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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AECOM ENERGY & CONSTRUCTION, INC.,)	2:17-cv-05398-RSWL-SS
Plaintiff,)	
v.)	ORDER RE: PLAINTIFF'S MOTION FOR CIVIL CONTEMPT [64]
)	
JOHN RIPLEY; TODD HALE; GARY TOPOLEWSKI; HENRY BLUM; BUD ZUKALOFF; MORRISON KNUDSEN CORPORATION; MORRISON- KNUDSEN COMPANY, INC.; MORRISON-KNUDSEN SERVICES, INC.; and MORRISON-KNUDSEN INTERNATIONAL INC.,)	
Defendants.)	

Currently before the Court is Plaintiff AECOM Energy and Construction, Inc.'s ("Plaintiff") Motion for Civil Contempt ("Motion") [64]. Having reviewed all papers submitted pertaining to this Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:** the Court **GRANTS** Plaintiff's Motion.

1 **I. BACKGROUND**

2 On July 21, 2017, Plaintiff filed its Complaint
3 [1]. Plaintiff then filed a Motion for Preliminary
4 Injunction on August 1, 2017 [11]. The Court granted
5 Plaintiff's Motion for Preliminary Injunction on
6 September 28, 2017 [45]. In its Order, the Court
7 enjoined Defendants John Ripley; Todd Hale; Gary
8 Topolewski; Henry Blum; Bud Zukaloff; Morrison Knudsen
9 Corporation; Morrison-Knudsen Company, Inc.; Morrison-
10 Knudsen Services, Inc.; and Morrison-Knudsen
11 International (collectively, "Defendants") from:

12 a) using, displaying, or otherwise exploiting
13 the MK trademarks, including MORRISON KNUDSEN and
14 MKCO MORRISON KNUDSEN, in connection with the
15 advertising, distribution, display, sale, or
16 offering for sale of any products or services;

17 b) using the Morrison Knudsen domain name
18 (morrison-knudsen.com) and any associated email
19 addresses;

20 c) making any statement or representation or
21 performing any act likely to lead members of
22 the public to believe that the business
23 Defendants operate at 2049 Century Park East,
24 Suite 3850, Los Angeles, California 90067 is in
25 any manner, directly or indirectly, associated,
26 affiliated or connected with, or licensed,
27 sponsored, authorized or approved by Plaintiff
28 and the MK brand;

29 d) conducting business, including selling any
30 product or service, under the names Morrison-
31 Knudsen Services, Inc.; Morrison Knudsen
32 Corporation; Morrison Knudsen International
33 Inc.; Morrison-Knudsen Company, Inc.; or any
34 other related entities.

35 Order re Pl.'s Mot. for Prelim. Inj. ("Order") 27:3-25,
36 ECF No. 45.

37 The Court's Order also instructed Defendants to
38 file an affidavit, within twenty-one days of Plaintiff

1 posting a \$50,000 bond, detailing the manner in which
2 Defendants complied with the Order. Id. at 28:7-10.
3 Plaintiff posted the \$50,000 bond on October 10, 2017.
4 See ECF No. 54. On November 9, 2017, nine days after
5 the twenty-one-day deadline, Defendants filed the
6 Declaration of Mike Johnson [62], one of their
7 corporate officers. According to Mr. Johnson's
8 Declaration, he directed his staff to change the name
9 of each corporate defendant, and his staff filed four
10 certificates of amendment with the Nevada Secretary of
11 State on October 27, 2017. See Decl. of Mike Johnson
12 ("Johnson Decl.") ¶ 4, ECF No. 62. The certificates of
13 amendment changed the corporate names as follows:

- 14 1. Morrison Knudsen Corporation was changed to MK
15 Corporation;
- 16 2. Morrison Knudsen Company, Inc. was changed to
17 MK Company Inc.;
- 18 3. Morrison Knudsen Services, Inc. was changed to
19 MK Services Inc.;
- 20 4. Morrison Knudsen International Inc. was changed
21 to MK International Inc.¹

22 Id. ¶ 5.

23 On November 28, 2017, Plaintiff filed the instant
24 Motion [64]. Defendants' Opposition was due on

25
26 ¹ According to Defendants, they learned on December 5, 2017
27 that the Nevada Secretary of State had not recorded Defendants'
28 certificates of amendment for these name changes because the
names were not available for use. Defs.' Opp'n to Pl.'s Mot. for
Civil Contempt ("Opp'n") 5:17-19, ECF No. 80.

1 December 19, 2017. After Defendants failed to timely
2 file their Opposition on December 19, 2017, Plaintiff
3 filed its Reply on December 20, 2017 informing the
4 Court of Defendants' failure to timely file their
5 Opposition. See Pl.'s Reply in Supp. of Mot. for Civil
6 Contempt ("Reply") 2:4-8, ECF No. 78.

7 On December 24, 2017, Defendants filed an *Ex Parte*
8 Application for Leave to File a Late Opposition ("*Ex*
9 *Parte* Application") [79]. Defendants then filed their
10 Opposition to Plaintiff's Motion on December 26, 2017
11 [80]. The Court denied Defendants' *Ex Parte*
12 Application on December 28, 2017 [82].

13 II. DISCUSSION

14 A. Legal Standard

15 "[C]ourts have inherent power to enforce compliance
16 with their lawful orders through civil contempt."

17 Shillitani v. United States, 384 U.S. 364, 370 (1966).

18 Civil contempt consists of a party's disobedience to a
19 specific and definite court order by failure to take

20 all reasonable steps within the party's power to

21 comply. In re Dual-Deck Video Cassette Recorder

22 Antitrust Litig., 10 F.3d 693, 695 (9th Cir. 1993).

23 "The moving party has the burden of showing by clear
24 and convincing evidence that the contemnors violated a

25 specific and definite order of the court. The burden

26 then shifts to the contemnors to demonstrate why they

27 were unable to comply." Stone v. City & Cty. of S.F.,

28 968 F.2d 850, 856 n.9 (9th Cir. 1992)(citations

1 omitted).

2 A person should not be held in contempt if his
3 action "appears to be based on a good faith and
4 reasonable interpretation of the [court's order]."
5 Vertex Distrib., Inc. v. Falcon Foam Plastics, Inc.,
6 689 F.2d 885, 889 (9th Cir. 1982). "[C]ivil contempt
7 may be established even though the failure to comply
8 with the court order was unintentional." Perry v.
9 O'Donnell, 759 F.2d 702, 705 (9th Cir. 1985). A
10 showing of willfulness is not a necessary element for
11 civil contempt because while the purpose of criminal
12 contempt is punishment, the purpose of civil contempt
13 is remedial. Id.

14 "Sanctions for civil contempt may be imposed to
15 coerce obedience to a court order, or to compensate the
16 party pursuing the contempt action for injuries
17 resulting from the contemptuous behavior, or both."
18 Gen. Signal Corp. v. Donallco, Inc., 787 F.2d 1376,
19 1380 (9th Cir. 1986). Accordingly, there are two types
20 of civil contempt sanctions: compensatory and coercive.
21 Falstaff Brewing Corp. v. Miller Brewing Co., 702 F.2d
22 770, 778 (9th Cir. 1983). "Compensatory sanctions are
23 intended to compensate the aggrieved party for 'actual
24 loss' resulting from the contemnor's noncompliance."
25 HM Elecs., Inc. v. R.F. Techs., Inc., No.
26 12-CV-2884-MMA (JLB), 2014 WL 12059031, at *3 (S.D.
27 Cal. Apr. 18, 2014)(internal citation omitted).
28 Coercive sanctions are "intended to coerce the

1 contemnor to comply with the court's orders in the
2 future." Richmark Corp. v. Timber Falling Consultants,
3 959 F.2d 1468, 1481 (9th Cir. 1992).

4 **B. Analysis**

5 As noted, Defendants' Opposition to Plaintiff's
6 Motion was due on December 19, 2017, but Defendants did
7 not file their Opposition until December 26, 2017.
8 Pursuant to Local Rule 7-12, "failure to file any
9 required document, or the failure to file it within the
10 deadline, may be deemed consent to the granting or
11 denial of the motion." Accordingly, the Court **GRANTS**
12 Plaintiff's Motion without reaching the merits, simply
13 based on Defendants' failure to timely oppose the
14 Motion. See Canon Sols. Am., Inc. v. Gungap, No.
15 SACV141990JLSRNBX, 2016 WL 9108916, at *2 (C.D. Cal.
16 Feb. 8, 2016)(granting motion for civil contempt when
17 defendant failed to timely file opposition to motion).

18 1. Civil Contempt

19 Even an analysis of the merits of Plaintiff's
20 Motion, including the arguments Defendants asserted in
21 their late-filed Opposition, supports granting
22 Plaintiff's Motion.

23 To succeed on its Motion, Plaintiff must first
24 prove by clear and convincing evidence that Defendants
25 violated the Court's Order. In re Dual-Deck, 10 F.3d
26 at 695. Defendants argue that the Court's Order lacked
27 specificity regarding the acts sought to be restrained,
28 in violation of Federal Rule of Civil Procedure

1 ("Rule") 65(d), and therefore, the Order cannot support
2 a finding of civil contempt. Opp'n 5:25-6:4. Despite
3 Defendants' arguments, the Court's September 28, 2017
4 Order was clear and unambiguous. The Order enjoined
5 Defendants from "making any [] representation that the
6 business Defendants operate . . . is . . . connected
7 with . . . the MK brand." Order 27:11-19. The Order
8 further enjoined Defendants from using Defendants'
9 corporate names. Id. at 27:20-25. While Defendants
10 argue that the Order created uncertainty as to whether
11 Defendants were prohibited from using the MK initials,
12 "[i]njuncts are not set aside under rule 65(d) . . .
13 unless they are so vague that they have no reasonably
14 specific meaning."² United States v. Holtzman, 762 F.2d
15 720, 726 (9th Cir. 1985).

16 Further, Defendants fail to identify any portion of
17 the Order that lacks specificity, nor could they do so.
18 See AT&T Intellectual Prop. II, L.P. v. Toll Free

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21 ² The case Defendants cite in support of their argument that
22 the Order was too vague and thus unenforceable, International
23 Longshoremen's Ass'n v. Philadelphia Marine Trade Ass'n, 389 U.S.
24 64 (1967), is easily distinguishable from the instant Action. In
25 International Longshoremen's, the trial court ordered the parties
26 to comply with the arbitrator's award. 389 U.S. at 69. When
27 counsel inquired into what this order meant, the trial court
28 refused to explain itself and at no point clarified its order.
Id. at 70-72. The Supreme Court then overturned the trial
court's contempt order based on the failure to comply with Rule
65(d). Id. at 75-76. This holding is inapplicable here. The
International Longshoremen's trial court's incredibly vague and
brief order and refusal to explain its order is nothing like the
four paragraph explanation in this Court's Order of the enjoined
activity. Thus, Defendants' Rule 65(d) argument holds no merit.

1 Yellow Pages Corp., No. CV095707PSGPJWX, 2010 WL
2 11508795, at *5 (C.D. Cal. Feb. 8, 2010)(rejecting
3 argument that injunction lacked specificity when
4 defendants failed to cite a single instance of
5 "overbreadth or lack of specificity"). The Court's
6 Order outlined four paragraphs explaining the various
7 conduct it enjoined. Defendants were on clear notice
8 that they could not continue to operate a business that
9 suggested a connection to Morrison Knudsen and its
10 brand. This cannot be considered so vague that it has
11 no reasonably specific meaning.

12 Defendants have failed to comply with the Court's
13 Order. Instead of changing their corporate names to
14 names that clearly departed from Morrison Knudsen and
15 the MK brand, Defendants simply abbreviated Morrison
16 Knudsen to MK. See Johnson Decl. ¶ 5. "This act on
17 the part of [D]efendants was intentionally calculated
18 by them to deceive the public into the belief that"
19 they were still affiliated with Morrison Knudsen. See
20 Rests. & Patisseries Longchamps, Inc. v. Longchamps,
21 Inc., No. 5972-WM, 1947 WL 4003, at *3 (S.D. Cal. May
22 23, 1947). Defendants made no effort to distance
23 themselves from the MK brand and are continuing to
24 operate a business under confusingly similar names.
25 See id. (holding defendant in contempt when defendant
26 changed store name from "Longchamps" to the confusingly
27 similar name "Longshires").

28 Defendants argue that a lay person would not think

1 MK is related to Morrison Knudsen because MK could
2 stand for anything. Opp'n 6:10-12. However, the
3 Morrison Knudsen trademarks, ownership over which
4 Defendants attempted to deceptively take, include the
5 MK initials. See Decl. of Annette Bottaro-Walklet in
6 Supp. of Pl.'s Mot. for Prelim. Inj., Ex. F at 8, ECF
7 No. 14. Additionally, Defendants used the initials MK
8 throughout their website to refer to Morrison Knudsen,
9 see Decl. of Charles Szurgot in Supp. of Pl.'s Mot. for
10 Prelim. Inj., Ex. C, ECF No. 13, and MK has been a
11 common way of referring to Morrison Knudsen since at
12 least the 1950s, id., Ex. A. Defendants' use of the
13 initials MK to refer to Morrison Knudsen prior to the
14 Court's Order, the presence of the MK initials in the
15 MK trademark, and the consistent use of the MK initials
16 to refer to Morrison Knudsen throughout history make it
17 clear that no reasonable person could argue that the
18 use of the MK initials does not infringe upon the
19 Morrison Knudsen name. Accordingly, Plaintiff has met
20 its burden to show by clear and convincing evidence
21 that Defendants violated the Court's Order.

22 The burden then shifts to Defendants to establish
23 why they were unable to comply with the Court's Order.
24 See Stone, 968 F.2d at 856 n.9. Defendants maintain
25 that they substantially complied with the Order.
26 Defendants assert that they made an effort to change
27 their corporate names to MK, which they felt complied
28 with the Court's Order. Opp'n 5:12-22. Defendants did

1 not discover until December 5, 2017 that the Nevada
2 Secretary of State had not accepted their paperwork
3 because the MK names were not available for use. Id.
4 at 5:17-19. This, Defendants assert, evidences
5 substantial compliance with the Court's Order and is a
6 defense to civil contempt.

7 However, this argument provides little support for
8 a finding of substantial compliance. Even after
9 discovering the Nevada Secretary of State had not
10 accepted their certificates of amendment, Defendants
11 made no effort to inform Plaintiff or the Court of
12 this. Further, Defendants did not make any attempt to
13 remedy the situation by filing paperwork to change
14 their corporate names to names entirely unrelated to
15 Morrison Knudsen or the MK brand. This lack of effort
16 clearly evidences a failure to ensure substantial
17 compliance with the Court's Order. See HM Elecs., 2014
18 WL 12059031, at *5 ("Defendant did not take 'all
19 reasonable steps within its power' to comply with the
20 labeling and disclosure requirements. Instead,
21 Defendant opted for language in both its labeling
22 stickers and written disclosure that evades the Court's
23 clear directive."); Honor Plastic Indus. Co. v.
24 Lollicup USA, Inc., 466 F. Supp. 2d 1217, 1224 (E.D.
25 Cal. 2006)(finding defendant deliberately violated the
26 preliminary injunction through continuing to represent
27 itself as the plaintiff's company). Because Defendants
28 have failed to substantially comply with the Court's

1 Order, the Court **GRANTS** Plaintiff's Motion and finds
2 Defendants in civil contempt of the Order.

3 2. Sanctions

4 Where a court finds a party in contempt, the court
5 has discretion to impose sanctions. See Gen. Signal
6 Corp., 787 F.2d at 1380. One form of these sanctions
7 is a coercive fine, which is imposed "to coerce the
8 contemnor to comply with the court's order in the
9 future" and "is conditioned upon continued
10 noncompliance." Richmark Corp., 959 F.2d at 1481.

11 Here, Defendants failed to timely file their
12 affidavit with the Court evidencing their compliance
13 with the Court's Order. The affidavit that Defendants
14 filed nine days after the Court's deadline showed a
15 clear failure to comply with the Court's Order. Even
16 after Defendants learned that the names they chose as
17 their new corporate names, simple abbreviations of
18 their previously infringing corporate names, were not
19 available, Defendants made no further effort to remedy
20 this and make another name change. Because Defendants
21 have shown no motivation to follow the Court's Order,
22 the Court now imposes a daily fine of \$500 paid to the
23 Court³ until Defendants file an affidavit with the Court
24 evidencing full compliance with Court's Order. See HM
25 Elecs., 2014 WL 12059031, at *7 (imposing daily fine of
26

27 ³ Gen. Signal Corp., 787 F.2d at 1380 ("If the fine, or any
28 portion of the fine, is coercive, it should be payable to the
court . . .").

1 \$2,500 so long as the defendant continued to violate
2 the terms of a preliminary injunction). Full
3 compliance includes Defendants changing their corporate
4 names to ensure no confusion that they are connected to
5 Morrison Knudsen or the MK brand.⁴

6 Additionally, a district court "may assess
7 attorneys' fees . . . as part of the fine to be levied
8 on the defendant." Donovan v. Burlington N., Inc., 781
9 F.2d 680, 682 (9th Cir. 1986)(internal citation
10 omitted). Attorneys' fees, "the cost of bringing the
11 violation to the attention of the court[, are] part of
12 the damages suffered by the prevailing party" and are
13 thus a compensatory sanction. Cook v. Ochsner Found.
14 Hosp., 559 F.2d 270, 272 (5th Cir. 1977). Attorneys'
15 fees and costs may be awarded to the moving party even
16 if the non-moving party's failure to comply with the
17 injunction was not willful. See Perry, 759 F.2d at
18 705.

19 Plaintiff requests that the Court award Plaintiff
20 its attorneys' fees and costs incurred in filing the
21 instant Motion. Had Defendants fully complied with the
22 Court's Order, Plaintiff's Motion would have been
23 unnecessary and Plaintiff would not have incurred
24 attorneys' fees and costs in drafting and filing such a
25 motion. Consequently, the Court finds that attorneys'

27 ⁴ The Court's Order prohibits Defendants from using the name
28 Morrison Knudsen or anything confusingly similar, such as the MK
initials, in their corporate names.

1 fees and costs are an appropriate sanction for
2 Defendants' failure to comply with the Court's Order.
3 See Henry Schein, Inc. v. Certified Bus. Supply, Inc.,
4 No. SA CV 03-1662 DOC, 2008 WL 9452685, at *10 (C.D.
5 Cal. Aug. 20, 2008).

6 **IV. CONCLUSION**

7 Based on the foregoing, the Court **GRANTS**
8 Plaintiff's Motion for Civil Contempt [64]. Defendants
9 are **ORDERED** to change the name of their corporate
10 entities to comply with the Court's Order. Beginning
11 with the issuance of this Order on January 11, 2018,
12 Defendants shall pay a daily fine of \$500, payable to
13 the Court, until Defendants file an affidavit outlining
14 their compliance with the Court's Order.

15 Additionally, Plaintiff's counsel is **ORDERED** to
16 submit a supplemental filing, including declarations,
17 setting forth the amount of attorneys' fees and costs
18 Plaintiff incurred in filing the instant Motion. These
19 papers shall be submitted no later than Friday, January
20 26, 2018. Defendants may then file an opposition to
21 Plaintiff's supplemental filing by February 2, 2018,
22 and Plaintiff may file a reply in support of its filing

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1 by February 9, 2018. Upon receiving these papers, the
2 Court will determine what amount of fees and costs is
3 reasonable.

4 **IT IS SO ORDERED.**

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6 DATED: January 11, 2018 S/ RONALD S.W. LEW

7 **HONORABLE RONALD S.W. LEW**
8 Senior U.S. District Judge

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