

EXHIBIT A

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.

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Index No. 451625/2020

IAS Part 3

Hon. Joel M. Cohen

**VERIFIED AMENDED ANSWER OF DEFENDANT JOHN FRAZER
TO PLAINTIFF'S SECOND AMENDED VERIFIED COMPLAINT**

~~Pursuant to CPLR 3025(a),~~ Defendant John Frazer ("Frazer"), by and through his attorneys Gage Spencer & Fleming LLP, amends his ~~responses~~ to Plaintiff's Second Amended Verified Complaint ("Amended Complaint")¹ as follows:

PRELIMINARY STATEMENT

1. Frazer denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 which further state legal conclusions to which no response is required, except Frazer states that the NRA has operated for 150 years.

2. Frazer denies the allegations contained in Paragraph 2 of the Amended Complaint except denies knowledge or information sufficient to form a belief as to the truth of the allegation

¹ For reasons explained more fully in Frazer's Second Affirmative Defense, Plaintiff's prolix Amended Complaint violates the requirement of the CPLR that each paragraph "shall contain, as far as practicable, a single allegation." See CPLR 3014. Due to the unwieldy presentation of the Amended Complaint, which frequently merges numerous allegations into single paragraphs, and the difficulties imposed in responding to such a complaint, Frazer is compelled to state, for purposes of ensuring clarity in the responses given in this Answer, that he denies all allegations in the Amended Complaint except those unequivocally admitted, and that he expressly reserves all rights to correct, supplement, or otherwise amend his Answer as may be needed.

contain, as far as practicable, a single allegation.” The vast majority of paragraphs in Plaintiff’s Amended Complaint are prolix and narrative, which has prejudicially rendered Frazer unable to respond in the simple manner required by CPLR 3018. The Amended Complaint further names as a Defendant, and asserts claims against, The National Rifle Association of America, Inc., an entity which Plaintiff has been repeatedly informed and knows does not exist, the inclusion of which has compromised the pleading process and Frazer’s ability to respond.

Third Affirmative Defense

3. Plaintiff’s claims and related requests for remedial action and other relief against Frazer are barred, in whole or in part, by the doctrines of estoppel, regulatory estoppel, waiver, and/or laches because Plaintiff has (a) failed to timely review, analyze, and take appropriate action with respect to CHAR500 filings submitted to it annually by the NRA or provide guidance or any feedback to the NRA and Frazer respecting how certain transactions and disclosures should be treated by the NRA and/or Frazer or would be treated by the Attorney General including, without limitation, those related to executive compensation, leading to the reasonable belief that all transactions and disclosures reported to the Attorney General’s Charities Bureau were proper and lawful and that no changes in the NRA’s bookkeeping, accounting, or reporting policies, practices, or procedures were necessary or appropriate, thereby allowing such policies, practices, and procedures thought to be in compliance and satisfactory to Plaintiff to continue without providing any notice of need or opportunity to address and cure any alleged deficiency in the NRA’s compliance with applicable New York not-for-profit laws; (b) unreasonably delayed thereby in providing any notice of alleged deficiencies which it knew or should have known about to Frazer’s prejudice including, without limitation, having changed his position by agreeing to accept

employment and election to his positions at the NRA; and (c) contradicted its own guidance and/or taken conflicting positions to secure a litigation advantage for which it should be estopped.

Fourth Affirmative Defense

4. Plaintiff's claims and related requests for remedial action and other relief against Frazer are barred, in whole or in part, by Plaintiff's unclean hands because, among other things, the NYAG has purposefully elected to seek relief against Frazer not permitted by the statutes on which her claims are based, further reflecting her already well-documented record of public expressions of personal political animus against the NRA, a targeted political opponent. The Complaint asks or previously asked, among other *ultra vires* relief, that Mr. Frazer (i) be permanently barred from serving any not-for-profit touching New York State in any way, (ii) disgorge his entire compensation approved through the independent actions of the Board of Directors, (iii) be removed from his non-officer position as General Counsel, and (iv) answer to a common law claim subject to a lower burden of proof than the governing statutes, none of which are permitted by the governing statutes and all of which are therefore "incompatible" with the Legislature's "comprehensive enforcement scheme." *People v. Grasso*, 11 N.Y.3d 64, 70-71 (2008). Plaintiff's conduct knowingly and wantonly violates her Office's constitutional separation of powers limitations and the NRA's and Frazer's free speech and free association rights, and establishes that the prejudice to Mr. Frazer rises to a constitutional level with the demand for unauthorized relief sought against him subjecting him to a distorted and unwarranted public opprobrium.

Fifth Affirmative Defense

5. Under express New York statutory law, Frazer "shall have no liability" under Plaintiff's claims because, at all times, as an officer of the corporation, he discharged the duties of

advertisements in NRA Magazine and in response to requests made to Members for suggested Directors – or by petition, or both, after which approximately one-half of the NRA’s five million members are eligible to vote for Directors of their preference. The particular circumstances presented by these nomination and election protocols hopelessly defeat the Attorney General’s necessary threshold allegations to establish demand futility. Additionally, Plaintiff’s attempt to bring a derivative action on behalf of the NRA members against Mr. Frazer fatally fails to allege support from ten percent of the total number of NRA members as required by N-PCL § 1102(a)(2), or five percent of any class of NRA members as required by N-PCL § 623.

Seventeenth Affirmative Defense

17. The Amended Complaint seeks an injunction and other equitable relief ~~from~~ against Frazer on the basis of conduct of others over whom Frazer had no control and for whose actions Frazer is not liable. The NRA is a complex organization that used and uses numerous inside and outside accountants and tax professionals whom Frazer believed to be reliable and competent in the matters presented and over whom he had no control, to put together its audited financial statements and its tax returns. These financial professionals exhaustively analyzed and evaluated information, issued statements, and created opinions and reports, including financial statements and other financial data, on whom and which the NRA’s corporate Treasurers, who signed the NRA’s Form 990 tax returns on the NRA’s behalf, testified they justifiably relied in signing, and on whom and which, a fortiori, Frazer, in discharging his duties in good faith and with that degree of care specified in paragraph (a) of N-PCL § 717, without knowledge concerning any matter in question that would cause such reliance to be unwarranted, also relied. He should not be liable in such circumstances particularly where he was unaware of the alleged conduct. Additionally, committees of the NRA’s all-volunteer Board of Directors and the Board itself exercised their

protected business judgment in making decisions as to matters within its and their designated authority which, under the Bylaws of the Association, they were authorized to make and as to which Frazer has no authority. Lastly, actions have been taken without Frazer's knowledge for which the Attorney General seeks improperly to impose strict liability which is not available under the governing statutory scheme. *People v. Grasso*, 11 N.Y.3d 64 (2008).

Eighteenth Affirmative Defense

18. The damages suffered by Plaintiff or any third parties were proximately caused by intervening and superseding actions and occurrences including, but not limited to, actions of persons, entities, and/or forces over which Frazer exerted no control and for which Frazer has no responsibility.

Nineteenth Affirmative Defense

19. Any recovery by Plaintiff against Frazer must be set off or reduced, abated, or apportioned to the extent that any other intervening or superseding action or occurrence caused or contributed to damages awarded to Plaintiff. The NRA is a complex organization that used and uses numerous inside and outside accountants and tax professionals whom Frazer believed to be reliable and competent in the matters presented and over whom he had no control, to put together its audited financial statements and its tax returns. These financial professionals exhaustively analyzed and evaluated information, issued statements, and created opinions and reports, including financial statements and other financial data, on whom and which the NRA's corporate Treasurers, who signed the NRA's Form 990 tax returns on the NRA's behalf, testified they justifiably relied in signing, and on whom and which, *a fortiori*, Frazer, in discharging his duties in good faith and with that degree of care specified in paragraph (a) of N-PCL § 717, without knowledge concerning any matter in question that would cause such reliance to be unwarranted, also relied. He should

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Twentieth Affirmative Defense

20. Plaintiff's claims and related requests for remedial action and other relief against Frazer are barred to the extent acts or omissions of third parties caused the alleged injury and damages complained of in this lawsuit.

Twenty-First Affirmative Defense

21. Plaintiff's claims and related requests for remedial action and other relief against Frazer are barred, in whole or in part, by the applicable statute of limitations and other equitable and statutory time limitations including, without limitation, CPLR 214(2) and 215(4) which affixes a three-year statute of limitations on any action to recover upon a liability, penalty, or forfeiture created or imposed by statute, including expressly those brought by the Attorney General.

Twenty-Second Affirmative Defense

22. Plaintiff's claims and related requests for remedial action and other relief against Frazer on its claims of falsity in public filings, breach of trust, and breach of fiduciary duty must fail because the allegations of the Amended Complaint are not stated with sufficient particularity as required under the Civil Practice Law and Rules regardless of the remedial purposes of any statute on which Plaintiff is proceeding in this case.

Twenty-Seventh Affirmative Defense

27. The Amended Complaint lacks any allegation that Frazer knowingly or willfully violated any of the statutes, rules, or provisions specified in the Amended Complaint which renders Plaintiff's requested remedies, including, *inter alia* and without limitation, a lifetime bar and the sanction of disgorgement of his compensation, inappropriate and unwarranted.

Twenty-Eighth Affirmative Defense

28. Plaintiff's claim for unjust enrichment against Frazer must fail because, among other reasons, he did not receive any "excess benefit" from participation in an "excess benefit transaction" as set forth under Internal Revenue Code Section 4958.

Twenty-Ninth Affirmative Defense

29. The relative culpability of each party who is or may be liable for the damages alleged by Plaintiff in the instant action should be determined in accordance with the decisional and statutory law of the State of New York, and the equitable share of each party's liability for contribution should be determined and apportioned in accordance with the relative culpability, if any, of each such party pursuant to Article 14 of the CPLR. The NRA is a complex organization that used and uses numerous inside and outside accountants and tax professionals whom Frazer believed to be reliable and competent in the matters presented and over whom he had no control, to put together its audited financial statements and its tax returns. These financial professionals exhaustively analyzed and evaluated information, issued statements, and created opinions and reports, including financial statements and other financial data, on whom and which the NRA's corporate Treasurers, who signed the NRA's Form 990 tax returns on the NRA's behalf, testified they justifiably relied in signing, and on whom and which, a fortiori, Frazer, in discharging his duties in good faith and with that degree of care specified in paragraph (a) of N-PCL § 717, without

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Thirtieth Affirmative Defense

30. Plaintiff's attempt to enjoin, void or rescind alleged related-party transactions pursuant to N-PCL §§ 112(a)(10), 715(f), and EPTL § 8-1.9(c)(4) fails because, to the extent such transactions were not approved in accordance with N-PCL § 715(a)-(b), they were duly ratified in accordance with N-PCL § 715(j).

Thirty-First Affirmative Defense

31. Plaintiff's causes of action and related requests for remedial action and other relief against Frazer are barred, in whole or in part, by the First Amendment to the United States Constitution, which requires that state regulation of not-for-profit corporations engaged in protected speech be conducted in the least intrusive manner possible. The relief sought against Frazer in this action trespasses upon fundamental freedoms protected by the due process clause of the Fourteenth Amendment, because removal from office and a lifetime nationwide ban on service to any not-for-profit corporation that conducts any activities in New York or solicits members or

funds in New York would abridge his right to engage in free speech, free assembly, and free association with others holding common beliefs..

Thirty-Second Affirmative Defense

32. Frazer adopts and incorporates by reference herein as if made by him any affirmative defense articulated by any other defendant in this action not included here, and Frazer reserves his right to amend or supplement this answer and/or to add any additional affirmative and/or other defenses for which a sufficient basis may be determined at a latter point in these proceedings.

Thirty-Third Affirmative Defense

33. The relief sought by Plaintiff is barred due to a failure to sue and add necessary and indispensable parties whose presence is required to determine fair responsibility for any of the alleged violations.

WHEREFORE, the Defendant John Frazer denies the claims brought against him and states that the Attorney General is not entitled to any relief against him. Frazer requests a judgment dismissing Plaintiff's Amended Complaint with prejudice, together with all such other and further relief deemed just and proper.

Dated: New York, New York

~~October 21, 2022~~ _____, 2023

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