

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. 45

**COUNTERSTATEMENT OF
MATERIAL FACTS IN
OPPOSITION TO
DEFENDANT WILSON H.
PHILLIPS'S MOTION FOR
SUMMARY JUDGMENT**

Plaintiff, the People of the State of New York ("Plaintiff"), by and through the Office of the Attorney General Letitia James ("OAG"), respectfully submits the following Counterstatement of Undisputed Material Facts pursuant to New York Civil Practice Law and Rules ("CPLR") § 3212, 22 N.Y.C.R.R. § 202.8-g, Commercial Division Rule 19-a, and the Individual Rules of this Court.

Plaintiff 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.

**PLAINTIFF'S RESPONSES TO DEFENDANT PHILLIPS'S
STATEMENTS OF FACT**

1. Mr. Phillips served as the Treasurer and Chief Financial Officer of the National Rifle Association ("NRA") from 1993 to 2018. (*See* Loegering Aff. Ex. C, Phillips Dep. 18:8-11.).

2. Mr. Phillips retired from the NRA in the fall of 2018. (*See* Loegering Aff, Ex. C, Phillips Dep. 18:12-21.).

3. Prior to his retirement from the NRA, Mr. Phillips entered into an Independent Consulting Agreement with an effective date of December 31, 2018. (*See* Loegering Aff. Ex. D, Phillips Dep. Ex. 3; *see also* Loegering Aff. Ex. C, Phillips Dep. 78:4-12.).

Plaintiff's Response: There is a factual dispute as to whether the Consulting Agreement was properly authorized. Plaintiff contests whether Mr. Brownell and Ms. Meadows had the authority to cause the NRA to enter into this Consulting Agreement in May 2018. Mr. Brownell [REDACTED]. (NYSCEF 1189 at 201:6-202:24). During his testimony in this litigation, Phillips admitted [REDACTED]
[REDACTED]
[REDACTED] (*See* Mendelson Affirmation ("Mendelson Aff."), Ex. B at 81:25–82:13 (8/10/2021 Phillips Depo. Tr.); *see also infra* ¶¶ 24–30).

4. NRA President Pete Brownell and NRA Vice-President Carolyn Meadows signed and executed the Consulting Agreement on behalf of the NRA in May 2018. (*See* Loegering Aff. Ex. D, Phillips Dep. Ex. 3; Loegering Aff. Ex. C, Phillips Dep. 77:8-25–78:1-3.).

Plaintiff's Response: There is no issue of fact as to whether Mr. Brownell and Ms. Meadows signed the post-retirement "Consulting Agreement," but there is a factual dispute as to other assertions in paragraph 4. Mr. Brownell [REDACTED]
[REDACTED] (NYSCEF 1189 (Brownell Depo. Tr.) at 201:6-202:24). Vice-President Carolyn Meadows' signature is undated. (*See* NYSCEF 1185 (Phillips Depo. Ex. 3); NYSCEF 1186 at NRA-BK-00040373.) Ms. Meadows initially testified that [REDACTED]

[REDACTED] (*See* Mendelson Aff., Ex. C at 121:9–17 (8/31/2022 Meadows Depo. Tr.)). She subsequently testified that [REDACTED] [REDACTED] (Mendelson Aff., Ex. D at 72:7–25 (9/7/2022 Meadows Depo. Tr.)).

Further, Plaintiff contests whether Mr. Brownell and Ms. Meadows had the authority to cause the NRA to enter into this Consulting Agreement in May 2018. Mr. Brownell [REDACTED] [REDACTED]. (NYSCEF 1189 at 201:6-202:24). During his testimony in this litigation, Phillips admitted [REDACTED] [REDACTED] [REDACTED] (*See* Mendelson Aff., Ex. B at 81:25–82:13 (8/10/2021 Phillips Depo. Tr.); *see also infra* ¶¶ 24–30).

5. Steven Hart, counsel to the Board of Directors, presented the Consulting Agreement to Mr. Brownell for his signature. (*See* Loegering Aff. Ex. H, Brownell Dep. 200:17–208:9.).

Plaintiff’s Response: There is a factual dispute as to whether Steven Hart “presented” the Consulting Agreement to Mr. Brownell. Mr. Brownell testified that [REDACTED] [REDACTED] (NYSCEF 1189 at 201:6–202:24; *see also* Mendelson Aff., Ex. B at 81:6-18 (8/10/2021 Phillips Depo. Tr.)). Mr. Brownell testified that [REDACTED] [REDACTED] (NYSCEF 1189 at 207:14–24; 208:7–9). During the NRA’s Bankruptcy Proceeding, Phillips [REDACTED] [REDACTED] [REDACTED] (Mendelson Aff., Ex. E at 46:8–47:2 (3/19/2021 Phillips Bankr. Depo. Tr.)).

6. Counsel for Mr. Phillips, Mr. Dycio, negotiated the terms of the Consulting Agreement on Mr. Phillips's behalf. (See Loegering Aff. Ex. C, Phillips Dep. 71:6-21; 81:21-24).

Plaintiff's Response: There is a factual dispute as to the negotiation of the Consulting Agreement. During the bankruptcy proceedings, [REDACTED]

[REDACTED] (Mendelson Aff., Ex. E at 46:8–47:1 (3/19/2021 Phillips Bankr. Depo. Tr.)). Phillips subsequently testified that [REDACTED]

[REDACTED] (Mendelson Aff., Ex. B at 70:9–74:21 (8/10/2021 Phillips Depo. Tr.)).

7. Mr. Phillips countersigned the Consulting Agreement on his own behalf. (See Loegering Aff. Ex. D, Phillips Dep. Ex. 3).

8. The Consulting Agreement required Mr. Phillips to perform post-retirement services for the NRA for a period of four years in exchange for a fee of \$30,000 per month and reimbursement of certain expenses related to those services, including providing rented office space for Mr. Phillips. (See Loegering Aff. Ex. D, Phillips Dep. Ex. 3 at ¶¶ 1.b.i – ii; 2.a-b; 3.).

Plaintiff's Response: There is a factual dispute as to the terms and length of the Consulting Agreement. Phillips's Consulting Agreement was, in fact, set for an initial four-year term; however, the agreement also provided for automatic renewal for an additional four-year term, unless Phillips died, became incapacitated for a continuous period of 90 days, or otherwise chose to terminate the Agreement. (NYSCEF 1185 ¶¶ 3–4). The Consulting Agreement, on its face, did

not have any requirement or means of measurement of services to be provided by Phillips. It had no deliverables. Nor did it contain a provision allowing the NRA to terminate it unless Phillips died or became incapacitated for a continuous period of 90 days, during which time he would continue to be paid, and stated it was signed on an “ongoing, irrevocable basis.” (NYSCEF 1185 ¶¶ 3–4).

9. Pursuant to the Consulting Agreement, Mr. Phillips was required to “provide advisory services and the benefit of his expertise in all appropriate areas including, but not limited to, areas related to his prior duties as CFO and Treasurer of the Organization.” The Consulting Agreement also required Mr. Phillips to “coordinate activities with NRA’s Executive Vice President, Treasurer and CFO and Executive Director, Office of Advancement, to build and maintain relationships with major gifts donors, identify and cultivate relationships with fundraising partners and identify prospective high net worth individuals to solicit for major gifts.” The Consulting Agreement further required Mr. Phillips to “communicate periodically with NRA employees, officers, board members and others as deemed necessary in the performance of stated services.” (*See* Loegering Aff. Ex. D, Phillips Dep. Ex. 3 at ¶ 1.b.i – ii).

Plaintiff’s Response: There is a factual dispute as to the terms of the agreement and what Phillips was required to do. The agreement classified Phillips as “an independent contractor and . . . not an employee or in any other servant relationship with the NRA,” and provided that “the manner in which Consultant’s services are rendered shall be within Consultant’s sole control and discretion.” (NYSCEF 1185 ¶ 1(b)). The agreement, on its face, did not have any requirement or means of measurement of services to be provided by Phillips. (*See id.*) It had no deliverables, hours requirements, or specific efforts Phillips must expend toward NRA-related work. The contract does not include any requirements that Phillips must satisfy in order to be paid, other than

the provision that it could be cancelled upon his death or incapacity for ninety consecutive days. Nor did it contain a provision allowing the NRA to terminate it unless Phillips died or became incapacitated for a continuous period of 90 days, during which time he would continue to be paid, and stated it was signed on an “ongoing, irrevocable basis.” (NYSCEF 1185 ¶¶ 3–4). Further, there is evidence that Phillips performed little to no services at all under the contract but continued to receive payment thereunder. (*See* Mendelson Aff., Ex. F at 90:2–12 (3/22/21 LaPierre Bankr. Depo. Tr.); Mendelson Aff., Ex. G at 153:4–22 (6/17/2020 LaPierre Depo. Tr.); Mendelson Aff., Ex. H at 82:6–8 (4/13/2021 Bankr. Trial Tr.) (testimony of Craig Spray); Mendelson Aff., Ex. I at 208:5–15 (5/3/2022 Schropp Depo. Tr.)).

10. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*See* Loegering

Aff. Ex. E, Phillips Dep. Ex. 5 at Bates NRA-BK-00040373).

Plaintiff’s Response: There is a factual dispute as to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (NYSCEF 1186 at

NRA-BK-00040373). [REDACTED]

[REDACTED] (Mendelson Aff., Ex. B at 81:25–82:4 (8/10/2021 Phillips Depo. Tr.)).

During his testimony in this litigation, Phillips [REDACTED]

[REDACTED] (*Id.* at 81:25-82:13).

Accordingly, [REDACTED]

11. Mr. Phillips performed his obligations under the Consulting Agreement, including investigating the potential for an online education program affiliated with the NRA, working on the Young Guns program, and maintaining contact and relationships with NRA donors in Texas. (*See* Loegering Aff. Ex. C; Phillips Dep. 83:4 –86:18).

Plaintiff's Response: There is a factual dispute as to what services, if any, Phillips performed under the Consulting Agreement. Phillips testified that [REDACTED]

[REDACTED] (Mendelson Aff., Ex. B at 83:4–25 (8/10/2021 Phillips Depo. Tr.)), [REDACTED]

[REDACTED] (*id.* at 84:1–9, 85:16–24), [REDACTED]

[REDACTED] (*id.* at 85:10–19). Phillips's consulting agreement with the NRA did not contain concrete deliverables or temporal requirements. (NYSCEF 1189 at

203:9–204:4).

[REDACTED] (Mendelson Aff., Ex. B at 86:7–9 (8/10/2021 Phillips Depo. Tr.)). The individuals purportedly responsible for coordinating Phillips’s post-employment consulting activities and communicating with Phillips during his consultancy—NRA Executive Vice President, Wayne LaPierre, the Executive Director, Office of Advancement, Tyler Schropp, and Phillips’s successor as Treasurer and CFO, Craig Spray—each testified that [REDACTED] (Mendelson Aff., Ex. F at 90:2–12 (3/22/21 LaPierre Bankr. Depo. Tr.); Mendelson Aff., Ex. G at 153:4–22 (6/17/2020 LaPierre Depo. Tr.); Mendelson Aff., Ex. H at 82:6–8 (4/13/2021 PM Bankr. Trial Tr.) (testimony of Craig Spray); Mendelson Aff., Ex. I at 208:5–15 (5/3/2022 Schropp Depo. Tr.)). To the extent that this paragraph contains legal argument and a legal conclusion that Phillips performed valuable services under the Consulting Agreement, Plaintiff objects to the same as inappropriate in a statement of material facts.

12. Consistent with the terms of the Consulting Agreement, the NRA paid Mr. Phillips a monthly fee and reimbursement of office rental expenses for approximately 5 months before ceasing to comply with its payment obligations. (*See* Loegering Aff. Ex. E, Phillips Dep. Ex. 5; *see also* Ex. C; Phillips Dep. 85:25–86:1-6; 87:20-25–88:1-13; 93:16-25–94:1-7).

Plaintiff’s Response: There is a factual dispute with regard to portions of this statement. Phillips submitted expense reports and monthly invoices through WHiP LLC, a limited liability company that [REDACTED] (Mendelson Aff., Ex. B at 87:6–13, 90:17–19 (8/10/2021 Phillips Depo. Tr.); *see also* NYSCEF 1186; Mendelson Aff., Ex. J (January/February 2019 Expense Report); Mendelson Aff., Ex. K (February/March 2019 Expense Report); Mendelson Aff., Ex. L (April 2019 Expense Report); Mendelson Aff., Ex. M

(June 2019 Expense Report). [REDACTED]

[REDACTED]

[REDACTED] (Mendelson Aff.,
Ex. B at 95:12–24 (8/10/2021 Phillips Depo. Tr.)).

[REDACTED]
(Mendelson Aff., Ex. J January/February 2019 Expense Report; Mendelson Aff., Ex. B at 90:17–
92:4 (8/10/2021 Phillips Depo. Tr.)) [REDACTED] (Mendelson Aff., Ex. J
(January/February 2019 Expense Report); Mendelson Aff., Ex. B at 92:5–15 (8/10/2021 Phillips
Depo. Tr.)). Phillips testified that [REDACTED]

[REDACTED] (Mendelson Aff., Ex. B at 91:18–24 (8/10/2021
Phillips Depo. Tr.)). Grable testified that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Mendelson Aff., Ex. N at 146:23–148:15
(4/26/2022 Grable Depo. Tr.)).

Following his retirement, between February and June 2019, Phillips received \$170,692.37 from the NRA through WHiP LLC. (*See* Mendelson Aff., Ex. O (WHiP Vendor Report); *see also* Mendelson Aff., Ex. P at NYAG-WF-01168422 (February 21, 2019 payment of \$30,000), NYAG-WF-01168429 (March 2019 payment of \$71,262.76), NYAG-WF-01168438 (April 2019 payment of \$33,500), NYAG-WF-01168447 (May 2019 payment of \$33,500), NYAG-WF-01168448 (second May 2019 payment of \$988.61), NYAG-WF-01168460 (June 2019 payment of \$1441)). \$20,692.07 was for expense reimbursements, including rent, travel, and social club dues. (*See* Mendelson Aff., Ex. J (January-February 2019 expenses for travel, rent, and social club dues

totaling \$7,272.58); Mendelson Aff., Ex. K (February-March 2019 expenses for travel and rent totaling \$3,989.88); Mendelson Aff., Ex. L (April 2019 expenses for travel totaling \$988.61); Mendelson Aff., Ex. M (June 2019 expenses for travel totaling \$1441.00). for travel)).

13. In September 2014, the NRA contracted with HomeTelos L.P. to develop software for a website to support the NRA's Outdoors Outfitters programs. (*See* Loegering Aff. Ex. F, Phillips Dep. Ex. 20; *see also* Ex. G, Phillips Oct. Dep. 50:19-25– 52:17).

14. Mr. Phillips introduced NRA staff members, including Tony Hayes, the NRA's Managing Director of Information Services, to HomeTelos. (*See* Loegering Aff. Ex. G, Phillips Oct. Dep. 50:4-11).

Plaintiff's Response: There is a factual dispute as to this paragraph. Phillips's testimony indicates that Mr. Hayes was familiar with the substance and extent of the service provided by HomeTelos to the NRA, not that Phillips introduced NRA staff to the company. (Mendelson Aff., Ex. Q at 50:4–11 (10/18/2021 Phillips Depo. Tr.)).

15. Mr. Phillips was in a romantic relationship with the principal of HomeTelos from approximately 2005 to 2010, and afterward maintained a friendship with her. (*See* Loegering Aff. Ex. C, Phillips Dep. 108:3-23).

Plaintiff's Response: There are factual disputes with regard to portions of this statement. Nancy Richards, the principal of HomeTelos, owner of First Preston HT, and partial owner of the office building located at 2525 Knight Street, was known among NRA employees as Phillips's "girlfriend" or "significant other" in years following 2010, including during the period when the HomeTelos Contract was negotiated and in effect. (Mendelson Aff., Ex. R at 373:2–374:6 (5/5/2022 Supernaugh Depo. Tr.) (testifying that [REDACTED]

[REDACTED]

Shortly after signing the HomeTelos Contract on behalf of the NRA, [REDACTED]

[REDACTED]

(Mendelson Aff., Ex. V [REDACTED]) at NRA-NYAGCOMMDIV-00229030). Phillips later testified in August 2021 that [REDACTED].

(Mendelson Aff., Ex. B at 17:8–10 (8/10/2021 Phillips Depo. Tr.)). In July 2018, Richards joined Phillips on a sailing trip to Rome involving a vessel owned by the shareholder of Membership Marketing Partners (“MMP”)—[REDACTED]

[REDACTED]. (See Mendelson Aff., Ex. W (July 10, 2018 email from Phillips to FirstPreston HT Employee) at NYAG-00313337); *see also* NYSCEF 1191 at NRA-NYAG-00008037–38).

During the NRA's bankruptcy proceedings, Phillips [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Mendelson Aff., Ex. E at 166:14–172:6 (3/19/2021 Phillips Bankr. Depo. Tr.).

16. Both Mr. Phillips and Mr. Hayes negotiated the terms of the HomeTelos Contract and prepared the Business Case Analysis. (See Loegering Aff. Ex. F, Phillips Dep. Ex. 20; Loegering Aff. Ex. C, Phillips Dep. 230:2-6).

Plaintiff's Response: There are factual disputes as to this paragraph. Phillips testified that [REDACTED] (Mendelson Aff., Ex. B at 230:17–231:4 (8/10/2021 Phillips Depo. Tr.)). The testimony cited in Paragraph 16 proves that Phillips prepared the analysis himself, as he added his own name to the portion of the form that requests information regarding who negotiated the contract, (*Id.* at 230:2–6 (Phillips responded “it’s Tony Hayes and I put my name on there too.”). Phillips was also responsible for receiving notices and communications under the terms of the contract, was the “responsible officer” for the contract, and was responsible for the financial and business review for both the Treasurer’s Office and the Financial Services Division. (NYSCEF 1187 at NYAG-00030239, -30248). [REDACTED]

[REDACTED]
[REDACTED] (see NYSCEF 1191 (Cotton Depo. Ex. 20 - [REDACTED]
[REDACTED]) at NRA-NYAG-00008039), and Phillips has submitted no evidence indicating that Blaz was aware of the relationship.

17. [REDACTED]

[REDACTED]

[REDACTED]

(See Loegering Aff. Ex. J, Cotton Dep. Ex. 20 at Bates NRA-NYAG-00008038-39; Loegering Aff. Ex. I, Cotton Dep. 362:17–364:3; 387:24–388:16).

Plaintiff's Response: Plaintiff disputes factual assertions in this paragraph. Plaintiff states that it objects to the admissibility of the evidence cited in support of it. [REDACTED]

[REDACTED]

[REDACTED]

(See Mendelson Aff., Ex. X at 210:7–212:9 (3/18/2021 Frazer Bankr. Depo. Tr.) (testifying that [REDACTED] [REDACTED]); 213:21–215:22). Further, it is not clear that [REDACTED]

[REDACTED]

[REDACTED]. (See NYSCEF 1191). Mr. Cotton, current NRA President and longtime Audit Committee member and occasional chair, testified that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. (Mendelson Aff., Ex. Y at 277:4–278; 362:17–364:3 (6/17/2022 Cotton Depo. Tr.)). Further, [REDACTED] [REDACTED] \$149,076.37 paid to HomeTelos between February and August 2014, before the contract went into effect, or \$44,800 paid after the contract was terminated in May 2017. (See Mendelson Aff., Ex. Z (“HomeTelos Invoices and Payments”) at NRA-NYAGCOMMDIV-

00838442-59); *see also* NYSCEF 1191 (Cotton Depo. Ex. 20 - [REDACTED]
[REDACTED]).

18. Michael Blaz from the NRA's Office of General Counsel reviewed the Business Case Analysis and proposed contract. The NRA's Executive Vice President, President and First Vice President all approved the HomeTelos Contract, as well, before Mr. Phillips executed it on behalf of the NRA. (*See* Loegering Aff. Ex. F, Phillips Dep. Ex. 20; Loegering Aff. Ex. C, Phillips Dep. 231:5-16).

Plaintiff's Response: There is no dispute of fact that the business case analysis prepared by Phillips reflects that Michael Blaz reviewed the business case analysis and proposed contract, or that the NRA's Executive Vice President, President, and First Vice President approved the contract before Phillips executed the contract. However, Phillips has not submitted any evidence to suggest that any of those individuals was aware of Phillips's close relationship to the principal of HomeTelos, the conflict of interest, or the appearance of such a conflict that the relationship imposed.

[REDACTED]
[REDACTED] (*See* Mendelson Aff., Ex. AA at NYAG-00283516 [REDACTED])

[REDACTED] Mendelson Aff., Ex. AB at NYAG-00028669 (2017 Financial Disclosure Questionnaire); Mendelson Aff., Ex. AC at NYAG-00028441 (2018 Financial Disclosure Questionnaire); Mendelson Aff., Ex. AD at NYAG-00024053 (2019 Financial Disclosure Questionnaire); Mendelson Aff., Ex. B at 233:8-234:5 (8/10/2021 Phillips Depo. Tr.)), and did not disclose the conflict [REDACTED] until on the eve of his retirement in September 2018, after the contract had ended. (*see* Mendelson Aff., Ex. AE (Sept. 6, 2018 Draft

Disclosure (disclosing “longstanding personal relationship with the chairman of HomeTelos”) at NYAG-00043961-62); NYSCEF 1191 at NRA-NYAG-00008038 [REDACTED] [REDACTED]; Mendelson Aff., Ex. B at 233:25–234:5 (8/10/2021 Phillips Depo. Tr.) (testifying that [REDACTED] [REDACTED]; NYSCEF 1186 [REDACTED] at NRA-BK-00040383). After his belated disclosure, [REDACTED] [REDACTED] (NYSCEF 1191 at NRA-NYAG-00008039.).

19. The Contract Review Signature Sheet contains the signature of Michael Blaz of the NRA’s Office of General Counsel, dated September 2, 2014. (*See* Loegering Aff. Ex. F, Phillips Dep. Ex. 20).

Plaintiff’s Response: There is no dispute of fact that Michael Blaz’s name appears on the contract review signature sheet. However, Phillips has not submitted any evidence to suggest that Blaz was aware of Phillips’s close relationship to the principal of HomeTelos, the conflict of interest, or the appearance of such a conflict that the relationship imposed.

20. The Contract Review Signature Sheet also contains signatures of NRA President James W. Porter, Executive Vice-President Wayne LaPierre dated September 5, 2014, and First Vice President Allan D. Cors dated September 13, 2024. (*See* Loegering Aff. Ex. F, Phillips Dep. Ex. 20; Loegering Aff. Ex. C, Phillips Dep. 231:5-16).

Plaintiff’s Response: There is no dispute of fact that Mr. LaPierre, Mr. Porter, and Mr. Cors signed the contract review signature sheet. However, Phillips has not submitted any evidence to suggest that any of those individuals was aware of Phillips’s close relationship to the principal

of HomeTelos, the conflict of interest, or the appearance of such a conflict that the relationship imposed.

21. Mr. Phillips executed the HomeTelos Contract on behalf of the NRA on September 24, 2014. (*See* Loegering Aff. Ex. F, Phillips Dep. Ex. 20; see also Ex. C, Phillips Dep. 231:5-16).

22. [REDACTED]
[REDACTED] (*See* Loegering Aff. Ex. J, Cotton Dep. Ex. 20 at Bates NRA-NYAG-00008038-39).

Plaintiff's Response: There are disputed issues of fact as to this paragraph. Plaintiff states that it objects to the admissibility of the evidence cited in support of it. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] (Mendelson Aff., Ex. X at 210:7–212:9 (3/18/2021 Frazer Bankr. Depo. Tr.) (testifying that [REDACTED]

[REDACTED]); 213:21–215:22). There is no admissible evidence that Mr. Hayes reviewed the HomeTelos Contract. Mr. Cotton, current NRA President and longtime Audit Committee member and occasional chair, testified [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] (Mendelson Aff., Ex. Y at 277:4–278; 362:17–364:3 (6/17/2022 Cotton Depo. Tr.).

ADDITIONAL STATEMENTS OF MATERIAL FACT

I. NRA's Bylaws and Financial Policies

23. As Treasurer of the NRA, Phillips was an officer and ex officio director of the NRA, and was obligated to “operate in accordance with the financial policies set forth by the Board of Directors or the Executive Committee” of the NRA, and also had “such other duties as may be assigned to him or her from time to time by the Board of Directors, the Executive Committee, and/or the Executive Vice President.” (Mendelson Aff., Ex. AF (“NRA Bylaws 2020”) at NRA-NYAGCOMMDIV-00102911, Article V, § 2(e).); *see also* Mendelson Aff., Ex. AG (“NRA Bylaws 2016 and 2017”) at Article V, § 2(e); Mendelson Aff., Ex. AH (“NRA Bylaws 2011, 2012, and 2014”) at Article V, § 2(e). [REDACTED]

[REDACTED] (Mendelson Aff., Ex. T at 17:18-19:17 (7/14/2022 Rowling Depo. Tr.)). As Managing Director of the Information Services Department, Tony Hayes reported to Phillips. (*See* NYSCEF 1191 (noting Hayes was “NRA’s Managing Director of Information Services”) at NRA-NYAG-00008039); *see also supra* ¶ 14.

24. Among the financial policies that Phillips was charged with operating in accordance with is [REDACTED]. Mendelson Aff., Ex. AI (NRA Policy Manual) NRA-NYAGCOMMDIV-00008897 at NRA-NYAGCOMMDIV-00008993–9002). Among other things, [REDACTED]

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

[REDACTED] (*Id.* at NRA-NYAGCOMMDIV-00008999). Furthermore, [REDACTED]
[REDACTED] (*Id.* at NRA-NYAGCOMMDIV-00008998).

25. The NRA's procurement policy also governs the approval authority for contracts that meet certain monetary thresholds. As relevant here, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (NRA Policy Manual at NRA-NYAGCOMMDIV-00009001). An additional policy 2012 policy memorandum requires, as relevant here, 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. AJ (4/8/2021 PM Bankr. Trial Tr. at 100:11-23 (identifying the policy as still in effect)); Mendelson Aff. Ex. AK (2012 memorandum from LaPierre to NRA staff regarding procurement policies, admitted as Exhibit 142 from the Bankruptcy hearing)).

26. [REDACTED]
[REDACTED] (Mendelson Aff., Ex. AI at NRA-NYAGCOMMDIV-00008997). Beginning in January 2004, 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) Each officer, director, division director or activity supervisor, 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.” (Mendelson Aff., Ex. AL (2016 Employee Handbook) at NYAG-00029852, Statement of Corporate Ethics effective 1/1/2004 at NYAG-00029864–67).

27. 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-00029865). 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.*). The Statement of Corporate Ethics was amended in January 2015, but remained substantially the same. (*See* Mendelson Aff., Ex. AM (2018 Employee Handbook at NYAG-00029627, Statement of Corporate Ethics effective 1/26/2015 at NYAG-00029639-42).

28. In 2016, [REDACTED]
[REDACTED]. (Mendelson Aff., Ex. AI [REDACTED]) at NRA-
NYAGCOMMDIV-00008919). [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (*Id.* at NRA-
NYAGCOMMDIV-00008921). Under the policy, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED] (*Id.*

at NRA-NYAGCOMMDIV-00008922). [REDACTED]

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

[REDACTED]

[REDACTED]

[REDACTED] (*Id.*)

29. The NRA represented in its IRS Form 990 for 2014, 2015, and 2016 which Phillips signed under penalty of perjury, and certified as accurate in the CHAR500 the NRA filed with the New York Attorney General, that the NRA had a written conflict of interest policy, its officers, directors and key employees were required to disclose annually conflicts and the organization regularly and consistently monitored compliance with the policy. (*See Mendelson Aff.*, Ex. AN (2014 CHAR500 and Form 990) at Part VI, Section B, Line 12; Mendelson Aff. Ex. AO (2015 CHAR 500 and Form 990) at Part VI, Section B, Line 12; *See Mendelson Aff.*, Ex. AP (2016 CHAR500 and Form 990) at Part VI, Section B, Line 12). These filings that Phillips signed claimed that the NRA “takes conflicts of interest very seriously, and utilizes a statement of corporate ethics.

To monitor and enforce corporate policies, annual filings must be provided to the NRA Office of the Secretary and reviewed regularly and consistently.” (See Mendelson Aff., Ex. AN (2014 CHAR500 and Form 990) at Schedule O, p. 2; Mendelson Aff. Ex. AO (2015 CHAR 500 and Form 990) at Schedule O, p. 2–3). Despite these attestations, John Frazer testified as the NRA’s corporate representative during the bankruptcy proceedings that [REDACTED] [REDACTED]. (Mendelson Aff. Ex. AQ at 137:24–140:25 (3/15/2021 Bankr. Corp. Rep. Depo. Tr.).

II. NRA Bylaws and Policies Governing Officer Compensation

30. Under the NRA’s Bylaws, “[n]o Director or member of the Executive Council shall receive any salary or other private benefit unless specifically authorized by resolution of the Board of Directors or an authorized committee thereof, but all such persons shall be entitled to reimbursement for expenses incurred on behalf of the Association, to such extent as may be authorized or approved by the Board of Directors.” Mendelson Aff., Ex. AF (Bylaws Article V § 5(a)). The Bylaws provide for “an Officers Compensation Committee, which shall consist of the President, who shall serve as the Chairman, the First Vice President, and the Second Vice President.” (*Id.* § 5(b)). The Officers Compensation Committee is tasked with recommending the compensation for all elected salaried officers, including the Treasurer, at the fall meeting of the Directors. (*Id.* § 5(c)). The Board is in turn tasked with establishing by resolution the officer’s compensation for the following year. (*Id.*). “All deliberations by the Board of Directors concerning such compensation shall be held in an executive session, at which none of the officers whose compensation is to be or is being established may attend, except for the limited time and limited purpose of answering questions asked by any member of the Board of Directors at the meeting.” (*Id.*).

31. As Treasurer, Phillips's compensation package was subject to Officers Compensation Committee review and Board approval. (*See* Mendelson Aff., Ex. AF (Bylaws Article V § 5); *see also* Mendelson Aff., Ex. AR ([REDACTED]) at NRA-NYAGCOMMDIV-00884203)). In its annual regulatory filings, the NRA represented that "compensation of the NRA's top management officials is established by methods including independent compensation consultants, compensation surveys and studies, and comparability data. In addition, under the NRA bylaws compensation of certain elected officers . . . must be approved by the board of directors, based on recommendations by the compensation committee. All decisions are properly documented." (Mendelson Aff., Ex. AS, (2018 CHAR 500 and Form 990) at Schedule J, p. 3); Mendelson Aff., Ex. AT, (2019 Form 990) at Schedule J, p. 4 (same); *see also* Part VI, Line 15 and Schedule O).

III. Phillips's Retirement Compensation

32. In its annual IRS information returns, the NRA reported each year that in addition to his base salary, bonus compensation, and other reportable compensation, Phillips received retirement and deferred compensation from the NRA in various forms, including pursuant to pension, 401(k), and 457 plans. (*See* Mendelson Aff., Ex. AN at Schedule J; Mendelson Aff., Ex. AO at Schedule J; Mendelson Aff. AP at Schedule J; Mendelson Aff., Ex. AS at Schedule J; Mendelson Aff., Ex. AT at Schedule J. [REDACTED]) *See* Mendelson Aff., Ex. AR [REDACTED] at NRA-NYAGCOMMDIV-00884203).

33. [REDACTED]

[REDACTED]. (NYSCEF 1189 at 207:17–24; Mendelson Aff., Ex. B at 82:5–22 (8/10/2021 Phillips Depo. Tr.)).

34. Phillips did not disclose the Consulting Agreement in his August 2018 Financial Disclosure Questionnaire. (Mendelson Aff., Ex. AC (2018 Financial Disclosure Questionnaire) at NYAG-00028441). He ultimately disclosed the existence of his Consulting Agreement on his Financial Disclosure Questionnaire on January 27, 2019, after he retired and the Consulting Agreement became effective. (Mendelson Aff., Ex. AD (2019 Financial Disclosure Questionnaire) at NYAG-00024053).

35. The NRA’s certified regulatory filings for 2018 and 2019 do not disclose the consulting arrangement with Phillips, or Phillips’s failure to comply with the NRA policies. ((Mendelson Aff., Ex. AS, (2018 CHAR 500 and Form 990) at Schedule J); Mendelson Aff., Ex. AT, (2019 Form 990) at Schedule J; Mendelson Aff., Ex. AU (2019 CHAR500 excerpt)). In addition, Schedule L, Part IV of the 2018 and 2019 IRS Forms 990, concerning transactions with interested persons, do not disclose the consulting agreement made with Phillips in 2018. (*See* Mendelson Aff., Ex. AS, (2018 CHAR 500 and Form 990) at Schedule L); Mendelson Aff., Ex. AT, (2019 Form 990) at Schedule L).

IV. HomeTelos

36. “HomeTelos, a First PrestonHT Company (FPHT), provides tailored advisory and management services to government and institutional markets to optimize their real estate portfolios.” (Mendelson Aff., Ex. AV at NYAG-00313196).

37. The NRA’s business relationship with HomeTelos L.P. began long before September 2014. Specifically, HomeTelos began providing web-development services to the NRA

as early as May 2013, and was paid \$149,076.37 between February and August 2014. (*See* Mendelson Aff., Ex. Z (“HomeTelos Invoices and Payments”) at NRA-NYAGCOMMDIV-00838442–50).

38. The NRA entered a written contract with HomeTelos L.P. in September 2014. (*See* NYSCEF 1187 (Phillips Depo. Ex. 20 – “HomeTelos Contract”). The contract itself required the NRA to pay more than \$1,000,000 to HomeTelos, paid in fourteen monthly installments of \$71,848 in 2014 and 2015. (*Id.*).

39. The HomeTelos transaction was subject to the [REDACTED] and the 2004 Statement of Corporate Ethics which required disclosure of the conflict of interest. (*See* Mendelson Aff., Ex. AI (NRA Policy Manual) at NRA-NYAGCOMMDIV-00008997–99); (2016 Employee Handbook) Mendelson Aff., Ex. AL at NYAG-00029864–67).

40. Phillips did not disclose his relationship with Nancy Richards in his conflict disclosure forms for [REDACTED], 2017, or 2018. (*See* Mendelson Aff., Ex. AA at NYAG-00283516 ([REDACTED]); Mendelson Aff., Ex. AB at NYAG-00028669 (2017 Financial Disclosure Questionnaire); Mendelson Aff., Ex. AC at NYAG-00028441 (2018 Financial Disclosure Questionnaire); Mendelson Aff., Ex. AD at NYAG-00024053 (2019 Financial Disclosure Questionnaire); Mendelson Aff., Ex. B at 233:8–234:5 (8/10/2021 Phillips Depo. Tr.)).

41. In May 2017, NRA informed HomeTelos that it would not renew HomeTelos Contract, which was set to expire on September 1, 2017. (Mendelson Aff., Ex. AW at NYAG-00030256).

42. Phillips and Hayes continued to discuss negotiating a revised contract with HomeTelos in 2017, following the termination of the original contract. (*See* Mendelson Aff., Ex.

AX at NYAG-00033018 (August 21, 2017 email from Hayes to Phillips sending a “support quote from HTSolutions”).

43. After the contract expired in May 2017, the NRA paid HomeTelos \$44,800 for technical support services. Mendelson Aff., Ex. Z (HomeTelos Invoices and Payments) at NRA-NYAGCOMMDIV-00838451–59).

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