

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK, COMMERCIAL DIVISION**

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,

ROSCOE B. MARSHALL, JR., individually and  
derivatively on behalf of THE NATIONAL  
RIFLE ASSOCIATION OF AMERICA, INC.,

Intervenor-Defendant,  
Cross Claimant, and  
Counter Claimant.

**Index No. 451625/2020**

**Hon. Joel M. Cohen**

**Part 3**

**PROPOSED ANSWER IN  
INTERVENTION TO THE  
AMENDED COMPLAINT,  
WITH DERIVATIVE CLAIMS,  
COUNTERCLAIMS AND  
CROSSCLAIMS BY  
ROSCOE B. MARSHALL, JR.**

Intervenor-Defendant (hereafter “Marshall”), by and through his undersigned counsel, responds to the Plaintiff’s Amended and Supplemental Verified Complaint (NYSCEF Doc. # 333, hereafter “the Complaint”) as follows:

**ANSWER**

1. As to all allegations of paragraphs 1 through 753, Marshall admits that:
  - a) The parties are accurately identified;
  - b) The Court has jurisdiction of the parties and this action;
  - c) Venue is proper in this Court;
  - d) The Attorney General has general supervisory powers over New York non-profit

charitable corporations and their officers and directors under the New York Not-for-Profit Corporation Law (“N-PCL”); and

e) That the Attorney General has alleged facts and conduct by the Individual Defendants LaPierre, Phillips, Frazer and Powell, and third parties named or described in the Complaint acting in concert with the named Individual Defendants, which if proven would violate New York law and subject such individuals to the liabilities, damages, restitution and other penalties or remedies alleged and sought by the Attorney General.

2. As to all allegations of paragraphs 1 through 753, Marshall specifically denies the following:

a) Marshall denies that any of the alleged actions and conduct of the Individual Defendants and/or third parties named or described in the Complaint acting in concert with the Individual Defendants can be charged against or attributed to the NRA as an entity, or serve as any basis for its dissolution;

b) Marshall denies that New York law allows the Attorney General to seek dissolution of the NRA under the facts and circumstances alleged here;

c) Marshall denies that the Attorney General’s conclusions of law regarding dissolution as to the NRA are correct; and

d) Marshall denies that dissolution of the NRA is a lawful, proper or appropriate remedy in this action.

3. As to all allegations of the Complaint concerning the NRA’s Board of Directors and the Board’s actions, breaches of duty, and failures to fulfill its fiduciary duties, Marshall alleges that at all times material to such allegations the Board failed to act in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

4. As to all other allegations of paragraphs 1 through 753, Marshall respectfully states that he lacks knowledge or information sufficient to form a belief as such allegations, which are therefore denied.

**MARSHALL'S AFFIRMATIVE DEFENSES,  
COUNTERCLAIMS, CROSSCLAIMS, & DERIVATIVE CLAIM**

**PRELIMINARY STATEMENT**

5. Marshall is a Life member of the National Rifle Association of America, Inc. ("NRA") and a sitting member of the NRA Board of Directors.

6. Marshall recognizes and appreciates the Attorney General's action in seeking to hold the Individual Defendants accountable when the NRA Board of Directors has failed to do so. But for the Attorney General's action here, no individual members would likely ever be able to overcome the complete control of Wayne LaPierre over the NRA and the complete lack of any effective oversight by the NRA Board.

7. The NRA Board is not independent, and no meaningful change in the NRA's governance will occur as long as the Individual Defendants, and particularly defendant LaPierre, remain in control of the NRA. Thus, as more fully set forth hereafter, Marshall supports the Attorney General's demand for removal of the Individual Defendants from their NRA positions and recovery of all funds shown to have been wrongfully spent or appropriated by them, whether paid directly to an individual defendant or to a third party who has not been joined in this case. To the extent possible, Marshall seeks to work with the Attorney General in reforming the NRA's leadership on behalf of all rank-and-file NRA members, while opposing those demands of the Attorney General that are not in the best interest of the NRA or its membership.

8. The NRA operated successfully for over 100 years prior to Wayne LaPierre and his associates gaining control of it, and will continue to do so once they are removed. Wayne

LaPierre and those aligned with him are not the NRA. The current LaPierre-controlled Board of Directors is not the NRA. The LaPierre-controlled executive leadership is not the NRA. The rank-and-file membership across our fifty states is the true NRA, and they are the people whose dues and contributions have built and sustained the NRA throughout its history. Defendants LaPierre, Frazer, Phillips and Powell are (and in the case of Phillips and Powell, were) merely placeholders entrusted with the duty to serve the NRA and its rank-and-file members. If the allegations herein and in the Attorney General's Complaint are proven, as Marshall verily believes to be the case, Marshall stands with the Attorney General in seeking to remove the executive cancer that has threatened and continues to threaten the NRA's ability to serve its members and the public interest.

9. The waste, looting, self-interest and other breaches of fiduciary duty alleged in the Complaint have been allowed to fester and metastasize for far too long because as the Complaint repeatedly alleges, these breaches of duty were not committed on behalf of, or for the benefit of, the NRA and its membership, but in fact were committed solely to benefit the personal interests of the Individual Defendants and their favored friends. These people *used* the NRA to serve only their own ends, and neither the extent of their wrongs, the number of faithless individuals involved, nor the period of time over which these wrongs were perpetrated can change the fact that these were wrongs perpetrated *against* the NRA and its membership, who placed their resources and trust in these individuals as fiduciaries that were duty-bound to put the members' interests ahead of their own. This they did not do.

10. Marshall brings his Complaint in Intervention for the following purposes:

a) to hold the Individual Defendants LaPierre, Frazer, Phillips and Powell liable for their breach of fiduciary duties and corporate waste; to recover all amounts that may be determined to

be due the NRA from these Defendants; and to have the Defendants LaPierre and Frazer removed from their positions with the NRA and all Individual Defendants barred from further participation or membership in the NRA;

b) to identify all other persons and entities that received excessive, improper and/or unauthorized payments and benefits at the expense of the NRA by the actions of the Individual Defendants, and to recover all such payments or benefits from these persons and entities;

c) for declaratory and injunctive relief to prevent the Attorney General from dissolving the NRA, which would be unlawful, extreme and factually unsupportable, and against the best interests of the NRA and its members as well as against the public interest;

d) to remove all present NRA Board members who acted with the Individual Defendants or acquiesced to their conduct of the NRA's affairs, or otherwise failed to properly oversee and prevent their conduct; and

e) for the appointment of a Receiver to manage the day-to-day ordinary business of the NRA until a new Board of Directors is elected by the membership in a general election pursuant to a plan approved by the Court and new executive management is appointed by the new Board; and further to pursue recovery of all amounts that may be due to the NRA from the Individual Defendants and all other persons or entities that received excessive, improper and/or unauthorized payments and benefits at the expense of the NRA by the actions of the Individual Defendants.

11. Marshall is a Life member of the NRA and like all other NRA members, has valuable membership rights. These member rights include the right to have the NRA's assets used for the benefit of the members and the public to establish and continue NRA programs for firearm safety, education and training as well as programs for shooting range development, standards and

certification. Further, like all other NRA members, Marshall has the constitutional right under the First and Fourteenth Amendments, and corresponding New York constitutional provisions, to freely associate with other NRA members to advance their common interests and viewpoints. Dissolution of the NRA would completely destroy these rights.

12. As an NRA member, Marshall has a statutory right (as do all other NRA members) to be heard in opposition to judicial dissolution, and to insist that all NRA members be given notice of this action before the action proceeds any further. N-PCL § 1104(a) provides:

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 before it, or before a referee designated in the order, at a time and place therein specified, not less than four weeks after the granting of the order, why the corporation should not be dissolved. (Emphasis added).

13. N-PCL § 1104 further requires that the show cause order be published and personally served on (i) the state tax commission, (ii) the corporation, (iii) each person named in the petition, and (iv) each member, creditor or claimant of the corporation except those whose addresses are unknown and cannot with due diligence be ascertained.

14. The petition described in Sec. 1104 has now been presented to the Court by the Attorney General. The Attorney General's Complaint seeks to impair or completely destroy the rights of all NRA members, including Marshall, to the continuation of the NRA's mission and programs for their use and benefit. Accordingly, due process under the federal and New York constitutions, as well as § 1104, requires that each member must be given meaningful notice of this action and a meaningful opportunity to contest the Attorney General's dissolution claims.

15. The Attorney General's derivative claims seek to enforce the rights of a director, officer or member under N-PCL §§ 112(a)(7) and 1102(a)(2), and in such a case the second sentence of § 112(a)(7) provides: "*The attorney-general shall have the same status as such*

*members, director or officer*", which necessarily includes § 1104's notice requirement. Moreover, even if this action were only a plenary action for dissolution, notice would still be required before proceeding farther by the Fourteenth Amendment's Due Process clause and similar New York constitutional law.

16. Marshall further alleges that he has real and substantial interests in this action which will not be adequately represented or protected by any of the present parties, although Marshall will be bound by the judgment along with all other NRA members, which the NRA has reported as approximately 5.5 million.

17. Marshall's interests in this action are as follows:

a) Marshall seeks to assure the statutory notice required by N-PCL § 1104 is given to all NRA members prior to further proceedings in this action. If granted intervention, Marshall will promptly move the Court to require the Attorney General's compliance with this statute.

b) Marshall seeks to assure that the NRA has independent and conflict-free counsel in this action, which the NRA's present counsel cannot provide.

c) Marshall seeks to enjoin the Attorney General's demand for dissolution as an unnecessary, extreme, unlawful and factually unsupportable remedy for the harm allegedly caused to the NRA by the Individual Defendants' alleged breaches of fiduciary duty. The Attorney General's complaint repeatedly alleges only individual misconduct by the Individual Defendants in this action that cannot be imputed to the NRA for the following reasons:

- i. These allegations describe individuals acting entirely for their own or another's purposes, adversely to the NRA and its members, and such actions (if proven) totally abandoned the interests of the NRA and its members.
- ii. Indeed, the Complaint alleges *the Individual Defendants and other unnamed*

*directors or members in control of the NRA* abused their positions and “looted or wasted” the NRA’s assets “*solely for their personal benefit*, or have otherwise acted in an illegal, oppressive or fraudulent manner”. (Complaint, ¶¶ 14 and 665; Prayer For Relief, Sec. C; emphasis added).

- iii. Thus, the wrongful acts alleged by the Attorney General (if proven) were committed *against* the NRA and its members rather than on its behalf, and in such instances dissolution is improper. Fraud *against* a corporation is not the same as fraud *on behalf* of the corporation, and the former will not justify dissolution. In fact the Complaint alleges that the Individual Defendants’ actions were “*to the detriment of the NRA*”, not for its benefit. (Complaint, ¶¶ 580 and 750(b); Prayer For Relief, Sec. C; emphasis added).
- iv. The Attorney General has *not* alleged that the NRA is incapable of continuing its core missions and programs if the Individual Defendants are removed from their positions, nor can this essential predicate for judicial dissolution be proven.
- v. Dissolution of the NRA is not authorized under N-PCL§ 1101 because neither of the two grounds for judicial dissolution exist here: (1) the NRA did not procure its formation by fraud or concealment of a material fact, and (2) as an entity distinct from the individual misconduct the Attorney General alleges, the NRA has not exceeded its legal authority, has not violated any law whereby it has forfeited its charter; has not carried on its business in a persistently fraudulent or illegal manner, and has not abused its powers contrary to public policy.
- d) The Attorney General's Complaint demands recovery of restitution and damages from the Individual Defendants. However, although the Complaint mentions a number of instances in



which the Individual Defendants have made or authorized improper payments and benefits to third parties, the Attorney General has made no claims against those third parties on behalf of the NRA. Marshall seeks to review and recover all such payments for the benefit of the NRA.

e) Although the Attorney General purports to be acting on behalf of the NRA in making derivative claims against the Individual Defendants, her demand for dissolution would effectively transfer any recovery to other charitable entities. Marshall opposes the distribution of any recovery to any entity other than the NRA, and asserts that any and all monetary recoveries here should be retained by the NRA to continue its core mission and programs for the use and benefit of all NRA members, including Marshall.

f) Marshall seeks a determination of whether the various professional, consulting and vendor fees enumerated in the Complaint were excessive and/or not validly authorized, including the legal and other fees referred to in ¶¶ 13, 173, 192, 268-272, 315-316, 334, 347, 350, and 472-494; and if so, Marshall seeks recovery for the NRA of all such amounts.

g) Marshall seeks to protect his personal constitutional rights as an NRA member to freedom of association, freedom of speech, and due process of law, as well as to prevent the impairment or forfeiture of his NRA membership by dissolution, which would effectively impose excessive fines or forfeitures against the NRA and its members for the alleged wrongful acts of the Individual Defendants who were acting for their own personal benefit.

h) Marshall seeks the removal of the Individual Defendants and any other NRA members or directors acting with them from their NRA positions if the alleged breaches of duty and other misconduct are proven.

18. Contrary to the Attorney General's dissolution demand, Marshall seeks continuation of the NRA and return of its control to NRA members. To accomplish this Marshall seeks the

following immediate preliminary relief:

a) Marshall alleges there is clear evidence showing the necessity for conservation of the NRA's assets and business and the need to protect the NRA members' interest in preserving such assets and business for their continued use and benefit.

b) Marshall further alleges there is a clear likelihood of his success and that of the Attorney General on the merits of their fiduciary claims against the Individual Defendants.

c) Marshall further alleges that absent preliminary relief the NRA and its membership will suffer irreparable injury by the continued waste and looting alleged by the Attorney General in the Complaint (see e.g., Complaint, ¶¶ 578-580).

d) Marshall further alleges that a balancing of the equities requires immediate preliminary relief to maintain and preserve the NRA's assets and business and to prevent further dissipation of its property that could render a final judgment in favor of the NRA as an entity ineffectual.

e) Marshall further alleges that immediate appointment of a temporary receiver pursuant to N-PCL § 1111 is therefore necessary to assure the continuation of the NRA and its day-to-day business activities until there is a final determination in this action of the rights, duties, liabilities and obligations of the parties, and

f) Further, that the Receiver's appointment shall continue until there is a new general election by the NRA membership of new Board members who have either not previously been a Director of the NRA or who can establish to the satisfaction of the Court that they have previously opposed the actions of the Individual Defendants and the failures to act of the NRA Board that are alleged in this action.

19. Marshall further seeks the following permanent relief if the allegations of the

Individual Defendants' misconduct and the passive “rubberstamp” failures of the present NRA Board to meet its fiduciary duties of effective oversight and control of the NRA and the Individual Defendants are proven at trial.

- a) Permanent removal of the Individual Defendants from their positions;
- b) Permanent injunctive relief barring the Individual Defendants from further NRA membership and participation in its business and affairs;
- c) Permanent injunctive relief barring any present member of the NRA Board from further participation in the NRA as an officer, employee or director unless the evidence establishes to the satisfaction of the Court that such Board member has previously opposed the actions of the Individual Defendants and the failures to act of the NRA Board that are alleged in this action;
- d) Such damages, restitution, interest and other monetary recoveries from the Individual Defendants and third parties named or described in the Complaint acting in concert with the named Individual Defendants as may be proven at trial; and
- e) Reasonable attorney's fees and expenses to Marshall and his counsel as may be allowed by N-PCL § 720 and other applicable New York law.

20. Marshall's interests, like those of all other NRA members, will not be adequately protected by the existing parties to this action for the following reasons:

- a) The Attorney General will not represent or protect any interests of Marshall or the NRA's other 5.5 million members. Although purporting to assert derivative claims of the NRA against the Individual Defendants under N-PCL § 623 and 720, the Attorney General has *not* filed this suit to benefit the NRA or its members. In reality the Attorney General seeks to destroy the NRA and liquidate and give away its assets without any allegation, proof or apparent

consideration of whether the NRA is incapable of continuing its core missions and programs if the Individual Defendants are removed from their positions.

b) The allegations of the Complaint make the Individual Defendants adverse to the NRA as an entity. These defendants will not demand examination by the Court and the present parties of the outside vendor fees they allegedly approved and caused to be paid, and the Individual Defendants will certainly not pursue their own removal or payment of restitution to the NRA.

c) The Complaint alleges that Defendant LaPierre “effectively dominates and controls the Board of Directors as a whole.” ¶ 429 and 750(b). Marshall verily believes this to be true, and alleges that the NRA has no independence as a separate entity because Defendant LaPierre controls whatever claims the NRA does or does not assert against him in this action, and thus the NRA cannot adequately protect the rights and interests of Marshall and all other NRA members.

d) The NRA's Chapter 11 bankruptcy filing earlier this year is just the latest example of Defendant LaPierre's domination and control. On January 15, 2021 Defendant LaPierre signed and filed a Chapter 11 Bankruptcy Petition in the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division, Case # 21-30085, which Petition was purportedly authorized by the NRA's "Special Litigation Committee". On May 11, 2021 the Bankruptcy Court dismissed the Ch. 11 case, finding that it was not filed in good faith. (NYSCEF Doc. # 360, attached as Exhibit # 3 to Affirmation of P. Kent Correll, Esq.). The Court found as a fact that *"Throughout the entirety of the board meeting [that purportedly authorized the Ch. 11 filing], both in the general and executive sessions, no discussion of bankruptcy, Chapter 11, or the possible reorganization of the NRA occurred. The board of directors was not informed that the language cited above could authorize Mr. LaPierre to unilaterally authorize a petition for bankruptcy relief for the NRA. In fact, the board of directors was not informed that the NRA was*

*considering filing for bankruptcy at all.* (Dismissal Order, NYSCEF Doc. # 360, p. 8.) The Bankruptcy Court also said that "*What concerns the Court most though is the surreptitious manner in which Mr. LaPierre obtained and exercised authority to file bankruptcy for the NRA. Excluding so many people from the process of deciding to file for bankruptcy, including the vast majority of the board of directors, the chief financial officer, and the general counsel, is nothing less than shocking.*" *Id.*, at p. 34.

e) The NRA's current law firm here, Brewer Attorneys & Counselors ("BAC"), will not advise the NRA to seek review of BAC's fees in this action or their repayment if those fees are found to be excessive, nor will BAC advise the NRA to pursue any claims against Defendant LaPierre. This is so because BAC has previously represented both the NRA and Mr. LaPierre in a case now pending in the U.S. District Court in Dallas, Texas, *National Rifle Assn. of America v. Ackerman McQueen Inc. et al*, No. 19-CV-02074-G-BK. In that action a counterclaim against the NRA and a third-party complaint against Mr. LaPierre made many of the same allegations of fraud and misuse of NRA funds that the Attorney General makes in this action. (See the last two pages of NYSCEF Doc. # 251, Excerpt from U.S. PACER docket report).

f) This dual representation creates these conflicts of interest for BAC:

- i. BAC cannot advise or represent the NRA in this action against LaPierre for breach of his fiduciary duties after previously defending him against the same or similar claims in Texas. Because of its previous dual representation of the NRA and LaPierre, BAC was in a position to acquire confidential and privileged information from both the NRA and LaPierre in the Texas action. In the present action BAC would be duty-bound to disclose to the NRA all information thus acquired and use it against LaPierre, which BAC could not do because it would be adverse to LaPierre as a former client.

- ii. Thus BAC cannot advise the NRA what action, if any, to take on any of the NRA's potential derivative claims against LaPierre here without a conflict of interest as to one or the other. The same conflicts would prevent BAC from advising either the NRA or LaPierre on the numerous privilege claims that will likely arise in this litigation. For example, if as the NRA's counsel, BAC knew of evidence tending to prove LaPierre's culpability, BAC would be duty-bound to use that in the NRA's claim against him here, while as LaPierre's counsel, BAC would be duty-bound to use every lawful means to prevent the same evidence from ever seeing the light of day.
- iii. Further, if LaPierre “effectively dominates and controls the Board of Directors as a whole,” he can prevent the NRA from pursuing any claims against him, and BAC cannot advise the NRA to do so.
- iv. The Complaint contains several allegations that BAC's legal bills were not properly audited, authorized, and/or were paid to Brewer “without consideration of the factors set forth in 552(e)(1)” [Sec. 552 (e)(1) of the New York Prudent Management of Institutional Funds Act.].
- v. Exhibit B to Marshall’s affidavit in support of intervention is a letter from the NRA's then-President and first Vice-President to the NRA's General Counsel and Audit Committee Chair details BAC's legal bills to the NRA that averaged “\$97,787 per day, seven days a week, every day of every month” for the first quarter of 2019. Generating these fees would require 10 lawyers billing \$1,000 an hour each, averaging 9.7 hours of work per day per lawyer, for every day of every week during that quarter. However, the Attorney General makes no demand for review of these charges nor any demand for their recovery if found to be unreasonable, and BAC is hopelessly

conflicted on advising the NRA whether to make such a review and claim here.

- vi. Given the Attorney General's allegations regarding BAC's fees, BAC knows or should know that one or more of its lawyers will be a material witness in this action.<sup>1</sup>
- vii. Further, BAC cannot possibly advise the NRA on whether to review and audit its legal bills, or whether to demand repayment of any BAC fees found to be excessive.
- viii. These conflicts were addressed in detail by both the Bankruptcy Court and the U.S. Bankruptcy Trustee in the Chapter 11 case. See NYSCEF Doc. # 246 and 247 in this action.

g) Moreover, when BAC filed a "Notice of Rejection" for the NRA in the present case on August 9, 2020, and stipulations and letters to Judge Lebovits in September 2020, BAC was also simultaneously representing Wayne LaPierre and the NRA in another federal action in the Middle District of Tennessee, *Dell'Aquila vs. LaPierre et al.*, No. 3:19-cv-00679. BAC represented both the NRA and LaPierre from August or September 2019, shortly after the action was filed, until September 30, 2020 when LaPierre was dismissed as a defendant. Excerpts from the PACER file were attached as Exhibit 3 (NYSCEF Doc. # 253) to the Affirmation of Taylor Bartlett (NYSCEF Doc. # 250). This action also alleged fraud and misconduct against LaPierre and as with the Texas action, it is impossible that BAC acquired no privileged and confidential information from both the NRA and LaPierre as the result of its dual representation there.

h) BAC has an additional conflict due to its previous and continuing relationship with defendant John Frazer, the NRA's General Counsel. The affidavit of Mr. Frazer submitted as NYSCEF Doc. # 254 was an exhibit in *People v. Ackerman McQueen and Nat'l Rifle Assn.*,

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<sup>1</sup> BAC would be conflicted on privilege issues as well as substantive ones. For example, BAC could assert lawyer-client privilege to avoid disclosure of its NRA invoices and billing records to the Intervenor and other parties. However, the NRA would not be subject to that privilege and could demand all supporting documents for BAC's bills and BAC could not possibly avoid a conflict in advising the NRA whether to demand production of those records.

NYSCEF Index # 451825/2019, Doc. # 26. In paragraph 2 of this affidavit, Frazer states that as NRA's General Counsel he supervises outside counsel representing the NRA in the *Ackerman* litigation and "inquiries" by the New York Attorney General. As NRA's counsel in *Ackerman*, BAC is indisputably "supervised" by Frazer, giving rise to the same conflicts here as from BAC's relationship with LaPierre.

i) As a result of these conflicts, the NRA as an entity will not pursue any claims against the Individual Defendants as long as the NRA is controlled by LaPierre and advised by BAC while being "supervised" by Frazer. It is likewise certain that BAC cannot independently advise the NRA here, and that the Attorney General is conflicted on raising BAC's dual representation even if she has standing to do so, which is doubtful.

j) Thus no present party will raise the BAC/NRA conflict issue.

k) Likewise no present party will adequately protect Marshall's constitutional rights enumerated above, which are fundamental elements of his personal liberty that he is entitled to assert against the Attorney General's effort to dissolve the NRA.

l) Further, the Individual Defendants have allegedly acted for their personal benefit against the interests of the NRA and its members, including Marshall, and the Individual Defendants therefore are or may be likely to subordinate the interests of the NRA and Marshall to their own interests in order to avoid individual liability. The Individual Defendants would have a strong personal incentive to enter into a settlement with the Attorney General under which the NRA paid the fines and penalties for their alleged misconduct and which imposed only minimal liability on themselves. Likewise, if BAC's fees were found to be excessive, it would have a similar incentive to recommend such a settlement at the expense of the NRA and its members.



### **DERIVATIVE ALLEGATIONS**

21. The NRA is named as a nominal defendant solely in a derivative capacity, and these derivative claims are brought by Marshall as an NRA director under N-PCL § 720.

22. Marshall will adequately and fairly represent the interests of the NRA in enforcing and prosecuting its rights.

23. Marshall became a Director of the NRA in early 2021 following the resignation of Director Duane Liptak after the NRA's Ch. 11 bankruptcy filing. On March 15, 2021 Marshall sent the email as Exhibit E to his affidavit in support of intervention to all members of the NRA Board. In this very detailed email Marshall reminded the Board of their fiduciary duties, the significant charges by the Attorney General against the Individual Defendants here, the failure of internal controls, the long history of management's abuses of their positions, and the Board's persistent failures to exercise proper oversight and control over the NRA's executive management. Marshall called on the Board to convene a special meeting to review and audit the charges and management actions called into question by the Attorney General's suit and Marshall's own review of NRA Board minutes. This email had several attachments, including Marshall's compilation of various financial information for the NRA's IRS Form 990 filings for the years 2013-2019. (See Exhibit G to Marshall's affidavit supporting intervention).

24. Two days later on March 17, 2021 Marshall sent another email to all Board members (Exhibit F to Marshall's affidavit supporting intervention) stating that he intended to join in a pending motion for an examiner in the bankruptcy case to seek an independent and objective evaluation of the NRA operations, management, and financial transactions, and urging all other Board members to join that motion as well.

25. On March 18, 2021 Marshall sent another email to the NRA Board directing their attention to Brewer's conflict of interest and again calling for a Board meeting to address this as well as "Transparency in reporting and informing Board of Director Members regarding litigation, filings, and pleadings in the Bankruptcy Case". (Exhibit I to Marshall's affidavit supporting intervention).

26. On July 1, 2021 Marshall sent an email (Exhibit J to Marshall's affidavit supporting intervention) to all members of the NRA Board members

As an elected NRA Board member, we have accepted a fiduciary duty and personal responsibility to fulfill those duties and act accordingly. Failing to act is a breach of the fiduciary duties. The harshest critics of the NRA are the members. It is well past time we take heed to their voices.

I call for a special meeting to address the management changes that are necessary. Your silence at this critical juncture will forever be your legacy.

27. On August 27, 2021 Marshall sent another email to the NRA Board members calling their attention to recent director resignations and the failure of NRA Secretary (Individual Defendant Frazer) to take action to replace these directors as well as refusing to hold the "76<sup>th</sup> Director" election required by the NRA's bylaws. Marshall again called on the Board to "take back the leadership of the NRA." (Exhibit K to Marshall's affidavit supporting intervention).

28. If these demands were not enough, the NRA Board's attention to the need for oversight was called to their attention by the numerous allegations of executive wrongdoing and Board failure to properly oversee the NRA's management by the Attorney General's original complaint filed August 6, 2021 and by the Bankruptcy Court's May 11, 2021 dismissal order.

29. It is beyond credible dispute that the NRA Board will not act to correct the abuses of position and breaches of fiduciary duty alleged in the Complaint and any further efforts by Marshall to bring about such action will be futile. These alleged violations are so egregious on

their face that they cannot be the product of sound business judgment of the NRA's directors, and the Board's inaction in the face of such egregious misconduct by its leadership demonstrates that the Board has abdicated its oversight of the NRA's management to such a degree that it could not validly exercise its business judgment.

### **AFFIRMATIVE DEFENSES**

1. Marshall denies that the Attorney General's claim for dissolution is properly brought. As alleged hereafter the petition for dissolution violates numerous federal and state constitutional rights of the NRA and its members, both individually and collectively.

2. Marshall further denies that dissolution is an available or proper remedy in this action because the NRA is fully capable of continuing to serve its members and their interests after the Individual Defendants and "rubberstamp" board members who acted with them (or who acquiesced to their conduct of the NRA's affairs or otherwise failed to properly oversee and prevent their conduct) are removed from their positions and new leadership and directors are elected by the NRA's members.

3. Marshall further denies that any of the wrongful acts of any individual defendant herein can be attributed to the NRA as an entity, or that any such actions can serve as the basis for dissolution of the NRA. The Attorney General's complaint repeatedly alleges that the Individual Defendants were acting solely for their own personal benefit, and accordingly their actions cannot be charged against the NRA. *See e.g., 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).

4. This action may not proceed until and unless the notice specified by N-PCL § 1104 has been given to all NRA members and other persons or entities described in that section and published as provided therein.

5. The Attorney General has alleged facts justifying the removal of the Individual Defendants from their positions with the NRA and recovery of damages, restitution, interest and penalties from them on behalf of the NRA and for the use and benefit of its members. However, the Attorney General's demand for dissolution is an abuse of her office because it is brought for political purposes and is a selective prosecution and application of N-PCL §§ 112 and 1101.

6. As further alleged hereafter, the Attorney General's demand for dissolution of the NRA in this action is barred by the 1<sup>st</sup>, 8<sup>th</sup> and 14th Amendments to the U.S. Constitution, and Article I, §§ 6, 8, 9 and 11 of the New York Constitution.

7. The Court should also award reasonable attorney's fees and expenses to Marshall and his counsel pursuant to N-PCL § 720 and other applicable New York law.

### **CROSS-CLAIMS AGAINST DEFENDANTS**

#### **FIRST CROSS-CLAIM**

#### **Declaratory Judgment that NRA Counsel Is Conflicted and Injunction Against BAC's Continued Representation of the NRA (On Behalf of the NRA Against All Defendants)**

8. Marshall repeats and re-alleges each and every allegation set forth in the paragraphs above as though fully set forth herein.

9. As an NRA member faced with the loss of his membership rights and impairment of his constitutional rights as alleged above, Marshall has a strong interest in assuring the NRA is represented by independent, conflict-free counsel who can investigate and litigate the NRA's derivative claims.

10. As alleged above and shown in the attached Exhibit 1, BAC's dual representation of the NRA and Wayne LaPierre renders BAC conflicted and precludes it from representing the NRA here.

11. No present party to this action will raise the conflicts of interest resulting from BAC's

dual representation of the NRA and defendant LaPierre for the reasons alleged above.

12. Therefore, this Court should enter a declaratory judgment that BAC is conflicted from representing the NRA and should enjoin BAC from the continued representation of the NRA in this and all other legal actions now pending on behalf or against the NRA. The Court should require the NRA to engage independent counsel with no present or prior relationship to BAC, the NRA or its Board of Directors, or any of the Individual Defendants.

13. Absent the requested declaratory and injunctive relief, the NRA and its members, including Marshall, will be irreparably harmed and deprived of due process if this action proceeds without independent counsel for the NRA. Marshall brings this cause of action as a sitting director of the NRA, and individually to protect this personal rights as an NRA member to conflict-free representation of the NRA, and on behalf of all other NRA members whose corresponding personal rights to due process as NRA members would likewise be impaired.

14. The Court should also award reasonable attorney's fees and expenses to Marshall and his counsel pursuant to N-PCL § 720 and other applicable New York law.

**SECOND CROSS-CLAIM**

**Declaratory Judgment Against Indemnification**

**N-PCL § 722; CPLR § 3001**

**(On Behalf of the NRA Against All Defendants)**

15. Marshall repeats and re-alleges each and every allegation set forth in the paragraphs above as though fully set forth herein.

16. N-PCL § 722 authorizes corporations to indemnify their officers and directors under certain circumstances specified therein, but only where “. . . such director or officer acted, in good faith, for a purpose which he reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other

enterprise, not opposed to, the best interests of the corporation. . .”

17. The Attorney General's Complaint alleges that the Individual Defendants' actions were not in good faith, that they have looted the NRA's assets, and that they did so solely for their own personal benefit or the benefit of others against the best interests of the NRA.

18. Under N-PCL § 722, the NRA may not indemnify Individual Defendants LaPierre, Frazer, Phillips and Powell against any judgments, fines, amounts paid in settlement and expenses in this action, including attorneys' fees.

19. Therefore, if the Attorney General's allegations are found to be true, the Court should enter a declaratory judgment and corresponding injunctive relief barring any indemnity by the NRA of any and all of the Individual Defendants determined to have so acted, and ordering the Individual Defendants to repay the NRA for all such fees and expenses previously advanced.

20. The Court should also award reasonable attorney's fees and expenses to Marshall and his counsel pursuant to N-PCL § 720 and other applicable New York law.

### **THIRD CROSS-CLAIM**

#### **Breach of Fiduciary Duty and Disgorgement of Profits**

#### **(On Behalf of the NRA Against Defendants LaPierre, Frazer, Phillips and Powell)**

21. Marshall repeats and re-alleges each and every allegation set forth in the paragraphs above as though fully set forth herein.

22. The NRA and its membership, including Marshall, placed their resources and trust in Defendants LaPierre, Frazer, Phillips and Powell as fiduciaries that were duty-bound to put the members' interests ahead of their own.

23. On information and belief, Defendants LaPierre, Frazer, Phillips, and Powell violated their fiduciary duties to the NRA by, *inter alia*, engaging in misappropriation, self-dealing, looting and/or committing waste of the NRA's corporate and charitable assets, participating in

prohibited related party transactions, making or authorizing improper payments and benefits to third parties, and causing false and materially misleading filings to be made in New York State.

24. On information and belief, as a direct and proximate result of Defendants LaPierre, Frazer, Phillips, and Powell's breaches of their fiduciary obligations, the NRA has sustained and will continue to sustain significant damages, as alleged herein.

25. On information and belief, as a result of their misconduct, Defendants LaPierre, Frazer, Phillips, and Powell are liable to the NRA.

26. The NRA is entitled to the disgorgement of all profits, compensation, and/or benefits earned or obtained by Defendants LaPierre, Frazer, Phillips and Powell during the course of their breaches of fiduciary duty and other wrongful conduct.

27. Although the Attorney General's Eighteenth Cause of Action purports to assert derivative claims for the benefit of the NRA, her demand for its dissolution is contrary to the best interests of the NRA and its members, including Marshall.

28. If the Attorney General's allegations are proven, Marshall opposes distribution of any amounts recovered to any entity other than the NRA. All such recoveries should be paid only to the NRA to further continue its core mission and programs.

29. The Attorney General has not requested a determination of whether the consulting and vendor fees enumerated in the Complaint, including the legal fees referred to in ¶¶ 472-494, were excessive and/or not validly authorized, nor has the Attorney General sought recovery for the NRA of any such improper payments. Marshall requests the review of all such payments and the addition as defendants of any persons or other entities found to have charged and received any such excessive fees.

30. Marshall further requests that any and all such fees recovered be paid only to the

NRA, less any attorney fees, costs and expenses that the Court may otherwise properly award, including an award of reasonable attorney's fees and expenses to Marshall and their counsel pursuant to N-PCL § 720 and other applicable New York law.

31. Because the Individual Defendants' actions were willful, malicious, and deliberate, and demonstrated a conscious disregard for the NRA's interests, the NRA is also entitled to an award of punitive damages.

32. The Court should also award reasonable attorney's fees and expenses to Marshall and his counsel pursuant to N-PCL § 720 and other applicable New York law.

#### **FOURTH CROSS-CLAIM**

##### **Corporate Waste**

##### **(On Behalf of the NRA Against Defendants LaPierre, Frazer, Phillips and Powell)**

33. Marshall repeats and re-alleges each and every allegation set forth in the paragraphs above as though fully set forth herein.

34. On information and belief, Defendants LaPierre, Frazer, Phillips, and Powell have looted and/or wasted the NRA's corporate and charitable assets, and they did so solely for their own personal benefit or the benefit of others against the best interests of the NRA.

35. On information and belief, as a direct and proximate result of Defendants LaPierre, Frazer, Phillips, and Powell's corporate waste, the NRA has sustained and will continue to sustain significant damages, as alleged herein.

36. On information and belief, as a result of their misconduct, Defendants LaPierre, Frazer, Phillips, and Powell are liable to the NRA.

37. Marshall requests that any and all such fees recovered be paid only to the NRA, less any attorney fees, costs and expenses that the Court may otherwise properly award, including an



award of reasonable attorney's fees and expenses to Marshall and their counsel pursuant to N-PCL § 623(e) and other applicable New York law.

38. Because Defendants' actions were willful, malicious, and deliberate, and demonstrated a conscious disregard for the NRA's interests, the NRA is also entitled to an award of punitive damages.

39. The Court should also award reasonable attorney's fees and expenses to Marshall and his counsel pursuant to N-PCL § 720 and other applicable New York law.

### **COUNTERCLAIMS AGAINST THE ATTORNEY GENERAL**

#### **FIRST COUNTERCLAIM**

**Violation of Free Speech, Free Association, Due Process of Law, and Equal Protection**

**U.S. Const. 1<sup>st</sup> and 14<sup>th</sup> Amendments;**

**N.Y. Const. Art. I, §§ 6, 8, 9, 11; N-PCL § 623**

**(On Behalf of the NRA Against Attorney General of New York)**

40. Marshall repeats and re-alleges each and every allegation set forth in the paragraphs above as though fully set forth herein.

41. The NRA was chartered in New York in 1871. For nearly 150 years it has been the leading national association of American citizens to promote the safe and responsible use of small arms for civilians and law enforcement. To that end the NRA has developed national training and certification programs used by many thousands of individuals, state and local associations, and law enforcement organizations that are recognized as primary standards for safe and effective use of firearms for recreation and defensive purposes. Further, many insurers rely on the NRA's safety certifications in providing insurance to individuals, state and local shooting facilities and law enforcement organizations.

42. But the first section of the NRA's Bylaws under "Purposes and Objectives" is to ". . .

protect and defend the Constitution of the United States . . .” and especially the “inalienable right of the individual American guaranteed by such Constitution” to acquire, own and use firearms for self-preservation and defense. (NRA Bylaws Art. II, Sec. 1; see 4th page of Exhibit 1 to Attorney General Complaint; Doc. No. 3). To this end, the NRA has long engaged in extensive public and legislative advocacy to promote its purposes and to vindicate the Constitutional rights of its members and all Americans. This advocacy is not only “political speech” but core political speech under the First Amendment to the U.S. Constitution.

43. The NRA is a private association of approximately 5.5 million members, all of whom voluntarily associate by joining the NRA as Annual or Life members. All NRA members voluntarily contribute funds to support the NRA's advocacy, education and training programs, either by annual dues or by their payment for a Life membership. The NRA spends millions of dollars annually on printed and electronic media to advocate for the Second Amendment rights of its members and all other Americans, whether they are NRA members or not.

44. Because the NRA is almost always at the forefront of political debate about Second Amendment rights and issues, it is sometimes the target of political action by persons willing to subvert government power in order to stifle or completely shut down the NRA's ability to effectively advocate for the Second Amendment rights of Americans. That is the case here.

45. During her campaign for the office of New York Attorney General, media reports quoted Attorney General Letitia James as saying that she would “take down the NRA”; that she saw “no distinction” between the NRA's political advocacy and its other activities; that “[t]he NRA is an organ of deadly propaganda masquerading as a charity for public good”; that she would use her “constitutional power as an attorney general to regulate charities” to attack the NRA’s “legitimacy”; that her “top issue” would be “going after the NRA because it is a criminal

enterprise”; and that “We need to again take on the NRA, which holds itself out as a charitable organization. But in fact, they are not. They are nothing more than a criminal enterprise.”

46. Attorney General James' filing of this action and her demand for dissolution confirms the selective and targeted use of her authority consistent with her campaign promises in violation of the rights of the NRA and Marshall to free speech, free association, due process of law, and equal protection of the laws under the First and Fourteenth Amendments to the U.S. Constitution and Article I, §§ 6, 8, 9, and 11 of the New York Constitution.

47. The Complaint wrongly imputes the numerous breaches of individual fiduciary duties alleged against the Individual Defendants to the NRA as an entity, and seeks its dissolution based on these individual wrongful acts even though the Attorney General alleges these actions were solely for the Individual Defendants' personal benefit, and therefore necessarily adverse to the NRA and its members.

48. Thus, the Attorney General seeks to completely eliminate the NRA's ability to engage in its core political speech on behalf of Marshall and all other NRA members. Her demand for the NRA's dissolution would totally destroy the rights of Marshall and all other NRA members, as well as those Americans who may wish to join the Association in the future, to freely associate with others in the NRA and thereby to exercise their individual rights of free political speech and viewpoint advocacy.

49. Further, the Attorney General's complaint completely ignores the many safety, educational and training functions that the NRA continues to provide for members and non-members alike, and completely ignores the best interests of the NRA and its members, including Marshall. Instead the Attorney General would throw the baby out with the bathwater by liquidating the NRA instead of simply removing the Individual Defendants from their positions

and recovering any misused funds as would be normally done where individual corporate officers have abused their positions. Accordingly, her demand for dissolution is not narrowly tailored or closely drawn to achieve any otherwise legitimate objective of the State of New York.

50. Therefore the Attorney General's demand for dissolution under the facts alleged here, as applied here, is unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution, and Article I, §§ 6, 8, 9 and 11 of the New York Constitution and should be enjoined.

51. As a direct and proximate result of Attorney General Letitia James' constitutional violations, the NRA and its members, including Marshall, are threatened with and would suffer the loss of their constitutional rights, entitling them to declaratory and injunctive relief. Marshall brings this cause of action individually to protect his personal constitutional rights as an NRA member as alleged above, and also on behalf of all other NRA members whose corresponding personal rights as NRA members will likewise be impaired.

52. The Court should also award reasonable attorney's fees and expenses to Marshall and his counsel pursuant to N-PCL § 720 and other applicable New York law.

### **SECOND COUNTERCLAIM**

#### **Injunctive Relief**

**U.S. Const. 1<sup>st</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments; N.Y.**

**Const. Art. I, § 6; N-PCL §§ 623, 1101, 1102, 1116**

**(On Behalf of the NRA Against Attorney General of New York)**

53. Marshall repeats and re-alleges each and every allegation set forth in the paragraphs above as though fully set forth herein.

54. The Attorney General's demand for dissolution is based on allegations of *individual* misconduct by the *Individual Defendants* that cannot be imputed to the NRA as a corporation under New York law. These allegations are of individuals acting entirely for their own or

another's purposes, adversely to the NRA and its members, and their actions (if proven) totally abandoned the NRA's interests. Because the wrongful acts alleged by the Attorney General, if proven, were committed *against* the NRA and its members rather than on the NRA's behalf, New York law bars its dissolution.

55. The Attorney General has *not* alleged that the NRA is incapable of continuing its core missions and programs if the Individual Defendants' culpability is proven and they are removed from their NRA positions. In fact the NRA is quite capable of continuing its mission and programs if these allegations are proven and these individuals are removed from office.

56. Dissolution is an extreme remedy to be granted only when a corporation is unable to carry on its mission and business after the offending actions are corrected. Indeed N-PCL § 1114 expressly provides for the dismissal of a dissolution petition when it is established that the cause for dissolution either did not exist or no longer exists.

57. Neither of the two grounds specified by N-PCL § 1101 for judicial dissolution of a non-profit corporation exist here: (1) the NRA did not procure its formation by fraud or concealment of a material fact, and (2) the NRA as a corporation – distinct from the misconduct of the Individual Defendants that the Attorney General alleges – has not exceeded its legal authority; has not violated any law whereby it has forfeited its charter; has not carried on its business in a persistently fraudulent or illegal manner; and has not abused its powers contrary to public policy.

58. The Attorney General alleges that she has authority to sue for dissolution based on a violation of “public policy.” However, there are no objective standards in N-PCL Article 11 or other New York statutes and case law to define what “public policy” or “public interest” is, or what sort of violation will support judicial dissolution action under § 1101. Thus this section

purports to grant the Attorney General and the courts absolute and unbridled discretion in its application, and in so doing violates the due process provisions of the 1<sup>st</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution and Article I § 6 of the New York Constitution.

59. Further, to the extent that any provision of N-PCL Article 11 might be construed or applied to allow the Attorney General to obtain judicial dissolution of the NRA and to distribute its assets to any entities other than the NRA's members, this would

a. deprive the NRA, Marshall and all other NRA members of due process of law by the taking of their private property for a public use without compensation;

b. violate the 8<sup>th</sup> Amendment to the U.S. Constitution as an unreasonable and excessive fine or forfeiture imposed on the NRA and its members, including Marshall, for the wrongful acts of the Individual Defendants and those acting with them; and

c. violate the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.

60. Therefore the Court should enjoin the Attorney General from seeking dissolution of the NRA.

61. Absent the requested injunctive relief, the NRA and its members, including Marshall, will be irreparably harmed. Marshall brings this cause of action individually to protect his personal constitutional rights as an NRA member as alleged above, and also on behalf of all other NRA members whose corresponding personal rights as NRA members will likewise be impaired.

62. The Court should also award reasonable attorney's fees and expenses to Marshall and his counsel pursuant to N-PCL § 720 and other applicable New York law.

**THIRD COUNTERCLAIM****Appointment Of A Temporary Receiver  
(Against All Defendants and the Attorney General On Behalf of the NRA)**

63. Marshall repeats and re-alleges each and every allegation set forth in the paragraphs above as though fully set forth herein. Without limiting these allegations Marshall specifically re-alleges that at all times material to the Attorney General's Complaint and the paragraphs above, the NRA Board has failed to act in good faith and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances.

64. Marshall requests the Court to appoint a temporary receiver pursuant to N-PCL § 1111 for the following purposes:

a) to manage the day-to-day ordinary business of the NRA until a new Board of Directors is elected by the membership in a general election pursuant to a plan approved by the Court and new executive management is appointed by the new Board, and new executive management is appointed by the new Board; and that in such election no previous officer, employee or director of the NRA may be run or be elected unless that person establishes to the satisfaction of the Court that they have previously opposed the actions of the Individual Defendants and the failures to act of the NRA Board that are alleged in this action; and

b) to pursue recovery of all amounts that may be due to the NRA from the Individual Defendants and all other persons or entities that received excessive, improper and/or unauthorized payments and benefits at the expense of the NRA by the actions of the Individual Defendants.

65. The Court should also award reasonable attorney's fees and expenses to Marshall and his counsel pursuant to N-PCL § [720](#) and other applicable New York law.

**PRAYER FOR RELIEF**

WHEREFORE, Marshall respectfully requests this Court to enter a judgment in favor of the NRA and against Defendants LaPierre, Frazer, Phillips and Powell, and against any other individuals or entities that may be sued in this action as recipients or beneficiaries of the Individual Defendants' wrongful actions, and against the Attorney General of New York, for the following relief:

A. A determination that this action is a proper derivative action and that Marshall has made adequate demand on the NRA Board, which has failed and refused to act, and that any other or further demand is excused as futile, and that Marshall has the right to bring the Causes of Action herein on behalf of the NRA as an entity as well as individually and on behalf of all other NRA members.

B. A determination that Marshall has the right to bring the Causes of Action asserted herein by the Attorney General of New York for recovery of damages, restitution, interest and punitive damages on behalf of the NRA as an entity and on behalf of all other NRA members.

C. The appointment of a temporary receiver to conduct a new election of Board members by the NRA membership pursuant to N-PCL § 1111 in accordance with a plan approved by the Court.

D. An immediate order that this action will be stayed until the Attorney General has given the notice specified by N-PCL § 1104 to all NRA members and other persons or entities described in that section.

E. An immediate order that Brewer Attorneys & Counselors ("BAC") is conflicted and enjoined from continued representation of the NRA in this action and all others in which BAC represents the NRA; and that the NRA is required to engage independent counsel who have no



present or prior relationship to BAC, the NRA or its Board of Directors, or any of the Individual Defendants before this action may proceed.

F. A declaratory judgment that the Attorney General's demand for dissolution is not authorized by N-PCL Article 11 and is unconstitutional under the 1<sup>st</sup>, 8<sup>th</sup> and 14th Amendments to the U.S. Constitution, and Article I, §§ 6, 8, 9 and 11 of the New York Constitution, together with dismissal of the Attorney General's claims for dissolution and/or an injunction barring the Attorney General from seeking the NRA's dissolution.

G. The removal from the NRA Board of Directors of any Individual Defendants determined to have breached their fiduciary duties or otherwise engaged in the misconduct alleged by the Attorney General, an order barring them from further membership or participation in the NRA.

H. Disgorgement of all profits, compensation, and/or benefits earned or obtained by Defendants LaPierre, Frazer, Phillips and Powell during the course of their breaches of fiduciary duty and other wrongful conduct.

I. A judgment against any individual defendant determined to have engaged in the misconduct alleged by the Attorney General for damages and restitution of all NRA funds found to have been misappropriated, misspent, recklessly spent, or otherwise improperly used for personal gain or the gain of others acting with such defendant, with interest as provided by law, and that any such judgment will include the amounts of any fines or penalties imposed on the NRA as the result of any such individual defendant's actions.

J. An order that any judgment entered in this action for damages or other monetary relief in favor of the NRA will include a provision that all sums recovered will be paid to the NRA for the use and benefit of its members, less the reasonable expenses of this litigation and reasonable

attorney fees to Marshall and his counsel.

K. On the Third and Fourth Cross-Claims, punitive damages in an amount to punish and deter Defendants LaPierre, Frazer, Phillips and Powell's willful and malicious conduct.

L. A declaratory judgment and corresponding injunctive relief barring each of the Individual Defendants LaPierre, Frazer, Phillips and Powell from seeking and/or receiving any indemnification or reimbursement from the NRA for any attorney fees and litigation expenses incurred in this action, and/or any penalties and other monetary assessments against them here.

M. An award of reasonable attorney's fees and expenses to Marshall and his counsel pursuant to N-PCL § 720 and other applicable New York law.

N. Such other and further relief as the Court deems just and proper.

Dated: September 24, 2021  
New York, New York

Respectfully submitted,

*/s/ Taylor Bartlett*

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