SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MARSHALL WACE NORTH AMERICA L.P., NICHOLAS NIELSEN, AND JOSHUA LERCHER,

Petitioners,

-against-

CITADEL AMERICAS SERVICES LLC,

Respondent.

In the Matter of Shatz v. Citadel Americas Services LLC Pending Before the American Arbitration Association (Case No. 01-24-0008-3987)

Index No.: 650619/2026
Hon. Justice Andrea Masley

Motion Seq. No.: ___

MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S PROPOSED ORDER TO SHOW CAUSE TO COMPEL MARSHALL WACE NORTH AMERICA L.P. TO COMPLY WITH THE COURT'S JUNE 8, 2026 ORDER

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PRELIMINARY STATEMENT

Citadel Americas Services LLC ("Citadel") reluctantly returns to this Court to seek its intervention. Since this Court's June 8 Order and Decision ("Order"), Marshall Wace North America L.P. ("Marshall Wace" or "MWNA") has spent the better part of three months engaged in a calculated effort to delay and withhold relevant communications in contravention of the Order. This Court ordered Marshall Wace to produce documents in response to an arbitration subpoena issued on January 27, 2026 ("Subpoena") and to engage in good-faith negotiations over custodians and search terms. Instead, it has delayed, stonewalled, and obstructed Citadel's access to evidence, engaging in the meet and confer process in name only. Indeed, despite this Court's Order requiring production, Marshall Wace has produced only a single text chain in twelve weeks (and did so over one month after the Court's Order), has refused to include two key custodians, and has rejected reasonable search term proposals designed to identify the very communications the Court and the arbitration panel have found are both relevant and discoverable.

This application arises in the context of an arbitration before the American Arbitration Association, *Daniel Shatz v. Citadel Americas Services LLC*, AAA Case No. 01-24-0008-3987 ("Arbitration"). The Subpoena seeks communications bearing on Marshall Wace's recruitment of Daniel Shatz from Citadel and on Shatz's involvement in building a competing credit team at Marshall Wace in violation of his contractual obligations to Citadel.

Citadel has made extensive good faith efforts to resolve these disputes without court intervention, offering to forgo review of multiple custodians' electronic communications and mobile devices and presenting a series of iterative, increasingly tailored search term proposals, which Marshall Wace should have been doing itself. Marshall Wace, however, has categorically refused to search any communications of Anthony Clake and Alan Hofmeyr—two of the most important custodians in terms of the issues central to the Arbitration, as they recruited and hired

Shatz as well as pushed for him to lead the build of his new credit team—and this includes refusing to search either of their mobile devices or even to inquire whether relevant messages exist on those devices. And finally, consistent with the obstructive approach the firm has followed to date, Marshall Wace will not agree to run important search terms or take basic steps that persons or entities with discovery obligations are expected to take to fine tune searches in order to eliminate false positives. Marshall Wace's conduct falls far short of its obligations to engage in diligent, good faith efforts to identify and produce responsive documents required under the Order.[1]

It is also worth noting here that Marshall Wace has consistently declined to submit Subpoena-related disputes to the Arbitration panel for binding resolution, as is its prerogative as a non-party that has not consented to the panel's jurisdiction. *See, e.g.*, NYSCEF No. 1 ¶ 41 (stating Marshall Wace has "not consented to the jurisdiction of the AAA"); Knox Aff. ¶ 34, Ex. 3 ("The Panel acknowledges that by communicating with the Panel, MWNA asserts that it is not submitting itself to the Panel's jurisdiction."); Knox Aff. ¶ 53, Ex. 8 (offering only to go to the Arbitration panel "in the first instance . . . to hopefully resolve these issues"). The consequence, however, is that this Court is the only forum in which these disputes can be resolved, and the only forum that can enforce its own Order.

The Court's intervention is thus, regrettably, necessary to compel compliance with the

[1] Prior to filing this motion, the parties have had extensive email correspondence regarding the subject matter of this filing and have met and conferred five times. Although Marshall Wace has agreed to another meet and confer, it has already made clear that it will not agree under any circumstances to the three above requests. Moreover, its delay tactics and lack of good faith engagement have led Citadel to the determination that additional efforts to meet and confer will not be productive absent instruction from this Court. We advised Marshall Wace on August 27 that we planned to file this application. Affirmation of Jeffrey H. Knox ("Knox Aff.") ¶ 53, Ex. 8. On August 28, it confirmed its prior positions. *Id.* As noted herein, it is regrettable that we are back before this Court, and the decision to seek intervention was made only after significant efforts to come to a resolution with Marshall Wace.

Order and to ensure that Citadel and the Arbitration panel get access to the evidence to which they are entitled.

RELIEF REQUESTED

Citadel respectfully requests that the Court:

1) Order Marshall Wace to include Anthony Clake and Alan Hofmeyr as custodians;
2) Order Marshall Wace to determine whether responsive communications exist on Clake's and Hofmeyr's mobile devices, to disclose the results of that inquiry, and to produce any responsive communications identified, within fourteen days of the Court's order;
3) Order Marshall Wace to run reasonable search terms designed to capture other relevant communications related to the recruitment of Daniel Shatz and Joshua Lercher and their involvement in building a competing credit group at Marshall Wace, and to disclose the hit count for each term within fourteen days of the Court's order; and
4) Award Citadel its costs, disbursements, and reasonable attorneys' fees incurred in bringing this application pursuant to 22 NYCRR § 130.1.

STATEMENT OF FACTS

A. Background of the Arbitration and Petitioner

As the Court may recall, the underlying Arbitration arises from an employment dispute between Shatz, a former portfolio manager in Citadel's Global Credit group, and Citadel. Shatz resigned from Citadel in June 2023 for a position at Marshall Wace, one of Citadel's direct competitors, to establish and lead a new credit group. In the Arbitration ([redacted]), Citadel has alleged, among other things, that Shatz breached his fiduciary duties and violated his contractual covenants with Citadel. Those allegations are predicated in part on Shatz's 2023 and

2024 misconduct in connection with his recruitment to Marshall Wace, including his communications with Marshall Wace executives such as Clake, Hofmeyr, and Nicholas Nielsen, in furtherance of building a competitive credit business in violation of his contractual obligations to Citadel; his collaboration with Joshua Lercher to build Marshall Wace's Global Credit group while Shatz was still employed by Citadel and during his post-employment June 2023 to September 2024 non-compete period; and his misappropriation of Citadel's confidential information to benefit his new employer.

B. The Subpoena and This Court's June 8, 2026 Production Order

On January 27, 2026, the Arbitration panel authorized Citadel to issue the Subpoena to Marshall Wace seeking documents and communications relating to Marshall Wace's recruitment of Shatz and Lercher, and to Shatz's role in building a credit team at Marshall Wace in violation of his contractual obligations to Citadel. NYSCEF No. 2. "Marshall Wace" is defined in the Subpoena to include "Marshall Wace North America L.P., Marshall Wace Asset Management, ***any affiliate***, agents, employees, representatives, counsel representing Marshall Wace, and others acting on Marshall Wace's behalf**,** including internal or external recruiters." *Id.* at 4 (emphasis added). Request Nos. 1 and 3 of the Subpoena seek all "Communications," expressly defined to include "text messaging, electronic conversations, instant text messages, iMessages, Signal messages, Microsoft Teams communications, Zoom communications, and Bloomberg messages." *Id*. at 5, 10. Request No. 2 seeks "all text messages" and tracks the same definitional language. *Id.* at 10.

On February 5, 2026, in the midst of the Arbitration hearing that began on February 2, Marshall Wace filed a petition in this Court seeking, among other things, to quash the Subpoena. NYSCEF No. 1. Citadel opposed the petition and cross moved to compel enforcement of the

Subpoena. NYSCEF No. 20. This Court held oral argument on the motions on February 24, 2026. NYSCEF No. 38.

On June 8, 2026, this Court entered its Order requiring Marshall Wace to produce documents responsive to the Subpoena. NYSCEF No. 39. As of the date of this application, twelve weeks have elapsed since entry of the Order.

C. Marshall Wace's Non-Compliance with the Subpoena and This Court's Order

In the twelve weeks since the Order, Marshall Wace has produced only the text message chain between Shatz and Nick Nielsen—a document this Court had specifically ordered produced—and took over a month to produce just that one item. Knox Aff. ¶ 6.[2]

Over three and a half weeks prior to this application, Marshall Wace represented that it was reviewing documents based on its own narrow selection of three custodians and unduly limited search terms. *Id.* ¶ 37. To date, however, it has not produced a single additional document. The withholding of relevant documents appears designed to prevent Citadel and the Arbitration panel from reviewing documents critical to the Arbitration proceedings.

D. Marshall Wace's Refusal to Include Key Custodians

In a show of good faith during the meet-and-confer process, Citadel has offered to exclude four of the nine custodians it originally requested. *Id.* ¶¶ 8–9, 39. Marshall Wace, by contrast, has not moved from its initial position that it will search for documents only from three custodians, Nielsen, a Partner and Head of Quantitative Trading; Lercher; and Sophie Kellman, a former internal recruiter; and has categorically refused to search two of the most important custodians,

[2] Remarkably, Marshall Wace has asserted that it has been "moving as expeditiously as possible" in the discovery process. *Id.* ¶ 53, Ex. 8.

Clake and Hofmeyr. *Id.* ¶¶ 8, 40.[3]

Marshall Wace's position is neither principled nor reasonable. Clake and Hofmeyr are front-and-center on the two key issues that required the Subpoena in the first place: (1) Marshall Wace's recruitment of Shatz; and (2) Shatz's involvement in building the credit team at Marshall Wace in violation of his contractual obligations to Citadel. *Id.* ¶ 11. During the February hearing before this Court, Citadel specifically referenced Clake and Hofmeyr (along with Nielsen) as the three principal Marshall Wace custodians from whom it was seeking responsive materials. *See* NYSCEF No. 38 at 33:24–34:15.

The relevance—indeed, the significance—of Clake's and Hofmeyr's communications is clear. Clake and Hofmeyr led Shatz's recruitment: (1) [redacted] Knox Aff. ¶¶ 12-16, 18-20, 22, Ex. 1.

And perhaps even more significantly, Clake and Hofmeyr were laser-focused on Shatz

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3 At the first meet and confer, Citadel requested the inclusion of nine custodians, and Marshall Wace only offered three. Citadel subsequently offered to exclude three of the remaining six in dispute. Then, on August 10, 2026, in a good-faith effort to resolve this matter, Citadel offered a significant compromise: even though the Subpoena expressly calls for the production of text messages, Citadel agreed to hold in abeyance its request for a review of Clake's and Hofmeyr's text messaging on mobile devices pending completion of the e-communications review and to exclude Marshall Wace North America CEO Todd Builione as a custodian ([redacted]). Knox Aff. ¶ 39. In exchange, Citadel asked only that Marshall Wace include Clake and Hofmeyr as custodians for their Marshall Wace-assigned emails and other electronic communications. *Id.* Marshall Wace rejected the proposal outright. *Id.* ¶ 40.

being ***personally responsible for building the new credit team and doing so prior to his start date***. *Id*. ¶¶ 13, 16, 18–20, Ex. 1. Communications Shatz has produced in the Arbitration make this clear. A principal goal in hiring Shatz was that Clake and Hofmeyr wanted "[redacted]" *Id*. ¶ 13. Clake told Shatz that he was "[redacted]" and that he expected that Shatz and Nielsen would "[redacted]" he also discussed giving Shatz [redacted]" *Id*. ¶¶ 16, 18–19. And, in response to learning that Shatz had just given his notice to Citadel, Clake told Shatz that [redacted] *Id*. ¶ 20. Just a few weeks later—during Shatz's non-compete period—Shatz met Clake and Hofmeyr in London. *Id*. ¶ 22.

Both the Court and the Arbitration panel have indicated that communications reflecting the involvement of Shatz and Lercher in the identification, recruitment, and hiring of credit professionals to Marshall Wace during Shatz's non-compete period are discoverable. *See, e.g.*, NYSCEF No. 39 at 9; Knox Aff. ¶ 34, Ex. 2 (stating that "communications between and among MWNA personnel regarding the recruitment of Lercher and Shatz are discoverable, as are communications between and among MWNA, Shatz, and Lercher regarding the recruitment of a Global Credit team regarding Shatz's and Lercher's actual or expected activities in aid of those efforts"). It is disingenuous, and in disregard of the record, for Marshall Wace to continue to claim that there is "no reasonable expectation that their email communications have unique information pertaining to Mr. Shatz and the issues in the Arbitration." Knox Aff. Ex. 8.

E. Marshall Wace's Unreasonable Approach to Identifying Relevant Documents

In the months since this Court's Order, Citadel has made a series of iterative and increasingly narrowed search term proposals to Marshall Wace. As this Court is well aware, running search terms, particularly with e-discovery tools available to sophisticated parties like Citadel and Marshall Wace, is relatively simple and neither time-consuming nor onerous. *Id.* ¶ 48, 51.

Marshall Wace, however, has taken weeks at a time to respond to Citadel's search proposals and has maintained consistently that it will not run several terms on the basis of relevance, claiming that doing so would be *per se* unreasonable or likely to involve competitive trade secret information (a bizarre position to take, generally, but especially on documents that have not yet been identified much less reviewed). *Id.* ¶ 41, Ex. 5. Moreover, these documents are subject to a protective order, and this Court has already ordered that any documents produced in response to the Order shall be used for the purpose of the Arbitration only and may only be shared with the members of the arbitration teams. *See* NYSCEF No. 20 at 16; NYSCEF No. 39 at 9. At the most basic level, Marshall Wace is generally agreeing to run the words "Shatz" and "Lercher" as search terms, but refusing to develop reasonable searches to capture instances where the custodians refer to them only by their first names, "Dan" and "Josh." Marshall Wace then justifies the decision by creating a false appearance of burden by refusing to take basic steps to reduce false positives. *Id.* ¶¶ 41–43, 45, Exs. 2, 5. For example, Marshall Wace argued that it searched "Dan" in the same communication as "PM" (a common abbreviation for "portfolio manager," a position Marshall Wace was recruiting for), which yielded over 1.5 million hits across Lercher's electronic communications for an 11-month period. *Id.* ¶ 42, Ex. 5. But Marshall Wace evidently did not take basic steps to exclude instances where "PM" appears in the date header of emails, or exclude obvious references to other individuals named "Dan." *Id.* ¶¶ 42–43.

Thus, as of today, twelve weeks after the Court's Order and after several meet-and-confers, Marshall Wace still will not even commit to run, determine hit counts for, or review hits for several straightforward searches, many of which include the term "Dan," which we know from other communications is how Marshall Wace employees often referred to Shatz.[4]

ARGUMENT

New York "observes a very liberal discovery policy as regards to motions to compel." *Gottwald v. Geragos*, 61 Misc. 3d 1214(A), at *13 (N.Y. Sup. Ct. 2018). "[C]ompliance with a disclosure order requires both a timely response and one that evinces a good-faith effort to address the requests meaningfully." *Kihl v. Pfeffer*, 94 N.Y.2d 118, 123 (1999). "If a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order . . . the party seeking disclosure may move to compel compliance or a response." CPLR § 3124.

Marshall Wace is a non-party, but that status neither excuses non-compliance with a court order nor shifts the burden here. CPLR § 3101(a)(4) requires only that the subpoenaing party give notice "stating the circumstances or reasons such disclosure is sought or required," and once that notice is given, the burden rests on the party moving to quash to establish that the materials sought are "utterly irrelevant" to the underlying dispute or that "the futility of the process to uncover anything legitimate is inevitable or obvious." *Matter of Kapon v. Koch*, 23 N.Y.3d 32, 34 (2014). Marshall Wace has already litigated and lost that question: it petitioned this Court to quash the Subpoena, and the Court rejected its objections and ordered production. *See* NYSCEF No. 1;

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[4] As one example, Marshall Wace has refused to search for communications containing the word "Dan" within 25 words of the terms "portfolio manager" or "analyst," which are positions Marshall Wace needed to fill on Shatz's credit team and were among "[redacted]" Thus, if Lercher sent an email noting that he "spoke with Dan last night about a new portfolio manager, and he gave me a name," Marshall Wace would never see it, let alone produce it. Marshall Wace has similarly refused to search Nielsen's communications containing the terms "Dan" within 15 words of certain individuals identified as candidates connected to Shatz and Citadel, including "[redacted]" "[redacted]" or "[redacted]" Omitting this string would cause Marshall Wace to miss an email from Nielsen stating that "Dan met with [redacted]. He asked us to bring him in." *Id*. ¶¶ 41, 42, 44, 45, Exs. 5–7. Such communications would be highly relevant.

NYSCEF No. 39. The relevance of the categories at issue is settled. The only question now before the Court is whether Marshall Wace's response to the Order reflects the timely, good-faith effort the Order and *Kihl* require.

A. Marshall Wace Should be Ordered to Include Clake and Hofmeyr as Custodians

1. Clake and Hofmeyr Are Central to the Issues in the Arbitration

As set forth above, Clake and Hofmeyr are central to both fact issues that required the Subpoena: (1) Marshall Wace's recruitment of Shatz; and (2) Shatz's involvement in building the credit team at Marshall Wace in violation of his obligations to Citadel. As noted above, [redacted] Knox Aff. ¶¶ 13–16, 18–20, Ex. 1. During the February hearing before the Court, Citadel specifically identified Clake, Hofmeyr, and Nielsen as the three principal Marshall Wace custodians from whom it was seeking materials, as their responsive materials are necessary in order to have a complete record to assist the Arbitration panel. NYSCEF No. 38 at 33:24–34:15; *see also Seaport Glob. Holdings LLC v. Dusansky*, 2022 NY Slip Op 50627(U), at 2–4 (N.Y. Sup. Ct. 2022) (granting motion to compel additional ESI discovery where moving party identified evidence showing additional custodians may possess relevant information and requiring responding party to confer regarding search terms and anticipated hit volume). The Arbitration panel has now, on two separate occasions, affirmed its position that communications related to Shatz's involvement in the recruitment of credit professionals during his non-compete period are discoverable and reflect information it feels it has been deprived of. NYSCEF No. 27; Knox Aff. ¶ 34, Ex. 3.

2. Marshall Wace's Objections Are Without Merit

Marshall Wace's objections to including Clake and Hofmeyr as custodians have been shifting and inconsistent. Marshall Wace no longer disputes that Clake and Hofmeyr were heavily involved in Shatz's recruitment and had numerous conversations about Shatz's role in building the credit team; instead, it generically cites "burden" and "harassment," while refusing to access those communications or even determine hit counts. *Id*. ¶ 40, Ex. 5. Marshall Wace has argued that any relevant communications involving Clake or Hofmeyr would already be captured in Marshall Wace's review of other custodians' communications, *i.e.*, that Clake and Hofmeyr never discussed Shatz without copying Nielsen or lower-level employees, but this assumption is baseless absent a review of the underlying communications. *Id*. ¶¶ 33, 40, Exs. 2, 5.

Rather, Clake's and Hofmeyr's communications can reasonably be expected to contain unique evaluations, instructions, and negotiating positions not captured through other custodians. By way of example, [redacted]. *Id*. Ex. 1. Clake, in turn, [redacted]" *Id*. ¶ 14. In April 2023, Nielsen [redacted]. *Id*. ¶ 15, Ex. 1.

Regardless, none of Marshall Wace's stated rationales justify the wholesale refusal to include these two key decision-makers as custodians. *See Utilisave, LLC v. Fox Horan & Camerini, LLP*, 2018 N.Y. Slip Op. 33320(U), at *11–12 (N.Y. Sup. Ct. Dec. 19, 2018) (granting motion to compel ESI-related discovery where responding party's burden objections were conclusory). Without any hit counts, any claims of burden are specious and are further evidence that Marshall Wace is refusing to meet and confer in good faith.[5] Clake and Hofmeyr are unquestionably relevant and necessary custodians for any good faith response to the Subpoena.

Marshall Wace has also claimed that simply because Clake and Hofmeyr are high-ranking executives, Citadel's request to include them as custodians is "burdensome" and "harassing." Knox Aff. Ex. 5. But New York courts do not recognize a categorical rule that senior executives are exempt from discovery where, as here, there is a reasonable basis to conclude they have relevant knowledge. *See, e.g.*, *Matter of Thomson v. Zillow, Inc.*, 2016 NY Slip Op 26151 (N.Y. Sup. Ct. May 2, 2016) (denying motion to quash subpoenas directed to CEO and chief strategy officer where there was a reasonable basis to conclude they had relevant knowledge); *Matter of Koch*, 23 N.Y.3d at 38 (holding that "so long as the disclosure sought is relevant to the prosecution or defense of an action, it must be provided by the nonparty").

Marshall Wace has also argued that Clake and Hofmeyr are technically employees of a U.K. entity (Marshall Wace LLP) rather than the entities expressly named in the Subpoena. *See, e.g.*, Knox Aff. Ex. 8. To the contrary, their communications are directly covered by the Subpoena, are evidently readily accessible for review via Marshall Wace's Global Relay platform, and raise no data privacy restrictions that cannot be simply addressed through targeted redactions. It is also notable that Marshall Wace has already produced numerous communications from U.K.-based Marshall Wace employees, including Clake and Hofmeyr. *Id.* ¶ 25; NYSCEF No. 1 ¶¶ 24, 30.

"Marshall Wace" is defined in the Subpoena to include "Marshall Wace North America L.P., Marshall Wace Asset Management, ***any affiliate***, agents, employees, representatives, counsel

[5] Citadel will, of course, address any issues with respect to burden following the provision of hit counts.

representing Marshall Wace, and others acting on Marshall Wace's behalf." NYSCEF No. 2 at 4. Marshall Wace never raised any objections to this definition in its Petition, and indeed acknowledged that it "is primarily an investment management firm providing alternative investment solutions and is ***affiliated*** with Marshall Wace LLP, a British hedge fund." NYSCEF No. 2 at 4 (emphasis added).[6]

Clake and Hofmeyr are senior executives of Marshall Wace's "alternative investment solutions" asset management business or "MWAM", *see* www.mwam.com— which is expressly referenced in the Subpoena—and the email domain Clake and Hofmeyr use in the U.K. is the same domain as U.S.-based MWAM employees, "@mwam.com." NYSCEF No. 2 at 4; Knox Aff ¶ 20. They act on behalf of both Marshall Wace and its U.K. affiliate, including by hiring Shatz, and [redacted]. *Id.* ¶¶ 9, 13–16, Ex. 1. Clake's and Hofmeyr's email signatures include the identical disclaimer that they are communicating with clients and investors as an "[redacted]" *Id.* ¶¶ 17, 21. It is evident that Clake and Hofmeyr's emails are accessible from Marshall Wace's Global Relay system.[7] Marshall Wace has previously produced communications from @mwam.com email addresses belonging to U.K.-based employees, including communications where the only email participants were Shatz and Hofmeyr or Shatz, Clake, and Clake's administrative assistant. *See*,

6 *See also* https://www.sec.gov/Archives/edgar/data/1318757/000090266422001662/p22-0332sc13g.htm (stating that Marshall Wace LLP "has delegated certain authority for US operations and trading to Marshall Wace North America L.P., an investment adviser registered under Section 203 of the Investment Advisers Act of 1940").

7 Global Relay is primarily an archiving and surveillance tool that enables financial institutions to comply with record-keeping obligations. *See* GLOBAL RELAY (last visited Aug. 30, 2026), https://www.globalrelay.com//. It is not an e-discovery platform, such that firms that use Global Relay often partner with an e-discovery tool or vendor to review and produce discovery documents. Knox Aff. ¶ 49.

e.g., *id.* ¶ 21; *see also* NYSCEF No. 1 ¶¶ 24, 30 (confirming Marshall Wace produced "all communications that ***MWNA employees*** exchanged via MWNA email with Shatz"). Marshall Wace is also registered with the U.S. Securities and Exchange Commission as an investment adviser, *see* www.mwam.com, and is required to maintain various books and records, including communications of its associated or related persons. *See* 17 CFR § 275.204-2.

Further, under New York law, possession, custody, or control encompasses constructive possession, including the practical ability to obtain the documents sought in discovery. *See Hinduja Global Solutions, Inc. v. Hbi Group, Inc.*, 2025 N.Y. Misc. LEXIS 27826, at *16 (N.Y. Sup. Ct. Aug. 1, 2025) (citing *Commonwealth of Northern Mariana Islands v. Canadian Imperial Bank of Commerce*, 21 N.Y.3d 55, 62–63 (2013)). Marshall Wace has control over Clake's and Hofmeyr's Marshall Wace LLP emails given the affiliations amongst these entities, including because they share an email domain, Clake and Hofmeyr are high ranking executives of both entities and conduct business on behalf of both, and because it has the practical ability to obtain the emails. Knox Aff. ¶13–15, 17, 19, 21, 25; *see also Coventry Capital US LLC v. EEA Life Settlements, Inc.*, 334 F.R.D. 68, 70 (S.D.N.Y. 2020) (affirming order compelling defendant to search for and produce documents held by its U.K. affiliate and affiliated fund and holding Rule 34 "control" includes party's practical ability to obtain documents in ordinary course of business, even without contractual right to demand them); *Eletson Holdings & Eletson Corp. v. Levona Holdings, Ltd.*, 2026 WL 84510, at *22–24 (S.D.N.Y. Jan. 12, 2026) (finding control is construed broadly and requiring U.S. entity to produce Marshall Islands non-party's documents where evidence established, among other factors, that entities shared offices, email systems, principals, and personnel to conduct business and had access to foreign entity's files); *Hinduja Global Solutions, Inc.*, 2025 N.Y. Misc. LEXIS 27826 at *16–17 (ordering subpoenaed party to produce its controller's documents where he was a principal of the subpoenaed party, attended its management meetings, and was involved in its personnel and financial decisions).

B. Marshall Wace Should be Ordered to Determine Whether Responsive Communications Exist on Clake's and Hofmeyr's Personal Mobile Devices, Disclose the Results of the Inquiry, and Produce Responsive Communications Within Fourteen Days of the Issuance of an Order

Even though the Subpoena expressly includes mobile device communications with the definition of "Communications," Marshall Wace has refused to search Clake's or Hofmeyr's cell phones or even ask them if they have relevant messages, claiming that (1) this would impose an undue burden; (2) Marshall Wace employees' phones are not the property of Marshall Wace North America nor within its custody, possession, or control; (3) the firm's policy prohibiting business communications on personal devices would prevent any messages from existing; (4) Clake and Hofmeyr, as U.K.-based employees, are beyond the scope of the Subpoena; and (5) U.K. data privacy law prohibits the search and production of such communications. Knox Aff. ¶¶ 27, Exs. 1–2, 5.

In addition, New York courts routinely require entities to search their employees' mobile devices in responding to discovery requests where those devices are used for business communications. *See, e.g.*, *Dorilton Capital Mgmt. LLC v. Stilus LLC*, 2024 WL 2302293, at *2–4 (N.Y. Sup. Ct. May 21, 2024) (finding employee was under his employer's control and ordering production of his text messages from his personal mobile device); *Smith v. Pergola 36 LLC*, 2022 WL 17832506, at *4 (S.D.N.Y. Dec. 21, 2022) ("[A] party is deemed to control documents that it has the legal right or the practical ability to obtain—even where those documents are in the physical possession of non-parties."). Here again, Marshall Wace should not be permitted to claim burden when it has not undertaken even the most basic of steps—such as speaking to Clake and

Hofmeyr about their texting practices—to ascertain the volume of relevant communications.[8] Knox Aff. ¶ 24.

Nor can Marshall Wace hide behind the firm's electronic communications policy. Marshall Wace previously argued against producing Nielsen's text messages, claiming that any relevant, business-related communications would have been captured by its policy, *see* NYSCEF No. 1 ¶ 70, but last month, Marshall Wace produced the single text message chain between Shatz and Nielsen demonstrating that they—in disregard of the firm's communications policy—engaged in business and recruiting-related communications via text message. Knox Aff. ¶¶ 6, Ex. 1.

Marshall Wace's invocation of U.K. data privacy law is also unavailing. It has identified no provision of U.K. law that bars this production, submitted no declaration of U.K. counsel, and has ignored that the party resisting discovery on the basis of foreign law bears the burden of establishing that the law actually prohibits it. As an SEC-registered investment adviser, it is required to preserve and surveil business-related communications. 17 CFR § 275.204-2; Knox Aff. ¶ 17. Nor does the U.K. General Data Protection Regulation ("GDPR") bar production. To the contrary, it expressly permits the processing and transfer of personal data necessary for the establishment, exercise, or defense of legal claims. U.K. GDPR arts. 6(1)(f), 49(1)(e). Citadel understands that Clake and Hofmeyr, like other Marshall Wace employees, are required to forward business-related mobile communications to a Marshall Wace email domain under firm policy and SEC recordkeeping requirements. *Id.* Ex. 2. That policy establishes both that Marshall Wace is entitled to these communications and that Clake and Hofmeyr have no expectation of privacy in them. It also disposes of Marshall Wace's suggestion that its personal-device policy makes any

[8] Unlike with respect to Clake and Hofmeyr, Marshall Wace inquired with Todd Builione, Marshall Wace CEO of North America, whether he had off-channel communications with Shatz or text messages responsive to the Subpoena. Knox Aff. ¶ 23.

inquiry unnecessary: if the policy was followed, the messages are Marshall Wace's to collect and produce; if it was not, the messages exist only on the devices and must be collected there. Either way, Marshall Wace cannot answer that question—or discharge its obligations under the Order—without asking Clake and Hofmeyr whether responsive messages exist. At minimum, the Court should direct Marshall Wace to make that inquiry and to disclose its results.

Significantly, there is no genuine risk of unprotected disclosure here. The Arbitration is confidential, and the parties have entered a protective order in the Arbitration that layers further protection on top of that baseline—any production Marshall Wace makes would be governed by it. *See supra* at 8. Further, while Citadel believes the protections already in place are more than adequate, Citadel would be prepared to accept additional safeguards should the Court consider them warranted, including, for example, targeted redaction of personal data unrelated to the issues in the Arbitration. What Marshall Wace cannot do, however, is withhold documents under a privacy regime it has not identified, has not previously observed, and that on its face permits this production.

C. The Court Should Order Marshall Wace to Run Reasonable, Additional Search Terms and Disclose Hit Counts Within Fourteen Days of the Issuance of an Order

Rather than use the past seven months productively to "consider compliance with the Subpoenas," NYSCEF Doc. No. 39 at 10, Marshall Wace has delayed, stonewalled, and provided incomplete and misleading answers to straightforward questions about the search terms it is willing to run to locate responsive documents, all of which has unnecessarily drawn out the discovery negotiation process and defies this Court's Order and the good faith expectations therein. *See Naramore v. Mount Sinai Health Sys., Inc.*, 227 A.D.3d 528, 528–29 (1st Dep't 2024) (affirming denial of reconsideration where defendants failed to comply with order directing parties to "meet and confer IN GOOD FAITH" regarding discovery before raising disputes, and holding that a significant ESI "hit count," without more, did not establish that plaintiff's proposed search terms were overbroad or unduly burdensome).

To date, Citadel and Marshall Wace have engaged in five meet and confers and Citadel has presented a series of increasingly tailored search terms. Citadel's searches target communications that are directly probative of the central issues in the Arbitration: the recruitment of Shatz and Lercher to Marshall Wace; and Shatz's (and Lercher's, on Shatz's behalf) recruitment of or input regarding candidates for Marshall Wace's Global Credit group during Shatz's non-compete period (including of individuals hired to, or whom Citadel understands interviewed for positions with, Marshall Wace's Global Credit group). Both the Court and the Arbitration panel have emphasized that these kinds of communications are relevant and discoverable. NYSCEF No. 39 at 9; Knox Aff. ¶ 34, Ex. 3.

Marshall Wace, by contrast, has rejected running numerous searches to even determine hit counts—let alone review the results. The refusal is unjustified. Its claim that running these searches would be *per se* unreasonable or would risk revealing competitive trade secrets is baseless: proximity searches of the kind proposed here are standard in commercial litigation involving sophisticated parties, and any privilege or trade secret objections can be addressed at the review stage through appropriate protections. *Id.* ¶¶ 41, 45, 50–51, Ex. 5.

Citadel therefore requests that the Court order Marshall Wace to promptly run the search terms in Exhibit 6 to the affirmation of Jeffrey H. Knox and to disclose the hit count for each. *Silva v. Giorgio Armani Corp.*, 2020 WL 6746628, at *9–14; (N.Y. Sup. Ct. Nov. 17, 2020) (addressing CPLR § 3124 motion concerning ESI search terms and hit reports and directing responding party to supplement its hit reports by identifying whether deduplication was used and by providing more individualized hit-count information); *RSM United States LLP v. Notes*, 2024

N.Y. Misc. LEXIS 66096, at *2–3 (N.Y. Sup. Ct. June 14, 2024) (ordering defendant to run plaintiff's narrowed search terms and provide an affirmation or affidavit from an e-discovery vendor setting forth the results of the search term hit report).

D. The Court Should Award Citadel Costs and Fees

Finally, Citadel respectfully requests that the Court award the costs and attorneys' fees Citadel has incurred in bringing this application. Marshall Wace has produced a single document in the twelve weeks since the Order, has refused to run terms it has never tested, and has declined even to ask two custodians whether responsive messages exist. *Kihl* makes clear that compliance with a disclosure order requires "both a timely response and one that evinces a good-faith effort to address the requests meaningfully," 94 N.Y.2d at 123, and an order carrying no consequence for non-compliance would invite a third round of the same conduct. Marshall Wace's conduct is frivolous within the meaning of 22 NYCRR § 130-1.1(c)(2), which reaches conduct "undertaken primarily to delay or prolong the resolution of the litigation," and an award of costs and fees is warranted both under Part 130 and pursuant to the Court's authority to enforce its own Order. *See* 22 NYCRR § 130.1.

CONCLUSION

For the foregoing reasons, Citadel respectfully requests that the Court:

1) Order Marshall Wace to include Anthony Clake and Alan Hofmeyr as custodians;
2) Order Marshall Wace to determine whether responsive communications exist on Clake's and Hofmeyr's mobile devices, to disclose the results of that inquiry, and to produce any responsive communications identified, within fourteen days of the Court's order;
3) Order Marshall Wace to run reasonable search terms designed to capture other relevant communications related to the recruitment of Daniel Shatz and Joshua

Lercher and their involvement in building a competing credit group at Marshall Wace, and to disclose the hit count for each term within fourteen days of the Court's order; and

4) Award Citadel its costs, disbursements, and reasonable attorneys' fees incurred in bringing this application pursuant to 22 NYCRR § 130.1.

Dated: New York, New York
August 31, 2026

SIMPSON THACHER & BARTLETT LLP

By *<u>/s/ Jonathan K. Youngwood</u>*

Jonathan K. Youngwood
Michael J. Osnato, Jr.
Alison Sher
Jonathan S. Kaplan
425 Lexington Avenue
New York, New York 10017
Tel: (212) 455-7226
Fax: (212) 455-2502
jyoungwood@stblaw.com
michael.osnato@stblaw.com
alison.sher@stblaw.com
jonathan.kaplan@stblaw.com

Jeffrey H. Knox
900 G Street, N.W.
Washington, D.C. 2001
Tel.: (202) 636-5500
Fax: (202) 636-5502
jeffrey.knox@stblaw.com

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Dated: New York, New York
August 31, 2026

*_/s/ Jonathan K. Youngwood_*
Jonathan K. Youngwood