

CL19001757  
CL 1900 2047

In the Matter of:

National Rifle Association of America

v.

Ackerman McQueen, Inc.

&

Mercury Group, Inc.

Motion

June 26, 2019

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1 COMMONWEALTH OF VIRGINIA  
2 IN THE ALEXANDRIA CIRCUIT COURT  
3 -----  
4 NATIONAL RIFLE ASSOCIATION OF AMERICA,  
5 Plaintiff,  
6 -vs- Case Nos. CL 19001757  
7 and  
8 CL 19002067  
9 ACKERMAN MCQUEEN, INC.  
10 and  
11 MERCURY GROUP, INC.  
12 Defendants.  
13 -----  
14 HEARING in the above-entitled matter,  
15 held in Alexandria Circuit Court in  
16 Alexandria, Virginia on June 26, 2019, before  
17 the HON. NOLAN DAWKINS, Presiding Circuit  
18 Court Judge.  
19  
20  
21 Reported by:  
22 Jacqueline N. Hagen

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## A P P E A R A N C E S

## ON BEHALF OF PLAINTIFF:

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## ALSO PRESENT:

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1 PROCEEDINGS

2 (Whereupon the proceedings began at  
3 10:57 a.m. )

4 MR. COX: Your Honor, Bob Cox  
5 representing the National Rifle Association.

6 THE COURT: Okay.

7 MR. COX: And with me is Michael  
8 Collins, who's the subject of the motion for  
9 pro hac vice. It's one of the motions that's  
10 contested today.

11 THE COURT: Again, let the record  
12 reflect this is the matter of Commonwealth  
13 vs. Ackerman McQueen, Inc., and Mercury Inc.  
14 The matter comes on cross motion for pro hac  
15 vice; is that correct?

16 MR. DICKIBSON: There's a number of  
17 other motions, your Honor. There's a motion  
18 for preliminary injunction.

19 THE COURT: That's not going to happen,  
20 sir. It just can't. I can't do that. I  
21 don't understand how it's possible that I can  
22 do a preliminary injunction in this matter in



1 30 minutes. It can't happen.

2 MR. DICKIESON: Your Honor, if I  
3 could --

4 THE COURT: Can't happen.

5 MR. DICKIESON: If I could address the  
6 Court on that issue, that -- this is a matter  
7 that there's going to be 40 five to 60  
8 employees laid off within the week if we  
9 cannot get the relief that we're requesting  
10 the Court. We've asked the supervisor of the  
11 -- the court schedule if we could get one  
12 specially set later this week or even early  
13 next week. Nothing is available until after  
14 the Fourth of July when these people will be  
15 furloughed, terminated, and their -- their  
16 lives will be disrupted. The AMC, Ackerman  
17 McQueen business will -- will suffer good  
18 will, harm, and substantial loss of the  
19 employees that it needs. So that's why we --  
20 we talked with the law clerk, the -- the  
21 Court's law clerk, and we said we'd take  
22 whatever time we got. We --

1 THE COURT: That's him.

2 MR. DICKIESON: We'll take whatever the  
3 time the Court will give us, but this is the  
4 most important issue that needs to be  
5 addressed today. The other issues can wait  
6 until another day, but we need to deal with  
7 the irreparable harm that will befall AMC  
8 within the week. That's why we have -- I  
9 have with me the CFO of AMC, who came here  
10 from Oklahoma City. He's prepared -- he's  
11 submitted a declaration. He's prepared to  
12 testify, if necessary. But we understand  
13 that the Court is not going to have  
14 evidentiary hearing on this, but he's here to  
15 provide me with the information about the  
16 irreparable harm that will befall to AMC if  
17 we cannot get this matter relief from the  
18 Court today.

19 So we'd ask that the 30 minutes be  
20 devoted to the preliminary injunction. If we  
21 don't finish, then we'll set it for some  
22 matter, but we believe that we need the

1 relief this week for this matter.

2 MR. COX: Your Honor, our position,  
3 first, that we would like to find out today  
4 whether Mr. Collins is in or out of the case,  
5 also to determine whether the Brewer firm is  
6 or in out of the case, potentially. We'd  
7 like that motion heard first. We -- we've --  
8 Mr. Dickieson and I have communicated with  
9 the clerk. Our position is that we don't  
10 believe that there is sufficient time for a  
11 preliminary injunction hearing and -- but we  
12 think that the -- if the Court is willing to  
13 entertain this motion today, that we feel  
14 that they're -- they have not met their  
15 burden as a matter of law to prove the  
16 relief. This is a mandatory preliminary  
17 injunction.

18 And, secondly, if the Court is not  
19 inclined to rule in favor, we think it's  
20 appropriate for an evidentiary hearing, and  
21 that should be set down for a date certain  
22 that would give the parties time to issue



1 some limited written discovery, just getting  
2 factual information. They have a declaration  
3 they've submitted, no documents, no financial  
4 statements, no back-up about the financial  
5 and irreparable harm here. We feel we should  
6 conduct limited written discovery and take  
7 two to three depositions.

8 THE COURT: And I understand that the  
9 alleged irreparable harm is that you're going  
10 to lose -- you're going to lose 40 employees;  
11 is that correct?

12 MR. DICKIESON: 45 to 60 employees  
13 within the week, your Honor.

14 THE COURT: But that means they won't  
15 get paid. You won't lose them.

16 MR. DICKIESON: Your Honor, they're  
17 going to be looking for other work.

18 THE COURT: That may be so, but that's  
19 speculative, at best. But I just don't know  
20 how I can do it. I don't have to do it -- I  
21 don't have to do it today, based on what I --  
22 what I read so far, and let me -- let me



1           advise counsel, too. I'm going to -- I'm  
2           going to probably give you a little more than  
3           30 minutes. I'm going to give everyone,  
4           since we got outside counsel, a copy of the  
5           local rules since I've been -- we've been  
6           receiving -- receiving documents as early --  
7           as late as yesterday for the Court's  
8           consideration, and that's just not the  
9           appropriate way to do it in this court.

10           Can I just hand each of you a copy of  
11           the local rules so you know what the  
12           timelines are in the future with regard to  
13           filing the pleadings?

14           MR. DICKIESON: Thank you.

15           MR. COX: Thank you, your Honor.

16           THE COURT: All right. Now, with regard  
17           to Mr. Cox, I hear -- I hear the motion. As  
18           I understand it, the motion is that Mr.  
19           Collins is associated with Mr. Brewer; is  
20           that correct?

21           MR. COX: He is partner with the Brewer  
22           firm. He's in the Dallas office, not in the

1 New York office.

2 THE COURT: And Mr. Collins is willing  
3 to, essentially, expose himself to the  
4 potential for malpractice and other claims  
5 that may result if -- if, in fact, he is  
6 associated to the extent that he has inside  
7 knowledge as it relates to the plaintiff. It  
8 seems to me that's -- that's a major risk  
9 he's taking, you know. You're saying that --  
10 that partner A can be here, and partner B can  
11 be on the other side. You can't serve two  
12 masters. How's that's possible?

13 MR. COX: Your Honor, under Rule 3.7(c),  
14 the allegation here is that Mr. Brewer is a  
15 potential witness.

16 THE COURT: A potential witness, that's  
17 right.

18 MR. COX: And so because the fact that  
19 Mr. Brewer is a witness doesn't impute  
20 disqualification under Rule 1.10 or  
21 Rule 3.7(c) to the entire firm. So our  
22 position is the fact that Mr. Brewer might be

1 a witnesses in this case -- only that 3.7  
2 would impute disqualification to the firm is  
3 if there's an actual conflict of interest  
4 under Rule 1.7 or Rule 1.9, and our position  
5 is that is that there's no actual conflict of  
6 interest here.

7 First, there's a matter of law. We  
8 dispute the allegations in the counterclaim  
9 that somehow the -- the firm is benefitting  
10 financially from -- from media relations.  
11 They have a staff of four people. They  
12 cannot undertake the work that Ackerman  
13 performs for the NRA as a media relations  
14 department that they use strictly for pending  
15 cases. So we dispute the factual allegations  
16 that Mr. Collins would be financially  
17 benefitting from any diversion of -- of  
18 marketing from business from Ackerman.

19 And our position is that all they've  
20 alleged is that Mr. Brewer, right now, is a  
21 potential witness in the case. At that  
22 point, under my reading of the -- the case



1 law, there's not much in Virginia, your  
2 Honor. We've cited to some Fourth Circuit  
3 and EDVA law that that's not enough to  
4 disqualify the firm.

5 Our feeling is that on a motion for  
6 pro hac vice, the Court is looking primarily  
7 at the fitness and character of the attorney,  
8 and this is more appropriate for a motion for  
9 disqualification. If they discover facts  
10 during the course of the discovery or they  
11 take Mr. Brewer's deposition and there does  
12 appear to be an actual conflict under  
13 Rule 1.7 and 1.9, I think, at that point, it  
14 would be appropriate for a motion to  
15 disqualify or, on our own, we may withdraw.  
16 If there becomes an actual ethical conflict  
17 here, at that point, the Brewer firm will  
18 consider withdrawing.

19 THE COURT: Yes, sir.

20 MR. DICKIESON: Your Honor, it's not our  
21 position that Mr. Brewer is going to be the  
22 only witness in that firm, but that the other



1 partners in the firm are also going to be  
2 witnesses. They're intricately linked.  
3 They're billing \$20-some million a year for  
4 the NRA for litigation strategies when we  
5 have an abuse of process as a counterclaim,  
6 and, therefore, we believe that Mr. Collins  
7 will be a key witness in the case. And that  
8 not only disqualifies him as for counsel, but  
9 we believe he will have evidence -- he will  
10 testify contrary to the interests of the NRA,  
11 and that disqualifies not only him, but the  
12 entire firm.

13 THE COURT: Is Mr. Brewer still  
14 associated with the firm with NRA?

15 MR. DICKIESON: Mr. Brewer is the -- the  
16 founding and -- it's called Brewer Attorneys  
17 and Associates or something.

18 MR. COLLINS: That's incorrect.

19 MR. DICKIESON: Attorneys and  
20 Counselors. So yes, he's still associated  
21 with the firm. He's still counsel for the  
22 NRA, as well.

1 THE COURT: Somebody explain to me how  
2 you can -- how can you represent both sides?  
3 I'm -- I guess I'm -- I'm not following this.  
4 Yes, sir?

5 MR. COX: Your Honor --

6 THE COURT: And I recognize that for  
7 purposes of the pro hac vice, that -- that I  
8 think that I'm limited to what the rules  
9 require, but I'm -- but that's -- that's  
10 expanded further. How -- how does one  
11 represent both sides of -- of the action?

12 MR. COX: Well, I guess, your Honor,  
13 it's our position Mr. Brewer is not  
14 representing both sides of the action. He's  
15 not seeking to be litigation counsel or trial  
16 counsel in this case. He's -- he is a  
17 partner in the Brewer law firm, but my  
18 reading of the ethical rules and obligations  
19 are that just because he may be a witness  
20 does not disqualify the firm again. And then  
21 I, I guess -- there's no actual conflict  
22 that's been demonstrated at this point. I

1 mean, the only conflict -- 1.9 deals with  
2 former clients. 1.7 deals with an actual  
3 client. So the only conflict would be if it  
4 was demonstrated Mr. Brewer was going to be  
5 called as a witness and testified adversely  
6 to the National Rifle Association.

7 And at this point, I -- I -- Mr. Brewer  
8 has not identified that he would have  
9 information that would be in conflict with  
10 the NRA's positions in this litigation, and,  
11 your Honor, if you want to hear from Mr.  
12 Collins, Mr. Collins has not had a direct  
13 role in the dispute between the NRA and  
14 Ackerman with regard to invoices and the  
15 factual matter.

16 So I don't know where Mr. Dickieson is  
17 coming from that he's a factual witness in  
18 this case, and -- and Mr. Brewer and his firm  
19 has never represented Ackerman or Mercury  
20 Group, and so I don't see how they're on both  
21 sides. They've always represented the  
22 National Rifle Association.



1 MR. DICKIESON: Your Honor, my client is  
2 reminding me that the Brewer law firm is  
3 actual a client of Ackerman McQueen and has  
4 been a long-term client of the firm. But  
5 it's not just that they are witnesses in this  
6 case. They financially benefit. They have  
7 an in-house public relations unit in the firm  
8 that is siphoning away business from Ackerman  
9 McQueen for the NRA work, and that's --  
10 that's a key factor in this case, what's  
11 happening to the work that's being taken away  
12 from AMc.

13 This is about abuse of process. This is  
14 a small law firm, Brewer and Associates and  
15 Counselors. There's not that many attorneys  
16 there. I assume -- I think he's the number  
17 two person there. To say he knows nothing  
18 about the \$21 million that the NRA is -- is  
19 -- is billing -- that he's billing the NRA is  
20 not believable.

21 THE COURT: And not withstanding the  
22 potential conflict that exists if he



1 continues to represent the NRA, Mr. Brewer  
2 docs, or the Brewer firm.

3 MR. DICKIESON: The Brewer firm does.

4 THE COURT: Is that correct?

5 MR. COX: Your Honor, yes, yes, they do.

6 Not in this case, I mean, the Brewer firm  
7 would be representing -- or Mr. Collins would  
8 be coming in as litigation counsel. But,  
9 yes, the NRA is a client of the Brewer firm,  
10 but again --

11 THE COURT: Does Mr. Collins have,  
12 necessarily, information that is provided to  
13 the Brewer firm that would be a detriment to  
14 the NRA?

15 MR. COX: Your Honor --

16 THE COURT: Is there a wall? You know,  
17 the old -- the old -- the old saying? It's  
18 "I'm going to put up a wall." I'm not going  
19 to use the first part, but I'm going to put  
20 -- saying that I'm going to put up a wall.  
21 You know what the old saying is -- is that --  
22 that's a little racist to say, to use the

1 entire term but -- the entire term, but he's  
2 going to put up a wall, and Mr. Brewer -- I  
3 mean, Mr. Collins will never have access to  
4 any information that relates to the NRA? Is  
5 that correct? We have --

6 MR. DICKIESON: I think you mean AMc, my  
7 client, AMc.

8 THE COURT: AMc. I'm sorry. Yes.

9 MR. COX: I mean, Mr. Collins is in a  
10 different office. He's in the Dallas office.  
11 Mr. Brewer is in the New York office, and I'm  
12 -- I'm not disputing it's a small firm.  
13 Sixty lawyers --

14 THE COURT: This is the 21st century.

15 MR. COX: Yeah, and -- and -- but, you  
16 know, I can -- if the Court wants to hear  
17 from Mr. Collins about that, I'm unfamiliar  
18 with what exact work the -- the Ackerman  
19 group does for the Brewer law firm.

20 THE COURT: Yes, Mr. Collins.

21 MR. COLLINS: Yes, your Honor. I,  
22 obviously, represent the NRA in connection

1 with this case and a number of matters. I  
2 myself am not the client contact. I've  
3 actually never had a substantive discussion  
4 with any client representative from the NRA.  
5 I've never done any work for Ackerman  
6 McQueen.

7 Now, I think it is correct they had done  
8 some website service and things for the  
9 firm -- Ackerman McQueen has -- but we've  
10 never done any legal work, to my  
11 understanding. I know I've never done any  
12 legal work for Ackerman McQueen, ever. So,  
13 your Honor, as far as being on both sides,  
14 I'm not on both sides. The firm is not on  
15 both sides. I'm not aware of any unique  
16 knowledge I have with respect to any claims  
17 or defenses they are serving other than what  
18 litigation counsel would have that -- like  
19 Mr. Cox has.

20 I've never spoken, I don't think, to any  
21 employee of Ackerman Mercury group. Maybe  
22 years ago about the work they were doing for

1 the firm, but nothing to do with this matter,  
2 your Honor, against Ackerman McQueen and  
3 Mercury Group. So also, your Honor, whatever  
4 knowledge I would have, I wouldn't be the one  
5 with the most unique knowledge. At least,  
6 that's my understanding. One of the elements  
7 of 3.7 is --

8 THE COURT: But isn't the case if he has  
9 any knowledge, that could -- that could  
10 potentially be a conflict?

11 MR. COLLINS: Well, it could be a  
12 conflict with the NRA, your Honor? Or a  
13 conflict with them?

14 THE COURT: I would say with both.

15 MR. COLLINS: Okay. Well, your Honor,  
16 with respect to them, the attorney always  
17 gains knowledge during the case. I'm not  
18 sure of any unique knowledge I have outside  
19 of this case, at all. With respect to the  
20 NRA, your Honor, the issue is -- for the  
21 attorney is the attorney's always going to  
22 know something. So what the Court said is



1           since we want to be careful because  
2           disqualifications and related-type  
3           proceedings could be used as a key to motive  
4           that, unless the attorney is essential to the  
5           case, it's a fact they can't get otherwise,  
6           you don't lock out the attorney.

7                     And, your Honor, at least I know in  
8           Texas and in many other jurisdictions -- I  
9           don't know if it's any different in Virginia  
10          -- that the attorney -- if it's a bench  
11          trial, the attorney could still do this whole  
12          case. If it's a jury trial, they could do  
13          the case up to the jury trial. This Court is  
14          sophisticated enough to know the difference  
15          between attorney testimony and other  
16          testimony and not to be unduly swayed. It's  
17          only when a jury gets involved that we're  
18          concerned. And my understanding, your Honor,  
19          is the NRA knows all about the potential  
20          conflict and has no problem, whatsoever.

21                     So you put all those things together,  
22          your Honor, I'm just not sure if this even

1 gets close to 3.7. And as far as me being a  
2 witness, they can speculate. We had the same  
3 issue that their attorneys are trying to  
4 pro hac about whether they're involved in the  
5 underlying facts, you know.' We just think  
6 the best way is for both sides to get  
7 admitted, and then, if someone has got a  
8 disqualification issue, they can raise it.  
9 And yes, we'll take it seriously, your Honor.  
10 If they've got grounds for us and they  
11 explain those grounds for us, we'll take them  
12 very seriously. But, as I say, your Honor,  
13 pretty much the rule is until you actually  
14 hold a jury trial, that attorney can take the  
15 depositions, can do the hearings before the  
16 judge. And I'll answer any other questions  
17 you may have, your Honor.

18 THE COURT: The motion is granted. The  
19 motion is granted.

20 MR. COX: Okay. Thank you, your Honor.

21 THE COURT: What's that?

22 MR. DICKIESON: Your Honor? There was a

1 pro hac vice motion for the attorneys on our  
2 side that was not contested.

3 THE COURT: That was -- that was by  
4 consent?

5 MR. DICKIESON: Right. Yes, sir.

6 THE COURT: That, likewise, is granted.

7 MR. DICKIESON: And the motion to  
8 consolidate is --

9 THE COURT: That motion is granted.

10 MR. DICKIESON: All right. So that  
11 leaves us getting to the heart of the matter  
12 of preliminary injunction. If I could begin  
13 on that, your Honor, in the time we have  
14 left?

15 THE COURT: I'll allow you 15 minutes.

16 MR. DICKIESON: All right. What we are  
17 witnessing here, your Honor, is the implosion  
18 of the NRA. Let me -- let me correct this.  
19 It's not an implosion. It's an explosion  
20 because it's not simply harming the NRA, it's  
21 harming those people that are in proximity to  
22 the NRA. And AMc happens to be one of those

1 people in the proximity that is now being  
2 harmed by the NRA's actions. They have  
3 stopped making payments on millions of  
4 dollars of invoices that they routinely paid  
5 for 38 years to AMC.

6 THE COURT: Let me -- that's a  
7 collection matter. As I understand it, this  
8 is a breach of contract, collection. I think  
9 there's an issue with past due accounts  
10 and --

11 MR. DICKIESON: Abuse of process.

12 THE COURT: Abuse of process. That's  
13 right.

14 MR. DICKIESON: Counterclaim.

15 THE COURT: So -- so to a much higher  
16 sense, this is a collection matter. You --  
17 you -- you haven't been paid, and want to be  
18 paid. So you come to court and you ask the  
19 Court to rule against one party or the other  
20 to be -- to be paid; is that correct?

21 MR. DICKIESON: Yes, your Honor, but  
22 what we're also trying to do is enforce the



1 contract. And the Court has the equitable  
2 power to enforce the contract, and here,  
3 where there's an irreparable injury, 40 five  
4 to 60 employees who will be forced to be  
5 terminated or furloughed if the NRA does not  
6 follow through on their obligations, which is  
7 clear in -- in the contract that they have to  
8 pay the invoices within 30 days. If they  
9 don't pay within 30 days, they have to post a  
10 \$3 million letter of credit.

11 They haven't paid within 30 days. They  
12 haven't posted a letter of credit. This  
13 Court has the power to enforce that contract.  
14 Now, what they responded with on Monday was a  
15 rather pedestrian brief that says, "Well, we  
16 -- we have the likelihood of success on our  
17 side because there's issues that they  
18 breached first." But the likelihood of  
19 success -- when you look at this issue, they  
20 have the invoices. They have 10 days to  
21 contest the invoices. They didn't contest  
22 them within 10 days. They have 30 days to

1 pay them. It's all written out there. It's  
2 all clear. They can't contest those facts.  
3 They have to post a \$3 million letter of  
4 credit in that situation. This Court has the  
5 power to prevent the irreparable harm that's  
6 about to fall to AMc.

7 Now, what we are seeing -- they filed a  
8 breach -- as I say, a rather pedestrian brief  
9 -- on Monday laying out the -- the four  
10 elements. What they didn't tell the Court  
11 and what they didn't tell us on Monday is  
12 that on Tuesday, they're sending out a notice  
13 to terminate the entire contract. And he  
14 hasn't mentioned that yet. It wasn't  
15 mentioned in the brief, and we think that  
16 what this is is that we have already issued a  
17 90-day notice to wind down the contract and  
18 orderly end this relationship that has turned  
19 sour. That's the logical, rational,  
20 reasonable business thing to do. The day  
21 before -- the night before, 7 o'clock last  
22 night, we get a letter that says, "We are

1 terminating the contract entirely. We're not  
2 paying anything more."

3 THE COURT: And that contract amounts to  
4 \$40 million a year; is that correct?

5 MR. DICKIESON: I think the last year  
6 that that was the total amount that was paid  
7 but that -- a number of that goes to  
8 expenses, for example, paying talent, such as  
9 Oliver North, who's paid several million  
10 dollars a year for his role in the NRA TV,  
11 which is produced and managed by Ackerman  
12 McQueen. Ackerman McQueen has served as the  
13 voice of the NRA for -- for decades, and they  
14 are intertwined in the NRA business. So what  
15 -- what the situation is here: We have a  
16 very complex relationship that has to be  
17 pulled apart, and what they did last night  
18 was saying "Take an axe and just cut it right  
19 in half, and don't worry about any of the  
20 consequences."

21 Now, we don't think that notice is valid  
22 because before they can terminate, they got



1 to pay everything that they owe, but they  
2 haven't done that. So we're still in a  
3 situation where we're trying to do a 90-day  
4 termination period, gradually and with, as it  
5 says in the contract, good faith  
6 negotiations. They're not interested in good  
7 faith negotiations. They're interested in,  
8 before this hearing, disrupting the process  
9 by saying, "We're terminating."

10 THE COURT: But correct me if I'm wrong.  
11 The invoice that we're talking about is a  
12 \$1.6 million invoice; is it not?

13 MR. DICKIESON: That's the -- the sum of  
14 the -- these eight invoices.

15 THE COURT: But the -- the -- the credit  
16 would be 1.6 million?

17 MR. DICKIESON: Correct.

18 THE COURT: And if you lose a  
19 \$40 million contract, you're going to lose  
20 those 65 clients -- 65 employees, anyway,  
21 aren't you?

22 MR. DICKIESON: They're going to be



1 transitioned away, not -- not severed  
2 immediately, your Honor, and that's -- that's  
3 when you -- when you talk about people's  
4 lives and whether or not you give them 90  
5 days to transition or to transition tomorrow,  
6 that's -- that's -- that's a concrete harm.  
7 This Court deals with harms that are much  
8 less significant than that and --

9 THE COURT: This is more about the 1.6  
10 as opposed to the 40 million?

11 MR. DICKIBSON: 1.6 plus we've been  
12 required to do work since that May 1st  
13 invoice was issued, and I believe that  
14 there's another equivalent amount that's  
15 already due since that last invoice.

16 THE COURT: All right. Yes, sir.

17 MR. DICKIBSON: And that's why the \$3  
18 million letter of credit is the logical thing  
19 that this Court can do within its equitable  
20 powers to enforce the \$3 million letter of  
21 credit to be issued.

22 THE COURT: Yes, sir.

1 MR. DICKIESON: So I have more stuff,  
2 but I'll let them respond to that argument at  
3 this point.

4 THE COURT: I'm still not understanding  
5 how I can do this without setting for  
6 testimony.

7 MR. DICKIESON: Your Honor, we provided  
8 a declaration for the Court that lays out the  
9 irreparable injury. We've provided the  
10 services agreement where the terms are  
11 concrete and clear that the -- if you don't  
12 pay within 30 days, you must post the \$3  
13 million letter of credit. All we're asking  
14 is that -- that one clause be enforced.

15 THE COURT: Okay. All right. Yes, sir.

16 MR. COX: Thank you, your Honor. I just  
17 want to note that -- and I won't go into  
18 detail because we have a shorter period  
19 amount of time, but the grant of interim  
20 injunctive relief is an extraordinary remedy  
21 involving a very far-reaching power of this  
22 Court. And the standard is ever higher for

1 preliminary mandatory injunction relief, is  
2 what they're seeking here. They're not  
3 seeking to have the NRA restrained or stopped  
4 from some activity. They're asking them  
5 actually to take steps and put up a line of  
6 credit in this case. So just -- we cited  
7 these in our brief, and in Ray v. Microsoft  
8 (phonetic), Tiffany v. Forbes, those have  
9 established that there is a higher, clear,  
10 and convincing probability standard that they  
11 need to meet as to irreparable harm,  
12 substantial likelihood of success, and the  
13 two other standards.

14 Again, the Court has correctly noted  
15 that this is a breach of contract case. And  
16 as many courts have held, including the  
17 Supreme Court in Samson v. Murray, mere  
18 injuries, however substantial, in terms of  
19 money, time, and energy necessarily expended  
20 in the absence of a stay are not enough. The  
21 possibility that adequate compensatory or  
22 other corrective relief will be available at



1 a later date in the ordinary course of the  
2 litigation weighs heavily against a claim of  
3 irreparable harm. We think this is the exact  
4 case here, your Honor.

5 As your Honor has pointed out in  
6 questions with Mr. Dickieson, what we're  
7 talking about here is that they've already  
8 sent us a letter of termination on May 29th.  
9 They're terminating the contract. Now,  
10 they've said that "We're going to do it over  
11 a 90-day period," but what they're here  
12 arguing is that they are entitled to  
13 preliminary injunctive relief because they're  
14 going to have to lay off employees or start  
15 furloughing employees within the next week,  
16 as opposed to 60 days from now, which they're  
17 still -- the Court correctly pointed out  
18 they're still going to have to do.

19 So either way, they are going to have to  
20 furlough these employees. And I would  
21 submit, your Honor, and you pointed to this,  
22 that the declaration submitted by Mr. Winkler



1 doesn't provide an adequate evidentiary  
2 record for the Court to rule on this motion.  
3 We pointed out to several instances where the  
4 conclusory statements of law as to whether  
5 the NRA has breached the contract and, in  
6 addition, they have all of the financial  
7 information. They have not set forth either  
8 in their -- in Mr. Winkler's declaration or  
9 in the brief what steps they've taken to  
10 mitigate the damages.

11 I mean, this is \$1.6 million that's in  
12 dispute. I will note for the Court, your  
13 Honor, that we haven't said we're not going  
14 to pay the invoices. The NRA has sent  
15 multiple letters and emails to the Ackerman  
16 firm asking for evidence and details. In  
17 addition, Mr. Winkler and in their brief --

18 THE COURT: That's what I'm saying. It  
19 renders this matter moot. If you're going to  
20 pay it, doesn't it render this matter moot?

21 MR. COX: Yes, your Honor.

22 THE COURT: All right. Go ahead. I'm

1 listening.

2 MR. COX: So -- and they haven't  
3 indicated, your Honor, that what this  
4 \$1.6 million -- they -- they get \$4 million  
5 dollars a year from the NRA alone. It -- it  
6 seems strange per duly for this court that  
7 \$1.6 million, which may be going to  
8 celebrities, such as Colonel North's  
9 contract, Dana Loesch's contracts, and  
10 others. They haven't broken down whether  
11 this is actual salaries for line employees  
12 they're going to have to furlough verus money  
13 they're going to have to pay out to people,  
14 celebrities, they have contracts with.

15 So I don't think that they -- they could  
16 have submitted financial statements in  
17 support of their declaration, and they  
18 haven't. I think that if the Court as a --  
19 as a basis for today's hearing, I don't think  
20 they've set a legal -- they haven't met the  
21 legal standard for proving irreparable harm  
22 in this instance. But even as the Court has

1           noted, I don't think that they have adequate  
2           evidentiary support, and we would need to  
3           proceed with an evidentiary hearing at a date  
4           certain. I think this is something the Court  
5           could set very soon, later in July or the  
6           first week of August. Give us an opportunity  
7           to, perhaps, take Mr. Winkler's deposition,  
8           obtain some additional financial information  
9           to see whether -- what their support is for  
10          the irreparable harm. I think there's an  
11          insufficient record as it stands before the  
12          Court.

13                   And as to the letter that was sent last  
14          night, I became aware of a letter last night  
15          around 7. I mean, that's why I didn't have  
16          it in our brief that we filed on Monday. But  
17          I believe that the NRA is taking the position  
18          that Ackerman has already said they're  
19          terminating the contract, and they sent that  
20          letter of termination on May the 29th, and  
21          the NRA has stated, "Well, at this point, we  
22          -- we agree. Let's -- we're terminating it,



1 but rather than this wind-down period, let's  
2 terminate it at this point."

3 Again, I think that there are numerous  
4 questions of fact about their financial  
5 condition, also about how much cash they need  
6 to make their obligations that just aren't  
7 known, and what steps, if any, they've taken  
8 to mitigate or find other sources. Perhaps,  
9 they have a line of credit already that they  
10 can borrow on to pay employees. I know my  
11 law firm does. Thank you, your Honor.

12 MR. DICKIESON: Your Honor, we have a  
13 copy of the termination letter that we  
14 received last night, if I can hand it up to  
15 the Court to submit it as Exhibit A for us.

16 (Whereupon Exhibit A was submitted for  
17 evidence.)

18 MR. DICKIESON: And for the record, we  
19 received that after 7 o'clock Eastern time  
20 last night. Obviously, it was intended to be  
21 issued prior to this hearing because they  
22 don't want to pay the -- what -- their



1 obligations. They want to delay it. They  
2 want to postpone the payment. They want --  
3 until after the damage is done. That's part  
4 of the abuse of process that we're alleging  
5 in this case, that they want to take legal  
6 actions, use the process of this Court, to  
7 harm Ackerman McQueen.

8 THE COURT: I just don't know how it's  
9 feasible for me to grant your motion for  
10 injunction in this matter without the benefit  
11 of an evidentiary hearing. However, I think  
12 that the real, great important factor is that  
13 I think in with regards to the injunction  
14 you've got -- you have to establish  
15 irreparable harm, and I'm hearing that you've  
16 got a firm that has historically had income  
17 of million -- \$40 million, and they're  
18 potentially going to be unable, currently, to  
19 collect 1.6 million on this account. And  
20 that 1.6 million will ultimately result in, I  
21 guess, a harm to the -- to the company  
22 because of the failure in ability to pay

1 salaries; is that correct?

2 MR. DICKIBSON: Yes, your Honor, and the  
3 \$40 million reflects the prior year. But  
4 there's also been some effort in the  
5 intervening months to wind down, which is why  
6 1.6 million for the last month is not one-  
7 twelfth of the 40 million. The parties have  
8 been working to reduce the scope of services,  
9 but this is not like we've got a stockpile of  
10 some \$40 million we can live off of for the  
11 time being.

12 THE COURT: But I assume this is not the  
13 only client?

14 MR. DICKIBSON: It's not, but it's  
15 approximately 35 percent of the business,  
16 35 percent of the employees of the firm.

17 THE COURT: All right. Counsel, I'm --  
18 I'm -- at this stage, unwilling to grant your  
19 motion, but I'll say this is that if you  
20 desire an evidentiary hearing, I will grant  
21 you to get a date certain, and we can hear  
22 matters at a later date, and you can put in

1 evidence in support of your -- your -- your  
2 request for an injunction. However, I  
3 understand that you have 65 employees that  
4 may be either out of work or being -- work  
5 without pay, but that's not something I can  
6 deal with at this time. I believe that this  
7 is a breach of contract case, a collection  
8 case, and I guess, at some point, issues  
9 regarding third party contracts. But, still,  
10 it remains a contract case. We can go to  
11 chambers and get a date. So at this time,  
12 I'm preliminary denying the motion for  
13 injunction without prejudice.

14 MR. DICKINSON: Thank you, your Honor.

15 THE COURT: All right. Do you all have  
16 orders?

17 MR. COX: For the denial of the motion  
18 for preliminary injunction, your Honor?

19 THE COURT: Yes.

20 MR. COX: I didn't bring one with me for  
21 that.

22 THE COURT: And that's without

1 prejudice?

2 MR. COX: Yes, your Honor, but I can  
3 draft an order and submit it to Mr. Dickieson  
4 and get it to the Court.

5 THE COURT: And we have all the  
6 necessary documents with regards to the  
7 pro hac vice; is that correct?

8 MR. COX: Yes, your Honor.

9 MR. DICKIESON: Yes, sir.

10 MR. COX: Your Honor, one -- one other  
11 -- two -- two questions. One is we were  
12 before the Court two weeks ago on a motion to  
13 seal, and your Honor ruled on that motion.  
14 And we have a prepared order that just allows  
15 for filing of a revised answer on behalf of  
16 Ackerman. I believe Mr. Dickieson has signed  
17 off on that order. We would just like to  
18 pass it up for the Court's signature.

19 THE COURT: Okay.

20 MR. DICKIESON: Yes, your Honor, we  
21 defer to them on their selection.

22 THE COURT: All right.



1 MR. COX: And then -- oh, do you have  
2 the original order? I gave it to you, but I  
3 have Jim's -- Jim's signature if you want to  
4 sign it. That's it. Thank you. The only  
5 one, I believe, and this is -- I'll take this  
6 down and file it with the clerk, and then  
7 your Honor, one final, just -- I had two  
8 questions, one related to the pro hac vice --  
9 and this came from a discussion Mr. Dickieson  
10 and I had. Now that Mr. Collins is admitted  
11 in the case, is the court's procedurally -- I  
12 know that I have to be present with Mr.  
13 Collin any time for a court hearing. Is he  
14 able to conduct depositions without local  
15 counsel being present? Or does the local  
16 counsel need to be present for depositions  
17 that --

18 THE COURT: I would prefer local counsel  
19 be present.

20 MR. COX: Prefer -- present?

21 THE COURT: Yes.

22 MR. COX: And then for the evidentiary

1 hearing that -- that Mr. Dickieson and I are  
2 heading down, do I raise issues with regard  
3 to -- I had indicated to the Court that we  
4 would like to take limited discovery,  
5 including Mr. Winkler's deposition and some  
6 limited document requests. Is that something  
7 we raise with the calendar control when we go  
8 downstairs?

9 THE COURT: Yes.

10 MR. COX: Thank you, your Honor.

11 MR. DICKIESON: One last matter, your  
12 Honor. I wanted to let you know that we have  
13 two of the pro hac vice attorneys on our side  
14 that have been admitted. Mr. David Schertler  
15 and Mr. Joseph González are in the courtroom.

16 UNIDENTIFIED ATTORNEY: Good morning,  
17 your Honor.

18 THE COURT: Welcome. Welcome.

19 UNIDENTIFIED ATTORNEY: Thank you, sir.

20 THE COURT: Do we have any idea when we  
21 are likely to try this matter? And I guess  
22 my question is how many days do you think

1           you're going to need to try it,  
2           approximately?

3           MR. DICKIESON: Your Honor, my position  
4           is that the parties are obligated under the  
5           contract to have good faith effort to try to  
6           resolve this. I think we should try  
7           mediation first.

8           THE COURT: Okay. All right.

9           MR. DICKIESON: And I think that's the  
10          appropriate way to go before we start trying  
11          to schedule an expedited trial.

12          THE COURT: All right.

13          MR. COX: Your Honor, just so you have  
14          our position, we think that it's -- we think  
15          it's, by estimate, a five to six-day trial.

16          THE COURT: Okay.

17          MR. COX: And we're prepared, if your  
18          Honor would like us to, to go -- I was  
19          waiting to receive a notice to come to  
20          calendar control to set a schedule, but if  
21          your Honor would like us to come in on a  
22          return date --

1 THE COURT: No.

2 MR. COX: -- and set it, we can do it.

3 We're -- we're moving forward with discovery.

4 THE COURT: Do it at your pleasure.

5 MR. COX: Thank you, your Honor.

6 THE COURT: Again, I strongly urge you  
7 to familiarize yourself with the local rules  
8 with regards to pleadings and everything.

9 You -- you worked my law clerk to death in  
10 the last -- how -- how many days?

11 THE CLERK: I would say around seven.

12 THE COURT: Seven. Okay. Give him a  
13 break, okay?

14 MR. COX: Your Honor -- your Honor, I  
15 apologize, and I just -- perhaps it was  
16 unfamiliarity. I didn't realize that I  
17 wasn't permitted a reply brief. So that's --  
18 I apologize for submitting that. One other  
19 thing. I -- I did -- I do have an order with  
20 regard to Mr. Collins --

21 THE COURT: How many times are you going  
22 to say "one other thing"?



1 MR. COX: I'm sorry. But I did -- I do  
2 have the order. I don't -- now that these  
3 matters are consolidated, I don't know  
4 whether you need two orders or just the one.

5 THE COURT: Why don't we do two to be  
6 safe?

7 MR. COX: Okay.

8 THE COURT: Okay.

9 MR. COX: Thank you.

10 THE COURT: All right. Thank you,  
11 gentlemen.

12 MR. COX: Thank you, your Honor.

13

14 (Whereupon the proceedings concluded at  
15 11:36 a.m.)

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## REPORTER CERTIFICATE

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3 I, JACQUELINE N. HAGEN, Court Reporter and Notary Public,  
4 certify:

5 That the foregoing proceedings were taken before me at  
6 the time and place herein set forth, at which time the  
7 witness was put under oath for me;

8 That the testimony of the witness and all objections made  
9 at the time of the examination were recorded  
10 stenographically by me and were thereafter transcribed;

11 That the foregoing is a true and correct transcript of my  
12 shorthand notes so taken;

13 I further certify that I am not a relative or employee of  
14 any attorney or of any of the parties not financially  
15 interested in this action.

16

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20

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JACQUELINE N. HAGEN

21

22 Dated: June 26, 2019