

Exhibit C



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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

REBUTTAL REPORT of

Ryan Sullivan, Ph.D.,
and

Bruce L. Blacker, CPA, CFF

October 7, 2022

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Section ECorrective Action

Attachment E-1	Corrective Action the NRA has Undertaken (Response to Hines Report)
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Section FHarris Report

Attachment F-1	2020 NRA Form 990 (Response to Harris Report)
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1. Overview of Assignment

- (1) Intensity, LLC (“Intensity”) has been engaged by Brewer, Attorneys & Counselors on behalf of its client the National Rifle Association of America (“NRA”) in the matter of *People of the State of New York, By Letitia James, Attorney General of the State of New York v. The National Rifle Association of America, Wayne LaPierre, Wilson Phillips, John Frazer, and Joshua Powell*. The allegations made by the Attorney General of the State of New York (“NYAG”) are set forth in the Second Amended Complaint filed May 2, 2022.¹ In response to the allegations set forth by the NYAG, we submitted the Report of Ryan Sullivan, Ph.D. and Bruce L. Blacker, CPA, CFF on September 16, 2022 (hereinafter referred to as our “Initial Report”). We incorporate our Initial Report by reference. In our Initial Report we:
- a. Assessed a reasonable framework from which to evaluate the NYAG’s allegations against the NRA from an economic, accounting, and reasonable businessperson perspective;
 - b. Evaluated the evolution and refinement of NRA’s policies and procedures, internal controls, and governance oversight in recent years (*i.e.*, 2015 to the present); and
 - c. Provided our observations and opinions as they relate to the NRA’s operating as a Section 501(c)(4) organization under the Internal Revenue Code.²
- (2) Ryan Sullivan and Bruce Blacker have each individually reached all the opinions expressed in the Initial Report and all the opinions expressed in this rebuttal report. We (Ryan Sullivan and Bruce Blacker) reached these opinions by applying our individual qualifications to the same set of facts, data, and information such that we each individually support the bases for all the opinions. The strengths of our varied qualifications inform our analyses and conclusions. Neither of us is relying on the other’s qualifications to reach our independent opinions.
- (3) Concurrent to our submitting our Initial Report, the NYAG submitted the Report of Jeffrey S. Tenenbaum dated September 16, 2022 (“Tenenbaum Report”), the Report of Eric Hines, CPA, CFF, CHC dated September 16, 2022 (“Hines Report”), and Report of Erica E. Harris dated September 16, 2022 (“Harris Report”) in support of the NYAG’s allegations.³ As a result,

¹ Second Amended Complaint, 5/2/2022.

² Initial Report, 9/16/2022, ¶ 2.

³ At the same time, the NRA also submitted the following reports in addition to our Initial Report: Report of Matthew Lerner, Certified Internal Auditor (CIA) dated September 16, 2022 (“Lerner Report”); Report and Disclosure of J. Lawrence Cunningham submitted on September 16, 2022 (“Cunningham Report”); Report of Amish Mehta (“Mehta Report”); and Report of Alan A. Nadel submitted September 16, 2022 (“Nadel Report”).

counsel for the NRA has asked us to evaluate the opinions and observations expressed in the Tenenbaum Report, Hines Report, and Harris Report. Our findings and opinions are contained in the remainder of this report. Our analysis of the Harris Report, Hines Report, and Tenenbaum Report has not changed our opinions expressed in our Initial Report.

- (4) This report is a statement of opinions we currently express in this matter and the bases and reasons for those opinions. This report summarizes our current opinions. We respectfully reserve the right to supplement our report in light of any additional fact discovery, opinions by other experts, information relied on by other experts,⁴ and/or trial testimony. We also respectfully reserve the right to provide opinions and testimony in response to other experts, and rebuttal testimony in response to any fact witnesses. In connection with our anticipated trial testimony in this action, we may use various documents produced in this litigation that refer to or relate to the matters discussed in this report. In addition, we respectfully reserve the right to use exhibits, animations, demonstratives, enlargements of actual attachments, and other information in order to convey our opinions.

⁴ We will consider any documents, data, or other materials relied on by Mr. Tenenbaum, Mr. Hines, and Ms. Harris should they submit rebuttal reports.

2. Summary of Opinions

- (5) Based on the entirety of research and analysis contained throughout this report and our Initial Report, our understanding of the allegations made by the NYAG, our review of the Tenenbaum Report, Hines Report, Harris Report, and documentary and testimonial evidence in this matter, and the application of economic, accounting, and financial principles, we have reached the following opinions.
- (6) Opinions and findings expressed in our Initial Report still hold and are summarized below with section references to the Initial Report.⁵
- a. **Opinion #1 (Initial Report, Section 7: Framework).** Evaluating the reasonableness of the NRA's control efforts is, in part, an economics and accounting issue that benefits from principles of materiality, prudent businessperson judgments, and cost-benefit analysis.
 - b. **Opinion #2 (Initial Report, Section 8: Industry Evidence).** Evidence from industry, including general auditing practices and standard IRS filing practices, demonstrates that the economic and accounting framework addresses real-world considerations faced by industry participants.
 - c. **Opinion #3 (Initial Report, Section 9: Industry Standard).** When past actions and disclosures of the NRA are evaluated based on an appropriate industry standard, and considering the NRA's subsequent corrective actions, Plaintiff's allegations generally represent immaterial transactions or correctable transactions that do not warrant the requested relief.
 - d. **Opinion #4 (Initial Report, Section 10: Continual Improvement).** Plaintiff's requested relief is not beneficial and is not warranted.
- (7) Opinions and findings regarding our evaluation of the NYAG's expert reports (i.e., Tenenbaum Report, Hines report, and Harris report) are summarized below.
- a. **Opinion #5:** The NYAG's expert reports discuss the identification of historical compliance issues and corrective actions taken by the NRA as it continues to improve internal controls. The mere possibility of future transactions that might be identified and may need correcting does not support the requested relief.
 - b. **Opinion #6:** The opinions in the Tenenbaum Report do not support the relief requested by the NYAG. The Tenenbaum Report indicates that corrective actions have been (and are being) taken by the NRA to identify, disclose, and correct past transactions. Further, actions for "a responsible course correction" as identified by Mr. Tenenbaum have been (and are being) evaluated by the NRA.

⁵ Initial Report, 9/16/2022, ¶ 4.

- c. **Opinion #7:** The opinions in the Hines Report do not support the relief requested by the NYAG. The Hines Report indicates that corrective actions have been (and are being) taken by the NRA to effectively identify, disclose, and correct past transactions. Mr. Hines' analysis of fraud risk indicators is based on historical transactions prior to the NRA's course corrections. Mr. Hines does not conduct an analysis of fraud risk indicators under the NRA's current and improved internal controls.
- d. **Opinion #8:** The Harris Report does not support the relief requested by the NYAG. The Harris Report indicates that corrective actions have been (and are being) taken by the NRA to identify information, disclose any necessary information, and correct its IRS Form 990 filings. The NRA has been repaid with interest and a penalty paid to the IRS, if applicable, by those who do not dispute that they may have received a historical excess benefit. Further, the Harris Report does not identify any excess benefit transactions after 2019.
- e. **Opinion #9:** The NYAG's experts have not performed a cost-benefit analysis to support or justify the NYAG's requested relief. The NYAG's experts have not identified the incremental benefit(s) to the NRA of appointing a compliance monitor or governance expert, if any. Additionally, the NYAG's experts have not explained how the requested relief helps the NRA more efficiently achieve its mission.

3. Qualifications

3.1. Ryan Sullivan

- (8) Ryan Sullivan, Ph.D. is President of Intensity and provides expertise in economics, finance, and statistics to solve complex and challenging issues that organizations face in the competitive marketplace and the courtroom.
- Litigation & Disputes. Dr. Sullivan has wide-ranging experience with the economics of intellectual property and technology, technically demanding analyses of antitrust and competition, robust statistical modeling for labor and employment issues, and detailed quantitative analyses for securities and finance disputes.
 - Business Analytics. Dr. Sullivan develops and implements state-of-the-art predictive models that provide reliable, evidence-based insights into business outcomes. These predictive models are implemented across a spectrum of business challenges, including price optimization, promotional programs, business strategy, forecasting, and investing.
- (9) Dr. Sullivan is a recognized top U.S. economic expert by Intellectual Asset Management (“IAM”) in each year from 2014 to 2022. He was rated at the top gold-band level reserved for those professionals highest among their peers in the field. According to IAM, “Ryan Sullivan uses sophisticated economic models to solve the trickiest damages conundrums.” IAM further commented that the “outstanding academician is celebrated for his creative but rigorous, data driven approach and deep engagement with the questions at hand.”
- (10) Dr. Sullivan has provided expert testimony in high-stakes commercial litigation. He has provided expert testimony in more than a dozen cases that each had more than \$1 billion in controversy. Dr. Sullivan has testified at trial in more than 25 cases and provided expert reports and deposition testimony in more than 100 cases.
- (11) Dr. Sullivan has served as an invited member of the Economics Leadership Council at the University of California, San Diego (“UC San Diego”). In this role, he provided guidance to the Department of Economics faculty on the application of economic science in private industry.
- (12) Dr. Sullivan has served as the Treasurer and an officer on the Board of Trustees for San Diego Zoo Global, now known as the San Diego Zoo Wildlife Alliance, which is an international, nonprofit conservation organization with two front doors: the San Diego Zoo and the San Diego Zoo Safari Park. The San Diego Zoo Wildlife Alliance integrates wildlife health and care, science, and education to develop sustainable conservation solutions.

- (13) Dr. Sullivan joined the Foundation Board of San Diego Zoo Global in January 2016 with a stated mission of enhancing major gift fundraising and friendraising. While on the Foundation Board, he served on the nominating committee to evaluate candidates for membership on the Foundation Board. Subsequently, Dr. Sullivan was elected to the Board of Trustees of San Diego Zoo Global in March 2018 with service on the finance committee and operations council. He was then elevated to an officer position as Treasurer in January 2019 with service as chair of the finance committee as well as member of the executive compensation committee, investment committee, and retirement & benefit plans committee. In addition, Dr. Sullivan participated on the conservation council and operations council. He completed his service with San Diego Zoo Global at the end of December 2020.
- (14) Dr. Sullivan earned his B.A., M.A., and Ph.D. in economics from UC San Diego. While at UC San Diego, he used advanced statistical methods to evaluate econometric models. Dr. Sullivan has published economic research in several top-tier, peer-reviewed academic journals—including the *Journal of Finance*, the *Journal of Econometrics*, and the *International Journal of Forecasting*—as well as articles on the economics of intellectual assets.
- (15) Dr. Sullivan has provided professional economic services since 1992. He established Quant Economics, Inc. in 2006 and Intensity in 2014.
- (16) Dr. Sullivan's curriculum vitae, provided as **Attachment A-1a**, contains more details on his background, experience, publications, and a list of his prior expert testimony. Dr. Sullivan approaches his work in this matter with formal training and extensive experience, including: academic training in economics, finance, statistics, and accounting; professional work as an economist in the areas of microeconomics, econometrics, industrial organization, financial analysis, accounting, and data science; service as an expert witness in litigation and disputes, involving both liability and damages issues; business consulting addressing a wide range of issues, including business optimization, strategic bargaining, and investment decisions; executive leadership of a successful for-profit business organization; and board member, officer, and treasurer of a significant non-profit organization.

3.2. Bruce L. Blacker

- (17) Bruce L. Blacker, CPA, CFF is a Managing Director at Intensity. His primary responsibility at Intensity is to provide accounting, economic, financial, and damages quantification consulting services to clients. Mr. Blacker specializes in the application of accounting, economic, and financial principles to complex financial disputes. He frequently performs financial analyses using large databases of information and complex computer models.

- (18) During Mr. Blacker's career, he has provided consulting services related to bankruptcy, breach of contract, business interruption, fraud, forensic accounting, intellectual property (copyright infringement, patent infringement, trade dress, trademark, and trade secrets), lender liability, loss of earnings (wrongful death/wrongful termination), mismanagement/negligence, securities-related, and other general damages quantification matters. Mr. Blacker is generally retained in cases requiring financial analyses associated with an evaluation of accounting documents and/or claimed damages. He has provided expert witness testimony in deposition, arbitration, and trial settings.
- (19) Mr. Blacker's work in this matter draws upon his skills and knowledge developed through training, education, and professional experience. Prior to joining Intensity, Mr. Blacker's work experience includes being a partner at PricewaterhouseCoopers, working at an economic consulting firm for over 15 years, and providing consulting services at a financial services firm. Mr. Blacker has extensive experience provided consulting services to both for-profit and nonprofit organizations.
- (20) Mr. Blacker received his Bachelor of Science in Accounting from Brigham Young University in 1989 and his Master's in Accountancy from Brigham Young University in 1989. Although Intensity is not a CPA firm, Mr. Blacker is a Certified Public Accountant ("CPA") licensed in the state of Texas and Certified in Financial Forensics ("CFF") by the American Institute of Certified Public Accountants. Mr. Blacker's curriculum vitae, provided as **Attachment A-2a**, contains more details, as well as a list of his trial and deposition testimony experience.

3.3. Compensation

- (21) Intensity generates research, analysis, and expertise to solve complex challenges in the marketplace and courtroom, especially in the areas of economics, finance, statistics, and accounting. Intensity is being compensated based on hours incurred and the hourly rates of the personnel involved. Intensity is being compensated at a rate of \$2000 per hour for time spent by Ryan Sullivan, \$795 per hour for time spent by Bruce L. Blacker, and lower rates for other Intensity professionals working on this matter. The compensation of Intensity is not contingent upon the opinions provided or the outcome of this matter.

4. Information Considered

- (22) Facts, data, and information considered in forming our opinions are contained in **Attachment A-3a**, elsewhere in this report, or in our Initial Report. Examples of the types of additional information that we considered include:
- a. Reports (e.g., Report of Jeffrey S. Tenenbaum dated September 16, 2022 (“Tenenbaum Report”); the Report of Eric Hines, CPA, CFF, CHC dated September 16, 2022 (“Hines Report”), Report of Erica E. Harris dated September 16, 2022 (“Harris Report”); Report of Matthew Lerner, Certified Internal Auditor (CIA) dated September 16, 2022 (“Lerner Report”); Report and Disclosure of J. Lawrence Cunningham submitted on September 16, 2022 (“Cunningham Report”); Report of Amish Mehta (“Mehta Report”); and Report of Alan A. Nadel submitted September 16, 2022 (“Nadel Report”));
 - b. Information produced during discovery (e.g., Audit Committee Reports; vendor documents, letters, contracts, and approval forms; termination letters; Chapter 11 filing and motion to dismiss); and
 - c. Independently obtained (e.g., IRS Form 990 (blank); Accounting Tools Article; U.S. Department of Justice Memorandum; Office of the Attorney General for the District of Columbia Press Release).
- (23) Additionally, contained in **Attachment A-5** is a listing of relevant persons and their titles.

5. NRA's Bylaws and Governance

- (24) As discussed in our Initial Report, the NRA was formed in 1871 and later organized under the Internal Revenue Code Section 501(c)(4).⁶ The NRA is a membership organization.⁷ The NRA's Bylaws set forth the governance of the NRA and address the Board of Directors ("Directors"), Officers, Members, and nomination and election procedures, among other governance issues.
- (25) The NRA's Bylaws create an environment that facilitates robust internal controls, especially in light of the corrective course taken by the NRA. The organizational structure established by the NRA's Bylaws provides internal oversight and promotes operations that are in the best interest of the NRA's mission. Specifically, the NRA's Bylaws distribute authority across the Directors, Officers, Members, and numerous committees, allowing each group opportunities to elect or remove Directors or Officers who are viewed as not advancing the NRA's mission.

5.1. Board of Directors

- (26) The NRA's Board of Directors comprises 76 Directors, of which 75 are elected for three-year terms from the voting membership who have been lifetime members for a minimum of five years at the time of nomination.⁸ Directors serving on the Board of Directors are elected from among the lifetime members of the NRA.⁹ Annual nominations to fill vacancies on the Board of Directors are made by the Nominating Committee.¹⁰ The remaining Director "shall hold

⁶ Initial Report, 9/16/2022, at 8.

⁷ NRA, "Bylaws," 10/24/2020 (NRA-NYAGCOMMDIV-00102890-2949, at NRA-NYAGCOMMDIV-001022895).

⁸ NRA, "Bylaws," 10/24/2020 (NRA-NYAGCOMMDIV-00102890-2949, at NRA-NYAGCOMMDIV-001022905-06). ("The Board of Directors shall consist of seventy-six (76) Directors as follows: (1) Seventy-five (75) Directors, elected for three (3) year terms as provided in Article VIII from lifetime members of the Association who are entitled to vote and have been lifetime members for a minimum of 5 years at the time of nomination.")

⁹ NRA, "Bylaws," 10/24/2020 (NRA-NYAGCOMMDIV-00102890-2949, at NRA-NYAGCOMMDIV-001022921). ("Directors shall be elected from among the lifetime members of the Association.")

¹⁰ The Nominating Committee is composed of nine members entitled to vote, no more than six of whom shall be members of the Board of Directors or executive council. Nominations of individuals to serve on the Nominating Committee are made from the floor of the Board of Directors. At the close of the nomination process, each Director present at the meeting receives a ballot listing the Nomination Committee nominees and the Directors cast one vote for Nomination Committee members. The votes are counted by the Committee on Elections. No person shall be eligible for election to the Nominating Committee more often than once every three years.

NRA, "Bylaws," 10/24/2020 (NRA-NYAGCOMMDIV-00102890-2949, at NRA-NYAGCOMMDIV-001022919-920). ("(a) At each regular meeting of the Board of Directors next following the Annual Meeting of Members, the Board shall elect, by secret ballot, a Nominating Committee which shall be responsible for nomination of Directors, members of the Executive Committee, and officers who are to be elected at the next annual meeting of members or at a subsequent meeting of the Board of Directors. . . . (b) The Nominating Committee shall be composed of nine members entitled to

office from the adjournment of the Annual Meeting of Members at which he was elected until the adjournment of the next Annual Meeting of Members, or until a successor is elected and qualified.”¹¹ This Director, who serves a one-year term, is elected at each annual meeting of members by a plurality of votes from voters present at the meeting.¹² This Director is elected from a pool of candidates who had been nominated for election to a three year-term as part of the preceding mail-in ballot but were not elected.¹³

- (27) The NRA’s Bylaws further establish that the Directors have the power to annually elect Officers.¹⁴ Officers elected by the Directors must follow the programs and policies established by the Directors.¹⁵ If the Directors determine Officers are not acting in the best interest of the

vote, no more than six of whom shall be members of the Board of Directors or Executive Council. Nominations for election to the Nominating Committee shall be made from the floor. Following the close of nominations for membership on the Nominating Committee, each Director present at the meeting shall receive one ballot listing the nominees, on which he is entitled to cast not more than one vote for each of nine nominees, of whom not more than six may be members of the Board of Directors or the Executive Council. All nominees for the Nominating Committee shall be voted on together, with the nine receiving the greatest number of votes being elected; provided, however, that no more than six nominees who are members of the Board of Directors or Executive Council shall be elected. In case of a tie for the last vacancy, a run-off vote shall be conducted between the nominees tied. A Director whose term expires at the end of the ensuing year shall not be eligible for election to the Nominating Committee. Notwithstanding any other provision of these Bylaws, no person elected to the Nominating Committee shall be eligible for election as a Director during the tenure of the Nominating Committee to which he was elected; nor shall any officer be a member or ex officio member of the Nominating Committee. (c) No person shall be eligible for election to the Nominating Committee more often than once every three years.”)

¹¹ NRA, “Bylaws,” 10/24/2020 (NRA-NYAGCOMMDIV-00102890–2949, at NRA-NYAGCOMMDIV-001022906). (“One (1) Director, elected as provided in Article VIII, Section 4, shall hold office from the adjournment of the Annual Meeting of Members at which he was elected until the adjournment of the next Annual Meeting of Members, or until a successor is elected and qualified.”)

¹² NRA, “Bylaws,” 10/24/2020 (NRA-NYAGCOMMDIV-00102890–2949, at NRA-NYAGCOMMDIV-001022927). (“One Director shall be elected for a one-year term on the occasion of each Annual Meeting of Members by a plurality of the votes cast by those individual members present in person (and not by proxy) who are entitled to vote pursuant to Article III, Section 6(e). Such Director shall be chosen only from those persons who were nominated as candidates for election for Director in the mail ballot (Article VIII) immediately preceding said Annual Meeting of Members, but who failed to be elected thereby.”)

¹³ NRA, “Bylaws,” 10/24/2020 (NRA-NYAGCOMMDIV-00102890–2949, at NRA-NYAGCOMMDIV-001022927). (“One Director shall be elected for a one-year term on the occasion of each Annual Meeting of Members by a plurality of the votes cast by those individual members present in person (and not by proxy) who are entitled to vote pursuant to Article III, Section 6(e). Such Director shall be chosen only from those persons who were nominated as candidates for election for Director in the mail ballot (Article VIII) immediately preceding said Annual Meeting of Members, but who failed to be elected thereby.”)

¹⁴ NRA, “Bylaws,” 10/24/2020 (NRA-NYAGCOMMDIV-00102890–2949, at NRA-NYAGCOMMDIV-001022909–910). (“The President and Vice Presidents shall be elected annually by and from the Board of Directors. The Executive Vice President, Secretary and Treasurer shall be elected annually by the Board of Directors, and they shall serve until their successors have been elected and qualified.”)

¹⁵ NRA, “Bylaws,” 10/24/2020 (NRA-NYAGCOMMDIV-00102890–2949, at NRA-NYAGCOMMDIV-001022910–13).

NRA, Directors have the authority to remove Officers through a three-fourths affirmative vote during a regular or special meeting of the Directors.¹⁶

5.2. Officers

- (28) The NRA's Officers include a President, one or more Vice Presidents, an Executive Vice President, a Secretary, a Treasurer, an Executive Director of the National Rifle Association General Operations, and an Executive Director of the National Rifle Association Institute for Legislative Action.¹⁷
- a. The President and Vice President(s) are elected annually by and from the Board of Directors.¹⁸
 - b. The Executive Vice President, Secretary, and Treasurer are elected annually by the Board of Directors and serve until their successors have been elected and qualified.¹⁹
 - i. In the event that the office of the Executive Vice President becomes vacant, the succeeding Executive Vice President is elected by the Board of Directors at its next meeting.²⁰
 - ii. The Executive Vice President appoints both the Executive Director of the National Rifle Association General Operations and the Executive Director of the National Rifle Association Institute for Legislative Action.²¹

¹⁶ NRA, "Bylaws," 10/24/2020 (NRA-NYAGCOMMDIV-00102890-2949, at NRA-NYAGCOMMDIV-001022913-15). ("Any such [elected, non-salaried] officer may be removed with or without cause by the Board of Directors, by a three-fourths (3/4) affirmative vote of the members of the Board of Directors present at any regular or special meeting of the Board of Directors. . . Any such [Elected Salaried] Officer may be removed with or without cause at any time by the Board of Directors by a three-fourths (3/4) affirmative vote of the members of the Board of Directors present at any regular or special meeting of the Board of Directors.")

¹⁷ NRA, "Bylaws," 10/24/2020 (NRA-NYAGCOMMDIV-00102890-2949, at NRA-NYAGCOMMDIV-001022909). ("The officers of the Association shall be a President, one or more Vice Presidents, an Executive Vice President, a Secretary, a Treasurer, an Executive Director of the National Rifle Association General Operations, and an Executive Director of the National Rifle Association Institute for Legislative Action.")

¹⁸ NRA, "Bylaws," 10/24/2020 (NRA-NYAGCOMMDIV-00102890-2949, at NRA-NYAGCOMMDIV-001022909). ("The President and Vice Presidents shall be elected annually by and from the Board of Directors.")

¹⁹ NRA, "Bylaws," 10/24/2020 (NRA-NYAGCOMMDIV-00102890-2949, at NRA-NYAGCOMMDIV-001022909-910). ("The Executive Vice President, Secretary and Treasurer shall be elected annually by the Board of Directors, and they shall serve until their successors have been elected and qualified.")

²⁰ NRA, "Bylaws," 10/24/2020 (NRA-NYAGCOMMDIV-00102890-2949, at NRA-NYAGCOMMDIV-001022910). ("The Executive Vice President shall be elected by the Board of Directors. In the event that the Office of the Executive Vice President becomes vacant, the succeeding Executive Vice President shall be elected by the Board of Directors at its next meeting.")

²¹ NRA, "Bylaws," 10/24/2020 (NRA-NYAGCOMMDIV-00102890-2949, at NRA-NYAGCOMMDIV-001022911). ("Among his authorities, the Executive Vice President shall be empowered to (l) appoint, suspend with or without pay, or remove the Executive Director of the National Rifle Association General Operations or the Executive Director of the National Rifle Association Institute for Legislative Action.")

- (29) The NRA's Bylaws state that "[t]he Board may not abolish said offices nor create any other offices."²² As discussed in our Initial Report (Section 10.4.4) and again below in **Section 6.3.2**, the NRA is seeking to create a compliance officer position. Based on this provision in the NRA's Bylaws preventing the Board from creating new offices, making a formal officer position in the Bylaws (such as a compliance officer) would require approval from its Members. The Bylaws identify other requirements that must be satisfied before a vote occurs.²³

5.3. Members

- (30) The NRA's Members are made up of individuals and organizations who subscribe to the objectives and purposes of the NRA.²⁴ The NRA offers multiple membership tiers.²⁵ Lifetime members and members with five or more consecutive years of membership are entitled to vote.²⁶
- (31) The Bylaws give Members who are eligible to vote the authority to elect Directors from a nomination ballot during the Annual Meeting of Members.²⁷ Individuals who receive the most votes are elected to the Board of Directors.²⁸ The Bylaws further stipulate Members who are

²² NRA, "Bylaws," 10/24/2020 (NRA-NYAGCOMMDIV-00102890-2949, at NRA-NYAGCOMMDIV-001022910). ("The Board may not abolish said offices nor create any other offices.")

²³ NRA, "Bylaws," 10/24/2020 (NRA-NYAGCOMMDIV-00102890-2949, at NRA-NYAGCOMMDIV-001022939-941).

²⁴ NRA, "Bylaws," 10/24/2020 (NRA-NYAGCOMMDIV-00102890-2949, at NRA-NYAGCOMMDIV-001022895, NRA-NYAGCOMMDIV-001022897). ("(a) Any citizen of the United States who is and while he remains of good repute, who subscribes to the objectives and purposes of the Association, or any organization as hereinafter described, shall be eligible to be a member of the Association, provided that citizens of foreign nations and organizations composed in whole or in major part of citizens of foreign nations may be admitted to membership as provided in Sections 3 and 4 of this Article.")

²⁵ NRA, "Bylaws," 10/24/2020 (NRA-NYAGCOMMDIV-00102890-2949, at NRA-NYAGCOMMDIV-001022895-98).

²⁶ NRA, "Bylaws," 10/24/2020 (NRA-NYAGCOMMDIV-00102890-2949, at NRA-NYAGCOMMDIV-001022899). ("Fully paid lifetime members and annual members with five or more consecutive years of membership, as shown in the Association's membership records, who have attained the age of 18 years on or before the fiftieth (50th) day prior to the date of the annual meeting of members and who are citizens of the United States of America shall be entitled to vote.")

²⁷ NRA, "Bylaws," 10/24/2020 (NRA-NYAGCOMMDIV-00102890-2949, at NRA-NYAGCOMMDIV-001022922, NRA-NYAGCOMMDIV-001022924). ("A member eligible and desiring to vote shall clearly mark his ballot for his choice of Directors. He may make his selection from the list of candidates printed on said ballot, and/or he may write the name, together with the city and state of principal residency of each other member whom he wishes to be on the Board and believes to be eligible to hold the office of Director. In any event, if his ballot is to be valid, he must not vote for a number of candidates greater than the total number of Directors to be elected by the mail ballot. Having marked his ballot and signed the authentication, the member must place and seal the ballot in the return envelope. Any ballot received by the Association later than the 20th day preceding the date of the Annual Meeting of Members shall be invalid and shall not be opened or counted.")

²⁸ NRA, "Bylaws," 10/24/2020 (NRA-NYAGCOMMDIV-00102890-2949, at NRA-NYAGCOMMDIV-001022924-25). ("The chairman shall declare elected to regular three (3) year terms those persons who, in numbers equal to the number of such vacancies, receive the largest number of the votes cast; and shall declare elected to specified incomplete terms, if any,

eligible to vote “may in a single petition call for the removal of one officer, or Director, for good cause,” such as conduct contrary to or in violation of the Bylaws or conduct that is disruptive to the NRA in pursuit of its goals or objectives.²⁹ The Secretary and the Committee on Hearings evaluate whether a petition for removal is valid.³⁰ If a petition is ruled valid by the Secretary and the Committee on Hearings, the petition for removal is placed on the ballot for vote.³¹ If a majority of the votes by the Members eligible to vote are cast in favor of removal, the removal of the Officer or Director is effective immediately.³²

beginning with the longest remaining incomplete term or terms, those persons who receive the next largest number of votes cast.”)

²⁹ NRA, “Bylaws,” 10/24/2020 (NRA-NYAGCOMMDIV-00102890–2949, at NRA-NYAGCOMMDIV-001022927) (“Notwithstanding any other provision of these Bylaws, any voting member of the Association (‘sponsor’) may in a single petition call for the removal of one officer, or Director, for good cause, in the manner hereinafter provided. For the purposes of this Article, ‘good cause’ is set forth in Article III, Section 11(b) of these Bylaws.”)

The Bylaws describe good cause as “including but not limited to, any conduct as a member that is contrary to or in violation of the Bylaws of the Association; for having obtained membership in the Association by any false or misleading statement; or, without limitation, conduct disruptive of the orderly operation of the Association in pursuit of its goals; violating one’s obligation of loyalty to the Association and its objectives; or willfully making false statements or misrepresentations about the Association or its representatives.” See:

NRA, “Bylaws,” 10/24/2020 (NRA-NYAGCOMMDIV-00102890–2949, at NRA-NYAGCOMMDIV-001022903.) (“Any individual or organization member may be disciplined, suspended, or expelled for good cause, including but not limited to, any conduct as a member that is contrary to or in violation of the Bylaws of the Association; for having obtained membership in the Association by any false or misleading statement; or, without limitation, conduct disruptive of the orderly operation of the Association in pursuit of its goals; violating one’s obligation of loyalty to the Association and its objectives; or willfully making false statements or misrepresentations about the Association or its representatives.”)

³⁰ NRA, “Bylaws,” 10/24/2020 (NRA-NYAGCOMMDIV-00102890–2949, at NRA-NYAGCOMMDIV-001022929–930). (“In the event a petition is ruled invalid by the Secretary, he shall immediately notify the sponsor of the petition and the person whose removal is sought, stating the reasons for such ruling. The sponsor may appeal this ruling to the Committee on Hearings, by a written notice that must be received by the Secretary within 21 days of the Secretary’s ruling. The Committee on Hearings shall meet within 10 days to hear such an appeal. The party not prevailing in the appeal to the Committee on Hearings may appeal within 10 days of the ruling by the Committee on Hearings, to the Executive Committee, which shall hold a conference telephone meeting within 10 days to act on the appeal, and the decision of that body shall be final. (d) In the event that the petition is ruled valid by the Secretary, the person whose removal is sought, and the sponsor of the petition, shall be notified immediately. The person whose removal is sought shall have the right, upon written request received by the Secretary within 10 days of the Secretary’s ruling, to inspect the petition, and to appeal the Secretary’s ruling, in writing, to the Committee on Hearings within 21 days of such ruling. The Committee on Hearings shall meet within 10 days to hear such an appeal. The party not prevailing in the appeal to the Committee on Hearings may appeal within 10 days of the ruling by the Committee on Hearings, to the Executive Committee, which shall hold a conference telephone meeting within 10 days to act on the appeal, and the decision of that body shall be final.”)

³¹ NRA, “Bylaws,” 10/24/2020 (NRA-NYAGCOMMDIV-00102890–2949, at NRA-NYAGCOMMDIV-001022930). (“At the time the Secretary mails out printed ballots to each member of record entitled to vote for the election of Directors, as provided in Article VIII, Section 2(e), he shall also enclose the printed recall ballot containing the name and office for each such person whose removal was the subject of a valid petition, together with a copy of the recommendation of the Hearing Board, including the minority view if the recommendation is not unanimous.”)

³² NRA, “Bylaws,” 10/24/2020 (NRA-NYAGCOMMDIV-00102890–2949, at NRA-NYAGCOMMDIV-001022931). (“If a majority of votes cast on the recall ballot by members of record entitled to vote shall call for the removal of an officer or Director, the removal shall be effective immediately upon certification of the results of a mail ballot recall procedure by the Committee on Elections.”)

- (32) The roles and responsibilities of Directors, Officers, and Members established by the NRA's Bylaws create conditions favorable to internal oversight. As described above, the NRA Bylaws bestow on each group powers to review and ensure those entrusted with authority act in the interest of the NRA and in accordance with its mission. Thus, the checks and balances established by the Bylaws create an environment of strong internal governance.

6. Evaluation of Tenenbaum Report

6.1. Overview of Tenenbaum Report

(33) Mr. Tenenbaum was “asked to provide . . . expert opinion on the fiduciary duties of and the standards of conduct generally applicable to nonprofit and their officers, directors and trustees, and in particular whether Wayne LaPierre, Wilson Phillips, John Frazer, and Joshua Powell (collectively, the ‘Individual Defendants,’ and with the NRA, the ‘Defendants’) acted consistently with their fiduciary duties and the standards of care generally applicable to officers and trustees, and whether Defendants administered the NRA’s charitable assets consistent with applicable standards.”³³

(34) In summary, Mr. Tenenbaum reached the following opinions:³⁴

- “1. Defendants did not act in a way consistent with the applicable standards of care with respect to conflicts of interest and related party transactions. The divided loyalty and failure of oversight resulted in waste, spending by NRA officers, directors, employees and others for their own personal benefit and the benefit of insiders, and in the override of NRA policies and procedures that were supposed to prevent waste, fraud, and improper private inurement and benefit.
2. Defendants did not act in a way consistent with the applicable standards of care with respect to addressing whistleblower complaints. As a result, concerns raised by NRA directors and employees regarding financial irregularities were not timely or adequately addressed leading to unnecessary waste, excess spending, and the diversion of funds away from the mission of the NRA. Certain whistleblowers also faced improper retaliation, which is not only illegal and a violation of NRA policy but perpetuates a culture of silence and fear.
3. Defendants did not act in a way consistent with the applicable standards of care to prevent the misuse of NRA funds. Funds donated by the public that were intended to benefit the mission of the NRA instead were diverted to Wayne LaPierre and favored insiders, vendors, friends, and family members for their own personal benefit.
4. The NRA did not meet the applicable standards for properly administering its charitable assets because it did not safeguard those assets against misuse and waste. The NRA’s purported course corrections do not adequately remediate its failures, leaving too many opportunities for Defendants to continue violating the law and the NRA’s internal policies and procedures resulting in the misuse of funds intended for nonprofit purposes.

³³ Tenenbaum Report, 9/16/2022, at 1.

³⁴ Tenenbaum Report, 9/16/2022, at 4–5.

5. The facts and circumstances implicated in the NRA's bankruptcy filing in 2021 demonstrated serious ongoing dysfunction at the NRA, as well as breaches of fiduciary duty by Defendants LaPierre and Frazer."

- (35) In an attempt to support these opinions, Mr. Tenenbaum addressed the NRA's historical vendor relationships. Specifically, Mr. Tenenbaum opined that the NRA violated its conflict-of-interest and related-party transaction policies, corporate ethics policy, and procurement policy.³⁵ In light of these claimed violations, Mr. Tenenbaum opined that the NRA historically failed to enforce the aforementioned policies.³⁶ Mr. Tenenbaum further claimed the NRA did not properly address whistleblower complaints.³⁷ Mr. Tenenbaum claimed that whistleblower complaints were not sufficiently investigated and those NRA stakeholders who submitted whistleblower complaints were subjected to retaliation.³⁸ Mr. Tenenbaum also discussed instances of alleged misused charitable assets.³⁹ Mr. Tenenbaum claimed the NRA did not properly oversee the use of charitable assets.⁴⁰
- (36) Mr. Tenenbaum also discussed the NRA's course corrections, claiming that the NRA's course corrections do not remediate its failures.⁴¹ As a result, Mr. Tenenbaum provided recommendations for what he characterizes as a "Responsible Course Correction."⁴² Mr. Tenenbaum recommended the NRA should: "Overhaul the Conflict of Interest Review Process[,] "Implement an Effective Compliance Program consistent with current US Sentencing Commission Guidance and Hire a Chief Compliance Officer[,] "Implement a 24/7 Employee 'Compliance Hotline[,] "Create an Internal Audit Function[,] "Rewrite the NRA's Policy Manual to Make It Easier to Understand and Apply[,] and "Require Regular Training."⁴³

³⁵ Tenenbaum Report, 9/16/2022, at 21–29.

³⁶ Tenenbaum Report, 9/16/2022, at 32–34.

³⁷ Tenenbaum Report, 9/16/2022, at 42.

³⁸ Tenenbaum Report, 9/16/2022, at 42.

³⁹ Tenenbaum Report, 9/16/2022, at 52.

⁴⁰ Tenenbaum Report, 9/16/2022, at 52.

⁴¹ Tenenbaum Report, 9/16/2022, at 57–59.

⁴² Tenenbaum Report, 9/16/2022, at 59–63.

⁴³ Tenenbaum Report, 9/16/2022, at 61–63.

Mr. Tenenbaum also briefly discusses the NRA's Chapter 11 filing.

6.2. Historical Transactions

- (37) Mr. Tenenbaum made several allegations regarding the NRA's historical transactions with its vendors. For example, Mr. Tenenbaum claimed that NRA executives used the credit cards of Ackerman McQueen ("Ackerman"), an NRA vendor, to evade internal controls.⁴⁴ Additionally, Mr. Tenenbaum claimed that the NRA failed to comply with standards of care and the NRA's policies relating to Mr. LaPierre's relationship with Mr. David McKenzie, the alleged owner of a collection of the NRA's vendors that Mr. Tenenbaum identified as the "MMP Entities."⁴⁵ As discussed in our Initial Report, the NRA has reviewed its past relationships with its vendors and has taken actions to address those relationships.⁴⁶ Below, we discuss the steps the NRA undertook to address vendor contracts with Ackerman, McKenna & Associates ("McKenna"), and MMP Entities.

6.2.1. Ackerman

- (38) Mr. LaPierre testified that, in the past, Ackerman took advantage of the NRA but, after strengthening the NRA's internal controls, "that could not happen today with the new controls that [the NRA] ha[s] in place[.]"⁴⁷
- (39) In 2018, the NRA mailed letters to over 200 of its vendors, including Ackerman, Allegiance Creative Group, Membership Marketing Partners, LLC, and McKenna.⁴⁸ Ackerman received two letters, both dated August 8, 2018, signed by Wilson Phillips.

⁴⁴ Tenenbaum Report, 9/16/2022, at 57.

⁴⁵ Tenenbaum Report, 9/16/2022, at 29.

Although Mr. Tenenbaum did not clearly define the term "MMP Entities," it appears that Mr. Tenenbaum used the term to refer to Membership Marketing Partners, Concord Social & Public Relations, and Allegiance Creative Group. See:

Tenenbaum Report, 9/16/2022, at 29.

⁴⁶ Initial Report, 9/16/2022, at 35–36.

⁴⁷ Wayne LaPierre, Dep. Tr., 6/27/2022, at 278:16–279:25: ("Q. Do you have an opinion on the practice? A. I think that there was -- what I believe now is there was -- they were taking advantage. I think there was abuse going on that could not happen today with the new controls that we have in place and I think it's one of the things that we discovered during the 360. I mean, Ackerman was one of our most trusted partners. We trusted them completely. And I think we found out during the review that we were misplaced, in terms of putting that trust there, and were taken advantage of. Q. When you say that 'they were taking advantage,' are you referring to Ackerman? Ackerman was taking advantage? A. Yes.")

⁴⁸ NRA, Email from Duane Reno to Rick Tedrick, 8/8/2018 (NRA-NYAG-00024875–889).

The NRA mailed letters to over 200 vendors, including the vendors discussed in this section, regarding the NRA's requirement for vendors to provide documentation to support invoiced amounts. See:

NRA, Email from Duane Reno to Lisa Supernaugh, 9/13/2018 (NRA-NYAGCOMMDIV-00601784–791, at NRA-NYAGCOMMDIV-00601787–791).

- a. One of those letters discusses Ackerman's service agreement, expressing the need for invoices to include supporting documentation, documentation of the NRA's approval of associated or fair-market analysis of any additional or special assignments, and a reminder to provide the NRA with cost estimates with respect to services such as video production, quantitative and qualitative research, broadcast design and production, and speechwriting.⁴⁹ The letter begins with the following sentence: "Beginning August 1, 2018, the NRA is strengthening its procedures for documentation and verification of compliance with vendor contracts[.]"⁵⁰ showing the NRA's commitment to strengthening its controls. The letter further states that "invoices for out-of-pocket, travel, or other expenses for which [Ackerman] seeks reimbursement pursuant to the Services Agreement must be accompanied by receipts or similar documentation, and such expenses must be approved in advance by the NRA[.]"⁵¹
- b. The other letter addressed to Ackerman is a notification that the NRA will conduct an examination of Ackerman's files, books, and records, pursuant to Ackerman's service agreement with the NRA.⁵²
- (40) Mr. Charles Cotton, NRA President and Audit Committee Chairman, testified that Ackerman did not provide the NRA with supporting documents.⁵³ Further, Mr. Cotton testified that, because Ackerman did not comply with the NRA's request to provide supporting documentation for its invoices, the NRA filed a lawsuit against Ackerman for books and records under Ackerman's contract with the NRA.⁵⁴ During the lawsuit, Mr. Cotton testified that Colonel North "was desperate to stop the investigation and the subsequent lawsuit for books and records against Ackerman McQueen. It later became obvious that [Colonel North] was doing that because he was hiding his employment relationship with Ackerman McQueen, where he was making \$2 million a year."⁵⁵

⁴⁹ NRA, Email from Duane Reno to Rick Tedrick, 8/8/2018 (NRA-NYAG-00024875-889, at NRA-NYAG-00014876-77).

⁵⁰ NRA, Email from Duane Reno to Rick Tedrick, 8/8/2018 (NRA-NYAG-00024875-889, at NRA-NYAG-00014876).

⁵¹ NRA, Email from Duane Reno to Rick Tedrick, 8/8/2018 (NRA-NYAG-00024875-889, at NRA-NYAG-00014876).

⁵² NRA, Email from Duane Reno to Rick Tedrick, 8/8/2018 (NRA-NYAG-00024875-889, at NRA-NYAG-00014886).

⁵³ Charles Cotton, Dep. Tr., 6/17/2022, at 68:10-22. ("Q. When you say 'complied,' what do you mean 'complied'? A. They wouldn't give us the -- the supporting documentation for their invoices and they wouldn't give it. They wouldn't give it to us. And so much so that we -- we, ultimately, had to file suit against them, not for damages. The first lawsuit against Ackerman was just for books and records under the contract. And they fought it like a tiger.")

⁵⁴ Charles Cotton, Dep. Tr., 6/17/2022, at 68:10-22. ("Q. When you say 'complied,' what do you mean 'complied'? A. They wouldn't give us the -- the supporting documentation for their invoices and they wouldn't give it. They wouldn't give it to us. And so much so that we -- we, ultimately, had to file suit against them, not for damages. The first lawsuit against Ackerman was just for books and records under the contract. And they fought it like a tiger.")

⁵⁵ Charles Cotton, Dep. Tr., 6/17/2022, at 309:5-21.

- (41) During the request for documentation from Ackerman, the NRA became familiar with Ackerman's out-of-pocket expense billing to the NRA.⁵⁶ The NRA found that its personnel would incur expenses that were billed to Ackerman, and Ackerman then passed those expenses to the NRA.⁵⁷ The NRA's compliance review exposed Ackerman's billing practices as being improper and addressed it so that the issue "could never happen again."⁵⁸ Indeed, as the NRA's letters to vendors requested, the NRA now requires vendors to provide documentation along with their invoices.
- (42) Since then, as part of its compliance review, the NRA has terminated its relationship with Ackerman.⁵⁹

6.2.2. McKenna

- (43) Mr. Tenenbaum also addressed the NRA's relationship with McKenna. In 2016, Mr. Powell was hired as the NRA's Chief of Staff who later became the Executive Director of General Operations.⁶⁰ In 2017, McKenna subcontracted Mr. Powell's wife, Ms. Colleen Gallagher, as a Senior Advisor.⁶¹ Mr. Powell testified that both Mr. LaPierre and Mr. Phillips were aware of

⁵⁶ Charles Cotton, Dep. Tr., 6/17/2022, at 457:20–458:2.

⁵⁷ Charles Cotton, Dep. Tr., 6/17/2022, at 458:24–459:6.

⁵⁸ Wayne LaPierre, Dep. Tr., 6/27/2022, at 280:2–20. ("Q. Are you aware that Tyler Schropp's -- are you aware that Tyler Schropp had an American Express card through Ackerman McQueen? A. I don't think I was aware of that. I knew that his -- some of his expenses were being passed through Ackerman McQueen or put under Ackerman McQueen for -- because they involved donors and high donors, and NRA trusted Ackerman for the security part of it. And that's why NRA did that arrangement. One of the things we learned during the 360 was that was improper. It should have never been done. It was a mistake for the organization to do it. And we have corrected it and nothing like that could ever happen again.")

Mr. LaPierre testified that he was aware that some of Mr. Schropp's expenses were billed to the NRA through Ackerman, but not that Mr. Schropp's Amex expenses on his Ackerman Amex were billed to the NRA as out-of-pocket expenses. See:

Wayne LaPierre, Dep. Tr., 6/27/2022, at 281:5–11. ("Q. Are you aware that Tyler Schropp's Amex expenses on his Ackerman card were billed to the NRA through the out-of-pocket invoices? A. No I wasn't. I wasn't aware that is where they were bucketed.")

⁵⁹ NRA, Letter from Andrew Arulanandam to David Schertler, 6/28/2019 (NRA-NYAG-00052304–05).

See also:

Wayne LaPierre, Dep. Tr., 6/27/2022, at 278:16–279:3: ("Q. After you had learned -- have you done anything personally to investigate what the out-of-pocket expense arrangement was? A. I really haven't. I mean we had -- as part of the 360-Compliance Review we did, we terminated the relationship with Ackerman.")

Michael Erstling, Dep. Tr., at 166:24–167:8: ("Q. The third category is 'Management Subordinating Its Judgement to Vendors.' What did that entail? A. Ackerman McQueen had a substantial amount of autonomy that they probably should not have had, and that has been resolved, too, because Ackerman McQueen is no longer a vendor of the NRA.")

⁶⁰ NRA, "Executive Profiles," 2018, at 11, available at: <https://www.nraam.org/media/2572/2018-nra-executiveprofiles.pdf>.

⁶¹ NRA, Audit Committee Report, 9/8/2018 (NRA-NYAG-00008035–041, at NRA-NYAG-00008039).

Mr. Powell's wife's position at McKenna.⁶² However, Mr. Tenenbaum states in his report that both Mr. LaPierre and Mr. Phillips denied knowing that Mr. Powell's wife was employed by McKenna.⁶³ Despite this, Mr. Tenenbaum claimed that Mr. LaPierre, Mr. Phillips, and Mr. Powell did not disclose potential conflict-of-interest and related-party transactions to the Audit Committee in a timely manner.⁶⁴ Moreover, Mr. Tenenbaum claimed that the NRA failed to appropriately address Mr. Powell's conflict of interest.⁶⁵

- (44) The September 2018 Audit Committee report describes the NRA's assessment of "material facts concerning the NRA's transactions with McKenna and any interest therein by Mr. Powell or Ms. Gallagher."⁶⁶ The Audit Committee report notes that the NRA has purchased consulting and fundraising services from McKenna since July 2016, before McKenna hired Ms. Gallagher.⁶⁷ The Audit Committee determined that the NRA's transactions with McKenna were "fair, reasonable, and in the best interest of the NRA at the time each transaction was undertaken."⁶⁸ Additionally, after its review of the facts, the Audit Committee determined that it is "fair, reasonable, and in the best interest" of the NRA to continue the NRA's business relationship with McKenna.⁶⁹
- (45) After approving previous transactions with McKenna and determining that the NRA may continue its relationship with the firm, the Audit Committee added the following terms to the NRA's agreement for transactions with McKenna between September 2018 and January 2019:⁷⁰
- a. Mr. Powell be "walled off" from any negotiation or determination regarding the scope or pricing of McKenna's services;
 - b. That the NRA solicit competitive bids for the services provided by McKenna, which ordinarily may be exempt from the NRA's competitive bidding requirement;

⁶² Joshua Powell, Dep. Tr., 6/9/2022, at 231:8–232:6.

⁶³ Tenenbaum Report, 9/16/2022, at 34.

⁶⁴ Tenenbaum Report, 9/16/2022, at 35.

⁶⁵ Tenenbaum Report, 9/16/2022, at 35.

⁶⁶ NRA, Audit Committee Report, 9/8/2018 (NRA-NYAG-00008035–041, at NRA-NYAG-00008039).

⁶⁷ NRA, Audit Committee Report, 9/8/2018 (NRA-NYAG-00008035–041, at NRA-NYAG-00008039–40).

⁶⁸ NRA, Audit Committee Report, 9/8/2018 (NRA-NYAG-00008035–041, at NRA-NYAG-00008039).

⁶⁹ NRA, Audit Committee Report, 9/8/2018 (NRA-NYAG-00008035–041, at NRA-NYAG-00008039).

⁷⁰ NRA, Audit Committee Report, 9/8/2018 (NRA-NYAG-00008035–041, at NRA-NYAG-00008040).

- c. To avoid any appearance of impropriety, the NRA limit its engagement of McKenna to services and projects for which there are no available, comparably suited, alternative providers; and
 - d. That the NRA's business relationship with McKenna be re-evaluated by the Audit Committee at its January 2019 meeting.
- (46) Mr. Tenenbaum claimed that the NRA did not consider potential alternatives to the services McKenna provided the NRA. However, as noted above, the Audit Committee decided that the NRA's business relationship with McKenna be re-evaluated by the Audit Committee in its January 2019 meeting.
- (47) In September 2018, the NRA also sent a letter to McKenna stating the NRA's commitment to strengthening its procedures for documentation and verification of compliance with accounting controls.⁷¹ In the letter, the NRA instructs McKenna to ensure that all invoices submitted to the NRA contain descriptive detail for the NRA to determine the specific activity for which compensation is sought and to provide relevant receipts or similar supporting documentation for incurred expenses.⁷²
- (48) In an Audit Committee report dated April 28, 2019, the Audit Committee reflected on the NRA's business relationship with McKenna since the meeting in September 2018. With regards to McKenna, the Audit Committee determined:⁷³
- a. Ms. Gallagher is a full-time employee at McKenna, but does not work on NRA projects;
 - b. Since the end of 2018, the NRA terminated all work by McKenna other than a contract for fundraising advisory and donor identification services;
 - c. The preexisting contract for fundraising advisory and donor identification services was renewed for 2019, with the inclusion of firm fundraising targets; and
 - d. The Office of Advancement will continue to oversee McKenna's work and Mr. Powell will have no role in such oversight.
- (49) Accordingly, the Audit Committee determined that McKenna's new contract is fair, reasonable, and in the best interest of the NRA.⁷⁴

⁷¹ NRA, Letter from NRA to McKenna, 9/12/2018 (NYAG-00292898-99).

⁷² NRA, Letter from NRA to McKenna, 9/12/2018 (NYAG-00292898-99).

⁷³ NRA, Audit Committee Report, 4/28/2019 (NRA-NYAGCOMMDIV-00058057-066, at NRA-NYAGCOMMDIV-00058065).

⁷⁴ NRA, Audit Committee Report, 4/28/2019 (NRA-NYAGCOMMDIV-00058057-066, at NRA-NYAGCOMMDIV-00058065).

- (50) By November 2019, the NRA determined terminated all contracts with McKenna.⁷⁵ In the termination letter to McKenna, the NRA noted there may be future opportunities to resume its business relationship with McKenna.⁷⁶ In addition, after an investigation found discrepancies in Mr. Powell's expense reporting, Mr. Powell was let go.⁷⁷

6.2.3. MMP Entities

- (51) Regarding the MMP Entities, Mr. Tenenbaum claimed that the NRA failed to ensure that its procedures were followed to fulfill its duty to administer what he refers to as its "charitable assets" properly.⁷⁸ For example, Mr. Tenenbaum identified the claimed verbal agreement between the MMP Entities and the NRA, along with the subsequent payments based on that agreement.⁷⁹ Further, Mr. Tenenbaum claimed that from 2014 to 2020, the NRA paid approximately \$48.5 million more than the fee agreed to under the written agreement between the NRA and the MMP Entities.⁸⁰
- (52) Although the NRA's financial personnel were initially unaware of the verbal agreement, the group investigated the agreement after noticing that the invoices from the MMP Entities were higher than the amounts in the contract.⁸¹ Accordingly, the NRA contacted the organizations and found that the NRA had a verbal agreement with the MMP Entities.⁸² After evaluating the

⁷⁵ NRA, Notice of Termination, 11/25/2019 (NRA-NYAGCOMMDIV-01077375).

⁷⁶ NRA, Notice of Termination, 11/25/2019 (NRA-NYAGCOMMDIV-01077375).

⁷⁷ Aronson, "Engagement Acceptance and Continuance Form," 6/10/2021, available at Greg Plotts, Dep. Tr., 3/22/2022, Exhibit 16 (Aronson_NRA0046027-048, at Aronson_NRA0046028).

⁷⁸ Tenenbaum Report, 9/16/2022, at 34.

⁷⁹ Tenenbaum Report, 9/16/2022, at 33.

⁸⁰ Tenenbaum Report, 9/16/2022, at 33.

⁸¹ Craig Spray, Dep. Tr., 1/14/2022, at 146:9-147:8 ("Q. Okay, during your tenure, the NRA was paying MMP and its affiliates fees above and beyond what was called for in their contract, correct? A. . . . We had concerns, we, the finance accounting group, that invoices were higher than what the signed contracts would indicate in file. And so, we, we contacted the organizations, and they put together reconciliation of what appeared to be verbal agreements between them and Woody, primarily, and possibly Wayne. I don't recall. And they sent us documentation that they had, in fact, delivered those goods or services. That reconciliation was done by somebody on my team. I believe it was Sonya. And we were able to tie that out. So while at it first when we looked at it, it appeared that we were overpaying, in retrospect, I believe we were paying the correct amount for the verbal agreements.")

⁸² Craig Spray, Dep. Tr., 1/14/2022, at 146:9-147:8 ("Q. Okay, during your tenure, the NRA was paying MMP and its affiliates fees above and beyond what was for in their contract, correct? A. . . . We had concerns, we, the finance accounting group, that invoices were higher than what the signed contracts would indicate in file. And so, we, we contacted the organizations, and they put together reconciliation of what appeared to be verbal agreements between them and Woody, primarily, and possibly Wayne. I don't recall. And they sent us documentation that they had, in fact, delivered those goods or services. That reconciliation was done by somebody on my team. I believe it was Sonya. And we were able to tie that out. So while

invoices and the verbal agreement, the NRA's financial personnel concluded that, while at first it seemed the NRA was overpaying, the NRA was paying the agreed-upon amount.⁸³ In addition, the MMP Entities sent Mr. Spray an email and documents explaining the services and management fees they provided the NRA.⁸⁴ Further, the NRA is aware that Ms. Rowling told RSM (the NRA's then-auditors at the time) about the NRA's verbal agreements with MMP Entities.⁸⁵

- (53) Additionally, Mr. Tenenbaum claimed that Mr. LaPierre failed to report his conflicts of interest and related-party transaction to the Audit Committee.⁸⁶ However, Mr. LaPierre, Mr. Frazer, and Ms. Rowling testified that Mr. LaPierre recused himself from participating in any negotiations regarding the MMP contract, as Mr. Tenenbaum notes.⁸⁷ Indeed, Mr. LaPierre testified that the Audit Committee, Treasurer's Office, and other groups within the NRA were aware that he decided to recuse himself from "being involved in any of the modernization of [the MMP Entities] contracts or in terms of the negotiations of these contracts."⁸⁸
- (54) Due to the information Mr. Spray received, the NRA decided to renegotiate its relationships with the MMP Entities.⁸⁹ In August 2022, the NRA renegotiated its contract with the MMP Entities to only include the services of a single entity.⁹⁰ The NRA Officers reviewed and signed

at it first when we looked at it, it appeared that we were overpaying, in retrospect, I believe we were paying the correct amount for the verbal agreements.")

⁸³ Craig Spray, Dep. Tr., 1/14/2022, at 146:9–147:8 ("Q. Okay, during your tenure, the NRA was paying MMP and its affiliates fees above and beyond what was called for in their contract, correct? A. . . . We had concerns, we, the finance accounting group, that invoices were higher than what the signed contracts would indicate in file. And so, we, we contacted the organizations, and they put together reconciliation of what appeared to be verbal agreements between them and Woody, primarily, and possibly Wayne. I don't recall. And they sent us documentation that they had, in fact, delivered those goods or services. That reconciliation was done by somebody on my team. I believe it was Sonya. And we were able to tie that out. So while at it first when we looked at it, it appeared that we were overpaying, in retrospect, I believe we were paying the correct amount for the verbal agreements.")

⁸⁴ NRA, Email from Murray Dreschler to Craig Spray, 6/14/2019 (NRA-NYAGCOMMDIV-00008642–48).

⁸⁵ John Frazer, Dep. Tr., 9/9/2022, at 922:3–9.

⁸⁶ Tenenbaum Report, 9/16/2022, at 34.

⁸⁷ Tenenbaum Report, 9/16/2022, at 34.

⁸⁸ Wayne LaPierre, Dep. Tr., 6/27/2022, at 92:18–93:2. ("Q. Did you have any conversations with Members or representatives of the Audit Committee regarding the decision to recuse yourself from MMP contract discussions? A. Yes. The Audit Committee was -- was aware of it, the SLC was aware of it, our Treasurer's Office was aware of it.")

⁸⁹ John Frazer, Dep. Tr., 9/9/2022, at 937:24–939:3.

⁹⁰ John Frazer, Dep. Tr., 9/9/2022, at 939:4–22. ("Q. Mr. Frazer, what I asked you was: Has there been a sign-off sheet by the -- completed by the Officers of the NRA in connection with the increases in the management fees paid to Membership Marketing Partners from 2011 until the present? A. . . . I am trying to address my previous answer was that -- since the ultimate conclusion was to start from scratch with a renegotiated contract of a single entity and that contract, at a reduced

off on the renegotiated contract.⁹¹ Mr. Tenenbaum pointed to the renegotiated contract's review sheet with Mr. LaPierre's signature, suggesting that Mr. LaPierre did not distance himself from the contract's negotiation.⁹² However, Mr. LaPierre's signature on a procedural step of the contract review process does not suggest that he took any role in the contract negotiation process with the MMP Entities; rather, the signature sheet states that Mr. Todd Grable, Executive Director of Membership and Affinity and Licensing,⁹³ negotiated the new contract with the MMP Entities.⁹⁴

- (55) Testimony and other information show that the NRA addressed its relationship with its vendors by requesting more documentation for invoices from its vendors, identifying discrepancies between agreements with its vendors and the amount they invoice the NRA, requiring vendors to support any fee increases with written justification and documentation, and Mr. LaPierre recusing himself from contract conversations to the extent his involvement would raise a potential conflict of interest.⁹⁵ The NRA has terminated its business relationship with Ackerman; the NRA no longer conducts business with McKenna and Mr. Powell's employment has been terminated; and the NRA renegotiated its contract with MMP. Therefore, given the NRA's actions towards its vendors, we conclude that Mr. Tenenbaum's opinions regarding historical transactions do not support NYAG's requested relief.

rate, did receive sign off by the Officers that -- that, essentially, the prior issue was overtaken by them. Q. And when did that new contract -- when was that new contract executed? A. August of this year.")

NRA, Service Agreement, 8/1/2022 (NRA-NYAGCOMMDIV-01538647-655).

⁹¹ John Frazer, Dep. Tr., 9/9/2022, at 939:4-22. ("Q. Mr. Frazer, what I asked you was: Has there been a sign-off sheet by the -- completed by the Officers of the NRA in connection with the increases in the management fees paid to Membership Marketing Partners from 2011 until the present? A. . . . I am trying to address my previous answer was that -- since the ultimate conclusion was to start from scratch with a renegotiated contract of a single entity and that contract, at a reduced rate, did receive sign off by the Officers that -- that, essentially, the prior issue was overtaken by them.")

⁹² Tenenbaum Report, 9/16/2022, at 33-34, fn. 127.

NRA, Contract Review Signature Sheet, 8/16/2022 (NRA-NYAGCOMMDIV-01538661-672, at NRA-NYAGCOMMDIV-01538661).

⁹³ Todd Grable, Dep. Tr., 4/26/2022, at 29:15-18.

⁹⁴ NRA, Contract Review Signature Sheet, 8/16/2022 (NRA-NYAGCOMMDIV-01538661-672, at NRA-NYAGCOMMDIV-01538661).

⁹⁵ See discussion on vendor letters above.

6.3. Tenenbaum's Recommended Actions

- (56) Upon review of the NRA's response to the NYAG's allegations, Mr. Tenenbaum opined that the NRA's course correction does not adequately remediate alleged past failures.⁹⁶ Mr. Tenenbaum discussed multiple instances where he opined the NRA's course correction program fell short of his standards.⁹⁷ Mr. Tenenbaum offered six additional recommended actions for what he terms a "[r]esponsible [c]ourse [c]orrection."⁹⁸ Below is our analysis of Mr. Tenenbaum's suggested course correction actions.

6.3.1. Conflict of Interest

- (57) Mr. Tenenbaum argued the NRA's conflict-of-interest policy is not correctly enforced.⁹⁹ To improve enforcement, Mr. Tenenbaum suggested the NRA "should decentralize its conflict of interest identification and review process by creating a committee . . . to review . . . transactions involving related parties or conflict of interest."¹⁰⁰
- (58) Contrary to the nature of Mr. Tenenbaum's assertions, NRA enforcement of its conflict-of-interest policy incorporates efforts from multiple individuals and divisions of the NRA. The process of enforcing the conflict-of-interest policy begins with the Office of General Counsel obtaining financial disclosure forms from NRA personnel.¹⁰¹ The conflicts of interest are then investigated by the Secretary's Office and/or the Financial Services Division.¹⁰² Upon compiling information relevant to potential conflicts of interest, the financial disclosure forms are presented to the Audit Committee (which consists of independent Board members).¹⁰³ The

⁹⁶ Tenenbaum Report, 9/16/2022, at 57. ("The NRA's Purported Course Corrections Do Not Adequately Remediate it Failures.")

⁹⁷ Tenenbaum Report, 9/16/2022, at 59–60.

⁹⁸ Tenenbaum Report, 9/16/2022, at 61.

⁹⁹ Tenenbaum Report, 9/16/2022, at 61.

¹⁰⁰ Tenenbaum Report, 9/16/2022, at 61–62. ("For an organization as large as the NRA with as many transactions involving conflicts of interest, the NRA should decentralize its conflict of interest identification and review process by creating a committee made up of different representatives from across the NRA to review and recommend to the board whether to clear, modify, or approve transactions involving related parties or conflicts of interest.")

¹⁰¹ Charles Cotton, Dep. Tr., 6/17/2022, at 170:9–172:15.

John Frazer works in the Office of General Counsel.

John Frazer, Dep. Tr., 7/12/2022, at 26:3–9.

¹⁰² Charles Cotton, Dep. Tr., 6/17/2022, at 170:9–172:15.

¹⁰³ Charles Cotton, Dep. Tr., 6/17/2022, at 170:9–172:15.

Audit Committee then reviews the disclosure and asks questions regarding any affected transactions.¹⁰⁴ If more information is necessary, the Audit Committee will request a meeting with the individual dealing with a potential related-party transaction.¹⁰⁵ After receiving relevant information about the potential transaction and potential conflict of interest, the Audit Committee then deliberates.¹⁰⁶

- (59) Likewise, Ms. Rowling testified that the NRA applies a “two-pronged” approach to verify all conflicts of interest are addressed.¹⁰⁷ First, the Financial Services Division creates a spreadsheet of historical information on conflicts of interest based on “their knowledge, past history, any Audit Committee meetings that might have referenced a new related party transaction.”¹⁰⁸ The spreadsheet then is sent to the Secretary’s Office.¹⁰⁹ The Secretary’s Office compares the list to the most recently received financial disclosure forms or questionnaires.¹¹⁰ If a conflict of interest is missing from the list, the Secretary’s Office will add the conflict of interest to the list.¹¹¹ Ultimately, the NRA also provides the list to the auditors.¹¹²
- (60) Aronson’s audit of the NRA’s conflict of interests verifies the enforcement of the NRA’s conflict-of-interest policy. As part of Aronson’s Engagement Acceptance and Continuance Form, Aronson conducted a series of special procedures to test the NYAG’s allegations of fraud.¹¹³ Among the special procedures, Aronson tested the NRA’s enforcement of the NRA conflict-of-interest policy.¹¹⁴ Aronson determined that “documentation was properly

¹⁰⁴ Charles Cotton, Dep. Tr., 6/17/2022, at 170:9–172:15.

¹⁰⁵ Charles Cotton, Dep. Tr., 6/17/2022, at 170:9–172:15.

¹⁰⁶ Charles Cotton, Dep. Tr., 6/17/2022, at 170:9–172:15.

¹⁰⁷ Sonya Rowling, Dep. Tr., 7/14/2022, at 219:7–220:10. (“Q. And sitting here today, Ms. Rowling, can you think of what other control improvements the NRA has put in place since the time that you put his list together in 2020? A. Sure. Our -- we have better controls around Mr. LaPierre’s expense reports. We have better controls around identifying and coming at related-party transactions from a two-pronged separation of duties aspect with Financial Services and the Secretary’s office. . .”)

¹⁰⁸ Sonya Rowling, Dep. Tr., 7/14/2022, at 220:15–221:19.

¹⁰⁹ Sonya Rowling, Dep. Tr., 7/14/2022, at 220:15–221:19.

¹¹⁰ Sonya Rowling, Dep. Tr., 7/14/2022, at 220:15–221:19.

¹¹¹ Sonya Rowling, Dep. Tr., 7/14/2022, at 220:15–221:19.

¹¹² Sonya Rowling, Dep. Tr., 7/14/2022, at 220:15–221:19.

¹¹³ Aronson, “Engagement Acceptance and Continuance Form,” 6/10/2021, available at Greg Plotts, Dep. Tr., 3/22/2022, Exhibit 16 (Aronson_NRA0046027–048, at Aronson_NRA0046034–035).

Greg Plotts, Dep. Tr., 3/22/2022, at 109:21–110:6.

¹¹⁴ Aronson, “Engagement Acceptance and Continuance Form,” 6/10/2021, available at Greg Plotts, Dep. Tr., 3/22/2022, Exhibit 16 (Aronson_NRA0046027–048, at Aronson_NRA0046034).

maintained and appear[ed] to be in compliance with NRA internal controls.”¹¹⁵ Further, “Aronson note[d] per discussions with John Frazer and Sonya Rowling that Conflict of Interest Disclosures are reviewed at Board Meetings.”¹¹⁶ Aronson concluded the NRA is able “to comply with independence, integrity, objectivity matters, conflicts of interest, or other ethical requirements[.]”¹¹⁷

- (61) Beginning in 2018, as part of the NRA’s course correction, the Audit Committee has improved its review of potential conflict-of-interest transactions.¹¹⁸ Since then, the Audit Committee has remained “dedicated to oversight[.]”¹¹⁹ In light of the NRA’s continued improvement, Mr. Tenenbaum’s recommendation for a decentralized committee responsible for reviewing conflicts of interest is not warranted.

6.3.2. Compliance Program and Compliance Officer

- (62) Mr. Tenenbaum claimed that in light of the allegations put forth by the NYAG, “the NRA should have hired a compliance officer no later than August 2020 to demonstrate its commitment to compliance in the face of the numerous allegations by the NYAG and others.”¹²⁰

- (63) As mentioned in our Initial Report:¹²¹

“The NRA has discussed implementing a Compliance Officer for multiple years. Currently, the NRA’s Bylaws restrict the NRA from establishing the Compliance Officer position without approval from its Members. To amend the Bylaws, the

¹¹⁵ Aronson, Special Procedure 210, 12/31/2020 (Aronson_NRA0047392–93, at Aronson_NRA004792).

We understand from counsel this document represents Aronson’s findings from Special Procedure 210.

¹¹⁶ Aronson, Special Procedure 210, 12/31/2020 (Aronson_NRA0047392–93, at Aronson_NRA004792).

¹¹⁷ Aronson, “Engagement Acceptance and Continuance Form,” 6/10/2021, available at Greg Plotts, Dep. Tr., 3/22/2022, Exhibit 16 (Aronson_NRA0046027–048, at Aronson_NRA0046042).

¹¹⁸ Charles Cotton, Dep. Tr., 6/17/2022, at 366:12–367:14.

NRA, “Minutes of the Meeting of the Board of Directors,” 9/8/2018, (NRA-NYAG-00007789–08090, at NRA-NYAG-00008035–041)

Mr. Cotton refers to the NRA’s course correction as a “Top-Down Review.”

Charles Cotton, Dep. Tr., 6/17/2022, at 26:24–28:12.

John Frazer, Dep. Tr., 7/29/2022, at 253:17–23.

¹¹⁹ Greg Plotts, Dep. Tr., 4/18/2022, at 366:17–23. (“Q. In your interaction with the audit committee, do you find them to be dedicated to effective oversight. A. I do find them to be dedicated to oversight, ask good questions during our audit committee meetings.”)

¹²⁰ Tenenbaum Report, 9/16/2022, at 62.

¹²¹ Initial Report, 9/16/2022, ¶ 101, fns. 223–227 (footnotes omitted).

NRA Members must approve the amendment to create the Compliance Officer position. Due to the amount of time and resources it takes to create the Compliance Officer position, and the fact that the Members only meet once a year, the Compliance Officer position has not been established yet. Until a Compliance Office can be formed and staffed, Sonya Rowling and John Frazer have overseen compliance for the NRA.”

- (64) Mr. Tenenbaum’s claim that the NRA should have hired a compliance officer by August 2020 lacks proper support.¹²² Mr. Tenenbaum provided no evidence that the NRA had the resources and time necessary to create a compliance officer position, which requires changing the NRA’s Bylaws by membership approval.¹²³ As such, Mr. Tenenbaum’s opinion is unsupported.

6.3.3. Compliance Hotline

- (65) Mr. Tenenbaum asserted that the NRA did not properly investigate whistleblower complaints, and hence should overhaul “the system through which whistleblower complaints and tips are received, as well as what happens after such complaints are received.”¹²⁴ Mr. Tenenbaum suggested creating a “Compliance Hotline.”¹²⁵
- (66) Contrary to Mr. Tenenbaum’s claims, the NRA does handle and investigate whistleblower complaints. As part of the NRA’s course correction, the NRA “addressed any potential Whistleblower violations or [whistleblower] issues as they arose.”¹²⁶ The NRA made sure that employees had access to the proper reporting channel to express whistleblower complaints.¹²⁷ Upon receiving an allegation of potential whistleblowing or whistleblower retaliation, the NRA

¹²² Tenenbaum Report, 9/16/2022, at 62.

¹²³ Tenenbaum Report, 9/16/2022, at 62.

¹²⁴ Tenenbaum Report, 9/16/2022, at 62. (“Given the severity of the whistleblower complaints, their dismissal without any investigation, and the subsequent allegations of retaliation, the NRA should have responded by overhauling the system through which whistleblower complaints and tips are received, as well as what happens after such complaints are received.”)

¹²⁵ Tenenbaum Report, 9/16/2022, at 62. (“Implement a 24/7 Employee ‘Compliance Hotline.’”)

¹²⁶ John Frazer, Dep. Tr., 7/29/2022, at 325:23–326:17. (“Q. Okay. As part of its compliance review process, did the NRA investigate violations of its Whistleblower Policy? . . . A. Again, it wasn’t -- it wasn’t a single -- and I hope I understood your previous question correctly, but as with conflicts of interest, it wasn’t a single comprehensive investigation about the Whistleblower Policy in general. We certainly addressed any potential Whistleblower Policy violations or whistle mother [sic] issues as they arose.”)

The compliance review process is another name for the NRA’s course correction policy.

John Frazer, Dep. Tr., 7/29/2022, at 253:17–25, 286:2–288:22.

Charles Cotton, Dep. Tr., 6/17/2022, at 26:24–28:12.

¹²⁷ John Frazer, Dep. Tr., 7/29/2022, at 326:15–327:21.

“would review it, talk to the individuals involved, review any documentation and appropriately counsel the . . . individuals in question.”¹²⁸

- (67) Aronson’s special procedures performed to determine whether to continue providing services for the NRA (as discussed in the Engagement Acceptance and Continuance Form) included a procedure to evaluate whether the NRA was handling its whistleblower complaints under course correction.¹²⁹ Special procedure 280 was an inquiry into how the NRA’s whistleblower complaints were addressed.¹³⁰ Of the whistleblower complaints reviewed, Aronson confirmed the NRA was addressing each whistleblower complaint.¹³¹

6.3.4. Internal Audit

- (68) Mr. Tenenbaum opined that a “reasonable course correction” should involve an evaluation of internal controls beyond external financial statement audits to assess and remediate compliance concerns.¹³² Mr. Tenenbaum suggested the best way to accomplish this is to hire internal auditors.¹³³
- (69) Our Initial Report provided a discussion of Aronson’s financial audit findings on the evaluation of the NRA’s internal controls:¹³⁴

“By way of the external audit, the auditors did consider the NRA’s internal controls. The auditors did not render an opinion on the NRA’s internal controls, but in conducting the audit, the auditors assessed and interacted with the NRA’s internal controls. As part of generally accepted accounting standards, the auditors ‘must study and evaluate the internal control so they

¹²⁸ John Frazer, Dep. Tr., 7/29/2022, at 326:15–327:21. (“Q. How did the NRA address any potential whistleblower violations as they arose? A. . . . And then, finally, by -- where there was an allegation of potential whistleblower, whistleblower retaliation, we would review it, talk to the individuals involved, review any documentation and appropriately counsel the - the individuals in question.”)

¹²⁹ Aronson, “Engagement Acceptance and Continuance Form,” 6/10/2021, available at Greg Plotts, Dep. Tr., 3/22/2022, Exhibit 16 (Aronson_NRA0046027–048, at Aronson_NRA0046035).

Aronson, Special Procedure 280, 12/31/2020 (Aronson_NRA0045715–16).

¹³⁰ Aronson, “Engagement Acceptance and Continuance Form,” 6/10/2021, available at Greg Plotts, Dep. Tr., 3/22/2022, Exhibit 16 (Aronson_NRA0046027–048, at Aronson_NRA0046035).

¹³¹ Aronson, Special Procedure 280, 12/31/2020 (Aronson_NRA0045715–16).

We understand from counsel this document represents Aronson’s findings from Special Procedure 210.

¹³² Tenenbaum Report, 9/16/2022, at 63. (“In a reasonable course correction, the board or the Audit Committee would have created an internal audit function at the NRA and hired internal auditors to assess whether additional compliance concerns exist; evaluate any compliance concerns; and remediate any deficiencies in a timely fashion.”)

¹³³ Tenenbaum Report, 9/16/2022, at 63.

¹³⁴ Initial Report, 9/16/2022, ¶ 75, fns. 160–163 (footnotes omitted).

can determine their level of reliance upon it when they are testing the transactions and arriving at their conclusion as to the fairness of the financial statements[.]’ The NRA’s auditors provided management letters to the NRA addressing various observations and recommendations regarding the NRA’s internal controls.”

- (70) Additionally, as mentioned previously, in conjunction with the financial audit, Aronson conducted a series of special procedures to test the NYAG’s allegations of fraud.¹³⁵ In order to test the existence of fraud alleged by the NYAG, Aronson interacted with the NRA’s internal controls.¹³⁶ The special procedures enabled Aronson to determine that the NRA placed a high priority on “best practice internal controls” and that the NRA “has taken major steps in the past 2 years to enhance internal controls[.]”¹³⁷ Furthermore, Aronson recognized that the NRA has “an appropriate internal quality control system in place[.]”¹³⁸
- (71) The combination of Aronson’s Engagement Acceptance and Continuance analysis, its decision to accept the NRA engagement, and its performance of the NRA’s financial audit indicates that Aronson understood and assessed the NRA’s internal controls. While the NRA did not perform a formal internal audit, Aronson’s analyses support the notion that the NRA’s internal controls were evaluated. Thus, the analyses suggest that the NRA does not need to conduct an internal audit as part of its course correction. Mr. Tenenbaum’s suggestion of hiring internal auditors is unwarranted, fails to consider the services provided by other professionals, and is not supported by a cost-benefit analysis.

6.3.5. Written Policies

- (72) Mr. Tenenbaum argued the NRA’s Policy Manual provides “little coherence between each recitation of policy making it incredibly difficult to discern which policies apply and when.”¹³⁹

¹³⁵ Aronson, “Engagement Acceptance and Continuance Form,” 6/10/2021, available at Greg Plotts, Dep. Tr., 3/22/2022, Exhibit 16 (Aronson_NRA0046027–048, at Aronson_NRA0046034–035).

Greg Plotts, Dep. Tr., 3/22/2022, at 109:21–110:6.

¹³⁶ Greg Plotts, Dep. Tr., 3/22/2022, at 109:21–110:6, 113:25–115:11.

¹³⁷ Aronson, “Engagement Acceptance and Continuance Form,” 6/10/2021, available at Greg Plotts, Dep. Tr., 3/22/2022, Exhibit 16 (Aronson_NRA0046027–048, at Aronson_NRA0046036). (“NRA’s management has taken major steps in the past 2 years to enhance internal controls, oversight of long-term contracts, and Division reporting structure (especially ILA). . . . We noted during our audit of 2019 that the implementation of best practice internal controls were done and high priority to the NRA, we also noted disciplinary actions were taken to those that circumvented controls.”)

¹³⁸ Aronson, “Engagement Acceptance and Continuance Form,” 6/10/2021, available at Greg Plotts, Dep. Tr., 3/22/2022, Exhibit 16 (Aronson_NRA0046027–048, at Aronson_NRA0046042).

¹³⁹ Tenenbaum Report, 9/16/2022, at 63.

As a solution, Mr. Tenenbaum suggested the NRA should rewrite the Policy Manual to make “it [e]asier to [u]nderstand and [a]pply.”¹⁴⁰

- (73) Mr. Tenenbaum has not provided any evidence that NRA employees find the Policy Manual difficult to understand and apply. Further, as a supplementary resource to the Policy Manual, the NRA provides its employees a copy of the Employee Handbook and makes it available to employees online, through the NRA’s intranet site.¹⁴¹ The NRA Employee Handbook provides an overview of the NRA’s policies and procedures, with each policy and procedure broken out into clearly defined subsections.¹⁴² The NRA requires employees to certify that they “understand that this Handbook describes certain benefits, policies, and procedures pertaining to NRA operations.”¹⁴³
- (74) The Employee Handbook makes the NRA’s policies more accessible to employees, helping facilitate greater knowledge and understanding of said policies and when those policies came into effect. Thus, Mr. Tenenbaum’s suggested remedy to rewrite the Policy Manual is unnecessary.

6.3.6. Compliance Training

- (75) Mr. Tenenbaum suggested the NRA “should require annual ethics and compliance training” for its members, officers, and staff.”¹⁴⁴
- (76) However, Mr. Tenenbaum’s suggestion is based on an incorrect premise. The NRA does conduct compliance training at least once a year.¹⁴⁵ Our Initial Report discusses the NRA’s compliance seminars:¹⁴⁶

¹⁴⁰ Tenenbaum Report, 9/16/2022, at 63. (“Rewrite the NRA’s Policy Manual to Make It Easier to Understand and Apply.”)

¹⁴¹ NRA, “Employee Handbook,” 1/1/2004 (NRA-NYAGCOMMDIV-01055732–5957, at NRA-NYAGCOMMDIV-01055740).
John Frazer, Dep. Tr., 7/12/2022, at 43:7–24.

¹⁴² NRA, “Employee Handbook,” 1/1/2004 (NRA-NYAGCOMMDIV-01055732–5957, at NRA-NYAGCOMMDIV-01055734–37).

¹⁴³ NRA, “Employee Handbook,” 1/1/2004 (NRA-NYAGCOMMDIV-01055732–5957, at NRA-NYAGCOMMDIV-01055740).

¹⁴⁴ Tenenbaum Report, 9/16/2022, at 63. (“The NRA’s board of directors should require all board members, officers, and staff – including all executives – to participate in annual ethics and compliance training.”)

¹⁴⁵ Indeed, the NRA recently held a compliance training seminar in September 2022. See:

NRA, “Upper Management Seminar – Compliance and Governance Refresher,” 9/2022 (NRA-NYAGCOMMDIV-01540023–049).

¹⁴⁶ Initial Report, 9/16/2022, ¶ 98, fns. 208–216 (footnotes omitted).

“The NRA held compliance seminars covering the NRA’s policies and procedures. The NRA offers compliance seminars periodically and held compliance seminars in at least 2018, 2019, 2021, and 2022. NRA employees ‘who have some type of contracting or spending authority within the [NRA] who would therefore have to deal routinely with kind of things like contract sign off requirements’ are expected to attend the compliance seminars. The NRA tracked compliance seminar attendance through sign-in sheets to enforce participation. During these seminars, the NRA would present a slide deck that was prepared jointly ‘by the Secretary’s Office, the General Counsel’s Office, and the Treasurer’s Office.’ The presentation educates the NRA’s employees on its:

- a. Policies and procedures (*e.g.* conflicts of interest and related-party transactions, spending and procurement, safeguarding of assets, travel, and communicating controls);
- b. Obligations to regulators;
- c. Principles underlying the NRA’s internal controls; and
- d. Key control activities the NRA has identified for its internal controls (*e.g.* create a control-conscious environment; segregate duties; obtain proper authorizations, approvals, and verifications; control and safeguard assets; and, monitor compliance).”

- (77) The NRA’s implementation of the compliance seminars coincided with its course correction.¹⁴⁷ Consistent with Mr. Tenenbaum’s suggestion, the NRA has made efforts to educate its employees on the importance of internal controls. Thus, the NRA’s course correction has been actively satisfying Mr. Tenenbaum’s suggested compliance training.

6.3.7. Conclusions

- (78) Mr. Tenenbaum’s claim that the NRA’s course correction is inadequate is used to buttress his overall theme that the NRA “did not act in a way consistent with the applicable standards of care[.]”¹⁴⁸ In response to the NRA’s purported lack of standard of care in regard to its course correction, Mr. Tenenbaum provided six suggestions to remediate allegations brought upon

¹⁴⁷ The NRA’s course correction started in spring 2017 and the NRA’s compliance seminars started in 2018 Charles Cotton, Dep. Tr., 6/17/2022, at 181:17–182:7.

NRA, “Upper Management Seminar – Compliance and Governance Refresher,” 7/26/2018 (NRA-NYAGCOMMDIV-00203706–756, at NRA-NYAGCOMMDIV-00203706).

¹⁴⁸ Tenenbaum Report, 9/16/2022, at 65. (“As this report outlines, the evidence [Mr. Tenenbaum] reviewed supports [his] conclusion that Defendants did not act in a way consistent with the applicable standards of care with respect to conflicts of interest and related party transactions and addressing whistleblower complaints.”)

by the NYAG.¹⁴⁹ However, Mr. Tenenbaum's suggestions fail to account for the NRA's course correction, as Mr. Tenenbaum does not take into consideration the improvements the NRA has implemented. The NRA's course correction has made, and continues to make, progress toward better internal controls in response to the NYAG's allegations, as recognized by Judge Hale during the NRA's Chapter 11 proceedings.¹⁵⁰ The NRA's actions have addressed, or are in the process of addressing, the allegations made by the NYAG. Thus, the recommendations provided by Mr. Tenenbaum are unwarranted.

¹⁴⁹ Tenenbaum Report, 9/16/2022, at 61–63.

¹⁵⁰ *In re: National Rifle Association of America and Sea Girt LLC*, No. 21-30085-HDH, Order Granting Motions to Dismiss (Bankr. N.D. Tex. May 11, 2021), available at Charles Cotton, Dep. Tr., 6/17/2022, Exhibit 7, at 35.

7. Evaluation of Hines Report

7.1. Overview of Hines Report

- (79) Mr. Hines was “engaged to conduct an analysis of the NRA, including Defendants’ adherence to policies, procedures, and internal controls; to perform quantitative analysis of financial transactions related to alleged acts of self-dealing and mismanagement by Defendants of NRA charitable funds; and to evaluate whether the facts and circumstances for specific areas within the scope of [Mr. Hines’] report include fraud risk indicators.”¹⁵¹
- (80) In summary, Mr. Hines reached the following “key thematic findings and opinions”¹⁵² related to the NRA’s control environment, vendor arrangements, and alleged fraud risk indicators:
- a. NRA’s control environment. Mr. Hines concluded that “that the NRA’s control environment has been ineffective, particularly with respect to processes and controls around expenditures, including purchasing, contract review and approval, and disclosures of conflicts of interest.”¹⁵³
 - b. Analysis of specific vendors, arrangements, and business practices.
 - i. Membership Marketing Partners and related entities (“MMP”). Mr. Hines concluded that “Formal approval processes required by NRA policy were not followed with respect to the MMP Entities’ contracts.”¹⁵⁴ Further, Mr. Hines concluded that “NRA employees . . . did not disclose all conflicts of interest related to receiving and personally benefiting from, common gifts and entertainment from the MMP Entities’ owner, including trips and use of luxury yachts in the Bahamas.”¹⁵⁵
 - ii. Ackerman. Mr. Hines concluded that “[t]he NRA paid Ackerman . . . under contracts that were not subject to the formal review and approval processes required by NRA policy.”¹⁵⁶ Further, Mr. Hines concluded that “the NRA also processed and paid . . . for expenditures incurred by Ackerman and NRA employees without review and verification that the goods and services comprising the associated invoices were received or appropriate, as required by NRA policies.”¹⁵⁷

¹⁵¹ Hines Report, 9/16/2022, ¶ 7.

¹⁵² Hines Report, 9/16/2022, ¶ 13.

¹⁵³ Hines Report, 9/16/2022, ¶ 14.

¹⁵⁴ Hines Report, 9/16/2022, ¶ 19.

¹⁵⁵ Hines Report, 9/16/2022, ¶ 19.

¹⁵⁶ Hines Report, 9/16/2022, ¶ 20.

¹⁵⁷ Hines Report, 9/16/2022, ¶ 21.

- iii. Under Wild Skies, Inc. (“UWS”). Mr. Hines concluded that “the NRA paid UWS without the benefit of a written contract or required review and approvals.”¹⁵⁸ Further, Mr. Hines concluded that “the NRA paid . . . [the] UWS president . . . without evidence of a written contract[,]” and that “NRA employees including the EVP, did not disclose conflicts of interest resulting from receiving, and personally benefiting from, gifts and entertainment from UWS, including all expenses paid international hunting trips.”¹⁵⁹
 - iv. Gayle Stanford (“Ms. Stanford”). Mr. Hines concluded that “Ms. Stanford . . . was paid . . . without a written contract (until 2019) or other review and approval process required by NRA policy.”¹⁶⁰ Additionally, Mr. Hines concluded that “the NRA also processed and paid out-of-pocket expenses submitted by Ms. Stanford (through her two companies) without review and verification that the goods and services in the invoices were received, as required by NRA policies.”¹⁶¹
 - v. Several NRA former employees and Board members. Mr. Hines concluded that former employees and Board members “were paid under contracts to provide ‘consulting’ or other services to the NRA without the arrangements being subject to review and approval processes required by policies, and, in the case of board members, required by NRA bylaws.”¹⁶²
 - vi. McKenna. Mr. Hines concluded that “the NRA compensated McKenna . . . without following review and approval processes required by the NRA policy.”¹⁶³ Additionally, Mr. Hines concluded that “the wife of Defendant, Mr. Powell, worked as a consultant for McKenna, including on NRA projects, but this conflict of interest was not subject to appropriate disclosure, review or approval processes in advance, as required by NRA policy.”¹⁶⁴
- c. Fraud risk indicators. Mr. Hines alleged “the presence of fraud risk indicators (or red flags) in each of the distinct areas [Mr. Hines] studied[,]”¹⁶⁵ such as transactions and billing arrangements, contracts, documentation, and disclosure of conflicts of interest.¹⁶⁶

¹⁵⁸ Hines Report, 9/16/2022, ¶ 22.

¹⁵⁹ Hines Report, 9/16/2022, ¶ 22.

¹⁶⁰ Hines Report, 9/16/2022, ¶ 23.

¹⁶¹ Hines Report, 9/16/2022, ¶ 23.

¹⁶² Hines Report, 9/16/2022, ¶ 24.

¹⁶³ Hines Report, 9/16/2022, ¶ 25.

¹⁶⁴ Hines Report, 9/16/2022, ¶ 25.

¹⁶⁵ Hines Report, 9/16/2022, ¶ 26.

¹⁶⁶ Hines Report, 9/16/2022, ¶ 26.

- (81) Mr. Hines analyzed the NRA's financial transactions against the backdrop of policies, procedures, and internal controls to determine circumstances, allegedly, "consistent with fraud risk indicators."¹⁶⁷
- (82) Mr. Hines alleged that "multiple conditions pertaining to NRA business activities . . . are consistent with fraud risk indicators."¹⁶⁸ Mr. Hines claimed that the "Form of Transactions Appears Overly Complex[.]" "Contracts Are Poorly Documented and Awarded Without Following Policies[.]" "Documentation is Missing, Inadequate, or Appears to be Altered[.]" and "Disclosures Regarding Potential Conflicts of Interest are Inadequate and Do Not Follow Policies[.]"¹⁶⁹

7.2. Hines Analysis

- (83) As discussed previously, Mr. Hines was engaged to conduct an analysis of the NRA's internal controls and performed quantitative analyses of the NRA's financial transactions to determine the existence of fraud risk indicators.¹⁷⁰ Mr. Hines' analysis of fraud risk indicators is predicated upon review of the NRA's relationships with the MMP Entities, Ackerman, UWS, Ms. Stanford, several NRA former employees and Board members, and McKenna.¹⁷¹ For each relationship, Mr. Hines detailed historical conduct he believed to be inconsistent with the NRA's internal policies.¹⁷² Based on Mr. Hines' observations, he concluded that the NRA exhibited "trends and weaknesses" in the NRA's internal controls and, as a result, claims to have "found the presence of fraud risk indicators[.]"¹⁷³

¹⁶⁷ Hines Report, 9/16/2022, ¶¶ 35–36. ("For the specific topics areas in the scope of [Mr. Hines'] report, [Mr. Hines'] analyses included procedures to evaluate NRA's adherence to policies, procedures, and internal controls, quantitatively analyze financial transactions at issue, including those involving the use of NRA charitable funds, and evaluate whether the facts and circumstances for relevant topic areas are consistent with fraud risk indicators commonly observed by forensic accounting professionals.")

¹⁶⁸ Hines Report, 9/16/2022, ¶ 490. ("Based on [Mr. Hines'] experience, education, and training as a forensic accountant, and comparison of the record evidence to reference materials commonly accepted in my profession, in [Mr. Hines'] opinion, multiple conditions pertaining to NRA business activities discussed in this report are consistent with fraud risk indicators.")

¹⁶⁹ Hines Report, 9/16/2022, 174–178. Capitalization adjusted from original.

¹⁷⁰ Hines Report, 9/16/2022, ¶ 7.

¹⁷¹ Hines Report, 9/16/2022, ¶¶ 18–25.

¹⁷² Hines Report, 9/16/2022, ¶¶ 103–493.

¹⁷³ Hines Report, 9/16/2022, ¶ 26. ("In addition to observing trends and weaknesses in the NRA's control environment, TATT, and operation of internal controls, [Mr. Hines'] analyses also found the presence of fraud risk indicators (or red flags) in each of the distinct areas [Mr. Hines] studied.")

- (84) The analysis of fraud risk indicators conducted by Mr. Hines focused on historical transactions and does not take into account the NRA's corrective actions nor the improvements to internal controls. Because the transactions presented by Mr. Hines occurred in the past and have either been corrected, or are in the process of being corrected, by the NRA, they have little or no relevance to the manner in which the NRA is operating today.¹⁷⁴ Mr. Hines fails to consider the corrective measures the NRA has taken, nor does he evaluate whether there are any current (2022) fraud risk indicators under the NRA's improved internal controls.
- (85) **Attachment E-1** provides a list of historical wrongful conduct presented by Mr. Hines and the some of the measures the NRA has taken to rectify those issues. Moreover, as discussed above, the NRA sent its vendors letters requesting additional information on expenditures and subsequently has terminated or renegotiated contracts with various vendors. See **Section 6.2**. The steps taken by the NRA to improve its policies render Mr. Hines' analysis of claimed fraud risk indicators irrelevant as to the NRA's current and future operations, governance, and compliance environment.¹⁷⁵
- (86) In addition to the evidence summarized in **Attachment E-1**, deposition testimony from key NRA personnel provides further evidence that Mr. Hines' opinions regarding the compliance environment and the "tone at the top" are flawed and do not reflect the current operations of the NRA.¹⁷⁶
- a. The NRA's Treasurer testified that for reimbursement requests Mr. LaPierre submitted in June 2019 covering expenses incurred from December 2017 to March 2018, the NRA reviewed the expenses, determined they did not comply with NRA policies, and hence did not pay Mr. LaPierre for those expenses.¹⁷⁷ Enforcement of such policies on reimbursement requests submitted by Mr. LaPierre shows that the policies apply to all at the NRA and hence contributes to a tone at the top that follows and enforces policies against all members.
 - b. Mr. Spray testified that Mr. LaPierre was "a big supporter" of the NRA's course correction efforts, stating that, "The vast, vast, vast majority of challenges that I [Mr. Spray] brought in he supported my recommendation, and we were able to implement."¹⁷⁸

¹⁷⁴ See **Attachment E-1**.

¹⁷⁵ See **Attachment E-1**.

¹⁷⁶ Hines Report, 9/16/2022, ¶¶ 14–17.

¹⁷⁷ Sonya Rowling, Dep. Tr., 7/14/2022, at 329:5–331:10.

¹⁷⁸ Craig Spray, Dep. Tr., 1/14/2022, at 247:8–248:9. ("Q. And what role, if any, did Mr. LaPierre play in the course correction?
A. Well, he hired the Brewer firm, which was the big driver of the course correction. And from my perspective on a more

- c. Professor Coy testified that multiple parties have been involved in the NRA's course correction efforts, including Mr. LaPierre and the Audit Committee, and that the course correction efforts covered a variety of efforts including reviewing vendor relationships, related-party transactions, and implementing compliance training and new Board member orientation.¹⁷⁹
- d. Mr. Cotton testified that "everybody" was involved in compliance efforts, further emphasizing the importance of the NRA's department heads, senior executives, and compliance training seminars to the NRA's compliance efforts.¹⁸⁰

(87) This deposition testimony and the evidence presented in **Attachment E-1** show that the NRA has made significant improvements to its compliance program, and those improvements have been supported by emphasis from NRA leadership (including the Board, Audit Committee, and senior executives) on the importance of compliance. In light of such evidence, Mr. Hines' claims regarding the historical "tone at the top" are of limited relevance to determining the current compliance environment of the NRA and the importance—or lack thereof—of the requested relief in this matter.

personal level, he was a big supporter. The vast, vast, vast majority of challenges that I brought in he supported my recommendation, and we were able to implement. And the cost -- we took it out of the cost structure, for example, could never have happened if he didn't support it. It just never would have happened. So I felt like [he] was very supportive from a course correction perspective.")

¹⁷⁹ David Coy, Dep. Tr., 6/15/2022, at 391:16–392:24. ("Q. Professor Coy, who at the NRA has been spearheading the course correction? A. That question, I think, as I reflect upon it, involves multiple parties. Mr. LaPierre authorized it. The Audit Committee became aware of it. We have tended to be the focal point of receiving information as to -- and as these matters come forward and are resolved. The evidence of that is in the minutes of the Audit Committee. The -- the multitude of things that we have dealt with, a lot of related party transactions have been reviewed by the Committee once we had the facts appropriate to them. Vendor relations have been scrutinized. All vendors have been put on -- received a letter from NRA explaining the current facts of life to them. We have had the compliance program put in place for management level employees and above. That compliance program is certainly supported by the Audit Committee. And we have a new Member -- Board Member orientation activity. I attended the one a year ago. It was very comprehensive, and I -- there was one that took place this past Monday that I unfortunately was not able to attend because I was here preparing for this deposition.")

¹⁸⁰ Charles Cotton, Dep. Tr., 6/17/2022, at 538:11–539:8. ("Q. Who, at the NRA, participates in compliance efforts? A. It's going to sound like a sales pitch but everybody. Well, I mean everybody. Well, everybody. I mean all of the -- all of the department heads, all of the senior execs are responsible for letting all of their people know what they have to do, in terms of disclosure requirements for related-party contracts, potential conflicts of interest, everybody is told, through our compliance seminars that we do, on a periodic basis, things like here's what it takes approve a contract, under \$50,000.00, here is what you have to do to approve a contract \$100,000.00 or more. You know the -- remember the front sheet discussion I was talking about? All of that is covered in our compliance seminars that are -- that are -- that given to people.")

8. Evaluation of Harris Report

8.1. Overview of Harris Report

- (88) Dr. Harris was retained to provide assessments regarding “how the National Rifle Association of America (‘NRA’) compares to other US nonprofit charitable organizations in reporting of excess benefit transactions with disqualified persons” and “how the NRA compares to other US nonprofit charitable organizations in reporting of significant diversions of assets.”¹⁸¹
- (89) Dr. Harris reached the following summary opinions:¹⁸²
- “2. [Dr. Harris] analyzed the Form 990 filings of 285,354 public charities over an 11-year time period (from 2010-2020) providing for over 1.6 million organization-years and determined that, according to Form 990 disclosures, 99% of nonprofits have avoided private inurement in the form of excess benefit transactions and significant diversions of their assets.
 3. The NRA has reported private inurement on Form 990s filed with the IRS in 2 of the years under review: 2019 and 2020. In 2019 the NRA reported both a significant diversion of assets as well as nine (or potentially more) excess benefit transactions. In 2020, the NRA reported four (or potentially more) excess benefit transactions.
 4. The NRA has violated IRS requirements for tax exempt organizations insofar as it has reported that private inurement took place in the organization. It is [Dr. Harris]’ opinion that the NRA is in a very small group of public charities filing electronic Form 990 returns that reported private inurement transactions between 2010-2020.”

8.2. Requested Relief

- (90) Dr. Harris’ analysis of NRA disclosures is based on responses from Form 990 filings in 2019 and 2020.¹⁸³ Specifically, Dr. Harris identified (a) excess benefit transactions and diversion of assets disclosed in the NRA’s 2019 Form 990 and (b) excess benefit transactions disclosed in

¹⁸¹ Harris Report, 9/16/2022, at 4.

¹⁸² Harris Report, 9/16/2022, at 7.

¹⁸³ Harris Report, 9/16/2022, at 7. (“The NRA has reported private inurement on Form 990s filed with the IRS in 2 of the years under review: 2019 and 2020. In 2019 the NRA reported both a significant diversion of assets as well as nine (or potentially more) excess benefit transactions. In 2020, the NRA reported four (or potentially more) excess benefit transactions.”)

the NRA's 2020 Form 990.¹⁸⁴ However, these disclosures (and the underlying transactions) do not support NYAG's requested relief in this matter because the NRA has been transparent in disclosing these transactions, the NRA has taken steps to correct the disclosed transactions, and the NRA has been engaged in updating its policies to limit potential future transactions that could be characterized as excess benefit transactions or diversion of assets.

- (91) BoardSource, a recognized leader in nonprofit research,¹⁸⁵ characterizes transparency as, "Part of the board's fiduciary responsibilities," and advises that a nonprofit organization "should make information about its operations, including its governance, finances, programs, and activities, widely available to the public."¹⁸⁶ The NRA's disclosures in 2019 and 2020 of excess benefit transactions and diversion of assets transactions exemplifies the NRA's commitment to provide transparency to the public regarding relevant events.
- (92) The transactions disclosed by the NRA have been corrected or are in the process of being corrected. As discussed in our Initial Report and as can be seen from the Harris Report, many transactions that were disclosed by the NRA have been repaid with interest.¹⁸⁷ These include

¹⁸⁴ Harris Report, 9/16/2022, at 7. ("The NRA has reported private inurement on Form 990s filed with the IRS in 2 of the years under review: 2019 and 2020. In 2019 the NRA reported both a significant diversion of assets as well as nine (or potentially more) excess benefit transactions. In 2020, the NRA reported four (or potentially more) excess benefit transactions.")

¹⁸⁵ BoardSource Website, About BoardSource, <https://boardsource.org/about-boardsource/> (accessed 10/3/2022).

¹⁸⁶ Ingram, Richard T. (2015), *Ten Basic Responsibilities of Nonprofit Boards*, 3rd ed., Washington, DC: BoardSource, at 74.

¹⁸⁷ Initial Report, 9/16/2022, at 32–35.

Harris Report, 9/16/2022, at 12–13, 15–16.

repayments from the LaPierre family,¹⁸⁸ Mr. Frazer,¹⁸⁹ and the unnamed staff employee associated with the diversion of assets disclosure.¹⁹⁰ For then-uncorrected transactions, the NRA disclosed in 2019 that it was continuing to investigate or seeking to recover various remaining transactions.¹⁹¹ These actions are representative of the NRA's efforts to identify, correct, and disclose excess benefit transactions. Further, in 2020, the NRA disclosed that "after further review of NRA records, it appears that Mr. Debergalis had, in fact, received the appropriate approval . . . Therefore, no excess benefit transactions occurred with respect to Mr. Debergalis."¹⁹² Moreover, as discussed throughout our Initial Report, the NRA has

¹⁸⁸ NRA, Form 990 (Amended return), 2019 (NRA-NYAGCOMMDIV-01533881-3981, at NRA-NYAGCOMMDIV-01533967). ("FROM 2015 THROUGH 2019, THE NRA ESTIMATES THAT IT PAID ON BEHALF OF MR. LAPIERRE, DIRECTLY OR INDIRECTLY, TRAVEL EXPENSES FOR MR. LAPIERRE IN THE AGGREGATE AMOUNT OF \$299,778.78. THE NRA HAS DETERMINED TO TREAT THE PAYMENTS AS AUTOMATIC EXCESS BENEFITS UNDER TREASURY REGULATIONS SECTION 53.4958-4(C). MR. LAPIERRE HAS REPAID THIS EXCESS BENEFIT TO NATIONAL RIFLE ASSOCIATION, PLUS INTEREST, AND THEREFORE THE EXCESS BENEFIT HAS BEEN CORRECTED.")

NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534190). ("THE NRA IS INVESTIGATING THE CIRCUMSTANCES, NUMBER OF TIMES AND COST OF PROFESSIONAL MAKEUP AND HAIR SERVICES FOR MRS. LAPIERRE. THE NRA EXPECTS TO RECEIVE REIMBURSEMENT FROM MR. LAPIERRE, PLUS INTEREST, IF IT IS DETERMINED THAT THERE IS AN EXCESS BENEFIT.")

Wayne LaPierre, Dep. Tr., 6/28/2022, at 350:11-25 ("Q. Have you paid the NRA any money in reimbursing for the expenses for professional makeup and hair services? A. Yes. Q. When did you pay the NRA reimbursement for that? A. When NRA -- when NRA came to me with the second set of what they had calculated as 'excess benefits,' and that was included in there. Q. When was that? A. Well, it would have been in the -- the year after -- after the 2019 990. It would be for the -- within the year of the 2020 990 (indicating), I believe."); 353:16-354:6 ("Q. Further on, it states: 'The NRA is investigating the circumstances, number of times and the costs of professional makeup and hair services for Ms. LaPierre. The NRA expects to receive reimbursement from Mr. LaPierre plus interest if it is determined that there is an excess benefit.' Did the NRA determine there was an excess benefit? A. I believe they did and I am quite certain that I have cut a check to the NRA and paid it back.").

¹⁸⁹ NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534191). ("MR. FRAZER HAS REPAID THIS EXCESS BENEFIT TO NRA, PLUS INTEREST AND THEREFORE THE EXCESS BENEFIT HAS BEEN CORRECTED. THE NRA EXPECTS TO RECEIVE REIMBURSEMENT FROM MR. LAPIERRE, PLUS INTEREST. THE NRA IS CURRENTLY UNAWARE AS TO WHETHER MR. PHILLIPS INTENDS TO REPAY THE AMOUNT OF ANY EXCESS BENEFIT TRANSACTIONS, PLUS INTEREST.")

¹⁹⁰ NRA, Form 990 (Amended return), 2019 (NRA-NYAGCOMMDIV-01533881-3981, at NRA-NYAGCOMMDIV-01533971). ("THE NATIONAL RIFLE ASSOCIATION BECAME AWARE DURING 2019 OF A SIGNIFICANT DIVERSION OF ITS ASSETS DURING 2019 AND FOR PRIOR CALENDAR YEARS. SEE SCHEDULE L, PART V FOR AN EXPLANATION. IN ADDITION, A STAFF EMPLOYEE (WHO WAS NOT A DISQUALIFIED PERSON, MANAGER, KEY EMPLOYEE OR HIGHLY COMPENSATED EMPLOYEE) DIVERTED \$41,820.37 FROM THE NRA BUT HAS FULLY REPAID THE ORGANIZATION, INCLUDING INTEREST, FOR A TOTAL OF \$56,241.35.")

¹⁹¹ NRA, Form 990 (Amended return), 2019 (NRA-NYAGCOMMDIV-01533881-3981, at NRA-NYAGCOMMDIV-01533966-67).

¹⁹² NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534191). ("ON SCHEDULE L OF ITS 2019 FORM 990, THE NRA REPORTED THAT MR. DEBERGALIS, A FORMER NRA DIRECTOR WHO HAS BEEN AN NRA EMPLOYEE AND, LATER, OFFICER FROM JANUARY 25, 2017 TO THE PRESENT, MAY HAVE USED BUSINESS CLASS TRAVEL PAID FOR BY THE NRA WITHOUT AUTHORIZATION, WHICH MAY HAVE CONSTITUTED EXCESS BENEFIT TRANSACTIONS. AFTER FURTHER REVIEW OF NRA RECORDS, IT APPEARS THAT MR. DEBERGALIS HAD, IN FACT, RECEIVED THE APPROPRIATE APPROVAL IN SEPTEMBER 2018 TO TRAVEL BUSINESS CLASS FOR MEDICAL REASONS. FROM 2017 THROUGH SEPTEMBER 2018, MR. DEBERGALIS COMPLETED TEN (10) ONE-WAY BUSINESS CLASS TRIPS THAT HE CHARGED TO THE NRA. ALL BUT ONE OF THOSE TRIPS WERE CONSIDERED COMMUTING, WERE TAXED AS COMPENSATION TO MR. DEBERGALIS THROUGH THE NRA PAYROLL, AND THUS WERE NOT EXCESS BENEFIT

updated its policies and procedures and has implemented training regarding such transactions, reducing the chances of improper transactions in the future.¹⁹³

8.3. Harris Analysis

- (93) Dr. Harris opined that “the NRA is in a very small group of public charities filing electronic Form 990 returns that reported private inurement transactions between 2010–2020.”¹⁹⁴ However, the analyses performed by Dr. Harris rely on organizations to identify and disclose such transactions themselves in a context where self-disclosures of such transactions may be viewed negatively (*e.g.*, as evidence of violation of IRS policies).¹⁹⁵ If Dr. Harris is correct regarding the negative view of self-disclosure, then there is an incentive for organizations to not disclose immaterial transactions. As a result, it is reasonable to infer that organizations have underreported such transactions, rendering Dr. Harris’ analysis irrelevant to this matter.
- (94) Prior to disclosing improper transactions on Form 990s, either in the year in which they occurred or in subsequent years, the organization must first identify transactions that represent excess benefit transactions or diversions of assets. Organizations that do not detect such transactions, even when they are occurring, would not disclose any such transactions. Hence, Dr. Harris’ analysis would not identify such occurrences. The spotlight the NRA operates and has operated under, given the scrutiny it faces due to its political nature,¹⁹⁶ adds increased pressure to identify and disclose such transactions that many other nonprofits do

TRANSACTIONS. THE OTHER TRIP WAS FOR BUSINESS AND WAS NOT CONSIDERED TAXABLE COMPENSATION. ALL OTHER NRA BUSINESS TRIPS UPGRADED TO BUSINESS CLASS BY MR. DEBERGALIS WERE PAID FOR BY MR. DEBERGALIS PERSONALLY AND NO REIMBURSEMENT WAS SOUGHT. THEREFORE, NO EXCESS BENEFIT TRANSACTIONS OCCURRED WITH RESPECT TO MR. DEBERGALIS.”)

¹⁹³ Initial Report, 9/16/2022, at 44–56.

¹⁹⁴ Harris Report, 9/16/2022, at 7. (“It is [Dr. Harris]’ opinion that the NRA is in a very small group of public charities filing electronic Form 990 returns that reported private inurement transactions between 2010–2020.”)

¹⁹⁵ Harris Report, 9/16/2022, at 24. (“All told, [Dr. Harris] believe[s] this analysis has demonstrated that very few US charitable organizations have reported private inurement in their organizations over the past 11 years and the fact that the NRA has reported numerous such transactions indicates their operations violated IRS requirements prohibiting private inurement and can be considered abnormal when compared to other 501(c)3 and 4 organizations.”)

¹⁹⁶ In addition to this matter and litigation initiated by the Attorney General of the District of Columbia, various organizations operate in opposition to the NRA, including by running websites such as “NRA Watch” that report (from an opposing political perspective) on the activities of the NRA.

Office of the Attorney General for the District of Columbia Press Release, “AG Racine Sues NRA Foundation for Diverting Charitable Funds to Support Wasteful Spending by NRA and Its Executives,” 8/6/2020, <https://oag.dc.gov/release/ag-racine-sues-nra-foundation-diverting-charitable>.

Everytown for Gun Safety Website, About, <https://www.everytown.org/about-everytown/> (accessed 10/1/2022).

NRA Watch Website, Home Page, <https://nrawatch.org/> (accessed 10/1/2022).

not face. The discrepancy between the treatment of the NRA and many other nonprofits calls into question the comparability of the nonprofits analyzed by Dr. Harris and further demonstrates that her analysis is not informative as to the appropriateness of the requested relief.

8.4. Harris Academic Research

- (95) Dr. Harris provided in Appendix B of her report one of her academic research papers that investigates how various organization governance and control policies (as disclosed on Form 990s) affect the probability that an organization filing a Form 990 reports an asset diversion.¹⁹⁷ In this paper, Dr. Harris and her co-authors used organizational responses to Form 990 questions to investigate whether attributes of an organization's governance structure, proxied by responses to Form 990 questions, increase or decrease the probability of an asset diversion.¹⁹⁸
- (96) Dr. Harris found that certain policies are associated with a lower probability of disclosing asset diversion, specifically identifying "four governance mechanisms that boards should consider."¹⁹⁹ According to Dr. Harris, disclosure of asset diversion is less likely for organizations that (1) undergo an external audit; (2) have the board review the Form 990; (3) have a (written) conflict of interest policy; and (4) maintain internal management and refrain from transferring managerial responsibilities to third parties.²⁰⁰ Dr. Harris found the results

¹⁹⁷ Harris, Erica, Christine Petrovits, and Michelle H. Yetman (2017), "Why Bad Things Happen to Good Organizations: The Link Between Governance and Asset Diversions in Public Charities," *Journal of Business Ethics*, produced as Harris Report, 9/16/22, Appendix B, at PDF 64.

¹⁹⁸ Harris, Erica, Christine Petrovits, and Michelle H. Yetman (2017), "Why Bad Things Happen to Good Organizations: The Link Between Governance and Asset Diversions in Public Charities," *Journal of Business Ethics*, produced as Harris Report, 9/16/22, Appendix B, at PDF 64. ("Specifically, for a sample of 1528 charities from 2008 to 2012, [Dr. Harris] simultaneously examine[s] eleven measures of governance that capture four broad governance constructs: board monitoring, independence of key individuals, tone at the top, and capital provider oversight. [Dr. Harris] find[s] consistent evidence that good governance across all four constructs is negatively associated with the probability of an asset diversion.")

¹⁹⁹ Harris, Erica, Christine Petrovits, and Michelle H. Yetman (2017), "Why Bad Things Happen to Good Organizations: The Link Between Governance and Asset Diversions in Public Charities," *Journal of Business Ethics*, available at Harris Report, 9/16/22, Appendix B, at PDF 79. ("Our results highlight four governance mechanisms that boards should consider.")

²⁰⁰ Harris, Erica, Christine Petrovits, and Michelle H. Yetman (2017), "Why Bad Things Happen to Good Organizations: The Link Between Governance and Asset Diversions in Public Charities," *Journal of Business Ethics*, produced as Harris Report, 9/16/22, Appendix B, at PDF 79. ("[Dr. Harris and her coauthors'] results highlight four governance mechanisms that boards should consider. First, [Dr. Harris] finds that using an external auditor is negatively associated with asset diversions. As Mead (2008) points out, charities have access to pro bono professionals, which can reduce the expense of an audit. Second, [Dr. Harris] also report[s] a negative association between having the board review the Form 990 and asset diversions. While the audit result may not be surprising, [Dr. Harris is] the first study to provide evidence consistent with the notion that having the board conduct a timely review of the charity's key financial report reduces the likelihood of fraud. This is not costly but does require diligent board members willing to take the time to read the Form 990. Third, [Dr. Harris] report[s]

for these attributes to consistently reduce the probability of asset diversion and to be statistically significant across all the statistical models they estimate.²⁰¹

- (97) Applying Dr. Harris' conclusions to the NRA's most recent Form 990 responses indicates that, along each dimension, for three of the four mechanisms identified by Dr. Harris, the NRA records answers that diminish its probability of reporting an asset diversion. See **Attachment F-1**.

- a. The NRA undergoes an external audit each year.²⁰²
- b. The NRA does not delegate any management functions to a third party.²⁰³
- c. The NRA has a written conflict-of-interest policy.²⁰⁴

- (98) For the remaining item, having board review of the Form 990 before filing, in 2020 the NRA stated that it did not have Board review prior to filing.²⁰⁵ However, Mr. Cotton testified that the NRA does have a practice of allowing the Board to review the Form 990 at the meeting before it is filed.²⁰⁶ Mr. Cotton testified that Board members were able to view the draft Form

that implementing a conflict of interest policy is associated with a lower probability of asset diversion. Clear conflict of interest policies that make employees and board members aware of potential problems with related-party transactions and require them to disclose all financial interests in the charity's transactions improves transparency and decision-making. Fourth, the tone at the top result suggests that there is a higher risk of an asset diversion when a third-party manager is hired. This finding supports Bradley (2015) who argues that empowering employees is vital to reducing the incidence of fraud. When managerial duties are outsourced, the board should take steps to ensure that third parties do not misuse charitable assets. For example, a charity may opt to use a third-party payroll service rather than have an employee process payroll. This does not mean that the charity's management should abdicate all responsibility for payroll; instead, they must regularly monitor the third party to ensure payroll taxes are submitted and their charitable assets are protected. This recommendation is particularly relevant for charities that operate overseas and use local third-party management because the greater distance increases the difficulty in establishing an appropriate code of conduct.")

²⁰¹ Harris, Erica, Christine Petrovits, and Michelle H. Yetman (2015), "Why Bad Things Happen to Good Organizations: The Link Between Governance and Asset Diversions in Public Charities," *Journal of Business Ethics*, produced as Harris Report, 9/16/22, Appendix B, at PDF 65. ("Overall, these results suggest that board monitoring, independence, tone at the top, and capital provider monitoring reflect distinct dimensions of corporate governance in reducing the likelihood of asset diversions.")

²⁰² NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534115).

See also:

Attachment B-1 (submitted as part of our Initial Report).

²⁰³ The NRA answered "No" to the Form 990 question, "Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors, trustees, or key employees to a management company or other person?" See: NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534109).

²⁰⁴ NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534109).

²⁰⁵ NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534109).

²⁰⁶ Charles Cotton, Dep. Tr., 6/17/2022, at 413:3-21. ("Q. Do Board Members all get the opportunity to review the 990? A. Yes, ma'am. Q. Does the NRA have a practice with regard to allowing Board Members to review the 990? A. Do we have

990 but not to take a copy of it due to confidentiality concerns.²⁰⁷ Hence, despite the Form 990 suggesting the NRA does not have Board review, the NRA's internal processes do include an opportunity for the Board to review the Form 990 before filing.²⁰⁸

- (99) According to Dr. Harris' own findings, the NRA's Form 990 responses indicate that the organization is adhering to governance standards that are associated with lower probability of asset diversion.

a practice of it -- yes, ma'am. Q. As to how you allow them to review the 990. A. Oh. At -- with the meeting we have before this is filed, and they are due, if I remember correctly, November each year, for the prior year. So that would be -- the Board Meeting immediately prior to that would be our -- that would be our fall meeting, typically September and sometimes it bumps into October. At that meeting, that is when we have a chance to review.")

²⁰⁷ Charles Cotton, Dep. Tr., 6/17/2022, at 413:19–418:3. ("Q. How are they actually given the opportunity to review them? A. They are told that we have the 990's available and who has them. Come look at them. . . . Q. So where would a Board Member who wants to review them at a typical annual meeting who wants review the 990's, where would they go? A. The room -- the room is set up for our meetings where all the Board Members have tables set up there, then kind of like the bar in court and then, behind that is the spectators' area and staff area, any non-Board Member. The Committee secretary or whoever has got them would be sitting there and that is where they go to review them. Q. Can a Board Member take a copy of the 990? A. No, ma'am. Q. Why not? A. Because they are confidential. . . .")

²⁰⁸ Additionally, the language for the Form 990 question regarding governing body review pre-filing has changed since 2008, the year used by Dr. Harris and her co-authors in their study. The 2008 question (Part VI, question 10) reads "Was a copy of the Form 990 provided to the organization's governing body before it was filed? All organizations must describe in Schedule O the process, if any, the organization uses to review the Form 990." The question to which the NRA answered "No" in 2020 (Part VI, question 11a) reads "Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?" (Question 11b requests disclosure of the process.) Given the change in language, combined with aforementioned testimony from NRA President Cotton, it is possible that technicalities in the new wording caused the NRA to respond "No" despite the existence of a Board review process.

Harris, Erica, Christine Petrovits, and Michelle H. Yetman (2017), "Why Bad Things Happen to Good Organizations: The Link Between Governance and Asset Diversions in Public Charities," *Journal of Business Ethics*, produced as Harris Report, 9/16/22, Appendix B, at PDF 80.

NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104–4211, at NRA-NYAGCOMMDIV-01534109).

IRS, Form 990 (blank), 2008, available at <https://www.irs.gov/pub/irs-prior/f990--2008.pdf>.

9. Analysis of Requested Relief

- (100) The NYAG is seeking the appointment of “an independent compliance monitor”²⁰⁹ and the appointment of “an independent governance expert to advise the Court on reforms necessary to the NRA’s governance to ensure the proper administration of charitable assets pursuant to EPTL § 8-1.4”²¹⁰ among other forms of relief. As we discussed in our Initial Report, the disciplines of economics, accounting, and finance provide insight as to the reasonableness of such remedies through the application of cost-benefit principles, whereby a decision-maker evaluating potential options compares the anticipated benefits of each option against the costs of the option (including opportunity cost).²¹¹
- (101) However, none of the expert reports submitted by Plaintiff’s experts evaluated the costs or benefits associated with these forms of requested relief. In fact, the NYAG’s expert reports fail to address even what benefit, if any, these remedies would provide the NRA, let alone evaluating the costs of such relief.
- a. As discussed throughout this report, each of the experts presents evidence from historical transactions and events to draw conclusions regarding the appropriateness of prior conduct and policies. See **Sections 6, 7, and 8**. Two of the expert reports, those authored by Mr. Hines and Dr. Harris, focus entirely on prior conduct and do not discuss either the changes made by the NRA since 2018 or the relief requested by Plaintiff. See **Sections 7 and 8**.
 - b. The remaining report, authored by Mr. Tenenbaum, includes a discussion of the NRA’s efforts to improve policies and concludes that “[w]ithout more action, there are too many opportunities for the Defendants to continue violating the law and the NRA’s internal policies and procedures, resulting in the same misuse of funds described above.”²¹² This conclusion is contrary to the course correction and improvements made by the NRA to its internal controls. The NRA has implemented, or is in the process of implementing, many of the “additional recommended actions” that Mr. Tenenbaum has suggested.²¹³ See **Section 6**. Thus, the improvements in internal controls, brought forth by the NRA’s course correction, mitigate the opportunities for any misuse of funds.
 - c. Accordingly, at best, the expert reports submitted on behalf of Plaintiff have presented a probabilistic argument (if any) on behalf of Plaintiff’s requested relief, in which Plaintiff’s

²⁰⁹ Second Amended Complaint, 5/2/2022, at 174–175.

²¹⁰ Second Amended Complaint, 5/2/2022, at 174–175.

²¹¹ Initial Report, 9/16/2022, ¶¶ 42–43, 45.

²¹² Tenenbaum Report, 9/16/2022, at 57–63, 65.

²¹³ Tenenbaum Report, 9/16/2022, at 61–63.

experts are suggesting that the NRA's past actions (prior to its efforts to improve its policies) demonstrate that the NRA is likely to engage in problematic conduct absent the requested relief. None of these reports performs a cost-benefit analysis even for the potential benefits of the requested relief.

(102) Plaintiff's experts have not performed a cost-benefit analysis for the requested relief. Even a high-level evaluation of costs and benefits demonstrates that the requested relief will impose significant costs and provide limited benefits, especially in terms of benefits to the NRA's ability to effectively pursue its mission. Examples of the significant costs that would be imposed by the imposition of a compliance monitor or a governance expert include the following:

- a. **Fees for Service.** Compliance monitoring and governance experts impose direct costs in the form of payment for services. The costs of employing a compliance monitorship are extensive.²¹⁴ The significant costs associated with a compliance monitorship are derived from the compliance monitor (typically a former prosecutor), as well as the support staff necessary to assist the compliance monitor with the right business-specific expertise required to make decisions that take into account the context of the nonprofit's operations and industry.²¹⁵ The expenses associated with a compliance monitorship can have "a significant impact on a company's bottom line."²¹⁶ Costs of a compliance monitorship can 'run well north of \$30 million to \$50 million over the course of three years[.]'²¹⁷ In fact, one company "under New York State enforcement authority . . . spent more than \$130 million on monitor-related costs."²¹⁸ The "prohibitively high price tags" of compliance monitorships 'can dissipate resources that ideally would be available to sustain long-term compliance programs.'²¹⁹

²¹⁴ Vinson & Elkins, "Monitoring Corporate Monitors: DOJ Publishes List of Compliance Monitors, Improving Transparency and Accountability in the Monitorship Program," 4/16/2020, <https://www.velaw.com/insights/monitoring-corporate-monitors-doj-publishes-list-of-compliance-monitors-improving-transparency-and-accountability-in-the-monitorship-program/>.

²¹⁵ Crowell & Moring LLP, "White Collar – Corporate Monitors: Peace, at What Cost?," 1/2018, <https://www.crowell.com/NewsEvents/Publications/Articles/White-Collar-Corporate-Monitors-Peace-at-What-Cost>.

²¹⁶ Crowell & Moring LLP, "White Collar – Corporate Monitors: Peace, at What Cost?," 1/2018, <https://www.crowell.com/NewsEvents/Publications/Articles/White-Collar-Corporate-Monitors-Peace-at-What-Cost>. ("The expenses associated with monitors have crept up to the point where they now can have a significant impact on a company's bottom line.")

²¹⁷ Crowell & Moring LLP, "White Collar – Corporate Monitors: Peace, at What Cost?," 1/2018, <https://www.crowell.com/NewsEvents/Publications/Articles/White-Collar-Corporate-Monitors-Peace-at-What-Cost>. ("It's becoming the new normal for the costs to run well north of \$30 million to \$50 million over the course of three years, . . .")

²¹⁸ Crowell & Moring LLP, "White Collar – Corporate Monitors: Peace, at What Cost?," 1/2018, <https://www.crowell.com/NewsEvents/Publications/Articles/White-Collar-Corporate-Monitors-Peace-at-What-Cost>. ("Under one recent agreement set up under New York State enforcement authority, a company spent more than \$130 million on monitor-related costs.")

²¹⁹ Crowell & Moring LLP, "White Collar – Corporate Monitors: Peace, at What Cost?," 1/2018, <https://www.crowell.com/NewsEvents/Publications/Articles/White-Collar-Corporate-Monitors-Peace-at-What-Cost>. ("In

b. **Additional Costs.** Plaintiff's requested relief also would introduce various additional costs beyond the costs to pay for oversight services, and these additional costs also have not been analyzed by the NYAG as part of a cost-benefit analysis.

i. **Added Compliance Costs.** Adding additional steps to organization workflows associated with a compliance monitor or as a result of a governance expert's recommendations would result in additional compliance costs associated with navigating the additional steps required to get things done.²²⁰

ii. **Misalignment of Mission.** The imposition of a compliance monitor or governance expert with the involvement of the NYAG raises concerns regarding alignment with the NRA's mission. NYAG has made statements indicating her personal opposition to the NRA and its mission.²²¹ Misalignment of missions between the NRA and external personnel with ties to the NYAG potentially could make it unnecessarily difficult for the NRA to operate in a way that advances its purpose. This issue also may exacerbate concerns with internal frictions arising from such external personnel.

iii. **Reduced Fundraising.** Further, concerns about the influence of NYAG over the operations of the NRA may affect the NRA's ability to raise funds to pursue its mission. Potential donors who support the NRA's mission likely oppose the views expressed by the NYAG, and such donors likely would prefer not to donate money to an organization under the control of (or under the influence of) the NYAG. The potential for reduced revenues is a cost associated with the requested relief that should be analyzed as part of the analysis of its reasonableness.

(103) According to the U.S. Department of Justice, the imposition of a compliance monitor should only be favored "where there is a demonstrated need for, and clear benefit to be derived from, a monitorship relative to the projected costs and burdens" imposed by a compliance monitor.²²² The benefits from such relief must be measured against the NRA's current policies and compliance environment, not the prior circumstances surrounding the actions and transactions discussed by Plaintiff's experts. As a result, the relevant question for determining

practice, however, monitorships don't always work as intended, frequently carrying prohibitively high price tags. . . . Such costs, . . . 'can dissipate resources that ideally would be available to sustain long-term compliance programs.'")

²²⁰ Accounting Tools, "Compliance Cost Definition," 5/24/2022, <https://www.accountingtools.com/articles/compliance-cost>. ("Compliance cost is the total cost incurred by a firm to comply with applicable regulations.")

²²¹ NRA, Upper Management Seminar – Compliance and Governance Refresher, 7/26/2018 (NRA-NYAGCOMMDIV-00203706–756, at NRA-NYAGCOMMDIV-00203710).

New York Daily News, "Letitia James Says She'd Investigate NRA's Not-For-Profit Status if Elected Attorney General," 7/12/2018, <https://www.nydailynews.com/news/politics/ny-pol-tish-james-nra-20180712-story.html>. ("James' campaign noted the attorney general can investigate both 501(c)(3)s, and argued lobbying against background checks and for concealed carry reciprocity laws does not seem to serve the purpose of promoting public safety.")

²²² US Department of Justice, Memorandum from Brian A. Benczkowski, Assistant Attorney General, 10/11/2018, at 2, available at: <https://www.justice.gov/opa/speech/file/1100531/download>.

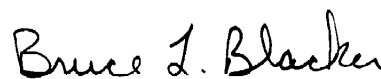
the benefits of the requested relief would be how much additional assurance against improper conduct the compliance monitor or governance expert would provide relative to the current status of the NRA, after its improvements of its policies and control practices. In light of this framework for evaluating benefits, and considering only benefits that are consistent with the NRA's mission, there would be limited benefits to the NRA, its Members, or to its donors. Thus, the NYAG's requested relief is unwarranted.

* * * * *



Ryan Sullivan, Ph.D.

October 7, 2022



Bruce L. Blacker, CPA, CFF

October 7, 2022



October 2022

Ryan Sullivan, Ph.D.*President*

Ryan Sullivan, Ph.D. is President of Intensity, LLC and provides expertise in economics, finance, and statistics. He applies his expertise to solve complex and challenging issues that organizations face in the competitive marketplace and the courtroom.

- **Litigation & Disputes.** Dr. Sullivan has wide-ranging experience with the economics of intellectual property and technology, technically demanding analyses of antitrust and competition, robust statistical modeling for labor and employment issues, and detailed quantitative analyses for securities and finance disputes.
- **Business Analytics.** Dr. Sullivan develops and implements state-of-the-art predictive models that provide reliable, evidence-based insights into business outcomes. These predictive models are implemented across a spectrum of business challenges, including price optimization, promotional programs, business strategy, forecasting, and investing.

Dr. Sullivan is a recognized top U.S. economic expert by Intellectual Asset Management in each year from 2014 to 2021. Dr. Sullivan was rated at the top gold-band level reserved for those professionals highest among their peers in the field. According to IAM, “Ryan Sullivan uses sophisticated economic models to solve the trickiest damages conundrums.” IAM further commented that the “outstanding academician is celebrated for his creative but rigorous, data driven approach and deep engagement with the questions at hand.”

Dr. Sullivan is often retained to provide expert testimony in high-stakes commercial litigation. He has provided expert testimony in more than a dozen cases that each had more than \$1 billion in controversy. Dr. Sullivan has testified at trial in more than 25 cases and provided expert reports and deposition testimony in more than 100 cases. Dr. Sullivan’s litigation-related work includes the following cases:

- *Juno Therapeutics v. Kite Pharma.* Dr. Sullivan worked on behalf of Juno Therapeutics and Sloan Kettering in patent litigation involving cancer immunotherapy. Juno, a subsidiary of Bristol-Myers Squibb, and Sloan Kettering claimed that Kite Pharma, a subsidiary of Gilead Sciences, infringed their patent. The technology at issue involved genetically engineering T-cells to fight cancer, which is known as CAR-T therapy. Economic issues included the contribution of the patented technology to Kite’s allegedly infringing product, availability of potential non-infringing alternatives, stage of development of licensed technology, competitive relationship between Juno and Kite, financial harms and benefits from use of the patented technology by Kite, and market analysis of related license agreements.

- *Lucent v. Microsoft*. Dr. Sullivan worked on behalf of Microsoft in patent litigation involving video coding technology. Lucent Technologies and Multimedia Patent Trust claimed that the Microsoft Windows operating system and Xbox 360 infringed their patent. Dr. Sullivan evaluated the contribution of the patented technology to Microsoft's products and the effects of licensing through patent pools. Economic issues included patent pools, cross licensing, FRAND rates, software cost structure, and reasonable royalties.
- *Abbott Cardiovascular v. Edwards Lifesciences*. Dr. Sullivan worked on behalf of Edwards Lifesciences in patent litigation involving devices used to treat mitral regurgitation, where the leaflets of the mitral valve do not close tightly and allow blood to backfill into the heart. Abbott claimed that Edwards' PASCAL device violated several of its patents and was harming sales of its competing MitraClip product. Abbott sought injunctive relief and economic damages. Economic issues included an examination of products in the structural heart device marketplace, market definition, competition, pricing dynamics, existing license agreements, and product substitution patterns at the customer level.
- *Ritz v. SanDisk*. Dr. Sullivan worked on behalf of plaintiffs in antitrust litigation involving NAND flash memory and related patent licensing. Dr. Sullivan's evaluation of price injury included analysis of licensing revenue, apportionment of licensing revenue to disputed patents, and implementation of an econometric model relating product pricing to competitor costs and other factors. Economic issues included market definition, market power, class definition, apportionment, and pass-through of costs.
- *T-Mobile v. Huawei*. Dr. Sullivan worked on behalf of T-Mobile in trade secret litigation involving Huawei's misappropriation of T-Mobile's robot testing system for mobile devices. Dr. Sullivan evaluated T-Mobile's actual losses and Huawei's unjust enrichment resulting from Huawei's misappropriation of trade secrets and breach of contract. Economic issues included the technology's contribution to profits, supply agreements, product sales, and product costs.

Dr. Sullivan served as an invited member of the Economics Leadership Council at the University of California, San Diego. In this role, he provided guidance to the Department of Economics faculty on the application of economic science in private industry.

Dr. Sullivan served as the Treasurer and an officer on the Board of Trustees for San Diego Zoo Global, now known as the San Diego Zoo Wildlife Alliance, which is an international, nonprofit conservation organization with two front doors: the San Diego Zoo and the San Diego Zoo Safari Park.

Dr. Sullivan earned his B.A., M.A., and Ph.D. in economics from the University of California, San Diego. While at UC San Diego, Dr. Sullivan used advanced statistical methods to evaluate the predictive ability of econometric models. He has published economic research in top-tier, peer-reviewed academic journals—including the *Journal of Finance*, the *Journal of Econometrics*, and the *International Journal of Forecasting*—as well as articles on the economics of intellectual assets.

Dr. Sullivan has provided professional economic services since 1992. He established Quant Economics, Inc. in 2006 and Intensity in 2014.

Education

Ph.D., Economics, University of California, San Diego

M.A., Economics, University of California, San Diego

B.A., Economics, University of California, San Diego

Employment

Intensity, LLC. President, 2014 to present.

Quant Economics, Inc. President, 2006 to 2014.

Bates White, LLC. Manager, 2001 to 2003. Principal, 2003 to 2006.

Econ One Research, Inc. Economist, 2000 to 2001.

Economic Analysis, LLC. Economist, 1998 to 2000.

INDETEC International, Inc. Economic Analyst, 1992 to 1998.

Professional Experience

Litigation & Disputes

- Dr. Sullivan has wide-ranging experience with the economics of intellectual property and technology across life sciences, consumer electronics, and other industries. In one example, he calculated the profits lost by a branded drug company as a result of an “at-risk” launch of generic versions of a blockbuster drug by generic drug suppliers, including reconstruction of the market but for the alleged infringement and detailed analysis of price effects. In another example, he calculated reasonable royalties in litigation involving video coding technology used in personal computers and gaming devices, including investigation of standard-essential patents, reasonable and non-discriminatory licensing practices, and the impact of patent licensing pools.
- Dr. Sullivan develops technically demanding analyses of antitrust and competition in the context of merger evaluation, antitrust claims, and related issues, such as alleged unfair competition and breach of contract. In one example, he examined allegations of tying, exclusive dealing, and other anticompetitive conduct in the aerospace equipment industry. His market power inquiry included defining the relevant market and directly determining competitive effects of the alleged conduct. In another example, Dr. Sullivan developed sophisticated statistical models of product sales to estimate economic damages. In addition

to measuring the effect of the alleged conduct, his models included a scientific test to assess the fact of damages.

- Dr. Sullivan applies robust statistical analyses to evaluate labor and employment issues. In one example, he evaluated a statistical sampling methodology for estimating the amount of time spent by managers performing non-exempt duties, which informed class certification. In another example, Dr. Sullivan evaluated the economic impact of an employee raid between two large insurance companies, using an econometric model that accurately separated the effects of the alleged conduct from unrelated factors, including the 2008 financial crisis.
- Dr. Sullivan implements detailed quantitative analyses for securities and finance disputes. In one example, he developed a probabilistic model of distressed equity and drivers of value, and advised on reliable trading strategies. In another example, he conducted detailed statistical analysis of stock options to test whether the pattern of observed option grants utilized unfair hindsight or sound foresight. In a third example, Dr. Sullivan implemented sophisticated event-study analyses and stock trading models to calculate economic damages to investors resulting from alleged accounting misstatements and other fraudulent claims.

Business Analytics

- Dr. Sullivan develops and implements state-of-the-art predictive models that provide reliable, evidence-based insights into business outcomes. These predictive models are implemented across a spectrum of business challenges, including price optimization, promotional programs, business strategy, and forecasting.
- Dr. Sullivan designs and develops price optimization programs that systematically improve business performance. In one example, he designed a price improvement program for a high-traffic online retailer that sells a diverse set of products that have widely varying consumer price sensitivity. His approach combined scientific testing that measures consumer response with adaptive pricing models that continuously update prices as market conditions change. In another example, Dr. Sullivan developed high-frequency price updating strategies that optimize a specialized statistic of business performance that includes revenue per order, profit per order, conversion rate, and repurchase rate.
- Dr. Sullivan designs and implements scientifically valid analyses that directly guide promotional activity and demonstrably improve customer engagement. For example, he performed analysis for pharmaceutical companies to determine which physicians should be visited, when they should be detailed, and how many samples should be provided at each visit. In another example, Dr. Sullivan designed a promotional testing and optimization program that combined individual customer attributes and dynamic market factors to deliver unique communications to each customer, including variation among types of discounts, featured products, and messaging.
- Dr. Sullivan applies real-world economic expertise to solve challenging problems facing sports franchises, player associations, and entertainment companies. In one example, he performed extensive economic analysis of digital video recorder technology, its effect on

consumer viewing behavior, and corresponding impacts on the value of live sports content. In another example, Dr. Sullivan investigated compensation mechanisms, player constraints, and strategic bargaining in the context of professional sports leagues, including a combination of economic theory and detailed data analysis to identify means of improvement for both players and teams.

- Dr. Sullivan employs predictive analytics that target a collection of performance metrics for determining reliable investments, including equity selection, trade timing, position size, duration of entry, and duration of exit. Select performance metrics include company revenue, company earnings, trade volume, and returns. Dr. Sullivan also incorporates state-of-the-art business cycle forecasts that quantify high-dimensional, time-varying relationships, as well as risk management techniques that limit downside movements.
- Dr. Sullivan implements methods that avoid data snooping, spurious correlations, look-ahead bias, and overfitting. Early in his career, Dr. Sullivan pioneered the application of advanced statistical methods that quantify data-snooping biases, which occur when a given set of data is used more than once for purposes of inference or model selection. When such data reuse occurs, there is a possibility that any seemingly positive model performance may simply be due to chance rather than any merits of the model. Through more than two decades of hands-on work in predictive modeling, Dr. Sullivan developed methodologies that effectively combine statistical techniques to reduce data-snooping biases and deliver reliable results.

Publications and Papers

Sullivan, Ryan, DeForest McDuff, and Justin Skinner: "Downgrade to 'Neutral': A Diminishing Role of the *Georgia-Pacific* Factors in Reasonable Royalty Analyses," (2015) *les Nouvelles* 50(3), 134-137.

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Sullivan, Ryan and DeForest McDuff: "AstraZeneca and Damages In 'At-Risk' Generic Drug Launches" (2015) *Law360*, April 28, 2015.

Schayes, Danny, Mickey Ferri, and Ryan Sullivan: "One and Done: A Data-Driven Analysis" (2014) *Intensity Corporation*.

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Sullivan, Ryan, Allan Timmermann, and Halbert White: "Forecast Evaluation with Shared Data Sets," (2003) *International Journal of Forecasting* 19(2), 217-227.

Sullivan, Ryan, Allan Timmermann, and Halbert White: "Dangers of Data-Mining: The Case of Calendar Effects in Stock Returns," (2001) *Journal of Econometrics* 105(1), 249-286.

Sullivan, Ryan, Allan Timmermann, and Halbert White: "Data-Snooping, Technical Trading Rule Performance, and the Bootstrap," (1999) *Journal of Finance* 54(5), 1647-1691.

Sullivan, Ryan, and Halbert White: "Finite Sample Properties of the Bootstrap Reality Check for Data-Snooping: A Monte Carlo Assessment," (1999) UCSD manuscript.

Sullivan, Ryan: "Instability and Prediction Error in Model Selection," (1996) UCSD manuscript.

Sullivan, Ryan: "A Neural Network Forecast of the S&P 500," (1995) UCSD manuscript.

Speaking Engagements

"Applied Economics and Business Analytics," Rady School of Management, University of California, San Diego, March 2020.

"Applied Economics and Business Analytics," ECONference, University of California, San Diego, April 2019.

"Feedback Loop of Licensing and Royalties," San Diego Intellectual Property Law Association, October 2018.

"A Brave New World of Patent Damages," San Diego Intellectual Property Law Association, April 2016.

Keynote address, "Perfecting the Science of Professional Success," 7th Annual Winter Business Leadership Conference, Rady School of Management, University of California, San Diego, January 2015.

"Application of Economic Science in Private Industry," MicroMBA, Rady School of Management, University of California, San Diego, June 2014.

"Asset Valuation for Patent Monetization: A review of valuation methods and transaction structures," Best Practices in Patent Monetization, San Francisco, California, March 2014.

Keynote address, "Perfecting the Science of Personal Achievement," Financial Horizons Conference, Rady School of Management, University of California, San Diego, March 2013.

"Reasonable Royalty Damages: A Return to the Roots," American Bar Association, February 2012.

"Patent Damages: Economic Perspectives on Lucent, ResQNet, and Uniloc," San Diego Intellectual Property Law Association, February 2011.

"Economics in Patent Litigation," University of San Diego, School of Law, February 2010.

"The Evolution of Patent Damages," Orange County Patent Law Association, November 2007.

"Economics of Intellectual Property," San Diego County Bar Association, Carmel Valley / UTC Section, March 2007.

Financial Horizons Conference, Undergraduate Investment Society, University of California, San Diego, March 2007.

“Allocating Risk in Intellectual Property Licensing Agreements,” CommNexus San Diego, November 2006.

“The Master Class on Licensing Agreements for the Financial Services Industry” and “Asserting Rights to Your Financial Services Innovation through Patent Litigation,” Optimizing Patents and IP in Financial Products & Services, New York, New York, June 2006.

Keynote address, “Economics in Intellectual Property,” California Bar Association, 30th Annual Intellectual Property Institute, Napa Valley, California, November 2005.

“Initial Analysis and Planning: Choosing the Expert and Getting Started,” Expert testimony in litigation: Capitalizing on expertise for success, Reston, Virginia, December 2004.

“Initial Analysis and Planning: Choosing the Expert and Getting Started,” Effective financial expert testimony: Significant strategies and tactics, San Francisco, California, November 2004.

“Applying Daubert Principles to the Use of Computer Simulation to Develop an Estimate of the ‘But For’ World for Damages Calculations,” Calculating and proving patent damages: Beyond the usual courses of action for pursuit and defense, Seattle, Washington, November 2004.

“Applying Daubert Principles to the Use of Computer Simulation to Develop an Estimate of the ‘But For’ World for Damages Calculations,” Calculating and proving patent damages: Beyond the usual courses of action for pursuit and defense, Atlanta, Georgia, October 2004.

“Taking a Holistic Approach to Patent Damages Analysis,” Calculating and proving patent damages: Recent developments and new tools for success, San Francisco, California, July 2004.

Professional Services and Associations

Referee, *American Economic Review*

Referee, *Journal of Business*

Referee, *Journal of Econometrics*

Referee, *Journal of Financial Econometrics*

Referee, *Journal of Financial Research*

Referee, *Journal of Forecasting*

Referee, *Quantitative Finance*

Member, American Economic Association

Member, American Finance Association

Member, Econometric Society

Member, Economics Leadership Council, University of California, San Diego

Member, Licensing Executives Society

Associate Member, American Bar Association, Intellectual Property and Antitrust Sections

Treasurer, Board of Trustees, San Diego Zoo Global

Expert Testimony

1. *People of the State of New York, by Letitia James, Attorney General of the State of New York v. The National Rifle Association of America, Wayne LaPierre, Wilson Phillips, John Frazer, and Joshua Powell.* Supreme Court of the State of New York, New York County, Index No. 451625/2020. Expert report.
2. *District of Columbia v. NRA Foundation, Inc. and National Rifle Association of America.* Superior Court for the District of Columbia, Case No. 2020 CA 003454 B. Expert report and deposition.
3. *PACT XPP Schweiz AG v. Intel Corporation.* United States District Court, District of Delaware, Case No. 1:19-cv-01006. Expert report and deposition.
4. *Natera, Inc. v. ArcherDX, Inc., ArcherDX, LLC, and Invitae Corp.* United States District Court, District of Delaware, Case No. 1:20-cv-00125. Expert report and deposition.
5. *Eolas Technologies Incorporated v. Google LLC.* United States District Court, Northern District of California, Case No. 4:17-cv-01138. Expert report and deposition.
6. *J.R. Simplot Company v. McCain Foods USA, Inc.* United States District Court, District of Idaho, Case No. 1:16-cv-00449. Expert report and deposition.
7. *Bio-Rad Laboratories, Inc. v. 10x Genomics, Inc.* United States District Court, District of Massachusetts, Case No. 1:19-cv-12533. Expert report and deposition.
8. *RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Company v. Altria Client Services, LLC; Philip Morris USA, Inc.; and Philip Morris Products S.A.* United States District Court, Eastern District of Virginia, Case No. 1:20-cv-00393. Expert report and deposition.
9. *VLSI Technology LLC v. Intel Corporation.* United States District Court, District of Delaware, Case No. 1:18-cv-00966. Expert report and deposition.
10. *VLSI Technology LLC v. Intel Corporation.* United States District Court, Western District of Texas, Case Nos. 6:19-cv-00254, 6:19-cv-00255, and 6:19-cv-00256. Expert report, deposition, and trial.
11. *Evalve, Inc., Abbott Cardiovascular Systems, Inc., and Abbott Medical Ireland Limited v. Edwards Lifesciences Ireland Limited, Edwards Lifesciences Corp., and Edwards Lifesciences, LLC.* The High Court Commercial, Record No. 2020/1219P. Expert report.
12. *CommScope, Inc. v. Rosenberger Technology (Kunshan) Co. Ltd., Rosenberger Asia Pacific Electronic Co., Ltd., Rosenberger Technology LLC, Rosenberger USA Corp., Rosenberger North America Pennsauken, Inc., Rosenberger Site Solutions, LLC, Rosenberger Hochfrequenztechnik GmbH & Co. KG, Northwest Instrument, Inc., CellMax Technologies AB, Janet Javier, and Robert Cameron.* United States District Court, District of New Jersey, Case No. 2:19-cv-15962. Expert report and deposition.

13. *Dentsply Sirona, Inc. and Tulsa Dental Products LLC d/b/a Dentsply Sirona Endodontics v. Edge Endo, LLC and US Endodontics, LLC.* United States District Court, District of New Mexico, Case No. 1:17-cv-01041. Expert report and deposition.
14. *ClearPlay, Inc. v. DISH Network L.L.C. and EchoStar Technologies L.L.C.* United States District Court, District of Utah, Central Division, Case No. 2:14-cv-00191. Expert report and deposition.
15. *Amgen Inc. and Amgen Manufacturing Limited v. Hospira, Inc. and Pfizer Inc.* United States District Court, District of Delaware, Case No. 1:18-cv-01064. Expert report and deposition.
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124. *Avid Identification Systems, Inc. v. Philips Semiconductors Inc., Philips Semiconductor Manufacturing Inc., The Crystal Import Corporation, Medical Management International, Inc., and Datamars S.A.* United States District Court, Eastern District of Texas, Marshall Division, Case No. 04-CV-00183 (TJW). Expert report, deposition, and trial.
125. *Sonic TCM, Inc. v. Cingular Wireless LLC and Opus Engineering.* Superior Court of the State of California, County of Orange, Case No. 04 CC 10732. Expert report, deposition, and trial.
126. *Dimension One Spas, Inc. v. Coverplay, Inc., and related counterclaims.* United States District Court, Southern District of California, Case No. 03-CV-1099L. Expert report and deposition.
127. *Robert F. Stonebreaker, DVM and Avid Identification Systems, Inc. v. Medical Management International, Inc. d/b/a Banfield, The Pet Hospital, and related cross-actions.* Superior Court for the State of California, County of San Diego, Case No. GIC830293. Expert deposition and trial.
128. *St. Joe Minerals Corporation v. Allianz Insurance Company, et al., and related cross-actions.* Superior Court for the State of California, County of Orange, Case No. 697526, Related to Case Nos. 791336 and 02CC00232. Expert deposition.
129. *Financial Security Assurance, Inc. v. CSC Logic / MSA, LLP D/B/A Loan Servicing Enterprise, and related counterclaims.* United States District Court, Northern District of Texas, Dallas Division, C.A. No. 3-02CV2414-M. Expert report and deposition.
130. *Assessment Appeal of Occidental of Elk Hills, Inc., Applicant. Regarding fee mineral interest assessments.* Before the Assessment Appeals Board, County of Kern, State of California, Kern 98 AAB 095-230. Hearing testimony.



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Bruce L. Blacker, CPA, CFF*Managing Director*

Bruce L. Blacker is a Managing Director at Intensity with 30 years of experience as a forensic accountant and economic damages expert. He is a seasoned expert witness and has provided testimony in Federal Courts, State Courts, and at arbitrations. Mr. Blacker has extensive experience in antitrust, breach of contract, business interruption, fraud investigations, insurance claims, intellectual property matters (such as copyright, patent infringement, trade dress, trademark, and trade secrets), lender liability, loss of earnings, securities fraud, and other general damage quantification matters.

As a litigation consultant, Mr. Blacker has provided litigation services that span across a wide variety of industries including advertising, aerospace, agriculture, banking and financial institutions, biotechnology, business services, chemicals, computers / computer software, energy and utilities, insurance, mobile devices, medical devices, pharmaceutical, real estate, retail, technology, telecommunications, transportation, among others. Furthermore, he has experience with matters filed internationally in Canada, Europe, and Mexico.

In addition to Mr. Blacker's litigation consulting experience, he has provided corporate recovery, business valuation and tax compliance services.

Education

M.ACC., Brigham Young University.

B.S., Accounting, Brigham Young University.

Professional Experience

Intensity, LLC. Managing Director, 2021 to present.

B. Riley Financial Advisory Services (f/k/a GlassRatner). Managing Director, 2020 to 2021.

Analysis Group. Vice President, 2004 to 2019.

PricewaterhouseCoopers LLP. Partner, 2003 to 2004. Director, 1999 to 2003. Manager, 1994 to 1999. Senior Consultant, 1992 to 1994. Staff Consultant, 1991 to 1992.

KPMG Peat Marwick. Tax Specialist, 1990

Brigham Young University. Legal Research Assistant, 1988 to 1989. Teaching Assistant, 1988.

Professional Designations and Business Affiliations

Certified Public Accountant ("CPA"), State of Texas.

Certified in Financial Forensics ("CFF").

American Institute of Certified Public Accountants, Forensic and Valuation Services Section.

Texas Society of Certified Public Accountants.

Dallas Chapter of Texas Society of Certified Public Accountants.

Participant in programs sponsored by the National Institute for Trial Advocacy.

Dallas Fort Worth Management Society.

Board of Directors, North Dallas Chamber of Commerce, 2001 to 2004.

Selected Litigation Consulting Experience

Arbitration and Settlement Proceedings

- Evaluated various automobile dealerships involved in arbitration with a major automobile manufacturer per the Consolidations Appropriations Act 2010 (H.R. 3288). The purpose of the arbitration was to determine which dealerships would be dealerships of the automobile manufacture post-bankruptcy and which dealerships would be terminated. In that regard, an analysis of the following factors was performed: (1) the dealership's profitability, (2) the dealership's current economic viability, (3) the manufactures business plan, (4) the dealership's performance related to objectives established in the dealership agreement, (5) demographics and geography of the dealership's market, (6) dealership's performance in relation to other dealerships, and (7) the dealership's length of experience. Dealerships were evaluated in Florida, Oregon, Tennessee, and Texas.
- Appointed by the court to perform as the arbitrator in a global settlement agreement to resolve a dispute between the estate of a deceased owner and the surviving owner/businesses in the oil and gas industry. Specifically, performed an accounting analysis of the books, records, and statements of accounts for four related entities. Analyzed all cash distributions, payments, and dividends of cash or other assets to determine whether such distributions were made in accordance with their respective ownership interests. Determined the adjustments that were required to bring the distributions into conformity with the owners' respective ownerships interests.
- Assisted the arbiter in a purchase price dispute involving the determination of final net working capital related to the sale of a restaurant. Items in dispute included but were not limited to, the cut-off date, net tax benefit, net operating losses, contractor liens, accrued expenses, and bonuses.
- Provided litigation consulting services to an insurance company who sought to settle a dispute between their client, a major motion picture and television company, and a direct mail promotional company. The Plaintiff's alleged that the airing of three television shows by the Defendants caused the loss of customers and resulted in economic harm. The insurance company requested that I evaluate the Plaintiff's expert's reports on damages and their own damages expert's rebuttal report and to provide an assessment of the strengths and weakness of the damage-related opinions rendered by both sides. My report was used to assist the parties in settling the matter.

Antitrust

- Evaluated Plaintiff's claim that a national orthodontic trade association's advertising guideline resulted in antitrust injury in the markets for orthodontic brackets and orthodontic services. Through empirical analysis, concluded the advertising guidelines lowered consumer search costs, promoted competition, and did not stifle innovation in the relevant markets. Performed quantitative analyses to demonstrate that legitimate advertising was not impacted by the advertising guidelines.
- Evaluated distributors' claims of past lost profits, future lost profits, and reductions in franchise value damages in a carbonated soft drink antitrust litigation. Plaintiffs were alleging Defendants entered into a series of anti-competitive marketing agreements with retailers relative to the distribution, marketing, advertising, promotion, and sale of national brand carbonated beverages. Analysis demonstrated Plaintiff's expert did not consider the brand composition of Plaintiff's case sales, underestimated variable costs of distribution,

did not adjust for increased competition from private-label brands and other drinks, and failed to account for the lack of advertising and other promotional support from distributor's parent company.

- Critiqued the Plaintiff's damage model in an alleged tying case dealing with automotive CAD/CAM design software and mainframe timesharing. Analyzed the total size of the market, CAD/CAM timesharing competitors, the likelihood of new entry into the market, and the Plaintiff's market share in an alleged unfettered market.
- Analyzed the fast-food point-of-sale ("POS") equipment and software industry in an alleged antitrust tying case. Issues investigated included the number of competitors, price competition, non-price competition, ease of entry, and the relative market shares of fast-food POS equipment manufacturers.
- Provided litigation assistance to the Plaintiff's counsel in an antitrust lawsuit against a major manufacturer of high-speed laser printers and copiers. Developed a model to calculate the damages to 16 equipment leasing partnerships arising from antitrust practices.

Breach of Contract

- Calculated Plaintiff's damages in a lawsuit that stemmed from Defendants' collective efforts to conspire to circumvent, breach, interfere with and/or disregard an agreement granting exclusive rights to the plaintiff related to technology, know-how, and patents for soil stabilization and pavement lifting construction in the country of Mexico. Quantified lost profits associated with completed projects and lost projects. Also, quantified contractual damages under the agreement. Issued an expert report, provided deposition testimony, and testified at trial.
- Quantified the amount of money that a major furniture, mattress, electronics, and appliance store chain claimed it overpaid to its largest next-day delivery service vender because of the vendors alleged breach of contract. Evaluated the delivery vender's claimed damages associated with the vendor's breach of contract counterclaim. Issued an expert report, rebuttal report, provided deposition testimony, and testified at arbitration. At the request of the Arbiters, submitted a response report. Arbiters awarded damages to the retail appliance based upon my calculations of overpayment and further cited my response report in concluding that the vendor had failed to prove its claimed damages with any reasonable degree of economic certainty.
- Retained by a major software company and its implementation contractor to critiqued plaintiff's damages claims in a breach of contract matter. Plaintiff was an online sports store that alleged there was misconduct in the implementation of the company's Enterprise Resource Planning ("ERP") system. Plaintiff contended the faulty implementation substantially caused the company to file bankruptcy and forced the owners to sell the bankrupt company. Assisted with the expert report and assisted counsel at the deposition of the opposing expert.
- Evaluated the damages sought by Counterclaimants which were alleged to have resulted from a bank's actions in connection with the default declaration, acceleration of the loan, and receivership of an automobile dealership. Counterclaimants asserted that they suffered damages from diminished business performance including, loss of business, car sales, insurance and finance proceeds, car repair, and other related direct losses. Performed an economic causation analysis. Issued an expert report and testified at trial. Court found

that there was no causal link between the banks alleged actions and Counterclaimants' claimed damages.

- Evaluated Plaintiff's claimed damages in connection with the development of a major hotel's development of a country resort and spa. Plaintiffs alleged the hotel breached its contract and participated in other wrong doings to induce investors to invest in the resort and pay for significant design and construction changes. Analyzed the expected net operating income and expected sales price of the resort absent the alleged wrongful conduct. Considered factors unrelated to the alleged wrongful conduct and the economic impact such factors had on the resort and claimed damages. Issued an expert report and provided deposition testimony.
- Analyzed damages in a breach of contract matter for a company in the business of designing, producing, and deploying its proprietary high-speed data network system in healthcare facilities. Plaintiff claimed that delay in delivery and defective products caused a delay in installations and damages. Monetary damages evaluated included delay damages and damages related to increased expenses.
- Quantified the royalty payments owed by the patent holder in a breach of contract dispute involving call processing and fraud control software technologies used in the corrections industry related to telecommunications services. Issues in the case included failure to pay royalties, failure to make royalty reports, failure to keep accurate books and records, and failure to comply with audit obligations. Analyses included a determination of the number of phone lines in service (each month) in various prisons and correctional facilities, the identification of equipment taken out of service and placed in inventory, and calculation of the claimed royalty payments due.
- Evaluated the developer/franchisee's claimed damages related to a major sandwich franchisor's alleged breach of a five-state area development agreement. Reviewed the area development agreement. Analyzed revenues, costs and profitability associated with each franchise store and estimated the Claimant's lost development fees (lost franchise fees and lost royalty fees) based on various scenarios contemplated by the Parties.
- Evaluated Plaintiff's breach of contract damages claim relating to an exclusive license to distributor aircraft turbochargers and parts. Calculated lost turbochargers sales using a market share approach. Lost profits were calculated on both lost turbochargers sales and lost part sales.
- Assisted a group of radiology physicians in assessing whether a management company was appropriately accounting for account receivable reserves under the terms of their service agreement. Performed an analysis to understand how the management company accounted for account receivable reserves. Analyzed the reserve methodology utilized by the management and compared their methodology to both industry standards and generally accepted accounting principles. Determined inadequate reserves and analyzed the effect on the calculations on the buy-out of two physicians.
- Evaluated Plaintiff's claimed damages in a breach of contract matter the telecommunications industry. Specifically, the dispute related to marketing services performed on behalf of a long-distance carrier to soliciting residential and business customers in Mexico during the "Equal Access Program" (i.e., the breakup of Mexican telephone monopoly) and the fees due for such services. Analyses included the evaluation of Plaintiff's claimed lost commission profits, lost commission buyout, and destruction of business value. Also, calculated and an alternative damages amount.

- Provided litigation consulting services in a breach of contract matter in the telecommunications industry related to an interconnection agreement. Specifically, the dispute arose over an incumbent local exchange carrier's ("ILEC") refusal to supply unbundled network elements ("UNE") and other services to a major metropolitan city to make the city a fully operationally telecommunications network. Issues analyzed included: lost revenues, lost savings, actual damages for equipment purchase, and litigation activities.
- Evaluated Plaintiffs' claimed damages in a breach of contract matter involving the aborted sale of assisted living facilities. Analyzed current trends in the assisted living industry, the financial condition of the target company, the projected financial results of certain to-be-constructed properties, and the target company's performance related to projections. Also, at issue was whether a material adverse change had occurred in the target company's operations and business. Lost profit, interest-related damages, lost fees, and diminution-in-value damages were evaluated.
- Quantified damages on behalf of an information technology firm alleging a recruiting firm breached its contract to fulfill its executive search obligations. Lost profits were calculated under a delayed theory that their hiring strategies were postponed due to the breach. Analysis included an assessment of expected vs. delayed revenues and the associated incremental costs and profits.
- Provided litigation consulting services in a dispute between a management services organization ("MSO") for physicians and an integrated Management Information System ("MIS") provider. The MSO alleged that the MIS provider made misrepresentations and breached the service contract which led to alleged poor collections of physician billings, which lead to alleged critically low cash flow, and resulted in the failure of the MSO. The MIS filed a counterclaim alleging that it had sustained damages the MSO's misrepresentations and breach of contract. Quantified damages for the MIS company under a benefit-of-the-bargain approach and an out-of-pocket approach. Evaluated the MSO's claims and illustrated that the MSO's business failure was due to its inability to reduce physician costs, corporate overhead, lack of capitalization, and a financially flawed business model. Additionally, demonstrated that the MSO's business model was unattractive to prospective physicians compared to other models and that its business plan contained unreasonable assumptions.
- Evaluated Plaintiff's damages claim relating to a NASCAR racing team's sponsorship agreement. Plaintiff alleged the sponsor, an Internet service provider, interfered with the NASCAR team's ability to sell advertising banners that were part of the sponsorship agreement. Assessed the Plaintiff's damages methodology and calculations. Analyzed the appropriate methodology for valuing a NASCAR race team and assessing comparable transactions. Additionally, assessed the financial performance of the racing team and the risks associated with a barter arrangement.
- Calculated damages sustained by the Plaintiff as the result of the Defendants breaching the supply agreement for roofing granules used in the manufacturing of roofing shingles. Analyzed the granule requirements of the Defendant and the capacity of the Plaintiff to meet those requirements. Performed a lost profit analysis. The lost profit analysis included assessing prompt payment discounts, freight equalization charges, incremental manufacturing costs, and transportation allowances or credits. Additionally, evaluated the Defendant's counterclaim for damages alleging a breach of contract relating to its pricing practices (i.e., "favored nations" clause). Evaluated the Defendant's claimed damage period

and the methodology used to estimate a discount from list price in the absence of the Plaintiff's alleged treatment of pricing issues. Evaluated the Defendant's regression analysis and identified for counsel the methodological errors contained in the Defendant's claim.

- Evaluated the Plaintiffs' claimed damages in a breach of contract / breach of warranty case in the grocery salvage industry. The Plaintiffs' alleged they lost their brokerage license and were put out of business because of the sale of contaminated goods by the Defendants. Specifically, the Plaintiffs claimed lost personal income, lost inventory, and the lost value of the business as damages.
- Assisted a hospital in evaluating its participation in a Shareholder Contribution Agreement among and between various other hospitals and certain managed healthcare plans. Specifically, evaluated the amount assessed the hospital under the agreement relating to Medicare, Medicaid, and commercially managed healthcare plans. Also, assessed the financial impact to the hospital under various potential exit strategies from the agreement.
- Evaluated Plaintiff's damages claim arising from the alleged failure of a call center to properly process inquiries relating to the sales of a collectible doll. The figurine was that of a recently deceased public figure. Analyses included advertising expenditures, response rates across cities, major news announcements related to the marketing of such merchandise, and contributing problems caused by Plaintiff's actions. Employed a before-and-after approach to estimate damages by comparing sales in an unimpacted period with sales in the alleged impacted period.
- Evaluated the Plaintiff's claimed damages in a breach of contract/failed initial public offering ("IPO") case in the temporary staffing and professional employer organization ("PEO") services industry. At issue was the underwriter's ability to price and close the IPO considering the "book" for the transaction and the stock's price performance in the aftermarket had the IPO been consummated. Evaluated the Plaintiff's damages claim, including the projected post-IPO stock price, profitability of certain aspects of the business, ownership percentages in the company, and how the proceeds would have been shared between the owners of the consolidating private companies.
- Critiqued the lost profit claim of a rural water district against a city in a breach of contract dispute involving the supply of water to an industrial park. Analyzed the water usage of the industrial park's tenants, the city's public works accounting records, and various contracts relating to the supply of and payment for water to the industrial park.
- Analyzed the Plaintiff's damages claim in a breach of contract dispute involving extremely low frequency ("ELF") electro-magnetic radiation protection system ("RPS") for video display terminals. At issue was the likely market penetration rate of a newly introduced RPS add-on device given declining monitor prices and compliance with radiation standards for monitors. Prepared an expert witness report and trial exhibits.
- Evaluated damages in a breach of contract claim between a television shopping network and a local television station. At issue were the lost profits to the television shopping network when the local television station discontinued broadcasting the retailer's programming.
- Calculated damages in a breach of contract lawsuit between two major semiconductor manufacturers. Analyzed the historical and projected trends of the semiconductor industry specifically focusing on the life cycle of semiconductor chips from current technology to obsolescence. Performed a competitor analysis. Critiqued the opposing side's damage model.

- Performed a solvency analysis in a breach of contract dispute between a clinic and a doctor. The matter was resolved through arbitration.
- Provided consulting services to the Defendant, during settlement negotiations, in a breach of contract lawsuit relating to lease agreements for heavy equipment used in a gunite business. Critiqued the opposing expert's damage model.
- Calculated damages in a breach of contract lawsuit relating to the sale of accidental death and dismemberment insurance policies.
- Quantified damages in a breach of contract lawsuit involving an insurance company and a non-compete agreement. Analyzed premiums, loss ratios, expense ratios, and investment returns relating to property and casualty insurance policies.
- Reviewed the financial operations of an oil and gas jobber in a breach of contract lawsuit. The jobber alleged that the fuel manufacturer diminished his business through direct competition of newly opened and owned retail stores. Performed a market analysis to determine if the retail owned outlets affected the jobber's business.
- Analyzed an opposing expert's damage model and developed an alternative damage model in a breach of contract litigation matter.

Business Interruption

- Evaluated the lost profits claims of a major resort in Puerto Rico that was closed due to Hurricane Maria in 2017. Claims related to hotel rooms, food and dining, spa, gambling, among other services. Analyzed the effect upon claimed damages related to a wide-impact catastrophe using both the “economy ignored” and the “economy considered” approaches.
- Calculated lost profits suffered by a major amusement park due to the Defendant’s, a ride manufacturer, alleged wrongful conduct which resulted in an accident and death of a patron. Analyses included lost attendance, lost ticket revenue, lost in-park revenue, incremental costs, and evaluated alternative reasons for declines in attendance. Damages were calculated using both a before-and-after and a benchmark approach.
- Evaluated the damages sustained by a cosmetic company as the result of defective decorative glass containers being furnished for its new therapy products. Evaluated and/or verified product retrieval costs, retrieval program administration costs, customer goodwill, replacement gift costs, waste disposal costs, and lost profits on the therapy products. The lost profit analysis included assessing the life cycle sales pattern of new cosmetic products introduced by the company.
- Evaluated Plaintiff’s claimed damages from a lost bid to retrofit a refinery in Pakistan. Analyzed Plaintiff’s allegations that Defendants made untrue statements to the bid evaluation team concerning Plaintiff’s net worth, working capital, and profitability trends. Evaluated Plaintiff’s claimed damages using as a benchmark prior engineering projects completed by Plaintiff.
- Evaluated Plaintiffs’ damages claim relating to the installation of an allegedly defective computer software system at an automobile dealership. Plaintiffs contended the software had defects adversely affecting the accounting system and day-to-day operations of the dealership and submitted an “increased cost” damages claim. Analysis demonstrated Plaintiffs’ expert used an inappropriate methodology for measuring damages and submitted cost increases unrelated to the allegedly defective software.

- Evaluated the Plaintiff's lost profit calculations in a condemnation/business interruption lawsuit between a tree nursery business and a state. The Plaintiff alleged that the state's highway construction impeded access to the Plaintiff's business and caused damages in the form of lost profits and additional expenses. Critiqued Plaintiff's damage model, prepared an expert witness report, created trial demonstratives, and testified at trial.

Class Actions/Class Certification

- Evaluated class action damages claims regarding the following industries, products, and/or types of cases: automotive, banking transactions, energy, false advertising, foreign exchange rates, franchisees, insurance, LIBOR-based derivatives, life settlements, mortgage-backed securities, pharmaceutical, polybutylene plumbing systems, postal services, product liability, securities fraud, stock options, utilities, among others.
- Addressed issues related to class certification and potential damages on behalf of the defendant who served as an intermediary for sellers and purchasers in life insurance settlement transactions. A putative class of about 13,000 investors alleged violations of federal and local law relating to the sale or transfer of ownership of life insurance policies. Through quantitative analysis, concluded that a class-wide formula could not be utilized to reasonably estimate the actual damages allegedly suffered by individual purchasers in the purported class. Without a single formula, the computation of damages would be a highly individualized task. The court concluded that common questions do not predominate, making a class action an inferior method of adjudicating the case and that the case would require approximately 13,000 mini trials to prove whether class members would have made purchases, and for what amount, had they received more information.
- Assisted in defending class certification involving the following consumer products, consumer service, and financial instruments:
 - Consumer products: automotive, fruit juice, hot chocolate mix, tires, tomato sauce.
 - Consumer services: billing practices, utilities.
 - Financial instruments: banking transactions, derivatives, foreign currency, life settlements, stock.

Commercial Litigation

- Evaluated the impact on the sales of a major manufacturer and marketer's pork breakfast products line because of the use of an unauthorized personal guarantee printed on the packaging. Plaintiff claimed that the manufacture had benefited from the unauthorized use of the guarantee. After evaluating other factors that could impact sales (e.g., sow prices, seasonality trends, etc.), determined that Plaintiff's claim could not be supported or causally connected to the personal guarantee.
- Evaluated Plaintiffs' claims for approximately \$1 billion relating to a prior settlement of claims for plumbing failures allegedly caused by leaks in plastic plumbing systems manufactured and sold during the 1970's. During the 1980's, claims of leaks in polybutylene plumbing systems began and resulted in several class action lawsuits. The Defendant filed for bankruptcy when these class actions were being brought and the Plaintiffs continued to control the claims resolution process under the terms negotiated in those class actions. When the Defendant emerged from bankruptcy, the Plaintiffs sought recovery from the Defendant for a portion of the claims paid related to the earlier class actions. Over the course of the claims administration process, nearly 900,000 claims were made, over 2 million leaks identified and inspected, and approximately 1.6 million checks

disbursed for repair and replacement of plumbing systems. Assignment: evaluated the large databases relied on by the Plaintiffs to determine if the data was complete and reliable for purposes of evaluating economic damages. Shortly after the exchange of expert witness reports, rebuttal reports, and the deposition of Plaintiffs' expert witness, the case settled very favorably for the Defendants.

- Evaluated the claimed damages of bellwether plaintiffs involving allegations of Racketeering Influenced and Corrupt Organizations Act (RICO), the Texas Deceptive Trade Practices Act (DTPA) and Texas common law in connection with the sale or transfer of ownership of life insurance policies to investors. Allegedly, the defendant provided grossly inaccurate life expectancy assessments to purchasers. As a result, purchasers claimed to have 1) overpaid for life settlements and 2) been forced to pay additional premium payments that would have been covered had defendants paid the minimum amount necessary to keep the policies in force, rather than the excessive premiums requested by the insurers. Assess damages, issued an expert report, and provided deposition testimony.

Environmental

- Analyzed a complex real estate transaction in an environmental contamination lawsuit against a major oil company. Designed the graphic presentation used to explain the transaction during trial.

Executive Compensation

- Provided litigation consulting services in a dispute over an executive's severance package for a major competitive local exchange carrier ("CLEC"). The dispute centered on whether the executive qualified for the severance package and the value of the various severance package components. Analyzed the CLEC industry both historically and based on analyst forecasts. Also evaluated the Plaintiff's calculations of the basic severance package including benefits, stock options, and other incentive plans.

Forensic Accounting/Fraud/Investigations

- Provided forensic accounting consulting services to counsel for one of the world's largest non-profit foundations and corporations related to large multiparty litigation. The nonprofit Foundation is recognized for providing an internationally recognized children's health system which owns and operates hospitals in two states along with outpatient clinics and facilities in five states, delivering pediatric primary, specialty, and urgent care. The parties to the litigation involved the attorney general of a northeastern state, the foundation, the trustees of the Will and Trust that in part funds the Foundation, and the attorney general of a southern state where the Foundation also operated. Plaintiffs sought billions of dollars in damages alleging breach of contract / breach of judgement claiming that the northeastern state had not received the distributions it was entitled to from the Foundation under the Will and Trust and a prior court judgement. Assisted counsel with (1) understanding the financial performance and organizational structure of the Foundation and its operating divisions, (2) understanding the Generally Accepted Accounting Principles ("GAAP") and the Financial Accounting Standards Board (FASB) Accounting Standards Codification® sections relevant to nonprofit accounting and associated with the recognition of revenues, income, and cashflow, (3) understanding the corporate governance and internal controls implemented by the board of directors, and (4) reconciling the terms and intent of the Will and Trust to accounting terminology and standards for financial reporting. Critiqued the expert report of two opposing Ph.D. accounting professors, assisted in the preparation of rebuttal report, assisted counsel with deposition, critiqued the reply reports of the accounting professors, and assisted in the preparation of re-rebuttal report.

- Evaluated plaintiff's claimed lost profits and lost business value. Plaintiff alleged that the property owner engaged in fraudulent lease renewal negotiation tactics. Determined that claimed damages did not have an economic nexus to the alleged wrongful conduct. Illustrated that changing the operating margin assumption in plaintiff's lost profits model to the plaintiff's average historical operating margin of other stores resulted in no lost profits. Concluded that lost business value was not a measure of damages. Assessed defendant's counterclaim by performed a forensic accounting analysis of a tenant's financial records and quantified the amount of underpaid rent based on a percentage rent provision in a lease agreement.
- Analyzed the funds of a company in the drilling industry to determine if funds had been transferred between related entities. The company being investigated was involved in a dispute over a distribution agreement and its indebtedness to a distributor. The analysis of funds included multiple entities and numerous bank accounts. The analysis concluded that funds were transferred between related entities and a significant amount of funds were transfer from the company in debt to related entities. The court found that those funds should be reclaimed and used to satisfy the company's indebtedness, ruling in favor of the distributor.
- Performed certain procedures in assisting a hospital with the investigation of a hotline report which alleged various issues concerning the materials management department including, but not limited to, falsifying inventory reports. Investigation included analysis of financial documents and conducting interviews.
- Assisted counsel in a health care criminal matter in which a group of doctors and a hospital were alleged to have conspired to receive remuneration in return for medical-eligible patient referrals. Analyzed the various medical labs to determine utilization rates and profitability. Quantified the value of reduced admission rates of patients and the reduced average length of time that a patient stays in geriatrics due to the services provided by the doctor group.
- Analyzed the return performance of a pension plan in a mismanagement lawsuit against the trustee. This included researching the historical performances of comparable mutual funds, calculating the returns of individual investors in the pension plans, and comparing the returns to funds with the same investment objective to determine damages.
- Performed extensive financial analyses on several publicly traded day-care centers to determine the financial position and market value of a day-care center in relation to a negligence lawsuit. Designed the graphic presentations used at trial.
- Reviewed numerous private deferred annuity trusts for a litigation matter relating to distributions.
- Reviewed the financial records and bank statements of a manufacturing company that defaulted on a loan where the bank considered foreclosure actions.
- Prepared an exception report for a large real estate management company. Included analyzing numerous residential, commercial, and mini-storage properties to develop financial tests used to identify properties with the potential for fraud and/or mismanagement.
- Performed a forensic investigation for a major airline company to determine the use of insurance proceeds by the family of a crash victim.
- Performed a forensic investigation on behalf of a lender to determine if assets existed that could support the value of a real estate developer's loan guarantee.

Insurance

- Evaluated Plaintiff's economic claims against an insurance company. Specifically, the plaintiff alleged the insurance company (a) engaged in false, misleading, and deceptive trade practices by selling and issuing a trade credit insurance policy that allegedly had little to no benefit in the context of the transaction for which it was allegedly issued (i.e., a fracking chemicals supply agreement); (b) misrepresented and/or falsely advertised the coverages, policy provisions, and terms afforded under this insurance policy, or alternatively, induced Plaintiff to purchase the policy by failing to disclose material information; (c) failed to effectuate a settlement of Plaintiff's claim of non-payment of invoices, including failing to (i) pay the claim, (ii) conduct a reasonable investigation, (iii) promptly provide a reasonable basis for the denial of Plaintiff's claim, and/or (iv) affirm or deny coverage within a reasonable time; and (d) withheld vital information related to coverage for the claim that caused Plaintiff's to give up remedies, benefits, settlement opportunities, and the ability to garner a higher market price when reselling the fracking chemicals. Conducted an economic causation analysis between the policy's coverage / the alleged wrongful conduct of the insurance company and claimed damages. Identified numerous market factors not covered by the insurance policy or were unrelated to the alleged wrongful conduct. Prepared expert reports and provided deposition testimony.

Intellectual Property: Patent Infringement

- Evaluated Plaintiff's claimed royalty damages in Canada patent infringement matter involving soil support systems for hardscape areas while enabling tree root growth and storm water systems. Utilized a hypothetical negotiation construct and an *AlliedSignal* factor analysis to independently analyze the appropriate royalty structure, royalty base, and royalty rate. Prepare an expert report and provided trial testimony.
- Evaluated Plaintiff's claimed patent infringement royalty damages against one of the world's largest manufactures of mobile devices in several patent infringement matters. A hypothetical negotiation construct was utilized and the *Georgia-Pacific* factors considered. These cases involved technology related to:
 - 2G (voice and data transmission)
 - 3G (Wideband Code Division Multiple Access ("WCDMA") and CDMA2000)
 - 4G (Long Term Evolution ("LTE"))
 - Coding and decoding of large blocks of data and the interactions with a device's memory
 - Methods for display
 - Touch screen applications
 - Methods for providing human inputs
 - Methods and apparatus for improving communications between humans and devices
 - Features alleged to extend battery life
- Evaluated claimed damages in a patent infringement matter related to a method for producing an electro-optical device. Specifically, at issue was the manufacturing method used to produce liquid-crystal displays ("LCDs"). Claimed benefits included reducing the number of photolithographic steps, improving yields, and decreasing manufacturing costs.

- Quantified damages in a dispute involving computer chips with dual diode ambient light or infrared canceling technology. These products were used in mobile devices. The case involved allegations of patent infringement, tortious interference, breach of contract, and misappropriation of trade secrets. Damages remedies included lost profits, reasonable royalty, and disgorgement.
- Evaluated claimed damages in a patent infringement matter related to technology for virtual connection of a remote unit to a server (*i.e.*, method and device for reconnecting a telephone modem with a reduced delay).
- Quantified and evaluated claimed damages in several patent infringement matters between two companies that manufacture and sell gel / cushioning liners used by amputees who wear prosthetic devices. Parties were both plaintiff in certain cases and the defendant in other cases. Quantified lost profit damages and reasonable royalty damages on behalf of the plaintiff. Evaluated claimed lost profit and reasonable royalty damages on behalf of the defendant. Utilized a hypothetical negotiation framework and guidance from the *Georgia-Pacific* factors in determining the reasonable royalties. Evaluated damages under various potential liability outcomes should the trier-of-fact have found that only certain patents were infringed. Issued expert witness reports, issued expert witness rebuttal reports, provided deposition testimony, and testified at trial.
- Analyzed Plaintiff's lost profit and reasonable royalty damages in a patent infringement matter related to spinning wing decoy products used by hunters. Two patents were at issue where the inventions related to animated waterfowl decoys and game decoys with high-speed rotating strobe wings. Lost profits were calculated using the *Panduit* factors and a market share approach using Mor-Flow as guidance. Reasonable royalties were calculated on unit sales for which lost profits were not being claimed. Plaintiffs were also alleging a false marking claim against the Defendant. Evaluated the possible number of false marking offenses based on sales data.
- Evaluated Plaintiff's claimed royalty damages in a patent infringement matter against a major movie and video rental company. The technology at issue related to a claimed invention for limiting the use of down loaded video on demand data applicable to video on demand rentals. Identified flaws in the Plaintiff's *Georgia-Pacific* analysis and performed an independent *Georgia-Pacific* analysis. Concluded that Plaintiff's analysis had failed to consider, among other things, (a) that no royalties were paid on the claimed established royalty rate, (b) the lack of competition between the parties, (c) the patent holder's inability to market the claimed invention, and (d) the resources and know how available to the Defendant to commercialize the invention. These considerations placed significant downward pressure on the claimed royalty rate.
- Analyzed Plaintiff's lost profit and reasonable royalty damages in a patent infringement matter related to three-way call detect and call blocking technologies used in telecommunications services at corrections facilities. Evaluated Plaintiff's lost profits using as guidance the *Panduit* factors. Determined the number of phone lines to correctional facilities that were lost sales to the Plaintiff and then quantified lost profits. Calculated royalties on the infringing lines at correctional facilities for which lost profits were not claimed. Analyzed the *Georgia-Pacific* factors, constructed a hypothetical negotiation framework to determine the royalty rate, and quantified the royalty base. Evaluated Plaintiff's damages based on various scenarios of potential findings of infringement - - there were four patents at issue in this matter.

- Evaluated Plaintiff's claimed compensatory damages in a patent infringement matter involving a method and apparatus for allowing a potential automobile purchaser to create and submit a purchase request over a computer network. Plaintiff and Defendant compete as web-based companies in the sales lead generation industry where potential buyers of automobiles are identified and then those buyer leads are sold to automobile dealers. Evaluated Plaintiff's claimed lost profits using a *Panduit* analysis and industry market share data. Also, evaluated Plaintiff's claimed reasonable royalty, increased cost, and price erosion damages.
- Assessed reasonable royalty damages associated with technology used in GPS asset tracking. Plaintiff claimed that a company which provided GPS based asset tracking and monitoring products and services was infringing its patents. Such products were used in a two-way data transmission system in which various types of information could be sent from and/or received by mobile terminals which were placed or installed on customers' assets.
- Evaluated the Plaintiff's claim against five Defendants in a patent infringement matter involving certain traffic management methodologies capable of implementation in Asynchronous Transfer Mode ("ATM") telecommunications switching systems. Issues in the case included the use of the entire market value rule, availability of non-infringing alternatives, and the negotiating positions of the various Parties in hypothetical negotiation construct. Performed a *Georgia-Pacific* Factors analysis and provided alternative reasonable royalty damages.
- Analyzed claimed damages in a patent infringement matter brought by the inventor against a major designer and marketer of technology-based education products. Five patents were at issue related to hardware and/or software products. Analyzed the *Georgia-Pacific* factors, conducted market and industry research, and compiled an accused product sales database. Calculated royalty damages under numerous scenarios by considering the impact on the hypothetical negotiation date, negotiating positions of the Parties, and products covered by the patents based on under various potential findings of infringement.
- Analyzed Plaintiff's lost profits and reasonable royalty damages in a patent infringement matter relating to scanning, counting, and counterfeit detection technologies in currency discriminators. With respect to Plaintiff's lost profits-related damages, performed incremental profit analyses on lost unit sales and ancillary sales. Evaluated Plaintiff's reasonable royalty-related damages. Developed a computer model to evaluate damages under a variety of scenarios based upon potential findings of infringement on patents and claims contained in these patents.
- Evaluated claimed royalty damages against a nutritional supplement company in a patent infringement matter. The technology at issue related to hydrosoluble organic salts of creatine and methods for enhancing muscle performance and recovery from fatigue. Analyzed the Plaintiff's expert's hypothetical negotiation framework, considered the availability of non-infringing methods and compositions, and identified inconsistencies in between Plaintiff's royalty rate and licensing evidence.
- Critiqued the Plaintiff's claimed economic damages in a patent infringement matter involving technology related to liquid crystal displays ("LCD") (i.e., TVs, Computers, and portable DVD players). Specifically, the Patents at issue related to two categories of technology: DC to AC converter technology and phased burst mode technology. Alleged infringing products include notebook computer panels, notebook computers, LCD panels, LCD TVs and monitors, and portable DVD players with the patented technology residing on inverter controller integrated circuits used in conjunction with cold cathode fluorescence

lamps ("CCFL"). Evaluated claimed royalty damages as presented by Plaintiff's expert through a report, deposition, supplemental report, and trial testimony. Identified conceptual inconsistencies in Plaintiffs claimed royalty rate when analyzing the claimed royalty rate across time periods and products. Also, addressed issues of royalty stacking, multiple patents, hypothetical negotiations, etc.

- Evaluated the Plaintiff's claimed damages in patent infringement matter involving on-line PINless debt bill payment processing. Specifically, Plaintiff's claimed lost profit and reasonable royalty damages related to PINless debt transactions initiated by consumers using interactive voice recognition (IVR). Evaluated the impact on the alleged infringing transactions of the parties' different business models, customer preferences, and non-infringing substitutes. Performed an incremental profit analysis. Evaluated the claimed reasonable royalty rate, base, and damages. Computed alleged damages using a reasonable royalty approach.
- Evaluated Plaintiff's claimed damages in a patent infringement matter dealing with non-reusable protective safety syringes. Specifically, the patent related to the syringe mechanism which, when the plunger on a syringe is fully depressed, causes the needle to retract into a cavity in the plunger. Analyzed other competitors offering a retractable syringe and the Parties' products; distribution capabilities; relative pricing structures; manufacturing capacity, and incremental costs. Calculated damages utilizing both a lost profits approach and a reasonable royalty approach.
- Evaluated the Plaintiff's claimed damages in a patent infringement matter involving six patents related to the Plaintiff's communications networking systems and technology. Also, computed damages related to the Defendants counterclaim that the Plaintiffs were infringing seven of the Defendant's patents relating to its communications networking systems and technology. Specifically, the technology at issue involved multiservice optical switches and the multiplexing protocols for transferring multiple digital bit streams using lasers or light-emitting diodes (LEDs) over the same optical fiber [Synchronous Optical networking (SONET) and Synchronous Digital Hierarchy (SDH)]. Evaluated the Plaintiff's damages model. Prepared a damages model to quantify the alleged damages related to the Defendants counterclaim. After the issuance of expert reports and depositions, the case settled, and the parties entered into a long-term patent cross-license agreement.
- Assessed damages resulting from the alleged infringement of three patents related to home lighting controls. Quantified damages utilizing both a lost profits approach (on both accused products and ancillary sales) and a reasonable royalty approach. Determined the royalty rate appropriate to this instance based on the bargaining positions of the parties in a hypothetical negotiation and guidance as provided by the 15 *Georgia-Pacific* factors. Issues in the matter included properly identifying and classifying accused products and systems based on the asserted claims and developing a damages model that would calculate damage for all liability outcomes (infringement of 1, 2, or all 3 patents).
- Computed reasonable royalty damages in a patent infringement matter involving technology related to an optical projector in a head-up guidance system used in aircraft. Analyses included: determining (from the documents produced) the date of the alleged infringers first infringing sale, quantifying the Defendants' unit and dollar sales of the alleged infringing products during the claimed damages period, evaluating the Defendants' profitability associated with the alleged infringing products, providing this data to the Plaintiff's reasonable royalty expert, and calculating Plaintiff's claimed reasonable royalty

damages using the royalty base determined and the royalty rate as provided by the Plaintiff's reasonable royalty expert.

- Evaluated patent infringement damages in a matter involving software to identify and track stolen laptop computers.
- Calculated the Plaintiff's claimed lost profit damages dealing with inbound routing of faxes over computer networks using direct inward dialing (typically known by the acronyms DID, DNIS, DDI, MSN). Performed the lost profits analysis utilizing a market share allocation methodology. Determined the market shares of the competitors in the intelligent fax board market in the United States, assessed Plaintiff's market share in the absence of Defendant's alleged infringement, and allocated the Defendant's unit sales to the Plaintiff, and determined whether additional constraints existed regarding the Plaintiff's increased sales in the absence of Defendant's alleged infringement by cross-checking whether Plaintiff had products comparable to that sold by Defendant, analyzing Plaintiff's and Defendant's relative prices, and analyzing Plaintiff's distribution coverage and manufacturing capacity. Additionally, evaluated the Defendant's counterclaim for reasonable royalty damages for the Plaintiff's alleged patent infringement of Defendant owned patents relating to the same technology.
- Analyzed and assessed the royalty damages claimed by the Plaintiff in a patent infringement matter against one of the world's largest Dynamic Random-Access Memory ("DRAM") integrated circuit manufacturer. The patented technology involved patents for the invention of a word line driver, a boosted voltage supply, and a high voltage boost word line supply charge pump regulator for a DRAM. Evaluated the Plaintiff's expert's damage model, identified errors in the royalty base, and assisted the Defendant's royalty rate / licensing expert in performing a George-Pacific factors analysis. Performed various reasonableness tests.
- Evaluated Plaintiff's claims of lost profit, price erosion, and royalty damages in a patent infringement matter relating to degradable films for covering landfills. Analyses demonstrated Plaintiff failed to rule out alternative reasons for the decline in sales, ignored Plaintiff's lack of cost competitiveness with competing technologies, inappropriately assumed Defendant would not have been in the market with a competing product, overstated price reduction damages by ignoring discounts granted by Plaintiff in the normal course of business, and overstated the appropriate royalty rate by ignoring industry licenses and Plaintiff's incremental profit rate.
- Computed damages in a patent infringement/trade secret matter in the entertainment lighting industry. Determined the Plaintiff's lost luminaire rentals by applying the Plaintiff's application share to the Defendant's sales and adjusting for inventory available at the time of the sale; rental utilization rates; capacity constraints; and dealer, distributor, and sub-distributor issues. Calculated lost profits on the lost luminaire rentals. Royalty calculations were performed on the Defendant's sales for which the Plaintiff would not have made an equivalent rental. Evaluated trade secret damages on one of the Plaintiff's luminaries. Prepared expert witness reports. Assisted counsel during mediation and settlement discussions.
- Quantified damages in a patent infringement case involving blasting hole drilling rigs. Performed a detailed analysis to determine which of the infringing rigs would have likely been made by the Plaintiff in the absence of the infringement (i.e., analyzed the comparability of rig models, geographical distribution, price, capacity, etc.). Calculated lost profit damages on those rigs determined to be lost rig sales. Also, analyzed parts sales and

calculated damages relating to the lost parts sales associated with the lost rig sales. Additionally, for those infringing sales which were not considered to be a lost sale, calculated lost royalty damages.

- Calculated lost profit damages, lost royalty damages, and price erosion damages in a design patent case for a manufacturer of vending machines. At issue was a vending machine dispensing refrigerated and unrefrigerated foods.
- Calculated damages in a patent infringement lawsuit involving dispense system products. Performed a lost profits analysis, performed an incremental cost analysis, analyzed capacity issues, and reviewed royalty rates for the high technology industry for the patent owner. Critiqued the opposing side's expert report.

Intellectual Property: Trade Secret

- Evaluated Claimants' remedies and damages resulting from the Respondents' alleged wrongful conduct (e.g., misappropriation of trade secrets, breach of contract) in a matter involving technology related to expandable lumbar interbody devices used in intervertebral body spinal fusion procedures. Critiqued Claimants unjust enrichment remedies under a disgorgement of profits and a head start theory. Also, evaluated Claimant's royalty damages claim. Independently utilized a head start approach to quantify the alleged unjust enrichment. Provided deposition and arbitrary testimony.
- Provided litigation consulting services in a misappropriation of trade secrets dispute between a large foreign telecommunications company and a domestic startup company including one of its founders. The trade secrets related to solid-state storage drive ('SSD') technology. Both parties alleged the other of misappropriating trade secrets. Calculated the unjust enrichment of the telecommunication company in the form of cost savings and calculated the startup company's damages in the form of lost profits and lost reasonable royalties. Evaluated the telecommunication company's claimed remedy to disgorge the startup company of a claimed head-start advantage and/or the enterprise value of the startup company attributable to the trade secrets. Also, evaluated the telecommunication company's claimed lost cost savings. Assisted counsel with damages-related issues in depositions and at trial.
- Calculated damages and evaluated counterclaimed damages and/or remedies in a trade secret matter involving software used in the manufacturing of components for human body implants (i.e., pacemakers and defibrillators). The dispute involved (a) breach of contract, (b) misappropriation of trade secrets, (c) unfair competition, (d) unjust enrichment, (e) copyright infringement, among other allegations. The disputes related to the alleged reproduction of certain software without permission and/or the disclosure of confidential and proprietary information. Calculated reasonable royalty damages because of the alleged disclosure of trade secrets. Evaluated claimed lost profit damages and/or the disgorgement of economic gains (profits and/or avoided costs). Prepared expert reports (affirmative, rebuttal, and reply), provided deposition testimony, and testified at trial.
- Provided litigation consulting services in a theft of trade secret matter dealing with terabit optical routers in the telecommunications industry. At issue was the alleged theft of trade secrets used by former Plaintiff employees who formed a start-up company to develop a terabit optical router. Researched the terabit optical router industry including analyzing competition, competing products, current and projected demand for terabit routers, and valuations for terabit router companies. Also computed damages under a reasonable royalty approach employing the *Georgia Pacific* factors.

- Provided litigation consulting services in a theft of trade secret matter dealing with next generation switching equipment in the telecommunications industry. At issue was the alleged theft of trade secrets when the Defendant firm hired nine employees of the Plaintiff firm. Evaluated the Plaintiff's damages, analyzed claimed inability to maintain its projected market share, the alleged accelerated entry of the Defendants firm into the next generation switching equipment market, disgorged measure of damages, and reasonable royalty measures of damages. Also, researched royalty rates in the telecommunications industry and investigated accounting and reporting issues surrounding the alleged intellectual property.
- Analyzed damages in a trade secrets case involving drilling bits. The allegation was that "anti-whirl" technology was stolen when a competitor firm hired certain employees. Created a database of the bits in dispute. Assisted counsel in settlement negotiations by determining lost revenues under various scenarios and assessing incremental profits.

Intellectual Property: Copyright, Trade Dress, Trademark

- Evaluated the Plaintiffs' claimed damages in a trademark infringement matter involving companies which specialize in industry-specific insurance programs and targeted temporary staffing and Professional Employer Organizations ("PEOs"). Plaintiffs' damages included a profit disgorgement claim and corrective advertising claim. Analysis indicated the lack of an economic causal link between the alleged wrongful conduct and the claimed damages. Attended trial and assisted counsel in preparation for cross examination of the Plaintiff's damages expert.
- Critiqued the Plaintiff's claimed economic damages in a trademark matter between two major hospitals. Plaintiffs alleged that the Defendants were infringing its trademark and engaging in unfair competition by allegedly creating confusion in the marketplace relating to the Defendant's pediatric healthcare facility. Specifically, evaluated the Plaintiff's claimed damages related to lost sales, corrective advertising, and lost royalties.
- Quantified the Plaintiff's claimed damages in a matter dealing with various computer circuit packs and telecommunication switches. Plaintiffs claimed four causes of action: copyright infringement, common law trademark infringement, violation of Section 43(a) of the Lanham Act, and unfair competition. Specifically, evaluated the Defendant's unit sales and revenues of the accused products and calculated the Plaintiff's actual damages in the form of lost profits for various damage periods related to the various causes of action. Evaluated the impact of product availability and industry events.
- Evaluated claimed damages in trademark and trade dress infringement matter in the military loans industry (i.e., financial institutions specializing in making loans to military personnel). The Plaintiff's claimed the trademark was infringed because the Defendants placed the Plaintiff's name in the meta tags of its website to misdirect potential customers who use internet search engines. The trade dress claim related to the look and feel of the various branch offices. Analyzed the incremental profitability of the Defendant's Internet loan business and critiqued the Plaintiff's corrective advertising claim. Issued expert witness report, provided deposition testimony, and testified at trial.
- Calculated damages in a trade dress case involving corn dogs. Damages included disgorgement of Defendant's profits and actual damages sustained by Plaintiffs because of the Defendant's alleged wrongful activities, to the extent they were non-duplicative.

- Conducted a net profit analysis for one of the world's largest retailers in a copyright infringement lawsuit involving women's sleep shirts. Performed an expense allocation analysis and calculated the net profits from the sale of the shirts at issue.

Intellectual Property: Royalty Audits, Licensing Negotiations, and Professional Malpractice

- Conducted a royalty examination for a mobile communications device company involving subscriber equipment and infrastructure equipment. Analyzed quarterly royalty reports to identified exceptions to a royalty agreement. Investigated exceptions and obtained an understanding of why they occurred if they were allowed so that this information could be used in future license negotiations.
- Assisted a major company in the wireless innovations and mobile systems industry in the valuation of a patent. Identified and evaluated market comparisons. Researched and quantified the potential royalty base using various units of measure including the number of subscribers, infrastructure equipment, and automatic cross-connection equipment (AXE) switching equipment.
- Evaluated claimed damages in a legal malpractice matter where the Plaintiff alleged the Defendants did not properly provide legal representation. Specifically, Plaintiffs' (shareholders) claimed legal counsel failed to conduct proper due diligence and draft a proper contract (purchase agreement) related to the sale of a company which specialized in children's oral care products (sculpted manual toothbrushes, sculpted battery powered toothbrushes, and toothpaste). Claimed damages were based on the allegation that the acquiring company interfered with the Plaintiff's business impeding performance that would have resulted in a high level of deferred compensation. Concluded that Plaintiffs failed to demonstrate an economic causal link between the alleged wrongful conduct and the claimed damages. Further, concluded that Plaintiff's had not quantified claimed damages with a reasonable degree of certainty.
- Conducted a royalty examination for a domestic company involving the sale of Hydroxylamine products by an international company. This royalty examination was prompted by the drop in overall product sales and by the disparity, identified by the domestic company, in price per gallon charged in Japan versus that charged in the U.S. and in Korea for royalty bearing products. Reviewed and tested the basis for the royalty reports including sales and deduction items.
- Assisted a large petroleum chemical company (the patent holder) in negotiating a licensing agreement regarding the chemicals and high polymers used in the manufacturing of certain plastic bottles. Evaluated market size; projected revenues, costs, and profits; discount rates, and the implied royalty rate.
- Evaluated Plaintiffs' claimed damages relating to an alleged failure by a law firm to properly file certain patent applications relating to a video processor recorder. Plaintiffs' business opportunities and licensing fees in the United States and Europe were allegedly lost due to the ensuing delays. Analyzed Plaintiffs' causation linkages to the claimed damages, length of the claimed damages period, forecasted units sold, forecasted market share, forecasted costs of production, and claimed licensing rate.
- Analyzed a license agreement between the patent holder and a manufacturer of polypropylene in a breach of contract lawsuit. Reviewed historical royalty payments, calculated estimated royalties based on various royalty rates, and calculated the implicit royalty rates of other license agreements.

- Critiqued the Plaintiff's expert's damage calculations in a lawsuit alleging the failure to protect a company's intellectual property through the proper prosecution of international patent applications. Specifically, this case involved an eye-correction surgical product used in the field of ophthalmology to treat presbyopia. Assisted counsel in discovery and settlement discussions.

Lender Liability

- Evaluated the Plaintiff's damages claim lender liability matter in the long-term healthcare industry. Plaintiffs claimed that with the alleged line of credit they would have built and managed several assisted living facilities and avoid a merger. Plaintiff's claimed damages including diminution of value, lost profits, market/contract interest rate differential, merger costs, loss of development fees, management fees, and loss of investment, among others. Evaluated Plaintiff's claim by analyzing trends in the assisted living industry, evaluating the financial condition of the Plaintiff to illustrate that it could not have met the proposed terms for funding, and analyzed the financial results to the Plaintiffs constructed facilities. Other issues included "black-box" financing and "off-balance sheet" financing.
- Provided litigation assistance to Defendant's counsel in a lender liability/ breach of contract suit related to funding residential development loans. Evaluated the Plaintiff's damages claim, analyzed Plaintiff's five-year projections, performed lost profits analyses, and evaluated the shareholder's future value under various scenarios.
- Analyzed a Plaintiff's complex damage model which estimated past and future lost profits for a high technology training company in relation to a lender liability lawsuit. This included evaluation of assumptions and sensitivity testing.

Securities Fraud

- Analyzed the Plaintiff's claimed damages in a securities law violation lawsuit against a global telecommunications company. Plaintiff's claimed damages resulted from an acquisition of the Plaintiff's company. Issues and analyses included employee stock options, the options to sell rather than pursue an initial public offering, lost wages, lost benefits, and an event study of alleged misrepresentations.
- Evaluated Plaintiffs' claimed damages related to a merger in the banking industry. At issue was whether material adverse changes regarding loan loss reserves had occurred but were not disclosed. Analyzed whether the complained of events were related to conditions and circumstances in the banking industry. Also analyzed the value of alternative offers for the target bank and the pre-merger volatility in the acquiring bank's stock price.
- Evaluated Plaintiff's claim of damages in a shareholder suit in the wireless cable industry. Plaintiff alleged that the company artificially inflated its stock price by making false representations relating to the growth of the industry, its introduction of a new product, and expected international sales. Analyses demonstrated that the Plaintiff's expert had no justification for the dates of the damage period, that the comparable companies selected were not comparable, that the "value line" used by the Plaintiff was inappropriate, and lead to an overestimation of alleged damages. Analysis also included demonstrating that increases and subsequent decreases in the company's stock price related in part to a joint venture of regional telephone companies entering the wireless cable industry (an industry effect ignored by the plaintiff's expert) and other company-specific events unrelated to the allegations.

- Analyzed the stock price movement of a computer card developer and manufacturer in a class action shareholder's securities fraud case. Performed an event study, identified an appropriate peer group, constructed a damage model, and analyzed economy-wide, industry-specific, and company-specific factors impacting the company's stock price.
- Provided litigation assistance to counsel in their representation of a health care company involved in a securities litigation matter. The Plaintiffs alleged that the company failed to disclose the full scope of certain alleged fraudulent practices regarding its psychiatric facilities. Assisted counsel in understanding the Plaintiffs' damages model, performed an event study, analyzed class certification issues, and evaluated "corrective disclosures" to the market. Performed alternative damage calculations to assist counsel in settlement negotiations.
- Analyzed the stock price movement of an arts and crafts store in a class action shareholder's securities fraud case. Analyzed the stock/option transactions of the named Plaintiffs, performed an event study, developed a Plaintiff-style damage model, critiqued the Plaintiffs' damages report, and consulted with counsel regarding the strengths and weaknesses of the testifying expert's report.
- Analyzed the stock price movement of a life insurance company in a class action shareholder's securities fraud case. Performed an event study, determined an appropriate peer group, compared the company's actual stock price to its "true value" line, constructed a volume matrix to track ins-and-outs traders and retention shareholders, and calculated damages.
- Analyzed the stock price movement of a real estate company's common stock in a class action shareholder's securities fraud case. Analyses included the development of an appropriate peer group and the isolation of economy-wide, industry-specific, and company-specific factors impacting the company's stock price. Also, compared the company's actual stock price to its "true value" line, constructed a volume matrix to track ins-and-outs traders and retention shareholders, critiqued the Plaintiff's damage model, and calculated damages under Section 10b-5 claims.
- At the request of a company's Board of Directors, analyzed the stock price movement of a medical equipment manufacturing company's common stock after the company's findings of an internal investigation which revealed that net income and assets may have been overstated in previously reported periods. Developed a Plaintiff-style damage model. Calculated damages assuming a claim under Section 10b-5 of the Securities Act of 1933. Prepared a summary report of the analysis for the company's Board of Directors.
- Analyzed the stock price movement of a computer/networking company, at the request of a potential acquiring company, during a time when public announcements were being made concerning new products, the company's dependence on a single large customer, acquisition rumors, and merger activity in the industry. Analyses included performing an event study and identifying economy-wide, industry-specific, and company-specific factors that impacted the company's stock price.
- Analyzed the stock price movement of a biotechnology company's common stock in a shareholder's securities fraud case. Critiqued the Plaintiff's expert's damage report and model. Performed an event study, determined an appropriate peer group, compared the company's actual stock price to its "true value" line, constructed a volume matrix to track ins-and-outs traders and retention shareholders, and calculated damages under Section 11 and Section 12 claims.

Wrongful Death / Wrongful Termination / Employment Issues

- Evaluated Plaintiff's claimed economic losses against a global financial services firm in a wrongful termination / discrimination matter. Specifically, the dispute involved the position of national underwriting and processing manager for multi-family lending. Evaluated Plaintiff's claimed past and future losses. Analyzed economic factors unrelated to the claimed wrongful conduct such as consolidation in the banking industry, the financial crisis, and the mortgage crisis. Illustrated the unreasonableness of Plaintiff's claimed losses considering numerous unrelated economic factors which Plaintiff's had not considered or explained.
- Evaluated the Plaintiff's claimed damages against a county hospital in a wrongful termination/discrimination matter. Evaluated alleged past and future lost earnings, alleged lost future pension income, and the alleged value of lost health insurance under two scenarios presented by the Plaintiff: (1) Plaintiff would have remained in same position and (2) Plaintiff would have been promoted. Identified assumptions erroneously assumed by the Plaintiff's expert which were contrary to the facts of the case. Concluded that Plaintiff's expert utilized assumptions that were unsupported, failed to consider Plaintiff's replacement income, and failed to consider other employment scenarios given the facts and circumstances of this case. Assisted counsel during trial.
- Evaluated the Plaintiffs' claimed lost future earnings in a wrongful death matter involving a lumber yard worker. Issues investigated included consumption expenses, assumptions regarding future work, possibility of separation from the workforce, estimated pay increases, cost of living adjustments, and taxes.
- Evaluated the Claimant's damage analyses and conclusions in a wrongful termination claim involving a senior life insurance broker/branch manager. Issues investigated included the assessment of income in the absence of an alleged wrongful termination, the assessment of income given the fact that termination did occur, an analysis of the expected work life of the Claimant, fringe benefits, and business expenses.
- Evaluated the lost earnings of a manager of an over-the-counter trading department in an alleged wrongful termination action. Since the manager's compensation was based on the profitability of the department, the performance of the department pre- and post-termination was investigated relative to the performance of the manager's new employer.
- Performed extensive financial analysis on several publicly traded psychiatric hospitals to determine the financial position and market value of a psychiatric hospital in a wrongful termination lawsuit.
- Analyzed a complex employment agreement between a mining company and its CEO. Developed a micro-computer model to compute the company's cost under various scenarios of action regarding the CEO.

Corporate Recovery Experience

- Analyzed the expected rate of return on a portfolio of assets being held to meet future pension plan obligations. Analyses included determining what investments would be included in a prudent fund manager portfolio and the historical risk premiums on each investment category.

- Performed preference payment, fraudulent conveyance, and reclamation claim analyses for a major distributor of over-the-counter and prescription drugs in relation to a large-scale bankruptcy of a discount drugstore chain.
- Reviewed the restructuring plan of a major jewelry retailer in a large-scale bankruptcy. Analyzed the projected operating expenses for a bank group who was considering debtor-in-possession financing.
- Analyzed a debtor-in-possession's financial projections on an unconsolidated and consolidated basis, performed a preference and fraudulent conveyance analysis, and assisted in the preparation of a Plan of Reorganization for the Official Unsecured Creditors Committee in relation to a large-scale bankruptcy proceeding of a major bus carrier.
- Prepared a cash flow model, analyzed the viability of projected business plans, reviewed management and accounting controls, and monitored cash transactions and inventory for a major creditor of a manufacturer of cash control devices and electronic monitoring systems.
- Assisted and advised in a creditor foreclosing on the assets of a manufacturer of security products and petroleum equipment.
- Computed and analyzed distributions by creditor class in a large-scale bankruptcy of a financial corporation.
- Performed extensive financial and valuation analysis for a major provider of psychiatric and rehabilitation services and its subsidiaries in a large-scale bankruptcy.
- Developed a cash flow model for a major international commercial real estate management corporation to calculate the value of numerous properties based on projected cash flows.
- Researched industry forecasts and performed extensive financial analyses on several public and private companies to determine the fair market value of a 100 percent ownership interest in a manufacturing company.

Business Valuation Experience

- Developed a cash flow model to calculate the value of a home health care corporation and its subsidiaries. The model was used in the negotiation process to sell two of the subsidiaries.
- Analyzed a psychiatric hospital valuation, which included reviewing the company's financial and operational records and researching economic forecasts to determine the appropriateness of the methodology employed.
- Performed extensive financial analysis on several public and private fast-food restaurants to determine the fair market value of a 100 percent ownership interest in a privately-owned pizza restaurant chain.
- Conducted extensive financial analyses on several public and private steel pipe and tube distributors to determine valuation multiples and capitalization rates.
- Performed financial and valuation analyses on a privately-owned fast food distributing company. Researched industry compensation standards and analyzed the owner's historical compensation.

Tax Experience

- Researched complex business transactions to determine the consequences relating to mergers and acquisitions, spin-offs, forgiveness of debt, etc.
- Researched international tax issues and prepared international tax returns.
- Prepared corporate, consolidated, S-corporation, partnership, and individual tax returns.

Trial Testimony Experience

1. *James B. chapman, M.D. v. **HealthTexas Provider Network***. American Arbitration Association – Dallas, Texas Case 01-19-0001-7346. (2022)
2. *Wendie Renee Williams, M.D. v. **French Larry Taylor, II***. In the 471st District Court, Collin County, Texas – Cause No. 471-05407-2016 (2021)
3. *Maya Walnut LLC f/k/a Maya Foods Inc. V. **Brian Ly, Walnut Creek Center, Inc., Leng Chiv Ly, And Sao Minh Ly***. In the District Court, 192nd Judicial District, Dallas County, Texas – Cause No. DC-19-06309. (2021)
4. *DeepRoot Green Infrastructure, LLC and DeepRoot Canada Corp. -and- **GreenBlue Urban North America Inc.*** Federal Court Canada File No. T-954-18. (2020)
5. *James Robinson, M.D. and Spectrum Spine IP Holdings, LLC v. **Amendia, Inc., d/b/a Spinal Elements and Spinal Elements, Inc.*** Arbitration Tribunal of Henning Mediation & Arbitration Service, Inc. – Henning Docket No. 18-26076. (2020)
6. ***Ureteknologia de Mexico S.A. de C.V. and Urelift S.A. de C.V.** v. Uretek (USA), Inc., Structural Plastics, Inc., Brent J. Barron, Randall Wayne Brown, Galen Howard, and Mindy Barron Howard*. In the United States District Court for the Southern District of Texas, Houston Division – Civil Action No. 4:16-cv-02762. (2019)
7. ***Conn Appliances, Inc.** v. US Transport Corporation*. American Arbitration Association Case 01-17-0006-3473. (2018)
8. *Universal Instruments Corporation v. **Micro System Engineering, Inc. Missouri Tooling & Automation***. US District Court for the Northern District of New York Civil Action No. 3:13cv831 (GLS/DEP). (2017)
9. ***Texas Capital Bank, N.A.** v. Dallas Roadster, Ltd., IEDA Enterprise, Inc., Bahman Khobahy, and Bahman Hafezamini*. US District Court for the Eastern District of Texas, Sherman Division. (2015)
10. ***Dynomax Drilling Tools Inc. and Dynomax Drilling Tools USA Inc.** v. Duradril, LLC, Rigminder, Inc., Aleutian Yachts, LLC, Citadel Marine Center, LLC, Gregory A. Ward and Pamela Ward*. District Court for Harris County, TX. (2014)
11. *ALPS South, LLC v. **The Ohio Willow Wood Company***. US District Court for the Middle District of Florida, Tampa Division. (2012)
12. *Bert Ogden Harlingen Motors, Inc. v. **Chrysler Group LLC***. American Arbitration Association Case No. 70-532-000086-10. (2010)
13. *Sexton Chevrolet Cadillac, Inc. v. **Chrysler Group LLC***. American Arbitration Association Case No. 30-532-00078-10. (2010)
14. *El Dorado Motors, Inc. v. **Chrysler Group LLC***. American Arbitration Association Case No. 71-532-000094-10. (2010)
15. *U.S. Bank for the Estate of Vearl Sneed, et al. v. **Reef Exploration, Inc.**, et al.* Probate Court of Dallas County, Texas. (2002)

16. *Pioneer Financial Services Inc., et al., v. Omni Loan Co. Ltd.* US District Court for the Western District of Missouri, Kansas City Division. (2001)
17. *The State of Texas v. J. Grady Brown, Jr., et al.* County Court at Law No. Three of Denton County, Texas. (1997)

Deposition Testimony Experience

1. *District of Columbia v. NRA Foundation, Inc and National Rifle Association of America.* In the Superior Court for the District of Columbia Civil Division – Case No. 2020 CA 003454 B. (2022)
2. *Humanigen, Inc. and Madison Joint Venture, LLC v. Savant Neglected Diseases, LLC.* In the Superior Court of the State of Delaware, Civil Action N17C-07-068-PRW. (2021)
3. *Maya Walnut LLC f/k/a Maya Foods Inc. V. Brian Ly, Walnut Creek Center, Inc., Leng Chiv Ly, And Sao Minh Ly.* In the District Court, 192nd Judicial District, Dallas County, Texas – Cause No. DC-19-06309. (2020)
4. *DBG Group International v. ActivTek Europe (nka ReSPR Technologies) and Christophe Suchy.* In the Arbitration Administered by the American Arbitration Association. (2020)
5. *James Robinson, M.D. and Spectrum Spine IP Holdings, LLC v. Amendia, Inc., d/b/a Spinal Elements and Spinal Elements, Inc.* Arbitration Tribunal of Henning Mediation & Arbitration Service, Inc. – Henning Docket No. 18-26076. (2020)
6. *TDY Industries, LLC v. BTA Oil Producers, LLC.* In the United States District Court for the District of New Mexico – Civil Action No. 1:8-cv-00296. (2019)
7. *Conn Appliances, Inc. v. US Transport Corporation.* American Arbitration Association – Case 01-17-0006-3473. (2018)
8. *John Dee Spicer, Trustee for Celeritas Chemicals, LLC v. Euler Hermes North America Insurance Company.* In the District Court, 95th Judicial District, Dallas County, Texas – Cause No. DC-15-12894. (2018)
9. *Uretekologia de Mexico S.A. de C.V. and Urelift S.A. de C.V. v. Uretek (USA), Inc., Structural Plastics, Inc., Brent J. Barron, Randall Wayne Brown, Galen Howard, and Mindy Barron Howard.* In the United States District Court for the Southern District of Texas, Houston Division – Civil Action No. 4:16-cv-02762. (2017)
10. *Conn Credit I, LP v. Sherman Originator III LLC.* In the United States District Court for the Eastern District of Texas, Beaumont Division – Civil Action No. 1:125-cv-7. (2017)
11. *Micro Systems Engineering, Inc. v. Universal Instruments Corporation.* In the United States District Court for the Northern District of New York – Civil Action No. 3-13-cv-01144-TJM-DEP. (2016)
12. *MyKey Technology Inc. v. Data Protection Solutions by Arco; CRU Acquisitions Group LLC; CRU-DataPort LLC; Digital Intelligence, Inc.; Diskology, Inc.; Guidance Software, Inc.; Guidance Tableau LLC; Ji2, Inc.; MultiMedia Effects, Inc.; Voom Technologies, Inc.; and YEC Co. Ltd.* (In the United States District Court for the District of Delaware – Civil Action No. 1-11-cv-00444-LDD) (2016)

13. **Gerald W. Marleau** v. *Rounds of Fun, Ltd., d/b/a Zone Action Park, JMATS, Inc., Joe G. Heath, Michelle Heath, and Michael K. Nicol.* In The District Court, 158th Judicial District, Denton County, Texas – Cause No. 14-06192-158. (2016)
14. *Jeffery D. Morton* v. **Sandra Wood.** In The District Court, 417th Judicial District, Collin County, Texas – Cause No. 417-02447-2013. (2016)
15. *Patricia Hughes* v. **Desoto Surgicare Partners, Ltd., Texas Health Ventures Group, LLC and United Surgical Partners International, Inc.** In The District Court, 193rd Judicial District, Dallas County, Texas – Cause No. DC-13-02334-L. (2015)
16. *In Re: Life Partners, Inc. Litigation (MDL NO. 13-0357) (Bellwether Plaintiffs v. Life Partners, Inc., Life Partners Holdings, Inc., Brian D. Pardo, R. Scott Peden, and Pardo Family Holdings, LTD aka Pardo Family Trust.)* In the District Court, 191st Judicial District, Dallas County, Texas – Cause No. DC-11-10639. (2014)
17. *TMI Products, Inc. v. Rosen Entertainment Systems, L.P.* In the United States District Court for the Central District of California, Western Division – Civil Action No. 5:12-cv-02263-RGK-SP. (2014)
18. *Sean T. Turnbow and Masako H. Turnbow, on behalf of themselves and all others similarly situated* v. **Life Partners, Inc. and Life Partners Holdings, Inc.** In the United States District Court for the Northern District of Texas, Dallas Division – Civil Action No. 3-11-cv-01030-M. (2012)
19. **The Ohio Willow Wood Company** v. *Alps South, LLC.* In The United States District Court for the Southern District of Ohio, Eastern Division – Civil Action No. C2-04-1223. (2012)
20. *Miller Global Properties, LLC, Miller Global Fund V, LLC, SA Real Estate, LLLP, and SA Resort LLLP* v. **Marriott International, Inc. and Marriott Hotel Services, Inc.** In The District Court of Collin County, Texas, 219th Judicial District – Cause No. 219-03327-2009. (2011)
21. *Leanne Siri* v. **The City of Dallas, Dallas City Manager Mary Suhm, individually; Dallas Assistant City Manager Ryan Evans, individually; and Dallas Fire-Rescue Chief Eddie Burns, Sr., individually.** In the United States District Court for the Northern District of Texas, Dallas Division – Civil Action No. 3:10CV0036-M. (2011)
22. *Alps South, LLC* v. **The Ohio Willow Wood Company.** In The United States District Court for the Middle District of Florida, Tampa Division – Civil Action No. 8:08-CIV-1893-T-33MAP. (2011 and 2010)
23. *Susan Harrison, et al.* v. **The Procter & Gamble Company; Taft, Stettinius, & Hollister LLP; and Thomas E. Grossman.** In The United States District Court for the Northern District of Texas, Wichita Falls Division. (2008)
24. *BMC Resources, Inc. v. Paymentech, LP.* In the United States District Court for the Northern District of Texas, Dallas Division – Civil Action No. 3:03CV1927. (2005)
25. **Siemen Information and Communication Networks, Inc.** v. *Inter-Commercial Business Systems, Inc.* In the United States District Court for the Northern District of Texas, Dallas Division- Civil Action No. 3-03CV2171-L. (2005)

26. *Jerry L. Cartwright as Administrator of the Estate of Valeria H. Cartwright and Jerry L. Cartwright and Vallie J. Cartwright, individually as survivors, and as next friend of Dana Blunt, minor child of Valeria H. Cartwright, Deceased, Monica Davis, Dewayne Cartwright, and Michael Vaughn and Christie Wilson, Intervenor vs. **Premier Parks, Inc. d/b/a Six Flags Over Texas, Inc.**, vs. Canyon Manufacturing Company.* In the District Court of Tarrant County, Texas, 342ND Judicial District. (2003)
27. *Pioneer Financial Services Inc., et al., v. **Omni Loan Co. Ltd.*** In the United States District Court for the Western District of Missouri, Kansas City Division. (2001)
28. ***The State of Texas** v. J. Grady Brown, Jr., et al.* County Court at Law No. Three of Denton County, Texas. (1997)

Attachment A-3a

Facts, Data, and Other Information Received

#	Description	Bates Number	File Type
Legal Documents:			
1	Fourth Revised Scheduling Order dated June 29, 2022		PDF
2	Verified Answer of Wilson Phillips to Amended and Supplemental Verified Complaint dated September 14, 2021		PDF
3	Second Revised Scheduling Order dated February 24, 2022		PDF
4	Amended Verified Answer of Defendant Wayne LaPierre dated April 12, 2022		PDF
5	Verified Amended Answer of Defendant John Frazer to Plaintiff's Verified Amended and Supplemental Complaint dated April 12, 2022		PDF
6	Amended and Supplemental Verified Complaint dated August 16, 2021		PDF
7	Defendant the National Rifle Association's First Amended Verified Answer to Amended and Supplemental Complaint and Counterclaims dated April 15, 2022		PDF
8	Second Amended Verified Complaint dated May 2, 2022		PDF
9	Third Revised Scheduling Order dated May 2, 2022		PDF
10	Fifth Revised Scheduling Order dated August 11, 2022		PDF
11	NRA Notice of Expert Witness dated September 16, 2022		PDF
12	John Frazer Notice of Expert Witness dated September 16, 2022		PDF
13	NYAG Notices of Expert Disclosures dated September 16, 2022		PDF
14	Wayne LaPierre Disclosure Notice dated September 16, 2022		PDF

Expert Reports

15	Expert Report of Matthew Lerner dated September 16, 2022		PDF
16	Expert Report of J. Lawrence Cunningham dated September 16, 2022		PDF
17	Expert Report of Amish Mehta dated September 16, 2022		PDF
18	Expert Report of Alan A. Nadel dated September 16, 2022		PDF
19	Expert Report of James F. Reda dated September 16, 2022		PDF
20	Expert Report of Erica E. Harris dated September 16, 2022		PDF
21	Expert Report of Eric Hines dated September 16, 2022		PDF
22	Expert Report of Jeffrey S. Tenenbaum dated September 16, 2022		PDF
23	Expert Report of Michael Graham dated September 16, 2022		PDF
24	Expert Report of Mark Rambin dated September 16, 2022		PDF

Depos and Associated Exhibits

25	John Frazer dated July 12, 2022		PDF
26	John Frazer, as corporate representative dated July 29, 2022		PDF
27	John Frazer, as corporate representative dated August 9, 2022		PDF
28	John Frazer, as corporate representative dated September 8, 2022		PDF
29	Sonya Rowling dated July 14, 2022		PDF
30	Wilson Phillips dated August 10, 2021		PDF
31	Wilson Phillips dated August 11, 2021		PDF
32	Peter Brownell dated October 1, 2021		PDF
33	Wilson Phillips dated October 18, 2021		PDF
34	Craig Spray dated January 14, 2022		PDF
35	Mildred Hallow dated January 20, 2022		PDF
36	Jim Staples dated January 26, 2022		PDF
37	Gayle Stanford dated February 28, 2022		PDF
38	Greg Plotts dated March 22, 2022		PDF
39	Greg Plotts dated April 18, 2022		PDF
40	Todd Grable dated April 26, 2022		PDF
41	Thomas "Rick" Tedrick dated April 28, 2022		PDF
42	Tyler Schropp dated May 3, 2022		PDF
43	Lisa Supernaugh dated May 5, 2022		PDF
44	Gurney Sloan dated June 6, 2022		PDF
45	Willes Lee dated June 7, 2022		PDF
46	Joshua Powell dated June 9, 2022		PDF
47	Joshua Powell dated June 10, 2022		PDF
48	Michael Trahar dated June 14, 2022		PDF
49	David Coy dated June 15, 2022		PDF
50	Michael Erstling dated June 16, 2022		PDF
51	Charles Cotton dated June 17, 2022		PDF
52	Joel Friedman dated June 21, 2022		PDF
53	Wayne LaPierre dated June 27, 2022		PDF
54	Wayne LaPierre dated June 28, 2022		PDF
55	Phillip Journey dated July 8, 2022		PDF
56	Susan LaPierre dated July 21, 2022		PDF
57	Murray Drechsler dated August 10, 2022		PDF
58	Carolyn Meadows dated August 31, 2022		PDF
59	Carolyn Meadows dated September 1, 2022		PDF
60	Carolyn Meadows dated September 7, 2022		PDF

#	Description	Bates Number	File Type
Production:			
61	NRA Form 990 dated 2017	NRA-NYAGCOMMDIV-00960251-0342	PDF
62	NRA Form 990 dated 2018	NRA-NYAGCOMMDIV-00092099-2221	PDF
63	NRA Amended Form 990 dated 2018	NRA-NYAGCOMMDIV-01533982-34103	PDF
64	NRA Form 990 dated 2019	NRA-NYAGCOMMDIV-00099458-9559	PDF
65	NRA Amended Form 990 dated 2019	NRA-NYAGCOMMDIV-01533881-3981	PDF
66	NRA Form 990 dated 2020	NRA-NYAGCOMMDIV-01510127-0234	PDF
67	NRA Amended Form 990 dated 2020	NRA-NYAGCOMMDIV-01534104-4211	PDF
68	NRA Consolidated Financial Statements dated 2015	NYAG-00208942-963	PDF
69	NRA Financial Statements dated 2015	NYAG-00208902-924	PDF
70	NRA Consolidated Financial Statements dated 2016	NRA-NYAGCOMMDIV-00785422-446	PDF
71	NRA Financial Statements dated 2016	NRA-NYAGCOMMDIV-00785487-5511	PDF
72	NRA Consolidated Financial Statements dated 2017	NRA-NYAGCOMMDIV-00827252-276	PDF
73	NRA Financial Statements dated 2017	NRA-NYAGCOMMDIV-00580155-180	PDF
74	NRA Consolidated Financial Statements dated 2018	NYAG-00242468-491	PDF
75	NRA Financial Statements dated 2018	NRA-NYAGCOMMDIV-00856118-144	PDF
76	NRA Consolidated Financial Statements dated 2019	NRA-NYAGCOMMDIV-00012357-386	PDF
77	NRA Financial Statements dated 2019	NRA-NYAGCOMMDIV-01533846-880	PDF
78	NRA Consolidated Financial Statements dated 2020	NRA-NYAGCOMMDIV-01533794-3826	PDF
79	NRA Financial Statements dated 2020	NRA-NYAGCOMMDIV-01533759-793	PDF
80	NRA Consolidated Financial Statements dated 2021	NRA-NYAGCOMMDIV-01534240-272	PDF
81	NRA Financial Statements dated 2021	NRA-NYAGCOMMDIV-01534273-4307	PDF
82	NRA Char500 dated 2014	NYAG-00000373-0451	PDF
83	NRA Char500 dated 2016	NRA-NYAGCOMMDIV-01424699-4788	PDF
84	NRA Char500 dated 2017	NYAG-00278603-8732	PDF
85	NRA Char500 dated 2018	NYAG-00286598-6705	PDF
86	NRA Char500 dated 2019	Exhibit 6 from Spray Depo	PDF
87	NRA Char500 dated 2020	Exhibit 8 from Pleading	PDF
88	NRA Upper Management Seminar - Compliance and Governance Refresher dated July 26, 2018	NRA-NYAGCOMMDIV-00203706-756	PDF
89	NRA Compliance Training Sign In dated July 26, 2018	NRA-NYAGCOMMDIV-00079840-41	PDF
90	NRA Upper Management Seminar - Compliance and Governance Refresher dated February 27, 2019	NRA-NYAGCOMMDIV-00200048-0103	PDF
91	NRA Upper Management Seminar - Compliance and Governance Refresher dated November 7, 2019	NRA-NYAGCOMMDIV-00203534-588	PDF
92	NRA Compliance Meeting Sign In Sheet dated February 27, 2019	NRA-NYAGCOMMDIV-00079837-39	PDF
93	NRA Compliance Training Sign In Sheet dated December 16, 2021	NRA-NYAGCOMMDIV-01458696-97	PDF
94	NRA Compliance Training Sign In Sheet dated November 7, 2019	NRA-NYAGCOMMDIV-00079834-36	PDF
95	NRA Attendee Log for Compliance Seminar dated May 18, 2022	NRA-NYAGCOMMDIV-01537411	XLXS
96	NRA Bylaws dated September 12, 2015	NYAG-00019060-087	PDF
97	NRA Bylaws dated May 23, 2016	NYAG-00019117-144	PDF
98	NRA Bylaws dated April 29, 2017	NRA-NYAGCOMMDIV-01458215-271	PDF
99	NRA Bylaws dated April 29, 2017	NYAG-NRA-00000120-175	PDF
100	NRA Bylaws dated April 29, 2019	NRA-NYAGCOMMDIV-00007606-665	PDF
101	NRA Bylaws dated September 14, 2019	NRA-NYAGCOMMDIV-00201686-1715	PDF
102	NRA Bylaws dated October 24, 2020	NRA-NYAGCOMMDIV-00102890-2949	PDF
103	NRA Minutes of the Meeting of the Board of Directors dated January 15, 2022	NRA-NYAGCOMMDIV-01528425-8617	PDF
104	NRA Minutes of the Meeting of the Board of Directors dated January 7, 2012	NRA-NYAG-00004525-05006	PDF
105	NRA Minutes of the Meeting of the Board of Directors dated April 16, 2012	NRA-NYAG-00001972-02289	PDF
106	NRA Minutes of the Meeting of the Board of Directors dated September 15, 2012	NRA-NYAGCOMMDIV-01454164-4431	PDF
107	NRA Minutes of the Meeting of the Board of Directors dated January 12, 2013	NRA-NYAG-00003872-04231	PDF
108	NRA Minutes of the Meeting of the Board of Directors dated May 6, 2013	NRA-NYAGCOMMDIV-01453606-3856	PDF
109	NRA Minutes of the Meeting of the Board of Directors dated September 14, 2013	NRA-NYAG-00006697-6991	PDF
110	NRA Minutes of the Meeting of the Board of Directors dated January 11, 2014	NRA-NYAGCOMMDIV-01506207-6591	PDF
111	NRA Minutes of the Meeting of the Board of Directors dated April 28, 2014	NRA-NYAG-00005781-06078	PDF
112	NRA Minutes of the Meeting of the Board of Directors dated September 13, 2014	NRA-NYAG-00000861-01163	PDF
113	NRA Minutes of the Meeting of the Board of Directors dated January 10, 2015	NRA-NYAG-00001557-1971	PDF
114	NRA Minutes of the Meeting of the Board of Directors dated April 13, 2015	NRA-NYAG-00006418-6696	PDF
115	NRA Minutes of the Meeting of the Board of Directors dated September 12, 2015	NRA-NYAGCOMMDIV-01528657-8943	PDF
116	NRA Minutes of the Meeting of the Board of Directors dated January 9, 2016	NRA-NYAGCOMMDIV-01510482-0874	PDF
117	NRA Minutes of the Meeting of the Board of Directors dated May 23, 2016	NRA-NYAG-00004232-4524	PDF
118	NRA Minutes of the Meeting of the Board of Directors dated September 10, 2016	NRA-NYAG-00008091-8395	PDF
119	NRA Minutes of the Meeting of the Board of Directors dated January 7, 2017	NRA-NYAG-00008396-8783	PDF
120	NRA Minutes of the Meeting of the Board of Directors dated May 1, 2017	NRA-NYAGCOMMDIV-01455839-56094	PDF
121	NRA Minutes of the Meeting of the Board of Directors dated September 9, 2017	NRA-NYAG-00007533-7788	PDF
122	NRA Minutes of the Meeting of the Board of Directors dated January 13, 2018	NRA-NYAG-00006079-6417	PDF
123	NRA Minutes of the Meeting of the Board of Directors dated May 7, 2018	NRA-NYAGCOMMDIV-01512154-2414	PDF
124	NRA Minutes of the Meeting of the Board of Directors dated September 8, 2018	NRA-NYAG-00007789-08090	PDF
125	NRA Minutes of the Meeting of the Board of Directors dated January 5, 2019	NRA-NYAG-00003503-3871	PDF
126	NRA Minutes of the Meeting of the Board of Directors dated April 29, 2019	NRA-NYAGCOMMDIV-01527776-7993	PDF
127	NRA Minutes of the Meeting of the Board of Directors dated September 14, 2019	NRA-NYAG-00052670-2845	PDF

#	Description	Bates Number	File Type
128	NRA Minutes of the Meeting of the Board of Directors dated January 11, 2020	NRA-NYAGCOMMDIV-00060893-61014	PDF
129	NRA Report of the Executive Director of the National Rifle Association - Institute for Legislative Action To the Board of Directors dated November 22, 2019	NRA-NYAGCOMMDIV-01487583-7794	PDF
130	NRA Minutes of the Meeting of the Board of Directors dated January 7, 2021	NRA-NYAGCOMMDIV-00062575-2731	PDF
131	NRA Minutes of the Meeting of the Board of Directors dated March 28, 2021	NRA-NYAGCOMMDIV-01522858-862	PDF
132	NRA Minutes of the Meeting of the Board of Directors dated June 26, 2021	NRA-NYAGCOMMDIV-01528618-656	PDF
133	NRA Minutes of the Meeting of the Board of Directors dated May 2, 2021	NRA-NYAGCOMMDIV-01326076-086	PDF
134	NRA Employee Handbook dated October 2021	NRA-NYAGCOMMDIV-01055732-5957	PDF
135	NRA Report of the Finance Committee dated October 2, 2021	NRA-NYAGCOMMDIV-01528395-8403	PDF
136	NRA Policy Manual dated March 11, 2020	NRA-NYAGCOMMDIV-00008897-09195	PDF
137	NRA Policy Statement dated February 27, 2012	NYAG-00030077-082	PDF
138	McGladrey Presentation to the NRA Audit Committee dated January 9, 2014	NYAG-00197598-7601	PDF
139	McGladrey Presentation to the NRA Audit Committee dated March 2014	NYAG-00200195-0210	PDF
140	McGladrey Presentation to the NRA Audit Committee dated September 11, 2014	NYAG-00200455-464	PDF
141	McGladrey Presentation to the NRA Audit Committee dated December 10, 2014	NYAG-00266222-28	PDF
142	McGladrey Presentation to the NRA Audit Committee dated September 10, 2015	NYAG-00205849-861	PDF
143	McGladrey Presentation to the NRA Audit Committee dated 2015	NYAG-00204048-067	PDF
144	NRA Email about Upcoming Audit Committee Meeting dated January 7, 2016	NRA-NYAGCOMMDIV-01374571-594	PDF
145	RSM Presentation to NRA Audit Committee dated March 8, 2016	NYAG-00208013-037	PDF
146	RSM Presentation to NRA Audit Committee dated September 8, 2016	NYAG-00209156-168	PDF
147	RSM Presentation to NRA Audit Committee dated December 27, 2016	NYAG-00092099-2100	PDF
148	RSM Presentation to NRA Audit Committee dated February 28, 2017	NRA-NYAG-00066667-68	PDF
149	RSM Presentation to NRA Audit Committee dated September 2017	NYAG-00213276-288	PDF
150	RSM Presentation to NRA Audit Committee dated 2017	NYAG-00213097-3118	PDF
151	RSM Presentation to NRA Audit Committee dated January 11, 2018	NYAG-00091418	PDF
152	RSM Presentation to NRA Audit Committee dated February 28, 2018	NRA-NYAG-00072588-590	PDF
153	RSM Presentation to NRA Audit Committee dated August 22, 2018	NRA-NYAG-00069233-36	PDF
154	RSM Presentation to NRA Audit Committee dated September 6, 2018	NYAG-00311564-579	PDF
155	RSM Presentation to NRA Audit Committee dated December 5, 2018	NYAG-00091416	PDF
156	RSM Presentation to NRA Audit Committee dated 2018	NYAG-00217078-095	PDF
157	RSM Presentation to NRA Audit Committee dated March 2, 2019	NYAG-00261461-479	PDF
158	RSM Presentation to NRA Audit Committee dated March 4, 2019	NRA-NYAG-00073191-92	PDF
159	RSM Presentation to NRA Audit Committee dated March 4, 2019	NYAG-00241983-42004	PDF
160	RSM Presentation to NRA Audit Committee dated March 8, 2019	NYAG-00091415	PDF
161	NRA Report of the Audit Committee dated January 10, 2015	NRA-NYAG-00001906	PDF
162	NRA Report of the Audit Committee dated April 13, 2015	NRA-NYAG-00006671	PDF
163	NRA Report of the Audit Committee dated May 23, 2016	NRA-NYAG-00004469	PDF
164	NRA Report of the Audit Committee dated January 9, 2016	NRA-NYAGCOMMDIV-01510776-784	PDF
165	NRA Report of the Audit Committee dated September 12, 2015	NRA-NYAGCOMMDIV-01528893	PDF
166	NRA Report of the Audit Committee dated September 10, 2016	NRA-NYAGCOMMDIV-00776966	PDF
167	NRA Report of the Audit Committee dated January 7, 2017	NRA-NYAGCOMMDIV-01455703	PDF
168	NRA Report of the Audit Committee dated May 1, 2017	NRA-NYAGCOMMDIV-00055954-55	PDF
169	NRA Report of the Audit Committee dated May 7, 2018	NRA-NYAGCOMMDIV-00056295-96	PDF
170	NRA Report of the Audit Committee dated January 5, 2019	NRA-NYAGCOMMDIV-00090642-46	PDF
171	NRA Report of the Audit Committee dated January 13, 2018	NRA-NYAGCOMMDIV-00056263-64	PDF
172	NRA Report of the Audit Committee dated September 8, 2018	NRA-NYAG-00008035-041	PDF
173	NRA Report of the Audit Committee dated September 9, 2017	NRA-NYAGCOMMDIV-00056222-23	PDF
174	NRA Report of the Audit Committee dated February 6, 2019	NRA-NYAGCOMMDIV-00859450-51	PDF
175	NRA Report of the Audit Committee dated May 10, 2019	NRA-NYAGCOMMDIV-00118920	PDF
176	NRA Report of the Audit Committee dated May 30, 2019	NRA-NYAGCOMMDIV-00119738-741	PDF
177	NRA Report of the Audit Committee dated April 29, 2019	NRA-NYAGCOMMDIV-00090627-641	PDF
178	NRA Report of the Audit Committee dated August 26, 2019	NRA-NYAGCOMMDIV-00022200	PDF
179	NRA Report of the Audit Committee dated March 8, 2019	NRA-NYAGCOMMDIV-00200020-23	PDF
180	NRA Report of the Audit Committee dated April 28, 2019	NRA-NYAGCOMMDIV-00058057-066	PDF
181	NRA Report of the Audit Committee dated August 7, 2019	NRA-NYAGCOMMDIV-00022196-98	PDF
182	NRA Report of the Audit Committee dated September 14, 2019	NRA-NYAGCOMMDIV-00880524-530	PDF
183	NRA Report of the Audit Committee dated May 2, 2021	NRA-NYAGCOMMDIV-01052802	PDF
184	NRA Report of the Audit Committee dated June 26, 2021	NRA-NYAGCOMMDIV-01492879	PDF
185	NRA Report of the Audit Committee dated October 1, 2021	NRA-NYAGCOMMDIV-01528404-06	PDF
186	NRA Report of the Audit Committee dated October 24, 2020	NRA-NYAGCOMMDIV-00128879-881	PDF
187	NRA Report of the Audit Committee dated April 13, 2015	NRA-NYAG-00019457-487	PDF
188	NRA Report of the Audit Committee dated January 11, 2020	NRA-NYAGCOMMDIV-00125215-222	PDF
189	NRA, Ackerman Complaint dated April 12, 2019	NRA-NYAGCOMMDIV-01430519-534	PDF
190	NRA, Ackerman First Amended Complaint dated April 24, 2019	NRA-NYAGCOMMDIV-01430869-888	PDF
191	NRA, Allegiance Agreement dated August 18, 2022	NRA-NYAGCOMMDIV-01538647-655	PDF
192	NRA, MMP Companies Memorandum of Understanding dated July 29, 2022	NRA-NYAGCOMMDIV-01538656-660	PDF
193	NRA, MMP Companies Contract Review Signature Sheet dated August 16, 2022	NRA-NYAGCOMMDIV-01538661-672	PDF
194	MMP Memorandum dated February 26, 2019	NRA-NYAGCOMMDIV-01538735-36	PDF
195	Aronson Ledger and Invoices dated December 28, 2021	Aronson_NRA0059687-693	PDF
196	Aronson Ledger and Invoices dated June 10, 2020	Aronson_NRA0000001-0107	PDF

#	Description	Bates Number	File Type
197	Brewer Attorneys & Counselors Response to July 2, 2021, Letter from John C. Frazer dated August 9, 2021	Aronson_NRA0045655-665	PDF
198	Foundation Intercompany Activity Due to NRA dated December 31, 2020	Aronson_NRA0045688	PDF
199	Native Document Placeholder	Aronson_NRA0045692	PDF
200	NRA Debt Rollforward dated December 31, 2020	Aronson_NRA0045692	XLSX
201	NRA, Foundation Secured Loan Agreement dated June 28, 2018	Aronson_NRA0030180-88	PDF
202	NRA File Memorandum dated December 31, 2020	Aronson_NRA0045491	PDF
203	NRA Interoffice Memorandum dated December 31, 2020	Aronson_NRA0045617	PDF
204	Native Document Placeholder	Aronson_NRA0073350	PDF
205	NRA Vendors List dated 2020	Aronson_NRA0073350	XLSX
206	NRA Special Procedures dated December 31, 2020	Aronson_NRA0047392-93	PDF
207	NRA Statement of Corporate Ethics dated January 22, 2020	Aronson_NRA0042460-64	PDF
208	NRA Audit File Memorandum dated December 31, 2020	Aronson_NRA0045631	PDF
209	NRA Audit File Memorandum dated December 31, 2020	Aronson_NRA0045556	PDF
210	NRA Audit File Memorandum dated December 31, 2020	Aronson_NRA0045630	PDF
211	NRA Audit Committee Charter	Aronson_NRA0045627-29	PDF
212	NRA Audit File Memorandum dated December 31, 2020	Aronson_NRA0045712	PDF
213	NRA Audit File Memorandum dated December 31, 2020	Aronson_NRA0045713	PDF
214	NRA Audit File Memorandum dated December 31, 2020	Aronson_NRA0045715-16	PDF
215	NRA Governing Board Minutes Review Memorandum dated August 30, 2021	Aronson_NRA0045759-762	PDF
216	Native Document Placeholder	Aronson_NRA0045733	PDF
217	NRA Related Parties dated December 31, 2020	Aronson_NRA0045733	XLSX
218	NRA Governing Board Minutes Review Memorandum dated May 14, 2021	Aronson_NRA0031143-44	PDF
219	NRA Audit File Memorandum dated December 31, 2020	Aronson_NRA0045620	PDF
220	Threats to the NRA dated multiple	NRA-NYAGCOMMDIV-00203759-3870	PDF
221	Threats to the NRA dated multiple	NRA-NYAGCOMMDIV-00203873-04251	PDF
222	Threats to the NRA dated multiple	NRA-NYAGCOMMDIV-00204805-05028	PDF
223	Document Withheld for Confidentiality	NRA-NYAGCOMMDIV-00571379	PDF
224	Document Withheld for Confidentiality	NRA-NYAGCOMMDIV-00578939	PDF
225	Threat to NRA	NRA-NYAGCOMMDIV-00571380	PDF
226	Threat to NRA dated February 17, 2018	NRA-NYAGCOMMDIV-00578897	PDF
227	Document Withheld for Confidentiality	NRA-NYAGCOMMDIV-00578634	PDF
228	Document Withheld for Confidentiality	NRA-NYAGCOMMDIV-00578894	PDF
229	Document Withheld for Confidentiality	NRA-NYAGCOMMDIV-00578938	PDF
230	Threats to the NRA dated multiple	NRA-NYAGCOMMDIV-00736122-185	TIF
231	Threats to the NRA dated multiple	NRA-NYAGCOMMDIV-00736436-458	TIF
232	Threat to the NRA dated November 19, 2015	NRA-NYAGCOMMDIV-00203760-61	PDF
233	Threat to the NRA dated July 20, 2012	NRA-NYAGCOMMDIV-00736128-130	PDF
234	Threat to the NRA dated April 29, 2021	NRA-NYAGCOMMDIV-00203917-18	PDF
235	Threat to the NRA dated September 23, 2013	NRA-NYAGCOMMDIV-00203776	PDF
236	Threat to the NRA dated December 17, 2012	NRA-NYAGCOMMDIV-00736153-54	PDF
237	Gardaworld Threat Assessment Update Wayne LaPierre dated May 15, 2019	NRA-NYAGCOMMDIV-00869854-884	PDF
238	Granite Security Executive Security Assessment dated November 6, 2017	NRA-NYAGCOMMDIV-00935682-5703	PDF
239	Gardaworld Threat Assessment Update Wayne LaPierre dated May 15, 2019	NRA-NYAGCOMMDIV-00865735-764	PDF
240	The Lake Forest Group Independent Security Study dated June 14, 2019	NRA-NYAGCOMMDIV-00138002-8103	PDF
241	LaPierre Reimbursement Check dated November 16, 2020	NRA-NYAGCOMMDIV-01539995	PDF
242	LaPierre Reimbursement Check dated November 30, 2021	NRA-NYAGCOMMDIV-01539222	JPG
243	LaPierre Reimbursement Check dated May 19, 2022	NRA-NYAGCOMMDIV-01539996-98	PDF
244	Document Produced Only in Native Format	NRA-NYAGCOMMDIV-00013553	PDF
245	NRA Flights dated November 16, 2020	NRA-NYAGCOMMDIV-00013553	XLSX
246	Document Produced Only in Native Format	NRA-NYAGCOMMDIV-00013554	PDF
247	NRA Flights dated November 16, 2020	NRA-NYAGCOMMDIV-00013554	XLSX
248	LaPierre Reimbursement Check dated September 6, 2022	NRA-NYAGCOMMDIV-01538646	JPG
249	Support for WLP Check for Excess Benefits Email dated September 12, 2022	NRA-NYAGCOMMDIV-01538816-17	PDF
250	NRA Compliance Seminar Presentation dated September 2022	NRA-NYAGCOMMDIV-01540023-049	PDF
251	Voluntary Petition for Non-Individuals Filing for Bankruptcy dated January 15, 2021	NRA-NYAGCOMMDIV-00074995-75008	PDF
252	NRA Report of the Audit Committee dated August 10, 2021	NRA-NYAGCOMMDIV-01540051-52	PDF
253	NRA Report of the Audit Committee dated July 30, 2022	NRA-NYAGCOMMDIV-01540050	PDF
254	NRA, Ackerman Original Complaint dated August 30, 2019	NRA-NYAGCOMMDIV-01496907-917	PDF
255	NRA, Ackerman First Amended Complaint dated October 25, 2019	NRA-NYAGCOMMDIV-01486416-495	PDF
256	NRA, Ackerman Second Amended Complaint dated March 12, 2021	NRA-NYAGCOMMDIV-00016765-6870	PDF
257	NRA Letters to Vendors dated August 8, 2018	NRA-NYAG-00024875-889	PDF
258	NRA Form Letter to Vendors dated September 13, 2018	NRA-NYAGCOMMDIV-00601784-791	PDF
259	MMP Entities Business Case Analysis dated December 12, 2011	NRA-NYAGCOMMDIV-00867564-576	PDF
260	MMP Agreement dated December 16, 2011	NRA-NYAGCOMMDIV-00974149-157	PDF
261	MMP First Amendment dated April 22, 2015	NRA-NYAGCOMMDIV-00974193-94	PDF
262	MMP Second Amendment dated January 30, 2017	NRA-NYAGCOMMDIV-00974158-59	PDF
263	MMP Entities Business Case Analysis dated August 18, 2022	NRA-NYAGCOMMDIV-01538661-672	PDF
264	NRA Report of the Audit Committee dated September 17, 2022	NRA-NYAGCOMMDIV-01540057-58	PDF
265	NRA Report of the Finance Committee dated September 17, 2022	NRA-NYAGCOMMDIV-01540059-066	PDF

#	Description	Bates Number	File Type
266	NRA Report of the Legal Affairs Committee dated September 17, 2022	NRA-NYAGCOMMDIV-01540053-56	PDF
267	McKenna Termination Letter dated November 25, 2019	NRA-NYAGCOMMDIV-01077375	PDF
268	Ackerman Termination Letter dated June 28, 2019	NRA-NYAG-00052304-05	PDF
269	McKenna Support for Invoiced Amounts dated September 12, 2018	NYAG-00292898-99	PDF
270	NRA Meeting of the Board of Directors dated September 17, 2022	NRA-NYAGCOMMDIV-01540067-0167	PDF
271	Document Produced Only in Native Format	NRA-NYAGCOMMDIV-01537500	PDF
272	MMP Proforma P&L dated January 2020	NRA-NYAGCOMMDIV-01537500	XLXS
273	NRA General Ledger dated 2015	NRA-NYAGCOMMDIV-01539476	PDF
274	NRA General Ledger dated 2016	NRA-NYAGCOMMDIV-01539478	PDF
275	NRA General Ledger dated 2017	NRA-NYAGCOMMDIV-01539474	PDF
276	NRA General Ledger dated 2018	NRA-NYAGCOMMDIV-01539479	PDF
277	NRA General Ledger dated 2019	NRA-NYAGCOMMDIV-01539475	PDF
278	NRA General Ledger dated 2020	NRA-NYAGCOMMDIV-01539477	PDF
279	NRA General Ledger dated 2021	NRA-NYAGCOMMDIV-01539480	PDF
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Attachment A-5

List of Referenced Individuals

Individual	Title
Charles Cotton	NRA, President/Board Member/Audit Committee Chairman
Christopher Cox	NRA, Former Executive Director of ILA/Officer
David Coy	NRA, Second Vice President/Board Member/Finance Committee Member/Audit Committee Member
Joseph Debergalis	NRA, Executive Director of General Operations/Officer/Former Director
Michael Erstling	NRA, Director of Finance
John Frazer	NRA, Secretary/General Counsel
Colleen Gallagher	McKenna, Senior Advisor for NRA/Wife of Joshua Powell
Todd Grable	NRA, Executive Director of Membership and Affinity and Licensing

Individual	Title
Wayne LaPierre	NRA, Executive Vice President/CEO
David McKenzie	MMP Entities, Alleged Owner
Oliver North	NRA, Former President
Wilson Phillips	NRA, Former Treasurer/CFO
Joshua Powell	NRA, Former Chief of Staff/Executive Director of General Operations
Sonya Rowling	NRA, Treasurer/CFO/Whistleblower
Craig Spray	NRA, Former Treasurer/CFO
Gayle Stanford	NRA, Former Travel Agent

Attachment E-1

Corrective Action the NRA has Undertaken (Response to Hines Report)

Allegation	Source	Action Undertaken?	Corrective Action	Corrective Action Citation
"Based on my experience, education, and training, the facts around the MMP Entity arrangements raise numerous red flags. Considered in totality, the record evidence reflects long-term commitments for tens of millions of dollars each year which were not subject to applicable reviews, approvals, and internal control steps in accordance with NRA policies."	[A]	Yes	<ul style="list-style-type: none"> • NRA's financial personnel reviewed the contracts with the MMP Entities • NRA renegotiated its contract with the MMP Entities 	See Section 6.2.3 of Rebuttal Report
"From a monetary perspective, the Management Fees for the MMP Entities in the aggregate have gone from \$575,000 per month in December 2011 to \$1,424,850 in December of 2021, an increase of 148%. . . . I have identified no evidence indicating that any such contemporaneous analysis of the contract performance or costs of the services, either to the NRA or the underlying costs of the MMP Entities, were analyzed in order to assess the appropriateness of Management Fee increases."	[B]	Yes	<ul style="list-style-type: none"> • MMP Entities sent an email to the NRA explaining its management fee increases from 2011–2018 	See Section 6.2.3 of Rebuttal Report
"Given the Disclosure of Financial Interest Policy, and the Financial Disclosure Questionnaire, specified disclosable financial interests that might constitute a conflict of interest . . . , in my opinion, it is clear that the benefits provided by the MMP Principal to Mr. LaPierre," and associated friends and family, and Mr. Phillips required disclosure in advance of accepting those benefits."	[C]	Yes	<ul style="list-style-type: none"> • NRA took steps to address LaPierre's conflict of interest with the MMP Entities 	See Section 6.2.3 of Rebuttal Report
"Based on my experience, education, and training, the facts around the Ackerman/Mercury arrangement raise numerous red flags. Considered in totality, the record evidence reflects contracts for tens of millions of dollars each year which were not subject to applicable reviews, approvals, and internal control steps in accordance with NRA policies."	[D]	Yes	<ul style="list-style-type: none"> • NRA ended its business relationship with Ackerman and engaged in litigation 	See Section 6.2.1 of Rebuttal Report

Allegation	Source	Action Undertaken?	Corrective Action	Corrective Action Citation
"Because the travel and entertainment expenses for certain NRA executives were lumped into single out-of-pocket expense lines on Ackerman invoices, these expenses were able to circumvent the controls within the NRA Travel and Business Expense policy. These individuals received reimbursements from the NRA for such expenses through the Ackerman pass through arrangement, without any of the required review of reasonableness, substantiation, and approval as required by the NRA Travel and Business Expense Reimbursement Policy."	[E]	Yes	<ul style="list-style-type: none"> • NRA ended its business relationship with Ackerman and engaged in litigation 	See Section 6.2.1 of Rebuttal Report
"From my review of the record evidence in this matter, I have not seen evidence that the formal agreements between UWS and the NRA were approved by NRA officers, nor was a business case analysis completed and approved as required by the NRA's longstanding policy for Approval Procedures for Purchases and Contracts Over \$100,000."	[F]	Yes	<ul style="list-style-type: none"> • NRA engaged in course correction of its operation and governance • NRA conducted contract policy training 	See Section 10.4.5 of Initial Report
"Based on my review of documentation regarding Mr. LaPierre's required annual Financial Disclosure Questionnaire responses, Mr. LaPierre did not disclose benefits received from UWS, including hunting trips that he and his wife took that were paid for by the NRA or UWS."	[G]	Yes	<ul style="list-style-type: none"> • Audit Committee reviews conflict of interest transactions • NRA developed a two-pronged approach for related party transactions and has implemented better controls regarding conflicts of interest 	See Section 6.3.1 of Rebuttal Report
"As described above, the NRA's vendor relationship with [Ms.] Stanford was not documented and was not consistent with NRA policy. The lack of documentation is consistent with fraud risk indicators."	[H]	Yes	<ul style="list-style-type: none"> • NRA requires a business case analysis • NRA requires a written contract prior to payment of invoices 	See Section 10.4.5 of Initial Report
"Considered together, these billing arrangements between Ms. Stanford and the NRA were inexplicably disaggregated, complex, unsupported by contracts, not approved in accordance with NRA policy, and present a number of red flags with respect to documentation and structure, as discussed subsequently."	[I]	Yes	<ul style="list-style-type: none"> • NRA requires a written contract prior to payment of invoices • NRA ensures expenses are properly approved 	See Section 10.4.5 of Initial Report

Allegation	Source	Action Undertaken?	Corrective Action	Corrective Action Citation
"Considered in totality, the record evidence reflected millions of dollars paid to former employees for consulting services that were undefined, not subject to applicable oversight and approval, and unsupported by evidence of services being provided."	[J]	Yes	<ul style="list-style-type: none"> • NRA's improved controls around identifying and addressing related party transactions 	See Section 10.4.5 of Initial Report
"Based on my analysis of the McKenna Agreements against the NRA Procurement Policy requirements, I observed the arrangements with McKenna did not comply with the NRA Procurement Policy. . . . I have not identified required evidence of the review and approval for the arrangement, including a contract signature review worksheet or business case analysis."	[K]	Yes	<ul style="list-style-type: none"> • The NRA's Audit Committee reviewed the McKenna agreements and added provisions to the terms • NRA terminated its contract with McKenna 	See Section 6.2.2 of Rebuttal Report
"Despite payments being made by the NRA to McKenna as early as August 2014, I did not observe any fully executed written agreements between the NRA and McKenna for these fundraising services until a contract that was executed in June 2016 (effective July 2016)."	[L]	Yes	<ul style="list-style-type: none"> • NRA and McKenna executed a written agreement • NRA terminated its contract with McKenna 	See Section 6.2.2 of Rebuttal Report
"Contracts that were poorly documented and awarded without following required policies and procedures[.]"	[M]	Yes	<ul style="list-style-type: none"> • NRA improved adherence to the Purchasing Policy and requires business case analysis 	See Section 10.4.5 of Initial Report

Allegation	Source	Action Undertaken?	Corrective Action	Corrective Action Citation
"Inadequate disclosure or non-disclosure regarding actual or perceived conflicts of interest."	[N]	Yes	• Aronson concluded that conflict of interest documentation was properly maintained and in compliance with NRA policies and internal controls	See Section 6.3.1 of Rebuttal Report
"Notwithstanding the limited information, even a circumscribed review of AMEX expense details indicates a questionable pattern of expense activity over an extended period of time by multiple individuals. Further, I noted that a significant number of these expenses have profiles similar to those summarized within other sections of this Report – including NRA expenses facilitated by the NRA Travel Consultant or Ackerman McQueen – with respect to potential abuses or violations of NRA policies."	[O]	Yes	• NRA requires AMEX expenses to include certifications and signatures • NRA reduced the number of people who have AMEX cards	See Section 10.4.5 of Initial Report

Notes and sources:

[A] Hines Report, 9/16/2022, ¶172.

[B] Hines Report, 9/16/2022, ¶¶ 130, 132.

[C] Hines Report, 9/16/2022, ¶160.

[D] Hines Report, 9/16/2022, ¶ 217.

[E] Hines Report, 9/16/2022, ¶218.

[F] Hines Report, 9/16/2022, ¶226.

[G] Hines Report, 9/16/2022, ¶ 241.

[H] Hines Report, 9/16/2022, ¶ 299.

[I] Hines Report, 9/16/2022, ¶ 275.

[J] Hines Report, 9/16/2022, ¶ 304.

[K] Hines Report, 9/16/2022, ¶ 460.

[L] Hines Report, 9/16/2022, ¶ 424.

[M] Hines Report, 9/16/2022, ¶ 26.

[N] Hines Report, 9/16/2022, ¶ 26.

[O] Hines Report, 9/16/2022, ¶ 473.

Attachment F-1

2020 NRA Form 990 (Response to Harris Report)

Variable Name	Source	Description	Form 990 Question Number	NRA 2020 Response
Review990	[A]	Indicator = 1 if governing body reviewed Form 990 prior to filing	Part VI Section B Question 11(a)	0
AuditCommittee	[B]	Indicator = 1 if organization has an audit committee	Part XII Question 2(c)	1
Audit	[C]	Indicator = 1 if organization's financial statements were audited by an independent auditor	Part XII Question 2(b)	1
BoardIndependence	[D]	Percentage of independent voting members to total board members	Part VI Section A Question 1(b)	96.1%
NoRelations	[E]	Indicator = 1 if there is an absence of family/business relationship between key personnel	Part VI Section A Question 2	0
ConflictPolicy	[F]	Indicator = 1 if organization has a written conflict of interest policy	Part VI Section B Question 12(a)	1
WhistleblowerPolicy	[G]	Indicator = 1 if organization has written whistleblower party	Part VI Section B Question 13	1
NoOutsource	[H]	Indicator = 1 if management function is not delegated to an outside entity	Part VI Section A Question 3	1
MuniBonds	[I]	Indicator = 1 if organization reports municipal bond debt	Part X Line 20	0
GovGrants	[J]	Indicator = 1 if organization reports revenue from government grants	Part VIII Line 1(e)	0
RestrictedDonations	[K]	Indicator = 1 if organization reports the existence of temporarily or permanently restricted net assets	Part X Line 28	1
ProgramRatio	[L]	Program Service Expenses / Total Expenses	Part IX Line 25 Columns A and B	60.9%
Complexity	[M]	Number of revenue sources (out of Donations, Government Grants, Program Service Revenues) received by organization	Part VIII Lines 1	2
Age	[N]	Number of years since the organization filed for exemption status	n/a	78
Growth	[O]	Quartile placement for % change in total revenues for sample	Part VIII Line 12	n/a
Size	[P]	Total expenses	Part I Line 18	\$ 237,633,314
FEZero	[Q]	Indicator = 1 if an organization reports fundraising expenses equal to zero but nonzero donations revenue	Part IX Line 25 column D	0

Notes and sources:

Variable names and Descriptions come from Dr. Harris's report.

Harris, Erica, Christine Petrovits, and Michelle H. Yetman (2017), "Why Bad Things Happen to Good Organizations: The Link Between Governance and Asset Diversions in Public Charities,"

Journal of Business Ethics, produced as Harris Report, 9/16/22, Appendix B, at PDF 80.

Highlighted rows represent the variables that Dr. Harris's research characterized as "four governance mechanisms that boards should consider."

Harris, Erica, Christine Petrovits, and Michelle H. Yetman (2017), "Why Bad Things Happen to Good Organizations: The Link Between Governance and Asset Diversions in Public Charities,"

Journal of Business Ethics, produced as Harris Report, 9/16/22, Appendix B, at PDF 79.

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[B] NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534115).

[C] NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534115).

[D] NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534109).

[E] NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534109).

[F] NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534109).

[G] NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534109).

[H] NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534109).

[I] NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534114).

[J] NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534112).

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NRA's age is the difference between 2022 and the date when NRA was awarded 501(c)(4) status—April 1944.

[O] NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534112).

[P] NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534104).

[Q] NRA, Form 990 (Amended return), 2020 (NRA-NYAGCOMMDIV-01534104-4211, at NRA-NYAGCOMMDIV-01534113).