

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

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 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, WAYNE LAPIERRE,
 WILSON PHILLIPS, JOHN FRAZER, and
 JOSHUA POWELL,

Defendants.
-----X

Index No. 451625/2020

IAS Part Three

Hon. Joel M. Cohen

**DEFENDANT WAYNE LAPIERRE’S COUNTERSTATEMENT OF FACTS
 AND STATEMENT OF FACTS**

Pursuant to 22 N.Y.C.R.R. § 202.8-g(b) and Commercial Division Rule 19-a(b), Defendant Wayne LaPierre (“LaPierre”) respectfully submits this counterstatement of facts and statement of facts in opposition to Plaintiff, People of the State of New York, by Letitia James, Attorney General of the State of New York’s (“Attorney General”) Motion to Dismiss Certain of Defendants’ Affirmative Defenses, and in support of LaPierre’s cross-motion for leave to replead, and responds to Plaintiff’s Statement of Undisputed Material Facts as follows:

A. Defendant Wayne LaPierre’s Counterstatement of Facts.

1. On August 6, 2020, Plaintiff commenced this action by service of summons and complaint. (NYSCEF 1.)

Defendant LaPierre’s Response: Not disputed.

2. On February 23, 2021, Defendant National Rifle Association of America (“NRA”) answered, asserting counterclaims arising out of, *inter alia*, purported bias, unconstitutional

selective prosecution and retaliation by the Attorney General in violation of its federal and state constitutional rights of free speech and free association (the “Counterclaims”). (NYSCEF 230.)

Defendant LaPierre’s Response: Disputed. Statement No. 2 does not pertain to Defendant LaPierre who denies knowledge or information sufficient to form a belief as to its truth.

3. On June 24, 2021, Plaintiff moved to dismiss the Counterclaims. (NYSCEF 264.)

Defendant LaPierre’s Response: Disputed. Statement No. 3 does not pertain to Defendant LaPierre who denies knowledge or information sufficient to form a belief as to its truth.

4. On July 20, 2021, Defendant National Rifle Association of America amended its answer, and re-asserted its Counterclaims. (NYSCEF 325.)

Defendant LaPierre’s Response: Disputed. Statement No. 4 does not pertain to Defendant LaPierre who denies knowledge or information sufficient to form a belief as to its truth.

5. On May 2, 2022, Plaintiff filed the operative Second Amended Verified Complaint (the “Operative Complaint”). (NYSCEF 646.)

Defendant LaPierre’s Response: Not disputed.

6. On June 6, 2022, Defendants National Rifle Association of America, Wayne LaPierre and John Frazer moved to dismiss the Operative Complaint, asserting, inter alia, that the Operative Complaint improperly sought to extraterritorially apply certain New York charities statutes. (NYSCEF 684–705.)

Defendant LaPierre’s Response: Disputed to the extent that in his motion to dismiss, Defendant LaPierre did not directly assert that the Complaint “improperly sought to extraterritorially apply certain New York charities statutes,” but does not dispute that in his memorandum in support of his motion to dismiss, he incorporated by reference the arguments made by the National Rifle

Association of America in support of its motion to dismiss, and otherwise refers the Court to his motion to dismiss for the assertions therein. (NYSCEF 697, at 18, fn. 41.)

7. The same day, Defendants Joshua Powell and Wilson Phillips answered the Operative Complaint, asserting the affirmative defenses therein. (NYSCEF 681–682.)

Defendant LaPierre’s Response: Disputed. Statement No. 7 does not pertain to Defendant LaPierre who denies knowledge or information sufficient to form a belief as to its truth.

8. On June 10, 2022, this Court issued a Decision and Order dismissing the Counterclaims on the grounds stated therein and finding that “the NRA’s factual allegations failed to support any viable legal claims that the Attorney General’s investigation was unconstitutionally retaliatory or selective.” (NYSCEF 706 at 2.), and refers the Court to the Court’s Decision and Order as the best evidence of its contents.

Defendant LaPierre’s Response: Not disputed.

9. On October 21, 2022, Defendants John Frazer and Wayne LaPierre answered the Operative Complaint, asserting the affirmative defenses therein. (NYSCEF 864–865.)

Defendant LaPierre’s Response: Disputed as insofar as Statement No. 9 does not pertain to Defendant LaPierre who denies knowledge or information sufficient to form a belief as to its truth, but Not disputed to the extent that it states that “Wayne LaPierre answered the Operative Complaint, asserting the affirmative defenses therein” (as opposed to jointly answering the Operative Complaint).

10. On November 2, 2022, Defendant National Rifle Association of America answered the Operative Complaint, asserting the affirmative defenses therein. (NYSCEF 889.)

Defendant LaPierre’s Response: Disputed. Statement No. 10 does not pertain to Defendant LaPierre who denies knowledge or information sufficient to form a belief as to its truth.

11. On September 29, 2022, this Court issued a Decision and Order denying Defendants' motion to dismiss the Operative Complaint on the grounds asserted therein, including rejecting Defendants' extraterritoriality argument. (NYSCEF 844–847.)

Defendant LaPierre's Response: Disputed to the extent that in his motion to dismiss, Defendant LaPierre did not directly assert that the Complaint “improperly sought to extraterritorially apply certain New York charities statutes,” but does not dispute that in his memorandum in support of his motion to dismiss, he incorporated by reference the arguments made by the National Rifle Association of America in support of its motion to dismiss, and otherwise refers the Court to his motion to dismiss for the assertions therein ((NYSCEF 697, at 18, fn. 41), and refers the Court to the Court's Decision and Order as the best evidence of its contents.

B. Defendant Wayne LaPierre's Statement of Facts.

1. Each year the NRA files a Form 990 with the Internal Revenue Service.
2. Each year, the NRA files a Char500 with the New York State Office of the Attorney General Charities Bureau, attaching a copy of the NRA's Form 990. https://www.charitiesnys.com/RegistrySearch/show_details.jsp?id={7DFC840A-50AC-42D4-8BA4-4169910FEFA6}
3. The NRA filed Char500s with the New York State Office of the Attorney General Charities Bureau for 2008, 2009, 2010, 2011, 2012, 2014, 2015, 2016, 2017, 2018, 2019 and 2020, attaching copies of its Form 990, which disclosed the amount of compensation the NRA paid Defendant Wayne LaPierre and the fact that the organization was providing first-class or charter travel. https://www.charitiesnys.com/RegistrySearch/show_details.jsp?id={7DFC840A-50AC-42D4-8BA4-4169910FEFA6}

4. On December 12, 2022, the Court ordered that references to the “National Rifle Association of America, Inc.” in all pleadings herein were deemed to refer to the “National Rifle Association of America”. *See* Order Amending Caption dated December 12, 2022 (NYSCEF 921).

5. On January 3, 2023, Defendant LaPierre filed an Amended Verified Answer of Defendant Wayne LaPierre dated January 3, 2023 (“AVA”) (NYSCEF 1023).

6. The AVA was filed as of right under CPLR 3025(d) after this Court, to correct a defect in the Attorney General’s pleading, ordered that references to the “National Rifle Association of America, Inc.” in all pleadings herein were deemed to refer to the “National Rifle Association of America”. *See* Order Amending Caption dated December 12, 2022 (NYSCEF 921).

7. The amendment of Defendant LaPierre’s prior pleading was required under CPLR 3025(d) and was necessary to change Defendant LaPierre’s responses to certain allegations whose meanings had changed as a result of the Court’s order, thus requiring a different response, and leave of court was not required.

8. Defendant LaPierre is the Executive Vice President and Chief Executive Officer of the National Rifle Association of America (“NRA”). He has held that position since 1991. *See* Affidavit of Wayne LaPierre sworn to March 13, 2023 (hereinafter cited as “LaPierre Aff.”) ¶ 2.

9. Defendant LaPierre started working for the NRA in early 1978. *See* LaPierre Aff. ¶ 3.

10. Stephen Shulman, Esq. represented the NRA as outside counsel (through several law firms, including Cadwalader, Wickersham and Taft) from 1977 until his death in 2011. During that time, Defendant LaPierre relied heavily on Mr. Shulman for legal advice regarding a broad

range of matters, including corporate, tax, regulatory and compliance matters, and he was involved in developing policies and procedures relating to compensation, travel and security, as well as other internal affairs. *See* LaPierre Aff. ¶ 4.

11. Gordon Russell was employed by the NRA as its Director of Security from 1994 until his death in 2014. During that time, Defendant LaPierre relied heavily on Mr. Russell for professional advice and instructions on security matters, including use of charter travel, and Mr. Russell provided Defendant LaPierre with information and advice regarding threat levels, threat assessments and the need for use of charter travel for security reasons. *See* LaPierre Aff. ¶ 5.

12. During Defendant LaPierre's 45 years at the NRA, no one from the Internal Revenue Service ("IRS") ever raised an issue with him concerning his compensation or use of charter travel. *See* LaPierre Aff. ¶ 6.

13. Until 2020, no one from the New York State Office of the Attorney General ("OAG") had ever raised an issue with Defendant LaPierre concerning his compensation or use of charter travel. *See* LaPierre Aff. ¶ 7.

14. Because no one from the IRS, and no one from the OAG (until 2020), ever raised any issue about his compensation or use of charter travel, Defendant LaPierre believed that neither agency had any issue with his compensation or charter travel, and that his compensation and use of charter travel were appropriate and lawful. *See* LaPierre Aff. ¶ 8.

15. If the IRS or the Attorney General had challenged Defendant LaPierre's compensation or charter travel in 2009 or 2010, Mr. Shulman would have been available to testify as a witness on his behalf as to the process by which his compensation was determined and the process by which the need for charter travel was determined, and Mr. Russell would have been available to testify as a witness on Defendant LaPierre's behalf on the process by which his need

for charter travel was determined. While Defendant LaPierre wouldn't have disclosed any confidential attorney-client communications with Mr. Shulman or the substance of any advice he received from him, Defendant LaPierre would have relied on him to organize files and refresh his recollection as to facts and Mr. Shulman would have been able to coordinate with various people who would be fact witnesses in Defendant LaPierre's defense and help him locate documents that could be used in his defense. *See* LaPierre Aff. ¶ 9.

16. Defendant LaPierre believes strongly that it would be unfair and inequitable for the Court to require him to defend himself against charges relating to compensation he received in years prior to 2011, or his use of charter travel prior to 2015, without the benefit of the testimony of these two critically important witnesses. *See* LaPierre Aff. ¶ 10.

17. Defendant LaPierre also believes strongly that it would be unfair and inequitable for the Court to require him to defend himself against charges relating to compensation he received in years prior to 2020, and charter travel he used before 2020, given the failure of the IRS and the OAG to act sooner to bring any concerns or issues they had to his attention promptly upon receiving the NRA's annual Form 990 and Char500 filings, which disclosed the amount of his compensation and, beginning in 2008 and continuing to date (with the exception of 2013), disclosed the fact that the NRA was providing first-class or charter travel, because, as a result of their conduct, Defendant LaPierre was led to believe that the amount of his compensation was viewed by the IRS and the OAG as reasonable and commensurate with the services he provided to the NRA and that his use of charter travel was appropriate and lawful. *See* LaPierre Aff. ¶ 11.

18. If the IRS or the OAG had informed Defendant LaPierre in 2009 or 2010 that they believed that the amount of my compensation was unreasonable and unlawful or that his use of charter travel was unwarranted and unlawful, he would have immediately sought advice from Mr.

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Shulman and would have followed his advice as to how to proceed, and he would have made sure that Mr. Shulman consulted with Mr. Russell regarding the threats that had been received and the need for use of charter travel for security reasons. *See* LaPierre Aff. ¶ 12.

Dated: New York, New York
March 13, 2023

Respectfully submitted,

/s/ P. Kent Correll

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was electronically served via the Court's electronic case filing system upon all counsel of record on this 13th day of March 2023.

/s/ P. Kent Correll
P. Kent Correll