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**NO. 65144-7  
IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
Division I**

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

**Appellants,**

**vs.**

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

**Respondents.**

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**BRIEF OF RESPONDENTS GIGOPTIX, TIMOTHY  
LONDERGAN, RALUCA DINU, DAN JIN, HENRY HU AND  
HANN WEN GUAN**

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 **ORIGINAL**

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## I. INTRODUCTION

Respondents, GigOptix, Timothy Londergan, Raluca Dinu, Dan Jin, Henry Hu and Hann Wen Guan (the “GigOptix Respondents” or “GigOptix Defendants”) respectfully request that this Court affirm the trial court’s dismissal of Adil Lahrichi (“Lahrichi”) and his wife and children’s (collectively “Appellants”) Complaint.

Lahrichi was employed with Lumera Corporation from approximately 2001 until 2002 when he was terminated. In 2004, he brought an employment discrimination lawsuit against Lumera, Lumera’s Chief Executive Officer (“CEO”), and Microvision, a technology company that founded and provided management support for Lumera. On March 2, 2006, the court granted the defendants’ motions for summary judgment and dismissed Lahrichi’s complaint in its entirety.

In 2009, Appellants filed their underlying Complaint asserting causes of action for alleged discovery violations and wrongful disclosures that took place in Lahrichi’s initial employment discrimination lawsuit. All of the named defendants in Appellants’ underlying action were either parties, witnesses or attorneys in the initial lawsuit.<sup>1</sup> On February 5, 2010, the trial court dismissed Appellants’ underlying Complaint because Appellants failed to allege any actions taken by any of the named defendants, including the GigOptix Appellants, that either: (1) are not absolutely privileged under the

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<sup>1</sup> While Respondent GigOptix was not a named defendant in the First Lawsuit, it merged with Lumera, Lahrichi’s former employer and a defendant in that action, in 2009. CP 4 (Complaint, ¶ 18). Presumably, Appellants brought suit against GigOptix in the underlying Complaint as a successor to Lumera. *See id.*

doctrine of litigation immunity; or (2) occurred within any applicable statute of limitations.

For the reasons set forth herein, the trial court properly dismissed Appellants' Complaint in its entirety against the GigOptix Respondents and, therefore, the February 5, 2010 order should be affirmed.

## **II. COUNTER-STATEMENT OF ISSUES**

**A.** Whether the trial court properly dismissed Appellants' Complaint in its entirety pursuant to CR 12(b)(6) because the GigOptix Respondents are protected from civil liability under the doctrine of litigation privilege immunity.

**B.** Whether the trial court properly dismissed Appellants' Complaint in its entirety pursuant to CR 12(b)(6) because Appellants' claims are time barred.

**C.** Whether the trial court properly dismissed Appellants' complaint in its entirety pursuant to CR 12(b)(6) without allowing for amendment when Appellants never filed a motion to amend and never submitted a proposed amended complaint.

## **III. COUNTER-STATEMENT OF THE CASE**

### **A. Appellants' Relationship With The GigOptix Respondents.**

Lahrichi worked for Lumera from 2001 until 2002 when he was terminated. CP 5, 7 (Complaint, ¶¶ 27, 32). Approximately seven years later, Respondent GigOptix merged with Lumera. CP 4 (Complaint, ¶ 18).

Respondents Londergan, Dinu, Jin, Hu and Guan were employed by Lumera. CP 3-4 (Complaint, ¶¶ 12-17).

**B. Lahrichi's First Lawsuit.**

In September 2004, Lahrichi filed an employment discrimination suit in the Superior Court of Washington for King County against Lumera, Thomas Mino, Lumera's CEO, and Microvision, a technology company that founded and provided management support for Lumera (Case No. 04-2-23849-8 SEA) (referred to herein as the "First Lawsuit"). CP 7 (Complaint, ¶ 34). Lumera, Microvision and Mr. Mino were represented in the First Lawsuit by attorneys Keelin Curran, Zahraa Wilkinson and Molly Daily of Stoel Rives (the "Attorney Respondents"). CP 7 (Complaint, ¶ 35). The defendants removed the case to the United States District Court for the Western District of Washington (Case No. 04-02124). *Id.* On March 2, 2006, the court granted the defendants' motion for summary judgment and dismissed Lahrichi's complaint in its entirety. CP 13-14 (Complaint, ¶¶ 73, 78), 112. Lahrichi appealed the court's decision to the Ninth Circuit Court of Appeals, which remains pending. CP 84, 112.

Respondents Londergan, Dinu, Jin, Hu and Guan are some of Lahrichi's former coworkers at Lumera and were witnesses in the First Lawsuit. CP 3-4, 7-8 (Complaint, ¶¶ 12-17, 38).

**C. Appellants' Underlying Complaint.**

Appellants filed their underlying Complaint on April 27, 2009. CP 1-20. In their Complaint, Appellants assert claims for violation of privacy, intentional and negligent dissemination of information, libel and defamation,

intentional misrepresentation of information to inflict harm, conspiracy to defame and harm, breach of contract, breach of trust, exploitation, negligence and negligent infliction of emotional distress, bad faith, fraud, malpractice, obstruction of the course of justice, perjury, intentional and malicious acts to harm, misappropriation of others' identity to inflict harm and obstruct justice, exploitation of privileges and trust to inflict harm, and intentional and bad faith acts to prevent Plaintiffs from mitigating ongoing damages.<sup>2</sup> CP 18 (Complaint, ¶ 101). The Complaint does not identify which factual allegations support each cause of action, nor does it make clear which causes of action are pleaded against which defendants.<sup>3</sup>

All of the wrongful acts set forth in Appellants Complaint are alleged to have taken place in the course of Lahrichi's First Lawsuit. CP 1-20. Specifically, with regard to Respondents Londergan, Dinu, Jin, Hu and Guan, Appellants allege that, as witnesses in the First Lawsuit, they provided malicious and fraudulent testimony with the intent to disparage Lahrichi's character, skills, work and reputation. CP 7-8 (Complaint, ¶ 38).

With regard to Respondent GigOptix, Appellants allege that, through the actions of its predecessor Lumera's counsel, the Attorney Respondents,

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<sup>2</sup> For the first time in their opening brief, Appellants suggest that they are additionally pursuing claims for violations of the Uniform Health Care Information Act ("UHCIA"), the Health Insurance Portability and Accountability Act ("HIPAA") and unidentified civil and constitutional rights. *See, e.g.*, Appellants' Brief, at 26 (UHCIA and HIPAA), 33 (civil and constitutional rights). Because such claims were not pleaded in Appellants' Complaint or raised with the trial court, they should not be considered on appeal. *See* RAP 2.5(a); *Sneed v. Barna*, 80 Wn. App. 843, 847 (1996).

<sup>3</sup> In addition to the GigOptix Defendants, Appellants named as defendants the Attorney Respondents, Microvision, Thomas Mino and Timothy Parker. Lahrichi later stated during oral argument on the motions to dismiss Appellants' claims that all of the claims were pleaded against all of the defendants. RP 26.

Respondent GigOptix: (1) violated mediation confidentiality agreements and protective orders;<sup>4</sup> (2) introduced defamatory evidence;<sup>5</sup> (3) engaged in abusive conduct during depositions;<sup>6</sup> (4) tampered with and/or concealed evidence;<sup>7</sup> (5) rehearsed questions with witnesses prior to depositions;<sup>8</sup> (6) delayed the course of litigation and filed frivolous motions;<sup>9</sup> and (7) impersonated Appellants' counsel while interviewing Lumera employees.<sup>10</sup> Appellants additionally allege that Lumera "participated in and committed the wrongful acts" (Appellants' Brief, at 17) engaged in by the Attorney Respondents by soliciting and influencing witness testimony and withholding documents and evidence. Appellants' Brief, at 34-35 (citing CP 10-12 (Complaint, ¶¶ 58, 62, 64-69)).

On January 13, 2010, the GigOptix Respondents filed a motion to dismiss under CR 12(b)(6) and CR 12(b)(5).<sup>11</sup> CP 196-202. On February 5, 2010, the trial court granted the GigOptix Respondents' motion to dismiss and ruled as follows:

The Court finds that Plaintiffs have failed to allege any actions by defendants Timothy Londergan, Raluca Dinu, Dan Jin, Henry Hu, Hann Wen Guan, and GigOptix that occurred within any applicable statute of limitations, and thus, any claims against these defendants are time-barred;

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<sup>4</sup> CP 9-11, 13-14 (Complaint, ¶¶ 51, 53, 55, 56, 59, 70, 71, 73, 76, 77, 80, 82, 85, 99).

<sup>5</sup> CP 9-15 (Complaint, ¶¶ 48, 55, 57, 60, 62, 65, 70, 73, 74, 77, 82, 86).

<sup>6</sup> CP 9-10 (Complaint, ¶ 52).

<sup>7</sup> CP 11, 13 (Complaint, ¶¶ 52, 55, 61, 70).

<sup>8</sup> CP 10-12 (Complaint, ¶¶ 58, 62, 66, 67, 69).

<sup>9</sup> CP 11, 13, 16-17 (Complaint, ¶¶ 61, 70, 89, 92-95).

<sup>10</sup> CP 12 (Complaint, ¶ 68).

<sup>11</sup> The Attorney Defendants and Defendant Microvision similarly filed motions to dismiss Appellants' Complaint. CP 173-189, 203-208.

The Court finds that Plaintiffs have failed to allege any actions by defendants Timothy Londergan, Raluca Dinu, Dan Jin, Henry Hu, Hann Wen Guan, and GigOptix that would not be absolutely privileged under the doctrine of litigation immunity, and thus, any claims against these defendants fail as a matter of law . . . .

It is now therefore **ORDERED** that GigOptix Defendants' motion is **GRANTED** as to defendants Timothy Londergan, Raluca Dinu, Dan Jin, Henry Hu, Hann Wen Guan, and GigOptix. It is further **ORDERED** that Plaintiffs' Complaint is dismissed in its entirety with prejudice as to those defendants.

CP 309-310. On February 26, 2010, the trial court denied Appellants' motion for reconsideration. CP 391.

#### IV. ARGUMENT

##### A. Standards of Review on Appeal.

###### 1. Motion to Dismiss.

An order granting a motion to dismiss pursuant to CR 12(b)(6) is reviewed de novo. *Atchison v. Great W. Malting Co.*, 161 Wn.2d 372, 376 (2007) (“We review CR 12(b)(6) rulings de novo.”). A motion to dismiss under CR 12(b)(6) is properly granted where it appears beyond a reasonable doubt that no facts exist that would justify recovery. *Cutler v. Phillips Petroleum Co.*, 124 Wn.2d 749, 881 (1994).

This Court may affirm the trial court's decision on any basis supported by the record evidence. *Deveny v. Hadaller*, 139 Wn. App. 605, 616 (2007).

###### 2. Motion to Amend.

“The standard of review for a request to amend a pleading is a manifest abuse of discretion.” *McDonald v. State Farm Fire & Casualty Co.*,

119 Wn.2d 724, 737 (1992); *see also Del Guzzi Constr. Co. v. Global Nw. Ltd.*, 105 Wn.2d 878, 888 (1986) (“We review a trial court's denial of a motion to amend pleadings for abuse of discretion.”). “A trial court abuses its discretion only if its exercise of discretion is manifestly unreasonable or based on untenable grounds or reasons.” *Travis v. Tacoma Pub. Sch. Dist.*, 120 Wn. App. 542, 554 (2004) (citation omitted).

**B. The Trial Court Properly Granted The GigOptix Respondents’ Motion to Dismiss.**

As detailed above, Appellants argue that the GigOptix Respondents are liable for: (1) providing malicious and fraudulent testimony in the First Lawsuit; (2) engaging in various wrongful acts during the course of the First Lawsuit, through the acts of the Attorney Respondents, including violating confidentiality agreements and/or protective orders, influencing witnesses, filing frivolous motions and tampering with or concealing evidence; and (3) withholding evidence and influencing witnesses. *See supra*, § III.C. All alleged acts took place within the course of the First Lawsuit and, thus, are barred by the litigation privilege. Furthermore, all alleged acts took place outside the applicable statutes of limitation and, thus, are time barred.

For each of these reasons, the trial court properly granted the GigOptix Respondents’ motion to dismiss Appellants’ claims under CR 12(b)(6).

**1. Appellants' Claims Are Barred by The Litigation Privilege.**

**a. Application and Scope of the Litigation Privilege.**

“The defense of absolute privilege applies to statements made in the course of judicial proceedings and avoids all liability.” *Twelker v. Shannon & Wilson*, 88 Wn.2d 473, 477 (1977). Although the privilege was founded to protect against defamation claims, Washington courts have repeatedly refused to limit the privilege only to such claims. *See Deatherage v. Board of Psychology*, 134 Wn.2d 131, 137 (1997) (“The privilege of immunity is a judicially created privilege founded upon the belief that the administration of justice requires witnesses in a legal proceeding be able to discuss their views without fear of a defamation lawsuit.”); *see also Bruce v. Byrne-Stevens & Assocs. Eng’Rs*, 113 Wn.2d 123, 134 (1989) (immunity not limited to defamation claims).

The two requirements for application of the privilege are that the statements or actions at issue be: (1) made in the course of a judicial proceeding; and (2) pertinent or material to the relief sought. *See McNeal v. Allen*, 95 Wn.2d 265, 267 (1980). The privilege extends to pleadings filed in and statements made during the course of judicial proceedings. *Richmond v. Thompson*, 130 Wn.2d 368, 383 (1996) (recognizing that “[b]y the early part of this century, this court had established an absolute privilege for pleadings and statements made during the course of judicial proceedings.”); *see also Herron v. Tribune Pub. Co.*, 108 Wn.2d 162, 180 (1987) (“The privilege has been applied not only to statements made in the course of the proceeding but

**b. The Alleged Actions Were Made In The Course Of the First Lawsuit and Were Pertinent to the Relief Sought.**

Appellants argue that the GigOptix Respondents are liable for: (1) providing malicious and fraudulent testimony in the First Lawsuit; (2) engaging in various wrongful acts during the course of the First Lawsuit, through the acts of the Attorney Respondents; and (3) withholding documents and evidence and influencing witnesses. *See supra*, § III.C. All of these alleged acts were made in the course of a judicial proceeding and were related to the relief sought.

First, the witness testimony Appellants contend Respondents Londergan, Dinu, Jin, Hu and Guan to have engaged in during the First Lawsuit unequivocally was made in the course of a judicial proceeding and was pertinent or material to the relief sought. *See* Restatement (Second) of Torts, § 588 (Witnesses in Judicial Proceedings) (“A witness is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding or as a part of a judicial proceeding in which he is testifying, if it has some relation to the proceeding.”); *see also FMC Techs., Inc. v. Edwards*, 464 F. Supp. 2d 1063, 1070 (W.D. Wash. 2006) (recognizing that deposition testimony is generally covered by the common law litigation privilege). Thus, Appellants’ claims against Respondents Londergan, Dinu, Jin, Hu and Guan are barred by the litigation privilege.

Second, Appellants allege Respondent GigOptix (as Lumera’s successor) through the actions of its agent, the Attorney Respondents, to

have: (1) violated mediation confidentiality agreements and/or protective orders; (2) introduced defamatory evidence; (3) engaged in abusive conduct towards Appellants during depositions; (4) tampered with and/or concealed evidence; (5) rehearsed questions with witnesses prior to depositions; (6) delayed the course of litigation and filing frivolous motions; (7) impersonated Appellants' counsel while interviewing Lumera employees. *See supra*, § III.C. As detailed in the Attorney Respondents' brief filed with this Court on November 8, 2010, the trial court properly concluded that the Attorney Respondents are immune from any liability under the litigation privilege as all of the alleged acts were made in the course of the First Lawsuit and were pertinent to the relief sought. *See* Brief of Respondents Keelin A. Curran, Zahraa V. Wilkinson, Molly M. Daily and Stoel Rives, LLP ("Attorney Respondents' Appellate Brief), at 10-22.<sup>12</sup> Under Washington law, where an individual's agent is not liable, there can be no liability for the principal. *See, e.g., Orwick v. Fox*, 65 Wn. App. 71, 88 (1992). Thus, because the Attorney Respondents are not liable to Appellants, there is no basis for any finding that the GigOptix Respondents are liable for the Attorney Respondents' actions. *See id.*

Third, Appellants allege that GigOptix, through the actions of Lumera in the First Lawsuit, withheld documents and evidence and influenced witness testimony. Appellants' Brief, at 34-35 9 (citing CP 10-12 (Complaint, ¶¶ 58, 62, 64-69)). Such actions if true (which GigOptix denies)

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<sup>12</sup> The GigOptix Appellants join in and incorporate herein by reference the arguments and authorities set forth in the Attorney Respondents' Appellate Brief.

constitute discovery violations, treatment of evidence, statements made in court and/or statements made in pleadings in the First Lawsuit and, thus, fall directly within the litigation privilege. *See generally McNeal v. Allen*, 95 Wn.2d 265, 267 (1980) (judicial privilege applicable when statement or action made in course of judicial proceeding and pertinent or material to the relief sought); *see also Demopolis v. People's Nat'l Bank*, 59 Wn. App. 105, 110 (1990) (noting that the litigation privilege “encompasses extrajudicial pertinent statements” and need only have “some relation” to prior judicial proceedings).

For all of these reasons, Appellants' claims against the GigOptix Defendants are barred by the litigation privilege. Accordingly, the trial court properly dismissed Appellants' Complaint in its entirety against the GigOptix Respondents pursuant to CR 12(b)(6).

**2. Appellants' Claims Are Barred by the Applicable Statutes of Limitation.**

As stated above, Appellants assert claims for violation of privacy, intentional and negligent dissemination of information, libel and defamation, intentional misrepresentation of information to inflict harm, conspiracy to defame and harm, breach of contract, breach of trust, exploitation, negligence and negligent infliction of emotional distress, bad faith, fraud, malpractice, obstruction of the course of justice, perjury, intentional and malicious acts to harm, misappropriation of others' identity to inflict harm and obstruct justice, exploitation of privileges and trust to inflict harm, and intentional and bad faith acts to prevent Plaintiffs from mitigating ongoing damages. CP 18

(Complaint, § 101). All of Appellants' recognized asserted claims are subject to a statute of limitations of three years or less. *See* RCW 4.16.100 (claims for libel, slander, defamation and false light invasion of privacy are governed by a two-year statute of limitations); RCW 4.16.080(2) (fraud, negligence and conspiracy subject to three-year statute of limitations); RCW 4.16.080(3) (breach of oral contract subject to a three-year statute of limitations); *see also* *Milligan v. Thompson*, 90 Wn. App. 586, 592 (1998) (intentional infliction of emotional distress subject to three-year statute of limitations under RCW 4.16.808(2)); *Eastwood v. Cascade Broad. Co.*, 106 Wn.2d 466, 474 (1986) (false light invasion of privacy claim is governed by the two-year statute of limitations for libel and slander under RCW 4.16.100(1)).

Here, in support of their claims, Appellants argue that: (1) Respondents Londergan, Dinu, Jin, Hu and Guan provided malicious and fraudulent testimony in the First Lawsuit; and (2) Respondent GigOptix (though Lumera) engaged in various wrongful acts during the course of the First Lawsuit, both on its own and through the acts of the Attorney Respondents, including violating confidentiality agreements and/or protective orders, influencing witnesses, filing frivolous motions and tampering with or concealing evidence. *See supra*, § III.C. As described above, all such actions are alleged to have occurred during the First Lawsuit. *See supra*, § IV.B.1.

On March 2, 2006, the trial court granted summary judgment in the First Lawsuit and dismissed the matter in its entirety. CP 13-14 (Complaint,

¶¶ 73, 78), 112. Thus, the alleged acts forming the basis of Appellants' claims against the GigOptix Respondents would have to have occurred sometime before March 2, 2006. *Id.*

Appellants filed their underlying Complaint on April 27, 2009. CP 1-20. Thus, the longest of the relevant limitation periods is April 27, 2006 to April 27, 2009. None of the actions Appellants allege the GigOptix Respondents to have engaged in occurred during this time period and, thus, the trial court properly dismissed their claims as time barred.

In their opening brief, Appellants claim that their asserted breach of contract claim is for breach of a written contract and, thus, a six-year-statute of limitations is applicable to that claim. Appellants' Brief, at 41. Notably, Appellants' Complaint does not allege that the GigOptix Respondents were parties to a contract with Appellants, nor does it specify the contract that was allegedly breached. CP 18 (Complaint, ¶ 101). Appellants now claim, however, that defendants to the underlying action, including the GigOptix Respondents, breached the following:

- Unidentified oral and written contracts with GigOptix, Microvision and the Attorney Respondents (Appellants' Brief, at 41 n. 16);
- The 2004 stipulated protective order entered in the First Lawsuit (CP 368-377 and Appendix A to Appellants' Brief); and
- The 2005 Agreement Regarding the Confidentiality of Alternative Dispute Resolution Proceedings (CP 378-379 and Appendix B to Appellants' Brief).

With regard to Appellants' claim that unidentified oral and written contracts exist, breach of any such contract is time-barred. As stated above, any oral agreement between Appellants and the GigOptix Respondents are subject to a three-year statute of limitations and, thus, are time-barred. *See supra*. To the extent that any written contract existed between Lahrichi and GigOptix, it would be in the context of Lahrichi's employment with GigOptix's predecessor, Lumera; thus, any such contract would have been entered into prior to 2002, when Lahrichi's employment with Lumera ended. CP 5, 7 (Complaint, ¶¶ 23, 32). To this end, any claim for breach of that contact accrued well over six years ago and, thus, is time barred.

With regard to Appellants' claim that the GigOptix Respondents breached the 2004 stipulated protective order and 2005 alternative dispute resolution ("ADR") confidentiality agreement, these documents do not constitute written contracts as a matter of law. *See Lager v. Berggren*, 187 Wn. 462, 467 (1936) (contract requires a legal subject matter, competent parties, a promise or mutual agreement, an offer and acceptance, and consideration). To the contrary, the 2004 stipulated protective order is a court order subjecting parties to court-imposed sanctions for violating the order and not to personal liability to one another. *See* CP 368-377 and Appendix A to Appellants' Brief (2004 Stipulated Protective Order, at Exhibit 1, ¶ 5). Similarly, the 2005 ADR confidentiality agreement is merely a reiteration of Rule 39.1 of the Civil Rules of the United States District Court for the Western District of Washington for the Western District of Washington ("Local Federal Civil Rules"), which provides that mediation

proceedings are confidential and for the purposes of settlement. *See* Local Federal Civil Rule 39.1; *see also* CP 378-379 and Appendix B to Appellants' Brief (Feb. 24, 2005 letter from J. Smith to K. Curran and K. Frank re: 2005 ADR Confidentiality Agreement, at 2 ("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 . . .").

Because neither the 2004 stipulated protective order nor the 2005 ADR Confidentiality Agreement constitute a written contract as a matter of law, a six-year statute of limitations does not apply to Appellants' breach of contract claim. Accordingly, all Appellants' claims are barred by a three-year statute of limitations and the trial court properly dismissed Appellants' Complaint in its entirety pursuant to CR 12(b)(6).

**C. The Trial Court Did Not Abuse its Discretion by Failing to Grant Appellants Leave to Amend Their Complaint.**

Appellants claim that they were "deprived from discovery to amend their complaint and correct any shortcomings that it might have." Appellants' Brief, 21. CR 15 provides that a party may amend his or her pleading by leave of the court and leave shall be freely given when justice so requires. *Kwiatkowski v. Drews*, 142 Wn. App. 463, 496 (2008). Thus, the proper mechanism through which Appellants could have sought to amend their complaint is a motion to amend pursuant to CR 15. Notably, however, at no time did Appellants make any such motion, nor did they submit a copy of any proposed amended complaint as required by the Civil Rules. *See* CR

15(a) (“If a party moves to amend a pleading, a copy of the proposed amended pleading, denominated “proposed” and unsigned, shall be attached to the motion.”).

Additionally, Appellants’ suggestion that the trial court abused its discretion by not affording them opportunity to conduct discovery so that they would *then* be in the position to amend their complaint and assert cognizable claims is in direct conflict with the requirements under the Civil Rules. Specifically, in order to survive dismissal under CR 12(b)(6), Appellants are required to state a claim upon which relief may be granted *prior* to conducting any discovery. *Cf., Tenore v. AT&T Wireless Serv.*, 136 Wn.2d 322, 329-330 (1998) (dismissal under CR 12(b)(6) for failure to state a claim for which relief may be granted is appropriate "if it appears beyond doubt that the plaintiff cannot prove any set of facts which would justify recovery"). In other words, Appellants are required to have a good faith basis upon which to plead their case *before* subjecting defendants to burdensome discovery in the hope that they will find facts substantiating their claims.

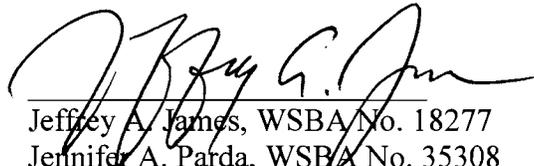
For each of these reasons, the trial court did not abuse its discretion by failing to grant Appellants leave to amend their Complaint.

## V. CONCLUSION

For each of the foregoing reasons, Respondents GigOptix, Timothy Londergan, Raluca Dinu, Dan Jin, Henry Hu and Hann Wen Guan respectfully request that the Court deny Appellants’ appeal and uphold the trial court’s dismissal of Appellants’ claims.

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of December, 2010.

SEBRIS BUSTO JAMES

A handwritten signature in black ink, appearing to read "Jeffrey A. James". The signature is written in a cursive style with a horizontal line underneath it.

Jeffrey A. James, WSBA No. 18277

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