

## Motion Sequence 017

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

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 Three

Hon. Joel M. Cohen

**NOTICE OF MOTION**

Oral Argument Requested

PLEASE TAKE NOTICE that, upon the annexed affirmation of P. Kent Correll, Esq., the accompanying memorandum of law, and all other papers, pleadings and proceedings in this action, Defendant Wayne LaPierre, by his undersigned attorney, will move this Court, before the Honorable 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 October 1, 2021, for an order and judgment pursuant to CPLR 3211(a)(2), (3) and (7), dismissing the causes of action asserted against LaPierre in the Amended and Supplemental Verified Complaint dated August 16, 2021, on the ground that the Attorney General lacks legal capacity, standing or authority to maintain the causes of action, the causes of action therefore fail to state a claim and the Court lacks jurisdiction of the subject matter of the causes of action, because:

(1) they are devoid of any fault-based elements and, as such, are fundamentally inconsistent with the N-PCL, and “would impose a type of strict liability,” in contravention of the Court of Appeals’ controlling decision in *People ex rel. Spitzer v. Grasso*, 11 N.Y.3d 64 (2008); and

(2) to the extent that they are asserted derivatively, they fail to satisfy the clear statutory prerequisites of N-PCL § 623, *i.e.*, 5% representation and demand/futility.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b) and CPLR 2215, any answering affidavits, or other answering papers, and any notice of cross-motion and accompanying papers, must be served upon the undersigned at least seven days prior to the return date of this motion.

Dated: New York, New York  
September 15, 2021

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*Attorney for Defendant Wayne LaPierre*