FILED: NEW YORK COUNTY CLERK 04/03/2023 05:04 PM

NYSCEF DOC. NO. 1776

INDEX NO. 451625/2020

RECEIVED NYSCEF: 04/03/2023

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 Hon. Joel M. Cohen

Mot. Seq. No. 44

PLAINTIFF'S RESPONSE TO FRAZER'S RULE 19-a COUNTERSTATEMENTS

Plaintiff, pursuant to Commercial Division Rule 19-a and the Individual Rules of this Court, submits this Response to Defendant Frazer's Counterstatements to Plaintiff's Rule 19-a Statements. (NYSCEF 1349.)

Plaintiff objects to Frazer's Counterstatements, which do not constitute short and concise statements of the material facts as to which it is contended that there exists a genuine issue to be tried, as required by Commercial Division Rule 19-a(b). Frazer's Counterstatements do not raise facts that preclude the relief Plaintiff seeks or require resolution at trial. Further, Plaintiff objects to the extent that Frazer's Counterstatements are not supported by citation to admissible evidence and where such Counterstatements are attempts to re-litigate issues or matters already decided by the Court.

NYSCEF DOC. NO. 1776

INDEX NO. 451625/2020 RECEIVED NYSCEF: 04/03/2023

FRAZER'S COUNTERSTATEMENTS OF FACTS

Prior to Mr. Frazer's 2015 hiring, the roles of Secretary and General 1. Counsel at the NRA were served by two different individuals. See Affirmation of William B. Fleming dated March 13, 2023 ("Fleming Aff."), Ex. 1 (Expert Report of James F. Reda) at 11.

RESPONSE: Disputed but not material. Plaintiff objects that this statement does not comply with Commercial Division Rule 19-a(b), as it does not contain an issue of material fact that precludes a grant of the judgment Plaintiff seeks. Frazer's counterstatements contain factual assertions, like this one, that are not material, do not bear upon and are irrelevant to Plaintiff's motion pursuant to CPLR 3211(b) and 3212 to dismiss certain affirmative defenses, and thus no response is required. See, e.g., People ex rel. Spitzer v. Grasso, 50 A.D.3d 535, 545, 858 N.Y.S.2d 23, 32 (1st Dep't 2008) quoting Anderson v. Liberty Lobby, 477 U.S. at 248, 106 S.Ct. 2505 ("Factual disputes that are irrelevant or unnecessary will not be counted.").

2. Frazer agreed to serve both positions for an annualized compensation of \$300,000. See id. at 11.

RESPONSE: Disputed but not material. Plaintiff incorporates its response to Paragraph 1, *supra*.

3. In 2014, the year preceding Frazer beginning work in both positions, the NRA Secretary had received base compensation of been paid \$370,923, and the General Counsel had received base compensation of \$244,000 through September 2014 which, annualized, computed to an obligation of \$325,333. See id at 11.

RESPONSE: Disputed but not material. Plaintiff incorporates its response to Paragraph 1, *supra*.

4. By combining the positions, the NRA reduced the organization's annual base compensation obligation by \$396,256 from the prior year. *Id*.

RESPONSE: Disputed but not material. Plaintiff incorporates its response to Paragraph 1, *supra*.

5. The Treasurer's office was responsible for the preparation of the NRA's Form 990. See Fleming Aff., Ex. 2 (Deposition of Wilson H. Phillips) at 157:18-159:8. Employees in the Treasurer's office, in particular Emily Cummins, Svetlana Olchevski, Arif Rahman, and

NYSCEF DOC. NO. 1776

INDEX NO. 451625/2020

RECEIVED NYSCEF: 04/03/2023

their supervisors, were principally responsible for" the preparation of the NRA's Form 990s. See Fleming Aff., Ex. 3 (Deposition of the NRA by a Corporate Representative) at 398:15-399:9; Ex. 4 (Deposition of Michael Erstling) at 284:24-285:14; Ex. 2 at 158:13-25; Ex. 5 (Deposition of Sonya Rowling) at 41:24-43:21.

RESPONSE: Disputed but not material. Plaintiff incorporates its response to Paragraph 1, *supra*. Plaintiff further adds that Frazer cites to this paragraph only in support of his arguments related to affirmative defenses with respect to which Plaintiff has since withdrawn its motion. Finally, Plaintiff notes that even the exhibits filed in regard to this motion belie the allegations contained in this paragraph. For example, Defendant Frazer was responsible for certifying under penalties of perjury that the NRA's CHAR500 submission, including the attached NRA IRS Form 990, was "true, correct and complete in accordance with the laws of the State of New York applicable to this report." See, e.g., NYSCEF 1421 (NRA's 2017 990, dated November 5, 2018) at 3.

6. The process of forming the Form 990s started with gathering the data from the NRA's audited financial statements which are then incorporated into the Form 990 by the Treasurer's office. Fleming Aff., Ex. 6 (Deposition of John Frazer) at 94:17-95:19.

RESPONSE: Disputed but not material. Plaintiff incorporates its response to Paragraphs 1 and 5, supra.

7. Described as a document that is "becoming more and more complex," the Form 990 is a filing which the NRA's current tax advisor Aronson has advised should be completed with the advice and counsel of tax professionals, as the NRA did. See Fleming Aff., Ex. 7 (Deposition of Greg Plotts) at 370:12-371:25.

RESPONSE: Disputed but not material. Plaintiff incorporates its response to Paragraphs 1 and 5, supra.

8. Tax accountants from the professional services firms of RSM McGladrey and Aronson, as well as outside tax attorneys, reviewed, analyzed, advised, and/or prepared the NRA's Form 990s. See id.; Fleming Aff., Ex. 8 (Deposition of Craig Spray) at 275:12-276:17

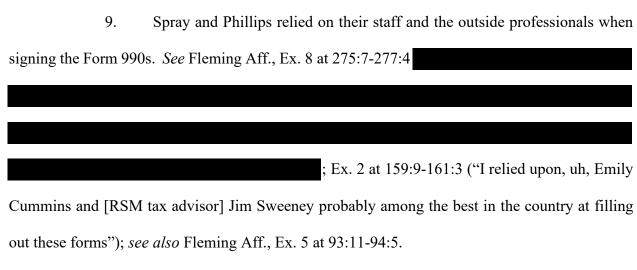
NYSCEF DOC. NO. 1776

INDEX NO. 451625/2020

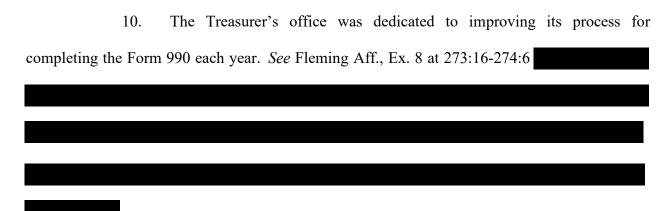
RECEIVED NYSCEF: 04/03/2023

Ex. 2 at 157:18-159:8.

RESPONSE: Disputed but not material. Plaintiff incorporates its response to Paragraphs 1 and 5, *supra*.



RESPONSE: Disputed but not material. Plaintiff incorporates its response to Paragraphs 1 and 5, *supra*.



RESPONSE: Disputed. Plaintiff incorporates its response to Paragraphs 1 and 5, *supra*.

FILED: NEW YORK COUNTY CLERK 04/03/2023 05:04 PM

NYSCEF DOC. NO. 1776

RECEIVED NYSCEF: 04/03/2023

INDEX NO. 451625/2020

Dated: April 3, 2023

New York, New York

LETITIA JAMES
Attorney General of the State of New York

/s/ Stephen Thompson
Steven Shiffman
Monica Connell
Stephen Thompson
Assistant Attorneys General
NYS Office of the Attorney General
28 Liberty Street
New York, New York 10005
(212) 416-6355
Steven.Shiffman@ag.ny.gov

MEGHAN FAUX, Chief Deputy Attorney General for Social Justice JAMES SHEEHAN, Chief of the Charities Bureau EMILY STERN, Co-chief of the Enforcement Section, Charities Bureau