

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

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THE PEOPLE OF THE STATE OF NEW YORK, by :
LETITIA JAMES, Attorney General of the State of New York :
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Petitioners, : **Index # 451825/2019**
: :
-against- : **Hon. Melissa Anne Crane**
: :
ACKERMAN MCQUEEN and NATIONAL RIFLE :
ASSOCIATION OF AMERICA, :
: :
Respondents. :
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**AFFIDAVIT OF JOHN FRAZER IN SUPPORT OF THE NRA’S OPPOSITION TO THE
ATTORNEY GENERAL’S SPECIAL PROCEEDING AND APPLICATION TO
COMPEL RESPONDENT ACKERMAN MCQUEEN TO COMPLY WITH AN
INVESTIGATORY SUBPOENA**

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss.:

JOHN FRAZER, being duly sworn, deposes and says:

1. I make this affidavit in support of the NRA’s Opposition to the Attorney General’s Special Proceeding and Application to Compel Respondent Ackerman McQueen to Comply with an Investigatory Subpoena. I am above the age of eighteen years, have never been convicted of a felony, and am fully competent to make this affidavit. The statements set forth below are true and correct and, unless otherwise qualified, are based upon my personal knowledge.

2. I am the Secretary and General Counsel of the National Rifle Association of America (the “NRA”). In my capacity as General Counsel, I manage legal matters involving the NRA, as well as provide legal advice and guidance to NRA employees and agents. I also supervise outside counsel retained to represent the NRA on matters, including, but not limited to: (i) certain

disputes with Ackerman McQueen, Inc. (“Ackerman”) over the course of 2018, which culminated in lawsuits that are currently pending in the states of Virginia and Texas; and (ii) inquiries by regulatory and law-enforcement authorities such as the New York Office of the Attorney General (the “OAG”).

3. The NRA’s relationship with Ackerman was governed by successive incarnations of a Services Agreement that specified, *inter alia*, how the NRA’s confidential information should be handled and how Ackerman’s services should be budgeted and billed. A true and correct copy of the most recent operative Services Agreement is attached hereto as Exhibit A.

4. Pursuant to the Services Agreement, Ackerman provided an array of services which were highly sensitive and entrusted to Ackerman only due to the relationship of trust and confidence that had been established during the course of a long relationship. Ackerman was empowered, *inter alia*, to fashion crisis public relations strategy; to manage the NRA’s branding; to administer many of the NRA’s digital assets, including NRA TV; to purchase goods and services on the NRA’s behalf (see, e.g., Services Agreement I.C); and to deploy the NRA’s intellectual property across a wide range of media (see, e.g., Services Agreement II.C). In addition, Ackerman employees, such as Dan Bongino and Dana Loesch, often spoke on behalf of the NRA in public fora. The NRA entrusted Ackerman as its agent and fiduciary under common law as well as pursuant to the Services Agreement.

5. The NRA routinely shared confidential information with Ackerman and its employees including, on many occasions, privileged information. Ackerman employees worked alongside, and were functionally interchangeable with, NRA employees in some situations. In order to prepare this affidavit, I reviewed my emails and quickly noted several instances wherein

I provided legal advice and guidance to Ackerman employees performing work as agents of the NRA.

6. By way of illustration, I have logged examples of privileged communications below which span the period from 2015 (when I became General Counsel) to the present. I have reviewed the subpoena issued by the New York State Office of the Attorney General (the "OAG") to Ackerman dated July 8, 2019 (the "Subpoena"), and believe that all of the following privileged communications are responsive to it; moreover, I believe that a full response to the Subpoena would capture many more:

- a. On February 7, 2018, I provided legal advice by email to Nader Tavangar, an Ackerman employee, regarding accounting for charitable expenditures relating to NRATV.
- b. On February 7, 2018, I provided legal advice by email to multiple recipients, including NRA employees and Ackerman employees, regarding messaging and disclaimers pertaining to a Carry Guard infomercial and promotional emails.
- c. On July 12 and 13, 2017, I provided legal advice by email to multiple recipients, including NRA employees and Ackerman employees, regarding specific provisions of contracts with NRA firearms instructors for a program jointly developed by Ackerman and NRA staff on behalf of the NRA.
- d. On December 5, 2016, I provided legal advice via email addressed jointly to Clay Turner, an Ackerman employee, and Laurie Luebbert, an NRA employee, regarding donor privacy issues pertaining to an upcoming article in a magazine jointly produced by Ackerman and NRA staff on behalf of the NRA.
- e. On October 28, 2016, I provided legal advice by email to multiple recipients, including NRA employees and Ackerman employees, regarding copyright issues pertaining to the potential use of archival NRA film footage that could be made available to Ackerman for NRA projects.
- f. On September 25, 2015, as part of an email chain involving Mr. Tavanger, NRA assistant general counsel Skipp Galythly, and the NRA's Managing Director of Public Affairs, Andrew Arulanandam, I provided legal advice regarding a proposed email communication to NRA supporters.

7. Of course, I never would have shared the NRA's confidential information (let alone legal advice) with Ackerman absent strong contractual and common-law assurances of confidentiality.

8. Not only did Ackerman acquire privileged communications when its employees performed functions equivalent to those of NRA employees—it also shared common legal interests with the NRA in connection with multiple lawsuits and government inquiries, and was party to privileged communications in that capacity for which the common-interest exception to the waiver rule applied. Recent examples of legal matters that triggered common-interest communications with Ackerman include: (i) a lawsuit filed in 2018 by the sculptor Anish Kapoor against the NRA regarding a depiction of one of Mr. Kapoor's works in an NRA-related video shot by Ackerman; (ii) an investigation—still ongoing—by the New York Department of Financial Services (“DFS”) relating to Carry Guard, in which both Ackerman and the NRA were subpoenaed (the “DFS Investigation”); and (iii) a lawsuit filed by the NRA against its affinity-insurance broker, Lockton Affinity LLC, in which Ackerman received a third-party subpoena (the “Lockton Lawsuit”).

9. In addition, pursuant to the Services Agreement, Ackerman operated several websites where NRA members were invited to input personal information. To the extent that Ackerman may have maintained records of inputs received, I would have serious concerns from a member and donor privacy perspective regarding any disclosure of such information to the OAG.

10. Section IV of the Services Agreement (the “NDA”) prohibits Ackerman from disclosing the NRA's Confidential Information (defined therein) without the NRA's consent. The parties' historic practice when Ackerman receives a subpoena has been that: (i) Ackerman notifies the NRA when it receives any subpoena implicating the NRA's Confidential Information and (ii)

the NRA reviews any outgoing document production, so it can log privileged documents. This practice was followed in the Lockton Lawsuit and DFS Investigation.

11. As has been widely reported, the NRA's relationship with Ackerman deteriorated throughout 2018. After receiving numerous reports accusing Ackerman of deceptive billing (and more), the NRA sought documents and information pursuant to its contractual record-inspection right under the Services Agreement. This led to a series of escalating disputes detailed in two consolidated lawsuits (collectively, the "Virginia Litigation"): *National Rifle Association of America v. Ackerman McQueen, Inc., et al*, Civil Case No. CL19001757 (Va. Cir., April 12, 2019) (the "First Virginia Lawsuit"); and *National Rifle Association of America v. Ackerman McQueen, Inc., et al*, Civil Case No. CL19002067 (Va. Cir., May 22, 2019) (the "Second Virginia Lawsuit"). A true and correct copy of the NRA's complaint in the First Virginia Lawsuit is attached as Exhibit B hereto. A true and correct copy of the NRA's complaint in the Second Virginia Lawsuit is attached as Exhibit C hereto.

12. The NRA never sued or threatened to sue Ackerman for disclosing information to the OAG. On May 17, 2019, in response to notice from Ackerman's outside counsel that Ackerman was considering meeting voluntarily with the OAG, I asked that Ackerman "provide the NRA with notice identifying any Confidential Information (as defined [in the Services Agreement]) which [Ackerman] proposes to share with the [OAG], so that the NRA may grant its consent as appropriate—or take steps to protect its interests, including by asserting any applicable privileges." A true and correct copy of my email to Ackerman's counsel dated May 17, 2019, is attached hereto as Exhibit D.

13. As tensions between Ackerman and the NRA grew into litigation, I developed serious concerns about Ackerman's willingness and ability to safeguard the privileged information


with which it had been entrusted over the course of its relationship with the NRA. For example, on June 28, 2019, Ackerman provided the NRA with a proposed document production in the DFS Investigation that disclosed multiple privileged communications to which I had personally been party. Fortunately, the NRA had an opportunity to redact and log these documents. A true and correct copy of the resulting privilege log furnished by the NRA, which to my knowledge remains unchallenged by DFS, is attached hereto as Exhibit E.

14. On Friday, July 26, 2019, I learned for the first time that Ackerman had been subpoenaed by the OAG, when Ackerman's counsel transmitted a copy of the Subpoena to me along with documents slated for production. Consistent with the parties' practice under the NDA, I directed outside counsel to review the documents for privilege, which occurred that weekend. On Tuesday, July 30, 2019, I informed Ackerman's counsel that the NRA consented to the entire proposed production.

15. It is my understanding that this is not the first occasion on which the OAG has sought NRA-related documents from an NRA contractor and purported to forbid disclosure of the subpoena, or responsive documents, to the NRA. Attached hereto as Exhibit F is a true and correct copy of a letter I received from an accounting firm, RSM, that performed services for the NRA and indicated it had received a similar subpoena. The NRA consented to production of documents by RSM in response to the OAG's subpoena, subject to a privilege review.


16. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 23rd day of October, 2019.



John Frazer

Sworn to before me this 23rd
day of October, 2019.



Notary Public Fairfax County

STEPHEN SANDER MC CORMICK
NOTARY PUBLIC
REGISTRATION # 7833634
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
MARCH 31, 2023