THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Circuit Court

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellant Case No. 2018-001444

Encore Technology Group, LLC, ...Respondent/Appellant,

v.

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

AND

Clear Touch Interactive, Inc. f/k/a Clear Touch
Interactive, LLC, ...Appellants/Respondent,

v.

Encore Technology Group, LLC, ...Respondent/Appellant.

RECORD ON APPEAL - VOLUME I

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
ENCORE TECHNOLOGY GROUP, LLC, Plaintiff, vs. KEONE TRASK and CLEAR TOUCH INTERACTIVE, INC., f/k/a CLEAR TOUCH INTERACTIVE, LLC, Defendants.	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-

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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.

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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.

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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:

Attorney	Hours Worked	Rate	Total Billing
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

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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.

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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	+ 419.56
Total:	**$94,900.45**

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,

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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

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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

Actual Damages	**Punitive Damages**	
$ 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)
+1,476,039.00	+2,000,000.00	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				+ 94,900.00
TOTAL JUDGMENT AGAINST TRASK:				**$7,917,468.40**

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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		
424,945.00		500,000.00	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			+ 94,900.00

TOTAL JUDGMENT AGAINST Clear Touch: $1,715,335.00[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.

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[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.

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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.

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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

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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

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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:

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(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.

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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

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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.

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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,

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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,

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

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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

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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

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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.

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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)

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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

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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).

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[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.

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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).

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"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,

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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.");

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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."),

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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.

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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.

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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;

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- 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

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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.

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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

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
ENCORE TECHNOLOGY GROUP, LLC, Plaintiff, vs. KEONE TRASK and CLEAR TOUCH INTERACTIVE, INC., f/k/a CLEAR TOUCH INTERACTIVE, LLC, Defendants.	Case No. 2015-CP-23-05757 **ORDER DENYING DEFENDANTS' RULE 59 MOTION FOR RECONSIDERATION**

This matter came before the Court for a hearing upon Defendants Keone Trask's and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC's ("Defendants") Rule 59 Motion for Reconsideration of the Court's Final Order and Judgment in this case entered April 2, 2018 (the "Order"). 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 considering arguments of counsel, I find that Defendants' motion should be denied. Specifically:

1. Defendants' motion to reconsider and reduce the award of attorneys' fees to Plaintiff is denied. The Court considered all factors and determined the amount of attorneys' fees requested by Plaintiff was reasonable.

2. Defendants' motion to reconsider the Order denying their motion to stay execution of the judgment is denied. The intent of the Court in denying the motion to stay was to explain its rationale and not create law of the case by its findings.

3. Defendants' motion to reconsider the Order regarding the election of remedies is denied. The judgment entered by the Court included all appropriate elections based upon the arguments and evidence presented at trial.

4. Defendants' motion to reconsider the denial of a new trial because of Plaintiff's failure to disclose testimony pursuant to Rule 26(e) regarding Defendant Trask and the destruction of evidence is denied.

5. All other motions associated with Defendants' motion for reconsideration are denied for the reasons set forth in the Order.

IT IS SO ORDERED.

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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	IN THE COURT OF COMMON PLEAS
ENCORE TECHNOLOGY GROUP, LLC, Plaintiff, vs. KEONE TRASK and CLEAR TOUCH INTERACTIVE, INC., f/k/a CLEAR TOUCH INTERACTIVE, LLC, Defendants.	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;

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- 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, SCRCP, 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

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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

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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

ELECTRONICALLY FILED - 2018 Jul 23 11:02 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305757

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

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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

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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;

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(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.

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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.

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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.

ELECTRONICALLY FILED - 2018 Jul 23 11:02 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305757

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.

ELECTRONICALLY FILED - 2018 Jul 23 11:02 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305757

ELECTRONICALLY FILED - 2018 Jul 23 11:02 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305757

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

Electronically signed on 2018-07-23 10:03:46 page 13 of 13

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017 CP-23-05862

CLEAR TOUCH INTERACTIVE, INC, F/K/A CLEAR TOUCH INTERACTIVE, LLC
PLAINTIFF(S)

ENCORE TECHNOLOGY GROUP, LLC
DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

SEE BELOW

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2155 **Judge Code**	**Date**

ELECTRONICALLY FILED - 2018 Jul 31 11:21 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2305862

ELECTRONICALLY FILED - 2018 Jul 31 11:21 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2305862

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered:

THIS MATTER CAME BEFORE ME IN ANDERSON COUNTY ON JULY 30, 2018 ON THE PARTIES' CROSS MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT. THE PARTIES AGREED AT THE OUTSET OF THIS HEARING THAT THIS COURT SHOULD DETERMINE ALL MOTIONS AS CROSS MOTIONS FOR SUMMARY JUDGEMENT.

A. DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT:

DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT SHALL BE GRANTED UNDER THE DOCTRINE OF RES JUDICATA OR ISSUE PRECLUSION.

IN THE PRIOR ACTION BETWEEN THESE PARTIES THE CURRENT PLAINTFF WAS PROVIDED SUFFICENT DISCOVERY TO ENABLE IT TO ASSERT CLAIMS BASED UPON THE CURRENT DEFENDANT'S ALLEGED MISUSE AND DISCLOSURE OF PLAINTIFF'S CONFIDENTIAL INFORMATION. PLAINTIFF IN THE PRIOR SUIT REQUESTED AND WERE GRANTED A CONTINUANCE UPON RECEIPT OF DISCOVERY TO ENABLE IT TO SEEK TO AMEND ITS ANDWER AND COUNTERCLAIM TO ASSERT THE PRESENT CLAIMS. PLAINTIFF DID NOT SEEK TO AMEND ITS PLEADINGS IN THE PRIOR CASE OR TO SEEK AND ADDITIONAL CONTIUANCE BASED UPON THE ALLEGEDLY NEWLY DISCOVERED INFORMATION. PLAINTIFF MADE THE DECISION NOT TO ASSERT THE PRESENT CLAIMS IN THE PRIOR ACTION. ACCORDINGLY, DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT AS TO PLAINTIFF'S CLAIMS FOR 1.) BREACH OF CONTRACT (MUTUAL CONFIDENTIALITY), 2.) VIOLATION OF SC TRADE SECRETS ACT 3.) CONVERSION IS GRANTED IN THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT THE PLAINTIFF COULD HAVE ASSERTED THESE CLAIMS IN THE PRIOR ACTION. PLAINTIFF STIPULATED THAT ITS CURRENT CLAIM FOR BREACH OF THE RESELLER AGREEMENT IS BARRED.

B. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

PLAINTIFF SEEKS AN ORDER GRANTING IT SUMMARY JUDGEMENT AS TO DEFENDANT'S COUNTERCLAIM FOR ABUSE OF PROCESS BY THE FILING OF THIS ACTION. DEFENDANT DID NOT PRESENT A SCINTILLA OF EVIDENCE THAT PLAINTIFF HAD AN ULTERIOR MOTIVE IN THE FILING AND CONTINUATION OF THE PRESENT CASE.

ACCORDINGLY, PLAINTIFF'S MOTION IS GRANTED.

MR. ENGLISH TO PREPARE A FORMAL ORDER AND PROVIDE IT TO THE PLAINTIFF'S COUNSEL PRIOR TO ITS SUBMISSION TO THE COURT.

ELECTRONICALLY FILED - 2018 Jul 31 11:21 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2305862

ELECTRONICALLY FILED - 2018 Jul 31 11:21 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2305862

Greenville Common Pleas

Case Caption: Clear Touch Interactive Inc , plaintiff, et al vs. Encore Technology Group LLC

Case Number: 2017CP2305862

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2018-07-30 13:42:45 page 4 of 4

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017 CP-23-05862

CLEAR TOUCH INTERACTIVE, INC, F/K/A CLEAR TOUCH INTERACTIVE, LLC
PLAINTIFF(S)

ENCORE TECHNOLOGY GROUP, LLC
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION
ORDER AMENDED 7/31/18
SEE BELOW

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2155 Judge Code	Date

ELECTRONICALLY FILED - 2018 Aug 01 8:59 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2305862

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered:

THIS MATTER CAME BEFORE ME IN ANDERSON COUNTY ON JULY 30, 2018 ON THE PARTIES' CROSS MOTION TO DISMISS AND FOR SUMMARY JUDGMENT. THE PARTIES AGREED AT THE OUTSET OF THIS HEARING THAT THIS COURT SHOULD DETERMINE ALL MOTIONS AS CROSS MOTIONS FOR SUMMARY JUDGEMENT.

A. DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT:

DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT SHALL BE GRANTED UNDER THE DOCTRINE OF RES JUDICATA OR ISSUE PRECLUSION.

IN THE PRIOR ACTION BETWEEN THESE PARTIES THE CURRENT PLAINTFF WAS PROVIDED SUFFICENT DISCOVERY TO ENABLE IT TO ASSERT CLAIMS BASED UPON THE CURRENT DEFENDANT'S ALLEGED MISUSE AND DISCLOSURE OF PLAINTIFF'S CONFIDENTIAL INFORMATION. ACCORDINGLY, DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT AS TO PLAINTIFF'S CLAIMS FOR 1.) BREACH OF CONTRACT (MUTUAL CONFIDENTIALITY), 2.) VIOLATION OF SC TRADE SECRETS ACT 3.) CONVERSION IS GRANTED IN THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT THE PLAINTIFF COULD HAVE ASSERTED THESE CLAIMS IN THE PRIOR ACTION.

B. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

PLAINTIFF SEEKS AN ORDER GRATING IT SUMMARY JUDGEMENT AS TO DEFENDANT'S COUNTERCLAIM FOR ABUSE OF PROCESS BY THE FILING OF THIS ACTION. DEFENDANT DID NOT PRESENT A SCINTILLA OF EVIDENCE THAT PLAINTIFF HAD AN ULTERIOR MOTIVE IN THE FILING AND CONTINUATION OF THE PRESENT CASE. ACCORDINGLY, PLAINTIFF'S MOTION IS GRANTED.

PLAINTIFF IS GRANTED SUMMARY JUDGMENT AS TO THE DEFENDANTS CLAIMS UNDER THE RESELLER AGREEMENT. THESE CLAIMS ARE ALSO BARRED BY RES JUDICATA OR ISSUE PRECLUSION.

MR. ENGLISH TO PREPARE A FORMAL ORDER AND PROVIDE IT TO THE PLAINTIFF'S COUNSEL PRIOR TO ITS

ELECTRONICALLY FILED - 2018 Aug 01 8:59 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2305862

ELECTRONICALLY FILED - 2018 Aug 01 8:59 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2305862

Greenville Common Pleas

Case Caption: Clear Touch Interactive Inc , plaintiff, et al vs. Encore Technology Group LLC

Case Number: 2017CP2305862

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2018-07-31 15:15:56 page 4 of 4

ELECTRONICALLY FILED - 2018 Aug 01 8:59 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2305862

ELECTRONICALLY FILED - 2018 Aug 10 9:10 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2305862

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC, Plaintiff, vs. Encore Technology Group, LLC, Defendant.	**ORDER DISMISSING CASE** Case No. 2017-CP-23-05862

This matter came before the Court on the parties' cross-motions to dismiss and for summary judgment. A hearing was held on July 30, 2018, at which counsel for all parties were present. The parties agreed at the outset of the hearing that the Court should determine all motions as cross-motions for summary judgment. For the reasons set forth below, the Court grants both parties' motions for summary judgment and dismisses this case.

A. Defendant Encore Technology Group, LLC's ("Encore") Motion for Summary Judgment against Plaintiff Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC ("Clear Touch")

Clear Touch's complaint asserts four causes of action against Encore: (1) breach of contract (Mutual Confidentiality Agreement); (2) breach of contract (Reseller Agreement); (3) violation of the SC Trade Secrets Act; and (4) conversion. The Court finds and concludes that Encore's Motion for Summary Judgment dismissing all causes of action in the complaint should be granted under the doctrine of *res judicata*/issue preclusion. *See, e.g., Roddy v. Wal-Mart Stores East, L.P.*, Op. No. 27783 (S.C. S. Ct. March 14, 2018); *Jaynes v. County of Fairfield*, 303 S.C. 434, 401 S.E.2d 183 (Ct. App. 1991).

The Court presided over a prior action between the parties, Encore Technology Group, LLC vs. Clear Touch Interactive, Inc., f/k/a Clear Touch Interactive, LLC, et al., Case No. 2015-CP-23-05757 (the "Prior Action"), which was fully tried before a jury September 25-29, 2017. Clear Touch admits that the Reseller Agreement was and/or could have been litigated in the Prior Action and therefore that the claims for breach of contract under the Reseller Agreement should be dismissed under the doctrine of *res judicata*, stipulating that its claim for breach of the Reseller Agreement is barred.

Clear Touch argues that evidence of its other claims was not produced sufficiently before trial in the Prior Action to be similarly precluded. In the Prior Action, however, Clear Touch was provided sufficient discovery to enable it to assert claims based upon Encore's alleged misuse and disclosure of Clear Touch's confidential information by May 31, 2017. Clear Touch requested and was granted a four-week continuance of the trial, from August 28 to September 25, 2017, following receipt of the subject discovery so that it could have sought to amend its Answer to assert the present claims as counterclaims. Clear Touch, however, did not seek to amend its pleadings in the Prior Action or seek an additional continuance based upon allegedly newly discovered information. Instead, Clear Touch made the decision not to assert the present claims in the Prior Action, even though they were mandatory counterclaims under Rule 13, SCRCP.

There is no genuine issue of material fact that Clear Touch could have asserted its claims in this action in the Prior Action and that they were logically related to the claims in the Prior Action. For the foregoing reasons, Encore's Motion for Summary Judgment is granted, so that not only Clear Touch's claim for breach of the Reseller Agreement, but also its claims for breach

ELECTRONICALLY FILED - 2018 Aug 10 9:10 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2305862

of the Mutual Confidentiality Agreement, violation of the SC Trade Secrets Act, and conversion are dismissed.

B. Clear Touch's Motion for Summary Judgment against Encore

Clear Touch seeks an order granting it summary judgment as to Encore's counterclaims, including (1) breach of contract (Reseller Agreement), (2) breach of contract accompanied by a fraudulent act, and (3) abuse of process by the filing of this action. For the same reasons as set forth above, the doctrine of *res judicata* bars the assertion of Encore's claims for breach of contract and breach of contract accompanied by a fraudulent act in this action, because those claims could have been litigated in the Prior Action. Moreover, Encore did not present any evidence that Clear Touch had an ulterior motive in the filing and continuation of the present action, so that the counterclaim for abuse of process should also be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that both Encore's and Clear Touch's motions for summary judgment are granted, and that this action, including all claims and counterclaims that were or could have been asserted herein, are dismissed with prejudice.

IT IS SO ORDERED.

ELECTRONICALLY FILED - 2018 Aug 10 9:10 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2305862

ELECTRONICALLY FILED - 2018 Aug 10 9:10 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2305862

Greenville Common Pleas

Case Caption: Clear Touch Interactive Inc , plaintiff, et al vs. Encore Technology Group LLC

Case Number: 2017CP2305862

Type: Order/Dismissal

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
Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC, Plaintiff, vs. Encore Technology Group, LLC, Defendant.	**ORDER DENYING PLAINTIFF'S RULE 59 MOTION FOR RECONSIDERATION** Case No. 2017-CP-23-05862

This matter came before the Court on Plaintiff's Rule 59 Motion for Reconsideration filed August 20, 2018, asking the Court to reconsider its Order Dismissing Case filed August 10, 2018. After considering the motion, the Court finds no reason to reconsider, alter, or amend its Order Dismissing Case.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's Rule 59 Motion for Reconsideration is **DENIED**.

IT IS SO ORDERED.

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Greenville Common Pleas

Case Caption: Clear Touch Interactive Inc , plaintiff, et al vs. Encore Technology Group LLC

Case Number: 2017CP2305862

Type: Order/Other

S/R. LAWTON McINTOSH

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ELECTRONICALLY FILED - 2018 Dec 06 2:54 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305757

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.

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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

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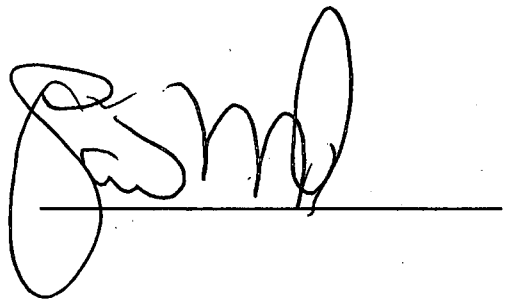
p.m. on November 2, 2018 by transferring those funds back into the Carolina Home Partners' account from which they came. Failure to do so may subject Defendants and/or Tamara Trask to contempt.

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,	)	**ORDER STAYING RECEIVERSHIP**
v.	)	
Keone Trask and Clear Touch Interactive, 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

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$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

Actual Damages		Punitive Damages		Cause of Action
$ 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
+1,476,039.00		+2,000,000.00		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				+ 94,900.00
TOTAL JUDGMENT AGAINST TRASK:				**$7,917,468.40**

Against Defendant Clear Touch Interactive, Inc.

Actual Damages		Punitive Damages	Cause of Action
$ 424,945.00		849,890.00	Violation of Trade Secrets Act
	or		
424,945.00		500,000.00	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:			**$1,715,335.00**

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

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$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

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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.

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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....

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(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

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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.

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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	IN THE COURT OF COMMON PLEAS
ENCORE TECHNOLOGY GROUP, LLC, Plaintiff, vs. KEONE TRASK and CLEAR TOUCH INTERACTIVE, INC., f/k/a CLEAR TOUCH INTERACTIVE, LLC, Defendants.	**COMPLAINT** **(JURY TRIAL DEMANDED)** Case No. 2015-CP-23-05757

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

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.

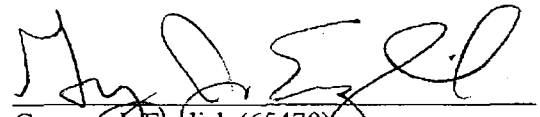
(4) Order Defendants to return to Encore all Encore equipment and assets that are or were in their possession, custody or control;

(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,



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Attorneys for Plaintiff
Encore Technology Group, LLC

September 18, 2015

The Plaintiff respectfully requests a jury trial.

EXHIBIT A

encore
technology group

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 KEVIN 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.

Exhibit A

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.

encore
technology group

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.**

ENCORE TECHNOLOGY GROUP, LLC	KEONU TRASK EMPLOYEE
By: Tammy Summerell [name]	Signed: [signature] [name]
Its: HR [title]	

EXHIBIT B

Clear Touch interactive

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 a 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" 70LE650U 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. Metcalf

EMPLOYEE – [name]

Dated: 5/6/14

ENCORE TECHNOLOGY GROUP, LLC

By: Tammy Summerell

Name: Tammy Summerell

Title: HR

Address: 2000 Wade Hampton Blvd Gville SC 29615

Facsimile:

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER
2015 NOV 13 PM 4:08

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,	)	**DEFENDANT CLEAR TOUCH INTERACTIVE, INC.'S ANSWER**
v.	)	
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
Defendants.	)	

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 at 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
1052 North Church Street
Greenville, S.C. 29601
(864)-349-2600
(864)-349-0303 fax
RMoody@roecassidy.com
JSmith@roecassidy.com
Attorneys for the Defendants

November 11, 2015
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 NOV 13 PM 4 08

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Encore Technology Group, LLC,

Plaintiff,

vs.

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

Defendants.

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	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Encore Technology Group, LLC,	)	C.A. No. 2015-CP-23-05757
Plaintiff,	)	**DEFENDANT TRASK'S ANSWER**
v.	)	
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 NOV 13 PM 4 08

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 at 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.

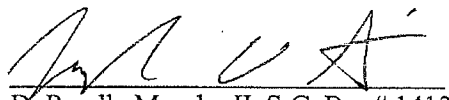
FOR AN THIRTEENTH DEFENSE
(Reservation)

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.



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November 11, 2015
Greenville, South Carolina

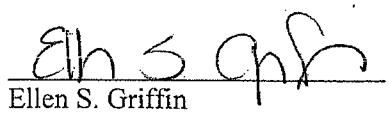
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 NOV 13 PM 4 09

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,	)	
vs.	)	
	)	**CERTIFICATE OF SERVICE**
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
Defendants.	)	

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

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	C.A. No.: 2017-CP-23-_____
	)	
Plaintiff,	)	**COMPLAINT**
	)	**(JURY TRIAL DEMANDED)**
v.	)	
	)	
Encore Technology Group, LLC,	)	
	)	
Defendant.	)	
	)	

Plaintiff Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC (*hereinafter* "Clear Touch" or "Plaintiff"), by and through its attorneys, complaining of Defendant Encore Technology Group, LLC (*hereinafter* "Encore"), would respectfully allege and show unto the Court as follows:

PARTIES, JURISDICTION AND VENUE

1. Clear Touch is a corporation organized and existing under the laws of the State of Nevada with a principal place of business in the State of South Carolina, County of Greenville.

2. 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.

3. This Court has jurisdiction over the parties to and the subject matter of this action.

FACTS

4. From 1999 through the fall of 2012, Keone Trask (*hereinafter* "Trask") worked for Computer Software Innovations ("CSI") in a variety of roles, including Chief Technology Officer charged with evaluating different technologies and solutions for the company to consider selling.

5. Around this time, Trask foresaw a shift in classroom technology away from projectors and whiteboards and to interactive touch panels; therefore, on August 8, 2012, he established Clear Touch, LLC as a Nevada entity with the notation that it may one day be a manufacturer or supplier of interactive touch panel technology. Trask set about identifying potential manufacturers and exploring the Clear Touch opportunity.

6. Clear Touch is currently a supplier of interactive touch panels which it sells to Resellers who then sell the products to end user customers, primarily in the K-12 education market.

7. Shortly after Clear Touch was established, a new opportunity arose due to the acquisition of CSI by a company called Harris. Trask and others at CSI learned that Harris was interested in only a portion of the CSI business and planned to eliminate the technology reseller and cloud services division.

8. Trask and other current and former Encore executives saw an opportunity to spin off that division into a new entity leading to the incorporation of Encore Technology Group, LLC on September 27, 2012.

9. The idea was for Encore to purchase the technology reselling and cloud services division of CSI and continue with that business as a newly minted entity. Trask and others solicited several prospective investors, ultimately resulting in Todd Newman purchasing all ownership interests in Encore and acquiring the technology reselling and cloud services division of CSI as planned.

10. On or about February 18, 2013, Trask began his employment with Encore as its Chief Business Development Officer, a role in which he sold a range of information technology systems and related services for Encore.

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11. Interactive panels were an emerging technology in the spring of 2013, and there were few options on the market. Consequently, Trask brought Clear Touch to Encore as a potential panel supplier.

12. Encore chose to begin selling Clear Touch interactive panel products and entered into a Reseller Agreement with Clear Touch on April 24, 2013, which made it the exclusive Reseller of Clear Touch products in seven southeastern states (the "Territory"). A copy of the Reseller Agreement is attached hereto, marked "Exhibit A," and incorporated herein by reference, the same as if fully set forth in this Complaint.

13. Under the Reseller Agreement, Clear Touch supplied Encore interactive panels and accessories which it in turn sold to end user customers at a markup. In order to facilitate those sales, Encore agreed to use its reasonable efforts to advertise, market, and sell Clear Touch products in the Territory for the mutual benefit of both companies. As a Reseller, Encore necessarily markets and promotes the various products it carries in order to make sales to customers and provide a value to their suppliers.

14. The Reseller Agreement also contained a reciprocal exclusivity provision prohibiting Encore from selling or soliciting sales for any other integrated interactive displays during the term of the Agreement.

15. Following execution of the Reseller Agreement, Encore began to market and sell Clear Touch products within its larger suite of product offerings, primarily in the K-12 education markets within the Territory.

16. Encore's business model and strategy was then and is now to be a Value-Added Reseller and a one-stop shop for the public sector's IT needs.

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17. In order to protect its trade secret, confidential, and/or proprietary information, Clear Touch required that Encore execute a Mutual Confidentiality Agreement, which, among other things, prohibited Encore from disclosing, disseminating or distributing Clear Touch's "Confidential Information" and "Confidential Materials" to any third party; required it use commercially reasonable efforts to protect such information from any unauthorized use, disclosure, copying, dissemination or distribution, and recognized all such information was the property of Clear Touch, among other things. A copy of the Mutual Confidentiality Agreement, entered into on April 9, 2013, is attached hereto, marked "Exhibit B," and incorporated herein by reference, the same as if fully set forth in this Complaint.

18. The Mutual Confidentiality Agreement defines "Confidential Information" to include "any and all confidential, proprietary, and trade secret...information of the Disclosing Party of a technical, non-technical, business or other nature..., that is disclosed to the Receiving Party."

19. The Mutual Confidentiality Agreement defines "Confidential Materials" to include "any software, hardware, memory storage device, diskette, tape, writing prototype, concept, document, or other tangible item that contains any Confidential Information...."

20. As a Reseller, Encore participated in providing end-user customers quotes and bids for Clear Touch products.

21. During the course of their business relationship, Clear Touch provided Encore with Clear Touch Confidential Information, Confidential Materials, and trade secret information and materials, including Clear Touch Reseller Price Lists reflecting the company's confidential reseller pricing. Copies of the Reseller Price Lists are attached hereto, marked "Exhibit C," and incorporated herein by reference, the same as if fully set forth in this Complaint.

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22. Every Reseller Price List provided was marked "Confidential" along with other language clearly designating the information as such and directing it not be disclosed to any third parties.

23. During the term of the Reseller Agreement, Encore was privy to other confidential, proprietary, and/or trade secret information of Clear Touch, including but not limited to historical pricing, customer preferences, and other customer information.

24. As a Clear Touch Reseller, Encore utilized this confidential, proprietary, and trade secret information, including Clear Touch Reseller pricing information to prepare quotes and bids for end-user customers.

25. Clear Touch and Encore worked together to market and sell interactive panel products to end-user customers in the Territory. As part of their arrangement, Clear Touch supplied Encore with its panel products which Encore marked up and sold to end-user customers at a profit to Encore. Clear Touch also provided marketing, technical, and customer support services to Encore and end-user customers for the benefit Encore as a Clear Touch Reseller.

26. On or about April 24, 2014, Trask was terminated from Encore.

27. Shortly thereafter, he went to work for Clear Touch and worked with Encore as a Clear Touch Reseller.

28. Encore did not object to Trask working for Clear Touch or claim it was a violation of his Encore Non-Disclosure and Non-Solicitation Agreement.

29. During the term of the Reseller Agreement, Encore sold other and competing interactive display technologies despite agreeing to "not sell, offer for sale or solicit sales for products of any IID (integrated interactive displays) manufacturer other than" Clear Touch. (*See* Exhibit A at Sec. 2.6).

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30. In October 2014, Clear Touch sent Encore a Modified Reseller Agreement which would allow Encore to sell Clear Touch products in all the lower 48 states on a non-exclusive basis. A copy of the Modified Reseller Agreement is attached hereto, marked "Exhibit D," and incorporated herein by reference, the same as if fully set forth in this Complaint. The Modified Reseller Agreement would take away the parties' exclusivity obligations and expand Encore's sales Territory to the lower 48 states.

31. That same month, Trask disclosed his interest in Clear Touch to Encore leadership.

32. Encore continued to sell Clear Touch products for nearly a year after his disclosure.

33. Encore also sold competing panel products throughout the country and in the several southeastern states in which they formerly could only sell Clear Touch products under the original Reseller Agreement.

34. Upon information and belief, in the spring or summer of 2015, Encore learned that Trask maintained a direct or indirect interest in Clear Touch since the company's inception prior to the establishment of Encore, including when he was an employee of Encore and throughout the two companies' business relationship.

35. Shortly thereafter, Encore decided to terminate its business relationship with Clear Touch.

36. Prior to notifying Clear Touch of this decision, Encore entered into a business relationship with View Sonic, another interactive display panel vendor, and undertook a campaign of converting as many Clear Touch purchase orders, quotes, and/or corporate opportunities as it could in order to position View Sonic to replace Clear Touch and cause as much harm to Clear Touch as possible.

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37. Upon information and belief, during this time and unbeknownst to Clear Touch, Encore contacted customers with outstanding Clear Touch purchase orders, customers who had been previously quoted Clear Touch products, customers who had ordered Clear Touch products in the past, and customers whom Encore believed would continue to do business or want to do business with Clear Touch, and attempted to convert those orders and/or customers to View Sonic and prevent them from purchasing Clear Touch product(s).

38. Upon information and belief, while still under contract with Clear Touch as a Reseller, Encore utilized the confidential, proprietary, and trade secret information, including but not limited to Clear Touch Reseller Price Lists to which it was privy as a Clear Touch Reseller, in order to convert Clear Touch orders and opportunities to its new vendor View Sonic and otherwise market and sell View Sonic panel products and accessories.

39. Encore also engaged in a campaign of spreading fear, uncertainty, and doubt as to the safety of Clear Touch products by claiming it lacked certain safety certifications which it claimed View Sonic had, in order to give actual and prospective customers the false impression Clear Touch products were unsafe or otherwise posed a safety risk to users and the school children whose teachers would use the product in the classroom.

40. At no time did Encore notify Clear Touch that it intended to terminate the Reseller Agreement, was now a Reseller for View Sonic panel products, and was in the process of converting as much Clear Touch business as possible to View Sonic and/or simply away from Clear Touch.

41. On or about September 11, 2015, Encore sent Clear Touch a letter via email terminating their business relationship and filed suit against Mr. Trask and Clear Touch seven days later.

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42. Since that time, Encore has continued to target Clear Touch in the marketplace and unlawfully utilize its confidential, proprietary, and trade secret information, including but not limited to utilizing Clear Touch Reseller Price Lists internally and by providing those lists and/or proprietary Clear Touch pricing information to View Sonic and other third parties, to unfairly compete with Clear Touch.

43. Encore's actions have caused Clear Touch damages for which it is entitled to recover.

FIRST CAUSE OF ACTION
(Breach of Contract – Mutual Confidentiality Agreement)

44. The allegations contained in the preceding paragraphs are incorporated by reference as if fully set forth herein.

45. The Mutual Confidentiality Agreement constitutes a valid and binding contract between Clear Touch and Encore.

46. Clear Touch has fully performed its obligations and all conditions of the Mutual Confidentiality Agreement.

47. Pursuant to the Mutual Confidentiality Agreement, Encore owed and continues to owe Clear Touch certain duties, including but not limited to:

a. Refrain from disclosing, disseminating or distributing to any third party any Confidential Information or Confidential Materials of Clear Touch;

b. Use commercially reasonable efforts to protect Clear Touch's Confidential Information and Confidential Materials;

c. Comply with all applicable laws relating to the use, disclosure, copying, dissemination and distribution of Clear Touch's Confidential Information and Confidential Materials.

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48. Upon information and belief, Encore breached the Mutual Confidentiality Agreement by:

a. Disclosing, disseminating and/or distributing Clear Touch's Confidential Information and Confidential Materials to one or more third parties;

b. Failing to use commercially reasonable efforts to protect Clear Touch's Confidential Information and Confidential Materials; and

c. Not complying with applicable laws relating to the use, disclosure, copying, dissemination and distribution of Clear Touch's Confidential Information and Confidential Materials.

49. Encore's breaches of the Mutual Confidentiality Agreement have caused Clear Touch actual and consequential damages.

SECOND CAUSE OF ACTION
(Breach of Contract – Reseller Agreement)

50. The allegations contained in the preceding paragraphs are incorporated by reference as if fully set forth herein.

51. The Reseller Agreement constitutes a valid and binding contract between Clear Touch and Encore.

52. Clear Touch has fully performed its obligations and all conditions of the Reseller Agreement.

53. Pursuant to the Reseller Agreement, Encore owed Clear Touch certain duties, including but not limited to,

a. refraining from selling, offering to sell or soliciting sales for products of any integrated interactive display product(s) other than Clear Touch in the Territory during the term of the Agreement;

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b. not disclose to any third party any of Clear Touch's proprietary and confidential information about the company's products, services, strategy and analysis, including refraining from disclosing to any third party such information marked CONFIDENTIAL, PROPRIETARY, STRICTLY PRIVATE, or INTERNAL DATA, or which though not so marked, could reasonably be construed as confidential or sensitive; and

c. not use Clear Touch Confidential Information for its own benefit, except as provided under the Reseller Agreement.

54. Upon information and belief, Encore breached the Reseller Agreement by

a. selling other integrated interactive display product(s) in the Territory during the term of the Agreement;

b. disclosing Clear Touch Confidential Information to third parties; and

c. using Clear Touch Confidential Information to Encore's benefit after termination of the Reseller Agreement.

55. Encore's breaches of the Reseller Agreement have caused Clear Touch actual and consequential damages for which Clear Touch is entitled to recover.

THIRD CAUSE OF ACTION
(Violation of the South Carolina Trade Secrets Act)

56. The allegations contained in the preceding paragraphs are incorporated by reference as if fully set forth herein.

57. During the course of their business relationship, Encore was privy to Clear Touch's trade secrets, including its Reseller Price Lists.

58. Both prior to Encore notifying Clear Touch of its termination of the Reseller Agreement and following its termination of that business relationship, Encore utilized Clear

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Touch's trade secrets in an improper and unlawful manner, including by disseminating such trade secrets to one or more of Clear Touch's competitors so that they could utilize that information to submit competing bids and/or quotes to customers and utilizing them to convert Clear Touch orders and opportunities.

59. Following Encore's termination of its business relationship with Clear Touch, Encore wrongfully maintained and utilized Clear Touch's trade secrets in soliciting and serving customers and to unfairly compete with Clear Touch in the market place.

60. Encore's actions were and are a violation of the South Carolina Trade Secrets Act, S.C. Code Ann. § 39-8-10 *et seq.*

61. Encore's actions were willful and deliberate.

62. Encore is liable to Clear Touch for its misappropriation of its trade secrets, and Clear Touch is entitled to all relief available under the Act and common law for such violations, including injunctive relief, actual, consequential and exemplary damages, prejudgment interest, costs, and attorneys' fees.

FOURTH CAUSE OF ACTION
(Conversion)

63. The allegations contained in the preceding paragraphs are incorporated by reference as if fully set forth herein.

64. Encore received confidential, proprietary, and trade secret information, including but not limited to Clear Touch Reseller Price Lists to which it was privy as a Clear Touch Reseller.

65. Encore converted this property to its own use in order to convert Clear Touch orders and opportunities to its new vendor View Sonic and otherwise market and sell View Sonic panel products and accessories.

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66. As a direct and proximate result of the Defendant's conversion of the information, Clear Touch has been significantly damaged and is entitled to recover actual damages from Encore.

PRAYER FOR RELIEF

WHEREFORE, Clear Touch respectfully requests that this Court:

1. Enter judgment in favor of Clear Touch against Plaintiff for actual damages, consequential damages, exemplary damages, and punitive damages, as appropriate, in addition to its reasonable attorneys' fees, the costs of this action, and prejudgment interest; and

2. Order any such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.

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Attorneys for the Plaintiffs

September 12, 2017

Greenville, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	C.A. No.: 2017-CP-23-05862
	)	
Plaintiff,	)	**AMENDED COMPLAINT (JURY TRIAL DEMANDED)**
	)	
v.	)	
	)	
Encore Technology Group, LLC,	)	
	)	
Defendant.	)	
	)	

Plaintiff Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC (*hereinafter* "Clear Touch" or "Plaintiff"), by and through its attorneys, complaining of Defendant Encore Technology Group, LLC (*hereinafter* "Encore"), would respectfully allege and show unto the Court as follows:

PARTIES, JURISDICTION AND VENUE

1. Clear Touch is a corporation organized and existing under the laws of the State of Nevada with a principal place of business in the State of South Carolina, County of Greenville.

2. 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.

3. This Court has jurisdiction over the parties to and the subject matter of this action.

FACTS

4. From 1999 through the fall of 2012, Keone Trask (*hereinafter* "Trask") worked for Computer Software Innovations ("CSI") in a variety of roles, including Chief Technology Officer charged with evaluating different technologies and solutions for the company to consider selling.

5. Around this time, Trask foresaw a shift in classroom technology away from projectors and whiteboards and to interactive touch panels; therefore, on August 8, 2012, he established Clear Touch, LLC as a Nevada entity with the notation that it may one day be a manufacturer or supplier of interactive touch panel technology. Trask set about identifying potential manufacturers and exploring the Clear Touch opportunity.

6. Clear Touch is currently a supplier of interactive touch panels which it sells to Resellers who then sell the products to end user customers, primarily in the K-12 education market.

7. Shortly after Clear Touch was established, a new opportunity arose due to the acquisition of CSI by a company called Harris. Trask and others at CSI learned that Harris was interested in only a portion of the CSI business and planned to eliminate the technology reseller and cloud services division.

8. Trask and other current and former Encore executives saw an opportunity to spin off that division into a new entity leading to the incorporation of Encore Technology Group, LLC on September 27, 2012.

9. The idea was for Encore to purchase the technology reselling and cloud services division of CSI and continue with that business as a newly minted entity. Trask and others solicited several prospective investors, ultimately resulting in Todd Newman purchasing all ownership interests in Encore and acquiring the technology reselling and cloud services division of CSI as planned.

10. On or about February 18, 2013, Trask began his employment with Encore as its Chief Business Development Officer, a role in which he sold a range of information technology systems and related services for Encore.

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11. Interactive panels were an emerging technology in the spring of 2013, and there were few options on the market. Consequently, Trask brought Clear Touch to Encore as a potential panel supplier.

12. Encore chose to begin selling Clear Touch interactive panel products and entered into a Reseller Agreement with Clear Touch on April 24, 2013, which made it the exclusive Reseller of Clear Touch products in seven southeastern states (the "Territory"). A copy of the Reseller Agreement is attached hereto, marked "Exhibit A," and incorporated herein by reference, the same as if fully set forth in this Complaint.

13. Under the Reseller Agreement, Clear Touch supplied Encore interactive panels and accessories which it in turn sold to end user customers at a markup. In order to facilitate those sales, Encore agreed to use its reasonable efforts to advertise, market, and sell Clear Touch products in the Territory for the mutual benefit of both companies. As a Reseller, Encore necessarily markets and promotes the various products it carries in order to make sales to customers and provide a value to their suppliers.

14. The Reseller Agreement also contained a reciprocal exclusivity provision prohibiting Encore from selling or soliciting sales for any other integrated interactive displays during the term of the Agreement.

15. Following execution of the Reseller Agreement, Encore began to market and sell Clear Touch products within its larger suite of product offerings, primarily in the K-12 education markets within the Territory.

16. Encore's business model and strategy was then and is now to be a Value-Added Reseller and a one-stop shop for the public sector's IT needs.

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17. In order to protect its trade secret, confidential, and/or proprietary information, Clear Touch required that Encore execute a Mutual Confidentiality Agreement, which, among other things, prohibited Encore from disclosing, disseminating or distributing Clear Touch's "Confidential Information" and "Confidential Materials" to any third party; required it use commercially reasonable efforts to protect such information from any unauthorized use, disclosure, copying, dissemination or distribution, and recognized all such information was the property of Clear Touch, among other things. A copy of the Mutual Confidentiality Agreement, entered into on April 9, 2013, is attached hereto, marked "Exhibit B," and incorporated herein by reference, the same as if fully set forth in this Complaint.

18. The Mutual Confidentiality Agreement defines "Confidential Information" to include "any and all confidential, proprietary, and trade secret...information of the Disclosing Party of a technical, non-technical, business or other nature..., that is disclosed to the Receiving Party."

19. The Mutual Confidentiality Agreement defines "Confidential Materials" to include "any software, hardware, memory storage device, diskette, tape, writing prototype, concept, document, or other tangible item that contains any Confidential Information...."

20. As a Reseller, Encore participated in providing end-user customers quotes and bids for Clear Touch products.

21. During the course of their business relationship, Clear Touch provided Encore with Clear Touch Confidential Information, Confidential Materials, and trade secret information and materials, including Clear Touch Reseller Price Lists reflecting the company's confidential reseller pricing.

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22. Every Reseller Price List provided was marked "Confidential" along with other language clearly designating the information as such and directing it not be disclosed to any third parties.

23. During the term of the Reseller Agreement, Encore was privy to other confidential, proprietary, and/or trade secret information of Clear Touch, including but not limited to historical pricing, customer preferences, and other customer information.

24. As a Clear Touch Reseller, Encore utilized this confidential, proprietary, and trade secret information, including Clear Touch Reseller pricing information to prepare quotes and bids for end-user customers.

25. Clear Touch and Encore worked together to market and sell interactive panel products to end-user customers in the Territory. As part of their arrangement, Clear Touch supplied Encore with its panel products which Encore marked up and sold to end-user customers at a profit to Encore. Clear Touch also provided marketing, technical, and customer support services to Encore and end-user customers for the benefit Encore as a Clear Touch Reseller.

26. On or about April 24, 2014, Trask was terminated from Encore.

27. Shortly thereafter, he went to work for Clear Touch and worked with Encore as a Clear Touch Reseller.

28. Encore did not object to Trask working for Clear Touch or claim it was a violation of his Encore Non-Disclosure and Non-Solicitation Agreement.

29. During the term of the Reseller Agreement, Encore sold other and competing interactive display technologies despite agreeing to "not sell, offer for sale or solicit sales for products of any IID (integrated interactive displays) manufacturer other than" Clear Touch. (*See* Exhibit A at Sec. 2.6).

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30. In October 2014, Clear Touch sent Encore a Modified Reseller Agreement which would allow Encore to sell Clear Touch products in all the lower 48 states on a non-exclusive basis. A copy of the Modified Reseller Agreement is attached hereto, marked "Exhibit C," and incorporated herein by reference, the same as if fully set forth in this Complaint. The Modified Reseller Agreement would take away the parties' exclusivity obligations and expand Encore's sales Territory to the lower 48 states.

31. That same month, Trask disclosed his interest in Clear Touch to Encore leadership.

32. Encore continued to sell Clear Touch products for nearly a year after his disclosure.

33. Encore also sold competing panel products throughout the country and in the several southeastern states in which they formerly could only sell Clear Touch products under the original Reseller Agreement.

34. Upon information and belief, in the spring or summer of 2015, Encore learned that Trask maintained a direct or indirect interest in Clear Touch since the company's inception prior to the establishment of Encore, including when he was an employee of Encore and throughout the two companies' business relationship.

35. Shortly thereafter, Encore decided to terminate its business relationship with Clear Touch.

36. Prior to notifying Clear Touch of this decision, Encore entered into a business relationship with View Sonic, another interactive display panel vendor, and undertook a campaign of converting as many Clear Touch purchase orders, quotes, and/or corporate opportunities as it could in order to position View Sonic to replace Clear Touch and cause as much harm to Clear Touch as possible.

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37. Upon information and belief, during this time and unbeknownst to Clear Touch, Encore contacted customers with outstanding Clear Touch purchase orders, customers who had been previously quoted Clear Touch products, customers who had ordered Clear Touch products in the past, and customers whom Encore believed would continue to do business or want to do business with Clear Touch, and attempted to convert those orders and/or customers to View Sonic and prevent them from purchasing Clear Touch product(s).

38. Upon information and belief, while still under contract with Clear Touch as a Reseller, Encore utilized the confidential, proprietary, and trade secret information, including but not limited to Clear Touch Reseller Price Lists to which it was privy as a Clear Touch Reseller, in order to convert Clear Touch orders and opportunities to its new vendor View Sonic and otherwise market and sell View Sonic panel products and accessories.

39. Encore also engaged in a campaign of spreading fear, uncertainty, and doubt as to the safety of Clear Touch products by claiming it lacked certain safety certifications which it claimed View Sonic had, in order to give actual and prospective customers the false impression Clear Touch products were unsafe or otherwise posed a safety risk to users and the school children whose teachers would use the product in the classroom.

40. At no time did Encore notify Clear Touch that it intended to terminate the Reseller Agreement, was now a Reseller for View Sonic panel products, and was in the process of converting as much Clear Touch business as possible to View Sonic and/or simply away from Clear Touch.

41. On or about September 11, 2015, Encore sent Clear Touch a letter via email terminating their business relationship and filed suit against Mr. Trask and Clear Touch seven days later.

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42. Since that time, Encore has continued to target Clear Touch in the marketplace and unlawfully utilize its confidential, proprietary, and trade secret information, including but not limited to utilizing Clear Touch Reseller Price Lists internally and by providing those lists and/or proprietary Clear Touch pricing information to View Sonic and other third parties, to unfairly compete with Clear Touch.

43. Encore's actions have caused Clear Touch damages for which it is entitled to recover.

FIRST CAUSE OF ACTION
(Breach of Contract – Mutual Confidentiality Agreement)

44. The allegations contained in the preceding paragraphs are incorporated by reference as if fully set forth herein.

45. The Mutual Confidentiality Agreement constitutes a valid and binding contract between Clear Touch and Encore.

46. Clear Touch has fully performed its obligations and all conditions of the Mutual Confidentiality Agreement.

47. Pursuant to the Mutual Confidentiality Agreement, Encore owed and continues to owe Clear Touch certain duties, including but not limited to:

a. Refrain from disclosing, disseminating or distributing to any third party any Confidential Information or Confidential Materials of Clear Touch;

b. Use commercially reasonable efforts to protect Clear Touch's Confidential Information and Confidential Materials;

c. Comply with all applicable laws relating to the use, disclosure, copying, dissemination and distribution of Clear Touch's Confidential Information and Confidential Materials.

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48. Upon information and belief, Encore breached the Mutual Confidentiality Agreement by:

a. Disclosing, disseminating and/or distributing Clear Touch's Confidential Information and Confidential Materials to one or more third parties;

b. Failing to use commercially reasonable efforts to protect Clear Touch's Confidential Information and Confidential Materials; and

c. Not complying with applicable laws relating to the use, disclosure, copying, dissemination and distribution of Clear Touch's Confidential Information and Confidential Materials.

49. Encore's breaches of the Mutual Confidentiality Agreement have caused Clear Touch actual and consequential damages.

SECOND CAUSE OF ACTION
(Breach of Contract – Reseller Agreement)

50. The allegations contained in the preceding paragraphs are incorporated by reference as if fully set forth herein.

51. The Reseller Agreement constitutes a valid and binding contract between Clear Touch and Encore.

52. Clear Touch has fully performed its obligations and all conditions of the Reseller Agreement.

53. Pursuant to the Reseller Agreement, Encore owed Clear Touch certain duties, including but not limited to,

a. refraining from selling, offering to sell or soliciting sales for products of any integrated interactive display product(s) other than Clear Touch in the Territory during the term of the Agreement;

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b. not disclose to any third party any of Clear Touch's proprietary and confidential information about the company's products, services, strategy and analysis, including refraining from disclosing to any third party such information marked CONFIDENTIAL, PROPRIETARY, STRICTLY PRIVATE, or INTERNAL DATA, or which though not so marked, could reasonably be construed as confidential or sensitive; and

c. not use Clear Touch Confidential Information for its own benefit, except as provided under the Reseller Agreement.

54. Upon information and belief, Encore breached the Reseller Agreement by

a. selling other integrated interactive display product(s) in the Territory during the term of the Agreement;

b. disclosing Clear Touch Confidential Information to third parties; and

c. using Clear Touch Confidential Information to Encore's benefit after termination of the Reseller Agreement.

55. Encore's breaches of the Reseller Agreement have caused Clear Touch actual and consequential damages for which Clear Touch is entitled to recover.

THIRD CAUSE OF ACTION
(Violation of the South Carolina Trade Secrets Act)

56. The allegations contained in the preceding paragraphs are incorporated by reference as if fully set forth herein.

57. During the course of their business relationship, Encore was privy to Clear Touch's trade secrets, including its Reseller Price Lists.

58. Both prior to Encore notifying Clear Touch of its termination of the Reseller Agreement and following its termination of that business relationship, Encore utilized Clear

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Touch's trade secrets in an improper and unlawful manner, including by disseminating such trade secrets to one or more of Clear Touch's competitors so that they could utilize that information to submit competing bids and/or quotes to customers and utilizing them to convert Clear Touch orders and opportunities.

59. Following Encore's termination of its business relationship with Clear Touch, Encore wrongfully maintained and utilized Clear Touch's trade secrets in soliciting and serving customers and to unfairly compete with Clear Touch in the market place.

60. Encore's actions were and are a violation of the South Carolina Trade Secrets Act, S.C. Code Ann. § 39-8-10 *et seq*.

61. Encore's actions were willful and deliberate.

62. Encore is liable to Clear Touch for its misappropriation of its trade secrets, and Clear Touch is entitled to all relief available under the Act and common law for such violations, including injunctive relief, actual, consequential and exemplary damages, prejudgment interest, costs, and attorneys' fees.

FOURTH CAUSE OF ACTION
(Conversion)

63. The allegations contained in the preceding paragraphs are incorporated by reference as if fully set forth herein.

64. Encore received confidential, proprietary, and trade secret information, including but not limited to Clear Touch Reseller Price Lists to which it was privy as a Clear Touch Reseller.

65. Encore converted this property to its own use in order to convert Clear Touch orders and opportunities to its new vendor View Sonic and otherwise market and sell View Sonic panel products and accessories.

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66. As a direct and proximate result of the Defendant's conversion of the information, Clear Touch has been significantly damaged and is entitled to recover actual damages from Encore.

PRAYER FOR RELIEF

WHEREFORE, Clear Touch respectfully requests that this Court:

1. Enter judgment in favor of Clear Touch against Plaintiff for actual damages, consequential damages, exemplary damages, and punitive damages, as appropriate, in addition to its reasonable attorneys' fees, the costs of this action, and prejudgment interest; and

2. Order any such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.

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Attorneys for the Plaintiffs

September 13, 2017

Greenville, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC, Plaintiff, v. Encore Technology Group, LLC, Defendant.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. No.: 2017-CP-23-05862 **AMENDED COMPLAINT** **(JURY TRIAL DEMANDED)**

Exhibit A

Reseller Agreement dated April 24, 2013

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Exhibit A

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.

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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.

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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 a provide an assumed guarantee of order availability.

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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.

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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.

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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,

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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.

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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

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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.

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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.

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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.

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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.

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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	Russell Young
Authorized Signature	Authorized Signature
Kathy Cruse Treasurer/Member	Russell Young CEO
Print Name and Title	Print Name and Title

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Exhibit A

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

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Exhibit A

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**

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Exhibit A

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.

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Exhibit A

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

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC, Plaintiff, v. Encore Technology Group, LLC, Defendant.	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. No.: 2017-CP-23-05862 **AMENDED COMPLAINT** **(JURY TRIAL DEMANDED)**

Exhibit B

Mutual Confidentiality Agreement dated April 9, 2013

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EXHIBIT B

MUTUAL CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (this "Agreement") is made and entered into as of the date written below (the "Effective Date") by and between the undersigned parties (collectively, the "Parties"). The Parties are or will potentially be engaged in discussions in contemplation or furtherance of entering into a business relationship between them, and, in the course of such discussions, have disclosed or may disclose to one another certain Confidential Information (as defined below). This Agreement is being entered into by the Parties to memorialize their agreement and understanding regarding the confidential and proprietary nature of the Confidential Information. In consideration of the disclosure of Confidential Information by the Parties to one another, and the mutual covenants and promises set forth below, the parties hereby agree as follows:

1. DEFINITIONS. (A) "Disclosing Party" means a party that discloses any of its Confidential Information to the other party under this Agreement.

(B) "Receiving Party" means a party that receives any Confidential Information from the other party under this Agreement.

(C) "Confidential Information" means any and all confidential, proprietary, and trade secret (as defined by the South Carolina Trade Secrets Act) information of the Disclosing Party of a technical, non-technical, business or other nature (including, without limitation, software, hardware, computer programs, technology, data, prototypes, concepts, processes, materials, products, services, designs, methodologies, business plans, pricing, finances, marketing plans, customers, vendors, prospects or other affairs), that is disclosed to the Receiving Party. Confidential Information shall not include information: (i) which is or becomes known publicly through no fault of the Receiving Party; (ii) learned by the Receiving Party from a third party entitled to disclose it; (iii) already known to the Receiving Party before receipt from the Disclosing Party as shown by the Receiving Party's prior records; or (iv) independently developed by the Receiving Party, as shown by the Receiving Party's records, without the use of Confidential Information.

(D) "Confidential Materials" means any software, hardware, memory storage device, diskette, tape, writing prototype, concept, document, or other tangible item that contains any Confidential Information, whether in printed, handwritten, coded, magnetic, electronic, optical, visual, audible, or other form and whether delivered by the Disclosing Party to the Receiving Party or otherwise made available for the Receiving Party's review.

2. RESTRICTIONS. (A) Confidential Information and Confidential Materials are made available to the Receiving Party solely for the purpose of evaluating a potential business relationship with the Disclosing Party. The Receiving Party will not use, disclose, disseminate or distribute to any third party any Confidential Information or Confidential Materials of the Disclosing Party without the prior written consent of the Disclosing Party. At the request of the Disclosing Party, to the extent commercially practicable, the Receiving Party will promptly return to the Disclosing Party, or, at the Disclosing Party's sole option, destroy all Confidential Information and Confidential Materials (including all copies thereof) of the Disclosing Party in the Receiving Party's possession, and will certify in writing to the Disclosing Party that the Receiving Party has returned or destroyed all such items. After such request, the Receiving Party will make no further use of the Confidential Information and Confidential Materials of the Disclosing Party.

(B) The Receiving Party will use commercially reasonable efforts to protect any Confidential Information and Confidential Materials of the Disclosing Party from any unauthorized use, disclosure, copying, dissemination or distribution. Without limiting the foregoing, the Receiving Party will: (i) make Confidential Information and Confidential Materials of the Disclosing Party available only to those of the Receiving Party's employees and agents who have a need to know the same for the purpose specified in Paragraph 2(A), and who have previously agreed in writing to be bound consistent with the provisions of this Agreement; and (ii) not reverse engineer, decompile or disassemble any Confidential Materials of the Disclosing Party.

(C) Notwithstanding anything to the contrary in Paragraphs 2(A) and 2(B), the Receiving Party may disclose or produce any Confidential Information or Confidential Materials of the Disclosing Party if and to the extent required by any court order or governmental action, provided that to the extent permitted by law the Receiving Party gives the Disclosing Party reasonable advance written notice of the same.

(D) All Confidential Information and Confidential Materials of the Disclosing Party are and shall remain the property the Disclosing Party. No right or license, either expressed or implied, under any property right, including patents, patent applications, trademarks, service marks, copyrights, and trade secrets, is granted to the Receiving Party or any other party hereunder, nor is any sale or offer for sale of any kind being made by the Disclosing Party to the Receiving Party hereunder.

(E) In addition to the covenants contained in this Agreement, the Receiving Party will comply with any and all applicable laws relating to the use, disclosure, copying, dissemination and distribution of any Confidential Information or Confidential Materials of the Disclosing Party.

3. MISCELLANEOUS. All Confidential Information and Confidential Materials are made available under this Agreement "AS IS", with all defects, errors, and deficiencies, and without any representation or warranty as to completeness or accuracy. This Agreement relates to Confidential Information and Confidential Materials, that is disclosed to the Receiving Party during the period beginning with the Effective Date, and ending two years thereafter, unless such period of effectiveness is extended by the mutual agreement of the parties, in writing. In the case this Agreement is entered into in connection or support of an agreement with a party for transacting business as a customer or vendor of CSI, the Agreement term shall end two years following the termination of the agreement for transacting business. The parties' respective obligations under this Agreement with respect to any Confidential Information and Confidential Materials will be effective during such period and will survive following such period for so long as such information and materials remain Confidential Information and Confidential Materials as defined in Paragraph 1. If any provision in this Agreement is held invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way. A party's failure to insist on compliance or enforcement of any provision of this Agreement shall not affect the validity or enforceability or constitute a waiver of any rights or remedies such party may have hereunder. This Agreement will in all respects be governed by and construed in accordance with the laws of the State of South Carolina, without reference to its conflicts of law rules. The parties agree that any action arising under or in connection with this Agreement will be brought in the state or federal courts located in Greenville County, South Carolina, and the parties hereby parties agree to submit themselves to the exclusive jurisdiction of said courts. This Agreement contains the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements or understandings between the parties relating to such subject matter. This Agreement may not be modified or amended except by a written instrument duly executed by both parties.

AGREED AND ACCEPTED this 9 day of April, 2013.

ENCORE TECHNOLOGY GROUP, LLC

Signature: [signature]

Name: Chris Powell

Title: CEO

Company Name: Clear Touch Interactive

Signature: Kathy Cruse

Name: Kathy Cruse

Title: Managing Member

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC, Plaintiff, v. Encore Technology Group, LLC, Defendant.	)))))))))))))))	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. No.: 2017-CP-23-05862 **AMENDED COMPLAINT** **(JURY TRIAL DEMANDED)**

Exhibit C

Modified Reseller Agreement
Effective October 1, 2014

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EXHIBIT C

RESELLER AGREEMENT

This Reseller Agreement (the "Agreement") is effective October 1, 2014,

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:

2000 Wade Hampton Boulevard
Suite 210
Greenville, SC 29615

1. APPOINTMENT

1.1 Appointment

Company appoints Reseller and Reseller accepts appointment as a non-exclusive reseller to market, sell, lease, install and service 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.

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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. Non-Exclusive Marketing Arrangement

During the term of this Agreement, Company will be the non-exclusive provider of Interactive Flat Panels ("IFP") to Reseller. Reseller may sell, offer for sale or solicit sales for products of any IFP manufacturer other than Company.

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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 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 8 and 12 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.

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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.

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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 $250,000.00 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.

All purchases are due within 30 days of date of invoice; after which interest charges will be accrued.

6. RETURNED MERCHANDISE

Company will accept returns for defective Products in accordance with the applicable Company 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.

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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,

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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. 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.

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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

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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.

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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.

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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
Attention: Supplier Administration
2000 Wade Hampton Boulevard
Suite 210
Greenville, SC 29615

To Company:

Clear Touch Interactive
Attention: Reseller Administration
561 Keystone Avenue
Suite 821
Reno, NV 89503

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.

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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.

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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

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EXHIBIT C

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:

Continental United States

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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:

Interactive Flat Panel / Interactive Panel

Products discounts identified herein:

Partner	**30.0% discount to MSRP**
Registered Partner	**35.0% discount to MSRP**
Direct Partner	**37.5% discount to MSRP**

Products descriptions identified herein:

Interactive Flat Panel Accessories / Interactive Panel Accessories

Products discounts identified herein:

Quantity Any	**25.0% discount to MSRP**

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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.

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC, Plaintiff, vs. Encore Technology Group, LLC, Defendant.	**ANSWER AND COUNTERCLAIMS** **(JURY TRIAL DEMANDED)** Case No. 2017-CP-23-05862

Defendant Encore Technology Group, LLC ("Encore"), answering the Amended Complaint of the Plaintiff, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. Encore denies each and every allegation of the Amended Complaint except as specifically and expressly admitted herein.

2. Encore admits the allegations of paragraphs 1, 2, 3, and 4 of the Amended Complaint.

3. Encore denies paragraphs 5, 6, 7, 8, and 9 of the Amended Complaint.

4. Encore admits paragraph 10 of the Amended Complaint.

5. In response to paragraphs 11 and 12 of the Amended Complaint, Encore states that Trask used his position as Chief Business Development Officer of Encore to convince Encore to sign the Reseller Agreement dated April 24, 2013 with Clear Touch ("the Reseller Agreement"). Encore denies each and every allegation of those paragraphs to the extent they are inconsistent with the Reseller Agreement, and denies the remaining allegations of those paragraphs.

6. In response to paragraph 13 of the Amended Complaint, Encore states that the Reseller Agreement speaks for itself, and denies all allegations of that Complaint to the extent inconsistent therewith.

7. Encore denies paragraphs 14, 15, 16, 17, 18, and 19 of the Amended Complaint.

8. In response to paragraph 20 of the Amended Complaint, Encore admits that it provided its customers with quotes and bids for Clear Touch products.

9. Encore denies the allegations of paragraphs 21, 22, 23, 24, and 25 of the Amended Complaint.

10. In response to paragraph 26 of the Amended Complaint, Encore states that Trask was terminated on April 25, 2014.

11. Encore denies the allegations of paragraphs 27, 28, and 29 of the Amended Complaint.

12. In response to paragraph 30 of the Amended Complaint, Encore states that Clear Touch sent it a proposed modified reseller agreement that was never executed.

13. Encore denies paragraphs 31, 32, 33, and 34 of the Amended Complaint.

14. In response to paragraph 35 of the Amended Complaint, Encore admits that shortly after it discovered Trask's interest in Clear Touch, it terminated its business relationship with Clear Touch.

15. Encore denies paragraphs 36, 37, 38, 39, and 40 of the Amended Complaint.

16. In response to paragraph 41 of the Amended Complaint, Encore admits that it sent Clear Touch a letter on or about September 11, 2015, terminating the Reseller Agreement and filed suit against Mr. Trask and Clear Touch seven days later.

17. Encore denies paragraphs 42 and 43 of the Amended Complaint.

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18. In response to paragraph 44 of the Amended Complaint, Encore incorporates herein by reference the foregoing paragraphs of this Answer.

19. Encore denies paragraphs 45, 46, 47, 48, and 49 of the Amended Complaint.

20. In response to paragraph 50 of the Amended Complaint, Encore incorporates herein by reference the foregoing paragraphs of this Answer.

21. Encore denies paragraphs 51, 52, 53, 54, and 55 of the Amended Complaint.

22. In response to paragraph 56 of the Amended Complaint, Encore incorporates herein by reference the foregoing paragraphs of this Answer.

23. Encore denies paragraphs 57, 58, 59, 60, 61, and 62 of the Amended Complaint.

24. In response to paragraph 63 of the Amended Complaint, Encore incorporates herein by reference, the foregoing paragraphs of this Answer.

25. Encore denies paragraphs 64, 65, and 66 of the Amended Complaint.

26. Encore denies that Plaintiff is entitled to any relief, and prays that its Amended Complaint be dismissed, with costs to Encore.

FOR A SECOND DEFENSE

27. Encore incorporates herein by reference the foregoing paragraphs of this Answer to the extent consistent herewith.

28. The Amended Complaint, in whole or in part, fails to state facts sufficient to constitute a cause of action, and therefore should be dismissed, in whole or in part.

FOR A THIRD DEFENSE

29. Encore incorporates herein by reference the foregoing paragraphs of this Answer to the extent consistent herewith.

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30. Plaintiff's claims based upon the modified Reseller Agreement are barred by the applicable statutes of frauds.

FOR A FOURTH DEFENSE

31. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

32. To the extent that the modified Reseller Agreement is viewed as a contract, which is denied and acknowledged solely for purpose of this defense, any such contract was subject to the condition that all parties sign a written reseller agreement, which condition was a condition precedent or condition subsequent and which was not fulfilled, and therefore Encore has no obligation to the Plaintiff under the modified Reseller Agreement. Specifically, Encore and Plaintiff failed and refused to sign a written modified Reseller Agreement, such that the parties never came to a meeting of the minds on the material terms of such relationship. Therefore, the necessary condition for a written modified Reseller Agreement never occurred.

FOR A FIFTH DEFENSE

33. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

34. Plaintiff's complaint is barred by the doctrine of waiver in that Plaintiff, by its failure and refusal to sign the necessary modified Reseller Agreements, waived any rights it would otherwise have under it.

FOR A SIXTH DEFENSE

35. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

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36. Plaintiff's claims are barred by the fact that it is the sole cause of any damages it incurred, which damages are denied and referenced solely for purposes of this defense.

FOR A SEVENTH DEFENSE

37. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

38. Plaintiff's claims for damages are barred by its failure to mitigate any damages it incurred, which are denied and referenced solely for purpose of this defense.

FOR AN EIGHTH DEFENSE

39. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

40. Plaintiff's claims for special damages are not stated with sufficient specificity and therefore should be dismissed.

FOR A NINTH DEFENSE

41. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

42. Plaintiff's claims under the Mutual Confidentiality Agreement are barred because it was superseded and replaced by the Reseller Agreement, which constitutes a modification and/or novation of the Mutual Confidentiality Agreement.

FOR A TENTH DEFENSE

43. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

44. Plaintiff's amended complaint is barred by the applicable statutes of limitations and/or the doctrine of laches.

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FOR AN ELEVENTH DEFENSE

45. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

46. Plaintiff's amended complaint is barred by the doctrines of waiver and/or estoppel, and therefore should be dismissed.

FOR A TWELFTH DEFENSE

47. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

48. Plaintiff's rights and claims against Defendants, if any, are barred by the doctrine of accord and satisfaction.

FOR A THIRTEENTH DEFENSE

49. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

50. Plaintiff's amended complaint is barred by the doctrine of unclean hands.

FOR A FOURTEENTH DEFENSE

51. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

52. To the extent Plaintiff's claims are based upon statements made before the Reseller Agreement, Plaintiff's claims are barred by the parol evidence rule.

FOR A FIFTEENTH DEFENSE

53. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

54. Encore states that, to the extent its employees violated any rights of Plaintiff or otherwise engaged in intentional misconduct, which is denied and stated solely for purpose of this defense, any such statements and/or actions were outside the scope of the employment of such employees so that Encore is not responsible for them.

FOR A SIXTEENTH DEFENSE

55. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

56. Plaintiff's claims are barred by the doctrines of res judicata, collateral estoppel, and/or mandatory counterclaims because they arise from the same transactions and occurrences that were the subject matter of and adjudicated in Case No. 2015-CP-23-05757 (Greenville County, SC) (the "Prior Action") between the parties, for which Encore obtained jury verdicts and judgment against Plaintiff, and therefore the Amended Complaint should be dismissed.

FOR A SEVENTEENTH DEFENSE

57. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

58. To the extent Plaintiffs' Amended Complaint is based upon a provision requiring Encore to purchase exclusively from Plaintiff, such provision is based upon a mutual mistake and scrivener's error, and/or a unilateral mistake wrongfully known and induced by Plaintiff's employee Trask through fraud and/or in breach of his fiduciary duties, duties of loyalty, and employment duties to Encore. Therefore, the Court should reform and strike such provision and dismiss the Amended Complaint to the extent based upon it.

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FOR AN EIGHTEENTH DEFENSE

59. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

60. The Amended Complaint is barred by the competition privilege and therefore should be dismissed.

FOR A NINETEENTH DEFENSE

61. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

62. All of Encore's use of information and sales of products were condoned and/or licensed by Plaintiff and therefore the Amended Complaint should be dismissed.

FOR A TWENTIETH DEFENSE

63. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

64. An award of punitive damages or penalties against Defendant would be a violation of the due process and equal protection clauses of the Fifth and Fourteenth Amendments and the excessive fines and punishment clauses of the Eighth Amendment of the United States Constitution, as well as the applicable corresponding sections of the Constitution of the State of South Carolina, including but not limited to Article I, Section 3, because:

(a) The standards or tests for the imposition of liability for the determination of the amount of punitive damages and penalties in this case are void for vagueness;

(b) Insofar as punitive damages and penalties are not measured against actual injury to a person and are left to the discretion of the court, there is no objective standard that limits the amount of such damages or penalties that may be awarded, so that the amount of punitive damages or penalties that may be awarded is indeterminate at the time of Defendant's alleged conduct; and

(c) Insofar as punitive damages and penalties are not measured against the degree of culpability of Defendant's alleged conduct, they are excessive, cruel, and unusual.

FOR A TWENTY-FIRST DEFENSE
AND BY WAY OF COUNTERCLAIM
(Breach of Contract)

65. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

66. 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.

67. 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.

68. This court has jurisdiction over the parties to and the subject matter of this action.

69. 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").

70. 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.

71. On or about August 24, 2012, unbeknownst to Encore, Trask formed Clear Touch to sell interactive displays (the "Clear Touch Products") to Encore at a profit, which Clear Touch and Trask would pocket without disclosing their conflicting interests to Encore.

72. 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

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an Encore executive to advance the business of his and his family's related interests in Clear Touch rather than in the interests of Encore.

73. On or about April 24, 2013, Trask convinced Encore to enter a Reseller Agreement with Clear Touch, pursuant to which Encore would market, sell, lease and install Clear Touch Products to Encore's customers.

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

75. 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.

76. 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 or suppliers to Clear Touch.

77. 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.

78. On or about May 6, 2014, Trask and Encore entered that certain Severance Agreement and General Release (the "Severance Agreement"), pursuant to which Trask's employment with Encore terminated effective April 25, 2014, and pursuant to which Trask made the other agreements with Encore set forth therein.

79. Both during and after Trask's employment with Encore, in violation of the Reseller Agreement, Clear Touch sold Clear Touch Products in Encore's exclusive territories

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and also entered agreements with other distributors in Encore's markets to compete wrongfully against Encore.

80. Clear Touch 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.

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

82. Clear Touch's actions have caused Encore damages, including but not limited to:

a. All gross profits made by Clear Touch on sales in Encore's exclusive territories and profits lost by Encore on such sales ("Lost Profits"); and

b. Legal fees and expenses.

83. To the extent the Reseller Agreement constitutes a binding contract between Encore and Trask, Encore has fully performed all conditions of the Reseller Agreement.

84. Pursuant to the Reseller Agreement, Clear Touch owed Encore duties to:

a. notify and help Encore take advantage of sales in Encore's exclusive territories;

b. not take Lost Profits from Encore, and

c. otherwise act in good faith and deal fairly with Encore.

85. Clear Touch breached the Reseller Agreement by failing to notify and help Encore take advantage of sales in Encore's exclusive territories, taking the Lost Profits from Encore, and otherwise failing to act in good faith and deal fairly with Encore, thereby causing damage to Encore.

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86. Clear Touch's breaches of the Reseller Agreement have caused Encore actual damages.

87. 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.

FOR A TWENTY-SECOND DEFENSE
AND BY WAY OF COUNTERCLAIM
(Breach of Contract Accompanied by Fraudulent Act)

88. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

89. In addition to the breaches of contract by Clear Touch, 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.

90. Specifically, Clear Touch:

a. Did not disclose Trask's involvement in Clear Touch to Encore while he was an employee of Encore;

b. Did not disclose Trask's transfer of his ownership in Clear Touch to his mother to hide his affiliation;

c. Had Encore sign the Reseller Agreement and had Trask's mother sign for Clear Touch;

d. Had the true suppliers remove their labels from panels and replace them with Clear Touch labels to hide the identities of the true suppliers from Encore;

e. Marked up the prices of the panels from the suppliers to Encore;

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f. Had Encore send its checks to a Nevada post office box and forward them back to South Carolina;

g. Had Trask's wife, Tamara Trask, email Encore as "Amy Andrews";

h. While Trask was at conferences for Encore, had Trask work to sign resellers for Clear Touch by initially leading them to believe Encore was an owner of Clear Touch;

i. Had Trask get 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

j. Had Trask permanently delete incriminating e-mails.

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

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

93. The conduct of Clear Touch was willful and intentional, such that Encore is entitled to punitive damages from Clear Touch for its breaches of contract accompanied by fraudulent acts.

FOR A TWENTY-THIRD DEFENSE
AND BY WAY OF COUNTERCLAIM
(Abuse of Process)

94. Encore incorporates herein by reference the foregoing paragraphs of this answer to the extent consistent herewith.

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95. Plaintiff's filing of this action constitutes an abuse of process in that this action is not taken to redress any injury sustained by Plaintiff as a result of Encore's conduct, but rather was initiated primarily to promote Plaintiff's ulterior purposes to gain objectives not legitimate in the use of the process, specifically attempting to get Encore to settle the Prior Action on terms favorable to Plaintiff and Trask.

96. Plaintiff's filing of this action constitutes an abuse of process in that Plaintiff did not undertake this action in good faith because Plaintiff knew that it was not entitled to the relief asserted in this action.

97. By unjustifiably filing the this action against Encore, Plaintiff committed willful acts in the use of the process not proper in the conduct of the proceeding, aimed at an object not legitimate in the use of the process, and for the primary purpose of achieving a collateral aim.

98. Encore has been harmed in that it has incurred actual and special damages which result directly and immediately from the willful conduct of Plaintiff, including but not limited to costs and attorneys' fees to defend this action, and Plaintiff is liable to Encore for those damages along with the expense of measures reasonably necessary to counteract the abuse of process, including litigation, attorneys' fees and costs in an amount to be determined plus prejudgment interest and punitive damages in an amount to be determined.

99. As a direct result of Plaintiff's abuse of process, Encore is entitled to the aforementioned actual, special, and punitive damages plus prejudgment interest.

WHEREFORE, having fully answered the Amended Complaint and Counterclaimed, Encore prays that this Court enter judgment awarding it the following relief:

1. Dismissing the Amended Complaint with prejudice;
2. Declaring that the Plaintiff is entitled to no recovery from Encore;

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3. Taxing the costs of this action against Plaintiff;

4. Awarding Encore its attorneys' fees;

5. Granting Encore a trial by jury on all issues so triable;

6. Awarding Encore a judgment on the counterclaims against Plaintiff, including actual damages and special damages, plus prejudgment interest and punitive damages in an amount to be determined; and

7. Granting such other relief in favor of Encore as the Court may deem just and appropriate.

Respectfully submitted,

/s Gregory J. English

Gregory J. English (65470)
Rita B. Barker (77600)

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Attorneys for Defendant
Encore Technology Group, LLC

November 16, 2017

The Defendant respectfully requests a jury trial.

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ELECTRONICALLY FILED - 2017 Dec 21 3:11 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2305862

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	C.A. No.: 2017-CP-23-05862
Plaintiff,	)	**CLEAR TOUCH'S ANSWER TO ENCORE'S COUNTERCLAIMS**
v.	)	
Encore Technology Group, LLC,	)	
Defendant.	)	

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

FOR A FIRST DEFENSE

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

2. Clear Touch admits the allegations of Paragraphs 65, 66, 67, 68, 69, and 70.

3. Clear Touch admits that Trask formed the company on or about August 24, 2012 to sell interactive panel displays. Clear Touch denies that the purpose of the company's formation at that time was to sell Encore interactive panel displays as alleged in Paragraph 71. Clear Touch denies the remaing allegations of Paragraph 71 alleging Trask and Clear Touch would "pocket" profits made for its sales of interactive panel products to Encore.

4. Clear Touch denies the allegations of Paragraph 72 as stated.

5. Clear Touch admits that Encore chose to enter a Reseller Agreement with Clear Touch as alleged in Paragraph 73, the terms and conditions of which speak for themselves. Clear

Touch denies any remaining allegations of Paragraph 73 that are inconsistent with the express terms and conditions of that document.

6. Clear Touch admits the allegations of Paragraph 74 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 Encore. Clear Touch denies the remaining allegations of Paragraph 74 as stated.

7. Clear Touch admits the allegations of Paragraph 75 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 75 at stated.

8. Clear Touch admits the allegations of Paragraph 76 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 76.

9. Clear Touch denies the allegations of Paragraph 77 as stated.

10. Clear Touch is without sufficient knowledge or information to respond to the allegations of Paragraph 78 and therefore denies the same.

11. Clear Touch denies the allegations of Paragraph 79 as stated.

12. Clear Touch denies the allegations of Paragraph 80.

13. Clear Touch admits the allegations of Paragraph 81.

14. Clear Touch denies the allegations of Paragraph 82 and its subparts.

15. Clear Touch denies the allegations contained in Paragraph 83.

16. Clear Touch denies the allegations contained in Paragraph 84 and is subparts to the extent they are inconsistent with the express terms and conditions of the Reseller Agreement.

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Further responding, Paragraph 84 contains legal conclusions which require no response, however to the extent a response is required, Clear Touch denies the same.

17. Clear Touch denies the allegations contained in Paragraph 85.

18. Clear Touch denies the allegations contained in Paragraph 86.

19. Clear Touch denies the allegations contained in Paragraph 87.

20. Paragraph 88 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.

21. Clear Touch denies the allegations of Paragraph 89.

22. Clear Touch admits the allegations of Paragraph 90 and its subparts to the extent they allege that:

a. Clear Touch had Kathy Cruse, as the managing member of Clear Touch sign the Reseller Agreement;

b. Had the Clear Touch brand name placed on its products;

c. Sold those products to Encore for more than it purchased them for; and

d. Had Encore send checks to its corporate address in Nevada where the company was formed.

Clear Touch denies the remaining allegations of Paragraph 90 and it subparts as stated.

23. Clear Touch denies the allegations of Paragraph 91.

24. Clear Touch denies the allegations of Paragraph 92.

25. Clear Touch denies the allegations of Paragraph 93.

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26. Paragraph 94 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.

27. Clear Touch denies the allegations of Paragraphs 95-99.

28. Clear Touch denies that Encore is entitled to any relief requested in its Counterclaims.

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

29. Clear Touch is informed and believes that Encore's counterclaims fail to state facts sufficient to set forth a cause of action against it and, therefore, Encore's counterclaims should be dismissed.

FOR A THIRD DEFENSE
(Bad Faith)

30. Encore's actions taken against Clear Touch in asserting its counterclaims have been taken in bad faith.

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

31. Encore's counterclaims are barred by the doctrine of unclean hands, estoppel, and/or waiver.

FOR A FIFTH DEFENSE
(Good Faith)

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

FOR A SIXTH DEFENSE
(Res Judicata)

33. Defendant's counterclaims related to Plaintiff's alleged breach of the Reseller Agreement are barred by the doctrine of Res Judicata and cannot be maintained in this case.

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Therefore, Defendant's Breach of Contract and Breach of Contract Accompanied by Fraudulent Act counterclaims should be dismissed with prejudice.

FOR A SEVENTH DEFENSE
(Set Off)

34. To the extent Encore is entitled to and is awarded damages for its counterclaims, Clear Touch is entitled to a set off for any and all amounts paid to Encore on a judgment in a prior action, the facts and circumstances of which are the same as those underlying Encore's counterclaims.

FOR AN EIGHTH DEFENSE
(Encore's Breach)

35. Encore cannot maintain its breach of contract counterclaims due to its multiple breaches of the Reseller Agreement.

FOR A NINTH DEFENSE
(Failure to Mitigate)

36. Encore's counterclaims are barred as a result of the Defendant's failure to take such reasonable actions necessary to mitigate its damages as required by South Carolina law.

FOR A TENTH DEFENSE
(No Damage)

37. Encore has suffered no cognizable damages and therefore cannot maintain its counterclaims against Clear Touch.

FOR AN ELEVENTH DEFENSE
(Reservation)

38. Clear Touch contends that it cannot fully anticipate all affirmative defenses that may be applicable to Encore's counterclaims based on the conclusory terms used in Encore's counterclaims. Accordingly, Clear Touch expressly reserves the right to assert additional affirmative defenses if and to the extent that such affirmative defenses become applicable.

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WHEREFORE, having fully answered the Defendant's Counterclaims, 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.

s/Joseph O. Smith
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Greenville, South Carolina
December 21, 2017

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ELECTRONICALLY FILED - 2017 Mar 10 3:13 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305757

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Encore Technology Group, LLC,	)	C.A. No. 2015-CP-23-05757
Plaintiff,	)	**MOTION FOR CONTINUANCE OF TRIAL DATE**
vs.	)	
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
Defendants.	)	

COMES NOW the Defendants, Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC (*hereinafter* "Defendants"), and respectfully move this Court for an extension of the pending day certain trial date and for an Order establishing a new day certain date during or after the September 2017 term of court. Defendants make the motion upon the following grounds:

1. Encore sued their former employee, Defendant Keone Trask, and its former business partner, Defendant Clear Touch, on September 18, 2015 setting forth a laundry list of claims against the Defendants, including ones for breach of a non-compete, breach of severance agreement, breach accompanied by fraudulent act, tortious interference, "unjust enrichment/accounting/constructive trust/disgorgement/restitution," defamation, breach of fiduciary duties, violation of the South Carolina Unfair Trade Practices Act and violation of the South Carolina Trade Secrets Act. Defendants filed Answers to the Complaint on November 13, 2015 denying the allegations and setting forth numerous defenses.

2. This matter is currently scheduled for a day certain trial date the week of May 8, 2017. The trial is expected to last the entire week.

3. The parties have been and continue to be actively engaged in long and extensive discovery however given the circumstances, proceeding to trial in May will not be possible.

4. Specifically, throughout this litigation, Plaintiff has pursued extensive and never-ending discovery from the Defendants and every person and entity with which they have done or are currently doing business as well as producing large volumes of documents at the end of December and a 49-page expert report claiming to reflect over seven million dollars in alleged damages just last week.

5. Defendants served their First Set of Interrogatories and First Requests for Production on April 25, 2016.

6. Plaintiff served its written responses to those requests on July 14, 2016 without producing any actual documents. Rather, Plaintiff's written responses said responsive documents would be made available.

7. Plaintiff provided supplemental written responses and a document production on August 8, 2016 which included 509 pages of documents. Plaintiff's supplemental responses and document production failed to rectify many, if not most, of the numerous deficiencies noted by Defendants and were non-responsive or insufficiently responsive to Defendant's discovery requests.

8. Both parties filed motions to compel, which resulted in the Court issuing a November 17, 2016 Discovery Order.

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9. In response to the Discovery Order, on November 21, 2016, Plaintiff produced a CD containing responsive documents ENC 00000510 to ENC 00027245 (26,735 pages of documents).

10. Then on November 22, 2016, Plaintiff produced two additional CDs containing Encore documents ENC 00027246 to ENC 59470 and ENC 00059471 to ENC 95581 (CD 2). This production was in excess of an additional 68,000 pages of documents.

11. Much of this extensive production was in separate pdf files and unusable in numerous respects, including not containing attachments to the emails which comprised the majority of the production.

12. To address these issues, on December 29, 2016, Plaintiff served Defendants with a flash drive containing a supplemental production. These documents were Bates numbered ENC 00027246 through ENC 00202344 and were to replace previously produced ENC 00027246 through ENC 00095581. This production included over 175,000 new pages of documents never before produced to the Defendants. In addition, the documents were produced in over 32,000 individual files.

13. Since receiving the large production on December 29th, Defendants have attempted to get it in a form, format or platform that makes it manageable and reviewable. Those efforts have all been to no avail.

14. The December 29, 2016 document production is so vast and unmanageable the Defendants have had to hire an outside company to review and sort the 202,344 pages of documents, delete the duplicates, and organize in a manner that is usable. This process is costly and will take time to fully complete.

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15. Once Defendants are able to get Plaintiff's production in a manageable form, because of the sheer volume, they expect the organization and comprehension to take at least six to eight weeks.

16. Defendants also provided discovery responses with a document production on April 8, 2016. Since that time, Defendants have made at least five or more supplemental productions per Plaintiff's requests- occurring on November 21, 2016, December 16, 2016, January 4, 2017, February 6, 2017 and the most recently on February 28, 2017-totaling over 22, 000 pages of documents.

17. In addition, beginning in September 2016, Plaintiff began its campaign of issuing fourteen (14) subpoenas to various businesses and individuals with whom Defendants have done or currently do business, including Clear Touch's accountant, factoring company, and new distributor. The last one of those subpoenas was issued December 27, 2016 and responded to in late February 2017. Those far-reaching discovery excursions have resulted in approximately 19,000 pages of documents for review and required Defendants to file numerous motions to challenge them as oppressive and overreaching in the first place.

18. Plaintiff has chosen to make this matter into a complex one with the accompanying amounts of extensive and detailed discovery which requires the corresponding amount of time to review and prepare for use in deposition and at trial.

19. This matter is currently scheduled for a day certain trial date the week of May 8, 2017. The trial is expected to last the entire week.

20. At this time, the parties are still actively engaged in discovery. There are at least seven (7) to nine (9) substantive depositions which still need to be taken, two of which are of experts and another two being 30(b)(6) depositions covering over thirty issues each.

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21. The Defendants were just served with the Plaintiff's expert report on Friday, March 3, 2017 and have not had time to review and assimilate the financial data used to formulate the Plaintiff's demand which seems to be in excess of seven million dollars.

22. Defendants have discussed the need to continue the trial date in order to have adequate time to complete discovery and prepare their defense with the Plaintiff.

23. The Plaintiff has refused to allow adequate time for a defense to be prepared in this case and insists on going to trial in May.

24. Under the circumstances, a May trial date is unrealistic and unreasonably burdensome to Defendants.

Defendants make this Motion pursuant to Rules 45 and 26 of the South Carolina Rules of Civil Procedure, and other applicable law, whether statutory or common, and request that this Court consider any affidavits, memoranda, or other filings submitted in support of this Motion and supplemented at the hearing as well as oral arguments.

WHEREFORE, Defendants respectfully request that this Court grant an order scheduling a new trial date for a term of court in September 2017 or later.

Respectfully submitted,

s/ Joseph O. Smith
Joseph O. Smith, S.C. Bar # 77475
ROE CASSIDY COATES & PRICE, P.A.
1052 North Church Street
Greenville, S.C. 29601
(864)-349-2600
(864)-349-0303 fax
JSmith@roecassidy.com
Attorney for the Defendants

March 10, 2017
Greenville, South Carolina

ELECTRONICALLY FILED - 2017 Mar 10 3:13 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305757

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Encore Technology Group, LLC,	)	C.A. No. 2015-CP-23-05757
Plaintiff,	)	**SECOND MOTION FOR CONTINUANCE OF TRIAL DATE**
vs.	)	
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
Defendants.	)	

COMES NOW the Defendants, Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC (*hereinafter* "Defendants"), and respectfully move this Court for an extension of the pending day certain trial date and for an Order establishing a new day certain date during or after the December 2017 term of court. Defendants make the motion upon the following grounds:

1. Encore sued their former employee, Defendant Keone Trask, and its former business partner, Defendant Clear Touch, on September 18, 2015 setting forth a laundry list of claims against the Defendants, including ones for breach of a non-compete, breach of severance agreement, breach accompanied by fraudulent act, tortious interference, "unjust enrichment/accounting/constructive trust/disgorgement/restitution," defamation, breach of fiduciary duties, violation of the South Carolina Unfair Trade Practices Act and violation of the South Carolina Trade Secrets Act. Defendants filed Answers to the Complaint on November 13, 2015 denying the allegations and setting forth numerous defenses.

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2. This matter is currently scheduled for a day certain trial date the week of August 28, 2017. The trial is expected to last the entire week.

3. The parties have been and continue to be actively engaged in long and extensive discovery however, given the circumstances, proceeding to trial in August will not be possible.

4. Specifically, throughout this litigation, Plaintiff has pursued extensive and never-ending discovery from the Defendants and every person and entity with which they have done or are currently doing business while engaging in discovery tactics that have hindered Defendants' ability to defend the case.

5. Defendants served their First Set of Interrogatories and First Requests for Production on April 25, 2016.

6. Plaintiff served its written responses to those requests on July 14, 2016 without producing any actual documents. Rather, Plaintiff's written responses said responsive documents would be made available.

7. On July 15, 2016 Defendants sent Plaintiff a detailed letter outlining the many deficiencies in the Plaintiff's discovery responses, and requesting Plaintiff supplement its written responses and provide a document production to rectify the many shortcomings.

8. Plaintiff provided supplemental written responses and a document production on August 8, 2016 which failed to rectify many, if not most, of the numerous deficiencies outlined in Defendants' July 15th deficiency letter and were non-responsive or insufficiently responsive to Defendant's discovery requests.

9. Defendants filed a motion to compel seeking several categories of information and documents, including requesting Plaintiff provide a privilege log.

10. Plaintiff also filed a motion to compel against the Defendants for several items.

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11. Those motions resulted in the Court issuing a November 17, 2016 Discovery Order.

12. Each party made a series of productions following issuance of the Discovery Order.

13. Plaintiff made a series of productions on November 21 and 22, 2016, December 29, 2016, February 3, 2017, and April 13, 2017, totaling over 200,000 pages of documents in over 32,000 separate files.

a. In response to the Discovery Order, on November 21, 2016, Plaintiff produced a CD containing responsive documents ENC 00000510 to ENC 00027245 (26,735 pages of documents).

b. Then on November 22, 2016, Plaintiff produced two additional CDs containing Encore documents ENC 00027246 to ENC 59470 and ENC 00059471 to ENC 95581 (CD 2). This production was in excess of an additional 68,000 pages of documents.

c. Much of this extensive production was in separate pdf files and unusable in numerous respects, including not containing attachments to the emails which comprised the majority of the production.

d. To address these issues, on December 29, 2016, Plaintiff served Defendants with a flash drive containing a supplemental production. These documents were Bates numbered ENC 00027246 through ENC 00202344 and were to replace previously produced ENC 00027246 through ENC 00095581. This production included over 175,000 new pages of documents never before produced to the Defendants. In addition, the documents were produced in over 32,000 individual files.

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e. Since receiving the large production on December 29th, Defendants attempted to get it in a form, format or platform that makes it manageable and reviewable. Those efforts were futile given the manner in which documents were produced.

14. Due to the sheer volume and manner in which the documents were produced, including lacking any discernable organization, Defendants had to upload the documents into specialized review software in order to review those files.

15. In order to do this, Defendants' requested and Plaintiff agreed to provide documents bates stamped "ENC 000513- 00202522" in native file format. (*See* Exh. A - Emails re Agreement on Native File Production). Plaintiff provided what was supposed to be all the documents encompassed in that bates range in native format. Those documents were uploaded to specialized review software in order for them to be in a reviewable format.

16. Given those circumstances, Defendants filed their first Motion for Continuance of Trial on March 10, 2017.

17. Plaintiff fiercely opposed that Motion, necessitating Defendants write the Court to address various arguments against continuance set forth by the Plaintiff. (*See* Exh. B - Emails re Plf's Opp. Mot. Cont.).

18. The Court reviewed the parties' filings, held a telephone conference, and granted Defendant's motion, continuing trial and placing it for a date certain the week of August 28, 2017.

19. Developments since that time warrant further continuance of the trial date.

20. Since the Plaintiff's massive document dump was loaded to the review software, Defendants undertook the time-consuming and costly review of those documents.

21. Defendants' review of Plaintiff's supplemental productions revealed serious deficiencies which they addressed in an April 6, 2017 letter to the Plaintiff. (Exh. C).

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22. In response, Plaintiff sent an April 13, 2017 letter along with some additional documents. (Exh. D).

23. That correspondence also included a document labeled "Privilege Log" which was merely four paragraphs of general objections to broad categories of documents. (Exh. E).

24. Defendants' continued attempts to obtain an actual privilege log from the Plaintiff were fiercely resisted. (Exh F - Emails re Document Labeled "Privilege Log").

25. Defendants were forced to file a Second Motion to Compel on April 26, 2017, seeking amongst other things, an actual privilege log from the Plaintiff.

26. A hearing on Defendants' Second Motion to Compel was set for Monday, June 5, 2017.

27. On May 31, 2017, Plaintiff provided a 65-page privilege log and an additional 10,000 plus pages of documents in over 4,000 individual pdf files. (*See* Exh. G - May 31, 2017).

28. The cover letter accompanying this latest production admitted that in the over a year and a half since filing this action ***Plaintiff had not searched for the name of the Defendant company "Clear Touch" when searching for responsive emails***. (Exh. G at 2)(Stating Plaintiff had searched for "ClearTouch" but not "Clear Touch" with the space between the words which is the actual name of the Defendant company.).

29. Defendants have undertaken a review of those 10,000 new pages of materials provided last week; a process which is ongoing and slow due to the manner of production.

30. After receiving the May 31st letter, privilege log and supplemental production, the parties continued to work to rectify issues related to Defendants' Second Motion to Compel through email correspondence and in a phone call the morning of June 5th. (*See* Exh H - Email Exchange re Second Motion to Compel). In that call, they agreed to forego the hearing as they

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believed an agreement on those issues has been reached. Resolution of those issues will take some time however, still leaving Defendants' without a full and sufficient production from the Plaintiff; thereby hindering their ability to proceed with defending the case.

31. That includes hindering the taking of several depositions, including a corporate 30(b)(6) deposition covering over 30 issues and that of Plaintiff's expert. Plaintiff's May 31st supplemental production also added to the list of necessary depositions Defendants must take due to the information revealed in the documents provided last week, which Defendants have been able to review thus far. Those documents also indicate the potential need for Defendants to amend their pleadings to add in a counterclaim against the Plaintiff not previously known due to Plaintiff's withholding of these many relevant documents.

32. Plaintiff informed Defendants it will not have availability for any depositions until the last week of June at the earliest, leaving Defendants approximately two months to take numerous depositions they have not been able to proceed with under the circumstances created by Plaintiff's discovery tactics, including withholding of evidence and not producing a real privilege log until May 31, 2017 and prepare this complex case for a week-long trial.

33. Furthermore, following the Parties' morning call on June 5th, it was revealed that Plaintiff had not included all documents labeled "ENC 000513 - 00202522" in the native file format as agreed. (*See* Exh. A and I - Email 6.5.17). These were the files loaded to the review software and reviewed by the Defendants. The extent of Plaintiff's omission in this regard is unknown at this time, and depending on the degree, could present a serious hindrance to the litigation process. Plaintiff has thus far not taken this issue seriously and is attempting to downplay its significance in order to push the case to trial before giving Defendants adequate evidence and time to defend this case.

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34. This matter is currently scheduled for a day certain trial date the week of August 28, 2017. The trial is expected to last the entire week.

35. Given the circumstances created by Plaintiff's discovery tactics, an August trial date is unreasonably burdensome to the Defendants. At this time, they remain without a complete production, are working on resolving issues related to the privilege log received just last week, still need to take numerous substantive depositions, one of which is of Plaintiff's expert and another being Plaintiff's 30(b)(6) deposition covering over thirty issues, after which they need to prepare for a week-long trial of this complex case.

36. Defendants have discussed the need to continue the trial date in order to have adequate time to complete discovery and prepare their defense with the Plaintiff.

37. The Plaintiff has refused to allow adequate time for a defense to be prepared in this case and will not consent to a continuance of the trial date.

38. Under the circumstances, an August trial date is unrealistic and unreasonably burdensome to Defendants.

Defendants make this Motion pursuant to Rules 45 and 26 of the South Carolina Rules of Civil Procedure, and other applicable law, whether statutory or common, and request that this Court consider any affidavits, memoranda, or other filings submitted in support of this Motion and supplemented at the hearing as well as oral arguments.

WHEREFORE, Defendants respectfully request that this Court grant an order scheduling a new trial date for a term of court in December 2017 or later.

(signature page to follow)

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Respectfully submitted,

s/ Joseph O. Smith
Joseph O. Smith, S.C. Bar # 77475
ROE CASSIDY COATES & PRICE, P.A.
1052 North Church Street
Greenville, S.C. 29601
(864)-349-2600
(864)-349-0303 fax
JSmith@roecassidy.com
Attorney for the Defendants

June 6, 2017
Greenville, South Carolina

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
Encore Technology Group, LLC,	)	C.A. No. 2015-CP-23-05757
	)	
Plaintiff,	)	
	)	
vs.	)	**SECOND MOTION TO CONTINUE**
	)	
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
	)	
Defendants.	)	
	)	

Exhibit A

Emails re Agreement to Produce Native Files Encompassed by "ENC 000513-00202522"

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Josh Smith

From: Rita Bolt Barker <rbarker@wyche.com>
Sent: Wednesday, March 08, 2017 2:07 PM
To: Josh Smith
Cc: Greg English; Jillene Van Hoy
Subject: RE: Natives

Josh,

Following up on our conversation earlier today, we can provide native files. Does your vendor have a filezilla site or something similar that would allow for an easier transfer? If so, please provide your vendor's contact information and/or file download site, and we will transfer the native files.

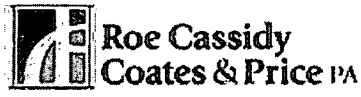
Thank you,

Rita Bolt Barker | Wyche
44 East Camperdown Way | Greenville, SC 29601-3512
Phone: (864) 242-8235 | Fax: (864) 235-8900
rbarker@wyche.com | www.wyche.com/rbarker | vCard
A Lex Mundi Member Firm

From: Josh Smith [mailto:jsmith@roecassidy.com]
Sent: Wednesday, March 08, 2017 10:54 AM
To: Rita Bolt Barker <rbarker@wyche.com>
Subject: RE: Natives

I'd like the natives of everything produced after Encore's first production besides the excel files. That would include ENC 000513- 00202522. This encompasses the 11.28.16, 1.13.17, and 2.3.17 productions by Encore.

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140



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From: Rita Bolt Barker [mailto:rbarker@wyche.com]
Sent: Wednesday, March 08, 2017 10:48 AM
To: Josh Smith <jsmith@roecassidy.com>
Subject: Natives

Josh, do you want the natives of the most recent email productions? Do you mind providing the specific Bates numbers so that I can make sure we are on the same page?

Thanks,

Rita Bolt Barker | Wyche
44 East Camperdown Way | Greenville, SC 29601-3512
Phone: (864) 242-8235 | Fax: (864) 235-8900
rbarker@wyche.com | www.wyche.com/rbarker | vCard
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No privilege is waived by inadvertent transmission.
Thank you.

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(iii) do not use, copy or distribute the contents in any form
(iv) notify the sender by return e-mail or by calling 864-242-8200.
No privilege is waived by inadvertent transmission.
Thank you.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Encore Technology Group, LLC,	)	C.A. No. 2015-CP-23-05757
Plaintiff,	)	
vs.	)	**SECOND MOTION TO CONTINUE**
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
Defendants.	)	

Exhibit B

Emails to Court re Plaintiff's Opposition to Motion for Continuance

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Josh Smith

From: Greg English <genglish@wyche.com>
Sent: Monday, March 13, 2017 3:41 PM
To: Josh Smith; Coker, Lyndall
Cc: Rita Bolt Barker; Ellen Griffin; Greg English
Subject: RE: Encore Technology v. Keone Trask 2015CP2305757
Attachments: Exh A for Response to Motion for Continuance.pdf

Lyndall,

Attached please find the correspondence referenced in our response. In reply to Mr. Smith's email below:

- We did not say Defendants failed and refused to produce any documents required by the Discovery Order's November 21, 2016, deadline, but they did fail and refuse to produce all of the documents required by the Discovery Order until February 2017, which were needed for Plaintiff's expert report. Therefore, Defendants should not be heard to complain about receiving the expert report on March 3.
- The additional documents produced by Plaintiff in December 2016 were far fewer than argued by Defendants and were simply attachments to emails that are not central to the case.
- Plaintiff's request to keep the agreed May 8 trial date is not "strategy," it is an effort to preserve a week that has been cleared and held by all of Plaintiff's counsel and witnesses. In this regard, if the Court is inclined to continue the trial, we request the opportunity to explore the available date-certain terms with our witnesses before the date is set.

Best regards, Greg

Gregory English | Wyche
44 East Camperdown Way | Greenville, SC 29601-3512
Phone: (864) 242-8247 | Fax: (864) 235-8900
genglish@wyche.com | www.wyche.com/genglish | vCard
A Lex Mundi Member Firm

From: Josh Smith [mailto:jsmith@roecassidy.com]
Sent: Monday, March 13, 2017 3:18 PM
To: Coker, Lyndall <LCoker@greenvillecounty.org>; Greg English <genglish@wyche.com>
Cc: Rita Bolt Barker <rbarker@wyche.com>; Ellen Griffin <egriffin@roecassidy.com>
Subject: RE: Encore Technology v. Keone Trask 2015CP2305757

I understand Lyndall. I would quickly like to address a few items following a conversation I just had with Mr. English that I would respectfully ask the Court consider.

As to paragraphs 4-5 of Plaintiff's Response– Defendants believe these paragraphs given the inaccurate impression Defendants failed and refused to produce documents responsive to the Discovery Order by the November 21, 2016 deadline. Defendants addressed this misrepresentation with Plaintiff who recognized and conceded that Defendants in fact produced documents in response to the Discovery Order on the November 21, 2016 deadline. (*See* attached 11.21.16 Ltr.). Plaintiff contended that production was inadequate. Following several depositions around this time counsel for the parties met to discuss these items and others in order to agree on what needed to be produced in order to satisfy Plaintiff's concerns on the Discovery Order. Following that meeting, Defendants sent the attached December 2nd letter reflecting that agreement. Since that time, both

sides have been engaged in an ongoing effort to address discovery issues, including those related to the Discovery Order. As reflected in our motion, those efforts have been extensive and time consuming.

As to paragraph 8 – The May 8th term was agreed to prior to Defendants' receipt of over 175,000 additional pages of documents on December 29, 2016. This drastically changed all planned timelines.

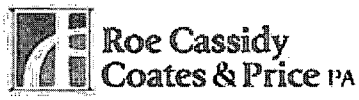
As to paragraph 11 – There is much more to the timing of Plaintiff's expert report; including whether the production of one final monthly P&L was necessary for its completion when Plaintiff had received financial information from Defendants' accountant covering the time period months prior. Or, the fact that P&L was thought to have been previously produced but it was not until February that Encore noted a duplicate of the previous monthly P&L had inadvertently been produced.

Defendants certainly do not wish to get into an unnecessary back and forth over discovery and their reasonable request to continue the trial date due to the circumstances of this case. Plaintiff's opposition to that request is a fitting illustration and reflection of the litigation strategy employed in this case which would be unduly rewarded should this matter proceed to trial in May. Defendants respectfully ask the Court to allow both parties adequate time to review the mass of discovery in this matter, take the appropriate depositions and prepare this matter for trial. Defendants are more than willing to work with the Court and Plaintiff on the date should a September term conflict with another trial for Plaintiff counsel.

Thank you again for your consideration.

Best Regards,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140



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From: Coker, Lyndall [mailto:LCoker@greenvillecounty.org]
Sent: Monday, March 13, 2017 3:01 PM
To: Josh Smith <jsmith@roecassidy.com>; Greg English <genglish@wyche.com>
Cc: Rita Bolt Barker <rbarker@wyche.com>
Subject: RE: Encore Technology v. Keone Trask 2015CP2305757

Josh,
The judge wanted to go ahead and review what had already been emailed.
Thanks,
Lyndall

From: Josh Smith [mailto:jsmith@roecassidy.com]
Sent: Monday, March 13, 2017 2:21 PM
To: Greg English; Coker, Lyndall
Cc: Rita Bolt Barker
Subject: RE: Encore Technology v. Keone Trask 2015CP2305757

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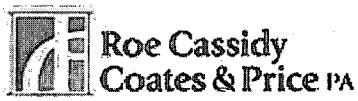
Lyndall,

Defendants will have to respond to Plaintiff's submission. I will submit our response to the Court as soon as possible. I appreciate your patience.

Best Regards,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140



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From: Greg English [mailto:genglish@wyche.com]
Sent: Monday, March 13, 2017 2:05 PM
To: 'Coker, Lyndall' <LCoker@greenvillecounty.org>; Josh Smith <jsmith@roecassidy.com>
Cc: Rita Bolt Barker <rbarker@wyche.com>; Greg English <genglish@wyche.com>
Subject: RE: Encore Technology v. Keone Trask 2015CP2305757

Lyndall,

Attached is Plaintiff's response in opposition to Defendants' motion for a continuance.

We will file this response with the referenced exhibits shortly. If you or Judge Gravely need the exhibits now, I can email those to you directly as well – just let me know.

Thanks, Greg

Gregory English | Wyche
44 East Camperdown Way | Greenville, SC 29601-3512
Phone: (864) 242-8247 | Fax: (864) 235-8900
genglish@wyche.com | www.wyche.com/genglish | vCard
A Lex Mundi Member Firm

From: Coker, Lyndall [mailto:LCoker@greenvillecounty.org]
Sent: Monday, March 13, 2017 11:35 AM
To: Josh Smith <jsmith@roecassidy.com>
Cc: Greg English <genglish@wyche.com>
Subject: RE: Encore Technology v. Keone Trask 2015CP2305757

Ok.. Thanks Josh.
I'll let the judge know Greg's position is in the motion.
Greg, If there's anything you want to add, please email me.
Thanks,
Lyndall

From: Josh Smith [mailto:jsmith@roecassidy.com]
Sent: Monday, March 13, 2017 11:27 AM
To: Coker, Lyndall; Gregory J. English
Subject: RE: Encore Technology v. Keone Trask 2015CP2305757

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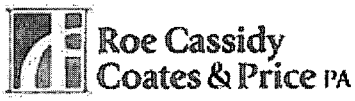
Lyndall,

Thanks for the email. Defendants' position is laid out in the motion. I would only add that I also had a multi-day federal trial in mid-February which took up a large portion of my time in January through the trial. Otherwise, I'll stand on what's in the motion unless it is necessary to respond to anything submitted by the Plaintiff.

I am happy to draft an order if the Court would like. Please just let me know and I'll get it done.

Best Regards,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140



1052 North Church St.
Greenville, S.C. 29601
p 864 349 2600 *f* 864 349 0303

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From: Coker, Lyndall [mailto:LCoker@greenvillecounty.org]
Sent: Monday, March 13, 2017 11:04 AM
To: Gregory J. English <genglish@wyche.com>; Josh Smith <jsmith@roecassidy.com>
Subject: Encore Technology v. Keone Trask 2015CP2305757

Greg and Josh,
Josh Smith filed a motion for continuance on March 10, 2017 and Steve Lopez said he doesn't set motions for continuance and no order was sent with the motion.

Judge Gravely will need to know your position on a continuance request, please. You can just email me and after Judge Gravely makes a decision, I'll be back in touch with both of you.

Thanks,
Lyndall

Lyndall Coker
Jury Trial Coordinator
Greenville County

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(iii) do not use, copy or distribute the contents in any form
(iv) notify the sender by return e-mail or by calling 864-242-8200.
No privilege is waived by inadvertent transmission.
Thank you.

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No privilege is waived by inadvertent transmission.
Thank you.

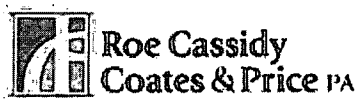
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
Encore Technology Group, LLC,	)	C.A. No. 2015-CP-23-05757
	)	
Plaintiff,	)	
	)	
vs.	)	**SECOND MOTION TO CONTINUE**
	)	
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
	)	
Defendants.	)	
	)	

Exhibit C

Defendants' April 6, 2017 Letter to Plaintiff

ELECTRONICALLY FILED - 2017 Jun 06 3:59 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305757

JOSEPH O. "JOSH" SMITH
(864) 404-3140
JSMITH@ROECASSIDY.COM



April 6, 2017

Via Email
Gregory J. English
Rita Bolt Barker
WYCHE P.A.
44 Camperdown Way (29601-3512)
Post Office Box 728
Greenville, SC 29602-0728
genglish@wyche.com
rbarker@wyche.com

RE: Encore Technology Group LLC v. Keone Trask and Clear Touch Interactive, Inc.
C.A. No. 2015-CP-23-05757
RCCP 2626.0001

Dear Greg and Rita:

I am writing regarding several deficiencies in Encore's document production that we have noticed in our ongoing review of those documents since getting the large majority of them in a reviewable format. I have addressed each specific item below:

Emails and Responsive Documents after Sept. 2015 (RFP 4 and Para. 3(b) in Order) – Our review has revealed Encore has failed to produce many relevant emails and responsive documents. Specifically, Plaintiff's large supplemental production encompassing ENC 000513 to 00202522 (the majority of which are emails and their attachments) does not contain ***any*** emails or related documents after September 2015. Encore's first document production (ENC 000001 to 000512) contains a mere three post-September 2015 emails; only one of which is from 2016. There must be more than three emails and relevant documents from after September 2015 which Encore needs to produce in order to comply with its discovery obligations. Defendants' RFP 4 specifically asked for all "correspondence, internal documents, memos, e-mails, and other documents concerning Trask and/or Clear Touch, and/or this case..." and paragraph 3(b) of the Discovery Order requires Plaintiff's compliance with that request. Encore's production has not complied with that request nor the Court's Order to do so. Please produce all responsive emails and related materials to adequately respond to Defendants' request and the Court's Discovery Order.

Expert Materials (RFP 10) – Defendant's RFP 10 requested Plaintiff provide "[a]ny and all documents (a) reviewed, considered, and/or relied upon by each and every expert or consultant the party intends to call as an expert witness at trial in connection with this case, or (b) that embody, reflect, refer to or summarize reports or memoranda prepared for the party to this litigation by any person the party expects to call as an expert witness." Encore provided an expert report dated February 28, 2017 which contains multiple references to documents reviewed and otherwise relied

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upon which have not been produced. For example, the report states that "[i]n order to perform these calculations, I was provided...*internal information* by Encore management" (pg. 3), that the expert "relied upon *spreadsheets provided by Encore management.*" (pg. 7), and that "It is my understanding, *based on review of financial and operational information provided to me*...that Encore was and is larger in scale than Clear Touch and financially healthy." (pg. 11). The report also references meetings with Encore management and their counsel (pg. 4) and notes the expert was provided "a *schedule* (generated from Encore QuickBooks)" said to reflect the percentage of time Keone Trask and others allegedly spent furthering the interest of Clear Touch (pg. 6). It appears many of these documents have not been produced. Nor have any communications with or notes or other documents concerning the expert, his analysis, or the meetings referenced in his own report been provided. All of these documents are responsive to Defendants' RFP 10 and their production is necessary for moving forward with taking Plaintiff's expert's deposition. Therefore, please provide these materials.

Privilege Log – To date I still have not received Encore's privilege log. We have asked for it numerous times, including in Defendants' Motion to Compel filed last year.

Encore Financials I will take this as an opportunity to make one final request for Encore to produce useable financial breakdowns. Encore has refused time and time again to provide useable financials, only providing financial information in a useable format that pertains to its claimed damages. That refusal and self-serving selective production will require very long depositions for us to be able to get through that information with Encore witnesses as they will have to discern and detail pertinent information that is buried in what has been provided. Second, Encore has sporadically produced random financial information and breakdowns without explanation or context. First, it provided ENC 00202576 (Encore Tech. Group Statement of Operations Feb 13-April 14) which is a simplistic Balance Sheet assumedly covering Feb. 2013-April 2014. With the production of ENC 00202576 Defendants believe it is necessary and fair for Plaintiff to provide that same information for its operations to date, and at least through the end of 2016 as that is the timeframe in which they are demanding damages and for which they have all the details of Clear Touch's operations. Second, Encore has produced ENC 00202523 to 00202526 related to its $5M LOC, the existence and balance of which directly relate to its damage expert's analysis and calculations. Those pages however contain no account number, account statements and only consist of a letter recognizing the LOC, what appear to be index or table of content pages, and a very plain balance summary for select quarters ending in December 2015. Plaintiff needs to produce full account statements for that LOC account or Clear Touch will be forced to subpoena those records. Finally, ENC 000510 which purports to be a spreadsheet reflecting Encore's Interactive Video Financials for 2016 stops at November 30, 2106. Please update that document and reproduce it to cover 2016 in its entirety. Please produce these necessary financial records.

Please provide these materials within the next seven (7) days so that we can review them and prepare for depositions.

I am of course happy to discuss any of this with you guys, so please do not hesitate to give me a call.

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With kind regards, I am

Sincerely,

ROE CASSIDY COATES & PRICE P.A.

s/ Joseph O. Smith

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	
Encore Technology Group, LLC,	C.A. No. 2015-CP-23-05757
Plaintiff,	
vs.	**SECOND MOTION TO CONTINUE**
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	
Defendants.	

Exhibit D

Plaintiff's April 13, 2017 Letter to Defendants

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W Y C H E

Attorneys at Law

April 13, 2017

BY FIRST CLASS MAIL AND BY E-MAIL

Joseph O. Smith, Esq.
ROE CASSIDY COATES & PRICE, P.A.
1052 North Church Street
Greenville, SC 29601

Re: *Encore Technology Group, LLC v. Trask, et al.*, Case No. 2015-CP-23-05757

Dear Josh:

In response to your letter dated April 6, 2017, we hereby serve upon you Plaintiff's Privilege Log. Contrary to the assertions in your letter, Encore has produced all responsive, non-privileged documents to you.

Notwithstanding the foregoing, solely to attempt to avoid additional discovery disputes, Encore is producing the following documents via Sharefile:

1. Post-September 10, 2015, documents regarding Mr. Trask and Clear Touch. As you know, Encore terminated its Reseller Agreement with Clear Touch on September 10, 2015, because of Defendants' breaches of their contractual and fiduciary duties to Encore. Those breaches formed the basis of the lawsuit filed on September 18, 2015. Accordingly, we believed that all documents regarding Mr. Trask and Clear Touch dated or created on or after September 11, 2015, were created in anticipation of litigation and trial and therefore are work product. Nevertheless, we have re-reviewed those documents and are producing documents that fall after this date as ENC 00203249–203437, none of which is relevant to the litigation.

2. Expert materials. All responsive written materials have been produced. The other information you reference was shared orally with the expert. Of course, you may inquire about this information when you depose him. Although we do not believe they are responsive, we are producing the cover and scheduling messages with the expert and re-producing the substantive documents that were attached as ENC 00203438-204370.

3. Encore financial documents. You request four additional categories of documents:

a. Revised Excel spreadsheet. Encore produced to you an Excel spreadsheet as it existed in the ordinary course of business in both PDF and native formats. Because you

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PROFESSIONAL ASSOCIATION
44 East Camperdown Way, Greenville, SC 29601- 3512
p: 864.242.8200 | f: 864.235.8900
www.wyche.com

have the document in native format, you could hide any columns that you do not want to use in questioning the witnesses. Although it has no obligation to create a new document for you, Encore has attempted to create a new, abbreviated version of this spreadsheet based upon your prior e-mail on the subject, which is produced as described in Section 3.d below.

b. Encore's Profit and Loss Statement from May 2014-December 2016. The Discovery Order directed Encore to produce financial documents "pertaining only to the interactive video panel components of its business and documents supporting its damage claims concerning such business." Encore has done this. The broader Profit and Loss Statement you request from May 2014-December 2016 goes beyond this requirement and is after your client left Encore's employ, so is neither responsive nor relevant.

c. Encore's Line of Credit documents. Encore has already produced all documents reviewed by its expert regarding its line of credit. Nevertheless, Encore is producing documents ENC 00203219–203248, which provide additional information about its line of credit.

d. Interactive Video Financials for December 2016. This information was not in existence when the Discovery Order was entered and Encore made its production of these financials. Encore is producing documents ENC 00202557–203218 to include December 2016.

In your e-mail dated April 12, 2017, you also requested any documents from July – September 2015 discussing or pertaining to Encore's termination of the Reseller Agreement. The only such documents are privileged attorney-client communications and therefore there is nothing else to produce.

With the foregoing, Encore has exceeded its obligations in satisfying your requests.

Sincerely,

Gregory J. English
864.242.8247
genglish@wyche.com

GJE/sc

cc: Mr. Todd Newnam (by-email)

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Encore Technology Group, LLC,	)	C.A. No. 2015-CP-23-05757
Plaintiff,	)	
vs.	)	**SECOND MOTION TO CONTINUE**
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
Defendants.	)	

Exhibit E

Plaintiff's April 13, 2017 Document Labeled "Privilege Log"

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
ENCORE TECHNOLOGY GROUP, LLC, Plaintiff, vs. KEONE TRASK and CLEAR TOUCH INTERACTIVE, INC., f/k/a CLEAR TOUCH INTERACTIVE, LLC, Defendants.	Case No. 2015-CP-23-05757 **PRIVILEGE LOG**

TO: DEFENDANTS AND JOSEPH O. SMITH, ESQ., THEIR ATTORNEY

Plaintiff Encore Technology Group, LLC ("Encore"), pursuant to Rule 26(b)(5), SCRCP, hereby identifies requested documents withheld on grounds of privilege:

1. All communications, whether paper or electronic, between employees and/or members of Wyche, P.A. (the "Plaintiff's Attorneys"), on the one hand, and employees or representatives of Encore, on the other hand, on grounds of attorney-client privilege and the work product doctrine.

2. All notes, memoranda, and copies of legal authorities, whether paper or electronic, created by or for employees and/or members of the Plaintiff's Attorneys concerning this case on grounds of the work product doctrine.

3. All communications, whether paper or electronic, between or among Encore's employees or representatives about this case on which Plaintiffs' Attorneys are copied, on grounds of attorney-client privilege, work product doctrine, and common interest doctrine.

4. All communications, notes, memoranda, and other documents or tangible things, whether paper or electronic, prepared by or for or sent to or from the Plaintiff's employees or representatives (other than to or from experts that have been named to testify) on and after **September 11, 2015** (the day following Encore's termination of the Reseller Agreement), concerning Defendants' actions, on grounds of work product doctrine and common interest doctrine.

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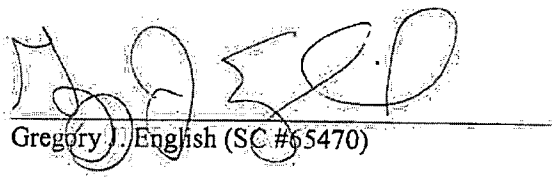
WYCHE, P.A.

By: 

Gregory J. English (SC #65470)

44 East Camperdown Way
Post Office Box 728
Greenville, SC 29602-0728
(864) 242-8200

Attorneys for Plaintiff

Dated: April 13, 2017

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
ENCORE TECHNOLOGY GROUP, LLC, Plaintiff, vs. KEONE TRASK and CLEAR TOUCH INTERACTIVE, INC., f/k/a CLEAR TOUCH INTERACTIVE, LLC, Defendants.	Case No. 2015-CP-23-05757 **CERTIFICATE OF SERVICE**

This is to certify that I have this date caused to be served on Defendants in this action true and correct copies of the within and foregoing **PRIVILEGE LOG** by causing the same to be mailed by U.S. Mail, first class postage prepaid, addressed as follows:

Joseph O. Smith, Esq.
ROE CASSIDY COATES & PRICE, P.A.
1052 North Church Street
Greenville, SC 29601

Gregory J. English (65470)
Rita Bolt Barker (77600)

WYCHE, P.A.
44 East Camperdown Way
Post Office Box 728
Greenville, South Carolina 29602-0728
Telephone: 864-242-2800
Telefax: 864-235-8900

Attorneys for Plaintiff
Encore Technology Group, LLC

April 13, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
Encore Technology Group, LLC,	)	C.A. No. 2015-CP-23-05757
	)	
Plaintiff,	)	
	)	
vs.	)	**SECOND MOTION TO CONTINUE**
	)	
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
	)	
Defendants.	)	

Exhibit F

Email Exchange re Plaintiff's Document Labeled "Privilege Log"

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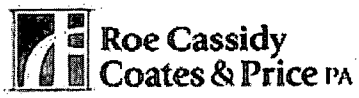
Josh Smith

From: Josh Smith
Sent: Thursday, April 20, 2017 5:02 PM
To: 'Greg English'; Rita Bolt Barker
Cc: Ellen Griffin
Subject: RE: Encore v Clear Touch - Encore's "Privilege Log"

Greg,

I have identified additional information I need for all documents withheld on privilege grounds, including those encompassed by items 1-3 in your email. Your statements otherwise are false. You can simply scroll down this very email chain to my email from 9:42 am today which requests additional information these documents.

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140



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Greenville, S.C. 29601
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From: Greg English [mailto:genglish@wyche.com]
Sent: Thursday, April 20, 2017 4:54 PM
To: Josh Smith <jsmith@roecassidy.com>; Rita Bolt Barker <rbarker@wyche.com>
Cc: Ellen Griffin <egriffin@roecassidy.com>; Greg English <genglish@wyche.com>
Subject: RE: Encore v Clear Touch - Encore's "Privilege Log"

Josh,

1. For communications between Wyche and Encore, you have not identified any additional information you need to satisfy yourself that these documents are privileged.

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2. For Wyche notes, memoranda, and legal authorities, you have not identified any additional information you need to satisfy yourself that these documents are work product.

3. For Encore communications copying Wyche, these are expressly limited to communications "about this case." You have not identified any additional information you need to satisfy yourself that these documents are privileged and work product.

4. For Encore communications on or after September 11, 2015, concerning Defendants' actions, I have confirmed that no such documents have been withheld, but reserve the right to claim privilege for any such document that has been inadvertently produced. We will amend the privilege log accordingly.

Please let us know if you need any additional information on the privilege log and, if so, what it is so that we may consider whether to make any other amendments to the privilege log.

Greg

Gregory English | Wyche
44 East Camperdown Way | Greenville, SC 29601-3512
Phone: (864) 242-8247 | Fax: (864) 235-8900
genglish@wyche.com | www.wyche.com/genglish | vCard
A Lex Mundi Member Firm

From: Josh Smith [mailto:jsmith@roecassidy.com]
Sent: Thursday, April 20, 2017 2:36 PM
To: Greg English <genglish@wyche.com>; Rita Bolt Barker <rbarker@wyche.com>
Cc: Ellen Griffin <egriffin@roecassidy.com>
Subject: RE: Encore v Clear Touch - Encore's "Privilege Log"

No Greg, it does not. This does not provide sufficient information for Defendants to assess Plaintiff's claims of privilege; and thus does not comply with the Rule. That is not to mention the numerous and very telling qualifying language strewn throughout your email and the document labeled "privilege log" saying things such as "you are not aware of any document that is being intentionally withheld..." and blanket general assertions of privilege with carefully crafted language to allow Encore to claim privilege well beyond its applicable bounds. It's not about your awareness or only documents that are being intentionally withheld. It's about what documents Encore is withholding on privilege grounds and Plaintiff providing adequate detail concerning them so we can assess the privilege claim. #3 in your latest email is another perfect example. You know simply copying an attorney does not make something privileged. This is a category of documents we certainly need the details on to analyze whether each one is in fact privileged. I could go on and on but we have expended an inordinate amount of time trying to get this simple thing from the Plaintiff and have been met with this fierce resistance. We have been very patient, accommodating, and reasonable in making the many requests for Plaintiff to provide a privilege log. It is clear Encore is holding things back and will not provide a real privilege log. This forces us to resort to the Court to make Encore perform this routine task and comply with its discovery obligations.

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140

Roe Cassidy Coates & Price PA

1052 North Church St.

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From: Greg English [mailto:genglish@wyche.com]
Sent: Thursday, April 20, 2017 10:43 AM
To: Josh Smith <jsmith@roecassidy.com>; Rita Bolt Barker <rbarker@wyche.com>
Cc: Ellen Griffin <egriffin@roecassidy.com>; Greg English <genglish@wyche.com>
Subject: RE: Encore v Clear Touch - Encore's "Privilege Log"

Josh,

None of the privileged documents has been (knowingly) bates-numbered. Regarding the categories on our log:

1. For communications between Wyche and Encore, you do not need these details to know they are privileged.

2. For Wyche notes, memoranda, and legal authorities, you do not need these details to know they are work product.

3. For Encore communications copying Wyche, you do not need these details to know they are privileged and work product.

4. For Encore communications on or after September 11, 2015, concerning Defendants' actions, I am not aware of any document that is being intentionally withheld, but reserve the right to claim privilege for any such document that has been inadvertently produced. I will ask Encore to double-check to make sure no documents are being withheld and, if not, amend the privilege log accordingly.

Please confirm that this will satisfy your concerns.

Thanks, Greg

Gregory English | Wyche
44 East Camperdown Way | Greenville, SC 29601-3512
Phone: (864) 242-8247 | Fax: (864) 235-8900
genglish@wyche.com | www.wyche.com/genglish | vCard
A Lex Mundi Member Firm

From: Josh Smith [mailto:jsmith@roecassidy.com]
Sent: Thursday, April 20, 2017 9:42 AM

ELECTRONICALLY FILED - 2017 Jun 06 3:59 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305757

To: Greg English <genglish@wyche.com>; Rita Bolt Barker <rbarker@wyche.com>
Cc: Ellen Griffin <egriffin@roecassidy.com>
Subject: RE: Encore v Clear Touch - Encore's "Privilege Log"

Greg,

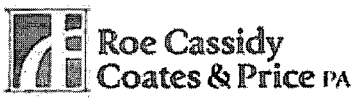
I need to know the following information for **each document** you guys are withholding on privilege grounds:

(1) Bates # (if any)
(2) Date of document
(3) Author of the document
(4) Party it was sent to
(5) Party sent from
(6) What attachments (if any) accompanied the document
(7) A description of the document
(8) Privilege claimed for withholding the document

You can look at Defendants' privilege log for this format which lays out the very information I am requesting for each document Defendants withheld on privilege grounds. Please either provide this information for each document withheld or let me know Encore refuses to do so. If Encore is not going to provide the information, please let me know by the end of tomorrow. On the other hand, if Plaintiff is going to provide a privilege log containing this information, please do so by next Wednesday.

Thanks,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140



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From: Greg English [mailto:genglish@wyche.com]
Sent: Wednesday, April 19, 2017 2:36 PM
To: Josh Smith <jsmith@roecassidy.com>; Rita Bolt Barker <rbarker@wyche.com>
Cc: Ellen Griffin <egriffin@roecassidy.com>; Greg English <genglish@wyche.com>
Subject: RE: Encore v Clear Touch - Encore's "Privilege Log"

Josh,

If I did not believe it complied with the Rules, I would not have prepared it that way and said so, but I invite you again to let us know what additional information you need to assess the claims of privilege and we will consider amending it.

Greg

Gregory English | Wyche
44 East Camperdown Way | Greenville, SC 29601-3512
Phone: (864) 242-8247 | Fax: (864) 235-8900
genglish@wyche.com | www.wyche.com/genglish | vCard
A Lex Mundi Member Firm

From: Josh Smith [mailto:jsmith@roecassidy.com]
Sent: Wednesday, April 19, 2017 1:43 PM
To: Greg English <genglish@wyche.com>; Rita Bolt Barker <rbarker@wyche.com>
Cc: Ellen Griffin <egriffin@roecassidy.com>
Subject: RE: Encore v Clear Touch - Encore's "Privilege Log"

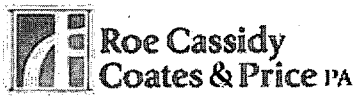
Greg,

That document does not comply with SCRCP 26 and you know that. I will afford you the professional courtesy of asking one final time for Encore to produce a real and complete privilege log with the specificity necessary for Defendants to assess the Plaintiff's claims of privilege. The four paragraphs in the document provided do not provide that level of necessary detail. This is not to mention they are overbroad in many respects.

Please produce a real and complete privilege log by Friday or we will have to resort to the Court to get Encore to comply with its discovery obligations.

Thank you,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140



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From: Greg English [mailto:genglish@wyche.com]
Sent: Tuesday, April 18, 2017 3:47 PM
To: Josh Smith <jsmith@roecassidy.com>; Rita Bolt Barker <rbarker@wyche.com>
Cc: Ellen Griffin <egriffin@roecassidy.com>; Greg English <genglish@wyche.com>
Subject: RE: Encore v Clear Touch - Encore's "Privilege Log"

Josh,

Plaintiff's privilege log complies with Rule 26(b)(5) by describing categories of privileged documents. If you need additional information to assess the privileges and protections claimed, please let us know what that is and we will consider amending.

Sincerely, Greg

Gregory English | Wyche
44 East Camperdown Way | Greenville, SC 29601-3512
Phone: (864) 242-8247 | Fax: (864) 235-8900
genglish@wyche.com | www.wyche.com/genglish | vCard
A Lex Mundi Member Firm

From: Josh Smith [mailto:jsmith@roecassidy.com]
Sent: Tuesday, April 18, 2017 9:22 AM
To: Greg English <genglish@wyche.com>; Rita Bolt Barker <rbarker@wyche.com>
Cc: Ellen Griffin <egriffin@roecassidy.com>
Subject: Encore v Clear Touch - Encore's "Privilege Log"

Greg and Rita,

I have not been able to look over the documents provided yesterday but have reviewed the one labeled "Privilege Log." To be frank, that document is not a privilege log. It is paragraphs of generalities without reference to any individual documents at all. Please produce a real and complete privilege log by the end of the week or we will be forced to file our own motion for sanctions as this is something we moved to compel last October.

Best Regards,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140

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Coates & Price PA

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This e-mail may contain privileged or confidential information.
If the e-mail was not intended for you, please:
(i) delete the e-mails and any attachments
(ii) destroy any copies that may have been made
(iii) do not use, copy or distribute the contents in any form
(iv) notify the sender by return e-mail or by calling 864-242-8200.
No privilege is waived by inadvertent transmission.
Thank you.

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No privilege is waived by inadvertent transmission.
Thank you.

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Encore Technology Group, LLC,	)	C.A. No. 2015-CP-23-05757
Plaintiff,	)	
vs.	)	**SECOND MOTION TO CONTINUE**
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
Defendants.	)	

Exhibit G

Plaintiff's May 31, 2017 Letter to Defendants with Privilege Log and ENC 00204371-00214720

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W Y C H E

Attorneys at Law

May 31, 2017

BY HAND DELIVERY AND BY E-MAIL

Joseph O. Smith, Esq.
ROE CASSIDY COATES & PRICE, P.A.
1052 North Church Street
Greenville, SC 29601

Re: *Encore Technology Group, LLC v. Trask, et al.*, Case No. 2015-CP-23-05757

Dear Josh:

We were surprised by Defendants' Second Motion to Compel filed on May 15, 2017, which inaccurately stated that "Defendants have attempted to resolve these issues with the Plaintiff in good faith." To the contrary, following our letter dated April 13, 2017, the only remaining issue you raised with us concerned the Privilege Log, which Rita was actively trying to resolve with you by telephone.

Defendants, however, filed a Second Motion to Compel that raises three issues:

1. Plaintiff's Response to Defendants' Request 14: Defendants expressly made these same arguments in their first motion to compel and they were denied. *See* Discovery Order filed November 17, 2016, at 4 ("The balance of Defendants' Motion to Compel is denied ...."). In addition to not consulting with us about this, it is improper to seek to re-litigate this issue.

2. Privilege Log: As you know, we offered repeatedly to amend the privilege log to try to satisfy your concerns regarding it. Enclosed is our Amended Privilege Log, which we believe should satisfy you completely.

3. Post-September 10, 2015, documents regarding Mr. Trask and Clear Touch. As you know, Encore terminated its Reseller Agreement with Clear Touch on September 10, 2015, because of Defendants' breaches of their contractual and fiduciary duties to Encore. Those breaches formed the basis of the lawsuit filed on September 18, 2015. Accordingly, we believed that all documents regarding Mr. Trask and Clear Touch dated or created on or after September 11, 2015, were created in anticipation of litigation and trial and therefore are work product. Nevertheless, solely to resolve the issue, we have amended the Privilege Log and are producing documents that fall after this date.

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PROFESSIONAL ASSOCIATION
44 East Camperdown Way, Greenville, SC 29601- 3512
p: 864.242.8200 | f: 864.235.8900
www.wyche.com

You will note that the documents produced on the enclosed flash drive include additional email communications beyond those produced on April 13, 2017 as ENC 00203249–204370. Following your conversations with Rita regarding the privilege log, Encore re-conducted its email search in an effort to ensure that all documents had been produced. Upon manually reviewing this search, Encore discovered the search terms inadvertently excluded certain emails, although none of them are relevant to this case.

Specifically, Encore discovered that, although its IT Department used "ClearTouch" in earlier searches, the spaced version "Clear Touch" was inadvertently left off. In this latest review, Encore also discovered that, when it endeavored to reduce the production of duplicate emails for the April 13, 2017 search (following your earlier protestations of duplications in Encore's prior productions), in some cases the effort to de-duplicate had deleted initial emails that were part of a multi-thread chain but were in an attached rather than string format. Encore has remedied these issues. Again, we do not believe that these additional emails are relevant to this case, but are producing them herewith as ENC 00204371-00214720.

Please confirm that the foregoing satisfies your requests.

Sincerely,

Gregory J. English

864.242.8247
genglish@wyche.com

GJE/sc

cc: Mr. Todd Newnam (by-email)

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Encore Technology Group, LLC,	)	C.A. No. 2015-CP-23-05757
Plaintiff,	)	
vs.	)	**SECOND MOTION TO CONTINUE**
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
Defendants.	)	

Exhibit H

Email Exchange re Defendants' Second Motion to Compel

ELECTRONICALLY FILED - 2017 Jun 06 3:59 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305757

Josh Smith

From: Josh Smith
Sent: Sunday, June 04, 2017 11:58 AM
To: 'Greg English'
Cc: Rita Bolt Barker; Ellen Griffin
Subject: RE: Response by Encore to Defendants' Second Motion to Compel

TimeMattersID: M5DD9A7A3D685127
TM Contact: Keone Trask
TM Matter No: 2626.0001
TM Matter Referenc Encore v. Keone TRASK and Clear Touch Interactive

Greg,

I've responded to your email from yesterday below in red. Let's plan to discuss tomorrow morning as I proposed on Friday.

Documents "related to this case" – Request 4/para. 16(b) Def. Second Motion to Compel

At the hearing on your first motion to compel, you agreed and Judge Stillwell ruled in the Discovery Order that, "In response to Defendants' Request 4, Encore shall provide all communications to or from Trask and/or Clear Touch and all internal documents, memos, e-emails and other documents concerning Trask and/or Clear Touch."

So Encore is still withholding documents "related to the case?" What documents has the Plaintiff withheld for nearly two years while trying to force this to trial? If Encore is taking the position that it need not produce relevant documents because of the Discovery Order then Judge Miller will need to weigh in to make the Plaintiff provide relevant evidence. The Plaintiff brought a lawsuit and now seeks millions of dollars from my client. They have to play by the rules and not continue to attempt to abuse the process by playing games with discovery. **Less than three months prior to trial the Plaintiff is admitting it did not even search for the name of the company it sued in searching emails**, and now having done so, is providing tons of new documents many of which are relevant to the case along with a real privilege log for the first time. This is a big problem that will need to be addressed.

Accordingly, with regard to your requests for:

1. documents reflecting communications amongst Encore executives regarding termination of their relationship with Clear Touch; These have been produced. Where? I have not seen any. Please provide bates numbers to validate this claim.

2. emails from personal accounts that are relevant or related to this case; These were searched for, sent to me, and supposed to have been included in the last production. I will look and see if they were and, if not, produce them. They have not been produced.

3. communications between Encore and subpoenaed parties; These have been produced. Everything? Where? Please provide bates numbers to validate this claim.

4. communications between Encore's counsel and subpoenaed parties; or These have been produced. Everything? Where? Please provide bates numbers to validate this claim.

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5. full account statements for the Encore LOC. These were not required by the Discovery Order. All documents on which Encore's expert relied have been produced and you have subpoenaed everything else. OK. I assume then Encore is not going to fight the subpoena?

Privilege Log

I've reviewed the privilege log and would like Encore to address the following items:

1. There is no attachment field indicating if an email has an attachment and if so, what it is. Defendants' log had this and I believe it is necessary if Plaintiff is withholding attachments under claims of privilege. Responsive attachments were not withheld, just the emails. You sure you want to make this representation? Have you reviewed the productions to make sure this is the case? What attachments have been withheld? I cannot tell without an attachment field.
2. Every item is claimed to be shielded from discovery by both the attorney-client privilege and work product doctrine. This cannot be the case for everything. It is because they are communications between attorneys and clients in preparation for trial.
3. Communications with Plaintiff's expert are not privileged and should be produced. I believe these were inadvertently listed on the privilege log and have been produced but we will confirm. I do not see them. Please provide bates numbers to confirm they've been produced and produce them it not.
4. Pg. 14 – 9.6.16 email Young to Newman not privileged. Only cced English. Merely ccing attorney does not make communication privileged. This is a work product communication made in preparation for trial.
5. Pg. 15 – 9.7.16 email Barker to Newnam re Mellinger's Report – Is a report attached? If so, please produce if not already provided. Do not want communication. I believe the report has been produced but we will confirm. I do not see them. Please provide bates numbers to confirm they've been produced and produce them it not.
6.
7. Pg. 16 – 9.15.16 9.15.16 Newnam to Young not privileged. Only cced English. This is a work product communication made in preparation for trial.
8. Pg. 17 – several emails are RE: Clear Touch Interactive Pricing 2014.pdf. Document attached? If so, please produce. Not looking for the communication itself. We are not claiming privilege for the underlying document just the communication.
    - 9.19.16 emails Subject: Sending: affidavit powell – If Powell or anyone else has executed an affidavit please provide it. This has been produced. Where? I haven't seen it? Please provide the bates number or identify the email or date of the cover letter accompanying this affidavit that was obtained last September.
9. Pg. 18 – 9.28.16 email Subject: Trask- Chris Powell Affidavit – same request. This has been produced. Same response as above.

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10. Several emails are between Newnam and Young that have English in recipient box as well as being cced on the communication (*see* pgs. 45, 46, 47, 54, and 58 reflecting seven instances of this). It's strange and appears as if Encore is attempting to withhold discoverable communications by putting their attorney as a recipient. I just want to ensure Encore wants to stand behind those designations as this was something I've never seen before. I copy myself on all outgoing emails regarding this case (like this one), which is the reason I am listed as both a recipient and cc. You didn't send these emails; Encore executives sent them to each other.

Plaintiff's Response to Defendants' Request 14

As you know, Plaintiff drafted the Discovery Order and the sentence quoted in your letter stating "The balance of Defendants' Motion to Compel is denied...." That quote however does not reflect the Court taking up and ruling on every aspect of Defendants' First Motion to Compel. Rather, as you are aware (and I verified by review of the hearing transcript), during the hearing Defendants chose to withdraw several aspects of its first motion to compel, including documents responsive to Request 14, and attempt to resolve those issues with the Plaintiff. These withdrawn items were not a part of what the Court considered and ruled upon in its Order. Therefore, Plaintiff is not absolved of its obligation to produce documents responsive to Request 14.

We addressed and agreed on all outstanding issues with Judge Stilwell and he ruled that the balance of your motion to compel was denied. You then filed this motion making the same arguments about this request without consulting with us. We do not even know what you want that is not covered by everything else. Is Encore taking the position it produced everything responsive to this request, or are you saying Plaintiff is continuing to withhold evidence responsive to it based on the Discovery Order?

Post September 10, 2015 Documents

Encore claims "all documents regarding Mr. Trask and Clear Touch **dated or created** on or after September 11, 2015, were created in anticipation of litigation and trial and therefore are work product." This is an overly broad application of the work product doctrine. Just because a document is **dated** after September 11, 2015, it does not make it work product. The doctrine only shields (1) documents or things otherwise discoverable; (2) prepared in anticipation of litigation or for trial; and (3) by or for a party to the lawsuit or by or for the party's representative. Defendants' disagree with Plaintiff's claim everything created or dated after September 11, 2015 constitutes work product because Encore terminated the Reseller Agreement on September 10, 2015 and filed suit on the 18th. Therefore, please produce any documents being withheld that were not actually created in anticipation of litigation or for trial by or for Encore or by or for its counsel regardless of date.

As noted by the amended privilege log, with are no longer withholding such documents and have produced them quickly to try to resolve your discovery dispute; we are simply reserving our rights to claw-back any post-September 10, 2015, documents on grounds of work product if we conclude that is warranted. I appreciate Plaintiff producing the documents but let's agree "quickly" is not the right adjective. Plaintiff made an inappropriate privilege claim over a year and half into a litigation and then when faced with having to justify it to a judge finally provided clearly responsive and relevant evidence that never should have been withheld in the first place. This goes to the bigger issue that, as I said, we will have to address.

What time can you guys talk in the morning?

Thanks,

Joseph O. "Josh" Smith

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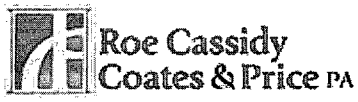
email jsmith@roecassidy.com
direct 864-404-3140



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From: Greg English [mailto:genglish@wyche.com]
Sent: Saturday, June 03, 2017 1:36 PM
To: Josh Smith <jsmith@roecassidy.com>
Cc: Rita Bolt Barker <rbarker@wyche.com>; Ellen Griffin <egriffin@roecassidy.com>; Greg English <genglish@wyche.com>
Subject: RE: Response by Encore to Defendants' Second Motion to Compel

Josh,

I have responded to the items for which you requested a response below.

Please let us know if you will withdraw your motion to compel or if you still want to go forward Monday morning, despite your not having fully consulted with us about the myriad of issues you are now raising.

Sincerely, Greg

Gregory English | Wyche
44 East Camperdown Way | Greenville, SC 29601-3512
Phone: (864) 242-8247 | Fax: (864) 235-8900
genglish@wyche.com | www.wyche.com/genglish | vCard
A Lex Mundi Member Firm

From: Josh Smith [mailto:jsmith@roecassidy.com]
Sent: Friday, June 02, 2017 4:14 PM
To: Greg English <genglish@wyche.com>
Cc: Rita Bolt Barker <rbarker@wyche.com>; Ellen Griffin <egriffin@roecassidy.com>
Subject: RE: Response by Encore to Defendants' Second Motion to Compel

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Documents "related to this case" – Request 4/para. 16(b) Def. Second Motion to Compel

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1. documents reflecting communications amongst Encore executives regarding termination of their relationship with Clear Touch; These have been produced.

2. emails from personal accounts that are relevant or related to this case; These were searched for, sent to me, and supposed to have been included in the last production. I will look and see if they were and, if not, produce them.

3. communications between Encore and subpoenaed parties; These have been produced.

4. communications between Encore's counsel and subpoenaed parties; or These have been produced.

5. full account statements for the Encore LOC. These were not required by the Discovery Order. All documents on which Encore's expert relied have been produced and you have subpoenaed everything else.

Privilege Log

I've reviewed the privilege log and would like Encore to address the following items:

1. There is no attachment field indicating if an email has an attachment and if so, what it is. Defendants' log had this and I believe it is necessary if Plaintiff is withholding attachments under claims of privilege. Responsive attachments were not withheld, just the emails.
2. Every item is claimed to be shielded from discovery by both the attorney-client privilege and work product doctrine. This cannot be the case for everything. It is because they are communications between attorneys and clients in preparation for trial.
3. Communications with Plaintiff's expert are not privileged and should be produced. I believe these were inadvertently listed on the privilege log and have been produced but we will confirm.
4. Pg. 14 – 9.6.16 email Young to Newman not privileged. Only cced English. Merely ccing attorney does not make communication privileged. This is a work product communication made in preparation for trial.
5. Pg. 15 – 9.7.16 email Barker to Newnam re Mellinger's Report – Is a report attached? If so, please produce if not already provided. Do not want communication. I believe the report has been produced but we will confirm.
6. Pg. 16 – 9.15.16 9.15.16 Newnam to Young not privileged. Only cced English. This is a work product communication made in preparation for trial.
7. Pg. 17 – several emails are RE: Clear Touch Interactive Pricing 2014.pdf. Document attached? If so, please produce. Not looking for the communication itself. We are not claiming privilege for the underlying document just the communication.

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- 9.19.16 emails Subject: Sending: affidavit powell – If Powell or anyone else has executed an affidavit please provide it. This has been produced.

8. Pg. 18 – 9.28.16 email Subject: Trask- Chris Powell Affidavit – same request. This has been produced.
9. Several emails are between Newnam and Young that have English in recipient box as well as being cced on the communication (*see* pgs. 45, 46, 47, 54, and 58 reflecting seven instances of this). It's strange and appears as if Encore is attempting to withhold discoverable communications by putting their attorney as a recipient. I just want to ensure Encore wants to stand behind those designations as this was something I've never seen before. I copy myself on all outgoing emails regarding this case (like this one), which is the reason I am listed as both a recipient and cc.

Plaintiff's Response to Defendants' Request 14

We addressed and agreed on all outstanding issues with Judge Stilwell and he ruled that the balance of your motion to compel was denied. You then filed this motion making the same arguments about this request without consulting with us. We do not even know what you want that is not covered by everything else.

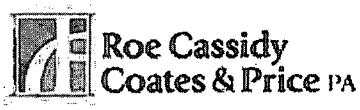
Post September 10, 2015 Documents

As noted by the amended privilege log, with are no longer withholding such documents and have produced them quickly to try to resolve your discovery dispute; we are simply reserving our rights to claw-back any post-September 10, 2015, documents on grounds of work product if we conclude that is warranted.

Please take a look at these items and let me know where you stand on them. Let's plan to talk Monday morning to see where things are and determine if we need the Court's assistance on resolving any outstanding issues.

Best,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140



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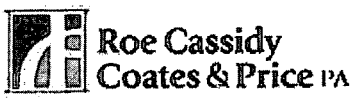
From: Josh Smith
Sent: Wednesday, May 31, 2017 5:31 PM
To: 'Greg English' <genglish@wyche.com>
Cc: Rita Bolt Barker <rbarker@wyche.com>
Subject: RE: Response by Encore to Defendants' Second Motion to Compel

Greg,

I appreciate you sending these items. I will take a look at the privilege log and attempt to review the 4,000 plus pdf files included as quickly as possible to see if the issues raised in Defendants' Second Motion to Compel are adequately addressed. I cannot say whether or not the items provided today satisfy Defendants' requests until reviewing them. I'll get back to you as soon as I can.

Thanks,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140



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From: Greg English [mailto:genglish@wyche.com]
Sent: Wednesday, May 31, 2017 3:40 PM
To: Josh Smith <jsmith@roecassidy.com>
Cc: Rita Bolt Barker <rbarker@wyche.com>; Greg English <genglish@wyche.com>
Subject: Response by Encore to Defendants' Second Motion to Compel

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Josh,

Attached is a letter responding to Defendants' Second Motion to Compel and an Amended Privilege Log, which are also being served upon you by hand today along with a flash drive containing additional documents.

Please confirm that the foregoing satisfies your requests.

Sincerely, Greg

Gregory English | Wyche
44 East Camperdown Way | Greenville, SC 29601-3512
Phone: (864) 242-8247 | Fax: (864) 235-8900
genglish@wyche.com | www.wyche.com/genglish | vCard

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No privilege is waived by inadvertent transmission.
Thank you.

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(iv) notify the sender by return e-mail or by calling 864-242-8200.
No privilege is waived by inadvertent transmission.
Thank you.

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
ENCORE TECHNOLOGY GROUP, LLC, Plaintiff, vs. KEONE TRASK and CLEAR TOUCH INTERACTIVE, INC., f/k/a CLEAR TOUCH INTERACTIVE, LLC, Defendants.	Case No. 2015-CP-23-05757 **PLAINTIFF'S RESPONSE TO DEFENDANTS' SECOND MOTION FOR CONTINUANCE OF TRIAL DATE**

Since the Court granted Defendants a second continuance in March, virtually nothing has changed in this case. Discovery has been substantially complete since March 3, when Plaintiff served its expert report, although Defendants have chosen not to take any of the four depositions that have been offered three different times. Nevertheless, Defendants now seek a third continuance that would push this date certain trial to over two years after filing and interfere with witness schedules.

Defendants' request is especially surprising because they recently argued to Judge Seals that Plaintiff Encore Technology Group, LLC ("Plaintiff" or "Encore") should not receive even seven (7) more documents because of all the discovery that had been exchanged, leading the judge to conclude "it is time for the case to go to trial." Order Denying Plaintiff's Second Motion to Compel, filed June 7, 2017. Now that they have succeeded in arguing that discovery should be over and the case is ready for trial to deny Encore's motion to compel, they change positions and argue the trial should be continued so that <u>they</u> have more time for discovery. Defendants should not be allowed to take such contradictory positions and continue to delay trial

of Encore's case, which is scheduled as a date-certain trial nearly three months from now, on **August 28, 2017** -- two years after Encore filed its complaint.

As the following facts show, there are no serious discovery issues and any problems were created by Defendants themselves, who have requested numerous, irrelevant documents they should already have and who refused to search for or timely produce documents, even after they were ordered to do so by the Court. Accordingly, Encore opposes Defendants' motion for continuance on the following grounds:

1. Encore filed this action on September 18, 2015, seeking damages against Defendants for violating their contractual and fiduciary duties to Encore. *See* Complaint.

2. On August 26, 2016, the parties agreed to a trial date of **February 27, 2017**, and were given a special order for that week. Exhibit A.

3. When Defendants failed to comply with Encore's discovery requests that had been served on July 2, 2016, Encore filed a Motion to Compel on October 4, 2016.

4. At the hearing on October 26, 2016, as confirmed in an Order filed November 17, 2016, the Court ordered Defendants to comply with their discovery obligations by November 21, 2016 (the "Discovery Order").

5. Defendants, however, failed and refused to produce all of the required documents by the Court's deadline. Instead, Defendants' witnesses appeared for their depositions in December and admitted they had not even searched for many of the documents they were ordered to produce. As Defendants admit in paragraph 16 of their motion for a second continuance filed March 10, 2017, they did not produce documents required by the Discovery Order until December 16, 2016 (after their witnesses appeared for depositions and made clear they had done no prior work), January 4, 2017, February 6, 2017, and February 28, 2017, many

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of which were needed for Encore's expert report. As a result, Encore's expert report was finalized and served on March 3, 2017 – three days after Defendants' last production.

6. Defendants also complain about the documents Encore has been forced to subpoena, but again Defendants have only themselves to blame. Defendant Trask – a former Chief Technology Officer for a publicly-traded company – claims that he made no back-up for emails and then "lost" relevant documents regarding Encore and the case when he changed email services. Whether inadvertent or by design, Defendants' "losing" of emails has forced Encore to subpoena such documents from third parties. This should not have burdened Defendants, but they filed four motions to quash these subpoenas, all of which were denied. Defendants also apparently spent time obstructing the third parties' responses to those subpoenas because several of them – including Collaboration Solutions, Inc., CVTE, Ronco, and UC Solutions – have made no or only minimal responses. Nevertheless, Encore has chosen not to file motions to compel the third parties, so that these issues were finalized by February 2017.

7. Moreover, at Defendants' overbroad request, Encore agreed to produce "all communications to or from [Defendants] Trask and/or Clear Touch and all internal documents, memos, emails, and other documents concerning Trask and/or Clear Touch," even though most of these voluminous documents were irrelevant and duplicative of documents Defendants should already have. Encore produced these documents in November 2016. Exhibit A.

8. Beginning November 28, 2016, Defendants claimed to have "technical issues" accessing some attachments to emails produced by Encore. Exhibit A. These issues, however, pertained only to attachments to emails, not to the emails or other communications themselves. The other alleged "problems" were not problems with Encore's production, but instead were:

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a. Defendants' software not being able to process the documents the way Defendants wanted (Email dated 12/1/16);

b. Defendants' misunderstanding of the way the documents were organized (emails dated 1/13/17); or

c. Defendants' wanting specially-created "load files" to use the documents with their own special software (email dated March 3, 2017). *Id.* By contrast, Encore has been forced to review Defendants' tardy productions the normal way – one document at a time. As Defendants admitted in paragraph 16 of their motion for a second continuance, they produced over 22,000 pages – many of them duplicated up to 25 times – which Encore had to review one page at a time.

All Encore email attachments were produced on a flash drive in December 2016 and Defendants have had all of Encore's documents since then. Exhibit A. In short, Defendants have had Encore's main documents since November 2016, and virtually all attachments and other documents since December 2016.

9. Recognizing the volume of documents they had requested from Encore, on December 2, 2016, Defendants requested that Encore "push back trial for at least 60 to 90 days." Exhibit A. On December 9, 2016, the parties agreed to push back the trial to the week of **May 8, 2017**. *Id.*

10. Based upon the parties' agreement, on December 12, 2016, the trial was continued and set as the date certain trial for the **May 8, 2017**, term of court. Exhibit A.

11. Other than the January 13, 2017, emails about Encore's documents, which concluded in Defendants' admitting "[i]t looks like you['re] right," Exhibit A, Encore received no further requests concerning its documents until March 3, 2017, when Defendants requested

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special "load files" to use the documents with their own special software. *Id.* Encore has no such load files.

12. Defendants then asked Encore to send them the documents in native format. Although not required by the rules, Encore did so in March, with the exception of a two-page affidavit that was a paper original, not an electronic document, and so had no "native format."

13. Based upon the foregoing, Defendants made their second request for a continuance, which was granted and the Court moved the trial date from May 8, 2017, to **August 28, 2017**.

14. Defendants have requested depositions of only four witnesses, which Encore has offered to give multiple times, in December, March, and May. Instead of taking them, Defendants have canceled scheduled depositions and made no real effort to schedule or take any depositions.

15. The only development since the last continuance in March to August 28 is Encore produced some additional emails on May 31 to accommodate Defendants' request for all emails concerning the parties, whether or not they are relevant to the case. Specifically, Encore originally objected in its privilege log to producing such emails after the lawsuit was filed in September 2015 on grounds such emails were irrelevant and/or work product. Nevertheless, solely to accommodate Defendants' continual demands, Encore produced such emails. Further, Encore discovered that, while its IT personnel had made multiple searches for documents containing "ClearTouch," which resulted in nearly 205,000 pages produced in December, they had inadvertently omitted the alternate spelling without the space in some searches. Encore re-ran a search with the space and supplemented its production with additional emails on May 31. Specifically, Encore produced 1,765 emails that pre-dated September 2015, which mostly

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concern irrelevant, day-to-day business issues, and 798 emails that post-date September 2015, which are irrelevant because they were created after the complaint in this action was filed. Not only are these documents largely irrelevant, but also they represent less than five percent (5%) of the documents Encore has produced and Defendants should be able to review them in a day or two. (In fact, in Defendant Trask's deposition on May 10, he claimed to have reviewed "literally every single document that has been provided," i.e., over 200,000 pages, in "six weeks." Trask Dep. at 6:14-16.)

16. In fact, the indications are that Defendants have already reviewed some if not all of the May 31 emails. Defendants mentioned to Encore's counsel that they wanted to depose one additional witness based upon emails in the May 31 production they had read. This witness was listed in interrogatory answers from the beginning, so that the only new development is that Defendants have read the few new emails from her.

17. As noted above, Defendants opposed Encore's recent second motion to compel by arguing that "both sides have produced thousands of pages of documents" and further discovery needs to end. The Defendants convinced the Court, which ruled "in reliance upon Defense counsel's representations, the Court finds that the documents and information sought by Plaintiff's Motion have already been sufficiently produced in some form or fashion, do not exist, or are not relevant to and it appears as if it is time for the case to go to trial." Order Denying Plaintiff's Second Motion to Compel, filed June 7, 2017.

18. Encore's multiple witnesses have already arranged their schedules for the week-long, date certain trial scheduled for August 28-September 1. The Court should not allow Defendants to push back the trial date again, particularly when Defendants' own actions are to

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blame for prolonging discovery and Defendants have argued to end discovery because of the upcoming trial date.

Respectfully submitted,

s/ Gregory J. English

Gregory J. English (65470)
Rita Bolt Barker (77600)

WYCHE, P.A.
44 East Camperdown Way
Post Office Box 728
Greenville, South Carolina 29602-0728
Telephone: 864-242-2800
Telefax: 864-235-8900
Attorneys for Plaintiff

June 7, 2017

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EXHIBIT A TO PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR CONTINUANCE OF TRIAL DATE

CORRESPONDENCE BETWEEN PARTIES

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Greg English

From: Josh Smith <jsmith@roecassidy.com>
Sent: Friday, August 26, 2016 11:05 AM
To: Greg English
Cc: Randy Moody; Rita Bolt Barker
Subject: RE: Sending: Status Conference Form (Encore v. Trask)

Looks good to me.

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140

1052 North Church St.
Greenville, S.C. 29601
p 864 349 2600 *f* 864 349 0303

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From: Greg English [mailto:genglish@wyche.com]
Sent: Friday, August 26, 2016 11:02 AM
To: Josh Smith <jsmith@roecassidy.com>
Cc: Randy Moody <rmoody@roecassidy.com>; Rita Bolt Barker <rbarker@wyche.com>; Greg English <genglish@wyche.com>
Subject: Sending: Status Conference Form (Encore v. Trask)

Josh,

Do I have your approval to send the attached Status Conference Form to the clerk? Do we need to request a date certain?

Thanks, Greg

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Greg English

From: Coker, Lyndall <LCoker@greenvillecounty.org>
Sent: Friday, August 26, 2016 4:16 PM
To: Greg English
Cc: 'Josh Smith'; Randy Moody; Rita Bolt Barker
Subject: RE: Sending: Status Conference Form - Case 2016-05757 (Encore v. Trask)

Greg,
I've got the case set Special Order, February 27, 2017.
Thanks and I hope you have a great weekend!
Lyndall

From: Greg English [mailto:genglish@wyche.com]
Sent: Friday, August 26, 2016 4:09 PM
To: Coker, Lyndall
Cc: 'Josh Smith'; Randy Moody; Rita Bolt Barker; Greg English
Subject: Sending: Status Conference Form - Case 2016-05757 (Encore v. Trask)

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Lyndall,

Attached please find our Status Conference Form for this case.

If we want a special order or need protection for dates after the trial date indicated, do we need to list those things on this form?

Thanks, Greg

Gregory English | Wyche
44 East Camperdown Way | Greenville, SC 29601-3512
Phone: (864) 242-8247 | Fax: (864) 235-8900
genglish@wyche.com | www.wyche.com/genglish | vCard
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No privilege is waived by inadvertent transmission.
Thank you.

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Greg English

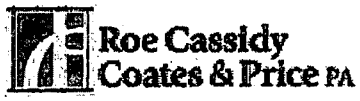
From: Josh Smith <jsmith@roecassidy.com>
Sent: Monday, November 28, 2016 1:48 PM
To: Greg English; Rita Bolt Barker
Subject: RE: Encore Supplemental Production

Greg and Rita,

I'm running into the same issue with many of the files on the 2 other CDs. It would take way too long to list each file that won't open on those two CDs. Can you please send a link for the files contained on the other two CDs as well. Please let me know what you guys want to do in order to address this so I can plan accordingly.

I appreciate it,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140



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From: Josh Smith
Sent: Monday, November 28, 2016 1:37 PM
To: Gregory J. English (genglish@wyche.com) <genglish@wyche.com>; Rita Bolt Barker <rbarker@wyche.com>
Subject: Encore Supplemental Production

Greg and Rita,

Looks like there is a technical issue with the supplemental production received today. I cannot open the following files on the CD accompanying the Nov. 21st letter:

ENC 000510

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ENC 000511

ENC 000512

ENC 00000007159-27245 (this was broken down into multiple files on the CD provided)

Each time I try to open these I get an error message saying the file is corrupted. Can you please provide these files again immediately seeing as we've got depos this week. An email link I think would work best.

I'm copying over the other two CDs (served with the Nov. 22nd letter) now and will let you know if there are errors with any of those files as soon as I know.

Thanks,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140

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Greg English

From: Rita Bolt Barker
Sent: Thursday, December 01, 2016 7:51 PM
To: 'Josh Smith'
Cc: Greg English
Subject: Encore v. Trask: Email Files

Josh, It was great to see you this afternoon. I spoke with our IT Director, Phil Townsend, and he provided the following advice regarding your difficulties uploading the PDF email files:

(1) We do not see corrupt files in the native documents or our copy of the production set. Please let us know of any specific files that you have identified as problematic, and we'll get replacements to you. (I know your program revealed thousands of corrupted files, but see the next point.)
(2) Phil said that Adobe Professional X is unlikely to be able to handle the volume of the entire set of PDFs you are attempting to upload and that you may be getting "false negatives" (or perhaps "false positives" depending on how you look at it) saying data is corrupt purely because of the volume.
(3) Phil suggested combining PDFs into smaller sets (using the same basic process you are using to select the entire batch now) and processing them through Adobe Professional X in those batches rather than as one large set.

Please let me know if this approach works for you. Also, I found this guide regarding printing Excel spreadsheets once you've hidden data.

Thank you,

Rita Bolt Barker | Wyche
44 East Camperdown Way | Greenville, SC 29601-3512
Phone: (864) 242-8235 | Fax: (864) 235-8900
rbarker@wyche.com | www.wyche.com/rbarker | vCard
A Lex Mundi Member Firm

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JOSEPH O. "JOSH" SMITH
(864) 404-3140
JSMITH@ROECASSIDY.COM

December 2, 2016

Via Email Only
Gregory J. English
Rita Bolt Barker
WYCHE P.A.
44 Camperdown Way (29601-3512)
Post Office Box 728
Greenville, SC 29602-0728
genglish@wyche.com
rbarker@wyche.com

RE: Encore Technology Group LLC v. Keone Trask and Clear Touch Interactive, Inc.
C.A. No. 2015-CP-23-05757
RCCP 2626.0001

Dear Greg and Rita:

Below I have addressed the items in the Discovery Order that we discussed yesterday detailing the specifics of our agreement as to what will be provided in order to satisfy Encore that Defendants have complied with the Order.

Clear Touch Monthly Financial Information (1(a) in Order) – As we discussed yesterday, this information for 2013-2015 is reflected in the detailed P&Ls previously produced. Regardless, Clear Touch will provide monthly reports showing its sales, costs of goods, operating expenses, and net profits from 2013 to date. This will be done in two phases due to my client needing to bring its books current for Q2 and Q3 of this year.

Timeline to complete: 14 days for 2013- Q1 2016 reports
30 days for Q2 & Q3 2016 reports

Clear Touch Tax Returns and Financial Statements (1(b) in Order) – All tax returns have been produced as well as P&Ls for 2013 – Q1 2016. As noted above, Q2 and Q3 for 2016 will be provided.

Timeline to complete: same as 1(a) above for Q2 & Q3 2016 reports

Supplier Agreements and Price Lists (1(c) in Order) – Clear Touch supplier price lists will be produced. I understand that Clear Touch did not have formal agreements with either of the two suppliers discussed in Ms. Trask's deposition (TSI and CVTE) and these two entities were the only suppliers utilized in the course of Clear Touch's business dealings with Encore. Outside of

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formal agreements, Clear Touch will produce invoices, purchase orders, and correspondence related to its financial arrangements with TSI and CVTE.

Timeline to complete: 14 days

Specific Customer Sales – (1(d) of Order) – Documents addressed in response to 1(a) &(b) cover this item.

Ownership Records & Agreements (1(e) of Order) – Clear Touch will supplement its previous productions with the corporate book and IRA ownership documents discussed in Ms. Trask's deposition.

Communications Regarding Encore and Prospective Customers (1(f) in Order) – Yesterday we agreed upon the following email search terms:

1. Encore
2. Leon
3. Madison
4. Valdosta
5. Gwinnett
6. Wake
7. WCPSS
8. Fairfield
9. Todd Newman
10. Russell Young
11. David Masters
12. Michael Knight
13. Leo Gallant (only for certain timeframe of 2.1.13 – 1.31.15)

Defendants will search for each of these terms in all Clear Touch email accounts as well as any personal email accounts utilized to conduct business on behalf of the company. My clients informed me that there are no archived emails or backup tapes to search.

Timeline to complete: 14 days.

Additional Items - Defendants will also provide (1) an affidavit explaining the Clear Touch email merger discussed in Ms. Trask's deposition and its impact on retention of company emails and (2) a copy of the NDA signed by Leo Gallant discussed in his deposition.

Timeline to complete: 14 days.

Per our conversation yesterday, Defendants will do a rolling production with the priority being to provide the additional financial information as quickly as possible.

I appreciate you sending along potential January deposition dates. I will get back to you on those the first of next week.

As for Encore's recent production, I am trying to get all the files transferred off the flash drives onto our system. I will attempt to do what Rita suggested in her email last night and let you know if I continue to have issues with transferring and opening a large number of the files provided.

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Finally, the February trial date will not work for me nor do I think it's workable considering the status of this case. As I mentioned yesterday, I have a federal trial in February that will make getting this case ready by the end of that month impossible. Even without the trial, there is a good deal of work to be done to get this one ready. We've got to resolve these discovery items, rectify the technical issues with Encore's recent production and review that very large set of documents all before getting to the numerous depositions that need to be conducted. That's not to mention the fact that Encore's expert witness needs to draft a supplemental report and be deposed with enough time afterwards to allow Defendants a chance to obtain their own expert, have them prepare a report and provide a deposition. Therefore, I propose we push back trial for at least 60 to 90 days. Please let me know your thoughts on this and how you want to notify the Court.

I am of course happy to discuss any of this with you guys so please do not hesitate to give me a call.

With kind regards, I am

Sincerely,

ROE CASSIDY COATES & PRICE P.A.

s/ Joseph O. Smith

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W Y C H E

Attorneys at Law

December 9, 2016

BY FIRST CLASS MAIL AND BY EMAIL

Joseph O. Smith, Esq.
D. Randle Moody, II, Esq.
ROE CASSIDY COATES & PRICE, P.A.
1052 North Church Street
Greenville, SC 29601

Re: *Encore Technology Group, LLC v. Trask, et al.*, Case No. 2015-CP-23-05757

Dear Josh and Randy:

In response to your letter dated December 2, 2016, the timelines to produce the requested documents are acceptable if we can get an extension of the trial date. If we can get a date certain for that term, we can agree to push the trial to the week of May 8. Please confirm that you want to do so.

Regarding your searches, please also add the names Chris Powell, Chris Davis, and Jimmy Higginbotham.

Finally, your clients' suggestion that they keep no archives or back-ups of their emails and systems is extremely dubious. Your clients are very successful business people and Mr. Trask specifically is a seasoned, savvy and long experienced information technology executive and has been personally responsible for ClearTouch's email and hardware systems. Therefore, regardless of whether they are "archived emails or back up tapes," please have your clients produce any copies of the requested documents of any sort. Furthermore, your clients are obligated under Rule 34, SCRCP, to produce not only what is in their actual possession, but also what is in their "custody or control," i.e., within the possession of third parties who can provide such documents. If the requested documents are not produced, we will expect the affidavit to elaborate on why there are no back-up copies.

Sincerely,

Gregory J. English
864.242.8247
genglish@wyche.com

cc: Rita B. Barker, Esq. (by-email)
Mr. Todd Newnam (by-email)

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PROFESSIONAL ASSOCIATION
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p: 864.242.8200 | f: 864.235.8900
www.wyche.com

Greg English

From: Greg English
Sent: Monday, December 12, 2016 3:29 PM
To: 'Coker, Lyndall'
Cc: 'Josh Smith'; Randy Moody; Rita Bolt Barker
Subject: RE: Sending: Status Conference Form - Case 2016-05757 (Encore v. Trask)

Lyndall,

As you may recall, we represent the Plaintiff and Josh Smith and Randy Moody represent the Defendants in this case. The case is set as the Special Order for the week of Feb. 27.

After we agreed on this trial date, discovery disputes arose and Judge Stilwell ordered the parties to produce documents by November 21. Defendants need additional time to produce their documents and we are willing to work with them if we can move this case to a Special Order for another week, such as the week of May 8.

Can you let us know the procedure for asking the case to be set as the Special Order for a later week, such as May 8?

Thanks, Greg

Gregory English | Wyche
44 East Camperdown Way | Greenville, SC 29601-3512
Phone: (864) 242-8247 | Fax: (864) 235-8900
genglish@wyche.com | www.wyche.com/genglish | vCard
A Lex Mundi Member Firm

From: Coker, Lyndall [mailto:LCoker@greenvillecounty.org]
Sent: Friday, August 26, 2016 4:16 PM
To: Greg English <genglish@wyche.com>
Cc: 'Josh Smith' <jsmith@roecassidy.com>; Randy Moody <rmoody@roecassidy.com>; Rita Bolt Barker <rbarker@wyche.com>
Subject: RE: Sending: Status Conference Form - Case 2016-05757 (Encore v. Trask)

Greg,
I've got the case set Special Order, February 27, 2017.
Thanks and I hope you have a great weekend!
Lyndall

From: Greg English [mailto:genglish@wyche.com]
Sent: Friday, August 26, 2016 4:09 PM
To: Coker, Lyndall
Cc: 'Josh Smith'; Randy Moody; Rita Bolt Barker; Greg English
Subject: Sending: Status Conference Form - Case 2016-05757 (Encore v. Trask)

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Lyndall,

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Greg English

From: Coker, Lyndall <LCoker@greenvillecounty.org>
Sent: Monday, December 12, 2016 3:35 PM
To: Greg English
Cc: 'Josh Smith'; Randy Moody; Rita Bolt Barker
Subject: RE: Sending: Status Conference Form - Case 2016-05757 (Encore v. Trask)

Greg,
The case has been moved to the May 8, 2017 term of court as Day Certain.
You don't need to send anything further.
Thanks and I hope you have a nice afternoon!
Lyndall

From: Greg English [mailto:genglish@wyche.com]
Sent: Monday, December 12, 2016 3:29 PM
To: Coker, Lyndall
Cc: 'Josh Smith'; Randy Moody; Rita Bolt Barker
Subject: RE: Sending: Status Conference Form - Case 2016-05757 (Encore v. Trask)

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Lyndall,

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Can you let us know the procedure for asking the case to be set as the Special Order for a later week, such as May 8?

Thanks, Greg

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From: Coker, Lyndall [mailto:LCoker@greenvillecounty.org]
Sent: Friday, August 26, 2016 4:16 PM
To: Greg English <genglish@wyche.com>
Cc: 'Josh Smith' <jsmith@roecassidy.com>; Randy Moody <rmoody@roecassidy.com>; Rita Bolt Barker <rbarker@wyche.com>
Subject: RE: Sending: Status Conference Form - Case 2016-05757 (Encore v. Trask)

Greg,
I've got the case set Special Order, February 27, 2017.

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Greg English

From: Josh Smith <jsmith@roecassidy.com>
Sent: Friday, December 16, 2016 11:43 AM
To: Rita Bolt Barker
Cc: Greg English
Subject: RE: Encore v. Trask: Email Files

Greg and Rita,

We are still working to get all the files transferred off the drives and I have begun to review those on our system. Every email with an attachment that I have reviewed so far does not allow me to click on the attachment link to pull up the attached document. The formatting (blue underlined text) makes it appear as if these are live links but they are not.

The attachments to the many emails Encore produced are part and parcel of that recent production. Considering the massive number of files, I think it is necessary to produce these documents in a manner that ensures each attachment can be linked to the appropriate email file. I would suggest attachments be bates stamped with the bates number on the related email followed by "A, B, C etc." So for example, ENC 00044986 has two attachments. If each was a single page doc they would be ENC 00044986A and ENC 00044986B respectively. This has worked well in previous cases. I am of course open to other suggestions.

We are set to notice the depositions of several Plaintiff witnesses for mid-January and need time to review what I anticipate to be a massive amount of additional information in order to prepare. To have any chance of sticking to that schedule we would need the documents as quickly as possible and no later than December 23rd. Please let me know today how you guys propose addressing this. I am of course happy to discuss over the phone if that's more efficient.

Best Regards,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140

1052 North Church St.
Greenville, S.C. 29601
p 864 349 2600 *f* 864 349 0303

Roe Cassidy Coates & Price, P.A. | Greenville, SC Law Firm

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W Y C H E

Attorneys at Law

December 29, 2016

BY HAND DELIVERY

Joseph O. Smith, Esq.
D. Randle Moody, II, Esq.
ROE CASSIDY COATES & PRICE, P.A.
1052 North Church Street
Greenville, SC 29601

Re: *Encore Technology Group, LLC v. Trask, et al.*, Case No. 2015-CP-23-05757

Dear Josh and Randy:

Enclosed please find a flash drive containing documents Bates labeled ENC 00027246 through ENC 00202344, along with a Certificate of Service for same. These documents replace previously produced documents Bates labeled ENC 00027246 through ENC 00095581.

Yours truly,

Rita Bolt Barker

Rita Bolt Barker
864.242.8235
rbarker@wyche.com

cc: Gregory J. English, Esq. (by-email)
Mr. Todd Newnam (by-email)

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PROFESSIONAL ASSOCIATION
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p: 864.242.8200 | f: 864.235.8900
www.wyche.com

Greg English

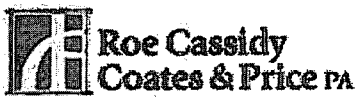
From: Josh Smith <jsmith@roecassidy.com>
Sent: Friday, January 13, 2017 10:09 AM
To: Greg English; Rita Bolt Barker
Subject: Encore v Clear Touch - Plaintiff's Supp Production

Greg and Rita,

The new flash drive you guys provided with ENC 27246-202344 seems to have live links to the attachments in those emails. I have quickly passed over ENC 0513-27245, the majority of which has the same issue as the Trask emails you guys had to reproduce. Specifically, ENC 000513-00025577 do not have the email attachments or live links to them. Please produce these documents with the attachments in the same manner you guys reproduced the Trask emails so we can review the documents and related attachments.

Thanks,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140



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Greg English

From: Josh Smith <jsmith@roecassidy.com>
Sent: Friday, January 13, 2017 3:43 PM
To: Greg English; Rita Bolt Barker
Subject: RE: Encore v Clear Touch - Plaintiff's Supp Production

Greg,

I understand. My last email might not have been clear. There are no attachments for ENC 000513-00025577. Those documents are the ones I am asking Encore to reproduce with attachments.

Thanks,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140

1052 North Church St.
Greenville, S.C. 29601
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From: Greg English [mailto:genglish@wyche.com]
Sent: Friday, January 13, 2017 3:40 PM
To: Josh Smith <jsmith@roecassidy.com>; Rita Bolt Barker <rbarker@wyche.com>
Cc: Greg English <genglish@wyche.com>
Subject: RE: Encore v Clear Touch - Plaintiff's Supp Production

Josh,

I understand that from our IT person that, on the new flash drive for ENC 27246-202344, the attachments are contained WITHIN the document. So, for example, 27861 is the parent email, 27862 and 27863 are the attachments, 30306 -30307 is the parent email, 30308 – 30315 is the attachment, etc.

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Greg English

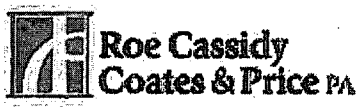
From: Josh Smith <jsmith@roecassidy.com>
Sent: Friday, January 13, 2017 4:27 PM
To: Greg English; Rita Bolt Barker
Subject: RE: Encore v Clear Touch - Plaintiff's Supp Production

Greg,

It looks like your right. My quick thumb through gave me the impression they were missing, but it seems the attachments were inserted after the related email chain. Apologies for the mix up. I'll let you know if there are any missing.

Have a good weekend,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140



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From: Greg English [mailto:genglish@wyche.com]
Sent: Friday, January 13, 2017 4:14 PM
To: Josh Smith <jsmith@roecassidy.com>; Rita Bolt Barker <rbarker@wyche.com>
Cc: Greg English <genglish@wyche.com>
Subject: RE: Encore v Clear Touch - Plaintiff's Supp Production

Josh,

I believe there are attachments for those numbers. For example, see ENC 5003-5043, which includes the email and its attachment.

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Greg English

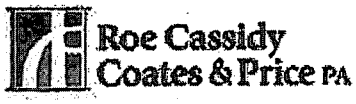
From: Josh Smith <jsmith@roecassidy.com>
Sent: Friday, March 03, 2017 2:22 PM
To: Greg English
Cc: Rita Bolt Barker; Ellen Griffin
Subject: Encore v Clear Touch
Attachments: Cloudnine Load File Specs.pdf

Greg,

Attached is the info regarding the load file we need from you guys to process Encore's discovery in an efficient manner. Please let me know when your tech folks can provide this to us.

Thanks,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140



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Greenville, S.C. 29601
p 864 349 2600 / 864 349 0303

Roe Cassidy Coates & Price, P.A. | Greenville, SC Law Firm

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cloudnine

TIF and Native Load File - Data Receiving Protocols

TIF Image Protocol:

- Images should be 300 dpi single-page Group IV TIF.
- Color images are recommended to be exported as JPG for file compression.
- Each image should contain only one document page.
- The TIFs of a given document should be kept in sequential order.
  Example: page 1 should be the first image, page 2 the second image etc.

OCR Text Protocol

- Single OR Multi - page OCR text.
- OCR text files must be named exactly as its corresponding TIF image.
- OCR text must reside in the same location as its corresponding TIF image

Naming Protocol:

- Each image file name MUST be a unique number.
- The TIF image should have a pad of eight digits. Example: 00000001.tif
- The TIF image should also have an alpha prefix if applicable.
  Example: AB00000001.tif

Metadata Fields:

Metadata should be provided in a standard Concordance .DAT file with the following file delimiters:

- (20) – Delimiter
- þ (254) – Qualifier
- ® (174) – Newline

The .DAT file should inlcude the following populated fields, to the extent that such information exists in the original ESI document or email

- **DocID/ImageFileName [Required]**
- Date/Time Sent
- Date/Time Received
- From
- To
- CC
- BCC
- Email Subject
- Thread ID
- Parent ID
- File Size
- Author
- Date/Time Created
- Date/Time Saved
- Date/Time Last Modified
- Date/Time Last Print
- **Native Link [Required]**
- Native File Size
- Native MD5 hash
- Custodian
- Original Folder Path
- OCR/Text Path

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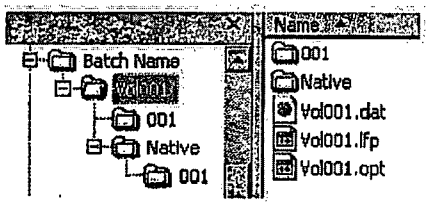
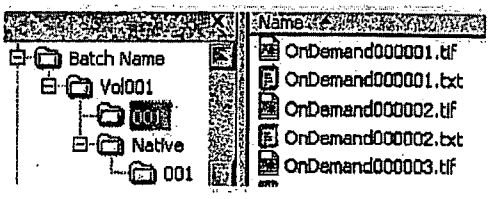
Folder/File Structure:

- **[Root Folder] Batch Name**
  - **[Image/Text Folder] Vol001\001 – This will contain the TIF and OCR files.**
    - **[Subfolders] within the Images folder incrementally numbered with no more than 10,000 files per folder.**
  - **[Native Folder] Vol001\Native\001 – This will be the native files named to the BegDoc#.**
    - **[Subfolders] within the Native folder incrementally numbered with no more than 10,000 files per folder.**
  - **[IPRO File] Vol001\Vol001.lfp – This is a standard IPRO load file.**
  - **[DAT File] Vol001\Vol001.dat – This is a standard Concordance metadata file.**

Folder Structure Examples:





NOTES:

- ***Do NOT include the following fields in Metadata:***
  - ***OCR (i.e. extracted text)***
  - ***Message Body***
  - ***Conversation string***

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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,	)	**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**
vs.	)	
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
Defendants.	)	

Exhibit C

Encore Technology Group, LLC
SC Secretary of State Summary

Pandora Radio - Listen t... | eFlex | Entity Details - Secretary | Entity Profile - Business E...

Secure | https://businessfilings.sc.gov/BusinessFiling/Entity/Profile/e74a0cd3-92d1-4e5a-a7d3-01fdc37d290c

Apps | Google | Suggested Sites | New Tab | Favorites | Rain Pursuit | BNC Bank - Serving t... | Green Flows: Jingle R... | Trademarks | USPTO | Other bookmarks

File, Search, and Retrieve Documents Electronically

Log In

ENCORE TECHNOLOGY GROUP, LLC

Corporate Information

Entity Type Limited Liability Company

Status Good Standing

Domestic/Foreign Domestic

Incorporated State South Carolina

Important Dates

Effective Date 09/27/2012

Expiration Date N/A

Term End Date 12/31/2063

Dissolved Date N/A

Registered Agent

Agent TODD R NEWMAN

Address 2000 Wade Hampton Blvd, Ste 210
Greenville, South Carolina 29615

ADD FILING

Official Documents On File

Filing Type	Filing Date
NOTICE OF CHANGE OF DESIGNATED OFFICE, AGENT OR ADDRESS OF REGISTERED AGENT	02/07/2017
Change of Agent or Office	02/08/2013
Amendment	02/08/2013
Organization	09/27/2012

Former Names

Name	Filing Date

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
Encore Technology Group, LLC,	)	C.A. No. 2015-CP-23-05757
	)	
Plaintiff,	)	
	)	
vs.	)	**DEFENDANTS' MOTION *IN LIMINE***
	)	
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
	)	
Defendants.	)	
	)	

The above-named Defendants, by and through their undersigned attorneys, file this Motion *in Limine* to prohibit Plaintiff, its witnesses and attorneys, from introducing evidence or referring to the following:

Issue No. 1

The testimony of Plaintiff's designated economic expert, Michael Meilinger or the report (including any exhibits or attachments) prepared by Mr. Meilinger Plaintiff claims reflects its recoverable economic damages in this case.

Issue No. 2

Testimony or evidence regarding Encore's alleged lost profits on sales made to Encore and Encore customers by Clear Touch and loss of business opportunity from April 26, 2015 to October 10, 2015.

Issue No. 3

Testimony or evidence regarding Encore's alleged profits lost to Clear Touch for Keone Trask's breach of his duty of loyalty and fiduciary duty.

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Issue No. 4

Testimony or evidence regarding and/or seeking to recover other Encore employees' compensation and expenses as an element of damages for Trask's breach of his duty of loyalty.

Issue No. 5

Testimony or evidence regarding and/or seeking to recover other Encore employees' compensation and expenses as an element of damages for Trask's breach of his fiduciary duties to the Plaintiff.

Issue No. 6

Testimony or evidence regarding alleged damages Plaintiff claims to have incurred due to Trask's breach of his duty of loyalty after he was no longer employed by the Plaintiff and his duty of loyalty ended.

Issue No. 7

Testimony or evidence regarding Plaintiff's alleged damages it claims to have incurred due to Trask's breach of his fiduciary duties after he was no longer employed by the Plaintiff and his fiduciary duties ended.

Issue No. 8

Testimony or evidence regarding Plaintiff's alleged damages from Clear Touch's sales to Leon County from April 24, 2014 – April 25, 2015.

Issue No. 9

Testimony or evidence regarding Plaintiff's alleged damages from Clear Touch's sales to Leon County from April 26, 2015 – October 10, 2015.

Issue No. 10

Testimony or evidence regarding Plaintiff's alleged damages from Clear Touch's sales to Plaintiff from April 24, 2014 – April 25, 2015.

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Issue No. 11

Testimony or evidence regarding Plaintiff's alleged damages representing Clear Touch's "normalized profit" from April 26, 2015 – October 10, 2015.

Issue No. 12

Testimony or evidence regarding Plaintiff's alleged damages arising from Defendants' alleged breach of the Reseller Agreement.

Issue No. 13

Testimony or evidence for the purpose of seeking attorneys' fees and costs against Clear Touch for its alleged tortious interference with any contract.

Issue No. 14

Testimony or evidence regarding Plaintiff's alleged damages in the form of profits to Clear Touch from February 13, 2013 – April 2, 2014 for Trask's alleged breach of his duties of loyalty and/or fiduciary duties to Encore.

Issue No. 15

Testimony or evidence accusing, alleging, suggesting, or in any implying that Defendants withheld, hid, or destroyed evidence.

Issue No. 16

Testimony or evidence regarding, accusing, or suggesting that Kathy Cruse changed her name from Trask to conceal her identity and affiliation with Keone Trask.

Issue No. 17

Testimony or evidence of any alleged damages Plaintiff claims related to Jimmy Higginbotham's alleged breach of his non-compete.

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Issue No. 18

Testimony or evidence of any claimed damages related to or otherwise arising out of Leo Gallant's alleged breach of his non-compete.

Issue No. 19

Testimony or evidence claiming or otherwise alleging that Encore would have invested in Clear Touch or directly sourced interactive panels as Clear Touch did had Trask disclosed the opportunity while employed by the Plaintiff.

Defendants respectfully request the Court enter an Order prohibiting Plaintiff, its witnesses and attorneys, from introducing evidence or referring to the issues noted above. Defendants make this motion pursuant to the applicable South Carolina Rules of Civil Procedure and Evidence and controlling case law upon the grounds noted in this Motion and more thoroughly addressed in Defendants' supporting memoranda and any other supporting arguments, evidence, or law presented at the hearing on this Motion.

Respectfully Submitted,

ROE CASSIDY COATES & PRICE, P.A.

s/Joseph O. Smith
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Attorneys for Defendants

Greenville, South Carolina
September 13, 2017

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
Encore Technology Group, LLC,	)	C.A. No. 2015-CP-23-05757
	)	
Plaintiff,	)	
	)	
vs.	)	**MEMORANDUM IN SUPPORT OF**
	)	**DEFENDANTS' MOTION *IN LIMINE***
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
	)	
	)	
Defendants.	)	
	)	

The above-named Defendants, by and through their undersigned attorneys, submit this memorandum in support of their Motion *in Limine*, and respectfully request the Court enter an order prohibiting Plaintiff, her witnesses and attorneys from introducing evidence or referring to the following issues at trial:

Issue No. 1 – The testimony of Plaintiff's designated economic expert, Michael Meilinger or the report (including any exhibits or attachments) prepared by Mr. Meilinger Plaintiff claims reflects its recoverable economic damages in this case.

Issue No. 2 – Testimony or evidence regarding Encore's alleged lost profits on sales made to Encore and Encore customers by Clear Touch and loss of business opportunity from April 26, 2015 to October 10, 2015.

Issue No. 3 – Testimony or evidence regarding Encore's alleged profits lost to Clear Touch for Keone Trask's breach of his duty of loyalty and fiduciary duty.

Issue No. 4 – Testimony or evidence regarding and/or seeking to recover other Encore employees' compensation and expenses as an element of damages for Trask's breach of his duty of loyalty.

Issue No. 5 – Testimony or evidence regarding and/or seeking to recover other Encore employees' compensation and expenses as an element of damages for Trask's breach of his fiduciary duties to the Plaintiff.

Issue No. 6 – Testimony or evidence regarding alleged damages Plaintiff claims to have incurred due to Trask's breach of his duty of loyalty after he was no longer employed by the Plaintiff and his duty of loyalty ended.

Issue No. 7 – Testimony or evidence regarding Plaintiff's alleged damages it claims to have incurred due to Trask's breach of his fiduciary duties after he was no longer employed by the Plaintiff and his fiduciary duties ended.

Issue No. 8 – Testimony or evidence regarding Plaintiff's alleged damages from Clear Touch's sales to Leon County from April 24, 2014 – April 25, 2015.

Issue No. 9 – Testimony or evidence regarding Plaintiff's alleged damages from Clear Touch's sales to Leon County from April 26, 2015 – October 10, 2015.

Issue No. 10 – Testimony or evidence regarding Plaintiff's alleged damages from Clear Touch's sales to Plaintiff from April 24, 2014 – April 25, 2015.

Issue No. 11 – Testimony or evidence regarding Plaintiff's alleged damages representing Clear Touch's "normalized profit" from April 26, 2015 – October 10, 2015.

Issue No. 12 – Testimony or evidence regarding Plaintiff's alleged damages arising from Defendants' alleged breach of the Reseller Agreement.

Issue No. 13 – Testimony or evidence for the purpose of seeking attorneys' fees and costs against Clear Touch for its alleged tortious interference with any contract.

Issue No. 14 – Testimony or evidence regarding Plaintiff's alleged damages in the form of profits to Clear Touch from February 13, 2013 – April 2, 2014 for Trask's alleged breach of his duties of loyalty and/or fiduciary duties to Encore.

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Issue No. 15 – Testimony or evidence accusing, alleging, suggesting, or in any implying that Defendants withheld, hid, or destroyed evidence.

Issue No. 16 – Testimony or evidence regarding, accusing, or suggesting that Kathy Cruse changed her name from Trask to conceal her identity and affiliation with Keone Trask.

Issue No. 17 – Testimony or evidence of any alleged damages Plaintiff claims related to Jimmy Higginbotham's alleged breach of his non-compete.

Issue No. 18 – Testimony or evidence of any claimed damages related to or otherwise arising out of Leo Gallant's alleged breach of his non-compete.

Issue No. 19 – Testimony or evidence claiming or otherwise alleging that Encore would have invested in Clear Touch or directly sourced interactive panels as Clear Touch did had Trask disclosed the opportunity while employed by the Plaintiff.

I. PROCEDURAL BACKGROUND

This matter was commenced by the filing of a Summons and Complaint on September 18, 2015. Plaintiff, Encore Technology Group (*hereinafter* "Encore" or "Plaintiff") alleged multiple causes of action against Defendants, styled as "Breach of Duty of Loyalty by Trask," "Breach of Fiduciary Duties by Trask," "Breach of Contract against Trask," "Violation of SC Trade Secrets Act against all Defendants," "Unjust Enrichment/Accounting/Constructive Trust/Disgorgement/Restitution against all Defendants," "Tortious Interference against Clear Touch," "Breach of Contract Accompanied by Fraudulent Act against Trask," "Defamation," and "Unfair Trade Practices." Plaintiff claims damages allegedly arising from Trask not disclosing his relationship with Clear Touch while an employee of Encore in violation of various common law and contractual obligations to the company, misappropriation of company trade secrets and company data, and defamatory statements concerning Encore, as alleged in the Complaint. Defendants filed Answers asserting various defenses.

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Defendants have admitted liability on Plaintiff's Breach of Duty of Loyalty and Breach of Fiduciary Duties causes of action.

II. ARGUMENT

A. Analysis

1. Exclusion of Plaintiff's Expert Testimony and Report

Plaintiff's expert, Michael Meilinger's testimony and the Damages Report (the "Report") (attached hereto as Exhibit A) he prepared Plaintiff contends reflects their economic damages in this case should be excluded from admission at trial because it is reliant upon rampant speculation and acceptance of wholly unsupported facts or nonexistent objective evidence all of which the Plaintiff intends to cloak in an air of legitimacy by presenting it through expert testimony and in an expert report. Further, it should be excluded because it contains an inappropriate analysis of alleged damages for breach of duty of loyalty and fiduciary duties and includes damages for which Plaintiff cannot recover under the applicable law. Presentation of expert testimony and reports are reserved for aiding the jury in understanding a fact at issue which requires explanation from someone with specialized knowledge, skill, or experience. It is not appropriate to allow a party to utilize expert testimony or an expert report to present evidence otherwise lacking reliable factual, objective, or other verifiable evidentiary support or when the analysis presented is not a measurement of the Plaintiff's alleged damages. Further, presentation of expert testimony or reports should also not be allowed when a party intertwines and includes unavailable damages along with those it may recover without any meaningful or clear way to segregate the two.

SCRE 702 governs admissibility of expert testimony and provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

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Expert testimony is required where a factual issue before the jury must be resolved with scientific, technical, or other specialized knowledge which falls outside the realm of ordinary lay knowledge. *Watson v. Ford Motor Co.*, 389 S.C. 434, 445 (2010). Unlike lay witnesses, experts may offer opinions based upon facts about which they have no firsthand knowledge or on information made available to them before a hearing so long as it is the type of information reasonably relied upon in their field to render opinions. SCRE 703. On the other hand, lay witnesses are confined to testifying only about matters within their personal knowledge and may not offer opinion testimony that requires special knowledge, skill, experience or training. *See* SCRE 602 and 701. "For these reasons, expert testimony receives additional scrutiny relative to other evidentiary decisions." *Watson v. Ford Motor Co.*, 389 S.C. 434, 446 (2010).

> A critical distinction between Rule 701 and Rule 702 testimony is that an expert witness must possess some specialized knowledge or skill or education that is not in possession of the jurors. Therefore [a]t bottom ... Rule 701 forbids the admission of expert testimony dressed in lay witness clothing.

United States v. Johnson, 617 F.3d 286, 293 (4th Cir. 2010) (citations omitted).

The trial court has a gatekeeping duty to ensure expert testimony is necessary for resolution of a factual issue, the expert is qualified, and "[f]inally, the trial court must evaluate the substance of the testimony and determine whether it is reliable." *Watson*, 389 S.C. at 446. The Fourth Circuit has identified that "'court[s] must recognize that due to the difficulty of evaluating their testimony, expert witnesses have the potential to be both powerful and quite misleading.' Regardless, 'the proponent of the [expert] testimony must establish its admissibility by a preponderance of proof.'" *Shameka Green, Plaintiff, v. The Bradley Co. & HMU, LLC, Defendants. The Bradley Co., Third-Party Plaintiff,* No. 3:15-CV-02581-JMC, 2017 WL 4012298, at *4 (D.S.C. Sept. 12, 2017) (citations omitted).

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In a number of cases around the country, courts have excluded economic and/or damages expert testimony when the underlying facts and data do not support the expert's conclusions. *See, e.g., Target Market Pub., Inc. v. ADVO, Inc.*, 136 F.3d 1139, 1142–45, 48 Fed. R. Evid. Serv. 1109 (7th Cir. 1998) (expert testimony of lost profits excluded because conclusion was based on assumption that company would have penetrated certain markets); *Boucher v. U.S. Suzuki Motor Corp.*, 73 F.3d 18, 21–22, 43 Fed. R. Evid. Serv. 521 (2d Cir. 1996) (damages testimony should have been excluded at trial level because the facts relied on by the expert did not support the conclusions and were therefore "speculative assumptions"); *Otis v. Doctor's Associates, Inc.*, 1998 WL 673595 (N.D. Ill. 1998) (damages expert testimony excluded because the expert based lost profits calculations on speculation and mere assumptions); *Sun Ins. Marketing Network, Inc. v. AIG Life Ins. Co.*, 254 F. Supp. 2d 1239 (M.D. Fla. 2003) (business valuation testimony of a forensic accountant excluded in part because the opinion was based on assumptions not supported by objective facts).

Here, Meilinger's report is largely speculative, based on grandiose assumptions blindly accepted because Plaintiff's executives said so, and lacking in objectively verifiable factual basis in many respects. It would be extremely prejudicial for the jury to hear that an expert believes Defendants caused at least $712,000 and possibly $5.5 Million Dollars of harm to the Plaintiff for which it may recover. As discussed in detail below, the Report and testimony are based on assumptions and speculation, without objective factual, or evidentiary foundation in order to put large numbers in front of the jury. The Report heavily relies upon acceptance of self-serving statements made by Plaintiff's executives which can only benefit Encore but for which there is no objective evidence to support or more importantly, challenge those assertions. Based only on the Court's gatekeeping duty under 702, Meilinger's testimony and Report do not meet the requirements for expert testimony and should be excluded. 702 notwithstanding, Meilinger's

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testimony and the Report are unable to overcome the additional hurdle in the Court's admission analysis under SCRE 403 as their probative value, to the extent there is any, is outweighed by the undue prejudice to the Defendants resulting from their admission.

Pursuant to SCRE 403, in assessing the admissibility of expert testimony and evidence, the Court must weigh the probative value against the danger of unfair prejudice, confusion of the issues, misleading the jury, or wasting time. "Trial courts should be cautious in conferring an expert label upon a witness because juries may accord excessive or undue weight to 'expert' testimony." *Watson v. Ford Motor Co.*, 389 S.C. 434, 449, 699 S.E.2d 169, 176 (2010). Here, the expert testimony Plaintiff intends to present at trial has little to no probative value because of the lack of objective factual basis in the conclusions, while its admission will assuredly result in an unfair prejudice to the Defendants, confuse the issues before the jury, and mislead the jury as to what damages Plaintiff may recover and the value of those damages. Therefore, "its probative value is substantially outweighed by its potential for unfair prejudice, confusion of the issues and misleading the jury." *Nook v. Long Island R. Co.*, 190 F. Supp. 2d 639, 643 (S.D. N.Y. 2002); *see also* Allison, 184 F.3d at 1310.

Calculation 1 – "Direct Costs Incurred by Encore" (Report pgs. 1, 5-7)

Encore seeks to recover for the following for Keone Trask's breach of his duty of loyalty and breach of his fiduciary duties to Plaintiff as his former employer:

95% of Keone Trask's Compensation and expenses while he worked for Encore = $318,364

90% of Leo Gallant's compensation and expenses while he worked for Encore = $206,966

95% of Jimmy Higginbotham's compensation and expenses while he worked for Encore = $119,066

Subtotal = $644,396

Percentage of trade show expenses claimed benefited Clear Touch = $67,689

Total = $712,085

(Exh. A at 1, 6-7).

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There are several issues with Calculation 1 which require it be excluded from evidence at trial.

First and foremost, the accuracy of the figures is reliant upon the percentage allocations which Meilinger received from Encore management. He conceded during his deposition he relied on management's representations concerning these percentages rather than use objective evidence to calculate them himself. (Meilinger Dep. 31-33).[1] The latter approach would allow Defendants a meaningful opportunity to scrutinize and challenge the percentages as well as afford the jury an objective basis upon which to evaluate them and determine what percentage of time did not benefit Encore. The Report's approach robs Defendants and the jury of those opportunities and requires acceptance of the self-serving percentages because Encore's management say they are accurate. The percentages Mr. Trask spent working solely in the interest of Clear Touch is an issue for the jury to determine and other than the power of suggestion, inclusion of objectively baseless percentages the accuracy of which is unknown in the Report and expert testimony does not serve the purpose of SCRE 702. Furthermore, presentation of the percentages reflected in the Report presume they are accurate without any objective evidence that is the case. Thus, admission of this evidence has no probative value in showing the extent of Plaintiff's claimed damages for the breach of fiduciary duty and breach of loyalty claims and would result in undue prejudice to the Defendants who would be left with no way to meaningfully challenge the accuracy of those percentages. Stated differently, it saddles Defendants with having to prove a negative – that the percentages are inaccurate – rather than having Plaintiff carry their evidentiary burden to show they are accurate. The parties should be on an even playing field at trial which requires Plaintiff

[1] When questioned about the basis for calculating these percentages, Mr. Meilinger was unclear about the actual factual basis for the calculation and his testimony made it clear he was totally reliant upon Encore management's representations. Meilinger Dep. 31-33.

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present evidence to allow the jury to determine the appropriate percentage of time Mr. Trask, and to the extent the Court deems appropriate, Higginbotham and Gallant, spent acting for the sole benefit of Clear Touch and to Encore's detriment. Therefore, SCRE 403 also requires this evidence be excluded at trial.

Second, the analysis itself is inappropriate. Mr. Meilinger confirmed what is apparent in the Report; that the percentages were determined by looking at actions that benefited Defendants rather than an evaluating how much of Trask's activities damaged Encore (or even taking into account actions which were mutually beneficial). (Meilinger Dep. 15-16; 25:15-24; 27:2-9). The latter is the appropriate analysis in calculating damages. Instead of performing the appropriate analysis, Plaintiff has chosen to ignore any *benefit* Trask's actions may have afforded Encore yet make the wholesale claim that anything done to the benefit of Clear Touch should be recoverable. An action beneficial to Clear Touch was not necessarily detrimental to Encore - a truism Meilinger's Report necessarily ignores and renders an opinion that infers the opposite. Therefore, the Plaintiff's analysis is of no value and merely suggests an exaggerated and inappropriate percentage that should be determined by the jury. (*See* Exh. B at 2).[2] The percentage of time Trask spent acting for the sole benefit of Clear Touch and to the detriment of Encore is a matter for the jury to determine based on the facts and evidence presented at trial. Thus, presentation of this evidence does not serve the purpose of SCRE 702, has no probative value, would prejudice the Defendants and should be excluded at trial under Rules 702 and 403.

[2] Defendants' economic expert Dr. Charles Alford analyzed the Report and with regard to Calculation 1 opined that "[i]f the issue before the court is the amount of damages that has been incurred by the plaintiff, and if the data used in Calculation 1 are to be applied, the appropriate question, I believe, is not, 'How much benefit did defendants receive through these expenditures?' but 'How was plaintiff damaged by the expenditures,?' which suggests an analysis of the difference between benefits which were actually received by plaintiff as a result of these expenditures and the benefits that plaintiffs would have received if defendants were not spending a portion of their time and effort 'working on behalf of Clear Touch.' Instead, the computation proposed by Mr. Meilinger is based on an assumption (implied in his report but made explicit in his deposition) that Encore received benefits only associated with a small percentage (5%-10% for employee time, 50% for trade shows) of the expenditures." (Exh. B at 2).

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Third, Calculation 1 contains components which Plaintiff cannot recover. Specifically, Defendants could find no applicable case law that allows a Plaintiff to recover other employees' compensation and expenses for a defendant employee's breach of his duty of loyalty or fiduciary duties. Neither Gallant nor Higginbotham are defendants in this matter, and their pay and expenses are not recoverable under the breach of loyalty and breach of fiduciary duties claims against Mr. Trask. Further, Calculation 1 includes Gallant's and Higginbotham's pay and certain expenses for time periods after Mr. Trask was no longer an Encore employee. (*See* Exh. A at 1, 6-7). Trask was terminated from Encore effective April 25, 2014. Higginbotham remained employed with the company until August 2014 and Gallant through the end of the year until he went to Clear Touch in January 2015. The Report does not take out nor differentiate these long segments of time in which Trask was no longer an Encore employee and hence owed them no duty of loyalty or fiduciary duties. Therefore, Calculation 1 is irreparably flawed because Plaintiff may not recover Higginbotham or Gallant's pay or expenses at all, and to the extent the Court finds those components of claimed damages are recoverable, Plaintiff cannot recoup Higginbotham's and Gallant's pay or expenses for the times during which Trask was no longer an Encore employee. The Report intertwines these time periods and items without giving Defendants or the jury a meaningful way to differentiate between them, the recoverable items, and the applicable time periods. Without any way for the jury to differentiate between these items, presentation of the Report and Meilinger's testimony concerning Calculation 1 is inappropriate and will merely confuse and mislead the jury and be unfairly prejudicial to the Defendants. Therefore, testimony concerning Calculation 1 and the Report reflecting it, should not be admitted at trial under Rules 702 and 403.

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Calculation 2 – Profit Lost on Sales Made to Encore and Encore Customers by Clear Touch

Calculation 2 seeks "profit diverted to Clear Touch by Defendants' alleged breach of his fiduciary duties and duties of loyalty to Encore, the business opportunity provision of his agreement with Encore, and Trask's non-compete agreement with Encore." (Exh. A at 2). This Calculation seeks lost profits from sales to two buyers of Clear Touch products – Encore and Leon County Schools – occurring during various time periods.

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**

(Exh. A at 2). The following are not recoverable for the reasons noted and therefore should not be admitted through testimony or the Report at trial:

Direct Damages on Products Sold to Encore from Clear Touch 2.13.13-4.25.14 = $125,730

This was the time period during which Trask was an Encore employee. Clear Touch did not make any profit on these sales and therefore there are no "diverted profits" to recover. (*See* Exh. C).[3]

Direct Damages on Products Sold to Encore from Clear Touch 4.26.14-4.25.15 = $344,201

This time period represents the duration of Trask's non-compete with Encore. There is no viable legal basis for the Plaintiff to recover profits from its supplier at a time in which Trask was no longer its employee; nor can it recover under the provisions of the non-solicitation provisions of the non-compete agreement. This leaves Trask's alleged breach of the Business Opportunity

[3] Clear Touch Balance Sheets for 2013, 2014, and 2015 submitted to the Court but not filed on public record due to containing confidential business information.

provision as the sole basis for potentially recovering these damages, which requires acceptance of Encore's assertion that it would have taken advantage of the Clear Touch opportunity and incurred no additional expenses in running Clear Touch through April 25, 2015. As argued in detail below this is another piece of rampant speculation Encore is attempting to legitimize through presentation by expert testimony and Report which should not be allowed at trial. (See *infra.* ____).

Direct Damages on Products Sold to Encore from Clear Touch 4.25.15 – 10.10.15 = $205,430

This time period represents the remaining duration of the Reseller Agreement following expiration of Trask's non-compete. There is no viable legal basis for the Plaintiff to recover profits from its supplier at a time in which Trask was no longer its employee and it has no non-compete with him. This again leaves Trask's alleged breach of the Business Opportunity provision as the sole basis for potentially recovering these damages, which as argued below, requires acceptance of speculation presented as fact. (*See infra.* pgs. 13-16).

Direct Damages on Products Sold to Leon County Schools 4.25.15 – 10.10.15 = $115,506

This time period represents the remaining duration of the Reseller Agreement following expiration of Trask's non-compete. Encore has no grounds upon which to recover for Clear Touch's sales to Leon County at this time. Trask owed no fiduciary duties or duties of loyalty, having long left the company and his non-compete was expired. Recovery of these profits not only requires the acceptance of the speculative testimony noted below (Encore would have taken the Clear Touch opportunity and run the company without additional expense through October 10, 2015) but also that Encore *could* have made these sales to Leon. Plaintiff recognized that it did not have a sales representative in Florida at the time these sales were made which was a requirement for them to make these sales to Leon County. (Pl. Dep. Newnam 285-288).[4]

[4] Plaintiff provides speculative testimony it "could have" satisfied procurement requirements to make the Leon sales while admitting they did not know what those were.

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Presentation of this category of damages gives the jury the prejudicial impression Encore could recover for these sales without Plaintiff offering sufficient evidence it could have even made them. Without the latter, Plaintiff should not be able to present testimony or its Report in regard to these claimed damages.

Calculation 3: Loss of Business Opportunity

This Calculation relies on speculation that Encore would have taken the Clear Touch opportunity and become a direct supplier of interactive panels when all objective facts are to the contrary. Meilinger relies upon Encore management simply stating that in 2013 it would have taken the Clear Touch opportunity and become a direct supplier of interactive panels. (Meilinger Dep. 35-39). This is rampant speculation contradicted by all objective facts which should not be allowed to be admitted to the jury through expert testimony or report. Specifically, Encore's business model has from the outset to be a "Value Added Reseller" ("VAR"). (Pl. Dep. Newnam 171:2-12). That means that it obtains the hard products it sells from suppliers or manufacturers, like Clear Touch, marks up the price and then sells those products to end user customers. Encore contends that had it known in 2013 that it could directly source the interactive panels as Clear Touch did and still does, it would have done so. However, the facts and Encore's actions contradict this position.

Encore offers a range of technology products including hardware, software and related services. Interactive panels make up less than 5% of the company's total business. (Pl. Dep. Newnam 18:4-7). Encore's contention is that it would have altered its business model for less than 5% of its business four years ago. It is undisputed that Encore learned Keone Trask owned Clear Touch in October 2014. (Pl. Dep. Newnam 67:16-22). Upon learning this, it did not look into, inquire or otherwise explore the opportunity to become a manufacturer/supplier of interactive panels. It merely continued to do what it does – be a reseller of Clear Touch panels and other

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technology products. In its 30(b)(6) deposition, Encore recognized that the direct supplier/manufacturer opportunity was presented to it at a trade show in August 2014, yet it did nothing to explore the opportunity. (Pl. Dep. Masters 69:9-71:21 discussing Def. Exh. 15- An 8.11.14 Email from a panel manufacturer proposing Encore directly source interactive panels). Further, when Encore chose to end its relationship with Clear Touch, it did not look into becoming a supplier. Rather, it simply positioned another supplier, View Sonic, to take Clear Touch's place in the company's interactive panel product offering. Thus, Encore claims it was robbed of an opportunity it would have taken, but when presented that opportunity at later dates, it did not do so. The Plaintiff was established as a VAR and has remained as such to date. Encore admitted that it does not directly source any hardware products. (Pl. Dep. Knight 27:6-29:13). The speculative assumption that it would have altered this business model for less than 5% of its business when it was first starting is contradicted by the objective facts and nothing but a self-serving position for which Encore can only hope to gain. There is no risk in Encore taking this position today knowing that Clear Touch is a profitable company and that claiming it would have acted in a certain way four years ago can only yield positive results.

Accepting the truth of this self-serving statement is necessary for Plaintiff to be entitled to the damages sought under Calculation 3. By admitting Meilinger's testimony and segment of the Report concerning this Lost Business Opportunity figure, the Court would allow the Plaintiff to put massive damages figures in front of the jury whose attainment is based on this speculative assumption contradicted by the objective facts. Therefore, Meilinger's testimony and the Report concerning Calculation 3 should not be presented at trial as they are reliant upon unverifiable speculation contradicted by the objective facts and admission offers no probative value and would result in unfair prejudice to the Defendants.

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Calculation 3 - Part 1: Adjusted Income Generated by Clear Touch from 2.13.13-12.31.15

Calculation 3, Part 1, relies on numerous assumptions which have no identified objective basis. (*See* Exh. B at 4-6 - Dr. Alford's analysis of these assumptions and their impact on Meilinger's calculations). Lacking such substantial objective factual basis makes this evidence of little to no probative value and again prevents Defendants from meaningfully challenging figures reliant upon such assumptions. Therefore, this part of the Report should be excluded under Rules 702 and 403.

Calculation 3 - Part 2: Fair Market Value of Clear Touch Interactive as of 12.31.15

Should the Court allow Plaintiff to present testimony and evidence concerning Calculation 3, Part 2 should be excluded as it has no probative value.

First, as Dr. Alford's analysis of the Report points out, utilizing only the available information, replication of Meilinger's model yields a figure almost $879,000 less than what he computed. (Exh. B at 7).

Second, this part of the Report references the Market Approach applying "price multiples derived from transactions of comparable companies in the same or similar lines of business" in in an effort to legitimize the $5.5M figure. (Exh. A at 14). In doing so, Meilinger considers businesses in two NAICS codes – 423430, Computer and Computer Peripheral Equipment and 443142, Electronics Stores. Defendants' expert, Dr. Charles Alford looked at these businesses in the Pratts Stats database used by Meilinger and opined that "[t]he descriptions of these companies…suggest that none of them are comparable to Clear Touch." (Exh. B at 7)(referencing NAICS 42430 businesses). He concluded that "[i]t is clear that the Pratts Stats database for this category is also of no value in providing value benchmarks." (Exh. B at 8)(referencing NAICS 443142 businesses). Thus, Calculation 3, Part 2 is a useless comparison of non-comparable businesses the Plaintiff is attempting to utilize to lend undue credence to its $5.5M valuation.

For the above reasons, Plaintiff's anticipated expert testimony and his Report are irreparably flawed and any probative value of their admission is vastly outweighed by the unfair prejudice to the Defendants. Admitting this evidence at trial allows Plaintiff to cloak unsupported evidence and speculation in an air of legitimacy and affords no meaningful way for Defendants to challenge it or for the jury to separate the legitimate evidence (based on established facts) from the illegitimate (reliant upon assumption and speculation).

2. *Exclusion of Testimony or Evidence Regarding Encore's Alleged Lost Profits and Loss of Business Opportunity from April 26, 2015 to October 10, 2015*

Plaintiff has no legal basis for claiming these alleged damages. This item of claimed damages is included in Calculation 2 of the Report which it states are damages representing "the profit diverted to Clear Touch by the Defendants' alleged breach of his fiduciary duties and duties of loyalty to Encore, the business opportunity provision of his agreement with Encore, and Trask's non-compete agreement with Encore." (Exh. A at 2). As of April 25, 2015, Trask's non-compete had expired and he owed no duty of loyalty or fiduciary duties to Encore having left the company over a year prior; leaving only his alleged breach of the business opportunity provision as a possible stated basis for recovery of these sales. The assumption that Encore would have taken advantage of the Clear Touch opportunity and run the business not only as successfully but more successfully than the Defendants is rampant speculation upon which Plaintiff should not be able to recover these considerable amounts. Therefore, this evidence provides no probative value and should be excluded from admission at trial under Rule 403.

3. *Exclusion of Testimony or Evidence Regarding Encore's Alleged Profits Lost to Clear Touch for Keone Trask's Breach of His Duty of Loyalty and Fiduciary Duty*

"A plaintiff is entitled to collect all damages proximately resulting from the breach of duty of loyalty. The plaintiff also is entitled to a disgorgement of the profits that *the wrongdoer received* as a result of his disloyalty." *Sonoco Prod. Co. v. Guven*, No. 4:12-CV-00790-BHH, 2015 WL

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127990, at *10 (D.S.C. Jan. 8, 2015) (*emphasis added*)(citations omitted). Here, Encore seeks to recover alleged normalized profits of $125,730.00 for Clear Touch sales to Encore from February 13, 2013 through April 25, 2014. (Exh. A at 2). However, the alleged wrongdoer for the breach of the duty of loyalty is Keone Trask, not Clear Touch. Trask did not receive the money or profits Encore is claiming. Clear Touch's 2013 Net Income was negative, and no compensation was paid to Trask. (Exh C; Def. Dep. 38:22-23). Clear Touch's 2014 income as of April 25, 2014 was also in the negative, and Trask received no compensation until July 11, 2014(months after he left Encore). *Id.* Thus, the undisputed evidence shows that any money or ("normalized") profit went to Clear Touch, an entity not owing any fiduciary duties or duty of loyalty to Encore. Therefore, Encore cannot recover this category of damages.

4. Exclusion of Testimony or Evidence Regarding and/or Seeking to Recover Other Encore Employees' Compensation and Expenses as an Element of Damages for Trask's Breach of His Duty of Loyalty to Encore

Trask is the only former Encore employee who is named as a party in this matter. While Encore has argued, and their damages report represents, that it is entitled to wages and other forms of compensation paid to Leo Gallant and Jimmy Higginbotham, Encore can point to no applicable case law or legal grounds that allows recovery of non-party compensation for a named-party's breach of the duty of loyalty. Therefore, Encore should be prevented from presenting testimony or other evidence seeking to recover any compensation paid to or expenses incurred by Higginbotham or Gallant attributed to Trask's breach of his duty of loyalty.

5. Exclusion of Testimony or Evidence Regarding and/or Seeking to Recover Other Encore Employees' Compensation and Expenses as an Element of Damages for Trask's Breach of His Fiduciary Duties to Encore

Trask is the only former Encore employee who is named as a party in this matter. While Encore has argued, and their damages report represents, that it is entitled to wages and other forms of compensation paid to Leo Gallant and Jimmy Higginbotham, Encore can point to no applicable

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case law or legal grounds that allows recovery of non-party compensation for a named-party's breach of his fiduciary duties. Therefore, Encore should be prevented from presenting testimony or other evidence seeking to recover any compensation paid to or expenses incurred by Higginbotham or Gallant attributed to Trask's breach of his fiduciary duties.

6. Exclusion of Testimony or Evidence Regarding Alleged Damages Due to Trask's Breach of His Duty of Loyalty after He Was No Longer Employed by Encore

Encore employed Trask from February 18, 2013 through April 25, 2014. Encore can only recover damages under the duty of loyalty for the time period in which Trask owed it the duty. Consequently, any alleges damages under this claim arising after Trask left Encore are not recoverable. Yet, Encore is attempting to recover compensation and expenses paid to and for two of its employees (Gallant and Higginbotham) for time periods during which Trask was no longer with the company. (Exh A. at 2, 5-7; Meilinger Dep. 26:2-25-27:1). When Encore terminated Trask effective April 25, 2014, he no longer owed them a duty of loyalty. Therefore, Encore cannot recover the damages it claims to have sustained due to Trask's breach of those duties after that date and any testimony or evidence regarding such unavailable damages should be excluded at trial.

7. Exclusion of Testimony or Evidence Regarding Alleged Damages Due to Trask's Breach of His Fiduciary Duties after He Was No Longer Employed by Encore

Again, Encore employed Trask from February 18, 2013 through April 25, 2014. Encore can only recover damages for Trask's breach of his fiduciary duties arising during the time period in which Trask owed it a duty. Consequently, any alleges damages under this claim arising after Trask left Encore are not recoverable. Yet, Encore is attempting to recover compensation and expenses paid to and for two of its employees (Gallant and Higginbotham) for time periods during which Trask was no longer with the company. (Exh A. at 2, 5-7; Meilinger Dep. 26:2-25-27:1). When Encore terminated Trask effective April 25, 2014, he no longer owed them any fiduciary

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duties. Therefore, Encore cannot recover the damages it claims to have sustained due to Trask's breach of those duties after that date and any testimony or evidence regarding such unavailable damages should be excluded at trial.

8. Exclusion of Testimony or Evidence Regarding Alleged Damages from Clear Touch's Sales to Leon County from April 24, 2014 through April 25, 2015

In order to make these sales, a seller needed to have a sales representative that was a resident of Florida at the time the sales were made. Encore did not have a Florida resident sales representative at the time of these sales to Leon County and therefore could not have made them. When confronted with the fact they had no Florida resident sales rep at the time of the Leon sales at issue, Encore could only offer self-serving speculation that it "would have made it work." (Pl. Dep. Newnam 285-88). Plaintiff should not be able to recover for sales it could not have made, and thus any testimony or evidence concerning the Leon County sales reflected in the Report should be excluded from admission at trial.

9. Exclusion of Testimony or Evidence Regarding Alleged Damages from Clear Touch's Sales to Leon County from April 26, 2015 through October 10, 2015

In order to make these sales, a seller needed to have a sales representative that was a resident of Florida at the time the sales were made. Encore did not have a Florida resident sales representative at the time of these sales to Leon County and therefore could not have made them. When confronted with the fact they had no Florida resident sales rep at the time of the Leon sales at issue, Encore could only offer self-serving speculation that it "would have made it work." (Pl. Dep. Newnam 285-88). Plaintiff should not be able to recover for sales it could not have made, and thus any testimony or evidence concerning the Leon County sales reflected in the Report should be excluded from admission at trial.

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Furthermore, Trask's non-compete expired on April 25, 2015, making it impossible for Plaintiff to claim it was owed these damages as a result of him allegedly breaching the non-solicitation of customers provision.

10. Exclusion of Testimony or Evidence Regarding Alleged Damages from Clear Touch's Sales to Encore from April 24, 2014 through April 25, 2015

There is no common law, contractual, statutory or other legal basis upon which Encore may recover the money from these sales. The undisputed facts are that at this time Trask no longer worked for Encore, thus he did not owe them a duty of loyalty or any other fiduciary duties. Second, as Encore has testified, it did not regard Clear Touch sales to Encore as a competitive activity, so Plaintiff cannot utilize Trask's non-solicitation (non-compete) as grounds to seek these alleged damages. Third, Encore recognized that Trask disclosed his ownership interest in Clear Touch to them in October 2014. (Pl. Dep. Newnam 67:16-22). Encore did not then end its relationship with Clear Touch or in any way alter its course of dealing with the company. Therefore, Encore should be precluded from offering testimony and evidence concerning these alleged damages at trial.

11. Exclusion of Testimony or Evidence Regarding Alleged Damages Representing Clear Touch's "normalized profit" from April 26, 2015 through October 10, 2015

This time period represents the remaining duration of the Reseller Agreement following expiration of Trask's non-compete. There is no viable legal basis for the Plaintiff to recover profits from its supplier at a time in which Trask was no longer their employee and it has no non-compete with him. This again leaves Trask's alleged breach of the Business Opportunity provision as the sole basis for potentially recovering these damages, which as argued above, requires acceptance of speculation presented as fact. (*See supra*. pgs. 13-16).

12. Exclusion of Testimony or Evidence Regarding Alleged Damages Arising from Defendants' Alleged Breach of the Reseller Agreement

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The only breach of contract claims in the Complaint are against Trask. (Compl. ¶¶ 45-51, 71-75). The sole contract claim against Clear Touch is for tortious interference based upon the company's alleged interference with the Non-Solicitation and Non-Disclosure Agreement and Severance Agreement between Trask and Encore. (Compl. ¶ 66). During Plaintiff's 30(b)(6) deposition, there was some testimony claiming an alleged breach of the Reseller Agreement was the basis for some of Plaintiff's claims and the damages it seeks to recover. (Pl. Dep. Newnam 119:10-12). Any alleged breach of the Reseller Agreement by Clear Touch is not a part of this action and Plaintiff should be precluded from offering testimony or evidence claiming damages arising out of that purported breach.

13. Exclusion of Testimony or Evidence for the Purpose of Seeking Attorneys' Fees and Costs against Clear Touch for its Alleged Tortious Interference with Contract

As noted above, Plaintiff's sole contract based claim against Clear Touch is its tortious interference cause of action. (Compl. ¶ 66). There is no contractual or statutory basis for Encore to be awarded attorney's fees and/or costs under this cause of action. Therefore, they should not be able to present evidence or argue for Clear Touch to pay it any attorneys' fees or costs.

14. Exclusion of Testimony or Evidence Regarding Alleged Damages in the Form of Profits to Clear Touch from February 13, 2013 through April 2, 2014 for Trask's Alleged Breach of His Duties of Loyalty and/or Fiduciary Duties to Encore

Clear Touch did not turn a profit until after Trask left Encore's employ, with the company's first profitable year being 2015. (See Exh. C).[5] Therefore, Plaintiff should not be able to seek recovery of profits where none exist.

15. Exclusion of Testimony or Evidence Accusing, Alleging, Suggesting, or in Any Way Implying that Defendants' Withheld, Hid, or Destroyed Evidence

[5] Confidential Balance Sheets for Clear Touch 2013, 2014, and 2015 – provided to the Court but not filed in the public record.

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Encore has been clear it believes Clear Touch and/or Trask withheld, hid, or destroyed potential evidence. (*See* Pl. Dep. Newnam at 232-33). There have been various accusations and insinuations made throughout litigation that this occurred. No evidence however has been presented to establish this occurred other than Plaintiff's belief and unsubstantiated speculation. Argument or testimony making such accusations at trial would result in incurable prejudice to the Defendants by irreparably tainting the jury's perception of Defendants. Therefore, Plaintiff should be precluded from offering any testimony, evidence or argument that accuses, alleges, suggest, or in any way implies that Defendants' withheld, hid, or destroyed evidence.

16. Exclusion of Testimony or Evidence Regarding, Accusing, or Suggesting That Kathy Cruse Changed Her Name from Trask to Conceal Her Identity and Affiliation with Keone Trask

Plaintiff has consistently stated and argued that Kathy Cruse changed her name from Kathy Trask around or at the time she was identified in Clear Touch's corporate filings and began to work for the company. The testimony elicited in this case is clear that Kathy Cruse changed her name well before her involvement with Clear Touch. (T. Trask Dep. 31:14-32:23)(Known her mother in law since 1990 or 1991 and never known her as Kathy Trask). Despite this definitive testimony, Plaintiff has consistently argued or insinuated that Kathy Cruse changed her name from Trask near the time she was identified as the company's managing member in Clear Touch's corporate filings and began to work for the company. In light of the only testimony on this issue establishing this not to be the case, Plaintiff should be precluded from arguing or suggesting otherwise at trial.

17. Exclusion of Testimony or Evidence Regarding Alleged Damages Related to Jimmy Higginbotham's Alleged Breach of His Non-Compete

Plaintiff's expert Report alludes to and indicates that some of the damages claimed arise out of Jimmy Higginbotham's alleged breach of his non-compete with Encore. (Exh. A at 10). Jimmy Higginbotham is solely responsible for any damages Encore may have incurred related to

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the alleged breach of his non-compete agreement. Defendants lack contractual privity and cannot be held liable for a non-party's breach. Further, Encore arranged for Mr. Higginbotham to be hired by Clear Touch and conceded during recent oral arguments on Defendants' Partial Motion for Summary Judgment that it was not seeking damages related to Higginbotham's alleged breach of his non-compete. Therefore, Plaintiff should be precluded from offering any testimony or evidence concerning Higginbotham's breach of his non-compete and any claimed damages arising therefrom. Further, introduction of this evidence would just serve to confuse the issues before the jury and misled them. Therefore, it should be excluded under SCRE 403.

18. Exclusion of Testimony or Evidence Regarding Alleged Damages Related to Leo Gallant's Alleged Breach of His Non-Compete

Plaintiff's expert Report alludes to and indicates that some of the damages claimed arise out of Leo Gallant's alleged breach of his non-compete with Encore. Leo Gallant is solely responsible for any damages Encore may have incurred related to the alleged breach of his non-compete agreement. Defendants lack contractual privity and cannot be held liable for a non-party's breach. Further, introduction of this evidence would just serve to confuse the issues before the jury and mislead them. Therefore, it should be excluded under SCRE 403.

19. Exclusion of Testimony or Evidence Claiming or Otherwise Alleging that Encore Would Have Invested in Clear Touch or Directly Sourced Interactive Panels as Clear Touch Did Had Trask Disclosed the Opportunity While Employed by Encore

In 2013 and 2014, Clear Touch was a newly-formed company that had yet to turn a profit. At the same time, Encore itself was a new business with a business model of that of a Value-Added Reseller. Clear Touch became and is now a profitable company. Consequently, Encore has made claims that it would have either invested in Clear Touch or directly sourced interactive panels had Trask disclosed the opportunity while he was employed by Encore. This is pure speculation that is contradicted by the undisputed objective evidence. (*See supra*. at pgs. 13-16).

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Trask disclosed his interest in Clear Touch to an Encore agent in October of 2014, yet Encore did nothing to attempt to invest in Clear Touch afterwards. Additionally, Encore's business model has not changed. It is still a reseller of ViewSonic and other panel products obtained from suppliers like Clear Touch. Therefore, saying it *would have* cut out Clear Touch as the "middle man" and become its own supplier is disingenuous and contradicted by the objective evidence.

With the benefit of hindsight and knowledge of Clear Touch's current financial condition, the disincentive to investing in 2013 and 2014 is absent. It would be prejudicial to Defendants to now allow Encore to claim that it would have invested in Clear Touch at a time in which Encore itself was a young business.

For these reasons and those noted above under Issue #1 (*supra*. pgs. 4-16), Plaintiff should be precluded from offering testimony or evidence claiming it would have invested in Clear Touch or directly sourced interactive panels as Clear Touch did had Trask disclosed the opportunity while he was an Encore employee.

Respectfully Submitted,

ROE CASSIDY COATES & PRICE, P.A.

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Greenville, South Carolina
September 20, 2017

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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,	)	**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION IN LIMINE**
vs.	)	
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
Defendants.	)	

Exhibit A

Plaintiff's Damages Report

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IN THE COURT OF COMMON PLEAS
GREENVILLE COUNTY, SOUTH CAROLINA

Encore Technology Group, Plaintiffs vs.
Keone Trask and Clear Touch Interactive, Inc., f/k/a Clear Touch Interactive, LLC, Defendants

C.A. No.: 2015-CP-23-05757
Expert Report of:
Michael E Meilinger, CPA, ABV, CFE, CFF, MAFF, CMA
Dated February 28, 2017

I. Expert Report of Michael E. Meilinger

I, Michael E. Meilinger, am the President of Meilinger Consulting, P.C., a licensed CPA firm in the state of South Carolina that specializes in consulting, forensic accounting, business valuations, and litigation support. I hold a Bachelor of Science degree in Accounting. I am a Certified Public Accountant, Accredited in Business Valuation, a Certified Fraud Examiner, Certified in Financial Forensics, a Master Analyst in Financial Forensics, and a Certified Management Accountant. My curriculum vitae and history of prior testimony are attached as Appendix 1.

II. Documents

In preparing this expert report, I have considered the documents listed in Appendix 2.

III. Executive Summary

I have presented my calculations as three separate items to be evaluated by the court:

1. The first, shown in Table 1: Direct Costs Incurred by Encore below, represents only the direct costs incurred by Encore while the Defendants were allegedly working in the interest of Clear Touch while employed by Encore, including compensation paid to Encore employees working for Clear Touch as well as trade show and related expenses paid by Encore for Clear Touch's benefit. For these items, I have calculated **$712,085** in damages.

Table 1: Direct Costs Incurred by Encore	
Wages, Benefits, and Expense Reimbursements	$ 644,396
Trade Show and Related Costs Paid by Encore for Benefit of Clear Touch	67,689
Total Calculated Damages	***$ 712,085***

2. The second, displayed in Table 2: Profit Lost on Sales Made to Encore and Encore Customers by

Clear Touch on the following page, represents the profit diverted to Clear Touch by the Defendants' alleged breach of his fiduciary duties and duties of loyalty to Encore, the business opportunity provision of his agreement with Encore, and Trask's non-compete agreement with Encore.

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***

3. The third, presented in Table 3: Damages for Loss of Business Opportunity, shows Encore's lost business opportunity because of the Defendants' alleged taking of the Clear Touch business opportunity cultivated while Trask was employed by Encore. This loss is represented by Clear Touch's profit from 2/13/2013 – 12/31/2015, adjusted for expenses either required or not required by Encore to facilitate the same level of business, and the fair market value of the Clear Touch business opportunity as of 12/31/2015.

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**

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IV. Preliminary Anticipated Testimony

If called as a witness at trial, I will testify to a reasonable degree of accounting certainty concerning the amount of economic damages to which Encore Technology Group (Encore or Plaintiff) contends it is entitled as a result of the allegations against Mr. Keone Trask and Clear Touch Interactive (Trask, Clear Touch, or collectively as Defendants), which include breaches of various duties owed to Encore by Trask as an employee and breach of agreements between Trask and Encore that included, among others, a non-compete agreement, non-solicitation of customers agreement, non-piracy of employees agreement, and business opportunity agreement.

Specifically, as requested, I will testify to the amount of calculated damages related to

1. Wages and other forms of compensation paid to Trask and other Encore employees, including Mr. Leo Gallant and Mr. Jimmy Higginbotham, who are alleged to have been actively working for the benefit of Clear Touch while employed by Encore
2. Estimated marketing costs unknowingly paid by Encore for the alleged benefit of Clear Touch
3. Profit lost on products sold to Encore by Clear Touch during specific periods, including:
   a) Trask's employment with Encore from 2/13/2013 through 4/25/2014
   b) The period following Trask's termination during which the non-compete and non-solicit covenants were in force per the termination agreement between Encore and Trask, which was from 4/26/2014 –4/25/2015
   c) The period following the expiration of the covenants mentioned above through the end of the reseller agreement, 4/26/2015– 10/10/2015
4. Profit lost on sales made by Clear Touch to Leon County Schools during the periods of 4/26/2014 – 4/25/2015 and 4/26/2015 – 10/10/2015
5. The value of Encore's lost business opportunity, which encompasses the normalized earnings of Clear Touch during the same periods as in sections 3a – 3c above and the fair market value of the Clear Touch business opportunity as of 12/31/2015.

In order to perform these calculations, I was provided both internal information by Encore management and documentation provided by Clear Touch during discovery. As displayed in the Executive Summary above, I have calculated these damages to be between **$712,085– $5,536,254**, depending on the determination of the court.

Relevant theory, procedures, and further details of my findings are included below.

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V. Background Information

Encore was formed in February 2013 from the Technology Solutions and Cloud Services division of Computer Software Innovations, Mr. Trask's employer. As such, he, along with several others, became an employee of Encore around the same time. Per discussions with Encore management, Mr. Trask was primarily tasked with business development and classroom technology strategy, sourcing, sales, and execution.

Trask formed Clear Touch Interactive, LLC as a Nevada LLC on August 24, 2012 and has maintained the benefits of ownership, direct or indirect, since. Per Clear Touch financial statements provided in discovery, no revenue was recorded until May 2013, which was a sale to Encore. It has been alleged that, during his employment with Encore, Trask used his position to 1) advance the interests of Clear Touch ahead of those of Encore by negotiating arrangements with terms favorable to Clear Touch, including a reseller agreement between Encore and Clear Touch as well as sourcing arrangements between Clear Touch and its suppliers with whom Encore could have transacted directly, 2) promote Clear Touch products to Encore clients without disclosing his interest in Clear Touch, 3) influence Encore employees to act in the interest of Clear Touch, and 4) intentionally dissuade Encore from pursuing options aside from Clear Touch.

Trask's employment with Encore was eventually terminated on April 25, 2014. Following his termination, Trask was bound by various covenants, including non-solicitation of customers, non-competition, and non-piracy of employees, all of which he has allegedly breached through direct contact with Encore customers and efforts to entice Encore employees to join Clear Touch.

VI. Basis for Opinions

I have read and analyzed the documents listed in Appendix 2 to understand the details and issues regarding this case. I have also met with Encore management and their counsel to discuss details of the case relevant to my procedures.

VII. Assumptions

My calculation of damages assumes that Encore will prevail on one or more of its theories of liability. Additionally, my calculations were performed to the standard of reasonable certainty as defined below:

> *"The law does not require absolute certainty of data upon which lost profits are to be estimated, but all that is required is such reasonable certainty that damages may not be based wholly upon speculation or conjecture, and it is sufficient if there is certain standard or fixed method by which profits sought to be recovered may be estimated and determined with a fair degree of accuracy."*

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Collins Holding Corp. v. Landrum, 360 S.C. 346, 350 (S.C. 2004)

VIII. Calculation of Damages

As stated above, all calculations of damages in this case have been based on the court ruling in Encore's favor on one or more issues of liability. Procedures and findings regarding each element of damage in my calculations are included in the sections below:

Calculation 1: Direct Costs Incurred by Encore

This calculation assumes that Encore is entitled to the expenses, in the forms of compensation and expenses, incurred that directly benefited of Clear Touch. This includes the wages and other forms of compensation paid to Trask, Mr. Leo Gallant, and Mr. Jimmy Higginbotham, all of whom are alleged to have worked for Clear Touch's benefit while employed and compensated by Encore, expenses reimbursed to those same individuals, and expenses paid by Encore for trade shows and related items which benefited Clear Touch. These items are detailed in the following sections:

1) Wages and Compensation Paid to Encore Employees

Certain employees, including Mr. Trask, are alleged to have spent considerable time and effort advancing the interest of Clear Touch while still employed by Encore. It is Encore's position that compensation, in various forms, paid to these employees during this period represents one element of damage. My calculation assumes that each respective individual spent certain percentages of time on Clear Touch during their employment with Encore. Encore's management has presented estimated allocation percentages to me for use in this calculation. Which at the direction of the attorneys, I have utilized for this report, as I understand detailed time activity was not kept at Encore. The allocation percentages provided to me are as follows:

Keone Trask	95%
Leo Gallant	90%
Jimmy Higginbotham	95%

I have examined the following documents and summarized the information therein to calculate the damages incurred by Encore resulting from this element.

- W-2s for Jimmy Higginbotham, Leo Gallant, and Keone Trask (collectively "CT Employees") for years 2013 – 2015 for the duration of their employment with Encore
- Expense reports itemizing expenses paid to Trask, Gallant, and Higginbotham for expenses alleged by Encore to be related to and/or beneficial to ClearTouch

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- Encore management prepared schedules detailing dental, medical, and 401(k) expenses paid by Encore for each individual listed above.

Damages for this element, totaling **$644,396** have been calculated and displayed in the following table:

Employee and Type	2013	2014	2015	Total	at CT %
Trask	**232,973**	**102,147**	**-**	**335,120**	**318,364**
401K Match	5,515	1,997	-	7,512	7,136
Dental	279	127	-	406	386
Expenses	33,568	12,240	-	45,808	43,518
Medical	3,099	1,238	-	4,337	4,120
Gross Wages	190,512	86,545		277,057	263,204
Gallant	**100,429**	**123,191**	**6,342**	**229,962**	**206,966**
401K Match	1,910	2,255	136	4,301	3,871
Dental	279	380	26	685	617
Expenses	28,527	41,536	1,324	71,387	64,248
Medical	3,099	3,715	325	7,139	6,425
Gross Wages	66,614	75,305	4,531	146,450	131,805
Higginbotham	**64,026**	**61,307**	**-**	**125,333**	**119,066**
401K Match	1,139	1,357	-	2,496	2,371
Dental	223	222	-	445	423
Expenses	2,288	3,550	-	5,838	5,546
Medical	2,479	2,167	-	4,646	4,414
Gross Wages	57,897	54,011		111,908	106,313
Grand Total	**397,428**	**286,645**	**6,342**	**690,415**	**644,396**

2) Trade Show and Other Related Costs Paid by Encore for the Benefit of Clear Touch

Per Encore's management, Mr. Trask was primarily responsible for business development and classroom technology strategy, sourcing, sales, and execution during his employment with Encore. He was tasked with expanding the Encore customer base, particularly in the classroom technology end-market, and as such, was given authority to select which trade shows to attend and to drive related activities. Because of the allegations against Mr. Trask and the other CT Employees, Encore claims that many trade show expenses paid by the company were in fact for the benefit of Clear Touch.

My analysis of the trade show expenses included examination of a schedule (generated from Encore QuickBooks) provided by Encore management detailing the trade show expenses at Encore from 2013 through 2015. This analysis required two primary steps. Both are discussed below:

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1. **High Level Comparison of Trade Show and Related Expenses**

   When Encore assumed control in 2013, total trade show expenses for that partial year were $59,508. In 2014, they increased 70% to 100,990. This increase alone is a significant factor, but is especially so when considering that Mr. Trask was terminated in 2014 and trade show and related expenses declined to $40,529 in 2015. These figures do not represent damages, but instead indicate that Mr. Trask may have increased trade show expenses at Encore for the benefit of Clear Touch.

2. **Calculation of Estimated Marketing Costs Paid for Benefit of Clear Touch**

   To calculate the trade show costs paid by Encore, I relied upon spreadsheets provided by Encore management. Considering that certain expenses are incorporated in the reimbursed expenses included in the wages and compensation calculation above and other expenses have been clearly delineated by Encore management as not being related to Clear Touch, these amounts have been netted from the total. To calculate the amount of marketing expenses that benefited Clear Touch, I then applied Encore management's estimate of 50% to the remaining amount to estimate Encore's damages.

   Based on the procedures above, I have estimated trade show costs paid by Encore for the benefit of Clear Touch to be **$67,689**. This result is calculated in the table below, while a more detailed analysis is included as Appendix 3:

Year	Total*	Reimbursed Expenses	Not CT Related per Encore Mgmt	Net	Est. %	CT Trade Show Expense
2013	59,508	(10,242)	(3,890)	45,376	50%	22,688
2014	100,990	(14,963)	(13,000)	73,027	50%	36,514
2015	40,529	-	(23,554)	16,975	50%	8,488
Totals	**201,027**	**(25,205)**	**(40,444)**	**135,378**		**67,689**

** Figures from QuickBooks rounded to nearest dollar*

Calculation 2: Profit Lost on Sales Made to Encore and Encore Customers by Clear Touch

This calculation assumes that Trasks abided by his duties and agreements with Encore and brought the

vendors and sourcing arrangements directly to Encore rather than taking the opportunity for himself. As such, the damages related to their compensation would not be included as a part of this scenario as those costs would not have been avoidable had Encore received those profits. This calculation assumes that Trask should have introduced Encore directly to Clear Touch's suppliers so that Encore could have derived additional gross profit by purchasing on the same terms as Clear Touch. In addition to his duties as a senior executive of Encore, Trask's employment contract required him to afford Encore with "any project, investment, venture, business, or other opportunity…that is competitive with, related to or in the same field as Company [Encore]."[1] Based on this, Encore would have had the same supplier agreements with Clear Touch's suppliers, and thus would have benefited from the profit that was instead passed through to Clear Touch.[2] Therefore, I have calculated the gross profit (Amount invoiced to Encore less the cost of the products to Clear Touch) that Clear Touch generated as an element of damage.

Additionally, the non-solicitation agreement states that Trask agrees not to "for Employee [Trask] or on behalf of any Person, directly or indirectly solicit, influence, contact, sell to, service or deal with any Customer of the Company [Encore]," during his employment and for one year following the end of his employment with Encore. I have been advised that Higginbotham had the same non-solicitation agreement that applied until the second half of 2015. I have been advised by Encore management and its counsel that Leon County Schools, a former customer of Encore's, was directly contacted and sold to by Clear Touch during the applicable period. As such, I have calculated the gross profit on those sales as an element of damage in this calculation.

1. Lost Profits Resulting from Sales to Encore from Clear Touch

Encore's position is that Mr. Trask used his position within Encore to sell Clear Touch products to Encore's customers, thus creating a middle layer of the transaction in which Clear Touch profited to Encore's detriment. Therefore, gross profit has been chosen as the damage because it represents the margin that Encore was not able to realize on the sales of products that Trask was selling through Clear Touch rather than notifying and allowing Encore to purchase the products from Clear Touch's suppliers at the same terms.

As such, I have calculated Encore's lost profits as a result of these actions by performing the following procedures:

[1] Encore Non-Disclosure and Non-Solicitation Agreement with Trask ENC 000001 – ENC 000003
[2] It is reasonable to assume that Encore could have negotiated superior terms and margins to that of Clear Touch given its greater scale and financial resources.

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1. I reviewed invoices provided to me by Encore management for all sales made to Encore by Clear Touch during the relevant periods discussed above
2. I then, in all instances in which it was possible, traced the transactions back to Clear Touch's suppliers to determine the cost of the products sold to Encore. Twenty invoices representing $1,593,411 in revenue to Clear Touch were traced in total.
3. In instances in which a Clear Touch invoice to Encore could not be traced back directly to a Clear Touch supplier, I have calculated average costs of items purchased by Clear Touch and sold to Encore to estimate the margin realized by Clear Touch.
4. **NOTE:** As referenced above, I have considered the necessity of deducting operating expenses from calculated lost profit; however, I understand that Encore still incurred these expenses in the normal course of business. Therefore, they did not avoid these costs as the sales were still made, only at a lower margin due to involvement of Clear Touch. Based on this, operating expenses have not been deducted as part of these calculations.
5. **NOTE:** Encore would, however, have paid commissions on the gross margins if it had been realized. Encore management has represented that they paid commissions between 8% - 12% on gross margin. Therefore, I have added 10% commission costs from these damages to account for this additional expense that would have been incurred.

Based on these procedures, I have calculated **$675,362** in damages related to sales made to Encore by Clear Touch. A summary of these calculations is included in the table below. Detail may be found in the attached Appendix 4[3].

[3] Per my discussions with Encore management, while the calculation related to this item is based on the margins that Clear Touch could realize, it is reasonable to believe that Encore, considering its greater scale and resources, could potentially have negotiated even more favorable terms and realized higher margins. It should also be noted that, in this calculation, there is no addition for compensation for these individuals who were spending their time building the broader value of Clear Touch beyond the sales to Encore and Leon County Schools. Additionally, Encore's sales force is compensated largely on commission. Due to the low margins it had been receiving as a result of Clear Touch's involvement, the sales force was not fully motivated to sell those products. If Encore was afforded the opportunity, Encore sales representatives would have received approximately 300% more commission on each sale. Therefore, it is reasonable to believe that, if the margins were higher, Encore could have sold even greater volume at higher margins.

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Summary of Direct Damages on Products Sold to Encore from Clear Touch

Relevant Dates	2/13/2013 - 4/25/2014	4/26/2014 - 4/25/2015	4/26/2015 - 10/10/2015	Lost Profit
Total Traced Revenue	603,057	990,355	-	1,593,412
Total Calculated Revenue	80,711	216,309	571,228	868,248
Subtotal Revenue	**683,768**	**1,206,664**	**571,228**	**2,461,660**
Total Traced Profit	130,602	319,855	-	450,457
Total Calculated Profit	9,099	62,590	228,256	299,945
Subtotal Profit	**139,701**	**382,445**	**228,256**	**750,402**
Net 10% Commission	**125,731**	**344,201**	**205,430**	**675,362**

** All figures rounded to nearest dollar*

As one may see in the table above, during the period from Clear Touch's inception to the end of Trask's non-compete, approximately 82% of revenue and 83% of profit is directly traceable back to Clear Touch's suppliers.

2. Lost Profit on Sales made by Clear Touch to Leon County Schools

Encore management has informed me that Leon County Schools was an Encore customer before being solicited by and subsequently moving its business directly to Clear Touch. As such, for all sales taking place during the non-compete period (4/26/2014 – 4/25/2015), I have calculated the gross profit earned on these sales by Clear Touch as an element of Encore's damages.

Additionally, I have calculated profit lost on sales to Leon County Schools during the period 4/26/2014 – 10/10/2015, during which time such sales were derived both Higginbotham's non-solicit and the re-seller agreement between Encore and Clear Touch were still was in effect.

A summary of these damages is included in the table below, with more detail included in the attached Appendix 5.

	Trask Non-Compete	Higginbotham Non-Solicit & Reseller Agreement
	4/26/2014 - 4/25/2015	4/26/2015 - 10/10/2015
Leon County Sales by Clear Touch	539,898	321,192
COGS Relate to Leon County Sales	196,077	192,852
Gross Margin on Leon County Sales	**343,821**	**128,340**
Net 10% Commission	**309,439**	**115,506**

Calculation 3: Loss of Business Opportunity

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Pursuant to the Encore agreements with Trask, Trask was required to offer "any project, investment, venture, business or other opportunity…that is competitive with, related to or in the same field as Company [Encore],"[4] to Encore. This alternative accounts for the fact that Clear Touch had value beyond the sales with Encore and Leon County Schools in the preceding section. Rather, Clear Touch began generating cash flow that would have otherwise been Encore's had the opportunity been afforded to it. Therefore, in calculating the damages in this scenario, I have identified and calculated two separate elements, 1) the lost cash flow generated by Clear Touch, represented by the adjusted income of Clear Touch, from 2/13/2013 – 12/31/2015, and 2) the fair market value of Clear Touch as of 12/31/2015.

1. Adjusted Income Generated by Clear Touch from 2/13/2013 – 12/31/2015

In order to prepare this calculation, I used the following formula using information from QuickBooks income statements provided by Clear Touch's accountant in discovery:

Revenue – Cost of Goods Sold – Operating Expense + Adjustments = Adjusted Income

Adjustments

It is my understanding, based on review of financial and operational information provided to me in additional to my conversations with Encore management,that Encore was and is larger in scale than Clear Touch and financially healthy. Specifically, Encore had the capacity and capability to handle the Clear Touch sales without incurring the same costs as Clear Touch. Encore had access to funds, specifically a $5,000,000 credit line it could utilize to purchase inventory or sustain operations while awaiting payment of receivables. Additionally, during this period, Encore had between 75 – 85 employees who were available to offer the capacity necessary to service the Clear Touch business. Based on this, I have adjusted the income reported by Clear Touch in its accounting records to encompass these factors and calculate the amount of income lost by Encore due to Trask's alleged breach of the business opportunity clause in his employment agreement with Encore. These adjustments included:

- **Cost of Goods Sold[5] adjustment** – The financial statements provided by Clear Touch appear to be mostly on the cash basis, meaning that revenue and expenses were recorded when cash was received or spent. As such, cost of goods sold appears to have been overstated early in the company's life cycle as inventory was being built. This expense has

[4] Encore Non-Disclosure and Non-Solicitation Agreement with Trask ENC 000001 – ENC 000003
[5] Factoring fees were not included in any adjustment to Cost of Goods Sold as they were adjusted separately.

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been adjusted to a 33% margin on gross sales based on the analysis performed in Calculation 2. Margins appear to have increased over the course of my analysis, to greater than 40% - 50% in some instances, but my calculation normalizes the margin to 33% to encompass the stability of Encore's operation[6]. This figure is further supported by the Clear Touch memo to potential investors in which Clear Touch management represents its margins to be 33% (CT01722 – CT0724).

- **Factoring fees** – Encore is a healthy company with a $5,000,000 credit line and can operate on extended collection periods. During this period from 6/30/2014 to 12/31/2015, the average amount drawn on the line was $1,067,143, leaving approximately $3,900,000 to finance this business. Factoring of receivables would not have been required. Therefore, factoring fees have been eliminated.
- **Margin Split –** Like the factoring fee adjustment above, Encore's size and resources allow it to operate without requiring a margin split arrangement with downstream distribution partners.
- **Professional fees –** Encore's expense structure already included these fees and expenses.
- **Warehousing expense -** Encore's expense structure already included this expense.
- **Rent expense** – Encore's expense structure already included this expense.
- **Mailbox rental -** Encore's expense structure already included this expense.
- **Bonuses** – Bonuses are considered discretionary; however, they have been included under the assumption that they were paid to critical employees.
- **Additional Employee Salary –** Encore is sufficiently staffed and would not have had to incur significant additional salary to service the Clear Touch business. However, it is understood that certain Encore employees (Gallant and Higginbotham) moved to Clear Touch over the course of this period. Additionally, Encore management has represented that one additional position may have been required. As such, I have adjusted additional salary downward by 25% to incorporate this adjustment.
- **Contract Labor –** It is assumed that Encore's employee base could have absorbed the activity represented by the contract labor expensed by Clear Touch.

[6] Based on the characteristics of Encore discussed above, it is reasonable to believe that Encore could have used its scale and access to funds to increase this margin further. For the calculation, I have relied on the margin determined from the Clear Touch invoice and purchase order analysis.

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- **Trask Salary for period during which he was not employed by Encore and not being paid by Clear Touch –** I have subtracted the amount of compensation that would have been paid to Trask by Encore during his employment for the months May – June 2014, which are understood to be the months during which he was no longer being compensated by Encore and was not yet being compensated by Clear Touch.
- **Payroll Taxes Adjustments on Compensation Related Adjustments -** In all instances involving wages, I have adjusted – either up or down – for payroll taxes estimated at 7.5% of wages.

This calculation is summarized in the following table. Additional information and detail is included in Appendix 6 attached with this report:

Dates	Revenue	COGS	Expenses	Unadjusted Income	Adj	Adjusted Income
2/13/2013 - 4/25/2014	408,647	593,101	54,964	(239,418)	344,555	105,137
4/26/2014 - 4/25/2015	2,507,066	1,713,612	784,832	8,622	27,557	36,179
4/25/2015 - 10/10/2015	4,932,856	3,428,763	367,738	1,136,355	145,474	1,281,829
10/11/2015 - 12/31/2015	1,882,820	1,207,983	449,669	225,168	(12,059)	213,109
Total	**9,731,389**	**6,943,459**	**1,657,203**	**1,130,727**	**505,527**	**1,636,254**

2. Fair Market Value of Clear Touch Interactive as of 12/31/2015

In addition to the damages related to the loss of the Clear Touch business opportunity from 2/13/2013 – 12/31/2015 calculated above, Encore has also lost the opportunity into the future as Clear Touch has further established itself in the market. This loss is considered permanent, and as such:

> "…damages are to be measured by one of two alternative methods: (1) the going concern value; or (2) lost future profits."
>
> *Cooper Distributing Co v Amana Refrigeration, Inc 180 F.3d 542 (3rd Cir. 1999) cited by Thomas Burrage, CPA/ABV in The Comprehensive Guide to Lost Profit Damages, 2009*

The going concern value, in this instance the fair market value, of an enterprise is defined as "the price that a willing buyer would pay and a willing seller would accept in a free marketplace for the business in question" (Burrage, 2009). Damages are then valued as the difference between the value of the business

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(Clear Touch in this case) and the value received by the plaintiffs upon sale, which in this case is zero

Based on this, I have estimated the fair market value of Clear Touch as of 12/31/2015. I have considered three different approaches in my calculation of Clear Touch's value: 1) Asset, 2) Market, and 3) Income.

Asset Approach:

In considering the asset approach, otherwise known as book-value, net asset value, or liquidation value, I have calculated Clear Touch's equity per its filed 2015 tax return as $1,428,883, which has not been adjusted upward for potentially significant cash payments for inventory believed to be expensed at year end for tax purposes. This method does not incorporate any consideration for the ongoing and future potential earnings of Clear Touch, and therefore, has received no weight in my final estimate of value. Rather, it stands as a factor in my consideration of my final estimate's reasonableness.

Market Approach:

The market approach represents the application of pricing multiples derived from transactions of comparable companies in the same or similar lines of business. In my considering of the market approach, I have derived market multiples from the Pratts Stats database for NAICS codes 423430 – Computer and Computer Peripheral Equipment and Software Merchant Wholesalers and 443142 – Electronics Stores, which are believed to best represent the operations of Clear Touch. All multiples used are "asset sale" multiples which assume that the seller will keep all cash held by the business, all receivables, and pay all debt.

A summary of cash, accounts receivable, and debt are summarized in the table below:

Net Adjustment for Market Approach Values*

Cash	694,748
Accounts Receivable	261,159
Total Debt	(357,303)
Net Adjustment	**598,604**

** All values derived from Clear Touch 2015 tax return*

Income Approach:

Income approaches rely on the theory that the value of a business depends on the future benefits that will accrue to it, with the value of the future economic benefits discounted back to present value, at some appropriate discount rate. I have utilized and relied on the capitalization of earnings method in my calculations.

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Relevant Business Valuation Factors Considered:

Please see Appendix 7 for additional exhibits regarding this analysis.

a. **Date of Valuation:** To estimate a value for Clear Touch, I have chosen 12/31/2015 as the valuation date. This date has been chosen for several reasons. The primary reason for choosing the 12/31/2015 valuation date is that it is the nearest tax year-end for Clear Touch. This represents a clear "cut-off" for the financial results of the company, as the books for small businesses are closed as of the end of the year, thus offering a clearer financial picture for analysis rather than a point occurring mid-year.

   Additionally, Encore and Clear Touch's re-seller agreement ran through 10/10/2015. This relationship leads me to again believe that year-end 2015 best represents the value of Clear Touch during the time it was affiliated with Encore.

   After considering all of the business and financial factors in this case, it is my opinion that 12/31/2015 is most appropriate valuate date for Clear Touch.

b. **Discount and Capitalization Rates (Income Approach):** I have determined discount and capitalization rates utilizing the build-up method. This is presented in the following table:

Build-Up of Discount and Capitalization Rates Used [7]

Normalized Risk Free	4.00%
Normalized Equity Risk Premium	5.00%
Size Premium	11.79%
Average Market Risk	**20.79%**
Specific Company Discount Rate	5.00%
Calculated Discount Rate	**25.79%**
Growth Rate Estimate	3.00%
Capitalization Rate	**22.79%**

c. **Weighting of Income (Income Approach – Capitalization of Earnings Method):** The capitalization of earnings method requires determination of weighted earnings to which the capitalization rate must then be applied. I have weighted the earnings 15% for 2014 and 85% for 2015 considering the relative youth of the company, the relative maturation of the company in 2015, and the continued growth of the company in 2016.

[7] Normalized Risk Free Rate, Normalized Equity Premium, and Size Premium have all been taken from the Duff & Phelps 2016 Valuation Handbook. Other rates are my own estimates.

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d. **Adjustments to Income:** In valuing the business, I have made the same adjustments to income as shown in my normalization to Encore's lost profit in Calculation Two. These adjustments have been made to estimate the income stream and subsequent value of the Clear Touch business opportunity to Encore rather than the fair market value of a standalone Clear Touch entity as it is currently operated.

e. **Additional Considerations:** In addition to my analysis and calculations, I have also considered the values that have been represented by Clear Touch management in documents provide to me. These include the following: 1) a CatchFire Funding questionnaire completed by Clear Touch management representing the value of the company to be $2,269,818 as of 12/31/2015 (CT 000072 – CT000074), and 2) a memo prepared for potential investors in Clear Touch offering convertible equity in the amount of 1% interest for each $100,000 invested, which equates to a $10,000,000 fair market value (CT01722 – CT0724).

I have summarized the results of my calculations in the following table:

EBIT	1,178,067	4.5	5,301,302	598,604	5,899,906
EBITDA	1,273,081	4	5,092,324	598,604	5,690,928
Income Approach					
Capitalization of Earnings					3,876,156
Opinion of Value					**3,900,000**
Clear Touch Management Representations of Value Considered					
Book Value per Clear Touch 2015 tax return (not adjusted for inventory write-off)					1,428,883
Clear Touch Internally Prepared Catchfire 401(k) Valuation as of 12/31/2015					2,269,818
Investor Memo Prepared by Clear Touch Management in 2014					10,000,000

Alternative Calculation

As discussed above, lost profit theory allows for either the fair market value of the lost business or the calculation of anticipatory damages for a set period of time. I have considered this alternative which would allow for Encore's recovery of known damages, which in this instance would be from 2/13/2013 – 12/31/2016, and anticipatory damages for a limited number of years in the future.

Considering this alternative, I have utilized the same procedures as calculation 2 to calculate the known losses through 2016, which have been estimated at $4,055,656. I then calculated three years of anticipatory damages assuming the same 2% growth estimate for revenue and operating expenses and a 33% gross

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margin. Total gross anticipatory damages were calculated at $6,010,943, the present value of which at 12/31/2016 are $3,742,976 utilizing the 27.79% discount rate from my capitalization rate build-up. Therefore, total damages utilizing this alternative are calculated as $7,798,632.

I have not utilized this calculation to derive any specific element of damage but rather as a test for reasonableness related to the lost business opportunity by Encore. Based on this figure, I believe that my calculation of **$5,536,254** is reasonable.

IX. Reservation of Right to Amend

In the event that additional documents and/or other discovered material is made available to me after the submission of this report, I respectfully reserve the right to amend this writing, as appropriate.

X. Rebuttal Testimony

In addition to the substance of the foregoing discussion, my testimony may also include rebuttal testimony, as required.

XI. Compensation:

Fees for my services are charged at my standard hourly rates currently $265 for my time, $175 for other accounting staff time, and $100 for admin staff. To date, I have charged $21,305 for my services.

XII. Prior Testimony

My prior testimony is detailed in my curriculum vitae which is attached to this report as Appendix 1.

Mike E Meilinger, CPA

Digitally signed by Mike E Meilinger, CPA
DN: cn=Mike E Meilinger, CPA, o=Meilinger Consulting, P.C., ou, email=mike@meilingerconsulting.com, c=US
Date: 2017.03.03 13:30:20 -05'00'

Mike E. Meilinger, President CPA/ABV, CMA, CFFA, CFF, CFE

March 3, 2017

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Michael E. Meilinger,CPA/ABV, CMA, MAFF, CFF, CFE

February 2017

351 Prado Way
Greenville, SC 29607

864-288-3049(o) 864-201-9077(c)
mike@meilingerconsulting.com

EDUCATIONAL BACKGROUND:

The University of South Carolina at Spartanburg, South Carolina: attained Bachelor of Science Degree in Business Administration with a Concentration in Accounting, May 1993, Cum Laude.

Recipient of the **O'Brien Accounting Scholarship**, Scored in top 1% of the Major Field Assessment Test for Business Majors.

The University of South Carolina School of Business Administration and Economics holds AACSB International Certification.

In 2009, Mike and his wife Penny received the 2009 distinguished Alumni Award from USC Upstate.

PROFESSIONAL CERTIFICATIONS:

- **Certified Public Accountant** since November 1995, passed CPA exam first sitting November of 1993.
- **Certified Management Accountant** since June 1996, passed CMA exam first sitting June of 1995. **Certified Financial Planner** from April 2000 to June 2010, passed CFP exam first sitting November of 2000.
- **Accredited in Business Valuation** since March 2008, passed ABV exam first sitting December of 2007.
- **Master Analyst in Financial Forensics**; passed both CFFA exams on first sitting October of 2008 and December of 2008.
- **Certified Financial Forensics -2009**
- **Certified Fraud Examiner -2012**

EMPLOYMENT INFORMATION:

2007 – Current: Meilinger Consulting, P.C., President CPA

- Practice that focuses on consulting, litigation support and transaction consulting including tax analysis, detection of fraud, divorce financial analysis, business valuations, property tax appeals, mediation, acquisitions, and mergers.

- Testified and been deposed in numerous cases and qualified as an expert in business valuation, accounting, forensic accounting, tax accounting, and pension plan valuation.

2002-2006: President and majority shareholder of Meilinger & Cohen, PC; Sold practice in 2006.

- Primarily consulted with clients on issues involving the purchase, sale, and value of businesses, tax planning, strategic growth opportunities and business operation.

- Responsible for growing the business revenue 350% in less than 4 years.

1999-2002: Shareholder Kent Evan Group

- In charge of consulting and litigation support services

- Developed expertise in real estate transactions, including developments accounting, and 1031 transactions; also engaged in work with numerous mergers, acquisitions, and business valuations.

1996-1999 Michael E Meilinger, CPA, CMA: Small business CPA and QuickBooks Consultant started up at residence and grew to over 100 clients and 3 employees.

1993-1995 Deloitte & Touché Staff Accountant: Conducted audits of financial statements under generally accepted accounting principles, and developed expertise in the textile industry.

MILITARY SERVICE:

Served from1986 to 1992 in the United States Marine Corps Reserve, achieved the rank of Corporal, and served in Operation Desert Storm and Operation Desert Shield.

PROFESSIONAL AFFILIATIONS:

American Institute of Certified Public Accountants, 2001 to present

Association of Certified Fraud Examiners, 2002 to present

Institute of Management Accountants, 1994 to present

Institute of Divorce Financial Analyst, 2007 to present

National Association of Certified Valuation Analysts, 2007 to present

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Testified:	**Year**
1. P. J. Richardson vs. North American Rescue Products	2008
2. Colquhoun vs. Colquhoun	2009
3. Nestberg vs. Nestberg	2009
4. Assmussen vs. Assmussen	2009
5. Kunst vs. Debacco	2009
6. Coulter vs. Coulter	2010
7. McClure vs. McClure	2010
8. Hulsey vs. Hulsey	2010
9. Lyda vs. Lyda	2010
10. Hiller vs. Hiller	2010
11. O'Boyle vs. O'Boyle	2011
12. USA vs. Pearce	2012
13. Connits vs. Connits	2012
14. O'Boyle vs. O'Boyle	2012
15. McAdory vs. McAdory	2013
16. Bessette vs. Pietrazak	2013
17. Fredrickson vs. Schultz	2013
18. McMillan vs. McMillan	2013
19. Fleetwood Transportation Corporation and Transportation Consultants, Inc. vs. Packaging Corporation of America	2013
20. Sweeney vs. Sweeney	2013
21. McMillan vs. McMillan	2014
22. Childs vs. Childs	2015
23. Silvey vs. Silvey	2015
24. Laris vs. Laris	2015
25. Howey vs. Howey	2016
26. Short vs Short	2016
27. Collins vs Collins	2016

Deposition Taken:

1. Nestberg vs. Nestberg	2008
2. Tracy vs. Tracy	2009
3. Kunst vs. Debacco	2009
4. Anastasia G. Livaditis vs. Louis Lignos of L & L of Greenwood, LLC vs. Gus Livaditis	2010
5. O'Boyle vs. O'Boyle	2011
6. Moore vs. Moore	2012
7. American National Property and Casualty Company, vs. Ernest W. Baker, III et al.	2013
8. McKelvey vs. McKelvey	2013
9. Sweeney vs Sweeney	2013
10. Fleetwood Transportation Corporation and Transportation Consultants, Inc. vs. Packaging Corporation of America	2013
11. HH Hunt Homes of Charleston, LLC vs. Allergycorp of America, LLC, et al	2015
12. Wilke vs. Wilke	2015
13. Fowler vs. CMA, et al	2015
14. Ashmore vs. Ashmore	2015
15. Travis R Holt and Tiffany Lariviere Holt vs. Scott W. Brown and Charles Vincent Brown	2015

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Appendix 2: Documents Reviewed in Analysis

1. Clear Touch tax returns for years 2013 - 2015
2. Invoices and purchase orders contained in CT 0829-1049, ENC 00202346 – ENC 00202522,
3. Margin Comparison Spreadsheet - ENC 00202345
4. Catchfire funding document CF 000072
5. Trask and Clear Touch agreements with Encore ENC 00001 – ENC 000020
6. Clear Touch memo to investors CT 01722 - 01724
7. Excel 2013 – 2015 CTI financials prepared from Clear Touch QuickBooks records
8. Monthly Clear Touch financial statements – CT 0768 – CT 0828, CT 022909 – CT 022928
9. Clear Touch's account discovery product - S&S 000001 – S&S 000320
10. Encore W2s for years 2013 – 2015 for Keone Trask, Leo Gallant, and Jimmy Higginbotham
11. Encore internally generated expense reimbursement reports for Keone Trask, Leo, Gallant, and Jimmy Higginbotham
12. Excel spreadsheet of Encore marketing expenses generated from Encore QuickBooks
13. Encore management representations of percentage of time expended by Trask, Gallant, and Higginbotham on Clear Touch business
14. Encore management spreadsheet of 401k, medical, and dental benefits for Trask, Gallant, and Higginbotham
15. The Comprehensive Guide to Lost Profits Damages, Fannon (2009)
16. The Pratt's Stats Database

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Appendix 3:
Marketing Costs Incurred by Encore for the Alleged Benefit of Clear Touch

Encore
Transaction Detail by Account
January through December 2013

Type	Date	Num	Name	Memo	Debit	Already provided in KT and LG Expenses	Clearly not ClearTouch related
6888202 · Mrkt Sales Conferences/Events							
Bill	02/28/2013	Spring Conference	SCASCD		250.00		250.00
General Journal	02/28/2013	2		AMEX Feb 2013 - June AL Conference	1,779.66		
General Journal	02/28/2013	26		Feb 2013 Prepaid Misc Exp	2,930.00		2,930.00
General Journal	02/28/2013	26		Feb 2013 Prepaid Misc Exp - Amex - June	1,675.00		
General Journal	03/27/2013	39		March 27, 2013 Expenses	734.61	524.63	209.98
Bill	04/02/2013	Gen Sponsor	MAC	Cisco Live Local - Carolinas	500.00		500.00
General Journal	04/30/2013	75		April 2013 Amex - June 2013 GMIS Intern	2,500.00		
Bill	05/09/2013	Upstate Tech Conf	Greenville County Schools	Tables/Exhibit Spaces	700.00		
Bill	05/21/2013	1040	Gameis	Sales Conference/Events	1,350.00		
Bill	05/21/2013	31770	SCSBA		1,075.00		
Bill	05/23/2013	Sponsorship	FAEDS	Exhibit Space at FAEDS Conference	3,000.00		
Bill	05/23/2013	1040-B	Gameis	Registration	300.00		
Bill	05/28/2013	Silver Sponsor	Madison Co Career Tech Center		300.00		
Bill	05/28/2013	Exhibit-Gold Sponso	School District of Pickens County	Exhibit Space/Gold Sponsor	500.00		
Bill	05/29/2013	Exhibit/Presentation	VSTE	Exhibit Booths	1,800.00		
Bill	05/29/2013	Exhibit/Presentation	VSTE	Presentation Slot	600.00		
General Journal	05/31/2013	100		May 2013 Amex - AETC, NC HPS, GMIS,	5,766.00		
Bill	06/11/2013	Golf-Sponsor	Gameis	Gameis Golf Tournament Sponsor	50.00		
Bill	07/01/2013	1138	Alabama Ed Tech Association		4,250.00		
Bill	07/11/2013	Booth Fee	SCAET/SC EDTECH	Booth Fee	3,100.00		
Bill	07/22/2013	MAEDS Registration	MAEDS	Exhibit & 4 Admission	1,195.00		
Bill	08/23/2013	Fall Symposium	NCLGISA Treasurer	Leo Gallant	4,000.00		
General Journal	09/11/2013	211		Sep 11, 2013 Expenses	245.35		
Bill	09/16/2013	4878323	SCATA	Level II Gold	2,500.00		
Bill	09/24/2013	2031018415	FedEx Freight		384.58		
Bill	09/25/2013	e-102	DL Fruit Designs		357.22		
General Journal	09/25/2013	239		Sep 25, 2013 Expenses - NC HPS	750.00	750.00	
General Journal	09/30/2013	268		Sep 2013 Amex - Freight for conference	531.47		
Bill	10/01/2013	INV313162	Boxlight, Inc.	Demo	1,174.00		
Check	10/08/2013	5030	ABF	Shipment from sales conference - AETA	387.73		
General Journal	10/23/2013	303		Oct 23, 2013 Expenses	910.28	910.28	
Bill	10/23/2013	2240	MarketLink, Inc		750.00		
General Journal	10/31/2013	313		October 2013 Amex - Conference supplies	12.78		
Bill	11/01/2013	055367404	ABF	Additional Charges	310.11		
Bill	11/01/2013	316169325	ABF	Additional Charges	225.07		
General Journal	11/06/2013	308		Nov 6, 2013 Expenses	1,152.29	1,152.29	
Bill	11/15/2013	2251	MarketLink, Inc	Pre-Event Mkt for Office365 Events	814.38		
General Journal	11/20/2013	338		Nov 20, 2013 Expenses	704.60	704.60	
General Journal	12/04/2013	350		Dec 4, 2013 Expenses - FETC	6,200.00	6,200.00	
Bill	12/04/2013	2258	MarketLink, Inc		274.37		
Bill	12/10/2013	2261	MarketLink, Inc		816.55		
Bill	12/17/2013	2873	MarCat Links	2014 SCITDA Sponsorship	2,500.00		
Bill	12/24/2013	2031018463	FedEx Freight		151.66		
Total 6888202 · Mrkt Sales Conferences/Events				**Total 2013 Marketing Expense**	**59,507.71**	**10,241.80**	**3,889.98**
				Less LG and KT Expenses	(10,241.80)		
				Less Non-CT Related	(3,889.98)		
				Net 2013 Expenses	**45,375.93**		

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Encore
Transaction Detail by Account
January through December 2014

Type	Date	Num	Name	Memo	Debit	Already provided in KT and LG Expenses	Clearly not ClearTouch related
6888202 · Mrkt Sales Conferences/Events							
Bill	01/08/2014	2014 NCASA Confer	NCASA	Conference on Education Leadership	975.00		
General Journal	01/15/2014	396		Jan 15, 2014 Expenses	150.00	150.00	
Bill	01/18/2014	2031018452	FedEx Freight		217.89		
General Journal	01/29/2014	436		Jan 29, 2014 Expenses	1,025.31	1,025.31	
Bill	01/31/2014	387682	NCTIES Registration	Leo Gallant	7,000.00		
Bill	02/10/2014	2014 Conference	NCET	Leo Gallant	500.00		
General Journal	02/12/2014	442		Feb 12, 2014 Expenses - FETC Freight	3,180.15	3,180.15	
Bill	02/14/2014	201402110007	AETC Exhibit Management	Booth Fees	3,200.00		
General Journal	02/26/2014	479		Feb 26, 2014 Expenses	2,770.12	2,770.12	
General Journal	02/28/2014	502		Feb 2014 Prepaid	4,100.00		
General Journal	02/28/2014	511		Feb 2014 AmEx Allocation	380.11		
Bill	03/01/2014	2031018430	FedEx Freight		1,570.04		
Bill	03/07/2014	2014-R10-009	The Interlocal Purchasing System	TIPS Vendor Show	150.00		
General Journal	03/12/2014	492		Mar 12, 2014 Expenses	21.85		
Bill	03/18/2014	AA47711933	FedEx Freight		2,001.35		
Bill	03/25/2014	AA47861864	FedEx Freight		906.68		
General Journal	03/26/2014	529		Mar 26, 2014 Expenses	3,134.99	2,702.44	
Bill	03/29/2014	2031018496	FedEx Freight		1,397.37		
Bill	04/01/2014	Registration	SCASA	Myrtle Beach	1,140.00		
Bill	04/01/2014	102	Greenville County Schools	Upstate Technology Conference	1,000.00		
Bill	04/04/2014	AA48072005	FedEx Freight	2031018500	567.03		
Bill	04/07/2014	GAMEIS 2014 Conf	There and Back again Travel	Sponsorship	1,300.00		
Bill	04/07/2014	GAMEIS 2014 Conf	There and Back again Travel	Attendees	300.00		
Bill	04/07/2014	FAMIS 2014 Conf	FAMIS	FAMIS 2014 Conference	1,700.00		
Bill	04/09/2014	AA48177635	FedEx Freight	2031018533	240.59		
Bill	04/10/2014	AA48186148	FedEx Freight	2031018511	310.94		
Bill	04/19/2014	2031018522	FedEx Freight		192.10		
Bill	04/26/2014	2031018485	FedEx Freight		130.63		
General Journal	04/30/2014	583		April 2014 Amex - GMIS	3,000.00		
General Journal	05/07/2014	569		May 7, 2014 Expenses	2,302.60	2,302.60	
Bill	05/07/2014	988288	Barracuda	Sales Event Fee	297.00		
Credit	05/27/2014	988288	Barracuda	Sales Event Fee Credit for 1 User	(99.00)		
General Journal	05/31/2014	624		May 2014 Prepaid - Microsoft & Cisco	13,000.00		13,000.00
Bill	06/01/2014	5707	School Superintendents of Alaban	2014-2015 SSA Business Agreement	2,800.00		
General Journal	06/18/2014	639		June 18, 2014 Expenses	40.00	40.00	
General Journal	06/30/2014	670		June 2014 Amex	90.00		
General Journal	07/16/2014	693		July 16, 2014 Expenses	330.38	330.38	
Bill	07/17/2014	2014 Summer Trainin	GACP	2014 GACP Summer Training Conference	835.00		
Bill	07/17/2014	74463-232	MAC	Chesterfield SD Tech Fair	25.00		
Bill	07/28/2014		MAEDS	2014 MAEDS vendor registration	600.00		
General Journal	07/31/2014	702		July 2014 Amex	145.00		
General Journal	07/31/2014	703		July 2014 Prepaid - ISTE	15,440.00		
Bill	08/01/2014		Shanty Creek Resorts	MAEDS conf.	400.00		
Check	08/06/2014	8406	Chesterfield County School Dis -	Speaker Fee	500.00		
General Journal	41878	738		Aug 27, 2014 Expenses	78.19	78.19	
General Journal	41882	740		Aug 2014 Amex	100.00		
Bill	41892	Tier Three Sponsor	VSTE	Dec 7-9, 2014	2,500.00		
Bill	41893		NCLGISA Treasurer	Nov 12-14, 2014	2,500.00		
Bill	41899	2015 MACUL Conf.	G&H Events, LLC	2015 MACUL conf for Mar 18-20, 2015	700.00		
Bill	41920	3118203023	FedEx Freight		548.17		
Bill	41926	Vendor Fair	York Co School District 1	Instructional Conference and Vendor Fair	100.00		
General Journal	41934	810		Oct 22, 2014 Expenses - TASA & IIPS	1,900.00	1,900.00	
General Journal	41948	814		Nov 5, 2014 Expenses	352.98	191.13	
Bill	41954	9014	Funds For Learning LLC	Dec 2, 3, and 4 E-rate seminars	5,250.00		
General Journal	41962	840		Nov 19, 2014 Expenses	36.24	36.24	
General Journal	41973	865		Nov 2014 Prepaid - GaEdTech	2,500.00		
Bill	41978	30504619	1105 Media Inc	FETC Jan 21-23, 2015	3,400.00		
General Journal	41990	887		Dec 17, 2014 Expenses	256.72	256.72	
Bill	42003	Booths 615 & 617	SCAET/SC EDTECH	October 29-31, 2014 conference	1,500.00		
Total 6888202 · Mrkt Sales Conferences/Events				**Total 2014 Marketing Expense**	**100,990.43**	**14,963.28**	**13,000.00**
TOTAL				Less LG and KT Expenses	(14,963.28)		
				Less Non-CT Related	(13,000.00)		
				Net 2013 Expenses	73,027.15		

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Encore
Transaction Detail by Account
January through December 2015

Type	Date	Num	Name	Memo	Debit	Already provided in KT and LG Expenses	Clearly not ClearTouch related
6888202 · Mrkt Sales Conferences/Events							
Bill	01/14/2015	3126706881	FedEx Freight	Sales Conference	619		
General Journal	01/31/2015	959		Jan 2015 Amex	372		
General Journal	01/31/2015	962		Jan 2015 Prepaid - FETC	6,200		
Bill	02/01/2015	18538	Texas Association of School Admin		3,000		
General Journal	02/11/2015	955		Feb 11, 2015 Expenses - FETC & TASA	1,071		
Check	02/25/2015	9357	Leo Gallant	TASA and FETC	1,115		
Bill	03/19/2015	3081634684	FedEx Freight	acct# 374674501	725		
Bill	03/25/2015	Gold Sponsorship	ESC Region 11	Gold Sponsorship with a table; 2 sessions	900		
Bill	03/25/2015	2900491694	FedEx Freight		305		
General Journal	03/31/2015	1047		Mar 2015 Amex	371		
General Journal	04/08/2015	1033		Apr 8, 2015 Expenses	1,718		
Bill	04/20/2015	3083314150	FedEx Freight	acct# 374574501	307		
Bill	04/30/2015	1532469912	FedEx Freight		248		
General Journal	07/15/2015	1178		Jul 15, 2015 Expenses	24		
Check	07/27/2015	10083	Chesterfield County School Dis -	1271	5,000		5,000
Check	07/30/2015	5117			43		43
General Journal	07/31/2015	1211		Jul 2015 Prepaid - GAMEIS & IIPS	2,600		2,600
General Journal	08/12/2015	1194		Aug 12, 2015 Expenses	502		502
General Journal	08/31/2015	1250		Aug 2015 Amex	1,075		1,075
General Journal	08/31/2015	1254		Aug 2015 Prepaid	-		-
General Journal	09/30/2015	1296		Sep 2015 Prepaid	1,000		1,000
General Journal	10/07/2015	1268		Oct 7, 2015 Expenses	54		54
General Journal	10/31/2015	1321		Oct 2015 Prepaid	6,600		6,600
General Journal	11/30/2015	1356		Nov 2015 Prepaid	3,500		3,500
General Journal	12/02/2015	1339		Dec 2, 2015 Expenses	3,180		3,180
Total 6888202 · Mrkt Sales Conferences/Events				**Total 2014 Marketing Expense**	**40,529**	-	**23,554**
TOTAL				Less LG and KT Expenses	-		
				Less Non-CT Related	(23,554)		
				Net 2013 Expenses	**16,975**		

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Appendix 4:
Detail of Traced and Calculated Gross Profit from Invoices and Purchase Orders

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Traced Clear Touch Costs of Sales Made to Encore

Encore PO #	Encore PO Date	ClearTouch Invoice #	ClearTouch Vendor (TSI Touch/Shiyan) Invoice #	Encore Cost	ClearTouch Cost	Profit	Document References
N/A	N/A	823121	0000805-IN/CC	6,139.99	5,680.89	459.10	TSI000001, 2013 Detail Financial
43515	5/22/2013	16598	0001090-IN, 0001094-IN	7,001.51	6,544.35	457.16	CT1020, TSI000002, TSI000004, 2013 Detail Financial
43516	5/22/2013	16599	0001092-IN, 0001116-IN	118,320.18	106,156.69	12,163.49	CT1021, TSI000003, TSI000005, 2013 Detail Financial
PO50915	9/5/2013	16670	0001616-IN	124,413.22	108,786.86	15,626.36	CT1022, TSI000006-TSI000008, 2013 Detail Financial
PO51073	9/16/2013	16671	0001618-IN	27,463.98	23,878.68	3,585.30	CT1023, TSI000009, 2013 Detail Financial
PO51207	9/25/2013	16712	0001775-IN	8,265.01	7,262.93	1,002.08	CT1024, TSI000014, 2013 Detail Financial
PO51212	9/25/2013	16696	0001709-IN	5,248.39	4,476.36	772.03	CT1025, TSI000010, 2013 Detail Financial
PO51216	9/25/2013	16697	0001710-IN	5,248.39	4,476.36	772.03	CT1026, TSI000011, 2013 Detail Financial
PO51358	10/2/2013	16698	0001711-IN	4,753.39	4,032.02	721.37	CT1027, TSI000012, 2013 Detail Financial
PO51398	10/7/2013	16687	Seewo	4,992.52	3,740.00	1,252.52	2013 Detail Financial
PO51755	11/12/2013	16744	0001906-IN	3,825.26	3,455.94	369.32	CT1028, TSI000017, 2014 Detail Financial
PO51800	11/18/2013	16713	0001797-IN	6,026.64	5,599.11	427.53	CT1029, TSI000015, 2013 Detail Financial
PO51975	12/6/2013	16742	0001866-IN	4,713.36	5,148.88	(435.52)	CT1030, TSI000016, 2014 Detail Financial
PO52001	12/10/2013	16743	0001907-IN	3,505.26	3,300.40	204.86	CT1031, TSI000018, 2014 Detail Financial
PO53175	4/1/2014	16872/16873	SYPI-141230, SYPI-141265	273,139.91	179,916.00	93,223.91	CT0831, CT0832, 2014 Detail Financial
			Total 2/13/13 - 4/25/2014	**603,057.01**	**472,455.47**	**130,601.54**	
PO53906	5/29/2014	ETG-091214	SYPI-141312-R1	259,282.05	165,820.00	93,462.05	CT0834, 2014 Detail Financial
PO54165	6/17/2014	17397/17397-A	SYPI-141326	492,744.95	340,780.00	151,964.95	CT0924, 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	CTI-18007	SYPI-141355R	216,704.00	150,700.00	66,004.00	CT0837, CT0926, 2014 Detail Financial
PO55004	8/27/2014	CTI-18007	SYPI-141355R	4,860.00	1,980.00	2,880.00	CT0837, CT0926, 2014 Detail Financial
			Total 4/26/2014 - 4/25/2015	**990,354.55**	**670,500.00**	**319,854.55**	

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Detail of Calculated Profit to CLear Touch on Sales to Encore

	Revenue	Cost	Profit
EE	80,711	71,612	9,099
NC	216,309	153,719	62,590
RSA	571,202	342,946	228,256
Totals	**868,222**	**568,277**	**299,945**

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Detail of Calculated Profit to CLear Touch on Sales to Encore

Date	CT Inv	Time Period	Item	Cost ID#	Description	Q	P	Amount	Cost	Profit
1/13/2014	16763	EE	CTI-5070H-UH06	TSI	70" Interactive Panel with USB HID 6 Points of Touch	4	4,544.33	18,177.32	16,207.36	1,969.96
1/13/2014	16763	EE	CTI-50XXH-PCM5	11	5000 Series - PC Module with Intel Core i5, 4GB Memory, 500GB Hard Disk (No OS)	4	524.25	2,097.00	1,908.00	189.00
1/13/2014	16763	EE	CTI-50XXH-STND	10	5000 Series - Mobile Stand	4	374.25	1,497.00	640.00	857.00
1/13/2014	16763	EE	Registered Opportunity Discount	N/A	Registered Opportunity Discount	4	(374.25)	(1,497.00)	-	(1,497.00)
1/13/2014	16764	EE	CTI-5070H-UH06	TSI	70" Interactive Panel with USB HID 6 Points of Touch	1	4,454.33	4,454.33	4,051.84	402.49
1/13/2014	16764	EE	CTI-50XXH-PCM5	11	5000 Series - PC Module with Intel Core i5, 4GB Memory, 500GB Hard Disk (No OS)	1	524.25	524.25	477.00	47.25
2/12/2014	16812	EE	CTI-5065H-UH06	Estimate	65" Interactive Panel with USB HID 6 Points of Touch	1	3,576.82	3,576.82	2,396.47	1,180.35
2/12/2014	16812	EE	CTI-5070H-UH06	TSI	70" Interactive Panel with USB HID 6 Points of Touch	9	4,454.32	40,088.92	36,466.56	3,622.36
2/12/2014	16812	EE	CTI-50XXH-PCM5	11	5000 Series - PC Module with Intel Core i5, 4GB Memory, 500GB Hard Disk (No OS)	8	524.25	4,194.00	3,816.00	378.00
2/12/2014	16812	EE	CTI-50XXH-STND	10	5000 Series - Mobile Stand	6	374.25	2,245.50	960.00	1,285.50
3/19/2014	16828	EE	CTI-5070H-UH06	TSI	70" Interactive Panel with USB HID 6 Points of Touch	1	4,454.33	4,454.33	4,051.84	402.49
3/19/2014	16828	EE	CTI-50XXH-PCM5	11	PC Module with Intel Core i5, 4 GB Memory, 500GB Hard Disk (No OS)	1	524.25	524.25	477.00	47.25
3/19/2014	16828	EE	CTI-50XXH-STND	10	5000 Series - Mobile Stand	1	374.25	374.25	160.00	214.25
5/29/2014	16855	NC	CTI-5065H-UH06	Estimate	65" Interactive Panel with USB HID 6 Points of Touch	5	3,576.83	17,884.15	11,982.36	5,901.76
5/29/2014	16855	NC	CTI-5070H-UH06	TSI	70" Interactive Panel with USB HID 6 Points of Touch	15	4,454.33	66,814.88	60,777.60	6,037.27
5/29/2014	16855	NC	CTI-50XXH-PCM5	11	PC Module with Intel Core i5, 4 GB Memory, 500GB Hard Disk (No OS)	14	524.25	7,339.50	6,678.00	661.50
5/29/2014	16855	NC	CTI-50XXH-STND	10	5000 Series - Mobile Stand	7	374.25	2,619.75	1,120.00	1,499.75
6/12/2014	CMETG614	NC	CM-Mobile Stand	10	5000 Series - Mobile Stand	(5)	374.25	(1,871.25)	(800.00)	(1,071.25)
7/2/2014	16881	NC	CTI-5070V-UH06	5	70" Interactive Panel with USB HID/AGG 6 Points of Touch	3	4,614.35	13,843.05	8,850.00	4,993.05
7/2/2014	16881	NC	CTI-50XXX-PCM8	11	Integrated PC Module (No OS) for all V Series	3	599.25	1,797.75	1,431.00	366.75
7/2/2014	16881	NC	CTI-50XXX-STND	10	Mobile stand for 65", 70", and 84"	3	449.25	1,347.75	480.00	867.75
7/9/2014	16886	NC	CTI-5084H-UH06	Estimate	84" Interactive Panel with USB HID 6 Points of Touch	1	9,449.33	9,449.33	6,331.05	3,118.28
7/9/2014	16886	NC	CTI-50XXH-PCM8	11	Integrated PC Module (No OS) for 84"	1	599.25	599.25	477.00	122.25
7/9/2014	16886	NC	Freight	N/A	Freight	1	1,112.00	1,112.00	-	1,112.00
7/9/2014	CMETG714	NC	Demo Unit	N/A	Demo Unit Concession	(1)	2,500.00	(2,500.00)	-	(2,500.00)
8/20/2014	ETG080714	NC	SLS700XV-6	Estimate	ZaagTech 70" 6P1 IR Touch Screen	3	500.00	1,500.00	1,005.00	495.00
8/20/2014	ETG080714	NC	Freight	N/A	Freight	3	108.33	325.00	-	325.00
9/19/2014	ETG091914	NC	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	1	374.25	374.25	160.00	214.25
10/8/2014	CTI-18000	NC	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	1	374.25	374.25	160.00	214.25
11/10/2014	CTI-18014	NC	CTI-5000-ADJM	9	Adjustable Mobile Stand (for use with 65" and 70" panels)	1	1,499.25	1,499.25	936.00	563.25
11/21/2014	CTI-18024	NC	CTI-5084V-UV06	Estimate	84" H+ Series Interactive Panel with USB HID/AGG 6 Points of Touch (Demo Pricing)	1	8,299.38	8,299.38	5,560.58	2,738.80
11/21/2014	CTI-18024	NC	CTI-5000X-PCM8	11	Integrated PC Module - No OS (for use with 84" H series and all V series	1	599.25	599.25	477.00	122.25
11/21/2014	CTI-18024	NC	CTI-5000-ADJM	9	Adjustable Mobile Stand (for use with 65" and 70" panels)	-	1,499.25	-	-	-
12/19/2014	CTI-18036	NC	CTI-5084V-UV06	Estimate	84" H+ Series Interactive Panel with USB HID/AGG 6 Points of Touch (Demo Pricing)	-	8,299.38	-	-	-
12/19/2014	CTI-18036	NC	CTI-5000X-PCM8	11	Integrated PC Module - No OS (for use with 84" H series and all V series	-	599.25	-	-	-
12/19/2014	CTI-18036	NC	CTI-5000-ADJM	9	Adjustable Mobile Stand (for use with 65" and 70" panels)	2	1,499.25	2,998.50	1,872.00	1,126.50
12/19/2014	CTI-18037	NC	CTI-5000-ADJM	9	Adjustable Mobile Stand (for use with 65" and 70" panels)	1	1,499.25	1,499.25	936.00	563.25
12/19/2014	CTI-18038	NC	CTI-5000-ADJM	9	Adjustable Mobile Stand (for use with 65" and 70" panels)	1	1,499.25	1,499.25	936.00	563.25
12/19/2014	CTI-18039	NC	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	20	449.25	8,985.00	3,200.00	5,785.00
12/19/2014	CTI-18039	NC	CTI-5000X-PCM5	11	Integrated PC Module (No OS) for 65" and 70" H Series	10	524.25	5,242.50	4,770.00	472.50
12/19/2014	CTI-18039	NC	Freight	N/A	Freight	1	350.00	350.00	-	350.00
12/19/2014	CTI-18040	NC	Warehouse	N/A	Warehouse Handling Fee	1	50.00	50.00	-	50.00
1/14/2015	CTI-18053	NC	CTI-RVCS-PROD	N/A	Professinal Development Classroom Technology	1	1,250.00	1,250.00	-	1,250.00
1/16/2015	CTI-18054	NC	CTI-5084H-UH06	8	84" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	8,839.35	8,839.35	5,400.00	3,439.35
1/16/2015	CTI-18054	NC	CTI-5000X-PCM8	11	Integrated PC Module - No OS (for use with 84" H series and all V series	1	599.25	599.25	477.00	122.25
2/23/2015	CTI-18075	NC	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	1	449.25	449.25	160.00	289.25
2/23/2015	CTI-18076	NC	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	8	449.25	3,594.00	1,280.00	2,314.00
2/23/2015	CTI-18076	NC	CTI-5000X-PCM5	11	Integrated PC Module (No OS) for 65" and 70" H Series	7	524.25	3,669.75	3,339.00	330.75
2/23/2015	CTI-18076	NC	Freight	N/A	Freight	1	200.00	200.00	-	200.00
2/23/2015	CTI-18076	NC	Freight	N/A	Freight	1	25.00	25.00	-	25.00
3/2/2015	CTI-18085	NC	CTI-5070H+UH10	4	70" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	2	4,289.35	8,578.70	4,992.00	3,586.70
3/2/2015	CTI-18085	NC	CTI-5000X-PCM8	11	Integrated PC Module - No OS (for use with 84" H series and all V series	2	599.25	1,198.50	954.00	244.50
3/2/2015	CTI-18085	NC	Freight	N/A	Freight	1	25.00	25.00	-	25.00
3/11/2015	CTI-18091	NC	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	3,444.35	3,444.35	1,625.00	1,819.35
3/11/2015	CTI-18091	NC	CTI-5000X-PCM8	11	Integrated PC Module - No OS (for use with 84" H series and all V series	1	599.25	599.25	477.00	122.25
3/11/2015	CTI-18091	NC	Warehouse	N/A	Warehouse Handling Fee	1	25.00	25.00	-	25.00
3/12/2015	CTI-18092	NC	CTI-5070H+UH10	4	70" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	4,619.30	4,619.30	2,496.00	2,123.30
3/12/2015	CTI-18092	NC	CTI-5000X-PCM8	11	Integrated PC Module - No OS (for use with 84" H series and all V series	1	599.25	599.25	477.00	122.25

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Detail of Calculated Profit to CLear Touch on Sales to Encore

Date	CT Inv	Time Period	Item	Cost ID#	Description	Q	P	Amount	Cost	Profit
3/12/2015	CTI-18092	NC	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1	-	-	38.00	(38.00)
3/12/2015	CTI-18092	NC	Warehouse	N/A	Warehouse Handling Fee	1	25.00	25.00	-	25.00
3/12/2015	CTI-18093	NC	CTI-5070H+UH10	4	70" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	4,289.35	4,289.35	2,496.00	1,793.35
3/12/2015	CTI-18093	NC	CTI-5000X-PCM8	11	Integrated PC Module - No OS (for use with 84" H series and all V series	1	599.25	599.25	477.00	122.25
3/12/2015	CTI-18093	NC	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1	-	-	38.00	(38.00)
3/26/2015	CTI-18103R	NC	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	3,709.30	3,709.30	1,625.00	2,084.30
3/26/2015	CTI-18103R	NC	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1	-	-	38.00	(38.00)
3/26/2015	CTI-18103R	NC	CTI-5000X-PCM8	11	Integrated PC Module - No OS (for use with 84" H series and all V series	1	599.25	599.25	477.00	122.25
3/26/2015	CTI-18103R	NC	Warehouse	N/A	Warehouse Handling Fee	1	25.00	25.00	-	25.00
4/7/2015	CTI-18108	NC	CTI-5070H+UH10	4	70" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	3	4,289.35	12,868.05	7,488.00	5,380.05
4/7/2015	CTI-18108	NC	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	3	-	-	114.00	(114.00)
4/7/2015	CTI-18108	NC	CTI-5000X-PCM8	11	Integrated PC Module - No OS (for use with 84" H series and all V series	3	599.25	1,797.75	1,431.00	366.75
4/7/2015	CTI-18108	NC	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	3	449.25	1,347.75	480.00	867.75
4/7/2015	CTI-18108	NC	Warehouse	N/A	Warehouse Handling Fee	1	25.00	25.00	-	25.00
4/21/2015	CTI-18123	NC	CTI-RVCS-PROD	N/A	Professinal Development Classroom Technology	1	1,275.00	1,275.00	-	1,275.00
5/15/2015	CTI-18132	RSA	CTI-5055H+UH10	1	55" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	2,404.35	2,404.35	1,100.00	1,304.35
5/15/2015	CTI-18132	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1	-	-	38.00	(38.00)
5/15/2015	CTI-18132	RSA	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	1	449.25	449.25	160.00	289.25
5/15/2015	CTI-18132	RSA	CTI-5000X-PCM8	11	Integrated PC Module - No OS (for use with 84" H series and all V series	1	599.25	599.25	477.00	122.25
5/15/2015	CTI-18132	RSA	Freight	N/A	Freight	1	457.11	457.11	-	457.11
5/15/2015	CTI-18133	RSA	CTI-5055H+UH10	1	55" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	2,311.00	2,311.00	1,100.00	1,211.00
5/15/2015	CTI-18133	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1	-	-	38.00	(38.00)
5/15/2015	CTI-18133	RSA	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	1	-	-	160.00	(160.00)
5/15/2015	CTI-18133	RSA	CTI-5000X-PCM8	11	Integrated PC Module - No OS (for use with 84" H series and all V series	1	599.25	599.25	477.00	122.25
5/15/2015	CTI-18133	RSA	Freight	N/A	Freight	1	469.02	469.02	-	469.02
5/19/2015	CTI-18139	RSA	CTI-SRVS-PROD	N/A	Professional Development - Per Day	1	1,200.00	1,200.00	-	1,200.00
5/29/2015	CTI-18146	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	8	3,444.35	27,554.80	13,000.00	14,554.80
5/29/2015	CTI-18146	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	12	-	-	456.00	(456.00)
5/29/2015	CTI-18146	RSA	CTI-5000X-PC85	11	Integrated PC Module - No OS (i5 Dual Core/4 GB DDR3/ 500GB HDD)	9	599.25	5,393.25	4,293.00	1,100.25
5/29/2015	CTI-18146	RSA	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	12	449.25	5,391.00	1,920.00	3,471.00
5/29/2015	CTI-18146	RSA	CTI-5000X-PC87	12	Integrated PC Module - No OS (i7 Dual Core/16 GB DDR3/ 240GB SSD)	3	1,161.75	3,485.25	2,985.00	500.25
5/29/2015	CTI-18146	RSA	CTI-5070H+UH10	4	70" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	4	4,289.35	17,157.40	9,984.00	7,173.40
5/29/2015	CTI-18146	RSA	Warehouse	N/A	Warehouse Handling Fee	1	125.00	125.00	-	125.00
5/29/2015	CTI-18147	RSA	CTI-5070H+UH10	4	70" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	4,159.35	4,159.35	2,496.00	1,663.35
5/29/2015	CTI-18147	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1	-	-	38.00	(38.00)
5/29/2015	CTI-18147	RSA	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	1	449.25	449.25	160.00	289.25
5/29/2015	CTI-18147	RSA	CTI-5000X-PC87	12	Integrated PC Module - No OS (i7 Dual Core/16 GB DDR3/ 240GB SSD)	1	1,161.75	1,161.75	995.00	166.75
6/10/2015	CTI-18154	RSA	CTI-5070H+UH10	4	70" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	30	3,850.00	115,500.00	74,880.00	40,620.00
6/10/2015	CTI-18154	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	30	-	-	1,140.00	(1,140.00)
6/10/2015	CTI-18154	RSA	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	35	374.25	13,098.75	5,600.00	7,498.75
6/10/2015	CTI-18154	RSA	CTI-5000X-PCM8	11	Integrated PC Module - No OS (for use with 84" H series and all V series	35	599.25	20,973.75	16,695.00	4,278.75
6/10/2015	CTI-18154	RSA	Warehouse	N/A	Warehouse Handling Fee	1	75.00	75.00	-	75.00
7/6/2015	CTI-18167	RSA	CTI-5000-ADJM	9	Adjustable Mobile Stand (for use with 65" and 70" panels)	2	1,499.25	2,998.50	1,872.00	1,126.50
7/6/2015	CTI-18167	RSA	Warehouse	N/A	Warehouse Handling Fee	1	10.00	10.00	-	10.00
7/6/2015	CTI-18169	RSA	CTI-5000-ADJM	9	Adjustable Mobile Stand (for use with 65" and 70" panels)	1	1,499.25	1,499.25	936.00	563.25
7/6/2015	CTI-18169	RSA	Warehouse	N/A	Warehouse Handling Fee	1	5.00	5.00	-	5.00
7/6/2015	CTI-18170	RSA	CTI-5000-ADJM	9	Adjustable Mobile Stand (for use with 65" and 70" panels)	1	1,499.25	1,499.25	936.00	563.25
7/6/2015	CTI-18170	RSA	Warehouse	N/A	Warehouse Handling Fee	1	5.00	5.00	-	5.00
7/10/2015	CTI-18181	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	3,311.88	3,311.88	1,625.00	1,686.88
7/10/2015	CTI-18181	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1	-	-	38.00	(38.00)
7/10/2015	CTI-18181	RSA	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	1	449.25	449.25	160.00	289.25
7/10/2015	CTI-18181	RSA	CTI-5000X-PC87	12	Integrated PC Module - No OS (i7 Dual Core/16 GB DDR3/ 240GB SSD)	1	1,161.75	1,161.75	995.00	166.75
7/10/2015	CTI-18181	RSA	Warehouse	N/A	Warehouse Handling Fee	1	17.50	17.50	-	17.50
7/10/2015	CTI-18182	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	3,429.35	3,429.35	1,625.00	1,804.35
7/10/2015	CTI-18182	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1	-	-	38.00	(38.00)
7/10/2015	CTI-18182	RSA	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	1	449.25	449.25	160.00	289.25
7/10/2015	CTI-18182	RSA	CTI-5000X-PCM8	11	Integrated PC Module - No OS (for use with 84" H series and all V series	1	599.25	599.25	477.00	122.25
7/10/2015	CTI-18182	RSA	Warehouse	N/A	Warehouse Handling Fee	1	17.50	17.50	-	17.50

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Detail of Calculated Profit to CLear Touch on Sales to Encore

Date	CT Inv	Time Period	Item	Cost ID#	Description	Q	P	Amount	Cost	Profit
7/13/2015	CTI-18183	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	3,444.35	3,444.35	1,625.00	1,819.35
7/13/2015	CTI-18183	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1			38.00	(38.00)
7/13/2015	CTI-18183	RSA	Warehouse	N/A	Warehouse Handling Fee	1	50.00	50.00	-	50.00
7/13/2015	CTI-18184	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	3,444.35	3,444.35	1,625.00	1,819.35
7/13/2015	CTI-18184	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1	-	-	38.00	(38.00)
7/13/2015	CTI-18184	RSA	Freight	N/A	Freight	1	50.00	50.00		50.00
7/13/2015	CTI-18185	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	3,444.35	3,444.35	1,625.00	1,819.35
7/13/2015	CTI-18185	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1		-	38.00	(38.00)
7/13/2015	CTI-18185	RSA	Freight	N/A	Freight	1	50.00	50.00	-	50.00
7/13/2015	CTI-18186	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	7	3,444.35	24,110.45	11,375.00	12,735.45
7/13/2015	CTI-18186	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	7	-	-	266.00	(266.00)
7/13/2015	CTI-18186	RSA	Freight	N/A	Freight	1	350.00	350.00		350.00
7/13/2015	CTI-18188	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	3	3,444.35	10,333.05	4,875.00	5,458.05
7/13/2015	CTI-18188	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	3			114.00	(114.00)
7/13/2015	CTI-18188	RSA	Freight	N/A	Freight	1	150.00	150.00	-	150.00
7/15/2015	CTI-18193	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	3,444.35	3,444.35	1,625.00	1,819.35
7/15/2015	CTI-18193	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1	-	-	38.00	(38.00)
7/15/2015	CTI-18193	RSA	Freight	N/A	Freight	1	437.38	437.38		437.38
8/10/2015	CTI-18232	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	3,124.38	3,124.38	1,625.00	1,499.38
8/10/2015	CTI-18232	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1		-	38.00	(38.00)
8/10/2015	CTI-18232	RSA	Freight	N/A	Freight	1	483.37	483.37	-	483.37
8/11/2015	CTI-18229	RSA	CTI-5075H+UH10	6	75" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	5,004.85	5,004.85	3,250.00	1,754.85
8/11/2015	CTI-18229	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1	-	-	38.00	(38.00)
8/11/2015	CTI-18229	RSA	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	1	449.25	449.25	160.00	289.25
8/11/2015	CTI-18229	RSA	CTI-5000X-PC85	11	Integrated PC Module - No OS (i5 Dual Core/4 GB DDR3/ 500GB HDD)	1	599.25	599.25	477.00	122.25
8/11/2015	CTI-18229	RSA	Freight	N/A	Freight	1	498.65	498.65		498.65
8/11/2015	CTI-18230	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	3,249.35	3,249.35	1,625.00	1,624.35
8/11/2015	CTI-18230	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1			38.00	(38.00)
8/11/2015	CTI-18230	RSA	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	1	449.25	449.25	160.00	289.25
8/11/2015	CTI-18230	RSA	Freight	N/A	Freight	1	363.37	363.37		363.37
8/11/2015	CTI-18231	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	3,249.35	3,249.35	1,625.00	1,624.35
8/11/2015	CTI-18231	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1		-	38.00	(38.00)
8/11/2015	CTI-18231	RSA	Freight	N/A	Freight	1	509.00	509.00	-	509.00
8/17/2015	CTI-18266	RSA	CTI-5000-ADJM	9	Adjustable Mobile Stand (for use with 65" and 70" panels)	2	1,499.25	2,998.50	1,872.00	1,126.50
8/17/2015	CTI-18266	RSA	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	-	-	-	-	-
9/1/2015	CTI-18197	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	3,444.35	3,444.35	1,625.00	1,819.35
9/1/2015	CTI-18197	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1	-	-	38.00	(38.00)
9/1/2015	CTI-18197	RSA	CTI-5000X-PC85	11	Integrated PC Module - No OS (i5 Dual Core/4 GB DDR3/ 500GB HDD)	1	599.25	599.25	477.00	122.25
9/1/2015	CTI-18197	RSA	CTI-5000-ADJM	9	Adjustable Mobile Stand (for use with 65" and 70" panels)	1	1,499.25	1,499.25	936.00	563.25
9/1/2015	CTI-18197	RSA	Freight	N/A	Freight	1	353.00	353.00		353.00
9/1/2015	CTI-18197	RSA	Discount	N/A	Discount	1	(300.00)	(300.00)	-	(300.00)
9/1/2015	CTI-18197	RSA	Discount	N/A	Discount	1	(1,049.75)	(1,049.75)		(1,049.75)
9/8/2015	CTI-18318	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	3,249.35	3,249.35	1,625.00	1,624.35
9/8/2015	CTI-18318	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1		-	38.00	(38.00)
9/8/2015	CTI-18318	RSA	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	1	449.25	449.25	160.00	289.25
9/8/2015	CTI-18318	RSA	CTI-5000X-PC85	11	Integrated PC Module - No OS (i5 Dual Core/4 GB DDR3/ 500GB HDD)	1	599.25	599.25	477.00	122.25
9/8/2015	CTI-18318	RSA	Freight	N/A	Freight	1	362.62	362.62	-	362.62
9/8/2015	CTI-18319	RSA	CTI-5070H+UH10	4	70" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	6	4,289.35	25,736.10	14,976.00	10,760.10
9/8/2015	CTI-18319	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	6	-	-	228.00	(228.00)
9/8/2015	CTI-18319	RSA	Freight	N/A	Freight	1	826.65	826.65		826.65
9/8/2015	CTI-18320	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	5	3,444.35	17,221.75	8,125.00	9,096.75
9/8/2015	CTI-18320	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	5			190.00	(190.00)
9/8/2015	CTI-18320	RSA	Freight	N/A	Freight	1	487.62	487.62	-	487.62
9/8/2015	CTI-18321	RSA	CTI-5070H+UH10	4	70" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	4,159.35	4,159.35	2,496.00	1,663.35
9/8/2015	CTI-18321	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1	-	-	38.00	(38.00)
9/8/2015	CTI-18321	RSA	CTI-5000X-PC85	11	Integrated PC Module - No OS (i5 Dual Core/4 GB DDR3/ 500GB HDD)	1	599.25	599.25	477.00	122.25
9/8/2015	CTI-18322	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	3,249.35	3,249.35	1,625.00	1,624.35
9/8/2015	CTI-18322	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1		-	38.00	(38.00)

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Detail of Calculated Profit to CLear Touch on Sales to Encore

Date	CT Inv	Time Period	Item	Cost ID#	Description	Q	P	Amount	Cost	Profit
9/8/2015	CTI-18322	RSA	CTI-5000X-PC85	11	Integrated PC Module - No OS (i5 Dual Core/4 GB DDR3/ 500GB HDD)	1	599.25	599.25	477.00	122.25
9/8/2015	CTI-18323	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	3,249.35	3,249.35	1,625.00	1,624.35
9/8/2015	CTI-18323	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1	-	-	38.00	(38.00)
9/8/2015	CTI-18323	RSA	CTI-5000X-PC85	11	Integrated PC Module - No OS (i5 Dual Core/4 GB DDR3/ 500GB HDD)	1	599.25	599.25	477.00	122.25
9/8/2015	CTI-18323	RSA	CTI-5000-ADJM	9	Adjustable Mobile Stand (for use with 65" and 70" panels)	1	1,874.25	1,874.25	936.00	938.25
9/8/2015	CTI-18324	RSA	CTI-5070H+UH10	4	70" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	35	3,850.00	134,750.00	87,360.00	47,390.00
9/8/2015	CTI-18324	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	35	-	-	1,330.00	(1,330.00)
9/8/2015	CTI-18324	RSA	CTI-5000X-PC85	11	Integrated PC Module - No OS (i5 Dual Core/4 GB DDR3/ 500GB HDD)	25	599.25	14,981.25	11,925.00	3,056.25
9/8/2015	CTI-18324	RSA	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	1	374.25	374.25	160.00	214.25
9/8/2015	CTI-18324	RSA	Freight	N/A	Freight	1	250.00	250.00	-	250.00
9/8/2015	CTI-18325	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	2	3,249.35	6,498.70	3,250.00	3,248.70
9/8/2015	CTI-18325	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	2	-	-	76.00	(76.00)
9/8/2015	CTI-18325	RSA	CTI-5070H+UH10	4	70" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	4,159.35	4,159.35	2,496.00	1,663.35
9/8/2015	CTI-18325	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1	-	-	38.00	(38.00)
9/8/2015	CTI-18325	RSA	CTI-5000X-PC85	11	Integrated PC Module - No OS (i5 Dual Core/4 GB DDR3/ 500GB HDD)	3	599.25	1,797.75	1,431.00	366.75
9/8/2015	CTI-18325	RSA	Freight	N/A	Freight	1	264.66	264.66	-	264.66
9/8/2015	CTI-18326	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	2	3,249.35	6,498.70	3,250.00	3,248.70
9/8/2015	CTI-18326	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	2	-	-	76.00	(76.00)
9/8/2015	CTI-18326	RSA	CTI-5000X-PC85	11	Integrated PC Module - No OS (i5 Dual Core/4 GB DDR3/ 500GB HDD)	2	599.25	1,198.50	954.00	244.50
9/8/2015	CTI-18326	RSA	CTI-5000-ADJM	9	Adjustable Mobile Stand (for use with 65" and 70" panels)	2	1,874.25	3,748.50	1,872.00	1,876.50
9/8/2015	CTI-18326	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	1	3,249.35	3,249.35	1,625.00	1,624.35
9/8/2015	CTI-18326	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	1	-	-	38.00	(38.00)
9/8/2015	CTI-18326	RSA	CTI-5000X-PC85	11	Integrated PC Module - No OS (i5 Dual Core/4 GB DDR3/ 500GB HDD)	1	599.25	599.25	477.00	122.25
9/8/2015	CTI-18326	RSA	CTI-5000X-STND	10	Fixed Mobile Stand (for use with 65", 75", and 84" panels)	1	449.25	449.25	160.00	289.25
9/8/2015	CTI-18326	RSA	CTI-5065H+UH10	3	65" H+ Series Interactive Panel with USB HID/AGG 10 Points of Touch	2	3,249.35	6,498.70	3,250.00	3,248.70
9/8/2015	CTI-18326	RSA	CTI-5000X-FXWM	14	Fixed Wall Mount (for use with Clear Touch Interactive Panels and other panels)	2	-	-	76.00	(76.00)
9/8/2015	CTI-18326	RSA	CTI-5000X-PC85	11	Integrated PC Module - No OS (i5 Dual Core/4 GB DDR3/ 500GB HDD)	2	599.25	1,198.50	954.00	244.50
9/8/2015	CTI-18326	RSA	Freight	N/A	Freight	1	441.10	441.10	-	441.10
9/14/2015	CTI-18327	RSA	CTI-5000-ADJM	9	Adjustable Mobile Stand (for use with 65" and 70" panels)	1	1,874.25	1,874.25	936.00	938.25
9/14/2015	CTI-18327	RSA	CTI-5000-ADJM	9	Adjustable Mobile Stand (for use with 65" and 70" panels)	2	1,499.25	2,998.50	1,872.00	1,126.50
9/14/2015	CTI-18327	RSA	Freight	N/A	Freight	1	447.99	447.99	-	447.99
9/14/2015	CTI-18328	RSA	CTI-5000-ADJM	9	Adjustable Mobile Stand (for use with 65" and 70" panels)	1	1,874.25	1,874.25	936.00	938.25
9/14/2015	CTI-18328	RSA	Freight	N/A	Freight	1	487.50	487.50	-	487.50
					Totals			**868,222**	**568,277**	**299,945**

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Detail of Calculated Profit to CLear Touch on Sales to Encore

ID #	Q	Total Cost	Avg P	Description	Notes
1	100	110,000	1,100	55, 10 , FHD	
2	300	492,500	1,642	65, 10, FHD	
3	400	650,000	1,625	65,10, UHD	
4	810	2,022,000	2,496	70, 10, FHD	
5	191	563,380	2,950	70, 6, FHD	
6	4	13,000	3,250	75, 10 UHD	
7	40	108,350	2,709	75, 10, FHD	
8	39	162,200	5,400	84, 10, UHD	Avg is $4,159. Only purchase prior to invoice to Encore was $5,400.
9	40	37,400	935	Adjustable Stand	
10	805	128,900	160	Mobile Stand	
11	1,030	491,810	477	PC, i5, 4G, 500 HD	
12	5	4,975	995	PC, i7, 16G, 240 SSD	
13	91	81,765	899	PC, i7, 8G, 240 SSD	
14	23	874	38	Wall Mount	

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Detail of Calculated Profit to CLear Touch on Sales to Encore

TSI Invoice Summary

Description	Q	Total Cost	Avg Cost
Credit For Incorrect Charges (Shipping)PO512125, PO51216, PO51358	1.00	356.08	356.08
SH6065-2PTIR-CB 60" Sharp Model 60LE65OU w 2 P	1.00	3,300.40	3,300.40
SH6065-6PTIR-CB 60" Sharp Model 60LE650U	4.00	13,143.47	3,285.87
SH7065-6PTIR-CB70" Sharp Model 70LE650U w/6	63.00	255,265.88	4,051.84
SH7065-D3YWSharp Display 3 Year Extended	8.00	2,439.60	304.95
SH7065-T3YWSharp Touch 3 Yr Warranty	8.00	2,062.39	257.80
SH70LE-CBE-K 70" Sharp Custom Bezel Extensi	1.00	5,680.89	5,680.89
SH8065-6PTIRCBSharp 80" 80LE65OU w 6 PT	1.00	6,264.68	6,264.68
SH8065-D3YWSharp Display 3 Year Extended	1.00	487.82	487.82
SH8065-T3YWSharp 80" 80LE65OU TP 3 Yr Ext	1.00	510.43	510.43

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Appendix 5:
Detail of Leon County Sales and Associated Costs

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Summary of Damages Related to Clear Touch Sales to Leon County Schools

Leon County School Board	**NC**	**RSA**
Sales - Hardware/Software	538,828	320,592
Freight Income	1,070	600
Total Revenue	**539,898**	**321,192**
Associated Expenses		
Purchases - Hardware/Software	(184,306)	(185,470)
Factoring Fee	(34,797)	-
Freight Expense	(10,639)	(7,382)
Merchant Account Fees	(511)	-
Insurance Expense	(451)	-
Bank Service Charges	(170)	-
Total Associated Expenses	**(230,874)**	**(192,852)**
Unadjusted Total	**309,024**	**128,340**
Eliminate Factoring Fees	34,797	-
Adjusted Income	**343,821**	**128,340**
Less 10% Commission	(34,382)	(12,834)
Net Damages	**309,439**	**115,506**

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Sales and Associated Expenses for Clear Touch Sales to Leon County Schools

Account	Type	Date	Num	Name	Debit	Credit
Sales - Hardware/Software	Invoice	11/07/2014	CTI-18010	Leon County School Board		5,140.00
Sales - Hardware/Software	Invoice	11/07/2014	CTI-18011	Leon County School Board		5,140.00
Sales - Hardware/Software	Invoice	11/10/2014	CTI-18008	Leon County School Board		108,830.00
Sales - Hardware/Software	Invoice	11/10/2014	CTI-18009	Leon County School Board		118,220.00
Sales - Hardware/Software	Invoice	12/01/2014	CTI-18027	Leon County School Board		5,590.00
Factoring Fee	Deposit	11/10/2014		Leon County School Board	11,269.83	
Factoring Fee	Deposit	12/30/2014		Leon County School Board	6,754.74	
Merchant Account Fees	Deposit	12/03/2014		Leon County School Board	510.83	
Purchases - Hardware/Software	Bill	10/16/2014	SYPI-142024	Leon County School Board	1,482.00	
Bank Service Charges	Deposit	11/10/2014		Leon County School Board	50.00	
Bank Service Charges	Deposit	12/30/2014		Leon County School Board	20.00	
Freight Expense	Check	09/10/2014	BP	Leon County School Board	9,643.20	
Freight Expense	Bill	11/21/2014	40645279A	Leon County School Board	100.00	
Freight Expense	Bill	11/21/2014	40645184	Leon County School Board	25.00	
Freight Expense	Bill	11/21/2014	40645184	Leon County School Board	25.00	
Freight Expense	Bill	11/21/2014	40645279A	Leon County School Board	1,225.00	
Freight Expense	Bill	11/21/2014	40645184	Leon County School Board	320.84	
Freight Expense	Check	09/10/2014	BP	Leon County School Board	60.00	
Freight Expense	Check	09/10/2014	BP	Leon County School Board	162.39	
Freight Expense	Bill	11/12/2014	C01102063	Leon County School Board	58.38	
Freight Expense	Check	09/10/2014	BP	Leon County School Board	125.00	
Sales - Hardware/Software	Invoice	02/24/2015	CTI-18077	Leon County School Board		8,239.00
Sales - Hardware/Software	Invoice	03/04/2015	CTI-18087	Leon County School Board		12,962.00
Sales - Hardware/Software	Invoice	03/04/2015	CTI-18088	Leon County School Board		539.00
Sales - Hardware/Software	Invoice	03/19/2015	CTI-18099	Leon County School Board		5,390.00
Sales - Hardware/Software	Invoice	03/20/2015	CTI-18098	Leon County School Board		267,280.00
Sales - Hardware/Software	Invoice	04/08/2015	CTI-18100	Leon County School Board		1,498.00
Sales - Hardware/Software	Invoice	05/07/2015	CTI-18102	Leon County School Board		5,889.00
Sales - Hardware/Software	Invoice	08/10/2015	CTI-18210	Leon County School Board		35,334.00
Sales - Hardware/Software	Invoice	08/10/2015	CTI-18211	Leon County School Board		41,120.00
Sales - Hardware/Software	Invoice	08/10/2015	CTI-18212	Leon County School Board		10,819.00
Sales - Hardware/Software	Invoice	08/10/2015	CTI-18213	Leon County School Board		41,120.00
Sales - Hardware/Software	Invoice	08/10/2015	CTI-18214	Leon County School Board		28,395.00
Sales - Hardware/Software	Invoice	08/10/2015	CTI-18215	Leon County School Board		73,038.00
Sales - Hardware/Software	Invoice	08/10/2015	CTI-18216	Leon County School Board		45,432.00
Sales - Hardware/Software	Invoice	08/10/2015	CTI-18217	Leon County School Board		5,140.00
Sales - Hardware/Software	Invoice	08/26/2015	CTI-18207	Leon County School Board		4,860.00
Sales - Hardware/Software	Invoice	09/02/2015	CTI-18281	Leon County School Board		5,889.00
Sales - Hardware/Software	Invoice	09/03/2015	CTI-18280	Leon County School Board		23,556.00
Freight Income	Invoice	02/24/2015	CTI-18077	Leon County School Board		470.00
Freight Income	Invoice	03/04/2015	CTI-18087	Leon County School Board		300.00
Freight Income	Invoice	03/04/2015	CTI-18088	Leon County School Board		100.00
Freight Income	Invoice	04/08/2015	CTI-18100	Leon County School Board		200.00
Freight Income	Invoice	05/07/2015	CTI-18102	Leon County School Board		300.00
Freight Income	Invoice	09/02/2015	CTI-18281	Leon County School Board		300.00
Factoring Fee	Deposit	03/20/2015		Leon County School Board	10,860.70	
Factoring Fee	Deposit	04/08/2015		Leon County School Board	285.24	
Factoring Fee	Deposit	04/22/2015		Leon County School Board	5,626.24	
Purchases - Hardware/Software	Invoice	02/24/2015	CTI-18077	Leon County School Board	6,424.00	
Purchases - Hardware/Software	Invoice	03/04/2015	CTI-18087	Leon County School Board	8,112.00	
Purchases - Hardware/Software	Invoice	03/04/2015	CTI-18088	Leon County School Board	160.00	
Purchases - Hardware/Software	Invoice	03/19/2015	CTI-18099	Leon County School Board	1,600.00	
Purchases - Hardware/Software	Invoice	03/20/2015	CTI-18098	Leon County School Board	165,360.00	
Purchases - Hardware/Software	Invoice	04/08/2015	CTI-18100	Leon County School Board	1,168.00	
Purchases - Hardware/Software	Invoice	05/07/2015	CTI-18102	Leon County School Board	3,764.00	
Purchases - Hardware/Software	Invoice	08/10/2015	CTI-18210	Leon County School Board	21,353.03	
Purchases - Hardware/Software	Invoice	08/10/2015	CTI-18211	Leon County School Board	23,798.71	
Purchases - Hardware/Software	Invoice	08/10/2015	CTI-18212	Leon County School Board	6,109.68	
Purchases - Hardware/Software	Invoice	08/10/2015	CTI-18213	Leon County School Board	23,798.71	
Purchases - Hardware/Software	Invoice	08/10/2015	CTI-18214	Leon County School Board	15,674.19	

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Sales and Associated Expenses for Clear Touch Sales to Leon County Schools

Account	Type	Date	Num	Name	Debit	Credit
Purchases - Hardware/Software	Invoice	08/10/2015	CTI-18215	Leon County School Board	41,967.74	
Purchases - Hardware/Software	Invoice	08/10/2015	CTI-18216	Leon County School Board	25,078.71	
Purchases - Hardware/Software	Invoice	08/10/2015	CTI-18217	Leon County School Board	2,974.84	
Purchases - Hardware/Software	Invoice	08/26/2015	CTI-18207	Leon County School Board	3,630.00	
Purchases - Hardware/Software	Invoice	09/02/2015	CTI-18281	Leon County School Board	3,464.00	
Purchases - Hardware/Software	Invoice	09/03/2015	CTI-18280	Leon County School Board	13,856.00	
Bank Service Charges	Deposit	03/04/2015		Leon County School Board	25.00	
Bank Service Charges	Deposit	03/20/2015		Leon County School Board	25.00	
Bank Service Charges	Deposit	04/08/2015		Leon County School Board	25.00	
Bank Service Charges	Deposit	04/22/2015		Leon County School Board	25.00	
Freight Expense	Bill	04/07/2015	3530953	Leon County School Board	30.00	
Freight Expense	Bill	04/07/2015	3530953	Leon County School Board	100.00	
Freight Expense	Bill	08/20/2015	3531797	Leon County School Board	145.00	
Freight Expense	Bill	04/07/2015	3530953	Leon County School Board	40.00	
Freight Expense	Bill	08/20/2015	3531797	Leon County School Board	40.00	
Freight Expense	Bill	04/07/2015	3530953	Leon County School Board	35.00	
Freight Expense	Bill	08/20/2015	3531797	Leon County School Board	35.00	
Freight Expense	Bill	04/07/2015	3530953	Leon County School Board	5,000.00	
Freight Expense	Bill	08/20/2015	3531797	Leon County School Board	3,150.00	
Freight Expense	Bill	01/09/2015	40645400	Leon County School Board	25.00	
Freight Expense	Bill	03/09/2015	40645680	Leon County School Board	25.00	
Freight Expense	Bill	04/07/2015	40645797	Leon County School Board	25.00	
Freight Expense	Bill	08/11/2015	40646456	Leon County School Board	15.00	
Freight Expense	Bill	09/14/2015	40646603	Leon County School Board	25.00	
Freight Expense	Bill	10/09/2015	40646765	Leon County School Board	125.00	
Freight Expense	Bill	01/09/2015	40645400	Leon County School Board	50.00	
Freight Expense	Bill	03/09/2015	40645680	Leon County School Board	50.00	
Freight Expense	Bill	04/07/2015	40645797	Leon County School Board	50.00	
Freight Expense	Bill	09/14/2015	40646603	Leon County School Board	100.00	
Freight Expense	Bill	10/09/2015	40646765	Leon County School Board	250.00	
Freight Expense	Bill	01/09/2015	40645400	Leon County School Board	347.53	
Freight Expense	Bill	03/09/2015	40645680	Leon County School Board	253.14	
Freight Expense	Bill	04/07/2015	40645797	Leon County School Board	191.98	
Freight Expense	Bill	09/14/2015	40646603	Leon County School Board	430.46	
Freight Expense	Bill	10/09/2015	40646765	Leon County School Board	906.61	
Freight Expense	Bill	04/07/2015	3530953	Leon County School Board	1,081.20	
Freight Expense	Bill	08/11/2015	40646456	Leon County School Board	32.00	
Freight Expense	Bill	08/17/2015	VO38548	Leon County School Board	332.00	
Freight Expense	Bill	08/20/2015	3531797	Leon County School Board	779.00	
Freight Expense	Bill	04/07/2015	3530953	Leon County School Board	264.00	
Freight Expense	Bill	04/07/2015	3530953	Leon County School Board	697.68	
Freight Expense	Bill	08/20/2015	3531797	Leon County School Board	681.90	
Freight Expense	Bill	04/07/2015	3530953	Leon County School Board	125.00	
Freight Expense	Bill	08/20/2015	3531797	Leon County School Board	125.00	
Freight Expense	Bill	02/20/2015	TRI01104	Leon County School Board	123.82	
Freight Expense	Bill	02/25/2015	VO34859	Leon County School Board	370.00	
Freight Expense	Bill	07/06/2015	TRI01104/VO377	Leon County School Board	210.00	
Insurance Expense	Bill	04/07/2015	3530953	Leon County School Board	451.44	
				Totals	**433,715.76**	**861,090.00**

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Appendix 6:
Detail of Adjusted Monthly Clear Touch Income Statements

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Monthly Summary of Adjusted Clear Touch Financial Statements

Period	Month	Revenue	COGS	Expenses	Net Income	Adj	Normalized Income
EE	Mar-13	-	-	83.14	(83.14)	-	(83.14)
EE	Apr-13	-	5,390.00	880.53	(6,270.53)	5,885.00	(385.53)
EE	May-13	6,078.59	-	(754.07)	6,832.66	(3,536.71)	3,295.95
EE	Jun-13	-	48,920.00	1,096.60	(50,016.60)	48,920.00	(1,096.60)
EE	Jul-13	125,063.70	61,298.39	1,656.41	62,108.90	(22,323.29)	39,785.61
EE	Aug-13	-	-	341.81	(341.81)	-	(341.81)
EE	Sep-13	-	3,740.00	230.71	(3,970.71)	3,909.00	(61.71)
EE	Oct-13	150,358.43	-	1,732.00	148,626.43	(100,770.15)	47,856.28
EE	Nov-13	4,992.52	130,496.00	2,241.71	(127,745.19)	127,151.01	(594.18)
EE	Dec-13	29,398.90	42,271.00	19,722.67	(32,594.77)	36,073.74	3,478.97
EE	Jan-14	37,296.78	11,302.00	2,203.49	23,791.29	(12,798.84)	10,992.45
EE	Feb-14	50,105.24	109,768.00	1,052.88	(60,715.64)	76,197.49	15,481.85
EE	Mar-14	-	50,220.00	15,938.79	(66,158.79)	56,488.65	(9,670.14)
EE	Apr-14	5,352.87	129,696.00	8,536.98	(132,880.11)	129,359.58	(3,520.53)
NC	May-14	44,658.30	6,920.00	6,723.65	31,014.65	(38,360.14)	(7,345.49)
NC	Jun-14	145,068.30	138,674.00	10,764.05	(4,369.75)	25,801.16	21,431.41
NC	Jul-14	201,624.57	226,162.00	45,330.90	(69,868.33)	89,717.07	19,848.74
NC	Aug-14	74,667.32	329,179.00	32,073.74	(286,585.42)	278,051.50	(8,533.92)
NC	Sep-14	207,750.00	347,701.00	42,707.58	(182,658.58)	198,720.92	16,062.34
NC	Oct-14	630,991.70	178,737.00	66,261.19	385,993.51	(230,422.15)	155,571.36
NC	Nov-14	311,970.76	23,037.00	63,519.88	225,413.88	(182,434.39)	42,979.49
NC	Dec-14	192,578.61	73,022.00	63,511.48	56,045.13	(52,456.45)	3,588.68
NC	Jan-15	107,356.77	45,623.00	47,945.75	13,788.02	(25,237.90)	(11,449.88)
NC	Feb-15	98,210.93	49,105.00	67,056.35	(17,950.42)	(15,008.02)	(32,958.44)
NC	Mar-15	349,855.00	210,598.00	263,153.00	(123,896.00)	(11,992.55)	(135,888.55)
NC	Apr-15	142,334.17	84,854.00	75,784.18	(18,304.01)	(8,822.07)	(27,126.08)
RSA	May-15	202,428.00	131,162.00	75,700.62	(4,434.62)	5,906.25	1,471.63
RSA	Jun-15	416,584.98	250,756.00	90,782.01	75,046.97	(29,645.03)	45,401.94
RSA	Jul-15	618,995.62	421,112.00	102,886.69	94,996.93	8,073.71	103,070.64
RSA	Aug-15	1,601,603.22	980,682.00	-	620,921.22	(83,821.75)	537,099.47
RSA	Sep-15	2,093,243.93	1,645,051.00	98,368.38	349,824.55	244,960.79	594,785.34
No Agreements	Oct-15	728,590.88	412,619.00	194,260.74	121,711.14	(56,983.06)	64,728.08
No Agreements	Nov-15	355,712.35	199,067.00	75,033.47	81,611.88	(31,893.34)	49,718.54
No Agreements	Dec-15	798,516.99	596,297.00	180,375.23	21,844.76	76,817.64	98,662.40
2016	Jan-16	917,058.94	642,400.00	239,709.10	34,949.84	36,948.56	71,898.40
2016	Feb-16	132,193.71	23,872.00	197,316.78	(88,995.07)	11,610.02	(77,385.05)
2016	Mar-16	962,042.78	1,021,336.00	130,967.73	(190,260.95)	400,216.74	209,955.79
2016	Apr-16	758,629.00	484,921.00	240,809.00	32,899.00	18,115.50	51,014.50
2016	May-16	815,899.00	400,662.00	209,905.00	205,332.00	(115,554.92)	89,777.08
2016	Jun-16	1,906,147.00	1,302,558.00	261,896.00	341,693.00	51,048.04	392,741.04
2016	Jul-16	1,169,806.00	723,111.00	270,572.00	176,123.00	(23,204.61)	152,918.39
2016	Aug-16	2,038,756.00	1,455,333.00	517,755.00	65,668.00	168,228.45	233,896.45
2016	Sep-16	1,730,282.00	1,085,555.00	801,876.00	(157,149.00)	(23,609.77)	(180,758.77)
2016	Oct-16	2,086,804.00	1,828,855.00	420,707.00	(162,758.00)	459,690.98	296,932.98
2016	Nov-16	2,076,130.00	1,513,497.00	297,774.00	264,859.00	155,963.41	420,822.41
2016	Dec-16	3,083,214.00	2,736,507.00	318,518.00	28,189.00	729,398.70	757,587.70
Total		*27,408,352*	*20,162,066*	*5,565,008*	*1,681,277*	*2,374,379*	*4,055,656*

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	Employed														
	Mar-13	Apr-13	May-13	Jun-13	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	Total
Revenue	-	-	6,079	-	125,064	-	-	150,358	4,993	29,399	37,297	50,105		5,353	**408,647**
COGS (Total)	-	5,390	-	48,920	61,298	-	3,740	-	130,496	42,271	11,302	109,768	50,220	129,696	**593,101**
Factoring Costs															
Purchases		5,390		48,920	61,298		3,740		130,496	42,271	11,302	109,768	50,220	129,696	
Merchant Account Fees															
Freight and Shipping Costs															
Margin Split															
Total Expenses	83	881	(754)	1,097	1,656	342	231	1,732	2,242	19,723	2,203	1,053	15,939	8,537	**54,964**
Net Income	**(83)**	**(6,271)**	**6,833**	**(50,017)**	**62,109**	**(342)**	**(3,971)**	**148,626**	**(127,745)**	**(32,595)**	**23,791**	**(60,716)**	**(66,159)**	**(132,880)**	**(239,418)**
Adjustments															
Nornalizize Gross Profit to 33%	-	5,390	(4,073)	48,920	(22,494)	-	3,740	(100,740)	127,151	22,574	(13,687)	76,197	50,220	126,110	
Warehouse Expense	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Professional Fees	-	324	536	-	-	-	169	(30)	-	13,500	888	-	6,269	750	
Rent Expense	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Mailbox Rental	-	171	-	-	171	-	-	-	-	-	-	-	-	-	
Factoring Fee	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Margin Split	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Add Officer Salary	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Add Payroll Taxes on Officer Salary	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Normalize Encore Wages to Trask	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Subtract PR Taxes on Encore Wages to Trask	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Contract Labor	-	-	-	-	-	-	-	-	-	-	-	-	-	2,500	
Adjustment for Other Wages	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
PR Tax On Other Wages															
Total Adjustments	**-**	**5,885**	**(3,537)**	**48,920**	**(22,323)**	**-**	**3,909**	**(100,770)**	**127,151**	**36,074**	**(12,799)**	**76,197**	**56,489**	**129,360**	**344,555**
Adjusted Income	**(83)**	**(386)**	**3,296**	**(1,097)**	**39,786**	**(342)**	**(62)**	**47,856**	**(594)**	**3,479**	**10,992**	**15,482**	**(9,670)**	**(3,521)**	**105,137**

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	May-14	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15	Apr-15	Total
						Non-Complete							
Revenue	44,658	145,068	201,625	74,667	207,750	630,992	311,971	192,579	107,357	98,211	349,855	142,334	**2,507,066**
COGS (Total)	6,920	138,674	226,162	329,179	347,701	178,737	23,037	73,022	45,623	49,105	210,598	84,854	**1,713,612**
Factoring Costs			15,344		10,285	40,698	**20,957**	12,144	1,813		12,140	(1,125)	
Purchases	6,920	138,674	210,818	329,179	337,416	138,039	**2,080**	60,367	43,616	48,931	198,458	85,791	
Merchant Account Fees								511	194	174		188	
Freight and Shipping Costs													
Margin Split													
Total Expenses	6,724	10,764	45,331	32,074	42,708	66,261	63,520	63,511	47,946	67,056	263,153	75,784	**784,832**
Net Income	**31,015**	**(4,370)**	**(69,868)**	**(286,585)**	**(182,659)**	**385,994**	**225,414**	**56,045**	**13,788**	**(17,950)**	**(123,896)**	**(18,304)**	**8,623**
Adjustments													
Normalizize Gross Profit to 33%	(23,001)	41,478	75,730	279,152	198,224	(284,725)	(206,940)	(68,150)	(28,119)	(16,696)	(35,945)	(9,385)	
Warehouse Expense	-	-	-	-	-	175.00	-	-	-	-	-	-	
Professional Fees	318.00	-	263.93	519.00	50.00	-	-	-	-	-	10,124	-	
Rent Expense	-	-	-	-	-	-	-	-	-	-	-	-	
Mailbox Rental	-	-	-	-	-	-	-	-	-	-	-	-	
Factoring Fee	-	-	15,343.00			40,697.67	20,957.16	12,144	1,813		12,140	(1,125)	
Margin Split	-	-	-	-	-	-	-	-	-	-	-	-	
Add Officer Salary	-	-	13,076.92	13,076.92	14,038.00	25,384.62	16,923.06	16,923.06	13,077	13,077	13,077	13,077	
Add Payroll Taxes on Officer Salary	-	-	981	981	1,053	1,904	1,269	1,269	981	981	981	981	
Normalize Encore Wages to Trask	(14,583)	(14,583)	(14,583)	(14,583)	(14,583)	(14,583)	(14,583)	(14,583)	(14,583)	(14,583)	(14,583)	(14,583)	
Subtract PR Taxes on Encore Wages to Trask	(1,094)	(1,094)	(1,094)	(1,094)	(1,094)	(1,094)	(1,094)	(1,094)	(1,094)	(1,094)	(1,094)	(1,094)	
Contract Labor													
Adjustment for Other Wages	-	-	-	-	962	1,692	962	962	2,500	3,077	3,077	3,077	
PR Tax On Other Wages	-	-	-	-	72.12	126.92	72.12	72.12	187.50	230.77	230.77	230.77	
Total Adjustments	**(38,360)**	**25,801**	**89,717**	**278,052**	**198,721**	**(230,422)**	**(182,434)**	**(52,456)**	**(25,238)**	**(15,008)**	**(11,993)**	**(8,822)**	**27,557**
Adjusted Income	**(7,345)**	**21,431**	**19,849**	**(8,534)**	**16,062**	**155,571**	**42,979**	**3,589**	**(11,450)**	**(32,958)**	**(135,889)**	**(27,126)**	**36,180**
Gross Profit Adjustment Supplemental Schedule													
Actual Gross Profit	37,738	6,394	(24,537)	(254,512)	(139,951)	452,255	288,934	119,557	61,734	49,106	139,257	57,480	
Add Factoring Costs	-	-	15,344	-	10,285	40,698	20,957	12,144	1,813	-	12,140	(1,125)	
Add Margin Split	-	-	-	-	-	-	-	-	-	-	-	-	
Adjusted Profit for Normalization	**37,738**	**6,394**	**(9,193)**	**(254,512)**	**(129,666)**	**492,953**	**309,891**	**131,701**	**63,547**	**49,106**	**151,397**	**56,355**	
Normalized GP at 33%	14,737	47,873	66,536	24,640	68,558	208,227	102,950	63,551	35,428	32,410	115,452	46,970	
Adjustment	**(23,001)**	**41,478**	**75,730**	**279,152**	**198,224**	**(284,725)**	**(206,940)**	**(68,150)**	**(28,119)**	**(16,696)**	**(35,945)**	**(9,385)**	

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	RSA and Higginbothan Non-Compete/Solicit						Remainder			
	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Total	Oct-15	Nov-15	Dec-15	Total
Revenue	202,428	416,585	618,996	**1,601,603**	**2,093,244**	**4,932,856**	728,591	355,712	798,517	**1,882,820**
COGS (Total)	131,162	250,756	421,112	980,682	1,645,051	**3,428,763**	412,619	199,067	596,297	**1,207,983**
Factoring Costs	740	2,162	55,748	10,088	33,246		13,975	1,234	5,838	
Purchases	130,389	248,380	365,331	970,561	1,611,772		398,430	197,800	590,459	
Merchant Account Fees	33	214	33	33	33		214	33		
Freight and Shipping Costs										
Margin Split										
Total Expenses	75,701	90,782	102,887		98,368	**367,738**	194,261	75,033	180,375	**449,669**
Net Income	**(4,435)**	**75,047**	**94,997**	**620,921**	**349,825**	**1,136,355**	**121,711**	**81,612**	**21,845**	**225,168**
Adjustments										
Nornalizize Gross Profit to 33%	(5,205)	(30,518)	(49,363)	(102,480)	209,332		(89,512)	(40,494)	55,453	
Warehouse Expense	-	-	-	-	-		-	-	-	
Professional Fees	-	-	-	234	834		3,809	2,425	2,822	
Rent Expense	-	-	-	-	-		-	-	-	
Mailbox Rental	-	-	-	-	-		-	-	-	
Factoring Fee	740	2,162	55,748	10,088	33,246		13,975	1,234	5,838	
Margin Split	-	-	-	-	-		-	-	-	
Add Officer Salary	19,615	13,077	13,077	6,573	13,077		19,615	13,077	13,077	
Add Payroll Taxes on Officer Salary	1,471	981	981	493	981		1,471	981	981	
Normalize Encore Wages to Trask	(14,583)	(14,583)	(14,583)	(14,583)	(14,583)		(14,583)	(14,583)	(14,583)	
Subtract PR Taxes on Encore Wages to Trask	(1,094)	(1,094)	(1,094)	(1,094)	(1,094)		(1,094)	(1,094)	(1,094)	
Contract Labor				15,400			3,476	1,920	9,321	
Adjustment for Other Wages	4,615	308	3,077	1,439	2,947		5,451	4,317	4,654	
PR Tax On Other Wages	346.15	23.08	230.77	107.96	221.05		408.79	323.80	349.04	
Total Adjustments	**5,906**	**(29,645)**	**8,074**	**(83,822)**	**244,961**	**145,474**	**(56,983)**	**(31,893)**	**76,818**	**(12,059)**
Adjusted Income	**1,471.63**	**45,401.94**	**103,070.64**	**537,099.47**	**594,785.34**	**1,281,829**	**64,728.08**	**49,718.54**	**98,662.40**	**213,109**
Gross Profit Adjustment Supplemental Schedule										
Actual Gross Profit	71,266	165,829	197,884	620,921	448,193		315,972	156,645	202,220	
Add Factoring Costs	740	2,162	55,748	10,088	33,246		13,975	1,234	5,838	
Add Margin Split	-	-	-	-	-		-	-	-	
Adjusted Profit for Normalization	**72,006**	**167,991**	**253,632**	**631,009**	**481,439**		**329,947**	**157,879**	**208,058**	
Normalized GP at 33%	66,801	137,473	204,269	528,529	690,770		240,435	117,385	263,511	
Adjustment	**(5,205)**	**(30,518)**	**(49,363)**	**(102,480)**	**209,332**		**(89,512)**	**(40,494)**	**55,453**	

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Appendix 7:
Valuation Exhibit Detail

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Clear Touch
Capitalization of Earnings

Weight	*15%*	*85%*
	12/31/2014	**12/31/2015**
Sales (Income)	1,902,065	7,513,433
Cost of Sales (COGS)	(1,677,117)	(5,026,927)
Gross Profit	**224,948**	**2,486,506**
Overhead or S,G,& A Expenses	**(367,893)**	**(1,396,802)**
Officer Comp (est for 2016)	(85,000)	(163,496)
Salaries and Wages	(44,777)	(169,714)
Repairs and Maint	-	-
Bad Debt	-	-
Rent	(1,007)	-
Taxes and Licenses	(12,640)	(35,253)
Interest	(3,472)	(44,919)
Charitable	-	-
Depreciation	(17,659)	(108,665)
Depletion	-	-
Advertising	(16,752)	-
Pension and Profit Sharing Plans	-	-
EE Benefit Programs	-	-
Other Expenses	**(182,448)**	**(874,755)**
Bank Charges	(1,896)	(2,113)
Computer Services	(2,242)	(1,200)
Dues And Subs		(4,719)
Freight	(107,307)	(358,579)
Po Box		
Meals And Entertainment (50%)	(4,531)	(13,768)
Office Supplies	(4,617)	
Postage	(981)	(2,907)
Professional Fees		
Telephone	(213)	(841)
Amortization		(175)
Auto And Truck	(5,424)	(25,597)
Discounts	(5,008)	(5,250)
Gifts	(264)	(127)
Insurance	(7,604)	(14,874)
Legal And Professional	(9,058)	(10,125)
Miscellaneous	(313)	(75,777)
Parking Fees And Tolls	(186)	(2,971)
Travel	(10,552)	(62,367)
Spiffs	(510)	
Trade Show	(21,187)	(51,862)
Web Development	(537)	(6)
Late Fee	(53)	(286)

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Clear Touch
Capitalization of Earnings

Labor		(2,760)	(2,025)
Reimbursement		(118)	(1,831)
Warehouse Fee		(175)	
Service Fee		(152)	(204)
Early Release Fee		(130)	
Sponsorship		(768)	(4,867)
Commissions			(143,513)
Credit And Collection Costs			(2,553)
Outside Services			(30,117)
Supplies			(27,613)
Expense Reimbursement			(15,871)
Co-Sponsorship			(500)
Continuous Bond		-	(525)
Marketing Materials		-	(11,592)
Operating Income	-	**(142,945)**	**1,089,704**
NOL			(142,945)
Taxable Income	-	**(142,945)**	**946,759**
Taxes (1120)		-	(321,898)
Penalties			(5,832)
Net Inome	-	**(142,945)**	**619,029**
Adjustments per Appendix 6			
Eliminate NOL			142,945
Owner Salary - Book	0	85,000	163,496
PR Tax on Owner Salary - est	7.50%	6,375	12,262
Normalized Salary	175000	(175,000)	(175,000)
PR Tax on Normalized Salary	7.50%	(13,125)	(13,125)
Gross Profit Adjustment	33.00%	350,034.00	3,128.74
Warehouse expense		175	-
Professional Fees		9,057	20,248
Factoring Fee		89,142	135,860
Contract Labor		2,500	30,117
Adjustment for Other Wages		4,577	38,539
Payroll tax adjustment on other wages		343	2,890
Subtotal Adjustments		**359,078**	**361,361**
Adjusted Income		**216,133**	**980,390**
Add Taxes and Interest		3,472	366,817
EBIT		**219,605**	**1,347,207**
Add Depreciation and Amort		17,659	108,665
EBITDA		**237,264**	**1,455,872**

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Clear Touch
Capitalization of Earnings

	2013	2014	2015
EBITDA	8,544	237,264	1,455,872
Less Normalized Depreciation	-		(22,931)
Less - Estimated Taxes 39%	-	(92,533)	(558,847)
NET CASH FLOW	**8,544**	**144,731**	**874,094**
Weight	0%	15%	85%

Weighted EBITDA	764,689.79
Estimated Sustainable Growth Rate	3.00%
Calculated Future Earnings	787,630
Adjusted for Mid Year Convention	883,376
Capitalization Rate	22.79%
Gross Capitalized Earnings	**3,876,156**
Less LT Interest Bearing Debt	-
MVIC	**3,876,156**

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Detail of Alternative Calculation of Damages Through 2019

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Alternative Calculation: Lost Profit on Clear Touch Business Opportunity through 2019

					Growth Rate		
					2%	2%	2%
	2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
Revenue	315,892	1,902,064	7,513,433	17,676,962	18,030,502	18,391,112	18,758,934
COGS	292,115	1,624,418	5,026,926	13,218,607	12,080,436	12,322,045	12,568,486
GP	23,777	277,646	2,486,507	4,458,355	5,950,066	6,069,067	6,190,448
OPEX	27,232	358,625	1,271,346	3,907,806	3,985,962	4,065,681	4,146,995
EBT	(3,455)	(80,978)	1,215,160	550,550	1,964,104	2,003,386	2,043,454
Adj - 33%	80,468	350,034	-7,072.45	1,375,043	-	-	-
Other Adjustments	14,841	(12,170)	79,427	493,808			
Adjusted EBT	**91,854**	**256,886**	**1,287,515**	**2,419,401**	1,964,104	2,003,386	2,043,454

	2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**Total**
Adjusted EBT	91,854	256,886	1,287,515	2,419,401	1,964,104	2,003,386	2,043,454	
Period to 12/31/16					1	2	3	
Discount Rate					27.79%	27.79%	27.79%	
PV	**91,854**	**256,886**	**1,287,515**	**2,419,401**	**1,536,978**	**1,226,792**	**979,206**	**7,798,632**

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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,	)	**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION IN LIMINE**
vs.	)	
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
Defendants.	)	

Exhibit B

Dr. Charles Alford Analysis of Plaintiff's Damage Report

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September 11, 2017

Joseph O. Smith
Attorney at Law
Box 10529
Greenville, SC 29603

Re: Encore v. Trask, *et al*

Dear Mr. Smith:

At your request I am herein offering my reactions to the February 28, 2017 damages report issued by Michael Meilinger, CPA in the cited matter.

My reactions and comments are strictly limited to Mr. Meilinger's analysis and computations. I have no opinions regarding the liability of the defendants, nor have I completed any independent analysis of the economic and financial issues in the case. Neither do I have any opinions regarding the appropriate period(s) of damage or legal issues that will no doubt be argued by the opposing parties. If I am asked to testify in this matter, my testimony will be limited to comments regarding Mr. Meilinger's report.

Finally, the opposing parties and the Court will know the things that are being asserted and by whom. To avoid redundancy and verbosity, I have refrained in this report from repeating assertions or referencing "alleged" damages. All damages are simply alleged until a finder of fact determines that they indeed exist and that the defendant(s) are liable.

Meilinger Calculation 1: Direct Costs Incurred by Encore

Mr. Meilinger's report is appropriately transparent and I see no need to repeat much of his narrative regarding his computations. Regarding the first calculation, it appears that he has simply compiled certain expenses incurred by Encore (payroll, benefits, reimbursements, marketing expenses, etc.) during possible damages periods and multiplied those totals by percentages provided to him by the plaintiff.

I have only three issues with this computation. The first issue is that the assigned percentages do not result in any way from Mr. Meilinger's analysis. While he indicates that he did discuss these with Encore management, he clearly abdicates any claim to their validity. In fact, in deposition testimony [page 14, lines 15-20], Mr. Meilinger said, "...it's a common practice to talk to management and

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look at the assumptions and assume that they're – and say they're reasonable. I think there's going to be a lot of testimony to that and the jury will actually make the final decision on that percentage." So other than deciding that the percentages are reasonable based on management's claim that they are, he provides no other justification for them. In light of the absence of any analysis or presentation of any logic regarding the percentages, I cannot see the usefulness of the arithmetic employed whereby he applies the percentages to the compilations of expenses, other than perhaps the power of suggestion. It appears that a more objective approach would have been for Mr. Meilinger to verify and detail the expenses, leaving it up to the finder of fact to select appropriate percentages.

The second point is that, if the issue before the court is the amount of damages that has been incurred by the plaintiff, and if the data used in Calculation 1 are to be applied, the appropriate question, I believe, is not, "How much benefit did defendants receive through these expenditures?" but ""How was plaintiff damaged by the expenditures?," which suggests an analysis of the difference between benefits which were actually received by plaintiff as a result of these expenditures and the benefits that plaintiffs would have received if defendants were not spending a portion of their time and effort "working on behalf of Clear Touch." Instead, the computation proposed by Mr. Meilinger is based on an assumption (implied in his report but made explicit in his deposition) that Encore received benefits only associated with a small percentage (5%-10% for employee time, 50% for trade shows) of the expenditures.

Finally, Mr. Meilinger attempts to lend credence to an assertion that trade show expenses were too high by citing the higher expenses during defendant's employment with Encore. He concludes [Meilinger report page 7], "These figures ...indicate that Mr. Trask *may have* [*italics added*] increased trade show expenses at Encore for the benefits of Clear Touch." First, the mere possibility of something does not, in my view, have any place in an independent expert's report. Second, while Mr. Meilinger included all trade show expenses after Mr. Trask went to work for Encore, in deposition testimony he indicated, "I don't know how long of a cycle there is on trade shows and how much of that is planned in advance and so forth." [page 19, lines 22-24] His comment was in response to a question as to why he included trade show expenses after the Trask employment ended, which of course may be valid, but it is also valid to question whether some of the expenses during his employment were actually planned and committed before he arrived at the company. In short, Mr. Meilinger really does not know. Finally, Mr. Meilinger seems to not know what trade show and marketing expenses may be required (see Meilinger deposition, page 61). In other words, he does not know what expenses may be reasonable, but he testified, "...it appears that once Mr. Trask was terminated that the expenses went back down to a *reasonable* [*italics added*] level." (page 17, lines 22-24]

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In conclusion regarding Mr. Meilinger's first computation, it appears that the only information which may be useful in his report is the compilation of expenses. Nothing further with regard to assignable percentages, reasonable expenditures, benefits to Clear Touch or benefits to Encore has resulted from his analysis.

Meilinger Calculation 2: Lost Profits Resulting from Sales to Encore from Clear Touch

Again, Mr. Meilinger's report with regard to this computation is clear and his methodology is transparent. The validity of this computation (as well as Meilinger Calculation 3, discussed later) depends on the following assumptions, all of which are implicit in his conclusion but none of which are supported by documentation or analysis presented in the report. I assume – and I suppose that Mr. Meilinger also assumes – that these will be argued by the opposing parties before the Court.

1. If the defendants had offered to transfer the sales opportunities to Encore, would Encore have been willing to accept them? Would this have required that Encore redefine its business model from one of primarily value added reseller to one involving contract manufacture and assembly? Because we know very little about the financial performance and condition of Encore (discussed later), we cannot know whether this book of business would have enticed it to change its business model. Would a change in the Encore business model affect its relationships with other vendors whose products it resells?
2. Was Encore capable of absorbing these sales? Were all Clear Touch trade relations transferable to Encore? Did Encore meet requirements of suppliers? Did it meet requirements of buyers (Leon County Schools)?
3. Would Encore have incurred absolutely zero additional operating expenses so that its only costs of the additional business would have been costs of purchases and sales commissions? Mr. Meilinger concludes that no other operating expenses would have been incurred, but his conclusion is based only on statements of Encore management. This exclusion apparently applies to every possible expense, including inland and air freight, cargo insurance, handling expenses, crating expenses, duties and customs fees, all of which appear on Clear Touch financial statements.
4. The Meilinger computation applies sales commissions of 10% of gross profit, but again his conclusion is based solely on statements from Encore management. While Mr. Meilinger was granted access to certain financial records of Encore (payroll, trade shows and marketing expenses), it appears that he was not provided with any documentation to support the commissions expense.

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5. Encore management told Mr. Meilinger that it had sold to Leon County Schools before Clear Touch. Again, it appears that Mr. Meilinger was not provided with documentation, which would have been readily available in Encore internal financial records.

In conclusion regarding Meilinger Computation 2, its validity rests almost entirely on statements made my Encore management and not on documentation applied in the analysis.

Meilinger Computation 3: Loss of Business Opportunity

Meilinger Computation 3, Part 1: Adjusted Income Generated by Clear Touch from 2/13/2013 – 12/31/2015

During the entirety of the four distinct damages periods identified by Mr. Meilinger, Clear Touch profit-and-loss statements show total income of $1,130,727. To compute the income that Encore would have earned on the same revenues, he adjusts the profit by just over $500,000, concluding that Encore would have earned $1,636,254 on those revenues. The adjustments computed by Mr. Meilinger are summarized below.

Adjustment	*Value*
Gross profit*	$188,140
Warehouse expense	175
Professional fees*	43,805
Mailbox rental	342
Factoring fees*	225,001
Officer salary	262,919
Payroll taxes on officer salary	19,719
Normalize Encore wages to Trask*	(291,660)
Payroll taxes on normalized Trask wages*	(21,875)
Contract labor*	32,617
Adjustment for other wages*	43,117
Payroll tax on other wages	3,234
Total Adjustments**	$505,534

*Discussed further below
**Total differs from the Meilinger total due to rounding.

Gross profit adjustment – More than one-third of the total Meilinger adjustment is based on his conclusion that the actual gross profit margin of Encore would have been 33%. In fact, for the period of its operation through December 31, 2015, the Clear Touch gross profit margin was 28.65%. After eliminating factor fees – a separate Meilinger adjustment discussed below – the Clear Touch Gross Profit Margin was 31.07%. Moreover, Meilinger Calculation 2 (page 10 of his report), computed profit of $750,402 on revenue of $2,461,660, yielding a gross profit margin of 30.48%. Yet Mr. Meilinger still assumes a 33% gross profit margin to Encore. He opines that cost of goods sold was overstated in

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the early months of the Clear Touch operation as it built inventory. If Mr. Meilinger is correct in assuming that during the entire period of Clear Touch's operation through December 31, 2015 its cost of goods sold was overstated as a result of understating inventory value, there would necessarily be inventory as of December 31, 2015 of approximately $188,000 (the amount of the Meilinger gross profit adjustment). I am not aware of any information substantiating that. Without any evidence of an accumulation of inventory, the gross profit adjustment is not warranted.

Professional fees – Mr. Meilinger has assumed that, while Clear Touch incurred professional fees in the amount of $43,805 during the period, Encore would have incurred $0 of these expenses, asserting, "Encore's expense structure already included these fees and expenses." I have seen no documentation regarding Encore's expense structure as it relates to professional fees and find no basis in Mr. Meilinger's report for assuming that none of these would have been incurred by Encore.

Factoring fees – Mr. Meilinger asserts, "Encore is a healthy company...." Perhaps it is, but I have not seen any documentation supporting that assertion and Mr. Meilinger references no such documentation. He also indicates that Encore has a $5 million credit line and the average drawn on the line during the period in which Clear Touch incurred factoring expenses was $1.07 million. Even if Encore (1) is healthy, (2) had a $5 million line of credit during the relevant period, (3) had drawn an <u>average</u> of about $1 million against that line during the period, and (4) could have used the credit line to finance receivables – and I find no evidence to support any of these assumptions in the Meilinger report – this is not sufficient evidence to conclude that factoring expenses would not be necessary for Encore. I am not aware of any information regarding the available credit during each month of the period. Mr. Meilinger has not identified how the <u>average</u> draw was computed. He has not identified the available credit at any point in time during the relevant period. Moreover, he has apparently excluded any consideration of the cost to Encore of financing its receivables. Based on the information presented, I find no basis for making this $225,000 adjustment.

Normalized Encore wages paid to Trask – Mr. Meilinger assumes that Encore would have paid Mr. Trask a salary of $175,000. However his own analysis in Meilinger Computation 1 shows gross 2013 wages to Mr. Trask from Encore of $190,512 and fringe benefits of $8,893, for total compensation package of $199,405. The Clear Touch financial statements include no fringe benefits for Mr. Trask. It appears that Mr. Meilinger's adjustment for this category is in error by $35,280 ($1,764 per month, May 2014 – December 2015).

Contract labor – Mr. Meilinger has made another assumption, this one adding $33,000 to his damage calculation, "that Encore's employee base could have absorbed the activity represented by the contract labor expensed by Clear Touch." Without information regarding the nature of the contract

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labor expenses and the functions and capacity of the Encore employee base, I don't see any support for Mr. Meilinger's assumption. (In fairness, in his report he offers no support, simply stating the assumption.)

Other wages and payroll taxes on other wages – Mr. Meilinger was told by Encore management that it would need one additional employee to help with the additional volume of business. There is not information regarding either the anticipated job description of this new Encore employee or of Mr. Meilinger's decision that this would equate to 25% of the Clear Touch "other wages" expense line. As is the case with several of the other Meilinger adjustments discussed above, this adjustment appears somewhat arbitrary and its only support appears to be undocumented and unquantified comments from the plaintiff in the case.

Conclusion regarding Meilinger Calculation 3, Part 1 – Eliminating the gross profit adjustment based on actual documentation, correcting the normalized compensation to Trask based on his actual wages and fringe benefits used elsewhere in the Meilinger report, and eliminating the adjustments for which no documentation has been provided,[1] the adjusted income to Encore from the Clear Touch revenues (over the entire period identified by Mr. Meilinger as the damages period) would be computed as follows. Also shown for comparison is Mr. Meilinger's computation summarized on page 13 of his report.

	Meilinger Adjustments	Adjustments Based on Available Documentation
Clear Touch Unadjusted Income	$1,130,727	$1,130,727
Adjustments		
Gross profit	188,140	0
Warehouse expense	175	175
Professional fees	43,805	0
Mailbox rental	342	342
Factoring fee	225,001	0
Officer salary	262,919	262,919
Payroll taxes on officer salary	19,719	19,719
Normalize Encore wages to Trask	(291,660)	(326,940)
Payroll taxes on normalized Trask wages	(21,875)	(21,875)
Contract labor	32,617	0
Other wages	43,117	0
Payroll taxes on other wages	3,234	0
Total adjustments	505,534	(65,660)
Encore Adjusted Income*	$1,636,261	$1,065,067

*$7 Difference between computed adjusted income show in and that in Mr. Meilinger's report is due to rounding.

[1] The warehouse expense adjustment of $175 and the mailbox rental adjustment of $342 are immaterial in magnitude and have neither been discussed nor eliminated.

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Meilinger Computation 3, Part 2: Fair Market Value of Clear Touch Interactive as of 12/31/2015

The normalizing adjustments applied by Mr. Meilinger had an even greater effect in the computation of fair market value. Exhibit 1 shows a replication of his computations yielding the $3,876,155 value of capitalized earnings in his report, which he rounded to $3.9 million. Exhibit 1 also shows the same computation, but with adjustments based only on available information, as I discussed in the previous section. With only these adjustments, replication of his model yields a computed value of $2,979,209 or almost $897,000 less than that which he computed. The effects of Mr. Meilinger's individual assumptions on his computed damage figure in Computation 3 are shown below.

	Computation 3, Part 1	Computation 3, Part 2	Total
Gross profit margin adjustment	$188,140	$170,571	$ 358,711
Professional fees adjustment	43,805	57,417	101,222
Factoring fees adjustment	225,001	398,417	623,418
Contract labor adjustment	32,617	80,314	112,931
Other wages adjustment with payroll taxes	46,351	111,167	157,518
Understatement of Trask compensation	35,280	79,057	114,337
Total	$571,194	$896,943	$1,468,137

In considering the value to Encore of the Clear Touch book of business, Mr. Meilinger also references the Market Approach, applying "price multiples derived from transactions of *comparable* companies in the *same or similar lines of business.*" [*Italics added.*] He considered businesses in two NAICS codes – 423430, Computer and Computer Peripheral Equipment and 443142, Electronics Stores. From these databases he derives multiples of EBIT and EBITDA. In addition to recognizing the Meilinger adjustments which are discussed above, it is informative to consider the Prats Stats databases from which he has derived his multiples.

In his report Mr. Meilinger provides no detailed information with regard to the transactions which he took from the databases, so it is not possible for me to replicate his work. Nevertheless, some significant points should be noted. Regarding NAICS 423430, the Pratts Stats database included only seven sales of companies with non-negative EBITDA within the previous ten years. The descriptions of these companies, shown below, suggest that none of them are comparable to Clear Touch.

- Distribution of computer networking hardware
- Refurbished printers sold through internet
- Distributes computer software
- Distribution communications equipment
- Distributes medical practice management, medical billing, and electronic medical records software
- Distributes computer networking products

- Data storage products – value added reseller

The Pratts Stats data base for NAICS 443142 contains more transactions, 93 for companies with non-negative EBITDA and sold no earlier than January 1, 2005. However, half of these were sellers of mobile telephones, satellite systems, VOIP, or other communications systems. After excluding sellers of specialty items (musical, medical, laser printers, navigation equipment, on-line merchandise, home sound systems, B to B software, data storage, e-commerce, etc.) and companies which are so broadly defined as to not be useful benchmarks (consumer electronics stores, computer sales and service, etc.), there were again only a handful of transactions that may have involved sales of comparable companies. It is clear that the Pratts Stats database for this category is also of no value in providing value benchmarks.

Finally, I note that Mr. Meilinger had apparently at one time used a gross capitalization rate of 27.79% and a growth rate of 2%, as opposed to the 25.79% and 3% which he ultimately uses. These originally applied measures are included in his report (apparently inadvertently) in the final section. When asked during his deposition testimony why he had changed, he responded that the values which he had used were conservative. But the question, which he did not answer, was not why he had used the values which were actually applied, but why had he changed the values. It is notable that his changing the rates yielded a considerably less conservative value estimate to the tune of $457,286. That is, if he had continued using the higher discount rate of 27.79% and the lower growth rate of 2%, his computed value – and therefore this element of computed damage – would have been $457,000 lower than his final conclusion. Moreover, using his more conservative discount and growth rates and only the adjustments that are supported by documentation, his computed value would have decreased by $1,282,000. This seems to cast some question on the assertion that his conclusions are conservative.

My résumé and a summary of my testimony since 2012 are enclosed. Charges for work by my firm in this case are at standard hourly rates, currently $400 for my time and $100 for that of my Assistant.

Cordially,

Charles L. Alford, Ph.D.

CLA/pc
Enclosures

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Exhibit 1

Replication of Meilinger Valuation as of 12/31/15

	Meilinger Adjustments		Adjustments Based on Available Documentation	
	2014	**2015**	**2014**	**2015**
Net Income	(142,945)	619,029	(142,945)	619,029
Adjustments				
Eliminate AOL		142,945	-	142,945
Owner Salary -- Book	85,000	163,496	85,000	163,496
PR Tax on owners salary	6,375	12,262	6,375	12,262
Normalized salary	(175,000)	(175,000)	(199,405)	(199,405)
PR tax on normalized salary	(13,125)	(13,125)	(14,288)	(14,288)
Gross profit adjustment	350,034	3,129	-	-
Warehouse expense	175	-	175	-
Professional fees	9,057	20,248	-	-
Factoring fee	89,142	135,860	-	-
Contract labor	2,500	30,117	-	-
Adjustment for other wages	4,577	38,539	-	-
Payroll tax adjustment on other wages	343	2,890	-	-
Total Adjustments	359,078	361,361	(122,143)	105,010
Adjusted Income	216,133	980,390	(265,088)	724,039
Add taxes and interest	3,472	366,817	3,472	366,817
EBIT	219,605	1,347,207	(261,616)	1,090,856
Add depreciation and amortization	17,659	108,665	17,659	108,665
EBITDA	237,264	1,455,872	(243,957)	1,199,521
Less normalized depreciation		(22,931)	-	(22,931)
Less estimated taxes	(92,533)	(558,847)	95,143	(458,870)
NET CASH FLOW	144,731	874,094	(148,814)	717,720
Weight	15%	85%	15%	85%
Weighted EBITDA [sic]		764,690		587,740
Estimated Sustainable Growth Rate		3.00%		3.00%
Calculated Future Earnings		787,630		605,372
Adjustment for Mid-year convention		883,376		678,962
Capitalization rate		22.79%		22.79%
Gross capitalized earnings		3,876,155		2,979,209
Gross capitalized earnings at original Meilinger 2% growth rate and 27.79% cap rate		3,418,869		2,593,753

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charlie@cla3.com

Education

Ph.D. in Economics and Business Administration; University of Alabama, 1972; Major – marketing; Minors – economics and quantitative methods.

B.A. in Economics; Wofford College, 1968.

Teaching and Administrative Experience

Professor Emeritus (2003), James C. Self Professor of Business Administration (1994), Professor (1983), Associate Professor (1976), Assistant Professor (1971) of Economics and Business Administration, Furman University.

Chair, Department of Economics and Business Administration, Furman University, 1976 – 1985.

Chair, Furman University Faculty, 1993 – 1995.

Faculty Athletic Representative to The Southern Conference and NCAA, 1995 – 2003.

Teaching Assignments at Furman

Economics: macroeconomics, microeconomics, urban economics, personal finance.

Business Administration: principles of marketing, marketing research, marketing problems, marketing management (graduate level), quantitative methods for business, experiential learning in business.

Statistics: graduate and undergraduate.

Director of the Furman Economics and Business Administration Internship Program.

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Publications

"The Economist's Role in Wrongful Death Cases," with John G. Fulmer, *South Carolina Trial Lawyers Bulletin*, October, 1974.

"An Investigation into the Effects of Selected Variables Upon Barriers to Entry in Manufacturing Industries," *Southern Marketing Association Proceedings*, 1974.

"New Product Idea Generation: A Case Study of Household Cleaners," with J. Barry Mason, *Journal of Advertising Research*, Spring, 1974.

"The Effects of Oral vs. Written Two-Sided Messages," with J. M. Wilkerson, *Journal of the Academy of Marketing Sciences*, Summer, 1976.

Succeeding in the Free Enterprise System, CORBIA – Council of Resources, 1978. A textbook written for the South Carolina Veterans Administration.

"Business Goodwill in South Carolina," with Katherine Tiffany and Peter C. Tiffany, *South Carolina Lawyer*, May, 2011.

Invited Lectures

"In Defense of Advertising," Wofford College, 1976.

"The Role of Marketing Research in the Business Enterprise," Wofford College, 1977.

"The Changing Marketing Concept," Sales and Marketing Executives Club of Greenville, 1978.

"What Really Matters," L. D. Johnson Memorial Lecture, Furman University, 1983.

Numerous speeches to local service, professional, and business organizations on business strategies and business valuation.

Co-presenter with Peter Tiffany, Timothy Madden, and Thomas Traxler, "2011 Family Law Intensive: Tax Returns, Other Financial Records & Valuation," October 2011.

Professional Affiliations

American Economic Association
Southern Economic Association

Southern Marketing Association
National Association of Forensic Economics

Awards and Honors

Western Electric Fund Award for innovative teaching, presented by the American Assembly of Collegiate Schools of Business, 1982.

Faculty Internship, Henderson Advertising Agency, 1972.

NDEA Fellowship, University of Alabama.

Wall Street Journal Award, Wofford College.

Listed in *Who's Who Among Expert Witnesses*.

Other Professional Activities

Professional Associations – Attended, presented papers, discussed papers, chaired sessions, and judged papers at numerous professional association meetings.

Consulting

Have been recognized in Federal District Courts, state courts in South Carolina, North Carolina, and Tennessee, South Carolina Family Courts, and the South Carolina Public Service Commission as an expert in economic and business affairs, including the following areas.

- valuation of closely held companies
- review of company performance and condition
- forecasting of sales and profits
- consideration of economic consequences of alimony and child support payments
- equitable distribution of marital assets
- application of South Carolina Department of Social Services Child Support Guidelines
- valuation of defined benefit pension plans
- computation of economic loss due to death, disability, and termination
- computation of lost business profits
- unfair trade practices
- antitrust violations

Have been appointed as the court's expert in South Carolina Family Court, South Carolina Circuit Court, and Masters in Equity in Greenville and Anderson counties.

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Have been retained by plaintiff's attorneys, defendant's attorneys, United States Department of Justice, and insurance companies in evaluation of economic loss.

Have served as a consultant in valuation of numerous closely held companies outside the context of litigation, including manufacturers, wholesalers, retailers, professional associations, and personal service companies.

Other consulting experience includes market research and analysis, corporate image research, and development and implementation of strategic plans.

Have served on the local advisory boards of a bank, commercial real estate development firm, and travel agency.

Community Activities

Past service on Travelers Rest Area Council, vice chairman, director, chair of Education Committee, co-chair of Economic Development Committee.

Past service on Travelers Rest Home Town Association, director, treasurer.

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Charles L. Alford, Ph.D.
2012 Depositions, Trials & Arbitrations

Date	Deposition, Trial or Arbitration	Attorney	Case	Ty
2/20/2012	D	Charles J. Hodge	Pavel Kishka, et al. v. South Carolina Department of Transportation, et al.	Con
3/16/2012	T	Myles E. Eastwood	Eco Solutions, LLC and Premier Polymers v. Verde Biofuels, Inc. and R. Samuel Bell, Jr.	US D
4/5/2012	D	Rodney M. Brown	Mary Sue Nelson, As Personal Representative of the Estate of Robert Lee Nelson v. Bon Secours St. Francis Health System, Carolina Surgical Associates and Regency Hospital of Greenville	Con
4/27/2012	D	Dana C. Mitchell, III	Theodore C. Randall and Connie L. Randall vs. Jamie G. Frankum and MSW Electrical Contractors, Inc.	Con
5/3/2012	D	Eugene C. Covington, Jr.	Dianne H. Latham and Kevin Latham vs. Federal Express Corporation and Lance A. Marbut	Con
5/8/2012	D	Michael E. Spears	Joseph A. Tonkovic v. EJ Pope & Son, Inc., et al.	Con
5/24/2012	D	Brian P. Murphy	Cynthia Hodge v. Spartanburg Regional Health Services District, Inc. d/b/a Spartanburg Regional Healthcare System	US D
6/13/2012	T	Jason D. Porter	Gregory J. Turner and Diane L. Turner v. Christopher Taylor Hall, Michelin North America, Inc., and Michelin Americas Research & Development Corporation	Con
7/10/2012	T	Mark B. Wallace	The Estate of Sharon L. Howell, by and through, Jeremy Howell, Administrator v. Yellow Cab Co. of Louisville, LLC, Jimmie D. Capps, Jr. and Jon Ochsenbien	Jefferso
8/14/2012	A	Hugh W. Welborn	Vivian Chambers v. Robert Chambers, Individually and d/b/a Chambers Trucking, Leola Hammonds, a/k/a Lee Chambers a/k/a L.R. Hammonds, Individually and d/b/a Chambers Trucking, and David Austin Chambers, Individually and as Registered Agent for Chambers Trucking, LLC, Chambers Trucking, LLC and Chambers Trucking	Fa
8/23/2012	D	T.S. Stern, Jr.	International Payment Group, Inc., Debtor - John Kirkland Fort, Chapter 7 Trustee for International Payment Group, Inc., v. Sun Trust Bank	US Ba
9/19/2012	T	J. Steven Welch	Delwyn Williams, individually, and as Personal Representative of the Estate of Jacqueline Williams v. Milestone Family Medicine, P.A., and Richard Leland, M.D.	Con
9/26/2012	D	Kenneth C. Anthony, Jr.	Anne H. Ashy, Personal Representative of the Estate of Ramon Jawad Ashy, Jr., Plaintiff, v. Genevieve Meeder Goucher and Sloan Construction Company, Inc.	Con
10/4/2012	D	James R. Gilreath	Marine Cross Country, Inc. v. HQ Marine Transport, Inc. f/k/a Cross Country Marine, Inc., Roger Bailey, Malibu Boats, LLC, Julie Haddy, PACCAR Financial Corp., and Cherokee Truck Leasing, Inc.	Con
10/9/2012	D	T. Ryan Langley	Michelle Martin, Personal Representative of the Estate of Gerald Martin, deceased, v. American Honda Motor Co, Inc., and Amano Pioneer Eclipse Corporation	US D
10/11/2012	D	Geoffrey H. Waggoner	Phillip Greene, as Guardian and Conservator of the Estate of Sheila Greene, an Incapacitated Adult v. Trident Medical Center, LLC, Trident Emergency Physicians, LLC and N. Selby Richardson, III, MD	Con
10/23/2012	D	Troy A. Tessier	Anderson County v. Joey Preston and South Carolina Retirement Systems	Con
11/5/2012	T	Troy A. Tessier	Anderson County v. Joey Preston and South Carolina Retirement Systems	Con

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Charles L. Alford, Ph.D.
2013 Depositions, Trials & Arbitrations

Date	Deposition, Trial or Arbitration	Attorney	Case
2/20/2013	T	Kenneth C. Anthony, Jr.	Anne H. Ashy, Personal Representative of the Estate of Ramon Jawad Ashy, Jr. v. Genevieve Marie Goucher and Sloan Construction Company, Inc.
4/2/2013	D	Donald L. Smith	Tracy William Keller v. Claudia Lynn Davis Keller
4/12/2013	D	W. Grady Jordan	Lynn S. Marler, individually and Lynn S. Marler as Personal Representative of the Estate of James Robert Marler v. Greenville County; Scott Bodiford; Katie Hughes, CCT; Derrick Jackson; Philip Smith; Kristi F. Padgett, LPCS; Timothy Williams; James Graveley; Rene L. Cox, LPN; Kendra LeAnne Edwards; R.N.
4/16/2013	T	J. Kendall Few	Hattie Knuckles, et al. v. RaceTrac Petroleum, Inc. et al.
5/8/2013	D	Frances G. Zacher	Robert Wayne Humphrey, Jr. and Crystal Marie Humphrey v. Day & Zimmerman International, Inc.
5/23/2013	D	Thomas A. Killoren	Vickie S. Crosswhite & George A. Crosswhite v. Bobby Jackson Electrical, Inc. and William J. Jackson
5/30/2013	T	Robert C. Wilson, Jr.	Front Roe Restaurants, Inc. v. Kyle Pertuis v. Beachfront Foods, Inc., et al.
6/4/2013	D	Kenneth C. Anthony	Minta W. Floyd v. John Franklin Floyd
6/20/2013	D	Richard C. Jones	Richard M. Hanson v. Vicki Thomas Gray, Gerald M. Gray, and Marshall P. Sherard, Jr., as personal representatives of the Estate of James M. Gray, Sr., Marshall P. Sherard, Jr., individually, Hartwell Lake Builders, the partnership of James M. Gray, Sr. and Marshall P. Sherard, Jr., Hartwell Lake Properties, a sole proprietorship, Mike Davenport d/b/a Davenport Construction, Jonathan A. Gray, Jeffrey Willis, Gray & Willis, Inc., Eric Murray d/b/a Designs Unlimited, and Hartwell Lake Investors, LLC
8/5/2013	D	James W. Segura	Gwendolyn Tucker and husband, David Tucker v. Sand Dunes North Tower Homeowners' Association, Inc.
8/5/2013	T	James W. Segura	Gwendolyn Tucker and husband, David Tucker v. Sand Dunes North Tower Homeowners' Association, Inc.
8/6/2013	T	Wallace K. Lightsey	Andrew P. Ballard v. Tim Roberson, et al.
8/12/2013	D	Charles J. Hodge	Myra Ranta as PR for the Estate of Heather Johnson v. Georgetown Memorial Hospital and Thomas Crosby, MD
9/13/2013	D	Stephen S. Wilson	Karrey Byrd v. Alessandro Boursier and Gas Turbine Efficiency Sweden AB (a Swedish corporation)
9/30/2013	D	Steven M. Krause	Estate of Michelle Heath Whiteside
10/2/2013	D	David R. Price, Jr.	Kristyn Hicks and Jeremy Hicks v. Waterford/Deerfield, LLC, d/b/a Waterford Apartments of Easley, Steven James, d/b/a James Landscaping, Inc. d/b/a James Landscaping; and James Landscaping Inc.
10/9/2013	T	Jon E. Newlon	Jeff Wertz and Lynn Wertz v. Joel Aria-Flores
11/22/2013	D	H. Donald Sellers	Fleetwood Transportation Corporation and Transportation Consultants, Inc., v. Packaging Corporation of America
12/12/2013	T	Joshua D. Spencer	Solv, Inc. v. JAT Systems, Inc.

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Charles L. Alford, Ph.D.
2014 Depositions, Trials & Arbitrations

Date	Deposition, Trial or Arbitration	Attorney:	Case	
2/18/2014	T	Charles J. Hodge	Linda Allen v. Robert Blackwell, MD, and Oaktree Medical Center d/b/a Pain Management Associates	C
2/20/2014	D	Donald C. Coggins	Tap Root Dairy, LLC v. Purina Mills, LLC; Land O'Lakes and Purina Feed, LLC; Jim G. Baker; and Stan S. Penland, Jr.	Gener S
4/24/2014	T	W. Norman Epps	Lori Batchler and Craig Batchler v. Stephen John Lewis, MD, Cherokee Womens Center, PA, Venkataiah Gutta, MD, and Gaffney Urology, PA	C
5/15/2014	T	Carl F. Muller	Louis Clay Tharp v. Media General, Inc.; Media General Operations, Inc. d/b/a WBTW CBS News 13 and the Morning News; Media General Communications Holdings, LLC d/b/a SCNOW.COM; Mason Snyder; and Nicole Boone	US
6/3/2014	D	Thomas A. Killoren, Jr.	Ralph Burke McAtee and Tina Irene McAtee v. Werner Enterprises, Inc. and Moussa Traore	US
6/11/2014	D	Donald C. Coggins, Jr.	Juan Corzo v. Jennifer H. Fiorini, MD, Coastal Carolina Surgical Specialists, and Trident Medical Center, LLC	C
6/12/2014	D	T. Ryan Langley	Ricardo Hagood and the Cornerstone Agency v. Nationwide Mutual Insurance Company	US
6/25/2014	D	Carl F. Muller	Catherine Ladnier, Personal Representative of the Estate of Mary Caroline Ladnier Dennis, Deceased v. David F. Carver, M.D., Kenneth S. Campbell, M.D., Hospital Physician Partners, Inc. and EDCare Management, Inc.	C
7/11/2014	D	Steven R. LeBLanc	H&C Corporation, Inc. v. Puka Creations, LLC and Robert Puka	US
8/5/2014	D	James C. Alexander	Harold Douglas Rice v. BorgWarner TorqTransfer Systems Inc. and Thrift Brothers Inc.	C
8/18/2014	D	Jay D. Lukowski	Terri Hendrix and Mike Hendrix v. Herschel Beker, M.D. and Resurgens, P.C.	
10/2/2014	T	Burl F. Williams	David Wilson, individually and derivatively on behalf of Carolina Custon Converting, LLC v. John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, Carolina Custom Converting, LLC and Carolina Custom Converting v. Dave Wilson, Steven Norvell, Neologic Distribution, Inc. and Freshwater Systems Inc.	C
11/5/2014	T	James B. Drennan	Marcus B. Hodge, Margaret H. Nowell, and Colton Hodge v. Charles J. Hodge	C
11/6/2014	T	James Stephen Welch	Mary Ann Eitel v. AnMed Health, et al.	C
11/12/2014	D	Brad D. Hewett	Kathryn Welch v. Richard Stichter and Pike Electric, LLC	C
11/21/2014	D	Knox L. Haynsworth	McKinley, Cooper & Company, LLC v. J. Todd Highsmith, Shane Highsmith and Highsmith & Highsmith, LLC	C
12/8/2014	D	Jay D. Lukowski	Heather Rice, Individually and as Administrator of the Estate of Matthew Rice v. Michael Katz, M.D.	
12/11/2014	T	Knox L. Haynsworth	McKinley, Cooper & Company, LLC v. J. Todd Highsmith, Shane Highsmith and Highsmith & Highsmith, LLC	C
12/19/2014	D	Eric H. Philpot	David Harris v. DMX and Ricky Black	C

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Charles L. Alford, Ph.D.
2015 Depositions, Trials & Arbitrations

Date	Deposition, Trial or Arbitration	Attorney	Case	Type of Co
2/19/2015	T	Jay D. Lukowski	Terri Hendrix and Mike Hendrix v. Herschel Beker, M.D. and Resurgens, P.C.	State Cou
2/25/2015	T	Robert T. Usry	Lawrence Goldstein v. Nancy Jane Ballenger	Common Pl
3/6/2015	T	Pamela E. Deal	Terry Smith v. James Rory Smith	Family Co
3/16/2015	D	E. Grey Wicker	John Bryant v. Aiken Regional Medical Centers, Inc.	Common Pl
3/19/2015	D	W. Andrew Arnold	Team IA, Inc., v. Cicero Lucas, George Lawson, IV and 5 Point Solutions, LLC	Common Pl
3/26/2015	T	W. Andrew Arnold	Team IA, Inc., v. Cicero Lucas, George Lawson, IV and 5 Point Solutions, LLC	Common Pl
5/19/2015	D	Donald Chuck Allen	Linda White, as Special Administrator of the Estate of Broadus White, Jr., v. Raymond Sampson	Common Pl
5/20/2015	D	Daniel E. Henderson	Cornelius J. Murphy v. Southeastern Stages, Inc. and Cynthia Ann Stewart	Common Pl
7/14/2015	T	E. Grey Wicker	John Davis and Jane Davis v. James Travis Singleton	Common Pl
8/6/2015	D	David J. Brousseau	Scott G. Edwards v. Group Alpha, Inc., Jerry D. Crane and Kathryn M. Edwards	Common Pl
8/13/2015	D	Robert F. Goings	Paulino D. Camacaro v. Tommie Lee Sanders	Common Pl
8/20/2015	D	Jean Perrin Derrick	Barbara S. Bodie as Personal Representative for the Estate of Robert M. Bodie, Sr., deceased, v. Duke Power Company, *a/k/a* Duke Energy Carolinas, LLC	US District (
8/26/2015	T	Robert F. Goings	Paulino D. Camacaro v. Tommie Lee Sanders	Common Pl
9/30/2015	T	Brian P. Murphy	Denise Parker v. The National Honorary Beta Club	Common Pl
10/27/2015	D	Neal D. Truslow	Ronald Huff v. Jethery Bohannon, J.B. Hunt Transport, Inc. and J.B. Hunt Transport Services	Common Pl
10/28/2015	T	David J. Brousseau	Scott G. Edwards v. Group Alpha, Inc., Jerry D. Crane and Kathryn M. Edwards	Common Pl
10/30/2015	D	Neil C. Jones	Precision Fabrics Group, Inc. v. Tietex International, LTD	US District (
11/3/2015	D	James R. Gilreath	James R. Malloy v. Swain N. Thompson, Jr., et al.	Common Pl
11/5/2015	D	Rodney M. Brown	James Curtis Shelton, as Personal Estate Representative of the Estate of Rose Mary Shelton v. Bon Secours St. Francis Health System, Inc., and Kerisea S. McPherson, MD	Common P
11/16/2015	T	Rodney M. Brown	James Curtis Shelton, as Personal Estate Representative of the Estate of Rose Mary Shelton v. Bon Secours St. Francis Health System, Inc., and Kerisea S. McPherson, MD	Common P
11/18/2015	T	Steven M. Krause	Rachel Michelle Whiteside v. Marcello Hochman, MD and The Facial Surgery Center	Common Pl
12/11/2015	D	Robert F. Goings	Bobby Gene McClellan v. Joseph A. Rich, Lena M. Rich, George P. Faust and Christopher G. Faust	Common Pl
12/21/2015	D	Carmen Harper Thomas	Betty Land and Michelle Stephanie Bowen as Personal Representative of the Estate of Gary F. Land v. Green Tree Servicing, LLC, Five Brothers Mortgage Company Services and Securing, Inc., PDQ Maintenance Solutions, Inc., Steve Thompson, Maintain It Now, LLC, James Dean, Scope Field Services, and Debbie Raker	US District (

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Charles L. Alford, Ph.D.
2016 Depositions, Trials & Arbitrations

Date	Deposition, Trial or Arbitration	Attorney	Case	Type of Court
1/7/2016	T	Robert F. Goings	Bobby Gene McClellan v. Joseph A. Rich, Lena M. Rich, George P. Faust and Christopher G. Faust	Common Pleas
2/9/2016	D	Kenneth C. Anthony	Robert P. Thompson and Debbi N. Thompson v. John R. Cocciolone and Greenville County Disabilities and Special Needs Board	Common Pleas
3/2/2016	T	Brooke Archenhold	Jamie P. Jones as Personal Representative of the Estate of Shannon E. Jones, deceased, v. Spartanburg Regional Health Services District, Inc., Lee Taylor, Jr., MD and Family Physicians of Spartanburg, PC	Common Pleas
3/31/2016	D	E. Grey Wicker	Siobhan Holden and Michael Holden v. Katherine E. Inclan	US District Cour
4/12/2016	D	Max T. Hyde, Jr.	Michael Carey, Sr. v. Vivianne Lee Carey	Family Court
4/28/2016	D	Walter McBrayer Wood	Donna Adair Short and Tracy Short v. Allcare Clinical Associates, PA, Mission Hospital, Inc., and James B. Calderbank, MD	General Court of Jus Superior Court Divis
5/11/2016	D	Mason A. Goldsmith, Sr.	Fraenkische USA, LP v. R&J Investments, Inc.	Common Pleas
5/12/2016	D	Robert F. Goings	Demaris Rivera v. Wendy Ann Orff	Common Pleas
6/6/2016	D	Steven M. Krause	Danny Argo and Brenda Argo v. David A. McCann, MD and Cornerstone Familty Practice, LLC	Common Pleas
6/21/2016	D	James R. Gilreath	Russell L. Bauknight as Special Administrator of the Estate of James Brown, Deceased, and as Special Trustee of the James Brown 2000 Irrevocable Trust, and James Brown Enterprises, Inc., and James Brown, LLC v. David G. Cannon, Joel A. Katz, and Greenberg Traurig, LLP	Common Pleas
6/30/2016	D	Stephen R.H. Lewis	Jonathan D. Christopher v. George Christopher	Common Pleas
8/9/2016	D	E. Brandon Gaskins	Charles Philip Toussaint, MD v. Palmetto Health and Greta S. Harper	US District Cour
8/11/2016	D	Jennifer M. Eberle	Sheriel Yokley and Travis Yokley Individually and in their capacity as Natural Parents and next of kin of Trevin Ray Yokley, deceased v.Terry A. Wynn, M.D., and Wynn Gynecology and Obstetrics, PLLC	Circuit Court
8/30/2016	D	Blaney A. Coskrey, III	Barry T. Sparks v. The Columbia City Ballet and William Starrett	US District Cour
9/8/2016	D	Brian C. Duffy	John F. Bartosh, Jr., individually and as Guardian of Amanda Lynn Bartosh v. Trident Medical Center, LLC, d/b/a Summerville Medical Center and Daniel W. Fisher, MD	Common Pleas
9/15/2016	D	James R. Gilreath	Judy S. Shaffer v. Ralph D. Kellar and James G. Stephens, individually and as Personal Representative of the Estate of James B. Stephens and as Trustee of the Amended and Restated James B. Stephens Revocable Trust Agreement originally dated March 19, 1996 and as subsequently amended and restated in 1999, 2001, 2003, 2006, 2007 and 2008, and James Michael Stephens, individually and as a Beneficiary of the Estate of James B. Stephens and as a beneficiary of the James B. Stephens Revocable Trust Agreement originally dated March 19, 1996 and subsequently amended	Probate Court Thirteenth Judicial C
9/21/2016	D	Charles J. Hodge	Christopher Knighton & Cristina Knighton v. Dorrian Taylor	Common Pleas
9/27/2016	D	Andrew N. Poliakoff	Tracy Hughes, by and through his Guardian ad Litem, Angela Hughes v. Sunbelt Rentals, Inc., et al.	Common Pleas
10/6/2016	D	James R. Gilreath	Peggy A. Hollingsworth, as Personal Representative of the Estate of Thomas F. Hollingsworth v. Charlotte Motor Speedway, LLC, Speedway Motorsports, Inc., North Carolina Association of Broadcasters, Inc., USO of North Carolina, Inc. and Deborah Lynn Mockus, as Administrator of the Estate of Alan Mockus	General Court of Jus Superior Court Divis
11/3/2016	D	W. Grady Jordan	Danny R. Duncan and Felecia K. Duncan v. S.S. Electrical, Inc.	Common Pleas
11/10/2016	T	Francis M. Hinson	Frank Heaps, III as Personal Representative of the Estate of Melissa Heaps vs. Lexington County Health Services District, Inc.	Common Pleas
12/13/2016	D	Mackenzie G. Archenhold	Tonette Harmon, as Personal Representative of the Estate of Jerry Wayne Harmon, deceased v. James William Carter, Sr., MD, Spartanburg Emergency Physicians, LLC, and Mary Black Health System, LLC	Common Pleas

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Charles L. Alford, Ph.D.
2017 Depositions, Trials & Arbitrations

Date	Deposition, Trial or Arbitration	Attorney	Case	Type
2/14/2017	D	Wes A. Kissinger	Jose Guadalupe Marin v. Henry Allan Brown, et al.	Comm
3/23/2017	D	W. Harold Christian, Jr.	Kirsten Fine Beischer, individually and as Personal Representative of the Estate of James Paul Beischer, Jr., deceased v. Bon Secours Health System, Inc., St. Francis Physician Services, Inc., St. Francis Hospital, Inc., St. Francis Health Care, Inc., Piedmont Family Practice, LLC and John L. Sloan, Jr., M.D.	Comm
4/20/2017	D	Nihar M. Patel	Brandy S. Cousar v. M&R Carriers I, Inc. and Daniel K. Karanja	S. Di
4/26/2017	D	Charles J. Hodge	Martha C. Warren v. Barry M. Lazenby, MD, Upstate Carolina Radiology, PA (Spartanburg, SC), Bon Secours St. Francis Health System d/b/a St. Francis Cardiovascular Associates d/b/a Upstate Cardiology	Comm
5/3/2017	D	W. Harold Christian, Jr.	Vicki Sheldon, individually and as Personal Representative of the Estate of Daniel Robert Sheldon v. Roper Hospital, Inc., Cardiothoracic Surgery of Charleston, Roper St. Francis Healthcare, Roper St. Francis Physicians Network, RSF Physician Partners, Physicians Network, Scott Ross, MD, Mary Utsey, Nitsa Calas Andrews, Hilliary Rizzetto, and Jacquelyn Ammons	Comm
5/15/2017	T	Douglas F. Patrick	Joseph Lyles v. Jennifer C. Dodson	Comm
6/22/2017	D	Kenneth C. Anthony, Jr.	Jaimie Reda Moore v. Anthony Wade Ross and General Motors, LLC	Comm
6/30/17 7/28/17	D	Aimee V. Leary	Advance Nursing Corporation v. South Carolina Hospital Association, SCHA Solutions, Inc., Greenville Health System, Spartanburg Regional Health Services District, Inc. d/b/a Spartanburg Regional Healthcare System, Mary Black Health System, Palmetto Health, Lexington County Health Services District, Inc. d/b/a Lexington Medical Center, Tuomey, Carolinas Hospital System, St. Francis Hospital, Inc., Sister of Charity Providence Hospitals, Providence Hospital, LLC, and Regional Medical Center of Orangeburg and Calhoun Counties	S. Di
7/11/2017	T	Charles J. Hodge	Martha C. Warren v. Barry M. Lazenby, MD, Upstate Carolina Radiology, PA (Spartanburg, SC), Bon Secours St. Francis Health System d/b/a St. Francis Cardiovascular Associates d/b/a Upstate Cardiology	Comm
7/13/2017	D	L. Lee Plumblee	VFC 29 Pearman Properties, LLC v. Electric City Fitness, Inc., et al.	Comm

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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,	)	**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION IN LIMINE**
vs.	)	
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
Defendants.	)	

Exhibit C

Clear Touch Balance Sheets for 2013, 2014, and 2014

CONFIDENTIAL

Submitted to Trial Judge and Not Filed in Public Record

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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,	)	**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION IN LIMINE**
vs.	)	
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
Defendants.	)	

Deposition Excerpts

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ELECTRONICALLY FILED - 2017 Sep 20 4:17 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305757

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. NO. 2015-CP-23-05757
ENCORE TECHNOLOGY GROUP, LLC,	)	
	)	30(b)(6) DEPOSITION
PLAINTIFF,	)	
	)	OF
VS.	)	
	)	TODD NEWNAM
KEONE TRASK AND CLEAR TOUCH INTERACTIVE, INC. f/k/a CLEAR TOUCH INTERACTIVE, LLC	)	
	)	
DEFENDANT.	)	

THE 30(b)(6) DEPOSITION OF TODD NEWNAM, TAKEN BEFORE HOLLY W. WILSON, PROFESSIONAL VERBATIM REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 9:35 A.M., TUESDAY, THE 18TH DAY OF JULY, 2017, AT ROE CASSIDY COATES & PRICE, P.A., 1052 NORTH CHURCH STREET, GREENVILLE, SOUTH CAROLINA.

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Q Say that number again. I'm sorry.
A Eighty-five to ninety percent of the company is the K-12 schools.
Q Within that 85 or 90 percent of the K through 12 segment of your business, what part of that is interactive panels, and accessory products for those?
A Interactive panels would be less than five percent.
Q So the interactive panels --
A The broader classroom business, the broader classroom business, which would include the touch -- the electronic white boards and projectors, which are an alternative for schools that need that price-performance metric, was more like 15 to 20 percent of the business over the last several years.
Q And my client, Clear Touch, they don't sell the projectors or the white boards; right?
A Correct.
Q So it's the interactive -- and I'm trying to use the right terminology. The interactive panels is five percent of the eighty-five to ninety percent of the K through 12 business?
A Yeah, it would be -- it was six or seven percent if you extrapolate out. It would be five percent of the total, but a little bit more of the eighty-five to ninety percent.

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1 affiliated with it, no.
2 Q That's kind of unclear; don't you agree?
3 A No.
4 MR. ENGLISH: Object to the form.
5 THE WITNESS: I do not agree that it's unclear at
6 all. I think any reasonable business person you bring
7 in here, who is a senior manager of a company, who
8 reads this clause, and says it shall use employee's
9 good faith efforts to cause the company to have the
10 opportunity, that is saying it is the employee's job,
11 and he has fiduciary responsibilities, duties of
12 loyalty and duties of care, to represent the company to
13 get it the opportunity to take advantage of these
14 opportunities. That's what this provision says.
15 BY MR. SMITH:
16 Q After Mr. Trask left the company, left Encore, he
17 eventually -- he disclosed an interest in Clear Touch;
18 did he not?
19 A Yes.
20 Q Do you recall when about that was?
21 A I don't recall exactly, but it was in the fall time
22 frame of 2014. I believe October-ish.
23 Q In October of 2014, Clear Touch was competing with
24 Encore in certain markets, was it not?
25 A I don't recall.

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1 support.
2 Q Now, you mentioned the business model of Encore
3 earlier, to vet the VARs. You kept saying value-added
4 reseller, and that's -- that continues to be your
5 business model?
6 A Yes.
7 Q And has it always been your business model?
8 A Yes.
9 Q In that business model, you have suppliers for your
10 products, and then you resell them to end users;
11 correct?
12 A Yes.
13 Q You don't source product directly from manufacturers,
14 do you?
15 A Yes, we do.
16 Q You source panels directly from the manufacturer?
17 A You asked me if I source products.
18 Q I know.
19 A Yeah, I source ---
20 Q I'm asking a narrower question now.
21 A Okay. You're asking me about panels or products?
22 Q Panels.
23 A Today, we source panels, ViewSonic, through
24 distributors, like Ingram Micro, ScanSource.
25 Q So it's the same ---

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A Mr. Trask had been in the educational space for a long time and in the classroom technology world for a long time.

Q Isn't it completely possible he could have developed a customer list and contact database on his own before working for Encore?

MR. ENGLISH: Object to the form.

THE WITNESS: Mr. Trask worked for me for 14 months from a predecessor business -- came in for 14 months where our direct marketing initiatives to customers and our direct contact with customers was in his full scope of responsibility and knowledge of all that activity. And developing -- of knowing that, oh, yeah, Greenville County Schools is a school system I'd be able to sell to, is not what we're talking about. We are talking about specific near-term knowledge of installed bases, customer names, people to talk to, thought processes on what their near-term and long-term buying needs would be. That was all information generated and knowledge generated under my watch and ownership.

BY MR. SMITH:

Q And do you have an email somewhere where Mr. Trask is forwarding that information to himself?

A I do not have an email of Mr. Trask forwarding that to himself, but Mr. Trask purged emails at Encore.

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Q What do you mean by purged emails?
A 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. And I also believe that I would have more information around what Clear Touch's things did if Mr. Keone hadn't executed his mail merge, which I believe is a front for destruction of evidence. Keone is a smart guy. He's a CTO of a former public company. He knows to make copies of information. He's now taken the opportunity to purge his database of emails, blame it on a mail merge, and the only person he has to corroborate that activity is himself. And I think in his clear examples of deception -- deceit and dishonesty and self-dealing point directly to that's highly not -- highly -- not highly credible -- as I explained what happened. And you can obviously use thumb drives in a variety of other ways to take information off systems. You don't have to email it to yourself.
Q And do you have any evidence at all besides your belief that Mr. Trask did any of these things?
A I have a series of -- well, what I did do is I had to subpoena a couple of customers to get information to show that he was having communications with them and

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1 procurement requirements, in place to make the sales to
2 Leon from April 26, 2014 to April 25, 2015?
3 A We absolutely could have sold to Leon County schools.
4 Q Did you have the procurement requirements in place to
5 make those sales at the time?
6 A We could have satisfied any procurement requirements at
7 the time to make these sales, absolutely.
8 Q Is that a yes?
9 A Yes. So your perspective on this -- I keep -- I've
10 heard you point this out before. There are all kinds
11 of ways to work around this. There are national
12 contracts, there's ways to work through the vendor. We
13 already sold to them and, in a case where, if there was
14 some requirement that we had a challenge with, we would
15 normally work with a supplier and they would work in
16 such that we were still part of the deal and would have
17 gotten our thing achieved, but they did not. But
18 absolutely we had ways to achieve these things.
19 Q I understand your response and I just -- the question
20 is simple, again. Did Encore have what it needed to
21 have in place to satisfy the procurement requirements
22 to make those sales?
23 A We could have satisfied those requirements, yes.
24 Q Did you have a rep present in Florida at the time?
25 A We could have.

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Q Did you?
A We could have.
Q Is that a no?
A If the -- no -- it's not a fair question. If the customer came to us and said we need you to have a way to make this happen and we had known about that instead of them trying to take the customer, we would have worked it through and figured it out. We had done it dozens and dozens of times, hundreds of times, where there's a particular requirement and we work with a customer and we find a way to satisfy it. We could have had a JB partner. There's all kinds of things we could have done. It's not fair to ask the question of did we have an employee in Florida. And neither did they.
Q Mr. Newnam ---
A Mr. Higginbotham lived in Georgia.
Q I'm asking a simple question.
A And I've answered it.
Q No, you told me what you could have, would have, should have done. I'm asking you did you have someone there at the time? Yes or no?
A We could have satisfied this requirement. I don't know exactly what the requirement is here, but we would have satisfied it.

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Q Assuming the requirement is you had to have someone present as a resident in Florida at the time to make the sale, did Encore have that?
A We could have done that, yes.
Q Did Encore have someone there at the time? It's a simple question.
A First of all, I don't know that that's a requirement for here, the only requirement, what I will tell you is we could have satisfied it.
Q I don't know how else to ask this question. Did Encore have someone in Florida at the time?
A Did Encore have an employee who was a resident of Florida at the time of this sale?
Q Yes.
A We did not have a resident employee at the time. But we could have satisfied these requirements.
Q Thank you. And same question for the last time frame, the sales of Leon County, the April 26, 2015, to October 10, 2015.
A At some point, we employed a salesperson who lived in Florida. I do not recall ---
Q Mr. Masters know the answer to that?
A I don't recall a time frame.
Q Okay. Would Mr. Masters more likely know the answer to when you employed a ---

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A He might know the answer to that person.
Q Please let me -- I appreciate it. Please let me finish the question so she gets a clear transcript for us.
So Mr. Masters may know the answer to when you employed a sales rep as a resident in Florida; right?
A Yeah.
Q Okay.
A A sales rep who was a resident of Florida.
Q Right. Thank you. During this time of the Leon County sales, did Encore have the required procurement contract in place to make those sales?
A To my knowledge, yes. We had contractual vehicles that we could have used.
Q Do you know what they were?
A Tips, and I don't know what the others were specifically. But, again, it's customary for a customer to come to us and, if they have certain requirements, we talk through what are the options for us to be able to meet those requirements either with our supplier or independently.
Q I think we're done with that. Got Leon on here, obviously.
A Sorry.
Q That's fine. No, I mean, I'm just referring to it.
A Uh-huh.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. NO. 2015-CP-23-05757
ENCORE TECHNOLOGY GROUP, LLC,	)	DEPOSITION
PLAINTIFF,	)	OF
VS.	)	MICHAEL E. MEILINGER, CPA
KEONE TRASK AND CLEAR TOUCH INTERACTIVE, INC., F/K/A CLEAR TOUCH INTERACTIVE, LLC,	)	
DEFENDANTS.	)	

THE DEPOSITION OF MICHAEL E. MEILINGER, CPA, TAKEN BEFORE SHELLY M. BONTRAGER, PROFESSIONAL VERBATIM REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 9:39 A.M., TUESDAY, THE 1ST DAY OF AUGUST, 2017, AT THE LAW OFFICES OF ROE, CASSIDY, COATES AND PRICE, 1052 NORTH CHURCH STREET, GREENVILLE, SOUTH CAROLINA.

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1 Q So that assumption means that five percent of this
2 employee's time was the only percentage that benefited
3 Encore.
4 A I think it's important to understand that Mr. Trask was
5 in a position that was only judged by results. And the
6 results he achieved, from the discussions with
7 management, were a majority was selling the Clear Touch
8 products through the Encore distribution channel.
9 Q I appreciate that. Isn't your assumption that 95
10 percent of Mr. Trask's time ---
11 A Yes, sir. Yes, sir. That's ---
12 Q --- did not benefit Encore?
13 A Yes, sir.
14 Q The same with Mr. Higginbotham, I believe, didn't --
15 you estimated 95 percent of Mr. Higginbotham's time was
16 dedicated to Clear Touch; is that correct?
17 A Correct.
18 Q And, again, that is an assumption that only five
19 percent of the time Mr. Higginbotham spent working for
20 Encore benefited Encore.
21 A Correct.
22 Q And then you had 90 percent of Mr. Gallant's time
23 dedicated to Clear Touch; is that correct?
24 A Correct.
25 Q And that, again, is an assumption only ten percent of

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Mr. Gallant's activities at Encore benefited his employer at the time.

A Correct.

Q I do want to talk to you about the attendance at trade shows and that calculation, if we could look at that. I believe that starts on Page 6 and goes over -- right?

A Yes.

Q Goes over to seven. Now, tell me what you looked at to put together these trade show reimbursement numbers.

A We looked at the -- I want to say the QuickBooks records. If you go to Appendix 3, there's an exhibit of the expenses that were classified.

Q And where did you get the data for Appendix 3?

A From the accounting records of Encore.

Q Did you discuss any of the trade show cost numbers with management? Did they provide those to you beyond the numbers reflected in the accounting books?

A We discussed in very great detail the expenses and how they thought that 50 percent was a reasonable calculation on most of the shows from -- and basically -- and then when we did our high-level comparison, just more of like an allegory review, we determined that it's reasonable that 50 percent would be a conservative number for the amount of the trade show expenses that directly benefited Clear Touch.

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Q All right. And did your calculation on this Calculation 1 take into account any of the value that Mr. Higginbotham, Mr. Gallant, and Mr. Trask's actions gave to Encore?

A I think about entire sales -- and I don't remember the number, they're in my work papers -- but Higginbotham generated about 90 percent of his -- or a large percentage of his sales benefited Clear Touch. He was specifically assigned to, I think, the classroom technology sector and that's where he was selling it. So I think he -- again, all these individual sales and everything, it's really not about as much activities as about the results you achieve.

Q Yes.

A So my understanding is the results Higginbotham achieved clearly benefited Clear Touch.

Q And my question was does the calculation take into account, even when these sales were for Clear Touch, the money that Encore made on these sales?

A Does it eliminate the margins for the Encore profits? For the direct expense, no. It does not.

Q And Encore, you've seen the numbers. They earned profit on Clear Touch sales, did they not?

A They did.

Q Give me one second.

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1 A Okay.
2 Q Part of Mr. Higginbotham's calculation -- Mr.
3 Higginbotham's pay and expenses -- that includes for
4 the time after Mr. Trask left Encore in April of 2014?
5 A Correct.
6 Q And is the same true for Mr. Gallant's pay and
7 expenses, that inclusive in that calculation are pay
8 and expenses after the time Mr. Trask left Encore's
9 employ in April 2014?
10 A Answer to that question, I believe it is the entire
11 wages. I have work papers ---
12 Q Sure.
13 A --- but I'm not -- I can't clearly speak. I will --
14 when I read the deposition, I will clarify that.
15 Q Okay. Let me maybe ask a simpler question that gets to
16 the same point. Mr. Gallant's wages and expenses
17 included in this report, for which Encore wants to be
18 reimbursed, that includes the whole time Mr. Gallant
19 was employed by Encore; is that correct?
20 A I believe so.
21 Q Same question for Mr. Higginbotham. Doesn't it include
22 the whole time Mr. Higginbotham was employed by Encore?
23 A I believe so. Yes.
24 Q Without taking into account when Mr. Trask left Encore;
25 correct?

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A Correct.
Q Thank you. Wouldn't it be true that if the assumption that 95 percent of Mr. Trask's time solely benefited Clear Touch were inaccurate, it would affect this calculation?
A The calculation would go down by the percentage.
Q And the same would be true for Mr. Gallant and Mr. Higginbotham's assumed 90 and 95 percent, respectively?
A Correct.
Q I'm going to ask you to clarify something for me because I was a little confused on this. Looking at Page 6, and then I'm going to point out two things. One thing on Page 6 and I believe on Page 13. So looking at Page 6 first, let me know when you're ---
A I'm here.
Q --- you're there. Okay. I'm just looking at 2013 Trask, that first column on the left, Gross Wages.
A Uh-huh.
Q He had gross wages of 195,012; right?
A For 2013?
Q Yes, sir. Do you see what I'm looking at?
A Correct.
Q Where did you get the 195,012?
A What line are you looking at?
Q Excuse me. I'm looking at 2013. You mind if I reach

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Q Do you know how they calculated those percentages?
A We talked to them about how they calculated it. And it largely was based on the results that the different individuals got. And looking back on now knowing that how Clear Touch was actually owned by Mr. Trask and now this is where a lot of the activities -- I think Mr. Trask was actually terminated for -- in April for basically not really generating much results. So, I mean, we talked about it significantly. And based on what they were telling us and based on the sales and then some of the depositions and different things, we felt that it was a reasonable estimate.
Q Okay. And I want to pin down what these particulars are that make up this number; okay? You said sales. So you're looking at results. Are sales and results the same thing?
A For a salesman, I would argue yes.
Q Okay. For a non-salesman, what would results be?
A What the employer charges them with, how many accounts, you know, like developing different channels, developing margin, different things like that.
Q Okay. So, for Mr. Trask, what were the results you were looking at and Encore management was discussing with you in coming up with this 95 percent number?
A Well, some of the results we looked at was the results

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that Clear Touch was getting; all right? They were getting -- he was involved in a start-up company. It's obviously anyone who's been in a start-up business is there's a lot of moving pieces and things that do that. And then the wages that he was paid -- the pushing the sales towards the Clear Touch and the product changes and different things like that required a lot of his time and effort. I mean, there's this underlying assumption that if you, you know -- as a rule of thumb in my business, I don't hire people who have a business.

Q Sure. Okay. So, just so I'm clear what you're saying, you're assuming because Mr. Trask had a direct or indirect interest in Clear Touch in different times, any activity he had to do with Clear Touch was just for Clear Touch's benefit?

A There was a lot of the activities and the sales generated by his activities were Clear Touch sales.

Q What else that's not reflected in the documents that you gave us did Encore management tell you made up this 95 percent calculation?

A There were some depositions that talked about the activities of the different people and what was spent on that.

Q Which depositions?

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A I don't think we've -- not Trask, his deposition, but Gallant's deposition.
Q So you reviewed one or more depositions and relied on those in making these figures in your report?
A I don't know if we actually have the deposition. We were told about it when interviewing management.
Q Did you ever read a deposition transcript, Mr. Meilinger, for this report?
A No. I did not read a whole deposition.
Q Just so we're clear, then, you were relying on what Encore management was telling you about a deposition and coming up with some figures in this report?
A Yes.
Q Besides Mr. Gallant's, any other deposition testimony you recall?
A No.
Q What else did you get from Encore Management that's not reflected in these documents that you used in calculating the 90, 95, 95 percentages?
A Nothing. Nothing else.
Q Okay. For this first calculation, you're adding up the numbers from these three men's pay reflected on their W-2s; correct?
A Correct.
Q And then you're adding up a figure that reflects what

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1 Q Let's talk about a few I think you would have to make;
2 is that fair?
3 A Okay. Yes, sir.
4 Q First and foremost, to do this you would have to assume
5 Encore would have taken or recall Clear Touch
6 opportunity and become a supplier.
7 MR. ENGLISH: Object to the form.
8 MR. SMITH: What's the basis of your objection?
9 MR. ENGLISH: Well, I think it's vague and it's
10 leading.
11 BY MR. SMITH:
12 Q Would you have to assume Encore would have become a
13 supplier in order to make this calculation?
14 A I think there is an inherent assumption that since they
15 took the Clear Touch product that if they knew they
16 were available 35 percent cheaper, they would have done
17 that instead of paying their employee an extra 35
18 percent. I think that is clearly -- you know, I think
19 that's what the argument is about. So I don't know if
20 that's an assumption. I mean, that's a, you know,
21 clear fact. I mean, I don't think you're stepping out
22 on an assumption on that.
23 Q It's not an assumption that someone would have acted a
24 certain way in the past that they did not act?
25 MR. ENGLISH: Object to the form.

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1 THE WITNESS: I think if you acted -- okay. So
2 here's the facts as I see them. I'm just a CPA. I'm
3 not a lawyer. So the fact is that Encore made these
4 sales to its customers of the Clear Touch product; all
5 right? That's a fact. These sales had a margin that
6 Encore made; right? An employee of Encore, through a
7 separate company, was actually buying the products,
8 putting them in another company, marking those products
9 up, and selling them to Encore; all right? So I don't
10 see an assumption there.
11 BY MR. SMITH:
12 Q Do you know what Encore's business model is?
13 A I have some ideas of what Encore's -- they are a
14 technology company. They sell technology. Right.
15 Q Do you know they characterize themselves as a value-
16 added reseller?
17 A Correct. Yes.
18 Q And you understand what that means, don't you?
19 A Correct. That's you're buying something. You're
20 creating some value either with your expertise,
21 knowledge, installation, turnkey systems, so forth.
22 And because of that, you're making a profit.
23 Q And that business model doesn't include sourcing direct
24 materials, does it?
25 MR. ENGLISH: Object to the form.

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1 THE WITNESS: I don't know.
2 BY MR. SMITH:
3 Q Is that something you would need to know to assume that
4 they would have become a supplier of the panel?
5 A I don't think that a value-added reseller doesn't
6 source directly. I mean, there's, you know -- if you
7 buy your stuff from Cisco, right, isn't that the
8 direct? If you supply Cisco, you're buying it direct;
9 right? I mean, I have a lot of clients who buy direct
10 from the manufacturer that are value-added resellers.
11 I think that's wrong.
12 Q Okay. Do you know Encore has testified they have
13 always sold products competitive with the Clear Touch
14 product?
15 A No.
16 Q Do you think it could be an issue for Encore should
17 they start selling their own brand of product if they
18 had taken this opportunity as they say they would have?
19 A I don't see. I don't see it. You have to explain it
20 to me.
21 Q Do you know they sell ViewSonic products?
22 A Correct.
23 Q They sell Promethean products. Do you know that?
24 A Correct.
25 Q And let's assume the products are competitive with

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1 Clear Touch product.
2 A Correct.
3 Q Okay. And I'm saying, would you see an issue if Encore
4 had started selling its own brand of product by taking
5 this supplier opportunity while selling competitive
6 products from other vendors?
7 A I don't think that would preclude them from doing that.
8 No. Because they're selling competitors. I mean, they
9 sell ViewSonic; they sell the other one that competes
10 with them. You know, they might have chosen, if given
11 the opportunity, not to brand it as an Encore product.
12 They might have chosen, if given the opportunity, to do
13 it in a separate company. They might have, you know, I
14 mean...
15 Q But we don't know any of that, do we? Those are all
16 assumptions and guesses.
17 A Well, I mean, there is, you know, a profit motive that
18 would have dictated it. I think that, you know, it's
19 not like a stab in the dark.
20 Q Sure. I'm talking about you're assuming they could
21 have or would have branded it differently, not branded
22 it Encore. We don't know any of that, do we?
23 A I'm not assuming any of that.
24 Q Okay.
25 A I'm assuming that, if Trask could take into agreement

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1 to Encore and had shown them they could make an extra
2 34 percent, you know, as an employee, which is alleged
3 that he should have done, that they would have done it.
4 Q And your calculation here in Table 2, it also assumes
5 that to comply with the business opportunity provision
6 of Mr. Trask's contract, he had to bring the supplier
7 opportunity to Encore and allow them to source those
8 panels directly.
9 MR. ENGLISH: Object to the form.
10 THE WITNESS: I don't think it relies on that. It
11 could rely -- I mean, there's a lot of allegations that
12 basically lead to the lost profits.
13 BY MR. SMITH:
14 Q On Page 2 at the very top, I just want to pin down the
15 basis on which the damages in Table 2 arise out of;
16 okay?
17 A Okay.
18 Q I believe you cite to -- it says, (as read) "Represents
19 the profits diverted to Clear Touch by defendant's
20 alleged breach of fiduciary duties due to the loyalty
21 of the business opportunity provision of his agreement
22 with Encore and Trask's non-competing agreement with
23 Encore." Correct?
24 A That's what it says. Yes, sir.
25 Q And that's why we're divided up into different time

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. NO. 2015-CP-23-05757
ENCORE TECHNOLOGY GROUP, LLC,	)	30(b)(6) DEPOSITION
PLAINTIFF,	)	OF
VS.	)	DAVID MASTERS
KEONE TRASK AND CLEAR TOUCH INTERACTIVE, INC., F/K/A CLEAR TOUCH INTERACTIVE, LLC,	)	
DEFENDANTS.	)	

THE 30(b)(6) DEPOSITION OF DAVID MASTERS, TAKEN BEFORE SHELLY M. BONTRAGER, PROFESSIONAL VERBATIM REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 2:15 P.M., FRIDAY, THE 4TH DAY OF AUGUST, 2017, AT THE LAW OFFICES OF ROE CASSIDY COATES AND PRICE, 1052 NORTH CHURCH STREET, GREENVILLE, SOUTH CAROLINA.

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to talk to them then we'll wrap it up; okay? All right. Let's take a break.

(OFF THE RECORD)

BY MR. SMITH:

Q A few more questions then we'll get you out of here; all right? Did you talk to anyone about your testimony during the break?

A No.

Q Okay. Let's look at Exhibit Number 15, which, I believe, I just put it right in front of you there. And this is an email I talked to Mr. Newnam about a bit earlier. And I really wanted to ask you about the conversation it references that this supplier had with you. Do you need a chance to review it?

A Okay.

Q Do you recall this conversation?

A I do not.

Q You agree with me it's reflecting a supplier came to you and offered up a direct supplier relationship with Encore?

MS. BARKER: Object to form.

THE WITNESS: So ISTE is a large national conference.

BY MR. SMITH:

Q Uh-huh.

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A I don't recall the conversation. A lot of times these guys will look at the list of attendees and just blast emails out. And so it's hard for me to even comment on this one. I'm not sure who CNIT is, C-N-I-T. I'm not sure who that is.

Q Let me ask you this.

A Sure.

Q Did Encore look into this direct sourcing opportunity?

A So the email came to April. I was -- it shows my name on here as being copied. I don't remember getting this. I got a lot of emails after ISTE. There's a good chance I just deleted it. But it wasn't really even in my realm to make decisions on that, so...

Q As far as you know, did Encore look into the direct sourcing opportunity?

A Based on this email?

Q I'm asking you your knowledge as a representative of Encore right now.

A So as a representative of Encore, you know, that job fell to Keone and when he was an employee at Encore around trying to find us a solution around interactive technology. He came back with this solution and basically said, "This is the right one to go with." My job was to make sure that the sales team executed, you know, from a sales perspective, and it was really -- at

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this time, you know, our partnership was with Clear Touch. And so I had no reason to look elsewhere or communicate otherwise.

Q Mr. Trask didn't work for y'all at this point; did he?

A No. I understand that. I'm saying our partnership was still in place.

Q I understand your response.

A Right.

Q Who took over that role of finding these relationships once Mr. Trask left?

A So it would have been -- I mean, it would have been a combination of probably Michael and -- Michael, and Todd was involved as well. I was involved from a sales perspective if we needed -- but at the time, we didn't need any new relationships. So we weren't actively pursuing any. We felt like we had a good channel partner. Didn't need to -- you know, we basically had one or two -- you know, two -- usually two in each category so that we could present alternatives to customers and we had those locked up. So there was no reason to look at any -- elsewhere.

Q Okay. I've just got a few random questions. Based on some things Mr. Newnam indicated, you may be more equipped to shed some light on; okay?

A Sure.

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	C.A. NO.: 2015-CP-23-05757
ENCORE TECHNOLOGY GROUP, LLC, PLAINTIFF, VS. KEONE TRASK AND CLEAR TOUCH INTERACTIVE, INC., F/K/A CLEAR TOUCH INTERACTIVE, LLC, DEFENDANTS.	30(B)(6) DEPOSITION OF MICHAEL JOSEPH KNIGHT

THE 30(B)(6) DEPOSITION OF MICHAEL JOSEPH KNIGHT, TAKEN BEFORE WENDY SHANNON SULLIVAN, VERBATIM REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 9:31 A.M., FRIDAY, THE 18TH DAY OF AUGUST, 2017, AT THE LAW OFFICES OF ROE CASSIDY COATES & PRICE, P.A. LOCATED AT 1052 NORTH CHURCH STREET, GREENVILLE, SOUTH CAROLINA.

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BY MR. SMITH:

Q I have a couple quick questions and then we'll get this wrapped up; okay? I told you I'd ask this. Did you discuss your testimony with anybody during the break?

A No.

Q All right. One of the criteria, the evaluation criteria we talked about earlier, do you recall that testimony?

A Yes.

Q I believe one of the criteria you said Encore looks at is can Encore do this themselves; is that fair?

A Correct.

Q Excluding software, what else has Encore done themselves as far as the products they resell?

A Sure. There were a number of discussions that we had over time, which was, at one point, we had discussed a tablet that the districts might use. We had discussed even the panel discussion, which some of that was in the mix of Encore becoming and those types of things where we looked at some interactive overlays where Mr. Trask and Leo looked at those and validated whether or not those could've been something we could've done and built our own display. There were some conversations about that.

Q Are you saying Mr. Trask and Mr. Gallant looked into

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whether Encore could directly source and make its own brand of a panel?

A So, there were a lot of discussions about that, at that time. One of the technologies that was available that Mr. Trask had brought up was the ability for you to put a touchscreen panel over the top of a television.

Q Mm-hmm.

A And that was a conversation that was in and around Encore moving from CSI. I couldn't give you an explicit date as to when we would've had those conversations --

Q Mm-hmm.

A -- and what that turned out to be, but putting it back over, that was Mr. Trask and Mr. Gallant's areas of expertise, so I would've yielded to whatever they thought would've been best.

Q Okay. Thanks for that response to my question. It's pretty simple. A little more narrow than that; okay?

A Okay.

Q Excluding software, what has Encore done themselves?

A Oh, I'm sorry.

Q Sure.

A So, what we've done directly outside of the software -- and you're just talking specifically hardware?

Q Yes.

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Q Not services; correct?
A Yes.
Q Okay.
A Making sure I explain your question accurately --
Q Sure. Take your time.
A -- because there's a number of ways to format different technologies, that I want to make sure I'm being accurate with what you're asking me.
Q Take your time.
A Off the top of my head with that explicit criteria, I am not aware of anything that we would've done which would've been providing hardware in and of its own frame.
Q Thank you. You mentioned several times Mr. Gallant and Mr. Trask having what you call domain expertise in the panel --
A Sure.
Q -- the interactive technology classroom space.
A Yes.
Q Who's evaluating that classroom tech for Encore since Mr. Trask and Gallant left some time ago?
A So, what I've done is I've built a team that brings all of that information in. So, the team consists of Danielle Stengel, who has been in the classroom a very long time. It would include Mike Sebolt, who is a

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1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF COMMON PLEAS

3 COUNTY OF GREENVILLE

4 - - -

5 ENCORE TECHNOLOGY GROUP, LLC,	:	
6 Plaintiff,	:	
	:	Case No.
7 vs.	:	2015-CP-23-05757
8 KEONE TRASK AND CLEAR TOUCH INTERACTIVE, INC., F/K/A CLEAR	:	Transcript
9 TOUCH INTERACTIVE, LLC.,	:	Designated
	:	CONFIDENTIAL
10 Defendants.	:	

11

12 DEPOSITION OF KEONE TRASK 30(b)(6)

13

14 DATE TAKEN: Tuesday, May 9, 2017

15 TIME BEGAN: 9:40 A.M.

16 TIME ENDED: 4:27 P.M.

17 LOCATION: Wyche, P.A.
44 East Camperdown Way
18 Greenville, South Carolina 29601

19

20 REPORTED BY: Jeanne M. McLaren, CSR, RMR
EveryWord, Inc.
21 P.O. Box 1459
Columbia, South Carolina 29202
22 888-341-1114

23

24

25

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1 Clear Touch, LLC?
2 A. Did not.
3 Q. Let me show you what we're marking as
4 Exhibit 18.
5 (Plaintiff's Exhibit 18, list of employees
6 of Clear Touch Interactive, Inc., was marked
7 for identification.)
8 BY MR. ENGLISH:
9 Q. Is this a list of employees of Clear Touch?
10 A. Yes, but I cannot determine for which period.
11 Q. Well, if you'll look at the column called
12 "Hire Date"?
13 A. Um-hum.
14 Q. Is the first employee of Clear Touch indicated
15 on here a James Higinbotham, as of August 1st, 2014?
16 A. That is correct.
17 Q. But as of that time, you and your wife were
18 also officers of Clear Touch, right?
19 A. Correct.
20 Q. Were you all being paid a salary by
21 Clear Touch in 2014?
22 A. Was not being paid a salary until July 1st of
23 2014, and that was for myself.
24 Q. So your wife was not receiving a salary then?
25 A. That's correct.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

- - -

ENCORE TECHNOLOGY GROUP, LLC,	:	
Plaintiff,	:	
vs.	:	Case No. 2015-CP-23-05757
KEONE TRASK and CLEAR TOUCH INTERACTIVE, INC., f/k/a CLEAR TOUCH INTERACTIVE, LLC,	:	
Defendants.	:	

DEPOSITION OF TAMARA TRASK

DATE TAKEN: Wednesday, November 30, 2016

TIME BEGAN: 10:00 a.m.

TIME ENDED: 2:30 p.m.

LOCATION: Wyche, P.A.
44 East Camperdown Way
Greenville, South Carolina 29601

REPORTED BY: Mary Posey, Court Reporter
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

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1 all put into that company at that point. There was
2 really nothing to give them back.
3 Q Was there any understanding about whether
4 the Powells could get back into the Clear Touch
5 business, whether as an LLC or a corporation?
6 A No. They weren't willing to put any skin
7 into the game, anymore monies in the game. Like I
8 said, they weren't willing to participate.
9 I think Chris has his role of CEO. I think
10 that's where he wanted his thing to be. They had
11 twin babies. They did have a fire. I think just the
12 mindset was just -- just different paths that they
13 wanted to be on.
14 Q Now, you mentioned that your mother-in-law
15 got involved in Clear Touch at some point. Was that
16 Kathy Cruse?
17 A Correct.
18 Q Now, was her name not Kathy Trask?
19 A I have never known her as Kathy Trask, no.
20 Q When did you first meet her?
21 A I met her in -- either the -- sometime in
22 1990 or 1991.
23 Q And was she going by Kathy Cruse then?
24 A She was going -- no. She was going by
25 Kathy Crebs, I believe.

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1 Q Okay. And has she gone by Kathy Crebs ever
2 since you met her?
3 A No. She went and changed her name. She
4 had a spiritual thing go on so she's actually changed
5 her name since then to Katia Crebs.
6 Q Okay. Has her last name -- we'll call her
7 Ms. Crebs.
8 A Okay.
9 Q Have you always known her as Ms. Crebs
10 since you met her?
11 A I think I have known her as Cruse and
12 Crebs.
13 Q Why would you know somebody by two last
14 names?
15 A That's just her maiden name. She has gone
16 by both.
17 Q But when you first met her, you knew her as
18 Kathy Crebs.
19 A I guess. You know, it was his mom and I
20 knew her as Kathy, basically.
21 Q Did she remarry a Crebs after she was
22 married to a Trask? Is that what happened?
23 A Yes.
24 Q Okay. And why did she get involved in
25 Clear Touch?

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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,	)	**DEFENDANTS' POST TRIAL MOTIONS**
v.	)	
Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC,	)	
Defendants.	)	

I. INTRODUCTION

Defendants Keone Trask (*hereinafter* "Trask") and Clear Touch Interactive, Inc. (*hereinafter* "Clear Touch," and collectively with Trask, "Defendants"), through their undersigned counsel, respectfully file these post-trial motions in this matter. Defendants move for the Court to order Plaintiff elect its remedy, for judgment notwithstanding the verdict, or in the alternative a new trial, a new trial *nisi* remittitur, or relief from the judgment upon the grounds set forth below.

II. MOTION FOR ELECTION OF REMEDIES

Under the doctrine of election of remedies, Plaintiff must choose which cause of action it elects to utilize as its monetary judgment. "The issue is one of election of remedies, not election between causes of action. Election of remedies is the act of choosing between different remedies allowed by law on the same state of facts." *Inman v. Imperial Chrysler-Plymouth, Inc.*, 303 S.C. 10, 13, 397 S.E.2d 774, 776 (Ct. App. 1990). "Plaintiffs may only recover once for their actual damages." *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 341, 306 S.E.2d 616, 619 (1983).

Here, Encore alleged nine causes of action and the jury returned a verdict in its favor on six (two of which Defendants admitted liability upon prior to trial). (Exh. A - Verdict Form). Many of the causes of action were reliant upon the same facts and actions and therefore the alleged harm (available damages) Plaintiff claimed resulted from them was the same. For example, Encore alleged Clear Touch's sales to Leon County violated Trask's Non-Disclosure and Non-Solicitation Agreement (Breach of Contract), that he utilized Plaintiff's trade secrets to consummate those sales (SCTSA and Breach of Contract), and that Clear Touch took part in and encouraged those sales (SCTSA and Tortious Interference). The damages the jury determined Encore suffered under those three claims were the same – profits from sales to Leon County. (*See* Exh. A at 3-5). The largest actual damages amount awarded by the jury was under the Breach of Contract with Fraud claim – a cause of action that encompasses the facts and actions underlying all five other claims decided in Plaintiff's favor and, as detailed below, was the result of the jury adding together the actual damages determined under those other claims. Thus, Encore must elect a remedy which does not result in duplicative recovery.

Encore presented Plaintiff Exhibit 10-H entitled "Summary of Damages" which was a one-page document with the three alternative damages charts put together by its expert, Michael Meilinger. (Exh. B). The Verdict Form clearly shows the jury's use of and reliance upon the Tables reflected in this exhibit to determine the actual damages awarded. Mr. Meilinger testified at trial that the jury awarding damages reflected in Table 2 precludes awarding those in Table 1.[1]

[1] Even if Meilinger had not testified as he did, recovery of the lost profits reflected in Table 2 necessarily precludes recovery of the wages and expenses in Table 1 because the latter necessarily encompasses the costs Encore itself said it incurred to make those sales. Those costs were compensation to Trask, Gallant, and Higginbotham. Allowing recovery of both Table 1 and Table 2 damages results in a windfall to Encore because it would recover Clear Touch profits and the expenses it claims generated them.

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It is clear from the Verdict Form that the jury used actual damages from Tables 1 and 2 of Mr. Meilinger's report reflected in Plaintiff Exhibit 10-H in awarding damages. For the first cause of action, Breach of Duty of Loyalty, the jury awarded what is indisputably a percentage of the number Mr. Meilinger set forth in Table 1 – Direct Costs Incurred by Encore - reflecting percentages of Trask's, Gallant's, and Higginbotham's compensation. (Exh. A at 1; Exh. B).[2] There is no dispute that the Breach of Duty of Loyalty damage figure had to come from Table 1. *Id.* For the second cause of action, Breach of Fiduciary Duty, the jury awarded the Direct Damages on Products Sold to Encore from Clear Touch from 2/13/13 - 10/10/2015, directly from Table 2, totaling $675,361. (Exh. A at 2; Exh. B). For the third, fourth, and fifth causes of action, the actual damages awarded were identical and came directly from Table 2 - the Lost Profit on Sales Made to Leon County Schools from 4/26/14 through 10/10/15 totaling $424,945. (Exh. A at 3-5; Exh. B). The actual damages the jury awarded in the sixth cause of action, Breach of Contract with Fraud, were the sum of all the actual damages awarded in causes of action one, two, and three for a total of $1,476,039.40.[3] (Exh. A at 6). Mr. Meilinger's testimony was clear that if the jury awarded the damages in Table 2 they could not award those in Table 1.[4] Consequently, the total actual damages the jury awarded without duplication or windfall was $1,100,306.[5]

Presumably, Plaintiff will elect to accept the jury award from cause of action six, which holds the highest amount of actual ($1,476,039.40) and punitive damages ($2,000,000). To be

---

[2] As they were instructed by the Court, the jury considered the evidence and apportioned what it believed was an appropriate percentage to the figures in Table 1 which was somewhat less than the 95%, 90%, and 95% claimed by Encore.

[3] $375,733.40 (breach loyalty) + $675,361 (breach fiduciary) + $424,945 (causes of action III-V) = $1,476,039.40

[4] Likewise, if the jury had awarded damages from Table 3, then it would be precluded from awarding those in Tables 1 and 2 according to Plaintiff's expert. This jury however did not award damages from Table 3.

[5] 1,476,039.40 (Breach Contract with Fraud) - $375,733.40 (Breach loyalty – precluded by award of Table 2 damages) = $1,100,306

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clear, allowing more than one of the punitive damages awards would also be duplicative. "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." *Smith v. Strickland*, 314 S.C. 192, 197, 442 S.E.2d 207, 210 (Ct. App. 1994).

Notwithstanding the election of cause of action six, the actual damages within cause of action six are also duplicative. Because the jury added damages from Table 1 to the total from Table 2, which Mr. Meilinger testified precluded the award of damages from Table 1, the actual damages for cause of action six must be reduced to $1,100,306. Also, as a practical matter, Encore's recovery of the damages from Table 2 – Lost Profits on Sales by Clear Touch to Encore and Leon County – would necessarily preclude recovery of the expenses incurred to generate those sales which were Trask's, Gallant's, and Higginbotham's pay and expenses reflected in Table 1 (and reduced by the jury's apportionment determination). Therefore, recovery of the lost profits (Table 2) precludes Encore's recovery of the wages and expenses in Table 1. To allow both would result in a double recovery with Encore getting profits from sales without incurring the expense it claims was necessary to make them.

Encore's Breach of Contract with Fraud cause of action arose out of the same actions and occurrences underlying the other claims upon which the Plaintiff prevailed at trial; a fact reflected by the jury adding together the damage awards from those causes of action to arrive at its actual damages figure for the sixth cause of action. Thus, the damages awarded under that claim are the entirety of those available to the Plaintiff, and allowing it to recoup any others would result in duplicative recovery. Therefore, Plaintiff must elect a remedy that awards it no more than $1,100,306 in actual damages and $2,000,000 in punitive damages.

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III. MOTION FOR NEW TRIAL ABSOLUTE

SCRCP 59 permits a defendant to move for 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 heretofore been granted in actions at law in the courts of the State...." Defendants invoke Rule 59 and move that the Court grant it a new trial absolute due to Plaintiff presenting evidence of Michael Knight's computer system search it claimed showed Keone Trask destroyed evidence for the first time at trial and for submission of Table 3 to the jury.

A. Michael Knight Testimony Claiming Trask Destroyed Evidence

At trial, Plaintiff presented the testimony of Encore's Chief Technology Officer Michael Knight. Mr. Knight testified that some two weeks prior to trial he performed certain searches of Encore's computer systems which he claimed confirmed Mr. Trask deleted emails from his Encore account. According to Knight's testimony, the searches were performed either on September 11 or 13; two weeks prior to trial and Knight's testimony respectively. Knight referenced and Encore attempted to admit Plaintiff's Exhibit 84 containing a collection of 17 pages of emails as those used by Knight in conducting his searches. (Exh. C). This was the first time Defendants were made aware of Knight's searches and what Plaintiff claimed was the significance of the emails in Plaintiff Exhibit 84. Encore's actions leading up to Knight's trial testimony reveal deliberate efforts to withhold such evidence and ambush Defendants with it at trial. Plaintiff's tactics robbed Defendants of any opportunity to verify or challenge Knight's accusation or cure the unfair prejudice resulting from the jury hearing his testimony.

1. Encore's 30(b)(6) Testimony Alleging Document Destruction – Its "Belief"

Defendants noticed a number of items for Encore's 30(b)(6) deposition, including "[t]he factual bases for all claims asserted by you in your Complaint in this case." (Exh. D - NOD Pl.

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30(b)(6) # 46). The Complaint alleges Trask accessed Encore's computer system "without or in excess of authorization" and "misappropriate[ed] and/or destroy[ed] Encore property, software, and files...." Compl. ¶ 33. Encore identified four 30(b)(6) designees, including its CEO Todd Newnam, who was designated to cover most of the topics noticed, including the factual bases for all claims asserted in the Complaint. (*See* Encore 30(b)(6) (Newnam) 8:11-23).[6]

Newnam offered his testimony as Encore's corporate representative over the course of two days - July 18 and then August 4. During that testimony Newnam was specifically asked about Encore's accusations that Trask deleted emails:

> Q And do you have an email somewhere where Mr. Trask is forwarding that information to himself?
>
> A I do not have an email of Mr. Trask forwarding that to himself, but Mr. Trask purged emails at Encore.
>
> Q What do you mean he purged emails?
>
> A 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. And I also believe that I would have more information around what Clear Touch's things did if Mr. Keone hadn't executed his mail merge, which I believe is a front for destruction of evidence. Keone is a smart guy. He's a CTO of a former public company. He knows to make copies of information. He's now taken the opportunity to purge his database of emails, blame it on a mail merge, and the only person he has to corroborate that activity is himself. And I think in his clear examples of deception –deceit and dishonestly and self-dealing point directly to that's highly not – highly—not highly credible – as I explained what happened. And you can obviously use thumb drives in a variety of other ways to take information off systems. You don't have to email it to yourself.
>
> Q And do you have any evidence at all besides your belief that Mr. Trask did any of these things?
>
> A I have a series of – well, what I did do is I had to subpoena a couple of customers to get information to show that he was having communications with them and communications with TSItouch and other vendors that Encore could have had, and I had used those subpoenas to get information to show the emails that he had with them prior that you guys didn't produce.

***

> Q Okay. And those were all the defamatory statements that underlie your defamation claim?

[6] Mr. Knight was identified for only one 30(b)(6) topic – Encore's decision to start selling Clear Touch products. (Exh. D #26).

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A These are the ones that I know of. I had hoped to find some more email evidence within Clear Touch, but given the mail merge and destruction of evidence, we didn't get many of those.

Q And you have no evidence besides your belief that evidence has been destroyed here, do you?

A Yeah. I'm pretty – I feel confident in that one, yes.

Q And that's your feeling?

A I believe Mr. Trask did that on purpose and we had to do it through subpoena to a few of our customers and to TSItouch to get the emails, yes.

(Encore 30(b)(6) (Newnam) 232-34, 294:6-18).

As the above shows, Encore's 30(b)(6) testimony on July 18th was that its evidence of alleged email destruction was Newnam's belief it occurred and the fact that Plaintiff had to subpoena some third parties to get email communications not produced by Defendants.[7]

2. Defendants' Motion *in Limine* and Hearing on September 21, 2017

Defendants filed Motions *in Limine* on September 13, 2017, one of which sought to exclude from trial "[t]estimony or evidence accusing, alleging, suggesting, or in any [way] implying that Defendants withheld, hid, or destroyed evidence." (Def. Mot. *Limine* Issue No. 15). Plaintiff filed an opposition memo on September 21, 2017, in which it addressed Issue No. 15 not once mentioning Knight's search nor the document evidence (Pl. Exh. 84) it attempted to offer at trial to claim Trask destroyed evidence. (*See* Pl. Resp. Opp. Defs. Mot. Limine pgs. 5-6). According to Knight's testimony at trial, the searched had been conducted at least a week prior to Plaintiff's opposition memo submission.

On September 21, 2017, four days prior to trial, the Court held a phone hearing on the Parties' respective motions in limine. In addressing Issue No. 15 Defendants contended Plaintiff

[7] Encore referenced Clear Touch's email merge. That issue was addressed in the discovery process, with Mr. Trask providing an Affidavit that explained the mail merge and that Clear Touch discovered in looking for emails in the discovery process that some had been lost in the transition. Plaintiff accused Trask of orchestrating this outcome again without any evidence other than its belief.

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had no evidence of email or document destruction. Plaintiff claimed it did have such evidence. The Court explicitly instructed Plaintiff to provide Defendants any evidence it had that Trask destroyed, withheld, or mishandled evidence by 5:00 pm that day because it "did not do trial by ambush." Plaintiff represented to the Court that all evidence had been disclosed, yet it had not and did not disclose Knight's search or what it claims Plaintiff Exhibit 84 showed until he was on the stand at trial.

3. Plaintiff's Exhibit 84

Plaintiff had 84 potential trial exhibits, and unbeknownst to Defendants, intended to use Plaintiff Exhibit 84 to support Knight's testimony concerning Trask's alleged email deletion. The exhibit itself and the manner in which it was presented before Knight took the stand on September 27th reflects a deliberate plan to withhold this evidence and ensure Defendants were not aware that Encore would use it to claim Trask destroyed evidence.

Plaintiff Exhibit 84 is a collection of random emails that in no way indicate they are evidence of Trask destroying emails nor foretell Encore's intent to utilize to make that claim at trial. Plaintiff Exhibit 84 includes an unrelated grouping of emails from Encore's May 31, 2017 supplemental production (a collection of over 10,000 pages of responsive documents not previously produced because Plaintiff failed to search for "Clear Touch" in doing its email searches) and another from its September 19, 2017 production following revelation that it still had not produced responsive emails less than two weeks before trial.[8] Review of these documents in

[8] Use of the documents from the September 19th production is also troubling. Knight performed his searches on either September 11 or 13 according to his testimony. This means he used and Plaintiff intended to offer emails at trial which had not been produced to the Defendants at the time the searches were conducted. Those emails were only produced on September 19th following Defendants' discovery that Plaintiff had not provided relevant emails, including one with the subject line "Keone Trask" concerning his termination from Encore.

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no way indicated they were evidence that Trask destroyed some of his Encore emails, and the Plaintiff never identified them as such.

The Plaintiff went further than simple omission however. Its exhibit index described Plaintiff Exhibit 84 simply as "Emails sent to Keone Trask at Encore." (Exh E - Pl. Trial Exhibit Index). During a pre-trial meeting the morning of September 25th, Defendants objected to admissibility of this exhibit, which Plaintiff noted but did not offer any indication or explanation of what the relevance of the exhibit was nor inform Defendants it would claim the exhibit was evidence of Trask deleting emails.

4. Ambush at Trial

On September 27th, Plaintiff called Michael Knight as a witness and for first time through his testimony revealed he had conducted searches of Encore's computer system two weeks prior utilizing Plaintiff Exhibit 84 and confirmed Trask deleted emails from his Encore account. Defendants immediately objected as they were hearing this information for the first time. Due to Plaintiff's actions the jury was also privy to this information at the same time as the Defendants. Argument concerning Defendants' objection continued outside the jury's presence. Defendants noted the prior 30(b)(6) testimony, its Motion in Limine, and the hearing on it in which the Court directed Plaintiff to disclose all evidence it had of alleged destruction of evidence by 5:00 pm that day.

In response to Defendants' objection concerning this testimony and Plaintiff Exhibit 84, Plaintiff represented that all documents in Plaintiff Exhibit 84 had been produced prior to Encore's 30(b)(6) – post trial review of which showed this not to be the case. More importantly, Plaintiff did not offer any, much less a reasonable, explanation for its withholding of this evidence nor address the manner in which that was achieved. It did not deny the representations made by its

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30(b)(6) deponent nor offer any explanation or reason for not disclosing this evidence earlier, including when the Court specifically directed it to do so on September 21st. Rather, Plaintiff attempted to deflect responsibility for its actions and excuse it by saying that Trask knew what he deleted and could have informed his counsel of it. The ludicrousness of this circular reasoning is self-evident and misses the point. Plaintiff knew Knight performed the searches and that it intended to offer his testimony concerning it along with Plaintiff Exhibit 84 as support at trial. Not only did Plaintiff fail to disclose this evidence to the Defendants, it buried the document portion of it as the last exhibit among 84 and gave it a generic (and inaccurate) description so as to not indicate what it was intended to show. Plaintiff had multiple opportunities to disclose this evidence prior to trial and failed to do so. More egregiously, Plaintiff did not abide by the Court's express instruction to turn over all evidence it had of Trask's alleged destruction of evidence by 5:00 pm on September 21st, a time at which Knight's searches had been done for more than a week. Failure to comply with the Court's instruction alone should serve as adequate grounds to grant a new trial, however that coupled with the actions taken to prevent this evidence from reaching Defendants until Knight was on the stand certainly call for it. Regardless, the undisputed facts recounted above reveal a calculated and deliberate scheme to withhold evidence and ambush Defendants with it at trial. As a result, Defendants were unfairly prejudiced when its case was submitted to a jury who heard unchallenged testimony that Trask destroyed evidence.

Federal courts' approach to determining whether a party's untimely disclosure of evidence is substantially justified is instructive and shows Plaintiff's withholding of the Knight searches was without appropriate justification. "District courts are accorded 'broad discretion' in determining whether a party's nondisclosure or untimely disclosure of evidence is substantially justified or harmless." *Bresler v. Wilmington Trust Co.*, 855 F.3d 178, 190 (4th Cir. 2017) *quoting*

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Wilkins v. Montgomery, 751 F.3d 214, 222 (4th Cir. 2014). In making this determination, a district court should be guided by the five *Southern States* factors:

> (1) the surprise to the party against whom the evidence would be offered; (2) the ability of that party to cure the surprise; (3) the extent to which allowing the evidence would disrupt the trial; (4) the importance of the evidence; and (5) the nondisclosing party's explanation for its failure to disclose the evidence.

S. States Rack & Fixture, Inc. v. Sherwin-Williams Co., 318 F.3d 592, 597 (4th Cir. 2003). "The first four factors ... relate primarily to the harmlessness exception, while the last factor, addressing the party's explanation for its nondisclosure, relates mainly to the substantial justification exception." *Bresler*, 855 F.3d at 190. Consideration of these factors show that Plaintiff's nondisclosure of Knight's searched prior to trial was not justified. Defendants were certainly surprised to hear Knight's testimony about the searches and had no opportunity to cure the surprise. Further, this was important and impactful evidence. Finally, Plaintiff did not offer any explanation for its failure to disclose the evidence and instead quipped Mr. Trask knew what he deleted and could have informed his lawyers of it. *Russel v. Absolute Collection Services. Inc.*, 763 F.3d 385, 397 (4th Cir. 2014)(Court rightfully excluded evidence first disclosed two months prior to trial).

Plaintiff attempted to utilize Knight's testimony to have the Court charge the jury on spoliation. The Court rightly rejected Encore's request for a spoliation charge noting that it had not proven Defendants destroyed evidence. The Court's conclusion on this issue and the fact that no spoliation charge was given shows that Knight's testimony should have never been presented to the jury at all. It was irrelevant to the issues before the jury and therefore provided no probative value. Its presentation however resulted in undue prejudice to the Defendants and as such should have not been offered in the presence of the jury. Plaintiff knew this and withheld the information to allow it to be presented to the jury and force a contemporaneous objection rather than afford Defendants a fair opportunity to prevent its presentation to the jury in the first place.

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Knight's testimony concerning the email deletion resulted in irreparable harm and prejudice to the Defendants. Without knowing about the searches performed by Knight, Defendants could not verify their accuracy or meaning, much less challenge the representation that they confirmed Trask deleted some of his Encore emails. Plaintiff's case included consistent besmirching of Trask's character and honesty. Knight's testimony went further, not simply continuing the dismantling of Trask's character, but by blaming any lack of evidence proving the Plaintiff's case on Trask's alleged destruction of it. 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. The only purpose of Knight's testimony therefore was to prejudice the jury against Trask and Clear Touch. The verdict rendered made it clear the jury thought Trask deserved to be punished. They reached that decision with Knight's testimony in mind. Without any ability to meaningfully address Knight's testimony, this inflammatory evidence was presented to the jury unchallenged and impacted their determination to award punitive damages and their conclusion as to the amount. While Plaintiff did not get its spoliation charge, it was granted a *de facto* one by Knight's testimony. Plaintiff should not be allowed to benefit from its concealment of evidence and ambush at trial before the jury. Defendants respectfully request the Court make clear that Plaintiff's actions will not be tolerated nor allow Encore to benefit from them. This was egregious conduct that warrants a substantial and meaningful response. It irreparably tainted the jury and thus the entire trial. Therefore, Defendants respectfully request the Court grant a new trial absolute.

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B. Submission of Table 3 to the Jury Caused Undue Prejudice to Defendants

Defendants objected to the admission of Table 3 reflected in Plaintiff Exhibit 10-H because it contained duplicative purported damage figures – Clear Touch's normalized profits and the fair market value of the "Clear Touch Opportunity" as of 12.31.15. Defendants contended that the recovery of one (profits or fair market value) necessarily precluded recovery of the other.[9] Specifically, Table 3 titled Damages Related to Loss of Business Opportunity claimed to reflect that Encore had suffered $5,536,254 worth of damages due to Trask's alleged breach of the Business Opportunity clause in the Agreement. The primary issue with Table 3 is that it was an attempt to have the jury award Encore both all of Clear Touch's normalized profits through the end of 2015 and the "value of the Clear Touch opportunity" as of that date; the latter being valued by Plaintiff's expert at $3.9M. Stated differently, it wanted to make Clear Touch a company that's never earned a dime and then have it pay $3.9M for its value, which was determined by the profits it made but no longer had. While the jury ultimately did not directly use Table 3 in awarding damages, 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. Simply put, Table 3 had an impact on the jury's view and understanding of the allowable damages and therefore influenced its final decision concerning actual damages. A jury faced with damages ranging from $488,041 - $1,100,306 (Tables 1 and 2) necessarily views the evidence and determines the damages award differently than one believing the Plaintiff can recover between $488,041 and $5,536,254 (Tables 1 and 3). The Verdict Form reflects the jury chose the middle damages range (Table 2). However, the mere fact that this was the middle range due to the

[9] The Court initially agreed one could not take all of Clear Touch's profits and then make it pay millions for the value of its business (a number calculated from those profits it no longer had). Ultimately, Table 3 was admitted and allowed to be considered by the jury over Defendants' objections.

submission of Table 3 was unfairly prejudicial to the Defendants and tainted the jury's damages finding.

In light of the foregoing, Defendants respectfully request the Court order a new trial absolute pursuant to SCRCP 59.

IV. MOTION FOR RELIEF FROM JUDGMENT

SCRCP 60(b) allows the court to grant a party relief from a final judgment "for the following reasons: (1) mistake, inadvertence, *surprise*, or excusable neglect...[or due to] (3) *fraud, misrepresentation*, or *other misconduct of an adverse party*." (*emphasis added*).[10] For the reasons detailed above concerning Plaintiff's actions related to the Knight testimony, Defendants respectfully move this Court pursuant to SCRCP 60(b) to grant them relief from the final judgment. Plaintiff's actions as detailed above resulted in prejudicial surprise at trial and constitute fraud, misrepresentation, and/or misconduct warranting the Court granting Defendants relief from the judgment pursuant to SCRCP 60(b).[11]

Fraud upon the court is a narrow and invidious species of fraud that subverts the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. *Perry v. Heirs of Law of Gadsden*, 357 S.C. 42, 590 S.E.2d 502 (Ct. App. 2003). The court grants relief for extrinsic but not intrinsic fraud on the theory that intrinsic deceptions should be discovered during the litigation itself, and to permit such relief would undermine the stability of all judgments; the essential distinction between intrinsic and extrinsic fraud for

[10] SCRCP 60(b) allows the Court to provide Defendants relief from the judgment in a form other than by new trial as argued for under Rule 59; impowering it to provide alternative relief in the form it deems appropriate.

[11] The term "fraud" is one utilized by the Rule and the case law cited. It is not one Defendants necessarily wished to utilize however it is how the courts have characterized actions warranting relief under SCRCP 60(b).

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purposes of relief from judgment is the ability to discover the fraud. *Gainey v. Gainey*, 382 S.C. 414, 675 S.E.2d 792 (Ct. App. 2009). For purposes of requirement that fraud must be extrinsic to support granting relief from judgment on basis of fraud, fraud is "extrinsic" when it is collateral to the issues tried in a case and effectively deprives the litigant of a fair hearing or the opportunity to present its case. *Jamison v. Ford Motor Co.*, 373 S.C. 248, 644 S.E.2d 755 (Ct. App. 2007).

Defendants contend the Plaintiff's actions related to Knight's testimony constitute extrinsic fraud for which a new trial or other relief from the judgment should be granted because it deprived Defendants of a fair opportunity to present their case. This was not intrinsic fraud that should have been discovered through the litigation process. In fact, Defendants actively attempted to discover it, yet the Plaintiff's actions prevented that from occurring even after the Court ordered Plaintiff to turn over all evidence it had concerning Trask's alleged deletion of emails or other destruction of evidence to Defendants by 5:00 pm on September 21st. Rather than abide by this Court's directive, Plaintiff ensured this evidence would not be revealed until Mr. Knight was sitting on the witness stand and Defendants were left with no ability to address or rectify the harm it caused in the jurors' minds. This was an unfortunate incident and an issue Defendants have been forced to address due to Plaintiff's actions.

Therefore, Defendants respectfully request the Court grant them relief from the judgment pursuant to SCRCP 60(b).

V. MOTION FOR NEW TRIAL *NISI* REMITTITUR

Defendants' move for a new trial absolute, or in the alternative, a new trial *nisi* remittitur. The trial court has the power to grant a new trial or a new trial *nisi* when it finds the amount of the verdict to be excessive. *Proctor v. Dep't of Health & Envtl. Control*, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006). Defendants must show compelling reasons to justify invading the jury's

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province. *Id.* "When considering a motion for a new trial based on the inadequacy or excessiveness of the jury's verdict, the trial court must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." *Id.* (citation omitted). For punitive damage awards to stand, they must be constitutional; a requirement the courts have evaluated by inquiring whether such awards comport with due process. "Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a state may impose." *BMW of North America v. Gore*, 116 S.Ct. 1589, 1598 (U.S. 1996).

First and foremost, the trial judge is obligated to review a jury's punitive damages award to ensure it was not the result of passion or prejudice. S.C. Code Ann. § 15-32-520(F)("If punitive damages are awarded, the trial court shall review the jury's decision, considering all relevant evidence, including the factors identified in subsection (E), to ensure that the award was not excessive or the result of passion or prejudice.").[12] Submission of Knight's testimony regarding alleged document destruction resulted in a jury determining the propriety and amount of a punitive damages award motivated by undue prejudice and passion incited by admission of Knight's surprise testimony.

The South Carolina Supreme Court, in *Gamble v. Stevenson*, 305 S.C. 104 (1991), identified eight considerations that trial courts should apply in conducting post-judgment due process review of any punitive damages award. These are:

> (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

[12] S.C. Code Ann. § 15-32-520(E) lists a set of 11 factors for a jury to consider in determining whether to award punitive damages, and the amount of such damages if awarded.

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> award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) … "other factors" deemed appropriate.

Id. at 111–12.

Here, Plaintiff attempted to question Defendants on the 2016 revenue of Clear Touch, intimating that Clear Touch had sufficient funds to pay a large jury award.

> In assessing punitive damages, "the wealth of a defendant is a relevant factor" in determining the defendant's ability to pay, but only evidence of net worth and extrapolations from net worth may be introduced on the issue. *Branham v. Ford Motor Co.,* 390 S.C. 203, 239–40, 701 S.E.2d 5, 24–25 (2010). In addition, such evidence must be handled cautiously, since "the presentation of evidence of a defendant's net worth creates the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences." *Id.* at 239, 701 S.E.2d at 24 (quoting *Honda Motor Co. v. Oberg,* 512 U.S. 415, 432, 114 S.Ct. 2331, 129 L.Ed.2d 336 (1994)).

Sulton v. HealthSouth Corp., 400 S.C. 412, 420 (2012). By allowing the jury to hear that Clear Touch had a revenue of over $17,000,000 in 2016, the jury was able to act on passion and prejudice to award its excessive punitive damages verdict with the fictitious notion those revenues reflect or were indicative of Clear Touch's actual profits. Revenue has no relation to the net worth of Clear Touch or Keone Trask. "Putting this huge sum of money into the minds of the jury, reflecting the company's net income but accounting for none of its expenses and obligations, was almost certainly misleading and very likely to have stirred any jury bias against big businesses." *Id.* at 421.

Further, an award of such a large punitive damages amount, does not serve the purpose of such awards when the *Gamble* factors are considered. First, a large punitive damages award in this situation will not likely deter any future behavior of the kind undertaken by Trask (and/or Clear Touch). Trask's actions were taken under specific circumstances in an effort to not reveal his interest in his then-employer's supplier of panel products. Trask has long since parted ways with Encore and now runs Clear Touch. He is not going to be presented the opportunity to

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undertake the actions underlying this suit again; making deterrence unnecessary. Further, the large actual damages awarded in and of itself are substantial enough on their own to achieve the goals of punishment and deterrence.

Therefore, Defendants respectfully request the Court grant them a new trial *nisi* remittitur.

VI. MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT[13]

SCRCP 50(b) permits a defendant to move for judgment notwithstanding the verdict whenever a motion for directed verdict was made at the close of all evidence and denied. Defendants invoke Rule 50(b) and respectfully move the Court grant it judgment in this matter notwithstanding the jury's verdict because Plaintiff's breach of contract claims rely upon unenforceable provisions of the Non-Disclosure and Non-Solicitation Agreement and Plaintiff did not provide sufficient evidence to establish essential elements of its trade secrets claim.

A. The Restrictive Covenants Upon which the Jury Relied are Unenforceable

The jury found that Trask breached his Non-Solicitation and Non-Disclosure Agreement (the "Agreement") with Encore and awarded $424,945 in actual damages for that breach. (Exh. A at 3). That number is taken directly from Table 2 of Pl. Ex. 10-H - the Lost Profits on Sales Made to Leon County from 4.26.14 – 4.25.15 and from 4.26.15 - 10.10.15. (Exh. B - Pl. Ex. 10-H). The jury's finding and the damages awarded under this cause of action could only be based upon it determining Trask breached the non-solicitation of customers clause (non-compete) and/or the confidentiality (non-disclosure) provisions of the Agreement by making sales directly to Leon County.[14] The Agreement's non-solicitation provision and confidentiality clauses are

[13] The substantive points of law were raised previously in Defendants' Motion for Partial Summary Judgment and in its Directed Verdict Motions at trial.

[14] Breach of the confidentiality provisions would be a necessary finding at a minimum to award profits from sales to Leon County from 4.26.15 – 10.10.15 because Trask's non-compete expired on April 25, 2015.

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unenforceable as a matter of law and warrant the Court ordering judgment notwithstanding the verdict on Plaintiff's breach of contract claims.

Covenants not-to-compete are looked upon with disfavor by South Carolina courts, critically examined, and strictly construed against the drafter. *Faces Boutique, Ltd. v. Gibbs*, 318 S.C. 39, 41, 455 S.E.2d 707, 708 (Ct. App. 1995). The drafter bears the burden of showing enforceability. *See Delmar Studios v. Kinsey*, 233 S.C. 313, 104 S.E.2d 338 (1958). A covenant not to compete will be upheld only if it is: (1) necessary for the protection of the employer's legitimate business interests; (2) reasonably limited as to time and place; (3) not unduly harsh in hindering the legitimate efforts of the employee to earn a living; (4) in accord with public policy; and (5) supported by valuable consideration. *Rental Uniform Service v. Dudley*, 278 S.C. 674, 301 S.E.2d 142 (1983).

The jury's verdict clearly reflects it found Trask violated either the non-compete provisions and/or the confidentiality clauses of the Agreement by selling directly to former Encore customer Leon County Schools. That finding cannot stand because neither restrictive provision is enforceable as a matter of law as they are overbroad and unreasonable restraints on competition.

1. The Agreement's restrictive covenants are impermissibly overbroad

The Agreement's non-solicitation of customers and confidentiality provisions ("restrictive covenants") are impermissibly overbroad and therefore unenforceable. To be enforceable in South Carolina, restrictive covenants must be, among other things, narrowly tailored for the protection of legitimate business interest. *Milliken & Co. v. Morin*, 399 S.C. 23, 31, 731 S.E.2d 288, 292 (2012)(internal citation omitted). The reasonableness of the particular restriction, whether geographic, temporal or otherwise, can often be determinative of the enforceability of a covenant not-to-compete. *Somerset v. Reyner*, 233 S.C. 324, 330, 104 S.E.2d 344, 346 (1958)("If the

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territorial scope of the restraint is unreasonable, no inquiry need be made as to the presence or absence of other necessary requirements."); *Stringer v. Herron*, 309 S.C. 529, 532, 424 S.E.2d 547, 548 (1992) *citing Standard Register Co. v. Kerringon*, 238 S.C. 54, 119 S.E.2d 533 (1961). Freedom from such unnecessary encumbrances forms the bedrock of a free market economic system and therefore "a restriction against competition must be narrowly drawn to protect the legitimate interests of the employer." *Faces Boutique, Ltd. v. Gibbs,* 318 S.C. 39, 42 (Ct. App. 1995)(Held covenant prohibiting worker from directly or indirectly owning, managing, or operating any business in direct competition with former employer's type of business overbroad and unenforceable)(internal citations omitted). The Agreement's restrictive covenants exceed the bounds of reasonableness and legitimate protection of Plaintiff's business interest and are therefore unenforceable.

a. The Agreement's non-solicitation of customers clause is overbroad

First, the non-solicitation of customers provision attempts to prevent Trask from "directly or indirectly" soliciting, influencing, contacting, selling to, servicing, or dealing with Customers of Encore. The Agreement relied upon a customer (rather than geographic) based restriction to define its scope. Due to Encore's overbroad definition of "Customer," the non-solicitation provision's reach is outside the recognized realm of reasonableness. Specifically, the paragraph entitled "Non-Solicitation of Customers" states that the Employee may not:

> [D]irectly or indirectly solicit, influence, contact, sell to, service, or deal ("Solicit") with 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.

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"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.*

(Exh. F at 2)(*emphasis added*).

According to Encore, (iii) applied to Trask because he had access to the pricing, advertising, and marketing schemes for all Encore customers. Encore's definition of "Customer" does not limit it to customers with whom Trask had contact with, knowledge of, or that were located in the territory in which he conducted business. Pursuant to Encore's definition of "Customer," Trask could not do business with any Encore customers, past, present, or future regardless of whether he had any contact with or knowledge of them during his employment, no matter where they were located, when they conducted business with Encore, or what products they purchased. With such a broad definition, Encore would be able to claim Trask was prohibited from dealing with almost any entity; and it is irrelevant they sought enforcement concerning just one at trial.

Appropriately drafted non-compete clauses do not allow such fluidity in determining the scope of the restriction nor allow *post hoc* definition by the drafter employer. Encore's broad definition of "Customer" expands the reach of the non-solicitation provision well beyond the legitimate and recognized scope of customer based restrictions to include areas in which Trask never did business and customers with whom he had absolutely no contact with while at Encore. *Collins Music Co. v. Parent*, 288 S.C. 91 (Ct. App. 1986)(Customer restriction must be limited to specific customers); *Standard Register v. Kerringan*, 238 S.C. 54 (1961)(Territorial restriction reasonably limited if restrained to employee's area of responsibility.). This overbroad customer restriction renders the non-solicitation provision unenforceable as such restrictive covenants must

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rise and fall upon their own terms. *See Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010)(The lack of any reasonable territorial restriction is fatal to its enforcement and overbroad territorial restriction could not be "blue penciled" by the court).[15]

b. The Agreement's confidentiality provisions are overbroad

Second, the Agreement's confidentiality provisions are also overbroad and unenforceable as a matter of law. The Agreement contains an incredibly all-inclusive kitchen sink definition of what constitutes "Company Data and Trade Secrets":

> The Company has a propriety 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, methods employed or sold by 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 construction 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 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 Employees acquired while employed with Company.

[15] In *Poynter*, the South Carolina Supreme Court explicitly ruled that the judiciary may not reform or modify non-compete provisions to make their scope reasonable and thereby enforceable. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 588, 694 S.E.2d 15, 16 (2010)("The restrictions in non-compete clause(s) cannot be rewritten by a court or limited by the parties' agreement, but must stand on their own terms....").

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(Exh. F at 1). "Company Data" and "Trade Secrets" under the terms of the Agreement can encompass nearly anything and everything Encore wishes it to, whether real, imaginary, or anticipated. The Agreement contains a laundry list of items Encore deems confidential with multiple qualifying clauses making it clear those items *may include but are not limited* to what is set out in the document. The broad and amorphous definitions of "Trade Secrets" and "Company Data" provide Encore an impermissible amount of leeway to make *post hac* determinations of what constitutes Company Data and/or Trade Secrets and claim that a former employee breached their obligations to keep that information confidential or refrain from using it.

The Agreement's confidentiality provision prohibits Trask from using, misappropriating, or divulging Encore's Trade Secrets in perpetuity and requires he refrain from doing the same with any Company Data not considered a trade secret for five years after his employment. (Exh. F at 1). The clear intention and effect of these provisions is to restrict Trask's post-employment competitive activities by prohibiting him from taking part in any business similar or related to Encore's rather than to simply restrict dissemination of the company's proprietary information. Thus, the practical effect of enforcing the confidentiality provisions is that of a covenant-not-to-compete. *See Carolina Chemical Equip., Inc., v. Muckenfuss*, 322 S.C. 289, 293-94, 471 S.E.2d 721, 723 (S.C. App. 1996)(Regardless of the label "Covenant Not to Divulge Trade Secrets" "this section would substantially restrict Muckenfuss' competitive employment activities. Because it basically has the effect of a covenant not to compete, we must subject it to the same scrutiny as a covenant not to compete."). Therefore, the confidentiality provisions of the Agreement should be subjected to the same stringent scrutiny as a non-compete. *Id.*; *Nucor Corp. v. Bell*, 482 F. Supp. 2d 714, 730 (D.S.C. 2007)("For all intents and purposes, such a broadly written non-disclosure covenant not only forbids Bell from divulging trade secrets, but also forbids Bell from engaging

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in any employment similar to his employment with Nucor. For this reason, South Carolina courts would hold the non-disclosure covenant here to the same heightened standard as any post-employment non-compete covenant.").

The Court's ruling in *Milliken & Co. v. Morin* does not change this conclusion. In *Milliken & Co. v. Morin*, the Court upheld a confidentiality provision which contained a much more succinct and narrow definition of "Confidential Information" defining it as "all competitively sensitive information of importance to and kept in confidence by Milliken, which becomes known to [the Employee] through [their] employment with Milliken and which does not fall within the definition of Trade Secret above" and held no time restriction was necessary for its enforceability. 399 S.C. 23, 27 (2012). Recently, the Court of Appeals found a non-disclosure which had the effect of a non-compete was unenforceable due to the lack of a time restriction recognizing the holding in *Milliken* but making clear that even though nondisclosure/confidentiality provisions may relate to nondisclosure of a company's confidential information they are not free from strict scrutiny when they have the effect of a non-compete. *Fay v. Total Quality Logistics*, LLC, 419 S.C. 622, 631, 799 S.E.2d 318, 323 (Ct. App. 2017)("Although these paragraphs related ostensibly to nondisclosure of TQL's Confidential Information and, thus, may not have required a reasonable time restriction under *Milliken* and section 39-8-30(D), the paragraphs were so broad they effectively became a noncompete provision and required a reasonable time restriction."). Here, the five-year prohibition on use or disclosure of the broadly defined "Company Data" results in an undue and overly burdensome restriction on Trask's ability to use his own general skills, knowledge, and ability acquired from a long career in the technology business, including during his time at Encore. An employer cannot lay claim to their employees' job skills and knowledge of the industry in perpetuity. *See Muckenfuss*, 322 S.C. at 294, 471 S.E.2d at 724("When an employee

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leaves a job, he is entitled to take the skills and general knowledge he has either acquired or increased during his employment with him."). As the Court of Appeals has recognized, "One who has worked in a particular field cannot be compelled to erase from his mind all of the general skills, knowledge and expertise acquired through his experience. These skills are valuable to such employee in the market place for his services. Restraints cannot be lightly placed upon his right to compete in the area of his greatest worth." *Id. citing ILG Industries v. Scott*, 499 Ill. 2d 88, 273 N.E.2d 393, 396 (1971). Furthermore, it lacks a territorial restriction – a necessary element for an enforceable non-compete – making it unenforceable as a matter of law.

The definition of "Company Data" and "Trade Secrets" and restrictive provisions based upon it are vastly overbroad, unnecessary for the protection of Plaintiff's legitimate business interest, and thus fatal to their enforcement. In *Muckenfuss*, the court was confronted with a similarly broad definition of "trade secrets" that it found did "not identify any specific trade secret, rather, it defin[ed] trade secrets so broadly that virtually all of the information Muckenfuss acquired during his employment would fall within the definition." 322 S.C. at 296.[16] The court reasoned, "therefore, the contract provision here is unenforceable as a matter of law." *Id.* Similarly, in *Nucor Corp. v. Bell*, the District Court found a post-employment confidentiality agreement unenforceable due to the overly expansive definition of "confidential information." 482 F. Supp. 2d 714, 730 (2007).[17] Encore's definition of "Company Data" and "Trade Secrets" is likewise unreasonably overbroad and thus unenforceable as a matter of law.

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[16] The provision in Muckenfuss' agreement read:

[Muckenfuss] agrees to not divulge any trade secrets of the Corporation. Trade secrets means any knowledge or information concerning any process, product, or customer of the Corporation and more generally any knowledge or information concerning any aspect of the business of the Corporation which could, if divulged to a direct or indirect competitor, adversely affect the business of the Corporation, its prospects or competitive position. Seller shall not use for his own benefit any trade secret of the Corporation in any manner whatsoever.

[17] The Court in *Bell* surmised and quoted the pertinent aspects of Defendant's agreement:

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In addition, the Court in *Muckenfuss* recognized that "[a]n employer has no legitimate commercial interest in prohibiting competition in itself." *Muckenfuss*, 322 S.C. at 294, 471 S.E.2d at 721-24. By enforcing the overly inclusive confidentiality restrictions of the Agreement, Encore sought to prevent Trask and by extension Clear Touch from competing with them in the free market rather than simply seeking to protect its proprietary information. The law tolerates a small degree of protectionism that is reasonable and narrowly tailored, however it does not allow enforcement of oppressive restraints on the free market that support monopolistic endeavors.

Allowing Encore to enforce these provisions as written allows it to claim a former employee breached its non-disclosure obligations for an unreasonable or even unlimited amount of time in a multitude of ways with little limitation. The law requires narrowly defined restrictions on free market activity to be enforceable. It is axiomatic that an amorphous and perpetual ability to restrict competition offends public policy and cannot be enforced.

B. Breach of Contract with Fraud

The jury added up all non-duplicative damages (with the exception of those under breach of loyalty) to arrive at the total actual damages under the Breach of Contract with Fraud claim. (Exh. A at 6). Therefore, the breach of contract with fraud cause of action is likewise dependent upon the enforceability of the non-compete and confidentiality provisions. Those restrictive covenants are unenforceable as a matter of law, and thus the jury's verdict on this cause of action cannot stand.

The Third Confidentiality Agreement, which requires that Bell refrain from disclosing Nucor's confidential information within twenty years after the termination of his employment with Nucor (the "nondisclosure covenant"), defines "confidential information" as "all Inventions and all other business, technical and financial information [Bell] develop[s], learn[s] or obtain[s] during the term of [his] employment that relate to (i) the Company and its business, (ii) the technological process for the production of flat steel products through thin strip casting, and (iii) all confidential information now or hereafter owned by Castrip, LLC."

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C. Plaintiff Failed to Prove its Trade Secrets Claim

To state a cause of action under the SCTSA where a former employee has allegedly misappropriated trade secrets, the plaintiff must show: (1) the existence of a trade secret; (2) that was communicated in confidence by the plaintiff to employee; (3) disclosed by the employee in breach of that confidence; (4) acquired by the defendant with knowledge of the breach of confidence; and (5) used by the defendant to the detriment of the plaintiff. *Nucor Corp. v. Bell*, 482 F. Supp. 2d 714, 725 (D.S.C. 2007)(internal citations omitted). Encore failed to establish essential elements of its trade secret misappropriation claim at trial, and therefore Defendants are entitled to judgment notwithstanding the verdict on this cause of action.

1. Encore failed to establish the customer list and knowledge of Leon County's intention to purchase panels were "trade secrets"

As defined under the SCTSA, "trade secret" means:

> (a) 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 efforts that are reasonable under the circumstances to maintain its secrecy.

S.C. Code Ann. § 39-8-20(5). "The first determination which must be made in a trade secrets case, therefore, is whether, in fact, there was a trade secret to be misappropriated." *Nucor Corp. v. Bell*, 482 F. Supp. 2d 714, 725 (D.S.C. 2007). "The threshold issue in any trade secrets case is not where there was a confidential relationship or a breach of contract or some other kind of misappropriation, but whether there was a trade secret to be misappropriated." *Carolina Chemical Equip. Co., Inc., v. Muckenfuss*, 322 S.C. 289, 295, 471 S.E.2d 721, 725 (Ct. App. 1996); *Lowndes Prods. V. Brower*, 259 S.C. 322, 191 S.E.2d 761 (1972). "The burden of proving the existence of a trade secret falls, of course, upon the plaintiff." *Lowndes Products, Inc. v. Brower*, 259 S.C. 322, 329

(1972); *Trandes Corp. v. Guy F. Atkinson Co.*, 669 F.2d 655, 661 (4th Cir. 1993)(A Plaintiff alleging trade secret misappropriation bears the burden of producing evidence that the items claimed to have been misappropriated meet the definition of a trade secret.).

That burden required Encore to present sufficiently detailed evidence to establish that the items it claims were misappropriated were in fact "trade secrets" as defined under the Act. In order to carry that burden, the Plaintiff had an obligation "to describe the subject matter of its alleged trade secrets in sufficient detail to establish each element of a trade secret." *Vessel Medical, Inc. v. Elliott*, 2015 WL 5437173 at * 7 (D.S.C. 2015) *citing Trandes Corp. v. Guy F. Atkinson, Co.*, 996 F.2d 655, 661-62 (4th Cir. 1993). A plaintiff cannot simply make a general claim that its trade secrets were misappropriated; rather it must identify, with sufficient particularity each trade secret it claims was misappropriated. *MicroStrategy Inv. v. Business Objects, S.A.*, 331 F. Supp. 2d 396 (E.D. Virginia 2004) ("It is not enough to claim generally that trade secrets were stolen. A plaintiff must identify, with particularity, each trade secret it claims was misappropriated."). A plaintiff's failure to carry that burden and identify its allegedly misappropriated trade secrets with particularity prevents Defendants from being able to mount a full and fair defense against a misappropriation claim; and does not allow the finder of fact to distinguish between a legitimate trade secret and other information that is simply confidential but not a trade secret, or publicly available information. *Id.*("This must be done to allow the finder of fact to distinguish that which is legitimately a trade secret from other information that is simply confidential but not a trade secret, or is publicly available information.").

Encore failed to carry the evidentiary burden necessary to establish the information it claims was misappropriated constitute trade secrets. At trial Encore offered up two items it claims constituted trade secrets which it alleged Defendants misappropriated – an Encore customer list

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and the knowledge the Leon County was upgrading its interactive classroom technology. At trial, Encore did not provide the evidence necessary for the jury to find these items were in fact "trade secrets."

First, Encore provided the testimony of Jimmy Higginbotham in which he claimed Trask instructed him to copy and bring to him Encore's customer list when he transitioned companies. Encore also offered a page from that customer list as Plaintiff Exhibit 60 which did not contain anything regarding Leon County. (Exh. G). Plaintiff failed however to provide any evidence this list was in fact a trade secret as defined under the Act. It did not offer testimony or evidence concerning how it was made, by whom, any security measures taken to keep it secret, or other pertinent information necessary to determine if something is in fact a trade secret. Without that information, the jury did not have an adequate evidentiary basis to find the customer list was in fact a trade secret.

Second, the only evidence Plaintiff offered to show that the knowledge Leon County Schools was upgrading its interactive classroom technology was an email between Trask and his panel supplier after he left Encore. (Exh. H - Pl. Ex. 53). As with the customer list, Encore provided nothing to show this information was secret; leaving the jury with no evidence upon which it could determine it constituted a trade secret. In fact, Defendants were the only ones who provided any evidence concerning the secrecy of this information. West Martin, a Tallahassee resident at the time the Leon County half penny bond was up for a vote in 2012, testified there were billboards advertising the bond and noting it was for upgrading the County schools' classroom technology. Thus, the only evidence presented at trial as to this information's secrecy showed it was public knowledge from the time the local government instituted a half penny sales tax in 2012. Encore did not offer any evidence to the contrary beyond simply saying this

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information was a trade secret. Without more, the jury was not presented with evidence upon which it could determine this information was a trade secret.

Encore failed to carry its evidentiary burden to show these items were in fact trade secrets. That failure resulted in a jury deciding a trade secret claim without the evidence necessary to make the threshold determination of whether these items were in fact "trade secrets." Without such information, its finding that Defendants misappropriated Plaintiff's trade secrets lacks evidentiary foundation and cannot stand.

2. Encore failed to establish defendants misappropriated its alleged trade secrets

Assuming *arguendo* that Encore had carried its burden at trial and shown the items were trade secrets, it failed to offer sufficient evidence that Defendants misappropriated them.

At trial, Encore offered nothing to show that Defendants actually physically possessed the information it claims was misappropriated; without which it cannot succeed on its SCTSA claim. *See Dove Data Prod., Inc. v. DeVeaux*, No. 2008-UP-202, 2008 WL 9841167, at *7 (S.C. Ct. App. Mar. 24, 2008)("The trial court found no specific evidence [Defendant] was physically in possession of the information or that he misappropriated the information."). All it offered was Jimmy Higginbotham's testimony in which he claimed Trask instructed him to copy and bring him an Encore customer list. Even assuming that Trask did instruct Higginbotham to bring a customer list from Encore's server, there is no evidence that it was even given to him or that he possesses it now other than Plaintiff's speculation based on the "circumstantial evidence."

3. Encore failed to establish defendants used its alleged trade secrets

To sustain a TSA claim, a Plaintiff must offer sufficient evidence that Defendants used or disclosed its trade secrets:

> Every employee who is informed of or should reasonably have known from the circumstances of the existence of any employer's trade secret has a duty to refrain from *using or disclosing* the trade secret without the employer's permission independently of and in addition to any written contract of

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> employment, secrecy agreement, noncompete agreement, nondisclosure agreement, or other agreement between the employer and the employee [and] [a] person aggrieved by a misappropriation, wrongful disclosure, or wrongful use of his trade secrets may bring a civil action to recover damages incurred *as a result of the wrongful acts* and to enjoin its appropriation, disclosure, use, or wrongful acts pertaining to the trade secrets.

S.C. Code Ann. § 39-8-30(b).

Again, assuming *arguendo* that Encore had trade secrets, it offered nothing to establish Defendants used this information. At trial, there was no evidence or testimony offered even claiming Trask or Clear Touch used the customer list in any way; much less evidence proving it happened. Likewise, Encore did not offer testimony or evidence Trask or Clear Touch used the information concerning Leon County's plans to purchase more panels to effectuate the sales at issue. The evidence at trial showed that Leon became dissatisfied with Encore and approached Clear Touch about buying direct. The Plaintiff claimed this was precipitated by Trask's alleged defamatory statement to Leon (reflected in Higginbotham's Affidavit para. 5). The jury found for Defendants on the defamation claim. Without offering any evidence or testimony showing that Trask of Clear Touch used either the customer list or knowledge that Leon County intended to purchase additional panels, Encore failed to establish an essential element of its trade secret claim – use or disclosure of the trade secret. Without evidence showing Trask or Clear Touch actually used or disclosed Encore's alleged trade secret information, its TSA claim fails as a matter of law. *See Muckenfuss*, 322 S.C. 289, 297(Trial court erred in failing to grant Defendants' motions for directed verdict and JNOV because no evidence was presented they used or disclosed any trade secret of the Plaintiff).

Encore failed to carry its burden by not providing evidence upon which a reasonable jury could determine the items at issue were trade secrets and that Defendants used or disclosed them to make the Leon County sales. These substantial evidentiary shortcomings warrant the Court granting judgment notwithstanding the verdict on Plaintiff's trade secret claim.

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For these reasons, Defendants respectfully request the Court enter judgment notwithstanding the verdict as to Plaintiff's breach of contract causes of action and its trade secret claim.

VII. MOTION PURSUANT TO THE "THIRTEENTH JUROR DOCTRINE"

Should the Court determine there is sufficient evidence to sustain the jury's verdict, Defendants respectfully move for a new trial pursuant to the Thirteenth Juror Doctrine. The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, is vested with the authority to grant new trials when he is convinced the facts in the case necessitate a new trial. Vinson v. Hartley, 324 S.C. 389, 403, 477 S.E.2d 715, 722 (Ct. App. 1996). Our Supreme Court long ago stated the doctrine as follows:

> Nor does it follow that because under the law the judge is compelled to submit the issues to the jury, he cannot grant a new trial absolute. As has often been said, the trial judge is the thirteenth juror, possessing the veto power to the Nth degree, and, it must be presumed, recognizes and appreciates his responsibility, and exercises the discretion vested in him with fairness and impartiality.

Worrell v. South Carolina Power Co., 186 S.C. 306, 313-14, 195 S.E. 638, 641 (1938). The Court may grant a new trial if the verdict is inconsistent and reflects the jury's confusion. *See Vinson v. Hartley*, 324 S.C. 389, 404, 477 S.E.2d 715, 722 (Ct. App. 1996). A trial judge may grant a new trial upon the facts if the judge determines the verdict is contrary to the fair preponderance of the evidence. *Dent v. Redd*, 270 S.C. 585, 586, 243 S.E.2d 460 (1978). It is not necessary for the Court to view the evidence in a light most favorable to the opposing party. *See Parker v. Evening Post Publ'g Co.*, 317 S.C. 236, 247, 452 S.E.2d 640 (Ct. App. 1994)(stating the trial court may take its own view of the evidence.). Rather, the granting of a new trial under the doctrine is addressed to the discretion of the trial judge. *McIntire v. Mooregard Exterminating, Services, Inc.*, 353 S.C. 629, 578 S.E.2d 746 (Ct. App. 2003). The evidence in this case shows that the jury

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rendered an inconsistent verdict and was confused as to one or more issues it was charged to decide.

A. The Jury Rendered an Inconsistent Verdict on the Breach of Contract Claims

The Verdict Form shows that the jury rendered an inconsistent verdict on the two breach of contract claims. (Exh. A at 3 and 6). It found for the Plaintiff on its Breach of Contract claim and awarded $424,945 in actual damages but then somehow went on to award $1,476,039.40 in actual damages under the Breach of Contract with Fraud claim despite the actual damages available being the same for both causes of action. (Exh. A at 6). Under a breach of contract claim, a Plaintiff may recover damages naturally resulting from Defendant's breach. *Fuller v. Eastern Fire and Caus. Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602 (1962). The actual damages available under the breach of contract accompanied by fraud claim are the same; the only difference being that it allows recovery of punitive damages. *Perry v. Green*, 313 S.C. 250, 252-53 (Ct. App. 1993)("The trial judge *sua sponte* recognized that the breach of contract and the breach of contract accompanied by a fraudulent act causes of action necessarily arose out of the same transaction and therefore would allow for only one recovery of actual damages."). Adherence to the applicable law required the jury award the same amount of actual damages for both the Breach of Contract and Breach of Contract with Fraud claims. The Court accurately charged the jury on the applicable law however, its inconsistent verdict reflects that they misunderstood and were confused as to what Plaintiff may recover under the breach of contract causes of action.

B. The Jury was Allowed to Consider Inappropriate Damages by Submission of Table 3

As noted above, submission of Meilinger's Table 3 to the jury resulted in it misunderstanding the type and amount of damages available to the Plaintiff in this case. It gave

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them the misimpression that Encore could recover over $5.5M in actual damages when, at best, it could recover $3.9M (the "Fair Market Value of Clear Touch Opportunity").

Based on the foregoing, Defendants respectfully ask that the Court grant a new trial pursuant to the Thirteenth Juror Doctrine.

VIII. MOTION TO STAY EXECUTION OF THE JUDGMENT

Pursuant to SCRCP 62(a), a judgment may be executed upon ten days following its entry. However, SCRCP 62(b) provides that the Court may, in its discretion, stay execution of such judgment pending post-trial motions as those made by Defendants in this case. Defendants, therefore, respectfully move for a stay of the execution of the judgment pending the Court's determination of its post-trial motions.

Furthermore, in the event that some or all of Defendants' motions are denied by this Court, Defendants respectfully move for a stay of execution of the judgment pending appeal pursuant to SCRCP 62(b) which states that "[w]hen an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay subject to the exceptions contained in subdivision (a) of this Rule and the South Carolina Appellate Court Rules." and S.C. Code Ann. § 18-9-130 which states that "[a] notice of appeal from a judgment directing the payment of money shall not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained shall grant a stay of execution...."

IX. MOTION TO DENY PLAINTIFF EQUITABLE RELIEF

Plaintiff's equitable cause of action is before the Court for its consideration. Defendants respectfully request the Court not award Plaintiff equitable relief because there is an adequate remedy at law and due to Plaintiff's unclean hands.

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First and foremost, Plaintiff should not receive any equitable relief because there is an adequate remedy at law – a truism demonstrated by the jury's verdict. The verdict compensated Encore for the damages it claimed it suffered and award of any further damages under its equitable claims would result in double recovery. "Generally, equitable relief is available only where there is no adequate remedy at law ..." *Milliken & Co. v. Morin*, 386S.C. 1, 8, 685 S.E.2d 828, 832 (Ct. App. 2009)(internal citations omitted). "An 'adequate' remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." *Id.* There is an adequate remedy at law in this case which precludes award of equitable relief.

Second, the evidence provided to the Court by Defendants on the equitable claims demonstrates that Encore has come to the court of equity with unclean hands. The deposition testimony of Daniele Stengel and the exhibits accompanying it show that Encore has unlawfully retained Clear Touch's trade secrets in the form of confidential reseller price lists and utilized that information to unfairly compete in the marketplace by forwarding it to ViewSonic and others. It also shows Encore engaged in a campaign to besmirch Clear Touch's reputation in the market by calling the safety of its products into question and mispresenting facts regarding UL certifications to customers and potential customers. Likewise, David Masters' deposition testimony and the exhibits thereto, provide further evidence of Encore's inequitable and illegal acts which should bar it from receiving equitable relief.

X. CONCLUSION

For the reasons stated above, Defendants pray that the Court order Plaintiff elect its remedy; grant it a new trial absolute, a new trial *nisi* remittitur, judgment in this matter notwithstanding the verdict of the jury; or a new trial pursuant to the Thirteenth Juror Doctrine.

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Further, Defendants move this Court to deny Plaintiff any equitable remedy, and to issue an order staying execution of the judgment during consideration of Defendants' post-trial motions and, if the Court denies such motions, during the pendency of an appeal.

Respectfully Submitted,

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