

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**CHANCERY DIVISION**  
**INTELLECTUAL PROPERTY LIST**

Royal Courts of Justice  
Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 14 October 2020

Before :

**JAMES MELLOR QC**  
**(sitting as a Deputy Judge of the High Court)**

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Between :

<b>C.T. DENT LIMITED</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>(1) MR KFIR YIZHAQ ATIAS</b>	<b><u>Defendants</u></b>
<b>(2) DENTAL SCAN LIMITED</b>	

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**Tom Cleaver** (instructed by **Mishcon de Reya LLP**) for the **Claimant**  
**Andrew Maguire** (instructed by **Greenwood & Co**) for the **Defendants**

Hearing dates: 2<sup>nd</sup> October 2020 with further written submissions 5<sup>th</sup> October 2020

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**Approved Judgment**

I direct that pursuant to CPR PD39A 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

**Covid-19 Protocol: This Judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand down is deemed to be 14 October 2020 at 10:30am.**

## **James Mellor QC:**

1. By this Application, the Claimant, a dental scanning company which is sometimes referred to in the papers as CTDL, sought a variety of urgent injunctive relief against the First Defendant Mr Atias, a former director of the Claimant who resigned as a director on 2 September 2020 and the Second Defendant, a company incorporated by Mr Atias on 9 September 2020.
2. Following the substantive hearing of the application before me on Friday 2 October 2020 and some further written submissions on Monday 5 October 2020, I granted a fairly extensive Order on 5 October 2020 against both Defendants, for reasons to be given later. This judgment contains my reasons. I have annexed the text of the Order to this judgment.
3. Although the disputes between the two sides range more widely, the focus of the relief sought on this application concerns the circumstances in which Mr Atias resigned as a director of the Claimant on 2<sup>nd</sup> September and resigned his position as an employee of the Claimant on 3<sup>rd</sup> September. It seems to be common ground that for a number of years up to his resignation, the First Defendant was effective CEO of the Claimant, although it does not appear that he ever had a written contract of employment.
4. The application notice was issued on 23 September 2020 in an intended action. It was served along with the first witness statement of Ms Mai Kelly on the Defendants' solicitors on 24 September 2020. The Defendants responded by saying the application would require a day's hearing and they appeared to offer a number of interim undertakings pending a full hearing of the application, including (a) an undertaking not to open a business competing with the Claimant pending the full hearing of the application and (b) an offer to deliver up his company phone along with '*any physical papers he has and electronic access to those that are not available to*' [the Claimant].
5. The application first came before me on Tuesday 29<sup>th</sup> September, by which time the offer of any undertakings from the Defendants had been withdrawn, although the offer to deliver up the company phone and certain papers continued to be made in the Defendants' Skeleton Argument. Those points apart, the application was opposed in its entirety. At around 10pm on Monday 28<sup>th</sup> September, the Defendants served a fairly lengthy witness statement of Mr Atias in which he appeared to respond fully to Ms Kelly's witness statement. At a short hearing on Tuesday 29<sup>th</sup> September I gave directions for the service of the Claimant's reply evidence by noon on Thursday, with a view to holding a substantive hearing of the Application on Friday 2<sup>nd</sup> October. In accordance with its undertakings, the Claimant issued the claim form on 29<sup>th</sup> September and served draft Particulars of Claim with its evidence in reply, a witness statement of Ari Manor. On Friday morning, I was sent a second witness statement of Mr Atias, responding to certain points in Mr Manor's statement. Both sides filed supplementary skeletons. Notwithstanding the flurry of additional documentation, the substantive hearing was able to take place on Friday 2<sup>nd</sup> October.

6. The relief sought by the Claimant can be divided into four categories. It is fair to say that as the evidence developed and certain aspects became clearer, so the relief sought by the Claimant became more specific and lengthier, but I can summarise it as follows.
7. First, there is what has been called the ‘Access Order’ – in brief, the Claimant sought a mandatory order requiring Mr Atias “*take such steps as are necessary to provide the Claimant or its appointed representatives with full access to and control of the database, website, email server and electronic file systems relating to the Claimant’s business (together, ‘the Systems’)*”.
8. Second, the ‘Delivery Up order’, by which the Claimant sought delivery up from Mr Atias of any items of property belonging to the Claimant and various documents in certain specified categories which he had in his capacity as CEO.
9. Third, the ‘Interim Restraints’. I set out the restraints originally sought in full, because much was made of the fact that by the hearing on 2<sup>nd</sup> October, the Claimant dropped the anti-solicitation injunction. The Claimant sought an order restraining the Defendants until trial or further order from doing the following acts without the consent of the Claimant:
  - 9.1. access the Systems or their contents (including any ct-dent.co.uk email address), except to the extent necessary to enable them to comply with the ‘access’ provisions of the Order;
  - 9.2. make any use of any materials falling within the ‘delivery up’ provisions of the Order, except to the extent necessary to comply;
  - 9.3. provide any materials falling within the ‘delivery up’ provisions above to any person other than the Claimant;
  - 9.4. make use of any software derived from the Software or incorporating any part of its code, or provide any such software to any person other than the Claimant;
  - 9.5. solicit the business of, deal with, or enter into or fulfil any contract with, any person who is, or was at any point in the 12 months prior to 2 September 2020, a customer of the Claimant.
10. Fourth, the ‘Imaging Order’, by which the Claimant sought an order requiring the First Defendant to arrange for his electronic devices, and any online accounts which have been used by him for any commercial purpose in the last 12 months, to be imaged by an independent computer specialist.
11. It can be seen that the relief sought was a mix of prohibitory injunctive relief and mandatory orders. For that reason, I proceeded on the basis of the following general principles. First, the approach in *American Cyanamid v Ethicon* [1975] AC 396, which does not require any repetition from me. Second, and bearing in mind part of the relief sought is mandatory in nature, what I propose to do is to apply the principles as stated by Chadwick J in

*Nottingham Building Society v Eurodynamics Systems* [1993] FSR 468 (later approved by Phillips LJ in *Zockoll Group Ltd v Mercury Communications Ltd* [1998] FSR 354 at 366). The four principles are conveniently summarised on page 2973 of the second volume of The White Book, as follows:

- (1) The overriding consideration is which course is likely to involve the least risk of injustice if it turns out to be “wrong” in the sense of granting an interlocutory injunction to a party who fails to establish his right at trial (or would fail if there was a trial) or, alternatively, in failing to grant an injunction to party who succeeds (or would succeed) at trial.
- (2) In considering whether to grant a mandatory injunction, the court must keep in mind that an order which requires a party to take some positive step at an interlocutory stage, may well carry a greater risk of injustice if it turns out to have been wrongly made than an order which merely prohibits action, thereby preserving the status quo.
- (3) It is legitimate, where a mandatory injunction is sought, to consider whether the court does feel a high degree of assurance that the claimant will be able to establish this right at a trial. That is because the greater the degree of assurance the claimant will ultimately establish his right, the less will be the risk of injustice if the injunction is granted.
- (4) But, even where the court is unable to feel any high degree of assurance that the claimant will establish his right, there may still be circumstances in which it is appropriate to grant a mandatory injunction at an interlocutory stage. Those circumstances will exist where the risk of injustice if this injunction is refused sufficiently outweigh the risk of injustice if it is granted.”

12. I also bear in mind that in the decision of the Privy Council in *National Commercial Bank Jamaica Ltd v Orint Corp Ltd* [2009] 1 WLR 1405 at [19]-[20], Lord Hoffmann indicated that no distinction in principle exists between mandatory and prohibitory relief and the court should adopt the path that will cause the least irremediable prejudice to one party or the other.

13. Third, because an imaging order is sought, I have had regard to *TBD (Owen Holland) Limited v Simons* [2020] EWCA Civ 1882.

14. Mr Maguire, for the Defendants, submitted:

14.1. that the question of whether a director has breached his fiduciary duties is acutely fact sensitive, a proposition I accept;

14.2. that a director is entitled to exploit a maturing business opportunity, irrespective of whether any plan to do so was made prior to resignation, relying on *Allfiled UK Ltd v Eltis* [2016] FSR 11 at [102] per Hildyard J. The proposition goes too far without

significant qualification. The paragraph cited relies on *Foster Bryant Surveying Ltd v Bryant* [2007] EWCA Civ 200 as an example where ‘*the rigour of fiduciary accountability may occasionally be abated where the resignation has been forced upon the director and he or she has not actively sought to seduce the company’s customers or to exploit any opportunity belonging to it*’. However, *Foster Bryant* was a case where the only possible wrong committed was for the director to agree to work for a competitor during his notice period, and arguably put himself in a position of conflict of interest. I do not accept those occasional exceptional cases have any application to the facts on this application.

15. The Claimant asserts a variety of causes of action, including breach of fiduciary duty, wrongful interference with property, infringement of copyright, infringement of the sui generis database right and misuse of confidential information. On all these causes of action the Claimant plainly has established a serious issue to be tried.
16. In order to address the four heads of relief, it is necessary for me to relate the factual background. There are many disputes on the evidence which I cannot resolve on this application. In large part, I will relate events which are not in dispute, even if much of the background to each event remains in dispute. These events help to shed light on the situation which existed when Mr Atias resigned as a director and employee.

#### Factual background

17. Until recent events (including the impact of COVID-19) the Claimant had a reasonably substantial and apparently profitable business in the provision of dental scanning services to dental practices in the UK. I am told the annual turnover was sub-£5m.
18. In order to explain aspects of the relief sought on this application, I need to relate certain of the definitions used in the evidence. Ms Kelly says the reason for the Claimant’s continued success is its central ERP (Enterprise Resource Planning) software (the ‘**Software**’). The Software is said to contain a database of the Claimant’s business data (the ‘**Database**’), incorporating data relating to all aspects of the Claimant’s business including customers (dental practices and their patients) and employees (together defined as the ‘**Confidential Information**’). The Software provides both an internal system used by the Claimant for all operational functions and also an external, client-facing system whereby customers (both dental practices and patients) can log-in to access the Claimant’s services via the ‘**Customer Portal**’. The Software is accessible by the Claimant’s employees by logging into the Claimant’s network. Clients access the Customer Portal through the Claimant’s website [www.ct-dent.co.uk](http://www.ct-dent.co.uk) (the ‘**Website**’).
19. Since Mr Atias’ resignations, a dispute has arisen for the first time over who owns the Software. This dispute involves a Mr Assaf Scialom who is the person who wrote the Software from 2007 onwards and who has improved and maintained it and the Database since then. Mr Scialom is involved in a number of the events which have led up to this

application, but because he is not a defendant nor represented and has not given any evidence, I exercise a degree of caution about the extent of his involvement.

20. There are disputes as to how the company reached its position in 2020 from its inception in 2007. Suffice to say that until recently, there were three directors of the Claimant – the First Defendant, Mr Shlomo Shani and Mr Meir Sahar. Mr Atias's sister was married to Mr Sahar, but, as I understand it, they divorced in 2016.
21. Originally and for many years, each of the directors held a one-third share of the shares in the Claimant. That division is alleged by Mr Atias to have changed as a result of an order of the Israeli Family Court made in the divorce proceedings between Mr Sahar and Mr Atias' sister. It was submitted for Mr Atias that the result is that there is a deadlock between Mr Sahar and Mr Shani on the one hand and Mr Atias and his sister on the other, since each side owns 50%, but further evidence from Mr Manor suggests this is not the case and the shares continue to be held in the original one-third divisions. That is not something I can or need to resolve for the purposes of this application.
22. It appears that the divorce proceedings in Israel resulted in a downturn in the relations between Mr Atias on the one hand and Mr Sahar and Mr Shani on the other. It is probably not necessary for me to detail all the steps by which the relationship deteriorated. I need only relate those events which have a bearing on what I have to decide.
23. Mr Atias left the UK with his family in August 2019, returning to Israel. He had run the business of the Claimant from the UK up to that point, and for about 11 months, he seems to have run the business from his home office in Israel. He says he did so using computer equipment belonging to the Claimant namely, two desktop computers, two monitors and a printer, plus his company mobile phone. He also indicates he had various documents, including invoices there. He says that all the Claimant's documents are stored in the 'Cloud' i.e. they are accessed via one or more online accounts.
24. According to Mr Atias, there was conflict between him and the other directors from early on during his time in Israel, apparently because the other directors considered that the CEO of the Claimant needed to be based in the UK. Mr Atias says they threatened to remove him as CEO. He says they blamed him for frustrating a possible sale of the Claimant company. Ms Kelly says that in January 2020, following another refusal by Mr Atias to provide Mr Sahar and Mr Shani with access to the Claimant's bank accounts, they contacted the bank directly to seek to change the banking mandate. She says that Mr Atias then agreed to provide access to the bank accounts, but consistently failed to follow through on that agreement.
25. It does appear that the issue of access to the Claimant's bank account remained unresolved for six months or so because at a board meeting on 25 June 2020, the board (Mr Sahar and Mr Shani voting in favour and Mr Atias opposing) resolved that the signatures of any two directors were required to bind the Company in any transaction and that the banking mandate shall be changed accordingly. The Board discussed the need for an 'on-ground'

executive located in England in view of the COVID-19 pandemic and authorised Mr Sahar to negotiate terms of engagement with Mr Ari Manor to act as special advisor to the board on matters relating to strategy, marketing, business development and innovation.

26. Ms Kelly alleges that Mr Atias did not co-operate with the Board's instructions and that he instructed employees of the Claimant to refuse to co-operate with the other directors. She says that the Claimant's Managing Director, Alex Woodham, has told her that at around this time, Mr Atias instructed him not to take instructions from the other directors or Mr Manor.
27. According to Ms Kelly, in a paragraph to which Mr Atias did not respond, a meeting took place on 16 July 2020 requested by Mr Atias, with Mr Shani and one of his business associates. At this meeting, she reports (apparently informed by Mr Shani) that Mr Atias told Mr Shani that he was '*coming back to London to start a competing business*' and he would '*take the workers and all the radiographers who work with CTDL and leave behind an empty company that would go bankrupt*'.
28. This further deterioration resulted in a further board meeting on 20 August 2020, at which the board resolved (with the voting on each issue as before and notwithstanding a request from Mr Atias to adjourn the meeting ) inter alia (1) to appoint Ms Kelly as interim CEO, (2) that Mr Atias must cooperate with the board of directors, (3) that Mr Atias was instructed to provide to the Board a detailed list of all future payments to be made through the company credit cards held by Mr Atias (4) that Mr Atias is prevented from approaching Company employees, suppliers and clients of the company and to refer any contact made to him to Mr Sahar and (5) Mr Atias was prevented from visiting the Claimant's offices, without being accompanied by one of the other directors. According to Ms Kelly (on information and belief from Mr Sahar), at this meeting Mr Atias said that once he resigned as a director he would open a competing business.
29. Immediately prior to that August Board meeting, Mr Atias says that on 16 August 2020 he and his family made a hurried return to the UK, putting the belongings from their house in Israel, including the 2 desktop computers and other computer equipment belonging to the Claimant, into storage.
30. Mr Atias resigned as a director of the Claimant on 2 September 2020, and resigned his position as CEO on 3 September 2020, sending short letters to effect those resignations via his solicitors, Messrs Greenwood & Co. Mr Atias made no attempt at all to effect any sort of handover of responsibilities to Ms Kelly as the interim CEO. Mr Atias claims he was constructively dismissed, but that is not an issue I have to decide nor does it have any bearing on the Order I have made.
31. Before I continue with events which have occurred since Mr Atias' resignations, as the evidence developed it revealed certain prior actions taken by Mr Atias.

32. Since about August 2013, eUKhost has been the provider of hosting services to the Claimant for its server(s) for the Software, the Database, other IT systems and services such as the Website, emails and cloud storage system.
33. In her witness statement (of 23 September 2020), Ms Kelly raised a particular difficulty: the Claimant had been locked out of its eUKhost account and so could not access its business critical Database, Confidential Information and other IT systems operated on eUKhost servers. Her evidence was that, on a date unknown, Mr Atias transferred the account with eUKhost out of the Claimant's name and into the name of another unknown person or entity. She says it must have been Mr Atias who did this, or someone acting on his instructions because Ms Kelly was informed by Antony Constante, who has worked as the Claimant's IT Manager as an independent contractor for around 8 years, that Mr Atias was the only person with the relevant account credentials to instruct eUKhost to transfer the account.
34. An attempt by Mr Constante to secure control over the eUKhost account gave rise to the following response from eUKhost on 3 September 2020:

*"Having looked into the situation further, I have located the account that holds the domain ctdent.co.uk. Unfortunately, the account is no longer held on the company name C T Dent. On that basis, we would not be able to move the account into your control. We would kindly suggest that you contact the person who had control of the account, when it was in the company name of C T Dent, to discuss the matter further with them."*

35. In his first witness statement (28 September 2020), Mr Atias' response was as follows:

*"I do not know if the Company has been locked out of the eUKhost account. If it is correct, it is likely to be because of payment difficulties when the claimant cancelled my Company credit card without arranging for the necessary payment to be made. The allegation that I have moved the account away from eUKhost is not correct."*

36. The Claimant having agreed to pay eUKhost's lawyers fees, solicitors for eUKhost responded on 1 October 2020 to a request for information as to instructions received from Mr Atias, as follows:

*"The only instruction our client received in that period was the change of the primary contact and company name which was requested via our client's billing portal on 26 August 2020 and which was completed after verification on 27 August 2020. The request came from Mr Atias. He changed the account details from himself and C.T. Dent to a "Assaf Scialom" and the company name was changed to "Scidan" with an email address of [payments@scidan.co.uk](mailto:payments@scidan.co.uk)."*

37. This incident and, more particularly, Mr Atias' response to it in his evidence is extremely telling, in my view. Even before his resignation as a director and employee, Mr Atias was

taking active steps to prevent the Claimant from being able to access its business critical software and IT systems. When challenged on this application, Mr Atias's response was not only transparently evasive, it was positively misleading. This incident appears to implicate Mr Scialom, but I must assess other indicators before forming any view as to whether Mr Scialom is an active participant in Mr Atias's actions.

#### Super user access

38. In parallel with the events which I have related already, there was quite extensive correspondence between solicitors for the Claimant and Mr Atias and his solicitors from 28 July 2020 onwards. It is not necessary for me to relate all that correspondence. Suffice to say that from 28 July 2020 onwards, a number of formal requests were made that Mr Atias should supply passwords, access codes and all information needed to access the Claimant's software, computer systems and bank accounts (Letters from Shakespeare Martineau of 28 July, 7, 14, and 20 August). Despite promises that the necessary information would be provided (e.g. Greenwoods' letter of 25 August 2020), it was not. A particular focus of these requests was the attempt by the Claimant to gain control over its computer systems by ensuring it had 'super user' access.
39. As I observed during the hearing, I incline to the view that any responsible director acting in accordance with his duties would have and would have been able to hand over all the passwords, access codes, login credentials for all the Claimant's systems in, say, 2 hours or possibly very much less time than that.
40. Since the solicitors' requests were not bearing fruit, on 3 September 2020, Ms Kelly emailed Mr Atias directly requesting '*access and login details for a superuser for the database and domain name*'. Mr Atias responded on 4 September 2020 (still using his ct-dent.co.uk email address) saying he would arrange for '*superadmin*' access on Monday (i.e. 7 September 2020). Suffice to say that Mr Atias did not arrange the requested 'superuser' access. In his first witness statement, Mr Atias claimed in terms that 'super admin' access and 'super user' access were one and the same thing. However, Mr Manor's witness statement in reply disputed this, relating information from Mr Constante. He recalls using Mr Atias' master account in the past and seeing all the controls and permissions that were available which have not been available with any of the usernames and passwords which the Claimant has, including the 'superadmin' account access arranged by Mr Atias. Mr Constante has identified at least six specific functions which are not available on the 'superadmin' account. Furthermore, that account did not initially have user management privileges, but at some point between 19 and 24 September, those privileges were added, and this can only have occurred because some higher user granted them. In the circumstances, it is difficult to avoid the conclusion that this higher user was either Mr Atias or possibly Mr Scialom.
41. The next date in the chronology is 11 September, some 6 weeks since the first requests and 9 days since Mr Atias' resignation as a director. On that day CTDL's solicitors (by then

Mishcon de Reya) wrote to Mr Atias making three requests, failing which an application for an injunction was threatened:

- 41.1. that he provide ‘super user access’ credentials in respect of CTDL’s systems;
- 41.2. that he provide “*all other access permissions, passwords, codes, information and authorisations that are necessary for our client to access in full its software, website, servers, databases and all other systems and data owned or operated by [CTDL]*”; and,
- 41.3. that he undertake to cease to use, and to deliver up, “*any and all software, data, information and property in his possession or control that could be reasonably considered to belong to CTDL*”.

42. Mr Atias’ solicitors replied to that letter on 14 September 2020:

- 42.1. In relation to the first request, they said: “*Our client cannot give access to a server that the Company does not own. Any issues should be taken up with the Company that owns the software. [...] Your clients have full ‘super user access’. Your clients are able to use this. If they have difficulties, they should contact the Company licencing the software.*” This was a reference to Mr Assaf Scialom – see further below. Ms Kelly had already contacted Mr Scialom to ask him to grant appropriate permissions, and he had said that she would need to ask Mr Atias.
- 42.2. In relation to the second request, they said: “*Our client has provided the necessary permission. The codes, software and servers, belong to the Company providing them. Your clients should have access to its database under its licences. They should contact the service providers in the event of difficulties. Your letter is the first request for access to the website. Our client has not prevented access. If anything specific is required please let us know. It is not for our client to resolve any technical issues that your clients may have.*”
- 42.3. It was incorrect that the letter of 11 September 2020 was the “*first request*” regarding the website: Mr Atias had been asked for login credentials relating to “*the domain name*” on 3 September 2020, but in his reply he had ignored that request. Further, the response made no reference to the fact that control of the website, along with CTDL’s other hosted systems, had been transferred away from it on Mr Atias’ instruction (as we now know).
- 42.4. It was also incorrect that Mr Atias had provided all necessary permissions and credentials, as the PACS incident (which I relate below) demonstrates.
- 42.5. In relation to the third request, they said: “*A request for an undertaking is inappropriate. That implies that our client has software, data, information or property belonging to the Company. He does not. He is not using any property of the Company and has no intention of doing so. That is the only reasonable confirmation required.*”

42.6. Mr Atias knew full well he still had, at the very least, some documents, information and property belonging to the Claimant. First, the episode in relation to the PACS system demonstrates that Mr Atias retained confidential login information relating to the Claimant's systems. Second, the Defendants proposed on 25 September 2020 to deliver up "*physical papers*" and a company phone, and to give the Claimant access to certain electronic documents in his control. Third, Mr Atias' first witness statement confirmed that he in fact had retained the two main desktop PCs, the monitors and the printer which he used for work in relation to the Claimant's business, along with various other documents and the company mobile phone, and that he was not even sure whether he had anything else and "*would need to check*".

43. In addition to the long-running saga of trying to get hold of passwords and login credentials, Ms Kelly has drawn attention to some other specific incidents.

#### PACS Software

44. Another incident related by Ms Kelly concerned the Claimant's use of some third-party licensed software, Dental PACs or PACS provided by Shina Systems, which the Claimant made available to its clients to view photos and scans in 3D. She exhibited correspondence which showed the following. The problem with the PACS software only came to Ms Kelly's attention when the Claimant started receiving a number of complaints from client dentists that they could not access scans in the PACS system. It turned out that the licence had expired (on 17 September 2020) and the licensor had been trying to contact the Claimant (in the form of Mr Atias) to organise a renewal. In the absence of Mr Atias, the Claimant was unable to renew the licence without connecting remotely to the Claimant's server, for which a password was required and neither the Claimant nor Shina Systems had the right password, Mr Atias having apparently changed it.

45. On 17 September 2020, and still continuing to use his ct-dent.co.uk email address, Mr Atias emailed Ms Kelly saying "*I'll try to give them access first thing in the morning.*" It appears he did provide the password to Shina Systems but not to the Claimant.

#### CTDL's digital artwork and marketing/branding materials

46. Ms Kelly's evidence is that CTDL uses the services of a third party graphic designer for its digital artwork and marketing/branding materials. On 22 September 2020, the Claimant's marketing manager contacted the designer to request that he send copies of all of CTDL's digital marketing materials to CTDL's IT Manager for processing and storage. On 23 September 2020, the designer responded as follows:

"Not sure how to respond to this. I have been made aware of what happened over at CT Dent and am in absolute shock. The artwork remains the property of the previous CEO, Kfir should he ever request it."

47. Ms Kelly goes on to give evidence that CTDL paid the designer for his services and there were regular entries for his firm in CTDL's bank statements. Perhaps not surprisingly, it is CTDL's case that it is the owner of all the materials created by the designer. Ms Kelly invites the conclusion that Mr Atias must have had a hand in the designer adopting this obstructive attitude. In the circumstances, I have a high degree of assurance that her conclusion is fully justified.

#### Ownership of the software

48. Ms Kelly explains in some detail how CTDL's ERP Software came to be written. It is not necessary for me to relate all the details. Suffice to say that it is CTDL's case that Mr Meir Sahar gave detailed instructions to Mr Assaf Scialom regarding the development of the software, and Mr Scialom wrote the system following those instructions, being paid significant amounts of money during the first year until the Software became fully operational. Since then Mr Scialom has been retained by CTDL to provide maintenance and improvement services in relation to the Software, as well as the associated Database and CTDL's Website and other IT systems. Ms Kelly has not been able to locate full details of all invoices and payments made to Mr Scialom or his company, IQ Desk Ltd (for the period which it existed from 15 July 2011 to 14 February 2020), but the records she has been able to locate show sporadic payments of varying amounts over the years. Where ledger entries are available (since 2013), they are 'Website & Data Base Management' and various entries like 'DB Work'. From 2014/15 onwards, the payments become a regular monthly occurrence, yet still for varying amounts until August 2017. It was only in September 2017 that the fluctuation in amounts ceased. Regular monthly payments were then made of £2,200, rising to £2,250 in August 2018 and £2,500 in February 2019.

49. The reason why Ms Kelly went into those details was because on the 4 September 2020 there came an assertion by Mr Scialom for the first time that he was the owner of the Software. He had asked Ms Kelly to pay an invoice. It was not surprising that in the circumstances she found herself in, she should ask what the invoice was in respect of. Mr Scialom's response was '*This is a software usage fee....the software belongs to me not CT Dent... for me the agreement is with Kfir.*' Mr Scialom's stance was challenged in a letter from Mishcon de Reya sent to him on 11 September 2020, to which he did not respond. I have already set out the response from Mr Atias, in his solicitors letter of 14 September.

50. Ms Kelly says that the payment history is consistent only with Mr Scialom being paid for maintenance and improvement services and is inconsistent with the notion that CTDL was paying Mr Scialom licence fees to use the Software.

51. It is, as Ms Kelly said in her evidence, highly suspicious that Mr Scialom and Mr Atias have both suggested that Mr Scialom (or his company) own the Software for the first time very recently and immediately after Mr Atias' resignations. It is telling that Mr Atias, despite making two witness statements, did not respond at all to the section of Ms Kelly's witness statement under the heading 'Ownership of the Software'. Since Mr Scialom has not given evidence, I remain cautious about drawing firm conclusions on this incident.

However, in the context of all the other incidents, I nonetheless have a high degree of assurance that CTDL either owns the software or, at the least, is the beneficial owner of it, but perhaps more relevantly, Mr Atias does not have the right to walk away from the Claimant with a copy of its Software.

52. In the meantime, D1 incorporated D2 on 9 September 2020. The name of that company rather speaks for itself. On 11 September 2020, Parveen Purewal (the Claimant's Sales Director) gave notice of termination of her consultancy agreement with the Claimant. Ms Kelly relates a meeting she had (along with CTDL's solicitors) with Mr Alex Woodham, the Claimant's Managing Director since 2017, on 21 September 2020. At that meeting, he reluctantly confirmed that Mr Atias had tried to persuade him, Ms Purewal, and others to leave the Claimant and join a new business in competition with it. Mr Woodham said that there were several occasions in July and August 2020 where Mr Atias tried to persuade him to resign from CTDL. Over that period, other employees or contractors of the Claimant also sought to persuade him to resign. These included Ms Purewal and Naveen Ahmed (the Operations Director). At a meeting with Mr Atias on 20 September 2020, Mr Woodham related that Mr Atias told him that '*CT Dent would go down*'. Mr Atias apparently needed Mr Woodham's help, in particular as regards obtaining a CQC registration. Mr Woodham said he was seeking assurances from Mr Atias that '*everything has to be different*' and that '*he would not take things from CT Dent*'. But, according to Ms Kelly's account of what Mr Woodham said, Mr Atias brushed over the issue and did not provide the assurances. Mr Woodham has indeed resigned from his role with the Claimant.

#### Additional issues

53. It was apparent from Ms Kelly's evidence that, as interim CEO and new to the business, she was struggling to get a grip on what had actually been happening in the business and what was needed to be done going forward (including paying invoices). I have already mentioned the ERP Software, the Database, the email server, the website server and the eUKhost account, but in his witness statement, Mr Manor (with assistance from Mr Constante) was able to set out some further components of the Claimant's IT infrastructure, systems and accounts in respect of which Mr Atias had yet to provide access details (Third party software, of which PACS is an example; the Mailgun account; the Clickatell account; the Claimant's gmail accounts, the Claimant's social media accounts). I need not set out all the details because they are covered in the Order of 5 October 2020. However, I remind myself that Mr Atias has stated that all the company documents are stored 'in the Cloud'. As Mr Manor says, CTDL's business documents such as contracts with suppliers and invoices must be stored somewhere, but the evidence is that Mr Atias had not given the Claimant access to the Claimant's business documents.

#### My conclusions on the relief sought

54. Based on what I have related above, plus the additional details set out in the Claimant's careful evidence, I had a high degree of assurance that the Claimant was entitled to the

‘Access Order’ in the expanded form put forward on 2 October 2020, albeit with certain adjustments which I introduced when finalising the Order. Without full access to all its IT systems and company documents, there was a virtual certainty of the Claimant suffering irreparable damage. On Mr Atias’ side, I was unable to discern any recoverable damage at all, other than perhaps his time cost. Furthermore, I struggle to see that Mr Atias really has any defence to this aspect of the claim. Certainly by the time it came to Mr Maguire’s submissions on 2 October 2020, realistically he was not able to offer any real resistance. Furthermore, when the draft Order was circulated, subject to certain revisions, Mr Maguire invited me to convert all the injunctions into undertakings to be given by Mr Atias. I declined this invitation as being far too late.

55. The position is similar, in my view, on the Delivery Up order. The Claimant is plainly entitled to the return of its documents and property. Although it is possible that the two desktop computers which Mr Atias used in Israel may not reveal very much in terms of the data stored on them, it is perhaps more likely that electronic copies of many of the Claimant’s documents remain stored on them, even if the documents are also to be found in the Claimant’s cloud storage. Since Mr Atias has arranged for the shipment of his belongings (including the Claimant’s computer equipment) from Israel, the Delivery Up Order has to cope with that. Subject to that, Mr Atias must make delivery up swiftly, as in the Order.
56. As for the Interim Restraints, I have already noted that the Claimant dropped its request for the anti-solicitation injunction/springboard relief. However, in the circumstances, I was entirely satisfied that the Claimant requires the other Interim Restraints. Mr Atias has no possible justification for continuing to access any of the Claimant’s systems, other than to comply with the Access Order. He has no possible justification in continuing to hold himself out as having authority to act on behalf of the Claimant (again, other than in order to comply with the Order). He has no possible justification to make use of or to provide to anyone else any of the materials I ordered him to deliver up (which include any of the Claimant’s documents in electronic form, or anything derived from them, including the Software or any part of it), save insofar as they may be provided to him and are necessary for the Defendants’ conduct of this action or any related action.
57. In relation to the Software, as I have related, Mr Atias and Mr Scialom now claim it is owned by Mr Scialom. However, in the circumstances of this application I have a high degree of assurance that the Claimant is either the owner of the copyright in the Software or, at the very least, beneficially entitled to it and, either way, would be entitled to prevent any third party, including the Defendants, from infringing such copyright. If, contrary to my provisional view, Mr Scialom is able to produce convincing evidence to support his claim to own it, then those parts of my Order which relate to the Software may need to be revisited.
58. The evidence which has emerged so far as to what Mr Atias was doing before his resignations and subsequently is probably only the proverbial tip of the iceberg. However, his almost total lack of proper co-operation with the Claimant’s reasonable requests, his

evasive and misleading responses and his grievances with the remaining directors of the Claimant which manifest themselves in his stated aim of destroying the Claimant lead to the conclusion, in my view, that the Claimant needs the fullest degree of protection in respect of its electronic records including in particular its Software, Database, client data and employee data. Mr Atias has had full opportunity to copy the Software, the Database along with any other documents or data which he might have considered might prove useful in setting up his competing business. Use of those materials or any parts which might be considered useful would, in my view, result in irreparable damage to the Claimant. On the Defendants' side, it was very difficult to see how they would suffer any irreparable damage by the grant of the Access Order, the Delivery Up Order or the Interim Restraints contained in my Order of 5 October 2020 and this point was reflected in the main theme of their opposition – which was that the relief was unnecessary.

59. Since Mr Atias has given so many assurances which have turned out to be either incorrect or highly misleading, so his assurances that he has not copied anything cannot be taken at face value. He seems to have conducted himself without the slightest regard for his fiduciary duties whilst he remained a director of the Claimant. Indeed, he seems to have operated on the basis that the business was 'his', and his to do with as he chose, without having regard to any legal constraints. His stated objectives to destroy the Claimant and, in effect, to resurrect the business in his new company indicate there is a clear risk that he may have copied whatever data of the Claimant he thought might prove useful in his new venture.
60. Mr Atias gave evidence that lists of the dental practices in the UK were available to purchase and I have no doubt that is true. However, the evidence was clear that the Claimant's Database contained a host of additional information about the various practices which have been clients of the Claimant and which would be useful to anyone wishing to set up a competing business.
61. It will be apparent from what I have related that as effective CEO of the Claimant, Mr Atias seems to have had virtually an unrestricted ability to run the Claimant as he saw fit, with very little supervision, and with virtually no safety systems in place to ensure business continuity in the event of his absence for any reason or a lack of cooperation from him. Whilst at one level, the business was able to continue following his resignation, the problems started almost immediately and have continued. I was entirely satisfied that without the grant of the Order with the three elements I have mentioned so far, those problems would have increased, with a substantial risk that in time the Claimant would have 'gone down', to coin Mr Atias' expression.
62. The request for the Imaging Order however calls for somewhat different consideration.
63. The case for the Imaging Order was put squarely on the basis that it was for the preservation of evidence. Consistent with that were the safeguards that the imaging is to be done by an independent computer specialist who will retain the images in his or her safekeeping until further order. Furthermore, the Claimant is not permitted to access the images or their

contents unless the Claimant and First Defendant so agree, or the Court so orders. So the images taken under my Order will be retained until the Court can decide with the assistance of the parties, how and under what circumstances the images should be accessed and searched.

64. Mr Atias claimed in his evidence that, the two desktop computers in Israel aside, he had no laptop or other computing device apart from the company mobile phone (which I understand has been delivered up) and a tablet. Given the apparently limited number of electronic storage devices in his possession, power or control, and given the circumstances of this case, I concluded it would be appropriate and proportionate to order imaging of such devices. Even though I was told that Mr Atias has been advised of his responsibilities to retain documents relevant to this dispute, in view of his behaviour so far, I have very little confidence that he would not destroy documents which he perceived to be damaging to his case.
65. Physical devices apart, the Claimant wanted the imaging order to go much wider to cover all online accounts which had been used by the First Defendant in the last 12 months *for any commercial purpose*. I considered that an imaging order of that breadth would be likely to embrace all sorts of documents which had nothing to do with this dispute and would be a disproportionate intrusion into the First Defendant's affairs. Accordingly, I limited the imaging of online accounts to those which had been used by the First Defendant *in the conduct of the Claimant's business* in the last 12 months (other than those in respect of which the Defendants provided login credentials to the Claimant pursuant to other parts of the Order).

### Costs

66. As to the costs of the Application, Mr Maguire submitted that the withdrawal of the claim for springboard relief and a non-solicitation injunction was highly significant and that this was, until it was dropped, the predominant issue which resulted in much time and energy being wasted. He submits that the Claimant ought to pay the Defendants' costs on that issue, the Defendants being the clear 'winner' but that otherwise, costs should either be in the case or reserved.
67. I see the matter rather differently. I consider it was clear throughout that the Access Order was plainly the most significant relief sought, following by the Delivery Up Order and the (other) Interim Restraints. Indeed, it was my understanding that the basis for the anti-solicitation injunction and/or any springboard relief was the possibility that the Defendants had or were threatening to solicit the Claimant's customers through their copying and misuse of the Database. Consistent with that, the reason given for the dropping of the anti-solicitation injunction and springboard relief was that the other Interim Restraints gave the Claimant sufficient protection. So the anti-solicitation injunction was only ever an adjunct, and one which proved unnecessary. Furthermore, it is not as if the Defendant conceded the relief which I granted leaving in issue for evidence and the substantive hearing just the anti-solicitation and/or springboard relief.

68. I am satisfied that the presence or absence of the anti-solicitation injunction/springboard relief made very little, if any, difference to the way this Application was launched, resisted and resolved or to the costs of doing so. Of far greater significance is the fact that this application ought to have been entirely unnecessary and would have been unnecessary had there been some outbreak of common sense on the Defendants' side. I take the view that Mr Atias brought this Application upon himself and only has himself to blame for the fact that it has consumed much time and costs, not least his evasive and misleading responses which I have discussed above. He had a number of opportunities to avoid further costs being incurred, but took none of them. For these brief reasons, I am satisfied that the Defendants must pay the Claimant's costs of the Application in any event.
69. Both sides submitted Statements of Costs for summary assessment. The Claimant's Statement of Costs for the first hearing on 29 September 2020 totalled £67,084 (no VAT claimed) and was supplemented by a further statement for the hearing on 2 October totalling £36,824 (no VAT claimed), with an overall figure of £103,908. On the Defendants' side, its first statement of costs totalled £39,596 (ex VAT) or £47,508.20 (inc VAT), and its further statement of costs totalled £17,078 (ex VAT), or £20,493.60 (inc VAT), yielding totals of £56,674 (ex VAT) or £68,001.80 (inc VAT). The disparity between the costs totals causes me no surprise. The Claimant had much more work to do to marshal the facts and prepare its careful evidence.
70. Although the presumption is that I should conduct a summary assessment, I decline to do so. Although some of the hourly rates claimed in the Claimant's statements are higher than the guideline rates, I am conscious those guideline rates are out of date. This is not a case where I consider the Defendants would be able to show any substantial grounds for disputing the sums claimed (cf rule 9.2). Rather, I decline to conduct a summary assessment purely because the costs claimed by the Claimant are very substantial. Although the Claimant urged me to make a larger interim award (of £75,000), I order the Defendants to pay the sum of £50,000 by way of interim payment on account of the Claimant's costs, which are to be assessed on the standard basis if not agreed. I am confident that on any assessment of the Claimant's costs, it will recover more than that amount. Although the Defendants have not had an opportunity to address me on the time for payment, I will give them a little extra time beyond the normal 14 days. So the Defendants must pay £50,000 to the Claimant's solicitors on or before 30 October 2020.

#### Further directions

71. Finally, the Defendants invited me to give directions for service of the Particulars of Claim, the Defence and a listing for a CCMC. I am prepared to make such directions, but I invite the parties to seek to agree those directions, which can be incorporated into an order with my order for costs.

ANNEX – the text of the Order dated 5 October 2020

**UPON** the application of the Claimant by notice dated 23 September 2020 (“**the Application**”)

**AND UPON** reading the First Witness Statement of Mai Kelly, the First Witness Statement of Ari Manor, and the First and Second Witness Statements of the First Defendant

**AND UPON** hearing Tom Cleaver for the Claimant and Andrew Maguire for the Defendants

**AND UPON** the Claimant giving the undertakings set out in Annex A to this Order

**IT IS ORDERED THAT:**

Provision of access

1. The First Defendant shall, as soon as possible and in any event no later than 6pm on Tuesday 6 October 2020, take all such steps as are within his power and are necessary to provide the Claimant or its appointed representatives with full access to and control of all electronic accounts or systems relating to the Claimant’s business. In particular, and without limitation:
  - a. The First Defendant shall take all such steps as are within his power and are necessary to provide the Claimant with any of the following that are in his possession, power or control:
    - i. any login credentials relating to the Claimant’s Enterprise Resource Planning System (“**ERP System**”), including the usernames and passwords of any inactive accounts;
    - ii. any login credentials relating to any other server operated on behalf of the Claimant, or which hosts any material relating to the Claimant’s business;
    - iii. any login credentials relating to the Claimant’s website, including credentials relating to the editing of the content of that website;
    - iv. any login credentials relating to the Gmail account [ctdentlondon@gmail.com](mailto:ctdentlondon@gmail.com);
    - v. if different, any login credentials relating to the Claimant’s YouTube and Google Analytics accounts;

- vi. details of and login credentials relating to any other Gmail account which is or has been used in relation to the Claimant's business;
  - vii. any login credentials relating to the Claimant's accounts with Mailgun, Clickatell, Mailingmanager, or Nexmo;
  - viii. the identity of any other bulk SMS messaging provider used by the Claimant, and any login credentials relating to the Claimant's account with that provider;
  - ix. any login credentials for any @ct-dent.co.uk email account, including but not limited to kfir@ct-dent.co.uk;
  - x. any login credentials relating to the Claimant's account with Heart Internet;
  - xi. any login credentials relating to the Claimant's account with Cloudflare;
  - xii. details of any cloud storage services which are or have been used to host documents relating to the Claimant's business, together with any login credentials for the accounts in question;
  - xiii. details of any other electronic accounts used by or for the Claimant, together with login credentials.
- b. The First Defendant shall direct Mr Assaf Scialom in writing to provide all information in subparagraph (a) which is within Mr Scialom's possession, power or control (including within the possession, power or control of any employee or agent of his) and which the Defendants have not already provided pursuant to subparagraph (a).
- c. The First Defendant shall also direct Mr Scialom in writing:
- i. to deal with and take instructions only from appointed representatives of the Claimant in relation to any electronic systems or accounts relating to the Claimant's business; and,
  - ii. not to act on instructions from the First Defendant (directly or indirectly) in relation to such systems or accounts in future, save as instructed by appointed representatives of the Claimant.

- d. The First Defendant shall provide copies to the Claimant of any directions given by him pursuant to subparagraphs (b)-(c) above.
2. After the First Defendant has given the directions required by subparagraphs 1(b)-(c) above, the First Defendant:
  - a. shall not give or purport to give, directly or indirectly, any further instructions to Mr Scialom or his team in relation to any electronic systems or accounts relating to the Claimant's business, unless the First Defendant is expressly requested to do so in writing by appointed representatives of the Claimant for the purposes of ensuring compliance with this Order;
  - b. shall not, until after Wednesday 21 October 2020, communicate, directly or indirectly, with Mr Scialom or his team about any such systems or accounts without copying any such communication to an appointed representative of the Claimant, either at the time of the communication or immediately thereafter.
3. If or to the extent that the First Defendant claims to be unable to comply fully with the provisions of Paragraph 1 above within the time specified, he must provide full reasons to the Claimant's representatives and explain when and how he may be able to comply fully. For the avoidance of doubt, if any of the login credentials required by Paragraph 1 above are only accessible on one of the desktop computers used by the First Defendant in his home office in Israel, no breach of Paragraph 1 will occur or will have occurred if, as soon as delivery up of the desktop computers to the Claimant or its solicitors has taken place, the First Defendant co-operates as soon as reasonably practicable to enable any such login credentials to be retrieved and disclosed to the Claimant or its solicitors.

#### **Delivery up**

4. The First Defendant shall, as soon as possible and in any event by no later than the times specified in paragraph 5 below, deliver up to the Claimant or its solicitors the following materials and any copies thereof in his possession, power or control (and, for the avoidance of any doubt, in relation to sub-paragraphs (b) to (i) below, "document" means any retained or copy document (in either physical or electronic form) which the First Defendant has in his possession, power or control):

- a. any physical property of the Claimant, including the two desktop computers, two computer monitors, and printer which are or were kept in the First Defendant's home office in Israel;
- b. any document embodying all or part of the database relating to the Claimant's business ("**the Database**"), or consisting of the product of an export of all or part of the Database or its contents;
- c. any document embodying a collection of emails from the email server relating to the Claimant's business, or consisting of the product of an export of all or part of that server or its contents;
- d. any document embodying a collection of files taken from the electronic file systems relating to the Claimant's business, or consisting of the product of an export of all or part of such a system or its contents;
- e. any copy of the software comprising the Claimant's ERP system ("**the Software**"), or of any part of that software or its code;
- f. any list of customers of the Claimant and/or of contact details or other information relating to such customers;
- g. any list of employees of the Claimant created prior to 4 September 2020 and/or of information about those employees such as job titles, contact details, or salary information;
- h. any documents containing information about patients or customers of the Claimant;
- i. any documents containing commercial information about the Claimant that is not publicly available, such as:
  - i. agreements with suppliers, customers, and employees;
  - ii. sales documentation and invoices;
  - iii. non-public pricing information; and,
  - iv. internal analysis of financial performance, such as management accounts;

- j. any communications between the Defendants and Mr Scialom or any member of Mr Scialom's team in the three months prior to 3 September 2020 concerning any electronic systems or accounts relating to the Claimant's business.

5. As to the deadline for compliance with Paragraph 4 above:

- a. In the case of documents held in 'cloud' accounts or similar online data repositories, the First Defendant must deliver up such documents by no later than 6pm on Wednesday 7 October 2020 by providing the Claimant's solicitors with electronic copies of all such documents.
- b. In the case of documents or other items which are currently in transit from Israel to the United Kingdom, or which are only accessible on devices that are currently in transit from Israel to the United Kingdom, the First Defendant shall:
  - i. by no later than 6pm on Friday 9 October 2020 give the Claimant such details as the First Defendant has of the date on which those items were or are scheduled to be dispatched and from where, the date on which it is anticipated they will arrive in the United Kingdom, and any tracking information;
  - ii. notify the Claimant immediately of (a) any updated information they may obtain as to the anticipated arrival date and (b) any confirmation that the items have arrived;
  - iii. arrange for any physical items to be collected by the Claimant, or by the First Defendant's solicitors for immediate delivery to the Claimant or its solicitors; and,
  - iv. if the items in question include any electronic devices belonging to the Claimant (including the two desktop PCs mentioned in subparagraph 4(a) above), ensure that those devices are not activated, opened, tampered with, or their contents accessed prior to their delivery to the Claimant or its solicitors.
- c. In the case of all other documents or items (including any which are held in Israel and are not yet in transit to the United Kingdom), the Defendants shall deliver up such documents or items by no later than 6pm on Friday 9 October 2020. To the

extent that any such documents or items, belonging to the Claimant, which are, at the date of this Order, not yet in transit to the United Kingdom and are held in Israel, the First Defendant must arrange for them to be delivered up to one of the Claimant's directors in Israel by no later than 6pm on Friday 9 October 2020.

6. To the extent that the First Defendants contends that he requires copies of any materials, documents or items delivered up pursuant to Paragraph 4 above for the purposes of conducting his case in these proceedings or in proceedings concerning the Claimant and the provision of such copies cannot be agreed, the First Defendant has permission to apply on reasonable notice.

### Non-use

7. Until judgment in this action or further order in the meantime, the Defendants shall not without the consent of the Claimant:
  - a. access any of the electronic systems or accounts mentioned in paragraph 1, or any other electronic systems or accounts relating to the Claimant's business (including any ct-dent.co.uk email address), except to the extent necessary to enable compliance with paragraphs 1 and 3 of this Order;
  - b. make any use of any materials falling within paragraph 4 above, except to the extent necessary to comply with this Order;
  - c. provide any materials falling within paragraph 4 above to any person other than the Claimant or its solicitors; or,
  - d. make use of any software derived from the Software or incorporating any part of its code, or provide any such software to any person other than the Claimant or its solicitors

PROVIDED THAT if the Defendants are provided with copies of any of the materials falling within Paragraph 4 above, either by agreement under Paragraph 6 above or pursuant to any Order of the Court, including any order for disclosure, for the purposes of conducting their case in these proceedings or in proceedings concerning the Claimant, the use of such materials for those purposes is not a breach of this Order.

### Imaging of electronic devices

8. The First Defendant must, as soon as possible and in any event no later than the time specified in paragraph 10:
  - a. make available all Electronic Storage Devices in his possession, power or control, and which he is not required to deliver up pursuant to paragraph 4 of this Order, to an independent computer specialist appointed by the Claimant (“**the Independent Computer Specialist**”), with all necessary login credentials including passwords, so as to allow an electronic image to be taken of the contents of those devices; and,
  - b. supply the Independent Computer Specialist with all email addresses or login credentials, including passwords, for Online Accounts which have been used by the First Defendant in the conduct of the Claimant’s business in the last 12 months (other than those in respect of which the Defendants have provided login credentials to the Claimant pursuant to this Order), so as to allow an electronic image to be taken of their contents.
  
9. In this Order:
  - a. “Electronic Storage Devices” includes devices such as computers, tablets, PDAs, mobile telephones, physical file servers, backup media, and USB storage devices; and,
  - b. “Online Accounts” includes email accounts, accounts on file servers which are accessible remotely, accounts with cloud-based IT Systems (including fileshares and email), and accounts with online storage/data sharing platforms such as Dropbox.
  
10. As to the deadline for compliance with the above order:
  - a. In the case of Electronic Storage Devices which are currently in transit from Israel to the United Kingdom, the Defendants shall:
    - i. by no later than 6pm on Friday 9 October 2020 give the Claimant such details as the First Defendant has of the date on which those items were dispatched and from where, the date on which it is anticipated they will arrive in the United Kingdom, and any tracking information;

- ii. notify the Claimant immediately of (a) any updated information they may obtain as to the anticipated arrival date and (b) any confirmation that the items have arrived;
  - iii. arrange for any physical items to be collected by the First Defendant's solicitors for immediate delivery to the Independent Computer Specialist; and,
  - iv. ensure that those devices are not activated, opened, tampered with, or their contents accessed prior to their delivery to the Independent Computer Specialist.
- b. In the case of all other Electronic Storage Devices, and all Online Accounts, the First Defendant shall comply with paragraph 8 above by no later than 6pm on Thursday 8 October 2020.
  - c. The Electronic Storage Devices shall be returned to the First Defendant or his solicitors within 48 hours of their delivery to the Independent Computer Specialist.
11. The Independent Computer Specialist shall keep in his custody all images so created until further order. The Claimant shall not be permitted to access the aforesaid images or their contents unless the Claimant and First Defendant so agree, or the Court so orders.

### **Permission to apply**

12. In the event of difficulties arising in compliance with this Order which cannot be agreed between the parties, the parties have permission to apply to the Judge upon the provision of reasonable notice.

### **Costs**

13. Costs of the Application reserved for decision upon hand down of the Court's written judgment on the Application.

### **Service of the order**

The Court has provided a sealed copy of this order to the serving party:

Mishcon de Reya LLP, Africa House, 70 Kingsway, London WC2B 6AH



**ANNEX A: CLAIMANT'S UNDERTAKINGS**

1. The Claimant undertakes that if the court later finds that this order has caused loss to the Defendants, and decides that the Defendants should be compensated for that loss, it will comply with any order the court may make.
2. The Claimant undertakes that a copy of the material delivered up by the Defendants to them pursuant to this Order will be preserved in a form capable of being returned to the Defendants if the Court should later decide that it should be returned to them.
3. The Claimant undertakes:
  - a. to appoint an Independent Computer Specialist for the purposes of this Order by no later than 24 hours after the making of the Order;
  - b. not to access the images created by the Independent Computer Specialist without the First Defendant's consent or further order of the Court.
4. The Claimant undertakes to provide all reasonable endeavours to ensure that the First Defendant has access to the "kfir@ct-dent.co.uk" email account and "info@ct-dent.co.uk" account in so far as such access is required for the purposes of compliance with the provisions of this Order.