DUBAI INTERNATIONAL FINANCIAL CENTRE COURT

IN THE COURT OF FIRST INSTANCE

BETWEEN

PERNELLA

Claimant/Applicant

and

PEARSON

Defendant/Respondent

ORDER WITH REASONS OF H.E. JUSTICE MARK PELLING

UPON the Part 7 Claim Form dated 13 March 2026 (the "Claim")

AND UPON the Claimant's Application No. CFI-018-2026/1 dated 13 March 2026, seeking a protective order regulating supervised access to the forensic image of the Claimant's work laptop

AND UPON the Claimant's Application No. CFI-018-2026/2 dated 23 March 2026, seeking specific interim access to identified categories of documents

AND UPON the Claimant's Application No. CFI-018-2026/3 dated 30 March 2026, seeking disclosure of, amongst other things, any Directors' and Officers' liability insurance policy

AND UPON the Defendant's Application No. CFI-018-2026/4 dated 27 April 2026, seeking an interim injunction pursuant to Part 25 of the Rules of the DIFC Courts ("RDC") and/or Articles 36(1)(a) and/or 35(1)(f) and/or 35(3) of the Law of Damages and Remedies (DIFC Law No. 7 of 2005) (the "Delivery-Up Application")

AND UPON hearing counsel for the Claimant and counsel for the Defendant at an Application Hearing held before H.E. Justice Mark Pelling on 7 May 2026 (the "Hearing")

AND UPON the Claimant's Application No. CFI-018-2026/5 dated 11 May 2026, seeking clarification of the wording at paragraph 4 of the draft consequential order following the Hearing

AND UPON review of the Court file and the exchanges between the parties between 8 May 2026 and 12 May 2026, including the various draft orders prepared by the parties' legal representatives (the "Post Hearing Exchanges")

AND UPON the parties being unable to agree the terms of the order to be made following the Hearing of the Delivery-Up Application and the ex tempore judgment determining the same (the "Order")

IT IS DIRECTED THAT:

1. The Order shall include within it a Paragraph 4 in the following terms:

(a) The Claimant shall irretrievably delete (or cause to be irretrievably deleted) all copies of all confidential or proprietary information of the Defendant in the possession custody or control of the Claimant including any communications with or from any third party relating to or concerning such confidential or proprietary information ("Confidential Information") including any Confidential information stored on any magnetic or optical disk or memory, outside of the Defendant's premises, including (once paragraph 2 is complied with) any Digital Image ("Deletion Obligation").

(b) For the avoidance of any doubt the Deletion Obligation includes an obligation to delete or procure the deletion of any copy of any part of the Confidential Information supplied by the Claimant to:

(i) her legal advisors in respect of these proceedings save and except to the extent that any such material has been incorporated into any document that is subject to either legal advice or litigation privilege as those terms are to be understood as a matter of substantive English law; or

(ii) any other third party other than under compulsion of law ("Relevant Third Party").

2. The Order shall include within it a Paragraph 5 in the following terms:

(a) The Claimant shall provide a signed witness statement to the Defendant stating (a) whether she has complied with paragraphs 1, 2 and 4 of this Order, (b) the password for the Laptop, and (c) exhibiting written confirmation from her legal advisors and any Relevant Third Party confirming deletion of any copies of any part of the Confidential Information in their possession custody or control save only as excluded from deletion by the terms of Paragraph 4 above.

3. The Defendant is directed to lodge for sealing a draft Order in the form drafted by the Defendant's solicitors, save and except that Paragraphs 4 and 5 shall be in the terms set out above.

4. The cost of an occasioned by the Post Hearing Exchanges are reserved and will be determined at the Case Management Conference or the next attended hearing (whether held remotely or in person) whichever be sooner.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 15 May 2026
At: 3pm

SCHEDULE OF REASONS

1. The attempts by or on behalf of the Claimant to narrow the scope of the Order sought by the Defendant following the Hearing are regrettable given that no objection was taken to the parts of the Order now challenged at the Hearing. In one sense, I would be entitled, strictly, to reject the submissions made on behalf of the Claimant and direct the sealing of the Order in the terms agreed on behalf of the Claimant at the Hearing. However, the correspondence has highlighted a problem - which is that, at least implicitly, the correspondence from the Defendant's legal consultants acknowledge that some or all of the Defendant's Confidential Information, which is the subject of the Application, was passed by the Claimant to her advisors.

2. Merely passing such information to a legal advisor does not have the effect of cloaking that material with either legal advice or litigation privilege when the material does not belong to the party passing it to the legal advisor and/or where that person is under a legally enforceable contractual or other legally enforceable duty to return the material to the person legally entitled to it. It is questionable whether including such material in documents generated in the course of litigation have that effect either. That said, the Defendant has pragmatically agreed to waive such rights as it might have to the deletion of any secondary documents prepared using the Defendant's Confidential Information. Paragraph 4 drafted as set out above is designed to reflect that concession.

3. However, copies of any part of the Defendant's Confidential Information in the possession of the Claimant's legal advisors must be deleted save to the limited extent set out in the proviso to Paragraph 4 as set out above. Those advisors have no better right to retain the material than the Claimant. Similar considerations apply to any other third parties other than to the extent they have sought or been supplied with the material under compulsion of law.

4. I have included a reference to communications with third parties because of a specific concern identified at the Hearing concerning the need of the Defendant to see, and as necessary, respond to any communications between the Claimant and any third party regulators with whom the Claimant was communicating prior to the termination of her employment.

5. Whilst it would have been desirable to identify specifically all the Confidential Information to which Paragraph 4 applies in a schedule to the Order (as often occurs in post termination confidential information cases, where the relevant material is known to the Claimant) that is not practical in the circumstances of this case because there is at least a partial asymmetry of information available to the parties. As things stand therefore it is not possible to set out in schedule form the information within the scope of Paragraph

4. If there is a dispute about what comes within the scope of Paragraph 4 it will have to be resolved by agreement or by the court on a variation agreement (if and to the extent the Claimant identifies the material concerning in a way that enables the Defendant to respond meaningfully) or otherwise on the hearing of a contempt application.