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No. 65144-7-I

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

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

Plaintiffs-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,**

Defendants-Respondents.

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

OPENING BRIEF OF APPELLANT

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**Adil Lahrichi and Regine Csipke
Appellants Pro Se
12875 NE 8th Street, # 14
Bellevue, WA 98005
Tel: 425-562-7220**

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I. INTRODUCTION

Respondents were the opposing party (“*Companies*”)¹, opposing counsel (“*Agents*”)², and their witnesses³ in Dr. Adil Lahrichi’s prior federal employment discrimination lawsuit against the Companies. During and after dismissal of that lawsuit, Respondents committed wrongful acts against Dr. Lahrichi and his family (“*The LAHRICHIs*”) and inflicted irreparable harm on them. Sometime after the dismissal, Dr. Lahrichi discovered Respondents’ misdeeds, including, but not limited to, breach of contracts, negligence, violation of privacy, libel, fraud, and conspiracy. Respondents hindered Dr. Lahrichi when he sought to mitigate damages compounding harm on The LAHRICHIs. After The LAHRICHIs filed the underlying action for damages, the Agents filed a lawsuit against Dr. Lahrichi in the Federal District Court for an injunction to bar this action in any court claiming relitigation. After the Federal District Court dismissed their lawsuit, Respondents filed in Superior Court motions to dismiss and alleged they are protected from liability, that The LAHRICHIs’ claims expired, and insufficient service. Although The LAHRICHIs’ factual allegations and evidence entitled The LAHRICHIs to relief and The

¹ The Companies are GigOptix, formerly Lumera Corp., Microvision Inc., and Thomas D. Mino.

² The Agents are Keelin A. Curran, Zahraa V. Wilkinson, Molly M. Daily, Stoel Rives LLP

³ The witnesses are Timothy Londergan, Timothy Parker, Raluca Dinu, Dan Jin, Henry Hu, and Hannwen Guan.

LAHRICHIs showed that Respondents misapplied the proffered defenses and were properly served, the Superior Court dismissed The LAHRICHIs' claims with prejudice. The LAHRICHIs, who continue to suffer irreparable harm, were deprived of discovery, the opportunity to amend their complaint, their right to a trial, and damages.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The trial court erred and abused its discretion in granting Respondents' motions to dismiss The LAHRICHIs' claims with prejudice under CR 12(b)(6).

2. The trial court erred in denying The LAHRICHIs' motions for reconsideration of the orders dismissing The LAHRICHIs' claims under CR 12(b)(6).

B. Issues Pertaining to Assignments of Error

1. Whether The LAHRICHIs' claims should have been dismissed under CR 12(b)(6), in spite of factual allegations and evidence, which show that The LAHRICHIs are entitled to relief?

2. Whether Companies-Agents are permitted to indiscriminately apply and overextend the conditional and limited litigation immunity privilege for libelous statements in proceedings to their wrongful acts that injured The LAHRICHIs, including, but not limited to, violations of the

law, violations of non-disclosure confidentiality contracts and The LAHRICHIs' privacy, contract fraud, malicious prosecution, and to their libelous statements not pertinent or material to the relief sought?

3. Whether the litigation immunity privilege shields Companies-Agents from liability for committing wrongful acts against non-parties to Lahrichi's lawsuit?

4. Whether the litigation immunity privilege applies when attorneys perform non-advocacy administrative acts?

5. Whether the litigation immunity privilege permits Respondents to conspire to defraud and harm The LAHRICHIs and permits the Companies to give Witnesses bribes?

6. Whether the litigation privilege immunity is transferrable to the attorneys' employers and other respondents?

7. Whether the Superior Court should have permitted The LAHRICHIs additional time to conduct discovery, to amend their complaint, and to submit evidence before their claims were dismissed under CR 12(b)(6)?

III. STATEMENT OF THE CASE

A. Factual Background and Procedural History

1. Lahrichi's Federal Employment Discrimination Lawsuit

The LAHRICHIs enjoyed a private and peaceful life. Dr. Lahrichi had an outstanding career and professional reputation. CP 5 at ¶ 22.

In 2001, the technology company Microvision hired Dr. Lahrichi as vice president of technology development for its subsidiary, technology startup, Lumera. CP 5 at ¶ 23. Dr. Lahrichi signed his employment contract with Microvision/Lumera in 2001. Dr. Lahrichi had a stellar performance at Lumera. CP 5-6 at ¶ 24. Dr. Lahrichi built Lumera's department for government defense contracts and managed its contracts with various United States military agencies. CP 6 at ¶ 25. Dr. Lahrichi complained to Microvision's management that Thomas D. Mino, his new boss, was abusing him, mistreating him, and discriminating against him. CP 7 at ¶ 31. Lahrichi also reported that Mino was misappropriating investor's money and defrauding the government on military defense contracts. CP 6 at ¶¶ 29-30. Mino terminated Dr. Lahrichi and threatened him that he would destroy him and "erase [Dr. Lahrichi's] shadow". CP 7 at ¶ 32; RP 14 at lines 3-5. Mino tried to force Dr. Lahrichi to sign a release of claims to silence him, but Dr. Lahrichi refused. CP 7 at ¶ 33.

2. Factual Background of Lahrichi's Federal Lawsuit

In 2004, Dr. Lahrichi's counsel filed an employment discrimination lawsuit against the Companies in the Federal District Court, *Lahrichi v. Lumera Corp. et al.*, Case No. 04-02124. CP 7 at ¶¶ 34-35. None of the other Appellants was party to that lawsuit. Before discovery started, Dr. Lahrichi and the Companies and Agents ("*Companies-Agents*") signed a non-disclosure confidentiality contract ("*2004-NDC Contract*"), which required the Companies-Agents to keep at all times confidential LAHRICHI's medical, financial, and personnel records, and their contents, and other information designated confidential ("*Confidential Information*"). CP 8 at ¶ 41; RP 12 at lines 1-14; RP 279 at ¶¶ 5-6. The 2004-NDC Contract declared that "[n]o party may challenge the confidentiality of medical records and personnel files" (Appendix A at page 5, ¶ 12) and those records "(or portions thereof) shall be considered per se CONFIDENTIAL" without a designation as such (Appendix A at page 3, ¶ 4). This includes compilations and summaries of such information. Appendix A at pages 5-6, ¶ 14. The 2004-NDC Contract prohibited the Companies-Agents from disclosing the Confidential Information except to specific individuals identified in the contract, who had to be associated with the lawsuit, and only after they signed an agreement to keep it confidential and be bound by the 2004-NDC

Contract. Id. The 2004-NDC Contract also required the Companies-Agents—if they were to file documents containing the Confidential Information in the Federal District Court—to file those documents only under seal and specifically by placing them in sealed envelopes. Appendix A at page 4, ¶ 8.⁴ The 2004-NDC Contract was in accordance with federal and state privacy laws and statutes, e.g., Chapter 70.02 RCW et seq.; HIPAA; 12 U.S.C. 3401 et seq.; RPC (Preamble; 1.6; 4.4; 8.4). Days later, on December 22, 2004, the District Court approved all the provisions of the parties’ 2004-NDC Contract and entered it as a stipulated protective order (“*SPO*”). Appendix A; RP 12 at lines 12-16.

Thereafter during discovery, Dr. Lahrichi began to disclose The LAHRICHIs’ Confidential Information to the Companies-Agents, such as medical, medical insurance, tax, and personnel records, and other confidential information. CP 8 at ¶ 43; CP 278 at ¶ 6. Throughout the lawsuit, Dr. Lahrichi consistently stressed to the Companies-Agents to protect said information. Id.

Early in discovery, the Companies-Agents pressed Dr. Lahrichi to attend an out-of-court confidential mediation conference and persuaded him to provide confidential information of The LAHRICHIs by signing a

⁴ In 2004-2005, the computer system in the District Court did not have features to submit documents electronically under seal.

non-disclosure confidentiality mediation contract on February 2005 (“2005-NDCM Contract”). CP 8 at ¶ 44; CP 279 at ¶ 9; RP 12 at lines 17-25. The contract declared the conference entirely confidential and prohibited parties and their counsel from using/disclosing for any purpose the information provided by parties therefor to anyone, including the Court. Appendix B at page 4; see p. 27, *infra*. The Companies-Agents assured Dr. Lahrichi that they would comply therewith and keep any information provided by Dr. Lahrichi confidential. CP 8 at ¶ 42. Lahrichi believed and trusted the Companies-Agents and disclosed to them personal and private information of and about The LAHRICHIs in a memorandum marked “CONFIDENTIAL PRIVILEGED FOR SETTLEMENT ONLY.” Dkt.# 40, Exh. H and Dkt.# 86, Exh. E.⁵ On March 7, 2005, the day of the mediation conference the mediator again emphasized to the parties that they were bound by the 2005-NDCM Contract to keep the conference entirely confidential. CP 8 at ¶ 45. The Companies-Agents made the mediation conference fail.

The Companies-Agents began their ruinous campaign against The LAHRICHIs. RP 13 at lines 2-9; RP 14 at lines 1-9. Unbeknownst to Dr.

⁵ This Court may take judicial notice of all documents in the federal District Court, *Lahrichi v. Lumera Corp. et al.*, Case No. 04-02124—referenced herein by “Dkt.#”—as matters of public record available via PACER. FRE 201(b); *U.S. v. Howard*, 381 F.3d 873, 876, fn.1 (9th Cir. 2004). These documents were not provided to because most are either sealed or are pending in the Ninth Circuit Court of Appeals for sealing/redaction to protect LAHRICHIs from harm and against further dissemination of the information.

Lahrichi, the Companies-Agents began to file The LAHRICHIS' Confidential Information—and also gross distortions thereof—unprotected in the District Court's computer system giving the public online access to it, instead of filing it in sealed envelopes to protect it from the public as agreed and ordered. Appendix A at page 4, ¶ 8. That information included confidential records, pages of the mediation memorandum, and information quoted/paraphrased therefrom. In their filings and communications with Dr. Lahrichi's counsel at the time, the Companies-Agents were admitting that the Confidential Information that they were improperly disseminating, is copied/paraphrased from confidential records, per se confidential, and cannot and will not be disclosed to the public. The Companies-Agents also made scandalous accusations against Dr. Lahrichi to damage him, including ferocious attacks on his persona and integrity that were not pertinent to the relief sought, which they supported by their false testimonies and omissions, and to which they gave the public online access without Dr. Lahrichi's knowledge.

Ms. Curran verbally attacked Dr. Lahrichi during and outside depositions of others. Ms. Curran intimidated Dr. Lahrichi, put him under duress, and humiliated him in front of others in depositions even ordering Dr. Lahrichi to make disgraceful demonstrations. Ms. Curran attacked Lahrichi's religious beliefs. CP 9-10 at ¶¶ 51-52.

While the Companies-Agents were escalating their online unauthorized disclosures of The LAHRICHIs' Confidential Information to the public through the District Court's computer system, the District Court entered two discovery orders for production of certain confidential information by Dr. Lahrichi on September 30, 2005 and on November 1, 2005. CP 12 at ¶ 64. Dkt.#s 45, 54. Those discovery orders included heightened protective orders ("*HPOs*") that affirmed the provisions of the 2004-NDC Contract and the SPO and heightened the confidentiality of Lahrichi's medical and financial records from per se confidential to per se highly confidential, i.e., requiring those records and any court filings that incorporate, disclose, or refer to them be designated "HIGHLY CONFIDENTIAL—SEALED SUBJECT TO COURT ORDER" and to be filed only sealed in envelopes and not to be docketed unless sealed. Dkt. # 45, pages 6-7, section III(3)(d). Yet, the Companies-Agents continued to give the public online access to more of The LAHRICHIs' Confidential Information without Lahrichi's knowledge and although Dr. Lahrichi reminded them of their obligations to protect it. CP 278 at ¶ 4; Dkt.# 184, Exh. 8. On January 4, 2006, the District Court issued a third HPO for Dr. Lahrichi's medical and financial records with the same provisions as the prior two HPOs, and emphasized:

[T]he parties are reminded that discovery orders relate to

just that-discovery. They are not determinations of relevance for trial, nor admissibility at trial. ... Counsel are reminded that attorneys are officers of the Court who are bound by the Rules of Professional Conduct, by the Federal Rules of Civil Procedure, including discovery Rules 26(g) and 37(c), and by the various protective orders in place regarding the sensitive information produced or ordered produced in this litigation.

Dkt.# 126, page 9, lines 2-8. RP 20 at line 16 thru RP 21 at line 6.

However, the Companies-Agents continued their unauthorized disclosures to the public.

Unbeknownst to Dr. Lahrichi, the Companies-Agents solicited witnesses and conspired with Witnesses to provide false testimonies and declarations to damage Lahrichi. CP 9, 13 at ¶¶ 49, 74. For example, the Agents coached the Witnesses to testify falsely and prepared their false testimonies. CP 11-12 at ¶¶ 62, 65, 67, 69. One of the Agents impersonated Dr. Lahrichi's counsel to interview witnesses. CP 12 at ¶ 68. The Companies-Agents continued to make public The LAHRICHIs' Confidential Information, and distortions thereof, libelous statements about Dr. Lahrichi, as well as the Witnesses false testimonies.

3. Respondents' Misdeeds Are Discovered

In February 10, 2006, Dr. Lahrichi became unwillingly pro se. CP 279 at ¶ 10. On March 3, 2006, Lahrichi's case was dismissed on summary judgment. Id. On March 1, 2006 and on March 23, 2006 (Dkt.#

184, Exhs. 6 and 7), Dr. Lahrichi requested the Agents to provide names of individuals that the Agents shared his medical records with and again reminded them to protect his medical records. The Agents did not respond to him. On April 28, 2006, Dr. Lahrichi coincidentally discovered that some of The LAHRICHIs' Confidential Information was publicly accessible on the internet. CP 279 at ¶ 11. On May 8, 2006, in his retax motion, Dr. Lahrichi alerted the District Court that Companies-Agents improperly filed some of LAHRICHIs' information unsealed.⁶ However, the District Court sent that motion back to Dr. Lahrichi and refused to accept any more documents from him. Dkt. # 173. That same day Lahrichi filed his notice of appeal.

Dr. Lahrichi was untrained in law and the court system. Lahrichi hired new counsel, who sought to mitigate The LAHRICHIs' damages. CP 279 at ¶ 12. Shortly thereafter, Dr. Lahrichi's counsel suffered a serious accident, which required her hospitalization, surgery, and therapy for few months. After Dr. Lahrichi's counsel's recovery and per her petition, on April 11, 2007, the Ninth Circuit Court of Appeals ordered a limited Seal Remand to permit Lahrichi to file a motion to seal/redact the Confidential Information to limit its dissemination, the only relief available to The

⁶ On May 15, 2006, the Agents reassured Lahrichi that they did and would continue to fulfill their obligations to protect The LAHRICHIs' confidential information. Dkt.# 247, Exh. 1.

LAHRICHIs without filing a lawsuit. The Companies-Agents opposed Dr. Lahrichi to file his motion to seal and requested that the sealing/redaction be done only by stipulation, which was granted. The Companies-Agents then used the stipulation for the Seal Remand to stall and prevent Dr. Lahrichi from sealing/redacting The LAHRICHIs' Confidential Information, compounding harm on The LAHRICHIs. RP 16 at lines 2-5.

During the 2007-2009 Seal Remand, with his counsel's assistance, Dr. Lahrichi learned of the Companies-Agents' ruinous campaign against The LAHRICHIs. CP 279-280 at ¶¶ 13-14. The Seal Remand revealed the routine online unauthorized disclosures of The LAHRICHIs' Confidential Information by the Companies-Agents, which included, but was not limited to, medical, personnel, financial, tax, personal, full name of minors and other identifying information, information from the mediation memorandum, including pages thereof, and other private information, as well as their scandalous and false accusations and omissions, and false declarations and testimonies that defamed Dr. Lahrichi. The Seal Remand showed that the Companies-Agents were diligent in filing the confidential information of Companies in sealed envelopes to protect it from public disclosure. Id; RP 21 at lines 15-20. Lahrichi learned of Respondents' wrongful actions against him, including their conspiracy to harm him, that

Companies gave bribes to the Witnesses for their false declarations, and that the Companies-Agents tempered with and concealed evidence. Lahrichi also learned that his previous counsel also improperly disseminated The LAHRICHIs' Confidential Information and concealed it from Dr. Lahrichi.

On March 23, 2009, the District Court ordered over 73 documents to be sealed/redacted and other documents are pending appeal for sealing/redaction. Dkt.# 257. The LAHRICHIs continue to suffer irreparable harm and substantial injuries from the misdeeds of Respondents. See Section V(B)(3). Dr. Lahrichi is continuing to spend immense time, efforts, and resources to limit the dissemination of said information.

4. Procedural History of this Case

On April 27, 2009, The LAHRICHIs filed the underlying action against Respondents alleging multiple causes of action.⁷ CP 1-2 at ¶ 1. Respondents were properly and personally served, but none filed an answer to the complaint. CP 226-249; CP 264-288.

⁷ The LAHRICHIs' alleged violation of privacy, intentional and negligent dissemination of their information, libel and defamation, intentional misrepresentation of information to inflict harm on them, conspiracy to defame and harm them, breach of contract, breach of trust, exploitation, negligence and infliction of emotional distress, bad faith, fraud, malpractice, obstruction of the course of justice, perjury, intentional and malicious acts to harm them, misappropriation of others' identity to inflict harm and obstruct justice, exploitation of privileges and trust to inflict harm on them, and intentional and bad faith acts to prevent them from mitigating ongoing damages.

On August 28, 2009, the Agents filed a complaint for injunctive relief against Lahrichi in the Federal District Court (W.D. Wash. Case No. C09-1227) (CP 42-46) and a motion for a preliminary injunction to dismiss this lawsuit and to bar it in any court. CP 28-40. The Agents alleged that Lahrichi was seeking to re-litigate his claims from his prior federal employment discrimination lawsuit and that The LAHRICHIs had had their day in court. Subsequently, the Agents filed non-emergency motions in their lawsuit and opposed Dr. Lahrichi's request for time extension, although Dr. Lahrichi had filed a notice of unavailability and they knew that Lahrichi was assisting his counsel in his appeal. CP 159 at fn. 2. Dr. Lahrichi showed the federal District Court that the Agents' claims of relitigation were frivolous. CP 111-132.

On August 31, 2009, the Agents requested a stay in this lawsuit. CP 21-22. The LAHRICHIs opposed the stay, which deprived them from discovery. On September 16, 2009, the stay was granted. CP 99-100. On November 19, 2009, the federal District Court rejected the Agents' conjectures of relitigation and dismissed their lawsuit in its entirety. CP 143-156.

On December 3, 2009, the Superior Court lifted the stay. CP 171-172. Respondents filed separate motions to dismiss, the Agents on January 6, and the Witnesses and the Companies on January 13,

claiming insufficient service and that they were immune from liability. CP 173-195; CP 196-202; CP 203-208. The Companies also claimed that The LAHRICHIs' claims expired. *Id.* All Respondents noted their motions the same day for oral hearing. Lahrichi had insufficient time to respond to all three motions and prepare for the oral hearing.⁸ CP 314, fn. 1. The LAHRICHIs' February 3, 2010 response showed that Respondents indiscriminately applied the litigation privilege and were, properly served, that the Agents untruthfully testified about improper service, that The LAHRICHIs' claims did not expire, and that the factual allegations in The LAHRICHIs' complaint entitled them to relief. CP 209-249; CP 250-263; CP 264-288. During the February 5, 2010 oral hearing, The LAHRICHIs requested additional time to conduct discovery, to amend their complaint, and to provide evidence to support their claims, but the Court declined their request. RP 25-29. Then, the Honorable Judge Regina Cahan granted Respondents' motion to dismiss and signed their proposed orders. RP 30-31; CP 306-308; CP 309-310; CP 311-312. The LAHRICHIs' motion for reconsideration was denied. CP 313-379; 380. On March 29, 2010, The

⁸ Respondents refused to change the hearing date of their motion to dismiss to give The LAHRICHIs time to respond. Despite their heavy workload, The LAHRICHIs had to prepare a detailed motion for extension of time. After The LAHRICHIs filed their motion for extension, the Agents counsel agreed to give The LAHRICHIs only a week extension on condition that The LAHRICHIs withdraw their motion for extension. The LAHRICHIs were forced to agree since they could not afford to lose more time for motion practice. The LAHRICHIs needed more time because all the additional time that they had received only offset the time they spent preparing the motion for extension of time.

LAHRICHI timely filed his notice of appeal. CP 381-391.

IV. SUMMARY OF THE ARGUMENT

The litigation privilege grants absolute immunity to attorneys to make libelous statements in judicial proceedings to advocate and secure justice for their clients and to witnesses to permit them to freely testify in such proceedings. However, the statements are “only privileged if they are pertinent to redress or relief sought.” McNeal v. Allen, 95 Wash. 2d 265, 268, 621 P.2d 1285 (1980) (quoting Gold Seal Chinchillas, Inc. v. State, 69 Wash. 2d 828, 420 P.2d 698 (1966)). The Supreme Court of Washington emphasized, “we must start from the proposition that there is no such immunity. . . Only when the person claiming absolute immunity can prove that such immunity is justified will we impose it.” Lutheran Day Care v. Snohomish County, 119 Wash.2d 91, 106-107, 829 P.2d 746 (1992).

The Superior Court erroneously accepted Respondents’ indiscriminate application of the litigation privilege to all their wrongful actions and statements—including acts in violation of the law—in and outside Dr. Lahrichi’s prior discrimination lawsuit, without determining their pertinence thereto, and that the all alleged actions supposedly occurred only during proceedings of that lawsuit.

In applying the litigation privilege, the Superior Court erroneously conflated the Companies-Agents' freedom to make libelous statements with their unauthorized dissemination of The LAHRICHIs' Confidential Information to the public, which was prohibited by non-disclosure confidentiality contracts, protective orders, privacy laws and statutes to protect The LAHRICHIs from harm. The protection of that information was immaterial to the relief and not an act of advocacy, but merely an administrative act for which immunity is not available. Mauro v. County of Kittitas, 26 Wash. App. 538, 613 P.2d 195 (1980). Immunities are not transferrable and the facts show that the Companies committed and participated in the wrongful acts, which do not entitle the Companies and Stoel Rives to immunity. The litigation privilege does not shield Respondents for injuring the other Appellants, including the minors, who were not parties to Dr. Lahrichi's federal lawsuit.

The Superior misapplied the standard for the statutes of limitations to The LAHRICHIs' claims against the Companies and Witnesses. The LAHRICHIs showed that they have not one, but multiple claims against those Respondents and well within the statute of limitations.

The Superior Court erroneously declared that The LAHRICHIs remedy is not in Superior Court, but only with Judge Coughenour⁹ in conflict with Judge Coughenour, who determined that The LAHRICHIs' should be heard in Superior Court and be allowed discovery. The LAHRICHIs have been greatly prejudiced in these proceedings. The LAHRICHIs were deprived of discovery and their request to amend their complaint before dismissal was denied. The premature dismissal of this case compounded harm on The LAHRICHIs and left them without any compensation for their injuries.

V. ARGUMENT

A. Standard of Review

Whether dismissal is appropriate under CR 12(b)(6) is a question of law to be reviewed de novo. State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass'n, 140 Wn.2d 615, 629, 999 P.2d 602 (2000). Under CR 12(b)(6), dismissal is appropriate only when it appears beyond doubt that the claimant can prove no set of facts, consistent with the complaint, which would justify recovery. Bravo v. Dolsen Cos., 125 Wn.2d 745, 750, 888 P.2d 147 (1995). CR 12(b)(6) motions should be granted "sparingly and with care," and only in the unusual case in which the plaintiff's

⁹ Judge Coughenour presided over Lahrichi's 2004 employment discrimination lawsuit in federal district court, which was dismissed in 2006. Judge Coughenour also decided the Agents' lawsuit for preliminary injunction against Lahrichi.

allegations show on the face of the complaint an insuperable bar to relief. Tenore v. AT&T Wireless Servs., 136 Wn.2d 322, 330, 962 P.2d 104 (1998)(quoting Hoffer v. State, 110 Wn.2d 415, 420, 755 P.2d 781 (1988), aff'd on reh'g, 113 Wn.2d 148, 776 P.2d 963 (1989)).

A dismissal of an action under CR 12(b)(6) should not be upheld on appeal if any state of facts could be proved under the complaint, which would entitle the plaintiff to relief. Madison v. General Acceptance Corp., 26 Wash. App. 387, 612 P.2d 826 (1980). A hypothetical situation asserted by the complaining party, not part of the formal record, may be considered by a court in making its determination, including facts alleged for the first time on appellate review. Halvorson v. Dahl, 89 Wash. 2d 673, 574 P.2d 1190 (1978); Collins v. King County, 49 Wash. App. 264, 742 P.2d 185 (1987).

For purposes of review, all facts pleaded by plaintiff are accepted as true, as well as any hypothetical facts that might sustain the claim for relief. See Postema v. Pollution Control Hearings Bd., 142 Wn.2d 68,122-23, 11 P.3d 726 (2000); Tenore, 136 Wn.2d. When the facts are undisputed, the appellate court is not bound by the trial court's interpretation, but may draw its own legal conclusions from the evidence. City of Seattle v. Shepherd, 93 Wn.2d 861, 613 P.2d 1158 (1980). An undisputed fact is "a fact disclosed in the record or pleadings that the party

against whom the fact is to operate either has admitted or has conceded to be undisputed.” Heriot v. Smith, 35 Wn.App. 496, 668 P.2d 589 (1983).

A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. . .A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record, it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.

In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). “A decision based on a misapplication of the law rests on untenable grounds.” In re Marriage of Bralley, 70 Wn. App. 646, 651, 855 P.2d 1174 (1993).

B. Legal Argument

1. The Superior Court Erred when It Concluded that Respondents Have Absolute Immunity for Their Wrongful Actions and Statements

The Superior Court treated Respondents’ motions to dismiss as motions for summary judgment, then overlooked that numerous disputed issues of material facts exist and adopted the position of Respondents, who did not dispute The LAHRICHIs’ factual allegations. If Respondents’ motions to dismiss are treated as motions for summary judgment, then all disputed issues of material facts must be viewed in favor of The LAHRICHIs and Respondents must prove their allegations, which they

did not do, and The LAHRICHIs should be allowed discovery and to present evidence. “We accept as true the allegations in the plaintiffs’ complaint and the reasonable inferences that can be drawn from the allegations.” Jeckle v. Crotty, 120 Wash.App. 374, 85 P.3d 931 (2004); see Postema, 142 Wn.2d at 122-23. The LAHRICHIs were deprived from discovery to amend their complaint and correct any shortcomings that it might have. “[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 (1955). The Superior Court erred when it did not make findings regarding The LAHRICHIs’ distinct claims, assigned to The LAHRICHIs only a claim of invasion of privacy (RP 30 line 13-14), and dismissed all The LAHRICHIs’ claims under the litigation privilege. CP 301-310; CP 215 at lines 7-10, CP 18 at 101. The Superior Court also erred when it readily signed Respondents’ pre-prepared orders for dismissal to which Lahrichi objected (CP 314 lines 4-15; RP 32-32) instead of issuing orders with sufficient details to explain how it reached its decision to dismiss The LAHRICHIs’ claims with prejudice, especially that CR 12(b)(6) motions should be granted “sparingly and with care.” Tenore, 136 Wn.2d.

a. The Litigation Immunity Privilege is Not a Blanket

Immunity

The litigation immunity privilege provides Attorneys the freedom in their efforts to secure justice for their clients permitting them to make defamatory statements in proceedings. However, such privilege is conditional and limited. “Allegedly libelous statements, spoken or written by a party or counsel in the course of a judicial proceeding, are absolutely privileged if they are pertinent or material to the redress or relief sought.” McNeal, 95 Wash. 2d at 268. “[T]he fact that statements made in pleadings are absolutely privileged does not mean that an attorney may abuse the privilege with impunity.” *Id.* The Supreme Court of Washington ruled: “Absolute immunity necessarily leaves wronged claimants without a remedy. This runs contrary to the most fundamental precepts of our legal system. Therefore, in determining whether a particular act entitles the actor to absolute immunity, we must start from the proposition that there is no such immunity. . . Only when the person claiming absolute immunity can prove that such immunity is justified will we impose it.” Lutheran Day Care, 119 Wash.2d at 106-107. See also RP 17. See Appendix C at pages 5-6.

b. The Superior Court Erred When It Indiscriminately Applied the Litigation Privilege to Breach of Contract

The Superior Court indiscriminately applied the litigation

privilege. RP 30. The Superior Court erroneously conflated Respondents' libelous statements in proceedings with the Companies-Agents' online dissemination of The LAHRICHIs' medical, financial, personnel information, which they had the duty to protect from public disclosure. The immunity litigation privilege is not applicable to the Companies-Agents' breach of their non-disclosure confidentiality contracts. RP 12 at lines 1-16; RP 13 at lines 20-24. The Companies-Agents were given privileged access to The LAHRICHIs' Confidential Information only on condition that they do not disclose it to the public so that The LAHRICHIs are shielded from irreparable harm. The Companies-Agents did not dispute that they were bound by the non-disclosure confidentiality contracts to protect said information from the public. RP 13 at lines 15-20; RP 21 at line 17 thru RP 22 at line 14. To the contrary, they ascertained their duty to protect said information by assuring Dr. Lahrichi that they were protecting it and complying with those contracts, protective orders, and privacy laws. RP 12 at lines 1-8; RP 15 at lines 1-5.

The 2004-NDC Contract granted the Companies-Agents the freedom to use The LAHRICHIs' Confidential Information for advocacy, but not permission to disclose it to the public. Appendix A. The 2004-NDC Contract is an admission by the Companies-Agents that their duty to protect The LAHRICHIs' Confidential Information from public disclosure

did not interfere with their ability or duty to secure justice for their clients. The protective orders are a confirmation thereof by the District Court. RP 20 line 16 thru RP 21 line 6. Thus, the protection of The LAHRICHI's Confidential Information from public disclosure by the Companies-Agents is immaterial and not pertinent to the relief.

The protection of The LAHRICHI's Confidential Information from public dissemination required the Companies-Agents to simply place documents with that information in sealed envelopes when filing them in court (Appendix at page 4, ¶ 8), which is a purely administrative or secretarial procedural act and not a judicial act.

In Mauro, 26 Wash. App. 538, the Court of Appeals declined to apply immunity to ministerial acts of a clerk. Mauro was arrested because his payment for a warrant was not entered in the court's computer system. That Court held that "[t]he act in this case was not a judicial act because the order had been executed by the judge. It was not a discretionary act, but was a purely ministerial act of a clerk of either the court or the sheriff's department." Id. at 541.

"In Dalton v. Hysell, 56 Ohio App. 2d 109, 381 N.E.2d 955 (1978), a clerk failed to record the payment of a fine, which resulted in the issuance of an arrest warrant and in Dalton's subsequent arrest while at work. Dalton sued the court clerk personally for negligent failure to record

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payment. The court held that judicial immunity would not apply to protect the clerk from a negligence suit for failure to perform a ministerial act, stating that civil liability would tend to encourage the proper performance of ministerial duties.” Id.

Therefore, one can conclude that when the non-disclosure confidentiality contract was signed and the protective orders affirming it were executed by the judge, declaring that The LAHRICHI’s Confidential Information must be sealed and filed in envelopes, the judicial function regarding sealing was completed. The filing of those documents by the Agents or someone on their behalf in sealed envelopes in the court or through the court’s computer system would not have enhanced or impaired the Agents’ positions or changed the court’s decision. See Appendix C, pages 8-9; See RP 23 at line 8 thru RP 24 at line 3. We have adopted a functional approach to determining if immunity applies. . .We look to the function being performed instead of the person who performed it.” (Citations omitted) Lallas v. Skagit County, No. 81672-7 (2009). See also Taggart v. State, 118 Wash. 2d 195, 822 P.2d 243 (1992). “[W]hen a prosecuting attorney acts in some capacity other than his quasi-judicial capacity, then the reason for his immunity . . . ceases to exist.” Robichaud v. Ronan, 351 F.2d 533, 536 (9th Cir. 1965).

A Judge is not immune for tortious acts committed in a purely

administrative, non-judicial capacity. Forrester v. White, 484 U.S. 219, 227-229, 108 S.Ct. 538, 544-545, 98 L.Ed.2d 555 (1988); Stump v. Sparkman, 435 U.S. 349, 380, 98 S.Ct. 1099, 1106, 55 L.Ed.2d 331 (1978). When the Companies-Agents were improperly filing The LAHRICHIs' confidential information unprotected through the court's computer system, they were disobeying the Court and violating their contracts, which cannot be considered legitimately advancing their clients' interests. Clothing violations of contracts with immunity would mean that contracts and agreements would be futile and not enforceable.

The protection of The LAHRICHIs' Confidential Information supersedes the litigation immunity privilege. In Wynn v. Earin, 181 P.3d 806, 163 Wash.2d 361 (2008), this Court affirmed en banc the court of appeals ruling "that witness immunity does not apply to information disclosed in violation of the Uniform Health Care Information Act." Chapter 70.02 RCW. Herein, The LAHRICHIs' medical, financial, and personnel information was protected by the 2004-NDC Contract, the SPO, three HPOs, privacy laws. In addition, The LAHRICHIs' medical information was protected by the Uniform Health Care Information Act (Chapter 70.02 RCW) and HIPAA. The LAHRICHIs' confidential information was not yet pertinent to the proceedings, "[t]he parties are reminded that discovery orders relate to just that-discovery. They are not

determinations of relevance for trial, nor admissibility at trial.” See complete quote on pages 9-10 supra.

The breaches of the 2005-NDCM Contract by the Companies-Agents by using and disseminating online to the public The LAHRICHIs’ privileged mediation information is also unrelated to making libelous statements for advocacy purposes in litigation. Per that contract,

The parties, acting through their undersigned counsel, hereby agree that these alternatives dispute resolution proceedings, including communications, statements, disclosures and representations made by any party, attorney or other participant in the course of such proceeding, shall, in all respects, be confidential, and shall not be reported, recorded, placed in evidence, disclosed to anyone not a party to the litigation, made known to the trial court or jury, or construed for any purpose as an admission or declaration against interest.

Appendix B at page 4.

Therefore, the information provided by Lahrichi for mediation could not be part of the proceedings, used for advocacy, or be pertinent to the relief. Without those guarantees and assurances by the Companies-Agents, Dr. Lahrichi would not have provided that information. Even if arguendo the Companies-Agents would have been permitted to use that information in proceedings, they were prohibited from giving the public access to it under the 2005-NDCM Contract, 2004-NDC Contract, the SPO, the HPOs, the health information act, HIPAA, and statutes, and the

Constitution, because it was also medical, financial, personnel, and private. The improper dissemination of that information to the public by the Companies-Agents cannot be considered an advocacy act that furthers their clients' interests. "Absolute immunity is strong medicine that is justified only when the danger of officials being deflected from effective performance of their duties is very great." Forrester, 484 U.S. at 230.

c. The Superior Court Erred When It Indiscriminately Dismissed The LAHRICHIs Meritorious Claims Including Contract Fraud, Bad Faith, Malpractice, and Negligence on the Basis of Immunity

The District Court erred when it dismissed The LAHRICHIs' claims under the litigation privilege without considering their claims, including contract fraud, bad faith, and negligence. Fraud is defined as "intentional deception resulting in injury to another" and bad faith as "breach of faith, willful failure to respond to plain, well-understood statutory or contractual obligation." Barron's Law Dictionary 1996.

Under Washington law the essential elements of fraud are (1) the representation of an existing fact (2) which is material and (3) false (4) by a person with knowledge of its falsity or ignorance of its truth and (5) with the intent that it be acted upon by a person who (6) reasonably (7) relies on the misrepresentation (8) in ignorance of its falsity (9) to his or her detriment.

Sigman v. Stevens-Norton, Inc., 70 Wn.2d 915, 920, 425 P.2d 891 (1967).

The elements for a negligence claim are (1) the existence of a duty owed

by the defendant to the plaintiff, (2) breach of that duty, and (3) injury to plaintiff, (4) proximately caused by the breach. Hertog v. City of Seattle, 138 Wn.2d 265, 275, 979 P.2d 400 (1999).

All the essential elements and facts to establish the above claims exist herein. The Companies-Agents had the duty to protect The LAHRICHIs' Confidential Information, but breached that duty. The LAHRICHIs incurred irreparable harm as a result. See section V(B)(3). The Companies signed the 2004-NDC Contract to get access to The LAHRICHIs' Confidential Information without opposition and disseminated it rather than protected it. Mino had threatened Dr. Lahrichi that he would destroy him. RP 13 at lines 2-9; RP at 14 lines 1-9. The Companies-Agents routinely breached that contract. The facts also demonstrate that the out-of-court mediation conference was a ruse by the Companies-Agents to defraud Dr. Lahrichi get access to more of The LAHRICHIs' confidential information, which they knew they could not obtain otherwise. RP 12 at lines 17 through RP 13 at lines 24; RP 29 at lines 3-18. The Companies-Agents signed the 2005-NDCM Contract in bad faith and gave Dr. Lahrichi assurances they would comply therewith quelling any suspicions that would cause Dr. Lahrichi not to provide the information or turn away from the conference. RP 12 at line 17 through RP 13 at line 17; RP 29 at lines 11-17. After Dr. Lahrichi provided the

information, the Companies-Agents disregarded their contractual obligations and disseminated it to the public, without Lahrichi's knowledge.

While the Companies-Agents were disseminating The LAHRICHI's Confidential Information to the public online and falsely assuring Lahrichi—verbally and in writing—that they were protecting it (RP 12 at lines 1-8; RP 15 at lines 1-5; RP 22 at lines 19-25), they were diligently protecting theirs by filing it in sealed envelopes. CP 280 at ¶ 14; RP 21 at lines 1-20. The Companies-Agents' breaches of their contracts were not isolated and inadvertent, but repeated and systematic, and continued after the lawsuit was dismissed. The Companies-Agents opposed Dr. Lahrichi's efforts to mitigate damages from their violations.

The existence of a duty also supports Respondents' malpractice and negligence. A number of states for example allow actions to hold attorneys liable to persons not their clients.¹⁰ Washington allows an action

¹⁰ A number of states, led by California, have relaxed the privity requirement for attorney malpractice actions to hold attorneys liable to persons not their clients. See, e.g., Heyer v. Flaig, 70 Cal. 2d 223, 449 P.2d 161, 74 Cal. Rptr. 225 (1969); Ogle v. Fuiten, 102 Ill. 2d 356, 466 N.E.2d 224 (1984); Fickett v. Superior Court, 27 Ariz. App. 793, 558 P.2d 988 (1976); McAbee v. Edwards, 340 So. 2d 1167 (1976). Some states recognize a cause of action by a third party in contract only. Guy v. Liederbach, 501 Pa. 47, 459 A.2d 744 (1983). Other states allow the third party to bring the action either in contract or in tort. Stowe v. Smith, 184 Conn. 194, 441 A.2d 81, 84 (1981); Lucas v. Hamm, 56 Cal. 2d 583, 364 P.2d 685, 15 Cal. Rptr. 821 (1961), cert. denied, 368 U.S. 987, 7 L. Ed. 2d 525, 82 S. Ct. 603 (1962). In all of these cases, the third party claimant was a legatee who was deprived of taking under a negligently drafted will. (footnote omitted). Bowman v. John Doe Two and Jane Doe Two, 104 Wash. 2d 181, 704 P.2d 140 (1985).

for legal malpractice to be framed either as a tort or a breach of contract. Peters v. Simmons, 87 Wash. 2d 400, 404, 552 P.2d 1053 (1976). . . In addition, the Court of Appeals has gone so far as to say that the malpractice plaintiff need not be the client, but “only an injured party.” Hansen v. Wightman, 14 Wash. App. 78, 88, n.2, 538 P.2d 1238 (1975). All these issues remain material disputed facts and matter of law questions that need to be addressed, which demonstrate that dismissal of Plaintiffs’ lawsuit was premature.

d. The Superior Court Erred and Abused Its Discretion When It Concluded that Respondents were Immune for all their Alleged Libelous Statements

The Superior Court’s findings that all libelous statements and omissions of Respondents were covered by the litigation immunity privilege without reviewing any of the statements and determining whether they were pertinent to the relief (CP 306-312; RP 30-31), is an error of law and abuse of discretion. See also RCW 4.36.120. The determination of pertinency is a question of law for the court,¹¹ and should be based upon an examination of the whole proceeding to which the defamatory statements are alleged to be pertinent.¹²

¹¹ Cooperstein v. Van Natter, 26 Wash. App. 91, 95 n.2, 611 P.2d 1332, review denied, 94 Wash. 2d 1013 (1980).

¹² Johnston v. Schlarb, 7 Wash. 2d 528, 540, 110 P.2d 190, 134 A.L.R. 474 (1941); accord, Green Acres Trust v. London, 142 Ariz. 12, 688 P.2d 658, 671 (1983) (Green

Respondents made deliberate libelous and scandalous statements and omissions against LAHRICHI, to which they gave the public online access. RP 21. The libelous statements and omissions went beyond advocacy permitted under court rules and practices. RP 17 at line 1 through RP 18 at line 1. They were not pertinent or material to the relief sought. They were maliciously made to inflict extreme harm on Dr. Lahrichi to destroy The LAHRICHI's reputation, career, and well-being, and deprive Dr. Lahrichi from finding employment. For example, the Companies-Agents attacked Lahrichi's integrity, honesty, persona, and sincerity about his religious beliefs, accused him of wrongdoings he had not committed. CP 9-10 at ¶¶ 52, 55, 57; RP 14 at lines 5-9. The Agents' libelous statements were supported by the Agents' false testimonials under perjury to lend them credence.

The Companies-Agents' libelous statements to which they gave the public online access include many disgraceful distortions of Lahrichi's Confidential Information. The Agents were prohibited to disclose to the public The LAHRICHI's Confidential Information, whether in actual or distorted form, by their non-disclosure confidentiality contracts, protective orders, privacy laws and statutes. RP 24 at lines 17-24. Filing The

Acres I), rev'd in part on other grounds, 141 Ariz. 609, 688 P.2d 617 (1984) (Green Acres II); McCarthy v. Yempuku, 5 Hawaii App. 45, 678 P.2d 11, 15-16 (1984).

LAHRICHIs' Confidential Information in proper or distorted form in sealed envelopes by the Companies-Agents as agreed, required, and ordered (CP 8 at ¶¶ 40-41; Appendix A at page 4, ¶ 8.), is immaterial to their advocacy and relief, and merely a secretarial act for which immunity is not available. RP 23 at line 8 through RP 24 at line 3; see section V(B)(1)(b).

The LAHRICHIs reiterated to the Superior Court that all the wrongful actions did not only occur during judicial proceedings. Since Respondents are claiming otherwise, such issue remains a disputed fact that would require discovery. RP 28 at lines 1-11.

e. The Superior Court Erred When It Indiscriminately Applied the Litigation Privilege to Respondents Violations of the Law

The Superior Court erroneously accepted Respondents' positions that they are immune under the litigation privilege even for their alleged acts in violation of the law. "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it." United States v. Lee, 106 U.S. 196, 220, 27 L. Ed. 171, 1 S. Ct. 240 (1882). The Supreme Court did not establish the litigation immunity to become a shield to trespass federal and state laws and the Constitution, and violate civil rights

of individuals and due process under the premise of judicial proceedings. Lallas; See also Taggart, 118 Wash. 2d.

The immunity afforded to Judges, Judicial officers, and officers of the court like Agents, is not “carte blanche” immunity. When a judicial officer acts entirely without jurisdiction or without compliance with jurisdiction requisites he may be held civilly liable for abuse of process even though his act involved a decision made in good faith, that he had jurisdiction. State use of Little v. U.S. Fidelity & Guaranty Co., 217 Miss. 576, 64 So. 2d 69.

The Companies-Agents are not immune for their unlawful acts, including obstruction of justice, perjury, malicious prosecution, and violations of due process to inflict harm on The LAHRICHIs.¹³ RCW 9A.72.120(1); RCW 9A.72.020; RCW 9A.72.030. “The obstruction of justice is the evil which the statute was designed to forestall.” State v. Stroh, 91 Wash.2d 580, 582, 588 P.2d 1182 (1979).

For example, the Companies and Agents tampered with and solicited witnesses. RCW 9A.72.120. In State v. Hall, No. 82558-1 (2010), Hall called a witness for the State to influence her testimony and was charged with witness tampering. Herein, the Companies and Agents also

¹³ The LAHRICHIs do not cite all unlawful acts of Respondents for which discovery will be necessary.

contacted and met with witness to influence their testimonies. The Companies gave stocks to a witness before her testimony. One of the Agents, Zahra Wilkinson, impersonated Lahrichi's previous counsel to interview a witness. The Companies and Agents tampered with and withheld evidence and documents. CP 10-12 at ¶¶ 58, 62, 64-69.

Ms. Keelin Curran, another Agent, intimidated and put Lahrichi under duress to prevent him from fully and freely testifying. CP 9-10 at ¶¶ 50-52, 54. For example, Ms. Curran intimidated Lahrichi and interrupted his testimony when he was about to reveal facts regarding Mino's fraud of investors and the U.S. government on defense contracts. Ms. Curran humiliated Lahrichi in front of other attendees, including, GigOptix' and Microvision's representatives, for example ordering him to make disgraceful demonstrations that had nothing to do with his discrimination claims. Ms. Curran also verbally intimidated Lahrichi at other times before and after depositions of other witnesses that Lahrichi attended and attacked his credibility and integrity.

The Companies, Agents, and Witnesses entered into a general conspiracy to destroy Lahrichi's life, reputation, and violate his constitutional rights, just like Mino had threatened Lahrichi that he would destroy Lahrichi. CP 9 at ¶ 49; RP 14 at lines 1-9. With help and coaching from the Agents and the Companies, the Witnesses fabricated material

facts, defamed Lahrichi, withheld evidence, and falsely testified in their depositions and affidavits, despite being sworn under penalty of perjury. The Companies gave Witnesses bribes for their false affidavits and testimonies. CP 10 at ¶ 58. The Companies-Agents also gave knowingly false sworn testimonies. CP 10 at ¶ 55. Chapter 9A.72 RCW. Respondents clothed their conspiracy with immunity by arguing that Attorneys and Witnesses should be immune for their testimonies. The application of Bruce v. Byrne-Stevens & Assoc. Eng. Inc., 113 Wash. 2d 123, 776 P.2d 666 (1989) by Witnesses to support their argument is flawed and should have been rejected by the Superior Court. Unlike Bruce, the situation herein is not about infringing on the right of a witness to freely testify and render his views, whether favorable or unfavorable, to a litigant.

f. The Superior Court Erred When It Concluded that The Companies and Stoel Rives are Immune for the Alleged Wrongful Actions

The Agents and the Witnesses were employees¹⁴ of the Companies.

An employee is “a person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.” The Black’s Law Dictionary (page 471, 5th Ed. 1979).

¹⁴ Some Witnesses left GigOptix (formerly Lumera), while all the Agents continue to represent the Companies.

An agency is “a fiduciary relationship created by express or implied contract or by law, in which one party (the *agent*) may act on behalf of the other party (the *principal*) and binds that other party by words or actions.” The Black’s Law Dictionary (p. 48, West Group, 7th Ed.)

The imposition of a duty as a matter of law is supported by the strong public policy to protect individuals’ constitutional rights and protect them from negligent and malicious acts of others. The Companies had the duty to stop the Agents and Witnesses from committing wrongful actions to injure The LAHRICHIs. “A special relationship between the defendant and the intentional tort feisor may give rise to a duty to control the tort feisor’s conduct for the benefit of third persons.” See Niece v. Elmview Group Home, 131 Wn.2d 39, 43, 929 P.2d 420 (1997). The duty to control the tort feisor exists “even where an employee ‘is acting outside the scope of employment, the relationship between employer and employee gives rise to a limited duty, owed by an employer to foreseeable victims, to prevent the tasks, premises, or instrumentalities entrusted to an employee from endangering others.’” Niece, 131 Wn.2d at 48.

In C.J.C. v. Corp. for the Catholic Bishop of Yakima, 138 Wash.2d 699, 985 P.2d 262 (1999), the Washington Supreme Court adopted the New Hampshire Supreme Court’s ruling in Marquay v. Eno, 139 N.H. 708, 719-21, 662 A.2d 272 (1995), which “did not reject the existence of a

duty as a matter of law” and “recognized that a principal's negligent failure to control an agent is not necessarily limited to conduct performed within the scope of employment or during work hours, so long as there is a causal connection between the plaintiff's injury and the fact of the agency relationship.”

Therefore, the Companies are liable for the Agents’ wrongful acts, because of their agency and employer-employee relationships and because they knew of and participated in those acts. RP 12 lines at 1-8; RP 18-20; RP 26 at lines 4-12. For example, the Companies and Agents signed the 2004-NDC Contract and the 2005-NDCM Contract in bad faith. The Companies are signatories to those contracts through their Agents. The Agents could not sign those contracts without direction from the Companies. The Companies knew their duties to protect The LAHRICHIs’ Confidential Information under those contracts, protective orders, and privacy laws and they knew the harm to The LAHRICHIs if they or their Agents breached those duties. RP 23 at lines 1-7. Therefore, even if the Companies were to deny participating in the breaches of these contracts, violations, and fraud, they are still liable in the very least for negligence.¹⁵

¹⁵ Dr. Lahrichi has worked for the Companies. The Companies have a permanent counsel on the premises.

The Companies are liable for their own wrongful acts, including for conspiring with their Agents and Witnesses to injure The LAHRICHIs, for giving bribes to Witnesses, for obstructing justice, and tampering and concealing evidence. The Companies participated in the other wrongdoings of the Agents, including for example hindering Lahrichi from mitigating damages resulting from Respondents misdeeds and continuing to inflict harm on The LAHRICHIs long after the discrimination lawsuit was dismissed. RP 18-19.

Likewise, Stoel Rives are liable for the Agents' wrongful actions, because the Agents are their agents and employees. Stoel Rives had the duty to supervise and control the Agents and stop them from committing their wrongful actions. RP 26 at lines 6-13.

The Superior Court erred when it declared that the Companies and Stoel Rives are immune, because immunities are not transferrable

“Immunities, unlike privileges, are not delegable and are available as a defense only to persons who have them. . . . On the other hand, where the principal directs an agent to act, or the agent acts in the scope of employment, the fact that the agent has an immunity from liability does not bar a civil action against the principal. Thus, where a servant in the scope of employment negligently runs over his wife, an action against the master by the injured wife is not barred. This result is in accordance with the rule stated in this Section and is the rule adopted in most of the states.”

Savage v. Washington, 127 Wash. 2d 434, 899 P.2d 1270 (1995). Thus, regardless whether Agents and Witnesses are immune or not for the misdeeds, the Companies and Stoel Rives are still liable.

2. The District Court Erred When It Concluded That The LAHRICHIs' Claims Against The Companies Expired

The Superior Court erred in declaring that The LAHRICHIs' claims against the Companies expired. RP 31 at lines 23-24; CP 310. Microvision disregarded LAHRICHIs' claims against them and speciously connected The LAHRICHIs' claims to Dr. Lahrichi's 2001 employment contract to allege expiration of statute of limitation. CP 203-205. Microvision cannot disregard all causes of actions are pleaded against them. CP 18 at ¶ 101; RP 26 at lines 3-12. As explained supra in Section V(B)(1)(f), the Companies are liable for the wrongful acts and the Agents' and Witnesses' wrongdoings and cannot just clothe themselves with the immunity defense. For example, The LAHRICHIs have claims against the Companies of breach of contracts independent of Lahrichi's employment contract, bad faith, contract fraud, and negligence, for directing and/or approving the wrongdoings of their Agents, conspiring with the Agents and Witnesses, for giving bribes to the Witnesses, for obstructing justice, and for tempering with and concealing evidence. RP 18-19.

The LAHRICHIs' breach of 2004-NDC Contract and the 2005-NDCM Contract claims against the Companies are governed by a six-year statute of limitations. Those contracts were signed in December 2004 and February 2005, respectively, Lahrichi lawsuit was filed on April 27, 2009, well within the six years.¹⁶ See Appendix C, section V(4) p. 11-12

Although The LAHRICHIs' other claims against the Companies are governed by shorter statute of limitations, the facts herein warrant application of the discovery rule. CP 253-255. "Under the discovery rule, the cause of action accrues and the statute of limitation begins to run when the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the facts that give rise to the claim." Architechtonics Construction Management, Inc. v. Khorram, 111 Wash.App. 725, 45 P.3d 1142 (2002). The Supreme Court has applied the discovery rule to many situations. Id. Also,

[i]n determining whether to apply the discovery rule, the possibility of stale claims must be balanced against the unfairness of precluding justified causes of action. That balancing test has dictated the application of the rule where the plaintiff lacks the means or ability to ascertain that a wrong has been committed. Thus, the rule has been applied, for example, to cases involving professional services and products liability. . .

We conclude that the reasons for applying the rule in tort claims apply equally in contract actions. When one of the

¹⁶ Dr. Lahrichi had other verbal and written binding agreements with Companies and Agents

parties is in a poor position to know of the other party's breach, the discovery rule is the only means of ensuring the wronged party is not denied a warranted cause of action.

Id. Lahrichi stumbled upon certain The LAHRICHIS' Confidential Information on April 28, 2010 after he became unwillingly pro se. CP 253, line 17 through CP 254, line 3 and CP 279 at ¶¶ 11-12. Even after this initial discovery, Lahrichi did not and could not know the facts and Respondents' wrongful acts underlying his claims and his injuries therefrom. Id. Lahrichi was untrained in law and the legal system. Lahrichi hired counsel to assist him as soon as possible. Id. Shortly thereafter, Lahrichi's new counsel suffered a serious accident that required hospitalization and several months for recovery. Id. Thereafter, the Companies hindered and delayed Lahrichi's counsel to study the record of Lahrichi's Discrimination Lawsuit, which is huge. CP 279-280 at ¶¶ 13-14. "Estoppel will preclude a defendant from asserting the statute of limitation when his actions have fraudulently or inequitably invited a plaintiff to delay commencing suit until the applicable statute of limitation has expired. Central Heat, Inc. v. Daily Olympian, Inc., 74 Wash. 2d 126, 443 P.2d 544, 44 A.L.R.3d 750 (1968)." Del Guzzi Construction Co. v. Global Northwest Ltd. Inc., 105 Wash. 2d 878, 719 P.2d 120 (1986). It was only during the April 2007-July 2009 limited Seal Remand that The

LAHRICHIs learned the facts underlying The LAHRICHIs' claims. CP 280 at ¶ 14. The District Court also determined:

Here the facts are quite different ... Although Lahrichi mentioned many of these claims in the context of the [May 8, 2006] 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.

CP 339 at lines 5-14.

3. The Superior Court Erred in Concluding that The LAHRICHIs' Remedy is with Judge Coughenour in his 2004 Federal District Court Lawsuit

The Superior Court erred and abused its discretion in declaring, "The LAHRICHIs' remedy is with Judge Coughenour" [in Lahrichi's 2004 federal discrimination lawsuit, dismissed in 2006] and "I just do not think this is the court room to address that because of the litigation privilege, so I am going to dismiss this." Judge Coughenour concluded in dismissing the Agents' 2009 lawsuit for an injunction to dismiss the underlying case

it cannot be said that Lahrichi had a full and fair opportunity to litigate his claims against the attorneys in the prior federal proceedings . . . if a federal court dismissed a matter on procedural grounds, then the state court should be free to hear the matter. ERWIN CHEMERINSKY, FEDERAL JURISDICTION § 11.2.4 at 749.

(CP 339 at lines 13-14 and 20-22)¹⁷ and rejected the Agents' argument that Lahrichi was re-litigating claims from his discrimination lawsuit and that The LAHRICHIs had their day in court.

The Superior Court did not weigh the irreparable harm that Respondents caused The LAHRICHIs by improperly giving the public online access to and disseminating The LAHRICHIs' confidential information and scandalous information about The LAHRICHIs over the internet and committing other wrongful acts against The LAHRICHIs. RP 21 at lines 7-14; RP 23 at lines 2-7; RP 24. Respondents trivialized the harm they caused The LAHRICHIs. Irreparable harm or loss can occur when it is also of a nature that is hard to calculate. Cf., In re Arthur Treacher's Franchisee litigation, 669 F.2d 1137, 1145 (3rd Cir. 1982). The LAHRICHIs have been suffering substantial injuries, which extend beyond repeated violations of their privacy and constitutional rights, and damage to their emotional, physical, and economic well-being, and damage to their career, reputation, and employment. The LAHRICHIs are being deprived of enjoyment of life, feel betrayed, and are stigmatized. The LAHRICHIs suffer immense emotional stress and discrimination for many years. They are also constantly are at risk for identity theft. The

¹⁷ The matter refers to Dr. Lahrichi informing the District Court of the violations in May 8, 2006 in his retax motion.

LAHRICHIs' ability to heal has been hindered. Dr. Lahrichi's discrimination lawsuit was dismissed due to Respondents' wrongful acts and his appeal stalled for over three years, which delayed him justice. Dr. Lahrichi continues to spend immense time, resources, and efforts to limit the dissemination of The LAHRICHIs Confidential Information and mitigate damages. Id. See Appendix C at page 11.

The Superior Court erroneously granted immunity to Respondents for harming other Appellants, including minors, who were not even parties to Lahrichi's federal discrimination lawsuit leaving them without opportunity for redress. The litigation privilege does not afford immunity to Respondents for injuring non-parties to the litigation. McNeal, 95 Wash. 2d at 268.

The LAHRICHIs cannot obtain relief for damages except by way of this lawsuit. Lahrichi's federal appeal, even if it were to be granted, will only correct the errors of the District Court and permit Lahrichi to proceed to trial on his discrimination claims, which are distinct from The LAHRICHIs' claims herein. Lahrichi cannot amend claims or add other Appellants to his 2004 discrimination lawsuit, which was dismissed just before it went to trial. Respondents' wrongful actions were discovered afterwards. The only remedy that Dr. Lahrichi can obtain is sealing/redacting documents from the District Court. Sealing/redaction

does not afford Dr. Lahrichi any compensation for their pain and suffering. RP 28 at lines 12-22. In addition, since Respondents disseminated the information over the internet and so much of it, sealing/redacting documents will only limit the dissemination and not undo the unauthorized disclosures. RP 15 at lines 15-22; RP 21 at lines 2-6. Secrecy is a one-way street: Once information is published, it cannot be made secret again. In re Copley Press, Inc., 518 F.3d 1022 (9th Cir. 2008)(citation omitted). “[A] person’s reputation, good name, honor, and integrity are among the liberty interests” protected by the Fourteenth Amendment. Board of Regents v. Roth, 408 U.S. 564, 573 (1972). This further demonstrate that grant to Respondents immunity is not proper and will only aggravate the harm on The LAHRICHIs.

4. The Superior Erred in Denying The LAHRICHIs Requests for Discovery and the Opportunity to Amend their Complaint

The LAHRICHIs have been prejudiced in these proceedings. The LAHRICHIs were not able to conduct any discovery and to amend their complaint. The Superior Court granted an unnecessary stay of proceedings (CP 99-100; see also CP 47-62; CP 94-98) when the Agents filed their lawsuit against Dr. Lahrichi in federal District Court to dismiss this case, despite The LAHRICHIs’ showing that the Agents’ lawsuit was frivolous. CP 110-132. The federal District Court concluded:

[t]he Court hinges its reasoning on one of the necessary prongs of the preliminary-injunction test. Because the attorneys have not shown that they 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 336 at lines 7-10; RP 25 at lines 24 through RP 26 at line 2; RP 27 at lines 6-13. After they filed their lawsuit in the federal District Court, the Agents filed several non-emergency motions and opposed Lahrichi's request for extension of time. CP 159 at fn. 2. Soon after the stay was lifted, Agents, who knew Lahrichi was assisting his counsel in his federal appeal, filed their motions to dismiss and a week later, the other Respondents filed their motion to dismiss. CP 173-195; CP 196-202; CP 203-208. The LAHRICHIs did not have sufficient to prepare their three responses or to prepare adequately oral for the hearing. CP 314, fn. 1; see also footnote 8. The LAHRICHIs were deprived of discovery, which is essential for The LAHRICHIs to amend their complaint. RP 16 at lines 10-11; RP 25 at lines 13-23. There are several matters regarding Respondents' actions, which occurred during, outside, and after the discrimination lawsuit that require depositions of Respondents. The LAHRICHIs' request to amend their complaint was not granted.¹⁸ See RP 25 at lines 13-20; RP 27 at line 14 through RP 28 at line 28. In addition,

¹⁸ At the oral hearing, Dr. Lahrichi attempted to explain to the Superior Court that The LAHRICHIs lacked legal expertise to perfect the complaint and that it would need to be amended.

The LAHRICHIs could not—without time for discovery and seeking court protection—present sealed documents as evidence in this Court without guarantee that the information would not be again disseminated.¹⁹

5. The Superior Court Erred in Granting the Agents' Motion to Dismiss Because the Agents' Credibility is at Issue

Although Respondents were properly served (CP 226-249; CP 264-288), they, except for Microvision, requested dismissal under CR 12(b)(5) claiming improper service. Although such defense is acceptable, because The LAHRICHIs' have the burden of proof²⁰, Stoel Rives and their Agents submitted a false affidavit to claim improper service. Compare CP 232-233; CP 264-265 at ¶ 3; CP 222-223 with CP 185-187; CP 190-191; RP 26 at lines 13-23. When the credibility of a witness is at issue, dismissal of the case is improper. 10B Wright, Miller & Kane, FEDERAL PRACTICE AND PROCEDURE CIVIL 3 § 2740 (1998) & Supp. 2001). The Superior Court ruled that the motion to dismiss would not be granted for CR 12(b)(5), improper service. RP 31 at lines 11-12.

V. CONCLUSION

The LAHRICHIs have been irreparably injured by Respondents. After the Agents failed to paint LAHRICHIs' claims as relitigation in

¹⁹ With such evidence, Lahrichi would be able to show that the defamatory statements made by the Agents were not pertinent to the proceedings.

²⁰ Witt v. Port of Olympia, 109 P.3d 489, 126 Wash.App. 752 (2005)

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federal District Court, Respondents clothed their wrongful actions and statements with immunity. The Superior Court did not impose the burden on Respondents to demonstrate that they are immune for each of their wrongful actions and statements and did not scrutinize their acts and statements for pertinence. Also, not all Respondents' wrongful acts occurred during and in judicial proceedings to qualify for immunity.

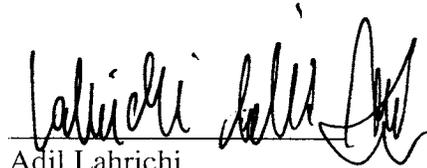
Respondents should not be granted immunity for violating the law. The Companies-Agents should not be rewarded with immunity for disseminating The LAHRICHIs Confidential Information online to the public in violation of their non-disclosure confidentiality contracts, protective orders, privacy laws, and their own assurances to Dr. Lahrichi. The Companies were diligent to protect their Confidential Information. Companies-Agents admitted and the federal District Court affirmed, by granting protective orders, that the protection of The LAHRICHIs' Confidential Information from the public did not interfere with the Companies-Agents' ability to advocate and was immaterial to the relief. Protecting The LAHRICHIs' Confidential Information by filing it in envelopes instead unprotected in the court's computer system was merely an administrative act, which does not qualify for immunity. Respondents should not be granted immunity for injuring non-parties, including minor children, who were not even parties to Dr. Lahrichi's prior federal lawsuit.

All Respondents committed and participated in the alleged wrongful actions against The LAHRICHIs and should be held accountable. The LAHRICHIs showed that they have multiple claims against Companies and Witnesses, and that their claims survive the statute of limitations. The LAHRICHIs have been deprived of discovery and from the opportunity to amend their complaint before dismissal was granted.

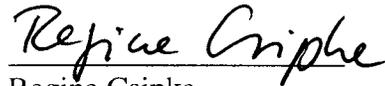
What Respondents did to The LAHRICHIs was gruesome, malicious, and unjust in all the possible variations ascribed to those terms, and perhaps is unprecedented. Yet, Respondents were granted absolute immunity without justifying it. The responsibility of this Court is to see that justice is done and that The LAHRICHIs are not again prejudiced and deprived from the opportunity to plead their case to obtain at least some relief. The Supreme Court has consistently declared, "justice must satisfy the appearance of justice". Levine v. United States, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). For all these reasons supra and because the factual allegations show that The LAHRICHIs are entitled to relief, the dismissal was premature and The LAHRICHIs respectfully request that this Court remand this case.

DATED this 4th day of October, 2010.

Respectfully submitted,



Adil Lahrichi
Appellant Pro Se and next
friend to minor children
Appellants T.L., M.L.,
Y.L., A.L., and Y.L.
12875 NE 8th Street, #14
Bellevue, WA 98005
425-562-7220



Regine Csipke
Appellant Pro Se and next
friend to minor children
Appellants T.L., M.L.,
Y.L., A.L., and Y.L.
12875 NE 8th Street, #14
Bellevue, WA 98005
425-562-7220

VI. APPENDIX

- Appendix A the Non-Disclosure Confidentiality Contract (“*2004-NDC Contract*”), entered in the Federal District Court as the Stipulated Protective Order, see CP 367-377 (Exh. 4 to Motion for Reconsideration)
- Appendix B the Non-Disclosure Confidentiality Mediation Contract (“*2005-NDCM Contract*”), entered in February 2005 for purposes of Alternative Dispute Resolution, see CP 378-379²¹ (Exh. 5 to Motion for Reconsideration)
- Appendix C Motion for Reconsideration

²¹ Verification of the clerks’ papers showed that the complete document that was provided to the Superior Court is missing in the clerk’s papers.

Appendix A

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ADIL LAHRICHI,

Plaintiff,

v.

LUMERA CORPORATION, a Delaware
corporation; MICROVISION, INC., a
Delaware corporation; and THOMAS D.
MINO,

Defendants.

No. C04-2124C

**(PROPOSED) STIPULATED
PROTECTIVE ORDER**

The parties to the above-captioned litigation believe they may seek or be required to disclose to others confidential information relating to the subject matter of this litigation, and that unauthorized or improper disclosure of such information would be harmful to the parties; and the parties desire to limit the extent of disclosure and use of such confidential information, and to protect such information from unauthorized use and/or further disclosure. Pursuant to Fed. R. Civ. Pro. 26(c), the parties, therefore, stipulate as follows:

Scope and Definitions

1. This Stipulation and Protective Order shall apply to all information properly considered to be CONFIDENTIAL, as defined below, and disclosed by the parties or third

1 parties, including, but not limited to, deposition testimony, documents, answers to interrogatories
2 and requests for production, answers to requests for admissions, information obtained from an
3 inspection of premises or things, and information obtained from third parties pursuant to a
4 subpoena issued in this litigation. It shall apply to all "documents" as defined in each party's
5 discovery requests including, without limitation, electronic documents, tape recordings, charts,
6 and data retained in any form.
7

8 2. Under this Protective Order, and as qualified by ¶ 3 below, the term
9 "CONFIDENTIAL" information means or refers to:

- 10 a) personal and business records, reports, plans, proprietary and trade secret
11 information, and other information including, but not limited to, company
12 policies, business plans and proposals, pricing information, technical
13 information, financial information, accounting and bank records, product
14 reports, audited or unaudited financial statements, financial reports,
15 income reports, expense reports, and tax records;
16 b) medical records;
17 c) documents pertaining to current or former employees of Defendants other
18 than or in addition to Plaintiff, in which such person(s) might have a
19 reasonable expectation of privacy or which are reasonably deemed
20 confidential by one or more parties.
21 d) any other information reasonably deemed confidential by either party or
22 determined to be so by this Court.
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1 3. Notwithstanding ¶¶ 2(a) through 2(d) above, this Protective Order shall not apply
2 to information which is either (a) public knowledge; or (b) discovered independently by the
3 receiving party (“independently” does not mean confidential documents taken without
4 permission from either Lumera or Microvision).
5

6 **Procedure for Designating Information as CONFIDENTIAL**

7 4. All medical records and personnel files (or portions thereof) shall be considered
8 per se CONFIDENTIAL and need not be specifically designated or marked as
9 CONFIDENTIAL. Such medical records and personnel files (or portions thereof) shall be
10 treated as CONFIDENTIAL in accordance with this Protective Order. With respect to other
11 types of information considered to be CONFIDENTIAL, the parties must follow the procedure
12 set forth in ¶¶5, 6 and 7, below.
13

14 5. Each party to this action, as well as third parties who may supply confidential
15 information, believing that such information is CONFIDENTIAL pursuant to ¶ 2, shall designate
16 the information as CONFIDENTIAL, by placing on the information, documents, or tangible
17 items the legend “CONFIDENTIAL” or words to this effect.

18 6. Such designation as CONFIDENTIAL shall be made either (a) when a response
19 to an interrogatory or request for admission is served, or (b) when a copy of the document is
20 provided to a party by a party or third party. In the case of depositions, the designating party
21 shall advise opposing counsel in writing specific pages of the deposition to be maintained in
22 confidence at the deposition or within twenty-one (21) days after receipt of the deposition
23 transcript by its counsel (during which period such information shall be considered
24 CONFIDENTIAL information.)
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1 7. Documents may be designated as CONFIDENTIAL only at the time copies of the
2 information are first produced or disclosed except as set forth in ¶ 14 *infra* with the sole
3 exception being that the parties may, retroactively, designate as CONFIDENTIAL, and seek to
4 have sealed as set forth in ¶ 7 *infra*, any information disclosed, served or filed during the period
5 of time subsequent to commencement of the instant action but prior to the date of execution of
6 this Stipulated Protective Order.
7

8 8. When CONFIDENTIAL documents (including, but not limited to, medical
9 records and personnel files) are filed with the Court, they must be filed in a sealed envelope
10 marked with the caption of this case, a concise, non-disclosing inventory of its contents for
11 docketing purposes and a notice substantially as follows:
12

CONFIDENTIAL: This envelope [or container] holds information of [name of
13 party] filed under seal pursuant to a protective order and is not to be opened
14 except by direction of the Court or by written consent of [name of party].

Challenges to Designation

15
16 9. At any time after receiving information which has been designated as
17 CONFIDENTIAL, any party may object to the designation of information as CONFIDENTIAL
18 by providing written notice to that effect to the designating party.

19 10. After first attempting to resolve any objection by agreement, the objecting party
20 may move the Court for a ruling regarding whether the information in question qualifies as
21 CONFIDENTIAL information. The burden of demonstrating any specific information or
22 document is confidential is on the party claiming its confidentiality, even if the objecting party
23 files a motion to challenge the designation of confidentiality.
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1 (e) any witness or person reasonably believed to be a potential witness to this
2 action, other than a party, in any pretrial interviews or at his or her deposition or at trial, to the
3 extent necessary for the purposes of this litigation; and

4 (f) the Court, and any necessary stenographic and clerical personnel thereof.
5
6 There shall be no other disclosure of CONFIDENTIAL information absent Order of the Court or
7 the express written agreement of the disclosing party.

8 15. Prior to the disclosure of any CONFIDENTIAL information to persons described
9 in ¶¶ 12(c), 12(d) or 12(e) above, the undersigned attorney, or an attorney under his or her
10 direction, shall advise each person that the information is confidential, can be disclosed only to
11 persons in ¶¶ 12(a-f) and only as provided by this Order, and can only be used for the purpose of
12 this litigation. Furthermore, in addition, prior to the disclosure of any CONFIDENTIAL
13 information to persons described in ¶¶ 12(c) and (e) above, each such person shall review this
14 Protective Order and shall sign a written undertaking, in the form as illustrated in Exhibit 1
15 hereto, acknowledging that he or she has read and understands this Order, agrees to comply with
16 this Order, agrees that the CONFIDENTIAL information will be used only to assist counsel in
17 this action, and agrees not to disclose or discuss CONFIDENTIAL information with any person
18 other than those described in ¶¶ 12(a-f) above.
19

20 16. If, through inadvertence, a producing party provides CONFIDENTIAL
21 information without marking the information as CONFIDENTIAL, the producing party may
22 subsequently inform the receiving party of the CONFIDENTIAL nature of the disclosed
23 information within a reasonable period following the discovery of such material, and the
24 receiving party shall treat the disclosed information as CONFIDENTIAL information upon
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(PROPOSED) STIPULATED PROTECTIVE ORDER - 6
No. C04-2124C

1 receipt of written notice from the producing party. Disclosure by any party of such matter prior
2 to notice by any party of the confidential nature thereof shall not be deemed a violation of this
3 order. This paragraph does not apply to medical records and personnel files (or portions
4 thereof), which shall be considered CONFIDENTIAL even without an actual CONFIDENTIAL
5 designation.
6

7 17. Within 60 days after final termination of this litigation, counsel for each of the
8 parties shall return to the disclosing party all CONFIDENTIAL information and all copies
9 thereof, and shall also provide to the disclosing party all of the original, signed undertakings
10 obtained pursuant to ¶ 13 above. In the alternative, the party holding the CONFIDENTIAL
11 information may elect to destroy the CONFIDENTIAL information and all copies thereof and
12 provide verification of destruction.
13

14 18. The restrictions provided for above shall not terminate upon the conclusion of this
15 lawsuit, but shall continue until further Order of this Court.

16 DATED this 20th day of December, 2004.

17 STOEL RIVES LLP

MacDONALD HOAGUE & BAYLESS

18
19 By Zahraa V. Wilkinson

20 Keelin A. Curran, WSBA #16258
21 Zahraa V. Wilkinson, WSBA #31606
22 Attorneys for Defendants
23 600 University Street, Suite 3600
24 Seattle, WA 98101
Telephone: (253) 624-0900
Fax: (253) 386-7500
E-mail: kacurran@stoel.com
E-mail: zvwilkinson@stoel.com

20 By /s/ per e-mail authorization 12/20/04

21 Katrin E. Frank, WSBA #14786
22 Attorneys for Plaintiff
23 1500 Hoge Building
24 705 2nd Avenue
Seattle, WA 98104
Telephone: (206) 622-1604
Fax: (206) 343-3961

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26 (PROPOSED) STIPULATED PROTECTIVE ORDER - 7
No. C04-2124C

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ORDER

IT IS SO ORDERED.

DATED this ____ day of _____, 2004.

UNITED STATES DISTRICT JUDGE

(PROPOSED) STIPULATED PROTECTIVE ORDER - 8
No. C04-2124C

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EXHIBIT 1 – CONFIDENTIALITY UNDERTAKING

1. I have read and understand the attached Stipulated Protective Order that has been entered in Adil Lahrichi v. Lumera Corporation, et. al., Case No. CV 04-2124C in the United States District Court for the Western District of Washington at Seattle.

2. I understand that I may be given access to CONFIDENTIAL information, and in consideration of that access, I agree that I shall be bound by all the terms of the Stipulated Protective Order.

3. I understand that I am to retain all originals and copies of the CONFIDENTIAL information in a secure manner and that all copies will be returned within sixty (60) days after termination of this action.

4. I understand that I will not disclose or discuss CONFIDENTIAL information with any persons other than counsel for any party and paralegal and clerical personnel assisting such counsel and other persons who have signed this Confidentiality Undertaking.

5. I understand that all CONFIDENTIAL information shall be used solely for the purposes of this action and shall not, directly or indirectly, be used for any other purpose and that any use of CONFIDENTIAL information, or any information obtained therefrom, in any manner contrary to the provisions of the Protective Order will subject me to the sanctions of the Court.

Signature: _____
Name: _____
Business Address: _____
Position: _____
Date: _____

1 CERTIFICATE OF SERVICE

2 I hereby certify that on December 20, 2004, I electronically filed the foregoing with the
3 Clerk of the Court using the CM/ECF system which will send notification of such filing to the
4 parties following individuals below:
5

6 **Katrin E. Frank**
7 **MacDonald Hoague & Bayless**
8 **1500 Hoge Building**
9 **705 Second Avenue**
10 **Seattle, WA 98104-1745**

11 **STOEL RIVES LLP**

12 *Keelin A. Curran*
13 Keelin A. Curran, WSBA #16258
14 Zahraa V. Wilkinson, WSBA #31606
15 Attorneys for Defendants
16 Stoel Rives LLP
17 600 University Street, Suite 3600
18 Seattle, WA 98101
19 Phone: (206) 624-0900
20 Facsimile: (206) 386-7500
21 kacurran@stoel.com
22 zvwilkinson@stoel.com
23
24
25
26

(PROPOSED) STIPULATED PROTECTIVE ORDER - 10
No. C04-2124C

Seattle-3243410.1 0041109-00005

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

Appendix B

Smith & Hennessey

PLLC
ATTORNEYS AT LAW

316 Occidental Avenue South, Suite 500
Seattle, Washington 98104

James A. Smith, Jr.
jas@smithhennessey.com

Telephone: (206) 292-1770
Facsimile: (206) 292-1790
e-mail: info@smithhennessey.com

RECEIVED

FEB 25 2005

February 24, 2005

MACDONALD, HOAGUE & BAYLESS

VIA FACSIMILE & U.S. MAIL

Katrin E. Frank
MacDonald Hoague & Bayless
705 Second Avenue, Suite 1500
Seattle, WA 98104-1745

Keelin A. Curan
Zahraa V. Wilkinson
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101-3197

Re: Lahrichi v. Lumera Corporation, et al., United States District Court, Western
District of Washington, Cause No. C04-2124C
(Mediation)

Dear Counsel:

I understand that you have selected me as your mediator in the above matter which is pending before Judge Coughenour United States District Court, Western District of Washington. I look forward to assisting you with respect to resolving this dispute.

The mediation will occur at the offices of Smith & Hennessey PLLC located at Suite 500, 316 Occidental Avenue South, Seattle, Washington 98104 on Monday, March 7, 2005, at 9:30 a.m. I understand that this date is convenient for you and it is available with respect to my own schedule. Please let me know, at the time you submit your pre-hearing submittals, how many attorneys and client representatives will be in attendance. If there is a need for more than three conference rooms then counsel should confer and contact me regarding holding the mediation at an alternate location.

I have no particular disclosures based upon the information which has been furnished to me. I have litigated with, and mediated for, the law firms involved in this case on several prior occasions. I know lawyers in both of the law firms involved and, over the years, have had a number of professional relationships with them. I can assure you that none of my prior experiences would be a source of bias or otherwise prevent me from being completely fair in discharging my duties as mediator on this case.

You are experienced litigators and are well aware of the requirements of CR 39.1. However, specifically I would appreciate you observing the following:

Exhibit
Page ___ of ___ Pages

(1) I will expect that you have had a pre-mediation settlement conference pursuant to CR 39.1(c)(2). This will ensure that you have had a meaningful exchange of initial settlement positions prior to the mediation.

(2) I believe that it is extremely important that a duly authorized representative of your respective clients be physically present at the mediation. See CR 39.1(c)(4)(E). This individual should have full authority to discuss settlement and resolve all claims. If any of you believe there are insurers or other parties who may have an exposure or direct interest in this matter, and properly should be in attendance at the mediation in order to effect a complete resolution of all claims, please confer and attempt to reach agreement about their attendance. Alternatively, you may contact me and I will endeavor to assist you in ensuring that the appropriate parties are in attendance.

(3) Your mediation memorandum submitted to me should be in the form, and subject to the page limitations, prescribed by CR 39.1(c)(4)(C). The memoranda which you furnish should not exceed ten pages, and copies should be served on the opposing parties. Each of you may submit copies of what you consider to be the important pleadings or other documents. I will read everything which you submit, but please keep the total of your submittals reasonable in length. Please have your pre-hearing submittals delivered to me by 12:00 p.m. on Friday, March 4, 2005.

(4) In addition to the above memoranda, I would like counsel for each party to write a letter to me, which will remain entirely confidential and privileged, candidly expressing the views of you and your client regarding liability, damages and settlement. See CR 39.1(c)(4)(C). This letter should include information concerning the exchange of positions and/or offers previously made during settlement negotiations. Your observations about any particular factors which may affect the prospects of settlement also would be appreciated. This letter should be prominently marked "CONFIDENTIAL—FOR THE MEDIATOR'S EYES ONLY," and not exchanged with opposing counsel. Please provide it to me together with your mediation memorandum, by 12:00 p.m. on Friday, March 4, 2005.

(5) The mediation proceedings are, of course, entirely confidential and for the purposes of settlement. See CR 39.1(a)(6). In that regard, I am enclosing an Agreement Regarding Confidentiality of Alternative Dispute Resolution Proceedings which I would like you to execute and return to me with, or prior to, submission of your mediation memoranda.

Finally, this will confirm that my hourly rate is \$375.00 per hour which, unless you agree otherwise, will be divided equally among the parties to the mediation. Unless I hear to the contrary, I will assume that this is acceptable to your clients.

**AGREEMENT REGARDING CONFIDENTIALITY
OF ALTERNATIVE DISPUTE RESOLUTION PROCEEDINGS**

The parties, acting through their undersigned counsel, hereby agree that these alternative dispute resolution proceedings, including communications, statements, disclosures and representations made by any party, attorney or other participant in the course of such proceeding, shall, in all respects, be confidential, and shall not be reported, recorded, placed in evidence, disclosed to anyone not a party to the litigation, made known to the trial court or jury, or construed for any purpose as an admission or declaration against interest. No party shall be bound by anything done or said during such proceedings unless a settlement or other agreement is reached.

The undersigned counsel have full authority to bind the parties in this regard. It is contemplated that this confidentiality agreement will be signed in separate counterparts.

DATED this 24th day of February, 2005.

Signed: _____

Print name: _____

Counsel for: _____
Party

James A. Smith, Jr.

Smith & Hennessey PLLC
316 Occidental Avenue S, Suite 500
Seattle, Washington 98104
Telephone: 206-292-1770
Fax: 206-292-1790
jas@smithhennessey.com

ALTERNATIVE DISPUTE RESOLUTION RESUME

EDUCATION: B.A., University of Notre Dame (1970); J.D., Cornell University (1973).

COURT ADMISSIONS: I am authorized to practice in Washington State and before the U.S. District Court for the Western and Eastern Districts of Washington, the U.S. Court of Appeals for the Ninth Circuit, the U.S. Court of Appeals for the Fifth Circuit, and the U.S. Supreme Court. I have appeared and argued before all of these courts.

LEGAL EXPERIENCE AND WORK HISTORY:

I was a partner in the Seattle law firm of Bogle & Gates before launching the firm of Perey & Smith in 1982. Smith & Leary was formed in June, 1986 and Smith & Hennessey was formed in April, 2000. Throughout my entire legal career I have been involved in a litigation practice consisting of trial, appellate and dispute resolution work. I have represented plaintiffs and defendants, and individuals as well as various business entities.

I have appeared in a variety of state and federal courts and personally argued cases at all levels of the Washington State and federal court systems, including various state trial courts, the Washington State Court of Appeals, the Washington Supreme Court, various U.S. District Courts, the U.S. Court of Appeals for the Ninth Circuit, and the U.S. Supreme Court.

FOCUS OF LAW PRACTICE: My practice emphasizes complex litigation, including litigation of business, commercial, insurance, environmental (particularly forestry issues), securities, employment, contract, and tort claims. A significant amount of my practice involves work as a mediator and arbitrator, as well as representing clients through alternative dispute resolution techniques.

PROFESSIONAL ASSOCIATIONS: Lawyer Representative for the Western District of Washington to the Ninth Circuit Judicial Conference (1995-98); Co-chair and Chair, Federal Bar Association Alternative Dispute Resolution Committee (1995-2001); Panel of Arbitrators, American Arbitration Association (1986-); Panel of Mediators, United States District Court for the Western District of Washington CR 39.1 Program (1981-); Chairperson, Federal Bar Association ADR Task Force (1995); Vice President, Federal Bar Association (2001-02); President, Federal Bar Association (2002-) Member, Civil Justice Reform Act Advisory Committee, United States District Court Western District of Washington (1999-); Member, American Bar Association (Litigation Section and Dispute Resolution Section); Member, Washington State Bar Association (Trustee Trial Practice Section (1983-86), Member, ADR Section); Member, King County Bar Association (ADR Section); Member, Kitsap County Bar

Association; Member, International Society of Barristers; Member, ADR Roundtable.

ALTERNATIVE DISPUTE RESOLUTION TRAINING: I have been a frequent lecturer in CLE programs involving mediation, arbitration and other forms of ADR. I have been involved in presenting CLE programs to the U.S. Court of Appeals for the Ninth Circuit Judicial Conference, ABA Dispute Resolution Section, Washington State Bar Association, King County Bar Association, Washington State Attorney General's office, and other professional organizations. I have taken the American Arbitration Association Commercial Arbitration and Securities Arbitrator Training Courses. I am a member of the American Arbitration Association Large Complex Case Panel.

ALTERNATIVE DISPUTE RESOLUTION EXPERIENCE: I have been involved as an arbitrator on numerous occasions, including cases on behalf of the American Arbitration Association. A significant amount of my practice involves acting as a mediator under the CR 39.1 ADR program in cases pending in the United States District Court for the Western District of Washington, as well as providing mediation and arbitration services in cases pending in the Washington State court system and other forums. Areas in which I successfully have served as an arbitrator or neutral include: breach of contract, antitrust, construction, securities, shareholder rights, partnership, professional dissolutions, insurance coverage, intellectual property, business tort, personal injury, professional negligence, and other substantive areas. I have successfully mediated many complex, multi-party disputes. I have mediated cases of all sizes, including many multi-million dollar disputes.

ALTERNATIVE DISPUTE RESOLUTION PRACTICE AREAS: I am an experienced civil litigator and ADR provider. Areas of focus include the broad spectrum of civil litigation ranging from contract and business disputes through tort and personal injury matters.

Smith & Hennessey

PLLC
ATTORNEYS AT LAW

316 Occidental Avenue South, Suite 500
Seattle, Washington 98104

Telephone: (206) 292-1770

Facsimile: (206) 292-1790

e-mail: info@smithhennessey.com

FACSIMILE TRANSMITTAL SHEET

DATE: February 24, 2005

Please deliver the following page to:

NAME: Katrin E. Frank FIRM: MacDonald Hoague & Bayless FAX NO.: 206 / 343-3961	NAME: Keelin A. Curran Zahraa V. Wilkinson FIRM: Stoel Rives LLP FAX NO.: 206 / 386-7500
--	---

FROM: James A. Smith, Jr.

RE: Lahrichi v. Lumera Corporation, et al.
(Mediation)

- Hard copy of this document will follow.
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Appendix C

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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

Plaintiffs,

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,

Defendants.

No. 09-2-17151-3 SEA

**PLAINTIFFS' MOTION FOR
RECONSIDERATION OF PORTIONS OF
ITS ORDERS GRANTING DEFENDANTS'
MOTIONS TO DISMISS DEFENDANTS
KEELIN A. CURRAN, ZAHRAA V.
WILKINSON, MOLLY M. DAILY AND
STOEL RIVES, LLP, TIMOTHY
LONDERGAN, TIMOTHY PARKER,
RALUCA DINU, DAN JIN, HENRY HU,
HANNWEN GUAN, GIGOPTIX, AND
MICROVISION**

I. RELIEF REQUESTED

Plaintiffs Adil Lahrichi, Regine Csipke, and Aziza BenAzzouz, pro se and as next friends to the minor children plaintiffs T.L., M.L., Y.L., A.L., Y.L. ("*Plaintiffs*"), hereby respectfully request this Court to grant their motion for reconsideration of portions of this Court's order granting Defendants' Motions To Dismiss Defendants Keelin A. Curran, Zahraa V. Wilkinson, Molly M. Daily and Stoel Rives, LLP (*collectively "Stoel Rives Defendants"*), Timothy Londergan, Timothy Parker, Raluca Dinu, Dan Jin, Henry Hu, HannWen Guan, GigOptix

**PLAINTIFFS' MOTION FOR RECONSIDERATION
OF PORTIONS OF ITS ORDERS GRANTING
DEFENDANTS' MOTIONS TO DISMISS - 1**

*Adil Lahrichi, Regine Csipke and
Aziza BenAzzouz
12875 NE 8th Street, #14, Bellevue, WA 98005
425-562-7220
adil_l@att.net; regine_c@comcast.net;
aziza_b@comcast.net*

1 (collectively "GigOptix"), and Microvision ("Motions To Dismiss").

2 **II. STATEMENT OF FACTS**

3 On February 5, 2010, this Court held an oral hearing regarding the three motions to dismiss
4 Plaintiffs' complaint under CR 12(b)(6) and CR 12(b)(5) filed separately by Defendants.¹ In that
5 hearing, this Court gave a brief general opinion about Plaintiffs' case and dismissed Plaintiffs'
6 claims against all Defendants. See Exhibit 1. Then, each counsel for each group of Defendants
7 handed Judge Cahan for signature their respective proposed orders for dismissal. Plaintiffs were
8 given only couple of minutes to review Stoel Rives Defendants' and GigOptix Defendants' orders.
9 Plaintiffs objected to said orders and their language.² Plaintiffs were not provided with
10 Microvision's proposed order. Judge Cahan signed all three proposed orders. This Court did not
11 provide the basis of its decision on the expiration of the statutes of limitations of Plaintiffs' claims.
12 This Court mooted Defendants' allegations of insufficient service and their request for dismissal
13 pursuant to CR 12(b)(5). Plaintiffs requested in the hearing to present/discuss caselaw and proofs
14 against Defendants' claims for absolute immunity and claims for status of limitations expiration,
15 but were not able to do so.

16 **II. STATEMENT OF ISSUES**

17 Pertaining to the issues argued/raised in Plaintiffs' response to Defendants' Motion to
18 Dismiss, the issues include

19 _____
20 ¹ Stoel Rives Defendants and GigOptix Defendants filed their Motions to Dismiss on January 6, 2010 and January 13,
21 2010, respectively. Due to unforeseen circumstances Plaintiffs had to file on January 25, 2010 a motion for extension
22 of time of at least one week to postpone the date for the oral hearing that was originally scheduled for January 29,
23 2010. After difficulties to reschedule this date due to this Court's and Defendants' counsel's unavailability, counsel
24 finally agreed to a one-week extension and rescheduled the hearing date for February 5, 2010 with the agreement that
Plaintiffs would strike their motion for extension of time. Plaintiffs did so on January 26, 2010. However, the next day,
on January 27, 2010, Microvision also filed a motion to dismiss that included the same and also different issues.
Therefore, Plaintiffs did not have sufficient time to prepare for the oral hearing.

² Plaintiffs also object that this Court entered the orders with prejudice.

1 A. whether this Court should reverse portions of its order granting Defendants' Motion
2 to Dismiss under CR 12(b)(6) because Defendants did not demonstrate they are entitled to absolute
3 immunity for their actions against Plaintiffs and because the statutes of limitations of Plaintiffs'
4 claims did not expire;

5 B. whether Defendants have absolute immunity 1) for their administrative non-judicial
6 acts, which caused irreversible harm without opportunity for redress for Plaintiffs; 2) for their non-
7 advocacy acts; 3) to breach their contracts; 4) to disseminate to the public Plaintiffs' confidential
8 information, which they had the duty to protect; 5) to distort such confidential information,
9 including medical information, and disseminate it to the public; 6) to violate Plaintiffs'
10 constitutional rights; 7) to defame Plaintiffs using statements that are not pertinent to the lawsuit or
11 to the relief sought; and 8) to conspire against Plaintiffs and to defraud Plaintiffs and 9) for
12 committing perjury and other unlawful acts;

13 C. whether Defendants can indiscriminately overextend absolute immunity for
14 defamatory statements in judicial proceedings to their other wrongful actions;

15 D. whether Defendants had the duty to Plaintiffs under their contracts and are immune
16 to breach said duties and act in bad faith;

17 E. whether Stoel Rives Defendants, GigOptix and Microvision committed malpractice;

18 F. whether Defendants are absolutely immune for wrongful acts, which occurred
19 outside Lahrichi's discrimination lawsuit and after Lahrichi's lawsuit was dismissed including but
20 not limited to preventing Plaintiffs to mitigate their damages resulting from Defendants'
21 unauthorized disclosures;

22 G. whether an employer is covered by his/her employer/agent's immunity;

23 H. whether Microvision, GigOptix, and Mino are liable for the actions of their

24 **PLAINTIFFS' MOTION FOR RECONSIDERATION
OF PORTIONS OF ITS ORDERS GRANTING
DEFENDANTS' MOTIONS TO DISMISS - 3**

***Adil Lahrichi, Regine Csipke and
Aziza BenAzzouz
12875 NE 8th Street, #14, Bellevue, WA 98005
425-562-7220
adil_l@att.net; regine_c@comcast.net;
aziza_b@comcast.net***

1 agents/employees Stoel Rives and their attorneys; and

2 I. whether Plaintiffs have the right to seek relief in this Court.

3 **IV. EVIDENCE RELIED UPON**

4 Plaintiffs rely upon 1) the Complaint; 2) excerpts of this Court's statements in the oral
5 hearing, attached as Exhibit 1; 3) the U. S. District Court's order dismissing the complaint for
6 injunctive relief (*Curran v. Lahrichi*, Case No. C04-1227) and Lahrichi's response to Stoel Rives
7 Motion for preliminary injunction attached as Exhibits 2 and 3; 4) Plaintiffs' responses to
8 Defendants' Motions to Dismiss and Lahrichi's declaration in support thereof; and 5) copies of the
9 contracts between Defendants and Lahrichi, attached as Exhibits 4 and 5.

10 **V. AUTHORITY**

11 The Supreme Court of Washington reiterated in *McNeal v. Allen*, 95 Wash. 2d 265, 621
12 P.2d 1285 (1980) "We have repeatedly said that a motion made pursuant to CR 12(b)(6) must be
13 denied unless it appears beyond doubt that the plaintiff can prove no set of facts, consistent with
14 the complaint, which would entitle the plaintiff to relief. (Citations omitted)." This Court
15 improperly treated Defendants' Motion to Dismiss as a motion for summary judgment. In doing so,
16 this Court overlooked that there are numerous unresolved issues of material facts and also
17 precluded Plaintiffs from using discovery to amend their complaint and correct any supposed
18 shortcomings therein. "[W]e are not inclined to hold a complaint insufficient unless it appears from
19 such complaint no cause of action can be stated by amendment or otherwise, or it shows on its face
20 plaintiff is not entitled to any relief." *Moody v. Moody*, 47 Wash. 2d 397, 288 P.2d 229 (1955). If
21 the Motions to Dismiss were to be treated as a motions for summary judgment, then all disputed
22 issues of material facts must be viewed in the light most favorable to Plaintiffs and the burden is on
23 Defendants to prove their allegations. Yet, this Court adopted Defendants' position. Defendants did

24 **PLAINTIFFS' MOTION FOR RECONSIDERATION
OF PORTIONS OF ITS ORDERS GRANTING
DEFENDANTS' MOTIONS TO DISMISS - 4**

***Adil Lahrichi, Regine Csipke and
Aziza BenAzzouz
12875 NE 8th Street, #14, Bellevue, WA 98005
425-562-7220
adil_l@att.net; regine_c@comcast.net;
aziza_b@comcast.net***

1 not dispute the factual allegations in Plaintiffs' complaint and/or in Plaintiffs' response. "We
2 accept as true the allegations in the plaintiffs' complaint and the reasonable inferences that can be
3 drawn from the allegations." *Jeckle v. Crotty*, 120 Wash.App. 374, 85 P.3d 931 (2004).

4 **1. The Standard for Absolute Immunity**

5 This Court's statement that immunity bars all of Plaintiffs' claims because this case is
6 derivative of Lahrichi's employment discrimination lawsuit is overbroad. (Exhibit 1). Although
7 Defendants reattempted in their Motions to Dismiss to tie this case to Lahrichi's previous
8 Discrimination Lawsuit (U.S. District Court No. C04-02124-JCC) and make it appear as a
9 relitigation of his previous claims, the Federal District Court summarily rejected such contentions
10 when it dismissed Stoel Rives Defendants' lawsuit and motion for injunctive relief. Exhibit 2. That
11 court also dismissed Stoel Rives Defendants' claims that Plaintiffs' claims will disturb its decisions
12 in the Discrimination Lawsuit.

13 Here, the facts are quite different. The conduct that Lahrichi alleges was harmful
14 arose *during the course of the prior litigation*. The pertinent facts were categorically
15 unavailable to him when he filed his original lawsuit in federal court. Although
16 Lahrichi mentioned many of these claims in the context of the motion to relax, the
17 factual allegations were nascent and developing. More importantly, Lahrichi had no
18 opportunity to engage in discovery concerning those allegations because the scope of
19 discovery was limited to the facts underlying his discrimination lawsuit. There is
20 simply not a sufficient factual nexus between the allegations against the attorneys and
21 the issues presented to the Court in the limited remand from the Ninth Circuit, and it
22 cannot be said that Lahrichi had a full and fair opportunity to litigate his claims
23 against the attorneys in the prior federal proceeding. Exhibit 2, p. 10

19 The question herein is not that this case is derivative of the Discrimination Lawsuit, but the
20 issues include whether Defendants proved that they are absolutely immune for all their wrongful
21 actions. "The Supreme Court has made it clear that the doctrine of immunity should not be applied
22 broadly and indiscriminately, but should be invoked only to the extent necessary to effect its
23 purpose. See *Doe v. McMillan*, 412 U.S. 306, 319-25, 36L. Ed. 2d 912, 93 S. Ct. 2018 (1973).

24 **PLAINTIFFS' MOTION FOR RECONSIDERATION
OF PORTIONS OF ITS ORDERS GRANTING
DEFENDANTS' MOTIONS TO DISMISS - 5**

*Adil Lahrichi, Regine Csipke and
Aziza BenAzzouz
12875 NE 8th Street, #14, Bellevue, WA 98005
425-562-7220
adil_l@att.net; regine_c@comcast.net;
aziza_b@comcast.net*

1 *fn4. We also must look beyond the status of the party seeking immunity and consider the nature
2 of the conduct for which immunity is sought. See *C. M. Clark Insurance Agency, Inc. v. Maxwell*,
3 156 U.S. App. D.C. 240, 479 F.2d 1223, 1227 (1973)” *Gregory v. Thompson*, 500 F.2d 59 (9th Cir.
4 1974). Defendants have still the burden to prove that they are entitled to immunity for each of their
5 wrongful acts, which they did not do. *Lutheran Day Care v. Snohomish County*, 119 Wash. 2d 91,
6 106, 829 P.2d 746 (1992) (“Only when the person claiming absolute immunity can prove that such
7 immunity is justified will we impose it.”)

8 **2. Defendants Did Not Prove That They Are Entitled To Absolutely Immunity**

9 Defendants indiscriminately overextend absolute immunity for defamatory statements in
10 judicial proceedings, which is conditional, to all their other wrongful actions. Defendants did not
11 disclose all the facts and misapprehended statements in Plaintiffs’ complaint to support their
12 absolute immunity claims. Defendants also inaccurately claimed that all the alleged wrongful
13 actions occurred during judicial proceedings and were undeniably pertinent to such proceedings.
14 Exhibit 3. This Court readily adopted Defendants’ positions, without requiring them to prove their
15 immunity for each of their wrongful actions. See *supra*.

16 “[J]udicial immunity does not automatically attach to all categories of conduct in which a
17 judge may properly engage, but only to those acts that are of a judicial nature.” *Gregory v.*
18 *Thompson*, 500 F.2d. In *Burgess v. Vernon W. Towne*, 13 Wash. App. 954, 538 P.2d 559 (1975)
19 the court states “[a]lthough the doctrine of judicial immunity is a broad one, not all actions by
20 judges are immune from civil suit. In *Spires v. Bottorff*, 317 F.2d 273 (7th Cir. 1963), cert. denied,
21 379 U.S. 938, 13 L. Ed. 2d 349, 85 S. Ct. 343 (1964), a judge who interfered with judicial
22 proceedings after he had disqualified himself was held to be acting in clear absence of jurisdiction.
23 Likewise, *Yates v. Village of Hoffman Estates*, 209 F. Supp. 757 (N.D. Ill. 1962), held that it was

24 **PLAINTIFFS’ MOTION FOR RECONSIDERATION
OF PORTIONS OF ITS ORDERS GRANTING
DEFENDANTS’ MOTIONS TO DISMISS - 6**

*Adil Lahrichi, Regine Csipke and
Aziza BenAzzouz
12875 NE 8th Street, #14, Bellevue, WA 98005
425-562-7220
adil_l@att.net; regine_c@comcast.net;
aziza_b@comcast.net*

1 not a judicial function for a magistrate to direct a police officer to take into custody a person not
2 named in a warrant, and *Wade v. Bethesda Hosp.*, supra, held that a judge acted without
3 jurisdiction in ordering a person sterilized.”

4 Likewise, absolute immunity does not attach to an act just because the act is performed by
5 an attorney, prosecutor, litigant, or witness and/or occurs within judicial proceedings. Otherwise,
6 those individuals can shield themselves from liability like Defendants attempt to do herein by
7 claiming a supposed link between his/her action and the judicial process. “We have adopted a
8 functional approach to determining if immunity applies. *Taggart*, 118 Wn.2d at 210 (quoting
9 *Forrester*, 484 U.S. at 227). We look to the function being performed instead of the person who
10 performed it. *Id. Lallas v. Skagit County*, No. 81672-7 (2009). Therefore, it must be left to the fact
11 finder to determine whether every wrongful action of Defendants meets the absolute immunity
12 standard.

13 **3. The Dismissal of Plaintiffs’ Lawsuit Was Improper and Premature**

14 While Defendants improperly and indiscriminately overextended absolute immunity for
15 defamatory statements in proceedings to all their other wrongful actions, this Court limited
16 Plaintiffs’ claims to violation of privacy. See Plts’ complaint. Also, like Defendants this Court
17 lumped all factual allegations of Plaintiffs under judicial proceedings and declared them pertinent
18 thereto. Plaintiffs’ presentation of historical and procedural details of the Discrimination Lawsuit
19 in their complaint should not held against them and be misread to dismiss Plaintiffs’ claims.
20 Plaintiffs reiterate that all the alleged factual allegations did not only occur during judicial
21 proceedings and if Defendants claim that this is supposedly the case, this becomes an disputed
22 issue of material fact. Plts’ Resps to Mtns to Dismiss and Plts’ Complaint. There also remain
23 disputed issues of material fact between parties as to whether the alleged wrongful acts, which

24 ***PLAINTIFFS’ MOTION FOR RECONSIDERATION
OF PORTIONS OF ITS ORDERS GRANTING
DEFENDANTS’ MOTIONS TO DISMISS - 7***

*Adil Lahrichi, Regine Csipke and
Aziza BenAzzouz
12875 NE 8th Street, #14, Bellevue, WA 98005
425-562-7220
adil_l@att.net; regine_c@comcast.net;
aziza_b@comcast.net*

1 occurred during judicial proceedings, were pertaining to the relief or not, that a fact finder will
2 need to resolve.

3 This Court dismissed Plaintiffs' violation of privacy claims under the immunity doctrine.
4 Defendants made the acts of using Plaintiffs' confidential information and disseminating it to the
5 public in violation of their contracts, privacy laws, court orders appear to be judicial acts and
6 undistinguishable advocacy acts. The unauthorized dissemination of Plaintiffs' confidential
7 information is simply not an act of judicial nature and/or an advocacy act and/or had any bearing
8 on the Discrimination Lawsuit. Defendants have not carried their burden to show that they were
9 acting as advocates when they were unlawfully disclosing Plaintiffs' medical information to the
10 public. Defendants often acknowledged that the protection of Plaintiffs' information from the
11 public was unquestionable and uncontestable. Defendants' repeated dissemination of that
12 information to the public, which occurred without Plaintiffs' and the Federal's District Court's
13 consent or knowledge, during judicial proceedings and after Lahrichi's Discrimination lawsuit was
14 dismissed, had nothing to do with Lahrichi's claims, was not intended to facilitate any
15 prosecutorial and/or advocacy decision and/or support Defendants' positions. The
16 protection/dissemination of Plaintiffs' confidential information is simply a ministerial act and not a
17 discretionary act. Such act does not interfere with judicial proceedings or carry the risk of
18 harassment and intimidation associated with the litigation of Lahrichi's claims in the
19 Discrimination Lawsuit, which forms the underlying basis for the immunity doctrine. In addition,
20 even assuming that there was ever a judicial act associated with the protection of Plaintiffs'
21 information, the judicial process ended when those decisions not to disclose the information to the
22 public were made and established. The confidential information at issue such as medical was also
23 collateral and unrelated to Plaintiffs' claims of discrimination. The court in *Mauro v. Kittitas*

24 **PLAINTIFFS' MOTION FOR RECONSIDERATION
OF PORTIONS OF ITS ORDERS GRANTING
DEFENDANTS' MOTIONS TO DISMISS - 8**

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Aziza BenAzzouz
12875 NE 8th Street, #14, Bellevue, WA 98005
425-562-7220
adil_l@att.net; regine_c@comcast.net;
aziza_b@comcast.net***

1 *County*, 26 Wash. App. 538, 613 P.2d 195 (1980) found the Court clerk, who would normally
2 benefit from absolute immunity for being the judge's arm, liable for not processing an order ruling
3 that such act was primarily ministerial. Likewise, Defendants' unauthorized disclosures of
4 Plaintiffs' confidential information by failing to protect it and properly process it, was merely a
5 ministerial act and Defendants were not acting as advocates when they were disseminating it.

6 Granting absolute immunity to Defendants for violating Plaintiffs' privacy is an assertion
7 that privacy laws and the confidentiality contracts signed between Lahrichi and Defendants and
8 approved and reaffirmed by the Federal District Court are irrelevant and unenforceable. Those
9 confidentiality contracts were legally binding and are still valid today. They were an additional
10 layer of protection that Plaintiffs relied on to relinquish their confidential information to
11 Defendants. Plaintiffs had no control on how Defendants handled the information once Defendants
12 were given access to it. Furthermore, the confidential information entrusted to Defendants was
13 collateral. It is also unjust to hold others liable if they were to disseminate such confidential
14 information, but permit Defendants, who were ordered, required, agreed, and promised not to
15 disseminate said information, to be absolutely immune for repeatedly disclosing it to the public.

16 There are other underlying issues related to Plaintiffs' violation of privacy claim, including
17 but not limited to the existence of duties between Lahrichi and Defendants based upon their
18 contractual agreements and privacy laws and the breach thereof as well as whether Defendants
19 committed fraud and acted in bad faith to make Lahrichi sign those agreements. All these questions
20 remain for the jury to resolve and also demonstrate that discovery is necessary and appropriate.
21 The existence of a duty also supports Plaintiffs' entitlement to claims of malpractice and
22 negligence. A number of states for example allow actions to hold attorneys liable to persons not
23

24 ***PLAINTIFFS' MOTION FOR RECONSIDERATION
OF PORTIONS OF ITS ORDERS GRANTING
DEFENDANTS' MOTIONS TO DISMISS - 9***

***Adil Lahrichi, Regine Csipke and
Aziza BenAzzouz
12875 NE 8th Street, #14, Bellevue, WA 98005
425-562-7220
adil_l@att.net; regine_c@comcast.net;
aziza_b@comcast.net***

1 their clients.³ “Washington allows an action for legal malpractice to be framed either as a tort or a
2 breach of contract. *Peters v. Simmons*, 87 Wash. 2d 400, 404, 552 P.2d 1053 (1976).....In addition,
3 the Court of Appeals has gone so far as to say that the malpractice plaintiff need not be the client,
4 but "only an injured party." *Hansen v. Wightman*, 14 Wash. App. at 88 n.2.” Id. All these issues
5 remain material disputed facts and matter of law questions that need to be addressed, which
6 demonstrate that dismissal of Plaintiffs’ lawsuit was premature.

7 This Court’s dismissal of Plaintiffs’ claims preclude Defendants from the opportunity to
8 establish through discovery their claim against all Defendants that they conspired to injure
9 Plaintiffs and that their conspiracy in this case was not an advocacy act.

10 This Court accepted Defendants’ deficient argument that all Defendants’ defamatory
11 statements were pertaining to the Discrimination Lawsuit, which entitles them to absolute
12 immunity. Defendants did not disclose all the facts to this Court about said statements. First,
13 whether a defamatory statement is actually pertinent to the judicial proceedings must be assessed
14 by a jury. Plaintiffs must be afforded the opportunity to present the statements in question to the
15 jury, which Plaintiffs cannot do herein, and conduct discovery. Second, Defendants distorted
16 Plaintiffs confidential information such as medical, which they had the duty to protect and not to
17 disclose to the public and which was collateral to Plaintiffs’ claims. The act of disseminating said
18 confidential information in distorted form to ridicule and embarrass and oppress Plaintiffs, is

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20 ³ A number of states, led by California, have relaxed the privity requirement for attorney malpractice actions to hold
21 attorneys liable to persons not their clients. See, e.g., *Heyer v. Flaig*, 70 Cal. 2d 223, 449 P.2d 161, 74 Cal. Rptr. 225
22 (1969); *Ogle v. Fuiten*, 102 Ill. 2d 356, 466 N.E.2d 224 (1984); *Fickett v. Superior Court*, 27 Ariz. App. 793, 558 P.2d
23 988 (1976); *McAbee v. Edwards*, 340 So. 2d 1167 (Fla. Dist. Ct. App. 1976). Some states recognize a cause of action
24 by a third party in contract only. *Guy v. Liederbach*, 501 Pa. 47, 459 A.2d 744 (1983). Other states allow the third
party to bring the action either in contract or in tort. *Stowe v. Smith*, 184 Conn. 194, 441 A.2d 81, 84 (1981); *Lucas v.*
Hamm, 56 Cal. 2d 583, 364 P.2d 685, 15 Cal. Rptr. 821 (1961), cert. denied, 368 U.S. 987, 7 L. Ed. 2d 525, 82 S. Ct.
603 (1962). In all of these cases, the third party claimant was a legatee who was deprived of taking under a negligently
drafted will. (footnote omitted). *Bowman v. John Doe Two and Jane Doe Two*, 104 Wash. 2d 181, 704 P.2d 140 (1985)

**PLAINTIFFS’ MOTION FOR RECONSIDERATION
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DEFENDANTS’ MOTIONS TO DISMISS - 10**

***Adil Lahrichi, Regine Csipke and
Aziza BenAzzouz***
12875 NE 8th Street, #14, Bellevue, WA 98005
425-562-7220
adil_l@att.net; regine_c@comcast.net;
aziza_b@comcast.net

1 simply not an advocacy act, even if the act of distorting it were to be permitted for advocacy
2 purposes. Defendants did not show that they were acting as advocates when they were violating
3 Plaintiffs' constitutional rights and disseminating such information.

4 There are multiple Defendants in this lawsuit and the relationships between parties are
5 intertwined and complex. Defendants sought to undermine those relationships between them to
6 avoid liability. As shown in Plaintiffs' response immunities are not transferrable. The way liability
7 for each Defendants based on their participation and relationship to others cannot be assessed at
8 this early stage without further discovery. Such issues present legal questions and material disputed
9 facts for the jury to resolve. The doctrine of immunity from civil liability relies on the existence of
10 other remedies and safeguards. This is not the case for Plaintiffs because the harm that Defendants
11 inflicted on Plaintiffs is irreversible. Plaintiffs have no opportunity for redress despite Defendants
12 efforts to trivialize the harm. See Plts' Resps to Mtns to Dismiss. Plaintiffs provided preliminary
13 insights to this Court on this matter during the hearing. This Court's statement that this Court is not
14 the appropriate forum for Plaintiffs to seek relief for their injuries and that Plaintiffs' remedy is
15 with Judge Coughenour, who had presided over Lahrichi's Discrimination Lawsuit, is perplexing.
16 Judge Coughenour already ruled that Plaintiffs should be allowed to conduct discovery. See supra.
17 In addition, the Discrimination Lawsuit was dismissed in 2006 and other Plaintiffs were not parties
18 to that lawsuit.

19 **4. The Statute of Limitations of Plaintiffs' claims did not expire**

20 Notwithstanding that this Court should assess the statute of limitations for each claim
21 separately, this Court also improperly accepted GigOptix's and Microvision's allegations that the
22 statutes of limitations run out for Plaintiffs' claims. This Court overlooked that Plaintiffs have
23 demonstrated in their response that Defendants sought to confuse this Court by connecting

24 *PLAINTIFFS' MOTION FOR RECONSIDERATION
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*Adil Lahrichi, Regine Csipke and
Aziza BenAzzouz
12875 NE 8th Street, #14, Bellevue, WA 98005
425-562-7220
adil_l@att.net; regine_c@comcast.net;
aziza_b@comcast.net*

1 Plaintiffs' claims of breach of contract to Lahrichi's employment contract with Lumera (now
2 GigOptix) and Microvision. However, the contracts at issue were signed in 2004 and 2005 and the
3 statute of limitations did not run out for those contracts. Thos contracts are in accordance with
4 privacy laws and do not expire. In addition, Defendants had the duty under clearly established
5 privacy laws, which do not expire, too. Defendants' attempt to conveniently ignore said contracts
6 does not avoid liability and contesting anything about those contracts should be resolved by a jury.
7 Defendants also ignored in their calculation of the status of limitations the time of discovery of the
8 harm, which occurred only after the Discrimination Lawsuit. Therefore, it is improper and
9 premature to dismiss Plaintiffs' case on this basis, too.

10 **V. CONCLUSION**

11 Plaintiffs have shown that there exist several issues of material fact and matter of law that
12 remain to be resolved regarding the immunity of Defendants, the statutes of limitations and
13 underlying issues as discussed in Plaintiffs' response and herein. Plaintiffs have only presented
14 some insight about these issues due to time and space constraint. Therefore, at this stage it is
15 premature and improper to dismiss all Defendants and preclude Plaintiffs from discovery, to
16 amend their claims and causes of action in their complaint, and remedy any deficiencies therein.

17 For all the foregoing reasons, Plaintiffs respectfully request this Court to reconsider and
18 reverse portions of its orders to dismiss Defendants.

19 **VII. DECLARATION**

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

23 DATED this 16th day of February, 2010.

24 ***PLAINTIFFS' MOTION FOR RECONSIDERATION
OF PORTIONS OF ITS ORDERS GRANTING
DEFENDANTS' MOTIONS TO DISMISS - 12***

***Adil Lahrichi, Regine Csipke and
Aziza BenAzzouz
12875 NE 8th Street, #14, Bellevue, WA 98005
425-562-7220
adil_l@att.net; regine_c@comcast.net;
aziza_b@comcast.net***

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Respectfully submitted,

//s//Adil Lahrichi

Adil Lahrichi, Plaintiff Pro Se and next friend to minor children Plaintiffs T.L., M.L., Y.L., A.L., and Y.L.

//s//Regine Csipke

Regine Csipke, Plaintiff Pro Se and next friend to minor children Plaintiffs T.L., M.L., Y.L., A.L., and Y.L.

//s//Aziza Ben Azzouz

Aziza Ben Azzouz, Plaintiff Pro Se and next friend to minor children Plaintiffs T.L., M.L., Y.L., A.L., and Y.L.

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies as follows:

3 On February 16, 2010, I caused a true and correct copy of the foregoing documents to be
4 (1) electronically filed with the Clerk of the Court using the King County Superior E-Filing
5 system; and (2) duly served as indicated below on the following parties' counsel:

5 William F. Cronin (WSBA# 8667)
6 Joshua J. Preece (WSBA# 15380)
7 Corr Cronin Michelson Baumgardner
& Preece LLP
8 1001 Fourth Avenue, Suite 3900
9 Seattle, WA 98154-1051
10 Tel: 206-625-8600
11 Fax: 206-625-0900
12 Email: wcronin@corrchronin.com
13 Email: jpreece@corrchronin.com
14 Email: scolgan@corrchronin.com

15 *Attorneys for Defendants*

16 *Keelin Curran, Zahraa Wilkinson, Molly*
17 *Daily, and Stoel Rives*
18 **[via E-Service]**

19 Jeffrey A. James (WSBA#18277)
20 Sebris Busto James
21 14205 S.E. 36th Street, Suite 325
22 Bellevue, WA 98006
23 Ph: 425-454-4233
24 Fax: 425-453-9005
Direct Dial: 503-935-5391
Email: jaj@sebrisbusto.com
Email: lkrizek@sebrisbusto.com

*Attorneys for Defendants GigOptix, Tim
Londergan, Raluca Dinu, Dan Jin, Henry Hu,
and HannWen Guan*

[via E-Service]

13 Mark W. Berry (WSBA#16730)
14 Boris Gaviria (WSBA# 31251)
15 Davis Wright Tremaine LLP
16 777 108th Avenue NE, Suite 2300
17 Bellevue, WA 98004-5149
18 Tel: 425-646-6142
19 Fax: 425-646-6199
20 Email: markberry@dwt.com
21 Email: borisgaviria@dwt.com

22 *Attorneys for Defendant Microvision, Inc.*

23 **[via E-Service]**

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

DATED: February 16, 2010 at Bellevue, Washington.

//s//Regine Csipke
Regine Csipke

**PLAINTIFFS' MOTION FOR RECONSIDERATION
OF PORTIONS OF ITS ORDERS GRANTING
DEFENDANTS' MOTIONS TO DISMISS - 14**

*Adil Lahrichi, Regine Csipke and
Aziza BenAzzouz*
12875 NE 8th Street, #14, Bellevue, WA 98005
425-562-7220
*adil_l@att.net; regine_c@comcast.net;
aziza_b@comcast.net*

CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

On October 4, 2010, I caused a true and correct copy of the foregoing documents be (1) filed with the Court of Appeals, Division I, 600 University St., Seattle, WA 98101-1176 via U.S. Priority Mail; and (2) duly served as indicated below on the following parties' counsel:

William F Cronin (WSBA# 8667)
Joshua J. Preece (WSBA# 15380)
Corr Cronin Michelson
Baumgardner & Preece LLP
1001 Fourth Avenue, Suite 3900
Seattle, WA 98154-1051
Tel: 206-625-8600
Fax: 206-625-0900
Email: wcronin@corrchronin.com
Email: jpreece@corrchronin.com
Email: scolgan@corrchronin.com

Attorneys for Defendants

Keelin Curran, Zahraa Wilkinson, Molly Daily, and Stoel Rives

[via U.S. Mail, postage prepaid]

Jeffrey A. James (WSBA#18277)
Sebris Busto James
14205 S.E. 36th Street, Suite 325
Bellevue, WA 98006
Ph: 425-454-4233
Fax: 425-453-9005
Direct Dial: 503-935-5391
Email: jaj@sebrisbusto.com
Email: lkrizek@sebrisbusto.com

Attorneys for Defendants GigOptix, Tim Londergan, Raluca Dinu, Dan Jin, Henry Hu, and HannWen Guan

[via U.S. Mail, postage prepaid]

Mark W. Berry (WSBA#16730)
Boris Gaviria (WSBA# 31251)
Davis Wright Tremaine LLP
777 108th Avenue NE, Suite 2300
Bellevue, WA 98004-5149
Tel: 425-646-6142
Fax: 425-646-6199
Email: markberry@dwt.com
Email: borisgaviria@dwt.com
Attorneys for Defendant Microvision, Inc.
[via U.S. Mail, postage prepaid]

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

DATED: October 4, 2010 at Bellevue, Washington.



Regine Csipke