STATE OF IDAHO)
County of KOOTENAI)ss

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CLERK OF DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

THOMAS LUNNEBORG, **a married individual,** *Plaintiff*, vs. **MY FUN LIFE CORP., a Delaware corporation, DAN E. EDWARDS and CARRIE L. EDWARDS, husband and wife,** *Defendants*.	Case No. **CV 2014 8968** **MEMORANDUM DECISION, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOLLOWING COURT TRIAL**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter came before the Court on March 13-15, 2017, for a three-day court trial. Following the trial, the parties were allowed to submit simultaneous post-trial briefing on March 29, 2017, and allowed to submit simultaneous rebuttal briefing to their opponent's post-trial brief on April 5, 2017. The parties submitted such briefing. The matter is now at issue.

On December 8, 2014, Plaintiff Thomas Lunneborg (Lunneborg) filed his Complaint against My Fun Life Corp. (MFL). Lunneborg's Complaint alleged; 1) MFL terminated Lunneborg's employment without cause, 2) MFL breached its contract, 3) MFL violated the Idaho Wage Claim Act, I.C. § 45-601 *et. seq.*, 3) MFL wrongfully terminated Lunneborg in violation of public policy, and 4) MFL breached its duty of good faith and fair dealing. Compl. 1-9. On January 5, 2015, MFL filed its Answer and Counterclaim. MFL generally denied most of Lunneborg's claims, affirmatively

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

On February 19, 2015, this Court scheduled the court trial to begin February 18, 2016. On August 7, 2015, the parties filed a Joint Motion and Order for Trial Continuance, and on August 9, 2015, this Court rescheduled the trial to begin on June 13, 2016.

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

On March 8, 2016, the parties filed a Joint Motion for Trial Continuance and on March 8, 2016, this Court rescheduled the court trial for October 17, 2016.

On June 22, 2016, a Notice of Bankruptcy was filed, informing this Court that MFL had that same day filed for Chapter 7 protection under the United States Bankruptcy Code. Due to that filing, on September 27, 2016, Lunneborg filed Plaintiff's

Motion to Reset Trial Date. Following a hearing on October 11, 2016, this court rescheduled the Court trial to begin on March 13, 2017.

This is an employment contract dispute. The contract was an April 8, 2014, Offer of Employment signed by both Lunneborg and Dan Edwards. Pl.'s Ex. 13B; Defs' Exh. A, p. 341. That contract states in pertinent part: "Your employment with the Company will be at will; meaning that either you or the Company will be entitled to terminate your employment at any time and for any reason, with or without cause." Pl.'s Ex. 13B, p. 1, ¶ 4; Defs' Exh. A, p. 341, ¶ 4. It also states: "In the event of termination of this employment agreement, without cause, except resignation, six months of salary will be paid on current payroll schedule." *Id.,* ¶ 5.

On May 21, 2014, Lunneborg went to work as Chief Operating Officer of MFL, a Deleware corporation owned by Dan and Carrie Edwards. MFL is a multi-level marketing company. At the time, MFL sold memberships for access to discount travel accommodations. Just over two months after Lunneborg's first day of work, on July 29, 2014, Dan Edwards terminated Lunneborg's employment. Defs' Ex. A, p. 500.

The dispute centers around whether Lunneborg is entitled to receive his six months' termination pay, which amounts to $60,000.00. Under the terms of the Offer of Employment, which both Dan Edwards and Lunneborg signed on April 16, 2014, if Lunneborg was terminated by defendants "without cause", then Lunneborg is entitled to his termination pay from MFL. Pl.'s Ex. 13B. If Lunneborg is entitled to his termination pay from MFL, secondary issues arise as to whether that amount should be trebled under I.C. § 45-615, and whether Lunneborg should be allowed to "pierce the corporate veil" of MFL, and obtain judgment against Dan and Carrie Edwards. MFL has no assets.

II. ANALYSIS.

A. Lunneborg Was Terminated Without Cause.

1. The Law.

"Where good cause is required, the employer must show that the employee did something wrong that justified the termination." *Metcalf v. Intermountain Gas Co.,* 116 Idaho 622, 630, 778 P.2d 744, 752 (1989). In order for Dan Edwards and Carrie Edwards to defend that Lunneborg's termination was with cause, their discharge of Lunneborg must be objectively reasonable.

> The employer is not the sole judge of what constitutes good cause. The employer's mere dissatisfaction with the employee's performance, or the mere absence of bad faith or evil or fraudulent conduct on his or her part, does not necessarily constitute good cause. Good cause exists only where a discharge is objectively reasonable, in that a reasonable person would find the cause sufficient.

30 C.J.S. Employer – Employee § 70 (footnotes omitted). As set forth below, this Court finds Dan Edwards and Carrie Edwards lacked a reasonable basis for discharging Lunneborg.

> In the absence of a contract provision to the contrary, the employer determines the facts in deciding whether good cause for discharge exists, and may act on its findings if they are supported by substantial evidence. The employer must believe the evidence, and its belief must be reasonable.

Id. (footnotes omitted). There is "no contract provision to the contrary" in the present case. One of the cases cited in the above passage is *Baldwin v. Sisters of Providence in Washington, Inc.,* 112 Wash.2d 127, 769 P.2d 298 (1989 en banc). In *Baldwin*, the Supreme Court of Washington held:

> We hold "just cause" is a fair and honest cause or reason, regulated by good faith on the part of the party exercising the power. We further hold a discharge for "just cause" is one which is not for any arbitrary, capricious, or illegal reason and which is one based on facts (1) supported by substantial evidence and (2) reasonably believed to be true.

112 Wash.2d at 139, 769 P.2d at 304. As set forth below, this Court finds the reasons stated by Dan Edwards for firing Lunneborg were false. Those reasons were not at the time and are not now supported by substantial evidence. This Court finds that even if Dan Edwards believed in the truth of those reasons, such belief was not reasonable.

There was testimony at trial that Lunneborg felt that "without cause" in his agreement meant any firing had to be for "something intentional" such as sexual misconduct. Lunneborg testified that the original draft of the agreement provided six-months salary if he were to be discharged for any reason. Pl's Ex. 13A. Lunneborg testified Dan Edwards requested it be changed to "without cause", and told Lunneborg the reason for the request was Dan Edwards did not want to pay six months' salary if Lunneborg was discharged for intentional conduct such as sexual misconduct, committing a crime, or taking information from MFL. Dan Edwards testified that was not the case and that he told Lunneborg if he had to terminate Lunneborg for not doing his job, that would not be "without cause." The Court finds it does not need to decide who is telling the truth. This Court finds that under the common meaning of "without cause", Dan Edwards fired Lunneborg "without cause."

2. The Facts.

Lunneborg had worked for Oxyfresh for almost 20 years. When he left Oxyfresh to join MFL, Lunneborg was Vice President of Logistics and Product Development.

Dan Edwards was put in contact with Lunneborg through Dr. Todd Schlapfer (Schlapfer), a naturopath who had previously helped Lunneborg with research and development at Oxyfresh. Dan Edwards had known Schlapfer for quite some time as Dan Edwards testified Schlapfer had treated Dan Edwards, Carrie Edwards and Dan Edwards' mother, who passed away in 2004. Dan Edwards testified he and Schlapfer frequently had lunch together. Dan Edwards testified that it was Schlapfer who asked

Dan Edwards to talk to Lunneborg. Citing *Rosecrans v. Intermountain Soap and Chemical Co., Inc.,* 100 Idaho 785, 605 P.2d 963 (1980), defendants argue Lunnegborg has the burden to establish he was terminated in violation of the employment contract, and then, the burden shifts to defendants to prove the existence of good cause for the termination. Defendants' Closing Argument Reply Brief 1-2. The Court finds Lunneborg has met his burden of proving he was terminated in violation of the employment contract. The Court also finds defendants have not proven good cause. Stated conversely, Lunneborg has proven that he was terminated without cause.

Lunneborg had known Schlapfer through working with Schlapfer at Oxyfresh. Together they developed products for Oxyfresh. One of those products was LifeShotz, a nutritional supplement. Dan Edwards knew Schlapfer through Schlapfer's profession as a naturopath.

Richard Brooke (Brooke) owns Oxyfresh. Dan Edwards testified at trial in the defense case in chief that he knows Brooke very well. Dan Edwards testified that "Brooke and I have known each other for many years," "We were going to do business together but he didn't put me on top." Dan Edwards testified, "I value Richard, I trust the man, he is a legend in network marketing."

Schlapfer knew Dan Edwards was looking for an executive-level employee to run MFL, and Schlapfer knew that Lunneborg had concerns about continuing to work for Oxyfresh. On March 27, 2013, Dan and Carrie Edwards, Lunneborg and Schlapfer met at the Coeur d'Alene Resort Golf Course café. That led to a dinner two days later with Dan and Carrie Edwards, Lunneborg, and Lunneborg's fiancée Brenda. Two days after that dinner Lunneborg reviewed several of MFL's financial reports provided by Carrie Edwards. Two days after that, Lunneborg visited MFL's offices to accept Dan Edwards' offer of employment as COO of MFL. It was now April 2, 2014. As mentioned above,

the employment contract was signed April 16, 2014, and Lunneborg's first day as COO of MFL was May 21, 2014. Sixty-nine days later, on July 29, 2014, Dan Edwards terminated Lunneborg's employment. Defs' Ex. A, p. 500. That letter reads:

> Dear Tom:
> You are aware of the several instances in which I have expressed concern with your performance in your position at MyFunLIFE, Inc. After repeatedly attempting to resolve those matters without success, MyFunLIFE has finally decided to terminate your employment, effective immediately.
> Your termination is for cause, for the following reasons:
> 1. The central purpose of your employment here was to bring health and nutritional products to market. You are unable to make any significant progress to that end, and whenever I have encouraged you to work on that goal, you have refused to take action, citing roadblocks that you claim prevent the development of new products.
> 2. I have also learned that you have been negotiating a consulting agreement with your former employer that would expressly prohibit your from bringing other new products to market. This is in direct competition with your duties at MyFunLIFE and a serious breach of your obligations to us. We cannot continue to pay an employee who not only fails to perform the central functions of his position, but is motivated to continue in that failure by an outside consulting arrangement that requires continued inaction.
> We regret that we are forced to take this action and wish you the very best in your future professional endeavors.
> Sincerely,
> MyFunLIFE
> Dan Edwards, CEO

Id. The problem for Dan Edwards and MFL is neither of the two reasons given are true. Neither of the two reasons are supported by the evidence.

Regarding the first reason, the Court finds that *a* purpose of Lunneborg's employment was to bring health and nutritional products to market, but that was not "the *central* purpose." The Court finds that in the two months he worked as COO for MFL, Lunneborg could not have made "any significant progress to that end [bringing nutritional products to market]", especially when Dan Edwards had not identified a specific product and Dan Edwards had failed to lock up Schlapfer to formulate such a product.

Regarding the second reason, the purported conflict with Oxyfresh, Dan Edwards knew all along that Lunneborg would be staying on to help Brooke and Oxyfresh. Also, Dan Edwards is entirely mistaken that Lunneborg had "been negotiating a consulting agreement with your former employer that would expressly prohibit you from bringing other new products to market." No agreement was ever reached between Lunneborg and Brooke.

The Court will discuss in detail each of these two reasons given by Dan Edwards.

Reason 1: The "central purpose" of hiring Lunneborg was not to develop new health and nutritional products; it was to run MFL. Dan Edwards did not identify a new health and/or nutritional product and approve research and development of that product, let alone approve the manufacture of that product. Dan Edwards did not hire Schlapfer who was essential to formulating any new health or nutritional product.

The Court finds Lunneborg has proven MFL breached its contract with Lunneborg by firing him without cause and without paying him his six months' severance. In coming to that finding, it is important to understand Lunneborg's contract of employment. It is important to understand what he was hired to do. It is important to understand what Lunneborg was tasked to do and what he was capable of doing and not capable of doing for MFL. It is important to know what Lunneborg controlled and what he did not control. It is important to know what Dan and Carrie Edwards controlled and did not control. It is important to know what Robert Brooke controlled and did not control.

The Court finds MFL breached its contract with Lunneborg by firing him without cause and not paying his severance, because Lunneborg was not responsible for the first two steps in "bringing a nutritional product to market." First, Dan Edwards was the one to make the determination of what product to bring to market. Second, Dan

Edwards was responsible for obtaining the services of Schlapfer to *formulate* that nutritional product. Only then could Lunneborg do what he was hired to do, and that is to arrange the production, distribution and marketing of that product.

The contract of employment hired Lunneborg as COO of MFL. The Offer of Employment reads: "Position. You will serve in a full-time capacity as Chief Operating Officer of the Company. You will report to the CEO." Defs' Ex. A, p. 341. This shows Dan Edwards retained the ultimate say. Lunneborg testified at trial that "I had no authority to go forward on a product without Dan's agreement, to go forward we had to have capital available." Lunneborg also testified that, "We [MFL] didn't have a consulting agreement with Dr. Schlapfer while I was working there." Dan Edwards was asked at trial whether Lunneborg had the authority to choose what MFL developed. Dan Edwards response was rambling, but eventually Dan Edwards was pinned down and testified, "I had ultimate say, but it was up to them, they kept stalling." Dan Edwards admits he had the ultimate say, not Lunneborg.

Dan Edwards would have the Court believe that Lunneborg was hired primarily to develop products for MFL. Dan Edwards made that claim multiple times at trial and in his briefing. Indeed, much of the testimony at the trial was each side trying to prove their understanding of what Lunneborg was hired to do for MFL. This is understandable. Dan Edwards needs the Court to believe his claim that Lunneborg was hired primarily to develop products for MFL because that claim was the first reason given to Lunneborg by Dan Edwards in the above termination letter.

Lunneborg would have the Court believe that he was primarily hired by Dan Edwards to run MFL, and that part of his duties in running MFL was to develop products. The Court finds the evidence supports Lunneborg's claim that the primary focus of his job was to run MFL. That is what Dan Edwards stated in his texts. On

March 29, 2014, in a text from Dan Edwards to Lunneborg: "I don't particularly care to run day to day operations." Pl.'s Ex. 19, p. 1. That is what Dan Edwards told his members or affiliates in his webcast on Lunneborg's first day of work. Dan Edwards said, "I love being in the field, can't stand all the details. I want to be with you, in your homes, in hotel rooms." Pl.'s Ex. 50. At the beginning of that web cast, Dan Edwards introduced Lunneborg as COO, said, "I love this guy," and "He will be overseeing operations and marketing." *Id.* A little later Lunneborg said he, "saw an opportunity with my skills to focus more on the creative side," and "I'm a nuts and bolts kind of guy." *Id.* Dan Edwards said, "We're adding products, like spokes on the wheel." Lunneborg then said, "I get to help bring other things to market – couldn't pass up that opportunity." *Id.* Further proving that Dan Edwards was hiring Lunneborg to run MFL (and not just develop products) was the fact that Dan and Carrie Edwards took a vacation the first two weeks that Lunneborg began working, and before they left, Dan Edwards introduced him to all the employees of MFL (and the Edwards' other businesses), and Dan Edwards told the employees to take direction from Lunneborg.

Lunneborg was hired by Dan and Carrie Edwards to run MFL as its COO. As just mentioned above, the contract states Lunneborg will report to Dan Edwards: "You will report to the CEO." Thus, this Court finds any new product Lunneborg proposed to be brought to market would need Dan Edwards' approval. This Court also finds that if the product were a "nutritional" product, Lunneborg could not bring the proposed product to market by himself. He would need someone like Schlapfer to help him.

Certainly product development was a part of Lunneborg's job as COO, but not the only responsibility. When Lunneborg started, MFL was already an up and running corporation, a corporation which had "sold" memberships to access travel accommodation discounts, a corporation which wanted to develop other "products",

products which their existing members would then buy and sell to other members, and get those other members to buy from them and sell to others. Some of the products which MFL wanted to develop may have been "nutritional", some were not. Defs' Ex. A, p. 492.

The evidence shows that Dan Edwards was deferring to Lunneborg as to when any product was ready to launch. In a text from Lunneborg to Schlapfer on March 29, 2014, Lunneborg wrote:

> Dan is going to let me go through all the company's financials on Monday. They had good answers to all my questions. Brenda had a great feeling on both. **Dan said he wants you and I to decide when the product is ready for launch not him.** He has capital to pay cash for us and production I get to see that Monday. He is pushing hard for me to join as coo or pres. He does not want to handle running this place.

Pl..'s Ex. 11. (emphasis added). Keep in mind this was written about eighteen days before Lunneborg and Dan Edwards signed the employment contract and about seven weeks before Lunneborg began working as COO for MFL. At that time, Lunneborg and Schlapfer obviously both contemplated working with Dan Edwards and MFL. The problem is Dan Edwards never went out and locked up Schlapfer. But in that above message, Lunneborg's understanding that Lunneborg would decide when the product was ready to launch and not Edwards, is corroborated by a text from Dan Edwards to Lunneborg the same date, March 29, 2014:

> I want you to know that I am looking for someone like yourself, that knows this business to run my company so I can go into the field to recruit and train our teams. I don't particularly care to run day to day operations. I love working directly with the field.

Pl.'s Ex. 19, p. 1. This makes it clear that Dan Edwards was hiring Lunneborg to run MFL, not just handle product development. And while Dan Edwards may have given Lunneborg final say as to *when* a product is ready to launch (as set forth in the above message between Lunneborg and Schlapfer), it is clear Dan Edwards retained final say

is to *whether* a product would be developed and *what* product that might be. On May 22, 2014, Dan Edwards texted to Lunneborg:

> You are COO and "If" we decide to launch a nutrition product, then you will be the COO for that product also. It really is NON [sic] of his business what you and I decide to do.

Pl's Ex. 19, p. 3.

Carrie Edwards stated Lunneborg was not going to develop products alone, recognizing that Lunneborg did not develop products alone when he worked for Oxyfresh. On May 21, 2014, Carrie Edwards prepared an announcement for Lunneborg as COO of MFL, stating

> In his corporate life, Tom was highly recognized for his leadership abilities. He advanced through multiple departments and was quickly propelled into a top Executive position. He oversaw all global manufacturing, logistics, purchasing, costing and R&D. During his tenure he **helped** create, improve, and foster over 60 personal care, nutrition, and pet care products.

Pl.'s Ex. 36, p. 1. (emphasis added).

When Dan Edwards testified at trial in the plaintiff's case, he testified that some time shortly after the July 15, 2014, email shown in Plaintiff's Exhibit 35, "Brooke asked me if I hired Tom [Lunneborg] to build a nutrition product, and I said 'I did.'" Dan Edwards then testified, "Brooke asked me if we were doing a Life Shotz type drink, I told him we hadn't determined what we were going to build." The next day, on July 16, 2014, Carrie Edwards' Skype text to Lunneborg corroborates the fact that as of that time, Dan Edwards had not determined what the "nutritional product" might be, and corroborates that it would be Dan Edwards who would make that decision. That Skype message from Carrie Edwards to Lunneborg discusses the conversation between Dan Edwards and Richard Brooke the night before, which Carrie Edwards wrote she "was present on the conversations", and reads:

> Basically I am surprised you lasted as long as you did with a man like that. I am literally dumbfounded when adults behave that way. But NO, Dan did not say you were hired only to bring us products! He did express that he realizes your talents extend far beyond what you are currently doing and when/if we decide to expand to different markets that you will (obviously) be right there with us!

Pl.'s Ex. 36, p. 3. Dan Edwards was asked about this at trial, and his explanation was that, "Carrie was sugarcoating this back to Tom [Lunneborg] so he didn't raise up red flags." That explanation really makes no sense. Even if that explanation were true, it would simply mean that Dan Edwards admitted under oath that his wife was lying to Lunneborg. Dan Edwards' explanation makes no sense. Why would he have his wife lie to Lunneborg about what they were telling Brooke? The Court finds Dan Edwards not to be credible in his "sugarcoating" explanation. The Court finds two weeks before Dan Edwards fired Lunneborg for not bringing a nutritional product to market, Dan Edwards had not even determined what that product might be. The Court also finds that Dan Edwards would be the one to make final approval of whether MFL's assets would be directed to research and development of a product, and that Dan Edwards would make such a decision only after he made the decision on *what* the product should be. Dan Edwards can fire Lunneborg without cause but he has to pay a penalty. Dan Edwards cannot fire Lunneborg without cause without paying six months of Lunneborg's salary. This Court finds Dan Edwards fired Lunneborg without cause. It is not sufficient cause for Dan Edwards to fire Lunneborg for his alleged failure "to bring health and nutritional products to market" when Dan Edwards was the one to decide *what* product should be brought to market and, within the first two months of Lunneborg's employment, Dan Edwards had not made that determination.

But most importantly, as to any nutritional product, Lunneborg was not hired to actually develop the product and bring it to market by himself. Lunneborg is not a

doctor; he is not a chemist. Lunneborg's skills are bringing the product to production, marketing the product, and distributing the product. The only person in the mix who could actually come up with the formulation for a product was Schlapfer.

Therein lies the problem--no one person and no business entity controlled Schlapfer. While Schlapfer had done business for Oxyfresh, Oxyfresh didn't control Schlapfer. While Lunneborg had worked with Schlapfer at Oxyfresh, Lunneborg didn't control Schlapfer. While Schlapfer had put Dan Edwards in touch with Lunneborg, Dan Edwards did not control Schlapfer. When asked at trial why he had not gotten Dr. Schlapfer on contract with MFL, Dan Edwards testified, "We were working on it." The Court finds that the task of getting Schlapfer on contract with MFL was upon Dan Edwards, and Dan Edwards failed in that regard.

If Dan Edwards had wanted a nutritional product within the first two months of Lunneborg's employment, Dan Edwards needed to get Schlapfer working for him in some capacity. That never occurred in the two months Lunneborg worked for MFL as COO. Dan Edwards, as CEO of MFL, and the sole owner of MFL, was the person to get Schlapfer working for MFL in some capacity. The evidence shows that a lot of lunches and dinners took place where Dan Edwards, Carrie Edwards, Lunneborg and Schlapfer "talked" about ideas and brainstormed about product areas, maybe even specific products, but that is all the further it went before Dan Edwards terminated Lunneborg. The evidence also shows that Dan Edwards would be the one to decide if an actual product idea would have the resources of MFL poured toward it to bring it to market.

There is a discrepancy as to how long it might take to bring a product to market. However, the evidence is uncontroverted that it would take more than the two months Dan Edwards gave Lunneborg. Lunneborg testified he had helped create over 60

products for Oxyfresh, about 30 of which were brought to market. He testified it took two years to develop LifeShotz for Brooke. He explained why the process takes time. Lunneborg testified the first step is to determine what we want the product to do, then formulate the product, then look for contraindications with the ingredients and look at the stability of all the ingredients, look at applicable regulations, partner with a laboratory to develop a prototype, and test the product with a focus group for taste, texture, and color; and then once the final formulation is decided upon you negotiate with a manufacturer, develop packaging, and determine how it is to be distributed. Lunneborg testified that once the final formulation is established it takes at least another eight to ten weeks for a manufacturer to create the first batch of the product. On the other hand, Dan Edwards testified Schlapfer formulated a product for a person named Wendy in eight days. But Dan Edwards' inference that Lunneborg could have immediately brought a nutritional product to market for MFL is belied by Dan Edwards' own notes. Dan Edwards identified his notes from a meeting between he, Lunneborg and Schlapfer held on July 25, 2014. Defendants' Exhibit A, p. 499. Dan Edwards' own handwritten notes from that meeting read: "8-10 weeks to get formulation ready" and "8-12 weeks manufacturing." This is written four days before Dan Edwards terminated Lunneborg. This conclusively proves the reasons set forth in Dan Edwards termination letter are false…Lunneborg was not being terminated for not bringing a nutritional product to market for Dan Edwards. Four days earlier Dan Edwards knew from talking to Schlapfer and Lunneborg that even at that time they were 16 weeks to 22 weeks away, even if they had a product identified, which they did not. Dan Edwards testified that these weeks were set forth by either Lunneborg or Schlapfer. Dan Edwards testified that was the estimated weeks to bring a health or nutrition product to market. Dan Edwards testified at trial that in that meeting "we weren't specific on the

product." Dan Edwards testified that "This was a brand new idea for all of us." So on July 25, 2014, Dan Edwards admits he had no product identified, that this was a new idea for the three of them, and yet, five days later he terminates Lunneborg because he failed to bring a nutritional product to market? Dan Edwards is lying as to the reason he terminated Lunneborg.

Dan Edwards terminated Lunneborg for not bringing a nutritional product to market within his first two months of employment. Due to the fact that Dan Edwards was CEO of MFL and due to the fact that it would be Dan and Carrie Edwards money that would be used to bring any identified product to market, it is clear Dan Edwards had the ultimate say as to what product would be developed. There is no evidence that Dan Edwards gave the "green light" to any product that Lunneborg then refused to take steps to bring to market. Even if he had, given the fact that Dan Edwards did not supply Lunneborg with the key person to make that happen, specifically Schlapfer, not bringing a product to market was simply not Lunneborg's responsibility within that two-month time frame.

Reason 2: Dan Edwards knew Lunneborg kept a relationship with Oxyfresh/Brooke, and was mistaken that Lunneborg's former employer Oxyfresh/Brooke had specifically prohibited Lunneborg from developing new products for MFL.

There was extensive testimony at trial about the final days of Lunneborg's employment, when Dan Edwards met with Brooke and received documented information from Brooke about Lunneborg. Why in these final days Dan Edwards chose to get all his information from Brooke about what was going on between Brooke and Lunneborg, and not get any information from his own employee/COO/Lunneborg, is a mystery. Brooke is, in a way, Dan Edwards' competitor. Dan Edwards' decision to listen to Brooke, to the exclusion of his own COO Lunneborg, is an important reason

this Court finds Dan Edwards fired Lunneborg without cause.

As set forth above, Dan Edwards' second reason to Lunneborg for his termination was:

> I have also learned that you have been negotiating a consulting agreement with your former employer that would expressly prohibit your from bringing other new products to market. This is in direct competition with your duties at MyFunLIFE and a serious breach of your obligations to us. We cannot continue to pay an employee who not only fails to perform the central functions of his position, but is motivated to continue in that failure by an outside consulting arrangement that requires continued inaction.

Defs' Ex. A, p. 500. The first phrase "I have also learned…", is important. The evidence is overwhelming that Dan Edwards "learned" about any agreement prohibiting Lunneborg from bringing new products to market for MFL *only* through Brooke, completely ignoring Lunneborg. The phrase "…you have been negotiating…" is also important. The evidence is overwhelming that in fact no agreement was ever signed between Brooke and Lunneborg.

Dan Edwards testified he had a meeting with Brooke on July 15, 2014. The topics of discussion of that meeting were set forth in an email from Brooke to Melissa Gulbrandson. That email reads:

> Just had a good conversation with Dan Edwards the guy that hired Tom [Lunneborg]. Here is what he told me
> 1. He specifically hired Tom to develop products..everything from a nutritional drink to sunscreen not to run his companies.
> 2. That has been there [sic] plan from day one and Tom has been involved in all those conversations.
> 3. That if Tom signs the contract he has in hand specifying that he will not be doing products for Myfunlife, Dan will have to terminate him immediately.
> 4. He wants a LifeShotz products as his top priority

Defs' Ex. A, p. 4. Dan Edwards was asked about that email at trial.

As to topic one, Dan Edwards testified he did tell that to Brooke in their meeting (that he specifically hired Lunneborg to develop products…not run his companies), but

then he testified that he did not tell Lunneborg that he had told Brooke that. Why would Dan Edwards admit to lying to Brooke, and then keep the fact that he told Brooke that lie a secret from Lunneborg? If Dan Edwards told Brooke that Dan Edwards hired Lunneborg to develop products and not to run the company, this Court finds that is a lie. The fact that it is a lie is made clear from the employment contract (Plaintiff's Exhibit 13B, that he was hired as the Chief Operating Officer), and the lie is made clear by Dan Edwards' own statements in his webcast. But it gets even weirder. The next day Lunneborg texts Carrie Edwards, telling her he got a copy of Brooke's email about the meeting. Pl.'s Ex. 36, p. 2. Lunneborg asked her about the portion of that email which read, "…last night Dan told him [Brooke] he never hired me to run his companies, he only hired me to make products for you guys." *Id.* In response, Carrie Edwards lies to Lunneborg about the lie Dan Edwards told Brooke, when she wrote: "But, NO, Dan did not say you were hired only to bring us products!" *Id.*

Dan Edwards' Topic two is not relevant.

As to topic three, that if Lunneborg, "signed the contract he has in hand specifying that he will not be doing products for Myfunlife, Dan will have to terminate him immediately", Dan Edwards was asked at trial, "Doesn't that imply that Tom had not signed a contract?" Dan Edwards answer was as obtuse as it was disingenuous. He would not agree with the statement in that question, and then testified, "I took it to mean the contract we were being asked to sign." To which Dan Edwards was then asked, "You knew you hadn't signed the agreement?" Dan Edwards had to admit that. Thus, Dan Edwards fired Lunneborg *as if Lunneborg <u>had</u> signed a contract with Brooke*, while ignoring the fact that Lunneborg had never signed such a contract. Dan Edwards own termination letter makes that fact clear. Defs' Ex. A, p. 500. However, Dan Edwards act of terminating Lunneborg is not consistent with that fact. And before Dan Edwards

terminated Lunneborg, Dan Edwards never asked his own employee and COO whether what Brooke had been telling him was true. Dan Edwards certainly never saw a contract between Lunneborg and Brooke, because none existed.

Regarding the fourth topic in Brooke's email, that Dan Edwards, "wants a LifeShotz products as his top priority", Dan Edwards was asked at trial if he made that statement to Brooke, to which Dan Edwards said "No." Then Dan Edwards was asked "Was it your priority?" To which Dan Edwards testified, "I hated the way LifeShotz tasted." That really didn't answer the question, and counsel asked the question again. Dan Edwards' response this time was, "I wanted an energy drink, maybe he heard me say I wanted an energy drink." Later in his testimony Dan Edwards testified, "We talked about a LifeShotz product, we wanted an energy drink and we talked about that." This fourth topic by itself might not seem that important, but it might show the seeds of Dan Edwards' contempt for Lunneborg. Lunneborg testified that Dan Edwards asked Lunneborg to make a copy of the LifeShtoz formula. Lunneborg testified that after he had started working at MFL, Dan Edwards called him at home as he was getting his RV ready, and said "I want you to make a mirror image of that." Lunneborg testified that he told him that we couldn't do that, to which Dan got upset. Lunneborg testified that a short time later Dan Edwards called him back and had calmed down, and that it seemed like we were fine. All of this testimony by Lunneborg is corroborated by text messages between Lunneborg and Schlapfer. Pl.'s Ex. 30, p. 7. Lunneborg texted Schlapfer:

> You and I have to sit down soon. Dan kind of lost his marbles with me last night. He round about asked me to knock off LS and then I insinuated he could reverse engineer it. I told him he isn't clear on the undertaking that would be and that I will never copy a formula that I was part of at oxy. He got a little hot and it all came as a huge surprise to me. Need to give you all the details. He has zero focus and gets excited about whatever the next idea is that crops up.

Id. This is corroborated by Schlapfer's testimony in his deposition for trial. Schlapfer testified:

> Q And during the time between April and July of 2014, did you have any conversations with Dan Edwards regarding Life Shotz?
> A Yes.
> Q And can you describe those conversations to us?
> A Dan was very interested in having Tom and I develop a product for his company that was, he referred to, as a mirror image of Life Shotz.
> Q Are you telling me that Dan asked you and Tom to create a mirror image of Life Shotz for MyFunLIFE?
> A Yes. In fact –
> Q And how did you --
> A Go ahead.
> Q How did you respond to that request?
> A Absolutely no, that it was unethical
> Q And at that time you were still consulting with Oxyfresh; correct?
> A Correct. I still am.
> Q How did Mr. Edwards react to that?
> A He asked more than once the same basic question. I found it a little peculiar and, consequently, I put it in my journal. I'm a writer. I keep a lot of notes about things that I'm thinking about or find interesting. So I actually found it in my journal.
> Q What did you put in your journal?
> A I have it with me, if you give me a moment to find it.

Pl.'s Ex. 48, p. 14, L. 23 – p. 15, L. 25. Schlapfer was then asked to read the entry into the record.

> Q Go ahead. Do you have that entry in front of you now?
> A I did. I found it. I had to do a lot of digging in my journals because I have a lot of journals. But I found this dated July 26th, 2014. Quote, "I think I should make a note of a request that Dan Edwards made to me recently, since it may be relevant to Tom's case in the future. I understand that he also made the same request of Tom. He asked if Tom and I could make a, " quote, "'mirror image,' i.e., a copy of Life Shtoz for MyFunLIFE, his company. The answer, absolutely not, unethical to do so. Besides, it is not in Tom's contract with MyFunLIFE to design and make products. He was hired as operations manager," end of quote.

Id., p. 16, L. 15 – p. 17, L. 3. At trial, Dan Edwards was asked if he asked Lunneborg to make a mirror image of LifeShotz, to which Dan Edwards testified, "That's false." Then, Dan Edwards testified, "I said make an energy drink, like LifeShotz or Red Bull." Dan

Edwards testified at least four times at trial how much he detested the taste of LifeShotz. Dan Edwards may have overemphasized that to make it seem less likely that he really did as Lunneborg and Schlapfer to simply copy the LifeShotz formula. The Court finds Lunneborg and Schlapfer credible on this point, that Dan Edwards specifically asked them to make an illegal mirror image of LifeShotz.

It seems to this Court that Dan Edwards hired Lunneborg thinking he could simply copy LifeShotz and bring a product to market nearly instantaneously. It is apparent Dan Edwards needed a physical product to sell along with his vacation discounts, in order to not run afoul of multilevel marketing laws. It is obvious that Dan Edwards was in a hurry to do this because he'd just fired his prior COO and had taken two more months to hire Lunneborg. When Lunneborg couldn't bring a product to market overnight, Dan Edwards fired him, using the information or misinformation from Boorks and an imagined conflict of interest between Lunneborg and Oxyfresh/Brooke as the basis for his decision to fire Lunneborg. This is all corroborated by Schlapfer's testimony:

> Q Did Dan [Edwards] ever appear hostile to you when discussing Life Shotz or product development with you and/or Tom [Lunneborg]?
>
> A One time. The very last meeting that we had at his office, the only time I attended his office, he was very interested in Tom and I becoming a part of the company and wanting to branch off and develop some products for him. And there was a confrontation about that because it was a repeat ask. And I confronted him about that and he blew up. He became very defensive and loud.
>
> Q Was this concerning the Life Shotz product?
>
> A It was concerning the whole idea of Tom and I joining him in the development of his other companies and doing product development. And it became an issue because neither of us were under contract to develop products. I was under no contract whatsoever. And Tom was not contracted to develop and design products. But he kept asking. And finally it came to a head. And I think that may have been provocative.
>
> Q I did not hear that.
>
> A I think that may have become provocative. And Tom was fired soon after that meeting.

Pl.'s Ex. 48, p. 18, L. 23 – p. 19, L. 20.

This proves several things in this Court's findings. First, the Court finds Lunneborg and Schlapfer to be credible, and Dan Edwards not to be credible. Second, this proves that Lunneborg was not hired primarily to develop products. Third, it proves that Schlapfer would be necessary in the development of any nutritional product for MFL. Fourth, it proves that Dan Edwards on behalf of MFL never had Schlaper under contract. Fifth, it proves that just prior to Dan Edwards act of firing Lunneborg, Dan Edwards had yet to identify a product for Lunneborg and Schlapfer to develop. These were all problems of Dan Edwards' own making. These were not problems created by Lunneborg. This Court finds the real reason Dan Edwards fired Lunneborg was because he refused to make a mirror image of LifeShotz and developing another product would best case take many months, and worst case, could not occur due to the pieces of the puzzle Dan Edwards had yet to acquire…namely, Schlapfer. Sixth, this proves that the stated reason by Dan Edwards, the imagined or fabricated conflict Dan Edwards created between Brooke and Lunneborg when in fact there was no conflict because there was no contract between those two, causes Dan Edwards' stated decision to terminate Lunneborg to be made without cause.

The Court finds the three-way soap opera dysfunction between Oxyfresh/Brooke and Lunneborg and Dan Edwards (with Schlapfer in the center of that triangle) really does not enter significantly into this Court's analysis of this lawsuit. The Court finds such for two reasons. First, MFL had never identified a product that Lunneborg had delayed. Second, Dan Edwards cannot base his decision to terminate Lunneborg upon his conversations about what Brooke told Dan Edwards about Lunneborg or what Schlapfer told Dan Edwards about Lunneborg, as neither Brooke nor Schlapfer were Lunneborg's agents. Lunneborg had no control over Brooke or Schlapfer. It is clear

Dan Edwards made his decision to terminate Lunneborg based on his conversations with Brooke and Schlapfer. Dan Edwards did not even ask Lunneborg for his side of the story on any "conflict" that Brooke might have mentioned to Dan Edwards. Dan Edwards never found out there was no agreement between Brooke and Lunneborg. Dan Edwards jumped the gun. Without seeing any written contract proving what Brooke supposedly told Dan Edwards about Lunneborg being contractually bound to Oxyfresh, Dan Edwards chose to fire Lunneborg based only on conversations he had with other people. Dan Edwards fired Lunneborg based on false rumor.

Dan Edwards was asked by his attorney at trial in the defense case-in-chief, "When were you first aware plaintiff wanted to consult with Brooke?", to which Dan Edwards really didn't answer that question, but then stated, "I had no problem with it, I didn't want Brooke to be hurt, Plaintiff told me it would be a couple hours a week at lunch time, and that seemed reasonable." It is uncontradicted that Dan Edwards knew Lunneborg still performed some work for Brooke. This knowledge makes the fact that Dan Edwards fired Lunneborg based on an unsubstantiated rumor all the more untenable. These facts deprive Dan Edwards of his ability to claim his firing of Lunneborg was "for cause."

The evidence is uncontradicted that Dan Edwards made up his mind to terminate Lunneborg only based on what Brooke and Schlapfer were telling him. Dan Edwards never confronted Lunneborg about any misinformation Dan Edwards obtained from his conversations with Brooke…Dan Edwards simply handed him the letter and terminated Lunneborg. It seems that Dan Edwards let his undying respect for Richard Brooke entirely supplant any loyalty to his COO Lunneborg. Dan Edwards chose to listen to Brooke and not even give Lunneborg the chance to respond. That is a termination without cause.

There are two other miscellaneous facts which inure to Lunneborg's benefit in proving he was terminated without cause.

First, Dan Edwards went without any COO for April and May 2014, yet Dan Edwards only gave Lunneborg two months before terminating him. Dan Edwards testified about the wrongdoings of his previous COO, testified that he had no COO in April and May, thus he was anxious to hire Lunneborg the end of May. Yet, Dan Edwards only gave him two months before Dan Edwards terminated Lunneborg. That makes absolutely no business sense. That makes no common sense. It is a lie by Dan Edwards that he was terminating Lunneborg for failing to bring a nutritional product to market.

Second, Lunneborg testified that he, Schlapfer and Dan Edwards had a meeting where Dan Edwards stated he was afraid of Richard Brooke, was afraid to make him mad, and the three brainstormed other business entities other than a multi-level marketing company to sell nutritional products. The notes of that meeting show it occurred on July 24, 2014, just four days before Dan Edwards terminated Lunneborg. Defs' Ex. 1, p. 499. Lunneborg testified Dan Edwards discussed forming another corporation, and hiring Lunneborg within the new corporation, and that Lunneborg would have to resign from MFL before being hired in the new corporation. Lunneborg testified he asked Dan Edwards why he had to resign first, to which Dan Edwards responded "he had a fiduciary duty to his shareholders and members." Dan Edwards then told Lunneborg he would have to resign or he would be terminated. Lunneborg testified he asked Dan Edwards what he would be terminated for, and Dan Edwards reiterated he had a fiduciary duty to his shareholders. Dan Edwards testified similarly. Dan Edwards testified that he told Lunneborg that he had to resign from MFL and that creating a new corporation for retail sales would go quickly. Dan Edwards testified he

told Lunneborg that, “once we have the new corporation, then I can bring you over.” Dan Edwards testified that he told Lunneborg, “We could pay him in the interim” but that Lunneborg would not resign from the contract with MFL first. Dan Edwards testified Lunneborg asked Dan Edwards why Lunneborg had to resign first, and Dan Edwards told Lunneborg, “I have a responsibility to that corporation, ethically I couldn’t do it.” This is false on so many levels. There is nothing ethically prohibiting Lunneborg from being COO of MFL and overlapping with being COO of a new corporation for a few days, or for many days. When Dan Edwards says he has a duty to the corporation, it must be kept in mind that **Dan Edwards *is* the corporation.** Dan Edwards was the only shareholder of MFL. So for Dan Edwards to tell Lunneborg that he must resign from MFL first because of an ethical duty to the corporation, what Dan Edwards is saying is “you have to resign first due to an ethical duty to me”. And since Dan Edwards cannot pinpoint the source of that ethical duty, this Court finds what Dan Edwards was really saying is “You have to resign so I don’t have to pay your severance pay from MFL.” The “ethical duty to my shareholders” was simply a pretext by Dan Edwards.

Finally, on more than one occasion at trial, Dan Edwards made the claim that he fired Lunneborg for not doing his job, and the contract allowed him to do that. First of all, Dan Edwards put in writing the two reasons he fired Lunneborg. Defs’ Ex. A, p. 500. The Court has discussed those two reasons at length above, and finds them to be false and pretextual. Second, the only other potential reasons found in the record would not amount to firing Lunneborg for cause. One potential reason was Dan Edwards asked Lunneborg to create a mirror image of LifeShotz, to shich Lunneborg refused. This was corroborated by Schlapfer. Firing Lunneborg for not creating a mirror image of LifeShotz would be firing Lunneborg for refusing to commit a crime. Another potential

reason could be when Lunneborg realized that because MFL did not sell anything tangible, MFL might be an illegal pyramid scheme. This would be firing Lunneborg for failing to investigate possible criminal conduct. Investigating potential legal problems for MFL is exactly what Lunneborg was hired to do as COO.

3. Breach of Contract and Violation Under the Idaho Wage Claim Act Have Been Proven.

Lunneborg has alleged breach of contract (Compl. 5, 6, First Cause of Action) and has proven MFL breached its employment contract with Lunneborg by terminating him without cause and without paying him his $60,000.00 severance pay under that contract. Lunneborg also alleged a violation of the Idaho Wage Claims Act, I.C. §§ 45-601 *et seq*. *Id.* 6, Second Cause of Action. The Court specifically finds that this severance pay is "compensation for the employee's own personal services" and as such they are the proper subject of a wage claim under I.C. § 45-615. Under that statute, Lunneborg is entitled to treble damages, three times the unpaid wages plus attorney fees. The Idaho Supreme Court recently decided *Huber v. Lightforce USA, Inc.*, 159 Idaho 833, 367 P.3d 228 (2016). The facts in *Huber* are quite similar to those in the present case. Huber sued his employer, Lightforce, claiming when Lightforce terminated Huber, the employer was obligated to pay him twelve months' pay under the noncompetition/nondisclosure agreement (NDA). On summary judgment, the District Court ruled "the amount owed under the NDA was not wages and, therefore, not subject to trebling under Idaho Code section 45-615." 367 P.3d at 234. Apparently, the District Court "concluded that the twelve months' pay was not wages because it was meant to compensate Huber for complying with the NDA's non-competition and non-disclosure clauses and not earned in increments as services were performed or in consideration for services rendered." 367 P.3d at 237. The Idaho Supreme Court

reversed the District Court on that issue, citing *Johnson v. Allied Stores Corp.,* 106 Idaho 363, 679 P.2d 640 (1984). The Idaho Supreme Court first discussed the definition of severance pay:

> In *Johnson*, this Court held that severance pay is wages because it is "a component of the compensation bargained for in the agreement of employment ... not a mere gratuity." Id. "'Severance pay' has been defined as '[a] sum of money usually based on length of employment for which an employee is eligible upon termination.'" *Parker v. Underwriters Lab., Inc.*, 140 Idaho 517, 520, 96 P.3d 618, 621 (2004) (quoting American Heritage Dictionary of the English Language (4th ed.2000)). "The purpose of a severance plan is to protect employees from economic hardship and to reward them for *past service* to the company." *Id.* (quoting 27 Am. Jur. 2d *Emp't Relationship* § 70 (1996)) (emphasis added). Although in *Parker* this Court was defining "severance pay" under an administrative provision unrelated to the IWCA, the Court's reasoning is nevertheless instructive on this issue.

367 P.3d at 237. The Idaho Supreme Court in *Huber* then discussed whether the twelve months' pay was severance pay, or, whether it was similar to payment for a release of claims against the employer, which would not be wages.

> Under *Parker*, severance pay is a distinct form of compensation in that it is intended to compensate an employee for past service and protect an employee from economic hardship. This is consistent with *Johnson*, where this court held that severance pay was wages because it is part of the bargained-for compensation for employment services. See *Johnson*, 106 Idaho at 367, 679 P.2d at 644. In *Parker*, this Court distinguished between severance pay and pay in consideration of a release of claims, focusing on the terms of the agreement. 140 Idaho at 521, 96 P.3d at 622. We held that a payment made in exchange for a release of claims against an employer was not severance because it was entirely separate from services rendered during employment. *Id.* at 522, 96 P.3d at 623. Similarly, in *Moore v. Omnicare*, this Court held that compensation promised in an employment agreement is not wages where it is not in consideration for any services actually rendered during employment. 141 Idaho 809, 819–20, 118 P.3d 141, 151–52 (2005) (holding that damages under a liquidation clause were not wages because they were not compensation for services rendered).

367 P.3d at 237-38. Then, the Idaho Supreme Court held:

> Rather, section 3.2 seems intended to provide a severance payment. A severance payment is meant to "provide a salary substitute to secure the

> employee's economic well-being during [a] period of unemployment." Parker, 140 Idaho at 520, 96 P.3d at 621 (internal citation omitted). Here, section 3.2 specifically provides that, as long as Huber is not terminated for performance issues or summarily dismissed, Huber would receive comparable compensation to his base salary for twelve months, even if Huber obtained other employment during that period. This provision seems intended to secure Huber's economic well-being.
>
> Based on a plain reading of the terms of the NDA, the twelve months' pay is not conditioned on compliance with the non-competition conditions. Rather, it unambiguously provides for a severance payment that is intended to compensate Huber for his past service and secure his economic well-being. As this Court found in Johnson, severance pay constitutes wages under the IWCA because it is "a component of the compensation bargained for in the agreement of employment." 106 Idaho at 367, 679 P.2d at 644.
>
> We reverse the district court ruling that the amount owed under the NDA was not wages under the IWCA, and remand for the district court to treble the $180,000 judgment under Idaho Code section 45–615. Post-judgment interest shall accrue on the trebled amount of $540,000 from December 10, 2013, the date of entry of the judgment. *Whitlock v. Haney Seed Co*., 114 Idaho 628, 635, 759 P.2d 919, 926 (Ct. App. 1988).

367 P.3d at 238. In the present case, Lunneborg testified the reason he negotiated the six months' pay was to protect himself as he was leaving Oxyfresh, his employer of nearly twenty years and taking a pay cut to become COO of MFL. This six months' pay is even more clearly "intended to compensate an employee for past service and protect an employee from economic hardship," as compared to the facts in *Huber*. 367 P.3d at 237. Lunneborg's six months' salary truly was severance pay, negotiated by Lunneborg, agreed to by Dan Edwards, and *Huber, Johnson* and *Parker* all make clear that "severance pay was wages because it is part of the bargained-for compensation for employment services." The Court finds the evidence is uncontradicted that Lunneborg's yearly salary was $120,000.00, and six months' salary is $60,000.00 which is due to Lunneborg by MFL under the employment contract. That amount is trebled under the Idaho Wage Claim Act, for a total award of $180,000.00.

Lunneborg also claimed in his Complaint that he had accumulated 114 hours of

paid time off while employed at MFL. Compl. 6, ¶ 5.3. The Court recalls no proof of this issue, and accordingly makes no award for such.

B. MFL's Corporate Veil Must be Pierced.

1. The Law.

The Court adopts the law set forth by counsel for Lunneborg. Whether to pierce the corporate veil is an equitable question to be decided by the Court in equity rather than at law. In order to prove that a corporation is a shareholder's alter ego, the plaintiff must demonstrate (1) a unity of interest and ownership to a degree that the separate personalities of the corporation and individual no longer exist, and (2) if the acts are treated as acts of the corporation, an inequitable result would follow. *Wandering Trails, LLC v. Big Bite Excavation, Inc*., 156 Idaho 586, 594. 329 {/3d 368. 376 (2014); *Surety Life Ins. Co. v. Rose Chapel Mortuary, Inc*., 95 Idaho 599, 601, 514 P.2d 594, 596 (1973). Resolving the issue of piercing the corporate veil is heavily fact-specific with the overriding objective being for the Court to reach an equitable result. Defendants are correct in pointing out that "A showing of need for vigilance in collecting the judgment is not a show of inequity or injustice." Defendants' Closing Argument Reply Brief 5, *citing Baker v. Kulczyc,* 112 Idaho 417, 420, 732 P.2d 386 (Ct. App. 1987). In other words, the fact that MFL is bankrupt is not evidence of inequity or injustice.

Courts have identified numerous factors to assist in the determination of whether a unity of interests between the individual and the corporation exists. A party seeking to pierce the corporate veil need not prove all factors but it must prove at least one of the factors. While the listing of these various factors in court decisions are highly similar, they are not identical.

In *Automotive Finance Corp. v. Joliet Motors, Inc.*, 761 F. Supp. 2d 789 (N.D. Ill.

2011), the Federal District Court identified numerous non-dispositive factors as follows:

(1) Inadequate capitalization;
(2) Failure to issue stock;
(3) Failure to observe corporate formalities;
(4) Nonpayment of dividends;
(5) Insolvency of the debtor corporation;
(6) Nonfunctioning of the other officers or directors;
(7) Absence of corporate records;
(8) Commingling of funds;
(9) Diversion of assets from the corporation by or to a stockholder or other person or entity to the detriment of creditors;
(10) Failure to maintain arm's-length relationships among related entities; and
(11) Whether, in fact, the corporation is a mere façade for the operation of the dominant stockholders.

761 F. Supp. 2d at 793. (*quoting Fontana v. TLD Builders, Inc.*, 840 N.E. 2d 767, 778 (Ill. App. Ct. 2005). In *Oceanics Schools, Inc. v. Barbour*, 112 S.W.3d 135 (Tenn. Ct. App. 2003), the Tennessee Court of Appeals identified the factors as follows:

(1) Whether there was a failure to collect paid in capital;
(2) Whether the corporation was grossly undercapitalized;
(3) The non-issuance of stock certificates;
(4) The sole ownership of stock by one individual;
(5) The use of the same office or business location;
(6) The employment of the same employees or attorneys;
(7) The use of the corporation as an instrumentality or business conduit for an individual or another corporation;
(8) The diversion of corporate assets by or to a stockholder or other entity to the detriment of creditors, or the manipulation of assets and liabilities in another;
(9) The use of the corporation as a subterfuge in an illegal transaction;
(10) The formation and use of the corporation to transfer to it the existing liability of another person or entity; and
(11) The failure to maintain arm's-length relationships between related entities.

112 S.W.3d at 140. (citiations omitted). In *Wachovia Securities, LLC v. Banco Panamericano, Inc.,* 674 F.3d 743 (7th Cir. 2012), the Federal District Court

identified the factors as follows:

(1) Inadequate capitalization;
(2) Failure to issue stock;
(3) Failing to observe corporate formalities;
(4) Failing to pay dividends;
(5) Corporate insolvency;
(6) Nonfunctioning corporate officers;
(7) Missing corporate records;
(8) Commingling funds;
(9) Diverting assets to an owner or other entity to creditor detriment;
(10) Failing to maintain an arm's-length relationship among related entities; and
(11) Whether the corporation is a mere façade for a dominant owner.

674 F.3d at 752. (*citing Fontana*, 840 N.E.2d at 778) (applying Illinois law). Similar factors was set forth in *In Re Phillips*, 139 P.3d 639 (Colo. 2006), where the Court identified the factors as being whether:

(1) The corporation is operated as a distinct business entity;
(2) Funds and assets are commingled;
(3) Adequate corporate records are maintained;
(4) The nature and form of the entity's ownership and control facilitate misuse by an insider;
(5) The business is thinly capitalized;
(6) The corporation is used as a "mere shell;"
(7) Shareholders disregard legal formalities; and
(8) Corporate funds or assets are used for non-corporate purposes.

139 P.3d at 644. (citations omitted).

A similar listing of factors is contained in *HOK Sport, Inc. v. FC Des Moines, LC*, 495 F.3d 927 (8th Cir. 2007) (applying Iowa law); *Coughlin Construction Co. v. Nu-Tec Industries, Inc.*, 755 N.W.2d 867 (N.D. 2008); *Inter-Tel Technologies, Inc. v. Linn Station Properties, LLC*, 360 S.W.3d 152 (Ky. 2012); and *Fontana v. TLD Builders, Inc.*, 840 N.E.2d 767 (Ill. App. Ct. 2005).

In each of the cases cited above, under the specific facts presented, the Courts found that equity warranted the piercing of the corporate veil, and *In re Phillips, supra*,

the Court recognized reverse piercing of the corporate veil. Achieving an equitable result is the paramount goal of the doctrine of piercing of the corporate veil. *In re Phillips* , 139 P.3d at 644.

Keep in mind, Lunneborg need only prove one factor in order to pierce the corporate veil of MFL and hold Dan Edwards and Carrie Edwards personally liable to Lunneborg. As discussed below, nearly all these various factors have been met in light of the facts of the present case. The acts of Dan Edwards and Carrie Edwards (and in some cases the inaction of Dan and Carrie Edwards) prove that the corporate veil must be pierced.

2. The Facts and Analysis Regarding Piercing the Corporate Veil.

Carrie Edwards testified that on February 22, 2013, MFL was incorporated as a Delaware Corporation. She testified her husband Dan Edwards was the CEO, President, Secretary, and sole Director of that corporation. Dan Edwards testified he was the sole shareholder of that corporation. Carrie Edwards testified she was the Chief Administrative Officer. She testified she was the COO for a few weeks before Lunneborg was hired and, after that, was Executive Vice President. There were no corporate resolutions authorizing Carrie Edwards to assume any of these positions. Carrie Edwards testified that no stock certificates were ever issued. She testified that the only corporate minutes MFL kept were the initial meeting minutes. She testified there were only three resolutions ever prepared in MFL's existence. She testified she and Dan Edwards also owned Ink Drop Signs, TraffiCorp, a tanning salon, and LFM, LLC, to hold their real property. She testified that MFL sold assets to TraffiCorp, rather than transfer notes payable, based on their accountant's advice. She testified that in 2013 through July 2014, "our corporations gave advance monies to each other", that "one to two times a month, depending on cash flow" they would transfer money from

one corporation to another, then back again. She testified that this was done to "help out" their various businesses. She testified this was all kept track in their records, and it all got paid back. Carrie Edwards testified that Exhibit H, page 1, shows money going from MFL to TraffiCorp. Indeed, Defendant's Exhibit H, page 1, is a record purporting to show $4,000.00 being paid by MFL to Ink Drop Signs and $20,000.00 being paid by MFL to TraffiCorp on June 28, 2013; $10,000.00 from MFL to TraffiCorp on July 8, 2013; $10,000.00 from MFL to TraffiCorp on August 8, 2013; $10,000.00 from MFL to TraffiCorp on August 23, 2013; $10,000.00 *back* to MFL from TraffiCorp on September 6, 2013; $20,000.00 from MFL to TraffiCorp on February 4, 2014; $5,000.00 from MFL to TraffiCorp on February 5, 2014; $3,000.00 from MFL to Ink Drop Signs on February 10, 2014; $10,000.00 from MFL to TraffiCorp on June 24, 2014; $3,500.00 from MFL to TraffiCorp on October 30, 2014; $5,000.00 from MFL to TraffiCorp on May 29, 2015; and $2,000 from MFL to TraffiCorp on August 7, 2015; $5,000.00 *back* to MFL from TraffiCorp on September 11, 2015. The one record referred to in Carrie Edwards' testimony shows $102,500.00 going from MFL to TraffiCorp and Ink Drop Signs, and only $15,000.00 has come back to MFL, all from TraffiCorp. Thus, Carrie Edwards' claim that "it all got paid back" is not supported by her own records. However, this Court has not been presented with any supporting documentary evidence that would back up this spreadsheet. She testified that at times MFL would make payments on their corporate American Express Card, at times TraffiCorp might pay. She testified she and Dan Edwards owned a Jeep and a 2014 Dodge Ram 1500 truck, which were titled in their names but the loans on the two trucks were paid by their businesses. She testified that neither she nor Dan Edwards received a salary. She testified that they received "shareholder distributions", and these shareholder distributions from MFL amounted to $74,830.00 in 2013, $265,684.00 in 2014, and $26,258.00 in 2015. Defs'

Ex. E. She testified she and Dan Edwards also received about $368,000.00 from purchases on MFL credit cards. She testified in 2013 she received $5,241.52 and Dan Edwards received $33,244.07 in commissions from MFL. Pl.'s Ex. 53. She testified that her children received commissions that year as well; Matt (age 17 then) received $4,088.72 that year, Dan Edwards III (age unknown) received $1,617.75, Brandon (age 15 then) received $356.41, Caden (age 14 then) received $50.50, Kelsey (age 12 then) received $990.65, and Heidi (age 11 then) received $836.00. *Id.* She testified in 2014 she received $11,045.23 and Dan Edwards received $44,411.83 in commissions from MFL. Pl.'s Ex. 54. She testified that her children received commissions that year as well; Matt received $6,567.37 that year, Dan Edwards III received $3,234.72, Brandon received $1,858.13, Caden received $2,119.47, Kelsey received $3,465.37 and Heidi received $2,027.22. *Id.* The evidence shows no corporate resolution was prepared and signed authorizing MFL to hire Lunneborg, fire Lunneborg, or for file bankruptcy. The evidence shows Dan and Carrie Edwards used the corporate credit cards for MFL as their own credit cards and, on occasion, adjusted the books retroactively. Carrie Edwards testified that by late 2014, MFL was having difficulty making payroll, so MFL sold several of its assets to TraffiCorp in order to make payroll at MFL, although that claim is not corroborated by Defendants' Exhibit I.

Carrie Edwards testified that she attempted to have all three of the companies (TraffiCorp, Ink Drop Signs, MFL) operating out of 5077 N. Building Center Drive share the rent and utility expenses evenly. She also testified that the three companies shared the expenses of maintenance on the building. However, the records provided by the defendants do not support these claims. MFL paid the full amount of rent on the building ($5,000/month) for 15 straight months, August 2013 through October 2014, when the Edwards purchased the building through their company, Edventures, LLC.

Defs' Ex. H, pp. 3, 5, 8, 11, 13, 14, 20, 22, 25, 27, 29, 32, 34, 36, 38. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid utility payments for the building to Kootenai Electric every month from August 2013 through August 2014, and several months thereafter. *Id.,* at 4, 8, 9, 13, 15, 19, 21, 24, 26, 28, 31, 33, 36, 43, 49. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid utility payments to the City of Coeur d'Alene every month from August 2013 through August 2014. *Id.,* at 5, 6, 9, 12, 14, 17, 20, 23, 25, 28, 30, 34. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid utility payments to Clearwater Springs every month from August 2013 through July 2014. *Id.,* 5, 6, 9, 12, 14, 17, 20, 23, 26, 28, 30, 32. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid utility payments to Avista every month from October 2013 through August 2014. *Id.,* at 8, 9, 13, 16, 19, 22, 24, 26, 29, 31, 33, 35. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid property taxes on the building at 5077 N. Building Center Drive on three separate occasions in 2013 and 2014, totalling more than $12,000. *Id.,* at 10, 14, 30; see also Pl.'s Ex. 8, p. 2. There is no record of MFL being made whole by the Edwards' other companies for this expense. MFL paid nearly $65,000 in "Repairs and Maintenance" to the building at 5077 N. Building Center Drive over a 2.5-year period. Pl.'s Ex. 8, p. 2. There is no record of MFL being made whole by the Edwards' other companies for this expense. Carrie Edwards testified that she and Dan Edwards are the sole owners of Edventures, LLC, which now owns the building at 5077 N. Building Center Drive. She also testified that Edventures purchased that building on a "lease-to-own" option, meaning that Edventures, and therefore the Edwardses, were personally

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

This Court finds Dan Edwards and Carrie Edwards disregarded the separate identity of MFL and the corporate entity of MFL. Their behavior is identical to the behavior in the pertinent case law which supported piercing the corporate veil. Dan Edwards was the sole shareholder and sole director. Dan Edwards was the CEO, the President, and Secretary of MFL. Dan Edwards exerted complete control over MFL. While under his control, MFL observed little, if any corporate formalities. The lines between their personal assets and the assets of all their businesses, including MFL, were heavily blurred.

Dan and Carrie Edwards produced no written documents to evidence the many transfers of funds between themselves and their companies. There was documentary evidence in the form of a spreadsheet produced at trial to support Carrie Edwards' claim that they kept track of their money transfers from one corporation to another. Defs' Ex. I. However, there were no loan documents, no contracts, no bank statements, and no notes evidencing these transfers. There was no corporate minutes to document these transfers. And even the spreadsheet contradicts Carrie Edwards' testimony that those transfers were paid back to MFL. In fact, the limited evidence provided by Dan and Carrie Edwards shows MFL has been shorted about $85,000.00 by Dan and Carrie Edwards other companies, TraffiCorp and Ink Drop Signs.

The use of one company's funds to "help out" another company controlled by the

same individuals was deemed sufficient, along with the lack of corporate actions and meetings, to pierce the veil in *Surety Life Insurance Co. v. Rose Chapel Mortuary, Inc.,* 95 Idaho 599, 514 P.2d 594 (1973). In that case, the Hesses were the sole shareholders of two companies, and Wilford Hess was the president and manager of both companies. Those facts are identical to the facts in the present case, as Dan Edwards was the sole shareholder of MFL, and was the President, Secretary, and CEO of MFL. That fact, coupled with a failure to treat corporate assets as separate, supported the Court's decision to pierce the veil in *Surety Life*. The Idaho Supreme Court stated:

> [f]urther evidence of the fact that the separate identities of the Hesses and the corporations had ceased can be seen in Wilford Hess's deposition concerning the relationship between Hess Distributing and Rose Chapel wherein he stated, 'One helps the other.' Indeed, one did help the other. Hess Distributing provided funds to cover labor costs incurred in the construction of the mortuary. Some, but not all, of these funds were reimbursed to Rose Chapel from the loan proceeds of the Continental mortgage.
>
> …Hess Distributing was also sustaining regular losses and…Wilford Hess planned to use anticipated profits derived from Rose Chapel to offset the losses sustained by Hess Distributing.

Id. at 602. The Idaho Supreme Court went on to say that this behavior:

> …without a written contract or other indicia of debt or corporate action by either corporation, can only indicate that Wilford and Betty Hess used the two corporations merely as a conduit through which to conduct their personal business ventures and that the separate identities of Wilford and Betty Hess and the corporations had ceased.

Id.

It is undisputed that there was never any corporate action to accompany the transfers made between MFL and TraffiCorp or Ink Drop Signs. There is no evidence to show that MFL was ever paid back or made whole by TraffiCorp or Ink Drop Signs. Dan and Carrie Edwards, like Wilford and Betty Hess in *Surety Life*, used their

companies as conduits through which to conduct their personal financial ventures. And for Dan and Carrie Edwards, like Wilford and Betty Hess in *Surety Life*, the separate identities between the individuals and the corporations have ceased. Dan and Carrie Edwards treated MFL like their personal bank account. The corporate veil must be pierced.

Lunneborg argues the Profit and Loss Statement and Balance Sheet of MFL as of July 30, 2015, states the total capitalization of MFL was $1,463.23. Plaintiff's Post-Trial Brief, p. 18, *citing* Pl.'s Ex. 8, 4. Lunneborg argues "This capitalization is woefully inadequate. Capitalization of $1,000 was found inadequate in *Wachovia Securities, supra*, and capitalization of $2,000 was found inadequate in *Oceanics Schools, supra*, and likewise, capitalization of $1,000 was found inadequate in *Fontana, supra*." *Id.* Defendants are correct that the issue of adequate capitalization is to be measured at the time of the contractual agreement. Defendants' Closing Argument Reply Brief, p. 6. The pertinent time period here is the end of May to the end of July 2014, not July 30, 2015. The Court finds lack of capitalization is not a factor in this case.

However, that is the only factor or criteria which does not fall in favor of piercing the corporate veil of MFL. The Court has reviewed defendants' arguments to the contrary, and is not persuaded by them. Defendants' Closing Brief, 7-17.

In addition to Dan and Carrie Edwards' failure to observe corporate formalities for MFL listed above, they disregarded corporate formalities in other ways. While Dan Edwards and Carrie Edwards both worked for MFL, they did not consider themselves as employees and did not report receiving any salary. This likely allowed them to successfully evade paying any social security tax, Medicare tax, federal unemployment tax, and Idaho unemployment tax on the distributions that they received from MFL.

Carrie Edwards also testified that she and Dan Edwards would receive IRS Form 1099s for reporting their commission or share of membership fee income. The Court agrees with Lunneborg; it defies belief that the president and executive vice president of a corporation would qualify as independent contractors for the purposes of receiving a Form 1099.

MFL did not pay any dividends. A dividend is usually a distribution of money by a corporation to its shareholders as authorized by the corporate board of directors. While Carrie Edwards testified that while she and her family received over $100,000.00 in commissions or shares of membership fees, she and her family also received approximately $360,000.00 in shareholder distributions. The vast majority of these shareholder distributions were payments by MFL of personal expenses of the Edwards and their family. Defs.' Ex. H, I, J, and K. On Plaintiff's Exhibit 8, the amount of these distributions is $367,316.71, which Carrie Edwards testified was the sum of shareholder distributions restated as a positive number and retained earnings. These figures do not include the $49,557.13 expended by MFL for car expenses for the two motor vehicles titled in the name of the Edwards, the approximately $2,000 per month paid by MFL as loan payments on the Edwards' motor vehicle loans, and the rent paid by MFL for those portions of the building occupied by TraffiCorp and Ink Drop Signs. The figure also does not consider the utility payments made by MFL for the utilities furnished to TraffiCorp and Ink Drop Signs, nor does it consider the $64,000 in repairs and maintenance to the building. None of these payments would fit the definition of a corporate dividend but instead constitute the diversion of corporate assets to the Edwards, their family, and their other solely-owned corporations.

MFL regularly commingled funds with the funds of the Edwards and their other companies in the Numerica bank account. The Edwards used the MFL credit cards

and the MFL bank accounts as if they were their personal assets, rather than corporate assets.

The Edwards were the sole owners and officers of TraffiCorp and Ink Drop Signs and the limited liability company that they formed to purchase the building where MFL and the other two corporations were located.

Upon Lunneborg's termination from MFL on July 29, 2014, Lunneborg requested payment of his severance, and Dan Edwards refused to pay it. MFL was thus aware of the claim of Lunneborg by approximately July 29, 2014. Notwithstanding knowledge of this claim, the Edwards and MFL continued the practice of diversion of corporate assets to the Edwards and their family without regard for the ability of MFL to meet its obligation to Lunneborg. Dan and Carrie Edwards inappropriately usurped so much of MFL's income and assets that when MFL filed for bankruptcy protection on June 22, 2016, its total reported assets had been reduced to the nominal sum of $5.11.

Based upon the foregoing, the first prong of the piercing of the corporate veil test--unity of interest--is clearly established. Further, the second prong of the test--to prevent an inequitable result--is also met. This second prong of the test requires "something less than an affirmative showing of fraud but something more than the mere prospect of an unsatisfied judgment." *Wachovia Sec. LLC,* 674 F.3d at 756. (applying Illinois law).

In *Fontana,* a wife was the sole shareholder and sole director of a construction company. The husband served as the president of the company, and while he received no salary from the company, he was the principal, and the wife had no meaningful role in the corporation. At the time that a breach of contract action was filed, the corporation had $1.8 million in assets, which in 12 months was inexplicably reduced to zero. Under these facts, the court found that both prongs of the piercing of the corporate veil test

were satisfied and a judgment was entered against the husband to prevent injustice and inequitable consequences. 840 N.E.2d at 778. A nearly identical situation exists in this case, where MFL's assets were usurped by the Edwards via retroactive "shareholder distributions," and reduced to $5.11.

The court pierced the corporate veil in *Inter-Tel Technologies, Inc. v. Linn Station Properties, LLC*, 360 S.W.3d 152 (Ky. 2012). The court stated: "Their diversion of ITS' corporate income and transfer of ITS' corporate assets for their own benefit provides the extra 'injustice' discussed in *Sea-Land*, something more than simply a creditor's inability to collect a debt from ITS." *Id.* at 167. The Edwards' use of corporate assets for personal benefit meets this standard.

In *HOK Sport, Inc. v. FC Des Moines, L.C.*, 495 F.3d 927 (8th Cir. 2007), the court pierced the corporate veil of a nonprofit corporation. *Id.* at 941. (applying Iowa law). The court stated:

> When the proprietor of a for-profit business establishes a nonprofit corporation to assume a liability or risk that otherwise, in the ordinary course of business, would have been assumed by a for-profit business, and when the nonprofit corporation accrued liabilities without any means to satisfy the liabilities, a reasonable jury may easily decide that allowing the for-profit business (or its owner) to escape the liability would be sanctioning a fraud and promoting an injustice.

Id.

The court pierced the corporate veil in *Coughlin Co. Inc. v. Nu-Tec Industries, Inc.*, 755 N.W.2d 867 (N.D. 2008). The court found that when the dominant shareholder of a corporation who, through the issuance of dividends and bonuses and repayment of undocumented loans, bled the corporation of assets so that it would not be able to satisfy a known corporate liability, it justified piercing the corporate veil. *Id.* at 876.

The corporate veil was also pierced in *Sea-Land Services, Inc. v. Pepper Source*, 993 F.2d 1309 (7th Cir. 1993) (applying Illinois law). The court stated:

> At trial, Sea-Land demonstrated that Marchese obtained countless benefits at the expense of not only Sea-Land, but the Internal Revenue Service (IRS) and other creditors as well. Indeed, Marchese used PS funds to pay his personal expenses as well as expenses incurred by his other corporations. As a result, PS was left without sufficient funds to satisfy Sea-Land or PS's other creditors. A*merican Trade Partners v. A1 Int'l Importing Enter*., 770 F.Supp.273, 278 (E.D. Pa. 1991) (corporate veil pierced on basis of unjust enrichment where managing shareholder, with knowledge of debt to creditor, used corporation's funds to pay personal expenses). Since Marchese was enriched unjustly by his intentional manipulation and diversion of funds from his corporate entities, to allow him to use these same entities to avoid liability 'would be to sanction an injustice.' *Gromer, Wittenstrom & Meyer, P.C. v. Strom*, 140 Ill. App.3d 349, 354, 95 Ill. Dec. 149, 153, 489 N.E.2d 370, 374 (1986).

993 F.2d at 1312.

The court likewise pierced the corporate veil in *66, Inc. v. Crestwood Commons Redevelopment Corporation*, 998 S.W.2d 32 (Mo. 1999). The court found that "making a corporation a supplemental part of an economic unit and operating it without sufficient funds to meet obligations to those who must deal with it", was inequitable and would create an injustice unless the corporate veil was pierced.

The corporate veil was also pierced in *Flushing Plaza Associates # 2 v. Albert*, 102 A.D.3d 737 (N.Y. App. Div. 2013). The court found that the shareholder abused the privilege of doing business in the corporate form by failing to observe corporate formalities. *Id.* at 739. Specifically, the fact that the shareholder caused the corporation to pay to him the sum of $29,500 just eleven days before judgment was entered against the corporation, which payment made the corporation judgment-proof, constituted a wrong committed against the plaintiff and to prevent injustice, the court allowed the corporate veil to be pierced. *Id.*

Dan Edwards recruited Lunneborg to leave Oxyfresh, where Lunneborg had

worked for nearly 20 years, to join the Edwards at MFL. To have some protection against Dan Edwards changing his mind after Lunneborg joined MFL, Lunneborg proposed an employment contract that would pay him six months of his salary in the event of termination without cause. Dan Edwards then terminated Lunneborg when he refused to resign from MFL to become an employee of a yet-to-be-formed corporation to sell nutritional products to consumers at retail. Dan Edwards fabricated the alleged causes for Lunneborg's termination in his July 29, 2014, Notice of Termination. Pl.'s Ex. 44. At the time of the termination, MFL was obligated to pay to Lunneborg the sum of $10,000 per month for six consecutive months. Instead of paying the severance to Lunneborg as provided in his employment contract, the Edwards drained MFL of all income and assets by diverting those assets and income to themselves and to TraffiCorp and by continuing to use the MFL credit cards for personal purchases. The Edwards were very successful in this diversion to the extent that they left MFL with $5.11 of assets by June 22, 2016.

To allow the Edwards to escape personal liability would be to sanction an injustice and create an inequitable result. Under the circumstances of this case, the corporate veil of MFL must be pierced. Judgment will be entered against Dan and Carrie Edwards, jointly and severally, along with MFL.

III. FINDINGS OF FACT.

As required by I.R.C.P. 52(a)(1) the Court lists the following findings of fact, as per the rule, they must be specially stated and separately stated from conclusions of law. In doing so, the Court adopts all findings of fact and conclusions of law set forth in the above opinion.

A. FACTS RELATED TO BREACH OF CONTRACT AND WAGE CLAIMS.

1. Defendant My Fun Life ("MFL") is a travel booking company based on a multi-

level marketing platform.

2. Plaintiff Lunneborg (Lunneborg) was hired by MFL to serve as its Chief Operating Officer ("COO") for an indefinite period of time. Pl.'s Ex. 13B; Defs.' Exhibit A, p. 341, ¶ 1.

3. Lunneborg and MFL entered into an employment contract on April 16, 2014. The employment contract stated that Lunneborg's position would be "Chief Operating Officer." That contract provided that if Lunneborg were to be terminated by MFL without cause, MFL would pay Lunneborg six months' salary as severance. *Id.,* ¶¶ 1, 5.

4. Lunneborg's salary while employed at MFL was $120,000.00 per year, or $10,000.00 per month. *Id.,* ¶ 1.

5. Throughout his tenure at MFL, Lunneborg fully and completely performed his duties as COO.

6. On July 29, 2014, MFL, through Dan Edwards, terminated Lunneborg, by hand-delivery of a termination letter. Defs.' Ex. A, p. 500. Said letter cited two alleged causes for Lunneborg's termination, both of which were fabrications.

7. MFL did not pay Lunneborg severance of six months' salary ($60,000.00) upon his termination.

B. FACTS RELATED TO PIERCING THE CORPORATE VEIL.

8. At all times material hereto, defendants Dan and Carrie Edwards were and are husband and wife.

9. Dan Edwards is the sole shareholder, director, and officer of Defendant MFL. Carrie Edwards is directly involved in the day-to-day management of Defendant MFL.

10. MFL is located at 5077 N. Building Center Dr. in Coeur d'Alene, a building which is owned by another of Dan and Carrie Edwards' closely held companies, Edventure Holdings, LLC. Many other closely held companies belonging to Dan and Carrie

Edwards operate or at one point operated out of the same location as MFL.

11. MFL, through the actions of Dan Edwards and Carrie Edwards, failed to keep adequate corporate records to document actions, including issuance of stock, distributing dividends, or holding an annual meeting.

12. Dan Edwards, as director and officer of MFL, and Carrie Edwards, as an agent and officer-in-fact of MFL, extensively commingled personal and MFL corporate funds, and corporate funds of MFL with other corporate entities owned by Dan and Carrie Edwards.

13. Dan and Carrie Edwards caused many transfers of assets between themselves (or their other closely-held corporations) and MFL's bank accounts, without consideration, written contracts, indicia of debt, or official corporate action.

14. Dan and Carrie Edwards used MFL credit cards and bank accounts for a multitude of personal expenses, totaling hundreds of thousands of dollars.

15. The financial records of MFL reveal several examples of funds deposited into MFL accounts from other entities owned and controlled by Dan and Carrie Edwards, without consideration and without indicia of debt.

16. Corporate funds belonging to MFL were regularly commingled with the funds belonging to other closely held corporations of Dan and Carrie Edwards to such an extent that the funds and accounts are indistinguishable.

17. Corporate funds belonging to MFL were regularly commingled with the personal funds of Dan and Carrie Edwards to such an extent that the funds and accounts are indistinguishable.

18. Although not a director of the corporation, Carrie Edwards served as an agent and officer-in-fact of Defendant MFL. Carrie Edwards directly benefited from using the corporate assets as her own. The marital community of Dan and Carrie Edwards

benefited from the actions of Dan Edwards.

19. Dan and Carrie Edwards regularly treated the assets of Defendant MFL as their own personal assets.

20. MFL filed for Chapter 7 bankruptcy and received a discharge from the bankruptcy court.

21. MFL is no longer in operation.

IV. CONCLUSIONS OF LAW

A. CONCLUSIONS RELATED TO BREACH OF CONTRACT AND WAGE CLAIMS.

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

2. Venue is proper in Kootenai County District Court pursuant to I.C. § 5-404 since defendant MFL has its principal place of business in Kootenai County, the acts or omissions alleged herein occurred in Kootenai County, and defendants Dan and Carrie Edwards reside in Kootenai County.

3. The employment contract between Lunneborg and MFL is a valid and enforceable contract.

4. Lunneborg was terminated without cause because the causes stated were false pretexts.

5. The failure of MFL to pay Lunneborg the severance payment as stated in the employment contract constitutes a breach of said contract.

6. Severance pay is considered a "wage" under I.C. § 45-615.

7. MFL, as an employer, owed wages to Lunneborg, as an employee, upon Lunneborg's termination.

8. The failure of MFL to pay Lunneborg his severance payment as stated in the employment contract is an unlawful withholding of wages under I.C. § 45-615.

9. MFL breached the implied covenant of good faith and fair dealing owed to Lunneborg by failing to perform under the contract, and by fabricating alleged causes for termination where none existed in fact.

10. MFL is liable to Plaintiff for the severance payment ($60,000).

11. Lunneborg is entitled to three times the unpaid wages due and owing ($180,000), plus attorneys' fees pursuant to I.C. § 45-615.

B. CONCLUSIONS RELATED TO PIERCING THE CORPORATE VEIL.

12. As the sole shareholder, director, and officer of the company, Dan Edwards exhibited such control over the corporation that permitting him to do so without holding him personally liable for the damages caused by MFL would achieve an unjust an inequitable result. Allowing Carrie Edwards to avoid liability for the damages caused by MFL would achieve an unjust and inequitable result.

13. The separate personalities of Dan Edwards and Carrie Edwards and MFL do not exist.

14. Dan Edwards and Carrie Edwards used MFL as their alter ego.

15. MFL, Dan Edwards and Carrie Edwards must be treated as one entity to prevent the defendants from abusing the corporate form in an effort to avoid liability for the causes of action brought by Lunneborg.

16. The corporate fiction of the Dan Edwards, Carrie Edwards and MFL--shall be disregarded because the entity form has been used as part of an unfair device to achieve an inequitable result.

17. Dan Edwards, Carrie Edwards and MFL are jointly and severally liable to Plaintiff for the full measure of damages suffered by Lunneborg.

18. Lunneborg is the prevailing party as compared to Dan Edwards, Carrie Edwards and MFL.

V. ORDER.

IT IS HEREBY ORDERED plaintiff Tom Lunneborg has proven breach of contract and violation of the Idaho Wage Claim Act by defendant MyFunLife. Damages under each of those causes of action amount to $60,000.00. Under the Idaho Wage Claim Act cause of action, damages are trebled to the amount of $180,000.00. I.C. §§ 45-607, 45-615. Under the Idaho Wage Claim Act, Lunneborg is also entitled to attorney fees. I.C. §§ 45-615.

IT IS FURTHER ORDERED that plaintiff Tom Lunneborg is the prevailing party as to all defendants, MFL, Dan Edwards and Carrie Edwards.

IT IS FURTHER ORDERED that the corporate veil of defendant MFL is pierced and defendants Dan Edwards and defendant Carrie Edwards are also jointly and severally liable for all damages and attorney fees.

IT IS FURTHER ORDERED that counsel for plaintiff Tom Lunneborg prepare a Judgment consistent with this opinion and order.

Entered this 17th day of April, 2017.

_____
John T. Mitchell, District Judge

Certificate of Service

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

Lawyer	Fax #	Lawyer	Fax #
Ed Anson/Emily Arneson	667-8470	Michael Hague	800 868-0224

_____
Jeanne Clausen, Deputy Clerk