IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WAL-MART STORES, INC. **PLAINTIFF/ COUNTER-DEFENDANT**

V. **CASE NO. 5:14-CV-5262**

CUKER INTERACTIVE, LLC **DEFENDANT/ COUNTER-CLAIMANT**

MEMORANDUM OPINION AND ORDER

Currently before the Court are:

- Defendant/Counter-Claimant Cuker Interactive, LLC's ("Cuker") Motion for Sanctions against Walmart and its Counsel (Doc. 464) and Brief in Support (Doc. 465); Plaintiff/Counter-Defendant Wal-Mart Stores, Inc.'s ("Walmart") Response in Opposition (Doc. 479); and Cuker's Reply (Doc. 481);
- Cuker's Motion for Attorneys' Fees and Costs (Doc. 473) and Brief in Support (Doc. 474); Walmart's Response in Opposition (Doc. 480); and Cuker's Reply (Doc. 481);
- Cuker's Bill of Taxable Costs pursuant to 28 U.S.C. § 1920 (Doc. 475); and Walmart's Objection (Doc. 476);
- Walmart's Motion for Judgment as a Matter of Law under Rule 50(b) (Doc. 490) and Brief in Support (Doc. 501); Cuker's Response in Opposition (Doc. 512); and Walmart's Reply (Doc. 519);

- Walmart's Motion for New Trial or Remittitur under Rule 59 (Doc. 493) and Brief in Support (Doc. 499); Cuker's Response in Opposition (Doc. 511); and Walmart's Reply (Doc. 515);
- A Motion to Withdraw (Doc. 520) and Brief in Support (Doc. 521) filed by Cuker's Arkansas attorneys in this case; and
- A Motion to Withdraw (Doc. 522) and Brief in Support (Doc. 523) filed by Cuker's California attorneys in this case.

For the reasons given below, Cuker's Motions for Sanctions and for Attorneys' Fees and Costs and Walmart's Motion for Judgment as a Matter of Law are **GRANTED IN PART AND DENIED IN PART**, Walmart's Motion for New Trial or Remittitur is **DENIED**, and Cuker's Motions to Withdraw are **GRANTED**.

I. BACKGROUND

As this Court explained more than a year ago:

> On January 30, 2014, Walmart and Cuker signed a contract under which Walmart agreed to pay Cuker a fixed fee of $577,719, in exchange for Cuker's provision of certain services to help make the website for Walmart's "ASDA Groceries business" responsive, irrespective of the device on which it is being viewed, such as a desktop or a mobile phone [("the Contract")]. *See* Doc. 124-7, pp. 8, 17. Walmart was facing very tight internal deadlines for this project, and the contract-negotiation process was a very speedy one, taking merely a few weeks rather than the months that were more typical. *See* Doc. 121-1, p. 3. The project launched almost immediately in early February, and by the end of that month the parties were already experiencing fundamental disagreements on matters such as whether various milestones for performance were strict deadlines or mere aspirations, when interim fee payments were due, how many rounds of revisions Walmart could require Cuker to make to its deliverables, and whether particular demands by Walmart were outside of the scope of work that Cuker had contracted to deliver.

(Doc. 197, pp. 1–2). Eventually, in July 2014, Walmart won a race to the courthouse, and the following month this lawsuit was removed from the Circuit Court of Benton County to

this Court. The parties asserted various cross-claims against each other, and extremely heated and tortured litigation followed over the next several years.

On April 10, 2017, the case finally went to trial, which lasted two weeks. The jury returned a verdict against Walmart on its claim against Cuker for breach of contract, and in favor of Cuker on its claims against Walmart for breach of contract, unjust enrichment, and misappropriation of trade secrets. The jury awarded Cuker a total of $12,438,665 in damages. The Court subsequently reduced this amount to $10,197,065, and on July 28, 2017, entered Judgment in favor of Cuker, including injunctive relief. *See* Doc. 484. After the entry of Judgment, post-verdict motion practice ensued. The Court stayed execution on the money judgment, *see* Doc. 488, and stayed the injunction, *see* Doc. 503, pending resolution of the various post-trial motions.

This Opinion and Order resolves all pending motions in this case. The above-mentioned motions are all ripe for decision, and can be divided into three categories. First, Walmart has filed two motions concerning the evidence that came in at trial. Second, Cuker has filed two motions concerning attorney fees, costs, and sanctions that it seeks to recover from Walmart. And third, Cuker's attorneys have filed two motions seeking to withdraw from this case. Below, the Court will address those motions in the sequence just listed.

II. WALMART'S MOTIONS ABOUT THE TRIAL

In this Section, the Court will first take up Walmart's Motion for Judgment as a Matter of Law under Rule 50(b). Then, the Court will turn to Walmart's Motion for New Trial or Remittitur under Rule 59.

preserved those issues for appeal. But the Court rejects Walmart's arguments regarding parol evidence and the scope of the Contract now for the same reasons it has before. *See, e.g.*, Doc. 379, pp. 12–14.

Accordingly, Walmart's Motion for New Trial or Remittitur under Rule 59 (Doc. 493) will be **DENIED**. The Court turns now to Cuker's motions regarding fees, costs, and sanctions.

III. CUKER'S MOTIONS ABOUT FEES, COSTS, AND SANCTIONS

As the prevailing party in this action, Cuker is seeking recovery of attorney fees and costs. In addition, or perhaps in the alternative, to seeking fees and costs as the prevailing party, Cuker is also asking this Court to enter sanctions against Walmart for abusing the judicial process throughout this case. In the first subsection below, the Court will deal with Cuker's Motion for Attorneys' Fees and Costs. Then in the second subsection, the Court will turn to Cuker's Motion for Sanctions against Walmart and its Counsel.

A. Cuker's Motion for Attorneys' Fees and Costs (Doc. 473)

This Opinion and Order has focused so far on Cuker's claims against Walmart for breach of contract, unjust enrichment, and misappropriation of trade secrets. And as was discussed at great length above, the Court finds that Cuker is entitled to judgment in the amount of $30,629 on its claim against Walmart for breach of contract claim against Walmart, $400,000 on its claim against Walmart for unjust enrichment, and $314,392 on its claim against Walmart for misappropriation of trade secrets, as well as to injunctive relief from the misappropriation. But these were not the only claims in this case. In order to address the issue of attorney fees, it is necessary to take into account the other claims

that were brought by these parties against each other. Cuker also brought a claim against Walmart for a declaratory judgment that the Contract is void for lack of mutual assent, and a claim against Walmart for fraudulent inducement. *See* Doc. 61-1, pp. 21–23. The Court granted Walmart summary judgment on both of these claims before trial. *See* Doc. 197, p. 26. And Walmart brought a claim against Cuker for breach of contract, which the jury rejected at trial. *See* Doc. 444, p. 3.

Arkansas law governs the issue of attorney fees in this case. *See FutureFuel Chem. Co. v. Lonza, Inc.*, 756 F.3d 641, 649 (8th Cir. 2014). The general rule in Arkansas is that attorney fees are not recoverable in the absence of statutory authority. *See Patton Hosp. Mgmt., LLC v. Bella Vista Vill. Coopershares Owners Ass'n, Inc.*, 2016 Ark. App. 281, at *10. But an Arkansas statute provides that in a contract action, "the prevailing party may be allowed a reasonable attorney's fee to be assessed by the court and collected as costs." Ark. Code Ann. § 16-22-308. And notwithstanding the aforementioned general requirement of statutory authority, attorney fees may be recovered by a prevailing party in an action involving claims for which such authority is lacking, if the action is "*primarily* based in contract." *See Patton Hosp. Mgmt., LLC*, 2016 Ark. App. 281, at *10–*11 (emphasis added); *FutureFuel Chem. Co.*, 756 F.3d at 649 (same). Additionally, the ATSA permits the Court to "award reasonable attorneys' fees to the prevailing party" in a trade secret action if "willful and malicious misappropriation exists." *See* Ark. Code Ann. § 4-75-607(3).

In calculating a reasonable fee, a number of factors should be considered, including: (1) the experience and ability of the attorney; (2) the time and labor required to perform the service properly; (3) the amount in controversy and the result obtained in the

case; (4) the novelty and difficulty of the issues involved; (5) the fee customarily charged for similar services in the local area; (6) whether the fee is fixed or contingent; (7) time limitations imposed upon the client or by the circumstances; and (8) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney. *See Chrisco v. Sun Indus., Inc.*, 304 Ark. 227, 229 (1990); "Because of its intimate acquaintance with the record and the quality of the service rendered," the trial court possesses a "superior perspective" from which to assess the applicable factors. *See Phelps v. U.S. Credit Life Ins. Co.*, 340 Ark. 439, 441 (2000). But "[w]hile courts should be guided by [these] factors, there is no fixed formula in determining the reasonableness of an award of attorney's fees." *Id.* at 442. Therefore, "when the trial judge is familiar with the case and the service done by the attorneys, the fixing of a fee is within the discretion of the court." *Hartford Accident & Indem. Co. v. Stewart Bros. Hardware Co.*, 285 Ark. 352, 354 (1985); *see also Burlington N. R.R. Co. v. Farmers Union Oil Co. of Rolla*, 207 F.3d 526, 534 (8th Cir. 2000).

The undersigned trial judge is, of course, extremely familiar with this case, having presided over this matter from beginning to end for more than three and a half years, including no less than eleven hearings and telephone conferences on dispositive and *Daubert* motions and discovery-related matters before trial,[5] ten days of trial, and exhaustive post-trial motion practice. All of which is to say, this Court is extraordinarily and even painfully aware of the microscopic details of every phase of this litigation. And viewing this litigation as a whole, the Court would make several threshold findings.

[5] This number does not include the many additional hearings and telephone conferences in this case over which the Magistrate Judge presided.

litigation, Cuker's overall attorney fee in this case should be reduced by one ninth from what it would otherwise be.

2. Calculation of a Reasonable Fee

So now, with those threshold findings out of the way, it is time to determine what that overall attorney fee should be. Cuker has submitted a motion for attorney fees in the lodestar sum of $4,057,709.04, representing the entirety of fees it has incurred, as documented by appropriate affidavits and itemized billing records. *See* Doc. 473-22. The Court will apply the aforementioned eight *Chrisco* factors to determine the extent to which this request is for a *reasonable* attorney fee, but for analytical ease it will do so in a different order from which they were presented above.

The first factor is the experience and ability of Cuker's attorneys. The Court finds all of Cuker's billing attorneys to be well experienced and its attorneys who tried the case to be extraordinarily skilled. Walmart does not challenge this proposition in its briefing.

The second, fourth, and fifth factors are the time and labor required to perform the service properly, the novelty and difficulty of the issues involved, and the fee customarily charged for similar services in the local area, respectively. Walmart does not challenge the necessity of any particular task or quantity of time billed by any of Cuker's principal attorneys. Walmart *does* object to the hourly rates charged by Cuker's non-Arkansas based attorneys and professional support staff. Walmart also objects to any and all fees attributed to the Husch Blackwell law firm, because none of its attorneys ever entered their appearance in this action—and because Cuker has otherwise not met its burden to establish the necessity of that firm's legal services. The Court completely agrees with both sets of criticisms. This Court has consistently held that local rates (or at least

Arkansas attorney rates) are to be used in assessing the reasonableness of the hourly rate in *most* cases. In the last four years, this Court has approved hourly rates in the range of $200 to $300 for commercial and civil rights litigation over which it presides, based on varying degrees of counsel's experience, responsibility, and proficiency. In especially complex litigation, or where the parties have agreed on a particular rate, this Court has approved fees of up to $350 per hour. Here, both the subject matter and the legal issues were exceedingly complex, and Cuker's counsel was among the best prepared that this Court has ever encountered. Walmart suggests a top hourly attorney rate of $385 per hour for partner level experience, and a schedule of lower rates for less experienced attorneys and para-professionals. *See* Doc. 480, pp. 10–12. The Court has carefully compared the suggested rates against rates proposed by Cuker's attorneys and concludes that Walmart's proposal is fair and reasonable in this particular case—and at some of the lower levels is actually quite generous. Thus, the Court adopts all of the hourly rates as proposed by Walmart, and will use and assume the accuracy of Walmart's mathematical computations in the fee calculations below. *See* Doc. 480-6, p. 1.

The Court will not award Husch Blackwell fees because it believes those services to be either redundant or beyond what was reasonably necessary to litigate the case. Walmart does not raise any other objections based on the quantity of Cuker's attorneys' time, and therefore this Court will make its calculations below based on the full quantity as documented.

The third factor to consider is the amount in controversy and the result obtained in the case. The amount in controversy was in excess of $12 million—at least from the perspective of the jurors. For Cuker, the stakes were tantamount to bet-the-company

litigation, or at least something close to that. And Mr. Cuker testified credibly about Walmart's threats of crushing Cuker if their dispute necessitated litigation. In the context of this David versus Goliath type of case, Cuker obtained excellent results. It substantially prevailed on the primary contract claims and defenses, and it was successful in convincing the jury that it should prevail across the board on its trade secret claims. For the reasons explained above, the fact that the Court set aside a large portion of those trade secret claims does not diminish the significance of Cuker's feat, nor should the discount for this Court's Rule 50(b) rulings be measured in a *pro rata* manner. Instead, as discussed above, the Court will reduce the fees that it attributes to the trade secret claims by one third.

The sixth factor is whether the fee is fixed or contingent. It is undisputed that Cuker's fees were incurred on an hourly basis, and therefore the Court has no need to entertain the reasonableness of awarding a percentage contingency fee.

The seventh factor is time limitations imposed upon the client or by the circumstances. The Court is persuaded that considerations related to time constraints weigh heavily in Cuker's favor. Walmart's discovery abuses, including what appears to have been a run-out-the-clock strategy of intentional delays and baseless representations, had the effect of significantly multiplying Cuker's attorney fees, because of the need to counteract those measures in a limited and compressed amount of time in the last few months before trial. The Court therefore finds that Cuker would ordinarily be entitled to a lodestar multiplier to account for these circumstances. However, as explained further below, the Court intends to impose new sanctions against Walmart, and the

reasons for the lodestar multiplier contemplated here are completely enveloped by the larger set of reasons that account for the award of sanctions.

And the eighth and final factor is, if known to the client, the preclusion of other employment by the attorney. The Court does not find any evidence in the record to suggest that the preclusion of attorney employment is a factor that weighs heavily in either direction.

Based on the findings above, the Court calculates and summarizes Cuker's entitlement to a reasonable fee as follows:

1.	Total fee request:	$4,057,709.04
2.	Revised total fee to reflect local rates:	$2,665,597.94
3.	Further Revised total to exclude Husch fees:	$2,445,831.64
4.	**Apportion 2/3 of fees to Contract Related Claims:**	**$1,630,555.24**
5.	Apportion 1/3 of fees to Trade Secret Claims:	$ 815,276.40
6.	**Trade Secret Fees when reduced by 1/3:**	**$ 543,517.87**
7.	**Total Combined Contract and Trade Secret Fees:**	**$2,174,073.11**

Accordingly, Cuker's Motion for Attorney's Fees and Costs (Doc. 473) is therefore **GRANTED IN PART AND DENIED IN PART.** Cuker is awarded a total of $2,174,073.11 in attorney fees.

3. Nontaxable Expenses

In addition to its attorney fees, Cuker also seeks to recover attorney travel expenses and expert witness fees in the total sum of $720, 991.84, which it characterizes as costs that are not taxable pursuant to 28 U.S.C. § 1920. Cuker relies on Rule 54(d)(2), which provides that "[a] claim for attorney's fees and related nontaxable expenses must

in Ark. R. Civ. P. 54(e), which governs awards of attorney fees and nontaxable expenses. That rule, just like its federal counterpart, requires the moving party to "specify the judgment and the statute or rule entitling the moving party to the award." Thus, Arkansas cases have rejected attempts to include any number of categories of ordinary and incidental expenses of litigation as either costs or as recoverable miscellaneous expenses. *See, e.g.*, *Sunbelt Exploration Co. v. Stephens Production Co.*, 320 Ark. 298, 309 (1995) (finding that depositions, expert fees, and travel expenses are not permissible costs). While the word "costs" is a legal term of art, referring to a variety of specifically enumerated categories of recoverable expenditures rather than to any and all "expenses," Arkansas courts have made clear that miscellaneous litigation expenses, whether described as costs or as nontaxable expenses, may not be recovered absent statutory authority for doing so. *See, e.g.*, *W.A. Krueger Co. v. St. Bernard's Reg'l Med. Ctr.*, 267 Ark. 180, 181 (1979) (holding that certain miscellaneous expenses incidental to litigation were "not recoverable, as costs or otherwise, absent a statute so providing"). Cuker's request for nontaxable costs is therefore **DENIED**.

4. Taxable Costs

Cuker has filed a Bill of Taxable Costs (Doc. 475) seeking to recover a total $89,889.37 pursuant to 28 U.S.C. § 1920. Walmart objects (Doc. 476) because (1) Cuker failed to timely file an affidavit verifying that the costs were correct and were for services actually and necessarily incurred; and (2) certain of the expenses are not properly recoverable under § 1920. The Court disagrees.

As a threshold matter, Walmart argues that Cuker did not attach a verification to its Bill of Costs as required by 28 U.S.C. § 1924, attesting to the accuracy of the amounts

copies of papers'" (quoting 28 U.S.C. § 1920(4)). Cuker's exemplification costs are awarded in the total sum of $47,133.61.

To summarize, all of Walmart's arguments are rejected, and Cuker is **AWARDED TAXABLE COSTS** in the total sum of $89,889.37.

B. Cuker's Motion for Sanctions against Walmart and its Counsel (Doc. 464)

Cuker seeks sanctions against Walmart for abuses that Walmart committed over a period of several years in this case. Throughout this case, Walmart has engaged in litigation practices that have repeatedly met with this Court's disapproval, extreme frustration, and sometimes even sanctions. For example, on October 9, 2015, the Court found that Walmart had "abused the discovery process" by egregiously over-designating documents it produced in discovery as "confidential" or "attorneys' eyes only," thereby frustrating Cuker's ability to conduct an efficient and meaningful review of those documents. *See* Doc. 62. The Court has already mentioned earlier in this Opinion and Order that Walmart failed even remotely to comply with an Order that it produce "all front-end Walmart2Go code to Cuker" by June 23, 2016. *See* note 6, *supra*. The Court eventually ended up awarding Cuker attorney fees and expenses that it reasonably incurred in compelling Walmart's production of the Walmart2Go code. *See* Doc. 235. By August 2016, the Court had become so frustrated with Walmart's repeated discovery abuses that it ordered Walmart "to designate an officer of the company with appropriate managerial understanding and oversight of these claims and these issues involved in this suit and involved in this discovery dispute," and stated that it might "require that Walmart designate an officer to attend any and all future hearings, phone conferences, et cetera," because "somebody from Walmart" needed to be involved who "can be accountable to

be sure that Walmart is fully engaged and accountable and can be the face for Walmart in these issues going forward." *See* Doc. 143-1, pp. 40–46.

On January 3, 2017, the Court ordered Walmart to provide certain financial information to Cuker by January 17. *See* Doc. 237, pp. 44–45. After that deadline passed without compliance, without any request for an extension, and on the heels of yet another motion to compel from Cuker, Walmart responded that it "needs more time to search for this information, given the Christmas selling season and the January 31 fiscal year end," *see* Doc. 234, p. 4, which left the Court with the distinct impression that Walmart "apparently is just not taking either this litigation seriously or this Court's orders seriously, and that's got to change," *see* Doc. 238, pp. 18–23. The Court required Walmart "to designate a nonlawyer, high-level executive with management responsibility over the financial records at issue," who "will have full operational authority to prioritize compliance with the Court's order and to ensure that all necessary resources are dedicated to meet the deadlines that either the Court has imposed or the parties have agreed upon." *See id.* at 25. The Court further ordered that "[s]hould the Court have to take up any of these issues again because deadlines have not been met, that executive shall be in attendance at the Court's hearing to account for why [Walmart] has not prioritized compliance with the Court's orders." *Id.* The Court also required the parties to conduct periodic joint telephone conferences with a Magistrate Judge "on no less than a weekly basis" in order to ensure that financial discovery stayed on track. *See id.* at 27. And as the Court has already described earlier in this Opinion and Order, even after that extraordinary step was taken, Walmart still failed to timely produce financial discovery, leading this Court to sanction it by ruling that it had waived its opportunity to file an expert report on damages

or to file any pretrial motions challenging Dr. Kennedy's expert report on trade secret damages, which in turn led to the issuance of a show-cause order after Walmart failed to comply even with *that* sanction. *See* note 2, *supra*.

There is much more that could be said about Walmart's abusive tactics in this case; Cuker spends fifty-five pages doing so in its Brief in Support of it Motion for Sanctions, and at least so far as the facts described therein go, there is very little with which this Court would disagree—except that while the Court agrees that Walmart's attorneys or employees have on several occasions made inaccurate representations to the Court, it does not go so far as to conclude they ever did so intentionally or in bad faith. *See* Doc. 465, pp. 14–16, 40–41. But suffice it to say that on the whole, and in cumulative effect, Walmart's litigation practices in this case have likely been the most vexatious, oppressive, and abusive ever to have occurred in any case before the undersigned in this Court. And over time, those practices had the practical effect of unnecessarily turning a complicated and expensive but manageable case into bet-the-company litigation for the opposing party and countless hours of wasted time for court staff. In its briefing, Walmart seems to acknowledge at least some amount of regret for its actions. Hopefully Walmart understands going forward that such abuses will not be tolerated, that the Court's orders must be obeyed in the first instance, and that this Court will not allow pointless trench warfare in discovery.

As for *this* case, additional sanctions are not only appropriate, but necessary to maintain the integrity of this Court's discovery orders and the interests of justice. Considering only the fees and expenses that Cuker has *actually* incurred to date, the Amended Judgment here will fall far short of making it whole in an economic sense. But

the Court does *not* believe that any sanction it imposes on Walmart for all of this should result in a windfall for Cuker. At the end of the day, this Court's primary concern is that justice be done, and justice requires proportionality. Of great significance to the Court on this point is that, in the end, Cuker prevailed at trial, is being awarded damages commensurate with what the evidence at trial showed, and is being permitted to recover reasonable attorney fees and costs, all as determined by applicable law.

Thus, when the dust settles and the Amended Judgment is executed, the Court believes Cuker will have been made whole *under the law*, and any new sanctions must be measured with the understanding that certain monetary *and evidentiary* sanctions have been imposed and taken a certain toll upon Walmart already. In light of this, the Court believes that Cuker's preferred sanction—striking Walmart's pleadings and awarding default judgment to Cuker—is far too severe. And the Court believes Cuker's alternative proposal—awarding Cuker *all* of its costs, expenses, and attorney fees incurred throughout the entirety of this litigation—would also be disproportionate, given that the Court has already awarded Cuker its *reasonable* attorney fees and costs in this Opinion and Order.

That said, Walmart has not yet been made to fully account for the cumulative effect of its abusive practices in this case. Therefore, the Court believes that Walmart's alternative proposal—a sanction of $74,189.00, amounting to half of the expert and attorney fees that Cuker incurred *during the period* of *January 27, 2017 to March 27, 2017* in this case—is appropriate to account for the specific abuses which occurred during *that* period of time. Additionally, to account for the *cumulative effect* of Walmart's abusive practices throughout the litigation as a whole, the Court will impose a monetary sanction

in a sum of $326,110.96, which is equal to 15% of the reasonable attorney fee award as calculated above. This formula is proportional inasmuch as it reflects the cumulative extent to which this Court finds Walmart's actions to have vexatiously multiplied these proceedings. In total, the Court imposes new sanctions against Walmart in the combined sum of $400,299.96.

Accordingly, Cuker's Motion for Sanctions will be **GRANTED IN PART AND DENIED IN PART**. The Court imposes the new $400,299.96 sanction pursuant to its inherent authority "to manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases," by assessing fees when a party has acted "vexatiously, wantonly, or for oppressive reasons." *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 43, 45–46 (1991). So as to ensure that the new sanction is not merely illusory, in whole or in part, the new sanction will be imposed *in addition* to the $2,263,962.48 in combined attorney fees and taxable costs that the Court awarded Cuker in the previous subsection of this Opinion and Order, resulting in a total award to Cuker of $2,664,262.44 in combined attorney fees, costs, and new sanctions.

Finally, the Court would emphasize that the relief Cuker has obtained in this case apart from this sanction is critical to this Court's analysis of what a just and appropriate sanction would be. So if the Amended Judgment in this case is reversed in any part on appeal, then this Court would likely consider that to be appropriate cause for Cuker to move in this forum on remand for reconsideration of this ruling on its Motion for Sanctions.

IV. CUKER'S MOTIONS TO WITHDRAW

The final matters to take up are the Motions to Withdraw (Docs. 520, 522) filed by Cuker's counsel of record in this case. Cuker's attorneys inform the Court that Cuker has

not complied with its written engagement agreements with them, and therefore they seek leave to withdraw pursuant to Local Rule 83.5(f). The Court finds that Cuker's attorneys have complied with Local Rule 83.5(f) and all other ethical responsibilities associated with withdrawing from client representation. Therefore, the Motions to Withdraw filed by Cuker's attorneys will be **GRANTED**.

Since Cuker is a limited liability company, it cannot represent itself *pro se*. *See Ackra Direct Marketing Corp. v. Fingerhut Corp.*, 86 F.3d 852, 857 (8th Cir. 1996). However, this case is closed, an Amended Judgment is being filed contemporaneously with this Opinion and Order, and the Court does not anticipate any further motion practice or briefing occurring, other than any appeal that may be filed in the Eighth Circuit, which is of course a different forum from this one. Therefore, Cuker will not be required at this time to secure new counsel and have that counsel enter an appearance in this matter. However, Cuker will be required to have new counsel enter an appearance in this matter prior to making any further filings in this matter. All of the attorneys being granted leave here to withdraw are directed to provide Cuker with a copy of this Opinion and Order and its accompanying Amended Judgment, along with an appropriate cover letter of explanation that states that the Court has permitted these attorneys to withdraw from the case as attorneys of record, and that Cuker may not make any further filings in this matter until new counsel has entered an appearance in this matter on Cuker's behalf.

V. CONCLUSION

IT IS THEREFORE ORDERED that Cuker's Motion for Sanctions against Walmart and its Counsel (Doc. 464) is **GRANTED IN PART AND DENIED IN PART**; Cuker's Motion for Attorneys' Fees and Costs (Doc. 473) is **GRANTED IN PART AND DENIED**

IN PART; Walmart's Motion for Judgment as a Matter of Law under Rule 50(b) (Doc. 490) is **GRANTED IN PART AND DENIED IN PART**; Walmart's Motion for New Trial or Remittitur under Rule 59 (Doc. 493) is **DENIED**; the Motion to Withdraw filed by attorneys Mark Murphey Henry and Adam L. Hopkins (Doc. 520) is **GRANTED**; and the Motion to Withdraw filed by attorneys Callie A. Bjurstrom and Michelle A. Herrera (Doc. 522) is **GRANTED**, as follows: an Amended Judgment will be entered contemporaneously with this Order, awarding Cuker $745,021.00 in damages, a total of $2,664,262.44 in attorney fees, costs, and sanctions, and injunctive relief pertaining to Cuker's Adobe Source Files.

IT IS FURTHER ORDERED that all of the attorneys being granted leave here to withdraw are to file of record an appropriate affidavit of delivery that explains the evidence or their actual knowledge of Cuker's actual receipt of this Order and of its accompanying Amended Judgment, and that otherwise indicates their compliance with this Order. The affidavit shall also provide an address at which service of any further filings in this matter may properly be made on Cuker. Upon the filing of such affidavit, the filing attorney shall be completely relieved of all further responsibilities in this case.

IT IS SO ORDERED on this 31st day of March, 2018.

TIMOTHY L. BROOKS
UNITED STATES DISTRICT JUDGE