

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

Motion Seq. No. 46

Hon. Joel M. Cohen

**DEFENDANT JOSHUA POWELL'S REPLY TO PLAINTIFF'S
ADDITIONAL STATEMENTS OF MATERIAL FACT**

Pursuant to Commercial Division Rule 19-a, Defendant Joshua Powell ("Powell") responds to Plaintiff's Additional Statement of Material Fact. For completeness and ease of reference, the below includes Powell's Statement of Material Facts, along with Plaintiff's responses, as well as Plaintiff's Additional Statements of Material Fact, along with Powell's responses.

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).

Plaintiff's Response: Plaintiff does not dispute this paragraph except to state that Powell never held the title of “Executive Vice President of Operations.” As noted below, Powell served as Chief of Staff, Executive Director of General Operations, and Senior Strategist. *See infra* ¶¶ 11–13.

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 Nat’l Rifle Ass’n 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 [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:

i. 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).

Plaintiff's Response: There are issues of fact in dispute regarding Powell's employment agreement. Powell's employment agreement acknowledges that his "gross annual salary is not inclusive of a housing allowance to be agreed upon annually by the parties" which "encompasses housing expenses such as lease payments, meals, maintenance, taxes and depreciation." (NYSCEF 1200 (Employment Agreement) at 2.) The agreement contains no information regarding what the annually agreed upon housing allowance was at any point during the course of his employment, and Powell provides no evidence to suggest that his housing allowance was, in-fact, agreed upon annually.

To the extent the contract contemplates a housing allowance for Powell's Virginia residence, it does not contain any language regarding reimbursement of expenses for Powell to commute between Michigan home and his NRA-subsidized residence in Virginia. (*See id.*; *see also* Mendelson Aff. Ex. A, at 165:9-15 (1/14/22 Craig Spray Dep. Tr.) [REDACTED])

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Mendelson Aff. Ex. B, at 412:17-417:5 (5/5/22 Lisa

Supernaugh Dep. Tr.)).

Ultimately, [REDACTED]

[REDACTED] (Mendelson Aff. Ex. C, at 87:2-89:13 (6/9/22 Powell Dep. Tr.)). From August 2016 to June 2019, the NRA paid or reimbursed Powell for over \$130,000 in rent for his Virginia residence, and in 2018 alone, Phillips approved lease payments of \$54,000 in rent to Powell's landlord. (*See* Mendelson Aff. Ex. D, at NYAG-00088665 (Aug.-Oct. 2016 Rental Expense Report totaling \$8,516.30); Mendelson Aff. Ex. E, at NYAG-00083883 (Oct.-Nov. 2016 Rental Expense Report totaling \$8,893.80); Mendelson Aff. Ex. F, at NYAG-00040035 (December 2016 Rental Expense Report totaling \$4,197.01); Mendelson Aff. Ex. G, at NYAG-00052327 (\$27,000 paid to landlord David Poole (Vendor # 10016906) in 2017); Mendelson Aff. Ex. H, at NYAG-00052588 (\$54,000 paid to landlord David Poole (Vendor # 10016906) in 2018); Mendelson Aff. Ex. I at NYAG-00053986 (\$31,000 paid to landlord David Poole (Vendor # 10016906) as of June 27, 2019).)

Despite the NRA's policy providing for a maximum temporary living expense allowance of thirty days, and a maximum of \$7,500 in relocation expense reimbursement, (Mendelson Aff. Ex. J, at NYAG-00029654) (2018 Employee Handbook)), [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See Mendelson Aff. Ex. C, at 87:2-89:13 (6/9/22 Powell Dep. Tr.); *see also* Mendelson Aff. Ex. K, at NRA-NYAGCOMMDIV-00011250 (December 2018-October 2019 Relocation Expenses Documents) ([REDACTED]).

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.

Plaintiff's Response: There are issues of fact in dispute regarding the role that Powell played with respect to the preparation of the NRA's annual IRS Form 990. Powell was responsible for accurately disclosing conflicts of interest in a timely manner [REDACTED] [REDACTED] (*See* Mendelson Aff., Ex. L (NRA Policy Manual) at NRA-NYAGCOMMDIV-00008919-22), which in turn informed the NRA's related-party transaction reporting on the annual IRS Form 990. Powell was also required to comply with the NRA's expense reimbursement policies, so that his overall compensation would be properly reported on the annual IRS Form 990. (*See* Mendelson Aff., Ex. J (2018 NRA Handbook) at NYAG-00029805-19; *see also* (Mendelson Aff. Ex. M, at NYAG-00073360 (discussing tax implications of failure to substantiate expenses.)) In October 2019, as his expenses were coming under scrutiny, Powell [REDACTED]

[REDACTED]

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.

Plaintiff's Response: There are issues of fact in dispute with regard to Powell's role in negotiating, managing and setting the terms of contracts on behalf of the NRA. In particular, Powell was [REDACTED]

[REDACTED] (Mendelson Aff. Ex. C, at 262:23-263:12 (6/9/22 Powell Dep. Tr.); *see also* Mendelson Aff. Ex. O, at NYAG-00300982 ([REDACTED] [REDACTED]); Mendelson Aff. Ex. P, at NYAG-00285736 (Summary of McKenna Invoices) ([REDACTED] [REDACTED])).

While Powell testified that [REDACTED] [REDACTED] (Mendelson Aff. Ex. C, at 263:6-19 (6/9/22 Powell Dep. Tr.)), Powell himself requested that McKenna adjust the contract between McKenna and the NRA to increase the payment terms (Mendelson Aff. Ex. Q, at NYAG-00033485) and [REDACTED] [REDACTED]. (Mendelson Aff. Ex. C, at 253:20-254:19 (6/9/22 Powell Dep. Tr.); *see also* (Mendelson Aff. Ex. R, at NYAG-00292981 ([REDACTED])). Powell acknowledged [REDACTED]

[REDACTED]

[REDACTED] (Mendelson Aff. Ex. C, at 254:20-255:21 (6/9/22 Powell Dep. Tr.)). [REDACTED]

[REDACTED] (Mendelson Aff. Ex. L, at NRA-NYAG-COMMDIV00009001-02 (NRA Policy Manual)); (Mendelson Aff. Ex. S, at NYAG-00030077 (Feb. 27, 2012 Memo to All Staff from Wayne LaPierre regarding Approval Procedures)).

[REDACTED]

[REDACTED] (Mendelson Aff. Ex. T, at 371:7-373:6 (6/10/22 Powell Dep. Tr.)). [REDACTED]

[REDACTED] (see Mendelson Aff. Ex. U, at NYAG-00301733 ([REDACTED])); (Mendelson Aff. Ex. V, at NYAG-00301758 ([REDACTED])); (Mendelson Aff. Ex. W, at JP-0001504 ([REDACTED]), but was never signed (see Mendelson Aff. Ex. X, at NYAG-00299247 ([REDACTED])); (Mendelson Aff. Ex. Y, at NRA-NYAGCOMMDIV-00583745 (email regarding LookingGlass contract forwarded to Spray, with Spray forwarding to Frazer and Hayes, noting “This is the problem with working without a contract. Not sure why everyone thinks this is ok.”)); (Mendelson Aff. Ex. Z, at NYAG-00041189 (additional discussion regarding the same email, noting the problems that “verbal agreements lend themselves to” and that “McKenna/Looking Glass are way out of line on pricing”)). By September 2018, LookingGlass had invoiced approximately \$1 million to “scope out” their proposed cybersecurity services, which Spray complained would be

equivalent to “[ten] years of actual security services” provided by a competitor (Mendelson Aff. Ex. AA, at NRA-NYAGCOMMDIV-00845653 (9/5/2018 “McKenna Cyber Invoice” email)).

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; Dep. of Lisa Supernaugh, May 5, 2022, pgs. 303:12–304:02 (Chin Aff. ¶ 21, Ex. 19).

Plaintiff’s Response: There are issues of fact in dispute with respect to the review of Powell’s expenses. The items cited by Powell above do not support his contention that his expenses were reviewed by the CFO and Audit Committee. *See* SAC ¶ 256 (noting that Powell’s salary was set at LaPierre’s discretion); ¶ 302 (noting Executive Assistant Number 1 was responsible for processing expenses of a different employee); ¶ 342 (specifically alleging that “[t]he NRA did not inform its Audit Committee or its external auditors about the out of pocket arrangement” that it had with Ackerman McQueen); ¶ 390 (noting that the Audit Committee resolved to modify a board member’s compensation in February 2019); Supernaugh Dep. Tr. 303:12-304:02 (testifying regarding the expenses of a different employee).

Indeed, Treasurer and CFO Craig Spray, testified that the process for reviewing credit card expenditures as “non-robust” under his predecessor, Defendant Wilson Phillips, and that improper expenses by Powell were uncovered when he began personally reviewing expenses. (Mendelson Aff. Ex. AB, at 206:5-211:7 (6/12/20 Spray Examination Tr.)) For example, [REDACTED]

[REDACTED]

[REDACTED]

(Mendelson Aff. Ex. A, at 165:3-15 (1/14/22 Craig Spray Dep. Tr.); *see also* Mendelson Aff. Ex. AC, at 134:16-135:5 (6/16/22 Michael Erstling Dep. Tr.) (testifying that [REDACTED]).

Following Spray's investigation into Powell's expenses, the NRA terminated Powell for, *inter alia*, "intentional and willful misconduct that includes misappropriation of NRA funds." (NYSCEF 1233 (Termination Letter)).

Finally, Powell has put forward no evidence to support his claim that his expenses were reviewed by the Audit Committee. Finally, Powell has put forward no evidence showing that all of his expenses, including expenses passed through NRA vendor Ackerman McQueen ("Ackerman") were reviewed and approved as appropriate business expenses. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *See infra* ¶¶ 5659; *see also* (Mendelson Aff. Ex. AD, at 604:24-624:19 (8/9/22 NRA Corp. Rep. Depo. Tr)).

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. Dep. of Wayne LaPierre, June 28, 2022, pgs. 470:7–19 (Chin Aff. ¶ 23, Ex. 21).

Plaintiff's Response: There is a dispute of fact with respect to the NRA's discipline of Powell and its reimbursement requests. In January 2020, after a short suspension, the NRA terminated Powell for, among other things, improper expenses, misappropriation of funds, and breach of the duty of loyalty. The NRA indicated in its 2019 IRS Form 990 filing that Powell owed \$54,904.45 as excess benefits made up of 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. (Mendelson Aff. Ex. AF, at 2019 990, Schedule L, Part I, Line 1 — 1B, Part V)); (NYSCEF 1233 (Termination Letter)).

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, Sept. 16, 2022, p. 43 (Chin Aff. ¶ 16, Ex. 14).

Plaintiff's Response: There are issues of fact in dispute with respect to this paragraph. Michael Dennis Graham was retained by Defendant LaPierre—not the NRA—to evaluate LaPierre's compensation—not Powell's—and Mr. Graham [REDACTED] [REDACTED] (See NYSCEF 1209 at 45.)

Indeed, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (*Id.* at 27-28.) And, as admitted above, Powell's salary was undisputedly set by LaPierre, rather than the Officers Compensation Committee. *See supra* ¶ 20. Further, [REDACTED] [REDACTED]

[REDACTED]. Even if Powell intended to cite to the report of Alan Nadel, the NRA's proffered executive compensation expert, his argument fails on similar grounds: there is no evidence that Mr. Nadel considered Powell's actual compensation received from the NRA, including unreported excess benefits and improper reimbursements, in his assessment and [REDACTED] [REDACTED]

[REDACTED] (Mendelson Aff. Ex. AG, at 292:7-293:3, 470:12-22 (10/24/23 Alan Nadel Dep. Tr.) ([REDACTED] [REDACTED]).

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 Nat'l Rifle Ass'n of America and Sea Girt LLC* (Bankr. N.D. Tex. March 24, 2021), pgs. 61:20–62:02 (Chin Aff. ¶ 18, Ex. 16).

Plaintiff's Response: There are issues of fact in dispute with respect to the review and documentation of Powell's expenses. The testimony cited by Powell in support of this paragraph relates only to issues concerning Powell's expenses for [REDACTED] and certain [REDACTED] [REDACTED] and does not support Powell's contention that those expenses were reviewed and documented prior to reimbursement. (See NYSCEF 1211 at 61:20-62:02 (3/15/21 John Frazer Bankr. Dep. Tr.)).

Powell admitted that [REDACTED] [REDACTED]. (Mendelson Aff. Ex. C, at 134:14-25; 135:8-17 (6/9/22 Powell Dep. Tr.)). His assistant testified that [REDACTED] [REDACTED] [REDACTED] (Mendelson Aff. Ex. B, at 77:22-78:3, 187:20-188:7 (5/5/22 Lisa Supernaugh Dep. Tr.)); see also Mendelson Aff. Ex. M, at NYAG-00073360 (email exchange regarding Powell's March 2019 American Express charges indicating Supernaugh did not have receipts for expenses or access to his account-)). Individuals in the financial services division confirmed through their testimony that [REDACTED] [REDACTED] (Mendelson Aff. Ex. AH, at 153:5-155:5, 170:10-172:19 (7/14/22 Sonya Rowling Dep. Tr.)); see also Mendelson Aff. Ex. AI, at NYAG-00042592 (Supernaugh "instructed me to pay the four invoice/expense reimbursements inspite [sic]

of missing documentation. She further said, 'If Josh (Powell) hears about the Carry Guard instructors not getting paid, he's going to throw a fit.' I perceived the last statement as an indirect threat. . . . It seems that when I raise inconvenient or controversial questions, I am likely to hear answers like ... Josh will throw a fit' It feels that with every turn, we have to request for missing documentation and we are made to feel like we are asking for more than what is required.')).

Further, as discussed below, [REDACTED]

[REDACTED] See *infra* ¶¶ 56-59; see also Mendelson Aff. Ex. AD, at 604:24-624:19 (8/9/22 NRA Corp. Rep. Dep. Tr.).

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. Dep. of Lisa Supernaugh, May 5, 2022, pgs. 303:7–304:02 (Chin Aff. ¶ 21, Ex. 19).

Plaintiff's Response: There are issues of fact in dispute with respect to the review and documentation of Powell's expenses. The evidence cited by Defendant Powell do not support his contention that his expenses were submitted with supporting documentation to his assistant. See NYSCEF 1214 at 303:12-304:02 (5/5/22 Lisa Supernaugh Dep. Tr.) (testimony regarding the expenses of a different employee).

[REDACTED]
(Mendelson Aff. Ex. C, at 134:14-25; 135:8-17, 176:6-10 (6/9/22 Powell Dep. Tr.)). Although Ms.

Supernaugh [REDACTED]

[REDACTED] (Mendelson Aff. Ex. B, at 304:8-305:13 (5/5/22 Lisa Supernaugh Dep. Tr.)), she testified that [REDACTED] (*id.* at

187:20-188:7.) Accordingly, Ms. Supernaugh [REDACTED]

[REDACTED]. (Mendelson Aff. Ex. AH, at 153:5-155:5 (7/14/22 Sonya Rowling Dep. Tr.)). Ms. Supernaugh also testified that [REDACTED] (Mendelson Aff. Ex. B at 416:21-417:5 ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED]). Spray testified that the process for reviewing expenses was “non-robust” under his predecessor as CFO, Defendant Wilson Phillips, and that improper expenses by Powell were uncovered when he began personally reviewing expenses. (Mendelson Aff. Ex. AB, at 206:5-211:7 (6/12/20 Spray Examination Tr)).

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* Dep. of John Frazer, *In re Nat’l Rifle Ass’n of America and Sea Girt LLC* (Bankr. N.D. Tex. March 24, 2021), pgs. 61:20–62:02 (Chin Aff. ¶ 18, Ex. 16).

Plaintiff’s Response: Frazer testified that the NRA demanded more detailed information about Powell’s cellular billing, but “couldn’t get enough information to determine that [the expenses] were necessarily improper.” (NYSCEF 1211 at 61:20-62:02 (Frazer Bankr. Dep. Tr.)).

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; Dep. of Lisa Supernaugh, May 5, 2022 pg. 196:02–196:22 (Chin

Aff. ¶ 21, Ex. 19); *see also* Dep. 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.”); Dep. of John Frazer, July 12, 2022, pgs. 423:13–424:5 (Chin Aff. ¶ 25, Ex. 23); Dep. of Wayne LaPierre, March 22, 2021, pgs. 130:23–131:5 (Chin Aff. ¶ 17, Ex. 15); Dep. 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.

Plaintiff’s Response: There are issues of fact in dispute regarding the extent of McKenna’s relationship with the NRA before and after Gallagher’s employment. [REDACTED]

[REDACTED] (Mendelson Aff. Ex. C, at 262:23–263:5 (6/9/22 Powell Dep. Tr.)); *see also* (Mendelson Aff. Ex. AJ, at 263:1–6 (8/10/21 Wilson Phillips Dep. Tr. (testifying that [REDACTED] [REDACTED])).

35. Powell did not make any effort to hide his relationship or that his wife was working on NRA-related matters at McKenna. *See* Dep. of Susan LaPierre, July 21, 2022, pgs. 264:23–265:25 (Chin Aff. ¶ 24, Ex. 22); Dep. of Wayne LaPierre, June 28, 2022, pgs. 557:13–558:21 (Chin Aff. ¶ 23, Ex. 21; Dep. of Wilson Phillips, August 11, 2021, pg. 298:10–13 (Chin Aff. ¶ 19, Ex.

17; Dep. of Sonya Rowling, July 14, 2022, pg. 411:5–18 (Chin Aff. ¶ 27, Ex. 25; Dep. of Lisa Supernaugh, May 5, 2022, pg. 377:9–24 (Chin Aff. ¶ 21, Ex. 19).

Plaintiff's Response: There are issues of fact in dispute regarding Powell's candor concerning his wife's work on NRA-related matters. [REDACTED]

[REDACTED] (See Mendelson Aff. Ex. AK, at NYAG-00302670; Mendelson Aff. Ex. C, at 265:16-271:15 (6/9/22 Powell Dep. Tr.)). Mr. Spray testified that, [REDACTED]

[REDACTED] (Mendelson Aff. Ex. A, at 155:24-156:5 (1/14/22 Craig Spray Dep. Tr.)). [REDACTED]

[REDACTED] (Mendelson Aff. Ex. AC, at 129:18-25, 131:4-9 (6/16/22 Michael Erstling Dep. Tr.)) [REDACTED]

[REDACTED] (Mendelson Aff. Ex. B, at 377:20-379:12 (5/5/22 Lisa Supernaugh Dep. Tr.)).

36. Powell's wife frequently interacted with NRA officials, such as Frazer, through her work at McKenna. Dep. 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).

Plaintiff's Response: There are issues of fact in dispute regarding Gallagher's interactions with NRA staff. [REDACTED]

[REDACTED] (Mendelson Aff. Ex. AL, at 386:16-387:24 (7/12/22 John Frazer Dep. Tr.)).

Indeed, [REDACTED]

[REDACTED] (*Id.* at 389:16 -391:19, 392:15-394:17.) In any event, the assertions in paragraph 36 are irrelevant as interactions with NRA staff [REDACTED]

[REDACTED] (Mendelson Aff., Ex. L ("NRA Policy Manual") at NRA-NYAGCOMMDIV-00008998), or under N-PCL § 715.

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. Dep. 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); Dep. of John Frazer, July 12, 2022, pgs. 397:11-15, 408:11-409:1 (Chin Aff. ¶ 25, Ex. 23).

Plaintiff's Response: There are issues of fact in dispute concerning the extent to which Powell derived a personal benefit from Gallagher's work for the NRA. Specifically, Powell indirectly derived a personal benefit from the funds paid by NRA to his wife. After Gallagher began working for McKenna, Powell helped to expand the scope of McKenna's services, requested that the NRA's monthly payments to McKenna increase, (*see* Mendelson Aff. Ex. Q, at NYAG-00033485) and [REDACTED]

[REDACTED] (Mendelson Aff. Ex. C, at 253: 20-254:19 (6/9/22 Powell Dep. Tr.)); *see also* (Mendelson

Aff. Ex. R, at NYAG-00292981.) Powell derived a personal benefit from his wife's increased compensation by the NRA.

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).

Plaintiff's Response: There are issues of fact in dispute concerning Powell's disclosure.

[REDACTED]
[REDACTED] (Mendelson Aff. Ex. C, at 295:21-298:2 (6/9/22 Powell Dep. Tr.); see also Mendelson Aff., Ex. L (NRA Policy Manual) at NRA-NYAGCOMMDIV-00008919 -23, NRA-NYAGCOMMDIV-00008921.) The policy also

[REDACTED]
[REDACTED] (Id.) Instead, [REDACTED]
[REDACTED]

[REDACTED] (Mendelson Aff. Ex. A, at 155:24-156:13 (1/14/22 Craig Spray Dep. Tr.)) Powell did not disclose the relationship in advance of the engagement, as required, but in an NRA Financial Disclosure Questionnaire on September 6, 2018, (See NYSCEF 1227 at NYAG-00041306-09; see also Mendelson Aff. Ex. AIL at 411:13-414:2 (7/14/22 Sonya Rowling Depo. Tr.) ([REDACTED])

[REDACTED]) The same day, the Audit Committee [REDACTED] (See NYSCEF 1219 at NYAG-00027013, NYAG-00027017-18.)

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).

Plaintiff's Response: There are issues of fact in dispute concerning the sufficiency of the Audit Committee's review. While the Audit Committee [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (NYSCEF 1219 at NYAG-00027017-18.) Indeed, longtime Audit Committee member and current Second Vice President of the NRA Charles Cotton [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Mendelson Aff. Ex. AM, at 396:23-400:24 (6/17/22 Charles Cotton Dep. Tr.)

Indeed, there is no evidence that the Audit Committee considered the assessment of Craig Spray that “McKerma/LookingGlass are way out of line on pricing.” (Mendelson Aff. Ex. Z, at NYAG-00041189.)

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.

Plaintiff's Response: There are issues of fact in dispute concerning the engagement of Powell's father. Powell testified that [REDACTED] (Mendelson Aff. Ex. C, at 287:4-5, 15-18 (6/9/22 Powell Dep. Tr.)); see also Mendelson Aff. Ex. AN, at NYAG-00032851 (June 2018 purchase order by NRA for photography services in the amount of \$49,300 by the NRA); Mendelson Aff. Ex. AO, at NYAG-00032906-08 (May 31, 2018 invoice from Jim Powell Advertising Photography to NRA for \$9,200 and July 2018 invoice for \$1,577.70 for cancelled photo shoot). Indeed Powell's 2018 Financial Disclosure Form contemplates both services invoiced directly to the NRA and those billed to the NRA indirectly, through Ackerman. (NYSCEF 1227 at NYAG-00041309.)

Powell claimed that [REDACTED]

[REDACTED] (Mendelson Aff. Ex. C, at 287:19-24, 289:3-15 (6/9/22 Powell Dep. Tr.)). However, Powell was [REDACTED]

[REDACTED] (see Mendelson Aff. Ex. AP, at JP-0004889 ([REDACTED] [REDACTED])), and directed his father to send an "invoice for [a] photo shoot at the Carry Guard Convention" to an NRA employee in September 2017. (See Mendelson Aff. Ex. AQ, at NYAG-00031583 (9/6/2017 email re: "Invoice for photo shoot at the Carry Guard Convention").) Supernaugh indicated that she would handle the invoice. (Id.) [REDACTED] (see Mendelson Aff., Ex. L (NRA Policy Manual) at NRA-NYAGCOMMDIV-00008921). but

disclosed the payments that were made to his father in a Financial Disclosure Questionnaire on September 6, 2018. (*See* NYSCEF 1227 at NYAG-00041306-09.) Powell's responses do not provide precise dates or months that the transactions took place; rather they provide that over \$100,000 was paid in "2017" and "2018." (*See id.*) The same day Powell made his disclosure, [REDACTED] (See NYSCEF 1219 at NYAG-00027013, NYAG-00027017-18.)

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

Plaintiff's Response: There are issues of fact in dispute concerning Powell's responsibilities in negotiating Ackerman McQueen's budget. Specifically, Powell admitted that [REDACTED]

[REDACTED] (Mendelson Aff. Ex. C, at 114:20-116:23 (6/9/22 Powell Dep. Tr.) Powell also testified that [REDACTED]

[REDACTED] (*Id.* at 121:18-123:9.) Powell also testified that [REDACTED]

[REDACTED] (Mendelson Aff. Ex. T, at 354:14-356:20 (6/10/22 Powell Dep. Tr.)); *see also* (Mendelson Aff. Ex. AC, at 126:6-129:17 (6/16/22 Michael Erstling Dep. Tr.) (discussing [REDACTED])). 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." Dep. 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); Dep. 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).

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." Dep. 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); Dep. 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).

Plaintiff's Response: There are issues of fact in dispute regarding the sufficiency of the Audit Committee's review of transactions with Powell's father. In assessing the fair market value for Jim Powell's photography, [REDACTED] (Mendelson Aff. Ex. AM, at 402:9-20 (6/17/22 Charles Cotton Dep. Tr.)). Further, the evidence reveals that NRA whistleblowers reported to the Audit Committee that there had been "a quote for less expensive photography services" other than those provided by Powell's father. (Mendelson Aff. Ex. AR, at NYAG-00032426.) Further, the Audit Committee failed [REDACTED] [REDACTED] [REDACTED] (NYSCEF 1219 at NYAG-00027018-19.)

PLAINTIFF'S ADDITIONAL STATEMENTS OF MATERIAL FACT

I. NRA Bylaws and Financial Policies

1. As Executive Director of General Operations from January 2017 to December 2018, *see supra* ¶ 12, Powell was an officer and *ex officio* director of the NRA, with “such powers and duties as delegated from time to time by the Executive Vice President.” (Mendelson Aff., Ex. AS (“NRA Bylaws 2020”) at NRA-NYAGCOMMDIV-00102912, Article V, § 2(f); *see also* Mendelson Aff., Ex. AT (“NRA Bylaws 2016/2017”) at NYAG-00046652, Article V, § 2(f)). In that role, Powell would automatically become Executive Vice President, should a vacancy arise. (*Id.*) With respect to compensation, the bylaws provide that “[t]he compensation of the Executive Director of the National Rifle Association General Operations ... shall be established by the Executive Vice President.” (*Id.* § 6(d)).

Powell's Reply: This paragraph contains conclusions of law. It is undisputed that the Bylaws provide “[t]he compensation of the Executive Director of the National Rifle Association General Operations . . . shall be established by the Executive Vice President.” *Id.* § 6(d).

2. [REDACTED]

[REDACTED] (Mendelson Aff., Ex. L (“NRA Policy Manual”) NRA-NYAGCOMMDIV-00008897 at NRA-NYAGCOMMDIV-00008993-9002.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.* at NRA-NYAGCOMMDIV-00008997-98.) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] (*Id.* at NRA-NYAGCOMMDIV-00008999.) [REDACTED]

[REDACTED] (*Id.* at NRA-NYAGCOMMDIV-00008998.)

Powell's Reply: This statement is undisputed.

3. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] (*Id.* at NRA-NYAGCOMMDIV-00009001.) An additional 2012 NRA policy implementing the procurement policy requires that all contracts worth in excess of \$100,000 in a twelve-month period have a business case analysis prepared prior to execution. (Mendelson Aff. Ex. AU (4/8/21 PM Bankr. Trial Tr. at 100:11-23 (identifying the policy as still in effect)); Mendelson Aff. Ex. S (2012 memorandum from LaPierre to NRA staff regarding procurement policies, admitted as Exhibit 142 from the Bankruptcy hearing).)

Powell's Reply: This statement is undisputed.

4. [REDACTED]
[REDACTED]

[REDACTED] (Mendelson Aff., Ex. L at NRA-NYAGCOMMDIV-00008997.) As of January 2015, the Statement of Corporate Ethics required that “[t]o maintain consistent standards of integrity: (1) Association employees shall not become involved in any activity which might influence, be reasonably expected to influence, or give the

appearance of influencing their objective business judgment in dealing with others. Employees shall not become involved in conflict of interest situations. . . . (4) Employees who are officers, directors, division directors or activity supervisor[s], shall have responsibility: (a) to insure that these policies are communicated to the employees reporting to them; . . . and (d) to report all known (or suspected) violations of said policies to the Executive Vice President of the Association, the Treasurer of the Association, and to other persons whom they designate. Where a question arises whether a particular anticipated course of business conduct is ethical or legal, the individual contemplating the action or directed to perform the action shall seek advice from the Office of the General Counsel of the Association.” (See Mendelson Aff. Ex. J (2018 Employee Handbook) at NYAG-00029627, Statement of Corporate Ethics effective 1/26/2015 at NYAG-00029639-42.) This Statement of Corporate Ethics also requires that NRA employees maintain “ethical business relationships” meaning “each officer or employee will be free of any investment, association or connection which interferes, or may appear to interfere, with the independent exercise of his or her judgment on behalf of the Association.” (*Id.* at NYAG-00029640.) Under the policy, “[a]ny employee involved in any situation which may represent a possible conflict of interest is to immediately report same to the Executive Vice President.” (*Id.*) Finally, the Statement of Corporate Ethics indicates that “[t]he use of association funds or assets for any unlawful or improper purpose is strictly prohibited.” (*Id.* at NYAG-00029641.)

Powell’s Reply: This statement is undisputed.

5. [REDACTED]

[REDACTED] (Mendelson Aff., Ex. L (NRA Policy Manual) at NRA-NYAGCOMMDIV-00008919.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.* at NRA-NYAGCOMMDIV-00008921.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.*) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.*) [REDACTED]

[REDACTED] (*Id.* at NRA-NYAGCOMMDIV-00008922.) [REDACTED]

[REDACTED] (*Id.*) [REDACTED]

[REDACTED]

[REDACTED] (*Id.*)

Powell's Reply: This statement is undisputed.

6. Powell was also subject to the NRA's expense reimbursement policies. In particular, the NRA "Interview and Relocation Expenses Policy" limits reimbursable relocation expenses to "transportation and out-of-pocket expenses for an interview, residence hunting, a temporary living allowance not to exceed 30 days, moving expenses not to exceed \$7,500, and other incidental expenses." (Mendelson Aff. Ex. J, at NYAG-00029654 (2018 Employee

Handbook).) The NRA Handbook also outlines the NRA’s “requirements for meal and travel expense reimbursement,” including a requirement of a “properly completed, authorized expense report.” (*Id.* at NYAG-00029682). The NRA’s “Travel and Business Expense Policy” also clarifies that employees “should incur the lowest practical and reasonable expense” and “have the duty to exercise care and void impropriety, or even the appearance of impropriety in any travel expense.” (*Id.* at NYAG-00029809; *see also id.* at NYAG-00029805-19 (Travel and Business Expense Policy).) “To qualify for reimbursement, an expense item must be incurred for NRA-related business,” which is “defined as those activities, which are necessary to meet organizational objectives.” (*Id.* at NYAG-00029809.) The policy further provides the requirements for travel authorization and approval, and for “lodging, meals, and entertainment expenses,” including requirements with respect to original receipts and warnings regarding non-reimbursable personal expenses. (*Id.* at NYAG-00029813-15.)

Powell’s Reply: This statement is undisputed.

II. **Powell’s Roles and Responsibilities**

7. [REDACTED]

[REDACTED] (Mendelson Aff. Ex. C at

58:2-62:14 (6/9/22 Powell Dep. Tr.)); *see also id.* at 121:7-15 [REDACTED]

[REDACTED] (*Id.* at 62:15-65:20; Mendelson Aff. Ex. AV, at JP-0037524 (2019

Organizational Chart.) [REDACTED]

[REDACTED] (Mendelson Aff. Ex. C at 101:21-103:14 (6/9/22 Powell Depo. Tr.); *see also* Mendelson Aff. Ex. AE at 555:25-556:13 (6/28/22 Wayne LaPierre Dep. Tr.))

Powell's Reply: NYAG mischaracterizes Powell's deposition testimony. Powell did not testify that he had "wide ranging responsibilities" as Chief of Staff at the NRA; rather, he testified that he had several conversations with LaPierre before accepting the role because "the Chief of Staff can be a pretty wide-ranging set of responsibilities, depending on how it's viewed and where it is, et cetera, et cetera." Mendelson Aff. Ex. C at 58:2-62:14 (6/9/22 Powell Depo. Tr.). The remainder of the statement is undisputed.

8. In January 2017, LaPierre appointed Powell as the NRA's Executive Director of General Operations, a bylaws-established officer and *ex officio* director of the NRA with "such powers and duties as delegated to him from time to time by the Executive Vice President." (*See* Mendelson Aff., Ex. AT (NRA Bylaws 2016/2017 at Art. V, §§ 1(a), 2(f), 2(h)) (NYAG-00046650-52.))

Powell's Reply: This statement is undisputed.

9. LaPierre removed Powell from General Operations in December 2018 and promoted him to a "Senior Strategist" position in December 2018, [REDACTED]
[REDACTED] (Mendelson Aff. Ex. C, at 220:25-221:25 (6/9/22 Powell Dep. Tr.)) [REDACTED]

[REDACTED] (*Id.* at 213:16-220:24.) In addition to his budgetary responsibilities discussed above, Powell was responsible for hiring and firing employees and for developing various NRA programs.

Powell's Reply: Powell disputes the NYAG statement that Powell was responsible for hiring and firing employees. Powell specifically testified that he “couldn’t hire and fire people at will.” Powell Depo. Tr. at 204:4–5.

10. For example, [REDACTED]
[REDACTED] (Mendelson Aff. Ex. C, at 222:9-224:13 (6/9/22 Powell Depo. Tr.), [REDACTED]
[REDACTED] (*id.* at 202:20-206:5, 209:11-210:12), and [REDACTED]
[REDACTED] (Mendelson Aff. Ex. T, at 380:12-383:13 (6/10/22 Powell Dep. Tr.)).

Powell's Reply: The NYAG mischaracterizes Powell’s deposition testimony. Powell testified that he did communicate with NRA’s HR about the hires discussed in the cited portion of his deposition. Mendelson Aff. Ex. C, at 222:9-224:13 (6/9/22 Powell Dep. Tr.). Powell testified that LaPierre made the decision to fire Weaver. Mendelson Aff. Ex. C, at 203:11-13 (6/9/22 Powell Dep. Tr.).

11. [REDACTED]
[REDACTED]
[REDACTED] (*See* Mendelson Aff. Ex. AL, at 393:20-394:2 (7/12/22 John Frazer Dep. Tr.); Mendelson Aff. Ex. AE at 535:24-536:4 (6/28/22 Wayne LaPierre Dep. Tr.) ([REDACTED]

[REDACTED]); (*id.* at 545:12-546:7 ([REDACTED]
[REDACTED]); *id.* at 550:20-552:7 ([REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] (See Mendelson Aff. Ex. All, at 394:12-13, 419:8-420:15 (7/14/22 Sonya Rowling Dep. Tr.); Mendelson Aff. Ex. AC, at 133:2-134:15, 172:12-173:8 (6/16/22 Michael Erstling Depo. Tr.) [REDACTED] (Mendelson Aff. Ex. AW, at 297:24-298:2 (3/23/21 Wayne LaPierre Bankr. Dep. Tr.))

Powell's Reply: This statement is disputed to the extent that the NYAG attempts to characterize deposition testimony.

III. **Powell's Expenses**

12. Powell routinely violated the NRA's expense reimbursement and travel expense policies, covered personal and inappropriate expenses using NRA funds without appropriate business purpose documentation, and took part in a "pass-through" arrangement to charge excessive personal expenses to vendors, which were in turn passed through to the NRA. (SAC ¶¶ 6, 231-232, 260-266, 325-341.)

Powell's Reply: This statement is disputed. Powell provided receipts for reconciliation. See Deposition of Lisa Supernaugh at 305–06 (Powell Mot. Summ. J. Ex. 19). Lisa Supernaugh testified that Mr. Powell would reimburse personal expenses inadvertently charged to his American Express card. 05/05/2022 Supernaugh Dep. Tr. at 401:24-402:4; *id.* at 199:17-199:19 (stating Powell would "write a check" when he inadvertently charged personal expenses to his American Express).

13. For example, Powell knew that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Mendelson Aff. Ex. C, at 137:9-143:22 (6/9/22 Powell Dep Tr.); *see also, e.g.*, Mendelson Aff. Ex. AX, at NYAG-00122499-500

([REDACTED]
[REDACTED]
[REDACTED]

Powell's Reply: In the cited deposition testimony Powell did not say that he was charging expenses to Ackerman McQueen. Mendelson Aff. Ex. C, at 137:9143:22 (6/9/22 Powell Dep. Tr.). The remainder of the statement is undisputed.

14. Powell [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] See Mendelson Aff. Ex. AY, at NYAG-00123539, NYAG-00123541, and NYAG-00123730 [REDACTED]
[REDACTED]); Mendelson Aff. Ex. AZ, at NYAG-00123216 ([REDACTED]
[REDACTED]) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (See Mendelson Aff. Ex. AD, at 604:24-624:19 (8/9/22 NRA Corp. Rep. Dep. Tr.))

Powell's Reply: This statement is disputed to the extent the NYAG claims Powell “routinely” incurred expenses. The remainder of the statement is undisputed.

15. The firm that the NRA engaged to review certain expenditures billed through Ackerman to the NRA, Forensic Risk Analysis (“FRA”), found that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Mendelson Aff. Ex. BA, (FRA Dep. Ex. 4) at 4 ([REDACTED] tab).) FRA specifically [REDACTED]

[REDACTED] \$43,536. (*Id.* at 28 (“Total Cost by Individual” tab.)

Powell’s Reply: This statement is undisputed.

16. FRA’s corporate representative, Michael Trahar, testified that [REDACTED]

[REDACTED] (Mendelson Aff. Ex. BB, at 146:2-149:8 (6/14/22 Trahar Dep.)). [REDACTED]

[REDACTED] (Mendelson Aff. Ex. C, at 155:5-161:73, 168:18-171:15 (6/9/22 Powell Depo Tr.)). [REDACTED]

[REDACTED] (*id.* at 168:18-171:15), [REDACTED]

[REDACTED] (*id.* at 177:21-183:7.) In addition to [REDACTED], Powell, like others within the NRA, was charging luxury hotels and other expenses on his corporate credit card without providing evidence of a business purpose and without complying with the NRA’s then-applicable travel policies. (Mendelson Aff. Ex. J, at NYAG-00029805-15 (Travel and Business Expense Reimbursement Policy); Mendelson Aff. Ex. M, at NYAG-00073360 (email exchange regarding Powell’s March 2019 American Express charges.)

Powell's Reply: Powell disputes the NYAG's statement that he avoided compliance with NRA's internal controls with respect to his expenses at Landini Brothers. The portion of the deposition cited for this proposition refers only to expenses passed through Ackerman McQueen. Mendelson Aff. Ex. C, at 177:21-183:7 (6/9/22 Powell Depo Tr.). However, Powell did not testify that he understood Ackerman McQueen to be passing through Landini Brothers expenses. He testified that he "didn't have insight into how [the Landini Brothers bills] got paid," he simply understood that "there was an NRA account." *Id.* at 156:23-157:10. Powell objects to the NYAG's statement that he charged luxury expenses on his corporate credit card because she cites no evidentiary support for this proposition.

IV. McKenna and Associates

17. The NRA had, for some time prior to 2017, a relatively small fundraising agreement with consulting firm McKenna & Associates LLC ("McKenna"). (Mendelson Aff. Ex. BC, at NYAG-00292854 ([REDACTED]); Mendelson Aff. Ex. R, at NYAG-00292983-92 ([REDACTED]); *id.* at NYAG-00292982 ([REDACTED]); Mendelson Aff. Ex. AJ, at 262:24-263:6 ([REDACTED]); [REDACTED]; [REDACTED]; [REDACTED] (Mendelson Aff. Ex. C, at 262:23-63:19 (6/9/22 Powell Depo. Tr.)) [REDACTED]; [REDACTED] (Mendelson Aff. Ex. R, at NYAG-00292981 ([REDACTED]).

Powell's Reply: This statement is undisputed.

18. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Mendelson Aff. Ex. BD, at 294:24-

95:20, 296:20-97:7 (8/11/21 Wilson Phillips Depo. Tr.))

Powell's Reply: Powell disputes the NYAG's characterization of Phillips' deposition testimony. Phillips stated that (a) he had never seen a written agreement, not that one did not exist; (2) he did not have knowledge of a business case analysis or officer signatures, not that they did not occur; and (3) he did not know if the relationship with McKenna was disclosed to the Finance Committee. Mendelson Aff. Ex. BD, at 294:24-295:01, 295:14-296:2 (8/11/21 Wilson Phillips Depo. Tr.).

19. [REDACTED]

[REDACTED]

[REDACTED] (See Mendelson Aff. Ex. C, at 226:24-227:3, 234:23-239:24, 244:11-

251:20 (6/9/22 Powell Depo. Tr.); *see also* Mendelson Aff. Ex. BE, at JP0008561-71 ([REDACTED]
[REDACTED]).) [REDACTED]

[REDACTED] (See Mendelson Aff. Ex. BF, at JP-0016545 ([REDACTED]); Mendelson Aff. Ex. BG, at JP-0002560 ([REDACTED]).)

Powell's Reply: This statement is undisputed.

20. [REDACTED]

[REDACTED] (Mendelson Aff. Ex. BE, at JP-0008571 ([REDACTED]
[REDACTED]) I [REDACTED]

[REDACTED]

[REDACTED] (Mendelson Aff. Ex. BH, at NYAG-00292837
(Draft McKenna Work Order).) [REDACTED]

[REDACTED] (Mendelson Aff. Ex. P, at NYAG-00285736
(Summary of McKenna Invoices).) [REDACTED]

[REDACTED] (*Id.*)

[REDACTED]

(*Id.*)

Powell's Reply: This statement is undisputed.

21. Michael Erstling, an employee in the NRA's Financial Services Division and one of the whistleblowers who went to the Audit Committee in the summer of 2018 with concerns that included Powell's related party transactions, testified that [REDACTED]

[REDACTED]

[REDACTED] (Mendelson Aff. Ex. AC, at 131:19-132:21 (6/16/22 Michael Erstling Depo. Tr.))

Powell's Reply: This statement is undisputed.

22. While Powell claims that he disclosed his wife's relationship with Powell to NRA leadership, he did not complete the NRA's mandatory Financial Disclosure Questionnaire, and did not disclose his wife's work for McKenna until September 2018, after the whistleblowers raised their concerns. *See supra* ¶ 35-38, 64.

Powell's Reply: 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).

New York, New York
April 10, 2023

/s/ Kristen W. Chin

Kristen W. Chin