STATE OF IDAHO)
County of KOOTENAI)ss

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AT_____ O'Clock _____M
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 AND ORDER GRANTING PLAINTIFF'S ATTORNEYS' FEES**

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.

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

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

trebled to the amount of $180.000.00 (I.C. §§ 45-607, 45-615), and found that under the Idaho Wage Claim Act, Lunneborg is entitled to attorney fees under I.C. § 45-615. *Id.* The Court also found that the corporate veil of MFL is pierced and defendants Dan and Carrie Edwards were jointly and severally liable for all damages and attorney fees. *Id.*

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

II. STANDARD OF REVIEW.

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

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

III. ANALYSIS.

A. Lunneborg is the Prevailing Party.

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

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

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

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

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

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

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

B. Costs.

1. Costs as a Matter of Right.

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

2. Discretionary Costs.

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

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

under I.R.C.P. 54(d)(1)(D). Def. Obj. to Pl. Aff. and Mem. of Costs and Fees 1-2. Defendants argue mediation is common, an ordinary part of litigation and not exceptional, as is computer research. *Id.* The Court agrees, and while the Court finds the costs of mediation and computer-assisted research were necessarily and reasonably incurred in this litigation, those costs are not exceptional.

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

C. Amount of Attorney Fees.

Lunneborg claims attorney fees in the amount of $223,564.50. Defs.' Mem. of Costs and Fees/Claim for Att'ys' Fees 1. Defendants claim that $60,000.00 is the appropriate award of attorney fees based on the one-third contingency fee agreement that Lunneborg had with his attorneys, according to the Affidavit of Emily Arneson. Aff. (Arneson) and Mem. of Costs and Fees 1-2, ¶ 2; Defs' Obj. to Pl.'s Aff. and Mem of

Costs and Fees 4-5, 7-8.

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

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

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

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

> **Amount of Attorney Fees.** In the event the court grants attorney fees to a party or parties in a civil action it shall consider the following factors in determining the amount of such fees:
>
> (A) The time and labor required.
> (B) The novelty and difficulty of the questions.
> (C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.

(D) The prevailing charges for like work.
(E) Whether the fee is fixed or contingent.
(F) The time limitations imposed by the client or the circumstances of the case.
(G) The amount involved and the results obtained.
(H) The undesirability of the case.
(I) The nature and length of the professional relationship with the client.
(J) Awards in similar cases.
(K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.
(L) Any other factor which the court deems appropriate in the particular case.

I.R.C.P. 54(e)(3).

(A) The Time and Labor Required.

As a starting point, the Court notes the attorneys' fees requested by Lunneborg's attorneys apparently already been discounted. To the $223,564.50 total of attorneys' fees, Lunneborg's attorneys have a "courtesy discount" of $5,899.50, leaving a net request of $217,665.00. Mem. Costs and Att'ys' Fees 29. No explanation is given as to why a "courtesy discount" is given or how that amount was arrived at by Lunneborg's attorneys.

Defendants' primary focus is on the 1,042 hours of attorney time, and not the hourly rate charged. Defs.' Obj. to Pl.'s Aff. and Mem. of Costs and Fees 2-4. The Court agrees that 1,042 hours of attorney fees to take a matter to a three-day court trial is shocking. However, when the Court reviews the itemized billing for each task, the Court is unable to determine that any of the work was duplicative as claimed by defendants (*Id.* at 3-4), and the Court is unable to find that the amount of time spent on each task is inordinately excessive for the task. However, the overall amount of hours, 1,042, is, as stated above, shocking. In more than fifteen years as a district court judge, this Court has never been presented with anywhere close to such a high amount

of hours for an attorney fee request. The Court finds that a reduction of 10% solely based on the aggregate amount of time is warranted simply based on the large number of hours. In making that reduction, the Court is not finding those hours were not spent on the case; the Court is simply finding that 10 less hours could have been expended and accomplished the same result. Applying that 10% deduction in time to the amount of hours requested and then reducing the total amount of fees requested ($217,665.00) by 10% amounts to a deduction of $21,766.50.

In making that reduction, the Court is not persuaded by counsel for defendants argument that he only billed 186.8 hours. Defs.' Obj. to Pl.'s Aff. and Mem of Costs and Fees 2. This is an argument frequently made by counsel for the losing party. The Court has never found such to be a sound argument. One reason the other side prevailed is perhaps their attorneys put more work and effort into the case. The Court does not find that to be the case here. The main reason the Court is not persuaded by the argument in this case is that counsel for the defendants came into this litigation mid-stream, after much of the discovery problems had already been resolved.

This Court also finds a slight downward departure in the amount of attorney fees requested is warranted due to the hourly rate for one of the attorneys. Michael F. Nienstedt has been practicing law since 1976, and billed out at $340 per hour for work done on this case in 2015 and $350 per hour in 2016-17. Aff. (Arneson) and Mem. of Costs and Fees 2, ¶ 7. Edward J. Anson has been practicing law since 1977, and billed out at $290.00 per hour. *Id.* at ¶ 6. There is no explanation as to the reason for the difference.

The Court finds the amount requested for Nienstedt's work (57.2 hours) on the case must be reduced to $290.00 per hour, for a total of $16,588.00, or a reduction of $3,291.00 from the $19,879.00 requested. In coming to that conclusion, this Court has

reviewed past decisions addressing the prevailing hourly rate in this community, and finds this result consistent with *City of Sandpoint v. Independent Highway District,* Bonner County Case No. CV 2013 1342, Memorandum Decision and Order Granting in Part (As to Timing of This Court's Prior Decision) and Denying in Part (As to Amount of Attorney Fees Previously Awarded) Defendant IHD's Motion for Reconsideration of Attorney Fees, October 24, 2014, pp. 5-7, and with *Samuel v. Black Rock Development, Inc., et al.,* Kootenai County Case No. CV 2012 4492, Kootenai County Case No. CV 2012 4492, Memorandum Decision and Order Granting in Part and Denying in Part Plaintiff Samuel's Motion for Award of Attorney Fees and Costs and Granting Plaintiff's Motion to Certify Judgment, March 12, 2013, p. 18. In *Harris v. Alessi,* 141 Idaho 901, 910, 120 P.3d 289, 298 (Ct. App. 2005), the Idaho Court of Appeals held it was not an abuse of the trial court's discretion to modify the requested hourly rate of $135.00 an hour downward to $110.00 per hour for a case in Pocatello in 2005.

Thus, if the Court were to look only at the "time and labor required" criteria, a reduction of $25,057.50 ($21,766.50 plus $3,291.00), is warranted, leaving Lunneborg with fees of $192,607.50 ($217,665.00 less $25,057.50).

(B) The novelty and difficulty of the questions. Neither counsel for Lunneborg nor counsel for defendants addressed this issue. The Court finds it to not be a relevant criteria in this case.

(C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law. Counsel for Lunneborg set forth the number of years of experience each of the attorneys who worked on this case. Aff. (Arneson) and Mem. of Costs and Fees 1-2, ¶¶ 2-9. Counsel

for defendants claims Lunneborg's counsel did not "address at all the experience of any of the five attorneys in question to this particular field of law." Defs.' Obj. to Pl.'s Aff. and Mem. of Costs and Fees 4. The Court finds that argument to be unpersuasive. This case was a contract and wage claim dispute; it did not involve nuanced questions of law. Thus, past particular experience in a particular area of law is not all that important. Counsel for defendants also notes on several occasions that Emily Arneson was only recently licensed to practice in Idaho, although she was licensed to practice in Washington for about five years before that. *Id.* With reciprocity between Idaho and Washington, the argument about recently licensing in Idaho is not persuasive. The Court finds this criteria does not justify either an upward or downward departure from the amount of attorneys' fees requested.

(D) The prevailing charges for like work. The Court has already addressed the hourly rate. Defendants claim that $217,665.00 requested is so far over the $60,000.00 contingency agreement that it cannot be considered the "prevailing charge" for similar work. The Court finds that is an issue that is more appropriately addressed in the next criteria under I.R.C.P. 54(e)(3). Thus, this Court finds this criteria does not justify either an upward or downward departure from the amount of attorneys' fees requested.

(E) Whether the fee is fixed or contingent. Defendants argue that trebling damages makes Lunneborg "three times whole", and that it would be unfair for anything more than a one-third fee of $60,000.00 to be imposed on top of the trebled damage award. Defs.' Obj. to Pl.'s Aff. and Mem. of Costs and Fees 5. While there is facial validity to that argument, it ignores the fact that the Idaho Wage Claim act allows *both* trebling of damages *and* attorney fees if the plaintiff prevails. This Court finds it is wrong to conflate the two, or to view one as excluding the other, or to view the two as

being duplicative. Because Idaho's statutory scheme allows both trebling of damages and attorney fees, if an employer is going to refuse a wage claim, that employer had better be sure it is on solid legal and factual ground in doing so. Defendants were not on solid legal or factual ground in their decision to terminate Lunneborg after two months for the reasons they stated.

However, the Court cannot ignore that when counsel for defendants initially looked at this case, they had to have assessed damages at $60,000.00 as they were essentially liquidated damages given the contract. They had to have known that if they prevailed on the Idaho Wage Claim Act that the damages would be trebled. They negotiated a one-third attorney fee with their client, so they had to have assessed the value of their work at $60,000.00. Certainly, a $60,000.00 fee would have been a lucrative arrangement for Lunneborg's attorneys had this case resolved quickly. However, it did not resolve quickly. The Court finds the reason the case did not resolve quickly was due to the defendants' actions throughout the litigation, first, with failing to comply with discovery rules, and second, with filing bankruptcy. There is a difference between recalcitrance (almost all adverse parties are recalcitrant) and actively obstructing your opponent and doing so by violating discovery rules and the rules under which you operate a corporation.

Had defendants been the typical recalcitrant adversary, the Court would likely "split the difference" between the negotiated $60,000.00 fee and the hourly (as adjusted downward by the Court) fee of $192,607.50. The midpoint between those two numbers is $126,303.75. If all this Court evaluated and balanced was the total attorney fees requested, with adjustments made to number of hours spent and one attorney's billing rate on one side of the scale, compared to the contingency fee on the other side of the scale, then $126,303.75 would be the number awarded Lunneborg as attorneys' fees.

However, as mentioned above, defendants' bad conduct caused more hours to be spent by Lunneborg's attorneys on this case. Lunneborg's attorneys had to work harder and expend more hours dealing with discovery abuses perpetuated by defendants, dealing with defendant MFL's bankruptcy, dealing with proving the falsity Dan Edwards' two reasons he said he fired Lunneborg, and in dealing with piercing the corporate veil, which was due to defendants bad conduct in disregarding the corporate entity. Mindful of that, this Court finds a reasonable attorney fee to be north of that midpoint. The Court finds an attorney fee of $160,000.00 to be a reasonable fee under all the circumstances and all the criteria under I.R.C.P. 54(e)(3)(A)-(L).

At oral argument on June 7, 2017, counsel for defendants argued that while the one-third contingency fee agreement was in the record via the affidavit of Lunneborg's attorney Emily Arneson [Aff. (Arneson) and Mem. of Costs and Fees 1-2, ¶ 2], there was no *evidence*, only argument in briefing, that there was an agreement that was set forth in Lunneborg's briefing that, "In the event attorney' fees collected from the adverse party exceed the contingent fee amount set forth above I understand [Witherspoon Kelley] shall retain said fees and I shall not owe [the firm] any additional fees…" Pl.'s Resp. to Defs.' Mot. To Disallow Attys' Fees and Costs 4. The Court is not concerned that there was no evidence of such agreement. The Court finds even if this language did not exist, and even if the only fee agreement was a one-third contingency, the Court *must* consider the hours spent on a case and hourly rate charged by the attorney(s) for that time spent. Idaho Rule of Civil Procedure 54(e)(3)(A)-(L) not only contemplates, but mandates such consideration of the hours spent and hourly rate charged.

(F) The time limitations imposed by the client or the circumstances of the case. The Court finds this to be a factor as to the amount of fees, not due to Lunneborg ("the client"), but again due to conduct of the opponent, the defendants'

conduct in excess of recalcitrance. However, this factor has been addressed in the section immediately above. Discovery abuses by defendants and their prior attorney consumed attorney time on the part of Lunneborg. There were volumes of emails and text messages that had to be pored over by Lunneborg's attorneys and presented to the Court at trial in order for Lunneborg to establish the fact that the two reasons for his termination given to Lunneborg by Dan Edwards were in fact not true. Similarly, there were volumes of defendants' financial records that had to be poured over in order to pierce the corporate veil of MFL. Because of defendants' disregard of the corporate entity, at least in part, MFL sought bankruptcy protection early on in this litigation. Counsel for Lunneborg had to defend their client's interest on that issue as well.

(G) The amount involved and the results obtained. Lunneborg failed to address this criteria. Defendants again argue that attorney fees even at $60,000.00 will make the plaintiff more than three times whole. Defs.' Obj. to Pl.s' Aff. and Mem. of Costs and Fees, 6. The Court has already stated in section "E" above why it is not persuaded by this argument.

(H) The undesirability of the case. Lunneborg claims there was nothing particularly desirable or undesirable about the case. Aff. (Arneson) and Mem. of Costs and Fees 3, ¶ 14. The Court finds this to be a neutral factor.

(I) The nature and length of the professional relationship with the client. Lunneborg claims he was not an established client of Witherspoon Kelley before this litigation. *Id.* The Court finds this to be a neutral factor.

(J) Awards in similar cases. Lunneborg does not address this factor. This Court finds this criteria justifies neither an upward or downward departure from the amount of fees sought.

(**K) The reasonable cost of automated legal research (Computer-Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.** Lunneborg has sought $2,099.82 as a discretionary cost. The Court has already denied such cost as not extraordinary. Under I.R.C.P. 54(e)(3)(K), the Court can consider that expense as a factor in determining the amount of legal fees. The Court does not consider this as a factor in granting an upward departure in the amount of attorney fees sought or awarded. The reason for this decision is that the Court finds computer assisted research is an overhead item built into the hourly rate of the attorney fees.

(L) Any other factor which the court deems appropriate in the particular case. The only other "factor" seems to be Lunneborg's claim, "My Fun Life filed counterclaims against Mr. Lunneborg, which were apparently abandoned and were not pursued at trial. The fees associated with the counterclaims were tracked separately, as indicated below." Aff. (Arneson) and Mem. of Costs and Fees 3, ¶ 15. The Court finds such fees appropriate as Lunneborg had to defend those claims even though defendants later abandoned them. The Court has considered the time spent defending the counterclaims in the above analysis of the hours claimed, and determines those hours should be included in the Court's analysis.

IV. CONCLUSION AND ORDER.

For the reasons stated above, costs as a matter of right in the amount of $6,852.69, discretionary costs in the amount of $176.00, and attorney fees in the amount of $160,000.00 (total costs and fees of $167,028.69) are awarded in favor of Lunneborg against the defendants, jointly and severally.

IT IS HEREBY ORDERED costs as a matter of right in the amount of $6,852.69, discretionary costs in the amount of $176.00, and attorney fees in the amount of

$160,000.00 (total costs and fees of $167,028.69) are awarded in favor of Lunneborg against the defendants, jointly and severally.

IT IS FURTHER ORDERED counsel for Lunneborg prepare an Amended Judgment consistent with this Memorandum Decision and Order.

Entered this 13th day of June, 2017.

_____
John T. Mitchell, District Judge

Certificate of Service

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

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

_____
Jeanne Clausen, Deputy Clerk