

65144-7

65144-7 granted  
4-14-2011  
JLL

No. 65144-7-I

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**THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON  
DIVISION I**

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**ADIL LAHRICHI, REGINE CSIPKE, T. L., M. L., Y. L.,  
A. L., Y. L., and AZIZA BENZAOUZ**

**Appellants,**

**v.**

**KEELIN A. CURRAN, ZAHRAA V. WILKINSON,  
MOLLY M. DAILY, STOEL RIVES, LLP, THOMAS D.  
MINO, TIMOTHY LONDERGAN, TIMOTHY PARKER,  
RALUCA DINU, DAN JIN, HENRY HU, HANNWEN  
GUAN, GIGOPTIX, and MICROVISION,**

**Respondents.**

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**ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY  
The Honorable Regina Cahan**

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**REPLY BRIEF OF APPELLANTS**

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**Abbreviation Key (from Opening Brief and herein)**

LAHRICHIs	Dr. Adil Lahrichi and his family (Regine Csipke, T.L., M.L., Y.L., A.L., Y.L., and Aziza BenAzzouz)
Companies	Opposing party in Dr. Lahrichi's federal lawsuit (GigOptix, Microvision, Thomas D. Mino)
Agents	Counsel of opposing party in Dr. Lahrichi's federal lawsuit (Keelin A. Curran, Zahraa V. Wilkinson, Molly M. Daily, Stoel Rives)
Witnesses	Witnesses in Dr. Lahrichi's federal lawsuit (Timothy Londergan, Timothy Parker, Raluca Dinu, Dan Jin, Henry Hu, Hannwen Guan)
Aplt Br.	LAHRICHIs Opening Brief
Atty Br.	Brief of Respondents Keelin A. Curran, Zahraa V. Wilkinson, Molly M. Daily, Stoel Rives
Microvision Br.	Brief of Respondent Microvision
GigOptix Br.	Brief of Respondents GigOptix, Thomas D. Mino and Witnesses Timothy Londergan, Timothy Parker, Raluca Dinu, Dan Jin, Henry Hu, Hannwen Guan

## **I. INTRODUCTION**

Respondents misapply and erroneously expand litigation immunity to their alleged wrongful acts by misapprehending the facts and conflating the issues. For example, litigation immunity is inapplicable to breach of contract and contract fraud claims. The confidentiality contracts, which were violated, did not interfere with Respondents' ability to advocate zealously, but only prohibited disclosure of LAHRICHIs' confidential information to individuals not entitled to it to protect LAHRICHIs from irreparable injury. Respondents' unauthorized dissemination of LAHRICHIs' confidential information to the public were a breach of duty, not in furtherance of the litigation, not pertinent to the relief, and constitutes excessive publication. Under the mediation confidentiality agreement, information provided by Dr. Lahrichi for settlement cannot be disclosed to anyone, including the Court.

For defamatory statements, which do not include LAHRICHIs' confidential information and which might qualify for the privilege, the statements must be first tested for pertinence.

Respondents misstate the factual allegations showing their unlawful acts to appear legitimate advocacy acts.

There were no adequate safeguards to prevent Respondents from committing wrongful acts. Agents impose remedies that deprive

LAHRICHIs of relief for irreparable harm they are continuing to suffer.

LAHRICHIs had insufficient time to respond to Respondents' motions and to prepare for the oral hearing. LAHRICHIs should be permitted to amend their complaint and conduct preliminary discovery.

## **II. APPELLANTS' REPLY TO ATTORNEYS/AGENTS' BRIEF**

### **A. Reply to Agents' Statement of the Case II.A (pp.2-5)**

Agents overstate a footnote (Atty Br. at 4) in the Federal Court's order dismissing their lawsuit for preliminary injunction. That Court did not hold that Agents are entitled to immunity, but only speculated that Agents could invoke it as a defense. Key findings of the Federal Court are:

The Court hinges its reasoning on of the necessary prongs of the preliminary-injunction test. Because the attorneys [Stoel Rives] have not shown that either are likely to succeed on the merits or raised serious questions of law or fact the Court need not consider the other four prongs.

CP 149:7-10.

Here, the facts are quite different. The conduct that Lahrichi alleges was harmful arose *during the course of the prior litigation*. The pertinent facts were categorically unavailable to him when he filed his original lawsuit in federal court. Although Lahrichi mentioned many of these claims in the context of the motion to retax, the factual allegations were nascent and developing. More importantly, Lahrichi had no opportunity to engage in discovery concerning those allegations because the scope of discovery was limited to the facts underlying his discrimination lawsuit. There is simply not a sufficient factual nexus between the allegations against the attorneys and the issues presented to the Court in the limited remand from the Ninth Circuit, and it cannot be said that Lahrichi

had a full and fair opportunity to litigate his claims against the attorneys in the prior federal proceeding.  
CP 152:5-14.

Importantly, the Court made no findings of fact or conclusions of law in the quoted portions of the Orders. The Court therefore did not “actually decide” those issues, such that claim preclusion would apply.

CP 153:10-12. The Agents “cannot succeed on the merits, and an injunction is not warranted” (CP 154:4-5) and “the attorneys cannot show that the requested injunction fits into the relitigation exception to the Anti-Injunction Act” (CP 150:8-9).

**B. Reply to Agents’ Statement of the Case II.B (pp. 6-8)**

LAHRICHIs’ complaint satisfies CR 8(a) and LAHRICHIs’ factual allegations support their causes of action and show that they are entitled to relief. “[A]ll the Rules require is ‘a short and plain statement of the claim’ that will give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” Conley et al. v. Gibson et al., 78 S.Ct. 99, 355 U.S. 41, 47 (1957) (internal footnotes omitted) “[W]e are not inclined to hold a complaint insufficient unless it appears from such complaint no cause of action can be stated by amendment or otherwise, or it shows on its face plaintiff is not entitled to any relief.” Moody v. Moody, 47 Wash.2d 397, 288 P.2d 229, 401 (1955).

Agents take liberty with their rewording of LAHRICHIs’ factual

allegations to claim immunity for their wrongdoings. See *infra*.

**C. Reply to Agents' Statement of the Case II.C (pp. 8-9)**

LAHRICHIs were deprived of time to prepare their responses to the three motions to dismiss and to prepare for the oral hearing.

On January 6, 2010, Agents filed their motion to dismiss and a motion for overlength and set the hearing for January 29, 2010. CP 173-195; CP 422:4-7. LAHRICHIs had to respond to the motion for overlength and did so on January 12. *Id.* The next day, GigOptix filed their motion to dismiss and set the hearing to January 29. CP 196-202. That same week, LAHRICHIs needed to prepare their answer to counterclaims in another case,<sup>1</sup> due January 19. CP 424(¶2). LAHRICHIs also suffered a serious setback, when they lost their work on their responses due to computer problems. *Id.*

On Monday, January 25, Dr. Lahrichi contacted Ms. Wu, bailiff of Judge Cahan, and informed her that LAHRICHIs' will be seeking an extension of time. LAHRICHIs' requested potential time slots in Judge Cahan's schedule to re-note the oral hearing. At the same time, LAHRICHIs contacted opposing the two opposing parties, who had filed motions to dismiss at the time, to ask if they would be amenable to an

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<sup>1</sup> See *Lahrichi et al. v. Frank et al.* (King County Superior Court No. 09-2-17150-5 SEA).

extension of time. LAHRICHIs' response was due on January 27. Ms. Wu provided LAHRICHIs with new dates for the oral hearing. LAHRICHIs attempted to schedule the hearing on February 12-15, which would have given LAHRICHIs two weeks extension. By late afternoon, after email exchanges with Agents and GigOptix, March 19 was the next possible date for the oral hearing, where all parties would be available. Mr. James, opposing counsel representing GigOptix, Mino and Witnesses also filed a motion for unavailability for a one month period starting February 15, 2010. CP 430-432. That same afternoon, January 25, LAHRICHIs filed their motion for extension to reschedule the hearing date to March 19. CP 421-429; 413-420. While LAHRICHIs' were delivering their working copy to the Court, Agents re-noted their motion to February 5. CP 438-439. Agents requested LAHRICHIs to strike their motion for extension or they would oppose it. LAHRICHIs had to agree to February 5 or lose even more time to motion practice, but objected to the February 5 date and told Agents that they needed more time. CP 439(fn.1). LAHRICHIs had to prepare a motion to strike, filed January 26. CP 437-443. The next day, January 27, 2010, Microvision filed a third motion to dismiss and noted it for February 5. CP 203-208. LAHRICHIs had very little time to prepare their responses, which were filed February 3. On February 4, Respondents filed replies. LAHRICHIs had only a day to prepare for the oral hearing on

February 5.

**D. Reply to Agents' Section III.A (pp. 9-10)**

LAHRICHIs provided the proper standard for CR 12(b)(6). Aplt Br. at 18-20. Agents cite McCurry v. Chevy Chase Bank, FSB, 169 Wn.2d 416, 233 P.3d 861 (2010), wherein the Washington Supreme Court declined to alter the lenient standard for CR 12(b)(6).

**E. Appellants' claims are not barred by the doctrine of litigation privilege**

**1. Reply to Agents' Section III.B.1 (pp. 10-13)**

Respondents' claim that the immunity privilege for defamatory statements is absolute is erroneous and superficial. The privilege also protects against injury to litigants. The defamatory statements must be material or have some connection to the relief sought. McNeal v. Allen, 95 Wash. 2d 265, 268, 621 P.2d 1285 (1980). In quoting Restatement, Second, Torts ("*Restatement*") §586 comment c (Atty Br. at 11-12), Respondents do not state "the privilege does not cover the attorney's publication of defamatory matter that has no connection whatever with the litigation." Id. We agree "special emphasis must be laid on the requirement that it [statement] be made in furtherance of the litigation and to promote the interest of justice." . . . Without that nexus, the defamation only serves to injure reputation. Demopolis v. Peoples Nat'l Bank, 59

Wn.App. 105, 112, 796 P.2d 426 (1990) (internal citations omitted).

The Superior Court did not apply the pertinence test, because it did not review the alleged defamatory statements.<sup>2</sup> “The determination of pertinency is a question of law for the Court... and should be based upon an examination of the whole proceeding to which the defamatory statements are alleged to be pertinent.” Demopolis, 59 Wn.App. at 110-111 (internal citations omitted); Restatement §619(1). Regardless, LAHRICHIs’ claims relate to acts that did not interfere with Respondents’ ability to advocate fearlessly and that were not pertinent to the relief.

Agents impose remedies that do not compensate LAHRICHIs’ for injuries, which are not small. See *infra*; Aplt Br. at 45-46; see also CP 111-132.

## **2. Reply to Agents’ Section III.B.2 (pp. 13-17)**

Respondents misconstrue Bruce v. Byrne-Stevens & Associates Engineers, Inc., 113 Wn.2d 123, 776 P.2d 666 (1989). The Washington Supreme Court was divided in Bruce. Bruce does not promote indiscriminate broadening of the immunity privilege to other causes of action. Bruce cites some cases from other jurisdictions that applied the privilege to some causes of actions, but does not analyze the

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<sup>2</sup> Appellants were unable to provide the defamatory statements and confidential information until they request a protective order in this case. LAHRICHIs had no time to seek a protective order.

circumstances and facts for which immunity was granted. Other courts adopted a stricter application of the immunity privilege and denied it for conduct (infra). Expanding immunity, beyond defamatory statements in judicial proceedings, is not a settled matter and should be done, if at all, based on the circumstances of each case. Id. at 139-142. Immunity should be invoked only to the extent necessary to effect its purpose. Doe v. McMillan, 412 U.S. 306, 319-25, 36 L. Ed. 2d 912, 93 S. Ct. 2018 (1973). See also Aplt Br. at 22.

Bruce was granted immunity for testimony, because the complaint was about recovery at trial. LAHRICHIs' claims, e.g., negligence and breach of contract, were not pertinent to the relief sought. "We do not hold that any professional negligence is immunized." Bruce at 136.

Agents quote out of context language (Atty Br. at 14) from T. Leigh Anenson, Absolute Immunity from Civil Liability for Litigation Lawyers, 31 Pepp. L. Rev. 915, 927-28 (2004) ("Anenson"). In summary, Anenson asserts that the litigation immunity must be cautiously applied to each case individually, requiring evaluation of parameters including the nature of the claims, the type of proceedings, what constitutes relevance, and whether immunity is considered a defense or immunity from suit. "In determining what conduct is entitled to the protection of the litigation privilege, courts examine not only the purpose of the conduct, but also the

method employed to achieve that goal. n116” Anenson at 935. Furthermore, judges must fairly balance the competing interests involved and achieve the purpose for which the privilege was originally created. Id. at 948. “The doctrine of absolute immunity is articulated fairly consistent throughout the fifty states. However, the circumstances under which it applies are not. n62.” Id. at 927. For example, the “proper scope of the lawyer’s immunity remains unsettled.” Id. at 927, n62. Anenson shows that many courts deny granting the privilege or expanding it,<sup>3</sup> e.g. “[s]tates are divided as to whether the doctrine of absolute immunity extends to claims of malicious prosecution.” Id. at 928, n75.

Courts have also determined factors that will destroy the privilege, including when it is abused (Id. at 943), e.g., when the correspondence is circulated to persons other than the attorneys involved in the litigation (Id. at n190); for unnecessary or unreasonable publication to one for whom the occasion is not privileged (Sullivan v. Birmingham, 416 N.E.2d 528, 530 (Mass. App. Ct. 1981)); by excessive publication when “the letter was

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<sup>3</sup> In Savage v. Stover, 92A. 284 (N.J. Sup. Ct. 1914), aff’d, 94A. 1103 (N.J. 1915), an attorney was denied absolute immunity for making derogatory statements about his client’s adversary and advising the opposing attorney not to keep his client. Anenson at 936. “Statements by a plaintiff’s attorney to the defendants’ business client that defendants were overcharging the client prior to filing a complaint were also denied absolute immunity.” Id. at 936, n130. Although in Post v. Mendel, 507 A.2d. 351, 352-357 (Pa. 1986), the conduct of both the witness and opposing counsel had occurred during existing litigation, the court denied the attorney absolute immunity on the ground that his goals were not related to the redress sought in the pending lawsuit. Anenson at 938-939.

published to those who did not have a legitimate role in resolving the dispute, or ... to persons who did not have an adequate legal interest in the outcome of the proposed litigation.” Krouse v. Bower, 20 P.3d 895, 900 (Utah 2001); see also Kurczaba v. Pollock, 742 N.E.2d 425, 441 (Ill. App. Ct. 2000) (refusing to extend the privilege to third persons who received court documents but had no participation or legal interest in the action).

Agents misapply Jeckle v. Crotty, 120 Wn. App. 374, 85 P.3d 931 (2004) to this case. In Jeckle, the attorneys used *publicly* available information from an investigation to solicit Jeckle’s patients to join the lawsuit against Jeckle. Jeckle’s patients were free to sue Jeckle without being solicited. Herein, Dr. Lahrichi provided Respondents LAHRICHIs’ confidential information. Respondents could use it for advocacy, but were prohibited from disclosing it to the public under the confidentiality contracts and the court’s orders. Herein, the alleged acts are unlawful and include conspiracy to commit perjury, tampering with witnesses, bribing witnesses to testify falsely, and impersonating individuals.

Agents misalign Kearney v. Kearney, 95 Wn. App. 405, 974 P.2d 872 (1999) with this case. Kearny claimed violation of privacy, because confidential information was introduced as evidence against him for the well-being of his children. Dr. Lahrichi provided LAHRICHIs’ confidential information to Agents and Companies, but they were not

permitted to disclose it, except to the judge and to the individuals who are participating in the lawsuit, as identified in the confidentiality contracts and by the Court in its orders. Those individuals were also prohibited from disclosing it. RP 12.

Agents misconstrue Barker v. Huang, 610 A.2d 1341 (Del. 1992), which is distinguishable. In Barker at 1343, the Court unsealed the documents. Herein, Agents and Companies had the duty to protect LAHIRICHIs' confidential information and not disclose it to anyone not entitled to it. RP 12;22. Barker did not provide factual allegations for her violation of privacy outside the defamatory statements or for other tort actions and did not argue the issue on appeal. Id. at 1350. LAHRICHIs' invasion of privacy claim is actionable on other grounds.

Moses v. McWillimas, 379 Pa. Super. 150, 549 A.2d 950 (1988) is inapplicable and distinguishable. First, the majority of jurisdictions that have considered whether patients are entitled to a cause of action for a physician breach of confidentiality allowed it; Moses was a case of first impression in Pennsylvania. Id. at 173. Second, Moses is a medical malpractice lawsuit. Moses opposed introduction of evidence under breach of confidentiality. Herein, the issue is disclosure of LAHRICHIs confidential information to individuals not entitled to it, not its introduction in proceedings. When Dr. Lahrichi entrusted that information

to Agents and companies, there was a relationship of trust and highest expectation that they will not disclose it to anyone not entitled to it, which was unambiguously memorialized in the confidential contracts and court orders.<sup>4</sup> CP 8,12 at ¶¶40,41,44,64; RP 12;22. Agents and Companies owed a total duty of care to LAHRICHIs and LAHRICHIs relied on Agents' and Companies' assurances, trust, and good faith. RP 13:14-19; RP 15:1-5; RP 21:25-22:4. The breach of that duty caused LAHRICHIs unreasonable and serious interference to their dignity and privacy, which is actionable as a tort. Notwithstanding that, the Moses Court held that protective orders would have provided a remedy to Moses. Moses at 169. In Dr. Lahrichi's federal lawsuit, the protective orders and confidentiality contracts were in place, but were repeatedly violated.

### **3. Reply to Agents' Section III.B.3 (pp. 17-21)**

“The illustrative forms appended to the Rules plainly demonstrate this. Such simplified “notice pleading” is made possible by the liberal opportunity for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues.” Conley, 355 U.S. at 47-48 Furthermore,

A document filed pro se is “to be liberally construed,” . . .

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<sup>4</sup> Even testimonials were covered by the contracts and court orders.

and “a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” Cf. Fed. Rule Civ. Proc. 8(f) (“All pleadings shall be so construed as to do substantial justice”). (internal citations and quotation marks omitted)

Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007). This Court should also take into consideration that besides their limited knowledge of the law, Dr. Lahrichi, Ms. Csipke, and Ms. BenAzzouz are not native English speakers. CP 2,14 at ¶¶2,3,5,79.

Agents refuse to acknowledge that *all* causes of actions are pleaded against them. Atty Br. at 6-7. Agents mischaracterize the complaint as ambiguous and erroneously omit and reword LAHRICHI’s factual allegations to misrepresent them as advocacy acts. Id.

For example, in (1), Agents conflate two issues. First, information protected by the mediation confidentiality agreement cannot be disclosed to anyone including the Court. LAHRICHIs allege that Agents and Companies signed that mediation contract in bad faith, violated it, and disseminated that information to harm LAHRICHIs. App. B; CP 8-9 at ¶¶ 44-47; RP 12:17-24. Second, the issue is *not* introducing LAHRICHIs’ confidential information in pleadings and depositions, but its improper and excessive disclosure to individuals, who are not entitled to it. Agents now conveniently ignore their confidentiality contracts. LAHRICHIs allege that Agents and Companies signed those contracts in bad faith, defrauded

Dr. Lahrichi, and deliberately and repeatedly violated those contracts to harm LAHRICHIs, while they were simultaneously assuring him of compliance. App. A; CP 8 at ¶¶40-42; RP 12:1-10; 15:1-5; 21-23. Agents omit from their mappings key factual allegations supporting the breach of those contracts, contract fraud, and bad faith, negligence, and violation of privacy. CP 8-9,11-17 at ¶¶39,40-42,44-47,51,60,64,72,75,79,80. 81,83, 84,86,88,90,91,92,93,94,95,96; Atty Br. at 7, fn. 2.

In (2), Agents' rewording of the factual allegations is inaccurate and misleading. The issue is *not* introducing defamatory evidence. Atty Br. at 7, fn. 3. Agents injected defamatory statements in their pleadings to damage LAHRICHIs that were not pertinent to the relief. CP 10-11,13-14 at ¶¶57,60,73,74,77,82. LAHRICHIs also allege that Agents and other Respondents conspired to defame them and commit perjury. CP 9,11 at ¶¶48,62,65,66,67,69,86. Besides, defamatory statements that included confidential information could not be disclosed to the public.

In (3), Agents downplay their wrongful acts in deposition, which were unlawful, not pertinent to the relief, and not in furtherance of the litigation. Agents also attacked Dr. Lahrichi's integrity and defamed Dr. Lahrichi in front of others, outside the confines of deposition, and before and after depositions of others. CP 9-10 at ¶¶50,51,52,59; Atty Br. at 7, fn. 4; Aplt Br. at 8(¶2).

In (4), Agents' rewording "tampering with and concealing evidence" supports among other things obstruction of justice, fraud, and conspiracy to commit perjury and to misuse the litigation to inflict harm on LAHIRCHIs beyond the confines of advocacy. CP 7,9 at ¶¶32,38,49.

In (5), Agents misstate the factual allegations about their unlawful acts, including tampering with and bribing witnesses, soliciting fabricated evidence, and coaching and conspiring with witnesses to commit perjury, and fraud as "rehearsing questions with witnesses prior to deposition." CP 9,11-12 at ¶¶48(?),63,65; Atty Br. at 7, fn. 6.

In (6), Agents' restatement "delaying the course of litigation" supports contract fraud, bad faith, breach of contract, conspiracy, negligence, obstruction of justice, and shows Agents' efforts to cover up their violations. CP 11,13,15 at ¶¶61,70, 85,86,88,89,91,92,93,94,95,96; Atty Br. at 7, fn. 7; RP 14.

In (7), Agents' restatement "posing as Dr. Lahrichi's counsel" show that Agents committed unlawful acts of fraud, deceit, identity theft and obstructions of justice as part of their conspiracy.<sup>5</sup> Atty Br. at 7, fn. 8.

Contrary to Agents (Atty Br. at 18, fn.11), negligence, malpractice, and breach of contract, bad faith, and fraud are proper causes of actions,

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<sup>5</sup> Agents sought to undermine this outrageous act by calling such allegation "bizarre." CP 219:4-5; CP 182:11-14.

because Agents and Companies owed a duty to LAHRICHIs. See Aplt Br. at 22-31; section II.E.2 supra. The causes of action that Agents claim are “vague” are supported by sufficient factual allegations to deny the motions to dismiss. Supra; Christensen v. Swedish Hosp., 59 Wn.2d 545, 548-49, 368 P.2d 897 (1962).

Agents omit facts and conflate issues to misrepresent their wrongful actions as immune advocacy acts. Agents erroneously broaden the immunity privilege. Agents’ wrongdoings were not pertinent to and not in furtherance of the litigation. Attacks on Dr. Lahrichi’s integrity and dignity outside the confines of deposition are not privileged. Demopolis, 59 Wn.App. at 110. Violations of contract and negligence are not immunized.

Agents misconstrue Dr. Lahrichi’s statements. Dr. Lahrichi did not admit that Agents and Companies did not commit wrongdoings outside proceedings, but explained that LAHRICHIs were investigating Respondents concealed wrongdoings and will need to amend their complaint and conduct discovery. RP 15;18-22; 19:22-25; 28:1-5..

#### **4. Reply to Agents’ Section III.B.4 (pp. 21-23)**

Agents misapply the public policies underlying the immunity privilege. Agents were not deprived from advocating fearlessly and introducing confidential evidence. They were prohibited from committing

unlawful acts, breaching their duties to protect LAHRICHIs' confidential information violating LAHRICHIs' constitutional rights, and misusing the federal lawsuit beyond the confines of advocacy and pertinence to damage LAHRICHIs. Agents' alleged wrongdoings were not advocacy acts.

Agents' claims about judicial efficiency and finality of judgment are misplaced. The Federal Court rejected Agents' argument that Dr. Lahrichi was recasting his previous claims in this lawsuit, when it dismissed Agents' federal lawsuit against Dr. Lahrichi for preliminary injunction under the re-litigation clause. CP 143:20-23. See Sec.II.A.

Agents' claim that safeguards were present is deceiving. Respondents' wrongful and concealed acts needed to be first discovered. That discovery occurred only after dismissal when the Federal Court had no jurisdiction. CP 14 at ¶¶78,80. The Federal Court held that the facts were unavailable to Dr. Lahrichi and LAHRICHIs should be entitled to discovery. See Sec.II.A. Lahrichi are continuing to investigate the wrongdoings. Additionally, no one could prevent Respondents from committing the alleged acts, including the Court. For instance, Lahrichi had no safeguards against unauthorized disclosures of LAHRICHIs confidential information once he entrusted it to Agents and Companies. Lahrichi relied on trust and good faith and assurances of Respondents to abide by their contracts. Privacy is a one-way street.

The sealing of documents does not undo the damage to LAHRICHIs, but demonstrates that Agents and companies violated their duties to LAHRICHIs. CP 18 at ¶100. The harm to LAHRICHIs is irreparable and is continuing after many years. The information was disseminated over the internet. The sealing is only a drop in the bucket and part of LAHRICHIs *ongoing* efforts to mitigate damages.<sup>6</sup> Even so, Agents and Companies hampered LAHRICHIs from correcting their unauthorized disclosures.<sup>7</sup> Additionally, the Federal Court could not provide compensation to LAHRICHIs for their injuries. Agents cannot avoid liability by imposing their own remedies. Disciplining attorneys leave LAHRICHIs uncompensated, but might prevent their future misconduct. Therefore, bestowing immunity on Respondents will not uphold the public policies, but instead will erode people's trust in the justice system, prevent justice, and encourage abuse of the privilege.

**F. Appellants' reasons for reversal of the trial court's decision are proper**

**1. Reply to Agents' Section III.C.1 (pp. 23-26)**

Agents' arguments that the Superior Court reviewed the complaint is immaterial to the fact that it treated the motions to dismiss as motions

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<sup>6</sup> LAHRICHIs are continuing to spend immense time, efforts, resources to mitigate damages.

<sup>7</sup> See CP 14-17 at ¶¶ 82; 85,86,88,91-96

for summary judgment. The same holds for Agents' argument that the factual allegations are presumed true under CR 12(b)(6) and thus no disputed facts exist. Even if the facts are undisputed, if reasonable minds could draw different conclusions, summary judgment is improper. Chelan County Deputy Sheriffs' Ass'n v. Chelan County, 109 Wn.2d 282, 295 (1987). The Superior Court erroneously adopted the Agents' omissions and erroneous restatements of the factual allegations rather than the facts in the complaint. The Superior Court erroneously reiterated the Agents' erroneous conclusions that they are immunized for all their wrongdoings rather than apply the proper standard. For example, the Superior Court did not apply the pertinence test, which requires review of the entire proceedings and analysis of many parameters. Sec.II.E. The Superior Court missed that Agents' wrongdoings did not further the litigation and undermined rather than promoted the Course of justice. The Superior Court did not consider that Agents had duties to LAHRICHIs and LAHRICHIs had countervailing privileges that did not interfere with Respondents' advocacy.

The Superior Court did not address all LAHRICHIs causes of action. The Superior Court's statements (Stoel p. 26) upon which Agents rely show it appears that it just adopted and recited Agents' deficient rewording of the factual allegations and erroneous conclusions in their

motions to dismiss. Compare CP 176:5-13 with record of proceedings in Atty Br. at 26. The Superior Court did not issue its own order and signed Respondents' orders that were deficient and erroneous, which is error. Cuthbertson v. Biggers Bros., Inc., 702 F. 2d 454, 459 (4th Cir. 1983). Moreover, this case involves complex issues and the application and expansion of the immunity privilege warrants an independent order.

**2. Reply to Agents' Section III.C.2 (p. 26)**

The Superior Court incorrectly applied and expanded the standard beyond its boundaries.

**3. Reply to Agents' Section III.C.3 (pp. 27-29)**

Agents neither acknowledge nor address the breach of the confidentiality contracts, for which immunity is not applicable. Agents conveniently conflate using confidential information to advocate and their duties to LAHRICHIs not to disclose it to ones not entitled to it. The confidentiality contracts and protective orders protected both interests concurrently, permitting Agents to advocate freely and fearlessly and protecting LAHRICHIs' from harm. Agents had a duty of care to LAHRICHIs to protect LAHRICHIs' confidential information. Supra. Its unauthorized dissemination was not in furtherance of the litigation and did not promote the course of justice, but only injured LAHRICHIs. In determining litigation immunity, "courts examine not only the purpose of

the conduct, but also the method employed to achieve that goal. n116” Anenson at 935. Such improper dissemination constitutes excessive publication that destroys the immunity privilege even it were to exist. See section II.E.2.

Agents misstate LAHRICHIs’ argument in Aplt Br. at 25-26 that the act of sealing LAHRICHIs’ confidential information was neither pertinent to the relief sought nor an advocacy act. Agents attempt to undermine authority showing their acts were not advocacy acts or pertinent to the relief sought. Judicial and litigation immunity are rooted in the same principles. Restatement, Chapter 25. LAHRICHIs showed that courts use a functional approach to determine immunity; i.e., it is “the nature of the function performed, not the identity of the actor who performed it,” that informs a determination of whether an actor is entitled to absolute immunity. Forrester v. White, 484 U.S. 219, 229 (1988). “The privilege . . . is confined to statements made by an attorney while performing his function as such.” Demopolis, 59 Wn.App. at 110. LAHRICHIs did not only cite Mauro v. County of Kittitas, 26 Wash. App. 538, 613 P.2d 195 (1980), but also other examples for such determinations.

Agents seek to distract from their outrageous violations by accusing LAHRICHIs of making unsubstantiated accusations against

them.<sup>8</sup> Atty Br. at 28. The Agents and Companies carried Mino's threat against LAHRICHIs' that he would erase his shadow. CP 6-7 at ¶¶ 26,29,30-32; RP 14:3-5. Agents do not show the information they filed unsealed and the defamatory statements. RP 14:6-8; 15:14-22; RP 21:7-12. Agents omit that they improperly filed unsealed hundreds of documents with LAHRICHIs confidential information that is highly sensitive. Id.

Agents misstate that there are no factual allegations supporting the violations of the Uniform Health Care Information Act ("UHCIA"). CP 8-9,14-15 at ¶¶40,42,47;51; 82 RP-22-23. See also *infra*. Agents misstate that the health care act apply only to health care providers. "It is the public policy of this state that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers." RCW 70.02.005 (4).

Additionally, *nothing* in Restatement §586 about the litigation immunity addresses this situation, where

- (1) the injured party (LAHRICHIs) had a countervailing confidentiality privilege;
- (2) Declarants (Respondents) had a duty to LAHRICHIs; and,

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<sup>8</sup> This is not the first time Agents use these tactics. CP 221:3-6.

- (3) Declarants had a confidentiality contractual relationship with the injured parties,

all of which are recognized by the Court and do not interfere with Respondents advocacy and which precluded declarants from improperly disseminating LAHRICHIs' confidential information and breaching their duty to LAHRICHIs, their contracts, and the Court orders. e.g. Jaffee v. Redmond, 518 U.S. 1, 15 (1996); HIPAA; UHCIA.

**4. Reply to Agents' Section III.C.4 (pp. 30-31)**

Contrary to Agents self-serving arguments, Appellants properly pleaded their claims of contract fraud, bad faith, malpractice, and negligence. Aplt. Br. 28-31; Sec.II.E.3 supra. For fraud and bad faith duty is not an issue, since the wrong is intentional conduct.<sup>9</sup>

LARHCHIs' authority shows that their malpractice claim can survive. Aplt Br. at 30-31. However, Agents erroneously combine defamatory statements with the malpractice claim to align this case with Hugel v. Milberg, Weiss, Bershad, Hynes & Lerach, LLP, 175 F.3d 14 (1st Cir. 1999). In Hugel, the malpractice emanated from defamatory statements that were found to be pertinent, whereas LAHRICHIs' malpractice claim is based on other grounds, including breach of duty, fraud, and negligence. Additionally, Agents' wrongdoings do not qualify

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<sup>9</sup> See Vega v. Jones, Day, Reavis & Pogue, 121 Cal.App.4th 282, 17 Cal.Rptr.3d 26 (Cal.App. 2004); Cicone v. URS Corp., 183 Cal.App.3d 194, 227 Cal.Rptr. 887 (Cal.App. 1986); Wilbourn v. Mostek Corp., 537 F. Supp. 302 (Colo 1982).

for immunity.

**5. Reply to Agents' Section III.C.5 (pp. 31-33)**

Agents conveniently misstate the issues and the factual allegations. The issue is not that Agents introduced confidential entrusted to them information in pleadings or used it in depositions, but that they were prohibited from disclosing that information to the public under the confidentiality contracts and court orders. Agents also conflate unauthorized disclosure of confidential information with making defamatory statements. Notwithstanding that, defamatory statements can only be qualified immune "upon an examination of the whole proceedings" and other parameters. Restatement §586; Demopolis, 59 Wn.App. at 110-111; see Sec. II.E.2. Contrary to Agents' claims, like in Demopolis, there were no safeguards to prevent Respondents' wrongdoings for which he was compensated. RP 21:2-12.

**6. Reply to Agents' Section III.C.6 (pp. 33-34)**

Agents improperly lump all their alleged unlawful acts alleged into perjury. Agents' unlawful acts include, but are not limited to, bribing witnesses, conspiracy, tampering with evidence, soliciting fabricated evidence, identity theft. "[W]hen two objects of the litigation—one legitimate and one illegitimate—could support an attorney's action, certain courts will deny the privilege's protection." Anenson 936 (n.126, p. 32).

“Certainly criminal conduct is not afforded immunity” Anenson n.83 p. 26. “In determining what conduct is entitled to the protection of the litigation privilege, courts examine not only the purpose of the conduct, but also the method employed to achieve that goal. n116” *Id.* at p. 7. Additionally, LAHRICHIs did not only allege Respondents committed perjury alone, but as part of their conspiracy to harm LAHRICHIs. “[W]hen perjury is merely a “step in the accomplishment of some larger, actionable conspiracy[.]” a cause of action exists. Dexter v. Spokane County Health District, 76 Wn.App. 372, 375, 884 P.2d 1353 (1994). LAHRICHIs provided statutes from the revised codes of Washington only as examples. LAHRICHIs cited Taggart v. State, 118 Wash. 2d 195, 822 P.2d 243 (1992) and Lallas v. Skagit County, No. 81672-7 (2009) to show that unlawful acts are not immunized.

**7. Reply to Agents’ Section III.C.7 (pp. 34)**

Stoel Rives erroneously claim that they are not liable hinges only on self-serving claims that their attorneys are immune for all their wrongdoings.

**8. Reply to Agents’ Section III.C.8 (pp. 35-38)**

Agents support the Superior Court’s errors by misconstruing LAHRICHIs’ argument. First, the Superior Court erroneously granted Respondents immunity for all their wrongdoings. The Superior Court’s

statement that LAHRICHIs' remedy is with Judge Coughenour acknowledges that LAHRICHIs are entitled to a remedy, but appear to show that the Superior Court did not weigh the facts presented by LAHRICHIs as well as the Federal Court's findings, including but not limited to (1) Dr. Lahrichi was not re-litigating previous claims; (2) LAHRICHIs are entitled to discovery (3) LAHRICHIs cannot get compensation in Federal Court; and (4) other Appellants are not part of Dr. Lahrichi's federal lawsuit, and (5) that LAHRICHIs have no recourse but this lawsuit. See Aplt Br. at 43-46; Sec.II.A supra.

Agents improperly make LAHRICHIs as a one plaintiff. First, the issue of privity was not decided by the Superior Court. Fentron Industries Inc. v. National Shopmen Pension Fund, 674 F.2d 1300 (9th Cir.1982) (appellate court is generally reluctant to review issues lower court has not fully considered). Ironically, when the Agents filed their federal lawsuit against Dr. Lahrichi they did not include any of the other LAHRICHIs. Additionally, each of LAHRICHIs is seeking relief that he or she suffered independently of the others. The violations to each are addressed through compensatory damages rather than punitive damages. The jury will grant LAHRICHIs collectively punitive damages as they see fit. Appellant could have separately sought an action against Respondents.

**9. Reply to Agents' Section III.C.9 (pp. 38-39)**

LAHRICHIs' complaint meets CR8(a). LAHRICHIs had insufficient time to respond to the motion to dismiss and to prepare for the oral hearing and to amend their complaint. See section II.C supra. Aplt Br. at 46-48 (section V.B.4).

LAHRICHIs are not seeking amendment in bad faith. During the oral hearing, Dr. Lahrichi attempted to explain to the Superior Court that LAHRICHIs needed to amend their complaint and conduct preliminary discovery, which are necessary herein. RP 15:14-22; 19:22-20:1-2; 20:5-21; See also CP 55-56, sec.B. Dr. Lahrichi informed the Court that LAHRICHIs are continuing their investigation and the facts are evolving. Id. Respondents include entities and many individuals. The relationships are intertwined and complex. The nature of the claims require discovery. RP 18:12-15; 18:20:23; 19:7-21; 21:15-20. Respondents own much of the evidence and have concealed their acts. "[W]here 'the proof is largely in the hands of the alleged conspirators,' dismissals prior to giving the plaintiff ample opportunity for discovery should be granted very sparingly." Hospital Bldg. Co. v. Rex Hospital Trustees, 425 US 738, 746 (1976).

Additionally, some of the evidence is sealed and LAHRICHIs need to get a protective order to avoid harm, but had no time to do so.

We have held that in dismissals for failure to state a claim, a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.”

Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911 F.2d 242, 247 (9th Cir. 1990);<sup>10</sup> see also Moody, 288 P.2d at 401.

The policy of Rule 15 is to allow amendments of the pleadings with “extreme liberality.” United States v. Webb, 655 F.2d 977, 979 (9th Cir.1981). “Delay alone is not enough to justify denying an amendment. ‘Where there is lack of prejudice to the opposing party and the amended complaint is obviously not frivolous or made as a dilatory maneuver in bad faith, it is an abuse of discretion to deny such a motion.’” Hurn v. Retirement Fund Trust of Plumbing, Heating, Piping Industry of So. Calif., 648 F.2d 1252, 1254 (9th Cir. 1981); Webb, 655 F.2d at 980. Refusing to grant leave to amend without stated reasons, or where the reasons are not readily apparent may be an abuse of discretion. Wallace v. Lewis County, 137 P.3d 101, 114, 134 Wash.App. 1 (2006). Furthermore, the Superior Court did not rule on amending the complaint. Respondents would not be prejudiced by such amendment. Respondents are not claiming bad faith or undue delay. CR 15(a) provides that leave to amend,

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<sup>10</sup> The differences between CR 15 and FRCP 15 are minor. Washington Civil Procedure Deskbook, 2<sup>nd</sup> ed., 2006 Supp. at 15-4.

“shall be freely given when justice so requires.” LAHRICHIs would be greatly prejudiced otherwise.

**10. Reply to Agents’ Section III.C.10 (pp. 40-41)**

Agents now downplay that they untruthfully testified that they were not properly served. CP 176-177; 185-187.

**III. APPELLANTS’ REPLY TO MICROVISION’S BRIEF**

**A. Reply to Microvision’s Section I (p. 1)**

Microvision’s restatements of LAHRICHIs’ allegations are incorrect and misrepresent the alleged wrongdoings as acts of advocacy to claim immunity. See Sec.II.E.3. Microvision erroneously shifts responsibility to Agents and claims no liability, because the Agents are supposedly immune. Like Agents, Microvision does not acknowledge the confidentiality contracts that they had signed in bad faith and violated. CP 8 at ¶¶40,44.RP 12; 15:1-5; 18. LAHRICHIs’ claims are within the statute of limitations.

**B. Reply to Microvision’s Section III.C (p. 3)**

LAHRICHIs’ allegations against Respondents do not emanate only from the Agents’ misconduct. The allegations against Microvision are the same as against the Agents, because Microvision took part in the wrongdoings.

**C. Reply to Microvision’s Section III.D (p. 4)**

In the federal lawsuit, currently on appeal, Microvision deflected liability to its subsidiary for Microvision's failure to stop discrimination against Dr. Lahrichi. Herein, Microvision also deflects liability to the Agents. Microvision omits the harm that their wrongdoings alleged herein are causing LAHRICHIs.

**D. Reply to Microvision's Section III.E (p. 4)**

Microvision prejudiced LAHRICHIs by filing their motion to dismiss knowing that LAHRICHIs had little time to respond to the other two motions to dismiss and for to prepare for the oral hearing. See Section II.C *supra*.

Contrary to Microvision, the order for Microvision (CP 311-312) does not state that the case was dismissed, because LAHRICHIs claims expired. Microvision omits Judge Cahan's statement that shows that she did not make conclusive findings about the statute of limitations: "May be the time has passed, I do not know." RP 31:5-6.

**E. Reply to Microvision's Section IV.B (pp. 7-11)**

Microvision participated in the alleged wrongdoings with other Respondents, including unlawful acts. Therefore, Microvision's argument that they are not liable just because the Agents are immune fails. Aplt Br. at 36-40. Besides, the Agents are not entitled to absolute immunity for

their wrongdoings.

Microvision recites the immunity doctrine, but misapplies it to the facts of this case. For instance, Microvision does not address all the prongs for immunity, including pertinence and other parameters. See Sec.II.E. Pertinence can only be established upon examination of the entire proceedings and immunity can be lost. Microvision indiscriminately expands immunity to all their wrongdoings. LAHRICHIs showed that the cases upon which Microvision rely, i.e., Jeckle; Kearney; and Bruce, cannot be indiscriminately generalized to this case. Id. Loigman v. Township Cmte. of Middletown, 185 N.J. 566, 588, 889 A.2d 426 (N.J. 2006) is also distinguishable. Loigman did not allege or present any evidence of Township officials' conspiracy or misuse of the judicial process to exclude him.

Like the Agents, Microvision omits, misapprehends, and erroneously rewords LAHRICHIs' factual allegations. Microvision goes to great length to ignore the confidentiality contracts, which they signed in bad faith and to defraud LAHRICHIs, and which they repeatedly violated. Microvision cannot undermine that they had a duty to LAHRICHIs to protect LAHRICHIs confidential information, which is actionable. Microvision erroneously recast their violations of the contracts as introduction of evidence, which is not at issue. The issue is Microvision's

improper disclosure of that information to the public. Additionally, mediation information cannot be disclosed to anyone or introduced as evidence. Microvision conveniently ignores the contracts by claiming only violations of protective orders. Even under the protective orders dissemination of that information constitutes excessive publication, for which immunity is unavailable. Sec. II.E. LAHRICHIs have shown that the act of sealing LAHRICHIs' confidential information from the public was not pertinent to the relief sought and was merely a ministerial act, for which immunity is not available. Aplt Br. at 22-28.

Microvision downplay their unlawful acts of tampering with witnesses, conspiring to commit perjury and to use the proceedings to inflict harm on LAHRICHIs, soliciting fabricated evidence, and bribing witnesses as "interfering with witnesses." Such unlawful actions are not privileged.

Microvision misses the point. Immunity does not attach to an act or a statement just because it is performed by an attorney, litigant, or witness, and occurred in judicial proceedings. Otherwise, immunity is only a sword to injure others. Demopolis, 59 Wn.App. at 110-111 . e.g., Sussman v. Damian, 355 So.2d 809, 812 (Fla. Dist. Ct. Ap. 1977)(attorney's defamatory attack on opposing counsel's integrity, made in the courthouse elevator after heated motion argument, was unrelated to cause at hand and

therefore was not absolutely privileged); Viss v. Calligan, 91 Wash. 673, 675-76, 158 P. 1012 (1916)(no privilege for witness who "'broke out' during the course of his testimony and proceeded to defame the [defamation plaintiff]" with allegations irrelevant to the proceeding)

Microvision omits many factual allegations and references only a portion of a paragraph of LAHRICHI's complaint (CP 8-9, ¶52) to claim that all their wrongdoings are privileged. Notwithstanding that, although those acts occurred in depositions, the statements and the actions were not pertinent to the relief and were not screened out for pertinence. Notwithstanding that, Microvision omit that their Agents verbally attacked Lahrichi even outside the confines of deposition. Id.

Microvision does not dispute they participated in the wrongdoings. Notwithstanding that, immunities are not transferrable (Aplt Br. at 36-40) and Microvision is at a minimum liable for negligence, Intentional or criminal conduct may be foreseeable unless it is "so highly extraordinary or improbable as to be wholly beyond the range of expectability." Niece v. Elmview Group Home, 929 P. 2d 420, 427 (1996). Employers are liable when they have constructive notice and fail to take remedial measures to avoid liability. Nichols v. Azteca Rest. Enterp. Inc., 256 F.3d 864, 875-77 (9th Cir.2001); Galdamez v. Potter, 415 F.3d 1015, 1022 (9th Cir.2005).

Microvision's claim that Lahrichi only now raises that Agents and

Companies violated the Uniform Health Care Information Act and HIPAA is incorrect. LAHRICHIs claimed that Agents and Companies violated privacy laws, in his complaint, responses, and reconsideration. RP 22:6-12; CP 49:17-19; CP 50:23-51:1; CP 215:14-17. Additionally, A 12(b)(6) motion permits consideration of hypothetical facts asserted for the first time on appeal and such facts may include statutory provisions. Halvorson v. Dahl, 89 Wn.2d 673,674-75, 574 P.2d 1190 (1978). Aplt Br. at 19.

**F. Reply to Microvision's Section IV.C (pp. 11-13)**

Under the circumstances of this case, the discovery rule applies to LAHRICHIs' claims. See detailed discussion in Aplt Br. at 40-43.

Microvision deceitfully omits factual allegations that Dr. Lahrichi was unaware that his confidential information was improperly disseminated. CP 14 at ¶81; RP 15:6-22.. Agents and Companies consistently assured Dr. Lahrichi they were protecting the information from public disclosure, even after dismissal of the federal lawsuit. RP 21:25-22:4; RP 13:14-19; RP 15:1-5. CP 9,14,18 at ¶¶47,79,99.

Peculiarly, Microvision denies existence of the confidentiality contracts, which were submitted to the Superior Court and this Court. Those contracts, were signed by Agents on behalf of Microvision, Lumera (now GigOptix), and Mino, and are governed by a six-year statute of limitations. The verbal contracts between Agents and Companies and Dr.

Lahrichi are also enforceable and are governed by the three-year statute of limitations. Notwithstanding that, for CR 12(b)(6), LAHRICHIs do not require producing those contracts. Even hypothetical factual allegations are permitted. AplntBr(19,¶ 2).

**G. Reply to Agents' Section IV.D (pp. 13-14).**

Microvision improperly seeks to deprive LAHRICHIs from amending their complaint and conduct discovery, who prejudiced and burdened LAHRICHIs with a third motion to dismiss. See supra Secs. II.C. and II.F.9.

**IV. APPELLANTS' REPLY TO GIGOPTIX' AND WITNESSES' BRIEF**

**A. Reply to GigOptix section I (pp. 1-2)**

GigOptix' restatements of LAHRICHIs' allegations misrepresent their alleged wrongdoings, including unlawful acts, as merely "discovery violations" to improperly cloak them with immunity. See Sec.II.E.3.

**B. Reply to GigOptix section III.C (pp. 3-6)**

GigOptix also misrepresent LAHRICHIs' complaint as ambiguous. Id. GigOptix and Witnesses also participated in the alleged wrongdoings. The allegations against GigOptix and Mino are the same as the allegations against Microvision and the Agents, since they participated in all the acts directly or by directing and conspiring with the other Respondents to

commit those acts.

Contrary to GigOptix, prior to this appeal LAHRICHIs alleged the Agents and Companies violated privacy laws; e.g. HIPPA, RCW 70.02 et seq., and LAHRICHIs' constitutional rights. See e.g., RP 17:1-14; CP 49:17-19; CP 50:23-51:1; CP 215:14-17. Notwithstanding that, under CR 12(b)(6) on appellate review LAHRICHIs can raise new facts. See page 34 supra.

GigOptix and Witnesses, like the other Respondents, take liberty in rewording the factual allegations in the complaint. For example, in GigOptix Br. at 4(¶2), they misstate the complaint ¶ 38 (CP 7-8) that Londergan, Dinu, Hu, Jin, Guan, and Parker *conspired* with Mino to falsely and fraudulently testify and were supported in their conspiracy by Agents only as those individuals just gave false testimony.

GigOptix and Witnesses adopts literally the Agents' categorizations of LAHRICHIs' factual allegations, which are erroneous and misleading. See Sec.II.E.3. LAHRICHIs allege that GigOptix and Mino are directly involved in the wrongful of the Agents by conspiring to carry those acts and carry Mino's threat to destroy Dr. Lahrichi. GigOptix and Mino omit many factual allegations pleaded against them, including bribing witnesses, soliciting fabricated testimony, committing fraud. They omit the violations of confidentiality contracts and negligence.

GigOptix and Witnesses recite the order that they had drafted for the Court. Lahrichi disputed the orders signed by Judge Cahan (RP 33 lines 15-18).

**C. GigOptix Motion to Dismiss was erroneously granted**

**1. Reply to GigOptix section IV.B.1 (pp. 8-12)**

GigOptix erroneously bestows immunity on all their wrongdoings by misapprehending and misstating the factual allegations and obfuscating the issues.

GigOptix indiscriminately overextend the privilege to causes of actions other than defamation claims. See Sec.II.E.2. GigOptix overstate that “Washington Courts have repeatedly refused to limit the privilege only to such claims.” GigOptix Br. at 8. Washington Courts and other Courts apply the privilege on a case-by-case basis and based on many parameters. Sec.II.E.2. The cases cited by GigOptix cannot be generalized to facts herein, including Bruce, which had divided the Court.

GigOptix misconstrue Stidham v. State, 30 Wn. App. 611 (1981). First, Stidham worked for the State and was a public figure. Second, the alleged defamatory statements had “some relation to the general matters.” Id. at 614. The facts, circumstances, and the claims herein are different.

GigOptix limit the allegations against them to only three categories. The issue is not whether the Witnesses could defame Dr.

Lahrichi, but that Witnesses conspired to commit perjury and fraud and received bribes to do so to carry Mino's threats to Dr. Lahrichi that he would destroy him. Nothing in the Restatement §588 allows witnesses to commit such unlawful acts or misuse the proceedings. Furthermore, the Witnesses' statements are not immune just because they occurred during proceedings, the statements must also pass the pertinence prong, before they can qualify for immunity. Demopolis, 59 Wn.App. at 110-111.

GigOptix parrots Agents' categorizations of the factual allegation, which are erroneous and misleading. See Sec.II.E.3. LAHRICHIs allege that GigOptix and Mino participated in the wrongdoings of Agents directly or by directing them to do so. Notwithstanding that, immunities are not transferrable; even under the tort of negligence GigOptix like Microvision is liable. *Supra*.

GigOptix conveniently ignore their confidentiality contracts with Dr. Lahrichi and their duties to LAHRICHIs under those contracts. LAHRICHIs allege that the unauthorized disclosures were not inadvertent, but deliberate acts to harm LAHRICHIs. RP 14:1-9.

## **2. Reply to GigOptix section IV.B.2 (pp. 12-16)**

LAHRICHIs' opening brief and Section II.E.3 show that GigOptix, like Microvision, omits and presents facts in the complaint out of context and misstate that LAHRICHIs' claims are stale.

Contrary to GigOptix, LAHRICHI's factual allegations discuss the alleged confidentiality contracts and that GigOptix are parties to those contracts. GigOptix and Mino obfuscate those contracts and falsely deny that they are signatories to those contracts. For instance, the 2005 mediation settlement confidentiality contract (CP 8 at ¶¶44,45) states: "The parties, acting through their undersigned counsel hereby agree..." Aplt Br. at 27; see CP 8 at ¶ 46.

Likewise, GigOptix conveniently omit that the parties had signed the 2004 confidentiality contract and the Federal Court granted parties' request to enter it as a stipulated protective order. CP 8 at ¶¶40,41. Parties entered into another written confidentiality contract with Respondents, which was violated. CP 9 at ¶ 50. These contracts are governed by the six-year statute of limitations. The breaches of these contracts were only discovered after the dismissal of the federal lawsuit in 2006. This also shows that the additional verbal confidentiality contracts (CP 8,9,14,18 at ¶¶ 42,47,79,99; RP 13:14-19; RP 15:1-5) are well within their stature of limitations.

GigOptix' claim that those contracts are not contracts as a matter of law is self-serving. Parties had agreed to the terms of those contracts, which were unambiguous and in accordance with existing privacy laws. Under those contracts, parties exchanged confidential information with the

understanding and duty to protect against improper disclosure. RP 15:1-5; RP 18:7-15; 21:22-22:2. The 2004 confidentiality contract preceded the stipulated protective order. The entry of that contract as a protective order further reasserts that is valid and enforceable. RP 20:16-21:6.

GigOptix misconstrue the letter of the mediator and misstate that the mediation confidentiality agreement merely reiterates federal CR 39.1(a)(6) for mediation. However, the mediation agreement is a stand-alone contract governed by the six-year statute of limitations. Without that contract, mediation would not have taken place. Parties did not rely only on court rules for mediation, but entered into that contract, because the stakes were high and damage from violation of confidentiality would be irreparable.<sup>11</sup>

Furthermore, this Court should disregard GigOptix Br. at 15, GigOptix attempts to create confusion by injecting Dr. Lahrichi's contracts with Lumera while he was employed there, which are not the alleged confidentiality contracts.

**D. Reply to GigOptix section IV.C (pp. 16-17)**

Contrary to GigOptix' and Witnesses' insinuations, LAHRICHIs presented sufficient factual allegations showing that they are entitled to relief to deny Respondents' motion to dismiss. Notwithstanding that,

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<sup>11</sup> Microvision and Gigoptix also had counsel in-house.

Lahrichi should be permitted to amend their complaint and conduct some preliminary discovery.

**V. CONCLUSION**

For all the foregoing reasons and because the factual allegations show that LAHRICHIs are entitled to relief, the dismissal was premature and LAHRICHIs respectfully request that this Court remand this case.

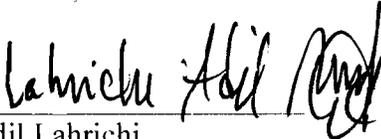
**VI. DECLARATION**

The undersigned declare under penalty of perjury under the laws of the State of Washington that the facts set forth in Part III herein above are true and correct to the best of the undersigned's knowledge and understanding.

//

DATED this 6<sup>th</sup> day of April, 2011.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies as follows:

On April 6, 2011, I caused a true and correct copy of the foregoing documents be duly served as indicated below on the following parties' counsel:

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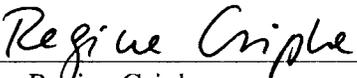
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I declare under penalty of perjury under the laws of the State of  
Washington that the foregoing is true and correct.

DATED: April 6, 2011 at Bellevue, Washington.

  
\_\_\_\_\_  
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