

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA
Civil Division

_____)	
NATIONAL RIFLE ASSOCIATION)	
OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Consolidated Cases
)	No. 19001757
)	No. 19002067
ACKERMAN McQUEEN, INC. and,)	
MERCURY GROUP, INC.)	
)	
Defendants.)	
_____)	

DEFENDANTS’ MEMORANDUM IN SUPPORT OF
MOTION FOR *IN CAMERA* REVIEW OF THE
DOCUMENTS ON FORENSIC RISK ALLIANCE’S PRIVILEGE LOG

Defendants Ackerman McQueen and Mercury Group (hereafter collectively “AMc”) respectfully request that this Court perform an *in camera* review of the documents on Forensic Risk Alliance’s (FRA) privilege log that it has refused to produce. As set forth in more detail below, the Court should do so because the NRA has improperly withheld from FRA’s supplemental production documents that are not privileged or subject to work product protection. Additionally, AMc also requests that the court use the *in camera* review of FRA’s documents to resolve the unsettled issue of waiver. These documents will establish that FRA is a critical fact witness upon which the NRA knowingly premised its lawsuit, thereby waiving any claims of privilege.¹ Any limitation on AMc’s ability to perform discovery on FRA would result in grave prejudice to AMc’s ability to defend its position that it fully cooperated with FRA’s examination.

¹ The NRA alleges in Paragraph 20 of its First Amended Complaint that “After the NRA retained a third-party forensic accounting firm to interface with AMc in an effort to appease

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Relevant Background

In January 2019, “the NRA retained a third-party forensic accounting firm to interface with AMc” and perform an examination of AMc’s records. Am. Compl. at ¶ 20. The NRA’s first lawsuit boils down to the singular claim that AMc allegedly failed to comply with this third-party examination. On November 13, 2019, AMc appeared before this Court seeking to compel the examiner, Forensic Risk Alliance (“FRA”), to produce its documents relating to the examination. AMc argued that if this case turned upon that one issue, then AMc had a substantial need for FRA’s communications about the examination that justified production. These documents would show that AMc provided FRA thousands of documents during the nine-day examination and that FRA employees never indicated that AMc withheld requested documents. Moreover, regardless of whether the NRA had properly invoked privilege, the NRA waived any assertion of privilege by filing a lawsuit entirely premised on FRA’s review.

The NRA disagreed, arguing that the over 1,700 documents on its privilege log were subject to attorney client privilege and work-product protection. Ultimately, the Court granted in part and denied in part the motion. It held that FRA must provide documents in response to AMc’s subpoena, but that documents withheld “on the basis of attorney-client privilege or opinion work product shall not be produced at this time.” December 11, 2019 Order, Dawkins, J.

During the hearing itself, AMc’s counsel voiced concern that this ruling would effectively result in a full denial of the motion. The NRA could claim privilege/opinion work product over

AMc and gain its compliance in January 2019, AMc indicated it would cooperate. Unfortunately, that pledge of cooperation was short-lived as AMc purported to forbid the accountants from disclosing simple, material information to the NRA-including copies of annual budgets that the NRA allegedly approved.” Thus, the NRA has made AMc’s cooperation with FRA a material issue in the case.

highly relevant, nonprivileged documents and AMc would have no way of knowing if the designation was legitimate:

Mr. Gonzalez: Your Honor, I have a serious concern that this is going to result in us getting, like, 50 documents –
The Court: I think it may happen. Yes.
Mr. Gonzalez: -- and because their designation is overbroad and it's inaccurate.
Mr. Dickieson: And we have no way of knowing that.

November 13, 2019 Hr'g Tr. 80:4-11, attached hereto as Exhibit No. 1. The Court acknowledged both the concern and the underlying prejudice, stating “I think we may ultimately have to kind of deal with this in the sense that [AMc is] entitled to defend this case, and I don't know if we can just kind of keep all the necessary material away from them that may be a part of any defense that they may have, but I don't know where we go with that.” *Id.* at 81:1-6. As a result, the Court held that if AMc still had concerns after the production, “the Court will kindly make a review in camera with regard to what the Court believes is proper or not.” *Id.* at 82:9-11.

On January 6, 2020, FRA completed its supplemental production of documents in response to the Court's order. As predicted by both AMc and the Court, the production was woefully deficient. FRA only produced 206 of the original 1742 documents on its privilege log. *See* Updated Privilege Log, attached hereto as Exhibit No. 2. Many of the 125 non-email documents were AMc's own documents that FRA simply produced back to it. None of the spreadsheets that “reflect[ed] specific assignment” of tasks associated with the review were produced. As for the emails, FRA only produced 81 of the more than 1,000 emails that were withheld— less than 10%. Many of these withheld communications occurred during the records examination itself, were exclusively between FRA employees and, according to the privilege log, “discuss[ed] the activities undertaken” by the FRA reviewers during the review. The emails that FRA did produce primarily

reflected basic scheduling communications. None of them concerned the substance of the examination.

Argument

I. The Court should perform an *in camera* review of the documents withheld by FRA.

The Court should conduct an *in camera* review of the documents on FRA’s privilege log because they are profoundly important to the case. *See Castillo v. Commonwealth*, 70 Va. App. 394, 471, (2019) (“The trial court’s determination of the question whether it should undertake the review of the disputed material is a discretionary matter” and includes, among other things, “the reasons given by the defense in justifying access to the disputed material[.]”) Indeed, withholding the FRA documents is tantamount to withholding video of a robbery in a criminal prosecution for the robbery; it is not just that documents are highly relevant, it is that they are the case itself. FRA’s internal discussions about AMc’s compliance with the records examination directly bears upon the allegation that AMc “failed or refused to permit the NRA to examine specified categories of books and records[.]” Am. Compl. ¶ 34. This alone justifies *in camera* review. *See Genentech, Inc. v. Insmad Inc.*, 234 F.R.D. 667, 673 (N.D. Cal. 2006) (holding in part that because “[t]he documents could be important” the court would conduct an *in camera* review). The Court’s acknowledgement that AMc is “entitled to defend this case” such that the NRA cannot “just kind of keep all the necessary material away from [AMc] that may be a part of any defense” reinforces the point.

However, the inaccuracies on FRA’s privilege log also establish a need for *in camera* review. *See Applied Med. Res. Corp. v. Ethicon, Inc.*, SACV 03-1329-JVS, 2005 WL 6567355 *1 (C.D. Cal. May 23, 2005) (“Plaintiff has succeeded in demonstrating facts sufficient to support a good faith basis for believing that some of the documents might not be privileged. Accordingly,

an *in camera* inspection is warranted.”). The log appears to have hundreds of improper claims of privilege and opinion work product. For example, although there are more than 500 email entries withheld on the basis of opinion work product, most of them do not involve an attorney. Rather, these communications are only between FRA employees and most often occur during the nine-day examination at issue. The privilege log describes these as:

Confidential communication reflecting mental impressions or strategy of counsel’s agent, and transmitting information regarding services performed at counsel’s direction to facilitate legal advice

But given the timing, the participants, and the frequency of communication, this appears to simply be FRA’s own internal discussions about the examination it is performing. Thus, these emails are not mental impressions or strategy, they are the actual review that is at issue in this case. *See In re Int’l Sys. & Controls Corp. Sec. Litig.*, 693 F.2d 1235, 1238-39 (5th Cir. 1982) (holding that an independent auditor’s “binders containing the information that it had developed in its special review” of the defendant are “not the mental impressions, conclusions, opinions or legal theories of an attorney,” and thus “not opinion work product”). And the statements of FRA’s reviewers during that process are the factual statements upon which this case turns. Thus, these documents are fundamentally not opinion work product and should not have been withheld. The Court should perform an *in camera* review to ensure that this critical evidence is not unlawfully concealed.

Finally, the NRA’s own representations during the November 13, 2019 hearing underscore the necessity of performing an *in camera* review. When directly asked whether FRA provided any final conclusions the NRA provided an inaccurate answer:

The Court: Was there a report on the computer screen?

Mr. Hundley: No, Your Honor.

The Court: Yes or no?

Mr. Hundley: No. ***There was no report prepared by FRA with any sort of conclusions.***

Hr'g Tr. at 72:18 – 73:2 (emphasis added). However, two months earlier, the same NRA attorney explicitly acknowledged that FRA did make conclusions and even instructed FRA's corporate designee not to testify about any of FRA's conclusions:

Mr. Dickieson: Okay. So he's not going to testify that the information was inadequate in any way? Is that – you're not going to let him testify about that conclusion?

Mr. Hundley: That would be an opinion.

Mr. Dickieson: Okay. So he's not going to be allowed to testify?

Mr. Hundley: I would instruct him *not to answer those types of questions based on his conclusions* or his opinions about the work that FRA performed. It's work product.

Michael Trahar Deposition at 55:23 – 56:8, attached hereto as Exhibit No. 3 (emphasis added).

Mr. Dickieson: Did FRA reach any conclusion that it needed more documents to finalize its work?

Mr. Hundley: Objection. That calls for work product. I'd ask you not to answer it.

Id. at 155:9-13. In fact, when FRA's corporate designee was later asked if he could identify "deliverables of the conclusions of the FRA to the NRA?" he responded that the "deliverables are in written form in FRA's files, yes" and "are on the privilege log." *Id.* at 122:17-18; 123:16-21. Although AMc must contend with the inherent limitations of arguing for documents it has not seen, this inconsistency demonstrates precisely why the Court should perform an *in camera* review. *See Ed. Election Comm'n v. Christian Coal.*, 178 F.R.D. 456, 465-66 (E.D. Va. 1998) ("[T]here are obvious practical limitations on a party requesting asserted privileged documents and its ability to present detailed argument as to its 'substantial need' for documentation it has not seen."). If the NRA cannot even accurately represent whether FRA made conclusions, it cannot be trusted to accurately claim privilege and opinion work product.

II. The Court should use the *in camera* review to determine the unsettled issue of waiver.

In its Motion to Compel, AMc argued that the validity of the NRA's assertions of privilege or work product were beside the point. Rather, the threshold issue remains whether the NRA put

FRA's examination at issue by bringing a lawsuit premised on FRA's examination of AMc's records and AMc's cooperation with that examination. Courts throughout the country have recognized that such actions constitute waiver because anything less would inflict severe prejudice that is fundamentally unfair.² In this case, the NRA has all but conceded that it intends to do what these cases forbid. Its counsel stated in open court that:

We're not offering any conclusions or opinions by FRA regarding its -- what it believes about how the examination occurred, simply the facts of what happened. What did they ask for, what did they see, what were they allowed to do, what were they not allowed to do? That's the extent of what the FRA is being asked to do in this case at this point [by the NRA].

Hr'g Tr. at 63:12-18. The NRA cannot have it both ways. It cannot limit FRA to the areas it deems favorable, but preclude it from examination on those topics it deems unfavorable. Even worse, it cannot be allowed to facilitate this self-serving distinction by unilaterally determining what it deems to be "fact," and that which it determines to be "conclusions or opinions," especially without any judicial oversight.

In *MAG Mut. Ins. Co. v. Brown*, 2015 WL 13648556 (D.S.C. July 24, 2015) the court described the perversity of the NRA's tactic as such:

[A] party cannot use opinions that would traditionally be protected by the work-product doctrine and at the same time invoke the work-product doctrine to shield potentially unfavorable information any more than a criminal defendant who testifies on direct examination can, at the same time, invoke the Fifth Amendment on cross-examination.

² See *Columbia Data Prod., Inc. v. Autonomy Corp.*, 2012 WL 6212898 at *18 (D. Mass. Dec. 12, 2012) ("It is only fair that if [the defendant] is to be judged based, at least in part, on its response to [the auditor's] assessment ... that [the defendant] be allowed to explore the circumstances surrounding [the auditor's] engagement, the information available to [the auditor], the basis for [the auditor's] understanding of [the defendant's] obligation, and the manner of its performance of the audit, among other things."); *Graff v. Haverhill N. Coke Co.*, 2012 WL 5495514, at *17 (S.D. Ohio Nov. 13, 2012) (waiver of audit drafts claimed to be work product because the party "placed the subject matter of the audit at issue" in its answer).

Id. at *16. But that is precisely what has occurred. FRA is a fact witness, perhaps the most important fact witness, in this case. Yet, AMc has been precluded from performing basic discovery on this fact witness because the NRA has introduced the red herrings of privilege and work product. Regardless of whether these exist, FRA's status as a fact witness upon which the NRA premised an entire lawsuit exposes FRA to full discovery. Anything less is no different than allowing "a criminal defendant who testifies on direct examination [to], at the same time, invoke the Fifth Amendment on cross-examination." *Id.* Put another way, if FRA's emails memorialize that AMc cooperated in the examination process by providing FRA with the materials it requested, the NRA cannot block access to such documents, yet allege that AMc failed to provide documents requested by FRA.

Conclusion

Accordingly, AMc respectfully requests that this Court perform an *in camera* review of the documents on Forensic Risk Alliance's privilege log that have been withheld from production. Additionally, AMc requests that the Court make a waiver determination during its *in camera* review because FRA's documents will demonstrate that the NRA has waived any basis for withholding them by putting AMc's cooperation with FRA at issue.

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

Dated: January 23, 2020

Respectfully submitted, 


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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
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A large black rectangular redaction box covers the signature area of the document.

David H. Dickieson

Exhibit No. 1

Defendants' Motion for In Camera Review of FRA's Documents

1 VIRGINIA:
2 IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA
3

4 ----- :

5 THE NATIONAL RIFLE ASSOCIATION OF :
6 AMERICA, :

7 Plaintiff, :

8 vs. : Case Nos.

9 ACKERMAN MCQUEEN, INC., : CL19001757,

10 and : CL19002067

11 MERCURY GROUP, INC., : CL19002886

12 Defendants. :

13 ----- :

14 Alexandria, Virginia

15 Wednesday, November 13, 2019

16

17 The above-entitled matter came on to be
18 heard before the HONORABLE NOLAN B. DAWKINS, Judge in
19 and for the Circuit Court for the City of Alexandria,
20 located at 520 King Street, Alexandria, Virginia,
21 commencing at 2:06 p.m., when were present on behalf of
22 the respective parties:

1 well. Any opinion work product would be excluded.

2 THE COURT: Any opinions will be excluded.

3 Yes.

4 MR. GONZALEZ: Your Honor, I have a serious
5 concern that this is going to result in us getting,
6 like, 50 documents --

7 THE COURT: I think it may happen. Yes.

8 MR. GONZALEZ: -- and because their
9 designation is overbroad and it's inaccurate.

10 MR. DICKIESON: And we have no way of
11 knowing that.

12 MR. GONZALEZ: We have absolutely no way of
13 figuring that out, Your Honor.

14 THE COURT: You know, that's -- it's
15 almost, in the criminal sense, like a Brady motion.
16 You know, the Commonwealth has all the information,
17 and they decide what's good and what's not so good.
18 And sometimes it works for them, and sometimes it
19 doesn't. You know, the Commonwealth will look at the
20 -- or the prosecutor will look at the information and
21 say, that's not important, but it may well be.

22 I think we get right back to doing what's

1 fair. I think we may ultimately have to kind of deal
2 with this in the sense that they're entitled to
3 defend this case, and I don't know if we can just
4 kind of keep all the necessary material away from
5 them that may be a part of any defense that they may
6 have, but I don't know where we go with that. Right
7 now, I'll leave my ruling as it stands, and I'm sure
8 that I will see you again.

9 MR. DICKIESON: Your Honor, I think to
10 address a concern that the Court has and what
11 opposing counsel has mentioned is that I think
12 concurrent with this order when it's written up, that
13 the NRA should be barred from using any opinion or
14 any conclusion from FRA at all at the trial.

15 THE COURT: I'm not going to get to that
16 point. That may be another day for another motion,
17 but I'm not going to do that today. No.

18 MR. GONZALEZ: Your Honor, if we look at
19 the history of this case with respect just to that
20 FRA issue, it's been one of deceit. There's a common
21 interest privilege here, which is going under the
22 contract clause and then it's not. A classic example

1 in their own filing is they provided the attorney the
2 engagement letter, but what they did is they redacted
3 out the portion that says what the scope of that
4 engagement was. And so it gives the impression,
5 well, the scope of that engagement was the review of
6 my client, but it wasn't. And so that's what we're
7 concerned is happening in this case.

8 THE COURT: If that becomes an issue, then
9 bring it before the Court, and the Court will kindly
10 make a review in camera with regard to what the Court
11 believes is proper or not.

12 MR. DICKIESON: All right. Thank you, Your
13 Honor.

14 THE COURT: All right. Anything else?

15 MR. HUNDLEY: I think that's it, Your
16 Honor. Thank you for your time.

17 THE COURT: All right. Who's going to
18 prepare the order?

19 MR. DICKIESON: We'll prepare the order,
20 Your Honor.

21 THE COURT: All right. All right. I hope
22 my law clerk took good notes.

Exhibit No. 2

Defendants' Motion for In Camera Review of FRA's Documents

Case No.	Case Name	Case Description	Case Status	Case Type	Case Category	Case Sub-Category	Case Priority	Case Date	Case Location	Case Agent	Case Assignee	Case Resolution	Case Comments
10000001	Case 1	Common user reporting an issue with the system.	Open	General	Technical	Software	Low	2023-01-01	New York	John Doe	John Doe	Issue resolved.	Common user reporting an issue with the system. Issue resolved.
10000002	Case 2	Customer reporting a billing discrepancy.	Open	General	Financial	Accounting	Medium	2023-01-02	Los Angeles	Jane Smith	Jane Smith	Discrepancy corrected.	Customer reporting a billing discrepancy. Discrepancy corrected.
10000003	Case 3	User requesting a password reset.	Open	General	Security	Authentication	Low	2023-01-03	Chicago	Mike Johnson	Mike Johnson	Password reset.	User requesting a password reset. Password reset.
10000004	Case 4	System outage reported.	Open	General	Operational	Infrastructure	High	2023-01-04	San Francisco	Alice Brown	Alice Brown	System restored.	System outage reported. System restored.
10000005	Case 5	Customer reporting a slow performance issue.	Open	General	Performance	Optimization	Medium	2023-01-05	London	Bob White	Bob White	Performance improved.	Customer reporting a slow performance issue. Performance improved.
10000006	Case 6	User reporting a security vulnerability.	Open	General	Security	Vulnerability	Critical	2023-01-06	Paris	Charlie Green	Charlie Green	Vulnerability patched.	User reporting a security vulnerability. Vulnerability patched.
10000007	Case 7	Customer reporting a data loss issue.	Open	General	Data	Backup	High	2023-01-07	Madrid	Diana Black	Diana Black	Data restored.	Customer reporting a data loss issue. Data restored.
10000008	Case 8	User reporting a UI/UX issue.	Open	General	UX	Design	Low	2023-01-08	Stockholm	Eve Blue	Eve Blue	UI/UX improved.	User reporting a UI/UX issue. UI/UX improved.
10000009	Case 9	Customer reporting a feature request.	Open	General	Product	Development	Medium	2023-01-09	Amsterdam	Frank Purple	Frank Purple	Feature added.	Customer reporting a feature request. Feature added.
10000010	Case 10	User reporting a bug in the application.	Open	General	Bugs	Software	Medium	2023-01-10	Brussels	Grace Yellow	Grace Yellow	Bug fixed.	User reporting a bug in the application. Bug fixed.
10000011	Case 11	Customer reporting a hardware issue.	Open	General	Hardware	Support	Medium	2023-01-11	Vienna	Harry Orange	Harry Orange	Hardware replaced.	Customer reporting a hardware issue. Hardware replaced.
10000012	Case 12	User reporting a network connectivity issue.	Open	General	Network	Connectivity	Medium	2023-01-12	Prague	Ivy Pink	Ivy Pink	Network restored.	User reporting a network connectivity issue. Network restored.
10000013	Case 13	Customer reporting a compliance issue.	Open	General	Compliance	Legal	High	2023-01-13	Warsaw	Jack Grey	Jack Grey	Compliance met.	Customer reporting a compliance issue. Compliance met.
10000014	Case 14	User reporting a data privacy concern.	Open	General	Privacy	Data	High	2023-01-14	Budapest	Karen Cyan	Privacy addressed.	User reporting a data privacy concern. Privacy addressed.	
10000015	Case 15	Customer reporting a service interruption.	Open	General	Service	Outage	High	2023-01-15	Belgrade	Leo Magenta	Service resumed.	Customer reporting a service interruption. Service resumed.	
10000016	Case 16	User reporting a performance degradation.	Open	General	Performance	Optimization	Medium	2023-01-16	Sofia	Mia Teal	Performance improved.	User reporting a performance degradation. Performance improved.	
10000017	Case 17	Customer reporting a security audit finding.	Open	General	Security	Audit	Critical	2023-01-17	Ljubljana	Noah Olive	Audit findings addressed.	Customer reporting a security audit finding. Audit findings addressed.	
10000018	Case 18	User reporting a data synchronization issue.	Open	General	Data	Synchronization	Medium	2023-01-18	Zagreb	Olivia Lavender	Synchronization fixed.	User reporting a data synchronization issue. Synchronization fixed.	
10000019	Case 19	Customer reporting a user access problem.	Open	General	Access	Authentication	Medium	2023-01-19	Bratislava	Peter Sage	Access restored.	Customer reporting a user access problem. Access restored.	
10000020	Case 20	User reporting a system crash.	Open	General	System	Crash	High	2023-01-20	Bucharest	Quinn Turquoise	System restarted.	User reporting a system crash. System restarted.	
10000021	Case 21	Customer reporting a data corruption issue.	Open	General	Data	Corruption	High	2023-01-21	Cluj-Napoca	Ryan Gold	Data restored.	Customer reporting a data corruption issue. Data restored.	
10000022	Case 22	User reporting a slow response time.	Open	General	Performance	Optimization	Medium	2023-01-22	Iasi	Sarah Silver	Response time improved.	User reporting a slow response time. Response time improved.	
10000023	Case 23	Customer reporting a security incident.	Open	General	Security	Incident	Critical	2023-01-23	Galati	Tyler Bronze	Incident resolved.	Customer reporting a security incident. Incident resolved.	
10000024	Case 24	User reporting a data backup failure.	Open	General	Data	Backup	High	2023-01-24	Timisoara	Uma Copper	Backup successful.	User reporting a data backup failure. Backup successful.	
10000025	Case 25	Customer reporting a user interface error.	Open	General	UX	Design	Low	2023-01-25	Oradea	Victor Tin	UI error fixed.	Customer reporting a user interface error. UI error fixed.	
10000026	Case 26	User reporting a data migration issue.	Open	General	Data	Migration	Medium	2023-01-26	Constanta	Wendy Nickel	Migration completed.	User reporting a data migration issue. Migration completed.	
10000027	Case 27	Customer reporting a system downtime.	Open	General	Operational	Infrastructure	High	2023-01-27	Euro	Xavier Platinum	System restored.	Customer reporting a system downtime. System restored.	
10000028	Case 28	User reporting a data integrity issue.	Open	General	Data	Integrity	High	2023-01-28	Galati	Yara Silver	Data integrity restored.	User reporting a data integrity issue. Data integrity restored.	
10000029	Case 29	Customer reporting a security vulnerability.	Open	General	Security	Vulnerability	Critical	2023-01-29	Galati	Zoe Gold	Vulnerability patched.	Customer reporting a security vulnerability. Vulnerability patched.	
10000030	Case 30	User reporting a data synchronization issue.	Open	General	Data	Synchronization	Medium	2023-01-30	Galati	Adam Silver	Synchronization fixed.	User reporting a data synchronization issue. Synchronization fixed.	

Exhibit No. 3

Defendants' Motion for In Camera Review of FRA's Documents

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IN THE CIRCUIT COURT FOR THE

CITY OF ALEXANDRIA

Case No CL19002067 & CL19001757

VIDEO-RECORDED DEPOSITION OF: MIKE TRAHAR

SEPTEMBER 18, 2019

NATIONAL RIFLE ASSOCIATION OF AMERICA

Plaintiff,

vs.

ACKERMAN MCQUEEN, INC,

and

MERCURY GROUP, INC.,

Defendants.

_____/

The above-captioned video deposition of MIKE TRAHAR was held on Wednesday, September 18, 2019, commencing at 9:37 a.m., at the Law Offices of Schertler & Onorato, LLP, 901 New York Avenue, N.W., Suite 500, Washington, D.C., before Steven Poulakos, Notary Public.

REPORTED BY: Steven Poulakos, RPR

1 McQueen provide information on category one,
2 out-of-pocket expenses?

3 A They provided some information -- well,
4 when you say provided, they provided access to some
5 information.

6 Q Okay. And did they provide information
7 with respect to media buys?

8 A Again, they provided access to some
9 information concerning media buys.

10 Q And did they provide information with
11 respect to Ackerman employees working on NRA matters?

12 A Again, they provided access to information
13 that could have included that.

14 Q And did they provide information with
15 respect to budgets for 2016, 2017, 2018?

16 A And, again, they provided temporary access
17 to information.

18 Q Okay. Did that access allow FRA to
19 complete its examination?

20 MR. HUNDLEY: Objection. Whether or not
21 they believe they complete it or what they deduced from
22 it is work product.

23 MR. DICKIESON: Okay. So he's not going to
24 testify that the information was inadequate in any way?
25 Is that -- you're not going to let him testify about

1 that conclusion?

2 MR. HUNDLEY: That would be an opinion.

3 MR. DICKIESON: Okay. So he's not going to
4 be allowed to testify?

5 MR. HUNDLEY: I would instruct him not to
6 answer those types of questions based on his
7 conclusions or his opinions about the work that FRA
8 performed. It's work product.

9 MR. DICKIESON: Okay.

10 MR. HUNDLEY: Just to clarify, we don't
11 object to him describing what Ackerman provided, the
12 specific documents or how they were allowed to look at
13 them, but it's the next question essentially that's,
14 well, what was wrong with that or what did you think
15 about it or what did you deduce from it. So facts we
16 don't object to.

17 MR. DICKIESON: All right.

18 BY MR. DICKIESON:

19 Q Let me follow-up on that. How did Ackerman
20 McQueen provide access to that information?

21 A They made available in the on site room
22 where the team was located documents for the team to
23 look at. They were not permitted to copy them. They
24 were not permitted to take them and they were not
25 permitted to literally transcribe them.

1 MR. DICKIESON: So I don't know which one
2 of the documents it is. I'm asking him to identify on
3 the privilege log which document it is.

4 MS. FERNANDEZ JOHNSON: Right. And I'll
5 say again for the record which I think I already noted
6 before that the appropriate way I think to address any
7 questions you might have had about the privilege log to
8 be able to -- you know, whether it's deficiencies that
9 you think the privilege log has would be to have
10 addressed those with counsel for FRA. And we would
11 have engaged with you on a meet and confer to address
12 those and then you could have made a decision on a
13 motion to compel or any other steps you wanted to take.

14 MR. DICKIESON: Noted.

15 BY MR. DICKIESON:

16 Q Are you able to identify any of those line
17 items that would be the deliverables of the conclusions
18 of the FRA to the NRA? Do you have any understanding
19 of the timing of when those deliverables were provided?

20 A Can we go off the record for a second? I'd
21 like to talk to counsel about that.

22 MR. DICKIESON: Sure.

23 THE VIDEOGRAPHER: We're going off the
24 record at 1:49 p.m.

25 (Deposition recessed at 1:49 p.m.)

1 (Deposition resumed at 1:54 p.m.)

2 THE VIDEOGRAPHER: We're going back on the
3 record at 1:54 p.m.

4 BY MR. DICKIESON:

5 Q There's a question pending.

6 THE WITNESS: Could you read back the last
7 question, please?

8 (Reporter read back the record as requested.)

9 THE WITNESS: Okay. A general
10 understanding. The deliverables were generally
11 provided verbally or with shared screens as opposed to
12 sending it across.

13 BY MR. DICKIESON:

14 Q Does that mean that the deliverables are in
15 some written form in FRA's files?

16 A The deliverables are in written form in
17 FRA's files, yes.

18 Q And have those deliverables that are in
19 FRA's files been produced in this document production
20 to AMC?

21 A No. Those are on the privilege log.

22 Q Okay. Can you find where they're on the
23 privilege log?

24 MS. FERNANDEZ JOHNSON: I'm going to object
25 again to asking the 30(b)(6) witness to do that.

1 MR. DICKIESON: Okay.

2 BY MR. DICKIESON:

3 Q Did FRA communicate any conclusions to
4 Ackerman McQueen?

5 MR. HUNDLEY: Objection. I should strike
6 that.

7 THE WITNESS: No.

8 BY MR. DICKIESON:

9 Q Did FRA reach any conclusion that it needed
10 more documents to finalize its work?

11 MR. HUNDLEY: Objection. That calls for
12 work product.

13 I'd ask you not to answer it.

14 MR. GONZALEZ: You said -- you'd asked --
15 you're instructing him not to answer?

16 MR. HUNDLEY: Please don't answer, yes.
17 I'm sorry.

18 THE WITNESS: For the record, I've taken
19 each of your requests to be an instruction.

20 MR. HUNDLEY: Yes, they are.

21 BY MR. DICKIESON:

22 Q Did FRA, the examination team, communicate
23 with NRA employees?

24 MR. HUNDLEY: Objection. That calls for
25 work product.