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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MATLINK, INC., a California) Case No. 07cv1994-DMS (BLM)
Corporation, and CRAIG FREEMAN,)
an individual,) **ORDER AWARDING FEES**
)
Plaintiffs,)
) [Doc. Nos. 97 & 98]
v.)
)
HOME DEPOT U.S.A., INC., a)
Delaware Corporation, LOWE'S)
HIW, INC., a North Carolina)
Corporation,)
)
Defendants.)
)
)
)
)
and RELATED COUNTERCLAIMS.)
)
)

Presently before the Court are Defendant Lowe's HIW, Inc.'s ("Lowe's") Application for Fees and Costs, Defendant Home Depot U.S.A., Inc.'s ("Home Depot") Application for Attorneys' Fees and Costs, Plaintiffs' oppositions to both applications, and Lowe's and Home Depot's reply briefs. Doc. Nos. 97, 98, 103, 104, 107, 108. This briefing was filed in response to this Court's August 21, 2008 Order Granting Defendants' Motion to Compel and its determination that Plaintiffs' conduct makes an award of attorneys' fees and costs appropriate. Doc. No. 88. Upon completion of the briefing, the

1 matter was taken under submission pursuant to Civil Local Rule
2 7.1(d)(1). Id.

3 Having reviewed the briefing submitted, and for the reasons
4 set forth below, Lowe's and Home Depot's applications are **GRANTED IN**
5 **PART AND DENIED IN PART.**

6 **PROCEDURAL BACKGROUND**

7 On July 8, 2008, Lowe's filed a Motion to Compel Production
8 of Documents in Response to Lowe's First Set of Requests for
9 Production and its Subpoena to Fish & Richardson LLP. Doc. No. 64.
10 Lowe's asked the Court to compel production of documents responsive
11 to eight document requests as well as all documents produced by Fish
12 & Richardson LLP to Plaintiffs in response to Lowe's subpoena to
13 Fish & Richardson. Id. Home Depot filed a notice of joinder in
14 Lowe's motion the same day. Doc. No. 65. Home Depot requested that
15 the Court compel Plaintiffs to produce documents responsive to four
16 of its requests for production. Id.

17 Plaintiffs did not file an opposition or notice of non-
18 opposition, as required by Civil Local Rule 7.1(f)(3)(a). By order
19 dated August 11, 2008, this Court provided Plaintiffs with another
20 opportunity to oppose the motion, warning them that if they did not
21 oppose by August 15, 2008, the Court would grant Defendants' motion
22 to compel pursuant to Civil Local Rule 7.1(f)(3)(c). Doc. No. 84
23 (quoting Civil Local Rule 7.1(f)(3)(c), which provides "[i]f an
24 opposing party fails to file the papers in the manner required by
25 Civil Local Rule 7.1.e.2, that failure may constitute a consent to
26 the granting of a motion or other request for ruling by the court").
27 The Court also held a telephonic case management conference with all
28 counsel on August 15, 2008, during which Plaintiffs' counsel

1 represented that he would not oppose the motion.

2 On August 21, 2008, the Court granted Defendants' motions to
3 compel. Doc. No. 88. In regard to Defendants' request for
4 attorneys' fees related to bringing the motion to compel, the Court
5 found that Plaintiffs' dilatory actions in response to Defendants'
6 discovery requests justified the imposition of sanctions under Rule
7 37(a)(5) of the Federal Rules of Civil Procedure. Id. at 4-5.
8 Specifically, the Court determined that:

9 Plaintiffs repeatedly stonewalled Defendants' efforts
10 to meet and confer and did not agree to do so until
11 over three months after Defendants served the
12 discovery requests at issue. During the meet and
13 confer discussions, Plaintiffs still objected to
14 several of the discovery requests on various grounds,
15 so Lowe's ultimately filed a motion to compel.
16 Plaintiffs then opted not to oppose the motion and
17 subsequently produced some of the requested documents
and agreed to produce the remaining documents. In
light of Plaintiffs' conduct, the Court finds that
Plaintiffs' resistance to meeting and conferring and
to producing documents responsive to the document
requests and subpoena in a timely manner were not
substantially justified, forced Defendants to file the
motion to compel and joinder, and served only to
improperly delay this case.

18 Id. at 5 (internal citations omitted). Thereafter, the Court set a
19 briefing schedule requiring Defendants to address the amount of fees
20 and costs requested and the basis for the requests, and allowing
21 Plaintiffs an opportunity to oppose the requests. Id. at 6.

22 LEGAL STANDARD

23 Rule 37 of the Federal Rules of Civil Procedure provides
24 that, if a motion to compel is granted,

25 ...the court **must**, after giving an opportunity to be
26 heard, require the party or deponent whose conduct
27 necessitated the motion, the party or attorney
28 advising that conduct, or both to pay the movant's
reasonable expenses incurred in making the motion,
including attorney's fees. But the court must not
order this payment if:

1 (i) the movant filed the motion before attempting
2 in good faith to obtain the disclosure or discovery
without court action;

3 (ii) the opposing party's nondisclosure,
4 response, or objection was substantially justified; or

5 (iii) other circumstances make an award of
6 expenses unjust.

7 Fed. R. Civ. P. 37(a)(5) (emphasis added).

8 To determine a reasonable attorneys' fee award or "lodestar"
9 figure, the Supreme Court directs courts to begin by calculating the
10 number of hours reasonably spent on the litigation multiplied by a
11 reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. 424, 433
12 (1983). There is a "strong presumption" that the lodestar fee
13 constitutes a reasonable fee. City of Burlington v. Dague, 505 U.S.
14 557, 562 (1992). Ultimately, however, because "[t]he calculation of
15 the amount of a 'reasonable attorney's fee' is not a precise
16 science," Green v. Baca, 225 F.R.D. 612, 614-615 (C.D. Cal. 2005),
17 the Supreme Court has repeatedly reemphasized that discretion to
18 determine the amount of a fee award lies with the district court,
19 Hensley, 461 U.S. at 437. "[I]n exercising its discretion in
20 setting a fee, the Court must assess 'the reasonableness of the fee
21 in light of the totality of the circumstances.'" Green, 225 F.R.D.
22 at 615 (quoting Jordan v. Multnomah County, 815 F.2d 1258, 1263 n.7
(9th Cir. 1987)).

23 DISCUSSION

24 In this case, Lowe's took the lead in filing the motion to
25 compel at issue, so it's attorneys' fees and costs are,
26 understandably, higher. Lowe's requests an award of \$44,699.00.
27 Lowe's Appl. at 4. This figure includes most, but not all, of the
28 time billed by Lowe's outside counsel for meeting and conferring

1 with Plaintiffs regarding the discovery at issue and the motion to
2 compel as well as for drafting and editing the motion to compel.
3 Lowe's Appl. at 3-5; Decl. of Gail J. Standish Supp. Lowe's Appl.
4 ("Standish Decl.") ¶¶ 2, 9-10; Lowe's Reply at 1-2 and 3 n.1. It
5 also includes legal research and messenger service costs. Standish
6 Decl. ¶ 10. Lowe's does not seek to recover the fees incurred
7 related to its application for fees and reply or the fees associated
8 with hours billed by a paralegal. Lowe's Reply at 1 and 3 n.1.

9 Home Depot seeks an award of \$9,828.00 in fees and costs.
10 Home Depot Reply at 2. Though Home Depot did not draft the motion
11 to compel, it's counsel represent that they assisted in the motion's
12 preparation, prepared a letter regarding the improperly withheld
13 documents, participated in meet and confer sessions with Plaintiffs,
14 and prepared a joinder to the motion. Home Depot Appl. at 1; Decl.
15 of David D. Bahler Supp. Home Depot Appl. ("Bahler Decl.") ¶ 7; Home
16 Depot Reply at 1-2. The total figure presented by Home Depot also
17 includes paralegal fees and attorneys' fees for hours spent
18 preparing its application for fees and related reply. Home Depot
19 Appl. at 2; Bahler Decl. ¶¶ 4, 8 and Ex. A; Home Depot Reply at 2;
20 Decl. of Gilbert A. Greene ("Greene Decl.") ¶ 4.

21 Several of Plaintiffs' objections apply to both Defendants.
22 First, Plaintiffs object to more senior attorneys billing time on
23 discovery matters that could have been handled by junior associates
24 (or, at the very least, at junior associate billing rates). Pls.'
25 Opp'n to Home Depot at 2-3, 5, Ex. 1; Pls.' Opp'n to Lowe's at 2-5.
26 Second, Plaintiffs object to each of the Defendants in some
27 instances billing for more than one attorney to participate in the
28 same task or conference with the Court. Pls.' Opp'n to Home Depot

1 at 5-6, Ex. 1; Pls.' Opp'n to Lowe's at 2, 4-5. Finally, Plaintiffs
2 submit that Defendants should not be reimbursed for the time their
3 counsel spent on normal litigation activities that Plaintiffs
4 contend they would have had to do regardless of whether Defendants
5 filed a motion to compel. Pls.' Opp'n to Home Depot at 3-4, Ex. 1;
6 Pls.' Opp'n to Lowe's at 2-4.

7 Specifically in regard to Lowe's application, Plaintiffs
8 object that: (1) all of the rates billed are too high for the San
9 Diego market, (2) Lowe's provided insufficient detail as to the
10 tasks and hours billed, (3) legal research is just a cost of doing
11 business and should not be included, and (4) the messenger service
12 cost is excessive and, regardless, is another non-compensable cost
13 of doing business. Pls.' Opp'n to Lowe's at 1-5.

14 As to Home Depot's application, Plaintiffs object that:
15 (1) Home Depot billed for time spent reviewing an entire set of
16 responses to its requests for production when only four requests
17 were at issue in the motion to compel, (2) the paralegal's
18 administrative time cannot be recovered, and (3) Home Depot
19 improperly seeks to recover the fees it incurred in preparing its
20 application for fees and related reply. Pls.' Opp'n at 3-6.

21 **A. Lodestar Analysis**

22 In determining what constitute "reasonable expenses," the
23 Supreme Court's "lodestar" analysis provides guidance to the Court.
24 Hensley, 461 U.S. at 433. This analysis requires the Court to
25 calculate the number of hours reasonably spent on the matter
26 multiplied by a reasonable hourly rate. Id.

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1 **1. Reasonable Rate**

2 Lowe's and Home Depot contend that the rates charged by their
3 counsel are reasonable given the type of legal services provided.
4 Lowe's Reply at 4-5; Bahler Decl. ¶ 8. While the fee award in this
5 case is not premised upon statutory authority, the standard
6 applicable to statutory awards provides a useful guideline. In
7 statutory award-based cases, the proper reference point for
8 determining whether the attorney's fees are "reasonable" is whether
9 the fees comport with the prevailing market rates in the relevant
10 community. See Blum v. Stenson, 465 U.S. 886, 895 (1984); Trevino
11 v. Gates, 99 F.3d 911, 925 (9th Cir. 1996) (holding that the
12 determination "should be guided by the rate prevailing in the
13 community for similar work performed by attorneys of comparable
14 skill, experience, and reputation") (internal citation omitted). In
15 this case, both Lowe's and Home Depot are represented by large,
16 international law firms and counsel who specialize in patent
17 litigation. And, while not all of the issues raised in the motion
18 to compel were technically complex, both Defendants were entitled to
19 engage counsel with both the technical knowledge and expertise in
20 the unique procedures associated with patent litigation to defend
21 this action. As such, the prevailing market rates should be
22 measured against rates charged for representation in patent
23 litigation. Lead counsel for both Lowe's and Home Depot confirm
24 that the billing rates in this case were comparable to those charged
25 for similar legal services. Bahler Decl. ¶ 8; Standish Decl. ¶ 7.
26 While both attorney's provided only their own declarations as
27 evidence of prevailing market rates, the Court finds the rates

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1 charged by counsel in this case to be reasonable.¹

2 Plaintiffs' primary objection to the billing rates is that
3 they are excessive for preparing work related to discovery. Pls.'
4 Opp'n to Lowes at 3; Pls.' Opp'n to Home Depot at 2. "An
5 experienced attorney commands high hourly rates in part because he
6 or she is more efficient." Patyk v. Certegy Pymnt Recovery Serv.,
7 Inc., 2008 WL 755850, *1 (S.D. Cal. 2008) (citing Ferland v. Conrad
8 Credit Corp., 244 F.3d 1145, 1148 (9th Cir.2001)). In this case, it
9 appears to the Court that the bulk of the time billed by counsel for
10 Lowe's and Home Depot was for work done by associates at lower
11 billing rates. However, the Court does not find it unreasonable
12 that Ms. Standish, Mr. Bahler, and higher level associates would
13 participate to some extent in ongoing discovery disputes and
14 strategy related thereto, particularly since several of these
15 disputes were aired before this Court, and the Court also does not
16 find their billing rates to be excessive in this context. Under the
17 totality of the circumstances, the Court finds Lowe's and Home
18 Depot's billing rates to be reasonable. See Green, 225 F.R.D. at
19 615.

20 **2. Reasonable Number of Hours**

21 Lowe's and Home Depot also contend that the number of hours
22 billed, for which they seek compensation, was reasonable. Lowe's
23 Appl. at 5; Bahler Decl. ¶ 8. The party seeking an award of
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25 ¹ Notably, Plaintiffs provided no evidence supporting their allegation
26 that "[a]ll of the rates charged by Winston and Strawn are inappropriate for the
27 San Diego community and perhaps every other community." Pls.' Opp'n to Lowe's
28 at 3. Plaintiffs further stated later on the same page that "Rates of \$630,
\$455, and \$280 per hour [Lowe's rates in this case] are reasonable rates." Id.

1 attorneys' fees must provide adequate documentation of the hours
2 worked and the nature of the work performed. See Hensley, 461 U.S.
3 at 433-434. "[A]n award of attorney's fees may be based on the
4 affidavits of counsel, so long as they are 'sufficiently detailed to
5 enable the court to consider all the factors necessary in setting
6 the fees.'" Henry v. Gill Indus., Inc., 983 F.2d 943, 946 (9th Cir.
7 1993) (quoting Williams v. Alioto, 625 F.2d 845, 849 (9th Cir. 1980)
8 (per curiam)). In documenting the number of hours worked, the party
9 should exercise "billing judgment" and "make a good faith effort to
10 exclude from a fee request hours that are excessive, redundant, or
11 otherwise unnecessary." Hensley, 461 U.S. at 434.

12 **a. Lowe's**

13 Lowe's asserts that its counsel expended 97 hours in
14 researching, drafting and revising its motion to compel. Standish
15 Decl. ¶ 9. It explains that, because Plaintiffs' counsel initially
16 and repeatedly refused to meet and confer, Lowe's was forced to
17 prepare a motion that addressed all of the disputed categories of
18 requested documents and legal arguments related thereto. Id. Only
19 after Lowe's informed Plaintiffs that it had prepared a motion to
20 compel, which it intended to file, did Plaintiffs agree to meet and
21 confer, at which time the parties resolved their differences as to
22 four categories of documents (which forced Lowe's to spend time
23 substantially revising its motion). Id. Lowe's also justifies the
24 number of hours billed by pointing to the fact that the issue of an
25 attorney-client privilege waiver by a *plaintiff* disclosing a patent
26 opinion presented a novel and complicated legal issue, which
27 required significant research. Lowe's Reply at 7.

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1 Having reviewed the arguments and documentation submitted,
2 the Court finds that Lowe's should recover a significant portion of
3 these fees. Ninety-seven hours is a considerable amount of time for
4 a motion to compel but, due to Plaintiffs' failure to timely meet
5 and confer and to produce the documents they promised, Lowe's had to
6 include in its initial motion the factual and legal analysis
7 relating to all six categories of documents, as well as an unusual
8 attorney-client privilege issue. Lowe's then was required to
9 substantially revise its motion once Plaintiffs finally agreed to
10 meet and confer and several issues were resolved. The motion
11 ultimately filed with the Court was lengthy, well-written and
12 contained proper persuasive legal authority, thus further justifying
13 the expenditure of counsel's time. However, because Lowe's
14 application and the supporting declaration do not provide any
15 details regarding the specific tasks involved, the Court cannot
16 assess whether or not individual work was reasonably necessary or
17 recoverable under this Court's order. C.f. Hensley, 461 U.S. at
18 433-434 (requiring adequate documentation of the hours worked and
19 the nature of the work performed); Henry, 983 F.2d at 946 (allowing
20 reliance on the affidavits of counsel *if* they are sufficiently
21 detailed to enable the court to evaluate *all the factors* necessary
22 in setting the fees). Accordingly, the Court finds it appropriate
23 to reduce the award to Lowe's, of fees it designated as being
24 related to drafting the motion to compel, by twenty-five percent.

25 In regard to the hours Lowe's billed for meeting and
26 conferring, the Court also finds that a reduced award is
27 appropriate. The local rules for the Southern District of
28 California require counsel to meet and confer before filing any

1 discovery motion in an effort to resolve disputes. See CivLR
2 16.5(k). As such, fees associated with the initial meet and confer
3 process logically should not always be included in a fee award. In
4 this case, however, Plaintiffs stonewalled Lowe's efforts to meet
5 and confer until the eleventh hour when Lowe's already had expended
6 considerable time attempting to meet and confer and, ultimately,
7 preparing a motion. The Court finds that these circumstances
8 justify an award of sanctions. But again, because Lowe's did not
9 provide the Court with any details regarding which meet and confer
10 efforts occurred when, the Court has no basis for separating out the
11 proper award. The Court, therefore, finds it appropriate to award
12 fifty percent of the attorneys' fees requested by Lowe's under the
13 rubric of meeting and conferring.

14 **b. Home Depot**

15 Home Depot seeks to recover the attorneys' fees attributable
16 to 30.3 hours of work meeting and conferring, reviewing and
17 providing comments on Lowe's motion, preparing its joinder in the
18 motion, participating in conferences with the court regarding the
19 delinquent discovery, and preparing its fee application. Bahler
20 Decl., Ex. A. In support of its application, Home Depot provides
21 copies of its billing records. Id. Additionally, Home Depot
22 requests an award of the fees incurred in preparing a reply brief
23 regarding fees (which amounts to an additional 6.8 hours of billable
24 time). Greene Decl. ¶¶ 2-3.

25 The Court finds that a significant award of fees is
26 appropriate. However, Home Depot included in its application hours
27 spent engaging in the initial document review and meet and confer
28 stages that the Court believes are not recoverable in this case.

1 See supra at 10. Accordingly, the Court finds it reasonable to
 2 award only the fees incurred by Home Depot from July 1, 2008 to the
 3 present.² This includes the hours spent preparing Home Depot's
 4 application for fees and related reply. Contrary to Plaintiffs'
 5 assertion, time spent litigating fee petitions is compensable. See
 6 Anderson v. Dir., Office of Workers Comp. Programs, 91 F.3d 1322,
 7 1325 (9th Cir. 1996) (compensation for time spent litigating a fee
 8 petition "must be included in calculating a reasonable fee because
 9 uncompensated time spent on petitioning for a fee automatically
 10 diminishes the value of the fee eventually received"); U.S. v. City
 11 of San Diego, 18 F. Supp. 2d 1090, 1101-1102 (S.D. Cal. 1998)
 12 (same); Sure Safe Indus. Inc. v. C & R Pier Mfg., 152 F.R.D. 625,
 13 627 (S.D. Cal. 1993) ("Attorneys' fees in preparation of requests
 14 for attorneys' fees sanctions are recoverable under Rule 37").

15 **3. Final Lodestar Amounts**

16 Based on the Court's findings above, the Court finds it
 17 reasonable to award \$31,333.75³ in attorneys' fees to Lowe's and

18 ² This award results in a deduction of the hours Home Depot attributes
 19 to meet and confer efforts (from 5/18/08 to 7/2/08) from 8.3 hours to 4.5 hours.
 20 The Court considered the percentage of this deduction in making its determination
 21 to reduce Lowe's hours spent meeting and conferring by fifty percent.

22 ³ The Standish Declaration contained the following chart demonstrating
 the fees incurred by Lowe's (last column omitted):

| <i>Professional</i> | <i>Hourly Rate</i> | <i>Hours Billed for Meeting & Conferring</i> | <i>Hours Billed Drafting Motion to Compel</i> |
|---------------------|--------------------|--|---|
| Gail J. Standish | \$630.00 | in excess of 2.0 | in excess of 10.5 |
| Daniel C. Whang | \$455.00 | in excess of 5.0 | in excess of 40.0 |
| Robert F. Gookin | \$280.00 | in excess of 8.5 | in excess of 46.5 |
| Total | | in excess of 15.5 | in excess of 97.0 |

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 28 In calculating the final lodestar figure, the Court multiplied the hourly rate by the hours spent meeting and conferring for each attorney and then reduced each

1 \$8,980.50⁴ to Home Depot.

2 **C. Paralegal Fees**

3 Home Depot seeks to recover \$87.50 billed by a paralegal
4 assigned to the case. See Bahler Decl., Ex. A. According to the
5 billing records in this case, the paralegal downloaded, distributed
6 and calendared the deadlines set by this Court in its briefing
7 schedule for the motion to compel. Id. While fees incurred for
8 paralegal work may be recoverable in some circumstances, see Sure
9 Safe Indus., 152 F.R.D. at 626-627 ("Properly included in an award
10 of attorneys' fees [under Rule 37] are costs and fees for
11 paralegals..."), the Court does not find that the paralegal's work
12 in this case was attributable to Plaintiffs' stonewalling
13 misconduct. The Court, therefore, denies Home Depot's request for
14 these fees.

15 **D. Electronic Research Fees**

16 Lowe's seeks to recover \$670.00 in costs it incurred
17 conducting computerized research in preparing its motion to compel.
18 Standish Decl. ¶ 10; Lowe's Reply at 9. "[R]easonable charges for
19 computerized research may be recovered as "attorney's fees" ... if

20 figure by 50% and added up the three reduced amounts. For hours billed for
21 drafting the motion to compel, the Court employed the same procedure but reduced
22 each figure by 25% instead of 50%. The total for the hours spent meeting and
23 conferring and the hours billed for drafting the motion to compel was \$31,333.75.

24 ⁴ Exhibit A of the Bahler Declaration contains the billing records for
25 Home Depot. In calculating the final lodestar figure for Home Depot, the Court
26 started with the total fees charged, \$8,402.00, subtracted out the first two time
27 entries (pre-July 1, 2008) for \$660.00 and \$100.00, and then subtracted out the
28 \$87.50 attributable to the paralegal's time (as his time will be addressed
separately in this order). The Court then added to this figure the additional
\$1,426.00 incurred by Home Depot in preparing its reply brief. See Green Decl.
¶ 4. This yielded a total of \$8,980.50.

1 separate billing for such expenses is 'the prevailing practice in
2 the local community.'" Trustees of Const. Indus. and Laborers
3 Health and Welfare Trust v. Redland Ins. Co., 460 F.3d 1253, 1259
4 (9th Cir. 2006); see also Sure Safe Indus., 152 F.R.D. at 626
5 (holding in reference to an award under Rule 37 that "[p]roperly
6 included in an award of attorneys' fees are ... out-of-pocket
7 expenses, including ... computerized legal research expenses") .
8 Counsel for Lowe's did, in fact, bill Lowe's for these legal
9 research costs and Plaintiffs have offered no evidence suggesting
10 that this is contrary to the prevailing practice in this community.
11 Moreover, given the unique attorney-client privilege issue in this
12 case, the Court accepts' Lowe's representation that significant
13 legal research was necessary. Accordingly, the Court awards Lowe's
14 this cost.

15 **E. Attorney Service Costs**

16 Lowe's also seeks to recover \$279.30 in attorney service
17 costs that resulted from its delivery of a courtesy copy of the
18 motion to compel to chambers. Standish Decl. ¶ 10; Lowe's Reply at
19 10. Section 2(e) of the Electronic Case Filing Administrative
20 Policies and Procedures Manual for the Southern District of
21 California ("ECF Manual") requires parties to deliver or mail a
22 courtesy copy of any filing exceeding twenty pages in length to
23 chambers within twenty-four hours after filing. Lowe's motion to
24 compel and attachments significantly exceeded twenty pages and so
25 deliver of a courtesy copy to chambers was required. Messenger
26 service fees are compensable in a fee award, see e.g. Harris v.
27 Marhoefer, 24 F.3d 16, 19-20 (9th Cir. 1994) (finding that messenger
28 fees may be recovered); see also Sure Safe Indus., 152 F.R.D. at 626

1 (holding that an award of attorneys' fees under Rule 37 properly
2 includes out-of-pocket expenses including mailing, copying and
3 travel), and the Court grants Lowe's request in this case for its
4 messenger fees.⁵

5 **CONCLUSION**

6 For the foregoing reasons, Lowe's and Home Depot's
7 applications for attorneys' fees are **GRANTED IN PART AND DENIED IN**
8 **PART**. Plaintiffs and their counsel are hereby ordered to reimburse
9 Lowe's in the amount of **\$32,283.05**⁶ on or before **November 10, 2008**,
10 and Plaintiffs' counsel is ordered to file a declaration verifying
11 said payment by **November 14, 2008**. Plaintiffs and their counsel are
12 hereby ordered to reimburse Home Depot in the amount of **\$8,980.50** on
13 or before **November 10, 2008**, and Plaintiffs' counsel is ordered to
14 file a declaration verifying said payment by **November 14, 2008**.
15 Failure to comply with this Order may result in the imposition of
16 additional sanctions.

17 **IT IS SO ORDERED.**

18 DATED: October 27, 2008

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20 BARBARA L. MAJOR
21 United States Magistrate Judge

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23 COPY TO:
24 _____

25 ⁵ While other delivery methods may have proven less expensive than
26 Lowe's messenger fees, Lowe's is permitted to utilize either method authorized
27 in the ECF Manual. In addition, Plaintiffs did not provide this Court with any
28 alternative evidence on which to rely so this Court grants the amount requested.

⁶ \$31,333.75 (attorneys' fees) + \$670.00 (electronic research fees) +
\$279.30 (messenger costs) = \$32,283.05.

1 HONORABLE DANA M. SABRAW
2 U.S. DISTRICT JUDGE

3 ALL COUNSEL
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