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November 11, 2020

Original by FedEx and by email to  
[sfc-part3@newyorkcourts.gov](mailto:sfc-part3@newyorkcourts.gov)

Hon. Joel M. Cohen  
Justice, Supreme Court of New York County  
Commercial Division  
60 Centre Street, Room 570  
New York, New York 10007

RE: *People v. National Rifle Association of America, Inc., et al.*  
Index No. 451625/2020, Attorney General's Petition For Dissolution  
Motion Seq. #s 1, 3, 4 and 5 (Pending motions of all defendants)  
Hearing set: January 11, 2021 at 11:00 a.m.

Dear Justice Cohen:

I represent several members of the National Rifle Association ("NRA"), and I write to call the Court's attention to two threshold matters that should be addressed before any of the pending motions.

The NRA is reported to have as many as 5.5 million members. (Doc. # 81; NRA Ex. 10 to Mot. #001). Regardless of the exact number, all NRA members are entitled to the notice mandated by N-PCL § 1104. Additionally all members are entitled to have their interests in the NRA represented by conflict-free counsel as to all claims for and against the NRA as an entity under New York's Rules of Professional Conduct.

My clients are not parties, but no party has raised the issues that this letter addresses and apparently no party intends to do so. As will be shown, status as a party is not a prerequisite to placing these matters before the Court.

*1. The Attorney General has failed to comply with N-PCL § 1104.*

§ 1104(a) requires that "*Upon the presentation of such a petition* [for judicial dissolution], the court *shall* make an order requiring the corporation and all persons interested in the corporation to show cause... why the corporation should not be dissolved." (Emphasis added.) This section plainly requires a show cause order to be served when the action is commenced, but the Attorney General has not done so.

As the petitioner, the Attorney General is responsible for including the show cause order with the petition and for service of the order on every member of the corporation pursuant to § 1104(c). The court is authorized by § 1104(a) to require the corporation, its officers and directors, to provide the name and address of each member so that service can be accomplished either personally or by mail. Given the number of NRA members to

be served the Court might well determine under CPLR § 308(5) that email was acceptable for those members with email addresses, but that question is beyond the scope of this letter.

The plain language of N-PCL § 1104 grants standing to be heard in a judicial dissolution action to every member of a corporation. A member is not required to intervene, as § 1104(a) and (c) directly grant the right to be notified and be heard to "all persons interested in the corporation", specifically including every member, creditor and claimant.

The first paragraph of the Attorney General's verified complaint alleges the NRA is a membership corporation. N-PCL § 102(a)(9) defines a "member" of a non-profit corporation as "... *one having membership rights in a corporation in accordance with the provisions of its certificate of incorporation or by-laws*". NRA members have such rights under Article III of the NRA's Bylaws. (Doc. # 3; Ex. 1 to the Complaint, p. 6-11).

The requirements of § 1104 are not mere formalities. *See e.g., Fedele v. Seybert*, 673 N.Y.S.2d 421, 250 A.D.2d 519 (N.Y. App. Div. 1998), staying the plaintiff's cause of action for dissolution until there was compliance with BCL § 1106 (the Business Corporation counterpart of N-PCL § 1104). *See also Application of Cunningham*, 426 N.Y.S.2d 765, 767; 75 A.D.2d 521 (N.Y. App. Div. 1980) (Where the petitioner failed to publish or serve a show cause order as required by BCL § 1106 the court acquired no jurisdiction over the dissolution claim); *Muller v. Silverstein*, 458 N.Y.S.2d 597, 599; 92 A.D.2d 455 (N.Y. App. Div. 1983) (reversing a dissolution order where there was no compliance with the notice requirements of § 1106); and *Matter of WTB Properties, Inc.*, 291 A.D.2d 566, 567; 737 N.Y.S.2d 654 (N.Y. App. Div. 2002) (reversing a dissolution order that did not provide for publication, was not published, and was not served on the Tax Commission). *WTB Properties* cited *LaSorsa v. Algen Press Corp.*, 481 N.Y.S.2d 716, 717-718; 105 A.D.2d 771 (N.Y. App. Div. 1984), and the court there said:

The Business Corporation Law sets forth the procedure to be followed when seeking a judicial dissolution of a corporation. A verified petition is to be presented to the court (Business Corporation Law, § 1105). *The court is then required to issue an order requiring the corporation and all interested persons to show cause why the corporation should not be dissolved. The court is to further provide for the publication of the order to show cause, the service of the order to show cause upon certain designated individuals, and the filing of the order to show cause...*" (citing BCL § 1106; emphasis added.)

All parties here are represented by experienced counsel and it is difficult to see how this section could simply have been overlooked. Perhaps no party wants the NRA's millions of members notified of this action, but in any event the Attorney General's dissolution claim cannot proceed until there is compliance with § 1104(a) and (c).

Consideration of the NRA's demand for change of venue and motion to stay or

dismiss should likewise be postponed because as noted in *Cunningham, supra*, a court acquires no jurisdiction of the dissolution claim until the petitioner complies with § 1104.

Further, my clients and many other NRA members, creditors and claimants would very likely oppose a change of venue. The NRA's counsel seemed to think this Court was proper by requesting a transfer to it. (Sept. 16, 2020 letter to Justice Kaplan stating that "This is precisely the type of complex commercial dispute that belongs in the Commercial Division"; Doc. # 26, p. 1).

Moreover, many NRA members might well support recovery of damages from the individual defendants if the Attorney General's claims of their malfeasance are proven, but the vast majority of these members have no way to know of these claims or their rights as NRA members, or even the pendency of this action, until and unless the Court requires service of § 1104 notice.

2. The NRA's present counsel is conflicted and should be disqualified before any further proceedings take place.

This point is readily illustrated with a single rhetorical question: What member of any corporation would want their interest in a derivative action alleging an executive's fraud and breach of fiduciary duty to be prosecuted by the same law firm that is simultaneously *defending* that executive against similar claims in another case?

This is precisely the case here. The NRA is represented in this action by Brewer Attorneys & Counselors ("Brewer"). The NRA's Motion to Dismiss or Stay (Mot. Seq. 001; Doc. # 70), adopted by defendants LaPierre and Frazer, alleges multiple cases of "related litigation" that Brewer claims to be "*efforts to redress the same alleged abuses by a handful of faithless fiduciaries that [the Attorney General] now purports to pursue derivatively.*" (Doc. # 99, NRA Memorandum, p. 1-2; emphasis added).

The Brewer firm cites *Nat'l Rifle Ass'n of Am. v. Ackerman McQueen, et al.*, Civ. No. 3:19-cv-02074-G (N.D. Tx.) as one of these cases that "*overlaps with, and precedes, this one*" (*Id.*, note 3), and another federal case, *Dell'Aquila, et al. v. Wayne LaPierre, et al.*, Civ. No. 3:19-cv-00679 (M.D. Tn.) as a lawsuit "*arising out of the same subject matter as the Complaint*". Indeed, both cases are on the "Schedule of Actions" that the NRA, LaPierre and Frazer say are related. See excerpt from Correll Affirm. ¶ 12, Doc. # 125, Ex. 10, p. 24 of 612 (MDL Motion to Transfer Cases; highlighted copy attached as Exhibit 1).

What is not disclosed to the Court anywhere in the Brewer firm's submissions on behalf of the NRA, or in the piggyback motions of LaPierre and Frazer, is that Brewer is presently representing both the NRA as an entity and LaPierre individually in the *Ackerman* case where there is a third-party complaint against LaPierre making the same or very similar allegations of fraud and misuse of NRA funds that the Attorney General asserts here. Brewer, LaPierre and Frazer also fail to disclose that Brewer represented both the NRA and LaPierre individually in the *Dell'Aquila* action from August or

September of 2019 shortly after it was filed until September 30, 2020 when LaPierre was dismissed as a defendant. Relevant pages from the *Ackerman* and *Dell'Aquila* PACER Dockets are attached as Exhibits 2 and 3 with highlighting for ease of reference.

There are several distinct conflicts of interest for the Brewer firm here that all NRA members have standing to assert based on their membership rights in the NRA.

First: The Brewer firm cannot represent the NRA on the Attorney General's derivative claims that LaPierre breached his fiduciary duties while simultaneously *defending* LaPierre against the same or similar claims in the *Ackerman* case, as well as having defended him against the same or similar claims in the *Dell'Aquila* suit. If the Attorney General's claims are proven then the NRA has the right to recover restitution and damages from LaPierre, and the NRA is therefore materially adverse to LaPierre in this action, or at the very least is potentially so.

Likewise the Brewer firm cannot defend the NRA on any of the Attorney General's claims against it because as shown hereafter, at least one viable defense would require Brewer to implicate LaPierre.

It is beyond dispute that Brewer would have acquired privileged and confidential information from both the NRA and LaPierre as the result of its dual representation in *Ackerman* and *Dell'Aquila*, and equally certain that Brewer would continue to acquire such knowledge going forward in *Ackerman*.

Second: The Attorney General's complaint alleges that Mr. LaPierre "effectively dominates and controls the Board of Directors as a whole". (Complaint, ¶ 412, 663). If that is true then the NRA has no independence as a separate entity because LaPierre controls whatever claims the NRA does or doesn't assert against him in this case, and independent counsel would be required for the NRA.

Third: The Attorney General's complaint contains a number of allegations that Brewer's legal bills were not properly audited, but the Complaint makes no demand for any review of these charges or for recovery of any bills found to be unreasonable. The Brewer firm is irreconcilably conflicted to advise the NRA whether to make such a review and assert a claim for recovery here if those fees are found to be unreasonable.<sup>1</sup>

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<sup>1</sup> The Court may recall and judicially notice that last year in *National Rifle Association vs. Oliver North*, Index No. 653577/2019, New York County Supreme Court (Doc. # 10), Mr. North filed an exhibit in support of his answer and counterclaim that listed payments from the NRA to Brewer totaling \$19,260,452 between March 2018 and February 2019. This exhibit also noted that for the first quarter of 2019 the Brewer firm billed the NRA more than \$8.8 million, or *\$97,787 per day, seven days a week, every week of every month*. To generate such fees would require 10 lawyers billing at \$1,000 an hour each, averaging 9.7 hours a day each, every day of every week during this period. Independent counsel for the NRA might well conclude these fees appeared to be excessive and pursue a recovery from Brewer. Highlighted copies of the relevant pages of the North exhibit are attached as Exhibit 4.

Fourth: Given the Complaint's numerous allegations as to the amount of Brewer's legal fees, the alleged lack of NRA audit or review of those fees, and the materiality of these allegations as to the Attorney General's derivative claims, the Brewer firm knows or should know that one or more of its lawyers will be called as a material witness here.

Fifth: Because of these conflicts and LaPierre's alleged influence over the NRA, neither LaPierre nor the Brewer firm can advise the NRA as an entity to ignore or expressly waive these conflicts, even if that was otherwise possible.

Once the NRA membership is notified of this action as required by N-PCL § 1104, it is quite likely that many NRA members will oppose dissolution but agree that if the Attorney General proves that defendant LaPierre is in fact a "faithless fiduciary" then he should be removed from office and pay restitution and damages as demanded by the Attorney General. This scenario is merely one of the possible reasons for Brewer's failure to raise the § 1104 issue and failure to disclose its dual representation of the NRA and LaPierre in *Ackerman* and *Dell'Aquila*.

Brewer's dual representation of the NRA fails both tests of 22 NYCRR §1200, Rule 1.7(a), because a reasonable lawyer would conclude that it would involve the Brewer firm in representing differing interests. There is a significant and obvious risk that Brewer's professional judgment on the NRA's behalf will be adversely affected, both by Brewer's own interest in shielding its billings from independent review and recovery by the NRA and by Brewer's duty to LaPierre as a client in *Ackerman* and former client in *Dell'Aquila*.

The exceptions of Rule 1.7(b) are of no help, because no reasonable lawyer could conclude that Brewer would be able to provide competent and diligent counsel to both the NRA and LaPierre in this action. As just one example, what Brewer refers to as the "faithless fiduciary" defense and New York cases call the "adverse interest exception" is an obvious defense for the NRA here; i.e., that LaPierre was acting solely for his personal benefit and adversely to the NRA and its members. *Kirschner v. KPMG LLP*, 938 N.E.2d 941, 952-953; 15 N.Y.3d 446, 466-468; 912 N.Y.S.2d 508, 519-520 (N.Y. 2010) is frequently cited for this:

We articulated the adverse interest exception in *Center [v. Hampton Affiliates, Inc.]*, 497 N.Y.S.2d 898, 66 N.Y.2d 782, 488 N.E.2d 828 (N.Y. 1985)] as follows: "To come within the exception, the agent must have *totally abandoned* his principal's interests and be acting entirely for his own or another's purposes. It cannot be invoked merely because he has a conflict of interest or because he is not acting primarily for his principal" (*Center*, 66 N.Y.2d at 784-785, 497 N.Y.S.2d 898, 488 N.E.2d 828 [emphasis added] ). This rule avoids ambiguity where there is a benefit to both the insider and the corporation, and reserves this most narrow of exceptions for those cases-outright theft or looting or embezzlement-where the insider's misconduct benefits only himself or a third party; i.e., where the fraud is committed against a corporation rather than on its behalf.

\* \* \*

Again, because the exception requires adversity, it cannot apply unless the scheme that benefitted the insider operated at the corporation's expense. The crucial distinction is between conduct that defrauds the corporation and conduct that defrauds others for the corporation's benefit. "Fraud on behalf of a corporation is not the same thing as fraud against it" (*Cenco Inc. v. Seidman & Seidman*, 686 F.2d 449, 456 [7th Cir.1982] ). (Emphasis in original.)

This defense is plainly supported by the Attorney General's allegations against LaPierre, but if the Brewer firm asserts it on the NRA's behalf they must implicate their own client LaPierre, using any and all information acquired from him. Conversely, Brewer could not assert any derivative claims of the NRA's against LaPierre no matter how strong the evidence is, and would thus fail the test of Rule 1.7(b)(3) as well.<sup>2</sup>

Once the Court orders § 1104 notice to the NRA's members it is reasonably likely that many NRA members would seek disqualification of the Brewer firm and an order directing the NRA to retain independent counsel in this action before it proceeds. This threshold issue simply underscores the need for this notice and the legislative purpose in requiring notice to all corporation members at the commencement of a dissolution action.

### Conclusion

According to ¶ 72 of the Amended Complaint ( Doc. # 11) the NRA had \$197 million in assets as of Dec. 31, 2018. These assets belong to the NRA's members, and they are entitled to notice and the opportunity to be heard under the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution and Article I § 6 of the New York Constitution as well as N-PCL § 1104. The underlying principles are not novel, and are no different from the notice required to creditors in bankruptcy cases or other proceedings that may affect property or other interests of persons who are not parties.

The Court should not allow the defendants' pending motions to take priority over the threshold questions addressed here. The Court should direct the Attorney General to comply with N-PCL § 1104 and order notice to all NRA members.

Consideration of the conflict issues as to NRA counsel should be deferred until all members, creditors and claimants have been served and given the opportunity to be heard on both the venue and conflict questions. Only then should the Court consider the defendants' pending motions.

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<sup>2</sup> Having represented both LaPierre and the NRA in *Ackerman* and *Dell'Aquila*, Brewer may very well have specific knowledge of evidence that supports the derivative claims here against LaPierre. Brewer's duty to the NRA would demand the disclosure and use of this evidence, while at the same time Brewer's duty to LaPierre would demand its suppression if at all possible.

Hon. Joel M. Cohen  
November 11, 2020  
Page 7

Respectfully,

A handwritten signature in black ink, appearing to read "G. Douglas, Jr.", with a stylized flourish at the end.

George C. Douglas, Jr.

Copies to all counsel of record by email:

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# Exhibit 1

Excerpt from Correll Affirm. ¶ 12, Doc. # 125, Ex. 10  
p. 24 of 612, MDL Motion to Transfer Cases



**BEFORE THE UNITED STATES JUDICIAL PANEL  
ON MULTIDISTRICT LITIGATION**

**MDL-\_\_\_\_\_ -- In re NRA Business Expenditures Litigation**

**SCHEDULE OF ACTIONS**

<b>Case Captions</b>	<b>Court</b>	<b>Civil Action No.</b>	<b>Judge</b>
<b>Plaintiffs:</b> David Dell'Aquila Loranda Borja Todd Chesney Brent Weber  <b>Defendants:</b> Wayne LaPierre (dismissed) The National Rifle Association of America The NRA Foundation, Inc. (dismissed)	M.D. Tn	3:19-cv-00679	William L. Campbell, Jr., referred to Magistrate Judge Jeffery S. Frensley
<b>Plaintiffs:</b> The National Rifle Association of America  <b>Defendants:</b> Letitia James, New York Attorney General	N.D.N.Y.	1:20-cv-00889	Mae A. D'Agostino, referred to Magistrate Judge Therese Wiley Dancks
<b>Plaintiffs:</b> The National Rifle Association of America  <b>Defendants:</b> Ackerman McQueen Inc. Mercury Group Inc. Henry Martin Jesse Greenberg William Winkler Melanie Montgomery	N.D. Tx.	3:19-cv-02074-G	A. Joe Fish, referred to Magistrate Judge Renee Harris Toliver
<b>Plaintiff:</b> Ackerman McQueen Inc.  <b>Defendant:</b> Grant Stinchfield	N.D. Tx.	3:19-cv-03016-X	Brantley Starr, referred to Magistrate Judge David L. Horan

## Exhibit 2

Excerpt from U.S. PACER Docket for  
*Nat'l Rifle Ass'n of Am. v. Ackerman McQueen, et al.*,  
Civ. No. 3:19-cv-02074-G (N.D. Tx.)

DISCREP, JURY

**U.S. District Court  
Northern District of Texas (Dallas)  
CIVIL DOCKET FOR CASE #: 3:19-cv-02074-G-BK**

National Rifle Association of America v. Ackerman  
McQueen Inc et al  
Assigned to: Senior Judge A. Joe Fish  
Referred to: Magistrate Judge Renee Harris Toliver  
Cause: 15:1125 Trademark Infringement (Lanham Act)

Date Filed: 08/30/2019  
Jury Demand: Both  
Nature of Suit: 890 Other Statutes:  
Other Statutory Actions  
Jurisdiction: Federal Question

**Plaintiff****National Rifle Association of  
America**

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V.

**ThirdParty Defendant**

**Wayne Lapierre**

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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*  
*Bar Status: Admitted/In Good*  
*Standing*

**Matthew K Felty**  
(See above for address)  
*TERMINATED: 05/28/2020*  
*Bar Status: Not Admitted*

**Counter Claimant**

**Jesse Greenberg**

represented by **J Brian Vanderwoude**  
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**Douglas Steward Lang**  
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*Standing*

		AM before Senior Judge A. Joe Fish. (Ordered by Senior Judge A. Joe Fish on 10/13/2020) (jmg) (Entered: 10/14/2020)
10/15/2020	<a href="#"><u>175</u></a>	NOTICE of <i>Plaintiff the National Rifle Association and Third-Party Defendant Wayne LaPierre's Rule 26 Initial Disclosure Statement</i> filed by National Rifle Association of America (Allegretto, Alessandra) (Entered: 10/15/2020)
10/15/2020	<a href="#"><u>176</u></a>	NOTICE of <i>Defendants' Rule 26 Initial Disclosures</i> filed by Ackerman McQueen Inc, Jesse Greenberg, Henry Martin, Mercury Group Inc, Melanie Montgomery, William Winkler (Mason, Brian) (Entered: 10/15/2020)
10/20/2020	<a href="#"><u>177</u></a>	NOTICE of <i>Related Case Filing in MDL</i> filed by National Rifle Association of America (Attachments: # <a href="#"><u>1</u></a> Exhibit(s) Motion and Supporting Papers) (Allegretto, Alessandra) (Entered: 10/20/2020)
10/23/2020	<a href="#"><u>178</u></a>	MOTION to Withdraw <i>As Counsel</i> filed by William A Brewer, III, Brewer Attorneys & Counselors (Attachments: # <a href="#"><u>1</u></a> Proposed Order Granting Motion to Withdraw As Counsel) (Tostrud, Daniel) (Entered: 10/23/2020)
10/23/2020	179	ELECTRONIC ORDER: The motion to withdraw of attorneys Daniel D. Tostrud, William D. Cobb, Jr., and Matthew E. Last of the law firm Cobb Martinez Woodward, PLLC (docket entry 178) is GRANTED. It is therefore ORDERED that Daniel D. Tostrud, William D. Cobb, Jr., and Matthew E. Last of the law firm Cobb Martinez Woodward, PLLC are hereby withdrawn as attorneys of record for non-parties William A. Brewer III and Brewer, Attorneys & Counselors. It is further ORDERED that Daniel D. Tostrud, William D. Cobb, Jr., and Matthew E. Last of the law firm Cobb Martinez Woodward, PLLC are hereby relieved of any further obligations as counsel to the court or to non-parties William A. Brewer III and Brewer, Attorneys & Counselors. (Ordered by Senior Judge A. Joe Fish on 10/23/2020) (chmb) (Entered: 10/23/2020)
10/23/2020	<a href="#"><u>180</u></a>	Joint STATUS REPORT <i>IN CONNECTION WITH PLAINTIFFS MOTION TO COMPEL AND FOR SANCTIONS (ECF NO. 47), AND DEFENDANTS MOTION TO COMPEL PLAINTIFFS DOCUMENT PRODUCTION AND MOTION FOR SANCTIONS (ECF NO. 54)</i> filed by Ackerman McQueen Inc, Jesse Greenberg, Henry Martin, Mercury Group Inc, Melanie Montgomery, William Winkler. (Mason, Brian) (Entered: 10/23/2020)
10/23/2020	<a href="#"><u>181</u></a>	(Document Restricted) Sealed MOTION FOR LEAVE TO FILE UNDER SEAL CERTAIN EXHIBITS TO JOINT STATUS REPORT IN CONNECTION WITH PLAINTIFFS MOTION TO COMPEL AND FOR SANCTIONS (ECF NO. 47), AND DEFENDANTS MOTION TO COMPEL PLAINTIFFS DOCUMENT PRODUCTION

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**NATIONAL RIFLE ASSOCIATION OF AMERICA,**

## Plaintiff and Counter-Defendant

**and**

**WAYNE LAPIERRE,**

**Third-Party Defendant,**

**V.**

**ACKERMAN MCQUEEN, INC.,**

**Defendant and Counter-Plaintiff,**

**and**

**MERCURY GROUP, INC., HENRY MARTIN, WILLIAM WINKLER, MELANIE MONTGOMERY, and JESSE GREENBERG,**

### **Defendants.**

**Civil Action No. 3:19-cv-02074-G**

**PLAINTIFF NATIONAL RIFLE ASSOCIATION OF AMERICA’S REPLY IN  
SUPPORT OF ITS MOTION FOR ENTRY OF AN ALTERNATIVE PROTECTIVE  
ORDER FOR THE PARTIES**

**BREWER, ATTORNEYS & COUNSELORS**

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**ATTORNEYS FOR PLAINTIFF AND COUNTER-  
DEFENDANT NATIONAL RIFLE  
ASSOCIATION OF AMERICA AND THIRD-  
PARTY DEFENDANT WAYNE LAPIERRE**

Dated: April 15, 2020

Respectfully submitted,

**BREWER, ATTORNEYS & COUNSELORS**

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was electronically served via the Court's electronic case filing system upon all counsel of record on this 15th day of April 2020.

/s/ Michael J. Collins  
Michael J. Collins

DISCREP, JURY

**U.S. District Court  
Northern District of Texas (Dallas)  
CIVIL DOCKET FOR CASE #: 3:19-cv-02074-G-BK**

National Rifle Association of America v. Ackerman McQueen Inc et al  
Assigned to: Senior Judge A. Joe Fish  
Referred to: Magistrate Judge Renee Harris Toliver  
Cause: 15:1125 Trademark Infringement (Lanham Act)

Date Filed: 08/30/2019  
Jury Demand: Both  
Nature of Suit: 890 Other Statutes: Other Statutory  
Actions  
Jurisdiction: Federal Question

**Plaintiff****National Rifle Association of America**

represented by

**Michael J Collins**

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*TERMINATED: 03/26/2020*  
*Bar Status: Admitted/In Good Standing*

**Jordan Andrew Welch**

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*TERMINATED: 09/02/2020*  
*Bar Status: Admitted/In Good Standing*

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V.

**Defendant**

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represented by **J Brian Vanderwoude**

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**Douglas Steward Lang**  
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**ThirdParty Plaintiff****Henry Martin***Bar Status: Admitted/In Good Standi*represented by **J Brian Vanderwoude**

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*ATTORNEY TO BE NOTICED**Bar Status: Admitted/In Good Standing***G Michael Gruber**

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*ATTORNEY TO BE NOTICED**Bar Status: Admitted/In Good Standing***Jay J Madrid ,**

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V.

**ThirdParty Defendant****Wayne Lapierre**represented by **Michael J Collins**

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*TERMINATED: 05/28/2020**Bar Status: Not Admitted***Counter Claimant****Jesse Greenberg**represented by **J Brian Vanderwoude**

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*ATTORNEY TO BE NOTICED**Bar Status: Admitted/In Good Standing***Jay J Madrid ,**

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*ATTORNEY TO BE NOTICED**Bar Status: Admitted/In Good Standing*

V.

**Counter Defendant****National Rifle Association of America**represented by **Michael J Collins**

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*LEAD ATTORNEY**ATTORNEY TO BE NOTICED**Bar Status: Admitted/In Good Standing***Alessandra Pia Allegretto**

(See above for address)

*ATTORNEY TO BE NOTICED**Bar Status: Admitted/In Good Standing***Claudia Victoria Colon Garcia-Moliner**

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*ATTORNEY TO BE NOTICED**Bar Status: Admitted/In Good Standing***Jason C McKenney**

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*TERMINATED: 03/26/2020**Bar Status: Admitted/In Good Standing***Jordan Andrew Welch**

(See above for address)

*TERMINATED: 09/02/2020**ATTORNEY TO BE NOTICED**Bar Status: Admitted/In Good Standing***William A Brewer , III**

(See above for address)

*ATTORNEY TO BE NOTICED**Bar Status: Admitted/In Good Standing*

Date Filed	#	Docket Text
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**I.**

**COUNTERCLAIM AND THIRD PARTY COMPLAINT**

Becoming Actor, AMc (“Counter-Plaintiff”) brings this Counterclaim against the NRA as Counter-Defendant, and its Third Party Complaint against Wayne LaPierre (“LaPierre”), Executive Vice President of the NRA, in his individual capacity.

**II.**

**PARTIES**

1. Counter-Plaintiff has appeared herein by contemporaneously filing this Answer, counterclaim and Third Party Complaint.
2. Counter-Defendant has appeared herein and is before the Court for all purposes.
3. Third Party Defendant Wayne LaPierre is a resident of the State of Virginia who may be served with citation at his place of business, 11250 Waples Mill Rd., Fairfax, Virginia 22030.

**III.**

**JURISDICTION AND VENUE**

4. This Court has personal and subject matter jurisdiction concerning Third Party Defendant LaPierre pursuant to 28 USC 1332(a) and the amount in controversy exceeds \$75,000. In addition, the counterclaims asserted herein include compulsory and permissive actions. Venue is proper in the Northern District of Texas, Dallas Division.

#### IV.

##### PRELIMINARY STATEMENT

###### A. Counterclaim.

1. Despite its seemingly benign veneer, the instant case is driven by Counter-Defendant's and LaPierre's sinister and intentional efforts to destroy AMc's business. Counter-Defendant's lawsuit invites – indeed, mandates – an inquiry into the NRA's and LaPierre's conduct. It makes relevant an examination of the real reasons behind termination of the parties' operating agreement (the "Services Agreement," as amended) and an examination of the creation, operation and unquestioned success of NRATV (a digital network dedicated to the advancement of 2<sup>nd</sup> Amendment issues), that lays bare the falsity of the NRA's "failed endeavor" contention.

2. Two events have combined to cause the NRA to switch from friend to foe: (1) the advent of the law firm of Brewer, Attorneys and Counselors, and its principal Bill Brewer ("Brewer") whose ascendancy within the NRA has resulted in the NRA embarking on a reckless and self-destructive path, in the process taking down numerous other important service providers and individual NRA leaders and others with it; and (2) AMc's refusal, including a series of events in 2018 to acquiesce in the financial adventurism and organizational mismanagement of NRA's leader, LaPierre. This combination of events has found malicious voice in this, the fourth frivolous lawsuit launched against AMc as well as in lawsuits against Andrew Cuomo, Governor of New York and New York's Chief Insurance Regulator; another unfounded lawsuit against Lt. Col. Oliver North ("North") the NRA's one-time President, for having the temerity to demand an audit of Brewer's \$97,000.00 per day legal bills (totaling over \$24 million for just over one year's activity); and has led to the voluntary resignation of several NRA board members who wanted no part of fiduciary risks being taken; and the enforced ouster of officials and attorneys accused of



allegedly “conspiring” to oust LaPierre from his position.<sup>5</sup>

3. The facts supporting this Counterclaim makes clear that it is AMc which has been victimized by the machinations of the NRA, LaPierre and others, and not as portrayed by Counter-Defendants.

**B. Third Party Action**

4. The NRA’s case also opens the door to an exposition of the fraudulent conduct of LaPierre, (particularly as it relates to NRATV) his profligate misuse of NRA members’ dues, for personal and family benefit, his flaunting of non-profit corporation law, and the reckless abandon with which he and his enabler Brewer have run roughshod over the NRA Board of Directors as well as the NRA Foundation Board of Directors in multiple respects (including failure to obtain prior board approval for his lawsuits against AMc and firing the Board’s counsel). It also calls for scrutiny of his personal exposure for libelous statements against AMc, his interference with Third Party NRA Contracts and the fraud he has perpetrated on AMc, particularly with respect to NRATV. All of these areas of inquiry will reveal that what is at the root of Counter Defendant’s and LaPierre’s effort to scapegoat AMc is the plan to deflect attention from their own misdeeds and to inflict maximum damage on Counter-Plaintiffs. It is LaPierre, with Brewer’s assistance, whose artifice has caused AMc serious damage, for which he must pay.

5. This Counterclaim and Third Party Complaint seek to not only restore AMc’s reputation; they also seek to hold accountable the NRA and LaPierre, whose dictatorial actions have neutered the NRA as a political force while inflicting serious collateral damage on AMc.

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<sup>5</sup> See, e.g., news articles describing this recent frenetic activity and Brewer’s role: Non Profit News Quarterly, (<https://nonprofitquarterly.org/why-someone-should-make-the-NRA-into-a-tv-series>; Washington Post, <https://www.washingtonpost.com/politics/how-a-hard-charging-attorney-helped-fuel-a-civil-war-inside-the-NRA/>); <https://www.nytimes.com/2019/08/22/us/politics/nra-guns-wayne-lapierre.html>

## Exhibit 3

Excerpt from U.S. PACER Docket for  
*Dell'Aquila, et al. v. Wayne LaPierre, et al.*,  
Civ. No. 3:19-cv-00679 (M.D. Tn.)



**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

DAVID DELL'AQUILA, LORANND  
BORJA, TODD CHESNEY, and  
BRENT WEBER, on behalf of  
themselves and all others similarly  
situated,

Plaintiffs,

v.

Case No. 3:19-cv-00679

Judge William L. Campbell, Jr.

Magistrate Jefferey S. Frensley

JURY TRIAL DEMANDED

Defendants.

**SECOND AMENDED COMPLAINT**

The Plaintiffs, David Dell'Aquila, Lorannda Borja, Todd Chesney and Brent Weber, on behalf of themselves and all those similarly situated, file this Amended Complaint, by and through counsel, against Wayne LaPierre, the National Rifle Association of America, a New York not-for-profit corporation, and the NRA Foundation, Inc., a Washington, D.C. not-for-profit corporation. In support hereof, the Plaintiffs state as follows:

**Parties & Jurisdiction**

1. Plaintiff, David Dell'Aquila, is an adult individual residing at 862 Bresslyn Road, Nashville, TN 37205.
2. Plaintiff, Lorannda Borja, is an adult individual residing at 405 Stella Avenue, Lawrenceburg, TN 38464.
3. Plaintiff, Todd Chesney, is an adult individual residing at Todd Chesney, 678 North Fire Sky Lane, Chino Valley, Arizona 86323.

## COUNT I

### Fraud

**Dell'Aquila, Borja, Chesney  
and Weber and NRA Class  
v. LaPierre and the NRA**

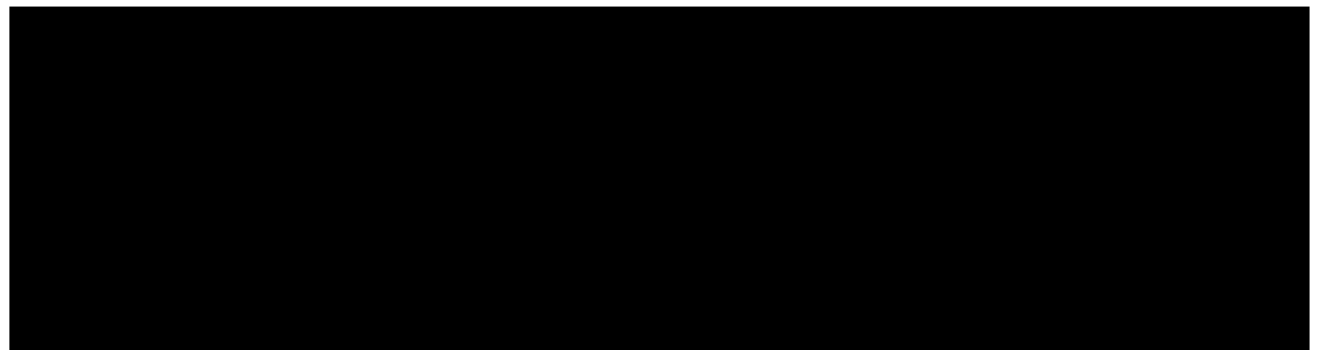
69. The Plaintiffs incorporate by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

70. During the period from November 30, 2015 to January 26, 2019, Defendants LaPierre and the NRA solicited funds from Dell'Aquila, Borja and each member of the NRA Class.

71. When soliciting such funds, Defendants LaPierre and the NRA advised Plaintiffs that their funds would be used for gun safety education; to promote shooting sports and hunter safety; to foster wildlife conservation; and to protect gun ownership rights in the United States (collectively, the "NRA's core mission").

72. Dell'Aquila, Borja, Chesney, Weber and each member of the NRA Class reasonably relied upon the statements made by Defendants concerning the proposed use of the solicited funds.

73. As a result of such reliance, Dell'Aquila, Borja, Chesney, Weber and each member of the NRA Class donated funds to the NRA during the time period from November 30, 2015 to January 26, 2019.



- b. By spending approximately \$2 million *per month* for the legal services of the Brewer Law Firm, over a thirteen-month period, without obtaining

reports filed by the NRA with the Internal Revenue Service (the "IRS")

- d. By spending \$243,644 on luxury travel for Defendant LaPierre to the Bahamas; Palm Beach; Los Angeles; Reno, Nevada; Budapest, Hungary; and Italy -- through payments made to Ackerman McQueen, without reporting such compensation as income for LaPierre in the reports filed with the NRA with the IRS.
- e. By making inflated payments to the NRA's advertising agency, Ackerman McQueen, without obtaining documentation justifying such expenditures.
- f. By spending \$5,446.16 per month for a luxury apartment for Michael LaPierre, an intern in Fairfax, Virginia.
- g. By spending tens of thousands of dollars on hair and make-up expenses for Susan LaPierre, the wife of Wayne LaPierre.
- h. By spending funds to investigate the purchase of a \$6 million mansion for Wayne LaPierre on a lake and golf course near Dallas, Texas.
- i. By paying for private jets to fly Wayne LaPierre's relatives in April 2017.
- j. By paying for private jet travel for Wayne LaPierre on a regular basis.
- k. By promoting Josh Powell to Executive Director of General Counsel after the NRA settled two separate sexual harassment suits against Powell.

76. Dell'Aquila, Borja, Chesney, Weber and the NRA Class have incurred damages as a result of the NRA's expenditures, unrelated to its mission.

77. The total amount of damages incurred by all Plaintiffs, including the NRA Class, is greater than \$5 million.



BREWER, ATTORNEYS &  
COUNSELORS

William A. Brewer (admitted *pro hac vice*)  
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(212)-489-1400

*ATTORNEYS FOR THE NATIONAL  
RIFLE ASSOCIATION OF AMERICA AND  
WAYNE LAPIERRE*

**CERTIFICATE OF SERVICE**

I do hereby certify that a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's electronic filing system. A copy was also sent via U.S. Mail to the following:

DAVID DELL'AQUILA  
862 BRESSLYN RD.  
NASHVILLE, TN 37205

Date: December 16, 2019

/s/ W. Allen McDonald

W. Allen McDonald

CASE-REFERRED,FRENSLEY

**U.S. District Court  
Middle District of Tennessee (Nashville)  
CIVIL DOCKET FOR CASE #: 3:19-cv-00679**

Dell'Aquila v. LaPierre et al  
Assigned to: District Judge William L. Campbell, Jr  
Referred to: Magistrate Judge Jeffery S. Frensley  
Demand: \$9,999,000  
Cause: 28:1332 Diversity-Fraud

Date Filed: 08/06/2019  
Jury Demand: Plaintiff  
Nature of Suit: 370 Other Fraud  
Jurisdiction: Diversity

**Plaintiff**

**David Dell'Aquila**  
*on behalf of himself and all others  
similarly situated*

represented by **Elliott J. Schuchardt**  
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**Plaintiff**

**Loranda Borja**

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**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Todd Chesney**

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**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Brent Weber**

represented by **Elliott J. Schuchardt**  
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**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Wayne LaPierre**  
**TERMINATED: 09/30/2020**

represented by **Wallace A. McDonald**  
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**Defendant**

**National Rifle Association of America**  
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**William A. Brewer**  
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**Defendant**

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*TERMINATED: 09/30/2020*

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*TERMINATED: 09/30/2020*

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# Exhibit 4

Excerpt from  
*National Rifle Association vs. Oliver North*  
Index No. 653577/2019  
New York County Supreme Court  
NYSCEF Doc. # 10



NATIONAL RIFLE ASSOCIATION OF AMERICA  
OFFICE OF THE PRESIDENT  
11250 WAPLES MILL ROAD  
FAIRFAX, VIRGINIA 22030

*CONFIDENTIAL*



**NRA**

John Frazer  
Secretary & General Counsel, National Rifle Association of America

Charles Cotton  
Chairman of the Audit Committee, National Rifle Association of America

April 18, 2019

Dear John and Charles:

As indicated in previous correspondence, we and others continue to be deeply concerned about the extraordinary legal fees the NRA has incurred with Brewer Attorneys & Counselors. The amount appears to be approximately \$24 million over a 13-month period, [REDACTED]

Because of the extraordinary size of the Brewer firm's invoices, our NRA Board Counsel advised us [REDACTED]

To that end, we have asked several times over the past two months for NRA management to retain an outside, independent review of the Brewer firm's invoices. Thus far there has been no action.

[REDACTED]—our Board Counsel has urged us [REDACTED]

Further, in separate meetings we had with Mr. Brewer on 15 and 20 March 2019, [REDACTED]

There are seven reasons why the NRA must engage an independent, outside expert to review the Brewer invoices immediately.

**First, the Brewer firm's invoices appear to be excessive on their face.**

The Brewer invoices are draining NRA cash at mindboggling speed.

Based on information provided to us over a month ago by our Secretary & General Counsel, the first 12 invoices the NRA received from the Brewer firm were for these amounts:

Date	Brewer Firm Invoice
March 2018	\$ 25,000.00
April 2018	\$ 1,011,184.04
May 2018	\$ 1,409,622.82
June 2018	\$ 1,730,571.18
July 2018	\$ 1,839,535.17
August 2018	\$ 1,839,743.68
September 2018	\$ 1,883,351.80
October 2018	\$ 1,892,735.45
November 2018	\$ 2,043,746.51
December 2018	\$ 1,847,898.88
January 2019	\$ 1,887,452.55
February 2019	\$ 1,849,610.20
<b>TOTAL:</b>	<b>\$ 19,260,452.28</b>

Invoices of this size for 12 months of work appear to be excessive and pose an existential threat to the financial stability of the NRA. This is a fiscal emergency, yet we have been unable to get management to engage an outside, independent review to ensure these bills are necessary and reasonable.

More alarming still, are the most recent figures provided in the table below by our Treasurer & Chief Financial Officer. His data indicates the Brewer firm's invoices for 1st Quarter 2019 total more than \$8.8 million—over \$2.9 million per month—or \$97,787 per day, seven days a week, every day of every month.

Invoices of this extraordinary magnitude deserve immediate attention, oversight, and a careful, competent and unbiased examination. \$97,000 + a day is a stunning amount of money for any organization to pay. It cries out for an outside, independent review.

**Brewer Attorneys & Counselors Paid & Owed 2018 & 1<sup>st</sup> Q 2019****Second, the secrecy surrounding the Brewer firm's invoices is alarming.**

We, and others, have made multiple requests and recommendations for an outside, independent review of the Brewer firm's invoices. All these requests have been denied. The secrecy surrounding these large invoices causes suspicion and raises questions.

On the advice of our Board Counsel [REDACTED] we have made the following requests regarding the Brewer invoices:

- February 25, 2019, President North asked our General Counsel/Secretary to be shown the Brewer invoices. He told President North he had been instructed not to show the invoices.
- February 26, 2019, President North, 1<sup>st</sup> VP Richard Childress and 2<sup>nd</sup> VP Carolyn Meadows, wrote to the Executive Vice President requesting the Brewer firm's invoices. The request was denied.
- On March 22, 2019, President North, 1<sup>st</sup> VP Richard Childress and 2<sup>nd</sup> VP Carolyn Meadows, wrote to the Audit Committee requesting that the Audit Committee retain and oversee an outside, independent review of the Brewer invoices. As yet, there is no response.
- On March 31, 2019, President North wrote to our Executive Vice President asking that he order an outside, independent review of the Brewer invoices. He refused.
- On April 8, 2019, President North wrote to our Executive Vice President urging him to end this controversy by ordering an outside, independent review of the Brewer firm's invoices. He again refused.