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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	92087430
Party	Defendant Next Level Private LLC
Correspondence address	NEXT LEVEL PRIVATE LLC DUANE MORRIS LLP 230 PARK AVENUE - SUITE 1130 NEW YORK, NY 10169 UNITED STATES Primary email: malerner@duanemorris.com Secondary email(s): trademarks@duanemorris.com 2124048714
Submission	Other Motions/Submissions
Filer's name	Mark Lerner
Filer's email	malerner@duanemorris.com
Signature	/mark lerner/
Date	07/03/2025
Attachments	Respondent Motion to Compel Discovery-Cancellation No. 92087430.pdf(897851 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 6,829,211
Registered: August 23, 2022
For the Mark: NEXT LEVEL PRIVATE

NXT LEVEL HOLDINGS LLC,	:	
Petitioner,	:	
v.	:	**Cancellation No.:** 92087430
NEXT LEVEL PRIVATE LLC,	:	
Respondent.	:	

RESPONDENT'S MOTION TO COMPEL

Pursuant to Rule 37 C.F.R. §2.120(f) and TBMP § 523, Next Level Private LLC ("Respondent"), by and through its attorneys, moves the Trademark Trial and Appeal Board (the "Board") to compel Petitioner Next Level Holdings LLC ("Petitioner"), to provide Initial Disclosures in accordance with Federal Rule of Civil Procedure 26(a) and Trademark Rule of Practice 2.120(a)(2)(ii), 37 C.F.R. § 2.120(a).

Respondent has made a good faith effort to resolve with counsel for Petitioner the issues presented herein, and Petitioner has failed to serve its Initial Disclosures by the June 6, 2025 deadline, completely disregarding its obligation in the proceeding.

FACTUAL BACKGROUND

On February 3, 2025, Petitioner filed a Petition for Cancellation (TTABVUE #1) against Respondent's U.S. Registration No. 6,829,211 for the trademark NEXT LEVEL PRIVATE in connection with "Financial planning and investment advisory services" in International Class 36. On April 10, 2025, in the wake of the parties' April 7, 2025, telephonic discovery conference, the

Board issued an Order (TTABVUE #9), setting a revised schedule for the proceedings, including June 6, 2025, as the deadline for Initial Disclosures. *See* **Exhibit A** to Declaration of Mark A. Lerner ("Lerner Decl.").

On June 6, 2025, Respondent timely served its mandatory Initial Disclosures, along with its first set of written discovery requests. *See* Lerner Decl., ¶3, Ex. B. Petitioner, however, failed to serve any Initial Disclosures. Instead, Petitioner transmitted a one-page PDF document identifying the names of two individuals described as Petitioner's managing partners; information that falls far short of the requirements under Fed. R. Civ. P. 26(a)(1). *See* Lerner Decl., ¶4, Ex. C.

On June 9, 2025, Respondent's counsel emailed Petitioner's counsel to advise that Petitioner had not served its mandatory Initial Disclosures in compliance with Fed. R. Civ. P. 26(a)(1) and Trademark Rule 2.120(a)(2)(ii). Respondent's counsel's correspondence noted that merely naming two individuals, without providing the subjects of their knowledge or any information about relevant documents, did not satisfy Petitioner's disclosure obligations under the Federal Rules of Procedure and Trademark Rules of Practice. *See* Lerner Decl., ¶7, Ex. D.

On June 13, 2025, after receiving no response from Petitioner's counsel, Respondent's counsel sent a follow-up email reminding Petitioner that its disclosures remained deficient and overdue. *See* Lerner Decl., ¶8, Ex. E.

After more than another week of silence, on June 27, 2025, Respondent's counsel sent a third and final email to Petitioner's counsel reiterating that Petitioner's Initial Disclosures had still not been served and were now three weeks overdue. The correspondence again urged Petitioner to bring its disclosures into compliance. *See* Lerner Decl., ¶8, Ex. F.

To date, Petitioner's counsel has not responded to any of Respondent's communications and has not served its mandatory Initial Disclosures. Despite multiple written requests and more

than three weeks of opportunity to cure the issue, Petitioner has taken no steps to comply with its obligations under the rules.

On the basis of its efforts to contact the Petitioner, Respondent has in good faith attempted to resolve the present issue. Despite the Respondent's efforts to resolve the issue, Respondent has been unable to resolve this dispute and, as such, this matter requires the Board's intervention. This motion is timely as the deadline for Respondent to file a motion to compel Petitioner's Initial Disclosures under Trademark Rule 2.196, is Sunday, July 6, 2025 (effectively, Monday, July 7, 2025).

ARGUMENT

Federal Rule of Civil Procedure 26(a)(1) requires each party, without awaiting a discovery request, to provide its Initial Disclosures to the other parties in the case. "If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions." Fed. R. Civ. P. 37(a)(3)(A). A motion to compel Initial Disclosures must be filed within thirty days after the deadline to serve them. 37 CFR § 2.120(f).

Here, the Board set a June 6, 2025, deadline for the parties to serve their Initial Disclosures. (TTABVUE #9). Only Respondent complied with its obligation under the Board's Order by serving its Initial Disclosures by the June 6, 2025, deadline. Respondent never sought additional time to meet its obligations under the Board's Order. In addition, despite Respondent's attempts to reach Petitioner on multiple occasions, June 9, June 13, and June 27, 2025, Petitioner still has not served Initial Disclosures in this proceeding, nor has it responded to any of the correspondence from Respondent's counsel in an attempt to resolve the issue in good faith. Respondent's failure to serve its mandatory Initial Disclosures is entirely unjustified and unexcused. Accordingly, Respondent respectfully moves the Board to enter an order compelling Petitioner to serve its Initial

Disclosures and comply with its discovery obligations under the governing rules.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Board grant this Motion to Compel Petitioner's Initial Disclosures and enter an order compelling Petitioner to serve its initial disclosures in accordance with the Federal Rules of Procedure and Trademark Rules of Practice within seven days.

Dated: July 3, 2025

Respectfully submitted,

DUANE MORRIS LLP

By: */Mark A. Lerner/*

Mark A. Lerner
22 Vanderbilt
335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
MALerner@duanemorris.com
(212) 404-8714
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that, on the 3rd day of July, 2025, I served a copy of the Motion to Compel Petitioner's Initial Disclosures and Declaration of Mark A. Lerner In Support Thereof, by email, upon the following party identified as correspondents and counsel of record for the Petitioner:

Andrew Delaney
NXT Level Holdings LLC
6 South Street, Suite 203
Morristown, NJ 07960
862-812-6874
adelaney@andrewdelaneylaw.com

Dated: July 3, 2025 By: */Patrick Boisson/*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 6,829,211
Registered: August 23, 2022
For the Mark: NEXT LEVEL PRIVATE

NXT LEVEL HOLDINGS LLC,	:	
Petitioner,	:	
v.	:	**Cancellation No.:** 92087430
NEXT LEVEL PRIVATE LLC,	:	
Respondent.	:	

DECLARATION OF MARK A. LERNER IN SUPPORT OF MOTION TO COMPEL

I, Mark A. Lerner, declare as follows:

1. I am an attorney at Duane Morris LLP, the firm representing Respondent, Next Level Private LLC, in this matter. I have personal knowledge of the facts set forth herein and will testify competently to the truth of the same if requested.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Board's Order (TTABVUE #9) issued to both parties on April 10, 2025, designating June 6, 2025, as the deadline for Initial Disclosures.

3. Attached hereto as **Exhibit B** is a true and correct copy of Respondent's Initial Disclosures to Petitioner, served on June 6, 2025.

4. As of July 3, 2025, Petitioner has not served its Initial Disclosures. Rather, on June 6, 2025, Counsel for Petitioner transmitted a one-page PDF document identifying the names of two individuals described as Petitioner's managing partners; information that falls far short of

the requirements under Fed. R. Civ. P. 26(a)(1). A true and correct copy of the PDF attached hereto as **Exhibit C.**

5. At no time did Petitioner seek an extension of the deadline or offer any explanation as to why its disclosures have not yet been served.

6. Pursuant to 37 C.F.R. § 2.120(e)(1) and TBMP. § 523, I have made a good faith effort to resolve Petitioner's non-compliance with its required Initial Disclosures under the Board's Order, the Federal Rules of Procedure, and Trademark Rules of Practice as outlined herein.

7. On June 9, 2025, I wrote to counsel for Petitioner noting that Petitioner had not served its mandatory Initial Disclosures by the June 6, 2025 deadline. No response was received from Counsel for Petitioner. A true and correct copy of the June 9, 2025 email is Attached hereto as **Exhibit D.**

8. On June 13, 2025 and June 27, 2025, I again reached out to Counsel for Petitioner via email to reiterate that Petitioner's deadline to serve its Initial Disclosures had passed. Attached hereto as **Exhibits E** and **F** are true and correct copies the of emails to Counsel for Petitioner dated June 13, 2025 and June 27, 2025, respectively.

9. To date, Counsel for Petitioner has not responded in any way either by serving the required Initial Disclosures or seeking to discuss the Initial Disclosures.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED this 3rd day of July 2025 at New York, New York.

/Mark A. Lerner/

EXHIBIT A

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

April 10, 2025

Cancellation No. 92087430

NXT Level Holdings LLC

v.

Next Level Private LLC

Jill M. McCormack, Interlocutory Attorney:

On April 7, 2025, the Board participated in the discovery conference. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 401.01 (2024). The participants included Andrew Delaney, in-house counsel for Petitioner, representing itself pro se; Mark Lerner and Lauren Silva, counsel for Respondent; and Jill McCormack, Interlocutory Attorney for the Board.

I. RELATED PROCEEDINGS

In the event that a civil action or separate Board proceeding between the parties is instituted, the parties must promptly advise the Board so it can determine if suspension or consolidation is appropriate. *See* TBMP §§ 510.02(a) and 511; *see also* Trademark Rule 2.117(a).

II. SETTLEMENT

Because its jurisdiction is limited to registrability determinations, unlike the federal courts, the Board does not take an active role in the settlement process.

However, the Board typically will grant a consented or joint motion to suspend proceedings for a reasonable period of time in order to allow the parties to engage in settlement negotiations. *See* TBMP § 510.03(a); *see also* Trademark Rule 2.117(c). Any stipulations to suspend the proceeding for settlement negotiations should be filed promptly because, absent suspension, the Board presumes the parties are preparing for trial and adhering to the disclosure, discovery, and trial deadlines set by the Board. *Atlanta-Fulton County Zoo Inc. v. De Palma*, 45 USPQ2d 1858, 1859 (TTAB 1998) ("[I]t is well established that the mere existence of settlement negotiations alone does not justify a party's inaction or delay.").

III. PLEADED CLAIMS AND DEFENSES

Respondent owns a registration for the standard-character mark NEXT LEVEL PRIVATE for "financial planning and investment advisory services," in Class 36.[1]

A. PETITION FOR CANCELLATION

On February 3, 2025, Petitioner filed a petition to cancel on the sole ground of likelihood of confusion. Petitioner pleads ownership of a registration for the mark shown below for "consulting services, namely, expert analysis and management consulting in economics and accounting; brand imagery consulting services; business consulting and information services; business consulting for enterprises; business consulting services; business consulting, inquiries or information; business management consulting; business marketing consulting services; business organization consulting; business organization and management consulting;

[1] Registration No. 6829211 was issued on August 23, 2022; "private" disclaimed.

corporate image consulting services; direct marketing consulting services; marketing consulting; personnel management consulting; professional business consulting," in Class 35:  .[2] This is sufficient to plead Petitioner's entitlement to a statutory cause of action. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000). Petitioner has also pleaded a legally sufficient claim of likelihood of confusion. *See Nike, Inc. v. Palm Beach Crossfit Inc.*, 116 USPQ2d 1025, 1030 (TTAB 2015).

B. ANSWER

On March 14, 2025, Respondent filed a legally sufficient answer that denies the salient allegations in the petition to cancel and asserts a number of "Affirmative Defenses." As explained during the conference,

- Respondent's First and Fourth Affirmative Defenses are **stricken without prejudice**. *See* Fed. R. Civ. P. 12(f). A legally sufficient pleading of a defense must include enough factual detail to provide fair notice of the basis for the defense. Fed. R. Civ. P. 8(b)(1). Respondent's First and Fourth Affirmative Defenses are insufficiently pleaded because Respondent has failed to plead any specific allegations of conduct that, if proven, would prevent Petitioner from prevailing on its claim of likelihood of confusion. *See Midwest Plastic Fabricators Inc. v. Underwriters Labs. Inc.*, 5 USPQ2d 1067, 1069 (TTAB 1987).[3]

[2] Registration No. 7490958 was issued on September 3, 2024.

[3] To plead acquiescence, the defendant must allege: (1) that the plaintiff actively represented that it would not assert a right or claim; (2) that the delay between the active representation and assertion of the right or claim was not excusable; and (3) that the delay caused the defendant undue prejudice. *Coach House Rest., Inc. v. Coach & Six Rests., Inc.*, 19 USPQ2d 1401, 1409 (11th Cir. 1991). Waiver is the "intentional relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). To plead laches, the defendant must allege "that there was undue or unreasonable delay [by plaintiff] in asserting its rights, and prejudice to [defendant] resulting from the delay." *Bridgestone/Firestone Research, Inc. v. Auto. Club*, 58 USPQ2d 1460, 1462 (Fed. Cir. 2001). To plead unclean hands, the defendant must allege specific allegations of misconduct that, if proved, would prevent the plaintiff from prevailing on its claim. *Midwest Plastic*, 5 USPQ2d at 1069.

- Respondent's Second Affirmative Defense is **stricken**. While Fed. R. Civ. P. 12(b)(6) allows a party to assert the defense in its answer, failure to state a claim is not a true affirmative defense because it relates to an assertion of the insufficiency of the pleading of Petitioner's claims rather than a statement of a defense to a properly pleaded claim. *See Hornblower & Weeks Inc. v. Hornblower & Weeks Inc.*, 60 USPQ2d 1733, 1738 n.7 (TTAB 2001). Here, because Petitioner has sufficiently pleaded its entitlement and at least one valid statutory ground for cancellation, the defense of failure to state a claim is not applicable.

- Respondent's Third Affirmative Defense is not a true affirmative defense, but may remain in the answer as an amplification of Respondent's denials. The allegations provide fuller notice to Petitioner of how Respondent intends to defend this proceeding. *See Order of Sons of Italy in Am. v. Profumi Fratelli Nostra AG*, 36 USPQ2d 1221, 1223 (TTAB 1995).

The Board liberally grants leave to amend pleadings prior to trial when justice requires, unless entry of the proposed amended pleading would be prejudicial to the rights of the adverse party, would violate settled law, or would serve no useful purpose. Respondent is allowed **THIRTY (30) DAYS** from the date of this order to file and to serve an amended answer that repleads its First and Fourth Affirmative Defenses, failing which the defenses will remain stricken without prejudice.

IV. ARRANGEMENTS FOR DISCLOSURES, DISCOVERY, AND TRIAL

A. INITIAL DISCLOSURES

After the pleadings close, the parties next must serve each other with initial disclosures. Fed. R. Civ. P. 26(a) (1) provides "a party must, without awaiting a discovery request, provide to the other parties:

> (i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
>
> (ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing

> party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment ..."

The Board advises that initial disclosures should be promptly supplemented as the parties' trial strategy evolves, to avoid surprise at trial, and to allow discovery to be taken from prospective witnesses.[4]

B. DISCOVERY

With respect to discovery, the scope of the pleadings determines the scope of discovery. *See* Fed. R. Civ. P. 26(b) (1) ("Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense…"). The parties were advised to consult the "Discovery Guidelines" listed in the TBMP § 414 before making or objecting to discovery requests. The Board expects parties to cooperate with one another in the discovery process. *See* TBMP § 408.01. The parties each have a duty not only to make a good faith effort to satisfy the legitimate discovery needs of their adversary, but also to make a good faith effort to seek only such discovery as is proper and relevant to the issues in the case. *See* TBMP § 408.01.

The parties are limited to seventy-five interrogatories, including subparts; seventy-five requests for production of documents and things, including subparts; and seventy-five requests for admission. *See* Trademark Rules 2.120(d), 2.120(e), and 2.120(i). Interrogatories, requests for production, and requests for admission must be served early enough in the discovery period, as originally set or as may have been

[4] The parties should not file their initial disclosures, discovery requests, or discovery responses with the Board, except as permitted under Trademark Rule 2.120(k)(8); in connection with a motion to compel discovery, as required by Trademark Rule 2.120(f)(1); or in connection with a motion to determine the sufficiency of an answer or objection to a request for admission, as required by Trademark Rule 2.120(i)(1).

reset by the Board, so that responses will be due no later than the close of the discovery period. Trademark Rule 2.120(a)(3). Similarly, discovery depositions must be properly noticed and taken during the discovery period. *Id.*

If either party plans to file a motion to compel discovery or a motion to test the sufficiency of a response or objection to a request for admission, the moving party must first confer with the other party in good faith to attempt to resolve or narrow the dispute, and then must demonstrate its good-faith efforts as part of its motion. *See* Trademark Rules 2.120(f)(1) and 2.120(i); *see also* TBMP § 523.02. The obligation to meet and confer in good faith is a mutual obligation. Motions to compel discovery, motions to test the sufficiency of responses or objections to a request for admission, and motions for summary judgment must be filed no later than the day before the deadline for pretrial disclosures for the first testimony period as originally set or as reset. Trademark Rules 2.120(f)(1), 2.120(i)(1), and 2.127(e)(1).

To the extent either party plans to use an expert witness, such party must make their expert witness disclosure by the set deadline, and provide the Board with notification that the party will be employing an expert. Trademark Rule 2.120(a)(2)(iii). The Board may suspend proceedings to allow the parties to take discovery of a designated expert witness or to allow a rebuttal expert witness.

C. PRETRIAL AND TRIAL PROCEDURES

Pretrial disclosures are governed by Trademark Rule 2.121(e) and Fed. R. Civ. P. 26(a)(3) with one exception: the Board does not require pretrial disclosure of each document or other exhibit that a party plans to introduce at trial as required by Fed.

R. Civ. P. 26(a)(3)(A)(iii). Additionally, if a party does not plan to take testimony from any witness in any form, it must state so in its pretrial disclosures. A party need not disclose, prior to its testimony period, any notices of reliance it intends to file during its testimony period. Trademark Rule 2.121(e). For further information regarding pretrial disclosures, the parties should consult TBMP § 702.01.

In addition to submission of evidence under notices of reliance,[5] parties may introduce evidence in the form of testimony depositions taken by a party during its assigned testimony period, or in the form of affidavit or declaration testimony submitted during its testimony period, subject to the right of the adverse party to conduct cross-examination as provided under Trademark Rule 2.123(c).[6] *See* TBMP § 703.01. The submission of evidence and testimony during the parties' assigned testimony periods corresponds to the trial in court proceedings. A party may take trial testimony only during its assigned testimony period, except by stipulation of the parties approved by the Board, or, on motion, by order of the Board. *See Fossil Inc. v. Fossil Grp.*, 49 USPQ2d 1451, 1454 n.1 (TTAB 1998); *Of Counsel Inc. v. Strictly of Counsel Chartered*, 21 USPQ2d 1555, 1556 n.2 (TTAB 1991).

D. STANDARD PROTECTIVE ORDER

The Board's Standard Protective Order is automatically imposed in this proceeding pursuant to Trademark Rule 2.116(g), unless the parties, by stipulation

[5] For information concerning submission of evidence by notice of reliance, see TBMP § 704.

[6] If an affiant or declarant witness is not within the jurisdiction of the United States, then the adverse party may elect to take and bear the expense of cross-examination of the witness by written questions. *See* Trademark Rules 2.123(a)(1) and 2.124.

approved by the Board, agree to an alternative order, or a motion by a party to use an alternative order is granted by the Board. *See* TBMP §§ 412.01–.02. Although they are not required to do so, the parties may elect to exchange executed copies of the order. Because of the automatic imposition of the protective order, parties may designate information or documents as confidential but typically cannot withhold properly discoverable information or documents on that basis. *See* TBMP § 412.01.

V. ACCELERATED CASE RESOLUTION

During the conference, the Board informed the parties of its Accelerated Case Resolution (ACR) process. ACR is an alternative to typical Board inter partes proceedings. *See Chanel Inc. v. Makarczyk*, 110 USPQ2d 2013, 2016–17 (TTAB 2013); *Chanel Inc. v. Makarczyk*, 106 USPQ2d 1774, 1775 (TTAB 2013); *see also Bond v. Taylor*, 119 USPQ2d 1049, 1051 (TTAB 2016).

The form of ACR can vary, but the process often approximates a summary bench trial, or cross-motions for summary judgment and accompanying evidentiary submissions, that the parties agree to submit in lieu of creating a traditional trial record and post-trial briefing. If the parties stipulate to ACR they could avoid a formal trial altogether. Although the Board may not decide disputed issues of material fact when considering a motion for summary judgment, the parties may stipulate to the submission of such briefs and evidence in lieu of trial and agree that the Board may resolve and decide any genuine dispute of material fact that may be found to exist.

As an alternative to the "traditional" ACR process discussed above, the parties also may explore stipulating to facts, evidence, and/or procedures at trial. *See, e.g.*,

Target Brands, Inc. v. Hughes, 85 USPQ2d 1676, 1678 (TTAB 2007). The Board allows the parties to stipulate to a variety of deviations from the Board's rules in order to streamline discovery and testimony. If the parties adopt ACR early in the proceeding, they could realize a significant savings in time and cost. More information about the Board's ACR options can be found in TBMP §§ 528.05(a)(2), 702.04, and 705, and on the Board's website.

If the parties wish to revisit the issue of ACR after they review this order, they may call the assigned Interlocutory Attorney to schedule a teleconference regarding ACR.

VI. PROCEEDING SCHEDULE

Pursuant to the Board's inherent authority to control the cases on its docket, remaining dates are reset as follows:

Initial Disclosures Due	6/6/2025
Expert Disclosures Due	10/4/2025
Discovery Closes	11/3/2025
Plaintiff's Pretrial Disclosures Due	12/18/2025
Plaintiff's 30-day Trial Period Ends	2/1/2026
Defendant's Pretrial Disclosures Due	2/16/2026
Defendant's 30-day Trial Period Ends	4/2/2026
Plaintiff's Rebuttal Disclosures Due	4/17/2026
Plaintiff's 15-day Rebuttal Period Ends	5/17/2026
Plaintiff's Opening Brief Due	7/16/2026
Defendant's Brief Due	8/15/2026
Plaintiff's Reply Brief Due	8/30/2026
Request for Oral Hearing (optional) Due	9/9/2026

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony

periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Such briefs should utilize citations to the TTABVUE record created during trial, to facilitate the Board's review of the evidence at final hearing. Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

VII. INFORMATION REGARDING LEGAL REPRESENTATION

It is noted that Petitioner is representing itself in this proceeding. While Patent and Trademark Rule 11.14 permits a party domiciled in the United States to represent itself, it is strongly advisable for a party who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. *See* TBMP § 114.02.

Trademark Rules 2.119(a) and (b) require that every submission filed in a proceeding before the Board must be served upon the other party or parties, and proper proof of such service must be made before the submission will be considered

by the Board. Accordingly, all submissions filed in this proceeding must be accompanied by a statement, signed by the attorney or other authorized representative, attached to or appearing on the original submission when filed, clearly stating the date and manner in which service was made, the name of each party or person upon whom service was made, and the email address or address. *See* TBMP § 113.03. Service must be made by email unless otherwise stipulated, or unless the filing party has satisfied the requirements for another method of service as set forth in Trademark Rule 2.119(b). The statement will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a Certificate of Service as follows:

> I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by forwarding said copy on (insert date of mailing), via email (or insert other appropriate method of delivery) to: (set out name, address, and email address of opposing counsel or party).
>
> Signature_____
>
> Date_____

Submissions in Board proceedings must be made via ESTTA, the Electronic System for Trademark Trials and Appeals, and must be in compliance with Trademark Rules 2.126(a) and (b). *See* TBMP § 110.01. The ESTTA user manual, ESTTA forms, and instructions for their use are at http://estta.uspto.gov/.

It is recommended that any pro se party be familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. Parties should also be familiar with the Trademark Trial and Appeal Board Manual of Procedure (TBMP), available at http://www.uspto.gov/trademarks-

application-process/trademark-trial-and-appeal-board-ttab, the TTABVUE system for viewing the record for all Board proceedings, available at http://ttabvue.uspto.gov/ttabvue/, and the Standard Protective Order, available at https://www.uspto.gov/sites/default/files/documents/Standard%20Protective%20Order_02052020.pdf.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006); *see also Hole In 1 Drinks, Inc. v. Lajtay*, 2020 USPQ2d 10020, at *1 (TTAB 2020) (noting that compliance with the Trademark Rules of Practice, and where applicable, the Federal Rules of Civil Procedure and the Federal Rules of Evidence, is required of all parties even those who assume the responsibility and risk of representing themselves).

EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 6,829,211
Registered: August 23, 2022
For the Mark: NEXT LEVEL PRIVATE

NXT LEVEL HOLDINGS LLC,	:	
Petitioner,	:	
v.	:	**Cancellation No.:** 92087430
NEXT LEVEL PRIVATE LLC,	:	
Respondent.	:	

RESPONDENT NEXT LEVEL PRIVATE'S RULE 26(a)(1) INITIAL DISCLOSURES

Pursuant to Trademark Rule 2.120(a) (37 C.F.R. §2.120(a)) and Fed. R. Civ. P. Rule 26(a)(1), Next Level Private LLC ("Next Level Private" or "Respondent") hereby provides the following Initial Disclosures based upon the information available to it at this time. Respondent reserves the right to revise, correct, add to, clarify or otherwise supplement any of the statements set forth herein, or documents and individuals identified, to supplement these Initial Disclosures if and when additional information is uncovered and/or becomes available, pursuant to Fed. R. Civ. P. Rule 26(e), and to rely on such supplemental information as evidence.

Respondent's disclosures represent a good faith effort to identify information it reasonably believes is or may be discoverable and that it may use to support its case as required by Fed. R. Civ. P. 26(a)(1). Respondent's Initial Disclosures are made without waiving in any way: (i) the right to object on the grounds of competency, privilege, relevancy, materiality, hearsay, or any other proper ground, to the use of any such information, for any purpose, in whole or in part, in

any subsequent proceeding in this action or any other action; and (ii) the right to object on any ground, at any time, to any other discovery request or proceeding involving or relating to the subject matter of these disclosures. All of the disclosures set forth below are made subject to the above objections and qualifications.

A. Individuals Likely To Have Discoverable Information:

The following individuals are likely to have discoverable information that Respondent may use to support its claims and/or defenses. This list is based on Respondent's present knowledge and understanding of the facts germane to this action and is in no way intended to be an exhaustive or complete listing of persons having non-cumulative and relevant discoverable information that may be sought in this litigation. The below individuals can be contacted only through counsel for Respondent:

NAME (AND TITLE)	ADDRESS	SUBJECT OF INFORMATION
Barry P. Mitchell Jr., CRPC®, CRPS®, CAP®, Founder and Managing Director, Next Level Private LLC	c/o Duane Morris LLP, 22 Vanderbilt 335 Madison Avenue, 23rd Floor New York, NY 10017-4669 (212) 404-8714	• Respondent's business, including its customer base. • Services offered by Respondent under the NEXT LEVEL PRIVATE mark. • Adoption, registration, and use of the NEXT LEVEL PRIVATE mark. • Methods and channels used by Respondent to market and promote the NEXT LEVEL PRIVATE mark. • Lack of actual confusion. • Source of business referrals.
Kate M. Bluvol, Chief Operating Officer, Next Level Private LLC	c/o Duane Morris LLP, 22 Vanderbilt 335 Madison Avenue, 23rd Floor New York, NY 10017-4669 (212) 404-8714	• Respondent's business, including its customer base. • Services offered by Respondent under the NEXT LEVEL PRIVATE mark. • Adoption, registration, and use of the NEXT LEVEL PRIVATE mark.

		• Methods and channels used by Respondent to market and promote the NEXT LEVEL PRIVATE mark. • Lack of actual confusion. • Source of business referrals.
Jenny G. Piche, Managing Director of Client Engagement, Next Level Private LLC	c/o Duane Morris LLP, 22 Vanderbilt 335 Madison Avenue, 23rd Floor New York, NY 10017-4669 (212) 404-8714	• Services offered by Respondent under the NEXT LEVEL PRIVATE mark. • Methods and channels used by Respondent to market and promote the NEXT LEVEL PRIVATE mark. • Lack of actual confusion. • Source of business referrals.

B. <u>Categories Of Relevant Documents Maintained By Respondent</u>

Exclusive of rebuttal evidence, the following is a description by category of the documents, electronically stored information and tangible things that Respondent has in its possession, custody or control and may use to support its claims and/or defenses. Documents that are subject to the attorney-client privilege are not included in the categories of documents identified herein. Respondent maintains the following documents at Next Level Private's corporate offices in Harrison, New York:

1. Corporate records relating to sales, advertisement, and promotion of the services offered under the NEXT LEVEL PRIVATE mark by Respondent;

2. Documents concerning the adoption, application to register, use, and enforcement of the NEXT LEVEL PRIVATE mark;

3. Documents concerning press and industry recognition of Respondent's services offered under the NEXT LEVEL PRIVATE mark;

4. Documents sufficient to demonstrate the nature of the services offered under the NEXT LEVEL PRIVATE mark;

5. Documents concerning state and federal regulatory filings related to Respondent's services offered under the NEXT LEVEL PRIVATE mark.

Dated: June 6, 2025

Respectfully submitted,

DUANE MORRIS LLP

By: */Mark Lerner/*
Mark A. Lerner
22 Vanderbilt
335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
MALerner@duanemorris.com
(212) 404-8714
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of June, 2025, I served a copy of the foregoing Initial Disclosures, by email, upon the following party identified as correspondents and counsel of record for the Petitioner:

Andrew Delaney
NXT Level Holdings LLC
6 South Street, Suite 203
Morristown, NJ 07960
862-812-6874
adelaney@andrewdelaneylaw.com

Dated: June 6, 2025

By: */Patrick Boisson/*
Patrick Boisson

EXHIBIT C

NXT Level Holdings Stakeholders

Axel D'Addario

Managing Partner

862.219.0133

adaddario@nxtlevelholdings.com

175 W Main St. APT. 418

Somerville, NJ 08876

Clifford Rowley

Managing Partner

646.529.5945

crowley@nxtlevelholdings.com

1460 Schmidt Lane

North Brunswick, NJ 08902

EXHIBIT D

From: Lerner, Mark
To: Andrew DeLaney
Cc: Silva, Lauren C.
Subject: RE: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430
Date: Monday, June 9, 2025 10:22:13 AM
Attachments: image002.png

Mr. Delaney,

Thank you for your message. We have reviewed your request and the assertions made therein. Your suggestion that our client, as a registered investment adviser, is required to notify its shareholders, investors, or business partners of this TTAB proceeding is entirely unfounded, as is the suggestion that it is obligated to confirm such notification to you and your client. There is no such requirement, and my client will not do so. We also decline to produce any "stakeholder information" in response to your email request.

Separately, we note that Petitioner failed to serve its required initial disclosures by the June 6, 2025, deadline set forth in the Board's scheduling order. The list of NXT Level Holdings managing partners you provided does not satisfy its obligations in this regard. Please produce the required disclosures immediately. Continued failure to comply with the Board's procedural requirements may necessitate further action.

Regards,

Mark Lerner
Partner

Duane Morris LLP
22 Vanderbilt
335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
P: +1 212 404 8714
F: +1 212 692 1020

MALerner@duanemorris.com
www.duanemorris.com

From: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Sent: Friday, June 6, 2025 9:41 PM
To: Lerner, Mark <MALerner@duanemorris.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>
Subject: Re: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430

On Fri, Jun 6, 2025 at 9:40 PM Andrew DeLaney <adelaney@andrewdelaneylaw.com> wrote:

Mr. Lerner,

Please see information regarding NXT Level Holdings' Managing Partners.

Additionally, please confirm whether you have taken appropriate action to notify all relevant stakeholders including but not limited to shareholders, investors, directors, and key business partners of the pending legal proceeding (Cancellation No. 92087430). As with standard disclosure protocols, any material developments or communications concerning this matter must be transparently shared with such parties.

Please send stakeholder information for NEXT LEVEL PRIVATE. Our 75 interrogatories will be sent next week.

Thank you.

On Thu, Jun 5, 2025 at 4:05 PM Lerner, Mark <MALerner@duanemorris.com> wrote:

> Mr. Delaney:
>
> You did not miss anything. We did not resubmit any affirmative defenses, though we continue to reserve the right to do so depending what we learn in discovery.
>
> **Mark Lerner**
> Partner
>
> Duane Morris LLP
> 22 Vanderbilt
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> New York, NY 10017-4669
> **P:** +1 212 404 8714
> **F:** +1 212 692 1020
>
> MALerner@duanemorris.com
> www.duanemorris.com
>
> ---
>
> **From:** Andrew DeLaney <adelaney@andrewdelaneylaw.com>
> **Sent:** Thursday, June 5, 2025 4:02 PM
> **To:** Lerner, Mark <MALerner@duanemorris.com>
> **Cc:** Silva, Lauren C. <LSilva@duanemorris.com>
> **Subject:** Re: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430
>
> Mr. Lerner,
>
> Did you resubmit any affirmative defenses? I did not see anything, and wanted to make sure I did not miss it. Thank you
>
> On Wed, Apr 30, 2025 at 10:02 AM Andrew DeLaney

<adelaney@andrewdelaneylaw.com> wrote:

> Mr. Lerner,
>
> [redacted]
>
> On Wed, Apr 23, 2025 at 3:33 PM Lerner, Mark <MALerner@duanemorris.com> wrote:
>
> > **CONFIDENTIAL**
> > **FOR SETTLEMENT PURPOSES ONLY**
> > **SUBJECT TO FRE 408**
> >
> > Mr. Delaney:
> >
> > [redacted]

[redacted]

[redacted]

DuaneMorris

www.duanemorris.com

Mark Lerner
Partner

Duane Morris LLP
230 Park Avenue, Suite 1130
New York, NY 10169-0079

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F: +1 212 818 9606

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Andrew DeLaney
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Work. 973-606-6090
Cell. 862-812-6874

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Andrew DeLaney
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--
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6 South Street, Suite 203
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Work. 973-606-6090
Cell. 862-812-6874

EXHIBIT E

From: Lerner, Mark
To: Andrew DeLaney
Cc: Silva, Lauren C.
Subject: RE: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430
Date: Friday, June 13, 2025 1:37:42 PM
Attachments: image002.png

Mr. Delaney:

Let this email serve as a reminder that we have yet to receive the required initial disclosures under Trademark Rule 2.120(a) (37 C.F.R. §2.120(a)) and Fed. R. Civ. P. Rule 26(a)(1) from NXT Level Holdings. They are now one week late.

Mark Lerner
Partner

Duane Morris LLP
22 Vanderbilt
335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
P: +1 212 404 8714
F: +1 212 692 1020

MALerner@duanemorris.com
www.duanemorris.com

From: Lerner, Mark
Sent: Monday, June 9, 2025 1:22 PM
To: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>
Subject: RE: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430

Mr. Delaney,

Thank you for your message. We have reviewed your request and the assertions made therein. Your suggestion that our client, as a registered investment adviser, is required to notify its shareholders, investors, or business partners of this TTAB proceeding is entirely unfounded, as is the suggestion that it is obligated to confirm such notification to you and your client. There is no such requirement, and my client will not do so. We also decline to produce any "stakeholder information" in response to your email request.

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Regards,

Mark Lerner
Partner

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335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
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MALerner@duanemorris.com
www.duanemorris.com

From: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Sent: Friday, June 6, 2025 9:41 PM
To: Lerner, Mark <MALerner@duanemorris.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>
Subject: Re: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430

On Fri, Jun 6, 2025 at 9:40 PM Andrew DeLaney <adelaney@andrewdelaneylaw.com> wrote:

> Mr. Lerner,
>
> Please see information regarding NXT Level Holdings' Managing Partners.
>
> Additionally, please confirm whether you have taken appropriate action to notify all relevant stakeholders including but not limited to shareholders, investors, directors, and key business partners of the pending legal proceeding (Cancellation No. 92087430). As with standard disclosure protocols, any material developments or communications concerning this matter must be transparently shared with such parties.
>
> Please send stakeholder information for NEXT LEVEL PRIVATE. Our 75 interrogatories will be sent next week.
>
> Thank you.
>
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>
> > Mr. Delaney:
> >
> > You did not miss anything. We did not resubmit any affirmative defenses, though we continue to reserve the right to do so depending what we learn in discovery.
> >
> > **Mark Lerner**
> > Partner
> >
> > Duane Morris LLP
> > 22 Vanderbilt

335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
P: +1 212 404 8714
F: +1 212 692 1020

MALerner@duanemorris.com
www.duanemorris.com

From: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Sent: Thursday, June 5, 2025 4:02 PM
To: Lerner, Mark <MALerner@duanemorris.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>
Subject: Re: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430

Mr. Lerner,

Did you resubmit any affirmative defenses? I did not see anything, and wanted to make sure I did not miss it. Thank you

On Wed, Apr 30, 2025 at 10:02 AM Andrew DeLaney <adelaney@andrewdelaneylaw.com> wrote:

> Mr. Lerner,
>
> [redacted]

[redacted]

On Wed, Apr 23, 2025 at 3:33 PM Lerner, Mark <MALerner@duanemorris.com> wrote:

> **CONFIDENTIAL**
> **FOR SETTLEMENT PURPOSES ONLY**
> **SUBJECT TO FRE 408**
>
> Mr. Delaney:
>
> [redacted]

[redacted]

[redacted]

[redacted]

DuaneMorris

www.duanemorris.com

Mark Lerner
Partner

Duane Morris LLP
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New York, NY 10169-0079

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--
Andrew DeLaney
Attorney at Law
6 South Street, Suite 203
Morristown, NJ 07960
Work. 973-606-6090
Cell. 862-812-6874

EXHIBIT F

From: Lerner, Mark
To: Andrew DeLaney
Cc: Silva, Lauren C.
Subject: RE: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430
Date: Friday, June 27, 2025 1:01:20 PM
Attachments: image002.png

Mr. Delaney:

The required disclosures from NXT Level Holdings, LLC are now three weeks overdue. Please promptly provide them.

Mark Lerner
Partner

Duane Morris LLP
22 Vanderbilt
335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
P: +1 212 404 8714
F: +1 212 692 1020

MALerner@duanemorris.com
www.duanemorris.com

From: Lerner, Mark
Sent: Friday, June 13, 2025 4:38 PM
To: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>
Subject: RE: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430

Mr. Delaney:

Let this email serve as a reminder that we have yet to receive the required initial disclosures under Trademark Rule 2.120(a) (37 C.F.R. §2.120(a)) and Fed. R. Civ. P. Rule 26(a)(1) from NXT Level Holdings. They are now one week late.

Mark Lerner
Partner

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MALerner@duanemorris.com
www.duanemorris.com

From: Lerner, Mark
Sent: Monday, June 9, 2025 1:22 PM
To: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>

Subject: RE: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430

Mr. Delaney,

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Separately, we note that Petitioner failed to serve its required initial disclosures by the June 6, 2025, deadline set forth in the Board's scheduling order. The list of NXT Level Holdings managing partners you provided does not satisfy its obligations in this regard. Please produce the required disclosures immediately. Continued failure to comply with the Board's procedural requirements may necessitate further action.

Regards,

Mark Lerner
Partner

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MALerner@duanemorris.com
www.duanemorris.com

From: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Sent: Friday, June 6, 2025 9:41 PM
To: Lerner, Mark <MALerner@duanemorris.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>
Subject: Re: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430

On Fri, Jun 6, 2025 at 9:40 PM Andrew DeLaney <adelaney@andrewdelaneylaw.com> wrote:

> Mr. Lerner,
>
> Please see information regarding NXT Level Holdings' Managing Partners.

Additionally, please confirm whether you have taken appropriate action to notify all relevant stakeholders including but not limited to shareholders, investors, directors, and key business partners of the pending legal proceeding (Cancellation No. 92087430). As with standard disclosure protocols, any material developments or communications concerning this matter must be transparently shared with such parties.

Please send stakeholder information for NEXT LEVEL PRIVATE. Our 75 interrogatories will be sent next week.

Thank you.

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> You did not miss anything. We did not resubmit any affirmative defenses, though we continue to reserve the right to do so depending what we learn in discovery.
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> **Sent:** Thursday, June 5, 2025 4:02 PM
> **To:** Lerner, Mark <MALerner@duanemorris.com>
> **Cc:** Silva, Lauren C. <LSilva@duanemorris.com>
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> > [redacted]

[redacted]

[redacted]

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[redacted]

On Wed, Apr 23, 2025 at 3:33 PM Lerner, Mark <MALerner@duanemorris.com> wrote:

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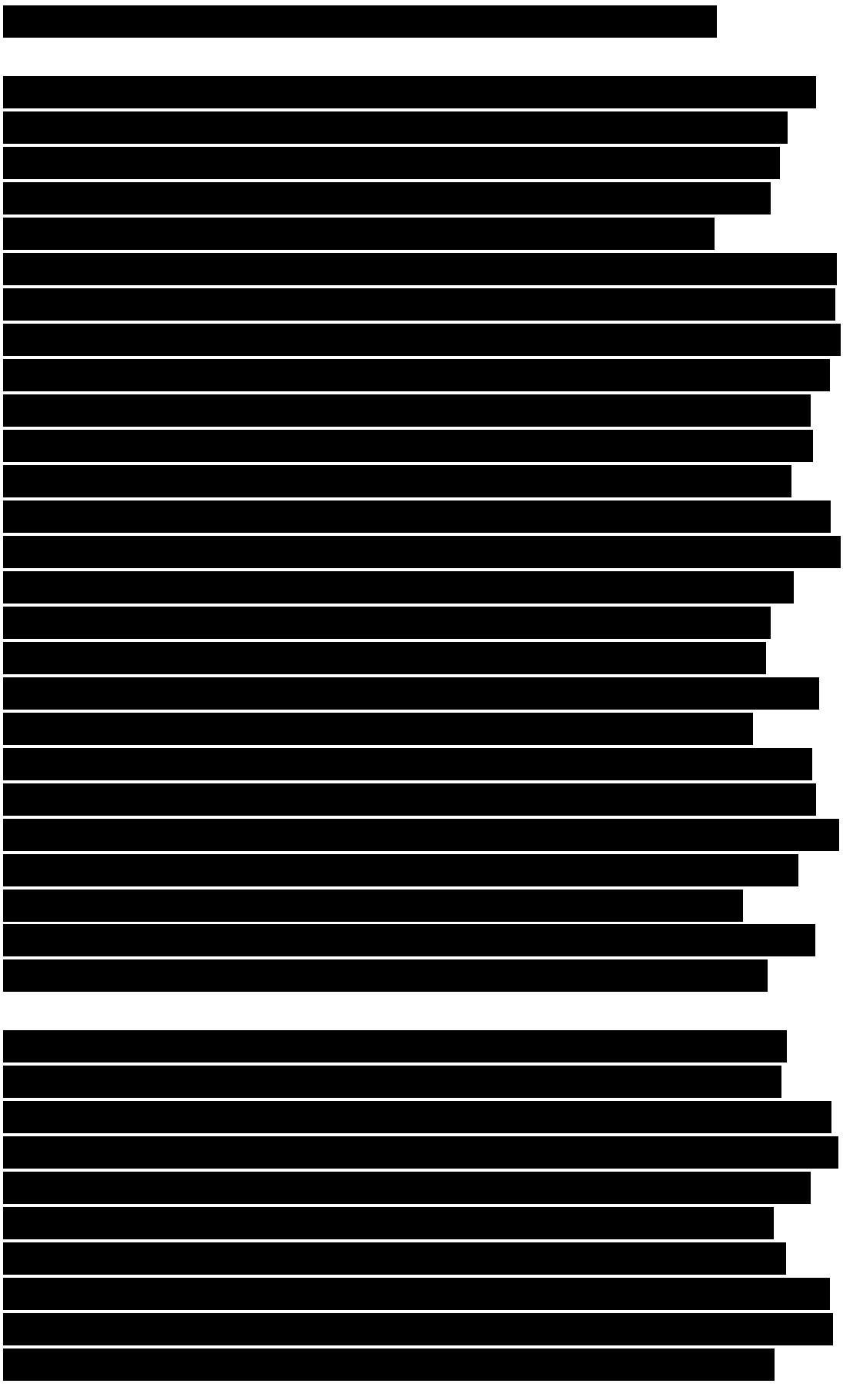
> **FOR SETTLEMENT PURPOSES ONLY**
> **SUBJECT TO FRE 408**
>
> Mr. Delaney:
>
> [redacted]
>
> [redacted]



[redacted]

DuaneMorris

www.duanemorris.com

Mark Lerner
Partner

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New York, NY 10169-0079

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