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James Millichap Merrick,

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London
W1U 2NT

Vitabeam Limited,
c/o Leaman Mattei,
5th Floor 64 North Row,
Mayfair,
London,
W1K 7DA

21 February 2022

Dear Sir,

Practice Direction Pre-action Conduct – letter of claim

Our client: VLADIMIR VASILENKO
Re VITABEAM LIMITED

We are instructed by Mr Vladimir Vasilenko in relation to his shareholding in Vitabeam Limited ('Vitabeam'). We now write formally in accordance with the Practice Direction on Pre-action Conduct to give you advance warning of a claim that our client intends to make:

(a) against you personally for breaches of a shareholder agreement dated 4 September 2014:

(b) against Vitabeam for unfair prejudice under section 994 of the Companies Act 2006.

You will no doubt be aware of the history of this matter, of the shareholders' agreement, the shareholdings and of your management of Vitabeam. However, for the sake of completeness and to ensure you understand the nature of our client's claim, we set out a brief history of the matter below.

Summary of the facts

Vitabeam was incorporated in the UK on 31 January 2014 under the name Hinthunt Franchises Limited (company number: 8871663) with one share allotted to Woodberry Secretarial Limited and with Barbara Kahan as sole director. The Articles of Association ('the Articles') included provision that the Model Articles applies save where modified and excluded by the Articles.

The Articles contained the following relevant provisions:

'21.3 Subject to the remaining provisions of this Article 21 and to Article 22 (Further issues of shares: pre-emption rights) and to any directions which may be given by the company in general meeting, the directors are generally and unconditionally authorised, for the purpose of section 551 of the Companies Act 2006 to exercise any power of the company to:

21.3.1 offer or allot;

21.3.2 grant rights to subscribe for or to convert any security into;

21.3.3 otherwise create, deal in or dispose of

any shares in the company to any person, at any time and subject to any terms and conditions as the directors think proper.'

21.4 'The authority referred to in Article 23:

...

21.4.3 may only be exercised for a period of five years commencing on the date on which the company is incorporated or these articles are adopted whichever is the later'

22.2 'Unless otherwise agreed by special resolution, if the company proposes to allot any equity securities, those equity securities shall not be allotted to any person unless the company has first offered them to all shareholders on the date of the offer on the same terms, and at the same price, as those equity securities are being offered to such other person on a pari passu basis and pro rata to the nominal value of shares held by those shareholders (as nearly as possible without involving fractions).'

On 30 May 2014, the company changed its name to Vitabeam Limited. According to the annual return dated 1 August 2014, at that time the one issued share in Vitabeam was held by one Gemma Milne. On 11 August 2014, Gemma Milne and you were appointed as directors of Vitabeam. At all material times our client has been Chief Scientific Officer at Vitabeam, albeit he is not a director.

Between about July and September 2014, you and our client, along with others negotiated the terms of a shareholders' agreement ('the Shareholders Agreement'). This was finally executed on 4 September 2014. The parties to it were you, Purifying Illumination Inc (a company incorporated in Canada whose shares were wholly owned by our client) and Allied Standard Limited. It is our client's case that Purifying Illumination Inc was in effect his nominee to hold shares on his behalf.

It was an express term of the Shareholders Agreement that Vitabeam's share capital was to be divided into 100 ordinary shares valued at £1 each and that Purifying Illuminations Inc (as our client's nominee) would hold 51 shares, Allied Standard Limited would hold 24 shares and J Capital (as your nominee) would hold 25 shares.

The Shareholders Agreement also contained the following relevant terms:

'3.1 each shareholder shall, for as long as he holds any shares in the capital of the company, use his reasonable endeavors (sic.) to procure (so far as is lawfully possible in the exercise of his rights and powers as a shareholder of the company) but the company shall not, without the prior written consent of all shareholders:

...

(g) purchase, lease or otherwise acquire assets, or any interest in assets, which in aggregate exceed the value of $50,000; or

(h) enter into any other contract, transaction or arrangement of a value exceeding $50,000'

'4.1 No Shareholder shall sell, transfer, assign, pledge, charge or otherwise dispose of any share or any interest in any share in the capital of the Company, except as permitted by this agreement or with the prior written consent of all other Shareholders such consent not to be unreasonably withheld or delayed and to the extent that a transferee is a part of a group with the transferring Shareholder or otherwise related to or controlled by no such consent shall be required.'

'8. ...If the Company determines to issue further shares, each of the Shareholders shall use its reasonable endeavors (sic.) to procure (so far as is lawfully possible in the exercise of his rights and powers as a shareholder of the Company) that the Company offers, by giving written notice to each respective Shareholder, that proportion of the shares proposed to be issued which the number of ordinary shares held by that Shareholder bears to the total number of ordinary shares in issue at the time the Company gives its notice. Such offer shall state the number of shares to be issued and the price of the shares.'

'11.3 On the occurrence of either a Commercial Event or the Main Funding service contracts with the following will be entered into:

(a) Dr Vladimir Vasilenko at a salary of $105,000 per year for a term of three years

(b) James Millichap-Merrick at a salary of $105,000 per year for a term of three years

(c) A nominee of Shareholder B at a salary of $48,000 per year for a term of three years'

'Commercial Event' was defined in the Shareholders agreement as 'the occurrence of either:

'(a) the sale of the Company's product for an amount not less than $250,000;

(b) the execution of a contract with a third-party to exploit one or more sublicenses granted by the company providing for payments to the company within one year and not less than $250,000.'

'13.1 The Shareholders shall attempt to resolve any dispute arising out of or relating to this Agreement, the Main Funding or Preliminary Funding through negotiations between the Shareholders,

13.2 a Shareholder claims that a dispute has arisen, that Shareholder shall give written notice to the other Shareholders. The written notice must specify the nature of the dispute.

13.3 on receipt of the notice delivered in accordance with clause 13.2 13.2, Shareholders shall within 7 days of receipt of such notice, meet and/or discuss via conference call, whichever is more practicable, in good faith and acting reasonably, do their best to resolve the dispute through negotiation

13.4 Subject to clause 13.3, if the Shareholders do not resolve the dispute by negotiation within 30 days of receipt of written notice, the Shareholders may refer the dispute to an independent mediator, and must in good faith and acting reasonably, do their best to resolve the dispute by participating in mediation.

13.5 If the Shareholders do not agree on a mediator, then the mediator will be appointed by the

President or the Deputy President of the Chartered Institute of Arbitrators.'

According to Companies House documents, on 6 October 2014 the share capital in Vitabeam was increased to 1,000,000 shares and the shares were subdivided into three different types of share.

The next annual return dated 1 August 2015 shows a further increase in the share capital to 1,225,800 ordinary shares. It is not clear how that further increase took place and we would invite you to explain it. Of those 1,225,800, 5,000 shares were held by Gemma Milne, 405,000 by our client, 350,000 by you and 180,000 by Allied Standard Limited. The remainder were held by 10 other shareholders who were not parties to the Shareholders Agreement. This reflects a 33% interest held by our client.

Again, according to Companies House documentation, over the following years more shares have been allotted each year and some shares appear to have been transferred as between shareholders. The most recent confirmation statement dated 1 August 2021 shows an issued share capital of 1,490,329 shares, of which our client continued to hold 405,000. This reflects a reduced proportionate shareholding by our client of 27%.

Our client has never been notified by you or Vitabeam of the allotment of shares.

It is not clear to what extent Vitabeam has entered into transactions that fall within clauses 3.1 (g) and (h) of the Shareholders Agreement. Our client has not consented to any such transactions and accordingly it his case that the entering into any such transactions would amount to a breach of the Shareholders Agreement.

Breaches of the Shareholders Agreement/Unfair prejudice in relation to dilution of shareholding

Pursuant to the Shareholders Agreement, Purifying Illuminations Inc., as our client's nominee, should have been registered on Vitabeam's Shareholder Register as having been allotted 51% of the shares in the company. Our client has not seen a copy of the Register and so he is not in a position to ascertain whether that shareholding was registered. If it was not, then it is our case that such failure would amount to a breach of the Shareholders Agreement.

Subject to what the Register reveals, the Companies House Documentation suggests that in fact our client's shareholding has apparently now been diluted to 27%. This appears to have been achieved by failing to register Purifying Illumination Inc.'s shareholding, the increasing of the share capital of Vitabeam and the allotting of new shares to other shareholders.

On the basis that our client was given no notice whatsoever of the allotting of shares and did not consent to any such allotment, there is a clear breach by you of clause 4 of the Shareholders' Agreement. Moreover, it is apparently the case that you failed to use your reasonable endeavours to ensure that Vitabeam offered to our client that proportion of shares proposed to be issued which the number of ordinary shares held by our client (or his nominee) bears to the total number of ordinary shares in issue; this amounts to a breach of clause 8 of the Shareholders Agreement.

The failure by Vitabeam to offer to our client any shares that it proposed to allot also amounts to a breach of Clause 22.2 of the Articles. Still further, any allotment of shares by Vitabeam 31 January 2019 would be in breach of clause 21.2 of the Articles.

Such allocations would clearly amount to unfair prejudice to our client, the effect being that his shareholding has been diluted.

It is our client's case that there has been further unfair prejudice in that, as far as our client is aware, there have been no General Meetings called since the Incorporation of Vitabeam. We are instructed that our client has never been given notice of such meetings if they did take place.

Breach of Shareholders Agreement in relation to our client's remuneration

Our client understanding is that there were Commercial Events, as defined in the Shareholders Agreement in 2017, 2018 and 2019 and accordingly our client was entitled to be paid $105,000 for three years under clause 11.3 of the Shareholders Agreement. In breach of that clause Vitabeam ceased paying our client his remuneration of $105,000 in October 2019 and has not paid since. In October 2020 you announced to the Vitabeam team our client's resignation from Vitabeam; in fact, our client had not and has not resigned. In the circumstances, our client has potential claim for damages for breach of his employment contract on which, depending on the response to this letter, we shall be advising our client further and which may result in a further claim against Vitabeam.

Other breaches of contract

We are instructed that in about January 2015, you agreed orally via Skype dialogue to purchase 10,000 of our client's shares in Vitabeam for $50,000. Prior to our client's examination of the Companies House records, his understanding was that the transfer took place, but in breach of the agreement you failed to pay our client $50,000; so far our client has received just $10,000. Having discovered that the transfer is not reflected in the Companies House records, it is now our client's understanding that 10,000 of his shares had not been registered on his behalf even before the time of the oral agreement, hence the absence of any record of this share transfer ever taking place.

REMEDIES SOUGHT

Remedy for breach of the Shareholders Agreement

In relation to the breach of the Shareholders Agreement, the effect is that our client's shareholding (or that of his nominee) has reduced from 51% to 27% of the total share capital of Vitabeam. We are instructed that you have valued Vitabeam at £9,000,000. Accordingly, our client's shareholding has been reduced in value by £2,160,000.

Even on the basis of the shareholdings registered at Companies House our client's shareholding had reduced from 33% to 27%, a reduction in value of £540,000.

Remedy for unfair prejudice as result of the dilution of our client's shareholding

It is clear that the dilution of a shareholder's shareholding in breach of the Articles of Association would amount to unfair prejudice. Our client intends to issue an unfair prejudice petition under section 994 of the Companies Act 2006 and would seek the remedy provided for under section 996 (1) (g), namely that Vitabeam or its members purchase our client's shares taking into account the dilution. Based on a 51% shareholding and a company value of £9,000,000 payment for such shares would come to £4,590,000. Even on the basis of the shares originally registered at Companies House in our client's name, the payment would come to £2,970,000.

Remedy for breach of our client's remuneration provision under the Share Agreement

Our client seeks payment by Vitabeam of $105,000 per year on a monthly basis since October 2019. We calculate this comes to $245,000 as at today's date and is continuing.

Request to inspect Vitabeam's Shareholders' Register

Our client hereby formally requests to inspect Vitabeam's Shareholders' Register pursuant to section 116 of the Companies Act 2006. As to the particulars required under section 116 (4):

Our client's name and address:

Vladimir Vasilenko
17891 McPhail Rd.
Martintown, Ontario, Canada
Postal Code: K0C 1S0

Purpose: to check the history of our client's shareholding and that of Purifying Illuminations Inc.

Disclosure: Disclosure will be made to members of our firm, as our client's solicitors, at the address given above.

Disclosure

We seek disclosure from your client of the following documents:

- Copies of all resolutions whereby the share capital of Vitabeam was increased
- Copies of all resolutions whereby shares were to be allotted to shareholders other than those party to the Shareholders Agreement
- Detailed company accounts for each year since 2014
- Any directors' reports for 2020 and 2021
- Details of all purchases, leases or other acquisition of assets or interests in assets by Vitabeam which in aggregate exceed the value of $50,000;
- Details of all contracts, transactions or arrangements entered into by Vitabeam the value of which exceeds $50,000.

We undertake to pay your reasonable copying charges.

As far as we are aware there are no documents that our client has to disclose at this stage that you do not already have, but we are willing to consider any reasonable request for disclosure of any documents that you consider to be relevant.

Further steps

It is clear that a dispute has arisen and our client gives you notice to that effect. In accordance with clause 13 of the Shareholders Agreement our client hopes that we can deal with this case without the need for a Court action and we consider that it would be of benefit to both sides to avail themselves of alternative dispute resolution ('ADR') (i.e., resolution without the need to go to Court). We invite you to consider this and we do reserve the right to raise any refusal to agree to ADR in relation to the issue of costs in any future litigation.

In accordance with the Practice Direction – Pre-action Conduct, we request a substantive response to the issues raised in this letter within 14 days of receipt by you. In the event that we receive no such substantive response in that period we reserve the right to issue proceedings against you which is likely to increase your liability for costs. We refer you specifically to the Practice Direction – Pre-action Conduct (a copy of which we attach) and in particular paragraphs 13 to 16 which sets out the sanctions available to the Court for non-compliance with the Practice Direction.

We would urge you to seek legal advice on the issues raised in this letter.

Yours sincerely,

England Palmer

Solicitors

Justice

PRACTICE DIRECTION – PRE-ACTION CONDUCT AND PROTOCOLS

Introduction

1. Pre-action protocols explain the conduct and set out the steps the court would normally expect parties to take before commencing proceedings for particular types of civil claims. They are approved by the Master of the Rolls and are annexed to the Civil Procedure Rules (CPR). (The current pre-action protocols are listed in paragraph 18.)

2. This Practice Direction applies to disputes where no pre-action protocol approved by the Master of the Rolls applies.A person who knowingly makes a false statement in a pre-action protocol letter or other document prepared in anticipation of legal proceedings may be subject to proceedings for contempt of court.

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Objectives of pre-action conduct and protocols

3. Before commencing proceedings, the court will expect the parties to have exchanged sufficient information to—

(a) understand each other's position;

(b) make decisions about how to proceed;

(c) try to settle the issues without proceedings;

(d) consider a form of Alternative Dispute Resolution (ADR) to assist with settlement;

(e) support the efficient management of those proceedings; and

(f) reduce the costs of resolving the dispute.

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Proportionality

4. A pre-action protocol or this Practice Direction must not be used by a party as a tactical device to secure an unfair advantage over another party. Only reasonable and proportionate steps should be taken by the parties to identify, narrow and resolve the legal, factual or expert issues.

5. The costs incurred in complying with a pre-action protocol or this Practice Direction should be proportionate (CPR 44.3(5)). Where parties incur disproportionate costs in complying with any pre-action protocol or this Practice Direction, those costs will not be recoverable as part of the costs of the proceedings.

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Steps before issuing a claim at court

6. Where there is a relevant pre-action protocol, the parties should comply with that protocol before commencing proceedings. Where there is no relevant pre-action protocol, the parties should exchange correspondence and information to comply with the objectives in paragraph 3, bearing in mind that compliance should be proportionate. The steps will usually include—

(a) the claimant writing to the defendant with concise details of the claim. The letter should include the basis on which the claim is made, a summary of the facts, what the claimant wants from the defendant, and if money, how the amount is calculated;

(b) the defendant responding within a reasonable time - 14 days in a straight forward case and no more than 3 months in a very complex one. The reply should include confirmation as to whether the claim is accepted and, if it is not accepted, the reasons why, together with an explanation as to which facts and parts of the claim are disputed and whether the defendant is making a counterclaim as well as providing details of any counterclaim; and

(c) the parties disclosing key documents relevant to the issues in dispute.

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Experts

7. Parties should be aware that the court must give permission before expert evidence can be relied upon (see CPR 35.4(1)) and that the court may limit the fees recoverable. Many disputes can be resolved without expert advice or evidence. If it is necessary to obtain expert evidence, particularly in low value claims, the parties should consider using a single expert, jointly instructed by the parties, with the costs shared equally.

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Settlement and ADR

8. Litigation should be a last resort. As part of a relevant pre-action protocol or this Practice Direction, the parties should consider whether negotiation or some other form of ADR might enable them to settle their dispute without commencing proceedings.

9. Parties should continue to consider the possibility of reaching a settlement at all times, including after proceedings have been started. Part 36 offers may be made before proceedings are issued.

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10. Parties may negotiate to settle a dispute or may use a form of ADR including—

(a) mediation, a third party facilitating a resolution;

(b) arbitration, a third party deciding the dispute;

(c) early neutral evaluation, a third party giving an informed opinion on the dispute; and

(d) Ombudsmen schemes.

(Information on mediation and other forms of ADR is available in the Jackson ADR Handbook (available from Oxford University Press) or at—

https://www.gov.uk/guidance/a-guide-to-civil-mediation

11. If proceedings are issued, the parties may be required by the court to provide evidence that ADR has been considered. A party's silence in response to an invitation to participate or a refusal to participate in ADR might be considered unreasonable by the court and could lead to the court ordering that party to pay additional court costs.

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Stocktake and list of issues

12. Where a dispute has not been resolved after the parties have followed a pre-action protocol or this Practice Direction, they should review their respective positions. They should consider the papers and the evidence to see if proceedings can be avoided and at least seek to narrow the issues in dispute before the claimant issues proceedings.

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Compliance with this Practice Direction and the Protocols

13. If a dispute proceeds to litigation, the court will expect the parties to have complied with a relevant pre-action protocol or this Practice Direction. The court will take into account non-compliance when giving directions for the management of proceedings (see CPR 3.1(4) to (6)) and when making orders for costs (see CPR 44.3(5)(a)). The court will consider whether all parties have complied in substance with the terms of the relevant pre-action protocol or this Practice Direction and is not likely to be concerned with minor or technical infringements, especially when the matter is urgent (for example an application for an injunction).

14. The court may decide that there has been a failure of compliance when a party has—

(a) not provided sufficient information to enable the objectives in paragraph 3 to be met;

(b) not acted within a time limit set out in a relevant protocol, or within a reasonable period; or

(c) unreasonably refused to use a form of ADR, or failed to respond at all to an invitation to do so.

15. Where there has been non-compliance with a pre-action protocol or this Practice Direction, the court may order that

(a) the parties are relieved of the obligation to comply or further comply with the pre-action protocol or this Practice Direction;

(b) the proceedings are stayed while particular steps are taken to comply with the pre-action protocol or this Practice Direction;

(c) sanctions are to be applied.

16. The court will consider the effect of any non-compliance when deciding whether to impose any sanctions which may include—

(a) an order that the party at fault pays the costs of the proceedings, or part of the costs of the other party or parties;

(b) an order that the party at fault pay those costs on an indemnity basis;

(c) if the party at fault is a claimant who has been awarded a sum of money, an order depriving that party of interest on that sum for a specified period, and/or awarding interest at a lower rate than would otherwise have been awarded;

(d) if the party at fault is a defendant, and the claimant has been awarded a sum of money, an order awarding interest on that sum for a specified period at a higher rate, (not exceeding 10% above base rate), than the rate which would otherwise have been awarded.

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Limitation

17. This Practice Direction and the pre-action protocols do not alter the statutory time limits for starting court proceedings. If a claim is issued after the relevant limitation period has expired, the defendant will be entitled to use that as a defence to the claim. If proceedings are started to comply with the statutory time limit before the parties have followed the procedures in this Practice Direction or the relevant pre-action protocol, the parties should apply to the court for a stay of the proceedings while they so comply.

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Protocols in force

18. The table sets out the protocols currently in force and from which date.

Protocol	Came into force
Personal Injury	6 April 2015
Resolution of Clinical Disputes	6 April 2015
Construction and Engineering	9 November 2016 2nd Edition
Defamation	02 October 2000
Professional Negligence	16 July 2000
Judicial Review	6 April 2015
Disease and Illness	8 December 2003
Housing Disrepair	6 April 2015
Possession Claims by Social Landlords	6 April 2015
Possession Claims for Mortgage Arrears	6 April 2015

Dilapidation of Commercial Property	1 January 2012
Low Value Personal Injury Road Traffic Accident Claims	30 April 2010 extended from 31 July 2013
Low Value Personal Injury Employers' and Public Liability Claims	31 July 2013