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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON

TOUCH NETWORKS, INC.

Petitioner,

v.

GOGI DESIGN, LLC

Respondent

On appeal from King County Superior Court, No. 07-2-33454-8 SEA
(the Honorable Mary I. Yu, Superior Court Judge), and
from the Court of Appeals, Division I, No. 63648-1

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF THE RESPONDENT

Gogi Design, LLC ("Gogi"), respondent, was one of two defendants, and was the sole counterclaimant, in the action before the Superior Court, King County, and was one of two appellants[1] before the Court of Appeals, Division I.

II. COUNTERSTATEMENT OF THE CASE

A. The Parties

HyunSook Chung is the sole member and manager of Gogi, a Washington limited liability company, which is also a defendant. Chung, 4/30/2009, 96:25 to 97:21. Ms. Chung operated a graphic design business operated out of her home, initially as a sole proprietorship, and later through the Gogi entity which was formed in 2006. *Id.*

It is not disputed that Ms. Chung (as a sole proprietor) and later Gogi provided various graphic design services to plaintiff Touch Networks, Inc. ("TNI"), a Washington corporation, from approximately March 2005 to approximately September 6, 2007. It is also not disputed that Defendants' principal contact at TNI was Dr. Mark Ombrellaro, who

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[1] Gogi, along with co-defendant HyunSook Chung, appealed from the judgment of the Superior Court to the Court of Appeals, Division I. Ms. Chung withdrew her appeal after obtaining a discharge in bankruptcy, which discharged her obligations under the judgment against her. Ms. Chung was forced to file for personal bankruptcy as a result of the erroneous judgment of the Superior Court, in the amount of $171,758.75, which consisted mostly of attorney fees. Gogi continued to prosecute the appeal, which resulted in the entry by the Court of Appeals of an order vacating the judgment of the Superior Court.

is the founder and sole officer or director of TNI.

TNI's principal product is an interactive gaming vest produced by TNI d/b/a "TN Games." The vest allows video game players to feel physical impacts while playing certain video games. TNI also produced various medical information systems doing business as "Touch Networks." *See, generally,* Ombrellaro, 4/29/09, at 5:20 to 12:1.

Although TNI is a development stage company with modest revenues to date, a more accurate measure of the scope of the business would be its capitalization. Dr. Ombrellaro publicly stated in an April 2007 interview on the All Games Interactive website that he had raised $7 million in capital. Ombrellaro, 4/30/09, at 10:25 to 11:21. In April 2008, Dr. Ombrellaro told the Puget Sound Business Journal that he had raised another $3 million in capital. Ombrellaro, 4/29/09, at 185:15-21.

Dr. Ombrellaro is a vascular surgeon who devotes the majority of his time to his medical practice, Eastside Vascular, L.P. ("Eastside Vascular"), which he runs along with another vascular surgeon. Ombrellaro, 4/29/09, at 186:1-6. Gogi has also performed graphic design services for Eastside Vascular. Chung, 4/30/09, at 109:10 to 110:14.

B. The Nondisclosure Agreement

At the insistence of TNI, Ms. Chung executed a "Nondisclosure Agreement" (the "Nondisclosure Agreement" or "NDA") in March 2005, while the parties were considering a business relationship and before TNI had retained Gogi. Exh. 1; Chung, 4/30/09, at 102:16 to 103:24. At the

time, Gogi was just beginning to discuss potential design projects with TNI, and had not yet performed any services, or even agreed to perform any services. Chung, 4/30/09, at 104:10-15

The Nondisclosure Agreement is a form contract created by TNI's lawyers that has been used by TNI on many occasions. Ombrellaro, 4/30/09, at 78:12-13. It was not specifically drafted for purposes of the TNI/Gogi relationship, and TNI and Gogi did not negotiate any of its provisions. Ombrellaro, 4/30/09, at 78:18 to 79:5.

Defendants understood that the purpose of the Nondisclosure Agreement was to ensure that persons working on TNI projects for Gogi did not disclose information about TNI's business to third persons. Chung, 104:16 to 105:5. Counterparts of the Nondisclosure Agreement were later executed by other Gogi employees and contractors. *See, e.g.,* Exhs. 2,3, 7 and 15.

C. Defendants' Billing Arrangements

Starting with the initial project Gogi worked on for TNI, Gogi offered TNI the options of being billed on (1) a project basis, pursuant to which the client pays a single flat price, receives a specified number of design concepts, "plus full usage rights" to the works; when billing on a "project" basis, Gogi provides the client with a price sheet listing all of the services included in the flat rate, or (2) an hourly basis, pursuant to which TNI would merely pay on an hourly basis for design services provided, but would obtain no usage rights. Exh. 264. A flat "project fee" is nearly

always more expensive than paying on an hourly basis, because the project fee includes usage rights. Chung, 4/30/09, at 106:6-14 to 107:17.

In an email message dated March 22, 2005, included in Exhibit 264, Ms. Chung articulated these options to Dr. Ombrellaro. Exh. 264. She explained that the project fee is "based on the average amount of hours spent in designing the logo *and* usage rights." *Id.* She explained that it is more typical, with respect to logo and letterhead projects, for the client to pay the project rate, and obtain all usage rights. *Id.*.

Dr. Ombrellaro responded, in an email dated March 23, 2005, also included in Exhibit 264, that TNI preferred to be billed on an hourly basis for the logo project. Dr. Ombrellaro subsequently indicated that he preferred to continue on an hourly basis for all projects. It is not disputed that TNI and Gogi *never*, at any time thereafter, discussed any engagement on a "project fee" basis, nor did they ever negotiate concerning the intellectual property rights of Gogi's work product.

"Usage rights" are valuable in the design business, and are not transferred from artist to client until, and if, the Client agrees to pay sufficient compensation to account for their value and the rights are transferred in writing. Chung, 4/30/09 at 106:21 to 107:17; 5/4/09 at 5:21-15. Neither Ms. Chung nor Gogi ever transferred or assigned any copyrights to TNI, nor did they ever agree that any works would be "works for hire." Chung, 5/4/09, at 6:19 to 7:3.

Dr. Ombrellaro understood the difference between billing on a

"project fee" or "hourly basis." Eastside Vascular, which was also represented by Dr. Ombrellaro, did elect to proceed on a project fee basis, pursuant to which it obtained full usage rights to a letterhead system and logo created by Gogi. *See* Exh. 232; Chung, 4/30/09 at 117:5 to 120:9. The Eastside Vascular price lists expressly provide that the client is paying for a "full usage buyout" with respect to Gogi's work product. *Id.*

D. Defendants Provided Extensive Graphic Design Services to TNI and Defendants Presented Extensive Evidence of their Authorship (or Co-Authorship) of the Works at Issue

Starting with the redesign of TNI's logo in March 2005, and concluding in September 2007, Defendants were engaged in no fewer than 71 discrete projects by TNI. The invoices for these services are contained in Exhibits 101 and 102, and time records for these services are contained in Exhibits 103 and 104. These projects included, but are hardly limited to, (1) the design of TNI's logo, (2) the design of TN' Games' logo, (3) the design of promotional buttons and t-shirts, (4) the production (along with certain subcontractors) of an animated promotional video (the "Beatdown") featuring the character "Bruce," (5) photography for TN Games' website and other promotional purposes, (6) the design of multiple versions of TNI's and TN Games' websites, and (7) the design of product packaging and promotional materials.

Ms. Chung provided hours of testimony describing her authorship

of the various works of visual art she prepared.[2] Additionally, dozens of exhibits were admitted, including numerous notes and drafts reflecting her authorship of the works in question.[3] It is not disputed that, with the exception of the very last round of projects[4] performed by Gogi, that Defendants satisfactorily performed all services for which they were retained. Ombrellaro Dep., 136:18 to 141:7. In fact, Dr. Ombrellaro, in late July 2007, tried to persuade Ms. Chung to become an employee of TNI. Chung, 5/4/09, at 65:1-8.

There were two purposes of this evidence: (1) to establish authorship of the works in question, and (2) to establish that the works were sufficiently original to qualify for copyright protection.[5] The documentary evidence pertaining to Ms. Chung's authorship was not designated for transmittal to the Court of Appeals, and the pertinent

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[2] *See, generally, e.g.*, Chung, 4/30/09 at 122:22 to 134:20; 145:9 to 173:2; 179:12 to 187:17; Chung, 5/4/09 at 9:21 to 16:25; 21:9 to 22:17; 44:14 to 45:12; 55:18 to 61:5; 69:5 to 73:22.

[3] *See, e.g.*, Exhs. 106-11, 116-20, 122-24, 126-35, 143-46, 149-50, 152-53, 155-63, 165, 168-83, 185, and 210.

[4] There was a factual dispute as to the extent that Gogi adequately performed the task of redesigning TN Games' website in August-September 2007, as testified to by Dr. Ombrellaro and Mr. Morris on behalf of TNI, and Ms. Chung on behalf of Gogi, and as referenced in several exhibits. Gogi did not, however, bill TNI for this project, with the exception of a retainer paid to Gogi's website subcontractor. The Superior Court did not make any factual findings as to this dispute, which does not appear to have been pertinent to its disposition of any claims.

[5] The Copyright Office found that certain of the works for which Gogi had filed copyright applications were not sufficiently original to qualify for copyright. Such a finding by the Copyright Office does not necessarily preclude an infringement claim. 17 U.S.C. § 411(a). *See also, e.g.*, *Paul Morelli Design, Inc. v. Tiffany And Co.*, 200 F.Supp.2d 482 (E.D. Pa. 2002) ("The applicant may" appeal the refusal, or " also litigate an infringement action, regardless of how a court may rule on the Copyright Office's refusal to register the copyright").

testimony concerning authorship is not described in any detail in this Statement of the Case, because it is not pertinent to appellate review of any of the decisions made by the Superior Court. The Superior Court did not make any findings as to authorship or originality. The Superior Court held that TNI owned the intellectual property rights to all of the works at issue by contract (specifically, by virtue of the Nondisclosure Agreement), which rendered irrelevant any determination as to authorship or originality. If that finding is reversed, as requested by Appellant, it will be necessary for the Superior Court, on remand, to enter findings of fact and conclusions of law concerning these issues.

E. The Termination of the TNI/Gogi Relationship

By September 2007, after substantially all of the pending projects for TNI were completed, Gogi made a determination to sever the relationship with TNI. Exh. 281. Gogi concluded that it was spending far too much time working for one client at sub-market rates, and that Ms. Chung would be unable to grow the business if this relationship continued on these terms. *Id.*; Dedon, 4/29/09 at 70:18 to 71:6. The separation was, at least initially, largely amicable. Exh. 281.

At a meeting on September 6, 2007, Gogi gave TNI *all* files in Gogi's possession concerning recent or unfinished design projects on a CD. Ms. Chung has authenticated an inventory of the CD, Exh. 290; Chung, 5/4/09, at 49:19-24; Dedon, 4/29/09, at 67:11 to 68:22. Files on the CD included: (1) the cover and body of the manual, all manual images

and fonts, (2) all files pertaining to the product packaging, (3) all recent promotional photographs of the vest, (4) all files of the current version of the TN Games website, (5) all public relations documents created since March 2007. *Id.*; Dedon, 4/29/09, at 69:2-12.

In email correspondence on Friday evening, September 7, 2007 and Saturday, September 8, 2007, TNI indicated that the "photos seemed OK," but otherwise complained that it was unable to open some of the files on the CD. Exh. 279.

On Monday, September 10, 2007, the next business day, Ms. Dedon of Gogi responded, indicating that TNI would need to obtain the current version of Adobe Creative Suite to open the Illustrator and InDesign files (with file extensions .ai and .indd), and that the font files were designed for Macintosh systems and probably could not be opened on a PC. Exh. 280. Ms. Dedon also indicated that she was surprised that TNI was interested in files pertaining to the "Bruce" video, and that Gogi did not have any files of any type other than the flash files that were delivered to TNI earlier in the year. *Id.*

By September 11, however, Dr. Ombrellaro indicated that TNI had obtained the software it needed to access the files., and that he had all of the files he required except for "source" files pertaining to the Bruce video. Exh. 281.

On September 21, 2007, TNI requested "ALL" files pertaining to work performed by Gogi for TNI. Exhs. 282-83, Ms. Dedon responded

that Gogi would need to complete its invoicing before it would send any additional art files to TNI. Exh. 283. On September 24, 2007, Gogi transmitted to TNI invoices for its work performed in August 2007. Exh. 284. Dr. Ombrellaro questioned the invoices and asked for more detailed time records. Exh. 285. Ms. Dedon provided the time records immediately, in an email on September 25, 2007. Exh. 285.

Dr. Ombrellaro still refused to pay Gogi's outstanding invoices (both to TNI and Eastside Vascular), and proceeded to request additional computer files from Gogi. Exh. 286. In an email dated September 26, 2007, Laura Dedon of Gogi explained that Gogi had already made many financial accommodations to TNI, including billing at substantially discounted rates, and not billing for projects that were not fully completed. Exh. 287. She noted that Gogi provided many files to TNI earlier in the month, in the good faith expectation of being paid for its work. *Id.* Ms. Dedon offered two reasonable alternatives: (1) *TNI could pay its modest bill and get further support*—Ms. Dedon noted that Gogi would not transmit any more files to TNI without receiving payment of its very modest balance of approximately $7500.00; or (2) *walk away*: as an alternative, Ms. Dedon also suggested that TNI could simply pay Gogi its outstanding expenses, and not its invoiced fees, but that Gogi would not provide any additional support or files. *Id* Neither of these options was satisfactory to TNI.

On September 27, 2007, Dr. Ombrellaro requested computer files

for *all* Gogi projects ever undertaken for TNI. Exh. 288. Attached to Dr. Ombrellaro's September 27, 2007 email was a proposed letter agreement that Dr. Ombrellaro asked Ms. Chung to sign, individually and on behalf of Gogi. The letter agreement (included in Exh. 288) stated that all design services performed for TNI were done "on a work for hire basis":

> [TN Games Letterhead]
> 9/27/07
>
> Dear Hen,
>
> This letter confirms our contract for design services on a work for hire basis and that the intellectual property generated by or from the work performed for us is Touch Networks' property. Please countersign below to confirm you will return all of our property to us, including all original works in your possession. This would include both items we sent to you and items you created for us. Thanks.
>
> Very Truly Yours
>
> Touch Networks, Inc.
>
> Mark Ombrellaro, President
>
> Agreed:
>
> Gogi Design, LLC
>
> By _____,
> Hyunsook Chung, individually and
> as its Manager/Member

The letter was sent prior to the formal involvement of Gogi's counsel in the dispute, which began a few days later, although Dr. Ombrellaro had

retained his lawyer to prepare the letter. Ombrellaro, 4/30/09, 83:8-14. Gogi never agreed to sign over the intellectual property rights to all of its work product as a prerequisite to having its outstanding invoices paid.

TNI has an outstanding balance due to Gogi. There are six (6) outstanding invoices from Gogi to TNI (Nos. 20071160, 20071165, 20071180, 20071185 in Exh. 103, and Nos. 20071160 and 20071165 in Exh. 101). The total amount of these invoices is $9095.00. The remaining balance due from TNI, after deducting an $1875.00 expense advance from TNI to Gogi, is $7220.00. Gogi's hourly time records for these invoices were provided to TNI on or about September 24, 2007. Exh. 285. TNI has refused to pay the balance due.[6]

F. The Trial Before, and Judgment Entered by, the Superior Court

A bench trial was held on April 28-30, 2009 and May 4, 2009 before the Hon. Mary I. Yu. On May 7, 2009, the Superior Court entered a "Summary Decision," CP 102, in which the Superior Court stated that it would find for TNI on Count I (breach of contract) and Count II (UTSA), in favor of Gogi on Count VIII of its counterclaim (unpaid invoices), and in favor of TNI on Gogi's copyright counterclaims. The Superior Court further stated it did not find any basis for awarding damages to TNI on the (originally pleaded) contract claim that Gogi failed to timely provide

[6] Eastside Vascular also has an outstanding balance due to Gogi of approximately $2110.00. Exh. 284 and Invoices attached thereto.

computer files, or on the UTSA claim. *Id.* Curiously, the Superior Court did state that it would "permit the parties to file additional legal authorities on this question if Plaintiff wishes to pursue such damages." *Id.*

On June 2, 2009, the Superior Court entered "Findings of Fact and Conclusions of Law" that were prepared by TNI's counsel, and also entered a "Judgment" that was prepared by TNI's counsel. Neither document was substantially modified by the Superior Court from the forms prepared by counsel. The Judgment provided that TNI would recover compensatory damages in the amount of $72,224.00, which consisted *solely* of the amount of its redesign costs allegedly incurred by TNI because Gogi had filed certain copyright applications. CP 117. The lion's share of the monetary judgment for TNI was attorney fees, in the amount of $92,970.00, and expenses, in the amount of $6564.75. *Id.*

G. The Order of the Court of Appeals

On August 22, 2011, the Court of Appeals, Division I, entered an order reversing the judgment of the Superior Court in favor of TNI on its contract and UTSA claims. The Court of Appeals held that the Superior Court erred in holding that the Nondisclosure Agreement effected a transfer of Gogi's intellectual property rights in its work product. The Court of Appeals further held that the Superior Court erred in finding a violation of the UTSA.

III. ARGUMENT WHY REVIEW SHOULD BE DENIED

A petition for review of a decision terminating review by a Court of Appeals will be accepted by this Court only if one of the following criteria are satisfied:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

In its petition in this matter, TNI contends only that the petition "involves an issue of substantial public interest." For the reasons stated below, this matter does not involve any issues of substantial public interest, and he petition for discretionary review should be denied.

A. TNI's Petition Does not Raise Any Issues of "Substantial Public Interest"

While the undersigned are not aware of any decisions defining criteria for what constitutes "an issue of substantial public interest" for purposes of RAP 13.4(b)(4), this Court has established the following criteria for determining what constitutes "an issue of substantial public interest" for purposes of determining whether to review a decision that

would otherwise be moot. Those criteria are as follows: (1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur. *Philadelphia II v. Gregoire,* 128 Wash.2d 707, 712 (1996).

This case involves issues of a strictly private nature – a business dispute between a graphic designer and a technology company. Any decision rendered in this matter will have no bearing on the affairs of government or work of public officers.

Moreover, the scenario at bar is not one likely to be adjudicated with particular regularity, nor is this Court likely to provide guidance to many (if any) actual or prospective litigants. The dispositive legal determination made by the Court of Appeals was based principally on (1) the provisions of the Copyright Act, which provide for the vesting of copyright in the author of works absent an assignment or work-for-hire agreement, and provide (in 17 U.S.C. § 204(a)) for the requirements for a transfer of copyright, and, (2) to a lesser extent, on general principles of contract interpretation under Washington law. The Superior Court's failure to even acknowledge the requirements of § 204(a) (or, even less, to attempt to apply them), and an erroneous construction of the operative contract, resulted in the reversal from the Court of Appeals.

The Court of Appeals did not create any new law on either front – the requirements of § 204(a) are not in dispute, and the Court of Appeals

certainly did not break any new ground in applying general principles of contract interpretation under Washington law.

The Court of Appeals' application of the law to the facts could only conceivably provide guidance to a very narrow group of persons – those who are contesting whether a simple confidentiality agreement effects the transfer of intellectual property rights. Intellectual property claims based on clauses in confidentiality agreements appear to be quite rare (and for good reason) – in the only decision the undersigned are aware involving such a claim, the Ninth Circuit similarly determined without difficulty that the clause could not possibly operate to effect a transfer of any copyright, and also determined that its decision was "Not for Publication in West's Federal Reporter" (which means it is not binding precedent). *Gladwell Government Services, Inc. v. County of Marin*, 265 Fed. Appx. 624, 2008 WL 268268 (9th Cir. Jan. 28, 2008).

It should also be noted that any construction or application by this Court of the Copyright Act would not likely ever have precedential effect in any action. Actions that "arise" under the Copyright Act are within the exclusive jurisdiction of the federal courts, 28 U.S.C. § 1338(a), and copyright law issues do not arise frequently in the state courts (although they may conceivably arise in copyright ownership disputes, or where a defense or counterclaim arises under copyright law). This Court's applications of § 204(a) and other copyright laws would only be binding in those somewhat rare cases, such as this one, in which copyright law was

pertinent in a Washington state court.

The relatively few reported cases in which a "substantial public interest" has been found under RAP 13.4(b)(4), in contrast, involve matters that had considerably broader application persons in the State of Washington, and were necessary to provide guidance immediately required by the lower state courts and public officials. *Compare State v. Watson*, 155 Wash.2d 574, 577 (2005) (erroneous Court of Appeals ruling would have "the potential to affect every sentencing proceeding in Pierce County" under drug offender sentencing alternative procedures during a four year period and "chill policy actions taken by both attorneys and judges-they may fear that their statements or actions in various public roles would later be treated as ex parte communications"); *In re Marriage of Ortiz*, 108 Wash.2d 643 (1987) (concerning the possible retroactivity of earlier decision concerning the requirements for automatic escalation clauses in child support decrees). The decision in this matter, in contrast, does not come close to approximating the public importance of the matters at bar in *Watson* and *Ortiz*.

B. The Court of Appeals Reached the Correct Result

In addition to the fact that this is a private intellectual property dispute controlled in substantial part by federal law, the Court should decline to exercise discretionary review for the further reason that the Court of Appeals made the correct determination that the "Nondisclosure Agreement" did not effect a transfer of intellectual property rights in all

works that the designer would later create for her client.

First, as noted by the Court of Appeals, § 204(a) requires that a transfer of a copyright be expressly memorialized in writing, which never occurred. The Nondisclosure Agreement – an ordinary confidentiality agreement -- did not effect the transfer of any property, nor contain any language referencing or suggesting a transfer.

Second, the intellectual property clause that is contained in the Nondisclosure Agreement only applies to property conveyed by TNI to Gogi, and not to any work product that Gogi might create thereafter, and the uncontradicted evidence at trial established that the works in question were created by Gogi.[7] It should also be noted that the intellectual property clause in the Nondisclosure Agreement (¶ 2) is narrower in scope than the general confidentiality clause (¶ 1), which also extends to works "derived from" information provided by TNI.[8]

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[7] Although TNI attempts to characterize the dispositive question as whether "a party may lose ownership of its own copyright or other proprietary rights in intellectual property by allowing another party to refine or otherwise enhance such property," this is a gross mischaracterization of the dispute. First, TNI , after successfully moving to remand this action to state court, is estopped from arguing that it owned the intellectual property rights by authorship, as such a claim would have been preempted by the Copyright Act and subjected its claim to federal jurisdiction – it obtained a remand on the grounds that its ownership of the intellectual property arose solely from an alleged conveyance manifested the Nondisclosure Agreement. Second, TNI did not "furnish" copyrightable works to Gogi – the reverse is true, as Gogi furnished the works to TNI.

[8] The confidentiality obligations in Paragraph 1 applies not only to Proprietary Information, but also to all information "derived therefrom." Exh. 1, ¶ 1. Under TNI's interpretation of ¶2, TNI's intellectual property

Third, the Nondisclosure Agreement did not reference any works to be created by the designer, nor any price that would be paid for those works. *See Konigsberg Intern. Inc. v. Rice*, 16 F.3d 355, 356 (9th Cir.1994) (Section 204(a) requires the "parties who want to transfer copyright ownership to determine," inter alia, "precisely what rights are being transferred and at what price").

Fourth, the Nondisclosure Agreement did not specify that works created by the designer would be "works for hire," which would be the conventional manner in which a client would specify that works created by a designer would be owned by the client. *See* 17 U.S.C. § 101.

Fifth, the parties' conduct negates any possible inference that had intended to effect a transfer of copyrights in the Nondisclosure Agreement. Just *one week* after Chung executed the Nondisclosure Agreement, Ms. Chung offered TNI the option of paying a flat rate "Project Fee" that would include "full usage rights," or simply paying hourly for design services, with no intellectual property rights included. Exh. 264. Additionally, Eastside Vascular, another company controlled by and represented by the same principal officer, *did* elect to proceed on a "Project Fee" basis. Exh. 232. Finally, on September 27, 2007, on the

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rights would extend not only to "Proprietary Information" but also to information "derived therefrom," but the contract says no such thing. Interpreting the scope of the intellectual property clause in ¶ 2 to be coextensive with the confidentiality clause in ¶ 1 would render entirely meaningless the words "or derived therefrom" in ¶ 1.

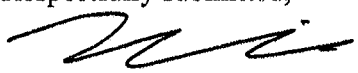
eve of litigation, TNI tried to convince Gogi to execute a letter stating that all work performed by Gogi for TNI were "works for hire." Exh. 288.

IV. CONCLUSION

For the reasons stated above, Respondent respectfully prays that the Court denies Petitioner's petition for discretionary review.

DATED THIS 21st day of October, 2011.

Respectfully submitted,



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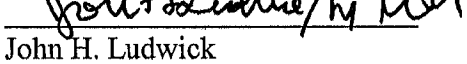

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CERTFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of October, 2011, a true and correct copy of the foregoing brief was furnished via Electronic Mail and by First Class Mail to: Susan Olson, Esq. and Randy Barnard, Esq., of O'Shea Barnard Martin, P.S., 1500 Skyline Tower, 10900 N.E. Fourth Street, Bellevue, WA, 98004.

MATTHEW E. MILLER

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Case Name: Touch Networks, Inc. v. Gogi Design, LLC
Case Number: Supreme Court Docket No. 86622-8
Document Attached: Answer to Petition for Review
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