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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

Payward, Inc., d/b/a Kraken, a California corporation, Plaintiff, v. **DOES 1 through 10**, inclusive, Defendants.	Case No. CIV 1902105 ***AMENDED*** **PAYWARD, INC.'S OPPOSITION TO J. DOE'S MOTION TO QUASH SUBPOENA** Date: July 8, 2020 Time: 1:30 p.m. Crtrm.: B The Hon. James T. Chou

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION

Plaintiff Payward, Inc., submits this opposition to J. Doe's motion to quash the subpoena served on Glassdoor in this matter, which seeks identification information regarding Doe, a former Payward employee who posted an anonymous review on Glassdoor.com containing disparaging remarks about Payward in violation of Doe's Severance Agreement with Payward.

Doe's motion relies entirely on arguments already considered and rejected by this Court. Doe makes three familiar arguments: (1) The First Amendment protects Doe from any breach of contract action; (2) Doe's review neither disparaged nor damaged Payward and is protected by California labor and business laws; and (3) Doe's Severance Agreement with Payward includes an arbitration provision. Glassdoor has raised these arguments with the Court already. The Court has twice reviewed extensive briefing on these issues, twice heard argument on these issues, and twice rejected these arguments.

Doe presents nothing new. Accordingly, the Court should deny Doe's motion to quash.

II. PROCEDURAL BACKGROUND

On June 21, 2019, Payward served a Court-ordered subpoena on Glassdoor seeking identification information for certain anonymous posters believed to be ex-employees that posted reviews on Glassdoor.com in violation of their Severance Agreements. Glassdoor refused to comply with the subpoena, and on September 6, 2019, Payward was forced to file a motion to compel Glassdoor's compliance with the subpoena. The Court held a hearing on the motion to compel on November 13, 2019.

Pursuant to the motion to compel, Glassdoor and Payward exhaustively briefed and argued all of the issues now raised by Doe except for the issue of the arbitration clause. (*See, e.g.*, Oct. 30, 2019, Nonparty Glassdoor, Inc.'s Opposition to Plaintiff Payward, Inc.'s Motion To Compel Compliance With Subpoena, at 1 (arguing the First Amendment protects Doe's right to post anonymously online); *id.* Section II.A. (arguing Payward failed to make a prima facie damages showing); *id.* Section II.B. (arguing Payward failed to make a prima facie breach-of-contract showing because California law renders the non-disparagement and confidentiality clause unenforceable, and Payward failed to make clear which online statements contained confidential or

disparaging material).)

The Court considered and rejected these arguments. (*See* Tentative Ruling on Payward's Motion to Compel ("Ruling");[1] Nov. 13, 2019 Transcript of Motion to Compel Hearing at 21:21-23:12 (reflecting the Court's colloquy with Payward and Glassdoor regarding the prima facie standard), 30:3-31:2 (arguing that California's Labor and Business and Professions Code renders the Severance Agreement's non-disparagement and confidentiality provisions invalid), 23:25-28:15 (arguing Payward has not established its entitlement to damages), 31:3-33:24 (arguing that Payward never adequately specified the offending reviews), 40:23-41:3 (THE COURT: "Okay. Thank you, counsel. I have read [the Glassdoor opinion] multiple times. And in drafting this memo, I believe that I was addressing the concerns expressed in Glassdoor. I believe, or I concluded, that plaintiffs had made a prima facie showing establishing the relief requested.").)

On November 22, 2019, the Court ordered Glassdoor to produce information identifying the authors of specific Glassdoor reviews after Glassdoor provided those authors with sixty days' notice. The sixty-day notice period expired Friday, February 14, 2020.

On February 11, 2020, Doe filed the instant motion seeking to quash the subpoena and the Court's order compelling Glassdoor's production of Doe's identification information.[2] On February 13, 2020, Glassdoor made an eleventh-hour *ex parte* application to stay the Court's November 22, 2019 Order, specifically relying on the arguments raised in Doe's motion to quash, including the arguments that (1) the arbitration provision in the Separation Agreement renders the Court's November 22, 2019 Order invalid and (2) the Court should develop more robust First Amendment protection for anonymous online posters than required by applicable California case law. (*See* Notice of Ex Parte Application by Nonparty Glassdoor, Inc. to Vacate or Stay Enforcement of the Court's Order Granting in Part and Denying in Part Plaintiff's Motion to Compel

[1] The Court adopted as final the Tentative Ruling, subject to the revision in the Court's November 22, 2019 Order.

[2] While Doe moves to quash the subpoena issued by the Court, that subpoena was modified by the Court's November 22, 2019, Order. That Order limited the identification information to be produced to the name, email address, IP address, and registration information (including physical address and telephone number if provided) for authors of certain reviews, including Doe, on Glassdoor's site that were (1) laid off in January 2019, (2) signed a severance agreement, and (3) received payments under the severance agreement.

¶¶ 3-4.) The Court held a hearing on Glassdoor's motion to stay, considered the arguments raised in Glassdoor's and Doe's motions, and again rejected these arguments. (*See* Feb. 13, 2020 Minute Order.)

III. ARGUMENT

Because Doe's motion to quash relies on the same arguments this Court has repeatedly rejected, and because those arguments continue to lack merit, the Court should deny Doe's motion to quash in its entirety. The Court should compel Glassdoor to produce Doe's identification information as required by the Court's November 22, 2019 Order.

A. This Court Should Again Reject Doe's Invitation to Ignore California Appellate Precedent and Make New Law

Doe primarily rehashes Glassdoor's argument that Doe enjoys an unfettered First Amendment right to post anonymously online. (*See* Motion to Quash at 6 ("This case calls into question the wisdom of solely relying on the standard announced in *Krinsky v. Doe 6*, 159 Cal.App.4th 1154 (2008), to shield anonymous speakers' identities.... "); Doe's Separate Statement in Support of Motion to Quash Subpoena ("Doe's Separate Statement") at 12 ("Requiring only that the plaintiff establish a prima facie showing of a tort or contract claim in order to unmask any anonymous speaker, even when the unmasking is not necessary to vindicate a plaintiff's interests, would unduly punish speakers for exercising their First Amendment rights.").)[3]

For the same reasons the Court has now rejected this argument twice, it should reject it again. First, the notion that the "unmasking" of Doe is unnecessary here is wrong and simply ignores the Court's finding in this regard. (*See* November 22, 2019 Court Order ("[S]hort of a *mea culpa* from the Doe defendants, Payward had no alternative source for the information sought.").)

Second, this argument rests on the false premise that non-libelous speech requires a greater showing than required by *Glassdoor, Inc. v. Super. Ct.*, 9 Cal.App.5th 623 (2017), and *Krinsky v. Doe 6*, 159 Cal.App.4th 1154 (2008). (*See* Motion to Quash at 14-15 ("*Krinsky* thus rejected a

[3] This argument is part of EFF's nationwide agenda to protect anonymous online speech. *See* Electronic Frontier Foundation, *Anonymity* ("We've challenged many efforts to impede anonymous communication both in the courts or the legislatures. We also previously provided financial support to the developers of Tor, an anonymous Internet communications system."), *available at* https://www.eff.org/issues/anonymity.

further balancing analysis *because* the plaintiff had met its burden to show that the speech that formed the gravamen of its complaint was defamatory and outside the First Amendment's protections."). Like defamatory speech, when speech breaches a contract, the First Amendment offers no protection. *Glassdoor*, 9 Cal.App.5th at 633 ("[T]he right to speak anonymously is not an unalloyed good. Anonymity can facilitate various kinds of harmful speech, including defamation, wrongful disclosure of private information, and malicious disinformation."); *In re Cty. of Orange*, 245 B.R. 138, 147-49 (C.D. Cal. 1997) (holding that "the First Amendment does not bar a breach of contract action" and that allowing a breach of contract to proceed based on statements made in violation of the contract does not implicate "First Amendment protection because, if proven, it would only hold [the contracting party] to obligations it voluntarily assumed"); Ruling at 3 (holding that to overcome the reviewers' First Amendment rights, "plaintiff must make a prima facie showing that the statements are a breach of the Severance Agreements").

Neither *Krinsky* nor *Glassdoor* limits the application of its prima facie standard only to tort claims; indeed, Glassdoor rejects this argument. *Glassdoor*, 9 Cal.App.5th at 634–35 ("Although the present case does not sound in libel, we see no reason to doubt that the same principles apply. In any action predicated on anonymous speech, *regardless of legal theory*, the plaintiff should not be able to discover the speaker's identity without first making a prima facie showing that the speech in question is actionable.") (emphasis added). The Court should again reject this tenuous argument.

Doe next suggests that this Court should abandon California appellate precedent entirely, citing out-of-state cases and asking the Court to craft a new standard. (*See* Doe's Separate Statement at 12 n.1 ("These cases call into question *Krinsky*'s First Amendment analysis.... *Krinsky* conditions the protections for anonymous speech on whether the speech itself is protected by the First Amendment…. Yet other courts have treated these rights as distinct concerns.") This Court has previously noted its careful consideration of California appellate precedent, holding that Payward set forth the requisite prima facie case for breach of contract. (*See infra* Section III.B.) Doe attempts what Glassdoor already tried: to transform this case into a First Amendment defamation case. (*See* Doe's Separate Statement at 12 n.1 (asking the Court to ignore *Krinsky* "because requiring a prima facie showing and a balancing test 'most appropriately balances a speaker's constitutional right to

anonymous Internet speech with a plaintiff's right to seek judicial redress from defamatory remarks.'").) To the extent Doe seeks to alter the *Glassdoor* and *Krinsky* decisions, their arguments should be rejected.

B. Doe's Arguments that Payward Has Failed to Set Forth a Prima Facie Breach of Contract Case Should Again Be Rejected

Payward established a prima facie breach of contract justifying Glassdoor's disclosure of identification information regarding Doe. Doe's argument to the contrary should be rejected for the same reasons the Court denied them the first time around.

To prevail on its motion to compel, and to defeat Doe's motion to quash, Payward must make a prima facie showing of its breach of contract claim. *Glassdoor, Inc.*, 9 Cal.App.5th at 634 ("[T]o overcome the defendant's constitutional right to preserve his or her anonymity … the plaintiff must 'make a prima facie showing' … which will support a ruling in favor of [the plaintiff] if no controverting evidence is presented. It may be slight evidence which creates a reasonable inference of fact sought to be established but need not eliminate all contrary inferences."); *Krinsky*, 159 Cal.App.4th at 1171. (*See also* Ruling at 3.)

In California, the elements of breach of contract are (1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff. *Coles v. Glaser*, 2 Cal.App.5th 384, 391 (2016). Payward satisfied all four elements and continues to satisfy these elements. Payward put forth evidence of the Severance Agreement it entered into with employees separated in January 2019. (Merkadeau Decl. in Support of Payward's Motion to Compel ¶ 8, Ex. A.). Doe acknowledges he is a former Payward employee that signed a version of the Severance Agreement, and that Payward performed according to the Severance Agreement by making payments to Doe. (Doe's Separate Statement at 5-6 ("Doe Signed Payward's Severance Agreement and received a sum of money to mitigate the financial hardship and lengthy job search Doe anticipated.").) Payward also established it suffered damages by making payments to Doe and former employees who have breached the Severance Agreement. (Ruling at 4.)

Lastly, and contrary to Doe's arguments, Payward identified and made a prima facie showing that Doe's review violated the Severance Agreements non-disparagement clause. (Transcript of

Motion to Compel Hearing at 41:25-28; Ruling at 4.)

1. Payward Has Sufficiently Identified That Doe's Review is Actionable

Doe admits that Payward identified Doe's review in its entirety and has excerpted portions of Doe's statements in Payward's motion to compel papers. (*See* Motion to Quash at 11.) Doe also admits that where it is "obvious from the face of the statements that they indeed conveyed an actionable meaning" Payward need do nothing more. (*Id.* at 11.) Nonetheless, Doe argues the Court "failed to conduct a particularized assessment" of Doe's review as required by *Glassdoor*. (*Id.*)

The Court already assessed Doe's review specifically, rejected these arguments, and found the review prima facie disparaging. (*See* Nov. 13, 2019 Transcript of Motion to Compel Hearing at 6:18-7:16 (reflecting Glassdoor's argument to exclude Doe's February 15, 2019 review from the Court's November 22, 2019 Order because it was Doe's "opinion" and contained some positive comments); *id.* 13:4-16 (reflecting Payward's argument that the title of Doe's review – "that having 'The Kraken' represent your firm is very apt" – combined with the statement "I personally had a deep sense of trepidation much of the time" rendered this review disparaging); *id.* at 41:25-28 ("THE COURT: With respect to [Doe's] review …, I find that, under the circumstances, even in light of [Glassdoor's] position that it is not disparaging, I think that a prima facie showing has been established that it is.").) It should do so again.

2. Doe Wrongfully Attempts to Impose a Defamation Standard and Ignores the Court's Reasoned Decision That Doe's Review Was Disparaging

Doe improperly seeks to apply a defamation standard to this review, which exempts opinions and requires statements be proven false. (*See* Motion to Quash at 9 ("The general thrust and specific content of Doe's review was pure opinion and conveyed their own feelings about working for Payward. The review did not mention anything about being laid off."); *id.* at 10 (citing defamation cases); Doe's Separate Statement at 10 ("[T]he *sine qua non* of defamation requires the existence of a falsehood.").) This argument was already made, unsuccessfully, by Glassdoor and it ignores that Payward set forth a prima facie breach of contract action, not a defamation claim.

Doe takes Glassdoor's attempt to turn Payward's contract claim into a tort claim a step further. Doe misleadingly argues the Court should apply the standard for the tort of product

disparagement to Payward's breach of contract claim. (*See* Motion to Quash at 12 (*citing Hartford Casualty Ins. Co. v. Swift Distrib., Inc.*, 59 Cal. 4th 277, 284, 294 (2014) (opining on the "tort of 'commercial disparagement,' [which] has received various labels, such as 'commercial disparagement,' 'injurious falsehood,' 'product disparagement,' 'trade libel,' 'disparagement of property,' and 'slander of goods.'") and Restatement (First) of Torts Chapter 28 (slander of title and trade libel).) This grossly misstates the legal standard applicable to Payward's breach of contract claims. *See In re Cty. of Orange*, 245 B.R. at 147 & n.4 ("[T]he Court rejects S&P's contention the County must plead the ratings were false to state a claim for breach of contract. The cases S&P cites involve tort rather than contract claims.").

The applicable standard here is the breach of contract standard set forth above (*supra* Section III.B.). *See Bakst v. Cmty. Mem'l Health Sys., Inc.*, No. CV0908241MMMFFMX, 2011 WL 13214315, at *12 (C.D. Cal. Mar. 7, 2011) (holding that to establish "the essential elements of his claim for breach of the non-disparagement clause" the plaintiff must show "that [defendant] breached the contract [by making] disparaging statements about him" pursuant to Black's Law Dictionary definition of disparagement, and that "[i]f a jury finds that a statement made by [defendant] 'detract[ed] from [plaintiff's] reputation,' he will have satisfied his burden of proving that [defendant] breached the contract."). The Court properly applied this standard. (*See* Ruling at 4 (*citing* Black's Law Dictionary (11th ed. 2019).)

While Doe's review purportedly represents Doe's opinion and contains some positive or neutral statements, he receives no protection from the non-disparagement clause he willingly accepted. *In re Cty. of Orange*, 245 B.R. at 147 ("Allowing the County to pursue the breach of contract action … does not threaten S & P's First Amendment protection because, if proven, it would only hold S & P to obligations it voluntarily assumed."). As Doe points out, the review indicated Doe "Doesn't Recommend" Payward and "Disapproves of the CEO." (Motion to Quash at 9.) Combined with the review's title and statement that Doe felt trepidation the entire time he was employed by Payward, Doe's review is clearly critical of Payward and therefore violates the plain import of the Severance Agreement's non-disparagement clause. (*See* Ruling at 4 ("Each review attached to the subpoena [includes statements] critical, degrading, or [involving] 'sneering

treatment' of Payward and its employees.").)

3. The Court Should Again Reject Doe's Argument that California Labor and Business and Professions Laws Render Unenforceable the Severance Agreement's Confidentiality and Non-Disparagement Provision

Without citing any new case law, Doe recycles Glassdoor's arguments that the confidentiality and non-disparagement clauses at issue here are unenforceable under California labor and business laws. (*See* Motion to Quash at 13-14 ("Doe joins Glassdoor's arguments that the [non-disparagement] clause is unenforceable.").) Glassdoor has raised this argument twice before. (*See* Glassdoor's Opposition to Payward's Motion to Compel at 11-12; Nov. 13, 2019, Transcript of Motion to Compel Hearing at 28:16-31:2 (arguing that Cal. Labor Code § 232.5 and Cal. Bus. and Prof. Code § 16600 prohibit the enforcement of the non-disparagement clause as a restrictive covenant).) As Payward has repeatedly pointed out, neither Glassdoor nor Doe have cited a single California case holding that a non-disparagement agreement was unenforceable. *Cf. Bakst*, 2011 WL 13214315 (holding a breach of contract action based on breach of a non-disparagement agreement is a viable claim). Instead they have relied on two cases involving non-solicitation agreements that have no bearing on or application to the Court's consideration of the non-disparagement agreement at issue here. *See Dowell v. Biosense Webster, Inc.*, 179 Cal.App.4th 564, 575 (2009); *AMN Healthcare, Inc. v. Aya Healthcare Servs., Inc.*, 28 Cal.App.5th 923, 936 (2018).

For these reasons, and because this argument has been considered and rejected by the Court (*see* Ruling at 4 ("Labor Code section 232.5 does not as a matter of law preclude enforcement of the non-disparagement or confidentiality provisions in the Severance Agreements at issue in this case."), the Court should again dismiss this argument.

4. The Court Has Ruled That Payward Has Established Prima Facie Evidence of Damages From Doe's Breach of the Severance Agreement

The Court should reject outright Doe's attempts to reanimate Glassdoor's unsuccessful arguments that Payward has failed to establish prima facie evidence of damages based on Doe's breach of the Severance Agreement. These arguments constituted the bulk of Payward's and Glassdoor's briefing and argument pursuant to Payward's motion to compel. (*See* Glassdoor's Opposition to Payward's Motion to Compel, at 6-9; Payward's Reply Memorandum in Support of

its Motion to Compel, at 2-6; Nov. 13, 2019 Transcript of Motion to Compel Hearing at 23:25-28:15.) The Court rejected Glassdoor's arguments in this regard. (*See, e.g.*, November 22, 2019 Order ("WHEREAS the Court HEREBY FINDS Payward has established … prima facie evidence of damages (payments made to the former employees who allegedly breached the Severance Agreement)…").) It should do so again.

The Court should also reject Doe's argument that Payward is not entitled to damages here because Doe has deleted the review at issue. (*See* Motion to Quash at 9.) Simply because Doe removed the review does not moot a breach of contract claim against Doe for posting the disparaging review in the first place and admittedly leaving it up for public review for several months. Doe argues Payward is not entitled to injunctive relief, but completely ignores that Payward is seeking monetary damages for Doe's breach of contract and that the Court found Payward has put forth sufficient evidence of those damages. (*See, e.g.*, Payward's Reply Memorandum in Support of its Motion to Compel at 4 ("Glassdoor fails to cite a single case holding that an unjust severance payment cannot qualify as damages … in a breach of contract claim."); Ruling at 4 ("[T]he Court finds Payward has also established prima facie evidence of damages (payments made to the former employees who allegedly breached the Severance Agreement.).").)

C. The Arbitration Clause in the Severance Agreement Does Not Undermine Payward's Prima Facie Breach of Contract Claim or Preclude the Court from Ordering Production of Doe's Identification Information

Doe argues the existence of an arbitration clause in the Severance Agreement deprives Payward of the ability to obtain any relief from this Court. (*See, e.g.*, Motion to Quash at 19.) This is a red herring and has no bearing on whether Payward set forth a prima facie claim for breach of contract justifying that discovery.[4] The Court has agreed. (*See* Feb. 13, 2020 Minute Order ("The Court is not convinced that disclosure of the arbitration clause would have influenced its decision on the motion to compel.").)

The Court should reject this argument for the same reasons it rejected the argument when Glassdoor made it. The arbitration provision is completely irrelevant to whether Payward is entitled

[4] To the extent Doe believes this ultimate controversy should be submitted to arbitration, Doe's remedy is a motion to compel arbitration, not a motion to quash this particular subpoena seeking to identify the parties Payward may actually assert claims against.

to the identification information sought in this action. *First*, Payward has been forced to seek this discovery through this Doe action in this Court. Payward tried to get this information without bringing a lawsuit twice (once by seeking it directly from Glassdoor and then again via New York's pre-action discovery tool, NY CPLR § 3102(c)). Because of Glassdoor's own (arguably unconscionable) policies, the only way Payward could get this information is to file this Doe suit in this Court. (*See* Payward's Reply Memorandum in Support of its Motion to Compel at 1 n.1 ("Glassdoor's terms of use attempt to bar anyone from collecting this information unless they secure a subpoena from this Court.").)

Second, even assuming Payward could unilaterally file an arbitration proceeding, there are no assured means of obtaining Doe's identification information through arbitration. *See, e.g.*, Heather L. Heindel, Third-Party Document Discovery in Arbitration? Do Not Count On It., Am. Bar Assoc., Oct. 8, 2018, available at https://www.americanbar.org/groups/construction_ industry/publications/under_construction/2018/fall/discovery-in-arbitration/. The Federal Arbitration Act ("FAA") contains limited provisions permitting third-party discovery, and most federal circuits, including the Ninth Circuit Court of Appeals, have concluded arbitrators do not have the power to compel third-party discovery. *See, e.g.*, *CVS Health Corp. v. Vividus, LLC*, 878 F.3d 703, 706 (9th Cir. 2017) (holding that 9 U.S.C. § 7 does not give an arbitrator the ability to compel third party discovery prior to the actual arbitration hearing).

Additionally, while the FAA typically preempts any attempt to enforce an arbitrator's subpoena, even if it does not in this case, California's arbitration laws only provide for non-party discovery in limited circumstances not present here. *See, e.g.*, Code Civ. Proc. § 1283.1 (stating that nonparty discovery is not available in arbitration unless the dispute involves a tort claim for personal injury or the arbitration agreement specifically incorporates Code Civ. Proc. § 1283.05). Therefore, Payward has been forced to petition this Court for the identification information it seeks from third-party Glassdoor.

It is telling that both Glassdoor and Doe cite no authority for their ultimate argument that Payward "should not be able to use discovery tools derived from the filing of this case to identify Doe." (Separate Statement in Support of Motion to Quash Subpoena at 15; Motion to Quash at 19;

Glassdoor Inc.'s *Ex Parte* Application to Vacate or Stay Enforcement of the Court's Order at 3-4.) It is one thing to move to compel this action to arbitration (which neither Doe nor Glassdoor has done here), it is another thing altogether to make the leap to a position that Payward is not entitled to seek from this Court what parties it can assert a claim against in the first place.[5] Accordingly, Doe's argument that the arbitration clause renders the Court's November 22, 2019 Order invalid rings hollow.

Third, once Payward receives the information it is entitled to from Glassdoor regarding Doe, Payward then can determine whether and where (including in arbitration) to sue. Even if there were no arbitration provision, Payward would have to determine if it could bring suit against any of the identified authors in this jurisdiction or whether it has to bring suit elsewhere. The same is true for any arbitration commenced by Payward against any of the identified authors. Again, the only reason Payward is before this Court is because Glassdoor has mandated it. This does not mean Payward would, or could, continue to press suit against Doe or the other authors, once identified, in this Court.

For these same reasons, Doe's reliance on the arbitration provision puts Payward in an impossible Catch-22. As Glassdoor has repeatedly made clear to Payward, Glassdoor will not comply with any subpoena unless it is issued by or enforced by this Court or the Northern District of California. (*See* Glassdoor.com, Legal FAQs, ("[S]ubpoenas to Glassdoor should be issued from the Marin County Superior Court or the federal courts in the Northern District of California.") Therefore, if Payward were forced to commence arbitration against an unknown defendant, it would have to do so in San Francisco County, per the terms of arbitration provision, and then seek to enforce a subpoena from the arbitrator in this Court or the Northern District of California. Enforcing an arbitrator's subpoena in either court may be impossible for the reasons set forth above but additionally because Payward cannot compel a non-party to comply with an arbitrator's subpoena if that non-party resides outside the geographic boundaries of the district of the arbitration. *See Dynegy v. Trammochem*, 451 F.3d 89, 95 (2d Cir. 2006) (holding the FAA does not contemplate

[5] The notion that the arbitration clause deprives Payward of the ability to obtain "any" relief from this Court (*See* Separate Statement at 15) is just plain wrong. California courts, like courts throughout the U.S., routinely provide relief in matters subject to arbitration, including, for example, in cases seeking injunctive relief (Code Civ. Proc. § 1281.8), where a party has waived its right to arbitration, or where the arbitration is otherwise unenforceable.

nationwide service of process or enforcement); Leane K. Capps, *Non-Party Discovery Under the Federal Arbitration Act* ("[I]t [is] impossible to compel a non-party to comply with an arbitrator's subpoena because personal jurisdiction is limited to the geographic boundaries of the district of the arbitration."), available at https://litigationcommentary.org/contributors/1379-non-party-discovery-under-thefederal-arbitration-act. In practice this means that, assuming Payward could enforce a subpoena against non-party Glassdoor, any author given notice of Glassdoor's intent to produce identification information could object on grounds that the subpoena is unenforceable against any author that resides outside San Francisco County or the Northern District of California.

For these reasons, the Court should again dismiss Doe's argument that the arbitration clause in the Severance Agreement precludes the Court from compelling production of Doe's identification information.

IV. CONCLUSION

For the reasons set forth above, the Court should deny Doe's Motion to Quash and order Glassdoor to provide Doe's identification information pursuant to the Court's November 22, 2019 Order.

DATED: June 15, 2020

WITHERS BERGMAN LLP

By: _____
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