

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

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PEOPLE OF THE STATE OF NEW YORK, BY	:
LETITIA JAMES, ATTORNEY GENERAL OF	:
THE STATE OF NEW YORK,	:
	:
Plaintiff,	:
	:
v.	:
	:
THE NATIONAL RIFLE ASSOCIATION OF	:
AMERICA, INC., WAYNE LAPIERRE,	:
WILSON PHILLIPS, JOHN FRAZER, and	:
JOSHUA POWELL,	:
	:
Defendants.	:
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Index No. 451625/2020

IAS Part 3

Hon. Joel M. Cohen

**NOTICE OF MOTION**

**PLEASE TAKE NOTICE**, that upon the Memorandum of Law in Support of John Frazer’s Motion to Dismiss Plaintiff’s Amended Complaint, the Affirmation of William B. Fleming dated September 15, 2021, and the exhibits annexed thereto, Defendant John Frazer (“Frazer”), by and through his attorneys Gage Spencer & Fleming LLP, will move this Court, before the Honorable Justice Joel M. Cohen, at the Supreme Court, New York County, Motions Submissions Part, Room 130 at 60 Centre Street, New York, New York 10007 at 9:30 a.m. on Friday, October 1, 2021, for an Order pursuant to CPLR 3211(a)(7) dismissing Plaintiff’s Amended and Supplemental Verified Complaint filed on August 16, 2021 (the “Amended Complaint”), with prejudice, and granting such other and further relief as this Court deems just and proper, on the ground that the Amended Complaint fails to state a cause of action, because:

- (1) They do not contain the requisite fault-based elements required by the governing N-PCL and are in conflict with the Court of Appeals’ controlling decision in *People ex rel. Spitzer v. Grasso*, 11 N.Y.3d 64 (2008);
- (2) To the extent they are asserted derivatively, they fail to satisfy N-PCL § 623

requiring that the Attorney General proceed on behalf of 5% or more of the members of the National Rifle Association of America, make demand upon the NRA Board of Directors, or state with particularity why such a demand would be futile; and

(3) They do not satisfy the heightened pleading standards require for such claims by CPLR 3016(b).

Dated: New York, New York  
September 15, 2021

GAGE SPENCER & FLEMING LLP

By: /s/ William B. Fleming  
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*Co-counsel for Defendant John Frazer*

To: PEOPLE OF THE STATE OF  
NEW YORK, by LETITIA JAMES,  
Attorney General of the State of New York (via NYSCEF)