

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

Defendants.

Index No. 451625/2020

Motion Sequence No.

**THE NATIONAL RIFLE
ASSOCIATION OF
AMERICA'S
COUNTERSTATEMENT OF
UNDISPUTED MATERIAL
FACTS IN OPPOSITION TO
DEFENDANT JOSHUA
POWELL'S MOTION FOR
SUMMARY JUDGMENT**

Defendant National Rifle Association of America (the "NRA"), pursuant to Commercial Division Rule 19-a(b), and the Individual Rules of this Court, submits this Response and Counterstatements to the Defendant Joshua Powell ("Powell")'s "Statement of Undisputed Material Facts" [NYSCEF No. 1234].

Defendant objects to and reserves all rights with regard to statements of material facts that do not comply with the CPLR, the Uniform Rules of Trial Courts, Commercial Division Rule 19-a, or this Court's Individual Rules, including where such statements include legal arguments or assertions, or where such statements are not supported by admissible evidence or are not supported by the evidence cited.

DEFENDANT'S RESPONSES TO DEFENDANT POWELL'S**UNDISPUTED MATERIAL FACTS**

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).

Defendant's Response: There is no issue of fact concerning the procedural history recited here. The pleadings in this matter speak for themselves.

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).

Defendant's Response: There is no issue of fact concerning the procedural history recited here.

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

Defendant's Response: There is no issue of fact concerning the procedural history recited here.

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).

Defendant's Response: There is no issue of fact as to the procedural history recited here. The bankruptcy court's order speaks for itself.

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).

Defendant’s Response: There is no issue of fact concerning the procedural history recited here. The pleadings in this matter speak for themselves.

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).

Defendant’s Response: There is no issue of fact concerning the procedural history recited here. The pleadings in this matter speak for themselves.

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.

Defendant’s Response: There is no issue of fact concerning the procedural history recited here. The pleadings in this matter speak for themselves.

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).

Defendant's Response: Powell's Michigan residency is undisputed, but irrelevant to a determination of the Motion.

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

Defendant's Response: This statement is undisputed.

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).

Defendant's Response: There is a factual dispute as to Powell's characterization of his employment agreement, which speaks for itself and states that it is "not inclusive of" any housing allowance. *See* NRA Answer (NYSCEF No. 889) ¶ 257; Executive Employment Agreement at 2 (NYSCEF 1195, Ex. 5). Lisa Supernaugh testified regarding what was relayed to her concerning the terms of Powell's employment, and such testimony is inadmissible hearsay. Deposition of Lisa Supernaugh, May 5, 2022 pg. 413:01–413:06 (NYSCEF 1195 ¶ 21, Ex. 19) (testifying "I did not see his employment contract. I was told what he had – had been relayed to him").

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

Defendant's Response: This statement is undisputed.

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

Defendant's Response: This statement is undisputed.

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

Defendant's Response: This statement is undisputed.

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

Defendant's Response: Although it is undisputed that Powell did not execute Form 990 during relevant years, the NRA, in connection with its preparation of Form 990, relied on Powell to submit timely and accurate conflict information. Frazer Aff. ¶ 9.

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

Defendant's Response: This statement is undisputed.

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

Defendant's Response: This statement is disputed. For example, Powell was involved in budget negotiations with Ackerman McQueen. *See* LaPierre Aff. ¶ 14. Although the NRA makes no averment as to whether McKenna & Associates was a “key vendor” for the purposes of this statement, Powell played a role in negotiating the terms of McKenna's engagement during 2018, prior to the intervention of the Audit Committee. *See* [NYSCEF No. 889](#) ¶ 271; Coy Aff. ¶ 9 (after September 2018, Powell was “walled off”). In October 2019, Powell was put on administrative leave. SAC ¶ 553.

Defendant's Response: This statement is undisputed.

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

Defendant's Response: This statement is undisputed.

II. Powell's Salary

18. 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).

Defendant's Response: This statement is disputed. LaPierre relied on the Treasurer's Office to review Powell's expenses. LaPierre Aff. ¶ 8. The Audit Committee was unaware of

Powell's improper expenses and its Vice Chair would have voted to discipline or remove Powell if those expenses had been disclosed. Coy Aff. ¶12. Moreover, Powell's citations to inapposite paragraphs of the SAC are misleading. SAC ¶ 256 relates to Powell's salary, not his expenses; SAC ¶ 302 relates to LaPierre's Senior Assistant, who was not Powell; SAC ¶ 342 relates to Ackerman McQueen's out-of-pocket expenses; and; SAC ¶ 390 relates to a contract with a board member, who was not Powell.

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

Defendant's Response: There is an issue of fact regarding whether all of Powell's salary increases were approved by LaPierre. *See* LaPierre Aff. ¶¶ 10–12.

20. 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).

Defendant's Response: These statements are undisputed.

21. 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 (NYSCEF 1195 ¶ 13, Ex. 11). This request was authorized by Wayne LaPierre. *See* NRA Personnel Authorization Change Form, dated June, 29, 2017 (NYSCEF 1195 ¶ 9, Ex. 7)

Defendant's Response: These statements are undisputed. However, LaPierre testifies that he would not have approved any salary increase for Powell had he known of Powell's improper expenses and failure to disclose conflicts. *See* LaPierre Aff. ¶ 11.

22. 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).

Defendant's Response: These statements are undisputed. However, LaPierre testifies that he would not have approved any salary increase for Powell had he known of Powell's improper expenses and failure to disclose conflicts. *See* LaPierre Aff. ¶ 11.

23. 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)

Defendant's Response: There is no dispute that on March 20, 2018, Phillips contacted Crouch requesting that Powell's annual pay be increased from \$650,000 to \$800,000. However, there is a dispute as to whether LaPierre authorized this request. *See* LaPierre Aff. ¶ 12.

24. 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).

Defendant's Response: These statements are undisputed.

25. 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)

Defendant's Response: Disputed and misleading. Mr. Graham was retained as an expert by Wayne LaPierre's counsel, Correll Law Group, not by the NRA or the NRA's counsel. And although he made no adverse findings about Powell's compensation, the expert was retained to analyze LaPierre's compensation, not Powell's. *See* CPLR 3101(d) Disclosure of Defendant

Wayne LaPierre dated Sep. 16, 2022, at 1-2, Rogers Aff. ¶ 14, Ex. 12. ("Mr. Graham is expected to testify regarding the compensation received by Mr. LaPierre in connection with services performed for the [NRA] , the process by which the compensation was determined and fixed, and whether the amount of the compensation was reasonable and commensurate with services performed. In addition, Mr. Graham is expected to testify regarding methodologies for determining the reasonableness of compensation and other benefits as well as custom and practice in the fields of corporate management and executive compensation and benefits that inform his opinion about the amount of compensation Mr. LaPierre received and the reasonableness of the compensation, the reasonableness of the other benefits he received, and the process by which his compensation and benefits were determined.")

III. Powell's Expenses

26. 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).

Defendant's Response: Disputed and misleading. Powell relies on testimony by Mr. Frazer concerning "different determinations" arrived-at by the NRA and Powell regarding the propriety of his expenses during the course of settlement negotiations that occurred in late 2019 and 2020, after majority of these expenses had already been reimbursed. *See* 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), pg. 61:9-12 (NYSCEF 1195 ¶ 18, Ex. 16); Frazer Aff. ¶ 14, Ex. K (Powell continued to refuse to provide documentation of cellular charges long after his termination).

27. 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)

Defendant's Response: Disputed and misleading. Lisa Supernaugh testified that her review of Powell's expenses was "administrative" and she was not in a position to determine whether the expenses were "right or wrong." Deposition of Lisa Supernaugh dated May 5, 2022, pgs. 415:17-417:5, Rogers Aff. ¶ 8, Ex. 6. The NRA's Chief Financial Officer, Craig Spray, did develop concerns about Powell's expenses when he began "digging into" them in 2019. Deposition of Craig Spray dated January 14, 2022, pgs. 163:11-164:5. Rogers Aff. ¶ 9, Ex. 7.

28. "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

Defendant's Response: This statement is disputed to the extent that it purports to characterize the activities of outside counsel or advice sought from outside counsel. [NYSCEF No. 889](#) at ¶ 263. To investigate Powell's expenses, the NRA retained a forensic accounting firm, not the Brewer Firm. LaPierre Aff. ¶ 15.

29. 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)

Defendant's Response: Disputed and misleading. The NRA only sought reimbursement from Powell for charges, including cellular charges, which it had strong evidence were improper. Frazer Aff. ¶ 12. Powell continued to refuse to provide documentation of his cellular charges long after his termination. Frazer Aff. ¶ 14, Ex. K.

30. 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)

Defendant’s Response: Although it is undisputed that Powell tendered a check to the NRA for \$40,760.20, the NRA could not and did not accept this payment in full accord and satisfaction of amounts Powell owed. Frazer Aff. ¶ 14. When it assembled the expenses disputed in late 2019, the NRA had incomplete access to certain information, “left some things out where [they] were uncertain.” *See* Deposition of John Frazer, March 15, 2021, pgs. 60:05–62:15, NYSCEF 1195 Ex. 16. Settlement negotiations are inadmissible to prove or limit the amount of Powell’s liability to the NRA. C.P.L.R. § 4547.

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

Defendant’s Response: It is undisputed that the NRA rejected Powell’s check. When it assembled the expenses disputed in late 2019, the NRA had incomplete access to certain information, “left some things out where [they] were uncertain.” *See* Deposition of John Frazer, March 15, 2021, pgs. 60:05–62:15, NYSCEF 1195 Ex. 16. Settlement negotiations are inadmissible to prove or limit the amount of Powell’s liability to the NRA. C.P.L.R. § 4547.

NRA Contracts with Powell’s Family Members

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

Defendant’s Response: This statement is undisputed.

34. McKenna’s relationship with the NRA predates Powell’s employment, dating back

to 2012. SAC ¶ 269

Defendant's Response: This statement is undisputed.

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)

Defendant's Response: There is a factual dispute as to whether Powell attempted to conceal his wife's relationship with McKenna from the NRA. Craig Spray testified that Powell asked him to keep the relationship a secret. See Deposition of Craig Spray, Jan. 14, 2022, pgs. 155:24-156:05, Rogers Aff. ¶ 9, Ex. 7. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The deposition testimony Powell cites is inapposite. Susan LaPierre recalled meeting Powell's wife at the NRA Annual Meeting in Louisville, Kentucky, but this annual meeting occurred in April 2016, before Powell's wife began work at McKenna—so the relationship could not have been disclosed then. See Deposition of Susan LaPierre, July 21, 2022, pgs. 264:23–265:25 NYSCEF 1195, Ex. 22; Frazer Aff. ¶ 16. LaPierre did not learn of the relationship until late spring or summer 2018. LaPierre Aff. ¶ 13.

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, Colleen 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)

Defendant's Response: It is undisputed that Powell's wife interacted with NRA employees, including John Frazer. [REDACTED]

[REDACTED]

[REDACTED]

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).

Defendant's Response: It is undisputed that the NRA never made specific complaints about work known to have been performed by Ms. Gallagher individually. However, the NRA substantially limited the scope of McKenna's engagement in 2018. Coy Aff. ¶¶ 8 and 9. There is a factual dispute as to whether Ms. Gallagher's relationship with McKenna amounted to a benefit to Powell requiring disclosure under the NRA's conflict policies. *See* July 2018 Compliance Seminar Presentation, Slide 8. Frazer Aff. ¶ 10, Ex. G.

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).

Defendant's Response: This statement is undisputed.

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).

Defendant's Response: It is undisputed that the NRA reviewed multiple transactions with McKenna in September 2018 and determined that they were fair, reasonable, and in the best interests of the NRA. Audit Committee Meeting Minutes, September 6, 2018. Rogers Aff. ¶ 15, Ex. 13.

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.

Defendant's Response: This statement is not disputed.

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

Defendant's Response: There is a factual dispute as to whether Powell was responsible for negotiating Ackerman McQueen's budget. Powell participated in budget negotiations with Ackerman in Fall 2018. LaPierre Aff. ¶ 14.

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).

Defendant's Response: These statements are undisputed.

ADDITIONAL STATEMENTS OF MATERIAL FACT

43. On his second day of employment in 2016, Powell received and acknowledged with

his signature, the rules and policies laid out in the NRA Employee Handbook, including The Travel and Business Reimbursement Policy, Confidentiality Agreement, and Ethics Policy. *See* Frazer Aff. ¶¶ 3–6, Exs. A, B, C, and D.

44. Shortly after his hiring, Powell was given the NRA Conflict of Interest and Related Party Transaction Policy, which requires NRA directors, officers, and key employees to disclose “[a]ll material facts related to conflicts of interest...in good faith and in writing to the NRA Audit Committee... in advance, before any action is taken on the matter.” Rogers Aff. ¶ 7, Ex. 5.

45. Powell was fully aware that the Conflict of Interest and Related Party Transaction Policy applied to him and even helped Frazer deliver a seminar to upper management which reviewed compliance requirements and discussed the specific statutes and policies that governed senior executives’ expense-reimbursement and conflict obligations. *See* Frazer Aff. ¶¶ 10, Ex. G.

46. Powell’s improper expenditures began shortly after his hiring which included charges for personal airfare, airline upgrades, and cell phone charges. *See* Rowling Aff. ¶¶ 6–20, Exs. A, B, and C.

47. Powell’s improper expenditures were not approved by the Executive Vice President as required in the Employment Agreement. LaPierre Aff. ¶¶ 4 and 9.

48. If the NRA had known of these expenditures, they would not have approved his salary adjustments or declined to discipline him in September 2018. *See* LaPierre Aff. ¶¶ 10 and 11; Coy Aff. ¶¶ 8–10.

49. Powell was aware by September 6, 2017 that his father was invoicing photography services to the NRA. *See* Rogers Aff. ¶ 13, Ex. 11.

50. Powell failed to disclose his wife’s potential contracting relationship with McKenna prior to her starting in December 2017 and further, failed to disclose this relationship to the Audit Committee at all until September 6, 2018. *See* NRA Financial Disclosure Questionnaire of Joshua Powell dated September 6, 2018, NYSCEF 1195 Ex. 32; Deposition of Craig Spray, Jan. 14, 2022,

pgs. 155:24-156:05, Rogers Aff. ¶ 9, Ex. 7. (Powell urged Spray to keep his relationship secret).

51. If the NRA had known that Powell intentionally concealed potential related-party transactions prior to reporting them to the Audit Committee in September 2018, the NRA would have disciplined or “fired him on the spot”. *See* LaPierre Aff. ¶ 17; *see also* Coy Aff. ¶¶ 10 and 11.

Dated: March 20, 2023
New York, New York

s/ Sarah B. Rogers
William A. Brewer III
Svetlana M. Eisenberg
Sarah B. Rogers
BREWER, ATTORNEYS & COUNSELORS
750 Lexington Avenue, 14th Floor
New York, New York 10022
Telephone: (212) 489-1400
Facsimile: (212) 751-2849
COUNSEL FOR THE NATIONAL RIFLE
ASSOCIATION OF AMERICA