

WHEREFORE Plaintiff NRA requests that the Court (1) enter an order staying this action so that the NRA may conduct limited discovery, (2) authorize the NRA to take the discovery it seeks, and (3) grant the NRA all other appropriate relief.

Dated: May 23, 2019

Respectfully submitted,

A large black rectangular redaction box covering the signature and name of the attorney.

James W. Hundley (VA Bar No. 30723)
Robert H. Cox (VA Bar No. 33118)
Amy L. Bradley (VA Bar No. 80155)
BRIGLIA HUNDLEY, P.C.
1921 Gallows Road, Suite 750
Tysons Corner, VA 22182
jhundley@brigliahundley.com
rcox@brigliahundley.com
abradley@brigliahundley.com
Phone: 703-883-0880
Facsimile: 703-883-0899

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2019, I caused Plaintiff's Motion for Entry of an Order Staying this Action so that Plaintiff May Conduct Limited Discovery Into Defendants' Theft of Plaintiff's Property, accompanying memorandum in support, exhibits, and a proposed order to be served via electronic mail and first-class mail upon:

David Schertler
Schertler & Onorato, LLP
901 New York Avenue, N.W.
Suite 500
Washington, D.C. 20001
dschertler@schertlerlaw.com

Counsel for the Defendants



James W. Hundley (VA Bar No. 30723)
Robert H. Cox (VA Bar No. 33118)

EXHIBIT A

**CIRCUIT COURT OF VIRGINIA
CITY OF ALEXANDRIA**

NATIONAL RIFLE ASSOCIATION OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Case No. CL19001757
)	
ACKERMAN MCQUEEN, INC.; MERCURY GROUP, INC.)	
)	
Defendants.)	

AFFIDAVIT OF ANDREW ARULANANDAM

1. My name is Andrew Arulanandam. I am over twenty-one years old and am fully competent to make this affidavit. Unless otherwise noted, I have personal knowledge of all matters stated herein.

2. I am the Managing Director of Public Affairs of the National Rifle Association (the "NRA"). I have worked for the NRA for more than 18 years.

3. As part of my job responsibilities, I attend most NRA board meetings, and sometimes coordinate with NRA officers, employees, or professionals who make presentations at those meetings.

4. I am aware that the NRA often receives technical assistance from meeting-venue staff and from Ackerman McQueen, in connection with setting up audio-visual ("AV") equipment and media for presentations at meetings. When confidential or privileged discussions occur, AV technicians not properly party to those discussions may be asked to leave the room; however, after the technician steps out, the NRA continues to make use of their equipment. It is

my understanding that the NRA sometimes authorizes third-party AV technicians to handle digital media containing privileged material—for example, to insert the media into a drive for “setup” purposes. However, it is never the NRA’s intent to thereby disclose the substance of the digital media to a third party.

5. Ackerman has been a trusted agent of the NRA for many years, including for purposes of assisting us with AV technology at meetings. I would never have expected Ackerman to copy or misappropriate the contents of any digital presentation media without explicit consent from the NRA. Indeed, it is my understanding that the NRA’s contract with Ackerman specifically prohibits Ackerman from copying any NRA confidential information without express written authorization from the NRA.

6. On Monday, April 29, 2019, I attended a meeting of the board of directors of the NRA that was held at the JW Marriott hotel in Indianapolis, Indiana, in connection with the NRA’s annual meeting.

7. The NRA board meeting was held in a large ballroom at the hotel, with a dais and large projection screen in the front of the room, seating for the NRA board members and other attendees in the middle of the room, and a table with a variety of audio-visual equipment located in the back of room behind the seating. The audio-visual equipment included two laptops for displaying PowerPoint presentations and other information on the large screen in the front of the room. I was cognizant that there were staff assisting with AV setup, but did not specifically note their identities.

8. After a short recess during the NRA board meeting, Travis Carter of Brewer, Attorneys & Counselors approached me and asked whether I knew someone named John who might have been assisting with AV in the back of the room. I determined that the individual he

was talking about was John Popp. Mr. Carter stated that he provided the flash drive to Mr. Popp with the Brewer Firm's PowerPoint presentation, and that Mr. Popp copied the presentation to his laptop—but then, Mr. Popp and his laptop appeared to have vanished from the meeting room.

9. I have known Mr. Popp for a number of years. Mr. Popp is a long-time employee of Ackerman McQueen. Mr. Popp has attended numerous NRA board meetings and provides technical assistance with the audio-visual equipment used during those meetings. Neither I—nor, to my knowledge, anyone at the NRA—ever intended to disclose the contents of Brewer's presentation to Mr. Popp.

10. Brewer's privileged presentation occurred in an executive session of the NRA board meeting, which no one from Ackerman was allowed to attend.

11. Not surprisingly, Mr. Carter expressed surprise and dismay that the AV technician to whom he had handed the presentation was affiliated with Ackerman. Mr. Carter expressed an urgent need to speak to Mr. Popp to ensure the PowerPoint presentation had not been retained on Mr. Popp's laptop.

12. I informed Mr. Carter that I could call Mr. Popp as I had Mr. Popp's cell phone number. (Most attendees are required to hand in their mobile phones to security before entering the Board meeting; However, given the nature of my responsibilities, I was allowed to hold on to my phones and had them on me when Mr. Carter made this request.) Mr. Carter requested that I do so. Mr. Popp answered my call and agreed that I could hand my cell phone to Mr. Carter so that Mr. Carter could speak with him.

13. I was standing next to Mr. Carter during the call and, although I could not hear Mr. Popp's side of the conversation, I could hear Mr. Carter's side of the conversation. Mr. Carter twice asked Mr. Popp whether he deleted the PowerPoint presentation that Mr. Carter put on the

laptop in Mr. Popp's possession. I could tell that Mr. Carter was satisfied by Mr. Popp's assurances that the PowerPoint presentation had been deleted from the laptop and no copy of the presentation remained in Mr. Popp's possession.

14. If I had been there at the time when Mr. Carter handed the presentation to Mr. Popp and realized the content of the Brewer presentation, and specifically its relevance to ongoing litigation against Ackerman, I would have certainly advised Mr. Carter against coordinating with Mr. Popp, or any Ackerman employee, for purposes of AV setup. Furthermore, regardless of the presentation's contents, if I had known that Mr. Popp would retain a copy of the presentation without the NRA's consent, or that Ackerman would make additional copies without the NRA's consent, I would have strongly recommended to the NRA that Ackerman be barred from the meeting altogether. Therefore, in my view, Ackerman's insistence that the NRA waived its attorney-client privilege is preposterous. I have worked with Ackerman for years and view this incident as reflecting a serious breach of trust. Needless to say, the NRA never intended to disclose the substance of the presentation to Ackerman or compromise the NRA's privilege in any way.

Further affiant sayeth not.



Andrew Arulanaidam

Sworn to before me this
22 day of May, 2019



Notary Public

COLLEEN PATRICIA SHOEMAKER
NOTARY PUBLIC
REG. #7164428
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES OCT. 31, 2020

EXHIBIT B

**VIRGINIA:
IN THE CIRCUIT COURT FOR THE
CITY OF ALEXANDRIA**

NATIONAL RIFLE ASSOCIATION OF AMERICA,)

Plaintiff,)

v.)

Civil Case No. CL19001757

ACKERMAN MCQUEEN, INC.,)

and)

MERCURY GROUP, INC.)

Defendants.)

AFFIDAVIT OF TRAVIS J. CARTER

District of Columbia

:
:
:
:
:

BEFORE ME on this day appeared TRAVIS J. CARTER, a person known to me, who did upon his oath depose and state:

1. My name is TRAVIS CARTER. I am over the age of twenty-one years and am fully competent and able to testify herein and able to swear, as do hereby swear, that all of the facts and statements herein contained are true and correct and that, except as expressly noted otherwise, I have personal knowledge of the same.

2. I am the Managing Director of Public Affairs at Brewer, Attorneys & Counselors, outside counsel for the NRA.

3. In the days leading up to the NRA's Board of Directors meeting on April 29, 2019, the Brewer law firm prepared a privileged and confidential PowerPoint presentation for use during the meeting. The meeting was to occur at the JW Marriott Hotel in Indianapolis, Indiana, in conjunction with the NRA's 2019 Annual Meeting.

4. The PowerPoint was intended for use during a presentation by William A. Brewer III to the NRA Board of Directors. The purpose of Mr. Brewer's privileged and confidential presentation was to, among other things, discuss litigation strategy in the above-captioned case. Several of the slides in the presentation contained highly confidential information about the lawsuit and other matters. I understand from attorneys at our firm that the confidential information contained in the PowerPoint presentation is protected, as a legal matter, by both the attorney-client privilege and the work product doctrine.

5. Appropriately, every page of the presentation was marked with the name of our law firm ("Brewer") and the legends: "ATTORNEY WORK PRODUCT" and "PRIVILEGED & CONFIDENTIAL." A similar legend appears in bold font on the cover page of the presentation: "**Attorney Work Product; Privileged & Highly Confidential.**"

6. Before the meeting, I stored a copy of the PowerPoint presentation on a USB “thumb” drive. I then carried the thumb drive on my person to the board meeting, at all times keeping it secure and protected.

7. On April 29, 2019, I arrived at the location of the board meeting. It was in a large hotel ballroom with a dais on one side of the room, seating room for board members and others, as well as space in the back of the room with a variety of Audio and Visual (“AV”) equipment placed on top of a table. Among the items on the AV table were two laptops. I observed that the laptops were connected through cable cords to some of the other AV equipment, and the location of the laptops and their configuration in relation to the rest of the equipment made it clear that they were being used to display PowerPoint and other presentations on the large screen in the front of the room for use during the meeting. This configuration did not surprise me: I had observed a similar setup at previous NRA board meetings.

8. In my experience (including, but not limited to, my experience at other NRA board meetings), such configurations are fairly common, and multiple presenters make use of a shared laptop or laptops (typically furnished by the meeting venue) to display different presentations. This is much more practical than having every presenter use his own laptop, because switching multiple laptops “in” and “out” can cause disruption and delay as the various AV technical settings are calibrated anew to accommodate every new laptop. Rather, presenters use thumb drives and the like to display their presentations via the venue-provided laptops. It is my understanding that

although AV technicians who are not properly party to privileged conversations may be asked to leave the room, presenters use the AV equipment furnished by the technicians and may request their assistance “setting up” presentations. These technicians may be entrusted with digital copies of documents for the purpose of loading the files onto one device or another. I often verbally confirm that the technical staff has not retained the contents of any files handed to him or her and that the presentation is deleted from their laptop.

9. When I entered the ballroom on April 29, 2019, I saw two individuals stationed at the AV area. Recognizing these individuals were operating in the capacity of AV professionals, I approached, introduced myself, and explained that I was with the Brewer firm and that Mr. Brewer would be making a privileged presentation to an executive session of the NRA board.

10. In response, one of the individuals—who I later learned was not an employee of the meeting venue, but rather an Ackerman McQueen employee named John Popp—greeted me and agreed to assist me. He told me it would be easier to run the presentation if the PowerPoint file was copied to the laptop’s hard drive. I acceded to this request because, in my prior experience, running a presentation directly from a piece of external media can sometimes slow things down and I wanted to maintain physical possession of my thumb drive. I handed Mr. Popp the thumb drive. (The thumb drive has a logo on it displaying the former name of our law firm, “Bickel &

Brewer.”) I then observed Mr. Popp plug the thumb drive into the laptop, and helped him select the correct file from the thumb drive.

11. Very quickly, Mr. Popp handed back to me the thumb drive and I continued to keep it safely in my possession. Mr. Popp then launched the PowerPoint off the laptop, causing the first slide of the presentation to open on a large screen at the front of the room. (The first slide of the presentation contains our firm’s logo and the title “Executive Session Briefing,” along with confidentiality and privilege legends, but no detailed information or legal advice. Therefore, I was comfortable displaying the first slide in the presence of the individual who I believed to be an AV technician.) This was necessary to “test” that the presentation would display properly.

12. Following a short recess of the meeting, and prior to the proceedings moving into executive session, I returned to the AV table and was shocked to discover that the “technician” and his laptop were gone.

13. I immediately turned to Andrew Arulanandam, Managing Director of Public Affairs at the NRA, and asked where the person assisting with our AV needs had gone. Another NRA representative standing nearby told me and Mr. Arulanandam that the AV person had to leave because he had a plane to catch, or words to that effect. There was then discussion through which I was informed for the first time that Mr. Popp works for Ackerman McQueen.

14. I could not believe what I had just heard. At no point leading up to this moment did I observe or hear anything that could have possibly disclosed that Mr. Popp

was an employee of Ackerman McQueen, the litigation adversary discussed in the confidential PowerPoint presentation. Nor had I been advised that anyone from Ackerman McQueen was in the room that day. It was clear to everyone that the materials to be presented during the executive session of the meeting were highly confidential, so much so that all attendees were required to “check in” prior to the meeting and turn over their phones and any electronic devices.

15. Promptly thereafter, I stated to Mr. Arulanandam that we needed to speak directly to Mr. Popp. I asked how we might reach him and Mr. Arulanandam offered to call Mr. Popp directly, as the meeting was on recess. (He informed me that he had Mr. Popp’s number saved on his mobile device.) I did not think that it was necessary for me to call Mr. Popp, but I chose to do so out of an abundance of caution. I wanted to confirm that he did not retain a digital copy of the PowerPoint presentation and, if he had, I wanted to direct him to delete it. Had he not left without my knowledge, I would have personally asked him to delete the PowerPoint presentation from his laptop before he left. Mr. Arulanandam called Mr. Popp at my request.

16. Mr. Popp answered the phone right away. After Mr. Arulanandam handed me the phone, I said to Mr. Popp in sum and substance: I did not know you were leaving. I then asked point blank: “You don’t still have the presentation on your computer, do you?” He answered: “No, I don’t have a copy.” I said: “What do you mean you don’t have a copy?” He then stated in sum and substance: “It is always my practice to delete the presentations that I run on my computer.” I reminded him that he

might have had a copy on his desktop and potentially would have had it in his archived files or something to that effect. I asked Mr. Popp to confirm that he deleted the presentation not only from the desktop of his laptop but also from any archived folders existing on his laptop. He assured me that he did. Mr. Arulanandam was a witness to me having a significant part, if not all, of this conversation on his cell phone.

17. Subsequently, I used the other laptop that was left in the room after Mr. Popp had left to display the PowerPoint presentation during Mr. Brewer's remarks in executive session. After the presentation was delivered, I deleted the PowerPoint, which I had downloaded from the thumb drive, from the other laptop so that the PowerPoint would be erased. I retained possession of my thumb drive to bring the device back with me to my office in Dallas, where I currently have the thumb drive in my possession.

18. Several weeks later, on May 15, 2019, I learned through a letter from Ackerman McQueen's counsel David Schertler that Ackerman McQueen had two thumb drives with the PowerPoint presentation on it. I was shocked to learn that Ackerman McQueen was in possession of such material. First, I knew that the presentation previously existed only on one thumb drive and that device was and still is in my personal possession. Second, I knew that for someone to have created those copies, Mr. Popp must have been untruthful with me during our conversation when he said that he had deleted the presentation. Moreover, it shocked me that someone from Ackerman McQueen must have participated in a process that involved copying and

storing the presentation on thumb drives – even as they knew that the presentation they were copying—twice—was privileged and highly confidential.

19. I have now learned that the two thumb drives were provided by Ackerman McQueen’s counsel to the NRA via NRA’s counsel James Hundley.

20. Also, I understand that Jamente Cooper, Lead Forensic Analyst, Contact Discovery Solutions, located in Washington D.C., who was retained by the NRA to assist it in this matter, extracted in a forensically sound manner the PowerPoint presentations contained on the two thumb drives that had been provided by Ackerman McQueen to its counsel, Mr. Schertler. On May 22, 2019, after Mr. Cooper extracted the PowerPoint presentations from the two thumb drives, Contact Discovery Solutions shared with our firm copies of those two PowerPoint presentations. Our firm then compared them to the one contained on the thumb drive I handed to Mr. Popp at the JW Marriott on April 29, 2019. After comparing the presentations, our firm is confident that the presentation saved on the Ackerman McQueen thumb drives are copies of the presentation located on the thumb drive I handed to Mr. Popp on April 29, 2019.

[Redacted Signature]

Travis J. Carter

Sworn to before me this
22 day of May, 2019

[Redacted Signature]

Notary Public

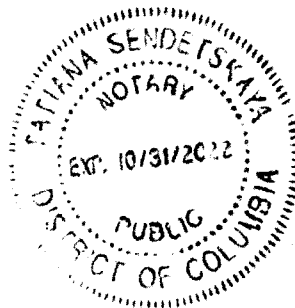


EXHIBIT C



SCHERTLER & ONORATO, L.L.P.

May 15, 2019

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

James W. Hundley
Briglia Hundley, P.C.
1921 Gallows Road
Suite 750
Tysons Corner, VA 22182

RE: **National Rifle Association of America v. Ackerman McQueen, Inc.**, CL19001757

Dear Jim:

As you know, this law firm represents Ackerman McQueen in connection with the above-captioned litigation. We recently became aware that our client came into possession of a power-point presentation used in connection with an Executive Session meeting of the NRA's Board of Directors on April 29, 2019. The power-point presentation may contain confidential material. To our understanding, at the direction of an attorney or employee of the Brewer Law Firm, the power-point presentation was loaded on a laptop computer belonging to Ackerman McQueen and remained on that laptop computer when it was retrieved later by an Ackerman McQueen employee.

We understand there are two thumb drives that contain a copy of the power-point presentation. An attorney in our office, without knowing the contents of the file, opened one of the thumb drives, viewed the first cover page and realized that the document appeared to be confidential. He immediately closed the file without viewing any of its contents and reported the existence of the document to me.

The two thumb drives have been secured in a safe in our offices. Our understanding is that those are the only two copies of the power-point presentation in our possession or in our client's possession. No attorney or other employee at our firm or any other law firm has reviewed the power-point presentation nor are we aware of the contents or substance of that document. We would be happy to either destroy those two thumb drives or deliver them to you, at your discretion.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

David Schertler

EXHIBIT D

B R E W E R
ATTORNEYS & COUNSELORS

May 16, 2019

VIA EMAIL

David Schertler
Schertler & Onorato, LLP
901 New York Avenue, N.W.
Suite 500 West
Washington, D.C. 20001

Re: Your May 15, 2019 Letter to James W. Hundley re National Rifle Association v. Ackerman McQueen, CL19001757

Dear David:

The NRA received your letter to James W. Hundley dated May 15, 2019, in which you state that your client Ackerman McQueen came into possession of two thumb drives with a Powerpoint presentation used in connection with an Executive Session meeting of the NRA's Board of Directors on April 29, 2019.

First, thank you for bringing the issue to the NRA's attention, securing the two thumb drives in a safe, and offering to deliver them to the NRA. As each page of the presentation states, the presentation at issue is a privileged, confidential document. It is protected not only by the attorney-client privilege but also the work product doctrine. As a result, please deliver the two thumb drives with the presentation to Mr. Hundley.

Second, please let me know:

1. The names, positions, and titles of all who participated in your investigation into how Ackerman McQueen came in possession of the privileged presentation and how the presentation came to exist on two thumb drives;
2. Your understanding as to who copied the presentation onto the thumb drives, when, where, and why;
3. Who at Ackerman McQueen reviewed the presentation or is otherwise aware of the contents of the presentation;
4. How the thumb drives came into your firm's possession;

B R E W E R

David Schertler
May 16, 2019
Page 2

5. The basis for your statement that you understand that the two thumb drives are the only two copies of the presentation in your firm's or in Ackerman McQueen's possession;
6. The steps that have been taken to ensure that the presentation does not exist in Ackerman McQueen's possession on any media other than the two thumb drives; and
7. Whether the thumb drives at any point contained any other privileged or confidential information belonging to the NRA.

Finally, I ask you to please confirm that Ackerman McQueen is not now nor has ever been, to its knowledge, in possession of any other privileged Powerpoint presentations belonging to the NRA.

Sincerely,

/s/ Svetlana M. Eisenberg
Svetlana M. Eisenberg

cc: John Frazer, General Counsel, The National Rifle Association
James W. Hundley, Briglia Hundley, P.C.

EXHIBIT E



SCHERTLER & ONORATO, L.L.P.

May 20, 2019

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

Svetlana M. Eisenberg
Brewer Attorneys & Counselors
750 Lexington Avenue
14th Floor
New York, New York 10022

RE: **National Rifle Association of America v. Ackerman McQueen, Inc.**, CL19001757

Dear Ms. Eisenberg:

I am in receipt of your letter of May 16, 2019 and respond by way of this letter.

First, we will hand-deliver today the two thumb drives in our possession to Mr. Hundley as you request.

Second, you state that “as each page of the presentation states, the presentation at issue is a privileged, confidential document.” (May 16, 2019 letter at p. 1). We do not know what each page of the presentation states. However, the fact that a Brewer Law Firm attorney or employee directed that the power-point be downloaded to a laptop computer that did not belong to the Brewer Law Firm and, in fact, a laptop that belonged to an adversarial party, and then allowed the power-point to remain on that laptop when it was returned to that employee, may well have waived any privilege or confidentiality of the document. Despite our view in this regard, we have elected to return the document to you.

Third, the information you request in Paragraphs (1) through (7) is protected from disclosure by the attorney-client privilege and we decline to disclose that information to protect the privilege.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

David Schertler

cc: James W. Hundley, Esq.