

1 order to show cause why defendants should not be held in civil contempt of court, accusing
2 defendants of violating the TRO. (Doc. No. 37 at 1–2.) Defendants submitted a response on June
3 18, 2020, disputing plaintiff’s accusation in this regard. (Doc. No. 50.) A week later, plaintiff
4 replied. (Doc. No. 53.) For the reasons explained below, plaintiff’s motion for the issuance of an
5 order to show cause will be denied.

6 LEGAL STANDARD

7 “The power to punish for contempts is inherent in all courts; its existence is essential to
8 the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders,
9 and writs of the courts, and, consequently to the due administration of justice.” *Bessette v. W. B.*
10 *Conkey Co.*, 194 U.S. 324, 327 (1904) (citation omitted). “A court’s contempt powers are
11 broadly divided into two categories: civil contempt and criminal contempt.” *Shell Offshore Inc.*
12 *v. Greenpeace, Inc.*, 815 F.3d 623, 628 (9th Cir. 2016). As relevant here, civil contempt
13 ““consists of a party’s disobedience to a specific and definite court order by failure to take all
14 reasonable steps within the party’s power to comply.”” *Reno Air Racing Ass’n, Inc. v. McCord*,
15 452 F.3d 1126, 1130 (9th Cir. 2006) (citation omitted). Willfulness or intent “is not an element of
16 civil contempt.” *United States v. Asay*, 614 F.2d 655, 661 (9th Cir. 1980) (citation omitted); *see*
17 *Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir. 1983) (citations omitted). “Judicial sanctions
18 in civil contempt proceedings may, in a proper case, be employed for either or both of two
19 purposes; to coerce the defendant into compliance with the court’s order, and to compensate the
20 complainant for losses sustained.” *United States v. United Mine Workers of Am.*, 330 U.S. 258,
21 303–04 (1947) (citation omitted).

22 To establish civil contempt, plaintiff here bears the burden of showing “(1) that
23 [defendants] violated the court order, (2) beyond substantial compliance, (3) not based on a good
24 faith and reasonable interpretation of the order, (4) by clear and convincing evidence.”
25 *Labor/Cnty. Strategy Ctr. v. Los Angeles Cty. Metro. Transp. Auth.*, 564 F.3d 1115, 1123 (9th
26 Cir. 2009) (alteration in original) (quoting *In re Dual-Deck Video Cassette Recorder Antitrust*
27 *Litig.*, 10 F.3d 693, 695 (9th Cir. 1993)). “Clear and convincing evidence requires greater proof
28 than preponderance of the evidence. To meet this higher standard, a party must present sufficient

1 evidence to produce ‘in the ultimate factfinder an abiding conviction that the truth of its factual
2 contentions are highly probable.’” *Sophanthavong v. Palmateer*, 378 F.3d 859, 866–67 (9th Cir.
3 2004) (citation omitted); *see also* O’Malley, *et al.*, *Federal Jury Practice & Instructions* § 104:02
4 (6th ed. 2020) (“‘Clear and convincing evidence’ is evidence that produces in your mind a firm
5 belief or conviction as to the matter at issue.”). The Supreme Court has held that civil contempt
6 “should not be resorted to where there is a fair ground of doubt as to the wrongfulness of the
7 defendant’s conduct.” *Taggart v. Lorenzen*, ___U.S.___, 139 S. Ct. 1795, 1801–02 (2019) (brackets
8 and citation omitted).

9 ANALYSIS

10 The resolution of the present motion turns on the first and fourth elements of civil
11 contempt. (*See* Doc. Nos. 37, 50, 53.) That is, whether plaintiff has met its burden of
12 establishing by clear and convincing evidence that defendants violated the following terms of the
13 TRO issued by this court:

- 14 • “Defendants Auvoria Prime, LLC, and Sal Leto shall NOT, directly or in active concert
15 with anyone else, knowingly recruit, sponsor or solicit any existing Eaconomy, LLC
16 distributor (known as an ISP) or customer to join Auvoria Prime, LLC as a distributor or
17 customer.” (Doc. No. 24 at 4.)
- 18 • “Within 48 hours of entry of this Order, Auvoria Prime, LLC shall notify, in writing, each
19 of its distributors of this prohibition by email.” (*Id.*)

20 In the pending motion plaintiff argues that defendants’ agent, Catalina Naranjo
21 (“Naranjo”), solicited one of plaintiff’s distributors in violation of the TRO, and that the
22 notification letter sent by defendants is *not* sufficiently clear about the TRO’s “mandate against
23 recruiting, sponsoring, and soliciting.” (Doc. No. 37 at 2–3, 4–5.) Plaintiff, therefore, asks the
24 court for “civil coercive sanctions of \$20,000 for the contemptuous conduct discussed in this
25 Motion” and “future sanctions of \$30,000 for each subsequent violation of the Order.” (*Id.* at 6;
26 *see also id.* (“Auvoria’s violation of the Order has not resulted in any losses that Eaconomy is
27 aware of.”)). Having carefully considered the evidence presented by the parties with respect to the
28 pending motion, the court finds that plaintiff has failed to establish, by clear and convincing

1 evidence, that defendants have violated the terms of the court’s TRO.

2 1. TRO Terms Prohibiting Defendants’ Recruitment, Sponsorship, or Solicitation of
3 Plaintiff’s Distributors

4 Plaintiff contends that defendants directly instructed or acted in active concert with
5 Naranjo to recruit, sponsor, or solicit one of plaintiff’s distributors, Michael Cuevas (“Cuevas”).
6 (Doc. No. 37-8 at ¶¶ 2–3.) Naranjo is an independent contractor for Auvoria, working only as a
7 Spanish coach to provide “a single, hour-long coaching call each week for Auvoria’s Spanish-
8 speaking distributors.” (Doc. No. 50-1 at ¶¶ 1–4.) On May 15, 2020, Cuevas received the
9 following voice message directly from Naranjo on Instagram:

10 I mean, yeah. I’m going to be real with you. I know you’re
11 launching Eaconomy, but I wish to maybe speak with you in telling
12 you what I have going on, what I have to offer, and tell you how
13 that is just not a good idea. I have been involved with this company
14 from the very beginning I’m the head of education, Latin
15 America, Spanish. Corporate brought me on board, and I want to
16 talk to you today. I have a lot of information you should know that
17 I know is going to make you think things twice, so let’s get on a
18 call. What’s your number? Because I think you’ll be very
19 interested to hear what I got to say.

20 (Doc. No. 37-1, Ex. A 1:00–1:58.) This message alone is neither proof nor a basis for any
21 reasonable inference that defendants were directly acting through or in active concert with
22 Naranjo. Of course, defendants are not in violation of the court’s TRO if Naranjo contacted
23 Cuevas without their involvement. For this reason, plaintiff focuses on how Naranjo held herself
24 out as the “head of education, Latin America, Spanish” for Auvoria in the voice message left for
25 Cuevas. (Doc. No. 53 at 3) (quoting Doc. No. 37-1, Ex. A 1:30–37). Plaintiff also exhibits an
26 Auvoria’s webpage showing Naranjo listed under the group “Education & Coaching” with the
27 title, “Airis Coach (Spanish).” (Doc. No. 53-2 at 3.) Altogether, the evidence demonstrates,
28 according to plaintiff, that Naranjo was acting as an ostensible agent of defendants. (Doc. No. 53
at 3–4.) Taken as true, the court is nonetheless unpersuaded by plaintiff’s evidence.

“Generally speaking, a person may do by agent any act which he might do himself.”
Preis v. Am. Indem. Co., 220 Cal. App. 3d 752, 761 (1990) (citing California Civil Code §§ 2304,
2305). “Under Civil Code section 2334, a principal is bound by acts of his ostensible agent”

1 *Id.* (quoting Cal. Civ. Code § 2334). In California, an agent has ostensible authority when “a
2 principal, intentionally or by want of ordinary care, causes or allows a third person to believe the
3 agent to possess.” Cal. Civ. Code § 2317. “Ostensible authority must be based on the acts or
4 declarations of the principal and not solely upon the agent’s conduct.” *Taylor v. Roseville*
5 *Toyota, Inc.*, 138 Cal. App. 4th 994, 1005 (2006) (citation omitted). “[O]stensible authority
6 arises as a result of conduct of the principal which causes the third party reasonably to believe
7 that the agent possesses the authority to act on the principal’s behalf.” *Chicago Title Ins. Co. v.*
8 *AMZ Ins. Servs., Inc.*, 188 Cal. App. 4th 401, 426 (2010) (citations omitted). “An agent’s
9 authority may be prove[n] by circumstantial evidence.” *Tomerlin v. Canadian Indem. Co.*, 61
10 Cal. 2d 638, 644 (1964) (alteration in original) (citation omitted). California law “indulges in no
11 presumption” that an independent contractor is an agent, but “an agent may [] be an independent
12 contractor.” *Jackson v. AEG Live, LLC*, 233 Cal. App. 4th 1156, 1184 (2015) (alteration in
13 original).

14 While Naranjo held herself out as the “head of education, Latin America, Spanish” in the
15 voice message left for Cuevas, nowhere in the message did she represent herself was acting on
16 behalf of either defendant. *See Pierson v. Helmerich & Payne Internat. Drilling Co.*, 4 Cal. App.
17 5th 608, 635 (2016) (The “ostensible authority of an agent cannot be based solely upon the
18 agent’s conduct.” (citation omitted)). In defendants’ response, Naranjo attests she never advised
19 or discussed with either defendants her conversation with Cuevas beforehand; no one at Auvoria
20 encouraged her to solicit or contact anyone from Eaconomy; and that she initiated the attempt to
21 contact Cuevas on her own volition. (Doc. No. 50-1 at ¶¶ 5–7.) Leto also attests in his
22 declaration that he was not aware of (until counsel informed him of this motion) and did not
23 participate in Naranjo’s communication with Cuevas, nor was Leto even aware that Cuevas was
24 an Eaconomy’s distributor. (Doc. No. 50-2 at ¶ 6.) Plaintiff insists, however, that the
25 declarations of Naranjo and Leto are not to be believed in this regard because “Auvoria’s
26 featuring of Ms. Naranjo on their website [] amounts to an act [] by Auvoria that would lead a
27 reasonable person to believe that Ms. Naranjo had authority to act on behalf of Auvoria.” (Doc.
28 No. 53 at 5.) This argument totally misses the mark since it is the specific terms of the TRO that

1 must be the focus in considering plaintiff’s motion. *See Taggart v. Lorenzen*, ___U.S.___,139 S.
2 Ct. 1795, 1802 (2019) (Because civil contempt is a “severe remedy,” the “principles of ‘basic
3 fairness require that those enjoined receive explicit notice’ of ‘what conduct is outlawed’ before
4 being held in civil contempt.” (citations omitted)). By the TRO’s terms, if Naranjo contacted
5 Cuevas without defendants’ knowledge or involvement, defendants have not violated the TRO
6 issued by this court. (*See* Doc. No. 24 at 4.) It is not reasonable to infer that by merely featuring
7 Naranjo on Auvoria’s website, defendants gave Naranjo the ostensible authority to solicit
8 plaintiff’s distributors in violation of the TRO.² *See, e.g., Morse v. Pac. Gas & Elec. Co.*, 152
9 Cal. App. 2d 854, 857 (1957) (holding that the mere fact of employment does not give the
10 employees the “ostensible authority to modify or terminate their employers’ written contracts,”
11 nor is it reasonable to infer such ostensible authority).

12 Other circumstantial evidence before the court further undermines plaintiff’s position. As
13 Leto states in his declaration, Auvoria has approximately 1,500 independent distributors, (Doc.
14 No. 50-2 at ¶ 3), yet plaintiff has presented evidence of only one isolated instance of someone
15 associated with Auvoria contacting one of plaintiff’s distributors. (*See* Doc. No. 37 at 6 (plaintiff
16 admitting that it is not aware of any other such instances)). Nor has plaintiff provided evidence of
17 other instances in which Naranjo contacted its other distributors. The isolated nature of the event
18 in question buttresses defendants’ showing that they were *not* involved in Naranjo’s outreach to
19 Cuevas. In light of the foregoing, the court finds that plaintiff has failed to present sufficient
20 evidence, whether direct or circumstantial, upon which this court could have “an abiding

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23 ² The court is likewise unpersuaded by plaintiff’s related suggestion that Naranjo is part of
24 Auvoria’s “corporate management ‘team’ and thus is Auvoria herself.” (Doc. No. 53 at 3.) This
25 conjecture is solely premised on Naranjo’s sales pitch portraying herself as “head of education,
26 Latin America, Spanish” in the voice message left for Cuevas. Auvoria’s webpage does not
27 support Naranjo’s sales pitch. On it, Naranjo is listed under the category heading “Education &
28 Coaching” as “Airis Coach (Spanish)” below another person with the title, “Director of Forex
Education”; Naranjo is visibly *not* listed under either the heading “Executive Leadership” or
“Directors & Chiefs.” (Doc. No. 53-2 at 3.) Naranjo and Leto have also declared under penalty
of perjury that Naranjo has a limited role at Auvoria as an independent distributor and a Spanish
coach. (Doc. Nos. 50-1 at ¶¶ 2–4; 50-2 at ¶¶ 2–5.)

1 conviction that the truth of its factual contentions are highly probable.” *Sophanthavong*, 378 F.3d
2 at 866–67.

3 2. TRO Terms Requiring Defendants to Notify Their Distributors

4 Pursuant to the TRO, defendants sent an email letter to their distributors on April 22,
5 2020, which states in relevant part the following:

6 We are re-informing and reinforcing our policy that we announced
7 on a zoom during our first week of launch, that we have a zero-
8 tolerance for cross recruiting and with that, we included recruiting
9 people from any previous opportunity that you did not personally
sponsor in that opportunity. We do not tolerate cross recruiting or
poaching of any kind.

10 This means that for most companies that you may have come from
11 including but not limited to Eaconomy, IML, Kuvera, Melius, FES,
12 Limbic Arc, and many others that you had, as a part of your
13 distributor agreement, a no-soliciting clause, or a non-compete, in
which you agreed to not solicit any members of that company
**unless they were people that were personally referred by you,
or people that come to you without you soliciting them.**

14 (Doc. Nos. 37-3 at 2; 50-3 at ¶¶ 4–5) (original embolden). After the instant motion was filed,
15 defendants’ counsel reviewed this email message and realized that a necessary footnote was
16 unintentionally omitted; based on communications between Auvoria’s executive officers and
17 counsel before the email was sent, defendants intended for the footnote to be included in it. (Doc.
18 No. 50-3 at ¶¶ 3–4, 7-8, Exs. B–C.) In civil contempt proceedings, “contemnor is afforded an
19 opportunity to purge” or correct the contemptuous act. *Int’l Union*, 512 U.S. at 829. “And once a
20 civil contemnor complies with the underlying order, he is purged of the contempt and is free.”
21 *Turner v. Rogers*, 564 U.S. 431, 442 (2011). The law thus affords defendants an opportunity to
22 remedy the unintentional omission of the footnote. So, on June 18, 2020, defendants sent another
23 email letter with the previously omitted footnote included in the body of the message, stating:

24 Consistent with these standards, Auvoria Prime and Mr. Leto have
25 specifically committed that they will not, directly or in concert with
26 anyone else, knowingly recruit, sponsor or solicit any existing
27 Eaconomy distributor or customer. This does not prevent anyone
28 from soliciting his or her personally sponsored downline at
Eaconomy, nor does it prevent anyone at Eaconomy who has not
been solicited from joining Auvoria Prime. Nevertheless, this is a
legally enforceable commitment that is fully consistent with our

1 values here at Auvoria Prime.
2 (Doc. No. 50-3 at ¶¶ 7–9, Ex. D; *see also* Doc. No. 50-4 at ¶¶ 2–3.) The court therefore will
3 construe the April 22 and June 18, 2020 email messages together to determine whether
4 defendants have complied with the terms of the TRO issued by this court. So construed, the court
5 finds that the two email messages have informed defendants’ “distributors of th[e] prohibition by
6 email” as specified in the TRO. (Doc. No. 24 at 4 (alteration in original).)

7 The second email message sent by defendants addresses the majority of the arguments
8 raised by plaintiff in its motion and reply, (Doc. Nos. 37 at 5–6; 53 at 1–2), except for one central
9 contention: that the second email “letter buries the statements relating to the Order between
10 unrelated announcements and topics in a manner that does not convey the seriousness of the
11 Order or expressly state that the language is the text of a Court order.” (Doc. No. 53 at 3.) The
12 TRO, however, does not require the prohibition statement to be in a certain order within a
13 particular message. Nor does the TRO by its terms require the prohibition statement to be
14 independent of other messages, or to restate verbatim the TRO language, or to convey a “serious”
15 tone. *See Reno Air Racing*, 452 F.3d at 1132 (“If an injunction does not clearly describe
16 prohibited or required conduct, it is not enforceable by contempt.” (citation omitted)); *id.* at
17 1130 (“a person should not be held in contempt if his action ‘appears to be based on a good faith
18 and reasonable interpretation of the court’s order.’” (citation omitted)). In short, the court cannot
19 hold defendants in civil contempt for violation of requirements not specified in the TRO. *See id.*
20 at 1132; *Taggart*, 139 S. Ct. at 1801–02 (civil contempt is improper “where there is a fair ground
21 of doubt as to the wrongfulness of the defendant’s conduct”). Moreover, even if the court were to
22 agree with plaintiff’s argument as to defendants’ first email message, the court finds that the two
23 messages sent by defendants, when read together, substantially comply with the TRO. *See*
24 *N.L.R.B. v. A-Plus Roofing, Inc.*, 39 F.3d 1410, 1418 (9th Cir. 1994) (“substantial compliance

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1 purges civil contempt”).³ For these reasons, the issuance of an order requiring defendants to
2 show cause why they should not be held in civil contempt for violating the terms of the court’s
3 TRO is not called for at this time.

4 **CONCLUSION**

5 Because plaintiff has failed to justify civil contempt by clear and convincing evidence, its
6 motion for the issuance of an order requiring defendants to show cause why they should not be
7 held in civil contempt of court (Doc. No. 37) is DENIED.

8 IT IS SO ORDERED.

9 Dated: August 28, 2020

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12 UNITED STATES DISTRICT JUDGE

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25 ³ Plaintiff also argues that “Ms. Naranjo would likely have never attempted to solicit an
26 Eaconomy distributor had Defendants properly informed its distributors of the Order’s prohibition
27 that the Order required it to.” (Doc. No. 53 at 4.) But the TRO does not hold defendants in
28 violation thereof if their independent contractors read the April 22, 2020 message and ignored it
(without defendants’ involvement). Moreover, the fact that plaintiff is only able to point to an
isolated recruitment effort by an Auvoria’s independent contractor out of Auvoria’s 1,500
independent distributors lends weight to the court’s conclusion that defendants’ messages
substantially comply with the TRO.