



1 Motion.

2 **I. BACKGROUND**

3 On July 21, 2017, Plaintiff filed its Complaint  
4 [1]. Plaintiff then filed a Motion for Preliminary  
5 Injunction on August 1, 2017 [11]. The Court granted  
6 Plaintiff's Motion for Preliminary Injunction on  
7 September 28, 2017 [45].

8 On November 9, 2017, Defendants Morrison Knudsen  
9 Corporation, Morrison Knudsen Company, Inc., Morrison  
10 Knudsen Services, Inc., and Morrison Knudsen  
11 International Inc. (collectively, "Defendants") filed  
12 the Declaration of Mike Johnson [62], outlining their  
13 compliance with the Court's Preliminary Injunction  
14 Order. According to Mr. Johnson's Declaration, he  
15 directed his staff to change the name of each corporate  
16 defendant to MK instead of Morrison Knudsen. Decl. of  
17 Mike Johnson re Compliance ¶¶ 4-5, ECF No. 62.

18 On November 28, 2017, Plaintiff filed its first  
19 Motion for Civil Contempt [64]. The Court granted  
20 Plaintiff's first Motion for Civil Contempt on January  
21 11, 2018 and ordered Defendants to change the names of  
22 their corporate entities to comply with the Court's  
23 Preliminary Injunction Order. Order re Pl.'s Mot. for  
24 Civil Contempt 13:7-10, ECF No. 86. The Contempt Order  
25 also ordered Defendants to pay a daily fine of \$500  
26 until Defendants filed an affidavit outlining their  
27 compliance with the Court's Contempt Order. Id. at  
28 13:10-14.

1 On January 12, 2018, Defendants filed an affidavit  
2 informing the Court that they had filed certificates of  
3 amendment changing their corporate names to Majestic  
4 Corporation, Majestic Company Inc., Majestic Services  
5 Inc., and Majestic International Inc. Decl. of Mike  
6 Johnson in Supp. of Defs.' Opp'n to Pl.'s Mot. for  
7 Contempt ("Johnson Decl.") ¶ 5, ECF No. 107-1. While  
8 the Nevada Secretary of State approved Majestic  
9 Services Inc., on February 1, 2018, Defendants received  
10 rejections from the Nevada Secretary of State for the  
11 other three names due to unavailability. Id. ¶ 6.

12 After Plaintiff filed supplemental briefing  
13 regarding its attorneys' fees incurred in connection  
14 with Plaintiff's first Motion for Civil Contempt, the  
15 Court granted Plaintiff's request for attorneys' fees  
16 on February 16, 2018 and ordered Defendants to pay  
17 Plaintiff \$21,815.80 within twenty-one days.<sup>1</sup> Order re  
18 Pl.'s Req. for Att'ys' Fees 4:28-5:5, ECF No. 97.

19 On February 23, 2018, Defendants faxed certificates  
20 of amendment to the Nevada Secretary of State changing  
21 Morrison Knudsen Corporation to International Majestic  
22 Corporation, Morrison Knudsen Company, Inc. to  
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24 <sup>1</sup> Defendants did not pay Plaintiff the fee award within the  
25 twenty-one-day deadline. Plaintiff's counsel contacted  
26 Defendants' counsel after the deadline passed, and Defendants'  
27 counsel responded that Defendants were unable to pay the fee  
28 award. Decl. of Yungmoon Chang in Supp. of Pl.'s Mot. for  
Contempt ("Chang Decl.") ¶ 10, Ex. 6 at 41, ECF No. 105. To  
date, Defendants still have not paid Plaintiff the fee award or  
provided a reason for failing to do so.

1 International Majestic Company Inc., and Morrison  
2 Knudsen International Inc. to International Majestic  
3 Inc. Johnson Decl. ¶ 7, Ex. C. After not receiving  
4 any word from the Nevada Secretary of State, on March  
5 8, 2018, Mr. Johnson contacted the Secretary of State,  
6 which informed Mr. Johnson that it had not received the  
7 name change requests. Id. ¶ 8. Defendants then resent  
8 the certificates of amendment to the Nevada Secretary  
9 of State on March 12, 2018. Id. ¶ 9. On March 22,  
10 2018, Defendants received the Nevada Secretary of  
11 State's denial of these name changes due to  
12 unavailability. Id. ¶ 10.

13 On March 26, 2018, Defendants submitted  
14 certificates of amendment changing Morrison Knudsen  
15 Corporation to Northern Majestic Corporation, Morrison  
16 Knudsen Company, Inc. to Northern Majestic Company  
17 Inc., and Morrison Knudsen International Inc. to  
18 Northern Majestic International Inc. Id. ¶ 11, Ex. F.  
19 The Nevada Secretary of State accepted the name change  
20 of Morrison Knudsen International Inc. to Northern  
21 Majestic International Inc. on March 29, 2018, but  
22 rejected the other two name changes. Pl.'s Reply in  
23 Supp. of Mot. for Contempt ("Reply") 4:12-14, ECF No.  
24 108.

25 On March 27, 2018, Plaintiff filed the instant  
26 Motion [103]. On April 4, 2018, the day after  
27 Defendants filed their Opposition [107] to Plaintiff's  
28 Motion, Defendants filed certificates of amendment for

1 the remaining two corporate Defendants. Second Decl.  
2 of Mike Johnson in Supp. of Defs.' Opp'n ("Second  
3 Johnson Decl.") ¶ 4, ECF No. 115. On April 10, 2018,  
4 Defendants received confirmation that Morrison Knudsen  
5 Corporation was changed to Goodbrand Corporation and  
6 Morrison Knudsen Company, Inc. was changed to Goodbrand  
7 Company Inc. Id. ¶ 5, Ex. B.

8 On April 17, 2018, one week after filing its Reply  
9 [108] in support of its Motion, Plaintiff filed the  
10 Supplemental Declaration of Yungmoon Chang [114]  
11 providing new evidence to the Court in support of  
12 Plaintiff's Motion. This new evidence included a  
13 website allegedly created by Defendants, which mirrored  
14 the website the Court previously ordered Defendants to  
15 take down.<sup>2</sup> Chang Suppl. Decl. ¶ 10. Defendants then  
16 responded on April 20, 2018 with the Second Declaration  
17 of Mike Johnson [115] in support of Defendants'  
18 Opposition to Plaintiff's Motion. Mr. Johnson declared  
19 that he was not aware of the morrison-knudsen.net  
20 website but that he had Defendants' IT department take  
21 the website down on April 17, 2018. Second Johnson  
22 Decl. ¶ 6.

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26 <sup>2</sup> The new website is [www.morrison-knudsen.net](http://www.morrison-knudsen.net), while the  
27 website the Court ordered Defendants to take down was  
28 [www.morrison-knudsen.com](http://www.morrison-knudsen.com). Suppl. Decl. of Yungmoon Chang ("Chang  
Suppl. Decl.") ¶ 3, Ex. A, ECF No. 114.



1 is remedial. Id.

2 "Sanctions for civil contempt may be imposed to  
3 coerce obedience to a court order, or to compensate the  
4 party pursuing the contempt action for injuries  
5 resulting from the contemptuous behavior, or both."  
6 Gen. Signal Corp. v. Donallco, Inc., 787 F.2d 1376,  
7 1380 (9th Cir. 1986). Accordingly, there are two types  
8 of civil contempt sanctions: compensatory and coercive.  
9 Falstaff Brewing Corp. v. Miller Brewing Co., 702 F.2d  
10 770, 778 (9th Cir. 1983). "Compensatory sanctions are  
11 intended to compensate the aggrieved party for 'actual  
12 loss' resulting from the contemnor's noncompliance."  
13 HM Elecs., Inc. v. R.F. Techs., Inc., No.  
14 12-CV-2884-MMA (JLB), 2014 WL 12059031, at \*3 (S.D.  
15 Cal. Apr. 18, 2014)(citing In re Crystal Palace  
16 Gambling Hall, Inc., 817 F.2d 1361, 1366 (9th Cir.  
17 1987)). Coercive sanctions are "intended to coerce the  
18 contemnor to comply with the court's orders in the  
19 future." Richmark Corp. v. Timber Falling Consultants,  
20 959 F.2d 1468, 1481 (9th Cir. 1992).

21 **B. Analysis**

22 1. Civil Contempt

23 a. *Failure to Change Corporate Names*

24 To succeed on its Motion, Plaintiff must first  
25 prove by clear and convincing evidence that Defendants  
26 violated the Court's Order. See In re Dual-Deck, 10  
27 F.3d at 695. In its Motion, Plaintiff argues that  
28 Defendants have not complied with the Court's

1 Preliminary Injunction Order because two of the  
2 corporate Defendants continue to use the Morrison  
3 Knudsen name. However, this is no longer true; none of  
4 the corporate Defendants currently use the Morrison  
5 Knudsen name.<sup>3</sup> Accordingly, Defendants are in  
6 compliance with that particular directive in the  
7 Court's Preliminary Injunction Order.

8 It should be noted, however, that Defendants' delay  
9 in complying with the Court's Orders regarding changing  
10 the corporate Defendants' names was inappropriate.  
11 While Defendants may have needed to wait to hear back  
12 from the Nevada Secretary of State regarding whether  
13 Defendants' name changes were accepted, Defendants fail  
14 to provide any reason for the two separate five-week  
15 delays between the Nevada Secretary of State rejecting  
16 the name change requests and Defendants filing  
17 subsequent name change requests.<sup>4</sup> It took Defendants  
18 over six months to change the names of all four of the

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19  
20 <sup>3</sup> Defendants changed Morrison Knudsen Services, Inc. to  
21 Majestic Services Inc. on January 29, 2018. Chang Decl. ¶ 8, Ex.  
22 4 at 5. Morrison Knudsen International Inc. became Northern  
23 Majestic International Inc. on March 29, 2018. Reply 4:12-14.  
24 On April 10, 2018, Defendants received confirmation that Morrison  
25 Knudsen Corporation was changed to Goodbrand Corporation and  
26 Morrison Knudsen Company, Inc. was changed to Goodbrand Company  
27 Inc. Second Johnson Decl. ¶ 5, Ex. B.

28 <sup>4</sup> Defendants received rejections from the Nevada Secretary  
of State on December 5, 2017 and waited until January 12, 2018,  
after the Court granted Plaintiff's first Motion for Civil  
Contempt, to file revised certificates of amendment. Defendants  
again received rejections from the Nevada Secretary of State on  
February 1, 2018 and waited until March 12, 2018 to file revised  
certificates of amendment.

1 corporate Defendants.<sup>5</sup> Such delay does not sit well  
2 with the Court, and future unexplained delays will not  
3 be easily forgiven. Ultimately, because Defendants  
4 have changed their corporate names to no longer include  
5 Morrison Knudsen, they are not in contempt of that  
6 portion of the Court's Preliminary Injunction Order.  
7 The Court **DENIES** Plaintiff's Motion as to this instance  
8 of alleged contempt.

9 b. *Defendants' Websites*

10 Plaintiff also provides evidence of two instances  
11 of contempt regarding Defendants' use of websites  
12 related to the Morrison Knudsen brand. The first  
13 instance involves one subpage of morrison-knudsen.com,  
14 <http://morrison-knudsen.com/author/admin/>, which was  
15 still active as of mid-March. See Chang Decl. ¶ 12,  
16 Ex. 7. According to Mr. Johnson's Declaration, he was  
17 unaware this subpage was still active and such page  
18 could only be accessed by typing the exact subpage  
19 address into the address bar. Johnson Decl. ¶ 14. Mr.  
20 Johnson has since had the page removed. Id. "If a  
21 violating party has taken 'all reasonable steps' to  
22 comply with the court order, technical or inadvertant  
23 [sic] violations of the order will not support a  
24 finding of civil contempt." Gen. Signal Corp., 787  
25 F.2d at 1379 (citations omitted). Here, Defendants  
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27 <sup>5</sup> Of note, Plaintiff had to file two motions for contempt  
28 before Defendants finally changed all four of the corporate  
Defendants' names.

1 substantially complied with the Court's Order to take  
2 down the morrison-knudsen.com website, so this  
3 technical violation, which includes one subpage of a  
4 website, cannot alone support a finding of civil  
5 contempt.

6       The second instance involves an entire website  
7 similar in look and form to the website Defendants  
8 previously utilized, morrison-knudsen.com. Plaintiff  
9 discovered this new website, morrison-knudsen.net, just  
10 days after filing its Reply in support of its Motion,  
11 and Plaintiff subsequently filed the Supplemental  
12 Declaration of Yungmoon Chang to inform the Court of  
13 this new evidence. The website essentially serves the  
14 exact same purpose as Defendants' prior  
15 website—outlining the history of the Morrison Knudsen  
16 brand, offering for sale construction equipment with  
17 the Morrison Knudsen mark, and holding themselves out  
18 as Morrison Knudsen. See Chang Suppl. Decl., Ex. A.  
19 Such a website is a blatant and egregious violation of  
20 the Court's Preliminary Injunction Order, which  
21 specifically prohibited Defendants from using a  
22 Morrison Knudsen domain name and "making any statement  
23 . . . likely to lead members of the public to believe  
24 . . . Defendants . . . [are] associated . . . [with]  
25 the MK brand." Order re Pl.'s Mot. for Prelim. Inj.  
26 27:8-19, ECF No. 45.

27       In response to Plaintiff's newly discovered  
28 evidence, Defendants filed the Second Declaration of

1 Mike Johnson, in which Mr. Johnson testified that he  
2 was unaware of the morrison-knudsen.net website prior  
3 to Plaintiff bringing it to the Court's attention.  
4 Second Johnson Decl. ¶ 6. Nonetheless, Mr. Johnson  
5 instructed Defendants' IT department to take down the  
6 website, which now currently states "under  
7 construction." Id. The Court finds it highly suspect  
8 that Defendants were not aware of the morrison-  
9 knudsen.net website when Mr. Johnson was able to so  
10 easily have Defendants' IT department take down the  
11 website. However, the website is no longer active, and  
12 Plaintiff has not offered any further evidence of  
13 contempt with regard to any Morrison Knudsen-related  
14 website that Defendant operates. Therefore, there is  
15 no clear and convincing evidence that Defendants are  
16 *currently* in contempt of the section of the Court's  
17 Preliminary Injunction Order covering a Morrison  
18 Knudsen website. See also Buildex Inc. v. Kason  
19 Indus., Inc., 849 F.2d 1461, 1463 (Fed. Cir. 1988)  
20 ("Although not susceptible to precise definition, clear  
21 and convincing evidence has been described as evidence  
22 which produces in the mind of the trier of fact an  
23 abiding conviction that the truth of [the] factual  
24 contentions are highly probable." (internal quotation  
25 marks and quotation omitted)). The Court **DENIES**  
26 Plaintiff's Motion related to contempt based on  
27 Defendants' websites. Defendants are warned that any  
28 further issues with Morrison Knudsen-related websites

1 that are so clearly in violation of the Court's  
2 Preliminary Injunction Order may result in harsh  
3 contempt sanctions, including, as Plaintiff requests,  
4 the striking of Defendants' Answer.

5 c. *Failure to Pay Attorneys' Fees*

6 Finally, Plaintiff argues that Defendants have  
7 failed to pay the attorneys' fees the Court awarded  
8 Plaintiff in connection with Plaintiff's first Motion  
9 for Contempt. Mot. 3:20-25. On February 16, 2018, the  
10 Court awarded Plaintiff \$21,815.80 in attorneys' fees  
11 and gave Defendants twenty-one days to make the payment  
12 to Plaintiff. Order re Pl.'s Req. for Att'ys' Fees  
13 4:28-5:5. Following the expiration of this twenty-one-  
14 day deadline, before which Defendants did not make the  
15 payment to Plaintiff, Plaintiff's counsel contacted  
16 Defendants' counsel and Defendants' counsel indicated  
17 that Defendants did not have the ability to pay. Chang  
18 Decl. ¶ 10, Ex. 6 at 41. However, in their Opposition,  
19 Defendants do not make any argument regarding their  
20 ability to pay the attorneys' fees award. The only  
21 argument they offer is that finding Defendants in  
22 contempt is not the proper remedy; instead, Plaintiff  
23 should have the award reduced to a judgment. Opp'n  
24 6:19-21.

25 First, "[u]se of the contempt power is an  
26 appropriate way to enforce a sanction for misconduct,  
27 which is not an ordinary money judgment." Cleveland  
28 Hair Clinic, Inc. v. Puig, 106 F.3d 165, 166 (7th Cir.

1 1997). Sanctions for misconduct include attorneys'  
2 fees incurred by the moving party in obtaining the  
3 contempt finding, and therefore, the Court can use its  
4 contempt power to enforce its prior award of attorneys'  
5 fees. See S.E.C. v. Amerifirst Funding, Inc., No.  
6 3:07-CV-1188-D, 2008 WL 5191896, at \*4 (N.D. Tex. Dec.  
7 11, 2008).

8 Second, Defendants have failed to prove they are  
9 unable to pay the attorneys' fee award. "[T]he burden  
10 is on the party against whom contempt is sought to show  
11 'categorically and in detail' why the party is unable  
12 to pay." Facebook, Inc. v. Power Ventures, Inc., No.  
13 08-CV-05780-LHK, 2017 WL 3394754, at \*10 (N.D. Cal.  
14 Aug. 8, 2017) (quoting NLRB v. Trans Ocean Exp.  
15 Packing, Inc., 473 F.2d 612, 616 (9th Cir. 1973)).  
16 Defendants have provided no evidence, or even argument,  
17 for their inability to pay the award of attorneys'  
18 fees. Accordingly, the Court **GRANTS** Plaintiff's Motion  
19 related to Defendants' failure to pay the attorneys'  
20 fee award.

## 21 2. Sanctions

22 Where a court finds a party in contempt, the court  
23 has discretion to impose sanctions. See Gen. Signal  
24 Corp., 787 F.2d at 1380. A district court "may assess  
25 attorneys' fees . . . as part of the fine to be levied  
26 on the defendant." Donovan v. Burlington N., Inc., 781  
27 F.2d 680, 682 (9th Cir. 1986) (internal citation  
28 omitted). Attorneys' fees, "the cost of bringing the

1 violation to the attention of the court[, are] part of  
2 the damages suffered by the prevailing party" and are  
3 thus a compensatory sanction. Cook v. Ochsner Found.  
4 Hosp., 559 F.2d 270, 272 (5th Cir. 1977). Attorneys'  
5 fees and costs may be awarded to the moving party even  
6 if the non-moving party's failure to comply with the  
7 injunction was not willful. See Perry, 759 F.2d at  
8 705.

9 Plaintiff requests that the Court award Plaintiff  
10 its attorneys' fees and costs incurred in filing the  
11 instant Motion. It ultimately took Defendants six  
12 months to comply with the Court's Preliminary  
13 Injunction Order, which required Defendants to remove  
14 Morrison Knudsen from their corporate names. Such  
15 compliance only occurred after Plaintiff filed two  
16 separate contempt motions. Further, Plaintiff tried to  
17 meet and confer with Defendants regarding Defendants'  
18 failure to pay the court-ordered attorneys' fees award,  
19 and Defendants offered nothing other than stating that  
20 they could not pay the award, an argument they  
21 abandoned upon responding to Plaintiff's Motion.  
22 Plaintiff therefore had no choice but to file another  
23 contempt motion. Defendants' litigation tactics and  
24 frequent refusal to comply with the Court's orders have  
25 increased Plaintiff's costs of litigation. See Henry  
26 Schein, Inc. v. Certified Bus. Supply, Inc., No. SA CV  
27 03-1662 DOC, 2008 WL 9452685, at \*9 (C.D. Cal. Aug. 20,  
28 2008) ("[I]t is important that [the defendant] realize

1 the substantial legal expenses [the plaintiff] has  
2 incurred in order to enforce the Injunction." ).  
3 Accordingly, the Court **GRANTS** Plaintiff's request for  
4 its attorneys' fees incurred in filing the instant  
5 Motion.

6 **III. CONCLUSION**

7 Based on the foregoing, the Court **GRANTS in part**  
8 and **DENIES in part** Plaintiff's Motion. Plaintiff's  
9 counsel is **ORDERED** to submit a supplemental filing,  
10 including declarations, setting forth the amount of  
11 attorneys' fees and costs Plaintiff incurred in filing  
12 the instant Motion. These papers shall be submitted no  
13 later than Friday, May 18, 2018. Defendants may then  
14 file an opposition to Plaintiff's supplemental filing  
15 by May 25, 2018, and Plaintiff may file a reply in  
16 support of its filing by June 1, 2018. Upon receiving  
17 these papers, the Court will determine what amount of  
18 fees and costs is reasonable.

19 **IT IS SO ORDERED.**

20  
21 DATED: May 10, 2018

s/ RONALD S.W. LEW

22 **HONORABLE RONALD S.W. LEW**  
23 Senior U.S. District Judge  
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