

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.

FRAZER'S COUNTERSTATEMENTS OF FACTS

1. Prior to Mr. Frazer's 2015 hiring, the roles of Secretary and General 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

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 [REDACTED]

[REDACTED]

[REDACTED] Ex. 2 at 157:18-159:8.

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

9. Spray and Phillips relied on their staff and the outside professionals when signing the Form 990s. *See* Fleming Aff., Ex. 8 at 275:7-277:4 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]; Ex. 2 at 159:9-161:3 (“I relied upon, uh, Emily Cummins and [RSM tax advisor] Jim Sweeney probably among the best in the country at filling out these forms”); *see also* Fleming Aff., Ex. 5 at 93:11-94:5.

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

10. The Treasurer’s office was dedicated to improving its process for completing the Form 990 each year. *See* Fleming Aff., Ex. 8 at 273:16-274:6 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

Dated: April 3, 2023
New York, New York

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