

PRACTICE DIRECTION – INTERIM INJUNCTIONS

THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 25

Jurisdiction

- 1.1 High Court Judges and any other Judge duly authorised may grant ‘search orders’¹ and ‘freezing injunctions’².
- 1.2 In a case in the High Court, Masters and district judges have the power to grant injunctions:
 - (1) by consent,
 - (2) in connection with charging orders and appointments of receivers,
 - (3) in aid of execution of judgments.
- 1.3 In any other case any judge who has jurisdiction to conduct the trial of the action has the power to grant an injunction in that action.
- 1.4 A Master or district judge has the power to vary or discharge an injunction granted by any Judge with the consent of all the parties.

Making an application

- 2.1 The application notice must state:
 - (1) the order sought, and
 - (2) the date, time and place of the hearing.
- 2.2 The application notice and evidence in support must be served as soon as practicable after issue and in any event not less than 3 days before the court is due to hear the application³.
- 2.3 Where the court is to serve, sufficient copies of the application notice and evidence in support for the court and for each respondent should be filed for issue and service.
- 2.4 Whenever possible a draft of the order sought should be filed with the application notice and a disk containing the draft should also be available to the court. This will enable the court officer to arrange for any amendments to be incorporated and for the speedy preparation and sealing of the order. The current word processing system to be used is WordPerfect 5.1.

1 Rule 25.1(1)(h).

2 Rule 25.1(1)(f).

3 Rule 23.7(1) and (2) and see rule 23.7(4) (short service).

Evidence

- 3.1 Applications for search orders and freezing injunctions must be supported by affidavit evidence.
- 3.2 Applications for other interim injunctions must be supported by evidence set out in either:
 - (1) a witness statement, or
 - (2) a statement of case provided that it is verified by a statement of truth,⁴ or
 - (3) the application provided that it is verified by a statement of truth,
 unless the court, an Act, a rule or a practice direction requires evidence by affidavit.
- 3.3 The evidence must set out the facts on which the applicant relies for the claim being made against the respondent, including all material facts of which the court should be made aware.
- 3.4 Where an application is made without notice to the respondent, the evidence must also set out why notice was not given.
(See Part 32 and the practice direction that supplements it for information about evidence.)

Urgent applications and applications without notice

- 4.1 These fall into two categories:
 - (1) applications where a claim form has already been issued, and
 - (2) applications where a claim form has not yet been issued,
 and, in both cases, where notice of the application has not been given to the respondent.
- 4.2 These applications are normally dealt with at a court hearing but cases of extreme urgency may be dealt with by telephone.
- 4.3 Applications dealt with at a court hearing after issue of a claim form:
 - (1) the application notice, evidence in support and a draft order (as in 2.4 above) should be filed with the court two hours before the hearing wherever possible,
 - (2) if an application is made before the application notice has been issued, a draft order (as in 2.4 above) should be provided at the hearing, and the application notice and evidence in support must be filed with the court on the same or next working day or as ordered by the court, and

4 See Part 22

- (3) except in cases where secrecy is essential, the applicant should take steps to notify the respondent informally of the application.

4.4 Applications made before the issue of a claim form:

- (1) in addition to the provisions set out at 4.3 above, unless the court orders otherwise, either the applicant must undertake to the court to issue a claim form immediately or the court will give directions for the commencement of the claim⁵,
- (2) where possible the claim form should be served with the order for the injunction,
- (3) an order made before the issue of a claim form should state in the title after the names of the applicant and respondent *'the Claimant and Defendant in an Intended Action'*.

4.5 Applications made by telephone:

- (1) where it is not possible to arrange a hearing, application can be made between 10.00 a.m. and 5.00 p.m. weekdays by telephoning the Royal Courts of Justice on 0171 936 6000 and asking to be put in contact with a High Court Judge of the appropriate Division available to deal with an emergency application in a High Court matter. The appropriate district registry may also be contacted by telephone. In county court proceedings, the appropriate county court should be contacted,
- (2) where an application is made outside those hours the applicant should either –
 - (a) telephone the Royal Courts of Justice on 0171 936 6000 where he will be put in contact with the clerk to the appropriate duty judge in the High Court (or the appropriate area Circuit Judge where known), or
 - (b) the Urgent Court Business Officer of the appropriate Circuit who will contact the local duty judge.
- (3) where the facility is available it is likely that the judge will require a draft order to be faxed to him,
- (4) the application notice and evidence in support must be filed with the court on the same or next working day or as ordered, together with two copies of the order for sealing,
- (5) injunctions will be heard by telephone only where the applicant is acting by counsel or solicitors.

Orders for injunctions

- 5.1 Any order for an injunction, unless the court orders otherwise, must contain:

- (1) an undertaking by the applicant to the court to pay any damages which the respondent(s) (or any other party served with or notified of the order) sustain which the court considers the applicant should pay,
 - (2) if made without notice to any other party, an undertaking by the applicant to the court to serve on the respondent the application notice, evidence in support and any order made as soon as practicable,
 - (3) if made without notice to any other party, a return date for a further hearing at which the other party can be present,
 - (4) if made before filing the application notice, an undertaking to file and pay the appropriate fee on the same or next working day, and
 - (5) if made before issue of a claim form –
 - (a) an undertaking to issue and pay the appropriate fee on the same or next working day, or
 - (b) directions for the commencement of the claim.
- 5.2 An order for an injunction made in the presence of all parties to be bound by it or made at a hearing of which they have had notice, may state that it is effective until trial or further order.
- 5.3 Any order for an injunction must set out clearly what the respondent must do or not do.

FREEZING INJUNCTIONS

Orders to restrain disposal of assets worldwide and within England and Wales

- 6 Examples of Freezing Injunctions are annexed to this practice direction.

SEARCH ORDERS

Orders for the preservation of evidence and property

- 7.1 The following provisions apply to search orders in addition to those listed above.
- The Supervising Solicitor
- 7.2 The Supervising Solicitor must be experienced in the operation of search orders. A Supervising Solicitor may be contacted either through the Law Society or, for the London area, through the London Solicitors Litigation Association.
- 7.3 Evidence:

- (1) the affidavit must state the name, firm and its address, and experience of the Supervising Solicitor, also the address of the premises and whether it is a private or business address, and
- (2) the affidavit must disclose very fully the reason the order is sought, including the probability that relevant material would disappear if the order were not made.

7.4 Service:

- (1) the order must be served personally by the Supervising Solicitor, unless the court otherwise orders, and must be accompanied by the evidence in support and any documents capable of being copied,
- (2) confidential exhibits need not be served but they must be made available for inspection by the respondent in the presence of the applicant's solicitors while the order is carried out and afterwards be retained by the respondent's solicitors on their undertaking not to permit the respondent –
 - (a) to see them or copies of them except in their presence, and
 - (b) to make or take away any note or record of them,
- (3) the Supervising Solicitor may be accompanied only by the persons mentioned in the order,
- (4) the Supervising Solicitor must explain the terms and effect of the order to the respondent in every day language and advise him of his right to –
 - (a) legal advice, and
 - (b) apply to vary or discharge the order,
- (5) where the Supervising Solicitor is a man and the respondent is likely to be an unaccompanied woman, at least one other person named in the order must be a woman and must accompany the Supervising Solicitor, and
- (6) the order may only be served between 9.30 a.m. and 5.30 p.m. Monday to Friday unless the court otherwise orders.

7.5 Search and custody of materials:

- (1) no material shall be removed unless clearly covered by the terms of the order,
- (2) the premises must not be searched and no items shall be removed from them except in the presence of the respondent or a person who appears to be a responsible employee of the respondent,
- (3) where copies of documents are sought, the documents should be retained for no more than 2 days before return to the owner,
- (4) where material in dispute is removed pending trial, the applicant's solicitors should place it in the custody of the respondent's solicitors on their undertaking to retain it in safekeeping and to produce it to the court when required,

- (5) in appropriate cases the applicant should insure the material retained in the respondent's solicitors' custody,
- (6) the Supervising Solicitor must make a list of all material removed from the premises and supply a copy of the list to the respondent,
- (7) no material shall be removed from the premises until the respondent has had reasonable time to check the list,
- (8) if any of the listed items exists only in computer readable form, the respondent must immediately give the applicant's solicitors effective access to the computers, with all necessary passwords, to enable them to be searched, and cause the listed items to be printed out,
- (9) the applicant must take all reasonable steps to ensure that no damage is done to any computer or data,
- (10) the applicant and his representatives may not themselves search the respondent's computers unless they have sufficient expertise to do so without damaging the respondent's system,
- (11) the Supervising Solicitor shall provide a report on the carrying out of the order to the applicant's solicitors,
- (12) as soon as the report is received the applicant's solicitors shall –
 - (a) serve a copy of it on the respondent, and
 - (b) file a copy of it with the court, and
- (13) where the Supervising Solicitor is satisfied that full compliance with paragraph 7.5(7) and (8) above is impracticable, he may permit the search to proceed and items to be removed without compliance with the impracticable requirements.

General

- 8.1 The Supervising Solicitor must not be an employee or member of the applicant's firm of solicitors.
- 8.2 If the court orders that the order need not be served by the Supervising Solicitor, the reason for so ordering must be set out in the order.
- 8.3 The search order must not be carried out at the same time as a police search warrant.
- 8.4 There is no privilege against self incrimination in Intellectual Property cases (see the Supreme Court Act 1981, section 72) therefore in those cases, paragraph (4) of the Respondent's Entitlements and any other references to incrimination in the Search Order, should be removed.
- 8.5 Applications in intellectual property cases should be made in the Chancery Division.
- 8.6 An example of a Search Order is annexed to this Practice Direction.

Annex

****Freezing Injunction****

Order to restrain assets in

England and Wales

Before The Honourable Mr Justice

IN THE [HIGH COURT OF JUSTICE]

[CHANCERY DIVISION]

[Strand, London WC2A 2LL]

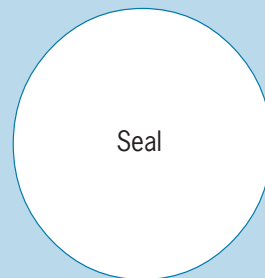
[

Claim No.

Dated

Applicant

Respondent



Name, address and reference of Respondent

PENAL NOTICE

**IF YOU THE WITHIN NAMED [] DISOBEY THIS
ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND LIABLE TO
IMPRISONMENT OR FINED OR YOUR ASSETS SEIZED**

IMPORTANT

NOTICE TO THE RESPONDENT

You should read the terms of the Order and the Guidance Notes very carefully. You are advised to consult a Solicitor as soon as possible.

This Order prohibits you, the Respondent, from dealing with your assets up to the amount stated in the Order, but subject to any exceptions set out at the end of the Order. You have a right to ask the Court to vary or discharge this Order.

If you disobey this Order you may be found guilty of Contempt of Court and may be sent to prison or fined. In the case of a Corporate Respondent, it may be fined, its Directors may be sent to prison or fined or its assets may be seized.

THE ORDER

An application was made today [date] by [Counsel][Solicitors][or as may be] for the Applicant to Mr Justice [] who heard the application. The Judge read the affidavits listed in Schedule A and accepted the undertakings set out in Schedule B at the end of this Order. As a result of the application **IT IS ORDERED** that until [[] ('the return date')]] [or further Order of the Court]:-

- 1 The Respondent must not remove from England and Wales or in any way dispose of or deal with or diminish the value of any of his assets which are in England and Wales whether in his own name or not and whether solely or jointly owned up to the value of £ .

This prohibition includes the following assets in particular:-

- (a) the property known as [title/address] or the net sale money after payment of any mortgages if it has been sold;
 - (b) the property and assets of the Respondent's business known as (or carried on at [address]) or the sale money if any of them have been sold; and
 - (c) any money in the account numbered [a/c number] at [title/address].
- 2 If the total unincumbered value of the Respondent's assets in England and Wales exceeds £ , the Respondent may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unincumbered value of his assets still in England and Wales remains above £ .
 - 3 Exceptions to this Order:-

- (1) This Order does not prohibit the Respondent from spending £ a week towards his ordinary living expenses [and £ a week towards his ordinary and proper business expenses] and also £ a week [or a reasonable sum] on legal advice and representation. But before spending any money the Respondent must tell the Applicant's legal representatives⁷ where the money is to come from.
 - [(2) [This Order does not prohibit the Respondent from dealing with or disposing of any of his assets in the ordinary and proper course of business.]
 - (3) The Respondent may agree with the Applicant's legal representatives that the above spending limits should be increased or that this Order should be varied in any other respect, but any agreement must be in writing.
 - (4) The Respondent may cause this Order to cease to have effect if the Respondent provides security by paying the sum of £ into Court or makes provision for security in that sum by another method agreed with the Applicant's legal representatives.
- 4 The Respondent must:-
- (1) Inform the Applicant in writing at once of all his assets in England and Wales and whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.

[The Respondent may be entitled to refuse to provide some or all of this information on the grounds that it may incriminate him. *This sentence may be inserted in cases not covered by the Theft Act 1968, s.31.*]
 - (2) Confirm the information in an affidavit which must be served on the Applicant's legal representatives within [] days after this Order has been served on the Respondent.
- 5 *Where an Order for service by an alternative means or service out of the jurisdiction has been made –*
- (1) The Applicant may issue and serve a Claim Form on the Respondent at [address] by [method of service].
 - (2) If the Respondent wishes to defend the Claim where the Claim Form states that Particulars of Claim are to follow he must complete and return the Acknowledgement of Service within [] days of being served with the Claim Form. Where the Particulars of Claim are served with the Claim Form, and the Respondent wishes to defend part or all of the Claim he must complete and return an Acknowledgement of Service within [] days of being served with the Claim Form or a Defence within [] days.

⁷ For the definition of legal representative see the glossary in Part 2.

GUIDANCE NOTES

EFFECT OF THIS ORDER

- (1) A respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
- (2) A respondent which is a corporation and which is ordered not to do something must not do it itself or by its directors, officers, employees or agents or in any other way.

VARIATION OR DISCHARGE OF THIS ORDER

The Respondent (or anyone notified of this Order) may apply to the court at any time to vary or discharge this Order (or so much of it as affects that person), but anyone wishing to do so must first inform the Applicant's legal representatives.

PARTIES OTHER THAN THE APPLICANT AND RESPONDENT

- (1) Effect of this Order:

It is a Contempt of Court for any person notified of this Order knowingly to assist in or permit a breach of this Order. Any person doing so may be sent to prison, fined or have his assets seized.

- (2) Set off by banks:

This injunction does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the respondent before it was notified of this Order.

- (3) Withdrawals by the Respondent:

No bank need enquire as to the application or proposed application of any money withdrawn by the Respondent if the withdrawal appears to be permitted by this Order.

INTERPRETATION OF THIS ORDER

- (1) In this Order, where there is more than one Respondent, (unless otherwise stated), references to 'the Respondent' means both or all of them.
- (2) A requirement to serve on 'the Respondent' means on each of them. However, the Order is effective against any Respondent on whom it is served.

- (3) An Order requiring ‘the Respondent’ to do or not to do anything applies to all Respondents.

COMMUNICATIONS WITH THE COURT

All communications to the Court about this Order should be sent, where the Order is made in the Chancery Division, to [Room TM 510], Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number. The telephone number is 0171 936 [6827]; and where the order is made in the Queen’s Bench Division, to Room W11 (0171 936 6009). The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday.

SCHEDULE A

AFFIDAVITS

The Applicant relied on the following affidavits:

[*name*] [*number of affidavit*] [*date sworn*] [*filed on behalf of*]

- (1)
- (2)

SCHEDULE B

UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) If the Court later finds that this Order has caused loss to the Respondent, and decides that the Respondent should be compensated for that loss, the Applicant will comply with any Order the Court may make.
- (2) The Applicant will on or before [*date*] cause a written guarantee in the sum of £ to be issued from a bank having a place of business within England or Wales, such guarantee being in respect of any Order the Court may make pursuant to paragraph (1) above. The Applicant will further, forthwith upon issue of the guarantee, cause a copy of it to be served on the Respondent.
- (3) As soon as practicable the Applicant will [issue and serve on the Respondent a Claim Form in the form of the draft produced to the Court] [serve on the Respondent the Claim Form] claiming the appropriate relief, together with this Order.
- (4) The Applicant will cause an affidavit to be sworn and filed [substantially in the terms of the draft affidavit produced to the Court] [confirming the substance of what was said to the Court by the Applicant’s Counsel/ Solicitors].

- (5) *[Where a return date has been given – As soon as practicable the Applicant will serve on the Respondent an Application for the return date together with a copy of the affidavits and exhibits containing the evidence relied on by the Applicant.]*
- (6) Anyone notified of this Order will be given a copy of it by the Applicant's legal representatives.
- (7) The Applicant will pay the reasonable costs of anyone other than the Respondent which have been incurred as a result of this Order including the costs of ascertaining whether that person holds any of the Respondent's assets and if the Court later finds that this Order has caused such person loss, and decides that such person should be compensated for that loss, the Applicant will comply with any Order the Court may make.
- (8) If for any reason this Order ceases to have effect (including in particular where the Respondent provides security as provided for above or the Applicant does not provide a bank guarantee as provided for above), the Applicant will forthwith take all reasonable steps to inform, in writing, any person or company to whom he has given notice of this Order, or who he has reasonable grounds for supposing may act upon this Order, that it has ceased to have effect.

NAME AND ADDRESS OF APPLICANT'S LEGAL REPRESENTATIVES

The Applicant's Legal Representatives are:-

[Name, address, reference, fax and telephone numbers both in and out of office hours.]

****Freezing Injunction******IN THE [HIGH COURT OF JUSTICE]****Order to restrain assets worldwide****[CHANCERY DIVISION]****[Strand, London WC2A 2LL]****Before The Honourable Mr Justice****[]****Claim No.****Dated****Applicant****Respondent**

Seal

Name, address and reference of Respondent

PENAL NOTICE

**IF YOU THE WITHIN NAMED [] DISOBEY THIS
 ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND LIABLE TO
 IMPRISONMENT OR FINED OR YOUR ASSETS SEIZED**

IMPORTANT

NOTICE TO THE RESPONDENT

You should read the terms of the Order and the Guidance Notes very carefully. You are advised to consult a Solicitor as soon as possible.

This Order prohibits you, the Respondent, from dealing with your assets up to the amount stated in the Order, but subject to any exceptions set out at the end of the Order. You have a right to ask the Court to vary or discharge this Order.

If you disobey this Order you may be found guilty of Contempt of Court and may be sent to prison or fined. In the case of a Corporate Respondent, it may be fined, its Directors may be sent to prison or fined or its assets may be seized.

THE ORDER

An application was made today [date] by [Counsel][Solicitors][or as may be] for the Applicant to Mr Justice [] who heard the application. The Judge read the affidavits listed in Schedule A and accepted the undertakings set out in Schedule B at the end of this Order. As a result of the application IT IS ORDERED that until [[] ('the return date')] [further Order of the Court]:-

1 The Respondent must not:-

- (1) remove from England and Wales or in any way dispose of or deal with or diminish the value of any of his assets which are in England and Wales whether in his own name or not and whether solely or jointly owned up to the value of £ , or
- (2) in any way dispose of or deal with or diminish the value of any of his assets whether they are in or outside England or Wales whether in his own name or not and whether solely or jointly owned up to the same value. This prohibition includes the following assets in particular:-
 - (a) the property known as [title/address] or the net sale money after payment of any mortgages if it has been sold;
 - (b) the property and assets of the Respondent's business known as (or carried on at [address]) or the sale money if any of them have been sold; and
 - (c) any money in the account numbered [a/c number] at [title/address].

- 2 (1) If the total unincumbered value of the Respondent's assets in England and Wales exceeds £ , the Respondent may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unincumbered value of his assets still in England and Wales remains above £ .

- (2) If the total unincumbered value of the Respondent's assets in England and Wales does not exceed £ , the Respondent must not remove any of those assets from England and Wales and must not dispose of or deal with any of them, but if he has other assets outside England and Wales the Respondent may dispose of or deal with those assets so long as the total unincumbered value of all his assets whether in or outside England and Wales remains above £ .

3 Exceptions to this Order:-

- (1) This Order does not prohibit the Respondent from spending £ a week towards his ordinary living expenses [and £ a week towards his ordinary and proper business expenses] and also £ a week [or a reasonable sum] on legal advice and representation. But before spending any money the Respondent must tell the Applicant's legal representatives where the money is to come from.
- (2) [This Order does not prohibit the Respondent from dealing with or disposing of any of his assets in the ordinary and proper course of business.]
- (3) The Respondent may agree with the Applicant's legal representatives that the above spending limits should be increased or that this Order should be varied in any other respect, but any agreement must be in writing.
- (4) The Respondent may cause this Order to cease to have effect if the Respondent provides security by paying the sum of £ into Court or makes provision for security in that sum by another method agreed with the Applicant's legal representatives.

4 The Respondent must:-

- (1) Inform the Applicant in writing at once of all his assets whether in or outside England and Wales and whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.

[The Respondent may be entitled to refuse to provide some or all of this information on the grounds that it may incriminate him. *This sentence may be inserted in cases not covered by the Theft Act 1968, s.31.*]
- (2) Confirm the information in an affidavit which must be served on the Applicant's legal representatives within [] days after this Order has been served on the Respondent.

5 [Where an Order for service by an alternative means or service out of the jurisdiction has been made –

- (1) The Applicant may issue and serve a Claim Form on the Respondent at [address] by [method of service]

- (2) If the Respondent wishes to defend the Claim he must complete and return the Notice of Intention to Defend within [] days of being served with the Claim Form.]

GUIDANCE NOTES

EFFECT OF THIS ORDER

- (1) A Respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
- (2) A Respondent which is a corporation and which is ordered not to do something must not do it itself or by its directors, officers, employees or agents or in any other way.

VARIATION OR DISCHARGE OF THIS ORDER

The Respondent (or anyone notified of this Order) may apply to the Court at any time to vary or discharge this Order (or so much of it as affects that person), but anyone wishing to do so must first inform the Applicant's legal representatives.

PARTIES OTHER THAN THE APPLICANT AND RESPONDENT

- (1) Effect of this Order:-

It is a Contempt of Court for any person notified of this Order knowingly to assist in or permit a breach of this Order. Any person doing so may be sent to prison, fined or have his assets seized.

- (2) Effect of this Order outside England and Wales:-

The terms of this Order do not affect or concern anyone outside the jurisdiction of this Court until it is declared enforceable by or is enforced by a Court in the relevant country and then they are to affect him only to the extent they have been declared enforceable or have been enforced **UNLESS** the person is:

- (i) a person to whom this Order is addressed or an officer or an agent appointed by power of attorney of that person; or
- (ii) a person who is subject to the jurisdiction of this Court and (a) has been given written notice of this Order at his residence or place of business within the jurisdiction of this Court and (b) is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this Order.

(3) Set off by Banks:-

This injunction does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the Respondent before it was notified of this Order.

(4) Withdrawals by the Respondent:-

No bank need enquire as to the application or proposed application of any money withdrawn by the Respondent if the withdrawal appears to be permitted by this Order.

INTERPRETATION OF THIS ORDER

- (1) In this Order, where there is more than one Respondent, (unless otherwise stated) references to 'the Respondent' means both or all of them.
- (2) A requirement to serve on 'the Respondent' means on each of them. However, the Order is effective against any Respondent on whom it is served.
- (3) An Order requiring 'the Respondent' to do or not to do anything applies to all Respondents.

COMMUNICATIONS WITH THE COURT

All communications to the Court about this Order should be sent, where the Order is made in the Chancery Division, to [Room TM 510], Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number. The telephone number is 0171 936 [6827]; and where the order is made in the Queen's Bench Division, to Room W11 (0171 936 6009). The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday.

SCHEDULE A

AFFIDAVITS

The Applicant relied on the following affidavits:

[name] [number of affidavit] [date sworn] [filed on behalf of]

(1)

(2)

SCHEDULE B

UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) If the Court later finds that this Order has caused loss to the Respondent, and decides that the Respondent should be compensated for that loss, the Applicant will comply with any Order the Court may make.
- (2) The Applicant will on or before [date] cause a written guarantee in the sum of £ to be issued from a bank having a place of business within England or Wales, such guarantee being in respect of any Order the Court may make pursuant to paragraph (1) above. The Applicant will further, forthwith upon issue of the guarantee, cause a copy of it to be served on the Respondent.
- [(3) As soon as practicable the Applicant will [issue and serve on the Respondent a Claim Form in the form of the draft produced to the Court] [serve on the Respondent the Claim Form] claiming the appropriate relief, together with this Order.]
- (4) The Applicant will cause an affidavit to be sworn and filed [substantially in the terms of the draft affidavit produced to the Court] [confirming the substance of what was said to the Court by the Applicant's Counsel/Solicitors].
- [(5) *[Where a return date has been given-* As soon as practicable the Applicant will serve on the Respondent an application for the return date together with a copy of the affidavits and exhibits containing the evidence relied on by the Applicant.]
- (6) Anyone notified of this Order will be given a copy of it by the Applicant's legal representatives.
- (7) The Applicant will pay the reasonable costs of anyone other than the Respondent which have been incurred as a result of this Order including the costs of ascertaining whether that person holds any of the Respondent's assets and if the Court later finds that this Order has caused such person loss, and decides that such person should be compensated for that loss, the Applicant will comply with any Order the Court may make.
- (8) If for any reason this Order ceases to have effect (including in particular where the Respondent provides security as provided for above or the Applicant does not provide a bank guarantee as provided for above), the Applicant will forthwith take all reasonable steps to inform, in writing, any person or company to whom he has given notice of this Order, or who he has reasonable grounds for supposing may act upon this Order, that it has ceased to have effect.

- [(9) The Applicant will not without the leave of the Court begin proceedings against the Respondent in any other jurisdiction or use information obtained as a result of an Order of the Court in this jurisdiction for the purpose of civil or criminal proceedings in any other jurisdiction.]
- [(10) [The Applicant will not without the leave of the Court seek to enforce this Order in any country outside England and Wales [or seek an Order of a similar nature including Orders conferring a charge or other security against the Respondent or the Respondent's assets].]

NAME AND ADDRESS OF APPLICANT'S LEGAL REPRESENTATIVES

The Applicant's Legal Representatives are:-

[Name, address, reference, fax and telephone numbers both in and out of office hours.]

****Search Order****

Order to preserve evidence and property

Before The Honourable Mr Justice

IN THE [HIGH COURT OF JUSTICE]

[CHANCERY DIVISION]

[Strand, London WC2A 2LL]

[]

Claim No.

Dated

Applicant

Respondent

Seal

Name, address and reference of Respondent

PENAL NOTICE

**IF YOU THE WITHIN NAMED [] DISOBEY THIS
ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND LIABLE TO
IMPRISONMENT OR FINED OR YOUR ASSETS SEIZED**

IMPORTANT

NOTICE TO THE RESPONDENT

You should read the terms of the Order and the Guidance Notes very carefully. You are advised to consult a Solicitor as soon as possible.

This Order orders you, the Respondent, to allow the persons mentioned in the Order to enter the premises described in the Order and to search for, examine and remove or copy the articles specified in the Order. The persons so named will have no right to enter the premises or, having entered, to remain at the premises, unless you give your consent to their doing so. If, however, you withhold your consent you will be in breach of this Order and may be held to be in Contempt of Court. The Order also requires you to hand over any of such articles which are under your control and to provide information to the Applicant's Solicitors, and prohibits you from doing certain acts. If you, the Respondent, disobey this Order you may be found guilty of contempt of Court and may be sent to prison or fined. In the case of a Corporate Respondent, it may be fined, its Directors may be sent to prison or fined or its assets may be seized.

THE ORDER

AN APPLICATION was made today [date] by [Counsel] [Solicitors] for the Applicant to Mr Justice [] who heard the application. The Judge read the affidavits listed in Schedule F at the end of this Order and accepted the undertakings by the Applicant, the Applicant's Solicitors and the Supervising Solicitor set forth in the Schedules at the end of this Order. As a result of the application IT IS ORDERED that until [[] ('the return date')][or further Order of the Court]:-

- 1 (1) The Respondent must allow Mr/Mrs/Miss [] ('the Supervising Solicitor'), together with Mr [] a Solicitor of the Supreme Court, and a partner in the firm of [] the Applicant's Solicitors and up to [] other persons being [*their capacity*] accompanying them, to enter the premises mentioned in Schedule A to this Order and any other premises of the Respondent disclosed under paragraph 4(1) below and any vehicles under the Respondent's control on or around the premises so that they can search for, inspect, photograph or photocopy, and deliver into the safekeeping of the Applicant's Solicitors all the documents and articles which are listed in Schedule B to this Order ('the listed items') or which Mr [] believes to be listed items.
- (2) The Respondent must allow those persons to remain on the premises until the search is complete, and to re-enter the premises on the same or the following day in order to complete the search.

- 2 (1) No item may be removed from the premises until a list of the items to be removed has been prepared, and a copy of the list has been supplied to the person served with the Order, and he has been given a reasonable opportunity to check the list.
- (2) The premises must not be searched, and items must not be removed from them, except in the presence of the Respondent or a person appearing to be a responsible employee of the Respondent or in control of the premises.
- (3) If the Supervising Solicitor is satisfied that full compliance with paragraph 2(1) or (2) above is impracticable, he may permit the search to proceed and items to be removed without compliance with the impracticable requirements.
- 3 (1) The Respondent must immediately hand over to the Applicant's Solicitors any of the listed items which are in his possession or under his control save for any computer or hard disk integral to any computer.
- (2) If any of the listed items exists only in computer readable form, the Respondent must immediately give the Applicant's Solicitors effective access to the computers, with all necessary passwords, to enable them to be searched, and cause the listed items to be printed out. A print-out of the items must be given to the Applicant's Solicitors or displayed on the computer screen so that they can be read and copied. All reasonable steps shall be taken by the Applicant to ensure that no damage is done to any computer or data. The Applicant and his representatives may not themselves search the Respondent's computers unless they have sufficient expertise to do so without damaging the Respondent's system.
- 4 (1) The Respondent must immediately inform the Applicant's Solicitors:–
 - (a) where all the listed items are; and
 - (b) so far as he is aware –
 - (i) the name and address of everyone who has supplied him, or offered to supply him, with listed items,
 - (ii) the name and address of everyone to whom he has supplied, or offered to supply, listed items, and
 - (iii) full details of the dates and quantities of every such supply and offer.
- (2) Within [] days after being served with this Order the Respondent must swear an affidavit setting out the above information.

- 5 (1) Except for the purpose of obtaining legal advice, the Respondent or anyone else with knowledge of this Order must not directly or indirectly inform anyone of these proceedings or of the contents of this Order, or warn anyone that proceedings have been or may be brought against him by the Applicant until [☐] the return date] [or further Order of the Court].
- (2) The Respondent must not destroy, tamper with, cancel or part with possession, power, custody or control of the listed items otherwise than in accordance with the terms of this Order.
- (3) *[Insert any negative injunctions.]*
- [6 *Insert any further order.*]

GUIDANCE NOTES

EFFECT OF THIS ORDER

- (1) A Respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
- (2) A Respondent which is a corporation and which is ordered not to do something must not do it itself or by its directors officers employees or agents or in any other way.
- (3) This Order must be complied with either by the Respondent himself or by an employee of the Respondent or other person appearing to be in control of the premises and having authority to permit the premises to be entered and the search to proceed.
- (4) This Order requires the Respondent or his employee or other person appearing to be in control of the premises and having that authority to permit entry to the premises immediately the Order is served upon him, except as stated in paragraph 6 below.

RESPONDENT'S ENTITLEMENTS

- (1) Before you the Respondent or the person appearing to be in control of the premises allow anybody onto the premises to carry out this Order you are entitled to have the solicitor who serves you with this Order explain to you what it means in everyday language.
- (2) You are entitled to insist that there is nobody [or nobody except Mr] present who could gain commercially from anything he might read or see on your premises.

- (3) You are entitled to refuse to permit entry before 9:30 a.m. or after 5:30 p.m. or at all on Saturday and Sunday unless the Court has ordered otherwise.
- (4) Except in certain cases, you may be entitled to refuse to permit disclosure of any documents which may incriminate you ('incriminating documents') or to answer any questions if to do so may incriminate you. It may be prudent to take advice, because if you so refuse, your refusal may be taken into account by the Court at a later stage.
- (5) You are entitled to refuse to permit disclosure of any documents passing between you and your Solicitors or Patent or Trade Mark Agents for the purpose of obtaining advice ('privileged documents').
- (6) You are entitled to seek legal advice, and to ask the Court to vary or discharge this Order, provided you do so at once, and provided you do not disturb or move anything in the interim and that meanwhile you permit the Supervising Solicitor (who is a Solicitor acting independently of the Applicant) to enter, but not start to search.
- (7) Before permitting entry to the premises by any person other than the Supervising Solicitor, you (or any other person appearing to be in control of the premises) may gather together any documents you believe may be [incriminating or] privileged and hand them to the Supervising Solicitor for the Supervising Solicitor to assess whether they are [incriminating or] privileged as claimed. If the Supervising Solicitor concludes that any of the documents may be [incriminating or] privileged documents or if there is any doubt as to their status the Supervising Solicitor shall exclude them from the search and shall retain the documents of doubtful status in his possession pending further order of the Court. While this is being done, you may refuse entry to the premises by any other person, and may refuse to permit the search to begin, for a short time (not to exceed two hours, unless the Supervising Solicitor agrees to a longer period). If you wish to take legal advice and gather documents as permitted, you must first inform the Supervising Solicitor and keep him informed of the steps being taken.

RESTRICTIONS ON SERVICE

Paragraph 1 of the Order is subject to the following restrictions:–

- (1) This Order may only be served between 9:30 a.m. and 5:30 p.m. on a weekday unless the Court has ordered otherwise.
- (2) This Order may not be carried out at the same time as a police search warrant.
- (3) This Order must be served by the Supervising Solicitor, and paragraph 1 of the Order must be carried out in his presence and under his supervision. Where the premises are likely to be occupied by an unaccompanied woman and the Supervising Solicitor is a man, at least one of the persons accompanying him as provided by paragraph 1 of the Order shall be a woman.

- (4) This Order does not require the person served with the Order to allow anyone [or anyone except Mr] to enter the premises who in the view of the Supervising Solicitor could gain commercially from anything he might read or see on the premises if the person served with the Order objects.

VARIATION OR DISCHARGE OF THIS ORDER

The Respondent (or anyone notified of this Order) may apply to the Court at any time to vary or discharge this Order (or so much of it as affects that person), but anyone wishing to do so must first inform the Applicant's Solicitors.

INTERPRETATION OF THIS ORDER

- (1) In this Order, where there is more than one Respondent, references to 'the Respondent' means both or all of them.
- (2) A requirement to serve on 'the Respondent' means on each of them. However, the Order is effective against any Respondent on whom it is served.
- (3) An Order requiring 'the Respondent' to do or not to do anything applies to all Respondents.
- (4) Any other requirement that something shall be done to or in the presence of 'the Respondent' means to or in the presence of any one of them or in the case of a firm or company a director or a person appearing to the Supervising Solicitor to be a responsible employee.

COMMUNICATIONS WITH THE COURT

All communications to the Court about this Order should be sent, where the Order is made in the Chancery Division, to [Room TM 510], Royal Courts of Justice, Strand, London, WC2A 2LL quoting the case number. The telephone number is 0171 936 [6827]; and where the order is made in the Queen's Bench Division, to Room W11 (0171 936 6009). The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday.

SCHEDULE A

The premises

SCHEDULE B

The listed items

SCHEDULE C

UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) If the Court later finds that this Order or carrying it out has caused loss to the Respondent, and decides that the Respondent should be compensated for that loss, the Applicant will comply with any Order the Court may make. Further, if the carrying out of this Order has been in breach of the terms of this Order or otherwise in a manner inconsistent with the Applicant's Solicitors' duties as Officers of the Court the Applicant will comply with any order for damages the Court may make.
- [(2) [As soon as practicable to issue a Claim Form [in the form of the draft produced to the Court] [claiming appropriate relief.]]]
- [(3) [To [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft produced to the Court] [confirming the substance of what was said to the Court by the Applicant's Counsel/Solicitors].]]]
- (4) To serve on the Respondent at the same time as this Order is served upon him:
 - (i) the Claim Form, or if not issued, the draft produced to the Court,
 - (ii) an Application for hearing on [date],
 - (iii) copies of the affidavits [or draft affidavits] and exhibits capable of being copied containing the evidence relied on by the Applicant [Copies of the confidential exhibits need not be served, but they must be made available for inspection by or on behalf of the Respondent in the presence of the Applicant's Solicitors while the Order is carried out. Afterwards they must be provided to a Solicitor representing the Respondent who gives a written undertaking not to permit the Respondent to see them or copies of them except in his presence and not to permit the Respondent to make or take away any note or record of the exhibits.], and
 - (iv) a note of any allegation of fact made orally to the Judge where such allegation is not contained in the affidavits or draft affidavits read by the Judge.
- (5) To serve on the Respondent a copy of the Supervising Solicitor's report on the carrying out of this Order as soon as it is received.
- (6) Not, without the leave of the Court, to use any information or documents obtained as a result of carrying out this Order nor to inform anyone else of these proceedings except for the purposes of these proceedings (including adding further Respondents) or commencing civil proceedings in relation to the same or related subject matter to these proceedings until after the return date.

[(7) [To maintain pending further order the sum of £ in an account controlled by the Applicant's Solicitors.]

[(8) [To insure the items removed from the premises.]]

SCHEDULE D

UNDERTAKINGS GIVEN BY THE APPLICANT'S SOLICITORS

- (1) To answer at once to the best of their ability any question whether a particular item is a listed item.
- (2) To return the originals of all documents obtained as a result of this Order (except original documents which belong to the Applicant) as soon as possible and in any event within two working days of their removal.
- (3) While ownership of any item obtained as a result of this Order is in dispute, to deliver the article into the keeping of Solicitors acting for the Respondent within two working days from receiving a written undertaking by them to retain the article in safe keeping and to produce it to the Court when required.
- (4) To retain in their own safe keeping all other items obtained as a result of this Order until the Court directs otherwise.

SCHEDULE E

UNDERTAKINGS GIVEN BY THE SUPERVISING SOLICITOR

- (1) To offer to explain to the person served with the Order its meaning and effect fairly and in everyday language, and to inform him of his right to seek legal advice (such advice to include an explanation that the Respondent may be entitled to avail himself of [the privilege against self-incrimination or] [legal professional privilege]) and apply to vary or discharge the Order as mentioned in the Respondent's Entitlements above.
- (2) To make and provide to the Applicant's Solicitors and to the Judge who made this Order (for the purposes of the Court file) a written report on the carrying out of the Order.

SCHEDULE F

AFFIDAVITS

The Applicant relied on the following affidavits:

[name] [number of affidavit] [date sworn] [filed on behalf of]