IN THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

Supreme Court Appeal No. 29661

Ansell RUS, LLC,

Plaintiff and Appellee,

VS.

Paul A. Christodoulou a/k/a,

Pavlos Andreas Christodoulou,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT FOURTH JUDICIAL CIRCUIT MEADE COUNTY, SOUTH DAKOTA

THE HONORABLE KEVIN KRULL CIRCUIT COURT JUDGE

APPELLANT'S BRIEF

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PRELIMINARY STATEMENT

Following the guidelines prescribed in SDCL 15-26A-63, throughout this brief, the plaintiff/appellee will be referred to as "Ansell." The defendant/appellant will be referred to as "Mr. Christodoulou" /KRIS-toe-doo-loo/. Citations to the Settled Record will be designated as "SR ____" followed by the applicable page number(s) contained in the Clerk's Index. References to the appendix of this brief will be designated "App. ___" followed by the applicable page number(s).

JURISDICTIONAL STATEMENT

Mr. Christodoulou appeals from the May 24, 2021 Order of the Circuit Court denying his motion to vacate a foreign judgment. Notice of Appeal was timely filed on May 27, 2021. *SR* 349. This Court has jurisdiction pursuant to SDCL 15-26A-3(2).

STATEMENT OF THE CASE

On February 4, 2020, Ansell petitioned the Circuit Court in Meade County, South Dakota to register a foreign default judgment it obtained against Mr. Christodoulou in the Circuit Commercial Court of England and Wales in the amount of \$2,997,614.53. *SR* 2.

After the judgment was registered *ex parte* over Mr. Christodoulou's timely filed objection, Ansell took action to execute on the judgment, whereupon Mr. Christodoulou moved to vacate the foreign judgment and for a stay of execution. *SR* 107; 124. Ansell stipulated to a stay of execution. On May 24, 2021, the Circuit Court entered an Order denying Mr. Christodoulou's motion to vacate the foreign judgment, and this appeal followed.

STATEMENT OF THE LEGAL ISSUES

1. Whether South Dakota's grant of full faith and credit to a foreign judgment in an action where Mr. Christodoulou was never served with process violates the due process rights guaranteed to him by the Due Process Clauses of the South Dakota and United States Constitutions.

Most Relevant Legal Authority:

U.S. Const. amend. XIV;

S.D. Const. art. VI, § 2;

Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306 (1950); and

R.B.O. v. Priests of Sacred Heart, 2011 S.D. 86, 807 N.W.2d 808.

2. In the event South Dakota will give full faith a credit to a foreign judgment in an action where Mr. Christodoulou was not served with process, whether the Circuit Court abused its discretion in refusing to vacate the foreign judgment for other reasons.

Most Relevant Legal Authority:

U.S. Const. amend. XI;

S.D. Const. art. VI, § 2;

SDCL § 15-16-44; and

SDCL § 15-16-45.

STATEMENT OF THE FACTS

The facts of this case are straightforward and not materially disputed.

A. Identification of the Parties

The plaintiff, Ansell RUS, LLC (hereinafter "Ansell") is a Russian business entity engaged in the sale of medical goods. *App.* 001 (Circuit Court's Findings of Fact and Conclusions of Law) at ¶ 1. Mr. Christodoulou is a citizen of the United States of America and a resident of Sturgis, Meade County, South Dakota. *Id.* ¶ 2. Mr.

Christodoulou is a member of the management board of ProLogics UK, LLP, a limited liability partnership registered in the United Kingdom doing business in Russia and Poland (hereinafter "ProLogics"). *App.* 001-02 at ¶¶ 3, 9.

B. The English Action and Judgment

In 2018, Ansell sued ProLogics in the Circuit Commercial Court of England and Wales (hereinafter the "English Action" and the "English Court," respectively) to collect on a guaranty Ansell alleged to have been made by ProLogics as guarantor of the obligations of Medcom-MP, a Moscow-based buyer of Ansell's medical goods (hereinafter "Medcom.") *Id.* ¶¶ 3, 8-10. As a member of ProLogics' management board, Mr. Christodoulou executed the guaranty of Medcom's obligations on behalf of ProLogics. *Id.* ¶ 8-10.

The English Court entered a default judgment against ProLogics when it failed to appear in the English Action. *Id.* ¶ 9. Thereafter, however, the English Court set aside the default judgment against ProLogics and allowed it to answer Ansell's claims. *Id.* ¶¶ 9-10. ProLogics' barristers filed a Defence (Answer) in the English Action alleging (on behalf of the company) that although each of ProLogics's two management board members (of which Mr. Christodoulou was one) independently possessed general authority to bind the company, ProLogics' written management agreement required the signatures of **both** management members to guarantee the debts of a third party such as Medcom. *App.* 011-13 at ¶¶ 4-8; *see also SR* 156 (Witness Statement of Paul Christodoulou in the English Action) at ¶ 12. Therefore, ProLogics' barristers argued, Mr. Christodoulou did not individually possess authority to bind the company to the purported Medcom guaranty. *Id.*

In response to this proffered defense by ProLogics in the English Action, Ansell amended its claim to add Mr. Christodoulou as a defendant in his personal capacity alleging Mr. Christodoulou was personally liable for negligent or fraudulent misrepresentation regarding his authority to bind ProLogics to the Medcom guaranty.

App. 002 at ¶¶ 10-12. In adding Mr. Christodoulou as a defendant in the English Action, Ansell made clear its claim against Mr. Christodoulou was an **alternative** claim in light of ProLogics' newly asserted defense. *Id.* ¶¶ 12-13. Ansell's original claim sought damages from ProLogics as Medcom's guarantor. Ansell's amended claim sought damages **alternatively** from Mr. Christodoulou in his personal capacity only in the event its original claim against ProLogics was denied. *App.* 038 (Amended Particulars of Claim to Ansell's Petition for Registration of Foreign Judgment) at ¶ 11D.¹

The English Court granted (in part) Ansell's application to amend its claim to add the alternative personal claim against Mr. Christodoulou but required Ansell to strike Paragraph 11I of its proposed amended claim before serving it on Mr. Christodoulou. *App.* 054 (Amended Order of the English Court) at ¶ 2. Thereafter, the English Court permitted Ansell to serve Mr. Christodoulou with the amended claim form outside its jurisdiction at Mr. Christodoulou's home in Sturgis, South Dakota, "in accordance with the Hague Conventions." *Id.* ¶ 3; *App.* 003 at ¶¶ 14-15; *SR* 132 ¶ 15. The English Court's Amended Order provided Mr. Christodoulou "22 days after service on him of the

¹ Specifically, Ansell claimed "[i]f, and to any extent that, the claim against [ProLogics] is unsuccessful by reason of [ProLogic's] defence (which is denied), [Ansell] seeks damages against [Mr. Christodoulou] as set out below." *Id*.

Amended Claim Form and Amended Particulars of Claim in which to respond[.]" *App*. 055 at ¶ 5.

Ansell failed to comply with the English Court's instructions to strike Paragraph 11I from the amended claim form prior to attempting service. *SR* 148 (Declaration of Michael Edward Ian Young) at ¶ 6. Additionally, instead of having Mr. Christodoulou personally served, Ansell opted to serve Mr. Christodoulou by mail. *App*. 003 at ¶¶ 14-16. Unlike the law in South Dakota and in most American jurisdictions, English law permits service by mail. *App*. 006 at ¶ 14. Even though the provisions of the Hague Service Convention do not affirmatively **authorize** service by mail on United States residents, they do **permit** service by mail if the receiving state has not objected to service by mail and if service by mail is authorized under otherwise-applicable law. *App*. 005 at ¶ 11; *Water Splash, Inc. v. Menon*, 137 S. Ct. 1504, 1513 (2017).²

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² The parties dispute whether English law or United States/South Dakota law is the "otherwise-applicable law" referenced in Water Splash, and there appears to be a split of authority on that question. See, e.g., Shull v. Univ. of Queensland, No. 218CV01781APGPAL, 2018 WL 6834327, at *4 (D. Nev. Dec. 28, 2018) (unreported) ("However, Water Splash held only that the Hague Convention does not prohibit service by mail. It did not hold that the treaty authorizes service by mail. Shull has not provided a memorandum of points and authorities addressing whether service by mail is affirmatively authorized in the Australian jurisdiction where defendants are located." (citation omitted); Wanke v. Invasix Inc., No. 3:19-CV-0692, 2020 WL 2542594, at *7 (M.D. Tenn. May 19, 2020) (noting service by mail was permissible under Water Splash, "to the extent allowed by U.S. law" and analyzing whether the Federal Rules of Civil Procedure allow service by mail (they do not.)); Densys Ltd. v. 3Shape Trios A/S, No. 6-19-CV-00680-ADA, 2020 WL 3001053, at *2 (W.D. Tex. June 4, 2020) (analyzing United States law as the "otherwise-applicable law" from Water Splash. But see Brockmeyer v. May, 383 F.3d 798, 804 (9th Cir. 2004) (holding that authorization for service by mail must come from the "forum in which the suit is filed."). Regardless of this split in authority, it does not actually matter whether the laws of the United States and South Dakota or the laws of England are the "otherwise-applicable law" referenced in Water Splash, because Ansell's attempt to serve Mr. Christodoulou complied with neither.

To ensure its attempted service of Mr. Christodoulou by mail complied with Hague Convention rules on serving a foreign defendant in another country, Ansell sought assistance from the English Court's Foreign Process Section. *App.* 006 at ¶ 16. The Foreign Process Section gave Ansell's barristers a copy of its amended claim form in a sealed envelope "to be taken to the Post Office and posted via a form of registered post whereby the defendant signs for the documents." *Id.* Ansell deposited that envelope in the British Royal Mail, which utilizes a signature and tracking feature. *Id.* The Royal Mail's Track and Trace feature indicated to Ansell that its envelope containing the deficient amended claim form was delivered in Sturgis and signed for on August 30, 2019. *Id.*; *App.* 049-51. However, the proof of delivery did not indicate where Ansell's service package had been delivered or who had signed for it. *Id.*

The evidence is undisputed that Mr. Christodoulou was in Wroclaw, Poland on August 30, 2019 and that his neighbor, Carol Fellner, signed for and received Ansell's service package at her address. *App.* 006 at ¶ 17. When Ms. Fellner eventually delivered Ansell's service package to Mr. Christodoulou, it was some six months after it had been delivered to her home. *Id.* ¶ 18. Mr. Christodoulou never responded to Ansell's new personal claim against him in the English Court, although, as required by his position as a member of ProLogics' management board, he did participate in the English Action by providing witness statements in his capacity as a management member of and on behalf of ProLogics. *App.* 003 at ¶ 19.

When Mr. Christodoulou failed to appear in the English Action, Ansell sought default judgment on its alternative personal claim against Mr. Christodoulou, which the English Court entered on December 9, 2019. *Id.* ¶ 17.

C. The Meade County Action

On February 4, 2020, Ansell petitioned the Circuit Court in Meade County to register its \$2,997,614.53 default judgment in the English Action against Mr. Christodoulou as a foreign judgment. SR 2. Mr. Christodoulou filed a written objection to Ansell's petition arguing, inter alia, that South Dakota should not give full faith and credit to a foreign court's default judgment in an action where he was never served with process. SR 99. Mr. Christodoulou requested a briefing schedule and a hearing before the foreign judgment was domesticated. Id. For reasons unclear and not material to this appeal, the foreign default judgment was registered over Mr. Christodoulou's objection, without a hearing, and without notice to Mr. Christodoulou or his counsel. Thereafter, Ansell attempted to execute on the now-purportedly-domesticated foreign default judgment. SR 99. At that point, Mr. Christodoulou and his counsel became aware the judgment had been registered and that an execution had been issued, whereupon Mr. Christodoulou moved the Circuit Court to vacate the foreign judgment and to stay any further efforts at execution. SR 107; 124. Ansell stipulated to a stay of execution pending the Circuit Court's resolution of his motion to vacate.

On June 29, 2020, Ansell obtained a judgment against ProLogics in the English Action on its primary theory of liability: *i.e.*, that ProLogics was a guarantor of Medcom's obligations and, by implication, that Mr. Christodoulou did, in fact, have authority to bind ProLogics notwithstanding the absence of the signature of ProLogics' second management board member. *App.* 003 at ¶ 21.

On October 6, 2020, the Circuit Court held a hearing on Mr. Christodoulou's motion to vacate the foreign judgment. Following the hearing, both parties submitted proposed findings of fact and conclusions of law. *SR* 305; 317.

On March 29, 2021, the circuit court entered findings of fact and conclusions of law rejecting Mr. Christodoulou's arguments and entered a final order denying his motion to vacate the foreign judgment on May 24, 2021. *SR* 337.

This appeal followed.

ARGUMENT AND AUTHORITY

I. South Dakota's domestication of a default judgment entered by a foreign tribunal in an action where Mr. Christodoulou was never served with process is a radical departure from settled law and a violation of Mr. Christodoulou's constitutional rights to procedural due process.

a. Standard of Review

The question of whether state action violates procedural due process is a constitutional question this Court reviews de novo. *Daily v. City of Sioux Falls*, 2011 S.D. 48, ¶ 11, 802 N.W.2d 905, 910. Likewise, "because the issue of the validity of service of process is a question of law, "we review the trial court's decision de novo, with no deference given to the trial court's legal conclusions." *Yankton Ethanol, Inc. v. Vironment, Inc.*, 1999 SD 42, ¶ 6, 592 N.W.2d 596, 598 (citations omitted).

b. Argument and Authority

If this Court affirms the Circuit Court's refusal to vacate the foreign default judgment against Mr. Christodoulou, it will be the first reported case in South Dakota to recognize and enforce a judgment in this state where it is undisputed the judgment debtor was never personally served with process and there was no attempt by the plaintiff to substantially comply with the relevant statutes governing service. In this case, the Circuit

Court found that Mr. Christodoulou's participation as a witness for ProLogics in the English Action (a function he was obligated to perform in his capacity as a member of that company's management board) was sufficient to give Mr. Christodoulou actual notice of Ansell's new personal claim against him in the absence of legally recognized service of process. *See App.* 003 at ¶ 19. The Circuit Court erred in this regard for two reasons. First, the record is not sufficient to show Mr. Christodoulou had actual notice of Ansell's new personal claim against him.³ Second, even if Mr. Christodoulou had actual notice, actual notice of a pending claim does not satisfy due process requirements in the absence of substantial compliance with a governing service-of-process statute. *R.B.O. v. Priests of Sacred Heart*, 2011 S.D. 86, ¶ 17, 807 N.W.2d 808, 812. Ansell did not even argue to the Circuit Court that it substantially complied with any governing statute, because the facts would not support such an argument.⁴

The only indication in the record that Mr. Christodoulou had actual notice of Ansell's new personal claim against him is the Circuit Court's finding that "Mr. Christodoulou continued to submit witness statements for Pro[L]ogics in defense of the action even after judgment was rendered against him. On March 3, 2020, Mr. Christodoulou provided a third witness statement on behalf of Pro[L]ogics with a caption acknowledging his status as a second defendant." *App.* 003 at ¶ 19. The fact that the English Court, or Ansell's barristers, or ProLogics' barristers captioned a document with Mr. Christodoulou's name is not a sufficient indicator that Mr. Christodoulou had actual notice of the existence and nature of Ansell's new personal claim against him, even if actual notice was sufficient to satisfy the requirements of due process in South Dakota, which it is not. *R.B.O. v. Priests of Sacred Heart*, 2011 S.D. 86, ¶ 17, 807 N.W.2d 808, 812. Further, the form of Ansell's process and its noncompliance with the English Court's order to strike Paragraph 11I was not capable of providing Mr. Christodoulou accurate notice of the claims against him even if he had been served.

⁴ In the absence of some indication that one's neighbor has been designated a registered agent of a person or business entity as authorized by applicable law, delivering notice of a foreign lawsuit to a would-be defendant's neighbor is presumably not valid service in any jurisdiction, but it certainly is not in the United States or in South Dakota.

Even though Mr. Christodoulou was never served with process, the Circuit Court erroneously determined that if Mr. Christodoulou sought to avoid any potential that the English default judgment might be domesticated in South Dakota at some point in the future, he was required to voluntarily make a personal appearance in the English Action and endeavor to vacate the default judgment across an ocean in a country where he does not live, where he owns no assets, and where he has never even visited, except perhaps as a tourist. App. 006-07 at ¶¶ 19-22. The Circuit Court did not cite any authority to support this proposition, and none exists. The Circuit Court found that Mr. Christodoulou had "a duty to take legal steps to protect his interests" despite Ansell's total failure to serve him with accurate process. App. 007 at ¶ 23. Assuming, arguendo, that submitting a witness statement on behalf of ProLogics on a document with a caption indicating his status as a defendant if enough to give Mr. Christodoulou actual notice of the nature and extent of the personal claims against him, there is simply no authority for this finding in South Dakota. No person has a duty to respond to a hypothetical lawsuit (whether domestic or foreign) until and unless process is served in accordance with applicable law. See S.D. Const. art. VI, § 2; U.S. Const. amend. XIV; R.B.O, 2011 S.D. 86, ¶ 17, 807 N.W.2d at 812. Domesticating a foreign default where it is undisputed that service of process never occurred is a radical departure from settled law and a violation of Mr. Christodoulou's due process rights.

Due process requires notice. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them

an opportunity to present their objections."); *Nw. S. Dakota Prod. Credit Ass'n v. Dale*, 361 N.W.2d 275, 278 (S.D. 1985) (citing *Boddie v. Connecticut*, 401 U.S. 371 (1971)). "[W]hen notice is a person's due, process which is a mere gesture is not due process." *Mullane*, 339 U.S. at 314. A would-be defendant has no obligation to respond to a lawsuit, nor does a court possess authority to exercise power over a would-be defendant until and unless proper service of process is made on that defendant. *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999); *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987); *Mississippi Publishing Corp. v. Murphree*, 326 U.S. 438, 444-45 (1946); *R.B.O.*, 2011 S.D. 86, ¶ 17, 807 N.W.2d at 812.5

In South Dakota, an action at law is commenced by serving process on a defendant. SDCL § 15-2-30. "Service of process serves two important functions: first, to

⁵ See also Keiling v. McIntire, 408 N.E.2d 565, 566 (Ind. Ct. App. 1980) ("Where a default has been taken against a person who has not been served with process and who thus has no notice of the institution of the action against him, such person is entitled to have the judgment set aside."); Taul v. Wright, 45 Tex. 388, 390 (1876) ("A judgment by default against a person who has not been served with process, or waived it, or filed an answer in the cause, is void."); Tay v. Hawley, 39 Cal. 93, 96 (1870) ("[W]e are utterly unable to see how a judgment that is to be enforced against the interest in such property of a person who has not been served with process, and has not appeared in the action, can be maintained."); Tokio Marine & Fire Ins. Corp. v. W. Pac. Roofing Corp., 75 Cal. App. 4th 110, 121, 89 Cal. Rptr. 2d 1, 8 (1999); Ferguson's Adm'r v. Teel, 82 Va. 690, 696 (1886) ("It is true that a judgment against a person who has not been served with notice is a void judgment, and is ex vi termini, a nullity."); Garry v. Torress, No. 320CV00197MMDWGC, 2021 WL 1015824, at *2 (D. Nev. Jan. 28, 2021) ("A complaint cannot be served on an unnamed person, and a case cannot proceed against a person who has not been served with a complaint."); Rae v. All American Life & Cas. Co., 95 Nev. 920, 922, 605 P.2d 196, 197 (1979) (holding that an individual named as a co-defendant is not a party unless he or she has been served); Oparaji v. Duran, 18 A.D.3d 725, 725, 795 N.Y.S.2d 341, 342 (2005) ("The Supreme Court properly granted the defendants' motion to vacate the order dated October 3, 2003. Because Cosme was never served with process, he did not default in appearing."); Allbritton v. Stahlman, 683 So. 2d 536, 537 (Fla. Dist. Ct. App. 1996) ("Because she was never served with process and did not otherwise submit to the jurisdiction of the court, the final judgment is void for lack of jurisdiction.")

advise that a legal proceeding has been commenced, and, second, to warn those affected to appear and respond to the claim." R.B.O., 2011 S.D. 86, ¶ 9, 807 N.W.2d at 810. "Proper service of process is no mere technicality: that parties be notified of proceedings against them affecting their legal interests is a vital corollary to due process and the right to be heard." Id.

In South Dakota, even actual notice of a pending claim is not enough to give a court personal jurisdiction over a would-be defendant. *Id.*, ¶ 17, 807 N.W.2d at 812. "Under South Dakota law, in circumstances where it is possible for a plaintiff to serve process on a defendant personally, only strict compliance with the service of process statute will suffice." *Sommervold v. Wal-Mart, Inc.*, 709 F.3d 1234, 1237 (8th Cir. 2013) (citing *R.B.O.*, 2011 S.D. 86, 807 N.W.2d at 808). Ansell was certainly capable of dispatching a process server to Mr. Christodoulou's Sturgis home to personally serve him with the amended personal claim in the English Action. In fact, Ansell did just that **in this very action**. *SR* 337. Why did Ansell not make the same effort in the English Action? If it had, its process server would have found Mr. Christodoulou at home just weeks before Ansell's unsuccessful attempt to serve Mr. Christodoulou by mail. *SR* 118 (Affidavit of Paul Christodoulou in Support of Motion to Vacate Default Judgment) at ¶ 15.

Just as notice (through service of process conforming with the requirements of the law) is required for a court in South Dakota to acquire personal jurisdiction over (and thus enter a judgment against) a party, notice is also required before South Dakota will recognize a foreign judgment and permit it to be enforced in South Dakota. To-wit, SDCL 15-16-44 provides:

An out-of-country foreign judgment need not be recognized and entitled to full faith and credit in the State of South Dakota, unless there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, **after due citation**⁶ **or voluntary appearance of the defendant**, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of the State of South Dakota should not allow it full effect.

Courts and legal scholars have generally agreed that lack of notice to a nonresident defendant in a foreign action is a reason for refusing to recognize a foreign judgment. *See*, *e.g.*, Ruth Bader Ginsburg, RECOGNITION AND ENFORCEMENT OF FOREIGN CIVIL JUDGMENTS: A SUMMARY VIEW OF THE SITUATION IN THE UNITED STATES, 4 Intl Law 720, 727 (1970) ("Recognition may not be granted, consistent with due-process fundamentals, if the defendant did not receive notice of the proceedings abroad in sufficient time to enable him to defend.") *Id.* (citing *Paramythiotis' Estate*, 15 Misc.2d 133, 181 N.Y.S. 2d 590 (Sur. Ct. 1958)); Bishop & Burnette, United States Practice Concerning the Recognition of Foreign Judgments, 16 Intl Law 425, 437 (1982); Note, Foreign Nation Judgments: Recognition and Enforcement of Foreign Judgments in Florida and the Status of Florida Judgments Abroad, 31 U Fla L Rev 588, 615 (1979); 9 *Am. Jur. Proof of Facts* 3d 687.

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⁶ A "citation" is "a court-issued writ that commands a person to appear at a certain time and place to do something demanded in the writ, or to show cause for not doing." CITATION, *Black's Law Dictionary* (11th ed. 2019).

⁷ The express language of SDCL 15-16-44 appears to include lack of notice as a *discretionary* ground for nonrecognition. However, consistent with the requirements of due process, case law from other jurisdictions shows a refusal to recognize foreign judgments where the defendant did not receive actual or proper notice of the foreign action. 9 *Am. Jur. Proof of Facts* 3d 687 (citing Note, FOREIGN NATION JUDGMENTS:

Ansell's failure to serve Mr. Christodoulou in the English Action is fatal to its efforts to register and enforce its default judgment in South Dakota. It is undisputed that Mr. Christodoulou was never personally served with process of the English Action. Instead of sending a process server or otherwise attempting to substantially comply with statutes governing service of process, Ansell mailed important legal documents to Mr. Christodoulou's vacant home where they sat—unopened and disregarded in the home of a neighbor—for at least six months while Mr. Christodoulou was in Poland tending to the needs of a son with cerebral palsy as he worked to arrange an experimental surgery for him in the United States. App. 006 at ¶18; SR 119 at ¶¶ 15-19. Thereafter, Ansell proceeded in the English Action as if Mr. Christodoulou had been served by mail, but Ansell apparently never bothered to check. Sending mail to Mr. Christodoulou's vacant home was not valid service in any jurisdiction and certainly not in South Dakota, which would not even recognize service by mail as lawful service even if Mr. Christodoulou had been home when Ansell's mail was delivered and had signed for it himself. SDCL § 15-6-4(d)(8). Whether service by mail on a resident of South Dakota constitutes proper service under the Hague Convention for the purposes of English law is debatable (see Note 2, supra,) but it does not matter in this case. Mr. Christodoulou did not receive the mail. He was not home. He was not in the country. Ansell may as well have thrown its service package directly into the bin. Depositing important legal documents in the

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RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN FLORIDA AND THE STATUS OF FLORIDA JUDGMENTS ABROAD, 31 U Fla L Rev 588, 615 (1979)). Because the due process clauses of the United States Constitution and the South Dakota Constitution require notice before the government takes action to deprive a person of a protected property interest, the South Dakota Legislature cannot abrogate that constitutional requirement with purportedly-permissive statutory language.

mailbox of a vacant home is not valid service. It is meaningless and wholly ineffectual.

Ansell's entire attempt at service (lackadaisical as it was) is a nullity in the eyes of the law.

Even if Ansell had served Mr. Christodoulou, the process itself was deficient in that it did not comply with the English Court's instructions and thus could not adequately provide Mr. Christodoulou with notice of the nature of the claim against him. For service of process to be valid, **service** must be accomplished in a manner permitted by law, but the form of **process** must also be sufficient. SDCL § 15-6-12(b). In this case, the amended claim form Ansell attempted but failed to serve did not to comply with the English Court's instructions and included a claim against Mr. Christodoulou the English Court ordered stricken from that pleading. App. 055 at ¶ 5; SR 148 (Declaration of Michael Edward Ian Young) at ¶ 6. The person against whom a foreign judgment is to be recognized is entitled to "due citation." SDCL § 15-16-44. Even if Mr. Christodoulou had been served in accordance with any law (applicable or otherwise), the form of Ansell's process failed to comply with the English Court's Order and therefore failed to adequately advise Mr. Christodoulou of the nature of the English Action and the claims purportedly pending against him in that tribunal. Accordingly, it is not entitled to recognition in South Dakota even if it had been served.

Ansell's failure to personally serve Mr. Christodoulou with due notice of the English Action renders the English judgment unenforceable in South Dakota for lack of service and insufficiency of process. Mr. Christodoulou is entitled to "due process of law," and using the instrumentalities of South Dakota's courts to enforce a foreign judgment from an overseas tribunal in an action where he was never served would violate

those principles. *See S.D. Const.* art. VI, § 2; *U.S. Const.* amend. XIV; *SDCL* §§ 15-16-44; 15-16-45.

II. If Ansell's failure to serve Mr. Christodoulou with notice of the English Action in the form required by the English Court does not in and of itself preclude South Dakota's recognition of that foreign judgment, the Circuit Court abused its discretion in refusing to vacate the foreign judgment for other reasons.

a. Standard of Review

It appears this Court has not had occasion to identify the standard of review when a foreign judgment is challenged under SDCL sections 15-16-44 and 15-16-45. *See also Kwongyuen Hangkee Co., Ltd. v. Starr Fireworks, Inc.*, 2001 S.D. 113, 634 N.W.2d 95. Because the statutes set forth discretionary factors for the Circuit Court to consider, it could be argued the appropriate standard of review would be "abuse of discretion." *See Wald, Inc. v. Stanley*, 2005 S.D. 112, ¶ 8, 706 N.W.2d 626, 628 ("When a court's authority to act rests upon a clear legislative grant of power, we review the decision under the abuse of discretion standard" (internal quotation omitted). However, statutes cannot abrogate constitutional due process requirements. Accordingly, Mr. Christodoulou submits that the appropriate standard of review for this question is de novo. Regardless, even if the standard of review is abuse of discretion, "[a]n abuse of discretion can simply be an error of law[.]" *Sjomeling v. Stuber*, 2000 S.D. 103, ¶ 11, 615 N.W.2d 613, 616 (citation omitted).

b. Argument and Authority

The grounds for recognizing foreign judgments are codified in SDCL sections 15-16-44 and 15-16-45. SDCL 15-16-44 is set forth in its entirety, *supra*. SDCL 15-16-45 provides:

In deciding whether to enforce and recognize an out-of-country foreign judgment, the court shall consider the following factors when deciding whether to enforce and recognize a out-of-country foreign judgment, to wit:

- 1) The foreign court actually had jurisdiction over both the subject matter and the parties;
- 2) The judgment was not obtained fraudulently;
- 3) The judgment was rendered by a system of law reasonably assuring the requisites of an impartial administration of justice which includes due notice and a hearing;
- 4) The judgment did not contravene the public policy of the jurisdiction in which it is relied upon; and
- 5) The jurisdiction issuing the order or judgment also grants comity to orders and judgments of South Dakota courts.

In addition to the fact that Mr. Christodoulou was never served in the English Action, the Circuit Court should have refused to recognize the foreign judgment for two additional and independent reasons.

i. First, the record in this action is not sufficient for the Court to determine whether the English Court had personal jurisdiction over Mr. Christodoulou.

It appears the English Court's purported personal jurisdiction over Mr.

Christodoulou was premised on the fact that Mr. Christodoulou was served in accordance with English law and thus (arguably)⁸ in accordance the Hague Convention when there is now undisputed evidence in this record that he was not.

A foreign tribunal's lack of personal jurisdiction is sufficient reason to refuse to give full faith and credit to that court's judgment. *SDCL* § 15-16-45(1). The party asserting personal jurisdiction has the burden of establishing a prima facie case; the burden does not shift to the party challenging jurisdiction. *Burke v. Roughrider, Inc.*, 2007 DSD 20, ¶ 4, 507 F. Supp. 2d 1040, 1042 (D.S.D. 2007). Ansell represented to the

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⁸ Mr. Christodoulou denies that English law is the "otherwise-applicable law" referenced by the United States Supreme Court in *Water Splash*. *See* Note 2, *supra*.

English Court that Mr. Christodoulou had been served in accordance with applicable law, which, presumably, was a prerequisite to that Court's exercise of personal jurisdiction over him. There is no indication in the record as to whether Ansell's barristers, having subsequently learned that its original attempt at service failed, had any obligation to inform the English Court of that fact. Certainly, Ansell would have had such an obligation to a South Dakota tribunal. *See* SD ST RPC APP CH 16-18 Rule 3.3. But, regardless, the question in this case is not whether the English judgment is enforceable in England (it almost certainly is not.)⁹ Instead, the question in this case is whether the English judgment is entitled to full faith and credit in South Dakota. For the reasons and on the authority cited herein, it is clearly not. *SDCL* §§ 15-16-44; 15-16-45; *S.D. Const.* art. VI, § 2; *U.S. Const.* amend. V.

ii. The manner in which Ansell brought its claim against Mr.
Christodoulou in the English Action bars its enforcement in South Dakota.

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⁹ Mr. Christodoulou and his undersigned legal counsel confess they do not conclusively know the answer to this question because neither are trained in English civil procedure. However, it seems, at best, highly unlikely the English Court ever acquired personal jurisdiction over Mr. Christodoulou in the absence of his being personally served in accordance with the Hague Convention and the English Court's instructions. The English Action concerned a dispute over a debt between two Russian entities. A partnership registered in the United Kingdom purportedly guaranteed that debt. The guaranty and the underlying contract were negotiated in Russia, signed in Russia, and performed in Russia. SR 121 ¶¶ 43-44. ProLogics maintained an office in Russia. Id. ¶¶ 41-42. While the English Court may have had personal jurisdiction over a partnership registered in that country, Mr. Christodoulou was not a resident of the United Kingdom, did not maintain an office in that country, never personally conducted business in that country, never stepped foot in the United Kingdom except perhaps as a tourist, and was never served in accordance with English Law or the English Court's instructions. Id. ¶¶ 44-46. The fact that the English Court may have had personal jurisdiction over ProLogics does not give it personal jurisdiction over a foreign national who happens to be a principal of that company in the absence of personal service.

Even if Mr. Christodoulou could not prove that service of process and the form of process were each deficient, this Court can refuse to recognize a foreign judgment if Mr. Christodoulou can show "prejudice in the court or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of the State of South Dakota should not allow it full effect." *SDCL* § 15-16-44. Mr. Christodoulou can easily make such a showing.

In the English Action, in its amended claim adding Mr. Christodoulou as a defendant in its lawsuit against ProLogics, Ansell asserted an alternative claim against Mr. Christodoulou. App. 038 at ¶ 11D; App. 002 at ¶¶ 12-13. Ansell obtained a default judgment against Mr. Christodoulou on that claim. Subsequently, Ansell obtained an on-the-merits judgment against ProLogics. App. 003 at ¶ 21. In its amended claim against Mr. Christodoulou personally, Ansell pursued Mr. Christodoulou only "[i]f, and to any extent that, the claim against [ProLogics] is unsuccessful by reason of [ProLogics'] defence[.]" App. 038 at ¶ 11D. But, Ansell was successful in its action against **ProLogics!** App. 002 at ¶¶ 12-13. By obtaining an on-the-merits judgment against ProLogics on its primary theory of liability, Ansell successfully established that the guaranty signed by Mr. Christodoulou was binding on ProLogics. Ansell's alternative personal claim against Mr. Christodoulou was only alleged in the event ProLogic's defense that Mr. Christodoulou had no authority to bind the company was successful, which it was not. App. 038 at ¶ 11D. Ansell's default judgment against Mr. Christodoulou necessarily holds that Mr. Christodoulou misrepresented his capacity and **did not** have authority to bind ProLogics. However, Ansell's subsequent, on-the-merits judgment against ProLogics necessary holds that Mr. Christodoulou did not misrepresent

his capacity and **did** have authority to bind ProLogics. Ansell cannot have it both ways. It cannot secure a default judgment against Mr. Christodoulou on an alternate theory of liability and then obtain a separate, on-the-merits judgment against ProLogics on its primary theory of liability. It is a clever litigation strategy to be sure, but it does not pass the smell test. Ansell is either attempting to conjure into existence Mr. Christodoulou's personal guarantee where none was bargained for, or to bootstrap a joint and several judgment in the English Court where none was issued. Ansell's default judgment against Mr. Christodoulou and its subsequent on-the-merits judgment against ProLogics are conflicting and entirely legally irreconcilable based on the express language of Ansell's own pleading. Accordingly, South Dakota should not recognize a foreign default judgment of such dubious provenance even if Mr. Christodoulou had been served with process as required by law. *SDCL* § 15-16-44.

CONCLUSION

Instead of having Mr. Christodoulou personally served with notice of its personal claims against him in the English Action, Ansell attempted to serve Mr. Christodoulou by mail. Thereafter, Ansell made no effort to determine whether its mailed process was delivered to the correct person or even the correct house, which it was not. Despite its lack of diligence in this regard (and likely because of it), Ansell managed to obtain a \$3 million-dollar foreign default judgment that is not even consistent with its own pleading. Accordingly, Mr. Christodoulou now bears the burden of posting an impossible-to-obtain supersedeas bond on a judgment purportedly earning nearly \$820 worth of interest each day.

A Russian business entity should not be able to enforce and levy upon a \$3 million-dollar foreign default judgment against a United States citizen by sending Royal Mail to a vacant home. That is what occurred in this case. Ansell's sole, halfhearted attempt to serve Mr. Christodoulou by mail did not satisfy the requirements for lawful service under South Dakota statutes or under the Due Process Clauses of the United States or South Dakota Constitutions. Therefore, its default judgment is not entitled to recognition by South Dakota courts. Even if the English Court did acquire personal jurisdiction over Mr. Christodoulou when Ansell mailed important legal documents to his vacant home, such does not satisfy the due process requirements in the United States.

Further, Ansell obtained its judgments in such a way that permitted it to secure a default judgment against Mr. Christodoulou on an alternative theory of liability and a subsequent conflicting and legally irreconcilable on-the-merits judgment against ProLogics on its primary theory of liability, which suggests (at least in this instance) such judgments were rendered by a system of law not reasonably assuring the requisites of an impartial administration of justice.

Accordingly, this Court should vacate the Order of the Circuit Court and remand with instruction to grant Mr. Christodoulou's motion to vacate the judgment.

Dated this 9th day of July, 2021.

Respectfully submitted,

NELSON LAW

/s/ Eric T. Davis
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Attorney for Appellant

REQUEST FOR ORAL ARGUMENT

Counsel respectfully requests the privilege of oral argument in this case.

CERTIFICATE OF COMPLIANCE

Pursuant to SDCL 15-26A-66(b)(4), the undersigned hereby states that the

foregoing brief is typed in proportionally spaced typeface in Times New Roman 12-point

(and occasionally 13-point) font. This brief is twenty-one pages in length, not including

the Appendix. The word processor used to prepare this brief indicates there are 7,837

words in the body of this brief.

Dated this 9th day of July, 2021.

NELSON LAW

/s/ Eric Davis
Eric Davis

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served two true and correct copies of Appellant's Brief upon the persons herein next designated, all on the date shown, by mailing such copies in the United States Mail, first-class postage prepaid, in envelopes

addressed to said addresses; to wit:

Supreme Court of South Dakota Office of the Clerk 500 East Capitol Avenue Pierre, SD 57501

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The undersigned further certifies that he served a true and correct copy of Appellant's Brief upon the persons herein next designated, all on the date shown, by emailing said copies to said addresses; to wit:

Mr. Richard C. Landon Lathrop GPM LLO 500 IDS Center 80 South 8th Street Minneapolis, MN 55402 richard.landon@lathropgpm.com Mr. Robert J. Breit Breit & Boomsma, P.C. 606 E Tan Tara Cir. Sioux Falls, SD 57108 robert@breitlawpc.com

Dated this 9th day of July, 2021.

NELSON LAW

/s/ Eric Davis
Eric Davis

APPENDIX

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STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
COUNTY OF MEADE) SS)	FOURTH JUDICIAL CIRCUIT
ANSELL RUS, a Limited Lia Company,	bility	
Plaintiff,		46CIV20-000054
v.		FINDINGS OF FACT AND CONCLUSIONS OF LAW
PAVLOS ANDREAS		FILED
CHRISTODOULOU,		MAR 2 9 2021
Defendant.		SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM 4TH CIRCUIT CLERK OF COURT

On October 6, 2020, a hearing was held on Defendant's Motion to Vacate Foreign Judgment and Motion to Stay Execution before the Honorable Kevin J. Krull. The Plaintiff, Ansell RUS, LLC appeared telephonically by and through its Attorney, Richard Landon of Lathrop GPM, LLP. The Defendant, Pavlos Andreas Christodoulou appeared by and through his attorney, Eric Davis of Nelson Law. The Court, having reviewed the record and filings herein, having heard the arguments of counsel, and being fully informed in the premises, now enters its Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

- 1. The Plaintiff, Ansell RUS, LLC ("Ansell") is a business entity registered under the Russian Federation that is engaged in the sale of medical goods.
- 2. The Defendant is Paul A. Christodoulou, a citizen of the United States of America and a resident of Sturgis, Meade County, South Dakota.
- 3. Ansell's claim against Mr. Christodoulou arises out of litigation between Ansell and ProLogics UK, LLP, which is a limited liability partnership organized in

- the United Kingdom that operates out of Russia and Poland. The case in England involved the non-payment of a guarantee.
- 4. Mr. Christodoulou was either served by publication or voluntarily appeared in the present action.
- 5. On February 4, 2020, Ansell petitioned this Court to register the \$2,997,614.53 English default judgment against Mr. Christodoulou as a foreign judgment.
- 6. Mr. Christodoulou filed an objection to Ansell's Petition for Registration of Foreign Judgment, arguing that Ansell's Petition should be denied.
- 7. On February 24, 2020, this Court filed an Amended Notice of Filing Foreign Judgment upon Ansell's petition for the recognition and enforcement of a December 9, 2019 default judgment against Mr. Christodoulou that was entered in the Circuit Commercial Court of England and Wales, claim number E40BM056.
- 8. After Prologics failed to pay money owed under a guarantee to Ansell, Ansell filed a claim against the company in the Commercial Court of England and Wales for breach of contract.
- 9. Mr. Christodoulou is a general manager of Prologics who is responsible for both the financial and legal matters of the company. Because Prologics did not timely respond to that claim, a default judgment was initially entered against it, but Mr. Christodoulou engaged solicitors to have the default judgment set aside.
- 10. Prologic's defense was that, although Mr. Christodoulou signed the guarantee on behalf of Prologics, he did not have authority to do so on his own by virtue of a previously unseen LLP agreement that voided the guarantee.
- 11. In response to Mr. Christodoulou's defense, Ansell amended its claim, naming Mr. Christodoulou as a second defendant.
- 12. Ansell's claim against Mr. Christodoulou alleges that, if Mr. Christodoulou did not have authority to sign the guarantee on behalf of Prologics, he fraudulently or negligently misrepresented his authority to act on behalf of the company to induce Ansell into entering into the contract.
- 13. Ansell's claim against Mr. Christodoulou in the English action is an alternative claim. Ansell sought damages from ProLogics as Medcom's guarantor and alternatively from Mr. Christodoulou personally as damages for Mr.

- Christodoulou's alleged "negligent misstatement or fraudulent or negligent misrepresentation.
- 14. Ansell sought and received permission from the English court to serve Mr. Christodoulou pursuant to the Hague Convention at his home at 7746 Wild Turkey Drive Sturgis, South Dakota.
- 15. To ensure compliance with the Hague Convention, Ansell processed its request through the Foreign Process Section, which prepared a sealed package with the claim papers to be mailed.
- 16. The Royal Mail service that was used provided for tracking and signature upon receipt, and the packaged was signed by Mr. Christodoulou's neighbor on August 30, 2019. Ansell filed its proof of service papers with the English court.
- 17.Mr. Christodoulou did not respond to or engage as a defendant in England after receiving service of the claim against him. Although Mr. Christodoulou chose not to be represented in court, he was repeatedly provided notice of the proceedings from Ansell's lawyers. As a result of Mr. Christodoulou's non-engagement, Ansell sought default against him, which was entered on December 9, 2019.
- 18.Mr. Christodoulou now represents that he was travelling outside of South Dakota for much of 2019 and was residing in Poland after August 13, 2019. Mr. Christodoulou's neighbor in Sturgis, South Dakota, Carol Fellner, signed for the mail on August 30, 2019 that was delivered to Mr. Christodoulou's home. She delivered the mail to him when he returned home in December.
- 19.Mr. Christodoulou does not dispute that he was aware of the English proceedings against him while they were pending. Mr. Christodoulou continued to submit witness statements for Prologics in defense of the action even after judgment was rendered against him. On March 3, 2020, Mr. Christodoulou provided a third witness statement on behalf of Prologics with a caption acknowledging his status as a second defendant. This document stated that he was responsible for the legal matters of Prologics.
- 20. On May 15, 2020, counsel for Mr. Christodoulou filed an appearance with this Court noting an objection to the February 24 judgment against him but no further motion was filed.
- 21. Ansell eventually went to trial against Prologics in June 2020 in England. Ultimately, Prologics was unrepresented by legal counsel. Although judgment was granted against Prologics and in favor of Ansell, Ansell has been unsuccessful in collecting on that judgment in England.

22. On September 1, 2020, Mr. Christodoulou filed a motion with this Court seeking to vacate the February 24, 2020 judgment against him.

CONCLUSION OF LAW

- 1. This Court has jurisdiction over the parties and the subject matter of this dispute.
- 2. Mr. Christodoulou has moved to vacate the foreign judgment entered in this action pursuant to SDCL 15-6-60(b), SDCL 15-16-44, and SDCL 15-16-45.
- 3. SDCL 15-6-60(b) "grants courts ample power to vacate judgments whenever such action is appropriate to accomplish justice. But this power should not be used to relieve those who have made free, calculated and deliberate choices." *In re Ibanez*, 2013 S.D. 45, ¶ 33, 834 N.W.2d 306, 315 (internal quotations and citations omitted).
- 4. A party "remains under a duty to take legal steps to protect his interests." Blare v. Blare, 302 N.W.2d 787, 789 (S.D. 1981) (quoting 3 Barron & Holtzoff, Federal Practice and Procedure 1329).
- 5. SDCL 15-6-60(b) requires that a party make its motion "within a reasonable time."
- 6. Mr. Christodoulou's primary argument in support of the motion to vacate is that the Court should not grant comity to the judgment in England because he was never properly served with notice of the proceedings in England.
- 7. In 2001, the South Dakota Supreme Court analyzed the principles of comity in relation to South Dakota's recognition of the judgments of foreign nations. In 2001, South Dakota had no statutes that addressed the recognition and enforcement of the judgment of a foreign nation in South Dakota's courts, and the South Dakota Supreme Court held that the common law rules of comity were in effect. Kwongyuen Hangkee Co. v. Starr Fireworks, Inc., 2001 S.D. 113, ¶¶ 8–14, 634 N.W.2d 95, 97–98 (2001).
- 8. In 2013, however, the South Dakota Legislature enacted SDCL 15-16-44 and SDCL 15-16-45, which set forth the conditions and criteria to be used by South Dakota courts in determining whether to recognize or not recognize the judgment of a foreign tribunal.
- 9. SDCL 15-16-44 provides:

An out-of-country foreign judgment need not be recognized and entitled to full faith and credit in the State of South Dakota, unless there has been opportunity for a full and fair trial aboard before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of the State of South Dakota should not allow it full effect.

10.SDCL 15-16-45 provides:

In deciding whether to enforce and recognize an out-of-country foreign judgment, the court shall consider the following factors:

- (1) The foreign court actually had jurisdiction over both the subject matter and the parties;
- (2) The judgment was not obtained fraudulently;
- (3) The judgment was rendered by a system of law reasonably assuring the requisites of an impartial administration of justice which includes due notice and a hearing;
- (4) The judgment did not contravene the public policy of the jurisdiction in which it is relied upon; and
- (5) The jurisdiction issuing the order or judgment also grants comity to orders and judgments of South Dakota courts.
- 11. The United States Supreme Court has weighed in on issues of proper service in international disputes. Water Splash Inc. v. Menon, 137 S.Ct. 1504, 197 L.Ed.2d 826 (2017). The Hague Convention permits service by mail but does not explicitly authorize service by mail. According to the Supreme Court, service by mail upon international defendants is only proper if: (1) the receiving state has not objected to service by mail; and (2) service by mail is authorized "under otherwise applicable law." Id. 137 S.Ct. 1504, 1507 (2017).
- 12. There is no dispute in this case that the United States, a member state of the Hague Convention, does not object to service by mail under the treaty.
- 13. The only question raised by Mr. Christodoulou is whether Ansell's service upon him by certified mail is authorized under applicable law. Mr. Christodoulou's arguments focus on South Dakota's Rules of Civil Procedure. However, because the action before this Court was pending in England, the issue before this Court is whether English law, not South Dakota law, authorizes service by mail. See, e.g., Brockmeyer v. May, 383 F.3d 798, 804 (9th Cir. 2004)

(authorization for service by mail must come from the "forum in which the suit is filed"); Water Splash, 137 S.Ct. 1504, 1513 (2017) ("Article 10(a) simply provides that, as long as the receiving state does not object, the Convention does not interfere with...the freedom to serve documents through postal channels.") (Quotations omitted).

- 14. Unlike the law in South Dakota and in most American jurisdictions, English law permits service by mail under various procedural rules. See Civil Procedure Rules (CPR) 6.3(b) (allowing service by mail for domestic suits); CPR 6.37 (providing that specific permission must be sought and granted by the court before a party can serve a claim outside of the jurisdiction of the UK). When service is required for a party outside the jurisdiction of the UK, courts express may "give directions about the method of permitted by the Hague Convention. Water Splash, 137 S.Ct. 1504, 1513 (2017).
- 15. Ansell sought permission to serve a claim upon Mr. Christodoulou in South Dakota pursuant to CPR 6.37, and the court in England specifically granted Ansell authority to do so in accordance with the Hague Convention.
- 16. In line with English process, the amended claim paperwork was filed with the Foreign Process Section of the Royal Courts of Justice—the U.K.'s Central Authority established under the Hague Convention—and the Foreign Process Section provided Ansell with a sealed envelope with the claim form "to be taken to the Post Office and posted via a form of registered post whereby the defendant signs for the documents." (Emphasis added). Ansell sent the claim form to Mr. Christodoulou's residence in Sturgis, South Dakota. However, it was Mr. Christodoulou's neighbor who received and signed for the package on August 30, 2019.
- 17. The evidence is undisputed that Mr. Christodoulou was in Wroclaw, Poland on August 30, 2019, and that his neighbor, Carol Fellner, signed for and received Ansell's service package at her address.
- 18. If Ms. Fellner delivered Ansell's service package to Mr. Christodoulou, it was some six months after it had been delivered.
- 19. Mr. Christodoulou does not dispute that English law authorizes for service by mail, or that Ansell followed the proper procedure to seek and received authorization from the court to serve him by mail. Instead, Mr. Christodoulou argues that service was nevertheless not proper because his neighbor was the person who signed for the Royal Mail package on August 30, 2019. Mr. Christodoulou has not presented this defense to the court in England, either before judgment was entered against him or after, in an effort to have the default judgment set aside.

- 20. While immature to its decision on this matter, this Court finds persuasive that Ansell has presented authority demonstrating that, if Mr. Christodoulou had challenged the sufficiency of process in England, the court would have been within its power to retrospectively validate alternative service if the court concludes that steps already taken by the claimant were sufficient to bring the claim to the attention of the defendant. See CPR 6.15(2) ("[T]he court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service."); Abela & Ors. v. Baadarani, [2013] UKSC 44 (26 June 2013) (UK Supreme Court affirmed lower court's approval of claimant's service of claim on foreign defendant after the fact, even though initial attempts did not strictly comply with foreign service rules).
- 21. In England, just as in South Dakota, a default judgment can be set aside if a party demonstrates that it should not have been entered. Mr. Christodoulou was aware of and invoked those procedures in defense of Prologics in the English courts, but chose not to do so for the judgment entered against him. Until a default judgment is set aside by a court, the default judgment is a valid judgment.
- 22. Mr. Christodoulou does not challenge that the English courts enforce a system of law that reasonably provides for the impartial administration of justice. SDCL 15-16-44; SDCL 15-16-45; Kwongyuen Hangkee Co. v. Starr Fireworks, Inc., 2001 S.D. 113, ¶¶ 8–14, 634 N.W.2d 95, 97–98 (2001). To the extent that Mr. Christodoulou does believe the judgment against him is invalid because of insufficiency of process, his argument could and should be made in England so that the court there can properly enforce its system of justice. To deny comity to the English judgment while it is still a valid judgment in that country would be a denial of Ansell's right to rely on an impartial justice system.
- 23. This conclusion is consistent with the standard this Court must apply to Mr. Christodoulou's motion to vacate. SDCL 15-6-60(b) "should not be used to relieve those who have made free, calculated and deliberate choices." In re Ibanez, 2013 S.D. 45, ¶ 33, 834 N.W.2d 306, 315 (internal quotations and citations omitted). Mr. Christodoulou "remain[ed] under a duty to take legal steps to protect his interests." Blare v. Blare, 302 N.W.2d 787, 789 (S.D. 1981).
- 24.Mr. Christodoulou challenges whether the English courts have personal jurisdiction over Ansell's claim against him but provides no authority in support of this argument. To the contrary, Ansell has demonstrated not only that procedures in England allow for jurisdiction over Mr. Christodoulou under theories of contract and tort. In addition, the Court specifically approved Ansell's claim over Mr. Christodoulou under CPR 6.37, which provided that

"the court will not give permission unless [it is] satisfied that England and Wales is the proper place in which to bring the claim." CPR 6.37(3).

- 25. Finally, Mr. Christodoulou argues that the court should exercise its discretion to not enforce a valid foreign judgment against him because it was based on an alternative claim to Ansell's claim against Prologics itself. However, Mr. Christodoulou has failed to demonstrate that the two judgments are legally inconsistent nor does he demonstrate any specific risk of double recovery. See, e.g., Nw. Pub. Serv. v. Union Carbide Corp., 115 F.Supp.2d 1164, 1169 (D.S.D. 2000) (recognizing independent claims of fraudulent inducement may be based on misrepresentations about contractual obligations).
- 26. Even if the judgments are in tension, this Court recognized and enforced Ansell's judgment against Mr. Christodoulou in February 2020, months before a judgment was rendered against Prologics in England. Mr. Christodoulou had failed to explain why this Court's earlier judgment should be vacated because of a later judgment issued in England.
- 27. Because Mr. Christodoulou has failed to demonstrate under SDCL 15-6-60(b) that this Court's judgment against him should be vacated to accomplish justice, his motion is hereby **DENIED**.

Dated this 27th day of March, 2021.

BY THE COURT:

Circuit Couft Judge

Attest: Adams, Denise Clerk/Deputy



MAR 2 9 2021

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT

STATE OF SOUTH DAKOTA)) ss `	IN CIRCUIT COURT FOURTH JUDICIAL CIRCUIT
COUNTY OF MEADE	,	46CIV20-000054
Ansell RUS Limited Liability (Company,	
vs.		ORDER DENYING DEFENDANT'S MOTION TO VACATE FOREIGN JUDGMENT
Paul A. Christodoulou a/k/a Pavlos Andreas Christodoulo	ou,	
Defendant.		

A hearing was held on Defendant's Motion to Vacate Foreign Judgment on October 6, 2020. The plaintiff, Ansell RUS, LLC appeared telephonically by and through its attorney, Richard Landon of Lathrop GPM, LLP. The Defendant, Paul A. Christodoulou appeared by and through his attorney, Eric Davis of Nelson Law.

The Court, having reviewed the record and filings herein, having heard the arguments of counsel, having considered the applicable law, having considered each party's proposed findings and conclusions, and being otherwise fully informed in the premises, it is hereby

ORDERED that, for the reasons set forth in the Court's Findings of Fact and Conclusions of Law filed March 29, 2021, the Defendant's Motion to Vacate Foreign Judgment is hereby DENIED.

Signed: 5/24/2021 11:39:44 AM

BY THE COURT

Attest: Adams, Denise Clerk/Deputy

The Honorable Vevin Krull Circuit Court Judge

Filed on: 05-25-21 MEADE

County, South Dakota 46CIV20-000054

Ansell RUS, LLC v. Christodoulou 46CIV20-000054

Order Denying Defendant's Motion to Vacate Foreign Judgment

IN THE HIGH COURT OF JUSTICE

Claim No. E90BM128

BUSINESS AND PROPERTY COURTS IN BIRMINGHAM

CIRCUIT COMMERCIAL COURT (QBD)

BETWEEN:-

ANSELL RUS LIMITED LIABILLTY COMPANY

Claimant

and

PROLOGICS (UK) LLP

Defendant

DEFENCE

PARTIES

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- 1. Paragraph 1 of the Particulars of Claim is admitted.
- 2. It is admitted that:
 - The Defendant is incorporated under the laws of England and Wales with the company registration number referred to in Paragraph 2 of the Particulars of Claim.
 - (2) Medcom-MP LLC ("Medcom") is registered as stated in Paragraph 2 of the Particulars of Claim and based in Moscow, Russia and is a buyer of medical goods supplied by the Claimant which are then sold by Medcom into the Russian market.
- Save as aforesaid Paragraph 2 of the Particulars of Claim is denied. In particular, and for the reasons appearing in Paragraphs 4-8 below, the

document relied upon by the Claimant as a guarantee and indemnity by the Defendant for Medcom was not and is not binding upon the Defendant.

THE PURPORTED GUARANTEE

- 4. (1) At all relevant times the Defendant, as a limited liability partnership, and its operations and business were governed by and subject to a Limited Liability Partnership Agreement dated September 30th 2014 ("the LLP Agreement") and made between each of the Members of the Defendant and the Defendant, to which the Defendant will refer at the trial of this action for its full terms and effect.
 - (2) At all relevant times and as referred to in the LLP Agreement, the sole Members of the Defendant (and also the sole Designated Members) were Surpenson Trade Limited and Orwensen Trading Limited ("the LLP Members").
 - (3) At all relevant times and as referred to in the LLP Agreement, the sole members of the Defendant's Management Board were Mr Panagiotis Sofianos ("Mr Sofianos") and Mr Pavlos Andreas Christodoulou ("Mr Christodoulou") referred to in the LLP Agreement as Mr Paul Andrew Christodoulou.
 - (4) Neither Mr Sofianos nor Mr Christodoulou (collectively "Board Members") was at any time a Member of the Defendant ("an LLP Member").
- (1) Clause 3.2 of the LLP Agreement provided that the Defendant would carry
 on its Business and/or such other or additional trade profession or business as
 the Management Board should from time to time determine.
 - (2) Clause 3.2 of the LLP Agreement went on to provide that the Defendant's objects might also include various specified matters. Those mattes included in clause 3.2(V) to provide security for third party debts as recommended by the Management Board.

- (1) Clause 5 of the LLP Agreement contained detailed provisions regulating the Management Board and the activities of the Board Members.
 - (2) Clause 5.2 of the LLP Agreement expressly provided that each of the Board Members had the authority to individually represent the Defendant in all activities listed in clause 3.2 with the express exception that point 3.2(V), being that referred to in the second sentence of Paragraph 5(2) above, required consent of both members of the Management Board, being both of the Board Members.
- 7. (1) The document relied upon in the Particulars of Claim as a guarantee by the Defendant of obligations on the part of Medcom to the Claimant ("the Purported Guarantee") was purportedly executed on behalf of the Defendant by Mr Christodoulou as a Member of Management (and not as an LLP Member).
 - (2) The Purported Guarantee purported to provide security for third party debts, being the debts of Medcom, and accordingly fell within the scope of the express exception referred to in Paragraph 6(2) above.
 - (3) Such execution took place without the consent or even knowledge of Mr Sofianos nor did Mr Christodoulou purport to have the consent of Mr Sofianos to execute the Purported Guarantee.
 - (4) Accordingly the Purported Guarantee was not and is not binding upon the Defendant and the Claimant was not and is not entitled to make any claim against the Defendant thereunder, since execution of the same on behalf of the Defendant did not have the necessary consent of both of the Board Members and was not therefore authorised by the Defendant.
- Section 6 of the Limited Liability Partnerships Act 2000 does not permit the Claimant to allege that Mr Christodoulou had the necessary authority to execute the Purported Guarantee on behalf of the Defendant since that

provision is applicable only to LLP Members and Mr Christodoulou is not and has never been an LLP Member of the Defendant.

THE ALLEGED CONTRACTUAL FRAMEWORK

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- 9. By reason of the matters set out in the second sentence of Paragraph 3 above, it is denied that the facts and matters alleged in Paragraph 3 of the Particulars of Claim are relevant to any valid claim by the Claimant against the Defendant. The matters set out below in relation to Paragraph 3 of the Particulars of Claim are without prejudice to this contention.
- Paragraph 3.1 of the Particulars of Claim is admitted. For the avoidance of doubt, the medical goods the subject of such contract were described in clause
 1.1 as "medical devices medical gloves".
- 11. It is admitted that the document referred to in Paragraph 3.2 of the Particulars of Claim, being the Purported Guarantee, purported to provide as summarised in Paragraph 3.2 of the Particulars of Claim. It is denied that it effectively did so or that it was binding upon the Defendant for the reasons set out above.
- 12. Paragraph 3.3 of the Particulars of Claim is admitted save that the document in question was in fact a letter from the Claimant addressed to Medcom and the Defendant and which was signed on behalf of Medcom and the Defendant as having been received and acknowledged by them.
- 13. The written agreement referred to in Paragraph 3.4 of the Particulars of Claim is admitted save that no admissions are made as to the date upon which it was agreed, no such date of subsequent agreement being specified in Paragraph 3.4 of the Particulars of Claim.
- 14. As to Paragraph 3.5 of the Particulars of Claim, it is denied for the reasons set out above that the Claimant is entitled to rely on the Purported Guarantee as giving any rights to the Claimant against the Defendant.

- Subject to Paragraph 12 above, Paragraphs 4 and 5 of the Particulars of Claim are admitted.
- 16. The first sentence of Paragraph 6 of the Particulars of Claim is denied. What the document provided was that Medcom and the Defendant were invited to accept the terms of the letter by signing the agreement attached as Annex 2.
- The second sentence of Paragraph 6 of the Particulars of Claim is admitted subject to Paragraph 3 above.
- 18. It is admitted that the Agreement dated 2nd February 2018 provided substantially (although not precisely) as set out in Paragraph 7 of the Particulars of Claim. For the avoidance of doubt, it is denied that there was or is any entitlement on the part of the Claimant to pursue the Defendant under the Purported Guarantee.
- 19. It is admitted that the Purported Guarantee provided substantially (although not precisely) as set out in Paragraphs 8-11 of the Particulars of Claim but, for the reasons set out above, it is denied that the Purported Guarantee was or is binding upon the Defendant.

DEFENDANT'S FAILURE TO PAY

- 20. Paragraph 12 of the Particulars of Claim is admitted save that:
 - (I) The payment to be made under paragraph 4 of the stated Conditions merely provided that specified payments were to be made "with a view to" the specified reduction so that it is not admitted that a failure to do so was a breach of such Condition.
 - (2) No sum is presently due or owing pursuant to the Purported Guarantee for the reasons set out above.
- Whilst it is admitted that the Purported Guarantee purported to contain an agreement by the Defendant in the terms referred to in the first sentence of

Paragraph 13 of the Particulars of Claim, it is denied for the reasons set out above that the Defendant can be pursued under the Purported Guarantee, whether as a result of the matters alleged in the second sentence of Paragraph 13 of the Particulars of Claim or otherwise.

- 22. The last two sentences of Paragraph 13 of the Particulars of Claim are admitted save that:
 - (1) The letter of 18th April 2018 did not demand payment as alleged.
 - (2) For the reasons set out above there was and is no sum due or owing under the Purported Guarantee.
- 23. Paragraph 13.1 of the Particulars of Claim is admitted save that it is denied that the Defendant owes the alleged or any sum as guarantor of Medcom or that the Claimant is entitled to pursue the Defendant for any such sum.
- 24. Paragraph 13.2 of the Particulars of Claim does not relate to the Defendant and accordingly the Defendant does not plead to the same.

CLAIM FOR INTEREST

25. Since liability under the Purported Guarantee is denied by the Defendant for the reasons set out above, it follows that any claim for contractual or statutory interest is similarly denied by the Defendant, whether as quantified in Paragraph 14 of the Particulars of Claim or otherwise.

CONCLUSION

26. By reason of the matters set out above it is denied that the Claimant is entitled to the relief claimed against the Defendant or any part of such relief.

EDWARD COHEN

Statement of Truth

The Defendant believes that the facts stated in this Defence are true, I am duly authorised by the Defendant to sign this statement.

Signed:

Smeetesh Kakkad, Principal

Gresham Legal, Central Court, 25 Southampton Buildings, London WC2A 1AL. Ref: SK/PRO0011

N244 AMENDED **Application notice**

For help in completing this form please read the notes for guidance form N244Notes.

Name of court High Court of Just: Queen's Bench Divis Birmingham District Registry Mercantile Court	sion
Fee account no. (if applicable)	Help with Fees – Ref. no. (if applicable)
	HWF-
Warrant no. (if applicable)	
Claimant's name (including Ansell RUS Limited	
Defendant's name (includin Prologics (UK) LLP	g ref.)
Date 29	1- March 2019

	Shakespea	are Martineau LLP		
2.	Are you a	Claimant	Defendant	x Legal Representative
		Other (please specify)		

3. What order are you asking the court to make and why?

An order that in light of the Defence filed Mr Pavlos Andreas Christodoulou be added as a Defendant to proceedings pursuant to CPR 19.4 and Practice Direction 19A paragraph 3.1, and as a result permission for the Claimant to amend the claim form and particulars of claim accordingly (with consequential provision for the existing Defence and Reply). In addition, pursuant to CPR 6.36, 6.37 and CPR PD 6B, para 3.1, the Claimant seeks permission to serve Mr Christodoulou out of the jurisdiction/byemail as may be appropriate, with any resultant pleadings and orders as directed.

The Claimant relies on Grounds 3 and/or 6 and/or 7 and/or 9 as set out at paragraph 3.1 of CPR PD 6B. The facts relied on in relation to each grounds are as follows: Ground 3 - The claim Form has been served on the First Defendant and as a result of the Defence filed and served, the Claimant brings this claim under this Ground as a result of the issue of authority to execute the Guarantee has arisen and gives rise to an alternative claim for negligent misstatement or fraudulent or negligent misrepresentation. It is therefore a real issue which it is reasonable for the court to try in one single set of proceedings, as opposed to two separate claims and the Court possesses jurisdiction as a result, inter alia, of the jurisdiction clause to be found in §22 of the guarantee, dated 1 January 2017.

Ground 6 - This ground is relied on as a result of the contract of guarantee being governed by English law.

Ground 7 - This ground is relied on as a result of the breach of contract of quarantee being committed within the jurisdiction, namely England and Wales. Ground 9 - This ground is relied on as a result of the tort of negligent misstatement

or fraudulent or negligent misrepresentation causing damage to the claimant resulting from an act committed or likely to be committed within the jurisdiction, namely England and Wales.

The Claimant believes that the following grounds exist between the Claimant and the

Second Defendant which gives rise to a real issue which it is reasonable for the court to try: namely, whether, in the event that the Guarantee is held to be invalid as a result of a failure of authority, the Second Defendant misstated or misrepresented his status and authority to sign the Guarantee for and on behalf of the First Defendant. The Claimant believes that the claim has a reasonable prospect of success. The Second Defendant's address is 7746N Wild Turkey Drive, Sturgis, South Dakota, USA. The claim against Mr Christodoulou arises from the following causes of action: deceit and/or fraudulent or negligent misrepresentation/negligent misstatement/economic torts of inducing or procuring a breach of contract/causing loss by unlawful means. In addition, the Claimant will rely at trial on the fact that Mr Christodoulou signed the Prologics (UK) LLP "Report of the Members for Year ended 31 December 2016" as a "Designated Member" on 23 March 2017 and the Balance Sheet as a "Member". 4. Have you attached a draft of the order you are applying for? No without a hearing 5. How do you want to have this application dealt with? at a hearing at a telephone hearing Hours Minutes 6. How long do you think the hearing will last? Is this time estimate agreed by all parties? Yes No 7. Give details of any fixed trial date or period N/A. List with CMC pending 22/3-8. What level of Judge does your hearing need? HHJ Worster 9. Who should be served with this application? Defendant and Mr Christodoulou 9a. Please give the service address, (other than details of the Defendant - c/o Gresham Legal, claimant or defendant) of any party named in question 9. Central Court, 25 Southampton Buildings, London WC2A 1AL. Mr Pavlos Andreas Christodoulou 7746N Wild Turkey Drive, Sturgis, South Dakota, USA. (Claimant's 10. What information will you be relying on, in support of your application? the attached witness statement the statement of case x the evidence set out in the box below If necessary, please continue on a separate sheet. The Defence makes reference to a LLP agreement dated 30 September 2014 not previously disclosed to the Claimant (paragraph 4). Paragraph 7 (4) of the Defence stipulates that the Guarantee upon which the present claim is based is not binding upon the Defendant as execution as carried out by Mr Christodoulou did not have the requisite consent under the aforementioned LLP agreement.

The Claimant remains of the view that the claim as presented follows against the Defendant, Prologics (UK) LLP. The Guarantee was entered into in good faith by the Claimant and duly relied upon, the Defendant taking the benefit of the same. The Claimant believed the Guarantee was signed off with full authority. The Claimant further relied upon the reassurance of the First and Second Agreements (as referenced in the Particulars of Claim).

However, given the contents of the Defence the Claimant believes it is appropriate for Mr Christodoulou to be added to the Claim as a Defendant. In the event the Defendant is successful in its present Defence that in turn raises issue against Mr Christodoulou himself with his sign off of the Guarantee, First and Second Agreements in full knowledge of his LLP Agreement.

The claim against Mr Christodoulou arises from the following causes of action: deseit and/or fraudulent or negligent misrep/negligent misstatement/economic torts of inducing or procuring a breach of contract/causing loss by unlawful means. In addition, the Claimant will rely at trial on the fact that Mr Christodoulou signed the Prologics (UK) LLP "Report of the Members for Year ended 31 December 2016" as a "Designated Member" on 23 March 2017 and the Balance Sheet as a "Member"

The Claimant thus believes that in light of the Defence submitted it is necessary to seek permission to bring Mr Christodoulou into the claim, and in consequence to seek permission to amend the claim form and particulars and then permission to serve the same on the Defendants, including on Mr Christodoulou out of the jurisdiction. The Claimant seeks an order in the attached terms. The Claimant seeks it costs-suggests costs in the case in relation to the amendment, despite the usual course on such applications, as in this instance the addition and amendment sought has been caused purely by the Defence position adopted.

The Claimant relies on Grounds 3 and/or 6 and/or 7 and/or 9 as set out at paragraph 3.1 of CPR PD 6B for permission to serve out of the jurisdiction on Mr Christodoulou. The facts relied on in relation to each grounds are as follows: Ground 3 - The claim Form has been served on the First Defendant and as a result of the Defence filed and served, the Claimant brings this claim under this Ground as a result of the issue of authority to execute the Guarantee has arisen and gives rise to an alternative claim for negligent misstatement or fraudulent or negligent misrepresentation. It is therefore a real issue which it is reasonable for the court to try in one single set of proceedings, as opposed to two separate claims and the Court possesses jurisdiction as a result, inter alia, of the jurisdiction clause to be found in \$22 of the guarantee, dated 1 January 2017.

Ground 6 - This ground is relied on as a result of the contract of guarantee being governed by English law.

Ground 7 - This ground is relied on as a result of the breach of contract of guarantee being committed within the jurisdiction, namely England and Wales.

Ground 9 - This ground is relied on as a result of the tort of negligent misstatement or fraudulent or negligent misrepresentation causing damage to the claimant resulting from an act committed or likely to be committed within the jurisdiction, namely England and Wales.

The Claimant believes that the following grounds exist between the Claimant and the Second Defendant which gives rise to a real issue which it is reasonable for the court to try: namely, whether, in the event that the Guarantee is held to be invalid as a result of a failure of authority, the Second Defendant misstated or misrepresented his status and authority to sign the Guarantee for and on behalf of the First Defendant.

The Claimant believes that the claim has a reasonable prospect of success.

The Second Defendant's address is 7746N Wild Turkey Drive, Sturgis, South Dakota, USA.

The claim against Mr Christodoulou arises from the following causes of action: deceit and/or fraudulent or negligent misrepresentation/negligent misstatement.

The grounds for the Claimant's belief and its source of information is the Defence put by the Defendant in the existing claim.

which include the Contract, Guaran Reply).	ts to this applaim form and par	weight against the making of the loation are appended to the same, ticulars of claim (with exhibits Second Agreements and Defence and
In addition, the Claimant will rely the Prologics (UK) LLP "Report of t "Designated Member" on 23 March 2017	the Members for	Year ended 31 December 2016" as a
Statement of Truth		
(t-believe) (The applicant believes) that the facts	stated in this section (and any continuation sheets) are true.
Signed M. SHAKBSPEAK	OF MARTINEAU	P Dated 1/3/19, 29/3/19
Applicant('s legal representative)('s lit	igation friend)	MIL.
Full name MICHAEL E.I. YOUNET, SE	MESPEARE W	MARTINEAU LLP.
Name of applicant's legal representative's firm &		
and the second s		
Position or office held Saucitor. (if signing on behalf of firm or company)		
(il signing on behalf of little of company)		
Signature and address details		
Signature and address details	2	1 . 20/2/14
Signed M. LL - SMAKES ABARE	MARTINEAN LIPDA	ted 1/3/19 29/3/19
Signature and address details Signed M. M. SIMPLES ABACE Applicant('s legal representative)(2s-litigati	MALTINEAU LLPDa	ted 1/3/19 29/3/19
Signed M. M. STRAKES PEARE Applicant('s legal representative)('s-litigation or office held Sour Trak	MAKTINEAU LLPDa ion friend)	ted +13/19 29/3/19
Signed M. M. STAKES PEARS Applicant('s legal representative)('s-litigati	MALTINEAU LLIDA ion friend)	ted 1/3/19. 29/3/19
Signed M. M. STRAKES PEARE Applicant('s legal representative)('s-litigation or office held Sour Trak	ion friend}	nt
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Signed M. M. SMAKES ABAKE Applicant('s legal representative)('s litigati Position or office held Sour Tok (if signing on behalf of firm or company) blicant's address to which documents about this ap	ion friend}	nt If applicable 0121 237 3000
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Signed M. M. STAKES AFACE Applicant('s legal representative) ('s litigative) Position or office held Sour Tok (if signing on behalf of firm or company) Dicant's address to which documents about this apakespeare Martineau LLP 1 Colmore Square rmingham	pplication should be se Phone no. Fax no. DX no.	ont If applicable 0121 237 3000 0121 237 3054 721090 Birmingham 43

N244

Application notice

For help in completing this form please read the notes for guidance form N244Notes.

Name of court High Court of Jus Business & Proper in Birmingham Circuit Commercia	rty Courts
Fee account no. (if applicable)	Help with Fees - Ref. no. (if applicable)
	H W F - -
Warrant no. (if applicable)	
Claimant's name (includ Ansell RUS Limite	ingref.) ed Liability Company
Defendant's name (inclu Prologics (UK) LI	
Date	29 March 2019
name of your firm?	
manie or your mill?	

1.	Shakespea	are Martineau LLP			
2.	Are you a	Claimant	Defendant	X Legal Representative	
		Other (please specify)			
	If you are a l	egal representative whom do ve	ou represent?	Claimant	

3. What order are you asking the court to make and why?

An order that in light of the Defence filed Mr Pavlos Andreas Christodoulou be added as a Defendant to proceedings pursuant to CPR 19.4 and Practice Direction 19A paragraph 3.1, and as a result of permission for the Claimant to amend the claim form and particulars of claim accordingly (with consequential provision for the existing Defence and Reply). In addition, pursuant to CPR 6.36, 6.37 and CPR PD 6B, para 3.1, the Claimant seeks permission to serve Mr Christodoulou out of the jurisdiction as may be appropriate, with any resultant pleadings and orders as directed.

The Claimant relies on Grounds 3 and/or 6 and/or 7 and/or 9 as set out at paragraph 3.1 of CPR PD 6B. The facts relied on in relation to each grounds are as follows: Ground 3 — The claim Form has been served on the First Defendant and as a result of the Defence filed and served, the Claimant brings this claim under this Ground as a result of the issue of authority to execute the Guarantee has arisen and gives rise to an alternative claim for negligent misstatement or fraudulent or negligent misrepresentation. It is therefore a real issue which it is reasonable for the court to try in one single set of proceedings, as opposed to two separate claims and the Court possesses jurisdiction as a result, inter alia, of the jurisdiction clause to be found in \$22 of the guarantee, dated 1 January 2017.

Ground 6 - This ground is relied on as a result of the contract of guarantee being governed by English law.

Ground 7 - This ground is relied on as a result of the breach of contract of guarantee being committed within the jurisdiction, namely England and Wales.

Ground 9 - This ground is relied on as a result of the tort of negligent misstatement or fraudulent or negligent misrepresentation causing damage to the claimant resulting from an act committed or likely to be committed within the jurisdiction, namely England and Wales.

The Claimant believes that the following grounds exist between the Claimant and the Second Defendant which gives rise to a real issue which it is reasonable for the

court to try: namely, whether, in the event that the Guarantee is held to be invalid as a result of a failure of authority, the Second Defendant misstated or misrepresented his status and authority to sign the Guarantee for and on behalf of the First Defendant. The Claimant believes that the claim has a reasonable prospect of success. The Second Defendant's address is 7746N Wild Turkey Drive, Sturgis, South Dakota, The claim against Mr Christodoulou arises from the following causes of action: deceit and/or fraudulent or negligent misrepresentation/negligent misstatement. In addition, the Claimant will rely at trial on the fact that Mr Christodoulou signed the Prologics (UK) LLP "Report of the Members for Year ended 31 December 2016" as a "Designated Member" on 23 March 2017 and the Balance Sheet as "Member". 4. Have you attached a draft of the order you are applying for? x Yes No 5. How do you want to have this application dealt with? at a hearing x without a hearing at a telephone hearing 6. How long do you think the hearing will last? Hours Minutes Is this time estimate agreed by all parties? Yes 7. Give details of any fixed trial date or period N/A 8. What level of Judge does your hearing need? HHJ Worster 9. Who should be served with this application? Defendant and Mr Christodoulou Defendant - c/o Gresham Legal, Central 9a. Please give the service address, (other than details of the Court, 25 Southampton Buildings, London, claimant or defendant) of any party named in question 9. WC2A 1AL. Mr Pavlos Andreas Christodoulou 7746N Wild Turkey Drive, Sturgis, South Dakota, USA. 10. What information will you be relying on, in support of your application? the attached witness statement the statement of case the evidence set out in the box below If necessary, please continue on a separate sheet. The Defence makes reference to a LLP agreement dated 30 September 2014 not previously disclosed to the Claimant (paragraph 4). Paragraph 7(4) of the Defence stipulates that the Guarantee upon which the present claim is based is not binding upon the Defendant as execution as carried out by Mr Christodoulou did not have the requisite consent under the aforementioned LLP The Claimant remains of the view that the claim as presented follows against the Defendant, Prologics (UK) LLP. The Guarantee was entered into in good faith by the Claimant and duly relied upon, the Defendant taking the benefit of the same. The Claimant believed the guarantee was signed off with full authority. The Claimant further relied upon the reassurance of the First and Second Agreements (as referenced in the Particulars of Claim).

However, given the contents of the Defence, the Claimant believes it is appropriate for Mr Christodoulou to be added to the claim as a Defendant. In the event the Defendant is successful in its present Defence that in turn raises issue against Mr Christodoulou himself with his sign off of the Guarantee, First and Second Agreements in full knowledge of his LLP Agreement.

The Claimant thus believes that in light of the Defence submitted it is necessary to seek permission to bring Mr Christodoulou into the claim, and in consequence to seek permission to amend the claim form and particulars and then permission to serve the same on the Defendants, including on Mr Christodoulou out of the jurisdiction. The Claimant seeks an order in the attached terms. The Claimant suggests costs in the case in relation to the amendment, despite the usual course on such applications, as in this instance the addition and amendment sought has been caused purely by the Defence position adopted.

The Claimant relies on Grounds 3 and/or 6 and/or 7 and/or 9 as set out at paragraph 3.1 of CPR PD 6B for permission to serve out of the jurisdiction on Mr Christodoulou. The facts relied on in relation to each grounds are as follows:

Ground 3 - The claim Form has been served on the First Defendant and as a result of the Defence filed and served, the Claimant brings this claim under this Ground as a result of the issue of authority to execute the Guarantee has arisen and gives rise to an alternative claim for negligent misstatement or fraudulent or negligent misrepresentation. It is therefore a real issue which it is reasonable for the court to try in one single set of proceedings, as opposed to two separate claims and the Court possesses jurisdiction as a result, inter alia, of the jurisdiction clause to be found in \$22 of the guarantee, dated 1 January 2017.

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Ground 7 - This ground is relied on as a result of the breach of contract of guarantee being committed within the jurisdiction, namely England and Wales.

Ground 9 - This ground is relied on as a result of the tort of negligent misstatement or fraudulent or negligent misrepresentation causing damage to the claimant resulting from an act committed or likely to be committed within the jurisdiction, namely England and Wales.

The Claimant believes that the following grounds exist between the Claimant and the Second Defendant which gives rise to a real issue which it is reasonable for the court to try: namely, whether, in the event that the Guarantee is held to be invalid as a result of a failure of authority, the Second Defendant misstated or misrepresented his status and authority to sign the Guarantee for and on behalf of the First Defendant.

The Claimant believes that the claim has a reasonable prospect of success.

The Second Defendant's address is 7746N Wild Turkey Drive, Sturgis, South Dakota, USA.

The claim against Mr Christodoulou arises from the following causes of action: deceit and/or fraudulent or negligent misrepresentation/negligent misstatement.

The grounds for the Claimant's belief and its source of information is the Defence put by the Defendant in the existing claim.

The Claimant is not aware of any issues that would weight against the making of the Order sought. The relevant documents to this application are appended to the same, being the draft order, amended claim form and particulars of claim (with exhibits which include the Contract, Guarantee, First and Second Agreements and Defence and Reply).

In addition, the Claimant will rely at trial on the fact that Mr Christodoulou signed the Prologics (UK) LLP "Report of the Members for Year ended 31 December 2016" as a "Designated Member" on 23 March 2017 and the Balance Sheet as "Member".

Statement of Truth		
(The applicant believes) that the fa	acts stated in this section (and any continuation sheets) are true.
Signed M. Y SHAK	mod all mades	ICAL Dated 29/2/19
Applicant('s legal representative)		P, Dated Offishir.
Full name MICHAEL EDWARD IAT	V YOUNG	
	-	- 0000- 100 11.0
Name of applicant's legal representative's fir	m OHMKESKEAKA	E INHKTINEAULLE.
Position or office held SOLICITO	<u>k.</u>	
(if signing on behalf of firm or company) Signature and address details Signed	RE MARTNEAU Da	ted <u>29 13 19.</u>
Signature and address details Signed Applicant('s legal representative) ('s-lit legal) or office held Sour Took if signing on behalf of firm or company) cant's address to which documents about this		nt
Signature and address details Signed Shakes PA Applicant('s legal representative) Falit Position or office held Shact Took if signing on behalf of firm or company) cant's address to which documents about thi kespeare Martineau LLP	s application should be se	nt If applicable
Signature and address details Signed Applicant('s legal representative) ('s-lit legal) or office held Sour Took if signing on behalf of firm or company) cant's address to which documents about this	s application should be se	nt If applicable 0121 214 0000
Signature and address details Signed Applicant('s legal representative) ('s-lit Position or office held Sour Took if signing on behalf of firm or company) cant's address to which documents about this kespeare Martineau LLP 1 Colmore Square	s application should be se	nt If applicable
Signature and address details Signed Applicant('s legal representative) ('s-lit Position or office held Sour Took if signing on behalf of firm or company) cant's address to which documents about this kespeare Martineau LLP 1 Colmore Square	s application should be se	nt If applicable 0121 214 0000

IN THE HIGH COURT OF JUSTICE
IN THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BIRMINGHAM CIRCUIT COMMERCIAL COURT (QBD)
BEFORE HHJ WORSTER SITTING AS A HIGH COURT JUDGE
B E T W E E N:

ANSELL RUS LIMITED LIABILITY COMPANY

Claimant

-and-

PROLOGICS (UK) LLP

Defendant

[DRAFT] ORDER

UPON the Court having heard from Counsel for the Claimant and Counsel for the Defendant on 22 March 2019

AND UPON READING the amended application of the Claimant, dated 29 March 2019 and the written evidence filed

AND UPON the Court being satisfied that the provisions of CPR 6.36, 6.37 and paragraph 3.1 of CPR Practice Direction 6B have been met.

IT IS ORDERED

1. Mr Pavlos Andreas Christodoulou to be added as a Second Defendant.

- 2. The Claimant has permission to file and serve the Amended Claim Form and Amended Particulars of Claim on the First Defendant and Mr Pavlos Andreas Christodoulou at 7746N Wild Turkey Drive, Sturgis, South Dakota, USA, as the Second Defendant, in accordance with the drafts served with its amended application dated 29 March 2019. This is in consequence of paragraph 1 above.
- 3. By 4pm on 26 April 2019 the Claimant shall file and serve its Amended Claim Form and Amended Particulars of Claim with a copy of this Order. Permission is granted to personally, and by first class post, serve Mr Pavlos Andreas Christodoulou out of the jurisdiction at 7746N Wild Turkey Drive, Sturgis, South Dakota, USA (being an address used by Mr Christodoulou on a witness statement by him in the course of these proceedings).
- By 4pm on 10 May 2019 the First Defendant shall file and serve their amended Defence, if so advised.
- 5. The Second Defendant has 22 days after service on him of the Amended Particulars of Claim in which to respond by either:
 - (a) filing an Acknowledgment of Service;
 - (b) filing or serving an Admission; or
 - (c) filing a Defence.
 - And, where an acknowledgment of service is filed, the Second Defendant has a further 14 days in which to file his Defence.
- By 4pm on 14 days after receiving the Second Defendant's Defence or the
 First Defendant's amended Defence, whichever is the later, the Claimant shall
 file and serve its Amended Reply, if so advised.

- 7. For the avoidance of doubt any requirement on the parties to deal with Initial Disclosure requirements under Practice Direction 51U is dispensed with so as to coincide with the fact this was not a requirement when the original pleadings were submitted.
- 8. The costs of and occasioned by the amendments above are to be in the case.



AMENDED Claim Form

You may be able to issue your claim online which may save time and money. Go to www.moneyclaim.gov.uk to find out more.

In the High Court of Justice Queen's Bench Division Birmingham District Registry		
Fee Account no.		
Help with Fees - Ref no. (if applicable)	HWF	

For court use only E 9 Claim no. Issue date 1.2 JUN 2018

Claimant(s) name(s) and address(es) including postcode Ansell RUS Limited Liability Company Krasnopresnenskaya emb. 12, Moscow 123610 RUSSIA



Defendant(s) name and address(es) including postcode

Prologics (UK) LLP (1) 12 Gateway Mews Bounds Green London N11 20T

MR PAYLOS ANDREAS EHRISTODOULGIU THEN WILD TURKEY DRIVE, STURGE, SOUTH BAKOTA, USA.

Brief details of claim

Monies owed by Medcom-MP LLC to the Claimant that have not been paid as required, the Paral the Defendant is now pursued for the same in its role as guarantor and indemnifier of Medcom-MP LLC.

> in the alternative the First Defendant and for the Second Defendant are present for redigent misstatement / franchitent or no misrepresentation in relaction to the Second Defendent is quarantee dated 2 January 2017. Value

£2,186,858.77 plus interest calculated at £509.27 per day, interest totalling £3,055.62 from the final demand date of 1 June 2018.

You must indicate your preferred County Court Hearing Centre for hearings here (see notes for guidance) High Court of Justice, Birmingham.

Defendant's name and address for service including postcode

Prologics (UK) LLP (1) 12 Gateway Mews

Bounds Green London

N11 2UT

Amount claimed 2,189,914.39 Court fee 10,000.00 Legal representative's costs TBC Total amount |2, 199, 914.39

Mr Pavios Andreas Christocloulon (2) 1746 N wild Turking Differ, Sturgis, South Daketa, USA

For further details of the courts www.gov.uk/find-court-tribunal, When corresponding with the Court, please address forms or letters to the Mahager and always <u>quote</u> the claim number

N1 Claim form (CPR Part 7) (06.16)

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Laserform International 6/10

	Claím No.			
Does, or will, your claim include any issues under the Human R	lights Act 1998?	☐ Yes	[X] No	
Particulars of Claim (attached)(to-follow)-				

Statement of Truth	
*(Hbelieve)(The Claimant believes) that the facts s	stated in these particulars of claim are true.
* I am duly authorised by the claimant to sign this s	statement.
Full name MICHAEL E. 1. COUNCY,	
Name of claimant's legal representative's firm Sh	akespeare Martineau LLP
signed M. W. SHAKESPEARE MAKIN	UMbosition or office held SOLICITOR (if signing on behalf of firm or company)

Shakespeare Martineau LLP

No 1 Colmore Square Birmingham B4 6AA

DX 721090 Birmingham 43 0121 237 3011

Claimant's or claimant's legal representative's address to which documents or payments should be sent if different from overleaf including (if appropriate) details of DX, fax or e-mail.

IN THE HIGH COURT OF JUSTICE

IN THE BUSINESS AND PROPERTY COURTS IN BIRMINGHAM

CIRCUIT COMMERCIAL COURT (QBD)

BETWEEN:

ANSELL RUS LIMITED LIABILITY COMPANY

Claimant

-and-

PROLOGICS (UK) LLP

First Defendant

-and-

MR PAVLOS ANDREAS CHRISTODOULOU

Second Defendant

AMENDED PARTICULARS OF CLAIM

Parties

- The Claimant is and was at all material times a seller of medical goods, registered under the Russian Federation main state registration number 1117746682349.
- The <u>First</u> Defendant, which is incorporated under the laws of England and Wales with company registration number OC314997, is and was at all material

times the guarantor and indemnifier for Medcom-MP LLC ("Medcom"), registered under the Russian Federation main state registration number 1027725002920, a buyer of medical goods from the Claimant, based in Moscow, Russia.

- 2A. The Second Defendant has declared that he is a Management Board Member of the First Defendant, pursuant to a Limited Liability Partnership Agreement, dated 30 September 2014. It is said that he undertakes most of the general management responsibilities for the First Defendant, including finance and legal matters.
- 2B. The Second Defendant has declared that he is a beneficial owner of a Cypriot trust, Pershing Trust (along with his mother and sister), which owns Robel Assets Inc, which is the owner of Orwensen Trading Limited, who is said to have been at all material times the joint Member and Designated Member (along with Surpenson Trade Limited) of the First Defendant. Orwensen Trading Limited and Surpenson Trade Limited wholly own the First Defendant.

The contractual framework

- 3. The Claimant avers that the following facts and matters are relevant:
 - 3.1 By a contract in writing marked "No.1701", dated 1 January 2017 ("the Contract"), the Claimant agreed with Medcom it would sell and supply medical goods to it. In particular, clause 3.6 declared that: "[Medcom] shall ensure that [the Defendant] enter into a suretyship agreement with [the Claimant] for the total amount of the Credit Limit in order to cover

- the payment of any amount due by [Medcom] to the [Claimant] ("the Guarantee")"
- 3.2 A Deed of Guarantee and Indemnity, dated 1 January 2017 ("the Guarantee"), detailed and obliged the <u>First</u> Defendant to stand as guarantor and as an indemnifier for Medcom under the Contract.
- 3.3 Further, on 31 January 2018 ,the Claimant, Medcom and the First Defendant recorded in a further signed written agreement ("the First Agreement") the present debt position and further the terms under which further orders were to progress.
- 3.4 In addition, a further written agreement of 2 February 2018 was subsequently agreed as "Annex 2" to the First Agreement so as to record certain generic terms as agreed by the parties ("the Second Agreement").
- 3.5 The Claimant will rely on the Contract, Guarantee and the First and the Second Agreements at trial for their full terms, meaning and effect.
 Copies of the documents are exhibited hereto as Exhibits 1-3 respectively.

The Claimant avers that:

- 4.1 The First Agreement recorded that, as at 16 January 2018, the total overdue from Medcom to the Claimant under the Contract was RUB 184,896,244.00 (defined therein as the "Overdue").
- 4.2 This sum was broken down by specific invoices within Annex 1 of the Agreement.

- 4.3 There is a handwritten note recording that a credit has been requested in relation to invoice 5000293. That was for RUB 2,542,936.00 giving rise to an amount owing at 16 January 2018 (as agreed by the Claimant, Medcom and the <u>First</u> Defendant as signatories to the Agreement) of RUB 182,353,308.00.
- 5. The First Agreement declared that "Ansell will no longer accept any orders from Medcom except under the following conditions ("the Conditions"):
 - 5.1 for Micro-Touch Coated and Micro-Touch Ultra Ansell product orders

 ("A Orders"): 30% of the A Order value must be paid to and received by

 Ansell prior to production of the A Order and the balance (70%) must

 be paid to and received by Ansell, five calendar days before the

 planned delivery of the A Order at Kotka, Finland;
 - 5.2 for all other Ansell product orders ("B Orders"): 10% of the B Order value must be paid to and received by Ansell prior to production of the B Order and the balance (90%) must be paid and received by Ansell, five calendar days before the planned delivery of the B Order at Kotka, Finland;
 - 5.3 for all product orders (ie. A Orders and B Orders combined): an additional 20% of the relevant order value must be paid to and received by Ansell, five calendar days before the planned delivery of the A Order and/or B Order at Kotka, Finland:
 - 5.4 it being understood that the payments made under 1-3 above ("120% Amount") will be exclusively credited towards the Overdue with a view

to clear the Overdue in full latest by 31 August 2018 either by applying the said 120% Amount to the Overdue or, should that not be sufficient to clear the Overdue in full, by making additional lump sum payments in May 2018 (of at least RUB 11.6M or such other amount so that the Overdue is at least reduced to RUB 131M) and another one in August 2018, if necessary, to reduce the balance of the Overdue to zero; and

- 5.5 payment of the new A Orders and/or B Orders will continue to be payable within 75 calendar days from the date of the shipment confirmed by a consignment note TORG-12, as per the Contract, it being understood that late payments on these orders will be exceptionally accepted until 31 August 2018 following which date all newly created overdue will be paid in three equal lump sum payments in October, November and December 2018 so that on orders prior to such date no overdue exists on 31 December 2018; and,
- 5.6 once the conditions under 1-4 have been satisfied in full, and the overdue referred to in 5 above does not exceed RUB 12M, any orders accepted by Ansell after 1 October 2018 will no longer be subject to conditions 1-3 above provided always the lump sum payments, if any, referred to in 5 above, are made."
- 6. The First Agreement specifically recorded that the First Defendant and Medcom accepted the terms [and conditions therein] by their signature to the Agreement. It further recorded "In the absence of signature by both Medcom and Prologics, Ansell will have no option but to immediately suspend all pending orders and exercise its rights under the Guarantee without prejudice to its rights under the

Contract. Such course will also follow if after signature of this letter, Medcom breaches the Conditions, at any point."

- 7. The Second Agreement repeated and reiterated that:
 - 7.1 Medcom and the <u>First</u> Defendant had independently accepted the amount detailed as due in the First Agreement (see paragraph 1.1), and;
 - 7.2 Further, that they could be pursued under the Contract, Guarantee or Agreements as the Claimant saw fit for any breach of the Conditions (see paragraph 1.3), and;
 - 7.3 Further the parties agreed that the English Courts would have exclusive jurisdiction to settle any dispute arising out of or in connection with the Agreement.
- 8. For completeness, the Guarantee declared that:
 - 8.1 The First Defendant guaranteed to the Claimant that whenever Medcom owed monies or debts were owed to the Claimant pursuant to the Contract, and provided Medcom had not made payment when falling due, the First Defendant would make due and punctual payment to the Claimant on demand of such monies (see paragraph 1 of the Guarantee).
 - 8.2 The First Defendant further agreed to indemnify and keep indemnified the Claimant in full and on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Claimant (see paragraph 2 of the Guarantee).

- Paragraph 5 of the Guarantee further provided that the Claimant, before
 enforcement of the Guarantee, was not obliged to take steps to obtain a
 judgment or to make a claim against Medcom.
- 10. Paragraph 7 of the Guarantee declared that "The Guarantor [the First Defendant] shall pay interest to Ansell after as well as before judgment at the annual rate of 8% above base rate of the Bank of England from time to time on all sums demanded under this guarantee agreement".
- Paragraph 22 of the Guarantee detailed that the parties agreed to submit to the jurisdiction of England and Wales in relation to the Guarantee.

The alternative claim against the Second Defendant

11A. In its Defence, the First Defendant relies on the contents of the Limited Liability

Partnership Agreement, dated 30 September 2014, In particular, clauses 5.2

and 3.2(V).

11B. It is averred by the First Defendant that:

- (i) The Guarantee was "purportedly executed on behalf of the [First]

 Defendant by Mr Christodoulou [the Second Defendant] as a

 Member of Management (and not as an LLP Member)" (sic).

 (paragraph 7(1))
- (ii) Such execution took place "without the consent or even knowledge of Mr Sofianos nor did Mr Christodoulou purport to have the consent of Mr Sofianos to execute the purported Guarantee." (paragraph 7(3))

- (iii) "Accordingly, the Purported Guarantee was not and is not binding upon the Defendant and the Claimant was not and is not entitled to make any claim against the [First] Defendant thereunder, since execution of the same on behalf of the Defendant did not have the necessary consent of both of the Board Members and was not therefore authorised by the [First] Defendant." (paragraph 7(4))
- (iv) "Whilst it is admitted that the Purported Guarantee purported to contain an agreement by the [First] Defendant in the terms referred to in the first sentence of Paragraph 13 of the Particulars of Claim, it is denied for the reasons set out above that the [First] Defendant can be pursued under the Purported Guarantee, whether as alleged in the second sentence of Paragraph 13 of the Particulars of Claim or otherwise." (paragraph 21).
- 11C. The Claimant has set out its case in response to the Defence, in its Reply, which it repeats mutatis mutandis (both now shown at Exhibit 6). In particular, the following facts and matters are relied on:
 - (i) The Claimant avers that, on 23 March 2017, the Second

 Defendant signed the First Defendant's "Report of the Members

 for Year Ended 31 December 2016" as a "Designated Member",

 affixed with the company seal of the First Defendant.
 - (ii) Further, on or about 23 March 2017, the Second Defendant signed the First Defendant's "Balance Sheet 31 December 2016" as a "Member" of Orwensen Trading Limited, affixed with the company seal of Orwensen Trading Limited.

- (iii) It is averred that the Second Defendant was a Designated

 Member of the First Defendant and/or a "Member" of Orwensen

 Trading Limited when he signed the Guarantee, dated 1 January

 2017.
- (iv) Further, the Second Agreement, at clause 3, contains a warranty of authority, which was signed by the Second Defendant, on 2.2,2018, expressly as a "Member of the LLP – On behalf of Prologics with common seal".
- (v) In the premises, it is denied that the Guarantee was "purportedly executed on behalf of the Second Defendant as a Member of Management (and not as an LLP Member)".
- (vi) Further, the Second Defendant deliberately used the wording of
 "Member of Management", being reckless as to its accuracy,
 which was apt to and intended to mislead the Claimant into
 proceeding to continue to trade with Medcom, despite the late
 payments.
- (vii) In the premises, the Second Defendant ought to have expressly signed the Deed of Guarantee as a "Designated Member" and/or as a "Member" of Orwensen Trading Limited.
- 11D. If, and to any extent that, the claim against the First Defendant is unsuccessful by reason of the First Defendant's Defence (which is denied), the Claimant seeks damages against the Second Defendant, as set out below.
- 11E. The Claimant avers that by executing the Guarantee, the Second Defendant assumed a responsibility to the Claimant whereupon a duty of care arose or alternatively it is fair, just and reasonable for such a duty of care to be imposed.

- 11F. Alternatively, the Second Defendant executed the Guarantee in circumstances where he knew or ought to have known that he was not permitted by the terms of the Limited Liability Agreement to do so without the consent or knowledge of Mr Sofianos.
- 11G. The Second Defendant thereby negligently misstated his status and role within the First Defendant and his authority to act within the confines of the Limited Liability Agreement and/or was reckless or negligent by acting without authority or failing to notify the Claimant as to the significance of his role when signing the Guarantee as a "Member of Management" and/or his purporting to execute the Guarantee as a deed on behalf of the First Defendant, so as to induce the Claimant to act upon his representation.

PARTICULARS

- (i) On 23 March 2017, the Second Defendant signed the First Defendant's

 "Report of the Members for Year Ended 31 December 2016" as a

 "Designated Member", affixed with the company seal of the First

 Defendant.
- (ii) Further, on or about 23 March 2017, the Second Defendant signed the First Defendant's "Balance Sheet 31 December 2016" as a "Member" of Orwensen Trading Limited, affixed with the company seal of Orwensen Trading Limited.
- (iii) It is averred that the Second Defendant was a Designated Member of the

 First Defendant and/or a "Member" of Orwensen Trading Limited when he
 signed the Guarantee, dated 1 January 2017.

- (iv) Further, the Second Agreement, at clause 3, contains a warranty of authority, which was signed by the Second Defendant, on 2.2.2018, expressly as a "Member of the LLP On behalf of Prologics with common seal".
- (v) In the premises, it is denied that the Guarantee was "purportedly executed on behalf of the Second Defendant as a Member of Management (and not as an LLP Member)".
- (vi) Further, the Second Defendant deliberately used the wording of "Member of Management", being reckless or negligent as to its accuracy, which was apt to and intended to ultimately mislead the Claimant into proceeding on a false basis so as to continue to trade with Medcom, despite the late payments.
- (vii) In the premises, the Second Defendant ought to have expressly signed the Deed of Guarantee as a "Designated Member" and/or as a "Member" of Orwensen Trading Limited.
- (viii) The Claimant avers that the Second Defendant made a false representation to the Claimant, in circumstances where the Second Defendant was reckless or negligent as to whether it was true or false, intending that the Claimant should act in reliance on it.
- 11H. The Claimant relied on the Second Defendant's misstatements and fraudulent or negligent misrepresentations by acting to its detriment in continuing to contract with Medcom without any actionable Guarantee in force, and, in consequence, has suffered loss.
- 111. In the premises, the Claimant seeks damages which correspond to the losses claimed under the Guarantee against the First Defendant, as a result of being

vicariously liable for the actionable misstatements and misrepresentations of the Second Defendant, either by reason of the aforesaid fraudulent misrepresentation or via section 2(1) of the Misrepresentation Act 1967.

Alternatively, if the Second Defendant is held to have acted outside the scope of his authority, such that his employer or principal is not vicariously liable, against the Second Defendant for the loss and damage he has caused to the Claimant.

The First Defendant's failure to pay

- 12. In breach of the Agreement, Medcom has failed to pay RUB 182,353,308.00 or any part of that sum. As per paragraph 4 of the Conditions set out above the "Overdue" figure should have been reduced by May 2018 to RUB 131M. Medcom is in breach of that Condition by virtue of its non-payment. Thus a figure of RUB 182,353,308.00 is presently due and owing pursuant to the Guarantee, as a result of breach of the Agreement. Requests for payment to both Medcom and the First Defendant have been made and are shown at Exhibit 4.
- 13. As per paragraphs 7 and 8 above, the First Defendant, who agreed to make due and punctual payment to the Claimant on demand of the Guaranteed Obligations (defined as any monies or debts owing to the Claimant pursuant to the Agreement) can be pursued under the Guarantee. This is as a result of the breach of the Conditions of the Agreement by Medcom, by virtue of the breach of the Agreement and the presence of the Guarantee. Payment has been

demanded under paragraph 1 of the Guarantee, by a letter of demand dated 18th April 2018 and further 1st June 2018 (copies of which are exhibited hereto as Exhibit 5) but payment has not been forthcoming and remains due and owing. For the avoidance of any doubt, the <u>First</u> Defendant has failed to make payment of the sum demanded, or any sum.

PARTICULARS OF LOSS

- 13.1 The First Defendant or alternatively the Second Defendant owes the sum of RUB 182,353,308.00. It has been demanded but not paid. By its right under the Agreement and Guarantee the First Defendant is pursued for this sum as Medcom's guarantor. The sum of RUB 182,353,308.00 amounts to £2,186,858.77 as at 6 June 2018.
- 13.2 The Claimant reserves the right to pursue Medcom directly as it may see fit and to take steps for permission to incorporate/join such claim with the present one if appropriate for costs and proportionality reasons.
- 13.3 Alternatively, the Claimant seeks the sum of sum of RUB

 182,353,308.00 as damages for negligent misstatement or fraudulent or

 negligent misrepresentation, pursuant to s.2(1) of the Misrepresentation

 Act 1967.

Claim for interest

14. Further, the Claimant claims contractual interest on the sum unpaid at the rate of 8% above base rate of the Bank of England from time to time on all sums demanded under the Guarantee, as per Paragraph 7 of the Guarantee amounting to £3,055.62 from 1 June 2018 and continuing at the rate of £509.27 per day until judgment or earlier payment, or alternatively the statutory interest under section 35A of the Senior Courts Act 1981.

AND THE CLAIMANT CLAIMS:

- (1) The sum of £2,186,858.77 or alternatively damages.
- (2) Interest as set out at paragraph 14 above.
- (3) Further or other relief.
- (4) Costs.

ANDREW MAGUIRE

OUTER TEMPLE CHAMBERS

Served this 6th day of June 2018 by Shakespeare Martineau LLP, solicitors for the Claimant.

ANDREW MAGUIRE

Amended this [] day of March 2019

STATEMENT OF TRUTH

The Claimant believes that the facts stated in these Amended Particulars of Claim are true. I am duly authorised by the Claimant to sign this statement.

Full name	Position or office
	held
Signed	(If signing on behalf of firm, company or
	corporation)

Claim No. E40BM056

IN THE HIGH COURT OF JUSTICE
IN THE BUSINESS AND PROPERTY
COURTS IN BIRMINGHAM
CIRCUIT COMMERCIAL COURT (QBD)

BETWEEN:

ANSELL RUS LIMITED LIABILITY COMPANY

Claimant

- and -

PROLOGICS (UK) LLP

First Defendant

-and-

MR PAVLOS ANDREAS CHRISTODOULOU

Second Defendant

AMENDED PARTICULARS OF CLAIM

Shakespeare Martineau LLP No1 Colmore Square Birmingham **B4 6AA** Ref: 1112538.1.MY

Solicitors for the Claimant

EXHIBIT 4

MEI Young Claimant Fourth MEIY4 26 November 2019

Claim No. E40BM056

IN THE HIGH COURT OF JUSTICE
IN THE BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
CIRCUIT COMMERCIAL COURT (QBD)
BEFORE HIS HONOUR JUDGE WORSTER SITTING AS A HIGH COURT JUDGE

BETWEEN:

ANSELL RUS LIMITED LIABILITY COMPANY

Claimant

-and-

PROLOGICS (UK) LLP (1) PAVLOS ANDREAS CHRISTODOULOU (2)

Defendants

Ex	L	L	:4	84	VA
	ш	IIJ	ш	IVI	Y4

* SHAKESPEAREMARTINEAU

This matter is being dealt with by Michael Young

No 1 Colmore Square Birmingham B4 6AA DX 721090 Birmingham 43 T +44 (0)121 214 0000

Clerk to HHJ Worster Birmingham Civil Justice Centre DX 701987 Birmingham 7

Our ref: B.1.1112538.1.MY.

10 September 2019

Dear Sirs

Ansell RUS Limited Liability Company v Prologics (UK) LLP (1) Mr Pavlos Andreas Christodoulou (2) Claim Number: E40BM056

The Second Defendant has been served with the Amended Claim Form, Amended Particulars of Claim, Amended Response Pack and Amended Order of 25 June 2019. The Foreign Process Section guidance requires the screen printout of the Royal Mail proof of delivery under signed for postage, this is enclosed along with a certificate of service for the Court file. We have also filed these with the FPS as appropriate.

Martinean LLP.

Yours faithfully

Shakespeare Martineau

Direct Line: +44 (0)121 631 5206 Direct Fax: +44 (0)121 237 3054 E: michael.young@shma.co.uk

Copy to First Defendant's solicitors







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04:13pm

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Saturday 24 August

08:49pm

Item Received

ISC CHICAGO IL (USPS), United States of America

Saturday 24 August

04:28am

Item Leaving the UK

LANGLEY HWDC

Friday 23 August

05:22am

Item Received by Royal Mail

LANGLEY HWDC

Thursday 22 August

07:21pm

Item Despatched to Heathrow Worldwide Distribution Centre

Birmingham Mail Centre

Thursday 22 August

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Birmingham Mail Centre

Thursday 22 August

03:02pm

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Birmingham Post Office [B2 4AA]

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Certificate of service	Name of court High Court of Justice, Queen's Bench Division, Birmingham District Registry, Mercantile Court Foreign Process (foreign service on Second Defendant via Queen's Bench Division, Foreign Process Section, Royal Courts of Justice)		
On what day did 2 2 7 0 8 7 2 0 1 9 you serve?	Name of Claimant Ansell RUS Limited Liability Company		
The date of service 3 0 / 0 8 / 2 0 1 9	Name of Defendant Prologics (UK) LLP (1) Mr Pavlos Andreas Christodoulou (2)		
Please attach copies of the documents you have not already filed with the court. Hague Conventi Amended Calm Pack, Amended	e containing bundle approved for foreign service under the on by the FPS, containing: Form, Amended Particulars of Claim, Amended Response Order of 25 June 2019. endant (Mr Pavlos Andreas Christodoulou)		
How did you serve the documents? (please tick the appropriate box) [] by first class post or other service which provides for delivery on the next business day [] by delivering to or leaving at a permitted place [] by personally handing it to or leaving it with [Give the address where service effected, include fax or DX number, e-mail address or other electronic identification 7746N Wild Turkey Drive Sturgis South Dakota United States		
стапт тотту риваза времуу	Being the [] claimant's [x] defendant's [] solicitor's [] litigation friend		
I by other means permitted by the court (please specify) Service carried out via the Foreign Process Section, a sealed bundle being posted to be tracked and signed for, in line with the Amended Order of 25 June 2019 and FPS guidance.	[] usual residence [x] last known residence [] place of business [] principal place of business [] last known place of business [] last known principal place of business [] last known principal place of business		
By Document Exchange by fax machine (time sent, where document is other than a claim form) (you may went to enclose a copy of the transmission sheet)	 [] principal office of the partnership [] principal office of the corporation [] principal office of the company [] place of business of the partnership/company/corporation within the jurisdiction with a connection 		
] by other electronic means (time sent, where document is other than a claim form) (please specify)	to claim () other (please specify)		

N215 Certificate of service (09.11) This form is reproduced from http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do and is subject to Crown copyright protection. Contains public sector information licensed under the Open Government Licence v2.0

ficate are true.	
Position or office SOLICITOR	,
	or
	or) (Is litigation friend) or office held (If signing on behalf of firm

Rules relating to the service of documents are contained in Part 6 of the Civil Procedure Rules (www.justice.gov.uk) and you should refer to the rules for information.

Calculation of deemed day of service of a claim

A claim form served within the UK in accordance with Part 6 of the Civil Procedure rules is deemed to be served on the second business day after the claimant has completed the steps required by CPR 7.5(1).

Calculation of the deemed day of service of documents other than the claim form (CPR 6.26)

Method of service	Deemed day of service
First class post or other service which provides for delivery on the next business day	The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day
Document exchange	The second day after it was left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day
Delivering the document to or leaving it at a permitted address	If it is delivered to or left at the permitted address on a business day before 4.30pm, on that day; or in any other case, on the next business day after that day
Fax	If the transmission of the fax is completed on a business day before 4.30pm, on that day; or in any other case, on the next business day after the day on which it was transmitted
Other electronic method	If the email or other electronic transmission is sent on a business day before 4.30pm, on that day; or in any other case, on the next business day after the day on which it was sent
Personal service	If the document is served personally before 4.30pm on a business day, it is served on that day; or in any other case, on the next business day after that day

In this context 'business day' means any day except Saturday, Sunday or a bank holiday; (under the Banking and Financial Dealings Act 1971 in the part of the UK where service is to take place) includes Good Friday and Christmas Day.

Claim No. E40BM056

IN THE HIGH COURT OF JUSTICE
IN THE BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
BIRMINGHAM CIRCUIT COMMERCIAL COURT (CBD)
BEFORE HIJ WORSTER SITTING AS A HIGH COURT JUDGE
BE TWEEN:

ANSELL RUS LIMITED LIABILITY COMPANY

Claimant

and

PROLOGICS (UK) LLP

Defendant

ORDER

UPON hearing Mr Gohen Counsel for the Claimant and Counsel Mr Maguire for the Defendant on 22 March 2019

AND UPON READING the amended application of the Claimant, dated 29 March 2019, the written representations of the Detendant of 29th March 2019 and the Claimant's reply of 5th April 2019

AND UPON the Court being satisfied that the provisions of CPR 6,36, 6,37 and paragraph 3.1 of CPR Practice Direction 6B have been met, and giving written reasons

IT IS ORDERED THAT:

- 1. Mr Pavlos Andréas Christodoulou be added as a Second Defendant.
- 2. The Claimant has permission to file and serve the Amended Claim Form and Amended Particulars of Claim on the First Defendant and Mr Pavlos Andreas Christodoulou at 7746N Wild Turkey Drive, Sturgis, South Dakota, USA, as the Second Defendant, in accordance with the drafts with its amended application dated 29 March 2019, with the deletion of paragraph 111 of the Amended Particulars of Claim.
- 9. Permission is granted to serve Mr Pavlos Andreas Christoticulou out of the jurisdiction at 7746N Wild Turkey Drive, Sturgis, South Dakota, USA in accordance with the Hague Conventions.

- The First Defendant shall file and serve an amended Defence, (If so advised) within 14 days of service of the Amended Particulars of Claim.
- The Second Defendant has 22 days after service on him of the Amended Claim Form and Amended Particulars of Claim in which to respond by either;
 - (a) filling an Acknowledgment of Service;
 - (b) filling or serving an Admission; or
 - (c) filing a Defence,

And, where an acknowledgment of service is filed; the Second Defendant has a further 14 days in which to file his Defence.

- By 4pm on 14 days after receiving the Second Defendant's Defence or the First Defendant's amended Defence, whichever is the later, the Claimant shall file and serve its Amended Reply, if so advised.
- Äny requirement on the parties to deal with initial Disclosure requirements under Practice Direction
 it dispensed with.
- 8. The First Defendants costs of and occasioned by the amendments above are to be paid by the Glatiment in any event.

Guidance for solicitors

Article 14 (EU) & Article 10(a) (The Hague)

First step

A member of staff will email you an undertaking and a blank covering letter.

Foreign Process requirements:

- N224 form
- Cover letter addressed to the RCJ foreign process office with contact details and overview of request
- Undertaking
- EU / Hague Covering letter addressed to the defendant (To be emailed back to the Foreign Process Section)
- *Translation of the covering letter and translator's certificate (*only if translations are required)
- Original set of documents for service, *translations and translators certificate (*if required)

If Serving a Claim form

- N510 or Order with permission to serve outside of Jurisdiction
- Amended Response Pack

EU / Hague Covering letter addressed to defendant.

Complete the name and address of the defendant

List the documents you are enclosing

(You will note there are bullet point <u>examples</u> of what is to be enclosed, which will not necessary relate to your claim. It is your responsibility to ensure you correctly list all your documents)

Email the covering letter back to:

foreignprocess.rcj@hmcts.gsi.gov.uk

The FPS will then copy and paste the contents onto our HMCTS letterhead.

If translations are required then send your covering letter to a translator to have it translated. As well as a translated copy of the covering letter, ensure you receive a certificate of translation from the translator.

Lodge in hard copy

You will lodge with the Foreign Process Section:

- N224 form
- Cover letter addressed to the RCJ
- Completed undertaking
- Original set of documents for service
- *Translation of EU covering letter and translator certificate (*if required)

If Serving a Claim form

- N510 or Order with permission to serve outside of Jurisdiction
- Amended Response Pack

Collection and transmission

Once your documents have been processed, the Foreign Process Section will call you and ask that you collect the documents for onward transmission. The person collecting the documents <u>must</u> be the individual stated in the undertaking.

The documents will be put into a sealed envelope which must not be opened. The documents are to be taken to the Post Office and posted via a form of registered post whereby the defendant signs for the documents. It is your responsibility to ensure that the method of posting complies with Article 14 of the Service Regulation (Reg. (EC) No 1393/2007)

You must state the following as the sender:

Foreign Process Section Room E16 Royal Courts of Justice Strand London WC2A 2LL United Kingdom

Once you have posted the documents you will need to provide the Foreign Process Section with the original receipt and a copy of the receipt should be kept for your records.

Evidence of service

The evidence of service will be your screen printout from the Royal Mail tracking website, (or other postal service used) indicating when the documents have been signed for.

If you have any queries please call the Foreign Process Section on:

020 7947 7772 option 6

or via email:

foreignprocess.rcj@hmcts.gsi.gov.uk

IN THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

Supreme Court Appeal No. 29661

Ansell RUS, LLC,

Plaintiff and Appellee,

v.

Paul A. Christodoulou a/k/a, Pavlos Andreas Christodoulou,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT FOURTH JUDICIAL CIRCUIT MEADE COUNTY, SOUTH DAKOTA

THE HONORABLE KEVIN KRULL CIRCUIT COURT JUDGE

APPELLEE'S BRIEF

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Notice of Appeal filed May 27, 2021

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JURISDICTIONAL STATEMENT

Christodoulou appeals from the Circuit Court's Findings of Fact and Conclusions of Law filed on March 29, 2021 and Order denying his Motion to Vacate Judgment filed on May 24, 2021. Christodoulou filed a Notice of Appeal on May 27, 2021.

STATEMENT OF THE LEGAL ISSUES

1. Whether the default judgment entered against Christodoulou in England should be recognized by South Dakota courts.

<u>Circuit Court's Decision:</u> The Circuit Court denied Christodoulou's Motion to Vacate Judgment and concluded that the foreign judgment is recognizable under South Dakota law.

Most Relevant Legal Authority:

Water Splash Inc. v. Menon, 137 S. Ct. 1504 (2017).

STATEMENT OF THE CASE

This case was heard in the Circuit Court of Meade County by the Honorable Kevin J. Krull. An English Court awarded Ansell a default judgment against Christodoulou. Ansell petitioned the Meade County Circuit Court to register its judgment against Christodoulou and it recognized the judgment. Christodoulou moved to vacate the judgment and the Circuit Court denied his motion.

STATEMENT OF THE FACTS

English Court Action

Ansell filed a lawsuit in the Commercial Court of England and Wales against Prologics (UK) LLP ("Prologics") alleging that it breached its payment obligations under a guarantee. (App.¹ 002 at ¶ 8.) Christodoulou is one of two Management Board Members of Prologics and signed the guarantee at issue. (Ansell App.² 007 at ¶ 1, 009 at ¶ 11.) Prologics did not timely respond to the claim, and the English Court entered a default judgment against it. (Ansell App. 010-011 at ¶¶ 16-20.) However, Christodoulou engaged solicitors to have the default judgment set aside and present a defense to the claim. (*Id.*) Prologics' defense was that, although Christodoulou signed the guarantee on behalf of Prologics, he did not have authority to do so on his own, so the guarantee was void. (Ansell App. 009-010 at ¶ 12-15; App. 002 at ¶ 10.) In response, Ansell amended its claim and added Christodoulou as a Second Defendant. (*See* Ansell App. 018-120; App. 002 at ¶ 11.)

Ansell's claim against Christodoulou alleged that if Christodoulou did not have authority to sign the guarantee on behalf of Prologics, he fraudulently or negligently misrepresented his authority to act on behalf of the company to induce Ansell into entering its contract. (Ansell App. 040-041 at ¶¶ 11E – 11G;

¹ "App." refers to Christodoulou's Appendix.

² "Ansell App." refers to Ansell's Appendix.

App. 002 at ¶ 12.) Christodoulou is a general manager of Prologics and is responsible for the company's financial and legal matters. (Ansell App. 008 at ¶ 7; App. 002 at ¶ 9.) Christodoulou worked with the lawyers representing Prologics to defend the action and helped them set aside an earlier default judgment entered against the company. (Ansell App. 011 at ¶ 19; Ansell App. 002 at ¶ 5, 004 at ¶ 12.) But Christodoulou refused to give those same lawyers authority to accept service on his behalf or represent him in that matter. (*See* Ansell App. 014-017.)

The English court permitted Ansell to serve Christodoulou at his South Dakota home (7746 N, Wild Turkey Drive, Sturgis, South Dakota) pursuant to the Hague Convention. (Ansell App. 002-003 at ¶ 6-7, 121-139; App. 003 at ¶ 14.) To ensure compliance with the Hague Convention, Ansell utilized the Foreign Process Section which prepared a sealed package with the claim papers to be mailed. (*Id.*; App. 003 at ¶ 15.) The Royal Mail service provided tracking and required a signature upon receipt. (App. 003 at ¶ 16.) The package was signed for at Christodoulou's home on August 30, 2019 and Ansell filed proof of service

papers with the English Court.³ (Ansell App. 003 at ¶ 8, 121-139; App. 003 at ¶ 16.)

After receiving service, Christodoulou did not respond, did not participate as a defendant, and chose not to be represented in court. (Ansell App. 004 at ¶ 12, 121-139; App. 003 at ¶ 17.) However, he was repeatedly provided notice of the lawsuit from Ansell's lawyers through email. (*Id.*) During this time Christodoulou submitted multiple witness statements on Prologics's behalf and the caption of the lawsuit listed Christodoulou as a Second Defendant. (Ansell App. 004 at ¶ 13.) As a result of Christodoulou's non-engagement, Ansell sought a default judgment against him, which was entered on December 9, 2019. Ansell prevailed at trial against Prologics and received judgment in its favor on June 29, 2020, but Ansell has not been able to collect on any judgment against the company. (Ansell App. 005 at ¶ 15.)

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³ In his appellate brief, Christodoulou claims that "Ansell failed to comply with the English Court's instructions to strike Paragraph 11I from the amended claim form prior to attempting service." (App. Br. at 5.) This statement is incorrect, and Christodoulou's attempt to raise it now is concerning for three reasons. First, Christodoulou's citation to Exhibit 3 attached to the Young affidavit is erroneous. Exhibit 3 is the amended application *but not* the papers that were served on Christodoulou. The Court approved the application to amend but required Ansell to remove paragraph 11I. This paragraph was removed in the papers that were served upon Christodoulou. Second, this concern was not raised before the Circuit Court, thus, Christodoulou is barred from trying to insert a new argument on appeal. Mortweet v. Eliason, 335 N.W.2d 812, 813 (S.D. 1983) ("This court has said on countless occasions that an issue may not be raised for the first time on appeal. Thus, an issue not presented at the trial court level will not be reviewed at the appellate level."). Lastly, Christodoulou had ample opportunity to challenge the judgment in England if he claims it was granted in error, but he chose not to do so.

On February 4, 2020, Ansell sought to register the foreign judgment against Christodoulou. Ansell attempted to personally serve the petition on Christodoulou at his home but was unsuccessful. The Circuit Court permitted Ansell to serve Christodoulou by publication. (Rec.⁴ at 90.) Christodoulou's counsel filed an appearance on May 15 and filed an objection to the petition. (Rec. at 98.) On September 1, Christodoulou moved the Circuit Court to vacate the foreign judgment. (Rec. at 107.)

In support of his Motion to Vacate Foreign Judgment, Christodoulou claims that he was travelling outside of South Dakota for much of 2019 and was residing in Poland after August 13, 2019. (Rec. 119 at ¶ 15; App. 003 at ¶ 18.) Christodoulou's motion papers alleged for the first time that his neighbor in Sturgis, South Dakota, Carol Fellner, was the individual that signed for the mail that was delivered to Christodoulou's home on August 30, 2019, and that she provided the mail to Christodoulou when he returned home in December. (Rec. 303 at ¶ 3; App. 003 at ¶ 18.) Christodoulou did not dispute that he had knowledge of the English action while it was being litigated. (App. 003 at ¶ 19.) Christodoulou continued to submit witness statements on Prologics's behalf in the lawsuit even after judgment was entered against him. (App. 003 at ¶ 19.) On March 3, 2020, Christodoulou provided a third witness statement on Prologics'

⁴ "Rec." refers to citations to the record.

behalf — with a caption acknowledging his status as Second Defendant — stating that he is responsible for the legal matters of Prologics. (Ansell App. 143 at \P 7; App. 003 at \P 19.)

On March 29, 2021, the Circuit Court filed its Findings of Fact and Conclusions of Law denying Christodoulou's motion to vacate the judgment. (App. 001.) After Ansell served on Christodoulou post-judgment discovery requests, Christodoulou filed, on May 19, 2021, a proposed order for the Circuit Court to deny his motion, which the court entered on May 24, 2021. Three days later, Christodoulou filed his Notice of Appeal.

ARGUMENT

I. ANSELL PROPERLY SERVED CHRISTODOULOU UNDER ENGLISH LAW AND HE WAS NOT DENIED DUE PROCESS.

Christodoulou is seeking relief from a judgment resulting from a lawsuit that he had actual knowledge of and that he was properly served with under English law. Christodoulou boldly claims that it is "undisputed" that "there was no attempt by the plaintiff to substantially comply with relevant statutes governing service." But this statement is contrary to the record and governing law. The Circuit Court's decision to recognize a valid foreign judgment resulting from an action in which Christodoulou was properly served pursuant to the foreign country's laws and the Hague Convention does not deny Christodoulou due process.

A. English Law is the applicable law pursuant to the Hague Convention and *Water Splash*.

Christodoulou insists that Ansell's service efforts in the underlying action had to comply with South Dakota law. However, pursuant to the Hague Convention and the Supreme Court's decision in *Water Splash*, Ansell was required to follow the service requirements provided under English law.

The Hague Convention is a treaty designed to organize the process of serving documents in other countries. *Water Splash, Inc. v. Menon,* 137 S. Ct. 1504, 1507 (2017). In *Water Splash,* the Supreme Court was tasked with interpreting the Hague Convention to determine whether it permitted a party to serve an out-of-country party by mail. *Id.* The Supreme Court concluded that the Convention does not prohibit service by mail and that service by mail is permitted when two factors are met: "the receiving state has not objected to service by mail" and "service by mail is authorized under otherwise-applicable law." *Id.* at 1513. The "applicable law" in this case is clearly English law, not South Dakota law.

The circumstances set forth in *Water Splash* are remarkably similar to the present case and are instructive in this regard. Water Splash, Inc. sued a former employee—who resided in Canada—in Texas state court. *Id.* at 1507. Water Splash secured permission from the court to serve the employee by mail. *Id.* The employee did not respond or appear and the court entered a default judgment in Water Splash's favor. *Id.* The employee then moved the Texas court to set aside the judgment because she had not been properly served. *Id.* The lower court

denied her request and she appealed. *Id.* at 1507-08. The Texas Court of Appeals concluded that the Hague Convention prohibited service by mail and the Texas Supreme Court denied review. *Id.* at 1508. Applying its new rule to the facts before it, the Supreme Court determined that service by mail was not prohibited under the Hague Convention because the "receiving state" (Canada) had not objected, but the Supreme Court remanded because the lower court had not analyzed whether service by mail was authorized by *Texas* law — in other words, the law of the forum in which the case was pending. *Id.* at 1513; *See also Brockmeyer v. May*, 383 F.3d 798, 804 (9th Cir. 2004) (authorization for service by mail must come from the "forum in which the suit is filed").

In this case, the law of the "receiving state" under the Hague Convention is the United States, and Christodoulou does not dispute that the United States has not objected to service by mail. But the forum in which the case was pending is England, and England specifically authorizes service by mail on foreign parties. Christodoulou contends that South Dakota law is the "otherwise-applicable law" and that it does not permit service by mail. But applying *Water Splash*, it is not the law of the jurisdiction in which Christodoulou receives the mail that matters but rather the law of the jurisdiction where the action is pending and where the mail was sent from. *Water Splash*, 137 S. Ct. at 1513; *Brockmeyer*, 383 F.3d at 804. Therefore, English law's service requirements governed Ansell's service efforts.

Christodoulou attempts to challenge this conclusion in a footnote, citing Shull v. Univ. of Queensland, 2018 WL 6834327 (D. Nev. Dec. 28, 2018), for the proposition that the court should look at whether service by mail is authorized in the jurisdiction where the defendants are located. (App. Br.⁵ at 5 n. 2.) But Christodoulou misreads Shull. The issue in that case was whether the first requirement of Water Splash had been met: that the receiving state did not object to service by mail. Shull recognized that Australian law provided only that Australia "does not object to service by postal channels, where it is permitted in the *jurisdiction in which the process is to be served.*" 2018 WL 6834327, at *3. Therefore, the plaintiff in that case had to demonstrate that the "jurisdiction where the defendants are located" authorized service by mail in order to show that Australian law did not object. *Shull* did not reach the question, much less come to a conclusion contrary to Water Splash or Brockmeyer (both of which Shull relies upon), that the second requirement of Water Splash should be determined by law of the forum where the action is pending.6

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⁵ "App. Br." refers to Appellant's brief.

⁶ Christodoulou similarly finds no support from his citation to *Wanke v. Invasix Inc.*, 2020 WL 2542594 (M.D. Tenn. May 19, 2020) or *Densys Ltd. v. 3Shape Trios A/S*, 336 F.R.D. 126, 130 (W.D. Tex. 2020), both of which looked to whether service by mail was authorized by the Federal Rules of Civil Procedure because the actions were pending in federal courts in Tennessee and Texas.

B. Ansell complied with English law's service requirements.

Under English law, service by mail is an acceptable form of service for domestic and foreign parties, and Christodoulou does not attempt to argue otherwise. When a party needs to serve a party outside of the UK, the serving party must first seek approval from the court to serve a claim outside of the jurisdiction of the UK. CPR 6.37. In granting this permission, the court may also "give directions about the method of service." CPR 6.37(5)(b)(i). CPR 6.40 provides general methods of service for claims to be made on a party outside the UK. That rule provides that, "[w]here a party wishes to serve a claim form or other document on a party out of the United Kingdom, it may be served . . . by any method permitted by a Civil Procedure Convention or Treaty." CPR 6.40(3)(b). It is clear that service by mail is a method *permitted* by the Hague Convention. *See Water Splash*, 137 S. Ct. at 1513.

The Circuit Court record reflects that Ansell followed the UK's service requirements. First, Ansell sought and received permission from the English Court to serve Christodoulou according to the Hague Convention. (*See* Ansell App. 129 at ¶ 3.) Ansell followed the English Court's procedure by filing the amended claim paperwork with the Foreign Process Section of the Royal Court of Justice (the UK's Central Authority established under the Hague Convention) and the Foreign Process Section gave Ansell a sealed envelope that contained the amended claim form "to be taken to the Post Office and posted via a form of registered post whereby the defendant signs for the documents." (Ansell App.

132.) Ansell mailed the envelope pursuant to these instructions and the package was accepted and signed for at Christodoulou's home address on August 30, 2019. (Ansell App. 124.) A certificate of service along with these documents were filed with the Circuit Court. (Ansell App. 122-128.) Ansell properly fulfilled the service requirements under English law.

Christodoulou claims that even if he had been served correctly under English law, Ansell served him with an amended claim form that included a claim that the English Court had instructed Ansell to strike. (App. Br. at 15.) As explained in footnote 3 of this brief, Ansell struck Paragraph 11I from the amended claim that it served upon Christodoulou. Christodoulou did not raise this issue in the Circuit Court, and therefore Ansell has been prevented from offering additional evidence that would conclusively demonstrate this point. The papers provided to the Foreign Process Section and sealed for service did not contain the paragraph struck by the Court.

It is important to note that Christodoulou does not deny having actual notice. And he cannot make such a claim because it would be untrue. Rather, he argues that the record "is not sufficient to show Mr. Christodoulou had actual notice" of Ansell's claim against him. (App. Br. at 9, fn 3.) The record reflects ample evidence that Christodoulou had actual notice. Christodoulou participated as a witness on Prologic's behalf. Ansell's attorneys notified Christodoulou by email of the claim against him. (Ansell App. 004 at ¶ 11.) Ansell knew that this email address was in use by Christodoulou, because he had

previously engaged in settlement discussions with Ansell from the same email address. (Id. at ¶ 10-11.)⁷ Christodoulou has not denied that this is his email account or suggested that he never received the email communications. Based upon the record evidence, there is no basis to question that he had actual notice.

Christodoulou insists that Ansell was required to serve him pursuant to South Dakota law and that Ansell's service was improper under South Dakota procedures. First, Christodoulou argues that lack of notice to a foreign defendant is one reason that a South Dakota Court may refuse to recognize a foreign judgment. (App. Br. at 13.) But Christodoulou had actual notice and was properly served under English law — thus, the Circuit Court properly recognized the foreign judgment. *See AO Alfa-Bank v. Yakovlev*, 21 Cal.App.5th 189 (Cal. Ct. App. 2018) (determining that Russian default judgment was entitled to recognition in California because service by mail in the underlying action complied with due process).

To the extent that Christodoulou argues that South Dakota does not permit actual notice to substitute for proper notice is not relevant because South Dakota law does not apply. Further, the Supreme Court has said that due process

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⁷ This is the same email address that the undersigned counsel for Ansell used in the present proceedings, in addition to publication, to notify Christodoulou of the South Dakota judgment. (*See* Return of Service at Rec. at 91.) Although he did not challenge the service by publication in this case, Christodoulou complained in the Circuit Court that he had not seen the notice by publication in this case because he does not read the publication in which it was printed, (Rec. 122 at ¶ 49), which suggests that the service by email was the only way he learned of the notice of filing.

in a proceeding requires that notice be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657 (1950). Christodoulou cannot say that he was denied an opportunity to present his objections to the English Court, because he has intentionally avoided participating there, knowing he has no defense to Ansell's claim. By asking this Court to invalidate service in an English proceeding—rather than seeking that relief in England—Christodoulou is the one attempting to prevent the English Court from addressing the merits of the case, rather than vice versa. Christodoulou cannot excuse himself from a valid foreign judgment by offering a technical defense that he refuses to present to the court that issued the judgment.

Second, Christodoulou argues that only personal service would have been proper under South Dakota law, but he concedes that he was away from home for six months. (App. Br. at 14.) Even if it had attempted personal service, Ansell's efforts would have failed. It would not have been possible for Ansell to personally serve Christodoulou during this time. In the Circuit Court action Ansell was unable to personally serve Christodoulou and sought the court's permission to resort to service by publication. (Rec. at 90.) Christodoulou argued in the Circuit Court that he does not read publications used for service. (Rec. 122 at ¶ 49.) It would appear that the only way that Ansell could successfully serve Christodoulou was by email, which Mr. Young did in 2019 in the English action

(and which the undersigned did in 2020 in the Circuit Court action). (Ansell. App. 004 at ¶ 11; Rec. at 91.)

Next, Christodoulou complains that he has no duty to respond to an English lawsuit that he was not served with under South Dakota law and that he should not be required to challenge the alleged lack of service in the English Court. (App. Br. at 10.) An analogy helps demonstrate why this argument is nonsensical. Imagine a plaintiff filed a complaint in South Dakota with an affidavit of service saying that it was served on the defendant. The defendant does not respond and a default judgment is issued. If the defendant later finds out about the judgment and argues that the affidavit of service was incorrect and that he had no notice of the claim, he would still have to move to vacate the judgment and present a defense in the South Dakota action. The same is true here. Neither Ansell nor the English court were ever informed that Christodoulou's neighbor signed for the package instead of a member of Christodoulou's household. Had Christodoulou presented that information to the court in England, he could have asked to set aside the judgment and present

a defense.⁸ Christodoulou was certainly familiar with this process because he had done it for Prologics in the same litigation.

Lastly, Christodoulou raises the issue of due process before this Court without any attempt to pursue due process in England where the valid judgment against him was entered. Instead, he raises technical questions about the judgment in South Dakota courts while avoiding any engagement with or providing any substantive defense in the English courts. Christodoulou's complaints about service should be directed at the Court that entered the judgment against him. Christodoulou's attempt to question the judgment's validity in South Dakota courts deprives Ansell of its own day in court and should be rejected.

II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION BY REFUSING TO VACATE THE JUDGMENT.

Christodoulou suggests that this Court should review the Circuit Court's decision de novo but also concedes that the abuse of discretion standard is also applicable. (App. Br. at 16.) Ansell agrees with Christodoulou that the appropriate standard is abuse of discretion. This Court reviews motions to vacate

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⁸ As the Circuit Court noted below, English law provides the English Court with discretion to retrospectively validate alternative service if the court concluded that steps already taken for service were sufficient to bring the claim to the attention of the defendant. See CPR 6.15(2) ("[T]he court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service."); Abela & Ors v. Baadarani [2013] UKSC 44 (26 June 2013) (UK Supreme Court affirmed lower court's approval of claimant's service of claim on foreign defendant after the fact, even though initial attempts did not strictly comply with foreign service rules).

a judgment for abuse of discretion and this motion should be no different. Wooster v. Wooster, 399 N.W.2d 330, 334 (S.D. 1987) (reviewing a circuit court's denial of a motion to vacate a judgment for an abuse of discretion).

Christodoulou argues that the foreign judgment should not be recognized by this Court because the record does not support a conclusion that the English Court had personal jurisdiction over Christodoulou and the default judgment was entered on a claim that conflicts with Ansell's on-the-merits judgment against Prologics. Neither of these arguments prevent a court in South Dakota from recognizing a valid foreign judgment.

A. The English Court determined that it had personal jurisdiction over Christodoulou.

Christodoulou claims, without citation to legal authority, that it is "highly unlikely" that the English Court had jurisdiction over him. In order for the Circuit Court to have erred by refusing to vacate the order, this Court has to conclude that the English Court did not have personal jurisdiction and this conclusion is not supported by the record. *See* SDCL 15-16-45 (providing that a court shall consider whether the foreign court "had jurisdiction over both the subject matter and the parties").

The English Court found that it had personal jurisdiction over Christodoulou. This is evidenced by its decision to permit Ansell to add him as a party to the lawsuit. CPR 6.37 states that the court will not permit a party to add another party unless it is "satisfied that England and Wales is the proper place in which

to bring the claim." CPR 6.37(3). It clearly determined that Christodoulou fell within its jurisdiction. Additionally, Ansell sued Christodoulou for fraudulent inducement of a contract. Under English law, this claim establishes jurisdiction over Christodoulou for two reasons. First, the English rules provide for jurisdiction in contract-related claims "where the contract . . . was made by or through an agent trading or residing within the jurisdiction." CPR 6.36, Part 6(B), paragraph 3.1(6)(B). To the extent the contract was fraudulently induced, English rules also provide jurisdiction when "[a] claim is made in tort where (a) damage was sustained . . . within the jurisdiction, or (b) damage which has been or will be sustained results from an act committed, or likely to be committed, within the jurisdiction." CPR 6.36, Part 6(B), paragraph 3.1(9). Furthermore, the guarantee in dispute that was signed by Christodoulou provides that disputes would be subject to the jurisdiction of England and Wales. (See Rec. 027 at ¶ 11.) It is clear that the English Court had jurisdiction over Christodoulou.

Christodoulou presents no actual argument or authority to the contrary, but merely admits that he is unfamiliar with English civil procedure. (App. Br. at 18 n. 9.) Christodoulou cannot demonstrate that the Circuit Court abused its discretion simply by pleading ignorance to the relevant law.

B. The default judgment does not conflict with Ansell's judgment against Prologics.

Christodoulou relies on the catch-all provision of the foreign judgment statute under which a court may refuse to recognize a foreign judgment if the

complaining party shows "prejudice in the court or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of the State of South Dakota should not allow it full effect." SDCL 15-16-44. (App. Br. at 19.) Christodoulou argues that the foreign judgment should not be recognized because it was based on an alternative claim to Ansell's claim against Prologics itself. But this argument fails for two reasons.

First, Christodoulou does not clearly explain how Ansell's claims in the English action were inconsistent and his argument lacks citation to any legal authority to support his contention. Ansell's claim against Christodoulou is based on a theory of negligent misrepresentation/fraudulent inducement, while its claim against Prologics is based on breach of contract. It is well established in South Dakota that a claim of fraudulent inducement can coexist with a claim for breach of contract, even when brought against the *same* defendant. *See, e.g., Nw. Pub. Serv. v. Union Carbide Corp.*, 115 F. Supp. 2d 1164, 1169 (D.S.D. 2000) (recognizing independent claims of fraudulent inducement may be based on misrepresentations about contractual obligations). Christodoulou does not refer to any English legal authority that shows that Ansell's claims are improper or inconsistent.

Second, Christodoulou's argument that the claims are inconsistent or "legally irreconcilable" should be directed at the English Court. Even if the two judgments were inconsistent, it would be the latter judgment that would be in question. Ansell's judgment against Christodulou was entered in England in

December 2019 and in Meade County in February 2020. Ansell's judgment against Prologics was entered in England in June 2020 so that would be the questioned judgment, not the judgment against Christodoulou. Further, although SDCL 15-6-60(b) requires a party to move to vacate a judgment "within a reasonable time." Christodoulou waited four months after his counsel filed an appearance in the Meade County action before moving to vacate.

Christodoulou has not demonstrated why Ansell's judgment against Prologics should prevent a South Dakota court from recognizing the judgment against him. Ansell has been unable to collect on its judgment against Prologics and Christodoulou is trying to avoid any responsibility for his wrongdoing.

(Ansell. App. 005 at ¶ 15.) There is no legal authority that supports

Christodoulou's contention that the Circuit Court erroneously denied his Motion to Vacate Judgment.

CONCLUSION

Christodoulou has not provided this Court with a legally sound reason to vacate a valid judgment. Christodoulou attempts to distract the Court by arguing that the default judgment was erroneously entered or is somehow contrary to law. In reality, Christodoulou refused to acknowledge his status as Second Defendant or defend himself in the English action. Ansell properly served Christodoulou with the English action and the English Court had jurisdiction over him. The Circuit Court agreed and recognized an enforceable foreign judgment. Ansell respectfully requests that this Court affirm the Circuit Court.

Dated this 8th day of September, 2021.

Respectfully submitted,

LATHROP GPM LLP

/s/ Edward H. Tully

Richard C. Landon (*pro hac vice*) Edward H. Tully (SD # 4810)

500 IDS Center

80 South Eighth Street

Minneapolis, MN 55402

(612) 632-3429

richard.landon@lathropgpm.com

Attorneys for Plaintiff/Appellee

CERTIFICATE OF COMPLIANCE

Pursuant to SDCL 15-26A-66(b)(4), the undersigned hereby states that the foregoing brief is typed in proportionally spaced typeface in Book Antiqua 12 point font. This brief is 19 pages in length, not including the Appendix. The word processor used to prepare this brief indicates there are 4740 words in the

body of this brief.

Dated this 8th day of September, 2021.

LATHROP GPM LLP

<u>/s/ Edward H. Tully</u>

Edward H. Tully

-20-

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served two true and correct copies of Appellee's Brief and one original copy of Appellee's Brief upon the persons herein next designated, all on the date shown, by mailing such copies in the United States Mail, first-class postage prepaid, in envelopes addressed to said addresses; to wit:

Supreme Court of South Dakota Office of the Clerk 500 East Capitol Avenue Pierre, SD 57501

LATHROP GPM LLP

<u>/s/ Edward H. Tully</u> Edward H. Tully

The undersigned further certifies that he served a true and correct copy of Appellee's Brief upon the persons herein next designed, all on the date shown, by emailing said copies to said addresses; to wit:

Eric T. Davis
Nelson Law
1209 Junction Avenue
Sturgis, SD 57785
eric@nelsonlawsturgis.com

LATHROP GPM LLP

<u>/s/ Edward H. Tully</u> Edward H. Tully

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Ansell RUS Limited Liability Company,

Case No. 46 CIV20-000054

Plaintiff,

v.

DECLARATION OF MICHAEL EDWARD IAN YOUNG

Pavlos Andreas Christodoulou,

Defendant.

- I, Michael Edward Ian Young, a solicitor of Shakespeare Martineau LLP of No. 1 Colmore Square, Birmingham, B4 6AA, submit the following pursuant to SDCL 18-6-6:
- 1. I am a solicitor representing Ansell Rus LLC in the Circuit Commercial Court of England and Wales, regarding Claim #E40BM056 against Mr. Christodoulou and his firm, Prologics (UK) LLP, and I make this statement in support of Ansell's opposition to Christodoulou's Motion to Vacate Judgment in Meade County, South Dakota upon personal knowledge of the matters herein.
- 2. Ansell filed its claim against Prologics in June 2018 for failure to pay money owed under a corporate guarantee. Ansell was initially granted default judgment against Prologics on July 12, 2018, for the Defendant's failure to file a defense. Thereafter, on August 20, 2018, the solicitors at Gresham Legal filed an application to set aside the default judgment against Prologics and present a defense to Ansell's claim.
- 3. In support of Prologics' application to set aside default judgment, Christodoulou submitted a witness statement, a true and correct copy of which is

attached here as Exhibit 1. In his witness statement, Christodoulou claimed that, although he signed the guarantee on behalf of Prologics, that in itself did not amount to sufficient authority, such a document also requiring sign off by a Mr Sofianos under the terms of an LLP agreement, providing Prologics with a purported defense to the money owed under that contract.

- 4. In response to Christodoulou's purported lack of authority, Ansell sought and received permission from the court to file an Amended Claim naming Christodoulou as a Second Defendant. The Amended Claim alleged that, if Christodoulou did not have authority to sign the guarantee on behalf of Prologics on his own, he negligently misrepresented his authority to act on behalf of the company in all of the circumstances, to induce Ansell into entering its contract.
- 5. Although Christodoulou was in contact with and helping Prologics' solicitors in presenting the company's defense, he did not give them authority to represent him or accept service on his behalf for the Amended Claim. Exhibit 2 is a true and correct copy of a June 2019 email chain between myself and the solicitors for Prologics regarding the representation of Christodoulou.
- 6. Attached as Exhibit 3 is an Amended Application to add Christodoulou as a Second Defendant and for an order allowing Ansell to serve Christodoulou out of the jurisdiction of England and Wales, at Christodoulou's home in South Dakota.
- 7. After receiving authority to serve Christodoulou from the court, Ansell processed the service request through the Foreign Process Section (FPS). The FPS provided a sealed envelope containing bundle approved for foreign service by mail

under the Hague Convention, including the Amended Claim Form, Amended Particulars of Claim, Amended Response Pack and Amended Order of 25 June 2019. A Certificate of Service was filed in relation to the completed service on Christodoulou as Second Defendant. Attached as Exhibit 4 is a true and correct copy of documents filed with the court related to service upon Christodoulou. The Certificate of Service and proof of delivery printout is shown at Exhibit 4, pages 1-6.

- 8. The proof of delivery shows the item as successfully delivered. The Royal Mail service used provides for tracking and signature. The Amended Order dated 25 June 2019 shown at pages 7-8 stated that the Claimant had permission to serve the Second Defendant out of the jurisdiction at 7746 N Wild Turkey Drive, Sturgis, South Dakota, USA in accordance with the Hague Conventions (that address being the one used when submitting a witness statement to support set aside against the First Defendant earlier in these proceedings). So as to ensure Hague Convention compliance, service was processed through the Foreign Process Section, which approved papers for service and prepared a sealed envelope for the Claimant to send on without opening. At pages 9-11 is the guidance sent by the Foreign Process Section to me that confirms evidence of service is the Royal Mail proof of delivery documentation.
- 9. Service of subsequent orders (15 August and 2 September 2019) upon the Second Defendant at 7746 N Wild Turkey Drive, Sturgis, South Dakota, USA was also attempted, posted 6 September 2019 to be tracked and signed for, but that was returned as "refused".

- 10. Between December 2018 and September 2019, Christodoulou did communicate with Ansell's Philippe Rommel via the email address <u>prologics@mac.com</u>, about potential settlement on a without prejudice basis
- 11. Because Ansell knew that Christodoulou was using the address prologics@mac.com, I emailed him at that address on 2 October 2019 to push him to engage, as shown at page 12 of Exhibit 4. I notified Christodoulou that failure to engage would lead to a default judgment against him. No response was received.
- 12. Christodoulou was served with the claim against him and Ansell made extended efforts to get him to meaningfully engage, but he failed to do so. Despite this, Christodoulou appeared to be instructing the solicitors for Prologics, having signed papers in their application to set aside an earlier judgment and in their disclosure to the court. Christodoulou has extensive knowledge of matters just through Prologics, as he is a general manager for the firm and responsible for financial and legal matters.
- 13. On March 3, 2020, Christodoulou again submitted a Witness Statement to be used in defense of Prologics. A true and correct copy of the Third Witness Statement of Paul Christodoulou is attached as Exhibit 5. The caption of this Witness Statement notes him as a Second Defendant in the claim.
- 14. Shortly before trial against Prologics was to be held in June 2020, the solicitors from Gresham Legal withdrew from representing Prologics. Although documentary evidence, including Christodoulou's Witness Statements, had previously been filed in defense of Prologics, no witnesses and no solicitors appeared on behalf of Prologics at trial.

15. Ansell was awarded judgment against Prologics on June 29, 2020.

However, Prologics has avoided payment of that judgment and Ansell is currently pursuing a winding up proceeding against Prologics in England.

I declare under penalty of perjury under the law of South Dakota that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the 25th	day of September	, <u>2020</u> , at
(date)	(month)	(year)
Birmingham	Englar	nd
(city or other location, and s	etate)	(country)
		137
	Michae	el Young
	(printe	d name)
	_ Mi U	had E.I. Young
	(signat	rure)

GP:4810-7234-8108 v1

EXHIBIT 1

P.A. Christodoulou Defendant First PAC1 17 August 2018

IN THE HIGH COURT OF JUSTICE
IN THE BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

Claim No. E90 BM 128

BETWEEN:

ANSELL RUS LIMITED LIABILITY COMPANY

Claimant

and

PROLOGICS (UK) LLP

Defendant

WITNESS STATEMENT OF PAVLOS ANDREAS CHRISTODOULOU

I, **PAVLOS ANDREAS CHRISTODOULOU**, of 7746 N, Wild Turkey Drive, Sturgis, South Dakota, United States of America, **SAY** as follows:

Introduction

- 1. I am one of two Management Board Members of the Defendant ("**Prologics**"). I am not and never have been a Member of Prologics. I am duly authorised under the LLP Agreement (to which I refer at paragraph 6 below) and by the Members to make this witness statement on behalf of Prologics in support of its application to set aside the default judgment entered on 12 July 2018. The facts and matters set out in this witness statement are within my own knowledge, unless otherwise stated. Where information is within my own knowledge, that information is true. Where information is not based on my personal knowledge, I identify the source of that information and I believe it to be true.
- 2. There is now produced and shown to me marked "PAC1" a bundle of true copy documents

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to which I shall refer in this witness statement. References to page numbers are to the pages of PAC1.

The background to execution of the Contract and the Guarantee

- 3. Prologics is primarily a holding entity, holding shares in various subsidiaries. Prologics is wholly-owned by two Cypriot companies, Orwensen Trading Limited and Surpenson Trade Limited. Those two companies are the sole Members and sole Designated Members of Prologics, and have been at all times since 3 April 2014.
- 4. Orwensen Trading Limited is in turn owned by Robel Assets Inc. Robel Assets Inc is owned by Pershing Trust, a Cypriot trust. The ultimate beneficial owners are myself, my mother, Stavroula Christodoulou, and my sister, Isabel Christodoulou.
- 5. Surpenson Trade Limited is owned by Sorotel Investments Ltd. Sorotel Investments Limited is owned by BIO Trust. The ultimate beneficial owners are Panagiotis Sofianos and his sister, Joanna Strange.
- 6. There is a Limited Liability Partnership Agreement for Prologics dated 30 September 2014 (the "LLP Agreement") (pages 1-10), which took effect on 30 September 2014. Pursuant to the LLP Agreement, Mr Sofianos and I are the only two Management Board Members of Prologics. However, neither of us has ever been a Member of Prologics. The LLP Agreement sets out the objects of Prologics at clause 3.2, and at clause 5, provisions as to the management of Prologics. I shall deal specifically with certain provisions within the LLP Agreement below, as they are relevant to Prologics' defence of the claim made against it in these proceedings.
- 7. I undertake more of the general management responsibilities for Prologics, including finance and legal matters. Mr Sofianos has strategic oversight of Prologics' activities. A separate management team is employed to manage the day-to-day business of subsidiaries of Prologics. Mr Sofianos and I are not a part of the management of those subsidiaries.
- 8. Medcom-MP LLC ("**Medcom**") was acquired by Prologics in 2016 and, therefore, after the date of the LLP Agreement. Medcom is a Russian registered company that supplies medical products in Russia. The management team of Medcom consists of the

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President, Philippe Lemaire, the General Director, Olga Kravchenko, and the Chief Financial Officer, Sebastien Dmirdjian. This team has full day-to-day management responsibility for Medcom's business. The management would not generally come to me or to Mr Sofianos for assistance with business decisions relating to Medcom. Occasionally, however, the management team asks us for our advice as experienced businessmen.

- 9. I was aware from when Prologics acquired Medcom in 2016 that Medcom had an agreement with Ansell Healthcare Europe NV for the supply by that Ansell company of medical goods, which Medcom then sold into the Russian market. The supply arrangements with Ansell were subsequently renewed through a new agreement with another Ansell entity, Ansell RUS Limited Liability Company ("Ansell"). Neither I nor Mr Sofianos was closely involved with Medcom's negotiation of, or entry into, the new contract with Ansell, which is dated 1 January, 2017 (the "Contract"). The Contract is at Exhibit 1 to the Particulars of Claim. I was aware that negotiations were taking place between Medcom and Ansell, but the detailed terms of the Contract were handled by Philippe Lemaire, Medcom's President. I did not review the Contract nor any drafts of it, and I did not discuss it with Mr Sofianos.
- 10. As part of the supply arrangements with Ansell, Prologics was asked to provide a guarantee in respect of Medcom's financial obligations under the Contract.
- 11. The Deed of Guarantee between Prologics and Ansell is dated 1 January, 2017 (the "Guarantee") (a copy of which is at Exhibit 2 to the Particulars of Claim). However, I can confirm that it was actually signed by me on or around 14 February, 2017.
- 12. Pursuant to clause 5.2 of the LLP Agreement, each Management Board Member has the authority to individually represent Prologics in all activities that form part of the LLP's objects, save specifically to provide security for third party debts as recommended by the Management Board (the object referred to in clause 3.2(V)), when both Members of the Management Board must consent (page 5). The reason we implemented this provision is that Prologics was established as a holding company. Therefore, we wanted to make sure that the assets of Prologics were not exposed to liability for third party debts unless both Management Board Members expressly approved that.

- 13. Based on prior guarantees that Prologics has provided for its subsidiaries, both Mr Sofianos and I usually would be approached by management of the relevant subsidiary on an individual basis and asked to approve and sign such agreements. Sometimes, we would ask questions about the nature of, and background to, a particular agreement, and sometimes we discussed them, but by no means always. Only when we were both satisfied as to giving a guarantee and the proposed terms would we then sign. We were not usually together when signing or approving such guarantees. Both Mr Sofianos and I spend much time in different countries, including Russia, the USA, Poland and Greece.
- 14. On this occasion, I recall that Mr Sofianos was on holiday in Greece for St. Valentine's Day on the date that I signed the Guarantee. There were no discussions or emails between him and me about the Guarantee. I assumed that one of the Medcom management team would be liaising directly with Mr Sofianos to have him execute the Guarantee. I now know that this was not the case and I understand from both Mr Sofianos and from Medcom's management that Mr Sofianos did not know about, consent to, or execute the Guarantee, nor did he approve my executing it for Prologics.
- 15. Accordingly, Prologics maintains that the fact that Mr Sofianos did not consent to the Guarantee given as security for the financial obligations of Medcom under the Contract means that Prologics has a defence to Ansell's claim in these proceedings. At pages 11-18 is a draft Defence.

Prologics' failure to file an Acknowledgment of Service

16. I do not now recall receiving or reviewing the first letter from Ansell's solicitors, Shakespeare Martineau, to Prologics regarding a potential claim dated 18 April 2018, which was emailed to me on 23 April, 2018 or the second reminder letter dated 1 June 2018, which was emailed to me on 13 June, 2018. However, I do accept that I did receive them. During that period, I was traveling frequently and was heavily involved with preparing for and negotiating with another supplier to arrange for a critical investment in Medcom. It is most likely that on receipt of these letters that I understood this to be a Medcom issue that was being dealt with by the Management team in Russia. My focus was to support the team by obtaining equity and debt investments for Medcom so that it could settle all of its outstanding debts.

- 17. The geo-political climate and the sanctions environment has made doing business in Russia particularly burdensome over the last few years. Prologics holds a number of large stakes in various businesses, each of which requires much more of my personal involvement than Medcom. Given the other business matters I was dealing with at the time, I must acknowledge that I also overlooked the importance of the documents and the tight time frames required for a response. Of course, I can now see that the documents were extremely important, but with everything else that was going on at the time, I had not appreciated that, and I am not familiar with court practice and procedures in England. Additionally, I was sure that a commercial solution would be arrived at by Medcom's management team, which would render the claim documents irrelevant.
- 18. In fact, after I received the claim documents, which I believe was on or about 12 July 2018, I telephoned Praveen Shenoy, Vice President of Finance at Ansell, regarding finding a commercial, rather than a legal, solution to Medcom's issues surrounding its debts to Ansell. I explained to him that we were in discussions with another investor to inject capital in Medcom and thereby allow Medcom to meet its financial obligations to Ansell. I also informed him that if Ansell were to proceed with a case against Prologics and Medcom, that would put the investment at risk. Therefore, I asked him to cease legal actions. He told me that Ansell would delay the legal proceedings in order to allow us time to conclude our negotiations with the proposed investor. Unfortunately, unbeknownst to him (I assume), the default judgment had already been issued that day, but it will be appreciated that our conversation was only shortly after the entry of the default judgment.
- 19. It was following a reminder from Prologics' corporate services provider in Cyprus about the claim that we approached the solicitors that they recommended, Philip Ross Solicitors, on 10 July 2018 to deal with the claim. However, by the time we had formally instructed them and asked them to contact Ansell's solicitors to request additional time to file Prologics' Defence, which they did on 12 July 2018, a default judgment had already been entered. Shortly thereafter, we decided to work with Gresham Legal, solicitors with whom Prologics has previously worked.
- 20. I accept full responsibility for Prologics' failure to file an Acknowledgment of Service,

and for that, I sincerely apologise to the court. As I mentioned above, I had other important demands on my time and I simply did not appreciate the importance to deal promptly with the claim. However, I believe it would be very unfair for the Defendant not to be permitted to defend the claim, particularly given the significant amount involved.

- 21. Moreover, the Defendant has, I believe, a valid and complete defence to the Claimant's claim.
- 22. In the circumstances, I respectfully request the Court to set aside the default judgment and to permit the Defendant to file its Defence.

I believe that the facts stated in this witness statement are true.

PAVLOS ANDREAS CHRISTODOULOU

Dated 17 August 2018

EXHIBIT 2

Landon, Richard C.

From: Smeetesh Kakkad <sk@greshamlegal.co.uk>

Sent: Monday, June 10, 2019 11:29 AM

To: Michael Young

Subject: RE: Private and Confidential - E40BM056 [SHMA-ACTIVE.FID77922]

This message originated from outside your organisation

Dear Mr Young,

We have no instructions to accept service for Mr Christodoulou and we are not acting for him at this time.

Yours sincerely,

Smeetesh Kakkad Managing Partner | Gresham Legal

DD: +44 (0) 20 3709 9206 | Mob: +44 (0) 7947 074 753

Central Court, 25 Southampton Buildings, London WC2A 1AL

Tel: +44 (0) 20 3709 9205 | Fax: +44 (0) 20 3709 9214

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Please consider the environment before printing this email.

From: Michael Young [mailto:Michael.Young@shma.co.uk]

Sent: 04 June 2019 14:16

To: Smeetesh Kakkad <sk@greshamlegal.co.uk>

Subject: RE: Private and Confidential - E40BM056 [SHMA-ACTIVE.FID77922]

Dear Mr Kakkad

I do not. I have written to the Court to enquire. Should I receive anything I will let you have a copy.

I look forward to hearing from you this week as to whether you are instructed to accept service for Mr Christodoulou.

Yours sincerely

Michael Young

Associate

D 0121 631 5206 M 07968 615 693 Main T 0121 214 0000 ext 2398



Shakespeare Martineau

No 1 Colmore Square, Birmingham, B4 6AA DX721090 Birmingham 43





FRAUD PREVENTION

Please do not reply to or act upon any email you might receive purporting to advise you that our bank account details have changed. Please always speak to the lawyer acting for you to check any changes to payment arrangements. We will also require independent verification of changes to any bank account to which we are asked to send money.

From: Smeetesh Kakkad <sk@greshamlegal.co.uk>

Sent: 04 June 2019 11:16

To: Michael Young < Michael. Young@shma.co.uk>

Subject: RE: Private and Confidential - E40BM056 [SHMA-ACTIVE.FID77922]

This message originated from outside your organisation

Dear Mr Young,

I acknowledge receipt of your email of yesterday and the attached Order.

I shall endeavour to come back to you by the end of this week as regards Mr Christodoulou.

In the meantime, I note that the final recital in the Order refers to written reasons having been given. Do you have those written reasons?

Yours sincerely,

Smeetesh Kakkad Managing Partner | Gresham Legal

DD: +44 (0) 20 3709 9206 | Mob: +44 (0) 7947 074 753

Central Court, 25 Southampton Buildings, London WC2A 1AL

Tel: +44 (0) 20 3709 9205 | Fax: +44 (0) 20 3709 9214

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Please consider the environment before printing this email.

From: Michael Young [mailto:Michael.Young@shma.co.uk]

Sent: 03 June 2019 14:49

To: Smeetesh Kakkad <<u>sk@greshamlegal.co.uk</u>>

Subject: Private and Confidential - E40BM056 [SHMA-ACTIVE.FID77922]

Dear Mr Kakkad

I attach a copy of the Order from the Court in relation to Mr Christodoulou being joined as Second Defendant.

On the point of service, can you let me know if you are/will be instructed by Mr Christodoulou and if so will you be instructed to accept service? I am making the enquiry as it would appear sensible from a costs perspective for all concerned if you were.

In the event we do not hear from you on the point my client will progress as appropriate.

Yours sincerely

Michael Young

Associate

D 0121 631 5206 M 07968 615 693 F 0121 237 3054 E michael.young@shma.co.uk

Main T 0121 214 0000 ext 2398

Shakespeare Martineau	
No 1 Colmore Square, Birmingham, B4 6AA	
DX721090 Birmingham 43	

FRAUD PREVENTION

Please do not reply to or act upon any email you might receive purporting to advise you that our bank account details

have changed. Please always speak to the lawyer acting for you to check any changes to payment arrangements. We will also require independent verification of changes to any bank account to which we are asked to send money.

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EXHIBIT 3 PART 1 OF 3

Application notice

For help in completing this form please read the notes for guidance form N244Notes.

Name of court High Court of Just Queen's Bench Divi Birmingham Distric Registry Mercantile Court	sion
Fee account no. (if applicable)	Help with Fees – Ref. no. (if applicable)
	HWF-
Warrant no. (if applicable)	
Claimant's name (including Ansell RUS Limited	gref.) Liability Company
Defendant's name (i ncludi Prologics (UK) LLP	
Date 29	1 March 2019

			Pro	Prologics (UK) LLP		
			Date	. 29	1 March 2019	
1.		r name or, if you are a legal repr	esentative, the nar	me of your firm?		
2	Are you a	Claimant	Defendant	x Legal Repr	esentative	
-	7 iio you u	Other (please specify)		[1-] 15gui (16pi		
	If you are a l	egal representative whom do yo	u represent?	Shakespeare	: Martineau LLP	

3. What order are you asking the court to make and why?

An order that in light of the Defence filed Mr Pavlos Andreas Christodoulou be added as a Defendant to proceedings pursuant to CPR 19.4 and Practice Direction 19A paragraph 3.1, and as a result permission for the Claimant to amend the claim form and particulars of claim accordingly (with consequential provision for the existing Defence and Reply). In addition, pursuant to CPR 6.36, 6.37 and CPR PD 6B, para 3.1, the Claimant seeks permission to serve Mr Christodoulou out of the jurisdiction/by email as may be appropriate, with any resultant pleadings and orders as directed.

The Claimant relies on Grounds 3 and/or 6 and/or 7 and/or 9 as set out at paragraph 3.1 of CPR PD 6B. The facts relied on in relation to each grounds are as follows: Ground 3 - The claim Form has been served on the First Defendant and as a result of the Defence filed and served, the Claimant brings this claim under this Ground as a result of the issue of authority to execute the Guarantee has arisen and gives rise to an alternative claim for negligent misstatement or fraudulent or negligent misrepresentation. It is therefore a real issue which it is reasonable for the court to try in one single set of proceedings, as opposed to two separate claims and the Court possesses jurisdiction as a result, inter alia, of the jurisdiction clause to be found in \$22 of the guarantee, dated 1 January 2017.

Ground 6 - This ground is relied on as a result of the contract of guarantee being governed by English law.

Ground 7 - This ground is relied on as a result of the breach of contract of guarantee being committed within the jurisdiction, namely England and Wales. Ground 9 - This ground is relied on as a result of the tort of negligent misstatement or fraudulent or negligent misrepresentation causing damage to the claimant resulting from an act committed or likely to be committed within the jurisdiction, namely England and Wales.

The Claimant believes that the following grounds exist between the Claimant and the

Second Defendant which gives rise to a real issue which it is reasonable for the court to try: namely, whether, in the event that the Guarantee is held to be invalid as a result of a failure of authority, the Second Defendant misstated or misrepresented his status and authority to sign the Guarantee for and on behalf of the First Defendant. The Claimant believes that the claim has a reasonable prospect of success. The Second Defendant's address is 7746N Wild Turkey Drive, Sturgis, South Dakota, USA. The claim against Mr Christodoulou arises from the following causes of action: deceit and/or fraudulent or negligent misrepresentation/negligent misstatement/economic torts of inducing or procuring a breach of contract/causing loss by unlawful means. In addition, the Claimant will rely at trial on the fact that Mr Christodoulou signed the Prologics (UK) LLP "Report of the Members for Year ended 31 December 2016" as a "Designated Member" on 23 March 2017 and the Balance Sheet as a "Member". Yes No Have you attached a draft of the order you are applying for? at a hearing without a hearing 5. How do you want to have this application dealt with? at a telephone hearing Minutes 6. How long do you think the hearing will last? Hours Is this time estimate agreed by all parties? Yes N/A. List with CMC pending 22/3 7. Give details of any fixed trial date or period 8. What level of Judge does your hearing need? HHJ Worster Defendant and Mr Christodoulou 9. Who should be served with this application? Defendant - c/o Gresham Legal, 9a. Please give the service address, (other than details of the Central Court, 25 Southampton claimant or defendant) of any party named in question 9. Buildings, London WC2A 1AL. Mr Pavlos Andreas Christodoulou 7746N Wild Turkey Drive, Sturgis, South Dakota, USA. (Claimant's 10. What information will you be relying on, in support of your application? the attached witness statement the statement of case the evidence set out in the box below If necessary, please continue on a separate sheet. The Defence makes reference to a LLP agreement dated 30 September 2014 not previously disclosed to the Claimant (paragraph 4). Paragraph 7 (4) of the Defence stipulates that the Guarantee upon which the present claim is based is not binding upon the Defendant as execution as carried out by Mr Christodoulou did not have the requisite consent under the aforementioned LLP agreement.

020

The Claimant remains of the view that the claim as presented follows against the Defendant, Prologics (UK) LLP. The Guarantee was entered into in good faith by the Claimant and duly relied upon, the Defendant taking the benefit of the same. The Claimant believed the Guarantee was signed off with full authority. The Claimant further relied upon the reassurance of the First and Second Agreements (as referenced in the Particulars of Claim).

However, given the contents of the Defence the Claimant believes it is appropriate for Mr Christodoulou to be added to the Claim as a Defendant. In the event the Defendant is successful in its present Defence that in turn raises issue against Mr Christodoulou himself with his sign off of the Guarantee, First and Second Agreements in full knowledge of his LLP Agreement.

The claim against Mr Christodoulou arises from the following causes of action: deceit and/or fraudulent or negligent misrep/negligent misstatement/economic torts of inducing or procuring a breach of contract/causing loss by unlawful means. In addition, the Claimant will rely at trial on the fact that Mr Christodoulou signed the Prologics (UK) LLP "Report of the Members for Year ended 31 December 2016" as a "Designated Member" on 23 March 2017 and the Balance Sheet as a "Member"

The Claimant thus believes that in light of the Defence submitted it is necessary to seek permission to bring Mr Christodoulou into the claim, and in consequence to seek permission to amend the claim form and particulars and then permission to serve the same on the Defendants, including on Mr Christodoulou out of the jurisdiction. The Claimant seeks an order in the attached terms. The Claimant seeks it costs suggests costs in the case in relation to the amendment, despite the usual course on such applications, as in this instance the addition and amendment sought has been caused purely by the Defence position adopted.

The Claimant relies on Grounds 3 and/or 6 and/or 7 and/or 9 as set out at paragraph 3.1 of CPR PD 6B for permission to serve out of the jurisdiction on Mr Christodoulou. The facts relied on in relation to each grounds are as follows: Ground 3 - The claim Form has been served on the First Defendant and as a result of the Defence filed and served, the Claimant brings this claim under this Ground as a result of the issue of authority to execute the Guarantee has arisen and gives rise to an alternative claim for negligent misstatement or fraudulent or negligent misrepresentation. It is therefore a real issue which it is reasonable for the court to try in one single set of proceedings, as opposed to two separate claims and the Court possesses jurisdiction as a result, inter alia, of the jurisdiction clause to be found in \$22 of the guarantee, dated 1 January 2017.

Ground 6 - This ground is relied on as a result of the contract of guarantee being governed by English law.

Ground 7 - This ground is relied on as a result of the breach of contract of guarantee being committed within the jurisdiction, namely England and Wales.

Ground 9 - This ground is relied on as a result of the tort of negligent misstatement or fraudulent or negligent misrepresentation causing damage to the claimant resulting from an act committed or likely to be committed within the jurisdiction, namely England and Wales.

The Claimant believes that the following grounds exist between the Claimant and the Second Defendant which gives rise to a real issue which it is reasonable for the court to try: namely, whether, in the event that the Guarantee is held to be invalid as a result of a failure of authority, the Second Defendant misstated or misrepresented his status and authority to sign the Guarantee for and on behalf of the First Defendant.

The Claimant believes that the claim has a reasonable prospect of success.

The Second Defendant's address is 7746N Wild Turkey Drive, Sturgis, South Dakota, USA.

The claim against Mr Christodoulou arises from the following causes of action: deceit and/or fraudulent or negligent misrepresentation/negligent misstatement.

The grounds for the Claimant's belief and its source of information is the Defence put by the Defendant in the existing claim.

The Claimant is not aware of any issues that would weight against the making of the Order sought. The relevant documents to this application are appended to the same, being the draft order, amended claim form and particulars of claim (with exhibits which include the Contract, Guarantee, First and Second Agreements and Defence and Reply). In addition, the Claimant will rely at trial on the fact that Mr Christodoulou signed the Prologics (UK) LLP "Report of the Members for Year ended 31 December 2016" as a "Designated Member" on 23 March 2017 and the Balance Sheet as "Member". Statement of Truth (t-believe) (The applicant believes) that the facts stated in this section (and any continuation sheets) are true. M. SHAKESPEARE MARTINEAU LLP Dated 1/3/19, 29/3/19 Applicant('s legal representative)('s litigation friend) Full name MICHARI E. I. YOUNET, SHAKESPEARE MARTINEAU LLP. Name of applicant's legal representative's firm SHAKESPEARE MARTINEAU LLP Position or office held SOUCITOR. (if signing on behalf of firm or company) 11. Signature and address details Signed M.M. SHAKESPEARE MAKTINEAN USDated +13/19. 19/3/19 Applicant('s legal representative)('s litigation friend) Position or office held Solic Tok (if signing on behalf of firm or company) Applicant's address to which documents about this application should be sent If applicable Shakespeare Martineau LLP 0121 237 3000 No1 Colmore Square Phone no. Birmingham 0121 237 3054 Fax no. DX no. 721090 Birmingham 43 6 A A Ref no. 1112538.1.MEIY Postcode B E-mail address

N244

Application notice

N244 Application notice	Name of court High Court of J Business & Prop in Birmingham	
For help in completing this form please read the notes for guidance form N244Notes.	Circuit Commerce Fee account no. (if applicable)	Help with Fees – Ref. no. (if applicable)
	Warrant no. (if applicable)	H W F - -
	Claimant's name (incl Ansell RUS Limi	uding ref.) ted Liability Company
	Defendant's name (in Prologics (UK)	
	Date	29 March 2019
What is your name or, if you are a legal representation	ative, the name of your firm?	
Shakespeare Martineau LLP		
2. Are you a Claimant De	fendant X Legal I	Representative
Other (please specify)		

3. What order are you asking the court to make and why?

If you are a legal representative whom do you represent?

An order that in light of the Defence filed Mr Pavlos Andreas Christodoulou be added as a Defendant to proceedings pursuant to CPR 19.4 and Practice Direction 19A paragraph 3.1, and as a result of permission for the Claimant to amend the claim form and particulars of claim accordingly (with consequential provision for the existing Defence and Reply). In addition, pursuant to CPR 6.36, 6.37 and CPR PD 6B, para 3.1, the Claimant seeks permission to serve Mr Christodoulou out of the jurisdiction as may be appropriate, with any resultant pleadings and orders as directed.

Claimant

The Claimant relies on Grounds 3 and/or 6 and/or 7 and/or 9 as set out at paragraph 3.1 of CPR PD 6B. The facts relied on in relation to each grounds are as follows: Ground 3 - The claim Form has been served on the First Defendant and as a result of the Defence filed and served, the Claimant brings this claim under this Ground as a result of the issue of authority to execute the Guarantee has arisen and gives rise to an alternative claim for negligent misstatement or fraudulent or negligent misrepresentation. It is therefore a real issue which it is reasonable for the court to try in one single set of proceedings, as opposed to two separate claims and the Court possesses jurisdiction as a result, inter alia, of the jurisdiction clause to be found in \$22 of the guarantee, dated 1 January 2017.

Ground 6 - This ground is relied on as a result of the contract of guarantee being governed by English law.

Ground 7 - This ground is relied on as a result of the breach of contract of quarantee being committed within the jurisdiction, namely England and Wales.

Ground 9 - This ground is relied on as a result of the tort of negligent misstatement or fraudulent or negligent misrepresentation causing damage to the claimant resulting from an act committed or likely to be committed within the jurisdiction, namely England and Wales.

The Claimant believes that the following grounds exist between the Claimant and the Second Defendant which gives rise to a real issue which it is reasonable for the

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	court to try: namely, whether, in the event t as a result of a failure of authority, misrepresented his status and authority to so the First Defendant.	the Second Defendant misstated or	
	The Claimant believes that the claim has a rea	sonable prospect of success.	
	The Second Defendant's address is 7746N Wild	d Turkey Drive, Sturgis, South Dakota,	
The claim against Mr Christodoulou arises from the following causes of action and/or fraudulent or negligent misrepresentation/negligent misstatement.			
	In addition, the Claimant will rely at trial of the Prologics (UK) LLP "Report of the Members "Designated Member" on 23 March 2017 and the E	for Year ended 31 December 2016" as a	
4.	Have you attached a draft of the order you are applying for?	X Yes No	
5.	How do you want to have this application dealt with?	at a hearing x without a hearing	
		at a telephone hearing	
3	How long do you think the hearing will last?	Hours Minutes	
	Is this time estimate agreed by all parties?	Yes No	
7.	Give details of any fixed trial date or period	N/A	
В.	What level of Judge does your hearing need?	HHJ Worster	
9.	Who should be served with this application?	Defendant and Mr Christodoulou	
9a.	Please give the service address, (other than details of the claimant or defendant) of any party named in question 9.	Defendant - c/o Gresham Legal, Central Court, 25 Southampton Buildings, London, WC2A 1AL.	
		Mr Pavlos Andreas Christodoulou 7746N Wild Turkey Drive, Sturgis, South Dakota, USA.	
62			
10.	What information will you be relying on, in support of your applic	cation?	
	the attached witness statement		
	the statement of case		
	the evidence set out in the box below		
	If necessary, please continue on a separate sheet. The Defence makes reference to a LLP agreement disclosed to the Claimant (paragraph 4).	t dated 30 September 2014 not previously	
	Paragraph 7(4) of the Defence stipulates that claim is based is not binding upon the Defence Christodoulou did not have the requisite agreement.	dant as execution as carried out by Mr	
	The Claimant remains of the view that the Defendant, Prologics (UK) LLP. The Guarantee	claim as presented follows against the was entered into in good faith by the	
		024	

Claimant and duly relied upon, the Defendant taking the benefit of the same. The Claimant believed the guarantee was signed off with full authority. The Claimant further relied upon the reassurance of the First and Second Agreements (as referenced in the Particulars of Claim).

However, given the contents of the Defence, the Claimant believes it is appropriate for Mr Christodoulou to be added to the claim as a Defendant. In the event the Defendant is successful in its present Defence that in turn raises issue against Mr Christodoulou himself with his sign off of the Guarantee, First and Second Agreements in full knowledge of his LLP Agreement.

The Claimant thus believes that in light of the Defence submitted it is necessary to seek permission to bring Mr Christodoulou into the claim, and in consequence to seek permission to amend the claim form and particulars and then permission to serve the same on the Defendants, including on Mr Christodoulou out of the jurisdiction. The Claimant seeks an order in the attached terms. The Claimant suggests costs in the case in relation to the amendment, despite the usual course on such applications, as in this instance the addition and amendment sought has been caused purely by the Defence position adopted.

The Claimant relies on Grounds 3 and/or 6 and/or 7 and/or 9 as set out at paragraph 3.1 of CPR PD 6B for permission to serve out of the jurisdiction on Mr Christodoulou. The facts relied on in relation to each grounds are as follows:

Ground 3 - The claim Form has been served on the First Defendant and as a result of the Defence filed and served, the Claimant brings this claim under this Ground as a result of the issue of authority to execute the Guarantee has arisen and gives rise to an alternative claim for negligent misstatement or fraudulent or negligent misrepresentation. It is therefore a real issue which it is reasonable for the court to try in one single set of proceedings, as opposed to two separate claims and the Court possesses jurisdiction as a result, inter alia, of the jurisdiction clause to be found in \$22 of the guarantee, dated 1 January 2017.

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Ground 9 - This ground is relied on as a result of the tort of negligent misstatement or fraudulent or negligent misrepresentation causing damage to the claimant resulting from an act committed or likely to be committed within the jurisdiction, namely England and Wales.

The Claimant believes that the following grounds exist between the Claimant and the Second Defendant which gives rise to a real issue which it is reasonable for the court to try: namely, whether, in the event that the Guarantee is held to be invalid as a result of a failure of authority, the Second Defendant misstated or misrepresented his status and authority to sign the Guarantee for and on behalf of the First Defendant.

The Claimant believes that the claim has a reasonable prospect of success.

The Second Defendant's address is 7746N Wild Turkey Drive, Sturgis, South Dakota, USA.

The claim against Mr Christodoulou arises from the following causes of action: deceit and/or fraudulent or negligent misrepresentation/negligent misstatement.

The grounds for the Claimant's belief and its source of information is the Defence put by the Defendant in the existing claim.

The Claimant is not aware of any issues that would weight against the making of the Order sought. The relevant documents to this application are appended to the same, being the draft order, amended claim form and particulars of claim (with exhibits which include the Contract, Guarantee, First and Second Agreements and Defence and Reply).

In addition, the Claimant will rely at trial on the fact that Mr Christodoulou signed the Prologics (UK) LLP "Report of the Members for Year ended 31 December 2016" as a "Designated Member" on 23 March 2017 and the Balance Sheet as "Member".

-	
Statement of Truth	
(I believe) -(The applicant believes) that the fa	cts stated in this section (and any continuation sheets) are true.
Signed M. SHAKE Applicant('s legal representative)('s	SPEARS MARTINEAU Dated 29/3/19, Stitigation friend) LLP,
Full name MICHAEL EDWARD IAM	v Youner
Name of applicant's legal representative's firm	MARTINEAULP.
(if signing on behalf of firm or company)	<u> </u>
Signature and address details	
Signed Applicant('s legal representative) ('s litig	RF MARINEAU Dated 29 3 19
Applicant('s legal representative)('s litig	gation friend)
그리아 얼마나 하다 하는 것으로 살아 다른	
Position or office held	C
(ii digiting on bondin or mini or company)	
licant's address to which documents about this	application should be sent
akespeare Martineau LLP	If applicable
1 0 1	

Shakespeare Martineau LLP		If applicable	
No 1 Colmore Square Birmingham	Phone no.	0121 214 0000	
	Fax no.	0121 237 3011	
	DX no.	DX 721090 Birmingham 43	
Postcode B 4 6 A A	Ref no.		

E-mail address

026

Claim No. E40BM056

IN THE HIGH COURT OF JUSTICE

IN THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BIRMINGHAM CIRCUIT COMMERCIAL COURT (QBD)

BEFORE HHJ WORSTER SITTING AS A HIGH COURT JUDGE

B E T W E E N:

ANSELL RUS LIMITED LIABILITY COMPANY

Claimant

-and-

PROLOGICS (UK) LLP

Defendant

[DRAFT] ORDER

UPON the Court having heard from Counsel for the Claimant and Counsel for the Defendant on 22 March 2019

AND UPON READING the amended application of the Claimant, dated 29 March 2019 and the written evidence filed

AND UPON the Court being satisfied that the provisions of CPR 6.36, 6.37 and paragraph 3.1 of CPR Practice Direction 6B have been met.

IT IS ORDERED

1. Mr Paylos Andreas Christodoulou to be added as a Second Defendant.

- 2. The Claimant has permission to file and serve the Amended Claim Form and Amended Particulars of Claim on the First Defendant and Mr Pavlos Andreas Christodoulou at 7746N Wild Turkey Drive, Sturgis, South Dakota, USA, as the Second Defendant, in accordance with the drafts served with its amended application dated 29 March 2019. This is in consequence of paragraph 1 above.
- 3. By 4pm on 26 April 2019 the Claimant shall file and serve its Amended Claim Form and Amended Particulars of Claim with a copy of this Order. Permission is granted to personally, and by first class post, serve Mr Pavlos Andreas Christodoulou out of the jurisdiction at 7746N Wild Turkey Drive, Sturgis, South Dakota, USA (being an address used by Mr Christodoulou on a witness statement by him in the course of these proceedings).
- By 4pm on 10 May 2019 the First Defendant shall file and serve their amended Defence, if so advised.
- 5. The Second Defendant has 22 days after service on him of the Amended Particulars of Claim in which to respond by either:
 - (a) filing an Acknowledgment of Service;
 - (b) filing or serving an Admission; or
 - (c) filing a Defence.
 - And, where an acknowledgment of service is filed, the Second Defendant has a further 14 days in which to file his Defence.
- 6. By 4pm on 14 days after receiving the Second Defendant's Defence or the First Defendant's amended Defence, whichever is the later, the Claimant shall file and serve its Amended Reply, if so advised.

- 7. For the avoidance of doubt any requirement on the parties to deal with Initial Disclosure requirements under Practice Direction 51U is dispensed with so as to coincide with the fact this was not a requirement when the original pleadings were submitted.
- 8. The costs of and occasioned by the amendments above are to be in the case.



AMENDED

Claim Form

You may be able to issue your claim online which may save time and money. Go to www.moneyclaim.gov.uk to find out more.

In the High Cou Queen's Bench I Birmingham Dist	Division
Fee Account no.	
Help with Fees - Ref no. (if applicable)	HWF-
	For court use only
Claim no.	E90BM128

Claimant(s) name(s) and address(es) including postcode Ansell RUS Limited Liability Company Krasnopresnenskaya emb. 12, Moscow 123610 RUSSIA



-1 2 JUN 2018

Defendant(s) name and address(es) including postcode MR PAYLOS ANDREAS CHRISTOBOULCIU

Prologics (UK) LLP (1)

12 Gateway Mews

Bounds Green

London

N11 2UT

Brief details of claim Monies owed by Medcom-MP LLC to the Claimant that have not been paid as required, the First the Defendant is now pursued for the same in its role as guarantor and indemnifier of Medcom-MP LLC.

SOUTH BIKOTA , USA -

Issue date

7146N WILD TURKEY DRIVE, STURGE

In the alternative the First Defendant and for the Second Defendant misrepresentation in relaction to the Second Defendant quevante dated 1 January 2017.

£2,186,858.77 plus interest calculated at £509.27 per day, interest totalling £3,055.62 from the final demand date of 1 June 2018.

You must indicate your preferred County Court Hearing Centre for hearings here (see notes for guidance) High Court of Justice, Birmingham.

Defendant's name and address for service including postcode

Prologics (UK) LLP (1)

12 Gateway Mews Bounds Green

London N11 2UT

2, 189, 914.39 Amount claimed 10,000.00 Court fee Legal representative's costs 2, 199, 914.39 Total amount

Mr Parios Andreas Christocloulon (2)

1746 N Wild Turking Drive , Shwais, South Daketa, USA

For further details of the courts www.gov.uk/find-court-tribunal.

When corresponding with the Court, please address forms or letters to the Manager and always quote the claim number.

N1 Claim form (CPR Part 7) (06,16)

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	Claim No.		
Does, or will, your claim include any issues under the Hum	an Rights Act 1998?	Yes	X No
Particulars of Claim (attached)(to follow)-	i		

Statement of Truth *(Hbelieve)(The Claimant believes) that the facts stat * I am duly authorised by the claimant to sign this stat	ed in these particulars of claim are true. ement.
Full name MCHAEL E. I. Lourer, Name of claimant's legal representative's firm Shak	espeare Martineau LLP
signed M. W. SHAKESPEARE MAKTINGA *(Claimant)(Litigation friend), LLP (Claimant's legal representative)	bosition or office held SOLICITOR. (if signing on behalf of firm or company) *delete as appropriate

Shakespeare Martineau LLP

No 1 Colmore Square Birmingham B4 6AA DX 721090 Birmingham 43 0121 237 3011 Claimant's or claimant's legal representative's address to which documents or payments should be sent if different from overleaf including (if appropriate) details of DX, fax or e-mail.

IN THE HIGH COURT OF JUSTICE
IN THE BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
CIRCUIT COMMERCIAL COURT (QBD)

BETWEEN:

ANSELL RUS LIMITED LIABILITY COMPANY

Claimant

-and-

PROLOGICS (UK) LLP

First Defendant

-and-

MR PAVLOS ANDREAS CHRISTODOULOU

Second Defendant

AMENDED PARTICULARS OF CLAIM

Parties

- The Claimant is and was at all material times a seller of medical goods, registered under the Russian Federation main state registration number 1117746682349.
- The <u>First</u> Defendant, which is incorporated under the laws of England and Wales with company registration number OC314997, is and was at all material

times the guarantor and indemnifier for Medcom-MP LLC ("Medcom"), registered under the Russian Federation main state registration number 1027725002920, a buyer of medical goods from the Claimant, based in Moscow, Russia.

- 2A. The Second Defendant has declared that he is a Management Board Member of the First Defendant, pursuant to a Limited Liability Partnership Agreement, dated 30 September 2014. It is said that he undertakes most of the general management responsibilities for the First Defendant, including finance and legal matters.
- 2B. The Second Defendant has declared that he is a beneficial owner of a Cypriot trust, Pershing Trust (along with his mother and sister), which owns Robel Assets Inc, which is the owner of Orwensen Trading Limited, who is said to have been at all material times the joint Member and Designated Member (along with Surpenson Trade Limited) of the First Defendant. Orwensen Trading Limited and Surpenson Trade Limited wholly own the First Defendant.

The contractual framework

- 3. The Claimant avers that the following facts and matters are relevant:
 - 3.1 By a contract in writing marked "No.1701", dated 1 January 2017 ("the Contract"), the Claimant agreed with Medcom it would sell and supply medical goods to it. In particular, clause 3.6 declared that: "[Medcom] shall ensure that [the Defendant] enter into a suretyship agreement with [the Claimant] for the total amount of the Credit Limit in order to cover

- the payment of any amount due by [Medcom] to the [Claimant] ("the Guarantee")"
- 3.2 A Deed of Guarantee and Indemnity, dated 1 January 2017 ("the Guarantee"), detailed and obliged the First Defendant to stand as guarantor and as an indemnifier for Medcom under the Contract.
- 3.3 Further, on 31 January 2018 ,the Claimant, Medcom and the First

 Defendant recorded in a further signed written agreement ("the First

 Agreement") the present debt position and further the terms under which further orders were to progress.
- 3.4 In addition, a further written agreement of 2 February 2018 was subsequently agreed as "Annex 2" to the First Agreement so as to record certain generic terms as agreed by the parties ("the Second Agreement").
- 3.5 The Claimant will rely on the Contract, Guarantee and the First and the Second Agreements at trial for their full terms, meaning and effect. Copies of the documents are exhibited hereto as Exhibits 1-3 respectively.

4. The Claimant avers that:

- 4.1 The First Agreement recorded that, as at 16 January 2018, the total overdue from Medcom to the Claimant under the Contract was RUB 184,896,244.00 (defined therein as the "Overdue").
- 4.2 This sum was broken down by specific invoices within Annex 1 of the Agreement.

- 4.3 There is a handwritten note recording that a credit has been requested in relation to invoice 5000293. That was for RUB 2,542,936.00 giving rise to an amount owing at 16 January 2018 (as agreed by the Claimant, Medcom and the First Defendant as signatories to the Agreement) of RUB 182,353,308.00.
- 5. The First Agreement declared that "Ansell will no longer accept any orders from Medcom except under the following conditions ("the Conditions"):
 - 5.1 for Micro-Touch Coated and Micro-Touch Ultra Ansell product orders

 ("A Orders"): 30% of the A Order value must be paid to and received by

 Ansell prior to production of the A Order and the balance (70%) must

 be paid to and received by Ansell, five calendar days before the

 planned delivery of the A Order at Kotka, Finland;
 - 5.2 for all other Ansell product orders ("B Orders"): 10% of the B Order value must be paid to and received by Ansell prior to production of the B Order and the balance (90%) must be paid and received by Ansell, five calendar days before the planned delivery of the B Order at Kotka, Finland;
 - 5.3 for all product orders (ie. A Orders and B Orders combined): an additional 20% of the relevant order value must be paid to and received by Ansell, five calendar days before the planned delivery of the A Order and/or B Order at Kotka, Finland;
 - 5.4 it being understood that the payments made under 1-3 above ("120% Amount") will be exclusively credited towards the Overdue with a view

to clear the Overdue in full latest by 31 August 2018 either by applying the said 120% Amount to the Overdue or, should that not be sufficient to clear the Overdue in full, by making additional lump sum payments in May 2018 (of at least RUB 11.6M or such other amount so that the Overdue is at least reduced to RUB 131M) and another one in August 2018, if necessary, to reduce the balance of the Overdue to zero; and

- 5.5 payment of the new A Orders and/or B Orders will continue to be payable within 75 calendar days from the date of the shipment confirmed by a consignment note TORG-12, as per the Contract, it being understood that late payments on these orders will be exceptionally accepted until 31 August 2018 following which date all newly created overdue will be paid in three equal lump sum payments in October, November and December 2018 so that on orders prior to such date no overdue exists on 31 December 2018; and,
- 5.6 once the conditions under 1-4 have been satisfied in full, and the overdue referred to in 5 above does not exceed RUB 12M, any orders accepted by Ansell after 1 October 2018 will no longer be subject to conditions 1-3 above provided always the lump sum payments, if any, referred to in 5 above, are made."
- 6. The First Agreement specifically recorded that the First Defendant and Medcom accepted the terms [and conditions therein] by their signature to the Agreement. It further recorded "In the absence of signature by both Medcom and Prologics, Ansell will have no option but to immediately suspend all pending orders and exercise its rights under the Guarantee without prejudice to its rights under the

Contract. Such course will also follow if after signature of this letter, Medcom breaches the Conditions, at any point."

- 7. The Second Agreement repeated and reiterated that:
 - 7.1 Medcom and the First Defendant had independently accepted the amount detailed as due in the First Agreement (see paragraph 1.1), and;
 - 7.2 Further, that they could be pursued under the Contract, Guarantee or Agreements as the Claimant saw fit for any breach of the Conditions (see paragraph 1.3), and;
 - 7.3 Further the parties agreed that the English Courts would have exclusive jurisdiction to settle any dispute arising out of or in connection with the Agreement.
- 8. For completeness, the Guarantee declared that:
 - 8.1 The First Defendant guaranteed to the Claimant that whenever Medcom owed monies or debts were owed to the Claimant pursuant to the Contract, and provided Medcom had not made payment when falling due, the First Defendant would make due and punctual payment to the Claimant on demand of such monies (see paragraph 1 of the Guarantee).
 - 8.2 The First Defendant further agreed to indemnify and keep indemnified the Claimant in full and on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Claimant (see paragraph 2 of the Guarantee).

- 9. Paragraph 5 of the Guarantee further provided that the Claimant, before enforcement of the Guarantee, was not obliged to take steps to obtain a judgment or to make a claim against Medcom.
- 10. Paragraph 7 of the Guarantee declared that "The Guarantor [the First Defendant] shall pay interest to Ansell after as well as before judgment at the annual rate of 8% above base rate of the Bank of England from time to time on all sums demanded under this guarantee agreement".
- 11. Paragraph 22 of the Guarantee detailed that the parties agreed to submit to the jurisdiction of England and Wales in relation to the Guarantee.

The alternative claim against the Second Defendant

11A. In its Defence, the First Defendant relies on the contents of the Limited Liability

Partnership Agreement, dated 30 September 2014, In particular, clauses 5.2

and 3.2(V).

11B. It is averred by the First Defendant that:

- (i) The Guarantee was "purportedly executed on behalf of the [First]

 Defendant by Mr Christodoulou [the Second Defendant] as a

 Member of Management (and not as an LLP Member)" (sic).

 (paragraph 7(1))
- (ii) Such execution took place "without the consent or even knowledge of Mr Sofianos nor did Mr Christodoulou purport to have the consent of Mr Sofianos to execute the purported Guarantee." (paragraph 7(3))

- (iii) "Accordingly, the Purported Guarantee was not and is not binding upon the Defendant and the Claimant was not and is not entitled to make any claim against the [First] Defendant thereunder, since execution of the same on behalf of the Defendant did not have the necessary consent of both of the Board Members and was not therefore authorised by the [First] Defendant." (paragraph 7(4))
- (iv) "Whilst it is admitted that the Purported Guarantee purported to contain an agreement by the [First] Defendant in the terms referred to in the first sentence of Paragraph 13 of the Particulars of Claim, it is denied for the reasons set out above that the [First] Defendant can be pursued under the Purported Guarantee, whether as alleged in the second sentence of Paragraph 13 of the Particulars of Claim or otherwise." (paragraph 21).
- 11C. The Claimant has set out its case in response to the Defence, in its Reply, which it repeats mutatis mutandis (both now shown at Exhibit 6). In particular, the following facts and matters are relied on:
 - (i) The Claimant avers that, on 23 March 2017, the Second

 Defendant signed the First Defendant's "Report of the Members

 for Year Ended 31 December 2016" as a "Designated Member",

 affixed with the company seal of the First Defendant.
 - (ii) Further, on or about 23 March 2017, the Second Defendant signed the First Defendant's "Balance Sheet 31 December 2016" as a "Member" of Orwensen Trading Limited, affixed with the company seal of Orwensen Trading Limited.

- (iii) It is averred that the Second Defendant was a Designated

 Member of the First Defendant and/or a "Member" of Orwensen

 Trading Limited when he signed the Guarantee, dated 1 January

 2017.
- (iv) Further, the Second Agreement, at clause 3, contains a warranty of authority, which was signed by the Second Defendant, on 2.2.2018, expressly as a "Member of the LLP On behalf of Prologics with common seal".
- (v) In the premises, it is denied that the Guarantee was "purportedly executed on behalf of the Second Defendant as a Member of Management (and not as an LLP Member)".
- (vi) Further, the Second Defendant deliberately used the wording of "Member of Management", being reckless as to its accuracy, which was apt to and intended to mislead the Claimant into proceeding to continue to trade with Medcom, despite the late payments.
- (vii) In the premises, the Second Defendant ought to have expressly signed the Deed of Guarantee as a "Designated Member" and/or as a "Member" of Orwensen Trading Limited.
- 11D. If, and to any extent that, the claim against the First Defendant is unsuccessful by reason of the First Defendant's Defence (which is denied), the Claimant seeks damages against the Second Defendant, as set out below.
- 11E. The Claimant avers that by executing the Guarantee, the Second Defendant assumed a responsibility to the Claimant whereupon a duty of care arose or alternatively it is fair, just and reasonable for such a duty of care to be imposed.

- Mr Sofianos.
 Alternatively, the Second Defendant executed the Guarantee in circumstances where he knew or ought to have known that he was not permitted by the terms of the Limited Liability Agreement to do so without the consent or knowledge of Mr Sofianos.
- 11G. The Second Defendant thereby negligently misstated his status and role within the First Defendant and his authority to act within the confines of the Limited Liability Agreement and/or was reckless or negligent by acting without authority or failing to notify the Claimant as to the significance of his role when signing the Guarantee as a "Member of Management" and/or his purporting to execute the Guarantee as a deed on behalf of the First Defendant, so as to induce the Claimant to act upon his representation.

PARTICULARS

- (i) On 23 March 2017, the Second Defendant signed the First Defendant's
 "Report of the Members for Year Ended 31 December 2016" as a
 "Designated Member", affixed with the company seal of the First
 Defendant.
- (ii) Further, on or about 23 March 2017, the Second Defendant signed the First Defendant's "Balance Sheet 31 December 2016" as a "Member" of Orwensen Trading Limited, affixed with the company seal of Orwensen Trading Limited.
- (iii) It is averred that the Second Defendant was a Designated Member of the

 First Defendant and/or a "Member" of Orwensen Trading Limited when he
 signed the Guarantee, dated 1 January 2017.

- (iv) Further, the Second Agreement, at clause 3, contains a warranty of authority, which was signed by the Second Defendant, on 2.2.2018, expressly as a "Member of the LLP On behalf of Prologics with common seal".
- (v) In the premises, it is denied that the Guarantee was "purportedly executed on behalf of the Second Defendant as a Member of Management (and not as an LLP Member)".
- (vi) Further, the Second Defendant deliberately used the wording of "Member of Management", being reckless or negligent as to its accuracy, which was apt to and intended to ultimately mislead the Claimant into proceeding on a false basis so as to continue to trade with Medcom, despite the late payments.
- (vii) In the premises, the Second Defendant ought to have expressly signed the Deed of Guarantee as a "Designated Member" and/or as a "Member" of Orwensen Trading Limited.
- (viii) The Claimant avers that the Second Defendant made a false representation to the Claimant, in circumstances where the Second Defendant was reckless or negligent as to whether it was true or false, intending that the Claimant should act in reliance on it.
- 11H. The Claimant relied on the Second Defendant's misstatements and fraudulent or negligent misrepresentations by acting to its detriment in continuing to contract with Medcom without any actionable Guarantee in force, and, in consequence, has suffered loss.
- 111. In the premises, the Claimant seeks damages which correspond to the losses claimed under the Guarantee against the First Defendant, as a result of being

vicariously liable for the actionable misstatements and misrepresentations of the Second Defendant, either by reason of the aforesaid fraudulent misrepresentation or via section 2(1) of the Misrepresentation Act 1967.

Alternatively, if the Second Defendant is held to have acted outside the scope of his authority, such that his employer or principal is not vicariously liable, against the Second Defendant for the loss and damage he has caused to the Claimant.

The First Defendant's failure to pay

- 12. In breach of the Agreement, Medcom has failed to pay RUB 182,353,308.00 or any part of that sum. As per paragraph 4 of the Conditions set out above the "Overdue" figure should have been reduced by May 2018 to RUB 131M. Medcom is in breach of that Condition by virtue of its non-payment. Thus a figure of RUB 182,353,308.00 is presently due and owing pursuant to the Guarantee, as a result of breach of the Agreement. Requests for payment to both Medcom and the First Defendant have been made and are shown at Exhibit 4.
- 13. As per paragraphs 7 and 8 above, the First Defendant, who agreed to make due and punctual payment to the Claimant on demand of the Guaranteed Obligations (defined as any monies or debts owing to the Claimant pursuant to the Agreement) can be pursued under the Guarantee. This is as a result of the breach of the Conditions of the Agreement by Medcom, by virtue of the breach of the Agreement and the presence of the Guarantee. Payment has been

demanded under paragraph 1 of the Guarantee, by a letter of demand dated 18th April 2018 and further 1st June 2018 (copies of which are exhibited hereto as Exhibit 5) but payment has not been forthcoming and remains due and owing. For the avoidance of any doubt, the <u>First</u> Defendant has failed to make payment of the sum demanded, or any sum.

PARTICULARS OF LOSS

- 13.1 The First Defendant or alternatively the Second Defendant owes the sum of RUB 182,353,308.00. It has been demanded but not paid. By its right under the Agreement and Guarantee the First Defendant is pursued for this sum as Medcom's guarantor. The sum of RUB 182,353,308.00 amounts to £2,186,858.77 as at 6 June 2018.
- 13.2 The Claimant reserves the right to pursue Medcom directly as it may see fit and to take steps for permission to incorporate/join such claim with the present one if appropriate for costs and proportionality reasons.
- 13.3 Alternatively, the Claimant seeks the sum of sum of RUB

 182,353,308.00 as damages for negligent misstatement or fraudulent or

 negligent misrepresentation, pursuant to s.2(1) of the Misrepresentation

 Act 1967.

Claim for interest

14. Further, the Claimant claims contractual interest on the sum unpaid at the rate of 8% above base rate of the Bank of England from time to time on all sums demanded under the Guarantee, as per Paragraph 7 of the Guarantee amounting to £3,055.62 from 1 June 2018 and continuing at the rate of £509.27 per day until judgment or earlier payment, or alternatively the statutory interest under section 35A of the Senior Courts Act 1981.

AND THE CLAIMANT CLAIMS:

- (1) The sum of £2,186,858.77 or alternatively damages.
- (2) Interest as set out at paragraph 14 above.
- (3) Further or other relief.
- (4) Costs.

ANDREW MAGUIRE

OUTER TEMPLE CHAMBERS

Served this 6th day of June 2018 by Shakespeare Martineau LLP, solicitors for the Claimant.

ANDREW MAGUIRE

Amended this [] day of March 2019

STATEMENT OF TRUTH

The Claimant believes that the facts stated in these Amended Particulars of Claim are true. I am duly authorised by the Claimant to sign this statement.

Full name	Position or office
	held
Signed	(If signing on behalf of firm, company or
	corporation)

Claim No. E40BM056

IN THE HIGH COURT OF JUSTICE
IN THE BUSINESS AND PROPERTY
COURTS IN BIRMINGHAM
CIRCUIT COMMERCIAL COURT (QBD)

BETWEEN:

ANSELL RUS LIMITED LIABILITY
COMPANY

Claimant

- and -

PROLOGICS (UK) LLP

First Defendant

-and-

MR PAVLOS ANDREAS
CHRISTODOULOU

Second Defendant

AMENDED PARTICULARS OF CLAIM

Shakespeare Martineau LLP
No1 Colmore Square
Birmingham
B4 6AA

Ref: 1112538.1.MY

Solicitors for the Claimant

EXHIBIT 3 PART 2 OF 3

	1	
		:
		Claim No. [NUMBER]
	IN THE HIGH COURT OF JUSTICE	i
	IN THE BUSINESS AND PROPERTY COURTS OF ENGLA	ND AND WALES
	COMMERCIAL COURT (QBD)	1
	BETWEEN:	i
@ .	ànsell rüs liivited liability comp	PANY : Claimant
	-and	
	PROLOGICS (ÚK) LLP	<u>Defendant</u>
	EXHIBIT 1	: :
		
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KOHTPAKT Ni 1701

Mookin, 01.01.2017

Chareceno a orpanimental orperchadinocerta «Ancene PYC», gonhum objesta condunas a цойствующее в соответствии с законодатольствой нопионои, фодериция; Рессинскойгосударственный регистрационный Ябмер-11-17746682349, е жестом нахождания чю-выресу! России, 123610, Моской, Юраспапресненская наб., д. 12 (папре по стейсту — «Продавач»), и личе Генераприосо "пароктори Неустроска Андрея Пеонидоричи, действующего на основални устава, с одной стороны, и

ООО «МЕЛКОМ МП», должным образом бозданное и дейструющее в соответствин с эмконопатольством Российской Федерации, основной государственный регистрационный комер. 1027723002920 с. исском нахождения по ндресу: Российския Федерация, 140055, Московская область, к. Котепьники, микрорайой Венця Дена, промосии «Технопром» (дайса — «Покупатель»), в лице Директора по экономикс-Финаниового директора Димирджина Себастына Прара, дойструющего на сеповании доворенности №15-003140 от 12:07:2015 г.

(при совместном упоминанин в настоящем Контракта Продовой, и. Покупотовь именуются «Стононым, а по отденьности - «Стонона»),.

авильник учетовий контрикт (данае —

Дип целей настоящего Контракта прабочий день» означаст побой день, который ис лепистел субботой или воскресеньей и и который блици. Росониской Федерации открыты осущоствления бынковской деятельности.

Li Tipegmer Konrpakta

Г.1. Продовец облауется продать и поставить Покупателю медицинские изделил и медицинские перчетки («Тофарма»), в Покупатель облачется приобрести у Продавца Топары в колинестве, в котором Покупатель их периодинески будет настописто в состостопни с условними настописто Контракта. Покупетель, облужения принять Топары у Продавца и обязуется оплатить Товары в соответствии в условиями настоящего Контракта, и спответствующих Понтверждений выклабы (как определено ниже).

Дия оформления заказа Покупатель направляет Продавцу заказ на закупку..

1.3. При поличим у Продация возможности 1.3. Should the Seller be able to supply the Goods in

CONTRACT No. 1701

Majeow, 01/01/2017

Augeji Julis Limited Liability Company, a löyat enuty duly organized and existing under the lawy of the Russian Redomition, main state registration number 1117746682349, having its registered address up: Krasnopresmonskaya emb. 12, Muscow 123610, Russin (the "Seller"), represented by Andrey Leondovich Newstraev, General Director, acting pursuant to the charter, but the one part, and

"MRDCOM-MP" LLC, a leggil entity duly organized and existing under the laws of the Russian Federation, under a state registered office at: Industrial zone Tekinoprom, place district Belsya Daelia, Kotelniki, Moscow area 140055 Russia (the "Buyot" ropresented by Dimitfan Schastlen Fier, Director of Economy-Rinancial Director, acting pursuant to Power of Attorney No.15-003140 dated 12/01/2015.

(the seller and the Buyer are burein reserved to us the "Burtler" where required)

have soncluded the present contract "Contrad"), whereby it is agreed as follows:

For the purposes of this Cohiract (business day) means a this (exchiding Saturdays and Sundays) on which hanks generally are open in the Russian rederation for the transaction of mornal banking

T. Subfect of the Contract.

1.1 The Seller shall sell and supply to the Buyer medical devices—medical gloves (the Goods), and the Buyer shall buy the Goods in such epartities as may be ordered by the Buyer from time to time in accordance with the conditions of this Contract. The Buyer shall accept the Goods from the Soller and shall just for the Goods in accordance with the conductors of this Contract. Acknowledgment (as doinged below).

1.2. In order to place an order the Huyer shall send to, the Soller's purchase order.

постинен Попары по шаймёновішнам, в количаетие и чи ниых условиях, укладийнх в энгале та чимпку Покупатели, Процисц напрацияют Покупітелію (і) подглержисние заказа, составленное по форме, приведенной в Приложении № Т и инстолисму Договору («Понтвариздопие запазан») в подписка и поопи. 81 энионы В жень (П) и плапродП раздичен Attraction of the state of the Подтверждение заказа, подписанное со стороны Покупатели. Подтверждение заказа не избест обядьтельной сиры для Проденца до его родинейний Покупателем. Покупитель не пираве вносить изменения и Подтверждение заказа после его подписания При этом а течение 30 (трідцати) чаненарнім діей Покудитель обязан направіть Продавцу оригинал надлежацім образом оформисивого Подтверждоння заказа курьером. Зели Покупатель не направляет Проціппу ориганал нарлежащим образом Elponimuy оформионного Подтверждения самаза, Продашец может приобтановить все поставки Толаров до моменты, пока он не получит вое недостношне оригинилы дидлежицим образом офирмленных Подтрорждений паказов.

the requested items and quantities and on other terms of supply slipulated in the purshase order of the Buyer, the Seller shall send to the Buyer, the Seller shall send to the Buyer (i) in order neknowledgment, made in the form set out in Attachnicht No. T (the "Order Acknowledgment") signed and stamped by the Seller and (th) an invoice. The Buyer shall, within the next & doubler-signed to the Seller the Order Acknowledgment counter-signed by the Seller the Order th until it has been counter-signed by the Buyer, An Order Acknowledgment cannot be modified by the Buyor after it has been dounter-signed by the Buyer, In addition, the Buyer shall send to the Seller a duly formalized countersigned original of the Order Anknowledgment by courier within 30 (thirty) calendar plays. If the Buyer does not send to the Seller the original of the duly executed Order Acknowledgment, the Seller may suspend all deliveries of Foods with such time as it has received deliveries of Foods with such time as it has received. deliveries of Goods until such time as It has received all outstanding originals of the duly executed Order :Acknowledgment.

При отсутствии возможности побтавить Товары на указанных и элказе на зокупку Условиях Продави зибо отказывает в принятия закази на закупку, имбо предлагает Покупателдо наменить успория заказа на закупку. Измененция Покупателем заказ на вакупку расскатривастел क्षा में Продавцом в том же поридке, Хунулае ви сълае индиаланановору.

If the Setter is unable to supply the Goods on the terms stigulated in a purchase order, the Seller will either refuse the purchase order or suggest that the Buyer modifies the terms of the purchase order. The modified purchase order will be reviewed by the Seller in the same mounter as the original purchase order.

1.4.:Продовец вправе отдазать в принятий заказа на закупку от Покупатели а спорующих опущих! - осли объем, заклаон на вакупку, предыщает по предоставленный Појсупателск ежемесичный прогноз заказов больо чем на 20%;

- Покупачень превысил (или провысит, соли заказ на закупку будет принят) Кредатиый лимит (как

б'пределейо няже); еоли отсутствует Поручительство, предусмотренной в п. В. б. Договода, а током осли оно было отмонено или прекращено; й/или

- за прошодшно 30 дней до даты размещения ригония от прето в а cliange of more than 10 заказа на закупку объенный куро доллара США к регсепт ін the exchange rate USD/RUB. российскому рублю изменился болсе чем на 10%,

Пробые предложения Продавца относитольнонаименования, ассортимента, привнемен на віднанівновій вородії (німі) и почовичном копультим на применти на примент anteynty. эдектронный адрес Покупателя.

1.4. The Seller is entitled to refuse accepting a phrchase dider from the Buyer in the following 'chroujnstancesi.

- if the volume of purchase orders calculated on the basis of judance exceeds the presented respective monthly forcost by more than 20 percent; and/or -the Buyer exceeded (or will exceed if the purchase order is accepted) the Credit Limit (as defined helow);

- the Chalantee foresten in clause 3.5 of the Contract Is not in place; Is cancelled or terminated; and/or - over the past 30 days prior to the placement of a.

Продавец не имеет права в одностороннем The Seller cannot unliaterally change the purchase порядке видонть наменения в закавы на закупку: order. Any proposals of the Seller considering the change in names, range, quantities or shipment dates should be communicated via e-mail to the Buyer.

1.5. Yonomir fractominero Kontrparta byayr 1.5. The conditions of this Contract shall govern each

deranglopuse kunkung angs no andund di Полтверицёние заказа. Кикдое Полтцерацение заказа должно содоржать укланые ил то, что стоantitionent worken her de dennier in 10, detennier in 20 kilonomiele in the Contract will be continued by the continued in the contract will be continued by the continued in the contract will be continued by the continued the Contract will be continued the Contract shall provail. Подтверждением สกัหมาก, Kourpaig преимущественную силу.

purchase order and Order Acknowledgment. Each Order Neknowledgment sind have a reference that it has been concluded in accordance with sind

Г.б. Покупатоль обизуется ревинарнывать Топары и Российской предориции («Территории»). Покупатель облауется не обуществлять истивных продож или не Астанданный Территории с цепью реализации или продвижения Продукции бутем примом понтолом расседин, подещений и режимы, прединалаченной для такж какедов. Покупатель облауется не хранить Горары и не осуществить распространение Тонаров за проделями Торритория.

1.6. The Hayer will distribute the Goods in the Russian Rederation ("the Tearlitary"). The Buyer will distribute the Approach and measures outside of the Tearlitory in the interrupt to sell or promote the Goods by direct mail, visits, advertisements targeted at such customers or other means. The Buyer will not establish a warehouse of distribution outside of the Territory,

1.7. Покупатель облауется передавать Продавцу ομολογούμγιο κιμφορωμιμιτό ε Ιφορωετε, προδοκοέκον для Продавца:

- Годовой прогноз на наказы - до конци мерта кажного года;

з Ежемесилный посьной йт заказыт скоптойния прогноз на двенициать мостцев;

- Ежемерінный откет а нарме запасов (объемы); - Енсифониный отчет о проделях по кладой позиция (в единицах).

1.7. The Buyer shall provide to the Seller the following information in the form acceptable for the Seller:

- Animal drder foregast - before and of March of each

- Monthly order forecast: Welve months rolling forecasts

Monthly stock level ceptort (voluma);
 Monthly sales out report per trent (in thirts).

Покупатель и Продавец облачества проводного екоквартальные истречи, пооблицеццые обябру продож, на которых Покупатель обязан предуставления. Продавилу информацию, пребускую догласко Байнея-плану: Обоужденне и согласовий байнее-плану проводится ежегодно до первого вголя, ори этом в Бизнестпане должно содержитеся подробное описилие «Фонда развичи бальсов, а также допуны быть опроороды правила в принципы осуществления рекламной деятельности Покупутелсы и Продавцом

The Buyer and the Seller WIL have quarterly sales review objettings during which the Buyer shall provide the Seller with the information required in the Business Plan. This Business Plan will be discussed and agreed annually before July I, and shall include details of the Business Development Fund" and shall set forth how advertising activities are to be corried out by the Buyer and Seller.

деятельности Покупатоль облауется соблюдень принципы, изложенные дарее в растонием пункть. Покупатель сослащается не использовать и не веменать торговые применования, товарные знаки и другие объекты интеллектуальной собственности Продавик, не использовать маркетингой верматериалы Продолиа в отношения инет товарой боз предадрительного фистиенного разресцений Продавца. Дизайн упаковки; фирменные наименования, тоодримо знаки, знаки. обокуживания, поготины и другив объекты

1:8. Προχώνου, μ Ποιχηντεύμ στημιστιμμός 1:8. The Seller and Auget engage in marketing маркетингорую χευτευρμόστε в στησημούστηκε activities with respectito the Goods. When our ying Του προχ. Πρυ. τοχιμέντει καρκοτικό του με the marketing activities the Buyer shall comply with the principles set out further in this clavise. Bayen agrees not to use or amend or after the trade names, trademarks or any other intellectual property of Seller, or to use Seller's marketing materials associated with non-Seller Goods without prior written consent from Seller, All packaging, tradenames, frageinatka, services marks, loggs, and other intellectual property of Seller shall remain the sole and exclusive property of Seller's Group. Buyer may dovelop ils own marketing materials to sell and distribute the Goods, except that no such marketing

еобетпенийети рителлектупльной фунцотея меключительной собственностью пруппы компаний Проданць, Покупателе пираво จุเลยเเดิมเรื่องจาก : arientaringedend маркетинговые. материолы: для продажи и дистрибуции Тонаров, при этом, одимо, инкличе тыкие материвны не допосны содержить фойологий, тарактий и утверждений но томоду Голаров, не утперждений воотпетегрующих гирантиям Продолиа отнощении Товаров ини дополниющих такие гарантия; Покупатель несет сдиноличную it, minentroun more on arounderfreduce облатейльствий, позникующим в связи с исо миркодинговений и иновмоннений Милеваничин п отношовин Товиров, если такне материалы но был согласовым с Продавцом до начала их непользований

Thousand majorials hay contain representations, warranties or beinedected offices regarding the Goods that are inconsistent with or in addition to the Goods' warranties provided by settler. Beyer shall be solely responsible for all a Toughou, a Toughou, and Habilities resulting from its marketing traterials or product literature, if those materials were not proflucturing agreed with the Seller.

1.9. Продавец обизуется не позднее 2 (друг) рабочих ацый с даты получений информации с ависсения уполномоченных органом рацения с авирещения к обращение или приостановления примецения Товаров проянформировать Покумителя с таком решении.

2. Цены и общий сумый Контракта

2.1. Стамость Тораров, аключая НДС, любые применный синдки и націонки и стандартному прайс-листу, которай должна быть согласована в Помтаелісм, должна быть указана в Помтаержанни заказа и/или очете по каждому виду Торари и в отношении общого количества Тораров, приобретаемых Покупателем. Цены на Точары указываются в российских рублик (прубл)

2.2. Текупий дандартный прайс-икст Продацца предсетавляется Покупателю однойременно с запионением Контракта и паписля псотомнемой цастью Контракта и паписля псотомнемой пастыю Контракта и пасты и цейы на Топары колут измещаться и побое преми путем направления соответствующего уженой питем прокупателю ца 30 календарных дией до плинируемой даты вогупления и силу новых цем (ку ведомлейте об изменении цемы»). Цеты на Топары определяются в соответствии о прайслинуюм, дойствующими на момент размещения заказа на закупуу.

Продавец может предпагать специальные цены на Торары, колорыю будут установлены в форме Специального Предпамент с установленыя с установления с установления присменя и объемами запулюю на заповы, разменсьными в этот период.

Цейні токущого стандартного прайс-инста на Товары не різут менятьол надзе у чем один раз в б (шесть) месяцей.

1.5. The Seller is obliged to inform the Huyer about the prohibition of obvolution or suspension of use of the Goods not later than 2 business days from the date of reaching of such information about such decision of the authorities.

2. Prices and total value of the Contract

2.1. The price of the Goods, including VAT, any hipflicable discounts and surcharges from standard pides list to be agreed with the Buyer, shall be indicated in the Order Asknowledgment and/or livoice for each individual type of Goods and for the total number of Goods purchased by the Buyer. The pitess of the Goods shall be fixed in Russian Rubbes ("RUH").

2.2. The Seller's current standard price fist shall be proyided to the Enyer upon the conduston of the Contract and product assertment and pricing may be simulated at any time upon a 30-calendar day written notice ("Price Ameridanent Notice") to the Enyer. The prices for Goods shall be the prices in effect at the time the purchase order is placed.

The prices of goods are defined in accordance with the prices list valid at the inoment of placing the purchase order,

The Seller may offer the special prices for Goods, which will be set as Special Price Offer (SFO), containing validity periods and purchase volumes for orders placed and confirmed in the validity period.

والضيارة المستناس

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The prices in the standard price list may not be changed inote frequently than once per a months.

2,3. В период премени между получением Уведомлония об изменений цены и можейтом исі Ациенни, в овітА наМененном пенет Пропивел не облеви принимий размощвомию Покупателем чакавы на эпкупку, соль объем заковой на эпкупку правышает прогноз, направленный Покулателем Тродпацу в месяцадо даты выпуска Уведоминия об изменении цены, более нем на 20%.

3. Устопия платема-

3.1. Все рисчеты по Контракту скуществлиются в

3.2. Қамарій очет, подтивриценніцій Покупрталем, opparemerch Покупитенем в целения колундарных дней с деты стуруаць, подтроридарной топарной пакледной по Трормс orrpyaics, ТОРГ-12; банковским переводом на очет Продавца по реквизитам; указанным в Контракта, при этон 'максимальная сумыя задолженности Покулителя не кожет преволиять, 103 000 000 руб, («Крадитими лимин»). Продобец імерт прово приостанодить поставки до получения платежа, Проданцом, всеночая те, врое оплаты по доторым вще на паступил;-

Кредитный лимит может бысь пересмотрен Продевисм в любой момент:по его соботвенному нижецевенноеційнік одсідільнівоця; Эсіметриняю ,в. оплаво, пистлішению шодого, из

- невыполнонис(-ия) платежных больтепьств по ійчетам; и (ішн)

 κουιζήρολου γπρουπείτας, είναι)
 κουιζήρολου γπρουπείτας, είναι) онижение пинскеспособности и (нии) утрата

эначительного объема имущества Покупателя; и (unit)

отмена / прекращение Поручительства предусмотренного пунктом 3.6. Контракта,

Продаред но может изменить Кредитный лимит в одностороннем порядке в отсутотвие жоги бы одного из выполеречистенных оботовтеньств.

3,3. Β. ποκοτορικά ομγάσης ο προπαρητιοποίο согласии Продавда и при условий стоучетана просроченной задобненности (неопиваемых счетов; сред средствить по которым наслупия); Получетий и представующей по которым наслупия); Получетий представующей по стоучеть и поставленом: Поцтверждении заказа,

2.3. During the period between the receipt of a Price. Amendment, Natice and the moment when the annualed brice comes into effect, the Solier shall not be obliged to necept purchase orders placed by the Buyer if the volume of purchase enders exceeds the forecast soul by the Buyer to the Sellet the mount prior to the date of issue of the Price Amendment Notice by more than 20 percent.

8. Terms of payment

3.1., All payments under the Contract shall to effected in RUB.

3.2. Bach invoice confirmed by the Buyer shall be payable by the Enger within 75 calendar days from the date of the slipment confirmed by a consignment not TONG 12; by a back transfer to the account of the Sciler specified in the Contract with a maximum of edit amount of 103 000 000 RDB (the "Credit Limit"). The Soiler has the right to suspend delivery mail the sum that reduces the fold rebus below the credit Limit the sum that reduces the fold lebts below the credit Limit anount of the credit Limit amount of the credit Limit powering the total amount of the colls and the purchase orders and all outstanding withing outstanding purchase orders and all outstanding withing outslanding purchase orders and all outslanding debig under all involces issued by the Seller, including those which are not yet overdue.

The Credit Limit can be reviewed by the Seller at any quament at the Seller's sole disortion, if one of the following circumstances occurs:

- paymon default(s) of the invoice, and/or

- Receivership/Administration with respect to the Buyert and/or

- deterioration in the solvency, bud/or dispusal of significant searce, of the Puyer, and/or

- cancellation reacts, of the Puyer, and/or

- cancellation convol of the Guarantee described in plause 3.6 of dis Contract

The Seller will not unflaterally change the Credit Limit if none of these circumstances occurs,

3/3. In certain circumstances, with the prior approval of the Seller, and pribe condition there is no overdue altuation (overdue invoice remaining uppeld), the Buyer is entitled to prepay the price of the Goods under a certain Order Acknowledgment.

Э.4. В сійчис просрочки поступления біличе за rounp. Продавец уведомия Панівійльтроп. Подуратоли о необходимости незамодинтельно опримент сумей заполненность. В саминет в свидние 15 рабочих дной, опедующих за датой ішатожа по ўсловыям контракта, то Продавец вправа пачиснить и предълонть и уплать неустойну в размере 0,1% от суммы подобжениюти за жилений день просрочки. Всин опласи просроченной видоменности поступит после истечения 15 рабочих дней с дахи платежа по усповиям контракта, то размер наустойки, после даты плитежа по условиям контракта, то Продовоц вправо науменить и предъланть к уплато неустойту в размере 0,3% от сумы задолжениюми вр. кождый день просрочки. Неустойка должна быть начислена ійсьменном виде предъплава Докупателю.

В случае приостановки поставой товари болос чем на 15 рабочих дней, в связи с зацержной оспат от Покупателя более чем на 15 рабочих дней, Тродавей по своему усмотранию имеет право переплресовать товар любому йодой ві атитовмороп ийй утнойны умотуды. другой склад, предварительно уведомии об этом :Покупатёна ди д (три):робочих двий

3,5. Все банковские платежи Мин фасходо, свизаньнае с банком Покупателя иссет в оплачивает Покупатель. Все прочве банковские расходы несет и оплачивает Продавей.

3.6 Покупатель обеспечих заключение компанной (IOKen) JJJIII» договора Мроновжине поручительства с Продавцом на полную сумму Крепитионо пимита в целья обеспочония выплаты Покупателем побой суммы, причитающейся Промицу (полек - «Поручетельсти»).

В целих рарингии получения суким, подпежащих Покупателем, отмены, случае yrmate педсиствительности прекращения иля πράμο Поручательства Продавец. имеет потребовать цезавноймую гарантию с пирилатой по первому требованию, выданную надежным банком, или иной документ, обеспечивающий получение плитежей, по усмотрению Продавца. (договор поручительства и т.л.).

4. Колество Товаров. Упаковка и маркировка

 Качество Товири, продавного по Контракту, должно сбответствовать стандартам Российской Фодерации и подтверждаться / декларациями о регистрационными. соотпетствин; удостоперениями на Tonapar. прочими докумейтами в сооттротегнии законодотельством Российской Федерации.

3.4. If pulineur is delayed, the Buyer will be notified about the need to immediately pay the outstanding account receivables ("AR"). If the outstanding AR is paid within 13 business days from the AR due date, pant within 15 consitess anys from the recent that, the Buyer shall pay to the Seller a penalty at the rate of 0.1% of the unpaid AR per each day of delay. If the untstanding AR is delayed for more than 15 business gays from the AR due date, the penalty rate as from the 16th day from the AR due date will be culculated at the rate of 0.3% of the unpaid AR per-ench day of delay. Penalty can only be applied by the Seller in written claim to the Buyer.

in addition to the above penalty for delayed paymont, in case of suspension of deliveries which cannot be performed by the Soller due to delayed phyingut from the Buyer, and If the Goods are on hold for nore than IS business days, the Seller has the right to recoute the Goods to any other oustomer ur designated was also by providing the Buyer 3 business days' prior holics.

3.5. Any banking fees and/or expenses connected with the Buyer's bank shall be borne and paid by the Buyer. All the other banking expenses shall be borne and paid by the Seller.

3.6. The Buyer shall ensure that Prologics (UK) LLP enter into a surelyship agreement with the Seller for the total amount of the Credit Limbs in order to cover the payment of any amount due by the Buyer to the Seller ("life Guarantee").

The Seller shall be entitled to require an independent guarance payable at first demand issued by a reputable bank or other means of scouring payment at the Seller discretion (suretyship agreement, etc.) in order to guarantee any amount due by the Buyer to the Soller if the Guarantee is cancelled or terminated, or otherwise becomes ineffective.

4. Quality of the Goods, Packaging and labeling

4.1. The quality of the Goods sold under the Contract. shall meet the standards accepted in the Riissian Rederation and shall be confirmed by declarations of conformily/registration certificates/ other documents required as per laws of the Russian Pederation

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4.2. The moderation of the state of the stat инитежнийго ббращений грузом.

43. Hogynarous не впрацё наменить Tonapus 43. The Bayer whall not alter the Cocids. Изменения и уполовку или маркировку Тонаров Modification to packaging or labeling conjuga take no marks object anecona bes muoro place will out the express phot approval of the Seller. предрарительного согласти Продавца.

4.4. Упаконая должна содержать информацию и АА The packaging mast contain the information and специананую маркаровку и соответствии с среды ворожности с среды ворожности с среды ворожности в станурация в соответствии в станурация в соответствий в предостание с предостание в предос Продудент несел. п. (при) розменты в полиом одгеже негольтойствой мых неприментой маниноргий:

4.5, ть, в слуние писк-лио инменения и регуниторинж Документах, относлинжей и Тойарай (регистрационное удостоверение, цеклараций о соответствии), в Российской Федериции, удоховка в инсциинательна даржировка на удижение Товара должин быть изменение (син требуетах) в спответствии с выконодатой стиом, гоботь и батай мини общинательной и Тойайх. ГОСТОМ: и (иди) иним: принциртом, и Толары должны быть уполовилы с учегом этих изменений, и тогого с учетом даты производства двиных Товаров.

В случае каких-либо изденений и 4,5 In case of any charges in the supporting property. Документах, относлицухой in tegralation gentlifests, declaration of conformity) in patient o соответствии), в Российской the Russian Federation, the packaging and special intermediate Tomana pointed barts изменена (ссти детом) в соответствии с выконодатоньством, should be conducted as per those changes for a (или) иным стандартом, и Толары соответству и иным стандартом, и Толары соответству и пристам от стандартом.

В спучаю певыполнения указанного требонатия Продавец поэмещает Покупателю в полном объеме примые расходы, понесейные на обработку. Толоров и неправление деправильной. упаковки или позврат Товара Продациу за еко

In this of non-fulfillment of this requirement the Soller shall compensate to the Pilyer direct expenses related to handling of Goods and convertion of thoroper labeling of those Goods or thinh of the Goods to the Seller at the Seller's expense.

4.6. Продавай гиранскоруст, что поставка Товаров осуществляется в бунктолись, минеты когорых согласовыратогоя Сторонами по электронной nointe;

N.6 The Relier guarantees that the Goods shall be shipped in the package the minek-up of which was agreed by Parties by e-mail;

5. Поставка.

5. Delivery.

осуществинстой Tonapon: Поставка отдельными партиями. Стандартным общиделим. ероком поставки очитается 90 календарных дней отонценым оформации пиносуют э. Почтиван моге им , веккае винерукцентуют указывается Тродавцом поотавки Подтнерждении заказа,

S.I. Delivery of Goods whall be carried out in soparate consignments. The standard expected delivery time shall be 90 intender days from the finalized Order Acknowledgement received by Seller authoroder Acknowledgement.

52. Tongpu поставляются Продарном на месковский сими. Покупателя, распристенный месковский сими. Покупателя, распристенный меском watchouse of the Bryer located at Moscow гедов, Помоделовский домоделовский гедов, Помоделовский гедов, Помоделовский гедов, Помоделовский гедов, Помоделовский гедов, Помоделовский гедов, Помоделовский гедов (Столбы, Билденде, «Спиды 104»; стр. 2, при этом Seller shall bear transportation obstant of Delivery гранский переводительного присте продавен невет транспортные расходы и риски

Sign

l'onap, nogranife(thing. Продавец упедомий Покупители о необходимости незимединтельно оплатить сумму задолженности. В случае, всян просробения задолженность будет отначена и течение 15 рабоних дией, оподующие за датой платежа по условиям контракта; то Покупатель иправо почисть и предсприть и ублаго неурговиу в разморо О.Г. от сумым задоженности од комерай день прогромки. Всли описта проспоченный авдолженности поступит поме потечейни 15 рабочах двей с даты платеми по условия контрацей, то трамер кеустойся, пичисалемый с 16 (шестымдиного) для просрочки после доты пинтерка по убложими контракта; то Покупатель впраце начислять и предывить к ідимус то ЖЕД ефомелі и улкоїсувні блапту няводосит аныў йідрікай ве иторинамподиц в и вивірангы, агід бимпод, выкотоуры

письменном акис предъладена Покупателю. В одучав присохановим постерои товара более чем на 15 рабочих дией, и сили с задержкой рішат от Покупателя болсе цём на 15 работих дней, Продачен по своему усмотрению либет право ререатресовать товар побому другому іціненту нли переместить на любой другой винод, предварнтельно уведомив об этом Покупатели в 3 (три) рабочих дипр

3.5. Все башковожно плателої п/или раскоды, селапініміе ў Банком Покупацеля несет я оплачилает Покупатель. Все прочис банковские расходы несет и опцачнист Продалец.

3,6 Покулатель обоспечнт зайдочение компанкей «Проподжике (ГОКСИ) ЛИП» договора поручительства ў Продавцом на подную сумму Кредитного лимита в целях обсолечения выплаты Покупателем любой сумым, причитающейся Продавиу (далее - «Поручительство»).

В целих: гарантии получения сумм, подпежащих शार्थपृत्व отмёны, уппате Hoicyringeriem, H нецейотнительности прекращения или Продавац Поручительска HMEOT ppimo потребовать незащиськую карантию с вышагой по первому требованню, выдвиную надежным банком, или иной документ обеспинивающий получение платежей, по усмотрению Продаміа (договор поручительства и т.д.).

4. Качество Товаров, Упаковка и маркировка

ит. Кансотво Товара, проданного по Контракту, полино сботавтствовать отвидирнам Российской Федераций и подтверждаться / декнарациями о **Белистрапионируми** coorderotunks: удостоперениями па Товары; / проними Докужонтами в фортветствии законодательством: Российской Федерации.

3.4. B. enyage apocepousty nocesymeens windres at. 3.4. If payment is delayed, the Buyer will be not that about the need to binnediately pay the outstanding account receivables ("AR"); If the dutstanding ARIs paid within 15 historis days from the AR due date, the Buyer stall pay to the Seller a penalty at the rate of 0.1% of the unpaid AR per cast day of delay. It the outstanding AR is delayed for more than 15 business days from the AR due date, the penalty fate as from the 16th day from the AR due date, the penalty fate on could late by the rate of 0.3% of the unpaid AR per cast day of the unpaid th each day of delay. Penalty can only be applied by the Seller in written claim to lio Buyer,

> In addition to the above penalty for delayed payment, in case of suspension of deliveries which behind the performed by the Seller due to delayed payment from the Buyer, and if the Goods are on held for more than 15 business duys, the Seller has the right to reroute the Goods to any other customer of designated warehouse by providing the Buyer I business days' prior notice.

3.5. Any banking fees and/or expenses connected with the Buyer's bank shall be borne and paid by the Buyer. All the other banking expenses shall be borne and paid by the Seller.

3.6. The Buyer shall pasure that Prologies (UK) LLP enter into a surety-lip agreement with the Soller for the total amount of the Credit Limit in order to cover the payaled of shy anothit due by the Buyer to the Seller ('The Guarantee').

The Seller shall be entitled to require an independent guaranted payable at first demand Issued by a reputable bank or other means of sequency payment at the Seller's discretion (suretyship agreement, etc.) in order to guarantee any amount due by the Buyer to the Seller if the Guarantee is cancelled or terminated. or otherwise becomes ineffective,

4. Quality of the Goods. Packaging and laboling

4.1. The quality of the Goods sold under the Contract shall night the standards accepted in the Russian Federation and shall be continued by declarations of conformity/ registration cortificates/ other documents required as per laws of the Russlan Federation.

габелы үли, прореждения Топаров до моменты (ав. detipes below); Поставни (как определено ниже).

maké honymouru nacere e organionnam shall send to the Buyer the following documents: Топарими:

Cuer-diaktypa ø

Товарная национная (ТОРГ-12) ò

Трянспортний накладной (СМК)

Продащец обязуется паправить ущаницые ниже документы Докупателю по электрониой почте до Hoc rangit

регистрационного удостонеронии на Гонары;

Копия декларации о соответствии на

5.3. Thorament obusyered manpanatic yearannals 5.3. Together with slipping to the Goods, the Seller

a VAT bivoice

Chişigmiğut note (FORG-12)

Transport delivery note (CMR)

The Seller shall send to the Buyer the following doublinents by e-mail prior to Delivery:

Copy of registration certificate for the Goods

Copy of declaration of conformily for the

б. Поставия и присыки Топаров

Horrabkit подтверждивтоя Момент 6.1. подписеннем топирной накладной (ТОРГ 12), подгиериднощих передичу Гонйров Продавцом или перерозчиком Продавца Покупателю, Право собствонности на Тонары и риск спункиой гибели или случайного, попреждения Топпров переходит к Покупателю в момента Поставки.

ного ден и кравов на порем на порем и на порем на причения и кравовичения причения день не позднее 16-00, В случае разгрузки с опозданцем, Покупатель облачест пести расходы, обязанные с проотоск грузовика.

6.3. Привыка поставненных Товаров по. количеству и посорущенту, віслючая проверку попрождоний при транспортировие утраты и недопостария Товаров, производится Покупатолом по інпериням бризнявам в момент Поставки. Товаркі считаются отпечающими трепования Контракти по количеству и ассоргименту при соотпетствия колинества одинии лостиненных Товаров колинеству; указаниому в тобарной найманиой на даниви. Торары.

Поваров по 6.4. Привний поставленных **Фиркировки/Апиковки** соответствию TOCTY и (или) иным эпконодительству, отандартам, производится Покупателем в течение 14 (четырнарцати) калондарных дной после

6. Delivery and acceptance of the Goods

in The moment of Delivery shall be confirmed iffrought signing the TORO-12. confirming the granter of the Goods from the Supplier or its saffer to the Buyer. The right of ownership to the Goods, and the fisk of accidental loss or accidental damage of the Goods shall trainment to the Buyer from the manual of the Dollows. moment of the Delivery.

62. To case of a loose carlon load the Huyer shall approva. Hochtare is observed as cook over parpyants a process of a loose carlon load the Huyer shall inload the Goods from the truck it only cost and telease the truck the within 7 hears upon its arrival. If the trick has arrived not later than 13100 on a hadren of the confidence of 16:00 on a business day, If should be unloaded and released within the same day, In case of lake unloading, the Buyet shall bear truck demurrage böştş.

> 6.3. The inspection of the supplied Goods for quantity and assorting in including transport quantry and assortagent, including transport breakages, missing Goods and shortages, shall be performed by the Buyer apon Delivery by visible conditions. The Goods shall be considered to be compliant with the requirements of this Contract regarding quantity and assortment if the solual quantity of Goods' units conform to the quantity specified in the consignment notes for the same Goods. Goods;

> 6,4 The inspection of supplied goods for compliance of inbelling package to GOST and, (or) other standards is performed by the Buyer within 14 calendar days after Delivery by the internal quality service of the Buyer, in the case of non-compliance

Hogy and the TOST and confident to support the support of the supp Покупачени. -13 случие hecoornerer will маркировки/упаковки законодительству, ГОСТу и (или) ниым стандартам, Покунатоль в тененые Эпинэжуданда пуномом в. Нейи живода (хэружения несоотпототини навощает об этом Продавца.

standards the Huyen informs the Sofler about this fact. within 3 working days from the discovery of noncompliance.

7. Протонзин и отноготрениюсть

7.1. Любаю претензил в отношении количестви и/или качества и/или внеційсто вида Топарон опетавлиотой по унифицирований форме № ТОРГ-2, всин напр форма не догомительно согипсовал форма будыт

Претензии относительно. жымидий: попреждений Тораров и унаковки, уграты и недопостанки Тораров, в тиске несоответствия поставляемым Тораров Подтверждений виказов, и жаркировки Упаковки - законодательству, ГОСТУ и (чли) иным стандартим должны быть и и. оналетилдемисей упарадорії ізневарина ід побож случає не поддаєт ім ла тачента (четырый цаты) календарных дисй Постапки. При ртсутствии таких сообщений Товиры считаются принятыми Покупатолем в безоговорочном порящке.

7.3. Продавец гарантырует отоутотвие спрытых дефектов (брак и т.п.). Даниая гарантия вступает и силу в момента Протавки и действуют в течение срока годиости Товаров. Претензни относительно скрытых недовножений и дефектов должны быты направионы Докупятелем при. возможности й не поэже чей через 96 насов после модо йілиготатоС., мтюфей отогладий иментолицій подположент постаном жимент вы доверо на моментом довер в мене в (ноормидеовти процентов) от общего ррока указанного годіўскір, указанного проёзполитейскі ім ўсикомко, йобо до мецка 12. каріянскі ірн оттрузко со силода в г. Гени, Бейнгии Постивна Товара со сроком годилски менее 80% (воськийселти процентов), при отгрузке с завода или менее 12 месяцев при отгрузце со склада Ансолл возможна только с письменного согласии Покупателя.

7.4. О претензии в связи с причинением вреда пользодателю Покупатель обложи сообщить Проданцу немедненно, когда сму сувно об этом изпестно.

предложит Покупателю план действий дв очет coorneratilyionax Tonnpon, уйменить

7. Complaints and Hability

2.1. Any complaints with respect to the quantity and/or quality and/or the visible defects of the Goods shall be prepared based on the unified form TORG-2. unless a different form shall be additionally agreed by the Parlies.

7.2. The Buyer must submit its complaints concerning visible damage to the Goods and their packaging, mussing Goods and shortages as well as discrepandies with the Order Acknowledgments and marking/labelling to law, GOST and (or) other standards to the Seller not later than 14 calendar days after the Delivery. If no complaint has been submitted, the Goods shall be considered irrevocably accepted by the Buyer.

7.3. The Seller guarantees the absence of concealed defects (waste, etc.). This guarantee comes into effect upon Delivery and is valid within the shelf life of Goods, Complaints regarding the hidden shortness and defects must be submitted by the Buyer at the carliest opportunity and not later than within 96 hours upon the discovery of a hidden defect. The residual shelf life of Goods at the moment of elilpment from factory should not be less than 80% of the total sholf life stated by producer at the package and for the shipment from warehouse in Genk, Belgium should not be less than 12 months. The shipinent of Goods with shelf life less that 80% from factory and 12 inouths from Ansell warehouse is possible only with written agreement of Buyer,

7.A. Any complaint resulting in a user injury must be reported by the Buyer to the Seller immediately when the information is received by Ruyer,

its own expense, return or dispose of corresponding Продавий оруществить позорач вин уничетожние Goods, replace the conceptonding Goods with the Goods of the appropriate quality and/or essortment,

Tongput or additionally supply the cutstanding Goods at phyra, and office of the difference of the difference of the non-equiporating or non-delivered fleads.

ACTUAL SACRAGE SACRES AND

7.6., Если Продавы не признал претензию по количеству, кичеству или иссоримойку. Стороны обязуются пачирить повымощного эксперта для проведения состоето устений или проведения состоето устений или проведения состоето устений или проведения п

7.6. If the Sellier does not necept the complaint in regard to the quality, quantity of issections of Goods, the Paules undertake to appoint an independent expect to conduct the appropriate, examination.

7,7, B přímky Kolityphera Cyopolial liceyc ornerczbenniocia друй паред другом центіочитеньно ви грубую неосторожность и пенвиденкащее оннениопили, умьпілонное обложеньств. Ни при каких обстоятельствах один-Οτόρομα με μεσεν ονμετεναθμικόσει τα γηνιμέτατγίο нозможности, μμεμιομαιαέψος сциратично надаржив для иных пий дъобщен сциратично надаржив для иных ими дъобщен нь деред отретствиность по претсилим и рекломациям, касающимся коммерческой пригодности Тонкроп, проданных Покупателно по Компракту, в также из соответствия особым Условиям жолопьяствий жій по любым шцыц основаниям.

7.9. The Inities shall only be libble to the other Party under the Contract for gross negligence and willful misconduct. Under no circumstances shall any Party be imple for any loss of profit, missed opportunities envisaged costs savings, or any other indirect damages of the other Party of third parties. The Seller is not libble for any claims or reolamations regulating metchaniability, specific use or shy other for the Goods sold for the Buyer or under the Contract.

соотпетатай ющим техническим пророжиму и поражити праводы по удориаториющих порражного обращения, и также праменения попражного обращению, и также праменения попражения, едертивниють измосы обрыцовию попражения не несег ответственности за 7.8. Продевод не несег ответственности за учественности по праводниками.

7.8. The Seller is not responsible for damage resulting from inappropriate use, fair west and fear, defective or careless handling or use of mappropriate operating froms.

7.9. Льобой возират Говаріов обуществияетой по согласовінню є Продавітой в раміках Процесса одобрення возирата Товаров Продавца. Посла добрення Продавцом, возврати Посупалена обува собирдата хотакорловивые Продависы орфіки подірата Товаров.

ордан сооподать хуганороганые продолжим обраний голорога Гондовий проботих дней обробрения протоизим об Покупатей иль принимает возврат некачественного Товара, или облази вернуть упраченые за некачественный Совар пенежные оргасти на распетый счет покупателя при условии, если замены продавном некачественного Товара на

канествейный, не послейует.
7.10. В случае афициального приостановления 7.10 посеее япи отмены рагистрационного удостоперейничим тедівтивного уполномоченных брізном за Российоном Казыда Теді федерации, Покупитень облаустся соблюдать предписации уновномоченного органа по quarantine адмінация уновномоченного органа по органацию адмінацию традацию уновномоченного трада очет об разводення продація.

7.6. Any icining of the Goods must take place subject to a consent of the Seller and within the frame of the Reprin of Goods Authorization process of the Seller. The Buyer must respect the Timing defined by the Seller for sending the Goods back afternesses of the return

The Sollor either accept the returned unconditional Goods in 10 husiness days after acceptance of complaint from the Buyer or in the same period returns the paid amount of money for unconditional goods to Buyer's bank account if the replacement of the unconditional Goods will not be excelled,

7:10 In case of official suspension or obnicellation of registration eetiliseate or destration of remotivation of remotivation of the Goods by the competent authorities in the Rissian redenation, the Buyer shall respect the instructions of the competent authorities in terms of quarantine and/or destruction of the Goods at the cost of the seller.

Sim

течения 10 раболих диби после уклапшого нике в донном позяце периода путем перечислейия: средств на счет Покупателя, еслу Тошры ужо отпачены. Покупателем и чх обращение апрещено уполномочениями органами более; чем ин. 30- рабония дней (-при этом Покупатель облан цернуть полученную компенсацию ф течении 10 рабочих дней ў моменті разрощения обратиення Тенцьов, осин уполномоченные органы и прого разрошат обращение Тенцров). В піобых інних случалх, ороки оплації Товаров будут прорисцы до принития окончательного решения уполномоченивыми органами,

Покупатоль освоборидается от финансовых Процопцом облантейьсті перец no. быйй. приобрегенным Товарам, koropsie Анилложени в соответствии с предписаниями Augustolioneurity oblation

8. Ооблюдение саконоцательства

8.1. Покупатель признает и принимает, что овтодпотодономис стран DHE Терригорий, испочающие, но не ограничивающиеся: Правина экспортного управлены, США, Правыц международной торговый оружем США, Закон Совданенных Шейсов Америки О коррупции за рубожом H Закой: Воликобритании Moryr примениться: изпрочничестве, дейтельности, приніощейся предметом Контракта. Соблюдение норм указанных актов существонно дуя выполнения Контракта.

В.2. При оыполнении своих обязательств по настоящему Контракту Стороны облауются подсерживаться от прямой или пословной випіцільі, преўпожених или вазвещення пришили пиропатоороді или фурдово жылментор жидопр нійничи на шинх тійн ній их петісіній челомійн петиосомі побым підня в петью оказаная получений пюбых незаконных преимуществ или в любых других незаконных целях. При выполнении обоих обязательств по инотолщему Контракту обизуются воздерживаться от либых действий, д действующим. соотвотствин доторые п мойтрапетицовномие классифицируются как дачелюйунения взихок, жыдой то влени в тухудон нивоорганивы -нарушающий. Monerayionice. действий, μικοτρήμου το παροκοτρίτου και και το μέ отраничивансь, Закон Соединенных Штатов Америки О корругции за рубежам и Закон Великобритании 0 взиточничестве, конвенции по борьба междуниродные керругіней я отмынаннем доходон, полученційх преступным ітутем,

Thougher nonnegatives and some the seller shall relimbure the cost of Goods via bank trunsfer to Buyer's account within 10 business days after bon period stated bolow if the Goods baye. nfrendy been paid by the Buyer and If the Goods are bauned for circulation by the competent authorities for more, map 20 business days (and Buyer should return the componsation within 10 working days from the nomensured within 19 working thys from the noment of indispiration of circulation of Goods in case the competent authorities finally authorize circulation of the Goods). In any other case, the physician terms shall be extended until figures to the competence of the control of the c decision of the competent authorities.

> If the Goods were destroyed as per the order of competent authorities; the Huyer will not bear the financial colligations in front of the Seller for those purchased Goods.

8. Compliance with Inves

8.f. The Buyer recognizes and accepts that the lawsast. The curver recognizes and general the law-of nontries of side the Territory, including but not limited to, the U.S. Export Administration Regulations, US International Traffic in Arms Regulations, US Foreign Cornel Practices Act, and the UK Bribory Act, may apply to the activities that are a nicelest for the Contract. Compliance in the material will be succommon of the Property of the president. material to the performance of the Contract.

8.2. In performance of their obligations under this Contract, the Parties shall not pay, offer to pay or authorize payment of any monetary funds or valuables, directly or indirectly, to any persons in order to influence these persons or their decision so not oger unlastfol benefits or reach any other illegal objectives. In performance of their obligations hereunder, the Parties shall not make notions qualified by the applicable legislation hereto as giving t taking a bribe, quanture to requirements of the as actions running counter to requirements of the applicable foreign legislation, unduding, but not limited to, the US Foreign Cornint Practices Act and the UK Bubery Act and International acts for avoidailee of laundering of proceeds of crime.

8.3. B chymae hozhmunouchum y Croponto 8.3. If any Patty suspecia that a violation of any

помозраний, что провершю наи может произойти нарушомна конка-инбо доложений пастоящего раздело в Жойтранта, соответствующий Оторона обисуется уведомить другую Оторону об этом в иновиденной фарма. Поста писого письменного уседовлючить, соответствующий Сторони импер право приботановить випочнение обизствующи извенирано приботановить випочнение обизствующи, что нарушения не произошно или не произойдет. Это подтверждение должно быть направлено то толение 10 (деорги) рабочих дней о цаза направления письменного учестомновии:

provisions of this section s of the Contract took place or may anto place, the appropriate Entry undertakes to notify the other Party of the satisfic witting. Where such will enough to opprepriate Party is entitled to suspend the performance of its obligations under the Contract until a confirmation is received that his violation did not or will not take place. This confirmation shall be provided within ten (10) business days from the date of written notice.

8.4. В письмонном упедомлении Сторона рбизана доблаться на факты или предоставить материалы, энціонаў жін виміонамифатрой биффортом можду произодум нибудомис дикиз-лидо основанно довущомизую дло произопли мид положений настоящей Стигон контрагентом, вегражитопресси о понодржих киспифипирамети в соодногодния, с приненичем, законопидоднолном как дана. Иди получение выски, коммерческий прикуп, й также действиях; нарушнюјцих Tochogalliu. дайствующего. иностранного э́мконодательства, віспочап, но не ограничивней. Врході, Сосдімонных Штигов Америки. О коррупции эт рубьжом й Закон Велисобритании милизаном врандодницународные конвенции но бореба с коррупцией и отмываниси: доходов, полученных преступным путем:

8.4. In its written notice the Parly should refet to the facts, or subilit materials confirming or giving grounds to presume that provisions of this Attlete may be or have been violated by the counterparty expressed in actions qualified by applicable laws as giving taking abribe, commercial tampering as well as actions running counter to taquifements of the applicable foreign legislation including but not limited to the United States Porciga Corrupt Receives Act and the United Kingdom Bribery Act and international acts for avoidance of launifering of proceeds of ctime,

8.5. Пекупатель будет соблюдать все дейотрующие люриятивис-привовые исты, регумирующие койтроль за экспортом, и получит все невбуодимые лицончии и вертификаты, посущатой ис будет и не бираве оказывать содокстиры или зациматься нерепаррациония кабарта или зациматься нерепаррациония эмбарта или ограничения в части, касающейся экспорта говаров ную услуг. Таким образом, посупателы соглашается ин примо, ни позвенно не экспортировать торары; страной промехокценки моторых примодея СПА, тем физическим и порадательных абартым запрещем. Каким-либо Фодоральным агейтством Правительстве СПА.

8.5. The Buyer will comply with all applicable export controls, regulations and obtain, all required licenses and certifications. The Buyer will not and shall not assist or engage in the redirection of Goods to any country that is subject to it US embarge or to US restrictions regarding the export of goods or selvices. The Buyer thus accepts not to export Goods of US origin directly or indirectly to a person or legal entity that is barried from US exports by a Federal Agency of the US Goyamacat.

в. В олучае нарушения одной Стороной облантеньств доздероваться от заприщениях в настоящем раздене Контрикта действии муни неполучения тругой Стороной и установленный перопроизонный пропроизонный пропроизонный произонный произонный произонный прина Стороно и пополнения Контракта настибетыю от исполнения Контракта направле иму в части без обращения в суднай произонный прина порядка отказаться от исполнения Контракта направле иму в части без обращения в суднай произонный произонны

8.6. If one of the Parties violates the obligation to refrain from the actions prohibited under fills settled of the Contract, and/or the other Party does not receive a confirmation within the time envisaged by the Contract that the violation did not of will not lake place, the other Party shall have the right to immediately vanilaterally refuse to perform the Contract, in full on in part, without recourse to court by southing a written notice of folialnation.

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πούμπου, πό τις ε pedynariar μαργιματίτη παμποιώ oikitotiatviengui облительстви no नाम्क्रिक्रियास्तामः wind нонименцияльной . получени Покупатолем от третьего лица без парущения им обязаконатова по неразглашенню конфиценцивной информации, при условии, чтο это τρατье πλίζο πουγνικό τακχιο πιθορωπισιοзаконным путем и, со своей стороны, не облицю цонфиценцииньности собтодать режим тижейдоп (III) или зирвыдофии йот инпошонго и кубрия маначо молотапурой опинашанием Управления или судам в соответствий с оудебными законодительными, официплеными предписаннями. В олучених указанных и іт. (ії) жыле, Покупатель должен пемедиенно проинформировать 06 Продраца: Этобы он мог причить меры для выщиты обоих интересов по собвюдению рожима конфиденциальности информаций.

12. Прочие условии

12.1. Денотано Конграция распространиется на отношения Сторон, позиципно с 01.01,2017 г. н Контрайт эпиночен на необределенный срок. Любан Сторона вправо отплатьот, от неполнения настоящего Контракта в односторонием порядко без обращения в суд тутем паправления другой Стороне дійоменного уведомірония не меней чем за 90 паціондардых дней до предпологаймой даты расторожения Кортіракта. Обрайтильства Сторон по Контракту, колорые не были молопинены на момент расториссиия Контракта, сохраняют свою горидинескую силу вплоть до их исполнения.

[2:2. Пооде подонойний Контракта 800 предејимитно переговори и переписке по нему перлот сниу.

12.3 Сели кокос-инбо положение настоящего Контракта явинстви или стиновитей по накой либо причине личтожным, недействительным или не имеющим ноколой силы, это не бликет ца. жействительность или некопую силу какйх-либо или всех остальных его положений. В любом таком опучие Стороны недамедлительно прододят переговоры для чого, чтобы изменить указанное положение таким образом, чтобы, будучк накененным, оно отело дейстительным и законным и в миксимильной сторени передавию первоначальное намерение Сторон, отраженное в иннедіствой в Контракте, настолицем рассматриваемого вопроса.

12.4. Ни одна: из сторон не имбет права передавить третьему лицу право и облавниости по Контракту без письменного согласия другой Стороны. Покупатель не будет необоеноранно одказењать в предоставноний совнасји на передачу Процавцом прав и обязанностей споим

administration (Kotophkita ando cram unascret director of this confidentiality obligation; or (ii) the Buyer obtains from a third party without a breach of a confidentiality obligation if and to the extent the third party obtained this differention legally and, ou is part, is not obligated to maintain regard the sign of sign information, or (iii) the Buyer is obligated to disclose to minorities, ac courts due to any stalutory, judicial or official orders. If clause (iii) is applicable, the Buyer what the courts are the second stalutory. the Buyer shall immediately inform the Seller to enable the Seller to reasonably protect its confidentiality interests.

12. Other conditions

12.1. The Contract shall apply to the relations of the Parties starting from 101/01/2017 and shall be concluded for an indefinite term. Trny Party has the right to unlitterally refuse to perform this Contract without recourse to epurt, at any moment by giving un obligatory written hotige to the other Party at least 50 calendar days prior to the desired termination data. All the obligations under the Contract which have not head fulfilled as of dale of its termination confinue to apply up to their complete performance,

12.2. After the Contract has been signed, all the preceding negotiations and correspondence preceding negotiations perjaining to it become null and void.

12.3. If any provision of this Contract is or will become levelid, ineffective, or uneffected for any reason, this ishall not affect the validity or enforceability of any or all of the remaining provisions hereof. In such a case, the Parties shall forthwith enter into good faith negotiations to amelia such provision in such a way that, as sinceded, such amended provision will be valid and legal and, to the maximum extent possible, will carry out the original intent of the Parties as reflected herein with respect to the matter in question.

12.4. Neither Party has the right to besign its rights and obligations under the Contract to any third Party will not uncasonable withhold its consent in the case of the assigning of rights by the Seller to its affiliates or subsidinities.

9.1. В спуще пользії при частичной перовножностії Велопивани любай па Схорон областовой на Койтракту (Кракіч финеводнік областовой на Койтракту (Кракіч финеводнік областовой на Койтракту (Кракіч финеводнік областов, д. пімовної тюжам, стихифица, общення, блокам, вищеннями випорта мін пручих, не зависищих от Сторой обстойтейнета, срок менолифий ображенає отодойнаето сорбаморно бражена, й пользивий которого будут действовить такио обстоятельства и их послодотими.

9.2. Если пъппеунаварные оботоптельстви и чк последствия будут продолжаться более ? (прех) месящей, то измедят из Еторон будет иметь право отказаться: от делицейциого меновления настоящего Контракта в односторонием порядке без обращения в суд (за усключением обязательств по отнате за поставленные Говары и возарату: Покупателю предоплаты за непоставленные Говары).

9.3. Сторона, дин которой созданає неподможность неполнення областового по товтракту, доржен неменню вписотить другую торгону о наступиским и прекращоний оботоякейсёть, пренатогомомих нополнению областового. Индискащим допелатовом написия уполнинах неше оботоятельств и их продоржительности будут спукуть виравсы, акомдения Поровой правтой в месте: нахождения Продавда или Покупатоми, соответотовню.

10. Разрешение споров

10:1. Отношения между Огоронеми по настоящему Контракту регупируются даконодетейством Российской Фодерейции:

10.2. Вов, біторы да разнеімали, спедующие на Контракта чин познійній в связи с Контраксові, догуті быть передації да рассмотренно и Арбытракный суд города Москава.

11. Конфиденциальность.

Приминенти за променти при пространет и променти при пространет и променти при пространет и променти при пространет при пространет променти промен

2.1. Should any circumstances adise preventing cities of the Parties from highlifligh their respective obligations ender the Contract (other than functed obligations) partially of in this panisty. The antical import, of any other productions of the expert of import, of any other productions beyond the control of the Parties, the time sipulated for the hilfilling of the obligations shall be extended for a period equal to that during which such direumstances and their consequences will remain in force.

9.2. Should the above mentioned chromstances and their consequences continue to be in force more than 3 (three) months cach Party shall have the right to unitateally return any faither fulfillment of the obligation under the Contract without recourse to court (except for the Buyer's obligations to pay for any shapped Goods, and for the Saller's obligation to pay back for non-delivered Goods).

9.3. The Pairty, which is unable to fulfill its obligation under the Contract, shall immediately inform the other Party of the occurrence and cassetton of their obligations. The contributes issued by the respective Chambers of Commerce at the fellors or of the Hayer's location shall be sufficient cyldence of such circumstances and their durability.

10. Dispute Resolution

10.1. The relationships between the Parties under this Contract shall be appreciate by the applicable legislation of the Russian Pederation.

10.2. All disputes and differences resulting from the Contract or which dan arise in cointection with the Contract, may be refound for resolution to the Arbitrach Court of the City of Moscow.

11.: Confidentiality

The Partles shall keep strictly confidential nity information, which they receive during the course of concluding or highling this Contract, and shall take fill the measures which are recessary to prevent the disclosure of such information.

11.2. The Huyer may use confidential information of the Seller only for the purpose of performing the Caultage and may have except disclose it to any third party. This chilication shall not apply to such confidential information that (1) has already been in the public domain upon conclusion of the Confinct or later becomes known to the general public without a

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аффилированным лицам и дочерним общестнам.

12.5. Продинец и Покупатель заверяют и гардитируют друг другу перкеслодующее:

12.5. The Seller and the Buyer declare and guarantee. to each other the following:

12.5.1. Кандал из:Сторон являетов юридинеским и маниюм, доловим образом учрежденным и территорий Российской действующим BB Федерации;

12.5.1. Back Party is a legal entity duly formed and acting legally on the territory of the Russian L'ederation;

12.5;2. Праноспособность Сторон позволяей вы запоночить Контракт;

12.5.2. The legal capacity allows them to conclude The Contract;

12.5,3. Лица, подписывающие от имени каждой из сторон Контракт и другие документы, отпроліднеся к лему, имеют все пеобходимыю для лигомониоп олоте

12.5.3. The persons, signing the Contract and other documents, relating to it, on behalf of each Party, have the accessary powers.

12.6. Все изменения и Приложения и Контракту действительными и считаютой ROTOIRRON неотъемнемой частью Контракта лишь в том случао, всли оти соворщены в иновменной форме и подписаны обеими Сторонами.

12.6. All the uniquents and Attachments to the Contract are valid and considered to be the integral part of the Contract only on the condition of heing inade in written form and duly signed by both Parties.

12:7. Контракт и относящиеся к нему документы, подписанные Сторонами скроплонныхо нупрациенные посредством файсимильной или электронной связи, имеют горидическую склу подлинных документов для обеня Стороп, При этом обмен оригинацими данных документов в согласованные Сторонами сроки прляется обизательным для обеих Сторон.

12.7. The Contract and documents related hereto, if signed and stamped by the Parties and sent by fax of e-mail, have legal force of originals for both Parties. However, the delivery of the originals within the timeframe agreed by the Parties is binding union the Parties.

Для направления документов вепользуются The documents shall be sent as follows: спедующие реквизичы:

Продавцу 123610, Москва, Краснопресненская наб., д. 12 Darco: +:32 (0)2 528 74 01 E-mail: Annahasalya Felissova@ansell.com

To the Seller Krasnoprianenskaya emb. 12, Moscow 123610 Fax: + 32 (0)2 528 74 01 B-mail: Anastassiya, Feitssova@ansell.com

Покупателю 127287, г. Москва, ул 2-л Хуторскал, дом 38 а, стр тракс: 8 495 363 60 33. E-mail: gorlov@medcom-up.tu

To the Buyer 38A, 2^{ct} Khutotukaya Str., bld 23, Moscow, Russia, 127287 Fax: 8 495 363 60 33 E-mail: gorlov@medcom-mp.ru

12.8. Контракт составлей и даўх экземплярах на английском и русском языках, причем каждал Сторона хранит один оригинад для надлежащего подтворждений, В случае расхождений или наличий противорочий между русско- и англовзычной персиями Конгракта, версий на русском языке имеет пренмущественную силу:

12.8. The Contract is made in two copies in English and Russian, each Party is keeping one original for due acknowledgement. If there is any disorepancy or contradiction between Russian and English versions hereof, the Russian version shall provail.

Байковские реквишиты Сторон:

Bank details of the Parties:

Pacyernsid over 40702810700102102008

Seller Settlemehi account 40702810700102102008

В ООО к9йц-Эс-Би-Са Банк (ГР)» БИК 044525351

Fineynatens
PH-1/16[14] 7/725203410/50270.1001
P/o 40/7028105000/70530247
AICE @Pockingishnen (AO)
P/o 30101810445250000836
PFIE 044525836

Подписи Сторой

Tipogniest / Seller: Officerno e or panning manifed of percententory wance of PYCs / Ansell RUS Limited Lindlify Company

Heyorpoes Aндрей Лебындович / Andrey Leondovich Neustroev Генерривный директор / General Director ыл./ seal Ve HRBC Bank (Kik) (Cimited Plapilità. Comband): Ve HRBC Bank (Kik) (Cimited Plapilità.

Влусё NN/КРР 7725203410/502701001 р/о 40702810500070530247 АКБ «РобЕвройайно» (АО) к/с 30101810445250000836 В10 044526830

Signatures of the Parties

Nokynarcni / Buyer: Obniecroo c orpaniiricintoli ofnercriscingerilo aMerkon Min/Medcom MP Limited Liability Company

Humuppushi Cabactull/Ileop Ditultian Sebasticn Pier
Hupakrop tig site marke Ditultional Ampekrop /Director of Ponorny-Binancial Ampekrop M.m./ scal

Claim No. [NUMBER] IN THE HIGH COURT OF JUSTICE. IN THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES COMMERCIAL COURT (QBD) BETWEEN; ANSELL RUS LIMITED LIABILITY COMPANY Claimant -and-PROLOGICS (UK) LLP Defendant EXHIBIT 2.

This Doed of Guarantee is dated [1 January 2017]

Deed of Guarantee with respect to Payment Obligations of PROLOGICS (UK) LLP

BACKGROUND

PROLOGICS (UK) LLP, a company incorporated under the laws of England and Walds with company registration number 00314997 and with the registered address of 277 Gray's Ind Road Izondon WCIX 8QF ("Guarantor") is the cultive responsible for the cycerall managetnent of the sourcing of various finished products for the entities in Russia and is entering into this guarantee agreement.

Ansell RUS Limited Liability Company, a legal entity duly organized and existing under the lays of the Russian Federation, main state registration number 11,17746682349, having its ragisfered address alt Krasnopresigneskaya omb. 12, Moscow 123610; Russia ("Ansell") entered into a distribution agreement dated [1/1/2017] with Medcom-MP LLC, having its rogistered address alt [Industrial zone Tekhnoprom, micro district Helsya Dacha, Rotelniki, Moscow area 140055 Russia ("Medcom") (the "Agreement") for the supply of various glove products by Ansell to Medcom. The Guarantor has agreed to enter into this guarantee agreement for the purpose of providing credit support to Ansell for Medcom's obligations under the Agreement. This guarantee agreement shall also be effective against any amendment, supplement or restatement of the Agreement.

AGREED TERMS

- 1. The Guarantor guarantees to Ansoll that whonever Medcord has any montes or debts owling to Ansell pursuantee to the Agreement ("Guaranteed Obligations"), and provided Medgord does not pay any of the Guaranteed Obligations when fley fall the, the Guarantee shall make due and punctual payment to Ansoll on demand of the Guaranteed Obligations;
- The Gustantor as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities in the paragraph I above agrees to indentify and keep indemnified Ansell in Iuli and on demand from and against all and only losses, costs, claims, liabilities, dunages, demands and expenses suffered or incorrect by Ansell attemp out of, or in connection with, the Guaranteed Obligations not being recoverable for any reason or any failure of Medicota to perform or discharge any of its obligations or liabilities in respect of the Guaranteed Obligations.
- 3. This grarantee is and shall ar all times be a continuing society and shall cover the halance of motiles from time to time owing to Ansell by Medicon in respect of the thiermitteed Obligations.
- 4. The Guaranter's liability shall not be reduced, discharged of otherwise adversely affected by:
 - (a) any intermediate payment, settlement of account of discharge in whole of in part of the Guarquized Obligations;
 - (b) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or readedy which Ansell may have now or after the date of this guarantee. have from or against Medcom;
 - (c) any act or origission by Ansell or any other person in taking up, perfecting or onitoring the Agreement from or against Medcom;
 - (d) any grant of time, indulgance, waiver or concession to Medcom;

(e) any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of Medcom, Ansell, or any other person;

(f) my invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of Medcom or any other person in connection

with the Guaranteed Obligations;

(g) any claim or enforcement of payment from Medcom or any other person; or (h) any act or omission which would have discharged or affected the liability of the Guarantor had it been a principal debtor instead of a guarantor, or indemnifier or by anything done or omitted by any person which, but for this provision, might operate to exonerate or discharge the Guarantor or otherwise reduce or extinguish its liability under this guarantee.

Ansell shall not be obliged, before taking sleps to enforce any of its rights and remedies under this guarantee, to:

(a) take any action or obtain judgment in any court against Medcom or any other

(b) make or file any claim in a bankruptcy, liquidation, administration or insolvency of Medcom or any other person; or

(c) make, demand, enforce or seek to enforce my claim, right or remedy against Medcom or any other person.

- This guarantee is in addition to and shall not affect nor be affected by or merge with б. any other judgment, security, right or remedy obtained or held by Arisell from time to time for the discharge and performance of Medicom of the Guaranteed Obligations.
- The Guarantor shall pay interest to Ansell after as well as before judgment at the annual rate of 8% above the base rate of the Bank of England from time to time on all sums demanded under this guarantee agreement from the date of demand by Ansell or, if earlier, the date on which the relevant damages, losses, costs or expenses arose in respect of which the demand has been made, until, but excluding, the date of actual payment. Interest under this paragraph shall accrue on a day-to-day basis calculated by Ansell on such terms as Ansell may from time to time determine and shall be. compounded on the last business day of each month.
- The Guaranter shall within seven days of demand, pay to, or reimburse, Ausell on a full indomnity basis, all costs, charges, expenses, taxes and liabilities of any kind incurred by Ausell in connection with any discharge or release of this guarantee agreement and the enforcement of any rights under on in connection with this guarantee agreement.
- The Guarantor shall pay all sums that become due under this guarantee in full to Ansell in pound sterling without any sot-off, condition or counterelain whatsnever and free and clear of any deductions of withholdings whatsoever except as may be required by law or regulation.
- This guarantee agreement is freely assignable or transferable by Ansoll.

- 11. The Guarantot may not assign any of its rights and may not transfer my of its obligations under this guarantee agreement or enter into any bransaction which would result in any of those rights or obligations passing to another person.
- 12. No amendment of this guarantee agreement shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).
- 13. A waiver of any right or remedy under this guarantee agreement or by law, or any consent given under this agreement, it only effective if given in writing and signed by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- 14. If Africell does not take action under this guirantee og content or the Agreement it shall not be prevented from taking action later:
- 15. The rights and remedies provided under this guarantee agreement are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.
- 16. If any provision (or part of a provision) of this guarantee agreement is or becomes invalid, illegal or menforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal; and enforceable. If shall modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision), under this clause shall not affect the legality, validity and enforceability of the rest of this guarantee agreement.
- 17. A person who is not a party to this guarantee agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of any term of this guarantee agreement.
- 18. This doed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.
- 19. Any notice or other communication given to a party under or in connection with this guarantee shall be in writing; delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and sent to:
 - (a) the Guarantor at:
 38A, 2-ya Khutorskaya Street, Hoor 4 building 23, 12728, Moseow Russia.
 Fax: 47, (495) 660 320-59
 Attention: Pari Chilstodoùlou
 - (b) Arisell ati.
 Riverside Business Park, Boulevard Interpational 35, 1070 Brussels, Belgium Fax: 432/2-528/15/80
 Affection: Ms. Caroline Rolengha

or to any other address or fax number as is notified in writing by one party to the other from three to time.

things you.

20. Any notice or other communication that Ansell gives to the Guarantor shall be deemed to have been received:

(a) if delivered by hand, at the time it is left at the relevant address;

(b) if posted by pre-paid first-class post or other next working day delivery service, on the second business day after posting; and

(c) if sent by fax, when received in legible form.

A notice or other communication given as described in paragraph 20 or on a day that is not a business day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next business day.

- 21. Paragraphs 19 and 20 do not apply to the service of any proceedings or other documents in any legal action or, where applicable, any minimation or other method of dispute resolution. A notice of other communication given under or in commented with this granulee is not valid if sent by e-mail.
- 22. This guarantee agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-confractual disputes or claims) shall be goverhed by, and construed in accordance with, the law of England and Weles. The parties agree that, subject to as provided below, the courts of England and Weles have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this letter. Nothing in this clause shall limit the right of Ansell to take proceedings against the Guaranter in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or those jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

This guaranted agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

my friends

Excouled as a deed on behalf of PROLOGICS (UK) LLP Signed: " Name: Pail Address: 9824 No 494 Executed as a deed on behalf of Ansell RUS Limited Liability Company Namer Andrey Leonidovich Neustroom Title: General Director Address: Krasnopreshenskaya omb. 12, Moscow 123610, Russia.

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	Ċlaim No, [NUMBER]
THE HIGH COURT OF JUSTICE	
THE BUSINESS AND PROPERTY COURTS C	FENGLAND AND WALES
MMERCIAL COURT (QBD)	
TWEEN	
Ansell Rus Limited Liabil	ITY COMPANY Clalinant
and-	
PROLOGICS (UK) I	Defendant
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Ansell RUS Limited Liability Company Krósnopreśnenskaya emb, 12, Mastow 124610,

T+7495 258 19 16 T. +32 (0)252874 00 F. + 92 10 2 520 74 01 www.auzell.com-

31 January 2018

MEDCOM-MP LLC

Mrs. Olga Kravchenlio, General Director

Mn Sebastian Dinihtjan, Financial Director

BBA, 2nd Khutorskaya Str., bld 23,

Moscow, Russia, 127287 Fax: 8 495 363 60 33

E-mall: gorlov@medcom-mp.ru

Also to Medcom-MP LLC at Industrial rope Tekhnoprom, micro district Belaya Dacha, Kotelniki,

Moscow area 140055 Russla

PROLOGICS (UK) LLP

Mr. Paul Christodoviou

38A, 24d Khutorskaya Str., flour 4 bld 23, Moscow, Russla, 127287 Fax: 47 495 660 320-59

Also to Prologics (UK) LLP at 277 Gray's Inti Road, London, WC1X 8QF and 12 Gateway Mews, Bounds Green, London, NE1 2UT

Dear Madam, Dear Sir,

Dutstanding Montes

31 лирард 2018 г.

Komy:

000 «МЕДКОМ-МП»

Ольте Кравченко, Генеральному. L-11(Q

дирентору

гну Себассыяну Димирдінану, Финансовому

дирентору

ул. 2-л Хуторская, д. 38А, стр. 23,

Москва, России, 127287

Факс! 8 495 363 60 33

E-mall: gorlav@medcom-mp.ru

С копией: ООО «Медком-МПВ, России, 140055,

Московская. фбласть, город Котельники, ΕΚΟΕΜΟΤΗ. Aaya;

минрорайон Бедая «Технопром»

«прододжикс (ю-кей) эд-эл-пи»

r-ну Полу Кри стодулу

. үл. 2-л Хүтор ная, д. 38А, стр. 23, 4й этаж

Москва, Россия, 127287

Фанс: +7 495 660 320-59

С 'копией: (Пролодийно (Ю-Кей) Эл-Эл-Пии по бдресу: 277 Gay's Inn Road, London, WC1X 8QF and 12 Gateway Mews, Bourids Green, London, N11 2UT

Уражаемая тоспожа, уважаемые господа

Касательно неполяшенной вадолженности

We refer to Contract No. 1701 dated January 1, 2017 Hacrogues phosmo Recaerch Homparra No. 1701 or

("Contract") between Ansoll RUS Limited Liability 1 дубаря 2017 года (в дальнейшем — «Контракт»)

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Company ("Ansell") and Medrom-MP LLC ("Medcom!") and the Guarantee dated 1 January 2017 ("Guarantoe") between Ansell and Prologics (UK) LLP ("Prologics").

меницу Обществом с отраниченной ответствинностью "Ансели РУС" (в дальнейшем - «Анселл») и 000 "Медіюм-МП" (в дальнейщем – «Мієдном») и Гарантин от 1 январи 2017 года (в дальнейщем 😁 «Гарантия») мениру Анселл и "Пролоджище (Ю-Кей) Эл-Эл-Пи" (i дальнейшем — «Пролоджикс»),

We have on numerous occasions discussed and alerted Medcom about its late payments to us for goods delivered by Ansell to Medcom pursuant to the Contract,

Мы неоднократно обсуждали и предупреждали Медком о том, что Медком задерживает оплату товаров, поставляемых со стороны Анселл для Медном по Контракту.

As of 16.01.2018, the total overdue from Medcom to По состоянию на 16,01.2018 г. общий размер. Ansell under the Contract amounts to RVB 184,896.244 ("Overdue"). A breakdown is shown in Annex 1.

проброченной вадолженности от Медком в пользу Ансели по Контракту составляет 184 896 244 рублей (в дальнейшем — «Просроченнай сумма»). Струнтура аадолженнооги показана в <u>Приложении 1</u>,

Ansell will no longer accept any orders from Medcom except under the following conditions:

Анселл не будет более принимать от Медком нинаких заказов кроме заназов; размегдаемих на следующих условиях:

- 1. for Micro-Touch Coated and Micro-Touch Ultra Ansell product orders ("A Orders"): 30% of the A Order value must be paid to and received by Ansall prior to production of the A Order and the balance (70%) must be paid to and received by Ansell, five calendar days before the planned delivery of the A Order at Kotka, Finland;
- 1, дін арназов на продукцию Анселд линий Micro Touch Coated w Micro-Touch Ultra (B. дальнейщем — «Заназы типа А»): 30% стоимроги Заказа типа А Должны быть предоплачены и получены Анселл до начала произподства Закава типа А, а оставшиеся 70% должны быть оплачены й получены Ансели за пять календарных дней до ваплацированной поставки Заказа типа а в г. Котка, Финландия;
- for all other Ansell product orders ("B Orders"): 10% of the B.Order value must be paid to and received by Ansell prior to production of the B. Order and the balance (90%) must be paid to and received by Ansell, five calendar days hefore the planned delivery of the B Order at Kotka, Finland;
- отильновин по всю фраго проминию Айселл (в дальнейшем - «Заплаы типа В»); 10% стфимости Запаза типа В должны быть предоглачены и получены Анселл, до начала произвідства Заказа типа:В; в оставщився 90% должны быть оплачены и получены Анселл за плть календарных дней до

УРГей: GAMMEX AlphaTec Michaelex



- a, for a) product orders (i.e. A Orders and B Orders combined): an additional 20% of the relevant order value must be paid to and received by Ansell, five calendar days before the planned delivery of the A Order and/or B Order at Kotka; Finland;
- 4. It being understood that the payments made unider 1-3 above ("120% Amount") will be exclusively credited towards the overdue with a view to clear the Overdue in full latest by 31. August 2018 alther by applying the said 120% Amount to the Overdue or should that not be sufficient to clear the overdue in full, by making additional lump sum payments in May 2018 (of at least RUB 11.6M or such other amount so that the Overdue is at least reduced to RUB 13.6M) and another one in August 2018, if hecessary, to reduce the balance of the Overdue to zero; and

- запланированной поставки Заказа типа в в г. Котка, финлиндии:
- 3. Дій всех заказов (т.е. Заказов типа А. и Заказов типа В); Допол'яйтельно 20%. Заказа полины быть упланены каказа должный каказа должный каказа полинены каказа типа В и и и каказа типа В и каказа типа В
- при этом понимается, что іглатени согласно условиям 1-3 выще ("Сумма в размеря 120%) будут вачтены исилючительно в суёх поташения Просрочениой суммы с тем, भावित्री полностью выплатить Продраченную CYMMY 1 позднее 31 выгуста:2018 года, .ภัพจิก путём применения указанной Суммы в размере 120% и Просроченной сумме, либо, всли этого будет недостаточно, чтобы полностью выплатить Просроченную сумму, путём льонапедения дополнительных разовых ллатений в мае 2018 года (не менев 11,6 милдионов рублей или иной суммы, в результате выплаты которой умёнышенная. Просроченная сумма составит не болев 131 миллионов рублей) и дополнительного лінатерія в вогусте 2018 года, если необходимо, в таком размаре, птобы полностью посасить зайоливенность по Просрочанной сумма и

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¹ Example; if Order A has a value of 100, and Order B has a Value of 200, the payment schedule will be as follows: 30 paid prior to production (for Order B) + 90 paid prior to Kotka delivery (for Order B), 1, e, in total 360 must be paid to reduce the Overrue. / Пример: всли стоймость Заказа типа А исполнийны 33 ваказа типа В составляет 200, а втоимость Ваказа типа В составляет 200, графин платемей будег следующим: 30 выплачивается до начала исполнийны Заказа типа В + 90 выплачивается до доставки Заказа типа В и Котку, таким образом всего долино быть вышлачено 360 для умень ценой Просроченной суммы.

ansell

- 5. payment of the new A Orders and/or p Orders will continue to be payable within 75 calendar days from the date of the shipment confirmed by a consignment note TORG-12, as per the Contract) It being understood that late payments on these orders will be exceptionally accepted until 31 August 2018 following which date all newly created overdue will be paid in three equal lump sum payments in October, November and December 2018 so that on orders prior to such clate no overdue exists on 31 December 2018; and,
- once the conditions under 2-4 have been satisfied in full, and the overdue referred to in 5 above does not exceed RUB 12M, any orders accepted by Ansell after 1 October 2018 will no longer be subject to conditions 1-3 above .provided always the lump sum payments, if any, referred to in 5 above, are made,
- опулата новых Заказов умпа А. и/или Заказов тира в продолжает осуществляться в течение 75 календарных дней с даты поставки, подтвержденной товарной нашладной ТОРГ-12, согласно условиям Контракта, при этом понимается, что просрочки цілатежей по этим ваказам будут в онде исключения приниматься до 31 августа 2018 года, после дего образующаяся вновы просроченная сумма будет оплачена в три равных разовых платена в онтибре, нолбре и декабре 2010 года, тан чтобы 31 денабря 2018 года. была оплачена ися просроченная сумма ва ванары до такой даты; и
- если условия 1-4 выше выполнены полнастые И просраченная ўпомянутая в ўсловии 5 выше, не превышает миллионов рублей, любые заказы, принимаемые Ансели после 1 одулбри 2018 года, не будут подчинены условилм 1-3 выще, однако при условии, осуществляются разорыв. платежи, обозначенные в условии 5 выше, если применимо,

together, the "Conditions"...

Medcom and Prologics are invited to accept the terms of this letter by signing the agreement attached as Annex 2 latest on 2 February 2018.

In the absence of signature by both Medcom and Prologies, Ansell will have no option but to immediately suspend all pending orders and exercise its rights under the Guarantee without prejudice to its rights under the Contract, Such course will also follow if after signature of this letter, Medcom breaches the Conditions, at any point.

совместно - пусловияв.

пражілятаєў Мендком и Процофукине приняль условия настолщего письма, подписав соглашение, придоженное и нему в начестве Придожения 2, не позднев 2 февраля 2018 года.

в случае отсутетвия подписей Медком и Пролодникс под соглашением по истечении указанного срока у Анселл He останется ныбора незамедлительного приостановления исполнения всех текущих эркезов и осуществления своих прав по-Гарантии, но без ущерба другим ето правам, предоставленным контрантом. Те же: действия могут последовать если после подписания настоящего.

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письма Медцем в накой-то момент нарушит условия.

.Upon signature, this letter will replace all preceding ¡Настоящее письмо послё его подписания заменит discussions and arrangements pertaining to the Overdue.

предыдущие результаты дискуссий и 'ACE договорённости, относящиеся к Просроченной сумме.

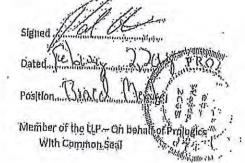
Yours Sincerely,



Received and acknowledged by:



Director/Member With Common Sea



С.Уважением,



Получено н подтварждено;

Подпись на у	The state of the s
Дата Елейска	Farmer 2018
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Доли(ность Участник. (артнёрства ответственностно - от имени Продост печать

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EXHIBIT 3 PART 3 OF 3

ANNEX 1/ПРИЛОЖЕНИЕ Д

to the second second					4.	
Document Number (pro-forma Invoice) / Номер документа (счёт-фактура)	іпиоісе)/ Дата документа (счет-фактура)	Due date / Срок оплать	Аггаагя (days)/ Прасроч (дни)		Amount / Cymms	Curr/Ban,
5000105	03/05/2017	17/07/2017	183	-	6,607,340.00	nunti a
200001.196	19/12/2017	19/12/2017	28	-	:6,320,430.00	RUB/py6,
5000110	04/05/2017	18/07/2017	182	-	4,151,620,00	RUB/py6.
5000111	10/05/2017	24/07/2017	176	•	4,151,620,00	RUB/pyő.
5000114	10/05/2017	24/07/2017	176		1,241,812.00	ŔŨB/Āyō.
5000117	17/05/2017	31/07/2017	169			ДИВ/руб.
5000118	17/05/2017	31/07/2017	169	•	4,151,620.00	RUB/þýð
	18/05/2017	01/08/2017	168	-	4,151,620.00	RUB/py6.
5000124	18/05/2017	01/08/2017	168	-=-	6,687,340.00	RUB/py6,
	18/05/2017	01/08/2017	168	-	4,151,620.00	RUB/pyd.
5000139	80/05/2017	19/08/2017	156	-	4,151,620.00	RUB/py6.
	14/06/2017	28/08/2017	1		3,859,005.80	RUB/py6.
and the second s	14/06/2017	28/08/2017	141.		1,564,046.00	RUB/py6:
	1/08/2017	31/08/2017	141.		2,495,850,40	:ВИВ/руб.
	1/06/2017	04/09/2017	198		59,400.00	RUB/pyő.
	7/06/2017	10/09/2017	194		1,112,647.80	RUB/pyp.
	8/06/2017	11/09/2017	128		5,205,217,60	RUB/pyő,
1111	8/06/2017	11/09/2017	427		1,216,998,40	RUB/py6
Automobile and a second			127	77	51,958.40	RUB/pys.
7		11/09/2017	127		01,062,40	RUB/py5.
-		11/09/2017	127		17,944.00	RUB/py6,
100			126	.3	,216,998,40	RUB/py6,
	-		126	2	271,152.40	RUB/py6;
71			118		587,555.20	RÜB/py6.
400	4.24 A 17 PA 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		106	5,	198,688.00	RUB/pyő.
The state of the s	1		106	5	198,688,00	RUB/руб.
190			106		14.2 212a	RUB/pyő.
77			105			Αὐβ/ργό.
	C		105		and the second second	RUB/pyő.
20	/07/2017 : 0	3/10/2017	105			RUB/nyh

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		40	12.1			
5000261	25/07/2017	08/10/2017	100	4,151,620.00	RUB/py6.	-
5000265	26/07/2017	09/10/2017	99	6,237,000,00	RUB/py6	
5000266	26/07/2017	09/10/2017	ģg	6,237,000,00	RÚB/pyő.	
5000267	26/07/2017	. 09/10/2017	99	6,237,000,00	RUB/py6.	
-5000268	27/07/2017	10/10/2017	98	5,198,688,00	RUB/py6,	
5000269	27/07/2017	10/10/2017	98	4,151,620,00	RUB/gy6.	\dashv
5000270	27/07/2017	10/10/2017	. 89.	6,237,000,00	RUB/py6,	**
5000271	27/07/2017	10/10/2017	98	5,198,688,00	RUB/py6.	-
5000272	27/07/2017	10/10/2017	98	6,237,000,00	RUB/py6	-
5000273	28/07/2017	11/10/2017	97	6,687,840,00	RÙB/pyő.	
5000274	:28/07/2017	11/10/2017	ý	5,198,688,00	RÚB/þýb:	
5000293	02/08/2017	16/10/2017	. 92	2,542,936.00	RUB/þý5.	-
5000294	03/08/2017	17/10/2017	. 91	6,237,000,00	RUB/py6.	~ 7
5000295.	03/08/2017	17/10/2017	91	4,151,620,00	RUB/pyb.	-
5000298	07/08/2017	21/10/2017	87-	8,326,557.80	RUB/py6,	-
5000326	29/08/2017	12/11/2017	65	45,553,20	RUВ/руб.	-
5000327	29/08/2017	12/11/2017	65	1,446,425:20	RUB/py6;	
5000682	24/11/2017	24/11/2017	53	-3,410,00	'RÜB/þyð:	
5000395	29/09/2017	07/12/2017	40	6,687,340,00	RUB/py6.	7
5000396	23/09/2017	07/12/2017	40	4,151,620,00	RUB/py6.	7
				184,896,244.00	пив/руб.	

" has been cognished." a credit

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ANNEX 2

приложение 2

THIS AGREEMENT Is made on 2 February 2018

НАСТОЯЩЕЕ СОГЛАШЕНИЕ ваниочено 2 февраля 2018 года

BETWEEN!

менду;

- ----
 - (1) Ansoll RÜŞ Umited Liability Company, of World (1) Trade Center, Krasnopresnenskaya emb. 42, ent.3, office 1103, 123610, Moscow , Russia ("Ansoll")); and
 - (2) Madcom-MP LLC, of aBA, 2nd Khutorskaya Str., (2) bld 23, Moscow, Russla, 127287 ("Madcom"); and
 - (3) Prologics (UK) LLP, of 12 Gateway Mews, (3) Bounds Green, London, United Kingdom, N11, 2UT ("Prologics").

Обществом с ограниченной ответственностью «Анселл Рус», расположенным по одресу: Россия, 123610, г. Москва, Краснопресненская наб., д. 12, всемирный торговый центра, подвезд 3, офис 1103 (в дальнейшем — «Анселл»); н

ООО «Медком-МЛ», расположенным по вдресу: Россия, 127287, г. Москва, 2-я Хуторская ул., д. 38А, стр. 23 (в дальнейцем —«Мрдком»); и

компанией «Пролоджикс (Ю-Кей) - Эл-Эл-Пи», расположенной по эдресу: 12 Гейтвей Мьюэ, Баундс Грин, Лондой, Соединённов Королевство; N11 2UT (в дальнейшем ы «Предодникся),

each a Party, and together the Partles.

именуемыми по отдельности «Сторона», а совместно — «Стороны»,

WHEREAS:

(A) A letter dated 31 January 2018 (to which this Agreement is attached and which is an integral part of this Agreement) from Ansell to Medcom and Prologics details monies dutstanding to it from Medcom under the Contract, such monies guaranteed by Prologics (the "Letter"). This Agreement adopts the definitions of the Lutter unless otherwise stated.

принимая во вниманив, что:

в письме Анселл от 81 января 2018 года (к Которому приложено настоящее Соглашения которое прляется неотъемлемой частью настонщего Соглашения) в вдрес Медком и Пролодіжикс были изложены детали просроченной денежной радолженности перед Ансели ко стороны Медцом no Контракту, облавтельства Которой были

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- (B) The Parties have agreed terms as stipulated in the Letter. They wish to regord and acknowledge such agreement, on a binding basis, via this document. Terms are agreed by Madcom and Prologics in consideration of Ansell not bringing proceedings against them so as to recover montes detailed in the Letter as overdue.
- (c) For the avoidance of doubt both idedcom and Prologics independently acknowledge to Ansell that any breach of the Conditions will then entitle Ansell to sue under the Contract, Guarantee or this Agreement as Ansell sees fit.
- Стороны согласовали условил, предусмотренные в Письме. Они жалают подтвердить такую спою договорённость и придеть ей облантельную силу, зајилочив настрящее Соглашение. Медиом и Продосумию соглашайотся принять предложенные условий в обмен на то, что Ансейл не будет возбуждать против них процессуальные действил по ваысканию просроченной дейскиюй задолженности, данные о которой приводены в Письме.
- Во избежание сомнений и Медком, и продождение по отдельности подтверждают . Анселл, что "прабое нарушение Условий . Оредоставич Анселл, право подачи иска по Контракту, Гарантии или пастолиему Соглашению по усмотрению Анселл.

IT IS AGREED as follows:

- This Agroument is signed by the Parties to 1, acknowledge the terms of the Letter; specifically:
- 1.1 Medcom and Prologics Independently accept 1.1, the amounts detailed as over to Ansell detailed in the Letter and specifically the Overduer
- 1.2 Medcom and Prologics Independently accept the Conditions as setsout in the Letter so that ongoing orders can be accepted by Ansell and a plan for dealing with the Overdue can be followed and the need for Ansell to refuse

стовонні йогововийися а счечлюйней.

- . Настолщее Соглашоние "подписано Стороцами в подгавлящение условий Письма, в упстности:
- Д. Медком и Пролоджикс по отдельности соглашаются с указанными в Письме суммами задолженности перед Ансели, в частности, с Просроченной суммой;
 - Медком и: Пролодийий по отдельности боглашаются, на установленные в Письме: Условин с тем, итобы: Анселл мог принимать текущие заказы и мог выполняться план работы с Просроченной суммой, а также

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further orders and pursue Medcom and/or Prologics for the Overdue and any other outstanding sums can be avoided;

1.3.

Medcom and Prologics Independently accept 1.3 that should any of the Conditions be breached. at any stage Ansell shall be at liberty to. Immediately pursue either or both of them under the Contract, Guarantee or this Agreement as it sees fit. For the avoidance of doubt this Agreemant will be seen as concluded agreement by Medcom to adhere to the Conditions and Prologics continuing guarantee

of Medcom's obligations as per the Guarantee...

2, This Agraement shall be binding on the Parties, their successors and assigns (Immediate and otherwise) and a reference to a Party shall Include such successors and assignse

3. Each Party represents and Warrants that:

> (a) It has the power to execute and deliver this Agreement and to perform its obligations under it and has taken all action necessary to authorise such execution and delivery and the performance of such obligations; and

можно было избежать необходимости отказа Анселл принимать новые заказы и начала действий по взысканию с Медком и (или) Проподжике Просроченной суммы и лірфой другой непогашенной денежной аадрименности

Медном и Пролодійнію по отдельности соглашаются с тем, что в случае нарушения на любом этапе любого из Условий Ансели будет пправе незамедлительно начать против любого из них или против них обоих профессуальные действия по Контракту; Гарантии или настоящему Соглашению по усмотрению Анселл. во избежание сомнений оговаривается, что настоящее Соглашение будет считаться заключённым со стороны Медком в подтверждение своего согласия соблюдать Условия, а со стороны Пролоджикс- в подтверждение сохранения в силе гарантии исполнения областельств Медком, предусмотренной Гарантией.

Настрящее Соглашение обязательно для Сторон, их правопраемников цассионарива (прямых или иных), и любов упоминанив в нём той или иной Стороны также включает таких правопреёмников и цессионариев.

Наждай Сторона ваверяет и гарпитирует, что:

(a) она имеет права и полномочил но подписание ѝ обмен экземплярами настоящего _Соглашения и на исполнение своих обязательств по HEMY предприняла все необходимые действия noсаниционированию такого. подписания и обмена энземплярами

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(b) this Agreement constitutes legal, valid and binding obligations of that Party in accordance with its terms,

настоящего Соглашения исполнения такик облаательств; и

настоящее Соглашение представляет кобой законные и юридически действительные облацтельства такой Стороны, установленные условиями.

The rights, powers and remedies of each Party: 4.

Прара, полномочия и средето правовой эациты наждой Стороны;

(6)

(b)

(c)

(a) may be exercised as often as necessary;

(a) могут осущестоляться так часто, как это необходимо;

(d) unless otherwise expressly provided in this Agreement, are cumulative and not exclusive of rights and remedies provided by Jaw; and

если: инов прямо: не указано в настолщем Соглашении, допонняют, но не исключают права и средства правовой защиты, предусмотренные н умоножве

(c) may be walved only in writing and specifically.

в онапот: вэётабайто онжом хин то моджан и и эмдоф йоннемавий отдельном случае,

No fallure to exercise, or delay or omission in exercising. Heosymecrane) its operate as a walver of, such right, power or remedy,

Йли Несловаременное или" ликомонтой заведт: обил-отольны виненетерило. ог "тверт утакума утакума утакума то преведт: при утакума утакум средства правраой защиты той, или илой Стороной не оспабляет такого права; полномочия или средства прэдовой вашихы и не считается отпазом от него.

- This Agreement and the documents referred to In it contain the whole ggreen ent between the Parities relating to the subject matter of this Agreement and supersede all previous agreements between the Parties relating to that: subject matter. Except as required by statute, no terms shall be implied (whether by custom, usage for otherwise) into this Agreement. For the hvoldance of doubt the Partles agree that in the part that this
- Настолицее Соглашение и указанные в нём: допументы содержат полный: объем договиренностей между Огоронами по предмету настоящего Соглашения заменног собой все прыкние соглашения между Сторонами по такому предмету. Если инов не требустся законом, в настоящее Соглашение He видючаются подразумеваемым образом никакие другие условия (в силу обычая, оборота или по

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Agreement and the Letter amend the payment and the delivery terms of the Contract, the provisions of this Agreement and of the Letter shall prevail over the terms of the Contract.

м основаниям). Во избежание сомнений Стороны соглашаются, что в той части в ноторой настоящее Соглашение и Письмо изманиют условия Контракта по оплате и постаже, положения настоящего Соглашения и Письма имеют преумущественную силу над условиями контракта.

Each Party:

Концая Сторона:

- (a) acknowledges that, in agreeing to enter Into this Agreement, it has not relied on any express or implied representation, warranty, draft agreement, undertaking, promise .collateral contract or other assurance or arrangement of any kind whether or notin writing (except those repeated in this Agreement) made by or on behalf of any other Party of any time before the signature of this Agreement) and
- (a) признавт, что, соглащалсь заключить настоящее Соглашение, она не полагалась на накие-либо прямо выраженные или подразумоваемые ваверения, гарантии, проекты соглащений, обизательства, объщения дополнительного рбеспечения или другие заверения или договорённости любого рода в письменной или иной форме (проме приведённых n . Настоліцем Соѓлаціении), сделанные другой Стороной или от её имени в любое время до подписания настоящего
- (b) walves all rights and remedles which, but for this subclause, might otherwise be available to it in respect of any such express or implied representation, warranty, collateral contract or other assurance.
- дополнительного обеспечения или иных,ручательств.
- 6. The provisions contained in each clause and 6. subclause of this Agreement shall be enforceable independently of each of the others and their validity shall not be affected if any of the others are invalid. If any of those
- Положений каждого отдельного пункта и одпункта настоящего Соглашёния могут приводиться и исполнение независимо от не уких, и их дейотаительность не ослововательность побосо

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provisions is void but would be valid if some provision the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it ivalid.

- This Agreement: may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same Agreement, and any Party (including any duly authorised representative of a Party) may enter into this Agreement by executing a counterpart. This Agreement is made in English and Russian languages, but in case of any discrepancies in between the English and Russian texts, the text in English shall prevail.
- This Agreement and any non-contractual 8, oblightions and out of or in connection with its shall be governed by English law.
- 9. The English courts shall have exclusive a Jurisdiction to settle any dispute thising out of or in connection with this Agreement and the Parties, submit to the exclusive jurisdiction of the English courte for the purpose of any action arising out of this Agreement.

Другого положения, Если каков-дибо из таках положения будет признано ничтожным, но было бы действительным, если бы была исключена какай-либо его часть, такое положение примениется с такуми изменениями, которые необходимы, чтобы сделать его действительным,

Настоящее Соглашение может быть подписано в любом количестве внаемпляров, но все они вместе ваятые составляют одно и то же соглащения, и любоя стороны в том числе любой уполномочений представитель стороны) может заключить настоящее соглащение, подписав один такой внаемпляр. Настоящее Соглащение составление на вначийском и на русском наыках, но в случае разнонтений между текстом на внагомиском и на русском.

настолицев Соблашение и все внедосоворные облазувльства, возни едіоцие на него или в селзи с ний, регулируются вислийским правом.

Любые споры, возникающие из настолицего соглашения или в связи с ним, подсудны йсключительно внглийсним судам, и стороны соглашаются на исключительную, подсудность любых исков, возникающих изнастолиего соглашения, внглийским судам.

Dated Diractor RUSLIC

Подпись получений до 18 до 18

Долиносты Генеральный дире

(AHCEIM PYCH) (AHSEILRUSLLC)

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	DI Contractor
Director/Member - On behalf of Ansell With Common Seal	Директор/участник – от имени Ан <u>селл</u> печать
Signed Dated Fall G 2 2018	Подпись
Position	Должность
Olrector/Member On behalf of Medcoid With Common Seal	Директор/учистник то име на медном печал
Signed	Подпись
Position PRO	Должность Дух д
Member of the LLP - On benalf of or florid	Участник партнёрства с б отроймениой ответственностью — от имони Проподнико
120	મુક્તા પ્રાપ્ત કરાયા કરાયા છે. મુક્તા પ્રાપ્ત કર્યા કર્યા હતું કર્યા કર્યા હતું કર્યા હતું કર્યા હતું કર્યા હતું કર્યા હતું કર્યા હતું કર્ય
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Claim No. [NUMBER] IN THE HIGH COURT OF JUSTICE IN THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES COMMERCIAL COURT (QBD) BETWEEN: ANSELL RUS LIMITED LIABILITY COMPANY. Claimant -and-PROLOGICS (UK) LLF Defendant EXHIBIT A

FAO: Olga Kravchenko, Sebastien Dimirtian Medcom-MP LLG 38A, 2nd Khütorskaya Str., bid 23, Moscow, Russia, 127287

Also to:
Medcom-MP-LLC
Incustrial Zong Tekhnoprom,
Micro District Belaya Dacha,
Koteiniki
Moscovy
Area 140055
Russia

Dear Sire

Our client: Ansell RUS Limited Liability Company ("Ansel")

We refer to the above matter and the agreement dated 31 January 2018 between Ansell, Medcom-MP LLC ("Medcom") and Prologics (UK) LLP ("Prologics") ("the Agreement"), also Contract Number 1701 dated 1 January 2017 between Ansell and Medcom ("the Contract") and further the Guarantee dated 1 January 2017 between Ansell and Prologics ("the Guarantee").

We have enclosed copies of the above documents. This is not purported to be an exhaustive list of documents relevant to this matter. Please confirm that you will take proper and appropriate steps to ensure no relevant documents, including electronic documents that are in your control, are altered, lost, destroyed or disposed of purequant to paragraph 7 of CPR Practice Direction 31B.

You will appréciate that copies of this latter have also been sent to Prologios in their role as guaranter.

This letter is being sent to you in accordance with the Practice infraction on Pre-Action Conduct and Protocole (the Pre-action PD) contained in the Civil Procedure Rules of England and Wales (OPR). In particular, we refer you to paragraphs 13 to 16 of the Pre-action PD concerning the court's powers to impose sanctions for falling to comply with its provisions. Ignoring this letter may lead to our client commencing proceedings against you and may increase your liability for costs.

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This matter is bollig donit with by Michael Young

No 1 Colmorò Square Blimhigliain B4 0AA DX 721090 Blimhigliant 43 T 444 (0)121 214 0000

Out ref; B.1,267927.54,MEIY,

18 April 2018

Present position

It is not in dispute that significant morites are due and dwing to our olient by you. As detailed in the Agreement our client has "on humerous occasions discussed and alerted Medoom about its late payments to us for goods delivered by Ansell to Medoom pursuant to the Contract. As: of 16.01,2018, the total overdue from Medoom to Ansell under the Contract amounts to RUE 184,866,244 ("Overdue"): "The Agreement is signed and accepted by both Medoom and Prologies.

It will be appreciated that under the Guarantee, Prologics quaranteed to Ansell that Whenever any monies or debts owing to Ansell under the Contract would be paid upon domand, in absence of payment by you. Further if agreed to Indemnify Ansell against any losses, costs, expenses or the like arising out of non-payment. Provisions as to interest payments were also included. The Guarantee is governed by the law of England and Weles.

The Agreement was signed so as to afford you the opportunity to resolve the position with the Overdue and so that illigation against you, and in turn Prologies as your guaranton might be avoided.

The Agreement provided as follows:

:Ausell will no longer accept any orders from Medcom except under the following conditions:

1. for Micro-Tough Coated and Micro-Tough Ultra Ansell product orders ("A Orders"); 90% of the A Order value must be paid to and received by Ansell prior to production of the A Order and the ballance (70%) must be paid to and received by Ansell, file calendar days before the planned delivery of the A Order at Kolka, Finland;

2. for all other Ansell product orders (*B Orders*): 10% of the B Order value must be paid to and received by Ansell prior to production of the B Order and the balance (90%): must be paid and received by Ansell, five palendar days before the planned delivery of the B Order at Kolka; Finland;

3. för äll product örders (le. A Orders and B Orders combined): an additional 20% of the felevant order value must be paid to and received by Ansell, iflye calendar days before the planned delivery of the A Order and or B Order at Kotka, Finland;

4. It beling understood that the payments made under 1-3 above ("120% Amount") will be exclusively credited towards the Oyerdue with a view to clear the Overdue in full latest by 81

Néhkps-ciu-lág/teaseman_al/COMPD/CS/p028/9827/60000054\j267/f9/283.DOC

August 2018 either by applying the said 120% Amount to the Overdue or, should that not be sufficient to clear the Overdue in full, by making additional lump sum payments in May 2018 (of at least RUB 11.6M or such other amount so that the Overdue is at least reduced to RUB 131M) and another one in August 2018; if necessary, to reduce the balance of the Overdue to zero; and

- 5. payment of the new A Orders and/or B Orders will continue to be payable within %5 calendar days from the date of the shipment confirmed by a consignment note. TORG-12, as per the Contract, it being understood that late payments on these orders will be exceptionally accepted until 31 August 2018 following which date all newly created overdue will be paid in three equal lump sum payments in October, November and December 2018 so that on orders prior to such date no overdue exists on 31 December 2018; ang.
- 6. once the conditions under 1-4 have been satisfied in full, and the overdue referred to in 5 above does not exceed RUB 12M, any orders accepted by Ansell after 1-October 2018 will no longer be subject to conditions 1-3 above provided always the lump sum payments, if any, referred to in 5 above, are made.

Ultimately minimal A and/or B Orders have been made and when they have been the relevant prepayment for Ansell to accept the order has not materialised.

As such a position is left where the Overdue is not being decreased as anticipated and there is real confern as to your meeting the requirements set out under paragraph 4 of the Agrocment come. May and August respectively.

This letter is to serve as notice that if the Overdue is not cleared as required appropriate further legal action will be pursued against you and Prologistics under the Agreement and Quarantee respectively.

Alternative Dispute Resolution, Experts

Whilst our client is amenable to the concept of mediation in theory, the strength of the peqition against you means that absent a viable. Defence they take the view such a step would not be cost or time productive for the parties at this stage. We have a position where there are unpaid fees that have been accepted as the and there is no effort being made to clear them. A guarantor is also in place for such unpaid fees.

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Action Required

You are required to properly comply with the Agreement, You will appreciate the position detailed above, to the effect that there has been an inability for our client to process them under the Agreement due to a lack of the requisite pre-payment. This leaves no reasonable expectation that the Overdue will be repaid as le required.

You will appreciate that paragraph 4 of the Agreement lump sum payments are required in May to reduce the Overdue to RUB 131M. Given the total sum of the Overdue was put at RUB 184,896,244 that means that absent any orders in the meant in properly reducing the Overdue, the figure of RUB 53,896,244 will be due to our client in May 2018.

Further, you will appreciate then that subject to any further orders the sum of RUB 131M will then also be due in August 2018.

In the absence of payments by either such dates, to the effect that the Overdue is dealt with we expect instructions to pursue proceedings without further notice.

Our client reserves all its rights, including the right to commence proceedings against you and/or Prologies as your gueranter (without further reference to you should that prove hedessary) for breach of contract and to seek an order for the total amount due plus interest and costs as may be appropriate.

As set out above, Ignoring this letter may lead to our client starting proceedings against you and your guaranter and may increase your liability for dosts.

We await your reply and confirmation that the Overdue will be dealt with as regulred.

Yours fallhfully

Shakespeare Martineau

Ďľrect Linei +44 (0)121 691 6206 Ďľrect Fax: +44 (0)121 227 2064 E: michael young@sluriaco,uk

Coples to Prologies (UK) LLP

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Thia máilér is boing dealt with by Michael Young

> Ng 1 Colinoro Squaro Blimlingham B4 6AA DX 721000 Blimlingham 43 T+44 (0)121 214 0000

Our ref. B.1.287927.64,KHS.

18 Aphl 2018

For the attention of Mr.Paul Christodoulou Prologics (UK) LLP 38A, 2nd Khutorskaya Sir., Floor 4 bld 23 Moscow, Russia, 127287

Also to: Prologios (UK) LLP 277 Gray's Inn Road London WC1X 8QF

Prologics (UK) I_LP 12 Gateway Mews Bounds Green London N11 2UT

Dear Sirs

Our client: Ansell RUS Limited Liability Company ("Ansel")

We enclose a copy of our letter to Medcom-MP-LLC, for whom you act as guarantor. We trust the position is self explanatory.

We put you on notice that in the event the Overdue (as referred to in the copy letter and the Agreement dated 31 January 2018) is not cleared as required under paragraph 4 of the Agreement instructions are expected to pursue you in your role as guaranter for Medcom.

We hope that will not be necessary and that you will be liaising with Medcom to ensure the requisite payments are made.

This letter is being sent to you in accordance with the Practice Direction on Pre-Action Conduct and Protocols (the Pre-action PD) contained in the Civil Procedure Rules of England and Wales (CPR). In particular, we refer you to paragraphs 13 to 48 of the Pre-action PD concerning the court's powers to impose sanctions for falling to comply with its provisions. Ignoring this letter may lead to our client commencing preceedings against you and may increase you liability for costs.

Yours faithfully

Shakespeare Wartineau

Direct Line; +44 (0)121 631 5206 Direct Fax; +44 (0)121 237 3054 B; michael.young@shma.co.uk

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Claim No. [NUMBER] IN THE HIGH COURT OF JUSTICE IN THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES COMMERCIAL COURT (QBD) BETWEEN: ANSELL RUS LIMITED LIABILITY COMPANY Claimant -and-PROLOGICS (UK) LLP Defendant EXHIBIT 5



For the attention of Mr Paul Christodoulou

Prologics (ÜK) LLP 38A, 2nd Khutorskaya Str., Floor 4 bld 23 Moscow, Russia, 127287

Also to: Prologics (UK) LLP 277 Gray's Inn Road London WC1X 8QF

Prologics (UK) LLP 12 Gateway Mews Bounds Green London N11 2UT

Dear Sirs

Our client: Ansell RUS Limited Liability Company ("Ansell")

We write following our previous letter to you of 18 April 2018 in your capacity as guaranter for Medcom-MP LLC.

You will be aware that the Overdue detailed in the Agreement of 31 January 2018 has not been paid. Demands have been sent as required.

As guarantor you are to make due and punctual payment to our client on demand of the Guaranteed Obligations (monies or debt owed by Medcom to our client, see Clause 1 of the Guarantee of 1 January 2017). This letter is demand for such payment given Medcom has not metabligations.

You will note that the Agreement of 31 January confirmed a sum of RUB 184,896,244 as the Overdue. Due to a credit request on one-invoice this figure becomes RUB 162,363,306. The figure was agreed to be reduced to RUB 131M by May 2016. Requisite payment has not been made. This entitles our client to pursue the full amount of RUB 182,363,308 now outstanding.

The guarantee also detailed that you would indemnify our ollent in relation to all losses, costs, claims; liabilities, damages, damages and expenses and would pay interest on sums demands (clauses 2 and 7 of the Guarnatee). Please pay the RUB 182,353,308 and we will then detail the sums due in this regard.

Absent payment as is due above by return you will appreciate our client will have no option but to purque its legal rights, resulting in further costs ultimately against you.

Yours falthfully

www.shma.co.uk Info@shma.co.uk

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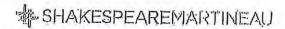
This maller is being dealt with by Michael Young

No 4 Colinora Squaro Eleminghain 84 8AA DX 724000 Dirmingham 43 T +44 (0)121 214 0000

Our ref; B.1.1112538:1.MY,MEIY

1 June 2018

a Marbineau IIP. Shakespeare Martineau Direct Line; 444 (0)121 631 5706 Direct Fax: 444 (0)121 237 3064 Er miclinet young@shma.co.uk



FAO: Olga Kravchenko, Sebastien Dimirtian

Medcom-MP LLC 38A, 2nd Khülorskays Str., bld 23, Mosdow, Russia, 127287

Also to: Medcom-MP LLC Industrial Zone Tekhnoprom, Micro District Belaya Dacha, Kolelniki Moscow Area 140055 Russia

Dear Sire

Our client: Ansell RUS Limited Liability Company ("Ansell")

We refer to the above matter and the agreement dated 31-January 2018 between Ansell, Medcom-MP LLG ("Medoom") and Prologics (UK) LLP ("Prologics") ("the Agreement"), also Contract Number 1701 dated 1 January 2017 between Ansell and Medcom ("the Contract") and further the Guarantee dated 1 January 2017 between Ansell and Protogics ("the Guarantee").

We refer to our previous letter to you of 18 April 2018, You will be aware that substantial monies are due and owing.

You have not made payment as per the Agreement to reduce the Overdue to RUB 131M by May 2018, This letter represents our client's final demand for requisite payment by return prior to taking legal action as it sees fit.

Should you be in any doubt as to your position we suggest you take independent legal advice.

Yours failhfully

Shakespeare Martinean LL Shakospoare Martineau

Diroct Line: +44 (0)121 631 6266 Diroct Fdx: +44 (0)121 237 3064 E: michael,young@shma.co.uk

www.styna.co.uk Info@shma.co.uk







This matter is being dealt with by Michael Young

Our ref; B.1.11/12538.1.MY.MEIY

No 4 Colmoro Squaro Biriningham B4 8AA DX 721090 Birailugham 43 T +44 (0)721 214 0000

1 June 2018

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Claim No. E40BM056

IN THE HIGH COURT OF JUSTICE
IN THE BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
CIRCUIT COMMERCIAL COURT (QBD)

BETWEEN:

ANSELL RUS LIMITED LIABILITY COMPANY

Claimant

-and-

PROLOGICS (UK) LLP

First Defendant

-and-

MR PAVLOS ANDREAS CHRISTODOULOU

Second Defendant

EXHIBIT 6

IN THE HIGH COURT OF JUSTICE

Claim No. E90BM128

BUSINESS AND PROPERTY COURTS IN BIRMINGHAM

CIRCUIT COMMERCIAL COURT (QBD)

BETWEEN:-

ANSELL RUS LIMITED LIABIILTY COMPANY

Claimant

and

PROLOGICS (UK) LLP

Defendant

DEFENCE

PARTIES

- 1. Paragraph 1 of the Particulars of Claim is admitted.
- 2. It is admitted that:
 - (1) The Defendant is incorporated under the laws of England and Wales with the company registration number referred to in Paragraph 2 of the Particulars of Claim.
 - (2) Medcom-MP LLC ("Medcom") is registered as stated in Paragraph 2 of the Particulars of Claim and based in Moscow, Russia and is a buyer of medical goods supplied by the Claimant which are then sold by Medcom into the Russian market.
- 3. Save as aforesaid Paragraph 2 of the Particulars of Claim is denied. In particular, and for the reasons appearing in Paragraphs 4-8 below, the

document relied upon by the Claimant as a guarantee and indemnity by the Defendant for Medcom was not and is not binding upon the Defendant.

THE PURPORTED GUARANTEE

- 4. (1) At all relevant times the Defendant, as a limited liability partnership, and its operations and business were governed by and subject to a Limited Liability Partnership Agreement dated September 30th 2014 ("the LLP Agreement") and made between each of the Members of the Defendant and the Defendant, to which the Defendant will refer at the trial of this action for its full terms and effect.
 - (2) At all relevant times and as referred to in the LLP Agreement, the sole Members of the Defendant (and also the sole Designated Members) were Surpenson Trade Limited and Orwensen Trading Limited ("the LLP Members").
 - (3) At all relevant times and as referred to in the LLP Agreement, the sole members of the Defendant's Management Board were Mr Panagiotis Sofianos ("Mr Sofianos") and Mr Pavlos Andreas Christodoulou ("Mr Christodoulou") referred to in the LLP Agreement as Mr Paul Andrew Christodoulou.
 - (4) Neither Mr Sofianos nor Mr Christodoulou (collectively "Board Members") was at any time a Member of the Defendant ("an LLP Member").
- (1) Clause 3.2 of the LLP Agreement provided that the Defendant would carry
 on its Business and/or such other or additional trade profession or business as
 the Management Board should from time to time determine.
 - (2) Clause 3.2 of the LLP Agreement went on to provide that the Defendant's objects might also include various specified matters. Those mattes included in clause 3.2(V) to provide security for third party debts as recommended by the Management Board.

- (1) Clause 5 of the LLP Agreement contained detailed provisions regulating the Management Board and the activities of the Board Members.
 - (2) Clause 5.2 of the LLP Agreement expressly provided that each of the Board Members had the authority to individually represent the Defendant in all activities listed in clause 3.2 with the express exception that point 3.2(V), being that referred to in the second sentence of Paragraph 5(2) above, required consent of both members of the Management Board, being both of the Board Members.
- 7. (1) The document relied upon in the Particulars of Claim as a guarantee by the Defendant of obligations on the part of Medcom to the Claimant ("the Purported Guarantee") was purportedly executed on behalf of the Defendant by Mr Christodoulou as a Member of Management (and not as an LLP Member).
 - (2) The Purported Guarantee purported to provide security for third party debts, being the debts of Medcom, and accordingly fell within the scope of the express exception referred to in Paragraph 6(2) above.
 - (3) Such execution took place without the consent or even knowledge of Mr Sofianos nor did Mr Christodoulou purport to have the consent of Mr Sofianos to execute the Purported Guarantee.
 - (4) Accordingly the Purported Guarantee was not and is not binding upon the Defendant and the Claimant was not and is not entitled to make any claim against the Defendant thereunder, since execution of the same on behalf of the Defendant did not have the necessary consent of both of the Board Members and was not therefore authorised by the Defendant.
- Section 6 of the Limited Liability Partnerships Act 2000 does not permit the Claimant to allege that Mr Christodoulou had the necessary authority to execute the Purported Guarantee on behalf of the Defendant since that

provision is applicable only to LLP Members and Mr Christodoulou is not and has never been an LLP Member of the Defendant.

THE ALLEGED CONTRACTUAL FRAMEWORK

- 9. By reason of the matters set out in the second sentence of Paragraph 3 above, it is denied that the facts and matters alleged in Paragraph 3 of the Particulars of Claim are relevant to any valid claim by the Claimant against the Defendant. The matters set out below in relation to Paragraph 3 of the Particulars of Claim are without prejudice to this contention.
- Paragraph 3.1 of the Particulars of Claim is admitted. For the avoidance of doubt, the medical goods the subject of such contract were described in clause
 1.1 as "medical devices medical gloves".
- 11. It is admitted that the document referred to in Paragraph 3.2 of the Particulars of Claim, being the Purported Guarantee, purported to provide as summarised in Paragraph 3.2 of the Particulars of Claim. It is denied that it effectively did so or that it was binding upon the Defendant for the reasons set out above.
- 12. Paragraph 3.3 of the Particulars of Claim is admitted save that the document in question was in fact a letter from the Claimant addressed to Medcom and the Defendant and which was signed on behalf of Medcom and the Defendant as having been received and acknowledged by them.
- 13. The written agreement referred to in Paragraph 3.4 of the Particulars of Claim is admitted save that no admissions are made as to the date upon which it was agreed, no such date of subsequent agreement being specified in Paragraph 3.4 of the Particulars of Claim.
- 14. As to Paragraph 3.5 of the Particulars of Claim, it is denied for the reasons set out above that the Claimant is entitled to rely on the Purported Guarantee as giving any rights to the Claimant against the Defendant.

- Subject to Paragraph 12 above, Paragraphs 4 and 5 of the Particulars of Claim are admitted.
- 16. The first sentence of Paragraph 6 of the Particulars of Claim is denied. What the document provided was that Medcom and the Defendant were invited to accept the terms of the letter by signing the agreement attached as Annex 2.
- 17. The second sentence of Paragraph 6 of the Particulars of Claim is admitted subject to Paragraph 3 above.
- 18. It is admitted that the Agreement dated 2nd February 2018 provided substantially (although not precisely) as set out in Paragraph 7 of the Particulars of Claim. For the avoidance of doubt, it is denied that there was or is any entitlement on the part of the Claimant to pursue the Defendant under the Purported Guarantee.
- 19. It is admitted that the Purported Guarantee provided substantially (although not precisely) as set out in Paragraphs 8-11 of the Particulars of Claim but, for the reasons set out above, it is denied that the Purported Guarantee was or is binding upon the Defendant.

DEFENDANT'S FAILURE TO PAY

- 20. Paragraph 12 of the Particulars of Claim is admitted save that:
 - (1) The payment to be made under paragraph 4 of the stated Conditions merely provided that specified payments were to be made "with a view to" the specified reduction so that it is not admitted that a failure to do so was a breach of such Condition.
 - (2) No sum is presently due or owing pursuant to the Purported Guarantee for the reasons set out above.
- 21. Whilst it is admitted that the Purported Guarantee purported to contain an agreement by the Defendant in the terms referred to in the first sentence of

Paragraph 13 of the Particulars of Claim, it is denied for the reasons set out above that the Defendant can be pursued under the Purported Guarantee, whether as a result of the matters alleged in the second sentence of Paragraph 13 of the Particulars of Claim or otherwise.

- 22. The last two sentences of Paragraph 13 of the Particulars of Claim are admitted save that:
 - (1) The letter of 18th April 2018 did not demand payment as alleged.
 - (2) For the reasons set out above there was and is no sum due or owing under the Purported Guarantee.
- 23. Paragraph 13.1 of the Particulars of Claim is admitted save that it is denied that the Defendant owes the alleged or any sum as guarantor of Medcom or that the Claimant is entitled to pursue the Defendant for any such sum.
- 24. Paragraph 13.2 of the Particulars of Claim does not relate to the Defendant and accordingly the Defendant does not plead to the same.

CLAIM FOR INTEREST

25. Since liability under the Purported Guarantee is denied by the Defendant for the reasons set out above, it follows that any claim for contractual or statutory interest is similarly denied by the Defendant, whether as quantified in Paragraph 14 of the Particulars of Claim or otherwise.

CONCLUSION

26. By reason of the matters set out above it is denied that the Claimant is entitled to the relief claimed against the Defendant or any part of such relief.

EDWARD COHEN

Statement of Truth

The Defendant believes that the facts stated in this Defence are true. I am duly authorised by the Defendant to sign this statement.

Signed..

Smeetesh Kakkad, Principal

Gresham Legal, Central Court, 25 Southampton Buildings, London WC2A 1AL. Ref: SK/PRO0011

Claim No. E90BM128
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN
BIRMINGHAM
CIRCUIT COMMERCIAL COURT (QBD)

BETWEEN:-

ANSELL RUS LIMITED LIABIILTY COMPANY

Claimant

and

PROLOGICS (UK) LLP

Defendant

DEFENCE

Gresham Legal Central Court 25 Southampton Buildings London WC2A 1AL Tel: 020 37089 9205 Fax: 020 3709 9214 Ref: SK/PRO0011

Solicitors for the Defendant

IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS IN BIRMINGHAM CIRCUIT COMMERCIAL COURT (QBD)

Claim No. E40BM056

BETWEEN:

ANSELL RUS LIMITED LIABILITY COMPANY

Claimant

-and-

PROLOGICS (UK) LLP

Defendant

REPLY

- 1. The Claimant joins issue with the Defendant on its Defence save insofar as the same consists of admissions or non-admissions.
- 2. Save as otherwise indicated, in this Reply:
 - 2.1 references to paragraphs by number are references to paragraphs in the Defence;
 - 2.2 definitions and sub-headings defined and employed in the Defence are adopted, without admission, for the purposes of clarity only;
 - 2.3 any document referred to will be relied upon at trial for its full terms and effect.
- 3. In relation to paragraph 4, the Claimant's case is as follows:
 - 3.1 The Defendant was incorporated as an LLP in England and Wales under Partnership No. OC314997, on 1 September 2005.
 - 3.2 No admissions are made as to the Limited Liability Partnership Agreement, dated 30 September 2014, and the Defendant is put to strict proof of its provenance and

- adoption by the Members of the LLP and as to any LLP Agreements which it replaced, producing copies of the same pursuant to CPR 31.14.
- 3.3 The Claimant avers that, on 23 March 2017, Paul Christodoulou signed the Defendant's "Report of the Members for Year Ended 31 December 2016" as a "Designated Member", affixed with the company seal of the Defendant.
- 3.4 Further, on or about 23 March 2017, Paul Christodoulou signed the Defendant's "Balance Sheet 31 December 2016" as a "Member" of Orwensen Trading Limited, affixed with the company seal of Orwensen Trading Limited.
- 3.5 In the premises, the Claimant is entitled to and does rely on section 6 of the Limited Liability Partnerships Act 2000 (members as agents).
- 3.6 In relation to paragraph 4(2), the Claimant avers that the First Schedule to the LLP Agreement, dated 30 September 2014, declares, under Part 1, that its "Designated Members" are Surpenson Trade Limited and Orwensen Trading Limited and, under Part 2, that its "Management Board Members" are "Panagiotis Sofianos, Chairman" and "Paul Andrew Christodoulou, Member".
- 3.7 Further, the LLP Agreement states at section 1 headed "Definitions and interpretation" that "... 'the Members' means the persons (whether individuals or limited companies) whose names and addresses appear in the First Schedule Part 1b;" and that "... 'the Designated Members' means the persons (whether individuals or limited companies) whose names and addresses appear in Part Ia of the First Schedule;" and "... 'Management Board Member' means either Member of the board of management of the LLP appearing in Part II of the First Schedule, that shall represent the Members in accordance with this agreement;". The LLP Agreement does not contain any Members in Part 1b of, or at all within, the First Schedule.
- 3.8 The Claimant avers that it was not referred to at any material time nor provided with a copy of the said LLP Agreement, until it was disclosed with the Defendant's application to set aside the default judgment.
- 3.9 In the premises, the Claimant was unaware of the existence of the said LLP Agreement nor with any reasonable enquiry have become aware of its existence as a copy of the same was not deposited by the Defendant at Companies House.
- 3.10 Accordingly, it is denied that at all relevant times, the sole Members were Surpenson Trade Limited and Orwensen Trading Limited.

- 3.11 It is averred that Mr Paul Christodoulou was a Designated Member of the Defendant when he signed the Guarantee, dated 1 January 2017.
- 3.12 Further or alternatively, it is averred that when Mr Paul Christodoulou signed the Guarantee, dated 1 January 2017, he had ostensible authority from the Defendant to sign the Guarantee.
- 3.13 Alternatively, as a result of Mr Christodoulou's actions, as set out herein, the Claimant avers that the Defendant is estopped from denying the validity of the Guarantee as the Claimant acted on the assumption that the Guarantee was properly executed given the clear representation that Mr Christodoulou had sufficient authority to sign the Deed of Guarantee and/or affix the Defendant's seal and the Defendant took the benefit of the Deed of Guarantee, namely Medcom's continued trade with Ansell (which has proved to be to the Claimant's detriment due to non-payment of invoices). The claimant will rely at trial on the authority of Shah v Shah [2001] EWCA Civ 527, [2002] QB 35.
- 3.14 Save as aforesaid, paragraph 4 is denied.
- In relation to paragraphs 5 and 6(2), the Claimant will say as follows:
 - 4.1 No admissions are made as to the applicability, scope and extent of clause 3.2 of the LLP Agreement.
 - 4.2 It is denied that clause 3.2(V) applies to the "Deed of Guarantee", which is also an indemnity and therefore a primary obligation and not "security for third party debts".
 - 4.3 Further or alternatively, without prejudice to the foregoing averments, the Claimant avers that clause 3.2(H) is applicable as it refers to bills of exchange and promissory notes and which more accurately describes the indemnity and therefore a primary obligation.
- 5. In relation to paragraph 7, the Claimant's case is as follows:
 - 5.1 The "Deed of Guarantee" was signed by Mr Christodoulou, acting at all relevant times as a Designated Member or alternatively as clothed with appropriate actual or ostensible authority by the Defendant.
 - 5.2 It is denied that it was "purportedly executed on behalf of Mr Christodoulou as a Member of Management (and not as an LLP Member)" as Mr Christodoulou deliberately used the wording of "Member of Management" which was apt to and

intended to mislead the Claimant into proceeding to continue to trade with Medcom, despite the late payments, and not insist on a Member or Designated Member signing the Deed of Guarantee (albeit as on the Defendant's case both were corporate entities who would have required somebody such as Mr Christodoulou to sign on behalf of the Defendant).

- 5.3 Further, the Claimant repeats its averment that Mr Christodoulou had actual or ostensible authority to sign and that the Defendant is therefore bound by the Deed of Guarantee; alternatively, estopped from seeking to deny the validity of the Deed of Guarantee.
- 5.4 It is denied that the Deed of Guarantee purported to or did provide security for third party debts as clause 2 therein created an indemnity and thus a principal obligation which was not strictly dependent on a default by Medcom but arose as a separate and independent obligation.
- 5.5 It is denied that Mr Sofianos did not consent or know about the execution of the Deed of Guarantee.
- 5.6 Mr Christodoulou purported to have actual or had ostensible authority to sign on behalf of the Defendant. The executive and senior management position he held together with the (alleged) fact of having two corporate Members and designated Members are circumstances in which the principal ordinary holds the agent out as having authority to enter into the transaction in question on behalf of the principal. The Claimant will rely at trial on the authority of <u>Ukraine v The Law Debenture Trust Corporation Pic</u> [2018] EWCA Civ 2026 at [77]-[80], particularly [79(7),(8)].
- 5.7 The existence of the LLP Agreement was deliberately concealed from the Claimant as it was not filed at Companies House nor referred to by Mr Christodoulou or any other person acting on behalf of the Defendant at any relevant time. Accordingly, any internal management rules would not bind the Claimant, who acted in good faith throughout.
- 5.8 Further, the Second Agreement, at clause 3, contains a warranty of authority, which was signed by Mr Christodoulou, on 2.2.2018, expressly as a "Member of the LLP On behalf of Prologics with common seal".
- 5.9 In the premises, the Defendant ratified or adopted the Deed of Guarantee. In the premises, by signing the Second Agreement, the Defendant, as principal, has

- ratified or adopted the Guarantee. There is no claim made by the Defendant that Mr Christodoulou was not authorised to sign the First or Second Agreements.
- 5.10. The Claimant avers that the defendant is bound by the terms of the Deed of Guarantee.
- 5.11 Save as aforesaid, paragraph 7 is denied.
- 6. Further, the Claimant makes the following averments:
 - 6.1 The Defendant being a LLP, an artificial entity, was able to enter into binding contracts by itself in writing under its common seal or on its behalf by any person acting under its authority, express or implied.
 - 6.2 'The Defendant had the choice of three methods of contracting, namely as follows:
 - (i) by affixing its common seal to the contract, or
 - (ii) by using the method in s.44 of the Companies Act 2006 of having the document recording the contract signed by two authorised signatories or one director in the presence of a witness whose attests his signature; alternatively,
 - (iii) the contract may be made under hand or even orally on behalf of the company by any person having its authority to do so.
 - 6.3 The Defendant as a LLP was subject to Regulation 4 of The Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (S.I. No. 1804), which states as follows:

"PART 2 FORMALITIES OF DOING BUSINESS

Formulities of doing business under the law of England and Wales or Northern Ireland

- 4. Sections 43 to 47 apply to LLPs, modified so that they read as follows....
 "LLP contracts
- 43.—(1) Under the law of England and Wales or Northern Ireland a contract may be made....
 - (a) by an LLP, by writing under its common seal, or
- (b) on behalf of an LLP, by a person acting under its authority, express or implied.
- (2) This is without prejudice to section 6 of the Limited Liability Partnerships Act 2000 (members as agents).

(3) Any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of an LLP.

Execution of documents

- 44.—(1) Under the law of England and Wales or Northern Ireland a document is executed by an LLP—
 - (a) by the affixing of its common seal, or
 - (b) by signature in accordance with the following provisions,
- (2) A document is validly executed by an LLP if it is signed on behalf of the LLP—
 - (a) by two members, or
- (b) by a member of the LLP in the presence of a witness who altests the signature.
- (3) A document signed in accordance with subsection (2) and expressed, in whatever words, to be executed by the LLP has the same effect as if executed under the common seal of the LLP.
- (4) In favour of a purchaser a document is deemed to have been duly executed by an LLP if it purports to be signed in accordance with subsection (2).
- A "purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.
- (5) Where a document is to be signed by a person on behalf of more than one LLP, or on behalf of an LLP and a company, it is not duly signed by that person for the purposes of this section unless he signs it separately in each capacity.
- (6) References in this section to a document being (or purporting to be) signed by a member are to be read, in a case where that member is a firm, as references to its being (or purporting to be) signed by an individual authorised by the firm to sign on its behalf.
- (7) This section applies to a document that is (or purports to be) executed by an LLP in the name of or on behalf of another person whether or not that person is also an LLP.

Common seal

45.—(1) An LLP may have a common seal, but need not have one.

- (2) An LLP which has a common seal shall have its name engraved in legible characters on the seal.
 - (3) If an LLP fails to comply with subsection (2) an offence is committed by--
 - (a) the LLP, and
 - (b) every member of the LLP who is in default.
- (4) A member of an LLP, or a person acting on behalf of an LLP, commits an offence if he uses, or authorises the use of, a seal purporting to be a seal of the LLP on which its name is not engraved as required by subsection (2).
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
 - (6) This section does not form part of the law of Scotland.

Execution of deeds

- 46.—(1) A document is validly executed by an LLP as a deed for the purposes of section 1(2)(b) of the Law of Property (Miscellaneous Provisions) Act 1989 and for the purposes of the law of Northern Ireland if, and only if—
 - (a) it is duly executed by the LLP, and
 - (b) it is delivered as a deed.
- (2) For the purposes of subsection (1)(b) a document is presumed to be delivered upon its being executed, unless a contrary intention is proved.

Execution of deeds or other documents by attorney

- 47.—(1) Under the law of England and Wales or Northern Ireland an LLP may, by instrument executed as a deed, empower a person, either generally or in respect of specified matters, as its attorney to execute deeds or other documents on its behalf.
- (2) A deed or other document so executed, whether in the United Kingdom or elsewhere, has effect as if executed by the LLP."
- 6.4 Each member of an LLP is an agent of that LLP and as such can represent and act on behalf of the LLP in all its business subject to certain safeguards for third parties, pursuant to s.6(1) of the Limited Liability Partnerships Act 2000.
- 6.5 The Defendant was incorporated on 1.9,2005 and yet seeks to rely on a LLP Agreement dated 30.9,2014.
- 6.6 The Defendant's incorporation document, registered and lodged at Companies House, contains merely the basic requirements as prescribed by s.2 of the Limited

- Liability Partnerships Act 2000 and not any LLP agreement. C did not have sight of the LLP agreement until served with D's application to set aside.
- 6.7 The Defendant seeks to suggest that clause 5.2 (which refers to clause 3.2(V) of the LLP agreement) has been breached as the consent of "both members of the Management board" had not been obtained at the time of the Deed of Guarantee, dated 1.1.2017.
- 6.8 It is submitted that there is a clear and fundamental distinction between a limited company and an LLP in relation to articles of association, which are registrable and discoverable by search at Companies house, and an internal LLP Agreement which is optional and non-registrable and accordingly is merely an internal management agreement as opposed to a formal constitution as is to be found in a company's articles.
- 6.9 Accordingly, the argument that Mr Sofianos ought to have approved or consented to the Guarantee is misconceived.
- 6.10 Further, the Defendant entered into the Guarantee by affixing its common seal and the Defendant's Members and Designated Members were apparently Orwensen Trading Limited and Surpenson Trade Limited. As such, it is not a necessary condition for the two "Board Members" and "Members of Management" to agree to the Guarantee.
- 6.11 The Defendant's incorporation document (Form LLP2), dated 1.9.2005, refers to the list of members on incorporation as being Robel Assets, Inc. and Sorotel Investments Ltd, both companies having registered offices in Victoria, Mahe, Seychelles. There is no reference to any designated members albeit the question of whether "Will all Members from time to time be designated members?" is answered "no". The Form LLP2 states that "If no, at least two of the listed members must be designated members". The Filing History states that Orwensen Trading Limited and Surpenson Trade Limited were appointed on 3.4.2014.
- 6.12 Moreover, in relation to the Defendant's reliance on Mr Christodoulou and Mr Sofianos as being described as "Board Members" in the LLP Agreement, it is averred that such a designation is an alien concept as far as the LLP Act 2000 and its regulations are concerned.
- 6.13 Moreover, the Deed of Guarantee is signed by Mr Christadoulou as "member of management". This description accords with, on 23 March 2017, Paul Christodoulou having signed the Defendant's "Report of the Members for Year

- Ended 31 December 2016" as a "Designated Member", affixed with the company seal of the Defendant.
- 6.14 Even on the Defendant's case, that the Members and Designated Members are corporate entities, Orwersen Trading Limited and Surpenson Trade Limited, as a matter of law, the Defendant has undertaken its business via its Members and Designated Members which in practice has meant that its agents, Mr Christodoulou and Mr Sofianos, who have acted as its executive by being "Board Members" or "member of management".
- 6.15 It is averred that such actions plainly bringing both Mr Christodoulou and Mr Sofianos into the category of actual or ostensible agent.
- 7. Paragraph 8 is denied. The Claimant relies on the fact that Mr Christodoulou, on 23 March 2017, signed the Defendant's "Report of the Members for Year Ended 31 December 2016" as a "Designated Member", affixed with the company seal of the Defendant.
- 8. Moreover, the Deed of Guarantee has the Defendant's common seal affixed to it. This satisfies the statutory requirements of ss.43-47 as modified by Regulation 4. The document is executed and delivered under seal and is thereby a deed, as the face value requirement is satisfied, in that the words of the document spell out that it is a deed.
- 9. It is averred that the Defendant's argument as to a lack of consent ignores the fact of the Defendant's seal being affixed. The Claimant, at all relevant times, acted in good faith and in relation to the internal management rule at common law, is not obliged to make enquiries into the regularity of the Defendant's internal management procedures.
- 10. Without prejudice to the foregoing averments, if it is decided that the statutory formalities for the creation of a deed have not been met, C will submit that the deed takes effect as a contract and satisfies the requirements of the Statute of Frauds 1677 for guarantees; a fortiori for indemnities. The Claimant avers that there is no requirement for a guarantee or an indemnity to be contained in a deed.
- 11. Furthermore, it is averred that Mr Christodoulou plainly had at least ostensible authority to sign and affix the common seal of the Defendant to the document on behalf of the

Defendant. This is supported by the later events of Mr Christodoulou signing the First Agreement, dated 31.1.2018, on 2.2.2018, within the section titled "Member of the LLP – On behalf of Prologics with Common Seal", as "Board Member" to describe his "Position" and the Second Agreement on 2.2.2018 also within the section titled "Member of the LLP – On behalf of Prologics with Common Seal", as "Board Member" to describe his "Position".

- 12. Further, the Second Agreement declares, at:
 - (i) §(B) that "Terms are agreed by Medcom and Prologics in consideration of Ansell not bringing proceedings against them so as to recover monies detailed in the letter as overdue."
 - (ii) §1.1 that "Medcom and Prologics independently accept the amounts detailed as owed to Ansell detailed in the Letter and specifically the Overdue;"
 - (iii) §1.3 that "Medcom and Prologics independently accept that should any of the Conditions be breached at any stage Ansell shall be at liberty to immediately pursue either or both of them under the Contract, Guarantee or this Agreement as it sees fit. For the avoidance of doubt this Agreement will be seen as concluded agreement by Medcom to adhere to the conditions and Prologics continuing guarantee of Medcom's obligations as per the Guarantee."
 - (iv) §3 that "Each Party represents and warrants that: (a) it has the power to execute and deliver this Agreement and to perform its obligations under it and has taken all action necessary to authorise such execution and the delivery and the performance of such obligations;"
- 13. Save as hereinbefore admitted or not admitted, all allegations in the Defence are each denied as if they been individually described and separately denied.

ANDREW MAGUIRE

Dated this 19th day of December 2018.

STATEMENT OF TRUTH

The Claimant believes that the facts stated in this Reply are true. I am duly authorised by the Claimant, Ansell RUS Limited Liability Company, to sign this statement of truth, on its behalf.

Signed:

Name:

Date:

«Анселл РУС» Аnsell RUS LLC

Address for receiving documents oka

Shakespeare Martineau LLP,

Nol Colmore Square,

Birmingham,

B4 6AA.

[Ref: 1112538,1.MY.]

Solicitors for the Claimant who are instructed to receive service of all documents on its behalf at the above address.

TO: HH Judge Worster;

AND TO: the Defendant.

IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS IN BIRMINGHAM CIRCUIT COMMERCIAL COURT (QBD)

Claim No. E40BM056

BETWEEN:

ANSELL RUS LIMITED LIABILITY COMPANY

Claimant

-and-

PROLOGICS (UK) LLP

Defendant

REPLY

Shakespeare Martineau LLP,

No1 Colmore Square,

Birmingham,

B4 6AA.

Ref: 1112538.1.MY.

Solicitors for the Claimant.

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Claim No. E40BM056

IN THE HIGH COURT OF JUSTICE
IN THE BUSINESS AND PROPERTY
COURTS IN BIRMINGHAM
CIRCUIT COMMERCIAL COURT (QBD)

BETWEEN:

ANSELL RUS LIMITED LIABILITY COMPANY

Claimant

- and -

PROLOGICS (UK) LLP

First Defendant

-and-

MR PAVLOS ANDREAS
CHRISTODOULOU

Second Defendant

AMENDED PARTICULARS OF CLAIM

Shakespeare Martineau LLP
No1 Colmore Square
Birmingham

B4 6AA

Ref: 1112538.1.MY

Solicitors for the Claimant

EXHIBIT 4

MEI Young Claimant Fourth MEIY4 26 November 2019

Claim No. E40BM056

IN THE HIGH COURT OF JUSTICE
IN THE BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
CIRCUIT COMMERCIAL COURT (QBD)
BEFORE HIS HONOUR JUDGE WORSTER SITTING AS A HIGH COURT JUDGE

BETWEEN:

ANSELL RUS LIMITED LIABILITY COMPANY

Claimant

-and-

PROLOGICS (UK) LLP (1) PAVLOS ANDREAS CHRISTODOULOU (2)

Defendants

Exhibit MEIY4



This matter is being dealt with by Michael Young

No 1 Colmore Square Birmingham B4 6AA DX 721090 Birmingham 43 T +44 (0)121 214 0000

Clerk to HHJ Worster Birmingham Civil Justice Centre DX 701987 Birmingham 7

Our ref: B.1.1112538.1.MY.

10 September 2019

Dear Sirs

Ansell RUS Limited Liability Company v Prologics (UK) LLP (1) Mr Pavlos Andreas Christodoulou (2)

Claim Number: E40BM056

The Second Defendant has been served with the Amended Claim Form, Amended Particulars of Claim, Amended Response Pack and Amended Order of 25 June 2019. The Foreign Process Section guidance requires the screen printout of the Royal Mail proof of delivery under signed for postage, this is enclosed along with a certificate of service for the Court file. We have also filed these with the FPS as appropriate.

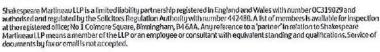
Yours faithfully

Shakespeare Martineau

Direct Line: +44 (0)121 631 5206 Direct Fax: +44 (0)121 237 3054 E: michael.young@shma.co.uk

Copy to First Defendant's solicitors











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Certificate of service	Name of court High Court of Justice, Queen's Bench Division, Birmingham District Registry, Mercantile Court (foreign service on Second Defendant via Queen's Bench Division, Foreign Process Section, Royal Courts of Justice) Claim No. E40BM056 Foreign Process Section Process Section Process Section Process
On what day did you serve? 2 2 / 0 8 / 2 0 1 9 The date of service 3 0 / 0 8 / 2 0 1 9	Name of Claimant Ansell RUS Limited Liability Company Name of Defendant Prologics (UK) LLP (1) Mr Pavlos Andreas Christodoulou (2)
Please attach copies of the documents you have not already filed with the court. Hague Conventi Amended Claim Pack, Amended	containing bundle approved for foreign service under the on by the FPS, containing: Form, Amended Particulars of Claim, Amended Response Order of 25 June 2019. Endant (Mr Pavlos Andreas Christodoulou) Give the address where service effected, include fax or DX number, e-mail address or other electronic identification 7746N Wild Turkey Drive Sturgis South Dakota United States Being the [] claimant's [x] defendant's
 [x] by other means permitted by the court (please specify) Service carried out via the Foreign Process Section, a sealed bundle being posted to be tracked and signed for, in line with the Amended Order of 25 June 2019 and FPS guidance. [] By Document Exchange [] by fax machine (time sent, where document is other than a claim form) (you may want to enclose a copy of the transmission sheet) [] by other electronic means (time sent, where document is other than a claim form) (please specify) 	[] solicitor's [] litigation friend [] usual residence [x] last known residence [] place of business [] principal place of business [] last known place of business [] last known principal place of business [] principal office of the partnership [] principal office of the corporation [] principal office of the company [] place of business of the partnership/company/

N215 Certificate of service (09.11) This form is reproduced from http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do and is subject to Crown copyright protection. Contains public sector information licensed under the Open Government Licence v2.0

I believe t	hat the facts stated in this certificate are true.		
Full name	MICHAEL E.1. YOUNG		
Signed	Michael & MARTINEAU LLP.	Position or office held	SOUCITOR.
	(Claimant) (Defendant) ('s solicitor) ('s-litigation friend)		(If signing on behalf of firm or company)
Date	10092019		32p//

Rules relating to the service of documents are contained in Part 6 of the Civil Procedure Rules (www.justice.gov.uk) and you should refer to the rules for information.

Calculation of deemed day of service of a claim

A claim form served within the UK in accordance with Part 6 of the Civil Procedure rules is deemed to be served on the second business day after the claimant has completed the steps required by CPR 7.5(1).

Calculation of the deemed day of service of documents other than the claim form (CPR 6.26)

Method of service	Deemed day of service	
First class post or other service which provides for delivery on the next business day	The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day	
Document exchange	The second day after it was left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day	
Delivering the document to or leaving it at a permitted address	If it is delivered to or left at the permitted address on a business day before 4.30pm, on that day; or in any other case, on the next business day after that day	
Fax	If the transmission of the fax is completed on a business day before 4.30pm, on that day; or in any other case, on the next business day after the day on which it was transmitted	
Other electronic method	If the email or other electronic transmission is sent on a business day before 4.30pm, on that day; or in any other case, on the next business day after the day on which it was sent	
Personal service	If the document is served personally before 4.30pm on a business day, it is served on that day; or in any other case, on the next business day after that day	

In this context 'business day' means any day except Saturday, Sunday or a bank holiday; (under the Banking and Financial Dealings Act 1971 in the part of the UK where service is to take place) includes Good Friday and Christmas Day.

Claim No. E40BM056

IN THE HIGH COURT OF JUSTICE
IN THE BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
BIRMINGHAM CIRCUIT COMMERCIAL COURT (QBD)
BEFORE HIJ WORSTER SITTING AS A HIGH COURT JUDGE
BET WEEN:

ANSELL RÜŞ LIMITED LIABILITY COMPANY

Claimant



-and-

PROLOGICS (UK) LLP

Defendant

ORDER

UPON hearing Mr Gohen Counsel for the Claimant and Gounsel Mr Maguire for the Defendant on 22 March 2019

AND UPON READING the amended application of the Claimant, dated 29 March 2019, the written representations of the Detendant of 29th March 2019 and the Claimant's reply of 5th April 2019

AND UPON the Court being satisfied that the provisions of CPR 6,86, 6.37 and paragraph 3.1 of CPR Practice Direction 6B have been met, and giving written reasons

IT IS ORDERED THAT:

- 1. Mr Pavlos Andréas Christodoulou be added as a Second Defendant.
- 2. The Claimant has permission to file and serve the Amended Claim Form and Amended Particulars of Claim on the First Defendant and Mr Pavlos Andreas Christodoulou at 7746N Wild Turkey Drive, Sturgis, South Dakota, USA, as the Second Defendant, in accordance with the drafts with its amended application dated 29 March 2019, with the deletion of paragraph 111 of the Amended Particulars of Claim:
- Permission is granted to serve Mr Pavlos Andreas Christodoulou out of the Jurisdiction at 7746N
 Wild Turkey Drive, Sturgis, South Dakota, USA in accordance with the Hague Conventions.

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- 4. The First Defendant shall file and serve an amended Defence, (if so advised) within 14 days of service of the Amended Particulars of Claim.
- 5. The Second Defendant has 22 days after service on him of the Amended Claim Form and Amended Particulars of Claim in which to respond by either:
 - (a) filing an Acknowledgment of Service;
 - (b) filing or serving an Admission; or
 - (c) filing a Defence,

And, where an acknowledgment of service is filled, the Second Defendant has a further 14 days in which to file his Defence.

- 6. By 4pm on 14 days after receiving the Second Defendant's Defence or the First Defendant's amended Defence, whichever is the later, the Claimant shall file and serve its Amended Reply, if so advised.
- 7. Äny requirement on the parties to deal with Initial Disclosure requirements under Practice Direction 51U iş dispensed with.
- 8. The First Defendants costs of and occasioned by the amendments above are to be paid by the Claimant in any event.

Guidance for solicitors

Article 14 (EU) & Article 10(a) (The Hague)

First step

A member of staff will email you an undertaking and a blank covering letter.

Foreign Process requirements:

- N224 form
- Cover letter addressed to the RCJ foreign process office with contact details and overview of request
- Undertaking
- EU / Hague Covering letter addressed to the defendant (To be emailed back to the Foreign Process Section)
- *Translation of the covering letter and translator's certificate (*only if translations are required)
- Original set of documents for service, *translations and translators certificate (*if required)

If Serving a Claim form

- N510 or Order with permission to serve outside of Jurisdiction
- Amended Response Pack

EU / Hague Covering letter addressed to defendant.

Complete the name and address of the defendant

List the documents you are enclosing

(You will note there are bullet point <u>examples</u> of what is to be enclosed, which will not necessary relate to your claim. It is your responsibility to ensure you correctly list all your documents)

Email the covering letter back to:

foreignprocess.rcj@hmcts.gsi.gov.uk

The FPS will then copy and paste the contents onto our HMCTS letterhead.

If translations are required then send your covering letter to a translator to have it translated. As well as a translated copy of the covering letter, ensure you receive a certificate of translation from the translator.

Lodge in hard copy

You will lodge with the Foreign Process Section:

- N224 form
- Cover letter addressed to the RCJ
- Completed undertaking
- Original set of documents for service
- *Translation of EU covering letter and translator certificate (*if required)

If Serving a Claim form

- N510 or Order with permission to serve outside of Jurisdiction
- Amended Response Pack

Collection and transmission

Once your documents have been processed, the Foreign Process Section will call you and ask that you collect the documents for onward transmission. The person collecting the documents <u>must</u> be the individual stated in the undertaking.

The documents will be put into a sealed envelope which must not be opened. The documents are to be taken to the Post Office and posted via a form of registered post whereby the defendant signs for the documents. It is your responsibility to ensure that the method of posting complies with Article 14 of the Service Regulation (Reg. (EC) No 1393/2007)

You must state the following as the sender:

Foreign Process Section Room E16 Royal Courts of Justice Strand London WC2A 2LL United Kingdom

Once you have posted the documents you will need to provide the Foreign Process Section with the original receipt and a copy of the receipt should be kept for your records.

Evidence of service

The evidence of service will be your screen printout from the Royal Mail tracking website, (or other postal service used) indicating when the documents have been signed for.

If you have any queries please call the Foreign Process Section on:

020 7947 7772 option 6

or via email:

foreignprocess.rcj@hmcts.gsi.gov.uk

Michael Young

From: Michael Young <Michael.Young@shma.co.uk> 02 October 2019 14:20

Sent: To:

Subject:

'prologics@mac.com'

Private and Confidential [SHMA-ACTIVE.FID77922]

Dear Mr Christodoulou

Ansell RUS Limited Liability Company v Prologics (UK) LLP (1) Mr Pavlos Andreas Christodoulou (2) Claim Number: E40BM056 We write further to the above matter of which you will be aware. We note that your acknowledgment of service of the claim brought against you is overdue and that in turn attempted service of the court's recent timetabling orders was rejected We encourage your engagement. Absent the same default judgment will inevitably need to be sought against you, and given you are already engaged and aware of matters via Prologics, and have previously sought set aside for Prologics, your engagement would be preferred. In the circumstances the claim is not just going to go away, the amount owed to my client is significant, a sum that it saw as guaranteed and then further ratified too.

We await hearing from you. Similarly, if you do instruct Gresham Legal to go on the record for you personally as well as Prologics no doubt you will let us know. Indeed, we would encourage you to take legal advice as to your position, if you have not done so already

Yours sincerely

Shakespeare Martineau LLP

Michael Young

Associate

F 0121 237 3054 E <u>michael.young@shma.co.uk</u> Main T 0121 214 0000 ext 2398

4 4 SHAKESPEAREMARTINEAU

Shakespeare Martineau

17

Michael Young

From:

Sent:

To:

Subject:

Attachments:

18 October 2019 12:15 Michael Young

prologics@mac.com'

RE: Private and Confidential [SHMA-ACTIVE.FID77922] Order.pdf; General Form of Judgment or Order.pdf

Dear Mr Christodoulou

Second email further to the below with the subsequent orders.

We look forward to your engagement.

Yours sincerely

Shakespeare Martineau LLP

Michael Young

Associate

E michael.young@shma.co.uk

Main T 0121 214 0000 ext 2398

4 SHAKESPEAREMARTINEAU

Shakespeare Martineau

No 1 Colmore Square, Birmingham, B4 6AA DX721090 Birmingham 43



13

Michael Young

From: Sent:

ö

Subject:

Attachments:

prologics@mac.com'

18 October 2019 12:13

Michael Young

RE: Private and Confidential [SHMA-ACTIVE.FID77922]

amended order 25 jun 19.pdf; amended resp pack and notes.pdf; amended c form and amended poc.pdf

Dear Mr Christodoulou

write further to my email below.

attach for your ease of reference a copy of the Claim already served upon you (you were of course served with sealed paperwork from the Foreign Process Section). I will in a second email re-send copies of the subsequent Orders you rejected service of later.

We encourage your engagement. You are aware of the claim and engagement will save time and costs for all concerned. You have also communicated via this email address. Absent further engagement we will seek default judgment at the start of next month.

Yours sincerely

Shakespeare Martineau LLP

Michael Young Associate

E michael.young@shma.co.uk

Main T 0121 214 0000 ext 2398

SHAKESPEAREMARTINEAU

No 1 Colmore Square, Birmingham, B4 6AA Shakespeare Martineau

DX721090 Birmingham 43 136

46CIV20-000054 1:18 PM CST Meade County, **South Dakota**







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RAUD PREVENTION

acting for you to check any changes to payment arrangements. We will also require independent verification of changes to any bank account to which we are asked to send Please do not reply to or act upon any email you might receive purporting to advise you that our bank account details have changed. Please always speak to the lawyer money.

From: Michael Young

Sent: 02 October 2019 14:20

「o: 'prologics@mac.com' <prologics@mac.com>

Subject: Private and Confidential [SHMA-ACTIVE.FID77922]

Dear Mr Christodoulou

Ansell RUS Limited Liability Company v Prologics (UK) LLP (1) Mr Pavlos Andreas Christodoulou (2)

Claim Number: E40BM056

We write further to the above matter of which you will be aware. We note that your acknowledgment of service of the claim brought against you is overdue and that in turn attempted service of the court's recent timetabling orders was rejected. We encourage your engagement. Absent the same default judgment will inevitably need to be sought against you, and given you are already engaged and aware of matters via Prologics, and have previously sought set aside for Prologics, your engagement would be preferred. In the circumstances the claim is not just going to go away, the amount owed to my client is significant, a sum that it saw as guaranteed and then further ratified too.

We await hearing from you. Similarly, if you do instruct Gresham Legal to go on the record for you personally as well as Prologics no doubt you will let us know. Indeed, we Vive aware nearing non-you. Similarly, if you do instruct Gresnan Legal to go on the record for would encourage you to take legal advice as to your position, if you have not done so already.

V

Yours sincerely

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Michael Young Associate

Main T 0121 214 0000 ext 2398

* SHAKESPEAREMARTINEAU

Shakespeare Martineau No 1 Colmore Square, Birmingham, B4 6AA DX721090 Birmingham 43







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FRAUD PREVENTION

acting for you to check any changes to payment arrangements. We will also require independent verification of changes to any bank account to which we are asked to send Please do not reply to or act upon any email you might receive purporting to advise you that our bank account details have changed. Please always speak to the lawyer money.

m

MEI Young Claimant Fourth MEIY4 26 November 2019

Claim No. E40BM056

IN THE HIGH COURT OF JUSTICE

IN THE BUSINESS AND PROPERTY COURTS IN BIRMINGHAM

CIRCUIT COMMERCIAL COURT (QBD)

BEFORE HIS HONOUR JUDGE WORSTER SITTING AS A HIGH COURT JUDGE

BETWEEN:

ANSELL RUS LIMITED LIABILITY COMPANY

Claimant

-and-

PROLOGICS (UK) LLP (1)

PAVLOS ANDREAS CHRISTODOULOU (2)

Defendants

FOURTH WITNESS STATEMENT OF MICHAEL EDWARD IAN YOUNG



SHAKESPEARE MARTINEAU LLP SOLICITORS

No 1 Colmore Square Birmingham B4 6AA

Tel: 0121 214 0000 Fax: 0121 237 3054

DX: 721090 Birmingham 43

Ref: B.1.1112538.1.MY

Solicitors for the Claimant

EXHIBIT 5

P.A. Christodoulou Defendant Third 3 March 2020

Claim No. E40BM056

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
CIRCUIT COMMERCIAL COURT (QBD)

BETWEEN:

ANSELL RUS LIMITED LIABILITY COMPANY

Claimant

and

PROLOGICS (UK) LLP

First Defendant

and

MR PAVLOS ANDREAS CHRISTODOULOU

Second Defendant

THIRD WITNESS STATEMENT OF
PAVLOS ANDREAS CHRISTODOULOU

I, **PAVLOS ANDREAS CHRISTODOULOU**, of 7746 N, Wild Turkey Drive, Sturgis, South Dakota, United States of America, **SAY** as follows:

Introduction

1. I am one of two Management Board Members of the Defendant ("**Prologics**"). I am not and never have been a Member of Prologics. I am duly authorised under the LLP Agreement (to which I refer at paragraph 6 below) and by the Members to make this witness statement on behalf of Prologics. The facts and matters set out in this witness statement are within my own knowledge, unless otherwise stated. Where information is within my own knowledge, that information is true. Where information is not based on

1

my personal knowledge, I identify the source of that information and I believe it to be true.

2. I hold three degrees – a Juris Doctorate from Fordham University, an MBA in Finance from NYU Stern School of Business, and a Bachelor of Science from Rensselear Polytechnic Institute. Over the past 20 years, I have been involved in the turnaround of many businesses across various sectors, transforming struggling companies into profitable ones. I have worked in many countries, including the US, Russia, Poland and other Eastern European countries. I founded Prologics (UK) LLP ("**Prologics**") in 2014, along with Panos Sofianos.

The background to execution of the Contract and the Guarantee

- 3. Prologics is primarily a holding entity, holding shares in various subsidiaries. Prologics is wholly-owned by two Cypriot companies, Orwensen Trading Limited and Surpenson Trade Limited. Those two companies are the sole Members and sole Designated Members of Prologics, and have been at all times since 3 April 2014.
- 4. Orwensen Trading Limited is in turn owned by Robel Assets Inc. Robel Assets Inc is owned by Pershing Trust, a Cypriot trust. The ultimate beneficial owners are myself, my mother, Stavroula Christodoulou, and my sister, Isabel Christodoulou.
- 5. Surpenson Trade Limited is owned by Sorotel Investments Ltd. Sorotel Investments Limited is owned by BIO Trust. The ultimate beneficial owners are Panagiotis Sofianos and his sister, Joanna Strange.
- 6. There is a Limited Liability Partnership Agreement for Prologics dated 30 September 2014 (the "LLP Agreement"), which took effect on 30 September 2014. Pursuant to the LLP Agreement, Mr Sofianos and I are the only two Management Board Members of Prologics. However, neither of us has ever been a Member of Prologics. The LLP Agreement sets out the objects of Prologics at clause 3.2, and at clause 5, provisions as to the management of Prologics. I shall deal specifically with certain provisions within the LLP Agreement below, as they are relevant to Prologics' defence of the claim made against it in these proceedings.

- 7. I undertake more of the general management responsibilities for Prologics, including finance and legal matters. Mr Sofianos has strategic oversight of Prologics' activities. A separate management team is employed to manage the day-to-day business of subsidiaries of Prologics. Mr Sofianos and I are not a part of the management of those subsidiaries.
- 8. Medcom-MP LLC ("Medcom") was acquired by Prologics in 2016 and, therefore, after the date of the LLP Agreement. Medcom is a Russian registered company that supplies medical products in Russia. The management team of Medcom consists of the President, Philippe Lemaire, the General Director, Olga Kravchenko, and the Chief Financial Officer, Sebastien Dmirdjian. This team has full day-to-day management responsibility for Medcom's business. The management would not generally come to me or to Mr Sofianos for assistance with business decisions relating to Medcom. Occasionally, however, the management team asks us for our advice as experienced businessmen.
- 9. I was aware from when Prologics acquired Medcom in 2016 that Medcom had an agreement with Ansell Healthcare Europe NV for the supply by that Ansell company of medical goods, which Medcom then sold into the Russian market. The supply arrangements with Ansell were subsequently renewed through a new agreement with another Ansell entity, Ansell RUS Limited Liability Company ("Ansell"), being the Claimant in these proceedings. Neither I nor Mr Sofianos was closely involved with Medcom's negotiation of, or entry into, the new contract with Ansell, which is dated 1 January, 2017 (the "Contract"). I was aware that negotiations were taking place between Medcom and Ansell, but the detailed terms of the Contract were handled by Philippe Lemaire, Medcom's President. I did not review the Contract nor any drafts of it, and I did not discuss it with Mr Sofianos.
- 10. As part of the supply arrangements with Ansell, Prologics was asked to provide a guarantee in respect of Medcom's financial obligations under the Contract.
- 11. The Deed of Guarantee between Prologics and Ansell is dated 1 January, 2017 (the "Guarantee"). However, it was actually signed by me on or around 14 February, 2017.
- 12. Pursuant to clause 5.2 of the LLP Agreement, each Management Board Member has the authority to individually represent Prologics in all activities that form part of the

LLP's objects, save specifically to provide security for third party debts as recommended by the Management Board (the object referred to in clause 3.2(V)), when both Members of the Management Board must consent. The reason we implemented this provision is that Prologics was established as a holding company. Therefore, we wanted to make sure that the assets of Prologics were not exposed to liability for third party debts unless both Management Board Members expressly approved that.

- 13. Based on prior guarantees that Prologics has provided for its subsidiaries, both Mr Sofianos and I usually would be approached by management of the relevant subsidiary on an individual basis and asked to approve and sign such agreements. Sometimes, we would ask questions about the nature of, and background to, a particular agreement, and sometimes we discussed them, but by no means always. Only when we were both satisfied as to giving a guarantee and the proposed terms would we then sign. We were not usually together when signing or approving such guarantees. Both Mr Sofianos and I spend much time in different countries, including Russia, the USA, Poland and Greece.
- 14. On this occasion, I recall that Mr Sofianos was on holiday in Greece for St. Valentine's Day on the date that I signed the Guarantee. There were no discussions or emails between him and me about the Guarantee. I assumed that one of the Medcom management team would be liaising directly with Mr Sofianos to have him execute the Guarantee. I now know that this was not the case and I understand from both Mr Sofianos and from Medcom's management that Mr Sofianos did not know about, consent to, or execute the Guarantee, nor did he approve my executing it for Prologics.
- 15. During the latter part of 2017, I learned from Medcom's management (Philippe Lemaire and Sebastien Dmirdjian) that a debt to Ansell had built up (although some of it was disputed). Ansell was a key supplier to Medcom and so it was important to try to find a solution to maintain supplies of product. Philippe and Sebastien asked for my help with that. The discussions and negotiations that ensued with Ansell, which I was involved in, led to further agreements being entered into on 31 January 2018 and 2 February 2018. Those agreements do refer to the Guarantee, but my understanding at the time was that these were references to a different guarantee provided to the previous supplier, Ansell Healthcare Europe NV.

Events after I learned of this claim

with Mr Praveen Shenoy, the CFO of Ansell. Mr Shenoy made a witness statement earlier in these proceedings setting out his version of what we discussed. I reject his account. In particular, I did not accept or concede the validity of the Claimant's claim. To the best of my recollection, we discussed the debt due from Medcom to the Claimant, and I emphasized to Mr Shenoy that the debt was due and payable by

After I learned about the Claimant's claim, in July 2018 I had a telephone discussion

Medcom. I told Mr Shenoy that Medcom was in advanced discussions with a potential

investor and that, if that investment was concluded, Medcom would be able to clear

the debt in full in the near term. I also told him that any claim might scare off the

potential investor. That was as far as the discussion went.

I did not acknowledge the validity of the claim against Prologics, nor did I say that I

"had no issues with the current proceedings on the Guarantee and that Ansell could

withdraw after the payment was made". Neither did I discuss with Mr Shenoy the

giving of a guarantee to the potential Medcom investor - no guarantee was ever

contemplated in relation to that investor.

I believe that the facts stated in this witness statement are true.

of Cht

PAVLOS ANDREAS CHRISTODOULOU

Dated 3 March 2020

IN THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

Supreme Court Appeal No. 29661

Ansell RUS, LLC,

Plaintiff and Appellee,

VS.

Paul A. Christodoulou a/k/a, Pavlos Andreas Christodoulou,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT FOURTH JUDICIAL CIRCUIT MEADE COUNTY, SOUTH DAKOTA

THE HONORABLE KEVIN KRULL CIRCUIT COURT JUDGE

APPELLANT'S REPLY BRIEF

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Attorney for Defendant/Appellant

Richard C. Landon Lathrop GPM LLP 500 IDS Center 80 South 8th Street Minneapolis, MN 55402 (612) 632-3429 richard.landon@lathropgpm.com Attorney for Plaintiff/Appellee

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REPLY

I. Mr. Christodoulou's failure to appear in the English Action does not prevent him from disputing the enforceability of the English Judgment under SDCL sections 15-16-44 and 15-16-45.

Ansell opens its brief by asserting Mr. Christodoulou "was properly served . . . under English law" because Ansell prepared and dispatched its service package in perfect accordance with the English Court's instructions and the requirements of the Hague Convention. *Appellee's Brief* at 6; 10-11. Mr. Christodoulou disputes the adequacy of the form of Ansell's process, ¹ that Ansell followed the English Court's instructions, ² and that the Hague Convention permits service by mail on South Dakota residents. ³ However, for the sake of argument, let us presume Ansell's position on those three matters is correct. Even then, Ansell's analysis omits the most critical detail: its service package (otherwise hypothetically flawless in both form and execution) was delivered to the wrong person. Ansell attempts to reframe the issue by dedicating nearly the entirety of its brief to an analysis of whether Ansell was required to follow the service requirements of English law or South Dakota law. *Appellee's Brief* at 6-10. That would be the appropriate analysis had Ansell actually delivered its service package to Mr. Christodoulou, but it did not.

Entirely ignoring this threshold fatal defect, Ansell instead takes a deep dive into *Water Splash* and argues "the circumstances set forth in *Water Splash* are remarkably similar to the present case[.]" *Appellee's Brief* at 7. In some ways, perhaps. For example,

¹ Appellant's Brief at 5; 15; Appellant's Reply Brief, infra, Section III.

² Id.; Appellant's Brief at 6.

³ Appellant's Brief at 5.

in *Water Splash* and in this case, a corporation attempted to serve a would-be foreign defendant by mail. The defendant in *Water Splash* was actually served by mail, and the question presented thereafter was which country's laws in that regard were applicable. *Menon v. Water Splash, Inc.*, 472 S.W.3d 28, 30 (Tex. App. 2015), *vacated and remanded*, 137 S. Ct. 1504 (2017); *Water Splash, Inc. v. Menon*, 137 S. Ct. 1504, 1507 (2017). There is no occasion to reach that question in this case because Ansell **tried** to serve Mr. Christodoulou by mail **but failed**. No service was made. Ansell's process was delivered to Mr. Christodoulou's neighbor's house⁴ where it sat unopened for six months. *App*. 006 at ¶ 18. Such is a material distinction between *Water Splash* and this case. If the plaintiff in *Water Splash* had purported to serve its would-be defendant by depositing its summons and complaint into her neighbor's mailbox while she was out of town, it seems unlikely the United States Supreme Court would have found occasion to extend its analysis beyond that critical detail.

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⁴ Mrs. Carol Fellner lives "next-door" to Mr. Christodoulou in rural Meade County (i.e., their driveways are separated by a distance of approximately 600 feet). Mrs. Fellner and her husband have a good and neighborly relationship with Mr. Christodoulou and his family. One day, on August 30, 2019, about two weeks after Mr. Christodoulou and his family flew to Poland, a mail carrier arrived at Mrs. Fellner's home and asked her to accept an envelope addressed to Mr. Christodoulou requiring a signature. Mrs. Fellner accepted the envelope, signed for it, and then set the envelope aside until Mr. Christodoulou's return home. Mrs. Feller did not open the envelope, nor is she authorized or designated as Mr. Christodoulou's agent for service of process. She is just an exceedingly friendly and accommodating neighbor. Nevertheless, when the mail carrier returned to Mrs. Fellner three weeks later and asked her to again sign for another piece of Mr. Christodoulou's mail, Mrs. Feller declined, because she decided she did not feel comfortable accepting any mail requiring a signature. Mrs. Fellner delivered Ansell's unopened envelope to Mr. Christodoulou around Christmastime—about a month after Ansell obtained its default judgment against Mr. Christodoulou in the English Action. See SR 303.

The fact that Ansell's English barristers elected to utilize a method of service so unreliable that important legal documents could be delivered to (and signed for by) Mr. Christodoulou's neighbor (and that Ansell would apparently have no way of discovering where its process was delivered or the identity of the person who signed for it)⁵ puts Ansell in a bit of a predicament in this action. Consequently, Ansell attempts to deflect from its failure to satisfy its obligation to properly serve its would-be defendant by attempting to shift blame onto Mr. Christodoulou for purportedly failing to seize his "opportunity to present his objections to the English Court, because he intentionally avoided participating there[.]" *Appellee's Brief* at 10-12. Ansell is correct about one thing: Mr. Christodoulou did not voluntarily submit himself to the jurisdiction of the English Court to relieve Ansell of its obligation to serve him with process in that foreign action. Delivering process to a would-be defendant's neighbor is not valid service of process in England, absolutely did not comply with the provisions of the Hague Convention, and did not comply with the English Court's instructions that "the

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment **shall not** be given until it is established that

 a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or [continued on next page]

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⁵ Ansell admits it learned of its failed attempt to serve Mr. Christodoulou only after it sought to enforce its foreign default judgment in Meade County. *Appellee's Brief* at 5. The "proof of service" Ansell filed with the English Court does not indicate where its envelope was delivered or who signed for it. *Ansell App.* at 124-26.

⁶ Article 15 of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents provides:

defendant signs for the documents." *App.* 006 at ¶ 16. Regardless, the question presented by this case is not whether the default judgment is valid in England. Mr. Christodoulou is not, as Ansell claims, "seeking relief from a judgment." *Appellee's Brief* at 5. To the contrary, he is seeking to avoid the recognition and **enforcement** of a foreign judgment in his home state of South Dakota. These are two different issues with two different legal standards, which Ansell has entirely conflated.

Ansell's position, (accepted in error by the Circuit Court below), is that Mr. Christodoulou had some duty or obligation to appear in England to dispute the adequacy of service in that forum and that his failure to do so prevents him from now challenging the enforcement of the English Court's default judgment in South Dakota. *App.* 006 at ¶ 19. Erroneously, the Circuit Court determined Mr. Christodoulou had this obligation to appear in England and defend the claims there notwithstanding the fact that he was never served with process. Ansell calls Mr. Christodoulou's argument that he had no obligation to contest Ansell's failure to serve him in England "nonsensical" and presents the following hypothetical analogy:

Imagine a plaintiff filed a complaint in South Dakota with an affidavit of service saying that it was served on the defendant. The defendant does not respond and a default judgment is issued. If the defendant later finds out about the judgment and argues that the affidavit of service was incorrect and that he had no notice of the claim, he would still have to move to vacate the judgment and present a defense in the South Dakota action.

b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention, and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Convention Done at the Hague November 15, 1965; T.I.A.S. No. 6638 (U.S. Treaty Feb. 10, 1969) (emphasis added).

Appellee's Brief at 12-13. Ansell's hypothetical is a correct statement of the law of domestic judgments in certain applications, but its hypothetical is simply not analogous to this case because it does not include a dubious foreign judgment and thus there is no occasion to apply SDCL 15-16-44 and 15-16-45 to determine whether that foreign judgment is entitled to recognition in South Dakota. Mr. Christodoulou agrees that if the facts were different and Ansell had sued him in Yankton County, for example, served him with process, and he had failed to answer, he would not later be able to assert the defenses contained in SDCL 15-16-44 and 15-16-45 to collaterally attack that domestic judgment when Ansell attempted to register that judgment in Meade County. But, those are not the facts of this case. This case involves a foreign judgment, not a domestic judgment. Longstanding principles of comity and the South Dakota Legislature's eventual codification of those principles contain a separate mechanism by which to evaluate foreign judgments to ensure their compliance with American notions of due process and our system of justice. Neither Ansell nor the Circuit Court have cited any statutory authority or common law authority sounding in comity to support their conclusions that failing to appear in a foreign action to contest personal jurisdiction somehow waives these special protections. By accepting Ansell's invitation to conflate these two different inquiries, the Circuit Court functionally abrogated SDCL 15-16-44 and 15-16-45 when it found Mr. Christodoulou was required to appear in England (even in the absence of being served) if he wanted to avoid any possibility the English default judgment could be recognized in South Dakota. App. 006 at ¶ 19.

A more apt hypothetical illustrates Ansell's faulty arguments: Mary L. Smith, a resident of Wagner, South Dakota, receives an email informing her she has been sued in Peru to recover \$200,000 in damages occasioned to XYZ Corporation by the breach of contract by one Mary L. Smyth of Lake Andes. Mrs. Smith does not know Mrs. Smyth, has never heard of XYZ Corporation, has never been to Peru, owns no assets in Peru, and has no intention of visiting Peru. Extending Ansell's arguments to this hypothetical, Ansell's position would be that if Mrs. Smith wants to prevent XYZ Corporation from domesticating its erroneous Peruvian judgment to withdraw the money out of her local bank accounts, garnish her wages, remove the vehicle from her driveway, and potentially force a judicial sale of her family's home, then she must write a check to some Peruvian lawyer to defend her interests and clear the matter up in Peru. But, if SDCL 15-16-44 and 15-16-45 are to have any meaning or effect whatsoever, that cannot be a correct statement or application of the law. The better legal advice for Mrs. Smith is to do nothing until and unless XYZ Corporation attempts to register its Peruvian judgment in Charles Mix County and, in that event, to collaterally attack the foreign judgment on the grounds that, among its other defects, it names the wrong defendant and that service of process by email does not comport with American or South Dakotan notions of due process.

In this case, Ansell's chief complaint is that Mr. Christodoulou "raises technical questions about the judgment in South Dakota courts while avoiding any engagement with or providing any substantive defense in the English courts." *Appellee's Brief* at 13.

Yes—that is exactly correct. Mr. Christodoulou did not (and had no obligation to) relieve Ansell of its obligation to effect proper service of process by voluntarily submitting

himself to the jurisdiction of the English Court in the absence of being properly served. He elected to default in the English action (or at least he might have had he been served with process) and instead invoke the protections of SDCL 15-16-44 and 15-16-45 in the event Ansell ever attempted to register its judgment in South Dakota. This is because the only other conceivable consequence flowing from Mr. Christodoulou's failure to voluntarily appear in the English Action would be that Ansell might attempt to register and enforce its foreign default judgment in South Dakota, a jurisdiction where Mr. Christodoulou does live, and where he does own assets—like the home he lives in with his family. Now, that consequence is far more serious. Ansell argues Mr. "Christodoulou cannot excuse himself from a valid foreign judgment by offering a technical defense that he refuses to present to the court that issues the judgment." Appellee's Brief at 12. Yes, he can. That is the entire point. Mr. Christodoulou could have waived Ansell's requirement to serve him and voluntarily appeared in England to argue lack of service, inadequate process, and the many other reasons the English Court should not enter a personal judgment against him. Whether the English judgment is valid in England under English law is one question. But, whether South Dakota will give full faith and credit to that English judgment is an entirely different question with a wholly different legal standard containing inquiries not relevant in England. SDCL §§ 15-16-44; 15-16-45. That is the only question pending in this action. Foreign judgments are not entitled to full faith and credit as a matter of right, they are evaluated for their regularity and satisfaction of, among other things, American constitutional due process protections. One such requirement is the defendant's "due citation" in the foreign action. SDCL 15-16-44. The fact that Mr. Christodoulou could have directly challenged the judgment in England

does not prevent him from also (or alternatively) collaterally attacking the English judgment based on faulty service when Ansell attempted to register it in South Dakota. The notion that an unserved would-be defendant must appear in a foreign jurisdiction to challenge the fact that he was not served as a prerequisite to challenging the enforcement of a foreign judgment in South Dakota finds no support in any authority cited by Ansell or the Circuit Court.

Perhaps conceding the point, Answer argues that notwithstanding its failure to serve Mr. Christodoulou, he may have had actual notice of Ansell's personal claim, because Ansell's barristers emailed it to him. Appellee's Brief at 10. It is not contained within the record whether Mr. Christodoulou received Ansell's email. Accordingly, we do now know whether it was directed to his spam folder, or whether he blocked Ansell's barristers' emails, or any number of other questions. Regardless, it does not matter because the English Court did not grant Ansell permission to serve Mr. Christodoulou by email, nor can service of process be accomplished by email in South Dakota even if the English Court did purport to grant Ansell such permission, nor can actual notice of a lawsuit that is not served in accordance with applicable law satisfy due process. R.B.O. v. Priests of Sacred Heart, 2011 S.D. 86, ¶ 17, 807 N.W.2d 808, 812. This long-settled law is not seriously debatable. Neither due process under the United States Constitution, or the South Dakota Constitution, nor the "due citation" requirement contained in SDCL 15-16-44 or 15-16-45 are satisfied by delivering notice of a lawsuit by mail to a would-be defendant's neighbor. Service of process is not some murky, amorphous legal concept analyzed in the abstract on a case-by-case basis. To the contrary, it is governed by clear, rigid, **codified** rules of civil procedure. If one does not follow the rules exactly, service is not effective, no matter the merits of the case or the harshness of the result. Ansell wants to argue the merits of the English Action while ignoring the glaring threshold issue that it never effected valid service of process. Such would be akin to arguing the merits of a slam-dunk medical malpractice case notwithstanding the fact that the statute of limitations has passed. The merits of a case are irrelevant if it is time-barred. Likewise, the merits of a case are not relevant if process is never validly served. Ansell complains Mr. "Christodoulou's attempt to question the judgment's validity in South Dakota courts deprives Ansell of its own day in court and should be rejected." *Appellee's Brief* at 13-14. To the extent Ansell has been "deprived" of its day in court, such is the natural consequence of its own negligence and not the result of any action or inaction by Mr. Christodoulou.

To be clear, it is our position that the fact Ansell's service package was delivered to Mrs. Fellner and was never personally served upon Mr. Christodoulou is absolutely fatal to Ansell's efforts to enforce its English default judgment in South Dakota and that this Court's analysis need not extend any further past that critical detail. Nevertheless, there remain numerous additional reasons the English Judgment is not entitled to recognition in South Dakota.

II. Ansell's claim that it could not have served Mr. Christodoulou even if it had tried is disingenuous and wholly contradicted by the record.

For a brief moment, Ansell attempted to argue to the Circuit Court that Mr.

Christodoulou attempted to avoid service of process, but the undisputed facts did not support that argument. It is not as if Ansell finally resorted to service by mail after its numerous attempts to personally serve Mr. Christodoulou failed. Ansell never even tried

to personally serve Mr. Christodoulou—**not a single time**. The full extent of Ansell's effort to serve Mr. Christodoulou with its new personal claim in the English Action consisted of mailing him an envelope to his home in Sturgis on a single occasion. Now, Ansell pretends that if it **had** actually expended any additional efforts, such would have proven fruitless. *Appellee's Brief* at 12. The claim strains credulity.

The record does not indicate when the English Court gave Ansell permission to serve Mr. Christodoulou outside of its jurisdiction, because Ansell presented an Order which is neither dated nor signed. Ansell App. 129 at ¶ 3. But, we do know Ansell's service package was deposited in the Royal Mail on August 22, 2020. *Id.* at 126. We also know that if Ansell had dispatched a process server to Mr. Christodoulou's home in Sturgis just a week or two earlier, Mr. Christodoulou could have been personally served, because he was home in Sturgis. SR 118 at ¶ 15. But, sometimes Mr. Christodoulou leaves home. See, e.g., Id. at ¶ 15. The fact that Mr. Christodoulou and his family were away in Poland addressing the needs of his disabled son on the sole attempt Ansell tried to send him some mail is, respectfully, not Mr. Christodoulou's problem. Mr. Christodoulou has no obligation to keep Ansell apprised of his travel plans just in case it decides to assert a personal claim in the foreign lawsuit it is maintaining against his company an ocean away. Even if Mr. Christodoulou did know Ansell was attempting to serve him (a premise entirely unsupported by the record) he is certainly not under any obligation to present himself gift wrapped. Even if he did receive the email from Ansell's barrister, Mr. Christodoulou was free to absolutely ignore it in the same way he would have been free to ignore a summons skywritten above his house or erected on a billboard on the route of his morning drive to his children's school. The South Dakota Legislature

has always had the opportunity to add service-by-mail to its list of permitted methods of service in South Dakota, but it has never done so. Perhaps the reason is—as demonstrated by this case—its comparative unreliability. The South Dakota Legislature has apparently determined service of process to be such a fundamental due process safeguard, that it is best to go about it the old-fashioned way. Therefore, service by mail (even when accomplished) is not acceptable. If a would-be plaintiff wants to summon a would-be defendant into court for the purpose of obtaining a judgment, he or she must physically put papers in that person's hand unless it is all but impossible to do so. *SDCL* § 15-6-4(d)(8). That is the state of the law today, and this Court should not accept Ansell's invitation to loosen service of process standards—especially not on these facts.

III. The form of Ansell's process was defective.

Mr. Christodoulou argues the **form** of Ansell's process (and not just its attempt to **serve** that process) was defective because the English Court required Paragraph 11I of Ansell's amended claim form to be stricken prior to being served. *Appellant's Brief* at 5; 15. Ansell represents to this Court that it did strike the offending paragraph from the amended claim form it tried but failed to serve upon Mr. Christodoulou and claims to possess conclusive evidence of this fact not contained in the record. *Appellee's Brief* at 10. Yet, Paragraph 11I appears plainly right there on pages 42 and 43 of the 145-page appendix to Appellee's Brief in this very appeal. As evidenced by its filing footer, Ansell filed this document on September 29, 2020 in Meade County accompanied by an affidavit declaring that it served the Amended Particulars of Claim attached as Exhibit 3 on Mr. Christodoulou. SR 148 (Declaration of Michael Edward Ian Young) at ¶¶ 6-7; SR 188-89 (Exhibit 3 to Declaration of Michael Edward Ian Young) at ¶ 11I.

If the amended claim form it presented to the Circuit Court is not the amended claim form it tried but failed to serve on Mr. Christodoulou, then the supposedly correct version does not appear in the record. The evidentiary support for the claim that the form of Ansell's process failed to comply with the English Court's instruction is derived from Ansell's own filings in this action including the appendix of Appellee's Brief.

Regardless, it appears Ansell either mailed Mr. Christodoulou an erroneous version of its amended claim form, or it filed an erroneous version as support for its request in Meade County, or perhaps both. In either event, the form of its process is plainly defective both here and in the circuit court below.

IV. The English Court never obtained personal jurisdiction over Mr. Christodoulou.

Ansell maintains its position that "[t]he English Court found that it had personal jurisdiction over [Mr.] Christodoulou" because it permitted Ansell to add Mr. Christodoulou as a party. *Appellee's Brief* at 15. Ansell fails to note that the reason the English Court determined it had personal jurisdiction over Mr. Christodoulou was Ansell's representation that it had effected service of process on Mr. Christodoulou in compliance with the English Court's instructions when Ansell had no way of actually knowing that fact, and which turned out to be incorrect in any event. The English Court's lack of personal jurisdiction is a separate and independent reason to refuse to recognize the English judgment in South Dakota. *SDCL* §§ 15-16-44; 15-16-45. *See also* Note 6, *supra*, and accompanying text.

V. The manner in which Ansell brought its claim against Mr. Christodoulou in the English Action bars its enforcement in South Dakota.

Mr. Christodoulou does not dispute the general proposition that "a claim of fraudulent inducement can coexist with a claim for breach of contract, even when brought against the same defendant" when such a claim is properly pled and logically tethered to the remaining claims. Ansell's entire personal claim against Mr. Christodoulou was an alternative claim it pursued only "[i]f, and to any extent that, the claim against [ProLogics] is unsuccessful by reason of [ProLogics'] defence[.]" *App.* 038 at ¶ 11D. But, Ansell was successful in its action against ProLogics. *App.* 002 at ¶ 12-13. Therefore, its entire claim against Mr. Christodoulou in the English Court (and this entire action) is moot as the result of its own pleading practice and its on-the-merits judgment against ProLogics.

VI. Mr. Christodoulou's motion to vacate the foreign judgment was brought within a reasonable time.

Ansell argues Mr. Christodoulou did not move to vacate the foreign default judgment within a reasonable time. *Appellee's Brief* at 17. Ansell made the same argument to the Circuit Court, which declined to make that finding. Thus, if Ansell wanted to challenge the timeliness of Mr. Christodoulou's motion on appeal, it should have filed a Notice of Review. *SDCL* § 15-26A-22.

Notwithstanding this procedural bar to its argument, Ansell filed its Petition in Meade County on February 4, 2020. SR 2. Mr. Christodoulou was served with that Petition on April 29, 2020. SR 91. Two weeks later, the undersigned filed a Notice of Appearance and an Objection to Ansell's Petition. SR 98-99. It can scarcely be argued Mr. Christodoulou did not seek relief within a reasonable time, and the Circuit Court

made no such finding. Regardless, Ansell does not claim prejudice, nor can it under these facts.

CONCLUSION

For the reasons and the authority cited herein and in Appellant's Brief, this Court should vacate the Order of the Circuit Court and remand with instruction to grant Mr. Christodoulou's motion to vacate the foreign default judgment.

Dated this 6th day of October, 2021.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to SDCL 15-26A-66(b)(4), the undersigned hereby states that the foregoing brief is typed in proportionally spaced typeface in Times New Roman 12-point (and occasionally 13-point) font. This brief is thirteen pages in length. The word processor used to prepare this brief indicates there are 4,157 words in the body of this brief.

Dated this 6th day of October, 2021.

NELSON LAW

/s/ Eric Davis
Eric Davis

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served two true and correct copies of Appellant's Brief upon the persons herein next designated, all on the date shown, by mailing such copies in the United States Mail, first-class postage prepaid, in envelopes addressed to said addresses; to wit:

Supreme Court of South Dakota Office of the Clerk 500 East Capitol Avenue Pierre, SD 57501

The undersigned further certifies that he served a true and correct copy of Appellant's Brief upon the persons herein next designated, all on the date shown, by emailing said copies to said addresses; to wit:

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Dated this 6th day of October, 2021.

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/s/ Eric Davis
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