

# Courts Regularly Back Glassdoor's Fight To Protect User Anonymity And Employee Free Speech

Glassdoor fights vigorously to protect and defend the rights of our users to share their authentic workplace experiences without fear of intimidation or retaliation. Courts rule in favor of Glassdoor and our users in the vast majority of cases we litigate. To date, we have succeeded in protecting the anonymity of our users leaving reviews on our site in over 100 cases.

In deciding whether or not statements in a review are protected opinion speech, courts generally are more likely to find statements to be non-actionable if they are: hyperbolic, strictly opinion, not harmful to the plaintiff's reputation, statements for which the "gist" or "sting" is true, statements of fact that the plaintiff has not contested, statements that are publicly available through another source, or statements that are otherwise not confidential by their nature.

Courts also typically evaluate Glassdoor reviews using a "totality of the circumstances" test to analyze relevant statements in the context of an entire review, while also taking into account the nature and purpose of the Glassdoor platform.

As one court noted in ruling in Glassdoor's favor:

*"The content of the reviews on Glassdoor.com are such that it should be obvious to any reasonable person that the authors (all listed as current or former employees) are using the website as a vehicle to express their personal opinions about the company in question...Glassdoor.com is a website for employment and company evaluation – it is not a news website (e.g. WSJ.com or NYT.com) where there is an expectation of objective reporting and journalistic standards. Nor is it a website where a person would go to find detailed factual information about a company such as earnings reports and SEC filings. It is quite evident to the Court that Glassdoor.com is a website where people go to express their personal opinions having worked for a company-not a website where a reasonable person would go looking for objective facts and information about a company." SunEnergy1, LLC, et al. v. Jeffrey Lawrence Brown, CA No. N14M12-028 (New Castle County Superior Court, November 15, 2015) at 7-8.*

## Glassdoor Continues to Successfully Fight To Protect User Anonymity And Employee Free Speech

Below are representative examples of cases in which Glassdoor has successfully defended our users' anonymous free speech rights.

### Discovery Clinical Trial, LLC, and Trudy Madan v. Doe 1, et al., Marin County Superior Court (CA), No. CIV2100554, July 2021

Glassdoor successfully opposed enforcement of an interstate subpoena brought by Texas-based clinical research company Discovery Clinical Trials and its CEO Trudy Madan (collectively, "DCT") seeking to unmask three Glassdoor users as part of a defamation suit brought against them in Texas as Doe defendants.

- The reviews at issue stated that Madan was “narcissistic,” “manipulative” and engaged in “gaslighting” employees, and that DCT was “toxic,” had a problem with a “lack of honesty and integrity” and offered “lousy pay and benefits.” Plaintiffs argued that these statements were false and defamatory.
- The Court found the highly unflattering statements made about the CEO “constitute[d] non-actionable opinion, loose and figurative terms, and/or rhetorical hyperbole.” The Court noted that, under governing Texas law, an essential element of a defamation claim is that the alleged defamatory statement is a statement of fact rather than opinion. The Court further noted that the CEO’s sworn affidavit did not “even try to show the falsity of the statements” about her, despite having the burden of establishing a prima facie case that these statements were false.
- The Court also held that the company reviews, including those referencing a “lack of honesty and integrity” and “lousy pay and benefits” at DCT, constituted “non-actionable opinion.” The Court again noted that plaintiffs failed to provide factual evidence that would contradict these statements.
- The Court at the conclusion of oral argument remarked that this was “not a close case.”

Does’ reviews remain live on DCT’s Glassdoor employer page. See [here](#), [here](#) and [here](#).

**Kurland & Associates, P.C. d/b/a The Kurland Group V. Glassdoor, Inc., Jane Doe and John Doe Defendants, Supreme Court of the State of New York, Index No. 162083/2018, June 29, 2021**

The Kurland Group (“TKG”), a boutique New York City law firm, represented itself in bringing a suit directly against Glassdoor and a named former employee based on unflattering workplace reviews. The suit alleged defamation, breach of contract, negligence, intentional interference, deceptive business practices and other related causes of action. TKG, apparently realizing it had wrongly named a specific former employee (after likely costing that former employee unnecessary legal expenses), then amended its complaint to name a Doe defendant in addition to Glassdoor.

After a lengthy and bruising multiyear battle, Glassdoor and Doe prevailed on their joint Motion to Dismiss pursuant to New York’s newly strengthened anti-SLAPP statute, New York Civil Rights Law §§ 70-a and 76-a. In its ruling, the Court made the following important findings:

- Glassdoor had full immunity for user-generated content pursuant to 47 U.S.C. § 230, finding that the Communications Decency Act “treats websites like bulletin boards; the person who administers the bulletin board is not responsible for the postings.”
- Doe’s posting was “all opinion, no facts,” “the letting off [of] steam, and the reasonable objective reader would see that [the review author] was trying to make a point.”
- The “badge” placed on TKG’s review page in order to alert users to the lawsuit against Glassdoor and a former TKG employee “basically says that if you post something about plaintiff, plaintiff might sue you.” The language accompanying the badge “is obviously true, and truth is a complete defense to defamation claims.”
- With respect to Doe’s posting of a salary amount as a separate basis of alleged defamation, following the introduction into evidence of Doe’s underlying (redacted) offer letter, the Court stated that it “is now convinced that [TKG] has not made out a claim for defamation per se that has not been proven incorrect by document evidence, namely the offering letter [...] with its \$1,000 figure.”
- The Court also found TKG’s contract claim to be “absurd,” its negligence claim “unavailing” and dismissed the remaining causes of action on similar grounds.

TKG also sought without success on multiple occasions to seal the entire public court docket and thereby effectively censor the review at issue and suppress Doe’s free speech rights. Glassdoor successfully fought these efforts, with courts finding on multiple occasions that nothing in the record (or that could be in the record) merited sealing.

The Court, in granting the Motion to Dismiss, deemed Plaintiff's lawsuit to be "ill-considered." However, it declined to award fees (later stating it "was a close call"). Glassdoor respectfully believes the Court erred fundamentally and was clearly mistaken as a matter of law under New York's recently revised anti-SLAPP statute in denying its fees application. In order to create an even further deterrent against future "ill-considered" lawsuits challenging and seeking to suppress legitimate employee free speech rights, Glassdoor is appealing the denial of fees to the Appellate Division.

The Glassdoor Alert and Doe's review remain live on TKG's Glassdoor employer page. See [here](#).

### **Augmented Reality Concepts, Inc. d/b/a Spincar v. Glassdoor, Inc., Index No. 005926/2020, Onandaga County Supreme Court (NY), November 2020**

A digital marketing platform sought to obtain pre-action disclosure under New York civil procedure in order to identify the author of an alleged defamatory review who, it claimed, also revealed proprietary information. The statements in the review included references to "[v]ery young and frat boy type of leadership at the top," "[l]ots of HR nightmare situations" and "[l]ots of deception in reporting and leading good customers along while overcharging them for services."

The Court found for Glassdoor and denied the Petition For Pre-Action Disclosure, finding that:

- The statements in the review "arguably [did] not rise above permissive opinion and rhetorical hyperbole."
- The forum selection clause in the Glassdoor Terms of Use required the issue of potentially unmasking a Glassdoor user to be litigated in federal or state court in California.

### **Synapse Financial Technologies, Inc. v. Does 1 to 50, No. CGC-19-579098, San Francisco Superior Court (CA), September 2020**

A Doe defendant's anti-SLAPP motion to strike was granted where a well-funded San Francisco Bay Area fintech start-up and its CEO "could not demonstrate their ability to succeed on the merits without (1) identifying statements that conveyed a provably false and defamatory imputation, and (2) presenting evidence that the statements were in fact substantially false, i.e., diverged from the true facts in and to such manner and degree as to produce a more damaging effect on the mind of the reader than would the truth."

Specifically, in ruling on an anonymous Glassdoor user's anti-SLAPP motion pursuant to California Code of Civil Procedure, § 425.16(e)(3) and (4), the Court found that:

- The statements at issue were made in a public forum: "It is settled that 'Web sites accessible to the public ... are "public forums" for purposes of the anti-SLAPP statute.'"
- The statements were made in connection with a public issue: "[A]lthough not every Website post involves a public issue, consumer information that goes beyond a particular interaction between the parties and implicates matters of public concern that can affect many people is generally deemed to involve an issue of public interest for purposes of the anti-SLAPP statute."

### **Jaclyn Fiore v. Semaphore Tax & Business Solutions, Orange County Superior Court (CA), 2019**

Glassdoor successfully opposed the enforcement of a subpoena seeking disclosure of a user's identity in connection with a libel and fraud lawsuit brought by a Southern California accounting firm against a former employee.

- The subpoena demanded user IDs for six different reviews on Glassdoor, as well as detailed log-in information for two email accounts associated with a former employee.

- The Court agreed with Glassdoor that the moving party did not sufficiently show that a libelous statement had been made in the relevant Glassdoor reviews because, among other reasons, there was no meaningful evidence presented that the statements made on Glassdoor were false.
- The Court also found that the moving party already had all the evidence it required for its case and had no right to further information from Glassdoor.

### **AdMarketplace, Inc. v. Doe, No. CIV 1900364, Marin County Superior Court (CA), 2019**

Glassdoor successfully opposed an effort by AdMarketplace (ADM) to enforce a subpoena to reveal a user's ID as part of a breach of contract lawsuit against a Doe defendant.

- After working to have the subpoena transferred from state court in New York to Marin County (CA) Superior Court, Glassdoor successfully argued that the Doe defendant did not abandon their First Amendment rights by executing a separation agreement with ADM, and that the "Subpoena [served on Glassdoor] is subject to a higher level of scrutiny because the First Amendment protects anonymous speech, not because it protects disparaging remarks in violation of a nondisparagement clause."
- The Court also agreed with Glassdoor in finding that ADM had not met its requirement to demonstrate it had used "alternative means" to ascertain the defendant's identity. Examples cited of what ADM could have done included "recognizing the writing style" or "know[ing] who had such feelings towards [ADM]." The Court also noted that ADM failed to show that it was "so large or spread out or has so many former employees that it is inconceivable that anyone could determine who authored the post."

### **Craft Beer Stellar, LLC v. Glassdoor, Inc., No. 18-10510-FDS (U.S.D.C. MA), 2018**

Glassdoor prevailed on its FRCP 12(b)(6) Motion to Dismiss an action brought by plaintiff Craft Beer Stellar (CBS), a franchisor of craft beer stores known as Craft Beer Cellars. Notwithstanding the well-accepted tenets of Section 230 of the Communications Decency Act, 47 U.S.C. § 230, CBS brought an action directly against Glassdoor as a named defendant.

- CBS argued that Glassdoor lost its Section 230 immunity by initially removing one of six reviews that CBS's co-founder had flagged as containing objectionable content and then allowing another version of that review to reappear. The review had been modified by its author and, in Glassdoor's view, no longer violated its Community Guidelines.
- CBS argued that Glassdoor somehow had helped create or develop the review's content, and therefore had transformed itself from an interactive computer service - operating within the immunity protections of Section 230 - into an information content provider no longer qualifying for Section 230 protections.
- The Court held for Glassdoor: "[H]olding Glassdoor liable for simply screening the posts on its website would directly counter the CDA, and create a 'disincentive' against 'self-regulation' by websites. [...] Glassdoor's decisions to remove the 'review,' and to permit an updated version to be re-posted, constituted the exercise of a traditional editorial function. Without more, Glassdoor cannot be deemed responsible for creating or developing the content."
- The Court similarly found, in response to CBS's claim for violation of the federal Defense of Trade Secrets Act (DTSA) (18 U.S.C. §§ 1836, et seq.), that the DTSA claim was subject to Section 230 immunity and was therefore also barred. The Court further invoked Section 230 in dismissing CBS's causes of actions under the Massachusetts Consumer Protection Act as well as two other common law claims.
- The Court also dismissed CBS's claim under the Massachusetts Misappropriation of Trade Secrets Statute, finding that, while the claim was not subject to Section 230 immunity, CBS could not establish a confidential relationship with Glassdoor as required to maintain such a claim.

**Glassdoor, Inc. v. Superior Court of Santa Clara County (Machine Zone, Inc.), (9 Cal. App. 5th 623), 2017**

In a published appellate opinion setting important legal precedent for anonymous free speech, Glassdoor successfully appealed a trial court ruling compelling the disclosure of user identity in connection with a breach of contract lawsuit brought by Machine Zone (since rebranded MZ), a California mobile gaming and platform company.

- MZ attempted to unmask an employee's identity on account of a Glassdoor review allegedly disclosing confidential information in violation of a nondisclosure agreement signed by all employees.
- MZ denied the accuracy of the employee's review without identifying any real confidential information allegedly disclosed.
- The California Court of Appeal agreed with Glassdoor in finding that MZ failed to make a prima facie showing that the anonymous employee's statements disclosed any confidential information in violation of the nondisclosure agreement.
- The California Court of Appeal further held that:
  - Glassdoor has standing to assert its users' interest in maintaining their anonymity against legal action to compel the disclosure of identifying information.
  - In any action predicated on anonymous speech, the plaintiff - regardless of legal theory - should not be able to discover the speaker's identity without first making a prima facie showing that the speech in question is actionable.
  - Anyone seeking to obtain the identity of an anonymous speaker must therefore clearly identify, on the record, the specific statements that are claimed to be actionable and then provide necessary supporting evidence in support of the applicable claim.

**FKA Distributing Co., LLC v. Doe, No. CIV 1603809, Marin County Superior Court (CA), 2016**

Glassdoor successfully opposed the enforcement of a subpoena seeking a user's identity in connection with a defamation lawsuit brought by a Michigan-based maker of health devices and consumer electronics.

- Plaintiffs claimed that a Glassdoor review stating that it "can't get it's [sic] head above water" and that its CEO "spent the money faster than we could make it" was defamatory.
- The Court agreed with Glassdoor in holding that the review was protected opinion.
- The Court explained that (1) "Glassdoor specifically disclaims responsibility for 'unintended, objectionable, inaccurate, misleading, or unlawful Content'" on its site; (2) the statements used "loose, figurative, or hyperbolic language"; and (3) the phrases at issue "could have dozens of meanings" and therefore "cannot be proven true or false."

**Awtry v. Glassdoor, Inc., No. 16-mc-80028-JCS (U.S.D.C. ND CA), 2016**

Glassdoor successfully opposed the enforcement of a subpoena seeking disclosure of user identity for four employee reviews of RightSize Facility, Inc. The owner of the business believed the information would be "critical" to his defense against defamation claims brought in Illinois by a woman with whom he had a child. Specifically, he claimed that she had authored four negative reviews while falsely posing as an employee of his business, and that unmasking her would support his defense that she was "a liar."

- The Court sided with Glassdoor, finding "there is a significant likelihood that ordering disclosure of the identities of the reviewers who posted the Glassdoor Reviews will result in a substantial chilling effect on anonymous expression using the site," and that "[i]t is highly unlikely that the individual who posted [one of the] review[s] ... would have done

so had she believed there was a possibility her identity would be disclosed to the CEO whose micromanagement she disparaged in her review.”

- The Court stated that “if courts are willing to enforce subpoenas like [this] based on what amounts to speculation that the anonymous review is only posing as a current or former employee, individuals who are in fact current or former employees are likely to be reluctant to post the candid reviews that Glassdoor tries to offer its users.”
- The Court further noted that the defendant failed to “demonstrate that he has made reasonable efforts to obtain the information he needs from other sources.”

### **Logic Planet, Inc. v. Does 1-10, No. CIV1600912, Marin County Superior Court (CA), 2016**

Glassdoor prevailed in both (1) a motion to fight a New Jersey subpoena and (2) opposing a motion to compel enforcement of a California subpoena seeking user identities for 10 Glassdoor reviews in a defamation lawsuit brought by a New Jersey-based software consulting company.

- Reviews of the plaintiff on Glassdoor made critical statements “includ[ing] claims of slavery, death, brainwashing, crying 24/7 and other similar hyperbole.”
- The Court agreed with Glassdoor in finding the reviews to be opinion, noting that “[w]hile the court appreciates the Plaintiff’s desire to vindicate itself from unflattering rhetoric, the balance weighs in favor of First Amendment protections.”

### **Brudy v. Doe, No. CV1500541 Marin County Superior Court (CA), 2015**

Glassdoor successfully opposed the enforcement of a subpoena seeking disclosure of user identity in connection with a defamation lawsuit brought by the named partner of a Pennsylvania law firm.

- The Court agreed with Glassdoor that a review containing statements such as “women [...] were treated like slaves,” and “[t]he men could have gotten away with murder” constituted protected opinion.
- The Court found that the statements in the review were “either opinions (e.g., accusations of sexism), overly generalized (e.g., a womanizer but with no specifics and no statement as to whether married), or hyperbolic (e.g., ‘treated like slaves’).”

### **SunEnergy1, LLC, et al. v. Jeffrey Lawrence Brown, CA No. N14M-12-028 (New Castle County Superior Court), 2015**

Glassdoor prevailed in quashing a Delaware state court subpoena seeking identifying information for the authors of allegedly defamatory reviews.

- The Court agreed with Glassdoor in finding that a review entitled “a terrible place to work” was “nothing more than a rant by a former employee citing anecdotal evidence, about why she thinks it is a terrible place to work” and “contained no objectively provable factual assertions.”

### **Glassdoor, Inc. v. Superior Court of Marin County (Travelers Haven, LLC), No. A145727 (2015)**

Glassdoor successfully appealed a trial court ruling compelling the disclosure of user identity in connection with a defamation lawsuit brought by a Colorado short-term housing solution company.

- The Court of Appeal sided with Glassdoor in holding that a review containing the phrase “company parties = lots of drugs [sic]” constituted protected opinion on the ground that the post was written in a “flippant, truncated, and florid style.”