

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

– against –

Docket No. 18-204 (NGG) (VMS)

KEITH RANIERE,
CLARE BRONFMAN,
ALLISON MACK,
KATHY RUSSELL,
LAUREN SALZMAN and
NANCY SALZMAN

Defendants.

Non-party NXIVM respectfully submits this memorandum of law in response to the Government's Objections to the Privilege Orders (Dkt. 552) and Magistrate Judge Vera M. Scanlon's April 22, 2019 Order (Dkt. 570).¹

Introduction

Judge Scanlon was entirely correct when she found that the record is sufficient to conclude that NXIVM as a corporate entity is neither dissolved, nor defunct, and retains attorney-client privileges and work product protections in this matter, and that Bronfman and Sullivan accordingly may assert them on NXIVM's behalf. *See* Court's Order, Dkt. 502. She also reached the correct result when she found that certain documents prepared by Dr. Park Dietz were protected by the work product doctrine. Neither of these rulings was clearly erroneous or contrary to existing law.

¹ The government objects to the following holdings in the April 2, 2019 Privilege Order: (1) the order's findings that the record is sufficient to find that NXIVM is not defunct and may still assert attorney-client and work product privileges in this matter, and that Bronfman and Sullivan may assert privileges on NXIVM's behalf; and (2) the order's finding that the Park Dietz Documents are protected by NXIVM's work product privilege. See ECF No. 502.

As discussed in more detail below and as evidenced in the attached Declaration, *see* Ex. A, NXIVM may assert attorney-client and work-product privileges over documents, including the Park Dietz Documents, for the simple reason that NXIVM is not, as the government alleges, a defunct corporation. Contrary to the government's assertion, NXIVM is still an active corporation that exhibits practical business functions, including the power to retain counsel to represent it and advocate on its behalf. In fact, undersigned counsel has done so in several civil and criminal cases, including this one, which has extended to [REDACTED]

[REDACTED]

Even so, the Second Circuit has ***not*** ruled that a defunct company no longer retains the right to assert the privilege, let alone that a company like NXIVM – which has suspended certain operations but otherwise maintained its active status as a corporate entity – no longer retains the right to assert the privilege. Under these circumstances, given the importance of attorney client and work product privileges to our jurisprudence, this Court should be extremely reluctant to conclude that these protections are no longer available to an entity such as NXIVM.

This Court also should affirm that the work product privilege applies to the Park Dietz Documents. The record amply supports his retention for the purpose of anticipated litigation, and the government's view to the contrary, or that Dr. Dietz may provide ancillary assistance or advice in public relations, is unavailing.

Legal Authority

A. Standard Of Review

As an initial matter, the appropriate standard of review for Judge Scanlon's Privilege Opinions under Federal Rule of Criminal Procedure 59(a) is whether her findings were "contrary to law or clearly erroneous." Courts have found that "[p]re-trial matters involving discovery are

generally considered nondispositive since they do not resolve the substantive claims for relief alleged in the pleadings . . . [t]his includes issues of privilege.” See *CFTC v. Standard Forex*, 882 F. Supp. 40, 42 (E.D.N.Y. 1995) (internal citations omitted). As such, a magistrate judge’s privilege determinations should be “reviewed under a clearly erroneous standard of review”—a “highly deferential standard.” *Id.*; see also *Koumoulis v. Indep. Fin. Mktg. Grp.*, 29 F. Supp. 3d 142, 145 (E.D.N.Y. 2014) (noting that “a party seeking to overturn a discovery order bears a heavy burden.”).

The government does not cite any case law from the Second Circuit or any other district to further support the position that a different standard of review should be applied to Judge Scanlon’s privilege decisions other than what is plainly indicated in Federal Rule of Criminal Procedure Rule 59(a).²

B. Defunct And/Or “Dead” Companies

Whether, absent dissolution, a corporation is “defunct” or has “died,” depends more upon the practical business realities than technical legal status. See *Official Committee of Administrative Claimants ex rel. LTV Steel Co., Inc. v. Moran*, 802 F.Supp.2d 947, 949 (N.D. Ill. 2011) (courts should look to practical business realities rather than technical legal status). In particular, courts consider whether there is someone who is authorized to speak for the client and assert privilege, whether the corporation carries on any practical existence, and whether the rights and interests of

² The government reliance on *In re De Mayolo*, No. 06-64, 2007 U.S. Dist. LEXIS 27912 (N.D. Iowa Apr. 16, 2007), for the proposition that the Court may review the present order *de novo*, is misplaced. See Government’s Objections, at 6. The court in *In re De Mayolo* relies upon a portion of the advisory committee notes to Federal Rule of Criminal Procedure 59 that states “[d]espite the waiver provisions, the district judge retains the authority to review any magistrate judge’s decision or recommendation whether or not objections are timely filed.” *In re De Mayolo*, 2007 U.S. Dist. LEXIS 27912, at *11. Those “waiver provisions,” in turn, refer to portions of Rule 59(a) and 59(b) that state “[f]ailure to object in accordance with this rule waives a party’s right to review.” Both the court in *In re De Mayolo* and in *Thomas v. Arn*, 474 U.S. 140, 154 (1985), which is cited to by the advisory committee notes, thus address a district judge’s authority to review a magistrate judge’s decision absent a timely objection under Rule 59, but neither articulate a different standard of review when considering objections to a magistrate judge’s decision on nondispositive issues.

the corporation would be adversely affected by the determination that the privilege does not survive. See *County of Santa Clara v. Myers Industries, Inc.*, 1996 U.S. Dist. LEXIS 1341, No. 95-298, at *1 (E.D. Pa. Feb. 9, 1996) (“analysis of whether the attorney-client privilege survives the death of the client depends on whether the ‘rights and interests’ of the client could be adversely affected”); *PCS Nitrogen*, 2011 U.S. Dist. LEXIS 93021 at *4 (finding that the privilege did not apply under the circumstances where corporation asserted no reason to raise the privilege other than to protect the directors). Compare *Lewis v. United States*, No. 02–2958, 2004 WL 3203121, at *4–5 (W.D. Tenn. Dec. 6, 2004) (concluding that the “attorney-client privilege cannot be applied to a defunct corporation” where the corporation “is bankrupt and has no assets, liabilities, directors, shareholders, or employees”), with *Gilliland v. Geramita*, No. 2:05–1059, 2006 WL 2642525, at *3–4 (W.D. Pa. Sept. 14, 2006) (communications between a business entity and its lawyers remain protected by the attorney-client privilege after a company dissolves or ceases operations “so long as the company retains some form of continued existence evidenced by having someone with the authority to speak for the ‘client’”). Further, in *Official Comm. of Admin. Claimants on Behalf of LTV Steel Co.*, the district court held that the privilege continued to exist for a company which had temporarily dissolved and had ceased normal business operations but had not “died” because the company was pursuing claims as part of the windup process and retained management which could assert the privilege. 802 F. Supp. 2d at 949-50.

This analysis makes sense because under well-settled law, a company does not immediately become defunct or “die” simply because it ceases its normal business operations. In fact, the Supreme Court has recognized this point in this very context when it held that a bankruptcy trustee retains and controls a bankrupt corporation’s attorney-client privilege. See *Commodity Futures Trading Comm’n v. Weintraub*, 471 U.S. 343, 351–52, 105 S. Ct. 1986, 85 L.Ed.2d 372 (1985).

Likewise, it makes eminent sense that a dissolved corporation should be permitted to assert its privilege during the windup process, “at least until all matters involving the company have been fully resolved and no further proceedings are contemplated.” *See Reilly v. Greenwald & Hoffman, LLP*, 196 Cal.App.4th 891, 127 Cal.Rptr.3d 317, 324 (2011). To hold otherwise would undercut the primary policy underlying the privilege: “to encourage ‘full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and the administration of justice.’” *See Swidler & Berlin v. United States*, 524 U.S. 399, 408 n. 3, 118 S.Ct. 2081, 141 L.Ed.2d 379 (1998) (citation omitted).

Argument

I. NXIVM HAS THE CAPACITY AND AUTHORITY TO ASSERT ATTORNEY-CLIENT AND WORK-PRODUCT PRIVILEGES

A. NXIVM Retains All Privileges Because It Is Not Defunct

NXIVM retains the attorney-client privilege and work product protections for the straightforward reason that it is by no means defunct and instead retains all the hallmarks of a viable legal corporation. For example, NXIVM: (1) is maintaining ordinary business practices; (2) has been served with (and has responded to) grand jury subpoenas by the government as recently as March 4, 2019 – which may be viewed as a concession as to its legal status and capacity; (3) has retained accountants and attorneys to provide services on its behalf; (4) has been billed for and paid normal operating costs; (5) has maintained files, storage facilities, computer servers, operating systems, and domain names; (6) has had tax returns prepared and filed; and (7) has an existing Board and held a Board Meeting in December. Nor, incidentally, is NXIVM bankrupt or can be fairly said to remain only as a sham entity, given it has assets, liabilities, directors, and contracted employees. The attached declaration – which provides important additional details regarding NXIVM, its Board members, and retention of counsel – further supports the conclusion that

NXIVM is not “defunct” as the Government contends. Ex. A (Declaration of M. Sullivan). Because NXIVM has all the characteristics, except perhaps revenue, of a legal corporation, it consequently has continuing rights to assert attorney-client and work-product privileges on its behalf via its legal counsel.

In addition to its ongoing business functions, NXIVM also retains management capable of asserting the privilege. This is in contrast to circumstances where corporations are found to be without current management, and therefore have lost their privilege. *See Gilliland v. Geramita*, No. 2:05–1059, 2006 WL 2642525, at *3-4 (W.D.Pa. Sept. 14, 2006) (holding that companies without ongoing management could not assert privilege even though they had not been technically dissolved). Three Board Members of NXIVM remain, and its President has not resigned. *See Sullivan Decl.* Here, Bronfman, as a member of the executive board, has heretofore asserted privilege on behalf of and in consultation with NXIVM. In addition, as discussed in more detail below and communicated to this Court, undersigned counsel has been instructed to assert valid assertions of privilege on behalf of NXIVM in the course of the representation.

The government’s reliance on *Lopes v. Vieira*, 688 F. Supp. 2d 1050 (E.D. Cal. 2010), is unavailing. *See Government Objections*, at 10. The court in *Lopes* explained that “Plaintiffs cannot transfer the power to assert or waive the attorney-client privilege from [the company’s] officers and management simply by asserting the apparent insolvency of [the company].” *Id.* at 1061. And while the court in *Lopes* ultimately determined the company had no corporate manager or officer to assert or waive the privilege, the facts of that case are entirely distinguishable from the case at hand. In *Lopes* the corporation “elected to be managed by a subset of managing members, [and] its ability to continue as a business was dependent upon this continued annual election of managing members.” *Id.* at 1064. In addition to other considerations, the court noted that “annual meetings

have not been held, no manager has been re-elected at an annual meeting, and no managers remain under the terms of the Operating Agreement.” *Lopes*, 688 F. Supp. 2d at 1067 (weighing public interest factors in favor of waiving the attorney-client privilege where there were allegations by the moving party of fraud and misappropriation of corporate assets). That is a far cry of the circumstances presented here.

Instead, the facts of this case are more closely aligned with *Overton v. Todman & Co.*, 249 F.R.D. 147 (S.D.N.Y. 2008), where the court found that a company is “technically still an active corporation” because there is still an acting President and corporate officer, “and a corporation’s current management controls the attorney-client privilege.” *Id.* at 148; *see also United States v. Shapiro*, 2007 U.S. Dist. LEXIS 74725, at *17 (S.D.N.Y. Oct. 2, 2007) (company in “wind-down mode” would otherwise have had a valid privilege claim but for the appointment of a receiver who had assumed “operational control” and “took over the day-to-day operation of the company”).

B. NXIVM’s Retention of Counsel To Advocate On Its Behalf Supports Its Claim of Privilege

It also is worthwhile noting, as Judge Scanlon pointed out, that NXIVM is represented by counsel, who has asserted privilege on NXIVM’s behalf throughout this litigation. *See* Dkt. 382. Furthermore, in an April 9, 2019, letter to Judge Scanlon, and in the attached Declaration, undersigned counsel explains that the law firm had been retained for purposes of providing legal advice and guidance in connection with this case, and others impacting NXIVM and its related corporate entities (the “Clients”). During the course of the representation, the Firm was instructed by individuals with authority to interact with the government on behalf of the Clients, and, as necessary, to retain services to assist the Firm in locating, examining, and providing non-privileged/responsive documents to the government. Undersigned counsel thus has provided advice in connection with a government asset forfeiture matter, a May 6, 2018, Grand Jury Subpoena, and a March 4, 2019 Grand Jury Subpoena. Additionally, and as explained in the above-

referenced letter and undersigned counsel's attached Declaration, upon being retained, undersigned counsel understood that NXIVM had a Board and that Board provided direction to NXIVM Corporation d/b/a ESP. Without waiving attorney-client privilege, undersigned counsel understood from each of the Client's representatives that the privilege should be asserted regarding documents and attorney work-product when appropriate and in NXIVM's best interest, and no unilateral waiver of the privilege on behalf of any of the Clients should take place. As explained in the attached Declaration, undersigned counsel was thus duly authorized by a majority of then-existing Board Members in December 2018 to determine NXIVM's position with regard to assertions of privilege. Client direction regarding representation, reviewing documents, work-product, and asserting privilege has not changed since the date of my representation.

C. NXIVM Has An Independent Interest In Preserving the Privilege

NXIVM is likely to be the target of lawsuits in the future arising from the facts of the criminal case against defendants here. If the Court determines that NXIVM is unable to assert attorney-client or work-product privileges over past litigations and communications with its attorneys on a variety of matters over many years, tens of thousands of documents seized from various defendants and/or subpoenaed from NXIVM will be determined not to be privileged and will be available to potential plaintiffs against NXIVM. NXIVM is not bankrupt or defunct and has an interest in protecting itself and its assets against future litigation. Moreover, as Judge Scanlon aptly noted in her privilege opinion: "It would be troubling if the Government's prosecution of a company's leadership as the source of a business's difficulties could then be used to find a waiver of the attorney-client or similar privileges." See Dkt. 502 at 3.

D. The Attorney-Client and Work Product Privilege Survives Even Corporate Dissolution

Although this Court need not reach this issue – and contrary to the Government’s suggestion that this novel legal question is settled, *see* Government’s Objections, at 8 – even assuming NXIVM is found to be “defunct,” there is no controlling precedent in this Circuit finding that the privilege automatically disappears. *In Securities and Exchange Commission v. Carrillo Huettel LLP, et al.* No. 13-cv-1735 (S.D.N.Y. Apr. 8, 2015) (citing cases that have held question unsettled). NXIVM submits that this important right can and should survive dissolution. The attorney-client privilege is one of the oldest recognized privileges protecting confidential communications and is of critical import in encouraging clients to make full disclosures to their attorneys, so that attorneys may provide sound legal advice based thereon. *See, e.g., Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981), *see also In re Subpoena Duces Tecum Dated September 15, 1983*, 731 F.2d at 1036-37. There are many strong reasons why the privilege should survive, and because the government assumed, rather than briefed, that issue, NXIVM respectfully reserves its right to respond should it be necessary. In any event, unavailability of the protection should only be found in the narrowest of circumstances, and certainly not where, as here, NXIVM has provided sufficient evidence to establish it is not defunct.

II. THE PARK DIETZ DOCUMENTS ARE PRIVILEGED

As a threshold matter, NXIVM incorporates by reference all of the arguments made in Hafetz & Necheles LLP’s February 21, 2019, letter and attachments thereto (Dkt. 363) which Judge Scanlon reviewed and relied upon in reaching her conclusion that the Park Dietz Documents were protected.

A. The Park Dietz Documents Are Privileged Because He Was Retained In Anticipation Of Litigation

Crockett's communications with Bronfman, acting in her capacity as executive board member of NXIVM, and Dietz, who was hired by Crockett to assist in litigation strategy, fall within the attorney-client privilege and/or are protected as attorney work product. *United States v. Kovel* established the ability for attorneys to seek assistance from third-party experts when representing a client without breaking privilege. The *Kovel* privilege "is now recognized as extending to representatives of the attorney, such as . . . non-testifying experts." *United States Postal Serv. v. Phelps Dodge Ref. Corp.*, 852 F. Supp. 156, 161 (E.D.N.Y. 1994) (indicating that "the attorney-client privilege can attach to reports of third parties made at the request of the attorney or the client where the purpose of the report was to put in usable form information obtained from the client"). Crockett's [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Based on this evidence and applicable case law, the documents relating to Dietz's engagement by Crockett squarely fall within the *Kovel* definition of expert assistance and should be protected by attorney-client privilege and related work product doctrine.

B. The Privilege Does Not Disappear Merely Because Retention May Serve More Than One Purpose

In its objections, the government argues that Park Dietz (1) was retained by Ms. Bronfman, and not Attorney Bob Crockett, who has submitted a declaration on this matter to the contrary, and (2) was retained to combat negative publicity, rather than to assist with or in anticipation of litigation. The government argues, pursuant to *United States v. Adlman*, 134 F.3d 1194, 1202 (2d Cir. 1998), that even if the Park Dietz Documents "might also help in preparation for litigation,"

those documents were not protected by the work-product privilege because such documents “would have been created in essentially similar form irrespective of the litigation,” as NXIVM was seeking to use such documents in a public relations campaign to rebut claims that NXIVM and DOS was a cult. *See* Govt. PRT Opp’n at 10.

The government’s theory gets the arrangement exactly backwards and is not supported by the record, [REDACTED]

[REDACTED]

[REDACTED] As noted above, Crockett’s [REDACTED]

[REDACTED]

[REDACTED]. Any additional benefit, assistance, or communication by Dietz to others, moreover, would not undermine the relationship or the privilege itself. Indeed, as the court in *Misek-Falkoff v. Int’l Bus. Machs. Corp.* found, an expert psychiatrist who was hired for purposes of litigation to render an opinion could even “testify at trial based on the examination to the extent necessary,” without waiving privilege with respect to all communications. 144 F.R.D. 48, 50-51 (S.D.N.Y. 1992).

Conclusion

As a matter of both fact and law, NXIVM is entitled to assert the attorney-client and work product privileges. To rule otherwise, especially in light of the factual evidence that refutes the government’s assertions, and the importance of the privilege itself, may set a dangerous precedent and jeopardize the provision of full and frank advice to future companies under similar circumstances as NXIVM.

Dated: April 25, 2019

Respectfully submitted,

/s/ Michael J. Sullivan
Michael J. Sullivan,
ASHCROFT LAW FIRM, LLC
200 State Street, 7th Floor
Boston, MA 02109
617-573-9400
msullivan@ashcroftlawfirm.com

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v. -

KEITH RANIERE, CLARE BRONFMAN,
ALLISON MACK, KATHY RUSSELL,
LAUREN SALZMAN, and NANCY SALZMAN,

Defendants.

No. 18-cr-204 (NGG)

**DECLARATION OF
MICHAEL J. SULLIVAN**

MICHAEL J. SULLIVAN, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a member of The Ashcroft Law Firm and a member in good standing of the bar in Massachusetts. I formerly served as the United States Attorney for the District of Massachusetts from 2001 to 2009. While serving as United States Attorney I also served as the Acting Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) from 2006 to January 2009. I have been in private practice since the end of my term as United States Attorney.

2. I submit this Declaration in support of NXIVM's Opposition to the Privilege Review Team's Objections to the Privilege Orders.

3. I represent non-party NXIVM Corporation in connection with the ongoing criminal proceedings in the Eastern District of New York. I was retained by NXIVM Corp. in April 2018 to represent the interests of the company in connection with investigations or possible governmental investigations into NXIVM and affiliated persons. I was retained by the individual who was at that time was the President of NXIVM Corp., Nancy Salzman. As far as I am aware Nancy Salzman has not resigned her role as President of NXIVM Corp., but is taking no active role in its management at this time.

4. A copy of the Certificate of Incorporation of Executive Success Programs, Inc., later renamed NXIVM Corporation, as filed with the Delaware Secretary of State, is attached as Exhibit B. The corporation's Certificate for Renewal and Revival of Charter, which restored the Charter after it was voided for nonpayment of taxes, as filed with the Delaware Secretary of State in 2005, is attached as Exhibit C.

5. According to its Certificate of Incorporation, NXIVM Corp. is governed by a Board of Directors, which has the power to adopt, amend or repeal the by-laws of the Corporation. See Exhibit B. I have not yet been able to locate a copy of the Corporation's current by-laws, if any exist.

6. I am also, however, aware from my interactions with NXIVM Corp. dating back to 2018 that its affairs have historically, and since my involvement with the company, been governed by the "Executive Board" or Board of Directors, which made major decisions about the company. At the time I was retained, or shortly before my retainer, the Executive Board consisted of Ms. Clare Bronfman, Ms. Lauren Salzman, Ms. Karen Unterreiner, Mr. Omar Boone, Mr. Alejandro Betancourt, and Emiliano Salinas. I understood from NXIVM management and/or members of the Executive Board, approximately early 2018, Betancourt and Salinas resigned from the Executive Board. In the Spring or Summer of 2018, Ms. Unterreiner tendered her resignation from the Board. Since that date, I am not aware that any additional board members have resigned. See Del. G.C.L. § 141(b) ("Each director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal.").

7. While I am aware that as of today, two of the remaining members of the Board of Directors, Ms. Lauren Salzman and Ms. Clare Bronfman, have entered guilty pleas to felonies in connection with this case, I am not aware of any provision of law that results in the automatic

removal or termination of a director upon entering a guilty plea to a felony. Further, no member of the Executive Board has yet had a judgment of conviction entered against them.

8. After the First Superseding Indictment in this case, which added board members Lauren Salzman and Clare Bronfman, among others, as defendants to the existing Indictment against Keith Raniere and Allison Mack, I convened several calls which consisted of a quorum of the remaining Board members (along with their individual counsel, due to their bail restrictions) in order to address operational aspects of the corporation's business, such as approval for use, retention and payment for accounting services, as well as authorization to process and pay for other corporation expenses.

9. On one of these Board phone calls, which took place on December 19, 2018, a quorum of the remaining Board members voted¹ to delegate to me the power to assert any applicable lawful privilege, or to waive privilege, on behalf of the corporation, taking into consideration the best interests of the corporation. One of the considerations in my determination as to whether to assert privilege on behalf of the company is possible future civil lawsuits against the corporation.

10. At no point since that Board call has the delegation of authority to me to make privilege determinations on behalf of NXIVM Corp. been revoked.

11. Although the corporation has suspended its' offering of trainings to clients, in light of the serious charges that were brought against NXIVM's founders and several NXIVM-affiliated individuals, other day-to-day operations of the business have continued, such as: (1) maintaining

¹ Under Delaware's General Corporations Law, "[a] majority of the total number of directors shall constitute a quorum for the transaction of business unless the certificate of incorporation or the bylaws require a greater number. . . . The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the certificate of incorporation or the bylaws shall require a vote of a greater number." Del. G.C.G. § 141 (b).

certain business practices; (2) responding to grand jury subpoenas by the government as recently as March 4, 2019; (3) retaining accountants and attorneys to provide services on its behalf; (4) being billed for and paying normal operating costs; (5) maintaining files, storage facilities, operating systems, domain names; (6) preparing and filing tax returns; (7) having an existing board and held a board meeting in December. The Corporation has not been dissolved, and is not defunct; rather, it continues to meet its obligations. Nor am I aware that it is a bankrupt entity.

12. Significantly, over the past year, I have been engaged in numerous conversations with the Government's trial team and the Government's privilege review team, on behalf of my client NXIVM Corp. and related entities that I represent. For example, I have engaged in extensive conversations with the Government's trial team regarding a grand jury subpoena served upon NXIVM Corp. and related entities, to which NXIVM Corp. has responded, through me, as its counsel. In fact, over the past year, NXIVM Corp. has produced tens of thousands of materials and documents, including, but not limited to, paper files, electronic files, CDs, DVDs, and other related documents in response to the grand jury subpoena served upon it, including producing responsive documents as recently as March 7, 2019. In responding to the government's grand jury subpoena, I have relied on former associates of NXIVM to locate documents, servers, videos, and other items that might be responsive to the request. I have retained through the authorization of NXIVM a company to conduct document searches of NXIVM's servers. NXIVM Corp.'s compliance with the grand jury subpoena indicates that it is still operational, and still in business – otherwise it would simply have defaulted on the subpoena. NXIVM Corp. has also filed documents in connection with forfeiture proceedings related to the seizure of NXIVM-owned assets. I have also been involved on NXIVM Corp.'s behalf, in consulting with the Government's privilege review team and consulting with the relevant defendants and their counsel to determine

where NXIVM does and does not have an interest in asserting privilege, and have participated in numerous appearances before Magistrate Judge Scanlon.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed in Boston, MA on April 24, 2019.

/s/ Michael J. Sullivan
Michael J. Sullivan

Exhibit B

CERTIFICATE OF INCORPORATION
OF
EXECUTIVE SUCCESS PROGRAMS, INC.

FIRST. The name of this corporation shall be:

EXECUTIVE SUCCESS PROGRAMS, INC.

SECOND. Its registered office in the State of Delaware is to be located at 1013 Centre Road, in the City of Wilmington, County of New Castle, 19805, and its registered agent at such address is THE COMPANY CORPORATION.

THIRD. The purpose or purposes of the corporation shall be:

To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH. The total number of shares of stock which this corporation is authorized to issue is:

One Thousand Five Hundred (1,500) shares without par value.

FIFTH. The name and mailing address of the incorporator is as follows:

Elaine Phaneuf
The Company Corporation
1013 Centre Road
Wilmington, DE 19805

SIXTH. The Board of Directors shall have the power to adopt, amend or repeal the by-laws.

IN WITNESS WHEREOF, The undersigned, being the incorporator hereinbefore named, has executed, signed and acknowledged this certificate of incorporation this twentieth day of July, A.D. 1998.



Elaine Phaneuf
Incorporator

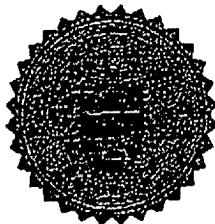
Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "EXECUTIVE SUCCESS PROGRAMS, INC.", CHANGING ITS NAME FROM "EXECUTIVE SUCCESS PROGRAMS, INC." TO "NXIVM CORPORATION", FILED IN THIS OFFICE ON THE TWENTY-THIRD DAY OF JANUARY, A.D. 2002, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



2922183 8100

020044285

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 1574143

DATE: 01-23-02

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 01/23/2002
020044285 - 2922183

**CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
EXECUTIVE SUCCESS PROGRAMS, INC.**

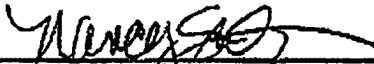
It is hereby certified that:

1. The name of the corporation (hereinafter called the "Corporation") is Executive Success Programs, Inc.
2. The Certificate of Incorporation of the Corporation is hereby amended by striking out Article FIRST thereof and by substituting in lieu of said Article the following new Article:

"FIRST: The name of this corporation shall be: NXIVM CORPORATION."

3. The amendment of the Certificate of Incorporation of the Corporation herein certified was duly adopted and written consent has been given in accordance with the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

Signed on January 15, 2002



Nancy Salzman, President

W:\2000\5227\Doc\Executive Success cert of amend.wpd

EXHIBIT C

PAGE 1



State of Delaware

SECRETARY OF STATE
DIVISION OF CORPORATIONS
P.O. BOX 898
DOVER, DELAWARE 19903

060313669

9516379

04-19-2006

JGL MANAGEMENT CONSULTING
163 NORTH STREET
AUBURN

NY 13021

DESCRIPTION	AMOUNT
NXIVM CORPORATION	
2922183 8100H Certified - History	
0102S Incorp Delaware Sto 07-20-1998 1	32.00
0312V Renewal for Void 07-10-2000 1	32.00
0240 Amendment; Domestic 01-23-2002 1	32.00
0312V Renewal for Void 05-24-2005 1	32.00
Certification Fee	120.00
Document Page Fee	8.00
FILING TOTAL	128.00
TOTAL PAYMENTS	128.00
SERVICE REQUEST BALANCE	.00

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "NXIVM CORPORATION" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE TWENTIETH DAY OF JULY, A.D. 1998, AT 9 O'CLOCK A.M.

CERTIFICATE OF RENEWAL, FILED THE TENTH DAY OF JULY, A.D. 2000, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "EXECUTIVE SUCCESS PROGRAMS, INC." TO "NXIVM CORPORATION", FILED THE TWENTY-THIRD DAY OF JANUARY, A.D. 2002, AT 9 O'CLOCK A.M.

CERTIFICATE OF RENEWAL, FILED THE TWENTY-FOURTH DAY OF MAY, A.D. 2005, AT 8 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION, "NXIVM CORPORATION".



2922183 8100H

060313669

Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4678098

DATE: 04-19-06

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 07/20/1998
981280020 - 2922183

CERTIFICATE OF INCORPORATION
OF
EXECUTIVE SUCCESS PROGRAMS, INC.

FIRST. The name of this corporation shall be:

EXECUTIVE SUCCESS PROGRAMS, INC.

SECOND. Its registered office in the State of Delaware is to be located at 1013 Centre Road, in the City of Wilmington, County of New Castle, 19805, and its registered agent at such address is THE COMPANY CORPORATION.

THIRD. The purpose or purposes of the corporation shall be:

To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH. The total number of shares of stock which this corporation is authorized to issue is:

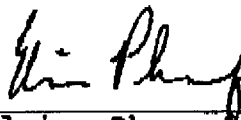
One Thousand Five Hundred (1,500) shares without par value.

FIFTH. The name and mailing address of the incorporator is as follows:

Elaine Phaneuf
The Company Corporation
1013 Centre Road
Wilmington, DE 19805

SIXTH. The Board of Directors shall have the power to adopt, amend or repeal the by-laws.

IN WITNESS WHEREOF, The undersigned, being the incorporator hereinbefore named, has executed, signed and acknowledged this certificate of incorporation this twentieth day of July, A.D. 1998.



Elaine Phaneuf
Incorporator

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 07/10/2000
001347461 - 2922183

CERTIFICATE
FOR RENEWAL AND REVIVAL OF CHARTER
OF
EXECUTIVE SUCCESS PROGRAMS, INC.

EXECUTIVE SUCCESS PROGRAMS, INC., a corporation organized under the laws of the State of Delaware, the Certificate of Incorporation of which was filed in the Office of the Secretary of State on the twentieth day of July A.D. 1998, the charter of which was voided for nonpayment of taxes, now desires to procure a restoration, renewal and revival of its charter, and hereby certifies as follows:

1. The name of this corporation is:

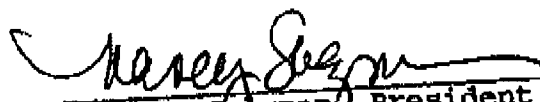
EXECUTIVE SUCCESS PROGRAMS, INC.

2. Its registered office in the State of Delaware is located at 1013 Centre Road, in the City of Wilmington, County of New Castle and its registered agent is THE COMPANY CORPORATION.

3. The date when the restoration, renewal, and revival of the charter of this company is to commence is the twenty-twenty-ninth day of February, A.D., 2000, same being prior to the date of the expiration of the charter. This renewal and revival of the charter of this corporation is to be perpetual.

4. This corporation was duly organized and carried on the business authorized by its charter until the first day of March, A.D., 2000, at which time its charter became inoperative and void for non-payment of taxes and this certificate for renewal and revival is filed by authority of the duly elected directors of the corporation in accordance with the laws of the State of Delaware.

IN TESTIMONY WHEREOF, and in compliance with the provisions of Section 312 of the General Corporation Law of the State of Delaware, as amended, EXECUTIVE SUCCESS PROGRAMS, INC. has caused this Certificate to be signed by Nancy Salzman, this 5th day of May A.D. 2000.


Nancy Salzman, President

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 01/23/2002
020044285 - 2922163

**CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
EXECUTIVE SUCCESS PROGRAMS, INC.**

It is hereby certified that:

1. The name of the corporation (hereinafter called the "Corporation") is Executive Success Programs, Inc.
2. The Certificate of Incorporation of the Corporation is hereby amended by striking out Article FIRST thereof and by substituting in lieu of said Article the following new Article:

"FIRST: The name of this corporation shall be: NXIVM CORPORATION."
3. The amendment of the Certificate of Incorporation of the Corporation herein certified was duly adopted and written consent has been given in accordance with the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

Signed on January 15, 2002



Nancy Salzman, President

State of Delaware
 Secretary of State
 Division of Corporations
 Delivered 08:00 AM 05/24/2005
 FILED 08:00 AM 05/24/2005
 SRV 050431148 - 2922183 FILE

STATE OF DELAWARE CERTIFICATE FOR RENEWAL AND REVIVAL OF CHARTER

The corporation organized under the laws of Delaware, the charter of which was voided for non-payment of taxes, now desires to procure a restoration, renewal and revival of its charter, and hereby certifies as follows:

1. The name of this corporation is NX1VM Corporation
2. Its registered office in the State of Delaware is located at 2711
CENTERVILLE RD STE 400 (street), City of WILMINGTON
 Zip Code 19803 County of NEW CASTLE, the name of
 its registered agent is The Company Corporation
3. The date of filing of the original Certificate of Incorporation in Delaware was 7/20/98
4. The date when restoration, renewal, and revival of the charter of this company is to commence is the 28th day of February, same being prior to the date of the expiration of the charter. This renewal and revival of the charter of this corporation is to be perpetual.
5. This corporation was duly organized and carried on the business authorized by its charter until the 1st day of March A.D. 2005, at which time its charter became inoperative and void for non-payment of taxes and this certificate for renewal and revival is filed by authority of the duly elected directors of the corporation in accordance with the laws of the State of Delaware.

IN TESTIMONY WHEREOF, and in compliance with the provisions of Section 312 of the General Corporation Law of the State of Delaware, as amended, providing for the renewal, extension and restoration of charters the last and acting authorized officer hereunto set his/her hand to this certificate this 7th day of April A.D. 2005.

By: Nancy S. [Signature]
 Authorized Officer
 Name: Nancy S. [Signature]
 Print or Type
 Title: President