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

In the Matter of the Application of

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

Petitioners,

For an Order Pursuant to CPLR §§ 2304, 3103 and 7502 Quashing Subpoenas, and for a Protective Order, served by

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.:

VERIFIED PETITION

----------X

Petitioners Marshall Wace North America L.P. ("Marshall Wace" or "MWNA"), Nicholas Nielsen ("Nielsen") and Joshua Lercher ("Lercher", together with MWNA and Nielsen, "Petitioners"), by and through their attorneys, Morrison Cohen LLP, respectfully allege as follows:

PRELIMINARY STATEMENT

1. Petitioners bring this special proceeding to quash three (3) nonparty subpoenas, all dated January 27, 2026, and respectively issued to them on short and inadequate notice, in connection with an arbitration proceeding to which Petitioners are not parties (the "Subpoenas").

2. The Subpoenas should be quashed in their entirety or, in the alternative, the Court should issue a protective order that precludes production of any further documents and does not require any hearing testimony from Petitioners in response to the Subpoenas because, among other reasons set forth below, each of the Subpoenas seeks testimony and/or documents that (a) are

unnecessary for the resolution of the arbitration, (b) are duplicative of prior requests and have already been provided in good faith by Petitioners, (c) can properly be obtained from the parties to the arbitration rather than Petitioners; (d) impinge on the trade secrets, and confidential and proprietary information and commercially sensitive business practices of MWNA; (e) are utterly irrelevant and/or cumulative to the claims at issue in the arbitration; and/or (f) were sought without sufficient notice.

3. The Subpoenas were requested by respondent Citadel Americas Services LLC ("Respondent" or Citadel"), part of one of the largest, multinational hedge funds and financial services companies in the world, and are designed to unnecessarily harass, burden and inconvenience MWNA, a direct competitor, and two of MWNA's high-level employees. The Subpoenas are simply a means by which Citadel, the proverbial "800 pound gorilla" in the alternative investment solution space, can aggressively push back, disincentivize competition, and extract both payback and proprietary confidential information from a competitor in connection with one of Citadel's former employees, Daniel Shatz ("Shatz"), going to work at MWNA after taking fifteen months of "garden-leave" following his departure from Citadel, during which he "sat out" and was not employed.

4. Shatz had been a top credit portfolio manager at Citadel. As part of MWNA's ongoing efforts to attract and recruit top talent in the industry for employment at MWNA, especially when building out a new business strategy as MWNA did in ramping up its credit portfolio practice, MWNA was able to lure Shatz away from Citadel, its competitor. Citadel is well known for its aggressive tactics and has been accused of engaging in bullying and intimidation, in particular with competitors, when it does not get its way.

5. The underlying arbitration in which the Subpoenas were issued is between Mr.

Shatz and Citadel and is currently pending before the American Arbitration Association ("AAA"), captioned *Shatz v. Citadel Americas Services LLC*, Case No. 01-24-0008-3987 (the "Arbitration"). None of Petitioners is a party to the Arbitration. Upon information and belief, the Arbitration concerns Shatz's allegations that he was retaliated against by Citadel for complaining about potential securities violations and that Citadel is liable to him for significant eight figure deferred compensation withheld even after Shatz served his 15 month "garden-leave" period.

6. Tellingly, Citadel – no stranger to litigation – did not sue or bring any claims in the Arbitration against MWNA undoubtedly because it had no evidence that Shatz misappropriated any confidential or proprietary information from it nor any evidence that MWNA received any benefit from any action of Shatz.

7. Attached hereto, respective as **Exhibits A through C** are true and correct copies of the Subpoenas, consisting of the following:

a. the Arbitration Summons to Testify and Present Documentary Evidence at an Arbitration Hearing to MWNA, dated January 27, 2026 (**Exhibit A**, the "MWNA Subpoena");

b. the Arbitration Summons to Testify and Present Documentary Evidence at an Arbitration Hearing to Nicholas Nielsen, dated January 27, 2026 (**Exhibit B**, the "Nielsen Subpoena"); and

c. the Arbitration Summons to Testify at an Arbitration Hearing to Joshua Lercher, dated January 27, 2026 (**Exhibit C**, the "Lercher Subpoena").

The Subpoenas were all made returnable on February 9, 2026.

8. The non-party Subpoenas are improper and inappropriate for the reasons set forth herein and in the accompanying affirmations. Accordingly, the Court should either quash the Subpoenas outright or grant MWNA's request for a protective order.

JURISDICTION AND VENUE

9. Jurisdiction and venue are proper in this Court pursuant to CPLR § 7502(a) because the AAA Arbitration is scheduled to take place in New York, New York and one or more of the parties to this proceeding do business in this judicial county.

THE PARTIES

10. Petitioner Marshall Wace North America L.P. is a Delaware limited partnership with its principal place of business in New York, New York. It is primarily an investment management firm providing alternative investment solutions and is affiliated with Marshall Wace LLP, a British hedge fund.

11. Petitioner Nicholas Nielsen is an individual residing in the State of New York and an employee of MWNA.

12. Petitioner Joshua Lercher is an individual residing in the State of New York and an employee of MWNA.

13. Upon information and belief, Respondent Citadel Americas Services LLC is a limited liability company organized and existing under the laws of the State of Delaware with a place of business in New York, New York. Citadel is a global investment firm and a direct competitor to MWNA.

STATEMENT OF THE RELEVANT FACTS

A. Background Related To The Arbitration

14. In May 2023, MWNA offered Shatz employment in the role of Head of Global Credit at MWNA. At that time, Shatz was employed by Citadel.

15. Shatz informed MWNA that he could not commence working at MWNA until the conclusion of his 15-month "garden leave" from Citadel. MWNA understood that Shatz would

not be available to work for MWNA for 15 months, but felt that Shatz was a promising candidate, and agreed to employ Shatz after his "garden-leave" concluded.

16. Upon information and belief, Shatz resigned from his employment with Citadel on or about June 7, 2023 and informed MWNA of his resignation from Citadel and his acceptance of MWNA's offer of employment, with his employment set to commence upon the conclusion of his unpaid "garden-leave" in September 2024.

17. Shatz's employment with MWNA commenced on September 23, 2024 after his "garden-leave" had concluded. Although Shatz remained in contact with MWNA employees, including Nielsen, during his "garden-leave," Shatz performed no work for MWNA nor did he share any Citadel confidential or proprietary information with MWNA or recruit any employees.

18. MWNA continued to build its Credit business while awaiting Shatz's arrival, including by hiring other individuals, including Lercher, to join the Credit team. None of the individuals that MWNA hired for its Credit team during Shatz's "garden-leave" were Citadel employees and, in fact, Shatz played no role in any recruiting efforts during that time period.

19. Shatz and Citadel are currently parties to the Arbitration. None of Petitioners is a party to the Arbitration and Petitioners are not fully aware of the subject matter of the Arbitration, other than understanding that the Arbitration relates to a dispute between Shatz and Citadel relating to Shatz's employment with Citadel and compensation that Shatz alleges is owed to him by Citadel.

B. Prior To Sending The Duplicative Subpoenas Related To The Hearing, Citadel Served Pre-Hearing Subpoenas To MWNA And Lercher For Documents, And Both Of Those Petitioners Produced Documents In Good Faith In Response

20. Before sending the Subpoenas to Petitioners, Citadel served separate pre-hearing document subpoenas in the Arbitration to MWNA and Lercher, respectively, dated December 18, 2025, which subpoenas were issued on their face pursuant to article 75 of the CPLR.

21. On December 19, 2025, Citadel provided to MWNA a Subpoena *Duces Tecum* (the "MWNA Pre-Hearing Subpoena"). Attached hereto as **Exhibit D** is a true and correct copy of the MWNA Pre-Hearing Subpoena.

22. In the MWNA Pre-Hearing Subpoena, Citadel sought the following documents:

(a) "From January 1, 2023 through September 30, 2024, Communications Concerning any efforts by You to recruit Daniel Shatz, including but not limited to: Communications with any headhunters or talent acquisition professionals Concerning the potential employment of Daniel Shatz";

(b) "From January 1, 2023 through September 30, 2024, all Communications with Daniel Shatz"; and

(c) "From January 1, 2023 through December 31, 2023, Communications, including call, Microsoft Teams, Zoom, or calendar invites, Concerning any efforts to recruit Joshua Lercher to Marshall Wace."

(Ex. D at 6.)

23. Separately, Citadel also sent a Subpoena *Duces Tecum* to Lercher (the "Lercher Pre-Hearing Subpoena"). Attached hereto as **Exhibit E** is a true and correct copy of the Lercher Pre-Hearing Subpoena. In the Lercher Subpoena, Citadel sought communications with Shatz concerning "professional, employment-related, or marketing-related matters", as well as a log of strictly personal communications between Shatz and Lercher.

24. On January 13, 2026, MWNA, through its counsel, served responses and objections to the MWNA Pre-Hearing Subpoena and also produced 2,400 pages of documents, voluntarily making such production despite the fact that pre-hearing arbitration subpoenas, in particular to non-parties, have generally been held to be invalid as a matter of law. Attached hereto as **Exhibit F** is a true and correct copy of the Response of Marshall Wace North America L.P. to Non-Party Subpoena *Duces Tecum*.[1]

[1] Lercher's response to the Lercher Pre-Hearing Subpoena is addressed in the accompanying affirmation of Joshua Lercher, dated February 5, 2026 (the "Lercher Affirmation").

25. Among various other valid objections that MWNA set forth in response to the non-party MWNA Pre-Hearing Subpoena, MWNA specifically objected on the following grounds:

(a) that the first and third requests were overbroad with respect to scope and unduly burdensome;

(b) that the information sought was not relevant and would reveal confidential, proprietary, commercially sensitive and/or trade secret information regarding MWNA's business and hiring practices and personnel; and

(c) to the extent it sought documents from September 23, 2024 to September 30, 2024, as Shatz was an MWNA employee during that period.

26. MWNA was, and still remains, especially concerned about disclosing its confidential, proprietary, commercially sensitive and/or trade secret information with regards to Citadel's request for communications pertaining to its recruitment and hiring practices employees, including communications pertaining to the recruitment of Lercher – someone who has never worked at Citadel.

27. Asset management firms are only as successful as the people they hire. MWNA understands that the market for skilled professionals in this area is highly competitive, and Citadel, MWNA, and a handful of other institutions often compete to recruit the same talent.

28. If Citadel were to receive information (whether through documents or testimony) regarding MWNA's efforts to recruit and hire employees, including Lercher and other candidates, Lercher's terms of compensation with MWNA, or other sensitive personnel information pertaining to Lercher or other MWNA non-party employees, Citadel could use this information to try and recruit Lercher and/or his colleagues away from MWNA, otherwise target MWNA's employees or to unfairly gain a competitive advantage in the marketplace for talent.

29. Further, to the extent Citadel seeks MWNA's communications with recruiters or talent acquisition professionals, these too may reveal MWNA's confidential, proprietary,

commercially sensitive and/or trade secret information with respect to its efforts to locate, recruit and hire the best and brightest individuals in the asset management field.

30. Despite MWNA's objections, MWNA produced 2,400 pages of documents in response to Request 2, consisting of all communications that MWNA employees exchanged via MWNA email with Shatz from January 1, 2023 through September 22, 2024. These include emails generally pertaining to Shatz's recruitment, hire, and onboarding, as well as some social communications with Shatz. Additionally, MWNA produced an email that Nielsen sent to an MWNA email address pursuant to MWNA policies where business-related messages sent or received by an MWNA employee via mobile text messaging from their personal devices are required to be sent. Nielsen's mobile phone was not MWNA issued and this is the only such business communication with Shatz that was sent to this internal MWNA email address.

31. Several of the documents that MWNA produced are also responsive to Request 1 of the MWNA Pre-Hearing Subpoena to the extent Shatz was involved in discussions with MWNA employees concerning his recruitment. MWNA objected to and did not produce, however, communications that do not include Shatz that might pertain to Shatz's hire, as it is unduly burdensome for MWNA to search for and review all communications that might remotely touch on Shatz's recruitment or the position for which he was eventually hired. Moreover, internal communications regarding the Global Head of Credit search and communications with retained talent acquisition professionals are likely to include sensitive, confidential and proprietary information concerning MWNA's recruitment, hiring and compensation practices.

32. MWNA could find itself at a significant commercial disadvantage if Citadel, a direct competitor, were to obtain its recruitment and compensation materials, including the terms of MWNA's engagement of any talent acquisition professionals, MWNA's methods for

identifying top talent in the industry, and the compensation terms offered to non-party employees. Again, there is no underlying dispute between MWNA and Citadel with respect to these recruitment practices. To the extent Citadel seeks information for the Arbitration regarding Shatz's representations to MWNA during his onboarding or Shatz's efforts in MWNA's employee recruitment efforts, these questions would be addressed by the production MWNA already made and can be posed to Shatz at the Arbitration hearing, without forcing MWNA, a non-party, to divulge such sensitive information about its hiring practices generally.

33. There is a substantial risk that a competitor like Citadel, especially one with a history of aggressive recruitment tactics like Citadel, would use MWNA's confidential, proprietary, commercially sensitive and/or trade secret materials for its own economic benefit, including to seek to hire away candidates that have been identified by MWNA and to try to prevent MWNA from fairly competing in the marketplace for talent.[2]

34. Both MWNA and Citadel recruit from the same small pool of highly accomplished financial professionals in the New York City market.

35. Simply put, the request for MWNA's recruitment communications, particularly those that concern Lercher and/or do not include Shatz, are nothing more than a fishing expedition to try and obtain a competitor's communications to gain a leg up in recruiting talented asset management professionals, all while distracting the arbitration panel (the "Panel") from the underlying dispute between Citadel and Shatz.

[2] While Citadel indicates in No. 21 of its "Instructions" to the MWNA Subpoena that it is willing to agree to review any documents produced subject to an "Attorney's Eyes Only" designation, Citadel offers no agreement to preclude its party representatives from being present at the Arbitration if any of the Petitioners are compelled to testify in response to the Subpoenas. Moreover, to the extent counsel for Citadel – which apparently includes in-house counsel in the Arbitration – represent Citadel in its recruiting and hiring practices generally and/or in other employment disputes, such information shared with counsel (especially in-house counsel) could still be used to Citadel's competitive advantage, even unwittingly.

C At Citadel's Request, The Subpoenas, Which Are Largely Redundant To The Pre-Hearing Subpoenas Concerning Documents, Are Issued Seeking Irrelevant Testimony At A Hearing On Less Than Two Weeks' Notice

36. On January 27, 2026, at the eleventh hour and less than two weeks prior to the stated return date in the Subpoenas of February 9, 2026, at Citadel's request, the Panel issued the Subpoenas. Upon information and belief, the Arbitration commenced on February 2, 2026 and Citadel has been aware of that date for months prior to its request for the Subpoenas to issue. Indeed, prior to the issuance of the Subpoenas, MWNA understands that the Panel issued an order on January 21, 2026 in which it noted that the hearing was scheduled to commence on February 2, 2026.[3]

37. In advance of the Order and the issuance of the Subpoenas, MWNA, through its counsel sent correspondence to Respondent's counsel, outlining its proper objections and its good faith production in connection with the MWNA Pre-Hearing Subpoena. A true and correct copy of that correspondence, dated January 20, 2026 (the "MWNA Objection Letter"), is attached hereto as **Exhibit G**. Citadel, however, did not care about these valid objections consistent with its reputation and apparent *modus operandi*. Indeed, in a telephone discussion between counsel prior to the MWNA Objection Letter being sent, Citadel, in attempting to force MWNA to produce additional documents based on its dissatisfaction with MWNA's initial production, warned that it would simply subpoena MWNA and its senior level personnel to testify at the Arbitration if additional documents were not produced. Shortly thereafter, also on January 20, 2026, Shatz's counsel forwarded a copy of the MWNA Objection Letter to the Panel along with its own letter

[3] Petitioners understand that the Order notably did not state that the Subpoenas were valid or appropriate**,** but only that the Panel determined that it was impractical to address issues concerning MWNA's responses to the MWNA Pre-Hearing Subpoena prior to the Arbitration hearing given that the hearing was imminent. Accordingly, Petitioners understand that the Panel held that Citadel could re-issue its prior subpoena and that the Panel could address any issues raised by either Citadel or MWNA at the hearing. However, MWNA has never agreed to arbitrate any issues, including its response to the Subpoena, and the proper forum for any dispute is before this Court.

concerning MWNA's response to the MWNA Pre-Trial Subpoena. A true and correct copy of that correspondence is attached hereto as **Exhibit H**.

38. On January 27, 2026, at Citadel's request, counsel for MWNA accepted service of the MWNA Subpoena and, on Nielsen's behalf, service of the Nielsen Subpoena. Lercher was not served with a copy of the Lercher Subpoena ***until February 4, 2026*** after he had retained MWNA's counsel to represent him individually and authorized counsel to accept service on his behalf.

39. The Subpoenas seek hearing testimony from each of MWNA (by a custodian of records apparently), Nielsen and Lercher as well as documents, duplicative of those already produced, subject to meritorious objections or wholly irrelevant to the Arbitration from MWNA and Lercher.

40. As with the MWNA Pre-Hearing Subpoena and the Lercher Pre-Hearing Subpoena, the documents requested in the MWNA Subpoena and the Nielsen Subpoena, to the extent not already produced or duplicative of the pre-hearing subpoenas, are overbroad, unduly burdensome, seek intrusive personal information, and seek information that would force MWNA to reveal confidential, proprietary, commercially sensitive and/or trade secret information regarding its recruiting and hiring practices to a direct competitor, *i.e.* Citadel.

41. These Subpoenas are especially onerous and inappropriate given that MWNA, Nielsen, and Lercher are not parties to the Arbitration, have not consented to the jurisdiction of the AAA, and have no firsthand knowledge of any dispute between Shatz and Citadel. Separately, even if the Subpoenas were otherwise appropriate (which they are not), Citadel's presentment of them at the eleventh hour, to non-parties, does not provide Petitioners with sufficient time to respond to the Subpoena or to plan its business around the potential absence of two of its most indispensable Global Credit employees on the same day.

EACH OF THE SUBPOENAS SHOULD BE QUASHED AND/OR THE COURT SHOULD ISSUE A PROTECTIVE ORDER

42. Pursuant to CPLR §§ 2304 and 3103, Petitioners move to quash and for a protective order concerning the Subpoenas.

43. Motions to quash and protective orders are designed to protect against unreasonable annoyance, expense, and disclosure of patently irrelevant information, such as is the case here.

44. "A motion to quash, fix conditions or modify a subpoena shall be made promptly in the court in which the subpoena is returnable." CPLR § 2304. Further, CPLR § 3103(a) provides as follows:

> The court may at any time on its own initiative, or on motion of any party or any person from whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage or other prejudice to any person or the courts.[4]

CPLR 3103(a). *See Liberty Petroleum Realty, LLC v. Gulf Oil, L.P.*, 164 A.D.3d 401, 403 (1st Dep't 2018) (*quoting* CPLR 3103(a)). A protective order is thus "necessary and proper" to eliminate such abuse. *See Plaitis v. Manolakakis*, 2018 NY Slip Op 31154(U), *6-7 (Sup. Ct. N.Y. Cnty. 2018) citing *Jones v. Maples*, 257 A.D.2d 53, 56-57 (1st Dep't 1999) ("When the disclosure process is used to harass or unduly burden a party, a protective order eliminating that abuse is necessary and proper.").

45. Pursuant to CPLR § 2304, "[i]f the subpoena is not returnable in a court, a request to withdraw or modify the subpoenas shall first be made to the person who issued it and a motion to quash, fix conditions or modify may thereafter be made in the supreme court ..." CPLR § 2304.

[4] An application for a protective order "… suspend[s] disclosure of the particular matter in dispute." CPLR § 3103.

46. "The supervision of disclosure and the setting of reasonable terms and conditions therefor rests within the sound discretion of the trial court." *Gilman & Ciocia, Inc. v. Walsh*, 45 A.D.3d 531 (2nd Dep't 2007) (affirming trial court's grant of a protective order).[5] A protective order is warranted where demands are "palpably improper in that they [seek], *inter alia*, irrelevant and/or confidential information, or were overbroad and burdensome." *Id.* Here, as set forth below, Petitioners make the requisite showing needed to warrant the issuance of a protective order. Among the other reasons set forth herein, the documents sought from Petitioners further constitute cumulative, duplicative or repetitive documentary evidence to that already provided by MWNA. *Broman v. Long Island Floor Store, Inc.*, No. 09975/2015, 2016 WL 5940227, at *5 (N.Y. Sup. Ct. Suffolk Cnty. Sept. 30, 2016) (granting non-party's motion to quash cumulative, duplicative or repetitive document production).

47. Subpoenas issued to nonparties to a proceeding are scrutinized carefully, in particular where the proceeding is an arbitration and the subpoenaed nonparties have not agreed to arbitrate. *See, e.g., ImClone Sys. Inc. v. Waksal*, 22 A.D.3d 387, 388 (1st Dep't 2005).

48. Courts have routinely quashed subpoenas issued to nonparties for an improper purpose. *Brook v. Peconic Bay Med. Ctr.*, 162 A.D.3d 503, 504 (1st Dep't 2018); *Maxim, Inc. v. Feifer*, 161 A.D.3d 551, 553 (1st Dep't 2018); *Matter of Home Box Off. Inc. (Laster),* 64 Misc. 3d 566 (Sup Ct. N.Y. Cnty. 2019). Furthermore, once the nonparty opposing the subpoena "establish[es] either that the discovery sought is utterly irrelevant to the action or that the futility of the process to uncover anything legitimate is inevitable or obvious," then the subpoenaing party must show that the discovery sought is material and necessary. *Matter of Kapon v. Koch*, 23 N.Y.3d 32, 34 (2014).

[5] In connection with an arbitration, where the issuing party has not agreed to withdraw or modify the subpoena, as is the case here, it is appropriate to seek to quash a subpoena through a special proceeding. CPLR § 7502(a).

49. If a party seeks discovery from non-parties to "unreasonably annoy harass and embarrass the party's adversary and the non-party, courts should not hesitate to step in so as to prevent improper use of . . . disclosure devices." *Garvin v. Garvin*, 162 A.D.2d 497, 500 (2d Dep't 1990). Even if the disclosure is arguably relevant, competing interests must always be balanced; "the need for discovery must be weighed against any special burden to be borne by the opposing party." *Forman v. Henkin*, 30 N.Y.3d 656, 662 (2018) citing *Andon ex rel. Andon v. 302-304 Mott St. Assocs.*, 94 N.Y.2d 740, 747 (2000).

50. To that end, New York courts prohibit nonparty discovery in arbitration unless "'there is a special need or extraordinary circumstances,' such as where the information sought is otherwise unavailable." *See ImClone Sys. Inc.*, 22 A.D.3d at 388 (1st Dep't 2005) (internal citation omitted); *see also AXA Equitable Life Ins. Co. v. Kalina*, 101 A.D.3d 1655, 1656 (4th Dep't 2012). Courts have held there not to be "a special need or extraordinary circumstances" where there has not been a showing that the documents and information cannot be obtained from a party to the arbitration. *See Bd. of Managers of Parc Vendome Condo. v. Cambourakis*, No. 107757/2010, 2011 WL 13122229, at *3 (Sup. Ct. N.Y. Cnty. Mar. 1, 2011) (denying motion to compel nonparty's compliance with subpoena for documents and deposition).

51. Here, there is no special need or extraordinary circumstances requiring Petitioners to testify or otherwise provide additional documents in connection with the Arbitration, and whatever relevant documents and information to which Citadel may arguably be entitled can be – and presumably has been – obtained from a party to the Arbitration; namely, Shatz.

52. The Subpoenas should be quashed because, among the other reasons detailed herein, (a) the additional documents that Citadel seeks from MWNA, its direct competitor, and MWNA's high level employees – beyond what has already been produced – are neither relevant

nor necessary to the resolution of the Arbitration, (b) the requests are overbroad and irrelevant, (c) the requests are cumulative and redundant, and (d) complying with the requests would run a real risk of putting MWNA at a competitive disadvantage vis-à-vis Citadel. *See Reuters Ltd. v. Dow Jones Telerate*, 231 A.D.2d 337 (1st Dep't 1997) (reversing grant of motion to compel compliance with arbitration subpoena because the documents requested were not relevant or necessary to resolving the arbitration, the requests were overbroad and production would force the subpoenaed non-party to turn over confidential and proprietary documents to a competitor).

53. Additionally, there is no reason why Petitioners' testimony at the arbitration hearing is necessary as to what is a private dispute between Shatz and Respondent, his previous employer. As such, the Subpoenas should be quashed. *See Matter of Mosse v. Gordon & Rees LLP*, No. 651214 (2014), 2014 N.Y. Misc. LEXIS 3051 at *5 (Sup. Ct. N.Y. Cnty. July 8, 2014) (subpoena to testify at an arbitration hearing quashed where party failed to demonstrate that the testimony was "necessary to what appears to be a private dispute").

A. The MWNA Subpoena

54. The MWNA Subpoena seeks testimony from MWNA at the arbitration hearing as well as the production of documents.

55. With respect to the testimony requested, the MWNA Subpoena specifies the scope of such testimony as related to the (a) "custody, maintenance, authenticity and responsiveness of documents" produced in response to the MWNA Pre-Hearing Subpoena as well as its search for documents in connection with same and (b) MWNA's efforts to preserve documents and implement litigation holds in response to letters from Citadel.

56. Such testimony is not relevant to the resolution of the Arbitration and is clearly meant to be harassing, in particular where non-party MWNA is willing, as it is here, to otherwise

attest in writing, as necessary, to the authenticity of the 2,400 pages of documents it produced in response to the MWNA Pre-Hearing Subpoena.

57. Although not a party to any litigation concerning the matters addressed in the Arbitration, MWNA understood that there was an underlying dispute between Shatz and Citadel and has not deleted or destroyed any documents pertaining to Shatz's hire. Indeed, it has already produced all of its communications with Shatz regarding his hire and onboarding with MWNA,

58. Although Petitioners lack full knowledge with respect to the subject matter of the Arbitration, it appears that Citadel's interest is in simply attempting to harass and "big-foot" MWNA, and to create inconvenience and expense for it as payback for hiring one of its former high-value employees. Neither MWNA's actions to preserve and/or produce documents with respect to the Arbitration nor what MWNA did or did not do after learning that Shatz was in a dispute with a prior employer are at issue in the Arbitration.

59. Citadel should not be permitted to drag MWNA, a competitor, into the Arbitration as a means to attempt to deflect from its own conduct by suggesting that somehow MWNA did not properly preserve and search documents for a matter in which it is not a party. Nor is it a productive use of MWNA's employees' time to participate in an unrelated arbitration to testify with respect to MWNA's response to the MWNA Pre-Hearing Subpoena, which was made by its counsel.

60. With respect to Citadel's request for documents in the MWNA Subpoena, those requests, in sum or substance, are ***entirely duplicative*** of Citadel's document requests to MWNA in the MWNA Pre-Hearing Subpoena, which Citadel is doubling down on. (*Compare* Ex. A, Request Nos. 1-3 at 10 *with* Ex. D, Request Nos. 1-3 at 6.) The only differences, except for the narrowed date range consistent with MWNA's valid previous objections, is that in the MWNA

Subpoena, Citadel specifically seeks "all text messages … with Mr. Shatz" (Request No. 2) whereas in the MWNA Pre-Hearing Subpoena, it requested "all Communications with Mr. Shatz" (Request No. 2). As noted, however, MWNA has already produced all responsive text messages it has with Shatz after conducting a reasonably diligent search.[6]

61. As set forth in the MWNA Objection Letter, it is not reasonable for MWNA in response to such request to search through the ***personal cell phones*** of various MWNA employees in responding to such request:

> MWNA employees' phones are not the property of MWNA. Each respective MWNA employee owns their own phone containing personally sensitive, private and irrelevant information and data. Demanding employees provide their phones for review and data collection in response to a competitor's request to MWNA in a proceeding to which neither the employee nor MWNA is a party is at best harassing and at worst violates fundamental privacy interests. Nonetheless, and without waiving this objection, MWNA "produce[d] any relevant, non-privileged and responsive text messages that were emailed to a Non-Party email address where business-related messages sent or received by an employee of Non-Party via mobile text messaging are required to be sent under Non-Party's policies." Your letter in fact acknowledges the "screenshot attached to an email produced by [MWNA]" clearly captures cell phone text messages between Mr. Shatz and Mr. Nick Nielsen of MWNA which, pursuant to MWNA internal policies, were duly emailed to a MWNA email address intended to capture such "business-related" text messages sent or received by MWNA employees. (See MW2397-2400). Notably, these produced text messages reference emails between the same persons (and other MWNA employees) that were also produced in response to the Subpoena. (See MW 201-210).

(Ex. G at 2.)

62. Citadel can seek this information (*i.e.*, text messages between Shatz and MWNA

[6] To the extent that "Communications" did not encompass "texts," Citadel should not have the right to have a proverbial "second-bite at the apple" in terms of trying to force a non-party, at the non-party's sole expense and inconvenience, to search its documents for a second time when it could have been clearer and definitive in the first request.

employees) by asking Shatz, a party to the Arbitration, for such documents, which MWNA understands Citadel has already done and Shatz has already produced such documents and text messages. It is cumulative and unduly burdensome for non-party MWNA to have to locate, search for, and review such text messages. Further, MWNA employees have a strong privacy interest in their personal cell phones and data and text messages, including any social or strictly personal messages exchanged with Shatz.

63. Moreover, under these circumstances where business-related messages are stored in a central repository and were produced, it would be highly inappropriate for MWNA to start questioning its workforce to search if anyone exchanged any text messages, including personal or social messages, with Shatz prior to his employment. Nor would it be appropriate for MWNA to collect and image the personal devices of its employees, including those whose communications with Shatz were strictly personal in nature, especially in an instance where MWNA is a non-party to the arbitration proceeding. Were MWNA forced to undertake this intrusive and invasive endeavor in circumstances like these, MWNA would lose its goodwill with its employees – which is exactly what Citadel, a competitor looking to hire away MWNA's employees, wants.

64. With respect to Request Nos. 1 and 3 in the MWNA Subpoena, those requests, to the extent documents have not already been provided, are improper for the same reasons identified in MWNA's response to the MWNA Pre-Hearing Subpoena (Ex. F.) They similarly seek confidential, proprietary, commercially sensitive and/or trade secret information with respect to MWNA's hiring and recruitment practices, including as they pertain to Joshua Lercher, who has never worked for Citadel and is not a party to the Arbitration.[7] Accordingly, such requests are overbroad in scope, unduly burdensome, and, along with any testimony relating thereto, risk the

[7] Shatz was not an employee of MWNA at the time Lercher was hired, and Lercher's hiring is not relevant to the Arbitration.

transmission of highly sensitive commercial information to a major competitor.

65. Citadel appears to be using the Subpoenas to harass MWNA and to obtain confidential and proprietary information about MWNA's hiring practices and Trading and Credit businesses in order to gain a competitive advantage. Shatz's hiring by MWNA was notable because it reinforced in the market that MWNA competes in bidding wars for top talent with behemoth competitors such as Citadel.

66. Upon information and belief, Citadel, accustomed to using its unlimited resources to attract top talent and to not face competition in doing so, are utilizing the Subpoenas for an ulterior motive. That motive appears to have little to do with the Arbitration itself, but to be focused on harassing and inconveniencing a competitor in order to stifle competition for top talent and to learn confidential details about its competitor's strategy and use of talent. Apparently, Citadel, lulled into competitive complacency and believing that they can simply buy talent by writing the biggest check, does not react well when forced to engage in healthy competition.

67. As stated above, MWNA's communications concerning efforts to recruit Shatz and Lercher could reveal confidential, proprietary, commercially sensitive and/or trade secret information regarding the ways in which MWNA identifies and recruits potential employees. This information would never be disclosed to a competitor in the ordinary course, let alone a competitor like Citadel. *See Reuters Ltd.*, 231 A.D.2d 337 (finding court erred in directing compliance with subpoena that would have resulted in production of information from a competitor with "no apparent prospect of yielding information of actual use to either party in the arbitration" and risked a competitive disadvantage).

68. Clearly, Citadel is lashing out and upset that one of its employees chose to resign and join a competitor. Citadel, however, rather than moving on with its business, has apparently

decided to attempt to sabotage MWNA's employee relations and productivity by serving the Subpoenas and seeking testimony from MWNA's employees on shockingly short notice.

B. The Nielsen Subpoena

69. In the Nielsen Subpoena, Citadel seeks unspecified hearing testimony from Nielsen and "all text messages" (including messages sent through a host of communication methods, including Microsoft Teams and Zoom) with Shatz, including those sent or received on a personal device, relating to Shatz's recruitment to MWNA or the recruitment of individuals to work with Shatz.

70. Nielsen, however, has already provided all business-related text messages with Shatz to MWNA by emailing them to the MWNA email address intended to capture such business-related text messages, and which MWNA has in turn produced them to Citadel in response to the MWNA Pre-Hearing Subpoena. The request for documents to Nielsen is thus redundant and merely harassing. Further, there is no basis to believe that he would provide any non-cumulative testimony relevant to the issues in the Arbitration between Shatz and Citadel or has any connection to that dispute.

71. Nielsen has no relationship with Citadel, other than having worked there over fifteen (15) years ago, much earlier in his career. Nielsen is not a party to the Arbitration and has no first-hand knowledge of the terms and conditions of Shatz's former employment at Citadel. Nielsen also has no contractual duties to Citadel.

72. Communications between Nielsen and Shatz can also more easily be obtained from a party to the Arbitration, *i.e.*, Shatz, who it is understood has already produced such communications. There is simply no need for cumulative evidence to be provided from the personal cell phone of a private individual who is not a party to the Arbitration.

73. Further, to the extent that Citadel intends to question Nielsen about the terms of his employment at MWNA or about his work at MWNA for some unknown reason, those subjects are highly confidential, irrelevant and would significantly disadvantage MWNA if a competitor like Citadel were to obtain this information.

74. The testimony of Nielsen at the hearing, on insufficient notice of less than two weeks, is also improper for an Arbitration in which neither Nielsen nor MWNA are parties. Nielsen has a demanding job as a Partner and the Global Head of Trading, Treasury and Specialist Strategies for MWNA. His integral management and trading roles for MWNA are critical, and hours away from his trading desk and the office during a business day can potentially have a substantial adverse economic impact on MWNA.

75. Citadel, by seeking Nielsen's cumulative testimony, appears to again simply be seeking to inconvenience, harass and disadvantage a competitor and its high-level employee by disrupting their business. Upon information and belief, and as explained in his accompanying affirmation, even if the Nielsen Subpoena were appropriate (which it is not), Nielsen also has an existing commitment on the morning of February 9th and is not available to testify that morning. The Arbitration hearing appears to have been set months ago, yet Citadel has chosen to ambush Nielsen with a subpoena now, and its tactics should not be permitted.

C. <u>The Lercher Subpoena</u>

76. The Lercher Subpoena, in which Citadel seeks unspecified testimony from non-party Lercher at the arbitration hearing, should also be quashed for similar reasons as well as because, critically, MWNA understands that such subpoena was not served on Lercher until February 4, 2026, ***only five days (and three business days) before the specified hearing date***, when Lercher's newly retained counsel, who is also counsel for the other Petitioners, agreed to

accept service on his behalf.

77. Upon information and belief and as detailed in the accompanying affirmation from him (the "Lercher Affirmation"), Lercher has never worked at Citadel, has no first-hand knowledge of the terms and conditions of Shatz's employment with Citadel and has no relationship with Citadel, employment or otherwise. Prior to working at MWNA, Lercher worked at JPMorgan Chase. As such, his required testimony, in particular on only five days' notice, is palpably improper. There is no reason to believe that his testimony would be relevant to the issues between Shatz and Citadel.

78. To the extent Citadel believes that Lercher has any connection to the issues in the Arbitration (although none is stated in the Lercher Subpoena) or intends to ask Lercher about any communications he may have had with Shatz, those questions can be posed to Shatz, and any testimony from Lercher on the same issues would be cumulative. Indeed, as detailed in the accompanying Lercher Affirmation, in response to the Lercher Pre-Hearing Subpoena, Lercher, through counsel, previously advised Citadel that he does not possess any communications with Shatz from the relevant time period, including any cell phone text messages. Accordingly, it appears of little utility for Citadel to question Lercher on messages that Lercher does not possess.

79. To the extent that Citadel intends to question Lercher about the terms of his employment at MWNA or about his work at MWNA for some unknown reason, those subjects are highly confidential, irrelevant and would significantly disadvantage MWNA if a competitor like Citadel were to obtain this information.

80. Finally, it is at best inconvenient and at worst disruptive if Lercher were to be absent from the Credit desk on February 9, 2026 to testify at the Arbitration, at the same time that Shatz who leads the desk is unavailable (due to Shatz's presence at the Arbitration). Shatz's and

Lercher's simultaneous absence from MWNA's Credit desk is largely unprecedented and requires advanced planning to ensure adequate coverage from colleagues. For all of these reasons, the Lercher Subpoena should also be quashed.

WHEREFORE, for all of the reasons stated herein, Petitioners respectfully request that the Court enter an Order:

(a) pursuant to CPLR § 2304, quashing each of the Subpoenas; or, in the alternative,

(b) pursuant to CPLR § 3103, granting a protective order that precludes production of any further documents and does not require any hearing testimony from Petitioners in response to the Subpoenas;

(c) awarding Petitioners their costs, disbursements, and reasonable attorneys' fees pursuant to Rule 130; and

(d) granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
February 5, 2026

MORRISON COHEN LLP

By: */s/ Fred H. Perkins*
Fred H. Perkins
Keith A. Markel
Jay R. Speyer
Alana R. Mildner Smolow
909 Third Avenue
New York, New York 10022
(212) 735-8600

Attorneys for Petitioners

VERIFICATION

I, COURTNEY E. KAPES LEWIS, affirm the following to be true under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, and understand that this document may be filed in an action or proceeding in a court of law:

I am a Partner, as well as the General Counsel, of petitioner Marshall Wace North America L.P. ("MWNA"). I have reviewed the foregoing Verified Petition and affirm that its contents are true and correct to the best of my knowledge based on the facts and information available to me as of today's date, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true. The basis for this is my personal knowledge and a review of MWNA's books and records. I hereby reserve MWNA's right to correct, clarify, supplement, amend or supply additional information if it appears at any time that omissions or errors may have been made therein.

Dated: New York, New York
February 5, 2026

COURTNEY LEWIS