

1 **FINDS AND RULES AS FOLLOWS:** the Court **GRANTS**
2 Plaintiff's Request in full and awards Plaintiff the
3 \$32,874.00 in attorneys' fees incurred in connection
4 with its Motion for Further Contempt.

5 **I. BACKGROUND**

6 Plaintiff filed a Motion for Preliminary Injunction
7 [11] on August 1, 2017, which the Court granted on
8 September 28, 2017 [45]. On November 28, 2017,
9 Plaintiff filed its first Motion for Contempt [64].
10 The Court granted Plaintiff's first Motion for Contempt
11 on January 11, 2018 and ordered Defendants Morrison
12 Knudsen Corporation, Morrison-Knudsen Company, Inc.,
13 Morrison-Knudsen International Inc., Morrison-Knudsen
14 Services, Inc., and Gary Topolewski (collectively,
15 "Defendants")¹ to change the names of their corporate
16 entities to comply with the Court's Preliminary
17 Injunction Order. Order re Mot. for Civil Contempt
18 ("Order re First Mot.") 13:7-10, ECF No. 86.

19 After Plaintiff filed supplemental briefing
20 regarding its attorneys' fees incurred in connection
21 with Plaintiff's first Motion for Contempt, the Court
22 granted Plaintiff's request for attorneys' fees on
23 February 16, 2018 and ordered Defendants to pay
24 Plaintiff \$21,815.80 within twenty-one days of the
25 Order. Order re Pl.'s Req. for Att'ys' Fees 4:28-5:5,
26

27 ¹ Plaintiff also filed this Action against Defendants Bud
28 Zukaloff, John Ripley, Todd Hale, and Henry Blum. The Clerk
entered default against these defendants on December 4, 2017.

1 ECF No. 97. To date, Defendants still have not paid
2 Plaintiff the fee award or provided a reason for
3 failing to do so.

4 On March 27, 2018, Plaintiff filed its Motion for
5 Further Contempt [103]. On May 10, 2018, the Court
6 granted in part and denied in part Plaintiff's Motion
7 for Further Contempt [119]. The Court denied the
8 Motion in part, noting that Defendants had changed the
9 four corporations' names and taken down the website at
10 the time of the ruling. Order re Pl.'s Mot. for
11 Further Civil Contempt ("Order re Mot. for Further
12 Contempt") 11:14-18, ECF No. 119. However, the Court
13 granted the Motion for Defendants' failure to pay
14 attorneys' fees in connection with Plaintiff's first
15 Motion for Contempt. Id. at 12:6-9. The Court also
16 awarded Plaintiff attorneys' fees incurred in filing
17 the Motion for Further Contempt. Id. at 15:3-5.

18 Plaintiff filed the instant Request [124] on May
19 18, 2018. Defendants filed an Opposition [127] on May
20 25, 2018. Plaintiff then filed its Reply [137] on June
21 1, 2018.

22 II. DISCUSSION

23 A. Legal Standard

24 "[A]ttorneys' fees in a civil contempt proceeding
25 are limited to those reasonably and necessarily
26 incurred in the attempt to enforce compliance." Abbott
27 Labs. v. Unlimited Beverages, Inc., 218 F.3d 1238, 1242
28 (11th Cir. 2000). Courts employ the "lodestar method"

1 to determine the reasonableness of the requested
2 attorneys' fees. Hensley v. Eckerhart, 461 U.S. 424,
3 433 (1983). "The 'lodestar' is calculated by
4 multiplying the number of hours the prevailing party
5 reasonably expended on the litigation by a reasonable
6 hourly rate." Ferland v. Conrad Credit Corp., 244 F.3d
7 1145, 1149 n.4 (9th Cir. 2001) (quotation omitted).

8 **B. Analysis**

9 1. Apportionment

10 Defendants argue that the Court should apportion
11 the attorneys' fees award, granting fees only for time
12 spent on the successful section of Plaintiff's Motion
13 for Further Contempt—Defendants' failure to pay
14 attorneys' fees awarded in connection with Plaintiff's
15 first Motion for Contempt—and not for time spent on the
16 unsuccessful sections of the Motion—Defendants' failure
17 to change corporate names and Defendants' websites
18 related to the Morrison Knudsen brand. See Defs.'
19 Opp'n to Pl.'s Suppl. Filing ("Opp'n") 2:4-11, ECF No.
20 127.

21 The Ninth Circuit has held that "a plaintiff who is
22 unsuccessful at a stage of litigation that was a
23 necessary step to her ultimate victory is entitled to
24 attorney's fees even for the unsuccessful stage."
25 Cabrales v. Cty. of L.A., 935 F.2d 1050, 1053 (9th Cir.
26 1991). Further, district courts have granted
27 attorneys' fees for an unsuccessful contempt motion if
28 the motion was necessary to bring a non-compliant

1 party's violations to the court's attention and enforce
2 a court's ruling. See Facebook, Inc. v. Power
3 Ventures, Inc., No. 08-CV-05780-LHK, 2017 U.S. Dist.
4 LEXIS 125541, at *47 (N.D. Cal. Aug. 8, 2017) (granting
5 attorneys' fees request in full for a contempt motion
6 that was denied in part because, at the time of the
7 motion's filing, the defendant was in violation of a
8 court order as alleged in the contempt motion, making
9 it "necessary to bring [that] failure to the Court's
10 attention"); see also Causey v. U.S. Bank Nat'l Ass'n,
11 No. CV-8-3460-MWF (CWx), 2012 U.S. Dist. LEXIS 189923,
12 at *4 (C.D. Cal. Oct. 17, 2012) (awarding attorneys'
13 fees in connection with unsuccessful application to
14 show cause regarding contempt because the defendant
15 "failed to act on the Ninth Circuit[']s . . . order[,]"
16 thus making "the Motion . . . necessary to the ultimate
17 vindication of [the plaintiff's] rights").

18 a. *Corporate Name Changes*

19 Here, Defendants do not dispute that they were not
20 in compliance with the Court's Preliminary Injunction
21 Order at the time Plaintiff filed its Motion for
22 Further Contempt. Instead, Defendants argue that this
23 section of the Motion was unnecessary because "whenever
24 Defendants were made aware of any deficiency complying
25 with the preliminary injunction, they reacted (albeit
26 not always quickly) to the notice and took appropriate
27 action." Opp'n 5:13-15. However, this argument is not
28 compelling because it was Defendants' delayed responses

1 that made Plaintiff's Motion for Further Contempt
2 necessary. It took six months for Defendants to change
3 all four corporate names. This included two separate
4 five-week delays between the Nevada Secretary of State
5 rejecting the name change requests and Defendants
6 filing the subsequent name change requests. During
7 this time, Plaintiff met and conferred with Defendants
8 and even warned that a second contempt motion might be
9 necessary to induce compliance. However, Defendants
10 failed to change all of the corporate names until April
11 10, 2018, one month after the parties' meeting and two
12 weeks after Plaintiff filed its Motion for Further
13 Contempt. Thus, it was necessary for Plaintiff to
14 bring this continuous failure to comply to the Court's
15 attention to induce compliance. See New England Tech.,
16 Inc. v. Sigma Tech Sales, Inc., No. 09-61347-CIV, 2011
17 U.S. Dist. LEXIS 102104, at *4 (S.D. Fla. Sept. 9,
18 2011) ("[W]hen a party's continued violation of a court
19 order requires the opposing party to seek enforcement
20 of the order through a motion for contempt, the
21 resulting attorneys' fees and costs may be assessed
22 against the noncomplying party, even if the court
23 ultimately does not hold that party in contempt.").

24 b. *Website*

25 Defendants also do not dispute that they were not
26 in compliance with the Court's Preliminary Injunction
27 Order regarding Morrison Knudsen websites prior to the
28 Court's ruling on Plaintiff's Motion for Further

1 Contempt. Instead, Defendants argue that this section
2 of the Motion was unnecessary because they acted
3 appropriately and quickly when given notice of their
4 noncompliance. Opp'n 5:13-15. As with Defendants'
5 argument regarding the corporate name changes, this
6 argument is unconvincing. Common sense dictates that
7 such an egregious violation of the Preliminary
8 Injunction Order should be brought to the attention of
9 the Court when it is discovered in the middle of
10 contempt proceedings.

11 Further, Defendants' behavior throughout the course
12 of this litigation gave Plaintiff no reason to believe
13 that any action short of a declaration to the Court
14 regarding the website would have induced Defendants to
15 shut down the website in a timely manner. See Order re
16 Mot. for Further Contempt 8:8-10 (noting Defendants'
17 "inappropriate" delays in complying with the
18 Preliminary Injunction Order throughout the course of
19 this Action). Given Defendants' unwillingness to obey
20 the Court's Orders in a timely manner,² it is clear that
21

22 ² Defendants claim that they were unaware of the website's
23 existence. Putting aside the Court's suspicion of this claim,
24 see Order re Mot. for Further Contempt 11:7-11, this claim is
25 irrelevant to a contempt proceeding, see Henry Schein, Inc. v.
26 Certified Bus. Supply, Inc., No. SA CV 03-1662 DOC (ANx), 2008 WL
27 9452685, at *7 (C.D. Cal. Aug. 20, 2008) (regarding a contempt
28 order, "[defendant is] responsible for all of its employees'
conduct, and it should make sure that methods are firmly in place
to prevent further violations from occurring"). Defendants'
employee was able to quickly take down the website, and
Defendants were under a duty to ensure the website was not
created in the first place.

1 bringing the website to the Court's attention was
2 necessary. See Casale v. Kelly, 710 F. Supp. 2d 347,
3 367 (S.D.N.Y. 2010) ("[E]ven where a court declines to
4 issue a citation of contempt for violations of the
5 court's orders, attorneys' fees and costs may be
6 recoverable where the 'bringing of the action should
7 have been unnecessary and was compelled by . . .
8 unreasonable, obdurate obstinacy.'" (quoting Brown v.
9 Kelly, 05 Cir. 5442 (SAS), 2007 U.S. Dist. LEXIS 39527,
10 at *26 (S.D.N.Y. May 31, 2007))).

11 Accordingly, the Court need not apportion fees
12 because awarding attorneys' fees for the entirety of
13 the Motion for Further Contempt is necessary and
14 justified to compensate Plaintiff for the costs
15 incurred in bringing Defendants' persistent violations
16 to the Court's attention. See Perry v. O'Donnell, 759
17 F.2d 702, 705 (9th Cir. 1985) (regarding a civil
18 contempt motion, "the cost of bringing the violation to
19 the attention of the court is part of the damages
20 suffered"); see also Henry Schein, 2008 WL 9452685, at
21 *9 ("[I]t is important that [the defendant] realize the
22 substantial legal expenses [the plaintiff] has incurred
23 in order to enforce the Injunction.").

24 2. Reasonableness of Time Spent

25 Because the Court has determined no apportionment
26 of fees is necessary, it must next assess "whether
27 attorneys for the prevailing party could have
28 reasonably billed the hours they claim to their private

1 clients." Gonzalez v. City of Maywood, 729 F.3d 1196,
2 1202 (9th Cir. 2013). In doing so, courts perform an
3 "'hour-by-hour analysis of the fee request,' and
4 exclude those hours for which it would be unreasonable
5 to compensate the prevailing party." Id. (quotation
6 omitted).

7 The Court has reviewed Plaintiff's counsel's
8 billing records, which include the time entries for
9 drafting the Motion for Further Contempt and the time
10 spent reviewing and drafting the supplemental
11 declaration regarding Defendants' website. As
12 Plaintiff noted in its Request, Defendants filed a
13 timely Opposition to Plaintiff's Motion for Further
14 Contempt, unlike in Plaintiff's first Motion for
15 Contempt, so Plaintiff's counsel spent more time on the
16 Motion for Further Contempt. Ultimately, the Court
17 does not see any billing entries that are "excessive,
18 redundant, or otherwise unnecessary," see Hensley, 461
19 U.S. at 434, and therefore, the Court finds the 49.3
20 hours billed to be reasonable.

21 3. Reasonableness of Rates

22 Defendants argue that Plaintiff's attorneys'
23 billing rates are unreasonably high. See Opp'n 9:22-
24 23. In Plaintiff's first request for attorneys' fees,
25 the Court held that Plaintiff's rates, "while on the
26 higher end," were "in line with rates courts in the
27 Central District have previously approved." Order re
28 Req. for Att'ys' Fees 4:2-3 (citing Perfect 10, Inc. v.

1 Giganews, Inc., No. CV 11-07098-AB SHX, 2015 WL
2 1746484, at *20 (C.D. Cal. Mar. 24, 2015), aff'd, 847
3 F.3d 657 (9th Cir. 2017); Burton Way Hotels, Ltd. v.
4 Four Seasons Hotels Ltd., No. CV 11-303 PSG (PLAX),
5 2015 WL 13081297, at *3 (C.D. Cal. Jan. 21, 2015)).

6 Plaintiff's counsel's rates remain unchanged from
7 when Plaintiff filed its first request for attorneys'
8 fees. Further, there is no reason to believe that
9 those rates are no longer reasonable. Accordingly, the
10 Court finds that the hourly rates are reasonable and
11 consistent with comparable market rates.

12 **III. CONCLUSION**

13 Based on the foregoing, the Court **GRANTS**
14 Plaintiff's Request in full and awards Plaintiff
15 \$32,874.00 in attorneys' fees related to Plaintiff's
16 Motion for Further Contempt. Defendants are **ORDERED** to
17 pay Plaintiff the fee award within thirty days of the
18 issuance of this Order.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Defendants are also **ORDERED** to pay Plaintiff,
2 within thirty days of the issuance of this Order, the
3 \$21,815.80 in attorneys' fees the Court previously
4 awarded Plaintiff in connection with its first Motion
5 for Civil Contempt.³

6 **IT IS SO ORDERED.**

7
8 DATED: July 3, 2018

s/ RONALD S.W. LEW
HONORABLE RONALD S.W. LEW
Senior U.S. District Judge

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

27 ³ Plaintiff requests that the Court reduce both awards to a
28 judgment. However, a judgment in this matter is premature.
Plaintiff should be able to collect the awards from Defendants
based on this Order.