ER-311–33. In support, RingCentral attached documentary evidence and a declaration from its Executive Vice President and Chief Innovation Officer Kira Makagon. *See* 2-ER-334–40.

The district court granted the TRO and issued an order to show cause why it should not grant a preliminary injunction. 2-ER-288–96. In granting the TRO, the district court observed that the SAA provides that it "remain[s] in effect through the End of Life period" and "no provision in the SAA suggest[s] that the parties intended to limit RingCentral's rights or Zoom's obligations … during the End of Life period." 2-ER-293–94. The court also found that RingCentral's evidence was sufficient to show that the "potential harms from 'loss of prospective customers or goodwill' …

establish irreparable harm." 2-ER-295 (quoting *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 (9th Cir. 2001)).

Zoom responded to the order to show cause, but, significantly, did not introduce evidence rebutting any of RingCentral's evidence of irreparable harm nor present evidence of harm to Zoom. Zoom also abandoned the core theory of its complaint: Zoom no longer claimed that the SAA had already terminated, but argued instead that RingCentral's license to sell Zoom's Service expired at the start of the EOL Period and thus Zoom was free to block access by RingCentral customers. 2-ER-269–72.

RingCentral replied, attaching additional evidence further demonstrating that RingCentral had been and is being irreparably harmed. That evidence included a declaration from RingCentral's Senior Vice President for Worldwide Field Sales Carson Hostetter, 1-ER-105–10, and an investment bank report from Craig-Hallum Capital Group, which corroborated RingCentral's claim of irreparable harm, 1-ER-112–16.

The District Court Dissolves The TRO And Denies RingCentral A Preliminary Injunction.

On March 29, 2021, the district court denied RingCentral a preliminary injunction and dissolved the TRO. 2-ER-147–59. Despite its earlier conclusion that RingCentral was likely to prevail on the merits, the court concluded that "neither party has shown a likelihood of success" because the parties presented such sharply "competing and conflicting interpretations of the SAA." 2-ER-154. Without resolution of the merits/contract-interpretation question, the district court could not conclude that the balance of hardships tipped decidedly in RingCentral's favor, 2-ER-157, or that the public interest favored RingCentral, 2-ER-158.

In sharp contrast to its order granting the TRO, the court was now "not convinced" that RingCentral would be irreparably harmed absent a preliminary injunction. 2-ER-158. The court acknowledged RingCentral "has suffered some harm." 2-ER-156. But the court believed the injuries were compensable by money damages, 2-ER-156–57, likely owing to its view that "preliminary injunctions are rarely issued for breach of contract claims," 2-ER-155. The court also faulted RingCentral for failing to "establish that it has actually lost market share." 2-ER-156. And the court dismissed the evidence RingCentral presented in support of its pre-discovery request for a preliminary injunction because it came from "an interested party." *Id.*

This appeal followed.

SUMMARY OF ARGUMENT

I.A. The district court failed to resolve the crucial merits question presented in this appeal: When does RingCentral's license to sell the Service expire? Numerous provisions of the SAA provide a clear and consistent answer to that legal question of contract interpretation. Section 2(a) grants RingCentral a license to sell the Service "for the term," i.e., duration, "of this Agreement." Similarly, §16(d) provides that the SAA "shall be deemed to remain in effect through the EOL Period." And §16(e) states that licenses granted under the SAA will end "[u]pon termination of this agreement"—which Zoom has conceded occurs at the end of the EOL Period. Each of these provisions makes clear that RingCentral retains a license to sell the Service until the end of the EOL Period, when the SAA terminates. Accordingly, Zoom breaches the SAA by denying access to the Service to RingCentral customers who purchased RCM during the EOL Period.

I.B. Zoom's contrary interpretations of the SAA fail. Zoom principally contends that RingCentral's license under §2(a) to sell the Service "for the term of this Agreement," expires before the EOL Period begins. Zoom reaches this interpretation by reading §2(a)'s license to last only until the end of the "Term," a specially defined, capitalized word appearing in §16(a). But §2(a) does not use the capitalized word "Term." That and other textual indicia make clear that in the numerous places where the SAA uses the lowercase word "term," the word must be given a consistent meaning, specifically its ordinary meaning: "the time for which something lasts." That means that the license granted in §2(a) lasts until the termination of the SAA, which, when the EOL Period is invoked as it was here, is at the end of the EOL Period.

Likewise unavailing is Zoom's attempt to draw a distinction between RingCentral's license to sell the Service to *new* customers versus *existing* customers. There is no basis for such a distinction anywhere in the SAA. In the district court, Zoom pointed to §16(f), but that provision has nothing to do with RingCentral's license to sell the Service. Zoom has also invoked the purpose of the EOL Period, which does not support Zoom. First, Zoom's argument wrongly assumes that it has no obligation to support RingCentral customers after termination of the SAA. This directly contradicts §16(e), which states that "termination of this Agreement will not terminate or affect any Customer Agreements entered into prior to the termination of this Agreement for the term of each such Customer

Agreement." Second, Zoom incorrectly claims that selling the Service to new customers is inconsistent with "transition[ing] Customers to an alternative to the Service." In reality, such transition would be frustrated if RingCentral could *not* sell the Service during the EOL Period. RingCentral contracts will undoubtedly expire during the EOL Period, and if RingCentral could not sell the Service to interested customers while it finalizes its alternative RCV offering, RingCentral would lose those customers and the ability to migrate them to RCV.

II.A. RingCentral is likely to suffer irreparable harm absent an injunction. RingCentral introduced ample evidence that it will suffer injury to its reputation and lose significant customer goodwill and prospective customers, all of which this Court has recognized are irreparable harms. Specifically, RingCentral will endure substantial reputational harm and the lost trust of customers and partners if Zoom succeeds in preventing RingCentral from making good on its promises to customers to provide Zoom's Service. Since Zoom started blocking or threatening to block customer access, RingCentral has already received complaints from its customers and partners evincing an erosion of faith in RingCentral's ability to fulfill its contractual obligations. Multiple customers have backed out of deals, while others have negotiated shorter contracts or contingency clauses. This erosion of goodwill will cost RingCentral untold number of lost referrals, which are a substantial portion of RingCentral's business. Zoom's actions will also eliminate one of RingCentral's key competitive advantages and differentiators in the marketplace. Coming at such a critical moment for videoconferencing while so many are working from home, Zoom's actions are likely to cost RingCentral precious market share that it can never recover.

II.B. The district court disregarded RingCentral's evidence of irreparable harm for several flawed reasons. The court began by claiming that preliminary injunctions are rare in breach-of-contract cases. It then faulted RingCentral for failing to introduce evidence that it had *already suffered* any of the harm that it likely would suffer absent an injunction. And it dismissed a declaration from a RingCentral executive as coming from an "interested party." Each of these mistakes runs head-on into contrary precedent. This Court has routinely endorsed preliminary injunctions in breach-of-contract cases, does not require parties to show past harm instead of likelihood of future harm, and has allowed parties to rely (as they must) on their own employees' declarations in support of preliminary-injunction motions. RingCentral's evidence of irreparable harm was detailed, corroborated, and unrefuted by contrary evidence from Zoom.

III. The equities heavily favor granting RingCentral a preliminary injunction. As explained, Zoom's actions have already imposed grave irreparable harm to RingCentral's reputation and customer goodwill. Yet, for its part, Zoom has failed to introduce any evidence of harm to itself. That is because the injunction here would merely preserve the status quo by requiring Zoom to continue to provide the Service under the parties' mutual agreement, under which Zoom will continue to receive substantial revenue.

IV. Finally, the public interest clearly favors granting RingCentral a preliminary injunction. Zoom is currently in breach of the SAA. Ensuring compliance with bargained-for contractual obligations advances the public interest.

STANDARD OF REVIEW

This Court reviews the district court's denial of a preliminary injunction for abuse of discretion. *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (reversing denial of preliminary injunction). A district court necessarily "abuses its discretion when its decision relies on an erroneous legal standard or clearly erroneous findings of fact." *Arc of Cal. v. Douglas*, 757 F.3d 975, 983 (9th Cir. 2014) (quotation marks omitted) (reversing denial of preliminary injunction). If the district court relies on an erroneous legal premise, this Court "review[s] the underlying issues of law de novo." *Id.*

ARGUMENT

"A [party] seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). These factors are evaluated on a "sliding scale" such that "a stronger showing of one element may offset a weaker showing of another." *Cottrell*, 632 F.3d at 1131. So, for example, "[a] preliminary injunction is appropriate when a plaintiff demonstrates … that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor" if the other two *Winter* factors are satisfied. *Id.* at 1134-35 (citation omitted).

I. RingCentral Is Likely To Succeed On The Merits Of Its Breach-Of-Contract Counterclaim.

The merits issue here is RingCentral's breach-of-contract counterclaim. After Zoom declared that it would "take technological steps to shut off RingCentral's ability to sell Zoom's products to new customers," 2-ER-350 (Zoom Complaint), RingCentral filed a breach-of-contract counterclaim, 2-ER-306–07, and sought preliminary relief to prevent Zoom from denying RingCentral's customers access to the Service, 2-ER-312. Thus, the key question is whether RingCentral is licensed to sell Zoom's Service during the EOL Period because, if it is, then RingCentral is likely to prevail on its claim that Zoom breaches the SAA when it "block[s], impair[s], or impede[s] RingCentral or its customer from accessing the [S]ervice." *Id.*

The question is one of contract interpretation. And because the parties argued below for the SAA to be interpreted based on the language of the Agreement without relying on any disputed extrinsic evidence, *see*, *e.g.*, 2-ER-323 (RingCentral Br.); 2-ER-268–69 (Zoom Opp.), the question is purely a legal issue. *See City of Hope Nat'l Med. Ctr. v. Genentech, Inc.*, 181 P.3d 142, 156 (Cal. 2008) (contract interpretation is a question of law for the court unless there is a dispute about the credibility of relevant extrinsic evidence); *cf.* 2-ER-173 (§18(g)) (SAA governed by California law).

But the district court refused to resolve this legal question. Instead, it threw up its hands and declared that "the [parties'] competing and conflicting interpretations of the SAA[] demonstrate that RingCentral has not established a likelihood of success on the merits." 2-ER-154. In other words, because Zoom disagreed with RingCentral's interpretation of the SAA, RingCentral could not show a likelihood of success on the merits.

That was error. "Likelihood of success on the merits is the most important *Winter* factor." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (quotation marks omitted). And because the preliminary injunction factors are evaluated on a sliding scale, *supra* 22, resolution of this factor impacts every other part of the analysis. *See, e.g.*, 2-ER-157–58 (finding balance of hardships and public interest did not strongly favor RingCentral largely because the court (wrongly) concluded that RingCentral had not shown it was likely to prevail on the merits). Unsurprisingly, then, courts are not to cut the merits analysis short simply because the parties disagree. *Cf. Associated Press v. Otter*, 682 F.3d 821, 825 (9th Cir. 2012) (finding likelihood of success on the merits and reversing denial of preliminary injunction, despite the State's contrary arguments); *Disney Enters.*, 869 F.3d at 857 (plaintiff showed likelihood of success on the merits notwithstanding defendant's disagreement on question of statutory interpretation). Were it otherwise, no litigant whose opponent was represented by counsel could ever win this factor. That is why courts must conduct a rigorous review of questions of law going to a plaintiff's likelihood of success on the merits. *See, e.g.*, *Klein v. City of San Clemente*, 584 F.3d 1196, 1200-07 (9th Cir. 2009) (reversing denial of preliminary injunction); *Douglas*, 757 F.3d at 984-90 (same).[4]

Due to this threshold error, this Court must conduct the legal analysis about the contract's meaning and the extent of RingCentral's license rights. *See Douglas*, 757 F.3d at 984-90. Under the unambiguous language of the SAA, RingCentral is licensed to sell the Service through the end of the EOL Period, and thus Zoom is not permitted to block

[4] The district court said at one point that the parties' "dueling allegations and interpretations of the SAA" presented "factual questions." 2-ER-152. The district court did not cite any factual disagreement between the parties; it noted only the parties' dispute "over the rights and obligations that each company possesses during the EOL Period." 2-ER-153. Because the parties did not rely on, and the district court did not identify, any relevant disputed extrinsic evidence, the extent of the parties' contractual obligations is a legal dispute, not a factual one. *See City of Hope Nat'l Med. Ctr.*, 181 P.3d at 156.

RingCentral's customers from accessing the Service. §I.A. The contrary arguments Zoom raised below are unavailing. §I.B. "[T]he district court's conclusion regarding [RingCentral's] likelihood of success on the merits was incorrect" and should be reversed. *Klein*, 584 F.3d at 1200.

A. The SAA plainly authorizes RingCentral to sell the Service during the EOL Period and thus prevents Zoom from blocking those customers' access.

1. Under California law, courts must "give effect to the mutual intention of the parties," Cal. Civ. Code §1636, which "is to be ascertained from the writing alone, if possible," *id.* §1639. "If contractual language is clear and explicit, it governs." *Bank of the West v. Superior Ct.*, 833 P.2d 545, 552 (Cal. 1992). "The words of a contract are to be understood in their ordinary and popular sense … unless a special meaning is given to them by usage." Cal Civ. Code §1644. Further, "[t]he whole of the contract is to be taken together, so as to give effect to every part." *Id.* §1641; *see also Bank of the West*, 833 P.2d at 552 ("[C]ourt[s] must interpret [contractual] language in context, with regard to its intended function in the [contract].").

2. The parties agree that whether RingCentral can continue to sell the Service to its customers during the EOL Period—and thus whether

Zoom can block those customers' access to the Service—depends on when RingCentral's license under the SAA expires. 2-ER-328 (RingCentral Br.); 2-ER-268 (Zoom Opp.). The text of the SAA answers that question.

The SAA grants RingCentral a "license to … sell, offer to sell, and exploit … [Zoom's] Service." 2-ER-161 (§2(a)). Three provisions address when this license expires, and all point to the same conclusion: When the EOL Period is invoked, as it was here, RingCentral's license to sell the Service expires when the SAA terminates, which is at the *end* of the EOL Period.

First is §2(a), which grants the license. That provision states that RingCentral's license will run "for the term of this Agreement." 2-ER-161 (§2(a)). The ordinary and popular meaning of "term" is "the time for which something lasts." *Term*, Merriam-Webster Dictionary Online, https://tinyurl.com/ruv92sc; *accord Term*, Oxford English Dictionary Online, https://tinyurl.com/nkdbxdu3 ("the length of time for which something lasts …, duration"); *cf.* Cal. Civ. Code §1644 (contractual language given its "ordinary and popular" meaning "unless a special meaning is given" to it). Accordingly, the license in §2(a) runs for the duration of the parties' agreement.

Second, and relatedly, is the last sentence of §16(d): "This Agreement shall be deemed to remain in effect through the EOL Period." 2-ER-227 (§16(d)). The license granted to RingCentral in §2(a) is, of course, part of "[t]his Agreement" and thus remains in effect. Indeed, where the parties wished to exclude an obligation from the EOL Period, they did so expressly. For example, the parties agreed to an "Annual Revenue Commitment," 2-ER-200, but specified that "the Annual Revenue Commitment shall not apply during the EOL Period," 2-ER-227. There is no such carve-out for RingCentral's license to sell under §2(a). This absence is particularly significant because the license granted to RingCentral in §2(a) is the heart of the parties' agreement from which all other rights and obligations flow. Accordingly, that license, like the rest of "this Agreement," "remain[s] in effect through the EOL Period," 2-ER-227 (§16(d)), and RingCentral can continue to sell the Service to its customers during the EOL Period.

Third, and finally, is §16(e). That provision states that "[u]pon termination of this Agreement, all licenses granted hereunder will immediately terminate." 2-ER-172 (§16(e)). Thus, RingCentral's license to sell Zoom's Service as RCM does not end until the SAA terminates. When does the SAA terminate? If RingCentral invokes the EOL provision, as RingCentral did here, 2-ER-341, it "defer[s] the effective date of termination" until the EOL Period ends, 2-ER-227 (§16(d)). The SAA's clear meaning has forced Zoom to concede that "termination" of the SAA "occurs at the expiration of the EOL Period"—not before. 2-ER-269. Because RingCentral's license to sell the Service does not end until the SAA terminates, which everyone agrees is at the end of the EOL Period, RingCentral is licensed to sell the Service during the EOL Period—which is in effect now and runs until [redacted].

Though the foregoing is sufficient to resolve the issue, another aspect of the SAA confirms RingCentral's interpretation. Section 16(e) provides: "The termination of this Agreement will not terminate or affect any Customer Agreements entered into prior to termination of this Agreement for the term of each such Customer Agreement in effect at the time of Termination." 2-ER-172. This provision clearly anticipates that RingCentral can sell the Service to its customers during the EOL Period, right up until termination of the SAA: It speaks of "Customer Agreements entered into *prior to termination* of this Agreement" and "Customer Agreement[s] in effect *at the time of Termination*" of the SAA. *Id.*

(emphasis added). Nothing indicates those sales must have occurred *before the EOL Period*. Precisely the opposite—Customer Agreements entered into during the EOL Period (i.e., that are in effect at the time the SAA is terminated) are expressly permitted under §16(e).

Finally, it bears emphasis that it is not as though Zoom is cut out of any sales RingCentral makes during the EOL Period. To the contrary, the SAA expressly provides that "during this time [the EOL Period] … [Zoom] shall be entitled to any amounts due for use of the Service." 2-ER-227 (§16(d)).

In sum, the parties' agreement is clear and straightforward: RingCentral's license to sell the Service remains in effect, RingCentral can continue to sell the Service in the EOL Period, and Zoom cannot deny RingCentral's customers access to the Service.

B. Zoom's arguments to the contrary are unpersuasive.

Zoom faces an impossible task: To avoid the conclusion that its conduct breaches the SAA, Zoom must demonstrate that RingCentral's license to sell the Service terminated while the SAA "remain[s] in effect." 2-ER-227 (§16(d)). Zoom cannot do so.

1. Zoom's claim that §2(a) terminates before the rest of the SAA fails.

Zoom's primary argument focuses on §2(a). Again, that provision grants RingCentral a license to sell the Service "for the term of this Agreement." 2-ER-161. And again, under California law, the language of a contract is given its "ordinary and popular" meaning "unless a special meaning is given" to it. Cal. Civ. Code §1644. The ordinary and popular meaning of "term" is "the time for which something lasts." *Supra* 27. Accordingly, the license in §2(a) runs until the end of the SAA, meaning the end of the EOL Period. The SAA states that expressly: The EOL Period "defer[s] the effective date of termination" of the SAA and the SAA "remain[s] in effect through the EOL Period." 2-ER-227 (§16(d)). And this reading is consistent with §16(e), which states that the "licenses granted [under the SAA] will immediately terminate" "[u]pon termination of this Agreement"—not before, 2-ER-172. *Supra* 28-29.

Zoom, however, objects to giving the word "term" in the phrase "the term of this Agreement" its ordinary meaning. Instead, it seizes on the specialized definition accorded to the capitalized word "Term" in §16(a). *See* 2-ER-269. Section 16(a) specially defines the capitalized word "Term" to mean the "Initial Term" of the SAA plus any "Renewal Term[s]," 2-ER-

242, which would not include the EOL Period. Throughout the proceedings below, Zoom misleadingly equated the phrase "the term of this Agreement" used in §2(a) to the defined word "Term" in §16(d). Zoom did not contend that the use of lowercase "term" in §2(a) was a typographical error or the result of a mistake. It simply ignored the difference and treated "term" and "Term" interchangeably. Having done so, Zoom argued that RingCentral's license expired when the "Term expired" (on January 31, 2021). *See* 2-ER-269-72.

Zoom's argument falls apart upon even cursory inspection. When electing to incorporate a special definition in their contract, RingCentral and Zoom used a common convention: They capitalized the words. *See* 2-ER-160-256; *see*, *e.g.*, *Washington Potato Co. v. J.R. Simplot Co*., 755 F. App'x 687, 688 n.1 (9th Cir. 2019) ("The Agreement capitalizes defined terms."); *Corbin Northridge LP v. HBC Sols., Inc*., No. 14-cv-02714, 2015 WL 12712292, at *3 (C.D. Cal. Feb. 17, 2015) ("In typical contract construction, the use of capitalization denotes a particular meaning of the term, as defined within the contract."). Indeed, subsequent amendments to the SAA expressly acknowledge this convention. *E.g.*, 2-ER-202 ("Any capitalized term used herein but not expressly defined in [this amendment] shall have the same meaning given to such term in the [original] Agreement."); 2-ER-218 (same). Accordingly, the capitalized word "Term" denotes a defined word in the contract.

But §2(a) does not use the capitalized word "Term." It uses the lowercase word "term" in the phrase "for the term of this Agreement." The fact that §2(a) uses the lowercase word "term" is an indication that the word "term" is *not* used as a defined term and must instead be given its ordinary meaning. *See* Cal. Civ. Code §1644 ("ordinary and popular sense" required "unless a special meaning is given"); *see also Tatonka Cap. Corp. v. Connelly*, 839 F. App'x 206, 208 (10th Cir. 2020) (capitalization key to determining whether a phrase in the contract was a defined term); *Env't Prods. Corp. v. King Cos.*, 47 F.3d 1164, at *5 (4th Cir. 1995) (unpublished) (similar).

Numerous other textual clues reinforce that "term" in §2(a) must be given its ordinary meaning. To start, it is clear that "term" cannot mean "Term" throughout the contract. *Cf. People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 107 Cal. App. 4th 516, 526 (2003) ("identical phrase or word used in a contract" to "be given the same meaning throughout the contract"). For example, §16(e) discusses "the term" of "Customer

Agreement[s].” 2-ER-172. There, the lowercase word “term” must refer to the ordinary meaning of the word rather than its defined meaning in the SAA, which relates to the Initial and Renewal Terms *of the SAA*. Similarly, the SAA’s confidentiality provision (§11) applies “during the term of this Agreement” and for some period thereafter. 2-ER-167. It would make no sense to exclude the EOL Period from the parties’ confidentiality obligations. Finally, §16(a) uses the lowercase word “term” *to define* “Initial Term,” “Renewal Term,” and then “Term.” 2-ER-242. That would not work if “term” and “Term” were synonymous.

Another indication that “term” in §2(a) must be given its ordinary meaning is that the drafters used the modifier “of this Agreement”: Section 2(a) states that RingCentral’s license endures “for the term *of this Agreement*.” 2-ER-161 (emphasis added). The same convention is used in the numerous other contractual provisions using the phrase “the term of this Agreement.” *See*, *e.g.*, *id.* (§2(b)); 2-ER-167 (§11); 2-ER-205 (§3(c)); 2-ER-223 (§6(c)). By contrast, where the capitalized defined word “Term” is used, it is *not* followed by the modifier. *See, e.g.*, 2-ER-227 (“RingCentral may, in its sole discretion, defer the effective date of termination by up to [redacted] from the end of the Term,” full stop.). This consistent convention shows that the language in §2(a) serves a deliberate purpose. The drafters did not use the modifier "of this Agreement" when the defined "Term" is used because "Term" is already defined in reference to "th[e] Agreement," 2-ER-242 (§16(a)), but did when employing the ordinary meaning of "term" because the modifier is necessary, *cf.* 2-ER-172 (§16(e) (referring to "term of each such Customer Agreement").

Finally, Zoom's interpretation creates unnecessary conflict among various other contract provisions. Consider §16(d): "This Agreement shall be deemed to continue to remain in effect through the EOL Period." 2-ER-227. Similarly, §16(e) provides that the "licenses granted [in the SAA]" will not terminate until "the termination of this Agreement." 2-ER-172. Under Zoom's interpretation, contrary to plain language both in §16(d) and in §16(e), arguably the most important part of the SAA—RingCentral's license to sell the Service—would not "remain in effect through the EOL Period" and would indeed terminate prior to the "termination of this Agreement." This conflict is entirely avoidable: By reading "term of this Agreement" in §2(a) according to its ordinary and popular meaning, §2(a) is harmonized with the rest of the SAA. *See also Bravo v. RADC Enters., Inc.*, 33 Cal. App. 5th 920, 923 (2019) (emphasizing importance of "effectuat[ing] and harmoniz[ing] all contract provisions," and rejecting proffered interpretation that "unnecessarily set[] one clause in conflict with the rest of the agreement"); *Lockyer*, 107 Cal. App. 4th at 526 (contractual terms should "be given the same meaning throughout the contract").

In light of the foregoing, there is only one plausible construction of §2(a): RingCentral's license endures "for the term of this Agreement," meaning for the duration of the SAA, until its termination at the end of the EOL Period.

2. The SAA does not support Zoom's artificial distinction between sales to new versus existing customers.

The above largely disposes of Zoom's argument that "RingCentral's license to sell Zoom products to new customers expired" at the end of the "Term." *See* 2-ER-269. As just explained, RingCentral's license to sell the Service is granted in §2(a) and lasts throughout the duration of the agreement, including the EOL Period.

Zoom tries to get around the SAA's clear language by inventing a distinction between sales to *existing* customers and sales to *new* customers. The SAA, however, makes no such distinction. The license to sell in §2(a) is an on-off switch: If RingCentral has a license to sell, and can make additional sales during the EOL Period, it can sell to existing customers as well as new customers during that period. Zoom's contrary argument has nothing to do with RingCentral's license to sell under §2(a) or when the SAA and the licenses its grants terminate under §16(d) and §16(e). Instead, Zoom relies first on an inapposite provision that has nothing to do with sales, and then on an overstatement and misunderstanding of the purpose of the EOL Period. Both attempts fail.

§16(f). To support its argument that RingCentral has no right to sell the Service to new customers during the EOL Period, Zoom seizes on a provision in the SAA that imposes a particular obligation on Zoom based on whether the Service was acquired before or during the EOL Period: §16(f). Under that clause, Zoom is obligated to use its "best efforts to ensure that any Customers who obtained a version of the Service available prior [to] the end of the Term may continue to use the Service after the Term" (i.e., during the EOL Period). 2-ER-172.

This has nothing to do with RingCentral's license to sell the Service, but rather involves Zoom's obligation to service old software to ensure that customers do not run into technical problems that prevent them from "us[ing] the Service after the Term." *Id.* Breaking down §16(f), it applies to "Customers who obtained a version of the Service available prior [to] the end of the Term." *Id.* A customer's "version of the Service" could be outdated by the end of the Term—indeed, Zoom started dragging its feet on software updates even *during* the Initial Term. *See* 2-ER-337. The SAA authorizes Zoom to "modify or change … the software that enables the Service," 2-ER-166 (§8(a)), but generally obligates Zoom to use only "commercially reasonable efforts" when discharging its contractual obligations, *see*, *e.g.*, 2-ER-165-67 (§§3(h), 8(a), 10(a)). In §16(f), RingCentral obtained extra protection for its customers with older software, requiring Zoom to use its "best efforts" to ensure that those customers with older versions of the software would still be able to use the Service. 2-ER-172.

Even assuming for argument's sake that the distinction in §16(f) is between existing customers and new customers, §16(f) has nothing to do with RCM *sales*. Zoom nonetheless relies heavily on that provision in arguing for a distinction in RingCentral's license to sell between "new" versus "existing" customers. *E.g.*, 2-ER-270. In providing enhanced protection to customers who obtain RCM before the EOL Period, §16(f) is not inconsistent with §2(a), §16(d), and §16(e), which govern RingCentral's license to sell the Service. And §16(f) cannot override the plain meaning and import of these provisions speaking directly to the specific question relevant here, namely when RingCentral's license to sell the Service expires. *Cf. Rebolledo v. Tilly's, Inc.*, 228 Cal. App. 4th 900, 920 (2014) ("the more specific clause controls the more general" in resolving possible conflict).

Purpose of EOL Period. As a last bastion, Zoom relies on the purpose of §16(d) to argue that RingCentral cannot sell the Service to new customers during the EOL Period. 2-ER-272. Section 16(d) provides that RingCentral may invoke the EOL Period to "defer the effective date of termination … in order to transition Customers to an alternative to [Zoom's] Service," 2-ER-227—i.e., RingCentral's alternative to Zoom's Service, RCV. This supports *RingCentral*'s position. *See infra* 42-44. Zoom's contrary argument—that §16(d) somehow prevents RingCentral from selling to new customers in the EOL Period—is based on two erroneous premises.

a. First, Zoom believes that it has no obligation to continue to support RingCentral customers after termination of the SAA. 2-ER-273

(Zoom Opp.). Thus, in Zoom's view, the EOL Period serves only to extend Zoom's obligations to service RingCentral customers by an additional [redacted] while RingCentral migrates them to another service. *Id.* Building on that faulty premise, Zoom argues that RingCentral should not be selling the Service to new customers in the EOL Period. *Id.*

There is a glaring problem with the premise of Zoom's argument: §16(e). As already explained (at 29), §16(e) provides that "termination of this Agreement will not terminate or affect any Customer Agreements entered into prior to termination of this Agreement for the term of each such Customer Agreement." 2-ER-172. In other words, Customer Agreements are to be unaffected by termination of the SAA. This can only be true if Zoom supports RingCentral's customers for the duration of their agreement with RingCentral, even after termination of the SAA. Otherwise, termination of the SAA would most certainly "affect" those Customer Agreements—it would nullify them. Zoom's position—that it has no obligation to support RingCentral customers after termination—would impermissibly vitiate §16(e). *See* Cal. Civ. Code §1641; *People v. Doolin*, 198 P.3d 11, 30 n.17 (Cal. 2009).

Moreover, allowing Zoom to cut off customer service at the end of the EOL Period would lead to absurd and untenable results. Imagine that a RingCentral customer signs a standard three-year Customer Agreement—the day before Zoom provides notice that it will not renew the SAA (i.e., when RingCentral has no reason to know Zoom will seek to end the SAA). *See* 2-ER-337 (standard commercial customer agreement three years). According to Zoom, the customer contract is automatically and retroactively transformed into [redacted] upon Zoom's notice of non-renewal because Zoom can cut off the customer's access at the end of the EOL Period. That cannot be—especially when §16(e) was included in the SAA precisely to make clear that the end of the SAA will "not terminate or affect any Customer Agreements entered into prior to [the] termination of [the SAA]." 2-ER-172.

Zoom's conception of §16(d) is so narrow that it renders it nearly superfluous. Section 16(e) already establishes that that customer agreements entered into prior to termination must be honored after, and cannot be affected by, termination of the SAA. So the EOL Period must do more than just extend Zoom's obligation to service RingCentral customers, as Zoom claims. Rather, §16(d) maintains the SAA in effect and allows

RingCentral to enter into new customer agreements during the EOL Period.

b. The second error in Zoom's argument is the assumption that sales during the EOL Period would be inconsistent with RingCentral "transition[ing] Customers to an alternative to the Service," 2-ER-227 (§16(d)). Not so. In fact, the purpose of the EOL Period would be frustrated if RingCentral could *not* sell the Service during the EOL Period: By selling the Service during the EOL Period, RingCentral gains time to complete the final few features on RCV that some customers want so RingCentral can move those customers over to RingCentral's "alternative to the Service." *Id.* (§16(d)).

The undisputed evidence demonstrates that services like RCM and RCV are the highest level "carrier-grade telecommunications software" developed for enterprise clients, and "building" such software and "rolling [it] out to customers" takes years. 2-ER-338. But the non-renewal notice period in the SAA is only six months, 2-ER-242 (§16(a)), and RingCentral has devoted millions of dollars of its annual R&D budget to integrating Zoom's Service with RingCentral's products when that money could have been used to develop RingCentral's RCV alternative. 2-ER-336.

Accordingly, RingCentral needed a lengthy EOL Period so its engineers would have time to develop and perfect RCV, and RingCentral could migrate its customers to RCV, before its license to sell Zoom's Service expired. As the district court put it: "RingCentral continues to add features to its own product in order to reach its goal of transitioning all of its clients away from Zoom's Service to its own or alternative product by the conclusion of the EOL Period." 2-ER-157. Exactly right.

The purpose of the EOL Period would be undermined if RingCentral could not continue to sell the Service during the EOL Period. Any number of existing RingCentral customers' agreements will expire during the EOL Period, and some of those customers may want one of the few features not yet perfected in RCV. If RingCentral cannot enter into sales agreements with those customers for RCM to bridge the gap, RingCentral will lose those customers without the chance to move them over to RCV later.

In light of the foregoing, Zoom cannot—and has not—argued that selling the Service to *existing* customers during the EOL Period would be inconsistent with the purpose of §16(d). Instead, it focuses its attention on sales to *new* customers. *E.g.*, 2-ER-262, 2-ER-273 (Zoom Opp.). But RingCentral's pipeline of prospective customers, just as much as

RingCentral's existing customers, needs to be "transition[ed]" away from the Service and toward RCV. Recall, the sales cycle on commercial transactions is quite lengthy, and so RingCentral could have been in negotiations with a prospective customer long before Zoom gave its notice of nonrenewal. *See* 1-ER-108 ("Enterprise customer sales cycles … can take anywhere from nine months to two years …."). If a prospective customer has been negotiating with RingCentral for months or years to purchase RCM, RingCentral must be able to sell the customer RCM or it will lose the deal and the customer. Later, when the customer is ready to switch to RCV, RingCentral can then migrate that customer to RCV.

Zoom's argument about "new customers" is also almost completely atextual. There is no basis in §2(a) for distinguishing RingCentral's license to sell to *new* customers and to sell to *existing* customers; if RingCentral can do the latter, it can do the former. Nor does the SAA say the EOL Period exists "only" or "solely" for RingCentral to transition customers to RCV. And, as explained above, the SAA licenses RingCentral to sell the Service until the SAA terminates at the end of the EOL Period. *Supra* 27-36. So Zoom can only prevail if it rewrites the language of the SAA.

To be sure, a contract's purpose is an important interpretive tool, but it does not give courts carte blanche to rewrite contracts. *See Rosen v. State Farm Gen. Ins. Co.*, 70 P.3d 351, 353 (Cal. 2003) (courts "do not rewrite any provision of any contract … for any purpose"). "If contractual language is clear and explicit, it governs," *Bank of the West*, 833 P.2d at 552, unless it "leads to absurdity" or is "wholly inconsistent with the main intention of the parties," *Harris v. Klure*, 205 Cal. App. 2d 574, 578 (1962) (citing, *inter alia*, *Jackson v. Puget Sound Lumber Co.*, 55 P. 788, 790 (Cal. 1898)). This is a high bar—and Zoom cannot come close to meeting it.

RingCentral selling the Service in the EOL Period, whether to existing or new customers, is not *inconsistent* with—much less *wholly inconsistent* with—the purpose of §16(d). It is hardly incompatible with transitioning customers to an alternative to the Service for RingCentral to sell the Service to some customers until they are ready to be migrated over to RCV. Stated another way, adding new customers to the Service does not frustrate or undermine RingCentral's ability to transition those customers to its alternative service. Accordingly, because the SAA's language and purpose are not wholly inconsistent, Zoom's attempt to rewrite the contract fails, and the clear and explicit language of the parties' agreement governs.

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As demonstrated above, RingCentral can sell the Service during the EOL Period and Zoom cannot block access to the Service to RingCentral's customers. Zoom's conduct contravenes—willfully, in RingCentral's view—the rights and obligations of the SAA, and thus RingCentral has a strong likelihood of succeeding on its breach-of-contract counterclaim.

II. RingCentral Will Suffer Irreparable Harm Absent A Preliminary Injunction.

The damage to RingCentral if Zoom can block activations or cut off the Service for RingCentral customers would be immense and irreparable. Zoom's actions will undermine RingCentral's promises to its customers, tarnishing its reputation and damaging its relationships with customers and business partners. Zoom's actions will also cost RingCentral unknowable prospective business opportunities. Damages for these injuries are not calculable and cannot make RingCentral whole. §II.A.

The district court nevertheless assessed that RingCentral would not suffer irreparable harm. The court reached that result by erroneously dismissing RingCentral's evidence of this harm as conclusory, self-serving, or speculative. The court also proceeded from the mistaken view that preliminary injunctions are rare in breach-of-contract cases. The court's rationale cannot be reconciled with either the record or with this Court's precedent relying on similar evidence to find irreparable harm. §II.B.

A. RingCentral will suffer irreparable harm.

This Court has long recognized that "lost contracts and customers" as well as "harm to … business reputation and goodwill" are "irreparable harm[s]." *Stuhlbarg*, 240 F.3d at 838 (harm to plaintiff who was prevented from delivering product that customers had ordered was irreparable); *see also Disney Enters.*, 869 F.3d at 866 ("[T]he loss of goodwill, negotiating leverage, and non-monetary terms in the Studios' licenses cannot readily be remedied with damages."); *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1058 (9th Cir. 2009) (finding irreparable harm based, in part, on likely damage to customer goodwill and reversing denial of preliminary injunction). That is true "because this sort of harm is difficult to measure." *Abdou v. Davita, Inc.*, 734 F. App'x 506, 506 (9th Cir. 2018).

RingCentral demonstrated that it is likely to suffer such harm if it cannot sell the Service and Zoom can block access to RingCentral's customers.

Harm to reputation and customer trust and confidence. Absent an injunction, RingCentral is likely to suffer damage to its reputation and its relationships with its customers and business partners—damage that has already begun. In the district court, RingCentral submitted sworn declarations from Executive Vice President and Chief Innovation Officer Kira Makagon and Senior Vice President for Worldwide Field Sales Carson Hostetter. Ms. Makagon explained that "RingCentral will face great reputational harm and loss of trust if it is unable to make good on the commitments contemplated" by the "[c]ustomer deals and contract extensions that RingCentral" was "working to close" when this lawsuit was filed. 2-ER-339. RingCentral has made commitments to its customers in reliance on the SAA and EOL Period, and it now risks alienating these customers by failing to deliver on its promises. *Id.* That is a classic example of irreparable harm. *Cerelux Ltd. v. Yue Shao*, No. 17-cv-02909, 2017 WL 6888253, at *3 (C.D. Cal. Apr. 21, 2017) (awarding an injunction because otherwise the plaintiff would "lose the trust of its customers and its allegedly good business reputation"); *QBAS Co. v. C Walters Intercoastal Corp.*, No. 10-cv-406, 2010 WL 7785955, at *13 (C.D. Cal. Dec. 16, 2010) (finding irreparable harm in part because "a customer is likely to stick with a brand that the customer knows and trusts").

Ms. Makagon and Mr. Hostetter declared that RingCentral has been receiving numerous complaints from customers and business partners ever since Zoom started threatening to block access to RingCentral customers. 1-ER-106–07; 2-ER-338–39. Their testimony was corroborated by an email from a Zoom account executive trying to poach a client she "kn[e]w" to be "a RingCentral customer," using the false claim that RingCentral would "be losing the agreement to utilize Zoom" in the next 60 days. 1-ER-111.

Already Zoom's actions are beginning to erode "some measure of trust or confidence in RingCentral" by its customers and partners. 1-ER-107; *accord* 2-ER-339. RingCentral has lost "multiple deals … because of customer fear about RingCentral's ability to deliver RingCentral Meetings," including from at least one customer who "had never indicated any dissatisfaction with RingCentral." 2-ER-107–08. In other cases, "Zoom's conduct has elongated RingCentral's sales cycle and eroded bookings," delaying deals that should have closed by now and forcing RingCentral to expend additional time and resources on those deals at the expense of other deals it would be pursuing. 1-ER-109. In still other deals, RingCentral's customers have forced it to "shorten[] the length of the deal," include "early termination clauses," or accept formal "amendments … to address a contingency" in which Zoom blocks their access—all because "RingCentral's written promise is no longer sufficient to give these customer[s] peace of mind." 1-ER-107–08; *see also* 1-ER-108 (explaining how it is "difficult to place a monetary value" on the cost of "shorten[ing] the length of their contract" because the injury comes not just from losing the "extra years' revenue," but from diverting sales resources that would have been used for other deals instead).

The risk to RingCentral's reputation is enormous and is already resonating in the marketplace. As a third-party investment bank report ("Craig-Hallum report") observed while lowering the value of RingCentral by a staggering $11 billion, Zoom's actions are creating a significant "risk" of "reputational damage" to RingCentral and its "relationships with [its] partners." 1-ER-113.

Injury to customer and partner goodwill. Zoom has become a household name because of the unprecedented appetite for videoconferencing during the COVID-19 work-from-home economy. 2-ER-298. The pandemic created "very unique market conditions," 1-ER-109, and a wave that Zoom has ridden to its competitive advantage. Through the SAA, RingCentral has been able to promote and sell RCM "powered by Zoom" with Zoom branding. 2-ER-163 (§3(e)).

In the SAA, RingCentral bargained for the right to sell Zoom's Service as RCM. If RingCentral immediately "loses" its "unique" right to provide its customers such a highly popular and desirable product, it undermines RingCentral's brand and "threatens [RingCentral's] relationship with [customers] that have come to rely on [it] for the in-demand product." *S. Glazer's Distribs. of Ohio, LLC v. Great Lakes Brewing Co.*, 860 F.3d 844, 853 (6th Cir. 2017). "This loss of customer goodwill is a prime example of intangible, irreparable harm." *Id.*; *cf.* 1-ER-112–13 (RingCentral's partnerships—including its "successful and … complementary" partnership with Zoom—"have been [RingCentral's] primary competitive advantage.").

Likewise, RingCentral's ability to offer customers a unified communications package is a "key business differentiator" in the market that other competitors do not offer. 1-ER-108. If customers choose a provider other than RingCentral for their videoconferencing, or if RingCentral's resale partners swap out RCM for another videoconferencing service, RingCentral will lose the "ability to provide a unified mobile, video, and phone solution" and the "synergy and simplicity" that comes with that—"diminish[ing] RingCentral's value proposition." *Id.*

Zoom's conduct is particularly devastating because Zoom is refusing to activate RingCentral's "new customers." *See* 2-ER-153. As the Craig-Hallum report recognizes, RingCentral spends considerable resources "to acquire new customers." 1-ER-113; *accord* 1-ER-108 (deals with enterprise customers take months or years to close). This Court has previously recognized that a failure to deliver on "initial orders from … new customers" is "especially" harmful to customer goodwill and the company's reputation. *Stuhlbarg*, 240 F.3d at 840-41; *see* 2-ER-339.

Lost prospective business opportunities. Undoubtedly, Zoom blocking access and denying activations for RingCentral customers will cost RingCentral sales—that is the very purpose of Zoom's actions. And there is no getting that opportunity back—the EOL Period's clock is ticking, and every day RingCentral cannot sell RCM is a bargained-for day that will not return. This Court has recognized that loss of "prospective customers" is a cognizable irreparable harm. *Stuhlbarg*, 240 F.3d at 841.

But even putting aside these lost sales, there is ample evidence of irreparable harm from other unknowable and unquantifiable lost opportunities. This Court has recognized that this category of injury is also irreparable. *See Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 423 (9th Cir. 1991) (finding an irreparable injury because the challenged action "would have an immediately discernible but unquantifiable adverse impact on [the plaintiffs'] earnings").

For starters, RingCentral is likely to lose referrals that it relies on for new business. Resale partners are apprehensive about continuing to refer their clients to RingCentral because of fears that the clients would later lose access to the Zoom Service. 1-ER-109–10; *accord* 1-ER-113 (Craig-Hallum report) (reporting that Zoom's actions risk "negatively impact[ing] [RingCentral's] relationships with [its] partners"). Such referrals account for "[a] high percentage of RingCentral's business." 1-ER-109. And, of course, disgruntled customers who do not have their videoconference service activated or have it deactivated during their customer contract are not likely to "refer business" to RingCentral. *See* 1-ER-107–08 (discussing customer reaction to uncertainty over access to Zoom Service). It is difficult to quantify just how many referrals RingCentral will lose because RingCentral does not "have visibility into when someone decide[s] not to refer business to us." *Id.* That is another reason why this Court recognizes that the loss of "prospective customers" is irreparable. *Stuhlbarg*, 240 F.3d at 841; *see also Cellco P'ship v. Hope*, 469 F. App'x 575, 577 (9th Cir. 2012).

The timing of this dispute also creates an irreparable injury because Zoom and RingCentral are competitors in a fast-growing market, where the race to establish a brand and name-recognition is paramount. *See Celsis In Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 931 (Fed. Cir. 2012) ("During the growth stage of a product, it is particularly crucial to be able to distinguish oneself from competitors. This includes building the brand, expanding the customer base, and establishing one's reputation and leadership in the market."). COVID-19 has "accelerated dramatically" the "migration to cloud services" that RingCentral and Zoom provide; now is an essential time because even small changes can "hav[e] a uniquely high impact … during a critical business window" such as this. 1-ER-109. By reneging on its agreement and directly targeting RingCentral's customers, Zoom is trying to establish "a foothold and the ability to compete [for additional business with the customer] as an incumbent." 1-ER-108; 1-ER-111 (Zoom offering RingCentral customer not just video conference but "Voip" telephone-over-the-internet too). The loss of incumbency and unknown prospective opportunities are irreparable injuries that preliminary injunctions are intended to prevent. *See Broadcom Corp. v. Emulex Corp.*, 732 F.3d 1325, 1336-37 (Fed. Cir. 2013).

Absent a preliminary injunction, RingCentral inevitably "will lose market share" to Zoom and other vendors who can provide videoconferencing services. 2-ER-339; *see also* 1-ER-114. That too is a harm that cannot be adequately compensated later. *See Broadcom Corp.*, 732 F.3d at 1337; *Robert Bosch LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1152 (Fed. Cir. 2011) (holding district court had "committed a clear error" in part because there was "unrebutted evidence of loss of market share and access to potential customers"); *see also Oracle USA, Inc. v. Rimini St., Inc.*, 783 F. App'x 707, 710 (9th Cir. 2019) (affirming district court's finding of irreparable harm in part because defendant "was able to gain increasing market share").

B. The district court committed numerous legal errors in finding that RingCentral was not likely to be irreparably harmed.

The district court correctly recognized that "[e]vidence of threatened loss of prospective customers or goodwill certainly supports a finding of the possibility of irreparable harm." 1-ER-10 (quoting *Stuhlbarg*, 240 F.3d at 841). It nonetheless concluded that RingCentral had not shown irreparable harm for several reasons—all of them legal errors contrary to this Court's precedent.

1. The district court erroneously believed that "preliminary injunctions are rarely issued for breach of contract claims." 2-ER-155. That is wrong. This Court has never stated such a rule, and it has routinely endorsed preliminary injunctions arising from breach-of-contract claims. *See, e.g.*, *Nike, Inc. v. McCarthy*, 379 F.3d 576, 580 (9th Cir. 2004); *Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 600 (9th Cir. 1991); *John Goyak & Assocs., Inc. v. Terhune*, 299 F. App'x 739, 740 (9th Cir. 2008); *Domain Name Comm'n Ltd. v. DomainTools, LLC*, 781 F. App'x 604, 607 (9th Cir. 2019). While breach-of-contract claims may conceivably give rise to readily calculable damages sometimes, Zoom's breach of this contract, in this market, at this time, does not. *Supra* 47-55.

The only authorities the district court cited for its mistaken belief are two district-court cases, the second of which relies only on the first. 2-ER-155 (citing *Telephia Inc. v. Cuppy*, No. 04-cv-03508, 2005 WL 588441, at *3 (N.D. Cal. Mar. 11, 2005) and *ConWest Res., Inc. v. Playtime Novelties, Inc.*, No. 06-cv-5304, 2006 WL 3346226, at *8 (N.D. Cal. Nov. 17, 2006)). For its part, *Telephia* relied only on this Court's decision in *Oakland Tribune, Inc. v. Chronicle Publishing Co.*, 762 F.2d 1374 (9th Cir. 1985). While this Court did affirm the denial of a preliminary injunction in *Oakland Tribune*, it did so for the basic reason that the plaintiff-newspaper feared it would "lose circulation and revenue" which it "seem[ed] to admit … involves purely monetary harm measurable in damages." *Id.* at 1376. This Court did not announce a broad rule that preliminary injunctions cannot issue in cases alleging breach of contract, as *Telephia* mistakenly understood.

2. The district court also erred by faulting RingCentral for not introducing "non-conclusory evidence sufficient to establish that it *has* *actually lost market share* as a result of Zoom not offering the Service to new customers." 2-ER-156 (emphasis added). That misstates the applicable standard. A party seeking a preliminary injunction must show a "likelihood" that it will suffer irreparable harm, *Winter*, 555 U.S. at 20, not that it "has actually" suffered that harm already, 2-ER-156. After all, the whole point of a preliminary injunction is to prevent future harm; requiring a party to show that it has already suffered harm misunderstands the basic nature of the remedy. It is also incongruous with the procedural posture of this case because the district court granted RingCentral a TRO before denying the preliminary injunction. *See* 2-ER-288–96. That TRO protected RingCentral against the very harm the district court then demanded RingCentral show it had already suffered. A TRO is meant to be an emergency safeguard that allows parties to avoid harm while seeking a preliminary injunction—not a catch-22 that dooms the preliminary injunction.

Applying the correct standard, RingCentral easily cleared the bar. As detailed above (at 47-55), the evidence established that if Zoom carried through on its threats to block access to the Service to RingCentral customers, it would have a devastating consequence on RingCentral's reputation, its goodwill and relationships with its customers and partners, its prospective business opportunities, and its market share. Those injuries are the precisely the sort of injuries that defy calculation and are incapable of being remedied through money damages.

The district court compounded its error by labeling RingCentral's evidence "conclusory," 2-ER-156, when it was nothing of the sort. RingCentral supported its request for a preliminary injunction with lengthy declarations from two senior executives with personal knowledge of the RingCentral's global product and business strategy; existing sales and pipeline; and customer relationships, negotiations, and sales agreements. 2-ER-334–40; 1-ER-105–10. The declarations explain RingCentral's business, the status of RCV's development, and how RingCentral's sales wins lead to future wins and referrals while lost sales cascade and cause lost future business opportunities. The declarations detail the long partnership between RingCentral and Zoom, Zoom's recent and threatened conduct, and the harm Zoom's actions have and will continue to cause to RingCentral. And critically, the Craig-Hallum report—an independent third-party analysis—corroborated the declarations. *See* 1-ER-112–16.

None of this was "conclusory," *contra* 2-ER-156, and the district court was wrong to dismiss the evidence on that basis. That is especially so because Zoom introduced no evidence contradicting RingCentral's declarations. Zoom did not argue that RingCentral's goodwill and reputation were *not* harmed, that its customers and partners are *not* complaining, or that RingCentral would *not* lose prospective customers. Nor did Zoom introduce any evidence suggesting that these injuries would somehow be calculable. RingCentral's unrebutted declarations, the documentary evidence, and the Craig-Hallum report combine to show a "likelihood" that RingCentral will suffer irreparable harm.

3. The district court was also wrong that RingCentral had not shown "why monetary damages would be insufficient to compensate RingCentral if its claims were ultimately successful." 2-ER-156. To begin with, this Court has already held that that reputational damage, injury to goodwill, loss of new customers, and non-calculable prospective business opportunities are irreparable injuries. *Supra* 47, 52-55.

Moreover, the district court's conclusion cannot be reconciled with the record. RingCentral explained in detail how Zoom blocking access to RingCentral customers would harm RingCentral's reputation and its goodwill with its customers and partners. 1-ER-107–09; 2-ER-338–39. Such damage to RingCentral's reputation cannot be easily measured or compensated with money damages. Nor can RingCentral rely on money damages to compensate it for the loss of unknown potential customers, their future business, and their referrals, or for other business lost due to the resource crunch from extra-lengthy and frequent sales cycles—all of which is difficult to assess, quantify, and remedy after the fact. 1-ER-107–10; 2-ER-339. This Court has previously recognized that the likelihood of such types of injuries constitutes irreparable harm and warrants preliminary relief. *Supra* 47, 52-55. The district court's conclusion cannot be reconciled with these decisions.[5]

4. The district court dismissed one of RingCentral's declarants "as an interested party" who "does not establish a non-speculative threat of irreparable injury supported by sufficient evidence (as opposed to conclusions)." 2-ER-156–57. That is wrong for multiple reasons. For one,

[5] The district court later repeated a similar rationale—that "the loss of business relationships is an economic harm that can be valued"—again relying on a single district court opinion. 2-ER-157 (quoting *Telephia*, 2005 WL 588441, at *4). That is wrong, certainly in the circumstances of this case, for all the same reasons just explained, and is incompatible with this Court's precedent.

this Court has specifically rejected the argument that a party's evidence supporting a preliminary injunction was "vague and speculative" because it was relying on the "declaration" of its own senior vice president. *See Disney Enters.*, 869 F.3d at 865-66. Instead, this Court concluded that an executive's recitation of how "customers" "complain[ed]" about the defendant's conduct "was sufficient to establish a likelihood of irreparable harm." *Id.* The Hostetter declaration does exactly that: He details the complaints RingCentral has received and how RingCentral's customers and partners have responded to Zoom's conduct. 1-ER-107–09.[6]

The district court's opinion is also internally inconsistent. Just a page earlier, the court rejected an evidentiary challenge on the grounds that the Ninth Circuit "do[es] not strictly" apply the rules of evidence in preliminary-injunction proceedings "[d]ue to the urgency of obtaining a preliminary injunction at a point when there has been limited factual

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[6] The district court's sole legal support was this Court's opinion in *American Passage Media Corp. v. Cass Communications, Inc.*, 750 F.2d 1470 (9th Cir. 1985). But, as the district court's own description of the case reveals, the affidavits from the company's executives there were insufficient, not because of self-interest, but because they did not support the tremendous assertion that the company's injuries "threatened [its] extinction"—a much more dramatic claim than RingCentral's witnesses advanced here. *Id.* at 1474.

development." 2-ER-155 n.1 (citing *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1363 (9th Cir. 1988)). For the same reason, the district court is wrong to insist that evidence supporting a preliminary injunction must come from un-interested, nonparty witnesses—though RingCentral introduced that too, *see supra* 50, 59.

Lastly, the court ignored that RingCentral's evidence was *uncontroverted*. Each of RingCentral's declarations was sworn to under penalty of perjury and cannot be simply dismissed as self-serving. Parties constantly rely on their own executives to introduce internal evidence, such as the effect on business operations of challenged action or customer complaints. That is especially true in the preliminary injunction context, where parties must scramble to accumulate evidence quickly. *See* 2-ER-155 n.1. Where the other side has introduced no evidence or declaration of its own that calls into question the validity of the movant's declarations, courts should not so casually discard the sworn evidence a party does present.

III. The Balance Of The Equities Favors A Preliminary Injunction.

To assess the equities, "courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Disney Enters.*, 869 F.3d at 866 (quoting *Winter*, 555 U.S. at 24).

The district court's initial error was that it imposed a heightened burden on RingCentral where none was warranted. The court held that "the balance of hardships does not tip *sharply* in RingCentral's favor." 2-ER-157 (emphasis added). The court applied that more demanding standard because of its mistaken view that RingCentral had shown only "serious questions" on the merits. *Id.* As explained above, however, RingCentral has shown it is likely to prevail on the merits. *Supra* 23-46. As a result, RingCentral must only show "that the balance of equities tips in [its] favor," *Winter*, 555 U.S. at 20, not that it does so "sharply." Because "the district court applied the wrong standard," it "thereby abused its discretion" and is not entitled to deference. *Johnson v. Paradise Valley Unified Sch. Dist.*, 251 F.3d 1222, 1230 (9th Cir. 2001); *accord Lynch v. Rank*, 747 F.2d 528, 534 (9th Cir. 1984) (articulating same rule in preliminary-injunction context).

In any event, the balance of equities *does* tip sharply in RingCentral's favor. As just explained, Zoom's conduct is likely to have grave effects on RingCentral. Already, RingCentral has lost customers, received complaints, been forced to rework or shorten existing contracts, and seen declining market share. Its goodwill and reputation have also taken a hit—especially as Zoom has been reaching out to RingCentral customers with misinformation. The district court based its balance-of-hardships decision on its irreparable-harm holding. 2-ER-157 ("RingCentral has not shown that it will suffer irreparable injury … which makes it difficult to conclude that the balance of hardships tips sharply in its favor."). And because the district court's conclusion on irreparable harm is irreconcilable with the record and this Court's precedent, neither it nor its balance-of-hardships conclusion can stand.

Further still, there is nothing to balance against the hardship to RingCentral. Zoom introduced zero evidence articulating any harm that it would suffer if the status quo is maintained pending a resolution of the litigation. Meanwhile, the only purported harm the district court identified was that "Zoom would have to continue to provide its Service to new RingCentral customers … while RingCentral continues to add features to its own product in order to … transition[] all of its clients away from Zoom's Service …." 2-ER-157. This is not a harm to Zoom—it is a contractual obligation Zoom voluntarily bargained to undertake and *did* undertake for years. *Supra* 6-10, 26-30. And Zoom is not doing this for free; it is being paid substantial sums of money under the SAA. 2-ER-227 (§16(d)). The injunction here merely preserves the status quo and requires Zoom to comply with the SAA. This strongly weighs against any harm to Zoom, which cannot "be heard to argue that the enforcement of the contract into which it freely entered would cause hardship." *Gen. Protecht Grp., Inc. v. Leviton Mfg. Co.*, 651 F.3d 1355, 1365 (Fed. Cir. 2011); *accord Dodocase VR, Inc. v. MerchSource, LLC*, No. 17-cv-07088, 2018 WL 1475289, at *12 (N.D. Cal. Mar. 26, 2018).

IV. Granting RingCentral An Injunction Is In The Public Interest.

The final preliminary-injunction factor considers whether "an injunction is in the public interest." *Winter*, 555 U.S. at 20. Courts have repeatedly explained that "'the interest of justice' is served by holding parties to their bargain." *Atl. Marine Constr. Co. v. U.S. Dist. Ct.*, 571 U.S. 49, 66 (2013); *see also Ocean Beauty Seafoods, LLC v. Pac. Seafood Grp. Acquisition Co.*, 648 F. App'x 709, 711-12 (9th Cir. 2016) (enforcement of legal contract furthers the public interest); *S. Glazer's Distributors*, 860 F.3d at 853 ("The public has a strong interest in holding private parties to their agreements."); *see also Bernstein v. Goldsmith*, No. 05-cv-4702, 2006

WL 1644849, at *7 (D.N.J. June 6, 2006) (public interest favors judicial resolution of contractual disputes and "disfavors … self-help remedies"); *Alton & S. Ry. Co. v. Bhd. of Maint. of Way Employes*, 883 F. Supp. 755, 765 (D.D.C. 1995) (similar).

This factor plainly favors RingCentral. Under the SAA, RingCentral's license to sell the Service remains in effect during the EOL Period, and so Zoom breaches its obligations under the SSA when it blocks RingCentral's customers from accessing RCM. *Supra* 26-30. Enjoining Zoom from engaging in this conduct—i.e., from breaching the contract—simply holds Zoom to its bargain, and thus furthers the public interest.

The sole basis for the district court's contrary finding was its flawed assessment of RingCentral's likelihood of success on the merits: "Given that both RingCentral and Zoom strongly believe that their interpretation of the SAA is correct …, the public interest in 'holding private parties to their agreements' justifies both issuing and not issuing a preliminary injunction." 2-ER-158 (citation omitted). Because the district court's resolution of this factor was dependent on its antecedent legal error on likelihood of success on the merits, this Court owes the district court no deference, *see Douglas*, 757 F.3d at 984, and should hold that the public interest supports a preliminary injunction.

CONCLUSION

Accordingly, this Court should reverse, remand, and order the district court to grant RingCentral a preliminary injunction.

May 26, 2021

Respectfully submitted,

/s/Andrew D. Silverman

Andrew D. Silverman
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000

Clement Seth Roberts
Karen G. Johnson-McKewan
Robert L. Uriarte
Nathan Shaffer
ORRICK, HERRINGTON & SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105
(415) 773-5700

Benjamin F. Aiken
ORRICK, HERRINGTON & SUTCLIFFE LLP
1152 15th Street, NW
Washington, DC 20005
(202) 339-8400

Walter Brown
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
943 Steiner St.
San Francisco, CA 94117
(415) 291-9432

Brad S. Karp
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000

Alyssa Barnard-Yanni
ORRICK, HERRINGTON & SUTCLIFFE LLP
701 Fifth Avenue
Seattle, WA 98104
(206) 839-4300

Counsel for RingCentral, Inc.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 17. Statement of Related Cases Pursuant to Circuit Rule 28-2.6

Instructions for this form: http://www.ca9.uscourts.gov/forms/form17instructions.pdf

9th Cir. Case Number(s) 21-15792

The undersigned attorney or self-represented party states the following:

[X] I am unaware of any related cases currently pending in this court.

[ ] I am unaware of any related cases currently pending in this court other than the case(s) identified in the initial brief(s) filed by the other party or parties.

[ ] I am aware of one or more related cases currently pending in this court. The case number and name of each related case and its relationship to this case are:

Signature *s/ Andrew D. Silverman* **Date** May 26, 2021
*(use "*s/[typed name]*" to sign electronically-filed documents)*

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

9th Cir. Case Number(s) 21-15792

I am the attorney or self-represented party.

This brief contains 13,112 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief *(select only one)*:

[X] complies with the word limit of Cir. R. 32-1.

[ ] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

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Signature s/ *Andrew D. Silverman* **Date** May 26, 2021
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ADDENDUM

Page

Key Provisions of Strategic Alliance Agreement ("SAA")

2-ER-161 – **§2(a) – Appointment.** Zoom hereby appoints RingCentral, and RingCentral accepts the right for RingCentral, to market and resell the Service (as incorporated into RingCentral's or its Affiliates own services or services provided in conjunction with its or its Affiliates' partners and resellers, whether as a standard feature or a feature at additional cost, in accordance with this Agreement) in the Territory. For the avoidance of doubt, nothing in this Agreement shall be construed as requiring RingCentral to incorporate the Service into RingCentral's products and services. Zoom hereby grants RingCentral and its Affiliates a worldwide, non-exclusive, non-transferable (except in connection with an assignment permitted under this Agreement), royalty-free, paid-up, sublicensable (to RingCentral's and its Affiliates' resellers, partners, and end users) license to use, copy, distribute, display, perform, import, make, sell, offer to sell, and exploit (and have others do any of the foregoing on or for RingCentral's or any of its Affiliates' behalf or benefit) the Service in the Territory for the term of this Agreement, as permitted by this Agreement.

2-ER-242 – **§16(a) – Term.** The initial term of the Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with Section 16(b), expire on January 31, 2021 (the "Initial Term"). The Agreement shall then automatically renew for two (2) additional one- (1-) year terms (each, a "Renewal Term," with the Initial Term and all Renewal Terms (if any) collectively the "Term"); *provided, however*, if RingCentral or Zoom provides written notice to either party at least six (6) months before the end of the Initial Term or first Renewal Term, as applicable, of its intention not to renew the Agreement, the Agreement shall terminate at the end of such Initial Term or first Renewal Term, as applicable. For the avoidance of doubt, following the end of the Term the Agreement shall enter into the EOL Period set forth in Section 16(d).

2-ER-227 – **§16(d) – End of Life.** RingCentral may, in its sole discretion, defer the effective date of termination by up to [redacted] from the end of the Term in order to transition Customers to an alternative to the Service (the "EOL Period"). Zoom shall continue to provide the Service in accordance with this Agreement during this time and shall be entitled to any amounts due for use of the Service. During the EOL Period, Zoom shall continue to comply with the SLAs. This Agreement shall be deemed to continue to remain in effect through the EOL Period. For the avoidance of doubt, the Annual Revenue Commitment shall not apply during the EOL Period.

2-ER-172 – **§16(e)** – **Surviving Obligations and Limitations.** The termination or expiration of this Agreement will not operate to discharge any liability that had been incurred by either Party prior to any such termination or expiration. The termination of this Agreement will not terminate or affect any Customer Agreements entered into prior to termination of this Agreement for the term of each such Customer Agreement in effect at the time of Termination. Upon termination of this Agreement, all licenses granted hereunder will immediately terminate. The following provisions shall survive expiration or termination of this Agreement: Sections 1, 3(c), 3(d), 3(i), 6 (for fees incurred prior to termination), 11, 12(a), 13, 15, 16(c), and 18 of this Agreement.