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Report No. 20121204-000911

February 20, 2013

Inspector General

United States
Department of Defense



ALLEGED MISCONDUCT:
Mr. Stephen E. Calvery
Senior Executive Service
Director, Pentagon Force Protection Agency

Warning

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REPORT OF INVESTIGATION:
MR. STEVEN E. CALVERY, SENIOR EXECUTIVE SERVICE

I. INTRODUCTION AND SUMMARY

We initiated an investigation to address allegations that Mr. Stephen E. Calvery, while serving as the Director, Pentagon Force Protection Agency (PFPA): misused his position; misused his subordinates; (b) (6), (b) (7)(C) improperly authorized the use of administrative leave; provided preferential treatment to a subordinate; (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

We substantiated the allegations that Mr. Calvery misused his position; misused his subordinates; improperly authorized the use of administrative leave; and engaged in a prohibited personnel practice by providing preferential treatment to a subordinate.

We conclude that Mr. Calvery misused his position in violation of Department of Defense (DoD) 5500.07-R, "Joint Ethics Regulation (JER)." We found that Mr. Calvery arranged for (b) (6), (b) (7)(C) who was not an employee of PFPA or DoD, to use the PFPA firing range. The JER requires that employees shall not use their public office for the private gain of relatives. We determined that family members of other PFPA employees were not offered the same benefit. Accordingly, we determined that Mr. Calvery misused his position to allow (b) (6), (b) (7)(C) access to the PFPA firing range, and use of a PFPA weapon, ammunition, and two PFPA firearms instructors.

We also conclude that Mr. Calvery misused his subordinates in violation of the JER. We found that Mr. Calvery had his office staff order and pick up his lunch and retrieve coffee for him. The JER requires that an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit. Although Mr. Calvery paid for the lunches and coffee using his own funds, we determined that it was improper for Mr. Calvery to ask or allow his subordinates to routinely retrieve lunch or coffee for him. Additionally, Mr. Calvery's (b) (6), (b) (7)(C) felt obligated to get Mr. Calvery his lunch and believed that if (b) (6), (b) (7)(C) did not agree, (b) (6), (b) (7)(C) would have been reconsidered. Accordingly, we determined that Mr. Calvery misused his subordinates.

We further conclude that Mr. Calvery improperly authorized the use of administrative leave in violation of DoD Financial Management Regulation (FMR), DoD Instruction (DoDI) 1400.25, Volume 630, "DoD Civilian Personnel Management System: Leave," and Office of the Secretary of Defense (OSD) Administrative Instruction (AI) Number (No.) 67, "Leave Administration." We found that Mr. Calvery authorized administrative leave to PFPA employees who participated in the 2009 and 2010 Annual PFPA Golf Tournaments. The DoD

¹ The incoming complaints contained several additional allegations. Based on our investigation we determined those allegations did not merit further investigation, and discuss them in Section III of this report.

FMR, DoDI, and OSD AI No. 67 require that if administrative leave is authorized there must be a benefit to the agency's mission, a Government-wide recognized and sanctioned purpose or in connection with furthering a function of DoD. We determined that the golf tournament, although open to all PFPA employees, was not a DoD-sanctioned event and there was no perceived benefit toward PFPA's mission or a Government-wide recognized and sanctioned purpose. We determined the reason for authorizing administrative leave to participate in a golf tournament was not consistent with the examples cited in the regulations. Accordingly, we determined that Mr. Calvery improperly authorized the use of administrative leave.

We finally conclude that Mr. Calvery provided preferential treatment to a subordinate in violation of Title 5, United States Code, Section 2301, "Merit system principles," 5 U.S.C. 2302, "Prohibited personnel practices," and the JER. We found that Mr. Calvery selected a subordinate for promotion, (b) (6), (b) (7)(C), because he felt the subordinate would never get promoted in his current position. Mr. Calvery's action resulted in one of the three individuals recommended by the selection board being removed from the promotion list to accommodate the promotion of the subordinate. Title 5 U.S.C. requires that candidates be selected based on their ability, knowledge and skills after a fair and open competition, and the JER requires employees to act impartially and not give preferential treatment to any individual. We determined that Mr. Calvery selected the subordinate for promotion based on their relationship rather than on the subordinate's experience or scope of responsibilities. Accordingly, we determined that Mr. Calvery engaged in a prohibited personnel practice by providing preferential treatment to a subordinate.

We did not substantiate the remaining four allegations.

By letter dated October 25, 2012, we provided Mr. Calvery the opportunity to comment on the results of our investigation. In his response, via his counsel, dated December 7, 2012, Mr. Calvery disputed the substantiated conclusions, and wrote that his violations of applicable standards were unintentional. Mr. Calvery contended the different practices used by PFPA and the Secret Service (his former employer) contributed to his misunderstanding that (b) (6), (b) (7)(C) was eligible to use the PFPA firing range. Mr. Calvery also wrote that he believed his subordinates only used personal time to pick up his lunch or coffee, that his granting administrative leave for the PFPA Golf Tournament met the criteria outlined in the DoD Financial Management Regulation, and that he exercised his discretion when he selected (b) (6), (b) (7)(C) for promotion to (b) (6), (b) (7)(C). After reviewing the matters presented by Mr. Calvery, reexamining the evidence, and obtaining additional testimony, we stand by our conclusions.²

² While we have included what we believe is a reasonable synopsis of the response provided by Mr. Calvery, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated comments by Mr. Calvery where appropriate throughout this report and provided a copy of his full response to the Director, Administration and Management, Office of the Secretary of Defense, with this report.

We recommend the Director, Administration and Management, Office of the Secretary of Defense, consider appropriate action with regard to Mr. Calvery and the use of a (b) (6), (b) (7)(C) for the Director, PFPA. Additionally, we will notify the U.S. Office of Special Counsel of the substantiated allegation concerning the prohibited personnel practice.

This report sets forth our findings and conclusions based on a preponderance of the evidence.

II. BACKGROUND

On May 3, 2002, in response to the September 11, 2001, terrorist attack against the Pentagon and the subsequent anthrax incidents, Deputy Secretary of Defense Paul Wolfowitz, established the PFPA as a DoD Agency under the cognizance of the Office of the Director of Administration and Management (A&M). This new agency absorbed the Defense Protective Service and its role of providing basic law enforcement and security for the Pentagon.

Mr. Calvery assumed duties as the Director, PFPA, on May 1, 2006. As the Director, Mr. Calvery is responsible for providing a full range of services to protect people, facilities, infrastructure, and other resources at the Pentagon Reservation and in DoD-occupied facilities in the National Capital Region.

III. SCOPE

We interviewed Mr. Calvery, and (b) (6), (b) (7)(C) with knowledge of the matters under investigation. We examined relevant documents and standards that govern the issues under investigation. We reviewed official email messages, memorandums, official personnel records, manpower documents, evaluation reviews, logistics budget, property accountability reports, and promotion packages.

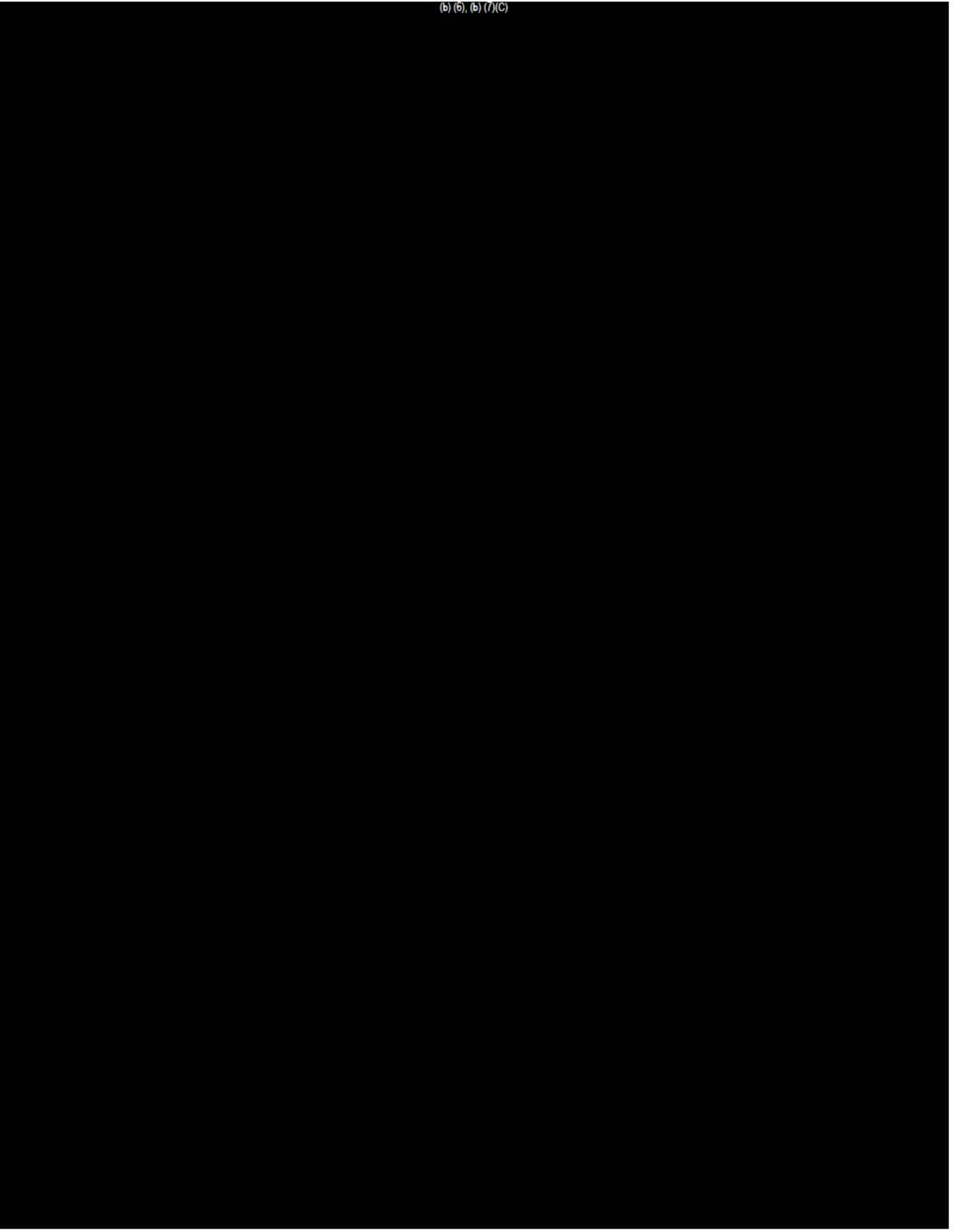
Our Office received two anonymous hotline complaints alleging misconduct by Mr. Calvery. The first complaint, dated March 16, 2011, alleged that Mr. Calvery abbreviated regularly scheduled firearms training in order for (b) (6), (b) (7)(C) to use the PFPA firing range, instructors, weapon, and ammunition. The second complaint, dated March 17, 2011, alleged that Mr. Calvery created a hostile work environment by (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) misusing his subordinates, (b) (6), (b) (7)(C) improperly authorizing administrative leave, (b) (6), (b) (7)(C)

By letter dated September 2, 2011, a U.S. Senator, on behalf of a constituent, asked this Office to review allegations of mismanagement by Mr. Calvery.


During our preliminary investigative work, we determined that the following issues, which the complainants alleged were violations, did not merit further investigation and consider them not substantiated.

(b) (6), (b) (7)(C)

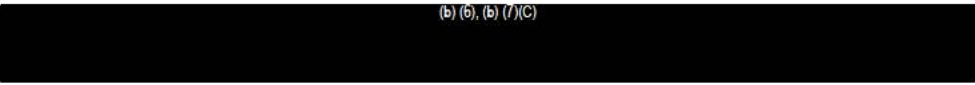


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(b) (6), (b) (7)(C)



(b) (6), (b) (7)(C)



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IV. FINDINGS AND ANALYSIS

A. Did Mr. Calvery misuse his position?

Standards

DoD 5500.07-R, "Joint Ethics Regulation (JER)," August 30, 1993, including changes 1-6 (November 29, 2007)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees.

Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, CFR, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Section 2635.101, "Basic Obligation of Public Service," states that employees shall put forth honest effort in the performance of their duties.

Section 2635.702, "Use of Public Office for Private Gain," states that employees shall not use their public office for their own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or person with whom the employee is affiliated in a nongovernmental capacity.

Section 2635.704, "Use of Government Property," states that an employee has the duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.⁴

Section 2635.705, "Use of Official Time," states that unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

⁴ The JER defines Government property to include any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes Government vehicles.

(b) (6), (b) (7)(C)

Facts

The anonymous complaint alleged that Mr. Calvery allowed (b) (6), (b) (7)(C) to use a Government firing range, PFPA weapon, and ammunition; and that PFPA instructors provided personal instruction to (b) (6), (b) (7)(C). Additionally, the complaint alleged that a regularly scheduled class was shortened in order to accommodate Mr. Calvery's (b) (6), (b) (7)(C).

A review of personnel records established that (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

PFPA Training Directorate Administrative Instruction 9002-004, "Standing Operating Procedures, Use of PFPA Firearms Ranges by Outside Agencies," states that outside agencies can request to use the PFPA firing range. If approved, the Agency must provide their own targets, ammunition, and certified firearms instructors. The Instruction also requires all shooters to sign a "Pentagon Force Protection Agency Firearms Waiver Form," which relieves PFPA for any injuries/property damage.

Mr. Calvery's (b) (6), (b) (7)(C) testified that Mr. Calvery asked (b) (6), (b) (7)(C) to coordinate with (b) (6), (b) (7)(C) in order to escort his (Mr. Calvery's) (b) (6), (b) (7)(C) to the firing range. On January 11, 2011, the (b) (6), (b) (7)(C) emailed (b) (6), (b) (7)(C) to inform (b) (6), (b) (7)(C) that Mr. Calvery's (b) (6), (b) (7)(C) had been cleared by the (b) (6), (b) (7)(C), to use the PFPA Firing Range at the Pentagon and to set up a time. The (b) (6), (b) (7)(C) clarified that the event was not scheduled at that point.

(b) (6), (b) (7)(C) testified that (b) (6), (b) (7)(C) received a telephone call from the front office, a day or two before Mr. Calvery's (b) (6), (b) (7)(C) used the range, asking if time could be made available for Mr. Calvery's (b) (6), (b) (7)(C) to use the firing range. (b) (6), (b) (7)(C) related that (b) (6), (b) (7)(C) checked with (b) (6), (b) (7)(C) staff and was informed that it was possible and no class would be interrupted.

(b) (6), (b) (7)(C) testified that the (b) (6), (b) (7)(C), asked if there was time on the schedule for Mr. Calvery's (b) (6), (b) (7)(C) to use the range. (b) (6), (b) (7)(C) recalled reviewing the range schedule and scheduling (b) (6), (b) (7)(C) use where it would cause minimal impact on operations. (b) (6), (b) (7)(C) scheduled (b) (6), (b) (7)(C) to shoot at 1400 on January 13, 2011, in between work shifts when no one would be on the range. The witness stated that because (b) (6), (b) (7)(C) believed the request was an "internal thing," (b) (6), (b) (7)(C) did not have Mr. Calvery's (b) (6), (b) (7)(C) complete the required paperwork.

(b)(6) (b)(7)(C) testified that on January 13, 2011, two PFPA firearms instructors provided approximately 1 hour of training to Mr. Calvery's (b)(6) (b)(7) which consisted of basic shooting fundamentals and 30 minutes of dry fire or dry practice. The witness stated that Mr. Calvery's (b)(6) (b)(7) shot approximately 50 rounds of .40 caliber frangible ammunition at an approximate cost of \$17-\$18. The Ammunitions Log listed 150 rounds of .40 caliber frangible ammunition being used on January 13, 2011, for Mr. Calvery's (b)(6) (b)(7)(C) familiarization training with a PFPA-owned pistol.⁵

A PFPA Firing Range Training Schedule for the period January 10-14, 2011, did not list any training for Mr. Calvery's (b)(6) (b)(7).

Witnesses testified that other than Mr. Calvery's (b)(6) (b)(7) no other PFPA employee's family member had used the firing range. Witnesses related that using the firing range for other than official business would be inappropriate.

(b) (6), (b) (7)(C) testified that (b) (6) (b)(7) office did not coordinate with PFPA for Mr. Calvery's (b)(6) (b)(7) to conduct weapons familiarization.

Mr. Calvery testified that (b) (6), (b) (7)(C) asked if he could use the PFPA firing range before he attended training at the Federal Law Enforcement Training Center. Mr. Calvery related he told the (b) (6), (b) (7)(C) not to cancel any training when he checked for range availability. Mr. Calvery stated that he told the (b) (6), (b) (7)(C):

You tell me when's the best time to come. And we just want to come down and do a weapons familiarization. You know, we don't want anything special. You know, (b) (6), (b) (7)(C) is completely flexible. You tell me when the best time is.

Mr. Calvery testified that the (b) (6), (b) (7)(C) told him, "Thursday at 2:00 is the best time. Tell him to come then." Mr. Calvery stated that (b) (6), (b) (7)(C) used the PFPA firing range, weapon, ammunition, and targets. He related that (b) (6), (b) (7)(C) use of the firing range was as a law enforcement officer.

Mr. Calvery also testified he was not aware of any other PFPA employee's family member ever using the firing range. However, Mr. Calvery added that he would permit a PFPA employee's family member, who was joining another law enforcement agency, to use the firing range to familiarize with a firearm.

Mr. Calvery further testified that after (b) (6), (b) (7)(C) used the PFPA firing range, he (Mr. Calvery) (b) (6), (b) (7)(C). The PFPA firing range is co-located inside the Pentagon near the Remote Delivery Facility.

⁵ The estimated cost of 150 rounds of .40 caliber frangible ammunition was \$51-\$54.

Discussion

We conclude Mr. Calvery misused his position to provide a benefit to (b) (6), (b) (7)(C). We found that on January 13, 2011, Mr. Calvery's (b) (6), (b) (7)(C) received 1 hour of firearms training from two PFPA Firearms instructors, and used a PFPA weapon, targets, and 150 rounds of ammunition. We also found (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) had not coordinated for the official use of the PFPA firing range and equipment. We found no evidence a previously scheduled class was shortened in order to accommodate Mr. Calvery and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C)

We determined Mr. Calvery misused his position to allow (b) (6), (b) (7)(C) who was not an employee of PFPA or DoD, access to the PFPA firing range. Mr. Calvery's (b) (6), (b) (7)(C) used a PFPA weapon, ammunition, and the official time of two Government employees while using the range on January 13, 2011. We also determined other family members of PFPA employees were not offered the same benefit. Furthermore, while there is a process in place for outside agencies to request the use of the PFPA firing range and equipment, we determined that there was no official coordination or documentation between the (b) (6), (b) (7)(C) and PFPA, and the targets, ammunition, firearms, and instructors were from PFPA, and not the (b) (6), (b) (7)(C). Furthermore, PFPA employees did not fill out the required paperwork, most significantly the waiver form, for Mr. Calvery's (b) (6), (b) (7)(C). We further determined Mr. Calvery misused his position when he had (b) (6), (b) (7)(C) coordinated the unauthorized event. (b) (6), (b) (7)(C)

Response to Tentative Conclusion

In his response, Mr. Calvery wrote the violation was unintentional and due to different practices used by PFPA and the Secret Service (his former employer). He reasonably believed (b) (6), (b) (7)(C) and thus eligible to use the PFPA firing range. Mr. Calvery acknowledged he should have completed additional paperwork and ensured (b) (6), (b) (7)(C) targets, ammunition, and certified firearms instructors. Mr. Calvery apologized for his oversight and stated he was willing to reimburse the agency accordingly.

Our office confirmed with (b)(6) (b)(7)(C), that Mr. Calvery's (b)(6) (b)(7)(C) when he used the PFPA Firing Range, and that the required coordinating paperwork for the use of the range was not prepared. After considering Mr. Calvery's remarks and confirming (b)(6) (b)(7)(C) status, we stand by our conclusion and recommend recoupment.

B. Did Mr. Calvery misuse his subordinates?

Standards

DoD 5500.07-R, "JER," August 30, 1993, including changes 1-6 (November 29, 2007)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees.

Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, CFR, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Subpart A, "General Provisions," Section 2635.101, "Basic obligation of public service," states in paragraph (b)(14) that employees "endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part." The section explains that whether particular circumstances create an appearance that the law or standards have been violated "shall be determined from the perspective of a reasonable person with knowledge of the relevant facts."

Subpart G, "Misuse of Position," states:

In Section 2635.702, "Use of public office for private gain," that an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise to himself or to friends, relatives, or persons with whom the employee is affiliated in a non-governmental capacity.

In Section 2635.705(b), "Use of a subordinate's time," that an employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

Facts

The anonymous complaint alleged Mr. Calvery's protocol staff regularly obtained lunch for him.

Five witnesses testified Mr. Calvery's office staff would bring him lunch and/or coffee/tea on a daily basis. One witness testified that Mr. Calvery never directed them to do it, but he would ask his office staff to pick up his lunch. Two witnesses testified that Mr. Calvery typically preordered his lunch at the Air Force or Navy mess and someone would pick the lunch up for him.

One witness testified the office staff's duties included getting Mr. Calvery his lunch and "lattes." The witness related that it was expected and if (b)(6) (b)(7) raised concerns over getting Mr. Calvery his lunch, they would think (b)(6) (b)(7) was not the right person for the job. Another witness testified that when (b)(6) (b)(7) worked for Mr. Calvery, (b)(6) (b)(7) ordered and picked up Mr. Calvery's lunch every day and had to have his coffee ready before he arrived in the morning.

Two witnesses testified (b)(6) (b)(7)(C), not Mr. Calvery, would ask the (b)(6) (b)(7)(C) to get Mr. Calvery's lunch. One witness testified that when (b)(6) (b)(7) arrived at PFFA, no one was getting Mr. Calvery his lunch, and so (b)(6) (b)(7) started it as a courtesy. (b)(6) (b)(7) further testified that Mr. Calvery had grown to expect someone to get his lunch and coffee. (b)(6) (b)(7) related that Mr. Calvery did not abuse it, "it's not a mandatory requirement whatsoever."

Three witnesses testified getting Mr. Calvery his lunch was not in their position description. The position description for an (b)(6) (b)(7)(C) did not list any duties or responsibilities commensurate with ordering and picking up lunches or coffee.

Seven witnesses testified Mr. Calvery always paid for his own lunch. One witness testified that the office staff maintained a cash fund to purchase Mr. Calvery's coffee, which Mr. Calvery replenished every week.

Mr. Calvery testified that occasionally, only when he was really busy, (b)(6) (b)(7)(C) would get him coffee and lunch. He stated that it has been going on for a while and related that "it's something that's kind of evolved. I've never directed or ordered (b)(6) (b)(7) to do that." He added that occasionally (b)(6) (b)(7)(C) also got him lunch. Mr. Calvery testified that he never coerced (b)(6) (b)(7)(C) into getting his lunch and that it was not commensurate with their duties. Mr. Calvery testified:

And I would hope if they felt uncomfortable doing it, they would tell me. And if they did feel uncomfortable, then that would be okay. You know, they wouldn't have to do that. And they don't have to do it now.

Discussion

We conclude Mr. Calvery misused his subordinates by regularly having his office staff order and pick up his lunch and retrieve coffee for him. Multiple witnesses testified that Mr. Calvery's staff performed these personal services on a routine basis. We found these duties were not part of any staff member's official duties. Mr. Calvery did not dispute accepting these services, but characterized the frequency as only on occasion.

The JER requires that an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit. Additionally, an employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

We determined it was improper for Mr. Calvery to have his (b) (6), (b) (7)(C) order and bring him his lunch. Mr. Calvery and witness testimony established that when Mr. Calvery was busy, his office staff ordered and retrieved his lunch from either the Air Force or Navy mess. Additionally, we found (b) (6), (b) (7)(C) bought him coffee each morning with money (b) (6), (b) (7) maintained for him. Although Mr. Calvery paid for the lunches and coffee using his own funds we determined that it was improper for Mr. Calvery to ask or allow his subordinates to routinely retrieve lunch or coffee for him. Finally, the (b) (6), (b) (7)(C) felt obligated to get Mr. Calvery his lunch and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

We also conclude these duties were expected as evidenced by the cash maintained by office staff, which was used for the daily purchase of Mr. Calvery's coffee.

Response to Tentative Conclusion

In his response, Mr. Calvery wrote that he never directed, coerced, induced or intimidated any subordinate to pick up his lunch or coffee. Mr. Calvery acknowledged that (b) (6), (b) (7)(C) would occasionally pick up lunch for him due to his back-to-back meetings and clarified that it was not a daily occurrence. He reiterated that he believed (b) (6), (b) (7) offered to do so because (b) (6), (b) (7) was already leaving the office for lunch or a break. Mr. Calvery added that in retrospect, he should have been clear to ensure his employees understood that he was not directing anyone to pick up his lunch or coffee. Mr. Calvery gave his assurance that he will be careful to avoid even the perception of impropriety and will not accept voluntary offers from employees that could be perceived as other than official duties. After carefully considering Mr. Calvery's response, we stand by our conclusion.

C. Did Mr. Calvery improperly authorize the use of administrative leave?

Standards

DoD Financial Management Regulation (DoD FMR), Volume 8, "Civilian Pay Policies and Procedures," Chapter 05 "Leave", dated September 2008

Section 051601, states, in part, that with regard to excused absences, "Agency heads or their designees have authority to grant excused absence in limited circumstances for the benefit of the agency's mission or a government-wide recognized and sanctioned purpose." Common situations where agencies generally excuse absence without charge to leave are: closure of

installations or activities, tardiness and brief absence,⁶ registering and/or voting, taking examinations, attending conferences or conventions, and representing employee organizations.

DoD Instruction (DoDI) 1400.25, Volume 630, DoD Civilian Personnel Management System: Leave, dated December 1996 (Administratively reissued April 6, 2009)

Paragraph 6, "Excused Absence," states, in part:

- In subparagraph a. that an excused absence refers to an authorized absence from duty without loss of pay and without charge to other paid leave. Periods of excused absence are considered part of an employee's basic workday even though the employee does not perform his or her regular duties. Consequently, the authority to grant excused absence must be used sparingly.
- In subparagraph b. that the Heads of the DoD Components or their designees shall delegate to the lowest practical level authority to grant excused absence.
- In subparagraph c. that Comptroller General decisions limit discretion to grant excused absence to situations involving brief absences. Where absences are for other than brief periods of time, a grant of excused absence is not appropriate unless the absence is in connection with furthering a function of the Department of Defense.
- In subparagraph d. that more common situations in which excused absence can be granted are for: voting, blood donation, permanent change of station, employment interview, counseling, certification, volunteer activities, emergency situations, physical examination for enlistment or induction, invitations for Congressional Medal of Honor holders, and funerals.

OSD Administrative Instruction (AI) Number 67, Subject: Leave Administration, dated December 27, 1988

Paragraph 15, "Administrative Excusals," states, in part:

- In subparagraph 15.1, that employees may be excused from duty without charge to leave or loss of compensation in accordance with FPM Supplement 990-2 and CPM Supplement 990-2 (references (b) and (c)).
- In subparagraph 15.2.1, that additionally, management officials may excuse employees from duty for reasonable amounts of time, normally not to exceed 8 hours.⁷

⁶ A brief absence is limited to periods of less than 1 hour.

⁷ Participation in an organizational golf tournament was not one of the examples authorized as an administrative excuse.

Facts

The anonymous complaint alleged that Mr. Calvery approved all employees who participated in the annual PFPA-sponsored golf tournament to take 4 hours of administrative leave. The complaint also alleged that not everyone was allowed to participate in the golf tournament.

Flyers reflected that the last three Annual PFPA Golf Tournaments were held on June 4, 2009; June 4, 2010; and June 24, 2011. Registration was open to all PFPA Government and contractor employees, as well as PFPA partners and guests.

(b)(6) (b)(7)(C) testified that the PFPA Golf Tournaments were not a DoD-sanctioned event. (b)(6) (b)(7) related that as an "MWR-type function" everyone was eligible to participate. (b)(6) (b)(7) stated that Mr. Calvery approved 4 hours of administrative leave for those that participated. (b)(6) (b)(7) further testified that (b)(6) (b)(7) did not know if Mr. Calvery had sought a legal opinion with regard to the granting of administrative leave.

The 2011 announcement for the Golf Tournament indicated that employees needed to be on a scheduled day off, or use annual leave to attend the tournament. (b)(6) (b)(7)(C) clarified that PFPA contractor employees who participated were required to take leave per their company guidelines.

On May 24, 2011, the (b)(6) (b)(7)(C), sent an email advising the PFPA Golf Tournament's point of contact, "Finally, we know of no legal method for granting employee administrative time to attend this Golf Tournament. Recommend, therefore, that all employees be required to take annual leave to attend the Golf Tournament if they are otherwise in a duty status."

Mr. Calvery testified that the PFPA Golf Tournament was one of several team building "esprit de corps" initiatives he established. He related that the golf tournament was started 3 to 4 years ago and it was open to all PFPA employees, of which approximately 100-150 participated. He further stated that the number of participants was regulated by the capacity of the golf course.

Mr. Calvery testified that the first year the tournament was held he approved 4 hours of administrative leave because, "I was told, and I believed and I still believe that that was in my authority to grant that because it was an Agency sponsored event." He clarified that during the planning process, although he could not recall who, someone recommended that he grant administrative leave.

I mean, I'm responsible --. I'm the responsible official. I mean, it was laid out as an option and I said, 'That sounds good. I think we should do it.' And I authorized it.

Mr. Calvery related that the first year of the tournament he did not seek any legal guidance prior to authorizing administrative leave. He recalled that during a subsequent tournament the Office of General Counsel advised that it was not a good idea to authorize

administrative leave. Mr. Calvery testified, "I personally still think it's within my authority, but to err on the side of caution, we decided that next year to have everybody take annual leave."

Discussion

We conclude that Mr. Calvery wrongfully authorized the use of administrative leave for PFPA employees who participated in the 2009 and 2010 Annual PFPA Golf Tournaments. We note that for the 2011 tournament, Mr. Calvery sought legal advice and required all employees to use annual leave to attend the tournament. We also conclude that the tournament did not exclude any one group of employees within PFPA.

The DoD FMR and DoDI 1400.25 provide that administrative leave is authorized when there is a benefit to the agency's mission, a Government-wide recognized and sanctioned purpose, or in connection with furthering a function of DoD. In addition to the DoD FMR and DoDI 1400.25, OSD AI No. 67 lists several situations where administrative leave could be granted.

We determined that Mr. Calvery wrongfully authorized administrative leave to PFPA employees participating in the PFPA Golf Tournament in 2009 and 2010. We also determined the golf tournament, although open to all PFPA employees, was not a DoD-sanctioned event and there was limited benefit toward PFPA's mission or a Government-wide recognized and sanctioned purpose. Further, we determined that authorizing administrative leave to participate in the golf tournaments was not an example cited in DoD regulations. Mr. Calvery may have had the authority to grant 4 hours of administrative leave, but could not do so for the purpose of playing golf.

Response to Tentative Conclusion

In his response, Mr. Calvery wrote that he sought appropriate guidance from his staff and that the annual golf tournament was a team-building event for PFPA and other partner organizations. He asserted the event was consistent with DoD policy, and the added liaison benefits with partner organizations strengthened PFPA's ability to complete its mission. Mr. Calvery offered in mitigation that he only granted administrative leave for four PFPA employees for the 2009 tournament.

DoD Regulations do not list a golf tournament as a common situation in which agencies generally grant excused absence. Golf tournaments are limited in attendance by the capacity of the golf course and interested golfers. Additionally, it is difficult to justify the golf tournament's benefit to the agency's mission or Government-wide recognized and sanctioned purpose when only four employees were granted administrative leave. Furthermore, he did not seek the advice of WHS OGC concerning the use of administrative leave to attend a golf tournament until 2011. After carefully considering Mr. Calvery's response, we stand by our conclusion.

D. Did Mr. Calvery provide preferential treatment to a subordinate?

Standards

Title 5, United States Code

Section 2301, "Merit system principles," states, in part, that Federal personnel management should be implemented consistent with the merit system principles:

- (1) recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity
- (8) that employees should be protected against arbitrary action, personal favoritism, or coercion for partisan political purposes.

Section 2302, "Prohibited personnel practices," Paragraph (b) states, in part, that any employee who has authority to take, directs other to take, recommend, or approve any personnel action, shall not, with respect to such authority:

- (6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.
- (12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in Section 2301 of this title.

Paragraph (c) states that the head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring that agency employees are informed of the rights and remedies available to them.

DoD 5500.07-R, "JER," August 30, 1993, including changes 1-6 (November 29, 2007)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees.

Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, CFR, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Subpart A, "General Provisions," Section 2635.101, "Basic Obligation of Public Service," states in paragraph (b)(8) that employees shall act impartially and not give preferential treatment to any private organization or individual, but shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

Facts

The anonymous complaint alleged that Mr. Calvery personally promoted (b) (6), (b) (7)(C) even though the promotion board "vigorously" recommended against it.

A senior official within PFPA testified that (b) (6) was surprised at how fast (b) (6), (b) (7)(C) was promoted. It was difficult to go from Police Officer to Sergeant to Lieutenant because experience was one of the things that counted as points, and he would have had fewer points in the experience part of the process. (b) (6) had no doubt that (b) (6), (b) (7)(C) was promoted because he was so close to "the flagpole." (b) (6) reiterated, "I mean it's obvious. There's no way."

(b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

The selection board results reflected that (b) (6), (b) (7)(C) was ranked (b) (6) out of 23 applicants. In an April 16, 2007, memorandum the (b) (6), (b) (7)(C) concurred with the selection board's recommendation to select and promote (b)(6) (b)(7)(C) to (b) (6), (b) (7)(C). Personnel records reflected the promotion was effective on (b) (6), (b) (7)(C).

(b)(6) (b)(7)(C)

(b) (6), (b) (7)(C)

A Selection Board rated the applicants based on answers to nine verbal and four written questions. The results, compiled on a spreadsheet, indicated that (b) (6), (b) (7)(C) was ranked (b) (6), (b) (7)(C) out of 17 applicants.

On February 25, 2009, (b)(6) (b)(7)(C) signed the Certificate of Eligibles for the position and selected three applicants for promotion; (b)(6) (b)(7)(C).

A PFPA Staff Action Summary, dated February 27, 2009, forwarded the Certificate of Eligibles and a brief biography of each applicant to Mr. Calvery requesting approval. The Staff Action Summary contained handwritten notes and initials. One of the handwritten notes on the front page is "ADD.- (b) (6), (b) (7)(C). On the second page of the Staff Action Summary there is a typed paragraph stating, (b) (6), (b) (7)(C) was competitively selected from (b) (6), (b) (7)(C) by Mr. Steven E. Calvery, (b) (6), (b) (7)(C).

Unlike the other

selectees, the paragraph about (b)(6) (b)(7)(C) did not summarize his current duties or education level.

The Certificate of Eligibles attached to the PFPA Staff Action Summary was also changed to reflect (b)(6) (b)(7)(C) selection. The handwritten and initialed changes included removing one of the previous selectees and adding (b)(6) (b)(7)(C). The changes were initialed by the (b)(6) (b)(7)(C).

Personnel records indicated that (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C) testified that at Mr. Calvery's direction, (b)(6) (b)(7)(C) sat on the selection board for the (b)(6) (b)(7)(C) positions. The witness related that because at the time (b)(6) (b)(7)(C) the board ranked him (b)(6) (b)(7)(C) out of 15 applicants. The witness further testified that a month after the promotion board's recommendation, he discovered that (b)(6) (b)(7)(C) was one of the three selected for promotion to (b)(6) (b)(7)(C).

On April 3, 2009, the (b)(6) (b)(7)(C) emailed the (b)(6) (b)(7)(C) stating that as a (b)(6) (b)(7)(C) could not believe (b)(6) (b)(7)(C) was selected for (b)(6) (b)(7)(C) above many others who truly shined during the board proceedings." (b)(6) (b)(7)(C) added there was no doubt in (b)(6) (b)(7)(C) mind that there was preferential treatment in that (b)(6) (b)(7)(C) stated that (b)(6) (b)(7)(C) selection set a terrible precedent for others who scored well above him.

(b)(6) (b)(7)(C) testified that when (b)(6) (b)(7)(C) approached Mr. Calvery about (b)(6) (b)(7)(C) promotion to (b)(6) (b)(7)(C), Mr. Calvery told (b)(6) (b)(7)(C) that it was his prerogative to promote (b)(6) (b)(7)(C). (b)(6) (b)(7)(C) recalled the conversation:

Sir, do you recognize that you told me in a face-to-face that you're concerned about transparency?" "Yep." Well, this isn't transparent, sir. He's not qualified for the position. "Well, he made the cert." Yes, sir, but there were people ahead of him that made more points and did a good job impressing the board and he wasn't one of them, and the senior person on the board told -- he's not even a police officer -- told you that. "I have my -- it's my prerogative." Yes, sir.

Three senior members of PFPA testified they did not think (b)(6) (b)(7)(C) current duties and responsibilities were commensurate with other (b)(6) (b)(7)(C) in the PPD. A review of the PFPA position descriptions for (b)(6) (b)(7)(C) reflected that neither position description listed serving as a (b)(6) (b)(7)(C) as a specific duty or responsibility.

Mr. Calvery testified that it was his responsibility to ensure the right people were in the right job, and was adamant that, as the Director, it was his prerogative; "I think I have to have that ability to exercise that. If I don't then you know, I'm not fulfilling my responsibility."

Mr. Calvery stated that (b) (6), (b) (7)(C) was currently and had been (b) (6), (b) (7)(C) for the past 3 to 4 years. He related that (b) (6), (b) (7)(C) supervised some of (b) (6), (b) (7)(C) but he was not aware of any additional supervisory responsibilities. Mr. Calvery added, "You know, he (b) (6), (b) (7)(C) does other things. I'm, you know, I'm not that close to all the other issues that he works." Mr. Calvery stated that (b) (6), (b) (7)(C) was in a unique position and could not be compared to other (b) (6), (b) (7)(C).

Mr. Calvery further testified that the (b) (6), (b) (7)(C) for (b) (6), (b) (7)(C) promotion. He related, "I don't know if I overturned anything." He recalled that the situation was unique because (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) and almost became "persona non grata" within the PPD. Mr. Calvery testified that (b) (6), (b) (7)(C) would have never been promoted because the (b) (6), (b) (7)(C) told him many times that a (b) (6), (b) (7)(C) would never get promoted.

Mr. Calvery related that he added (b) (6), (b) (7)(C) to the promotion list because he did not want (b) (6), (b) (7)(C) to suffer from being (b) (6), (b) (7)(C). Mr. Calvery testified, "I didn't remove anybody from the list. I added him to the list when that promotion list came by, which is my prerogative." Mr. Calvery related that (b) (6), (b) (7)(C) met the minimum standards and was on the well-qualified list. He added that (b) (6), (b) (7)(C) was a loyal employee, "he does his job in an exemplary manner and I thought he needed to be promoted."

Discussion

We conclude Mr. Calvery engaged in a prohibited personnel practice by providing preferential treatment to a subordinate. We found that (b) (6), (b) (7)(C) has served as Mr. Calvery's (b) (6), (b) (7)(C) for several years and was promoted to (b) (6), (b) (7)(C) while serving in the same capacity. There were no improprieties with (b) (6), (b) (7)(C) promotion to (b) (6), (b) (7)(C). In February 2009, (b) (6), (b) (7)(C) was considered for one of three (b) (6), (b) (7)(C) positions available. A selection board did not recommend (b) (6), (b) (7)(C) for promotion and ranked him in the (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) approved the selections and routed the Certificate of Eligibles to Mr. Calvery for approval/concurrence. We also found that during the routing process, Mr. Calvery directed that (b) (6), (b) (7)(C) be added to the list - resulting in one of the selectees being removed from the promotion list. Mr. Calvery testified that it was his prerogative to select (b) (6), (b) (7)(C) for promotion because he felt that (b) (6), (b) (7)(C) would never get promoted in his current position because he was not (b) (6), (b) (7)(C).

5 U.S.C. 2301 requires approving officials to select and advance employees solely on the basis of relative ability, knowledge, and skills, after fair and open competition, and shall not grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment for the purpose of improving or injuring the prospects of any particular person for employment. 5 U.S.C. 2302 states that the head of each agency shall be responsible for the prevention of prohibited personnel practices, and prohibits actions that violate any law, rule, or regulation implementing or directly concerning the merit system principles contained in Section 2301. 5 U.S.C. 2302 and the JER requires employees to act impartially and not give

preferential treatment to any individual, and endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards.

We determined that Mr. Calvery selected (b) (6), (b) (7)(C) for promotion based on their relationship rather than on (b) (6), (b) (7)(C) experience or scope of responsibilities. The selection board objectively evaluated each candidate based on their ability, knowledge, and skills, after a fair and open competition, and selected three candidates for promotion to (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) was not one of the three candidates selected by the board's criteria and would not have been selected without Mr. Calvery's assistance. Mr. Calvery used his discretion and authority to arbitrarily add (b) (6), (b) (7)(C) to the list, but was unable to describe what experience or qualifications he had to merit promotion to (b) (6), (b) (7)(C). Mr. Calvery justified his decision on (b) (6), (b) (7)(C) loyalty and thought that he deserved to be promoted. Mr. Calvery, as the agency head responsible for the prevention of prohibited personnel practices, violated the merit systems principles. His actions resulted in one of the three individuals selected by the board for promotion being removed to accommodate (b) (6), (b) (7)(C) promotion.

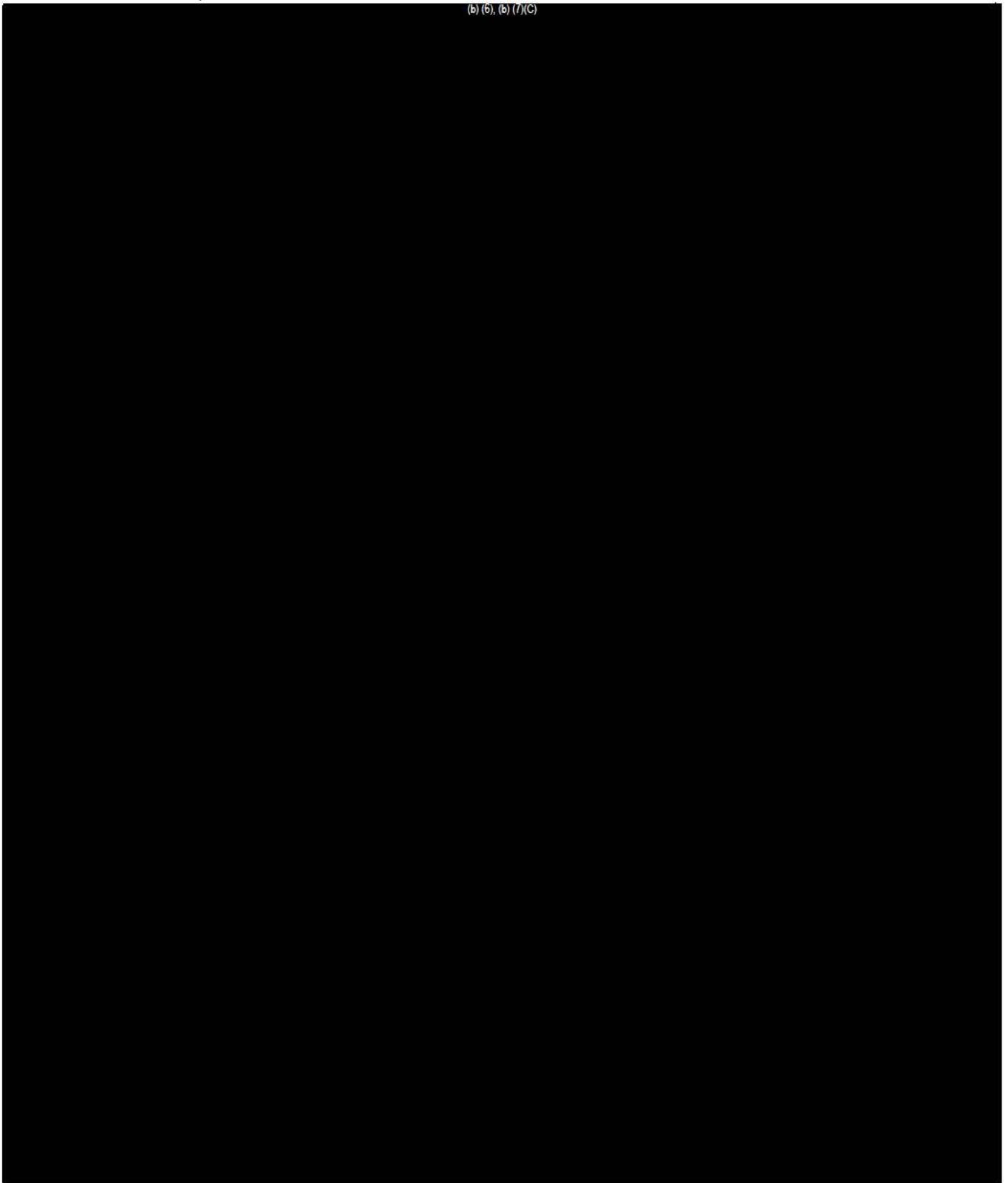
Accordingly, we conclude that Mr. Calvery engaged in a prohibited personnel practice by providing preferential treatment to a subordinate.

Response to Tentative Conclusion

In his response, Mr. Calvery denied having a personal interest in (b) (6), (b) (7)(C) promotion or pulling anyone off the promotion list to accommodate his selection. Mr. Calvery wrote that he exercised his discretion to ensure the agency was selecting the best and brightest for promotion. Additionally, Mr. Calvery explained (b) (6), (b) (7)(C)

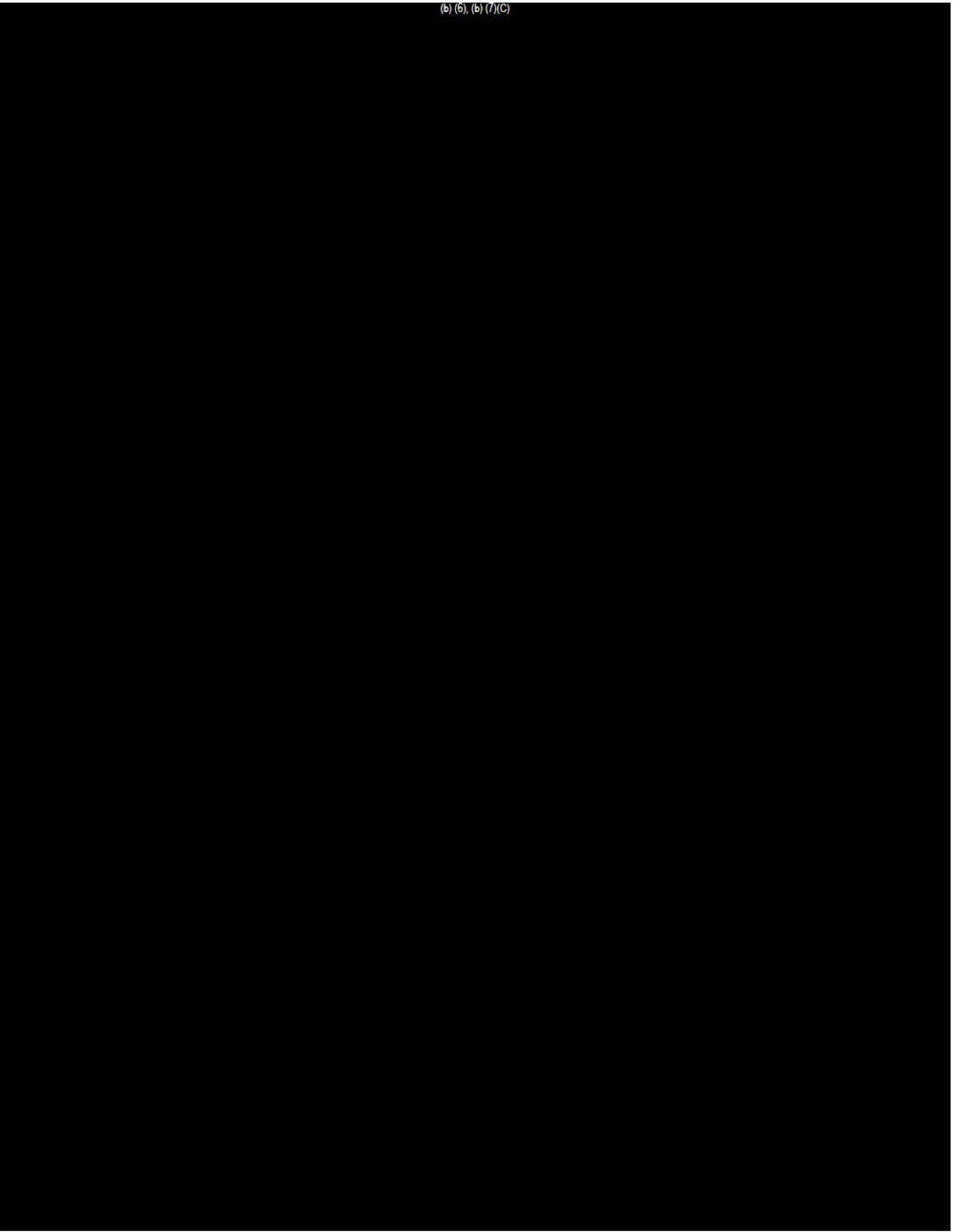
Mr. Calvery's personal interest in (b) (6), (b) (7)(C) promotion was evident when he testified he did not want (b) (6), (b) (7)(C) to "suffer" because of the "unique" situation of being (b) (6), (b) (7)(C). We interviewed (b) (6), (b) (7)(C). (b) (6) testified (b) (6) did not (b) (6), (b) (7)(C). (b) (6) stated (b) (6) made it abundantly clear to "everybody" that (b) (6) wanted the promotion and (b) (6) was disappointed when (b) (6) was not selected. After carefully considering Mr. Calvery's response and the additional testimony, we stand by our conclusion.

(b) (6), (b) (7)(C)



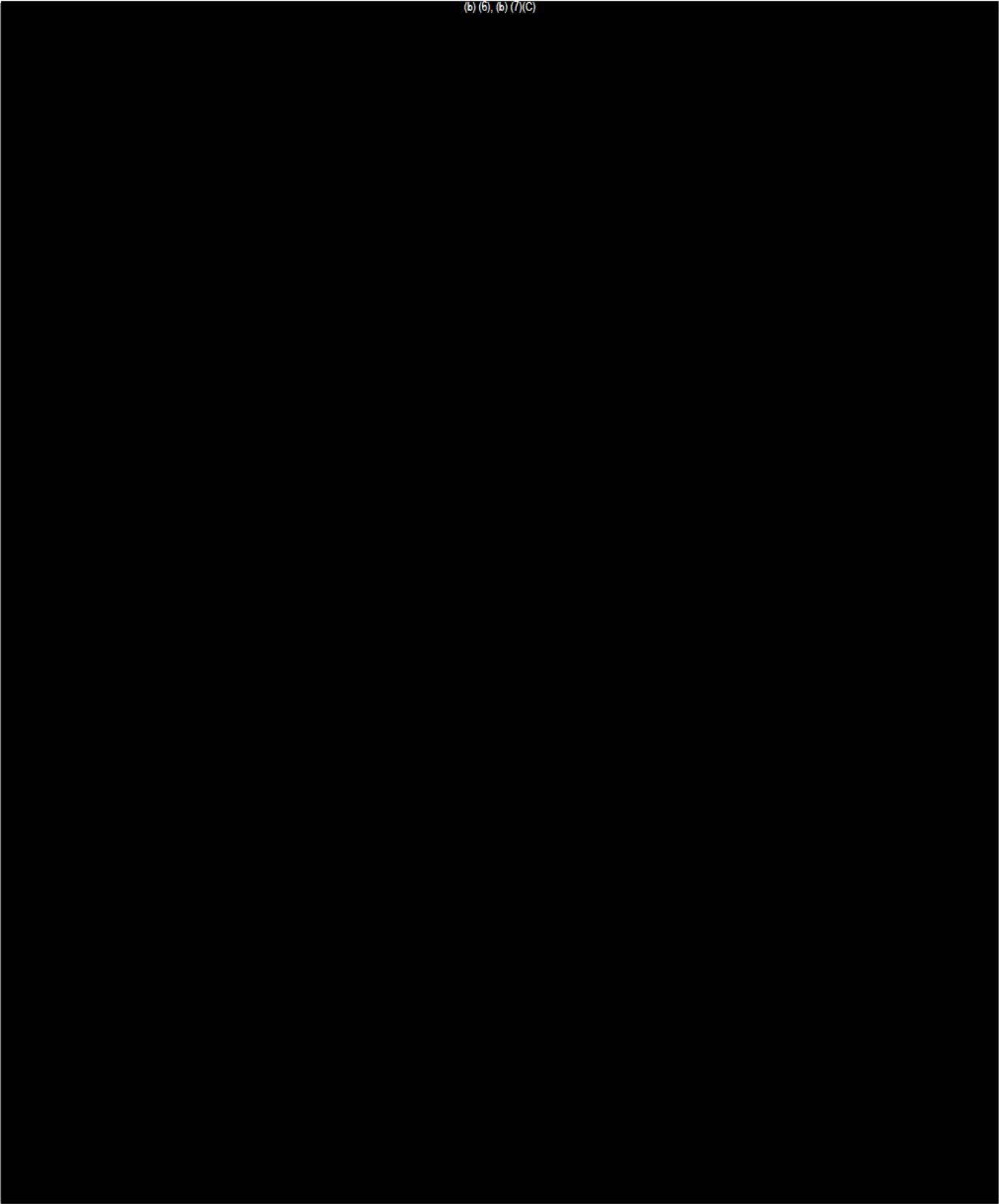
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(b) (6), (b) (7)(C)



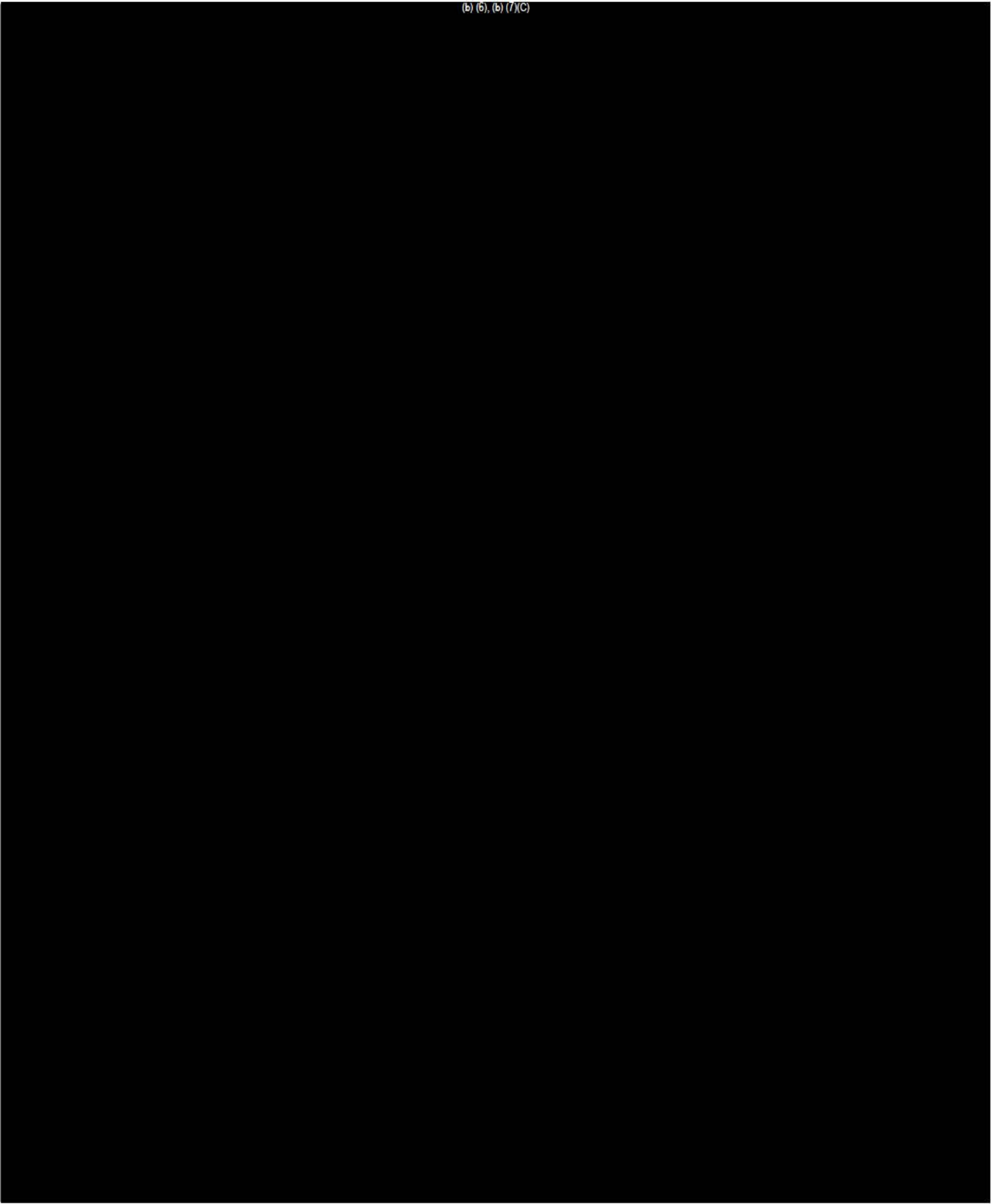
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(b) (5), (b) (7)(C)



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(b) (5), (b) (7)(C)



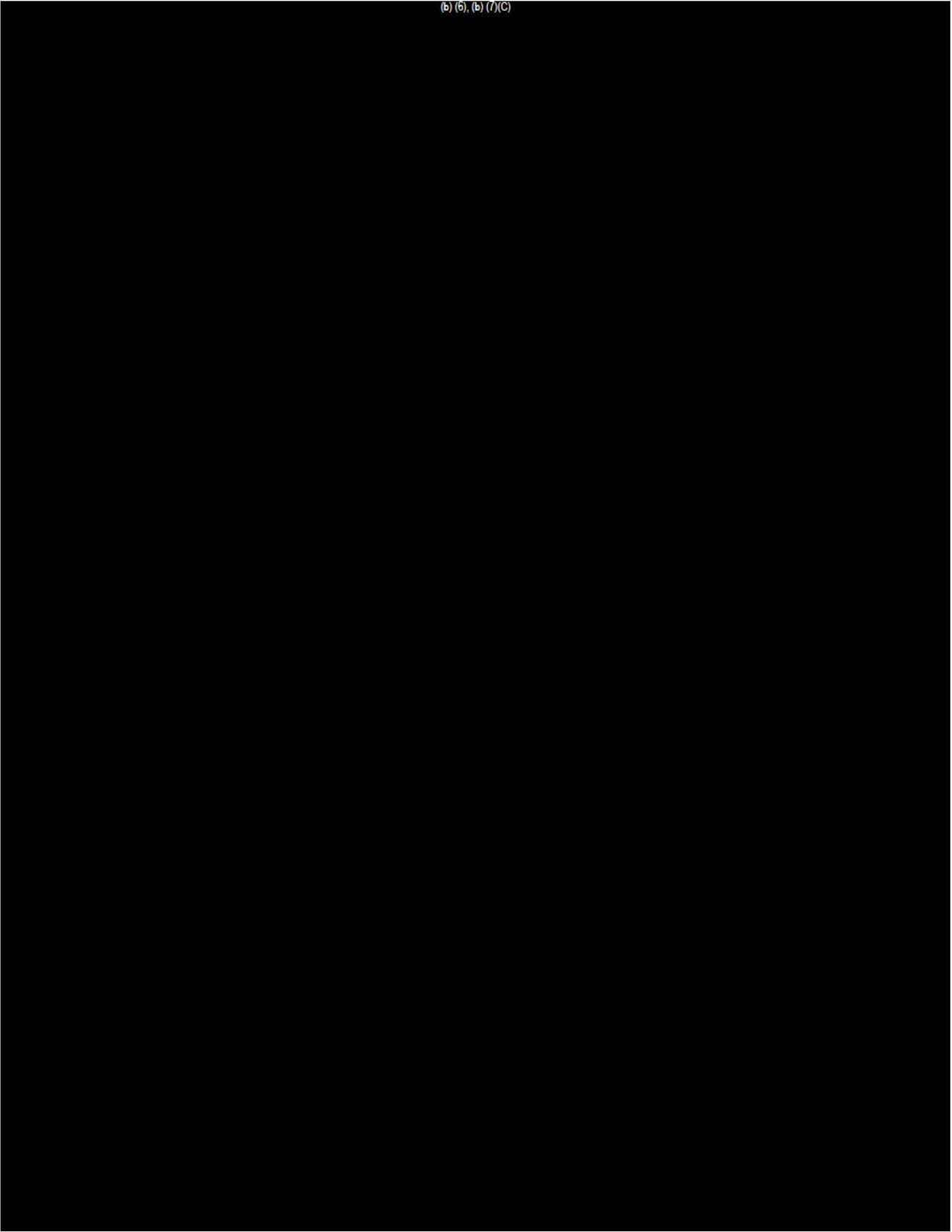
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(b) (5), (b) (7)(C)

(b) (5), (b) (7)(C)

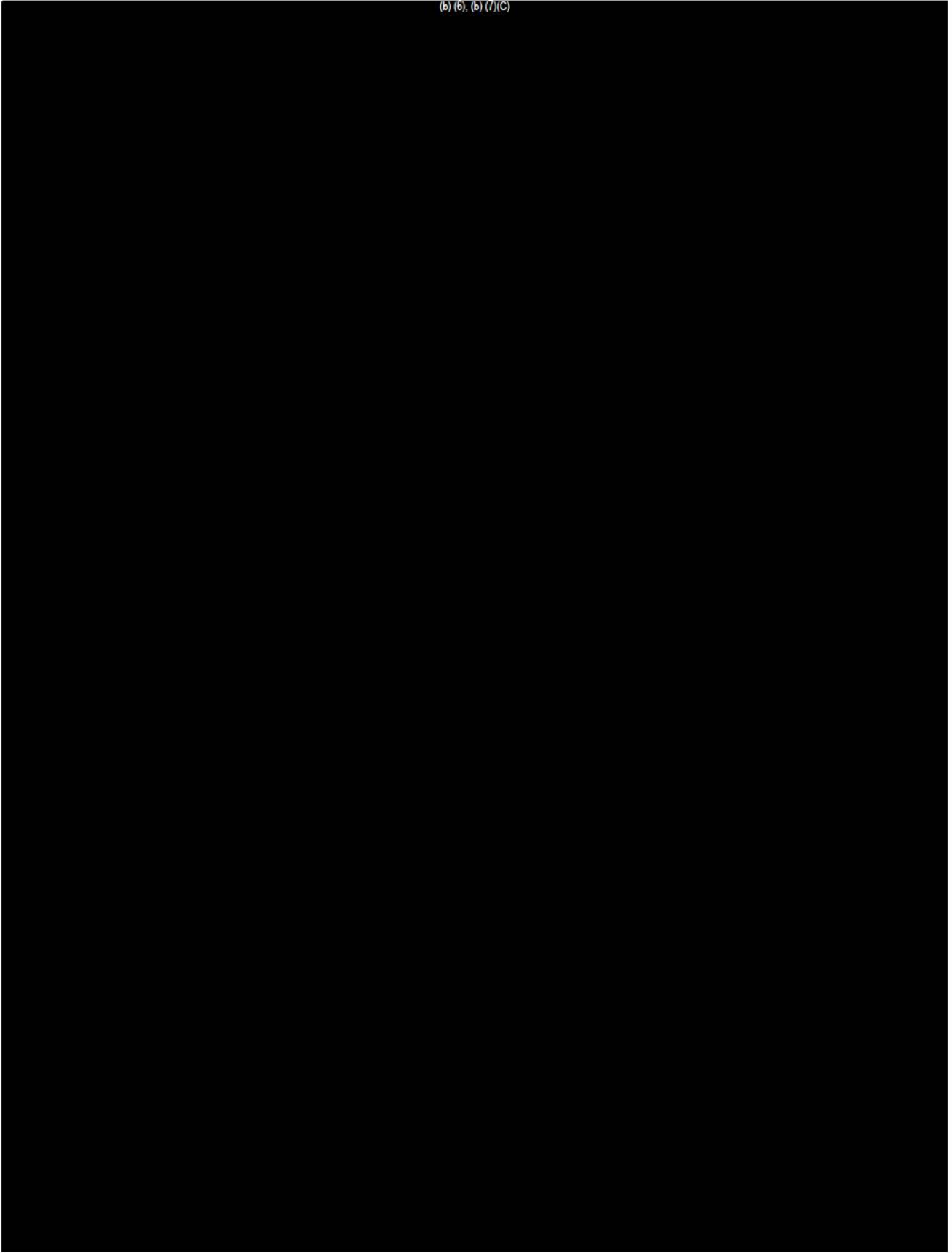
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(b) (6), (b) (7)(C)



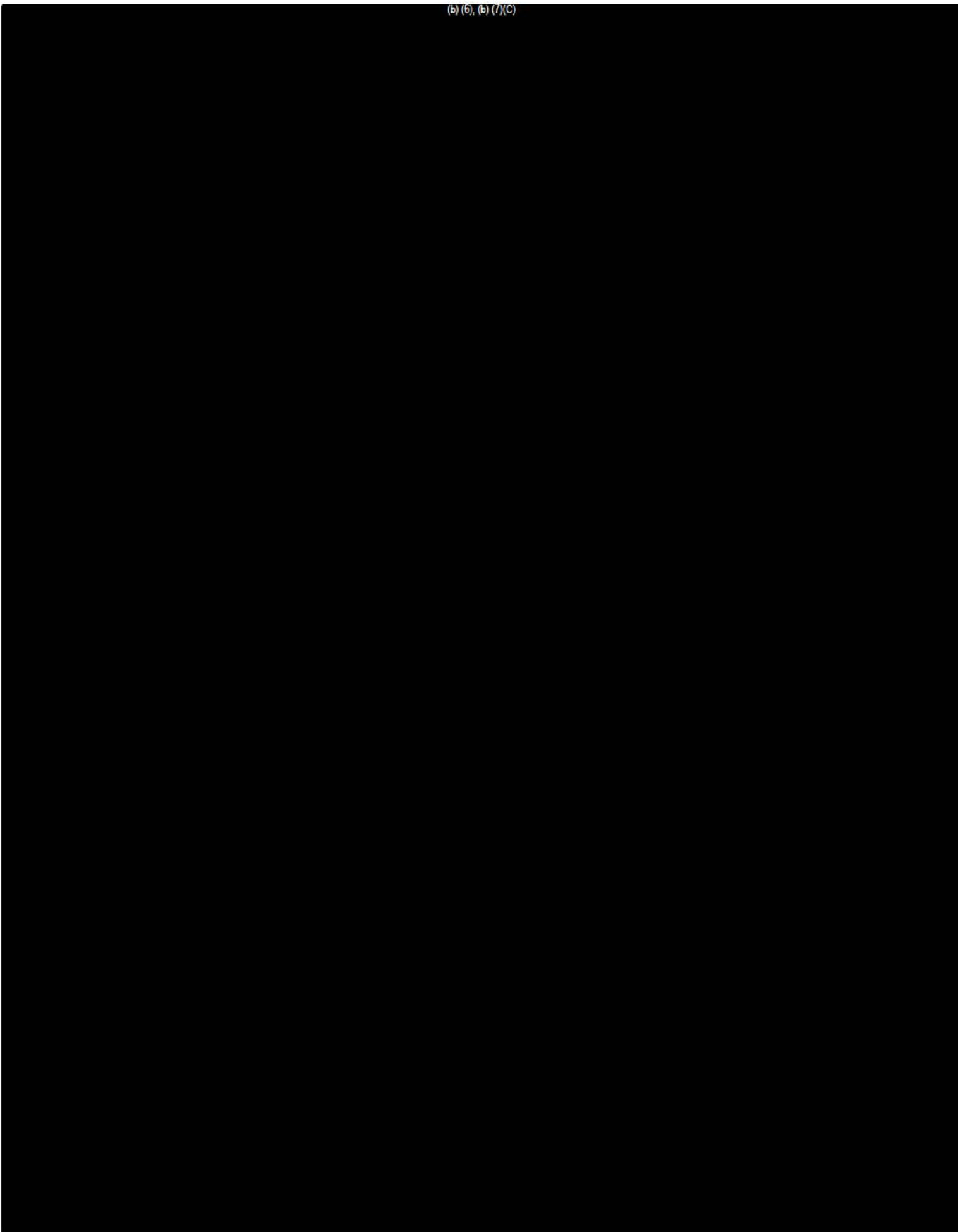
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(b) (5), (b) (7)(C)



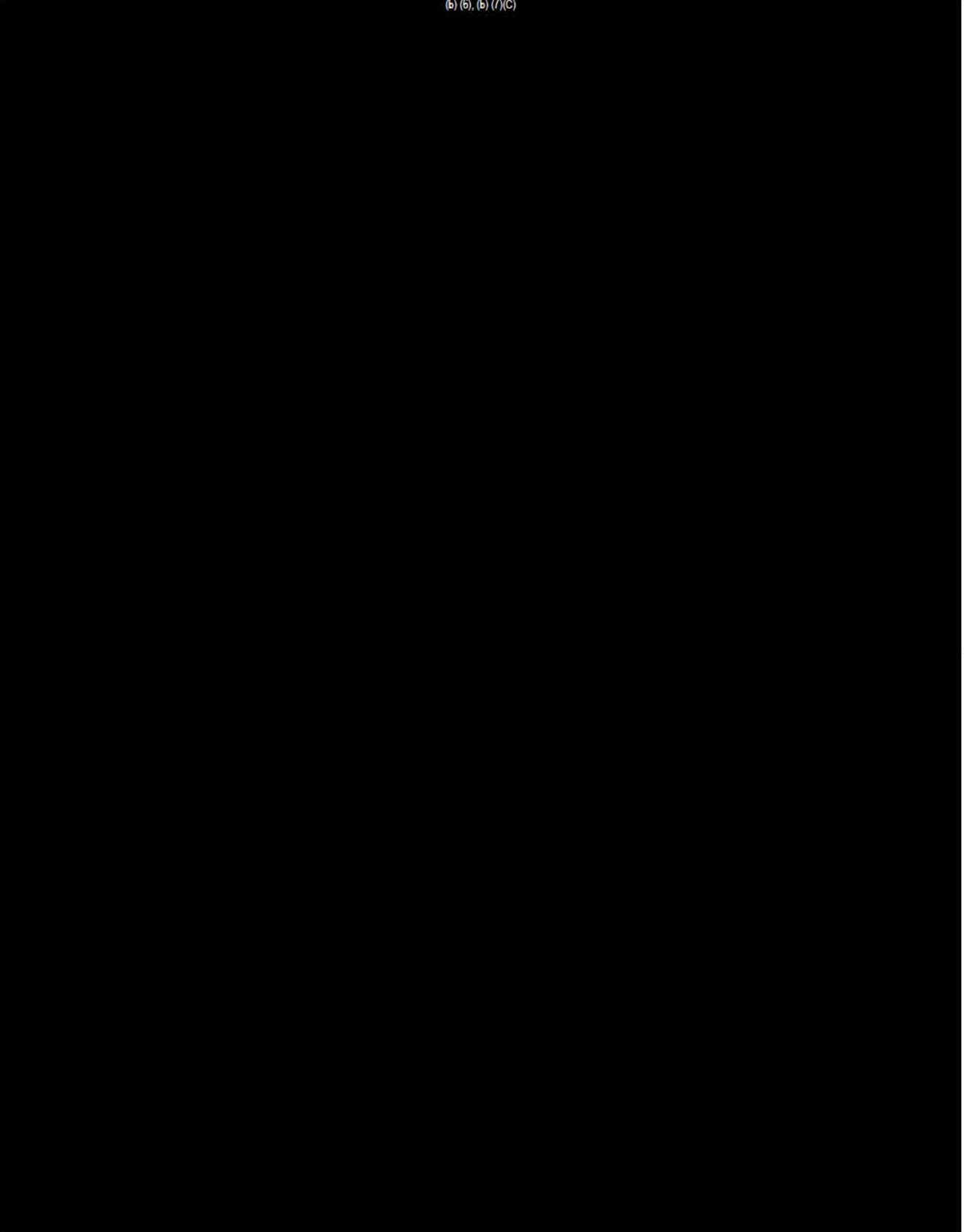
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(b) (5), (b) (7)(C)




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(b) (6), (b) (7)(C)



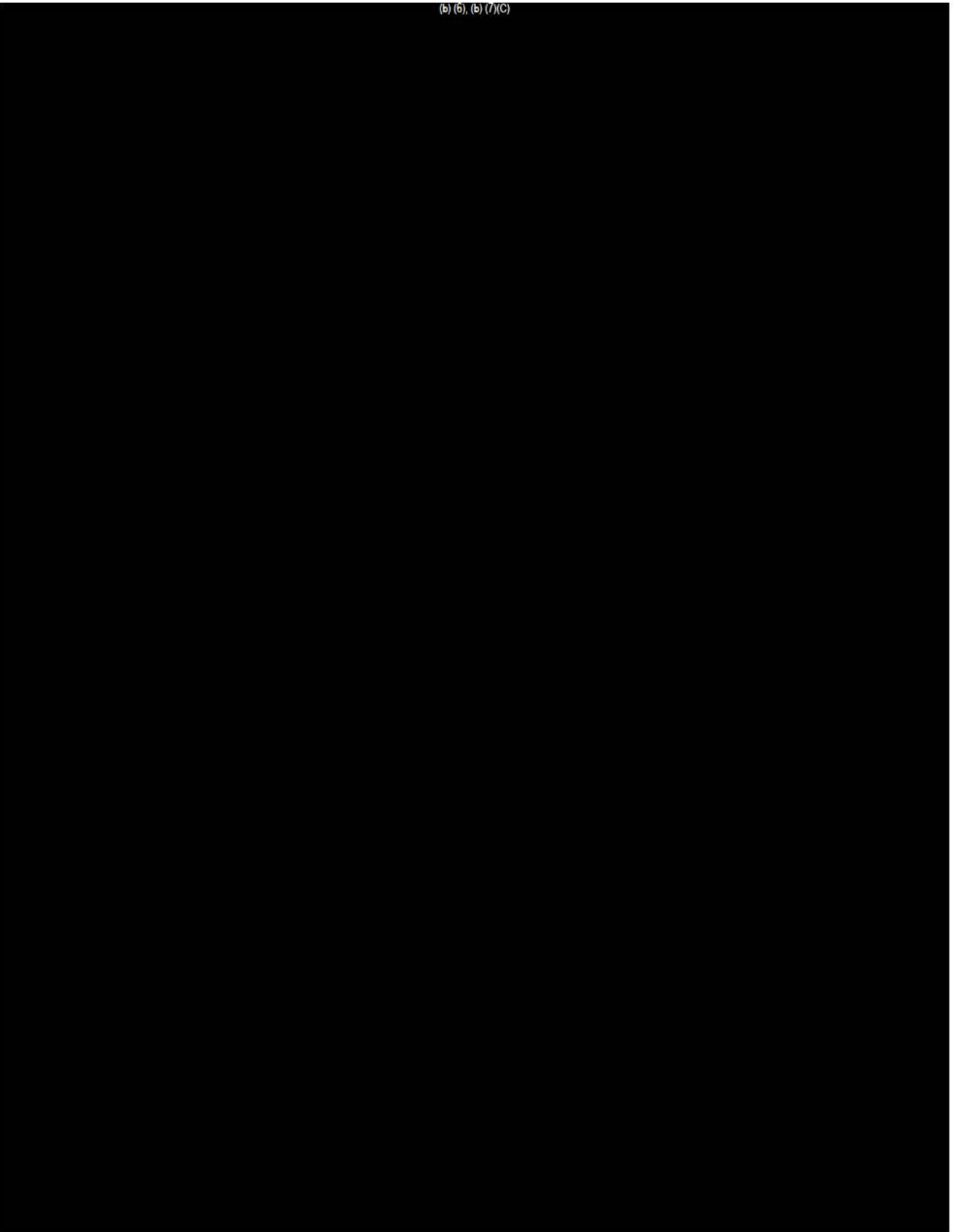
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(b) (6), (b) (7)(C)



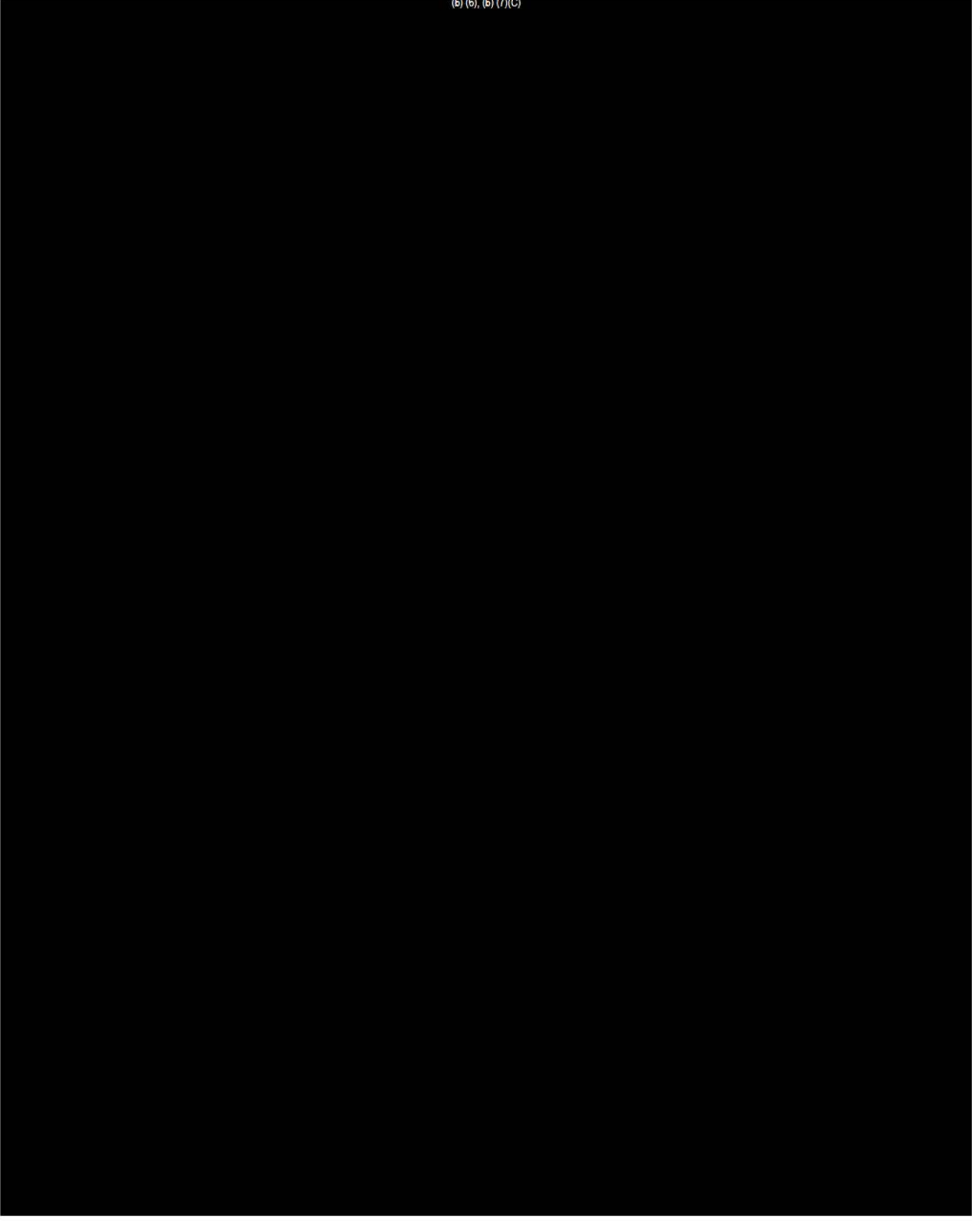
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(b) (6), (b) (7)(C)



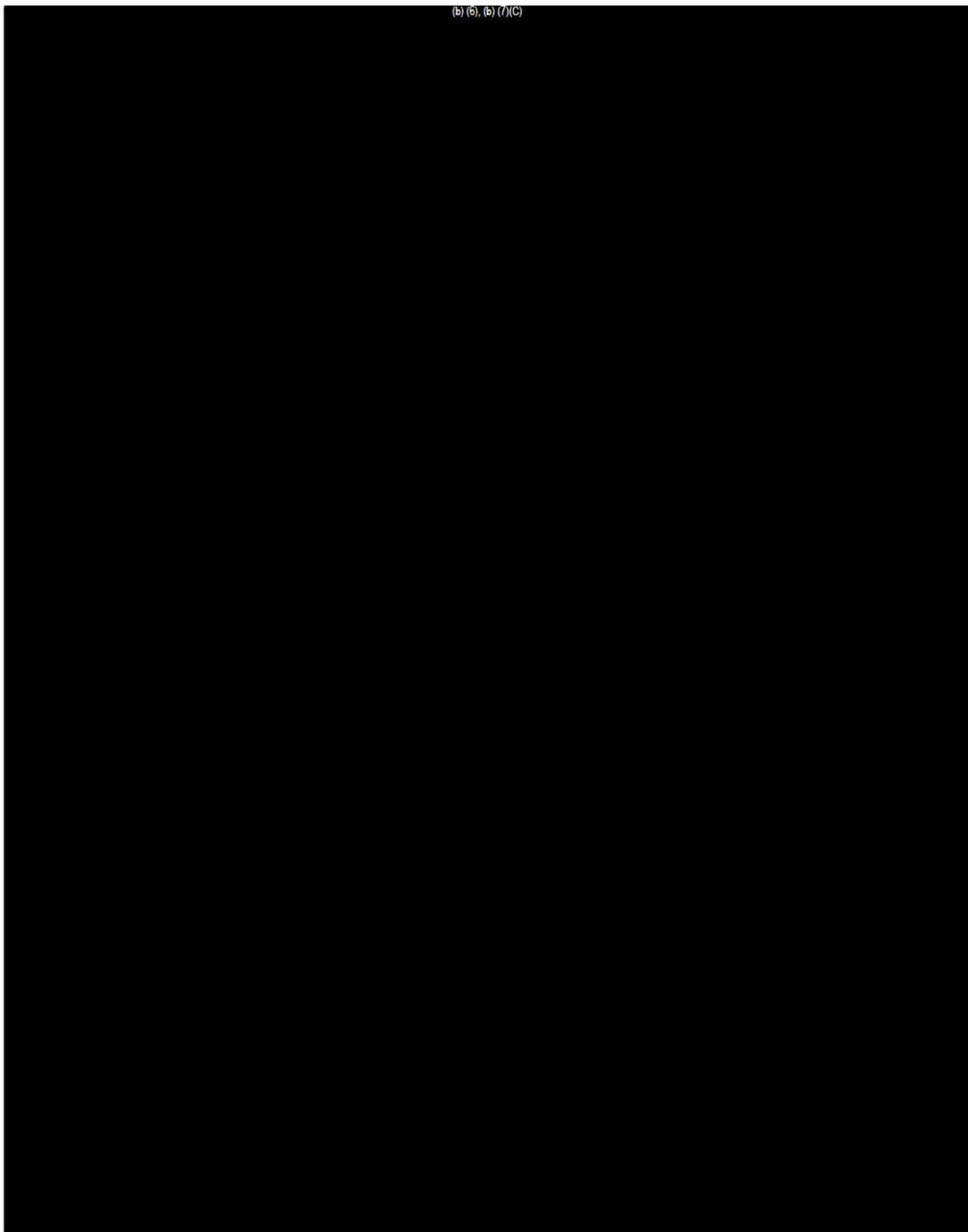
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(b) (6), (b) (7)(C)



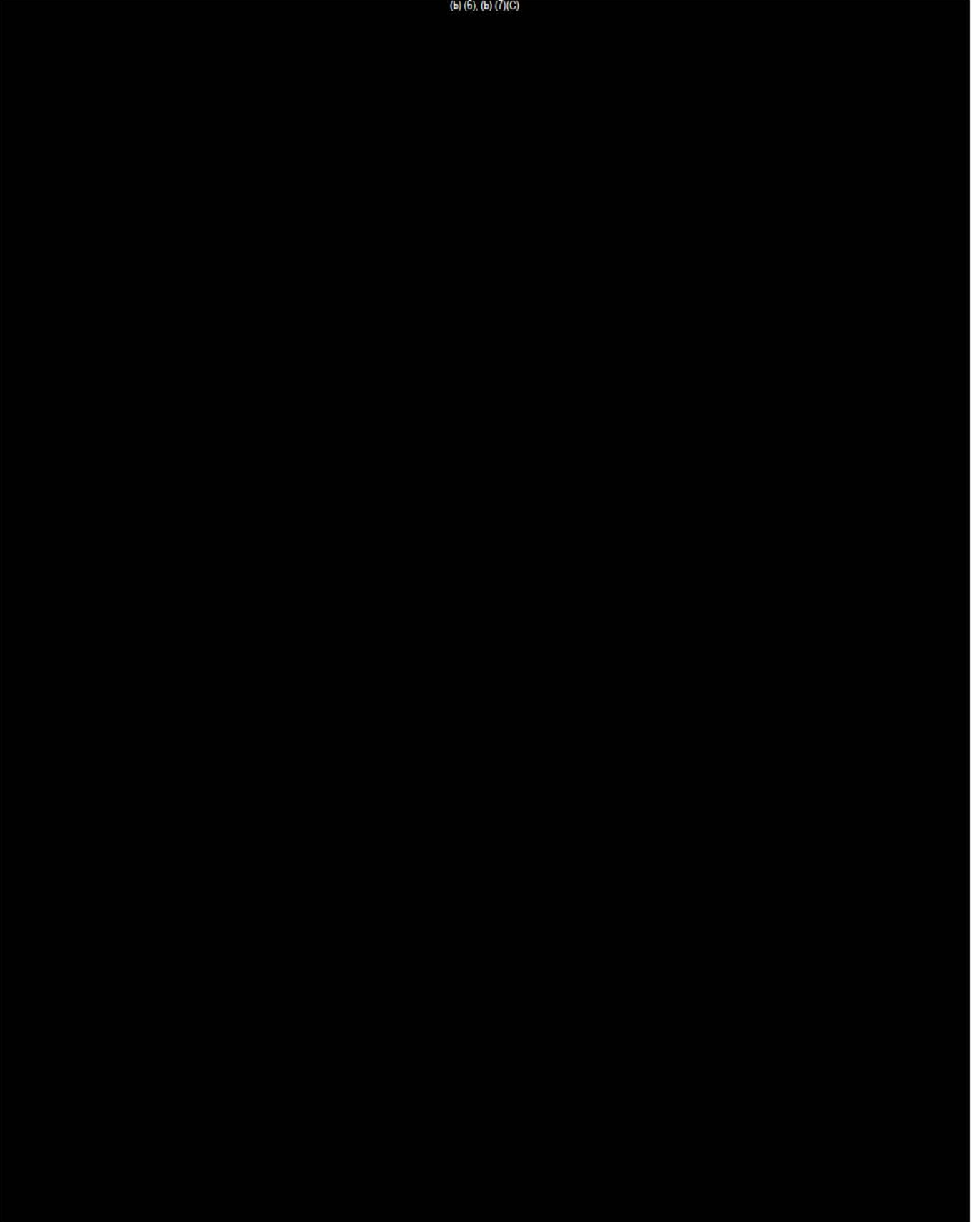
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(b) (6), (b) (7)(C)



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(b) (6), (b) (7)(C)



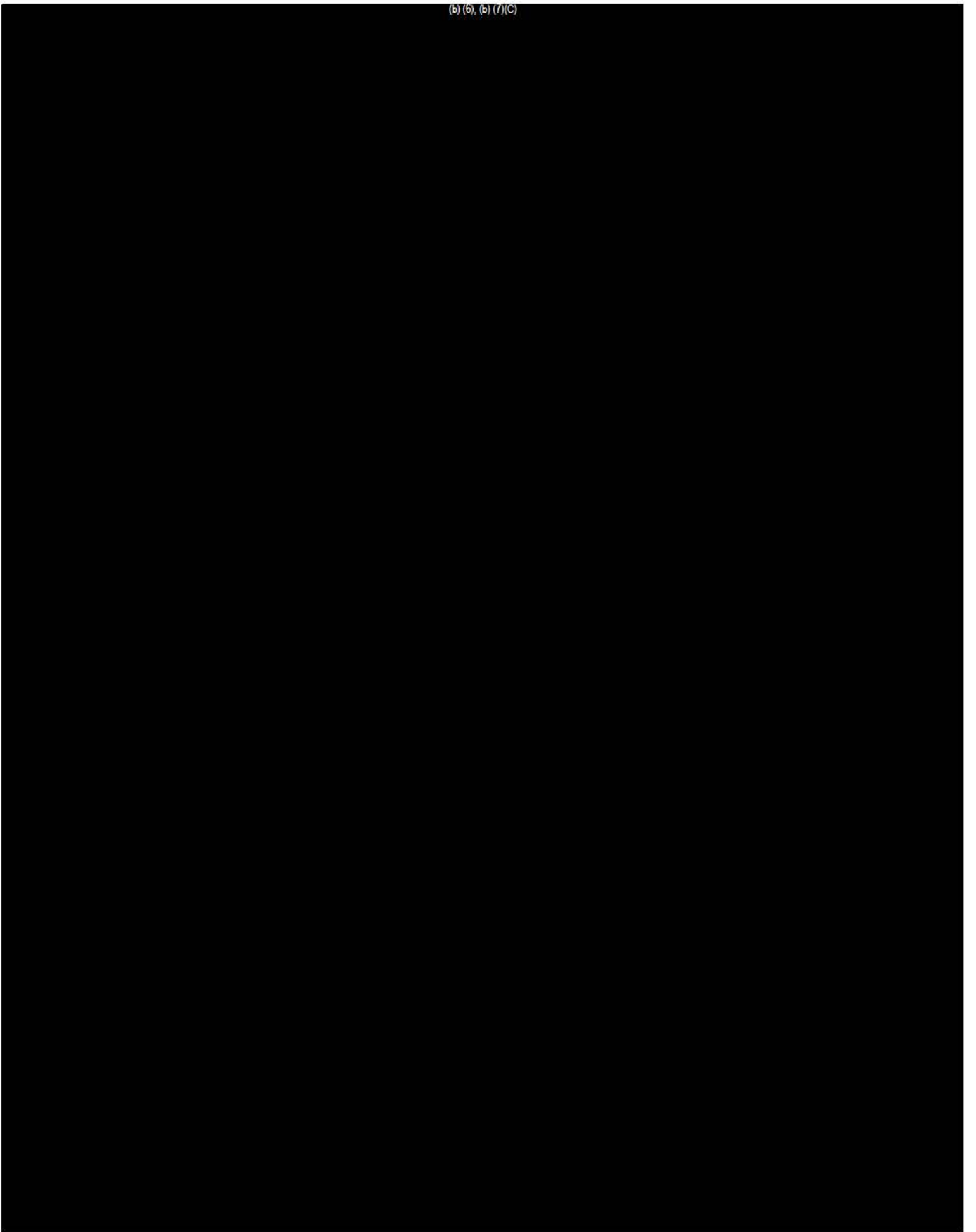
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(b) (6), (b) (7)(C)



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(b) (6), (b) (7)(C)



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(b)(6) (b)(7)(C)

V. OTHER MATTERS

During the conduct of the investigation, we questioned the use of a (b)(6) (b)(7)(C) position within PFPA, (b)(6) (b)(7)(C) for the Director. Mr. Calvery could not provide any written authorization for a (b)(6) (b)(7)(C) in accordance with DoD Publication 4500.36-R, paragraph C.2.2.2, and Appendix 1, paragraph AP1.2.9. Additionally, based on a position description for a (b)(6) (b)(7)(C) for the Director appears inconsistent with the duties and responsibilities associated with the grade of that position.

VI. CONCLUSIONS

A. Mr. Calvery misused his position by allowing (b)(6) (b)(7)(C) access to the PFPA firing range, and use of a PFPA weapon, ammunition, and two PFPA firearms instructors.

B. Mr. Calvery misused his subordinates by having his office staff order and pick up his lunch and retrieve coffee for him.

C. Mr. Calvery improperly authorized the use of Administrative Leave for the 2009 and 2010 PFPA Golf Tournaments.

D. Mr. Calvery engaged in a prohibited personnel practice by providing preferential treatment to a subordinate.

E. (b)(6) (b)(7)(C)

F. (b)(6) (b)(7)(C)

G. (b)(6) (b)(7)(C)

H. (b)(6) (b)(7)(C)

VII. RECOMMENDATIONS

A. The Director, Administration and Management, consider appropriate action regarding the substantiated allegations, to include recoupment of costs associated with (b)(6) (b)(7)(C) use of the PFPA firing range.

B. The Director, Administration and Management, consider appropriate action regarding the use of a (b)(6) (b)(7)(C) for the Director.

C. The DoD, Office of the Inspector General, will notify the U.S. Office of Special Counsel of the substantiated allegation concerning the prohibited personnel practice.

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20121204-000911



Inspector General
Department of Defense

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