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1. I am a Senior Associate with the firm Brewer, Attorneys & Counselors, counsel for the Defendant/Counterclaim-Plaintiff the National Rifle Association of America (the “NRA”) in the above-captioned action.

2. I respectfully submit this Affirmation in support of the NRA’s Reply Memorandum of Law in Support of the NRA’s Motion to Dismiss the NYAG’s claims against it in the above-captioned action brought by the Office of the Attorney General for the State of New York (the “Attorney General”).

3. I am familiar with the facts and circumstances of this action. The facts set forth in this Affirmation are based upon my review of the materials and information described below.

I.

PROCEDURE

4. On August 10, 2020, the Attorney General filed a complaint (the “Original Complaint”) (NYSCEF 11) against the NRA and four of its executives—Wayne LaPierre (Executive Vice President), Wilson “Woody” Phillips (former Treasurer and Chief Financial Officer), Joshua Powell (former Chief of Staff and the Executive Vice President of Operations), and John Frazer (General Counsel). The Original Complaint includes over 660 paragraphs of allegations and eighteen causes of action against the NRA and its officers and directors.

5. On October 19, 2020, the NRA filed a Motion to Dismiss the Original Complaint (the “Motion to Dismiss the Original Complaint”) (NYSCEF 99). The NRA sought dismissal on four procedural grounds:

- a. CPLR 327(a), *forum non conveniens*;
- b. CPLR 3211(a)(4), dismissing or staying the action due to pending litigation between the parties;

- c. CPLR 3211(a)(1), improper venue under; and
 - d. CPLR 2201, staying the action pending the resolution of related federal cases.
6. On December 10, 2020, the Attorney General filed an Opposition to the Motion to Dismiss the Original Complaint (NYSCEF 192).
7. On December 24, 2020, the NRA filed a Reply in Support of the Motion to Dismiss the Original Complaint (NYSCEF 193).
8. On January 15, 2021, the NRA filed a Voluntary Petition for Non-Individuals Filing for Bankruptcy in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division. *In re National Rifle Association of America and Sea Girt LLC*, Case No. 21-30085 (Bankr. N.D. Tex.) (Judge Harlin DeWayne Hale) (hereinafter the “Bankruptcy Action”) (Bankruptcy Action, Dkt. 1). A true and correct copy of the Bankruptcy Action docket, as of November 12, 2021, is annexed hereto as Exhibit A.
9. On February 12, 2021, the Attorney General filed a Motion to Dismiss, or, in the Alternative, Appoint a Chapter 11 Trustee in the Bankruptcy Action (Bankruptcy Action, Dkt. 156), arguing, among other things, that the Bankruptcy Action should be dismissed “[a]s a result of the persistent violations of law alleged” in the Original Complaint (Bankruptcy Action, Motion to Dismiss at ¶ 6 (referring to the Original Complaint as the “NYAG Enforcement Complaint”), Dkt. 156). A true and correct copy of the Motion to Dismiss, or, in the Alternative, Appoint a Chapter 11 Trustee in the Bankruptcy Action is annexed hereto as Exhibit B.
10. On April 5, 2021, trial commenced in the Bankruptcy Action, lasting 12 days, during which the court heard testimony of 23 witnesses, received in evidence over 300 exhibits, along with 1064 pages of F. R. Civ. P. 32 deposition designations by the Attorney General alone (Bankruptcy Action). The discovery phase of the chapter 11 proceeding involved at least 16

depositions and a production by the NRA to the NYAG of over 24,000 documents (Bankruptcy Action).

11. On May 11, 2021, Judge Hale entered an Order Granting the Motion to Dismiss in the Bankruptcy Action (Bankruptcy Action, Dkt. 740), finding:

“Both Ms. Rowling and Mr. Erstling, the NRA’s Director of Budget and Financial Analysis, testified that the concerns they expressed in the 2017 Whistleblower Memo are no longer concerns. Mr. Frazer testified regarding the compliance training program that the NRA now has for employees. Mr. Spray testified credibly that the change that has occurred within the NRA over the past few years could not have occurred without the active support of Mr. LaPierre. It is also an encouraging fact that Ms. Rowling has risen in the ranks of the NRA to become the acting chief financial officer, both because of her former status as a whistleblower and because of the Court’s impression of her from her testimony as a champion of compliance.

(Bankruptcy Action, Order Granting Motion to Dismiss at 35, Dkt. 740)

In short, the testimony of Ms. Rowling and several others suggests that the NRA now understands the importance of compliance. Outside of bankruptcy, the NRA can pay its creditors, continue to fulfill its mission, continue to improve its governance and internal controls, contest dissolution in the NYAG Enforcement Action, and pursue the legal steps necessary to leave New York.”

(Bankruptcy Action, Order Granting Motion to Dismiss at 35, Dkt. 740)

A true and correct copy of the Order Granting the Motion to Dismiss in the Bankruptcy Action is annexed hereto as Exhibit C.

12. On August 16, 2021, the Attorney General filed an Amended Complaint in this Action (the “Amended Complaint”) (NYSCEF 333), adding 87 paragraphs and 25 pages of new allegations, alleging, among other things, self-dealing and related-party transactions made at the direction and for the benefit of certain individuals. The Amended Complaint contains allegations not arising out of or relating to the allegations in the Original Complaint, including at least 67 paragraphs discussing alleged misconduct after the Attorney General filed the Original Complaint

(NYSCEF 333, Amended Complaint, “The Defendants’ Continued Breaches Since the Attorney General’s Complaint” at ¶¶ 580-646).

13. On September 15, 2021, the NRA filed a Motion to Dismiss the Amended Complaint (the “Motion to Dismiss the Amended Complaint”) (NYSCEF 371), seeking dismissal of the Attorney General’s dissolution claims on the grounds that (i) she is collaterally estopped from relitigating factual issues decided in the Bankruptcy Action; and (ii) such findings are fatal to the cause of action seeking dissolution. In the Motion to Dismiss the Original Complaint, the NRA did not seek dismissal under CPLR 3211(a)(5) and (a)(7). The Motion to Dismiss the Original Complaint argued that this Action should be dismissed under four procedural grounds. In ruling on the Motion to Dismiss the Original Complaint, this Court did not reach the “merits of the case” (NYSCEF 220, Hearing Transcript and Order, at 67:10-14).

14. On October 15, 2021, the Attorney General filed an Opposition to the Motion to Dismiss the Amended Complaint (NYSCEF 404).

15. Annexed hereto as Exhibit D is a true and correct copy of the Transcript of Status Conference, dated May 14, 2021, issued in the Bankruptcy Action (Bankruptcy Action, Dkt. 747).

16. Annexed hereto as Exhibit E is a true and correct copy of Memoranda, Communications and Reports Rendered upon Applications for the Institution of Proceedings by the Attorney-General and in Response to Requests from Various Public Officers and Boards and Private Persons, 1914 NY Att’y Gen. Rep. & Op. 217 (1914).

17. Annexed hereto as Exhibit F is a true and correct copy of the NRA Bylaws.

18. Annexed hereto as Exhibit G is a true and correct copy of letter correspondence filed by the NRA in this Action on January 20, 2021 (NYSCEF 204).

19. Annexed hereto as Exhibit H is a true and correct copy of a letter from the Office of the Attorney General, dated January 27, 2021.

20. Annexed hereto as Exhibit I is a true and correct copy of a letter from the Office of the Attorney General, dated February 10, 2021. In the letter, the Office of the Attorney General states that it was producing examination transcripts for 13 witnesses. These examinations were conducted during the Attorney General's investigation of the NRA. Upon information and belief, the Office of the Attorney General also interviewed other individuals.

Dated: December 4, 2021
New York, New York

/s/ David J. Partida
David J. Partida

Certification of Compliance with Word Count

I, David J. Partida, an attorney duly admitted to practice law before the courts of the State of New York, certify that the foregoing Reply Affirmation of David J. Partida complies with the word count limit set forth in Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g)) because the Reply Affirmation contains 1,318 words, excluding the parts exempted by Rule 17. In preparing this certification, I have relied on the word count of the word-processing system used to prepare this Reply Affirmation.

By: /s/ David J. Partida
David J. Partida
Attorney for Defendant Counterclaim-Plaintiff
National Rifle Association of America