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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

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CALDWELL LAND & CATTLE, LLC, an Idaho  
limited liability company, a/k/a CALDWELL  
LAND & CATTLE COMPANY, LLC,

Plaintiff/Respondent,

v.

JOHNSON THERMAL SYSTEMS, INC., an  
Idaho corporation,

Defendant/Appellant.

Supreme Court Docket No. 46056-2018

Canyon County Case No. CV-2015-587

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**RESPONDENT'S BRIEF**

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Appeal from the District Court of the Third Judicial District for Canyon County.

Honorable Judge Christopher S. Nye, District Judge, presiding.

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Pursuant to Idaho Appellate Rule 34, and in accordance with Rules 34.1, 35, and 36, Plaintiff/Respondent Caldwell Land & Cattle, LLC (“CLC”) respectfully responds to the *Appellant’s Brief* filed by Defendant/Appellant Johnson Thermal Systems, Inc. (“JTS”).

**STATEMENT OF THE CASE (I.A.R. 35(b)(3))**

**Statement of the Case.** This appeal is taken from the *Findings of Fact and Conclusions of Law* (“Findings and Conclusions”) [R. 957-67], *Order Awarding Costs and Attorney Fees to Plaintiff* (“Order Awarding Fees”) [R. 974-82], and *Amended Judgment* (“Am. Judgment”) [R. 983-84] entered by the District Court against JTS: (1) finding JTS “guilty of unlawful detainer” under Idaho Code § 6-303; (2) finding JTS liable for breach of a “Commercial Lease Agreement” (the “Lease”) (*Trial Ex. 1*<sup>1</sup>); (3) awarding CLC damages for unlawful detainer and breach of

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<sup>1</sup> All trial exhibits cited herein are on record with the Court. *Certificate of Exhibits* [R. 1000-01].

contract according to the Lease; and (4) awarding CLC attorney fees. JTS takes issue with the District Court's legal conclusions regarding JTS's unlawful detention and breach of contract, and with the District Court's factual findings concerning JTS's failure to exercise a six-month option included in an amendment to the Lease (the "Third Amendment"). *Trial Ex. 3*. JTS avers that the District Court's award of damages is not supported by substantial and competent evidence. JTS also asserts that the District Court abused its discretion in awarding attorney fees.

As discussed below, the District Court found JTS guilty of unlawfully detaining commercial property (the "Property") that JTS leased from CLC and CLC's predecessor, the Gilbert Family Partnership ("Gilbert"), under the Lease. The District Court correctly awarded CLC damages for JTS's unlawful detainer under Idaho Code § 6-316. Because JTS's unlawful detainer concerned its default of the Lease, the District Court also correctly considered CLC's related claims for breach of contract and breach of the implied covenant of good faith, as well as JTS's contract-based counterclaims. The District Court correctly found that JTS did not exercise the six-month option in the Third Amendment. Because JTS did not exercise the six-month option, the District Court correctly found that JTS carried over as a month-to-month tenant and, thereafter, unlawfully detained the Property and breached the Lease by refusing to vacate after receiving notice of termination. The District Court found JTS liable for breach of contract and breach of the implied covenant, and correctly awarded damages to CLC according to provisions in the Lease that carried over into JTS's holdover tenancy. According to indemnity provisions contained in the Lease, these damages properly included compensating CLC for its resulting liability to Caldwell Peterbilt, Inc. ("Peterbilt"), CLC's new tenant, because of the delay caused by JTS's unlawful

detainer and breach of contract. JTS also breached the Lease by removing an electrical transformer (the “Transformer”) without CLC’s permission, which left the Property without 480V power and created further substantial delay and caused CLC to incur added liability and damages. The District Court’s findings of unlawful detainer and breach of contract were not inconsistent and conformed with the Lease, and the District Court did not award duplicate damages for claims. Following entry of judgment against JTS, the District Court appropriately awarded attorney fees and costs to CLC, the prevailing party, which were increased in significant part by JTS’s aggressive defense before and during trial, and its filing several post-judgment motions denied by the District Court.

CLC respectfully requests the Court affirm the District Court’s findings of fact and conclusions of law and final judgment. CLC further requests the Court award it attorney fees and costs for this appeal and issue the appropriate remittitur to the District Court.

**Course of the Proceedings Below.** CLC initiated this action when JTS still occupied the Property and refused to vacate despite receiving notice of termination. *Complaint for Eviction* at 7, ¶¶ 29-31 [R. 29]. CLC prayed for restitution and damages caused by JTS’s unlawful detainer. *Id.* at 9, ¶ 38 [R. 31]. After JTS abruptly abandoned possession (despite repeated representations that it would not vacate), CLC filed an amended complaint that reasserted a first claim for unlawful detainer damages and separately alleged a second claim for breach of the Lease and third claim for breach of the implied covenant of good faith. *Am. Complaint* at 13-17, ¶¶ 57-77 [R. 62-66].<sup>2</sup> JTS answered and asserted counterclaims that were also premised on the Lease. *Answer to Am.*

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<sup>2</sup> JTS asserted a fourth claim for intentional injury to the Property, which was dismissed by the District Court and is not the subject of appeal. *Findings and Conclusions* at 8 n. 1 [R. 964].

*Complaint and Counterclaim* (“Answer and Counterclaim”) at 10-13, ¶¶ 24-48 [R. 102-05].

A three-day bench trial was held on all claims. [Tr. Vol. I, 1-187]. (Before trial, the District Court denied motions for summary judgment filed by both parties. [R. 196-202, 337-38].) After trial, the parties submitted closing arguments by brief, which cited to transcripts of trial testimony and admitted exhibits. *CLC’s Closing Trial Brief* [R. 593-615]; *Defendant’s [Proposed—and Denied—] Findings of Fact and Conclusions of Law* [R. 573-92]. As introduced above, the District Court entered findings of fact and conclusions of law in favor of CLC and, later, entered judgment against JTS. *Findings and Conclusions* [R. 957-67]; *Judgment* [R. 955-56]. Following entry of judgment, the District Court granted CLC’s request for attorney fees and costs. *Order Awarding Fees* [R. 974-82]. The District Court also denied JTS’s motion to reconsider and to alter, amend, or vacate the judgment. *Decision Denying Combined Motions* [R. 968-71]. The District Court then entered an amended judgment, from which JTS appealed. *Am. Judgment* [R. 983-84]; *Notice of Appeal* [R. 946-54]; *Am. Notice of Appeal* [R. 985-95]. JTS posted a supersedeas bond and execution of the judgment was stayed. *Am. Order Staying Execution* [R. 996-98].

**Statement of Facts.** JTS initially leased the Property from CLC’s predecessor, Gilbert, from March 2012 to April 2013. *Trial Ex. 1*. JTS and Gilbert twice extended the Lease in writing; the first extension was through April 2014; and the second extension was through October 2015. *Trial Exs. 2, 3*. The second extension, the Third Amendment, was entered with the understanding that JTS was constructing a new building and would vacate the Property as soon as that building was completed. *Trial Ex. 4* [Tr. Vol I, 8 (17:13-17), 20-21 (68:22-69:1)]. At JTS’s insistence, the Third Amendment contained an option to extend for another six months through April 2015 or



continue month to month. *Trial Ex. 3* at ¶ 3; *Trial Ex. 4* [Tr. Vol. I, 10 (25:9-12), 18 (57:25-58:3)]. JTS understood that Gilbert planned to find a new tenant or purchaser of the Property as soon as JTS vacated. [Tr. Vol. I, 9 (22:8-13), 11 (29:5-16), 65 (229:5-10)].

JTS did not exercise the six-month option. In several communications between JTS and Gilbert's agent about the Lease, JTS never expressed any written or oral intent to exercise the six-month option. [Tr. Vol. I, 13 (39:11-19) (40:7-10), 17 (55:13-56:7), 23-24 (78:21-79:4) (80:13-81:1) (82:21-83:5), 38 (138:4-13), 40 (147:12-20), 66 (232:16-233:7), 68 (241:9-19)]. Instead, JTS only communicated potential exit dates that were less than six months. *Trial Exs. 5-7* [Tr. Vol. I, 67-68 (237:6-16) (239:24-240:4) (242:1-13)]. JTS also did not pay rent through April 2015. [Tr. Vol. I, 24 (81:16-82:12)]. Because of JTS's expressed intent to vacate and stay "for an additional 3-6 months," in October 2014, at the end of the extended term, Gilbert listed the Property for sale. *Trial Ex. 7* [Tr. Vol. I, 22 (75:2-11)]. Gilbert's agent understood that the six-month option had not been exercised. [Tr. Vol. I, 76 (275:16-22), 67-68 (237:17-241:8)]. When the Property was listed for sale, JTS continued to occupy and pay monthly rent. Gilbert's agent specifically asked JTS to keep him informed about the date that JTS planned to vacate. *Trial Ex. 7*. However, JTS never informed Gilbert or Gilbert's agent that it might occupy the Property through April 2015. [Tr. Vol. I, 12 (34:20-35:6), 22 (75:21-76:13), 67-68 (237:17-241:8)].

In November 2014, CLC purchased the Property from Gilbert. *Trial Ex. 8* [Tr. Vol. I, 100 (370:15-21)]. Consistent with JTS's representations, CLC contemplated that JTS would vacate within a month of closing so that CLC's new tenant, Peterbilt, could move in. [Tr. Vol. I, 103 (380:7-10)]. Before the Property closed, CLC entered a lease with Peterbilt (the "Peterbilt Lease"),

which obligated CLC to make the Property available starting on February 1, 2015. *Trial Ex. 21* at 3, § 2.1(g) [Tr. Vol. I, 100 (371:17-20), (379:11-17)].

In early December 2014, Gilbert's agent notified JTS that the Property would be sold and said that the new tenant wanted to move in as soon as possible. *Trial Ex. 9*. For the first time, JTS asserted that it had purportedly exercised the six-month option by continuing to pay rent for the months of November and December. *Id.* [Tr. Vol. I, 36 (131:15-132:7), 66 (233:12-21), 77 (276:14-24)]. However, these payments were sent to Arlene Gilbert (an elderly widow living in St. George, Utah) and not to Gilbert's agent,<sup>3</sup> who had requested notice of JTS's plans to vacate. [Tr. Vol. I, 23-24 (80:13-81:11), 62 (218:5-12)]. The payments were also not accompanied with a written exercise of the six-month option. [Tr. Vol. I, 36 (132:3-11)]. While JTS belatedly claimed that the six-month option was exercised, internally, its principals stated that this argument was for gaining leverage to delay an eviction. *Trial Ex. 9*. At trial, JTS could not show its purported intent to exercise the six-month option before the term of the Lease expired in October 2014. [Tr. Vol. I, 23 (80:9-12), 37 (133:8-15), 40-41 (146:5-9) (147:21-148:11), 184 (686:7-687:11)].

On December 11, 2014, Gilbert sent a "Notice of Termination" of the Lease to JTS and requested that it vacate by January 31, 2015. *Trial Ex. 13*. Gilbert and CLC closed on December 31, 2014, and CLC assumed the Lease. [Tr. Vol. I, 100 (370:22-23)]. In communications with CLC, JTS refused to vacate by the noticed date. [Tr. Vol. I, 104-05 (384:8-389:19)]. On January 29, 2015, JTS's attorney informed that JTS would not vacate until April 15, 2015. *Trial Ex. 17*.

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<sup>3</sup> See also footnote 20, *infra*.

However, sometime on or around February 15, 2015, JTS abruptly abandoned the Property. *Findings and Conclusions* at 3 [R. 959] (resolving the disputed issue when JTS vacated).

When JTS finally vacated, it did not make certain repairs to the Property. *Trial Ex. 18* [Tr. Vol. 42-43 (153:5-13) (157:4-6)]. After JTS vacated, but in the immediate days before Peterbilt could move in, JTS instructed Idaho Power to remove a Transformer located on the Property. *Trial Ex. 20* [Tr. Vol. I, 35 (127:20-128:3), 80 (288:2-24)]. Removing the Transformer deprived the Property of 480V power, which was necessary for Peterbilt to make use of the premises. [Tr. Vol. I, 48-49 (180:8-182:2), 88 (320:19-321:10)]. Although JTS understood that it required permission, it did not inform or ask CLC to enter the Property and remove the Transformer. [Tr. Vol. I, 31 (109:11-17), 35-36 (128:4-130:8), 42 (156:15-21), 107 (396:9-12)]. Had JTS informed CLC, then Idaho Power would not have removed the Transformer to deprive the Property of power. [Tr. Vol. I, 85 (308:13-24) (309:24-310:2)]. Because of JTS's actions, first, by refusing to vacate by January 31, 2015, and later, by removing the Transformer, Peterbilt was unable to occupy the Property until after the end of April 2015 when power was restored. [Tr. Vol. I, 87-89 (316:18-317:14) (323:8-324:10), 99 (364:7-19), 145-46 (532:16-25) (535:23-536:9)].

At trial, CLC presented evidence of damages, including liability that it incurred to Peterbilt because of the delay caused by JTS's actions. *CLC's Closing Trial Brief* at 15-17 [R. 608-10] (citing exhibits and testimony). Contrary to JTS's averment, the District Court did not award damages simply because JTS overstayed the Lease by two weeks. *Appellant's Brief* at 3. Rather, the District Court awarded damages because of JTS's unlawful detention and breach of the Lease, including removing the Transformer, which caused damages to CLC. *Findings and Conclusions*

at 8-9 [R. 964-65]. Under the Lease, JTS agreed to indemnify CLC for the liability it incurred to Peterbilt. *Trial Ex. 1* at 2, 5.

**ISSUES PRESENTED ON APPEAL (I.A.R. 35(b)(4))**

1. Did the District Court correctly award damages caused by JTS's unlawful detention?
2. Did the District Court correctly consider the parties' related claims under the Lease?
3. Did the District Court correctly find that JTS did not exercise the six-month option?
4. Did the District Court correctly award damages caused by JTS's breach of the Lease?
5. Did the District Court appropriately award attorney fees to CLC?

**ATTORNEY FEES ON APPEAL (I.A.R. 35(b)(5))**

Pursuant to Idaho Code § 6-324, the "Enforcement Expenses" provision of the Lease, and Idaho Code § 12-120 (3), CLC respectfully requests the Court award it attorney fees for this appeal.

**ARGUMENT (I.A.R. 35(b)(6))**

**I. THE DISTRICT COURT FOUND JTS GUILTY OF UNLAWFUL DETAINER AND CORRECTLY AWARDED DAMAGES UNDER I.C. § 6-316 AND CONSIDERED RELATED CONTRACT CLAIMS.**

The District Court did not exceed its jurisdiction by awarding damages for JTS's unlawful detainer. The District Court also did not exceed its jurisdiction by considering provisions of the defaulted Lease and related claims for JTS's breach of contract. In this case, JTS was found "guilty of unlawful detainer" under Idaho Code § 6-303 and, pursuant to Idaho Code § 6-316, the District Court correctly awarded damages in accordance with the Lease.

In Idaho, unlawful detainer proceedings are not limited to a determination of a tenant's right of possession. By statute, Idaho Code § 6-316 specifically "allows a landlord in an unlawful

detainer action to recover, in addition to possession of his property,” both “damages and rent found due.” *Texaco, Inc. v. Johnson*, 96 Idaho 935, 940, 539 P.2d 288, 293 (1975) (emphasis added); *see also Brooks v. Coppedge*, 71 Idaho 166, 170, 228 P.2d 248, 250 (1951) (stating, a landlord, who proves unlawful detainer, “is entitled to three things: [1] restitution of the premises, [2] rent then due and unpaid, and [3] any damages alleged and proven”). To determine the amount of rent and whether “damages are the proximate or direct result of the unlawful detention,” *Texaco*, 96 Idaho at 940, 539 P.2d at 293, a court may necessarily consider terms of the parties’ lease agreement. *See Nicholson v. Coeur D’Alene Placer Mining Corp.*, 161 Idaho 877, 392 P.3d 1218 (2017).

The phrase “special statutory proceeding,” used by JTS to describe an action for unlawful detainer,<sup>4</sup> is borrowed from an old version of Idaho Rule of Civil Procedure 81(a) that was rescinded in 1975.<sup>5</sup> *Olson v. Bedke*, 97 Idaho 825, 831, 555 P.2d 156, 162 (1976). This Court has since confirmed that a declaration of property ownership is not one of the remedies available for an unlawful detainer claim. *Carter v. Zollinger*, 146 Idaho 842, 845, 203 P.3d 1241, 1244 (2009); *see also Richardson v. King*, 51 Idaho 762, 766-67, 10 P.2d 323, 324-25 (1932). However, the Court has never diminished, let alone abrogated, the mandate of the Idaho legislature that

[I]f the proceeding be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held . . . the judgment shall also declare the forfeiture of such lease or agreement. The jury, or the court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff . . . by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and find the amount of any rent due, . . . and the judgment shall be rendered against the defendant guilty of the . . . unlawful

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<sup>4</sup> *Appellant’s Brief* at 10 (heading).

<sup>5</sup> Rule 81(a) formerly stated that the Idaho Rules of Civil Procedure “do not govern the practice in any special proceedings[.]” *Texaco*, 96 Idaho at 938, 539 P.2d at 291. Today, the Rules “apply to all civil and special statutory proceedings.” *Id.* at n. 3.

detainer, for the amount of the damages thus assessed, and of the rent found due.

I.C. § 6-316 (emphasis added).

In *Carter* (cited by JTS), the Court invoked the reasoning of *Richardson* (also cited by JTS) to reverse findings by the district court “concerning the nature and extent of the Respondents’ interest in the [subject] property [and] whether Appellants [were] estopped from denying any such interest . . .” 146 Idaho at 1245, 203 P.2d at 846. In both *Carter* and *Richardson*, the parties made competing arguments for ownership of the subject property, which the Court held could not be resolved through a claim for unlawful detainer. *Id.* at 1242-43, 843-44; *Richardson*, 51 Idaho at 765-66, 10 P.2d at 323-24 (arguing that the transaction “amounted to a mortgage” instead of a landlord-tenant relationship). Because the district courts in both cases determined “that no landlord-tenant relationship exist[ed],” thus terminating the unlawful detainer claim, the Court was not asked—and it did not consider—whether the putative landlord was entitled to rent and damages under Idaho Code § 6-316. *Carter*, 146 Idaho at 844, 203 P.3d at 1243; *Richardson*, 51 Idaho at 766-67, 10 P.2d at 324-25 (concluding that because “the relation of landlord and tenant did not exist, and, since no rental was alleged or proved, the [district] court of course could not find that the respondent was in default . . . or, as a tenant, obligated to give . . . any amount due”).

In this case, unlike *Carter* and *Richardson*, there was never a dispute about ownership of the Property. Rather, JTS conceded that CLC was the owner and that a landlord-tenant relationship existed between them. *E.g. Answer and Counterclaim* at 2, ¶ 2 [R. 94].<sup>6</sup> Indeed, the counterclaims

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<sup>6</sup> Admitting CLC’s factual allegation that “[t]he actions complained herein relate to the Property owned by Caldwell Cattle [CLC] . . . and to a written contract, the Commercial Lease Agreement and Lease Amendments.” *Am. Complaint (3/20/15)* at 2, ¶ 3 [R. 51].

asserted by JTS were premised on the Lease and tenancy with CLC. *Id.* at 10-13, ¶¶ 24-48 [R. 102-05]. As such, the District Court appropriately considered (and found) that JTS was in default of the Lease and, therefore, liable to CLC for damages. *See Carter*, 146 Idaho at 845, 203 P.3d at 1244 (stating that an unlawful detainer action should determine “whether the relation of landlord and tenant existed, and if so, whether the respondent was in default” (emphasis added) (quoting *Richardson*)). The damages the District Court awarded, specifically rent owed by JTS for preventing occupation after it vacated and CLC’s resulting liability to Peterbilt<sup>7</sup> (discussed *infra*), were appropriate based on JTS’s unlawful detainer. *Texaco*, 96 Idaho at 940, 530 P.2d at 293 (damages which are “the proximate or direct result of the unlawful detention” are recoverable for unlawful detainer); C. S. Patrinelis, *Measure of Damages for Tenant’s Failure to Surrender Possession of Rented Premises*, 32 A.L.R.2d 582 (1953) (damages may include losses “sustained for a period subsequent to the unlawful detainer because the premises remained unoccupied”).

**A. The District Court appropriately considered the parties’ contract claims because they concerned the landlord-tenant relationship.**

JTS argues that the District Court’s rulings on CLC’s related claims for breach of the Lease and on JTS’s counterclaims should nonetheless be stricken because they “go beyond ruling on the unlawful detainer issue.” *Appellant’s Brief* at 12. Yet, unlike *Carter* and *Richardson*, these claims are all based on the parties’ landlord-tenant relationship and, thus, were appropriately decided by the District Court with CLC’s unlawful detainer damages claim.

The history of this case reveals that when the first complaint was filed, JTS still occupied

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<sup>7</sup> *Findings and Conclusions* at 9.

the Property and represented it would not vacate by the noticed termination date. *Complaint for Eviction* at 7, ¶¶ 29-31 [R. 29]. In the complaint, CLC sought an order of restitution and damages per the unlawful detainer statute, Idaho Code § 6-301 et seq. *Id.* at 9, ¶ 38 [R. 31]. After the complaint was filed, JTS abruptly vacated (despite prior repeated notice that it would not). CLC then amended the complaint to reassert its claim for unlawful detainer damages, which continued accruing after JTS vacated (discussed *infra*). *Am. Complaint* at 13-15, ¶¶ 57-64 [R. 62-64]. Because a determination of JTS's unlawful detainer and damages inherently concerned the Lease, both CLC and JTS asserted claims concerning the parties' respective obligations under the Lease. *Id.* at 15-18, ¶¶ 65-77 [R. 64-66]; *Answer and Counterclaim* at 10-13, ¶¶ 24-48 [R. 102-05].

In *Nicholson*, this Court recently resolved the appeal of an unlawful detainer claim and related breach-of-contract and unjust enrichment claims concerning a land lease. 161 Idaho at 879, 392 P.3d at 1220. There, the plaintiff-tenants asserted contract and promissory estoppel claims against the defendant-landlord for breach of an alleged right of first refusal in the sale of the property. *Id.* at 880, 1221. The tenants also asserted unjust enrichment claims against both the landlord and the codefendant-purchaser. *Id.* The tenants claimed that the landlord and purchaser would be unjustly enriched if they were ordered to vacate and unable to remove certain buildings, which they owned, from the land. *Id.* The purchaser also counterclaimed against the tenants for unlawful detainer. *Id.*; *see also id.* at 886, 1227 (finding the district court correctly characterized the purchaser's counterclaim as one for unlawful detainer). The district court considered and dismissed the tenants' claims and then entered judgment for the purchaser, finding the tenant guilty of unlawful detainer and awarding damages. *Id.* at 880, 1221. On appeal, the Court affirmed the



district court's decisions (albeit affirming one decision by a different theory). *Id.* at 881-86, 1222-27. The Court considered, among other things, the terms of the parties' lease agreement to deny the tenants' unjust enrichment claim. *Id.* at 884-86, 1225-27. With respect to the unlawful detainer claim, the Court rejected the tenants' argument that the inclusion of damages was improper. *Id.* at 886-87, 1227-28. The Court rebuffed the notion that related claims could not be considered in an unlawful detainer action. *Id.* (abrogating *Coe v. Bennett*, 39 Idaho 176, 226 P. 736 (1924)<sup>8</sup>). Relevant to this appeal, the Court did not hold that the unlawful detainer claim should have been decided in proceedings separate from the other claims. *Id.* The tenant in *Nicholson* did not claim an ownership interest in the property. Further, there was no issue whether the other claims were separately pleaded from the unlawful detainer claim.<sup>9</sup>

Here, all claims concerned only the parties' landlord-tenant relationship. Claims on both sides related to the Lease and JTS's occupation of the Property as tenant. Moreover, CLC's case for JTS's breach of the Lease was pleaded in separate claims and supported by damages. *Galindo v. Hibbard*, 106 Idaho 302, 306-07, 678 P.2d 94, 98-99 (Ct. App. 1984) (consequential damages are recoverable for breach of contract); *White v. Unigard Mut. Ins. Co.*, 112 Idaho 94, 102, 730

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<sup>8</sup> When *Coe* and *Richardson* were decided, unlawful detainer was a "summary proceeding" that did not belong in the same class of cases as other actions. *Nicholson*, 161 Idaho at 887, 1228. Thus, an unlawful detainer action was treated differently under the rescinded Rule 81(a), *supra*. The statutes relevant to *Coe* (1924) and *Richardson* (1932) have long since been repealed. *Id.*

<sup>9</sup> Notably, the tenants in *Nicholson* are distinguished from the putative tenants in *Carter*. In *Carter*, the putative tenants (the respondents in that case) did not assert any affirmative claims. *Carter*, 146 Idaho at 844, 203 P.3d at 1243. Instead, the respondents simply motioned for summary dismissal, disputing that they were tenants. *Id.* Consequently, because the only claim in *Carter* was for unlawful detainer, the Court held that the district court's additional findings regarding ownership were of no legal consequence as to other unpleaded claims. *Id.* at 846-47, 1245-46.

P.2d 1014, 1022 (1986) (same). Accordingly, like *Nicholson*, by determining the parties' related breach-of-contract claims, the District Court did not exceed the scope of its jurisdiction.

JTS avers that this Court's *Texaco* decision nonetheless precludes all claims other than for unlawful detainer (including those affirmatively asserted—and lost—by JTS) from being tried in a single action. *Appellant's Brief* at 10-11. This argument can be rejected for at least three reasons. First, the portion of *Texaco* JTS relies on, specifically the dismissal of the defendant-tenant's counterclaim in that case,<sup>10</sup> is abrogated by the holdings in *Nicholson*, the repeal of the statutes relied upon in *Coe* and *Richardson*,<sup>11</sup> and the rescission of former Rule 81(a).<sup>12</sup> Second, the dismissed counterclaim in *Texaco* did not concern the parties' landlord-tenant relationship; rather, it alleged interference with the sale of the tenant's business. *Texaco*, 96 Idaho at 936, 539 P.2d at 289. Because the tortious interference claim was unrelated to the landlord-tenant relationship, the Court determined that it was an "extraneous issue." *Id.* at 938, 291. In contrast, in this case, all claims decided by the District Court concerned the landlord-tenant relationship. Third, a special action and streamlined procedure for possession is contemplated by Idaho Code § 6-310. In this case, CLC did not plead, and the District Court did not conduct, a special short-form proceeding under that section. *See* I.C. § 6-310(4) (requiring a trial within 72 hours from the filing of the complaint); *see also id.* § 6-311E (stating that "the early trial provision of section 6-310 . . . shall not be applicable when an action for damages is combined with an action for possession"). Instead,

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<sup>10</sup> *Texaco*, 96 Idaho at 937-38, 539 P.2d at 290-91; *see also Willmore v. Christensen*, 94 Idaho 262, 263-64, 486 P.2d 273, 274-75 (1971).

<sup>11</sup> *See* footnote 8, *supra*.

<sup>12</sup> *See* footnote 5, *supra*; *see also Olson*, 97 Idaho at 831, 555 P.2d at 162.

CLC proceeded with claims for damages and breach of contract, which is allowed under modern pleading rules. I.R.C.P. 8(d) (allowing for pleading of multiple claims, regardless of consistency).

Accordingly, the District Court did not exceed its subject-matter jurisdiction by deciding the unlawful detainer damages claim alongside the parties' other related claims. The District Court properly determined that JTS was guilty of unlawful detainer and breached the Lease, and appropriately awarded CLC damages for both claims.

**B. The District Court properly awarded CLC special damages resulting from JTS's unlawful detainer.**

JTS also argues that the District Court improperly awarded contract damages "unrelated to CLC's unlawful detainer claim." *Appellant's Brief* at 18-21. To be sure, these damages are separately recoverable as consequential damages for JTS's breach of contract (discussed *infra*).<sup>13</sup> However, the District Court properly awarded them as special damages for unlawful detainer because they were proximately caused by JTS's failure to timely surrender possession of the Property, at least up through removing the Transformer, and beyond.<sup>14</sup>

As cited above, this Court has recognized that damages which are "the proximate or direct result of the unlawful detention" are recoverable. *Texaco*, 96 Idaho at 940, 539 P.2d at 293. The Court has cited 32 A.L.R.2d 582 as "an excellent annotation on the measure of damages for a

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<sup>13</sup> Damages for CLC's successful claims for breach of contract and breach of the implied covenant of good faith were decided under the same damages theory. *Drug Testing Compliance Group, LLC v. DOT Compliance Serv.*, 161 Idaho 93, 103, 383 P.3d 1263, 1273 (2016); *Idaho First Natl. Bank v. Bliss Valley Foods, Inc.*, 121 Idaho 266, 289, 824 P.2d 841, 864 (1991).

<sup>14</sup> See *CLC's Closing Trial Brief* at 15 [R. 608] (showing how occupation by CLC's new tenant, Peterbilt, was delayed: "first, by JTS's refusal to vacate by January 31, 2015 . . . ; and second, by JTS's instruction and removal of power in late February/early March . . .").

tenant's failure to surrender possession of rented premises." *Id.* at n. 9. This annotation describes cases allowing both rent and special damages—consistent with Idaho Code § 6-316—for losses “suffered by [the landlord] as the result of the tenant’s failure to surrender the premises.” Patrinelis, 32 A.L.R.2d 582 at § 9. Special damages for unlawful detention may include, among other things, lost rent from a new tenant, increased costs, and lost profits, including “for a period subsequent to the unlawful detainer because the premises remained unoccupied.” *Id.* at §§ 2, 9, and 10.

Evidence at trial showed that when JTS was given notice to vacate in December 2014, CLC expected that its new tenant, Peterbilt, would occupy the Property immediately. *CLC’s Closing Trial Brief* at 13 [R. 606] (citing testimony); *Memo. in Opp. to Defendant’s Mot. to Reconsider* (“Opp. to Mot. to Reconsider”) at 26 [R. 885] (same). Because JTS refused to vacate the Property by January 31, 2015 (the date required by the Notice of Termination), Peterbilt was forced to extend its old lease the entire month of February. *CLC’s Closing Trial Brief* at 15 [R. 608]; *CLC’s Opp. to Mot. to Reconsider* at 26 [R. 885]. During that time, Peterbilt paid rent for its old lease, suffered lost profits from not being able to move into the Property, and incurred other costs because of the delay. *CLC’s Closing Trial Brief* at 15-16 [R. 608-09]. CLC demonstrated that it was liable to Peterbilt for these amounts under the Peterbilt Lease. *Id.* (showing that the Peterbilt Lease was entered before CLC closed on its purchase of the Property). The District Court appropriately awarded these amounts, *viz.*, the damages resulting from the “first delay” caused by JTS for the month of February 2015, as special damages for JTS’s unlawful detainer. By unlawfully detaining the Property beyond the first of February, at least through the removal of the Transformer and the end of that month, JTS’s wrongful detention caused damages that were proven by CLC. Thus, the

District Court properly awarded damages.

Further, JTS's removal of the Transformer and the ensuing damages, *viz.*, damages caused by the "second delay" for March and April 2015, can also be appropriately considered special damages resulting from JTS's unlawful detainer. Evidence showed that JTS's instruction to remove the Transformer occurred on February 23, 2018, in the days after JTS vacated, but before Peterbilt could move in because of JTS's unlawful detention. *CLC's Opp. to Mot. to Reconsider* at 13 [R. 872] (citing testimony). Consequently, the damages incurred by CLC after the Transformer's removal (including its resulting liability to Peterbilt for continued payments on the old lease, lost profits, and other costs, as well as unpaid rent by JTS through April 2015 when Peterbilt could move in), were recoverable as special damages after the Transformer's removal.

JTS extrapolates from *Texaco* that these damages are somehow not really "the proximate or direct result of [JTS's] unlawful detention," and that only rent is recoverable for the purported additional "twelve days" that JTS refused to leave through February 12, 2015. *Appellant's Brief* at 19-21. This is not the holding in *Texaco*, which confirmed that damages in addition to rent, are recoverable under Idaho Code § 6-316, *supra*. In that case, the Court affirmed the district court's decision that the landlord's construction of a temporary bulk plant, while the tenant remained in possession of the landlord's plant, was not the natural and proximate result of the tenant's unlawful detention. *Texaco*, 96 Idaho at 937, 940, 539 P.2d at 290, 293. However, the Court did not explain what facts at trial led the district court to make this decision, other than to say that "[t]he record support[ed] this conclusion." *Id.* at 940, 293. In contrast, the District Court here did find that the above damages were the result of JTS's unlawful detention. *Findings and Conclusions* at 7, 9 [R.

963, 965]. Unlike the landlord in *Texaco*, CLC did not seek recovery for constructing a new building (which the *Texaco* landlord presumably owned, made profits from, and could have sold). Significantly, the limited rent that JTS paid for February (less than what CLC would have received but for JTS's unlawful detention<sup>15</sup>) did not absolve CLC of its liability to Peterbilt. In other words, the rent JTS paid through February was not a substitute for CLC's damages.

The record in this case supports the District Court's conclusion that JTS's unlawful detainer caused CLC to incur damages, including for a period beyond JTS's occupation. As such, the District Court properly awarded damages under Idaho Code § 6-316 for JTS's unlawful detention.

**II. THE DISTRICT COURT CORRECTLY FOUND JTS DID NOT EXERCISE THE SIX-MONTH OPTION AND, THUS, UNLAWFULLY DETAINED THE PROPERTY AND BREACHED THE LEASE.**

The District Court correctly determined that the Third Amendment was unambiguous and that JTS failed to exercise the six-month option. *Findings and Conclusions* at 5-7 [R. 961-63]. Thus, the District Court properly concluded JTS was guilty of unlawful detainer and breached the Lease by refusing to timely vacate the Property. *Id.* at 7-8 [R. 963-64].

JTS asserts that the District Court's finding is in error (and thereby attempts to avoid all liability for unlawful detainer and breach of contract) by claiming that it silently exercised the six-month option by paying rent after the term of the Lease expired. *Appellant's Brief* at 13-18. Yet, this argument disregards paragraph 4 of the Third Amendment, which expressly incorporated and reaffirmed all other provisions of the Lease, including the requirement that an extension must be

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<sup>15</sup> See *CLC's Closing Trial Brief* at 19 (asserting, in the alternative, that CLC should at a minimum receive the rent that Peterbilt would have paid if it had been able to timely occupy the Property).

exercised in writing. *Trial Ex. 3* at ¶ 4; *Trial Ex. 1* at 2 (“Option to Renew”). This argument also ignores JTS’s conduct demonstrating that the limited payments it made were to carry on month to month so that JTS could leave when it wanted, not to extend the Lease for six months. *Findings and Conclusions* at 6-7 [R. 962-63]. Because JTS did not exercise the six-month option “in the manner specified by the parties’ contract[,]” the District Court correctly concluded that JTS was guilty of unlawful detainer and breached the Lease. *Cristo Viene Pentecostal Church v. Paz*, 144 Idaho 304, 309, 160 P.3d 743, 748 (2007); see William B. Johnson, *Sufficiency As to Method of Giving Oral or Written Notice Exercising Option to Renew or Extend Lease*, 29 A.L.R.4th 903, § 3 (1984) (“to be effective, a notice exercising an option to renew must contain a definite statement of intent to renew in accordance with the terms specified for renewal by the underlying lease”).

**A. The District Court correctly determined that exercising the six-month option required written notice, which JTS did not provide.**

When JTS and Gilbert negotiated the Third Amendment, they expressly incorporated “[a]ll other terms and conditions of the Lease” that were not specifically amended. *Trial Ex. 3* at ¶ 4. This included the requirement that an “Option to Renew” must be exercised in writing:

Upon Lessor’s receipt of a written notice by [JTS] at least sixty (60) days prior to the expiration of this Lease Agreement, Lessor grants to [JTS] an option to renew this Lease . . .<sup>16</sup>

Because JTS never provided written notice, the six-month option could not have been exercised.

JTS attempts to inextricably wed this requirement for written notice to only the one-year extension that was originally provided in the Lease (*see id.*), claiming that the Third Amendment

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<sup>16</sup> *Trial Ex. 1* at 2 (emphasis added).

created a “third way” for JTS to renew by merely continuing to pay rent. *Appellant’s Brief* at 16.<sup>17</sup> In this manner, JTS attempts to bootstrap the Court’s decision in *Dante v. Golas*, which held that a purchase option was timely exercised by lessees. 121 Idaho 149, 150-51, 823 P.2d 183, 184-85 (1992). JTS’s argument can be rejected for several reasons.

First, the requirement for written notice is tied to an “Option to Renew,” which paragraph 3 of the Third Amendment indisputably comprises. There is no language in the Lease or the Third Amendment that restricts the requirement for written notice to only one instance or type of renewal.

Second, the six-month option in paragraph 3 of the Third Amendment is a modification of the second one-year renewal that was originally granted by the Lease. *Trial Ex. 1* at 2 (granting “an additional two (2) terms of one (1) year each”). JTS exercised the first one-year renewal (the “First Amendment”), which extended the Lease to April 15, 2014. *Trial Ex. 2*. Instead of exercising the second renewal for a complete one-year term, JTS negotiated for a reduced six months through October 15, 2014, and then “for an additional period of either six (6) months or on a month to month basis” afterwards. *Trial Ex. 3* at ¶ 1. Because the six-month option was thus part of the second one-year renewal in the Lease, it follows that the requirement for written notice applied.

Third, the Court’s decision in *Dante* was about the timeliness of the lessees’ exercise of a purchase option before—not after—the end of a lease. 121 Idaho at 151, 823 P.2d at 185. In that case, the lessees twice exercised their option in writing. *Id.* Because the lessees’ exercise was clear and occurred before the lease expired, in light of the language of the option, which gave the lessees

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<sup>17</sup> JTS argues that the “first way” was for a one-year extension as provided in the “Option to Renew” provision and that the “second way” was under the “Modification” provision of the Lease. See *Trial Ex. 1* at 2, 5.



the right to purchase “[a]t the end of [the] lease,” the Court held that their written exercise was timely. *Id.* In contrast, in this case, JTS never sent any writing or gave any indication that the six-month option was exercised, let alone before or “[a]t the conclusion of [the] lease extension [on October 15, 2014,]” as stated in the Third Amendment. *Trial Ex. 3* at ¶¶ 1, 3. Instead, throughout its communications, JTS consistently provided exit dates less than six months, demonstrating that the six-month option had not been exercised. *CLC’s Opp. to Mot. to Reconsider* at 6 [R. 885] (citing exhibits and testimony). At best, JTS can argue only that the 60-day notice requirement in the Lease’s “Option to Review” provision was modified by the phrase “[a]t the conclusion of this lease extension” in the Third Amendment. But, where JTS did not provide any written notice at all, either on or before October 15, 2014, its argument for a timely renewal of the six-month option necessarily fails. *Contrast also Dennett v. Kuenzli*, 131 Idaho 21, 24, 936 P.2d 219, 222 (1997) (considering the plaintiff’s timely written notice, given in accordance with the option agreement).

Fourth, JTS’s argument that it could silently renew and receive the benefits of a six-month option, without committing to a full six-month renewal, smacks of bad faith. By belatedly claiming a silent exercise, without notice, in paying limited rent while simultaneously and consistently representing an exit date before the end of that six months, JTS violated the implied covenant of good faith (discussed *infra*). *CLC’s Closing Trial Brief* at 6-8 [R. 599-601] (citing exhibits and testimony); *CLC’s Opp. to Mot. to Reconsider* at 20-23 [R. 879-82] (same). The District Court agreed with CLC and found that JTS violated the implied covenant, thus precluding a determination that JTS exercised the six-month option. *Findings and Conclusions* at 8 [R. 964].

As such, the District Court correctly held that JTS did not exercise the six-month option in

accordance with the Lease. *Id.* at 5 [R. 961] (holding that the Lease “required any renewal, including a renewal under the Third Amendment, to be put in writing”). Instead, when the term of the Lease expired, JTS “carried on as a month-to-month or at will tenant after October 15, 2014.” *Id.* Later, when JTS refused to vacate after receiving the Notice of Termination, it committed unlawful detainer and breached the Lease. *Id.* at 8 [R. 964].

**B. The District Court made correct factual findings that JTS did not intend to exercise the six-month option.**

Important to the District Court’s decision was evidence that JTS did not intend to renew the Lease for another six months; rather, the rent JTS paid after the term expired was consistent with JTS’s stated purpose of continuing month-to-month. Specifically, the District Court found:

Until the present dispute arose, neither [JTS] nor Gilbert intended to renew the lease for a six-month term after October 15, 2014. They did not have an agreement to renew the lease. In discussions leading up to October 2014, [JTS] made clear that it intended to move out as soon as its new facility was finished. [JTS’s] proposed exit dates were all less than six months after October 15, 2014. Ms. Johnson told Mr. Hagood that after the lease expired in October 2014, [JTS] wanted to go “month to month for an additional 3-6 months.” []. [JTS’s] communications did not demonstrate intent to be any more than a month-to-month tenant after October 15, 2014. Gilbert intended to sell the Property. [JTS’s] continued possession of the Property and Gilbert’s acceptance of the \$6,000/month rent for [the two months of] November and December 2014 did not demonstrate an intent to extend the lease for six months. *See* 29 A.L.R.4th 903 (1984). [JTS] was a month-to-month tenant after October 15, 2014. This is consistent with [JTS’s] stated intent to vacate as soon as it could move to its new facility.

*Findings and Conclusions* at 6-7 [R. 962-63]. Because these factual findings are not clearly erroneous, the Court can affirm the District Court’s decision that JTS was a holdover tenant and committed unlawful detainer and breached the Lease by refusing to timely vacate the Property. *Big Wood Ranch, LLC v. Water Users’ Assn. of Broadford Slough and Rockwell Bypass Lat.*

*Ditches, Inc.*, 158 Idaho 225, 230, 345 P.3d 1015, 1020 (2015) (stating, “This Court will not set aside a trial court's findings of fact unless the findings are clearly erroneous.”); I.R.C.P. 52(a).

When the term of a lease expires and a tenant continues to occupy the leased premises and pay rent, a new lease can arise by operation of law. *Lewiston Pre-Mix Concrete, Inc. v. Rohde*, 110 Idaho 640, 644-45, 718 P.2d 551, 555-56 (Ct. App. 1985). Determining the type of tenancy, namely a “tenancy at sufferance, tenancy at will, periodic tenancy (month-to month or year-to-year) or a fixed term tenancy[,]” requires the court to examine the parties’ intent. *Id.* at 645, 556. This examination necessarily involves a factual determination of the parties’ conduct. *See id.* (stating that “[a] court must look to the lessor’s intent, as revealed by either his words or his actions, to determine whether a new tenancy results”). This is consistent with the law in Idaho that modifying an existing contract or implying a new contract by actions of the parties involves a question of fact. *Pocatello Hosp., LLC v. Quail Ridge Med. Investor, LLC*, 156 Idaho 709, 717-19, 330 P.3d 1067, 1075-77 (2014) (recognizing that, in the absence of writing, a “trier of fact is permitted to infer mutual intent based upon the parties’ subsequent conduct” to determine whether a contract has been modified); *Lawyers Title Co. of Idaho v. Jacobs*, 102 Idaho 804, 806, 641 P.2d 350, 352 (Ct. App. 1982) (stating that “[a] contract may be implied in fact by conduct of the parties”) (citing *Clements v. Jungert*, 90 Idaho 143, 408 P.2d 810 (1965)).

In *Lewiston*, the Court of Appeals was confronted with determining whether a new lease arose between the plaintiff-lessee and the defendant-lessor. *Id.* at 644-45, 555-56. There, the lease (assumed by the lessee) allowed for a fixed-term renewal, provided the lessee complied with notice provisions which required written notice. *Id.* at 643, 554. Neither the lessee nor its predecessor

gave written notice; however, when the lease expired, the lessee continued to occupy the property and pay rent, which was accepted by the landlord. *Id.* The Court of Appeals held “that a new tenancy, implied from conduct, arose by operation of law.” *Id.* at 645, 556. Although the question before the Court did not require it to answer what type of tenancy arose,<sup>18</sup> the Court suggested that this determination also required a factual finding implied by the conduct of the parties. *See id.*

Consistent with these authorities,<sup>19</sup> the District Court, acting as the trier of fact in this case, found that JTS’s payment of rent for November and December 2014, two months after the term of the Lease expired, *supra*, gave rise to a month-to-month tenancy in line with JTS’s stated intent. *Findings and Conclusions* at 5-7 [R. 961-63]. The District Court expressly found that payment of rent was not evidence that JTS exercised the six-month option. *Id.* at 7 [R. 963]. These findings are supported by substantial and competent evidence in the record, which is convincingly outlined in *CLC’s Closing Trial Brief*, and relied upon by the District Court (*see id.*), as follows (cited exhibits and testimony are removed for brevity):

- The Third [] Amendment was entered with the understanding that JTS was constructing a new building and would vacate the Property as soon as that building was completed. []. JTS understood that upon vacating [Gilbert] expected to find a new tenant or purchaser [].
- JTS had an option to extend the Lease for another full year through April 15, 2015 [], but instead requested a lesser term of six months with the option to go month to month afterwards. [] (“We [JTS] would like to do a 6 month lease with the option to go month to month for an additional 3-6 months” []).

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<sup>18</sup> The appeal involved the lessee’s right to remove tenant improvements. *Lewiston*, 110 Idaho at 556, 718 P.2d at 645. Because the Court of Appeals was concerned only with whether the lessee was a tenant, and thus entitled to rights under the lease agreement that carried over, the Court was not required to determine the type of new tenancy that arose. *Id.*

<sup>19</sup> *See State v. Austin*, 163 Idaho 378, 381, 413 P.3d 778, 782 (2018) (confirming “that precedent from [the Supreme] Court and the Court of Appeals is binding upon the district courts in Idaho”).

- On August 15, 2014, 60 days before the end of the Third [ ] Amendment, and within the [60-day written] notice period, *supra*, [Gilbert’s] agent, Lincoln Hagood, communicated with JTS to inquire about the status of completing the new building and to request an exit date. [ ]. In response, JTS did not exercise the six-month option. [ ].
- Later, in early October 2014, at the end of the Third [ ] Amendment, [Gilbert] listed the Property for sale because of JTS’s stated intent to leave. [ ].
- When the Property was listed for sale, [Gilbert’s agent] specifically asked JTS to “keep [him] informed on [JTS’s] planned vacancy of the building.” [ ]. JTS never informed Mr. Hagood that it might occupy the Property for another six months through April 15, 2015. [ ].
- Throughout its communications, JTS never expressed any written or oral intent to exercise the 6-month option [ ]. Instead, JTS only communicated potential exit dates that were less than six months and before April 15, 2015. [ ] (stating a potential December or January exit date); [ ] (stating a potential January or February exit date); [ ] (failing to correct [Gilbert’s agent’s] representation that JTS was “shooting for December 15th” to vacate) [ ].
- JTS did not pay six months of rent through April 15, 2015 [ ].
- The first time that JTS ever asserted it had purportedly exercised the six-month option, was in December 2014, after the Property was sold when JTS was informed that it would be required to vacate with 30-day notice. [ ].
- The sole basis for JTS’s argument that the six-month option was exercised, was the payment of rent in the base amount of \$6,000, plus triple-net expenses, for the months of November and December 2014. [ ] (arguing that JTS’s “lease payments for Nov and Dec have been at the base rent for [the] six month period, not the higher month to month period”) [ ]. However, these payments were sent to Arlene Gilbert (an elderly widow living in St. George, Utah [ ]), and not to [Gilbert’s] agent, Mr. Hagood,<sup>[20]</sup> and were not accompanied with a written exercise of the option [ ].

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<sup>20</sup> Mrs. Gilbert’s deposition testimony (admitted at trial) showed that she relied on her agent, Mr. Hagood, to make all decisions regarding the Property and that she had no communications with JTS or its principals about extending the Lease. *Depo. of Arlene Gilbert* at 49:18-50:6, 54:8-55:10, 61:14-19 [Aug. 7-10]. JTS’s principals confirmed that they exclusively communicated with Gilbert’s agent about the Third [ ] Amendment [Tr. Vol. I, 6 (12:12-14), 11 (30:18-21), 13 (39:6-10), 17 (54:22-55:7), 20 (65:2-66:8)]. Mrs. Gilbert was not aware of any modifications or

- While JTS belatedly asserted the six-month option had been exercised, internally, its principals stated that this argument was for gaining leverage to delay an eviction. [] (Dave Erlebach: “Good luck with that! It appears we have the option to extend the lease so we will exercise the option. If they evict us we will fight it which should take at least 6 months.”). JTS could not show its purported intent to exercise the six-month option before the Third [] Amendment expired [].
- Before the threat of eviction, JTS never insisted upon staying on the Property for the duration of the six-month option though April 15, 2015 []. Afterwards, JTS continued to tie its exit to completing the new building and asserted an earlier exit date of March 1, 2015. [].

*CLC’s Closing Trial Brief* at 1-4 [R. 595-97] (citing exhibits and testimony); *CLC’s Opp. to Mot. to Reconsider* at 6-10 [R. 865-69] (same).

In this appeal, JTS fails to cite any evidence to challenge the District Court’s findings or contest the above-summarized facts, let alone to satisfy the significant hurdle of Idaho Rule of Civil Procedure 52(a).<sup>21</sup> *KDN Mgmt., Inc. v. WinCo Foods, LLC*, 164 Idaho 1, 6, 423 P.3d 422, 427 (2018) (“In determining whether a finding is clearly erroneous this Court does not weigh the evidence. The Court inquires whether the findings of fact are supported by substantial and competent evidence.”). Because the record supports the District Court’s determination that JTS did not exercise the six-month option, but paid rent to carry over month-to-month, the District Court’s findings are not clearly erroneous. Because JTS refused to timely vacate, the District Court correctly concluded that it unlawfully detained the Property and breached the Lease.

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amendments to the Lease. *Depo. of Arlene Gilbert* at 33:13-19 [Aug. 4].

<sup>21</sup> “Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court’s opportunity to judge the witnesses’ credibility.” I.R.C.P. 52(a)(7).

**III. THE DISTRICT COURT FOUND JTS LIABLE FOR BREACH OF CONTRACT AND BREACH OF THE IMPLIED COVENANT, AND CORRECTLY AWARDED CONSEQUENTIAL DAMAGES.**

As discussed above, the District Court correctly considered the parties' contract claims (relating to their landlord-tenant relationship, *supra*) and found JTS liable for breaching the Lease. For JTS's breach of contract and breach of the implied covenant of good faith, the District Court awarded CLC general and consequential damages. *Findings and Conclusions* at 8-9 [R. 964-65].

Separate from its unlawful detainer arguments, JTS asserts that the District Court erred by finding that JTS breached the implied covenant of good faith. *Appellant's Brief* at 21-27. JTS also argues that the consequential damages awarded to CLC should be limited to JTS's breach of contract and failure to timely vacate, and not its breach of the implied covenant. *Id.* at 27-34.

JTS misunderstands why the District Court found a breach of the implied covenant of good faith. Even assuming JTS could have exercised the six-month option without written notice simply by paying rent (it could not, *supra*), JTS breached the implied covenant by depriving Gilbert and CLC of the benefits of notice and rent and termination rights commensurate with JTS's occupation, as contemplated by the Lease. JTS evidenced bad faith by belatedly claiming exercise of the six-month option, not for purpose of occupying the Property an additional six months, but to leverage against a valid Notice of Termination<sup>22</sup> while simultaneously paying less rent.

JTS also misunderstands how the District Court awarded damages according to provisions of the Lease, which carried over into JTS's holdover tenancy. Because JTS entered the Property

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<sup>22</sup> Significantly, JTS does not challenge the form of the Notice of Termination or whether it was properly given under Idaho § 55-208. *Trial Ex. 13*. JTS only claims that the six-month option was exercised (it was not) and thus it was not required to vacate the Property by January 31, 2015.

and removed the Transformer without notice or the consent of CLC, as required under the Lease, JTS breached the Lease and caused significant damages, including CLC's resulting liability to Peterbilt. Under the Lease's indemnity provisions, JTS assumed liability for the damages to CLC that JTS caused. Further, because JTS did not pay for repairs to the Property, JTS also breached the Lease's maintenance provision and owed CLC for completing the unpaid repairs.

**A. The District Court correctly found that JTS breached the implied covenant.**

Under Idaho law, “[i]n every contract there is an implied covenant of good faith and fair dealing, which ‘requires the parties to perform, in good faith, the obligations required by their agreement.’” *Drug Testing Compliance Group*, 161 Idaho at 102-03, 383 P.3d at 1272-73 (quoting *Silicon Intl. Ore, LLC v. Monsanto Co.*, 155 Idaho 538, 552, 314 P.3d 593, 607 (2013)). “A violation of the covenant occurs when either party violates, nullifies or significantly impairs any benefit of the contract.” *Id.* (quoting *Idaho First Natl. Bank*, 121 Idaho at 289, 824 P.2d at 864).

CLC's claim for breach of the implied covenant was asserted in this case in the alternative. *CLC's Opp. to Mot. to Reconsider* at 21 [R. 880]; *see also* I.R.C.P. 8(d)(3). Specifically, even if JTS could convince the District Court (which it did not, *supra*) that the six-month option was exercised in accordance with the Lease, JTS still breached the implied covenant; first, by nullifying, or at least significantly impairing, Gilbert's right (CLC's right as successor) to actual notice when JTS would leave; and second, by depriving Gilbert and CLC of the higher rent that JTS agreed to pay for the month-to-month option in the Third Amendment.

As demonstrated at trial and explained in CLC's briefing to the District Court, the Third Amendment was the product of JTS's insistence—not Gilbert—to remain on the Property only so



long as necessary to complete its new building. *CLC's Closing Trial Brief* at 6 [R. 599] (citing testimony); *CLC's Opp. to Mot. to Reconsider* at 21 [R. 880] (same). In exchange for a lesser term than the second one-year renewal (which contemplated only a six-month renewal followed by the option to extend for six months or month-to-month), Gilbert had a reasonable expectation of notice from JTS about its exit date. This was evidenced by provisions from the Lease that were incorporated by the Third Amendment. *Trial Ex. 3* at ¶ 4; *Trial Ex. 1* at 1-3 (“Term of Lease,” “Option to Renew,” and “Time of the Essence”). The expectation of actual notice was confirmed in communications by Gilbert’s agent. *Trial Exs. 5-7*. Relying on JTS’s representations that it was leaving in December or January, Gilbert listed the Property for sale in October 2014. *Trial Ex. 7*.

Knowing that the Property was listed for sale in October 2014, JTS had a good faith obligation to give notice whether it would extend the Lease and for how long. By claiming a silent exercise of the six-month option without any written notice, and by paying Mrs. Gilbert (an elderly widow residing in St. George, Utah) while simultaneously and consistently representing an exit before the end of that six months, JTS deprived Gilbert and CLC of the right to actual notice when JTS would leave.<sup>23</sup> *CLC's Closing Trial Brief* at 7 [R. 600]; *CLC's Opp. to Mot. to Reconsider* at 22 [R. 881]. Further, by belatedly claiming a right to possess the Property for the duration of the six-month option (through April 15, 2015), while at the same time asserting termination sometime before that date, JTS deprived Gilbert and CLC of the higher rent that JTS agreed to pay in

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<sup>23</sup> Had JTS given notice that it would exercise the six-month option, the Property likely would not have been listed for sale until later. But, when the Property was listed and sold in November, JTS did not represent to CLC that it would remain through April 2015. *CLC's Closing Trial Brief* at 7 [R. 600] (citing testimony); *CLC's Opp. to Mot. to Reconsider* at 22 [R. 881] (same).

exchange for the month-to-month option. *Trial Ex. 3* at ¶ 3(b). In remaining silent, JTS hoped to both continue paying a lesser monthly rent and avoid committing to pay full rent for the next six months. This impaired Gilbert and CLC's right to a full six months' rent, which otherwise would have been due had JTS given notice for the six-month option. *Id.* Before the threat of eviction, JTS never insisted on staying for the full six-month option. *CLC's Closing Trial Brief* at 7 [R. 600]; *CLC's Opp. to Mot. to Reconsider* at 23 [R. 882]. Afterwards, JTS continued to tie its departure to completing its new building and gave conflicting exit dates, which further impaired the landlord's right to terminate the Lease in a planned and orderly manner, which otherwise would have been completed by January 31, 2015. *Id.*

For these reasons, the District Court correctly found that JTS breached the implied covenant of good faith. By failing to vacate the Property and pay rent through April 2015, JTS damaged CLC. The damages the District Court awarded for JTS's breach of the implied covenant were correctly included as the same damages for JTS's unlawful detention, *supra*, and for its breach of express provisions of the Lease. *See Drug Testing Compliance Group*, 161 Idaho at 103, 383 P.3d at 1273. In other words, the District Court did not award duplicate damages caused by JTS's refusal to timely vacate or pay rent. *Findings and Conclusions* at 9 [R. 965].

**1. *The District Court's determination that JTS breached the implied covenant is not incompatible with other rulings.***

JTS argues that the District Court's finding JTS breached the implied covenant for the reasons above is "incongruous" with its determination that JTS did not renew the six-month option. *Appellant's Brief* at 27-28. Again, JTS miscomprehends the District Court's decision.

Breach of the implied covenant was asserted in the alternative. Even if JTS could have exercised the six-month option without written notice simply by paying rent (it could not, *supra*), JTS still breached the Lease by depriving the landlord of actual notice when it would exit. Had JTS been frank about its intentions, either to renew the Lease and pay full rent through April 2015 or to continue month to month and peaceably exit with 30-day notice, then an orderly and planned transfer of the Property could have occurred. Instead, JTS played both sides, hedging against a full six-month commitment while paying lesser rent. The District Court correctly rejected JTS's action.

Furthermore, as stated above, the District Court did not award duplicate damages for JTS's breach. The remedy for breach of the implied covenant is the same for breach of contract. *Drug Testing Compliance Group*, 161 Idaho at 103, 383 P.3d at 1273.

Accordingly, the District Court's determination that JTS breached the implied covenant of good faith and award of damages was not in error.

**B. The District Court correctly determined that JTS violated provisions of the Lease, which carried over, and assumed liability, and therefore properly awarded consequential damages to CLC.**

The District Court awarded damages to CLC through the end of February 2015 because occupation of the Property by CLC's new tenant, Peterbilt, was delayed by JTS's refusal to timely vacate (the "first delay").<sup>24</sup> The District Court also awarded damages after February because occupation was further delayed by JTS's instruction to remove the Transformer (the "second delay"). Because the District Court correctly determined that provisions of the Lease carried over

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<sup>24</sup> See footnote 14, *supra*.

into JTS's holdover tenancy, the District Court appropriately awarded consequential damages for both the first delay and the second delay caused by JTS.

In addition to damages for unlawful detainer, *supra*, a holdover tenant can also be contractually liable for general and consequential damages resulting from the breach of a lease. *Lamb v. Robinson*, 101 Idaho 703, 705, 620 P.2d 276, 278 (1980); *Galindo*, 106 Idaho at 306-07, 878 P.2d at 98-99; *see also Idaho First Natl. Bank*, 121 Idaho at 289, 824 P.2d at 864 (same for breach of the implied covenant). Consequential damages, including lost profits, are recoverable if “[t]hey are, first, . . . proved with reasonable certainty, and second, . . . within the contemplation of the parties.” *Circle C Ranch Co. v. Jayo*, 104 Idaho 353, 356, 659 P.2d 107, 111 (1983); *Galindo*, 106 Idaho at 307, 878 P.2d at 99. The test for “reasonable certainty” requires only that damages be taken out of the realm of speculation. *Id.* Consequential damages are recoverable if they are “reasonably foreseeable and within the contemplation of the parties at the time they made the contract.” *Garcia v. Absolute Bail Bonds, LLC*, 161 Idaho 616, 622, 389 P.3d 161, 167 (2016) (quoting *Suitts v. First Sec. Bank of Idaho, N.A.*, 110 Idaho 15, 22, 713 P.2d 1374, 1381 (1985)). (Significantly, however, as distinguished from consequential damages for breach of contract, **a reasonable understanding of the parties at the time of contract is not required to show special damages for unlawful detainer.** *See Brooks*, 71 Idaho at 170, 228 P.2d at 250.)

As discussed above, the District Court correctly determined that because JTS did not exercise the six-month option it was as a month-to-month tenant after October 2014. Though the term expired, the Lease's provisions carried over into JTS's new tenancy with Gilbert and then CLC. *Lewiston*, 110 Idaho at 645, 718 P.2d at 556 (“[t]he terms of the new lease are usually carried

over into the new tenancy”); *see also Pearson v. Harper*, 87 Idaho 245, 255, 392 P.2d 687, 692 (1964) (tenant’s possession, holding over after expiration of a lease, “was no more than a continuance of the original term”). JTS concedes this point. *Appellant’s Brief* at 22 (asserting that provisions of the Lease carried over). The provisions of the Lease that carried over included:

Surrender of Premises: Upon the expiration of this agreement, [JTS] shall quit and surrender the premises in the same state of condition, reasonable wear and tear expected, that the premises was in at the beginning of this Agreement. . . .

*Trial Ex. 1* at 5; *see also id.* (“Time is of the essence”).

Improvements: [JTS] shall not reconstruct, remodel or change any part of the premises without the consent of the Lessor . . .

*Id.* (emphasis added).

Liability Insurance: . . . [JTS] agrees to indemnify and hold Lessor harmless from any damages, suits, judgments, liabilities or expenses arising from the use or occupancy of the premises by [JTS], [JTS’s] agents, . . . or [JTS’s] guests caused by either negligent or intentional acts.

*Id.* at 2 (emphasis added).

Indemnification of Lessor: [JTS] shall indemnify Lessor against liability on all claims for damages and injuries to persons or property that are claimed to have resulted from the activities or omissions of [JTS] . . .

*Id.* at 5 (emphasis added).

When JTS refused to vacate by January 31, 2015, according to the Notice of Termination, JTS violated its obligation to timely surrender the Property. The evidence showed that JTS’s breach caused CLC to incur liabilities discussed above, namely its resulting liability to Peterbilt, the new tenant, because the Property was unavailable at the start of February. As a commercial tenant leasing the Property under a “Commercial Lease Agreement” with obligations to indemnify

the Lessor, JTS reasonably contemplated at the time of contracting that its breach would cause such damages to the landlord. *See Lamb*, 101 Idaho at 705, 620 P.2d at 278; *Galindo*, 106 Idaho at 306-07, 678 P.2d at 98-99. Indeed, when JTS negotiated the Third Amendment, it expressly understood that the landlord desired to have a new tenant “tak[e] the space over from [JTS]” as soon as it vacated.” *CLC’s Opp. to Mot. to Reconsider* at 16 [R. 875] (citing exhibits and testimony). For this reason, throughout the extended term of the Lease, Gilbert’s agent inquired several times about the status of JTS’s exit. *Id.*

The evidence showed that after JTS refused to vacate, and in the immediate days after it abruptly abandoned, but before Peterbilt could move in, JTS instructed Idaho Power to remove the Transformer. *CLC’s Closing Trial Brief* at 14 [R. 607] (citing exhibits and testimony); *CLC’s Opp. to Mot. to Reconsider* at 16 [R. 875] (same). This was also a violation of the Lease, specifically the “Improvements” provision (quoted *supra*), which required CLC’s consent to make changes to the Property. *Trial Ex. 1* at 3. Because of this violation and removal of power, Peterbilt could not occupy the Property for another two months through April 2015, which caused additional damages. *CLC’s Closing Trial Brief* at 15-16 [R. 609-10]; *CLC’s Opp. to Mot. to Reconsider* at 16 [R. 875]. Again, by including this provision in the Lease, along with the other provisions for indemnity, JTS reasonably contemplated at the time of contract that such a violation would cause damages.

Therefore, the District Court appropriately awarded consequential damages for JTS’s breaches of contract and violations of the Lease that carried over. JTS, as suggested by its own protest before leaving, understood that delay and causing a new tenant to operate without a building would cause “economic damage.” *Trial Ex. 9* at 3. Because JTS expressly agreed to indemnify the

landlord against damages and liabilities caused by its actions, JTS reasonably contemplated CLC's resulting liability to Peterbilt according to its own lease agreement (the Peterbilt Lease). *See CLC's Closing Trial Brief* at 16 [R. 609] (explaining the basis for CLC's resulting liability to Peterbilt).

Despite the foregoing, JTS argues that even though provisions of the Lease carried over, it was nonetheless entitled to remove the Transformer as a temporary improvement or trade fixture,<sup>25</sup> and, therefore, damages resulting from the loss of power are not recoverable. *Appellant's Brief* at 23-27. JTS focuses on the circumstances of installing the Transformer and whether it was considered a permanent improvement to the Property. *Id.* at 24-25. These arguments fail because they ignore the specific breach of the "Improvements" provision for which the District Court found JTS liable. Specifically, the District Court found JTS liable, not because the Transformer was considered an improvement, but because JTS failed to get permission to "change any part of the premises." *Trial Ex. 1* at 3. The District Court found:

[JTS] is liable for breach of contract because it failed to vacate the Property after its term expired; [and] removed the transformer after the term expired and without [CLC's] permission . . .

*Findings and Conclusions* at 8 [R. 964] (citing "Improvements," quoted *supra*) (emphasis added).

The evidence showed that when JTS gave instruction to remove the Transformer, it knew Idaho Power would enter the Property. *CLC's Closing Trial Brief* at 14 [R. 607] (citing exhibits

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<sup>25</sup> Notably, in making this argument, JTS contradicts the claim that it had completely vacated the Property on February 12, 2015. *Appellant's Brief* at 21. The instruction to remove the Transformer was made on February 23, 2015, and the Transformer itself was not removed until later at the end of the month. *CLC's Closing Trial Brief* at 14-15 [R. 607-08] (citing exhibits and testimony). By claiming that it was entitled to remove the Transformer as a temporary fixture, JTS necessarily concedes that it had not completely vacated the Property.

and testimony); *CLC's Opp. to Mot. to Reconsider* at 17 [R. 876] (same). JTS also testified it understood CLC's permission was required. *Id.* Even so, JTS failed to inform CLC that Idaho Power would be entering the Property and tearing out the Transformer, removing power, and leaving a hole in the parking lot.<sup>26</sup> *Id.* Regardless who owned the Transformer (Idaho Power) or whether it was considered a temporary improvement or trade fixture, these were indisputably changes to the Property that required CLC's consent under the "Improvements" provision of the Lease, which JTS did not obtain. *Id.* But for JTS's request, Idaho Power would not have entered the Property to remove the power. *Id.* Had Idaho Power known that JTS did not have the consent of the landlord, it would not have entered the Property, but contacted CLC. *Id.* Had CLC been contacted, it would have arranged for the Transformer to remain so that power to the Property could be preserved, which Idaho Power would have accommodated. *Id.* Instead, because of JTS's instruction, power was removed and not restored until the end of April 2015, thus precluding Peterbilt's occupation of the Property and causing CLC to incur additional liability. *Id.*

The District Court's award of consequential damages for JTS's breach of the Lease (in addition to special damages for JTS's unlawful detention, *supra*), is thus supported by substantial and competent evidence in the record. The District Court specifically identified the provisions of the Lease that carried over and which JTS violated. *Findings and Conclusions* at 8-9 [R. 964-65].

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<sup>26</sup> JTS briefly argues that the Notice of Termination, *Trial Ex. 13*, should somehow be construed as an instruction to JTS to remove the Transformer. *Appellant's Brief* at 26. Not only does the Notice of Termination say nothing about the Transformer, it certainly cannot be construed to have allowed JTS to leave holes in the building and a giant hole in the parking lot, which did not exist at the commencement of the Lease. *CLC's Opp. to Mot. to Reconsider* at 17 [R. 876] (comparing *Trial Exs. 220 and 286* and related testimony).



The District Court also specifically identified the provisions of the Lease, including the indemnity provisions, that justified the award of consequential damages. *Id.* (citing “Indemnity” provisions, quoted *supra*). As such, the Court should uphold the District Court’s judgment.

**1. *The District Court properly awarded damages for rent due.***

JTS challenges the District Court’s award of damages for rent due through April 2015, claiming that this award is incompatible with the expired term of the Lease in October 2014. *Appellant’s Brief* at 30. First, as discussed above, an award of rent is allowed under Idaho § 6-316 for unlawful detainer. Second, with respect to contract damages, because of JTS’s breaches, CLC was prevented from having its new tenant, Peterbilt, occupy the Property. Instead of receiving rent from Peterbilt starting February 1, 2015, under the Peterbilt Lease, CLC was unable to rent the Property and became liable to Peterbilt for the delay. CLC requested, in the alternative and at a minimum, the rent that Peterbilt would have paid had it been able to timely occupy the Property. *CLC’s Closing Trial Brief* at 19 [R. 612]. The District Court did not grant this alternative minimum but awarded CLC consequential damages of (a) unpaid rent through April 2015 that JTS caused and would have paid (i.e. the rent due) and (b) CLC’s resulting liability to Peterbilt. Because the Court did not grant the alternative minimum, there is nothing incompatible or duplicative with the award of damages including rent due. The award is proper. (Coincidentally, if JTS had exercised the six-month option, it would have been required to pay this same rent plus the costs of repairs.)

**2. *JTS does not challenge the award of damages for repairs.***

JTS does not challenge the District Court’s award of damages for repairs. *Appellant’s Brief* at 31. As such, the District Court’s decision stands.

3. ***The District Court properly awarded damages for CLC's liability to Peterbilt.***

JTS's last argument for reducing damages questions the purported standing of Peterbilt to claim injury in this action. *Id.* at 31-32. The District Court correctly decided that this case did not present an issue of Peterbilt's standing or privity vis-à-vis JTS, but concerned CLC's damages, including its liability to Peterbilt because of JTS's misdeeds. *Findings and Conclusions* at 4, 9 [R. 960, 965]; *see also CLC's Opp. to Mot. to Reconsider* at 24 [R. 883]; *CLC's Memo. in Opp. to Defendant's Mot. in Limine* [R. 545-55]; *Mot. [in Limine] Denied* [R. 15] (denying JTS's pretrial motion to exclude damages concerning CLC's liability to Peterbilt).

At trial, the unrebutted testimony of CLC's principal confirmed that the Peterbilt Lease was entered before CLC closed on the Property. *CLC's Opp. to Mot. to Reconsider* at 24 [R. 883] (citing exhibits and testimony). Otherwise, CLC could not have obtained outside financing to close. *Id.* Thereafter, CLC's obligations to Peterbilt under the Peterbilt Lease commenced on February 1, 2015, corresponding with the termination date in the Notice of Termination. *Id.* When JTS refused to vacate, and unlawfully detained the Property and breached the Lease, Peterbilt could not take possession and was forced to extend its old lease. *Id.* Later, when JTS instructed Idaho Power to cancel services and the Transformer was removed, Peterbilt was forced again to extend the old lease until April 2015. *Id.* During this time, Peterbilt paid the mortgage on the Property for CLC (because there was no occupying tenant paying rent) and also continued to pay rent and utilities under the old lease. *Id.* Because the old lease was in a smaller building, Peterbilt's planned expansion was delayed and it lost profits. *Id.* at 24-25 [R. 883-84]. Peterbilt also incurred the cost of an idle employee, who had been hired to work at the expanded location. *Id.* at 25 [R.

885]. Peterbilt also paid for Idaho Power to restore power to the Property. *Id.* According to the Peterbilt Lease, as well as CLC and Peterbilt’s un rebutted course of dealing, CLC was liable for these costs incurred because of Peterbilt’s delayed occupation. *Id.* n. 16 (citing provisions of the Peterbilt Lease that impose liability on CLC for JTS’s actions). The District Court correctly found that JTS reasonably anticipated and was obligated to indemnify CLC under the Lease for the resulting liability to Peterbilt that CLC incurred. *Findings and Conclusions* at 9 [R. 965].

JTS’s remaining comments about damages after removing the Transformer are more of the same argument that JTS should only be liable for damages caused by the “first delay.” *Appellant’s Brief* at 32-34. As discussed above, the first delay caused CLC to incur liability to Peterbilt for all of February 2015 (not just twelve days) because the Property was unavailable at the beginning of the month and Peterbilt had to extend its old lease an entire month. Moreover, the evidence at trial was that JTS provided no notice when it abruptly left (after repeatedly declaring that it would not vacate).<sup>27</sup> There was no showing that Peterbilt could have immediately entered the Property on February 13, 2015, let alone without notice. *See CLC’s Opp. to Mot. to Reconsider* at 18 [R. 877] (showing that JTS failed to satisfy its burden of proof on mitigation of damages). Thus, JTS’s self-serving twelve-day calculations for the first delay should be rejected.

For the reasons above, the District Court also correctly determined that JTS is liable for damages caused by the “second delay” and removing the Transformer without CLC’s consent.

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<sup>27</sup> There was conflicting testimony whether JTS vacated on February 12, 2015. *CLC’s Opp. to Mot. to Reconsider* at 12 n. 8 [R. 871] (citing testimony). Because JTS did not give notice, CLC only discovered that JTS had abandoned the Property on February 17, 2015. *Id.* The District Court found that JTS vacated “on or about February 15, 2015.” *Findings and Conclusions* at 3 [R. 959].

Therefore, the District Court properly calculated and awarded damages for CLC's resulting liability to Peterbilt. *Big Butte Ranch, Inc. v. Grasmick*, 91 Idaho 6, 415 P.2d 48 (1966) (holding that an award of damages for breach of contract supported by competent and substantial evidence would not be set aside on appeal); *see also Trilogy Network Sys., Inc. v. Johnson*, 144 Idaho 844, 846, 172 P.3d 1119, 1121 (2007). The District Court's award of damages should be upheld.

**IV. THE DISTRICT COURT CORRECTLY CONCLUDED THAT JTS DID NOT SUCCEED ON ITS COUNTERCLAIMS AND CORRECTLY DENIED THE MOTION TO RECONSIDER.**

JTS does not challenge the District Court's findings denying JTS's affirmative defenses. *Findings and Conclusions* at 9 [R. 965] (finding that JTS did not prove a mitigation defense and its other defenses were unsupported). As such, denial of JTS's affirmative defenses stands.

In brief arguments, JTS asserts that the District Court erred by finding JTS failed on its counterclaims and that the District Court should have granted JTS's motion to reconsider. *Appellant's Brief* at 34-35. These arguments are merely a rehash of JTS's previous arguments. Accordingly, for the same reasons discussed above, the District Court's decisions were correct.

**V. THE DISTRICT COURT APPROPRIATELY AWARDED ATTORNEY FEES UNDER I.C. § 6-324 AND THE LEASE.**

For the reasons discussed above, the District Court found JTS guilty of unlawful detainer and correctly awarded damages under Idaho Code § 6-316. The District Court also correctly considered the parties' related claims under the Lease, correctly determined that JTS breached the same, and correctly awarded consequential damages to CLC. Therefore, because Idaho Code § 6-324 provides for a mandatory award of attorney fees in an action for unlawful detainer damages,

and because Idaho Rule of Civil Procedure 54(e)(1) and the Lease provide an additional basis for attorney fees by contract, the District Court appropriately awarded fees to CLC as the prevailing party. Furthermore, because the District Court awarded fees pursuant to a reasoned decision and in accordance with Idaho Rule of Civil Procedure 54 (e)(3), the District Court did not abuse its discretion in determining the amount.

The award of attorney fees in civil actions “rests in the sound discretion of the [trial] court.” *Lunneborg v. My Fun Life*, 163 Idaho 856, 873, 421 P.3d 187, 204 (2018) (quoting *Burns v. Cty. of Boundary*, 120 Idaho 623, 625, 818 P.2d 327, 329 (Ct. App. 1990)). “[T]he burden is on the appellant [the disputing party] to demonstrate that the trial court abused its discretion.” *Elec. Whole. Supply Co., Inc. v. Nielson*, 136 Idaho 814, 824, 41 P.3d 242, 252 (2001). In determining whether a trial court has properly exercised its discretion to award attorney fees, this Court has described a four-party inquiry that considers the following:

Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.

*Lunneborg*, 163 Idaho at 873, 421 P.3d at 204.

Considering the above factors, the District Court appropriately awarded attorney fees in this case. First, the District Court, by its order, correctly perceived the award as a matter of discretion. *Order Awarding Fees* at 3 [R. 976]. While attorney fees under the unlawful detainer

statute are mandatory,<sup>28</sup> and similarly are compulsory under the Lease,<sup>29</sup> the District Court recognized that determining the prevailing party “is a discretionary matter, based on the overall outcome of the entire action.” *Id.* (citing, among other authorities, I.R.C.P. 54 (d)(1)(B); *Poole v. Davis*, 153 Idaho 604, 606, 288 P.3d 821, 823 (2012)). In this case, JTS agreed—and it cannot be legitimately disputed—that CLC prevailed at trial. *Order Awarding Fees* at 3 [R. 976]; *see also Memo. in Support of Mot. to Disallow Costs and Attorney Fees* at 2 [R. 711] (stating that “[JTS] does not dispute that Plaintiff [CLC] is the prevailing party pursuant to the Court’s *Findings and Conclusions*”). The District Court also recognized that determining the amount of reasonable fees was committed to its discretion. *Order Awarding Fees* at 6 [R. 979] (citing *E. Idaho Agric. Credit Assn. v. Neibaur*, 133 Idaho 402, 411, 987 P.2d 314, 323 (1999)).

Second, the District Court appropriately acted within the outer boundaries of its discretion. The District Court awarded fees according to both the unlawful detainer statute and the Lease. With respect to the former, the District Court found JTS guilty of unlawful detainer and awarded damages, and specifically cited Idaho Code § 6-324 as a basis for fees. *Order Awarding Fees* at 6 [R. 979]. The District Court also specifically cited the provision of the Lease, “Enforcement Expenses,” which allows for fees. *Id.* at 5 [R. 978]. In determining a reasonable amount of fees, the District Court considered the results achieved by CLC, the prevailing party, and the \$86,389.26

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<sup>28</sup> “In any action brought under the provisions of this chapter . . . the prevailing party shall be entitled to an award of attorney fees.” I.C. § 6-324 (emphasis added).

<sup>29</sup> “Enforcement Expenses: The losing party in any court action brought to enforce any of the provisions of or to collect any sums due under the terms of this Agreement [the Lease] shall pay the prevailing party in such action in all trial and appellate courts, a reasonable attorneys’ fee to be fixed by such court, in addition to the costs allowed by law.” *Trial Ex. 1* at 5 (emphasis added).

damages award it obtained. *Id.* at 7 [R. 980]. Significantly, the District Court was not constrained to making the award of fees proportional to the award of damages. *Elec. Whole.*, 136 Idaho at 824, 41 P.3d at 252 (citing *e.g. Lunders v. Snyder*, 131 Idaho 689, 699, 963 P.2d 372, 382 (1998); *Meldco, Inc. v. Hollytex Carpet Mills, Inc.*, 118 Idaho 265, 271, 796 P.2d 142, 148 (Ct. App. 1990)). JTS put up an aggressive defense in this case, both before and after trial, which demanded substantial attention by CLC. *See generally Case Summary* [R. 2-22].

Third, for substantially the same reasons, the District Court applied the correct legal standard and cited the specific choices available under the unlawful detainer statute and the Lease that support an award of attorney fees. *Id.*

Fourth, after determining that CLC is entitled to fees, the District Court considered the factors set forth in Idaho Rule of Civil Procedure 54 (e)(3). *Id.* at 6-7. Based upon these factors, the above-cited statute and rules, the Lease, and a review of the case record (which included discovery, a trial, and several pre- and post-trial motions), the District Court reasoned that \$150,000 is an appropriate award of attorney fees (reduced from \$200,579 actually incurred by CLC) according to the work record submitted by CLC's counsel. *Id.*; *Memo. of Attorney Fees and Costs* [R. 627-704]; *Reply Brief in Supp. of Memo. of Attorney Fees and Costs* [R. 772-80]; *Suppl. Memo. of Attorney Fees and Costs* [R. 906-21].

Despite the foregoing, JTS argues that the District Court abused its discretion by awarding fees after the date that CLC supposedly recovered possession of the Property and by awarding fees for successfully prosecuting and defending claims under the Lease. *Appellant's Brief* at 36-37.

Regarding the former argument, the District Court correctly rejected the same<sup>30</sup> and ruled that damages obtained under Idaho Code § 6-316 properly fall within “the provisions of [the] chapter” for unlawful detainer, and, therefore, justify an award of attorney fees. I.C. § 6-324. With respect to the latter argument, as discussed above, the District Court correctly considered the parties’ related contract claims, found JTS liable for breach, and awarded damages to CLC. Thus, attorney fees were also appropriately awarded according to the Lease. Because the Lease in this case was a commercial transaction, attorney fees were additionally proper under Idaho Code § 12-120 (3).<sup>31</sup> *Pocatello Hosp.*, 157 Idaho at 743, 339 P.3d at 1147. The District Court was not required to apportion fees according to claims; especially where CLC prevailed on both claims for unlawful detainer damages and breach of contract.<sup>32</sup> *Advanced Med. Diagnostics, LLC v. Imaging Ctr. of Idaho, LLC*, 154 Idaho 812, 815-16, 303 P.3d 171, 174-75 (2013); *see also Meldco*, 118 Idaho at 271, 796 P.2d at 148 (confirming that fees should not be calculated according to “individual prevailing and nonprevailing ‘theories[;]’ [r]ather, the amount should be determined by the appropriate application of the factors enunciated in I.R.C.P. 54 (e)(3)”).

JTS additionally argues that the Lease cannot be a basis for fees because the District Court held that the term expired when JTS did not exercise the six-month option. *Appellant’s Brief* at 38. Yet, JTS concedes that provisions of the Lease carried over into its holdover tenancy. *Id.* at 22 (citing *Lewiston*, 110 Idaho at 646, 718 P.2d at 557); *see also Findings and Conclusions* at 6 [R.

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<sup>30</sup> *Memo. in Supp. of Mot. to Disallow Costs and Attorney Fees* at 6-7 [R. 715-16].

<sup>31</sup> *Answer and Counterclaim* at 13, ¶ 47 [R. 105].

<sup>32</sup> True, CLC was not successful in its final claim for malicious injury. However, the District Court properly acknowledged as much and nonetheless awarded fees according to the prevailing claims for unlawful detainer damages and breach of contract. *Order Awarding Fees* at 7 [R. 980].



962] (citing *Lewiston*). These carried-over provisions necessarily included the fee provision, which the District Court cited in its order. *Order Awarding Fees* at 5 [R. 978]. Significantly, JTS cited the Lease and the fee provision as the basis for its own fee request, which, had JTS prevailed, it would not argue was unenforceable.<sup>33</sup> *Answer and Counterclaim* at 13, ¶ 47 [R. 105] (claiming entitlement to attorney fees under “Idaho Code §§ 12-120(3), . . . 6-324, Idaho Rule of Civil Procedure 54, and the express terms of the Lease at page 5 ‘Enforcement Expenses’”).

Finally, JTS avers that CLC’s memorandum of costs did not procedurally conform with the requirements of Idaho Rule of Civil Procedure 54(d)(4). *Appellant’s Brief* at 39. The District Court correctly rejected this argument and found that CLC’s memorandum of costs and supporting affidavits conform with Rule 54(d). *Order Awarding Fees* at 3 [R. 976] (citing *Est. of Holland v. Metro. Prop. and Cas. Ins. Co.*, 153 Idaho 94, 102-03, 279 P.3d 80, 88-89 (2012)); *see also Resp. to Defendants’ Suppl. Memo. in Supp. of Mot. to Disallow Attorney Fees and Costs* [R. 906-09]; *Suppl. Aff. of William B. Ingram* at 2, ¶ 7 [R. 911].

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<sup>33</sup> “It is of no consequence that the underlying contractual obligation is unenforceable. A prevailing party may recover attorney fees even though no liability under a contract was established or where no contract was, in fact, ever formed.” *Garner v. Bartschi*, 139 Idaho 430, 439, 80 P.3d 1031 (2003) (quoting *Hilbert v. Hough*, 132 Idaho 203, 207, 969 P.2d 836, 840 (Ct. App. 1998)). Thus, JTS is incorrect in its reliance on *O’Connor v. Harger Constr., Inc.* that a severability clause must be included in the contract. *Appellant’s Brief* at 38. In that case, the Court found that the unenforceable instrument “was a contract and had a severability clause[.]” 145 Idaho 904, 912, 188 P.3d 846, 854 (2006). The Court did not hold that the additional fact of a severability clause was necessary to enforcing the attorney provision. *Id.* JTS’s reliance on *Ellis v. Butterfield* is also misplaced. *Appellant’s Brief* at 38-39. In *Ellis*, the Court held that respondents who terminated a contract could not “later assert the attorney fee clause in it while defending successfully against [the] appellants’ action to reinstate the contract.” 98 Idaho 644, 650, 570 P.2d 1334, 1340 (1977). Here, CLC never claimed to have terminated the Lease before the term expired, and JTS never asked to reinstate the contract. Rather, CLC argued, and the District Court found, that JTS was a holdover tenant that continued to be bound by provisions of the Lease, including the fee provision.

Therefore, the District Court did not abuse its discretion in awarding attorney fees.

**A. JTS does not challenge costs.**

JTS does not challenge the District Court's award of costs on this appeal.

**CONCLUSION (I.A.R. 35(b)(7))**

The District Court made correct factual findings and correct legal conclusions about JTS's unlawful detention and breach of the Lease. The District Court correctly awarded damages and attorney fees to CLC. For the foregoing reasons, CLC should prevail in this appeal. CLC respectfully requests the Court issue the appropriate remittitur and, pursuant to the above-cited statutes and provision of the Lease, award CLC attorney fees and costs for this appeal.

DATED this 18th day of January, 2019.

STRONG & HANNI

*/s/ William B. Ingram* \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18th day of January, 2019, I caused to be served a true copy of the foregoing RESPONDENT'S BRIEF by the methods indicated below, and addressed to each of the following:

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