

No. 19-56397

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

FEDERAL TRADE COMMISSION,
Plaintiff-Appellee,

v.

JACQUES POUJADE,
Objector-Appellant,

JASON CARDIFF, et al.,
Defendants.

Appeal from the United States District Court
for the Central District of California
No. 5:18-cv-02104-SJO-PLA

**OPPOSITION OF THE FEDERAL TRADE COMMISSION
TO OBJECTOR-APPELLANT JACQUES POUJADE'S MOTION FOR
LIMITED STAY PENDING APPEAL**

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The district court held appellant Jacques Poujade in contempt for disobeying an order requiring expedited discovery needed to secure ill-gotten assets. The court determined at the contempt hearing that Poujade was “totally unbelievable,” that he “lied to this Court,” and that he “perpetrated fraud on this Court.” ECF 188-1, Tr. 390:17-391:1. In Section 2(k) of the order establishing contempt purge conditions, the court gave Poujade thirty days to “produce to the FTC all communications of any type” between him and the Defendants and their business associates from October 12, 2018 through the present. ECF 238 at 7, § 2(k). The court also stated that it would order monetary sanctions if Poujade did not comply. ECF 238 at 7, § 4.

Poujade’s motion to stay Section 2(k) pending appeal satisfies none of the requirements for such relief. On the record here, he is highly unlikely to succeed in his claim that the district court abused its discretion in compelling him to produce previously ordered discovery. Nor has he shown irreparable harm. If any monetary sanctions are ordered, they can be refunded in the (improbable) event of reversal. The production of non-privileged documents subject to a protective order plainly causes no harm. In contrast, granting a stay would significantly hinder the FTC’s ability to locate Defendants’ assets and investigate their fraud. The longer that takes, the more time Defendants (with Poujade’s help) have to dissipate or hide assets. The public interest plainly lies in locating and freezing these assets so they

can be used to compensate consumer victims pursuant to any final judgment against Defendants.

BACKGROUND

In October 2018, the FTC sued a group of defendants for violating various provisions of the FTC Act, 15 U.S.C. §§ 45(a), 52, the Restore Online Shoppers' Confidence Act, 15 U.S.C. § 8404, the Electronic Fund Transfer Act, 15 U.S.C. § 1693o(c), and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6105, through a wide-ranging scheme of fraud and deception.¹ ECF 1. The complaint alleges that the scheme encompasses, among other things, false and unsubstantiated claims that Defendants' dissolvable film strips would help smoking cessation, facilitate weight loss, and improve male sexual performance. It also charged a related unlawful auto-ship continuity program that resulted in unauthorized shipments and charges, abusive telemarketing through robocalls, and unsubstantiated earnings claims for a multi-level marketing scheme.

On October 10, 2018, the district court entered a temporary restraining order against Defendants, ECF 29, which it extended on October 24, 2018, ECF 48. On

¹ The Defendants are Jason Cardiff; Eunjung Cardiff, a/k/a Eunjung Lee, a/k/a Eunjung No; Danielle Cadiz, a/k/a Danielle Walker; Redwood Scientific Technologies, Inc. (California); Redwood Scientific Technologies, Inc. (Nevada); Redwood Scientific Technologies, Inc. (Delaware); Identify, LLC; Advanced Men's Institute Prolongz LLC; Run Away Products, LLC; and Carols Place Limited Partnership. ECF 1.

November 7, 2018, the court entered a preliminary injunction against them. ECF 59. Among other things, the TRO and PI froze Defendants' assets; established a Receivership over Defendants' assets and businesses; required financial disclosures and accounting of all assets; required repatriation to the United States of foreign assets, documents, and records, including those in possession of third parties; prohibited the dissipation of domestic and foreign assets; required delivery of assets and information to the Receiver; and ordered expedited discovery. The provisions of the TRO/PI apply not only to Defendants, but also to "their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly." *See, e.g.*, ECF 59 at 14, § VII Asset Freeze; *see also* Fed. R. Civ. P. 65(d)(2)(C).

Poujade, though not a defendant, was (and may still be) the Chief Financial Officer and a Director of Defendant Redwood Scientific Technologies. ECF 9 at 11; ECF 134-17 at 15-16. Redwood is owned and operated by Defendants Jason and Eunjung Cardiff. Poujade has described Jason Cardiff as his best friend. ECF 190-1, Tr. 117:15-19; 142:2-4.

The district court found after a three-day evidentiary hearing that Poujade had actual notice of the TRO no later than October 12, 2018, ECF 188-1, Tr. 390:8-390:16, and he received notice of the PI through his attorney no later than

March 20, 2019, ECF 153-3 at 3; ECF 134-21 at 2. Nevertheless, in direct violation of the TRO, more than \$1.5 million (Canadian) was withdrawn between October 16 and 18 from the bank account of a Canadian corporation, True Pharmastrip, Inc., for which the Cardiffs were the sole signatories. ECF 144-1 at 26-33; ECF 134-2 at 15-23; ECF 134-12 at 44; ECF 134-20 at 1. Poujade, who was already a director of and investor in True Pharmastrip, ECF 134-20 at 1-3, told the district court that he had made those withdrawals in Jason Cardiff's presence. ECF 153-5 at 11. In written pleadings and during the evidentiary hearings before the district court, the FTC presented evidence establishing that those True Pharmastrip funds were then funneled through Canadian and American bank accounts controlled by Poujade and his brother, Richard Poujade, and ultimately were used to pay the Cardiffs' personal expenses since the imposition of the asset freeze, such as luxury car leases and credit card bills. ECF 134-2 at 15-19; ECF 134-6 at 16-18.

The TRO/PI authorizes the FTC and Receiver to conduct expedited discovery "for the purposes of discovering: (1) the nature, location, status, and extent of Defendants' Assets; or (2) compliance with this Order." ECF 59 at 35, § XXVI Expedited Discovery. The court further directed that: "Any expedited discovery taken pursuant to this Section is in addition to, and is not subject to, the limits on discovery set forth in the Federal Rules of Civil Procedure and the Local

Rules of this Court. The expedited discovery permitted by this Section does not require a meeting or conference of the parties, pursuant to Rules 26(d) and (f) of the Federal Rules of Civil Procedure.” *Id.* at 36, § XXV(F).

In accordance with the expedited discovery provisions, the FTC served Poujade with a subpoena, via his counsel, on April 10, 2019. ECF 134-12. In response, Poujade produced some documents (including some of dubious authenticity) but largely failed to comply with the subpoena.² In the meantime, the FTC uncovered evidence that Jason Cardiff controlled the bank account from which the \$1.56 million (Canadian) had been transferred in the days following imposition of the asset freeze. Accordingly, on June 17, 2019, the FTC filed a motion to show cause why the Cardiffs and Jacques Poujade should not be held in contempt of the district court’s TRO/PI for transferring frozen assets out of a bank account controlled by Jason Cardiff, failing to identify and transfer the assets to the Receiver, and failing to comply with the expedited discovery requirements. ECF 134.

The district court issued an Order to Show Cause on June 24, 2019, ECF 140, in response to which Poujade filed numerous pleadings and declarations in

² In his Stay Motion (at 18 n.6), Poujade claims that he fully complied with the FTC’s subpoena on November 27, 2019. The FTC disputes this claim, which should and will be resolved by the district court in the first instance.

opposition, ECF 148, ECF 153, ECF 164, ECF 169, ECF 173, and ECF 178. From July 29 to 31, 2019, and on August 27, 2019, the district court held a four-day hearing at which Poujade testified and was represented by counsel. ECF 181, 182, 183, 249. At the conclusion of the testimony on July 31, the court stated:

Mr. Poujade, I find that you are totally unbelievable. You lied to this Court. You perpetrated fraud on this Court. You did that in conjunction with the Cardiffs [Defendants]. You created a paper trail perpetuating the fraud on the Court. It's unbelievable considering the positions that you hold as a financial officer.

But I guess money is everything and greed is everything. And in pursuit of your greed, you have advanced the interest of the Cardiffs to detriment of the public, government agencies, the receiver, and the Court.

Dkt. 188-1, Tr. 390:17-391:1. The court also found clear and convincing evidence that Poujade knew of the asset freeze and the requirement that all assets controlled by the Cardiffs be turned over the receiver, yet allowed money from the True Pharmastrip bank account to be withdrawn anyway. ECF 188-1, Tr. 390:8-16; ECF 237 at 4-5.

The district court continued the hearing to August 27, 2019, encouraging the parties to explore resolution of the matter in the meantime. ECF 198. On August 8, 2019, the FTC filed proposed findings of fact and conclusions of law in which it requested, *inter alia*, that the “Cardiffs and Jacques Poujade [be] further ordered to turn over all communications, including emails, text messages, and encrypted chat messages (e.g., Whatsapp, Signal, Telegram), from October 12, 2018 [the day

Poujade learned of the TRO] through the present with any of the following individuals/entities: Jason Cardiff, Eunjung Cardiff, Jacques Poujade, Richard Poujade, Ralph Olson, Dana Rohrabacher, Kamlesh Shah, Anton Drescher, Haywood Securities, Falcon, and Industrial Court L7.” ECF 180 at 51.

At the hearing on August 27, the district court ordered, *inter alia*, production of recorded communications between Defendants and Poujade. ECF 212. It also ordered the Cardiffs to turn over their mobile phones. *Id.*³ In addition, the district court ordered Poujade’s counsel to transfer the \$1.56 million (Canadian) to the Receiver, as required by the TRO and PI, which finally did occur. ECF 238 at 3; ECF 226-1 at 16.

At the district court’s direction, the FTC and Poujade engaged in ultimately unsuccessful discussions regarding a stipulated order implementing the district court’s contempt findings and orders. On October 3, 2019, the FTC filed a proposed order regarding the turnover of funds and film strip machines to the receiver, an accounting of assets, and the production of documents to the FTC.

³ Subsequent forensic analysis of the phones revealed that Poujade was continuing to communicate with Jason Cardiff about True Pharmastrip, ECF 271; ECF 227-1 at 15-16; ECF 248 at 5-6, even after Poujade swore in a declaration that Cardiff was terminated and had no more connection with company. ECF 153-5 at 20; ECF 196 at 4.

ECF 225, 225-1. On the same day, Poujade filed objections and an alternative to the FTC's proposed order. ECF 226.

On October 29, 2019, the district court overruled Poujade's objections to the FTC's proposed order and rejected his alternative. ECF 237. In so doing, the district court stated that Poujade's failure to comply with the FTC's subpoena violated the TRO/PI's expedited discovery provisions and that such failure constituted contempt. ECF 237 at 6. It further stated that "communications between Defendants and Mr. Poujade, as well as Mr. Poujade's business associates, are relevant to the FTC's investigation of whether Defendants remain involved in True Pharmastrip" and that such communications must be turned over as part of the TRO/PI's expedited discovery provisions. *Id.*

Concurrently, the district court entered its "Order Regarding Turnover of Funds to Receiver, Film Strip Machines, Accounting, and Production of Documents." ECF 238 [hereafter "Contempt Purge Order"]. As relevant here, the Order provided:

j. Jacques Poujade shall within thirty days of entry of this Order comply with the FTC's April 10, 2019 Subpoena for Documents, to the extent the Subpoena requests information falling within the scope of this Court's expedited discovery (ECF No. 59 at 35-36) and this Order. The parties are reminded that the Court's expedited discovery permits discovering: "(1) the nature, location, status, and extent of Defendants' Assets; or (2) compliance with this Order." (ECF No. 59 at 35.) Such expedited discovery includes communications in any form between Defendants and Mr. Poujade. Such expedited discovery also includes communications between Mr. Poujade and

individuals/entities affiliated with Pharmastrip pertaining to the nature, location, status, and extent of Defendants' Assets, and compliance with the TRO and PI. Counsel for the FTC and counsel for Mr. Poujade shall continue to meet and confer to accomplish Mr. Poujade's compliance. Any discovery dispute within the scope of the Court's expedited discovery and this Order shall be brought to the Court's attention in a renewed motion for contempt. Any discovery dispute extending beyond the scope of this Court's expedited discovery and this Order shall be resolved pursuant to the Standing Order, Local Rules, and Federal Rules of Procedure.

k. Eunjung Cardiff, Jason Cardiff, and Jacques Poujade shall within thirty days of entry of this Order produce to the FTC all communications of any type, including emails, text messages, and encrypted chat messages (e.g., Whatsapp, Signal, Telegram), from October 12, 2018 through the present with any of the following individuals/entities: Jason Cardiff, Eunjung Cardiff, Jacques Poujade, Richard Poujade, Ralph Olson, Dana Rohrabacher, Kamlesh Shah, Anton Drescher, Haywood Securities, Falcon, and Industrial Court L7. This Order does not require the Cardiffs to produce any communications already obtained by the FTC as a result of the Cardiffs' turnover of their mobile phones (Dkt. 217).

ECF 238 at 6-7, §§ 2(j), 2(k). Section 2(k) is the provision that Poujade now seeks to stay. The Contempt Purge Order provided that noncompliance after November 28 would lead the district court to order monetary sanctions, with increasing severity over time. ECF 238 at 7-8, § 4.

Rather than comply, on November 22, 2019, Poujade filed an ex parte motion to modify the October 29, 2019, Order or, in the alternative, to stay the order pending appeal. ECF 243. On November 27, 2019, he filed a notice of appeal of the district court's contempt orders, ECF 237 and 238. That appeal is now pending before this Court.

On December 17, 2019, the district court rejected the November 22, 2019 ex parte motion. ECF 248. The court recognized that in light of the pending appeal it no longer had jurisdiction to modify its contempt order, but concluded that it would have denied the motion on the merits anyway. Specifically, the court found that the documents and communications that it ordered Jacques Poujade to produce are responsive to the FTC's subpoena and fall within the scope of the PI's expedited discovery provision. ECF 248 at 6. The court also found that, in light of its credibility findings and the recent, ongoing communications between Poujade and Jason Cardiff, the documents and communications ordered to be produced are "critically important to revealing the actions of Defendants with respect to True Pharmastrip, via the actions of Mr. Poujade." ECF 248 at 7.

The district court also concluded that Poujade had not made an adequate showing to obtain a stay. Noting the multi-day contempt hearing, live witness testimony, including from Poujade, and numerous pleadings filed by him, the court concluded that Poujade was "unlikely to establish that this Court abused its discretion in making credibility determinations as to Mr. Poujade's and True Pharmastrip's connection to the Defendants." ECF 248 at 8. It concluded that the ordered production of documents, pursuant to protective order, did not constitute irreparable harm. *Id.* It found that the equities favored the FTC given the court's findings about Poujade's lack of credibility and connection to Defendants' fraud

and given the further delay in proceeding with the TRO/PI's expedited discovery.

Id. Finally, the court found that the public interest "lies in uncovering the extent of Defendants' fraud and seizing as much of their assets as possible for restitution for the victims, and cessation of fraud on the public." *Id.*

On December 23, 2019, Poujade sought from this Court a stay only of Section 2(k)'s requirement that Poujade produce communications between him, the Cardiffs, and their business associates.⁴

ARGUMENT

To justify a stay, Poujade bears the burden to show that: (1) he is likely to succeed on the merits of his appeal; (2) he will be irreparably injured absent a stay; (3) issuance of a stay will not substantially injure other parties interested in the proceeding; and (4) the public interest favors a stay. *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012). The third and fourth factors may be considered together where, as here, the government is the opposing party. *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011). With respect to the first two factors, Poujade must meet the "bedrock requirement" of showing "that irreparable harm is

⁴ Although Poujade's Stay Motion argues that the district court abused its discretion in ordering him to transfer \$1.56 million (Canadian) to the receiver and finding that he had purged his contempt in making the transfer, Mot. 9-11, he does not request any relief related to that argument. The FTC therefore will not address the argument here, but does not waive its right to respond if Poujade pursues the issue in his merits brief.

probable," and a stay "must be denied" if he fails to carry that burden. *Id.* at 965, 968 (emphasis added). And unless Poujade demonstrates that the "balance of hardships tips sharply in his favor," he must also establish "a strong likelihood of success" on the merits. *Id.* at 970. Poujade fails to meet his burden on any of those factors.

A. Poujade Has Not Established a Likelihood of Success on the Merits

This Court reviews a district court's civil contempt order for abuse of discretion. *See Kelly v. Wengler*, 822 F.3d 1085, 1094 (9th Cir. 2016). A similarly deferential standard of review applies to a district court's management of its docket. *See In re Eisen*, 31 F.3d 1447, 1452 (9th Cir. 1994). Poujade has come nowhere close to that exacting standard in either of his two claims of error.

1. Poujade is Very Unlikely to Show that the District Court Abused its Discretion in Finding Poujade in Contempt for Noncompliance with the TRO/PI's Expedited Discovery Provision

The district court held Poujade in contempt for violating the TRO/PI's expedited discovery provisions, under which the FTC issued its April 10, 2019, subpoena. ECF 237 at 6, ECF 248 at 6-7. Poujade claims that was an abuse of discretion because he violated no order. In his view, the expedited discovery order could have been violated only if the FTC moved to compel compliance with its subpoena, which it did not do even though Poujade objected to it. Mot. 11-13. In

reality, the expedited discovery order could be enforced whether or not the FTC filed a motion to compel, and Poujade has little likelihood of success on this issue.

The expedited discovery provision authorized the FTC to pursue discovery via a Fed. R. Civ. P. 45 subpoena. ECF 59 at 35. At the same time, the TRO/PI stated that “[a]ny expedited discovery taken pursuant to this Section is in addition to, and is not subject to, the limits on discovery set forth in the Federal Rules of Civil Procedure and the Local Rules of this Court.” *Id.* at 36. Thus, Poujade is wrong that the district court “disregarded Federal Rule of Civil Procedure 45,” which governs motions to compel. Mot. 12. Under the express terms of the order, Rule 45 did not apply, and the expedited discovery provision was therefore enforceable directly via contempt. The district court properly held that Poujade’s failure to respond to the FTC’s subpoena constituted contempt because “[a]ny failure to provide such discovery is a violation of the TRO and PI.” ECF 237 at 6.

See also In re Contempt Finding in United States v. Stevens, 663 F.3d 1270, 1272, 1274 (D.C. Cir. 2011) (contempt order requiring compliance with a court order for document production “is a classic use of civil contempt”).

In any event, the FTC’s show-cause motion essentially functioned as a motion to compel—indeed, in the context of the FTC’s April 10, 2019, subpoena, the district court referred to the FTC’s show-cause motion as a “Motion to Compel” (ECF 237 at 6)—and Poujade was able to, and did, raise his objections

just as he would have in an ordinary motion to compel. *See* ECF 148-4 (Poujade response to FTC motion attaching objections). In its contempt ruling, the district court addressed Poujade’s specific objections (*see, e.g.*, ECF 148-4 at 9-10) such as the relevancy of the discovery and the existence of privileged documents. On relevancy, the court noted that “communications between Defendants and Mr. Poujade, as well as Mr. Poujade’s business associates, are relevant to the FTC’s investigation of whether the Defendants remain involved in True Pharmastrip.” ECF 237 at 6 (citing ECF 226-1 at 43-44). On privilege, the court stated that “[t]o the extent any documents are privileged, the rules governing discovery set forth an established procedure for seeking to withhold.” ECF 248 at 7 n.1.

2. The Order to Produce Communications Is Not a Criminal Sanction

Poujade next claims that Section 2(k) is an abuse of discretion because it is a punitive sanction for criminal contempt and was imposed without procedural safeguards. Mot. 14-15. The claim fails because Section 2(k) simply enforces the district court’s own orders, *i.e.*, the TRO and PI, and therefore is civil.

“Civil contempt seeks “only to coerce the defendant to do what a court had previously ordered him to do.” *Turner v. Rogers*, 564 U.S. 431, 441 (2011) (cleaned up). “[O]nce a civil contemnor complies with the underlying order, he is purged of the contempt and is free.” *Id.* (cleaned up). He “carries the keys of his prison in his own pockets.” *Hicks v. Freick*, 485 U.S. 624, 633 (1988) (cleaned up).

Under these standards, Section 2(k) is clearly within the district court's civil contempt authority. First, as the district court concluded, the communications required to be produced under Section 2(k) "fall within the scope of the Court's Preliminary Injunction." ECF 248 at 6. Poujade does not show otherwise, but merely claims, without support, that "the communications ordered under that paragraph go far beyond the expedited discovery authorized by the TRO." Mot. 15. The district court addressed this claim directly:

The Preliminary Injunction permitted limited expedited discovery to discover the nature, location, status, and extent of Defendants' Assets, or compliance with the Preliminary Injunction. (Preliminary Injunction, ECF No. 59, at 35.) Paragraph 2(k) orders production of communications between Mr. Poujade, Defendants, and business associates of True Pharmastrip. These communications are relevant to determine the extent of Defendants' involvement with True Pharmastrip. The existence of such involvement is evidenced by Jason Cardiff's communications with Mr. Poujade, and Mr. Poujade's role as Chief Executive Officer of True Pharmastrip. As stated during the August 27 hearing, and noted again in the Court's Order Overruling Objections, communications between Mr. Poujade and his business associates are relevant to the FTC's investigation as to whether and to what extent Defendants remain involved in True Pharmastrip. (Order Overruling Objections 6 (citing 8-27 Tr. at 33-34).)

ECF 248 at 6-7.⁵ In short, Section 2(k) obligates Poujade to do what the TRO/PI required him to do, which is "a classic use of civil contempt." *Stevens*, 663 F.3d at 1274.

⁵ The district court reasoned that "[t]he Court's credibility finding renders the documents even more critically important to revealing the actions of Defendants

Second, Poujade had the power to purge himself of his contempt by simply producing the documents required under Section 2(k). The district court provided Poujade thirty days to produce the documents. ECF 238 at 7.⁶ The district court also found that he failed to do so with no explanation. *See* ECF 248 at 4. Poujade’s own failure—indeed, refusal—cannot transform Section 2(k) into criminal contempt.

B. Poujade Fails To Show Irreparable Injury

Poujade’s claim of irreparable harm does not even approach the showing of “probable” irreparable harm required for a stay. *Leiva-Perez*, 640 F.3d at 965. He first claims (Mot. 16) that he will be irreparably harmed by the “substantial graduated monetary sanctions and coercive incarceration” identified by the district court in § 4 of the Contempt Purge Order. But the monetary sanctions are not self-executing. They take effect only if Poujade fails to comply, the FTC returns to court, and the court decides to impose the coercive sanctions. Poujade’s noncompliance is all that has happened so far.

with respect to True Pharmastrip, via the actions of Mr. Poujade.” ECF 248 at 7. Therefore, even in the absence of a subpoena, the district court had independent authority to order production of communications covered by Section 2(k).

⁶ The district court also set forth monetary sanctions if Poujade did not comply within thirty days. ECF 238 at 7. Poujade has not asked for a stay of the sanctions provision and, in any event, the district court has not yet considered whether to impose them.

Moreover, the sanctions amount only to a financial injury, which “will not constitute irreparable harm if adequate compensatory relief will be available in the course of litigation.” *Goldie’s Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 471 (9th Cir. 1984) (citing *Sampson v. Murray*, 415 U.S. 61, 90 (1974)). Here, in the unlikely event that Poujade prevails on appeal, the district court could easily restore to him any money he paid, which will have been deposited in the court’s registry.

As for incarceration, Poujade makes no showing that such an outcome is probable, nor could he. The district court merely stated that it “may, in its discretion, revisit Mr. Poujade’s sanctions and later order coercive incarceration if a monetary sanction proves ineffective in securing Poujade’s compliance with the Court’s orders.” ECF 238 at 7-8. Incarceration is a speculative possibility at best, well below the required showing for irreparable harm.

Poujade next asserts the very production of the documents required by Section 2(k) represents irreparable injury. Mot. 16-17. That is not the case for several reasons.

First, production of documents in response to a court order is not irreparable because the documents may be returned if the order is reversed. See *Wang v. United States*, 2010 WL 55850, at *1 (W.D. Wash. Jan. 4, 2010); *Doe v. United States*, 2012 WL 78586, at *5 (N.D. Cal. Jan. 10, 2012). And the Supreme Court

has found that the return of documents improperly produced remediates any injury.

See, e.g., Mohawk Indus. v. Carpenter, 588 U.S. 100, 108-09 (2009).

Second, Poujade claims that Section 2(k) requires him to produce “all communications with his brother from October 12, 2018, to October 29, 2019,” including conversations concerning family medical emergencies implicating privacy concerns. Mot. 16. Even if Poujade had attempted to show that production of such materials in litigation discovery could constitute irreparable harm, however, that concern is overblown.

The district court has explained that Section 2(k) covers documents responsive to the FTC’s subpoena; documents needed to discover the nature, location, status, and extent of Defendants’ Assets, or compliance with the Preliminary Injunction; communications between Poujade, Defendants, and business associates of True Pharmastrip to determine the extent of Defendants’ involvement with True Pharmastrip; and documents revealing the actions of Defendants with respect to True Pharmastrip, via the actions of Poujade. ECF 248 at 6-7. To the extent text message or email strings include the kind of communications Poujade deems “private,” the protective order to which their production (ECF 219) is subject will protect him. *See Mohawk Indus.*, 558 U.S. at 112. Poujade has not shown otherwise. Moreover, given the likelihood that a single text message or email string could include both responsive communications and

unresponsive communications, they should be produced, rather than allowing Poujade, who the district court has found is not credible, to decide which ones will be produced.

Third, Poujade asserts that Section 2(k) would require the production of confidential business information and that the protective order to which the documents would be subject would not safeguard “confidential business information and potential trade secrets of a new company entering into the emerging market of legal cannabis products.” Mot. 17. Poujade, however, neither shows that such confidential information would need to be produced nor that the protective order would be inadequate. Confidential business information is routinely disclosed in litigation discovery. Indeed, the FTC routinely receives and reviews confidential business information from companies and has statutory obligations to protect from public disclosure. *See* 15 U.S.C. §§ 18a(h), 57b-2. We are unaware of any incident involving the disclosure of such material.

Finally, Poujade wrongly maintains that Section 2(k) would require production of documents subject to the attorney-client privilege. Mot. 17. That is wrong. As the district court made clear, any documents that are legitimately privileged may be withheld and listed on a privilege log. *See* ECF 248 at 7 n.1.

C. Harm to Other Parties and the Public Interest Weigh Against a Stay

As noted at the outset, where the government is the party opposing the stay, the questions of harm to other parties and the public interest may be considered together. *See p. 11 supra.* Poujade has not shown that these factors favor a stay.

Poujade begins by accusing the FTC of abusive discovery and claiming that such conduct is inequitable, thus counseling in favor of a stay.⁷ Mot. 17; *see also* Mot. 19. According to him, the FTC substantially burdened Poujade by serving him in his individual capacity rather than serving discovery on True Pharmastrip. Mot. 17. It is not inequitable, however, to require Poujade to respond to discovery, even if it means production of True Pharmastrip documents in his possession, custody, or control. Poujade is personally bound by the TRO/PI, *see p. 3 supra* and Fed. R. Civ. P. 65(d)(C), which he does not dispute. Moreover, he is currently CEO of True Pharmastrip, as well as a director of and investor in the company. Given the allegations and evidence of his close relationship with the Defendants and their fraud, *see ECF 248 at 8*, it is entirely appropriate to look to him for discovery, including materials attributable to True Pharmastrip.

⁷ Poujade also accuses the FTC of having “slipped in” Section 2(k) when submitting a proposed order to the district court following contempt proceedings. Mot. 20. Far from slipping the provision in, the FTC openly urged the district court to include it, *see ECF 180 at 1, ECF 212, and ECF 225-1*, and Poujade had ample opportunity to respond, *see ECF 192, ECF 226*.

Poujade's arguments regarding injury to the FTC and the public interest largely rehash claims that the FTC has already addressed. *See* Mot. 18 (FTC never subpoenaed communications covered by Section 2(k), which fall outside the expedited discovery provision of the TRO/PI); Mot. 19 (FTC engaged in abusive discovery and failed to file a motion to compel). One critical concern he has not addressed, however, is his own responsibility for convincing the district court to hold him in contempt and for the harm to the public interest. Based on Poujade's numerous pleadings and his live testimony, the district court concluded that he had lied to and perpetuated a fraud on the court and acted to "advance[] the interest of the Cardiffs to the detriment of the public, government agencies, the receiver, and the Court." ECF 188-1, Tr. 390:18 to 391:1. Further, the district court concluded that a stay would harm the public interest "in uncovering the extent of Defendants' fraud and seizing as much of the assets as possible for restitution to the public." ECF 248 at 8. This Court's conclusion should be no different.

CONCLUSION

The Court should deny Poujade's motion for a limited stay pending appeal.

Respectfully submitted,

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January 9, 2020

COMBINED CERTIFICATES

I certify that the foregoing motion complies with Federal Rule of Appellate Procedure 27(d)(2)(A), in that it contains 5,193 words.

I further certify that on the 9th day of January, 2020, an electronic copy of the foregoing opposition was filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system and that service will be accomplished via that system.

January 9, 2020

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