
**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM GREENVILLE COUNTY
Circuit Court**

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2019-000530

Jami Powell and Encore Technology Group, LLC, Plaintiffs,

Of which Encore Technology Group, LLC is theAppellant,

v.

Clear Touch Interactive, Inc. (a Nevada Corporation)
f/k/a Clear Touch Interactive, LLC (a Nevada LLC);

Keone Trask and Tamara Trask.....Respondents.

RESPONDENTS' SUPPLEMENTAL RECORD ON APPEAL

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SC Court of Appeals

November 22, 2019

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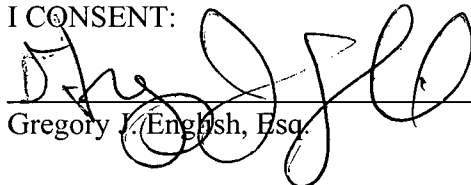
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Certificate of Counsel 37

CONSENT

The undersigned attorneys of record consent to supplement the Record on Appeal with the materials included in this Supplemental Record on Appeal.

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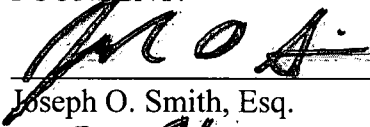
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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

ENCORE TECHNOLOGY GROUP, LLC,
Plaintiff,

vs.

KEONE TRASK and CLEAR TOUCH
INTERACTIVE, INC., f/k/a CLEAR
TOUCH INTERACTIVE, LLC,
Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2015-CP-23-05757

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISSOLVE
RECEIVERSHIP**

Plaintiff Encore Technology Group, LLC ("Encore") opposes Defendants', Keone Trask ("Trask") and Clear Touch Interactive, Inc., f/k/a Clear Touch Interactive, LLC ("Clear Touch"), Motion to Dissolve Receivership because, contrary to Defendants' claim that they have paid the judgments against them, there remains over \$1.2 million outstanding against Trask and Defendants have not provided sufficient factual or legal support for their motion. Specifically, Defendants' motion should be denied on the following grounds:

1. On April 2, 2018, this Court entered a Final Order and Judgment (the "Judgment") in favor of Encore against Trask in the amount of \$7,917,468.40 and against Clear Touch in the amount of \$1,715,335. Judgment at pp. 10-11.
2. Pursuant to the Judgment, Clear Touch's payment of the full amount of the judgment against it by would reduce Trask's judgment liability by \$865,445, to \$7,052,023.40. Judgment at p. 11, n.3 ("Because the jury determined that both Defendants were liable for misappropriation of Trade Secrets, Defendants are jointly and severally liable to Encore for the actual damages of \$424,945, the attorneys' fees of \$345,600, and the costs and expenses of

\$94,900, or a total of \$865,445 on this claim. Therefore, payment by one Defendant of this amount on this claim will reduce the other Defendant's liability for this claim. Each Defendant, however, will owe exemplary damages of \$849,890 for this claim because each engaged in willful, wanton, and reckless disregard of the Plaintiff's rights.”).

3. Between April 11, 2018, and April 17, 2018, Clear Touch made deposits with the Greenville County Clerk of Court totaling \$1,715,335, including actual damages of \$424,945, attorneys' fees of \$345,600, costs and expenses of \$94,900, and exemplary damages against it of \$849,890 for violation of the Trade Secrets Act, entitling Trask to a credit of \$865,445 and leaving Trask responsible for \$7,052,023.40 plus post-judgment interest at 8.5% per annum from April 2, 2018.

4. On July 23, 2018, this Court entered an Order Appointing Receiver (the “Receivership Order”) to monitor and preserve the non-exempt assets of Trask. The Receivership Order also made Trask liable for the Receiver's fees and costs as well as Encore's fees and costs of collection. Receivership Order at p. 9, ¶ 8 (“Without further Order of the Court, the Receiver shall be entitled to payment of professional fees and expenses incurred by the Receiver. While Trask's appeal remains pending, Receiver's fees and expenses shall be paid by Plaintiff. If the Judgment is affirmed in whole or in part, Plaintiff shall be entitled to reimbursement of such payments from Trask's assets in addition to the Judgment and the legal, accounting, and other costs of collecting same.”).

5. On January 3, 2019, Trask made a deposit with the Greenville County Clerk of Court totaling \$6,600,769.58, leaving Trask responsible for \$904,515.38 on the Judgment, plus post-judgment interest on same at 8.5% per annum from January 3, 2019, plus the Receiver's fees and costs and Encore's fees and costs of collecting the Judgment.

6. Specifically, as of February 7, 2019, Trask still owes at least the following on the Judgment and the Receivership Order:

\$7,917,468.40	Principal Amount
- \$865,445.00	Credit for Clear Touch Deposit
\$7,052,023.40	Amount due April 2, 2018
\$453,261.56	Post-Judgment Interest @ 8.5% to Jan 3, 2019
- \$6,600,769.58	Deposit on Jan. 3, 2019
\$904,515.38	Remaining Balance as of Jan. 3, 2019
\$7,372.42	Post-Judgment Interest @ 8.5% to Feb. 7, 2019
\$911,887.80	Sub-total amount due
\$193,190.32	Receiver Fees & Costs thru 12/31/18
\$36,263.90	Receiver Fees & Costs Jan. 2019
\$77,150.96	Wyche Collection Fees & Costs (4/1/18-12/31/18)
\$14,650.55	Wyche Collection Fees & Costs Jan. 2019
\$1,233,143.53	Total Due

7. Accordingly, because Trask has not paid the Judgment against him and remains responsible for over \$1.2 million, the Court should deny Defendants' Motion to Dissolve Receivership.

8. Moreover, Defendants have appealed the Receivership Order and that order is pending before the South Carolina Court of Appeals. Defendants previously moved before the South Carolina Court of Appeals to overturn or amend the Receivership Order and the Court of Appeals denied that motion. Defendants have failed to provide this court with facts, supported by affidavits, or legal authorities sufficient to remove this matter from the Court of Appeals' exclusive jurisdiction over the Receivership Order or to "dissolve" the receivership.

Encore incorporates herein by reference the pleadings, the record, the Judgment, the Receivership Order, the Second Affidavit of Russell Young re Fees incurred by Plaintiff, and any

other affidavits to be filed in this case, and any testimony or other evidence that may be offered at the hearing.

Respectfully submitted,

WYCHE, P.A.

By: s/ Gregory J. English
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Encore Technology Group, LLC

February 5, 2019

MR. SMITH: --- your concern, because I -- and to be clear, I understand it. And I don't think anyone wants -- under the delusion that I don't understand the mindset here. He -- Mr. Trask and Mrs. Trask have done some things they shouldn't have. We all agree on that. They've been punished for it extensively ---

THE COURT: Mm-hmm.

MR. SMITH: --- and they have paid that money into the Court, which Your Honor has just -- I agree with you wholeheartedly. The law is clear, and no matter what harm, or what bad they did, they are still entitled to what the law says and protections of the law. And we've been clear on what the laws and limits are.

THE COURT: No, I agree with you on the trade secrets. I ---

MR. SMITH: And what Mr. English is asking for, and Encore -- I hate to say Mr. English, because he's asking for his client. I hate ---

THE COURT: Sure.

MR. SMITH: --- personal attacks on other lawyers.

THE COURT: Well, he's not taking it that way.

MR. SMITH: Yeah. He's asking for an advance, and I ---

THE COURT: Well, let me ask you a question. I kept interrupting Mr. English, so I'm going to do the same to you.

MR. SMITH: Sure.

THE COURT: Let's say that the Plaintiffs are successful 100 percent on appeal.

MR. SMITH: Okay.

THE COURT: Take out the double calculation of the exemplaries under the trade secrets.

MR. SMITH: Yes, sir.

THE COURT: Do you agree that your client would be 100 percent responsible -- your clients -- for receivership costs and fees?

MR. SMITH: Receivership costs and fees, yes, Your Honor. It's under the order. That's if it's upheld.

THE COURT: And likewise, do you believe that your clients would be 100 percent responsible for the Wyche collection fees and costs under the contracts at issue in this case?

MR. SMITH: I think that's an issue we would have to look at. I wouldn't -- as I stand here today, I don't even know if I can agree with that. And also, just a side note on the 100 percent, we've of course ---

THE COURT: That wasn't a fair question, I grab that.

MR. SMITH: And I didn't want to not be direct with the Court, because that's ---

THE COURT: Right.

MR. SMITH: But the point would we be responsible for the receiver's fees per the language of the order with the ability as we always are to challenge reasonableness of them, that's later on. The Wyche fees -- in general, I don't believe people are entitled to post-judgment attorneys fees and costs, but if they can ---

THE COURT: Well, the contract between the parties doesn't limit itself to trial. It says that if we have to go to collect, if we have litigation about this, it wouldn't limit itself only to trial rate.

MR. SMITH: I think the contract could be interpreted that way, Your Honor, and yes, I would agree with you. I don't remember the language off the top of my head.

THE COURT: I can't either, quite frankly. But there was a point in the contract that there was no competition ---

MR. SMITH: Yes, Your Honor ---

THE COURT: --- have attorney's fee provisions in both of them.

MR. SMITH: It was all rolled into one if I -- Mr. Anderson and Mrs. Barker will correct me if -- okay, it was two. I thought it was rolled into one. But yeah, there was the attorney's fees provision ---

THE COURT: What if ---

MR. SMITH: --- of this contract. So dependent on the language of those.

THE COURT: All right. So you might have a ---

MR. SMITH: And it's all -- and I guess, my opinion, I think you see my concern. It's a might. And it's still -- there's probability and possibility. I mean, granted, the liability for some part of the receiver's fees is a probability. And I don't know if it's a possibility --- responsible for Wyche's post-judgment interest, but the point being, again, it's simple. We've -- it's a simple issue in my mind -- paid up. They did some -- they did bad, we all agree on that. We're past that. We're talking dollars and cents and the confines and lengths of the law, and that's what we all have got to abide by, and that's where our argument lies. Not about perceived fraud or claims that are outstanding or anything like that anymore. It's about what the law is telling us we've got to do, and we've done that.

THE COURT: Where's that verdict -- okay, I've got it right here.

MR. SMITH: I'm sure it's tab ---

THE COURT: Let me look at this right quick. All right. Go ahead.

MR. SMITH: Okay, if I could just approach. For the record, I just want to cover a few things.

THE COURT: ---

MR. SMITH: Okay. And I'll --- make a note for myself. If Your Honor, and again, I think you were on the same page here, agrees that the judgment is paid in full, that is the basis for our two motions to dismiss. One, and it's stated they don't have standing to pursue these claims, and if you don't have a judgment, you can't pursue a fraudulent conveyance

under The Statute of Elizabeth as they are. If you don't have a judgment against the defendant, you cannot try to pierce the corporate veil, because they have no liability to you. You know, so the damage aspect of those claims robs them of standing, and therefore they should be dismissed.

The same applies to them being the co-Plaintiff -- I should not say them -- Encore being co-Plaintiff in the Powell matter. They got into that case saying we have interest in the resolution of that claim. Now, that gain is premised on the fact that there's an outstanding judgment against my client. The payment of the judgment eliminates that, and they should be dismissed as co-Plaintiffs in that.

THE COURT: Well, let me ask you this. If you look at the verdict -- go to page -- or tab 2.

MR. SMITH: I'm with you, Your Honor.

THE COURT: And if I recall, Mr. Smith, you had an employment contract that had an attorney's fee provision, okay.

MR. SMITH: Sure.

THE COURT: You had a non-compete agreement that had attorney's fees provision as well.

MR. SMITH: Yes. I'm not sure if I ---

THE COURT: And, quite frankly, I don't have it in front of me, but I don't think that that contract right to collect fees within with the trial or until they are satisfied and paid the monies. So, if you look at the awards under this verdict, the first one, breach of loyalty, it certainly in mind falls under breach of contract claim or that employment contract, excuse me.

MR. SMITH: Say that one more time, Your Honor. I'm not following.

THE COURT: --- on you said. Under the breach of loyalty claim ---

MR. SMITH: Yes, sir.

THE COURT: --- they will be able to collect their fees under the employment contract for breach of loyalty. It's based on his work for Encore, okay. That's what I -- and I admit we have a right to have a hearing on that, but that seems at first blush, without further inquiry, that's what it would be. Same thing with fiduciary duties, based on his employment with Encore. So again, that falls under the employment contract. It would be breach of contract, if I recall, on number 3 had to do with non-competition and the non-compete, but I can't say that for sure as we're standing here.

Trade secrets would be probably both, non-compete and non-employment contract. So it seems to me, then tortious interference, that may be a little more questionable, but it seems to me that if they brought a claim against your client under any of those free-standing five causes of action we just went over, they'd be able to seek their fees against your client if they were successful, based on the wording of the contract.

MR. SMITH: And I don't remember the wording of the contract, so, if they were successful on appeal and the contract language is such that it would be interpreted to allow the post-judgment ---

THE COURT: I don't think it had anything about appeal. That certainly would be the receiver, because that's clearly in the order.

MR. SMITH: Yes, Your Honor. I think my point is really simple, though. And I understand your question. I don't want to not answer it, so if I don't, I figure you'll tell me. And I want you to, because I want to answer your questions. As we stand here today, it's not money owed. And that's the point. As we stand here today, the money owed is paid to the Court, and that's why I said at the start of this -- and granted, we're going through it a lot because we need to, but it's that simple.

And I understand the propensity to want -- if I'm in Mr. English's chair, I don't -- and Mrs. Barber's chair -- I don't fault the inclination to try -- hey, I'm going to try to secure as much as I can for my client. The fact is, there's a limitation to it. So, my client as we sit here today owes what's in the Court, and that's it. I mean, really, that's where we are, and I don't want to not answer your question there, so.

THE COURT: Well -- and let me tell you. I don't purport to be a guru at all in the receivership issue. I've been involved in very few of them, quite frankly. But, the idea of the receiver is to garner assets to pay judgment.

MR. SMITH: Yes, sir.

THE COURT: Or to preserve assets that they be paid, you know, whatever terminology you want to use. And while the amount is yet to be determined as to the receivership fees and costs, Wyche collection fees and costs, it may not be available to them in the --- appeal. It seems to me there should be some kind of preservation in the event of success, unless I can see that it is going to cause this company, you know, to go under. I mean, certainly that is not the intent for anybody, to put any business out of business.

MR. SMITH: Well, and Your Honor hit on it earlier in talking with Mr. English about this issue. That's what the collection mechanism is for, though. I mean, we can't always advance eventualities, even as probable as they may be. What my clients owe under the law has been paid, so we can't advance eventualities. I ---

THE COURT: I got you. I got you.

MR. SMITH: So ---

THE COURT: So -- go ahead.

MR. SMITH: No, no, no. If you've got another question, please ask. I have a few points just to make for the purpose of ---

THE COURT: And it's very interesting points, and I -- you know, I, quite frankly -- I can see both sides of the coin. I do think that on Mr. Smith's side of the coin that we have an undesignated amount, unlike the verdicts that were rendered below. Those are clearly defined, and that's what the rule is designed to require is the payment of --- and x amount of monies that may become due at a later point and time. In other words, these contingent receivership fees, your contingent attorney's fees for collection -- and I just don't know that you can continue a receiver and his continued costs and expenses that would keep running it up. It just doesn't seem to be right.

MR. ENGLISH: And Your Honor, I could stop the receivership contingent on them paying, but we've submitted an affidavit of Mr. Young, who is a CPA in South Carolina and said here are the receiver's costs and fees that we've paid. Here are the collection fees and costs we've paid, and the receivership order says that the -- Encore shall be entitled -- so Mr. Trask's liability has been determined contingent on the appeal being affirmed in whole or in part, the same way collection of the judgment is conditioned on the appeal.

THE COURT: Right, and I got it. I got that.

MR. SMITH: My point is you don't need to collect the judgment before the verdict's rendered.

THE COURT: I got that, too.

MR. SMITH: Yeah. I know, I know. The horse is dead. I think Greg and I've beat it pretty ---

THE COURT: I know, I know. Let's go ---. All right.

MR. SMITH: Can I say, just really ---

THE COURT: Yes, sir.

MR. SMITH: --- for purposes of the record, and I will sit down unless you have ---

THE COURT: Sure.

1 Constellation Software, through their Harris software
2 division, did consummate the acquisition.

3 **Q** This is mid-to-late 2012 time frame?

4 **A** It is. It is.

5 **Q** Around that time, what was -- did you see a
6 shift in the technology market -- classroom
7 technology market?

8 **A** In the classroom technology market, we were
9 seeing a shift. We've heard about some trends that
10 were happening, specifically in classroom technology.
11 The interactive whiteboards and projectors had come
12 to the market in or about 2003. Soon, a proliferation
13 of technology was entering into the classroom. Prior
14 to this technology shift, most classrooms maybe had a
15 teacher's computer at their desk, maybe a couple of
16 shared computers for the students to use at break-out
17 time. There wasn't really technology coming in that
18 was whole -- whole-group instruction, is how we
19 looked at that.

20 That technology, as it went on, would
21 continue to age and need to be replaced. We're
22 getting into a cycle of these that were buying in
23 2003 were on their -- maybe their second round of
24 replacement for parts and pieces, and servicing
25 requirements were going high. The technology itself

1 wasn't as robust as it used to be. What people were
2 finding, just having technology wasn't making quite
3 the difference in the classroom. What we further saw
4 shifting is the pursuit or the idea that a one-to-one
5 initiative that every child could have one device in
6 their hands. So technology started to move away from
7 the whole group from classroom instruction and move
8 more toward putting a device in their hand. That
9 opened up a lot of questions. We had a lot of
10 product, a lot of technology out there, how do we
11 converge that and bring that together into a solution
12 that could help enhance learning.

13 **Q** So what did you do at that time, when you
14 foresaw this shift?

15 **A** In foreseeing the shift, it really just
16 kind of took a look out at the market and saw what
17 was available. The touch interactivity that came from
18 the interactive whiteboard was limiting. The
19 traditional projector models, the technology itself
20 had some shortcomings in terms of quality,
21 interactivity, the amount of interactivity that could
22 happen and looked out into the market to see what was
23 out there. What I found was that in the market, there
24 were a lot of high-end audio/visual solutions that
25 were out there that could replicate this experience,

1 but using LED technology versus projection
2 technology. LED, being, the display. They were quite
3 possibly headed for the classroom. The 55-inch model,
4 at that time, were upwards of \$10,000 for the
5 classroom. As we heard, classroom technology really
6 needs to be in that \$5000-range to be equitable.

7 And --

8 **Q** Go ahead.

9 **A** I was going -- so there was technology that
10 was out there, but it wasn't ready for consumption by
11 the classroom. The experience was lackluster in what
12 was available. So there was an opportunity to get
13 that technology, bring it to a point that was
14 affordable and change the way people were interacting
15 in the classroom.

16 **Q** So what did you do to look into this
17 opportunity?

18 **A** Did an extensive amount of research on my
19 personal time; online, looking at different
20 technologies, the brands that are out there;
21 evaluating the product remotely via video and things
22 like that to look at that.

23 **Q** And again, when that was -- were you doing
24 all of this?

25 **A** This was in early 2012. And then it kind

1 of, as an idea, accelerated when we knew that the
2 acquisition was going to happen by Harris Computer.

3 **Q** Did you establish Clear Touch Interactive,
4 LLC, at some point?

5 **A** We did. Came to the conclusion that this
6 was a viable idea. Let's take it a little bit further
7 and let's get, you know, incorporated. And we filed
8 for Clear Touch Interactive, LLC, in the state of
9 Nevada in August of 2012.

10 **Q** Are you sure it was in August of 2012?

11 **A** So many dates, I apologize.

12 **Q** Sure. Sure. Would it be accurate what's
13 reflected on the corporate filings we saw earlier ---

14 **A** It would.

15 **Q** --- would be the correct date?

16 **A** Yes.

17 **Q** Who was listed as the initial managing
18 members ---

19 **A** The --

20 **Q** --- of the business?

21 **A** The initial managing members of Clear Touch
22 Interactive, LLC, was myself, Keone Trask, and my
23 wife Tamara Trask.

24 **Q** You filed it in Nevada, correct?

25 **A** That is correct.

1 Q Why did you file in Nevada?

2 A For tax reasons.

3 Q Is it still a Nevada Corporation?

4 A It is still a Nevada Corporation to this
5 day.

6 Q After you filed the initial corporate
7 filings, did you continue to work on Clear Touch
8 opportunity?

9 A I did. Continuing to progress that; make
10 outward contacts; actually take some of the ideas and
11 things and cultivate that; test some samples of
12 different products and components, not the actual
13 physical product that you see today here in the
14 courtroom, but the components that go into that; the
15 different glass surfaces; the different film
16 coatings; the different components that go into that.

17 Q And did you do this on your own time?

18 A I did.

19 Q You weren't -- did Encore even exist at
20 this point?

21 A At this point, it did not.

22 Q Did you invest money in the Clear Touch
23 opportunity in 2013?

24 A In 2013, I did.

25 Q How much did y'all put in, in 2013?

1 **A** I believe we put in approximately \$3500.

2 **Q** What was that for?

3 **A** That was to take all of this information
4 that was put together and actually have a product
5 made, prototype if you will, put together for that.

6 **Q** I will take a little step back before we
7 get too far into 2013.

8 **A** Uh-huh.

9 **Q** How did you and others -- I believe it was
10 you and others -- identify the Encore opportunity?

11 **A** Well, as I mentioned earlier, the Harris
12 acquisition was taking place, and that was actually
13 finished in November of 2012. But prior to that, we,
14 some of the senior management at Computer Software
15 Innovations at that time in the technology and cloud
16 services division -- there was initial effort by one
17 of the former owners and partners of CSI, Computer
18 Software Innovations, to actually buy the technology
19 division back from Harris Computer very early on.
20 That lasted for about four weeks where that
21 individual was trying to go out, raise capital, get
22 different partners brought in and do some things with
23 that; and that, ultimately, failed. That effort
24 failed for him to do that.

25 It was at that time, knowing that, that we

1 said let's go ahead and make -- we, myself and Chris
2 Powell, specifically, and then later, Michael Knight
3 who you've heard from as well, we came together and
4 said, "Let's go ahead and form a company here in
5 South Carolina. And let's, at least, get a letter of
6 intent in to Harris Group, that we have an interest
7 to take the technology business and do something with
8 that it, in the hopes of those 107 people we keep
9 talking about that came over as part of the
10 acquisition --"

11 Q When did you incorporate Encore Technology
12 Group in South Carolina?

13 A I believe that was September 2012.

14 Q And tell the jury more about what you did
15 leading up to the meeting that we've heard about with
16 Mr. Newnam about potential investment.

17 A So in the market at this time -- so the
18 Computer Software Innovations, the business as a
19 whole, is very disruptive right now. There's an
20 acquisition that's been public for about six months.
21 Acquisition is near finalized and there's a lot of
22 shifting and things going on. Very disruptive,
23 especially to the existing client base, the existing
24 pipeline. They don't know what's going to happen.
25 There's a lot of uncertainty in the customers' minds,

1 a lot of uncertainty in the employees' minds: Do I
2 have a job? Am I going to have a job? What's going to
3 happen? Just a lot of anxiety that was going with
4 that.

5 In leading up to that, we took that idea --
6 we, being myself, Chris Powell and Michael Knight --
7 and we started to expand the circle of people that
8 were participating in helping to take this into a
9 different direction and included others in that. We
10 began to solicit the network of contacts that we had.
11 I, myself, had reached out to probably 20 other
12 investors in the market that were also VARs who were
13 looking, or lacking, for a Southeast presence, as far
14 away as California, VARs that may have an interest in
15 this business that was existing, an existing
16 15-million-dollar-a-year business revenue top line.
17 We began soliciting them, putting the idea in front
18 of them, starting to have, I guess, what would be
19 akin to potential investment costs, presentations,
20 going to the different banking institutions and
21 creditors that were existing for Computer Software
22 Innovations.

23 Q So did you, ultimately, meet with
24 Mr. Newnam as a part of that investor search?

25 A I did. We actually were introduced to

1 Mr. Newnam through the Wyche Law Firm and a contact
2 that we had there that actually helped draft some of
3 the documentation that we had for Encore Technology
4 Group, the corporation that we formed in South
5 Carolina. We met with Mr. Newnam on January 12th,
6 2013.

7 **Q** Tell the jury about that meeting.

8 **A** It was a casual meeting. We actually met
9 over lunch. We talked about the idea. We had some
10 initial conversations with some things were exchanged
11 electronically, previous. It wasn't walking in and
12 presenting it for the first time. There was an idea
13 of what was -- what was going to be the opportunity.
14 We ended up having lunch and we actually -- I believe
15 we moved to another location and continued that over
16 coffee and spent the better part of the afternoon,
17 you know, reviewing what the potential was.

18 We laid out a -- what we felt was a pretty
19 comprehensive plan at that time that included, you
20 know, financials; the market; here's the top line of
21 what we're doing; here's the messaging; here's what
22 it could be; and here's what the potential is.

23 **Q** What happened as a result of that meeting?

24 **A** The result of that meeting was a prompt
25 follow-up by Mr. Newnam with the team. We assembled

1 at the offices in Easley, South Carolina. We were
2 still co-locating with Harris, that did the
3 acquisition in November. We were put into the
4 position of working alongside the acquired, knowing
5 that if we weren't able to do something -- and
6 really, a lot of the conversations, from that point
7 going forward, were mostly facilitated by Chris
8 Powell and Russell Young and Todd Newnam. They were
9 talking about the financial aspects of the deal that
10 they were working out with Harris.

11 Q So eventually, Mr. Newnam invested in the
12 business?

13 A Ultimately, purchased Encore Technology
14 Group from Chris Powell, myself and Michael Knight;
15 and then invested and bought the assets of what was
16 CSI's technology and cloud services division.

17 Q What did he pay you for the idea or
18 opportunity of Encore?

19 A It came in two forms: One was a full
20 reimbursement of expenses. So again, we had to put
21 capital up earlier when we started Encore, just for
22 attorneys fees, filing fees, mailbox rentals,
23 letterhead, just operational-type things that we had
24 to have, e-mail accounts that were temporary. We put
25 that all of that together. Mr. Newnam reimbursed for

1 all those expenses; and then, as a bonus for that --
2 it has been referred to as a bonus previously, was
3 \$25,000.

4 **Q** Who came up with the name, the brand name
5 "Encore"?

6 **A** That was really -- the name, I came up with
7 myself and kind of floated it to "What you guys think
8 about this?" was pretty early on. We weren't trying
9 to be too particular with it. We just wanted to get a
10 entity set up and get a letter of intent in to
11 Harris, so that we could get the transaction
12 potentially posed in front of them and get the letter
13 of intent. I did come up with Encore Technology
14 Group, the logo, the design, a lot of the branding
15 elements that come -- that are still in use today and
16 in existence.

17 **Q** At that time, did you guys have a business
18 plan for Encore that you were pitching to investors
19 and, ultimately, Mr. Newnam?

20 **A** We did. We did. We had a plan. What we saw,
21 the -- the value-added reseller business was an
22 interesting one, in the decade-and-a-half experience
23 I had, in that it is -- especially in the public
24 sector markets. There's peaks and valleys to the
25 sales cycle when you have revenue. There's a lot of

1 need to understand how funds are moved through these
2 entities, both at a local level, a state level and,
3 also the federal level. Those funding cycles come in
4 waves. Sales cycles come in waves. One of the things
5 that we sought is, we do need to have some way to
6 bring some consistency to the revenue flow in the
7 business. So we need to get some additional verticals
8 outside of K-12 to represent some of that revenue.

9 Then also, we have to get a little bit
10 leaner, actually, a lot leaner. We called it -- we
11 referenced it, "You're going to get dot-com," which,
12 in hindsight, probably wasn't a great reference,
13 given what happened to them in early 2000s. What it
14 meant was, we had to get real lean with what we were
15 trying to do. Cut costs at all levels.

16 We had -- previously, we had, as you heard,
17 we were a public company, so we had a lot of
18 compliance costs to that aspect of the business which
19 was in excess of \$1 million a year, just to be
20 compliant, to be a small publicly traded company. We
21 had a lot of ancillary expenses that went into that
22 and then also moved from -- what was emerging at that
23 time was, take a lot of the services that we were
24 consuming and run them from the cloud. Don't buy the
25 infrastructure. Don't buy the infrastructure, the

1 building. Everything that comes in adds a lot of cost
2 to your business. Get real lean and mean.

3 Q So that was the business plan?

4 A That's the high level of it, yeah.

5 Q Pull up Plaintiff's 1 for me please.

6 This has been admitted. So were you
7 eventually hired for Encore?

8 A Was, yes.

9 Q And you recognize this particular document?

10 A I do.

11 Q Is this your employment agreement?

12 A It is.

13 Q So what were you hired as, at Encore?

14 A The title was chief business development
15 officer. We went back and forth on that quite a few
16 times, what that was going to be. But chief business
17 development officer was the title that I assumed the
18 responsibility for at Encore.

19 Q You executed this document. Did you execute
20 the non-disclosure and confidentiality agreement we
21 have seen, as well?

22 A Yeah, we actually -- we had a meeting to
23 announce to the employees, because a lot of this was
24 done without being in front of the employees of the
25 previous organization. All of the team that was

1 working on this was under a non-disclosure. We were
2 working, almost in cloak in the building, shut off
3 from everybody else. There were some whispers going
4 around, but we actually had a kickoff event following
5 the announcement of the acquisition on Valentine's
6 Day.

7 The following Tuesday, we had a big kickoff
8 meeting. Everybody was brought in from around the
9 region. Some drove in; some flew in. We set up a big
10 presentation meeting and kicked it off and introduced
11 Todd to everybody and introduced the team; and kind
12 of laid out that plan for them that we had shared, as
13 well. Then we had a big signing party where everybody
14 moved in, got their employee -- got hired -- I'm
15 sorry -- fired by Harris; and then 20 minutes later,
16 hired by Encore. It was kind of an assembly line
17 approach to that.

18 **Q** And what was your role and responsibilities
19 at Encore, as you understood them?

20 **A** Well, there was the -- there was the
21 assumption of a lot of the marketing efforts. That's
22 an area that I had done for CSI, the previous
23 company, in, kind of, duality with other
24 responsibilities -- it was just something I could
25 excel at and help with -- the marketing

1 responsibilities, and then also going out and
2 managing a lot of the relationships that we had.

3 In this first couple of weeks -- like I
4 said, the existing customer base that was Computer
5 Software Innovations' before this has now been
6 announced in March, 2012, that the company was going
7 to be acquired; and there was some uncertainty. It
8 was acquired in November of 2012. Further
9 uncertainty. And now, there's a new entity. We had to
10 go out and quickly triage and bring stability to the
11 business.

12 So as far as my role, it was, at that time,
13 whatever it took. It was get out there; get in front
14 of customers. We had upwards of almost \$1 million in
15 paid receivables that had to go out and be collected.
16 Fortunately, I had a lot of relationships with a lot
17 of those accounts. I had to go out, tell them what
18 the plan was, who we were going to be, get that
19 revenue back in. Because we were -- we were depending
20 on that revenue, that revenue stream that was
21 purchased with them.

22 And a lot of other tasks, vendor
23 relationships, establishing vendors, triaging with
24 vendors. The vendors were just as concerned about
25 where their pipeline was going to be and where their

1 revenue and relationships were going to be. We had to
2 go out and meet with customers during the six-month
3 -- 6- to 9-month cycle. All of our competitors came
4 out, even -- kind of nipping at the heels, kind of
5 going after the business they knew we were
6 established in and selling through a lot of fear,
7 uncertainty and doubt. "They're not going to be here
8 next year. They're not going to fill your contracts,
9 etc."

10 We had to go out to the contract
11 authorities and get things moved over from state
12 contracts for hardware services. We had to also work
13 with Universal Services Administration Corporation to
14 get our existing contracts -- they facilitate and
15 manage a program called E-Rate, which represented
16 more than 30 percent of Computer Software
17 Innovations' business. We had to move all of those
18 contracts over, as well. So there is a lot of triage
19 going on to kind of bring some consistency to the
20 day-to-day operations of the business, for the first
21 six months.

22 **Q** Now on April 11, 2013, did you file an
23 annual list of managing members for Encore -- for
24 Clear Touch?

25 **A** For Clear Touch Interactive, LLC, that's

1 awareness for this unique offering by Encore and have
2 built great momentum. Momentum that would be very
3 hard to rebuild in a scenario where we have
4 quadrupled our competition field."

5 Q Did you write that?

6 A I did.

7 Q Do you believe it?

8 A Yes.

9 Q Mr. Trask didn't tell you to write that?

10 A No.

11 Q Let's look at the last page. There's a
12 spreadsheet there. Did you prepare this?

13 A Yes, I did.

14 Q Mr. Trask help you to prepare it?

15 A He did not.

16 Q Did he have any input?

17 A No.

18 Q Why did you prepare it?

19 A I was asked by management to prepare a
20 comparison of available panel options on the market.

21 Q What does it show?

22 A It shows, based on my findings -- and these
23 were findings that are a combination of looking up
24 specifications through these and manufacturer's
25 websites, as well as any time I had an opportunity to

1 actually touch one of these type products. These are
2 very clear specifications that, in my opinion, show
3 that we had a much better product to bring to market.

4 A couple of things in compared -- in
5 particular, one is the speed of touch. So one of the
6 things that our customers enjoyed with the Promethean
7 active board over, say, a company and a brand like
8 SMART is they use very different touch technologies.
9 Promethean actually used what was called
10 electromagnetic, which meant their pen, how it
11 interacted with the panel or with their interactive
12 whiteboard, was extremely fast.

13 For a teacher going from a static
14 whiteboard with a dry erase markers, unless your
15 marker had dried up, that ink flows out of the tip of
16 that pen as fast as you can write. The Promethean
17 experience was the same. That was very important for
18 a teacher. There was nothing more frustrating than
19 writing on something and watching and waiting for
20 that electronic ink to catch up to you. In
21 instruction time in the classroom, time is of the
22 essence. I want to keep my students on task and
23 engaged with me. I need to be able to do things in
24 realtime.

25 As we compared panels on the market, Clear

1 Touch was the first panel that I came across where
2 there wasn't an extreme lag time. When I talked about
3 those other things that we experimented with, with
4 the interactive overlay over TVs, there was an
5 apparent lag time. As you wrote on that screen, you
6 are waiting for the ink to catch up. And while it's
7 cool that you could do this digitally and with touch,
8 you know, the apparent lag time, we knew, was not
9 ready for the classroom.

10 When Promethean -- sorry, when Clear Touch
11 brought their product into Encore to be evaluated,
12 that was the first time that I experienced on a
13 panel, interactive flat panel, that speed that
14 compared to what I, you know, experienced for 10-plus
15 years on a Promethean interactive whiteboard. So I
16 knew it was ready for, basically, time in the
17 classroom. It was ready to be used and enjoyed in a
18 way that would not detract from instruction in the
19 classroom.

20 **Q** And because this spreadsheet is gibberish
21 to me and to probably a couple of other people in
22 this room ---

23 **A** Sure.

24 **Q** --- what was the decision, based on the
25 spreadsheet?

1 **A** So a couple of things: one is the speed,
2 and it's actually listed there in milliseconds, Clear
3 Touch having one of the fastest speeds of response
4 times to touch; the other thing was what we call the
5 internal PC option. With Clear Touch, you have the
6 option -- and that panel over there has it -- where
7 you have a -- basically, it's almost like a laptop
8 motherboard that's made to fit exactly inside the
9 Clear Touch panel. What that allows for is a smooth
10 and transitionless experience at the panel. It's
11 almost like that becomes a large Tablet PC in itself
12 without the necessity of how we have it set up today
13 with wires coming off of it, you know, to our
14 lawyer's laptop.

15 They wanted to go that route because they
16 wanted to keep all of their information on that. We
17 could've just taken that on a flash drive and put it
18 on the internal PC. In the classroom, that also meant
19 that teacher did not have to share her laptop anymore
20 with instruction to the students. She could keep that
21 for e-mailing and for grades and anything else that
22 she was preparing, while students interacted with
23 content in the classroom.

24 Classroom time is not always, you know,
25 just talking, talking, talking. Sometimes I give them

1 seatwork to do. And so then that teacher can then use
2 her laptop to prepare content aside from, you know,
3 the students aren't taking up that laptop time from
4 her.

5 At the time, I think there was maybe one or
6 two others that offered an internal PC option. So for
7 us, again, that was a very much competitive advantage
8 in the Clear Touch product.

9 Q Based on this analysis, did you determine
10 that Clear Touch was the best option?

11 A I did. Let me just delineate a little bit
12 further, too. Some of those brands up there were not
13 available to us as a resell brand to be able to carry
14 as Encore. Some of them sold direct. Some of them
15 already had established relationships. Based on what
16 was available and what we already had in hand, I
17 truly believe that we had the best product to offer
18 our customers.

19 Q During this time, what kind of interaction
20 did you have with Clear Touch management?

21 A During that time, very limited. Very
22 limited. There's an instance where we had an issue
23 where our panel needed support; needed, you know,
24 guidance on how to repair something. I was put in
25 contact with, I think it was, Kathy Cruse, at that

1 time, to receive guidance on a support issue.

2 Q Did it bother you that you weren't able to
3 meet them in person or tour their facilities and that
4 kind of thing?

5 A Not necessarily. Early on in the Promethean
6 relationship, you know, I didn't have a lot of access
7 to people at Promethean. You know, management came
8 and said this is what we're selling. So in that
9 regard, it wasn't -- and because it was such a great
10 product, you know, I didn't really focus on the fact
11 of, you know, exactly where did this come from, who
12 are these people. I mean, obviously, I wondered, as
13 anybody would, but it didn't bother me because it was
14 a great product.

15 Q Did you -- after Mr. Trask was terminated
16 from Encore, did you meet with him?

17 A I did.

18 Q Was that the day of or very shortly
19 thereafter?

20 A I believe it was the day of.

21 Q And what was the purpose of that meeting?

22 A He asked me to come over. And my wife and I
23 both went over to their house. He asked us to sign an
24 NDA, so I knew something was up.

25 Q Was that kind of weird?

1 **A** A little bit, yeah. At the same time, you
2 know, I was curious to see what he was going to talk
3 about.

4 **Q** So what did he disclose?

5 **A** At that time, he disclosed to me and to my
6 wife that he was, indeed, the owner and was the
7 founder of Clear Touch Interactive.

8 **Q** And you were not aware of that before that?

9 **A** I was not.

10 **Q** During that meeting, did Mr. Trask
11 encourage you to leave Encore?

12 **A** Never.

13 **Q** Did he tell you he had a spot ready for you
14 at Clear Touch?

15 **A** No.

16 **Q** Did you discuss with Mr. Trask any interest
17 in Clear Touch?

18 **A** I did. Over the years, you know, it's kind
19 of a natural progression in a lot of people's careers
20 to, say, go from a reseller to working for the
21 manufacturer. In fact, we -- I had seen several of my
22 colleagues at Encore do the same thing and go to
23 other OEM manufacturers, to other direct
24 manufacturers. So for me, you know, I always thought,
25 even over the years, you know, if the opportunity had

1 been there, I might had gone to Promethean over the
2 years, but that opportunity never presented itself.
3 So I did express to Mr. Trask that, should the
4 opportunity arise, I would love the opportunity to
5 possibly move over to Clear Touch.

6 **Q** Was Encore not focused on those types of
7 things?

8 **A** They were. As far as interactive
9 technologies?

10 **Q** Correct.

11 **A** Yes. So I mean, we still had the -- what we
12 would call our interactive classroom group, we had
13 installers, we had trucks and those types of things.
14 So I mean, I was still heavily involved in, you know,
15 assisting the sales cycles, sales reps, with their
16 demonstrations, with trainings.

17 **Q** Why was it that you wanted to --

18 **A** Right.

19 **Q** -- that Clear Touch was a better option?

20 **A** So because of -- with my role at Encore,
21 you know, I was involved with a lot of things, not
22 only in the interactive classroom group, but a lot of
23 the marketing efforts, a lot of the video making,
24 those types of things that were across a lot of
25 different products. As I mentioned before, my passion

1 lies in the classroom and the interactive classroom
2 products. So for me, I felt like I'd like to go to a
3 company where that could be my sole focus.

4 Q Were you offered a job then?

5 A No.

6 Q How long were you at Encore after this
7 meeting?

8 A I was there through January -- I guess,
9 January 11th, 2015.

10 Q How did you end up at Clear Touch?

11 A Keone told me that if an opportunity ever
12 arose, that it would be posted. He never contacted me
13 directly to say, "Hey, we want to talk about hiring
14 you."

15 With that, I monitored -- I followed their
16 Facebook page. They had social media going. One day,
17 they posted through Facebook. I think when I gave my
18 deposition, I think I said that I thought I saw
19 through ZipRecruiter. Going back now, I remember that
20 I saw it through Facebook. There was a notification
21 on Facebook saying, "Hey, we're hiring in the South
22 Carolina market."

23 Q And so you applied?

24 A And so I applied. I sent them my resume at
25 that point.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Circuit Court

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2019-000530

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SC Court of Appeals

Jami Powell and Encore Technology Group, LLC, Plaintiffs,

Of which Encore Technology Group, LLC is theAppellant,

v.

Clear Touch Interactive, Inc. (a Nevada Corporation)

f/k/a Clear Touch Interactive, LLC (a Nevada LLC);

Keone Trask and Tamara Trask.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Supplemental Record on Appeal contain all material proposed to be included by any of the parties and not any other material and complies with Rules 210 and 212, SCACR.

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