



Neutral Citation Number: [2022] EWHC 979 (QB)

Case No: QB-2021-004143

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**MEDIA AND COMMUNICATIONS LIST**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29/04/2022

**Before:**

**MR JUSTICE JAY**

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**Between:**

**BW LEGAL SERVICES LIMITED**

**Claimant**

**- and -**

**GLASSDOOR INC**

**Defendant**

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**Stefan Ramel** (instructed by **BW Legal Services Limited**) for the **Claimant**  
**Adam Speker QC and Andrew Feld** (instructed by **Bird & Bird LLP**) for the **Defendant**

Hearing date: 12 April 2022  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE JAY

**MR JUSTICE JAY:**

*Introduction*

1. BW Legal Services Limited (“the Claimant”) is a specialist debt recovery law firm regulated by the Solicitors Regulation Authority and the Financial Conduct Authority. It provides debt recovery services to various sectors including financial services, private parking, energy and general business. It has received accolades and awards in that regard and prides itself in its ethical approach to debt recovery and litigation.
2. Glassdoor Inc (“the Defendant”) was incorporated in Delaware in 2007, its registered office is in Los Angeles, and it is headquartered in San Francisco, California. It owns and operates the website [www.glassdoor.co.uk](http://www.glassdoor.co.uk) (“the Website”) as well as its US analogue, [www.glassdoor.com](http://www.glassdoor.com). In the simplest of terms, these websites (and the instant case is concerned only with the former) offer employees a platform to place reviews about their employers, thereby giving, in the words of the Defendant’s witness Mr Joe Freeman, “jobseekers the best possible information about companies so that they are able to make informed decisions about their careers and find jobs and companies they will love”.
3. The Claimant complains of two anonymous reviews dated 17<sup>th</sup> and 25<sup>th</sup> October 2021, and seeks the identities of the posters of the reviews. It is said that the reviews are defamatory and, possibly, in breach of the contracts of employment between the reviewers and the Claimant (assuming, at the very least, that the individuals in question are existing employees).
4. On 9<sup>th</sup> November 2021 the Claimant caused a Part 8 Claim Form to be issued against the Defendant seeking *Norwich Pharmacal* relief. The Claim Form gave an address for service for the Defendant as being “...c/o Glassdoor Global Limited, Fourth Floor, 11 Ironmonger Lane, London EC2V 8EY”. I will be referring hereafter to Glassdoor Global Limited as “GGL”. The address specified is GGL’s registered office and the company was incorporated on 19<sup>th</sup> October 2012.
5. The Part 8 Claim for *Norwich Pharmacal* relief was supported by the witness statement of Mr Rohan Krishnarao dated 8<sup>th</sup> November 2021 as well as a draft Order. I have examined the documents on the CE-file and it is to be noted that no application was made for a without notice Order. Indeed, para 10 of the Claim Form stated:

“The Claimant wishes for the application to be reviewed by a Master in the first instance and should the Master feel it necessary, the application should be referred to a Judge.”
6. The Claimant sought permission to serve the Defendant through the medium of service on GGL, relying on the provisions of CPR r.6.9 rather than the rules governing service out of the jurisdiction. Given that *Norwich Pharmacal* relief is final relief (see the decision of Teare J in *AB Bank, Off-Shore Banking Unit v Abu Dhabi Commercial Bank* [2016] EWHC 2082; [2017] 1 WLR 810) there is no gateway for service out of the jurisdiction in PD 6B. As a corollary, permission to serve the Claim Form on the Defendant within the jurisdiction at the address of GGL as an alternative method or place (see CPR r. 6.15 or r.6.37(5)(b)(i)) would have been refused (see the decision of Foxton J in *Marashen v Kenvett* [2017] EWHC 1706 (Ch); [2018] 1 WLR 288). For

present purposes I am content to proceed on the footing that this is a neutral factor, noting in passing the potential anomaly. But there may well be force in the submission advanced by Mr Stefan Ramel for the Claimant that the issue falls to be determined within the four walls of CPR r.6.9: either this rule permits service in this way, or it does not.

7. On 19<sup>th</sup> November 2021 Master Eastman granted the *Norwich Pharmacal* Order in the terms set out in the draft and also granted the Claimant permission to serve a sealed copy of the Order upon the Defendant at the City of London address. The Defendant was required to provide the information sought by affidavit within 14 days and was also restrained from notifying anyone of the proceedings and of the requirement to provide the affidavit until 28 days had elapsed, time starting to run when the affidavit was provided. Master Eastman made the Order on the papers and without a hearing, and without receiving submissions from the parties.
8. On 23<sup>rd</sup> November 2021 a hard copy of the application bundle was delivered to the offices of GGL. It is not clear whether the mode of delivery was by hand or by post. An Acknowledgement of Service was filed on 8<sup>th</sup> December 2021. Section C was ticked, thereby indicating that the Defendant intended to dispute the Court's jurisdiction. The skeleton argument of Mr Stefan Ramel for the Claimant took a preliminary point that the Acknowledgement of Service was one day late, but that issue evaporated during the hearing as soon as consideration was given to the deemed service provisions of CPR r.6.14.
9. On 22<sup>nd</sup> December 2021 the Defendant issued an application notice seeking the following relief:
  - (1) for a declaration, pursuant to CPR r.11(1)(a), that the court has no jurisdiction to try the claim for *Norwich Pharmacal* relief because no valid service has been effected; alternatively because, even if permission had been sought to serve the Claim Form out of the jurisdiction (which it has not been), permission to serve out could not be granted for the relief sought;
  - (2) alternatively, for a declaration, pursuant to CPR r.11(1)(b), that, if valid service has been effected, then the court should not exercise its jurisdiction to try this claim because: (a) there is an exclusive jurisdiction clause in the Defendant's Terms of Use granting exclusive jurisdiction to courts in California and therefore the Defendant is entitled to a stay; and/or (b) the Claimant obtained the Order of Master Eastman dated 18 November 2021 unfairly and/or improperly;
  - (3) therefore, the Order should be discharged; the Claim Form set aside; and service of the Claim Form set aside;
  - (4) alternatively, and without prejudice to the Claimant's position on jurisdiction, the Order be set aside because (a) the conditions to meet the test for *Norwich Pharmacal* relief are not met on the evidence; and/or (b) the Claimant obtained the Order unfairly and/or improperly.

10. On 4<sup>th</sup> January 2022, Master Eastman ordered that the proceedings be continued as a Part 7 Claim. On 13<sup>th</sup> January 2022, Nicklin J gave directions in respect of the Defendant's application leading to the hearing before me on 12<sup>th</sup> April.
11. The evidence that I have considered comprises two witness statements from Mr Rohan Krishnarao (dated 8<sup>th</sup> November 2021 and 7<sup>th</sup> February 2022) and two from Mr Joe Freeman (dated 22<sup>nd</sup> December 2021 and 18<sup>th</sup> February 2022). Not all of the evidence relied on is relevant to the issues I have to determine.

### ***Factual Background***

12. The Claimant is regularly reviewed on the Website and has a score of 4.9 out of 5 based on 59 such reviews. The Defendant operates an algorithm for arriving at this composite score, which on any view is an impressive one. It also operates "Community Guidelines" and a process for moderating content in an endeavour to ensure the quality and accuracy of the reviews posted.
13. The terms of the two reviews of which complaint is made appear in the Annex to this judgment. The first review in time (i.e. the review dated 17<sup>th</sup> October 2021) was removed by the Defendant from the Website on 8<sup>th</sup> November.
14. The present dispute has not come entirely out of the blue. It is unnecessary to summarise the history, although it should be noted that in May 2021 the Defendant informed the Claimant that it would challenge the jurisdiction of this Court to entertain any dispute that became litigious. On a number of occasions the Claimant persuaded the Defendant to remove reviews it said were inaccurate or potentially defamatory, and frequently sought to invoke, to its advantage, relevant provisions in the Terms of Use.
15. In the light of the parties' submissions, I may limit any detailed consideration of the evidence to two issues. The first is relevant to whether the Defendant has a place of business in the jurisdiction. The second is relevant to whether the Claimant is bound by the Defendant's Terms of Use.
16. As for the first issue, GGL's incorporation documents show that initially there were three directors, all American citizens giving their address for service in Sausalito, California. The Defendant was the sole shareholder, and that remained the position until at least September 2015. As at 31<sup>st</sup> December 2017 GGL's immediate and ultimate parent company was the Defendant, but the position changed on 20<sup>th</sup> June 2018 when the Defendant was acquired by RGF OHR USA Inc, a subsidiary of Recruit Holding Co Ltd, a company listed on the Tokyo Stock Exchange. The Japanese company therefore became the ultimate parent company. GGL is not a subsidiary of the Defendant but both companies are within the same group.
17. GGL's most recent financial statements have been filed for the period ended 31<sup>st</sup> December 2020. The principal activity of GGL is to provide marketing services for the Defendant in the United Kingdom. The turnover of GGL was just over £5.3M (attributable to "continuing operations") and its administrative expenses just under £5M. The Japanese company provided a letter of support, enabling the accounts to be prepared on a "going concern" basis.

18. An examination of these accounts reveals that the turnover is solely attributable to “sales and marketing support services”. The majority of the expenses are attributable to wages, pensions and the cost of premises.
19. According to Mr Freeman’s evidence, these “marketing support services” relate to advertisements placed on the Website. The evidence before me contains examples of these, being advertisements placed by employers in the market for recruitment as well as recruitment agents. The reason why Mr Freeman has described the GGL’s commercial activity as providing marketing support is because the advertising contracts are made not with GGL but with the Defendant. GGL has no authority to enter into contracts on the Defendant’s behalf and does not do so.
20. I was curious as to how GGL could be generating any turnover in these circumstances. Mr Ramel submitted that the inference must be that the Defendant was paying GGL an amount from these advertising revenues which covered GGL’s costs and a small operating profit. Mr Adam Speker QC for the Defendant was able to confirm, on instructions, that this was indeed the position. Further, GGL receives no commission and its remuneration is not performance related. Arguably, this information should have been included in the Defendant’s evidence, but nothing turns on that.
21. Mr Speker also submitted, and I agree, that this is a standard structure or business model in the internet world.
22. Mr Freeman’s evidence contains the following additional matters:
  - (1) GGL has no control over user content posted to the site.
  - (2) Lease agreements for GGL’s offices are in GGL’s name and not the Defendant’s.
  - (3) GGL’s letterhead does not refer to the Defendant.
  - (4) GGL and the Defendant share no directors.
23. Mr Ramel observed that the Defendant and GGL use the same “Glassdoor” logo, printed in green. That may be so, but the letterhead clearly refers to GGL, and when “Glassdoor” uses the Website for its own recruitment purposes it is clear from the context that the relevant entity is not the Defendant but GGL.
24. As for the second issue, the Defendant’s Terms of Use provide, by clauses 13 and 14, as follows:

**“13. Third-Party Discovery**

You agree to waive your right to file a pre-suit discovery proceeding seeking a user’s identifying information from Glassdoor. If you intend to propound discovery seeking a user’s identifying information, you agree to do so pursuant to a valid California subpoena, properly issued in connection with an active lawsuit and properly served on our registered agent in California at Glassdoor, Inc., c/o CT Corporation, 330 North Brand Boulevard, Glendale, CA 91203-2336. You further agree

that all such subpoenas and discovery proceedings arising from such subpoenas shall be issued from, brought and resolved exclusively within the state courts located within Marin County, California or the federal courts in the Northern District of California, as appropriate, and you agree to submit to the personal jurisdiction of each of these courts for such discovery proceedings.

#### **14. Dispute Resolution**

**A. Governing law.** These Terms and any and all claims, disputes or other legal proceedings by or between you or us... shall be governed by the laws of the State of California... The parties agree that their arrangement under these Terms is an interstate commerce and that the Federal Arbitration Act applies to the construction of the “Agreement to Arbitrate” provision below. For any claim, dispute or other legal proceeding not subject to the “Agreement to Arbitrate” provision below, the claim or dispute shall be brought and litigated exclusively in the state courts located within Marin County, California or the federal courts in the Northern District of California, as appropriate, and you agree to submit to the personal jurisdiction of each of these courts for the purpose of litigating such claims or disputes.

**B. Agreement to Arbitrate.** If you reside in the United States, subject to the Exceptions to Arbitration set forth below, you and Glassdoor each agree that any and all disputes between consumer users of Glassdoor and Glassdoor arising under or related in any way to these Terms and such users' use of Glassdoor must be resolved through binding arbitration as described in this section. With the exception of the prohibition on class arbitrations set forth in this "Dispute Resolution" section, if an arbitrator or court decides that any part of this agreement to arbitrate is unenforceable, the other parts of this Agreement to Arbitrate will still apply....

...

Exceptions to Arbitration. This Agreement to Arbitrate will not apply to the following: (a) small claims court cases that qualify; (b) legal proceedings that involve efforts to obtain user-identifying information; (c) any legal proceedings brought against the Glassdoor Group by companies or other legal entities; or individuals acting on behalf of such companies or other legal entities.... Where this agreement to Arbitration does not apply, the remainder of this Agreement and the Dispute Resolution section will continue to apply.”

25. The Defendant contends that the Claimant is bound by these provisions, amongst others, because it chose to set up a free employer account on the Website. The evidence is that Ms Scanlon, the Claimant's Head of People and Culture, did so on two separate occasions, the first in December 2017. A free employer account offers access to basic reporting metrics and the ability to respond to user comments free of charge. In order to create an account, the user is required to agree to the Website Terms of Use by checking the relevant box, and she confirms that she has authority to bind the principal. The Terms of Use and Privacy Policy are hyperlinked within the relevant online page.
26. There is no evidence from Ms Scanlon as to what her intentions were when she opened these accounts on behalf of the Claimant. Mr Krishnarao advances three arguments on this topic. First, that the Claimant had no intention to create legal relations and was effectively "held to ransom"; secondly, that the Claimant provided no consideration to the Defendant for its use of the website; and, thirdly, that there are ways in which an employer can interact with the Website without being bound by the Terms of Use.

### *The Issues*

27. There are, potentially, five issues arising on the parties' submissions.
28. The first issue is whether there was valid service of the Defendant on GGL for the purposes of CPR r.6.9.
29. The second issue is whether the Claimant should have brought these proceedings in the courts of California rather than in this jurisdiction.
30. The third issue is whether the Claimant obtained Master Eastman's Order by unfair and/or improper means.
31. The fourth issue is whether, in all the circumstances, Master Eastman's Order should be discharged in the light of the foregoing.
32. The fifth issue is whether Master Eastman's Order should be discharged in any event because the conditions for the grant of *Norwich Pharmacal* relief have not been fulfilled.
33. In the light of my conclusions on the first and second issues, detailed consideration of the third, fourth and fifth issues will not be required.

### *The First Issue*

34. CPR r.11.11 provides, in material part:

**"11**

(1) A defendant who wishes to –

(a) dispute the court's jurisdiction to try the claim; or

(b) ...

may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.”

35. CPR r.6.9 provides, in material part, that “any other corporation” may be served at “any place within the jurisdiction where the corporation carries on its activities; or any place of business of the company within the jurisdiction”. The Claimant relies on that part of this provision which follows the semi-colon.
36. I was referred to a number of authorities, including *Adams v Cape Industries* [1990] 1 Ch 433; *Chopra v Bank of Singapore Ltd* [2015] EWHC 1549 (Ch); *Alli-Balogun v On the Beach Ltd* [2021] EWHC 83 (QB); and *Hand Held Products v Zebra Technologies Ltd* [2022] EWHC 640 (Ch).
37. The burden of establishing that the Defendant can be served under CPR r.6.9 lies on the Claimant: see *Zebra Technologies*, at para 20.
38. The *locus classicus* remains the decision of the Court of Appeal in *Adams*. Rather than cite extensively from that authority, I will attempt to summarise the propositions of law it endorses to the extent that is relevant for present purposes.
39. First, and on the assumption that GGL may properly be described as the Defendant’s “agent” or “representative” in this country (and this may assume what needs to be proved), the real question is whether GGL’s business should properly be regarded as its own business or as the business of the Defendant. The answer to that question necessitates an investigation both of the activities of GGL and of the relationship between it and the Defendant (per Slade LJ, at 525F-G).
40. Secondly, the absence of any authority in GGL to bind the Defendant to contracts with advertisers is a powerful factor militating against the Defendant having a place of business in this jurisdiction, although it is not an exclusive or conclusive test (per Slade LJ, at 529A-530B; 531D-F).
41. Thirdly, our courts will be likely to regard a foreign corporation as having a place of business within this jurisdiction if *either* it has established an office here (described as a “branch office case”), *or* a representative within this jurisdiction carries on the foreign corporation’s business here (per Slade LJ at 530C-E). The branch office cases usually give rise to no difficulty, not least because the foreign corporation has chosen to register a presence here: see ss. 1046 and 1139 of the Companies Act 2006. The representative cases involve an analysis of the central question identified by Slade LJ at 525F-G.
42. Fourthly, there is a range of factors likely to be relevant to the central question. These are (per Slade LJ at 530F-531B):

“(a) whether or not the fixed place of business from which the representative operates was originally acquired for the purpose of enabling him to act on behalf of the overseas corporation;

(b) whether the overseas corporation has directly reimbursed him for (i) the cost of his accommodation at the fixed place of business; (ii) the cost of his staff;



- (c) what other contributions (if any) the overseas corporation makes to the financing of the business carried on by the representative;
- (d) whether the representative is remunerated by reference to transactions (e.g. by commission) or by fixed regular payments or in some other way;
- (e) what degree of control the overseas corporation exercises over the running of the business conducted by the representative;
- (f) whether the representative reserves (i) part of his accommodation, (ii) part of his staff for conducting business related to the overseas corporation;
- (g) whether the representative displays the overseas corporation's name at his premises or on his stationery, and if so, whether he does so in such a way as to indicate that he is a representative of the overseas corporation;
- (h) what business (if any) the representative transacts as principal exclusively on his own behalf;
- (i) whether the representative makes contracts with customers or other third parties in the name of the overseas corporation, or otherwise in such manner as to bind it;
- (j) if so, whether the representative requires specific authority in advance before binding the overseas corporation to contractual obligations.”

This list is not exhaustive, and no one factor is conclusive.

43. Fifthly, the “single commercial unit” argument travels only a limited distance. This is because:
  - “If a company chooses to arrange the affairs of its group in such a way that the business carried on in a particular foreign company is the business of the subsidiary and not its own, it is, in our judgment, entitled to do so. Neither in this class of case nor in any other class of case is it open to this court to disregard the principle of *Saloman v A. Saloman & Co. Ltd* [1997] AC 22 merely because it considers it just to do so.” (per Slade LJ at 537B-C)
44. In my view, this last principle has all the more force where, as here, the entity within the jurisdiction is not a subsidiary of the foreign corporation. Slade LJ treated what he called “façade” cases in a different way, but it is not suggested that the arrangements between the Defendant and GGL amount to a sham or that the corporate veil may somehow be lifted.

45. This fifth point was also subjected to close analysis by Nugee LJ sitting at first instance in *Zebra Technologies*. Mr Speker submitted that Nugee LJ went no further than Slade LJ did in *Adams*; Mr Ramel submitted, with appropriate diffidence, that he went too far. Mr Ramel's point was that if regard were paid to the formal corporate structures, the ten questions identified in *Adams* (see my fourth point, at §42 above) would always be answered in the foreign corporation's favour. Put another way, his point was that Nugee LJ's reasoning proved too much.
46. I cannot accept Mr Ramel's submission on this topic, although he advanced it with skill and charm. Companies are entitled to organise their affairs as they see fit, subject to the constraints imposed by statute and the ability of the law to look beneath or beyond sham transactions. Companies may decide to invest the "representative" in this jurisdiction, however it may be described, with power to enter into binding contracts; they may decide differently. It is true that this Defendant does not wish to be sued in England and Wales in relation to whatever may be placed on the Website it owns and manages, or facilitate such suit by comporting itself in such a way that GGL may properly be served, but the fact remains that it can achieve this objective via its Terms of Use. Ultimately, it is up to the Defendant how it chooses to arrange its affairs here.
47. These, amongst others, are the points made by Nugee LJ in *Zebra Technologies* at paras 30-32. I do not set these out verbatim. I limit myself to saying that I respectfully agree with him.
48. Mr Ramel made a number of cogent submissions on Slade LJ's ten factors or questions. The commercial reality here is that GGL is the instrument of the Defendant in the sense that its economic activities are wholly related to furthering the Defendant's business interests through the generation of advertising revenues. That is the Defendant's business model (although the UK is likely to be a relatively small part of its overall commercial activity). GGL does not generate its own revenues because it is not permitted to enter into these contracts; it is reimbursed its costs, plus a small additional element, by the Defendant. That is its turnover. Overall, submitted Mr Ramel, there is an inextricable link between the Defendant and GGL.
49. The answer to Mr Ramel's submissions is to be found in the arrangements made between the Defendant and GGL, no doubt at the instigation of the former rather than the latter. Notwithstanding the commercial nexus between GGL's marketing activity and the contracts formally entered into by the Defendant, those contracts are the Defendant's business (in all senses of the term) and GGL's business is legally separate. Viewed in this way, GGL is not the Defendant's representative in the UK, as its letterhead makes clear. The answer to the crucial question posed in the authorities is that the Defendant's business is not carried on from GGL's offices in the City of London.
50. On analysis, Mr Ramel's arguments dissolved into one: the wider economic reality of this being a sole commercial unit. In order to succeed on that argument, he would need to persuade me not merely that Nugee LJ was wrong (at his paras 30-32) but also that Slade LJ was incorrect (at 537B-C). Regardless of any impediment posed by the principles of *stare decisis*, I cannot agree with him.
51. My conclusion is supported by relatively brief dicta in *Tamiz v Google Inc and Google UK Ltd* [2012] EWHC 449 (QB) (per Eady J at para 4) and *ABC v Google Inc* [2018]

EWHC 137 (QB) (per Julian Knowles J at para 10). Google's business model appears to be similar to Glassdoor's. In both cases the Claimant appeared in person and did not have the benefit of Mr Ramel's submissions.

52. The Defendant's application under CPR r.11(1)(a) is made as of right and does not depend on the exercise of any sort of discretion on my part. In my judgment, the Defendant is correct and is entitled to the relief sought under the first part of para (1) of the Application Notice.

*The Second Issue*

53. CPR r.11.11 provides, in material part:

“11

(1) A defendant who wishes to –

(a) ...; or

(b) argue that the court should not exercise its jurisdiction

may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.”

54. I may deal briefly with the Claimant's arguments based on absence of an intention to create legal relations and of consideration.
55. The “layman” referred to by Nugee LJ, admittedly in a different context in *Zebra Technologies*, may well sympathise with the argument advanced by Mr Krishnarao that the Claimant was effectively “held to ransom”, had no option but to click on the relevant box if it wanted to have any say about potentially malicious anonymous reviews posted online, and paid nothing for the service. However, the legal reality of what happened here is as straightforward as it is unremarkable. By clicking on the relevant box, Ms Scanlon bound the Claimant to a contractual relationship with the Defendant whatever her subjective intentions or feelings may have been. Inherent in the notion of Terms of Use is that a relationship is intended to be formed which has some formal legal character. It is trite law that an intention to create legal relations entails the application of an objective test. Legal certainty is more important than the attempt to ascertain private motives and sentiments. Furthermore, by entering into a contract in this way, the Claimant acquired the facility to access reporting metrics and comment on reviews free of charge. This was a benefit moving to the promisor which amounted to consideration on ordinary principles. Finally, the possibility that the Claimant may have been able to achieve the same advantages without “signing up” to the Terms of Use, about which I make no finding, is irrelevant to the central questions.
56. I did not understand Mr Ramel to submit that this was a form of unconscionable bargain and/or was a contract voidable for duress. Given the obvious difficulties hereabouts, Mr Ramel was right not to enter into this form of discussion.
57. Mr Ramel made a number of submissions on the true construction of clauses 13 and 14 of the Terms of Use. First, he submitted that these clauses should be read independently

of each other, with each (as it were) occupying a separate and discrete domain. Secondly, he contended that that part of clause 14 which is dealing with jurisdiction should be construed as applying to any claim (as opposed to all claims) which was not covered by clause 13. Thirdly, he argued that clause 13 does not in terms cover claims for *Norwich Pharmacal* relief. Fourthly, and connectedly, he maintained that clause 13 only applies to litigation in the United States.

58. My point of departure is the general principle that exclusive jurisdiction clauses are construed liberally and on the premise that all disputes are covered by them unless their clear language otherwise dictates: see *Fiona Trust & Holding Corporation v Privalov* [2007] UKHL 40; [2007] 4 All ER Comm 951, at paras 12-14, and *Donohue v Armco* [2001] UKHL 64; [2002] 1 Lloyd's Rep 433, at para 14.
59. In the absence of expert evidence and contrary argument from the Claimant, I will proceed on the basis that English law is the same as California law *à propos* the construction of these clauses.
60. In my judgment, clauses 13 and 14 are to be read together. They cannot be notionally decoupled. Clause 13 presupposes litigation in California not least because “pre suit discovery” is an American concept. *Norwich Pharmacal* relief is analogous to pre-suit discovery but the terminology is different. Clause 14 applies to “any and all claims” and this, in my opinion, covers a claim for *Norwich Pharmacal* relief. It follows that such claims are governed by California law and must be brought in the relevant California court, unless that is the claimant is resident in the US in which case the general rule is that she or he must arbitrate. However, the arbitration clause does not in any event apply to the present case, being in the nature of “legal proceedings that involve efforts to obtain user-identifying information”. In such a case, the remainder of the Terms of Use applies, including clause 13.
61. The relevance of the exception to the arbitration clause is that it reinforces the point, if such were required, that “all and any claims” includes claims for obtaining user-identifying information. In substance, a claim for *Norwich Pharmacal* relief is precisely that.
62. The upshot, in my judgment, is that the instant claim is caught by the exclusive jurisdiction clause (clause 14) and the effect of clause 13 is that the Claimant has waived its right to sue in California for pre-suit discovery. It is clause 14 which precludes the Claimant from suing for *Norwich Pharmacal* relief, or at all, in this jurisdiction. Clause 13 is not of direct application; its relevance is that it is of a piece with clause 14, and makes it clear that this type of claim must be brought in California within the scope of existing proceedings.
63. Even if, contrary to my preferred view, *Norwich Pharmacal* relief could not be envisaged as pre-suit discovery, because it is in the nature of a claim for final relief, the outcome would be the same. Clause 14 would still apply, and this claim has to be brought in California.
64. All of this being the case, the Court must enforce these clauses by staying the proceedings unless the Claimant can show strong reasons for suing here. The relevant principles have been set out in *The Eleftheria* [1970] P 94, at pages 99-100 (per Lord

Brandon), *Donohue* (at paras 24-25) and *OT Africa Line v Magic Sportswear* [2005] EWCA Civ 710; [2005] 2 Lloyd's Rep 170, at paras 32-33 and 54.

65. The Claimant did not submit that strong reasons existed here (beyond the submissions I have already addressed at §55 above).
66. The Defendant's application under CPR r.11(1)(b) is made on discretionary grounds which pivot on the true construction of clauses 13 and 14 of the Terms of Use. In my judgment, the Defendant is correct and should be granted the relief sought under the first part of para (2) of the Application Notice.

### ***The Remaining Issues***

67. Given my conclusions on the first and second issues, it is unnecessary to say much about the third, fourth and fifth issues.
68. As for the fifth issue, I would probably have concluded, had the need arisen, that the Claimant has not proved serious financial loss. The first review was only online for approximately three weeks. Both reviews are somewhat tendentiously worded, the first more than the second, and prospective employees would understand that they were largely based on matters of opinion and perception. There is no evidence of serious financial loss and I do not think that in a case such as this it may be inferred, without more. Moreover, the contractual claim is as speculative as it is unattractive.
69. All these things having been said, these are no more than firm provisional conclusions. Whether the Claimant would have satisfied me that it had a good arguable case for *Norwich Pharmacal* purposes would have required a closer analysis of all the material.
70. As for the third and fourth issues, I am slightly surprised that Master Eastman granted *Norwich Pharmacal* relief in advance of the Acknowledgement of Service. Reading between the lines, I suspect that many applications against internet companies are dealt with in this way, and on most occasions without difficulty. However, that could not be presumed and for this Defendant an important point of principle has arisen.
71. The Claimant did not ask Master Eastman to deal with its application in this manner. However, once it received the Order from the Court, and certainly once it became clear that the Defendant was opposing the grant of relief, there is surely force in the observation that the Claimant should have corrected the matter with the Master and have sought directions in lieu. Nonetheless, I would have been slow to conclude that, had the Claimant succeeded before me on the first, second and fifth issues, it should be regarded as having acted so unfairly and improperly that its entitlement to *Norwich Pharmacal* relief would have been lost.

### ***Disposal***

72. The Defendant has succeeded on the first and second issues. I now invite counsel to draw up an Order which reflects the terms of this judgment.

## ANNEX

### **Review dated 17<sup>th</sup> October 2021**

**Headline:** “Avoid”

**Pro’s:** “It’s a 9-5 job. That’s the only pro.”

**Con’s:** “Low wage, high workloads, no support, inept management, short breaks and lunch made even shorter by the fact you’re supposed to go on them for 5 minutes into said break/lunch and be back 5 minutes early too, their IT systems are so slow it would sometimes honestly be quicker to just go back to paper but this means you have to start work 20 – sometimes 30 minutes early because they take the “be ready to do your job” too far and treat it like it’s because you didn’t get to work early enough to load everything up opposed to their system being slow. The “in-house café/restaurant” serves food worse than you’d get at a burger van because they’re so far from city centre by time you’ve gotten back even just to the nearest Tesco express you’re late back. The job is so dull you’ll fall asleep at your desk. During the 4-6 weeks training you’re constantly told “we’re not like can’t pay take it away, we do show compassion and fairness and go back to a client and say we’re not taking this case” but then go after people who went on a parking ticket by 15 seconds because there was a queue getting out of a car park.”

**Advice:** “Close up shop, give staff a higher wage, look at how other companies manage their staff.”

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### **Review dated 25<sup>th</sup> October 2021**

[Anonymous] Former Employee, more than one year.

Need to acknowledge their toxic environment to truly improve a better environment

Recommend    CEO Approval    Business Outlook

#### **Pros**

On paper, seems a good place to be career wise ... Check previous employer and customer reviews & make your informed opinion from there.

Free parking, good location, lots of effort put into engagement incentive ... but if you don’t want to participate in these events, don’t waste your time here.

Work life balance – depends on the department you work.

Staff canteen available onsite.

#### **Cons**

Everything IS monitored and overthought. The few people who laugh and joke with one another get suspicious sideways looks from people who are too afraid to let their hair down. Outspoken employees and non-traditional thinkers do not last long. They get disgusted by their child-like treatment and leave, or they are “invited” to leave when their style clashes with the status quo. So people come and go relatively quickly.

The CEO doesn't want to hear the truth and you can only push for so long before you stop and ask yourself, “Why am I letting people treat me like a child for this job? Is it worth it?” There is a lot of focus on mental wellbeing (good right?), yet never in my life had I suffered until coming here and it is the same for a lot of people which boils down to the environment you put yourself in. I've no personal vendetta, just warning people so they go in prepared. If your not in a mentally stable place or sensitive, this isn't the company for you.

Everybody is afraid of getting in trouble for breaking the “rules”, and so they keep their heads low and try not to step out of line. Not a fun place to be at all. People can't get out quickly enough, yet they get each other through the day.

There are some good people there, just a military style environment which for me, it wasn't worth the stress and hassle given you spend a lot of time at work.

### **Advice to Management**

Acknowledge the problems with the company culture. Look how the highest chain of command have personally directed & contributed to the toxic culture in their workplace. Fear & trust is the topic that desperately needs to be spoken about within the leadership team and review your way forward from there. Genuine advice, take it or leave it. Makes no odds to me whatsoever.