

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 CRATERS & FREIGHTERS,

5 Plaintiff,

6 v.

7 DAISYCHAIN ENTERPRISES, dba
8 FREIGHT & CRATE; CATHY BENZ; and
9 FRED BENZ.

10 Defendants.

No. C 09-04531 CW

ORDER GRANTING
PLAINTIFF'S MOTION FOR
SANCTIONS

11 _____/
12 Plaintiff Craters & Freighters has filed a motion for
13 additional contempt sanctions for violation of the Court's June
14 30, 2014, July 9, 2014 and July 15, 2014 orders. Having
15 considered Plaintiff's papers, the Court grants the motion and
16 awards additional contempt sanctions. In addition, the Court
17 imposes the further contempt sanctions it discussed in its July 15
18 order.

19 BACKGROUND

20 In an order dated May 22, 2014, the Court granted Plaintiff's
21 motion for contempt sanctions and advised Defendants that it would
22 impose sanctions of \$1,000 per day that any infringing internet
23 advertisements are found. Docket No. 159. On June 30, 2014, the
24 Court entered an order awarding Plaintiff \$15,622.15 in attorneys'
25 fees and costs (Docket No. 165) and an order granting Plaintiff
26 \$1,000 in contempt sanctions (Docket No. 166). Both orders
27 directed Defendants to pay Plaintiff within seven days of the date
28 of the order. The order awarding attorneys' fees and costs

1 advised Defendants that if they were unable to pay the full
2 \$15,622.15 within seven days of the date of the order, they must
3 pay "what they can" and "file a financial affidavit and a proposed
4 payment plan within seven days of the date of [the June 30]
5 order." Docket No. 165.

6 On July 7, 2014, the day that payment of both amounts or
7 partial payment and a financial affidavit and proposed payment
8 plan were due, Defendants filed a "Motion for 30 Day Extension of
9 Court's Orders of June 30, 2014." In that motion, Defendants
10 stated that they were "in the process of collecting funds as
11 ordered by the Court but will need 30 days to attain said funds."
12 Docket No. 168. However, Defendants did not submit any financial
13 affidavits to support a finding that they are unable to pay any
14 portion of the \$16,622.15 due or that they required thirty days to
15 pay the amount in full. Moreover, the Court did not offer
16 Defendants any extension on payment of \$1,000 in contempt
17 sanctions.

18 On July 8, 2014, the Court denied Defendants' motion for
19 extension of time and ordered Defendants to pay Plaintiff
20 \$16,622.15 within three days of the date of that order. The Court
21 again advised that, if Defendants were not able to pay the full
22 amount within three days, they must pay at least the \$1,000 in
23 contempt sanctions and any portion of the attorneys' fees and
24 costs that they were then able to pay. The Court further ordered
25 that, if Defendants made a partial payment, they must also file a
26 financial affidavit disclosing all assets and liabilities, signed
27 under penalty of perjury, and a proposed payment plan, within
28 three days of the date of the order.

1 On July 15, 2014, two days after the deadline set out in the
2 Court's July 8 order, the Court received various documents from
3 Defendants. These documents included a purported promissory note
4 in the amount of \$16,622.15 and a declaration from Defendant Fred
5 Benz that stated that "all monies provided for in the matter on
6 file herein have been deposited with the Clerk of the District
7 Court and credited and posted in the above captioned action."
8 Docket No. 171. The declaration further indicated that "the party
9 for whose benefit this order is being presented is entitled to
10 withdraw the sum of \$16,622.15." Id. However, Defendants did not
11 submit any payment to the Court, only the purported promissory
12 note.

13 On July 15, 2014, the Court entered an order noting that
14 Defendants had made no effort to comply with the Court's prior
15 orders and directing them to make full payment or to make partial
16 payment, along with a financial affidavit and a proposed payment
17 plan. The Court again ordered Defendants to pay Plaintiff
18 \$16,622.15 within three days of the date of that order. The Court
19 again advised that, if Defendants were not able to pay the full
20 amount within three days, they must pay at least the \$1,000 in
21 contempt sanctions and any portion of the attorneys' fees and
22 costs that they were then able to pay. The Court further ordered
23 that, if Defendants made a partial payment, they must also file a
24 financial affidavit disclosing all assets and liabilities, signed
25 under penalty of perjury, and a proposed payment plan, within
26 three days of the date of the order. Finally, the Court ordered
27 that, if Defendants did not comply with the Court's order within
28 three days of the date of the order, they were ordered to show

1 cause why they should not be assessed \$100 in contempt sanctions
2 for every day, beginning July 21, 2014, that they do not comply
3 with the Court's order to pay contempt sanctions and fees.

4 Defendants' deadline to respond to the order to show cause was
5 July 21, 2014, unless they complied with the order. To date,
6 Defendants have not responded to the order to show cause.

7 Plaintiff presents evidence that, on July 21, 2014,
8 Defendants mailed to Plaintiff a letter stating, "Please find
9 enclosed payment per orders issued by Judge Claudia Wilken, US
10 District Court Judge, on June 30, 2014 in the above referenced
11 case. This constitutes payment in full." Docket No. 174, Ex. A.
12 Enclosed with the letter was a check for \$16,622.15, with the
13 words "PROMISSORY NOTE" printed across the face of the check. Id.

14 Plaintiff also presents evidence that it discovered
15 infringing internet search results on June 1, 2 and 3. Docket No.
16 174, Ex. B. Although an internet search on June 4, 2014 produced
17 no infringing results, internet searches on July 24 and 25, 2014
18 again produced infringing results. Docket No. 174, Exs. C and D.

19 DISCUSSION

20 I. Failure to Pay Previously Ordered Sanctions, Fees and Costs

21 The Court has three times ordered Defendants to pay the full
22 \$1,000 of contempt sanctions and either to pay \$15,522.15 in
23 attorneys' fees and costs or to make a partial payment, propose a
24 payment plan and provide a financial declaration. Defendants have
25 responded to the three orders with a total disregard for the
26 Court's instructions.

27 In its July 15, 2014 order, the Court advised Defendants
28 that, if they failed to comply with the Court's order, they must

1 show cause why they should not be assessed \$100 in contempt
2 sanctions for every day, beginning July 21, 2014, that they do not
3 comply with the Court's order to pay contempt sanctions and fees.
4 Defendants have failed to comply with the Court's order or to
5 respond to the order to show cause. Accordingly, the Court will
6 again order Defendants to pay Plaintiff \$16,522.15 in contempt
7 sanctions and attorneys' fees and costs. In addition, Defendants
8 are ordered to pay an additional \$100 per day in sanctions,
9 beginning on the date of this order, through the date they pay
10 Plaintiff in full.

11 II. Continued Failure to Comply with the Permanent Injunction
12 Plaintiff has produced evidence that internet searches on
13 June 1, 2 and 3 and July 24 and 25 produced infringing results.
14 In an order dated May 22, 2014, the Court granted Plaintiff's
15 motion for contempt sanctions and advised Defendants that it would
16 impose sanctions of \$1,000 per day that any infringing internet
17 advertisements are found. Docket No. 159. Accordingly, the Court
18 awards Plaintiff an additional \$5,000 in contempt sanctions. In
19 addition the Court orders Defendants to pay Plaintiff's reasonable
20 attorneys' fees and costs expended in pursuing the July 25, 2014
21 motion. Within ten days of the date of this order, Plaintiff is
22 directed to submit its attorneys' billing records and hourly
23 rates. Within five days thereafter, Defendants may submit a
24 response of no more than five pages, addressing any dispute with
25 the amount of Plaintiff's request for fees. Within five days of
26 Defendants' response, Plaintiff may file a reply of no more than
27 three pages.

1 CONCLUSION

2 For the reasons set forth above, Defendants are ordered to
3 pay Plaintiff \$21,522.15 in contempt sanctions and attorney's
4 fees. Defendants are further ordered to pay \$100 per day in
5 additional sanctions for failure timely to pay the previously
6 ordered sanctions. Defendants shall pay \$100 per day in sanctions
7 until Defendants pay in full the \$16,522.15 previously ordered to
8 be paid. In addition Defendants will be ordered to pay
9 Plaintiff's reasonable attorneys' fees and costs expended in
10 pursuing its July 25 motion. The Clerk of the Court shall enter a
11 judgment in favor of Plaintiff and against Defendants in the
12 amount of \$22,722.15.

13 Plaintiff may attempt to execute this judgment in accordance
14 with state and federal law. In addition, Plaintiff may move for
15 an order directing www.yellowpages.com and www.freightnet.com to
16 stop selling infringing advertisements to Defendants. If
17 Plaintiff is unable to locate any bank accounts or real or
18 personal property upon which to execute the judgment, it may seek
19 criminal contempt. Any motion for criminal contempt must be made
20 in compliance with the requirements of due process and Federal
21 Rule of Criminal Procedure 42.

22 IT IS SO ORDERED.

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24 Dated: 8/7/2014

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CLAUDIA WILKEN
United States District Judge