

1 Tasto respectively. Id. at 20. Schmitz billed at \$200.00 per
2 hour, whereas Tasto billed at \$295.00 per hour. Id. at 19. Judge
3 Spero recommended finding the billing rates reasonable, but
4 recommended disallowing hours unreasonably expended and denying
5 Plaintiff's request for fees for services not billed as of November
6 23. The Court adopted Judge Spero's report and recommendation.

7 Plaintiff now seeks to recover fees incurred after November
8 23, 2009. A significant amount of litigation in this action
9 occurred after that date. On December 3, 2009, the Court held a
10 hearing on Plaintiff's motion for a preliminary injunction, at
11 which Plaintiff's counsel appeared. On February 1, 2010, Defendant
12 Fred Benz filed a motion to dismiss, which Plaintiff opposed. On
13 February 3, 2010, Plaintiff filed a motion for an order to show
14 cause concerning Defendants' violation of the Court's preliminary
15 injunction. On February 5, 2010, Judge Spero held a hearing on
16 Plaintiff's motion for default judgment, at which Plaintiff's
17 counsel appeared. On February 17, 2010, Mr. Benz filed a motion to
18 stay the proceedings, which Plaintiff opposed. On April 15, 2010,
19 the Court held a hearing on Plaintiff's motion for an order to show
20 cause, at which Plaintiff's counsel appeared.

21
22 DISCUSSION

23 After November 23, 2009, Schmitz charged Plaintiff \$21,835.78
24 for fees,¹ and Tasto charged \$8,862.19 for the same. Schmitz's
25 billing rate was \$200 per hour. Tasto billed \$295 per hour for
26

27 ¹ In his declaration, Schmitz stated that he billed Plaintiff
28 \$21,835.53 for fees. Schmitz Decl. ¶ 3. However, a review of his
billing statements shows that he billed \$21,835.78.

1 work completed through December 16, 2009; for work completed
2 thereafter, he charged \$200 per hour. The billing rate for
3 paralegals was \$75 per hour. Schmitz and Tasto filed declarations
4 and billing statements in support of Plaintiff's motion.

5 As noted above, the Court has already found this to be an
6 "exceptional" case warranting the award of attorneys' fees. Thus,
7 the Court "may award reasonable attorney fees" to Plaintiff as the
8 prevailing party. 15 U.S.C. § 1117(a).

9 In the Ninth Circuit, reasonable attorneys' fees are
10 determined by first calculating the "lodestar." Jordan v.
11 Multnomah County, 815 F.2d 1258, 1262 (9th Cir. 1987). "The
12 'lodestar' is calculated by multiplying the number of hours the
13 prevailing party reasonably expended on the litigation by a
14 reasonable hourly rate." Morales v. City of San Rafael, 96 F.3d
15 359, 363 (9th Cir. 1996). There is a strong presumption that the
16 lodestar figure represents a reasonable fee. Jordan, 815 F.2d at
17 1262. However, the court may adjust the award from the lodestar
18 figure upon consideration of additional factors that may bear upon
19 reasonableness. Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70
20 (9th Cir. 1975).

21 The hourly rates charged were reasonable. In addition, the
22 Court finds most of the hours billed to be reasonable, with one
23 exception. On March 9, 2010, Schmitz spent 3.9 hours reviewing an
24 "attorney audit report," drafting an "Annual Attorney Opinion
25 Letter," reviewing an "FASB No. 5" and discussing with co-counsel
26 the Court's "ruling on order to show cause." Schmitz Decl., Ex. A
27 at 2. The same day, a paralegal spent half an hour gathering
28

1 "notes and files for Attorney Audit Letter." Id. Aside from
2 counsel's discussion on the Court's ruling, the other tasks billed
3 do not appear necessary to this litigation. Accordingly, the Court
4 disallows recovery for three hours of work claimed by Schmitz and
5 the one-half hour of work completed by the paralegal.

6 With the Court's reduction taken into account, Plaintiff is
7 awarded an additional \$30,022.97 for attorneys' fees incurred after
8 November 23, 2009. Of this amount, \$21,160.78 and \$8,862.19 are
9 attributable to Schmitz and Tasto respectively.

10 CONCLUSION

11 For the foregoing reasons, the Court GRANTS in part
12 Plaintiff's motion for further attorneys' fees. (Docket No. 108.)
13 Plaintiff is awarded an additional \$30,022.97 for fees incurred
14 after November 23, 2009. Defendants shall pay this amount
15 forthwith.

16 IT IS SO ORDERED.

17
18 Dated: July 22, 2010

19 
20 CLAUDIA WILKEN
21 United States District Judge
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

CRATERS & FREIGHTERS,
Plaintiff,

Case Number: CV09-04531 CW

CERTIFICATE OF SERVICE

v.

DAISYCHAIN ENTERPRISES, et al.,
Defendants.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 22, 2010, I SERVED a true and correct copies of the attached, by placing said copies in a postage paid envelope addressed to the person hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copies into an inter-office delivery receptacle located in the Clerk's office.

Kathy Benz
574 N. Sonora Way
P.O. Box 490
Eagle, ID 83616

Dated: July 22, 2010

Richard W. Wieking, Clerk