

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

NATIONAL RIFLE ASSOCIATION OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ACKERMAN MCQUEEN, INC., )  
 )  
 and )  
 )  
 MERCURY GROUP, INC. )  
 )  
 Defendants. )

Case No. CL19002067  
CL19001757

**DEFENDANT ACKERMAN MCQUEEN, INC.’S MEMORANDUM OF LAW IN**  
**SUPPORT OF ITS MOTION TO COMPEL PLAINTIFF TO**  
**SUPPLEMENT ITS EXPERT DESIGNATIONS**

FILED  
 CLERK OF COURTS  
 CITY OF ALEXANDRIA  
 2020 JAN 23 PM 4:5

Pursuant to Va. Supreme Court Rule 4:12(a), Defendants Ackerman McQueen, Inc. and Mercury Group, Inc. (hereafter collectively “AMc”) respectfully move this Court to order the National Rifle Association of America (hereafter “NRA”) to supplement its expert witness designations in response to AMc’s Interrogatory Request in order to allow AMc to prepare adequately to depose those designated NRA experts, generate appropriate rebuttal expert responses, and prepare for trial. The expert witness designations submitted by the NRA<sup>1</sup> (hereafter “NRA expert designations”) are deficient for the reasons set forth below.

On January 7, 2020, pursuant to the Scheduling Order of this Court, the NRA identified and designated five “expert witnesses” that it may call in the trial of this matter. Long before, on

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<sup>1</sup> The NRA’s expert witness designations, entitled “*Plaintiff The NRA’s Expert Witness Designations,*” are attached as Exhibit A.

June 14, 2019, AMc submitted interrogatories to the NRA and, in accordance with the Court's Scheduling Order and Va. Rule 4:1(b)(4)(A)(i)<sup>2</sup>, made the following request:

Identify any expert witness that you intend to have testify at trial in this case or in any related case, specifying the background and experience of the witness, the sum and substance of his/her testimony, the grounds for any opinion to be presented, and any scholarly publications or prior expert testimony previously provided by the witness.

*(AMc's First Set of Interrogatories to NRA, June 14, 2019, Interrogatory 23, p. 41.)*

The NRA expert designations fail to specify the sum and substance of its experts' proposed testimony or the grounds underlying the experts' opinions. In addition, there seems to be no limit to the random and irrelevant matters that the noticed experts have been offered to address. One expert, for example, is listed as possibly providing as many as 13 different opinions on a variety of subject matters. The NRA expert designations are deficient, fail to respond to AMc's reasonable discovery request, appear designed to obfuscate the issues at trial, and are invalid under Virginia law.<sup>3</sup>

**I. AMC ATTEMPTED TO RESOLVE THIS DISPUTE PRIOR TO FILING THIS MOTION.**

Prior to filing this Motion to Compel, AMc's counsel asked the NRA's counsel to supplement the Expert Designations. In an initial discussion, NRA counsel acknowledged that the designations would require supplementation. Despite representing that the designations necessitated supplementation, the NRA has failed to supplement any of its expert designations. A final meet and confer session regarding AMc's demand for additional information on the NRA

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<sup>2</sup> Rule 4:1(b)(4)(A)(i) states: "A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion."

<sup>3</sup> Separate and apart from the inadequacy of the NRA expert designations, AMc believes that the vast majority of the purported "expert opinions" offered by the NRA do not qualify as "expert opinion" under Virginia law. AMc expects to file a separate motion *in limine* to exclude testimony that does not properly qualify as expert testimony.

expert designations was held on January 22, 2020, but there was no agreement on the nature and timing of the NRA's supplementation. The current deadline for serving rebuttal expert analysis is February 5, 2020. In order to obtain the information necessary for it to comply with this immediate deadline and to ultimately address what it believes to be legally flawed expert testimony that the NRA seeks to offer, AMc is compelled to seek relief from the Court through this motion to compel.

**II. ALL OF THE NRA EXPERT DESIGNATIONS HAVE SIMILAR AND FUNDAMENTAL DEFICIENCIES.**

The NRA expert designations are all deficient in several critical ways. As an initial matter, the first five pages of the NRA expert designations are not associated with any expert witness, but simply recite an exaggerated, inflammatory, and false narrative about the NRA's approach to the case in general. Pages 1 through 5 of the NRA expert designations should be stricken as irrelevant and not associated with any particular expert. This introductory section appears to have been crafted as a public relations matter to gratuitously defame AMc in a court filing without fear of being sued for defamation. It is a continuation of the NRA's abuse of process.

Second, the NRA admits that its expert designations are incomplete. On page 7 of Exhibit A, the NRA states: "*Each expert will explain the bases of his opinions. Each expert may discuss general issues pertinent to his specialty. . .*" These concessions openly acknowledge that the NRA expert designations do not, and were not intended to, disclose the substance of and basis for the proposed experts' opinion testimony or the grounds underlying the proposed experts' opinions as required by Virginia Rule and the Scheduling Order in this case.

Third, the NRA's concession that it has not disclosed the substance of and basis for its proposed experts' opinions ignores that Virginia courts require detailed expert reports that contain this information. *See e.g., John Crane, Inc. v. Jones*, 274 Va. 581, 591, 650 S.E.2d 851, 856 (2007); *Blue Ridge Serv. Corp. v. Saxon Shoes, Inc.*, 271 Va. 206, 212, 624 S.E.2d 55, 58 (2006)

(citing *Tarmac Mid-Atlantic, Inc. v. Smiley Block Co.*, 250 Va. 161, 166, 458 S.E.2d 462, 465 (1995)). For example, in *Cook, Heyward, Lee, Hopper & Feehan, P.C. v. D'Eramo*, 2007 Va. Cir. LEXIS 267 (Newport News 2007), the court found the lack of detail in the expert notice sufficient to justify excluding the testimony of that expert witness. Here, the NRA has failed to provide an adequate description of any expert opinion it proposes to offer or the basis underlying any opinion. In the meet and confer session discussion of the NRA expert designations, NRA counsel claimed that they could not provide the grounds for the opinions until AMc completed its document production. When questioned, however, the NRA proffered this same excuse with respect to one expert – for whom all of the information relating to expert’s opinion is in the hands of the NRA.

Fourth, the deficient NRA expert designations prejudice AMC by denying it the ability to take meaningful depositions of the designated experts and to prepare rebuttal experts. Rule 4:1(b)(4)(A)(ii) permits a party to depose an opponent’s testifying experts, subject to subpart (C)’s fee payment requirement. ***The ability of the opposing party to depose an expert or the actual taking of the deposition does not, however, reduce in any way the obligation of the party who has designated the expert to answer fully an interrogatory seeking the opinions and bases for those opinions of experts who will testify at trial.***<sup>4</sup> In any case, AMc is severely hampered in its ability to take a meaningful deposition of an expert when the substance of and basis for the expert’s opinion has not been articulated in the NRA expert designations. Furthermore, the lack of information regarding the NRA’s proposed expert opinions also hampers AMc’s ability to designate appropriate rebuttal experts. AMc cannot effectively rebut an expert opinion that is left vague and unsubstantiated.

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<sup>4</sup> Rule 4:1(b)(4) of the Rules of the Supreme Court of Virginia essentially tracks the Federal Rule. Thus, relevant federal cases can also shed light on the requirements for experts in Virginia.

Fifth, the NRA expert designations fail to provide any factual basis underlying the proffered opinions. “[E]xpert testimony . . . cannot be speculative or founded upon assumptions that have an insufficient factual basis.” *Tittsworth v. Robinson*, 252 Va. 151, 154, 475 S.E.2d 261, 263 (1996) (citations omitted). In *Vasquez v. Mabini*, 269 Va. 155, 159-61, 606 S.E.2d 809, 811-12 (2005), for example, the Virginia Supreme Court held that an expert's testimony in a wrongful death action as to the decedent's expected loss of income and the economic value of the loss of her services was inadmissible because it was “speculative” and “founded upon assumptions that [had] no basis in fact.” *Id.* at 160-61, 606 S.E.2d at 811-12.

Finally, the Virginia Supreme Court has held that parties should satisfy their obligations under Rule 4:1(b)(4)(A)(i), Rule 4:1(e), and the pretrial scheduling order to provide a timely and specific disclosure of anticipated expert testimony. “To hold otherwise would reduce the expert disclosure obligation to the status of a mere recommendation or, worse, a juristic bluff—obeyed faithfully by conscientious litigants but ignored at will by those willing to run the risk of unpredictable enforcement.” *Mikhaylov v. Sales*, 784 S.E.2d 286, 292 (Va. 2016)

In light of the pressing timetable for its rebuttal expert analysis and trial preparation, AMc can no longer wait idly for the NRA to supplement its expert designations at its leisure. This motion is necessary and warranted to compel the NRA to meet its discovery obligations and fully disclose the substance of and grounds for the opinions that its designated experts propose to provide at trial.

## **CONCLUSION**

For the reasons stated above, AMc, by counsel, respectfully requests that this Court grant this Motion to Compel in full and order that the NRA provide full and complete expert discovery responses, articulating the sum and substance and the grounds for each of the opinions stated for

each expert. In addition, the Court should grant AMc additional time to receive the supplemental information and take the depositions of the NRA experts before requiring AMc to designate rebuttal experts.

Respectfully submitted,  
ACKERMAN MCQUEEN, INC. and  
MERCURY GROUP, INC.  
By Counsel

Dated: January 23, 2020

Respectfully submitted,




David H. Dickieson (VA Bar #31768)  
SCHERTLER & ONORATO, LLP  
901 New York Avenue, NW, Suite 500  
Washington, DC 20001  
Telephone: 202-628-4199  
Facsimile: 202-628-4177  
[ddickieson@schertlerlaw.com](mailto:ddickieson@schertlerlaw.com)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on January 23, 2020, on the following counsel for Plaintiff by agreement via email addressed to:

James W. Hundley  
Robert H. Cox  
BRIGLIA HUNDLEY, PC  
1921 Gallows Road, Suite 750  
Tysons Corner, VA 22182  
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David H. Dickieson

# **Exhibit A**

**Defendants' Motion to Compel Plaintiff  
to Supplement Expert Designations**



VIRGINIA:

IN THE CIRCUIT COURT OF  
THE CITY OF ALEXANDRIA

NATIONAL RIFLE ASSOCIATION OF  
AMERICA,

Plaintiff,

v.

ACKERMAN MCQUEEN, INC.

And

MERCURY GROUP, INC.

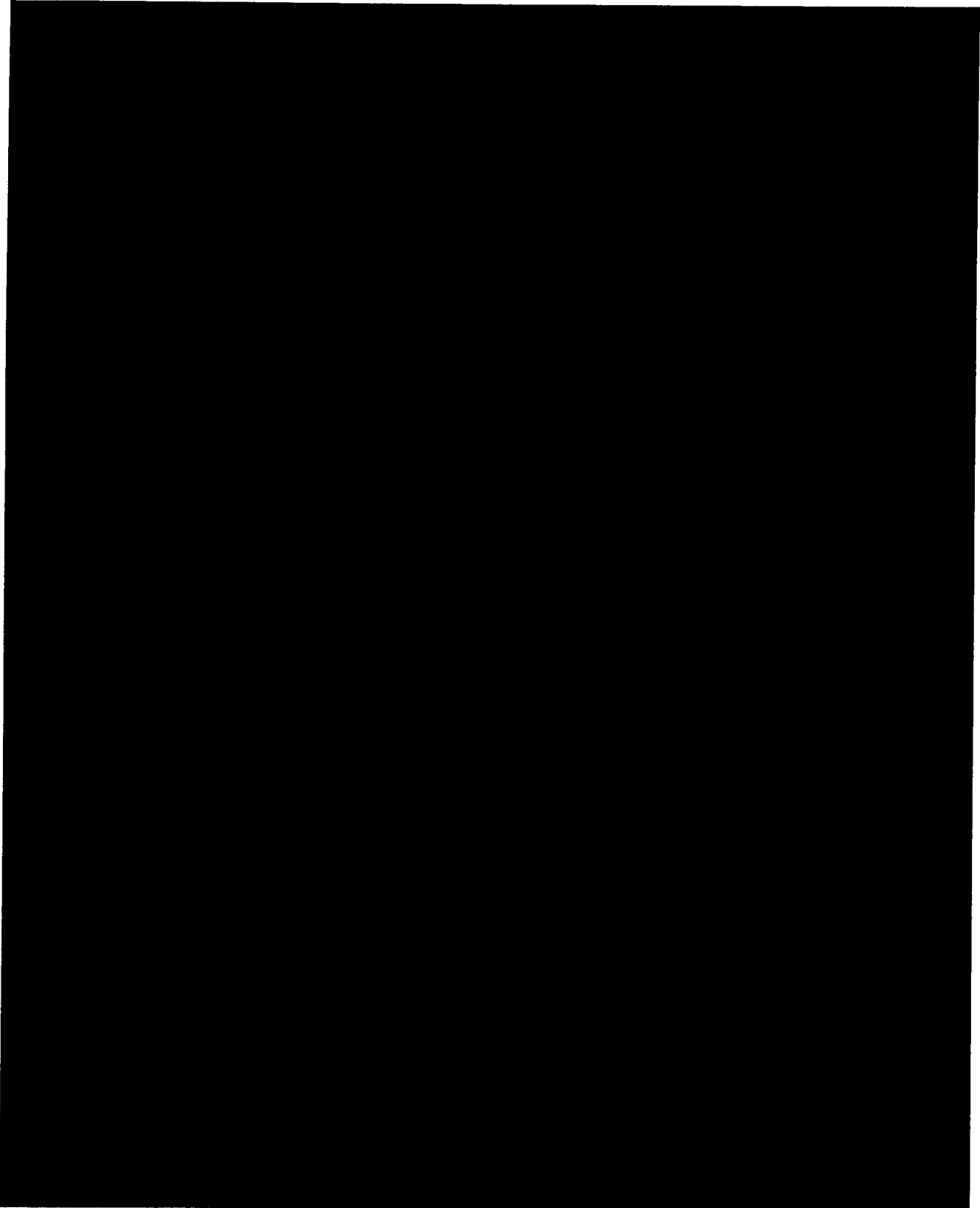
Defendants.

Case Nos. CL19001757  
CL19002067

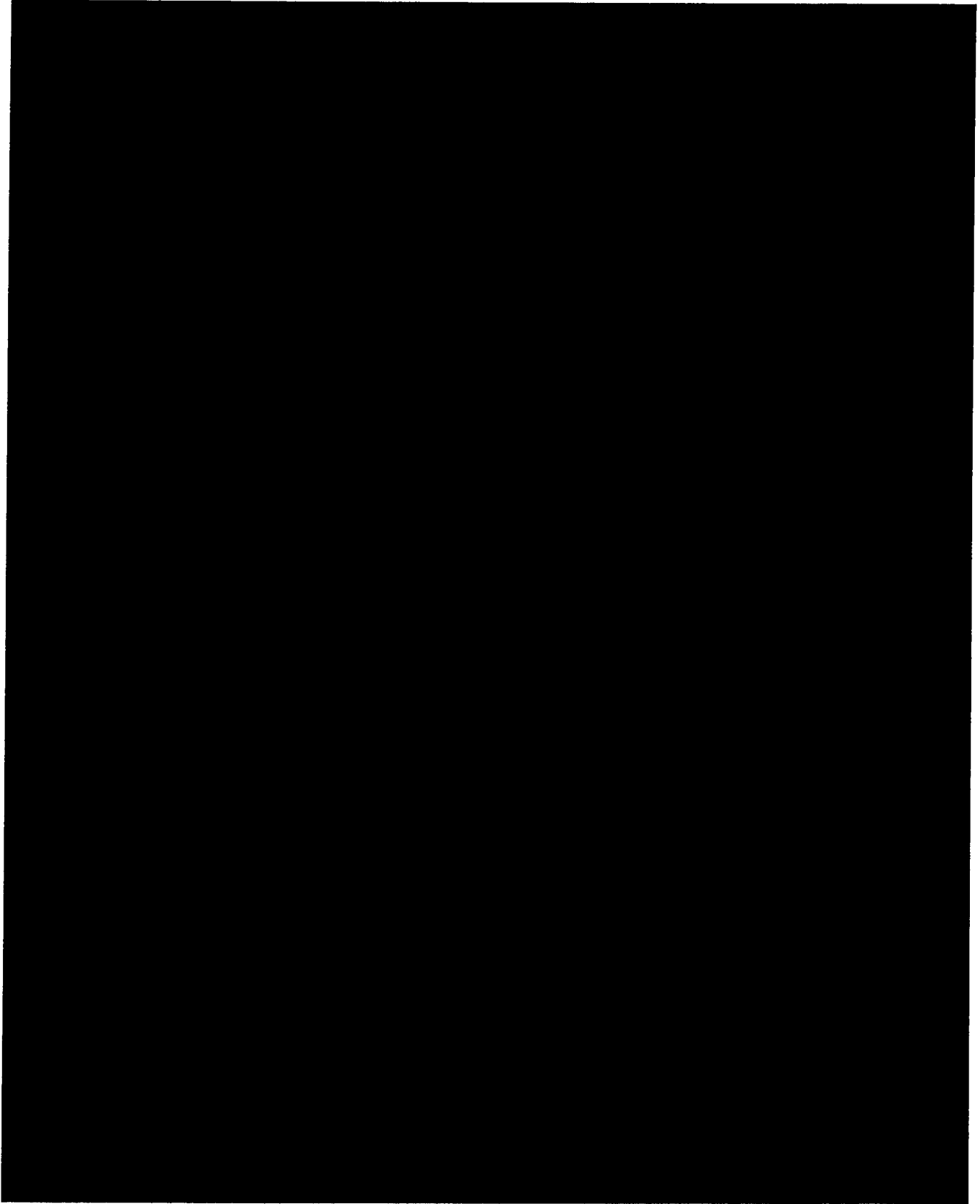
**PLAINTIFF THE NRA'S EXPERT WITNESS DESIGNATIONS**

COMES NOW Plaintiff, National Rifle Association of America (the "NRA" or the "Association"), by and through its counsel, and submits its Expert Witness Designations, as required by Rule 4:1 of the Virginia Supreme Court Rules ("Virginia Rules"). Subject to and without waiving any of its prior objections, the NRA hereby supplements its response to Interrogatory No. 20, of Defendant Ackerman McQueen, Inc. and Mercury Group Inc.'s ("Defendants" or together, "AMc's") First Set of Requests for Interrogatories.

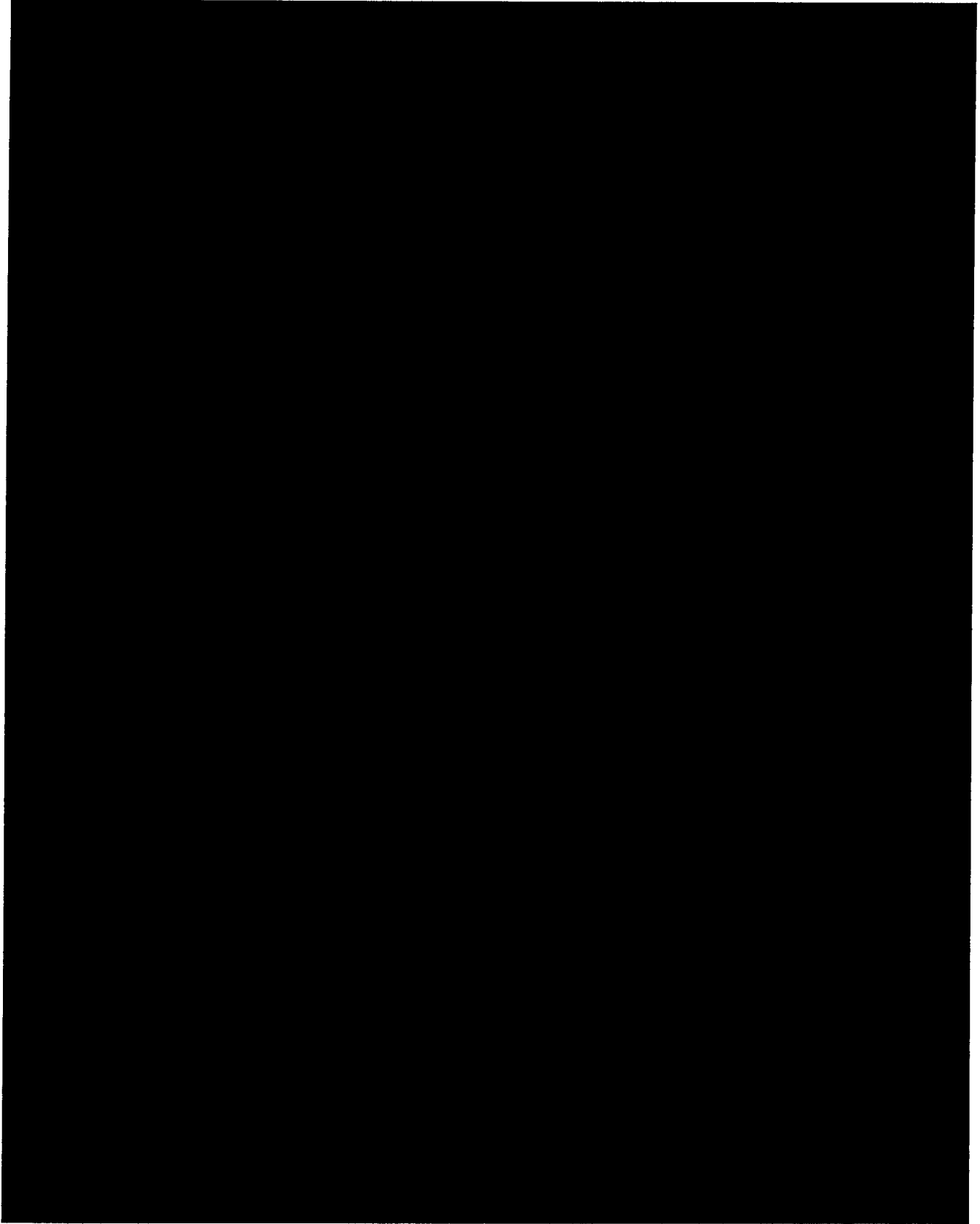
REDACTED



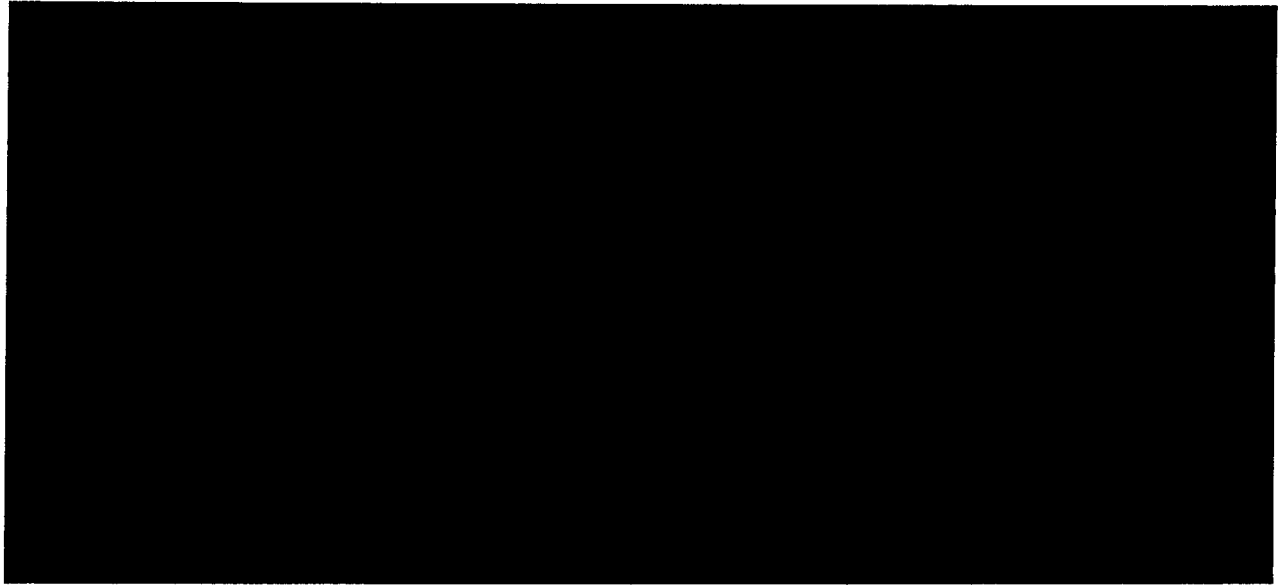
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The following expert designations represent summaries of the anticipated opinions of the NRA’s retained experts. Plaintiff reserves the right to present additional expert testimony on matters learned during discovery, learned by the production or discovery of evidence not-yet-produced by Defendants, raised at trial, or as necessary to fully explain the issues in this case to the jury, and those opinions are incorporated herein.

Any and all opinions set forth below will be expressed to a reasonable degree of certainty in the field in which the expert is qualified. The expected opinions set forth below are expected to be based upon the education, training, and experience of each expert, and follow each expert’s review of the relevant contract records, pleadings and discovery materials, and other information in the case, and if applicable, a review of the pertinent literature<sup>1</sup>. More specific facts and opinions, and more specific grounds, may be elicited on direct and/or re-direct examination at trial. Defendants’ counsel is invited to depose each expert witness disclosed herein for greater details consistent with the Virginia Rules.

Five industry, forensic and/or accounting experts have been engaged by the NRA to provide testimony in the following areas:

Forensic Accounting; Contract Damages	Gary Goolsby, FTI Consulting, Inc.
Public Relations; Strategic Marketing Services	Robert Fisher, Fisher & Associates, Inc.
Advertising; Creative Services; Media Planning and Placement	Andrew McLean, Inventus Media Inc.
Online / Digital Media: Analytics	Doug Bania, Nevium Intellectual Property Consultants
Online / Digital Media: Damages	Brian Buss, Nevium Intellectual Property Consultants

<sup>1</sup> In addition each expert is and will be reviewing additional documents, including deposition transcripts of depositions taken or to be taken and docs included in future productions.

Below is a disclosure of each expert's expected testimony, qualifications, and industry / practice expertise, as well as the information considered for such opinions. Recognizing that AMc has thwarted the NRA's collection of evidence across every category of our complaints, the testimony outlined below is constrained by the information presently available to the NRA. The facts and records upon which expert opinions are expected are at this point necessarily limited by AMc's failure to provide documents and information required to respond to the NRA's discovery requests. For additional information regarding the failure of AMc to produce books and records, see the discussion that follows expert summaries. It is likely that additional wrongdoing will reveal itself, as AMc is required to comply with its obligations to produce information.

Each expert will explain the nature of his specialty and his experience, as necessary, for qualification purposes. Each expert will explain the bases of his opinions. Each expert may discuss general issues pertinent to his specialty and may use art work, graphs, models, illustrations, animations, or other demonstrative aids to help explain these issues to the jury.

**A. Gary B. Goolsby, C.P.A., C.F.F.**

**FTI Consulting, Inc.:**  
1301 McKinney, Suite 3500  
Houston, TX 77010

1. Subject Matter of Expert Testimony

It is anticipated that Mr. Goolsby will opine on the failure of AMc to fulfill its obligations under the "Records Examination Clause" of the Services Agreement by withholding a number of critical documents, including support for invoices, budget planning materials, and NRA-dedicated employee information. It is anticipated that Mr. Goolsby will opine that AMc invoices lack

supporting details necessary for the NRA to substantiate the invoices, which were excessive and abusive. It is anticipated that Mr. Goolsby will opine that AMc billed the NRA for amounts inconsistent with the provisions of the Services Agreement, including, but not limited to, the production of Oliver North's American Heroes program on NRATV. It is anticipated that Mr. Goolsby will opine on AMc's actions that have jeopardized the NRA's ability protect itself from AMc's theft and on AMC's refusal to disclose North's contract which threatens to impede the NRA's corporate governance. It is anticipated that Mr. Goolsby will opine that in support of several designated "special assignments" (Section II.E of the Services Contract), AMc failed to provide the contractually required scope documents and budgets, nor approvals, in advance of the work. It is also anticipated that Mr. Goolsby will opine on AMc inappropriately billing the NRA for services not rendered.

It is anticipated that Mr. Goolsby will opine on AMc's failure to uphold its fiduciary duties, most notably its responsibility to manage invoicing, as AMc submitted expenses to the NRA that were inappropriately billed or not substantiated by supporting documentation. It is anticipated that Mr. Goolsby will opine on "fair market value" determinations as required by Section I.B. of the Services Agreement that AMc did not supply to the NRA, and has later through self-admission, stated that the determination of costs are simply what the NRA was willing to pay for a project or service. It is anticipated that Mr. Goolsby will opine on the lack of time records and NRA-dedicated personnel lists and salaries required to validate that projects and personnel costs were correctly allocated to the NRA. This enabled AMc executives to obfuscate expenses not approved by the Section III of the Services Contract.

It is anticipated that Mr. Goolsby will opine that AMc undertook additional record keeping responsibilities for the benefit of the Association to maintain certain expense files, including out-



of-pocket expenses (“OOP”), that related to donor development, strategic activities, and public relations – and it is anticipated that Mr. Goolsby will opine on the lack of such documents provided by AMc. It is anticipated that Mr. Goolsby will opine that although a full accounting is not yet possible given AMc’s refusal to turn over such information and backup, AMc used this agency function as an opportunity for its executives to abuse the NRA by charging unapproved expenses. It is also anticipated that Mr. Goolsby will opine on damages calculations. It is anticipated that Mr. Goolsby will opine on budgetary abuse and a variety of unjustified and excessive invoice charges.

It is anticipated that Mr. Goolsby will opine that funds subject to disgorgement exceed \$100 million, based on direct damages that include overcharging as well as unjustified expense charging. It is anticipated that the damages calculation will include any and all invoices amounts paid by the NRA to AMc that were inappropriately billed or not substantiated by supporting documentation.

## 2. Qualifications

Mr. Goolsby is an expert in the field of Forensic Litigation Consulting and a Senior Managing Director at FTI Consulting, a global consulting firm. Prior to FTI Consulting, Mr. Goolsby was Managing Director for 5 years in the Disputes and Investigations practice of Navigant Consulting. Prior to Navigant Consulting, he served in executive level positions of Chief Financial Officer and President for a Houston-based financial services company. Prior to his work for the Houston-based financial services company, Mr. Goolsby was with Arthur Andersen for 28 years, 18 as a partner, serving in various audit partner and leadership roles. Mr. Goolsby earned his M.B.A. and B.S. from Louisiana Tech.<sup>2</sup>

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<sup>2</sup> Mr. Goolsby’s curriculum vitae is appended as Exhibit A

3. Expertise and Information Considered

Mr. Goolsby has made numerous presentations during his career covering a wide range of financial reporting, risk and investigation issues. He has also previously served as liaison to the Professional Liability Litigation and Energy Litigation Committees of the American Bar Association Section of Litigation. Mr. Goolsby has also provided expert reports, affidavits and testimony in federal and state courts and in arbitration hearings relating to theft of confidential business information, fraudulent transfers, governance, and internal controls and processes.

Mr. Goolsby has received all complaints, amended complaints, counterclaims, and plaintiff/defendant requests for production, as well as plaintiff/defendant responses, in the litigation. Please see the following section labeled “Summary of Documents Provided to Experts” that list the documents provided to Mr. Goolsby in connection with this litigation.

**B. Robert Fisher**

**Fisher & Associates, Inc.**  
4607 Lakeview Canyon Rd. Ste. 210  
Westlake Village, CA 91361

1. Subject Matter of Expert Testimony

It is anticipated that based on his 52 years of relevant professional experience in public relations, strategic marketing, and communications industries, including operating and managing his own public relations, strategic marketing, and communications firm for the last 42 years, Mr. Fisher will opine that AMc’s refusal to share any substantive information regarding fees, employees and time records, violates Section VIII of the Services Agreement. It is expected that Mr. Fisher will opine on how this refusal to share substantive information with the NRA before litigation, or currently in litigation, violates numerous material standard operating practices,

procedures and policies in the industry, as well as moral and ethical standards, about which Mr. Fisher can speak to as the former Executive Committee Member of the Counselor's Academy of the Public Relations Society of America and as a former officer of the Public Communicators of Los Angeles.<sup>3</sup>

It is anticipated that based on a review of the Services Agreement dated May 1, 1999, including the operative Services Agreement dated April 30, 2017, and the amendment dated May 6, 2018, it is anticipated that Mr. Fisher will opine that a relationship of trust and confidence was created between the NRA and AMc which required AMc to act at all times for the benefit of the NRA.

It is anticipated that Mr. Fisher will further opine on the gravity of the duties and obligations of a public relations and strategic marketing firm, such as AMc, owe to any client, including the doctrine of full disclosure, strong operational and billing procedures, client good faith of fair dealing, and confidentiality, that are customary for the industry, regardless of the length and scope of the relationship. It is anticipated that Mr. Fisher will opine that AMc operated in its own interest, was irresponsible, and abusive regarding its duties and obligations to the NRA

It is anticipated that Mr. Fisher will further opine that AMc clearly understood that its relationship with the NRA was one of trust and that it owed NRA obligations of loyalty, confidentiality, full disclosure, transparency and honesty - all of which were abused. It is anticipated that Mr. Fisher will opine on the abundant evidence that already exists that AMc violated those obligations, as well as numerous contractual obligations under the Services Agreement, including expenses inappropriately charged without approval (per Section III, Billing and Payment); withholding fair market value work for creative services such as speeches, national

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<sup>3</sup> Mr. Fischer's curriculum vitae is appended as Exhibit B

print and broadcast advertising, and event management services (per Section I.B.); not providing books and records upon request (Section VIII); and the right to immediate possession of NRA property (Section XI).

Mr. Fisher is anticipated to opine on the importance of the duties AMc was entrusted to provide to the NRA, to not only provide communications fully and accurately, but also to protect confidentiality and to enhance and safeguard its public image. Mr. Fisher is anticipated to opine that the AMc leaks of confidential information violated Section IV of the Services Agreement and have caused irreparable harm to the NRA's reputation and its status as a not-for-profit organization.

Based on the analysis of media reports, public statements, and overall messaging strategy of the NRA, it is anticipated that Mr. Fisher will opine on AMc's failure to provide material and industry-standard information of the results and effectiveness of its public relations programs.

It is anticipated that Mr. Fisher will opine that AMc failed to cultivate or leverage media relationships beyond conservative media and was ineffective in advancing the NRA's public service message.

## 2. Qualifications

Mr. Fisher is an expert in the fields of public relations, strategic marketing, and communications and is based in Los Angeles, CA. Mr. Fisher has 52 years of professional experience in public relations, strategic marketing and communications, including 42 years of operating and managing the public relations, strategic marketing and communications business he founded in 1978, Fisher & Associates, Inc.

Prior to founding Fisher & Associates, Inc. Mr. Fisher held positions in journalism reporter for the New York Times, and at , at three of the top national public relations firms, Harshe, Rotman & Druck, Burson-Marsteller and Doremus & Company.

Mr. Fisher is nationally recognized by the news media and the legal profession for his expertise in crisis communications and image/reputation management and repair. Mr. Fisher has served as an expert witness and has represented both plaintiffs and defendants in over 40 litigation matters in twenty states and Washington, D.C.

Mr. Fisher graduated from San Jose State College with a BA in Public Relations.

### 3. Expertise and Information Considered

Mr. Fisher has 52 years of relevant professional experience in public relations, strategic marketing, and communications industries and has regularly opined on industry custom and practice throughout his career as an officer of two trade associations, the Public Relations Society of America and the Public Communicators of Los Angeles. Mr. Fisher has received all documents associated with the litigation, including complaints, amended complaints, counterclaims, plaintiff and defendant responses.

Mr. Fisher has received all complaints, amended complaints, counterclaims, and plaintiff/defendant requests for production, as well as plaintiff/defendant responses, in the litigation. Please see the following section labeled “Summary of Documents Provided to Experts” that list the documents provided to Mr. Fisher in connection with this litigation.

#### **C. Andrew McLean**

**Inventus Media, Inc.**  
515 Madison Ave #40  
New York, NY 10022

1. Subject Matter of Expert Testimony

It is anticipated that Mr. McLean will opine that in connection with billings to the NRA, AMc's billing practices were not customary or typically adhered to by businesses operating in advertising, media planning and placement, and creative services industries. It is anticipated that Mr. McLean will further opine on NRA funding the entire amount of expected media spending at the outset of each year and despite this good faith process, AMc refused to provide adequate explanation for how money was spent, including the assessment of the selection of media outlets, dates of airing and/or the price being charged. It is also anticipated that Mr. McLean will opine that regarding pricing, AMc refused to discuss its negotiation process, insisting the pricing process was proprietary and that the NRA could not have access to this information.

It is anticipated that Mr. McLean will testify that significant invoice support is missing, which prevents reconciliation of the actual expenses to a detailed annual budget. It is anticipated that Mr. McLean will testify that the NRA cannot investigate any AMc misuse of NRA funds, due to lack of transparency and lack of supporting documentation, costs and expenses in AMc invoices. It is anticipated that Mr. McLean will testify that AMc should have provided the NRA with a unique identification number (i.e., job number) for every AMc marketing, creative media, and advertising related project.

It is anticipated that Mr. McLean will further opine on the fundamental importance of the duties advertising, creative services, as well as media planning and placement firms, such as AMc, owe to any client. It is anticipated that based on review of the Services Agreement dated May 1, 1999, including the operative Services Agreement dated April 30, 2017, and the amendment to the 2017 Services Agreement dated May 6, 2018, Mr. McLean will opine that a relationship of trust and confidence was created between the NRA and AMc that was supported by standards, including

the doctrine of full disclosure, client good faith of fair dealing, and confidentiality, all of which are customary for the industry. It is anticipated that Mr. McLean will opine on the abundant evidence that already exists that AMc violated those obligations, as well as numerous contractual obligations under the Services Agreement, including expenses inappropriately charged without approval per Section III of the Services agreement; withholding fair market value work for creative services such as speeches, national print and broadcast advertising, and event management services (per Section I.B.); not providing books and records upon request (Section VIII); and the right to immediate possession of NRA property (Section XI).

## 2. Qualifications

Mr. McLean is an expert in the fields of advertising, creative services, as well as media planning and placement. Mr. McLean is currently the Managing Partner of Inventus Media, an independent advertising, media planning, buying and strategy firm. Mr. McLean has over 30 years of active advertising agency experience from large global agencies and mid-sized independent agencies in the US. He can specifically talk to best practices in client management in all areas of marketing, creative, media and advertising.

In the non-for-profit industry, Mr. McLean has experience with American Heart Association, The Michael J. Fox Foundation and TRUTH. Mr. McLean is also a board director of The Grady School of Mass Communication at the University of Georgia<sup>4</sup>.

## 3. Expertise and Information Considered

Mr. McLean has regularly opined on custom and practice in the advertising, creative services, and media planning and placement industries, having worked with the Association of

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<sup>4</sup> Mr. McLean's curriculum vitae is appended as Exhibit C

National Advertisers (ANA) and the American Association of Advertising Agencies (4As), as well as 30 years of relevant professional experience.

Mr. McLean has received all complaints, amended complaints, counterclaims, and plaintiff/defendant requests for production, as well as plaintiff/defendant responses, in the litigation. Please see the following section labeled “Summary of Documents Provided to Expert” that list the documents provided to Mr. McLean in connection with this litigation.



**D. Doug Bania**

**Nevium Intellectual Property Consultants**

415 Laurel Street, Suite 341  
San Diego, CA 92101

1. Subject Matter of Expert Testimony

It is anticipated that Mr. Bania will opine that AMc misrepresented the efficacy of NRATV and the number of viewers watching NRATV programs. Mr. Bania will opine on the self-aggrandizing decision making of AMc relating to NRATV.

It is anticipated that Mr. Bania will opine on AMC's failure to disclose material information which was critical to an informed view of the efficacy of NRATV. It is also anticipated that Mr. Bania will opine on AMc executives misleading NRA management by overstating the benefits of the NRATV platform and its likelihood of becoming a self-sustaining platform. It is anticipated that Mr. Bania will opine on AMc presenting a false impression to the NRA regarding the growth, sponsorship and viewership data of NRATV by omitting standard industry metrics.

2. Qualifications

Mr. Bania is an expert in internet and social media analytics. Mr. Bania is a Founding Principal of Nevium Intellectual Property Consultants and holds the following qualifications: Certified Licensing Professional; Google Analytics Certified Individual; committee member for International Trademark Association Internet Committee; and ICANN Compliance and Domain name Industry Subcommittee.

Mr. Bania earned a BA in Cinema from San Francisco State University, and a Masters, Television, Film, New Media Production from San Diego University.<sup>5</sup>

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<sup>5</sup> Mr. Bania's curriculum vitae is appended as Exhibit D

Mr. Bania regularly works with clients on brand strategy, valuation and analysis outside of his expert testimony work. In this capacity, Mr. Bania helps clients with online brand development and the assessment of investment alternatives as it relates to online and digital strategies. Mr. Bania specializes in analyses for copyright, trade dress, trade secrets and trademark infringement, publicity rights, social media and internet infringement, strategy analyses, royalty rate determinations and other intangible assets.

3. Expertise and Information Considered

Mr. Bania has over 20 years of relevant professional experience in internet and social media analytics and has regularly opined on custom and usage throughout his career. Mr. Bania has been named expert for approximately 65 cases, deposed 15 times and has provided mediation testimony 3 times and trial testimony 4 times. Mr. Bania has received all documents associated with the litigation, including complaints, amended complaints, counterclaims, plaintiff and defendant responses.

Mr. Bania has received all complaints, amended complaints, counterclaims, and plaintiff/defendant requests for production, as well as plaintiff/defendant responses, in the litigation. Please see the following section labeled “Summary of Documents Provided to Experts” that list the documents provided to Mr. Bania in connection with this litigation.

**E. Brian Buss**

**Nevium Intellectual Property Consultants**

415 Laurel Street, Suite 341  
San Diego, CA 92101

1. Subject Matter of Expert Testimony

Mr. Buss is an expert in calculating economic and financial damages, due to the misuse of intellectual property and intangible assets. It is anticipated that Mr. Buss will opine on the financial and economic harm suffered by the NRA, due to falsified statements by AMc regarding the strong growth, valuation and overall performance of NRATV.

2. Qualifications

Mr. Buss is Chartered Financial Analyst with more than 25 years of experience in damages calculations in contract disputes, lost profits and business valuations. Mr. Buss provides strategic advice for owners of intellectual property portfolios, transaction support and due diligence for acquisitions, licensing, divestiture and partnership transactions. Mr. Buss has provided expert testimony regarding economic damages and IP Asset apportionment and valuations of trademarks, patents, copyrights, brand assets, trade secrets, technology assets and intangibles.

Mr. Buss earned a BA, Biology and Economics from Claremont McKenna College, and an MBA from San Diego State University. Mr. Buss is Chartered Financial Analyst and Certified Patent Valuation Analyst.<sup>6</sup>

3. Expertise and Information Considered

Mr. Buss is a Chartered Financial Analyst (CFA) with 25 years of experience in valuations, financial analysis and corporate finance around the world. Mr. Buss has received all complaints,

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<sup>6</sup> Mr. Buss's curriculum vitae is appended as Exhibit E

amended complaints, counterclaims, and plaintiff/defendant requests for production, as well as plaintiff/defendant responses, in the litigation. Please see the following section labeled “Summary of Documents Reviewed by Expert” that list the documents provided to Mr. Buss in connection with this litigation.

The NRA reserves the right to further supplement its expert response to Interrogatory No. 20, due to (1) AMc's failure to produce responsive records and (2) AMc's production of piece-meal and incomplete records.

(1) AMc has yet to provide significant information to the NRA in an acceptable or "usable" format as required by Virginia Rules.<sup>7</sup> Notably, of the six production volumes the NRA has received to date, four of the volumes are of little or no evidentiary value: despite multiple meet-and-confers on this very issue, AMc is withholding the electronic data that AMc is required to provide under the Virginia Rules, leaving the NRA without key information that is readily accessible to AMc, such as the dates, authors and custodians of produced documents.<sup>8</sup>

(2) AMc has entirely failed to provide documents which it is required to produce to the NRA in discovery, and which AMc is and was required to provide to the NRA by contract. Those records include:

- Time records for AMc employees who worked on the NRA account
- Identities of NRA-dedicated employees
- Salaries of NRA-dedicated employees
- Back up to out-of-pocket expense files
- Identification of special projects

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<sup>7</sup> "The production of electronically stored information should be made in the form or forms in which it is ordinarily maintained *or that is reasonably usable* . . ." The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production, 19 SEDONA CONF. J. 1 (2018) (emphasis added); see Va. R. S. Ct. 4:9(b)(iii)(B)(2) (AMc did not object to the form of the requested production, but even if it had, the Rules would still require AMc to produce responsive information in the form in which "it is ordinarily maintained if it is *reasonably usable* in such form . . . or . . . in another form or forms in which it is *reasonably usable*." ) (emphasis added).

<sup>8</sup> "The production of electronically stored information should be made in the form or forms in which it is ordinarily maintained *or that is reasonably usable* . . ." The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production, 19 SEDONA CONF. J. 1 (2018) (emphasis added); see Va. R. S. Ct. 4:9(b)(iii)(B)(2) (AMc did not object to the form of the requested production, but even if it had, the Rules would still require AMc to produce responsive information in the form in which "it is ordinarily maintained if it is *reasonably usable* in such form . . . or . . . in another form or forms in which it is *reasonably usable*." ) (emphasis added).

- Support for “fair market” valuation analyses

In addition to deficient document production and subject to the receipt of acceptable production documents, the NRA has completed possession of only 5 of 10 AMc employees that AMc identified in the ROG 7 dated September 10, 2019 as people that have the most knowledge of facts about this case.

The following table provides a timeline of the key documents that the NRA continues to request from Ackerman McQueen.

Category	Summary of Requests for Information
Time records for AMc employees who worked on the NRA account	<p><b>Overview:</b> AMc has refused to provide the NRA with AMc employee time records so that the NRA can analyze the number of employees staffed to its account, the time those employees spent on the NRA account, and the nature and scope of the services they were paid to provide to the NRA.</p> <p><b>August 29, 2018:</b> NRA specifically requested employee timesheets for employees working on an NRA project called Carry Guard. NRA-AMc_00057263.  <i>- AMc did not provide any employee timesheets or equivalent documents on NRA project called Carry Guard.</i></p> <p><b>4Q 2018:</b> NRA also sought time records in connection with the winding down of select services for the Fourth Quarter of 2018<sup>9</sup> so that the NRA could determine whether it could substantiate the expenses AMc may claim were owed to it by the NRA (under the Services Agreement) that permitted the NRA to cancel/modify works in progress.<sup>10</sup>  <i>- AMc did not provide documents in connection with the winding down of the above select services.</i></p> <p><b>June 29, 2019</b> (RFP No. 12): Documents sufficient to identify all NRA-Dedicated Personnel . . . as of June 19, 2019, and all projects or accounts on which each individual worked, and the amount or percentage of time dedicated to each such project or account. (Emphasis added.)  <i>- AMc agreed to produce responsive information to RFP No. 12 on July 25, 2019, but the NRA has yet to receive any documents sufficient to identify all NRA-Dedicated Personnel.</i></p> <p><b>August 1, 2019</b> (RFP No. 43): With respect to any purportedly outstanding invoice for which AMc seeks payment, the NRA requested that AMc provide all documents detailing information and support . . . including, without limitation: copies of any creative or other work product for which compensation</p>

<sup>9</sup> The Services Agreement (NRA-AMc\_00061216) provides at Section V.C., that the NRA may “modify, reject cancel or stop any and all plans, schedule and work in progress.”

<sup>10</sup> See, Letter, C. Spray (NRA) to W. Winkler (AMc), Re: Budget Adjustments, dated Oct. 6, 2018 (NRA-AMc\_00064257) (“If Ackerman contends that cancellation of these projects imposes liabilities reimbursable by the NRA pursuant to Services Agreement § V.C, please provide us with copies of applicable third-party contracts, receipts, employee timesheets, or other records evidencing the ‘commitments . . . [and] expenses incurred on NRA’s behalf with NRA’s authorization’ for which Ackerman seeks reimbursement.” (footnote omitted)).