

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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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.
-----X

Index No. 451625/2020

IAS Part Three
Hon. Joel M. Cohen

**AFFIRMATION OF
P. KENT CORRELL**

I, P. KENT CORRELL, an attorney duly admitted to practice in the courts of the State of New York, hereby affirm the following under the penalty of perjury pursuant to CPLR 2106:

1. I am the attorney of record for Defendant Wayne LaPierre in this action, and am fully familiar with the facts and circumstances in this case.

2. I make this affirmation in support of LaPierre's opposition to Plaintiff's motion to exclude some or all of the testimony of certain defense experts (Motion Sequence No. 56) (NYSCEF 1663-1679).

3. The Second Amended Verified Complaint ("Complaint") seeks, *inter alia*, a judgment to compel "restitution" from LaPierre, Frazer and other individual defendants "to recover illegal, unauthorized or *ultra vires* compensation, reimbursements, benefits or amounts unjustly paid" to them, based on allegations that "LaPierre abused his position as a fiduciary to the NRA to obtain millions of dollars in personal benefits in the form of undisclosed, excessive compensation, which includes in-kind benefits and reimbursements from the NRA and its vendors" and that LaPierre, Frazer and others "received excessive compensation that the NRA

did not accurately disclose.” See NYSCEF 646 (Complaint), at i-ii (“TABLE OF CONTENTS[:] “PART FIVE - DEFENDANTS’ VIOLATIONS OF NEW YORK LAW) ***

III. The Individual Defendants Received Excessive Compensation that the NRA Did Not Accurately Disclose”); page 3 (§ 9), pages 6-7 (§ 15), and pages 100 – 113 (§§ 412-460). Moreover, specifically, in paragraph 450, the Complaint alleges: “From 2015 to 2019, the NRA reported paying LaPierre \$12,076,437 in total compensation, an average of \$2,415,287 a year,” implying that LaPierre was paid an average of \$2,415,287 a year for services performed during that five-year period, an implied assertion that is very much at issue in this case. Thus, Plaintiff’s allegations of regarding “excessive compensation” and “excess benefits” comprise a substantial portion of Plaintiff’s case. Indeed, they lie at the very heart of the case.

4. On information and belief, on August 6, 2020, the Office of the New York State Attorney General, Letitia James, New York State Attorney General put out a press release stating:

Attorney General James Files Lawsuit to Dissolve NRA[:] AG James’ Action Will Hold Powerful Gun Group Accountable[:] Lawsuit Details Year of Illegal Self-Dealing That Funded Lavish Lifestyle of NRA Leaders *** **NRA’s Culture of Self-Dealing, Mismanagement, and Negligence** *** The lawsuit alleges that the four men instituted a culture of self-dealing, mismanagement, and negligent oversight at the NRA that was illegal, oppressive, and fraudulent. They overrode and evaded internal controls to allow themselves, their families, favored board members, employees, and vendors to benefit through reimbursed expense, related party transactions, *excess compensation*, side deals, and *waste* of charitable assets without regard to the NRA’s best interests. *** The complaint lays out numerous ... instances in which LaPierre, Phillips, Powell, Frazer, and other executives and board members at the NRA abused their power and illegally diverted or facilitated the diversion of tens of millions of dollars from the NRA. These funds were in addition to millions of dollars the four individual defendants were already receiving in *grossly excessive salaries and bonuses that were not in line with the best practices and prudent standards for evaluating and determining compensation.*”) (bolding in original; italics added).

5. A true and correct copy of the Press Release is attached hereto as **Exhibit 1**.

6. Thus, Plaintiff has clearly injected the issue of whether the four individual defendants received “grossly excessive salaries and bonuses that were not in line with the best practices and prudent standards for evaluating and determining compensation” into this case.

7. On September 16, 2022, pursuant to CPLR 3101(d) and Commercial Division Rule 13, LaPierre served his expert disclosure, indicating his intention to call Graham to offer testimony and evidence at trial to show, among other things, that the amount of compensation the NRA paid to LaPierre was reasonable, and that that would be true even if the alleged “excess benefits” were treated as “compensation,” as Plaintiff argues they should be.

8. True and correct copies of LaPierre’s “Disclosure Pursuant to CPLR 3101(d) and Commercial Division Rule 13” and accompanying Exhibit A (“Expert Opinion Report on Reasonable Compensation [of] Executive Vice President of the National Rifle Association and Evaluation of the Governance Process that Determined that Compensation” of Michael Dennis Graham, Consultant, Grahall, LLC) are attached hereto as **Exhibit 2**.

9. Graham holds a Bachelor of Science degree in engineering from Worcester Polytechnic Institute and a Master of Business Administration degree from Rensselaer Polytechnic Institute. (Exhibit 2, ¶ 4.)

10. He is employed as a consultant at Grahall LLC (“Grahall”), an organization he founded which has grown from two partners to sixty partners in 26 cities in the U.S., Canada, India and Switzerland. (Exhibit 2, Exhibit A (Exhibit D: “Mr. Graham’s Qualifications to Provide an Opinion”), at 58.)

11. Grahall is a consulting firm that advises clients on human resources, reward strategy and compensation. (*Id.*, at 57.)

12. Graham has over 45 years of experience in the human resources and executive compensation advisory services fields leads the firm's Compensation Advisory services. (Exhibit 2, ¶ 4.)

13. He has served on the editorial board of the Compensation and Benefits Review. (*Id.*)

14. He regularly advises clients in the area of executive compensation and benefits and has advised on compensation and benefits in a range of industries for both public and private companies, including both for profit and not-for-profit corporations, in many countries around the world. (Exhibit 2, ¶ 5.)

15. He has been retained by the Internal Revenue Service in connection with the determination of reasonable compensation in a variety of cases, including two major cases where millions of dollars of compensation were deemed to have been unreasonably paid to the CEOs of the organizations in question. (*Id.*)

16. He served as the IRS's expert in those cases. (*Id.*)

17. In addition to issuing reasonableness opinions, Graham provides executive compensation analysis and opinions to support determinations under corporate bylaws and certain regulatory statutes addressing executive and employee compensation. (*Id.*)

18. Graham's experience includes serving as the Worldwide Director of Compensation and Benefits for both Bausch & Lomb and Albany International. (*Id.*, ¶ 6.)

19. In his 37-year consulting career he has advised over a thousand organizations on compensation and benefits programs and issues and has served as Practice Director for five major consulting firms. (*Id.*)

20. In addition, he has served as a consulting expert in litigation matters involving compensation and benefits and as a testifying expert in litigation matters involving compensation and benefits. (*Id.*)¹

21. Graham is expected to testify regarding the compensation received by LaPierre in connection with services performed for the NRA, the process by which the compensation was determined and fixed and whether the amount of compensation was reasonable and commensurate with services performed. (*Id.*, ¶ 2.)

22. In addition, he is expected to testify regarding methodologies for determining the reasonableness of compensation and other benefits as well as custom and practice in the fields of corporate management and executive compensation and benefits that inform his opinion about the amount of compensation LaPierre received and the reasonableness of the compensation, the reasonableness of the other benefits he received, and the process by which the compensation and benefits were determined. (*Id.*)

23. In his report, Graham offers the opinion that the compensation and benefits LaPierre received in connection with his work for the NRA, as alleged in the Complaint, were reasonable and commensurate with services performed and were determined and fixed in accordance with, or in substantial compliance with, custom and practice in the field of executive compensation and benefits, the Not-for-Profit Corporation Law, and the Bylaws of the Association. (*Id.* ¶ 3.)

24. The substance of Graham's opinion is detailed in his expert report at pages 5-9. (*Id.*)

¹ Further information regarding Graham's professional skill, training, education, knowledge and experience is provided in LaPierre's Expert Disclosure and in Graham's Expert Report at Exhibits D, E and F.

25. Graham's opinion is based on (1) his experience and expertise in the areas of corporate and not-for-profit executive compensation and benefits (2) the pleadings in this action (which are verified); (3) the deposition transcripts and exhibits in this action; (4) documents produced in this action; and (5) applicable professional standards. (*Id.* ¶ 8).

26. The documents upon which Graham has specifically relied are listed in Exhibits G and H of his report. (*Id.*)

27. On October 6, 2022, LaPierre served his "Supplemental Disclosure Pursuant to CPLR 3101(d) and Commercial Division Rule 13" and accompanying Exhibit A ("Supplemental Expert Report" of Michael Dennis Graham, Consultant, Grahall, LLC, dated October 6, 2022).

28. True and correct copies of the Supplement Disclosure and Graham's Supplemental Report are attached hereto as **Exhibit 3**.

29. In his supplemental report, Graham states that, based on his receipt of additional information bearing on the issue of whether the compensation paid by the NRA to LaPierre was reasonable, he performed an additional analysis and concluded that LaPierre's compensation was even farther below the 50th percentile benchmark shown in his initial report, further showing that LaPierre's compensation was reasonable. (*See* Exhibit 3, at 2.)

30. On October 7, 2022, LaPierre served his Disclosure of Expert Rebuttal Reports Pursuant to CPLR Rule 3101(d) and Commercial Division Rule 13 and accompanying Exhibit A ("Expert Rebuttal Report[:] Mr. LaPierre's Compensation as the Executive Vice President of the National Rifle Association and Evaluation of the Governance Process that Determined that Compensation" of Michael Dennis Graham, Consultant, Grahall, LLC dated October 7, 2022).

31. True and correct copies of LaPierre's Disclosure of Expert Rebuttal Reports and Graham's Rebuttal Report are attached hereto as **Exhibit 4**.

32. In his rebuttal report, Graham addresses certain statements made by Plaintiff's experts Erica Harris, Eric Hines and Jeffrey Tenenbaum on the subject of reasonable compensation, noting that neither Plaintiff nor her designated experts had provided any expert opinion of substance, or any evidence, that the amount of LaPierre's compensation was "more than was reasonable," and addressed Plaintiff's conflation of the term "excessive compensation" with the term "reasonable compensation" expressing the opinion that Plaintiff's use of those terms was both inappropriate and technically incorrect. *See* Exhibit 4 at 4-5.

33. In addition, he addresses the issue, raised by Plaintiff in her expert disclosure, of whether all of the allegedly "normal" compensation elements of base salary, bonuses and perquisites appeared appropriately in the NRA's filed Form 990s. (*Id.* at 5.) Graham expressed the opinion that even if travel expenses were treated as compensation, as Plaintiff contends they should be, the total compensation paid by the NRA to LaPierre would still not be "unreasonable." (*Id.*)

34. Further, Graham explains that the number presented by Plaintiff as the amount of "total compensation" received by LaPierre in 2015 for services performed in 2015 was inflated because it included a payment of 3,463,368 from a 457(f) non-qualified deferred compensation plan" which was the result of a substantial number of years of contributions and fund appreciation by the NRA for LaPierre, noting that, "[w]hen determining reasonable compensation, this payment is required by the IRS to be divided over the course of years during which the contribution to the deferred compensation were made by Mr. LaPierre, not when they were received by him (not in 2015, the year when he turned 65)." (*Id.* at 5).

35. In short, Graham offers the opinion that LaPierre was underpaid as compared to the competitive market, even if the value of charter travel is treated as compensation.

36. In sum, the issue of whether the NRA paid LaPierre excessive compensation and provided him with “excess benefits” in violation of the N-PCL or the EPTL is central to the case, and resolution of that issue necessarily requires expert testimony on the issue of what amount of “compensation” and “benefits” is “reasonable.” LaPierre is entitled to defend himself by having a highly qualified compensation and benefits expert help educate the jury as to what constitutes “compensation”, what constitutes “benefits”, and what amount of “compensation” and “benefits” is “reasonable” and commensurate with the services LaPierre performed for the NRA.

37. Accordingly, LaPierre respectfully requests that this Court deny Plaintiff’s motion to the extent it seeks to preclude him from introducing the expert testimony of his compensation and benefits expert, to the extent it seeks to preclude the NRA from introducing the expert testimony of its compensation and benefits and security experts, and to the extent it seeks to exclude Frazier from introducing the expert testimony of his compensation and benefits expert, whose expert opinions are all proper because they would help to clarify issues calling for professional knowledge possessed by the experts and beyond the ken of the typical juror.

Executed this 5th day of May 2023 in New York, New York.

/s/ P. Kent Correll

P. Kent Correll

CERTIFICATE OF COMPLIANCE

I, P. Kent Correll, an attorney duly admitted to practice law before the courts of the State of New York, certify that the Affirmation of P. Kent Correll complies with the word count limit set forth in Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g)) because the Affirmation contains 2,129 words, excluding the parts exempted by Rule 17. In preparing this certification, I have relied on the word count of the word-processing system used to prepare this affirmation.

Dated: New York, New York
May 5, 2023

/s/ P. Kent Correll

P. Kent Correll

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was electronically served via the Court's electronic case filing system upon all counsel of record on this 5th day of May 2023.

/s/ P. Kent Correll
P. Kent Correll