

Exhibit A-2

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1 THE COURT: Those are settlements, right? In
2 other words, you could have a settlement in this case
3 doing the same thing. That doesn't -- I don't recall
4 whether in all of those cases was there -- are you saying
5 that there was no claim in any complaint seeking
6 dissolution or that the settlement happened before there
7 was a complaint?

8 MS. EISENBERG: I don't know that all of them
9 were settlements before a claim was brought, but I can't
10 represent it one way or another.

11 THE COURT: But this, I think that settlements
12 are distinguishable because, you know, we don't have that
13 here, we don't have a settlement.

14 MS. EISENBERG: Yes. Now that I'm kind of
15 thinking back, there were some claims brought against
16 individuals to recover moneys that went out or to bar them
17 from serving on a board yet, dissolution was not sought.
18 And importantly, there is also at least one case where the
19 allegation was that the board of trustees was asleep at
20 the switch and wasn't paying attention. But I think that
21 we're back to the issue that a reasonable jury might
22 decide that in a similar type of situation we were not
23 treated the same.

24 The last set of comparators that we have is the
25 Multicultural case, the Trump case and the Northern

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1 Leasing case which Ms. Connell puts forward. She says,
2 well, these cases show that we actually seek dissolution
3 from time to time. Those cases show that they're just
4 like the NRA and that's why there is no dissimilar
5 treatment here. So, I would like to go briefly through
6 each and make clear how those cases are way worse and
7 nothing like our case.

8 First, in the Federation of Multicultural
9 Programs case you had a facility or set of facilities who
10 were comparing for disabled individuals that provided them
11 with residence and health services. What happened was as
12 early as 2011 the New York Times was reporting on
13 embezzlement, self-dealing and the like. And then in 2015
14 when the Attorney General finally sought dissolution, what
15 they were talking about is medication errors, insolvency,
16 shortages of food, failure to investigate physical abuse
17 at the facility.

18 So, that's where you have a situation where a
19 corporation is conducting its business in a private
20 illegal way. Here you don't have those types of
21 allegations. There is also what strikes me as an
22 inaccuracy, I'm sure not intentional. In the Attorney
23 General's brief she says, look at the Multicultural case,
24 that is an example where we obtained dissolution based on
25 embezzlement or breaches of fiduciary duty or self-dealing

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1 and the like.

2 Now, they did not move for dissolution in that
3 case on the basis of 1102 (b) statute, which is the basis
4 here. Which is that officers and directors and
5 controllers of the corporation looted and wasted its
6 assets and perpetrated the corporation solely for their
7 benefit; that was the basis. The basis in Multicultural
8 Programs was that the company was insolvent and that the
9 order that Ms. Connell submitted to you as an exhibit
10 specifically says 1102 (a) 2 (a), which is insolvency. So
11 that's completely inapposite and certainly does not move
12 the needle in terms of us having shown just how unusual
13 this case is.

14 In the Trump case the company was winding down.
15 There were allegations that moneys were used for political
16 purposes. You asked Mr. Conley on December 10 to quantify
17 and he couldn't. They certainly cannot make any or draw
18 any kind of analogy to the Trump Foundation situation,
19 where the majority of the funds were not being used for
20 the charitable purposes specified in the charity.

21 Last by not least, you have Northern Leasing
22 Consumer which is not even a charity situation. And Ms.
23 Connell puts it forward as another situation that she says
24 is like here. Well, nothing about Northern Leasing is
25 like here. What you had there was adhesion contracts that

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1 the company obtained through a fraud. And all these
2 consumers or all these customers were stuck with contracts
3 that they didn't want. So, this was a financial consumer
4 fraud case. And the company literally conducted its
5 business in a fraudulent way. So, again, that's not an
6 apposite analogy in any way, shape or form.

7 THE COURT: I think that I have the arguments
8 from your argument here and in the briefs. I would like
9 to take a short break to give, in part, Jack's fingers
10 times to recoil and recover. Then, Ms. Connell, go back
11 to you for short-ish rebuttal. All right, let's take
12 five.

13 MS. CONNELL: Thank you, Your Honor.

14 (Short recess taken)

15 THE COURT: Ms. Connell, I'm going to try to
16 keep your rebuttal to ten minutes.

17 MS. CONNELL: I'm going to try. I was hoping
18 Jack's fingers would need more rest, but I've been trying
19 to narrow this argument. But I'm going to do it.

20 THE COURT: Jack's fingers probably do need more
21 rest but I have to get onto another thing, so.

22 MS. CONNELL: Excuse me, I refer to Mr. Morelli.

23 The NRA's arguments ignore the presumption of
24 regularity. They cite to the Hartman decision and say
25 it's inappropriate here. But the presumption of

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