

9-22-2017

Lunneborg v. My Fun Life Clerk's Record Dckt. 45200

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IN THE SUPREME COURT OF THE STATE OF IDAHO

THOMAS LUNNEBORG,)	
)	SUPREME COURT
PLAINTIFF/RESPONDENT,	)	CASE NO. 45200
)	
VS.)	
)	
MY FUN LIFE, a Delaware Corporation,)	
DAN E. EDWARDS and CARRIE L.)	
EDWARDS, husband and wife,)	
)	
DEFENDANT/APPELLANTS)	
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CLERK'S RECORD ON APPEAL

MARY SHEA
109 N Arthur – 5th Floor
Pocatello, ID 83204-0991

CHRISTOPHER G VARALLO
DANIEL J GIBBONS
422 W Riverside Ave, Suite 1100
Spokane, WA 99201

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

Thomas Lunneborg vs. My Fun Life Corporation, Daniel E Edwards, Carrie L Edwards

Date	Code	User		Judge
12/8/2014	NCOC	DIXON	New Case Filed - Other Claims	John T. Mitchell
		DIXON	Filing: AA- All initial civil case filings in District Court of any type not listed in categories E, F and H(1) Paid by: Nienstedt, Michael F. (attorney for Lunneborg, Thomas) Receipt number: 0048294 Dated: 12/8/2014 Amount: \$221.00 (Check) For: Lunneborg, Thomas (plaintiff)	John T. Mitchell
	COMP	MCCOY	Complaint Filed	John T. Mitchell
	SUMI	MCCOY	Summons Issued	John T. Mitchell
12/12/2014	AFSV	MCCOY	Affidavit Of Service - 12/9/14 - DE obo My Fun Life	John T. Mitchell
	NOTE	MCCOY	File Sent to Judge for Review	John T. Mitchell
12/15/2014	NOTC	JLEIGH	Notice Of Status Conference	John T. Mitchell
	SUMR	JLEIGH	Summons Returned- DEE	John T. Mitchell
12/19/2014	AFSV	CLEVELAND	Affidavit Of Service - 12/17/14 - D.E.E. registered agent for My Fun Life Corp	John T. Mitchell
	NTSV	JLEIGH	Notice Of Service Of Plaintiff's First Set Of Interrogatories And Requests For Production Of Documents Propounded To Defendant	John T. Mitchell
12/30/2014	AFDJ	WOOSLEY	Application and Affidavit In Support Of Default Entry	John T. Mitchell
1/5/2015		DIXON	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Douglas B Marks And Associates PLL Receipt number: 0000326 Dated: 1/5/2015 Amount: \$136.00 (Check) For: My Fun Life Corporation (defendant)	John T. Mitchell
	ANSW	HUFFMAN	Answer and Counterclaim	John T. Mitchell
	ORDF	DEGLMAN	Order For Entry Of Default - VACATED ON 2/23/15	John T. Mitchell
1/6/2015	NOTE	HUFFMAN	Clerk's Notation-Sent to Judge for review	John T. Mitchell
1/14/2015	HRSC	HODGE	Hearing Scheduled (Status Conference 02/11/2015 10:00 AM)	John T. Mitchell
		HODGE	Notice of Hearing	John T. Mitchell
1/27/2015	ANSW	LEU	Plaintiff's Answer To Counterclaim	John T. Mitchell
2/10/2015	NOTC	MCCOY	Notice of Association of Counsel - Emily Arneson Associates With Nienstedt & Hazel	John T. Mitchell
2/11/2015	HRSC	CLAUSEN	Hearing Scheduled (Jury Trial Scheduled 02/08/2016 09:00 AM) 5 DAYS	John T. Mitchell
	NTSV	MCKEON	Notice Of Service Of Defendant's Responses To Interrogatories And Requests For Production Of Documents	John T. Mitchell
	NTSV	MCKEON	Notice Of Service Of Defendant's Responses To Interrogatories And Requests For Production Of Documents Propounded To Plaintiff	John T. Mitchell

Thomas Lunneborg vs. My Fun Life Corporation, Daniel E Edwards, Carrie L Edwards

Date	Code	User		Judge
2/11/2015	DCHH	CLAUSEN	Hearing result for Status Conference scheduled on 02/11/2015 10:00 AM: District Court Hearing Held Court Reporter: JULIE FOLAND	John T. Mitchell
2/18/2015	HRSC	CLAUSEN	Hearing Scheduled (Motion to Dismiss 04/16/2015 02:00 PM) Hazel	John T. Mitchell
2/19/2015	ORDR	CLAUSEN	Scheduling Order, Notice of Trial Setting and Initial Pretrial Order	John T. Mitchell
2/23/2015	ORDR	MCCOY	Stipulated Order Vacating Default Order	John T. Mitchell
2/26/2015	NTSV	MCKEON	Notice Of Service Of Plaintiff's Answers And Responses To Defendant's First Set Of Interrogatories And Requests For Production Of Documents Propounded To Plaintiff	John T. Mitchell
3/25/2015	HRSC	CLAUSEN	Hearing Scheduled (Motion to Compel 04/29/2015 02:00 PM) Hazel	John T. Mitchell
4/1/2015	MEMO	MCKEON	Memorandum In Support Of Motion To Dismiss Counterclaim	John T. Mitchell
	MNDS	MCKEON	Motion To Dismiss Counterclaim And Notice Of Hearing	John T. Mitchell
4/8/2015	MOTN	MCKEON	Motion For Leave To File First Amended Answer And Counterclaim	John T. Mitchell
	MEMO	MCKEON	Memorandum In Opposition To Motion To Dismiss Counterclaims	John T. Mitchell
4/13/2015	HRVC	CLAUSEN	Hearing result for Motion to Compel scheduled on 04/29/2015 02:00 PM: Hearing Vacated Hazel	John T. Mitchell
4/14/2015	HRVC	TBURTON	Hearing result for Motion to Dismiss scheduled on 04/16/2015 02:00 PM: Hearing Vacated Hazel	John T. Mitchell
4/17/2015	MISC	MMILLER	Statement of Non-Objection To Motion For Leave To File First Amended Answer and Counterclaim	John T. Mitchell
4/28/2015	AFSV	DIXON	Affidavit of Service-4/22/15-JBB obo RB	John T. Mitchell
5/11/2015	NTSV	MCKEON	Notice Of Service Of Plaintiff's Second Set Of Interrogatories And Requests For Production Of Documents Propounded To Defendant	John T. Mitchell
6/10/2015	NOTC	CLEVELAND	Notice of Service of Defendant's Supplemental Responses to Interrogatories and Requests for Production of Documents	John T. Mitchell
6/15/2015	ORDR	CLAUSEN	Order Granting Leave to File First Amended Answer and Counterclaim	John T. Mitchell
	ANSW	CLAUSEN	First AMENDED Answer and Counter-Claim	John T. Mitchell
7/9/2015	HRSC	CLAUSEN	Hearing Scheduled (Motion to Compel 07/28/2015 09:00 AM)	John T. Mitchell
7/14/2015	MEMS	DIXON	Memorandum In Support Of Motion To Compel Resonnes To Second Set Of Discovery Requests	John T. Mitchell

Thomas Lunneborg vs. My Fun Life Corporation, Daniel E Edwards, Carrie L Edwards

Date	Code	User		Judge
7/14/2015	NOTH	DIXON	Notice Of Hearing On Plaintiff's Motion To Compel	John T. Mitchell
	MISC	DIXON	Declaration Of Emily K Arneson In Support Of Motion To Compel Discovery	John T. Mitchell
	MNCL	DIXON	Motion To Compel Responses To Plaintiffs Second Set Of Discovery Requests	John T. Mitchell
7/28/2015	DCHH	HODGE	Hearing result for Motion to Compel scheduled on 07/28/2015 09:00 AM: District Court Hearing Held - GRANTED Court Reporter: JULIE FOLAND	John T. Mitchell
	ORDR	HODGE	Order Compelling Responses to Plaintiff's Second Set Discovery Requests	John T. Mitchell
8/7/2015	PLWL	CLEVELAND	Plaintiff's Expert Witness Disclosure	John T. Mitchell
	MOTN	CLEVELAND	Joint Motion and Order for Trial Continuance	John T. Mitchell
	NTSV	CLEVELAND	Notice Of Service of Plaintiff's Expert Witness Disclosure	John T. Mitchell
	MOTN	CLEVELAND	Motion for Approval of Attorneys' Fees	John T. Mitchell
	AFFD	CLEVELAND	Declaration of Emily K. Arneson in Support of Motion to Approve Attorneys' Fees	John T. Mitchell
	MISC	DEGLMAN	Disclosure of Expert Witnesses By Defendant	John T. Mitchell
	NTSV	DEGLMAN	Notice Of Service of Defendant's Responses to Second Interrogatories and Requests For Production of Documents	John T. Mitchell
8/10/2015	ORDR	CLAUSEN	Order for Trial Continuance	John T. Mitchell
	HRSC	CLAUSEN	Hearing Scheduled (Jury Trial Scheduled 06/13/2016 09:00 AM) 5 DAYS	John T. Mitchell
	CONT	CLAUSEN	Hearing result for Jury Trial Scheduled scheduled on 02/08/2016 09:00 AM: Continued 5 DAYS	John T. Mitchell
8/13/2015	MISC	MMILLER	Declaration of Doug Marks	John T. Mitchell
	OBJT	MMILLER	Objection To Motion To Approve Attorneys' Fees	John T. Mitchell
8/18/2015	NTSV	DEGLMAN	Notice Of Service of Defendant's Supplemental Responses to Second Interrogatories and Requests For Production of Documents	John T. Mitchell
8/19/2015	FILE	BRADY	New File Created*****#2*****	John T. Mitchell
8/20/2015	MOTN	BRADY	Second Declaration Of Emily K. Arneson In Support Of Motion To Approve Attorneys' Fees	John T. Mitchell
	MOTN	BRADY	Reply In Support Of Motion For Approval Of Attorneys' Fees	John T. Mitchell
9/2/2015	HRSC	CLAUSEN	Hearing Scheduled (Motion to Amend 09/28/2015 04:00 PM) Complaint; Arneson	John T. Mitchell
9/4/2015	MNWD	MMILLER	Motion For Leave To Withdraw	John T. Mitchell
9/8/2015	NOTH	JLEIGH	Notice Of Hearing On Plaintiff's Motion For Leave To File First Amended Complaint	John T. Mitchell

Thomas Lunneborg vs. My Fun Life Corporation, Daniel E Edwards, Carrie L Edwards

Date	Code	User		Judge
9/8/2015	MOTN	JLEIGH	Motion For Leave To File First Amended Complaint	John T. Mitchell
	MEMS	JLEIGH	Memorandum In Support Of Motion For Leave To File First Amended Complaint	John T. Mitchell
9/17/2015	HRSC	CLAUSEN	Hearing Scheduled (Motion for Contempt 10/20/2015 02:00 PM) Hazel; 1/2 hour	John T. Mitchell
9/25/2015	HRVC	CLAUSEN	Hearing result for Motion to Amend scheduled on 09/28/2015 04:00 PM: Hearing Vacated Complaint; Arneson	John T. Mitchell
	MISC	ANGLIN	Statement of Non-Objection to Plaintiff's Motion for Leave to File Amended Complaint	John T. Mitchell
9/30/2015	NOTC	ANGLIN	Notice of Substitution of Counsel - M Hague for D Marks	John T. Mitchell
10/7/2015	MEMO	HUFFMAN	Memorandum in Support of Motion for Sanctions	John T. Mitchell
	MISC	HUFFMAN	Declaration of Emily K Arneson	John T. Mitchell
	MOTN	HUFFMAN	Plaintiff's Motion for Sanctions	John T. Mitchell
	MOTN	ESPE	Plaintiff's Motion to Shorten Time for Hearing on Motion for Sanctions	John T. Mitchell
	MEMO	ESPE	Memorandum in Support of Motion to Shorten Time for Hearing on Motion for Sanctions	John T. Mitchell
	MISC	ESPE	Second Declaration of Emily K. Arneson	John T. Mitchell
10/13/2015	AFFD	ESPE	Affidavit of Counsel in Response to Plaintiff's Motion for Sanctions	John T. Mitchell
10/16/2015	MISC	ESPE	Third Declaration of Emily K. Arneson	John T. Mitchell
10/20/2015	DCHH	CLAUSEN	Hearing result for Motion for Contempt scheduled on 10/20/2015 02:00 PM: District Court Hearing Held Court Reporter: JULIE FOLAND	John T. Mitchell
	ORDR	CLAUSEN	Order Shortening Time	John T. Mitchell
10/23/2015	HRSC	CLAUSEN	Hearing Scheduled (Motion 11/23/2015 11:00 AM) Attorneys Fees; Arneson	John T. Mitchell
11/9/2015	HRSC	CLAUSEN	Hearing Scheduled (Motion 12/08/2015 02:00 PM) Attorneys Fees; Arneson	John T. Mitchell
	HRVC	CLAUSEN	Hearing result for Motion scheduled on 11/23/2015 11:00 AM: Hearing Vacated Attorneys Fees; Arneson	John T. Mitchell
11/23/2015	MISC	ESPE	Declaration of Emily K. Arneson in Support of Motion to Approve Attorney's Fees	John T. Mitchell
11/24/2015	MOTN	HUFFMAN	Motion for Approval of Attorney's Fees and Notice of Hearing	John T. Mitchell
	NOTC	HUFFMAN	Notice of Taking Deposition of Thomas Lunneborg	John T. Mitchell
11/30/2015	NOTD	ESPE	Amended Notice of Taking Deposition of Thomas Lunneborg	John T. Mitchell

Thomas Lunneborg vs. My Fun Life Corporation, Daniel E Edwards, Carrie L Edwards

Date	Code	User		Judge
11/30/2015	OBJT	HAYDEN	Defendant's Objection to Plaintiff's Motion for Approval of Attorney Fees	John T. Mitchell
12/7/2015	MISC	ESPE	Reply in Support of Motion for Approval of Attorney's Fees	John T. Mitchell
12/8/2015	DCHH	CLAUSEN	Hearing result for Motion scheduled on 12/08/2015 02:00 PM: District Court Hearing Held Court Reporter: JULIE FOLAND	John T. Mitchell
	ORDR	CLAUSEN	Order Granting in Part and Denying in Part Plaintiff's Motion for Sanctions	John T. Mitchell
	ORDR	CLAUSEN	Order Granting Leave to File Amended Complaint	John T. Mitchell
12/14/2015	NTSV	ESPE	Notice Of Service of Plaintiff's First Amended Expert Witness Disclosure	John T. Mitchell
12/21/2015	COMP	HAYDEN	First Amended Complaint Filed	John T. Mitchell
	SUMI	HAYDEN	Amended Summons Issued	John T. Mitchell
12/28/2015	ORDR	LARSEN	Order Approving Reduced Attorneys' Fees	John T. Mitchell
1/19/2016	NTSV	LEU	Notice Of Service Of Defendants' Expert Witness Disclosure	John T. Mitchell
2/10/2016	MOTN	KOZMA	Motion to Enlarge Time to Respond to Plaintiff's First Amended Complaint	John T. Mitchell
2/16/2016	ANSW	CLEVELAND	Answer to First AMENDED Complaint - Michael B. Hague	John T. Mitchell
3/8/2016	MOTN	DIXON	Joint Motion For Trial Continuance	John T. Mitchell
	ORDR	CLAUSEN	Order for Trial Continuance	John T. Mitchell
3/9/2016	CONT	CLAUSEN	Hearing result for Jury Trial Scheduled scheduled on 06/13/2016 09:00 AM: Continued 5 DAYS	John T. Mitchell
	HRSC	CLAUSEN	Hearing Scheduled (Jury Trial Scheduled 10/17/2016 09:00 AM) 5 DAYS	John T. Mitchell
4/14/2016	NOTD	KOZMA	Notice Of Taking Deposition Duces Tecum of Todd Schlapfer, N.D.	John T. Mitchell
5/13/2016	HRSC	CLAUSEN	Hearing Scheduled (Motion 06/28/2016 10:30 AM) Sanctions; Arneson	John T. Mitchell
5/31/2016	STIP	DEGLMAN	Stipulation to Order Authorizing Out of State Deposition	John T. Mitchell
6/1/2016	ORDR	CLAUSEN	Order Authorizing Out of State Deposition	John T. Mitchell
6/2/2016	FILE	KOZMA	New File Created*****#3****	John T. Mitchell
6/15/2016	MISC	KOZMA	Second Declaration of Emily K. Arneson	John T. Mitchell
	MEMS	KOZMA	Memorandum In Support Of Motion to Shorten Time for Hearing on Motion for Sanctions	John T. Mitchell
	MOTN	KOZMA	Plaintiff's Motion to Shorten Time for Hearing on Motion for Sanctions and Notice of hearing	John T. Mitchell
	MISC	KOZMA	Declaration of Emily K. Arneson	John T. Mitchell
	MEMS	KOZMA	Memorandum In Support Of Motion for Sanctions	John T. Mitchell

Thomas Lunneborg vs. My Fun Life Corporation, Daniel E Edwards, Carrie L Edwards

Date	Code	User		Judge
6/15/2016	MOTN	KOZMA	Plaintiff's Motion for Sanctions and Notice of Hearing	John T. Mitchell
6/16/2016	HRSC	CLAUSEN	Hearing Scheduled (Motion 06/29/2016 09:30 AM) for Sanctions; Arneson	John T. Mitchell
	HRSC	CLAUSEN	Hearing Scheduled (Motion 06/29/2016 09:30 AM) to Shorten Time: Arneson	John T. Mitchell
	HRVC	CLAUSEN	Hearing result for Motion scheduled on 06/28/2016 10:30 AM: Hearing Vacated Sanctions; Arneson	John T. Mitchell
	MOTN	KOZMA	Plaintiff's Motion for Sanctions and Amended Notice of Hearing	John T. Mitchell
6/22/2016	OBJT	WOOSLEY	Objection to Motion for Sanctions	John T. Mitchell
	AFFD	WOOSLEY	Affidavit of Michael B Hague	John T. Mitchell
	MEMO	WOOSLEY	Memorandum in Opposition to Motion for Sanctions	John T. Mitchell
	BANR	ZOOK	Bankruptcy Filed #16-20462-TLM	John T. Mitchell
6/24/2016	HRVC	CLAUSEN	Hearing result for Motion scheduled on 06/29/2016 09:30 AM: Hearing Vacated for Sanctions; Arneson	John T. Mitchell
	HRVC	CLAUSEN	Hearing result for Motion scheduled on 06/29/2016 09:30 AM: Hearing Vacated to Shorten Time: Arneson	John T. Mitchell
7/1/2016	NOTD	KOZMA	Notice Of Deposition Duces Tecum of Richard Brooke	John T. Mitchell
7/12/2016	STAT	CLAUSEN	Case status changed: inactive	John T. Mitchell
7/22/2016	HRVC	CLAUSEN	Hearing result for Jury Trial Scheduled scheduled on 10/17/2016 09:00 AM: Hearing Vacated 5 DAYS	John T. Mitchell
8/15/2016	REPT	DIXON	ADR Joint Report	John T. Mitchell
8/19/2016	NTWD	HAYDEN	Notice Of Withdrawal and Substitution of Counsel - Anson obo Lunneborg	John T. Mitchell
	NOTD	KOZMA	Notice Of Deposition of Dan E. Edwards	John T. Mitchell
	NOTD	KOZMA	Notice Of Deposition of Carrie L. Edwards	John T. Mitchell
8/24/2016	HRSC	CLAUSEN	Hearing Scheduled (Motion to Dismiss 10/12/2016 11:30 AM) Anson	John T. Mitchell
	HRSC	CLAUSEN	Hearing Scheduled (Motion to Amend 10/12/2016 11:30 AM) Anson	John T. Mitchell
	HRSC	CLAUSEN	Hearing Scheduled (Motion 10/12/2016 11:30 AM) Trial Setting; Anson	John T. Mitchell
9/21/2016	NOTD	KOZMA	Notice Of Deposition of Dan E. Edwards	John T. Mitchell
9/23/2016	HRSC	CLAUSEN	Hearing Scheduled (Motion to Dismiss 10/11/2016 09:00 AM) Anson	John T. Mitchell

Thomas Lunneborg vs. My Fun Life Corporation, Daniel E Edwards, Carrie L Edwards

Date	Code	User		Judge
9/23/2016	HRVC	CLAUSEN	Hearing result for Motion to Dismiss scheduled on 10/12/2016 11:30 AM: Hearing Vacated Anson	John T. Mitchell
	HRSC	CLAUSEN	Hearing Scheduled (Motion to Amend 10/11/2016 09:00 AM) Anson	John T. Mitchell
	HRVC	CLAUSEN	Hearing result for Motion to Amend scheduled on 10/12/2016 11:30 AM: Hearing Vacated Anson	John T. Mitchell
	HRSC	CLAUSEN	Hearing Scheduled (Motion 10/11/2016 09:00 AM) for Trial Setting; Anson	John T. Mitchell
	HRVC	CLAUSEN	Hearing result for Motion scheduled on 10/12/2016 11:30 AM: Hearing Vacated Trial Setting; Anson	John T. Mitchell
9/27/2016	MISC	KOZMA	Declaration of Edward J. Anson	John T. Mitchell
	MOTN	KOZMA	Plaintiff's Motion to Reset Trial Date and Notice of Hearing	John T. Mitchell
	MOTN	KOZMA	Plaintiff's Amended Motion for Sanctions and Notice of Hearing	John T. Mitchell
	AFFD	HAYDEN	Second Declaration of Emily K Arneson	John T. Mitchell
10/5/2016	MEMO	KOZMA	Memorandum in Opposition to Amended Motion for Sanctions	John T. Mitchell
10/7/2016	MISC	KOZMA	Reply In Support of Plaintiff's Amended Motion for Sanctions	John T. Mitchell
10/11/2016	DCHH	CLAUSEN	Hearing result for Motion scheduled on 10/11/2016 09:00 AM: District Court Hearing Held Court Reporter: JULIE FOLAND	John T. Mitchell
	DCHH	CLAUSEN	Hearing result for Motion scheduled on 10/11/2016 09:00 AM: District Court Hearing Held Court Reporter: JULIE FOLAND	John T. Mitchell
	DCHH	CLAUSEN	Hearing result for Motion to Dismiss scheduled on 10/11/2016 09:00 AM: District Court Hearing Held Court Reporter: JULIE FOLAND	John T. Mitchell
10/12/2016	HRSC	CLAUSEN	Hearing Scheduled (Jury Trial Scheduled 03/13/2017 09:00 AM) 5 DAYS	John T. Mitchell
		CLAUSEN	Notice of Trial	John T. Mitchell
11/10/2016	NOTC	HICKS	Notice of Continued Deposition of Carrie L Edwards	John T. Mitchell
11/29/2016	ORDR	HAYDEN	Order Re Plaintiff's Motion for Sanctions	John T. Mitchell
	CVDI	HAYDEN	Civil Disposition entered for: My Fun Life Corporation, Defendant; Lunneborg, Thomas, Plaintiff. Filing date: 11/29/2016	John T. Mitchell
	FJDE	HAYDEN	Judgment Re Attorney's Fees	John T. Mitchell
12/5/2016	NOTD	KOZMA	Notice Of Deposition of Dr. Todd Schlapfer	John T. Mitchell
12/23/2016	MISC	DIXON	Video Deposition of Dr. Todd Schlapfer	John T. Mitchell

Thomas Lunneborg vs. My Fun Life Corporation, Daniel E Edwards, Carrie L Edwards

Date	Code	User	Judge
1/12/2017	NOTR	JLEIGH	Notice Of Transcript Delivery Deponent: Carrie L Edwards, Vols I & II
1/23/2017	REPT	CLEVELAND	Joint ADR Report (Mediation Did Not Result in a Settlement)
2/14/2017	HRSC	CLAUSEN	Hearing Scheduled (Motion in Limine 03/13/2017 08:30 AM) Anson
2/27/2017	DFWL	KOZMA	Defendant's Witness List
	DEFX	KOZMA	Defendant's List Of Exhibits
	MNLI	KOZMA	Plaintiff's Motion In Limine and Notice of Hearing
	PLTX	KOZMA	Plaintiff's List Of Exhibits
	PLWL	KOZMA	Plaintiff's Witness List
	HRSC	CLAUSEN	Hearing Scheduled (Court Trial Scheduled 03/13/2017 09:00 AM) 5 Days
	HRVC	CLAUSEN	Hearing result for Jury Trial Scheduled scheduled on 03/13/2017 09:00 AM: Hearing Vacated 5 DAYS
		CLAUSEN	AMENDED Notice of Trial
2/28/2017		CLAUSEN	AMENDED Notice of Trial
3/6/2017	FACT	KOZMA	Plaintiff's Proposed Findings Of Fact, Conclusions Of Law
	MNLI	KOZMA	Withdrawal of Plaintiff's Motion In Limine
	PBRF	KOZMA	Plaintiff's Trial Brief
	MEMA	KOZMA	Defendants' Memorandum Of Points And Authorities
	FACT	KOZMA	Defendants' Proposed Findings Of Fact, Conclusions Of Law
	MISC	KOZMA	Declaration of Counsel in Support of Defendants' Response to Motion in Limine
	MISC	KOZMA	Defendants' Response to Motion in Limine
3/10/2017	HRVC	CLAUSEN	Hearing result for Motion in Limine scheduled on 03/13/2017 08:30 AM: Hearing Vacated Anson
3/13/2017	DCHH	EVANS	Hearing result for Court Trial Scheduled scheduled on 03/13/2017 09:00 AM: District Court Hearing Held Court Reporter: JULIE FOLAND Number of Transcript Pages for this hearing estimated: 250 Pages
	CTST	EVANS	Court Trial Started
3/14/2017	HRSC	EVANS	Hearing Scheduled (Jury Trial Scheduled 03/14/2017 08:30 AM)

Thomas Lunneborg vs. My Fun Life Corporation, Daniel E Edwards, Carrie L Edwards

Date	Code	User		Judge
3/14/2017	DCHH	EVANS	Hearing result for Jury Trial Scheduled scheduled on 03/14/2017 08:30 AM: District Court Hearing Held Court Reporter: JULIE FOLAND Number of Transcript Pages for this hearing estimated: less than 275 pages	John T. Mitchell
	HRSC	EVANS	Hearing Scheduled (Court Trial Scheduled 03/15/2017 08:30 AM)	John T. Mitchell
3/15/2017	DCHH	CLAUSEN	Hearing result for Court Trial Scheduled scheduled on 03/15/2017 08:30 AM: District Court Hearing Held Court Reporter: JULIE FOLAND Number of Transcript Pages for this hearing estimated: 200	John T. Mitchell
3/28/2017	FILE	CLAUSEN	New File Created ***** 4 *****	John T. Mitchell
3/29/2017	PBRF	KOZMA	Plaintiff's Post-Trial Brief	John T. Mitchell
	MISC	KOZMA	Defendants' Closing Argument	John T. Mitchell
4/5/2017	MISC	FLODEN	Plaintiff's Response to Defendant's Closing Argument	John T. Mitchell
	BRIE	FLODEN	Defendants' Closing Argument Reply Brief	John T. Mitchell
4/10/2017	FILE	HAYDEN	*****File 5 Created*****	John T. Mitchell
4/17/2017	ORDR	CLAUSEN	Memorandum Decision, Findings of Fact, Conclusions of Law, and Order Following Court Trial	John T. Mitchell
4/21/2017	HRSC	CLAUSEN	Hearing Scheduled (Motion 05/17/2017 04:00 PM) Objection to Form of the Judgment; Hague	John T. Mitchell
	NOTH	KOZMA	Notice Of Hearing Defendants' Objection to Proposed Judgment	John T. Mitchell
	OBJT	KOZMA	Defendants' Objection to Proposed Judgment	John T. Mitchell
4/25/2017	CVDI	HAYDEN	Civil Disposition entered for: Edwards, Carrie L, Defendant; Edwards, Daniel E, Defendant; My Fun Life Corporation, Defendant; Lunneborg, Thomas, Plaintiff. Filing date: 4/25/2017	John T. Mitchell
	FJDE	HAYDEN	Final Judgment	John T. Mitchell
5/3/2017	MOTN	KOZMA	Motion to Alter or Amend Judgment	John T. Mitchell
	NOTH	KOZMA	Notice Of Hearing Motion to Alter or Amend Judgment	John T. Mitchell
5/8/2017	AFFD	KOZMA	Affidavit and Memorandum of Costs and Attorney's Fees	John T. Mitchell
5/10/2017	ANSW	CLEVELAND	Plaintiff's Response to Defendants' Motion to Alter or AMEND Judgment	John T. Mitchell
5/12/2017	MISC	DIXON	Reply To Objection to Motion to Alter Or Amend Judgment	John T. Mitchell

Thomas Lunneborg vs. My Fun Life Corporation, Daniel E Edwards, Carrie L Edwards

Date	Code	User		Judge
5/17/2017	DCHH	TBURTON	Hearing result for Motion scheduled on 05/17/2017 04:00 PM: District Court Hearing Held Court Reporter: Julie Foland Number of Transcript Pages for this hearing estimated: Under 100	John T. Mitchell
5/22/2017	MOTN	JLEIGH	Defendants's Motion To Disallow Attorney Fees And Costs	John T. Mitchell
	MISC	DEGLMAN	Declaration of Counsel In Support of Defendants' Objection to Plaintiff's Affidavit and Memorandum of Costs and Attorney Fees	John T. Mitchell
	OBJT	DEGLMAN	Defendants' Objection to Plaintiff's Affidavit and Memorandum of Costs and Attorney Fees	John T. Mitchell
	HRSC	CLAUSEN	Hearing Scheduled (Motion 06/07/2017 04:00 PM) Disallow Attorney Fees/Costs; Hague	John T. Mitchell
5/23/2017	NOHG	DEGLMAN	Notice Of Hearing Defendants' Motion to Disallow Attorney Fees and Costs	John T. Mitchell
5/24/2017	NOTH	KOZMA	Notice Of Hearing Defendants' Objection to Plaintiff's Affidavit and Memorandum of Costs and Fees	John T. Mitchell
5/31/2017	ANSW	DEGLMAN	Plaintiff's Response to Defendants' Motion to Disallow Attorney Fees and Costs	John T. Mitchell
6/2/2017	NOAP	FLODEN	Notice Of Appearance by Association - Mary E. Shea	John T. Mitchell
6/5/2017	APSC	LEU	Appealed To The Supreme Court	John T. Mitchell
		LEU	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Mary E. Shea Receipt number: 0020913 Dated: 6/5/2017 Amount: \$129.00 (Check) For: Edwards, Carrie L (defendant), Edwards, Daniel E (defendant) and My Fun Life Corporation (defendant)	John T. Mitchell
	BNDC	LEU	Bond Posted - Cash (Receipt 20914 Dated 6/5/2017 for 100.00)	John T. Mitchell
	MEMO	TBURTON	Memorandum Decision And Order Denying Defendants' Motion To Alter Or Amend Judgment	John T. Mitchell
6/12/2017	DCHH	TBURTON	Hearing result for Motion scheduled on 06/07/2017 04:00 PM: District Court Hearing Held Court Reporter: Julie Foland Number of Transcript Pages for this hearing estimated: Under 100	John T. Mitchell
6/13/2017	ORDR	CLAUSEN	Memorandum Decision and Order Granting Plaintiff's Attorneys' Fees	John T. Mitchell
6/20/2017	CERT	HAYDEN	Certificate Of Mailing by Certified Mail	John T. Mitchell
	BNDC	VIGIL	Bond Posted - Cash (Receipt 23274 Dated 6/20/2017 for 2080.00)	John T. Mitchell
	JDMT	VIGIL	Amended Final Judgment	John T. Mitchell
6/27/2017	SUBC	DEGLMAN	Notice of Substitution Of Counsel- Christopher Varallo/ Daniel Gibbons obo Plaintiff	John T. Mitchell

Thomas Lunneborg vs. My Fun Life Corporation, Daniel E Edwards, Carrie L Edwards

Date	Code	User		Judge
7/11/2017	APSC	LEU	Amended Notice Of Appeal	John T. Mitchell
7/31/2017	AFFD	DEGLMAN	Affidavit of Amount Due	John T. Mitchell
	MOCG	DEGLMAN	Motion For Writ of Garnishment	John T. Mitchell
8/2/2017	ORCG	DEGLMAN	Order For Continuing Garnishment	John T. Mitchell
	WRIT	DEGLMAN	Writ Issued \$366,277.95	John T. Mitchell
		DEGLMAN	Miscellaneous Payment: Writs Of Execution Paid by: Witherspoon Kelley Receipt number: 0029085 Dated: 8/2/2017 Amount: \$2.00 (Check)	John T. Mitchell
8/30/2017	NLTR	LEU	Notice Of Transcript Lodged - 650 pgs - Julie K. Foland	John T. Mitchell
8/31/2017	BNDV	LEU	Bond Converted (Transaction number 1626 dated 8/31/2017 amount 2,080.00)	John T. Mitchell

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED: 4829
2014 DEC -8 PM 3: 11

CLERK DISTRICT COURT
Sumner
DEPUTY

1
2 Michael F. Nienstedt, ISBA No. 3770
3 Joel P. Hazel, ISBA No. 4980
4 WITHERSPOON KELLEY
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11 Email: jph@witherspoonkelley.com

12 *Attorneys for the Plaintiff, Thomas Lunneborg*

13
14 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
15 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

16 THOMAS LUNNEBORG, a married
17 individual,

18 Plaintiff,

19 vs.

20 MY FUN LIFE CORP, a Delaware corporation,
21 Defendant.

CASE NO: CV14-8968
COMPLAINT

22 COMES NOW Plaintiff, THOMAS LUNNEBORG (hereinafter Plaintiff Lunneborg),
23 by and through his attorneys Michael F. Nienstedt and Joel P. Hazel of the firm Witherspoon
24 Kelley, and for his causes of action against the above named Defendant complains, alleges and
25 avers as follows:

26 I. PARTIES

27 1.1 At all times material, Plaintiff Lunneborg resided in Spokane County,
28 Washington, but worked in Kootenai County, Idaho. Plaintiff Lunneborg currently resides in
Kootenai County, Idaho.

ASSIGNED TO
JUDGE MITCHELL

1 3.4 Defendant MFL is a travel booking company based on a multi-level marketing
2 platform.

3 3.5 On March 27, 2014, Plaintiff Lunneborg was introduced through a mutual
4 acquaintance to the Chief Executive Officer (CEO) of Defendant MFL, Dan Edwards.
5

6 3.6 Mr. Edwards expressed an interest in hiring Plaintiff Lunneborg to act as the
7 Chief Operations Officer (COO) of Defendant MFL.

8 3.7 Mr. and Ms. Edwards shared financial information of MFL with Plaintiff
9 Lunneborg to entice him to become Defendant MFL's COO.
10

11 3.8 On or about April 2, 2014, Plaintiff Lunneborg accepted the position of COO
12 for Defendant MFL.

13 **B. COMMENCEMENT OF PLAINTIFF'S EMPLOYMENT AT DEFENDANT MFL**

14 3.9 Plaintiff Lunneborg and Defendant MFL entered into a written employment
15 contract ("Employment Agreement") on or about April 16, 2014. A true and correct copy of
16 the Employment Agreement is attached hereto as Exhibit "A".
17

18 3.10 Plaintiff Lunneborg was immediately introduced to Defendant MFL's staff as
19 the new COO.
20

21 3.11 The Employment Agreement provides, among other terms, that Plaintiff
22 Lunneborg's position would be "Chief Operating Officer" of Defendant MFL, and that Plaintiff
23 Lunneborg's annual salary would be \$120,000. A quarterly bonus was also promised, based
24 upon a percentage of company revenues.

25 3.12 Plaintiff Lunneborg's compensation at Oxyfresh had been significantly higher
26 than what Defendant MFL offered; however, Mr. Edwards assured Plaintiff Lunneborg that the
27 quarterly bonuses would make up the difference soon after Plaintiff Lunneborg began work.
28

1 3.13 The Employment Agreement provided that if Plaintiff Lunneborg's employment
2 was terminated by MFL "without cause," he would be paid six (6) months of salary.

3 3.14 Plaintiff Lunneborg commenced working for Defendant MFL on May 21, 2014.

4 3.15 Throughout his tenure at Defendant MFL, Plaintiff Lunneborg fully and
5 completely performed all of his obligations as COO. Neither Mr. Edwards nor Ms. Edwards
6 ever expressed any concern, complaint, or criticism of the adequacy of Plaintiff Lunneborg's
7 job performance until the date of Plaintiff Lunneborg's termination.
8

9 **C. EXPANSION OF COMPANY FOCUS**

10 3.16 Mr. and Ms. Edwards informed Plaintiff Lunneborg that they wanted to expand
11 the focus of Defendant MFL to include the offering of various products and services in
12 addition to travel booking.
13

14 3.17 Initially, Mr. Edwards wanted to develop and market an energy drink similar to
15 a product Plaintiff Lunneborg had created at Oxyfresh called LifeShotz.
16

17 3.18 Mr. Edwards asked Plaintiff Lunneborg to make a "mirror image" of the
18 LifeShotz formula used at Oxyfresh. Believing this action to be unethical, improper, and
19 potentially illegal, Plaintiff Lunneborg refused, but offered to develop a different product for
20 Defendant MFL.
21

22 3.19 Mr. Edwards expressed significant displeasure at Plaintiff Lunneborg's refusal
23 to misappropriate Oxyfresh's formula for LifeShotz.

24 **D. PLAINTIFF'S TERMINATION FROM DEFENDANT MFL**

25 3.20 Mr. Edwards terminated Plaintiff Lunneborg on July 28, 2014. The termination
26 letter cited two alleged "causes" for Plaintiff Lunneborg's termination, both of which are
27 fabrications.
28

1 3.21 At the time of his termination, Plaintiff Lunneborg's salary was \$10,000 per
2 month. Pursuant to the Employment Agreement, he is entitled to six (6) months of salary,
3 which is \$60,000. Defendant MFL refused to pay Plaintiff Lunneborg the owed severance
4 payment.
5

6 3.22 Also, at the time of his termination, Plaintiff Lunneborg had accrued 114 hours
7 of vacation time. He was not paid for this time.
8

9 **IV. FIRST CAUSE OF ACTION: BREACH OF CONTRACT**

10 4.1 Plaintiff Lunneborg re-alleges and incorporates Paragraphs 1.1 through 3.22 as
11 though fully set forth herein.

12 4.2 Plaintiff Lunneborg and Defendant MFL entered into a valid Employment
13 Agreement on April 16, 2014, Exhibit "A".
14

15 4.3 Pursuant to the terms of the Employment Agreement, Plaintiff Lunneborg was
16 to serve as the COO of Defendant MFL for an indefinite period of time.

17 4.4 The Employment Agreement provided that if Plaintiff Lunneborg was
18 terminated without cause, Defendant MFL would pay him six (6) months' salary severance.

19 4.5 Plaintiff Lunneborg was terminated without cause or the cause stated was a
20 false pretext.
21

22 4.6 Defendant MFL did not pay Plaintiff Lunneborg the severance payment or the
23 vacation pay promised under the Employment Agreement, and therefore breached the contract.

24 4.7 Defendant MFL's breach has proximately caused Plaintiff Lunneborg to suffer
25 damages in an amount to be proven at trial.
26
27
28

1 **V. SECOND CAUSE OF ACTION: WAGE CLAIM, I.C. § 45-601, et. seq.**

2 5.1 Plaintiff Lunneborg re-alleges and incorporates Paragraphs 1.1 through 4.7 as
3 though fully set forth herein.

4 5.2 Defendant MFL, as an employer, owed wages to Plaintiff Lunneborg as an
5 employee upon his termination.

6 5.3 Plaintiff Lunneborg accumulated 114 hours of paid time off while employed at
7 Defendant MFL, and was rightfully entitled to compensation for those days upon his
8 termination.

9 5.4 Defendant MFL refused to pay Plaintiff Lunneborg both the severance payment
10 and the promised paid time off upon its termination of Plaintiff Lunneborg.

11 5.5 Severance pay and vacation time are "compensation for the employee's own
12 personal services" and as such they are the proper subject of a wage claim under I.C. § 45-615.

13 5.6 Under I.C. § 45-615, Defendant MFL is liable to Plaintiff Lunneborg for the
14 severance payment and for compensation in lieu of vacation hours earned.

15 5.7 Plaintiff is also entitled to three (3) times the unpaid wages due and owing plus
16 attorney's fees pursuant to I.C. § 45-615.

17 **VI. THIRD CAUSE OF ACTION: WRONGFUL TERMINATION**

18 **IN VIOLATION OF PUBLIC POLICY**

19 6.1 Plaintiff Lunneborg re-alleges and incorporates Paragraphs 1.1 through 5.7 as
20 though fully set forth herein.

21 6.2 The formula for LifeShotz was and is owned by Oxyfresh.

22 6.3 The formula for LifeShotz derives independent economic value from not being
23 generally known, and not being readily ascertainable, by other persons who can obtain
24

1 economic value from its disclosure or use; further, the formula for LifeShotz is the subject of
2 reasonable efforts to maintain its secrecy. The formula for LifeShotz is a trade secret under I.C.
3 §48-801 and 28 U.S.C. § 1839.
4

5 6.4 Plaintiff Lunneborg knew or had reason to know that his knowledge of the
6 formula for LifeShotz was acquired under circumstances giving rise to a duty to maintain its
7 secrecy or limit its use.

8 6.5 Plaintiff Lunneborg did not have express or implied permission to disclose the
9 formula for LifeShotz.
10

11 6.6 Mr. Edwards asked Plaintiff Lunneborg to misappropriate the formula for
12 LifeShotz by making a "mirror image" of the formula which would then be sold by Defendant
13 MFL. Plaintiff Lunneborg refused.

14 6.7 Defendant MFL terminated Plaintiff Lunneborg because Plaintiff Lunneborg
15 declined to misappropriate the formula for LifeShotz for the benefit of Defendant MFL.
16

17 6.8 The public policy of the State of Idaho includes the protection of trade secrets
18 against misappropriation, as evidenced by the Idaho Trade Secrets Act, § 48-801 et seq.

19 6.9 Public policy protecting trade secrets is further evidenced by federal criminal
20 penalties for conversion or improper disclosure of trade secrets.
21

22 6.10 Plaintiff Lunneborg's refusal to commit the unlawful act of misappropriating a
23 trade secret is protected activity and said activity was in furtherance of the public policy
24 protecting trade secrets.

25 6.11 Defendant MFL's termination of Plaintiff Lunneborg violates public policy
26 because Plaintiff Lunneborg was terminated for engaging in a legally protected activity,
27 namely refusing to commit an unlawful act.
28

1 6.12 As a direct and proximate result of Defendant MFL's conduct, Plaintiff
2 Lunneborg has suffered damages in an amount to be proven at trial.

3
4 **VII. FOURTH CAUSE OF ACTION: BREACH OF THE DUTY**
5 **OF GOOD FAITH AND FAIR DEALING**

6 7.1 Plaintiff Lunneborg re-alleges and incorporates Paragraphs 1.1 through 6.12 as
7 though fully set forth herein.

8 7.2 Implied by law into the terms of the Employment Agreement is a covenant of
9 good faith and fair dealing.

10 7.3 Defendant MFL breached the implied covenant of good faith and fair dealing
11 owed to Plaintiff Lunneborg by failing to perform under the Employment Agreement and by
12 fabricating alleged "causes" for termination where none existed in fact.
13

14 7.4 Such breach has proximately caused damages in an amount to be proven at trial.
15

16 **VIII. PRAYER FOR RELIEF**

17 WHEREFORE, the Plaintiff prays for relief as follows:

18 1. For judgment against Defendant MFL for damages including, but not limited to,
19 the amount of severance payment to which Plaintiff Lunneborg is entitled, along with
20 compensation for earned but unused paid time off, in amounts to be proven at trial;

21 2. For compensatory and actual damages including, but not limited to, front pay
22 and back pay;

23 3. For treble damages pursuant to I.C. § 45-615;

24 4. For an award of attorney's fees and costs under I.C. § 45-615;

25 5. For prejudgment interest as provided by law;
26
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28

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VERIFICATION

STATE OF IDAHO)
 : ss.
County of Kootenai)

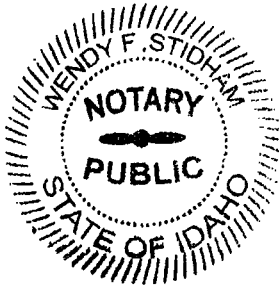
THOMAS LUNNEBORG, being first duly sworn on oath, deposes and says:

That he is the Plaintiff in the foregoing *COMPLAINT*, that he has read the same, knows the contents thereof, and believes the facts therein stated to be true.

DATED this 1st day of December, 2014.


THOMAS LUNNEBORG

SUBSCRIBED AND SWORN TO before me this 1st day of December 2014



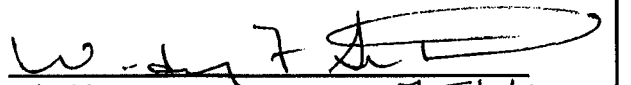

Print Name: Wendy F Stidham
Notary Public for the State of Idaho
Residing at: Post Falls ID
Commission expires: 11-24-2015

Exhibit A



April 8, 2014

Tom Lunneborg
6211 E Moreland Drive
Spokane, WA 99212

Re: Offer of Employment

Dear Tom:

My Fun Life, Inc. (the "Company") is pleased to offer you employment on the following terms:

1. **Position.** You will serve in a full-time capacity as Chief Operating Officer of the Company. You will report to the CEO. By signing this letter agreement, you represent and warrant to the Company that you are under no contractual commitments inconsistent with your obligations to the Company.
2. **Salary.** You will be paid a salary at the annual rate of \$120,000, payable in installments in accordance with the Company's standard payroll practices for salaried employees. This salary will be subject to adjustment pursuant to the Company's employee compensation policies in effect from time to time. In addition, a quarterly bonus of 1% of revenues for all revenues over \$600,000 per quarter, will be paid out within 30 days after the end of the quarter thru standard payroll practices.
3. **Benefits.** You will also be entitled, during the term of your employment, to such paid time off, medical, dental and other employee benefits as the Company may offer from time to time, subject to applicable eligibility requirements. The Company does reserve the right to make any modifications in this benefits package that it deems appropriate. The Company's current paid time off policy is to provide you with four weeks per year during the term of your employment.
4. **Period of Employment.** Your employment with the Company will be at will; meaning that either you or the Company will be entitled to terminate your employment at any time and for any reason, with or without cause. Any contrary representations which may have been made to you are superseded by this offer. This is the full and complete agreement between you and the Company on this term. Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures, may change from time to time, the at will nature of your employment may only be changed in an express written agreement signed by you and a duly authorized officer of the Company.
5. In the event of termination of this employment agreement, without cause, except resignation, six months of salary will be paid on current payroll schedule.

6. **Indemnification Rights.** You shall be entitled to indemnification, including advance reimbursement of expenses, to the fullest extent permitted by applicable law, and shall be entitled to receive an indemnification agreement with terms equivalent to any indemnification agreement that the Company executes with any of its officers or directors.

7. **Withholding Taxes.** All forms of compensation referred to in this letter are subject to reduction to reflect applicable withholding and payroll taxes.

8. **Entire Agreement.** This letter and the Exhibits attached hereto contain all of the terms of your employment with the Company and supersede any prior understandings or agreements, whether oral or written, between you and the Company.

9. **Amendment and Governing Law.** This letter agreement may not be amended or modified except by an express written agreement signed by you and a duly authorized officer of the Company. The terms of this letter agreement and the resolution of any disputes will be governed by Idaho law and subject to the arbitration provisions contained in the Employment Agreement.

We hope that you find the foregoing terms acceptable. You may indicate your agreement with these terms and accept this offer by signing and dating both the enclosed duplicate original of this letter and the enclosed Employment Agreement and returning them to me. As required by law, your employment with the Company is also contingent upon your providing legal proof of your identity and authorization to work in the United States and or obtaining the necessary authorizations to work in the United States.

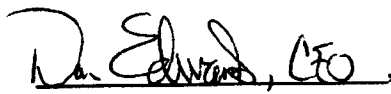
This offer, if not accepted, will expire at the close of business on April 18, 2014.

We look forward to having you join us on April 18, 2014 as a My Fun Life team member. If you have any questions, please don't hesitate to contact me.

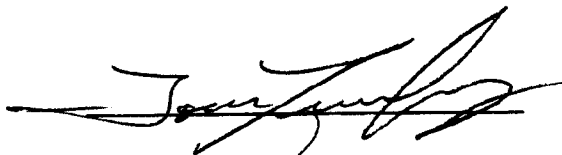
Very truly yours,

I have read and accept this employment offer:

My Fun Life, Inc.



Dan Edwards
President & CEO



Tom Lunneborg
Dated 4/16/2014

Start Date to be Approx. May 19, 2014

Lunneborg Offer 4-8-14

DOUGLAS B. MARKS
Attorney at Law
197 Harbison Lane
Sagle, ID 83860
Phone: (208) 597-5654
Fax: (208) 441-5462
ISB #5621

Attorney for Defendant

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED: 326

2015 JAN -5 PM 3: 54

CLERK DISTRICT COURT

Sherry Huffman
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THOMAS LUNNEBORG, a married individual,

Plaintiff,

vs.

MY FUN LIFE CORP, a Delaware corporation,

Defendant

CV 14-8968

CASE NO: ~~CV-13-9069~~

ANSWER AND COUNTER-CLAIM

FEE CATEGORY: A

FEE: ~~\$221.00~~

COMES NOW MY FUN LIFE CORP, ("Defendant") by and through its attorney Doug B. Marks of the firm DOUG MARKS & ASSOCIATES, PLLC, and hereby answers and counterclaims as follows:

Defendant denies each and every allegation of Plaintiff's Complaint not specifically and expressly denied herein. Defendant reserves the right to amend this and any other answer or denial stated herein once it has had an opportunity to complete discovery regarding the allegations contained in Plaintiff's Complaint.

ANSWER

I.

Defendant does not have sufficient knowledge to form a belief as to the allegations contained in Paragraph 1.1, and on that basis, denies the allegations of that paragraph.

II.

Defendant admits the allegations contained in Paragraph 1.2 of Plaintiff's Complaint.

III.

In response to Paragraph 2.1, Defendant re-asserts its responses to Paragraphs 1.1 and 1.2 as though set forth fully herein.

IV.

Defendant admits the allegations contained in Paragraph 2.2 of Plaintiff's Complaint.

V.

Defendant admits the allegations contained in Paragraph 2.3 of Plaintiff's Complaint.

VI.

Defendant admits the allegations contained in Paragraph 2.4 of Plaintiff's Complaint.

VII.

In response to Paragraph 3.1, Defendant re-asserts its responses to Paragraphs 1.1 through 2.4 as though set forth fully herein.

VIII.

Defendant does not have sufficient knowledge to form a belief as to the allegations contained in Paragraph 3.2, and on that basis, denies the allegations of that paragraph.

IX.

Defendant does not have sufficient knowledge to form a belief as to the allegations contained in Paragraph 3.3, and on that basis, denies the allegations of that paragraph.

X.

In response to the allegations contained in Paragraph 3.4 of the Complaint, MFL admits that travel booking services are a part of the services and products offered by MFL on a network marketing model.

XI.

In response to the allegations contained in Paragraph 3.5 of the Complaint, MFL admits that it was introduced by a mutual acquaintance, Dr. Todd Schlapfer, a naturopath doctor whom MFL had approached to create a product for MFL. Dr. Schlapfer said he was willing to work with MFL on creating a new product, but only if Plaintiff was in charge of developing the new product. Dr. Schlapfer was more than a mere acquaintance. His experience bringing new products to market was the reason MFL was interested in Plaintiff.

XII.

In response to the allegations contained in Paragraph 3.6 of the Complaint, MFL admits that MFL was interested in hiring Plaintiff, but only after learning that Dr. Schlapfer would not work with MFL unless Plaintiff was involved, and only after learning that Oxyfresh was in bad financial condition and that Plaintiff was looking for a way out.

XIII.

In response to the allegations contained in Paragraph 3.7 of the Complaint, MFL admits that it disclosed financial information to Plaintiff, but only after being requested by Plaintiff.

XIV.

In response to the allegations contained in Paragraph 3.8 of the Complaint, MFL admits that Plaintiff accepted the COO position on April 2. However, he was still determining his exit strategy at Oxyfresh and did not begin salaried work for MFL until May 21, 2014. Between May 21 and June 29, Plaintiff only worked nine full days. He consistently took long lunches and time off to continue working for Oxyfresh, contrary to his agreement with MFL.

XV.

Defendant admits the allegations contained in Paragraph 3.9 of the Complaint.

XVI.

In response to the allegations contained in Paragraph 3.10, MFL admits that Plaintiff was introduced to the staff as the new COO. At the time it was also emphasized to the staff that Plaintiff would be gaining an understanding of MFL's operations so that he could immediately begin working on bringing a new product to market.

XVII.

Defendant admits the allegations contained in Paragraph 3.11 to the extent they do not conflict with the language of the contract. The document speaks for itself.

XVIII.

Defendant has no knowledge of Plaintiff's compensation at Oxyfresh and denies the allegations contained in Paragraph 3.12 for that reason. Defendant denies that Dan Edwards assured Plaintiff of higher compensation. Defendant believes that a major reason for Plaintiff's move was that Oxyfresh was experiencing financial difficulty.

XIX.

Defendant admits the allegations contained in Paragraph 3.13 to the extent they do not conflict with the language of the contract. The document speaks for itself.

XX.

Defendant admits the allegations contained in Paragraph 3.14 of Plaintiff's Complaint.

XXI.

Defendant denies each and every one of the allegations contained in Paragraph 3.15 of Plaintiff's Complaint.

XXII.

Defendant admits the allegations of Paragraph 3.16 of Plaintiff's Complaint. That was the very purpose for hiring Plaintiff, to expand MFL's offerings, and Plaintiff was aware of that fact from the very first meeting.

XXIII.

In response to the allegations contained in Paragraph 3.17 of the Complaint, Defendant admits that it wished to have Plaintiff develop a product similar to the LifeShotz product. But it did not want or

ask for a mirror product or any product that would infringe on any rights of Oxyfresh. It simply wanted an energy-hydration drink similar to the hundreds of other energy-hydration drinks on the market.

XXIV.

Defendant denies each and every allegation contained in Paragraph 3.18 of the Complaint. MFL wished to have its own formula for a healthy energy-hydration drink, and Plaintiff was fully aware of this before agreeing to work for MFL.

XXV.

In response to the allegations contained in Paragraph 20, Defendant admits it terminated Plaintiff and denies that the reasons for the termination were fabrications.

XXVI.

In response to the allegations contained in Paragraph 21, Defendant admits that Plaintiff's salary was \$10,000 per month but denies that any of it was owed at termination, due to Plaintiff's breach of his contract with MFL.

XXVII.

Defendant denies each and every allegation contained in Paragraph 3.22 of the Complaint.

XXVIII.

In response to Paragraph 4.1, Defendant re-asserts its responses to Paragraphs 1.1 through 3.22 as though set forth fully herein.

XXIX.

Defendant denies the allegation contained in Paragraph 4.2 of the Complaint.

XXX.

Defendant admits the allegation contained in Paragraph 4.3 of the Complaint.

XXXI.

Defendant admits the allegation contained in Paragraph 4.4 of the Complaint.

XXXII.

Defendant denies each and every allegation contained in Paragraph 4.5 the Complaint.

XXXIII.

Defendant denies each and every allegation contained in Paragraph 4.6 of the Complaint.

XXXIV.

Defendant denies each and every allegation contained in Paragraph 4.7 of the Complaint.

XXXV.

In response to Paragraph 5.1, Defendant re-asserts its responses to Paragraphs 1.1 through 4.7 as though set forth fully herein.

XXXVI.

Defendant denies each and every allegation contained in Paragraph 5.2 of the Complaint.

XXXVII.

Defendant denies each and every allegation contained in Paragraph 5.3 of the Complaint.

XXVIII.

Defendant denies each and every allegation contained in Paragraph 5.4 of the Complaint.

XXXIX.

Defendant denies each and every allegation contained in Paragraph 5.5 of the Complaint.

XL.

Defendant denies each and every allegation contained in Paragraph 5.6 of the Complaint.

XLI.

Defendant denies each and every allegation contained in Paragraph 5.7 of the Complaint.

XLII.

In response to Paragraph 6.1, Defendant re-asserts its responses to Paragraphs 1.1 through 5.7 as though set forth fully herein.

XLIII.

Defendant does not have sufficient information to form a belief as to the allegations contained in Paragraph 6.2 of the Complaint and on that basis denies the allegations.

XLIV.

Defendant does not have sufficient information to form a belief as to the allegations contained in Paragraph 6.3 of the Complaint and on that basis denies the allegations.

XLV.

Defendant does not have sufficient information to form a belief as to the allegations contained in Paragraph 6.4 of the Complaint and on that basis denies the allegations.

XLVI.

Defendant does not have sufficient information to form a belief as to the allegations contained in Paragraph 6.5 of the Complaint and on that basis denies the allegations.

XLVII.

Defendant denies the allegations contained in Paragraph 6.6 of the Complaint.

XLVIII.

Defendant denies the allegations contained in Paragraph 6.7 of the Complaint.

XLIX.

Defendant does not have sufficient information to form a belief as to the allegations contained in Paragraph 6.8 of the Complaint and on that basis denies the allegations.

L.

Defendant does not have sufficient information to form a belief as to the allegations contained in Paragraph 6.9 of the Complaint and on that basis denies the allegations.

LI.

Defendant does not have sufficient information to form a belief as to the allegations contained in Paragraph 6.10 of the Complaint and on that basis denies the allegations.

LII.

Defendant denies the allegations contained in Paragraph 6.11 of the Complaint.

LIII.

Defendant denies the allegations contained in Paragraph 6.12 of the Complaint.

LIV.

In response to Paragraph 7.1, Defendant re-asserts its responses to Paragraphs 1.1 through 6.12 as though set forth fully herein.

LV.

The allegations contained in Paragraph 7.2 of the Complaint calls for a legal conclusion, and on that basis, Defendant denies.

LVI.

Defendant denies the allegations contained in Paragraph 7.3 of the Complaint.

LVII.

Defendant denies the allegations contained in Paragraph 7.4 of the Complaint.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses:

1. **Failure of Consideration**: A critical element of the consideration for the employment agreement between Defendant and Plaintiff was Plaintiff's experience in bringing products to market. Defendant learned, after entering into the employment agreement, that Plaintiff was prohibited from bringing any products to market by an agreement he had with a third party. Consequently, the consideration for the employment agreement failed, and Defendant is entitled not only to terminate the employment agreement, but to recover all salary paid to Plaintiff, as well as the vacation pay given to Plaintiff.

2. Fraudulent Inducement: Plaintiff represented and warranted to Defendant in his employment agreement that he was “under no contractual commitments inconsistent with [his] obligations to the Company.” This representation and warranty was false, as he had an agreement with Richard Brooke and/or OxyFresh that he would not assist to bring any products to market for a party other than OxyFresh, his former employer. This matter was material to the agreement, since a major purpose of hiring Plaintiff was to have Plaintiff bring products to market for Defendant. Plaintiff knew of the obligation with OxyFresh and that his statement disclaiming its existence was false, and he intended that Defendant hire him in reliance on the false statement. Defendant did not know of the falsity of the statement and did in fact hire Plaintiff, relying on the statement. As a result, Defendant suffered damages in the amount of Plaintiff’s salary and the vacation pay Plaintiff received.

COUNTERCLAIM

1. During the early part of the calendar year 2014, Defendant spoke many times with Dr. Todd Schlapfer, who Defendant was aware had produced other health/energy/hydration drinks and other products similar to the type Defendant wanted to bring to market.

2. Defendant told Dr. Schlapfer that they wished to hire an individual who could help them bring products to market, and Dr. Schlapfer suggested Plaintiff, since he was aware that Plaintiff was looking for a change in employment and that Plaintiff had worked as vice president of Product Development at OxyFresh for many years.

3. Based on Dr. Schlapfer’s recommendation, and after several meetings with Plaintiff, during which the parties discussed Defendant’s desire to bring new products to market, Defendant decided to hire Plaintiff.

4. In an e-mail dated April 8, 2014, Plaintiff wrote to Defendant, "I am also extremely blessed to continue my partnership with Dr. Shlapfer. We've already been talking about the new blank canvas we have in front of us to create the best products imaginable. We can take any idea from concept to a finished product that all of your members will love."

5. On April 16, 2014, Plaintiff and Defendant agreed upon an employment agreement, a true and correct copy of which is attached hereto as Exhibit A. The first paragraph of the agreement states, "By signing this letter agreement, you [Plaintiff] represent and warrant to the Company that you are under no contractual commitments inconsistent with your obligations to the Company."

6. In late April and early May, Plaintiff performed some consulting work for Defendant and then went to work full-time for Defendant on May 21, 2014. Defendant immediately began encouraging Plaintiff to get to work bringing new products to market, but Plaintiff consistently stalled and failed to take any significant steps to bring new products to market.

7. In a communication to Defendant's employees announcing the hiring of Plaintiff, Carrie Edwards wrote in part, that Plaintiff had "helped create, improve, and foster over 60 personal care, nutrition, and pet care products." Plaintiff signed off on the announcement, e-mailing back, "This is great!"

8. Starting May 21, 2014, Plaintiff worked sporadically and took many days off, including an entire afternoon for a going-away party at OxyFresh, a weeklong paid honeymoon vacation, and many long lunches during which it is believed he met with Richard Brooke of OxyFresh.

9. Defendant knew that Plaintiff had a continuing relationship with OxyFresh and Richard Brooke, but it was unaware of any obligation that prevented Plaintiff from performing the duties for which he was hired; namely, to bring products to market.

10. Plaintiff continued to delay making any meaningful step toward producing a product. On July 15, 2014, Richard Brooke wrote an e-mail to Defendant that stated, "Tom said you did not want to sign acknowledging the agreement he negotiated with us but he did not say why. Could you address that? Did you read it? Are you currently brainstorming, planning, or developing any nutritional products? Are they anything like Life Shotz or Vibe? When do you plan to introduce them?"

11. Uncertain how to reply, Defendant immediately told Plaintiff about the e-mail, and Plaintiff told Defendant, "Don't tell Richard Brooke I'm here to do products!" Based on Plaintiff's demand, Defendant did not reply to Richard Brooke's e-mail.

12. The next day, July 16, 2014, Plaintiff wrote in an instant message to Carrie Edwards, "Richard is definitely afraid of our competition and lots of distributors following me once we have products. In fact, Deanne found an oxy fresh distributor getting travel quoted!"

13. Plaintiff also wrote in instant messages to Carrie Edwards on July 16th that Richard Brooke had said that Dan Edwards said that Plaintiff was hired only to bring products to market and that he would be immediately terminated if there was a contract with LifeShotz.

14. At this point it became clear to Defendant that Plaintiff had a contract with Richard Brooke or OxyFresh preventing him from performing the duties for which Plaintiff was hired, although Plaintiff has still never shown Defendant the contract or disclosed its essential terms. Defendant tried to make other provisions to continue Plaintiff's employment but realized it was impossible and terminated Plaintiff's employment for cause on July 29.

15. Failure to bring a product to market was not the only reason Defendant fired Plaintiff. His poor performance, poor attendance, and dishonesty in dealing with his former employer were also causes of his termination.

CAUSE OF ACTION--Failure of Consideration

16. Defendant incorporates herein as if they had been set forth in full the allegations contained in Paragraphs 1 through 15 above.

17. The consideration upon which Defendant relied in forming its agreement with Plaintiff failed when Plaintiff was unable to bring products to market.

18. As a result, Defendant is entitled to cancel and void the employment agreement and receive back the amounts it paid to Plaintiff, including the vacation pay it paid.

19. Defendant is entitled to entry of a judgment as against Plaintiff in an amount in excess of \$10,000.00 to be proven at trial.

CAUSE OF ACTION—Fraudulent Inducement

20. Defendant incorporates herein as if they had been set forth in full the allegations contained in Paragraphs 1 through 19 above.

21. Plaintiff represented and warranted to Defendant in his employment agreement that he was “under no contractual commitments inconsistent with [his] obligations to the Company.” This representation and warranty was false, as he had an agreement with Richard Brooke and/or OxyFresh that he would not assist to bring any products to market for a party other than OxyFresh, his former employer.

22. The obligation to bring a product to market was material to the agreement, since a major purpose of hiring Plaintiff was to have Plaintiff bring products to market for Defendant.

23. Plaintiff knew of the obligation with OxyFresh and that his statement disclaiming its existence was false, and he intended that Defendant hire him in reliance on the false statement.

24. Defendant did not know of the falsity of the statement and did in fact hire Plaintiff, relying on the statement. As a result, Defendant suffered damages in the amount of Plaintiff's salary and the vacation pay Plaintiff received.

25. Defendant is entitled to entry of a judgment as against Plaintiff in an amount in excess of \$10,000.00 to be proven at trial.

CAUSE OF ACTION—Good Faith and Fair Dealing

26. Defendant incorporates herein as if they had been set forth in full the allegations contained in Paragraphs 1 through 25 above.

27. By misrepresenting his obligations to OxyFresh and/or Richard Brooke, and by failing to disclose the requirements of such obligations at any time, Plaintiff failed to deal with Defendant according to the implied covenant of good faith and fair dealing.

28. Defendant suffered damages in the amount of Plaintiff's salary and the vacation pay Plaintiff received.

29. Defendant is entitled to entry of a judgment as against Plaintiff in an amount in excess of \$10,000.00 to be proven at trial.

CAUSE OF ACTION—Unjust Enrichment

30. Defendant incorporates herein as if they had been set forth in full the allegations contained in Paragraphs 1 through 29 above.

31. Defendant conferred upon Plaintiff the benefit of paying him for services. Because Plaintiff intentionally refused to perform the central services for which he was hired, Defendant did not receive the benefit of its contract. Due to Plaintiff's failure to disclose the contract he had with

OxyFresh and/or Richard Brooke, it would be inequitable to allow Plaintiff to retain the pay he received in exchange for services he did not render.

32. Defendant is entitled to recover the unjust enrichment bestowed upon Plaintiff in the amount of Plaintiff's salary and the vacation pay Plaintiff received.

33. Defendant is entitled to entry of a judgment as against Plaintiff in an amount in excess of \$10,000 to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for relief as follows:

1. That the Complaint be dismissed with prejudice and that all claims made by Plaintiff be denied.
2. For entry of judgment against Plaintiff in an amount in excess of \$10,000 to be proven at trial for damages suffered as indicated in the above-referenced causes of action.
3. For an award of attorney fees and costs pursuant to Idaho Code §§ 12-120, 12-121, and any other applicable provision of Idaho law.
4. For such other and further relief as the Court deems just and equitable under the circumstances.

Dated this 5th day of January, 2015.




Doug B. Marks
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on the 5th day of January, 2015, I served true and accurate copies of the foregoing document on the following person by hand-delivery to Michael F. Nienstedt of WITHERSPOON KELLEY at the following address:

Michael Nienstedt
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-1246



Doug B. Marks, Attorney for Defendant

VERIFICATION

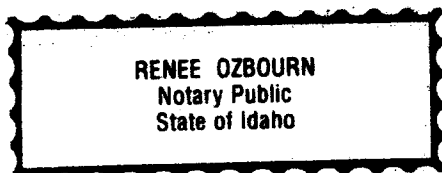
STATE OF IDAHO)
)
COUNTY OF KOOTENAI)

CARRIE EDWARDS, Executive VP of MY FUN LIFE CORP, being first duly sworn on oath, deposes and says that she is the Executive VP of Defendant and Counter Plaintiff in the foregoing ANSWER AND COUNTER-CLAIM, that she has read the foregoing, is personally familiar with the contents thereof, and believes the facts therein stated to be true.

DATED this 2nd day of January, 2015.

Carrie Edwards, Executive VP
Carrie Edwards, Executive Vice President

SUBSCRIBED AND SWORN TO before me this 2 day of January, 2015.



Renee Ozburn
Print Name: Renee Ozburn
Notary Public for the State of Idaho
Residing at: Coeur d'Alene
My Commission Expires: 8-16-2019

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STATE OF IDAHO
COUNTY OF KOOTENAI
FILED 717 *SS*

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CLERK DISTRICT COURT
[Signature]
DEPUTY

1
2 Michael F. Nienstedt, ISBA No. 3770
3 Joel P. Hazel, ISBA No. 4980
4 WITHERSPOON KELLEY
5 Attorneys and Counselors
6 The Spokesman-Review Building
7 608 Northwest Boulevard, Suite 300
8 Coeur d'Alene, ID 83814-1246
9 Telephone: (208) 667-4000
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11 Email: jph@wITHERSPOONKELLEY.COM

12 *Attorneys for the Plaintiff, Thomas Lunneborg*

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THOMAS LUNNEBORG, a married individual,

Plaintiff,

vs.

MY FUN LIFE CORP, a Delaware corporation,

Defendant.

No. CV-14-8968

PLAINTIFF'S ANSWER
TO COUNTERCLAIM

COMES NOW Plaintiff THOMAS LUNNEBORG (hereinafter "Plaintiff Lunneborg"), by and through his undersigned counsel, and responds to Defendant's Answer and Counterclaim as follows:

I. AFFIRMATIVE DEFENSES

Although it is typically unnecessary for a plaintiff to admit, deny, or respond to a defendant's affirmative defenses as stated in the defendant's Answer to the Complaint, in this case Defendant MY FUN LIFE CORP., (hereinafter "Defendant MFL"), has included factual allegations within the paragraphs it labels as "Affirmative Defenses." To avoid any doubt,

Plaintiff Lunneborg responds to said allegations as follows:

1 new products. Plaintiff Lunneborg lacks sufficient knowledge to admit or deny the remaining
2 allegations contained in Paragraph 3 of Defendant MFL's Counterclaim, and therefore denies
3 the same.

4 4. In response to Paragraph 4 of Defendant MFL's Counterclaim, Plaintiff
5 Lunneborg responds that any such email, to the extent that it exists, speaks for itself and
6 therefore no response is required.
7

8 5. In response to Paragraph 5 of Defendant MFL's Counterclaim, Plaintiff
9 Lunneborg admits that he and Defendant MFL entered into a written employment contract the
10 provisions of which speak for themselves, and therefore no response is required. In addition, no
11 "Exhibit A" was attached with the service copy of Defendant MFL's Counterclaim,
12 consequently Plaintiff Lunneborg is without sufficient knowledge to admit or deny the
13 remaining allegations contained in Paragraph 5 of Defendant MFL's Counterclaim and,
14 therefore, denies the same.
15

16 6. Plaintiff Lunneborg admits that during April and May, 2014, he provided
17 services for Defendant MFL and that he commenced full time employment with Defendant
18 MFL on May 21, 2014. Except as specifically admitted herein, each and every other allegations
19 of Paragraph 6 of Defendant MFL's Counterclaim is specifically denied.
20

21 7. Plaintiff Lunneborg is without sufficient knowledge to admit or deny the
22 allegations of Paragraph 7 of Defendant MFL's Counterclaim and, therefore, denies the same.
23 Further, to the extent the communication alleged in Paragraph 7 was written, said
24 communication speaks for itself.
25

26 8. Plaintiff Lunneborg admits that, after commencing employment with Defendant
27 MFL, he was occasionally absent from work but only with the knowledge and consent of
28

1 Defendant MFL. Except as specifically admitted herein, each and every other allegation
2 contained in Paragraph 8 of Defendant MFL's Counterclaim is specifically denied.

3 9. Plaintiff Lunneborg denies that he was hired by Defendant MFL to "bring
4 products to market" as alleged in Paragraph 9 of Defendant MFL's Counterclaim. Plaintiff
5 Lunneborg is without sufficient information to admit or deny each and every other allegation of
6 Paragraph 9 of Defendant MFL's Counterclaim and, therefore, denies the same.
7

8 10. Plaintiff Lunneborg denies the allegations contained in Paragraph 10 of
9 Defendant MFL's Counterclaim. In addition, the writing referenced in said Paragraph, to the
10 extent it exists, speaks for itself and no response is required of Plaintiff Lunneborg.
11

12 11. For answer to Paragraph 11 of Defendant MFL's Counterclaim, Plaintiff
13 Lunneborg admits that Mr. Edwards told him he had received an email from Mr. Brooke.
14 Plaintiff Lunneborg is without sufficient information to admit or deny whether Mr. Edwards
15 replied to this email or the reasons therefore and, therefore, denies the same. Except as
16 specifically admitted herein, each and every other allegation of Paragraph 11 of Defendant
17 MFL's Counterclaim is specifically denied.
18

19 12. Plaintiff Lunneborg admits that he sent messages to Carrie Edwards but the
20 contents of such messages speaks for themselves and no response is required. Except as
21 specifically admitted herein, each and every other allegation of Paragraph 12 of Defendant
22 MFL's Counterclaim is specifically denied.
23

24 13. Plaintiff Lunneborg admits that he sent messages to Carrie Edwards but the
25 contents of such messages speak for themselves and no response is required. Except as
26 specifically admitted herein, each and every other allegation of Paragraph 13 of Defendant
27 MFL's Counterclaim is specifically denied.
28

1 14. Plaintiff Lunneborg admits that his employment with Defendant MFL was
2 terminated on July 29, 2014. Except as expressly admitted herein Plaintiff Lunneborg denies
3 each and every other allegation of Paragraph 14 of Defendant MFL's Counterclaim.

4 15. Plaintiff Lunneborg denies the allegations of Paragraph 15 of Defendant MFL's
5 Counterclaim.

6
7 **CAUSE OF ACTION - Failure of Consideration**

8 16. In response to Paragraph 16 of Defendant MFL's Counterclaim, Plaintiff
9 Lunneborg realleges all previous paragraphs herein in response to the Affirmative Defenses and
10 Counterclaim.

11 17. The allegations contained in Paragraph 17 of Defendant MFL's Counterclaim call
12 for a legal conclusion, to which no response is required. To the extent a response is required,
13 Plaintiff Lunneborg denies the same.

14 18. The allegations contained in Paragraph 18 of Defendant MFL's Counterclaim call
15 for a legal conclusion, to which no response is required. To the extent a response is required,
16 Plaintiff Lunneborg denies the same.

17 19. The allegations contained in Paragraph 19 of Defendant MFL's Counterclaim call
18 for a legal conclusion, to which no response is required. To the extent a response is required,
19 Plaintiff Lunneborg denies the same.

20
21 **CAUSE OF ACTION - Fraudulent Inducement**

22 20. In response to Paragraph 20 of Defendant MFL's Counterclaim, Plaintiff
23 Lunneborg realleges all previous paragraphs herein in response to Defendant MFL's Affirmative
24 Defenses and Counterclaim.

25 21. For answer to Paragraph 21 of Defendant MFL's Counterclaim, Plaintiff
26 Lunneborg responds that the employment contract speaks for itself, and, therefore, no response
27
28

1 is required. Plaintiff Lunneborg denies each and every allegation contained in Paragraph 21 of
2 Defendant MFL's Counterclaim.

3 22. Plaintiff Lunneborg denies the allegations of Paragraph 22 of Defendant MFL's
4 Counterclaim.

5 23. Plaintiff Lunneborg denies the allegations of Paragraph 23 of Defendant MFL's
6 Counterclaim.

7 24. Plaintiff Lunneborg denies the allegations of Paragraph 24 of Defendant MFL's
8 Counterclaim.

9 25. Plaintiff Lunneborg denies the allegations of Paragraph 25 of Defendant MFL's
10 Counterclaim.
11

12
13 **CAUSE OF ACTION – Good Faith and Fair Dealing**

14 26. In response to Paragraph 26 of Defendant MFL's Counterclaim, Plaintiff
15 Lunneborg realleges all previous paragraphs herein in response to Defendant MFL's Affirmative
16 Defenses and Counterclaim.

17 27. Plaintiff Lunneborg denies the allegations contained in Paragraph 27 of
18 Defendant MFL's Counterclaim.

19 28. Plaintiff Lunneborg denies the allegations of Paragraph 28 of Defendant MFL's
20 Counterclaim.

21 29. Plaintiff Lunneborg denies the allegations of Paragraph 29 of Defendant MFL's
22 Counterclaim.
23

24
25 **CAUSE OF ACTION – Unjust Enrichment**

26 30. In response to Paragraph 30 of Defendant MFL's Counterclaim, Plaintiff
27 Lunneborg realleges all previous paragraphs herein in response to the Defendant MFL's
28 Affirmative Defenses and Counterclaim.

1 31. Plaintiff Lunneborg admits that he was paid a salary for the days he worked for
2 Defendant MFL. Except as specifically admitted herein, each and every other allegation
3 contained in Paragraph 31 of Defendant MFL's Counterclaim is specifically denied.

4 32. Plaintiff Lunneborg denies the allegations of Paragraph 32 of Defendant MFL's
5 Counterclaim.

6 33. Plaintiff Lunneborg denies the allegations of Paragraph 33 of Defendant MFL's
7 Counterclaim.
8

9 **III. PLAINTIFF LUNNEBORG'S AFFIRMATIVE DEFENSES**
10 **TO DEFENDANT MFL'S COUNTERCLAIM**

11 1. Defendant MFL fails, in whole or in part, to state a claim upon which relief may
12 be granted.

13 2. Defendant MFL's claims are barred by laches, waiver, and/or estoppel.

14 3. Defendant MFL's claims are barred because MFL is guilty of unclean hands.

15 4. All conduct, acts, or omissions of Plaintiff Lunneborg were done in good faith
16 and for legitimate and lawful reasons.
17

18 5. At all times, Plaintiff Lunneborg acted in conformance with the terms of the
19 employment contract, and any further performance under the contract was excused by
20 Defendant MFL's termination of Plaintiff Lunneborg.
21

22 6. Defendant MFL failed to mitigate its damages, if any.

23 7. Plaintiff Lunneborg reserves the right to amend or supplement his affirmative
24 defenses in accordance with the Civil Rules.

25 **IV. PRAYER FOR RELIEF**

26 **WHEREFORE, Plaintiff Lunneborg prays for the following relief, in addition to the**
27 **relief requested in the Complaint:**
28

CERTIFICATE OF SERVICE

I certify that on this the 27th day of January 2015, I caused a true and correct copy of the within **PLAINTIFF'S ANSWER TO COUNTERCLAIM** to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Douglas B. Marks, ISB No. 5621
Attorney at Law
197 Harbison Lane
Sagle, ID 83860
Phone: (208) 597-5654

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Via Fax: (208) 441-5462

Annette Moormann
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DOUGLAS B. MARKS
Attorney at Law
197 Harbison Lane
Sagle, ID 83860
Phone: (208) 597-5654
Fax: (208) 441-5462
ISB #5621

Attorney for Defendant

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED: 9/15/15
AT 3:20 O'CLOCK P.M.
JAMES CLARKE
CLERK, DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THOMAS LUNNEBORG, a married individual,

Plaintiff,

vs.

MY FUN LIFE CORP, a Delaware corporation,

Defendant

CASE NO: CV-14-8968

**FIRST AMENDED
ANSWER AND COUNTER-CLAIM**

COMES NOW MY FUN LIFE CORP, ("Defendant") by and through its attorney Doug B. Marks of the firm DOUG MARKS & ASSOCIATES, PLLC, and hereby answers and counterclaims as follows:

Defendant denies each and every allegation of Plaintiff's Complaint not specifically and expressly denied herein. Defendant reserves the right to amend this and any other answer or denial stated herein once it has had an opportunity to complete discovery regarding the allegations contained in Plaintiff's Complaint.

FIRST AMENDED ANSWER AND COUNTER-CLAIM – PAGE 1

ANSWER

I.

Defendant does not have sufficient knowledge to form a belief as to the allegations contained in Paragraph 1.1, and on that basis, denies the allegations of that paragraph.

II.

Defendant admits the allegations contained in Paragraph 1.2 of Plaintiff's Complaint.

III.

In response to Paragraph 2.1, Defendant re-asserts its responses to Paragraphs 1.1 and 1.2 as though set forth fully herein.

IV.

Defendant admits the allegations contained in Paragraph 2.2 of Plaintiff's Complaint.

V.

Defendant admits the allegations contained in Paragraph 2.3 of Plaintiff's Complaint.

VI.

Defendant admits the allegations contained in Paragraph 2.4 of Plaintiff's Complaint.

VII.

In response to Paragraph 3.1, Defendant re-asserts its responses to Paragraphs 1.1 through 2.4 as though set forth fully herein.

VIII.

Defendant does not have sufficient knowledge to form a belief as to the allegations contained in Paragraph 3.2, and on that basis, denies the allegations of that paragraph.

IX.

Defendant does not have sufficient knowledge to form a belief as to the allegations contained in Paragraph 3.3, and on that basis, denies the allegations of that paragraph.

X.

In response to the allegations contained in Paragraph 3.4 of the Complaint, MFL admits that travel booking services are a part of the services and products offered by MFL on a network marketing model.

XI.

In response to the allegations contained in Paragraph 3.5 of the Complaint, MFL admits that it was introduced by a mutual acquaintance, Dr. Todd Schlapfer, a naturopath doctor whom MFL had approached to create a product for MFL. Dr. Schlapfer said he was willing to work with MFL on creating a new product, but only if Plaintiff was in charge of developing the new product. Dr. Schlapfer was more than a mere acquaintance. His experience bringing new products to market was the reason MFL was interested in Plaintiff.

XII.

In response to the allegations contained in Paragraph 3.6 of the Complaint, MFL admits that MFL was interested in hiring Plaintiff, but only after learning that Dr. Schlapfer would not work with MFL unless Plaintiff was involved, and only after learning that Oxyfresh was in bad financial condition and that Plaintiff was looking for a way out.

XIII.

In response to the allegations contained in Paragraph 3.7 of the Complaint, MFL admits that it disclosed financial information to Plaintiff, but only after being requested by Plaintiff.

XIV.

In response to the allegations contained in Paragraph 3.8 of the Complaint, MFL admits that Plaintiff accepted the COO position on April 2. However, he was still determining his exit strategy at Oxyfresh and did not begin salaried work for MFL until May 21, 2014. Between May 21 and June 29, Plaintiff only worked nine full days. He consistently took long lunches and time off to continue working for Oxyfresh, contrary to his agreement with MFL.

XV.

Defendant admits the allegations contained in Paragraph 3.9 of the Complaint.

XVI.

In response to the allegations contained in Paragraph 3.10, MFL admits that Plaintiff was introduced to the staff as the new COO. At the time it was also emphasized to the staff that Plaintiff would be gaining an understanding of MFL's operations so that he could immediately begin working on bringing a new product to market.

XVII.

Defendant admits the allegations contained in Paragraph 3.11 to the extent they do not conflict with the language of the contract. The document speaks for itself.

XVIII.

Defendant has no knowledge of Plaintiff's compensation at Oxyfresh and denies the allegations contained in Paragraph 3.12 for that reason. Defendant denies that Dan Edwards assured Plaintiff of higher compensation. Defendant believes that a major reason for Plaintiff's move was that Oxyfresh was experiencing financial difficulty.

XIX.

Defendant admits the allegations contained in Paragraph 3.13 to the extent they do not conflict with the language of the contract. The document speaks for itself.

XX.

Defendant admits the allegations contained in Paragraph 3.14 of Plaintiff's Complaint.

XXI.

Defendant denies each and every one of the allegations contained in Paragraph 3.15 of Plaintiff's Complaint.

XXII.

Defendant admits the allegations of Paragraph 3.16 of Plaintiff's Complaint. That was the very purpose for hiring Plaintiff, to expand MFL's offerings, and Plaintiff was aware of that fact from the very first meeting.

XXIII.

In response to the allegations contained in Paragraph 3.17 of the Complaint, Defendant admits that it wished to have Plaintiff develop a product similar to the LifeShotz product. But it did not want or

ask for a mirror product or any product that would infringe on any rights of Oxyfresh. It simply wanted an energy-hydration drink similar to the hundreds of other energy-hydration drinks on the market.

XXIV.

Defendant denies each and every allegation contained in Paragraph 3.18 of the Complaint. MFL wished to have its own formula for a healthy energy-hydration drink, and Plaintiff was fully aware of this before agreeing to work for MFL.

XXV.

In response to the allegations contained in Paragraph 20, Defendant admits it terminated Plaintiff and denies that the reasons for the termination were fabrications.

XXVI.

In response to the allegations contained in Paragraph 21, Defendant admits that Plaintiff's salary was \$10,000 per month but denies that any of it was owed at termination, due to Plaintiff's breach of his contract with MFL.

XXVII.

Defendant denies each and every allegation contained in Paragraph 3.22 of the Complaint.

XXVIII.

In response to Paragraph 4.1, Defendant re-asserts its responses to Paragraphs 1.1 through 3.22 as though set forth fully herein.

XXIX.

Defendant denies the allegation contained in Paragraph 4.2 of the Complaint.

XXX.

Defendant admits the allegation contained in Paragraph 4.3 of the Complaint.

XXXI.

Defendant admits the allegation contained in Paragraph 4.4 of the Complaint.

XXXII.

Defendant denies each and every allegation contained in Paragraph 4.5 the Complaint.

XXXIII.

Defendant denies each and every allegation contained in Paragraph 4.6 of the Complaint.

XXXIV.

Defendant denies each and every allegation contained in Paragraph 4.7 of the Complaint.

XXXV.

In response to Paragraph 5.1, Defendant re-asserts its responses to Paragraphs 1.1 through 4.7 as though set forth fully herein.

XXXVI.

Defendant denies each and every allegation contained in Paragraph 5.2 of the Complaint.

XXXVII.

Defendant denies each and every allegation contained in Paragraph 5.3 of the Complaint.

XXVIII.

Defendant denies each and every allegation contained in Paragraph 5.4 of the Complaint.

XXXIX.

Defendant denies each and every allegation contained in Paragraph 5.5 of the Complaint.

XL.

Defendant denies each and every allegation contained in Paragraph 5.6 of the Complaint.

XLI.

Defendant denies each and every allegation contained in Paragraph 5.7 of the Complaint.

XLII.

In response to Paragraph 6.1, Defendant re-asserts its responses to Paragraphs 1.1 through 5.7 as though set forth fully herein.

XLIII.

Defendant does not have sufficient information to form a belief as to the allegations contained in Paragraph 6.2 of the Complaint and on that basis denies the allegations.

XLIV.

Defendant does not have sufficient information to form a belief as to the allegations contained in Paragraph 6.3 of the Complaint and on that basis denies the allegations.

XLV.

Defendant does not have sufficient information to form a belief as to the allegations contained in Paragraph 6.4 of the Complaint and on that basis denies the allegations.

XLVI.

Defendant does not have sufficient information to form a belief as to the allegations contained in Paragraph 6.5 of the Complaint and on that basis denies the allegations.

XLVII.

Defendant denies the allegations contained in Paragraph 6.6 of the Complaint.

XLVIII.

Defendant denies the allegations contained in Paragraph 6.7 of the Complaint.

XLIX.

Defendant does not have sufficient information to form a belief as to the allegations contained in Paragraph 6.8 of the Complaint and on that basis denies the allegations.

L.

Defendant does not have sufficient information to form a belief as to the allegations contained in Paragraph 6.9 of the Complaint and on that basis denies the allegations.

LI.

Defendant does not have sufficient information to form a belief as to the allegations contained in Paragraph 6.10 of the Complaint and on that basis denies the allegations.

LII.

Defendant denies the allegations contained in Paragraph 6.11 of the Complaint.

LIII.

Defendant denies the allegations contained in Paragraph 6.12 of the Complaint.

LIV.

In response to Paragraph 7.1, Defendant re-asserts its responses to Paragraphs 1.1 through 6.12 as though set forth fully herein.

LV.

The allegations contained in Paragraph 7.2 of the Complaint calls for a legal conclusion, and on that basis, Defendant denies.

LVI.

Defendant denies the allegations contained in Paragraph 7.3 of the Complaint.

LVII.

Defendant denies the allegations contained in Paragraph 7.4 of the Complaint.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses:

1. **Failure of Consideration**: A critical element of the consideration for the employment agreement between Defendant and Plaintiff was Plaintiff's experience in bringing products to market. Defendant learned, after entering into the employment agreement, that Plaintiff was prohibited from bringing any products to market by an agreement he had with a third party. Consequently, the consideration for the employment agreement failed, and Defendant is entitled not only to terminate the employment agreement, but to recover the amount of its damages to be reasonably determined at trial,

which are in excess of the amount of the salary paid to Plaintiff, as well as the vacation pay given to Plaintiff.

2. **Fraudulent Inducement:** Plaintiff represented and warranted to Defendant in his employment agreement that he was “under no contractual commitments inconsistent with [his] obligations to the Company.” This representation and warranty was false, as he had an agreement with Richard Brooke and/or OxyFresh that he would not assist to bring any products to market for a party other than OxyFresh, his former employer. This matter was material to the agreement, since a major purpose of hiring Plaintiff was to have Plaintiff bring products to market for Defendant. Plaintiff knew of the obligation with OxyFresh and that his statement disclaiming its existence was false, and he intended that Defendant hire him in reliance on the false statement. Defendant did not know of the falsity of the statement and did in fact hire Plaintiff, relying on the statement. As a result, Defendant suffered damages in an amount to be reasonably determined at trial, which are in excess of the amount of the salary paid to Plaintiff, as well as the vacation pay given to Plaintiff.

COUNTERCLAIM

1. During the early part of the calendar year 2014, Defendant spoke many times with Dr. Todd Schlapfer, who Defendant was aware had produced other health/energy/hydration drinks and other products similar to the type Defendant wanted to bring to market.

2. Defendant told Dr. Schlapfer that they wished to hire an individual who could help them bring products to market, and Dr. Schlapfer suggested Plaintiff, since he was aware that Plaintiff was

looking for a change in employment and that Plaintiff had worked as vice president of Product Development at OxyFresh for many years.

3. Based on Dr. Schlapfer's recommendation, and after several meetings with Plaintiff, during which the parties discussed Defendant's desire to bring new products to market, Defendant decided to hire Plaintiff.

4. In an e-mail dated April 8, 2014, Plaintiff wrote to Defendant, "I am also extremely blessed to continue my partnership with Dr. Shlapfer. We've already been talking about the new blank canvas we have in front of us to create the best products imaginable. We can take any idea from concept to a finished product that all of your members will love."

5. On April 16, 2014, Plaintiff and Defendant agreed upon an employment agreement, a true and correct copy of which is attached hereto as Exhibit A. The first paragraph of the agreement states, "By signing this letter agreement, you [Plaintiff] represent and warrant to the Company that you are under no contractual commitments inconsistent with your obligations to the Company."

6. In late April and early May, Plaintiff performed some consulting work for Defendant and then went to work full-time for Defendant on May 21, 2014. Defendant immediately began encouraging Plaintiff to get to work bringing new products to market, but Plaintiff consistently stalled and failed to take any significant steps to bring new products to market.

7. In a communication to Defendant's employees announcing the hiring of Plaintiff, Carrie Edwards wrote in part, that Plaintiff had "helped create, improve, and foster over 60 personal care, nutrition, and pet care products." Plaintiff signed off on the announcement, e-mailing back, "This is great!"

8. Starting May 21, 2014, Plaintiff worked sporadically and took many days off, including an entire afternoon for a going-away party at OxyFresh, a weeklong paid honeymoon vacation, and many long lunches during which it is believed he met with Richard Brooke of OxyFresh.

9. Defendant knew that Plaintiff had a continuing relationship with OxyFresh and Richard Brooke, but it was unaware of any obligation that prevented Plaintiff from performing the duties for which he was hired; namely, to bring products to market.

10. Plaintiff continued to delay making any meaningful step toward producing a product. On July 15, 2014, Richard Brooke wrote an e-mail to Defendant that stated, "Tom said you did not want to sign acknowledging the agreement he negotiated with us but he did not say why. Could you address that? Did you read it? Are you currently brainstorming, planning, or developing any nutritional products? Are they anything like Life Shotz or Vibe? When do you plan to introduce them?"

11. Uncertain how to reply, Defendant immediately told Plaintiff about the e-mail, and Plaintiff told Defendant, "Don't tell Richard Brooke I'm here to do products!" Based on Plaintiff's demand, Defendant did not reply to Richard Brooke's e-mail.

12. The next day, July 16, 2014, Plaintiff wrote in an instant message to Carrie Edwards, "Richard is definitely afraid of our competition and lots of distributors following me once we have products. In fact, Deanne found an oxy fresh distributor getting travel quoted!"

13. Plaintiff also wrote in instant messages to Carrie Edwards on July 16th that Richard Brooke had said that Dan Edwards said that Plaintiff was hired only to bring products to market and that he would be immediately terminated if there was a contract with LifeShotz.

14. At this point it became clear to Defendant that Plaintiff had a contract with Richard Brooke or OxyFresh preventing him from performing the duties for which Plaintiff was hired, although

Plaintiff has still never shown Defendant the contract or disclosed its essential terms. Defendant tried to make other provisions to continue Plaintiff's employment but realized it was impossible and terminated Plaintiff's employment for cause on July 29.

15. Failure to bring a product to market was not the only reason Defendant fired Plaintiff. His poor performance, poor attendance, and dishonesty in dealing with his former employer were also causes of his termination. All the conduct complained of in the foregoing paragraphs resulted in damages to be reasonably determined at trial, which are in excess of the amount of the salary paid to Plaintiff, as well as the vacation pay given to Plaintiff.

CAUSE OF ACTION--Failure of Consideration

16. Defendant incorporates herein as if they had been set forth in full the allegations contained in Paragraphs 1 through 15 above.

17. The consideration upon which Defendant relied in forming its agreement with Plaintiff failed when Plaintiff was unable to bring products to market.

18. As a result, Defendant is entitled to cancel and void the employment agreement and receive damages to be reasonably determined at trial, which are in excess of the amount of the salary paid to Plaintiff, as well as the vacation pay given to Plaintiff.

19. Defendant is entitled to entry of a judgment as against Plaintiff in an amount in excess of \$10,000.00 to be proven at trial.

CAUSE OF ACTION—Fraudulent Inducement

20. Defendant incorporates herein as if they had been set forth in full the allegations contained in Paragraphs 1 through 19 above.

21. Plaintiff represented and warranted to Defendant in his employment agreement that he was “under no contractual commitments inconsistent with [his] obligations to the Company.” This representation and warranty was false, as he had an agreement with Richard Brooke and/or OxyFresh that he would not assist to bring any products to market for a party other than OxyFresh, his former employer.

22. The obligation to bring a product to market was material to the agreement, since a major purpose of hiring Plaintiff was to have Plaintiff bring products to market for Defendant.

23. Plaintiff knew of the obligation with OxyFresh and that his statement disclaiming its existence was false, and he intended that Defendant hire him in reliance on the false statement.

24. Defendant did not know of the falsity of the statement and did in fact hire Plaintiff, relying on the statement. As a result, Defendant suffered damages to be reasonably determined at trial, which are in excess of the amount of the salary paid to Plaintiff, as well as the vacation pay given to Plaintiff.

25. Defendant is entitled to entry of a judgment as against Plaintiff in an amount in excess of \$10,000.00 to be proven at trial.

CAUSE OF ACTION—Good Faith and Fair Dealing

26. Defendant incorporates herein as if they had been set forth in full the allegations contained in Paragraphs 1 through 25 above.

27. By misrepresenting his obligations to OxyFresh and/or Richard Brooke, and by failing to disclose the requirements of such obligations at any time, Plaintiff failed to deal with Defendant according to the implied covenant of good faith and fair dealing.

28. Defendant suffered damages in an amount to be reasonably determined at trial, which are in excess of the amount of the salary paid to Plaintiff, as well as the vacation pay given to Plaintiff.

29. Defendant is entitled to entry of a judgment as against Plaintiff in an amount in excess of \$10,000.00 to be proven at trial.

CAUSE OF ACTION—Unjust Enrichment

30. Defendant incorporates herein as if they had been set forth in full the allegations contained in Paragraphs 1 through 29 above.

31. Defendant conferred upon Plaintiff the benefit of paying him for services. Because Plaintiff intentionally refused to perform the central services for which he was hired, Defendant did not receive the benefit of its contract. Due to Plaintiff's failure to disclose the contract he had with OxyFresh and/or Richard Brooke, it would be inequitable to allow Plaintiff to retain the pay he received in exchange for services he did not render.

32. Defendant is entitled to recover the unjust enrichment bestowed upon Plaintiff in an amount to be reasonably determined at trial, which are in excess of the amount of the salary paid to Plaintiff, as well as the vacation pay given to Plaintiff.

33. Defendant is entitled to entry of a judgment as against Plaintiff in an amount in excess of \$10,000 to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for relief as follows:

1. That the Complaint be dismissed with prejudice and that all claims made by Plaintiff be denied.
2. For entry of judgment against Plaintiff in an amount in excess of \$10,000 to be proven at trial for damages suffered as indicated in the above-referenced causes of action.
3. For an award of attorney fees and costs pursuant to Idaho Code §§ 12-120, 12-121, and any other applicable provision of Idaho law.
4. For such other and further relief as the Court deems just and equitable under the circumstances.

Dated this 18th day of May, 2015.



Doug B. Marks
Attorney for Defendant

2015 DEC 21 PM 6:12

CLERK DISTRICT COURT

[Signature]
DEPUTY

1
2 Michael F. Nienstedt, ISBA No. 3770
3 Joel P. Hazel, ISBA No. 4980
4 Emily K. Arneson, ISBA No. 9659
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13 *Attorneys for the Plaintiff, Thomas Lunneborg*

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THOMAS LUNNEBORG, a married
individual,

Plaintiff,

vs.

MY FUN LIFE CORP, a Delaware corporation,
and DANIEL E. EDWARDS AND CARRIE L.
EDWARDS, husband and wife,

Defendants.

CASE NO: CV 14-8968

FIRST AMENDED COMPLAINT

COMES NOW Plaintiff, THOMAS LUNNEBORG (hereinafter Plaintiff Lunneborg),
by and through his attorneys Michael F. Nienstedt and Joel P. Hazel of the firm Witherspoon
Kelley, and for his causes of action against the above named Defendant complains, alleges and
avers as follows:

I. PARTIES

1.1 At all times material, Plaintiff Lunneborg resided in Spokane County,
Washington, but worked in Kootenai County, Idaho. Plaintiff Lunneborg currently resides in

1 Kootenai County, Idaho.

2 1.2 Defendant My Fun Life (hereinafter Defendant MFL) is a Delaware corporation
3 doing business in Kootenai County, State of Idaho, and at all relevant times herein maintained
4 its principal place of business at 5077 North Building Center Drive, Coeur d'Alene, Idaho
5 83815.
6

7 1.3 Upon information and belief, at all times material hereto Defendants Daniel E.
8 Edwards and Carrie L. Edwards were and are husband and wife, forming a marital community
9 under the laws of the state of Idaho, and have resided in Kootenai County, Idaho.
10

11 II. JURISDICTION AND VENUE

12 2.1 Plaintiff Lunneborg re-alleges and incorporates Paragraphs 1.1 through 1.3 as
13 though fully set forth herein.

14 2.2 The Court has original jurisdiction over this matter pursuant to I.C. § 5-514 as
15 Defendant transacts business in the State of Idaho and the acts or omissions which give rise to
16 the causes of action herein occurred in Kootenai County, State of Idaho.
17

18 2.3 The amount in controversy exceeds \$10,000.

19 2.4 Venue is proper in Kootenai County District Court pursuant to I.C. § 5-404
20 since MFL has its principle place of business in Kootenai County, the acts or omissions alleged
21 herein occurred in Kootenai County, and Mr. and Ms. Edwards reside in Kootenai County.
22

23 III. FACTS

24 3.1 Plaintiff Lunneborg re-alleges and incorporates Paragraphs 1.1 through 2.4 as
25 though fully set forth herein.

26 A. THE PARTIES & THEIR RELATIONSHIPS WITH ONE ANOTHER

27 3.2 For eighteen (18) years, Plaintiff Lunneborg worked for Oxyfresh, a company
28

1 which specialized in health and wellness products.

2 3.3 Plaintiff Lunneborg was a Vice President of Oxyfresh and the head of the
3 Research and Development sector. He had in-depth knowledge of the formulas developed and
4 sold by Oxyfresh, which Oxyfresh considered to be proprietary trade secrets.
5

6 3.4 Defendant MFL is a travel booking company based on a multi-level marketing
7 platform.

8 3.5 On March 27, 2014, Plaintiff Lunneborg was introduced through a mutual
9 acquaintance to the Chief Executive Officer (CEO) of Defendant MFL, Dan Edwards, and his
10 wife, Carrie Edwards. Mr. Edwards was and is the sole shareholder, director, and officer of
11 Defendant MFL, and Ms. Edwards is also directly involved in the day-to-day management of
12 the company.
13

14 3.6 Mr. Edwards expressed an interest in hiring Plaintiff Lunneborg to act as the
15 Chief Operations Officer (COO) of Defendant MFL.
16

17 3.7 Mr. and Ms. Edwards shared financial information of MFL with Plaintiff
18 Lunneborg to entice him to become Defendant MFL's COO.

19 3.8 On or about April 2, 2014, Plaintiff Lunneborg accepted the position of COO
20 for Defendant MFL.
21

22 **B. COMMENCEMENT OF PLAINTIFF'S EMPLOYMENT AT DEFENDANT MFL**

23 3.9 Plaintiff Lunneborg and Defendant MFL entered into a written employment
24 contract ("Employment Agreement") on or about April 16, 2014. A true and correct copy of
25 the Employment Agreement is attached hereto as Exhibit "A".
26

27 3.10 Plaintiff Lunneborg was immediately introduced to Defendant MFL's staff as
28 the new COO.

1 3.11 The Employment Agreement provides, among other terms, that Plaintiff
2 Lunneborg's position would be "Chief Operating Officer" of Defendant MFL, and that Plaintiff
3 Lunneborg's annual salary would be \$120,000. A quarterly bonus was also promised, based
4 upon a percentage of company revenues.
5

6 3.12 Plaintiff Lunneborg's compensation at Oxyfresh had been significantly higher
7 than what Defendant MFL offered; however, Mr. Edwards assured Plaintiff Lunneborg that the
8 quarterly bonuses would make up the difference soon after Plaintiff Lunneborg began work.
9

10 3.13 The Employment Agreement provided that if Plaintiff Lunneborg's employment
11 was terminated by MFL "without cause," he would be paid six (6) months of salary.

12 3.14 Plaintiff Lunneborg commenced working for Defendant MFL on May 21, 2014.

13 3.15 Throughout his tenure at Defendant MFL, Plaintiff Lunneborg fully and
14 completely performed all of his obligations as COO. Neither Mr. Edwards nor Ms. Edwards
15 ever expressed any concern, complaint, or criticism of the adequacy of Plaintiff Lunneborg's
16 job performance until the date of Plaintiff Lunneborg's termination.
17

18 **C. EXPANSION OF COMPANY FOCUS**

19 3.16 Mr. and Ms. Edwards informed Plaintiff Lunneborg that they wanted to expand
20 the focus of Defendant MFL to include the offering of various products and services in
21 addition to travel booking.
22

23 3.17 Initially, Mr. Edwards wanted to develop and market an energy drink similar to
24 a product Plaintiff Lunneborg had created at Oxyfresh called LifeShotz.

25 3.18 Mr. Edwards asked Plaintiff Lunneborg to make a "mirror image" of the
26 LifeShotz formula used at Oxyfresh. Believing this action to be unethical, improper, and
27
28

1 potentially illegal, Plaintiff Lunneborg refused, but offered to develop a different product for
2 Defendant MFL.

3 3.19 Mr. Edwards expressed significant displeasure at Plaintiff Lunneborg's refusal
4 to misappropriate Oxyfresh's formula for LifeShotz.
5

6 **D. PLAINTIFF'S TERMINATION FROM DEFENDANT MFL**

7 3.20 Mr. Edwards terminated Plaintiff Lunneborg on July 28, 2014. The termination
8 letter cited two alleged "causes" for Plaintiff Lunneborg's termination, both of which are
9 fabrications.
10

11 3.21 At the time of his termination, Plaintiff Lunneborg's salary was \$10,000 per
12 month. Pursuant to the Employment Agreement, he is entitled to six (6) months of salary,
13 which is \$60,000. Defendant MFL refused to pay Plaintiff Lunneborg the owed severance
14 payment.
15

16 3.22 Also, at the time of his termination, Plaintiff Lunneborg had accrued 114 hours
17 of vacation time. He was not paid for this time.

18 **E. MR. AND MS. EDWARDS' ABUSE OF THE CORPORATE FORM**

19 3.23 Mr. Edwards exercises complete domination over Defendant MFL. He is the
20 sole shareholder and the sole director, and he holds all of the officer positions simultaneously:
21 President, Vice-President, Secretary, and Treasurer. Ms. Edwards also exhibits control over
22 the company's assets by using corporate credit cards and supervising employees.
23

24 3.24 Defendant MFL is located at 5077 N. Building Center Dr. in Coeur d'Alene. At
25 least 18 other active entities which are owned and operated by Mr. and/or Ms. Edwards are
26 also located at that same address, including the entity which owns the building, Edventure
27 Holdings, LLC.
28

1 3.25 Defendant MFL failed to keep adequate corporate records to document its
2 actions. Defendant MFL has no records of issuing stock, even though its bylaws require stock
3 certificates to be issued. Likewise, Defendant MFL has no records of ever distributing
4 dividends, or ever holding an annual meeting.
5

6 3.26 Mr. Edwards, as director and officer of Defendant MFL, and Ms. Edwards, as
7 an agent and officer-in-fact of Defendant MFL, extensively commingled personal and
8 corporate funds. Mr. and/or Ms. Edwards caused many transfers of assets between themselves
9 (or their other closely-held corporations) and Defendant MFL's bank accounts, without
10 consideration, written contracts, indicia of debt, or official corporate action. Mr. and Ms.
11 Edwards used MFL credit cards and bank accounts for a multitude of personal expenses,
12 totaling tens of thousands of dollars or more.
13

14 3.27 Defendant MFL was initially, and has remained, grossly undercapitalized. The
15 company possesses no record of an initial capital contribution, and financial records reveal
16 dozens of examples of funds deposited into MFL accounts from other entities owned and
17 controlled by Mr. and Ms. Edwards, without consideration and without indicia of debt.
18

19 3.28 Although not a director of the corporation, Ms. Edwards served as an agent and
20 officer-in-fact of Defendant MFL. She directly benefited from using the corporate assets as her
21 own, and the marital community also benefited from the actions of Mr. Edwards.
22

23 3.29 Several individuals who were employed by Defendant MFL were also
24 employed by other entities owned and controlled by Mr. and Ms. Edwards.
25

26 3.30 Defendant MFL has asserted that the company is in the process of being wound
27 up. The company has stated that it has distributed all of its assets, and that it is now insolvent.
28

///
28

1 5.4 Defendant MFL refused to pay Plaintiff Lunneborg both the severance payment
2 and the promised paid time off upon its termination of Plaintiff Lunneborg.

3 5.5 Severance pay and vacation time are "compensation for the employee's own
4 personal services" and as such they are the proper subject of a wage claim under I.C. § 45-615.
5

6 5.6 Under I.C. § 45-615, Defendant MFL is liable to Plaintiff Lunneborg for the
7 severance payment and for compensation in lieu of vacation hours earned.

8 5.7 Plaintiff is also entitled to three (3) times the unpaid wages due and owing plus
9 attorney's fees pursuant to I.C. § 45-615.
10

11 **VI. THIRD CAUSE OF ACTION: WRONGFUL TERMINATION**
12 **IN VIOLATION OF PUBLIC POLICY**

13 6.1 Plaintiff Lunneborg re-alleges and incorporates Paragraphs 1.1 through 5.7 as
14 though fully set forth herein.

15 6.2 The formula for LifeShotz was and is owned by Oxyfresh.

16 6.3 The formula for LifeShotz derives independent economic value from not being
17 generally known, and not being readily ascertainable, by other persons who can obtain
18 economic value from its disclosure or use; further, the formula for LifeShotz is the subject of
19 reasonable efforts to maintain its secrecy. The formula for LifeShotz is a trade secret under I.C.
20 §48-801 and 28 U.S.C. § 1839.
21

22 6.4 Plaintiff Lunneborg knew or had reason to know that his knowledge of the
23 formula for LifeShotz was acquired under circumstances giving rise to a duty to maintain its
24 secrecy or limit its use.
25

26 6.5 Plaintiff Lunneborg did not have express or implied permission to disclose the
27 formula for LifeShotz.
28

1 6.6 Mr. Edwards asked Plaintiff Lunneborg to misappropriate the formula for
2 LifeShotz by making a "mirror image" of the formula which would then be sold by Defendant
3 MFL. Plaintiff Lunneborg refused.

4 6.7 Defendant MFL terminated Plaintiff Lunneborg because Plaintiff Lunneborg
5 declined to misappropriate the formula for LifeShotz for the benefit of Defendant MFL.
6

7 6.8 The public policy of the State of Idaho includes the protection of trade secrets
8 against misappropriation, as evidenced by the Idaho Trade Secrets Act, § 48-801 et seq.
9

10 6.9 Public policy protecting trade secrets is further evidenced by federal criminal
11 penalties for conversion or improper disclosure of trade secrets.

12 6.10 Plaintiff Lunneborg's refusal to commit the unlawful act of misappropriating a
13 trade secret is protected activity and said activity was in furtherance of the public policy
14 protecting trade secrets.
15

16 6.11 Defendant MFL's termination of Plaintiff Lunneborg violates public policy
17 because Plaintiff Lunneborg was terminated for engaging in a legally protected activity,
18 namely refusing to commit an unlawful act.

19 6.12 As a direct and proximate result of Defendant MFL's conduct, Plaintiff
20 Lunneborg has suffered damages in an amount to be proven at trial.
21

22 **VII. FOURTH CAUSE OF ACTION: BREACH OF THE DUTY**
23 **OF GOOD FAITH AND FAIR DEALING**

24 7.1 Plaintiff Lunneborg re-alleges and incorporates Paragraphs 1.1 through 6.12 as
25 though fully set forth herein.

26 7.2 Implied by law into the terms of the Employment Agreement is a covenant of
27 good faith and fair dealing.
28

1 b. Defendant MFL failed to keep adequate records of its capital
2 contribution(s), issuance of stock, distribution of dividends, holding of meetings, acquiring
3 debt, issuing credit, or any other corporate action.
4

5 c. Corporate funds were regularly commingled with the personal funds of
6 Mr. and Ms. Edwards to such an extent that the funds and accounts are indistinguishable.

7 d. Defendant MFL's funds were regularly commingled with the funds of
8 Mr. and/or Ms. Edwards' other closely-held corporations.
9

10 e. Defendant MFL is and has always been grossly undercapitalized.

11 f. Several individuals who were employed by Defendant MFL were also
12 employed by other entities owned and operated by Mr. and Ms. Edwards.

13 g. Defendant MFL has claimed that it is now insolvent, and in the process
14 of winding up.
15

16 8.5 Due to the actions of Mr. and Ms. Edwards, the separate personalities of
17 Defendant MFL and Mr. and Ms. Edwards do not exist. Mr. and Ms. Edwards used Defendant
18 MFL as their alter ego. If acts complained of herein are treated as solely those of Defendant
19 MFL, an inequitable result will follow.

20 8.6 Defendants MFL, Mr. Edwards, and Ms. Edwards must be treated as one entity
21 to prevent the Defendants from abusing the corporate form in an effort to avoid liability for the
22 causes of action cited herein. The corporate fiction of the Defendants--Mr. Edwards, Ms.
23 Edwards, and MFL--should be disregarded because the entity form has been used as part of an
24 unfair device to achieve an inequitable result.
25

26 8.7 The corporate veil should be pierced to provide that all Defendants, including
27 Mr. and Ms. Edwards, and MFL, are jointly and severally liable to Plaintiff for damages.
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PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for relief as follows:

1. For judgment against Defendants MFL, Daniel Edwards, and Carrie Edwards for damages including, but not limited to, the amount of severance payment to which Plaintiff Lunneborg is entitled, along with compensation for earned but unused paid time off, in amounts to be proven at trial;
2. For compensatory and actual damages including, but not limited to, front pay and back pay;
3. For treble damages pursuant to I.C. § 45-615;
4. For an award of attorney's fees and costs under I.C. § 45-615;
5. For prejudgment interest as provided by law;
6. For joint and several liability among the defendants; and
7. For such additional relief as the Court may deem just and proper.

DATED this 16 day of December, 2015.

WITHERSPOON • KELLEY
Counsel for the Plaintiff



MICHAEL F. NIENSTEDT, ISB #3770
JOEL P. HAZEL, ISB #4980
EMILY K. ARNESON, ISB #9659

1
2 VERIFICATION

3 STATE OF WASHINGTON)
4 : ss.
5 County of Spokane)

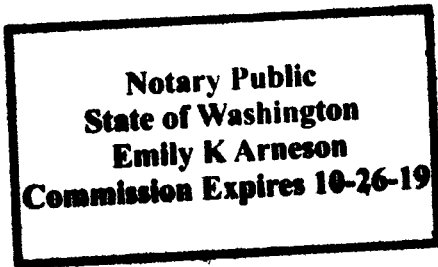
6 THOMAS LUNNEBORG, being first duly sworn on oath, deposes and says:


7 That he is the Plaintiff in the foregoing *FIRST AMENDED COMPLAINT*, that he has
8 read the same, knows the contents thereof, and believes the facts therein stated to be true.

9 DATED this 16 day of December, 2015.

10 
11 THOMAS LUNNEBORG

12
13 SUBSCRIBED AND SWORN TO before me this 16 day of Dec., 2015



17 
18 Print Name: Emily K. Arneson
19 Notary Public for the State of Washington
20 Residing at: Spokane WA
21 Commission expires: 10-26-19

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 STATE OF IDAHO }
 COUNTY OF KOOTENAI } SS
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 CLERK DISTRICT COURT
 DEPUTY

MICHAEL B. HAGUE, ISBA#3574
 HAGUE LAW OFFICES, PLLC
 401 Front Avenue, Suite 212
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 Fax: (800) 868-0224
 Email: mhague@haguelawoffices.com

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THOMAS LUNNEBORG, a married individual,)	)	Case No. CV 14-8968
Plaintiff,)	
	)	ANSWER TO FIRST
vs.	)	AMENDED COMPLAINT
)	
MY FUN LIFE CORP., a Delaware corporation,))	
DANIEL [sic] E. EDWARDS and CARRIE L.))	
EDWARDS, husband and wife,)	
)	
Defendants.)	
)	

Defendants, My Fun Life Corp, a Delaware corporation and Dan E. Edwards and Carrie L. Edwards, husband and wife, respond to plaintiff, Thomas Lunneborg's, First Amended Complaint, as follows:

Generally, defendants respond that defendant Dan Edwards', true name is Dan Edwards, not Daniel Edwards. References in plaintiff's First Amended Complaint to Daniel Edwards are assumed for purposes of this Answer to be to defendant Dan Edwards.

I.

Defendants are without knowledge sufficient to form a belief as to the truth or falsity of the allegations of paragraph 1.1 of plaintiff's First Amended Complaint and therefore deny same leaving plaintiff to his proof.

II.

Defendants admit the allegations of paragraphs 1.2 and 1.3 of plaintiff's First Amended Complaint.

III.

In response to paragraph 2.1 of plaintiff's First Amended Complaint, defendants reallege and incorporate herein their responses to paragraphs 1.1 and 1.3 above.

IV.

Defendants admit the allegations of paragraphs 2.2, 2.3 and 2.4 of plaintiff's First Amended Complaint.

V.

In response to paragraph 3.1 of plaintiff's First Amended Complaint, defendants reallege and incorporate their responses to paragraphs 1.1 and 2.4 above.

VI

In response to paragraphs 3.2 and 3.3 of plaintiff's First Amended Complaint, defendants respond that they are without knowledge sufficient to form a belief as to the truth or falsity of the allegations therein and therefore deny same leaving plaintiff to his proof.

VII.

Defendants admit the allegations of paragraphs 3.4, 3.5 and 3.6 of plaintiff's First Amended Complaint.

VIII.

In response to paragraph 3.7 of plaintiff's First Amended Complaint, defendants respond that they did share financial information of MFL with plaintiff upon plaintiff's request to be provided same, but deny that that information was provided to plaintiff to entice him to become defendant MFL's COO.

IX.

Defendants admit the allegations of paragraphs 3.8, 3.9, and 3.10 of plaintiff's First Amended Complaint.

X.

Defendants admit the allegations of the first sentence of paragraph 3.11 of plaintiff's First Amended Complaint to the extent they do not conflict with the language of the contract and further respond that the contract speaks for itself.

XI.

In response to paragraph 3.12 of plaintiff's First Amended Complaint, defendants are without knowledge sufficient to form a belief as to the truth or falsity of the first half of the first sentence of paragraph 3.12 of plaintiff's First Amended Complaint and therefore deny same leaving plaintiff to his proof. In response to the second half of paragraph 3.12 defendants admit that the potential for bonuses did exist if membership increased, but deny the remainder of the second half of paragraph 3.12 leaving plaintiff to his proof.

XII.

Defendants admit the allegations of paragraphs 3.13 and 3.14 of plaintiff's First Amended Complaint.

XIII.

Defendants deny the allegations of paragraph 3.15 of plaintiff's First Amended Complaint.

XIV.

Defendants admit the allegations of paragraph 3.16 of plaintiff's First Amended Complaint.

XV.

In answer to paragraph 3.17 of plaintiff's First Amended Complaint, defendants admit that they wanted to develop and market an energy drink and that plaintiff was asked to assist in that regard, but otherwise deny the allegations of paragraph 3.17 leaving plaintiff to his proof.

XVI.

Defendants deny the allegations of paragraphs 3.18 and 3.19 of plaintiff's First Amended Complaint.

XVII.

Defendants admit the allegations of the first sentence of paragraph 3.20 of plaintiff's First Amended Complaint. Defendants further admit that the termination letter cited to alleged "causes" for plaintiff's termination, but deny the remainder of the allegations of paragraph 3.20 leaving plaintiff to his proof.

XVIII.

In answer to paragraph 3.21 of plaintiff's First Amended Complaint, defendants admit that plaintiff was receiving \$10,000 per month salary at the time of his termination, but deny the remainder of the allegations of paragraph 3.21 of plaintiff's First Amended Complaint leaving plaintiff to his proof.

XIX.

Defendants deny the allegations of paragraph 3.22 of plaintiff's First Amended Complaint.

XX.

Defendants admit the allegations of paragraph 3.23 of plaintiff's First Amended Complaint.

XXI.

In answer to paragraph 3.24 of plaintiff's First Amended Complaint, defendants admit that MFL is located at 5077 N. Building Center Drive in Coeur d'Alene, but deny that 18 other active entities are also located at that same address. Defendants further respond that Edventure Holdings, LLC is the owner of the building at 5077 N. Building Center Drive, Coeur d'Alene.

XXII.

Defendants deny the allegations of paragraphs 3.25, 3.26 and 3.27 of plaintiff's First Amended Complaint.

XXIII.

Defendants deny the allegations of the first sentence of paragraph 3.28 of plaintiff's First Amended Complaint. Defendants further deny that defendant Carrie Edwards benefited from

using the corporate assets as her own. Defendants admit that the marital community benefited from the actions of Mr. Edwards.

XXIV.

In answer to paragraph 3.29 of plaintiff's First Amended Complaint, defendants respond that one employee worked for Defendant MFL and a sign company owned by defendants.

XXV.

Defendants admit the allegations of paragraph 3.30 of plaintiff's First Amended Complaint.

XXVI.

In answer to paragraph 4.1 of plaintiff's First Amended Complaint, defendants reincorporate their responses to paragraphs 1.1 through 3.30 above.

XXVII.

Defendants admit the allegations of paragraphs 4.2, 4.3 and 4.4 of plaintiff's First Amended Complaint.

XXVIII.

Defendants deny the allegations of paragraph 4.5 of plaintiff's First Amended Complaint.

XXIX.

In answer to paragraph 4.6 of plaintiff's First Amended Complaint, defendant MFL admits that it did not pay plaintiff severance pay, but denies that it did not pay plaintiff vacation pay. Defendants deny the remainder of the allegations of paragraph 4.6 of plaintiff's First Amended Complaint.

XXX.

Defendants deny the allegations of paragraph 4.7 of plaintiff's First Amended Complaint.

XXXI.

In answer to paragraph 5.1 of plaintiff's First Amended Complaint, defendants reincorporate their responses to paragraphs 1.1 through 4.7 above.

XXXII.

Defendants deny the allegations of paragraphs 5.2 and 5.3 of plaintiff's First Amended Complaint.

XXXIII.

In answer to paragraph 5.4 of plaintiff's First Amended Complaint, defendant MFL admits that it has not paid severance to plaintiff, but denies that it did not pay time off to plaintiff. In further response to paragraph 5.4, defendants deny that plaintiff is owed severance or further time off payments.

XXXIV.

Defendants deny the allegations of paragraphs 5.5, 5.6 and 5.7 of plaintiff's First Amended Complaint.

XXXV.

In answer to paragraph 6.1 of plaintiff's First Amended Complaint, defendants reincorporate their responses to paragraphs 1.1 through 5.7 above.

XXXVI.

Defendants are without knowledge as to the truth or falsity of the allegations of paragraphs 6.2, 6.3, 6.4, and 6.5 of plaintiff's First Amended Complaint, and therefore deny same leaving plaintiff to his proof.

XXXVII.

Defendants deny the allegations of paragraphs 6.6 and 6.7 of plaintiff's First Amended Complaint.

XXXVIII.

Paragraphs 6.8, 6.9, 6.10 and 6.11 of plaintiff's First Amended Complaint call for legal conclusions and therefore defendants deny same, leaving plaintiff to his proof.

XXXIX.

Defendants deny the allegations of paragraph 6.12 of plaintiff's First Amended Complaint.

XL.

In answer to paragraph 7.1 of plaintiff's First Amended Complaint, defendants reincorporate their responses to paragraphs 1.1 through 4.7 above.

XLI.

Paragraph 7.2 of plaintiff's First Amended Complaint calls for a legal conclusion and therefore defendants deny same leaving plaintiff to his proof.

XLII.

Defendants deny the allegations of paragraph 7.3 and 7.4 of plaintiff's First Amended Complaint.

XLIII.

In answer to paragraph 8.1 of plaintiff's First Amended Complaint, defendants reincorporate their responses to paragraphs 1.1 through 7.4 above.

XLIV.


Defendants deny paragraphs 8.2 through 8.7 of plaintiff's First Amended Complaint.

WHEREFORE, having answered plaintiff's First Amended Complaint, defendants pray for relief as follows:

1. That plaintiff's First Amended Complaint be dismissed and that he take nothing thereby.
2. For judgment in accordance with defendants' Counterclaim filed previously.
3. For costs and attorney fees incurred in this matter.
4. For such other and further relief as the Court deems just.

DATED this 16th day of February, 2016.

HAGUE LAW OFFICES, PLLC

By 
MICHAEL B. HAGUE
Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of February, 2016, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Emily Arneson
Michael Nienstedt
Witherspoon Kelley
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-1246

- U.S. MAIL
- HAND DELIVERED
- ELECTRONIC-MAIL to:
- TELECOPY (FAX) to: (208) 667-8470



Michael B. Hague

2016 NOV 29 AM 9: 50

CLERK DISTRICT COURT


DEPUTY

1
2 Michael F. Nienstedt, ISBA No. 3770
3 Edward J. Anson, ISBA No. 2074
4 Emily K. Arneson, ISBA No. 9569
5 WITHERSPOON KELLEY
6 Attorneys & Counselors
7 The Spokesman-Review Building
8 608 Northwest Boulevard, Suite 300
9 Coeur d'Alene, ID 83814-1246
10 Telephone: (208) 667-4000
11 Facsimile: (208) 667-8470
12 Email: eka@witherspoonkelley.com

13 *Attorneys for the Plaintiff, Thomas Lunneborg*

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THOMAS LUNNEBORG, a married individual,

Plaintiff,

vs.

MY FUN LIFE CORP, a Delaware corporation,
DAN E. EDWARDS and CARRIE L.
EDWARDS, husband and wife,

Defendant.

CASE NO: CV 14-8968

ORDER RE PLAINTIFF'S
MOTION FOR SANCTIONS

THIS MATTER, having come before the Court on the Plaintiff's Motion for Sanctions pursuant to I.R.C.P. 37(b) and (f), and having reviewed the records and files herein, the Court being fully apprised of the circumstances, enters the following:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On December 28, 2015, this Court ordered that Defendant My Fun Life Corp. must pay Plaintiff Lunneborg's reasonable fees and costs incurred in bringing the July 28, 2015

ORDER RE PLAINTIFF'S
MOTION FOR SANCTIONS - 1

1 Motion to Compel and the October 20, 2015 Motion for Sanctions in the amount of \$8,823.75.

2 2. Defendant MFL has not complied with this Court's December 28, 2015 Order
3 Approving Reduced Attorneys' Fees.

4 3. On June 16, 2016, Plaintiff Lunneborg moved for sanctions against Defendant
5 MFL for failing to comply with the Court's December 28, 2015, requesting that Defendant
6 MFL's Answer and Counterclaim be stricken, default be entered, and fees and costs be
7 awarded.
8

9 4. On or about June 22, 2016, Defendant MFL filed for Chapter 7 bankruptcy and
10 an automatic stay on all legal proceedings, including the instant case, was issued by the United
11 States Bankruptcy Court, District of Idaho.
12

13 5. On or about July 25, 2016, Plaintiff Lunneborg achieved relief from the
14 automatic bankruptcy stay.

15 6. On September 27, 2016, Plaintiff Lunneborg renewed his Motion for Sanctions.

16 7. The Motion for Sanctions was heard by this Court on October 11, 2016.

17 8. The counterclaims in this case are assets of the bankruptcy estate, and this Court
18 will not interfere with a bankruptcy proceeding.
19

20 9. However, Defendant MFL's failure to adhere to the December 28, 2015 Order is
21 unacceptable and must be rectified as soon as possible after the bankruptcy concludes.
22

23 II. ORDER

24 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
25 that Plaintiff's Motion for Sanctions under I.R.C.P. 37(b) and (f) is hereby DENIED;

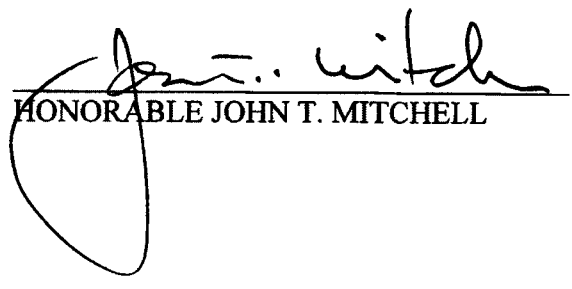
26 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant MFL is
27 ordered to pay the sum of \$8,823.75 together with \$383.50 in accrued interest calculated to
28

**ORDER RE PLAINTIFF'S
MOTION FOR SANCTIONS - 2**

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October 17, 2016, with interest continuing to accrue at the rate of 5.375% per annum (\$1.30 per fay) for each day thereafter to Plaintiff Lunneborg within seven (7) calendar days of the conclusion of the bankruptcy proceeding.

DONE IN OPEN COURT, this 29th November, 2016.


HONORABLE JOHN T. MITCHELL

**ORDER RE PLAINTIFF'S
MOTION FOR SANCTIONS - 3**

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CLERK'S CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 29 day of November, 2016, I caused a true and correct copy of the *ORDER RE PLAINTIFF'S MOTION FOR SANCTIONS* to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Michael Hague
Hague Law Offices, PLLC
401 Front Ave., Ste. 212
Coeur d' Alene, ID 83814
F: (800) 868-0224

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Via Fax
- Via Email

#681

Emily K. Arneson
Edward J. Anson
Witherspoon Kelley
Spokesman Review Building
608 Northwest Boulevard, Ste. 300
Coeur d'Alene, ID 83814
F: (208) 667-8470

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Via Fax:
- Via Email:

#682

Jim Brannon, Kootenai County
Clerk of District Court

By: *Juan McCoy*
Deputy

**ORDER RE PLAINTIFF'S
MOTION FOR SANCTIONS - 4**

2016 NOV 29 AM 9:50

CLERK DISTRICT COURT


DEPUTY

1 Michael F. Nienstedt, ISBA No. 3770
2 Edward J. Anson, ISBA No. 2074
3 Emily K. Arneson, ISBA No. 9569
4 WITHERSPOON KELLEY
5 Attorneys & Counselors
6 The Spokesman-Review Building
7 608 Northwest Boulevard, Suite 300
8 Coeur d'Alene, ID 83814-1246
9 Telephone: (208) 667-4000
10 Facsimile: (208) 667-8470
11 Email: eka@witherspoonkelley.com

12 *Attorneys for the Plaintiff, Thomas Lunneborg*

13 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
14 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

15 THOMAS LUNNEBORG, a married individual,
16 Plaintiff,

Case No. CV 14-8968

JUDGMENT RE ATTORNEYS' FEES

17 vs.

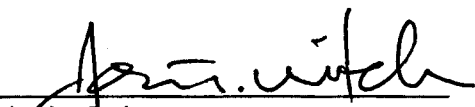
18 MY FUN LIFE CORP, a Delaware corporation,
19 DAN E. EDWARDS and CARRIE L. EDWARDS,
20 husband and wife,

21 Defendant.

22 JUDGMENT IS ENTERED AS FOLLOWS:

23 Thomas Lunneborg is awarded judgment against Defendant My Fun Life Corp., in the
24 principal sum of \$8,823.75, plus accrued interest in the amount of \$383.50 as of October 17,
25 2016 with interest continuing to accrue at the rate of 5.375% (\$1.30 per diem) until paid in full.

26 DATED this 29th day of November, 2016.

27 
28 District Judge

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CLERK'S CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 29 day of Nov., 2016, I caused a true and correct copy of the JUDGMENT RE ATTORNEYS' FEES to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Michael Hague
Hague Law Offices, PLLC
401 Front Ave., Ste. 212
Coeur d' Alene, ID 83814
F: (800) 868-0224

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Via Fax
- Via Email

#681

Emily K. Arneson
Edward J. Anson
Michael F. Nienstedt
Witherspoon Kelley
Spokesman Review Building
608 Northwest Boulevard, Ste. 300
Coeur d'Alene, ID 83814
F: (208) 667-8470

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Via Fax:
- Via Email:

#682

Jim Brannon, Kootenai County
Clerk of District Court

By: *Gusan McCoy*
Deputy

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2017 APR 25 PM 2: 20

CLERK DISTRICT COURT

DEPUTY

1 Edward J. Anson, ISBN 2074
2 Emily K. Arneson, ISBN 9659
3 WITHERSPOON KELLEY
4 Attorneys and Counselors
5 The Spokesman-Review Building
6 608 Northwest Boulevard, Suite 300
7 Coeur d'Alene, ID 83814-1246
8 Telephone: (208) 667-4000
9 Facsimile: (208) 667-8470
10 Email: eka@witherspoonkelley.com

11 *Attorneys for Plaintiff*

12 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
13 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

14 THOMAS LUNNEBORG, a married
15 individual,

CASE NO. CV 14-8968

16 Plaintiff,

FINAL JUDGMENT

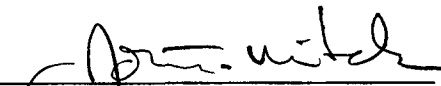
17 vs.

18 MY FUN LIFE CORP, a Delaware corporation,
19 DAN E. EDWARDS and CARRIE L.
20 EDWARDS, husband and wife,

21 Defendants.

22 JUDGMENT IS ENTERED AS FOLLOWS: Plaintiff is awarded judgment against My
23 Fun Life Corp, Dan E. Edwards, and Carrie L. Edwards, jointly and severally, in the principal
24 sum of \$180,000, together with prejudgment interest in the sum of \$17,635.41, together with an
25 award to Plaintiff of Plaintiff's attorney fees and costs in an amount to be determined pursuant
26 to I.R.C.P. 54, together with interest on the total amount of the judgment, commencing as of the
27 date hereof at the rate of 5.625% per annum.

28 DATED this 24th day of April, 2017.


The Honorable John T. Mitchell
District Judge

FINAL JUDGMENT - 1

WITHERSPOON · KELLEY
422 WEST RIVERSIDE AVE, STE 1100
SPOKANE, WASHINGTON 99201-0302
(509) 624-5265

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CLERK'S CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 25 day of April, 2017, I caused a true and correct copy of the *FINAL JUDGMENT* to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Michael Hague
Hague Law Offices, PLLC
401 Front Ave., Ste. 212
Coeur d' Alene, ID 83814
F: (800) 868-0224

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Via Fax
- Via Email

#834

Emily K. Arneson
Edward J. Anson
Witherspoon Kelley
Spokesman Review Building
608 Northwest Boulevard, Ste. 300
Coeur d'Alene, ID 83814
F: (208) 667-8470

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Via Fax:
- Via Email:

#833

Jim Brannon, Kootenai County
Clerk of District Court

By: *Susan McCay*
Deputy

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED: *[Signature]*

2017 MAY -8 PM 3:05

CLERK DISTRICT COURT
[Signature]
DEPUTY

1 Edward J. Anson, ISBN 2074
2 Emily K. Arneson, ISBN 9659
3 WITHERSPOON KELLEY
4 Attorneys and Counselors
5 The Spokesman-Review Building
6 608 Northwest Boulevard, Suite 300
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8 Telephone: (208) 667-4000
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10 Email: eka@witherspoonkelley.com

11 *Attorneys for Plaintiff*

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THOMAS LUNNEBORG, a married individual,

Plaintiff,

vs.

MY FUN LIFE CORP, a Delaware corporation, DAN E. EDWARDS and CARRIE L. EDWARDS, husband and wife,

Defendants.

CASE NO. CV 14-8968

AFFIDAVIT AND MEMORANDUM OF COSTS AND ATTORNEYS' FEES

STATE OF WASHINGTON)
County of Spokane) :ss

I, Emily K. Arneson, declare under penalty of perjury as follows:

1. That I am one of the attorneys for Thomas Lunneborg, the Plaintiff in the above-entitled matter. I am over the age of eighteen years and I am competent to be a witness. I make this declaration based upon my personal knowledge of the facts stated herein.

2. That I am well informed as to the attorneys' fees and costs incurred in this action. That while the fee agreement between Thomas Lunneborg and Witherspoon Kelley was a

AFFIDAVIT AND MEMORANDUM OF COSTS AND ATTORNEYS' FEES - 1

WITHERSPOON · KELLEY
422 WEST RIVERSIDE AVE, STE 1100
SPOKANE, WASHINGTON 99201-0302
(509) 624-5265

1 contingency fee agreement of 1/3 of any recovery plus all costs and disbursements, Plaintiff
2 submits that a reasonable award of attorneys' fees should be based on the time and hourly rates
3 of the attorneys of Witherspoon Kelley who represented Mr. Lunneborg in this action.

4 3. That I state that to the best of my knowledge, all items set forth in this
5 memorandum are correct, and that all items claimed are in compliance with I.R.C.P. 54.

6 4. That the time and labor required for this action is itemized and set forth below.
7 That the time and labor is greater than what would be typical for a case of this nature due to the
8 failure of the Defendants to properly respond to discovery requests.

9 5. I (EKA) have been licensed to practice law in the State of Washington since
10 2010 and I received reciprocal admission to practice in the State of Idaho in 2015. My hourly
11 rate on this case would be \$180 per hour.

12 6. Edward J. Anson (EJA) was lead trial counsel. He has been licensed to practice
13 law in the State of Idaho since 1977. His hourly rate for this case would be \$290 per hour.
14 During his career he has participated in over 300 trials.

15 7. Michael F. Nienstedt (MFN) also participated in this case. He has been licensed
16 to practice law in the State of Washington since 1976 and in the State of Idaho since 1989. His
17 hourly rate in this case would be \$340 per hour in 2015, and \$350 per hour in 2016-17.

18 8. Joel P. Hazel (JPH) also participated in this case. He has been licensed to
19 practice law in the State of Idaho since 1994. His hourly rate in this case would be \$285 per
20 hour.

21 9. Daniel J. Gibbons (DJG) also participated in this case. He has been licensed to
22 practice law in the State of Idaho since 2000. His hourly rate in this case would be \$280 per
23 hour. Mr. Gibbons' participation centered on My Fun Life's bankruptcy filing and the Plaintiff's
24 application to lift the bankruptcy stay.

25 10. That I am well informed as to the hourly rates of counsel with similar skill,
26 knowledge, and experience of those counsel who worked on this case in the State of Idaho, and
27 I state that the attorneys' fees sought are similar to the rates charged for like work.
28

AFFIDAVIT AND MEMORANDUM OF COSTS
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11. That as stated above, a substantial amount of time and labor was required in this case. The issues of piercing the corporate veil and whether Mr. Lunneborg was terminated with cause presented difficult questions of law.

12. The award of attorneys' fees sought may be somewhat greater than the award in similar cases due to the failure of the Defendants to properly respond to discovery requests and the corporate defendant's bankruptcy filing.

13. The time limits imposed by the circumstances of the case were typical of a case of this nature. Had My Fun Life (MFL) paid Mr. Lunneborg his severance pay when due, the amount would have been \$60,000. By MFL's failure to pay that amount when due, the result is a principal judgment in the sum of \$180,000 plus interest.

14. There was nothing particularly desirable or undesirable about the case. Mr. Lunneborg was not an established client to Witherspoon Kelley.

15. My Fun Life filed counterclaims against Mr. Lunneborg, which were apparently abandoned and were not pursued at trial. The fees associated with the counterclaims were tracked separately, as indicated below.

16. The following is a true and accurate account of the costs and fees associated with this action as sought by Plaintiff:

COSTS AS A MATTER OF RIGHT

DESCRIPTION	AMOUNT (S)
Filing Fee	221.00
Service of Process Fee	150.00
Deposition of Richard Brooke	575.91
Deposition of Thomas Lunneborg	1,542.87
Deposition of Dr. Schlapfer	1,142.38
Deposition of Dan Edwards	1,526.03

AFFIDAVIT AND MEMORANDUM OF COSTS
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1 Deposition of Carrie Edwards 1,694.50

2 **TOTAL COSTS AS A MATTER**
3 **OF RIGHT**

\$6,852.69

4 **DISCRETIONARY COSTS**

5 **DESCRIPTION** **AMOUNT**
6 **(S)**

7 Mediation Fee (C. Lempeis) 600.00

8 Bankruptcy Court Filing Fee 176.00

9 Computer-Assisted Research 2,099.82

10 **TOTAL DISCRETIONARY**
11 **COSTS**

\$2,875.82

12 **ATTORNEYS' FEES FOR PLAINTIFF'S CLAIMS**

14 DATE	14 ATTORNEY	14 DESCRIPTION	14 TIME
15 8/06/14	15 MFN	15 Review material from T. Lunneborg; research re severance as wage claim; analyze documents and claims therefrom.	15 1.50
16 8/07/14	16 MFN	16 Email to Tom with multiple questions re information provided.	16 .30
17 8/07/14	17 EKA	17 Research whether severance pay and unpaid vacation days are considered "wages" for the purposes of Idaho's wage claim statutes.	17 .80
18 8/09/14	18 MFN	18 Review email from T. Lunneborg and reply.	18 .30
19 8/12/14	19 MFN	19 Review Idaho law re "wage claims" and termination in violation of public policy.	19 .70
20 8/19/14	20 MFN	20 Emails from T. Lunneborg and replies.	20 .30
21 8/28/14	21 MFN	21 Review file; research; work on demand letter.	21 2.20
22 9/08/14	22 MFN	22 Emails to and from Tom re return to Oxyfresh, last paycheck, etc.	22 .30
23 10/07/14	23 MFN	23 Draft demand letter; forward to Tom and Atty. Hazel for review; incorporate Atty. Hazel's changes.	23 1.50
24 10/07/14	24 JPH	24 Review and revise demand letter.	24 .40
25 10/08/14	25 MFN	25 Finalize demand letter re prejudgment interest, etc.	25 .50

26 **AFFIDAVIT AND MEMORANDUM OF COSTS**
27 **AND ATTORNEYS' FEES - 4**

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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	10/10/14	MFN	Email from Tom approving demand letter; confer re meeting to set initial demand.	.50
3	10/20/14	MFN	Forward demand letter to Mr. Edwards.	.30
4	11/04/14	MFN	Review response from MFL; review file re allegations against Lunneborg; email to Tom; confer with Atty. Hazel.	1.50
5	11/05/14	MFN	Forward Atty. Marks' letter to Tom requesting response to issues presented by same; reply from Tom; review text messages; email to Tom.	1.30
6	11/05/14	JPH	Review correspondence and respond re My Fun Life, Inc.'s claims.	.40
7	11/06/14	MFN	Review email from Tom re YouTube video on company announcement of Tom as COO; reply to Tom; draft anti-spoilation letter for Atty. Marks and MFL; email to Tom with letter to Atty. Marks; reiterate with Tom spoliation requirements.	1.50
8	11/06/14	JPH	Review correspondence from client; review youtube audio of announcement as Chief Operating Officer.	.50
9	11/07/14	MFN	Review documents from Tom re disputing claims asserted by MFL.	.50
10	11/12/14	EKA	Review file and documents received from client; begin drafting Complaint.	1.50
11	11/13/14	EKA	Email Attys. Nienstedt and Hazel re naming individual plaintiffs and adding potential causes of action.	.40
12	11/14/14	MFN	Work on complaint and issue related thereto.	.50
13	11/17/14	EKA	Watch several YouTube videos re My Fun Life.	1.00
14	11/18/14	MFN	Email from Tom and reply; review Atty. Hazel's changes to complaint; review web material re COO issue.	1.20
15	11/18/14	EKA	Draft Plaintiff's First Interrogatories and Requests for Production to Defendant.	1.80
16	11/20/14	MFN	Confer with Atty. Arneson re discovery; forward complaint to Tom for verification of facts.	1.00
17	11/24/14	MFN	Analyze and incorporate Tom's changes into complaint.	.30
18	12/10/14	MFN	Work on discovery; confer with Tom.	.60
19	12/16/14	MFN	Finalize first discovery requests.	1.00
20	12/19/14	MFN	Email from Tom; email from same; phone call to Tom; phone call to Dr. Schlapfer; review interview file; email to Dr. Schlapfer.	2.20
21	12/19/14	EKA	Receive and review email from Atty. Nienstedt re Dr. Todd Schlapfer.	.10
22	12/23/14	MFN	Review statements by R. Brooke, Dr. Schlapfer, D. Mires and B. Lunneborg; review company vision and goals; review Skype chat logs; email to Tom re same; research genesis of same.	2.30

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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	1/05/15	EKA	Review Answer and Counterclaim.	.80
3	1/06/15	MFN	Email to and from Tom.	.10
4	1/07/15	MFN	Review Lunneborg email material; letter to Atty. Marks re Order for Default.	.50
5	1/08/15	MFN	Emails re defendant's answer and counterclaim and analyze same.	1.00
6	1/13/15	MFN	Phone call from Atty. Marks re answer.	.30
7	1/19/15	MFN	Begin review of discovery responses from MFL.	.40
8	1/19/15	EKA	Review defendant's discovery responses.	.30
9	1/20/15	EKA	Review discovery responses.	1.00
10	1/21/15	MFN	Forward MFL discovery responses to Tom for review.	1.80
11	1/22/15	MFN	Correspondence to Atty. Marks re inadequacy of objections; review MFL's first discovery requests to Tom; forward same to client.	1.50
12	1/28/15	EKA	Begin constructing timeline re alleged consulting agreement with Oxyfresh.	1.40
13	2/03/15	MFN	Email from Tom and reply.	.40
14	2/04/15	EKA	Work on consulting agreement issues.	1.20
15	2/05/15	EKA	Draft email to client with instructions re compiling documents for discovery; receive responsive email; begin drafting discovery responses.	2.00
16	2/10/15	MFN	Conference call with Atty. Marks re status conference and issues to be addressed.	.30
17	2/10/15	EKA	Phone call with client re discovery responses; phone conference with opposing counsel re status conference; follow-up email to client re discovery; draft memo to file re status of case; finish draft of discovery responses.	4.50
18	2/11/15	EKA	Prepare for and attend the status conference.	1.00
19	2/11/15	EKA	Receive and review emails from client.	.30
20	2/12/15	EKA	Draft email to client re search of Oxyfresh emails.	.20
21	2/17/15	EKA	Conference call with Tom re discovery; begin drafting letter to opposing counsel re deficiencies in discovery responses.	1.20
22	2/18/15	EKA	Review and labeling of documents provided by client and responsive to MFL's discovery requests.	3.00
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AFFIDAVIT AND MEMORANDUM OF COSTS
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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	2/19/15	EKA	Emails to and from client re status of email and text message review; review and coding of MFL's discovery responses.	1.20
3	2/23/15	MFN	Review responses to MFL discovery.	.50
4	2/27/15	MFN	Review discovery to date.	.60
5	3/03/15	EKA	Correspondence with opposing counsel and support staff re receipt of stipulated order vacating order of default with the Court's signature.	.30
6	3/03/15	EKA	Email correspondence with IT staff re creation of .pst file and production of electronic records.	.30
7	3/03/15	EKA	Email communication with opposing counsel re scheduling of discovery conference.	.10
8	3/05/15	EKA	Email correspondence with opposing counsel rescheduling discovery conference.	.10
9	3/06/15	EKA	Receive copy of signed Order vacating the order of default from opposing counsel.	.10
10	3/09/15	EKA	Telephone conference with opposing counsel re discovery issues.	.30
11	3/09/15	EKA	Email opposing counsel to follow up on discovery conference.	.10
12	3/10/15	EKA	Receive and review email from IT staff re creation of .pst documents; receive and review email from opposing counsel re estimate for delivery of outstanding records.	.20
13	3/12/15	EKA	Receive and respond to email from client re Oxyfresh emails.	.10
14	3/16/15	MFN	Review information on MFL's "new" venture.	.30
15	3/20/15	EKA	Receive and respond to email from client re Oxyfresh emails.	.10
16	3/21/15	EKA	Draft letter to opposing counsel re insufficient discovery.	.80
17	3/21/15	EKA	Online legal research re elements of alter ego/corporate disregard and fraudulent transfers in preparation to create second discovery requests.	2.10
18	3/24/15	EKA	Complete letter to Atty. D. Marks re insufficient discovery.	.80
19	3/24/15	EKA	Begin drafting second set of interrogatories and requests for production.	.60
20	3/25/15	EKA	Continue drafting second set of interrogatories and requests for production.	4.20
21	3/30/15	EKA	Receive and review email from opposing counsel re provision of discovery materials.	.60
22	3/30/15	EKA	Begin drafting Motion to Compel and Memorandum in support thereof.	1.50
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AFFIDAVIT AND MEMORANDUM OF COSTS
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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	3/31/15	MFN	Review new discovery to MFL re winding down of business.	.80
3	3/31/15	EKA	Continue drafting Memorandum in support of Motion to Compel; begin drafting Declarations in support thereof; email client re signing declaration; receive and respond to email from opposing counsel re deadline for providing responsive documents.	2.80
4	3/31/15	EKA	Email client with update re motion to compel and receive response.	.30
5	4/01/15	EKA	Receive and review letter from opposing counsel re discovery issues; email discovery letter and motion to dismiss pleadings to client.	.50
6	4/02/15	EKA	Receive and respond to client's email re Oxyfresh's refusal to provide emails.	.10
7	4/06/15	MFN	Review email traffic re Oxyfresh subpoena.	.20
8	4/06/15	EKA	Phone conversation with Atty. Tyler Wilson, counsel for Oxyfresh, re access to emails.	.20
9	4/06/15	EKA	Email Atty. Tyler Wilson re follow up on phone conversation.	.20
10	4/06/15	EKA	Draft subpoena for records to Oxyfresh.	.40
11	4/06/15	EKA	Review subpoena sent by Mr. Marks re Richard Brooks/Oxyfresh documents.	.20
12	4/06/15	EKA	Draft letter to Atty. Doug Marks re insufficient discovery responses.	.40
13	4/08/15	EKA	Receive and respond to email from Atty. Doug Marks re production of emails in discovery.	.10
14	4/09/15	EKA	Receive and respond to email from Atty. Doug Marks re status of discovery.	.10
15	4/13/15	EKA	Finalize letter to Atty. Doug Marks re insufficient discovery responses; review Civil Rules re production of documents as kept in normal course of business; email IT staff re method for copying Apple Mail account; review documents propounded in response to Defendant MFL's discovery requests and communicate with litigation support staff re remaining documents left to produce; draft letter to Atty. Doug Marks in response to his letter re Plaintiff's discovery responses.	2.00
16	4/14/15	EKA	Receive, review, and respond to email from Atty. Doug Marks re his subpoena to Oxyfresh and request to schedule depositions; phone call to judicial assistant re cancellation of April 16 hearing and nonobjection to motion for leave to amend; finalize letter to Atty. Doug Marks re insufficient discovery and conference with staff re service of the same; email Atty. Doug Marks re electronic service.	1.80
17	4/14/15	EKA	Serve Atty. Doug Marks via email with proposed subpoena to Oxyfresh.	.10
18	4/15/15	EKA	Finalize letter to Atty. Doug Marks re Defendant's insufficient discovery responses and instruct staff re delivery.	.80

AFFIDAVIT AND MEMORANDUM OF COSTS
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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	4/15/15	EKA	Edit draft of Plaintiff's Second discovery requests.	.40
3	4/15/15	EKA	Receive and review email from Atty. Doug Marks re no objections to proposed Oxyfresh subpoena.	.10
4	4/16/15	EKA	Receive and review emails from client re discovery; draft supplemental answers to defendant's discovery requests and email to client for review.	1.00
5	4/16/15	EKA	Edit draft of Plaintiff's Second discovery requests based on additional information provided by client.	.30
6	4/21/15	EKA	Receive and review email from client with additional text messages.	.10
7	4/22/15	EKA	Respond to email from client re additional discovery materials.	.10
8	4/22/15	EKA	Call Atty. Tyler Wilson re Oxyfresh subpoena.	.20
9	4/22/15	EKA	Email courtesy copy of subpoena to Atty. Tyler Wilson and receive response.	.10
10	4/23/15	EKA	Receive and respond to email from Atty. Doug Marks re settlement; forward email to client.	.20
11	4/28/15	EKA	Follow up with client re additional discovery and signing of verification page.	.30
12	4/28/15	EKA	Receive settlement offer from Atty. Doug Marks and forward the same to client; receive response from client.	.20
13	4/29/15	EKA	Email client re settlement offer; draft letter in response to settlement offer; online legal research re dissolution of company with litigation pending; draft another discovery letter to Atty. Doug Marks; phone conference with client re settlement offer.	2.50
14	4/30/15	EKA	Online legal research re responsibilities of directors/officers in winding up business; review MyFunLIFE corporate YouTube page; email IT staff re saving videos; review settlement offer from Atty. Doug Marks.	2.40
15	5/01/15	EKA	Review new postings to MFL's corporate YouTube account.	.40
16	5/05/15	EKA	Review outstanding discovery responses and email client.	.30
17	5/06/15	EKA	Receive and respond to email from client re outstanding discovery responses.	.10
18	5/08/15	EKA	Begin reviewing text message and emails in Xera.	3.20
19	5/11/15	EKA	Finish reviewing text message conversations.	2.20
20	5/13/15	EKA	Prepare for discovery conference.	1.20
21	5/13/15	EKA	Telephonic discovery conference with Atty. Doug Marks.	1.20
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AFFIDAVIT AND MEMORANDUM OF COSTS
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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	5/14/15	EKA	Draft letter to Atty. Marks confirming results of discovery conference; send letter to Mr. Marks and copy to client.	1.00
3	5/19/15	EKA	Emails with Atty. Doug Marks re meeting to copy email account.	.50
4	5/20/15	EKA	Meet with Atty. Doug Marks re discovery and copying tom@myfunlife.com email account.	1.50
5	5/21/15	EKA	Receive and review documents served in response to subpoena on Oxyfresh; correspond with Atty. Tyler Wilson to confirm receipt.	1.80
6	5/21/15	EKA	Forward Oxyfresh subpoena responses to Atty. Doug Marks.	.10
7	5/21/15	EKA	Receive and respond to email from Tom re MFL's service of subpoena on Oxyfresh.	.10
8	5/22/15	EKA	Email client re discovery motion and Oxyfresh subpoena responses.	.10
9	5/26/15	EKA	Emails with Atty. Doug Marks re events at discovery conference of May 20; emails with Atty. Doug Marks requesting copy of subpoena served on Oxyfresh.	.40
10	5/27/15	EKA	Begin drafting Motion to Compel and Memorandum and Declarations in support thereof.	2.00
11	5/28/15	EKA	Continue drafting Motion to Compel and Memorandum and Declarations in support thereof.	1.50
12	5/29/15	EKA	Receive email from Atty. Doug Marks re expected service of discovery responses.	.10
13	5/29/15	EKA	Edit declarations in support of motion to compel.	.20
14	6/02/15	EKA	Receive and respond to emails from Atty. Doug Marks re delivery of discovery materials; email correspondence with support staff re intake of materials.	.30
15	6/03/15	EKA	Receive email from client re MFL bankruptcy; emails with litigation support staff re ingestion of produced materials into Xera for review.	.40
16	6/08/15	EKA	Continue reviewing emails provided by MFL in June 2 production.	1.10
17	6/10/15	MFN	Work on discovery issues.	.60
18	6/10/15	EKA	Receive service of filed First Amended Complaint, letter to Judge Mitchell, and Supplemental Discovery Responses; draft letter to Atty. Marks re Second Discovery Requests.	.50
19	6/12/15	EKA	Receive copies of subpoena responses from Atty. Doug Marks; receive and review letter from Atty. Doug Marks re Second Discovery Responses.	.60
20	6/13/15	EKA	Review subpoenaed Oxyfresh materials provided by Atty. Doug Marks.	.60
21	6/15/15	EKA	Receive email from Atty. Doug Marks re scheduling deposition of client.	.10
22	6/16/15	EKA	Review Idaho and Delaware Secretaries of State websites for information related to whether MFL is active; begin drafting memo to file on status of case and strategy of next steps.	2.30

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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	6/21/15	EKA	Prepare for discovery conference with Atty. Doug Marks.	.80
3	6/22/15	EKA	Emails with client re scheduling deposition; discovery conference with opposing counsel re Plaintiff's Second Discovery Requests.	1.10
4	7/02/15	EKA	Finish editing memo to file re status of case, causes of action, status of discovery, and next steps.	1.30
5	7/03/15	EKA	Receive email from Atty. Marks re substitution of counsel.	.10
6	7/09/15	EKA	Coordinate scheduling of Motion to Compel; emails with client re update on case and strategy moving forward.	.80
7	7/10/15	EKA	Review Defendant's responses to First Discovery Requests, and collect letters to Atty. Doug Marks re the same; review timeline of First and Second Discovery Requests; online legal research re Idaho Rules of Civil Procedure related to discovery and discovery sanctions; draft Motion to Compel, Memorandum and Declaration in support of the same, and Proposed Order Compelling Responses.	6.70
8	7/13/15	EKA	Review MFL's discovery responses for phone numbers; draft subpoena to Verizon for text messages; online search for Verizon legal department contact information; call to Verizon re proper entity to name; email Atty. Doug Marks with 7-day notice of subpoena.	2.30
9	7/14/15	EKA	Edit Memorandum and Declaration in support of Motion to Compel to include additional factual information.	1.30
10	7/20/15	EKA	Emails with client re possibility of new counsel substituting for Defendant; coordinate service of subpoena on Verizon; online research re Dan Edwards' involvement with other multi-level marketing schemes; phone conference with client re strategy and status of case; email copy of subpoena to potential substituting counsel for Defendant.	4.70
11	7/27/15	EKA	Review Motion, Declaration and Memorandum; prepare notes for hearing; receive email from Atty. Doug Marks re request to continue the hearing; email client re hearing.	2.30
12	7/28/15	EKA	Final preparations for hearing on Motion to Compel; travel to courthouse and attend hearing.	1.30
13	7/28/15	EKA	Emails with client re next steps and potential settlement; continue online research into corporations owned by Dan Edwards, including MarketShyft; edit memo to file re background of Dan Edwards.	4.30
14	7/29/15	EKA	Draft settlement offer; email offer to Atty. Doug Marks.	2.10
15	7/30/15	MFN	Confer re settlement offer.	.80
16	7/31/15	EKA	Receive email from Atty. Doug Marks declining settlement offer; forward the same to client.	.20
17	8/04/15	MFN	Review responses from MFL re order to compel; review rejection of settlement offer.	.80
18	8/04/15	EKA	Begin drafting motion and Declaration for approval of attorneys' fees; begin reviewing MFL's discovery responses and begin memo to file re the same.	2.50
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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	8/05/15	EKA	Continue reviewing MFL's responses to discovery; continue drafting memo to file re the same; continue drafting Motion for Approval of Fees and Declaration in support thereof; receive and review fax from Verizon re inability to provide requested documents.	4.00
3	8/06/15	MFN	Work on and review pleadings relative to trial date issues, potential expert disclosures and attorney's fees application on motion to compel.	.80
4	8/06/15	EKA	Draft Joint Motion for Trial Continuance; email MFL's discovery responses to the client; review research on piercing the corporate veil; continue reviewing MFL's responses to Second Discovery Requests, and complete memo re the same; review proposed affidavit in support of fee application; email Atty. Doug Marks.	4.70
5	8/07/15	MFN	Work on discovery and trial date issues.	1.00
6	8/07/15	EKA	Receive response from Atty. Doug Marks re dates for continuing trial; finalize joint motion for continuance of trial; receive response from Atty. Doug Marks; finalize Motion for Approval of Fees and Declaration in support thereof, and draft proposed Order.	4.10
7	8/10/15	EKA	Review court records related to Dan Edwards and update memo re the same; email client with Motion for Approval of Fees, Joint Motion for Trial Continuance, and Expert Witness Disclosure; draft letter to Atty. Doug Marks re incomplete responses to Second Discovery Requests.	5.60
8	8/12/15	EKA	Receive response from Atty. Doug Marks re incomplete discovery responses, and reply.	.30
9	8/13/15	EKA	Receive and review email from Atty. Doug Marks re needing more time to supplement responses to Second Discovery Requests; receive and review email attaching Objection to Motion to Approve Attorneys' Fees and Declaration of Doug Marks.	.40
10	8/17/15	EKA	Review Civil Rules re replying to opposition to Motion to Approve Fees; begin drafting Reply to Opposition; receive email from Atty. Doug Marks re supplemental discovery, unavailability and deposition dates.	1.50
11	8/19/15	EKA	Continue drafting Reply in support of Motion for Approval of Fees.	2.00
12	8/20/15	EKA	Finish draft of Reply in Support of Motion for Approval of Fees; draft Second Arneson Declaration; edit Reply and Declaration, and adjust Proposed Order to reflect reduced amount of fees.	2.80
13	8/21/15	MFN	Review papers re discovery.	.30
14	8/24/15	EKA	Review MFL's Supplemental Responses to Second Discovery Requests.	.60
15	8/24/15	EKA	Begin reviewing supplemental responses to Second Discovery Requests, and edit memo to file re the same.	2.10
16	8/26/15	EKA	Receive email from Atty. Doug Marks re verification of supplemental discovery answers, his availability, and deposition dates for Dan Edwards.	.10
17	8/28/15	EKA	Receive and review email from judicial assistant re whether to note hearing on Motion for Approval of Attorneys' Fees.	.20
18	8/31/15	EKA	Continue reviewing financial records provided by Defendant MFL; organize records to determine what is still missing; review commission payout report and determine amounts of payouts to Edwards family members.	6.60

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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	9/01/15	EKA	Receive and review email from Atty. Doug Marks re requesting a hearing on the Motion to Compel Fee Application; email Atty. Doug Marks re the same, and receive response; draft letter to Atty. Doug Marks re outstanding documents responsive to the Second Discovery Requests.	1.90
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4	9/03/15	EKA	Begin strategy for additional discovery requests; begin drafting First Amended Complaint.	2.10
5				
6	9/04/15	EKA	Receive email from Atty. Doug Marks re his withdrawal; email client re the same; review I.R.C.P. re requirements and process for withdrawal.	.30
7	9/05/15	EKA	Finish drafting Amended Complaint; draft Motion and Memo for Leave to File Amended Complaint.	4.10
8	9/07/15	MFN	Review amended complaint and attendant papers; review motion to withdraw by Atty. Marks.	.80
9	9/07/15	EKA	Edit Motion for Leave to File First Amended Complaint, and Memorandum in support thereof; email client re the same, and receive response.	2.00
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11	9/15/15	EKA	Work on Third Discovery Requests for MFL.	3.10
12	9/16/15	MFN	Review emails re discovery shortfalls and withdrawal by Atty. Marks.	.80
13	9/16/15	EKA	Receive and review email from Atty. Doug Marks re substitution of counsel and Motion to Amend; reply re the same.	.90
14	9/17/15	EKA	Continue drafting Third Discovery Requests.	1.10
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16	9/23/15	EKA	Receive and respond to email from Atty. Doug Marks re discovery conference; phone conversation with Atty. Mike Hague.	.50
17	9/24/15	EKA	Review case file and locate documents requested by Atty. Mike Hague; draft three emails to him attaching relevant documents; email Atty. Doug Marks re outstanding discovery.	1.20
18	9/28/15	EKA	Email from Atty. Doug Marks re additional responses to Second Discovery Requests.	.20
19	9/30/15	MFN	Confer with Atty. Arneson re another motion to compel in light of Defendants continued refusal to supplement discovery pursuant to Court Order.	.40
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21	10/01/15	EKA	Email client re status of case and substitution of counsel for My Fun Life.	.10
22	10/05/15	EKA	Work on Memorandum in Support of Motion for Sanctions; review sequence of correspondence with Atty. Doug Marks related to Second Discovery Requests since the entry of July 28 Order.	2.80
23	10/06/15	EKA	Online legal research re I.R.C.P. 37(b) sanctions for discovery disputes; draft Proposed Order Granting Sanctions and Dismissing Counterclaims, Motion for Sanctions, and Declaration of Emily K. Arneson; finish drafting Memorandum in Support of Motion for Sanctions; coordinate filing and service with staff; email copies of pleadings to Atty. Mike Hague.	7.50
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26	10/07/15	EKA	Review I.R.C.P. re notice and service of motions; draft Motion to Shorten Time, Memorandum in support thereof, and Second Declaration of Emily K. Arneson; coordinate filing and service of the same; receive phone call from Lisa Sines at Atty. Mike Hague's office re sending clean copies of Bated documents, and conference with staff re the same; email Ms. Sines re the same;	4.30
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AFFIDAVIT AND MEMORANDUM OF COSTS
AND ATTORNEYS' FEES - 13

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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	10/07/15	EKA	coordinate mailing of DVD of documents to Ms. Sines. Receive and respond to emails from Atty. Mike Hague about Motion for Sanctions and Oct. 20 hearing.	.30
3	10/08/15	EKA	Phone call with Lisa Sines re subpoena responses; review file to locate responses, and receive email from Lisa re the same.	.30
4	10/12/15	EKA	Receive and respond to email from Lisa Sines attaching bank statements and reports.	.20
5	10/13/15	EKA	Review letter from Atty. Mike Hague re additional records and Motion for Sanctions; email Atty. Mike Hague re continuing hearing date; receive Affidavit of Atty. Mike Hague.	1.40
6	10/13/15	EKA	Begin reviewing Second Supplemental Responses to Second Discovery Requests.	3.00
7	10/14/15	EKA	Continue reviewing Second Supplemental Responses to Second Discovery Requests and begin spreadsheet re commission payout reports.	1.50
8	10/15/15	EKA	Review commission payout reports and charting payments made to family members.	2.00
9	10/16/15	EKA	Draft Third Declaration of Arneson in support of Motion for Sanctions.	1.50
10	10/19/15	EKA	Continue reviewing MyFunLife commission payout reports and statements, and update spreadsheet re the same.	1.10
11	10/20/15	EKA	Receive call from Judicial Assistant requesting proposed Order, and email the same; prepare for and attend Motion for Sanctions.	1.50
12	10/20/15	EKA	Conference with Atty. Mike Hague after hearing re next steps in litigation.	.40
13	10/21/15	EKA	Receive and review signed Order Shortening Time from court; email draft Order re amended complaint to Atty. Mike Hague for approval.	.20
14	10/22/15	EKA	Emails with Lisa Sines at Atty. Mike Hague's office re draft complaint and Order.	.20
15	10/27/15	EKA	Receive and respond to email from Lisa Sines re Tom's text messages.	.10
16	10/30/15	EKA	Receive and review upcoming trial deadlines.	.10
17	11/05/15	EKA	Receive and respond to email from Atty. Mike Hague re Tom's deposition.	.10
18	11/09/15	EKA	Review discovery materials, memos and timelines in preparation for Tom's deposition.	2.80
19	11/10/15	MFN	Review trial and pretrial docket form; review emails with defendant's counsel.	.50
20	11/10/15	EKA	Receive and respond to email from Atty. Mike Hague re scheduling hearing on fees.	.20
21	11/11/15	EKA	Continue reviewing MFL's financial documents and updating spreadsheet re payments to family members.	4.80
22	11/16/15	EKA	Receive and review email from Atty. Mike Hague re First Amended Complaint.	.10

AFFIDAVIT AND MEMORANDUM OF COSTS
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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	11/18/15	EKA	Continue reviewing MFL's bank statements and updating spreadsheet re payments to family members of the Edwardses.	3.70
3	11/20/15	EKA	Email client re dates for deposition and deposition prep.	.20
4	11/23/15	EKA	Emails with Atty. Mike Hague re scheduling deposition and order granting leave to file First Amended Complaint; emails with client re text messages; coordinate filing of Motion for Approval of Attorneys' Fees.	1.10
5	11/23/15	EKA	Draft Motion for Approval of Attorneys' Fees, Declaration in Support thereof, and Proposed Order.	2.50
6	11/30/15	EKA	Email Atty. Mike Hague; email client re deposition date and prep, and receive response; receive and quickly review MFL's Objection to Motion for Approval of Fees.	.60
7	12/01/15	EKA	Receive and review Amended Notice of Taking Deposition of Thomas Lunneborg.	.10
8	12/03/15	EKA	Email client re deposition prep.	.30
9	12/04/15	EKA	Review Defendant's Opposition to Motion for Approval of Fees; online legal research re compensable attorneys' fees; draft Reply in Support of Motion; coordinating filing and service of the same.	2.60
10	12/08/15	EKA	Prepare for hearing on fee application; attend hearing.	1.60
11	12/14/15	MFN	Work on expert disclosure papers; phone call with Atty. Hague; confer with Atty. Arneson; review status order; review court rules.	2.50
12	12/14/15	EKA	Draft witness disclosure; review CV of accountant Sean Black.	.70
13	12/15/15	EKA	Begin reviewing discovery materials in preparation for meeting with client.	1.50
14	12/16/15	EKA	Review documents and prepare for meeting with Tom; deposition prep meeting with Tom.	6.50
15	12/18/15	EKA	Defend client's deposition.	7.00
16	12/18/15	MFN	Confer with Atty. Arneson re deposition of client.	.40
17	12/21/15	MFN	Review Amended Complaint re individuals; confer with Atty. Arneson re dates for depositions of defendants.	.50
18	12/23/15	EKA	Begin preparing for deposition of Dan Edwards; review file, discovery materials and responses to interrogatories.	6.70
19	1/12/16	EKA	Email Lisa Sines re alternate dates for Dan Edwards deposition.	.10
20	1/19/16	EKA	Receive email from Lisa Sines; conference with staff re service of Amended Complaint on Atty. Mike Hague; receive email from client re notes from deposition and respond; receive Defendant's Expert Witness Disclosure; review draft of Acceptance of Service.	.50
21	1/21/16	EKA	Receive and respond to email with Acceptance of Service.	.10
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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	1/22/16	EKA	Begin preparing for deposition of Dan Edwards.	6.10
3	1/26/16	EKA	Receive and review Affidavit of Nonservice; continue preparing for deposition of Dan Edwards; consider strategy of dispositive motions.	6.10
4	2/01/16	EKA	Email Lisa Sines re date of deposition for Dan Edwards; directions to staff re notice of deposition, and edit the same; review civil rules re notices of depositions.	.50
5	2/03/16	EKA	Review correspondence and timeline related to sanctions award.	.60
6	2/04/16	EKA	Begin reviewing credit card and bank statements in preparation for deposition of Dan Edwards.	4.80
7	2/05/16	EKA	Begin reviewing background data on Dan Edwards for deposition; review previous court cases and filings; review public records.	5.10
8	2/10/16	MFN	Confer with Atty. Arneson re further discovery prior to deposition (re tax returns from entities); payment of court ordered discovery sanctions, and trial date.	.40
9	2/10/16	EKA	Phone call with Atty. Mike Hague re Answer to Complaint; received and review Motion to Enlarge Time; email Atty. Mike Hague re the same and receive response.	.60
10	2/11/16	EKA	Email Atty. Mike Hague re whether MFL would pay sanctions; continue reviewing credit card and bank statements relative to drafting third discovery requests; review responses to second discovery requests; compile list of Edwards companies; online search for content related to MFL.	4.10
11	2/16/16	EKA	Receive Motion to Enlarge Time via fax; receive and review Answer to Complaint.	.60
12	2/17/16	EKA	Receive response from Atty. Mike Hague re MFL's intent to pay sanctions.	.10
13	2/23/16	EKA	Continue reviewing bank and credit card statements relative to third discovery requests, and edit the same; email Atty. Mike Hague re possibility of trial continuance.	4.80
14	3/02/16	EKA	Emails with Atty. Mike Hague re trial continuance; draft stipulation.	.60
15	3/02/16	MFN	Review new Idaho decision; review Stipulation for new trial date; email traffic.	.50
16	3/03/16	EKA	Review new Idaho Supreme Court case; continue reviewing bank and credit card records provided by MFL in discovery; edit new discovery requests to MFL and first requests to Dan & Carrie Edwards.	4.80
17	3/04/16	EKA	Continue reviewing bank and credit card records provided by MFL in discovery; update discovery requests to MFL and Dan & Carrie Edwards.	6.10
18	3/07/16	EKA	Emails with client re continuance and depositions; call Atty. Mike Hague re proposed trial dates; finish drafting Stipulated Motion for Trial Continuance and email Atty. Mike Hague re the same; exchange emails with Lisa Sines re language of Order, and edit the same.	1.00
19	3/08/16	EKA	Finalize Joint Motion and Order for Continuance; emails with opposing counsel re filing and service of order.	.40
20	3/21/16	EKA	Receive email from Lisa Sines re scheduling Todd Schlapfer and Richard Brooke's depositions.	.20

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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	3/28/16	EKA	Review file for statements by Atty. Mike Hague re timeline for MFL to pay sanctions.	.20
3	3/28/16	EKA	Emails to Lisa Sines and Atty. Mike Hague re scheduling depositions.	.20
4	4/07/16	EKA	Receive email from client re listing of My Fun Life building.	.50
5				
6	4/13/16	EKA	Receive and respond to email from Lisa Sines re scheduling Todd Schlapfer deposition.	.10
7	4/14/16	EKA	Receive and review Notice of Deposition and Subpoena Duces Tecum to Todd Schaffer, M.D.	.10
8	4/14/16	EKA	Receive email from client re schedule.	.10
9	4/15/16	EKA	Review MFL's discovery responses and notes from client; begin preparing outline for Todd Schlapfer deposition.	3.40
10	4/29/16	EKA	Receive and respond to email from client re status of case.	.10
11	5/04/16	EKA	Receive email from opposing counsel re cancellation of deposition of Dr. Todd Schlapfer; email client re the same, and receive response.	.40
12	5/16/16	EKA	Receive email from Atty. Mike Hague re hearing.	.10
13	6/03/16	EKA	Receive Order Authorizing Out of State Deposition of Richard Brooke; review materials provided in response to subpoena to Oxyfresh.	2.10
14	6/10/16	EKA	Review correspondence with counsel for Defendants related to payment of sanctions and prepare correspondence as exhibits; draft Declaration of Emily K. Arneson; draft Motion for Sanctions and Order Awarding Sanctions; begin drafting Memorandum in Support.	3.20
15				
16	6/13/16	EKA	Receive email from Lisa Sines re scheduling deposition of Richard Brooke.	.10
17	6/14/16	EKA	Review previous Motion for Sanctions and Motion to Compel; complete Memorandum in Support of Motion for Sanctions; finalize all pleadings; coordinate filing and service with staff; calendar response and reply dates.	4.40
18				
19	6/15/16	EKA	Draft Motion to Shorten Time, Second Declaration of Emily K. Arneson, Order Shortening Time, and Memo.	2.40
20	6/16/16	EKA	Correspondence with Lisa Sines re rescheduling Motion for Sanctions.	.40
21	6/16/16	EKA	Emails with Atty. Mike Hague re expert witnesses and reports.	.20
22	6/22/16	EKA	Receive and review Affidavit of Michael B. Hague and Memorandum in Opposition to Motion for Sanctions.	.40
23	6/22/16	EKA	Contact client re bankruptcy of MFL; online legal research re automatic bankruptcy stay; email Atty. Gibbons re the same; emails with client re World Ventures.	3.10
24	6/23/16	MFN	Review My Fun Life bankruptcy notice; confer with Atty. Gibbons; confer with Atty. Arneson.	.90
25	6/23/16	EKA	Conference with Attys. Gibbons and Nienstedt re bankruptcy stay and strategy moving forward; review case scheduling order and status of discovery; online search for MFL activity.	4.40
26	6/24/16	EKA	Review ECF filings.	.90
27	6/27/16	EKA	Email client re status of case and effect of bankruptcy stay; email Atty. Mike Hague and receive response re deposition of Richard Brooke; online legal research re continuing discovery during stay.	3.40
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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	6/29/16	DJG	Review complaint and orders from state court re sanctions; draft Motion for Relief from Stay.	2.70
3	6/29/16	EKA	Strategize with Atty. Gibbons re bankruptcy; receive response from client re next steps; review Motion for Relief from Stay.	.40
4	7/01/16	EKA	Receive voicemail from Atty. Gibbons; review Motion for Relief from Stay; phone conversation with Atty. Gibbons.	.40
5	7/18/16	EKA	Prepare for Richard Brooke deposition.	4.40
6	7/19/16	EKA	Review documents in preparation for Richard Brooke deposition; attend deposition; conference with client.	5.80
7	7/20/16	EKA	Emails with client re defendants; email Atty. Mike Hague for deposition dates and receive response.	.60
8	7/22/16	DJG	Draft order granting relief from bankruptcy stay.	.50
9	7/22/16	EKA	Receive email from Atty. Gibbons re lifting of bankruptcy stay, and respond.	.20
10	7/25/16	MFN	Review Order Lifting Stay.	.10
11	7/27/16	EKA	Review previous notes for deposition of Dan Edwards.	1.10
12	7/30/16	EKA	Begin reviewing MFL discovery responses in preparation for deposition of Dan Edwards.	4.10
13	8/12/16	EKA	Email Atty. Mike Hague re deposition dates and ADR Report; receive email and call in response; contact mediator Chuck Lempesis and request mediation date; email Atty. Mike Hague re the same; email client with update.	2.50
14	8/15/16	EKA	Compose ADR Joint Report; coordinate signature of Atty. Mike Hague and filing.	.50
15	8/16/16	EKA	Discuss mediation details with Lisa Sines and staff.	.10
16	8/18/16	EKA	Confirm reservation of mediation date; coordinate ordering of deposition transcripts with staff; email client re text messages; emails with Atty. Gibbons re meeting of creditors; review memo re piercing the veil claim; emails with Lisa re changing mediation date.	6.20
17	8/19/16	EKA	Emails re moving mediation date; coordinate service of notices of deposition of Dan and Carrie Edwards; emails with client re transcripts.	.40
18	8/22/16	EKA	Review discovery responses and memos in preparation for meeting of creditors.	2.10
19	8/23/16	EKA	Attend meeting of creditors for MFL's bankruptcy.	1.50
20	8/23/16	EKA	Review deposition transcripts of Richard Brooke and Tom Lunneborg; receive and review mediation letter from Chuck Lempesis.	4.30
21	8/24/16	EJA	Telephone conference with client.	.30
22	8/26/16	EKA	Review materials in preparation for depositions of Dan & Carrie Edwards.	4.20
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AFFIDAVIT AND MEMORANDUM OF COSTS
AND ATTORNEYS' FEES - 18

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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	9/05/16	EJA	Review deposition transcripts of Tom Lunneborg and Richard Brooke and exhibits thereto.	3.50
3	9/06/16	DJG	Emails to and from Atty. Arneson re transcript of meeting of creditors.	.10
4	9/06/16	EKA	Finalize outline of questions for Dan Edwards deposition and prepare exhibits.	5.30
5	9/06/16	EJA	Prepare for deposition of Carrie Edwards.	3.50
6	9/07/16	EKA	Conduct deposition of Dan Edwards; conferences with client and Atty. Anson; review notes from deposition and continue preparing for deposition of Carrie Edwards.	11.00
7	9/08/16	EKA	Prepare outline for Carrie Edwards Deposition; review pleadings re piercing the corporate veil; conduct deposition of Carrie Edwards.	7.80
8	9/12/16	EKA	Email client with update.	.40
9	9/15/16	EKA	Review notes from depositions of Carrie and Dan Edwards; begin drafting discovery requests for specific QuickBooks information and/or entries; online research re discovery of QuickBooks information.	6.00
10	9/19/16	EKA	Email parties re mediation.	.20
11	9/19/16	EJA	Telephone conference with counsel; telephone conference with mediator.	.30
12	9/20/16	EKA	Emails re scheduling mediation; research re burden of proof for termination "without cause."	4.20
13	9/20/16	EJA	Review burden of proof issues.	.80
14	9/21/16	EKA	Review Dan Edwards deposition and make notes for continuation of Carrie Edwards Deposition.	3.40
15	9/22/16	EKA	Meeting with Attys. Nienstedt and Anson, and Tom Lunneborg, re case strategy; review memo from Atty. Anson; review deposition of Tom Lunneborg; emails with Attys. Anson and Nienstedt, and client, re scheduling mediation; emails with Atty. Mike Hague's office re the same.	2.00
16	9/22/16	EJA	Prepare for meeting with client; attend meeting with client; draft correspondence; review naturopathy.	2.40
17	9/23/16	EKA	Communicate with client and staff re Tom's signing his deposition; emails re rescheduling October hearing; emails re scheduling mediation.	.60
18	9/23/16	EJA	Review correspondence; review scheduling with court.	.50
19	9/26/16	EJA	Review proposed pleadings, legal research re Rule 54 judgments.	1.30
20	9/27/16	EKA	Coordinate filing of motions; emails re scheduling mediation.	.50
21	9/27/16	EJA	Review and finalize pleadings.	.40
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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	9/29/16	EKA	Receive response from client and forward information to Attys. Anson and Nienstedt.	.20
3	10/04/16	EKA	Phone call with Dr. Todd Schlapfer; phone calls and emails with Attys. Anson and Nienstedt re meeting with Dr. Todd and scheduling mediation; review recent Idaho Supreme Court case re attorneys' fees; review deposition transcripts of Plaintiff and witness Richard Brooke in preparation for deposition of Carrie Edwards and mediation; review memo to file re collectability of potential judgment and claw back of fraudulent transfers.	6.80
4				
5	10/05/16	EJA	Research re attorney fees; draft memorandum; review file; review defendant's response memorandum.	2.80
6				
7	10/06/16	EKA	Emails re rescheduling mediation.	.60
8				
9	10/07/16	EJA	Review deposition transcript; review reply; draft correspondence; review bankruptcy law.	4.30
10	10/10/16	EKA	Prepare for hearing on Motion for Sanctions.	1.80
11	10/10/16	EJA	Research bankruptcy issues; prepare for hearing.	4.40
12				
13	10/11/16	EKA	Hearing on Motion for Sanctions; conference with Atty. Anson re strategy; receive Notice of Trial from court; receive email re standing to assert claim owned by bankruptcy estate; research whereabouts of potential lay witness; review of online activity of defendants; review background report on defendant Dan Edwards; review notes from bankruptcy meeting of creditors.	3.40
14				
15	10/11/16	EJA	Prepare for and attend hearing.	2.00
16				
17	10/14/16	EKA	Emails re rescheduling mediation; emails with client re witness; draft Judgment; draft order on Judge's oral ruling on Motion for Sanctions.	2.10
18	10/14/16	EJA	Review correspondence re mediation.	.30
19	10/17/16	EJA	Review and revise judgment and order.	.60
20	10/18/16	EKA	Review bank statements in preparation for continuing deposition of Carrie Edwards.	4.00
21				
22	10/21/16	EKA	Research functionality of Quick Books for purposes of preparing for Carrie Edwards Deposition; review materials produced pursuant to subpoena to OxyFresh; review online marketing and reviews of LifeShotz.	3.40
23	10/24/16	EKA	Emails re mediation rescheduling; email client with update.	.70
24				
25	10/25/16	EJA	Telephone conference with Mediator's office.	.30
26	10/26/16	EJA	Telephone conference with Mediator, Charles Lemposis', office.	.30
27	10/31/16	EKA	Emails re mediation and deposition scheduling.	.20
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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	10/31/16	EJA	Draft correspondence to Mike Hague; draft correspondence to Charles Lempeis.	.40
3	11/01/16	EJA	Telephone conference with Mike Hauge.	.30
4	11/02/16	EKA	Receive and review mediator's letter; conference with Atty. Gibbons re proof of claim and addendum; conference with staff re interest calculation and status of Order and Judgment.	.50
5	11/03/16	EJA	Review correspondence.	.30
6	11/04/16	EJA	Review discovery issues.	.40
7	11/07/16	EJA	Telephone conference with Mike Hauge.	.30
8	11/08/16	EJA	Review materials.	.80
9	11/09/16	EJA	Review materials.	1.00
10	11/15/16	EKA	Review MFL bank statements to determine which entries to request additional information from QuickBooks.	2.50
11	11/16/16	EKA	Review calendar; emails with staff re court reporter for Carrie Edwards deposition.	.30
12	11/17/16	EKA	Finalize proofs of claims for bankruptcy.	.60
13	11/18/16	EKA	Phone calls with Dr. Todd Schlapfer and Atty. Anson re phone conference; prepare for phone conference; attend phone conference; draft letter to Atty. Mike Hague re QuickBooks entries and email Atty. Anson re the same.	3.50
14	11/18/16	EJA	Prepare for conference with Dr. Todd Schlapfer; attend telephone conference with Dr. Todd Schlapfer.	3.00
15	11/21/16	EKA	Emails with staff re deposition of Dr. Todd Schlapfer; receive and review Proofs of Claims filed in bankruptcy matter.	.50
16	12/01/16	EJA	Telephone conference with Todd Schlapfer	.80
17	12/02/16	EKA	Receive and review email from Atty. Anson to Dr. Todd Schlapfer re deposition and course of events, as discussed via phone; review source documents to confirm timeline.	.60
18	12/02/16	EJA	Draft notice of taking deposition; draft correspondence to Todd Schlapfer.	.60
19	12/06/16	EKA	Receive and review email from Dr. Todd Schlapfer re phone note; review timeline and discovery documents re the same.	.70
20	12/13/16	EKA	Emails re court reporter for deposition of Dr. Todd Schlapfer.	.20
21	12/14/16	EKA	Draft mediation statement; prepare relevant documents for mediation; update research re piercing the corporate veil.	5.00
22	12/15/16	EJA	Review materials re mediation.	1.00

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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	12/16/16	EKA	Emails with client re preparing for mediation; receive review responses to 11/21/16 correspondence, and confirm with bank statements and discovery responses; phone call with Atty. Gibbons re bankruptcy trustee; finalize mediation statement and email to Atty. Anson; confirmation of payment to mediator; continue deposition outline.	6.40
5	12/16/16	EJA	Prepare for deposition of Dr. Todd Schlapfer; revise mediation statement.	2.30
6	12/19/16	EKA	Finalize deposition outline and email Atty. Anson.	.60
7	12/19/16	EJA	Prepare for Dr. Todd Schlapfer deposition; attend deposition; draft memorandum re deposition.	5.80
8	12/20/16	EKA	Prepare for deposition of Carrie Edwards; review source documents and notes from previous deposition; conference with Atty. Anson; review summary of Dr. Schlapfer deposition by Atty. Anson.	6.30
9	12/20/16	EJA	Prepare for Carrie Edwards deposition; prepare for mediation; review memorandum re Dr. Todd Schlapfer deposition.	4.20
10	12/21/16	EKA	Deposition of Carrie Edwards; review notes of previous deposition and notes of Dan Edwards deposition.	4.80
11	12/21/16	EJA	Prepare for Carrie Edwards deposition; attend Carrie Edwards depositions; prepare for mediation.	5.50
12	12/22/16	EKA	Attend mediation; begin drafting Point-Counterpoint memo.	5.70
13	12/22/16	EJA	Client conference; attend mediation; review pre-trial issues.	5.00
14	12/23/16	EKA	Review file for disclosure of expert witnesses; review file for memo re piercing the corporate veil; communicate with staff re ordering transcript of Carrie Edwards deposition; review notes of the same; review sample Motions in Limine; begin drafting Master Timeline for witness and document prep.	6.50
15	12/23/16	EJA	Draft memorandum; review Richard Brook deposition; review pleadings; telephone conference with counsel.	3.00
16	1/03/17	EKA	Receive email from Atty. Anson re Idaho case, and review case; conference with Atty. Anson re witness list, and email client re the same; receive response from client; review court rules re subpoenas for testimony at trial.	1.50
17	1/04/17	EJA	Research re motion in limine.	.80
18	1/05/17	EJA	Trial preparation.	1.30
19	1/06/17	EJA	Legal research.	2.80
20	1/10/17	EKA	Review calendar of deadlines for trial and discuss the same with staff; review notes and transcripts of depositions of Dan Edwards and Richard Brooke; review deposition transcript of Tom; begin list of potential exhibits.	6.20
21	1/10/17	EJA	Research and trial preparation.	4.80
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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	1/11/17	EKA	Emails with client re potential witness.	.20
3	1/11/17	EJA	Research and trial preparation.	3.50
4	1/12/17	EKA	Review Carrie Edwards deposition testimony and exhibits, and begin drafting outline of expected testimony and exhibits for trial.	3.20
5	1/13/17	EJA	Legal research; draft memorandum re termination for cause.	5.60
6	1/17/17	EKA	Review deposition testimony of Dr. Todd Schlapfer; make notes for trial re the same; review evidence rules for introduction of deposition testimony at trial; receive and review memo from Atty. Anson re termination for cause.	3.90
7	1/20/17	EKA	Review deposition testimony, documentary evidence, and related legal research to compose outline of Dan & Carrie's anticipated trial testimony.	3.20
8	1/23/17	EJA	Draft memo on treble damages.	3.10
9	1/24/17	EKA	Review Joint ADR Report.	.10
10	1/24/17	EJA	Revise and finalize memo re treble damages.	2.80
11	1/25/17	EKA	Review memo from Atty. Anson re damages.	.30
12	1/25/17	EJA	Research re motion in limine.	2.00
13	1/26/17	EKA	Prepare for meeting with Deanne Mires; review discovery materials related to Deanne's involvement in MFL; finish drafts of testimony outlines and exhibit references for Dan & Carrie Edwards.	5.00
14	1/26/17	EJA	Prepare for and attend interview with Deanne Mires.	2.00
15	1/27/17	EKA	Review memo re naturopathic medicine and prepare outline of important testimony from Dr. Todd Schlapfer; prepare outline of important testimony from Richard Brooke, in addition to documents for exhibits; additional online research re Richard Brooke and Oxyfresh; review several webcasts by Dan Edwards.	5.20
16	1/30/17	EKA	Review sample Findings of Fact and Conclusions of Law; review sample Trial Brief; continue drafting list of potential exhibits and outlines of witness testimony; review case law re piercing the corporate veil and relevant evidence thereto.	4.10
17	1/31/17	EKA	Review research re fraudulent transfers and recovery of assets; review bank statements for transfers to other Edwards companies; review property records for commercial and residential properties.	3.50
18	2/01/17	EKA	Review Tom Lunneborg deposition and outline relevant testimony for trial.	6.40
19	2/01/17	EJA	Prepare for trial.	6.00
20	2/02/17	EKA	Finish reviewing webcasts and noting relevant portions for trial exhibits; meetings with Atty. Anson re potential witness; emails with client re the same.	6.10
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AFFIDAVIT AND MEMORANDUM OF COSTS
AND ATTORNEYS' FEES - 23

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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	2/02/17	EJA	Prepare for trial.	6.80
3	2/03/17	EJA	Prepare for trial.	2.50
4	2/06/17	EKA	Review bankruptcy pleadings; review pleadings related to sanction award; review Dan Edwards and Carrie Edwards deposition testimony related to bankruptcy; review P&L and Balance Sheet provided by MFL; compare Balance Sheet liabilities to charges/deposits in Numerica bank account; review commission payout reports and deposition testimony of Dan Edwards related to calculation of commissions.	9.10
5	2/06/17	EJA	Review Carrie Edwards deposition transcript.	2.00
6	2/08/17	EKA	Online research re requirements for legal multi-level marketing system versus illegal pyramid scheme; review deposition testimony of Dan & Carrie Edwards re structure of MFL.	3.70
7	2/08/17	EJA	Legal research; review deposition transcripts; prepare for trial.	5.00
8	2/09/17	EKA	Conference call with client; emails with client; continue reviewing documents for potential exhibits; compare American Express statements with known transfers of funds among Edwards companies.	4.20
9	2/09/17	EJA	Telephone call with client, research, and trial preparation.	3.80
10	2/10/17	EKA	Continue reviewing materials for potential exhibits; draft Exhibit List; review large exhibit used by opposing counsel at deposition of Tom Luaneborg for potential exhibits; online search for current operations of Edwards businesses.	8.70
11	2/13/17	EKA	Reviewing potential exhibits; email client re the same; receive email from client re exhibit.	4.90
12	2/13/17	EJA	Trial preparation.	5.40
13	2/14/17	EKA	Receive email from client re potential witness; call potential witness and leave message; review Richard Brooke and Dr. Todd Schlapfer depositions and determine relevant portions for trial testimony; review evidence rules for use of deposition testimony at trial.	6.20
14	2/15/17	EKA	Call potential witness; email client re the same and receive response.	.80
15	2/15/17	EJA	Trial preparation.	5.00
16	2/21/17	EKA	Begin spreadsheet reflecting AmEx payments and Numerica transfers; continue working on preparing Exhibits and Exhibit List; online research re the same.	8.10
17	2/22/17	EKA	Continue spreadsheet reflecting AmEx payments and Numerica transfers; continue working on preparing Exhibits and Exhibit List; coordinate with IT staff re copying webcasts to DVD.	7.60
18	2/23/17	EKA	Continue spreadsheet reflecting AmEx payments and Numerica transfers; continue working on preparing Exhibits and Exhibit List.	11.80
19	2/24/17	EKA	Finish spreadsheet reflecting AmEx payments and Numerica transfers; continue working on preparing Exhibits and Exhibit	6.40

AFFIDAVIT AND MEMORANDUM OF COSTS
AND ATTORNEYS' FEES - 24

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1	DATE	ATTORNEY	DESCRIPTION	TIME
2			List; continue working on Witness list; emails with client re	
3			locating document; finalize Witness List; finalize Exhibit List;	
4	2/24/17	EJA	review pleadings re the same. Work on trial exhibits.	6.00
5	2/27/17	EJA	Prepare trial exhibits, exhibit list and witness list; telephone call	6.50
6	2/28/17	EKA	with Atty. Hague.	
7			Receive Amended Notice of Trial; emails with client re meeting;	8.70
8			review Defendants' Witness List and Exhibits; edit spreadsheet re	
9	2/28/17	EJA	bank transfers; begin drafting Findings of Fact and Conclusions of	8.00
10			Law; begin reviewing Dan Edwards deposition for testimony	
11	3/01/17	EKA	purposes. Drafting pretrial brief.	4.10
12	3/03/17	EKA	Finish drafting Findings of Fact and Conclusions of Law.	3.50
13	3/06/17	EJA	Review case law and memo re fraudulent transfers and piercing	6.80
14			the corporate veil; expand search to additional jurisdictions;	
15			review financial statements, commission payout reports, profit &	
16			loss statement, and balance sheet; review deposition transcript of	
17	3/07/17	EJA	Carrie Edwards re financial practices and corporate formalities. Revise and finalize pre-trial brief.	6.30
18	3/07/17	EKA	Prepare discovery/correspondence binder for trial; prepare	8.90
19			pleadings binder; review and finalize timeline; assist in preparing	
20			direct examination of Carrie Edwards; review deposition transcript	
21			of Dr. Todd Schlapfer and exhibits related to the same; review	
22			Defendants' Trial Brief, Findings of Fact and Conclusions of Law,	
23			and Response to Motion in Limine.	
24	3/08/17	EKA	Prepare for trial.	4.80
25			Review Defendants' Exhibit A and note objectionable portions;	
26			review Defendant's Exhibit D; review Plaintiff's audio exhibit and	
27	3/09/17	EKA	prepare questioning; prepare potential cross-examination of Carrie	7.50
28			Edwards.	
29	3/10/17	EKA	Prepare for meeting with client; meet with client to prep for trial.	7.90
30			Continue preparing for direct examination of client; receive and	
31			begin review of new financial records from Defendant MFL.	
32	3/10/17	EJA	Prepare for trial.	7.30
33	3/11/17	EKA	Review financial records of Defendant MFL provided on March	9.00
34			10, 2017	
35	3/12/17	EKA	Continue reviewing financial records of Defendant MFL provided	12.50
36			March 10, 2017; continue preparing for direct examination of	
37			client and cross-examination of Dan Edwards; file management;	
38			confirm audio equipment.	
39	3/12/17	EJA	Prepare for trial.	5.00
40				

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AND ATTORNEYS' FEES - 25

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1	DATE	ATTORNEY	DESCRIPTION	TIME
2	3/13/17	EKA	Trial Day 1 - Review materials and continue preparing for direct examination of client; continue preparing for cross-examination of Dan Edwards.	9.00
3	3/13/17	EJA	Attend trial.	7.30
4	3/14/17	EKA	Trial Day 2 - Continue preparing for cross-examination of Dan Edwards.	6.30
5	3/14/17	EJA	Prepare for and attend trial.	6.00
6	3/15/17	EKA	Trial Day 3 - Review notes from testimony; begin strategizing briefing.	5.00
7	3/15/17	EJA	Prepare for and attend trial.	4.50
8	3/16/17	EKA	Begin drafting Statement of Facts for post-trial brief; review notes from testimony; review trial briefs; file management.	5.50
9	3/20/17	EKA	Review notes from trial; review Defendants' and Plaintiff's Trial Briefs; review Exhibits; begin drafting Statement of Facts for Post-Trial Brief.	6.90
10	3/20/17	EJA	Legal research re post trial brief.	5.80
11	3/21/17	EKA	Continue working on Statement of Facts for Post-Trial Brief.	7.20
12	3/21/17	EJA	Legal research re post trial brief.	6.50
13	3/22/17	EKA	Finish Statement of Facts for Post-Trial Brief and begin drafting section related to termination "without cause."	3.40
14	3/22/17	EJA	Legal research re post trial brief.	4.00
15	3/23/17	EKA	Edit Statement of Facts; additional online legal research re standard for "without cause."	1.90
16	3/24/17	EKA	Continue drafting "without cause" section of Post-Trial Brief; online legal research re treble damages and attorneys' fees for wage claim.	3.10
17	3/26/17	EJA	Drafting and revising post trial brief.	2.50
18	3/27/17	EKA	Edit "without case" section of brief.	5.50
19	3/27/17	EJA	Drafting and revising post trial brief.	6.30
20	3/28/17	EKA	Continue editing Post-Trial Brief.	3.50
21	3/28/17	EJA	Revise and finalize post trial brief.	5.50
22	3/30/17	EKA	Review Defendants' Closing Argument and begin draft of response.	5.20

AFFIDAVIT AND MEMORANDUM OF COSTS
AND ATTORNEYS' FEES - 26

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DATE	ATTORNEY	DESCRIPTION	TIME
3/31/17	EJA	Review defendants' post trial brief; legal research re reply brief.	4.80
4/03/17	EJA	Drafting and revising response brief.	6.80
		Total Hours for Plaintiff's Claims:	990.30

ATTORNEYS' FEES FOR COUNTERCLAIMS

DATE	ATTORNEY	DESCRIPTION	TIME
1/05/15	EKA	Review Answer and Counterclaim. Conference with Atty. Nienstedt.	.80
1/05/15	EKA	Email communication with Attys. Nienstedt and Hazel re answer to counterclaim and due date for Defendant to respond to discovery.	.10
1/06/15	EKA	Online legal research re whether an employer may seek repayment of wages when employee breached a duty to employer.	5.20
1/07/15	EKA	Continue online legal research re whether an employer may seek repayment of wages when employee breached a duty to employer.	5.10
1/07/15	EKA	Email communication with Attys. Nienstedt and Hazel re next steps in answering counterclaim and proceeding with discovery.	.30
1/07/15	EKA	Email correspondence with Attys. Nienstedt and Hazel re faithless servant doctrine and disgorgement of wages.	.10
1/08/15	MFN	Research novel theory of counterclaim.	1.00
1/09/15	EKA	Review email from client re comments to defendant's Answer and Counterclaim.	.20
1/13/15	MFN	Phone call from Atty. Marks re answer; confer with Atty. Arneson re response to counterclaim.	.30
1/20/15	EKA	Counterclaim: Begin drafting 12(b)(6) motion to dismiss counterclaims, and memo in support thereof.	2.50
1/21/15	EKA	Draft Answer to Counterclaim.	3.00
1/21/15	EKA	Continue drafting 12(b)(6) memo in support of motion to dismiss counterclaims.	4.30
1/21/15	JPH	Review correspondence re counterclaim and discovery.	.20
1/22/15	MFN	Review MFL's responses to first discovery requests; correspondence to Atty. Marks re inadequacy of objections; review MFL's first discovery requests to Tom; forward same to client.	1.00
1/23/15	MFN	Work on answer to counterclaim; confer with Atty. Arneson; forward draft of same to Tom to review for factual accuracy.	2.50
1/23/15	EKA	Receive and review draft of Answer to Counterclaim from Atty.	.30

AFFIDAVIT AND MEMORANDUM OF COSTS
AND ATTORNEYS' FEES - 27

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1			Nienstedt, and provide comment.	
2	1/24/15	MFN	Email from Tom confirming accuracy of factual response in answer to counterclaim; reply to same.	.30
3	1/24/15	EKA	Receive and review emails from staff and client re draft of Answer to Counterclaim.	.10
4	1/26/15	MFN	Email from Tom re payment on counterclaims; begin review of "faithless service doctrine."	1.50
5				
6	1/26/15	MFN	Confer with Atty. Hazel re filing of answer to counterclaim.	.30
7	1/27/15	MFN	Review "faithless servant" doctrine and the intertwining with duty of loyalty and the proposed Restatement Third of Employment Law; confer with Atty. Arneson re same and outline of motion; prepare engagement letter on counterclaims.	2.60
8				
9	1/27/15	JPH	Review, revise and finalize plaintiff's answer to counterclaim.	1.20
10	1/29/15	MFN	Work on issues raised by MFL counterclaim.	1.40
11	1/31/15	MFN	Review letter from Atty. Marks in response to Rule 11 letter; forward same to Attys. Hazel and Arneson; forward same to Tom with instructions.	.80
12	2/02/15	EKA	Receive and review emails between Atty. Nienstedt and client re restriction on developing products.	.20
13				
14	2/02/15	EKA	Emails to Attys. Nienstedt and Hazel re limitation of product development restriction to "network marketing" companies.	.30
15	2/03/15	EKA	Receive and review several emails from client re defendant's assertion of facts re counterclaim.	.60
16	3/02/15	EKA	Continue drafting Motion to Dismiss.	3.20
17	3/02/15	EKA	Review cases cited by opposing counsel purported to be in support of his argument for disgorgement of wages and email analysis to Attys. Nienstedt and Hazel.	2.00
18				
19	3/03/15	EKA	Finalize first draft of Motion to Dismiss Counterclaims, and Memorandum in support thereof. Email draft to Attys. Nienstedt and Hazel.	3.10
20				
21	3/04/15	MFN	Begin review of motion to dismiss counterclaims.	.50
22	3/05/15	MFN	Work on motion to dismiss counterclaim; confer with Atty. Arneson re same.	1.40
23	3/09/15	EKA	Receive and review email from Atty. Hazel re Motion to Dismiss.	.10
24	3/18/15	MFN	Confer with Atty. Arneson re 12(b)(6) motion.	.20
25	3/18/15	EKA	Discuss issue of damages as they relate to the motion to dismiss with Atty. Nienstedt.	.10
26	3/19/15	EKA	Edit fact section of Motion to Dismiss Counterclaims and email draft to Attys. Hazel and Nienstedt.	1.80
27				
28	3/20/15	EKA	Email correspondence with staff re scheduling of Motion to Dismiss hearing.	.20

AFFIDAVIT AND MEMORANDUM OF COSTS
AND ATTORNEYS' FEES - 28

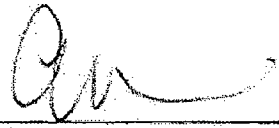
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1	3/25/15	MFN	Confer with Atty. Hazel re motion to dismiss.	30	
2	3/25/15	EKA	Email correspondence with Atty's. Hazel and Nienstedt, and support staff, re edits to the Motion to Dismiss.	40	
3					
4	3/26/15	EKA	Conference with Atty. Hazel re finalizing and filing Motion to Dismiss.	10	
5	4/01/15	EKA	Receive conformed copies of Motion to Dismiss, Memorandum in Support, and Proposed Order. Check Idaho Rules of Civil Procedure for notice period requirements. Email Attys. Hazel and Nienstedt re proper notice time. Instructions to staff re service of pleadings.	50	
6					
7	4/14/15	EKA	Email client with version of proposed Amended Answer and Counterclaim showing changes.	10	
8					
9	4/14/15	EKA	Review cases cited by Defendant MFL in its Response to Motion to Dismiss Counterclaims.	1.20	
10	4/14/15	EKA	Begin memo to file re analysis of Response to Motion to Dismiss Counterclaims.	.80	
11					
12			Total hours for counterclaims:	52.20	
13		ATTORNEY	HOURS	RATE	TOTAL
14		<i>EKA</i>	<i>745.50</i>	<i>x 180.00</i>	<i>134,190.00</i>
15		<i>EJA</i>	<i>233.80</i>	<i>x 290.00</i>	<i>67,802.00</i>
16		<i>MFN (2015)</i>	<i>14.10</i>	<i>x 340.00</i>	<i>4,794.00</i>
17		<i>MFN (2016-17)</i>	<i>43.10</i>	<i>x 350.00</i>	<i>15,085.00</i>
18		<i>JPH</i>	<i>2.70</i>	<i>x 285.00</i>	<i>769.50</i>
19		<i>DJG</i>	<i>3.30</i>	<i>x 280.00</i>	<i>924.00</i>
20			TOTAL ATTORNEY'S FEES:		223,564.50
21			Less courtesy discount:		(5,899.50)
22			TOTAL COSTS:		9,728.51
23			<u>TOTAL ATTORNEYS' FEES AND COSTS</u>		227,393.51
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AFFIDAVIT AND MEMORANDUM OF COSTS
AND ATTORNEYS' FEES - 29

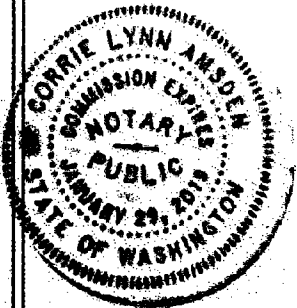
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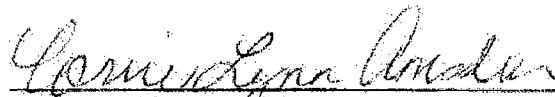
DATED this 8 day of May, 2017, at Spokane, Washington.

By: 

Emily K. Arneson, ISB 9659
WITHERSPOON KELLEY
The Spokesman Review Building
608 Northwest Blvd, Suite 300
Coeur d'Alene, Idaho 83814
Attorneys for Plaintiff

SUBSCRIBED AND SWORN to before me this 8th day of May, 2017.




Notary Public In and for the State of
Washington, residing at: Spokane
My appointment expires: January 29, 2019

AFFIDAVIT AND MEMORANDUM OF COSTS
AND ATTORNEYS' FEES - 30

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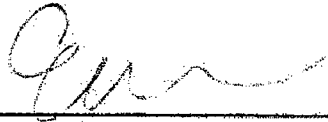
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CERTIFICATE OF SERVICE

I certify that on this the 8 day of May, 2017, I caused a true and correct copy of the foregoing DECLARATION AND MEMORANDUM OF COSTS AND ATTORNEYS' FEES to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Michael B. Hague
Hague Law Offices, PLLC
401 Front Ave., Ste. 212
Coeur d'Alene, ID 83814

U.S. Mail
Overnight Mail
Via Fax
Via Email: mhague@haguelawoffices.com
lisa@haguelawoffices.com



Emily Arneson

AFFIDAVIT AND MEMORANDUM OF COSTS AND ATTORNEYS' FEES - 31

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2017 MAY 22 PM 5:01

CLERK DISTRICT COURT

Julie Leigh
DEPUTY *M*

MICHAEL B. HAGUE, ISBA#3574
HAGUE LAW OFFICES, PLLC
401 Front Avenue, Suite 212
Coeur d'Alene, ID 83814
Telephone: (208) 215-2400
Fax: (800) 868-0224
Email: mhague@haguelawoffices.com

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THOMAS LUNNEBORG, a married individual,)

Plaintiff,

vs.

MY FUN LIFE CORP., a Delaware corporation;)
and DAN EDWARDS and CARRIE
EDWARDS, husband and wife,

Defendants.)

) Case No. CV 14-8968

) **DEFENDANTS' MOTION TO**
) **DISALLOW ATTORNEY FEES AND**
) **COSTS**

Defendants, by and through their attorney of record, Michael B. Hague, pursuant to IRCP
54, move to disallow Plaintiff's Attorney Fees and Costs as follows:

Costs:

None of the discretionary costs sought by Plaintiff are appropriate. Under IRCP
54(d)(1)(D), such costs are not allowable unless there is a showing that the costs were
"exceptional". Costs which are an ordinary part of litigation are not exceptional. Hayden Lake
Fire Protection District v. Alcorn, 141 Idaho 307, 109 P.3d 161 (2005). Mediation is common

and routine in civil litigation, and no showing to the contrary has been made by Plaintiff. Likewise, online legal research is common and routine in civil litigation, and the cost of utilizing an online research service is not appropriately awarded as a cost on a cost bill. Beach v. Wells Fargo Bank, NA, 11.4 I.B.C.R. 129, Vol. 11, No. 30 (Idaho, 2011). In making that holding, Judge Pappas described online research as “the modern-day equivalent of a law firm’s library”. Id @ 11.4 I.B.C.R. 134.

The “Bankruptcy Court Filing Fee” claimed as a discretionary cost was incurred in a separate proceeding in a separate jurisdiction. No authority is cited, and the undersigned knows of none, for the proposition that a cost of filing in one action may be legitimately claimed as a cost to be awarded in a separate action. This is not a proper cost in this case.

Attorney Fees:

The attorney fees claimed by Plaintiff in this case are simply not reasonable under the factors set forth at IRCP 54(e)(3). Each of those factors, relative to the circumstances of this case, are discussed below:

1) “The time and labor required”. Plaintiff’s lawyers seek attorney fees of \$217,665 for a total of 1,042 hours of attorney time for five lawyers to prosecute this case. While the claim may represent the amount of time spent by Plaintiff’s attorneys, we submit it is grossly excessive. As a reference point, as reflected in the affidavit of the undersigned in support of this Objection, the undersigned worked 186.8 hours on this case through April of 2017. The undersigned’s hourly rate for that work was \$275 per hour and the total attorney fees billed by the undersigned to Defendants for that work at that rate was \$51,370.00. This case did not

reasonably require Plaintiff's lawyers to quintuple the hours and quadruple the fees incurred by Defendants to bring the matter to trial successfully.

Much of the activity billed by Plaintiff's lawyers was duplicative. Attorney Anson filed a Notice of Substitution on August 19, 2016, and his first time entry reflected in Plaintiff's Affidavit and Memorandum of Costs and Attorney Fees is on August 24, 2016. That same affidavit reflects a total of 233.80 hours worked on this case by Mr. Anson since his first time entry. Another 368 hours were spent on this case by attorney Arneson in that same time, for a total of 601.8 hours claimed by those two attorneys since Mr. Anson first appeared in this case. The fees claimed by Mr. Anson and Ms. Arneson since Mr. Anson appeared in this case exceed \$134,000.

Beginning on June 22, 2016, several of Plaintiff's lawyers report time spent concerning the bankruptcy filing by MFL. That is a separate action in a separate jurisdiction and those fees are not appropriately the subject of this case.

This factor for consideration under IRCP 54(e)(3) pertains to the "time and labor required". This case did not reasonably require the 745.5 hours recorded by Ms. Arneson, had she handled the case on her own, and the hourly rate claimed by her does not justify the volume of hours worked. Nor did this case require either five lawyers to prosecute or two full-time lawyers since Mr. Anson's appearance in the case. It is apparent from the submissions that Plaintiff's law firm saw this case as a learning opportunity for one of their young lawyers. IRCP 54(e)(3) does not make reference to the utility of the case as a teaching tool to justify excessive and/or duplicative work. The time worked and fees sought by Plaintiff's lawyers are excessive.

Paragraph 4 on page 2 of Plaintiff's Affidavit and Memorandum of Costs and Attorney's Fees states that "... the time and labor is greater than what would be typical for a case of this nature due to the failure of Defendants to properly respond to discovery requests." In this respect, we would note that this subject was the focus of the Court's Order Approving Reduced Fees entered December 28, 2015. The entirety of the attorney fees claimed by Plaintiff as a result of discovery issues was \$11,765. The Court found that claim to be excessive, and reduced the award to \$8,823.75. Subtracting all of the fees associated with discovery problems from the fees claimed here leaves a difference of \$208,841.25. Clearly, the excessiveness of the fees claimed here is not due to discovery problems.

2) "The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law". Plaintiff's Affidavit and Memorandum of Costs and Attorney Fees does not address at all the experience of any of the five attorneys in question relative to this particular field of law. Four of the five lawyers have been admitted to practice law in Idaho for 15 years or more, and attorney Arneson was not admitted to practice law in Idaho until after the initial Complaint was filed in this case in December of 2014. Again, nearly three quarters of the 1,042 hours claimed by Plaintiff's law firm are attributed to Ms. Arneson. We respectfully submit that this factor of IRCP 54(e)(3) also supports the conclusion that the fees claimed by Plaintiff's lawyers are grossly excessive.

3) "The prevailing charges for like work". We respectfully submit that the fee agreement Plaintiff had with his lawyers, itself, contradicts the suggestion that the prevailing charge for this case is \$217,665. According to their Affidavit, Plaintiff's lawyers agreed to charge their client one-third (1/3) of the damages recovered. As the Court noted at the end of

the last day of trial, damages in this case were either \$180,000, or zero, depending on the outcome of the liability aspect of the case. One-third of \$180,000 is \$60,000, and as such it is clear that Plaintiff's lawyers agreed that \$60,000 was the most they would charge the Plaintiff for their work. It is also clear that \$60,000 is the most Plaintiff is required to pay his lawyers. The remaining \$157,665 in fees claimed in this case are primarily associated with practice and skills development, which is ordinarily and usually part of the overhead of a law firm. Had this case been taken by Plaintiff's lawyers on an hourly fee basis, it is also apparent that the "prevailing charge" would not be determined by multiplying an hourly rate by an excessive number of hours not reasonably required to bring the matter to trial. We respectfully submit that the term "prevailing charge" as used in the Rule speaks to the reasonable charge the attorney in question would reasonably expect to be able to charge his or her client for the case, in light of the sums at issue. Put another way, it is inconceivable that Plaintiff's law firm would have dreamed of charging Plaintiff \$217,665 in fees for this case.

4) "Whether the fee is fixed or contingent". The Affidavit of Plaintiff's lawyers indicated that the fee agreement in this case is that they agreed to take the case on a one-third contingency basis. The Affidavit does not state that the agreement is for the greater of that contingent fee or their hourly rate in the event of a fees award. The outcome of this case is that Plaintiff will be made whole (actually three times whole) if the fees awarded in this case are as set forth in the fee agreement. As reflected in the affidavit of the undersigned, it is apparent that the cost in attorney fees reasonably necessary to bring this matter to trial is consistent with the fee to which Plaintiff's lawyers agreed.

5) “The time limitations imposed by the client or the circumstances of the case”. Paragraph 13 on Page 3 of Plaintiff’s Affidavit and Memorandum of Costs and Attorney Fees indicates that the time limits of this case “... were typical of a case of this nature.” This factor does not support the excessive fees claimed.

6) “The amount involved and the results obtained.” The amount involved was \$60,000, which under the terms of the statute applicable to this case was subject to trebling in the event plaintiff prevailed. Plaintiff prevailed, and was awarded the trebled damage claim. Under the terms of his fee agreement, Plaintiff owes his lawyers one-third of the amount recovered, or \$60,000. The Court awarded attorney fees, in an amount yet to be determined, in addition to the trebled damages. Awarding attorney fees at \$60,000 will make plaintiff three times whole.

7) “The undesirability of the case”. Paragraph 14 on page 3 of Plaintiff’s Affidavit and Memorandum of Costs and Attorney Fees indicates that “... (t)here was nothing particularly desirable or undesirable about the case...”. This factor does not support the excessive fees claimed.

8) “The nature and length of the professional relationship with the client.” Paragraph 14 on page 3 of Plaintiff’s Affidavit and Memorandum of Costs and Attorney Fees indicates that “... Mr. Lunneborg was not an established client to Witherspoon Kelley”. This factor does not support the excessive fees claimed.

9) “Awards in similar cases”. Plaintiff offers no input on this issue in his Affidavit and Memorandum of Costs and Attorney Fees, and therefore this factor does not support the excessive fees claimed.

10) “The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party’s case”. Plaintiff’s Affidavit and Memorandum of Costs and Attorney Fees states simply “Computer-Assisted Research \$2,099.82”. There is nothing therein describing the automated legal research done or how it was necessary to the Plaintiff’s case. In any event, we submit that this cost is subsumed in the attorney time spent researching.

11) “Any other factor which the court deems appropriate in the particular case”. Paragraphs 11 and 12 of Plaintiff’s Affidavit and Memorandum of Costs and Attorney Fees reference veil-piercing and termination for cause as “difficult questions of law” and further reference discovery problems and MFL’s bankruptcy as having bearing on the extent of fees claimed. We would note relative to the issues of veil piercing and termination for cause that these were addressed by both parties, and the work of addressing both is subsumed in the \$51,300 billed by defense counsel in this case. The fees claimed due to MFL’s bankruptcy are relative to a different case in a different venue and are not properly the subject of this suit. As discussed above, less than 5% of the fees claimed are associated with discovery problems. This subsection of the Rule does not support the excessive fees claimed.

In summary, the attorney fees claimed in this case are grossly excessive and unreasonable. Plaintiff will be made more than whole by an award consistent with his fee agreement with his attorneys. IRCP 54(e)(3) contemplates that attorney fee awards be reasonable under the various factors listed in the Rule. The circumstances driving the extent of fees claimed by Plaintiff’s lawyers in this case are not among the factors listed in the Rule. We

respectfully request that the Court deny attorney fees beyond the \$60,000 fee due Plaintiff's lawyers under his fee agreement with them.

Oral argument is requested.

DATED this 22nd day of May, 2017.

HAGUE LAW OFFICES, PLLC

By


MICHAEL B. HAGUE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of May, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Emily Arneson
Edward Anson
Witherspoon Kelley
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-1246

- U.S. MAIL
- HAND DELIVERED
- ELECTRONIC MAIL to:
- TELECOPY (FAX) to: (208) 667-8470


Michael B. Hague

MICHAEL B. HAGUE, ISBA#3574
HAGUE LAW OFFICES, PLLC
401 Front Avenue, Suite 212
Coeur d'Alene, ID 83814
Telephone: (208) 215-2400
Fax: (800) 868-0224
Email: mhague@haguelawoffices.com

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED }
2017 MAY 22 PM 4:53

CLERK DISTRICT COURT
[Signature]
DEPUTY
M

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THOMAS LUNNEBORG, a married individual,)

Plaintiff,

vs.

MY FUN LIFE CORP., a Delaware corporation;)
and DAN EDWARDS and CARRIE
EDWARDS, husband and wife,

Defendants.)

) Case No. CV 14-8968

) **DECLARATION OF COUNSEL IN**
) **SUPPORT OF DEFENDANTS'**
) **OBJECTION TO PLAINTIFF'S**
) **AFFIDAVIT AND MEMORANDUM OF**
) **COSTS AND ATTORNEY FEES**

Michael Hague declares as follows:

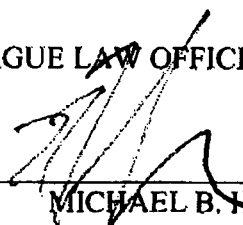
1. I am the attorney for defendants in the above matter.
2. Through the end of April, 2017 I logged 186.80 hours relative to this matter at an hourly rate of \$275, for a total billable amount through the end of April, 2017 of \$51,370.

**DECLARATION OF COUNSEL IN SUPPORT OF DEFENDANTS'
OBJECTION TO PLAINTIFF'S AFFIDAVIT AND MEMORANDUM
OF COSTS AND ATTORNEY FEES - 1**

DATED this 22nd day of May, 2017.

HAGUE LAW OFFICES, PLLC

By



MICHAEL B. HAGUE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of May, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Emily Arneson
Edward Anson
Witherspoon Kelley
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-1246

- U.S. MAIL
- HAND DELIVERED
- ELECTRONIC MAIL to:
- TELECOPY (FAX) to: (208) 667-8470


Michael B. Hague

**DECLARATION OF COUNSEL IN SUPPORT OF DEFENDANTS'
OBJECTION TO PLAINTIFF'S AFFIDAVIT AND MEMORANDUM
OF COSTS AND ATTORNEY FEES - 2**

MICHAEL B. HAGUE, ISBA#3574
 HAGUE LAW OFFICES, PLLC
 401 Front Avenue, Suite 212
 Coeur d'Alene, ID 83814
 Telephone: (208) 215-2400
 Fax: (800) 868-0224
 Email: mhague@haguelawoffices.com

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THOMAS LUNNEBORG, a married individual,)	)	Case No. CV 14-8968
Plaintiff,)	
vs.	)	DEFENDANTS' OBJECTION TO
	)	PLAINTIFF'S AFFIDAVIT AND
MY FUN LIFE CORP., a Delaware corporation;)	)	MEMORANDUM OF COSTS AND
and DAN EDWARDS and CARRIE	)	ATTORNEY FEES
EDWARDS, husband and wife,)	
Defendants.)	
_____))	

Defendants, by and through their attorney of record, Michael B. Hague, pursuant to IRCP 54, object to Plaintiff's Affidavit and Memorandum of Costs and Attorney Fees as follows:

Costs:

None of the discretionary costs sought by Plaintiff are appropriate. Under IRCP 54(d)(1)(D), such costs are not allowable unless there is a showing that the costs were "exceptional". Costs which are an ordinary part of litigation are not exceptional. Hayden Lake Fire Protection District v. Alcorn, 141 Idaho 307, 109 P.3d 161 (2005). Mediation is common

**DEFENDANTS' OBJECTION TO PLAINTIFF'S AFFIDAVIT
 AND MEMORANDUM OF COSTS AND ATTORNEY FEES - 1**

and routine in civil litigation, and no showing to the contrary has been made by Plaintiff. Likewise, online legal research is common and routine in civil litigation, and the cost of utilizing an online research service is not appropriately awarded as a cost on a cost bill. Beach v. Wells Fargo Bank, NA, 11.4 I.B.C.R. 129, Vol. 11, No. 30 (Idaho, 2011). In making that holding, Judge Pappas described online research as “the modern-day equivalent of a law firm’s library”. Id @ 11.4 I.B.C.R. 134.

The “Bankruptcy Court Filing Fee” claimed as a discretionary cost was incurred in a separate proceeding in a separate jurisdiction. No authority is cited, and the undersigned knows of none, for the proposition that a cost of filing in one action may be legitimately claimed as a cost to be awarded in a separate action. This is not a proper cost in this case.

Attorney Fees:

The attorney fees claimed by Plaintiff in this case are simply not reasonable under the factors set forth at IRCP 54(e)(3). Each of those factors, relative to the circumstances of this case, are discussed below:

1) “The time and labor required”. Plaintiff’s lawyers seek attorney fees of \$217,665 for a total of 1,042 hours of attorney time for five lawyers to prosecute this case. While the claim may represent the amount of time spent by Plaintiff’s attorneys, we submit it is grossly excessive. As a reference point, as reflected in the affidavit of the undersigned in support of this Objection, the undersigned worked 186.8 hours on this case through April of 2017. The undersigned’s hourly rate for that work was \$275 per hour and the total attorney fees billed by the undersigned to Defendants for that work at that rate was \$51,370.00. This case did not

reasonably require Plaintiff's lawyers to quintuple the hours and quadruple the fees incurred by Defendants to bring the matter to trial successfully.

Much of the activity billed by Plaintiff's lawyers was duplicative. Attorney Anson filed a Notice of Substitution on August 19, 2016, and his first time entry reflected in Plaintiff's Affidavit and Memorandum of Costs and Attorney Fees is on August 24, 2016. That same affidavit reflects a total of 233.80 hours worked on this case by Mr. Anson since his first time entry. Another 368 hours were spent on this case by attorney Arneson in that same time, for a total of 601.8 hours claimed by those two attorneys since Mr. Anson first appeared in this case. The fees claimed by Mr. Anson and Ms. Arneson since Mr. Anson appeared in this case exceed \$134,000.

Beginning on June 22, 2016, several of Plaintiff's lawyers report time spent concerning the bankruptcy filing by MFL. That is a separate action in a separate jurisdiction and those fees are not appropriately the subject of this case.

This factor for consideration under IRCP 54(e)(3) pertains to the "time and labor required". This case did not reasonably require the 745.5 hours recorded by Ms. Arneson, had she handled the case on her own, and the hourly rate claimed by her does not justify the volume of hours worked. Nor did this case require either five lawyers to prosecute or two full-time lawyers since Mr. Anson's appearance in the case. It is apparent from the submissions that Plaintiff's law firm saw this case as a learning opportunity for one of their young lawyers. IRCP 54(e)(3) does not make reference to the utility of the case as a teaching tool to justify excessive and/or duplicative work. The time worked and fees sought by Plaintiff's lawyers are excessive.

Paragraph 4 on page 2 of Plaintiff's Affidavit and Memorandum of Costs and Attorney's Fees states that "... the time and labor is greater than what would be typical for a case of this nature due to the failure of Defendants to properly respond to discovery requests." In this respect, we would note that this subject was the focus of the Court's Order Approving Reduced Fees entered December 28, 2015. The entirety of the attorney fees claimed by Plaintiff as a result of discovery issues was \$11,765. The Court found that claim to be excessive, and reduced the award to \$8,823.75. Subtracting all of the fees associated with discovery problems from the fees claimed here leaves a difference of \$208,841.25. Clearly, the excessiveness of the fees claimed here is not due to discovery problems.

2) "The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law". Plaintiff's Affidavit and Memorandum of Costs and Attorney Fees does not address at all the experience of any of the five attorneys in question relative to this particular field of law. Four of the five lawyers have been admitted to practice law in Idaho for 15 years or more, and attorney Arneson was not admitted to practice law in Idaho until after the initial Complaint was filed in this case in December of 2014. Again, nearly three quarters of the 1,042 hours claimed by Plaintiff's law firm are attributed to Ms. Arneson. We respectfully submit that this factor of IRCP 54(e)(3) also supports the conclusion that the fees claimed by Plaintiff's lawyers are grossly excessive.

3) "The prevailing charges for like work". We respectfully submit that the fee agreement Plaintiff had with his lawyers, itself, contradicts the suggestion that the prevailing charge for this case is \$217,665. According to their Affidavit, Plaintiff's lawyers agreed to charge their client one-third (1/3) of the damages recovered. As the Court noted at the end of

the last day of trial, damages in this case were either \$180,000, or zero, depending on the outcome of the liability aspect of the case. One-third of \$180,000 is \$60,000, and as such it is clear that Plaintiff's lawyers agreed that \$60,000 was the most they would charge the Plaintiff for their work. It is also clear that \$60,000 is the most Plaintiff is required to pay his lawyers. The remaining \$157,665 in fees claimed in this case are primarily associated with practice and skills development, which is ordinarily and usually part of the overhead of a law firm. Had this case been taken by Plaintiff's lawyers on an hourly fee basis, it is also apparent that the "prevailing charge" would not be determined by multiplying an hourly rate by an excessive number of hours not reasonably required to bring the matter to trial. We respectfully submit that the term "prevailing charge" as used in the Rule speaks to the reasonable charge the attorney in question would reasonably expect to be able to charge his or her client for the case, in light of the sums at issue. Put another way, it is inconceivable that Plaintiff's law firm would have dreamed of charging Plaintiff \$217,665 in fees for this case.

4) "Whether the fee is fixed or contingent". The Affidavit of Plaintiff's lawyers indicated that the fee agreement in this case is that they agreed to take the case on a one-third contingency basis. The Affidavit does not state that the agreement is for the greater of that contingent fee or their hourly rate in the event of a fees award. The outcome of this case is that Plaintiff will be made whole (actually three times whole) if the fees awarded in this case are as set forth in the fee agreement. As reflected in the affidavit of the undersigned, it is apparent that the cost in attorney fees reasonably necessary to bring this matter to trial is consistent with the fee to which Plaintiff's lawyers agreed.

**DEFENDANTS' OBJECTION TO PLAINTIFF'S AFFIDAVIT
AND MEMORANDUM OF COSTS AND ATTORNEY FEES - 5**

5) “The time limitations imposed by the client or the circumstances of the case”. Paragraph 13 on Page 3 of Plaintiff’s Affidavit and Memorandum of Costs and Attorney Fees indicates that the time limits of this case “... were typical of a case of this nature.” This factor does not support the excessive fees claimed.

6) “The amount involved and the results obtained.” The amount involved was \$60,000, which under the terms of the statute applicable to this case was subject to trebling in the event plaintiff prevailed. Plaintiff prevailed, and was awarded the trebled damage claim. Under the terms of his fee agreement, Plaintiff owes his lawyers one-third of the amount recovered, or \$60,000. The Court awarded attorney fees, in an amount yet to be determined, in addition to the trebled damages. Awarding attorney fees at \$60,000 will make plaintiff three times whole.

7) “The undesirability of the case”. Paragraph 14 on page 3 of Plaintiff’s Affidavit and Memorandum of Costs and Attorney Fees indicates that “... (t)here was nothing particularly desirable or undesirable about the case...”. This factor does not support the excessive fees claimed.

8) “The nature and length of the professional relationship with the client.” Paragraph 14 on page 3 of Plaintiff’s Affidavit and Memorandum of Costs and Attorney Fees indicates that “... Mr. Lunneborg was not an established client to Witherspoon Kelley”. This factor does not support the excessive fees claimed.

9) “Awards in similar cases”. Plaintiff offers no input on this issue in his Affidavit and Memorandum of Costs and Attorney Fees, and therefore this factor does not support the excessive fees claimed.

**DEFENDANTS’ OBJECTION TO PLAINTIFF’S AFFIDAVIT
AND MEMORANDUM OF COSTS AND ATTORNEY FEES - 6**

10) “The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party’s case”. Plaintiff’s Affidavit and Memorandum of Costs and Attorney Fees states simply “Computer-Assisted Research \$2,099.82”. There is nothing therein describing the automated legal research done or how it was necessary to the Plaintiff’s case. In any event, we submit that this cost is subsumed in the attorney time spent researching.

11) “Any other factor which the court deems appropriate in the particular case”. Paragraphs 11 and 12 of Plaintiff’s Affidavit and Memorandum of Costs and Attorney Fees reference veil-piercing and termination for cause as “difficult questions of law” and further reference discovery problems and MFL’s bankruptcy as having bearing on the extent of fees claimed. We would note relative to the issues of veil piercing and termination for cause that these were addressed by both parties, and the work of addressing both is subsumed in the \$51,300 billed by defense counsel in this case. The fees claimed due to MFL’s bankruptcy are relative to a different case in a different venue and are not properly the subject of this suit. As discussed above, less than 5% of the fees claimed are associated with discovery problems. This subsection of the Rule does not support the excessive fees claimed.

In summary, the attorney fees claimed in this case are grossly excessive and unreasonable. Plaintiff will be made more than whole by an award consistent with his fee agreement with his attorneys. IRCP 54(e)(3) contemplates that attorney fee awards be reasonable under the various factors listed in the Rule. The circumstances driving the extent of fees claimed by Plaintiff’s lawyers in this case are not among the factors listed in the Rule. We

respectfully request that the Court deny attorney fees beyond the \$60,000 fee due Plaintiff's lawyers under his fee agreement with them.

DATED this 22nd day of May, 2017.

HAGUE LAW OFFICES, PLLC

By 


MICHAEL B. HAGUE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of May, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Emily Arneson
Edward Anson
Witherspoon Kelley
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-1246

- U.S. MAIL
- HAND DELIVERED
- ELECTRONIC MAIL to:
- TELECOPY (FAX) to: (208) 667-8470


Michael B. Hague

**DEFENDANTS' OBJECTION TO PLAINTIFF'S AFFIDAVIT
AND MEMORANDUM OF COSTS AND ATTORNEY FEES - 8**

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED: 20913

2017 JUN -5 PM 12:29

CLERK DISTRICT COURT

DEPUTY

Mary E. Shea
MERRILL AND MERRILL, CHARTERED
Counselors and Attorneys at Law
109 N. Arthur – 5th Floor
Pocatello, ID 83204-0991
208-232-2286
Facsimile: 208-232-2499
Email: mary@merrillandmerrill.com
ISB No. 6115

Attorney for My Fun Life Corp,
Dan E. Edwards and Carrie L. Edwards

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

THOMAS LUNNEBORG,

Plaintiff/Respondent

v.

MY FUN LIFE, a Delaware Corporation,
DAN E. EDWARDS and CARRIE L.
EDWARDS, husband and wife,

Defendants/Appellants

CASE NO. CV-2014-8968

NOTICE OF APPEAL

Filing Fee Category L.4 \$229
(Including Estimated Fee for Clerk's Record)

TO: The above-named Respondent, Thomas Lunneborg, and his attorneys:

Edward Joseph Anson
Emily K. Arneson
Witherspoon Kelley
422 W. Riverside Avenue
Suite 1100
Spokane, Washington 99201

Notice of Appeal
Lunneborg v. My Fun Life, Inc., CV-2014-8968
11468/MES

TO: Jim Brannon, Clerk, Kootenai County
P.O. Box 9000
Coeur d'Alene, ID 83816-9000

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellants appeal against the above-named Respondent to the Idaho Supreme Court from the Final Judgment entered in the above-entitled action on the 25th day of April, 2017, Honorable Judge John T. Mitchell, presiding. A copy of the final judgment or order being appealed is attached to this Notice.
2. The appellant has the right to appeal to the Idaho Supreme Court, and the judgment described in Paragraph 1 above is an appealable order under and pursuant to Rule 11(a)(1) of the Idaho Appellate Rules (I.A.R.).
3. The issues of appeal include the following:
 - a. In this employment contract dispute, the District Court committed legal error by defining "just cause" for termination too narrowly as a matter of law, thus finding that Appellants did not have cause to terminate Respondent for negotiating a contract with My Fun Life, Inc.'s chief competitor that would have prevented him from bringing any new products for their company to market; and for not being honest or fully forthcoming with Appellants about his ongoing employment relationship and negotiations with that competitor; and where the evidence was

Notice of Appeal
Lunneborg v. My Fun Life, Inc., CV-2014-8968
11468/MES

undisputed that bringing new products to market for My Fun Life, Inc. was one of the Respondent's primary job expectations.

- b. In this employment contract dispute, the District Court committed legal error by defining "just cause" for termination too narrowly as a matter of law, thus finding that Appellants' reasons for termination to be "pretext."
 - c. The District Court committed legal error by misapplying the law of piercing the corporate veil to find that Dan Edwards could be personally liable for the total damages found against My Fun Life, Inc., which was the employer in this employment contract dispute.
 - d. The District Court committed legal error by misapplying the law of piercing the corporate veil, and Idaho law of community and separate marital property, by entering a judgment for joint and several liability against Carrie Edwards, where Carrie Edwards is not an owner or shareholder of My Fun Life, Inc., and she is not directly liable for the judgment, and her separate property should be protected from any collection efforts.
4. No order has been entered sealing any portion of this record.
 5. The Appellant requests the reporter's transcript of the following trial and hearing dates in electronic format:
 - a. Trial transcript, March 13-15, 2017
 - b. Hearing, May 17, 2017 Motion to Amend or Alter Judgment

Notice of Appeal
Lunneborg v. My Fun Life, Inc., CV-2014-8968
11468/MES

6. The Appellant requests the following documents to be included in the Clerk's record in addition to those automatically included under Rule 28, I.A.R., in electronic format:
 - a. March 6, 2017 Plaintiff's Proposed Findings of Fact and Conclusions of Law
 - b. March 6, 2017 Plaintiff's Trial Brief
 - c. March 6, 2017 Defendants' Memorandum of Points and Authorities
 - d. March 6, 2017 Defendants' Proposed Findings of Fact, Conclusions of Law
 - e. March 29, 2017 Plaintiff's Post Trial Brief
 - f. March 29, 2017 Defendants' Closing Argument
 - g. April 5, 2017 Plaintiff's Response to Defendants' Closing Argument
 - h. April 5, 2017 Defendants' Closing Argument Reply Brief
 - i. April 21, 2017 Defendants' Objection to Proposed Judgment
 - j. May 3, 2017 Motion to Alter or Amend Judgment
 - k. May 10, 2017 Plaintiff's Response to Defendants' Motion to Alter or Amend Judgment
 - l. May 12, 2017 Reply to Objection to Motion to Alter or Amend Judgment
7. The Appellant requests all documents, charts or pictures which were offered or admitted as exhibits to be copied and sent to the Idaho Supreme Court.

8. I certify:

- a. That a copy of this Notice of Appeal has been served on the reporter of whom a transcript has been requested as named below at the address set out below:

Julie Foland
324 West Garden Avenue
P.O. Box 9000
Coeur d'Alene, Idaho 83816-9000

- b. That the Clerk of the District Court has been paid the estimated fee for preparation of the Reporter's Transcript.
- c. That the estimated fee for preparation of the Clerk's record has been paid.
- d. That the appellate filing fee has been paid.

Dated this 2nd day of June, 2017.

MERRILL AND MERRILL, CHARTERED



Mary E. Shea
Attorney for Appellants

CERTIFICATE OF SERVICE

I, Mary E. Shea, the undersigned, and the attorney appearing for Appellants, do hereby certify that on June 5, 2017, a true and correct copy of the foregoing Notice of Appeal was served upon the following in the manner indicated below:

Edward J. Anson
Emily K. Areneson
WITHERSPOON KELLEY
Attorneys and Counselors
The Spokesman-Review Building
608 Northwest Boulevard Suite 300
Coeur d'Alene, ID 83814-1246
Counsel for Respondent

- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Fax 208-667-8470

Michael Hague
Hague Law Offices, PLLC
401 Front Avenue, Suite 212
Coeur d'Alene, ID 83814
Counsel for Defendants/Appellants


- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Fax 800-868-0224

Julie Foland
324 West Garden Avenue
P.O. Box 9000
Coeur d'Alene, Idaho 83816-9000
Court Reporter

- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Fax

Jim Brannon, Clerk, Kootenai County
P.O. Box 9000
Coeur d'Alene, ID 83816-9000

- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Fax



Mary E. Shea

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2017 APR 25 PM 2: 20

CLERK DISTRICT COURT

DEPUTY _____

1 Edward J. Anson, ISBN 2074
2 Emily K. Arneson, ISBN 9659
3 WITHERSPOON KELLEY
4 Attorneys and Counselors
5 The Spokesman-Review Building
6 608 Northwest Boulevard, Suite 300
7 Coeur d'Alene, ID 83814-1246
8 Telephone: (208) 667-4000
9 Facsimile: (208) 667-8470
10 Email: eka@witherspoonkelley.com

11 *Attorneys for Plaintiff*

12 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
13 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

14 THOMAS LUNNEBORG, a married
15 individual,

CASE NO. CV 14-8968

16 Plaintiff,

FINAL JUDGMENT

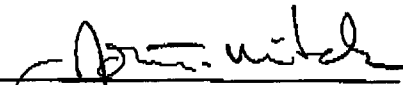
17 vs.

18 MY FUN LIFE CORP, a Delaware corporation,
19 DAN E. EDWARDS and CARRIE L.
20 EDWARDS, husband and wife,

21 Defendants.

22 JUDGMENT IS ENTERED AS FOLLOWS: Plaintiff is awarded judgment against My
23 Fun Life Corp, Dan E. Edwards, and Carrie L. Edwards, jointly and severally, in the principal
24 sum of \$180,000, together with prejudgment interest in the sum of \$17,635.41, together with an
25 award to Plaintiff of Plaintiff's attorney fees and costs in an amount to be determined pursuant
26 to I.R.C.P. 54, together with interest on the total amount of the judgment, commencing as of the
27 date hereof at the rate of 5.625% per annum.

28 DATED this 24th day of April, 2017.


The Honorable John T. Mitchell
District Judge

FINAL JUDGMENT - 1

WITHERSPOON · KELLEY
422 WEST RIVERSIDE AVE, STE 1100
SPOKANE, WASHINGTON 99201-0302
(509) 624-5265

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CLERK'S CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 25 day of April, 2017, I caused a true and correct copy of the *FINAL JUDGMENT* to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

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Jim Brannon, Kootenai County
Clerk of District Court

By: *Jusam Mcray*
Deputy

FINAL JUDGMENT - 2

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FILED 6-5-17

AT 1:45 O'Clock P M
CLERK OF DISTRICT COURT

Jeffery Burt
Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

THOMAS LUNNEBORG, a married individual,)
)
Plaintiff,)
)
vs.)
)
MY FUN LIFE CORP., a Delaware corporation, DAN E. EDWARDS and CARRIE L. EDWARDS, husband and wife,)
)
Defendants.)

Case No. **CV 2014 8968**

MEMORANDUM DECISION AND ORDER DENYING DEFENDANTS' MOTION TO ALTER OR AMEND JUDGMENT

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.

This matter is before the Court on defendants My Fun Life Corp. (MFL), Dan E. Edwards, and Carrie L. Edwards (collectively, the defendants) Motion to Alter or Amend Judgment pursuant to Idaho Rules of Civil Procedure 59(e) and 60(b). At issue is, 1) whether a non-shareholder (defendant Carrie L. Edwards) should have her separate property liable for judgment against her and a pierced corporate entity, MFL, and 2) whether the post-judgment interest rate is variable or fixed.

On April 17, 2017, this Court issued a Memorandum Decision, Findings of Fact, Conclusions of Law, and Order following Court Trial (Memorandum Decision) in *Thomas Lunneborg vs. My Fun Life Corp., Dan E. Edwards, and Carrie L. Edwards* (case no. CV-2014-8968). On April 19, 2017, a proposed Final Judgment was submitted by counsel for Lunneborg. On April 21, 2017, the defendants filed Defendants' Objection to Proposed Judgment. The Court reviewed that objection

before it signed the proposed Final Judgment on April 24, 2017. Thus, the “objection” is obsolete, but the basis of the objection is contained in and expanded upon in defendants Motion to Alter or Amend Judgment, filed May 3, 2017. Such motion was timely filed.

The defendants raise two issues in their Motion to Alter or Amend Judgment. First, the defendants argue that the Court erred to the extent that Carrie Edwards’ separate property and interest in the community estate of Dan and Carrie Edwards is subject to the Final Judgment. Mot. Alter or Amend J. 2. In their Motion, the defendants highlight the following facts: (1) the First Amended Complaint is against the “marital community” of Dan and Carrie Edwards, (2) the First Amended Complaint alleges that Dan Edwards was the sole shareholder, director, and officer of the company, and (3) the Court’s Memorandum Decision states that Dan Edwards was the sole shareholder, sole director, CEO, President, and Secretary of MFL. *Id.* at 1–2. The defendants then cite to Idaho Code § 32-912,¹ and suggest that because Carrie Edwards did not consent in writing to Dan Edwards obligating her separate property, that separate property cannot be subject to the Court’s Final Judgment. As such, the defendants ask the Court to modify its Final Judgment to specifically note that the Final Judgment is not against Carrie Edwards relative to her separate assets. *Id.* at 2. The second issue raised by the defendants is related to the post judgment interest rate. In its Final Judgment, the Court set the post judgment interest rate at 5.625% per annum. Final J. 1. The defendants argue that this rate should be adjusted annually and ask the Court to modify its Final Judgment accordingly. Mot. Alter or Amend J. 2.

¹ Idaho Code § 32-912 provides: “[A]ny community obligation incurred by either the husband or the wife without the consent in writing of the other shall not obligate the separate property of the spouse who did not consent”

On May 10, 2017, Thomas Lunneborg (Lunneborg) filed Plaintiff's Response to Defendants' Motion to Alter or Amend Judgment. In his Response, Lunneborg states that the Final Judgment is correct and the defendants' Motion should be denied. Pl.'s Resp. Defs.' Mot. Alter or Amend J. 1. First, Lunneborg argues that the Court found Dan and Carrie Edwards jointly and severally liable for MFL's debts because the corporate veil of MFL was pierced. Second, Lunneborg points out that Carrie Edwards was named and has consistently been treated as an individual defendant in her own right due to her individual actions. *Id.* at 2–4. Third, Lunneborg contends that Carrie Edwards' own actions obligated her separate property. *Id.* at 5. Lastly, pursuant to Idaho Code § 28-22-104(2) and *Bouten Construction Company v. H.F. Magnuson Company*, 133 Idaho 756, 922 P.2d 751 (1999), Lunneborg argues the post judgment interest rate should be fixed, not variable, as the defendants suggest. *Id.* at 5.

On May 12, 2017, the defendants filed a Reply to Objection to Motion to Alter or Amend Judgment. In their Reply, the defendants provide the following summary of the First Amended Complaint:

Plaintiff's First Amended Complaint sets forth five causes of action. The first four of those causes of action allege liability on the part of [MFL] only. The fifth cause of action is against Dan Edwards and Carrie Edwards, under the theory of "Piercing the Corporate Veil." Paragraph 8.2 of the First Amended Complaint alleges that Dan Edwards is the "sole shareholder, director, and officer of the company." As for Carrie Edwards, Plaintiff alleged that she was "an officer in fact" of the company, that "the marital community directly benefitted from Mr. and Mrs. Edwards' failure to observe corporate formalities."

Reply to Obj. Mot. Alter or Amend J. 1–2. The defendants argue that because Dan Edwards was the sole shareholder of MFL, he alone is liable for MFL's debts following the piercing of MFL's corporate veil. Put another way, the defendants argue that a non-shareholder like Carrie Edwards cannot be liable for a pierced corporation's debts, and

they note that “[n]o authority is cited for the proposition that any and all of the assets of a non-shareholder directly involved with the day-to-day management of a pierced corporation are liable for the debts of that corporation.” *Id.* at 2. Additionally, the defendants reiterate that Carrie Edwards’ marriage to Dan Edwards should not subject her separate property to the Final Judgment. *Id.* Defendants again cite to Idaho Code § 32-912 and provide citations to case law in support of their argument. *Id.* at 2–4.

A hearing on the Defendants’ Motion to Alter or Amend Judgment was held on May 17, 2017, and the matter was taken under advisement by this Court on that date.

II. STANDARD OF REVIEW.

A motion to alter or amend a judgment pursuant to Idaho Rule of Civil Procedure 59(e) is “addressed to the discretion of the court.” *Lowe v. Lym*, 103 Idaho 259, 263, 646 P.2d 1030, 1034 (Ct. App. 1982) (citing *Cohen v. Curtis Publ’g Co.*, 333 F.2d 974 (8th Cir. 1964)). Thus, “[s]o long as the trial court recognized the matter as discretionary, acted within the outer boundaries of the court’s discretion, and reached its conclusion through an exercise of reason, [the reviewing court] will not disturb the [trial court’s] decision on appeal.” *Slaathaug v. Allstate Ins. Co.*, 132 Idaho 705, 707, 979 P.2d 107, 109 (1999).

III. ANALYSIS.

The defendants filed a Motion to Alter or Amend Judgment pursuant to Idaho Rules of Civil Procedure 59(e) and 60(b). As noted by Lunneborg, the Defendants did not identify the subsection of Rule 60(b) they rely on for relief or otherwise specify the grounds for such relief. Pl.’s Resp. to Defs.’ Mot Alter or Amend J. 2. Additionally, after reviewing the Defendants’ Motion to Alter or Amend Judgment and Reply to Objection

to Motion to Alter or Amend Judgment, the Court is unable to discern a basis for a Rule 60(b) Motion. As a result, the Court will not analyze this matter under Rule 60(b).

The Court, however, finds the motion is properly before it pursuant to Idaho Rule of Civil Procedure 59(e). “Rule 59(e) proceedings afford the trial court the opportunity to correct errors both of fact or law that had occurred in its proceedings; it thereby provides a mechanism for corrective action short of an appeal.” *Barmore v. Perrone*, 145 Idaho 340, 344, 179 P.3d 303, 307 (2008) (quoting *Coeur d’Alene Mining Co. v First Nat’l Bank of N. Idaho*, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990)). In their Motion to Alter or Amend Judgment, the Defendants have asked this Court to correct what they perceive to be an error or errors of law. Specifically, the defendants contend that there is no legal basis for holding a non-shareholder liable for corporate debts, there is no legal basis for holding a spouse liable for her shareholder-husband’s debts (incurred as a result of piercing the corporate veil), and there is no legal basis for concluding that the post judgment interest is fixed, rather than variable. Each argument is addressed in turn.

A. Piercing the Corporate Veil to Reach a Non-shareholder.

“Piercing the corporate veil imposes personal liability on otherwise protected corporate officers, directors, and shareholders for a company’s wrongful acts allowing the finder of fact to ignore the corporate form.” *Wandering Trails, LLC v. Big Bite Excavation, Inc.*, 156 Idaho 586, 594, 329 P.3d 368, 376 (2014) (citing *VFP VC v. Dakota Co.*, 141 Idaho 326, 335, 109 P.3d 714, 723 (2005)). To pierce the corporate veil, two requirements must be met. The plaintiff must demonstrate “(1) a unity of interest and ownership to a degree that the separate personalities of the corporation and individual no longer exist and (2) if the acts are treated as acts of the corporation

an inequitable result would follow.” *Vanderford Co., Inc. v. Knudson*, 144 Idaho 547, 556, 165 P.3d 261, 270 (2007) (citing *Surety Life Ins. Co. v. Rose Chapel Mortuary*, 95 Idaho 599, 601, 514 P.2d 594, 596 (1973)). The issue raised by the Defendants’ Motion is whether the first prong of this test has been met; that is, whether there is a “unity of interest and ownership” between Carrie Edwards, a non-shareholder, and MFL.

It appears that Idaho appellate courts have not explicitly decided if the corporate veil can be pierced to reach a non-shareholder like Carrie Edwards. In a 2005 opinion, the Idaho Supreme Court alluded to this issue in *Maroun v. Wyreless Systems, Inc.*, 141 Idaho 604, 114 P.3d 974 (2005), *abrogated by Wandering Trails, LLC*, 156 Idaho 586, 329 P.3d 368. In that case, the Idaho Supreme Court upheld a district court’s decision to grant the defendant’s motion to strike a portion of the plaintiff’s third amended complaint because the plaintiff never received leave from the court to add the allegation that the defendant was a shareholder.² *Id.* at 613, 114 P.3d at 983. In reaching that decision, the Idaho Supreme Court stated:

The complaint in this case had previously only alleged Robinson was a director and officer in Wyreless. *Merely being a director or officer of a corporation is not sufficient to pierce the corporate veil.* Thus, adding the allegation that Robinson was a shareholder alleged an entirely new cause

² The Idaho Supreme Court summarized the district court’s reasoning as follows:

The district court granted the motion, noting the original complaint alleged that [the defendant] was a shareholder, but the first and second amended complaints deleted that allegation as to [the defendant]. When the third amended complaint was filed, it added the word “shareholder” as to [the defendant], but nowhere in [the plaintiff’s] briefing or affidavit in support of the third motion to amend did [the plaintiff] mention adding a shareholder liability claim against [the defendant].

Maroun, 141 Idaho 604 at 613, 114 P.3d at 983.

of action against Robinson for which [the plaintiff] had not obtained permission.

Id. (emphasis added). While this quote from *Maroun* viewed out of context suggests that in order to pierce the corporate veil, one must be a shareholder of the corporation, not merely a non-shareholder who is an officer or director, the quoted portion is dicta and, thus, it is not binding on this Court. See *State v. Hawkins*, 155 Idaho 69, 74, 305 P.3d 513, 518 (2013) (explaining that if a “statement is not necessary to decide the issue presented to the appellate court, it is considered to be dictum and not controlling”). The Court finds this to be dicta for the following reasons. The Idaho Supreme Court in *Maroun* upheld the district court’s decision to strike a portion of the third amended complaint because the district court never granted the defendant leave to amend the complaint, and doing so is solely within the trial court’s discretion. The statement “Thus, adding the allegation that Robinson was a shareholder alleged an entirely new cause of action against Robinson for which [the plaintiff] had not obtained permission” was made in the context of a claim of shareholder liability, not in the context of piercing the corporate veil, and thus, was not “necessary to decide the issue.” This Court finds it is dicta for the additional reasons: (1) this quote is in the context of a motion to strike, (2) there is no analysis and no citation to other binding authority for this proposition, and (3) the implication that shareholder status is a prerequisite to veil-piercing is a fairly important one. Because this is a fairly important legal issue, this Court finds it to be a bit of a stretch to make a decision solely on this statement without some additional guidance or analysis from the Idaho Supreme Court. Finally, this quote from *Maroun* contradicts the Idaho Supreme Court’s definition of piercing the corporate veil as provided in *Wandering Trails, LLC*, a more recent decision, which

states that officers and directors can be personally liable for a pierced corporation's misconduct. *Wandering Trails, LLC*, 156 Idaho at 594, 329 P.3d at 376.

Furthermore, in *Swenson v. Bushman Investment Properties, Ltd.*, 870 F. Supp. 2d 1049 (D. Idaho 2012), the U.S. District Court for the State of Idaho noted that Idaho courts "have not squarely addressed whether an individual must be [a] shareholder to be potentially liable for corporate debts." *Id.* at 1058–59. In doing so, it concluded that an arbitrator did not "manifestly disregard" Idaho law in determining that non-shareholders . . . could be personally liable for the [corporation's] debts." *Id.* at 1059. The U.S. District Court explained that the arbitrator had found two non-shareholders, who were employees of a corporation, personally liable for the pierced corporations' debts, in part, because the non-shareholders were "part of an 'insider' group that controlled [the] entities." *Id.* at 1053, 1059.

Unlike Idaho, other jurisdictions have considered whether an individual must be a shareholder to be liable for corporate debts, and, as summarized in *Buckley v. Abuzir*, 8 N.E.3d 1166 (Ill. Ct. App. 2014), "[c]ourts and commentators are split as to whether the veil may be pierced to reach nonshareholders." *Id.* at 1172. Based on the Illinois Court of Appeals' extensive review of persuasive case law, a majority of states "support[] the conclusion that lack of shareholder status—and, indeed, lack of status as an officer, director, or employee—does not preclude veil-piercing." *Id.* at 1176–77. It points to New York, Colorado, Connecticut, Indiana, and more than a dozen other jurisdictions as supporting the conclusion that lack of shareholder status does not preclude veil-piercing, while Maine, Maryland, North Carolina, and Texas require shareholder status to pierce the corporate veil. *Id.* at 1172–77 (providing string citations to case law requiring and not requiring shareholder status as a prerequisite to veil-

piercing). California and Florida have reached inconsistent results according to the Illinois Court of Appeals' analysis. *Id.* at 1175.

Based on its review of persuasive authority from other jurisdictions, as well as judicial decisions within Illinois, the Illinois Court of Appeals made the following observations and conclusions:

Illinois falls in line with the majority. In *Fontana v. TLD Builders, Inc.*, 362 Ill. App. 3d 491 (2005), plaintiff property owners hired defendant's construction corporation to construct a single-family home. The builder abandoned the project, and plaintiffs sued, seeking to pierce the corporation's veil and hold defendant personally liable. *Id.* at 494–95. Following a bench trial, the trial court pierced the veil and held defendant and his corporation jointly and severally liable. *Id.* at 499. On appeal, defendant argued that the trial court erred in piercing the corporate veil, because he was a nonshareholder and, therefore, the unity-of-interest-and-ownership prong could not be met. *Id.* at 500–01. The Fontana court disagreed. *Id.* at 501. Noting that piercing the corporate veil is an equitable remedy that looks to substance over form, the court held that status as a nonshareholder does not preclude piercing the corporate veil, because equitable ownership may satisfy the unity-of-interest-and-ownership prong. *Id.* at 501, 503; see also *Judson Atkinson Candies, Inc. v. Latini-Hohberger Dhimantec*, 529 F.3d 371, 381 (7th Cir. 2008) (“Under Illinois law, it is possible for a non-shareholder to be found personally liable under a veil-piercing theory.”); *Macaluso v. Jenkins*, 95 Ill. App. 3d 461, 465-66 (1981) (although defendant was a nonshareholder, his equitable ownership and control justified piercing the corporate veil); Markus May, *Helping Business Owners Avoid Personal Liability*, 95 Ill. B.J. 310, 311 (2007) (discussing Illinois law, stating “a non-shareholder individual can be personally liable for a corporation's debts if the two-prong test for piercing the corporate veil is met”).

Defendant argues that *Fontana* is distinguishable, because the defendant in that case was the corporation's president. In *Fontana*, however, the defendant's liability did not turn on his status as an officer of the corporation. Indeed, the court did not mention the defendant's office in its piercing analysis. *Fontana*, 362 Ill. App. 3d at 500–03. Rather, its decision rested on the equitable nature of veil-piercing, specifically, whether a person exercises equitable ownership and control over a corporation, such that separate personalities no longer exist. *Id.* at 501.

Considering shareholder status as a factor rather than a prerequisite to veil-piercing also makes good sense. We find Professor Glenn G. Morris's logic persuasive:

“The very point of veil-piercing is to avoid injustice by disregarding the formal structure of a transaction or relationship in favor of its

substance—to impose personal liability on persons who have, in substance, run their nominally incorporated business in a way that makes it unfair to allow them to deny their responsibility for the obligations of the business by interposing the corporation’s separate legal personality. But if the corporation’s very existence is to be disregarded in a veil-piercing case, it hardly makes sense to resurrect the stock ownership records of the legally nonexistent corporation as a means of limiting the class of persons that may be found to have acted in a way that justifies making them personally liable under a veil-piercing theory.” *Morris*, supra ¶ 17, at 508.

There are many ways to organize a sham corporation. In some instances, the wrongdoer neither holds stock nor serves in an official capacity. Making officer, director, or shareholder status a prerequisite to veil-piercing elevates form over substance and is therefore contrary to veil-piercing’s equitable nature.

Id. at 1177–78.

While *Buckley* is not binding authority, the Court finds its reasoning persuasive and, given the lack of Idaho case law on this issue, the Court likewise finds that shareholder status is a *factor* to consider when deciding whether the unity-of-interest-and-ownership prong is satisfied, but it is not a dispositive factor. This Court finds that shareholder status is not a prerequisite or bar to piercing the corporate veil. Thus, to the extent that Carrie Edwards’ status as a non-shareholder was not explicitly considered as a factor in the Court’s veil-piercing analysis in its April 17, 2017, Memorandum Decision, the Court amends its Memorandum Decision in order to consider that factor as part of the first prong of its veil-piercing analysis. In that April 17, 2017, Memorandum Decision, the Court on several occasions noted that Carrie Edwards was not a shareholder and that the only shareholder was her husband Dan Edwards. That Memorandum Decision is replete with this Court’s analysis of how Carrie Edwards’ actions support this Court’s decision to pierce the corporate veil of MFL. Carrie Edwards testified she was the Chief Administrative Officer. Mem. Dec. 32. She testified she was the COO before Lunneborg was hired and became Executive

Vice President after he was hired. *Id.* She testified “our companies gave advance monies to each other”, that “one to two times a month, depending on cash flow” they would transfer money from one corporation to another, then back again. *Id.* at 32-33. She testified that this was done to “help out” their various businesses. She testified this was all kept track in their records, and it all got paid back. *Id.* at 33. However, as the Court noted:

The one record referred to in Carrie Edwards’ testimony shows \$102,500.00 going from MFL to TraffiCorp and Ink Drop Signs, and only \$15,000.00 has come back to MFL, all from TraffiCorp. Thus, Carrie Edwards’ claim that “it all got paid back” is not supported by her own records. However, this Court has not been presented with any supporting documentary evidence that would back up this spreadsheet. She testified that at times MFL would make payments on their corporate American Express Card, at times TraffiCorp might pay. She testified she and Dan Edwards owned a Jeep and a 2014 Dodge Ram 1500 truck, which were titled in their names but the loans on the two trucks were paid by their businesses. She testified that neither she nor Dan Edwards received a salary. She testified that they received “shareholder distributions”, and these shareholder distributions from MFL amounted to \$74,830.00 in 2013, \$265,684.00 in 2014, and \$26,258.00 in 2015. Defs’ Ex. E. She testified she and Dan Edwards also received about \$368,000.00 from purchases on MFL credit cards.

Id. at 33-34. While Carrie Edwards was not a shareholder, she certainly received all financial benefits from being married to the sole shareholder. More important than the fact that Carrie Edwards benefits by being married to the sole shareholder, is the fact that Carrie Edwards’ own actions made her husband’s financial remuneration so great, and conversely, her own actions made MFL so judgment-proof. Carrie Edwards testified at length at the trial about her involvement in the financial operations of all the businesses she and Dan Edwards owned, but especially, MFL. Part of the reason Dan Edwards had an incredibly large \$265,684.00 shareholder distribution from MFL for 2014, the year Lunneborg worked for MFL for two months, on top of the \$368,000.00 in credit card purchases from MFL, was because Carrie Edwards made it that way. She

was the one moving money around. Part of the reason MFL later became judgment-proof is because \$87,500 went from MFL to TrafficCorp and Ink Drop Signs, and never came back to MFL. That was due to Carrie Edwards' actions. There are other reasons MFL became prematurely judgment-proof. Those reasons are also due to Carrie Edwards' actions. As this Court noted:

Carrie Edwards testified that she attempted to have all three of the companies (TrafficCorp, Ink Drop Signs, MFL) operating out of 5077 N. Building Center Drive share the rent and utility expenses evenly. She also testified that the three companies shared the expenses of maintenance on the building. However, the records provided by the defendants do not support these claims. MFL paid the full amount of rent on the building (\$5,000/month) for 15 straight months, August 2013 through October 2014, when the Edwards purchased the building through their company, Edventures, LLC. Defs' Ex. H, pp. 3, 5, 8, 11, 13, 14, 20, 22, 25, 27, 29, 32, 34, 36, 38. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid utility payments for the building to Kootenai Electric every month from August 2013 through August 2014, and several months thereafter. *Id.*, at 4, 8, 9, 13, 15, 19, 21, 24, 26, 28, 31, 33, 36, 43, 49. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid utility payments to the City of Coeur d'Alene every month from August 2013 through August 2014. *Id.*, at 5, 6, 9, 12, 14, 17, 20, 23, 25, 28, 30, 34. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid utility payments to Clearwater Springs every month from August 2013 through July 2014. *Id.*, 5, 6, 9, 12, 14, 17, 20, 23, 26, 28, 30, 32. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid utility payments to Avista every month from October 2013 through August 2014. *Id.*, at 8, 9, 13, 16, 19, 22, 24, 26, 29, 31, 33, 35. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid property taxes on the building at 5077 N. Building Center Drive on three separate occasions in 2013 and 2014, totalling more than \$12,000. *Id.*, at 10, 14, 30; see also Pl.'s Ex. 8, p. 2. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid nearly \$65,000 in "Repairs and Maintenance" to the building at 5077 N. Building Center Drive over a 2.5-year period. Pl.'s Ex. 8, p. 2. There is no record of MFL being made whole by the Edwards' other companies for this expense. Carrie Edwards testified that she and Dan Edwards are the sole owners of Edventures, LLC, which now owns the building at 5077 N. Building Center Drive. She also testified that Edventures purchased that building on a "lease-to-own" option, meaning that Edventures, and therefore the Edwardses, were personally enriched by the payments made toward rent, utilities, taxes, and maintenance on

the building. The Edwards also considered their 2014 Jeep SRT and 2014 Dodge Ram 1500 to be assets of MFL, using MFL funds to make loan payments and pay for over \$29,000 in repair and maintenance between January 1, 2013 and July 30, 2015. Pl.'s Ex. 8, p. 2. However, they used the vehicles for personal use a substantial portion of the time.

Id. at 34-36. Carrie Edwards was an officer of MFL. She was not a director nor was she a shareholder. The Court finds that not being a director or a shareholder does not matter because the Court finds Carrie Edwards primarily, if not exclusively, moved the money around. Carrie Edwards' actions in moving the money around were the most important and most significant disregard of MFL's corporate entity. Those actions of Carrie Edwards are what made her husband, the sole shareholder of MFL, artificially rich, and made MFL prematurely judgment proof. Due to Carrie Edwards' actions, her separate property is subject to the Final Judgment in this case.

B. Holding a spouse liable for her shareholder-husband's debts.

As mentioned above, one of defendants' arguments as to why Carrie Edwards' separate property should not be liable is because Carrie Edwards did not consent in writing to Dan Edwards obligating her separate property. This argument is made pursuant to Idaho Code § 32-912.

Because the Court concludes that Carrie Edwards' separate property is liable for MFL's debts, despite being a non-shareholder, it need not consider the merits of this argument.

C. Post Judgment Interest Rate.

The Court agrees with Lunneborg and finds that he is entitled to a fixed interest rate of 5.625% per annum, and not a variable rate as the defendants argue. See I.C. § 28-22-104(2); *Bouten Constr. Co.*, 133 Idaho at 764–65, 922 P.2d at 759–60 (explaining that the 1996 amendment to Idaho Code § 28-22-104(2) provides for a fixed interest rate).

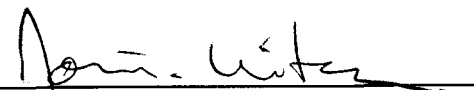
IV. CONCLUSION AND ORDER.

The Court denies the defendant's Motion to Alter or Amend Judgment as to Carrie Edwards' personal liability, but in doing so, the Court clarifies the legal basis for finding that Carrie Edwards is liable for MFL's debts. The Court denies the defendants' Motion to the extent that it asks this Court to find that Carrie Edwards' personal assets are not subject to the Final Judgment. The Court's Order that "the corporate veil of defendant MFL is pierced and Defendants Dan Edwards and Carrie Edwards are also jointly and severally liable for all damages and attorney fees" (Memorandum Decision, Conclusions of Law and Order Following Court Trial 47) is the correct result, and this Memorandum Decision and Order Denying Defendants' Motion to Alter or Amend Judgment clarifies why Carrie Edwards' separate property is liable for MFL's debts.

The Court denies the Defendants' Motion to Alter or Amend Judgment to the extent that the defendants ask the Court to impose a variable post judgment interest rate, rather than a fixed rate.

IT IS HEREBY ORDERED defendants' Motion to Alter or Amend Judgment is **DENIED.**

Entered this 5th day of June, 2017.


John T. Mitchell, District Judge

Certificate of Service

I certify that on the 5 day of June, 2017, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer
Ed Anson/Emily Arneson

Fax #
667-8470

#99571

Lawyer
Michael Hague

Fax #
800 868-0224


Tiffany Burton, Deputy Clerk

FILED June 13, 2017

AT 1:20 O'Clock P. M
CLERK OF DISTRICT COURT

[Signature]
Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

THOMAS LUNNEBORG, a married individual,)
)
) *Plaintiff,*)
) vs.)
)
) **MY FUN LIFE CORP., a Delaware corporation, DAN E. EDWARDS and CARRIE L. EDWARDS, husband and wife,**)
)
) *Defendants.*)

Case No. **CV 2014 8968**

MEMORANDUM DECISION AND ORDER GRANTING PLAINTIFF'S ATTORNEYS' FEES

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.

This matter is before the Court on plaintiff Thomas Lunneborg's (Lunneborg) Affidavit (of Emily K. Arneson) and Memorandum of Costs and Attorneys' Fees, filed May 8, 2017. Following a three-day court trial, Lunneborg's attorneys, the firm of Witherspoon Kelley requested \$223,564.50 in attorney fees and \$9,728.51 in costs. Mem. Costs and Att'ys' Fees 29.

On April 17, 2017, this Court filed its Memorandum Decision, Findings of Fact, Conclusions of Law, and Order Following Court Trial. In that decision, the Court found Lunneborg to be the prevailing party as to all defendants My Fun Life Corp. (MFL), Dan E. Edwards, and Carrie L. Edwards (collectively, the defendants). Mem. Decision 48. The Court found Lunneborg had proven breach of contract and a violation of the Idaho Wage Claim Act by defendant MFL, found damages to have been proven in the amount of \$60,000.00, which, under the Idaho Wage Claim Act cause of action, damages are

trebled to the amount of \$180,000.00 (I.C. §§ 45-607, 45-615), and found that under the Idaho Wage Claim Act, Lunneborg is entitled to attorney fees under I.C. § 45-615. *Id.* The Court also found that the corporate veil of MFL is pierced and defendants Dan and Carrie Edwards were jointly and severally liable for all damages and attorney fees. *Id.*

As mentioned above, Lunneborg's Affidavit (of Emily K. Arneson) and Memorandum of Costs and Attorneys' Fees were filed May 8, 2017. This was timely filed relative to the April 25, 2017, Final Judgment. I.R.C.P. 54(d)(4). On May 22, 2017, defendants timely filed Defendants' Motion to Disallow Attorneys' Fees and Costs and a Declaration of Counsel in Support of Defendants' Objection to Plaintiff's Affidavit and Memorandum of Costs and Attorneys' Fees. I.R.C.P. 54(d)(5). On May 31, 2017, Lunneborg filed Plaintiff's Response to Defendants' Motion to Disallow Attorneys' Fees and Costs. The requisite hearing was held June 7, 2017. I.R.C.P. 54(d)(6). It is incumbent upon the Court to establish the appropriate amount of attorney fees. *Id.*

II. STANDARD OF REVIEW.

"In those circumstances where attorney fees can properly be awarded, the award rests in the sound discretion of the court and the burden is on the disputing party to show an abuse of discretion in the award." *Burns v. Cty. of Boundary*, 120 Idaho 623, 625, 818 P.2d 327, 329 (Ct. App. 1990). The appellate court conducts a three-stage inquiry: 1) whether the lower court rightly perceived the issue as one of discretion; 2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and 3) whether the court reached its decision by an exercise of reason. *Id.*

An award of costs, as stated in the rule itself, is committed to the sound discretion of the court. *Zimmerman v. Volkswagen of Am., Inc.*, 128 Idaho 851, 857, 920 P.2d 67, 73 (1996). The grant or denial of discretionary costs is also committed to the discretion of the court; such an award or denial will only be set aside for an abuse of that discretion. *Fish v. Smith*, 131 Idaho 492, 493, 960 P.2d 175, 176 (1998).

III. ANALYSIS.

A. Lunneborg is the Prevailing Party.

In this Court's Memorandum Decision, this Court found Lunneborg to be the prevailing party as to all defendants: MFL, Dan Edwards and Carrie Edwards. Mem. Decision 48. In that Memorandum Decision, the Court did not engage in a detailed analysis as to why Lunneborg is the prevailing party in this litigation. Even though defendants do not make an argument that Lunneborg is not the prevailing party, the Court now sets forth its reasons why Lunneborg is the prevailing party. Idaho Rule of Civil Procedure 54(d)(1)(B) states:

(B) Prevailing Party. In determining which party to an action is a prevailing party and entitled to costs, the trial court must, in its sound discretion, consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court may determine that a party to an action prevailed in part and did not prevail in part, and on so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resulting judgment or judgments obtained.

On December 8, 2014, Lunneborg brought this lawsuit alleging: 1) MFL terminated Lunneborg's employment without cause; 2) MFL breached its contract; 3) MFL violated the Idaho Wage Claim Act, I.C. § 45-601 *et. seq.*; 4) MFL wrongfully terminated Lunneborg in violation of public policy; and 5) MFL breached its duty of good faith and fair dealing. Compl. 1-9. On January 5, 2015, MFL filed its Answer and Counterclaim. MFL generally denied most of Lunneborg's claims, affirmatively defended, claiming

Lunneborg's agreement with MFL lacked consideration. MFL also counterclaimed against Lunneborg, claiming that Lunneborg fraudulently induced MFL to enter into the employment contract with Lunneborg, Lunneborg breached the covenant of good faith and fair dealing, and Lunneborg was unjustly enriched by his being paid his salary when he didn't do what he was supposed to do. Answer and Countercl. 1-16.

On September 8, 2015, Lunneborg filed a Motion for Leave to File First Amended Complaint, which sought to add Dan Edwards and Carrie Edwards as defendants, alleging MFL was used by them as an alter ego. Mem. Supp. Mot. Leave to File First Am. Compl. 3. On September 25, 2015, MFL filed its Statement of Non-Objection to Plaintiff's Motion for Leave to File Amended Complaint. After a hearing on December 8, 2015, this Court entered its Order Granting Leave to File First Amended Complaint. The First Amended Complaint was filed December 21, 2015. On February 16, 2016, defendants MFL and Dan and Carrie Edwards filed an Answer to First Amended Complaint. This pleading did not contain any affirmative defense or counterclaims by any of the defendants.

The Court finds defendants abandoned any counterclaim they had made against Lunneborg. The Court found that Lunneborg prevailed against MFL on Lunneborg's claims that: 1) MFL terminated him without cause (Mem. Decision 4-29); 2) MFL breached its contract with him (*Id.* at 26-29); 3) MFL breached the implied covenant of good faith and fair dealing owed to Lunneborg by failing to perform under the contract, and by fabricating alleged causes for termination where none existed in fact (*Id.* at 47); and 4) MFL violated the Idaho Wage Claim Act. *Id.* At all times Lunneborg has claimed he is entitled to his severance pay which was six-months of his \$120,000.00 annual salary, or \$60,000.00. Compl. Ex. A. That was the amount of Lunneborg's award by this Court. Mem. Decision 48. Lunneborg claimed he was entitled to treble damages

under the Wage Claim Act, and he prevailed on that claim. *Id.* Lunneborg prevailed on his claim against Dan and Carrie Edwards that MFL was used by them as an alter ego. *Id.* at 29-43. The only claims Lunneborg did not prevail upon were 1) his claim for accrued paid leave and 2) his claim that MFL violated public policy. The inescapable conclusion is that Lunneborg is the prevailing party.

B. Costs.

1. Costs as a Matter of Right.

Lunneborg requests costs as a matter of right totaling \$6,852.69 for the filing fee, service of process, and depositions of Richard Brooke, Thomas Lunneborg, Dr. Shlapfer, Dan Edwards and Carrie Edwards (all of whom either testified at trial, or, as with Richard Brooke and Dr. Schlapfer, their transcript was presented as evidence at trial). *Aff. and Mem. of Costs and Att'ys' Fees* 3-4. No objection has been made by defendants to these costs as a matter of right. The Court has reviewed those costs and determines they are appropriate and will be awarded.

2. Discretionary Costs.

Lunneborg requests discretionary costs of \$600.00 for his share of the mediator's expense, \$176.00 for the bankruptcy court filing fee, and \$2,875.82 for computer assisted research. *Id.* at 4. Discretionary costs may be allowed upon a showing that the costs were necessary and reasonably incurred and should be assessed against the adverse party in the interest of justice. I.R.C.P. 54(d)(1)(C), (D). In ruling upon objections to discretionary costs, the trial court shall make express findings as to why each specific item of discretionary cost should or should not be allowed. I.R.C.P. 54(d)(1)(D). A court may upon its own motion disallow any items of discretionary costs and shall make express findings supporting such disallowance. *Id.*

Defendants have objected to each of these costs as not being "exceptional"

under I.R.C.P. 54(d)(1)(D). Def. Obj. to Pl. Aff. and Mem. of Costs and Fees 1-2.

Defendants argue mediation is common, an ordinary part of litigation and not exceptional, as is computer research. *Id.* The Court agrees, and while the Court finds the costs of mediation and computer-assisted research were necessarily and reasonably incurred in this litigation, those costs are not exceptional.

Defendants also argue the bankruptcy court filing fee was incurred in a separate proceeding in a separate jurisdiction. *Id.* at 2. The Court does not find that to be a valid objection. The cost was incurred by Lunneborg. The cost was necessary to protect himself in this state court litigation were he to eventually receive a judgment.

Lunneborg argues he was forced to participate in the bankruptcy proceedings to lift the automatic stay in that proceeding. Pl.'s Resp. to Defs.' Mot. to Disallow Atty Fees and Costs 2. The Court finds the filing fee was "exceptional" in that, while filing bankruptcy by a party being sued sometimes occurs during litigation, it is not often that the entity sued and which subsequently sought bankruptcy protection did so because it had made itself judgment proof during this litigation, and did so, in large part, by disregarding the corporate entity. Thus, the Court finds the bankruptcy court filing fee of \$176.00 to be necessary and reasonably incurred in this state court litigation, finds the interest of justice requires payment of such to the prevailing party, and finds such to be an "exceptional" and an appropriate discretionary cost.

C. Amount of Attorney Fees.

Lunneborg claims attorney fees in the amount of \$223,564.50. Defs.' Mem. of Costs and Fees/Claim for Att'ys' Fees 1. Defendants claim that \$60,000.00 is the appropriate award of attorney fees based on the one-third contingency fee agreement that Lunneborg had with his attorneys, according to the Affidavit of Emily Arneson. Aff.

(Arneson) and Mem. of Costs and Fees 1-2, ¶ 2; Defs' Obj. to Pl.'s Aff. and Mem of

Costs and Fees 4-5, 7-8.

The Court has previously ordered that attorney fees are to be awarded under that the Idaho Wage Claim Act, I.C. § 45-615. Mem. Decision, Conclusion of Law and Order Following Court Trial 48. That statute provides any judgment awarded to a plaintiff for a suit under the Idaho Wage Claim Act “may include all costs and attorney’s fees reasonably incurred in connection with the proceedings.” The use of the word “may” indicates such an award is discretionary with the Court, and any award must be “reasonable.” Additionally, pursuant to Idaho Code § 12-120(3), the prevailing party in an action brought for breach of an employment contract is entitled to fees. Specifically, Idaho Code § 12-120(3) provides in pertinent part:

In any civil action to recover on [a] . . . contract relating to the purchase or sale of . . . services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

I.C. § 12-120(3). “Actions brought for breach of an employment contract are considered commercial transactions and are subject to the attorney fees provision of I.C. § 12-120(3).” *Willie v. Bd. of Trustees*, 138 Idaho 131, 136, 59 P.3d 302, 307 (2002) (citing *Nw. Bec Corp v. Home Living Servs.*, 136 Idaho 835, 842, 41 P.3d 263, 270 (2002); *Treasure Valley Gastroenterology Specialists, P.A. v. Woods*, 135 Idaho 485, 492, 20 P.3d 21, 28 (Ct. App. 2001)).

The Court determines the appropriate amount of attorney fee by analyzing the criteria set forth in I.R.C.P. 54(e)(3). Idaho Rule of Civil Procedure Rule 54(e)(3) reads:

Amount of Attorney Fees. In the event the court grants attorney fees to a party or parties in a civil action it shall consider the following factors in determining the amount of such fees:

- (A) The time and labor required.
- (B) The novelty and difficulty of the questions.
- (C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.

- (D) The prevailing charges for like work.
- (E) Whether the fee is fixed or contingent.
- (F) The time limitations imposed by the client or the circumstances of the case.
- (G) The amount involved and the results obtained.
- (H) The undesirability of the case.
- (I) The nature and length of the professional relationship with the client.
- (J) Awards in similar cases.
- (K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.
- (L) Any other factor which the court deems appropriate in the particular case.

I.R.C.P. 54(e)(3).

(A) The Time and Labor Required.

As a starting point, the Court notes the attorneys' fees requested by Lunneborg's attorneys apparently already been discounted. To the \$223,564.50 total of attorneys' fees, Lunneborg's attorneys have a "courtesy discount" of \$5,899.50, leaving a net request of \$217,665.00. Mem. Costs and Att'ys' Fees 29. No explanation is given as to why a "courtesy discount" is given or how that amount was arrived at by Lunneborg's attorneys.

Defendants' primary focus is on the 1,042 hours of attorney time, and not the hourly rate charged. Defs.' Obj. to Pl.'s Aff. and Mem. of Costs and Fees 2-4. The Court agrees that 1,042 hours of attorney fees to take a matter to a three-day court trial is shocking. However, when the Court reviews the itemized billing for each task, the Court is unable to determine that any of the work was duplicative as claimed by defendants (*Id.* at 3-4), and the Court is unable to find that the amount of time spent on each task is inordinately excessive for the task. However, the overall amount of hours, 1,042, is, as stated above, shocking. In more than fifteen years as a district court judge, this Court has never been presented with anywhere close to such a high amount

of hours for an attorney fee request. The Court finds that a reduction of 10% solely based on the aggregate amount of time is warranted simply based on the large number of hours. In making that reduction, the Court is not finding those hours were not spent on the case; the Court is simply finding that 10 less hours could have been expended and accomplished the same result. Applying that 10% deduction in time to the amount of hours requested and then reducing the total amount of fees requested (\$217,665.00) by 10% amounts to a deduction of \$21,766.50.

In making that reduction, the Court is not persuaded by counsel for defendants argument that he only billed 186.8 hours. Defs.' Obj. to Pl.'s Aff. and Mem of Costs and Fees 2. This is an argument frequently made by counsel for the losing party. The Court has never found such to be a sound argument. One reason the other side prevailed is perhaps their attorneys put more work and effort into the case. The Court does not find that to be the case here. The main reason the Court is not persuaded by the argument in this case is that counsel for the defendants came into this litigation mid-stream, after much of the discovery problems had already been resolved.

This Court also finds a slight downward departure in the amount of attorney fees requested is warranted due to the hourly rate for one of the attorneys. Michael F. Nienstedt has been practicing law since 1976, and billed out at \$340 per hour for work done on this case in 2015 and \$350 per hour in 2016-17. Aff. (Arneson) and Mem. of Costs and Fees 2, ¶ 7. Edward J. Anson has been practicing law since 1977, and billed out at \$290.00 per hour. *Id.* at ¶ 6. There is no explanation as to the reason for the difference.

The Court finds the amount requested for Nienstedt's work (57.2 hours) on the case must be reduced to \$290.00 per hour, for a total of \$16,588.00, or a reduction of \$3,291.00 from the \$19,879.00 requested. In coming to that conclusion, this Court has

reviewed past decisions addressing the prevailing hourly rate in this community, and finds this result consistent with *City of Sandpoint v. Independent Highway District*, Bonner County Case No. CV 2013 1342, Memorandum Decision and Order Granting in Part (As to Timing of This Court's Prior Decision) and Denying in Part (As to Amount of Attorney Fees Previously Awarded) Defendant IHD's Motion for Reconsideration of Attorney Fees, October 24, 2014, pp. 5-7, and with *Samuel v. Black Rock Development, Inc., et al.*, Kootenai County Case No. CV 2012 4492, Kootenai County Case No. CV 2012 4492, Memorandum Decision and Order Granting in Part and Denying in Part Plaintiff Samuel's Motion for Award of Attorney Fees and Costs and Granting Plaintiff's Motion to Certify Judgment, March 12, 2013, p. 18. In *Harris v. Alessi*, 141 Idaho 901, 910, 120 P.3d 289, 298 (Ct. App. 2005), the Idaho Court of Appeals held it was not an abuse of the trial court's discretion to modify the requested hourly rate of \$135.00 an hour downward to \$110.00 per hour for a case in Pocatello in 2005.

Thus, if the Court were to look only at the "time and labor required" criteria, a reduction of \$25,057.50 (\$21,766.50 plus \$3,291.00), is warranted, leaving Lunneborg with fees of \$192,607.50 (\$217,665.00 less \$25,057.50).

(B) The novelty and difficulty of the questions. Neither counsel for Lunneborg nor counsel for defendants addressed this issue. The Court finds it to not be a relevant criteria in this case.

(C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law. Counsel for Lunneborg set forth the number of years of experience each of the attorneys who worked on this case. Aff. (Arneson) and Mem. of Costs and Fees 1-2, ¶¶ 2-9. Counsel

for defendants claims Lunneborg's counsel did not "address at all the experience of any of the five attorneys in question to this particular field of law." Defs.' Obj. to Pl.'s Aff. and Mem. of Costs and Fees 4. The Court finds that argument to be unpersuasive. This case was a contract and wage claim dispute; it did not involve nuanced questions of law. Thus, past particular experience in a particular area of law is not all that important. Counsel for defendants also notes on several occasions that Emily Arneson was only recently licensed to practice in Idaho, although she was licensed to practice in Washington for about five years before that. *Id.* With reciprocity between Idaho and Washington, the argument about recently licensing in Idaho is not persuasive. The Court finds this criteria does not justify either an upward or downward departure from the amount of attorneys' fees requested.

(D) The prevailing charges for like work. The Court has already addressed the hourly rate. Defendants claim that \$217,665.00 requested is so far over the \$60,000.00 contingency agreement that it cannot be considered the "prevailing charge" for similar work. The Court finds that is an issue that is more appropriately addressed in the next criteria under I.R.C.P. 54(e)(3). Thus, this Court finds this criteria does not justify either an upward or downward departure from the amount of attorneys' fees requested.

(E) Whether the fee is fixed or contingent. Defendants argue that trebling damages makes Lunneborg "three times whole", and that it would be unfair for anything more than a one-third fee of \$60,000.00 to be imposed on top of the trebled damage award. Defs.' Obj. to Pl.'s Aff. and Mem. of Costs and Fees 5. While there is facial validity to that argument, it ignores the fact that the Idaho Wage Claim act allows *both* trebling of damages *and* attorney fees if the plaintiff prevails. This Court finds it is wrong to conflate the two, or to view one as excluding the other, or to view the two as

being duplicative. Because Idaho's statutory scheme allows both trebling of damages and attorney fees, if an employer is going to refuse a wage claim, that employer had better be sure it is on solid legal and factual ground in doing so. Defendants were not on solid legal or factual ground in their decision to terminate Lunneborg after two months for the reasons they stated.

However, the Court cannot ignore that when counsel for defendants initially looked at this case, they had to have assessed damages at \$60,000.00 as they were essentially liquidated damages given the contract. They had to have known that if they prevailed on the Idaho Wage Claim Act that the damages would be trebled. They negotiated a one-third attorney fee with their client, so they had to have assessed the value of their work at \$60,000.00. Certainly, a \$60,000.00 fee would have been a lucrative arrangement for Lunneborg's attorneys had this case resolved quickly. However, it did not resolve quickly. The Court finds the reason the case did not resolve quickly was due to the defendants' actions throughout the litigation, first, with failing to comply with discovery rules, and second, with filing bankruptcy. There is a difference between recalcitrance (almost all adverse parties are recalcitrant) and actively obstructing your opponent and doing so by violating discovery rules and the rules under which you operate a corporation.

Had defendants been the typical recalcitrant adversary, the Court would likely "split the difference" between the negotiated \$60,000.00 fee and the hourly (as adjusted downward by the Court) fee of \$192,607.50. The midpoint between those two numbers is \$126,303.75. If all this Court evaluated and balanced was the total attorney fees requested, with adjustments made to number of hours spent and one attorney's billing rate on one side of the scale, compared to the contingency fee on the other side of the scale, then \$126,303.75 would be the number awarded Lunneborg as attorneys' fees.

However, as mentioned above, defendants' bad conduct caused more hours to be spent by Lunneborg's attorneys on this case. Lunneborg's attorneys had to work harder and expend more hours dealing with discovery abuses perpetrated by defendants, dealing with defendant MFL's bankruptcy, dealing with proving the falsity Dan Edwards' two reasons he said he fired Lunneborg, and in dealing with piercing the corporate veil, which was due to defendants bad conduct in disregarding the corporate entity. Mindful of that, this Court finds a reasonable attorney fee to be north of that midpoint. The Court finds an attorney fee of \$160,000.00 to be a reasonable fee under all the circumstances and all the criteria under I.R.C.P. 54(e)(3)(A)-(L).

At oral argument on June 7, 2017, counsel for defendants argued that while the one-third contingency fee agreement was in the record via the affidavit of Lunneborg's attorney Emily Arneson [Aff. (Arneson) and Mem. of Costs and Fees 1-2, ¶ 2], there was no *evidence*, only argument in briefing, that there was an agreement that was set forth in Lunneborg's briefing that, "In the event attorney' fees collected from the adverse party exceed the contingent fee amount set forth above I understand [Witherspoon Kelley] shall retain said fees and I shall not owe [the firm] any additional fees..." Pl.'s Resp. to Defs.' Mot. To Disallow Attys' Fees and Costs 4. The Court is not concerned that there was no evidence of such agreement. The Court finds even if this language did not exist, and even if the only fee agreement was a one-third contingency, the Court *must* consider the hours spent on a case and hourly rate charged by the attorney(s) for that time spent. Idaho Rule of Civil Procedure 54(e)(3)(A)-(L) not only contemplates, but mandates such consideration of the hours spent and hourly rate charged.

(F) The time limitations imposed by the client or the circumstances of the case. The Court finds this to be a factor as to the amount of fees, not due to Lunneborg ("the client"), but again due to conduct of the opponent, the defendants'

conduct in excess of recalcitrance. However, this factor has been addressed in the section immediately above. Discovery abuses by defendants and their prior attorney consumed attorney time on the part of Lunneborg. There were volumes of emails and text messages that had to be pored over by Lunneborg's attorneys and presented to the Court at trial in order for Lunneborg to establish the fact that the two reasons for his termination given to Lunneborg by Dan Edwards were in fact not true. Similarly, there were volumes of defendants' financial records that had to be poured over in order to pierce the corporate veil of MFL. Because of defendants' disregard of the corporate entity, at least in part, MFL sought bankruptcy protection early on in this litigation. Counsel for Lunneborg had to defend their client's interest on that issue as well.

(G) The amount involved and the results obtained. Lunneborg failed to address this criteria. Defendants again argue that attorney fees even at \$60,000.00 will make the plaintiff more than three times whole. Defs.' Obj. to Pl.s' Aff. and Mem. of Costs and Fees, 6. The Court has already stated in section "E" above why it is not persuaded by this argument.

(H) The undesirability of the case. Lunneborg claims there was nothing particularly desirable or undesirable about the case. Aff. (Arneson) and Mem. of Costs and Fees 3, ¶ 14. The Court finds this to be a neutral factor.

(I) The nature and length of the professional relationship with the client. Lunneborg claims he was not an established client of Witherspoon Kelley before this litigation. *Id.* The Court finds this to be a neutral factor.

(J) Awards in similar cases. Lunneborg does not address this factor. This Court finds this criteria justifies neither an upward or downward departure from the amount of fees sought.

(K) The reasonable cost of automated legal research (Computer-Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case. Lunneborg has sought \$2,099.82 as a discretionary cost. The Court has already denied such cost as not extraordinary. Under I.R.C.P. 54(e)(3)(K), the Court can consider that expense as a factor in determining the amount of legal fees. The Court does not consider this as a factor in granting an upward departure in the amount of attorney fees sought or awarded. The reason for this decision is that the Court finds computer assisted research is an overhead item built into the hourly rate of the attorney fees.

(L) Any other factor which the court deems appropriate in the particular case. The only other "factor" seems to be Lunneborg's claim, "My Fun Life filed counterclaims against Mr. Lunneborg, which were apparently abandoned and were not pursued at trial. The fees associated with the counterclaims were tracked separately, as indicated below." Aff. (Arneson) and Mem. of Costs and Fees 3, ¶ 15. The Court finds such fees appropriate as Lunneborg had to defend those claims even though defendants later abandoned them. The Court has considered the time spent defending the counterclaims in the above analysis of the hours claimed, and determines those hours should be included in the Court's analysis.

IV. CONCLUSION AND ORDER.

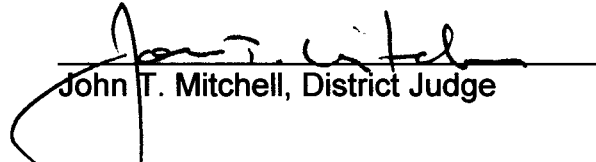
For the reasons stated above, costs as a matter of right in the amount of \$6,852.69, discretionary costs in the amount of \$176.00, and attorney fees in the amount of \$160,000.00 (total costs and fees of \$167,028.69) are awarded in favor of Lunneborg against the defendants, jointly and severally.

IT IS HEREBY ORDERED costs as a matter of right in the amount of \$6,852.69, discretionary costs in the amount of \$176.00, and attorney fees in the amount of

\$160,000.00 (total costs and fees of \$167,028.69) are awarded in favor of Lunneborg against the defendants, jointly and severally.

IT IS FURTHER ORDERED counsel for Lunneborg prepare an Amended Judgment consistent with this Memorandum Decision and Order.

Entered this 13th day of June, 2017.


John T. Mitchell, District Judge

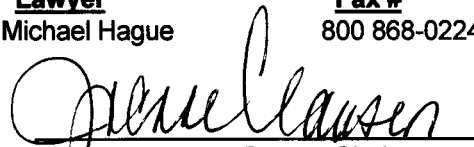
Certificate of Service

I certify that on the 13th day of June, 2017, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer Fax #
Ed Anson/Emily Arneson 667-8470 ✓

Lawyer Fax #
Michael Hague 800 868-0224 ✓

Mary Shea
(208) 232-2499
#142


Jeanne Clausen, Deputy Clerk

2017 JUN 20 PM 1:33

CLERK DISTRICT COURT

[Signature]
DEPUTY

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6 Telephone: (208) 667-4000
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8 Email: mfn@witherspoonkelley.com

9 *Attorney for Plaintiff*

10 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
11 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

12 THOMAS LUNNEBORG, a married
13 individual,

14 Plaintiff,

15 vs.

16 MY FUN LIFE CORP, a Delaware corporation,
17 DAN E. EDWARDS and CARRIE L.
18 EDWARDS, husband and wife,

19 Defendants.

CASE NO. CV 14-8968

AMENDED FINAL JUDGMENT

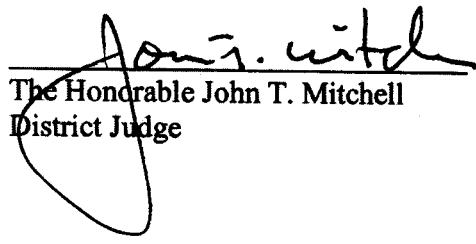
20 JUDGMENT IS ENTERED AS FOLLOWS: The judgment previously entered in this
21 matter on the 24th day of April, 2017, is hereby amended and that the Plaintiff is awarded
22 judgment against My Fun Life Corp, Dan E. Edwards, and Carrie L. Edwards, jointly and
23 severally, in the principal sum of \$180,000, together with prejudgment interest in the sum of
24 \$ 17,635.41, together with post-judgment interest in the sum of \$1,613.85 through (6/15/2017),
25 together with an award to Plaintiff of Plaintiff's attorney fees and costs in the sum of
26 \$167,028.69, for a total amount of the judgment awarded to Plaintiff in the sum of \$366,277.95
27 together with post-judgment interest, commencing as of the date hereof at the rate of 5.625%
28 per annum.

AMENDED FINAL JUDGMENT - 1

WITHERSPOON · KELLEY
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DATED this 20th day of June, 2017.


The Honorable John T. Mitchell
District Judge

AMENDED FINAL JUDGMENT - 2

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CLERK'S CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 20 day of June, 2017, I caused a true and correct copy of the *AMENDED FINAL JUDGMENT* to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

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Jim Brannon, Kootenai County
Clerk of District Court

By: Juan McCoy
Deputy

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2017 JUL 11 AM 9:33

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Attorney for My Fun Life Corp,
Dan E. Edwards and Carrie L. Edwards

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

THOMAS LUNNEBORG,

Plaintiff/Respondent

v.

MY FUN LIFE, a Delaware Corporation,
DAN E. EDWARDS and CARRIE L.
EDWARDS, husband and wife,

Defendants/Appellants

CASE NO. CV-2014-8968

AMENDED NOTICE OF APPEAL

TO: The above-named Respondent, Thomas Lunneborg, and his attorneys:

Christopher G. Varallo
Daniel J. Gibbons
Witherspoon Kelley
422 W. Riverside Avenue
Suite 1100
Spokane, Washington 99201

Amended Notice of Appeal
Lunneborg v. My Fun Life, Inc., CV-2014-8968
11468/MES

TO: Jim Brannon, Clerk, Kootenai County
P.O. Box 9000
Coeur d'Alene, ID 83816-9000

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellants hereby amend their appeal against the above-named Respondent to the Idaho Supreme Court to include in this appeal the post-judgment orders and Amended Final Judgment entered in the above-entitled action. Specifically, the Appellant includes the June 5, 2017 Memorandum Decision and Order Denying Defendants' Motion to Alter or Amend Judgment; and the June 13, 2017 Memorandum Decision and Order Granting Plaintiff's Attorney's Fees; and the June 20, 2017 Amended Final Judgment, Honorable Judge John T. Mitchell, presiding. True copies of the additional final judgments or orders being appealed are attached to this Amended Notice.
2. The Appellants have the right to appeal to the Idaho Supreme Court, and the judgments described in Paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(7) of the Idaho Appellate Rules (I.A.R.).
3. In addition to the issues on appeal previously raised by Appellants in their original Notice of Appeal, their issues on appeal include the following:
 - a. In this employment contract dispute, the District Court committed legal error in denying Defendant's Motion to Alter or Amend Judgment, by holding that separate

Amended Notice of Appeal
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property of a non-owner of a corporation can be reached by piercing the corporate veil of a company owned by her spouse.

- b. In this employment contract dispute, the District Court committed legal error by relying on financial transactions of the corporation that occurred well before the Respondent was even hired, and while the company was succeeding financially, in reaching its conclusions that Dan and Carrie Edwards had engaged in conduct with the intent to avoid payment of any judgment to Respondent.
 - c. In this employment contract dispute, the District Court committed legal error by failing to consider the legitimate business reasons for the financial ascent and subsequent decline of My Fun Life, Inc., and for failing to consider the legitimate business plan of My Fun Life, Inc., in its piercing of the corporate veil analysis.
 - d. In this employment contract dispute, the District court erred in awarding Plaintiff's attorneys' fees and costs of \$167,028.69 plus post-judgment interest, because the Court "double counted" attorneys' fees awarded previously; and the Court did not properly balance the factors under I.R.C.P. 54(e)(3).
4. No order has been entered sealing any portion of this record.
 5. The Appellant requests the reporter's transcript of the following additional hearing dates in electronic format:
 - a. Hearing on Motion to Alter and Amend Judgment May 17, 2017
 - b. Hearing on Attorneys' Fees June 7, 2017

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Lunneborg v. My Fun Life, Inc., CV-2014-8968
11468/MES

6. The Appellant requests the following additional documents to be included in the Clerk's record in addition to those automatically included under Rule 28, I.A.R., in electronic format:

- a. November 29, 2016 Order Re: Plaintiff's Motion for Sanctions
- b. November 29, 2016 Judgment Re: Attorney's Fees
- c. May 8, 2017 Affidavit and Memorandum of Costs and Attorney's Fees
- d. May 22, 2017 Defendants' Motion to Disallow Attorney's Fees and Costs
- e. May 22, 2017 Declaration of Counsel in Support of Defendant's Objection to Plaintiff's Affidavit and Memorandum of Costs and Attorney's Fees
- f. May 22, 2017 Defendant's Objection to Plaintiff's Affidavit and Memorandum of Costs and Attorney Fees
- g. June 5, 2017 Memorandum Decision and Order Denying Defendant's Motion to Alter or Amend Judgment
- h. June 13, 2017 Memorandum Decision and Order Granting Plaintiff's Attorneys Fees
- i. June 20, 2017 Amended Final Judgment

7. The Appellant requests all documents, charts or pictures which were offered or admitted as exhibits to be copied and sent to the Idaho Supreme Court.

8. I certify:

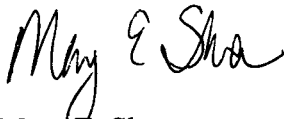
- a. That a copy of this Amended Notice of Appeal has been served on the reporter of whom a transcript has been requested as named below at the address set out below:

Julie Foland
324 West Garden Avenue
P.O. Box 9000
Coeur d'Alene, Idaho 83816-9000

- b. That the Clerk of the District Court has been paid the estimated fee for preparation of the Reporter's Transcript.
- c. That the estimated fee for preparation of the Clerk's record has been paid.
- d. That the appellate filing fee has been paid.

Dated this 6th day of July, 2017.

MERRILL AND MERRILL, CHARTERED



Mary E. Shea
Attorney for Appellants

CERTIFICATE OF SERVICE

I, Mary E. Shea, the undersigned, and the attorney appearing for Appellants, do hereby certify that on July 6, 2017, a true and correct copy of the foregoing Notice of Appeal was served upon the following in the manner indicated below:

Christopher G. Varallo
Daniel J. Gibbons
WITHERSPOON KELLEY
Attorneys and Counselors
The Spokesman-Review Building
608 Northwest Boulevard Suite 300
Coeur d'Alene, ID 83814-1246
Counsel for Respondent

- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Fax 208-667-8470

Michael Hague
Hague Law Offices, PLLC
401 Front Avenue, Suite 212
Coeur d'Alene, ID 83814
Counsel for Defendants/Appellants

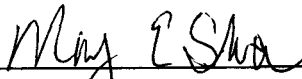
- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Fax 800-868-0224

Julie Foland
324 West Garden Avenue
P.O. Box 9000
Coeur d'Alene, Idaho 83816-9000
Court Reporter

- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Fax *email*

Jim Brannon, Clerk, Kootenai County
P.O. Box 9000
Coeur d'Alene, ID 83816-9000

- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Fax *email*



Mary E. Shea

Amended Notice of Appeal
Lunneborg v. My Fun Life, Inc., CV-2014-8968
11468/MES

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED:

2017 JUN 20 PM 1:33

CLERK DISTRICT COURT

DEPUTY

1 Michael F. Neinstedt, ISBN 3770
2 WITHERSPOON KELLEY
3 The Spokesman-Review Building
4 608 Northwest Boulevard, Suite 300
5 Coeur d'Alene, ID 83814-1246
6 Telephone: (208) 667-4000
7 Facsimile: (208) 667-8470
8 Email: mfn@witherspoonkelley.com

9 *Attorney for Plaintiff*

10 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
11 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

12 THOMAS LUNNEBORG, a married
13 individual,

14 *Plaintiff,*

15 vs.

16 MY FUN LIFE CORP, a Delaware corporation,
17 DAN E. EDWARDS and CARRIE L.
18 EDWARDS, husband and wife,

19 *Defendants.*

CASE NO. CV 14-8968

AMENDED FINAL JUDGMENT

20 JUDGMENT IS ENTERED AS FOLLOWS: The judgment previously entered in this
21 matter on the 24th day of April, 2017, is hereby amended and that the Plaintiff is awarded
22 judgment against My Fun Life Corp, Dan E. Edwards, and Carrie L. Edwards, jointly and
23 severally, in the principal sum of \$180,000, together with prejudgment interest in the sum of
24 \$ 17,635.41, together with post-judgment interest in the sum of \$1,613.85 through (6/15/2017),
25 together with an award to Plaintiff of Plaintiff's attorney fees and costs in the sum of
26 \$167,028.69, for a total amount of the judgment awarded to Plaintiff in the sum of \$366,277.95
27 together with post-judgment interest, commencing as of the date hereof at the rate of 5.625%
28 per annum.

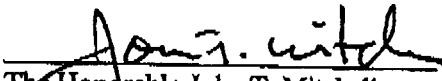
AMENDED FINAL JUDGMENT - 1

WITHERSPOON · KELLEY
422 WEST RIVERSIDE AVE, STE 1100
SPOKANE, WASHINGTON 99201-0302
(509) 624-5265

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DATED this 20th day of June, 2017.


The Honorable John T. Mitchell
District Judge

AMENDED FINAL JUDGMENT - 2

WITHERSPOON · KELLEY
422 WEST RIVERSIDE AVE, STE 1100
SPOKANE, WASHINGTON 99201-0302
(509) 624-5265

S1526463.DOCX

CLERK'S CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 20 day of June, 2017, I caused a true and correct copy of the *AMENDED FINAL JUDGMENT* to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Michael Hague
Hague Law Offices, PLLC
401 Front Ave., Ste. 212
Coeur d'Alene, ID 83814
F: (800) 868-0224

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Via Fax *9/81*
- Via Email

Michael F. Nienstedt
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- U.S. Mail
- Hand Delivered *9/80*
- Overnight Mail
- Via Fax:
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Mary E. Shea
Merrill & Merrill
109 N. Arthur Ave., 5th Floor
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- Hand Delivered
- Overnight Mail
- Via Fax:
- Via Email:

Julie Foland
324 West Garden Avenue
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Court Reporter

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Via Fax:
- Via Email: *jfoland@ckcgov.us*

Jim Brannon, Kootenai County
Clerk of District Court

By: *Jusan McCay*
Deputy

AMENDED FINAL JUDGMENT - 3

WITHERSPOON · KELLEY
422 WEST RIVERSIDE AVE, STE 1100
SPOKANE, WASHINGTON 99201-0302
(509) 624-5265

STATE OF IDAHO
County of KOOTENAI)^{ss}

FILED June 13, 2017

AT 1:20 O'Clock P. M
CLERK OF DISTRICT COURT

[Signature]
Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

**THOMAS LUNNEBORG, a married
individual,**)
)
) *Plaintiff,*)
)
vs.)
)
**MY FUN LIFE CORP., a Delaware
corporation, DAN E. EDWARDS and
CARRIE L. EDWARDS, husband and wife,**)
)
) *Defendants.*)

Case No. **CV 2014 8968**

**MEMORANDUM DECISION AND
ORDER GRANTING PLAINTIFF'S
ATTORNEYS' FEES**

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.

This matter is before the Court on plaintiff Thomas Lunneborg's (Lunneborg) Affidavit (of Emily K. Arneson) and Memorandum of Costs and Attorneys' Fees, filed May 8, 2017. Following a three-day court trial, Lunneborg's attorneys, the firm of Witherspoon Kelley requested \$223,564.50 in attorney fees and \$9,728.51 in costs. Mem. Costs and Att'ys' Fees 29.

On April 17, 2017, this Court filed its Memorandum Decision, Findings of Fact, Conclusions of Law, and Order Following Court Trial. In that decision, the Court found Lunneborg to be the prevailing party as to all defendants My Fun Life Corp. (MFL), Dan E. Edwards, and Carrie L. Edwards (collectively, the defendants). Mem. Decision 48. The Court found Lunneborg had proven breach of contract and a violation of the Idaho Wage Claim Act by defendant MFL, found damages to have been proven in the amount of \$60,000.00, which, under the Idaho Wage Claim Act cause of action, damages are

trebled to the amount of \$180,000.00 (I.C. §§ 45-607, 45-615), and found that under the Idaho Wage Claim Act, Lunneborg is entitled to attorney fees under I.C. § 45-615. *Id.* The Court also found that the corporate veil of MFL is pierced and defendants Dan and Carrie Edwards were jointly and severally liable for all damages and attorney fees. *Id.*

As mentioned above, Lunneborg's Affidavit (of Emily K. Arneson) and Memorandum of Costs and Attorneys' Fees were filed May 8, 2017. This was timely filed relative to the April 25, 2017, Final Judgment. I.R.C.P. 54(d)(4). On May 22, 2017, defendants timely filed Defendants' Motion to Disallow Attorneys' Fees and Costs and a Declaration of Counsel in Support of Defendants' Objection to Plaintiff's Affidavit and Memorandum of Costs and Attorneys' Fees. I.R.C.P. 54(d)(5). On May 31, 2017, Lunneborg filed Plaintiff's Response to Defendants' Motion to Disallow Attorneys' Fees and Costs. The requisite hearing was held June 7, 2017. I.R.C.P. 54(d)(6). It is incumbent upon the Court to establish the appropriate amount of attorney fees. *Id.*

II. STANDARD OF REVIEW.

"In those circumstances where attorney fees can properly be awarded, the award rests in the sound discretion of the court and the burden is on the disputing party to show an abuse of discretion in the award." *Burns v. Cty. of Boundary*, 120 Idaho 623, 625, 818 P.2d 327, 329 (Ct. App. 1990). The appellate court conducts a three-stage inquiry: 1) whether the lower court rightly perceived the issue as one of discretion; 2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and 3) whether the court reached its decision by an exercise of reason. *Id.*

An award of costs, as stated in the rule itself, is committed to the sound discretion of the court. *Zimmerman v. Volkswagen of Am., Inc.*, 128 Idaho 851, 857, 920 P.2d 67, 73 (1996). The grant or denial of discretionary costs is also committed to the discretion of the court; such an award or denial will only be set aside for an abuse of that discretion. *Fish v. Smith*, 131 Idaho 492, 493, 960 P.2d 175, 176 (1998).

III. ANALYSIS.

A. Lunneborg is the Prevailing Party.

In this Court's Memorandum Decision, this Court found Lunneborg to be the prevailing party as to all defendants: MFL, Dan Edwards and Carrie Edwards. Mem. Decision 48. In that Memorandum Decision, the Court did not engage in a detailed analysis as to why Lunneborg is the prevailing party in this litigation. Even though defendants do not make an argument that Lunneborg is not the prevailing party, the Court now sets forth its reasons why Lunneborg is the prevailing party. Idaho Rule of Civil Procedure 54(d)(1)(B) states:

(B) Prevailing Party. In determining which party to an action is a prevailing party and entitled to costs, the trial court must, in its sound discretion, consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court may determine that a party to an action prevailed in part and did not prevail in part, and on so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resulting judgment or judgments obtained.

On December 8, 2014, Lunneborg brought this lawsuit alleging: 1) MFL terminated Lunneborg's employment without cause; 2) MFL breached its contract; 3) MFL violated the Idaho Wage Claim Act, I.C. § 45-601 *et. seq.*; 4) MFL wrongfully terminated Lunneborg in violation of public policy; and 5) MFL breached its duty of good faith and fair dealing. Compl. 1-9. On January 5, 2015, MFL filed its Answer and Counterclaim. MFL generally denied most of Lunneborg's claims, affirmatively defended, claiming

Lunneborg's agreement with MFL lacked consideration. MFL also counterclaimed against Lunneborg, claiming that Lunneborg fraudulently induced MFL to enter into the employment contract with Lunneborg, Lunneborg breached the covenant of good faith and fair dealing, and Lunneborg was unjustly enriched by his being paid his salary when he didn't do what he was supposed to do. Answer and Countercl. 1-16.

On September 8, 2015, Lunneborg filed a Motion for Leave to File First Amended Complaint, which sought to add Dan Edwards and Carrie Edwards as defendants, alleging MFL was used by them as an alter ego. Mem. Supp. Mot. Leave File First Am. Compl. 3. On September 25, 2015, MFL filed its Statement of Non-Objection to Plaintiff's Motion for Leave to File Amended Complaint. After a hearing on December 8, 2015, this Court entered its Order Granting Leave to File First Amended Complaint. The First Amended Complaint was filed December 21, 2015. On February 16, 2016, defendants MFL and Dan and Carrie Edwards filed an Answer to First Amended Complaint. This pleading did not contain any affirmative defense or counterclaims by any of the defendants.

The Court finds defendants abandoned any counterclaim they had made against Lunneborg. The Court found that Lunneborg prevailed against MFL on Lunneborg's claims that: 1) MFL terminated him without cause (Mem. Decision 4-29); 2) MFL breached its contract with him (*Id.* at 26-29); 3) MFL breached the implied covenant of good faith and fair dealing owed to Lunneborg by failing to perform under the contract, and by fabricating alleged causes for termination where none existed in fact (*Id.* at 47); and 4) MFL violated the Idaho Wage Claim Act. *Id.* At all times Lunneborg has claimed he is entitled to his severance pay which was six-months of his \$120,000.00 annual salary, or \$60,000.00. Compl. Ex. A. That was the amount of Lunneborg's award by

this Court. Mem. Decision 48. Lunneborg claimed he was entitled to treble damages

under the Wage Claim Act, and he prevailed on that claim. *Id.* Lunneborg prevailed on his claim against Dan and Carrie Edwards that MFL was used by them as an alter ego. *Id.* at 29-43. The only claims Lunneborg did not prevail upon were 1) his claim for accrued paid leave and 2) his claim that MFL violated public policy. The inescapable conclusion is that Lunneborg is the prevailing party.

B. Costs.

1. Costs as a Matter of Right.

Lunneborg requests costs as a matter of right totaling \$6,852.69 for the filing fee, service of process, and depositions of Richard Brooke, Thomas Lunneborg, Dr. Shlapfer, Dan Edwards and Carrie Edwards (all of whom either testified at trial, or, as with Richard Brooke and Dr. Schlapfer, their transcript was presented as evidence at trial). Aff. and Mem. of Costs and Att'ys' Fees 3-4. No objection has been made by defendants to these costs as a matter of right. The Court has reviewed those costs and determines they are appropriate and will be awarded.

2. Discretionary Costs.

Lunneborg requests discretionary costs of \$600.00 for his share of the mediator's expense, \$176.00 for the bankruptcy court filing fee, and \$2,875.82 for computer assisted research. *Id.* at 4. Discretionary costs may be allowed upon a showing that the costs were necessary and reasonably incurred and should be assessed against the adverse party in the interest of justice. I.R.C.P. 54(d)(1)(C), (D). In ruling upon objections to discretionary costs, the trial court shall make express findings as to why each specific item of discretionary cost should or should not be allowed. I.R.C.P. 54(d)(1)(D). A court may upon its own motion disallow any items of discretionary costs and shall make express findings supporting such disallowance. *Id.*

Defendants have objected to each of these costs as not being "exceptional"

under I.R.C.P. 54(d)(1)(D). Def. Obj. to Pl. Aff. and Mem. of Costs and Fees 1-2.

Defendants argue mediation is common, an ordinary part of litigation and not exceptional, as is computer research. *Id.* The Court agrees, and while the Court finds the costs of mediation and computer-assisted research were necessarily and reasonably incurred in this litigation, those costs are not exceptional.

Defendants also argue the bankruptcy court filing fee was incurred in a separate proceeding in a separate jurisdiction. *Id.* at 2. The Court does not find that to be a valid objection. The cost was incurred by Lunneborg. The cost was necessary to protect himself in this state court litigation were he to eventually receive a judgment.

Lunneborg argues he was forced to participate in the bankruptcy proceedings to lift the automatic stay in that proceeding. Pl.'s Resp. to Defs.' Mot. to Disallow Atty Fees and Costs 2. The Court finds the filing fee was "exceptional" in that, while filing bankruptcy by a party being sued sometimes occurs during litigation, it is not often that the entity sued and which subsequently sought bankruptcy protection did so because it had made itself judgment proof during this litigation, and did so, in large part, by disregarding the corporate entity. Thus, the Court finds the bankruptcy court filing fee of \$176.00 to be necessary and reasonably incurred in this state court litigation, finds the interest of justice requires payment of such to the prevailing party, and finds such to be an "exceptional" and an appropriate discretionary cost.

C. Amount of Attorney Fees.

Lunneborg claims attorney fees in the amount of \$223,564.50. Defs.' Mem. of Costs and Fees/Claim for Att'ys' Fees 1. Defendants claim that \$60,000.00 is the appropriate award of attorney fees based on the one-third contingency fee agreement that Lunneborg had with his attorneys, according to the Affidavit of Emily Arneson. Aff.

(Arneson) and Mem. of Costs and Fees 1-2, ¶ 2; Defs' Obj. to Pl.'s Aff. and Mem of

Costs and Fees 4-5, 7-8.

The Court has previously ordered that attorney fees are to be awarded under that the Idaho Wage Claim Act, I.C. § 45-615. Mem. Decision, Conclusion of Law and Order Following Court Trial 48. That statute provides any judgment awarded to a plaintiff for a suit under the Idaho Wage Claim Act "may include all costs and attorney's fees reasonably incurred in connection with the proceedings." The use of the word "may" indicates such an award is discretionary with the Court, and any award must be "reasonable." Additionally, pursuant to Idaho Code § 12-120(3), the prevailing party in an action brought for breach of an employment contract is entitled to fees. Specifically, Idaho Code § 12-120(3) provides in pertinent part:

In any civil action to recover on [a] . . . contract relating to the purchase or sale of . . . services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

I.C. § 12-120(3). "Actions brought for breach of an employment contract are considered commercial transactions and are subject to the attorney fees provision of I.C. § 12-120(3)." *Willie v. Bd. of Trustees*, 138 Idaho 131, 136, 59 P.3d 302, 307 (2002) (citing *Nw. Bec Corp v. Home Living Servs.*, 136 Idaho 835, 842, 41 P.3d 263, 270 (2002); *Treasure Valley Gastroenterology Specialists, P.A. v. Woods*, 135 Idaho 485, 492, 20 P.3d 21, 28 (Ct. App. 2001)).

The Court determines the appropriate amount of attorney fee by analyzing the criteria set forth in I.R.C.P. 54(e)(3). Idaho Rule of Civil Procedure Rule 54(e)(3) reads:

Amount of Attorney Fees. In the event the court grants attorney fees to a party or parties in a civil action it shall consider the following factors in determining the amount of such fees:

- (A) The time and labor required.
- (B) The novelty and difficulty of the questions.
- (C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.

- (D) The prevailing charges for like work.
- (E) Whether the fee is fixed or contingent.
- (F) The time limitations imposed by the client or the circumstances of the case.
- (G) The amount involved and the results obtained.
- (H) The undesirability of the case.
- (I) The nature and length of the professional relationship with the client.
- (J) Awards in similar cases.
- (K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.
- (L) Any other factor which the court deems appropriate in the particular case.

I.R.C.P. 54(e)(3).

(A) The Time and Labor Required.

As a starting point, the Court notes the attorneys' fees requested by Lunneborg's attorneys apparently already been discounted. To the \$223,564.50 total of attorneys' fees, Lunneborg's attorneys have a "courtesy discount" of \$5,899.50, leaving a net request of \$217,665.00. Mem. Costs and Att'ys' Fees 29. No explanation is given as to why a "courtesy discount" is given or how that amount was arrived at by Lunneborg's attorneys.

Defendants' primary focus is on the 1,042 hours of attorney time, and not the hourly rate charged. Defs.' Obj. to Pl.'s Aff. and Mem. of Costs and Fees 2-4. The Court agrees that 1,042 hours of attorney fees to take a matter to a three-day court trial is shocking. However, when the Court reviews the itemized billing for each task, the Court is unable to determine that any of the work was duplicative as claimed by defendants (*Id.* at 3-4), and the Court is unable to find that the amount of time spent on each task is inordinately excessive for the task. However, the overall amount of hours, 1,042, is, as stated above, shocking. In more than fifteen years as a district court judge, this Court has never been presented with anywhere close to such a high amount

of hours for an attorney fee request. The Court finds that a reduction of 10% solely based on the aggregate amount of time is warranted simply based on the large number of hours. In making that reduction, the Court is not finding those hours were not spent on the case; the Court is simply finding that 10 less hours could have been expended and accomplished the same result. Applying that 10% deduction in time to the amount of hours requested and then reducing the total amount of fees requested (\$217,665.00) by 10% amounts to a deduction of \$21,766.50.

In making that reduction, the Court is not persuaded by counsel for defendants argument that he only billed 186.8 hours. Defs.' Obj. to Pl.'s Aff. and Mem of Costs and Fees 2. This is an argument frequently made by counsel for the losing party. The Court has never found such to be a sound argument. One reason the other side prevailed is perhaps their attorneys put more work and effort into the case. The Court does not find that to be the case here. The main reason the Court is not persuaded by the argument in this case is that counsel for the defendants came into this litigation mid-stream, after much of the discovery problems had already been resolved.

This Court also finds a slight downward departure in the amount of attorney fees requested is warranted due to the hourly rate for one of the attorneys. Michael F. Nienstedt has been practicing law since 1976, and billed out at \$340 per hour for work done on this case in 2015 and \$350 per hour in 2016-17. Aff. (Arneson) and Mem. of Costs and Fees 2, ¶ 7. Edward J. Anson has been practicing law since 1977, and billed out at \$290.00 per hour. *Id.* at ¶ 6. There is no explanation as to the reason for the difference.

The Court finds the amount requested for Nienstedt's work (57.2 hours) on the case must be reduced to \$290.00 per hour, for a total of \$16,588.00, or a reduction of \$3,291.00 from the \$19,879.00 requested. In coming to that conclusion, this Court has

reviewed past decisions addressing the prevailing hourly rate in this community, and finds this result consistent with *City of Sandpoint v. Independent Highway District*, Bonner County Case No. CV 2013 1342, Memorandum Decision and Order Granting in Part (As to Timing of This Court's Prior Decision) and Denying in Part (As to Amount of Attorney Fees Previously Awarded) Defendant IHD's Motion for Reconsideration of Attorney Fees, October 24, 2014, pp. 5-7, and with *Samuel v. Black Rock Development, Inc., et al.*, Kootenai County Case No. CV 2012 4492, Kootenai County Case No. CV 2012 4492, Memorandum Decision and Order Granting in Part and Denying in Part Plaintiff Samuel's Motion for Award of Attorney Fees and Costs and Granting Plaintiff's Motion to Certify Judgment, March 12, 2013, p. 18. In *Harris v. Alessi*, 141 Idaho 901, 910, 120 P.3d 289, 298 (Ct. App. 2005), the Idaho Court of Appeals held it was not an abuse of the trial court's discretion to modify the requested hourly rate of \$135.00 an hour downward to \$110.00 per hour for a case in Pocatello in 2005.

Thus, if the Court were to look only at the "time and labor required" criteria, a reduction of \$25,057.50 (\$21,766.50 plus \$3,291.00), is warranted, leaving Lunneborg with fees of \$192,607.50 (\$217,665.00 less \$25,057.50).

(B) The novelty and difficulty of the questions. Neither counsel for Lunneborg nor counsel for defendants addressed this issue. The Court finds it to not be a relevant criteria in this case.

(C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law. Counsel for Lunneborg set forth the number of years of experience each of the attorneys who worked on this case. Aff. (Arneson) and Mem. of Costs and Fees 1-2, ¶¶ 2-9. Counsel

for defendants claims Lunneborg's counsel did not "address at all the experience of any of the five attorneys in question to this particular field of law." Defs.' Obj. to Pl.'s Aff. and Mem. of Costs and Fees 4. The Court finds that argument to be unpersuasive. This case was a contract and wage claim dispute; it did not involve nuanced questions of law. Thus, past particular experience in a particular area of law is not all that important. Counsel for defendants also notes on several occasions that Emily Arneson was only recently licensed to practice in Idaho, although she was licensed to practice in Washington for about five years before that. *Id.* With reciprocity between Idaho and Washington, the argument about recently licensing in Idaho is not persuasive. The Court finds this criteria does not justify either an upward or downward departure from the amount of attorneys' fees requested.

(D) The prevailing charges for like work. The Court has already addressed the hourly rate. Defendants claim that \$217,665.00 requested is so far over the \$60,000.00 contingency agreement that it cannot be considered the "prevailing charge" for similar work. The Court finds that is an issue that is more appropriately addressed in the next criteria under I.R.C.P. 54(e)(3). Thus, this Court finds this criteria does not justify either an upward or downward departure from the amount of attorneys' fees requested.

(E) Whether the fee is fixed or contingent. Defendants argue that trebling damages makes Lunneborg "three times whole", and that it would be unfair for anything more than a one-third fee of \$60,000.00 to be imposed on top of the trebled damage award. Defs.' Obj. to Pl.'s Aff. and Mem. of Costs and Fees 5. While there is facial validity to that argument, it ignores the fact that the Idaho Wage Claim act allows *both* trebling of damages *and* attorney fees if the plaintiff prevails. This Court finds it is wrong to conflate the two, or to view one as excluding the other, or to view the two as

being duplicative. Because Idaho's statutory scheme allows both trebling of damages and attorney fees, if an employer is going to refuse a wage claim, that employer had better be sure it is on solid legal and factual ground in doing so. Defendants were not on solid legal or factual ground in their decision to terminate Lunneborg after two months for the reasons they stated.

However, the Court cannot ignore that when counsel for defendants initially looked at this case, they had to have assessed damages at \$60,000.00 as they were essentially liquidated damages given the contract. They had to have known that if they prevailed on the Idaho Wage Claim Act that the damages would be trebled. They negotiated a one-third attorney fee with their client, so they had to have assessed the value of their work at \$60,000.00. Certainly, a \$60,000.00 fee would have been a lucrative arrangement for Lunneborg's attorneys had this case resolved quickly. However, it did not resolve quickly. The Court finds the reason the case did not resolve quickly was due to the defendants' actions throughout the litigation, first, with failing to comply with discovery rules, and second, with filing bankruptcy. There is a difference between recalcitrance (almost all adverse parties are recalcitrant) and actively obstructing your opponent and doing so by violating discovery rules and the rules under which you operate a corporation.

Had defendants been the typical recalcitrant adversary, the Court would likely "split the difference" between the negotiated \$60,000.00 fee and the hourly (as adjusted downward by the Court) fee of \$192,607.50. The midpoint between those two numbers is \$126,303.75. If all this Court evaluated and balanced was the total attorney fees requested, with adjustments made to number of hours spent and one attorney's billing rate on one side of the scale, compared to the contingency fee on the other side of the scale, then \$126,303.75 would be the number awarded Lunneborg as attorneys' fees.

However, as mentioned above, defendants' bad conduct caused more hours to be spent by Lunneborg's attorneys on this case. Lunneborg's attorneys had to work harder and expend more hours dealing with discovery abuses perpetrated by defendants, dealing with defendant MFL's bankruptcy, dealing with proving the falsity Dan Edwards' two reasons he said he fired Lunneborg, and in dealing with piercing the corporate veil, which was due to defendants bad conduct in disregarding the corporate entity. Mindful of that, this Court finds a reasonable attorney fee to be north of that midpoint. The Court finds an attorney fee of \$160,000.00 to be a reasonable fee under all the circumstances and all the criteria under I.R.C.P. 54(e)(3)(A)-(L).

At oral argument on June 7, 2017, counsel for defendants argued that while the one-third contingency fee agreement was in the record via the affidavit of Lunneborg's attorney Emily Arneson [Aff. (Arneson) and Mem. of Costs and Fees 1-2, ¶ 2], there was no *evidence*, only argument in briefing, that there was an agreement that was set forth in Lunneborg's briefing that, "In the event attorney' fees collected from the adverse party exceed the contingent fee amount set forth above I understand [Witherspoon Kelley] shall retain said fees and I shall not owe [the firm] any additional fees..." Pl.'s Resp. to Defs.' Mot. To Disallow Attys' Fees and Costs 4. The Court is not concerned that there was no evidence of such agreement. The Court finds even if this language did not exist, and even if the only fee agreement was a one-third contingency, the Court *must* consider the hours spent on a case and hourly rate charged by the attorney(s) for that time spent. Idaho Rule of Civil Procedure 54(e)(3)(A)-(L) not only contemplates, but mandates such consideration of the hours spent and hourly rate charged.

(F) The time limitations imposed by the client or the circumstances of the case. The Court finds this to be a factor as to the amount of fees, not due to Lunneborg ("the client"), but again due to conduct of the opponent, the defendants'

conduct in excess of recalcitrance. However, this factor has been addressed in the section immediately above. Discovery abuses by defendants and their prior attorney consumed attorney time on the part of Lunneborg. There were volumes of emails and text messages that had to be pored over by Lunneborg's attorneys and presented to the Court at trial in order for Lunneborg to establish the fact that the two reasons for his termination given to Lunneborg by Dan Edwards were in fact not true. Similarly, there were volumes of defendants' financial records that had to be poured over in order to pierce the corporate veil of MFL. Because of defendants' disregard of the corporate entity, at least in part, MFL sought bankruptcy protection early on in this litigation. Counsel for Lunneborg had to defend their client's interest on that issue as well.

(G) The amount involved and the results obtained. Lunneborg failed to address this criteria. Defendants again argue that attorney fees even at \$60,000.00 will make the plaintiff more than three times whole. Defs.' Obj. to Pl.s' Aff. and Mem. of Costs and Fees, 6. The Court has already stated in section "E" above why it is not persuaded by this argument.

(H) The undesirability of the case. Lunneborg claims there was nothing particularly desirable or undesirable about the case. Aff. (Arneson) and Mem. of Costs and Fees 3, ¶ 14. The Court finds this to be a neutral factor.

(I) The nature and length of the professional relationship with the client. Lunneborg claims he was not an established client of Witherspoon Kelley before this litigation. *Id.* The Court finds this to be a neutral factor.

(J) Awards in similar cases. Lunneborg does not address this factor. This Court finds this criteria justifies neither an upward or downward departure from the amount of fees sought.

(K) The reasonable cost of automated legal research (Computer-Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case. Lunneborg has sought \$2,099.82 as a discretionary cost. The Court has already denied such cost as not extraordinary. Under I.R.C.P. 54(e)(3)(K), the Court can consider that expense as a factor in determining the amount of legal fees. The Court does not consider this as a factor in granting an upward departure in the amount of attorney fees sought or awarded. The reason for this decision is that the Court finds computer assisted research is an overhead item built into the hourly rate of the attorney fees.

(L) Any other factor which the court deems appropriate in the particular case. The only other "factor" seems to be Lunneborg's claim, "My Fun Life filed counterclaims against Mr. Lunneborg, which were apparently abandoned and were not pursued at trial. The fees associated with the counterclaims were tracked separately, as indicated below." Aff. (Arneson) and Mem. of Costs and Fees 3, ¶ 15. The Court finds such fees appropriate as Lunneborg had to defend those claims even though defendants later abandoned them. The Court has considered the time spent defending the counterclaims in the above analysis of the hours claimed, and determines those hours should be included in the Court's analysis.

IV. CONCLUSION AND ORDER.

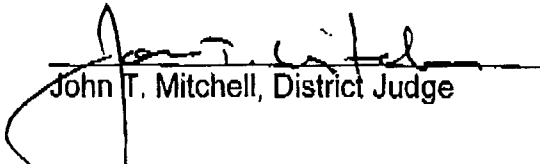
For the reasons stated above, costs as a matter of right in the amount of \$6,852.69, discretionary costs in the amount of \$176.00, and attorney fees in the amount of \$160,000.00 (total costs and fees of \$167,028.69) are awarded in favor of Lunneborg against the defendants, jointly and severally.

IT IS HEREBY ORDERED costs as a matter of right in the amount of \$6,852.69, discretionary costs in the amount of \$176.00, and attorney fees in the amount of

\$160,000.00 (total costs and fees of \$167,028.69) are awarded in favor of Lunneborg against the defendants, jointly and severally.

IT IS FURTHER ORDERED counsel for Lunneborg prepare an Amended Judgment consistent with this Memorandum Decision and Order.

Entered this 13th day of June, 2017.


John T. Mitchell, District Judge

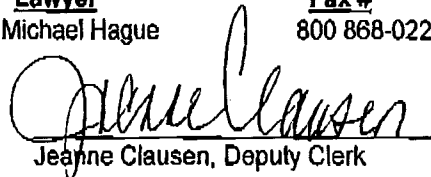
Certificate of Service

I certify that on the 13th day of June, 2017, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer Fax #
Ed Anson/Emily Arneson 667-8470 ✓

Lawyer Fax #
Michael Hague 800 868-0224 ✓

Mary Shea
(208) 232-2449


Jeanne Clausen, Deputy Clerk

STATE OF IDAHO }
County of KOOTENAI }^{ss}

FILED 6-5-17

AT 1:45 O'Clock PM
CLERK OF DISTRICT COURT

Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

**THOMAS LUNNEBORG, a married
individual,**)
)
)
 Plaintiff,)
 vs.)
)
 **MY FUN LIFE CORP., a Delaware
corporation, DAN E. EDWARDS and
CARRIE L. EDWARDS, husband and wife,**)
)
 Defendants.)

Case No. **CV 2014 8968**

**MEMORANDUM DECISION AND
ORDER DENYING DEFENDANTS'
MOTION TO ALTER OR AMEND
JUDGMENT**

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.

This matter is before the Court on defendants My Fun Life Corp. (MFL), Dan E. Edwards, and Carrie L. Edwards (collectively, the defendants) Motion to Alter or Amend Judgment pursuant to Idaho Rules of Civil Procedure 59(e) and 60(b). At issue is, 1) whether a non-shareholder (defendant Carrie L. Edwards) should have her separate property liable for judgment against her and a pierced corporate entity, MFL, and 2) whether the post-judgment interest rate is variable or fixed.

On April 17, 2017, this Court issued a Memorandum Decision, Findings of Fact, Conclusions of Law, and Order following Court Trial (Memorandum Decision) in *Thomas Lunneborg vs. My Fun Life Corp., Dan E. Edwards, and Carrie L. Edwards* (case no. CV-2014-8968). On April 19, 2017, a proposed Final Judgment was submitted by counsel for Lunneborg. On April 21, 2017, the defendants filed

Defendants' Objection to Proposed Judgment. The Court reviewed that objection

before it signed the proposed Final Judgment on April 24, 2017. Thus, the "objection" is obsolete, but the basis of the objection is contained in and expanded upon in defendants Motion to Alter or Amend Judgment, filed May 3, 2017. Such motion was timely filed.

The defendants raise two issues in their Motion to Alter or Amend Judgment. First, the defendants argue that the Court erred to the extent that Carrie Edwards' separate property and interest in the community estate of Dan and Carrie Edwards is subject to the Final Judgment. Mot. Alter or Amend J. 2. In their Motion, the defendants highlight the following facts: (1) the First Amended Complaint is against the "marital community" of Dan and Carrie Edwards, (2) the First Amended Complaint alleges that Dan Edwards was the sole shareholder, director, and officer of the company, and (3) the Court's Memorandum Decision states that Dan Edwards was the sole shareholder, sole director, CEO, President, and Secretary of MFL. *Id.* at 1–2. The defendants then cite to Idaho Code § 32-912,¹ and suggest that because Carrie Edwards did not consent in writing to Dan Edwards obligating her separate property, that separate property cannot be subject to the Court's Final Judgment. As such, the defendants ask the Court to modify its Final Judgment to specifically note that the Final Judgment is not against Carrie Edwards relative to her separate assets. *Id.* at 2. The second issue raised by the defendants is related to the post judgment interest rate. In its Final Judgment, the Court set the post judgment interest rate at 5.625% per annum. Final J. 1. The defendants argue that this rate should be adjusted annually and ask the Court to modify its Final Judgment accordingly. Mot. Alter or Amend J. 2.

¹ Idaho Code § 32-912 provides: "[A]ny community obligation incurred by either the husband or the wife without the consent in writing of the other shall not obligate the separate property of the spouse who did not consent."

On May 10, 2017, Thomas Lunneborg (Lunneborg) filed Plaintiff's Response to Defendants' Motion to Alter or Amend Judgment. In his Response, Lunneborg states that the Final Judgment is correct and the defendants' Motion should be denied. Pl.'s Resp. Defs.' Mot. Alter or Amend J. 1. First, Lunneborg argues that the Court found Dan and Carrie Edwards jointly and severally liable for MFL's debts because the corporate veil of MFL was pierced. Second, Lunneborg points out that Carrie Edwards was named and has consistently been treated as an individual defendant in her own right due to her individual actions. *Id.* at 2–4. Third, Lunneborg contends that Carrie Edwards' own actions obligated her separate property. *Id.* at 5. Lastly, pursuant to Idaho Code § 28-22-104(2) and *Bouten Construction Company v. H.F. Magnuson Company*, 133 Idaho 756, 922 P.2d 751 (1999), Lunneborg argues the post judgment interest rate should be fixed, not variable, as the defendants suggest. *Id.* at 5.

On May 12, 2017, the defendants filed a Reply to Objection to Motion to Alter or Amend Judgment. In their Reply, the defendants provide the following summary of the First Amended Complaint:

Plaintiff's First Amended Complaint sets forth five causes of action. The first four of those causes of action allege liability on the part of [MFL] only. The fifth cause of action is against Dan Edwards and Carrie Edwards, under the theory of "Piercing the Corporate Veil." Paragraph 8.2 of the First Amended Complaint alleges that Dan Edwards is the "sole shareholder, director, and officer of the company." As for Carrie Edwards, Plaintiff alleged that she was "an officer in fact" of the company, that "the marital community directly benefitted from Mr. and Mrs. Edwards' failure to observe corporate formalities."

Reply to Obj. Mot. Alter or Amend J. 1–2. The defendants argue that because Dan Edwards was the sole shareholder of MFL, he alone is liable for MFL's debts following the piercing of MFL's corporate veil. Put another way, the defendants argue that a non-shareholder like Carrie Edwards cannot be liable for a pierced corporation's debts, and

they note that “[n]o authority is cited for the proposition that any and all of the assets of a non-shareholder directly involved with the day-to-day management of a pierced corporation are liable for the debts of that corporation.” *Id.* at 2. Additionally, the defendants reiterate that Carrie Edwards’ marriage to Dan Edwards should not subject her separate property to the Final Judgment. *Id.* Defendants again cite to Idaho Code § 32-912 and provide citations to case law in support of their argument. *Id.* at 2–4.

A hearing on the Defendants’ Motion to Alter or Amend Judgment was held on May 17, 2017, and the matter was taken under advisement by this Court on that date.

II. STANDARD OF REVIEW.

A motion to alter or amend a judgment pursuant to Idaho Rule of Civil Procedure 59(e) is “addressed to the discretion of the court.” *Lowe v. Lym*, 103 Idaho 259, 263, 646 P.2d 1030, 1034 (Ct. App. 1982) (citing *Cohen v. Curtis Publ’g Co.*, 333 F.2d 974 (8th Cir. 1964)). Thus, “[s]o long as the trial court recognized the matter as discretionary, acted within the outer boundaries of the court’s discretion, and reached its conclusion through an exercise of reason, [the reviewing court] will not disturb the [trial court’s] decision on appeal.” *Slaathaug v. Allstate Ins. Co.*, 132 Idaho 705, 707, 979 P.2d 107, 109 (1999).

III. ANALYSIS.

The defendants filed a Motion to Alter or Amend Judgment pursuant to Idaho Rules of Civil Procedure 59(e) and 60(b). As noted by Lunneborg, the Defendants did not identify the subsection of Rule 60(b) they rely on for relief or otherwise specify the grounds for such relief. Pl.’s Resp. to Defs.’ Mot Alter or Amend J. 2. Additionally, after reviewing the Defendants’ Motion to Alter or Amend Judgment and Reply to Objection

to Motion to Alter or Amend Judgment, the Court is unable to discern a basis for a Rule 60(b) Motion. As a result, the Court will not analyze this matter under Rule 60(b).

The Court, however, finds the motion is properly before it pursuant to Idaho Rule of Civil Procedure 59(e). "Rule 59(e) proceedings afford the trial court the opportunity to correct errors both of fact or law that had occurred in its proceedings; it thereby provides a mechanism for corrective action short of an appeal." *Barmore v. Perrone*, 145 Idaho 340, 344, 179 P.3d 303, 307 (2008) (quoting *Coeur d'Alene Mining Co. v First Nat'l Bank of N. Idaho*, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990)). In their Motion to Alter or Amend Judgment, the Defendants have asked this Court to correct what they perceive to be an error or errors of law. Specifically, the defendants contend that there is no legal basis for holding a non-shareholder liable for corporate debts, there is no legal basis for holding a spouse liable for her shareholder-husband's debts (incurred as a result of piercing the corporate veil), and there is no legal basis for concluding that the post judgment interest is fixed, rather than variable. Each argument is addressed in turn.

A. Piercing the Corporate Veil to Reach a Non-shareholder.

"Piercing the corporate veil imposes personal liability on otherwise protected corporate officers, directors, and shareholders for a company's wrongful acts allowing the finder of fact to ignore the corporate form." *Wandering Trails, LLC v. Big Bite Excavation, Inc.*, 156 Idaho 586, 594, 329 P.3d 368, 376 (2014) (citing *VFP VC v. Dakota Co.*, 141 Idaho 326, 335, 109 P.3d 714, 723 (2005)). To pierce the corporate veil, two requirements must be met. The plaintiff must demonstrate "(1) a unity of interest and ownership to a degree that the separate personalities of the corporation and individual no longer exist and (2) if the acts are treated as acts of the corporation

an inequitable result would follow." *Vanderford Co., Inc. v. Knudson*, 144 Idaho 547, 556, 165 P.3d 261, 270 (2007) (citing *Surety Life Ins. Co. v. Rose Chapel Mortuary*, 95 Idaho 599, 601, 514 P.2d 594, 596 (1973)). The issue raised by the Defendants' Motion is whether the first prong of this test has been met, that is, whether there is a "unity of interest and ownership" between Carrie Edwards, a non-shareholder, and MFL.

It appears that Idaho appellate courts have not explicitly decided if the corporate veil can be pierced to reach a non-shareholder like Carrie Edwards. In a 2005 opinion, the Idaho Supreme Court alluded to this issue in *Maroun v. Wyreless Systems, Inc.*, 141 Idaho 604, 114 P.3d 974 (2005), *abrogated by Wandering Trails, LLC*, 156 Idaho 586, 329 P.3d 368. In that case, the Idaho Supreme Court upheld a district court's decision to grant the defendant's motion to strike a portion of the plaintiff's third amended complaint because the plaintiff never received leave from the court to add the allegation that the defendant was a shareholder.² *Id.* at 613, 114 P.3d at 983. In reaching that decision, the Idaho Supreme Court stated:

The complaint in this case had previously only alleged Robinson was a director and officer in Wyreless. *Merely being a director or officer of a corporation is not sufficient to pierce the corporate veil.* Thus, adding the allegation that Robinson was a shareholder alleged an entirely new cause

² The Idaho Supreme Court summarized the district court's reasoning as follows:

The district court granted the motion, noting the original complaint alleged that [the defendant] was a shareholder, but the first and second amended complaints deleted that allegation as to [the defendant]. When the third amended complaint was filed, it added the word "shareholder" as to [the defendant], but nowhere in [the plaintiff's] briefing or affidavit in support of the third motion to amend did [the plaintiff] mention adding a shareholder liability claim against [the defendant].

Maroun, 141 Idaho 604 at 613, 114 P.3d at 983.

of action against Robinson for which [the plaintiff] had not obtained permission.

Id. (emphasis added). While this quote from *Maroun* viewed out of context suggests that in order to pierce the corporate veil, one must be a shareholder of the corporation, not merely a non-shareholder who is an officer or director, the quoted portion is dicta and, thus, it is not binding on this Court. See *State v. Hawkins*, 155 Idaho 69, 74, 305 P.3d 513, 518 (2013) (explaining that if a "statement is not necessary to decide the issue presented to the appellate court, it is considered to be dictum and not controlling"). The Court finds this to be dicta for the following reasons. The Idaho Supreme Court in *Maroun* upheld the district court's decision to strike a portion of the third amended complaint because the district court never granted the defendant leave to amend the complaint, and doing so is solely within the trial court's discretion. The statement "Thus, adding the allegation that Robinson was a shareholder alleged an entirely new cause of action against Robinson for which [the plaintiff] had not obtained permission" was made in the context of a claim of shareholder liability, not in the context of piercing the corporate veil, and thus, was not "necessary to decide the issue." This Court finds it is dicta for the additional reasons: (1) this quote is in the context of a motion to strike, (2) there is no analysis and no citation to other binding authority for this proposition, and (3) the implication that shareholder status is a prerequisite to veil-piercing is a fairly important one. Because this is a fairly important legal issue, this Court finds it to be a bit of a stretch to make a decision solely on this statement without some additional guidance or analysis from the Idaho Supreme Court. Finally, this quote from *Maroun* contradicts the Idaho Supreme Court's definition of piercing the corporate veil as provided in *Wandering Trails, LLC*, a more recent decision, which

states that officers and directors can be personally liable for a pierced corporation's misconduct. *Wandering Trails, LLC*, 156 Idaho at 594, 329 P.3d at 376.

Furthermore, in *Swenson v. Bushman Investment Properties, Ltd.*, 870 F. Supp. 2d 1049 (D. Idaho 2012), the U.S. District Court for the State of Idaho noted that Idaho courts "have not squarely addressed whether an individual must be [a] shareholder to be potentially liable for corporate debts." *Id.* at 1058–59. In doing so, it concluded that an arbitrator did not "manifestly disregard" Idaho law in determining that non-shareholders . . . could be personally liable for the [corporation's] debts." *Id.* at 1059. The U.S. District Court explained that the arbitrator had found two non-shareholders, who were employees of a corporation, personally liable for the pierced corporations' debts, in part, because the non-shareholders were "part of an 'insider' group that controlled [the] entities." *Id.* at 1053, 1059.

Unlike Idaho, other jurisdictions have considered whether an individual must be a shareholder to be liable for corporate debts, and, as summarized in *Buckley v. Abuzir*, 8. N.E.3d 1166 (Ill. Ct. App. 2014), "[c]ourts and commentators are split as to whether the veil may be pierced to reach nonshareholders." *Id.* at 1172. Based on the Illinois Court of Appeals' extensive review of persuasive case law, a majority of states "support[] the conclusion that lack of shareholder status—and, indeed, lack of status as an officer, director, or employee—does not preclude veil-piercing." *Id.* at 1176–77. It points to New York, Colorado, Connecticut, Indiana, and more than a dozen other jurisdictions as supporting the conclusion that lack of shareholder status does not preclude veil-piercing, while Maine, Maryland, North Carolina, and Texas require shareholder status to pierce the corporate veil. *Id.* at 1172–77 (providing string citations to case law requiring and not requiring shareholder status as a prerequisite to veil-

piercing). California and Florida have reached inconsistent results according to the Illinois Court of Appeals' analysis. *Id.* at 1175.

Based on its review of persuasive authority from other jurisdictions, as well as judicial decisions within Illinois, the Illinois Court of Appeals made the following observations and conclusions:

Illinois falls in line with the majority. In *Fontana v. TLD Builders, Inc.*, 362 Ill. App. 3d 491 (2005), plaintiff property owners hired defendant's construction corporation to construct a single-family home. The builder abandoned the project, and plaintiffs sued, seeking to pierce the corporation's veil and hold defendant personally liable. *Id.* at 494–95. Following a bench trial, the trial court pierced the veil and held defendant and his corporation jointly and severally liable. *Id.* at 499. On appeal, defendant argued that the trial court erred in piercing the corporate veil, because he was a nonshareholder and, therefore, the unity-of-interest-and-ownership prong could not be met. *Id.* at 500–01. The *Fontana* court disagreed. *Id.* at 501. Noting that piercing the corporate veil is an equitable remedy that looks to substance over form, the court held that status as a nonshareholder does not preclude piercing the corporate veil, because equitable ownership may satisfy the unity-of-interest-and-ownership prong. *Id.* at 501, 503; see also *Judson Atkinson Candies, Inc. v. Latini-Hohberger Dhimantec*, 529 F.3d 371, 381 (7th Cir. 2008) (“Under Illinois law, it is possible for a non-shareholder to be found personally liable under a veil-piercing theory.”); *Macaluso v. Jenkins*, 95 Ill. App. 3d 461, 465–66 (1981) (although defendant was a nonshareholder, his equitable ownership and control justified piercing the corporate veil); Markus May, *Helping Business Owners Avoid Personal Liability*, 95 Ill. B.J. 310, 311 (2007) (discussing Illinois law, stating “a non-shareholder individual can be personally liable for a corporation's debts if the two-prong test for piercing the corporate veil is met”).

Defendant argues that *Fontana* is distinguishable, because the defendant in that case was the corporation's president. In *Fontana*, however, the defendant's liability did not turn on his status as an officer of the corporation. Indeed, the court did not mention the defendant's office in its piercing analysis. *Fontana*, 362 Ill. App. 3d at 500–03. Rather, its decision rested on the equitable nature of veil-piercing, specifically, whether a person exercises equitable ownership and control over a corporation, such that separate personalities no longer exist. *Id.* at 501.

Considering shareholder status as a factor rather than a prerequisite to veil-piercing also makes good sense. We find Professor Glenn G. Morris's logic persuasive:

“The very point of veil-piercing is to avoid injustice by disregarding the formal structure of a transaction or relationship in favor of its

substance—to impose personal liability on persons who have, in substance, run their nominally incorporated business in a way that makes it unfair to allow them to deny their responsibility for the obligations of the business by interposing the corporation's separate legal personality. But if the corporation's very existence is to be disregarded in a veil-piercing case, it hardly makes sense to resurrect the stock ownership records of the legally nonexistent corporation as a means of limiting the class of persons that may be found to have acted in a way that justifies making them personally liable under a veil-piercing theory." *Morris*, supra ¶ 17, at 508.

There are many ways to organize a sham corporation. In some instances, the wrongdoer neither holds stock nor serves in an official capacity. Making officer, director, or shareholder status a prerequisite to veil-piercing elevates form over substance and is therefore contrary to veil-piercing's equitable nature.

Id. at 1177–78.

While *Buckley* is not binding authority, the Court finds its reasoning persuasive and, given the lack of Idaho case law on this issue, the Court likewise finds that shareholder status is a *factor* to consider when deciding whether the unity-of-interest-and-ownership prong is satisfied, but it is not a dispositive factor. This Court finds that shareholder status is not a prerequisite or bar to piercing the corporate veil. Thus, to the extent that Carrie Edwards' status as a non-shareholder was not explicitly considered as a factor in the Court's veil-piercing analysis in its April 17, 2017, Memorandum Decision, the Court amends its Memorandum Decision in order to consider that factor as part of the first prong of its veil-piercing analysis. In that April 17, 2017, Memorandum Decision, the Court on several occasions noted that Carrie Edwards was not a shareholder and that the only shareholder was her husband Dan Edwards. That Memorandum Decision is replete with this Court's analysis of how Carrie Edwards' actions support this Court's decision to pierce the corporate veil of MFL. Carrie Edwards testified she was the Chief Administrative Officer. Mem. Dec. 32. She testified she was the COO before Lunneborg was hired and became Executive

Vice President after he was hired. *Id.* She testified "our companies gave advance monies to each other", that "one to two times a month, depending on cash flow" they would transfer money from one corporation to another, then back again. *Id.* at 32-33. She testified that this was done to "help out" their various businesses. She testified this was all kept track in their records, and it all got paid back. *Id.* at 33. However, as the Court noted:

The one record referred to in Carrie Edwards' testimony shows \$102,500.00 going from MFL to TrafficCorp and Ink Drop Signs, and only \$15,000.00 has come back to MFL, all from TrafficCorp. Thus, Carrie Edwards' claim that "it all got paid back" is not supported by her own records. However, this Court has not been presented with any supporting documentary evidence that would back up this spreadsheet. She testified that at times MFL would make payments on their corporate American Express Card, at times TrafficCorp might pay. She testified she and Dan Edwards owned a Jeep and a 2014 Dodge Ram 1500 truck, which were titled in their names but the loans on the two trucks were paid by their businesses. She testified that neither she nor Dan Edwards received a salary. She testified that they received "shareholder distributions", and these shareholder distributions from MFL amounted to \$74,830.00 in 2013, \$265,684.00 in 2014, and \$26,258.00 in 2015. Defs' Ex. E. She testified she and Dan Edwards also received about \$368,000.00 from purchases on MFL credit cards.

Id. at 33-34. While Carrie Edwards was not a shareholder, she certainly received all financial benefits from being married to the sole shareholder. More important than the fact that Carrie Edwards benefits by being married to the sole shareholder, is the fact that Carrie Edwards' own actions made her husband's financial remuneration so great, and conversely, her own actions made MFL so judgment-proof. Carrie Edwards testified at length at the trial about her involvement in the financial operations of all the businesses she and Dan Edwards owned, but especially, MFL. Part of the reason Dan Edwards had an incredibly large \$265,684.00 shareholder distribution from MFL for 2014, the year Lunneborg worked for MFL for two months, on top of the \$368,000.00 in credit card purchases from MFL, was because Carrie Edwards made it that way. She

was the one moving money around. Part of the reason MFL later became judgment-proof is because \$87,500 went from MFL to TrafficCorp and Ink Drop Signs, and never came back to MFL. That was due to Carrie Edwards' actions. There are other reasons MFL became prematurely judgment-proof. Those reasons are also due to Carrie Edwards' actions. As this Court noted:

Carrie Edwards testified that she attempted to have all three of the companies (TrafficCorp, Ink Drop Signs, MFL) operating out of 5077 N. Building Center Drive share the rent and utility expenses evenly. She also testified that the three companies shared the expenses of maintenance on the building. However, the records provided by the defendants do not support these claims. MFL paid the full amount of rent on the building (\$5,000/month) for 15 straight months, August 2013 through October 2014, when the Edwards purchased the building through their company, Edventures, LLC. Defs' Ex. H, pp. 3, 5, 8, 11, 13, 14, 20, 22, 25, 27, 29, 32, 34, 36, 38. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid utility payments for the building to Kootenai Electric every month from August 2013 through August 2014, and several months thereafter. *Id.*, at 4, 8, 9, 13, 15, 19, 21, 24, 26, 28, 31, 33, 36, 43, 49. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid utility payments to the City of Coeur d'Alene every month from August 2013 through August 2014. *Id.*, at 5, 6, 9, 12, 14, 17, 20, 23, 25, 28, 30, 34. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid utility payments to Clearwater Springs every month from August 2013 through July 2014. *Id.*, 5, 6, 9, 12, 14, 17, 20, 23, 26, 28, 30, 32. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid utility payments to Avista every month from October 2013 through August 2014. *Id.*, at 8, 9, 13, 16, 19, 22, 24, 26, 29, 31, 33, 35. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid property taxes on the building at 5077 N. Building Center Drive on three separate occasions in 2013 and 2014, totalling more than \$12,000. *Id.*, at 10, 14, 30; see also Pl.'s Ex. 8, p. 2. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid nearly \$65,000 in "Repairs and Maintenance" to the building at 5077 N. Building Center Drive over a 2.5-year period. Pl.'s Ex. 8, p. 2. There is no record of MFL being made whole by the Edwards' other companies for this expense. Carrie Edwards testified that she and Dan Edwards are the sole owners of Edventures, LLC, which now owns the building at 5077 N. Building Center Drive. She also testified that Edventures purchased that building on a "lease-to-own" option, meaning that Edventures, and therefore the Edwardses, were personally enriched by the payments made toward rent, utilities, taxes, and maintenance on

the building. The Edwards also considered their 2014 Jeep SRT and 2014 Dodge Ram 1500 to be assets of MFL, using MFL funds to make loan payments and pay for over \$29,000 in repair and maintenance between January 1, 2013 and July 30, 2015. Pl.'s Ex. 8, p. 2. However, they used the vehicles for personal use a substantial portion of the time.

Id. at 34-36. Carrie Edwards was an officer of MFL. She was not a director nor was she a shareholder. The Court finds that not being a director or a shareholder does not matter because the Court finds Carrie Edwards primarily, if not exclusively, moved the money around. Carrie Edwards' actions in moving the money around were the most important and most significant disregard of MFL's corporate entity. Those actions of Carrie Edwards are what made her husband, the sole shareholder of MFL, artificially rich, and made MFL prematurely judgment proof. Due to Carrie Edwards' actions, her separate property is subject to the Final Judgment in this case.

B. Holding a spouse liable for her shareholder-husband's debts.

As mentioned above, one of defendants' arguments as to why Carrie Edwards' separate property should not be liable is because Carrie Edwards did not consent in writing to Dan Edwards obligating her separate property. This argument is made pursuant to Idaho Code § 32-912.

Because the Court concludes that Carrie Edwards' separate property is liable for MFL's debts, despite being a non-shareholder, it need not consider the merits of this argument.

C. Post Judgment Interest Rate.

The Court agrees with Lunneborg and finds that he is entitled to a fixed interest rate of 5.625% per annum, and not a variable rate as the defendants argue. See I.C. § 28-22-104(2); *Bouten Constr. Co.*, 133 Idaho at 764-65, 922 P.2d at 759-60 (explaining that the 1996 amendment to Idaho Code § 28-22-104(2) provides for a fixed interest rate).

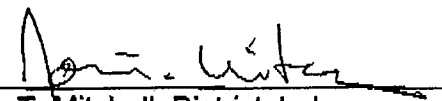
IV. CONCLUSION AND ORDER.

The Court denies the defendant's Motion to Alter or Amend Judgment as to Carrie Edwards' personal liability, but in doing so, the Court clarifies the legal basis for finding that Carrie Edwards is liable for MFL's debts. The Court denies the defendants' Motion to the extent that it asks this Court to find that Carrie Edwards' personal assets are not subject to the Final Judgment. The Court's Order that "the corporate veil of defendant MFL is pierced and Defendants Dan Edwards and Carrie Edwards are also jointly and severally liable for all damages and attorney fees" (Memorandum Decision, Conclusions of Law and Order Following Court Trial 47) is the correct result, and this Memorandum Decision and Order Denying Defendants' Motion to Alter or Amend Judgment clarifies why Carrie Edwards' separate property is liable for MFL's debts.

The Court denies the Defendants' Motion to Alter or Amend Judgment to the extent that the defendants ask the Court to impose a variable post judgment interest rate, rather than a fixed rate.

IT IS HEREBY ORDERED defendants' Motion to Alter or Amend Judgment is **DENIED.**

Entered this 5th day of June, 2017.

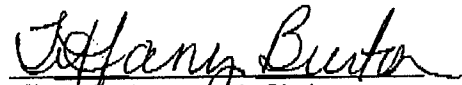

John T. Mitchell, District Judge

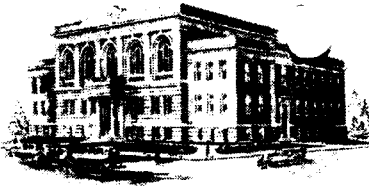
Certificate of Service

I certify that on the 5 day of June, 2017, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer
Ed Anson/Emily Arneson Fax #
667-8470

Lawyer
Michael Hague Fax #
800 868-0224


Tiffany Burton, Deputy Clerk



Julie K. Foland
 Official Court Reporter - STATE No. 639
 324 West Garden Avenue COURTES BOISE } SS
 Coeur d'Alene, Idaho 83814-9000 KOOTENAI }
 Phone: (208) 446-1130
 Email: jfoland@jcpys.com

2017 AUG 30 PM 3:21

TO: Clerk of the Court
 Idaho Supreme Court
 451 West State Street
 Boise, Idaho 83720

CLERK DISTRICT COURT
W. L. ...
 DEPUTY

DOCKET NO. 45200

(THOMAS LUNNEBORG
 (
 (vs.
 (
 (MY FUN LIFE

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on August 30, 2017, I lodged a transcript of 650 pages in length, including the March 13-15, 2017, Court Trial, the May 17, 2017, Hearing re: Motion to Alter or Amend Judgment, and the June 7, 2017, Hearing re: Attorneys' Fees and Costs in the above-referenced appeal with the District Court Clerk of the County of Kootenai in the First Judicial District.

Julie K. Foland
 JULIE K. FOLAND
 August 30, 2017

IN THE SUPREME COURT OF THE STATE OF IDAHO

THOMAS LUNNEBORG,)	
	)	SUPREME COURT
PLAINTIFF/RESPONDENT,	)	CASE NO. 45200
)	
VS.)	
	)	DISTRICT COURT
MY FUN LIFE, a Delaware Corporation,	)	CASE NO. CV 2014 – 8968
DAN E. EDWARDS and CARRIE L.)	
EDWARDS, husband and wife,)	
)	
DEFENDANT/APPELLANTS)	

CLERK’S CERTIFICATE OF EXHIBITS

I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court of Appeals.

I further certify that the no exhibits were offered.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai County, Idaho this 22nd day of September, 2017.

Jim Brannon
Clerk of the District Court


Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF IDAHO

THOMAS LUNNEBORG,)	
	)	SUPREME COURT
PLAINTIFF/RESPONDENT,	)	CASE NO. 45200
)	
VS.)	
)	
MY FUN LIFE, a Delaware Corporation,)	
DAN E. EDWARDS and CARRIE L.)	
EDWARDS, husband and wife,)	
)	
DEFENDANT/APPELLANTS)	

CLERK'S CERTIFICATE OF SERVICE

I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record and transcripts to each of the Attorneys of record in this cause as follows:

MARY SHEA
109 N Arthur – 5th Floor
Pocatello, ID 83204-0991

CHRISTOPHER G VARALLO
DANIEL J GIBBONS
422 W Riverside Ave, Suite 1100
Spokane, WA 99201

IN WITNESS WHEREOF, I have unto set my hand and affixed the seal of the said Court this 22nd day of September 2017.

Jim Brannon
Clerk of District Court

By: *Kurt [Signature]*



IN THE SUPREME COURT OF THE STATE OF IDAHO

THOMAS LUNNEBORG,)	
	)	SUPREME COURT
PLAINTIFF/RESPONDENT,	)	CASE NO. 45200
)	
VS.)	
)	
MY FUN LIFE, a Delaware Corporation,)	
DAN E. EDWARDS and CARRIE L.)	
EDWARDS, husband and wife,)	
)	
DEFENDANT/APPELLANTS)	

I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the above and foregoing record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I further certify that no exhibits were offered in this case.

I certify that the Attorneys for the Appellant and Respondent were notified that the Clerk's Record and transcripts were complete and ready to be picked up, or if the attorney is out of town, the copies were mailed by U.S. mail, postage prepaid on the 22nd day of September 2017.

I do further certify that the Clerk's Record and transcript will be duly lodged with the Clerk of the Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai County, Idaho this 22nd day of September 2017.

JIM BRANNON
Clerk of the District Court

By: *Karl Hays*
Deputy Clerk

