

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
CIRCUIT COURT

The Hon. 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 the Appellant,

v.

Clear Touch Interactive, Inc. (a Nevada Corporation),

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

Keone Trask and Tamara Trask, ... Respondents.

RECORD ON APPEAL

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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

FINAL ORDER AND JUDGMENT

THIS MATTER is before the Court following a week-long trial and jury verdict in favor of Plaintiff Encore Technology Group, LLC ("Encore") against Defendants Keone Trask ("Trask") and Clear Touch Interactive, Inc., f/k/a Clear Touch Interactive, LLC ("Clear Touch") on September 29, 2017. The Court gave the parties 10 days to make post-trial motions concerning the verdict. The following post-trial motions are currently before the Court:

1. Encore's Motion for Judgment including Restitution, Exemplary Damages, Attorneys' Fees, Expert Witness Fees, Costs and Other Expenses, which Defendants ask the Court to deny;
2. Defendants' Motion for Judgment Notwithstanding the Verdict;
3. Defendants' Motion for New Trial Absolute;
4. Defendants' Motion for New Trial *Nisi* Remittitur;
5. Defendants' Motion for New Trial pursuant to the Thirteenth Juror Doctrine;
6. Defendants' Motion for Relief from Judgment pursuant to Rule 60(b), SCRCP;
7. Defendants' Motion for Election of Remedies;

8. Defendants' Motion to Stay Execution of the Judgment; and
9. Defendants' Supplemental Post Trial Filings, filed March 5, 2018, including a motion to deposit the amounts of the judgment in court pursuant to Rule 67, SCRCP.

The parties have filed responses to the others' motions and a hearing was held on November 17, 2017, at which counsel for all parties attended. After considering the matters of record and the arguments of counsel, for the reasons set forth herein, the Court grants Encore's motion except for restitution, denies Defendants' motions except to deposit the amounts of the judgments in court, and directs the entry of judgment in favor of Encore against Trask in the amount of \$7,917,468.40 and in favor of Encore against Clear Touch in the amount of \$1,715,335.00.

DISCUSSION

In considering the pending motions, the Court must have due respect for the jury's verdict. As the South Carolina Supreme Court has stated:

The Court must respect the verdict of the jury in fact as well as in pretense or theory and must not interfere or substitute its own judgment for that of the jurors. One is entitled to the constitutional privilege of the fair judgment of a jury rather than that of the Court

Brabham v. S. Asphalt Haulers, Inc., 223 S.C. 421, 430, 76 S.E.2d 301, 306 (1953).

For these reasons, "it is the duty of the court to sustain verdicts when a logical reason for reconciling them can be found." *Daves v. Cleary*, 355 S.C. 216, 231, 584 S.E.2d 423, 430 (Ct. App. 2003). Specifically, "[a] jury's verdict should be affirmed if it is possible to do so and carry into effect the jury's clear intention." *Id.* at 234, 432 (internal quotations and citations omitted).

In this case, Trask secretly set up and pursued a side company, Clear Touch, to sell interactive panels to Encore at a profit while employed by and under a Non-Disclosure and Non-

Solicitation Agreement (the "Contract") with Encore. Trask admitted that he breached his duty of loyalty to Encore, for which the jury awarded \$375,733.40 actual damages and \$175,000.00 punitive damages. The actual damages award appears to compensate Encore for Trask's wages, benefits and a portion of conference expenses Encore paid for Trask. Plaintiff's Exhibits 10.B and 10.G.

Trask also admitted that he breached his fiduciary duties to Encore, for which the jury awarded Encore \$675,361 actual damages and \$1,500,000 punitive damages. The actual damages award appears to compensate Encore for its lost profits on sales to its customers as a result of Trask's not disclosing that Encore could purchase products directly from the true suppliers, TSI Touch and CVTE, instead of Clear Touch. Plaintiff's Exhibit 10.C.

The jury also awarded Encore actual damages of \$424,945, which appears to compensate Encore for lost profits on sales to Leon County Schools made by Clear Touch. Plaintiff's Exhibit 10.D. The jury awarded these damages on Encore's claim of breach of contract against Trask, claim of tortious interference against Clear Touch, and violation of the South Carolina Trade Secrets Act by both Defendants. On the latter claim, the jury found that Defendants' conduct in violating the South Carolina Trade Secrets Act was willful, wanton and in reckless disregard of Encore's rights. The jury also awarded Encore punitive damages in the amount of \$500,000 against Clear Touch for tortious interference with the Encore-Clear Touch Contract.

Finally, the jury found Trask liable for breach of contract accompanied by a fraudulent act in the amount of \$1,476,039 actual damages and awarded \$2 million punitive damages. This verdict appears to compensate Encore for a portion of the net profits lost to Clear Touch when Trask breached the "business opportunity" provision of the Contract. Plaintiff's Exhibit 10.E.

I. Encore is entitled to judgment amounts consistent with the jury verdicts, plus exemplary damages, attorneys' fees, expert witness fees, costs, and other expenses, but not restitution.

Based upon the evidence and foregoing jury verdicts, Encore is entitled to judgments against both Defendants, including awards by the Court of exemplary damages, attorneys' fees; expert witness fees, costs and other expenses, as follows:

A. Exemplary damages under the South Carolina Trade Secrets Act

Under the South Carolina Trade Secrets Act, "[u]pon a finding of wilful, wanton, or reckless disregard of the plaintiff's rights, the court may award separate exemplary damages in an amount not exceeding twice any award" of actual damages. S.C. Code Ann. § 39-8-40. It is appropriate to award exemplary damages in an amount that is twice the actual damages award where the evidence demonstrates a willful and wanton disregard of the plaintiff's rights. *See Sonoco Products Co. v. Guven*, No. 4:12-CV-00790-BHH, 2015 WL 127990, at *11 (D.S.C. Jan. 8, 2015) (doubling the amount of actual damages to set the award for exemplary damages under the South Carolina Trade Secrets Act).

In this case, the jury found that Defendants' violation of the Trade Secrets Act was willful, wanton, and in reckless disregard of the plaintiff's rights. The evidence demonstrated that Defendants misappropriated Encore's trade secrets intentionally and used them to take business from the Leon County Schools in the amount of \$424,945. In fact, the case of misappropriation was one of the most egregious this Court has ever seen. Therefore, the actual damages of \$424,945 should be doubled and awarded as exemplary damages in the amount of \$849,890.

B. Attorneys' fees, expert witness fees, costs and other expenses

The Trade Secrets Act provides that if "willful misappropriation exists, the court may award reasonable attorney's fees to the prevailing party." S.C. Code Ann. §§ 39-8-80(3). The Contract also provides that, in the event Encore "prevails, in whole or in part, in any such action, [Trask] shall be liable to [Encore] for all of its costs and expenses, including, without limitation, reasonable attorney fees and expert witness fees." Plaintiff's Exhibit 2, p. 2 ("General Provisions"). "The law is clear in South Carolina that attorney fees are recoverable when authorized by contract or statute." *Charleston Lumber Co. v. Miller Housing Corp.*, 318 S.C. 471, 483, 458 S.E.2d 431, 438 (Ct. App. 1995).

Encore prevailed at the trial of this action in that the jury awarded it damages for breach of contract, breach of contract accompanied by a fraudulent act, tortious interference with contract, and willful violation of the South Carolina Trade Secrets Act. Accordingly, Encore is entitled to attorneys' fees, expert witness fees, and other costs and expenses.

It is for the Court to fix a reasonable amount of attorneys' fees. In determining the amount of reasonable attorneys' fees, the Court must consider: (1) the nature, extent, and difficulty of the legal services rendered; (2) time and labor necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993).

As demonstrated by the Affidavit of Gregory J. English, Encore's counsel worked on this case for the following number of hours at the following hourly rates:

<u>Attorney</u>	<u>Hours Worked</u>	<u>Rate</u>	<u>Total Billing</u>
Greg English	491.1	\$ 400.00	\$ 196,440.00
Rita Bolt Barker	24.2	\$ 380.00	\$ 9,196.00

Rita Bolt Barker	277.4	\$ 350.00	\$ 98,507.00
Meliah Jefferson	37.3	\$ 375.00	\$ 13,987.50
Andrew Coburn	5.3	\$ 400.00	\$ 2,120.00
Chris Schoen	1.1	\$ 310.00	\$ 341.00
Mark Bakker	0.6	\$ 400.00	\$ 240.00
Jillene Van Hoy	24.7	\$ 185.00	\$ 4,569.50
Jillene Van Hoy	92.4	\$ 200.00	\$ 18,480.00
Denise Eubanks	0.3	\$ 200.00	\$ 60.00
Lynda Romanstine	8	\$ 195.00	\$ 1,560.00
Lynda Romanstine	0.5	\$ 200.00	\$ 100.00

TOTAL: \$345,601.00

Based upon the facts of this case and the law concerning awards of attorneys' fees, Encore should receive the amount requested above for attorneys' fees, plus costs and associated expenses. The hours devoted to this case and Encore's attorneys' rates justify this award of attorneys' fees, in addition to all costs and expenses. Additionally, as noted in *Blumberg*, several factors other than time and an hourly rate are relevant to an award of attorneys' fees:

The case required a jury trial. Attorneys were required to be in court the entire week of September 25, 2017. In a day when most cases are settled and few cases are tried, this case was more difficult and required more skill to resolve than most.

Because Defendants had lost or destroyed many e-mails and other documents, Encore had to seek relevant documents from third parties through subpoenas. Defendants moved to quash nearly all of these subpoenas, requiring Encore's counsel to attend hearings to obtain denials of Defendants' motions to quash to collect relevant evidence.

The professional standing of Encore's counsel is outlined in the Affidavit of Gregory J. English, Esq. Encore's counsel have litigated numerous other cases involving business disputes, such as *Powell v. Floyd*, Case No. 97-2686, Unpub. Decision at 11-12 (4th Cir. Oct. 12, 1999), and *South Carolina Department of Transportation vs. Jetport Eighty-Five Associates*. *Powell* involved disputes over the value of businesses in Spartanburg County, South Carolina and the

District Court awarded, and the Fourth Circuit Court of Appeals affirmed, \$241,000 in attorneys' fees and costs in 1999. The *Jetport* case involved a condemnation by SCDOT and Judge Cole awarded the full amount of attorneys' fees and costs requested at full hourly rates (\$325 per hour for Mr. English in 2008).

As outlined in the Affidavit, Encore's attorneys had other available opportunities to handle work at reasonable fees at higher hourly billing rates than set forth above, but accepted this case with the belief that they would be fairly compensated.

The fee requested is in line with that customarily charged in the locality for similar services. A case such as this – involving a jury trial and court appearances for five (5) days – would be considered undesirable within the legal community.

The Wyche Firm obtained beneficial results for Encore. It obtained favorable verdicts totaling millions in actual and punitive damages. The results obtained were very beneficial for Encore.

In addition, Encore incurred, or the Wyche Firm incurred on Encore's behalf, the following expenses and other costs for this litigation:

Expert Fees	\$57,326.50 ¹
Trial Exhibit Presentation	14,418.14
Deposition transcripts	7,988.08
Out-of-state subpoenas	5,076.20
Westlaw legal research	3,662.04

¹ Encore's expert, Mike Meilinger, prepared both a preliminary report for mediation and a final report after receiving Defendants' books and records. Because those books and records were prepared on a cash basis, substantial effort was required to convert them to an accrual basis. In addition, Mr. Meilinger was required to review third-party documents to complete his assessment of Defendants' financial records.

Witness travel	1,983.51
Copy costs	1,281.80
Mediation Fees	1,004.72
Other costs & expenses	1,739.90
Lunch expense during trial	<u>+ 419.56</u>
Total:	<u>\$94,900.45</u>

A statement detailing these costs is attached to the Affidavit of Mr. English.

Defendants argue that \$70,505.00 in Encore's attorneys' fees and a substantial portion of the costs are excessive because, for example, this amount includes time Encore's attorneys spent seeking documents via third-party subpoenas and fees for two attorneys to attend certain depositions and hearings. Encore, however, was forced to seek documents through third parties because Defendants did not produce them and/or claimed to have lost or destroyed them. Defendants' complaint regarding there being two Encore attorneys in attendance at certain depositions and hearings is unpersuasive considering that two attorneys routinely appeared for Defendants.

Defendants also argue that, because some of Encore's fees are not specifically attributable to causes of action for which attorneys' fees are eligible, they are not recoverable. The case Defendants rely on for this proposition, *Uhlig v. Shirley*, 895 F. Supp. 2d 707 (D.S.C. 2012), actually rejects Defendants' position. Although the *Uhlig* court performed an analysis of whether there was a particular cause of action that permitted an attorneys' fees award, once it determined there was one, it did not subtract attorneys' fees for work on causes of action that did not provide for an attorneys' fees award. *Id.* at n.3. In other words, even under the authority Defendants cite, Encore has prevailed upon a cause of action that provides for attorneys' fees,

and once attorneys' fees may be awarded under any cause of action, no apportionment of fees is required.

Defendants argue that, because Encore did not prevail upon two causes of action and must elect between others, it may only recover the fraction of fees represented by the cause of action it elects entitling it to fees divided by the total causes of action. In considering the reasonableness of a fee award, however, the Court should not simply divide the attorneys' fees and costs by the number of causes of action and then award only that fraction. Where a plaintiff recovers on certain claims but not others, "[i]n determining what is proportional, courts should not employ a strict 'mathematical approach.' Rather, courts should look at 'the degree of the plaintiff's overall success.'" *Dowling v. Litton Loan Servicing LP*, 320 Fed. Appx. 442, 449 (6th Cir. 2009) (internal citations omitted); *Hensley v. Eckerhart*, 461 U.S. 424, 456 n.11 (1983) (in evaluating an award of statutory attorney's fees, agreeing with the district court's rejection of "a mathematical approach comparing the total number of issues in the case with those actually prevailed upon" and noting "[s]uch a ratio provides little aid in determining what is a reasonable fee in light of all the relevant factors," "[n]or is it necessarily significant that a prevailing plaintiff did not receive all the relief requested.").

Here, Encore achieved a successful result despite not prevailing on two of its causes of action, and no proportional adjustment is justified. Although Encore did not prevail upon two causes of action, any additional fees and costs to present each additional cause of action would only be minimal. Additionally, Defendants' multiple post-trial motions have cost Encore additional attorneys' fees that are not being awarded by this Order.

Finally, the *Uhlig* court awarded \$1,816,494.28 in attorneys' fees and costs to plaintiff in what the court described as "a straightforward claim against an employee for misappropriation

of...trade secrets.” *Id.* at 713. In this case, Defendants’ loss and/or destruction of documents caused Encore to have to do much more work, with third parties and otherwise, to present the facts to the jury. In light of *Uhlig*’s award of \$1,816,494.28 and the additional work caused by Defendants since the request for attorneys’ fees and costs, Encore’s request for \$345,600.00 in fees and \$94,900.00 in costs and expenses is reasonable.

Accordingly, Encore is entitled to judgments against the Defendants as follows:

Against Defendant Keone Trask

<u>Actual Damages</u>	<u>Punitive Damages</u>	
\$ 375,733.40	\$ 175,000.00	breach of loyalty (Trask’s wages + conference expenses)
675,361.00	1,500,000.00	breach of fiduciary duty (Encore’s lost profits from non-disclosure of suppliers)
424,945.00	849,890.00	violation of Trade Secrets Act (Leon County profits—same actual damages as breach of contract)
<u>+1,476,039.00</u>	<u>+2,000,000.00</u>	breach of contract accompanied by a fraudulent act (portion of Clear Touch profits)
\$2,952,078.40	+	\$4,524,890.00 = \$7,476,968.40
Plus attorneys’ fees		+ 345,600.00
Plus costs & expenses		<u>+ 94,900.00</u>
TOTAL JUDGMENT AGAINST TRASK:		<u>\$7,917,468.40</u>

Against Defendant Clear Touch Interactive, Inc.

<u>Actual Damages</u>	<u>Punitive Damages</u>	
\$ 424,945.00	849,890.00	violation of Trade Secrets Act (Leon County profits)
or		
<u>424,945.00</u>	<u>500,000.00</u>	tortious interference (\$424,945.00 in actual damages same as Leon County profits) ²
\$ 424,945.00	+	\$ 849,890.00 = \$1,274,835.00
Plus attorneys' fees		+ 345,600.00
Plus costs & expenses		+ <u>94,900.00</u>
TOTAL JUDGMENT AGAINST Clear Touch: <u>\$1,715,335.00</u>³		

C. Encore is not entitled to a restitution award from Defendants.

Encore also argues that Defendants have been unjustly enriched in the amount of the value of Clear Touch, appraised at \$5,536,254, and should be required to pay restitution in that amount. Specifically, Encore argues that, while he was Encore's employee, Trask built the Clear Touch business using Encore's monetary, personnel, and other resources, with Encore taking all of the risk. Encore's expert testified that Clear Touch's profits through 2015, plus the value of Clear Touch as of December 31, 2015, was \$5,536,254. Plaintiff's Exhibit 10.E.

² Encore acknowledges that the \$424,945.00 represents its lost profits from the sales to Leon County Schools and that it must elect among its Trade Secrets, Breach of Contract, and Tortious Interference claims for such damages. The Court is awarding Encore the amount under the Trade Secrets Act because it includes the higher amounts for exemplary damages, attorneys' fees, and costs and expenses. Such election would be without prejudice to Encore to claim such damages under its other causes of action if the jury verdict on the Trade Secrets claim were ever overturned or otherwise invalidated.

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.

Defendants argue that Encore is not entitled to restitution because “there is an adequate remedy at law afforded by the jury’s verdict.” The Court agrees and therefore denies Encore’s request for restitution. *See Milliken & Co. vs. Morin*, 386 S.C. 1, 8, 685 S.E.2d 828, 832 (Ct. App. 2009) (“Generally, equitable relief is available only where there is no adequate remedy at law”).

II. Defendants are not entitled to judgment notwithstanding the verdict.

A motion for judgment notwithstanding the verdict, or JNOV, should be denied where the evidence yields more than one reasonable inference or its inference is in doubt. *Strange v. S.C. Dep’t of Highways & Pub. Transp.*, 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994). “A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict.” *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998).

A. The restrictive covenants are enforceable.

Defendant Trask argues that his Non-Solicitation and Non-Disclosure Agreement is unenforceable as a matter of law because it contains overly broad provisions. South Carolina law expressly allows an employer to protect its existing, former, and prospective customers. “Prohibitions against contacting existing customers can be a valid substitute for a geographic limitation.” *Wolf v. Colonial Life and Acc. Ins. Co.*, 309 S.C. 100, 109, 420 S.E.2d 217 (Ct. App. 1992).⁴ Covenants preventing the solicitation of former customers are enforceable. *Baugh v. Columbia Heart Clinic, P.A.*, 402 S.C. 1, 12, 738 S.E.2d 480, 486 (S.C. Ct. App. 2013) (“[A]n

⁴ Trask cites *Collins Music Co. v. Parent*, 288 S.C. 91, 92, 340 S.E.2d 794, 795 (Ct. App. 1986), for the proposition that customer restrictions must be limited to “specific customers,” but that case does not so hold. In fact, it upheld a non-solicitation provision on much broader grounds: “The provision merely prohibits pirating of [employer’s] customers. It is not a territorial restriction. A restriction which allows the former employee to sell anywhere else, subject only to the employer’s protection of his own clients, is valid.” *Id.* That is exactly what Encore’s Agreement does.

otherwise reasonable limitation on the solicitation of former clients can substitute for a territory restriction.”). Likewise, covenants preventing the solicitation of prospective customers are enforceable. See *Vessel Medical, Inc. v. Elliott*, Civil Action No.: 6:15-cv-00330-MGL (D.S.C. September 15, 2015); *Hagemeyer North America Inc. v. Thompson*, C/A No. 2:05-cv-3425, 2006 WL 516733, at *5 (D.S.C. Mar. 1, 2006) (finding reasonable a non-solicitation agreement limited to the employer’s customers from a certain period of time who were served by the defendant, with whom he had contact, or whose names or addresses the employer provided to the defendant in furtherance of the employer’s business).

Trask argues that the Non-Solicitation of Customers provision, Plaintiff’s Ex. 2, at 2, is overly broad because it could be interpreted to reach “customers with whom he had absolutely no contact.” That is not correct, because the Contract does require that Trask at least had to have had access to Encore’s “pricing, advertising and/or marketing schemes developed ... for such customer.” Furthermore, there is no South Carolina law that says protection of such customers is overly broad. Moreover, Trask has failed to identify any Encore customer with whom he had no contact. The fact is, the only customer at issue was Leon County Schools, with whom Trask had direct contact. And even if the subsection (iii) that Trask claims is overly broad were severed—as would be required by the severance provision of the Contract and *Team IA, Inc. v. Lucas*, 395 S.C. 237, 717 S.E.2d 103 (Ct. App. 2011)—Trask would still be prohibited from selling to Leon by sub-sections (i) and (ii) of the Contract’s Non-Solicitation of Customers provision.

Trask’s arguments that the confidentiality provisions of the Contract are overly broad also lack merit. Encore’s confidentiality provision is akin to that approved by the Supreme Court in *Milliken & Co. v. Morin*, 399 S.C. 23, 37, 731 S.E.2d 288, 295 (2012), which held that “an employer may restrain a former employee from disclosing and using confidential information

which was developed as a result of the employer's initiative and investment and which the employee learned as a result of the employment relationship." *Id.* The Court upheld Milliken's confidentiality provision because, "rather than covering general skills and knowledge, it encompasses only important information not generally known to the public which becomes known to the employee through his employment with Milliken." *Id.* Accordingly, the Court held that while "Morin may be restricted from using certain information he learned at Milliken for his own personal advantage, these agreements are designed to strike an appropriate balance between protecting an employer's valuable interest in its proprietary information and permitting an employee to find gainful employment in his chosen field." *Id.* at 38-39.

Encore's Contract is the same. All Encore's Contract required was that Trask not use the confidential information he learned about Leon to sell to it directly, and that is what the jury found he did. This in no way prohibited Trask from using his "general skills and knowledge" to find gainful employment. Consequently, Trask is not entitled to JNOV.

B. Breach of contract accompanied by a fraudulent act.

Trask contends that he is entitled to JNOV on the grounds that the breach of contract accompanied by a fraudulent act claim is dependent on the enforceability of the non-solicitation and confidentiality provisions of the Contract. "The law ... forbids this court assuming to take upon itself the powers, duties, rights, and privileges of a jury. Obviously, the absolute power to change or modify the findings of a jury upon an issue of fact properly submitted to them would, when exercised, amount to the substitution of the trial judge[']s findings for the verdict of the jury and to the abrogation in such cases of the right of trial by jury." *Camden v. Hilton*, 360 S.C. 164, 173, 600 S.E.2d 88, 92 (Ct. App. 2004) (quoting *Anderson v. Aetna Cas. Sur. Co.*, 175 S.C. 254, 282, 178 S.E. 819, 829 (1934)); see also *Keeter v. Alpine Towers Int'l, Inc.*, 2012 WL

11867308, *11 (S.C. Ct. App. June 27, 2012) (“This court has stated that ‘it is the duty of the court to sustain verdicts when a logical reason for reconciling them can be found.’ In fulfilling this duty, we may not substitute our judgment for that of the jury.”) (citations omitted).

Instead, it is just as if not more likely that the jury relied upon the “business opportunity” clause of the Contract to find Trask guilty of breach of contract accompanied by a fraudulent act. Trask’s argument assumes, without support, that the jury did not make an independent assessment of the breach of contract accompanied by a fraudulent act claim. Such an assumption is inappropriate under the law. Accordingly, Trask can find no relief from the jury verdicts on this basis.

C. Trade secrets claim

Defendants argue that Encore failed to provide evidence from which the jury could determine it had “trade secrets” and return a verdict for Encore on its misappropriation claim. The Court disagrees. The South Carolina Trade Secrets Act provides a broad definition of “trade secrets,” “misappropriation,” and remedies for their misappropriation. S.C. Code Ann. § 39-8-20(5) (defining “trade secret” to include broad categories of information, including “a simple fact” that “may be the basis of a marketing or commercial strategy”); -20(2) (defining misappropriation to include “disclosure or use of a trade secret of another without express or implied consent by a person who ... at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was ... acquired ... under circumstances giving rise to a duty to maintain its secrecy or limit its use”); -30(C) (“A person aggrieved by a misappropriation, wrongful disclosure, or wrongful use of his trade secret may ... recover damages incurred as a result of the wrongful acts”). Specifically, a “trade secret” is information that:

- (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use, and
- (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

S.C. Code Ann. § 39-8-20(5); *see also* *Carolina Chem. Equip. Co. v. Muckenfuss*, 322 S.C. 289, 296, 471 S.E.2d 721, 724 (Ct.App.1996) (“[I]n determining whether something is a trade secret, one must consider the extent to which the information is known outside of his business and the ease or difficulty with which the information could be properly acquired or duplicated by others.”).

The evidence demonstrated that Encore’s customer list was a trade secret and, more particularly, that Encore had trade secrets regarding its customer Leon County Schools’ needs for, preferences for, and plans to purchase interactive displays. Encore presented evidence at trial from which the jury reasonably found that this information pertaining to Leon’s needs, preferences, and plans were trade secrets. The evidence also showed that Trask took those trade secrets with him when he left, that Trask had Jimmy Higginbotham deliver the customer list to him at Clear Touch, and that he and Clear Touch used those trade secrets to take sales away from Encore and sell directly to Leon. Clear Touch Dep. at 149:22-23; 150:3-151:8; 151:19-23; Plaintiff’s Exhibits 9, 53, and 58.

Encore presented evidence to support its trade secret claims against Defendants. The jury found in favor of Encore and the Court upholds that verdict.

III. Defendants are not entitled to a new trial absolute.

Rule 59, SCRCP, permits the Court to grant a new trial “on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have theretofore been granted in actions at law in the courts of the State....” SCRCP 59(a).

Defendants contend that Encore’s presentation of evidence that Mr. Trask destroyed one category of e-mails and the submission of Table 3 reflecting certain damages to the jury entitle them to a new trial. The admission or exclusion of evidence is within the sound discretion of the trial court. *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012); *American Fed. Bank v. No. 1 Main Joint Venture*, 321 S.C. 169, 174-75, 467 S.E.2d 439, 442 (1996). To the extent any evidence has been improperly admitted, the party seeking relief must also show that he was prejudiced by the admission. *Id.* Applying the law, neither of Defendants’ grounds justifies a new trial.

A. The Court’s admission of Mr. Knight’s testimony confirming that Defendant Trask destroyed one category of e-mails was proper.

At trial, Encore presented evidence that Mr. Trask lost and/or destroyed relevant evidence, including three different categories of e-mails:

1. E-mails from Mr. Trask’s personal “gmail” account that he used while he was an Encore employee, which Encore discovered only after third-party witness Dale Viola came forward and produced such e-mails that he had preserved. Plaintiff’s Exhibits 79 and 80;

2. Clear Touch e-mails, which Defendants claim they “lost” in an e-mail “migration,” Plaintiff’s Exhibit 73, ¶¶ 7-9, and Clear Touch’s 30(b)(6) Deposition by Keone Trask, p. 193, l. 17 – p. 194, l. 7 & p. 194, l. 14 – p. 195, l. 9 (read into evidence at trial) (admitting that Clear Touch emails were “lost” during a migration from one email

provider to the other, but that no efforts had been made to retrieve those lost emails, and that Clear Touch had no email preservation policy); and

3. Trask's e-mails on Encore's server sent to or from Trask's Encore e-mail address.

Trask admitted losing and/or destroying e-mails in the first two categories and never denied deleting e-mails in the third category. Defendants contend, however, that the presentation of the third category of evidence, via the testimony of Michael Knight, resulted in surprise and unfair prejudice to Defendants, requiring a new trial. The Court, however, properly admitted Mr. Knight's testimony regarding Trask's email deletion and in no way were Defendants prejudiced by this testimony.

1. Defendants were on notice that Encore would introduce evidence of Trask's deletion of e-mails from Encore's servers.

Defendants cannot reasonably assert they were surprised by testimony that Trask destroyed emails. Encore alleged as much in the Complaint. *See* Complaint, ¶ 33 ("Trask intentionally breached his duty of loyalty while he was still employed by Encore by...accessing Encore's computer system without or in excess of authorization [and] misappropriating and/or destroying Encore property, software, and files....") Mr. Trask even admitted that his Encore "emails were deleted" at trial, though he offered no explanation as to how that occurred.

Defendants contend that one of Encore's 30(b)(6) deponents, Todd Newnam, had no evidence of Mr. Trask's deletion of emails, but Defendants mischaracterize that deposition testimony.⁵ Mr. Newnam never said he had no evidence and in fact referred to the evidence he

⁵ Defendants' 30(b)(6) deposition notice did not identify Mr. Trask's deletion of emails as a topic, but Matter No. 46 simply referenced "[t]he factual bases for all claims asserted by [Encore] in your Complaint in this case," so did not provide specific notice that he, or any Encore representative, would need to be prepared to discuss this specific topic.

recalled at the time of his deposition to support his allegation. In fact, Defendants admit Mr. Newnam testified during the deposition that "Mr. Trask purged emails at Encore" and that he "deleted some information while he was at Encore, previous emails. There are tidbits of emails that we have that show communications that were deleted from our system." Defendants' Post-Trial Motions at 6.

Encore's presentation of evidence regarding Trask's deletion of emails was also discussed in response to Defendants' motion *in limine* to exclude such references. In evaluating the issue in a pre-trial telephonic hearing, the Court stated that Encore would need to prove that emails were deleted to present such evidence. Accordingly, Mr. Knight's testimony was presented to establish a foundation for the identification of the emails in Encore's proposed Exhibit 84 that were representative of those emails that Trask deleted.

Plaintiff's Exhibit 84 was not admitted into evidence, but even assuming it had been admitted, Defendants had these documents before trial. Each page of Plaintiff's Exhibit 84 was bates-numbered and produced to Defendants well before trial.

Following the Court's statement during the hearing on the parties' motions *in limine* that, in order for Encore to present evidence that Mr. Trask had deleted email, Encore would need to demonstrate that such deletion had occurred, the Court instructed Encore to make sure it produced any documents it intended to introduce in evidence to support this claim. Because Encore had already produced the documents in Exhibit 84, there was no need for Encore to provide these documents again.⁶ Additionally, the parties exchanged electronic copies of exhibits, and then met and reviewed exhibits, including Plaintiff's Exhibit 84, before trial.

⁶ Exhibit 84 was a compilation of representative emails Mr. Knight confirmed were deleted from Encore's email server. Encore produced all but one of these emails nearly four months before trial. Specifically, Encore produced documents Bates labeled 205428, 205222, 205217, 205142,

Defendants' argument amounts to a claim that Encore was under an obligation to explain to them each point its witnesses would testify to and the significance of each exhibit. Encore had no such obligation, nor did Defendants.

2. Defendants were not prejudiced by Mr. Knight's testimony.

Not only is Defendants' claim that they were surprised by the evidence regarding Trask's deletion of emails unsupported, but also Defendants were not prejudiced by Mr. Knight's testimony. First, as noted above, Plaintiff's Exhibit 84 was not admitted into evidence and thus could not have prejudiced Defendants in any way. Second, as also noted above, there was no prejudice to Trask from Mr. Knight's testimony because there was significant evidence presented at trial which demonstrated that Trask destroyed emails. In addition to the evidence cited above, Dale Viola presented testimony and exhibits at trial which confirmed that Trask sent emails to Mr. Viola that were never produced by Trask, and Trask admitted on cross-examination that he did not have these e-mails, and therefore they were destroyed.

Defendants admit as much in their Post-Trial Motions: "Defendants had already admitted liability on two causes of action prior to trial. Plaintiff had ample evidence to attempt and prove its case as to all of its claims, including those with elements of willful or wanton behavior with things such as the Amy Andrews and Kathy Cruse emails." Defendants' Post-Trial Motions at 12 (emphasis added). Because there was already "ample evidence" in the record to prove that Trask engaged in deceptive and fraudulent conduct, including deletion of emails, Mr. Knight's testimony could create no prejudice to Defendants.

Finally, Defendants were not prejudiced because Trask knew that he had deleted these emails. The Court allowed Defendants to delay putting Trask on the stand to testify. Even then,

and 204880 on May 30, 2017, and Encore produced document Bates labeled 214870 on September 19, 2017.

Trask did not deny that he had deleted these emails. Truthful evidence from Mr. Knight does not constitute legal "prejudice" entitling Defendants to a new trial.

B. The Court's admission of Table 3 was proper and caused no prejudice.

Defendants allege that the Court's admission of Plaintiff's Exhibit 10-H, Table 3 was improper and prejudiced Defendants. The Court rejects this argument on both counts.

First, in allowing Encore to present the damages in Table 3, the Court was relying on well-settled law regarding damages available to Encore. *See, e.g., Minter v. GOCT, Inc.*, 322 S.C. 525, 473 S.E.2d 67 (Ct. App. 1997) (purpose of damages for breach of contract is to put the plaintiff in as good a position as he would have been if the contract had been performed).

The evidence was undisputed that, while he was Encore's employee, Trask built the Clear Touch business using Encore's monetary, personnel, and other resources, with Encore taking all of the risk. If Trask had used Encore's resources to build a rental house and collected rent from its tenants, he would be required to pay Encore the amount of the rent collected plus the value of the house. Encore's expert testified that Clear Touch's profits through 2015, plus the value of Clear Touch as of December 31, 2015, was \$5,536,254, so that this amount was properly admitted.

Second, Defendants were not prejudiced by the admission of Table 3. As Defendants acknowledge in their Post-Trial Motions, the jury did not award all of the damages set forth in Table 3. Defendants' Post-Trial Motions at 3 & 13. Accordingly, it is impossible to have resulted in prejudice to Defendants.

Defendants contend, however, that "the sheer admission of Table 3 into evidence and submission of it to the jury created an artificially inflated damages range which unfairly prejudiced its determination of damages." *Id.* at 13. This argument ignores that the valuation of

Clear Touch in Table 3 was significantly more conservative than the \$10 million valuation Defendants placed on Clear Touch in their memorandum to investors shortly after Trask left Encore. See Plaintiff's Ex. 68 (setting forth a \$10,000,000 valuation of Clear Touch). Accordingly, Defendants have not shown prejudice from the admission of Table 3.

IV. Defendants are not entitled to a new trial *nisi remittitur*.

A new trial or new trial *nisi* should be granted only when the Court finds the amount of the verdict to be excessive. *Proctor v. Dept. of Health & Environmental Control*, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006). However, the jury's determination of damages is entitled to substantial deference. *Rush*, 310 S.C. at 379, 426 S.E.2d at 805; *Gastineau v. Murphy*, 323 S.C. 168, 182, 473 S.E.2d 819, 828 (Ct. App. 1996), *rev'd on other grounds*, 331 S.C. 565, 503 S.E.2d 712 (1998).

Additionally, where the amount of the verdict falls within the range of damages testified to, the verdict should not be disturbed on the ground of excessiveness. *Id.* at 183, 828; *Buzhardt v. Cromer*, 272 S.C. 159, 163, 249 S.E.2d 898, 900 (1978). The damages awarded by the jury were within the range of damages presented by Encore's economic damages expert Mike Meilinger. See Plaintiff's Ex. 10-H. Furthermore, they were below the \$10 million valuation of Clear Touch presented by Defendants to investors shortly after Trask left Encore and the \$7.7 million alternative lost profits damage calculation of Mr. Meilinger. See Plaintiff's Ex. 68 (setting forth a \$10,000,000 valuation of Clear Touch); Plaintiff's Exhibit 10.J, last page (setting forth lost profits of \$7,798,632). Accordingly, the jury's verdicts were not excessive and are entitled to deference.

The same is true of the jury's punitive damages awards. In reviewing punitive damages awards, the Court should evaluate several factors, including: (1) defendant's degree of

culpability, (2) duration of the conduct, (3) defendant's awareness or concealment, (4) the existence of similar past conduct, (5) likelihood the award will deter the defendant or others from like conduct, (6) whether the award is reasonably related to the harm likely to result from such conduct, (7) defendant's ability to pay, and (8) other factors deemed appropriate. *Gamble v. Stevenson*, 305 S.C. 104, 111-12 (1991).

Analysis of these factors reveals that the jury's verdicts were well-supported by the evidence presented at trial. There was overwhelming evidence of Defendants' culpability. Indeed, Trask admitted liability on two causes of action giving rise to punitive damages, breach of fiduciary duty and breach of duty of loyalty. The conduct at issue occurred over a multi-year period, and was initiated and actively concealed from Encore by Defendants both during and after Trask's employment by Encore. Defendants built an extremely profitable and successful business in Clear Touch through their unlawful conduct.⁷ Finally, an award of punitive damages will deter Defendants and others from engaging in similar behavior in the future. The jury's awards of punitive damages, like its awards of actual damages, are justified in light of the evidence presented at trial and cannot be viewed as the result of passion or prejudice. With a ratio of actual to punitive damages of far less than 1 to 9, the punitive damages cannot be said to be excessive. Defendants are not entitled to a new trial *nisi remittitur*.

V. Defendants are not entitled to invocation of the "thirteenth juror doctrine."

Defendants also seek a new trial under the "thirteenth juror doctrine." The "thirteenth juror doctrine" is a vehicle by which the trial court may grant a new trial absolute when it finds

⁷ Defendants complain that the Court allowed testimony from Mr. Meilinger's report that Clear Touch had revenue of over \$17 million in 2016, but they opened the door and made this evidence relevant by criticizing Mr. Meilinger for not considering their 2016 and subsequent financial information. This evidence was thus properly admitted to refute Defendants' arguments about the thoroughness of Mr. Meilinger's assessment of damages.

the evidence does not justify the verdict. *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d 690 (1995). To support their request, Defendants argue that “[t]he evidence in this case shows that the jury rendered an inconsistent verdict and was confused as to one or more issues it was charged to decide.” Defendants’ Post-Trial Motions at 12-13.

The jury’s verdicts do not reveal that the jurors were confused about any issues. In fact, the verdicts show that they carefully considered each cause of action, awarding different amounts of actual and punitive damages and even ruling for Defendants on two claims. The jury’s verdicts should be given the deference the law requires and upheld.

VI. Defendants are not entitled to relief from judgment.

Rule 60(b), SCRCP, permits the Court to grant relief from a final judgment because of (1) mistake, inadvertence, surprise, or excusable neglect... [or] (3) fraud, misrepresentation, or other misconduct of an adverse party.” Rule 60 is inapplicable in this context, where no judgment has been entered, Defendants made their arguments at trial, and the Court overruled Defendants’ arguments and admitted the testimony in question.

Nevertheless, Defendants contend that they were surprised by Mr. Knight’s testimony and that the presentation of such evidence by Encore’s counsel constitutes fraud on the Court. Defendants’ Post-Trial Motions at 14-15. For the reasons set forth above, the Court finds unpersuasive Defendants’ arguments that Encore or its counsel engaged in any fraudulent actions or that Defendants were surprised by evidence that Trask permanently deleted emails.

Even if Defendants had been surprised, a party may not prevail under Rule 60(b)(3), SCRCP, on the basis of fraud where he has access to disputed information or has knowledge of inaccuracies in an opponent’s representations at the time of the alleged misconduct. *Raby Constr., LLP v. Orr*, 358 S.C. 10, 21, 594 S.E.2d 478, 484 (2004) (holding that a Rule 60(b)(3)

movant could not prevail where a party was “on notice” of the relevant issue); *see also Bowman v. Bowman*, 357 S.C. 146, 591 S.E.2d 654 (Ct. App. 2004) (in denying a Rule 60(b)(3) motion, referring to “South Carolina’s strong policy towards finality of judgments[, which] trumps a party’s ability to set aside a judgment where, as here, the party could have discovered the evidence prior to trial”). Moreover, while Encore contends and the Court finds that Encore has done nothing unfair in this case, “lack of fairness is not a ground for relief under Rule 60(b).” *Gainey v. Gainey*, 382 S.C. 414, 675 S.E.2d 792 (Ct. App. 2009).

In this case, Encore repeatedly alleged that Trask deleted emails, Trask admitted to doing so, and Encore provided other evidence that substantiates these allegations. Moreover, Trask himself was in the best position to provide the particulars of his deletions to his counsel. For all of these reasons, Defendants’ Rule 60(b) motion is denied.

VII. Other than its claims against Trask for breach of contract and against Clear Touch for tortious interference with contractual relations, Encore should not be required to elect remedies.

Encore acknowledges that the jury verdicts of \$424,945 were to compensate Encore for lost profits on sales to Leon County Schools made by Clear Touch. Plaintiff’s Exhibit 10.D. The jury awarded these damages on Encore’s claim of breach of contract against Trask, Encore’s claim of tortious interference against Clear Touch, and violation of the South Carolina Trade Secrets Act by both Defendants. Accordingly, assuming these damages are coupled with double exemplary damages, attorneys’ fees, costs and expenses as set forth above, Encore seeks to recover these actual damages only under the Trade Secrets Act.

Even regarding the other verdicts, however, Defendants argue that Encore should have to elect one (other than breach of duty of loyalty) because they committed a “single wrong” and that Encore “sought the exact same damages” for the “same injury.” But Encore presented

evidence and argued – and the jury found – that Defendants committed at least five (5) different wrongs causing at least five (5) different injuries and damages. Specifically, the evidence, including but not limited to Plaintiff's Exhibit 10-H ("Summary of Damages"), supported the jury's findings that Defendants committed the following distinct breaches of duty to Encore that caused Encore separate and distinct damages:

1. Breach of the duty of loyalty by Trask by spending time setting up his own company while taking wages and conference expenses from Encore, which the jury found he should forfeit in the amount of \$375,733.40.⁸ In addition, the jury determined that Trask should pay \$175,000 in punitive damages for this breach of the duty of loyalty (Cause of Action I).

2. Breach of fiduciary duty by Trask by failing to disclose to Encore that it could purchase products directly from suppliers TSI Touch and CVTE instead of through Clear Touch, which the jury found caused Encore lost profits of \$675,361.⁹ In addition, the jury determined that Trask should pay \$1,500,000 in punitive damages for this breach of fiduciary duty (Cause of Action II).

3. Violation of the South Carolina Trade Secrets Act by using Encore's trade secret information regarding Leon County Schools' need for and purchase price of panels, which caused Encore lost profits of \$424,945.¹⁰ (This also violated Trask's contract with Encore, Cause of Action III). In addition, the jury determined that Trask's violation was a willful, wanton, or reckless disregard of Encore's rights, for which Trask should pay double exemplary damages of \$849,890 under the Act (Cause of Action IV).

⁸ Summary of Damages, Table 1 (portion only).

⁹ Summary of Damages, Table 2, lines 1-3.

¹⁰ Summary of Damages, Table 2, lines 4-5.

4. Breach of contract accompanied by a fraudulent act, specifically Trask's violation of the "business opportunity" clause of his Non-Disclosure and Non-Solicitation Agreement with Encore, Plaintiff's Exhibit 2, page 2, seventh paragraph, for which the jury awarded Encore a portion of Clear Touch's profits of \$1,476,039.40.¹¹ In addition, the jury determined that Trask should pay \$2,000,000 in punitive damages for this breach of contract accompanied by a fraudulent act (Cause of Action VI).

5. Clear Touch's violation of the South Carolina Trade Secrets Act by using Encore's trade secret information regarding Leon County Schools' need for and purchase price for panels, which caused Encore lost profits of \$424,945. (This also tortiously interfered with Trask's contract with Encore, Cause of Action V, for which the jury awarded \$500,000 in punitive damages). In addition, the jury determined that Clear Touch's violation was a willful, wanton, or reckless disregard of Encore's rights, for which Clear Touch should pay double exemplary damages of \$849,890 under the Act (Cause of Action IV).

A. The doctrine of election of remedies does not apply to the causes of action upon which the Court is entering judgment.

As shown by the above, the evidence demonstrated – and the jury found – separate acts by Defendants giving rise to separate injuries and damages. The doctrine of election of remedies has no application where separate causes of action based on different facts exist. *GTR Rental, LLC v. DalCanton*, 547 F. Supp. 2d 510, 515 (D.S.C. 2008) (holding that election was unnecessary because the jury awards for breach of fiduciary duty, conversion, fraud, violation of the South Carolina Unfair Trade Practices Act, and breach of contract were based on different elements, and the facts supporting the separate claims occurred "over a lengthy period and involved numerous activities involving [plaintiff's] customers, property, and finances," so that

¹¹ Summary of Damages, Table 3 (portion only).

“the complex series of transactions undertaken by Defendants does not comprise a single wrong that would give rise to but one cause of action.”); *see also Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct. App. 1995); *Rivers v. Rivers*, 292 S.C. 21, 29-31, 354 S.E.2d 784, 788-90 (Ct. App. 1987), *overruled on other grounds by Russo v. Sutton*, 310 S.C. 200, 422 S.E.2d 750 (1992) (holding no election of remedies required of a plaintiff who received damages for the “twin causes of action” of both alienation of affection and criminal conversation because “[t]he causes of action are distinct, they arose out of separate and distinct facts, and the two alleged wrongs did not result in a single and the same loss.”).

In this case, because the causes of action were based on different elements and because there were different facts supporting the various claims involving numerous activities, “the complex series of transactions undertaken by Defendants does not comprise a single wrong that would give rise to but one cause of action.” The fact that the jury awarded different actual damages and different punitive damages shows that Defendants committed multiple wrongs, not a “single wrong.” Therefore, except for the verdicts for the Leon County Schools profits of \$424,945, which are addressed above to avoid a double recovery, election among the legal claims should not be required.

B. Encore’s attorneys’ arguments do not require ignoring four of the jury’s six verdicts.

Defendants argue that Encore must choose one of “causes of action II-VI because it presented its damages for those claims as identical to the jury at trial.” There are several problems with this argument.

First, it is not correct. Encore’s attorney argued that there were multiple ways that Trask breached his duties to Encore and each breach could lead to different damages. Closing Transcript – Plaintiff’s Closing Argument at 21 (“Now what that means, Ladies and Gentlemen,

is that you will have a broad range of damages to consider for this cause of action.”); at 21-26 (covering multiple items of damages the jury could find). Specifically, Encore’s attorney argued the jury could award Encore:

1. the wages, benefits, and expenses it paid Trask while he was breaching his duty of loyalty. Plaintiff’s Closing Argument at 18 (“[W]hile he was an employee of Encore, Mr. Trask received salary, bonus, benefits and expenses So for the first cause of action, Breach of Duty of Loyalty, we’re asking you to check the box A, for plaintiff); 21 (“The first element of damages you can consider are the wages that Encore paid”);

2. the profits Encore lost by Trask’s breaching his fiduciary duty by not disclosing the identities of the true suppliers of the products. *Id.* at 20 (“An employer and an employee have that [fiduciary] relationship in a couple of different ways. First of all, an employee could breach it if the employee fails to fully disclose to the employer known information that is significant and material. We know that Mr. Trask did that with regard to the true suppliers of these products.”); 22 (“Now, the second category of damages is Lost Profit, and there are two categories of that.... The first category are the products that Encore sold to its customers that it acquired from Clear Touch at the mark up.... That’s the first three categories in Table Number 2. Those categories total \$675,361.”);

3. the profits Encore lost from Leon County Schools by Trask’s and Clear Touch’s misappropriating Encore’s trade secrets. *Id.* at 14 (“Then Mr. Trask also used specific information he learned about Leon County Schools to take an opportunity and orders for about 1000 of these panels So he had specific knowledge that he learned at Encore about that that constitutes a trade secret”); at 22-23 (“The second category are those bottom two lines, and those are the sales made to Leon County Schools.... [T]he profit amount is \$424,945.”);

4. the lost business opportunity of Clear Touch that breached the “business opportunity” clause of Trask’s contract. *Id.* 28-29 (“Encore claims that Mr. Trask breached his contract in five ways.... The fourth breach is the business opportunity provision. He breached that. He didn’t notify them of ... the opportunity to build the reseller network.”); at 24-25 (“[T]he third calculation ... is the business opportunity calculation.... There are actually two components of this.... One is just for ... the profits that Clear Touch made through the end of 2015, and that figure is \$1,636,254.... And then at the end of 2015, what was Clear Touch worth? ... That’s where he comes up with the figure of \$3,900,000. Those two components add up to the \$5.5 million figure that you heard.”); and

5. damages against Clear Touch for tortiously interfering with Encore’s contract with Trask. *Id.* at 31 (The next cause of action is Tortious Interference. This is against Clear Touch only”).

Although Encore’s attorney argued that, as an alternative to awarding lower amounts for each injury, the jury could award \$5.5 million actual damages for each of Causes of Action II-VI, the jury chose not to do that. Instead, the jury awarded different actual damage amounts and different punitive damage amounts, clearly intending to treat Defendants’ different acts and Encore’s different injuries as separate and distinct. The verdicts, interpreted in a way that “logical reason for reconciling them can be found,” *Daves*, 355 S.C. at 231, 584 S.E.2d at 430, indicate that the jury chose to find that the distinct and different acts set forth above violated the distinct duties set forth above and caused the different injuries and damages set forth above.

Second, Defendants’ argument assumes the jury was bound by Encore’s attorneys’ arguments, but it was not. An attorney’s arguments are not evidence. *Bowers v. Bowers*, 304 S.C. 65, 68, 403 S.E.2d 127, 129 (Ct. App. 1991) (“Arguments of counsel are ... not evidence.”),

quoting *McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered."). The jury was the judge of the facts based upon the evidence, not upon attorneys' arguments, and it was the jury's prerogative to award different damages for different injuries like it did.

Third, Encore's attorneys never contended that liability or damages under Causes of Action II-VI were based on a single fact, a single injury, or single damage. Defendants' argument that these claims "simply represent[] alternative theories of recovery for the same injury," is inconsistent with the facts presented at trial.

Fourth, Defendants' reliance on *Uhlig v. Shirley*, Civil Action No. 6:08-cv-01208, 2012 WL 2890178 (D.S.C. Sept. 25, 2012), is misplaced. In *Uhlig*, while the Court did require election among four of six causes of action, it did so only as to causes of action based on "the same facts" – the violation of two provisions of an employment agreement, which formed the only basis for the four claims subject to election. *Id.* at *4. As noted above, this is not the case here, where distinct facts gave rise to Causes of Action II-VI. Encore's case against Defendants was much broader in scope and duration and involved more distinct acts and injuries than *Uhlig*.

Finally, Defendants' argument does not apply to the verdicts against Clear Touch. Encore acknowledges that the \$424,945 in actual damages awarded against Clear Touch for its violation of the South Carolina Trade Secrets Act are the same as the actual damages for tortious interference with Encore's contract with Trask and is only being awarded these actual damages once. The foregoing arguments about election among Causes of Action II, III, IV, and VI against Trask have no bearing on the judgment against Clear Touch.

C. Mr. Melinger's testimony does not require overturning the jury's first verdict for breach of duty of loyalty.

Finally, Defendants argue that Mr. Meilinger testified that awarding damages reflected in Plaintiff's Exhibit 10-H, Table 2 (Encore's lost profits on sales to its customers and Leon County Schools of \$1,100,306), precluded awarding damages in Table 1 (a portion of the wages of Trask, Higginbotham, Gallant, and trade shows of \$488,041). There are numerous problems with Defendants' arguments.

First, Mr. Meilinger did not testify that awarding any damages reflected in Plaintiff's Exhibit 10-H, Table 2 precluded awarding any damages in Table 1. He merely said that "you would not add the second analysis [\$1,100,306] to the first analysis [\$488,041]." Meilinger Testimony Tr. at 50. The jury did not do this. Instead, they chose to award some damages from the first analysis and some damages from the second analysis, which was the jury's prerogative.

Second, even if Mr. Meilinger had testified as Defendants assert, the jury was not required to accept such testimony in calculating damages. It is within the jury's discretion to determine how much weight to give an expert's testimony. *See State v. Poindexter*, 314 S.C. 490, 494, 431 S.E.2d 254, 256 (1993); *Small v. Pioneer Machinery*, 316 S.C. 479, 488-89, 450 S.E.2d 609, 614-15 (Ct. App. 1994) ("It is not unusual, of course, for a case to have contradictory evidence and inconsistent testimony from a witness. In a law case tried before a jury, it is the jury that must decide what part of the witness's testimony it wants to believe and what part it wants to disbelieve.... The jury could have either accepted or rejected the expert witness's opinions, depending on its view of the evidence."). The jury did not award all of the damages calculated in Table 1, and was entitled to award as much of Table 2 as it chose.

In sum, except for the award of the Leon County Schools profit of \$424,945, Encore is not required to elect remedies.

VIII. Defendants are not entitled to a stay of execution of the judgment.

Defendants request the Court grant a stay of execution of judgment pending post-trial motions and appeal pursuant to Rule 62(d), SCRCP. "Whether to grant such a stay rests in the court's discretion 'on such conditions for the security of the [creditor] as are proper'" See *Stearns Bank Nat. Ass'n v. Glenwood Falls, LP*, 375 S.C. 423, 426, 653 S.E.2d 274, 276 (2007) (citing Rule 62(b)). The policy expressed in . . . Rule 62(b) favors the creditor over the debtor." *Id.*

Defendants note that, pursuant to S.C. Code Ann. § 18-9-130, if the Court grants a stay and requires a bond, the bond must be limited to \$1 million from each of Trask and Clear Touch because Trask is an individual and Clear Touch, Defendants argue, employs fewer than fifty persons.

The Court finds that it would be inappropriate to grant Defendants a stay of execution of judgment. Defendants have already had nearly six months since the jury rendered its verdicts. Moreover, the evidence showed that the Defendants engaged in an involved scheme to hide from Encore the truth of Trask's breaches of fiduciary duties, duties of loyalty, and contract.

Specifically, Trask:

- Did not disclose his involvement in Clear Touch to Encore while he was an employee of Encore;
- Transferred his ownership in Clear Touch to his mother to hide his affiliation;
- Got Encore to sign a Reseller Agreement and had his mother sign for Clear Touch;
- Had the true suppliers remove their labels from panels and replace them with Clear Touch labels to hide the suppliers' true identities from Encore;
- Marked up the prices of the panels from the suppliers to Encore;

- Had Encore send its checks to a Nevada post office box and forwarded them back to South Carolina;
- Had his wife, Tamara Trask, email Encore as "Amy Andrews";
- While at conferences for Encore, worked to sign resellers for Clear Touch by initially leading them to believe Encore was an owner of Clear Touch;
- Got Encore's employees, Leo Gallant and Jimmy Higginbotham, to sign non-disclosure agreements so that he could induce them to leave Encore by disclosing his ownership of Clear Touch but prevent them from disclosing same to Encore; and
- Permanently deleted incriminating e-mails.

Based upon this evidence, the jury awarded millions of dollars of punitive damages against Defendants. In short, Defendants simply cannot be expected to fulfill their legal duties. Therefore, the Court finds it would not be appropriate to stay execution of the judgment.

IX. Post-judgment interest accrues until Defendants deposit with the Clerk of Court the full amount of the judgments against them and Encore shall receive interest earned on such amounts.

Defendants request that they be allowed to deposit the full amounts of the judgments against them pursuant to Rule 67, SCRCP, to stop the accrual of post-judgment interest. The Court grants this motion and directs that the Greenville County Clerk of Court accept any payment for the full amount of a judgment against a Defendant made by such Defendant and place it in an escrow account at U.S. Bank, N.A. managed by Brown Advisory, LLC with investments limited to cash or cash equivalents, FDIC-insured instruments, direct obligations of the U.S. Government or its agencies, or high grade, short-term fixed income securities with maturities of two years or less. Post-judgment interest on the judgments shall accrue at 8.50% per annum from the date this Order is filed until the date the deposit is made. Encore shall

receive the pre-deposit interest accrued and the post-deposit interest earned on such amounts that are ultimately paid to Encore.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Encore's motion is granted except for restitution, which is denied, that Defendants' motions are denied except for the motion to deposit the full amount of each judgment in court, and that judgment shall be entered:

(1) in favor of Encore against Keone Trask in the amount of \$7,917,468.40, and

(2) in favor of Encore against Clear Touch Interactive, Inc., f/k/a Clear Touch Interactive, LLC in the amount of \$1,715,335.00.

IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: Encore Technology Group LLC vs. Keone Trask , defendant, et al

Case Number: 2015CP2305757

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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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

ORDER APPOINTING RECEIVER

This matter came before the Court for a hearing upon Plaintiff Encore Technology Group, LLC ("Plaintiff")'s Motion to Appoint Receiver for Defendant Keone Trask ("Trask"). The motion was heard by the Court on June 12, 2018. Counsel for all parties were present.

Upon reviewing the record, the evidence, and the applicable law and hearing statements and representations of counsel, I find that Plaintiff's Motion to Appoint Receiver should be granted and a receiver should be appointed with authority to pursue discovery from Defendants and third parties, require the production of documents and other evidence, and take possession of Trask's non-exempt assets and secure them while Trask's appeal is pending, upon threat of contempt and sanctions by this Court for willful failure to cooperate with the receiver.

FINDINGS OF FACT

1. On April 2, 2018, the Court entered a Final Order and Judgment in favor of Encore against Defendant Keone Trask ("Trask") in the amount of \$7,917,468.40 (the "Judgment").

2. The Judgment required Trask to pay \$7,917,468.40 to Encore. Trask has failed to pay any portion of this amount. Although the Clerk of Court issued an Execution against Property of Trask on April 13, 2018, it has not been satisfied, in whole or in part.

3. Trask filed a motion pursuant to Rule 59, SCRCP, for Reconsideration of the Judgment and intends to appeal the Judgment, necessitating the preservation of Trask's property during the pendency of the appeal.

4. The Judgment includes \$2,952,078 in actual damages and \$4,524,890 in punitive and exemplary damages. In doubling the actual damages under the Trade Secrets Act to award \$849,890 in exemplary damages, the Court noted the case of misappropriation was one of the most egregious this Court has ever seen. Judgment at 4.

5. Defendants moved to stay execution of the Judgment, but the Court denied a stay. In support of its denial, the Court noted that evidence was presented at trial from which one could conclude or infer that the Defendants were engaged in an involved scheme to hide from Encore the truth of Trask's breaches of fiduciary duties, duties of loyalty, and contract and cannot be expected to fulfill their legal duties. Therefore, the Court determined it would not be appropriate to stay execution of the judgment. Judgment at 33-34. Specifically, evidence at trial indicated that Trask:

- Did not disclose his involvement in Clear Touch to Encore while he was an employee of Encore;
- Transferred his ownership in Clear Touch to his mother to hide his affiliation;
- Got Encore to sign a Reseller Agreement and had his mother sign for Clear Touch;
- Had the true suppliers remove their labels from panels and replace them with Clear Touch labels to hide the suppliers' true identities from Encore;

- Marked up the prices of the panels from the suppliers to Encore;
- Had Encore send its checks to a Nevada post office box and forwarded them back to South Carolina;
- Had his wife, Tamara Trask, email Encore as "Amy Andrews";
- While at conferences for Encore, worked to sign resellers for Clear Touch by initially leading them to believe Encore was an owner of Clear Touch;
- Got Encore's employees, Leo Gallant and Jimmy Higginbotham, to sign non-disclosure agreements so that he could induce them to leave Encore by disclosing his ownership of Clear Touch but prevent them from disclosing same to Encore; and
- Permanently deleted incriminating e-mails.

Id.

6. During the pendency of this case, on May 12, 2017, Trask transferred real estate from his individual ownership into the "Trask Family Trust" of which he and his wife are the trustees.

7. Trask is the President and sole Director of his corporation, Defendant Clear Touch Interactive, Inc., f/k/a Clear Touch Interactive, LLC ("Clear Touch"), and exercises ownership and control in ways that will only be clear following discovery.

8. Instead of cooperating in discovery, Trask moved to quash subpoenas Encore issued pursuant to Rules 34, 45, and 69, SCRPC, to his CPA and Clear Touch's third-party administrator, CatchFire Funding. Trask has also refused to provide to Encore documents requested in post-Judgment discovery.

9. Trask previously admitted to Encore that he owns several rental properties in several counties. The public records of Greenville County and Anderson County, South

Carolina, show that Trask is connected with fifteen (15) properties, which appear to be residential rental properties, either individually or through Carolina Home Partners LLC, a company of which Trask is manager. The records of Oconee County show that Trask transferred ten (10) duplexes in November 2017, shortly after the jury verdicts in this case were rendered, at a sales price of approximately one-half of what the buyer was able to mortgage the properties for. Encore records from when Trask was an employee indicate he had three bank and/or brokerage accounts. Only a receiver can effectively preserve the net rental and investment income from these assets and preserve them so that they are available to apply to the Judgment.

10. Plaintiff seeks for the Court to appoint L. Walt Tollison, III, Esq., as receiver for Trask.

CONCLUSIONS OF LAW

1. The foregoing Findings of Fact are denominated Conclusions of Law to the extent that they constitute the same.

2. The Judgment was granted in favor of Encore and has not been satisfied.

3. A receiver may be appointed after judgment to carry the judgment into effect. *See* S.C. Code Ann. § 15-65-10(2).

4. A receiver may be appointed after judgment to preserve the judgment debtor's property during the pendency of an appeal. *See* S.C. Code Ann. § 15-65-10(3).

5. A receiver may be appointed after judgment when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in satisfaction of the judgment. *See* S.C. Code Ann. § 15-65-10(3).

6. A receiver may be appointed to receive any distributions due to or to become due to the judgment debtor from a limited liability company in which the judgment debtor has a

membership interest. *See* S.C. Code Ann. § 33-44-504(a). Likewise, a receiver may receive other payments due a judgment debtor and “stands in the shoes of the debtor with respect to property of the latter,” as well as his “contractual relation[s].” *Jeffcoat v. Morris*, 300 S.C. 526, 389 S.E.2d 526 (Ct. App. 1989), *overruled on other grounds by United Carolina Bank v. Caroprop, Ltd.*, 316 S.C. 1, 4 (1994).

7. South Carolina law allows for the appointment of a Receiver under the facts of this case.

8. The Court concludes that Encore is entitled to the appointment of a receiver in order to ascertain by investigation and to take possession of and secure assets and income of Trask until the appeal is resolved.

NOW, THEREFORE, based upon the foregoing findings of fact and the conclusions of law, IT IS THEREFORE ORDERED that:

1. L. Walt Tollison, III, Esq. (“TOLLISON”) is hereby appointed as Receiver to ascertain by investigation and to take possession of and secure assets and income of Trask until their appeal of the Judgment is resolved.

2. Within ten (10) business days following the entry of this Order, and on an ongoing basis as long as this Order remains in effect, Trask shall surrender and deliver possession to TOLLISON all of the assets, property, and records relating to assets, property, and income that he may possess, own or control, directly or indirectly, legally or equitably, including but not limited to all shares of stock of Clear Touch Interactive, Inc., f/k/a Clear Touch Interactive, LLC (“Clear Touch”), and all assets of Trask in Clear Touch, all records of Clear Touch that relate to or may lead to the discovery of assets, property, and income of Trask, and all assets and property that Trask hereafter receives or acquires, directly or indirectly, legally or

equitably, while the Order is in effect (all of the foregoing herein referred to as the "Property"), with the exception of property that is exempt from execution or levy (for example, the homestead exemption) ("Exempt Property"). As to such Exempt Property, Trask shall not dispose of or encumber such property beyond the statutory amount of the exemption. If such property is already encumbered such that the owner's equity in the property is less than the amount of the exemption, the owner shall not further encumber or dispose of the property. All documents of Clear Touch shall be produced subject to the Confidentiality Order in this case, which the Receiver shall acknowledge he has read and will follow.

3. Effective as of and from the date of the entry of this Order, all funds or other property that are received by Trask, except for Exempt Property, shall be delivered to the Receiver and deposited with a bank of Receiver's choice or otherwise secured by Receiver pending resolution of Trask's appeal.

4. The evidence presented at trial indicated that the regular, historical salary Trask has received from Encore and Clear Touch is approximately \$200,000.00 per year, *see* Plaintiff's Exhibits 10.G and 10.I (showing Trask's wages of \$190,512 in 2013) and 10.J (showing Trask's wages from Clear Touch of \$163,496 in 2015), which shall be the amount of Trask's exempt earnings (the "Exempt Earnings"). The Exempt Earnings shall not include commissions or bonuses based upon Clear Touch's performance as opposed to Trask's personal services to Clear Touch. *See In re Davis*, 1999 WL 33486078, *3 (Bankr. D.S.C. May 28, 1999) ("earnings for personal services are to be distinguished from the proceeds of a business carried on by the debtor; the legislative intent being to protect the fruit of someone's labor for the benefit of his family, rather than income derived from passive sources, such as investment income or return on capital."); *Mathews v. Mathews*, 207 S.C. 170, 35 S.E.2d 157 (1945) (indicating that "earnings of

the debtor for his personal services" are limited to wages and ordinary salaries necessary for the use of a family supported wholly or partly by his labor). The Exempt Earnings shall be deposited in a separate account controlled by Trask but for which the Receiver shall receive monthly statements from the bank and be a co-signer (the "Exempt Earnings Account"). Any amounts accumulated in the Exempt Earnings Account above the \$5,000.00 amount set forth in S.C. Code Ann. § 15-41-30(A)(5), and any other amounts due Trask from Clear Touch, shall be delivered to the Receiver and deposited by him into the bank account referenced in Paragraph 3. Any dispute over such amounts shall be brought promptly to the Court.

5. The Receiver will be and hereby is authorized and directed to take immediate possession of Trask's assets and to exercise full control over Trask's assets, except for Exempt Property, provided that Receiver shall not sell or dispose of such assets until further order of this Court, and the Receiver in so doing will have all powers generally available to Receivers under the laws of the State of South Carolina, and will have, among others, the following specific powers:

(a) The power and authority to take possession of property owned or leased by Trask. All parties in possession of any such property are to surrender it to the Receiver upon demand. This property shall include, but not be limited to the following;

- i Real Property
- ii Goods
- iii Inventory
- iv Equipment
- v Chattel Paper and Accounts
- vi Securities and Instruments, including but not limited to Stocks, Membership Interests, Bonds, and Promissory Notes

- vii Investment Property
- viii Contracts and other Documents
- ix Deposit Accounts
- x Commercial Tort Claims
- xi Money
- xii Letter of Credit Rights
- xiii General Intangibles
- xiv Supporting Obligations
- xv All Cash or Equivalents, Savings Accounts, Brokerage Accounts, any other bank accounts of Trask; and
- xvi All proceeds and products, including but not limited to rent, of above.

This property shall not include Exempt Property.

(b) Gather all books and records of Trask, and subpoena or otherwise require production of books and records of third parties, including but not limited to a list of all aliases Trask has used, a list of all family members and entities with which he is affiliated, and historical records showing any asset transfers or dispositions by Trask, family members, or affiliated entities and all salary, dividend, distribution, and other compensation payments to Trask, his family members, or any entity with which he is affiliated, to determine the existence and amount of all Trask's rights, debts and obligations together with all their assets;

(c) To control all bank, brokerage, and trust accounts owned by or for the benefit of Trask. No other person shall have any authority or control over any funds in the accounts, including but not limited to authority or control to disburse funds;

(d) With respect to any insurance coverage in existence or obtained, the Receiver shall be named as an additional insured on the policies for the period that the Receiver shall be in possession of the property insured;

(e) The Receiver is hereby authorized to demand and receive any dividends or distributions due to or to become due to Trask from any corporation or limited liability company in which Trask has a direct or indirect ownership or membership interest, including but not limited to Clear Touch; and any such corporation or limited liability company is hereby directed and enjoined, upon receipt of this Order, to make such distribution(s) only to the Receiver while this Order is in effect.

6. Plaintiff and Receiver shall have no obligation to pay for accrued wages, benefits, and taxes, payroll or other amounts, accrued in advance of the date of this Order, whether currently due or owing.

7. The Receiver will furnish to the Court and to the parties quarterly statements itemizing property that has been secured by Receiver pursuant to this Order. Such report will be filed within thirty (30) days after the end of each calendar quarter, the first such report to be due thirty days after the end of the first quarter after this Order is entered and quarterly thereafter. The parties to this litigation will be entitled to inspect the books and records of the Receiver concerning assets held by it pursuant to this Order at reasonable times and with reasonable notice, subject to the Confidentiality Order in this case.

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. Receiver's professional fees shall be charged at \$325 per hour for Receiver's time and at such lesser rates as he ordinarily charges for paralegal time. All photocopies and facsimile charges along with necessary out-of-pocket expenses (including travel and lodging) will be billed at cost.

All fees and expenses of the Receiver shall be accounted for in the Quarterly Statement of Operations.

9. The Receiver will have such additional powers as are provided by law and as this Court may from time to time direct.

10. No person or entity shall file suit against the Receiver, Plaintiff, or Plaintiff's counsel for actions taken in compliance with this Order.

11. The Receiver shall have no personal liability in connection with any liabilities, obligations, liens or amounts owed to any creditors or claimants of Trask.

12. The Receiver and his employees, agents, and attorneys shall have no personal liability or obligation and shall have no claim asserted against them in connection with the Receiver's actions under this Order.

13. The Receiver may, in its discretion, notify this Court and the parties to this action that the Receivership is not practical, and upon such notice all duties of the Receiver shall terminate except with regard to liabilities which arise prior to the date of the notice. The Court may then appoint a new Receiver to take any and all such other action as it deems appropriate. Receiver shall turn over all of the assets and records secured pursuant hereto to any successor receiver appointed by the Court and shall file a final accounting with the Court.

14. In the event that Trask fails to turn over the property and other items required by this Order within ten (10) business days, the appropriate County Sheriff is hereby ordered to take all necessary actions and appropriate force to give full effect to the terms of this Order.

15. All persons who receive notice of this Order are enjoined from interfering with the powers and duties of the Receiver.

16. All providers of insurance with respect to the Property are prohibited and enjoined from cancelling such insurance policies provided that the Receiver pays the applicable premiums for any prospective exposure going forward under the receivership, and such premiums may be paid from assets secured by the Receiver pursuant to this Order.

17. The receiver is not responsible for filing any federal, state, or local tax returns including those relating to any activities during the receivership, but is entitled to collect any tax refunds payable to Trask.

18. The Receiver and the parties to this case may at any time apply to this Court for instructions or orders and for further powers necessary to enable the Receiver to perform the Receiver's duties properly.

19. IT IS FURTHER ORDERED that pending further Order of this Court, Trask and his respective agents, partners, managers, employees, assignees, heirs, representatives, affiliates or related entities and all other persons acting in concert with them who have actual or constructive knowledge of this Order, and their agents and employees, shall not:

A. Commit Waste:

Trask shall not commit or permit any waste of the Property or any part thereof, or suffer or commit or permit any act on the Property or any part thereof in violation of law, or remove, transfer, encumber or otherwise dispose of any of the Property or the fixtures presently on the Property or any part thereof.

B. Cash or Credit Card Receipts:

Trask shall not discount or in any other way divert or use any of the monies from the Property, including, but not limited to, rents, cash from sales, or credit card receipts.

C. Interfere with Receiver:

Trask shall not directly or indirectly interfere in any manner with the discharge of the Receiver's duties under this Order or the Receiver's possession of the Property;

D. Transfer or Encumber the Property:

Trask shall not expend, disburse, transfer, assign, sell, convey, devise, pledge, mortgage, create a security interest in, encumber, conceal or in any manner whatsoever deal in or dispose of the whole or any part of the Property, including, but not limited to, the cash, rents inventory, and fixtures without prior Court Order; and

E. Impair Preservation of Property or Plaintiff's Interest:

Trask shall not do any act which will, or which will tend to impair, defeat, divert, prevent or prejudice the preservation of the Property, or the preservation of Plaintiff's interest in the Property. Trask is further enjoined from making any payments or transfers of funds or property to or from any affiliates, insiders, directors, officers, family members, or any other person or entity controlled by or otherwise related to any affiliates, insiders, directors, and/or officers.

IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: Encore Technology Group LLC vs. Keone Trask , defendant, et al
Case Number: 2015CP2305757
Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Encore Technology Group, LLC,	)	C.A. No.: 2015-CP-23-05757
	)	
Plaintiff,	)	
	)	
v.	)	
	)	ORDER
Keone Trask and Clear Touch Interactive, Inc.	)	
f/k/a Clear Touch Interactive, LLC,	)	
	)	
Defendants.	)	
	)	

This matter is before the Court on the following motions filed by the parties: (1) Defendants Keone Trask ("Trask") and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC's ("Clear Touch") (collectively, "Defendants") Motion to Relieve Receiver, (2) Defendants' Motion to Alter, Amend and/or Clarify Receiver Order, (3) Defendants' Motion to Quash Subpoena to UC Solutions, LLC, (4) Defendants' Amended Motion to Quash Subpoenas to Bank of America, NA and Citigroup and (5) Plaintiff Encore Technology Group LLC's ("Encore") Motion for Civil Contempt Sanctions and Attorneys' Fees.

Additionally, Defendants' are before the Court in response to a Rule to Show Cause entered on September 26, 2018, directing Defendants and Tamara Trask to show why they should not be held in contempt for failing to fully respond to and produce information set forth in the Receiver's requests made pursuant to the Court's July 23, 2018, Order. A hearing was held on all matters on November 1, 2018. The Receiver and counsel for all parties were present before the Court.

After considering the arguments set forth at the hearing as well as the entire record, the Court finds as follows for the reasons discussed below. First, with regard to Defendants' Motion

to Relieve Receiver the Court finds that Defendants have not stated adequate grounds for relieving the Receiver and therefore denies Defendants' Motion.

Second, with regard to Defendants' Motion to Alter, Amend and/or Clarify Receiver Order, the Court finds that there is no need to amend, alter, or clarify the Receiver Order and therefore denies the Motion. However, the Receiver shall make his file records, including all invoices (excluding any confidential source information), open to both Plaintiff and Defendants subject to the Confidentiality Order in this case; provided however if Defendants claim that specific documents include trade secrets or other proprietary information that Encore could use to compete against Clear Touch, then Defendants shall mark such specific documents for "Receiver's Eyes Only" (the "REO Documents"), which may also be reviewed by Encore's counsel. If the Receiver disagrees with the Defendants' designation of REO on any such document and the Receiver cannot resolve the issue with Defendants' counsel, then the Receiver shall initiate a telephone conference and/or hearing with the Court.

Third, with regard to Defendants Motion to Quash Subpoena to UC Solutions, LLC, the Court finds that the state of New York is the appropriate venue for the third party to challenge this subpoena and for this reason denies Defendants' Motion.

Fourth, with regard to Defendants' Amended Motion to Quash Subpoenas issued by the Receiver to Bank of America, NA, and CitiGroup, the Court finds Defendants objections without merit and denies Defendants' Motion.

Fifth, with regard to Plaintiff's Motion for Civil Contempt Sanctions and Attorneys' Fees, the Court finds that said Motion shall be held in abeyance pending the future compliance and conduct of Defendants and Tamara Trask with regard to the mandates set forth in this Order.

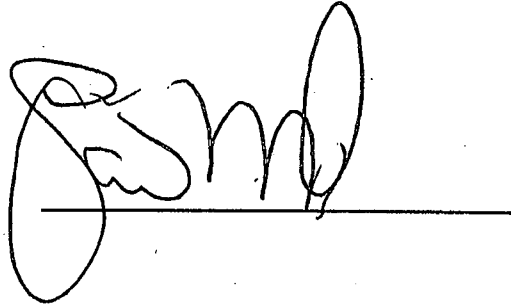
Last, with regard to the Rule to Show Cause, the Court finds that Defendants and Tamara Trask have failed to show cause why they should not be held in contempt for violating the Receivership Order. Specifically, Defendants and Tamara Trask have failed to show cause why they have not produced all the information and documents set forth in the Receiver's Exhibit 3, entitled "Documents/Information Needed by the Receiver" (the "Receiver's Requests") requested by the Receiver on one or more occasions pursuant to the Receivership Order. As such, Defendants and Tamara Trask are held in civil contempt for failing to comply with the Receivership Order.

Defendants and Tamara Trask may purge the contempt by producing on or before November 19, 2018, all documents and information (past and ongoing by virtue of immediate access) set forth in the Receiver's Requests, along with affidavits signed by Keone Trask, in both his individual capacity and as President of Clear Touch Interactive, the Chief Financial Officer of Clear Touch, and Tamara Trask verifying that the information and documents provided to the Receiver to date and produced in response to the Receiver's Requests are accurate and complete ("Affidavits"). If Defendants and Tamara Trask fail to fully respond to Receiver's Request and produce Affidavits, they shall be subject to criminal contempt including incarceration and/or fines.

Furthermore, the Receiver provided supporting information to the Court that Tamara Trask transferred \$120,000 from Carolina Home Partners, LLC (an entity owned 50% by Keone Trask) bank account to Tamara Trask's personal account after being notified by the Receiver in an October 4, 2018, letter that the Carolina Home Partners, LLC account was to be placed under the control of the Receiver on October 5, 2018. The Court finds this conduct is in violation of the Receiver Order and directs those funds to be placed under the Receiver's control by 5:00

p.m. on November 2, 2018 by transferring those funds back into the Carolina Home Partners' account from which they came. Failure to do so may subject Defendants and/or Tamara Trask to contempt.

IT IS SO ORDERED.



December 5, 2018
Anderson, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Encore Technology Group, LLC,	)	C.A. No.: 2015-CP-23-05757
Plaintiff,	)	
v.	)	ORDER STAYING
Keone Trask and Clear Touch Interactive,	)	RECEIVERSHIP
Inc. f/k/a Clear Touch Interactive, LLC,	)	
Defendants.	)	

THIS MATTER, comes before the Court upon motion by Defendants Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC ("Clear Touch") (*collectively* "Defendants"), to dissolve the Receivership established under the Receiver Order entered July 23, 2018. A hearing was held February 7, 2019, at which counsel for all parties participated. After considering the matters of record, materials presented at the hearing, and arguments of counsel, the Court finds and concludes that it is appropriate to stay the Receivership upon the grounds and condition(s) specified below because the Defendants have paid the what appears to be entirety of the judgments against them into the Court. Nothing contained in this finding shall prohibit plaintiff from establishing that the judgments have not been paid in the entirety.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

A week-long trial was held in September 2017 with the jury rendering a verdict in favor of the Plaintiff on six of the eight causes of action alleged. The jury's verdict and findings under the Trade Secrets cause of action is of particular importance to the Motion before the Court. Encore alleged the Defendants misappropriated its trade secrets in violation of the South Carolina Trade Secrets Act (SCTSA). The jury found for the Plaintiff on its Trade Secrets claim and awarded

\$424,945 in actual damages against the Defendants. (Verdict Form p. 4). The jury went on to answer "Yes" to the special interrogatory on the Verdict Form asking "Was the Defendants' conduct in violating the South Carolina Trade Secrets Act committed by the Defendants in a willful, wanton, or reckless disregard of Plaintiff's rights?" *Id.* In light of the jury's response to this special interrogatory, the Court awarded Encore its attorney's fees and costs of \$440,500 and levied the maximum amount of exemplary damages allowed under the SCTSA against the Defendants of \$849,890; twice the actual damages awarded by the jury. That brought the Trade Secrets verdict against the Defendants to a total of \$1,715,335.00.

Following post-trial filings and arguments, this Court entered a Final Order and Judgment on April 2, 2018 in favor of the Plaintiff against Keone Trask individually and Defendant Clear Touch (the "Final Order"). Specifically, the Final Order awarded the following:

Against Defendant Keone Trask

<u>Actual Damages</u>	<u>Punitive Damages</u>	<u>Cause of Action</u>
\$ 375,733.40	\$ 175,000.00	Breach of Loyalty
675,361.00	1,500,000.00	Breach of Fiduciary Duty
424,945.00	849,890.00	Violation of Trade Secrets Act
<u>+1,476,039.00</u>	<u>+2,000,000.00</u>	Breach of Contract Accompanied by a Fraudulent Act
\$2,952,078.40	+ \$4,524,890.00	= \$7,476,968.40
Plus attorneys' fees		+ 345,600.00
Plus costs & expenses		<u>+ 94,900.00</u>
TOTAL JUDGMENT AGAINST TRASK:		<u>\$7,917,468.40</u>

Against Defendant Clear Touch Interactive, Inc.

<u>Actual Damages</u>	<u>Punitive Damages</u>	<u>Cause of Action</u>
\$ 424,945.00	849,890.00	Violation of Trade Secrets Act
or		
<u>424,945.00</u>	<u>500,000.00</u>	Tortious Interference

\$ 424,945.00	+	\$ 849,890.00	=	\$1,274,835.00
Plus attorneys' fees				+ 345,600.00
Plus costs & expenses				+ 94,900.00
TOTAL JUDGMENT AGAINST Clear Touch:				<u>\$1,715,335.00</u>

The Final Order awarded Encore recovery under the Trade Secrets Act cause of action against Clear Touch, as the higher total judgment awarded against the corporate Defendant when compared with the Tortious Interference award. Thus, the Trade Secrets award of \$1,715,335.00 comprised the entire judgment against Clear Touch and a notable portion of the judgment against Keone Trask.

The Final Order granted Defendants' Motion to pay the respective judgments against them into the Court under Rule 67 pending resolution of any appeal. By April 17, 2018, Clear Touch paid the judgment against it in full into the Court under Rule 67.

Defendants filed a timely notice of appeal of the Final Order in July 2019. The judgment against Keone Trask remained outstanding at that time. Encore filed a Motion for Appointment of a Receiver on May 21, 2018 as part of its efforts to collect the Trask judgment. The Court granted Encore's motion and entered a Receiver Order on July 23, 2018 for the purpose of identifying and taking possession of Keone Trask's assets to secure the outstanding judgment against him pending resolution of the appeal. The Receiver began his job in earnest shortly thereafter.

Defendants filed two subsequent appeals, one of the Receiver Order and another arising out of the dismissal of a separate action between the Parties, all of which were consolidated into Appellate Case No. 2018-001444. That matter is currently pending before the Court of Appeals.

On January 3, 2019, Keone Trask paid the outstanding judgment balance against him into the Court under Rule 67, thus fully depositing the entirety of Encore's judgment against both Defendants into the Court. The payments of April 17, 2018 and January 3, 2019 total

\$8,316,104.58 and are meant to fully secure Encore's respective judgments against the Defendants pending resolution of the consolidated appeal arising out of and related to this matter.

On January 8, 2019, Defendants filed a Motion to Dissolve the Receivership because their payments into the Court, and more specifically Keone Trask's January 3, 2019 payment of the judgment against him to the Clerk, eliminated the need for the Receiver. Encore opposed the Motion, claiming that Defendants' miscalculated the judgment amount owed by Trask and asserting he was responsible for an additional \$1.2 million dollars because it claimed each Defendant owed \$849,890 in exemplary damages on the Trade Secrets awards, plus post-judgment interest.

A February 7, 2019 hearing was held on Defendants' Motion to Dissolve the Receiver, along with several related motions.

LAW AND ANALYSIS

Defendants contend that Clear Touch's April 17, 2018 and Keone Trask's January 3, 2019 payments into the Court fully secure the outstanding judgments owed to Encore under the Final Order thereby eliminating the need for the Receiver. Encore opposes the Motion by arguing Defendants' miscalculated the judgment amount owed by Trask and claiming that he is responsible for an additional \$1.2 million dollars. That alleged shortfall is comprised of three items; (1) \$849,890 in exemplary damages under the Trade Secret claim (which Encore calculated to total \$904,515.38 with post-judgment interest as of February 7, 2019) that Encore argues Trask owes despite Clear Touch's payment of the Trade Secret verdict into the Court; (2) the Receiver's fees and costs incurred to date; and (3) the fees and costs charged by Encore's counsel it attributes to post-judgment collection efforts. On the latter point, the Court notes that while the fees and costs

charged by Encore's counsel may ultimately be recoverable from Defendants, the Court declines to require that they be deposited with the Receiver at this time.

At the hearing, Encore admitted that if the Plaintiff can recover exemplary damages on the Trade Secrets awards from only one Defendant, and the Receiver fees and costs and its post-judgment attorney's fees and costs are not included in calculating the judgment against Trask, then the Defendants have paid the judgments against them in full into the Court. Encore recognized that if the Court rejects its arguments, then the Defendants have paid the entirety of the judgments against them into the Court as of January 3, 2019.

The Court finds that, because it can recover the \$849,890 in exemplary damages under the Trade Secrets Act from only one Defendant, Encore is not entitled to the monies comprising its claimed \$1.2 million-dollar shortfall and that Defendants properly calculated the judgment against Trask and paid those sums in full into the Court.

1. Potential Future Liabilities Have No Bearing on Judgment Calculation

Neither the Receiver's fees and costs nor any post-judgment fees and costs incurred by Encore's counsel are part of the judgment against Trask or Clear Touch. First and foremost, those fees and costs are not part of the judgments awarded in the Final Order, and, as such, cannot impact calculation of the judgments rendered in it. Second, both are possible future liabilities that Trask may be responsible for at a later date. Trask owing the Receiver's fees and costs is contingent upon all or part of the appeal being upheld. (*See Receiver Order p. 9*) ("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."). Given the appeal remains unresolved, Trask does not yet owe the Receiver fees. Likewise, Trask

does not owe Encore's post-judgment attorney's fees and costs when Plaintiff has not petitioned the Court for their recovery, much less obtained an order awarding them.

Thus, Encore's opposition hinges upon whether Trask and Clear Touch are each separately liable for the payment of \$849,890 in exemplary damages under the Trade Secret cause of action. The Court finds they are not.

2. Defendants are Jointly and Severally Liable for the Trade Secrets Verdict

In calculating the outstanding judgment against Trask as of January 3, 2019, the Defendants credited him in full for Clear Touch's payment of the Trade Secrets award into the Court. That included the \$849,890 in exemplary damages. Encore argues that Trask miscalculated the judgment against him because he treated the \$849,890 in exemplary damages under the Trade Secrets claim as a joint and several liability rather than an individual and separate debt owed by each him and Clear Touch. In other words, Encore contends Trask should not have been credited for Clear Touch's payment of those exemplary damages and he remains liable for them. The Court finds Trask was rightfully credited for Clear Touch's payment of all of the Trade Secrets award because the Defendants are jointly and severally liable for every aspect of those damages, including exemplary damages.

As noted above, Encore was awarded a total of \$1,715,335.00 under its Trade Secrets claim alleged against both Defendants. That figure is comprised of three components; (1) Actual damages (\$424,945); (2) Exemplary Damages (2x actuals) (\$849,890); and (3) Attorney's fees and costs (\$440,500).

Clear Touch's April 2018 payment of the Trade Secrets award into the Court fully satisfied and secured the judgment against it. It also reduced Trask's judgment by eliminating his liability for the Trade Secret award. That reduction included the \$849,490 in exemplary damages.

Defendants calculated the outstanding judgment amount against Trask, including applicable post-judgment interest, as of January 3, 2019 by crediting him for Clear Touch's payment of the Trade Secrets verdict into the Court.

Encore concedes that the Defendants are jointly and severally liable for the actual damages and attorney's fees and costs components of the Trade Secret award, but argues that Clear Touch and Trask are each responsible for the payment of the full exemplary damages amount of \$849,890. Accordingly, Encore contends that it may recover \$849,890 in exemplary damages under the Trade Secrets claim twice—once from each Defendant—for a total recovery of \$1,699,780 in exemplary damages. Encore's argument relies upon a footnote in the Final Order that states "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." (Final Order p. 11 fn3). Encore is mistaken and Defendants' liability for all aspects of the Trade Secrets award must be joint and several to avoid running afoul of the controlling law and in light of the fact it was treated as such at trial. Otherwise Encore would be able to recover quadruple its actual damages by recovering punitive damages for the same claim twice. The law prohibits Encore recovering exemplary damages for trade secret misappropriation in that amount and does not allow a party to recover the same damages more than once.

The South Carolina Trade Secrets Act specifies limits the amount of exemplary damages recoverable for violation of the Act to no more than two times the actual damages awarded for the misappropriation, stating in pertinent part that:

- (A) A complainant is entitled to recover actual damages for misappropriation of trade secrets....
- (B) Damages may include both the actual loss caused by misappropriation or the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss....

(C) Upon a finding of willful, wanton, or reckless disregard of the plaintiff's rights, the court *may award separate exemplary damages in an amount not exceeding twice any award made under subsection (A).*

S.C. Code Ann. § 39-8-40 (*emphasis added*). The clear and unambiguous language of the statute caps the amount of exemplary damages a court can award for trade secret misappropriation to no more than twice the actual damages awarded for violation of the Act. *Hodges v. Rainey*, 314 S.C. 79, 85 (Ct. App. 2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning."). To adhere to that limitation, Defendants' liability for all aspects of the Trade Secrets award must be treated as joint and several.

In this case, the jury awarded \$424,945 in actual damages, therefore limiting the exemplary damages Encore could recover under its Trade Secrets claim to \$849,890. The Court awarded the fullest amount of exemplary damages available. Clear Touch paid that amount into the Court and Trask rightfully credited himself for that payment when calculating the judgment against him as of January 3, 2019. Making each Defendant liable for that entire amount would result in an exemplary damages award of four times the actual damage verdict in violation of the Act. It also would allow Encore to recover the same punitive damages arising from single wrong twice; an outcome prohibited by well-established common law. *See Smith v. Strickland*, 314 S.C. 192, 197, 442 S.E.2d 207, 210 (Ct. App. 1994) ("As with actual damages, a plaintiff can recover damages that are punitive in nature only once, either as expressly-designated punitive damages or as trebled damages, where their recovery concerns a single wrong."). Finally, at trial Defendants' liability for the alleged trade secret misappropriation was treated as joint and several as reflected by the wording of the Verdict Form for that cause of action. (Verdict Form p. 4)(Special Interrogatory to

the jury asked "Was the Defendants' conduct in violating the South Carolina Trade Secrets Act committed by the Defendants in a willful, wanton, or reckless disregard of Plaintiff's rights?").

Therefore, the SCTSA, common law, and treatment of Defendants' liability for the alleged trade secret misappropriation at trial mandate that their liability for the Trade Secrets award be joint and several. Accordingly, Trask's calculation of his judgment liability as of January 3, 2019 correctly credited him for Clear Touch's payment of the Trade Secret award and the Defendants have paid the entirety of the judgments against them into the Court.

3. Receiver Fees and Costs to be Held in Trust

As noted above, Trask may be liable for the Receiver's fees and costs should Encore prevail in whole or part on appeal. Although the appeal remains pending, and Trask does not currently owe the Receiver's fees and costs, the Court finds it prudent to require him to deposit the total Receiver fees and costs incurred through February 7, 2019 with the Receiver. Those funds will be held in trust pending resolution of the appeal until further Order of this Court. Should Encore prevail on appeal, in whole or in part, then it will have a right to collect the Receiver fees and costs, including but not limited to any fees or costs incurred by the Receiver after February 7, 2019, following a hearing to address the same. During that hearing, Defendants will have the opportunity to challenge the reasonableness of the fees and costs incurred by the Receiver.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. Immediately upon Trask's deposit with the Receiver of the Receiver fees and costs incurred through February 7, 2019, the Receivership established under the Receiver Order shall be stayed, and the Receiver relieved of any and all power and authority afforded him under the Receiver Order except as set forth herein;
2. Immediately upon Trask's deposit of the Receiver fees and costs incurred through February

7, 2019, Defendants or their agents may take any actions necessary to remove the Receiver's oversight, ownership, possession, control, or interest in any and all assets or other property of any kind which was taken or otherwise placed under the Receiver's custody, possession, control, or oversight pursuant to the Receiver Order;

3. Within forty-eight (48) hours of Trask's deposit of the Receiver fees and costs incurred through February 7, 2019, the Receiver shall return any and all assets or other property of any kind to the party from which it was taken or otherwise placed under the Receiver's custody, possession, control, or oversight but may maintain all documents he has collected in this matter;
4. Within forty-eight (48) hours of Trask's deposit of the Receiver fees and costs incurred through February 7, 2019, the Receiver shall take all actions necessary to unencumber any and all assets or other property of any kind he has encumbered, in his role as Receiver in this case.

IT IS SO ORDERED.

The Honorable R. Lawton McIntosh
Judge, Tenth Judicial Circuit

Entered this ____ Day of _____, 2019.



Greenville Common Pleas

Case Caption: Encore Technology Group LLC vs. Keone Trask , defendant, et al

Case Number: 2015CP2305757

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

JAMI POWELL,

Plaintiff,

vs.

CLEAR TOUCH INTERACTIVE, INC. (a
Nevada Corporation) f/k/a CLEAR
TOUCH INTERACTIVE, LLC (a Nevada
LLC); KEONE TRASK and TAMARA
TRASK,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2017-CP-23-06520

**ORDER GRANTING MOTION TO
INTERVENE BY
ENCORE TECHNOLOGY GROUP, LLC**

THIS MATTER comes before the Court upon motion by Encore Technology Group, LLC ("Encore") pursuant to Rule 24(a)(2), SCRPC, allowing it to intervene as a co-plaintiff in this action as a matter of right or, alternatively pursuant to Rule 24(b)(2), SCRPC, to intervene permissively. A hearing was held on August 7, 2018, at which counsel for all parties participated. In response to Encore's motion, counsel for the Plaintiff consented, but counsel for Defendants objected on grounds that Encore is already involved in other actions with Defendants and argues that Encore has no interest in the asset(s) and property in dispute in this action.

After considering the matters of record and the arguments of counsel, the Court finds and concludes that Encore should be allowed to intervene in this action as a co-plaintiff. Under Rule 24(a)(2), SCRPC, as interpreted by *Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 394 S.E.2d 712 (1990), Encore has met the tests for intervening as a matter of right. Specifically, Encore has made a timely application to intervene, as Defendants concede. This

action has not progressed beyond written discovery and Encore's intervention will not delay or prejudice the parties to this action.

Second, Encore claims an interest relating to the property and transaction which is the subject of this action, *i.e.*, Defendant Keone Trask's ("Keone") ownership interest in Defendant Clear Touch Interactive, Inc., f/k/a Clear Touch Interactive, LLC ("Clear Touch"). On April 2, 2018, in *Encore Technology Group, LLC vs. Keone Trask, et al.*, Case No. 2015-CP-23-05757, Encore obtained a Final Order and Judgment against Keone in the amount of \$7,917,468.40 (the "Judgment"), which the Court upheld on July 23, 2018, following a motion to alter or amend. Keone has failed to pay any portion of this amount. Although the Clerk of Court issued an Execution against Property of Keone on April 13, 2018, it has not been satisfied, in whole or in part, and the Greenville County Sheriff has returned it marked "Nulla Bona."

Keone previously owned a membership in Clear Touch, but claims to have converted Clear Touch from a limited liability company to a corporation and, as part of such conversion, to have relinquished his ownership interest in Clear Touch. This action seeks a declaratory judgment that Clear Touch was not successfully converted from a limited liability company to a corporation and accordingly Keone still has an ownership interest in Clear Touch. If such a declaratory judgment is granted, then Keone's ownership interest in Clear Touch could be available for application to Encore's Judgment.

Third, Encore is in a position such that, without intervention, disposition of this action may impair or impede its ability to protect that interest. Although Encore may be able to assert the same claims in a separate action, such proceedings would be inefficient and risk inconsistent rulings. As in *Berkeley Electric*, if the Court rules in this action that Keone's conversion was valid, it could be extremely difficult for Encore to collaterally attack that ruling. Allowing

Encore to intervene in this action is the best way to ensure that disposition of this action does not impair or impede Encore's ability to protect its interest in collecting its Judgment and that Encore's claims and the common claims in this action are resolved efficiently and consistently.

Finally, Encore has demonstrated that Plaintiff is not an adequate representative of Encore's interest. In this action, Plaintiff is focused on recovering her own membership interest in Clear Touch, and does not have a stake in what is declared about Keone's interest. Encore will likely make different arguments than Plaintiff would make concerning Keone's interest, and it is not clear that Plaintiff would make Encore's arguments. Moreover, Encore brings a different perspective and experience to this proceeding because Keone was Encore's employee at the time of the conversion, about which Encore likely has knowledge and information that Plaintiff does not.

Accordingly, the Court finds and concludes that Encore is entitled to intervene as a matter of right in this action. Alternatively, because Encore's claim and this action have questions of law and fact in common, *i.e.*, whether Keone successfully converted Defendant Clear Touch from a limited liability company to a corporation and still owns a membership interest in Clear Touch, the Court would also permit Encore to intervene pursuant to Rule 24(b)(2).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Encore may file its own complaint as a co-plaintiff in this action.

IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: Jami Powell vs. Clear Touch Interactive Inc , defendant, et al
Case Number: 2017CP2306520
Type: Order/Intervene

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JAMI POWELL, AND ENCORE
TECHNOLOGY GROUP, LLC,

Case No. 2017-CP-23-06520

Plaintiffs,

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

vs.

CLEAR TOUCH INTERACTIVE, INC.
(a Nevada Corporation) f/k/a CLEAR
TOUCH INTERACTIVE, LLC (a
Nevada LLC); KEONE TRASK and
TAMARA TRASK,

Defendants.

THIS MATTER, comes before the Court upon motion by Defendants Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC ("Clear Touch"), Keone Trask and Tamara Trask (*collectively* "Defendants"), to dismiss Intervening Plaintiff, Encore Technology Group, LLC's ("Encore") Complaint and remove it as a party to this action based upon Encore's lack of standing to pursue its claims following Defendants' payment of the entire judgment against them, including applicable post-judgment interest, into the Court under Rule 67. A hearing was held February 7, 2019, at which counsel for all parties participated. After considering the matters of record, materials presented at the hearing, and arguments of counsel, the Court finds and concludes that Encore should be dismissed as a party to this action because it no longer has any interest in the outcome of the claims in this case and as a result lacks the necessary standing to pursue its claims.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

In September 2015, Encore filed a case captioned *Encore Technology Group, LLC v. Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC and Keone Trask, C.A.* No. 2015-CP-23-05757 alleging numerous causes of action related to the Parties' business dealings. A week-long trial was held in September 2017 with the jury rendering a verdict in favor of the Plaintiff on six of the eight causes of action alleged. Following post-trial filings and arguments, this Court entered a Final Order and Judgment on April 2, 2018 in favor of the Plaintiff against Keone Trask individually totaling \$7,917,468.40 and judgment against Clear Touch for \$1,715,335.00 (an amount for which Trask was jointly and severally liable and therefore included in the judgment against him). That Order also granted Defendants' Motion to pay the respective judgments against them into the Court under Rule 67 pending resolution of any appeal. On April 17, 2018, Clear Touch paid the judgment against it in full into the Court under Rule 67.

Shortly after trial ended in the 2015 matter, Jami Powell filed the present case, a shareholder oppression suit styled *Jami Powell v. Clear Touch Interactive, Inc. et al., C.A.* No. 2017-CP-23-06520 claiming that she has an interest in Clear Touch. Powell's suit seeks, among other things, a declaratory judgment that Clear Touch was not properly converted from an LLC to a Corporation.

Encore's judgment against Trask remained outstanding throughout 2018, prompting it to pursue various avenues of satisfying that judgment debt. That included moving to intervene in the present case on July 26, 2018 claiming that, as a judgment creditor, Encore had an interest in the resolution of the declaratory judgment because it would impact whether Trask's interest in Clear Touch would be available for application

to the judgment debt. The Court agreed and granted Encore's Intervenor Motion on September 8, 2018.

On January 3, 2019, Keone Trask paid the outstanding judgment balance against him into the Court under Rule 67, thus fully depositing the entirety of Encore's judgment against both Defendants into the Court if the Trask and Clear Touch are considered jointly and severally liable for the \$849,890 in exemplary damages under the Trade Secrets award, as opposed to each owing \$849,890. The payments of April 17, 2018 and January 3, 2019 total \$8,316,104.58 and fully secure Encore's respective judgments against the Defendants pending resolution of the consolidated appeal arising out of and related to this matter.

On January 8, 2019, Defendants filed a Motion to Dismiss Encore as Intervenor Plaintiff due to its lack of standing to pursue its claims following Trask's payment of the judgment against him into the Court. Encore opposed the Motion, claiming that Defendants' miscalculated the judgment amount owed by Trask and asserting he was responsible for an additional \$1.2 million dollars because it claimed each Defendant owed \$849,890 in exemplary damages on the Trade Secrets awards, plus post-judgment interest. A February 7, 2019 hearing was held on Defendants' Motion to Dismiss Encore as Intervenor Plaintiff, along with several related motions.

LAW AND ANALYSIS

Standing to sue is a fundamental requirement for a party instituting or maintaining an action. *Blandon v. Coleman*, 285 S.C. 472, 475 (1985)(standing is a fundamental requirement for instituting an action and no justiciable controversy is presented unless the plaintiff has standing to maintain the action. "Once it is determined a plaintiff has no standing to prosecute, the court must dismiss the action." *Brock v. Bennett*, 313 S.C. 513,

519 (Ct. App. 1994). Standing requires a personal interest in the subject matter of the action, and that interest must be a personal state. *Duke Power Co. v. South Carolina Public Service Comm'n*, 284 S.C. 81, 96 (1985). Trask's payment of the full judgment debt against him into the Court deprived Encore of its only interest in this case and therefore standing to remain a party to this suit.

At the hearing, Encore conceded that its entire interest in this matter is predicated upon having a judgment against Trask. Trask agreed but claims his January 3, 2019 payment into the Court fully secured his judgment debt to Encore, and as a result, deprived Encore of its interest in this case. Both parties agree that in the absence of a judgment against Trask, Encore no longer has any interest in the disposition of this matter.

Encore, however, opposes Defendant's Motion because it claims Trask miscalculated the judgment debt he owes and a \$1.2 million-dollar shortfall remains. That alleged shortfall is comprised of three items; (1) \$849,890 in exemplary damages under the Trade Secret claim (which Encore calculated to total \$904,515.38 with post-judgment interest as of February 7, 2019) that Encore argues Trask owes despite Clear Touch's payment of the Trade Secret verdict into the Court; (2) the Receiver's fees and costs incurred to date; and (3) the fees and costs charged by Encore's counsel it attributes to post-judgment collection efforts

At the hearing, Encore admitted that if the Plaintiff can recover exemplary damages on the Trade Secrets awards from only one Defendant, and the Receiver fees and costs and its post-judgment attorney's fees and costs are not included in calculating the judgment against Trask, then the Defendants have paid the judgments against them in full into the

Court. Encore recognized that if the Court rejects its arguments, then the Defendants have paid the entirety of the judgments against them into the Court as of January 3, 2019.

The Court finds that, because it can recover the \$849,890 in exemplary damages under the Trade Secrets Act from only one Defendant, the Defendants have paid the entire balance of the judgments against them into the Court, fully securing their outstanding debt to Encore resulting from the verdict, and therefore Encore has no standing to remain a party to this action.

1. Potential Future Liabilities Have No Bearing on Judgment Calculation

Neither the Receiver's fees and costs nor any post-judgment fees and costs incurred by Encore's counsel are part of the judgment against Trask or Clear Touch. First and foremost, those fees and costs are not part of the judgments awarded in the Final Order, and as such, cannot impact calculation of the judgments rendered in it. Second, both are possible future liabilities that Trask may be responsible for at a later date. Trask owing the Receiver's fees and costs is contingent upon all or part of the appeal being upheld. (*See* Receiver Order p. 9)(“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.”). Given the appeal remains unresolved, Trask does not yet owe the Receiver fees. Likewise, Trask does not yet owe Encore's post-judgment attorney's fees and costs when Plaintiff has not petitioned the Court for their recovery, much less obtained an order awarding them.

Thus, Encore's opposition hinges upon whether Trask and Clear Touch are each separately liable for the payment of \$849,890 in exemplary damages under the Trade Secret cause of action. The Court finds they are not.

2. Defendants are Jointly and Severally Liable for the Trade Secrets Verdict

In calculating the outstanding judgment against Trask as of January 3, 2019, the Defendants credited him in full for Clear Touch's payment of the Trade Secrets award into the Court. That included the \$849,890 in exemplary damages. Encore argues that Trask miscalculated the judgment against him because he treated the \$849,890 in exemplary damages under the Trade Secrets claim as a joint and several liability rather than an individual and separate debt owed by each him and Clear Touch. In other words, Encore contends Trask should not have been credited for Clear Touch's payment of those exemplary damages and he remains liable for them. The Court finds Trask was rightfully credited for Clear Touch's payment of all of the Trade Secrets award because the Defendants are jointly and severally liable for every aspect of those damages, including exemplary damages.

As noted above, Encore was awarded a total of \$1,715,335.00 under its Trade Secrets claim alleged against both Defendants. That figure is comprised of three components; (1) Actual damages (\$424,945); (2) Exemplary Damages (2x actuals) (\$849,890); and (3) Attorney's fees and costs (\$440,500).

Clear Touch's April 2018 payment of the Trade Secrets award into the Court fully satisfied and secured the judgment against it. It also reduced Trask's judgment by eliminating his liability for the Trade Secret award. That reduction included the \$849,490 in exemplary damages. Defendants calculated the outstanding judgment amount against Trask, including applicable post-judgment interest, as of January 3, 2019 by crediting him for Clear Touch's payment of the Trade Secrets verdict into the Court.

Encore concedes that the Defendants are jointly and severally liable for the actual damages and attorney's fees and costs components of the Trade Secret award, but argues that, like the tortfeasors jointly and severally liable for actual damages but separately liable for punitive damages described in *McGee v. Bruce Hospital System*, 344 S.C. 466, 545 S.E.2d 286 (2001), under the Trade Secrets Act and Final Order Clear Touch and Trask are each responsible for the payment of the full exemplary damages amount of \$849,890. Accordingly, Encore contends that it may recover \$849,890 in exemplary damages under the Trade Secrets claim twice—once from each Defendant—for a total recovery of \$1,699,780 in exemplary damages. Encore's argument relies upon a footnote in the Final Order that states "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." (Final Order p. 11 fn3). Encore is mistaken and Defendants' liability for all aspects of the Trade Secrets award must be joint and several to avoid running afoul of the controlling law and in light of the fact it was treated as such at trial. Otherwise Encore would be able to recover quadruple its actual damages by recovering punitive damages for the same claim twice. The law prohibits Encore recovering exemplary damages for trade secret misappropriation in that amount and does not allow a party to recover the same damages more than once.

The South Carolina Trade Secrets Act specifies limits the amount of exemplary damages recoverable for violation of the Act to no more than two times the actual damages awarded for the misappropriation, stating in pertinent part that:

(A) A complainant is entitled to recover actual damages for misappropriation of trade secrets....

(B) Damages may include both the actual loss caused by misappropriation or the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss....

(C) Upon a finding of willful, wanton, or reckless disregard of the plaintiff's rights, the court *may award separate exemplary damages in an amount not exceeding twice any award made under subsection (A)*.

S.C. Code Ann. § 39-8-40(*emphasis added*). The clear and unambiguous language of the statute caps the amount of exemplary damages a court can award for trade secret misappropriation to no more than twice the actual damages awarded for violation of the Act. *Hodges v. Rainey*, 314 S.C. 79, 85 (Ct. App. 2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning."). To adhere to that limitation, Defendants' liability for all aspects of the Trade Secrets award must be treated as joint and several.

In this case, the jury awarded \$424,945 in actual damages, therefore limiting the exemplary damages Encore could recover under its Trade Secrets claim to \$849,890. The Court awarded the fullest amount of exemplary damages available. Clear Touch paid that amount into the Court and Trask rightfully credited himself for that payment when calculating the judgment against him as of January 3, 2019. Making each Defendant liable for that entire amount would result in an exemplary damages award of four times the actual damage verdict in violation of the Act. It also would allow Encore to recover the same punitive damages arising from single wrong twice; an outcome prohibited by well-established common law. *See Smith v. Strickland*, 314 S.C. 192, 197, 442 S.E.2d 207, 210 (Ct. App. 1994) ("As with actual damages, a plaintiff can recover damages that are punitive in nature only once, either as expressly-designated punitive damages or as trebled damages, where their recovery concerns a single wrong."). Finally, at trial Defendants' liability for

the alleged trade secret misappropriation was treated as joint and several as reflected by the wording of the Verdict Form for that cause of action. (Verdict Form p. 4)(Special Interrogatory to the jury asked "Was the Defendants' conduct in violating the South Carolina Trade Secrets Act committed by the Defendants in a willful, wanton, or reckless disregard of Plaintiff's rights?").

Therefore, the SCTSA, common law, and treatment of Defendants' liability for the alleged trade secret misappropriation at trial mandate that their liability for the Trade Secrets award be joint and several. Accordingly, Trask's calculation of his judgment liability as of January 3, 2019 correctly credited him for Clear Touch's payment of the Trade Secret award and the Defendants have paid the entirety of the judgments against them into the Court.

As noted, all parties, including Encore agreed that its entire interest in this matter is predicated upon having a judgment against Trask. Trask's payment of the judgment against him into the Court on January 3, 2019 fully secured Encore's judgment and deprived it of the right or ability to seek any further assets to apply in satisfaction of that debt. Consequently, Encore has no interest in the outcome of the present action and therefore no standing to remain a co-plaintiff in this case.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that, immediately upon Trask's deposit of the Receiver fees and costs incurred through February 7, 2019 with the Receiver, Encore shall be dismissed as a party from this Action.

IT IS SO ORDERED.

The Honorable R. Lawton McIntosh
Judge, Tenth Judicial Circuit

Entered this _____ Day of _____, 2019.



Greenville Common Pleas

Case Caption: Jami Powell , plaintiff, et al vs. Clear Touch Interactive Inc ,
defendant, et al
Case Number: 2017CP2306520
Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2019-02-27 09:35:58 page 11 of 11

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

**COMPLAINT
(JURY TRIAL DEMANDED)**

Case No.

2015-CP-23-05757

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENHOFER
2015 SEP 18 PM 2 50

Plaintiff Encore Technology Group, LLC ("Encore"), complaining of and seeking legal and equitable relief from Defendants Keone Trask ("Trask") and Clear Touch Interactive, Inc., f/k/a Clear Touch Interactive, LLC ("Clear Touch") (collectively, "Defendants"), would respectfully show unto the Court as follows:

PARTIES, JURISDICTION AND VENUE

1. Encore is a limited liability company organized under the laws of and with a principal place of business in the State of South Carolina, County of Greenville.
2. Trask is an individual residing in South Carolina who does business in Greenville County, South Carolina.
3. Clear Touch is a corporation organized under the laws of the State of Nevada with a principal place of business in the State of South Carolina, County of Greenville.
4. This court has jurisdiction over the parties to and the subject matter of this action.

FACTS

5. Encore is in the business of designing, selling, and installing a wide range of information technology products, including but not limited to interactive displays, commonly known as "smart" boards, to K-12 schools (collectively, the "Products").

6. On or about February 18, 2013, Encore employed Trask as a full-time employee to sell a range of information technology systems and related services, including but not limited to the Products.

7. In connection with Encore's employment of Trask, on or about February 18, 2013, Encore and Trask entered into that certain Non-Disclosure and Non-Solicitation Agreement, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference (the "Agreement").

8. In the course of his work as an employee of Encore, Trask was privy and had access to Encore's Trade Secrets and Company Data, as both are defined in the Agreement, including but not limited to information about Encore's employees and their contact information, Products, procedures, equipment, and methods used and preferred by Encore's customers, manuals, reports, lists of customers of Encore, pricing information, marketing and business plans and objectives, sales commission rates and other costs, the customs, requirements, needs, and preferences of Encore's customers and vendors, and other information and documents relating to existing goods and services, shipping, sales, pricing, and marketing and business strategies (said Trade Secrets and Company Data shall hereinafter be referred to collectively as the "Confidential Information"). The Confidential Information is necessary to Encore's competitive success. The Confidential Information was not generally known or ascertainable by the general public, and was acquired by Trask pursuant to his employment relationship with Encore.

9. At the time of his employment and throughout the term of his work for Encore, Trask was aware of the confidential nature of the Confidential Information to which he was given access and the damage to Encore that would occur if he used or disclosed this Confidential Information during or after his relationship with Encore.

10. On or about August 24, 2012, unbeknownst to Encore, Trask formed Clear Touch to sell interactive displays (the "Clear Touch Products").

11. During his employment by Encore, Trask used Encore's financial and other resources directly and indirectly and devoted a significant portion of his time and his influence as an Encore executive to advance his and his family's related interests in Clear Touch rather than the interests of Encore.

12. On or about April 24, 2013, Trask convinced Encore to enter a Reseller Agreement with Clear Touch, a true and correct copy of which is attached hereto as Exhibit B (the "Reseller Agreement"), pursuant to which Encore would market, sell, lease and install Clear Touch Products to Encore's customers and Clear Touch would sell the Clear Touch Products to Encore at a profit, which Clear Touch and Trask would pocket.

13. At the time he convinced Encore to enter the Reseller Agreement, Trask did not disclose his interest in Clear Touch to Encore.

14. Instead of disclosing his interest in Clear Touch to Encore, Trask had his mother, Kathy Cruse, who had re-taken her maiden name, sign the Reseller Agreement as "Managing Member" of Clear Touch.

15. While an employee of Encore, Trask not only advanced Clear Touch's interests, but also dissuaded and/or prevented Encore from pursuing or learning about competing products and suppliers to Clear Touch.

16. Trask caused Encore to bear the sales and marketing expenses and develop the market for the Clear Touch Products while he worked both sides of deals to skew profit margins in favor of Clear Touch to the detriment of Encore.

17. On or about May 6, 2014, Trask and Encore entered that certain Severance Agreement and General Release, a true and correct copy of which is attached hereto as Exhibit C (the "Severance Agreement"), pursuant to which Trask's employment with Encore terminated effective April 25, 2014, and pursuant to which Trask make the other agreements with Encore set forth therein.

18. Both during and after his employment with Encore, in violation of the "Non-Solicitation of Customers" section of the Agreement and Section 9 of the Severance Agreement, Trask caused Clear Touch to sell Clear Touch Products to some of Encore's customers directly and also to enter agreements with other distributors in Encore's markets to compete against Encore.

19. Both during and after his employment with Encore, Trask further violated the "Non-Piracy of Employees" section of his Agreement with Encore and Section 9 of the Severance Agreement by encouraging Encore employees to end their employment with Encore and to accept employment with Clear Touch. Specifically, in January of 2015, Trask induced Leo Gallant to leave his employment with Encore and then caused Clear Touch to hire him. Trask has also solicited other employees of Encore to leave Encore in violation of the Agreement and Severance Agreement.

20. Trask also offered to pay Encore employees to divert profits on sales of Clear Touch Products by Encore from Encore to Clear Touch and/or to cut Encore out of deals altogether and pay the Encore employees directly.

21. In violation of the Agreement and Section 12 of the Severance Agreement, Trask used Encore resources and Confidential Information, including but not limited to customer lists, pricing plans, marketing plans, internal and third party databases, to advance the interests of Clear Touch.

22. Despite its knowledge of the Agreement, Clear Touch has utilized Trask and his Confidential Information belonging to Encore to solicit and sell Clear Touch Products to Encore's customers and compete against Encore.

23. Defendants have used and/or disclosed Confidential Information entrusted to Trask by Encore and obtained by him during and after his work with Encore in an attempt to compete unfairly for the business of Encore's customers.

24. Defendants have used Encore's Confidential Information to solicit and render services to Encore's customers for themselves and third parties during and subsequent to Trask's relationship with Encore.

25. On or about September 10, 2015, Encore gave notice to Clear Touch that it was terminating the Reseller Agreement.

26. Trask, in violation of section 10 of the Severance Agreement, and Clear Touch have disparaged and defamed Encore and its executives, falsely stating to current and prospective customers of Encore that Clear Touch terminated its relationship with Encore for bad acts of Encore and its executives and that Encore is exiting the classroom technology business because it is unfit for that business, which false statements have impaired Encore's business and reputation.

27. Defendants' actions have caused Encore damages, including but not limited to:

(a) Trask's salary and benefits, including but not limited to those paid by Encore during the term of his employment from February 18, 2013 through April 25, 2014 and under the Severance Agreement;

(b) All gross profits made by Clear Touch ("Lost Profits");

(c) Compensation paid by Encore to its employees who devoted time to support Clear Touch instead of the full interests of Encore;

(d) Interest and other carrying costs for inventory of Clear Touch Products purchased by Encore;

(e) Costs incurred by Encore at trade shows and related customer marketing events directed by Trask while he was employed Encore for the benefit of Clear Touch;

(f) Damages to Encore's and its executives reputations; and

(g) Legal fees and expenses.

28. Unless they are enjoined, Defendants will be able to use the confidential information they learned from Encore, including but not limited to their knowledge regarding employees', contractors', distributors', dealers', customers', and/or clients' names, contacts, preferences, pricing, equipment costs, Product designs, and other Confidential Information, to gain an unfair advantage against Encore with its customers.

29. Unless they are enjoined, Defendants will continue to solicit and service Encore's customers in violation of Trask's contractual obligations, and Encore will lose and be threatened with the ongoing loss of its customers and goodwill. Additionally, unless Defendants are enjoined, they will continue to unfairly induce Encore's employees, subcontractors, distributors, dealers, customers, and/or clients to terminate their associations with Encore, and Encore will

lose and be threatened with the ongoing loss of business. Encore has been and will continue to be irreparably harmed by these wrongful actions of Defendants.

30. Unless they are enjoined, Defendants will continue to defame and disparage Encore and its executives.

FOR A FIRST CAUSE OF ACTION
(Breach of Duty of Loyalty by Trask)

31. The foregoing allegations are incorporated herein by reference.

32. As an employee and while on the payroll of Encore, Trask owed a duty of loyalty to Encore in addition to other fiduciary duties to Encore.

33. Trask intentionally breached his duty of loyalty while he was still employed by Encore by, among other things, not devoting substantially all of his business efforts to conducting the business of Encore; using Encore time and resources to prepare to compete with Encore; soliciting Encore employees and Encore customers to terminate their respective relations with Encore; accessing Encore's computer system without or in excess of authorization; misappropriating and/or destroying Encore property, software, and files; and/or misappropriating, using or disclosing Confidential Information of Encore for his own purposes. In addition, Trask breached his duty of loyalty to Encore by failing to disclose his conflicting interests in Clear Touch, his diverting profits from Encore to Clear Touch, and his plans to compete with Encore.

34. Trask exploited the trust given to him by Encore, acting in secret and duplicity, to obtain an unfair advantage for himself and his competing company, Clear Touch.

35. The breaches of Trask's duties of loyalty, designed to cause maximum injury to Encore, were willful and intentional, and have damaged and continue to damage Encore and will cause irreparable harm to Encore.

36. Consequently, Encore is entitled to equitable and injunctive relief against Trask, including but not limited to a temporary restraining order and a temporary injunction, a permanent injunction, other equitable relief, and actual, consequential (including but not limited to Lost Profits), and punitive damages, costs, interest, and attorney's fees.

37. Encore is also entitled to recover all wages and other compensation given by Encore to Trask during his period of disloyalty, and recover all expenses incurred by Encore for work Trask actually performed for himself and Clear Touch.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duties by Trask)

38. The foregoing allegations are incorporated herein by reference.

39. As an employee of Encore, Trask owed and continues to owe fiduciary duties to Encore in addition to his common law duties of loyalty owed to Encore.

40. In addition to the breaches of the duty of loyalty described above, Trask breached his fiduciary duties to Encore by failing to disclose his conflicting interests in Clear Touch, his diverting profits from Encore to Clear Touch, and his plans to compete with Encore, and by failing to act in Encore's best interests instead of his own.

41. Trask's breach was especially injurious to Encore as he participated in setting the prices charged by Clear Touch and paid by Encore and in coordinating Encore's strategic business plan while all the while preparing to compete and actually competing with Encore while he was still on the Encore payroll and owed duties of loyalty and other fiduciary duties to Encore.

42. These breaches, designed to cause maximum injury to Encore, were willful and intentional, and have damaged and continue to damage Encore and will cause irreparable harm to Encore.

43. Consequently, Encore is entitled to equitable and injunctive relief against Trask, including but not limited to a temporary restraining order and a temporary injunction, a permanent injunction, other equitable relief, and actual, consequential (including but not limited to Lost Profits), and punitive damages, costs, interest, and attorney's fees.

44. Encore is also entitled to recover all wages and other compensation given by Encore to Trask during the period in which he breached his fiduciary duties and recover all expenses incurred by Encore for work Trask actually performed for and time spent on his or other Defendants' business.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract against Trask)

45. The foregoing allegations are incorporated herein by reference.

46. The Agreement and the Severance Agreement constitute binding contracts between Encore and Trask.

47. Encore has fully performed all conditions of the Agreement and Severance Agreement.

48. Pursuant to the Agreement and the Severance Agreement, Trask owed and continues to owe Encore duties to:

- (a) notify and help Encore take advantage of Business Opportunities,
- (b) not encourage employees to terminate their employment with Encore;
- (c) not disparage Encore or its executives;
- (d) not solicit business of Encore's customers,
- (e) not use or disclose Encore's Confidential Information, and
- (f) otherwise act in good faith and deal fairly with Encore.

49. Upon information and belief, Trask has breached the Agreement by:

- (a) Failing to notify and help Encore take advantage of Business Opportunities, including but not limited to the sale of Clear Touch Products;
- (b) encouraging employees to terminate their employment with Encore;
- (c) disparaging Encore and its executives;
- (d) soliciting customers and clients of Encore,
- (e) misappropriating, using and disclosing trade secrets and proprietary and other Confidential Information of Encore to further distribution of Clear Touch Products, and
- (f) otherwise failing to act in good faith and deal fairly with Encore, thereby causing damage to Encore.

50. Trask's breaches of the Agreement have caused Encore actual damages.

51. Consequently, Trask is liable to Encore for actual and consequential (including but not limited to Lost Profits) damages, prejudgment interest, costs and attorneys' fees.

FOR A FOURTH CAUSE OF ACTION
(Violation of SC Trade Secrets Act against all Defendants)

52. The foregoing allegations are incorporated herein by reference.

53. Defendants knew that during Trask's work for Encore, he received proprietary and Confidential Information that constituted trade secrets of Encore.

54. Upon information and belief, Defendants have wrongfully taken Encore's trade secrets.

55. Upon information and belief, Defendants have disclosed and used, or plan to use, confidential, proprietary, and trade secret information of Encore, protected by the South Carolina Trade Secrets Act and common law, in soliciting and serving customers and clients of Encore and attacking Encore's customer base.

56. Defendants' actions violate the South Carolina Trade Secrets Act and common law.

57. Defendants are liable to Encore and Encore is entitled to all relief available under the South Carolina Trade Secrets Act and common law for such violations, including injunctive relief, actual, consequential (including but not limited to Lost Profits), and exemplary damages, prejudgment interest, costs, and attorneys' fees.

FOR A FIFTH CAUSE OF ACTION

(Unjust Enrichment/Accounting/Constructive Trust/Disgorgement/Restitution
against all Defendants)

58. The foregoing allegations are incorporated herein by reference.

59. By entrusting Trask with trade secrets and other Confidential Information, Encore conferred non-gratuitous benefits on the Defendants from which they have realized value such that it would be inequitable for the Defendants to retain these benefits without paying Encore for their value.

60. Trask further agreed in the Agreement to direct all Business Opportunities to Encore.

61. Upon information and belief, Defendants have been unjustly enriched by the revenues and profits derived from using and disclosing proprietary and Confidential Information and trade secrets of Encore and by breaching Trask's Agreement in selling Clear Touch Products.

62. Therefore, Encore is entitled to an accounting from Defendants for, imposition of a constructive trust on, and disgorgement of all gross profits of Clear Touch, which should be paid to Encore, along with restitution, prejudgment interest, costs, and attorneys' fees from Defendants.

FOR A SIXTH CAUSE OF ACTION
(Tortious Interference against Clear Touch)

63. The foregoing allegations are incorporated herein by reference.

64. The Agreement and the Severance Agreement were binding contracts between Encore and Trask.

65. Clear Touch knew that Encore had the Agreement and Severance Agreement with Trask.

66. Clear Touch intentionally procured Trask's breaches of the Agreement and Severance Agreement described above.

67. There was no justification for Clear Touch's procurement of Trask's breaches of the Agreement and Severance Agreement.

68. Clear Touch's causing Trask to breach the Agreement and Severance Agreement caused Encore actual damages.

69. Consequently, Clear Touch is liable to Encore for actual and consequential (including but not limited to Lost Profits) damages, prejudgment interest, costs and attorneys' fees.

70. Clear Touch's conduct was willful and intentional, such that Encore is entitled to punitive damages from Defendants for their tortious interference.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act against Trask)

71. The foregoing allegations are incorporated herein by reference.

72. In addition to the breaches of contract by Trask, the circumstances described herein show a pattern of behavior and motive that demonstrate both a fraudulent intent relating to the breach, and fraudulent acts accompanying the breach.

73. The fraudulent acts of Trask are characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of Encore's property and profits by design.

74. Encore has been damaged by these breaches and is entitled to all damages flowing from these breaches, punitive damages, costs and interest.

75. The conduct of Trask was willful and intentional, such that Encore is entitled to punitive damages from Trask for his breaches of contract accompanied by fraudulent acts.

FOR AN EIGHTH CAUSE OF ACTION
(Defamation)

76. The foregoing allegations are incorporated herein by reference.

77. Trask, both individually and in his representative capacity for Clear Touch, made the following statements concerning Encore and its executives:

(a) that Clear Touch terminated its relationship with Encore for bad acts of Encore and its executives; and

(b) that Encore is exiting the classroom technology business because it is unfit for that business.

78. These statements were false.

79. These statements were known by Defendants to be false.

80. These statements were defamatory because they tended, either directly, indirectly, or by insinuation, to impeach the honesty, integrity, virtue, and reputation of the Defendants; expose them to public hatred, contempt, ridicule, and/or obloquy; cause them to be shunned or avoided; and/or injure them in their office, business, and/or occupation.

81. Defendants published these false, defamatory statements to numerous persons on numerous occasions.

82. Defendants published these false, defamatory statements with actual and/or implied malice.

83. The false, defamatory statements are actionable *per se*.

84. The false, defamatory statements were made intentionally, recklessly, wantonly, with ill will toward Encore and/or with conscious indifference toward Encore's rights.

85. In making the statements, Defendants were engaged in conscious wrongdoing or chargeable with conscious wrongdoing.

86. The false, defamatory statements have resulted in damages to Encore, both special and legally presumed. Encore's damages include financial loss and injury to reputation.

87. Because Defendants acted intentionally, recklessly, wantonly, with ill will toward Encore and/or with conscious indifference toward Encore's rights, Encore is entitled to punitive damages.

88. Upon information and belief, Defendants continue to defame Encore, resulting in a loss of customers to Encore. There is no adequate remedy at law to prevent Defendants from engaging in these wrongful acts, and Encore's damages will be irreparable because it would be extremely difficult, if not impossible, to ascertain the amount of compensation that would afford Encore adequate relief if Defendants are not enjoined.

89. Encore is entitled to equitable and injunctive relief against Defendants, including but not limited to a temporary injunction and a permanent injunction.

FOR A NINTH CAUSE OF ACTION
(Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 *et seq.*)

90. Encore incorporates herein by reference the allegations of the preceding paragraphs consistent herewith.

91. Defendants' actions in diverting business opportunities to Clear Touch and publishing the false statements to Encore's customers constitute an unfair method of competition and/or an unfair or deceptive act or practice in the conduct of any trade or commerce, in violation of the Unfair Trade Practices Act ("SCUTPA"), S.C. Code Ann. § 39-5-10 *et seq.*

92. Defendants have engaged in such conduct repeatedly in the past and have a policy of engaging in such conduct, so that these violations have an adverse impact on the public interest.

93. The violations have directly and proximately caused actual damages to Encore.

94. The violations were willful, as Defendants knew or should have known their conduct was in violation of the SCUTPA.

95. Encore is entitled to actual damages – including but not limited to financial loss and injury to reputation – and to treble damages, attorney's fees, and the costs of this action.

96. Upon information and belief, Defendants continue to engage in the unfair methods of competition and unfair and deceptive acts and practices, resulting in a loss of customers to Encore. There is no adequate remedy at law to prevent Defendants from engaging in these wrongful acts, and Encore's damages will be irreparable because it would be extremely difficult, if not impossible, to ascertain the amount of compensation that would afford Encore adequate relief if Defendants are not enjoined.

97. Encore is entitled to equitable and injunctive relief against Defendants, including but not limited to a temporary injunction and a permanent injunction.

PRAYER FOR RELIEF

WHEREFORE, Encore respectfully requests that this Court:

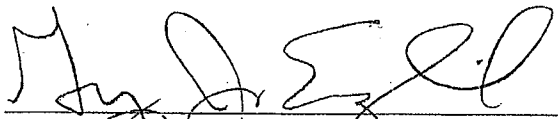
- (1) Enter judgment in favor of Encore against Defendants for actual damages, consequential damages (including but not limited to Lost Profits), exemplary

damages, treble damages, and punitive damages, as appropriate, in addition to its reasonable attorneys' fees, the costs of this action, and prejudgment interest;

- (2) Order Defendants to account for, impose a constructive trust on, and order Defendants to disgorge to Encore all gross profits that have been derived by Clear Touch and/or from Defendant's use of Encore's Confidential Information, along with restitution, prejudgment interest, costs, and attorneys' fees;
- (3) Enter a temporary injunction and a permanent injunction:
 - (a) enjoining Defendants from directly or indirectly inducing or attempting to induce any employees, contractors, distributors, dealers, customers, and/or clients of Encore to terminate their contracts and/or relationships with Encore;
 - (b) enjoining Defendants from, directly or indirectly, using, disclosing, copying, or assisting any other person or firm in the use, disclosure or copying of any and all of Encore's customer information or any other proprietary, Confidential Information, or trade secrets belonging to Encore; and
 - (c) enjoining Defendants from making statements concerning Encore and its employees; and
 - (d) granting Encore such other and further injunctive relief as is fair and just.
- (4) Order Defendants to return to Encore all Encore equipment and assets that are or were in their possession, custody or control;
- (5) Order Defendants to return to Encore all Encore documents, whether in written or electronic form, and confidential and proprietary business information and trade secrets belonging to Encore, and any other property or information of Encore in their possession, custody or control, including, but not limited to, Encore's data, all originals and all copies on all computers and other information technology equipment, cell phones, books, records, files, or software, and any information or property created or derived therefrom, including but not limited to any and all computer recorded and/or generated data, programs, and related information, and any copies, duplicates or reproductions of the same;
- (6) Order Defendants to file with this Court a certification signed by them, under oath, certifying that they have complied fully with the provisions of subparagraphs (3)(a) – (3)(c), (4), and (5) above; and

(7) Order such other and further relief as is just and equitable.

Respectfully submitted,



Gregory J. English (65470)

Mark W. Bakker (13096)

Sarah S. Batson (76637)

WYCHE, P.A.

44 East Camperdown Way

Post Office Box 728

Greenville, South Carolina 29602-0728

Telephone: 864-242-2800

Telefax: 864-235-8900

September 18, 2015

Attorneys for Plaintiff

Encore Technology Group, LLC

The Plaintiff respectfully requests a jury trial.

EXHIBIT A

Non-Disclosure and Non-Solicitation Agreement

This Non-Disclosure and Non-Solicitation Agreement (the "Agreement") is made effective as of February 18, 2013 between Encore Technology Group, LLC (hereinafter referred to as "Encore" or the "Company") of 900 East Main St., Easley, South Carolina and KEUNE TRASK (hereinafter referred to as "Employee").

Pursuant to the Asset Purchase Agreement dated February 14, 2013, the Company has consummated the purchase from Computer Software Innovations, Inc. ("CSI") of certain of the assets pertaining to the Cloud Services Segment and the Technology Solutions Segment (the "Transaction"). Following the Transaction, Employee's employment with CSI will be terminated, and Company and Employee intend to enter into an at-will employment relationship.

It is understood and agreed that the Company has legitimate business interests in seeking the protections it seeks in this Agreement, including but not limited to the protection of its trade secrets, confidential information, substantial relationships with specific prospective or existing customers or clients, and the restrictions set forth herein are reasonably necessary to protect these legitimate business interests. The purpose of this Agreement is to make it known that Encore desires to protect the confidentiality of its own proprietary information as well as customer information that is, from time to time, made available to the employees of Encore. Therefore, in consideration of being employed and compensated by Encore and of these provisions herein contained, and other good and valuable consideration, the parties hereby covenant and agree as follows:

COMPANY DATA AND TRADE SECRETS: The Company has a proprietary interest in, and its business is one that requires secrecy concerning, "Trade Secrets" and "Company Data." Trade Secrets are limited to Company information including, but not limited to, a formula, pattern, compilation, program, device, method, technique, product, system, or process, design, prototype, procedure, or code that (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, the public or any other person who can obtain economic value from its disclosure or use, and (ii) is the subject of Company efforts that are reasonable under the circumstances to maintain its secrecy, and any Company information that could otherwise come under the definition of Trade Secret under South Carolina Code § 39-8-20. Company Data is defined as Company information related to the services or other business of the Company that is not generally known by or readily ascertainable to the public that is not considered a Trade Secret. Trade Secrets and Company Data may include, without limitation (i) inventions, discoveries, copyrights, intellectual property improvements, know-how, methods, technical information, data, process technology, plans, drawings, blueprints, manufacturing processes, laboratory procedures, and methods employed or sold by the Company relating to the services of the Company; (ii) sales and customer data (whether or not reduced to writing), including but not limited to customer lists, customer preferences, customer requirements, customer contracts, customer contacts, pricing information, concessions and prior bids; (iii) marketing information, including but not limited to business strategy, plans, research, development, expansion or contraction plans; (iv) business plans, including but not limited to capital projects, departmental budgets and expenses; (v) financial information, including but not limited to revenue and billing projects; (vi) computer programs (or any portions or logic comprising such programs and/or source codes), internal security codes and passwords; (vii) manufacturing and vendor contacts, contracts and agreements; (viii) research and development efforts; (ix) product or service cost or pricing; (x) personnel allocation or organizational structure; and (xi) non-public information concerning the legal or financial affairs of Company. Trade Secrets and Company Data include, without limitation, documents, records, tapes, files, media, and any other medium of communicating information and information Employee acquired while employed with Company.

CONFIDENTIALITY: Except as may be necessary to perform Employee's duties for the Company, Employee shall hold Trade Secrets in confidence and shall not use, misappropriate, or divulge to any third party at any time Trade Secrets of the Company, during or after Employee's employment with the Company ends. For Company Data that is not considered a Trade Secret, Employee agrees to hold Company Data in confidence and shall not use, misappropriate, or divulge Company Data to any Person at any time during the course of Employee's employment with the Company (or its predecessors) and for a period of five (5) years after Employee's employment ends with the Company. Employee agrees to promptly inform Company of any breach of confidentiality of Trade Secrets or Company Data by any other person that comes to Employee's attention. Employee shall also endeavor to protect Trade Secrets or Company Data from being exposed inadvertently to any Person. For purposes of this Agreement, this Confidentiality provision shall not apply to information or Company Data that (i) is or was publicly known and made generally available to the public through no action or inaction of Employee; (ii) is obtained from a third party not in violation of any agreement with, or duty of confidentiality to, the Company; or (iii) involves general skills or knowledge independently developed by the Employee as shown by documents and other competent evidence in Employee's possession.

Non-Disclosure and Non-Solicitation Agreement

RETURN OF COMPANY PROPERTY: Upon termination of employment or written request of Encore, Employee shall return to Encore all Company property, including but not limited to Company Data, Trade Secrets, and all copies thereof, in Employee's possession or under Employee's control. Employee shall also deliver to Encore written statements signed by Employee certifying that all materials have been returned immediately upon termination of employment or within five (5) days of receipt of the request.

LIMITED LICENSE TO USE: Employee shall not acquire any intellectual property rights under this Agreement except the limited right to use as set out above. Employee acknowledges that, as between Encore and Employee, the confidential information and all related copyrights, and other intellectual property rights, are (and at all times will be) the property of Encore, even if suggestions, comments, and/or ideas presented by Employee are incorporated into the confidential information or related materials during the period of this Agreement.

NON-SOLICITATION OF CUSTOMERS: Employee covenants and agrees that during the period of Employee's employment with Company, and for a period of one (1) year thereafter (the "Restricted Period"), Employee will not, for Employee or on behalf of any Person, directly or indirectly solicit, influence, contact, sell to, service, or deal with ("Solicit") any Customer (as defined below) of the Company (or provide information or assistance to any third party that would enable or help such third party Solicit a Customer of the Company) for the purpose of:

- (a) providing services or products to such Customer that are the same as or competitive with the services or products that are provided to such Customer in competition (directly or indirectly) with the Company; or
- (b) diverting or attempting to divert from the Company the business of the Customer of the Company, including but not limited to any actions that cause such Customer to reduce the level or amount of services (or other business or products) provided by Company to such Customer.

"Customer" shall be limited to any actual or prospective customer of the Company:

- (i) that Employee Solicited during Employee's employment with the Company; or
- (ii) that employees of the Company supervised by Employee Solicited during Employee's employment with the Company;
- (iii) about whom Employee had access to the pricing, advertising and/or marketing schemes developed by Employee or the Company for such customer.

NON-PIRACY OF EMPLOYEES: Employee covenants and agrees that during the Restricted Period, Employee will not, for Employee or on behalf of any Person, directly or indirectly:

- (a) consult, attempt to hire, or encourage any present employee of the Company to end his/her employment with the Company to accept employment with any third party that competes, directly or indirectly, with the Company; or
- (b) consult, attempt to hire, or encourage any former employee of the Company who has been away from the Company for less than three months to accept employment with any third party that competes, directly or indirectly, with the Company.

ASSIGNMENT: This Agreement shall be binding upon and inure to the benefit of the Company, its successors and assigns, and shall be binding upon the Employee and Employee's executors, administrators, or representatives. The Company has permission to assign this Agreement at its discretion. Any assignment by Company of this Agreement shall not be considered a termination of this Agreement.

BUSINESS OPPORTUNITY: During the term of this Agreement, if Employee becomes aware of any project, investment, venture, business or other opportunity (any of the preceding, collectively referred to as an "Opportunity") that is similar to, competitive with, related to, or in the same field as Company, or any project, investment, venture, or business of Company, then Employee shall so notify Company immediately of such Opportunity and shall use Employee's good-faith efforts to cause Company to have the opportunity to explore, invest in, participate in, or otherwise become affiliated with such Opportunity.

GENERAL PROVISIONS: The parties hereto recognize that irreparable damage will result to the Company in the event of the breach of any of the covenants and assurances made by the Employee in this Agreement. The parties therefore agree that the Company shall be entitled, in addition to any other remedies or damages available to it under the South Carolina Trade Secrets Act or other statutory or common law, to obtain injunctive relief without bond in order to restrain the violation of such covenants by Employee. In the event that the Company prevails, in whole or in part, in any such action, Employee shall be liable to the Company for all of its costs and expenses, including, without limitation, reasonable attorney fees and expert witness fees.



Non-Disclosure and Non-Solicitation Agreement

This Agreement may be enforced in a court of competent jurisdiction in Greenville County, South Carolina, and Employee agrees to submit to jurisdiction in Greenville County, South Carolina whether or not Employee is then residing in South Carolina. Employee submits to such jurisdiction and waives any defenses relative to the jurisdiction or venue of South Carolina courts, except that the Company, in its sole discretion, may institute a proceeding in the location of Employee's residence or where Employee is working to remedy a violation of this Agreement.

If any Court should construe any provision, or any clause or portion of these provisions, of this Agreement to be too broad to prevent enforcement to its fullest extent, then such restrictions shall be enforced to the maximum extent that the Court finds reasonable and enforceable. In the event that any of these provisions or any clause or portion of these provisions shall be held to be invalid or unenforceable, the remaining provisions, or any clause or portion of these provisions, hereof shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable provisions, or clauses or portions of these provisions, had not been included therein. The parties in no way intend to include a provision, or any clause or portion of these provisions, that contravenes public policy. Therefore, if any provision, or any clause or portion of these provisions, of this Agreement is unlawful, against public policy, or otherwise declared void or unenforceable, such provision, or clause or portion of these provisions, shall be deemed excluded from this Agreement, which shall in all other respects remain in effect.

REAFFIRMATION OF AT-WILL EMPLOYMENT/SURVIVAL: This Agreement does not constitute or create a contract of employment for a fixed term between Employee and the Company. Employee understands that as an employee-at-will, Employee is completely free to leave the Company at any time Employee chooses and the Company would have the same right to end the employment relationship at any time without prior notice and with or without cause. Employee acknowledges that the obligations of this Agreement survive the separation of employment (no matter how it is achieved) with the Company.

Jol
ENCORE TECHNOLOGY GROUP, LLC

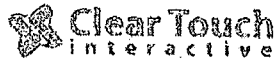
KEVIN TRASK
EMPLOYEE

By: Tammy Summerell
[name]

Signed: K Trask
[name]

Its: HR
[title]

EXHIBIT B



RESELLER AGREEMENT

This Reseller Agreement (the "Agreement") is effective April 24, 2013.

BETWEEN: Clear Touch Interactive (the "Company"), a company organized and existing under the laws of the state of Nevada, with its head office located at:

561 Keystone Avenue
Suite 821
Reno, NV 89503

AND: Encore Technology Group (the "Reseller"), a company organized and existing under the laws of the state of South Carolina, with its head office located at:

900 East Main Street
Suite T
Easley, SC 29640

1. APPOINTMENT

1.1 Appointment

Company appoints Reseller and Reseller accepts appointment as an exclusive reseller to market, sell, lease and install Company products ("Products") within the Territory stated in Exhibit A to consumers.

1.2 Products Covered

Company Products means the products agreed to between the parties from time to time with any exclusions, additions or discounts Company may make.

1.3 Sub-Resellers

Reseller shall not, without Company's prior written approval, appoint sub-resellers, resellers or agents ("Sub-resellers") to market, sell, or lease Company Products. Reseller shall be liable for the acts and omissions of any such Sub-resellers. Should Reseller resell Products to any Sub-reseller, and Products are further resold, the final end-user may not receive manufacture warranty or technical support.

1.4 Sales Outside Territory

Reseller shall in no way market, distribute, export, sell, lease or install Company Products outside the Territory without Company's prior written approval. Company will not ship on any Purchase Orders ("P.O.s") issued by Reseller outside the Territory.

Exhibit B

2. OBLIGATIONS OF RESELLER

2.1. Marketing and Product Support

Reseller shall use reasonable efforts to market and sell Company Products in the Territory and shall comply with the policies, programs, and requirements regarding marketing and product support as may be communicated by Company to Reseller from time to time; provided, however, that in order to avoid conflict among Company's distribution channels, Reseller shall not, without prior written authorization from Company, resell Company Products in a retail environment that includes any type of store, shop, or other similar physical premises into which customers or potential customers are invited for the purpose of purchasing or potentially purchasing any product from Reseller.

2.2. Advertising

Reseller shall adhere to the reseller advertising policies and programs as may be communicated by Company to Reseller from time to time.

2.3. Customer Support and Service Reseller Shall:

- a) Supply Company with such data as Company requests regarding Reseller's sales to customers for Company's own reporting purposes;
- b) Participate fully in Company campaigns to notify customers of any retrofit or recall of Company Products;
- c) Use only Company-approved spare parts for any repair, servicing and maintenance of Company Products it provides under warranty;
- d) Comply with laws and regulations applicable to "used" or returned merchandise and never refurbish, place in inventory, or resell as "new" any Company Products returned to Reseller for post-sale repair; and
- e) Instruct its customers on how to obtain replacement parts under warranty, including, when Reseller wants its customers to contact Company directly, the use of Company's Return Merchandise Authorization ("RMA") procedures.

2.4. Observance of Company Policies

Company will keep Reseller informed of Company's customer support policies and procedures, and Reseller agrees to follow such policies and procedures to resolve any customer support issues.

2.5. Reseller's Warehouse

All Products shipped to Reseller shall be maintained in Reseller's warehouse facility and shall be insured against any damage or loss.

2.6. Exclusive Marketing Arrangement

During the term of this Agreement, Company will be the exclusive provider of Integrated Interactive Displays ("IID") to Reseller. Reseller will not sell, offer for sale or solicit sales for products of any IID manufacturer other than Company. For the term of this Agreement, Company will be the sole supplier to Reseller.

3. OBLIGATIONS OF COMPANY

3.1. Supply of Company Products

Company shall endeavor to manufacture, assemble and ship Company Products to Reseller in a timely manner. Should shortages occur, Company may allocate its production as it deems appropriate, may delay or stop shipments, and may send partial shipments with prior notice.

3.2. Marketing Assistance

Company will provide marketing support services and training programs to Reseller on a case-by-case basis.

4. ORDERING AND DELIVERY OF COMPANY PRODUCTS

4.1. Purchasing

This Agreement with its terms and conditions, and those provided under the Company Consumer Products Limited Warranty (available upon request) applies to all purchase orders and other documents of purchase ("Orders") which Reseller may place with Company for the Products during the term of this Agreement.

4.2. Media for Orders

Reseller may order from Company by telephone, facsimile, mail or electronic mail. Acceptance by Company of the Order shall occur (a) when the Order is entered into Company's system, (b) when an Order number is provided to Reseller by facsimile or electronic mail, if requested by Reseller, or (c) when assembly of the Products commences, whichever occurs first.

4.3. Lead Time for Orders

The Company indicates that the associated lead time for orders is between 4 and 6 weeks from the time of receipt of order. Lead times may vary from time to time dependent upon product supply and availability from Third Party manufactures. Lead times are provided as guidance and do not provide an assumed guarantee of order availability.

4.4. Orders

- a) Reseller may deliver a P.O. to Company by facsimile or electronic mail provided a signed original is delivered to Company within 15 days of receipt of the P.O. by Company. Company shall accept all POs by (a) facsimile or electronic mail, with a signed original notice of acknowledgment.
- b) Each P.O. shall be deemed an offer by Reseller to purchase the Company Products listed therein and when accepted by Company shall constitute a contract in accordance with the terms and conditions of the P.O. and this Agreement. If a conflict arises between the two, this Agreement shall take precedence.
- c) P.O.s submitted by Reseller pursuant to this Agreement shall include the quantity and type of Product(s) ordered, Product descriptions, Product specifications, shipment and invoice information and shipping instructions (if allowed by Company), Reseller's order number, and the Agreement number.
- d) Company will endeavor to fill all orders from Reseller insofar as it is practicable and consistent with Company's production schedules to do so, provided that in the event of its failure to fill all or part of any order, Company shall not be to any extent liable or responsible therefor.

4.5. Changes to Orders

- a) No terms of any purchase orders (whether printed, stamped, typed, written, or sent by any electronic means), except those specifying the quantity and type of Product(s) ordered, shipment and invoice information and shipping instructions (if allowed by Company), shall be binding either on Company or Reseller if they contravene any term or condition of this Agreement, unless specifically accepted or approved in writing and signed by an appropriate senior manager or executive of Reseller and Company. A general or form acknowledgment of any such order or any communication with respect to such an order, or the making of deliveries with respect thereto, shall in no case be construed as an acceptance or approval of the type required by this paragraph.
- b) Changes to orders will only be accepted prior to the order entering Company's manufacturing queue. Reseller may initiate such changes or additions to previously accepted Orders by submitting a modification of the Order to Company with appropriate reference to the original Order. Upon Company's written acceptance of the modification or addition, Company shall process the Order in accordance with the pricing terms and conditions of this Agreement.

4.6. Products

- a) As an accommodation to Reseller and without Reseller's prior approval, Company may make Product substitutions when the Products ordered are unavailable, provided that the substituted Products are of equal or greater functionality than those contained on the original Order and that Company notifies Reseller of such substitution at the time of delivery.
- b) Company reserves the right to make changes and modifications in specifications, construction, or design of the Products, or any of them, at any time, and any Products so modified shall be accepted by Reseller as standard construction in fulfillment of existing orders. Company shall not be required to retrofit any Product previously delivered to Reseller with any modifications.
- c) Company reserves the right to discontinue any Products at any time.

4.7. Shipping

Reseller is responsible for payment of all shipping and handling fees for delivery of Products. All deliveries of Products are FOB Company manufacturing facilities unless Company expressly states otherwise in its acceptance of the purchase order. Title and risk of loss shall pass from Gateway to Reseller or Reseller customer at the point of delivery.

5. PRICES AND PAYMENTS

5.1. Reseller's Purchase Price

Prices for Company Products purchased hereunder shall be agreed to from time to time. Such prices do not include any taxes, fees, duties, shipping costs, insurance or other levies. Any such items (except taxes on Company's income) will be added to the purchase price. Reseller shall pay all taxes and government imposts arising from Reseller's activities as a Company Reseller.

5.2. Price Changes

Company may at any time change Company Product pricing or the Reseller's purchase price with 30 days written notice, but any P.O accepted by Company before a price change takes effect shall be invoiced at the previous price.

5.3. Invoice and Payment Terms

For the Purchases of Products the Company will invoice Reseller as of order shipment date, for orders in excess of \$50,000.00 a security deposit may be required with the acceptance of any order. Reseller shall pay for Company Products in United States Dollar's upon shipment to Reseller or customer.

For all purchases that are paid in full within 10 days of date of invoice a discount of 1% of the total purchase price will be applied; for all Purchase Orders that are received with at minimum a 50% security deposit, an additional discount of 1% of purchase price will be applied. These discounts can be combined when both criteria are met for any single order.

6. RETURNED MERCHANDISE

Company will accept returns for defective Products in accordance with the applicable Company Consumer Limited Warranties which are available upon request.

7. TRADEMARKS, TRADE NAMES

Reseller acknowledges that Company and/or its parent or affiliates are the sole and exclusive owners of the name "Company" and any abbreviations or variations thereof, and of any and all of Company's trademarks and trade names, service marks, trade logos and trade dress (collectively "Trademarks") as Company may unilaterally amend periodically (registered or not). Reseller agrees not to register or use any mark(s) that are similar enough to be construed as Company Trademarks. Reseller acquires no rights to the Trademarks, and Reseller hereby assigns and transfers to Company all rights that it may acquire in and to the Trademarks, whether by operation of law or otherwise. Any approval for Reseller's use of any Company Trademark shall be made pursuant to a Company Trademark License Agreement executed separately by and between the Parties hereto.

8. SOFTWARE

8.1. Software as Component

Company Products include as components certain software programs (collectively "Programs") proprietary to Company or licensed by it from third-party vendors, which may be periodically updated and substituted. Company has all rights necessary for it to market and distribute the Programs as Company Product components, as well as the right and authority to conclude this Agreement and to grant rights hereunder regarding the Programs. Title to the Programs remains with the Company and/or their licensors, and Reseller has no rights to transfer them except as stated below.

8.2. Distribution Rights

Subject to the use license in Section 8.3 below, Company grants to Reseller during the Term a non-transferable right to transfer to end users within the Territory the copies of the Programs it obtains under this Agreement only as components of Company Products, subject to the following terms & conditions:

- a) Reseller shall sell or lease Company Products with the Program packages as integral parts, and shall abide by all terms and conditions imposed by the Programs' licensors. It shall not open the Program packages or end user license packets or separate such Program packages (including documentation and end user licenses) from the Company Products. Reseller shall not copy or reproduce any Program (except as stated herein or in any Program's pre-packaged license agreement), or modify, reverse engineer, disassemble, or de-compile any Program in any way.
- b) Reseller shall promptly notify Company of any unauthorized use or copying of any Program, and will take at Reseller's expense (but at Company's option and under Company's control and direction) legal action to prevent or stop any unauthorized use or copying of the Programs by anyone that has obtained the Programs due, in substantial part, to Reseller's fault.
- c) Termination of this Agreement will automatically and immediately terminate Reseller's rights under this Section.

8.3. Use License

Reseller shall pass on to end users of each Company Product a license to use the Programs in the form of a "break-the-seal" end user license agreement contained in the Programs' packages.

8.4. Compliance with Import Regulations

Reseller shall comply with all United States export control regulations, licensing or other requirements applicable to the Programs.

8.5. Disclaimer of Warranties and Limitation of Liability

EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS AGREEMENT OR IN ANY PRE-PACKAGED LICENSE AGREEMENT FOR A COMPANY PRODUCT COMPONENT, COMPANY (ON BEHALF OF ITSELF AND ITS LICENSORS) DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PROGRAMS, INCLUDING ALL IMPLIED CONDITIONS OR WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO DEFECTS IN DISKETTES, COMPACT DISKS OR OTHER PHYSICAL MEDIA AND DOCUMENTATION, OPERATION OF THE PROGRAMS AND ANY APPLICATION OR USE OF THE PROGRAMS. IN NO WAY SHALL COMPANY (OR ITS LICENSORS) BE LIABLE FOR ANY LOSS OF PROFIT OR ANY OTHER COMMERCIAL DAMAGE.

INCLUDING BUT NOT LIMITED TO SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES.

9. TERM

This Agreement's term ("Term") shall begin on the Effective Date and continue for 36 months, and shall be automatically renewed for 2 additional 12 month terms up to a maximum term of 5 years, provided that either party hereto may terminate this Agreement at any time with 30 days' advance written notice, and further provided that this Agreement shall terminate automatically if Reseller makes no purchases from Company hereunder for a period of 90 calendar days, such termination to be effective as of the next calendar day after such period elapses.

10. SECTION X: TERMINATION

10.1. Termination Without Cause

Either party can terminate this Agreement without cause by giving 90 days' written notice to the other.

10.2. Termination for Cause

This Agreement may be terminated for cause upon written notice:

- a) By either party upon 30 days' written notice if the other commits a material breach of the Agreement and fails to cure it within the 10 days;
- b) By Company immediately if Reseller files for or has instituted against it any proceedings as to its bankruptcy, insolvency, reorganization, liquidation, receivership, or dissolution or there is an assignment for the benefit of creditors;
- c) By Company upon 30 days' written notice (i) if Reseller becomes ineligible to receive approval for any license or export documents necessary to buy or resell Company Products; (ii) if Reseller tries to register this Agreement with any government conferring any exclusivity upon Reseller; (iii) if Reseller assigns this Agreement without Company's prior written consent; (iv) upon substantial change in Reseller's ownership; or (v) if any change or enactment of law or regulation after the date of this Agreement interferes, in Company's opinion, with the parties' rights or obligations stated herein.

10.3. EFFECT OF TERMINATION

- a) Upon termination of this Agreement, Company may terminate any or all unfilled orders
- b) Upon termination, Reseller shall immediately stop all marketing, promotion, advertising or reference to Company Products and shall have no further rights to use Company's marketing, promotion or advertising materials or other resources.
- c) Termination will discharge and release Company from all obligations and liability under this Agreement, except as it expressly accepts for unfulfilled orders. The sole fact of this Agreement's termination shall not make either party liable to the other for any compensation, reimbursement, losses or damages whatsoever, though Reseller shall remain obligated to pay all outstanding balances on its Company Product purchases.

11. CONFIDENTIALITY

11.1. Confidential Information

Prior to and during the Term hereof, Company may convey to Reseller proprietary and confidential information about Company Products, services, strategy and analysis. For the Term of this Agreement (including renewals) and for 2 years thereafter, Reseller shall not disclose to any third party any such information marked CONFIDENTIAL, PROPRIETARY, STRICTLY PRIVATE, or INTERNAL DATA, or which, though not so marked, could reasonably be construed as confidential or sensitive, such as the terms of this Agreement (all collectively "Confidential Information"), nor shall it use any such Confidential Information for its own benefit, except as provided herein. Any reliance on such Confidential Information is at Reseller's own risk. Nothing in this Section grants or implies any rights by license, estoppel, or otherwise. Confidential Information does not include information (i) in the public domain at the time of disclosure or which enters the public domain after such disclosure through no fault of Reseller, (ii) generally disclosed to third parties by Company without restriction, (iii) communicated to Reseller by a third party with the unrestricted right to do so, or (iv) approved for release by Company in writing.

11.2. Presentations and Planning

Company's oral and visual presentations describing Company Products and plans, business and product plans, and any inspections thereof by Reseller or its personnel shall all be deemed Confidential Information under this Agreement whether so marked or not.

12. EXPORT CONTROLS

12.1 Compliance with Laws

Reseller shall comply with all United States export laws and regulations applicable to Company Products, and shall obtain any licenses required for export.

12.2 Products of United States Origin Technology

Reseller may sell Company Products only to end-users within the Territory, and shall not export any Company Products, including Programs, or any direct products thereof without Company's advance written approval and, if required, United States Government permission. This requirement shall survive termination or expiration of this Agreement. Reseller shall not do business with any person or firm identified by the United States government as being denied the right to receive any United States product.

13. LIMITATION OF LIABILITY AND REMEDIES; INDEMNITY

13.1. Limitation of Liability; Sole Remedy

Any liability of Company under this Agreement is expressly limited to the price paid by Reseller for the Company Products involved. Reseller's sole remedy against Company in any dispute concerning this Agreement shall be to seek recovery of that amount, upon payment of which Company shall be released from all further obligations and liability to Reseller.

13.2. Indemnity

- a) Except as otherwise stated herein, Reseller shall indemnify and hold harmless Company against any and all claims, legal actions, losses, damages, liabilities, costs and expenses asserted against, imposed upon or incurred by Company arising out of or relating to (i) any misrepresentation or breach of warranty or covenant by Reseller.

under this Agreement; (ii) any actual or alleged act or omission of Reseller in the course of its performance hereunder; (iii) death or injury to any person or damage to any property resulting from any product or part (a) not supplied by Company, (b) supplied by Company but changed, modified, adapted or refitted without Company's written authorization, (c) not in Company's standard inventory but purchased by Company at Reseller's direction, or (d) manufactured to Reseller's design, as well as any claim of infringement arising from the use of any Product with any other product as a combination not furnished by Company.

- b) Company warrants and represents that the Products shall be delivered with good title free of any rightful third party claim of infringement of any patent, copyright, trademark, trade secret or other intellectual property right recognized or registered within the United States and its possessions. Company shall defend Reseller from all claims, suits, damages, costs, expenses or liabilities actually incurred by Reseller as a result of any such claim. If a Product or part thereof is held to constitute an infringement and its intended use is enjoined, Company shall at its option procure for Reseller the right to continue using the Product or part, replace it with a non-infringing Product or part, modify it to become non-infringing, or remove it and refund its purchase price (less depreciation and amortization). This Section does not apply to

- i) any product or part not supplied by Company;
- ii) any Product or part supplied by Company which is changed, modified, adapted or refitted without Company's express written approval;
- iii) any Product or part not in Company's standard inventory but purchased by it at Reseller's direction;
- iv) any Product or part manufactured to Reseller's design or
- v) any claim of infringement arising from the use of any Product in combination with any other product not furnished by Company. THIS INDEMNITY IS COMPANY'S SOLE LIABILITY AND RESELLER'S SOLE REMEDY FOR INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT.

14. WARRANTIES AND REPRESENTATIONS

The Products are covered by the limited warranties in effect at the time the Products are delivered, on standard terms and conditions supplied with each product shipped and which are incorporated herein by this reference. Should Reseller resell Products to any entity other than an end-user, and Products are further resold, the final end-user may not receive any Company warranty or technical support.

15. BUSINESS STANDARDS; PRODUCT SERVICE PROVISION

15.1. Conflicts of Interest

Reseller confirms that it has revealed all information pertaining to possible conflicts of interest created by sale of competing products or services or arising from other positions or contracts held by Reseller and represents that no conflict of interest exists. Reseller shall disclose to Company any future circumstances which could create possible conflicts of interest as soon as they become known by Reseller.

15.2. Ethical Standards

Directors, officers, or employees of Reseller shall not, directly or indirectly, offer, promise or pay any bribes or other improper payments for the purposes of promoting Company Product sales to any individual, corporation, government official or agency, or other entity. No gift, benefit or contribution in any way related to Company or the sale of Company Products shall be made to political or public officials or candidates for public office or to political organizations, regardless of whether such contributions are permitted by local laws. Reseller shall generally abide by all Company policies and standards regarding conflicts of interest and ethics as may be adopted by Company or otherwise communicated to Reseller from time to time, such policies and standards being incorporated herein by this reference.

15.3. Authorized Service Provider Program

In the event Reseller is approved by Company as an Authorized Service Provider for Company Products, Reseller shall at all times during the period of such designation adhere to the standard terms, conditions, rules and policies of the Company Authorized Service Provider Program as may be issued by Company from time to time, and shall be solely responsible for all its acts and omissions in the course of acting as an Authorized Service Provider for Company Products.

16. FORCE MAJEURE

Company shall not be liable for any failure to perform due to causes beyond its control, including but not limited to fire, flood, earthquake, explosion, accident, acts of public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine, labor disputes or shortages, transportation embargoes, failures or delays, inability to secure raw materials or machinery, acts of God or government (including denials of or onerous restrictions on export licenses), any such event of force majeure affecting Company's third-party suppliers, or judicial action. Similar causes shall excuse Reseller for failure to take Company Products ordered by Reseller other than those already in transit or specially fabricated or not readily saleable to other buyers.

17. GENERAL PROVISIONS**17.1. Parties' Relationship**

Company's and Reseller's relationship is solely that of independent seller and buyer with the right to resell. Reseller is authorized to resell Company Products (and, if applicable, to act as an Authorized Service Provider) in its own name but not to receive any commissions from Company. Reseller has no express or implied authority to assume or create any obligation on Company's behalf, and shall disclaim any such authority whenever necessary to avoid confusion. In no case shall Reseller or any of its sub-resellers, if any, be deemed Company's agents or representatives, nor shall Reseller or any of its Sub-resellers, if any, have the right to conclude any contract or commitment in Company's name, or to make any representation, guarantee or warranty on behalf of Company or any of its licensors to any third party, including end-users.

17.2. Governing Law; Venue

This Agreement and any controversy arising out of or in relation to it, shall be governed by the law of the Nevada (conflicts of laws provisions excepted), and, subject to Section 17.6 below, the parties hereby submit to the jurisdiction of the state and federal courts of the Nevada, which shall have exclusive jurisdiction over all controversies in connection herewith. Reseller hereby waives any right to assert any rights or defenses within any other jurisdiction or to require that litigation regarding this Agreement take place elsewhere.

17.3. Severability

If any provision of this Agreement shall be declared void, invalid, or illegal, the validity or legality of all other provisions of the Agreement shall not be affected thereby.

17.4. Notices

Except as otherwise provided in this Agreement, all notices, demands and other communications hereunder shall be in writing and shall be delivered personally or sent by facsimile, other electronic means or nationally recognized overnight courier service addressed to the party to whom such notice or other communication is to be given or made at such party's address as set forth below, or to such other address as such party may designate in writing to the other party from time to time in accordance with the provisions hereof, and shall be deemed given when personally delivered, when sent electronically or 3 business day after being sent by overnight courier.

To Reseller:

Encore Technology Group
900 East Main Street
Suite T
Easley, SC 29640

Attention: Supplier Administration
Facsimile: (864) 422-0647

To Company:

Clear Touch Interactive
561 Keystone Avenue
Suite 821
Reno, NV 89503

Attention: Reseller Administration
Facsimile: (775) 473-9108

EITHER PARTY MAY CHANGE THE ADDRESS TO WHICH NOTICE MUST BE SENT BY GIVING WRITTEN NOTICE OF SUCH CHANGE TO THE OTHER PARTY IN THE MANNER PROVIDED HEREIN.

17.5. Assignability

Reseller shall not assign or transfer this Agreement without Company's prior written consent, upon which this Agreement shall bind and inure to the benefit of the assigns. Company may assign this Agreement to its affiliate upon written notice to Reseller.

17.6. Dispute Resolution

All material disputes between the parties arising from this Agreement shall be resolved by the following procedures.

- a) A letter shall be sent from the party raising the dispute to the other party in accordance with the notice provisions of Section 17.4, identifying with particularity the nature of the dispute, the proposed resolution of the dispute ("Proposed Resolution"), and the executives from the party raising the dispute who are authorized to resolve the dispute ("Demand Letter"). The Demand Letter shall include the facts supporting such party's position on the dispute and include copies of any written materials

- b) The party receiving the Demand Letter shall have 3 Business Days to send a written response ("Response Letter"), which shall be sent in accordance with Section 17.4. The Response Letter must accept the Proposed Resolution in the Demand Letter or offer some other resolution.
 - i) If the Response Letter accepts the proposed resolution in the Demand Letter or no Response Letter has been received within 3 Business Days, then the Proposed Resolution shall be promptly implemented by the parties and shall, where applicable, be considered an amendment of this Agreement.
 - ii) If the Response Letter offers some other resolution, it shall include all facts supporting the responding party's position on the dispute, include copies of any written materials, and identify the executives of the responding party who are authorized to resolve the dispute. The executives identified in the Demand Letter and Response Letter shall meet one or more times and exchange such additional written materials and proposals as needed to reach a resolution of the matter or for one of them to declare an impasse.
- c) The party declaring an impasse shall obtain a list of 3 mediators from the United States Judicial Arbitration and Mediation Service ("JAMS") acceptable to that party and send such list to the other party. Within 10 Business Days, the other party shall select one of the 3 mediators. If the other party fails to select an arbitrator within 10 Business Days, then the party declaring the impasse shall ask JAMS to select a mediator. The Mediation shall be held in the State of Nevada.
- d) The mediator shall immediately arrange a conference call with the mediator and the executives identified in the Demand Letter and Response Letter. In the initial conference, the mediator shall set a place and a time where the executives and mediator will resolve the dispute ("Mediation"). The Mediation must take place within 10 Business Days of the initial conference call. The parties shall each pay one half of the costs of the mediator unless directed otherwise by the mediator.
- e) At least 24 hours prior to the Mediation, each party shall submit to the mediator the Demand Letter and Response Letter, any additional written materials exchanged prior to the declaration of an impasse, and the party's final proposal to resolve the dispute ("Final Proposal"). No other written materials may be submitted to the mediator or used in the Mediation.
- f) The Mediation shall be attended only by the mediator and the executives identified in the Demand Letter and Response Letter. The Mediation shall take no more than 3 days. Each side shall have counsel available by telephone to draft any documents necessary to implement any resolution of the Mediation. If at the end of the Mediation the parties have not reached a mutual resolution, the mediator shall within 24 hours adopt one of the party's Final Proposals or set forth in writing a resolution of the matter that is between the parties' Final Proposals ("Mediator's Resolution").
- g) The Mediator's Resolution shall be immediately implemented by the parties. The Mediator's Resolution shall be binding upon the parties and not subject to any further review except in the following limited circumstances:
- h) The Mediator's Resolution requires either party to pay the other or incur expenses in excess of \$10,000.00

- i) The difference between the aggregate amount demanded in a party's Final Proposal exceeds \$10,000.00.
- j) The Mediator's Resolution is less favorable to a party than the other party's Final Proposal.
- k) Any party dissatisfied with the Mediator's Resolution meeting the criteria in Section 17.6 above must initiate a proceeding within 10 days of receipt of the Mediator's Resolution ("Proceeding"). The Proceeding shall make a de novo review of the parties' dispute, except the Mediator's Resolution shall be admissible. The parties shall each pay one half of the costs of the retired judge unless directed otherwise by the retired judge.

17.7. No Waiver

Any failure of either party to enforce at any time, or for any period of time, any provision of this Agreement, shall not constitute a waiver of such provision or in any way affect the validity of this Agreement.

17.8. Complete Agreement

This Agreement with its Exhibits contains the parties' entire Agreement and supersedes all previous communications, representations or agreements, oral or written, regarding its subject matter. No addition to or modification hereof shall bind either party unless reduced to writing and duly executed by the parties as this Agreement was, subject, however, to revisions of Exhibits A, B and C, which Company may revise at any time pursuant to Section 17.9.

17.9. Exhibits

All Exhibits attached hereto are incorporated herein by this reference, and Company has the right to amend in writing any of those Exhibits in its sole discretion.

IN WITNESS WHEREOF, this Agreement has been executed by the parties' authorized representatives on the date first written above.

COMPANY

RESELLER

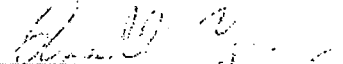
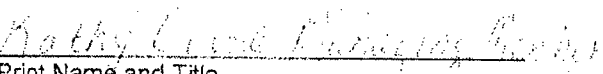
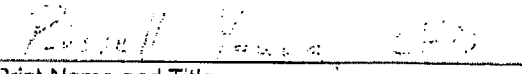

Authorized Signature
Authorized Signature
Print Name and Title
Print Name and Title

EXHIBIT A
COMPANY'S RESELLER TERRITORY LIST

Reseller's Territory/ies shall be defined as the localities identified in this exhibit. Prior to any termination of this agreement, Company will send written notice to the Reseller.

Localities identified herein:

The State of Alabama
The State of Georgia
The State of Florida
The State of North Carolina
The State of South Carolina
The State of Tennessee
The State of Virginia

EXHIBIT B
COMPANY'S RESELLER PRICE LIST

Company's Reseller Price List applies to all product purchases, and will be updated from time to time.

Products descriptions identified herein:

Integrated Interactive Displays

Products discounts identified herein:

Quantity 1 to 2	20.0% discount to MSRP
Quantity 3 to 24	25.0% discount to MSRP
Quantity 25 to 49	30.0% discount to MSRP
Quantity 50 and above	32.5% discount to MSRP

Products descriptions identified herein:

Integrated Interactive Displays Warranties

Products discounts identified herein:

Quantity Any	10.0% discount to MSRP

EXHIBIT C
COMPANY PURCHASE ORDER FORM

Reseller's standard purchase order will be sufficient to constitute an order, but no terms and conditions stated on Reseller's purchase order will have any effect on the terms of this Agreement and are superseded in their entirety by this Agreement.

EXHIBIT D
INITIAL PURCHASE PRODUCT LIST

The products and prices for demonstration products purchased by Reseller for an Initial Purchase are:

Item Identification	Item Description	MSRP	Price
CTI-4070L-06	Sharp 70" 70LE65OU Display with 6 points of touch	\$6,499.00	\$5,849.10

EXHIBIT C

Date This Agreement Received by Employee: April 25, 2014 (the "Offer Date")

SEVERANCE AGREEMENT AND GENERAL RELEASE

This Severance Agreement and General Release ("Agreement") is made by and between Encore Technology Group, LLC ("Company," which term includes all affiliated companies and all Released Parties as defined below, where appropriate) and Keone Trask ("Employee").

WHEREAS, Employee and Company mutually agree that Employee's employment with the Company will terminate, effective April 25, 2014 (the "Effective Date");

WHEREAS, the Company and Employee do not anticipate that there will be any disputes between them or legal claims arising out of Employee's separation from employment, but nevertheless, desire to ensure a completely amicable parting and to settle fully and finally any and all differences or claims that might arise out of Employee's employment;

THE PARTIES HEREBY AGREE, in consideration of the foregoing and the following terms, conditions and obligations, as follows:

1. **Employment Ended.** The parties agree that Employee's employment with the Company (and any and all of its affiliates) will end on the Effective Date. Employee shall thereafter no longer be employed by Company in any capacity, and Employee shall not represent to any third party that Employee retains any employment or other relationship with Company.

2. **Severance Benefits.**

In exchange for the general release of claims and other good and valuable consideration and subject to the performance by Employee of the terms and provisions of this Agreement, the Company agrees to pay Employee \$6,730.77 (2 weeks regular base salary as of the Effective Date) in a lump sum ("Severance Pay"), less all normal withholdings for federal and state income taxes and payroll taxes. The Severance Pay will be transmitted to Employee at the time such payments would otherwise have been made to Employee and paid to other employees, consistent with the Company's normal payroll practices, at the first normal pay period occurring immediately (i) after Company receives a fully-executed copy of this Agreement in unmodified form without deletions executed by Employee, and (ii) after the expiration of the seven-day revocation period as described below. Employee acknowledges that s/he is not entitled to receive the Severance Pay unless s/he executes and does not revoke this Agreement.

- A. The Company also agrees to pay Employee \$13,124.98 for Employee's accrued but unused paid time off as of the Effective Date.
- B. Employee recognizes and agrees that Employee is solely responsible for any federal, state, or other tax obligations, including but not limited to all reporting and payment.

Exhibit C

obligations that could arise as a consequence of Employee's receipt of any payments or benefits pursuant to this Agreement.

- C. Employee will be advised of her/his COBRA continuation rights through a separate communication sent by *The Employers Association*, the Company's COBRA administrator. Employee should notify Tammy Summerell, Director of Human Resources, at 864-770-2758 [phone] if s/he does not get this notice. If Employee elects COBRA continuation coverage, the making of timely premium payments is solely her/his obligation.

3. **Cooperation.** Employee agrees to cooperate with all reasonable requests from the Company or other delegated requests regarding the transition of Employee's position and/or for information regarding Employee's position with the Company during the Severance Period. The Severance Pay set forth in this Agreement is contingent and conditioned upon Employee's full cooperation and compliance with these requests.

4. **General Release of Claims.** Employee hereby releases and forever discharges the Company, its subsidiaries, business units, affiliates, and parent companies, past and present, its predecessors and successors and its respective officers, directors, employees, agents, legal counsel, successors and assigns, past and present (hereinafter referred to collectively as the "Released Parties") from any and all known and unknown claims of action that Employee may have against the Released Parties arising from or in connection with: (a) the terms and conditions of her/his employment with the Company; (b) the termination of her/his employment from the Company; and (c) any conduct, actions or omissions, known or unknown, by the Released Parties occurring on or before the date Employee executes this Agreement. This release, and the term "claim" or "claims" as used in this Agreement, includes all benefits, grievances, proceedings, investigations, hearings, charges, complaints, claims, demands, actions, causes of action, and suits of whatever nature, whether known or unknown, fixed, absolute or contingent, matured or unmatured, asserted or unasserted, however arising, and whether legal, equitable, or administrative. The released claims include Employee's attorneys' fees, court costs, wages, back pay, front pay, severance pay, compensatory damages, punitive damages, general damages, special damages, penalties, benefits of any sort, liquidated damages, costs and disbursements, expert fees, injunctive relief, equitable relief, declaratory relief, interest, reinstatement, future employment, and any other legally recoverable category of damages or relief that Employee has ever had, or now has, or may claim to have, against the Company. It is expressly intended, understood and agreed that the claims released by Employee shall include, by way of example and without limitation, all claims arising under federal, state, or local statute, ordinance, common law, regulation, equity or other sources, whether known or unknown, based upon:

- A. Actual or alleged defamation, invasion of privacy, injury to credit, personal inconvenience, damage to Employee's personal reputation, outrage, distress, humiliation, loss of standing and prestige, personal injury, bodily injury, tort, loss of consortium, intentional or negligent infliction of emotional distress, abuse of process, retaliation, negligence, fraud, extortion, or other common law causes of action or other compensation for bodily injury;

- B. Failure to provide benefits or pay wages or commissions, including actual or alleged violations of the South Carolina Human Affairs Law, the South Carolina Payment of Wages Act, common law and any and all other applicable state, county or local codes, statutes, ordinances or regulations;
- C. Actual or alleged violations of discrimination, including but not limited to any and all claims of age, disability, race, color, sex, national origin, ancestry, religion, genetic information, or other discrimination, retaliation, or harassment;
- D. Actual or alleged violations of the federal Age Discrimination in Employment Act, as amended, the Civil Rights Acts of 1866, 1871, and 1964, Section 1981 of Title 42 of the U.S. Code, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, all federal and state executive orders including Executive Order 11246, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Equal Pay Act, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Family and Medical Leave Act, the Fair Labor Standards Act, the Genetic Information Nondiscrimination Act of 2008, the Worker Adjustment and Retraining Notification Act, the Pregnancy Discrimination Act, state and local wage-hour laws and regulations, and the federal Employee Retirement Income Security Act, including but not limited to claims under Company-sponsored severance and termination pay plans, if any;
- E. Actual or alleged violations of any other federal or state codes, laws, ordinances, regulations or case law which prohibit employment discrimination, retaliatory termination of employment, wrongful discharge, and employment termination in violation of public policy;
- F. Actual or alleged breach of express and implied contract, breach of contract accompanied by a fraudulent act, breach of implied covenant of good faith and fair dealing, interference with contract, promissory estoppel, and claims under any employment agreement, handbook or policy; and
- G. Actual or alleged violations of the National Labor Relations Act and the Labor Management Relations Act.

Employee agrees and understands that any claims s/he may have under the aforementioned statutes, or any other federal, state or local law ordinance, rule or regulation, are effectively waived and released by this Agreement. Employee represents that s/he knows of no claim that s/he has that has not been released by this paragraph. This release does not extend to claims which as a matter of law cannot be waived. Employee acknowledges and understands that this paragraph is intended to prevent her/him from making any claim against the Released Parties regarding any matter or incident relating to or arising from the employment relationship or its termination that occurs up to the date Employee executes this Agreement.

5. **Covenant Not to Sue.** Employee hereby covenants and agrees not to file, commence or initiate any suit, grievance, demand or cause of action against the Released Parties based upon or relating to any of the claims released and forever discharged pursuant to this Agreement. If Employee breaches this covenant not to sue, s/he hereby agrees to pay all of the reasonable costs and attorneys' fees actually incurred by the Released Parties in defending against such breaching conduct, together with such other and further damages as may result, directly or indirectly, from that breach. Moreover, Employee agrees that s/he will not persuade or instruct any person to file a suit, claim or complaint on her/his behalf based on a claim released in this Agreement with any state or federal court or administrative agency against the Released Parties. Employee expressly agrees not to commence or file any class action, including any class arbitration against Company, or serve in any representative capacity in any class action, including class arbitration, against or involving the Company. In accordance with 29 C.F.R. § 1625.23(b), nothing in this covenant not to sue is intended to preclude Employee from challenging the validity of this Agreement under the Older Workers Benefit Protection Act, 29 U.S.C. § 626(f), with respect to claims under the Age Discrimination in Employment Act, and the Company shall not be entitled to recover any consideration paid under this Agreement, damages or its attorneys' fees and costs resulting from such challenge.

6. **Non-Interference.** Nothing in this Agreement shall interfere with Employee's right to file a charge, cooperate or participate in an investigation or proceeding conducted by the Equal Employment Opportunity Commission, or other federal or state regulatory or law enforcement agency. However, the consideration provided to Employee in this Agreement shall be the sole relief provided to Employee for the claims that are released by her/him herein. To the maximum extent permitted by law, Employee agrees that Employee will not seek and waives any right to accept any relief or award from any charge or action against the Released Parties before any federal, state, or local administrative agency or federal, state or local court whether filed by Employee or on Employee's behalf with respect to any claim or right released in this Agreement.

7. **No Admission of Wrongdoing or Liability.** Nothing contained in this Agreement shall constitute, or be construed as or is intended to be, an admission or an acknowledgment by the Company or the Released Parties of any wrongdoing or liability, all such wrongdoing and liability being expressly denied.

8. **Confidentiality and Nondisclosure Provisions.** Employee agrees to maintain absolute confidentiality and secrecy concerning the terms of this Agreement and will not reveal or disseminate by publication in any manner whatsoever this document or any matters pertaining to it to any other person except as required by legal process. This confidentiality provision does not apply to communications necessary between Employee's immediate family members or legal and financial planners or tax preparers who are also bound by this confidentiality provision. Employee also agrees to honor and remains obligated under any confidentiality agreement(s) Employee entered into with the Company or the Released Parties, and nothing in this Agreement shall be deemed to limit, void, abrogate or lessen any otherwise existing obligation of the Employee to keep confidential any trade secret or confidential information belonging to the Company, including but not limited to any such contractual or common law confidentiality obligations Employee owes to the Company.

9. **Restrictive Covenants Obligations.** Nothing in this Agreement shall void, abrogate or lessen any otherwise existing obligation of Employee to the Company to keep confidential any trade secret or confidential information belonging to the Company or refrain from any competition with the Company or solicitation of the Company's employees or customers, including but not limited to the obligations contained in statutory or common law, or those contained in the Employee's Non-Disclosure and Non-Solicitation Agreement with the Company or referenced in other written agreements with the Company.

10. **Non-Disparagement.** Employee agrees not to make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, including but not limited to any statements made via social media, on websites or blogs, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of the Company, or any of the Released Parties. Employee acknowledges and agrees that this prohibition extends to statements, written or verbal, made to anyone, including but not limited to the news media, competitors, vendors, employees (past and present), customers and clients. Employee further understands and agrees that this paragraph is a material provision of this Agreement and that any breach of this paragraph shall be a material breach of this Agreement, and that the Company would be irreparably harmed by violation of this provision.

11. **Disclosure.** Employee acknowledges and warrants that s/he is not aware of, or that s/he has fully disclosed to the Company, any matters for which Employee was responsible or which came to Employee's attention as an employee of the Company that might give rise to, evidence, or support any claim of illegal conduct, regulatory violation, unlawful discrimination, or other cause of action against the Company.

12. **Company Property.**

- a. All records, files, lists, including computer generated lists, data, drawings, documents, equipment and similar items relating to the Company's business that Employee generated or received from the Company remain the Company's sole and exclusive property. Employee agrees to promptly return to the Company all property of the Company in her/his possession. Employee further represents that s/he has not copied or caused to be copied, printed out, or caused to be printed out any documents or other material originating with or belonging to the Company. Employee additionally represents that s/he will not retain in her/his possession any such documents or other materials. Employee agrees not to delete Company information or any other electronic information from Employee's computer or other devices belonging to the Company before or after the Effective Date. Employee further agrees not to access the Company's computer system or other electronic systems following the Effective Date.
- b. Any and all social media and other online accounts and profiles created or used by Employee on behalf of Company or otherwise for the purpose of promoting or marketing Company or similar business purposes, including such profiles and accounts featuring or displaying Company's name and trademarks ("Company Social Media Accounts") belong solely to Company. As of the Effective Date,

Employee agrees to cease accessing, using, updating or modifying any and all Company Social Media Accounts.

- c. Upon the separation of Employee's employment, Company will retain ownership and control of all Company Social Media Accounts created or used during the course of Employee's employment with the Company, including all related data and information. Prior to the Effective Date, Employee agrees to provide to Company the log-in information, including usernames and passwords, for each Company Social Media Account that Employee created, used or managed. Employee also agrees to assist Company, both prior to and after the Effective Date (as may be necessary), with the transition and maintenance of each Company Social Media Account created or used by Employee during the course her/his employment with the Company, including providing information that may be necessary to ensure that Company is able to access the Company Social Media Accounts.

13. **No Other Compensation Due.** Employee acknowledges and agrees that neither the Company nor any of the Released Parties owes Employee any wages, salary, stock options, bonus, accrued vacation or sick leave, benefits, paid time off, notice pay, severance pay, commissions, equity or ownership, incentive pay, salary, reimbursement, expenses, deferred compensation, or other compensation in any amount whatsoever other than as expressly agreed to herein. Employee agrees that to the extent that Employee is otherwise due any such amounts or compensation or expenses of any nature, the Company's obligation to pay these amounts is satisfied and subsumed in full by the Severance Pay. The parties shall each bear their own costs and their own attorneys' fees.

14. **No Other Consideration.** Employee affirms that the only consideration for the signing of this Agreement is that set forth in this Agreement and that no other promises or assurances of any kind have been made to Employee by the Company, the Company's attorneys, or any other person, as an inducement to sign this Agreement. The consideration for this Agreement tendered and herewith accepted is solely by way of settlement, compromise, and final disposition of disputed claims, and it is therefore specifically agreed that this Agreement shall forever be a final and complete bar to and full satisfaction of Employee's claims and suits for injuries or damages of whatsoever nature resulting from the aforesaid matters.

15. **No Assignment.** Employee hereby represents and warrants that Employee has not assigned, transferred, or conveyed to any individual or entity any alleged right, claim or cause of action of any kind which is included within the above releases. Employee further represents and warrants that Employee is aware of no lien or other encumbrance on Employee's rights, claims, and causes of action, and that Employee is entitled to receive from the Company payment of the full amount of the proceeds due to Employee under this Agreement.

16. **Breach of Agreement.** If either party brings a claim for breach of the terms of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and expenses incurred in prosecuting or defending such an action.

17. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Employee and the Company, and their officers, directors, employees, agents, legal counsel, heirs, successors and assigns.

18. **Warranties/Representations.** Employee hereby warrants and represents that:

- A. Throughout her/his employment, s/he was fully and appropriately compensated for all hours worked in accordance with the Fair Labor Standards Act and other applicable law, if any;
- B. Employee has been provided with all leave to which s/he is entitled under the Company policy and applicable law, including but not limited to the Family and Medical Leave Act;
- C. Employee has carefully read and fully understands the comprehensive terms and conditions of this Agreement and the releases set forth herein;
- D. Employee is executing this Agreement knowingly and voluntarily, without any duress, coercion or undue influence by the Company, its representatives, or any other person;
- E. Employee has consulted with legal counsel of her/his own choice before executing this Agreement;
- F. Employee has pending no claim, complaint, grievance or any document with any federal or state agency or any court seeking money damages or relief against the Company;
- G. The Severance Pay recited above constitutes good and valuable consideration;
- H. Employee is fully satisfied with the terms and conditions of this Agreement including, without limitation, the consideration paid to her/him by the Company;
- I. Employee has not made a claim for worker's compensation related to her/his employment with the Company, and that s/he is currently unaware of any injury or illness that would support such a claim; and
- J. Employee is not waiving rights or claims that may arise after the date this Agreement is executed.

19. **Entire Agreement; Severability of Terms.** Except as expressly otherwise provided herein, this Agreement contains the complete, entire understanding of the parties. In executing this Agreement, neither party relies on any term, condition, promise or representation other than those expressed in this Agreement. This Agreement supersedes all prior and contemporaneous oral and written agreements and discussions with respect to the subject matter hereof. This Agreement may be amended or modified only by an agreement in writing. If any provision of

this Agreement is determined to be invalid or otherwise unenforceable, then that invalidity or unenforceability shall not affect any other provision of this Agreement, which shall continue and remain in full force and effect. Except as stated herein, all other agreements, written or verbal, between the parties shall be void and of no effect.

20. **Compliance with the Older Workers Benefit Protection Act.** To comply with the Older Workers Benefit Protection Act of 1990, the Company has advised Employee of the legal requirements of that Act and this Agreement fully incorporates those legal requirements by reference and as follows:

- A. This Agreement is written in layman's terms, and Employee hereby represents to the Company that Employee understands and comprehends its terms;
- B. Employee is hereby advised to, and has had an opportunity to, consult with an attorney to review this Agreement prior to executing it;
- C. This Agreement specifically refers to rights and claims arising under the Age Discrimination in Employment Act;
- D. Employee does not waive any rights or claims that result from events occurring after the date this Agreement is executed by Employee;
- E. Employee hereby acknowledges that Employee is receiving consideration beyond anything of value to which Employee already is entitled;
- F. Employee has twenty-one days from Employee's receipt hereof (the Offer Date) to consider this proposed Agreement. Employee's failure to accept this proposed Agreement by close of business on the twenty-first day following Employee's receipt of this Agreement may be deemed rejection of its terms; and
- G. Employee has the right to revoke this Agreement for seven days following Employee's signing of this Agreement, and after the expiration of that seven days the executed Agreement shall be of full validity, force, and effect. To exercise this right, Employee is required to deliver written notice to the Company prior to expiration of this right to revoke, and such revocation is not valid or effective unless and until the written notice of same is received by the Company, at the address or facsimile number specified at the end of this Agreement, within the revocation period. Otherwise, such revocation shall be invalid and ineffective and this Agreement shall be deemed accepted.

21. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina, without regard to the choice of law principles. This Agreement may be enforced only in a court of competent jurisdiction in Greenville County, South Carolina, and the parties hereby consent and submit themselves to the exclusive venue and personal jurisdiction of said court with respect to all such disputes and controversies whether or not Employee is then residing in South Carolina.

22. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or other electronic means shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

(Execution Page follows.)

THIS IS A LEGALLY ENFORCEABLE AGREEMENT.

Dated: 5/6/14

Witness: Wendy S. Metcalfe

[Signature]
EMPLOYEE - [name]

Dated: 5/6/14

ENCORE TECHNOLOGY GROUP, LLC

By: Tommy Summrell

Name: Tommy Summrell

Title: HR

Address: 2000 Wade Hampton Blvd Greenville
SC 29615

Facsimile: _____

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Encore Technology Group, LLC,

Plaintiff,

v.

Keone Trask and Clear Touch Interactive,
Inc. f/k/a Clear Touch Interactive, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS

)

) THIRTEENTH JUDICIAL CIRCUIT

)

)

C.A. No.: 2015-CP-23-05757

)

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**DEFENDANT TRASK'S
ANSWER**

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The Defendant, Keone Trask (*hereinafter* "Trask" or "Defendant"), by and through his attorneys, hereby answers the Complaint of Plaintiff, Encore Technology Group, LLC (*hereinafter* "Encore" or "Plaintiff"), as follows:

FOR A FIRST DEFENSE

1. Each and every allegation contained in Plaintiff's Complaint not *hereinafter* admitted, qualified, or explained, is hereby denied and strict proof demanded thereof.
2. Trask admits the allegations of Paragraphs 1 and 2.
3. Trask admits the allegations contained in Paragraph 3.
4. Trask admits the allegations contained in Paragraph 4.
5. Trask admits the allegations contained in Paragraph 5.
6. Trask admits the allegations contained in Paragraph 6.
7. Trask admits the allegations contained in Paragraph 7.
8. Trask admits the allegations of Paragraph 8 to the extent they allege as an employee of Encore he was privy and had access to Encore related data and information,

including some or all of the items listed in Paragraph 8. Trask denies the remaining allegations of Paragraph 8 as stated

9. Trask denies the allegations of Paragraph 9 as stated.

10. Trask admits the allegations of Paragraph 10 to the extent they allege that he formed Clear Touch Interactive, LLC on or about August 8, 2012 prior to the formation and incorporation of Encore Technology Group, LLC on or about September 27, 2012. Further responding, Trask admits that a non-existent entity could not have known of the formation of another company before the former's existence. Trask denies the remaining allegations of Paragraph 10 as stated.

11. Trask denies the allegations of Paragraph 11 as stated.

12. Trask admits the allegations of Paragraph 12 to the extent they allege on or about April 24, 2012 he presented Clear Touch, along with other existing companies/product lines to Encore to fulfill a void in Plaintiff's then-existing product line and that Encore chose/selected Clear Touch out of its multiple options and entered into the referenced Reseller Agreement. Trask further admits the allegations of Paragraph 12 which are consistent with the terms and conditions of the Reseller Agreement which speak for themselves and denies any allegations inconsistent therewith. Trask further denies the allegation of Paragraph 12 alleging he and Clear Touch would "pocket" profits made under the Reseller Agreement.

13. Trask admits the allegations of Paragraph 13 to the extent they allege that at the time he presented Clear Touch to Encore he did not disclose his interest in Clear Touch to the Plaintiff. Trask denies the remaining allegations of Paragraph 13 as stated.

14. Trask admits the allegations of Paragraph 14 to the extent they allege that the Managing Member of Clear Touch, LLC signed the Reseller Agreement. Trask denies the remaining allegations of Paragraph 14 as stated.

15. Trask admits the allegations of Paragraph 15 to the extent they allege that during his employment with Encore some of his actions benefited Clear Touch's interests, however denies that any such actions were to the detriment of Encore. Trask denies the remaining allegations of Paragraph 15.

16. Trask denies the allegations of Paragraph 16 as stated.

17. Trask admits the allegations of Paragraph 17 to the extent they allege he entered the referenced Severance Agreement and General Release on or about May 6, 2014. Trask further admits any allegations consistent with the provisions of that document which speak for themselves, and denies any allegations inconsistent therewith.

18. Trask denies the allegations of Paragraph 18 as stated.

19. Trask denies the allegations of Paragraph 19 as stated.

20. Trask denies the allegations of Paragraph 20.

21. Trask admits the allegations of Paragraph 21 to the extent they allege he utilized Encore resources as a business partner for the mutual benefit of the Parties. Trask denies the remaining allegations of Paragraph 21 as stated.

22. Trask denies the allegations of Paragraph 22 as stated.

23. Trask denies the allegations of Paragraph 23.

24. Trask admits the allegations of Paragraph 24 to the extent they allege that Clear Touch worked with Encore to service customers to the Parties' mutual benefit during and after his employment with Encore. Trask denies the remaining allegations of Paragraph 24 as stated.

25. Trask admits the allegations of Paragraph 25.

26. Trask denies the allegations of Paragraph 26.

27. Trask denies the allegations of Paragraph 27 and all its subparts.

28. Trask denies the allegations of Paragraph 28.

29. Trask denies the allegations of Paragraph 29.

30. Trask denies the allegations of Paragraph 30.

31. Paragraph 31 is an incorporation paragraph to which no response is necessary.

However, to the extent that any allegations contained in such paragraph require an answer, the same is hereby denied.

32. The allegations of Paragraph 32 consists of contain legal conclusions to which no affirmative response is required. To the extent a response is required Trask denies the allegations of Paragraph 32 as stated.

33. Trask denies the allegations of Paragraph 33.

34. Trask denies the allegations of Paragraph 34.

35. Trask denies the allegations of Paragraph 35.

36. Trask denies the allegations of Paragraph 36.

37. Trask denies the allegations of Paragraph 37.

38. Paragraph 38 is an incorporation paragraph to which no response is necessary.

However, to the extent that any allegations contained in such paragraph require an answer, the same is hereby denied.

39. The allegations of Paragraph 39 consists of contain legal conclusions to which no affirmative response is required. To the extent a response is required Trask denies the allegations of Paragraph 39 as stated.

40. Trask denies the allegations of Paragraph 40.

41. Trask denies the allegations of Paragraph 41.

42. Trask denies the allegations of Paragraph 42.

43. Trask denies the allegations of Paragraph 43.

44. Trask denies the allegations of Paragraph 44.

45. Paragraph 45 is an incorporation paragraph to which no response is necessary.

However, to the extent that any allegations contained in such paragraph require an answer, the same is hereby denied.

46. The allegations of Paragraph 46 consists of contain legal conclusions to which no affirmative response is required. To the extent a response is required Trask denies the allegations of Paragraph 46 as stated.

47. Trask admits the allegations of Paragraph 47.

48. Trask admits the allegations of Paragraph 48 and its subparts to the extent they are consistent with the provisions of the document(s) reference, the terms and conditions of which speak for themselves and thus Defendant denies any allegations inconsistent therewith.

49. Trask denies the allegations of Paragraph 49 and all its subparts.

50. Trask denies the allegations of Paragraph 50.

51. Trask denies the allegations of Paragraph 51.

52. Paragraph 52 is an incorporation paragraph to which no response is necessary.

However, to the extent that any allegations contained in such paragraph require an answer, the same is hereby denied.

53. Trask denies the allegations of Paragraph 53.

54. Trask denies the allegations of Paragraph 54.

55. Trask denies the allegations of Paragraph 55.

56. Trask denies the allegations of Paragraph 56.

57. Trask denies the allegations of Paragraph 57.

58. Paragraph 58 is an incorporation paragraph to which no response is necessary.

However, to the extent that any allegations contained in such paragraph require an answer, the same is hereby denied.

59. The allegations of Paragraph 59 consists of contain legal conclusions to which no affirmative response is required. To the extent a response is required Trask denies the allegations of Paragraph 59 as stated.

60. Paragraph 60 recites and/or references a portion of an incorporated document and does not require a response. To the extent a response is required Trask refers to the subject document and denies any allegations inconsistent therewith.

61. Trask denies the allegations of Paragraph 61 as stated.

62. Trask denies the allegations of Paragraph 62.

63. Paragraphs 63-70 allege a cause of action solely against Defendant Clear Touch and therefore do not require a response from this Defendant. However, to the extent that any allegations contained in such paragraphs require an answer, the same are hereby denied.

64. Paragraph 71 is an incorporation paragraph to which no response is necessary. However, to the extent that any allegations contained in such paragraph require an answer, the same is hereby denied.

65. Trask denies the allegations of Paragraph 72.

66. Trask denies the allegations of Paragraph 73.

67. Trask denies the allegations of Paragraph 74.

68. Trask denies the allegations of Paragraph 75.

69. Paragraph 76 is an incorporation paragraph to which no response is necessary.

However, to the extent that any allegations contained in such paragraph require an answer, the same is hereby denied.

70. Trask denies the allegations of Paragraph 77 and its subparts.

71. Trask denies the allegations of Paragraph 78 as stated.

72. Trask denies the allegations of Paragraph 79 as stated.

73. Trask denies the allegations of Paragraph 80.

74. Trask denies the allegations of Paragraph 81.

75. Trask denies the allegations of Paragraph 82.

76. Trask denies the allegations of Paragraph 83.

77. Trask denies the allegations of Paragraph 84.

78. Trask denies the allegations of Paragraph 85.

79. Trask denies the allegations of Paragraph 86.

80. Trask denies the allegations of Paragraph 87.

81. Trask denies the allegations of Paragraph 88.

82. Trask denies the allegations of Paragraph 89.

83. Paragraph 90 is an incorporation paragraph to which no response is necessary.

However, to the extent that any allegations contained in such paragraph require an answer, the same is hereby denied.

84. Trask denies the allegations of Paragraph 91.

85. Trask denies the allegations of Paragraph 92.

86. Trask denies the allegations of Paragraph 93.

87. Trask denies the allegations of Paragraph 94.
88. Trask denies the allegations of Paragraph 95.
89. Trask denies the allegations of Paragraph 96.
90. Trask denies the allegations of Paragraph 97.
91. Trask denies the allegations of Paragraph 86.
92. Trask denies that Plaintiff is entitled to any relief requested in the Complaint.

FOR A SECOND DEFENSE
(Rule 12(b)(6))

93. Trask is informed and believes that Plaintiff's Complaint fails to state facts sufficient to set forth a cause of action against him and, therefore, Plaintiff's Complaint should be dismissed as to this Defendant.

FOR A THIRD DEFENSE
(Bad Faith)

94. Plaintiff's actions taken against Trask in instituting this action have been taken in bad faith.

FOR A FOURTH DEFENSE
(Unclean Hands, Estoppel, and Waiver)

95. Plaintiff's action is barred by the doctrine of unclean hands, estoppel and/or waiver.

FOR A FIFTH DEFENSE
(Good Faith)

96. All actions taken by Trask have been in good faith.

FOR A SIXTH DEFENSE
(No Protectable Trade Secret(s))

97. One or more of Plaintiff's claimed trade secrets alleged to have been misappropriated by the Defendant is/are not protectable trade secrets, and therefore,

Plaintiff cannot maintain a statutory or common law cause of action against the Defendant for misappropriation.

FOR A SEVENTH DEFENSE
(Failure to take reasonable security measures)

98. Plaintiff has failed to take reasonable security measures to protect the secrecy of its alleged trade secret information, and therefore, Plaintiff cannot maintain a statutory or common law cause of action against the Defendant for misappropriation.

FOR AN EIGHTH DEFENSE
(Information Readily Ascertainable)

99. One or more of Plaintiff's claimed trade secrets alleged to have been misappropriated by the Defendant is/are information that is readily ascertainable, and therefore, Plaintiff cannot maintain a statutory or common law cause of action against the Defendant for misappropriation.

FOR A NINTH DEFENSE
(Information in Public Domain)

100. One or more of Plaintiff's claimed trade secrets alleged to have been misappropriated by the Defendant is/are information released into the public domain prior to Defendant's alleged use, and therefore, Plaintiff cannot maintain a statutory or common law cause of action against the Defendant for misappropriation.

FOR A TENTH DEFENSE
(Failure to Mitigate)

101. Plaintiff's claims are barred as a result of the Plaintiff's failure to take such reasonable actions necessary to mitigate its damages as required by South Carolina law.

FOR A ELEVENTH DEFENSE
(No Damage)

102. Plaintiff has suffered no cognizable damages and therefore cannot maintain the present action against the Defendant.

FOR A TWELFTH DEFENSE
(SCUTPA - No Adverse Public Impact)

103. Defendant's alleged actions underlying Plaintiff's South Carolina Unfair Trade Practices Act cause of action did not and will not have an adverse impact on the public interest, and therefore this c must be dismissed.

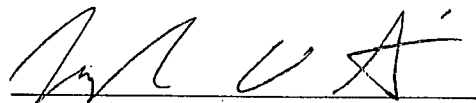
FOR AN THIRTEENTH DEFENSE
(Reservation)

104. Defendant contends that he cannot fully anticipate all affirmative defenses that may be applicable to this action based on the conclusory terms used in Plaintiff's Complaint. Accordingly, Defendant expressly reserves the right to assert additional affirmative defenses if and to the extent that such affirmative defenses become applicable.

WHEREFORE, having fully answered the Plaintiff's Complaint, Trask prays that the claims against him be dismissed with prejudice with costs and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.



D. Randle Moody, II, S.C. Bar # 14135

Joseph O. Smith, S.C. Bar # 77475

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JSmith@roecassidy.com

Attorneys for the Defendants

November 11, 2015
Greenville, South Carolina

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
) THIRTEENTH JUDICIAL CIRCUIT

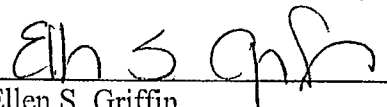
C.A. No. 2015-CP-23-05757

CERTIFICATE OF SERVICE

This is to certify that I did cause on this 13th day of November, 2015 a copy of **DEFENDANT KEONE TRASK'S ANSWER** to be served in the above-entitled matter on the person(s) listed below by enclosing a copy of same in an envelope with sufficient postage thereon prepaid in the United States mail, addressed as follows:

Gregory J. English
WYCHE P.A.
Post Office Box 728
Greenville, SC 29602-0728

ROE CASSIDY COATES & PRICE P.A.


Ellen S. Griffin
Paralegal to Joseph O. Smith

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Encore Technology Group, LLC,

Plaintiff,

v.

Keone Trask and Clear Touch Interactive,
Inc. f/k/a Clear Touch Interactive, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS

) THIRTEENTH JUDICIAL CIRCUIT

) C.A. No.: 2015-CP-23-05757

) **DEFENDANT CLEAR TOUCH**
) **INTERACTIVE, INC.'S**
) **ANSWER**

The Defendant, Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC (*hereinafter* "Clear Touch" or "Defendant"), by and through its attorneys, hereby answers the Complaint of Plaintiff, Encore Technology Group, LLC (*hereinafter* "Encore" or "Plaintiff"), as follows:

FOR A FIRST DEFENSE

1. Each and every allegation contained in Plaintiff's Complaint not hereinafter admitted, qualified, or explained, is hereby denied and strict proof demanded thereof.

2. Clear Touch admits the allegations of Paragraphs 1 and 2.

3. Clear Touch admits the allegations contained in Paragraph 3.

4. Clear Touch admits the allegations contained in Paragraph 4.

5. Clear Touch admits the allegations contained in Paragraph 5.

6. Clear Touch admits the allegations contained in Paragraph 6.

7. Clear Touch admits the allegations contained in Paragraph 7.

8. Clear Touch admits the allegations of Paragraph 8 upon information and belief to the extent they allege that Trask as an employee of Encore was privy and had access to Encore

related data and information, including some or all of the items listed in Paragraph 8. Clear Touch denies the remaining allegations of Paragraph 8 as stated

9. Clear Touch is without sufficient knowledge or information to respond to the allegations of Paragraph 9 and therefore denies the same.

10. Clear Touch admits the allegations of Paragraph 10 to the extent they allege that Trask formed Clear Touch Interactive, LLC on or about August 8, 2012 prior to the formation and incorporation of Encore Technology Group, LLC on or about September 27, 2012. Further responding, Clear Touch admits that a non-existent entity could not have known of the formation of another company before the former's existence. Clear Touch denies the remaining allegations of Paragraph 10 as stated.

11. Clear Touch denies the allegations of Paragraph 11 as stated.

12. Clear Touch admits the allegations of Paragraph 12 to the extent they allege on or about April 24, 2012 Trask presented Clear Touch, along with other existing companies/product lines to Encore to fulfill a void in Plaintiff's then-existing product line and that Encore selected Clear Touch out of its multiple options and entered into the referenced Reseller Agreement. Clear Touch further admits the allegations of Paragraph 12 which are consistent with the terms and conditions of the Reseller Agreement which speak for themselves and denies any allegations inconsistent therewith. Clear Touch further denies the allegation of Paragraph 12 alleging Trask and Clear Touch would "pocket" profits made under the Reseller Agreement.

13. Clear Touch admits the allegations of Paragraph 13 to the extent they allege that at the time Trask presented Clear Touch to Encore he did not disclose his interest in Clear Touch to the Plaintiff. Clear Touch denies the remaining allegations of Paragraph 13 as stated.

14. Clear Touch admits the allegations of Paragraph 14 to the extent they allege that the Managing Member of Clear Touch, LLC signed the Reseller Agreement. Clear Touch denies the remaining allegations of Paragraph 14 as stated.

15. Clear Touch admits the allegations of Paragraph 15 to the extent they allege that during Trask's employment with Encore some of his actions benefited Clear Touch's interests, however denies that any such actions were to the detriment of Encore. Clear Touch denies the remaining allegations of Paragraph 15.

16. Clear Touch denies the allegations of Paragraph 16 as stated.

17. Clear Touch is without sufficient knowledge or information to respond to the allegations of Paragraph 17 and therefore denies the same.

18. Clear Touch denies the allegations of Paragraph 18 as stated.

19. Clear Touch denies the allegations of Paragraph 19 as stated.

20. Clear Touch denies the allegations of Paragraph 20.

21. Clear Touch admits the allegations of Paragraph 21 to the extent they allege Trask utilized Encore resources as a business partner for the mutual benefit of the Parties. Clear Touch denies the remaining allegations of Paragraph 21 as stated.

22. Clear Touch denies the allegations of Paragraph 22 as stated.

23. Clear Touch denies the allegations of Paragraph 23.

24. Clear Touch admits the allegations of Paragraph 24 to the extent they allege that Clear Touch worked with Encore to service customers to the Parties' mutual benefit during and after Trask's employment with Encore. Clear Touch denies the remaining allegations of Paragraph 24 as stated.

25. Clear Touch admits the allegations of Paragraph 25.

26. Clear Touch denies the allegations of Paragraph 26.

27. Clear Touch denies the allegations of Paragraph 27 and all its subparts.

28. Clear Touch denies the allegations of Paragraph 28.

29. Clear Touch denies the allegations of Paragraph 29.

30. Clear Touch denies the allegations of Paragraph 30.

31. Paragraphs 31-51 allege causes of action solely against Defendant Trask and therefore do not require a response from this Defendant. However, to the extent that any allegations contained in such paragraphs require an answer, the same are hereby denied.

32. Paragraph 52 is an incorporation paragraph to which no response is necessary. However, to the extent that any allegations contained in such paragraph require an answer, the same is hereby denied.

33. Clear Touch denies the allegations of Paragraph 53.

34. Clear Touch denies the allegations of Paragraph 54.

35. Clear Touch denies the allegations of Paragraph 55.

36. Clear Touch denies the allegations of Paragraph 56.

37. Clear Touch denies the allegations of Paragraph 57.

38. Paragraph 58 is an incorporation paragraph to which no response is necessary. However, to the extent that any allegations contained in such paragraph require an answer, the same is hereby denied.

39. The allegations of Paragraph 59 consists of contain legal conclusions to which no affirmative response is required. To the extent a response is required Clear Touch denies the allegations of Paragraph 59 as stated.

40. Paragraph 60 recites and/or references a portion of an incorporated document and does not require a response. To the extent a response is required Clear Touch refers to the subject document and denies any allegations inconsistent therewith.

41. Clear Touch denies the allegations of Paragraph 61 as stated.

42. Clear Touch denies the allegations of Paragraph 62.

43. Paragraph 63 is an incorporation paragraph to which no response is necessary. However, to the extent that any allegations contained in such paragraph require an answer, the same is hereby denied.

44. The allegations of Paragraph 64 consists of contain legal conclusions to which no affirmative response is required. To the extent a response is required Clear Touch denies the allegations of Paragraph 64 as stated.

45. Clear Touch admits the allegations of Paragraph 65.

46. Clear Touch denies the allegations of Paragraph 66.

47. Clear Touch denies the allegations of Paragraph 67.

48. Clear Touch denies the allegations of Paragraph 68.

49. Clear Touch denies the allegations of Paragraph 69.

50. Clear Touch denies the allegations of Paragraph 70.

51. Paragraphs 71-75 allege causes of action solely against Defendant Trask and therefore do not require a response from this Defendant. However, to the extent that any allegations contained in such paragraphs require an answer, the same are hereby denied.

52. Paragraph 76 is an incorporation paragraph to which no response is necessary. However, to the extent that any allegations contained in such paragraph require an answer, the same is hereby denied.

53. Clear Touch denies the allegations of Paragraph 77 and its subparts.
54. Clear Touch denies the allegations of Paragraph 78 as stated.
55. Clear Touch denies the allegations of Paragraph 79 as stated.
56. Clear Touch denies the allegations of Paragraph 80.
57. Clear Touch denies the allegations of Paragraph 81.
58. Clear Touch denies the allegations of Paragraph 82.
59. Clear Touch denies the allegations of Paragraph 83.
60. Clear Touch denies the allegations of Paragraph 84.
61. Clear Touch denies the allegations of Paragraph 85.
62. Clear Touch denies the allegations of Paragraph 86.
63. Clear Touch denies the allegations of Paragraph 87.
64. Clear Touch denies the allegations of Paragraph 88.
65. Clear Touch denies the allegations of Paragraph 89.
66. Paragraph 90 is an incorporation paragraph to which no response is necessary.

However, to the extent that any allegations contained in such paragraph require an answer, the same is hereby denied.

67. Clear Touch denies the allegations of Paragraph 91.
68. Clear Touch denies the allegations of Paragraph 92.
69. Clear Touch denies the allegations of Paragraph 93.
70. Clear Touch denies the allegations of Paragraph 94.
71. Clear Touch denies the allegations of Paragraph 95.
72. Clear Touch denies the allegations of Paragraph 96.
73. Clear Touch denies the allegations of Paragraph 97.

74. Clear Touch denies the allegations of Paragraph 86.

75. Clear Touch denies that Plaintiff is entitled to any relief requested in the Complaint.

FOR A SECOND DEFENSE
(Rule 12(b)(6))

76. Clear Touch is informed and believes that Plaintiff's Complaint fails to state facts sufficient to set forth a cause of action against it and, therefore, Plaintiff's Complaint should be dismissed as to this Defendant.

FOR A THIRD DEFENSE
(Bad Faith)

77. Plaintiff's actions taken against Clear Touch in instituting this action have been taken in bad faith.

FOR A FOURTH DEFENSE
(Unclean Hands, Estoppel, and Waiver)

78. Plaintiff's action is barred by the doctrine of unclean hands, estoppel, and/or waiver.

FOR A FIFTH DEFENSE
(Good Faith)

79. All actions taken by Clear Touch have been in good faith.

FOR A SIXTH DEFENSE
(No Protectable Trade Secret(s))

80. One or more of Plaintiff's claimed trade secrets alleged to have been misappropriated by the Defendant is/are not protectable trade secrets, and therefore, Plaintiff cannot maintain a statutory or common law cause of action against the Defendant for misappropriation.

FOR A SEVENTH DEFENSE
(Failure to take reasonable security measures)

81. Plaintiff has failed to take reasonable security measures to protect the secrecy of its alleged trade secret information, and therefore, Plaintiff cannot maintain a statutory or common law cause of action against the Defendant for misappropriation.

FOR AN EIGHTH DEFENSE
(Information Readily Ascertainable)

82. One or more of Plaintiff's claimed trade secrets alleged to have been misappropriated by the Defendant is/are information that is readily ascertainable, and therefore, Plaintiff cannot maintain a statutory or common law cause of action against the Defendant for misappropriation.

FOR A NINTH DEFENSE
(Information in Public Domain)

83. One or more of Plaintiff's claimed trade secrets alleged to have been misappropriated by the Defendant is/are information released into the public domain prior to Defendant's alleged use, and therefore, Plaintiff cannot maintain a statutory or common law cause of action against the Defendant for misappropriation.

FOR A TENTH DEFENSE
(Failure to Mitigate)

84. Plaintiff's claims are barred as a result of the Plaintiff's failure to take such reasonable actions necessary to mitigate its damages as required by South Carolina law.

FOR A ELEVENTH DEFENSE
(SCUTPA - No Adverse Public Impact)

85. Defendant's alleged actions underlying Plaintiff's South Carolina Unfair Trade Practices Act cause of action did not and will not have an adverse impact on the public interest, and therefore this c must be dismissed.

FOR A TWELFTH DEFENSE
(No Damage)

86. Plaintiff has suffered no cognizable damages and therefore cannot maintain the present action against the Defendant.

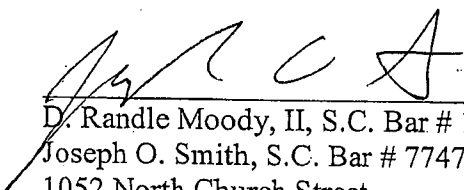
FOR AN THIRTEENTH DEFENSE
(Reservation)

87. Defendant contends that it cannot fully anticipate all affirmative defenses that may be applicable to this action based on the conclusory terms used in Plaintiff's Complaint. Accordingly, Defendant expressly reserves the right to assert additional affirmative defenses if and to the extent that such affirmative defenses become applicable.

WHEREFORE, having fully answered the Plaintiff's Complaint, Clear Touch prays that the claims against it be dismissed with prejudice with costs and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.


D. Randle Moody, II, S.C. Bar # 14135

Joseph O. Smith, S.C. Bar # 77475

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JSmith@roecassidy.com

Attorneys for the Defendants

November 11, 2015
Greenville, South Carolina

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
) THIRTEENTH JUDICIAL CIRCUIT

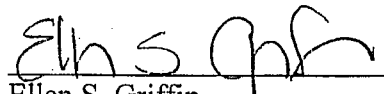
C.A. No. 2015-CP-23-05757

CERTIFICATE OF SERVICE

This is to certify that I did cause on this 13th day of November, 2015 a copy of
DEFENDANT CLEAR TOUCH INTERACTIVE, INC.'S ANSWER to be served in the
above-entitled matter on the person(s) listed below by enclosing a copy of same in an envelope
with sufficient postage thereon prepaid in the United States mail, addressed as follows:

Gregory J. English
WYCHE P.A.
Post Office Box 728
Greenville, SC 29602-0728

ROE CASSIDY COATES & PRICE P.A.



Ellen S. Griffin
Paralegal to Joseph O. Smith

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Jami Powell,)
Plaintiff,)
vs.)
Clear Touch Interactive, Inc. (a Nevada)
Corporation) f/k/a Clear Touch)
Interactive, LLC (a Nevada LLC); Keone)
Trask and Tamra Trask,)
Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-_____

SUMMONS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers at their office at WOMBLE CARLYLE SANDRIDGE & RICE, PLLC, 550 S. Main Street, Suite 400, P.O. Box 10208, Greenville, SC 29603, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, the plaintiff in this action will apply to the Court for a judgment by default for the relief demanded in the Complaint.

October 13th, 2017
Greenville, South Carolina

s/ Joshua L. Howard
Joshua L. Howard (S.C. Bar No. 70260)
jhoward@wcsr.com
Womble Carlyle Sandridge & Rice, LLP
550 South Main Street, Suite 400
Greenville, South Carolina 29601
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Attorneys for Plaintiff Jami Powell

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Jami Powell,)
Plaintiff,)
vs.)
Clear Touch Interactive, Inc. (a Nevada)
Corporation) f/k/a Clear Touch)
Interactive, LLC (a Nevada LLC); Keone)
Trask and Tamra Trask,)
Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-_____

COMPLAINT

Plaintiff, Jami Powell, complains against Defendants Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC, Keone Trask and Tamra Trask as follows:

1. Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC ("CTI") is a corporation organized and existing under the laws of the State of Nevada, with a principal place of business in Greenville, South Carolina.
2. Keone Trask is citizen and resident of the State of South Carolina, County of Greenville.
3. Tamra Trask is citizen and resident of the State of South Carolina, County of Greenville.

FACTUAL BACKGROUND

4. CTI is a distributor of interactive, visual display panels for education and business.
5. CTI's business concept was formulated by Chris Powell and Keone Trask in early 2012.

6. At that time, Chris Powell and Keone Trask were business associates at Computer Software Innovations. At that time, Computer Software Innovations was going through structural changes and there was concern over the future. Given the situation, the Powells and the Trasks agreed that CTI LLC was a business concept that they would grow slow and could be a great alternate opportunity should their current employment end.
7. With this agreement, the parties agreed to enter into a business partnership in the CTI business concept wherein each held 25% of the company.
8. On or about August 24, 2012, Keone Trask filed online Articles of Organization organizing Clear Touch Interactive, LLC ("CTI LLC") as a member-managed Nevada Limited Liability Company. At the time of organization, the members of CTI LLC were Jami Powell holding 25%, Chris Powell holding 25%, Keone Trask holding 25% and Tamra Trask holding 25%.
9. On September 26, 2012, CTI LLC made an initial filing with the State of Nevada identifying Keone Trask and Tamra Trask as Managing Members. The filing was later amended on October 2, 2012 to reflect that Jami Powell, Chris Powell, Keone Trask and Tamra Trask were all Managing Members of CTI LLC.
10. No operating agreement of CTI LLC was ever drafted or executed.
11. Shortly after organizing CTI LLC, Chris Powell was hired as the CEO for the newly formed Encore Technology Group and Keone Trask was hired as their CMO.
12. Knowing that CTI LLC could potentially create a conflict of interest with their positions with Encore Technology Group, Keone Trask and Chris Powell agreed that they would mutually withdraw from any operations of CTI LLC.

13. Without the knowledge of the Powells, on or about April 11, 2013 a Kathy Cruse, who was later identified as the mother of Keone Trask, was identified in a filing in Nevada as a managing member of CTI LLC. A subsequent similar filing was again made on or about August 26, 2013. Kathy Cruse has never been admitted as a member of CTI LLC and was never an authorized signatory for CTI LLC.
14. Sometime in early 2014, Tamra Trask reached out to Jami Powell to ask whether the Powells objected to CTI LLC being converted from an LLC to a Nevada corporation.
15. Nevada law allows for an LLC to be converted to a corporation pursuant to NV Rev. Stat. § 92A.105. In order to legally convert from an LLC to a corporation, a written plan of conversion is required to be adopted by a majority of the members of the LLC. See NV Rev. Stat. §§ 92A.105, 92A.150.
16. After discussing the matter, Jami Powell responded that she was potentially agreeable to the concept, but would need to see how it would ultimately be undertaken. No plan of conversion was ever presented to the Powells and not vote was undertaken by the members of CTI LLC to approve a conversion from an LLC to a corporation.
17. Without the Powells knowledge or consent, on January 21, 2014 Kathy Cruse filed Articles of Conversion with the state of Nevada converting CTI LLC to Clear Touch Interactive, Inc. ("CTI Inc.")
18. Under penalties of perjury and the submittal of false information, Kathy Cruse, purportedly on behalf of CTI LLC n/k/a CTI Inc. represented that the information included in the filing and Articles of Incorporation was true and correct. In particular, Ms. Cruse represented in the CTI Inc. filing to the Nevada Secretary of State and the public that "A plan of conversion" required by Nevada statute had "been adopted by

the constituent entity in compliance with the law of the jurisdiction governing the constituent entity” and checked the box that “The complete executed plan of conversion is on file at the registered office or principal place of business of the resulting entity.”

19. Jami Powell has no knowledge of a plan of conversion, was never presented a plan of conversion to review and never agreed to or signed a plan of conversion as required by law.
20. In reality, following a request for such relevant information in early 2017 it was determined that this representation to the Nevada Secretary of State is patently false. The Trasks, Ms. Cruse and CTI Inc. never drafted a plan of conversion, no plan of conversion was ever agreed to between the members of CTI LLC, and CTI Inc. has no plan and has never had a plan of conversion on file.
21. On or about April 2014 Keone Trask left his position with Encore Technology Group and assumed a position with CTI.
22. Without the knowledge of the Powells, on or about August 25, 2014, the Trasks caused a filing by CTI with Nevada providing that Keone Trask was President, Tamra Trask was Secretary, Tamra Trask as Treasurer and Keone Trask was Director.
23. On or about August 2014, Chris Powell resigned from his position with Encore Technology Group. Shortly thereafter, Chris Powell and Jami Powell reached out to the Trasks for Chris to assume duties with CTI as originally contemplated.
24. The Trasks at that point began a campaign to deny any interest in CTI held by the Powells, to deny Chris Powell’s employment position within the company and to freeze the Powells out of CTI altogether.

25. In late 2014, when faced with the Powells demands to include Chris within the business, the Trasks fabricated an excuse that CTI could not afford to also employee Chris within the business. Keone Trask told Chris that the time was not right.

26. On December 7, 2014, Jami Powell and Tamra Trask exchange text messages where Jami reached out to Tamra as follows: "We are thinking we get together and get a plan for the business". Tamra ignored this request and put her off by stating "We'll catch up on things soon ... Barely even see our kiddos these days with so many conferences. Viva VA this week". Jami continued: "We just got back from VA. Okay so are you going to VA with Keone? Let's plan a call with the four of us so we can all be on the same page. Chris is ready to jump in and I know we are all busy but its important that we talk and go over everything. What day is good for you both? Maybe while you are driving?" Jami received no response to this request.

27. On December 17 2014, Jami messaged the following: "Keone scheduled a meeting with Chris today and didn't show or answer his phone so we are concerned – have you heard from him? I hope he is okay and nothing happened." Tamra responded: "Heading on to sport event field phone about dead. Last I heard he was called off to customer. Always something. I'm sure he'll reach out when can. ***". Jami replied:

I know you are both working so hard and missing time with your kids- you are a super mom! Hopefully Chris can help take some of that off your plate soon. It is unusual for Keone to stand Chris up and not tell him he got called away or even answer texts or phone. I think we are getting concerned that you guys are purposely not communicating with us – we are your partners ya know? We are trying to take part and instead we getting shut out. You both told us to trust you and we did so hopefully everything is okay.

Tamra Trask did not respond.

28. Not knowing how to proceed and continuing to trust the Trasks, Chris Powell instead focused on building a consulting business, which has been his primary source of income since late 2014.
29. Over the course of 2015 and into 2016, the Powells attempted numerous times to engage with the Trasks and CTI.
30. In the time since 2014, despite her status Jami Powell has received no information on the status of CTI, has received no notice of annual meeting despite the CTI obligation to do so, has received no distributions or a payment of any kind from CTI and has received no response to repeated communications regarding the status of the company.
31. Having failed to receive any response and any information about the status of CTI, CTI was presented with a letter on March 1, 2014 requesting as follows:
- a. Who are the current directors and officers of the company? Given that Jami and Chris have been passive owners and not actively involved as employees of the company, they are unsure. As they collectively own 50%, we certainly think Jami and Chris or someone appointed by them need seats on the board.
 - b. When is the next annual meeting of shareholders?
 - c. Have there been any shareholder distributions? Jami and Chris have not received one.

In addition, the following documents were requested:

- a. Current financials for the company.
 - b. Corporate books and records, including a copy of the bylaws and any amendments, minutes of annual meetings, shareholder meetings and meetings of the board of directors, and any resolutions of the board of directors.
32. Offering no documented evidence of the extinguishment of Jami Powell's interest, CTI responded by acknowledging that Jami Powell held an interest in in CTI LLC, denying that Jami Powell held an interest in CTI Inc., claiming that Jami Powell's interest extinguished during the conversion of CTI LLC to CTI Inc. and claiming that

CTI is 100% owned by the "Clear Touch Interactive Retirement Plan". In response to Jami Powell's request for financial information and corporate records, CTI denied such request to all records but for those up to and through the end of 2013 before CTI converted from an LLC to a corporation. Without any legal basis, CTI offered to provide those documents only upon the condition that the Powells sign a confidentiality agreement.

33. The Powells declined CTI's offer of 4-year-old records and demanded current information. To date, no documents have been provided.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment, S.C. Code Ann. § 15-53-10 et seq.)

34. Plaintiff repeats and incorporates by reference the allegations contained in the paragraphs above.
35. CTI is an entity organized under the laws of the state of Nevada with its principal place of business in Greenville, South Carolina. CTI's owners are all located within South Carolina.
36. Without any documents to support the claim, Defendants have principally denied Plaintiff's present ownership interest on the basis that Plaintiff's ownership interest did not convert from CTI LLC to CTI Inc.
37. Defendants' assertions are false and without any legal basis. Defendants assertions are part of a coordinated scheme of the Defendants dating back to at least early 2014 to freeze out and exclude the Powells from CTI.
38. Further, the legal and factual basis of Defendants' claim lacks all merit as there is no evidence or documentation that Jami Powell ever extinguished her interest and there was no lawful conversion of CTI LLC to CTI Inc.

39. Plaintiff seeks declaratory relief on the basis that CTI was never lawfully converted from CTI LLC to CTI Inc., therefore should be declared to be CTI LLC.
40. In order to complete a conversion from a statutory limited liability company to a corporation under Nevada law, a company is required to draft and maintain a plan of conversion. See NV Rev. Stat. § 92A.105.
41. Absent such plan and the accompanying representation to the Nevada Secretary of State that the plan has been drafted and is being maintained by the company, Nevada law would not sanction such conversion.
42. Despite Nevada's requirements and Defendants' representations to the Nevada Secretary of State, CTI, the Trasks and Ms. Cruse did not draft a plan of conversion.
43. Despite Nevada's requirements, CTI did not present the required plan of conversion to the members of CTI LLC for a vote. The members of CTI LLC never voted for and approved of a plan of conversion from CTI LLC to CTI Inc.
44. Despite Nevada's requirements and their representations to the Nevada Secretary of State, CTI, the Trasks and Ms. Cruse did not draft and do not maintain a plan of conversion as required by law.
45. CTI, the Trasks and Ms. Cruse's representations to the Nevada Secretary of State are false and in violation of Nevada state law.
46. Further, Ms. Cruse was and has never been an authorized signatory for CTI LLC.
47. Based on the failure to draft, receive agreement to and maintain the plan of conversion required by Nevada law, as well as Ms. Cruse' lack of authority to sign Articles of Conversion for CTI LLC, CTI LLC was never lawfully converted to CTI Inc.

48. Jami Powell, therefore, prays that this court declare as follows:

- a. CTI LLC was not lawfully converted to CTI Inc., therefore must be declared to be CTI LLC with its ownership status as of and before the date of the purported conversion intact.
- b. Any and all corporate actions of CTI Inc., the Trasks on behalf of CTI Inc., or actions by any other person or entity that could be construed to be the actions of CTI LLC, including the sale or exchange of any equity, are null and void.
- c. Any and all actions of CTI Inc., the Trasks on behalf of CTI Inc., or actions by any other person or entity that could be construed to be the actions of CTI LLC, that would or could be claimed to result in the dilution of Jami Powell's 25% shall be declared null and void.
- d. Any and all others actions of CTI Inc., the Trasks on behalf of CTI Inc., or actions by any other person or entity that could be construed to be the actions of CTI LLC, or any other person on behalf of CTI that in any way could harm the present or future 25% interest of Jami Powell shall be declared null and void.

FOR A SECOND CAUSE OF ACTION
(Judicial Dissolution/Shareholder or Member Oppression)

49. Plaintiff repeats and incorporates by reference the allegations contained in the paragraphs above.

50. Per the Nevada Secretary of State, the Trasks are the sole officers and directors of CTI Inc.

51. Since at least December 2014, the Trasks have engaged in continuous acts of deception and are playing a "shell game" to deny Jami Powell's interest in CTI.

52. The Trasks have repeatedly and continuously denied the Powells attempts to engage within the company, denied the Powells requests for information of which they are entitled, have failed to comply with corporate formalities such as an annual meeting of shareholders, have failed to make any distributions and are running the company as if Jami Powell does not exist.

53. The actions complained of herein constitute oppression as a matter of law and equity in violation of both the laws of the states of South Carolina and Nevada.

54. As a remedy for such actions, Jami Powell is entitled to the relief afforded by statute and in equity, including but not limited to an order dissolving CTI or, in the alternative, a court ordered buyout of her 25% interest in CTI at fair value, or such other and further relief in equity the court may in its discretion decree.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants as follows:

1. A declaratory judgment as set forth above;
2. An order of dissolution or, in the alternative, a buyout of Jami Powell's 25% interest at fair value, or such other and further relief in equity the court may in its discretion decree;
3. The Plaintiff receive an award of all costs, interests and reasonable attorneys' fees incurred in this action;
4. The Plaintiff receive an award of such additional and further relief as the Court deems just and proper.

This the 13th day of October, 2017,

s/ Joshua L. Howard
Joshua L. Howard (Bar No. 70260)
Womble Carlyle Sandridge & Rice, LLP
P.O. Box 10208
Greenville, SC 29603
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Email: JHoward@wcsr.com

ELECTRONICALLY FILED - 2017 Oct 13 3:23 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306520

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Jami Powell,	)	C.A. No.: 2017-CP-23-06520
	)	
Plaintiff,	)	DEFENDANTS' ANSWER
	)	
v.	)	
	)	
Clear Touch Interactive, Inc. (a Nevada	)	
Corporation) f/k/a Clear Touch Interactive,	)	
LLC (a Nevada LLC); Keone Trask and	)	
Tamara Trask,	)	
	)	
Defendants.	)	

The Defendants, Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC ("Clear Touch" or "CTI") Keone Trask, and Tamara Trask (*collectively* "Defendants"), by and through their attorneys, hereby file this Answer in response to the Complaint of Plaintiff, Jami Powell ("Powell" or "Plaintiff"), as follows:

FOR A FIRST DEFENSE

1. Each and every allegation contained in Plaintiff's Complaint not hereinafter admitted, qualified, or explained, is hereby denied and strict proof demanded thereof.
2. Defendants admit the allegations of Paragraphs 1 and 2.
3. Defendants admit the allegations contained in Paragraph 3.
4. Defendants admit the allegations contained in Paragraph 4 to the extent they allege Clear Touch is in the interactive panel business. Clear Touch is a manufacturer and not a "distributor" of interactive touch panels as alleged in the Complaint.

5. Defendants admit the allegations contained in Paragraph 5 to the extent they allege Chris Powell and Keone Trask discussed the general business concept of Clear Touch in or around the first half of 2012. Defendants deny any remaining allegations of Paragraph 5 as stated.

6. Defendants admit the allegations contained in Paragraph 6 to the extent they allege Keone Trask and Chris Powell were business associates at Computer Software Innovations; a company which at the time was undergoing structural changes that caused concern for its future. Defendants admit at Keone Trask and Chris Powell agreed that the Clear Touch business was a concept that could be executed upon and marketed should it be pursued. Defendants deny the remaining allegations of Paragraph 6 as stated.

7. Responding to Paragraph 7, Defendants admit that the Keone Trask and Chris Powell were having ongoing conversations about a potential partnership in the Clear Touch concept at this time. Defendants deny the remaining allegations of Paragraph 7 as stated.

8. Defendants admit the allegations of Paragraph 8 to the extent they allege Keone Trask filed Articles of Organization for Clear Touch Interactive, LLC on August 24, 2012 with the Nevada Secretary of State and designated the company as a member-managed entity. That filing designated Keone Trask as the sole member of the company. Defendants deny the remaining allegations of Paragraph 8 as stated.

9. Defendants admit the allegations of Paragraph 9.

10. Defendants admit the allegations of Paragraph 10 to the extent they allege CTI, LLC never completed or executed an operating agreement.

11. Defendants admit the allegations of Paragraph 11.

12. Defendants admit the allegations of Paragraph 12 to the extent they allege Chris Powell agreed to withdraw from any operations of CTI LLC, to the extent he had any prior

involvement at all in the company, on or about the time he was hired by Encore. Further responding, at this time, the Trasks and Powells agreed to move managerial control and ownership interest in CTI, LLC to a trusted third party and have that party file with the Nevada Secretary of State as the sole managing-member of CTI, LLC. Defendants deny the remaining allegations of Paragraph 12 as stated.

13. Defendants admit the allegations of Paragraph 13 to the extent they allege that on or about April 11, 2013 and again on August 26, 2013 Kathy Cruse was identified in filings with the Nevada Secretary of State as the managing member of CTI, LLC. Defendants deny the remaining allegations of Paragraph 13.

14. Defendants deny the allegations of Paragraph 14.

15. Paragraph 15 consists of legal conclusions to which no response is necessary. To the extent those allegations require a response, Defendants deny the same.

16. Defendants admit that no written plan of conversation was presented to the Powells as alleged in Paragraph 16. Defendants deny the remaining allegations of Paragraph 16 as stated.

17. Defendants admit the allegations of Paragraph 17 to the extent they allege Kathy Cruse filed Articles of Conversion with the Nevada Secretary of State on or about January 21, 2014 converting Clear Touch Interactive, LLC to Clear Touch Interactive, Inc. Defendants deny the remaining allegations of Paragraph 17 as stated.

18. Defendants admit the allegations of Paragraph 18 to the extent they are consistent with the document referenced in that Paragraph which speaks for itself. Defendants deny the remaining allegations of Paragraph 18 as stated.

19. Defendants admit the allegations of Paragraph 19 to the extent they allege Jami Powell was not presented a plan of conversion to review or sign. Defendants lack sufficient

knowledge or information to respond to the allegation of Paragraph 19 claiming that Jami Powell was unaware of the conversion and therefore must deny the same. The remaining allegations of Paragraph 19 constitute a conclusion of law to which no response is necessary. To the extent a response to the legal conclusion in Paragraph 19 is necessary, the same is denied.

20. Defendants admit that it was recently discovered no written plan of conversion was completed and kept on file at the corporate office as noted in the Articles of Conversion filed with the Nevada Secretary of State. Defendants deny the remaining allegations of Paragraph 20 as stated.

21. Defendants admit the allegations of Paragraph 21.

22. Defendants admit the allegations of Paragraph 22 to the extent they allege that on or about August 25, 2014, Keone Trask on behalf of CTI filed a public document with the Nevada Secretary of State reflecting that he was both the President and Director and Tamara Trask both the Secretary and Treasurer of CTI, Inc. Defendants lack sufficient knowledge and information to respond to remaining allegations of Paragraph 22, and therefore deny the same.

23. Defendants admit the allegations of Paragraph 23 to the extent they allege Chris Powell's employment with Encore ended on or about August 2014. Chris Powell first contacted Keone Trask in December 2014 requesting a meeting because he was in need of health insurance benefits due to his COBRA coverage coming to an end at or around this time. Defendants deny the remaining allegations of Paragraph 23 as stated.

24. Defendants deny the allegations of Paragraph 24.

25. Responding to Paragraph 25, Defendants admit that because Chris Powell only offered to do minimal administrative work for the company and refused to undertake the extensive travel and sales efforts performed by the Trasks and the one other Clear Touch employee necessary

for the company to survive, Keone Trask told Mr. Powell the time was not right for the company to take on an employee it did not need and could not afford. Defendants deny the remaining allegations of Paragraph 25 as stated.

26. Defendants do not have the communication referenced in Paragraph 26 and therefore cannot respond to such paragraph. To the extent a response is necessary, Defendants deny the same and crave reference to the communication cited.

27. Defendants do not have the communication referenced in Paragraph 27 and therefore cannot respond to such paragraph. To the extent a response is necessary, Defendants deny the same and crave reference to the communication cited.

28. Defendants lack sufficient knowledge or information to respond to the allegations of Paragraph 28, and therefore deny the same.

29. Responding to Paragraph 29, Defendants admit that Chris Powell made contact with Keone and Tamara Trask in January 2015. The Powells did not make any further attempts to contract or "engage" with the Trasks in 2015-2016. Defendants therefore deny the allegations of Paragraph 29 as stated.

30. Defendants admit Jami Powell has not received notices of annual meetings or distributions from or concerning CTI, Inc. as she has no interest in that company and no such notices or distributions have been sent or made. The remaining allegations of Paragraph 30 are general and vague, and therefore Defendants must deny the same.

31. Defendants deny the allegations of Paragraph 31 alleging or implying the Powells had made any requests for documents or information concerning CTI prior to March 1, 2017. Defendants admit the allegations of Paragraph 31 to the extent they are accurate reflections of the

statements made in the document cited (letter dated March 1, 2017) and deny any remaining allegations inconsistent with the same.

32. Defendants admit the allegations of Paragraph 32 to the extent they allege. Defendants stated that Jami Powell owns no interest in CTI, Inc. and the company is wholly owned by Clear Touch Interactive Retirement Plan. Defendants further admit they offered to provide information and documents concerning CTI, LLC. At the time of this request, Clear Touch and Keone Trask were in the midst of another case filed by his and Chris Powell's former employer, Encore Technology Group. Therefore, Defendants *requested* Plaintiff execute a confidentiality agreement to protect any information or documents provided. Plaintiff agreed to execute such an agreement. Defendants deny it *required* execution of a confidentiality agreement as a condition to providing the CTI, LLC documents as alleged in Paragraph 32. Defendants admit the remaining allegations of Paragraph 32 only to the extent they are consistent and accurate statements of the Defendants' response to Plaintiff's March 1, 2017 letter. Defendants deny any remaining allegations of Paragraph 32.

33. Defendants admit the Powells did not want any of the CTI, LLC documents and demanded access to current information concerning a business in which neither has an interest. Further responding, Chris Powell represented in his demands for CTI information that he was an owner of CTI, LLC and CTI, Inc. despite having executed a sworn affidavit some five months earlier in which he stated "[i]n February 2013, I abandoned my interest in Clear Touch." and "I understood that if I ever wanted to resume ownership of Clear Touch, I would have to buy any such interest as if I had never been an owner."

34. Paragraph 34 is an incorporation paragraph to which no response is necessary. However, to the extent that any allegations contained in such paragraph require an answer, the same is hereby denied.

35. Defendants admit the allegations of Paragraph 35 to the extent they allege CTI is an entity organized under the law of Nevada with its principal place of business in Greenville, SC. Further responding, the sole owner of CTI, Inc. is the "Clear Touch Interactive Retirement Account" which is administered by an entity based in Colorado. Defendants deny the remaining allegations of Paragraph 35.

36. Defendants deny the allegations of Paragraph 36 as stated.

37. Defendants deny the allegations of Paragraph 37.

38. Paragraph 38 contains legal conclusions to which no response is necessary, however, to the extent a response is required, Defendants deny the same. Defendants deny the remaining allegations of Paragraph 38.

39. Defendants admit Plaintiff is seeking declaratory relief as alleged in Paragraph 39 and contend she is not entitled to such relief. Defendants deny the remaining allegations of Paragraph 39.

40. Paragraph 40 consists of a legal conclusion to which no response is necessary, however, to the extent a response is required, Defendants deny the same.

41. Paragraph 41 consists of a legal conclusion to which no response is necessary, however, to the extent a response is required, Defendants deny the same.

42. Defendants admit that it was recently discovered no written plan of conversion was completed and kept on file at CTI's corporate office as noted in the Articles of Conversion filed

with the Nevada Secretary of State. Defendants deny the remaining allegations of Paragraph 42 as stated.

43. Paragraph 43 contains a legal conclusion to which no response is necessary, however, to the extent a response is required, Defendants deny the same. Defendants deny the remaining allegations of Paragraph 43 as stated.

44. Paragraph 44 contains a legal conclusion to which no response is necessary, however, to the extent a response is required, Defendants deny the same. Defendants deny the remaining allegations of Paragraph 44 as stated.

45. Paragraph 45 consists of a legal conclusion to which no response is necessary, however, to the extent a response is required, Defendants deny the same.

46. Defendants deny the allegations of Paragraph 46.

47. Paragraph 47 consists of legal conclusions to which no response is necessary, however, to the extent a response is required, Defendants deny the same.

48. Defendants deny the allegations of Paragraph 48 and all its subparts.

49. Paragraph 49 is an incorporation paragraph to which no response is necessary. However, to the extent that any allegations contained in such paragraph require an answer, the same is hereby denied.

50. Defendants admit the allegations of Paragraph 50.

51. Defendants deny the allegations of Paragraph 51.

52. Defendants deny the allegations of Paragraph 52 as stated.

53. Paragraph 53 consists of legal conclusions to which no response is necessary, however, to the extent a response is required, Defendants deny the same.

54. Defendants deny Jami Powell is entitled to any relief sought in her Complaint, including the remedies sought by Paragraph 54.

55. Defendants deny that Plaintiff is entitled to any relief requested in the Complaint.

FOR A SECOND DEFENSE
(S.C. R. Civ. P. 12(b)(6))

56. Defendants are informed and believe that Plaintiff's Complaint fails to state facts sufficient to set forth a cause of action against them and, therefore, Plaintiff's Complaint should be dismissed.

FOR A THIRD DEFENSE
(Statute of Limitations)

57. Plaintiff's claims are barred by the applicable statute of limitations.

FOR A FOURTH DEFENSE
(Lack of Contractual Privity)

58. To the extent Plaintiff's Complaint alleges a contract between the parties or a third party for Plaintiff's benefit, the Plaintiff lacks contractual privity with the Defendant(s) and cannot maintain any cause of action reliant upon any right granted under such contract or its enforcement.

FOR A FIFTH DEFENSE
(No Duty)

59. Defendants have no fiduciary or contractual duty to the Plaintiff.

FOR A SIXTH DEFENSE
(Statute of Frauds)

60. To the extent Plaintiff's Complaint alleges and relies upon the existence of a contract between the parties or a third party for Plaintiff's benefit for the maintenance of one or more of her claims, the doctrine of the statute of frauds bars her maintenance of such claims.

FOR A SEVENTH DEFENSE

(Futility, Impossibility, Frustration of Purpose and Impracticality)

61. To the extent Plaintiff's Complaint alleges and relies upon a contract between the parties or a third party for Plaintiff's benefit for the maintenance of one or more of her claims, Defendants are excused from the performance based upon the doctrines of futility, frustration of purpose, and impracticality.

FOR AN EIGHTH DEFENSE

(Modified by Conduct)

62. To the extent Plaintiff's Complaint alleges and relies upon a contract between the parties or a third party for Plaintiff's benefit for the maintenance of one or more of her claims, the terms of the purported contract(s) were modified by the conduct of the parties during the duration of the alleged contract(s).

FOR A NINTH DEFENSE

(Set Off)

63. In the event that it is determined Plaintiff is entitled to an award of monetary damages against one or more of the Defendants, which is denied and admitted solely for the purpose of this defense, Defendants contend that they are entitled to set-off against such award.

FOR A TENTH DEFENSE

(Unclean Hands, Estoppel, and Waiver)

64. Plaintiff's action is barred by the doctrine of unclean hands, estoppel, and/or waiver.

FOR AN ELEVENTH DEFENSE

(Good Faith)

65. All actions taken by Defendants have been in good faith.

FOR A TWELFTH DEFENSE
(Failure to Mitigate)

66. Plaintiff's claims are barred as a result of the Plaintiff's failure to take such reasonable actions necessary to mitigate her damages as required by South Carolina law.

FOR A THIRTEENTH DEFENSE
(No Damage)

67. Plaintiff has suffered no cognizable damages and therefore cannot maintain the present action against the Defendants.

FOR A FOURTEENTH DEFENSE
(Reservation)

68. Defendants contend that they cannot fully anticipate all affirmative defenses that may be applicable to this action based on the conclusory terms used in Plaintiff's Complaint. Accordingly, Defendants expressly reserve the right to assert additional affirmative defenses if and to the extent that such affirmative defenses become applicable.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendants respectfully request that:

1. Plaintiff's Complaint be dismissed with prejudice;
2. Plaintiff take nothing by reason of her Complaint;
3. The Court award Defendants all costs and expenses incurred because of this suit, including its reasonable attorneys' fees; and
4. The Court grant such other and further relief it may deem just and proper.

(signature page to follow)

Respectfully Submitted,

ROE CASSIDY COATES & PRICE, P.A.

s/ Joseph O. Smith

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Attorneys for Defendants

December 1, 2017

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

JAMI POWELL and ENCORE
TECHNOLOGY GROUP, LLC,

Plaintiffs,

vs.

CLEAR TOUCH INTERACTIVE, INC. (a
Nevada Corporation) f/k/a CLEAR
TOUCH INTERACTIVE, LLC (a Nevada
LLC); KEONE TRASK and TAMARA
TRASK,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2017-CP-23-06520

**COMPLAINT BY ENCORE
TECHNOLOGY GROUP, LLC**

FILED-CLERK OF COURT
PAUL B. WICKENS
GREENVILLE CO. SC

2018 OCT -2 PM 1:36

Plaintiff ENCORE TECHNOLOGY GROUP, LLC ("Encore"), a judgment creditor of Defendants Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC, and Keone Trask, and a claimant against Tamara Trask, complains against the Defendants as follows:

1. Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC ("CTI") is a corporation organized and existing under the laws of the State of Nevada, with a principal place of business in Greenville, South Carolina.
2. Keone Trask is citizen and resident of the State of South Carolina, County of Greenville.
3. Tamara Trask is citizen and resident of the State of South Carolina, County of Greenville.

FACTUAL BACKGROUND

4. CTI is a distributor of interactive, visual display panels for education and business.
5. CTI's business concept was formulated by Chris Powell and Keone Trask in

2012.

6. At that time, Chris Powell and Keone Trask were business associates at Computer Software Innovations. At that time, Computer Software Innovations was going through structural changes and there was concern over the future. Given the situation, the Powells and the Trasks agreed that Clear Touch Interactive, LLC ("CTI LLC") was a business concept that could be a great alternate opportunity should their employment end.

7. With this agreement, Chris Powell and Keone Trask agreed to enter into a business partnership in the CTI LLC wherein each held 25% of CTI LLC and their spouses, Tamara Trask and Jami Powell, each held 25% of CTI LLC.

8. On or about August 24, 2012, Keone Trask filed online Articles of Organization organizing CTI LLC as a member-managed Nevada Limited Liability Company. At the time of organization, the members of CTI LLC were Jami Powell holding 25%, Chris Powell holding 25%, Keone Trask holding 25% and Tamara Trask holding 25%.

9. On September 26, 2012, CTI LLC made an initial filing with the State of Nevada identifying Keone Trask and Tamara Trask as Managing Members. The filing was later amended on October 2, 2012 to reflect that Jami Powell, Chris Powell, Keone Trask and Tamara Trask were all Managing Members of CTI LLC.

10. No operating agreement of CTI LLC was ever drafted or executed.

11. Shortly after organizing CTI LLC, Chris Powell was hired as the CEO for the newly formed Encore Technology Group, LLC ("Encore") and Keone Trask was hired as their Chief Business Development Officer.

12. Knowing that CTI LLC could potentially create a conflict of interest with their positions with Encore, Keone Trask and Chris Powell agreed that they would mutually withdraw from any operations of CTI LLC.

13. Without the knowledge of the Powells, on or about April 11, 2013, Kathy Cruse, who was later identified as the mother of Keone Trask, was identified in a filing in Nevada as a managing member of CTI LLC. A subsequent similar filing was again made on or about August 26, 2013. Kathy Cruse was never admitted as a member of CTI LLC and was never an authorized signatory for CTI LLC.

14. Sometime in early 2014, Tamara Trask reached out to Jami Powell to ask whether the Powells objected to CTI LLC being converted from an LLC to a Nevada corporation.

15. Nevada law allows for an LLC to be converted to a corporation pursuant to NV Rev. Stat. § 92A.105. In order to legally convert from an LLC to a corporation, a written plan of conversion is required to be adopted by a majority of the members of the LLC. See NV Rev. Stat. §§ 92A.105, 92A.150.

16. After discussing the matter, Jami Powell responded that she was potentially agreeable to the concept, but would need to see how it would ultimately be undertaken. No plan of conversion was ever presented to the Powells and no vote was undertaken by the members of CTI LLC to approve a conversion from an LLC to a corporation.

17. Without the Powells' knowledge or consent, on January 21, 2014, Kathy Cruse filed Articles of Conversion with the state of Nevada converting CTI LLC to Clear Touch Interactive, Inc. ("CTI Inc.").

18. Kathy Cruse, purportedly on behalf of CTI LLC n/k/a CTI Inc., falsely represented that the information included in the filing and Articles of Incorporation was true and correct. In particular, Ms. Cruse falsely represented in the CTI Inc. filing to the Nevada Secretary of State and the public that "A plan of conversion" required by Nevada statute had "been adopted by the constituent entity in compliance with the law of the jurisdiction governing the constituent entity" and checked the box that "The complete executed plan of

conversion is on file at the registered office or principal place of business of the resulting entity.”

19. Jami Powell had no knowledge of a plan of conversion, was never presented a plan of conversion to review, and never agreed to or signed a plan of conversion as required by law.

20. In reality, these representations to the Nevada Secretary of State were patently false. The Trasks, Ms. Cruse and CTI Inc. never drafted a plan of conversion, no plan of conversion was ever agreed to between the members of CTI LLC, and CTI Inc. has no plan and has never had a plan of conversion on file.

21. On or about April 2014, Keone Trask left his position with Encore and assumed a position with CTI.

22. Without the knowledge of the Powells, on or about August 25, 2014, the Trasks caused a filing by CTI with Nevada providing that Keone Trask was President, Tamara Trask was Secretary, Tamara Trask as Treasurer and Keone Trask was Director.

23. On or about August 2014, Chris Powell resigned from his position with Encore. Shortly thereafter, Chris Powell and Jami Powell reached out to the Trasks for Chris Powell to assume duties with CTI as originally contemplated.

24. The Trasks at that point began a campaign to deny any interest in CTI held by the Powells, to deny Chris Powell’s employment position within the company and to freeze the Powells out of CTI altogether.

25. In late 2014, when faced with the Powell’s demands to include Chris within the business, the Trasks fabricated an excuse that CTI could not afford to also employ Chris Powell within the business. Keone Trask told Chris that the time was not right.

26. On December 7, 2014, Jami Powell and Tamara Trask exchanged text messages where Jami reached out to Tamara as follows: “We are thinking we get together and get a plan

for the business". Tamara ignored this request and put her off by stating "We'll catch up on things soon ... Barely even see our kiddos these days with so many conferences. Viva VA this week". Jami continued: "We just got back from VA. Okay so are you going to VA with Keone? Let's plan a call with the four of us so we can all be on the same page. Chris is ready to jump in and I know we are all busy but it's important that we talk and go over everything. What day is good for you both? Maybe while you are driving?" Jami received no response to this request.

27. On December 17, 2014, Jami messaged the following: "Keone scheduled a meeting with Chris today and didn't show or answer his phone so we are concerned – have you heard from him? I hope he is okay and nothing happened." Tamara responded: "Heading on to sport event field phone about dead. Last I heard he was called off to customer. Always something. I'm sure he'll reach out when can. ***". Jami replied:

I know you are both working so hard and missing time with your kids- you are a super mom! Hopefully Chris can help take some of that off your plate soon. It is unusual for Keone to stand Chris up and not tell him he got called away or even answer texts or phone. I think we are getting concerned that you guys are purposely not communicating with us – we are your partners ya know? We are trying to take part and instead we getting shut out. You both told us to trust you and we did so hopefully everything is okay.

Tamara Trask did not respond.

28. Not knowing how to proceed and continuing to trust the Trasks, Chris Powell instead focused on building a consulting business, which has been his primary source of income since late 2014.

29. Over the course of 2015 and into 2016, the Powells attempted numerous times to engage with the Trasks and CTI.

30. In the time since 2014, despite her status Jami Powell has received no information on the status of CTI, has received no notice of annual meeting despite the CTI obligation to do so,

has received no distributions or a payment of any kind from CTI and has received no response to repeated communications regarding the status of the company.

31. Having failed to receive any response and any information about the status of CTI, CTI was presented with a letter on March 1, 2014 requesting as follows:

- a. Who are the current directors and officers of the company? Given that Jami and Chris have been passive owners and not actively involved as employees of the company, they are unsure. As they collectively own 50%, we certainly think Jami and Chris or someone appointed by them need seats on the board.
- b. When is the next annual meeting of shareholders?
- c. Have there been any shareholder distributions? Jami and Chris have not received one.

In addition, the following documents were requested:

- a. Current financials for the company.
- b. Corporate books and records, including a copy of the bylaws and any amendments, minutes of annual meetings, shareholder meetings and meetings of the board of directors, and any resolutions of the board of directors.

32. Offering no documented evidence of the extinguishment of Jami Powell's interest, CTI responded by acknowledging that Jami Powell held an interest in CTI LLC, denying that Jami Powell held an interest in CTI Inc., claiming that Jami Powell's interest extinguished during the conversion of CTI LLC to CTI Inc. and claiming that CTI is 100% owned by the "Clear Touch Interactive Retirement Plan". In response to Jami Powell's request for financial information and corporate records, CTI denied such request for all records but for those up to and through the end of 2013 before CTI converted from an LLC to a corporation. Without any legal basis, CTI offered to provide those documents only upon the condition that the Powells sign a confidentiality agreement.

33. The Powells declined CTI's offer of 4-year-old records and demanded current information. Through mid-2018, no documents were provided; subsequently, some older, less relevant records were provided.

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment, S.C. Code Ann. § 15-53-10 et seq.)

34. Plaintiff repeats and incorporates by reference the allegations contained in the paragraphs above.

35. CTI is an entity organized under the laws of the state of Nevada with its principal place of business in Greenville, South Carolina. CTI's owners are all located within South Carolina.

36. Without any documents to support the claim, Defendants have principally denied Jami Powell's present ownership interest in CTI on the basis that her ownership interest did not convert from CTI LLC to CTI Inc.

37. Defendants' assertions are false and without any legal basis. Defendants' assertions are part of a coordinated scheme of the Defendants dating back to at least early 2014 to freeze out and exclude the Powells and Encore from the assets of CTI.

38. Further, the legal and factual basis of Defendants' claim lacks all merit as there is no evidence or documentation that Jami Powell ever extinguished her interest and there was no lawful conversion of CTI LLC to CTI Inc.

39. Plaintiff seeks declaratory relief on the basis that CTI was never lawfully converted from CTI LLC to CTI Inc., therefore should be declared to be CTI LLC.

40. In order to complete a conversion from a statutory limited liability company to a corporation under Nevada law, a company is required to draft and maintain a plan of conversion. See NV Rev. Stat. § 92A.105.

41. Absent such plan and the accompanying representation to the Nevada Secretary of State that the plan has been drafted and is being maintained by the company, Nevada law would not sanction such conversion.

42. Despite Nevada's requirements and Defendants' representations to the Nevada Secretary of State, CTI, the Trasks and Ms. Cruse did not draft a plan of conversion.

43. Despite Nevada's requirements, CTI did not present the required plan of conversion to the members of CTI LLC for a vote. The members of CTI LLC never voted for and approved of a plan of conversion from CTI LLC to CTI Inc.

44. Despite Nevada's requirements and their representations to the Nevada Secretary of State, CTI, the Trasks and Ms. Cruse did not draft and do not maintain a plan of conversion as required by law.

45. CTI, the Trasks and Ms. Cruse's representations to the Nevada Secretary of State are false and in violation of Nevada state law.

46. Further, Ms. Cruse was and has never been an authorized signatory for CTI LLC.

47. Based on the failure to draft, receive agreement to and maintain the plan of conversion required by Nevada law, as well as Ms. Cruse' lack of authority to sign Articles of Conversion for CTI LLC, CTI LLC was never lawfully converted to CTI Inc.

48. Encore, therefore, prays that this court declare as follows:

a. CTI LLC was not lawfully converted to CTI Inc., therefore must be declared to be CTI LLC with its ownership status as of and before the date of the purported conversion intact.

b. Any and all corporate actions of CTI Inc., the Trasks on behalf of CTI Inc., or actions by any other person or entity that could be construed to be the actions of CTI LLC, including the sale or exchange of any equity, are null and void.

c. Any and all actions of CTI Inc., the Trasks on behalf of CTI Inc., or actions by any other person or entity that could be construed to be the actions of CTI LLC, that would or could be claimed to result in the dilution of Jami Powell's,

Keone Trask's, or Tamara Trask's equity in CTI shall be declared null and void.

d. Any and all others actions of CTI Inc., the Trasks on behalf of CTI Inc., or actions by any other person or entity that could be construed to be the actions of CTI LLC, or any other person on behalf of CTI, that in any way could transfer the equity interests of Jami Powell, Keone Trask, or Tamara Trask in CTI shall be declared null and void.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants as follows:

1. A declaratory judgment as set forth above;
2. The Plaintiff receive an award of all costs, interests and reasonable attorneys' fees incurred in this action; and
3. The Plaintiff receive an award of such additional and further relief as the Court deems just and proper.

s/ Gregory J. English

Gregory J. English (65470)
Rita B. Barker (77600)

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September 24, 2018

Attorneys for Encore Technology Group, LLC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Jami Powell and Encore Technology Group, LLC,	)	C.A. No.: 2017-CP-23-06520
	)	
Plaintiffs,	)	DEFENDANTS' ANSWER TO PLAINTIFF
	)	ENCORE TECHNOLOGY GROUP, LLC'S COMPLAINT
v.	)	
	)	
Clear Touch Interactive, Inc. (a Nevada Corporation) f/k/a Clear Touch Interactive, LLC (a Nevada LLC); Keone Trask and Tamara Trask,	)	
	)	
Defendants.	)	

The Defendants, Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC ("Clear Touch" or "CTI") Keone Trask, and Tamara Trask (*collectively* "Defendants"), by and through their attorneys, hereby file this Answer in response to the Complaint of Plaintiff, Encore Technology Group, LLC ("Encore" or "Plaintiff"), as follows:

FOR A FIRST DEFENSE

1. Each and every allegation contained in Plaintiff's Complaint not hereinafter admitted, qualified, or explained, is hereby denied and strict proof demanded thereof.
2. Defendants admit the allegations of Paragraphs 1 and 2.
3. Defendants admit the allegations contained in Paragraph 3.
4. Defendants admit the allegations contained in Paragraph 4 to the extent they allege Clear Touch is in the interactive panel business. Clear Touch is a manufacturer and not a "distributor" of interactive touch panels as alleged in the Complaint.

5. Defendants admit the allegations contained in Paragraph 5 to the extent they allege Chris Powell and Keone Trask discussed the general business concept of Clear Touch in or around the first half of 2012. Defendants deny any remaining allegations of Paragraph 5 as stated.

6. Defendants admit the allegations contained in Paragraph 6 to the extent they allege Keone Trask and Chris Powell were business associates at Computer Software Innovations; a company which at the time was undergoing structural changes that caused concern for its future. Defendants admit that Keone Trask and Chris Powell agreed that the Clear Touch business was a concept that could be executed upon and marketed should it be pursued. Defendants deny the remaining allegations of Paragraph 6 as stated.

7. Responding to Paragraph 7, Defendants admit that the Keone Trask and Chris Powell were having ongoing conversations about a potential partnership in the Clear Touch concept at this time. Defendants deny the remaining allegations of Paragraph 7 as stated.

8. Defendants admit the allegations of Paragraph 8 to the extent they allege Keone Trask filed Articles of Organization for Clear Touch Interactive, LLC on August 24, 2012 with the Nevada Secretary of State and designated the company as a member-managed entity. That filing designated Keone Trask as the sole member of the company. Defendants deny the remaining allegations of Paragraph 8 as stated.

9. Defendants admit the allegations of Paragraph 9.

10. Defendants admit the allegations of Paragraph 10 to the extent they allege CTI, LLC never completed or executed an operating agreement.

11. Defendants admit the allegations of Paragraph 11.

12. Defendants admit the allegations of Paragraph 12 to the extent they allege Chris Powell agreed to withdraw from any operations of CTI LLC, to the extent he had any prior

involvement at all in the company, on or about the time he was hired by Encore. Further responding, at this time, the Trasks and Powells agreed to move managerial control and ownership interest in CTI, LLC to a trusted third party and have that party file with the Nevada Secretary of State as the sole managing-member of CTI, LLC. Defendants deny the remaining allegations of Paragraph 12 as stated.

13. Defendants admit the allegations of Paragraph 13 to the extent they allege that on or about April 11, 2013 and again on August 26, 2013 Kathy Cruse was identified in filings with the Nevada Secretary of State as the managing member of CTI, LLC. Defendants deny the remaining allegations of Paragraph 13.

14. Defendants deny the allegations of Paragraph 14.

15. Paragraph 15 consists of legal conclusions to which no response is necessary. To the extent those allegations require a response, Defendants deny the same.

16. Defendants admit that no written plan of conversation was presented to the Powells as alleged in Paragraph 16. Defendants deny the remaining allegations of Paragraph 16 as stated.

17. Defendants admit the allegations of Paragraph 17 to the extent they allege Kathy Cruse filed Articles of Conversion with the Nevada Secretary of State on or about January 21, 2014 converting Clear Touch Interactive, LLC to Clear Touch Interactive, Inc. Defendants deny the remaining allegations of Paragraph 17 as stated.

18. Defendants admit the allegations of Paragraph 18 to the extent they are consistent with the document referenced in that Paragraph which speaks for itself. Defendants deny the remaining allegations of Paragraph 18 as stated.

19. Defendants admit the allegations of Paragraph 19 to the extent they allege Jami Powell was not presented a plan of conversion to review or sign. Defendants lack sufficient

knowledge or information to respond to the allegation of Paragraph 19 claiming that Jami Powell was unaware of the conversion and therefore must deny the same. The remaining allegations of Paragraph 19 constitute a conclusion of law to which no response is necessary. To the extent a response to the legal conclusion in Paragraph 19 is necessary, the same is denied.

20. Defendants admit that it was recently discovered no written plan of conversion was completed and kept on file at the corporate office as noted in the Articles of Conversion filed with the Nevada Secretary of State. Defendants deny the remaining allegations of Paragraph 20 as stated.

21. Defendants admit the allegations of Paragraph 21.

22. Defendants admit the allegations of Paragraph 22 to the extent they allege that on or about August 25, 2014, Keone Trask on behalf of CTI filed a public document with the Nevada Secretary of State reflecting that he was both the President and Director and Tamara Trask both the Secretary and Treasurer of CTI, Inc. Defendants lack sufficient knowledge and information to respond to remaining allegations of Paragraph 22, and therefore deny the same.

23. Defendants admit the allegations of Paragraph 23 to the extent they allege Chris Powell's employment with Encore ended on or about August 2014. Chris Powell first contacted Keone Trask in December 2014 requesting a meeting because he needed health insurance benefits due to his COBRA coverage coming to an end at or around this time. Defendants deny the remaining allegations of Paragraph 23 as stated.

24. Defendants deny the allegations of Paragraph 24.

25. Responding to Paragraph 25, Defendants admit that because Chris Powell only offered to do minimal administrative work for the company and refused to undertake the extensive travel and sales efforts performed by the Trasks and the one other Clear Touch employee necessary

for the company to survive, Keone Trask told Mr. Powell the time was not right for the company to take on an employee it did not need and could not afford. Defendants deny the remaining allegations of Paragraph 25 as stated.

26. The text messages quoted speak for themselves, and therefore Defendants admit the allegations of Paragraph 26 to the extent they are consistent with those messages and deny the remainder of the allegations in this Paragraph.

27. The text messages quoted speak for themselves, and therefore Defendants admit the allegations of Paragraph 27 to the extent they are consistent with those messages and deny the remainder of the allegations in this Paragraph.

28. Defendants lack sufficient knowledge or information to respond to the allegations of Paragraph 28, and therefore deny the same.

29. Responding to Paragraph 29, Defendants admit that Chris Powell contacted Keone and Tamara Trask in January 2015. The Powells did not make any further attempts to contract or "engage" with the Trasks in 2015-2016. Defendants therefore deny the allegations of Paragraph 29 as stated.

30. Defendants admit Jami Powell has not received notices of annual meetings or distributions from or concerning CTI, Inc. as she has no interest in that company and no such notices or distributions have been sent or made. The remaining allegations of Paragraph 30 are general and vague, and therefore Defendants must deny the same.

31. Defendants deny the allegations of Paragraph 31 alleging or implying the Powells had made any requests for documents or information concerning CTI prior to March 1, 2017. Defendants admit the allegations of Paragraph 31 to the extent they are accurate reflections of the

statements made in the document cited (letter dated March 1, 2017 [although Complaint erroneously cites the year as 2014]) and deny any remaining allegations inconsistent with the same.

32. Defendants admit the allegations of Paragraph 32 to the extent they allege Defendants stated that Jami Powell owns no interest in CTI, Inc. and the company is wholly owned by Clear Touch Interactive Retirement Plan. Defendants further admit they offered to provide information and documents concerning CTI, LLC. At the time of this request, Clear Touch and Keone Trask were in the midst of another case filed by his and Chris Powell's former employer, Encore Technology Group. Therefore, Defendants *requested* Plaintiff execute a confidentiality agreement to protect any information or documents provided. Plaintiff agreed to execute such an agreement. Defendants deny it *required* execution of a confidentiality agreement as a condition to providing the CTI, LLC documents as alleged in Paragraph 32. Defendants admit the remaining allegations of Paragraph 32 only to the extent they are consistent and accurate statements of the Defendants' response to Plaintiff's March 1, 2017 letter. Defendants deny any remaining allegations of Paragraph 32.

33. Defendants admit the Powells did not want any of the CTI, LLC documents and demanded access to current information concerning a business in which neither has an interest. Further responding, Chris Powell represented in his demands for CTI information that he was an owner of CTI, LLC and CTI, Inc. despite having executed a sworn affidavit some five months earlier in which he stated "[i]n February 2013, I abandoned my interest in Clear Touch." and "I understood that if I ever wanted to resume ownership of Clear Touch, I would have to buy any such interest as if I had never been an owner."

34. Paragraph 34 is an incorporation paragraph to which no response is necessary. However, to the extent that any allegations contained in such paragraph require an answer, the same is hereby denied.

35. Defendants admit the allegations of Paragraph 35 to the extent they allege CTI is an entity organized under the law of Nevada with its principal place of business in Greenville, SC. Further responding, the sole owner of CTI, Inc. is the "Clear Touch Interactive Retirement Account" which is administered by an entity based in Colorado. Defendants deny the remaining allegations of Paragraph 35.

36. Defendants deny the allegations of Paragraph 36 as stated.

37. Defendants deny the allegations of Paragraph 37.

38. Paragraph 38 contains legal conclusions to which no response is necessary, however, to the extent a response is required, Defendants deny the same. Defendants deny the remaining allegations of Paragraph 38.

39. Defendants admit Plaintiff is seeking declaratory relief as alleged in Paragraph 39 and contend she is not entitled to such relief. Defendants deny the remaining allegations of Paragraph 39.

40. Paragraph 40 consists of a legal conclusion to which no response is necessary, however, to the extent a response is required, Defendants deny the same.

41. Paragraph 41 consists of a legal conclusion to which no response is necessary, however, to the extent a response is required, Defendants deny the same.

42. Defendants admit that it was recently discovered no written plan of conversion was completed and kept on file at CTI's corporate office as noted in the Articles of Conversion filed

with the Nevada Secretary of State. Defendants deny the remaining allegations of Paragraph 42 as stated.

43. Paragraph 43 contains a legal conclusion to which no response is necessary, however, to the extent a response is required, Defendants deny the same. Defendants deny the remaining allegations of Paragraph 43 as stated.

44. Paragraph 44 contains a legal conclusion to which no response is necessary, however, to the extent a response is required, Defendants deny the same. Defendants deny the remaining allegations of Paragraph 44 as stated.

45. Paragraph 45 consists of a legal conclusion to which no response is necessary, however, to the extent a response is required, Defendants deny the same.

46. Defendants deny the allegations of Paragraph 46.

47. Paragraph 47 consists of legal conclusions to which no response is necessary, however, to the extent a response is required, Defendants deny the same.

48. Defendants deny the allegations of Paragraph 48 and all its subparts.

49. Defendants deny that Plaintiff is entitled to any relief requested in the Complaint.

FOR A SECOND DEFENSE
(S.C. R. Civ. P. 12(b)(6))

50. Defendants are informed and believe that Plaintiff's Complaint fails to state facts sufficient to set forth a cause of action against them and, therefore, Plaintiff's Complaint should be dismissed.

FOR A THIRD DEFENSE
(Statute of Limitations)

51. Plaintiff's claims are barred by the applicable statute of limitations.

FOR A FOURTH DEFENSE
(Lack of Contractual Privity)

52. To the extent Plaintiff's Complaint alleges a contract between the parties or a third party for Plaintiff's benefit, the Plaintiff lacks contractual privity with the Defendant(s) and cannot maintain any cause of action reliant upon any right granted under such contract or its enforcement.

FOR A FIFTH DEFENSE
(No Duty)

53. Defendants have no fiduciary or contractual duty to the Plaintiff.

FOR A SIXTH DEFENSE
(Statute of Frauds)

54. To the extent Plaintiff's Complaint alleges and relies upon the existence of a contract between the parties or a third party for Plaintiff's benefit for the maintenance of one or more of her claims, the doctrine of the statute of frauds bars her maintenance of such claims.

FOR A SEVENTH DEFENSE
(Futility, Impossibility, Frustration of Purpose and Impracticality)

55. To the extent Plaintiff's Complaint alleges and relies upon a contract between the parties or a third party for Plaintiff's benefit for the maintenance of one or more of her claims, Defendants are excused from the performance based upon the doctrines of futility, frustration of purpose, and impracticality.

FOR AN EIGHTH DEFENSE
(Modified by Conduct)

56. To the extent Plaintiff's Complaint alleges and relies upon a contract between the parties or a third party for Plaintiff's benefit for the maintenance of one or more of her claims, the terms of the purported contract(s) were modified by the conduct of the parties during the duration of the alleged contract(s).

FOR A NINTH DEFENSE
(Set Off)

57. In the event that it is determined Plaintiff is entitled to an award of monetary damages against one or more of the Defendants, which is denied and admitted solely for the purpose of this defense, Defendants contend that they are entitled to set-off against such award.

FOR A TENTH DEFENSE
(Unclean Hands, Estoppel, and Waiver)

58. Plaintiff's action is barred by the doctrine of unclean hands, estoppel, and/or waiver.

FOR AN ELEVENTH DEFENSE
(Good Faith)

59. All actions taken by Defendants have been in good faith.

FOR A TWELFTH DEFENSE
(Failure to Mitigate)

60. Plaintiff's claims are barred as a result of the Plaintiff's failure to take such reasonable actions necessary to mitigate her damages as required by South Carolina law.

FOR A THIRTEENTH DEFENSE
(No Damage)

61. Plaintiff has suffered no cognizable damages and therefore cannot maintain the present action against the Defendants.

FOR A FOURTEENTH DEFENSE
(Lack of Standing)

62. Plaintiff does not have the constitutionally required standing to maintain its claim against the Defendants and therefore it should be dismissed.

FOR A FIFTEENTH DEFENSE
(Reservation)

63. Defendants contend that they cannot fully anticipate all affirmative defenses that may be applicable to this action based on the conclusory terms used in Plaintiff's Complaint. Accordingly, Defendants expressly reserve the right to assert additional affirmative defenses if and to the extent that such affirmative defenses become applicable.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendants respectfully request that:

1. Plaintiff's Complaint be dismissed with prejudice;
2. Plaintiff take nothing by reason of its Complaint;
3. The Court award Defendants all costs and expenses incurred because of this suit, including its reasonable attorneys' fees; and
4. The Court grant such other and further relief it may deem just and proper.

Respectfully Submitted,

ROE CASSIDY COATES & PRICE, P.A.

s/ Joseph O. Smith

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Attorneys for Defendants

October 24, 2018
Greenville, South Carolina

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 MOTION FOR
JUDGMENT INCLUDING
RESTITUTION, EXEMPLARY
DAMAGES, ATTORNEYS' FEES,
EXPERT WITNESS FEES, COSTS
AND OTHER EXPENSES**

Plaintiff Encore Technology Group, LLC ("Encore") hereby moves the Court, pursuant to S.C. Code Ann. §§ 39-8-40 and -80, Rule 54, S.C.R.C.P., its Contract, and other applicable law, for judgment against Defendants Keone Trask ("Trask") and Clear Touch Interactive, Inc., f/k/a Clear Touch Interactive, LLC ("Clear Touch"), including awards by the Court of restitution, exemplary damages, attorneys' fees, expert witness fees, costs and other expenses to Encore, as follows:

Restitution	\$5,536,254
Exemplary Damages	849,890
Attorneys' Fees	345,600
Other costs & expenses	94,900

This motion is made upon the following grounds:

In this case, Trask set up and pursued a side company, Clear Touch, while employed by and under a Non-Disclosure and Non-Solicitation Agreement (the "Contract") with Encore.

Trask admitted that he breached his duty of loyalty to Encore, for which the jury awarded

\$375,733.40 actual damages and \$175,000.00 punitive damages. The actual damages award compensated Encore for Trask's wages, benefits and a portion of conference expenses Encore paid for Trask. Plaintiff's Exhibits 10.B and 10.G.

Trask also admitted that he breached his fiduciary duties to Encore, for which the jury awarded Encore \$675,361 actual damages and \$1,500,000 punitive damages. The actual damages award compensated Encore for its lost profits on sales to its customers as a result of Trask's not disclosing that Encore could purchase products directly from the true suppliers instead of Clear Touch. Plaintiff's Exhibit 10.C.

The jury also awarded Encore actual damages of \$424,945, which compensated Encore for lost profits on sales to Leon County Schools made by Clear Touch. Plaintiff's Exhibit 10.D. The jury awarded these damages on Encore's claim of breach of contract against Trask, Encore's claim of tortious interference against Clear Touch, and violation of the South Carolina Trade Secrets Act by both Defendants. On the latter claim, the jury found that Defendants' conduct in violating the South Carolina Trade Secrets Act was willful, wanton and in reckless disregard of Encore's rights. The jury also awarded Encore punitive damages in the amount of \$500,000 against Clear Touch for tortious interference with the Encore-Clear Touch Contract.

Finally, the jury found Trask liable for breach of contract accompanied by a fraudulent act in the amount of \$1,476,039 actual damages and awarded \$2 million punitive damages. This verdict compensated Encore for a portion of the net profits lost to Clear Touch when Trask breached the "business opportunity" provision of the Contract. Plaintiff's Exhibit 10.E.

Based upon the evidence and foregoing jury verdict, Encore is entitled to judgments against both Defendants, including awards by the Court of restitution, exemplary damages, attorneys' fees, expert witness fees, costs and other expenses, as follows:

1. The Court should rule that both Defendants are liable to make restitution to Encore in the amount of \$5,536,254 for unjust enrichment.

a. Entitlement to Restitution

Defendants have been unjustly enriched in the amount of the value of Clear Touch, or \$5,536,254, and should be required to pay restitution in that amount. The evidence was undisputed that, while he was Encore's employee, Trask built the Clear Touch business using Encore's monetary, personnel, and other resources, with Encore taking all of the risk. If Trask had used Encore's resources to build a rental house and collected rent from its tenants, he would be required to pay Encore restitution in the amount of the rent collected plus the value of the house. Encore's expert testified that Clear Touch's profits through 2015, plus the value of Clear Touch as of December 31, 2015, was \$5,536,254. Plaintiff's Exhibit 10.E.

Encore's valuation was based upon very conservative assumptions. For example, using Clear Touch's actual earnings through 2016 and assuming a growth rate of 2% (which was significantly less than historical rates) through 2019, Encore's expert calculated lost profits from the Clear Touch business opportunity of \$7,798,632. Plaintiff's Exhibit 10.J (last page). Additionally, Encore's expert based his value upon Clear Touch's earnings from two years ago, which have increased significantly since then, *id.* (Appendix 7 - Clear Touch Capitalization of Earnings), did not account for Encore's loss of the time value of money, and did not take into account Defendants' fraudulent acts and failure to preserve evidence. While Clear Touch hired a business valuation expert, Dr. Charles Alford, who testified at trial, he did not value Clear Touch or offer any different valuation.

Where a defendant has been unjustly enriched, the plaintiff is entitled to restitution. *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 473-74, 366 S.E.2d 12, 14-15 (Ct. App. 1988).

“Restitution is a remedy designed to prevent unjust enrichment.” *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003); *see also Ellis*, 294 S.C. at 473, 366 S.E.2d at 14 (“Unjust enrichment is an equitable doctrine, akin to restitution, which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff.”).

“To recover on a theory of restitution, the plaintiff must show (1) that he conferred a non-gratuitous benefit on the defendant; (2) that the defendant realized some value from the benefit; and (3) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value.” *Sauner*, 354 S.C. at 409, 581 S.E.2d at 167; *see also Columbia Wholesale Co. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994); *Webb v. First Fed. Savings & Loan Ass’n of Anderson*, 300 S.C. 507, 513, 388 S.E.2d 823, 827 (Ct. App. 1989), *overruled on other grounds by Myrtle Beach Hosp. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000); *Niggel Assocs., Inc. v. Polo’s of North Myrtle Beach*, 296 S.C. 530, 532, 374 S.E.2d 507, 509 (Ct. App. 1984). The plaintiff must present evidence concerning the amount by which the defendant was unjustly enriched. *Id.* at 533-34, 374 S.E.2d at 509.

Defendants have been unjustly enriched in the amount of the value of Clear Touch, or \$5,536,254. Defendants should be required – jointly and severally – to pay restitution in that amount.

b. **Election of Remedies**

Upon the Court’s finding that Defendants have been unjustly enriched and ordering them to pay restitution, Plaintiff elects the remedy that will yield the highest judgment from each Defendant. The doctrine of election of remedies, designed to prevent double redress for a single wrong, involves a choice between different forms of redress afforded for the same injury. *GTR Rental, LLC v. DalCanton*, 547 F. Supp. 2d 510, 515 (D.S.C. 2008). The principle has no

application, however, where separate causes of action, based on different facts, exist. *Id.*; see also *Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct. App. 1995).

In *GTR Rental*, the defendant received jury awards for breach of fiduciary duty, conversion, fraud, violation of the South Carolina Unfair Trade Practices Act, and breach of contract. *Id.* at 514-15. Because the causes of action were based on different elements, and the facts supporting the separate claims occurred “over a lengthy period and involved numerous activities involving [plaintiff’s] customers, property, and finances,” the Court held that “the complex series of transactions undertaken by Defendants does not comprise a single wrong that would give rise to but one cause of action,” thus making election unnecessary. *Id.* at 515.

Similarly, in *Rivers v. Rivers*, 292 S.C. 21, 354 S.E.2d 784 (Ct. App. 1987), *overruled on other grounds by Russo v. Sutton*, 310 S.C. 200, 422 S.E.2d 750 (1992), the Court did not require election of remedies by a plaintiff who received damages for both alienation of affection and criminal conversation. Even though the causes of action were so related that they were described as “twin causes of action” and the losses for which a plaintiff could recover under both causes of action were similar, the Court held that no election was required because “[t]he causes of action are distinct, they arose out of separate and distinct facts, and the two alleged wrongs did not result in a single and the same loss.” *Id.* at 29-31, 788-790.

In this case, because each legal causes of action were based on different elements and because the facts supporting the various claims involved numerous activities, “the complex series of transactions undertaken by Defendants does not comprise a single wrong that would give rise to but one cause of action.” Therefore, except for the verdicts for the Leon County School profits of \$424,945, election between the legal claims should not be required. Upon the

Court's awarding restitution to Encore, however, election could properly be required. Therefore, adopting a conservative approach that ensures Encore is not receiving double redress for the loss of Leon County School profits, Encore will elect the higher against each Defendant of either (a) the restitution amount determined by the Court, or (b) the amounts based upon the jury verdict as follows:

Against Defendant Keone Trask

<u>Actual Damages</u>	<u>Punitive Damages</u>	
\$ 375,733.40	\$ 175,000.00	breach of loyalty (Encore wages + conference expenses)
675,361.00	1,500,000.00	breach of fiduciary duty (Encore's lost profits from non-disclosure of suppliers)
424,945.00	849,890.00	violation of Trade Secrets Act (Leon County profits – same as breach of contract)
<u>+1,476,039.00</u>	<u>+2,000,000.00</u>	breach of contract accompanied by a fraudulent act (portion of Clear Touch profits)
\$2,952,078.40	+	\$4,524,890.00 = \$7,476,968.40
Plus attorneys' fees (see below)		+ 345,600.00
Plus costs & expenses (see below)		<u>+ 94,900.00</u>

TOTAL LEGAL CLAIMS AGAINST TRASK: \$7,917,468.40

Against Defendant Clear Touch Interactive, Inc.

<u>Actual Damages</u>	<u>Punitive Damages</u>	
\$ 424,945.00	849,890.00	violation of Trade Secrets Act (Leon County profits)
or		
<u>424,945.00*</u>	<u>500,000.00*</u>	tortious interference (* \$424,945.00 in actual damages same as Leon County profits)
\$ 424,945.00	+	\$ 849,890.00 = \$1,274,835.00
Plus attorneys' fees (see below)		+ 345,600.00
Plus costs & expenses (see below)		<u>+ 94,900.00</u>

TOTAL LEGAL CLAIMS AGAINST CT: \$1,715,335.00

Accordingly, upon the Court's awarding Encore full restitution of \$5,536,254, Encore would elect judgment against Trask of \$7,917,468.40 and judgment against Clear Touch of \$5,536,254.

2. **The Court should enter judgment against both Defendants including an award of \$849,890 in exemplary damages.**

Under the South Carolina Trade Secrets Act, "[u]pon a finding of wilful, wanton, or reckless disregard of the plaintiff's rights, the court may award separate exemplary damages in an amount not exceeding twice any award" of actual damages. S.C. Code Ann. § 39-8-40. It is appropriate to award exemplary damages in an amount that is twice the actual damages award where the evidence demonstrates a willful and wanton disregard of the plaintiff's rights. *See Sonoco Products Co. v. Guven*, No. 4:12-CV-00790-BHH, 2015 WL 127990, at *11 (D.S.C. Jan. 8, 2015) (doubling the amount of actual damages to set the award for exemplary damages under the South Carolina Trade Secrets Act).

In this case, the jury found that Defendants' violation of the Trade Secrets Act was willful, wanton, and in reckless disregard of the plaintiff's rights. Therefore, the actual damages of \$424,945 should be doubled and awarded as exemplary damages in the amount of \$849,890.¹

3. **The Court should enter judgment against both Defendants including \$345,600 in attorneys' fees and \$94,900 in expert witness fees, costs and other expenses.**

The Trade Secrets Act provides that if "willful misappropriation exists, the court may award reasonable attorney's fees to the prevailing party." S.C. Code Ann. §§ 39-8-80(3). The

¹ Because the jury awarded \$500,000 in punitive damages for Clear Touch's tortious interference with contractual relations on the same actual damages of \$424,945, the Court's exemplary damage award should at least equal if not exceed this amount.

Contract also provides that, in the event Encore “prevails, in whole or in part, in any such action, [Trask] shall be liable to [Encore] for all of its costs and expenses, including, without limitation, reasonable attorney fees and expert witness fees.” Plaintiff’s Exhibit 2, p. 2 (“General Provisions”). “The law is clear in South Carolina that attorney fees are recoverable when authorized by contract or statute.” *Charleston Lumber Co. v. Miller Housing Corp.*, 318 S.C. 471, 483, 458 S.E.2d 431, 438 (Ct. App. 1995).

Encore prevailed at the trial of this action in that the jury awarded it damages for Defendants’ breach of contract, breach of contract accompanied by a fraudulent act, tortious interference with contract, and willful violation of the South Carolina Trade Secrets Act. Accordingly, Encore is entitled to attorneys’ fees, expert witness fees, and other costs and expenses for the following reasons:

1. As demonstrated by the Affidavit of Gregory J. English filed herewith, Encore’s counsel worked on this case for the following number of hours at the following hourly rates:

<u>Attorney</u>	<u>Hours Worked</u>	<u>Rate</u>	<u>Total Billing</u>
Greg English	491.1	\$ 400.00	\$ 196,440.00
Rita Bolt Barker	24.2	\$ 380.00	\$ 9,196.00
Rita Bolt Barker	277.4	\$ 350.00	\$ 98,507.00
Meliah Jefferson	37.3	\$ 375.00	\$ 13,987.50
Andrew Coburn	5.3	\$ 400.00	\$ 2,120.00
Chris Schoen	1.1	\$ 310.00	\$ 341.00
Mark Bakker	0.6	\$ 400.00	\$ 240.00
Jillene Van Hoy	24.7	\$ 185.00	\$ 4,569.50
Jillene Van Hoy	92.4	\$ 200.00	\$ 18,480.00
Denise Eubanks	0.3	\$ 200.00	\$ 60.00
Lynda Romanstine	8	\$ 195.00	\$ 1,560.00
Lynda Romanstine	0.5	\$ 200.00	\$ 100.00
TOTAL:			<u>\$345,601.00</u>

2. It is for the Court to fix a reasonable amount of attorneys' fees. In determining the amount of reasonable attorneys' fees, the Court must consider: (1) the nature, extent, and difficulty of the legal services rendered; (2) time and labor necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993).

3. Based upon the facts of this case and the law concerning awards of attorneys' fees, Encore should receive amount requested above for attorneys' fees, plus costs and associated expenses. The hours devoted to this case and Encore's attorneys' rates justify this award of attorneys' fees, in addition to all costs and expenses. Additionally, as noted in *Blumberg*, several factors other than time and an hourly rate are relevant to an award of attorneys' fees:

(A) The case required a jury trial. Attorneys were required to be in court the entire week of September 25, 2017. In a day when most cases are settled and few cases are tried, this case was more difficult and required more skill to resolve than most.

(B) Because Defendants had lost or destroyed many e-mails and other documents, Encore had to seek relevant documents from third parties through subpoenas. Defendants moved to quash nearly all of these subpoenas, requiring Encore's counsel to attend hearings to obtain denials of Defendants' motions to quash to collect relevant evidence.

(C) The professional standing of Encore's counsel is outlined in the Affidavit of Gregory J. English, Esq. Encore's counsel have litigated numerous other cases involving business disputes, such as *Powell v. Floyd*, Case No. 97-2686, Unpub. Decision at 11-12 (4th Cir. Oct. 12, 1999), and *South Carolina Department of Transportation vs. Jetport Eighty-Five Associates*. *Powell* involved disputes over the value of businesses in Spartanburg County, South

Carolina and the District Court awarded, and the Fourth Circuit Court of Appeals affirmed, \$241,000 in attorneys' fees and costs in 1999. The *Jetport* case involved a condemnation by SCDOT and Judge Cole awarded the full amount of attorneys' fees and costs requested at full hourly rates (\$325 per hour for Mr. English in 2008).

(D) As outlined in the Affidavit, Encore's attorneys had other available opportunities to handle work at reasonable fees at higher hourly billing rates than set forth above, but accepted this case with the belief that they would be fairly compensated.

(E) The fee requested is in line with that customarily charged in the locality for similar services. A case such as this – involving a jury trial and court appearances for five (5) days – would be considered undesirable within the legal community.

(F) The Wyche Firm obtained beneficial results for Encore. It obtained favorable verdicts totaling millions in actual and punitive damages. The results obtained were very beneficial for Encore.

4. In addition, Encore incurred, or the Wyche Firm incurred on Encore's behalf, the following expenses and other costs for this litigation:

Expert Fees	\$57,326.50 ²
Trial Exhibit Presentation	14,418.14
Deposition transcripts	7,988.08
Out-of-state subpoenas	5,076.20
Westlaw legal research	3,662.04

² Encore's expert, Mike Meilinger, prepared both a preliminary report for mediation and a final report after receiving Defendants' books and records. Because those books and records were prepared on a cash basis, substantial effort was required to convert them to an accrual basis. In addition, Mr. Meilinger was required to review third-party documents Defendants did not produce to complete his assessment of Defendants' financial records.

Witness travel	1,983.51
Copy costs	1,281.80
Mediation Fees	1,004.72
Other costs & expenses	1,739.90
Lunch expense during trial	<u>+ 419.56</u>
Total:	<u>\$94,900.45</u>

A statement detailing these costs is attached to the Affidavit of Mr. English.

CONCLUSION

For the foregoing reasons, the Defendants should pay the amounts requested above for restitution, exemplary damages, attorneys' fees, expert witness fees, costs and other expenses for Encore's successful prosecution of this case. Specifically, the Court should enter judgment for the higher of:

- A. Restitution in the amount fixed by the Court; or
- B. The amounts awarded by the jury, plus exemplary damages, attorneys' fees, expert witness fees, costs and other expenses as follows:

Against Defendant Keone Trask**Actual Damages****Punitive Damages**

\$ 375,733.40	\$ 175,000.00	breach of loyalty (Encore wages + conference expenses)
675,361.00	1,500,000.00	breach of fiduciary duty (Encore's lost profits from non-disclosure of suppliers)
424,945.00	849,890.00	violation of Trade Secrets Act (Leon County profits – same as breach of contract)
<u>+1,476,039.00</u>	<u>+2,000,000.00</u>	breach of contract accompanied by a fraudulent act (portion of Clear Touch profits)

\$2,952,078.40 + \$4,524,890.00 = \$7,476,968.40

Plus attorneys' fees (see below) + 345,600.00

Plus costs & expenses (see below) + 94,900.00

TOTAL LEGAL CLAIMS AGAINST TRASK: \$7,917,468.40

Against Defendant Clear Touch Interactive, Inc.**Actual Damages****Punitive Damages**

\$ 424,945.00	849,890.00	violation of Trade Secrets Act (Leon County profits)

or

<u>+ 424,945.00*</u>	<u>500,000.00*</u>	tortious interference (* \$424,945.00 in actual damages same as Leon County profits)

\$ 424,945.00 + \$ 849,890.00 = \$1,274,835.00

Plus attorneys' fees (see below) + 345,600.00

Plus costs & expenses (see below) + 94,900.00

TOTAL LEGAL CLAIMS AGAINST CT: \$1,715,335.00

Upon the Court's awarding Encore full restitution of \$5,536,254, Encore would elect judgment against Trask of \$7,917,468.40 and judgment against Clear Touch of \$5,536,254.

Respectfully submitted,

WYCHE, P.A.

By: s/ Gregory J. English
Gregory J. English (SC #65470)

44 East Camperdown Way
Post Office Box 728
Greenville, SC 29602-0728
(864) 242-8200

Attorneys for Plaintiff
Encore Technology Group, LLC

October 9, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Encore Technology Group, LLC,	)	C.A. No.: 2015-CP-23-05757
	)	
Plaintiff,	)	DEFENDANTS' MOTION TO
	)	DISSOLVE RECEIVERSHIP
v.	)	
	)	
Keone Trask and Clear Touch Interactive,	)	
Inc. f/k/a Clear Touch Interactive, LLC,	)	
	)	
Defendants.	)	
	)	

PLEASE TAKE NOTICE that Defendants, Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC, (*collectively* "Defendants") by and through their attorneys, will move before the presiding judge of the Court of Common Pleas for Greenville County, South Carolina; at a date, time and location to be set by the Court, for an order dissolving the Receivership established by the Receiver Order entered July 23, 2018, herein based on the following:

1. On April 2, 2018, the Court entered a Final Order and Judgment in favor of Plaintiff against Keone Trask and Clear Touch Interactive, Inc.
2. On April 17, 2018, Defendant Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive LLC paid the judgment against it in full into the Court pursuant to South Carolina Rule of Civil Procedure 67.
3. On July 23, 2018, a Receiver Order was entered for the purpose of identifying and preserving collectible assets which may be utilized to satisfy the judgment against Keone Trask resulting from the trial of this matter in September 2017.
4. On January 3, 2019, Defendant Keone Trask paid the Judgment against him into the Court pursuant to South Carolina Rule of Civil Procedure 67.

5. The payments dated April 17, 2018 and January 3, 2019, are meant to secure the respective judgments Encore has against these Defendants pending resolution of the appeals arising out of and related to this matter.

6. Consequently, the need for the Receivership has concluded since payment of the judgment against all Defendants has now been made in full into the Court pending resolution of the appeal.

The motion is based on this notice and motion; the pleadings, documents, records, and files in this action; the statutory and case law of the State of South Carolina; any subsequent memoranda of law or other evidence which may be submitted prior to the hearing on this motion; as well as any oral argument and documentary evidence which may be presented at the hearing on this matter.

WHEREFORE, Defendants pray that the Receiver Order be dismissed with prejudice.

(Signature page follows)

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.

s/ Joseph O. Smith

Joseph O. Smith, S.C. Bar # 77475

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Attorneys for the Defendants

*Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear
Touch Interactive, LLC*

January 8, 2019
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

JAMI POWELL,

Plaintiff,

vs.

CLEAR TOUCH INTERACTIVE, INC. (a
Nevada Corporation) f/k/a CLEAR
TOUCH INTERACTIVE, LLC (a Nevada
LLC); KEONE TRASK and TAMARA
TRASK,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2017-CP-23-06520

**MOTION TO INTERVENE BY
ENCORE TECHNOLOGY GROUP, LLC**

**TO: PLAINTIFF and JOSHUA L. HOWARD, ESQ., HER ATTORNEY, and
DEFENDANTS and JOSEPH O. SMITH, ESQ., and JOSHUA J. HUDSON, ESQ.,
THEIR ATTORNEYS**

Encore Technology Group, LLC ("Encore") hereby moves for an order pursuant to Rule 24, SCRPC, allowing it to intervene as a co-plaintiff in this action and adopt the complaint in this action as its own, on the grounds that (a) Encore claims an interest relating to the property and transaction which is the subject of this action, i.e., Keone Trask's ownership interest in Defendant Clear Touch Interactive, and is so situated that the disposition of this action may impair or impede its ability to protect that interest; and (b) Encore's claim and this action have questions of law and fact in common, i.e., whether Keone Trask successfully converted Defendant Clear Touch Interactive from a limited liability company to a corporation and still owns a membership interest in Defendant Clear Touch Interactive.

In further support of this motion, Encore notes the following:

1. On April 2, 2018, Encore obtained a Final Order and Judgment against Defendant Keone Trask ("Keone") in the amount of \$7,917,468.40 (the "Judgment").

2. The Judgment required Keone to pay \$7,917,468.40 to Encore. Keone has failed to pay any portion of this amount. Although the Clerk of Court issued an Execution against Property of Keone on April 13, 2018, it has not been satisfied, in whole or in part, and the Greenville County Sheriff has returned it marked "Nulla Bona."

3. Keone is the President and sole Director of Defendant Clear Touch Interactive, Inc., f/k/a Clear Touch Interactive, LLC ("Clear Touch"). Keone previously owned a membership in Clear Touch, but claims to have converted Clear Touch from a limited liability company to a corporation and, as part of such conversion, to have relinquished his ownership interest in Clear Touch.

4. This action seeks a declaratory judgment that Clear Touch was not successfully converted from a limited liability company to a corporation and accordingly that Keone still has an ownership interest in Clear Touch. If such a declaratory judgment is granted, then Keone's ownership interest in Clear Touch will be available for application to Encore's Judgment.

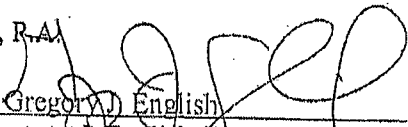
5. If Encore is not allowed to intervene in this action, it would file a new lawsuit seeking the same result. Such proceedings would be inefficient and risk inconsistent rulings. Allowing Encore to intervene in this action is the best way to ensure that disposition of this action does not impair or impede Encore's ability to protect its interest in collecting its Judgment and that Encore's claims and the common claims in this action are resolved efficiently and consistently.

This motion is supported by the pleadings in this case and the Judgment and record in *Encore Technology Group, LLC vs. Keone Trask, et al.*, Case No. 2015-CP-23-05757.

The undersigned affirms that he has communicated with opposing counsel and attempted in good faith to resolve the matter contained herein.

Respectfully submitted,

WYCHE, R.A.

By: 
s/ Gregory D. English
Gregory D. English (SC #65470)
Rita Bolt Barker (SC #77600)

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Post Office Box 728
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Attorneys for
Encore Technology Group, LLC

July 25, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Jami Powell and Encore Technology Group, LLC,	)	C.A. No.: 2017-CP-23-06520
	)	
Plaintiffs,	)	DEFENDANTS' MOTION TO
	)	DISMISS
v.	)	
	)	
Clear Touch Interactive, Inc. (a Nevada Corporation) f/k/a Clear Touch Interactive, LLC (a Nevada LLC); Keone Trask and Tamara Trask,	)	
	)	
Defendants.	)	

PLEASE TAKE NOTICE that Defendants, Clear Touch Interactive, Inc. (a Nevada Corporation) f/k/a Clear Touch Interactive, LLC (a Nevada LLC); Keone Trask and Tamara Trask, (*collectively* "Defendants")¹ by and through their attorneys, will move before the presiding judge of the Court of Common Pleas for Greenville County, South Carolina, at a date, time and location to be set by the Court, for an order dismissing the Intervening Plaintiff, Encore Technology Group, LLC's ("Encore") Complaint and all causes of action filed herein based on the following:

1. On April 2, 2018, the Court entered a Final Order and Judgment in favor of Encore against Keone Trask.
2. On October 2, 2018, Encore filed a Complaint requesting a declaratory judgment against Defendants.
3. The First (Declaratory Judgment) Cause of Action herein are attempts to collect on said Judgment by intervening in this case.

¹ These Defendants are using the terminology utilized by Plaintiff in the case caption, and do not necessarily admit that such descriptions are true and accurate.

4. On January 3, 2019, the Judgment was paid into the Court pursuant to South Carolina Rule of Civil Procedure 67.

5. Consequently, Plaintiff no longer has standing to pursue these claims as the alleged injury has been appropriately collateralized pending appeal.

The motion is based on this notice and motion; the pleadings, documents, records, and files in this action; the statutory and case law of the State of South Carolina; any subsequent memoranda of law or other evidence which may be submitted prior to the hearing on this motion; as well as any oral argument and documentary evidence which may be presented at the hearing on this matter.

WHEREFORE, Defendants pray that the Cause of Action be dismissed with prejudice.

(signature page to follow)

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.

s/ Joseph O. Smith

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Attorneys for the Defendants

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

Clear Touch Interactive, LLC (a Nevada LLC); Keone

Trask and Tamara Trask

January 8, 2019

Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
) CASE NO: 2015-CP-23-05757

Encore Technology Group, LLC,

PLAINTIFFS,

-vs-

Keone Trask and Clear Touch Interactive,
Inc., f/k/a Clear Touch Interactive, LLC

DEFENDANTS.

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
) CASE NO: 2017-CP-23-06520

Jami Powell and Encore Technology
Group, LLC,

PLAINTIFFS,

-vs-

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

DEFENDANTS.

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
) CASE NO: 2018-CP-23-03966

Encore Technology Group, LLC,

PLAINTIFFS,

-vs-

Tamara Beatrice Trask, individually and as
Trustee of Clear Touch Interactive

TRANSCRIPT OF RECORD

Retirement Plan and as trustee of the Trask)
Family Trust, Keone Trask as trustee and)
Administrator of the Clear Touch Interactive)
Retirement Plan and as trustee of the Trask)
Family Trust, Clear Touch Interactive, Inc.)
As sponsor of the Clear Touch Interactive)
Plan, Trask Family Trust, Leo Gallant,)
And Khatia Ingrid Crebs, a/k/a Kathleen)
Ingrid Cruse, a/k/a Kathy Cruse,)

DEFENDANTS.

February 7, 2019
ANDERSON, SOUTH CAROLINA

BEFORE:

THE HONORABLE LAWTON MCINTOSH, JUDGE

APPEARANCES:

Greg English, Esquire
Attorney for Plaintiff

Keith D. Munson, Esquire
Attorney for Plaintiff

Steven Edward Buckingham, Esquire
Attorney for Defendant

John R. Perkins, Jr., Esquire
Attorney for Defendant

Joseph O. Smith, Esquire
Attorney for Defendant

LESA D. WILLIAMS
Family Court Reporter

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EXHIBITS

NO EXHIBITS ENTERED

THE COURT: --- and we have a motion to dissolve the receivership. We have a Motion to Dismiss in the Jami Powell case, a Motion to Dismiss Plaintiff's Motion for Partial Summary Judgment as to Status of LLC, and then Encore and to my --- Motion to Dismiss from the motion for a failure to state a more definite statement -- a motion to state a more definite statement. Is that basically right? Have I stumbled through that clearly enough? All right, let's do the Motion to Dissolve, Mr. Smith.

MR. SMITH: Yes, Your Honor. I will say before I start, the three motions that we filed, and I will lay out what they are, the central issue runs throughout all of them, so I think the determination of this issue determines the fate of those three motions. I'll make clear what they are real quick for the sake of everyone.

First, the Motion to Dissolve the Receiver -- and excuse me, I'm Josh Smith, on behalf of the Defendants -- Motion to Dissolve the Receiver, there is a Motion to Dismiss -- Encore has claims against the Defendants for fraudulent conveyance and piercing claim. And then there's another motion to dismiss -- Encore is co-Plaintiff in the Powell case. So those are the three motions that all hinge on the determination of the substantive issue that we're going to talk about here.

THE COURT: Okay.

MR. SMITH: And before we start, and before I get to that I would like ---

THE COURT: Let me stop, if I may. Does everybody agree, Mr. Smith, that depending on the resolution of the Motion to Dissolve Receivership, the other motions will be mooted?

MR. ENGLISH: We agree that if the Court denies Mr. Smith's Motion to Dissolve the Receiver that it should also deny those other two motions.

THE COURT: Well, on the opposite side, Mr. English, do you agree that if I dissolve the receivership, the other motions are moot?

MR. ENGLISH: No, Your Honor. I think if -- even if you dissolve ---

THE COURT: I'm surprised, Mr. Smith. All right, well, at least we're consistent over here. All right, go ahead, Mr. Smith.

MR. SMITH: If I can get over the shock from Mr. English's stance, here. No, no, I'm kidding with you, Greg in good fun, honestly. But, before we get to the substantive issue, really quickly I need to -- the fact that we're here is troublesome to me. My clients paid \$8.3 million into the Court, and we haven't resolved these things. And look at this -- I mean, machine around us, here. I've got three other defense lawyers here. We've got three Plaintiff's lawyers, and out of the seven of us, six of us are going to either be paid or try to be paid by my client.

And that's not even the receivers thankfully -- I spoke -- you know, we've communicated. He's not here. That's another attorney. I mean, that's a massive thing. And it's very indicative to me of what the true intention is here, is not necessarily to collect a judgment, to square what they got in trials and destroy Clear Touch. It's to interfere with the business and try to take it, plain and simple. And that's why we're here. That's why we filed these motions. That's why my client came up with the massive amount of money they did, to secure Encore's judgment.

THE COURT: I'm sorry.

MR. SMITH: That's fine, I was waiting on you, Your Honor. And I know there's a lot going on here. I'm going to try to be as concise as possible.

THE COURT: Sure.

MR. SMITH: So, I just wanted to say as I'm disturbed that we're here. I don't think we should be. I think this thing should be resolved. That's neither here nor there necessarily, but it's very telling that we're standing here spending all this time, a lot of client's time and resources and money, and of course, time, but I do appreciate you making time today for us,

because this is very important to my client. They want all this understandably to stop. They need to be able to run their business without this massive interference, this massive distraction, this massive drain that this whole collective thing has turned into that the Court's intimately familiar with.

So, the central issue here is the payment of the judgment amount into the Court. We contend we're going to go through the calculation, that we've paid 100 percent into the Court. Encore contends we haven't. And really the issue is, are we going to make Encore follow the law, or are we going to make Encore abide by -- go by what the order says. The law here controls. The law that the legislature put out and the law of our appellate court controls the situation here, and I'll explain what I mean.

But let me take two pieces of low-hanging fruit, I think, here. Encore's objection to our calculation is made up of three main components. One, they claim we owe receiver's fees of 200, I think ---

THE COURT: That has yet to be determined.

MR. SMITH: Yes, Your Honor. That's exactly what I'm going to say, just for the purpose of the record. Page 9, paragraph 8 of the receiver's order is very clear. If part of the appeal is upheld, then we'll owe receiver's fees. So, to me as we stand here today, that hasn't happened. That's off the table ---

THE COURT: I agree with you.

MR. SMITH: --- so I wouldn't even give breath to it beyond this point. Two ---

THE COURT: Let me ask you, if I may. I know I keep interrupting you, and I apologize.

MR. SMITH: Yes, do.

THE COURT: But the amounts -- and Mr. English kind of broke them down. If I were to subtract out the amounts -- it would probably be a better question for Mr. English. If

I were to subtract out the receiver fees and costs of what you're arguing is the basis -- say that this judgment has not been paid individually or corporately, then how much do you allege would be remaining?

MR. ENGLISH: \$911,887.80, and I've got those calculations if Your Honor would like to look at them.

THE COURT: And what would that consist of, please, sir?

MR. ENGLISH: That would consist of the balance of the judgment plus post-judgment interest at 8.5 percent, all as set forth in the Court's Final Order of Judgment that is on appeal.

THE COURT: Do you have a breakdown on that?

MR. ENGLISH: I do. Would you like it?

THE COURT: Would you pass it forward?

MR. ENGLISH: Yes.

THE COURT: Do you have a copy of that, Mr. Smith?

MR. SMITH: Of -- I don't think so, but I'm sure they have one for me.

THE COURT: I'll tell you, Mr. English, right now I do agree with Mr. Smith that to stop the receivership -- I mean to dissolve the -- to not dissolve the receivership based on these collection costs remain unpaid is premature. And it may be you have to reapply for a receiver to be appointed, but that issue remains to be determined based on the outcome of the appeal, okay. I'm just telling you that's what I'm thinking, and I doubt very seriously you're going to change my mind on that, okay.

MR. ENGLISH: Whenever I have an opportunity to be heard, I ---

THE COURT: I'll give you all the time you need. I'm just letting you know ---

MR. ENGLISH: Okay.

THE COURT: --- okay. All right, go ahead. So, Mr. Smith, right now, you're winning on that one. Go ahead ---

MR. SMITH: That's good to hear.

THE COURT: --- and give me the other ones.

MR. SMITH: I hope to continue that trend. Second, the part of the component -- the two -- the second part of the three parts they had was the post-judgment fees that the Wyche firm, Mrs. Barker and Mr. English had put into this. Again, not part of the judgment calculation. I mean, the judgment calculation awarded fees and costs up to the trial and under the trade secret misappropriation claim. Those were awarded. That's part of the judgment. Post-trial fees are another matter, and again, do not go into the calculation we're talking about as owing today. So, again, to me it's a moot point. It doesn't need to be addressed beyond saying that, and I'm sure my colleagues disagree, but that's where we are on that. It's not part of the judgment calculation. That's abundantly clear. It's not in the order.

So, that leaves us with the third part. The third part they contend us owing is a component of the trade secrets ---. I'm going to try -- and of course, you're familiar with this, but I'd like to just run through it so we're all on the same page. The jury found against the Defendants for violating the Trade Secrets Act. They awarded \$424,945 in actual damages. And then there was special part of the verdict form that asked did you find the Defendants engaged in wanton and willful reckless misappropriation was essentially the question and they answered in the affirmative and put it to the Court to -- in your discretion to award exemplary damages and/or attorney's fees. You awarded attorney's fees. And awarded exemplary damages.

Now, the trade secrets statute which is -- I gave to you, it's under tab 6 there, the pertinent part, if you don't mind looking at it with me ---

THE COURT: I got it.

MR. SMITH: --- right quick, is very important.

THE COURT: Okay.

MR. SMITH: Let me know when you're ready, Judge.

THE COURT: I've got it, 39-8-40?

MR. SMITH: Yes, sir.

THE COURT: Okay.

MR. SMITH: And if you see here, part C limits the exemplary damages a Plaintiff can recover under the Trade Secrets Act, and it's extremely clear. It limits it to twice the actuals. I mean, it says it verbatim the Court may award separate exemplary damages in an amount not exceeding twice any award made under subsection A, and subsection A is actual damages. That's the law. So, the most that they could recover for exemplary damages under the Trade Secrets Act which they elected to recover under, is \$849,890.

So, if you recall, my client, Clear Touch, paid into judgment against it, which was the trade secret plan. And if you look at page -- excuse me, tab 3 in your notebook, we have a breakdown of our calculation here, Your Honor. So, if you look at the top two boxes, you can see ---

THE COURT: Original revised?

MR. SMITH: Look at the -- yes, yes, Your Honor. On the top left, it says original summary of the judgment. I had an accountant do this, so he used some terms --- he wasn't meaning to. And you see the violation of the Trade Secrets Act is broken down there in the top left box. \$424,000 in actuals, \$849,000 in punitives, so the total of \$1.2 and change.

THE COURT: Right.

MR. SMITH: And then you add in -- excuse me, the attorneys fees and costs, and got the \$1.7. Now, Clear Touch paid that in in April, a couple of weeks after you issued the

order, so the outstanding judgment against Mr. Trask we calculated not to include the Trade Secrets Act in any form. Now, what they rely on is the footnote in the order. There is a footnote on page 11, footnote number three. And it says in the order that -- and it's in here if you want to look at it, Your Honor. I think Mr. English's breakdown actually has it as well. It somehow got in this 35-page order in the footnote that each Defendant has to pay \$849,890 a piece in exemplary damages.

Well, we contend the statute extremely clear. You can only go up to twice. And then also, the case law is very clear that -- this is a quote from *Smith v. Strickland* -- it's in your book as well, 314 S.C. 192 of the Court of Appeals, and that's a business tort case -- made very clear, as with actual damages, a Plaintiff can recover damages that are punitive in nature only once, either as expressly designated punitive damage or as trebled damage where the recovery concerns a single wrong. Well here, the single wrong is a trade secret misappropriation. It's the same claim, same facts, same single wrong, a misappropriation of trade secrets they claim.

The jury agreed. They awarded damages. But those damages can only be recovered once, and what they're contending today is we can go above the law, we can ignore the Trade Secrets Act, we can ignore the case law, and we can get quadruple the actuals. So that means you quadruple punitives. The law doesn't allow that. The issue is that simple for us. It really is. So, as I said in the beginning of this, when we got to the substantive part, the issue running through my three motions is very clear and very cut and dry, because either we're going to have to follow the law or not. And we think they have to. We think the law, the very clear law controls what they can and can't recover. And that's why we let them calculate the damages as we did.

Now, let me say this, too. If for some reason Your Honor disagrees with our calculation --- just now, there's also some very favorable law. The Court has the discretion

to stop all this. You, as trial court, Your Honor, can stay the execution of the judgment pending appeal if you decide that Encore is adequately secured by what we have paid in. So even if -- and again, we disagree with this assessment -- but even if Your Honor were to say Mr. English, I -- you know, I agree with you, they owe you another \$900, you could also say, but, they've paid in 90 percent of that already, that's adequate security for the judgment and I am going to stay execution of the judgment pending appeal. And South Carolina Appellate Court Rule 241 has a procedure for issuing up a *supersedeas* and effecting that process. So, the law is very clear there, Your Honor.

And so, I ask if you do agree with Mr. English and you disagree with my calculation based on what I just laid out, I do ask the Court to stay execution because it is causing a mass amount of harm to my client, especially to Clear Touch. I'm not going to read all this off here, but I asked my client just tell me how the receiver -- the receiver's actions especially, have impacted your ability to run business, and this is just a quick breakdown. And I mean, he's missed attendance -- a customer's --- events in Atlanta, cost him a \$2 million opportunity. It's their largest market. He didn't have contact with current and prospective customers there. And I don't have to tell Your Honor, Keone Trask is a major player in this business. He is good at what he does, and as much problem as Encore and them have been, no one disagrees Keone Trask is excellent at his job, and good at doing business.

So him not being able to go to that conference is a big deal. That wasn't just an isolated event. Same thing, conference in Sacramento. It's their largest emerging market. He couldn't go, because he had to do stuff with the receiver with the post-judgment, with getting things together, providing the information. It's taking up this mass amount of time from the principal of his business. Same thing, he missed participating in finalizing his regulatory certification for certain products. He missed participating and -- they have a yearly national meeting in Greenville, because the Greenville company -- was run out of the

Greenville office here. And he missed full participation in that, because that was right in the midst of us getting together more and more stuff for the receiver, wanting to answer his questions and get him what he needed -- what he said he needed.

And he missed fully participating in the company's annual budgeting and planning to identify, you know, who are we doing business with, who can we do business with. Let's plan this out the right way and continue to be viable and grow. So, it is not even close to an understatement -- or overstated, rather, that this is a massive detriment to my client's business and him personally. They have moved mountains to put a lot of money into the Court to where we say it's 100 percent of the judgment. It's -- and even conceiving their calculation of \$900 discrepancy, it's still 90-something percent of the judgment. They are adequately secured.

So, we ask that you grant our motions, Your Honor, and if you're not inclined to do that, you stay -- you do stay execution of the judgment which is granting the motions in essence, as well.

THE COURT: All right. Mr. English, let me start you off with the trade secrets calculation that you have. I will tell you right now there is never -- it is not my intent, regardless of somehow in my misguided way, I overlooked the footnote. But it was never intended, and I don't think it's allowed by the statute, that you be allowed to collect double actuals per party, okay, per corporate entity and the individual. I think they're joint and several.

MR. ENGLISH: You're right, and the order did not do that. And in fact, I attached to my calculation the footnote in question. So, my calculation is page 1. Page 2 is the amount of the judgment against Trask, and page 3 is the footnote that Mr. Smith referenced. And it's very clear that -- and based on our calculation, we have given credit to Mr. Trask for Clear Touch, the deposit into the Court of the actual damages and the attorney's fees and

costs that the Court awarded. So, you're right on the law there. And the order was right. And that order and that footnote wasn't overlooked, it was right on the law. And Mr. Smith, Your Honor will recall ---

THE COURT: I've got no ---

MR. ENGLISH: Okay.

THE COURT: Let me make sure I recall it, because I don't necessarily ---

MR. ENGLISH: Well, Mr. Smith --- this and sent Your Honor redlines of objections to the proposed order, things that he wanted changed. He did not touch that footnote, and he didn't argue that in his Motion for Reconsideration, so that ---

THE COURT: Be that as it may, do you agree with Mr. Smith's assessment that it says each one has to pay the punitive aspect individually on this double amount? Because I disagree with that, and if I let that get in the order, that's my mistake.

MR. ENGLISH: Now, on punitive damages, that's a different question, and the order is right on the wall.

THE COURT: In the sense when you double the damages, that's a punitive award.

MR. ENGLISH: Correct. And what the law is on that is that each defendant separately owes punitive damages. Your Honor will recall the verdict form on this asked for each defendant -- did Mr. Trask willfully and deliberately violate the Trade Secret Act? The jury said yes. Did Clear Touch willfully and deliberately violate the Trade Secret Act?

THE COURT: Show me the verdict form. Who has it? Do you ---

MR. SMITH: I've got it right here, Your Honor. It's tab 2 of your ---

THE COURT: Tab 2?

MR. SMITH: Yes, and the question was, quote, was the defendant's conduct and viable defendants ---

THE COURT: Hang on, hang on.

MR. SMITH: Sure.

THE COURT: Hang on, hang on.

MR. SMITH: Tab 2.

THE COURT: I got it.

MR. SMITH: Page 4 of 8 of the verdict form.

THE COURT: All right, sir.

MR. ENGLISH: All right ---

THE COURT: I will tell you, Mr. English, that I don't think that you get double per defendant. I think it's one verdict.

MR. ENGLISH: All right, Your Honor, I ---

THE COURT: You can argue with me, but ---

MR. ENGLISH: Thank you.

THE COURT: --- that's what I'm thinking.

MR. ENGLISH: First of all, I would say that that is a -- would be a misinterpretation of the Trade Secrets Act, because that is a per defendant cap, not a per party cap.

THE COURT: What tab is that under, Mr. Smith?

MR. SMITH: The act, Your Honor?

THE COURT: Yeah.

MR. SMITH: It is -- there is an index in the front there referencing it.

THE COURT: And I don't mean to keep interrupting you, Mr. English.

MR. ENGLISH: No, it's fine.

MR. SMITH: Six. Six.

THE COURT: Six. So, you're reading the term separate to mean separate to the defendants?

MR. ENGLISH: Correct. Separate defendants and twice any award. So, there was an award against Mr. Trask, an award against Clear Touch, and the Supreme Court has addressed this issue in the *McGee* case, which I'd like to hand up.

THE COURT: Well, first, let me go back and correct something that I think that you -- the award that I'm looking at on page 4 of 8 of the jury verdict, the question to the jury was as to the Plaintiff Encore Technology Group, LLC's violation of the South Carolina Trade Practices Act claim against Defendants Keone Trask and Clear Touch, Inc., we the jury unanimously find, and they have a single award right there, okay. And there was no request for a third defendant award on the verdict form. It's just basically a general verdict form against both defendants.

MR. ENGLISH: Correct. And they're jointly and separately liable for that, yes.

THE COURT: Right. But then, you go down and look at the statute. I'm reading under 38 -- 39-8-40. Tell me when you're there.

MR. ENGLISH: I am.

THE COURT: Okay. Under C it says upon finding of willful, wanton or reckless disregard of the plaintiff's rights, the Court may award separate exemplary damages in the amount may not exceed. Now, the way that I interpret that, and maybe you're correct -- I haven't looked at this case you've handed up -- separate means it separate and apart from the actual damages awarded.

MR. ENGLISH: Correct.

THE COURT: But it's not separate per defendant.

MR. ENGLISH: I think it is separate per defendant.

THE COURT: Show me in the case we have that says that that's what that statute says.

MR. ENGLISH: Okay. Two points. First of all, the *McGee* case doesn't address the trade secrets act specifically. It addresses punitive damages against two defendants, two doctors who were jointly and separately liable for the same actual damages. What the Supreme Court said there is when two doctors are jointly and separately liable, then one doctor pays the actual damages and pays punitive damages, the Plaintiff is still entitled to a separate punitive damage award against the jointly and separately liable other doctor. So that's what -- that is the common law principle, and I think you have to read the statute in the light of that principle of law.

THE COURT: I think you read the statute in the plain wording of reading the statute. If it's ambiguous, maybe you use other things to interpret the ambiguity, but the statute's clear, the statutory construction rules are that you read the plain meaning of the statute. Right?

MR. ENGLISH: Yes, that's right.

THE COURT: And it seems very plainly worded to me.

MR. ENGLISH: Well ---

THE COURT: In addition to the verdict form that was placed before the jury. I mean, because you could very easily ask for a separate finding of willful conduct by each individual defendant, so it's clear that the jury was awarding a separate award, but this is just a general award. I don't believe, quite frankly, that that entitles you to double damages under part C of the statute against each individual defendant. I think it's just a single, one award of double the actual damages applicable to the both of the defendants jointly and separately.

MR. ENGLISH: Well, Judge, I would say that the verdict form refers to the defendants as defendants plural. And so, the jury found that both Defendants had willfully violated -- I'll say that this footnote 3 recognizes that fact, and that Mr. Smith has appealed this order to the Court of Appeals, so under Rule 205 of the Appellate Court rules, that issue

is before the South Carolina Court of Appeals right now, and it has exclusive jurisdiction over that question. Now, Mr. Smith is going to have a hard time with the Court of Appeals, because in none of his post-trial arguments about this interpretation of the statute in this order did he raise the issue before this Court. And so, it would be inappropriate for Your Honor to change the order that's now pending before the Court of Appeals.

THE COURT: Well, that very well may be, since I was not asked to do so, but still as its application applies to this receiver, that's well within my jurisdiction now, don't you think?

MR. ENGLISH: Well, I would say ---

THE COURT: Yes or no?

MR. ENGLISH: No. In order ---

THE COURT: That shocks me.

MR. ENGLISH: In order to file a motion for *supersedeas* you've got to have some statement of law and some ---

THE COURT: Wait, wait, wait a minute.

MR. ENGLISH: --- statement of facts.

THE COURT: I'm not asking for *supersedeas*.

MR. ENGLISH: Okay.

THE COURT: I understand that basically the idea behind the *supersedeas* is to stay the status quo of the parties pending appeal, okay. And I just got through doing one in Beaufort two weeks ago -- or in Charleston.

MR. ENGLISH: And because this is before the Court of Appeals ---

THE COURT: But it appears the issue to me, though, Mr. English, when we have a motion to dismiss or dissolve the receivership, I think that clearly is before this Court, because there's no issues up there before the Court of Appeals except for the verdict itself.

MR. ENGLISH: No, sir.

THE COURT: Okay.

MR. ENGLISH: Mr. Smith has also appealed the order appointing the receiver and has also asked the Court of Appeals to stay the receivership and the Court of Appeals has denied Mr. Smith's motion. So, both the final judgment and order and the receivership order are pending before the Court of Appeals.

THE COURT: Okay.

MR. ENGLISH: And I've got more to say about ---

THE COURT: I'm going to let you -- this is an important case ---

MR. ENGLISH: Yes.

THE COURT: --- for both sides.

MR. ENGLISH: Yes.

THE COURT: So, I recognize that. I don't think I agree with you on the receivership issue. But, you can convince me. I'm going to let you try. But I just -- it's hard for me, quite frankly, to number one, envision that with the verdict form that was agreed upon by all the parties after a conference before we went to the jury with the charge, that it's very -- a general form that has this specific interrogatory that you can interpret especially given the -- I think the unambiguous language of 39-8-40(C), I mean, that says that the award double -- it's just a separate award distinctive apart from the actual damage award, doesn't mean separate as to the defendants themselves.

In other words, it's applicable to each defendant separately so that you double up on each defendant. I don't think it says that. And I don't think you can read into that statute common law rules of punitive damages because the statute controls and it's clear. And it's unambiguous to me.

MR. ENGLISH: And I think that would be an unreasonable interpretation of that statute. Because, for example, imagine that you have ten defendants conspiring to steal somebody's trade secrets. Under that interpretation, all ten defendants would just divide up the exemplary damages among themselves.

THE COURT: No, what you would do at trial is that you would tailor a verdict form that would be applicable to the individual defendants. And that way it would be clear and the argument's not being made.

MR. ENGLISH: This verdict form found both Clear Touch and Mr. Trask ---

THE COURT: Jointly and separately liable.

MR. ENGLISH: --- liable for violating the Trade Secret Act, and the willful and wanton -- it's clear that it refers to defendants plural, so I think the finding is clear. They were both willfully violating the Trade Secret Act.

THE COURT: Sure. I don't disagree with that.

MR. ENGLISH: And let me just -- I want to address some of the background here, because I don't feel like I've gotten a chance to be heard on that.

THE COURT: You go ahead. I'm sorry.

MR. ENGLISH: Thank you. Judge, Mr. Smith got up and said his clients have paid a lot of money. But they paid that money to the clerk. They haven't paid a dime to the Plaintiff in this case who has a judgment, and still hasn't collected a single penny on that. And contrary to what Mr. Smith suggested, Encore has offered to resolve this case and take a big discount. So, the reason that we're -- the reason that we are here is because the positions that Mr. Trask has taken, and specifically what we were told at the beginning of this case is that Mr. Trask -- you know, Clear Touch deposited its money. Mr. Trask had no -- virtually no assets to pay.

And so, when we served discovery -- again, we got this verdict in September 2017. We got the judgment about six months later in about April of 2018, and served post-judgment discovery on Mr. Trask. He didn't answer any of that. He wouldn't tell us what bank accounts he had. He wouldn't tell us anything. So, in part, because of that, we filed and asked for a receiver, and the Court agreed that that was appropriate, especially with what ---, given to us or not given to us.

And then, instead of cooperating with the receiver, Mr. Trask -- I counted this morning, or last night -- Mr. Trask has filed no less than seven different motions to try to alter or change or having to turn over information. So, that's why these attorney's fees and receiver's fees are so high. In fact, the Court just recently, back in November, held Mr. Trask in contempt for not cooperating with the receiver. So, to the extent he's claiming he's suffering some hardship, it's his own lack of cooperation that is the cause of that.

Now, if Mr. -- if the receiver were here, he could tell you that even to this day Mr. Trask has not cooperated with the receiver ---

THE COURT: Well, let me tell you -- let me just state for the record. I had a call from the receiver. I was down in Columbia taking care of other things yesterday, and I told him that he did not need to come. I didn't think his presence would be necessary. If that's a mistake, that's on me, that's not on anybody else. I did that. And one of the reasons was I didn't see any basis, you know -- incur any additional fees and costs without him -- you know, I didn't think it was necessary. But I may be wrong about that.

MR. ENGLISH: And then what Your Honor put in that receivership order, I've attached that as page 5 -- to the last page of what I handed up. And in the receivership order, the Court ordered that the receiver shall be entitled to payment of professional fees and expenses incurred by the receiver. While Trask appeal remains pending, receiver's fees and expenses shall be paid by Plaintiff. That's my client that's had to pay that. If the judgment is

affirmed in whole or in part, Plaintiff shall be entitled to reimbursement of such payment from Trask's assets.

And so, what the receiver is out there doing is trying to find out what assets Mr. Trask has and preserve those, so that if the appeal is upheld, that Encore is not only entitled to recover on the judgment what it is owed under the judgment, but also if that judgment is upheld in whole or in part, it's also entitled to reimbursement of these receiver's fees and costs. And the order's ---

THE COURT: Again, though -- again -- let me ask you another way.

MR. ENGLISH: Okay.

THE COURT: And I'm going to give you all your time. But still, if we take out from the calculations the receiver's costs, the Wyche fee -- collection fees, and the trade secrets calculations for the exemplary damages, has the Defendants -- or have the Defendants paid a sufficient amount of monies into the Court to satisfy the verdict that was rendered and written down?

MR. ENGLISH: It is correct that Encore -- what Encore is claiming is the exemplary damage portion plus ---

THE COURT: Hang on. Don't twist it, because I'm slow and so I need to you to go slow--. If the receivership fees and costs are paid, your firm's collection costs are paid ---

MR. ENGLISH: Yes.

THE COURT: Not the attorney's fees awarded, but the collection costs, and subtract out the double exemplary award per Defendant -- just do it once. Has the Defendants -- have the Defendants paid sufficient monies into the Court to satisfy the verdict?

MR. ENGLISH: I think the answer to that is no, because they haven't paid the receiver's fees or the Wyche ---

THE COURT: Well, no, no, you're not listening to my question.

MR. ENGLISH: Sorry.

THE COURT: Okay. Take out receiver's fees and costs. Take out your collection fees and costs, not the attorney's fees that were awarded for the trial verdicts. That's a different award, okay. And if you were to only put one exemplary award and the actual damages in, not two. If you take out receivership, your collection fees and costs, and only have one exemplary award, have the Defendants paid sufficient monies to pay that amount to the clerk?

MR. ENGLISH: They have paid enough money in the clerk to cover what's left beyond those three things, yes.

THE COURT: Right. Okay.

MR. ENGLISH: Yes.

THE COURT: All right. Thank you. Okay, go ahead.

MR. ENGLISH: And so, Judge, in the same way, though, that Mr. Trask is liable for whatever amount of the judgment is upheld on appeal -- and that's before the Court of Appeals -- he's also liable for the receiver -- pursuant to the order he's now appealed, he's liable.

THE COURT: He could be liable. He could be liable. So could Encore. I agree. But that is not an award yet. That is an award to be determined.

MR. ENGLISH: Your Honor ---

THE COURT: What would be the difference, Mr. English, if I were to go as a Plaintiff and say I had this claim against this person -- this company or individual both that entitles me to fees if I prevail, but you need to go ahead and attach \$200,000 because I anticipate that I am going to be successful. And that's basically what you're saying.

MR. ENGLISH: The -- because the receivership order says that if the underlying judgment is affirmed in whole or in part, Plaintiff shall be entitled to reimbursement ---

THE COURT: Right.

MR. ENGLISH: --- of those payments from Mr. Trask's assets.

THE COURT: So, it would be incumbent upon your client if I were to say, okay, I'm going to stay or dismiss or dissolve or whatever proper terminology I should use -- the ongoing receivership activities and additional incurring attorney's fees and costs in that regard pending appeal, okay. And if I were to do that, I mean, that's what I was asking. I'm losing track of what I was asking you.

MR. ENGLISH: You would cut your stock in the continuing incurring fees, yes. But that still leaves ---

THE COURT: But you still -- but it wouldn't be incumbent -- going back to what I was trying to think of, wouldn't it be incumbent, assuming that the Plaintiffs were successful in all regards on appeal or partially on appeal, and then you had these receivership fees and costs incurred through whatever time period, from the time the receiver's appointed to whatever that period ends, and if you're entitled to collection of your collection costs and fees, wouldn't it be incumbent then to try to collect those fees against the defendants and having been unable to do so, then reapply for the reappointment of a receiver at that point?

I mean, I think it's somewhat cumbersome, but it -- to me, to allow the ongoing accrual of receivership fees and costs, your collection fees and costs, when they have posted what appears to be what I had thought was the proper payment of fees and costs absent determination of the appeal for the receiver, is to unsound an advance and withhold monies or make them incur additional costs that they haven't incurred yet. They shouldn't.

MR. ENGLISH: I think there's a difference between cutting off the ongoing incurrence of fees on the one hand, and on the other hand making sure that the Defendant pays what he owes. And either the Plaintiff is entitled to get paid what the Defendant owes or ---

THE COURT: You have deposited with the Clerk of Court sufficient sums to pay the total amount of the judgment excluding receivership fees and costs, your collection costs, but payment of your fees awarded at trial, and doubling of the exemplary award under the Trade Secrets Act. There is sufficient monies to pay that amount. And that's the intent, I thought, was it Rule 67 or whatever it is, to pay the judgment into the Court.

And let me tell you, and I've said it more than once and I'll say it again, your client's conduct was some of the most reprehensible conduct I've ever seen. And I had jurors leave saying the same thing to me out there. That being said, you know, you can't kick him while he's down. You're entitled to what you're entitled to. And I know there's animosity between your client and them, and I think there is some bit of truthfulness in Mr. Smith's assertion they're just trying to put him out of business. I do think that's kind of -- there's some of that going on. I really do.

MR. ENGLISH: And I'm sorry that you feel that way, because my client really just wants to get paid. And the problem is, if you say that, okay, he doesn't have to deposit anything more to the Court, even though my client's paid out -- if you set aside the double exemplary damages, has paid another \$350,000 almost because Mr. Trask would not just come clean with what his assets were and what he could apply to the judgment, so he's forced Encore to incur all these fees ---

THE COURT: I don't disagree with that.

MR. ENGLISH: --- that if he doesn't deposit, then they're left essentially unsecured even though the order says he is liable for it. There's been a determination that you did not cooperate in discovery, you're going to have to pay the receiver, and because you -- instead of cooperating ---

THE COURT: Well, there is a reward of the receivership contingent upon your success on appeal. There's nothing ---, and if there is, I'm forgetting it, okay. But I -- in

sitting here right now under the impression that the only the Plaintiff is going to be able to collect the receivership fees and costs incurred in this matter is if you are successful in your appeal, right?

MR. ENGLISH: But that's the same for the judgment, yes. Both -- the same analysis applies to the receivership order ---

THE COURT: Sure.

MR. ENGLISH: --- and the judgment.

THE COURT: I agree.

MR. ENGLISH: And so, they should be both deposited. And that -- the receivership order says that the receiver is ---

THE COURT: But the difference -- the award has been made by the jury, and then I made the award of the exemplary damages and the attorney's fees, and that's done. That's under appeal. But these other things, the collection of the receiver, is contingent upon your success on the underlying issues that the verdict is based on, okay. So those are two separate distinct animals.

MR. ENGLISH: But the ability to get the money out of the Clerk of Court for the judgment is also contingent on the judgment being ---

THE COURT: Yeah, but there's nothing in the rules that have anything about contingency -- getting your money pendency of appeal, because that's what it's for. It's to guarantee you the monies are there in the event you are successful, okay. But it's -- I mean, I have a real hard time with the concept that we're going to let this receiver keep bumping up monies -- and he's a good receiver. He's fine, and granted, what you say I know to be true, that is one of the reasons his fees are up there, is because of the conduct of the Defendants in this matter. I don't disagree with that at all. But, that being said, that whether or not he's ultimately going to be liable for that is dependent on the outcome.

MR. ENGLISH: Just like whether he's liable for the judgment is dependent on the outcome of the appeal, but the receiver ---

THE COURT: Let me ask you ask you another way, Mr. -- and I know I keep cutting you off.

MR. ENGLISH: That's all right.

THE COURT: But let me ask you this another way. If -- assuming you are successful on appeal, then you have whatever total amount that is excluding the receiver, your collection fees, and the doubling of the trade secrets. You have a wealth of monies there available to collect. Then your clients with your firm would be able to then get -- if they will not pay you for the receiver, for your collection costs if you're entitled to them, and if I'm wrong on the trade secrets issue, then you can seek to collect that again from them. And if they don't, come back and do the process again of refile for a receiver, if you're not successful, and your costs. I mean, to me, that's the way to go. I don't know why we wouldn't do it that way.

MR. ENGLISH: I guess the reason is because that would leave my client \$1.2 million short. It's -- and it's going to leave us short, and there's been no cooperation or payment to the Plaintiff ---

THE COURT: Well, granted -- I mean, I understand that. Let me ask you this, a different question, Mr. English. Under -- how is your firm going to be entitled to your collection fees incurred? Is there a contract or statute that provides for it?

MR. ENGLISH: Yes, the contract provides for fees and costs and the courts have interpreted those contracts as covering ---

THE COURT: That's as long as the governing parties are in the underlying action?

MR. ENGLISH: Yes. Yes.

THE COURT: And it's ongoing?

MR. ENGLISH: Yes.

THE COURT: All right. Okay.

MR. ENGLISH: And so, that's what we -- we don't want to be left short of -- and you can separate the Trade Secrets Act analysis from the receiver fees. If the appeal -- if the judgment is upheld at all, we'll get the money from -- that's been deposited for the judgment, but we'll still be about \$350,000 short on the money that Encore has already paid out because of Mr. Trask ---

THE COURT: But you -- absent having an immediate pot to go to than having to go back through the hoops again, which I know your client doesn't want to do, you still have the security of the court order saying to get the fees, you have a contract saying we'll get our fees, and you have the process of -- you know, of receivership available if they don't pay. And as you've seen, I'm not afraid to go ahead and appoint a receiver, and then we'll -- then the receiver apparently has been very successful in getting them to pay at least the vast majority of these monies into the Court.

MR. ENGLISH: The problem is that it's very costly to get all that started up, and that's how we got \$350,000 in the hole.

THE COURT: Right.

MR. ENGLISH: So, we would just ask that that money -- and because of the receivership order says those payments are to be made quote from Trask's assets, it's appropriate for the receiver to preserve those assets and not let him squander these. And that's another point. It bleeds into some of these other motions, but we've got fraudulent conveyance claims.

THE COURT: Mm-hmm.

MR. ENGLISH: And -- because when -- after -- when the judgment came down, there is evidence that Mr. Trask and his wife transferred assets out into their family trust, knowing that that judgment was out there.

THE COURT: Well, let me ask you another thing, Mr. English. If you were to -- never mind, go ahead.

MR. ENGLISH: So, the problem is, to the extent Your Honor lets them not put assets in with the clerk, it gives them opportunity to do things while the appeal is pending. And that's the whole reason the receiver was appointed, is because these folks -- and in fact, in response to Mr. Munson's motion, they admit that both Mr. Trask and Mrs. Trask intentionally transferred their ownership in order to hide that from Encore. There's just been ongoing evidence of the Defendants hiding facts and hiding assets from Encore, and if Your Honor lets them off the hook, there's no reason to think they won't continue to do that for the next two or three years while this appeal continues. And we just risk losing money that Encore is entitled to, and ---

THE COURT: Well, let me ask you this. If you had also -- the corresponding -- we have the ongoing receivership in place with the incurring of the fees and costs associated with that, doesn't that endanger their ability to pay, too, because they are going to pay the receiver?

MR. ENGLISH: We're willing to cut that off so long as they ---

THE COURT: But what if -- and that's what I was about to ask you.

MR. ENGLISH: Yes.

THE COURT: What if there was an order saying I'm going to resolve this receivership and it's contingent upon him garnering the amounts in the event -- for the payment of his fees and costs, your collection fees and costs, not the double exemplary fees

and costs, and have that held and him -- pending the outcome of this appeal. That should assuage your client's concerns.

MR. ENGLISH: That would be better, yes.

THE COURT: Well, I know it would be better, but I think it's just wrong, though. But that's okay. All right, how difficult would that be for your client to do?

MR. SMITH: I think extremely. And I think Your Honor was right when you said that's asking for an advance that's not due. And that's hard. I understand the concept, and I appreciate the Court working creatively.

THE COURT: But the idea of --- receivership is for the payment of fees -- payment of the judgment that would be affirmed on appeal, right? And if it's affirmed on appeal, you are stuck with these receivership fees that your client did cause to be extraordinarily high under the circumstances.

MR. SMITH: I agree that the order very clear in first word we can all keep reading -- if -- if the judgment is affirmed. And I'm not going to sit here and act like I don't think ---

THE COURT: But at the same time, Mr. Smith, at the same time, your client has shown -- and his wife in the corporation, the propensity to not be candid with the Court, to try to hide assets. I remember I had -- I can't remember what it was, I had to make him bring monies back in to the receiver that were transferred over, and so -- you know, and all this was brought about by your client's very reprehensible conduct. So, at some point, you know, you -- assuming that I'm going to do this, I'm probably going to go along with the --- and have the receiver at least hold enough to pay the pressing fees and costs calculated, not the trade secrets, and then dissolve the receivership, and hold those monies pending the outcome of the appeal.

MR. SMITH: I understand the Court's propensity to do that. Can I just speak to ---

THE COURT: Sure.

MR. SMITH: --- a question for me.

THE COURT: Sure.

MR. SMITH: Thank you for your patience. I'm looking over my fees -- excuse me, my fees. I'm looking over my -- not my fees. I'm looking over my notes. That was a little Freudian slip there, right? Actually, I'm good. Thank you, Your Honor.

THE COURT: All right. Anything further ---

MR. ENGLISH: Sure.

THE COURT: --- on the motion to dissolve the receivership? Anything further?

MR. ENGLISH: Not on that motion.

THE COURT: Okay. Here's what I'm going to do. As to the stated amount, the present amount of the receiver's fees and costs, I am going to direct the receiver to secure assets from the Defendants for the payment of those monies that have been incurred to date, including the costs incurred to secure the monies. Once that's done, it's going to be held in trust by the receiver or some other mechanism the parties can agree upon, probably a -- I prefer an interest-bearing account for everyone.

But, we have any problem with that, we can discuss that at a later date. And once that's done, we can dissolve the receivership. I don't see the need for ongoing disruption in this business. I don't see the need for the additional fees and costs upon the payments of the monies that have been paid. As to your claim for trade secrets, since you would be quadrupling the money under the statute, I think you're incorrect. I think that you're only entitled to one joint and several award double the actuals under 39-8-40, whatever that statute was that we were going over by the plain meaning that the statute. It's not ambiguous, and taking into consideration the verdict form that was actually used in the course of this trial, without there being a further specific verdict form for each Defendant.

Therefore, at the end of the day, if Plaintiffs are successful in the appeal, then they will have the right to collect their fees and costs -- well, they'll have a right to have a hearing on collection of their fees and costs. I think it probably should be subject to a hearing if they are successful on appeal. If they are, the monies being held representing the receiver's fees and costs will be immediately payable over to the Plaintiff, okay. And that is on the remittitur.

MR. SMITH: Okay. And just a point of clarity if you're done, on the very beginning of that. The present amount -- we're talking about the present amount just the receiver's fees, not ---

THE COURT: Not Wyche ---

MR. SMITH: --- Wyche firm's ---

THE COURT: Right.

MR. SMITH: Okay.

THE COURT: And then, in addition to that, Mr. Smith, if he has to incur additional fees and costs to go get these monies to hold them in trust, then that's going to be added to that amount, okay, which I think it probably will be -- shouldn't be a substantial amount, but if your client runs and hides again, then this will be a lot more.

MR. SMITH: Sure, and I appreciate that. I do want to say I think the action of putting this amount in shows the good faith here and what we want to do ---

THE COURT: I don't disagree with that.

MR. SMITH: And I don't know that -- I just don't know the ability right now.

THE COURT: Right.

MR. SMITH: I mean, I'm obviously going to talk to Mr. Trask and see, and we'll coordinate with Mr. Tollison, the receiver, and what I hope that all goes like is yes, we can, but it'll probably be this day, so I'll call Mr. Tollison and say here's the deal and we'll try to

do it that way. I don't think there's any mystery to this. Paying him is not easy, and this payment substantially drained cash. But, we will try, so.

THE COURT: All right. All right, sir. Now, let me clarify as to your collection fees and costs. If the Plaintiff is successful on appeal and that matter cannot be resolved by the parties, then we'll just have a hearing on the collectability. And quite frankly, at first blush, without further in-depth review of it, Mr. Smith, I think they are, okay.

And I'm just saying that, FYI, whether or not there's money there to pay it, I don't know. But I think they are collectable under either employment contract, non-compete contract, or both. Okay. It might be ---. All right. So, let me ask Mr. English this, with that being said, is your basis for joining in whatever suit is out there, because I -- which one is it, Mr. Smith?

MR. SMITH: It's the Powell case, and what's ---

THE COURT: Is that based on your judgment? Is that -- is there anything other than your judgment that causes you to join into that suit?

MR. ENGLISH: It is just based on that judgment, yes.

THE COURT: Okay. Then you're out of that case.

MR. ENGLISH: May I be heard on that?

THE COURT: Yeah. But I'll tell you you're going to be out.

MR. ENGLISH: Before you reach that final conclusion ---

THE COURT: Sure. And I should not do that. Go ahead.

MR. ENGLISH: Thank you, Judge. I will say that on the appeal, one of the things that Mr. Smith is seeking is a new trial, and if he is successful on the appeal and the Court of Appeals says yep, you've got to try this case again, then at that point we would be going back to trial. We might get the same judgment. We might get more.

THE COURT: You might get zero.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

JAMI POWELL,
PLAINTIFF,

vs.

CLEAR TOUCH INTERACTIVE,
INC., (a Nevada Corporation),
f/k/a CLEAR TOUCH
INTERACTIVE, LLC (a Nevada
LLC); Keone Trask and
Tamra Trask,
DEFENDANTS.

COURT OF COMMON PLEAS
2017-CP-23-06520

TRANSCRIPT OF RECORD

August 7, 2018
Greenville, South Carolina

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH, JUDGE

A P P E A R A N C E S:

JOSEPH L. HOWARD, ESQ.
Attorney for the Plaintiff

JOSEPH OWEN SMITH, ESQ.
Attorney for the Defendants

GREGORY JACOBS ENGLISH, ESQ.
Attorney for Encore Technology

CHERYL A. SMITH
Circuit Court Reporter

1 THE COURT: Okay.

2 MR. SMITH: So we're still on Powell right here if
3 Your Honor wants to hear Mr. English's motion.

4 THE COURT: Are you wanting to intervene?

5 MR. ENGLISH: Yes, Your Honor.

6 THE COURT: Why? I know you're a judgment creditor,
7 but

8 MR. ENGLISH: Yes, Your Honor. Encore is moving
9 pursuant to Rule 24(a)2 and 24(b) to intervene as a matter
10 of right or alternatively permissibly to intervene.

11 Encore, as a judgment creditor, if the conversion is
12 undone and this is no longer a corporation but it's an
13 LLC, Mr. Trask would then own either one-fourth or
14 one-third of the LLC that Encore could then apply to its
15 judgment either through a charging order or through a
16 foreclosure of the LLC interest. And so Encore has an
17 interest in that, and the test is set forth. The Berkeley
18 case is ---

19 THE COURT: What is the test? I'm not familiar with
20 that.

21 MR. ENGLISH: The Berkeley case sets that out. It's
22 a four-part test that's on page 2 of the Berkeley case.

23 THE COURT: Okay.

24 MR. ENGLISH: The four parts are timely application,
25 and here, this is timely. The parties are still involved

1 in paper discovery. Encore's intervening as a
2 co-plaintiff would not harm or delay this case at all.
3 The plaintiffs, Ms. Powell has consented to Encore's
4 intervention.

5 The second test is asserting an interest in the
6 property -- relating to the property or transaction which
7 is the subject of the action. Encore takes the position
8 that because Mr. Trask was an employee at the time he did
9 this conversion, that was also a breach of his duties and
10 the fact that it is a judgment creditor now, and that
11 judgment's been upheld under the motion for
12 reconsideration just July 23rd, has an interest in that,
13 Mr. Trask, one-third interest.

14 Number three, that it is in a position that without
15 intervention, disposition of the action may impair or
16 impede its ability to protect that interest. And
17 certainly, if this action determines that Mr. Trask isn't
18 entitled to that, that can negatively affect Encore's
19 ability to collect its judgment.

20 And then fourth, demonstrate that its interest is
21 inadequately represented by the parties. The Court says
22 on page 3 that that's a minimal burden, and it noted in
23 this case that SCNG was allowed to intervene because it
24 had a different perspective or experience to the
25 proceeding that would otherwise be absent. And that's

1 true here because Ms. Powell is interested in her
2 one-third, not necessarily how much Tamra Trask, for
3 example, might get of the company. And also, Encore has a
4 unique perspective. It knows what was going on with
5 Mr. Trask while he was an employee of the company. So we
6 think we meet the test for mandatory intervention.

7 But then alternatively, if Your Honor has doubts
8 about that, under permissive intervention, all you have to
9 show is a common questions of fact or law, and this
10 certainly has common questions as to Encore's ability to
11 collect its judgment against that one-third interest of
12 the LLC.

13 THE COURT: All right. Mr. Hudson.

14 MR. SMITH: Smith, Your Honor.

15 THE COURT: I'm so sorry.

16 MR. SMITH: It's okay. There's three Joshes in front
17 of you. It's completely fine, and I get it. There's a
18 lot going on every time we come in front of Your Honor, so
19 I totally get it.

20 Let me speak to a couple points Mr. English just made
21 just seems -- this case here, the four-part test
22 Mr. English just went through on the mandatory
23 intervention aspect, we don't think all that's met looking
24 at it here.

25 Timely application, that's fine. Number one is

1 checked.

2 Two, that's -- the second element here, the asserting
3 an interest relating to the property or transaction which
4 is the subject of the action, Encore has a theory that
5 they might be able to get to Clear Touch to satisfy the
6 judgment against Mr. Trask, because as the Court I'm sure
7 remembers this clearly, there were two different
8 judgments. There's one against the company, and there's
9 one against Keone Trask individually. The one against the
10 company has been paid into the Court since April of this
11 year in full. There's nothing -- I mean, the company is
12 paid up. It's sitting in a bank account controlled by
13 this clerk of court. So they're going after Mr. Trask
14 individually.

15 Right now they don't have an interest in Clear Touch.
16 They've got -- just because they claim under some theory
17 they might, if they undo what we contend is a very valid
18 conversion from LLC to inc., based on a theory to butt
19 into this case when they already have appropriate
20 mechanisms to try to collect on the judgment and they're
21 taking all kinds of other actions to collect on the
22 judgment including filing a new lawsuit on July 26th
23 against Keone Trask, Tamra Trask, Kathy Cruse, Leo
24 Gallant, Clear Touch, Clear Touch Retirement Plan, Family
25 Trust in which they're seeking the same thing. So they

1 don't have an interest in this asset, they haven't
2 established that, and they're trying to, by every means
3 possible, beat my guy up as much as they can.

4 THE COURT: I understand that.

5 MR. SMITH: They're serving him at home with the
6 sheriffs when I said I'll accept service of the complaint.
7 I mean, this is just another way to try to get at Keone
8 Trask. And I understand you want to collect a judgment.
9 That's fine. But we provide a mechanism to bring someone
10 in here, put them in front of the master, do a
11 supplemental proceeding, and then look at their assets and
12 liquidate things. But none of that's being done. That's
13 a side point.

14 THE COURT: Let me ask Mr. English right quick. If
15 you have this other lawsuit, which I have yet to see, why
16 aren't you adequately protected by that?

17 MR. ENGLISH: That lawsuit does not address this
18 question of whether the Clear Touch, LLC was properly
19 converted to Clear Touch Corporation, so it's -- that
20 issue -- I guess we could add that issue to the lawsuit,
21 but then Your Honor and maybe Your Honor in a different
22 case or a different judge would be possibly considering
23 the same question. So our strategy was to try to
24 intervene in this question to deal with the conversion.
25 And if that conversion is set aside as Ms. Powell wants,

1 then Mr. Trask will then own or get his one-third interest
2 back that Encore can then attach and apply its judgment.

3 THE COURT: All right.

4 MR. SMITH: The new complaint is in front of Your
5 Honor there behind Tab 4. And if you want to see the
6 cause of action alleged, and it actually has an allegation
7 in here, Paragraph 34 -- excuse me. That's wrong -- 34 to
8 35 where it addresses the conversion thing. They
9 attempted to convert the limited liability company into a
10 corporation, then transfer their ownership interest of
11 Clear Touch into the retirement plan. Because if you
12 recall, again, Clear Touch is 100 percent owned by an IRA.
13 That's how the conversion went. That was actually the
14 reason for the conversion from LLC to inc. To take
15 Mr. Trask's entire life savings in his IRA, the IRA had to
16 become the owner of the company, and then that cash went
17 into the company. So they are trying to undo that
18 conversion.

19 And kudos to Mr. English and Ms. Barker is excellent
20 lawyers who are smart and trying to do it in a different
21 way, but they had this other action. And to intervene in
22 this action and have a second action, it's just too much
23 and it's not appropriate. I mean, they've got to choose a
24 lane there and let's pursue that.

25 THE COURT: Well, let me ask Mr. Smith one question.

1 It seems to me, I mean, you've got similar issues. You've
2 got -- I know there are different issues as well. What is
3 going to be the harm to your client other than having to
4 face multiple people in the same suit of letting him jump
5 in and at least be there and participate in this case? If
6 it's about the allegedly improper conversion of a
7 corporation, he is alleging that in his other case. I
8 mean, what's the harm?

9 MR. SMITH: It is dealing with the same thing from
10 multiple fronts and different parties. I mean, Your Honor
11 is probably more aware than anybody of what's going on and
12 how much is going on, and this is just -- it's not
13 necessary. It's not necessary for them to step in here
14 and assert themselves in this lawsuit that was filed prior
15 to the trial last year.

16 THE COURT: And let me ask Mr. English on the
17 converse to that question, what is the harm of you not
18 being allowed to be in since you have this issue raised in
19 your pleadings in this case?

20 MR. ENGLISH: And, again, the new case does not ask
21 for a declaration. If you look on the prayer for relief,
22 there's no request in the new suit for a declaration that
23 the conversion is invalid. That issue -- and the reason
24 we didn't put it in the new lawsuit is because we knew
25 this lawsuit was going on, and it makes sense just to

1 resolve that issue probably first all in one lawsuit
2 rather than us amend the complaint and add it to this new
3 lawsuit and then risk inconsistent rulings. And, in fact,
4 in the Berkeley case, they said, you know, one of the
5 problems, this is on page 3, with having a separate suit
6 by SCNG, is it would be extremely difficult for SCNG to
7 collaterally attack any ruling adverse to them if not made
8 party to the original action. And so it's avoiding that
9 risk of inconsistent decisions that would ---

10 THE COURT: All right. I'm going to allow
11 intervention. I think it's mandatory. If you'll prepare
12 me an order, Mr. English.

13 All right. I know we've got limited time here.
14 There was a motion to stay, appointment of receiver. Are
15 y'all prepared to do that this morning?

16 MR. SMITH: Yes, Your Honor. It's a little more
17 narrow than that.

18 THE COURT: Okay.

19 MR. SMITH: And I'll be very quick because I
20 understand you've got limited time, but I appreciate that.
21 It's number ---

22 THE COURT: And if you don't feel like we have
23 sufficient time, we can do it another day. If we can,
24 let's try it.

25 MR. SMITH: I'm going to try because I think it's

1 pretty narrow.

2 THE COURT: All right.

3 MR. SMITH: You're aware that this is the 5757 case,
4 2015 case, for clarity of the court reporter there.

5 Encore moved to have a receiver appointed. You heard
6 that on June 12th.

7 THE COURT: I granted it.

8 MR. SMITH: Granted, ordered July 23rd, I believe.
9 Then it had a ten-business day deadline on some compliance
10 dates.

11 The 24th, Mr. Trask ---

12 THE COURT: What was the ten-day deadline? I can't
13 remember.

14 MR. SMITH: Sure. And I've got -- if you'll -- Tab 5
15 should have the receiver order behind it as an exhibit,
16 and it does.

17 THE COURT: It's a motion to continue on Tab 5. Let
18 me look.

19 MR. SMITH: Yes, Your Honor. And if you start at --
20 there's an exhibit attached to that.

21 THE COURT: I may be looking at the wrong notebook,
22 buddy. Hang on.

23 MR. SMITH: Sure.

24 THE COURT: Okay. I've got an order appointing a
25 receiver which is under Tab 4. Okay.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Encore Technology Group, LLC,	)	Case No(s) : 2015CP2305757
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Keone Trask and Clear Touch	)	Volume 1 of 5
Interactive, Inc. f/k/a Clear	)	
Touch Interactive, LLC,	)	
	)	
Defendant.	)	
	)	

September 25 - 29, 2017
Greenville, South Carolina

B E F O R E:

HONORABLE LAWTON R. MCINTOSH, Judge.

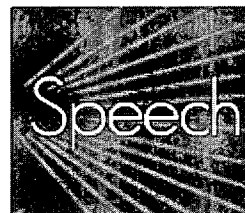
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1 related by blood or marriage to any of these
2 attorneys here in the courtroom or any member
3 of the Wyche Law Firm or the Cove -- excuse me
4 -- Roe Cassidy Coates and Price Law Firm? If
5 so, would you please stand.

6 (No audible response.)

7 And finally, Ladies and Gentlemen, is
8 there any member of the jury panel who has a
9 close, personal or social relationship with any
10 of these attorneys in the courtroom or any
11 members of their respective law firms? If so,
12 would you please stand.

13 All right. Ma'am, what is your jury
14 number?

15 **POTENTIAL JUROR:** My jury number is 127.
16 My name is Sheri Sadie. (Pause.)

17 Sheri Sadie, 127.

18 **THE COURT:** 127. Thank you, ma'am. And
19 which attorney is it?

20 **POTENTIAL JUROR:** I know Mr. English on a
21 personal basis.

22 **THE COURT:** Okay. And how long have you
23 known Mr. English, if you don't mind my asking?

24 **POTENTIAL JUROR:** Five or six years now.

25 **THE COURT:** Do you socialize with him

1 outside of work?

2 **POTENTIAL JUROR:** Yes. Yes, sir.

3 **THE COURT:** And how -- I know this is
4 general, but how frequently do you see
5 Mr. English?

6 **POTENTIAL JUROR:** Once or twice a year.
7 Once or twice a year.

8 **THE COURT:** A year?

9 **POTENTIAL JUROR:** Uh-huh.

10 **THE COURT:** Well, would the fact that you
11 have this relationship with Mr. English prevent
12 you from giving both sides of this case a fair
13 and impartial trial?

14 **POTENTIAL JUROR:** No, sir.

15 **THE COURT:** And would you side with his
16 client, or against his client, simply because
17 of this relationship you have with Mr. English?

18 **POTENTIAL JUROR:** No, sir.

19 **THE COURT:** Very good. Any additional
20 voir dire?

21 (No audible response.)

22 Thank you, ma'am.

23 **MR. SMITH:** No, Your Honor.

24 **THE COURT:** Thank you.

25 All right. Ladies and Gentlemen, has any

1 member of the jury panel read, heard or seen
2 anything about the case of Encore Technology
3 Group, LLC, versus Keone Trask and Clear Touch
4 Interactive, Inc., prior to coming to court
5 today? If so, would you please stand.

6 (No audible response.)

7 And as a follow-up question, has any
8 member of the jury panel formed or expressed an
9 opinion about the matter of Encore Technology
10 Group, LLC, versus Keone Trask and Clear Touch
11 Interactive, Inc.? If so, would you please
12 stand.

13 (No audible response.)

14 Now, I don't know how in the world you
15 could have any opinion about a case you never
16 heard about, but...

17 Ladies and Gentlemen, let me just tell you
18 generally, this is a corporate case, business
19 case. I'm not going to go into the specifics
20 because the attorneys know it much better than
21 I do. But essentially, the plaintiff alleges
22 that the defendant, or defendants, violated
23 certain common-law duties, statutory duties or
24 contractual duties that the plaintiff -- one or
25 more of the defendants owed back to the

1 plaintiff. They seek damages as a result of
2 that. The defendants said no, there's no
3 violation and we acted in good faith all along.
4 That's very general description. You will hear
5 much more from the attorneys in opening
6 statement, but just to make sure you have a
7 general idea about this case.

8 Ladies and Gentlemen, is there any member
9 of the jury panel who is aware of any bias or
10 prejudice they may harbor against the
11 plaintiff, Encore Technology Group, LLC, or the
12 defendants, Keone Trask and Clear Touch
13 Interactive, Inc., or their respective
14 attorneys or their law firms? If so, would you
15 please stand.

16 (No audible response.)

17 Is there any juror who knows of any reason
18 whatsoever why he or she should not be selected
19 to serve the trial of this matter with
20 particular emphasis being placed upon your
21 ability to be fair and impartial both to the
22 plaintiff and to the defendants? If you know of
23 any reason why you should not serve, would you
24 please stand.

25 **POTENTIAL JUROR:** May I ask you a

1 question?

2 THE COURT: Yes, sir.

3 POTENTIAL JUROR: Juror Number 33.

4 THE COURT: You are the pastor?

5 POTENTIAL JUROR: Yes.

6 THE COURT: Okay, sir.

7 POTENTIAL JUROR: I'm not sure of one of
8 the names that was mentioned. I don't know the
9 guy real well, but --

10 THE COURT: Are you talking about from
11 the witness list?

12 POTENTIAL JUROR: From Encore. When she
13 should stood up -- Michael Knight, maybe? I
14 think -- I think our kids go to school together
15 possibly. I'm not sure. I met him a couple of
16 times. I just wanted to make sure that I was
17 clear about that.

18 THE COURT: Well, let me make sure that
19 this Mr. Knight or somebody else that you may
20 know of or may have met comes in and
21 testifies --

22 POTENTIAL JUROR: Yes.

23 THE COURT: -- would that prevent you
24 from being fair and impartial to either side of
25 this case?

1 **POTENTIAL JUROR:** No, sir.

2 **THE COURT:** Would you believe their
3 testimony because of this prior knowledge of
4 them over somebody else who may testify in this
5 matter?

6 **POTENTIAL JUROR:** No, sir.

7 **THE COURT:** All right. Thank you, sir.

8 **POTENTIAL JUROR:** Okay.

9 **THE COURT:** All right. Ladies and
10 Gentlemen, has any member of the jury panel or
11 a member of their immediate family ever
12 purchased a business? If so, would you please
13 stand.

14 Yes, ma'am. What is your jury number?

15 **POTENTIAL JUROR:** 157.

16 **THE COURT:** 157, and you are whom?

17 **POTENTIAL JUROR:** Sandy Zuschlag.

18 **THE COURT:** Okay. Do you mind telling us
19 what type of business and who it was?

20 **POTENTIAL JUROR:** My husband purchased a
21 small business that was based out of Enoree,
22 South Carolina. They do --

23 **THE COURT:** Erosion control?

24 **POTENTIAL JUROR:** -- erosion control,
25 yes, sir. They work for municipalities, such as

1 the City of Union, and do the tree work at
2 Furman and that sort of thing.

3 **THE COURT:** All right. Would the fact
4 that your husband owns this business, if this
5 case is about businesses, would have to decide
6 -- would that prevent you from being fair and
7 impartial to both sides in this matter?

8 **POTENTIAL JUROR:** No, sir.

9 **THE COURT:** Are you sure?

10 **POTENTIAL JUROR:** Yes.

11 **THE COURT:** Very good. Thank you.

12 All right, sir. What is your jury number?

13 **POTENTIAL JUROR:** 55, Mykel Fisher.

14 **THE COURT:** Okay, sir. And what business
15 was it, if you don't mind, and who owned it?

16 **POTENTIAL JUROR:** My dad, a small lawn
17 care business in Florida.

18 **THE COURT:** And how long ago has that
19 been?

20 **POTENTIAL JUROR:** Probably about 10 years
21 ago.

22 **THE COURT:** Is he still operating that
23 business?

24 **POTENTIAL JUROR:** Yes, sir.

25 **THE COURT:** Now, would the fact that your

1 dad is a small business owner prevent you from
2 being fair and impartial to both sides in this
3 case?

4 **POTENTIAL JUROR:** No.

5 **THE COURT:** Thank you, sir.

6 Yes, ma'am.

7 **POTENTIAL JUROR:** Juror 9, Winona
8 Ballard.

9 **THE COURT:** I like that name, Winona.
10 That's very good.

11 **POTENTIAL JUROR:** Thank you. Purchased
12 Biggs Jewelers.

13 **THE COURT:** Okay. And you --

14 **POTENTIAL JUROR:** I'm retired.

15 **THE COURT:** -- you still own that?

16 **POTENTIAL JUROR:** Yes.

17 **THE COURT:** Okay. Would -- you are the
18 owner? Did I --

19 **POTENTIAL JUROR:** Yes.

20 **THE COURT:** Will that prevent you from
21 being fair and impartial from either side of
22 this case?

23 **POTENTIAL JUROR:** No. No.

24 **THE COURT:** All right. Thank you so much.
25 Has any member of the jury panel or any

1 member of their immediate family ever sold a
2 business? If so, would you please stand.

3 Okay. Yes, ma'am. I know you've already
4 given it to us, but if you would give your name
5 and jury --

6 **POTENTIAL JUROR:** Sheri Sadie, 127. I
7 owned a small coffee shop, which I have sold.

8 **THE COURT:** How long ago has that been?

9 **POTENTIAL JUROR:** I sold it in 2006.

10 **THE COURT:** '6?

11 **POTENTIAL JUROR:** Yes.

12 **THE COURT:** Now, would the fact that you
13 sold this business in 2006 cause you to be
14 unable to be fair and impartial to either side
15 of this case?

16 **POTENTIAL JUROR:** No, sir.

17 **THE COURT:** Thank you, ma'am. Your name
18 and juror number please.

19 **POTENTIAL JUROR:** Juror Number 1, Heidi
20 Adams. My husband and I had a free fall
21 photography business. We sold it.

22 **THE COURT:** How long ago has that been?

23 **POTENTIAL JUROR:** Eight years or so.

24 **THE COURT:** And would that cause you to
25 be unable to be fair and impartial to both

1 sides?

2 **POTENTIAL JUROR:** Not at all.

3 **THE COURT:** Thank you so much.

4 **POTENTIAL JUROR:** I owned an industrial
5 truck dealership back in 1993/94.

6 **THE COURT:** Okay. Sir, again, same
7 question would apply to you. Would that cause
8 you to be unable to be fair and impartial?

9 **POTENTIAL JUROR:** No. No.

10 **THE COURT:** Thank you so much.

11 Has any member of the jury panel or any
12 member of their immediate family ever been
13 employed by a company that has a business in
14 selling, installing, repairing or otherwise
15 dealing with interactive displays, such as, for
16 example, SMART boards or touchscreen
17 whiteboards. If so, would you please stand.
18 (No audible response.)

19 Has any member of the jury panel ever left
20 their job -- or their immediate family ever
21 left their job to start a business? If so,
22 would you please stand.

23 All right, sir. What is your juror name?

24 **POTENTIAL JUROR:** I'm Glenn Cockrell. I'm
25 37. I wish I was 37.

1 **THE COURT:** Me too.

2 **POTENTIAL JUROR:** I could do it all over
3 again. I left the electrical wholesale
4 distribution business and started my own
5 consulting business in '03.

6 **THE COURT:** Okay, sir.

7 **POTENTIAL JUROR:** I do, basically what
8 I've always done, except I do it for myself.

9 **THE COURT:** Let me ask you that. If this
10 case involves any such things, would that cause
11 you to be unable to be fair and impartial to
12 either side of this case?

13 **POTENTIAL JUROR:** It would make me
14 better.

15 **THE COURT:** Sir?

16 **POTENTIAL JUROR:** I'd be better at
17 judging it.

18 **THE COURT:** Well, maybe. That may be the
19 case and it may not be the case, but my
20 question --

21 **POTENTIAL JUROR:** It won't -- it won't
22 affect me, no.

23 **THE COURT:** Okay. Thank you so much.
24 That's what I'm driving at.

25 Has any member of --

1 Oh, oh, oh.

2 **POTENTIAL JUROR:** Sorry.

3 **THE COURT:** That's okay. I'm sorry.

4 **POTENTIAL JUROR:** I also left -- I was in
5 the dental field. I left that to open a
6 business.

7 **THE COURT:** That's for your business you
8 were telling us about?

9 **POTENTIAL JUROR:** That was a different
10 business.

11 **THE COURT:** And tell us your name and
12 jury number again.

13 **POTENTIAL JUROR:** Number 1, Heidi Adams.

14 **THE COURT:** And the reason being -- I
15 know this sounds crazy. I really am not that
16 slow. I'm kind of slow, but I kind of know who
17 I hear -- this young lady right here in front
18 of me takes down everything that is said in the
19 courtroom. She has the hardest job of anybody
20 in the courtroom. Later on, if somebody looks
21 at this record, we want them to be able to
22 identify you. Somebody in Columbia reading a
23 cold record won't know who's speaking.

24 **POTENTIAL JUROR:** Understood.

25 **THE COURT:** All right. Thank you so much.

1 Has any member of the jury panel ever
2 worked in a position where you held -- you
3 handled or were exposed to confidential or
4 trade secret information? If so, would you
5 please stand.

6 All right. And, again, your name and
7 number?

8 **POTENTIAL JUROR:** Glenn Cockrell, 37.

9 **THE COURT:** And you were exposed to
10 confidential trade secret information?

11 **POTENTIAL JUROR:** Well, a lot of the
12 customers I do business with make me sign
13 confidentiality agreements.

14 **THE COURT:** Well, this case --

15 **POTENTIAL JUROR:** That's the process that
16 they use.

17 **THE COURT:** Well, this case involves
18 allegation of trade secrets or other type of
19 confidential information. If it does, would
20 that -- would your experience cause you to be
21 unable to be fair and impartial to both sides?

22 **POTENTIAL JUROR:** No, I can be fair.

23 **THE COURT:** Thank you.

24 **POTENTIAL JUROR:** 53, Cheryl English.

25 53 ---

1 THE COURT: Okay.

2 POTENTIAL JUROR: --- Cheryl English.

3 THE COURT: And you are exposed to
4 confidential or trade secret information?

5 POTENTIAL JUROR: Yes.

6 THE COURT: And is that currently what
7 you're exposed to or is it in the past?

8 POTENTIAL JUROR: It's in the past.

9 THE COURT: In the past?

10 POTENTIAL JUROR: In the past.

11 THE COURT: Okay. Would that experience
12 cause you to be unable to be fair and impartial
13 to both sides of this case?

14 POTENTIAL JUROR: No.

15 THE COURT: Thank you so much.

16 All right. Sir, your jury name -- you're
17 name and jury number?

18 POTENTIAL JUROR: 55, Mykel Fisher.

19 THE COURT: Okay, sir. And you are
20 exposed to confidential trade secret
21 information?

22 POTENTIAL JUROR: Yes.

23 THE COURT: Currently or in the past?

24 POTENTIAL JUROR: Both.

25 THE COURT: Okay. Again, if this case

1 involves allegations of trade secrets or
2 confidential information, would your experience
3 cause you to be unable to be fair and impartial
4 to either side in this case?

5 **POTENTIAL JUROR:** No.

6 **THE COURT:** Thank you, sir.

7 All right. Sir, your name and juror
8 number?

9 **POTENTIAL JUROR:** My name is Todd
10 Herderick. I'm Number 74.

11 **THE COURT:** And you are exposed to it now
12 or in the past?

13 **POTENTIAL JUROR:** Now and in the past.

14 **THE COURT:** Both?

15 **POTENTIAL JUROR:** Yes.

16 **THE COURT:** Would that experience cause
17 you to be unable to be fair an impartial to
18 both sides in this case?

19 **POTENTIAL JUROR:** No, sir.

20 **THE COURT:** Thank you so much.

21 All right. Ladies and Gentlemen, two
22 parties, the plaintiff and one defendant, are
23 corporations. I will tell you -- and you will
24 be charged if you're selected, at the end of
25 the case -- corporations are treated like

1 people under the law. But if the fact that this
2 case involves corporations, would that cause
3 you to feel like you cannot be fair to both
4 sides of this case and give a fair and
5 impartial verdict? If so, would you please
6 stand.

7 (No audible response.)

8 Okay. Very good. Ladies and Gentlemen,
9 that concludes the voir dire.

10 Any other voir dire from the plaintiff
11 other than requested, Mr. English?

12 **MR. ENGLISH:** Yes, Your Honor.

13 **THE COURT:** Other than requested?

14 **MR. ENGLISH:** No, Your Honor.

15 **THE COURT:** Mr. Smith, other than
16 requested?

17 **MR. SMITH:** No, Your Honor.

18 **THE COURT:** Thank you so much.

19 All right. Ladies and Gentlemen, back when
20 I had -- before I had gray hair, the way we
21 would pick jurors -- juries, we would have
22 somebody come in who could not read and write.
23 There was a spindle. They would turn it around
24 and reach in there and we'd draw out 20 names
25 or the sufficient number of names and then they

1 development officer of the Company and shall have
2 such duties of an executive nature as the Manager of
3 the Company, the 'Manager,' shall reasonably
4 determine from time to time. The Executive will
5 report to the Manager."

6 Q Who was the "Manager"?

7 A Me. I'm the Manager.

8 Q What were Mr. Trask's duties as Chief
9 business development officer of Encore?

10 A He had three or four main duties. One, he
11 was responsible, at the time, for all of our sales
12 and marketing force. Number two, he was responsible
13 for building out our marketing brand for Encore.
14 Number three, he was responsible for setting our
15 trade show plans and cadences. And four, he had
16 responsibility for the technology, what we call the
17 Classroom Technology Group, which is the part of our
18 business that does things that the kids see and
19 touch. So it would be, principally, the visual
20 systems that are out there, but it takes the form of
21 projectors and touchscreen panels and a variety of
22 other products. He had responsibility for those.

23 Q Was it his responsibility to find a
24 supplier for touchscreen panels?

25 A Yes, that was his responsibility.

1 Q Now, let me refer you down to page -- to
2 Section 3. Let's get all three of (a), (b), and (c).
3 What was the -- under 3(a), how much did you pay
4 Mr. Trask as a base salary?

5 A \$175,000, which was an increase from his
6 previous base.

7 Q In addition to that, did you also pay him
8 a bonus when he joined Encore?

9 A I did. I paid him a \$25,000 bonus.

10 Q And then what sort of benefits did
11 Mr. Trask receive?

12 A He had large stipend and expense account.
13 Then he also had health insurance, which we provide
14 some other dental and vision and 401K and other kinds
15 of benefits like that.

16 Q And when, what sort of expenses did
17 Mr. Trask get reimbursed?

18 A We reimbursed him for travel expenses,
19 monies he would spend to go to trade shows, travel
20 and hotel rooms, meals and entertainment things when
21 he was out, supposedly, marketing Encore and current
22 business expenses.

23 Q Who, at Encore, was in charge of signing
24 up Encore for trade secrets?

25 A Mr. Trask. That was his principal

1 learned of while he was with us as well. In January
2 of 2014, I had very specific evidence and the
3 gentleman who will testify that he met with Keone
4 while we were paying for a trade show in Texas, that
5 he came to tell him about wanting to use Encore to
6 build out Clear Touch and then sign up additional
7 resellers and build a business that he wanted to take
8 advantage of himself.

9 **Q** So for all these reasons, are you claiming
10 or is Encore claiming that Mr. Trask breached the
11 Non-Disclosure and Non-Solicitation Agreement we have
12 marked as Exhibit 2?

13 **A** Yes.

14 **Q** Now, does Encore claim that Mr. Trask's
15 breaches of this contract were accompanied by
16 fraudulent acts?

17 **A** Yes.

18 **Q** What?

19 **A** There were a number of fraudulent acts. It
20 was a quite a broad and deep, deceptive scheme on
21 Keone's part. First of all, he put the names of the
22 LLC in his mother's maiden name to hide that fact.
23 Number two, he took the labels off of, essentially,
24 the TSitouch product and put the Clear Touch label on
25 it, so we wouldn't know who were the real suppliers.

1 Three, he used fake e-mail addresses: Amy Andrews; I
2 think he used Kathy Cruse when he was communicating
3 with himself at Encore.

4 Then, he also used titles to try to make it
5 look like when he moved over to Clear Touch the first
6 time -- when he first joined the company, he used the
7 title chief business development officer in an effort
8 to hide from us that he was the sole employee at the
9 time. After he left, he had his wife continue to
10 e-mail us under the name of Amy Andrews, asking for
11 Keone's information, in an effort to make it look
12 like she didn't know that he left the company, even
13 though it was his wife and she knew.

14 Then he had us mail payments to Nevada. He
15 had those payments -- all that was really in Nevada
16 was a PO box. And we would mail checks to them, and
17 they would basically forward them back to their home
18 here in South Carolina while he was taking the margin
19 from us and we were paying for the product.

20 Q Now let me refer you to what we have
21 marked as Plaintiff's Exhibit 15. This is already in
22 evidence. What is this?

23 A This is a non-disclosure agreement that
24 Keone executed with Jimmy Higginbotham, three days
25 after he left Encore.

1 **Q** So what day did Mr. Trask leave Encore?

2 **A** He left Encore April 25 of 2014.

3 **Q** And was Mr. Higginbotham an employee of
4 Encore at the time?

5 **A** Yes.

6 **Q** Did you know that Clear Touch was entering
7 a non-disclosure agreement with your employee three
8 days after Mr. Trask left?

9 **A** No. I also didn't know that Mr. Trask
10 tried to have other customers -- he had TSItouch
11 enter a non-disclosure agreement so they wouldn't
12 talk to us. He also had other valued resellers enter
13 non-disclosure agreements prior to his departure at
14 Encore.

15 **Q** Does Encore believe those constitute
16 fraudulent acts?

17 **A** I believe those constitute fraudulent
18 acts, as well. He was trying to hide what he was
19 doing the whole time.

20 **Q** Let me show you what we've marked as
21 Plaintiff's Exhibit 32. Is this the non-disclosure
22 agreement that Mr. Trask signed with Leo Gallant on
23 April 25th, 2014?

24 **A** Yes. This was the day that Keone left
25 Encore and, that night, Leo Gallant -- had him sign

1 this non-disclosure agreement and then told him all
2 about Clear Touch, that he owned it and has plans for
3 it, the day he left.

4 Q Does Encore also consider this a
5 fraudulent act?

6 A This is absolutely a fraudulent act.

7 Q If we could look at the last page of this
8 exhibit, the signatures, on April 14, 2014, the day
9 you let Mr. Trask go, did you know that he and his
10 wife were directors of Clear Touch Interactive, Inc.?

11 A I did not.

12 Q Did you know that they were getting your
13 employee to sign a non-disclosure agreement with
14 them?

15 A I did not.

16 Q What about Mr. Trask's e-mails? Does
17 Encore claim fraudulent acts in connection with
18 those?

19 A Yes, in three ways. First, Mr. Keone
20 personally deleted a lot of e-mails from Encore
21 before he left --

22 MR. SMITH: Objection, there's no
23 evidence of that.

24 THE WITNESS: Yes, there is.

25 THE COURT: No, sir. Do not respond.

1 back in.

2 (Jury enters at approximately 3:17 p.m.)

3 **THE COURT:** Please be seated.

4 Mr. English?

5 **MR. ENGLISH:** Thank you, Your Honor.

6 **BY MR. ENGLISH:**

7 **Q** Mr. Newnam, with regard to the omission of
8 the suppliers, TSItouch and CVTE from that list of
9 suppliers on Plaintiff's Exhibit 5, does Encore claim
10 that that is a fraudulent act?

11 **A** Yes, Mr. Keone did not take the
12 opportunity to tell me then that they were the
13 suppliers of the product and I could have bought from
14 them.

15 **Q** Does Encore claim that the defendants
16 engaged in unfair or deceptive acts or practices?

17 **A** Yes.

18 **Q** Okay. What?

19 **A** First, he used all the fake e-mails that
20 he used to communicate with us. He had put the LLC in
21 his mother's maiden name, in an effort to deceive us.
22 They also had to send the payments to Nevada, as I
23 said before. That got forwarded back to their South
24 Carolina address, and they used a number of different
25 titles to hide their involvement.

1 Q What about the labels?

2 A The labels, they asked TSItouch,
3 specifically, don't include any TSItouch labels on
4 the products; replace it with our Clear Touch stuff
5 on shipping product -- on the shipping labels, on the
6 shipping packaging, as well as on the devices
7 themselves. It was essentially just a -- heat-shrunk
8 logo.

9 Q And then how many sales of panels did
10 Clear Touch make to Encore?

11 A Several million dollars-plus.

12 Q And how did this affect Encore?

13 A In a number of ways. First of all, you're
14 asking -- versus us buying directly?

15 Q Yes.

16 A Yes. So essentially, when we sold a panel,
17 we made anywhere from maybe \$250 to \$450 per panel,
18 generally. Keone was making \$1500 a panel.

19 Q How did this affect -- the fact that
20 Encore was buying through Clear Touch instead of
21 directly -- directly from the suppliers, how did this
22 affect the public?

23 A In addition to us not making much margin
24 on the products and bearing all the sales expenses,
25 how it hurt the public is it reduced our ability to

1 amount of money for himself that we would make on the
2 projects, my sales force would have worked a lot
3 harder to sell the products. If we were selling them
4 for very low margins and they were not the same as
5 everyone in a sales group work, the money they could
6 make, the more they will sell, they were not making
7 much money because he was keeping the margin for
8 himself. And he induced me to hire a lot of people
9 and try to go over business, which in retrospect, he
10 was working for Clear Touch, for his business, not
11 mine.

12 Q Now, did Mr. Trask, at any time, ever
13 notify you that he was an owner of Clear Touch?

14 A Keone told me in October of 2014,
15 approximately six months after he'd left Encore, we
16 were at a trade show, and David Masters, who's my
17 head of sales, was meeting with Keone. In the course
18 of that conversation, he had disclosed to me that he
19 had recently acquired an interest in Clear Touch, is
20 how he termed it.

21 Q Did he tell you that he had owned Clear
22 Touch while he was an employee of Encore?

23 A Absolutely not. He had led me to believe
24 that he had just purchased it recently over the
25 summer.

1 **A** Our bank.

2 **Q** Because it was performing so poorly?

3 **A** Yes.

4 **Q** How much of the business did you testify
5 during your deposition that the panels, interactive
6 panels, made up of Encore's business?

7 **A** Within the classroom technology business,
8 it was roughly 20 to 30 percent of our business,
9 historically. The panels, as a new product, I
10 testified were about five percent of our business
11 because it was a new and growing technology. The
12 overall business is 25 percent to 30 percent.

13 **Q** Mr. Newnam, does the panel business
14 represent about five percent of Encore's business at
15 the time?

16 **A** At the time, as a new technology being
17 introduced into the market, it was a small piece of
18 the business, yes. But it grew, as evidenced by
19 Exhibit 9 that we saw.

20 **Q** So that's a yes?

21 **A** Yes.

22 **Q** You claim that Encore would have taken
23 advantage of the Clear Touch opportunity, right?

24 **A** Yes.

25 **Q** And you also claim that Encore could have

1 push for us to try to get out into the market as a
2 new technology. What I said was many of our employees
3 probably spent 20 or 30 percent of their time trying
4 to benefit, trying to sell Clear Touch. But I was not
5 including that activity in my claim.

6 Q Why would you have 20 or 30 percent -- how
7 big was your sales force, first of all?

8 A 12 or 14 outside salespeople who were
9 supposed to call on customers. And then maybe another
10 four to six inside salespeople who were basically
11 people that support that sales activity.

12 Q Why would you have 30 percent of your sales
13 force working on something that's five percent of
14 your overall business?

15 A Well, first of all, I didn't say 30 percent
16 of the sales force. I said 20 to 30 percent of their
17 time. And what you have to remember is the reason it
18 was only five percent of our business is because it
19 was a new product line. And so when it comes out, it
20 takes time to grow. So we had a demo unit in April of
21 2013, and then we didn't sell our first product until
22 late that year or early the next year. It takes a
23 long time to build this pipeline, which we invested
24 heavily in.

25 So they were out there. And so in the

1 course of them talking to the IT directors at the
2 school systems, it takes a long time to get those
3 sales and build that pipeline. So the fact that my
4 sales was only five percent is not indicative of how
5 much time they were spending to get here and develop
6 it.

7 When you go to a trade show, what's in that
8 booth is essentially classroom technology businesses.
9 No one wants to look at a server. They want to see a
10 board. And there's teachers and IT directors and
11 principals walking around. And that's what we were
12 doing is trying to sell to them.

13 **Q** Do you recall testifying that as of your
14 business model today, it's still not five percent of
15 your overall business?

16 **A** That's probably right.

17 **Q** So that answer you just gave, the growth
18 and the pipeline, the amount and portion of the
19 business that -- that your business represented about
20 panels has remained unchanged, hasn't it?

21 **A** Sure. But as we went through in that other
22 exhibit, a lot of those sales went to Keone at Clear
23 Touch. Leon County, other sellers, other resellers
24 came into my market. He put competitors into my
25 market. When I had the exclusive territory, he put

1 them in and helped take sales away from us. And we
2 weren't making as much money on this product because
3 we were buying it from Clear Touch and we didn't have
4 the margins and the sale force. We were out pushing
5 it, but I wish it -- I wish it was -- I wish all of
6 my business were growing faster and better. Clearly,
7 there was a lot of growth in this market. It just
8 didn't go to Encore; it went over to Clear Touch.

9 Q You said you had the exclusive market.
10 Didn't y'all sell Promethean panels, as well?

11 A We did.

12 Q And you started selling that when?

13 A In -- we've been representing Promethean
14 for 15 or 20 years at CSI and then Encore. I don't
15 remember when their panel first came to market. But I
16 want to say as they came in, it was in late 2014,
17 probably.

18 Q You started selling them about when it came
19 out in late 2014; is that fair?

20 A We intended to sell a Promethean panel the
21 entire time. Promethean was one of our -- probably
22 our second-largest vendor over the previous two or
23 three years. So we were going to continue to sell
24 Promethean products, yes.

25 Q Will you flip to Plaintiff's 3 for me,

1 division. To me, that was -- I was hoping to be there
2 20 years. Obviously, I didn't last 20 years, but they
3 saved my family, so...

4 Q Let me show you what we've marked as
5 Plaintiff's Exhibit Number 6 in the big notebook in
6 front of you. You'll see, at the top, this is a
7 severance agreement that has an effective date of
8 April 25th, 2014.

9 A Uh-huh.

10 Q Do you understand that's when Mr. Trask
11 left Encore?

12 A Yes.

13 Q Did Mr. Trask ever express to you that he
14 wanted to leave before this date?

15 A Not that I remember. And if he had, Todd
16 made it pretty apparent that he would be willing to
17 separate ways prior to then.

18 Q Mr. Powell, that's all the questions I
19 have. Please answer any questions Mr. Smith has for
20 you.

21 A Yes, sir.

22 THE COURT: Cross-examination.

23 MR. SMITH: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. SMITH:

1 Touch, instead of going out and finding -- continuing
2 to develop our own brand, which is what we were doing
3 at the time.

4 Q Now, let me show you what we've marked as
5 Plaintiff's Number 78.

6 A 78.

7 Q If you will look down at the bottom of this
8 e-mail chain, there's a reference to, "I will arrive
9 at TCEA by February 6th and hopefully have dinner
10 with you, Mike, and Keone." So when in 2014 did the
11 TCEA conference occur?

12 A February 6th, 7th and 8th, I believe.

13 Q Now, did you communicate with Mr. Trask
14 about the TCEA conference before you attended it?

15 A Yes, we had some conversations regarding
16 that, I think, around the 25th, 26th, somewhere
17 around there of ---

18 Q Which month?

19 A --- January. Of January.

20 Q And that's 2014?

21 A Correct. That time, we discussed what Clear
22 Touch was, whether -- where was it? What was Encore's
23 involvement in it? All the questions you want to ask
24 if you're getting ready to make a huge business
25 decision. And at that point, we said we really need

1 to see our panel, our display versus the one you've
2 already purchased from CVTE.

3 Q Let me show you what we've marked as
4 Plaintiff's Number 79.

5 A 79.

6 Q So is this an e-mail from Mr. Trask to you
7 on January 25th, 2014?

8 A Yes. It's from Keone, his Gmail account, to
9 my personal account.

10 Q And the lead-in sentence says, "It's a
11 pleasure to introduce you to Kathy Cruse with Clear
12 Touch Interactive." Mr. Trask explained to you why he
13 wanted to introduce you to Kathy Cruse?

14 A Only that she was a person who was involved
15 with Clear Touch and she's the one who did the
16 non-disclosures and the partner agreements.

17 Q At this time, who, did you understand,
18 Mr. Trask was employed by?

19 A Encore.

20 Q At this time, did Mr. Trask disclose to you
21 that he had any interest in Clear Touch?

22 A No.

23 Q Let me show you what we marked as
24 Plaintiff's Exhibit Number 80. (Pause.)

25 Now, let's look at the bottom e-mail here.

1 Is this an e-mail to you from Kathy Cruse at Clear
2 Touch on January 25th, 2014?

3 A Now, the e-mail was to Keone. It didn't
4 have my name on that one. But then the forward, that
5 had -- forgot to send the non-disclosure, did have my
6 name on it.

7 Q So you did get this e-mail?

8 A I did.

9 Q It says, "Clear Touch -- while Clear Touch
10 Interactive does not have a formal reseller program,
11 we have established a few partners." Who did you
12 understand were Clear Touch's partners at this time?

13 A Really, the only one that I knew of or
14 anybody -- that we knew of on the Promethean Advisory
15 Council was Encore. We actually thought that Clear
16 Touch and Encore was one and the same.

17 Q And then what did Ms. Kathy Cruse send you
18 with this e-mail?

19 A She sent me a standard non-disclosure
20 agreement that you get before you start talking
21 pricing and details of somebody else's business.

22 Q And in that last sentence, it references
23 the non-disclosure agreement. What was the purpose of
24 sending you the non-disclosure agreement?

25 A So we can start talking pricing and terms

1 and planning. If you're going to spend millions of
2 dollars with a company, you want to make sure that
3 you have all the information.

4 Q Was that for your company trying to be a
5 reseller of Clear Touch?

6 A Yes, they wanted us to cease what we were
7 doing and become -- join forces with Clear Touch.
8 This was being pushed by the manufacturer. He knew
9 the size of our organization and the financial --
10 that it wasn't going to be adequate for a small group
11 to be able to do that on a very large scale fast
12 enough.

13 Q And let's go back three pages in this.

14 A Which one?

15 Q 80.

16 A Back to 80?

17 Q No, you're in the right exhibit. Just turn
18 back two pages.

19 A Okay. I'm in 80.

20 Q Just turn --

21 A Oh, okay. This way. Yes.

22 Q So what is -- what document was attached to
23 the e-mail?

24 A It's a non-disclosure and protective
25 agreement to govern confidentiality and proprietary

1 data.

2 Q What did you do with that non-disclosure
3 agreement?

4 A I thought that I signed it. Apparently, I
5 could not find a copy of anything but the blank one.
6 Once I forwarded it to you and the attorneys, I was
7 told that there wasn't a signed copy, that Mr. Trask
8 didn't have one either.

9 Q Did you meet with Mr. Trask at the TCEA
10 conference in February of 2014?

11 A Yes. That was the purpose of all of us
12 going. We met on the floor at the Encore booth,
13 looked at the Clear Touch products, looked at -- you
14 know, talked to Leo Gallant. He was really the person
15 who was doing a lot of the showing of it. We talked
16 about what was being -- some of the larger deals that
17 they had in the works in Florida and some other
18 places. And we agreed that -- you know, on the floor,
19 it's real difficult to have a conversation with
20 teachers walking up -- that we would meet later and
21 talk more about business.

22 Q Now, at this Encore booth -- this was an
23 Encore booth; is that right?

24 A Correct.

25 Q And who was there for Encore?

1 **A** I seem to recall it was Keone, Leo Gallant,
2 who I also knew, and a lady that I had not run into
3 before, really nice, April.

4 **Q** Now, did you have a subsequent meeting off
5 of the trade show grounds with Mr. Trask and
6 Mr. Gallant?

7 **A** Yes. We went and -- our group was there to
8 meet with vendors. We were there to try and find
9 partners. So we set up at a place called the Buffalo
10 Billiards sports bar. Different manufacturers came
11 there and met with us. That would be Jimmy Williams
12 from ACT, Mike from ProComputing, and a few others
13 that came in. We just had hors d'oeuvres and drank --
14 watched what was going on and we had business
15 conversations. So after -- I think, after dinner,
16 Keone and Robin Liang, the head of CVTE's global
17 division, came up.

18 **Q** Do you know if Ms. Trask, Mr. Keone Trask's
19 wife, was there?

20 **A** It's quite possible, but I've seen her so
21 many times. They're usually together, but I don't
22 recall exactly.

23 **Q** At this meeting, what did Mr. Trask say
24 that he was doing?

25 **A** Well, at the meeting, he was saying that

1 everything that they were doing with Encore was
2 working great, that they had got a lot more traction,
3 that -- we had been very cautious about, in our
4 group, concerning how fast we went, because our major
5 manufacturer, Promethean, first, said they weren't
6 getting into this market. Then they saw the success
7 we were starting to have and the wisdom of what we
8 were trying to do, so they came back and said, "Wait,
9 wait, wait, we're going to do this." They weren't
10 quite there yet. So we were still pursuing that.

11 What we were talking to Keone about was
12 joining forces, that we wouldn't continue to pursue
13 our brand with CVTE. We would stay with CVTE, but
14 that would be primarily under the Clear Touch brand.
15 They needed -- well, I needed \$2 million just to run
16 my state. If you look at that, you know, nationally,
17 you need a lot of money, a lot of money. So a couple
18 of million dollars from us, a couple of million
19 dollars from Mike, a couple of million dollars from
20 Jimmy, would have been a good foundation, in addition
21 to what we thought that Encore had put in. It was
22 Encore's business.

23 Q At this meeting, did Mr. Trask reveal his
24 connection with Clear Touch?

25 A Not in the initial conversations. The

1 initial conversations that we had, you know, involved
2 the whole group having, you know, hors d'oeuvres and
3 wings, I believe, and, you know, some beer. He's
4 talking to the whole group about the sales virtues of
5 coming on board with Encore, coming on board with
6 Clear Touch, of -- having a very well-put-together
7 marketing plan.

8 Q After this, was there a later meeting with
9 Mr. Trask?

10 A Yes, we got a chance to sit over to the
11 side. It's a very loud place. So just a few chairs
12 over, we're having a conversation regarding directly
13 how we're going to get this money. I mean, how much
14 money is Encore going to put into it? Are they that
15 committed? Because at this time, I'd already put out,
16 oh, easily, a quarter of a million dollars, just
17 doing the research and set-up of what it would take
18 doing evaluations, going back to -- back and forth to
19 China, so it's not a small amount of money. If we
20 were going to do that, I wanted to know where the
21 money came from.

22 Q And what did -- how did Mr. Trask respond
23 to that concern?

24 A Well, my question was: Is Encore behind
25 this? Is Encore going to put the money up for this?

1 How certain are they? I did not know anybody, Todd or
2 anybody with Encore, because I -- my relationships
3 had been with the previous thing. Other than Chris,
4 who testified before, I didn't think I knew anybody.

5 Q And so how did Mr. Trask respond to your
6 concern?

7 A He said that Encore was behind it and he
8 had a piece of it. It was involved. My question to
9 him was, "If they're doing all this, why are you
10 pushing it so hard?"

11 And he said, "Well, I'm going to have a
12 piece of it."

13 Q And then, after that, did Mr. Trask
14 disclose to you what his connect -- true connection
15 with Clear Touch was?

16 A Yeah, later, you know, after -- this had
17 been going on for several hours. And later, we had
18 another conversation with just he, myself and the
19 manufacturer off to one side. Robin sat here, Keone
20 there, and myself was leaned over. We had the
21 conversation about, look, I kept hammering the money.
22 I wanted to know where the money was coming from.

23 He said that this is -- "I have investors.
24 I'll get investors. This is my baby. It's my
25 retirement plan. I want to make this work, just like

1 you want to make your company work."

2 Now, we had finally gotten to the brass
3 tacks of where it was. My question was, again:
4 "Where's the money coming from?"

5 He says, "I can borrow the money. I can
6 mortgage my house," which I counseled him not to do.
7 That's really hard to have everything you own in it.
8 Keone is a very intelligent guy. He's very
9 determined. I just was concerned about that. When he
10 said that, and we had that conversation, the
11 following day, I had a conversation with the
12 manufacturer and said without the money, you know,
13 he's got to get the money from somewhere.

14 Q But you understood, after that
15 conversation, that Mr. Trask owned Clear Touch?

16 A Yes, I did.

17 Q And was Mr. Trask trying to get your
18 company to be a reseller for Clear Touch?

19 A Yes. He was trying to -- we have the
20 Education Resource Group, which is seven companies
21 that do what we do from around the country. We cover
22 most of the United States. We do not compete with
23 each other. We have non-disclosures with each other.
24 We share financials. We share products. In this case,
25 our rule is, we were trying to find a product that we

1 could each sell at least a million dollars of. That's
2 about what it takes to begin to pay for it, doing it
3 with your sales team. That was the pitch. If we went
4 with Clear Touch, that meant that our primary
5 manufacturer, Promethean, would be left out. They
6 would have nowhere to go if we all committed to going
7 to Clear Touch, which would have been a great coup.

8 Q And in addition to your company, was
9 Mr. Trask trying to get other resellers to be
10 resellers for Clear Touch?

11 A Well, the only ones that I'm aware, at that
12 time, were the ones that were at the meeting. And
13 that -- together, we went from Louisiana, all the way
14 to Alaska.

15 Q And who were those other resellers?

16 A That was AXI; ProComputing, which is
17 primarily the state of Texas; and then ACT, Classroom
18 Technologies -- I can't remember what the A stands
19 for -- out of Seattle, which had California; Oregon;
20 Idaho; some other little states in there; and Alaska.

21 Q Now, at this trade show at Encore's booth,
22 were any panels displayed other than the Clear Touch
23 panel?

24 A Not that I recall.

25 Q And tell the jury a little bit about what

1 Q So did you assign all of your and the
2 Powells' interest in Clear Touch to Ms. Cruse?

3 A That is correct.

4 Q And who is Kathy Cruse?

5 A Kathy Cruse, also known as Kathy Krebs, is
6 my mother.

7 Q And why did you and Ms. Trask assign your
8 interest in Clear Touch to Ms. Cruse?

9 A Well, there was -- at the time Encore was
10 starting, and there was a lot of confusion in the
11 market following the acquisition of CSI by Harris,
12 then the transition to Encore and a lot of people
13 that were missing from the teams as a result of that.
14 And there was a lot of confusion with that, and
15 further confusion by having myself associated with
16 another company, was one that we wanted to remove,
17 for the benefit of Encore.

18 Q So for the benefit of Encore, you did not
19 want to be associated with Clear Touch at that point?

20 A That is correct.

21 Q Well, if the goal was to avoid confusion in
22 the market, how would transferring your ownership
23 interest in Clear Touch clarify any confusion?

24 A It would remove confusion, not clarify.

25 Q How would anybody in the market know who

1 owned Clear Touch?

2 **A** It's readily available to look online.

3 **Q** So you didn't want anyone to look online
4 and see you as an owner of Clear Touch?

5 **A** No, I didn't want to create confusion for
6 prospective customers of those of Encore. People
7 doing business with us, those that needed trust, we
8 didn't need to have them confused by finding
9 information like that.

10 **Q** Would it be troubling to somebody to find
11 out that you are both an employee of Encore and an
12 owner of Clear Touch?

13 **A** I can't speak for anybody -- for somebody
14 else.

15 **Q** But you were supposedly making this change
16 in the public records to avoid confusion, right?

17 **A** That's correct.

18 **Q** Let me show you what we're marking as
19 Exhibit 15. Were these Articles of Incorporation of
20 Clear Touch Interactive, Inc., filed with the Nevada
21 Secretary of State in January of 2014?

22 **A** It appears so.

23 **Q** And who caused these to be filed?

24 **A** That was Kathy that initiated the
25 conversion.

1 Q How much did Clear Touch spend in
2 developing it's products?

3 A Define "development."

4 Q Well, what do you have to do to get a
5 product ready to sell?

6 A Well, you have to define what the product's
7 going to be.

8 Q Well, the interactive video panels that
9 Clear Touch sells.

10 A Okay. So you have to define and outline
11 your specifications for that product, and you have to
12 find a manufacturer to deliver that.

13 Q And how much did Clear Touch spend on doing
14 that?

15 A In terms of dollars, it would be hard to
16 pinpoint a number on that. In terms of time and
17 effort, significant.

18 Q Did it spend any money developing the
19 products?

20 A Very little.

21 Q Let me show you what we're marking as
22 Exhibit 1. Is this your employment agreement with
23 Encore?

24 A This is an employment agreement between
25 myself and Encore.

1 Q And it's dated February 14th, 2013; is that
2 right?

3 A That is correct.

4 Q And Encore paid you \$175,000 a year as a
5 base salary?

6 A That is correct.

7 Q What was your role for Encore?

8 A The title that was given was chief business
9 development officer. The roles and responsibilities
10 were not defined.

11 Q Well, what did you understand your
12 responsibilities to be as chief business development
13 officer?

14 A Relationship management.

15 Q Relationships with whom?

16 A Customers, staff, business partners.

17 Q What about suppliers?

18 A And in some cases, yes.

19 Q Did you supervise any employees for Encore?

20 A I did.

21 Q Who?

22 A That would be Leo Gallant and Carla
23 Davidson.

24 Q Did you have access to Encore's prices of
25 its products?

1 contacting them, is because it would conflict with
2 your duties with Encore, right?

3 A That's what I said.

4 Q Because at this time, you were supposed to
5 be spending 100 percent of your time and devote 100
6 percent of your time to the business of Encore,
7 right?

8 A And I was.

9 Q Let me show you what we've marked as
10 Exhibit 58. This is an e-mail from your mother to you
11 on December 17, 2013?

12 A Correction. It's from Kathy Cruse to
13 purchasing@encoretg.com, copying myself.

14 MS. BARKER: Your Honor, I'd like to move
15 into evidence, Exhibit 58.

16 THE COURT: It's admitted.

17 (Plaintiff's Exhibit 58 is admitted into the
18 record.)

19 BY MS. BARKER:

20 Q And it says, "The e-mail is provided as
21 confirmation of modified terms and pricing for Leon
22 School District"; is that right?

23 A That is correct.

24 Q Leon School District was a customer of
25 Encore, right?

1 **A** At this time, it was.

2 **Q** And why did you need your mother to confirm
3 the modified terms of pricing for Leon County School
4 District?

5 **A** To communicate the confirmation of the
6 modified terms and pricing.

7 **Q** Mr. Trask, you said you collaborated by
8 e-mail with your mother on things like the reseller
9 agreement, the price list. Where are the e-mails
10 between you and your mother showing that
11 collaboration?

12 **A** I believe we submitted it into the record
13 -- information regarding the loss of an e-mail
14 server.

15 **Q** So you're saying those e-mails have been
16 lost?

17 **A** If they were there, yeah. They're no longer
18 available.

19 **Q** And you're saying that Clear Touch didn't
20 have any sort of backup for those e-mails?

21 **A** As a formality, no, we did not.

22 **Q** Well, I want to make sure I'm clear. I'm
23 not just talking about formality, but did Clear Touch
24 have a backup for the e-mails?

25 **A** No.

1 Q Let me show you what we're marking as
2 Exhibit 4. And do -- you understand that your wife
3 posed as somebody named Amy Andrews for Clear Touch,
4 correct?

5 A That is correct.

6 Q Why did you have your wife pose as Amy
7 Andrews for Clear Touch?

8 A At this point, we had signaled with our
9 filing with the Secretary of State in Nevada that we
10 were incorporating as Clear Touch Interactive, and it
11 was going to be our interest going forward. But with
12 my mother's help -- Kathy Cruse -- she was stepping
13 aside and needed somebody to fill in the gap until
14 that was formalized.

15 Q Well, why did your wife not just appear to
16 Encore as Tamara Trask?

17 A Because, at the time, we thought there
18 would be some bias towards the decisions that were
19 involved.

20 Q So you think if Encore knew that you and
21 your wife were involved with Clear Touch, they would
22 scrutinize the value they were receiving from the
23 Clear Touch product?

24 A That was -- that was the thought, yes.

25 Q And you didn't want Encore to conduct that

1 scrutiny?

2 **A** Not at that time, no.

3 **Q** Let me show you what we're marking as
4 Exhibit 26. Is this an e-mail from your wife posing
5 as Amy Andrews to you dated February 10th, 2014?

6 **A** It appears to be.

7 **MS. BARKER:** Your Honor, I'd like to move
8 into Exhibit 26.

9 **THE COURT:** It's admitted.
10 (Plaintiff's Exhibit 26 is admitted into the
11 record.)

12 **BY MS. BARKER:**

13 **Q** And it says, "Here is a lead from a general
14 inquiry to the website." Is that the Clear Touch
15 website?

16 **A** In this context, it appears to be.

17 **Q** If the Clear Touch website forwarded leads
18 to you, would they have forwarded them to your Encore
19 e-mail address?

20 **A** No, they would not.

21 **Q** Did you have a separate Clear Touch e-mail
22 address at this time?

23 **A** Yes.

24 **Q** And would the leads from the Clear Touch
25 website have been forwarded to you at your Clear

1 Touch e-mail address?

2 A Potentially.

3 Q And is that to keep Encore from knowing
4 that you're involved with Clear Touch?

5 A No, it's to capture leads and then forward
6 them on.

7 Q Well, if your wife is forwarding the leads
8 to you at your Encore e-mail address, why wouldn't
9 you just arrange to have the website notify you at
10 your Encore address?

11 A I don't have an answer for your question.

12 Q Let me show you what we're marking as
13 Exhibit 27. Is this an e-mail from you to your wife
14 on February 10th, 2014?

15 A It's an e-mail from me to Amy Andrews, yes.

16 MS. BARKER: Your Honor, I'd like to move
17 into evidence, Exhibit 27.

18 THE COURT: It's admitted.

19 (Plaintiff's Exhibit 27 is admitted into the
20 record.)

21 BY MS. BARKER:

22 Q And Amy Andrews is your wife, right?

23 A Yes.

24 Q And you address her as Amy, correct?

25 A That is correct.

1 Q And you're copying Leo Gallant at Encore
2 with this e-mail?

3 A That is correct.

4 Q Is the reason that you're referring to your
5 wife as Amy to maintain this ruse that you all are
6 not involved with Clear Touch?

7 A No, the purpose of the e-mail was to
8 facilitate information.

9 Q But the purpose of addressing it to Amy was
10 to hide the fact that you are all involved in Clear
11 Touch, right?

12 A No.

13 Q Well, why did you refer to your wife as
14 Amy?

15 A Because Amy is the one that sent the
16 e-mail.

17 Q Isn't your wife going under the alias Amy
18 Andrews?

19 A That is correct.

20 Q And you are playing along with her.

21 A Playing along, no.

22 Q Let me show you what we're marking as
23 Exhibit 29. Is this an e-mail from you to your wife
24 dated March 24th, 2014?

25 A It's an e-mail from me to Amy Andrews.

1 **MS. BARKER:** Your Honor, I'd like to move
2 into evidence, Exhibit 29.

3 **THE COURT:** It's admitted.
4 (Plaintiff's Exhibit 29 is admitted into the
5 record.)

6 **BY MS. BARKER:**

7 **Q** Was Amy Andrews your wife?

8 **A** No, Tamara Trask is my wife.

9 **Q** And was Tamara Trask Amy Andrews?

10 **A** It's already been established.

11 **Q** Is that yes?

12 **A** Yes.

13 **Q** So it is fair to describe this as an e-mail
14 from you to your wife, right?

15 **A** No, it's from Keone Trask to
16 aa@cleartouchinteractive.com.

17 **Q** And that's your wife's e-mail account?

18 **A** That is Amy Andrews's e-mail account.

19 **Q** Are you saying that Amy Andrews is not your
20 wife?

21 **A** I didn't say that.

22 **Q** She is your wife?

23 **A** No, Tamara Trask is my wife.

24 **Q** Do you really view Amy Andrews as a
25 different person from your wife?

1 **A** No.

2 **Q** It begins with Amy?

3 **A** That is correct.

4 **Q** Which is your wife?

5 **A** No.

6 **Q** Which is -- Amy is Tamara Trask?

7 **A** That is a pen name that she uses, yes.

8 We've already established that.

9 **Q** Why did Clear Touch have Encore send
10 payments for its product to a PO box in Nevada and
11 then turn around and have those checks sent back to
12 Clear Touch in South Carolina?

13 **A** Because it's a Nevada registered
14 corporation.

15 **Q** So my question is, why did Clear Touch not
16 just have Encore make payments directly to it in
17 South Carolina where it deposited the checks?

18 **A** Because the business address for Clear
19 Touch Interactive, Inc., was located in Reno, Nevada.

20 **Q** All right. But Clear Touch's bank account
21 was in South Carolina, right?

22 **A** One of them, yes.

23 **Q** Weren't Encore's checks sent from Nevada to
24 South Carolina?

25 **A** Yes.

1 Q And so why not just have the Encore checks
2 sent directly to Clear Touch in South Carolina?

3 A Because the business address for Clear
4 Touch Interactive was in Reno, Nevada.

5 Q And that was important because you didn't
6 want Encore to know that Clear Touch had a South
7 Carolina connection, right?

8 A No. It was important because it was a
9 Nevada corporation.

10 Q Well, isn't it true that the reason you put
11 Kathy Cruse on the public documents, you had your
12 wife pose as Amy Andrews, and you had Encore ship
13 checks to Nevada, only to turn around and be shipped
14 back to South Carolina, was to hide the fact that you
15 and your wife were involved in Clear Touch?

16 A No.

17 Q What was the reason for putting Kathy Cruse
18 on the public documents, having your wife pose as Amy
19 Andrews, and having Encore send checks to Nevada
20 first, instead of directly to South Carolina?

21 A The last one, as indicated before, the
22 address for Clear Touch Interactive was in Reno,
23 Nevada. That is the business address for that entity.

24 The reasons for Kathy Cruse is -- we
25 discussed earlier, in detail, was to remove any

1 ambiguity or prospective confusion.

2 And Amy Andrews was to take over in Kathy's
3 place as we transferred the company to Clear Touch
4 Interactive, Inc.

5 Q After you left Encore, you disclosed your
6 involvement in Clear Touch?

7 A That is correct.

8 Q And didn't Encore start paying Clear Touch
9 directly in South Carolina?

10 A That is correct.

11 Q So wasn't the purpose of having the PO box
12 in Nevada to hide the fact that you all were involved
13 in Clear Touch?

14 A No, because the business address for Clear
15 Touch Interactive, Inc. is in Reno, Nevada.

16 Q And the business address for Clear Touch
17 was also in Nevada after you left Encore and
18 disclosed your involvement, right?

19 A It is today.

20 Q But then, at that point, you started having
21 checks go directly to South Carolina, your South
22 Carolina address?

23 A That's correct.

24 Q Why did you change -- after you left
25 Encore, why did you change the checks going directly

1 to Clear Touch in South Carolina?

2 **A** To expedite the delivery of mail.

3 **Q** Let me show you what we're marking as
4 Exhibit 31. If you will look back on the fourth page,
5 you will see there's an e-mail from Todd Newnam to
6 Leo Gallant on April 11th, 2014, saying, "Leo, Keone
7 was going to give you a list of performance
8 characteristics and a list of product offerings for
9 you to prepare a grid so we could view the product
10 options."

11 **A** Uh-huh.

12 **Q** Was that true? Was that something you were
13 working with Leo Gallant on?

14 **A** Yes, I believe so.

15 **Q** If you will look at the last paragraph, the
16 second sentence says, "We are working very hard to
17 create the demand and awareness for this unique
18 offering by Encore." Was that true?

19 **A** Which sentence again?

20 **Q** That's okay. So the question is, was it
21 true that you all were working very hard to create
22 the demand and awareness for this unique offering by
23 Encore?

24 **A** Yes.

25 **Q** But you were working hard to create demand

1 for Clear Touch products, weren't you?

2 **A** As part of that for creating the
3 opportunity for Encore, yes.

4 **Q** And Mr. Gallant was working hard to create
5 the demand for the Clear Touch product, wasn't he?

6 **A** Mr. Gallant was working hard on several
7 projects.

8 **Q** Including the Clear Touch product?

9 **A** Including, yes.

10 **Q** And this chart, that is attached, indicates
11 that Clear Touch is the product that Encore should go
12 with, right?

13 **A** With its unique opportunity, yes.

14 **Q** Now, you've got Mr. -- let's see. Before we
15 get into that, let me show you what we've marked as
16 Plaintiff's Exhibit Number 6. Is this a severance
17 agreement and general release you entered with
18 Encore?

19 **A** It is.

20 **Q** Now, around this time, you've got Mr. Leo
21 Gallant, who was still an employee of Encore, to sign
22 a non-disclosure agreement with you, correct?

23 **A** Uh-huh. That's correct.

24 **Q** Let me show you what we're marking as
25 Exhibit 32.

1 A Uh-huh.

2 Q Is this a non-disclosure agreement -- the
3 non-disclosure agreement you got Leo Gallant to sign?

4 A It's one presented to Leo Gallant and
5 signed by Leo Gallant, that's correct.

6 Q And it's dated April 25th, 2014; is that
7 right?

8 A That is correct.

9 Q And that's the same day that you received
10 the severance agreement from Encore?

11 A That is correct.

12 Q And Mr. Gallant was an employee of Encore
13 at the time?

14 A That is correct.

15 Q Why did you have Mr. Gallant sign a
16 non-disclosure agreement with you the day you were
17 leaving Encore?

18 A Well, the day of, which actually was the
19 evening of, where Leo and his spouse Kim joined us
20 for dinner.

21 Q And do you ask all of your dinner guests to
22 sign non-disclosure agreements?

23 A I'll have you over. No, I do not.

24 Q Why did you have Mr. Gallant sign a
25 non-disclosure agreement?

1 **A** Because we have policy of having all that
2 we have communications with about Clear Touch
3 Interactive sign a non-disclosure.

4 **Q** All right. So what did you discuss about
5 Clear Touch with Mr. Gallant?

6 **A** Just sharing with him that Clear Touch was
7 its own entity and would be moving forward.

8 **Q** Well, Mr. Gallant knew that Clear Touch was
9 its own entity because he knew that -- in connection
10 with Exhibit 31 and the comparison of panels -- he
11 was comparing the Clear Touch panel with other
12 panels, right?

13 **A** Uh-huh. Yes.

14 **Q** So he knew that Clear Touch was a separate
15 entity. What additional information were you giving
16 him on April 25th?

17 **A** We were talking about the Clear Touch
18 Interactive, LLC and our plans for what it was going
19 to be.

20 **Q** Did you disclose to him at the time that
21 you were the owner of Clear Touch?

22 **A** I did.

23 **Q** And is that something you considered
24 confidential?

25 **A** Yes.

1 Q And you got Mr. Gallant to sign a
2 non-disclosure agreement so he wouldn't tell anybody
3 that, right?

4 A That is correct.

5 Q And specifically, so that he wouldn't tell
6 Encore, right?

7 A Or anybody.

8 Q Why would you not want Mr. Gallant telling
9 Encore that?

10 A Just confidential information.

11 Q Was it because you knew that Encore was
12 evaluating whether to sell interactive panels other
13 than Clear Touch panels?

14 A They were already selling other panels.

15 Q Well, you understood that there was a
16 review underway of which panel to focus on selling,
17 correct?

18 A I didn't understand the extent of it,
19 but...

20 Q Why would you think that Encore's comparing
21 different panels?

22 A Because they're evaluating the features to
23 make sure -- in Exhibit 31, they are evaluating the
24 features of the available products in the market.

25 Q Other than the fact that you owned Clear

1 Touch, what else did you disclose to Mr. Gallant that
2 required a non-disclosure agreement?

3 A I don't remember the content of the
4 conversation.

5 Q Did he indicate to you that he was
6 interested in joining Clear Touch at some point?

7 A If it made sense, yes.

8 Q And how did you maintain contact with
9 Mr. Gallant, from the time that he signed the
10 non-disclosure on April 25th, 2014 until Clear Touch
11 hired him in January 2015?

12 A Telephone.

13 Q Did you e-mail with Mr. Gallant about the
14 opportunities he had to come work for Clear Touch?

15 A I believe so.

16 Q And you did that while Mr. Gallant was an
17 employee of Encore?

18 A That is correct.

19 Q Let me show you what we're marking as
20 Exhibit 33. Is this an e-mail from your wife to you
21 dated April 30th, 2014?

22 A That is correct.

23 MS. BARKER: Your Honor, I'd like to move
24 into evidence, Exhibit 33.

25 THE COURT: It's admitted.

1 (Plaintiff's Exhibit 33 is admitted into the
2 record.)

3 **BY MS. BARKER:**

4 **Q** And she says, "Hi, Keone. I just wanted to
5 touch base with you to see how things are going."
6 Now, she sent this to your Encore address, right?

7 **A** That is correct.

8 **Q** And she knew you were no longer at Encore,
9 right?

10 **A** That is correct.

11 **Q** Why is she e-mailing you April 30th, 2014
12 to see how things are going?

13 **A** To continue communications, because no
14 vendors were notified of my departure.

15 **Q** But no vendors were copied on the e-mail,
16 were they?

17 **A** No, they were not.

18 **Q** So why is Amy Andrews sending you an e-mail
19 to your Encore address to touch base to see how
20 things are going?

21 **A** Because this address is being monitored.

22 **Q** By whom?

23 **A** By Encore.

24 **Q** And so why did you want Encore to see an
25 e-mail from Amy Andrews to you after you had

1 departed?

2 **A** To make sure that clear line of
3 communications stayed open.

4 **Q** Were you accessing Encore's -- any of
5 Encore's databases after you left?

6 **A** No.

7 **Q** And if Amy Andrews wanted to know how
8 things were going, she could ask you at home, right?

9 **A** That is correct.

10 **Q** Let me show you what we're marking as
11 Exhibit 34. Is this an e-mail from Amy Andrews to
12 your Encore e-mail address on May 2nd, 2014?

13 **A** It is.

14 **MS. BARKER:** Your Honor, I'd like to move
15 into evidence, Exhibit 33.

16 **THE COURT:** Admitted.

17 (Plaintiff's Exhibit 33 previously has been
18 admitted into the record.)

19 **BY MS. BARKER:**

20 **Q** Why would she be sending you a lead from
21 Clear Touch's website on May 2nd, 2014, after you've
22 left Encore?

23 **A** I assume because no direction was given on
24 the change in communications' structure.

25 **Q** You worked at Encore, right?

1 **A** I did.

2 **Q** And you told her that you had left Encore,
3 right?

4 **A** Correct.

5 **Q** So you could have had her direct this to
6 somebody else?

7 **A** Uh-huh.

8 **Q** But you didn't?

9 **A** No, the e-mail was sent to the Encore
10 account.

11 **Q** To your Encore account?

12 **A** That's correct, which, again, was being
13 monitored.

14 **Q** And is that why you didn't direct her to
15 somebody else?

16 **A** I didn't direct her in any specific
17 direction.

18 **Q** Let me show you what we're marking as
19 Exhibit 35. Is this a consignment agreement that your
20 mother sent to you at Encore for Encore to enter with
21 Clear Touch?

22 **A** It appears so.

23 **MS. BARKER:** Your Honor, I'd like to move
24 into evidence, Exhibit 35.

25 **THE COURT:** Admitted.

1 (Plaintiff's Exhibit 35 is admitted into the
2 record.)

3 **BY MS. BARKER:**

4 **Q** So was Encore providing -- through this
5 agreement, was Encore providing warehousing for
6 Encore product?

7 **A** Yes, with access to product at no
8 additional cost.

9 **Q** Let me show you what we're marking as
10 Plaintiff's Exhibit 8. Is this Encore's termination
11 of the reseller agreement?

12 **A** It is.

13 **Q** It says that you were the primary Encore
14 employee responsible for the developing the supplier
15 relationship between Encore and Clear Touch; is that
16 true?

17 **A** Primary, yes.

18 **Q** It says, "Encore understands and has
19 evidence that you and your immediate family members
20 were owners, managing members and managers of Clear
21 Touch prior to and during the term of the agreement
22 and your employment with Encore." Was that true?

23 **A** That is correct.

24 **Q** Then it says, "Neither you, nor Clear
25 Touch, disclosed these facts or conflicts of interest

1 to Mr. Newnam, the owner of Encore." Was that true?

2 A This is not true.

3 Q When did you disclose these facts and
4 conflicts of interest to Mr. Newnam?

5 A On October -- of 2014.

6 Q What did you tell Mr. Newnam at that time?

7 A That I owned Clear Touch.

8 Q What did you tell him about how long you
9 had owned it?

10 A It wasn't a topic of conversation.

11 Q Was that your first disclosure to Encore of
12 your ownership of Clear Touch?

13 A It was.

14 Q Let me show you what we're marking as
15 Plaintiff's Exhibit Number 9. Is this a summary of
16 Clear Touch sales from February 2013 through
17 October 10th, 2015?

18 A Through October 10, 2015, correct.

19 Q Right. And that was the date that the
20 Encore's termination of the reseller agreement was
21 effective?

22 A Effective, yes.

23 Q Now, during this time, it looks like Clear
24 Touch sold about \$8.9 million worth of panels?

25 A That is correct.

1 Solutions in Florida?

2 **A** I believe you have the full sales
3 information to delineate that.

4 **Q** Well, I'm asking you. Were those sales to
5 Collaboration Solutions in Florida?

6 **A** There would be some, yes.

7 **Q** Did you make any effort to work with Encore
8 so that it could get those sales from Leon County
9 Schools instead of making sales direct from Clear
10 Touch?

11 **A** We had communications with Terry Caldwell,
12 who is the account manager assigned to that following
13 the transition of James Higginbotham, as well as
14 David Masters, about the account.

15 **Q** And why did Encore then not make some
16 effort to get the sales?

17 **A** That's not something I can answer.

18 **Q** You don't know?

19 **A** I don't know.

20 **Q** Is it true you didn't disclose your
21 involvement with Clear Touch to anybody at Encore
22 while they were involved with the development of
23 Clear Touch as a supplier to Encore?

24 **A** That is correct.

25 **Q** And TSItouch was Clear Touch's initial

1 partners?

2 **A** At this time, on Tuesday, February 26th, no
3 one.

4 **Q** But Encore was the first?

5 **A** As of April 24th, 2013, that is correct.

6 **Q** And then you said, "I will be limitedly
7 available for the balance of this week, attending a
8 conference on the west coast." Was that a conference
9 for Encore?

10 **A** It was.

11 **Q** Let me show you what we're marking as
12 Exhibit 40. Is this an e-mail from you to TSitouch on
13 March 26th, 2013?

14 **A** It is.

15 **Q** And again, this is while you were an
16 employee at Encore, right?

17 **A** Correct.

18 **Q** Now, in the second paragraph, you say,
19 "Couple of items we would like to have considered:
20 associated white labeling efforts."

21 **A** Uh-huh.

22 **Q** What are "white labeling efforts"?

23 **A** Branding, and taking advantage of using the
24 brand of Clear Touch versus the manufacturer's brand.

25 **Q** What was the manufacturer's brand?

1 **A** Sharp.

2 **Q** Did TSItouch label any of these products as
3 Sharp products?

4 **A** They were boxed in Sharp boxes.

5 **Q** So are you saying that when TSItouch got
6 these products, they had the Sharp labels on them?

7 **A** That is correct.

8 **Q** So did TSItouch have to remove those?

9 **A** It was critically modified as a product.

10 **Q** And as part of that, were they removing all
11 Sharp labels?

12 **A** Yes.

13 **Q** And then you tell TSItouch you want to add
14 a Clear Touch Interactive label, right?

15 **A** That's correct.

16 **Q** And for the instructions, you want those to
17 have the Clear Touch brand on the instructions,
18 right?

19 **A** That's correct.

20 **Q** And the shipping labels, you want to say
21 from Clear Touch Interactive, right?

22 **A** Uh-huh. Drop-shipped.

23 **Q** And then you say your initial distribution
24 partner is Encore; is that right?

25 **A** That is correct.

1 Q Looking back at Exhibit 41 -- before we
2 leave that, though, before we get to 42, it looks
3 like our e-mail to TSItouch was on Friday, April 5th,
4 at 3:20 p.m.; is that right?

5 A That is the time of the e-mail server, yes.

6 Q And you were working for Encore at that
7 time, right?

8 A That is correct.

9 Q All right. Let me show you what is marked
10 as Exhibit 43. If you will look on the next to the
11 last page, it looks like at the bottom is an e-mail
12 from you to TSItouch on Thursday, May 9th at 11:00 --
13 I'm sorry, at 10:00 a.m.; is that right?

14 A That is correct.

15 Q Now, on the second page, on May 30th, you
16 write to TSItouch in the second sentence, "It is
17 critical to make sure these units do not arrive with
18 anything other than Clear Touch Interactive
19 labeling."

20 A Yes.

21 Q These were the units coming to Encore,
22 right?

23 A These were the units and specifications
24 required from the previous white labeling.

25 Q And these units were coming to Encore,

1 right?

2 **A** That is correct.

3 **Q** And then, going down in that same e-mail,
4 you say, "Here's a sales video that has been
5 circulating from our reseller Encore."

6 **A** Uh-huh.

7 **Q** "Please do not respond or comment online
8 per our NDA." Why did you not want TSItouch
9 commenting on Encore's video?

10 **A** I don't recall.

11 **Q** Isn't it true that you didn't want TSItouch
12 to reveal to Encore that they were the source of the
13 product?

14 **A** No, that is not correct.

15 **Q** But you don't know why you told them not to
16 respond or comment online?

17 **A** I do not.

18 **Q** And then on the first page, Mr. Mundrake
19 responds to your May 30th e-mail on May 31 and says
20 in the last paragraph, "We will ship everything white
21 label/CTI branded, no TSItouch marking on anything,"
22 right?

23 **A** Uh-huh.

24 **Q** Is that yes?

25 **A** This is yes.

1 Q And that's because you didn't want Encore
2 to receive product with TSItouch marking on it,
3 right?

4 A I stated earlier, I did not want the
5 customer to receive product that did not have the
6 brand on it that they purchased.

7 Q And Encore was a Clear Touch customer,
8 right?

9 A They were a customer of Clear Touch.

10 Q Let me show you what we're marking as
11 Exhibit 44. Clear Touch bought products from its
12 supplier and sold them to Encore, didn't it?

13 A That is correct.

14 **MS. BARKER:** Your Honor, I'd like to move
15 into evidence, Exhibit Number 44.

16 **THE COURT:** It's admitted.

17 (Plaintiff's Exhibit 44 is admitted into the
18 record.)

19 **BY MS. BARKER:**

20 Q And because of that, Clear Touch was able
21 to make a profit on its sales to Encore?

22 A That is correct.

23 Q Now, it looks like, based on our
24 calculations, between February of 2013 and April 25th
25 of 2014, when you left Encore, Encore paid \$603,000

1 for product that cost Clear Touch \$472,000, so that
2 Clear Touch made a 130,000-dollar profit while you
3 were an employee. Do you dispute that?

4 **A** I would have to verify the numbers to not
5 dispute it.

6 **Q** But it's true that while you were an
7 employee of Encore, you were causing Encore to buy
8 product from TSItouch at a markup?

9 **A** That is correct.

10 **Q** And if you had disclosed to Encore that
11 TSItouch was the supplier of the product, Encore
12 could have bought directly from TSItouch, right?

13 **A** They still can.

14 **Q** But they could have at the time, right?

15 **A** That is correct.

16 **Q** And it would have saved Encore money to
17 have bought directly from TSItouch than to have
18 bought through Clear Touch, correct?

19 **A** There was a markup involved, yes.

20 **Q** So it would have been cheaper for Encore to
21 buy directly from TSItouch than to have bought
22 through Clear Touch?

23 **A** There was a markup involved.

24 **Q** Right. So it would have been cheaper for
25 Encore?

1 A There was a markup involved.

2 Q Right. And my question is: Therefore, it
3 would have been cheaper for Encore, correct?

4 A In the sales of and information, yes.

5 Q During that period of April -- that
6 one-year period after you left Encore, do you dispute
7 that Encore paid \$990,000 for product that -- to
8 Clear Touch that cost Clear Touch \$607,000?

9 A I do agree with that, but it was not
10 competitive.

11 Q Let me show you what we're marking as
12 Exhibit 48. Is this an e-mail from you to TSItouch in
13 February of 2014?

14 A It is.

15 Q And you say that you're going to a trade
16 show to promote interactive displays, right?

17 A Well, I'm talking to our manufacturer of
18 interactive displays, that's correct.

19 Q And the interactive displays you are
20 promoting are the Clear Touch displays, right?

21 A That's correct.

22 Q And you're traveling to that trade show for
23 Encore, aren't you?

24 A That is correct.

25 Q And Encore's paying your costs for that,

1 aren't they?

2 **A** While also promoting other products and
3 services, yes.

4 **Q** Now, when did Clear Touch shift from using
5 TSitouch as a supplier to CVTE?

6 **A** On or about January of 2014.

7 **Q** And you don't recall whether Clear Touch
8 ever sold to Encore any CVTE panels?

9 **A** Yes, we did.

10 **Q** And the payments that had to be made to
11 CVTE in advance, weren't those made by Encore?

12 **A** No, they were made by Clear Touch.

13 **Q** Well, didn't Encore pay Clear Touch first
14 for the products, and then Clear Touch used that
15 product -- or used product to pay CVTE?

16 **A** According to the pricing sheet, there was a
17 direct pricing option, which required 20 percent
18 product down payment.

19 **Q** From Encore?

20 **A** From, at the time, Encore.

21 **Q** Let me show you what we're marking as
22 Exhibit 51. Is this Clear Touch's summary of sales by
23 customer from February 2013 through October 2014?

24 **A** Yes, October 10, 2014, being the date that
25 the modified reseller agreement was in effect.

1 **BY MS. BARKER:**

2 **Q** Let me show you what we're marking as
3 Exhibit 51. Is this Clear Touch's summary -- is this
4 Clear Touch's summary of sales by customer from
5 February 2013 through October 2014?

6 **A** Yes. October 10, 2014, being the date that
7 the modified reseller agreement was in effect.

8 **MS. BARKER:** Your Honor, I'd like to move
9 into evidence, Exhibit 51.

10 **THE COURT:** It's admitted.

11 (Plaintiff's Exhibit 51 is admitted into the
12 record.)

13 **BY MS. BARKER:**

14 **Q** And it looks like Clear Touch's sales for
15 that year, in eight months, totaled about \$1.18
16 million; is that right?

17 **A** That is correct.

18 **Q** And of that, Encore was 1.13 million of
19 that?

20 **A** As the exclusive reseller for those states
21 at that time, yes.

22 **Q** But as of Clear Touch's sales, 90 percent
23 were made to Encore, right?

24 **A** As the exclusive reseller to those regions,
25 yes.

1 Q In fact, it was closer to 95 percent,
2 wasn't it?

3 A If you'll hand me a calculator, I'll answer
4 it accurately for you, but yes, it's close.

5 Q And after Encore, the biggest customer was
6 Leon County Schools, right?

7 A Uh-huh.

8 Q Is that yes?

9 A That is a yes.

10 Q Let me show you what we're marking as
11 Exhibit 53. Is this an e-mail from you dated
12 May 14th, 2014, to CVTE?

13 A It is.

14 Q And this was about two weeks after you left
15 Encore?

16 A That is correct.

17 Q And you report that Leon County School
18 District had selected Clear Touch as the panel
19 manufacturer?

20 A That is correct.

21 Q You said, "Encore received a purchase order
22 for 18 yesterday"?

23 A That is correct.

24 Q And then you say, "These 18 are the
25 beginning of 285 to be acquired through December.

1 Next year is 600 rooms," correct?

2 A That is correct.

3 Q So was the plan for Encore to continue to
4 sell to Leon County Schools?

5 A I don't know if that was the plan. They
6 were buying in waves.

7 Q Leon County Schools was?

8 A That is correct.

9 Q But you knew two weeks after leaving Encore
10 that Encore had gotten an order for 18, which was the
11 beginning of 285 units, right?

12 A That is correct.

13 Q And you know that 600 -- you knew in May of
14 2014, that in '15, there was going to be an
15 opportunity to sell another 600 units to Leon County
16 Schools?

17 A There would an opportunity.

18 Q If you'll look back on Exhibit 9, Clear
19 Touch sold \$935,000 worth of product directly to Leon
20 County Schools, right?

21 A For the time period of February 13, 2013 to
22 October 10th, that is correct.

23 Q Clear Touch hired Jimmy Higginbotham the
24 day after he left Encore, on August 1st, 2014,
25 correct?

1 **A** That is correct, following negotiation with
2 Encore's management while attending ISTE in Atlanta
3 2013 -- 2014.

4 **Q** Now, you understood that Mr. Higginbotham
5 had a non-compete that was identical to yours, right?

6 **A** He may have. I did not view his.

7 **Q** Well, he told you he had a non-compete,
8 like yours, with Encore, right?

9 **A** That's correct.

10 **Q** And then the next day, after he --
11 Mr. Higginbotham starts for you on August 2nd, 2014,
12 Clear Touch has an order -- or a prospect for an
13 order of 45 units from Leon County Schools, correct?

14 **A** I don't know that we have an order, but it
15 looks like an opportunity.

16 **Q** Didn't that violate your non-compete with
17 Encore?

18 **A** If we're working collaboratively on
19 opportunities, it's not competing.

20 **Q** Well, these were sales direct from Clear
21 Touch to Leon County Schools, right?

22 **A** This is not a sale.

23 **Q** I know, but this led to a sale direct from
24 Clear Touch to Leon County Schools, right?

25 **A** It may have, given the requirements.

1 Q And didn't that violate your non-compete
2 with Encore?

3 A I don't know if it does or not.

4 Q Well, if you'll look back at Exhibits 51
5 and 52.

6 A Uh-huh.

7 Q Mr. Wuerstein, [phonetic] is that 51?
8 Clear Touch had not sold anything to Leon
9 County Schools as of October 10th, 2014, right?

10 A That is correct.

11 **MS. BARKER:** Your Honor, I'd like to move
12 into evidence, Exhibit 50 -- 50 -- Exhibit 51
13 and Exhibit 52.

14 **THE COURT:** 51 has been admitted. 52 has
15 now been admitted.

16 (Plaintiff's Exhibit 52 is admitted into the
17 record.)

18 **BY MS. BARKER:**

19 Q But by April 2015, seven months later, it
20 had sold \$546,000 worth of products to Leon County
21 Schools; is that right?

22 A That's what it says.

23 Q But at some point, Leon stopped purchasing
24 -- at some point, between October 10th, 2014 and
25 April 2015, Leon County Schools stopped purchasing

1 from Encore and started purchasing directly from
2 Clear Touch; is that correct?

3 A That is correct.

4 Q Now, in addition to selling direct to Leon
5 County Schools, Clear Touch also sold direct to Wake
6 County Schools, which was an Encore customer, right?

7 A That is correct.

8 Q And then let me show you what we're marking
9 as Exhibit 56. Is this an e-mail from you to a
10 milton@ansonschools?

11 A That is correct.

12 Q But Anson Schools was an Encore customer,
13 right?

14 A Yes.

15 Q And this was during your non-compete,
16 right?

17 A It is June 26th, 2014.

18 Q So it's within that one-year non-compete
19 period, right?

20 A That is correct.

21 Q Then on the next page of Exhibit 56 is a --
22 it looks like the identical e-mail to ---

23 A Uh-huh.

24 Q --- Davidson County Schools; is that right?

25 A That is correct.

1 the plan year-end?"

2 Q And what's the answer you provided?

3 A \$2,269,818.

4 Q Well, if you'll look at what we'll mark as
5 Exhibit 70, the net assets of Clear Touch indicated
6 on the 2015 federal return.

7 MS. BARKER: Your Honor, I'd like to move
8 into evidence, Exhibit 70.

9 THE COURT: It's admitted.
10 (Plaintiff's Exhibit 70 is admitted into the
11 record.)

12 BY MS. BARKER:

13 Q The next assets of Clear Touch indicated on
14 the 2015 federal return were 2.271 million, right?

15 A Uh-huh.

16 Q Is that "yes"?

17 A That is a yes.

18 Q And again, that would be on the low side of
19 a value of a corporation, wouldn't it?

20 A If that number is entered correctly, yes.

21 Q Let me show you what we're marking as
22 Exhibit 73. Is this an affidavit that you signed?

23 A It is.

24 MS. BARKER: Your Honor, I'd like to move
25 into evidence, Exhibit 73.

1 **THE COURT:** It's admitted.

2 (Plaintiff's Exhibit 73 is admitted into the
3 record.)

4 **BY MS. BARKER:**

5 **Q** In Paragraph 5, it says that, "In February
6 of 2015, Clear Touch began experiencing electronic
7 communication issues with its e-mails."

8 **A** It did.

9 **Q** And that just -- you had been using Zoho
10 e-mail since May of 2014?

11 **A** That is correct.

12 **Q** And so, nine months later, you just started
13 experiencing issues out of the blue?

14 **A** We did.

15 **Q** And that led you to attempt to -- or that
16 led you to shift your e-mail provider to Google Apps
17 for Business; is that right?

18 **A** That is correct.

19 **Q** Then it said, "It was later observed that"
20 -- this is Paragraph 7 -- "It was later observed that
21 not all e-mails were successfully migrated to Google
22 Apps for Business." How was that observed?

23 **A** In attempting to search for e-mails.

24 **Q** You searched for e-mails and didn't find
25 them?

1 **A** That is correct.

2 **Q** Has Clear Touch made any effort to obtain
3 e-mails from Zoho?

4 **A** No.

5 **Q** And you say Clear Touch does not have an
6 electronic communications discovery or preservation
7 policy?

8 **A** It does not.

9 **Q** And you're saying Clear Touch does not
10 maintain any e-mail archiving system?

11 **A** We do not.

12 **Q** Clear Touch does not preserve e-mails?

13 **A** We do not.

14 **Q** Do you know which e-mails were missing?

15 **A** Do not.

16 **Q** And of all these e-mails that we've gone
17 through with the TSItouch, came to us from TSI,
18 you're saying that all these e-mails were lost?

19 **A** That's what's in the affidavit, yes.

20 **MS. BARKER:** Your Honor, those are all of
21 the excerpts from the 30(b)(6) deposition. We
22 now have a brief portion from Mr. Trask's
23 individual deposition that we would like to
24 read.

25 **THE COURT:** Ladies and Gentlemen, if you

1 for sales, marketing and delivering of Interactive
2 Display Solutions."

3 First, when you say "my colleagues and I,"
4 who are your colleagues?

5 A The colleagues would be Chris Powell and
6 Michael Knight, as well as other members of the
7 management team, of then, the divisions of technology
8 and Cloud that were CSI, including Russell Young,
9 David Masters and Chris Davis.

10 Q And so it was -- was it at that time that
11 you all formed Encore?

12 A No. I think, if you'll refer to the date of
13 the filing with the South Carolina Secretary of
14 State, that Encore was formed prior to this.

15 Q Would Encore had been formed for the
16 purpose of acquiring operational control of those
17 business units?

18 A That is correct.

19 Q Now, you say, "For this reason, we have
20 established Clear Touch Interactive."

21 A Uh-huh.

22 Q Now, who is "we" in that sentence?

23 A Again, I don't -- I do not know who we is.

24 Q Now, Michael Knight and Russell Young and
25 David Masters were not involved in establishing Clear

1 Touch Interactive, were they?

2 A That is correct.

3 Q So why didn't you share with them your
4 plans for Clear Touch Interactive as of November of
5 2012?

6 A Because our focus was to drive the effort
7 to have Encore Technology Group to be an independent
8 entity. It was not -- the effort was not on the
9 other.

10 Q Well, I don't understand why that would
11 preclude you from telling Mr. Knight, Mr. Young,
12 Mr. Masters about the Clear Touch plans. Why didn't
13 you tell them?

14 A I didn't want to provide them with any
15 distraction. Our focus was, Harris was going to
16 terminate 110 employees, for us to take action, use
17 our resources, leverage our networks and try to make
18 something viable, the Encore Technology Group.

19 Q But then you were always on the side,
20 working on this Clear Touch project.

21 A That is correct.

22 Q Now, it says, "With our ability to move
23 forward with introducing the Interactive Display
24 Solutions to the market, we're prepared to order a
25 prototype of the 70-inch product, to allow for

1 testing, integration and initial marketing." Who
2 purchased that initial prototype?

3 **A** Clear Touch Interactive did.

4 **Q** Did Encore pay for it?

5 **A** In November, they did not.

6 **Q** Did they later?

7 **A** They may have, as part of their reseller
8 agreement.

9 **Q** So there was a prototype shipped to Encore
10 and tested at Encore?

11 **A** That is correct.

12 **Q** Now, you said you didn't want to distract
13 Mr. Knight, Mr. Young and Mr. Masters of Clear Touch.
14 How would telling them about Clear Touch be
15 distracting to them?

16 **A** Because the opportunity at hand was for
17 Encore Technology Group, and any other distractions
18 for them would draw away from that.

19 **Q** So if they were involved in Clear Touch,
20 that would have distracted them from the Encore
21 opportunities?

22 **A** I feel so.

23 **MS. BARKER:** That's the end of the
24 excerpts, Your Honor.

25 **THE COURT:** Is there any response from the

1 Q Do you know how many trade shows they
2 attend a year?

3 A No.

4 Q Do you know how many trade shows Encore
5 attends a year?

6 A No.

7 Q And as we've been over earlier, you now
8 know earlier that Encore's business, only about five
9 percent of it, is represented by sales of interactive
10 panel technology?

11 A I don't think that's correct for 2016 but,
12 at the time of my deposition, I thought that was
13 correct.

14 Q We're looking at 2015.

15 A Okay.

16 Q 2015, is it your understanding that panel
17 sales represented less than five percent of Encore's
18 business?

19 A Yes, it is.

20 Q And do you, obviously, know that this
21 represented 100 percent of my client's business,
22 correct?

23 A Correct.

24 Q So less than a 10th of Encore's time at
25 these trade shows is presumably spent promoting

1 interactive panel technology products?

2 **A** I don't know where that number came from.

3 **Q** So you don't know the answer to that?

4 **A** Well, my understanding was that the panels
5 were the next big thing. From Mr. Newnam and
6 Mr. Viola that, basically, that a product can turn
7 from a two percent product to a 20 to 25 percent
8 product, that it takes time, effort and money to
9 bring that product to market. And I think the
10 accusation is that -- that Encore put the money in,
11 they put the effort in, they paid the sales people.
12 They did everything Mr. Viola did, but then Mr. Trask
13 took the opportunity. Just because it was two percent
14 of sales does not mean they would not have taken
15 advantage of an opportunity for a product that will
16 quickly turn to 15 to 20 percent of sales.

17 **Q** I appreciate that. I think my question is a
18 little more narrow.

19 **A** Okay.

20 **Q** You understand Encore sells a large suite
21 of different technology products?

22 **A** Correct.

23 **Q** And you understand at least in 2015 only
24 five percent of that large product offering were
25 these panels, right?

1 **A** Correct.

2 **Q** And so your assumption is Encore could do
3 what my client does, essentially, spending 90 percent
4 more of their time, money and effort promoting --
5 excuse me. Bad questions. So -- my client spending 90
6 percent more of their time, money and effort
7 promoting these products than Encore does?

8 **A** Correct.

9 **Q** So wouldn't Encore have to do more than
10 it's doing and you're saying it would have the same
11 level of marketing and turn overhead as --

12 **A** I don't think you understand my analysis.
13 Okay. So you're looking at the third analysis. I
14 didn't eliminate any marketing expense for Encore. I
15 didn't eliminate the majority of expenses. I'm trying
16 to explain to you and the jury there is -- 80 percent
17 of the eliminated expenses were factoring expenses
18 and costs of goods sold adjustments, as I explained.
19 Okay. There's \$260,000 of receivables on the books of
20 Clear Touch at the end of 12/31/2015 that were not
21 recognized as income. So basically, there's your
22 adjustment for the cost of goods sold, right? That's
23 the \$200,000. We used all the expenses. We assumed
24 that Mr. Trask would take the opportunity to his
25 employer and do his job as business -- vice president

1 e-mails, as well.

2 THE COURT: Sir? -- ma'am?

3 MS. BARKER: There are other e-mails, as
4 well. Mr. Knight conducted the review.

5 THE COURT: But they were obtained, not
6 through the defense in this case, but through
7 other customers and vendors or somebody?

8 MS. BARKER: Other sources, yes,
9 Your Honor.

10 THE COURT: Okay. I'm going to note your
11 objection. I think that's more of a subject for
12 cross-examination. Okay, sir. I'm going to
13 overrule your objection.

14 MR. HUDSON: Fair enough, Judge.

15 THE COURT: Very good.

16 Would you bring the jury back in?

17 (Jury enters at approximately 1:58 p.m.)

18 THE COURT: Ms. Barker?

19 BY MS. BARKER:

20 Q Mr. Knight, did you look into whether
21 Mr. Trask permanently deleted e-mails from Encore's
22 computer servers?

23 A I did.

24 Q What did you do?

25 A Sure. So what -- in order to do that, you

1 have to be able to sign directly into the account as
2 that person. There are other ways around it, but we
3 did not enable that on our system. So what I was
4 given was, the username and password for that
5 specific account.

6 I signed in using what's called Outlook,
7 Web Access. It's a web interface that is connected to
8 the e-mail server. The importance of that is that I
9 didn't use an e-mail client that would download
10 e-mail that would take a long time to index.
11 Therefore, searches wouldn't work correctly. So
12 effectively, what I did was, I went directly to a
13 server platform so nothing could be missed.

14 Well, I'm a -- well, I essentially have a
15 little OCD. And my wife would disagree with me; I
16 have a lot of OCD. So what I did was, I did the
17 specific searches. I did full searches for that
18 specific e-mail by subject. I, then, did partial
19 e-mail searches on that, just to make sure there
20 wasn't some data that was wrong. I, then, did e-mail
21 address base searches. Then, I also went to the
22 specific time and date that those e-mails would have
23 been there, and they were not there.

24 So I made sure I went through every
25 process. I checked the deleted items. I went through

1 the junk mail, and then I did another context query
2 through there to validate that those e-mails were
3 not, in fact, there; and they were not in the
4 mailbox.

5 Q So to clarify, what did you conclude from
6 your review?

7 A That those e-mails were absolutely deleted
8 and then deleted permanently from the deleted items
9 mailbox.

10 Q Mr. Knight, would you please review
11 Exhibit 84 in the binder in front of you?

12 A (Reviewing.)

13 Q It's all the way in the back.

14 A I'm there.

15 Q Are these some of the e-mails Mr. Trask
16 deleted from Encore's system?

17 A Yes, the first page here was the one I did,
18 again, a search on based on the full subject and then
19 the abbreviated subject; and even specific words in
20 there, looking for the e-mail, as well as the e-mail
21 addresses themselves. I even scrolled to the date and
22 these e-mails were not in there.

23 MS. BARKER: Your Honor, I'd like to move
24 into evidence Exhibit 84.

25 MR. HUDSON: Judge, we're going to have to

1 BY MS. BARKER:

2 Q What did the e-mails have in common?

3 MR. HUDSON: Objection.

4 THE COURT: Overruled.

5 THE WITNESS: The e-mails themselves were
6 -- typically had, at least, one or more of the
7 same recipients in there. They were all related
8 to some measure of Clear Touch business.

9 BY MS. BARKER:

10 Q Thank you, Mr. Knight. No further
11 questions. Please answer any questions Mr. Hudson has
12 for you.

13 A Sure.

14 CROSS-EXAMINATION

15 BY MR. HUDSON:

16 Q Good afternoon, Mr. Knight.

17 A Afternoon.

18 Q God bless you with five young children.
19 I've got three. That seems like that's a lot.

20 A I've got a patron saint for life, so that's
21 about the only reason I can make it happen.

22 Q Absolutely. So you were the chief
23 technology officer, correct, at Encore?

24 A Encore, correct.

25 Q So you, and I think I heard your testimony

1 Touch over Encore's other product offerings?

2 A No.

3 Q Now, January 2014, was this an eventful
4 month?

5 A A lot of stuff happened now.

6 Q Tell me what you -- tell me what happened
7 in January of 2014 -- tell the jury what happened in
8 January of 2014.

9 A Certainly. Well, the -- again, the buying
10 cycles for K-12 education, K-12 takes a whole winter
11 break, and things tend to get settled down a little
12 bit. At this point, my personal reflection in looking
13 at what to do going forward, ultimately, led to the
14 decision that Encore was not going in the direction
15 that I thought it was going to go when we first laid
16 out some initial plans and ideas. There were changes
17 happening all the time. There was a lot of
18 uncertainty with where that would go, and that we
19 should invest our entire efforts into Clear Touch and
20 move that forward as its own viable entity and put
21 the focus and energy into it, to actually take it and
22 market it and make it a solution that could be used
23 in education and elsewhere.

24 Q Did you inform Encore that you wanted to
25 leave the company in January of 2014?

1 **A** I did inform Chris Powell that it was my
2 intention to leave. He was aware of some of the
3 concerns that I had about where Encore was going. He
4 signaled that -- I think his words were, "This is my
5 baby" --

6 **MR. ENGLISH:** Objection, hearsay.

7 **MR. SMITH:** Don't say what anyone else
8 said.

9 **THE WITNESS:** Understood. Understood. I
10 did signal my intention to leave for him.

11 **BY MR. SMITH:**

12 **Q** What was Encore's response?

13 **A** I was asked to stay through --

14 **MR. ENGLISH:** Objection, hearsay.

15 **THE COURT:** Overruled.

16 **THE WITNESS:** I was asked to stay through
17 the E-Rate sales cycle that would go through
18 the end of March, historically, and to finish
19 some opportunities that were recently asked to
20 be explored in North Carolina in coveraging --
21 covering for some sales representatives that
22 were no longer with us.

23 **BY MR. SMITH:**

24 **Q** Do you know of Encore doing that with
25 anyone else?

1 **A** I do.

2 **Q** Tell the jury about that.

3 **A** There were other individuals that had
4 signaled intent to leave and were asked to stay in
5 the same capacity: One, I know very well, is Leo
6 Gallant who, ultimately, joined Clear Touch
7 Interactive and was asked to stay for some additional
8 time to provide some --

9 **MR. ENGLISH:** Objection. This is hearsay.

10 **THE COURT:** Overruled. Go ahead.

11 **THE WITNESS:** It was -- he was asked to
12 stay and clean up a few things before he left.
13 It was amicable for both. Then, other employees
14 had been asked the same thing when they
15 submitted their resignation.

16 **BY MR. SMITH:**

17 **Q** Let me pull up Plaintiff's Exhibit 16 here
18 real quick. It's already been admitted into evidence.
19 If you want to look at plaintiff's notebook,
20 Mr. Trask, it's the bigger one to your left. This is
21 Exhibit Number 16. Let me know when you're there,
22 please.

23 **A** I am.

24 **Q** Do you recognize that document?

25 **A** I do.

1 Q Is this the Articles of Conversion that
2 were filed for Clear Touch?

3 A It is.

4 Q Please explain to the jury why Clear Touch
5 was converted from an LLC or a limited liability
6 corporation to a Inc., just an incorp -- you know,
7 regular corporation?

8 A A couple of reasons. The primary one was,
9 is that the -- in order to access to funds that were
10 going to be necessary to make Clear Touch's own
11 viable business, I had to roll in my 401(k)
12 retirement savings into that and -- through a method
13 called a ROBS 401(k) Rollover, Business Start-ups
14 fund. We had to convert to a corporation to where the
15 retirement fund could buy shares into the
16 organization, that -- thus unlocking my retirement
17 funds to be used as capital in the company. The other
18 is, it signaled a change in the structure from a
19 limited liability company to a corporation, which
20 gave us some additional potential, if profits were to
21 ensue, tax benefits, and others.

22 Q You said you rolled your IRA funds into --
23 as capital investment?

24 A That is correct.

25 Q Was this your life savings?

1 **A** It was.

2 **Q** How much was it?

3 **A** I believe it was about \$150,000.

4 **Q** Why did you roll your life savings into
5 Clear Touch in January of 2014?

6 **A** I knew the product could be viable. It was
7 something that the market was going to need and I
8 wanted to do something that was my own and get out
9 there and start that.

10 **Q** What did Clear Touch use that \$150,000 of
11 your life savings for?

12 **A** The first purchases that went in, other
13 than general administrative, is, we acquired
14 inventory that we presented to Encore as consignment
15 inventory, and actually gave them product to use to
16 sell in advance of taking orders.

17 **Q** Can you explain to the jury what
18 consignment inventory is?

19 **A** Certainly.

20 **Q** Some of us may not know.

21 **A** Sure. As the manufacturer, we would put
22 products into the reseller's hands so that they were
23 able to sell the products, not have to wait for that
24 product assembly shifting and other delays that might
25 enter into that equation. It gave them a ready and

1 available inventory so that they could meet the
2 demand of their customers in a more efficient time.
3 They didn't have to pay for it. They only had to pay
4 when they sold it.

5 We had a reconciliation period of two times
6 per month where we would have to reconcile the
7 inventory, what was sold, what was -- what would need
8 to be paid for. We would reconcile that inventory.
9 Very akin to how resellers work with taking product
10 and putting it on their shelves and then paying for
11 it at a later date.

12 Q Was that a benefit to Encore?

13 A It was.

14 Q Around January of 2014, did we see the
15 emergence of Amy Andrews' e-mails with Encore?

16 A Yes.

17 Q Is Ms. Andrews, Amy Andrews, an alias for
18 your wife Tamara Trask?

19 A Yes, it is.

20 Q What happened with your mom -- her mother
21 around then, Kathy Cruse, that she just stopped
22 communicating and then we see Amy Andrews popping up?

23 A She began to experience health problems
24 that same winter, part of that reflection about what
25 was important to me and what we were going to do

1 **Q** Who?

2 **A** The first one outside -- the first reseller
3 outside of Encore was actually Academic Technologies
4 in Jackson, Mississippi. We also signed up Howard
5 Technologies based out of the Gulf of Mississippi;
6 and a couple of others, LeCroy Educational
7 Technologies of Toccoa, Georgia; and Collaboration
8 Solutions, local office in Jacksonville, Florida.

9 **Q** Did you also continue to work with Encore
10 as a reseller?

11 **A** Yes, we continued to work with Encore.

12 **Q** In October of 2014, did you attend S.C. Ed
13 Tech?

14 **A** Yes. So this was the next year's South
15 Carolina Ed Tech conference, and it was here in
16 Greenville that year.

17 **Q** I believe a lot of testimony has occurred
18 in this case about a discussion that you had at that
19 conference with Encore. Tell the jury about that.

20 **A** So we were exhibiting as Clear Touch in the
21 booth next to Encore across the way. We also had some
22 other -- another one of our partners exhibiting at
23 the conference. The whole team which now consisted of
24 Tamara; myself; Jimmy Higginbotham, as you know; and
25 then we also recently added our fourth team member.

1 And we were exhibiting at the conference. Throughout
2 the course of the conference, an opportunity came up
3 to have a casual sidebar conversation with
4 Mr. Newnam, where I disclosed to him that I own Clear
5 Touch Interactive.

6 Q Why tell Mr. Newnam now? Why tell him you
7 had an interest in Clear Touch months after you left
8 the company?

9 A I felt it important as we were adding new
10 resellers, these new resellers were aware of my
11 ownership in Clear Touch. As much as I tried to avoid
12 that conversation, it did arise with several of the
13 new resellers. As they were coming into markets, I
14 didn't want Todd to be caught off guard with that
15 information, and disclosed it to him so that he could
16 make adjustments to his business as needed and the
17 value-added relationship from there.

18 Q And what was Encore's reaction to you
19 informing them of your ownership?

20 A The reaction was one of making themselves
21 available for assistance. There was some follow-up
22 communication that's memorialized as e-mails where
23 their experience and education and -- would be able
24 -- would be maybe of interest to Clear Touch to help
25 it grow.

1 Q To be clear for the jury, did you disclose
2 that you always owned an interest in Clear Touch at
3 this time?

4 A I did not.

5 Q Why is that?

6 A The topic of owning it was the discussion
7 on the table; and the details of how, when, why, how
8 weren't part of the conversation.

9 Q At the time of the conversation or any time
10 immediately after, was there ever a request that
11 Encore and Mr. Newnam buy Clear Touch?

12 A No, it was not.

13 Q Was there ever -- excuse me -- was there
14 ever a claim that Encore should be allowed to have
15 all or part of the Clear Touch business?

16 A No, there was not.

17 Q Was there ever any objection voiced at that
18 time or anytime thereafter until they terminated the
19 reseller relationship?

20 A Not until the termination of the reseller
21 agreement.

22 Q So I'm going to pull up Defendant's 19. Put
23 19 in front of you, in our notebook, Mr. Trask.

24 A Yes.

25 Q Do you recognize this document?

1 **A** They were not.

2 **Q** So Encore lost that business?

3 **A** Yes.

4 **Q** Now, you know they want millions of dollars
5 from you, right?

6 **A** Yes.

7 **Q** Please just tell the jury what this
8 business means to you and your family.

9 **A** Clear Touch Interactive -- when you say
10 family, I extend that to all the team members that we
11 have. It's what we do. It's what we're passionate
12 about. We've come together as quite the team taking
13 care of our own. It means everything to everyone.
14 That's their -- just part of their livelihood.

15 **Q** Could you afford a multi-million-dollar
16 verdict?

17 **A** That would be -- that would be detrimental
18 to the continuation of the business.

19 **Q** Could you continue your business if that
20 happened?

21 **A** Likely not.

22 **MR. SMITH:** Thank you, Mr. Trask. That's
23 all the questions I have for you.

24 **THE COURT:** Why don't y'all step up here?
25 (Bench conference is held off the record.)

1 right?

2 **A** Correct.

3 **Q** And I believe you worked for CSI for 13
4 years, from May 1999 to October 2000 -- until the end
5 of 2012?

6 **A** That is correct.

7 **Q** Part of your job was to work with
8 manufacturing partners and suppliers to evaluate
9 their technologies, correct?

10 **A** That was a responsibility I had.

11 **Q** And you formed Encore for the purpose of
12 buying the CSI business unit that was responsible for
13 sales, marketing and delivery of interactive
14 displays, right?

15 **A** That is correct.

16 **Q** Now, you also formed Clear Touch while you
17 were an employee of CSI, correct?

18 **A** That is correct.

19 **Q** But you didn't disclose to anybody at CSI
20 that you had formed Clear Touch, did you?

21 **A** No, I did not.

22 **MR. SMITH:** Objection, Your Honor.
23 Relevancy.

24 **THE COURT:** Overruled.

25 **BY MR. ENGLISH:**

1 Q You were working at CSI with Mr. Russell
2 Young and Mr. Michael Knight and Mr. David Masters,
3 all at CSI, right?

4 A That is correct.

5 Q You didn't tell any of them that you had
6 formed Clear Touch as a side company, did you?

7 A No, I did not.

8 Q But you were always working on Clear Touch
9 on the side, right?

10 A Yes.

11 Q And you say the reason you didn't tell
12 Mr. Knight and Mr. Young and Mr. Masters, is that if
13 they had been involved in Clear Touch that would have
14 distracted them from Encore's opportunities, right?

15 A I believe I said that.

16 Q So it would have distracted you too, right?

17 A It didn't.

18 Q It didn't distract you?

19 A No.

20 Q Is that because you had your mother
21 handling the operations of Clear Touch?

22 A No. It's because I delineated my time spent
23 on each.

24 Q And then you only contributed, you said,
25 \$3500 to Clear Touch when you started it in 2012; is

1 Q It was paid for by Encore, right?

2 A Correct.

3 Q And Encore was paying you \$175,000 a year
4 to be its chief business development officer, right?

5 A That's correct.

6 Q Your obligation to Encore was to increase
7 its profits; is that right?

8 A That is correct.

9 Q And while you were an employee of Encore,
10 you were supposed to be spending 100 percent of your
11 time for the business of Encore, weren't you?

12 A 100 percent of my working time was given to
13 Encore.

14 Q And how did you delineate your working
15 versus your non-working time?

16 A Number of hours, location.

17 Q Were you an hourly employee?

18 A Was not.

19 Q You were paid a salary, right?

20 A That's correct.

21 Q And your responsibilities at Encore
22 included managing the relationships with Encore's
23 suppliers of products?

24 A Yes.

25 Q It was in your role as chief business

1 development officer that you found a supplier for
2 these interactive panels from Encore, correct?

3 A No.

4 Q Well, it was your role as chief business
5 development officer to find suppliers of products for
6 Encore, wasn't it?

7 A That's correct.

8 Q And when you did the work to find TSItouch,
9 you didn't disclose to Encore that TSItouch was the
10 manufacturer of the panel, did you?

11 A I did not disclose that they are the
12 assembler of it.

13 Q Well, you say "assembler," but -- okay.
14 Then when you switched over from TSItouch to CVTE,
15 you didn't disclose to Encore that CVTE was the
16 manufacturer of the panel, did you?

17 A They're not -- they are not the
18 manufacturer.

19 Q CVTE is not the manufacturer?

20 A No, sir.

21 Q Okay. Clear Touch is not the manufacturer,
22 is it?

23 A No, sir.

24 Q So the panel comes from CVTE to Clear
25 Touch, right?

1 Q Even after the prototype had been reviewed?

2 A That's correct.

3 Q And you set the prices that Clear Touch
4 charged Encore?

5 A I established the pricing list, that's
6 correct.

7 Q You had access to Encore's prices or its
8 products, both from its suppliers and the price at
9 which it was selling to its customers, right?

10 A That was -- yes.

11 Q And in the prices that Clear Touch charged
12 Encore, Clear Touch made a profit, didn't it?

13 A It didn't make a profit.

14 Q The whole time you were an employee, it
15 did, right?

16 A Yes.

17 Q Now, you claim that you were collaborating
18 with your mother on setting these prices. But you say
19 that the e-mail showing that collaboration had been
20 lost, correct?

21 A If they had not been presented, then yes.

22 Q And you claim that Clear Touch didn't have
23 any sort of backup for these e-mails?

24 A That is correct.

25 Q But you say that Clear Touch went through

1 some sort of e-mail migration from one provider to
2 another and when it did the migration, it didn't
3 arrange to have any backup in case it lost e-mails?

4 **A** The services that we use for e-mail
5 communications was changed three times since the
6 inception. They have not provided that as a service.

7 **Q** But -- so you didn't make arrangements --
8 so even though you are migrating from one e-mail
9 service provider to another, you didn't make any
10 arrangements for any backup.

11 **A** We were trying to minimize costs associated
12 with the migration.

13 **Q** This is even though you had been the IT
14 director of a publicly traded company?

15 **A** That is correct.

16 **Q** So the e-mails that show the collaboration
17 you had with your mother for Clear Touch have been
18 lost?

19 **A** They're not available.

20 **Q** Now, let's talk about your e-mails at
21 Encore. Isn't it true that you permanently deleted
22 e-mails when you left Encore?

23 **A** E-mails were deleted.

24 **Q** And you permanently deleted them, didn't
25 you?

1 **A** I don't believe so.

2 **Q** Are you denying that on April 25th, 2014,
3 the day you left Encore, you went into your deleted
4 items and permanently deleted?

5 **A** I am.

6 **Q** You deny that?

7 **A** Yes.

8 **Q** Now you were also, while you were working
9 at Encore, had a personal e-mail account,
10 keonetask@gmail.com, didn't you?

11 **A** I maintained that e-mail account for
12 several years, yes.

13 **Q** And you used that personal e-mail account
14 to contact potential resellers for Clear Touch while
15 you were an Encore employee, didn't you?

16 **A** I used that to contact individuals in my
17 professional network, yes.

18 **Q** Specifically, you used the e-mail account
19 to contact potential resellers for Clear Touch while
20 you were an Encore employee, true?

21 **A** Yes.

22 **Q** Let me show you what we marked as
23 Plaintiff's Exhibit 79. This is an e-mail that you
24 sent to Mr. Dale Viola on January 25th, 2014; is that
25 right?

1 **A** That is correct.

2 **Q** And you say, "It's a pleasure to introduce
3 you to Kathy Cruse with Clear Touch Interactive,"
4 right?

5 **A** It does.

6 **Q** Do you want the jury to believe that you
7 sent this e-mail, and Kathy Cruse just knew what to
8 do from here?

9 **A** It gives instructions for completing the
10 non-disclosure agreement.

11 **Q** Now this e-mail came from
12 keonetrask@gmail.com. But you didn't produce this to
13 us in this case, did you?

14 **A** No, I did not.

15 **Q** This is another e-mail that you permanently
16 deleted from your personal e-mail account, true?

17 **A** From three and a half years ago, yes.

18 **Q** And if Mr. Viola hadn't come forward, we
19 would've never known about this, correct?

20 **A** Apparently, he maintained a copy of this
21 communication.

22 **Q** And you say in this e-mail that, "Clear
23 Touch Interactive has been a key partner for the last
24 years. We've been witnessing the transition from
25 using projector-based displays to LCD-based

1 to put that interactive overlay on top of it.

2 The first one, we tried at one point of
3 touch. Then another one at two points of touch. But
4 they're extremely fragile. We'd move them from one
5 show to the next and there would be a crack in it or
6 too much ambient light shining inside of a conference
7 hall that affected the actual touch technology
8 because they were using up optical sensors. Little
9 things like that, you know, made us feel like, well,
10 the technology is not quite right yet at that point.
11 So that's, you know -- that's where that's been.

12 Q Just so I'm clear, particularly about
13 Promethean, how much time would you say you spent on
14 Clear Touch versus Promethean?

15 A Because of my opinion that we needed to
16 move more toward panel technology, I would say it was
17 at least two to one, you know, over what I might
18 spend, you know, promoting Prome -- the traditional
19 Promethean interactive whiteboard and projector. I
20 was already convinced that we needed to move beyond
21 projectors and that we needed to get ahead of the
22 marketing curve to push panel technology.

23 At that time, when we brought Clear Touch
24 on board, that was the only thing available to us, at
25 that time, and it was a great technology. I spent the

1 majority of my time over Promethean promoting Clear
2 Touch.

3 Q Let's look at Defendant's Exhibit 34.

4 A Which one?

5 Q Defendant's book over there to your right.

6 A Okay.

7 Q This was an e-mail that I believe
8 Mr. English brought up earlier. Does this look
9 familiar to you?

10 A Yes.

11 Q What -- what does this show?

12 A This is talking about comparisons between
13 different manufacturers' panels that were out there
14 on the market.

15 Q If you'll look -- we're going to have to
16 scroll down here -- the first page, there was a
17 paragraph that was discussed earlier. Can you read
18 that last paragraph?

19 A Okay. "We enjoy a unique position with
20 Clear Touch in a very robust, reliable product that
21 is actually shipping. We are also not competing
22 against other resellers for the same product, a
23 situation that would be there with all the other
24 panels, Promethean included, in this comparison.
25 We're working very hard to create the demand and

1 too?

2 **MR. SMITH:** No, Your Honor. Can you just
3 give me a minute?

4 **THE COURT:** Okay. Well, let me just point
5 out something to you.

6 **MR. SMITH:** Sure.

7 **THE COURT:** That is incorrect at the trade
8 practices aspect. The Court makes the
9 determination of punitive damages on that,
10 under the statute. Also under the unfair trade
11 practices, that would be one option for actual
12 damages, and then a question: If you award the
13 plaintiff actual damages as to the question
14 below, and this is, was the defendant's unfair
15 trade practices committed willfully -- if I
16 find a willful violation -- if they find it's
17 willful, then I can use that to treble fees.
18 That's my understanding. That's where we are.

19 **MR. ENGLISH:** I think the same is true
20 under the Trade Secrets Act. In other words,
21 the jury makes the willfulness finding, then
22 you double.

23 **MR. SMITH:** I'd have to look at the
24 statute.

25 **THE COURT:** Look at the statute again. I

1 unfair trade practices.

2 **THE COURT:** Right.

3 **MR. ENGLISH:** Just looking at the Trade
4 Secrets Act real quick. (Pause.)

5 There, the statute says the Court may award
6 separate exemplary damages in an amount not
7 exceeding -- not exceeding twice any award
8 made, so it's sort of a cap. It lets the Court,
9 I think, award -- if you've got nominal damages
10 on that, I think the Court could award
11 exemplary.

12 **THE COURT:** Yeah, I do. I'm just talking
13 about the question to the jury. I changed it
14 to: Only if you award actual damages, are you
15 to answer the question below.

16 **MR. ENGLISH:** Okay. Yeah, I think that
17 would be fine.

18 **THE COURT:** That kind of takes out the
19 sting of -- all right. That gets the verdict
20 form out of the way.

21 Let's go over the charge. I'm not saying
22 that I'm charging spoliation charge. It's in
23 there. But I'm not saying I -- quite frankly, I
24 don't think that's necessarily been proven.

25 But summary of claims at issue I think is a

1 The reason I put those figures on the
2 board, as you can see, this \$5.5 million figure
3 isn't the highest. It's actually in the middle.
4 Encore sincerely believes if that Mr. Trask had
5 honored his fiduciary duty to disclose the
6 Clear Touch opportunity, Encore would have
7 realized that \$5.5 million value. Instead,
8 Mr. Trask tricked Encore into taking the risk,
9 paying virtually all the start-up costs of this
10 business and keeping it for himself.

11 You will see on that last page of
12 Plaintiff's Exhibit 10(J) just how rapidly
13 Clear Touch has grown, again, because he caught
14 the wave. His sales went, in 2015, when this
15 valuation was done, from \$7.5 million then
16 jumped to over \$17.5 in 2016. He testified they
17 are even higher this year. They haven't
18 produced that information for you to see.

19 So let's jump back to the verdict form.
20 Number 2, for Breach of Fiduciary Duty, we
21 believe that you should find for the plaintiff
22 and you should find for the amount of \$5.5
23 million based on this analysis. But it's for
24 you, the jury. You're the judges of the facts.
25 I'm not. So you all decide what is fair and

1 reasonable. And then, just like you did in the
2 first cause of action, you consider punitive
3 damages. Let me say that each cause of action
4 is separate. They are not added together. You
5 need to view each cause of action as though
6 it's there by -itself.

7 Now, the third -- the rest of this will go
8 a little faster -- the third claim is for
9 Breach of Contract. Mr. Trask, as I've said, is
10 not admitting that he breached the contract.

11 Let's put up Plaintiff's Exhibit 2. Encore
12 claims that Mr. Trask breached his contract in
13 five ways. First, on Page 1, in the
14 confidentiality provision, Mr. Trask had
15 Encore's confidential information about two
16 things: the true identity of the suppliers and
17 the ability to build this reseller network for
18 this -- this product. He used Encore's
19 confidential information in violation of this
20 that says he won't use it for himself or
21 disclosure to third parties. That's the first
22 breach of contract that we're claiming.

23 Next, let's go to Page 2. Let's look at the
24 non-solicitation provision. On Page 2, the
25 non-solicitation provision is the provision

1 that says he won't compete with Encore for one
2 year. This is Leon County. Leon County was
3 Encore's customer. Mr. Trask and Clear Touch --
4 Mr. Trask would not have been involved in
5 making those sales to Leon County. That's the
6 second breach of contract.

7 The third provision is the non-piracy
8 provision on the contract. This is the
9 provision that says that Mr. Trask won't, for
10 one year, hire an employee of Encore. And he
11 hired Mr. Gallant in breach of this. That's the
12 third breach.

13 The fourth breach is the business
14 opportunity provision. And this is the
15 provision that says during the term of this
16 agreement, if he becomes aware of an
17 opportunity that's similar to, competitive
18 with, or in the same field as Encore -- and
19 these panels certainly are -- then he's going
20 to do two things. He's going to notify company
21 immediately of the opportunity. He breached
22 that. He didn't notify them either of the
23 opportunity to buy from the suppliers or the
24 opportunity to build a reseller network. Then,
25 he's got to -- and shall use his good faith

1 efforts to cause the company to have the
2 opportunity to explore, invest in, participate
3 or otherwise because affiliated with the
4 opportunity. He breached that. That's the
5 fourth provision of contract.

6 The fifth provision is actually not written
7 in the contract, but listen to the Judge's
8 charges. The Judge will tell you that in every
9 contract in South Carolina, there's something
10 called an implied covenant of good faith and
11 fair dealing. It means you've got to act in
12 good faith and deal fairly with the party on
13 the other side. Mr. Trask breached that.

14 Going back to the verdict form. So on this
15 claim, we would ask you to find for the
16 plaintiff. We'd ask you to put the same damage
17 amount as you put for the Breach of Fiduciary
18 duty. We think the damages resulting from both
19 are the same. And that makes it simple.

20 The fourth claim is Trade Secrets. Again,
21 the trade secrets are two-fold. The trade
22 secrets, Encore should have known who the
23 suppliers were. That was Encore's trade secret
24 information. And Leon County's desire to
25 purchase these 900 panels was the second trade

1 secret that Mr. Trask misappropriated along
2 with Clear Touch. And this is the claim that
3 reaches Clear Touch. The first three claims
4 that I told you about were Mr. Trask only. But
5 these are for -- this will be both Mr. Trask
6 and Clear Touch. And again, we'd ask you to use
7 the same damage figure for this claim that you
8 used in the breach of fiduciary and breach of
9 contract claim.

10 Now, there's also, on this one, a find --
11 do you find that the defendants' actions were
12 willful, wanton or reckless? We'd ask you to
13 check yes. We think Mr. Trask knew what he was
14 doing and knew that he was violating Encore's
15 rights when he did it.

16 The next cause of action is Tortious
17 Interference. This is against Clear Touch only,
18 because Clear Touch didn't have a contract with
19 Encore. Mr. Trask did, but it was his company.
20 Basically, what we're saying is Clear Touch has
21 the same responsibility for causing that
22 contract to be breached that Mr. Trask had.
23 We'd ask for you to check for the plaintiff and
24 use the same damage figure that you used in the
25 prior three claims. On this one, you can also

EMPLOYMENT AGREEMENT

This Agreement (the "Agreement"), dated as of February 14, 2013 (the "Effective Date"), is by and between Encore Technology Group, LLC, a South Carolina limited liability company (the "Company"), and Keone Trask (the "Executive").

WHEREAS, the Company desires to retain the services of the Executive pursuant to the terms and conditions set forth herein, and the Executive wishes to be employed by the Company on such terms and conditions;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Term.** Unless earlier terminated as provided herein, the Executive's employment under this Agreement shall be for a term of one year (the "Term") commencing on the Effective Date.

2. **Duties.** The Executive will serve as the Chief Business Development Officer of the Company and shall have such duties of an executive nature as the Manager of the Company (the "Manager") shall reasonably determine from time to time. The Executive will report to the Manager.

3. **Compensation and Benefits.** During the Term of Executive's employment with the Company under this Agreement, the Executive shall be entitled to compensation and benefits as follows:

(a) **Base Salary.** The Executive will receive an annual salary of One Hundred Seventy-Five Thousand Dollars (\$175,000.00) (the "Base Salary"), payable in equal increments not less often than monthly in arrears.

(b) **Benefits.** In addition to the Base Salary, the Executive will be entitled to receive fringe benefits that are generally available to the Company's executive employees in accordance with the then existing plans and/or programs, if any.

(c) **Expense Reimbursement.** The Executive will be entitled to reimbursement of all reasonable expenses incurred by him in performing services under this Agreement and during his employment with the Company, in accordance with the policies and procedures established by the Company, provided that Executive properly accounts in writing for the expenses in accordance with Company policies.

(d) **Withholding.** The Company will withhold from compensation payable to the Executive all applicable federal, state, and local withholding taxes.



4. Termination.

(a) The Executive's employment with the Company may be terminated at any time by the Company with Cause or without Cause or in the event of the death or Disability of the Executive. The Executive's employment with the Company may be terminated by the Executive at any time for any reason by giving at least two weeks prior written notice to the Company.

(b) As used in this Agreement, the following terms shall have the following meanings:

(i) "Cause" means (i) fraud; (ii) embezzlement; (iii) the Executive's commission of a felony or a misdemeanor that involves fraud; (iv) any act of moral turpitude or willful misconduct by the Executive intended to result in personal enrichment of the Executive at the expense of the Company; (v) gross negligence or intentional misconduct resulting in damage to the property, reputation, or business of the Company; or (vi) the Executive's failure or refusal to substantially perform his material duties, responsibilities, and obligations, other than a failure resulting from Executive's death or Disability.

(ii) "Disability" means illness (mental or physical) or accident, which results in the Executive being unable to perform the Executive's material and essential duties as an employee of the Company for a period of more than two consecutive months.

(iii) "Good Reason" means that the Company reduces Executive's base salary or requires that the Executive live outside of Greenville County, South Carolina (excluding, however, reasonable travel related to his employment), and such condition is not cured within 30 days after written notice of such condition is given by the Executive to the Company.

(c) If the Executive's employment is terminated for Cause while this Agreement is in effect, or if Executive terminates his employment without Good Reason, the Company shall have no further obligation to make any payments or provide any benefits to the Executive under this Agreement after the date of termination except for payments of Base Salary and expense reimbursement that had accrued but had not been paid prior to the date of termination.

(d) If (1) the Executive's employment with the Company is terminated by the Company without Cause, (2) the Executive's employment is terminated as a result of Executive's death or Disability, or (3) the Executive's employment with the Company is terminated by the Executive for Good Reason, and such termination occurs prior to August 15, 2013, Executive (or his estate) shall be entitled to a lump sum payment of an amount equal to the Executive's base salary for a period of six months plus accrued vacation. If the Executive's employment is terminated for any of the above reasons and such termination occurs between August 15, 2013 and February 15, 2014, Executive (or his estate) shall be entitled to a lump sum payment of an amount equal to the Executive base salary for the period beginning on the termination date and ending on February 15, 2014 plus accrued vacation.

(e) Notwithstanding any provision of this Agreement to the contrary, to receive any of the payments set forth in Section 4 upon a termination of employment, the Executive must first execute, enter into, and not revoke a reasonable release and hold harmless agreement (on a form provided by the Company), within the time period specified under the release and hold harmless agreement, whereby the Executive agrees to release and waive, in return for the payments specified in Section 4 of this Agreement, any claim or cause of action that the Executive may have against the Company and any of its affiliates, including, without limitation, for unlawful discrimination or retaliation; provided, however, that such agreement shall not release any claim by the Executive for any payment or benefit that is due under the express terms of this Agreement at the time the Executive executes the release agreement.

5. **Notices.** Any notice, demand, or other communication given pursuant to this Agreement shall be in writing and shall be personally delivered, sent by nationally recognized overnight courier or express mail, or mailed by first class certified or registered mail, postage prepaid, return receipt requested as follows:

(a) If to the Executive:

Keone Trask
15 Red Tip Court
Simpsonville, SC 29680

(b) If to the Company:

Encore Technology Group, LLC
900 East Main Street, Suite T
Easley, SC 29640
Attention: Todd Newnam
Telephone: 704-996-5034

or at such other address as may have been furnished by such party in writing to the other party.

6. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of South Carolina, without regard to its choice of law provisions.

7. **Amendments and Waivers.** This Agreement may be amended or modified only by a written instrument signed by the Company and the Executive. No waiver of this Agreement or any provision of this Agreement shall be binding upon the party against whom enforcement of such waiver is sought unless it is made in writing and signed by or on behalf of such party. The waiver of a breach of any provision of this Agreement shall not be construed as a waiver or a continuing waiver of the same or any subsequent breach of any provision of this Agreement. No delay or omission in exercising any right under this Agreement shall operate as a waiver of that or any other right.

8. **No Conflicting Agreements.** The Executive represents and warrants to the Company that the Executive is not a party to or bound by any confidentiality, noncompetition, nonsolicitation, employment, consulting, or other agreement or restriction that could conflict with, or be violated by, the performance of the Executive's duties to the Company or obligations under this Agreement.

9. **Review of Agreement.** The Executive acknowledges that the Executive (a) has carefully read and understands all of the provisions of this Agreement and has had the opportunity for this Agreement to be reviewed by counsel, (b) is voluntarily entering into this Agreement, and (c) has not relied upon any representation or statement made by the Company (or its affiliates, equity holders, agents, representatives, employees, or attorneys) with regard to the subject matter or effect of this Agreement.

10. **Miscellaneous.** The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit, or affect the scope or substance of any section of this Agreement. This Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited or invalid under any such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating or nullifying the remainder of such provision or any other provisions of this Agreement. This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, and assigns. This Agreement may not be assigned by either party without the written consent of the other party. This Agreement constitutes the final and entire agreement of the parties with respect to the matters covered by this Agreement and replaces and supersedes all other agreements and understandings relating to the matters covered by this Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or electronic transmission in portable document format (pdf) will constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or by electronic transmission in pdf format will be deemed to be their original signatures for all purposes.

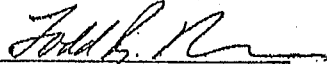
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This Agreement has been executed and delivered as of the date first above written.

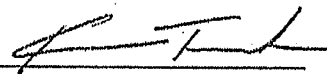
COMPANY:

Encore Technology Group, LLC
By its Manager:

TRN Capital Advisory, LLC

By: 
Name: Todd R. Newnam
Title: Manager

EXECUTIVE:


Keone Trask

[SIGNATURE PAGE TO EMPLOYMENT AGREEMENT]



RESELLER AGREEMENT

This Reseller Agreement (the "Agreement") is effective April 24, 2013.

BETWEEN: Clear Touch Interactive (the "Company"), a company organized and existing under the laws of the state of Nevada, with its head office located at:

561 Keystone Avenue
Suite 821
Reno, NV 89503

AND: Encore Technology Group (the "Reseller"), a company organized and existing under the laws of the state of South Carolina, with its head office located at:

900 East Main Street
Suite T
Easley, SC 29640

1. APPOINTMENT

1.1 Appointment

Company appoints Reseller and Reseller accepts appointment as an exclusive reseller to market, sell, lease and install Company products ("Products") within the Territory stated in Exhibit A to consumers.

1.2 Products Covered

Company Products means the products agreed to between the parties from time to time with any exclusions, additions or discounts Company may make.

1.3 Sub-Resellers

Reseller shall not, without Company's prior written approval, appoint sub-resellers, resellers or agents ("Sub-resellers") to market, sell, or lease Company Products. Reseller shall be liable for the acts and omissions of any such Sub-resellers. Should Reseller resell Products to any Sub-reseller, and Products are further resold, the final end-user may not receive manufacture warranty or technical support.

1.4 Sales Outside Territory

Reseller shall in no way market, distribute, export, sell, lease or install Company Products outside the Territory without Company's prior written approval. Company will not ship on any Purchase Orders ("P.O.s") issued by Reseller outside the Territory.



2. OBLIGATIONS OF RESELLER

2.1. Marketing and Product Support

Reseller shall use reasonable efforts to market and sell Company Products in the Territory and shall comply with the policies, programs, and requirements regarding marketing and product support as may be communicated by Company to Reseller from time to time; provided, however, that in order to avoid conflict among Company's distribution channels.. Reseller shall not, without prior written authorization from Company, resell Company Products in a retail environment that includes any type of store, shop, or other similar physical premises into which customers or potential customers are invited for the purpose of purchasing or potentially purchasing any product from Reseller.

2.2. Advertising

Reseller shall adhere to the reseller advertising policies and programs as may be communicated by Company to Reseller from time to time.

2.3. Customer Support and Service Reseller Shall:

- a) Supply Company with such data as Company requests regarding Reseller's sales to customers for Company's own reporting purposes;
- b) Participate fully in Company campaigns to notify customers of any retrofit or recall of Company Products;
- c) Use only Company-approved spare parts for any repair, servicing and maintenance of Company Products it provides under warranty;
- d) Comply with laws and regulations applicable to "used" or returned merchandise and never refurbish, place in inventory, or resell as "new" any Company Products returned to Reseller for post-sale repair; and
- e) Instruct its customers on how to obtain replacement parts under warranty, including, when Reseller wants its customers to contact Company directly, the use of Company's Return Merchandise Authorization ("RMA") procedures.

2.4. Observance of Company Policies

Company will keep Reseller informed of Company's customer support policies and procedures, and Reseller agrees to follow such policies and procedures to resolve any customer support issues.

2.5. Reseller's Warehouse

All Products shipped to Reseller shall be maintained in Reseller's warehouse facility and shall be insured against any damage or loss.

2.6. Exclusive Marketing Arrangement

During the term of this Agreement, Company will be the exclusive provider of Integrated Interactive Displays ("IID") to Reseller. Reseller will not sell, offer for sale or solicit sales for products of any IID manufacturer other than Company. For the term of this Agreement, Company will be the sole supplier to Reseller.

3. OBLIGATIONS OF COMPANY

3.1. Supply of Company Products

Company shall endeavor to manufacture, assemble and ship Company Products to Reseller in a timely manner. Should shortages occur, Company may allocate its production as it deems appropriate, may delay or stop shipments, and may send partial shipments with prior notice.

3.2. Marketing Assistance

Company will provide marketing support services and training programs to Reseller on a case-by-case basis.

4. ORDERING AND DELIVERY OF COMPANY PRODUCTS

4.1. Purchasing

This Agreement with its terms and conditions, and those provided under the Company Consumer Products Limited Warranty (available upon request) applies to all purchase orders and other documents of purchase ("Orders") which Reseller may place with Company for the Products during the term of this Agreement.

4.2. Media for Orders

Reseller may order from Company by telephone, facsimile, mail or electronic mail. Acceptance by Company of the Order shall occur (a) when the Order is entered into Company's system, (b) when an Order number is provided to Reseller by facsimile or electronic mail, if requested by Reseller, or (c) when assembly of the Products commences, whichever occurs first.

4.3. Lead Time for Orders

The Company indicates that the associated lead time for orders is between 4 and 6 weeks from the time of receipt of order. Lead times may vary from time to time dependent upon product supply and availability from Third Party manufactures. Lead times are provided as guidance and do not provide an assumed guarantee of order availability.

4.4. Orders

- a) Reseller may deliver a P.O. to Company by facsimile or electronic mail provided a signed original is delivered to Company within 15 days of receipt of the P.O. by Company. Company shall accept all POs by (a) facsimile or electronic mail, with a signed original notice of acknowledgment.
- b) Each P.O. shall be deemed an offer by Reseller to purchase the Company Products listed therein and when accepted by Company shall constitute a contract in accordance with the terms and conditions of the P.O. and this Agreement. If a conflict arises between the two, this Agreement shall take precedence.
- c) P.O.s submitted by Reseller pursuant to this Agreement shall include the quantity and type of Product(s) ordered, Product descriptions, Product specifications, shipment and invoice information and shipping instructions (if allowed by Company), Reseller's order number, and the Agreement number.
- d) Company will endeavor to fill all orders from Reseller insofar as it is practicable and consistent with Company's production schedules to do so, provided that in the event of its failure to fill all or part of any order, Company shall not be to any extent liable or responsible therefor.

4.5. Changes to Orders

- a) No terms of any purchase orders (whether printed, stamped, typed, written, or sent by any electronic means), except those specifying the quantity and type of Product(s) ordered, shipment and invoice information and shipping instructions (if allowed by Company), shall be binding either on Company or Reseller if they contravene any term or condition of this Agreement, unless specifically accepted or approved in writing and signed by an appropriate senior manager or executive of Reseller and Company. A general or form acknowledgment of any such order or any communication with respect to such an order, or the making of deliveries with respect thereto, shall in no case be construed as an acceptance or approval of the type required by this paragraph.
- b) Changes to orders will only be accepted prior to the order entering Company's manufacturing queue. Reseller may initiate such changes or additions to previously accepted Orders by submitting a modification of the Order to Company with appropriate reference to the original Order. Upon Company's written acceptance of the modification or addition, Company shall process the Order in accordance with the pricing terms and conditions of this Agreement.

4.6. Products

- a) As an accommodation to Reseller and without Reseller's prior approval, Company may make Product substitutions when the Products ordered are unavailable, provided that the substituted Products are of equal or greater functionality than those contained on the original Order and that Company notifies Reseller of such substitution at the time of delivery.
- b) Company reserves the right to make changes and modifications in specifications, construction, or design of the Products, or any of them, at any time, and any Products so modified shall be accepted by Reseller as standard construction in fulfillment of existing orders. Company shall not be required to retrofit any Product previously delivered to Reseller with any modifications.
- c) Company reserves the right to discontinue any Products at any time.

4.7. Shipping

Reseller is responsible for payment of all shipping and handling fees for delivery of Products. All deliveries of Products are FOB Company manufacturing facilities unless Company expressly states otherwise in its acceptance of the purchase order. Title and risk of loss shall pass from Gateway to Reseller or Reseller customer at the point of delivery.

5. PRICES AND PAYMENTS**5.1. Reseller's Purchase Price**

Prices for Company Products purchased hereunder shall be agreed to from time to time. Such prices do not include any taxes, fees, duties, shipping costs, insurance or other levies. Any such items (except taxes on Company's income) will be added to the purchase price. Reseller shall pay all taxes and government imposts arising from Reseller's activities as a Company Reseller.

5.2. Price Changes

Company may at any time change Company Product pricing or the Reseller's purchase price with 30 days written notice, but any P.O. accepted by Company before a price change takes effect shall be invoiced at the previous price.

5.3. Invoice and Payment Terms

For the Purchases of Products the Company will invoice Reseller as of order shipment date, for orders in excess of \$50,000.00 a security deposit may be required with the acceptance of any order. Reseller shall pay for Company Products in United States Dollars upon shipment to Reseller or customer.

For all purchases that are paid in full within 10 days of date of invoice a discount of 1% of the total purchase price will be applied; for all Purchase Orders that are received with at minimum a 50% security deposit, an additional discount of 1% of purchase price will be applied. These discounts can be combined when both criteria are met for any single order.

6. RETURNED MERCHANDISE

Company will accept returns for defective Products in accordance with the applicable Company Consumer Limited Warranties which are available upon request.

7. TRADEMARKS, TRADE NAMES

Reseller acknowledges that Company and/or its parent or affiliates are the sole and exclusive owners of the name "Company" and any abbreviations or variations thereof, and of any and all of Company's trademarks and trade names, service marks, trade logos and trade dress (collectively "Trademarks") as Company may unilaterally amend periodically (registered or not). Reseller agrees not to register or use any mark(s) that are similar enough to be construed as Company Trademarks. Reseller acquires no rights to the Trademarks, and Reseller hereby assigns and transfers to Company all rights that it may acquire in and to the Trademarks, whether by operation of law or otherwise. Any approval for Reseller's use of any Company Trademark shall be made pursuant to a Company Trademark License Agreement executed separately by and between the Parties hereto.

8. SOFTWARE

8.1. Software as Component

Company Products include as components certain software programs (collectively "Programs") proprietary to Company or licensed by it from third-party vendors, which may be periodically updated and substituted. Company has all rights necessary for it to market and distribute the Programs as Company Product components, as well as the right and authority to conclude this Agreement and to grant rights hereunder regarding the Programs. Title to the Programs remains with the Company and/or their licensors, and Reseller has no rights to transfer them except as stated below.

8.2. Distribution Rights

Subject to the use license in Section 8.3 below, Company grants to Reseller during the Term a non-transferable right to transfer to end users within the Territory the copies of the Programs it obtains under this Agreement only as components of Company Products, subject to the following terms & conditions:

- a) Reseller shall sell or lease Company Products with the Program packages as integral parts, and shall abide by all terms and conditions imposed by the Programs' licensors. It shall not open the Program packages or end user license packets or separate such Program packages (including documentation and end user licenses) from the Company Products. Reseller shall not copy or reproduce any Program (except as stated herein or in any Program's pre-packaged license agreement), or modify, reverse engineer, disassemble, or de-compile any Program in any way.
- b) Reseller shall promptly notify Company of any unauthorized use or copying of any Program, and will take at Reseller's expense (but at Company's option and under Company's control and direction) legal action to prevent or stop any unauthorized use or copying of the Programs by anyone that has obtained the Programs due, in substantial part, to Reseller's fault.
- c) Termination of this Agreement will automatically and immediately terminate Reseller's rights under this Section.

8.3. Use License

Reseller shall pass on to end users of each Company Product a license to use the Programs in the form of a "break-the-seal" and user license agreement contained in the Programs' packages.

8.4. Compliance with Import Regulations

Reseller shall comply with all United States export control regulations, licensing or other requirements applicable to the Programs.

8.5. Disclaimer of Warranties and Limitation of Liability

EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS AGREEMENT OR IN ANY PRE-PACKAGED LICENSE AGREEMENT FOR A COMPANY PRODUCT COMPONENT, COMPANY (ON BEHALF OF ITSELF AND ITS LICENSORS) DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PROGRAMS, INCLUDING ALL IMPLIED CONDITIONS OR WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO DEFECTS IN DISKETTES, COMPACT DISKS OR OTHER PHYSICAL MEDIA AND DOCUMENTATION, OPERATION OF THE PROGRAMS AND ANY APPLICATION OR USE OF THE PROGRAMS. IN NO WAY SHALL COMPANY (OR ITS LICENSORS) BE LIABLE FOR ANY LOSS OF PROFIT OR ANY OTHER COMMERCIAL DAMAGE.

INCLUDING BUT NOT LIMITED TO SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES.

9. TERM

This Agreement's term ("Term") shall begin on the Effective Date and continue for 36 months, and shall be automatically renewed for 2 additional 12 month terms up to a maximum term of 5 years, provided that either party hereto may terminate this Agreement at any time with 30 days' advance written notice, and further provided that this Agreement shall terminate automatically if Reseller makes no purchases from Company hereunder for a period of 90 calendar days, such termination to be effective as of the next calendar day after such period elapses.

10. SECTION X: TERMINATION

10.1. Termination Without Cause

Either party can terminate this Agreement without cause by giving 90 days' written notice to the other.

10.2. Termination for Cause

This Agreement may be terminated for cause upon written notice:

- a) By either party upon 30 days' written notice if the other commits a material breach of the Agreement and fails to cure it within the 10 days;
- b) By Company immediately if Reseller files for or has instituted against it any proceedings as to its bankruptcy, insolvency, reorganization, liquidation, receivership, or dissolution or there is an assignment for the benefit of creditors;
- c) By Company upon 30 days' written notice (i) if Reseller becomes ineligible to receive approval for any license or export documents necessary to buy or resell Company Products; (ii) if Reseller tries to register this Agreement with any government conferring any exclusivity upon Reseller; (iii) if Reseller assigns this Agreement without Company's prior written consent; (iv) upon substantial change in Reseller's ownership; or (v) if any change or enactment of law or regulation after the date of this Agreement interferes, in Company's opinion, with the parties' rights or obligations stated herein.

10.3. EFFECT OF TERMINATION

- a) Upon termination of this Agreement, Company may terminate any or all unfilled orders.
- b) Upon termination, Reseller shall immediately stop all marketing, promotion, advertising or reference to Company Products and shall have no further rights to use Company's marketing, promotion or advertising materials or other resources.
- c) Termination will discharge and release Company from all obligations and liability under this Agreement, except as it expressly accepts for unfulfilled orders. The sole fact of this Agreement's termination shall not make either party liable to the other for any compensation, reimbursement, losses or damages whatsoever, though Reseller shall remain obligated to pay all outstanding balances on its Company Product purchases.

11. CONFIDENTIALITY**11.1. Confidential Information**

Prior to and during the Term hereof, Company may convey to Reseller proprietary and confidential information about Company Products, services, strategy and analysis. For the Term of this Agreement (including renewals) and for 2 years thereafter, Reseller shall not disclose to any third party any such information marked CONFIDENTIAL, PROPRIETARY, STRICTLY PRIVATE, or INTERNAL DATA, or which, though not so marked, could reasonably be construed as confidential or sensitive, such as the terms of this Agreement (all collectively "Confidential Information"), nor shall it use any such Confidential Information for its own benefit, except as provided herein. Any reliance on such Confidential Information is at Reseller's own risk. Nothing in this Section grants or implies any rights by license, estoppel, or otherwise. Confidential Information does not include information (i) in the public domain at the time of disclosure or which enters the public domain after such disclosure through no fault of Reseller, (ii) generally disclosed to third parties by Company without restriction, (iii) communicated to Reseller by a third party with the unrestricted right to do so, or (iv) approved for release by Company in writing.

11.2. Presentations and Planning

Company's oral and visual presentations describing Company Products and plans, business and product plans, and any inspections thereof by Reseller or its personnel shall all be deemed Confidential Information under this Agreement whether so marked or not.

12. EXPORT CONTROLS**12.1 Compliance with Laws**

Reseller shall comply with all United States export laws and regulations applicable to Company Products, and shall obtain any licenses required for export.

12.2 Products of United States Origin Technology

Reseller may sell Company Products only to end-users within the Territory, and shall not export any Company Products, including Programs, or any direct products thereof without Company's advance written approval and, if required, United States Government permission. This requirement shall survive termination or expiration of this Agreement. Reseller shall not do business with any person or firm identified by the United States government as being denied the right to receive any United States product.

13. LIMITATION OF LIABILITY AND REMEDIES; INDEMNITY**13.1. Limitation of Liability; Sole Remedy**

Any liability of Company under this Agreement is expressly limited to the price paid by Reseller for the Company Products involved. Reseller's sole remedy against Company in any dispute concerning this Agreement shall be to seek recovery of that amount, upon payment of which Company shall be released from all further obligations and liability to Reseller.

13.2. Indemnity

- a) Except as otherwise stated herein, Reseller shall indemnify and hold harmless Company against any and all claims, legal actions, losses, damages, liabilities, costs and expenses asserted against, imposed upon or incurred by Company arising out of or relating to (i) any misrepresentation or breach of warranty or covenant by Reseller

under this Agreement; (ii) any actual or alleged act or omission of Reseller in the course of its performance hereunder; (iii) death or injury to any person or damage to any property resulting from any product or part (a) not supplied by Company, (b) supplied by Company but changed, modified, adapted or refitted without Company's written authorization, (c) not in Company's standard inventory but purchased by Company at Reseller's direction, or (d) manufactured to Reseller's design, as well as any claim of infringement arising from the use of any Product with any other product as a combination not furnished by Company.

- b) Company warrants and represents that the Products shall be delivered with good title free of any rightful third party claim of infringement of any patent, copyright, trademark, trade secret or other Intellectual property right recognized or registered within the United States and its possessions. Company shall defend Reseller from all claims, suits, damages, costs, expenses or liabilities actually incurred by Reseller as a result of any such claim. If a Product or part thereof is held to constitute an infringement and its intended use is enjoined, Company shall at its option procure for Reseller the right to continue using the Product or part, replace it with a non-infringing Product or part, modify it to become non-infringing, or remove it and refund its purchase price (less depreciation and amortization). This Section does not apply to

- i) any product or part not supplied by Company;
- ii) any Product or part supplied by Company which is changed, modified, adapted or refitted without Company's express written approval;
- iii) any Product or part not in Company's standard inventory but purchased by it at Reseller's direction;
- iv) any Product or part manufactured to Reseller's design or
- v) any claim of infringement arising from the use of any Product in combination with any other product not furnished by Company, THIS INDEMNITY IS COMPANY'S SOLE LIABILITY AND RESELLER'S SOLE REMEDY FOR INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT.

14. WARRANTIES AND REPRESENTATIONS

The Products are covered by the limited warranties in effect at the time the Products are delivered, on standard terms and conditions supplied with each product shipped and which are incorporated herein by this reference. Should Reseller resell Products to any entity other than an end-user, and Products are further resold, the final end-user may not receive any Company warranty or technical support.

15. BUSINESS STANDARDS; PRODUCT SERVICE PROVISION

15.1. Conflicts of Interest

Reseller confirms that it has revealed all information pertaining to possible conflicts of interest created by sale of competing products or services or arising from other positions or contracts held by Reseller and represents that no conflict of interest exists. Reseller shall disclose to Company any future circumstances which could create possible conflicts of interest as soon as they become known by Reseller.

15.2. Ethical Standards

Directors, officers, or employees of Reseller shall not, directly or indirectly, offer, promise or pay any bribes or other improper payments for the purposes of promoting Company Product sales to any individual, corporation, government official or agency, or other entity. No gift, benefit or contribution in any way related to Company or the sale of Company Products shall be made to political or public officials or candidates for public office or to political organizations, regardless of whether such contributions are permitted by local laws. Reseller shall generally abide by all Company policies and standards regarding conflicts of interest and ethics as may be adopted by Company or otherwise communicated to Reseller from time to time, such policies and standards being incorporated herein by this reference.

15.3. Authorized Service Provider Program

In the event Reseller is approved by Company as an Authorized Service Provider for Company Products, Reseller shall at all times during the period of such designation adhere to the standard terms, conditions, rules and policies of the Company Authorized Service Provider Program as may be issued by Company from time to time, and shall be solely responsible for all its acts and omissions in the course of acting as an Authorized Service Provider for Company Products.

16. FORCE MAJEURE

Company shall not be liable for any failure to perform due to causes beyond its control, including but not limited to fire, flood, earthquake, explosion, accident, acts of public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine, labor disputes or shortages, transportation embargoes, failures or delays, inability to secure raw materials or machinery, acts of God or government (including denials of or onerous restrictions on export licenses). Any such event of force majeure affecting Company's third-party suppliers, or judicial action. Similar causes shall excuse Reseller for failure to take Company Products ordered by Reseller other than those already in transit or specially fabricated or not readily saleable to other buyers.

17. GENERAL PROVISIONS**17.1. Parties' Relationship**

Company's and Reseller's relationship is solely that of independent seller and buyer with the right to resell. Reseller is authorized to resell Company Products (and, if applicable, to act as an Authorized Service Provider) in its own name but not to receive any commissions from Company. Reseller has no express or implied authority to assume or create any obligation on Company's behalf, and shall disclaim any such authority whenever necessary to avoid confusion. In no case shall Reseller or any of its sub-resellers, if any, be deemed Company's agents or representatives, nor shall Reseller or any of its sub-resellers, if any, have the right to conclude any contract or commitment in Company's name, or to make any representation, guarantee or warranty on behalf of Company or any of its licensors to any third party, including end-users.

17.2. Governing Law; Venue

This Agreement and any controversy arising out of or in relation to it shall be governed by the law of the Nevada (conflicts of laws provisions excepted), and, subject to Section 17.6 below, the parties hereby submit to the jurisdiction of the state and federal courts of the Nevada, which shall have exclusive jurisdiction over all controversies in connection herewith. Reseller hereby waives any right to assert any rights or defenses within any other jurisdiction or to require that litigation regarding this Agreement take place elsewhere.

17.3. Severability

If any provision of this Agreement shall be declared void, invalid, or illegal, the validity or legality of all other provisions of the Agreement shall not be affected thereby.

17.4. Notices

Except as otherwise provided in this Agreement, all notices, demands and other communications hereunder shall be in writing and shall be delivered personally or sent by facsimile, other electronic means or nationally recognized overnight courier service addressed to the party to whom such notice or other communication is to be given or made at such party's address as set forth below, or to such other address as such party may designate in writing to the other party from time to time in accordance with the provisions hereof, and shall be deemed given when personally delivered, when sent electronically or 3 business day after being sent by overnight courier.

To Reseller:

Encore Technology Group
900 East Main Street
Suite T
Easley, SC 29640

Attention: Supplier Administration
Facsimile: (864) 422-0647

To Company:

Clear Touch Interactive
561 Keystone Avenue
Suite 821
Reno, NV 89503

Attention: Reseller Administration
Facsimile: (775) 473-9108

EITHER PARTY MAY CHANGE THE ADDRESS TO WHICH NOTICE MUST BE SENT BY GIVING WRITTEN NOTICE OF SUCH CHANGE TO THE OTHER PARTY IN THE MANNER PROVIDED HEREIN.

17.5. Assignability

Reseller shall not assign or transfer this Agreement without Company's prior written consent, upon which this Agreement shall bind and inure to the benefit of the assigns. Company may assign this Agreement to its affiliate upon written notice to Reseller.

17.6. Dispute Resolution

All material disputes between the parties arising from this Agreement shall be resolved by the following procedures.

- a) A letter shall be sent from the party raising the dispute to the other party in accordance with the notice provisions of Section 17.4, identifying with particularity the nature of the dispute, the proposed resolution of the dispute ("Proposed Resolution"), and the executives from the party raising the dispute who are authorized to resolve the dispute ("Demand Letter"). The Demand Letter shall include the facts supporting such party's position on the dispute and include copies of any written materials.

- b) The party receiving the Demand Letter shall have 3 Business Days to send a written response ("Response Letter"), which shall be sent in accordance with Section 17.4. The Response Letter must accept the Proposed Resolution in the Demand Letter or offer some other resolution.
- i) If the Response Letter accepts the proposed resolution in the Demand Letter or no Response Letter has been received within 3 Business Days, then the Proposed Resolution shall be promptly implemented by the parties and shall, where applicable, be considered an amendment of this Agreement.
 - ii) If the Response Letter offers some other resolution, it shall include all facts supporting the responding party's position on the dispute, include copies of any written materials, and identify the executives of the responding party who are authorized to resolve the dispute. The executives identified in the Demand Letter and Response Letter shall meet one or more times and exchange such additional written materials and proposals as needed to reach a resolution of the matter or for one of them to declare an impasse.
- c) The party declaring an impasse shall obtain a list of 3 mediators from the United States Judicial Arbitration and Mediation Service ("JAMS") acceptable to that party and send such list to the other party. Within 10 Business Days, the other party shall select one of the 3 mediators. If the other party fails to select an arbitrator within 10 Business Days, then the party declaring the impasse shall ask JAMS to select a mediator. The Mediation shall be held in the State of Nevada.
- d) The mediator shall immediately arrange a conference call with the mediator and the executives identified in the Demand Letter and Response Letter. In the initial conference, the mediator shall set a place and a time where the executives and mediator will resolve the dispute ("Mediation"). The Mediation must take place within 10 Business Days of the initial conference call. The parties shall each pay one half of the costs of the mediator unless directed otherwise by the mediator.
- e) At least 24 hours prior to the Mediation, each party shall submit to the mediator the Demand Letter and Response Letter, any additional written materials exchanged prior to the declaration of an impasse, and the party's final proposal to resolve the dispute ("Final Proposal"). No other written materials may be submitted to the mediator or used in the Mediation.
- f) The Mediation shall be attended only by the mediator and the executives identified in the Demand Letter and Response Letter. The Mediation shall take no more than 3 days. Each side shall have counsel available by telephone to draft any documents necessary to implement any resolution of the Mediation. If at the end of the Mediation the parties have not reached a mutual resolution, the mediator shall within 24 hours adopt one of the party's Final Proposals or set forth in writing a resolution of the matter that is between the parties' Final Proposals ("Mediator's Resolution").
- g) The Mediator's Resolution shall be immediately implemented by the parties. The Mediator's Resolution shall be binding upon the parties and not subject to any further review except in the following limited circumstances:
- h) The Mediator's Resolution requires either party to pay the other or incur expenses in excess of \$10,000.00.

- i) The difference between the aggregate amount demanded in a party's Final Proposal exceeds \$10,000.00.
- j) The Mediator's Resolution is less favorable to a party than the other party's Final Proposal.
- k) Any party dissatisfied with the Mediator's Resolution meeting the criteria in Section 17.6 above must initiate a proceeding within 10 days of receipt of the Mediator's Resolution ("Proceeding"). The Proceeding shall make a de novo review of the parties' dispute, except the Mediator's Resolution shall be admissible. The parties shall each pay one half of the costs of the retired judge unless directed otherwise by the retired judge.

17.7. No Waiver

Any failure of either party to enforce at any time, or for any period of time, any provision of this Agreement, shall not constitute a waiver of such provision or in any way affect the validity of this Agreement.

17.8. Complete Agreement

This Agreement with its Exhibits contains the parties' entire Agreement and supersedes all previous communications, representations or agreements, oral or written, regarding its subject matter. No addition to or modification hereof shall bind either party unless reduced to writing and duly executed by the parties as this Agreement was, subject, however, to revisions of Exhibits A, B and C, which Company may revise at any time pursuant to Section 17.9.

17.9. Exhibits

All Exhibits attached hereto are incorporated herein by this reference, and Company has the right to amend in writing any of those Exhibits in its sole discretion.

IN WITNESS WHEREOF, this Agreement has been executed by the parties' authorized representatives on the date first written above.

COMPANY

RESELLER

Kathy Cruse
Authorized Signature

Russell Young
Authorized Signature

Kathy Cruse Managing Member
Print Name and Title

Russell Young, CEO
Print Name and Title

EXHIBIT A
COMPANY'S RESELLER TERRITORY LIST

Reseller's Territory/ies shall be defined as the localities identified in this exhibit. Prior to any termination of this agreement, Company will send written notice to the Reseller.

Localities identified herein:

The State of Alabama
The State of Georgia
The State of Florida
The State of North Carolina
The State of South Carolina
The State of Tennessee
The State of Virginia

EXHIBIT B
COMPANY'S RESELLER PRICE LIST

Company's Reseller Price List applies to all product purchases, and will be updated from time to time.

Products descriptions identified herein:

Integrated Interactive Displays

Products discounts identified herein:

Quantity 1 to 2	20.0% discount to MSRP
Quantity 3 to 24	25.0% discount to MSRP
Quantity 25 to 49	30.0% discount to MSRP
Quantity 50 and above	32.5% discount to MSRP

Products descriptions identified herein:

Integrated Interactive Displays Warranties

Products discounts identified herein:

Quantity Any	10.0% discount to MSRP

EXHIBIT C
COMPANY PURCHASE ORDER FORM

Reseller's standard purchase order will be sufficient to constitute an order, but no terms and conditions stated on Reseller's purchase order will have any effect on the terms of this Agreement and are superseded in their entirety by this Agreement.

EXHIBIT D
INITIAL PURCHASE PRODUCT LIST

The products and prices for demonstration products purchased by Reseller for an Initial Purchase are:

Item Identification	Item Description	MSRP	Price
CTI-4070L-06	Sharp 70" 70LE650U Display with 6 points of touch	\$6,499.00	\$5,849.10

Russell Young

From: Amy Andrews <aa@cleartouchinteractive.com>
Sent: Wednesday, January 15, 2014 11:24 AM
To: Pam Dodd
Cc: Krissy Banister
Subject: New Introduction!

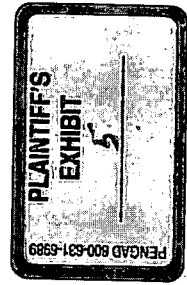
Pam and Krissy,

Hello! I just wanted to take a moment to introduce myself. My name is Amy Andrews and I am new with Clear Touch Interactive working with Kathy Cruse. Going forward, I will be the one handling purchase orders and invoicing and am here to help manage any questions or issues that may arise. I look forward to working with you!

Amy Andrews
Clear Touch Interactive
Interact Differently
(775) 473-9199 x 708



	A	B	C	D	E	F	G
1	<u>Panel Comparison</u>	<u>Clear Touch</u>	<u>Promethean</u>	<u>SMART</u>	<u>Qomo</u>	<u>Sharp</u>	<u>BenQ</u>
2	<u>Sizes</u>	65, 70, 84	65, 70	70	55, 65, 70, 84	60, 70, 80	42, 55, 65
3	<u>Resolution</u>	1920x1080, 4K on 84"	1920x1080	1920x1080	1920x1080, 4K on 84"	1920x1080	1920x1080
4	<u>Low Glare Glass</u>	Yes	Yes	Yes	Yes	No	Yes
5	<u>Optional Integrated PC</u>	Yes	Yes, but customer must buy their own at 2x the price of Clear Touch	No	No	Yes, Win7 only	No
6	<u>Integrated Speakers</u>	Yes	Yes	Yes	Yes	No, but optional	Yes
7	<u>HID Scattered IR</u>	Yes	Yes, IR but not HID compliant	Yes, but not HID compliant	Yes	No, but optional	No, uses optical
8	<u>Points of Simultaneous Touch</u>	6	6	8	6	cameras and mirrors	cameras and mirrors
9	<u>Speed of Touch Response</u>	<4ms	8ms	8ms	4ms	6ms	8ms
10	<u>TV Remote Touch Enabled</u>	Yes	No	No	<	No	No
11	<u>Sole-Source Opportunity</u>	Yes	No	No	No	No	No
12	<u>Inputs</u>	2xHDMI, 2xVGA, 2xUSB(control), 1xUSB(media), 1xComponentVid, 1xCompositeVid	1xHDMI, 1xVGA, 1xComponentVid, 1xCompositeVid, 2xUSB(media), 1xUSB(control)	3xHDMI, 1xVGA, 1xComponentVid, 1xCompositeVid, 1xUSB(control), 1xUSB(media)	2xHDMI, 2xVGA, 2xUSB(control), 1xUSB(media), 1xComponentVid, 1xCompositeVid	1xHDMI, 1xDVI, 1xVGA, 1xComponentVid, 1xCompositeVid, 1xUSB(control)	2xHDMI, 1xSVid, 1xUSB(control), 1xUSB(media)
13	<u>Power Consumption</u>	260W	340W	280W	260W	240W	265W
14	<u>Running</u>	.5W	1W	.5W	.5W	1W	.5W
15	<u>Standby</u>	Yes	Yes	Yes	Yes	Yes	Yes
16	<u>Auto Shutoff</u>	50,000 hrs min	50,000 hrs min	50,000 hrs min	50,000 hrs min	50,000 hrs min	50,000 hrs min
17	<u>Life Expectancy</u>	1 Year Manufacture, 3 and 5 year options	3 Year	2 Year limited	Unknown	3 year limited	Unknown
18	<u>Warranty</u>	The response to these panels has always been overwhelmingly positive. A true walk-up experience, and we more or less have sole-source.	Still not shipping	In a side by side comparison, SMART districts have preferred our panel to run SMART software	This product is the most similar to ours. At every conference, their reps have come to our booth fretting that we are beating them on price.	I've yet to hear anyone say they've had a positive experience with these units. They're slow and the glass is very reflective.	Again, using optical glass technology is slow and frustrating.
19	<u>Special Note</u>						
18	<u>Estimated Cost to Customer</u>	\$5,295.00	\$6,500.00	\$5,495.00	\$5,695.00	\$5,395.00	\$5,500.00
19	<u>(based on 70")</u>						



ENC 00000986



September 10, 2015

ClearTouch Interactive
561 Keystone Avenue
Suite 821
Reno, NV 89503
Attention: Reseller Administrator
Fax 775-473-9108

Re: Notice of Termination

To whom it may concern:

This letter serves as official notice that Encore is terminating the "Clear Touch Interactive Reseller Agreement" (the "Agreement") dated April 24, 2013 between Encore Technology Group, LLC ("Encore") and Clear Touch Interactive ("ClearTouch"), including any related revisions and amendments deemed to be in effect. Encore also hereby rescinds and terminates all outstanding purchase orders for which Encore has not yet received delivery of product.

Termination is effective 30 days from the date of this letter per Section 9 "Term" of the Agreement, which allows termination by either party at any time with 30 days' written notice.

Encore also notifies you of its termination of the Agreement for cause on grounds that the Agreement is invalid given the facts and circumstances surrounding its execution. Specifically, at the time of and subsequent to the execution of the Agreement, Keone Trask ("Keone") was employed by Encore as a senior executive, had non-disclosure and non-solicitation obligations to Encore, and was subject to a range of customary legal duties to Encore, including fiduciary duties and duties of loyalty and care.

Keone was the primary Encore employee responsible for developing the supplier relationship between Encore and ClearTouch. Keone is currently a senior executive and an owner of ClearTouch. We now understand and have evidence that Keone and his immediate family members were in fact owners, managing members, and managers of ClearTouch prior to and during the term of the agreement and during Keone's employment with Encore.

Neither Keone nor ClearTouch disclosed these facts and conflicts of interest to Todd Newnam, owner of Encore, or to Russell Young or David Masters, who were and are other senior executives of Encore and who were involved with the development of ClearTouch as a supplier to Encore. During his employment by Encore, we believe that Keone used Encore financial and other resources directly and indirectly to benefit ClearTouch and devoted a significant portion of his time to advance the business of his and his family's related interests in ClearTouch rather than the interests of Encore, his full-time employer.

Attached is an executed copy of Keone Trask's Non-Disclosure and Non-solicitation Agreement effective February 18, 2013. Among other provisions, we direct you to the section titled "Business Opportunity," which clearly obligated Keone to notify Encore of opportunities of which ClearTouch has taken advantage.

2000 Wade Hampton Blvd. • Suite 210 • Greenville, SC 29615 • (888) 98-encore • www.encore.com



CONFIDENTIAL

ENC 000186



We also understand that some group of Keone Trask and ClearTouch and its employees and/or affiliates have told directly or intimated to customers, potential customers and others in the market that either Todd Newnam or Encore have a financial interest or other stake in ClearTouch in an effort to generate credibility and alleviate questions regarding the financial stability of ClearTouch. Since neither Todd Newnam nor Encore have any such interest in ClearTouch, you are directed to communicate this fact to your employees and affiliates and to direct them to not communicate otherwise.

We also remind Keone Trask of his April 2014 severance agreement, which has several provisions applicable to this situation. We have not included a copy of this agreement with this communication, but he can contact Tammy Summerell at Encore directly if he needs another copy.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd R. Newnam".

Todd R. Newnam
Chairman, CEO and Owner
Encore Technology Group, LLC

A handwritten signature in black ink, appearing to read "Russell Young".

Russell Young
CFO
Encore Technology Group, LLC

Copy to: Keone Trask
Tamara Trask

2000 Wade Hampton Blvd. • Suite 210 • Greenville, SC 29615 • (888) 98-encore • www.encoretg.com

CONFIDENTIAL

ENC 000187

Russell Young

From: Russell Young <ryoung@encoretg.com>
Sent: Friday, September 11, 2015 4:30 PM
To: kt@getcleartouch.com; tt@getcleartouch.com
Subject: Notice of Termination
Attachments: Clear Touch Notice of Termination.pdf

Keone,

Please see the attached notice of termination.

Russell Young

Russell Young
CFO
Encore Technology Group
Direct: (864) 326-3612
Fax: (864) 438-0263
Office: (888) 983-6267

Email Disclaimer

This message contains confidential information and is intended only for the individual(s) addressed in the message. If you are not the named addressee, you should not disseminate, distribute, or copy this e-mail. If you are not the intended recipient, you are notified that disclosing, distributing, or copying this e-mail is strictly prohibited.

Encore Technology Group

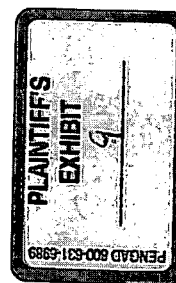
10:29 AM

09/01/16

Accrual Basis

Clear Touch Interactive, Inc.
Sales by Customer Summary
February 13, 2013 through October 10, 2015

	Feb 13, '13 - Oct 10, ...
Academic Technologies	481,531.69
Advanced Classroom Technologies	17,869.50
Audio Visual Excellence, Inc.	41,027.25
BridgeTek Solutions, LLC	107,351.00
Broward County School District	5,595.00
CIM Technology Solutions	80,257.49
Collaboration Solutions, Inc.	612,933.11
Columbia County School District	5,940.00
Conestoga Valley School District	5,629.20
ConnectView, LLC	8,640.75
Edmentum	7,000.00
Encore Technology Group, LLC	2,460,790.68
Enterprise City Schools	5,895.00
FileWave	8,500.00
Focus School Software	5,148.00
Galaxy Technology Distribution	984,660.00
Great Oaks Institute of Technology	9,972.35
Howard Industries, Inc.	30,754.99
Indian Springs School	113,672.10
Information Transport Solutions, Inc.	243,202.50
Katz Computer Service	92,620.53
LeCroy	1,269,455.10
Lee County Youth Development Ce...	6,499.00
Leon County School Board	934,917.00
Lorain County Joint Vocational Sch...	44,099.00
Ockers Company	127,837.48
Personal Computer Systems	253,761.81
Progressive Communications	16,163.50
Ronco Specialized	85,766.73
Russell County School District	15,830.00
Selma University	11,570.00
Social Circle City Schools	14,791.25
Summit Integration System	160,404.94
TriStar Digital Connections, LLC	469,286.78
Troxell Communications	10,029.36
Unified AV Systems	49,057.92
United Data Technologies	31,795.84
Vernon High School	5,805.00
Wake County Public School System	4,240.00
Washington County School Board	24,995.00
Worth County Schools	11,100.00
Write Brain World	4,750.00
TOTAL	8,881,146.85



SUMMARY OF DAMAGES

Table 1: Direct Costs Incurred by Encore

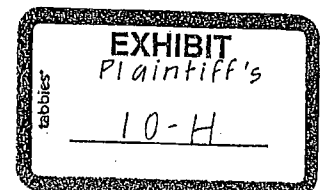
Wages, Benefits, and Expense Reimbursements	\$ 420,352
Trade Show and Related Costs Paid by Encore for Benefit of Clear Touch	67,689
Total Calculated Damages	\$ 488,041

Table 2: Profit Lost on Sales Made to Encore and Encore Customers by Clear Touch

Direct Damages on Products Sold to Encore from Clear Touch 2/13/13 - 4/25/14	125,730
Direct Damages on Products Sold to Encore from Clear Touch from 4/26/14 - 4/25/15	344,201
Direct Damages on Products Sold to Encore from Clear Touch from 4/25/15 - 10/10/2015	205,430
Lost Profit on Sales Made to Leon County Schools 4/26/2014 - 4/25/2015	309,439
Lost Profit on Sales Made to Leon County Schools 4/26/2015 - 10/10/2015	115,506
Total Calculated Damages	\$ 1,100,306

Table 3: Damages Related to Loss of Business Opportunity

Normalized Profit of Clear Touch from 2/13/2013 - 4/25/2014 (employed)	105,137
Normalized Profit of Clear Touch from 4/26/2014 - 4/25/2015 (non-compete)	36,179
Normalized Profit of Clear Touch from 4/26/2015 - 10/10/2015 (reseller agreement)	1,281,829
Normalized Profit of Clear Touch from 10/11/2015 - 12/31/2015	213,109
Fair Market Value of Clear Touch Opportunity as of 12/31/2015	3,900,000
Total Damages Related to Lost Business Opportunity	\$ 5,536,254



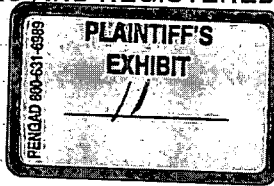
INITIAL LIST OF MANAGERS OR MANAGING MEMBERS AND REGISTERED AGENT AND STATE BUSINESS LICENSE APPLICATION OF:

CLEAR TOUCH INTERACTIVE LLC

NAME OF LIMITED-LIABILITY COMPANY

FOR THE FILING PERIOD OF 8/2012 TO 8/2013

****YOU MAY FILE THIS FORM ONLINE AT www.nvsos.gov****



FILE NUMBER

E0441682012-1



100+01

The entity's duly appointed registered agent in the State of Nevada upon whom process can be served is:

NATIONAL REGISTERED AGENTS, INC. OF NV (Commercial Registered Agent)
1000 EAST WILLIAM STREET SUITE 204
CARSON CITY, NV 89701 USA

A FORM TO CHANGE REGISTERED AGENT INFORMATION IS FOUND AT: www.nvsos.gov

Filed in the office of Ross Miller Secretary of State State of Nevada	Document Number
	20120659633-77
	Filing Date and Time
	09/26/2012 11:24 AM
Entity Number	E0441682012-1

(This document was filed electronically.)
ABOVE SPACE IS FOR OFFICE USE ONLY

USE BLACK INK ONLY - DO NOT HIGHLIGHT

☐ Return one file stamped copy. (If filing not accompanied by order instructions, file stamped copy will be sent to registered agent.)

IMPORTANT: Read instructions before completing and returning this form.

- Print or type names and addresses, either residence or business, for all manager or managing members. A Manager, or if none, a Managing Member of the LLC must sign the form. **FORM WILL BE RETURNED IF UNSIGNED.**
- If there are additional managers or managing members, attach a list of them to this form.
- Initial list fee is \$125.00. A \$75.00 penalty must be added for failure to file this form by the last day of the first month following organization date.
- State business license fee is \$200.00. Effective 2/1/2010, \$100 must be added for failure to file form by deadline.
- Make your check payable to the Secretary of State.
- Ordering Copies:** If requested above, one file stamped copy will be returned at no additional charge. To receive a certified copy, enclose an additional \$30.00 per certification. A copy fee of \$2.00 per page is required for each additional copy generated when ordering 2 or more file stamped or certified copies. Appropriate instructions must accompany your order.
- Return the completed form to: Secretary of State, 202 North Carson Street, Carson City, Nevada 89701-4201, (775) 684-5708.
- Form must be in the possession of the Secretary of State on or before the last day of the first month following the initial registration date. (Postmark date is not accepted as receipt date.) Forms received after due date will be returned for additional fees and penalties. Failure to include initial list and business license fees will result in rejection of filing.

INITIAL LIST FILING FEE: \$125.00

LATE PENALTY: \$75.00

BUSINESS LICENSE FEE: \$200.00

LATE PENALTY: \$100.00

Complete only if applicable

Section 7(2) Exemption Codes

- 001 - Governmental Entity
- 002 - 501(c) Nonprofit Entity
- 003 - Home-based Business
- 004 - Natural Person with 4 or less rental dwelling units
- 005 - Motion Picture Company
- 006 - NRS 680B.020 Insurance Co.

☐ Pursuant to NRS, this corporation is exempt from the business license fee. Exemption code:

☐ Month and year your State Business License expires: 20

NAME
KEONE TRASK

(DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED)

☐ MANAGER ☒ MANAGING MEMBER

ADDRESS
201B WEST BUTLER ROAD #1103, USA

CITY STATE ZIP CODE
MAULDIN SC 29662

NAME
TAMARA TRASK

(DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED)

☐ MANAGER ☒ MANAGING MEMBER

ADDRESS
201B WEST BUTLER ROAD #1103, USA

CITY STATE ZIP CODE
MAULDIN SC 29662

NAME

(DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED)

☐ MANAGER ☐ MANAGING MEMBER

ADDRESS

CITY STATE ZIP CODE

NAME

(DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED)

☐ MANAGER ☐ MANAGING MEMBER

ADDRESS

CITY STATE ZIP CODE

I declare, to the best of my knowledge under penalty of perjury, that the above mentioned entity has complied with the provisions of sections 6 to 18 of AB 146 of the 2009 session of the Nevada Legislature and acknowledge that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State.

KEONE TRASK

X
Signature of Manager or Managing Member

Title

MANAGING MEMBER

Date

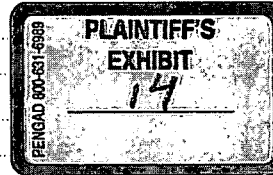
9/26/2012 11:23:06 AM

Nevada Secretary of State Initial List Man/Mem
Revised: 8-5-09

ANNUAL LIST OF MANAGERS OR MANAGING MEMBERS AND REGISTERED AGENT AND STATE BUSINESS LICENSE APPLICATION OF:

CLEAR TOUCH INTERACTIVE LLC

NAME OF LIMITED-LIABILITY COMPANY



FILE NUMBER

E0441682012-1

FOR THE FILING PERIOD OF AUG, 2012 TO AUG, 2013

****YOU MAY FILE THIS FORM ONLINE AT www.nvsos.gov****

The entity's duly appointed registered agent in the State of Nevada upon whom process can be served is:

110405

NATIONAL REGISTERED AGENTS, INC. OF NV
311 S DIVISION ST
CARSON CITY, NV 89703

A FORM TO CHANGE REGISTERED AGENT INFORMATION IS FOUND AT: www.nvsos.gov

Filed in the office of Ross Miller Secretary of State State of Nevada	Document Number
	20130241592-49
	Filing Date and Time
	04/11/2013 8:58 AM
	Entity Number
	E0441682012-1

(This document was filed electronically.)
ABOVE SPACE IS FOR OFFICE USE ONLY

USE BLACK INK ONLY - DO NOT HIGHLIGHT

☐ Return one file stamped copy. (If filing not accompanied by order instructions, file stamped copy will be sent to registered agent.)

IMPORTANT: Read instructions before completing and returning this form.

1. Print or type names and addresses, either residence or business, for all manager or managing members. A Manager, or if none, a Managing Member of the LLC must sign the form. **FORM WILL BE RETURNED IF UNSIGNED.**
2. If there are additional managers or managing members, attach a list of them to this form.
3. Return completed form with the fee of \$125.00. A \$75.00 penalty must be added for failure to file this form by the deadline. An annual list received more than 90 days before its due date shall be deemed an amended list for the previous year.
4. State business license fee is \$200.00. Effective 2/1/2010, \$100.00 must be added for failure to file form by deadline.
5. Make your check payable to the Secretary of State.
6. **Ordering Copies:** If requested above, one file stamped copy will be returned at no additional charge. To receive a certified copy, enclose an additional \$30.00 per certification. A copy fee of \$2.00 per page is required for each additional copy generated when ordering 2 or more file stamped or certified copies. Appropriate instructions must accompany your order.
7. Return the completed form to: Secretary of State, 202 North Carson Street, Carson City, Nevada 89701-4201, (775) 684-5708.
8. Form must be in the possession of the Secretary of State on or before the last day of the month in which it is due. (Postmark date is not accepted as receipt date.) Forms received after due date will be returned for additional fees and penalties. Failure to include annual list and business license fees will result in rejection of filing.

ANNUAL LIST FILING FEE: \$125.00 LATE PENALTY: \$75.00 BUSINESS LICENSE FEE: \$200.00 LATE PENALTY: \$100.00

CHECK ONLY IF APPLICABLE AND ENTER EXEMPTION CODE IN BOX BELOW

NRS 76.020 Exemption Codes

☐ Pursuant to NRS Chapter 76, this entity is exempt from the business license fee. Exemption code:

- 001 - Governmental Entity
- 005 - Motion Picture Company
- 006 - NRS 680B.020 Insurance Co.

NOTE: If claiming an exemption, a notarized Declaration of Eligibility form must be attached. Failure to attach the Declaration of Eligibility form will result in rejection, which could result in late fees.

NAME KATHY CRUSE		(DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED)	
		☐ MANAGER	☒ MANAGING MEMBER
ADDRESS 561 KEYSTONE AVE. SUITE 821, USA	CITY RENO	STATE NV	ZIP CODE 89503
NAME		(DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED)	
		☐ MANAGER	☐ MANAGING MEMBER
ADDRESS	CITY	STATE	ZIP CODE
NAME		(DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED)	
		☐ MANAGER	☐ MANAGING MEMBER
ADDRESS	CITY	STATE	ZIP CODE
NAME		(DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED)	
		☐ MANAGER	☐ MANAGING MEMBER
ADDRESS	CITY	STATE	ZIP CODE

I declare, to the best of my knowledge under penalty of perjury, that the above mentioned entity has complied with the provisions of NRS Chapter 76 and acknowledge that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State.

X KATHY CRUSE

Signature of Manager or Managing Member

Title

MANAGING MEMBER

Date

4/11/2013 8:58:47 AM

412

Nevada Secretary of State Annual List ManorMem
Revised: 3-9-12

**NONDISCLOSURE AND PROTECTIVE AGREEMENT
TO GOVERN CONFIDENTIAL/PROPRIETARY DATA**

This **NONDISCLOSURE AND PROTECTIVE AGREEMENT** ("Agreement") is hereby made and entered into as of this 28th day of April, 2014 (the "Effective Date"), by and between Clear Touch Interactive, Inc., a corporation organized under the laws of Nevada, and its affiliates and subsidiaries ("Clear Touch"), and JAMES HIGGINBOTHAM, an individual. Clear Touch and JAMES HIGGINBOTHAM hereinafter shall each be referred to as a "Party" and shall collectively be referred to as the "Parties."

RECITALS:

WHEREAS, the Parties intend to jointly explore the possibility of entering into a business relationship;

WHEREAS, the Parties, to facilitate this effort, may exchange information deemed to be confidential and/or proprietary by the disclosing Party, including, without limitation, financial, operational, business and technical data regarding, as well as business, marketing, and sales strategies and plans of, the disclosing Party;

WHEREAS, the Parties desire to preserve and protect the confidentiality of all confidential and/or proprietary information disclosed by the Parties to one another;

NOW THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties, with the intent of being legally bound, do hereby agree as follows:

1. **Purpose.** Each Party hereby acknowledges that it has entered into this Agreement solely to facilitate the joint exploration by the Parties of a potential business relationship, providing a mechanism to safeguard any confidential and proprietary data exchanged by the Parties. This Agreement shall not require either Party to furnish Confidential/Proprietary Information to the other Party, nor shall the furnishing of Confidential/Proprietary Information by a Party to the other Party obligate either Party to evaluate, negotiate or enter into a business relationship with the other Party or preclude either Party from evaluating, negotiating or entering into any business relationship with a third party. No warranties of any kind are given by either party with respect to the information provided to the other.

2. **Confidential/Proprietary Information.** All information disclosed by a Party, its affiliates, subsidiaries or agents, or third parties at the request of the Party, to the other Party, shall be deemed to be "Confidential/Proprietary Information" if it is (a) in written, graphic or other tangible form, including, without limitation, computer discs and tapes and other media which can be converted to readable form, and bears an appropriate legend indicating its confidential and/or proprietary nature, or (b) disclosed orally, or in a form other than in writing or a media which can be converted to readable form, and is identified as confidential and propriety at the time of disclosure, with such designation confirmed in writing within seventy-two (72) hours thereafter; provided, however, that the disclosing Party's failure to place an appropriate legend indicating the confidentiality and/or proprietary nature of information disclosed in written, graphic or other tangible form or to provide written confirmation of the confidential nature of information disclosed orally, or in a form other than in writing or on

Page 1 of 5

Clear Touch Interactive, Inc. Initials

CT YH

Individual Initials

JH



CONFIDENTIAL

CT 1481

computer disk or tape, shall not relieve the receiving Party of its obligation to preserve the confidentiality of said information if the receiving Party knows, should have known or has reason to know that the information is confidential or proprietary; provided further that the receiving Party shall not be liable for any reasonable, good faith disclosure of such information. Any agreements or other documents memorializing or reflecting the terms of the Parties business relationship shall also be deemed Confidential/Proprietary Information. Each Party acknowledges that the Confidential/Proprietary Information of the other Party is uniquely valuable and competitively-sensitive.

3. **Use and Dissemination.** Neither Party shall use Confidential/Proprietary Information of the other Party for any purpose other than evaluating and negotiating a business relationship between the Parties. Each Party shall restrict internal disclosure of Confidential/Proprietary Information of the other Party to such of its officers, employees and agents, including attorneys, accountants and financial or investment advisors, as have a reasonable need to know such information and shall advise said officers, employees and agents of the obligations assumed by it in this Agreement. Neither Party shall disclose Confidential/Proprietary Information of the other Party to any third party, other than such attorneys, accountants and financial or investment advisors as shall be assisting the Party in evaluating and negotiating the business relationship between the Parties, without the prior written consent of the other Party; provided, however, that either Party may disclose Confidential/Proprietary Information of the other Party to its principal lenders and substantial stock holders without the prior written consent of the other Party so long as such lenders and stock holders have executed a nondisclosure agreement substantially similar to this Agreement. A Party shall not reproduce Confidential/Proprietary Information of the other Party unless necessary to evaluate and explore a business relationship between the Parties, and shall ensure that all such copies, as well as summaries and notes of and other documents and materials containing or referencing, the Confidential/Proprietary Information of the other Party are appropriately marked as such.

4. **Standard of Care.** Each Party shall take all reasonable and necessary steps to prevent the disclosure, unauthorized use or publication of Confidential/Proprietary Information of the other Party and in so doing, shall not use less than the same degree of care it uses with regard to its own proprietary or confidential information, and shall maintain said information in a secure location accessible only by those who are authorized to view it.

5. **Exceptions.** The restrictions on disclosure of Confidential/Proprietary Information shall not apply to (i) information which at the time of disclosure was generally available to the public; (ii) information which subsequent to its disclosure to a Party, is published or otherwise becomes available to the public through any means other than an act or omission of the Party; (iii) information which was previously known to a Party free of any obligation to keep it confidential or which is subsequently developed independently in good faith by the Party; and (iv) information rightfully acquired in good faith from a third party on a non-confidential basis without breach of an agreement to maintain said information in confidence. Notwithstanding anything to the contrary herein, a Party may disclose Confidential/Proprietary Information of the other Party (i) if required to do so by law; or (ii) if ordered to do so by a court or other governmental authority of competent jurisdiction; provided, however, that a Party shall provide the other Party prior written notice of any such disclosure and exercise its best efforts, consistent with sound business practice, both to afford the other Party an opportunity to contest the disclosure and to limit the extent of the disclosure to the maximum extent practicable.

6. **Proprietary.** By disclosing Confidential/Proprietary Information, a Party does not relinquish any proprietary rights and interests, or grant any rights or licenses, in said information. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise conveyed by this Agreement with respect to Confidential or other information. Upon the written request of a Party, the other Party shall promptly return, or, at the sole discretion of the requesting Party, destroy, all Confidential/Proprietary Information of the requesting Party and all

Page 2 of 5

Clear Touch Interactive, Inc. Initials

CT Y

Individual Initials

[Signature]

CONFIDENTIAL

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copies thereof, as well as all summaries, notes or other documents, materials or things containing Confidential/Proprietary Information.

7. **Remedies.** In the event a material breach hereof occurs, or is threatened, the nonbreaching Party shall have the right to pursue any and all legal and equitable remedies to which it would be entitled under the law. Each Party hereby agrees and acknowledges that the other Party would be irreparably damaged by the breach of this Agreement, which damage could not be adequately compensated except by specific performance hereof. In the event such a default has occurred or is threatened, it is agreed that the nonbreaching Party shall be entitled to temporary and permanent injunctive relief, including, without limitation, specific performance of this Agreement, without any showing of actual damage or inadequacy of legal remedy or the posting of any bond in any proceeding which may be brought to enforce this Agreement.

8. **Representations and Warranties.** Each Party represents and warrants to the other Party, which representations and warranties shall survive the execution hereof, that it has the power and authority to execute, deliver and perform this Agreement, that its execution and delivery of this Agreement and its performance hereunder have been duly authorized and that this Agreement has been duly executed and delivered by it and is a valid and binding agreement enforceable in accordance with its terms against it. Neither Party is making any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential/Proprietary Information being disclosed to the other Party.

9. **Nonsolicitation.** For a period commencing on the Effective Date and ending on the second anniversary of the termination of this Agreement, neither Party shall directly solicit for employment or hire any person who is now employed by the other Party (or whose activities are dedicated to the other Party).

10. **Termination/Survival.** This Agreement may be terminated upon thirty (30) days' written notice by either Party; provided, however, that the obligations imposed by this Agreement to safeguard and to promptly return or destroy the Confidential/Proprietary Information of the other Party shall survive any termination of this Agreement for a period of three (3) years.

11. **Entire Agreement.** **THIS AGREEMENT SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES CONCERNING THE SUBJECT MATTER HEREOF AND SUPERSEDE ALL PRIOR AGREEMENTS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, REGARDING THE SUBJECT MATTER HEREOF.** This Agreement may only be amended or modified by written consent of both Parties. The terms, conditions and provisions of this Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective heirs, successors, transferees and assigns.

12. **Miscellaneous.** The waiver of compliance with any of the provisions of this Agreement by a Party shall not be considered an ongoing waiver of such provisions or a waiver of any of the other provision hereof by said Party. Each provision of this Agreement shall be considered severable and if for any reason any provision hereof is determined to be contrary to any existing or future law, rule or regulation of any jurisdiction, such invalidity shall not impair the operation of said provision in any other jurisdiction or any other provisions hereof. All notices and solicitations of consent or approval, and other communications hereunder, shall be in writing; shall be deemed to have been given when delivered by hand, by telecopy (followed by mailed notices as hereinafter provided), by overnight delivery service, with acknowledged receipt, or by United States mail, if sent by registered or certified mail, postage prepaid, return receipt requested, addressed, to a Party at the address set forth for that Party below or such other address as the Party shall have given in writing for such purpose. Neither Party shall assign this

Page 3 of 5

Clear Touch Interactive, Inc. Initials

(ET) *YR*

Individual Initials

[Signature]

CONFIDENTIAL

CT 1483

Agreement to any third party without the prior written consent of the other Party, provided, however, that the merger or consolidation of one Party into, or the sale of all or substantially all of the stock or assets of such Party to, a third party shall not be deemed to be an assignment. This Agreement will be governed by internal laws of the State of Nevada, without reference to its choice of law rules. Any action arising out of or related to this Agreement shall be brought in the state or Federal courts located in Washoe County, Nevada and each Party consents to the jurisdiction and venue of such courts.

13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all counterparts taken together shall constitute the agreement of the Parties.

Page 4 of 5

Clear Touch Interactive, Inc. Initials CT YH

Individual Initials JD

CONFIDENTIAL

CT 1484

IN WITNESS WHEREOF, the Parties have caused this NONDISCLOSURE AND PROTECTIVE AGREEMENT to be duly executed as of the day and year first above written.

Clear Touch Interactive, Inc.

By: [Signature]

Name: KEONE TRASK

Title: DIRECTOR

By: Jamara Trask

Name: Jamara Trask

Title: Director

Individual

By: [Signature]

Name: JAMES HIGGINBOTHAM

Address for Notices

561 Keystone Avenue
Suite 821
Reno, NV 86503

Address for Notices

5111 CRAFTSMAN STREET
JOHNS CREEK, CA 95007

Page 5 of 5

Clear Touch Interactive, Inc. Initials

CT YAL

Individual Initials

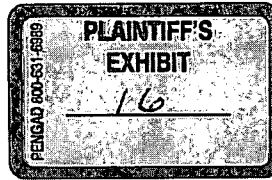
[Signature]

CONFIDENTIAL

CT 1485



ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4520
(775) 684-5708
Website: www.nvsos.gov



140301

Articles of Conversion

(PURSUANT TO NRS 92A.205)

Page 1

Filed in the office of 	Document Number 20140041375-97
Ross Miller Secretary of State State of Nevada	Filing Date and Time 01/21/2014 8:00 AM
	Entry Number E0441682012-1

USE BLACK INK ONLY - DO NOT HIGHLIGHT

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Articles of Conversion (Pursuant to NRS 92A.205)

1. Name and jurisdiction of organization of constituent entity and resulting entity:

CLEAR TOUCH INTERACTIVE LLC

Name of constituent entity

Nevada

Jurisdiction

Limited-Liability Company

Entity type *

and,

Clear Touch Interactive, Inc.

Name of resulting entity

Nevada

Jurisdiction

General For-Profit Corporation

Entity type *

2. A plan of conversion has been adopted by the constituent entity in compliance with the law of the jurisdiction governing the constituent entity.

3. Location of plan of conversion: (check one)

☐

The entire plan of conversion is attached to these articles.

☒

The complete executed plan of conversion is on file at the registered office or principal place of business of the resulting entity.

☐

The complete executed plan of conversion for the resulting domestic limited partnership is on file at the records office required by NRS 88.330.

* corporation, limited partnership, limited-liability limited partnership, limited-liability company or business trust.

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Conversion Page 1
Revised: 8-31-11



ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4520
(775) 684-5708
Website: www.nvsos.gov

Articles of Conversion

(PURSUANT TO NRS 92A.205)

Page 2

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4. Forwarding address where copies of process may be sent by the Secretary of State of Nevada (if a foreign entity is the resulting entity in the conversion):

Attn: _____

c/o: _____

5. Effective date and time of filing: (optional) (must not be later than 90 days after the certificate is filed)

Date: _____

Time: _____

6. Signatures - must be signed by:

1. If constituent entity is a Nevada entity: an officer of each Nevada corporation; all general partners of each Nevada limited partnership or limited-liability limited partnership; a manager of each Nevada limited-liability company with managers or one member if there are no managers; a trustee of each Nevada business trust; a managing partner of a Nevada limited-liability partnership (a.k.a. general partnership governed by NRS chapter 87).

2. If constituent entity is a foreign entity: must be signed by the constituent entity in the manner provided by the law governing it.

CLEAR TOUCH INTERACTIVE LLC

Name of constituent entity

X *Kathy Cruse*
Signature Kathy Cruse

Member

Title

1/16/14

Date

* Pursuant to NRS 92A.205(4) if the conversion takes effect on a later date specified in the articles of conversion pursuant to NRS 92A.240, the constituent document filed with the Secretary of State pursuant to paragraph (b) subsection 1 must state the name and the jurisdiction of the constituent entity and that the existence of the resulting entity does not begin until the later date. This statement must be included within the resulting entity's articles.

FILING FEE: \$350.00

IMPORTANT: Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Conversion Page 2
Revised: 8-31-11

Russell Young

From: Amy Andrews <aa@cleartouchinteractive.com>
Sent: Monday, February 10, 2014 4:17 AM
To: ktrask@encoretg.com
Subject: Clear Touch Interactive - Opportunity

Keone

Here is a lead from a general inquiry to the website.

Thank you

Amy

Contact: Kirt Hinkle
Company: Striker Contracting
Phone: (770) 820-4434

Note: I am looking for pricing on the 70 and 84 inch units as well as a comparison of how your product compares to smart technologies product. Please email or call me so we can discuss. 770.820.4434. Thanks for the help!

Amy Andrews
Clear Touch Interactive
Interact Differently
(775) 473-9199 x 708



Russell Young

From: Keone Trask <ktrask@encoretg.com>
Sent: Monday, February 10, 2014 3:26 PM
To: aa@cleartouchinteractive.com
Cc: kc@cleartouchinteractive.com; Leo Gallant
Subject: RE: Spartanburg School District 6 SC - Touch Screen Displays

Amy –

Please be aware that due to inclement weather we will be unable to facilitate the onsite diagnostics as requested; we should be able to accommodate this request on Thursday of this week.

Keone

Keone Trask
Chief Business Development Officer
Encore Technology Group

Follow Encore Online:



[Goodbye Projectors - Interact Differently](#)

From: Amy Andrews [mailto:aa@cleartouchinteractive.com]
Sent: Monday, February 10, 2014 4:01 AM
To: Keone Trask
Cc: kc@cleartouchinteractive.com
Subject: Spartanburg School District 6 SC - Touch Screen Displays

Keone,

I apologize for the issues you are experiencing with the touch screens displays deployed at Spartanburg School District 6, SC.

Please review the attached trouble report instructions and diagram to submit a trouble report to our support and development engineers in China; support@zaagtech.com.

Use the following URL to install remote connection software for each device connected to the touch screen displays;
<http://www.teamviewer.com/en/products/remotecontrol.aspx>

Please send the user name and password for each device connected to the touch screen displays to Brian Oh;
brian@idspulse.com.

It is not necessary to have anyone present at the time of the remote connection; but it is necessary to leave the computer on for remote connection

Note that these devices will be accessed between 9:30pm and 6:30am Eastern Standard Time.



Best regards,

Amy

Amy Andrews
Clear Touch Interactive
Interact Differently
(775) 473-9199 x 708

Russell Young

From: Keone Trask </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A22B903AAA2F4950BEFC40F053EF4C25-KEONE TRASK>
Sent: Monday, March 24, 2014 9:16 PM
To: 'aa@cleartouchinteractive.com'
Subject: Opportunity Registrations

Amy –

Can you confirm for me that we can make the following pricing deviations for some key account opportunities?

Nash Rocky Mount Schools, NC

Looking at single purchase of 200 65" or 70" displays. Requesting a \$200- interactive panel price discount.

Winston Salem Forsyth Schools, NC

One of our biggest accounts. Currently piloting mobile interactive panels in a couple of schools. Requesting free stand to support pilot.

Please contact me with any questions or additional details about these opportunities.

Keone

Keone Trask
Chief Business Development Officer
Encore Technology Group

Follow Encore Online:



Goodbye Projectors - Interact Differently



Russell Young

From: Keone Trask </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A22B903AAA2F4950BEFC40F053EF4C25-KEONE TRASK>
Sent: Wednesday, March 26, 2014 10:03 AM
To: 'aa@cleartouchinteractive.com'
Cc: Danielle Stengel; Megan White
Subject: Opportunity Deviation Request

Amy –

Two new opportunities that we are working with:

Vance Granville Community College, NC – Immediate purchase of 2 units with near term purchase total of 10 units.

Customer is looking for a mobile solution to use throughout campus. This is a competitive account with Sharp being the Incumbent, customer is willing to present at regional conferences and discuss product on state level communications to all community colleges in North Carolina. We are looking at providing the mobile stands complementary.

Winston Salem Forsyth Schools, NC – Immediate purchase of 1 to 5 units at specific locations.

Customer is historically one of Encore largest buyers of classroom technology. Budget constraints have forced district administrative staff to consider and implement interactive projectors. Following recent regional events individual schools staff have opted to pilot and review the interactive panel. This would allow us to escalate the decision to move away from interactive whiteboards and projectors moving toward panels. We are looking at providing the mobile stands complementary for these pilot initiatives.

Call me with any questions.

Thank you

Keone

Keone Trask
Chief Business Development Officer
Encore Technology Group

Follow Encore Online:



[Goodbye Projectors - Interact Differently](#)

Russell Young

From: Amy Andrews <aa@cleartouchinteractive.com>
Sent: Wednesday, March 26, 2014 1:28 PM
To: 'Keone Trask'
Subject: RE: New Opportunity

Keone –

That is exciting to hear! I will certainly be open and willing to assist Encore as much as I am able to in order to procure this possible implementation across this district and others of course. Your continued feedback is always appreciated and as always, please let me know what would be/may be beneficial to help assist some of these folks along. It sounds like you have a good plan together thus far.

Amy Andrews
Clear Touch Interactive
Interact Differently
(775) 473-9199 x 708

From: Keone Trask [mailto:ktrask@encoretg.com]
Sent: Wednesday, March 26, 2014 10:06 AM
To: 'aa@cleartouchinteractive.com'
Cc: M. Terry Caldwell; Steve Mott
Subject: New Opportunity

Amy –

We have a new opportunity that we are working with:

Dublin City Schools, GA – Immediate purchase of 4 units with potential to implement across the district.

Customer is looking for a mobile solution to use throughout two campuses to gauge usability and response. This will build on existing Georgia activity and is very timely heading into ISTE which will be held in Atlanta, GA this year... more local customers and presence. We are looking at providing the mobile stands complementary.

Call me with any questions.

Thank you

Keone

Keone Trask
Chief Business Development Officer
Encore Technology Group

Follow Encore Online:



[Goodbye Projectors - Interact Differently](#)

Keone Trask
CBDO
Encore Technology Group
Direct: (864) 200-2169
Fax: (864) 438-0265
Office: (888) 983-6267

Email Disclaimer

This message contains confidential information and is intended only for the individual(s) addressed in the message. If you are not the named addressee, you should not disseminate, distribute, or copy this e-mail. If you are not the intended recipient, you are notified that disclosing, distributing, or copying this e-mail is strictly prohibited.

Encore Technology Group

Russell Young

From: Keone Trask </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A22B903AAA2F4950BEFC40F053EF4C25-KEONE TRASK>
Sent: Wednesday, March 26, 2014 2:26 PM
To: 'aa@cleartouchinteractive.com'
Subject: Opportunity Pricing Deviation

Amy -

The opportunities continue to come in...

Warren County School District, NC - District is moving order over from Promethean Interactive Whiteboards to the clear Touch Interactive Panels. Features and functionality is heavily favored. Warren County is a rural school district with little spend capability. They are funding this purchase with a federal grant. Unlike our other opportunities that are in larger districts, Warren County is representative of the majority of school district in the region. By implementing Warren County School District they will be a favorable reference and a like reference for other accounts.

Request is for up to 8 mobile stands to be discounted to \$0-

Thank you.

Keone

Keone Trask
Chief Business Development Officer
Encore Technology Group

Follow Encore Online:



Goodbye Projectors - Interact Differently

NONDISCLOSURE AND PROTECTIVE AGREEMENT
TO GOVERN CONFIDENTIAL/PROPRIETARY DATA



This NONDISCLOSURE AND PROTECTIVE AGREEMENT ("Agreement") is hereby made and entered into as of this 25th day of April, 2014 (the "Effective Date"), by and between Clear Touch Interactive, Inc., a corporation organized under the laws of Nevada, and its affiliates and subsidiaries ("Clear Touch"), and Leo Gallant, an individual. Clear Touch and Leo Gallant hereinafter shall each be referred to as a "Party" and shall collectively be referred to as the "Parties."

RECITALS:

WHEREAS, the Parties intend to jointly explore the possibility of entering into a business relationship;

WHEREAS, the Parties, to facilitate this effort, may exchange information deemed to be confidential and/or proprietary by the disclosing Party, including, without limitation, financial, operational, business and technical data regarding, as well as business, marketing, and sales strategies and plans of, the disclosing Party;

WHEREAS, the Parties desire to preserve and protect the confidentiality of all confidential and/or proprietary information disclosed by the Parties to one another;

NOW THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties, with the intent of being legally bound, do hereby agree as follows:

1. **Purpose.** Each Party hereby acknowledges that it has entered into this Agreement solely to facilitate the joint exploration by the Parties of a potential business relationship, providing a mechanism to safeguard any confidential and proprietary data exchanged by the Parties. This Agreement shall not require either Party to furnish Confidential/Proprietary Information to the other Party, nor shall the furnishing of Confidential/Proprietary Information by a Party to the other Party obligate either Party to evaluate, negotiate or enter into a business relationship with the other Party or preclude either Party from evaluating, negotiating or entering into any business relationship with a third party. No warranties of any kind are given by either party with respect to the information provided to the other.

2. **Confidential/Proprietary Information.** All information disclosed by a Party, its affiliates, subsidiaries or agents, or third parties at the request of the Party, to the other Party, shall be deemed to be "Confidential/Proprietary Information" if it is (a) in written, graphic or other tangible form, including, without limitation, computer discs and tapes and other media which can be converted to readable form, and bears an appropriate legend indicating its confidential and/or proprietary nature, or (b) disclosed orally, or in a form other than in writing or a media which can be converted to readable form, and is identified as confidential and propriety at the time of disclosure, with such designation confirmed in writing within seventy-two (72) hours thereafter; provided, however, that the disclosing Party's failure to place an appropriate legend indicating the confidentiality and/or proprietary nature of information disclosed in written, graphic or other tangible form or to provide written confirmation of the confidential nature of information disclosed orally, or in a form other than in writing or on

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Clear Touch Interactive, Inc. Initials CTI YBC

Individual Initials LG

computer disk or tape, shall not relieve the receiving Party of its obligation to preserve the confidentiality of said information if the receiving Party knows, should have known or has reason to know that the information is confidential or proprietary; provided further that the receiving Party shall not be liable for any reasonable, good faith disclosure of such information. Any agreements or other documents memorializing or reflecting the terms of the Parties business relationship shall also be deemed Confidential/Proprietary Information. Each Party acknowledges that the Confidential/Proprietary Information of the other Party is uniquely valuable and competitively-sensitive.

3. **Use and Dissemination.** Neither Party shall use Confidential/Proprietary Information of the other Party for any purpose other than evaluating and negotiating a business relationship between the Parties. Each Party shall restrict internal disclosure of Confidential/Proprietary Information of the other Party to such of its officers, employees and agents, including attorneys, accountants and financial or investment advisors, as have a reasonable need to know such information and shall advise said officers, employees and agents of the obligations assumed by it in this Agreement. Neither Party shall disclose Confidential/Proprietary Information of the other Party to any third party, other than such attorneys, accountants and financial or investment advisors as shall be assisting the Party in evaluating and negotiating the business relationship between the Parties, without the prior written consent of the other Party; provided, however, that either Party may disclose Confidential/Proprietary Information of the other Party to its principal lenders and substantial stock holders without the prior written consent of the other Party so long as such lenders and stock holders have executed a nondisclosure agreement substantially similar to this Agreement. A Party shall not reproduce Confidential/Proprietary Information of the other Party unless necessary to evaluate and explore a business relationship between the Parties, and shall ensure that all such copies, as well as summaries and notes of and other documents and materials containing or referencing, the Confidential/Proprietary Information of the other Party are appropriately marked as such.

4. **Standard of Care.** Each Party shall take all reasonable and necessary steps to prevent the disclosure, unauthorized use or publication of Confidential/Proprietary Information of the other Party and in so doing, shall not use less than the same degree of care it uses with regard to its own proprietary or confidential information, and shall maintain said information in a secure location accessible only by those who are authorized to view it.

5. **Exceptions.** The restrictions on disclosure of Confidential/Proprietary Information shall not apply to (i) information which at the time of disclosure was generally available to the public; (ii) information which subsequent to its disclosure to a Party, is published or otherwise becomes available to the public through any means other than an act or omission of the Party; (iii) information which was previously known to a Party free of any obligation to keep it confidential or which is subsequently developed independently in good faith by the Party; and (iv) information rightfully acquired in good faith from a third party on a non-confidential basis without breach of an agreement to maintain said information in confidence. Notwithstanding anything to the contrary herein, a Party may disclose Confidential/Proprietary Information of the other Party (i) if required to do so by law; or (ii) if ordered to do so by a court or other governmental authority of competent jurisdiction; provided, however, that a Party shall provide the other Party prior written notice of any such disclosure and exercise its best efforts, consistent with sound business practice, both to afford the other Party an opportunity to contest the disclosure and to limit the extent of the disclosure to the maximum extent practicable.

6. **Proprietary.** By disclosing Confidential/Proprietary Information, a Party does not relinquish any proprietary rights and interests, or grant any rights or licenses, in said information. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise conveyed by this Agreement with respect to Confidential or other information. Upon the written request of a Party, the other Party shall promptly return, or, at the sole discretion of the requesting Party, destroy, all Confidential/Proprietary Information of the requesting Party and all

copies thereof, as well as all summaries, notes or other documents, materials or things containing Confidential/Proprietary Information.

7. **Remedies.** In the event a material breach hereof occurs, or is threatened, the nonbreaching Party shall have the right to pursue any and all legal and equitable remedies to which it would be entitled under the law. Each Party hereby agrees and acknowledges that the other Party would be irreparably damaged by the breach of this Agreement, which damage could not be adequately compensated except by specific performance hereof. In the event such a default has occurred or is threatened, it is agreed that the nonbreaching Party shall be entitled to temporary and permanent injunctive relief, including, without limitation, specific performance of this Agreement, without any showing of actual damage or inadequacy of legal remedy or the posting of any bond in any proceeding which may be brought to enforce this Agreement.

8. **Representations and Warranties.** Each Party represents and warrants to the other Party, which representations and warranties shall survive the execution hereof, that it has the power and authority to execute, deliver and perform this Agreement, that its execution and delivery of this Agreement and its performance hereunder have been duly authorized and that this Agreement has been duly executed and delivered by it and is a valid and binding agreement enforceable in accordance with its terms against it. Neither Party is making any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential/Proprietary Information being disclosed to the other Party.

9. **Nonsolicitation.** For a period commencing on the Effective Date and ending on the second anniversary of the termination of this Agreement, neither Party shall directly solicit for employment or hire any person who is now employed by the other Party (or whose activities are dedicated to the other Party).

10. **Termination/Survival.** This Agreement may be terminated upon thirty (30) days' written notice by either Party; provided, however, that the obligations imposed by this Agreement to safeguard and to promptly return or destroy the Confidential/Proprietary Information of the other Party shall survive any termination of this Agreement for a period of three (3) years.

11. **Entire Agreement.** THIS AGREEMENT SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES CONCERNING THE SUBJECT MATTER HEREOF AND SUPERSEDE ALL PRIOR AGREEMENTS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, REGARDING THE SUBJECT MATTER HEREOF. This Agreement may only be amended or modified by written consent of both Parties. The terms, conditions and provisions of this Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective heirs, successors, transferees and assigns.

12. **Miscellaneous.** The waiver of compliance with any of the provisions of this Agreement by a Party shall not be considered an ongoing waiver of such provisions or a waiver of any of the other provision hereof by said Party. Each provision of this Agreement shall be considered severable and if for any reason any provision hereof is determined to be contrary to any existing or future law, rule or regulation of any jurisdiction, such invalidity shall not impair the operation of said provision in any other jurisdiction or any other provisions hereof. All notices and solicitations of consent or approval, and other communications hereunder, shall be in writing; shall be deemed to have been given when delivered by hand, by telecopy (followed by mailed notices as hereinafter provided), by overnight delivery service, with acknowledged receipt, or by United States mail, if sent by registered or certified mail, postage prepaid, return receipt requested, addressed, to a Party at the address set forth for that Party below or such other address as the Party shall have given in writing for such purpose. Neither Party shall assign this

Agreement to any third party without the prior written consent of the other Party, provided, however, that the merger or consolidation of one Party into, or the sale of all or substantially all of the stock or assets of such Party to, a third party shall not be deemed to be an assignment. This Agreement will be governed by internal laws of the State of Nevada, without reference to its choice of law rules. Any action arising out of or related to this Agreement shall be brought in the state or Federal courts located in Washoe County, Nevada and each Party consents to the jurisdiction and venue of such courts.

13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all counterparts taken together shall constitute the agreement of the Parties.

IN WITNESS WHEREOF, the Parties have caused this NONDISCLOSURE AND PROTECTIVE AGREEMENT to be duly executed as of the day and year first above written.

Clear Touch Interactive, Inc.

Individual

By: [Signature]

By: [Signature]

Name: KEONE TRASK

Name: LEO GALLANT

Title: DIRECTOR

By: Tamara Trask

Name: Tamara Trask

Title: Director

Address for Notices

561 Keystone Avenue
Suite 821
Reno, NV 86503

Address for Notices

907 South SUBER RD.
GREENSBORO NC 27650

Russell Young

From: Amy Andrews <aa@cleartouchinteractive.com>
Sent: Wednesday, April 30, 2014 12:30 PM
To: ktrask@encoretg.com
Subject: Touching Base

Hi Keonel I just wanted to touch base with you to see how things are going. First of all, I sent Pam and Russell and update in regards to your current shipments which stated the following:

I just wanted to give you a quick update on your shipments. Your consignment inventory is scheduled to arrive into port on May 3 and should reach your office shortly thereafter. I will provide tracking information once it has reached the states and is on its way to you. As far as PO53175, it is scheduled to arrive into port on May 29. I was hoping for sooner but you never can tell for certain with shipment prep and vessel schedules. Once again, I will provide tracking information once it has reached the states and is on its way to you. Please let me know if you have any additional questions.

How are things going in the sales department? Anything I can be of assistance with? I know Pam had inquired about possibly ordering 55 of the 65" panels here soon and I didn't know what else you may be looking at coming up. It is probably a good idea to get another order in soon due to the length of time in production and shipping.

We are streamlining some things here moving forward to help make things run more seamlessly on your end. We will be implementing some additional pricing discounts with quantity orders that will enable you to have full control of how you wish to allocate those funds whether to increase margin or offer additional customer discounts or marketing, etc. I truly think this will alleviate the headaches of having to not only reconcile every "free stand" or having to come to me for additional things to help out the customer — it will now be all in your hands!

I will get you some additional information soon. Please let me know how I can be of assistance. Thanks!

Amy Andrews
Clear Touch Interactive
Interact Differently
(775) 473-9199 x 708



Russell Young

From: Amy Andrews <aa@cleartouchinteractive.com>
Sent: Friday, May 2, 2014 1:51 PM
To: ktrask@encoretg.com
Subject: Website Generated Lead

Keone

Enclosed is a lead that was submitted via our website. Please acknowledge receipt.

Patrick Farley
Toledo Technology Academy
Toledo Public Schools, OH
pfarley@tps.org
419-671-3900

"I'd like information on pricing and how to order (ie. directly from cleartouch or through a distributor or local rep). Thanks!"

Regards,

Amy Andrews
Clear Touch Interactive
Interact Differently
(775) 473-9199 x 708



From: [Keone Trask](#)
To: garym@tsitouch.com
Subject: Documents
Date: Tuesday, February 26, 2013 9:33:33 AM
Attachments: [Clear Touch Interactive NDA.pdf](#)
[TSI Credit Application.JPG](#)
[TSI Credit Card Signature.JPG](#)
[TSI Credit Card.JPG](#)
[TSI Vendor Application.JPG](#)

Gary –

Please find attached the completed application documentation for Clear Touch Interactive. Additionally, I have enclosed a non-disclosure agreement that will allow us to continue to grow our opportunities with confidentiality. I will be reviewing pricing and creating additional supporting documentation that will allow Clear Touch Interactive to leverage its direct sales partners in bringing the displays to market. Following the review of the prototype and other matters we will begin to commence formal operations. Thank you for your patience as we overcame many obstacles in getting to this point. I look forward to our mutual success.

I will be limitedly available for the balance of this week attending a conference on the west coast. Please do not hesitate to contact me should you have any questions.

Keone



TSI 000885

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From: Keone Trask
To: garym@tsitouch.com
Subject: RE: Clear Touch
Date: Tuesday, March 26, 2013 10:06:49 PM

Gary –

Very impressed with the unboxing today. The finish quality is outstanding compared to overlay usage we have seen in the past.

Couple of items we would like to have considered in pricing – associated white labeling efforts:

- Labeling – Would like to add Clear Touch Interactive resin label or similar (to be provided).
- Documentation – Would like to add Clear Touch Interactive branded instructions including web based software download.
- Shipping Label – Would like to have shipped from Clear Touch Interactive; number of distribution points increased following delivery.

Need additional information regarding warranty for both televisions and glass... noted consumer models are 2 years. Any options for extended warranty or should we shop 3rd party?

I see this market being quickly fluid and we will have to update pricing quarterly throughout production and would be interested in learning about "low price" solutions like plasma... when appropriate.

The dual, 1x2, format is still of interest and makes a compelling talking point right now. Need to revisit, your other email about two independent monitor driven from the same host is interesting!

We will continue to test through the Easter break, locally anyways, and forward any questions to you.

We are still actively setting up Clear Touch Interactive as a business concern and will promptly have payment to you for the prototype!

Our initial distribution partner, Encore, has an order that is anticipated next week for 100 classroom's... potentially a good way to start!

Awaiting upgrades in pricing!

Keone

From: Gary Mundrake [mailto:garym@tsitouch.com]
Sent: Tuesday, March 26, 2013 6:57 AM
To: 'Keone Trask'
Subject: RE: Clear Touch



TSI 000954

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Keone, I will get you updated pricing and new model information. The Sharp 70LE640U went end of life this month. We just received our first buy of next gen 70" units. We are now using the 70LE650U. The unit is about ½" thinner and width and height are about 2" less but viewable is the same.

I will send you new pricing on the 55, 60, 70, and 80 based on cost break points in volume vs arbitrary volume cost break points. Some of the newer models such as the 70" Sharp consumer and 60" LG plasma dropped in price while the NEC commercial units going to LED went up.

I will get you the 60, 70, and 80 first.

Samsung, Sharp, LG, NEC, and Philips are all in some stage of product transition right now. Most touch prices dropped since DSE. Appears to be a run to the bottom between China mfg.

We are integrating a commercial LG 60" 60PA550C plasma. The price is pretty attractive and does not need a cover glass.

Thank you,
Gary

Gary Mundrake
1004 Industrial Park Dr | PO Box 287 | Mt. Braddock, PA 15465
(p) 724-437-3440 | (f) 703-991-8770
garym@tsitouch.com | www.tsitouch.com



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From: Keone Trask [<mailto:kt@cleartouchinteractive.com>]
Sent: Tuesday, March 26, 2013 5:47 AM
To: garym@tsitouch.com
Subject: RE: Clear Touch

Gary –

For clarification –

I am curious about the pricing associated with the previous provided configuration based on the: Sharp 70" 70LE640U Monitor

Also would like to add pricing for a configuration based on the: Sharp 80" 80LE632U Monitor

What displays are you recommending for the dual 55" or dual 60" configuration... previously had

TSI 000955

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reviewed a number of them.

Keone

From: Keone Trask [mailto:kt@cleartouchinteractive.com]
Sent: Tuesday, March 26, 2013 5:25 AM
To: 'garym@tsitouch.com'
Subject: Clear Touch

Gary –

I just wanted to drop a note and let you know that we will be unboxing the unit later this afternoon and look forward to functional testing. You should be receiving payment information shortly as we are wrapping up our administrative setup. The market is poised well and we are establishing part numbers and pricing; accordingly I wanted to inquire about any pricing changes since the submission of pricing in October. I know, especially for the consumer based products, that pricing has fluctuate dramatically following the holiday season. Please let me know of any changes there.

I can say with confidence that we will be placing some initial orders quickly, following functional review, as demand has been generated over the last six months.

I will let you know how we progress today!

Keone

TSI 000956

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From: Keone Trask
To: garym@tsitouch.com
Subject: RE: Near Term Orders
Date: Tuesday, June 04, 2013 5:41:29 PM

Gary -

Through a little miscommunication I have learned that the check that you were expecting has not yet been sent... I am printing it now and sending it in the AM so that you can hopefully get it in before heading to Orlando, FL. I let Rick know that we blocked Thursday evening out so that we could get together...

Sorry about the miscommunication.

Keone

-----Original Message-----

From: Gary Mundrake [mailto:garym@tsitouch.com]
Sent: Friday, May 31, 2013 8:36 AM
To: 'Keone Trask'
Subject: RE: Near Term Orders

Keone, I have attached a generic set-up sheet stripped of our info. If you dress it, add your info, delete, modify etc, we will print and ship with each unit.

Your numbers look great. As soon as you know, let me know and we will get the bezels rolling.

Will see you at infocom. We do not have a booth. Just going for meetings. We are coming in early Wed and out Friday.

I saw the video last week. Good stuff.

We will ship everything white label/CTI branded. No TSItouch marking on anything.

Let me know the Panasonic model when you can.

Thank you,
Gary

Gary Mundrake
1004 Industrial Park Dr | PO Box 287 | Mt. Braddock, PA 15465
(p) 724-437-3440 | (f) 703-991-8770
garym@tsitouch.com | www.tsitouch.com

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-----Original Message-----



TSI 000575

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From: Keone Trask [mailto:kt@cleartouchinteractive.com]
Sent: Thursday, May 30, 2013 8:11 PM
To: garym@tsitouch.com
Subject: RE: Near Term Orders

Fantastic! Can we review the "white label" requirements tomorrow? It is critical to make sure these units do not arrive with anything other than "Clear Touch Interactive" labeling.

Did not expect you to be at Infocomm... but a VERY welcome addition to the conversation. Actually will make it more relevant!

I do know that we have a confirm order for 50 units of the 70" that will come in the first week of June... we are selling about 15 of the existing order into that. Give me another week and we can firm up numbers.

Sales response is coming in very well... as expected and strongly looking at firming up 500 for the balance of the year. Do want to talk about Panasonic option for another opportunity that can increase our volume.

Here is a sales video that has been circulating from our reseller... Encore Technology Group:
<http://www.encoretg.com/interactive-display-clear-touch-4070/#Uafp4kBtjzw>

Please do not respond or comment online per our NDA...

Very much looking forward to meeting with you.

Keone

-----Original Message-----

From: Gary Mundrake [mailto:garym@tsitouch.com]
Sent: Thursday, May 30, 2013 8:02 AM
To: 'Keone Trask'
Subject: RE: Near Term Orders

Keone, Thanks for the status. I fully appreciate the pain of cash flow. I should have a firm ship date either later today or early tomorrow. Rick has mentioned meeting you at Infocomm. I will be there and expect I will be joining you.

If you have any minimum projections of June orders, I will get the bezels in the production queue now.

Thank you,
Gary

Gary Mundrake
1004 Industrial Park Dr | PO Box 287 | Mt. Braddock, PA 15465
(p) 724-437-3440 | (f) 703-991-8770
garym@tsitouch.com | www.tsitouch.com

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TSI 000576

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440

TSItouch LLC.

-----Original Message-----

From: Keone Trask [mailto:kt@cleartouchinteractive.com]

Sent: Thursday, May 30, 2013 6:02 AM

To: garym@tsitouch.com

Subject: RE: Near Term Orders

Gary -

We have moved the funds around necessary and have cleared the bank; what a pin. The draft for \$50,000.00 as partial payment for the recent orders is being sent today.

Junes orders are starting to come together and should have an order forecast shortly. Please let me know if you have any questions.

It looks like we will be visiting with Rick Gordon while attending InfoComm.

Keone

-----Original Message-----

From: Gary Mundrake [mailto:garym@tsitouch.com]

Sent: Thursday, May 09, 2013 2:41 PM

To: kt@cleartouchinteractive.com

Subject: RE: Near Term Orders

Keone, Thanks for the heads up.

Thank you,

Gary

Gary Mundrake

1004 Industrial Park Dr |PO Box 287 |Mt. Braddock, PA 15465

(p) 724-437-3440 |(f) 703-991-8770

garym@tsitouch.com | www.tsitouch.com

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-----Original Message-----

From: kt@cleartouchinteractive.com [mailto:kt@cleartouchinteractive.com]

Sent: Thursday, May 09, 2013 10:00 AM

To: garym@tsitouch.com

Cc: tt@cleartouchinteractive.com

Subject: Near Term Orders

Gary -

I wanted to provide you heads up. The purchase order for 3 70" with 6 points touch is being modified for a total quantity of 25. An additional purchase order for 3 60" with points touch will be submitted with it. These purchase orders will be prepared and submitted by close of business tomorrow.

TSI 000577

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Thank you.

Keone

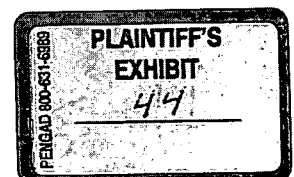
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TSI 000578

Traced Clear Touch Costs of Sales Made to Encore

ClearTouch Vendor (TSI Touch/Shiyan)

PO #	Encore	ClearTouch	PO Date	Invoice #	Invoice #	Encore Cost	ClearTouch Cost	Profit	Document References
N/A	N/A			823121	0000805-IN/CC	6,139.99	5,680.89	459.10	TS1000001, 2013 Detail Financial
43515			5/22/2013	16598	0001090-IN, 0001094-IN	7,001.51	6,544.35	457.16	CT1020, TS1000002, TS1000004, 2013 Detail Financial
43516			5/22/2013	16599	0001092-IN, 0001116-IN	118,320.18	106,156.69	12,163.49	CT1021, TS1000003, TS1000005, 2013 Detail Financial
PO50915			9/5/2013	16670	0001616-IN	124,413.22	108,786.86	15,626.36	CT1022, TS1000006-TS1000008, 2013 Detail Financial
PO51073			9/16/2013	16671	0001618-IN	27,463.98	23,878.68	3,585.30	CT1023, TS1000009, 2013 Detail Financial
PO51207			9/25/2013	16712	0001775-IN	8,265.01	7,262.93	1,002.08	CT1024, TS1000014, 2013 Detail Financial
PO51212			9/25/2013	16696	0001709-IN	5,248.39	4,476.36	772.03	CT1025, TS1000010, 2013 Detail Financial
PO51216			9/25/2013	16697	0001710-IN	5,248.39	4,476.36	772.03	CT1026, TS1000011, 2013 Detail Financial
PO51358			10/2/2013	16698	0001711-IN	4,753.39	4,032.02	721.37	CT1027, TS1000012, 2013 Detail Financial
PO51398			10/7/2013	16687	See wo	4,992.52	3,740.00	1,252.52	2013 Detail Financial
PO51755			11/12/2013	16744	0001906-IN	3,925.26	3,455.94	369.32	CT1028, TS1000017, 2014 Detail Financial
PO51800			11/18/2013	16713	0001797-IN	6,026.64	5,599.11	427.53	CT1029, TS1000015, 2013 Detail Financial
PO51975			12/6/2013	16742	0001866-IN	4,713.36	5,148.88	(435.52)	CT1030, TS1000016, 2014 Detail Financial
PO52001			12/10/2013	16743	0001907-IN	3,505.26	3,300.40	204.86	CT1031, TS1000018, 2014 Detail Financial
PO53175			4/1/2014	16872/16873	SYPI-141230, SYPI-141265	273,139.91	179,916.00	93,223.91	CT1031, TS1000018, 2014 Detail Financial
					Total 2/13/13 - 4/25/2014	603,057.01	472,455.47	130,601.54	
PO53906			5/29/2014	1717C-091214	SYPI-141312-R1	259,282.05	165,820.00	93,462.05	CT1034, 2014 Detail Financial
PO54165			6/17/2014	17397/17397-A	SYPI-141326	492,744.95	340,780.00	151,964.95	CT10924, 2014 Detail Financial
PO54342			7/3/2014	16881	16881	16,763.55	11,220.00	5,543.55	2014 Detail Financial
PO54396			7/10/2014	CT11-18007	SYPI-141355R	216,704.00	150,700.00	66,004.00	CT10837, CT10926, 2014 Detail Financial
PO55004			8/27/2014	CT11-18007	SYPI-141355R	4,860.00	1,980.00	2,880.00	CT10837, CT10926, 2014 Detail Financial
					Total 4/26/2014 - 4/25/2015	990,354.55	670,500.00	319,854.55	



From: Keone Trask
To: garvm@tsitouch.com
Cc: tt@cleartouchinteractive.com
Subject: Interactive Displays - Spartanburg School District 6 SC
Date: Tuesday, February 04, 2014 5:58:33 AM

Gary -

Per our communications yesterday please review the video available at the following link:
http://www.youtube.com/watch?v=o7_xGQHvS-o

This video was recorded by A/V engineers from Encore who visited the end user location to insure all other basic requirements were met: driver, calibration, cleaning, etc.

This visit followed the last incident, perhaps misdiagnosed as related to the glass, that required that all of units to be returned to TSI for service and replacement. Given that this is recurring and isolated to a specific end user I can only assume that this might be related to the Zagtech IR component of the interactive display. Unfortunately, both Encore and the end user are extremely frustrated and making strong demands... the end user following their previous experience is wanting to return the units and Encore is seeking compensation for the labor associated with multiple site visits and freight preparation.

What are our options? I am sure it goes without saying but this is a very significant event that could have very negative consequences.

I will be travelling today through the afternoon to another tradeshow promoting the interactive displays.

Please let me know your thoughts and our course of action...

Keone

Keone Trask
Clear Touch Interactive
Interact Differently
(775) 473-9199



TSI 000931

CONFIDENTIAL

From: **Keone Trask** kt@getcleartouch.com
Subject: RE: RE: Customs Detention
Date: May 14, 2014 at 9:10 PM Asia/Calcutta
To: "'Robin Liang'" liangbin@cvte.cn



Yes - Will update today. We are bringing new CRM system online to assist in managing opportunities. Detail to follow.

BTW - I do not think we told you. Leon County School District, FL has selected Clear Touch Interactive as their panel manufacture... beating Promethean, Smart and Qomo. This was not a formal bid... Encore received a purchase order for 18 units yesterday. These 18 are the beginning of 285 units to be acquired through December. Next year is 600 rooms.

From: Robin Liang [<mailto:liangbin@cvte.cn>]
Sent: Wednesday, May 14, 2014 11:29 AM
To: kt@getcleartouch.com
Subject: Re: RE: Customs Detention

Keone
Let's focus on current projects, make sure we win every bloody battle.
1000pcs is a duable target.
Are you still working on the pipeline list?
Regards

Robin Liang|Global Market BU

Guangzhou Shirui Electronics Co., Ltd. | 192 Kezhu Road, Science Park, P.R.China (510663) | www.cvte.cn
Mobile: (+86)13922196150 | Skype: robin.liang321 | TEL: +86-20-82260169 | FAX: +86-20-82075579

From: **Keone Trask**
Date: 2014-05-14 23:11
To: 'Robin Liang'
Subject: RE: RE: Customs Detention

Our thought is to use the H Series to battle it out at the lower end - to compete with existing panels as pricing pressure and market share are pursued. The H Series panel has performed well against these competitively and if necessary we can push price down to add further pressure.

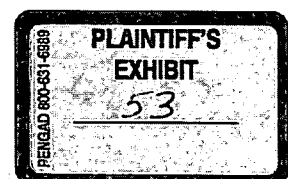
Further, we use the V Series to differentiate ourselves in the market... rise above the pricings pressure with the additional integrated features... and request a small premium for it.

Your risk is minimal for the additional H Series Chipsets...

Keone

Clear Touch Interactive

Keone Trask - Director of Business Development
864-430-0361/ kt@getcleartouch.com
Clear Touch Interactive
561 Keystone Avenue, Suite 821, Reno NV 89503
<http://www.getcleartouch.com>



This e-mail message may contain confidential or legally privileged information and is intended only for the use of the intended recipient(s). Any unauthorized disclosure, dissemination, distribution, copying or the taking of any action in reliance on the information herein is prohibited. E-mails are not secure and cannot be guaranteed to be error free as they can be intercepted, amended, or contain viruses. Anyone who communicates with us by e-mail is deemed to

CONFIDENTIAL

CT 10664

Russell Young

From: Kathy Cruse <kc@cleartouchinteractive.com>
Sent: Tuesday, December 17, 2013 8:56 AM
To: purchasing@encoretg.com
Cc: ktrask@encoretg.com
Subject: Leon School District FL

This email is provided as a confirmation of modified terms and pricing

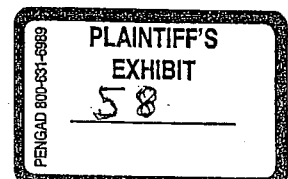
Specifically for Leon School District FL

4 mobile stands will be provided to Encore at no cost as part of a pilot initiative

Thank you

Kathy

Kathy Cruse
Clear Touch Interactive
Interact Differently
(775) 473-9199





6. CTI attempted to work with Zoho to overcome the electronic communications issues. After numerous attempts to resolve the issues, CTI, decided to implement Google Apps for Business in April of 2015.

7. A key part to the implementing of Google Apps for Business was the requirement to migrate existing electronic communications. Google Apps for Business provided tools, the Google Apps Migration Tool, to facilitate the migration of each user account. The Google Apps Migration Tool was used manually, using the IMAP Migration method, to import email from Zoho into Google Apps for Business. Though the use of the IMAP Migration allowed for the import of email, it was later observed that not all emails were successfully migrated to Google Apps for Business. Following the termination of service with Zoho Email, CTI no longer had access to emails not successfully migrated from Zoho to Google Apps for Business.

8. Google Apps for Business has since been rebranded to G Suite of Business. CTI continues to use G Suite for Business to this day and has overcome the majority of electronic communication issues. Since CTI's inception through today, CTI does not have an electronic communications discovery or preservation policy.

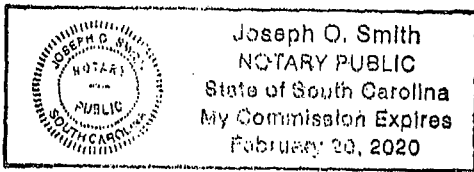
9. From CTI's founding to present, the company did not maintain any email archiving system or preserve emails on backup tapes. Emails are currently stored on the G Suit for Business cloud service.

FURTHER AFFIANT SAYETH NOT.

Keone Trask
Keone Trask

SWORN to before me this 19
day of December, 2016.

Joseph O. Smith
Notary Public for South Carolina
My commission expires: 2/24/20



Hello Robin,

Terri and I am delighted to hear she is doing well. I am sure your parents are very excited. Grandchildren are God's blessing.

How many of the 20 70" pieces may I have? Each of my customers is requesting one for evaluation in their environment.

What type of forecast information are you seeking? I expect to know more information fairly soon but I would probably consider at least a container with a more solid forecast to come in the next few weeks. I did speak to Keone. He is using an older product — what is the CVTE base model? We are going to talk at TCEA however Tony and I have some reservations regarding ClearTouch's ability to scale to the level we need.

Happy New Year,

Dale

Dale Viola

President and Chief Customer Care Officer

Tel: 888.493.0608

M: 985.773.8658

F: 985.893.4897

AXI Education Solutions

www.axiedu.com

"Every great dream begins with a dreamer. Always remember, you have within you the strength, the patience, and the passion to reach for the stars to change the world."

-- Harriet Tubman

From: Robin Liang <liangbin@cvte.cn>

Reply-To: liangbin <liangbin@cvte.cn>

Date: Thursday, January 23, 2014 9:00 PM

To: Dale Viola <dale@axiedu.com>

Subject: 回復: Re: Do you have Time to talk tomorrow?

Hi Dale

So far she feels very well, no much sick feeling, thank you very much for your caring.

Her English name is Cherry, I shared our experience in your house with her, she loves the dogs so much!

😊

Currently the soonest batch of production finish time is around Feb. 20th, by which time we will have 20pcs 65" and 20pcs 70" H+ in stock.

I suggest we set up a forecast and I will hold the samples for you in advance.

If we ship out samples by air, they should arrive at your side within Feb.

I assume average air cost from our warehouse to New Orleans airport is around \$1000/pc.

Besides, I'd like to check the possibility for a 3 party meeting during TCEA.

I will arrive at TCEA by Feb.6th afternoon and hopefully can have a dinner with you, Mike and Keone.

What is your opinion about this?

Await your reply.

Thank you.

Regards

Robin Liang | Global Market BU

Guangzhou Shirui Electronics Co., Ltd. | 192 Kezhu Road, Science Park, P.R.China (510663)

| www.seewo.com

Mobile: (+86)13922196150 | Skype: robin.liang321 | TEL: +86-20-82260169 | FAX: +86-20-82075579

seewo



Jan 25 2014

G
Dale Viola

Wednesday, September 6, 2017 at 3:32:29 PM Central Daylight Time

Subject: Interactive Panels

Date: Saturday, January 25, 2014 at 3:27:37 PM Central Standard Time

From: Keone Trask <keonetask@gmail.com>

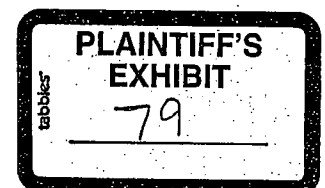
To: viola@me.com <viola@me.com>, kc@cleartouchinteractive.com <kc@cleartouchinteractive.com>

Dale -

It is a pleasure to introduce you to Kathy Cruse with Clear Touch Interactive. Clear Touch Interactive has been a key partner for the last year as we have been witnessing the transition from using projector based displays to LCD based displays. Together we have been working with districts across the southeast to address the needs and requirements of the K20 Education and Commercial markets.

You can review their products on their website at: www.cleartouchinteractive.com

Keone



H
Dale Viola

Jan 25 2014
Wednesday, September 6, 2017 at 3:35:18 PM Central Daylight Time

Subject: FW: Interactive Panels
Date: Saturday, January 25, 2014 at 4:04:53 PM Central Standard Time
From: Kathy Cruse <kc@cleartouchinteractive.com>
To: viola@me.com <viola@me.com>
Attachments: Individual NDA.pdf

Dale

I neglected to hit "reply all"

My apologies

Thank you

Kathy

 Kathy Cruse
Clear Touch Interactive
Interact Differently
(775) 473-9199 x 706

From: Kathy Cruse [mailto:kc@cleartouchinteractive.com]
Sent: Saturday, January 25, 2014 5:03 PM
To: 'Keone Trask'
Subject: RE: Interactive Panels

Dale

It is a pleasure to meet you

While Clear Touch Interactive does not have a formal reseller program we have established a few partners that we have been working with in providing interactive touch panels

We will be developing a formal program in the coming months that addresses key topics

Please find attached a non-disclosure document that will allow us to provide you're a reseller agreement and pricing

Thank you

Kathy

Kathy Cruse
Clear Touch Interactive
Interact Differently
(775) 473-9199 x 706

From: Keone Trask [mailto:keonetask@gmail.com]



Page 1 of 2

Sent: Saturday, January 25, 2014 4:28 PM
To: viola@me.com; kc@cleartouchinteractive.com
Subject: Interactive Panels

Dale -

It is a pleasure to introduce you to Kathy Cruse with Clear Touch Interactive. Clear Touch Interactive has been a key partner for the last year as we have been witnessing the transition from using projector based displays to LCD based displays. Together we have been working with districts across the southeast to address the needs and requirements of the K20 Education and Commercial markets.

You can review their products on their website at: www.cleartouchinteractive.com

Keone

**NONDISCLOSURE AND PROTECTIVE AGREEMENT
TO GOVERN CONFIDENTIAL/PROPRIETARY DATA**

This **NONDISCLOSURE AND PROTECTIVE AGREEMENT** ("Agreement") is hereby made and entered into as of this ____ day of _____, 201_ (the "Effective Date"), by and between Clear Touch Interactive, Inc., a corporation organized under the laws of Nevada, and its affiliates and subsidiaries ("Clear Touch"), and _____, an individual. Clear Touch and _____ hereinafter shall each be referred to as a "Party" and shall collectively be referred to as the "Parties."

RECITALS:

WHEREAS, the Parties intend to jointly explore the possibility of entering into a business relationship;

WHEREAS, the Parties, to facilitate this effort, may exchange information deemed to be confidential and/or proprietary by the disclosing Party, including, without limitation, financial, operational, business and technical data regarding, as well as business, marketing, and sales strategies and plans of, the disclosing Party;

WHEREAS, the Parties desire to preserve and protect the confidentiality of all confidential and/or proprietary information disclosed by the Parties to one another;

NOW THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties, with the intent of being legally bound, do hereby agree as follows:

1. **Purpose.** Each Party hereby acknowledges that it has entered into this Agreement solely to facilitate the joint exploration by the Parties of a potential business relationship, providing a mechanism to safeguard any confidential and proprietary data exchanged by the Parties. This Agreement shall not require either Party to furnish Confidential/Proprietary Information to the other Party, nor shall the furnishing of Confidential/Proprietary Information by a Party to the other Party obligate either Party to evaluate, negotiate or enter into a business relationship with the other Party or preclude either Party from evaluating, negotiating or entering into any business relationship with a third party. No warranties of any kind are given by either party with respect to the information provided to the other.

2. **Confidential/Proprietary Information.** All information disclosed by a Party, its affiliates, subsidiaries or agents, or third parties at the request of the Party, to the other Party, shall be deemed to be "Confidential/Proprietary Information" if it is (a) in written, graphic or other tangible form, including, without limitation, computer discs and tapes and other media which can be converted to readable form, and bears an appropriate legend indicating its confidential and/or proprietary nature, or (b) disclosed orally, or in a form other than in writing or a media which can be converted to readable form, and is identified as confidential and propriety at the time of disclosure, with such designation confirmed in writing within seventy-two (72) hours thereafter; provided, however, that the disclosing Party's failure to place an appropriate legend indicating the confidentiality and/or proprietary nature of information disclosed in written, graphic or other tangible form or to provide written confirmation of the confidential nature of information disclosed orally, or in a form other than in writing or on

computer disk or tape, shall not relieve the receiving Party of its obligation to preserve the confidentiality of said information if the receiving Party knows, should have known or has reason to know that the information is confidential or proprietary; provided further that the receiving Party shall not be liable for any reasonable, good faith disclosure of such information. Any agreements or other documents memorializing or reflecting the terms of the Parties business relationship shall also be deemed Confidential/Proprietary Information. Each Party acknowledges that the Confidential/Proprietary Information of the other Party is uniquely valuable and competitively-sensitive.

3. **Use and Dissemination.** Neither Party shall use Confidential/Proprietary Information of the other Party for any purpose other than evaluating and negotiating a business relationship between the Parties. Each Party shall restrict internal disclosure of Confidential/Proprietary Information of the other Party to such of its officers, employees and agents, including attorneys, accountants and financial or investment advisors, as have a reasonable need to know such information and shall advise said officers, employees and agents of the obligations assumed by it in this Agreement. Neither Party shall disclose Confidential/Proprietary Information of the other Party to any third party, other than such attorneys, accountants and financial or investment advisors as shall be assisting the Party in evaluating and negotiating the business relationship between the Parties, without the prior written consent of the other Party; provided, however, that either Party may disclose Confidential/Proprietary Information of the other Party to its principal lenders and substantial stock holders without the prior written consent of the other Party so long as such lenders and stock holders have executed a nondisclosure agreement substantially similar to this Agreement. A Party shall not reproduce Confidential/Proprietary Information of the other Party unless necessary to evaluate and explore a business relationship between the Parties, and shall ensure that all such copies, as well as summaries and notes of and other documents and materials containing or referencing, the Confidential/Proprietary Information of the other Party are appropriately marked as such.

4. **Standard of Care.** Each Party shall take all reasonable and necessary steps to prevent the disclosure, unauthorized use or publication of Confidential/Proprietary Information of the other Party and in so doing, shall not use less than the same degree of care it uses with regard to its own proprietary or confidential information, and shall maintain said information in a secure location accessible only by those who are authorized to view it.

5. **Exceptions.** The restrictions on disclosure of Confidential/Proprietary Information shall not apply to (i) information which at the time of disclosure was generally available to the public; (ii) information which subsequent to its disclosure to a Party, is published or otherwise becomes available to the public through any means other than an act or omission of the Party; (iii) information which was previously known to a Party free of any obligation to keep it confidential or which is subsequently developed independently in good faith by the Party; and (iv) information rightfully acquired in good faith from a third party on a non-confidential basis without breach of an agreement to maintain said information in confidence. Notwithstanding anything to the contrary herein, a Party may disclose Confidential/Proprietary Information of the other Party (i) if required to do so by law; or (ii) if ordered to do so by a court or other governmental authority of competent jurisdiction; provided, however, that a Party shall provide the other Party prior written notice of any such disclosure and exercise its best efforts, consistent with sound business practice, both to afford the other Party an opportunity to contest the disclosure and to limit the extent of the disclosure to the maximum extent practicable.

6. **Proprietary.** By disclosing Confidential/Proprietary Information, a Party does not relinquish any proprietary rights and interests, or grant any rights or licenses, in said information. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise conveyed by this Agreement with respect to Confidential or other information. Upon the written request of a Party, the other Party shall promptly return, or, at the sole discretion of the requesting Party, destroy, all Confidential/Proprietary Information of the requesting Party and all

copies thereof, as well as all summaries, notes or other documents, materials or things containing Confidential/Proprietary Information.

7. **Remedies.** In the event a material breach hereof occurs, or is threatened, the nonbreaching Party shall have the right to pursue any and all legal and equitable remedies to which it would be entitled under the law. Each Party hereby agrees and acknowledges that the other Party would be irreparably damaged by the breach of this Agreement, which damage could not be adequately compensated except by specific performance hereof. In the event such a default has occurred or is threatened, it is agreed that the nonbreaching Party shall be entitled to temporary and permanent injunctive relief, including, without limitation, specific performance of this Agreement, without any showing of actual damage or inadequacy of legal remedy or the posting of any bond in any proceeding which may be brought to enforce this Agreement.

8. **Representations and Warranties.** Each Party represents and warrants to the other Party, which representations and warranties shall survive the execution hereof, that it has the power and authority to execute, deliver and perform this Agreement, that its execution and delivery of this Agreement and its performance hereunder have been duly authorized and that this Agreement has been duly executed and delivered by it and is a valid and binding agreement enforceable in accordance with its terms against it. Neither Party is making any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential/Proprietary Information being disclosed to the other Party.

9. **Nonsolicitation.** For a period commencing on the Effective Date and ending on the second anniversary of the termination of this Agreement, neither Party shall directly solicit for employment or hire any person who is now employed by the other Party (or whose activities are dedicated to the other Party).

10. **Termination/Survival.** This Agreement may be terminated upon thirty (30) days' written notice by either Party; provided, however, that the obligations imposed by this Agreement to safeguard and to promptly return or destroy the Confidential/Proprietary Information of the other Party shall survive any termination of this Agreement for a period of three (3) years.

11. **Entire Agreement.** **THIS AGREEMENT SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES CONCERNING THE SUBJECT MATTER HEREOF AND SUPERSEDE ALL PRIOR AGREEMENTS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, REGARDING THE SUBJECT MATTER HEREOF.** This Agreement may only be amended or modified by written consent of both Parties. The terms, conditions and provisions of this Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective heirs, successors, transferees and assigns.

12. **Miscellaneous.** The waiver of compliance with any of the provisions of this Agreement by a Party shall not be considered an ongoing waiver of such provisions or a waiver of any of the other provision hereof by said Party. Each provision of this Agreement shall be considered severable and if for any reason any provision hereof is determined to be contrary to any existing or future law, rule or regulation of any jurisdiction, such invalidity shall not impair the operation of said provision in any other jurisdiction or any other provisions hereof. All notices and solicitations of consent or approval, and other communications hereunder, shall be in writing; shall be deemed to have been given when delivered by hand, by telecopy (followed by mailed notices as hereinafter provided), by overnight delivery service, with acknowledged receipt, or by United States mail, if sent by registered or certified mail, postage prepaid, return receipt requested, addressed, to a Party at the address set forth for that Party below or such other address as the Party shall have given in writing for such purpose. Neither Party shall assign this

Agreement to any third party without the prior written consent of the other Party, provided, however, that the merger or consolidation of one Party into, or the sale of all or substantially all of the stock or assets of such Party to, a third party shall not be deemed to be an assignment. This Agreement will be governed by internal laws of the State of Nevada, without reference to its choice of law rules. Any action arising out of or related to this Agreement shall be brought in the state or Federal courts located in Washoe County, Nevada and each Party consents to the jurisdiction and venue of such courts.

13. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all counterparts taken together shall constitute the agreement of the Parties.

IN WITNESS WHEREOF, the Parties have caused this **NONDISCLOSURE AND PROTECTIVE AGREEMENT** to be duly executed as of the day and year first above written.

Clear Touch Interactive, Inc.

Individual

By: _____

By: _____

Name: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Address for Notices

561 Keystone Road
Reno, NV 86503

Address for Notices

Clear Touch Interactive, Inc. Initials _____

Individual Initials _____

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Encore Technology Group, LLC,

Plaintiff,

v.

Keone Trask and Clear Touch Interactive,
Inc. f/k/a Clear Touch Interactive, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-23-05757

DEFENDANTS'
STIPULATIONS OF FACT
AND
ADMISSIONS OF LIABILITY

The above-named Defendants, by and through their undersigned attorneys, hereby stipulate to the following facts and admit liability on the claims noted below:

1. Defendant, Keone Trask worked for Computer Software Innovations (CSI) from 1999 to 2012.
2. Keone Trask incorporated Clear Touch Interactive, LLC in Nevada on August 24, 2012.
3. Keone Trask and his wife Tamara Trask appeared on the initial corporate filings as Managing Members of Clear Touch.
4. Keone Trask incorporated Encore Technology Group, LLC in South Carolina on September 27, 2012.
5. Encore hired Keone Trask as its Chief Business Development Officer on February 18, 2013.
6. Keone Trask signed a Non-Disclosure and Non-Solicitation Agreement with Encore on February 18, 2013. (Exhibit A to the Complaint).
7. Clear Touch filed an Annual List of Managing Members and Registered Agent and State of Business License Application of Clear Touch Interactive, LLC on April 11, 2013 for the



period of August 2012 – August 2013 listing Kathy Cruse as the only managing member of Clear Touch,

8. Kathy Cruse is Keone Trask's mother,

9. Keone Trask facilitated Encore becoming a Reseller of Clear Touch products while he was an employee of Encore,

10. Keone Trask did not disclose his interest in Clear Touch to Encore before the parties entered into the Reseller Agreement or during his employment with Encore.

11. Kathy Cruse sent emails from her Clear Touch email address (ke@cleartouchinteractive.com) to Keone Trask at his Encore email address (ktrask@encoretg.com) before Clear Touch and Encore entered into the Reseller Agreement and during the term of the parties' business relationship. These emails were sent to facilitate the parties entering of the Reseller Agreement and discuss Encore's purchases of Clear Touch products and other matters pertaining to the parties' business relationship.

12. Keone Trask sent emails from his Encore email address to Kathy Cruse at her Clear Touch email address before Clear Touch and Encore entered into the Reseller Agreement and during the parties' business relationship to facilitate the parties entering of the Reseller Agreement and to discuss Encore's purchases of Clear Touch products and other matters pertaining to the parties' business relationship.

13. Encore entered into a Reseller Agreement with Clear Touch on April 24, 2013, making Encore the exclusive reseller of Clear Touch interactive panels and products in seven southeastern states. (Exhibit B to the Complaint).

14. Tamara Trask and Keone Trask are husband and wife.

15. Starting in January 2014, Tamara Trask started communicating with Encore from a Clear Touch email address under the alias "Amy Andrews." This included email correspondence

between Amy Andrews at a Clear Touch email address (aa@cleartouchinteractive.com) and Keone Trask at his Encore email address.

16. Encore terminated Keone Trask on April 24, 2014.
17. Encore continued to sell Clear Touch products after Keone Trask was terminated.
18. Keone Trask immediately went to work for Clear Touch after being terminated from Encore.
19. Keone Trask informed Encore executives that he owned Clear Touch in October 2014. Historical ownership of Clear Touch was not discussed at that time, and therefore it was not disclosed that Keone Trask had owned an interest in Clear Touch during his employment with Encore.
20. Encore continued to do business with Clear Touch until ending the relationship on September 11, 2015.
21. Encore filed suit on September 18, 2015.
22. Defendant, Keone Trask, admits, based on the facts stipulated above and under the applicable law, he breached his duty of loyalty to Encore.
23. Defendant, Keone Trask, admits, based on the facts stipulated above and under the applicable law, he breached his fiduciary duties to Encore.

(signature page to follow)

Respectfully Submitted,

ROE CASSIDY COATES & PRICE, P.A.

s/Joseph O. Smith

Joseph O. Smith, SC Bar # 77475

Joshua J. Hudson, SC Bar # 100311

(1052 North Church Street, 29601)

Post Office Box 10529

Greenville, SC 29603

864.349.2600 - Telephone

864.349.0303 - Facsimile

jsmith@roecassidy.com - Email

jhudson@roecassidy.com - Email

Attorneys for Defendants

Greenville, South Carolina
September 18, 2017

Sandy Crandall

From: efiledonotreply@socourts.org
Sent: Monday, September 18, 2017 4:37 PM
To: Greg English
Cc: Sandy Crandall
Subject: Courtesy NEF RE: 2015CP2305757

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2015CP2305757

Official File Stamp: 09-18-2017 04:36:27 PM
Court: CIRCUIT COURT
Common Pleas
Greenville
Case Caption: Encore Technology Group LLC vs. Keone Trask , defendant, et al
Document(s) Submitted: Memo/Memo in Support
Filed by or on behalf of: Joseph Owen Smith

This notice was automatically generated by the courts auto-notification system.

The following people were served electronically:

Gregory Jacobs English for Encore Technology Group LLC
Joshua Jennings Hudson for Keone Trask et al
Joseph Owen Smith for Keone Trask et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.



STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Encore Technology Group, LLC, )

CA No. 2015-CP-23-05757

VERDICT FORM

Plaintiff, )

vs. )

Keone Trask and Clear Touch )  
Interactive, Inc., f/k/a Clear Touch )  
Interactive, LLC, )  
Defendant. )

I. As to Plaintiff Encore Technology Group, LLC's breach of loyalty claim, against Defendants Keone Trask, we the jury, unanimously find:

X A. For the Plaintiff in the amount of:

THREE-HUNDRED SEVENTY FIVE THOUSAND SEVEN HUNDRED THIRTY-THREE DOLLARS AND FORTY CENTS

(\$ 375,733.40 actual damages)

Note: If you award actual damages you may consider whether to award punitive damages. You may not award punitive damages without an award of actual damages.

X B. For the Plaintiff in the amount of:

ONE-HUNDRED SEVENTY THOUSAND DOLLARS

(\$ 175,000 punitive damages)

II. As to Plaintiff Encore Technology Group, LLC's breach of fiduciary duty claim against Defendant Keone Trask, we the jury, unanimously find:

X A. For the Plaintiff in the amount of:

SIX-HUNDRED SEVENTY FIVE THOUSAND THREE HUNDRED SIXTY ONE

(\$ 675,361 actual damages)

Note: If you award actual damages you may consider whether to award punitive damages. You may not award punitive damages without an award of actual damages.

X B. For the Plaintiff in the amount of:

ONE MILLION FIVE HUNDRED THOUSAND DOLLARS

(\$ 1,500,000 punitive damages)

           C. For the Defendant,

III. As to Plaintiff Encore Technology Group, LLC's breach of contract claim against Defendant Keone Trask, we the jury, unanimously find:

X A. For the Plaintiff in the amount of:

FOUR-HUNDRED TWENTY FOUR THOUSAND, NINE HUNDRED FORTY FIVE  
DOLLARS

(\$ 424,945 actual damages)

       B. For the Defendant.

IV. As to Plaintiff Encore Technology Group, LLC's violation of South Carolina Trade Secrets Act claim against Defendants Keone Trask and Clear Touch Inc., we the jury, unanimously find:

X A. For the Plaintiff in the amount of:

FOUR-HUNDRED TWENTY FOUR THOUSAND, NINE-HUNDRED FORTY FIVE  
DOLLARS

(\$ 424,945 actual damages)

Only if you award the Plaintiff actual damages, please answer the question below:

B. Was the Defendants' conduct in violating the South Carolina Trade Secrets Act committed by the Defendants in a willful, wanton, or reckless disregard of Plaintiff's rights?

X  
YES

        
NO

       C. For the Defendants.

V. As to Plaintiff Encore Technology Group, LLC's tortious interference claim against Clear Touch Inc., we the jury, unanimously find:

  X   A. For the Plaintiff in the amount of:

FOUR-HUNDRED TWENTY FOUR THOUSAND, NINE-HUNDRED FORTY FIVE

(\$ 424,945 actual damages)

Note: If you award actual damages you may consider whether to award punitive damages. You may not award punitive damages without an award of actual damages.

  X   B. For the Plaintiff in the amount of:

FIVE-HUNDRED THOUSAND DOLLARS

(\$ 500,000 punitive damages)

           C. For the Defendant.

VI. As to Plaintiff Encore Technology Group, LLC's breach of contract accompanied by fraudulent act claim against Defendant Keone Trask, we the jury, unanimously find:

X A. For the Plaintiff in the amount of:

ONE-MILLION FOUR-HUNDRED SEVENTY SIX THOUSAND, THIRTY NINE AND FORTY CENTS

(\$ 1,476,039.40 actual damages)

Note: If you award actual damages you may consider whether to award punitive damages. You may not award punitive damages without an award of actual damages.

X B. For the Plaintiff in the amount of:

TWO MILLION DOLLARS

(\$ 2,000,000 punitive damages)

           C. For the Defendant.

VII. As to Plaintiff Encore Technology Group, LLC's defamation claim against Defendant Keone Trask, we the jury, unanimously find:

\_\_\_\_\_ A. For the Plaintiff in the amount of:

\_\_\_\_\_  
(\$ \_\_\_\_\_ actual damages)

☒ B. For the Defendant.

VIII. As to Plaintiff Encore Technology Group, LLC's Unfair Trade Practices Act claim against Defendants Keone Trask and Clear Touch Inc., we the jury, unanimously find:

\_\_\_\_\_ A. For the Plaintiff in the amount of:

\_\_\_\_\_  
(\$ \_\_\_\_\_ actual damages)

Only if you award the Plaintiff actual damages, please answer the question below:

B. Were the Defendants Unfair Trade Practices Committed willfully?

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

X C. For the Defendants.

Awarded this 29 day of SEPTEMBER, 2017.

Mykel E. [Signature]  
Foreperson of the Jury



**ORIGINAL**  
**SUMMARY JUDGEMENT**

| Against Defendant Keong Trank                    |                 |                  |                   |      |
|--------------------------------------------------|-----------------|------------------|-------------------|------|
| CLAIM                                            | ACTUAL DAMAGES  | PUNITIVE DAMAGES | TOTAL DAMAGES     |      |
| Breach of Loyalty                                | \$ 375,733.40   | \$ 175,000.00    | \$ 550,733.40     |      |
| Breach of Fiduciary Duty                         | \$ 675,361.00   | \$ 1,500,000.00  | \$ 2,175,361.00   |      |
| Violation of Trade Secrets                       | \$ 424,945.00   | \$ 849,890.00    | \$ 1,274,835.00   |      |
| Breach of Contract Accompanied by Fraudulent Act | \$ 1,476,039.40 | \$ 2,000,000.00  | \$ 3,476,039.40   |      |
| Subtotal                                         | \$ 2,952,078.80 | \$ 4,524,890.00  | \$ 7,476,968.80   |      |
| Attorney Fees                                    |                 |                  | \$ 345,600.00     |      |
| Costs & Expenses                                 |                 |                  | \$ 94,900.00      |      |
| TOTAL                                            |                 |                  | \$ 7,917,468.80   |      |
| PLUS: Interest Accrued                           | Thru 01/03/18   |                  | \$ 508,887.17     |      |
| Payments to Court                                | Date 01/17/2019 | Amount           | Total Payments \$ | 0.00 |
| ENDING BALANCE                                   |                 |                  | \$ 8,426,355.97   |      |

| Against Defendant Clear Tooth Interactive Inc. |                 |                  |                   |              |
|------------------------------------------------|-----------------|------------------|-------------------|--------------|
| CLAIM                                          | ACTUAL DAMAGES  | PUNITIVE DAMAGES | TOTAL DAMAGES     |              |
| Violation of Trade Secrets                     | \$ 424,945.00   | \$ 849,890.00    | \$ 1,274,835.00   |              |
| Subtotal                                       | \$ 424,945.00   | \$ 849,890.00    | \$ 1,274,835.00   |              |
| Attorney Fees                                  |                 |                  | \$ 345,600.00     |              |
| Costs & Expenses                               |                 |                  | \$ 94,900.00      |              |
| TOTAL                                          |                 |                  | \$ 1,715,335.00   |              |
| PLUS: Interest Accrued                         | Thru 04/17/18   |                  | \$ 0.00           |              |
| Payments to Court                              | Date 04/11/2018 | Amount           | Total Payments \$ | 1,715,335.00 |
| ENDING BALANCE                                 |                 |                  | \$ -              |              |

**REVISED**  
**SUMMARY JUDGEMENT**

| Against Defendant Keong Trank                    |                 |                  |                   |      |
|--------------------------------------------------|-----------------|------------------|-------------------|------|
| CLAIM                                            | ACTUAL DAMAGES  | PUNITIVE DAMAGES | TOTAL DAMAGES     |      |
| Breach of Loyalty                                | \$ 375,733.40   | \$ 175,000.00    | \$ 550,733.40     |      |
| Breach of Fiduciary Duty                         | \$ 675,361.00   | \$ 1,500,000.00  | \$ 2,175,361.00   |      |
| Violation of Trade Secrets                       | \$ 424,945.00   | \$ 849,890.00    | \$ 1,274,835.00   |      |
| Breach of Contract Accompanied by Fraudulent Act | \$ 1,476,039.40 | \$ 2,000,000.00  | \$ 3,476,039.40   |      |
| Subtotal                                         | \$ 2,952,078.80 | \$ 4,524,890.00  | \$ 7,476,968.80   |      |
| Attorney Fees                                    |                 |                  | \$ 345,600.00     |      |
| Costs & Expenses                                 |                 |                  | \$ 94,900.00      |      |
| TOTAL                                            |                 |                  | \$ 7,917,468.80   |      |
| PLUS: Interest Accrued                           | Thru 01/03/18   |                  | \$ 508,887.17     |      |
| Payments to Court                                | Date 01/17/2019 | Amount           | Total Payments \$ | 0.00 |
| ENDING BALANCE                                   |                 |                  | \$ 8,426,355.97   |      |

| Against Defendant Clear Tooth Interactive Inc. |                 |                  |                   |              |
|------------------------------------------------|-----------------|------------------|-------------------|--------------|
| CLAIM                                          | ACTUAL DAMAGES  | PUNITIVE DAMAGES | TOTAL DAMAGES     |              |
| Violation of Trade Secrets                     | \$ 424,945.00   | \$ 849,890.00    | \$ 1,274,835.00   |              |
| Subtotal                                       | \$ 424,945.00   | \$ 849,890.00    | \$ 1,274,835.00   |              |
| Attorney Fees                                  |                 |                  | \$ 345,600.00     |              |
| Costs & Expenses                               |                 |                  | \$ 94,900.00      |              |
| TOTAL                                          |                 |                  | \$ 1,715,335.00   |              |
| PLUS: Interest Accrued                         | Thru 04/17/18   |                  | \$ 0.00           |              |
| Payments to Court                              | Date 04/11/2018 | Amount           | Total Payments \$ | 1,715,335.00 |
| ENDING BALANCE                                 |                 |                  | \$ -              |              |

**Subject:** RE: WIRE TRANSFER CONFIRMATION

**Date:** Thursday, January 3, 2019 at 4:10:57 PM Eastern Standard Time

**From:** Turner, Margaret

**To:** Josh Smith

**CC:** King, Leanda

Josh, I just received confirmation from Wells Fargo that the incoming wire transfer in the amount of \$6,600,769.58 has been received and completed.

This deposit was added to the existing trust account balance \$1,715,335.00 opened April 2018, the balance for this account is now \$8,316,104.58, Wells Fargo will complete the transaction at midnight tonight.

If you need additional confirmation please let me know.

Margaret B. Turner  
Administrative Coordinator  
Greenville Clerk of Court  
Accounting Department  
305 E. North St. Suite #226  
Greenville, S.C. 29601  
864-467-8761  
864-467-8753 (Fax)

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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY  
CIRCUIT COURT

The Hon. R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2019-000530

Jami Powell and Encore Technology Group, LLC,

Of which Encore Technology Group, LLC is the ..... Appellant,

v.

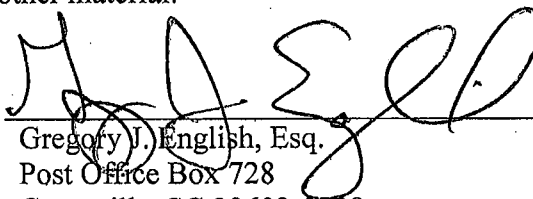
Clear Touch Interactive, Inc. (a Nevada Corporation),

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

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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed  
to be included by any of the parties and not any other material.

  
\_\_\_\_\_  
Gregory J. English, Esq.  
Post Office Box 728  
Greenville, SC 29602-0728  
(864) 242-8200

Attorneys for Appellant

Dated: Oct. 23, 2019

RECEIVED

NOV 27 2019

SC Court of Appeals