

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.

Index No. 451625/2020
Hon. Joel M. Cohen

Motion Seq. No. ____

**DEFENDANT JOSHUA POWELL’S STATEMENT OF UNDISPUTED MATERIAL
FACTS IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 19-a of the Rules of the Justices of the Commercial Division, Supreme Court, Defendant Joshua Powell (“Powell”), by and through undersigned counsel, submit the following statement of the material facts as to which Powell contends there is no genuine issue to be tried:

PROCEDURAL HISTORY

1. On August 10, 2020, the Attorney General filed a complaint (the “Original Complaint”) (NYSCEF 11), containing over 660 paragraphs of allegations and eighteen causes of action, against the National Rifle Association of American (the “NRA”), 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).

2. 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) (Chin Aff. ¶ 5, Ex. 3).

3. On April 5, 2021, trial commenced in the Bankruptcy Action, which lasted 12 days and 23 witnesses were heard.

4. On May 11, 2021, the federal court dismissed the NRA’s bankruptcy petition. *See* Bankruptcy Action, Order Granting Motion to Dismiss, Dkt. 740 (Chin Aff. ¶ 6, Ex. 4).

5. On August 16, 2021, the NYAG filed a 188-page amended and supplemental verified complaint (“Amended Complaint”) (NYSCEF 333), which added 87 paragraphs and 25 pages of new allegations. Only four paragraphs in the Amended Complaint included new information relating to Powell, three of which were new paragraphs (paras. 266–67, 602(ii)) and one of which included amended information (para. 453):

- a. “Powell ultimately tendered a check to the NRA for \$40,760.20 to settle the dispute over his expenses. The NRA rejected the check on the basis that it does not constitute the full amount owed to the Association.” Amended Complaint ¶ 266.
- b. “As set forth *supra* in Part V, Section IX(A)(ix), the NRA reported in its Form 990 for 2019 that Powell improperly charged to the NRA, or had reimbursed by the NRA, \$54,904.45 in personal expenses from 2016 through 2019 that “were not intended by the NRA to be part of Mr. Powell’s compensation and constitute automatic excess benefits” under federal regulations.” *Id.* ¶ 267.

- c. “With respect to Powell, from 2017 to 2019, the NRA reported paying Powell \$2,634,116 in total compensation, an average of \$878,039 a year. In its annual IRS Form 990 filings, the NRA reported the following breakdown of Powell’s compensation for 2017 and to 2019...” *Id.* ¶ 453 (new information in italics).
- d. “The reported excess-benefit transactions implicate numerous NRA executives and board members, including LaPierre, Powell, Dissident No. 1, the Executive Director of General Operations, and the former Executive Director of NRA-ILA. Specifically, the NRA reported that:
 - ii. Powell received \$54,904.45 in excess benefits from 2016 to 2019, after he “charged to the NRA, or had reimbursed by the NRA, various personal, travel, cellular, and other expenses which [he] knew or should have known were not by the NRA to be part of [his] compensation.”

Id. ¶ 602(ii).

6. On June 17, 2021, two NRA members filed a motion to intervene in the instant action, which the Court denied. NYSCEF 243; *id.* at Dkt. No. 340 (Decision and Order on Motion).

7. On May 2, 2022, the NYAG amended her complaint. The Second Amended Complaint (the “SAC”) (NYSCEF 646) did not include any additional factual allegations, but included a new cause of action, which asks the Court to appoint an independent compliance monitor to oversee the administration of the NRA.

JOSHUA POWELL'S TENURE AT THE NRA**I. Powell's Positions and Authority at the NRA**

8. Powell was a Michigan resident when he began his employment at the NRA. SAC ¶ 21; Executive Employment Agreement at 4 (Chin Aff. ¶ 7, Ex. 5).

9. Powell began his employment at the NRA on June 7, 2016. *See id.* at 1.

10. Powell's employment agreement with the NRA included several benefits in addition to his salary, such as a housing allowance for Powell's Virginia residence. SAC ¶ 257; Executive Employment Agreement at 2 (Chin Aff. ¶ 7, Ex. 5); Deposition of Lisa Supernaugh, May 5, 2022 pg. 413:01–413:06 (Chin Aff. ¶ 21, Ex. 19) (testifying that "housing, normal reimbursement such as mileage, that sort of thing, his cell phone, relocation expenses" were covered by the NRA).

11. From June 2016 to January 2020, Powell served as the Chief of Staff. SAC ¶ 141.

12. From January 2017 to December 2018, Powell served as the Executive Director of General Operations. SAC ¶¶ 141, 253.

13. From December 2018 to January 2020, Powell served as the Senior Strategist. SAC ¶ 141.

14. Powell was not responsible for and did not play a role in the preparation of the Annual Form 990. SAC ¶ 294.

15. Powell's authority did not extend to oversight over LaPierre—LaPierre was Powell's supervisor. SAC ¶ 141.

16. Powell was not responsible for managing contracts with key NRA vendors or setting the terms of those contracts. SAC ¶ 320–21.

17. In October 2019, Powell was put on administrative leave. SAC ¶ 553.

18. In January 30, 2020, the NRA ended Powell's employment. SAC ¶ 21; Employment Termination Letter (Chin Aff. ¶ 40, Ex. 38).

II. Powell's Salary

19. Powell's expenses were reviewed by the Chief Financial Officer ("CFO") and the Audit Committee. *See, e.g.*, SAC ¶¶ 256, 302, 342, 390; Deposition of Lisa Supernaugh, May 5, 2022, pgs. 303:12–304:02 (Chin Aff. ¶ 21, Ex. 19).

20. Powell's salary was set by Wayne LaPierre. SAC ¶¶ 445–47; *id.* at ¶ 256.

21. On July 13, 2016, Wilson Phillips (Treasurer and CFO at the time) contacted Linda Crouch (Executive Director of Human Resources) to increase Powell's base pay to \$500,000 from \$250,000, effective as of his start date. *See* e-mail from Wilson Phillips to Linda Crouch, dated July 13, 2016 (Chin Aff. ¶ 12 Ex. 10). This was authorized by Wayne LaPierre. *See* NRA Personnel Authorization Change Form, dated July 13, 2016 (Chin Aff. ¶ 8, Ex. 6).

22. On June 29, 2017, Phillips contacted Crouch to increase Powell's salary. The first salary adjustment in 2017 occurred on June 29, 2017, when Phillips contacted Crouch to increase Powell's salary by \$150,000 from \$500,000 to \$650,000. *See* e-mail from Wilson Phillips to Linda Crouch, dated June 29, 2017 (Chin Aff. ¶ 13, Ex. 11). This request was authorized by Wayne LaPierre. *See* NRA Personnel Authorization Change Form, dated June, 29, 2017 (Chin Aff. ¶ 9, Ex. 7).

23. On November 8, 2017, Phillips contacted Crouch to adjust Powell's compensation and provide a \$50,000 bonus. *See* e-mail from Wilson Phillips to Linda Crouch, dated Nov. 8, 2017 (Chin Aff. ¶ 14, Ex. 12). This request was authorized by Wayne LaPierre. *See* NRA Personnel Authorization Change Form, dated Nov. 8, 2017 (Chin Aff. ¶ 10, Ex. 8).

24. On March 20, 2018, Phillips contacted Crouch requesting that Powell's annual pay be increased from \$650,000 to \$800,000, effective January 1, 2018. *See* e-mail from Wilson Phillips to Linda Crouch, dated Mar. 20, 2018 (Chin Aff. ¶ 15, Ex. 13). This request was authorized by Wayne LaPierre. *See* NRA Personnel Authorization Change Form, dated Mar. 20, 2018 (Chin Aff. ¶ 11, Ex. 9).

25. The NRA never disciplined Powell for his salary or sought reimbursement. Deposition of Wayne LaPierre, June 28, 2022, pgs. 470:7–19 (Chin Aff. ¶ 23, Ex. 21).

26. The NRA hired an expert consulting firm to evaluate compensation, which found no evidence that Powell's salary was not commensurate with his experience. *See* Expert Report of Michael Dennis Graham, Consultant Grahall, LLC, September 16, 2022, p. 43 (Chin Aff. ¶ 16, Ex. 14).

III. Powell's Expenses

27. Powell's expenses were internally reviewed and documented prior to reimbursement. *See* SAC ¶ 265; Deposition of John Frazer, dated March 15, 2021, *In Re National Rifle Association of America and Sea Girt LLC* (Bankr. N.D. Tex. March 24, 2021), pgs. 61:20–62:02 (Chin Aff. ¶ 18, Ex. 16).

28. Powell submitted his expenses for reimbursement along with related documentation to his assistant. If there were any questions regarding any expense the CFO would review and sign off prior to reimbursement. Deposition of Lisa Supernaugh, May 5, 2022, pgs. 303:7–304:02 (Chin Aff. ¶ 21, Ex. 19).

29. In October 2019, the Treasurer of the NRA conducted an independent investigation of Powell's expenses. During this time the Brewer firm was also conducting an investigation into

allegations of improper reimbursements, which included reviewing Powell's expenses. SAC ¶ 263.

30. Powell provided documentation in support of his cell phone charges for review by the NRA. The NRA did not conclude that the charges were improper. *See* Deposition of John Frazer, *In Re National Rifle Association of America and Sea Girt LLC* (Bankr. N.D. Tex. March 24, 2021), pgs. 61:20–62:02 (Chin Aff. ¶ 18, Ex. 16).

31. Powell sought to reimburse the NRA for those expenses that were determined not to have a proper business expenses and tendered a check to the NRA for \$40,760.20 to settle the disputed expenses. SAC ¶ 265; Deposition of Lisa Supernaugh, May 5, 2022 pg. 196:02–196:22 (Chin Aff. ¶ 21, Ex. 19); *see also* Deposition of Michael Erstling, June 16, 2022, pg. 166:13–166:17 (Chin Aff. ¶ 22, Ex. 20) (“Josh Powell purchasing a computer on his credit card has been resolved.”); Deposition of John Frazer, July 12, 2022, pgs. 423:13–424:5 (Chin Aff. ¶ 25, Ex. 23); Deposition of Wayne LaPierre, March 22, 2021, pgs. 130:23–131:5 (Chin Aff. ¶ 17, Ex. 15); Deposition of Craig Spray, January 14, 2022 pg. 195:1–195:22 (Chin Aff. ¶ 20, Ex. 18).

32. The NRA, however, rejected Powell's check and claimed that Powell owed \$54,904.45. SAC ¶¶ 265–66.

IV. NRA Contracts with Powell's Family Members

33. Powell wife, Colleen Gallagher, was employed as an independent contractor by McKenna & Associates. SAC ¶¶ 273–79.

34. McKenna's relationship with the NRA predates Powell's employment, dating back to 2012. SAC ¶ 269.

35. Powell did not make any effort to hide his relationship or that his wife was working on NRA-related matters at McKenna. *See* Deposition of Susan LaPierre, July 21, 2022, pgs.

264:23–265:25 (Chin Aff. ¶ 24, Ex. 22); Deposition of Wayne LaPierre, June 28, 2022, pgs. 557:13–558:21 (Chin Aff. ¶ 23, Ex. 21; Deposition of Wilson Phillips, August 11, 2021, pg. 298:10–13 (Chin Aff. ¶ 19, Ex. 17; Deposition of Sonya Rowling, July 14, 2022, pg. 411:5–18 (Chin Aff. ¶ 27, Ex. 25; Deposition of Lisa Supernaugh, May 5, 2022, pg. 377:9–24 (Chin Aff. ¶ 21, Ex. 19).

36. Powell’s wife frequently interacted with NRA officials, such as Frazer, through her work at McKenna. Deposition of John Frazer, July 12, 2022, pg. 387:8–387:10 (Chin Aff. ¶ 25, Ex. 23); *see* calendar invite for January 25, 2018 call with John Frazer, Collen Gallagher, and Joshua Powell (NYAG-00300402); calendar invite for a February 2018 call with Colleen Gallagher, John Frazer and Joshua Powell (NYAG-00301917); calendar invite for an August 2018 call with Colleen Gallagher, John Frazer and Joshua Powell (NRA-NYAGCOMMDIV-01185188); Email chain from September 2019 discussing McKenna’s work for the NRA with John Frazer, Joshua Powell and Colleen Gallagher (NRA-NYAGCOMMDIV-01190160) (Chin Aff. ¶¶ 30-32, 35).

37. There are no complaints that Ms. Gallagher’s work for the NRA was unsatisfactory, to the detriment of the NRA or its members, or led to any personal benefit to Powell. Deposition of Lisa Supernaugh, May 5, 2022, pgs. 407:15–25 (Chin Aff. ¶ 21, Ex. 19) (testified that she was unaware of any complaints regarding Powell’s wife’s competency); Deposition of John Frazer, July 12, 2022, pgs. 397:11–15, 408:11–409:1 (Chin Aff. ¶ 25, Ex. 23).

38. Powell disclosed his relationship in his Financial Disclosure Questionnaire for the years 2017 and 2018. SAC ¶ 279; NRA Financial Disclosure Questionnaire of Joshua Powell, September 6, 2018 (NRA-NYAG-00022328) (Chin Aff. ¶ 34, Ex. 32).

39. The Audit Committee then conducted an independent review of the contract with McKenna and found that it was fair, reasonable, and in the best interest of the NRA. Deposition of John Frazer, July 12, 2022, pgs. 397:11–15, 408:11–409:1 (Chin Aff. ¶ 25, Ex. 23). Ex. 5, pgs. 247–49 (NYAG-00027017) (Chin Aff. ¶ 26, Ex. 24).

40. In 2017 and 2018, NRA-vendor Ackerman McQueen engaged Powell’s father, Jim Powell, a professional photographer who owned his own business. SAC ¶ 280.

41. LaPierre and Phillips—not Powell—were responsible for negotiating Ackerman McQueen’s budget. SAC ¶ 321.

42. The Audit Committee compared the prices and photographs of Powell’s father with that of similar event photography services and determined that the engagement with Powell’s father was “fair, reasonable, and in the best interest of the NRA.” Deposition of John Frazer, July 12, 2022, pgs. 409:21–410:12 (Chin Aff. ¶ 25, Ex. 23), Ex. 5, pgs. 248–49 (NYAG-00027017) (Chin Aff. ¶ 26, Ex. 24); Deposition of John Frazer, July 12, 2022, pg. 411:16–24 (testifying that he believed the Audit Committee conducted an adequate investigation in order to make the resolution) (Chin Aff. ¶ 25, Ex. 23).

New York, New York
February 10, 2023

/s/ Kristen W. Chin
Kristen W. Chin