

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

**NATIONAL RIFLE ASSOCIATION
OF AMERICA,**

Plaintiff,

v.

AMC MCQUEEN, INC.

And

MERCURY GROUP, INC.

Defendants.

**Consolidated Case Nos.
CL19001757;
CL19002067;
CL19002886.**

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CITY OF ALEXANDRIA**

**PLAINTIFF'S CONSOLIDATED AND SUPPLEMENTAL AMENDED COMPLAINT
TO CONFORM WITH EVIDENTIARY PROOF**

Plaintiff the National Rifle Association of America (the "NRA" or the "Association"), by and through its undersigned counsel, files this Consolidated and Supplemental Amended Complaint to Conform with Evidentiary Proof against Defendants AMc McQueen, Inc. ("AMc") and Mercury Group, Inc. ("Mercury" and, together with AMc, "AMc"), to consolidate, supplement, and amend Case Nos. CL19001757, CL19002067, and CL19002886 (the "Complaints"),¹ including new causes of action the NRA further developed and gained knowledge of during discovery.

¹ The first two actions were previously consolidated. *See National Rifle Association of America v. Ackerman McQueen, Inc. and Mercury Group, Inc.*, Civil Case No. CL19001757, 19002067 (Va. Cir. Ct., Alex.) (Consolidated). The third matter, *National Rifle Association of America v. Ackerman McQueen, Inc. and Mercury Group, Inc.*, Civil Case No. CL19002886 (Va. Cir. Ct., Alex.) is herein consolidated to the referenced first two actions.

Based on personal information as to its own actions and on information and belief as to all other matters, the NRA hereby avers as follows:

I.

PRELIMINARY STATEMENT

The NRA amends its Complaints to provide a consolidated complaint that organizes and adds newly developed causes of action in order to confront a stunning pattern of corruption, fraud, and retaliation by AMc which recently came to light. As pled in the original Complaints, AMc breached the Services Agreement² between the parties through various means and likewise breached its fiduciary duties to the NRA arising out the language of the Services Agreement and through a long history of trust and confidence. Since the NRA initiated its first lawsuit and terminated its relationship with AMc on June 25, 2019, newly unearthed text messages, emails, and interviews with former AMc employees, customers, and others have made two things abundantly clear: *First*, AMc exploited decades of trust and confidence in order to siphon assets from the NRA, lining the agency's pockets at the expense of its client and in violation of the law. *Second*, AMc went to outrageous lengths to conceal and sustain its fraud, deploying scorched-earth tactics against anyone who dared to scrutinize its conduct. When the NRA's CEO, Wayne LaPierre, threw his weight behind efforts to gain transparency into AMc's business practices, the agency tried to oust him from the NRA in a desperate final salvo. That scheme failed. AMc now faces a long-overdue reckoning.

Until recently, the NRA could never have predicted that it would find itself at odds with its longtime advisor and vendor. Since at least the 1980s, the NRA relied on AMc as its agent to develop messaging, place advertising, and assist it in times of crisis. AMc's pugnacious messaging, reflected in

² See Exhibit ("Ex.") A, Services Agreement dated May 1, 1999.

its work with former NRA president Charlton Heston, favorably impressed NRA stakeholders. However, by 2017, the NRA was paying tens of millions to AMc annually, and many within the Association had grown suspicious that its experiment with a branded media platform that broadcast a live feed digitally over the internet was not working. The experiment had begun at the inducement of AMc in 2016 and with the intent to foster NRA membership growth, generate revenue and donations, and create a forum for singularly promoting the NRA's viewpoint on Second Amendment issues. This experiment became known as NRATV.

As AMc's bills grew ever larger, NRATV's messaging strayed from the Second Amendment to themes which some NRA leaders found distasteful and racist.³ One particularly damaging segment featured children's cartoon characters adorned in Ku Klux Klan hoods. Unfortunately, attempts by the NRA to "rein in" AMc and its messaging were met with responses from AMc that ranged from evasive to hostile. At the same time, when NRA executives sought performance metrics for NRATV, AMc simply ignored the request or contrived a pretext to demand that each interlocutor be sidelined or fired. Simultaneously, in closed-door meetings with Mr. LaPierre (which AMc insisted remain "confidential"), the agency presented fabricated and inflated sponsorship and viewership claims. The simple request for the number of "unique visitors" to the site was not answered, despite multiple attempts by Mr. LaPierre and other NRA executives. In fact, AMc's representations to the NRA leadership regarding the viewership and valuation for the digital platform it created, presented, and administered were, by 2017, intentionally (and wildly) misleading. Tellingly, when NRATV finally shut down in June 2019, no one missed it: not a single sponsor or viewer even called, confirming what

³ See, e.g., Danny Hakim, *Incendiary N.R.A. Videos Find New Critics: N.R.A. Leaders*, THE NEW YORK TIMES (Mar. 11, 2019), <https://www.nytimes.com/2019/03/11/us/nra-videostreaming-nratv.html>.

at least some NRA executives suspected—the site had limited visibility and was failing to accomplish any of its goals.

Sadly, it is also now known that AMc's abuse of the trust placed in the agency neither began nor ended with NRATV. Since commencing its investigation into AMc's alleged abuses, the NRA has acquired documents and information indicating that AMc fraudulently double-billed the NRA (and perhaps other clients) for professional time and equipment needs, and refused to keep adequate backup and substantiation for its bills, turning its prior representations on the subject fraudulent and in violation of the Services Agreement, among other things. For example, during 2018, AMc billed the NRA for time spent by one of its highest-paid employees, Lt. Col. (Retired) Oliver North ("North"), for filming an NRATV documentary series. However, very little filming took place—because North was negligent in his contractual duties, as he focused time and energy in 2018 attempting to derail the NRA's inquiries into AMc's business and billing practices. Those attempts culminated in an extortion threat delivered during the NRA's Annual Meeting in April 2019, when AMc, via North, demanded that unless Mr. LaPierre immediately withdrew the pending lawsuit against it and resigned from office, AMc would publicize portions of confidential documents misleadingly curated to cause maximum reputational harm to the NRA. After Mr. LaPierre rebuffed AMc's threat and reported it to the entire Board of Directors of the NRA in an open letter, one of the agency's co-conspirators lamented privately: "[h]e is kicking our side's ass," and stated that Mr. LaPierre's challengers would benefit from "leak[ing] AMc's info." Immediately, in stark violation of its contractual and fiduciary duties, AMc proceeded to "leak" the threatened documents. To this day, AMc continues to breach its nondisclosure obligations and wage false, punitive reputational attacks against the NRA and Mr. LaPierre. Considering the multi-faceted scheme perpetrated on the NRA, it is beyond doubt that AMc and the other Defendants believe they are above the law.

In addition, notwithstanding the termination of the parties' Services Agreement, AMc continues to hold the NRA's property it has accumulated over the years. Despite its contractual obligation to return that property, AMc has instead turned this into an opportunity to unfairly hold-up the NRA with a demand that the Association pay \$1.5 million dollars for AMc to fulfill its contractual duties.

The NRA brings this action to redress AMc's breaches and unlawful conduct, and subdue AMc's ongoing hostilities, so that it can close this regrettable chapter of its history.

II.

PARTIES AND RELEVANT NONPARTIES

1. Plaintiff NRA is a not-for-profit corporation organized under the laws of the State of New York with its principal place of business located in Fairfax, Virginia. The NRA is America's leading provider of gun-safety and marksmanship education for civilians and law enforcement. It is also the foremost defender of the Second Amendment of the United States Constitution. A 501(c)(4) tax-exempt organization, the NRA has over five million members – and its programs reach many millions more.

2. Defendant Ackerman or ("AMc") is a non-resident for-profit business corporation organized under the laws of the State of Oklahoma with its principal place of business in Oklahoma City, Oklahoma. AMc is an advertising and public relations agency that has counted the NRA among its largest clients for more than thirty years.

3. Defendant Mercury is a non-resident for-profit business corporation organized under the laws of the State of Oklahoma with its principal place of business in Alexandria, Virginia. Mercury is a wholly owned subsidiary of AMc which specializes in public- communications strategy, including on behalf of advocacy groups such as the NRA. At all relevant times, AMc acted on behalf of both itself and Mercury pursuant to the Services Agreement (defined below) between AMc and the NRA.

4. Non-party North is a resident of the State of Virginia and a former president of the NRA. Unbeknownst to the NRA until recently, North is also a full-time employee of AMc.

5. Non-party William Winkler (“Winkler”) is a resident of the State of Oklahoma and the Chief Financial Officer of AMc.

6. Non-party Melania Montgomery (“Montgomery”) is a resident of the State of Texas and an Executive Vice President and member of the Board of Directors of AMc who managed the NRA account for almost 30 years.

7. Non-party Dan Boren (“Boren”) is an executive of the Chickasaw Nation and not an employee of AMc. Mr. Boren entered into an agreement, combination, and/or conspiracy with the Defendants and/or their employees for the purpose of carrying out the fraudulent behavior, the attempt to de-railing the resulting NRA investigation, and the attempt to extort Mr. LaPierre and the NRA alleged herein. In addition, there exists a small group comprising former vendors, professionals, and consultants of the NRA whose economic incentives, like AMc’s, were challenged by the NRA investigation and, like Mr. Boren, joined the agreement, combination, and/or conspiracy.

III.

JURISDICTION AND VENUE

8. This Court has jurisdiction over AMc and Mercury pursuant to Virginia Code § 8.01-328.1 because each of AMc and Mercury has transacted business in the Commonwealth of Virginia and contracted to supply services in the Commonwealth of Virginia.

9. Venue is proper in this Court because the cause of action set forth herein arose from the transaction of business in Alexandria, Virginia.

IV.

FACTUAL BACKGROUND

A. For Decades, The NRA Relied on AMc To Perform Public Affairs Services Requiring A High Level of Trust, But Engaged in Acts of Financial Fraud.

10. Until earlier this year, the NRA and AMc had worked closely together since the 1980s. Indeed, the NRA was one of AMc's most lucrative clients for more than 30 years. In 2017 alone, the NRA paid more than \$40 million to AMc. Over that decades-long relationship, the NRA reposed extensive trust and confidence in AMc to perform services including public relations and strategic marketing; planning and placement of media; management of digital media and websites; and, the operation of NRATV, a digital-media platform managed by AMc but frequently perceived by the public as the "voice" of the NRA.⁴ By its nature, this work was publicly and politically sensitive, and required the NRA to entrust AMc with confidential (and sometimes privileged) information.

11. Over time, AMc's work on behalf of the NRA was governed by successive incarnations of a Services Agreement containing detailed specifications for how various types of work performed by AMc for the NRA should be budgeted and billed. Each Services Agreement provided that certain categories of services, such as Owned Media and Internet Services, would be compensated with an agreed annual fee, while others were required to be invoiced on an *ad hoc* basis based on estimates furnished by AMc and approved by the NRA. Consistent with the sensitive nature of AMc's services, the Services Agreement strictly limits⁵ use and disclosure by AMc, and its individual employees (who

⁴ See, e.g., Jeremy W. Peters & Katie Benner, *Where The N.R.A. Speaks First and Loudest*, THE NEW YORK TIMES, February 21, 2018, <https://www.nytimes.com/2018/02/21/us/politics/nratv-nra-news-media-operation.html>.

⁵ AMc's confidentiality obligations survive termination. See Services Agreement § X.E.

were themselves fiduciaries of the NRA), of information acquired during AMc’s work on behalf of the NRA.

12. Section IV of the Services Agreement specifically provides that AMc “shall not disclose, directly or indirectly, to any third party, any ... data, materials or information ... made known to AMc as a result of AMc’s providing [contracted-for services] ... without the prior express written permission of [the] NRA.”⁶ AMc may use the NRA’s confidential information “only for the limited purpose of providing its [s]ervices to the NRA,”⁷ and AMc “warrants and agrees to prevent disclosure of Confidential Information by its employees, agents, successors, assigns and subcontractors.”⁸

13. Notably, AMc served as the NRA’s agent under the Services Agreement, and, therefore, owed fiduciary duties to the NRA as its principal. For example, the Services Agreement provided explicitly for AMc to act “on [the] NRA’s behalf,” and subject to the NRA’s control, with respect to purchasing, planning, and placement of media⁹—activities that required the NRA to entrust AMc with nonpublic information about its communication strategy. In its capacity as the NRA’s agent, AMc was required to demonstrate “the same high standard of good faith and loyalty” to the NRA as would be “required ... of an attorney to his client.”¹⁰ Indeed, owing to the parties’ decades of close collaboration, their special relationship of trust and confidence existed prior to, and apart from, the execution of the Services Agreement. The confidentiality provisions of the Services Agreement were, therefore, backstopped and strengthened by common-law and contractual fiduciary duties which forbid any

⁶ Services Agreement § IV.A. I.

⁷ Services Agreement § IV.A.3.

⁸ Services Agreement § IV.A.4.

⁹ Services Agreement §§ I.C, 11.B. I.

¹⁰ See, e.g., *Nicholson v. Shockey*, 192 Va. 270, 270 (1951).

misuse or misappropriation of the NRA's information. In addition, the senior executives who were delegated to work on the NRA account, one of, if not, the largest account at AMc, was aware of the Service Agreements' terms.

14. Given its responsibilities, AMc took an active role in shaping the public image of the NRA's principals and executives, including LaPierre. Based on AMc's advice, and subject to billing procedures AMc set up, LaPierre over a fifteen-year period incurred wardrobe and related expenses for countless television appearances, filming of commercials, and other outward-facing brand-development activities. Those activities were specifically directed, choreographed and produced by AMc. Records of the wardrobe expenses, which were initiated at AMc's direction, were maintained by AMc. Of course, AMc should not have incurred (let alone sought reimbursement for) any expenses which it believed inappropriate.

15. Consistent with the substantial scope and dollar value of the services rendered by AMc for the NRA, AMc invoiced the NRA for a wide variety of expenses. The Services Agreement contained detailed guidelines identifying categories of expenses that could be invoiced to the NRA, and conditions for their reimbursement. For example, hotel and meal expenses were required to be authorized in writing, in advance, by the NRA. Over the parties' decades-long course of dealing, underlying receipts and other support for AMc's expenses were not transmitted contemporaneously with AMc's monthly invoices. However, the NRA was repeatedly assured that appropriate documentation was retained by AMc, including by Winkler, Montgomery, and McQueen, and could be audited at the NRA's request. Importantly, AMc offered elaborate assurances not only that its recordkeeping was secure and accurate, but that AMc was an especially secure repository for travel itineraries and other documents raising potential security issues.

16. Also, of note, the various incarnations of the Services Agreement have obligated AMc to charge the NRA a “fair market price” “fair market value” for various advertising, creative, and media placement and management services performed. For example, the 1999 Services Agreement contained the straightforward assurance by AMc: “we will charge you a fair market price for the work performed.” Similarly, all versions of the Services Agreement required AMc to provide cost quotations for art concepts, design layouts, and similar items “based on the fair market price of the work as determined by AMc.”

17. As the scope of AMc’s work for the NRA grew, AMc represented to the NRA that it was required to hire a substantial number of personnel, as well as incur obligations to third-party contractors, for the exclusive purpose of servicing the NRA’s account. Accordingly, when the parties renegotiated a new services agreement in 2017, AMc insisted upon—and the NRA agreed to provide—certain financial assurances in the event that the Services Agreement terminated. Among other things, upon the NRA’s termination, the Services Agreement requires that the NRA to (ii) pay AMc a termination fee to cover severance payments owed to AMc employees who are “dedicat[ed] to provide services [to the NRA], not other clients of AMc and would” likely need to be laid off if the Services Agreement was terminated (the “NRA-Dedicated Personnel”).

18. During the course of a given year, AMc can undertake “other projects” pursuant to Section II.E. that are not included within the services defined in the Services Agreement Section I. For these other projects, charges made by AMc were agreed upon in advance whenever possible, and if no specific agreement was made, AMc charged the NRA a “fair market price” for the work performed. In addition, “special assignments” not included in the Services Agreement “which cannot be reasonably included under the monthly fee

must be approved in accordance with written procedures established by NRA Executive Vice President or his designee.”

19. Furthermore, under the Services Agreement, the NRA provided its property, materials, documents, and confidential information to AMc solely to allow AMc to provide services to the NRA. Section XI.E. of the Services Agreement required that “[u]pon the expiration or termination of this Services Agreement, AMc shall immediately return to the NRA, to such place and in such manner as NRA may specify, any and all of the NRA’s property, materials, documents, Confidential Information, etc., that may be in AMc’s possession.” Section XI.E. also provides that the NRA will pay AMc in advance for “all charges for accumulating said materials

20. To effectuate these contractual obligations, starting in at least 2016 and continuing through 2018 AMc used the “annual budgeting process” under the Services Agreement and as described by AMc—in particular, its senior executives Winkler and Montgomery, and its former CEO Angus McQueen. At these meetings it was represented to the NRA on multiple occasions that appropriate back-up documentation was retained by AMc for purposes of justifying and substantiating their billing statements and that such documentation could be audited at the NRA’s request at any time. AMc likewise represented that their record-keeping was accurate. These representations were made with the specific intent to have the NRA look-the-other way while AMc violated its contractual obligations to maintain reasonable backup documentation. These representations were made by AMc and its officers over the course of the “annual budgeting process” of the preceding budgetary year (i.e., the process for the 2017 budget would have occurred in Q4 2016).

21. These representations were relied on, yet false when made, with a specific intent to induce the NRA to maintain or increase the annual budget for AMc. As the NRA later discovered, for

years *no one* at AMc kept or maintained systematic, much less reasonable, documentation that would justify or support the accuracy of the sums of money AMc represented it was owed in the billing statements it sent to the NRA. In addition, absent such record-keeping, a complete audit could not occur. For these reasons, AMc's record-keeping was not accurate, contrary to its representations.

22. Defendants also failed to disclose certain facts to the NRA during the "annual budgeting process." In particular, they knowingly failed to disclose the fact that AMc often had NRA-Dedicated Personnel work for other client's projects, but invoiced the NRA for 100% of their salary, and billed the clients for the same work, or simply billed the NRA for time logged by employees supposedly "dedicated" the NRA account for work they performed on non-NRA projects. As Dan Boren, an executive of AMc's second-largest client, the Chickasaw Nation, revealed by email dated April 15, 2019: "I bet AMc is in trouble on this one. They can't produce the backup to the invoices and were allocating full salary to these employees that may have been working on our [Chickasaw Nation's] accounts." Defendants also failed to disclose that AMc had fraudulently billed the NRA for expenses that were ostensibly business-related in nature but were in fact personal expenditures. By failing to disclose these facts, Defendants intended to induce the NRA to maintain or increase the amounts NRA paid to Defendants.

23. Defendants also hid fraudulent activity simply by not providing enough information on monthly invoices for the NRA to ascertain the validity of charges billed, despite requests by NRA management to address this issue multiple times and formally by letter in August 2018.

24. Angus McQueen, Winkler, and Montgomery held senior executive positions at AMc and were specifically responsible for "budgetary compliance, invoicing, and payments" on the NRA account. Accordingly, there is more than ample reason to believe that they must have known about, or

consciously disregarded, the gross failure to maintain systematic or reasonable backup and supporting documents and other financial improprieties in connection with their billing practices.

B. Branded News—The Growth of NRATV.

25. During the late 1990s, under the leadership of its then-president, AMc decided to radically alter its business from that of a traditional ad agency to a creator and broadcaster of original media content. AMc saw the growth of digital networks as an opportunity for large entities to craft and advance their own brand messaging through television production. It saw the content production business as lucrative, exciting, and cutting-edge, but did not consider or care whether its clients would actually benefit from such services. If AMc could hawk “television-style production” at a profit, it would do so—and it did. AMc touted its new business philosophy as follows:

EVERY BUSINESS AND INDIVIDUAL HAS THE ABILITY TO
BECOME A MEDIA COMPANY

If you have an audience that cares about what you have to say, you can create and distribute content with complete autonomy. No one else should capture or distribute those stories better than you. And in this era of communication, it has never been more affordable or efficient for you to begin.

26. Of course, fundamental to AMc’s optimism about its “new” direction was its belief that it could convince its largest client, the NRA, to “buy into” the concept. Thus, in the early 2000s, AMc set out to induce the NRA to finance the creation of its own branded news platform. Plying the NRA with glowing prognostications about the lucrative benefits of “owned media,” AMc persuaded the NRA to launch its initial digital-video platform known as “NRA News” in 2004. The NRA had long relied on AMc to place advertising via traditional media, including conventional television channels. To AMc, the funds remitted to real media outlets were funds available for the Association “to invest” in building studios and other assets from which AMc might profit. NRA News was the beginning of that effort.

27. The annual budget for NRA News quickly, substantially climbed, from \$1.6 million in 2004 to \$4.594 million by 2014. However, there was at least some evidence that NRA News was attracting the engaged viewership AMc promised: for example, even late at night, live programs with call-in components generated promising call volume. AMc generated glossy, confidential PowerPoint presentations—which it would display for the NRA during meetings but would forget or refuse to provide “in writing”—that claimed NRA News had generated tens of millions of valuable engagements and views.

28. Based on the reported success of NRA News, the NRA agreed to experiment with an expanded version of the platform that broadcast live video programming on an online platform, which launched in 2016 under the brand NRATV. Beginning in 2016, AMc CEO Angus McQueen began lobbying Mr. LaPierre with glowing projections about the benefits of expanded programming on an NRA-branded digital platform. Seeking to induce Mr. LaPierre to substantially increase the NRA’s investment in the media segment to over \$10 million dollars, McQueen seized on the rise of digital media and persuasively claimed that developing such a digital platform was simply “part of being a 21st century company” and that “we can’t let the status quo continue.” Emphasizing the need to act quickly, McQueen stated that the “NRA needs to lead change in the marketplace” and “not become a follower.” Tying his themes together, McQueen asserted that the NRA “must put its message in all delivery systems,” including the expanded digital platform.

29. Highlighting the concept’s financial viability, McQueen pressed that “we must vastly modernize the entire economic under-performance of [the] NRA.” Ultimately, he pointedly emphasized that the “NRA needs to find new ways to make money” and that the digital platform concept presented “a good opportunity to generate revenue.” Indeed, Defendants assured the NRA that its substantial investment would “pay for itself” in short order, via a combination of “soft” and “hard” monetization,

including paid commercial sponsorships for live programs. In fact, AMc assured the NRA that based on its experiences for other clients that this substantial investment would “pay for itself” within three years, max. In reliance on these representations, the digital platform was launched in 2016 under the brand NRATV.

30. From the outset, NRATV was expensive, costing more than \$12 million in its first year. However, AMc claimed that the largest subset of this expense, which pertained to live programming, was “the key” to the success of the platform. Having served the NRA for decades, AMc knew what its client desired in the digital media space: (1) outreach to new potential members (especially of a younger generational cohort), (2) a self-sustaining platform, and (3) a vehicle to advance its mission and Second Amendment advocacy. AMc represented that NRATV would be built and managed to serve these purposes.

31. Within NRATV’s first year, AMc reported that the platform had generated millions of engagements and views. Noting the NRA’s keen interest in the platform’s viewership and sponsorship figures, AMc also promised to bring aboard two separate consulting firms, Cambridge Analytica and Performance Improvement Partners, to provide “data analytics and insights” tracking NRATV’s performance. In the interim, AMc purported to update the NRA regularly on NRATV’s metrics. During meetings held on the following dates, at the following locations, AMc staff—generally consisting of Nader Tavangar, Melanie Montgomery, Revan McQueen, and others—delivered PowerPoint presentations boasting that NRATV consistently generated millions of views, including “completed” and “engaged” views:

Meeting Date	Meeting Location
October 24, 2017	Teleconference/Polycom
November 28, 2017	Mercury Group Offices
January 3, 2018	AMc Offices (Dallas, Texas)
February 1, 2018	Las Vegas, Nevada

Meeting Date	Meeting Location
February 19, 2018	AMc Offices (Dallas, Texas)
April 11, 2018	AMc Offices (Dallas, Texas)
September 4, 2018	Teleconference/Polycom
October 11, 2018	AMc Offices (Dallas, Texas)
October 23, 2018	Teleconference/Polycom
October 30, 2018	AMc Offices (Dallas, Texas)
November 28, 2018	Teleconference/Polycom
December 5, 2018	Teleconference/Polycom
January 18, 2019	AMc Offices (Dallas, Texas)

32. In these closed-door meetings (which AMc insisted upon, ostensibly for reasons of “confidentiality”), with Mr. LaPierre and sometimes others from the NRA leadership in attendance, Defendant Montgomery and others made purposely inflated sponsorship and viewership claims now known to be false in order to induce the NRA to continue investing millions upon millions in NRATV and, by extension, AMc. In each of the thirteen meetings listed in the above chart, Defendants led the NRA to believe that NRATV’s viewership numbered in the millions and that Defendants were generating many millions of dollars in value for the NRA. They did so not with facts or evidence but through a carefully coordinated scheme to present misleading, out-of-context, and conjured-up statistics for the consumption of the NRA leadership.

33. Of course, viewership is the *raison d’etre* of digital advertising and content creation. By creating attention-catching content, digital creators and their marketing firms aim to develop a base of loyal viewers who will eventually support the organizations who create it. This, in turn, attracts advertisers and sponsors for the programming or other digital content, which pay based on the number of *unique* “eyeballs” or “click-throughs” provided by the content. As digital marketing has become increasingly important for businesses and non-profits alike, an entire industry has arisen which collects, aggregates, analyzes, and presents viewership data. That data—which can be so granular as to identify

distinct individual viewers of digital media—can provide valuable insight to organizations seeking to develop their brand and win the loyalty of the viewing public. For example, a user’s web browser might automatically refresh a video or a page at routine intervals, simulating hundreds or thousands of views; less egregiously, a single user might intentionally click on a piece of content multiple times. Accordingly, responsible media companies disaggregate their total click figures and discern, using data provided by Google and other analytics services, the total number of *distinct users*. *AMc declined to do that*. Instead of providing an accurate account of the number of distinct users—a number which AMc knew would raise the alarm that NRATV was failing—AMc provided only aggregate data, thereby creating the false impression that NRATV had more viewers than it actually had. However, due to content creators’ heavy reliance on these digital metrics, inaccuracies can be consequential and damning.¹¹

34. The figures presented by Defendants also fraudulently inflated NRATV’s viewership figures by failing to rigorously differentiate between genuine views and merely incidental ones. Genuine views represent instances in which a user encounters content and then volitionally interacts with it in some way—rather than immediately navigating elsewhere. Merely incidental views, by contrast, are “views” which occur only because an individual user happens to scroll past NRATV content on a webpage. The importance of this distinction is obvious. While genuine viewers represent those who actually watch NRATV content and thus are exposed to the NRA’s messaging and ideas, merely

¹¹ For example, Facebook recently paid \$40 million to settle a lawsuit by advertisers who alleged that it inflated view counts for certain videos—pleading that they relied extensively and detrimentally on Facebook’s false figures. David Paul Morris, *Facebook to Pay \$40 Million to Settle Advertiser Lawsuit Over Inflated Video Views*, TIME (Oct. 8, 2019), <http://time.com/5694910/facebook-settle-advertiser-lawsuit-videos/>.

incidental viewers are not. Although AMc occasionally purported to distinguish total views from “engaged” views, its calculations overrepresented the number of “engaged” views.

35. The presentation made by senior corporate executives of AMc to the NRA leadership in October 11, 2018 (one of the meetings identified in the chart) is illustrative of the agency’s efforts to hoodwink the NRA through tortured, fraudulent statistics and misleading generalizations about the platform’s performance. Just as they had done in previous meetings, AMc produced a glossy PowerPoint presentation which purported to, in the words of Melanie Montgomery, present “all things NRATV,” including its “analytics.” It did nothing of the kind. Rather than candidly discuss NRATV’s disastrous performance, known internally to Defendants, Montgomery falsely touted its success. For example, the presentation asserted that NRATV was “the strongest media outlet covering the Second Amendment,” and that NRATV had seen “tremendous increase[s] in [the] time spent on the site.” Each of these representations was accompanied by a bevy of out-of-context and misleading statistics. Not once did Montgomery or any other AMc employee disclose the crucial actual and unique viewership data that would contradict her misleading statements about the performance of NRATV. Among the outrageous representations made was that the total viewership of NRATV, in a mere eight months, had received over two-hundred million views, thereby *suggesting that NRATV content had reached two-thirds of the United States*. This representation, like the many others made during the course of AMc’s meetings with NRA executives regarding NRATV, was fraudulent and false—and AMc knew it.

36. Apparently not content to hide from the NRA the platform’s actual viewership figures, Defendants also concocted a series of “valuations” that had no basis in reality. For example, in Q3 2018, representatives from the NRA and AMc, including from AMc Melanie Montgomery, Ed Martin, and Jesse Greenberg, held a meeting to discuss the valuation of NRATV. At the meeting, Defendants touted a proprietary “AM Conservative Approach” formula, which it insisted provided a conservative estimate

of the Earned Media Value (EMV) generated by NRATV in excess of \$13 million. Adopting a separate, less-conservative formula, Defendants represented that NRATV should actually be valued at \$45 million annually, a figure justified by citing “total views” of NRATV content. In addition to being based on “total view” figures that Defendants knew to be misleading for the reasons discussed above, the more fundamental problem with these “valuations” is that they have no basis in fact. Rather, by presenting these valuations and contending they are based on a proprietary formula, Defendants intentionally deceived the NRA into believing that its substantial investment in NRATV was generating outstanding returns when, in fact, the primary beneficiary of the initiative were the Defendants. [REDACTED]

[REDACTED]

[REDACTED]

37. Further illustrating the slipshod and dishonest approach to valuation, in a meeting held on October 11, 2018, at AMc’s offices in Dallas, Texas, and in correspondence dated May 13, 2019, Montgomery made representations that purported to calculate the value of the NRA’s digital media presence. Using a formula based solely on the “cost to get . . . published”—that is, the cost to AMc—Montgomery presented a valuation based, not on the value the NRA received, but on putative costs incurred by AMc. In doing so, Montgomery effectively represented on behalf of AMc that, in paying AMc to conduct digital media operations, the NRA was receiving substantial value on its investment. That representation was not based upon any reliable measure of the benefit the NRA received due to its digital media presence; the sole measure of the “value” used by AMc was its own profitability.

38. Importantly, AMc had reason to know that even its most conservative projections for NRATV were fanciful. By 2016, when NRATV debuted, another AMc client had already agreed to experiment with the “owned media” concept—and it was an unmitigated failure. The American Clean

Skies Foundation (“ACSF”), an energy-industry advocacy group, hired AMc beginning in roughly 2008, and was promptly sold a bill of goods similar to the one pitched by AMc to the NRA, including an “owned media” digital-video channel. ACSF’s ensuing experience with AMc, and the resulting “Clean Skies TV” product, was so disastrous that ACSF’s former general counsel contacted the NRA and offered assistance with this lawsuit, noting: “I’m pleased to see AM get called on their practices finally.” After ACSF’s reasonable requests for information about Clean Skies TV’s budgets and operations went unanswered, ACSF fired AMc in 2009. Even as it made elaborate representations to the NRA that digital-video “owned media” was the future of public relations, and that steep costs associated with NRATV would easily be recouped, AMc intentionally concealed the failure of Clean Skies TV.

39. By 2017, the annual budget for NRATV grew to over \$20 million annually—a number that was viewed by NRA leadership as unsustainable without tangible proof that the platform would soon monetize itself. As described above, the Association began, in 2017, to press AMc for actual, reliable proof that the platform was reaching its projected objectives or deliverables—membership growth, actual unique viewership information, and/or signs that others (*e.g.*, advertisers or sponsors) would invest in the platform.

40. At the same time, the leadership of the NRA—especially Mr. LaPierre—began to question whether the messaging associated with NRATV’s live programming actually served as a benefit to the NRA’s mission. As NRATV often became viewed as a dystopian cultural rant that deterred membership growth, NRA leadership requested greater directional control and coordination over the content of NRATV programming. As these factors coalesced, the ownership at AMc—fearing the loss of its most important income-producing activity—became increasingly secretive, hostile and determined to “protect” its “economics” with the NRA.

41. On May 13, 2019, AMc finally responded in writing to the latest of numerous requests for unique live viewership figures for NRATV. Incredibly, AMc’s response still did not disclose unique viewers for NRATV platforms. Instead, an accompanying letter from Defendant Montgomery disclaimed years of assurances regarding the monetization potential of NRATV. In the most direct response offered by AMc to date regarding the NRA’s requests for unique-viewer data, Montgomery simply stated: “[L]ive production is in place for several reasons, not one of which was to accumulate massive live viewership numbers.” Of course, this is nonsense: since 2016, AMc touted NRATV’s purported viewership numbers as a primary driver of its claimed valuation. Of course, there was no other logical reason for the NRA to invest in NRATV than to gain large viewership numbers, without them, none of the stated goals of increased membership and sponsors would be possible. And it did not. It was all a hoax.

42. Ultimately, facing a “wind-down” of its services and cessation of payments from the NRA, AMc finally admitted that the NRA “could conceivably stop the live stream component of NRATV without significantly affecting the network’s viewership performance[.]” In other words, the most expensive component of NRATV (and thus the most profitable for AMc) was generating de minimis value, if any, with respect to primary metric of interest to the NRA: viewership.

43. During 2019, The New York Times reportedly reported on an independent assessment of NRATV’s unique viewership figures. That assessment determined that NRATV’s “web traffic was miniscule, with 49,000 unique visitors in January [2019]”¹²—compared to the millions of visitors claimed by AMc. It is now known that those paltry numbers—stunningly small when compared to

¹² Danny Hakim, *N.R.A. Shuts Down Production of NRATV, and Its No. 2 Official Resigns*, THE NEW YORK TIMES (June 25, 2019), <https://www.nytimes.com/2019/06/25/us/nra-nratvackerman-mcqueen.html>.

AMc's representations regarding viewership—are overstated. In fact, when the Association shut down NRATV in June 2016, not a single reaction emerged.

C. Troubled Waters: The NRA's Transparency Efforts And AMc's Response.

44. In recent years, the State of New York amended its Not-for-Profit Corporation Law (the "NPCL") to clarify requirements for director independence and the ratification of related-party contracts, among other items. After updating its internal policies and controls to reflect these amendments, the NRA undertook to strengthen its procedures for documentation and verification of compliance by vendors with their contracts. Beginning in August 2018, the NRA sent letters to more than a hundred vendors—including AMc—that set forth updated invoice-support requirements and provided detailed guidance regarding, for example, expense reimbursement procedures.

45. Simultaneously, as the NRA's now-former Treasurer and CFO prepared to retire and the NRA leadership ranks shifted, multiple employees began to voice recommendations regarding opportunities for improvement at the NRA. Combined with the NRA's compliance efforts, this produced an explosion of complaints about AMc.

46. Specifically, the NRA quickly found itself investigating multiple concerns:

- "Out of pocket" expenses that lacked meaningful documentation of NRA approvals, receipts, or other support, despite the requirements set forth in the Services Agreement;
- Immense growth in AMc's annual budgets, coupled with a lack of transparency regarding how the budgets were calculated or whether AMc adhered to them;
- Lack of transparency regarding AMc's compliance with its contractual obligation to ensure that services were provided at "fair market value;"
- Concerns that AMc was invoicing the NRA for the entire salaries attributable to NRA-Dedicated Personnel, despite certain NRA-Dedicated Personnel allocating substantial time to non-NRA clients; and

- Refusal by AMc to provide data “in writing” (such as unique visitors, viewership numbers, clickthrough rates, or related performance metrics) that enable the NRA to analyze the return on its substantial investment since 2016 in NRATV.¹³

47. Consistent with the broad scope and critical nature of the services performed by AMc for the NRA, the NRA bargained for transparency into AMc’s files, books and records pursuant to the Services Agreement. Both the Previous Services Agreement and the current Services Agreement incorporate records-examination clauses that require AMc to open its files for the NRA’s inspection upon reasonable notice. The full text of the Records-Examination Clause in the Services Agreement appears below:

<p>Services Agreement</p> <ul style="list-style-type: none"> • Dated April 30, 2017 (as amended May 6, 2018) • Between the NRA and “AMc” (defined to include both AMc and Mercury)
<p>VIII. EXAMINATION OF RECORDS</p> <p>During the term of this Services Agreement, AMc authorizes NRA, upon reasonable notice, to examine AMc and Mercury’s files, books and records, with respect to matters covered under this Services Agreement.</p>

48. During early- and mid-2018, the NRA sought information from AMc pursuant to the Records-Examination Clause on a common-interest basis to advance parties’ mutual interests relating to an ongoing lawsuit. The NRA sought full access to certain categories of records rather than sample subsets gathered by AMc. However, after the NRA began to request access to records that would shed light on concerns regarding AMc’s business and accounting practices, AMc’s responses became evasive and hostile.

49. In August 2018, within days after the NRA announced that it would now require supporting documentation to be transmitted contemporaneously with vendor invoices, a media outlet

¹³ In addition, certain NRA stakeholders were also concerned that NRATV’s messaging-on topics far afield of the Second Amendment-deviated from the NRA’s core mission and values.

hostile to the NRA quoted “an anonymous source at AMc McQueen”¹⁴—creating serious concerns about AMc’s compliance with its confidentiality obligations. When another outlet described the same source as a former (rather than a current) AMc employee,¹⁵ the NRA trust in its longtime collaborator dissuaded it from requiring an immediate and full-scale investigation. Unfortunately, it now appears that such a complete accounting is required.

50. On August 27, 2018, Winkler sent a letter to the NRA which purported to comply with the NRA’s request for a more comprehensive audit of AMc’s expense records. The letter pointedly identified several categories of items, some relating to travel and entertainment, which it warned would be encompassed in a full production of those records—perhaps believing that the threat of such disclosure would dampen the NRA’s demands for transparency. However, the NRA was undeterred, and insisted upon reviewing and verifying details of expenses incurred.

51. In September 2018, for the first time in the parties’ decades-long course of dealing, AMc demanded that its outside counsel supervise any document review conducted under the Records-Examination Clause, then demanded payment of outside counsel’s legal fees as a precondition for delivery of video footage it produced and for which AMc had already invoiced the NRA. During a telephone call on September 19, 2018, after AMc’s counsel insisted that the NRA pay AMc’s legal fees without any insight into why the fees were incurred, the NRA’s counsel observed that AMc’s posture seemed more consistent with an adverse than a common-interest relationship. AMc’s counsel then made a startling statement: “AMc views the relationship as adverse.”

¹⁴ Dylan Matthews, *The National Rifle Association, America’s most powerful lobby, claims it’s in financial crisis. What?*, VOX (Aug. 3, 2018, 4:50pm), <https://www.vox.com/2018/8/3/17648960/nra-national-rifle-association-companies-support-boycott-new-york-lawsuit>

¹⁵ Alex Yablon & Mike Spies, *In Court Papers, NRA Stresses Financial Pressures and Says It May Have to Shut Down NRATV*, THE TRACE (Aug. 1, 2018), <https://www.thetrace.org/rounds/nra-carry-guard-insurance-new-york-lawsuit/>

52. Around the same time, an executive in the NRA's Membership division asked AMc for a copy of an audit purportedly conducted by Performance Improvement Partners ("PIP"), one of the independent digital-analytics vendors purportedly retained by AMc, regarding the value of NRATV. Departing sharply from prior conversations, AMc cursorily informed the executive that no audit had been performed, and no copies of any documents would be provided. Rather than audit AMc's reported viewership metrics, AMc explained that PIP had "worked with" AMc to create a purported "dashboard" of digital analytics; AMc promised it would "go through all of that" during an upcoming live meeting.

53. Thereafter, AMc strenuously resisted the NRA's efforts to enforce the Services Agreement, including by embarking on a campaign to "kill the messenger" when the NRA continued to seek access to documents or proposed reductions in AMc's budget. At first, AMc scapegoated the NRA's outside counsel—refusing to interface with counsel. However, over ensuing months, AMc also refused to respond to basic information requests from NRA executives. After the NRA retained a third-party forensic accounting firm to interface with AMc in an effort to appease 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 against which AMc was invoicing. When the NRA's General Counsel sought additional information in a follow-up to the forensic audit, AMc ignored his letters.

54. As AMc continued to stonewall the NRA's requests for documents and tensions between the parties rose, the NRA was contacted with increasing frequency by journalists acting on purported "leaks" relating to matters on which AMc had worked. The contents of these "leaks" reflected a malicious, out-of-context use of the NRA's confidential information, with an apparent intent to

damage the NRA. The NRA was advised by multiple confidential sources that the leaks were emanating from AMc.

D. Among the Records Unlawfully Withheld by AMc: A Major Related-Party Contract.

55. Non-party North is a veteran of the United States Marine Corps and the Reagan administration. Although he faces an ethics complaint that seeks his removal on account of the conduct recounted herein and related matters, North is also a member of the NRA Board of Directors. During May 2018, the NRA announced that North was slated to serve as its next President—a largely ceremonial but high-profile position famously occupied by Charlton Heston during the late 1990s. As North prepared to assume the presidency of the NRA, he separately discussed a potential engagement by AMc as the host of an NRATV documentary series. On May 6, 2018, the NRA and AMc amended the Services Agreement (such amendment, the “May 2018 Amendment”) to affirm that any contract between AMc and North would be considered an AMc-Third Party NRA Contract, for which outstanding compensation would be owed by the NRA to AMc if the Services Agreement was terminated. Importantly, the amendment treated North as a third-party contractor—but not, necessarily, an employee—of AMc.

56. North and AMc assured the NRA that North’s profile and “brand” would be actively leveraged to elicit sponsorships for the North documentary series. This was of vital interest because during recent years, the NRA had spent substantial sums on NRATV based on AMc’s advice and representations regarding achievable benefits of an owned-media platform. However, as discussed above, measured against any of the desired outcomes, the returns on the NRA’s investment in NRATV were less favorable than AMc predicted. Accordingly, the NRA began to reconsider its willingness to continue its investment in NRATV. If the North documentary series attracted sponsorships, then the

costs associated with NRATV could be defrayed, altering the NRA’s calculus about whether to continue supporting the platform.

57. New York law requires that the NRA Board of Directors, or an authorized committee thereof, review and approve “any transaction, agreement, or any other arrangement in which [a director or officer of the NRA] has a financial interest and in which the [NRA or an affiliate] is a participant.”¹⁶ Guidance published by the New York Attorney General notes that a board of directors may define additional restrictions on transactions giving rise to potential conflicts of interest;¹⁷ and, consistent with best practices, the NRA’s Conflict of Interest Policy requires disclosure of contracts between NRA leadership and vendors, like AMc, that receive funds from the NRA.

58. Aware that North had entered into a contract with AMc (the “North Contract”), the NRA diligently sought to comply with its obligations concerning analysis and approval of the North Contract. During September 2018, the Audit Committee of the NRA Board of Directors (the “Audit Committee”) reviewed a purported summary of the material terms of the North Contract and ratified the relationship pursuant to New York law—subject to carefully drawn provisos designed to avoid any conflicts of interest.

59. At the time it ratified North’s continued service as an NRA director and President given his relationship with AMc, the Audit Committee was assured that the NRA’s counsel would review the North Contract in full. But that turned out to be false, at least for the duration of 2018, as AMc continued to refuse to provide the North Contract pursuant to the Records-Examination Clause.

¹⁶ See N.Y. NPCL § 715.

¹⁷ *Conflicts of Interest Policies Under the Not-for-Profit Corporation Law*, Charities Bureau, N.Y. State Office of the Attorney General (2018), https://www.charitiesnys.com/pdfs/Charities_Conflict_of_Interest.pdf, at 3.

Meanwhile, North indicated via counsel that he could only disclose a copy of the contract to the NRA subject to AMc's consent. This back-and-forth persisted for nearly six months.

60. Eventually, in February 2019, AMc acceded to a brief, circumscribed, "live" review of the North Contract (but no retention of any copies) by the General Counsel of the NRA. This review raised concerns about whether the previous summary of the North Contract that had been provided to the Audit Committee had been complete and accurate. Among other things, the NRA's brief, limited review of the North Contract—along with other information disclosed for the first time by North—gave rise to questions regarding: (i) whether North was a third-party contractor of AMc or, conversely, a full-time employee with fiduciary duties to AMc that supersede his duties to the NRA; (ii) whether the previously disclosed costs borne by the NRA in connection with the North Contract were complete and accurate; and (iii) whether the contract imposed obligations on North that prevent him from communicating fully and honestly with other NRA fiduciaries about AMc. Against the backdrop of escalating concerns about AMc's compliance with the Services Agreement and applicable law, the NRA became determined to resolve these issues.

61. By letters dated March 25-26, 2019, the NRA's General Counsel again sought visibility regarding the North Contract and related business arrangements, as well as copies of other material business records pursuant to the Services Agreement. Specifically, the NRA requested:

- A chance to conduct a follow-up review of the North Contract (the NRA's General Counsel even volunteered to conduct the review at AMc's attorney's offices, for AMc's convenience);
- Information about any additional costs relating to AMc's engagement of Col. North, to the extent that such costs were being "passed through" to the NRA;
- Copies of any additional AMc-Third Party NRA Contracts currently in existence;
- Information about which AMc personnel purportedly constituted "NRA-Dedicated Personnel," such that their salaries or severance were alleged to be reimbursable by the NRA, and business records sufficient to show whether these personnel were in fact dedicated to NRA projects; and,

- Copies of the annual budget documents provided to the NRA’s forensic accountants.

62. The NRA made clear that it sought the above information “in whatever form [wa]s most convenient” for AMc and hoped to obtain access to ordinary-course business records as contemplated under the Records-Examination Clause. AMc immediately acknowledged receipt of the letters and promised a substantive response, which it never provided.

63. The NRA had begun to suspect that the information it previously received regarding the North Contract was incomplete and, therefore, misleading. The May 2018 Amendment classified North as a third-party contractor of AMc—but in actuality, the North Contract treated him as a full-time employee, with legal duties to AMc that superseded his fiduciary duties to the NRA as a member of the Board of Directors. Moreover, AMc originally advised the NRA that it had contracted North to host “[t]welve feature-length episodes” of a digital documentary series, to be produced “during each 12 months of a three-year [a]greement,” commencing during or about May 2018. Yet by April 22, 2019—eleven months into North’s engagement—only three episodes were available, and none were “feature-length.” Instead, as of the date of this filing, the three episodes made available by AMc total 39 minutes, 33 minutes, and 11 minutes in length, respectively.

64. In short, by treating the North Contract as an AMc-Third Party NRA Contract pursuant to the May 2018 Amendment to the Services, AMc: (1) made an implicit representation about the degree of independence North could exercise; and (2) imposed a rigid financial liability on the NRA that persists if the Services Agreement is terminated, as opposed to the “fair and equitable,” “negotiable severance offset that would apply if North were an AMc employee. Specifically, because AMc and North had structured their contact in the manner that they did the NRA could be liable to pay AMc the balance of any compensation owed under “non-cancellable

contracts entered into between AMc and third parties for the benefit of the NRA” (as defined under the Services Agreement, the “AMc-Third Party NRA Contracts”).

65. However, on or around February 19, 2019, the NRA learned that North was a salaried employee of AMc. Accordingly, North owed a fiduciary duty of loyalty to AMc under the laws of many jurisdictions—a fact that was never disclosed to the Audit Committee when it ratified North’s service as fiduciary of the NRA. And under the terms of the May 2018 Amendment, the NRA has incurred a purported trailing liability under the North Contract that was never appropriate and would not have occurred if the NRA had known that North would become beholden to AMc through his employment contract and course of dealing under which AMc allowed him to earn substantial sums of money for essentially not performing any of the contracted for work.

66. On April 11, 2019, North finally disclosed a copy of his contract to the NRA—even as AMc continued to rebuff the NRA’s requests for material information about the contract. The North Contract seemed unlikely to be fulfilled in the first year and showed little promise of fulfillment in years two and three. AMc has also withheld documentation regarding sponsorships raised for the North documentary series, and the NRA has no evidence that any substantial sponsorships exist. Viewed in light of the series’ production shortfalls, these facts have troubling implications. The NRA agreed to shoulder a specific financial burden in connection with a specific digital-media project—not to allow its President to be compensated by a for-profit advertising agency for performing, at best, generic leadership functions that placed his interest in earning a paycheck from AMc (and billed to NRA) doing minimal work above his interests as a member of the Association’s President and member of the Board of Directors. Importantly, the NRA’s Bylaws do not provide for the President to receive a salary.

67. In the wake of these developments, the NRA again requested that AMc allow it to examine business records that would shed light on “what, exactly, [the NRA] is paying for—and what it is getting.” AMc never responded.

E. The NRA Takes Legal Action, and AMc Responds With Illegal Extortion.

68. On April 12, 2019, having exhausted its good faith efforts to access key records pursuant to the Services Agreement, the NRA filed a narrowly tailored action in this Court seeking specific performance by AMc of its obligation to share relevant records with the NRA.¹⁸ In retaliation, rather than provide the requested records directly to the NRA (as the NRA had sought for months), AMc conspired with others to disseminate select, out-of-context portions of those records – many obsolete or dated – to a subset of the NRA Board of Directors, in order to sow false impressions regarding the NRA’s spending and lend support for a possible executive coup.

69. AMc’s breach of the Services Agreement has damaged—and threatens to imminently and irreparably harm—the NRA’s legitimate operational interests as a not-for-profit organization. By denying the NRA access to basic information regarding the nature of the services being performed, the putative budgets for these services, and the material terms of third-party contracts for which the NRA is purportedly liable, AMc is interfering with the NRA’s ability to steward its funds in pursuit of its public mission. Moreover, AMc’s baseless refusal to disclose additional material information relating to, but separate and apart from, the North Contract threatens to impede the NRA’s corporate governance process.

70. If the NRA is denied access to material business records regarding its largest vendor relationship-records which it specifically bargained to access, under the Services Agreement—

¹⁸ See *National Rifle Association of America v. Ackerman McQueen, Inc. and Mercury Group, Inc.*, Civil Case No. CL19001757 (Va. Cir. Ct., Alex.).

the NRA's fiduciaries will be forced either to exercise their business judgment based on incomplete information or defer resolution of pressing matters. There is no adequate remedy at law for the risks that would arise in either scenario. The NRA is America's oldest civil rights organization and an advocate for millions of law-abiding gun owners. Its compliance with not-for-profit law cannot be permitted to be held hostage by a recalcitrant advertising agency.

71. Furthermore, on April 22, 2019, days before the NRA's Annual Meeting of Members, AMc executive Bill Winkler doubled down on the tactic he previewed in his August 27, 2018 letter.¹⁹ In communications to select NRA executives, Winkler referenced and excerpted certain expense records which had previously been withheld from the NRA. Importantly, Winkler did not contend—nor does the NRA believe—that any of the referenced expenses were improper.²⁰ Nonetheless, they were obviously selected by AMc and Winkler to foster salacious, misleading impressions of the NRA's spending practices. Winkler's letters carried an implicit threat, made explicit in a subsequent series of telephone calls: If the NRA failed to withdraw its lawsuit seeking access to AMc's records, AMc would publicize portions of those records tailored to cause maximum reputational damage to the leadership of the NRA.

72. On April 24, 2019, AMc caused its employee, North, to telephone an aide of LaPierre and relay the contents of yet another letter that AMc purportedly planned to disseminate. North emphasized that the letter would be “bad” for LaPierre and the NRA, and he described a laundry list of allegations the letter would contain: an unfavorable (and untrue) depiction of the NRA's finances; sexual harassment accusations against an NRA staff member; and, as previewed in Winkler's letters, excerpts

¹⁹ See discussion *supra* at ¶ 50.

²⁰ Indeed, if Winkler or anyone at AMc had believed the expenses were improper, then AMc's fiduciary obligations required it to inform the NRA of suspected accounting improprieties. Instead, for more than a decade, AMc invoiced the NRA for the expenses without any such comment.

of wardrobe, travel, and entertainment expenses paid by AMc and then invoiced by it to the Association over the years.

73. Tellingly, several categories of information referenced by North consisted of the same information the NRA had tried, but failed, to elicit from AMc under the Record-Examination Clause. After withholding this information for more than six months in an attempt to stonewall the NRA's compliance efforts, AMc now threatened to strategically, selectively publicize the information in a manner calculated to cause harm to LaPierre and the Association. North stated that AMc would forbear from publicizing the "bad" letter if LaPierre agreed to withdraw the NRA's lawsuit seeking access to AMc's records, resign immediately from the NRA, and support North's continued tenure as NRA President. If LaPierre cooperated, North indicated that he could "negotiate with" AMc co-founder Angus McQueen to secure an "excellent retirement" for LaPierre.

74. The NRA does not take kindly to threats, and neither did LaPierre. Rather than accede to AMc's extortion, LaPierre wrote a letter to the NRA's Board of Directors that gave a transparent account of AMc's threat and concluded "so long as I have your confidence ... I will not back down." As became widely publicized, LaPierre prevailed—and AMc's coup attempt failed. AMc's employee, North, is no longer an officer of the NRA.

F. Extortion's Aftermath: Documents Vindicate the NRA's Concerns, And AMc Continues Its Attacks.

75. The NRA hoped that in the wake of these events, AMc would resume faithfully serving the NRA as the parties' contract and Virginia law required. Unfortunately, the NRA continued to receive media inquiries that strongly suggest there are misleading, defamatory "leaks" emanating from AMc. In other words, the NRA believes that AMc delivered on its extortion threat. Tellingly, much of the information "leaked" by AMc concerns travel, wardrobe, and other expenses incurred in connection with AMc projects, based on AMc's advice, or on trips with itineraries crafted by AMc. Although it

disseminates select portions of these records in an effort to convey misleading impressions about spending activities by the NRA's leadership, AMc knows full well that these particular expenses were proper—because it was deeply involved in their occurrence.

76. To resolve its concerns regarding these disclosures, on May 6, 2019, the NRA requested that several key AMc employees execute sworn declarations attesting that they had not violated their confidentiality obligations under the Services Agreement. The NRA tailored its request narrowly—seeking declarations only from senior executives who had exposure to the information at issue—and demanded simply that these executives affirm they had complied, and would continue to comply, with their clear legal duties.

77. To the NRA's dismay, AMc flatly refused to provide any cooperation or assurances whatsoever.

78. Discovery has corroborated one of the NRA's worst fears about AMc's billing practices—specifically, that AMc was double-billing multiple clients for the same work, or simply billing the NRA for time logged by its employees on non-NRA projects. Dan Boren, an executive of AMc's second-largest client, the Chickasaw Nation, admitted by email dated April 15, 2019: "I bet AMc is in trouble on this one. They can't produce the backup to the invoices and were allocating full salary to these employees that may have been working on our [Chickasaw Nation's] accounts."

79. The NRA is informed and believes that AMc has fraudulently billed it, and perhaps other clients, for equipment as well as personnel. Over the duration of the Services Agreement, AMc billed the NRA for at least \$2.7 million in fixed assets consisting of audiovisual equipment and the like. After the Services Agreement had undisputedly terminated, the NRA wrote to AMc to arrange for the return of these assets. AMc has not meaningfully responded, nor can it—because it has deployed these

NRA-owned assets to service other clients. Discovery will reveal whether other AMc clients were duplicative billed for the same items.

80. Defendants' campaign of attempted coercion and intimidation of the NRA and Mr. LaPierre rose its ugly head again in the days before the NRA Board of Directors meeting in September 2019. For the purpose of intimidating and undermining the leadership of the NRA, as well as potentially laying the ground work for a second attempted coup, on September 13, 2019, Defendants issued a corporate "press release" to the general public—but in fact intended for consumption by the members of the NRA Board of Directors—that attempted to cast doubt on the judgment of the NRA's leadership and to re-position Defendants as "the good guys." In reality, this so-called "press release" was nothing more than a gaggle of lies, including the following misrepresentations:

- "AMc McQueen cooperated with every single audit NRA requested";
- "AMc McQueen never overcharged the NRA and retains records of all the work to prove it";
- "Every expense incurred on behalf of the [NRA] was directed by the NRA at the highest level, always with personal knowledge and approval of Wayne LaPierre;" and
- Outside counsel for the NRA "pursues . . . frivolous lawsuits" against AMc "for PR purposes and to serve as a distraction from the failure of NRA executives and its board to properly fulfill its oversight duties."

81. The pattern of attempted extortion, coercion, and intimidation (oftentimes based on outright falsehoods) undertaken for the purpose of shuttering the NRA's legitimate and ongoing investigation into Defendants' fraudulent activities and ousting the current NRA leadership dedicated to enhanced compliance is clear as day. No reasonable basis exists for the NRA to believe this campaign will stop in the foreseeable future and abate resorting to criminal malfeasance that risks harming not

only the NRA, but Defendants' other clients as well. The NRA brings this action to discover the full extent of AMc's breaches and frauds, recover its documents and property, and attain compensation for the damage it has sustained

G. In Repeated Communications, the NRA Requested that AMc Return NRA Property, Materials, and Confidential Information. AMc has Refused.

82. On May 29, 2019, Revan McQueen, CEO of AMc, sent a letter to the NRA, entitled "Notice of Termination of the Services Agreement," notifying the NRA that AMc would be terminating the Services Agreement in 90 days under Section XI.B. of the Services Agreement. In the letter AMc states:

This Notice of Termination initiates a process under Section XI, Subsections E and F of the Services Agreement to wind up the relationship between the parties. Pursuant to Subsection E, AMc will prepare to return to the NRA any and all of NRA's property, materials, documents and confidential information in AMc's possession.

Id. at p. 4 (emphasis added).

83. Around this time, pursuant to Section XI.E. of the Services Agreement, the NRA has repeatedly requested return of its property, materials, and confidential information ("NRA's Property") from AMc. In addition, the NRA has made repeated requests for an advance price quote from AMc for the expected cost of accumulating the NRA's Property so that the NRA can advance the costs to AMc.

84. As part of the NRA's letter terminating the Services Agreement, the NRA "demand[ed] immediate delivery of all materials encompassed by Section XI.E. of the Services Agreement, including all Confidential Information (as defined by the Services Agreement)." Section XI.E of the Services Agreement provides that, "[u]pon the expiration or termination of this Services Agreement, AMc shall immediately return to the NRA, to such place and in such manner as NRA may specify, any and all of NRA's property, materials, documents, Confidential Information, etc. that may be in AMc's possession" (the "Return Clause"). In the termination letter, the NRA further stated that

it “will pay for accumulation of these materials and reiterates its previous requests for an advance price quote to this end.” *Id.*

85. On June 27, 2019, AMc’s outside counsel, David Schertler, sent a letter responding to the NRA’s June 25, 2019 letter. In the letter, counsel for AMc states that AMc is immediately terminating the Services Agreement. In addition, counsel for AMc states:

With respect to your demand of immediate delivery of all Confidential Information under Section XI, Paragraph E of the Services Agreement, such delivery is conditioned upon approval and payment in advance by the NRA of “all charges for accumulating said materials.” We will provide the NRA with the costs of accumulating these materials and will expect to receive payment of those costs prior to the delivery of any materials encompassed by this provision.

Id. at p. 2. AMc did not state when it will return the NRA’s Property or when it will provide the costs of accumulating and returning the NRA’s Property.

86. On June 28, 2019, the NRA responded to AMc counsel’s letter dated June 27, 2019, by repeating its request for return of the NRA’s Property and a budget for the transmittal of the NRA’s Property. The letter states, in part:

The discussion in your letter concerning payment for transmittal of materials pursuant to Section XI.E. of the Services Agreement also retraces ground well-trod in prior letters (most recently my letter dated June 25, 2019). The NRA has repeatedly requested a budget for transmittal of these materials. Please provide one. Please also be prepared to explain the basis for the asserted cost. Based on all that has transpired and come to light in recent months, the NRA will not accept AMc’s unsupported invoices at face value.

Id. at p. 2.

The NRA also “demand[ed] immediate delivery of all materials encompassed by Section XI.E. of the Services Agreement, including all Confidential Information (as defined by the Services Agreement).” The NRA further stated that it “will pay for accumulation of these materials and reiterates its previous requests for an advance price quote to this end.” *Id.*

87. The NRA received no response from AMc to its June 28 letter. Despite repeated requests, AMc failed to return the NRA's Property and failed to provide a budget for the costs.

88. In a letter dated July 22, 2019, counsel for the NRA sent a "follow-up to multiple previous requests concerning AMc's contractual obligation to surrender the NRA's property and Confidential Information." In the July 22 letter, the NRA states, in part:

Return of the NRA's Property, Material, Documents, and Confidential Information. As you know, Section XI.E. of the Services Agreement required that AMc "*return to the NRA, to such place and in such manner as NRA may specify, any and all of the NRA's property, materials, documents, Confidential Information, etc., that may be in AMC's possession.*" Furthermore, AMc must return these items "*immediately*" upon expiration or termination of the Services Agreement. In repeated communications throughout May and June, the NRA emphasized its urgent need for these materials, reiterated its willingness to pay up front for their accumulation, and requested that AMc promptly disclose any associated costs so the parties could proceed. By letter dated June 27, 2019, AMc finally agreed to provide those costs to the NRA. Please let us know when we can expect to receive them.

Id. at p. 1 (emphasis addd)

89. The NRA attached to the July 22 letter a list of fixed assets for which it had been invoiced by AMc and stated its expectation that these assets be returned with all of its other property, materials, documents, and confidential information. These items include, but are not limited to, audio visual equipment, cameras, monitors, tripods, microphones, adaptors, cables, software, power supplies, batteries, pedestals, recording and playout servers, storage modules, and computers. The list includes values for each of the fixed assets.

90. On August 5, 2019, counsel for AMc responded to the NRA's July 22 letter taking the position, *for the first time*, that AMc will not return the NRA's Property and will not provide

the charges for accumulating the NRA's Property until "the NRA comes into compliance with all of its obligations under the Services Agreement."

91. On August 9, 2019, counsel for the NRA responded to counsel for AMc's August 5 letter. *See* Letter dated August 9, 2019, from Michael Collins to David Schertler. The NRA stated that it has not breached the Services Agreement and that the NRA owes nothing to AMc other than costs associate with gathering and returning the NRA's Property. The NRA further stated:

Pursuant to section XI.D., AMc is entitled to terminate immediately upon sending written notice for certain grounds, including if the NRA breached the Services Agreement. Nonetheless, section XI.E. still requires AMc to immediately return the NRA's property even if the termination was based on alleged breaches by the NRA. ***Thus, AMc would have no basis to delay returning the NRA's property until the NRA pays whatever amounts AMc seeks unrelated to the costs associated with accumulating the NRA's property.***

Id. at pp. 1-2 (emphasis added).

92. In the August 9 letter, the NRA repeated its demand that AMc "immediately return all of the NRA's books, records, documents, Confidential Information, and other personal property. As stated before, the NRA will reimburse AMc for its reasonable costs in accordance with Section IX.E. once AMc provides an accounting of those costs." *Id.* at p. 2.

93. The NRA has not breached the Services Agreement. The NRA's property, fixed assets, materials, documents, and confidential information are valuable property of the NRA.

94. AMc has committed material breaches of the Services Agreement. On September 30, 2019, AMc provided a quote of \$1.5 million for the delivery of the NRA property, a facially unreasonable sum that lacked sufficient substantiation to enable the NRA to obtain competitive bids. And it did so in an untimely manner and with reasonable offer in order to hold up the return of the NRA's Property due to other alleged breaches on the part of the NRA. Regardless of whether the NRA has breached the Services Agreement (and it has not), Section XI.E. requires AMc to immediately return

the NRA's Property upon termination of the Services Agreement, including even if the NRA breached the Services Agreement.

I.
FIRST CAUSE OF ACTION
BREACH OF CONTRACT—RECORDS-EXAMINATION CLAUSE—
AND REQUEST FOR SPECIFIC PERFORMANCE

(Against AMc and Mercury)

95. Plaintiff incorporates by reference and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

96. The Services Agreement was a legally enforceable contract. The Records-Examination Clause and the Return Clause were unambiguous.

97. The NRA performed all of its obligations under the Services Agreement, including its obligation to provide reasonable notice pursuant to the Records-Examination Clause.

98. AMc and Mercury breached the Records-Examination Clause of the Services Agreement. Specifically, AMc—acting at all times on behalf of both itself and Mercury, pursuant to the Services Agreement—repeatedly failed or unreasonably refused to permit the NRA to examine specified categories of books and records with respect to matters covered under the Services Agreement.

99. There is no adequate remedy at law for AMc's refusal to permit the NRA to access its own documents. Many of the records sought by the NRA reside uniquely in the possession of AMc and/or Mercury and cannot be acquired on the open market for any sum of money.

100. The nature of the obligation imposed by the Records-Examination Clause makes specific performance equitable and practical because the Court need only order AMc to furnish to the NRA: (i) copies of any AMc-Third Party NRA Contracts, including the North Contract; and (ii) business records, in whatever form they were generated in the ordinary course of AMc's business, which are sufficient to convey the information sought by the NRA as described in Paragraph 60 hereof.

101. Defendants' breaches of the Services Agreement have injured and damaged—and threaten to imminently, irreparably harm—the NRA's legitimate operational interests as a not-for-profit organization. By denying the NRA access to basic information regarding the nature of the services being performed, the putative budgets for these services, and the material terms of third-party contracts for which the NRA is purportedly liable, Defendants have jeopardized the NRA's ability to steward its funds in pursuit of its public mission. Moreover, AMc's continued and baseless refusal to disclose material information relating to the North Contract threatens to impede the NRA's corporate governance. In addition, the NRA has been injured and damaged as it has been forced to expend resources and hire third parties to pursue the Books and Records of AMc.

102. By reason of the foregoing, the NRA requests that this Court order specific performance by Defendants of their obligations pursuant to the Records-Examination Clause of the Services Agreement.

II.

SECOND CAUSE OF ACTION **BREACHES OF CONTRACT—CONFIDENTIALITY PROVISION**

(Against AMc and Mercury)

103. Plaintiff incorporates by reference and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

104. The Services Agreement was a legally enforceable contract. The confidentiality provisions of Section IV of the Services Agreement are unambiguous, and bind "AMc" (defined to include both AMc and Mercury).

105. The NRA has performed all of its obligations under the Services Agreement.

106. AMc breached the provisions of Section IV of the Services Agreement by directly or indirectly disclosing, to third parties, information made known to AMc as a result of AMc's providing Services (as defined under the Services Agreement).

107. AMc also breached the implied covenant of good faith and fair dealing by conspiring with and causing North to issue an extortion threat to the NRA.

108. AMc's breaches have damaged the NRA. Among other things, the NRA has incurred significant reputational damage, and professional fees, as a result of Defendants' bad faith, out-of-context "leaks" to reporters. For example, the NRA's attorneys and public affairs professionals have spent extensive hours fielding inquiries from journalists in an effort to correct the misleading impressions sown by AMc.

109. AMc's breaches have been escalating, and there can be little doubt that if its collaborator of multiple decades continues to maliciously disseminate its confidential information, the NRA will be irreparably harmed. The NRA is entitled to injunctive relief to avert or minimize this irreparable harm.

110. Moreover, AMc's breaches were material. AMc destroyed the purpose of the parties' contract by seeking to destroy the NRA's reputation. Accordingly, the NRA is entitled to damages based on all of its remaining rights to performance under the Services Agreement.²¹

III.

THIRD CAUSE OF ACTION **BREACH OF FIDUCIARY DUTY**

(Against AMc and Mercury)

111. Plaintiff incorporates by reference and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

²¹ See Restatement (Second) of Contracts § 236 (1981).

112. Over the course of more than thirty years of close collaboration (including decades that preceded the Services Agreement), the NRA reposed extensive trust and confidence in both AMc and Mercury as their principal public relations and marketing firm. Defendants therefore incurred a common-law fiduciary duty to put the NRA's interests first when rendering services to the NRA, including pursuant to the Services Agreement.

113. In addition, AMc incurred fiduciary duties to the NRA when it acted as the NRA's agent pursuant to multiple provisions of the Services Agreement. For example, on the NRA's behalf and subject to the NRA's control, AMc entered into contracts and arrangements for the purchase, planning, and placement of media-activities that required AMc to be entrusted with sensitive confidential information pertaining to the NRA.

114. Because it acted in a fiduciary capacity, AMc had a duty of loyalty to the NRA which forbade it from misusing the NRA's confidential information—especially with the malicious intent to damage the NRA.

115. Furthermore, because it acted in a fiduciary capacity, AMc had a duty to disclose all material facts to the NRA regarding the advice and services it provided.

116. AMc breached its fiduciary duties when it conspired to effect an out-of-context, partial disclosure of certain NRA confidential information to (i) a handpicked group of outside directors of the NRA, as well as (ii) the news media.

117. AMc further breached its fiduciary duties of loyalty and fair dealing by conspiring with and causing its employee, North, to relay an extortion threat to the NRA on April 24, 2019.

118. AMc also breached its fiduciary duties of candor and full and complete disclosure by withholding material information from the NRA, including information concerning the performance, including financial performance and the viewership performance of the live broadcasting component,

of NRATV. Furthermore, AMc breached its fiduciary duties of loyalty to the NRA by failing to maintain its digital assets, by having NRA-Dedicated Personnel assigned to NRATV conduct business on other accounts or attempt to generate to new business, and by operating NRATV for its own benefit and at great expense to the NRA.

119. As a direct and proximate result of AMc's breaches, the NRA has been injured and incurred damages, including but not limited to, professional fees expended to redress the consequences of AMc's breaches of fiduciary duties. AMc's breaches have escalated, and there can be little doubt that if its collaborator of multiple decades continues to maliciously disseminate its confidential information, the NRA will be irreparably harmed. The NRA is entitled to injunctive relief to avert or minimize this irreparable harm.

120. The NRA furthermore seeks forfeiture and disgorgement of all amounts wrongfully obtained by Defendants on account of their breaches of their fiduciary duties including, without limitation, all fees paid by the NRA to AMc and Mercury since the date such breaches began.

121. AMc acted willfully and maliciously. Accordingly, the NRA seeks an award of punitive damages. In addition, the NRA has been damaged by the tortious acts alleged herein in an amount to be proven at trial.

IV.
FOURTH CAUSE OF ACTION
DETINUE (CIVIL CLAIM FOR SPECIFIC PERSONAL PROPERTY)
(Against AMc and Mercury)

122. Plaintiff incorporates by reference and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

123. The Services Agreement is a legally enforceable contract. The provisions of Section XI.E. of the Services Agreement are unambiguous and bind “AMc” (defined to include both AMc and Mercury).

124. The NRA seeks possession of its property, fixed assets, materials, documents, and confidential information as defined in the Services Agreement.

125. Both the NRA and AMc have provided notice of the immediate termination of the Services Agreement; thus, the NRA has an immediate right to possession of the NRA’s Property.

126. The NRA’s Property is capable of identification. The NRA’s Property is defined in the Services Agreement and the NRA provided a partial list of its property in AMc’s possession in the NRA’s letter dated July 22, 2019, to AMc.

127. In its July 22 letter, the NRA provided values for some of its fixed assets in AMc’s possession. In addition, the NRA’s confidential information and materials provided to AMc during their contractual relationship have monetary value.

128. AMc is in possession of the NRA’s Property and has wrongfully refused to return the NRA’s Property.

129. Pursuant to Va. Code §§ 8.01-114 and 8.01-534, the NRA will seek pretrial seizure of its personal property wrongfully withheld from it by AMc through petition to this Court. Grounds exist for a pre-trial seizure pursuant to Va. Code § 8.01-534.

130. The NRA seeks possession of its Property and damages resulting from the unjust detention of its Property by AMc. For any NRA Property that cannot be returned due to damage or loss, the NRA seeks the value of that Property.

V.
FIFTH CAUSE OF ACTION
FINANCIAL FRAUD & BREACH OF CONTRACT

(Against AMc and Mercury)

131. Plaintiff incorporates by reference and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

132. AMc has engaged in a widespread scheme to defraud the NRA, thereby causing it harm and putting it (and other AMc clients) at imminent risk of harm. Accordingly, Defendants are liable for their misleading representations and/or non-disclosure of material facts.

133. Beginning in at least 2016 and continuing through 2018, in connection with the “annual budgeting process,” described by AMc,²² William Winkler and Melanie Montgomery, as well as former CEO Angus McQueen represented to the NRA on multiple occasions that appropriate back-up documentation was retained by AMc for purposes of justifying and substantiating their billing statements and that such documentation could be audited at the NRA’s request. Defendants likewise represented that their record-keeping was accurate.

134. These representations were false when made, with a specific intent to induce the NRA to maintain or increase the annual budget for AMc. As the NRA later discovered, for years no one at AMc kept or maintained any systematic, much less reasonable, documentation that would justify or support the accuracy of the sums of money AMc represented it was owed in the billing statements it sent to the NRA. In addition, absent such record-keeping, a complete audit could not occur. For these reasons, AMc’s record-keeping was not accurate, contrary to AMc’s representations.

²² *National Rifle Association of America, et al. v. Ackerman McQueen, et al.*, Case 3:19-cv-02074-G, ECF No. 12 at p. 23 ¶ 12 (N.D. Tex.).

135. AMc employees McQueen, Winkler, and Montgomery held senior executive positions at AMc and, as AMc has admitted, were specifically responsible for “budgetary compliance, invoicing, and payments” to the NRA, according to AMc.²³ Accordingly, there is more than ample reason to believe that they must have known of, or consciously disregarded, the gross failure to maintain reasonable backup and supporting document in connection with AMc’s billing practices.

136. These representations were material and reasonably and justifiably relied upon insofar as the NRA would never have agreed to a budget, much less the same or a greater budget, had the it known the complete truth.

137. In addition, AMc failed to disclose certain facts to the NRA during the “annual budgeting process.” In particular, they knowingly failed to disclose the fact that AMc:

- Expenses were billed to the NRA for time logged by employees supposedly “dedicated” the NRA account for work those employees performed on non-NRA projects.
- The failure to commit any “fair market analysis” as required by the Services Agreement, and, if they did, the analysis lacked adequate justification or substantiation
- The use of “special projects” without obtaining NRA approval and using them to hide various costs, such as overruns
- Charging out-of-pocket expenses charged to the NRA when the expenses were personal in nature (e.g., private airplanes and luxury cars).

138. AMc (including their employees) had a duty to disclose these because of the principal-agency relationship language present in the Services Agreement, and AMc itself on account of the

²³ *Id.*

longstanding relationship of trust and confidence in which the NRA relied on AMc that was separate and apart from the Services Agreement and (2) they had the obligation not to tell “half-truths.”

139. Defendants knew that the NRA was ignorant of these facts and did not have an equal opportunity to discover the facts.

140. Winkler and Montgomery held senior executive positions at AMc and were specifically responsible for “budgetary compliance, invoicing, and payments” with respect to the NRA account. Therefore, there is more than a reasonable basis to believe that they knew about, consciously disregarded, the practice of overbilling with regards to personnel. Accordingly, the false representations were made knowingly or recklessly and without knowledge of the truth. For similar reasons, they knew that the information that they did not disclose to the NRA and were deliberately silent when they had a duty to speak.

141. The misrepresentations and fraudulent omission were allocated to the NRA and charged to the NRA account, facts that AMc knew, especially Winkler and Montgomery.

142. These false representations and/or fraudulent non-disclosures were material and actually, reasonably, and justifiably relied on upon the NRA. As a result, the NRA has suffered injury and damages, in an amount to be proven at trial. Had it known the complete truth, the NRA would never have agreed to an annual budget, much less the same or a greater budget, would have terminated AMc as its agent, and would have ceased conducting business with the agency.

143. For the reasons discussed above, AMc also breached the Services Agreement through overbilling the NRA and other improper financial practices.

144. The NRA has been damaged by the tortious acts alleged herein in an amount to be proven at trial.

VI.
SIXTH CAUSE OF ACTION
NRATV FRAUD

(Against AMc and Mercury)

145. Plaintiff incorporates by reference and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

146. Beginning in at least 2016 and continuing through 2019 AMc made multiple fraudulent statements and/or failed to disclose material information in connection with NRATV. Among other things alleged herein, in early 2016 Mr. Angus McQueen, the CEO of AMc McQueen, made multiple representations to the NRA that his proposal of live-broadcasting platform for digital content “a good opportunity to generate revenue” and that developing and launching such a platform would “pay for itself,” including through paid commercial sponsorships for the live programs.

147. In at least 2017, AMc began manipulating viewership statistics to create a false perception that NRATV was performing well financially, when in fact it was not. At the thirteen specific meetings identified above May 13, 2019 and late October 2018, whether verbally or by Power Point presentation, AMc employee’s like Nader Tavanger and Melanie Montgomery touted NRATV’s performance and represented that the platform had certain valuations and generated millions of engagements and views. These statements were made for the purpose of inducing the NRA to expand its investment in NRATV, to the benefit of AMc. These misstatements were made for the purpose of inducing the NRA to expand its investment in NRATV, to the benefit AMc.

148. These representations and omissions were false and misleading for multiple reasons. First, the statements about the NRATV digital platform’s promised success and revenue generator because in reality NRATV did not generate revenue and was never going to pay for itself in its current format, as demonstrated by the dismal viewership and sponsorship numbers it actually generated,

consistent with the previous failure of a similar project with The American Clean Skies Foundation, a fact that AMc did not disclose to the NRA.

149. Second, to cover up the initial lie, AMc made repeated representations that the NRATV platform generated millions of viewers and it touted the platform's financial performance and valuation misled the NRA into believing NRATV platform generated millions of viewers in combination with robust financial performance and valuations were, contrary to the rosy picture presented, in fact based on out-of-context statistics predicated on, among other things, aggregate viewership numbers that failed to account the number of actual unique viewers, one of the key benchmarks in digital advertising and content. At no point did Defendants disclose that their purported viewership numbers were not based on actual data of the number of unique and genuine viewers.

150. AMc knew about failure of the similar digital platform that AMc had developed and operated for The American Clean Skies Foundation and, therefore, also knew that embarking upon a similar venture for the NRA would not present a good opportunity for revenue generation or pay for itself. AMc understood that their development, creation, and subsequent viewership analytics did not accurately present NRATV's viewership because they did not use unique viewers as the key metric. Defendants likewise understood such data is readily available from third-party vendors given that Defendants hold themselves out as ostensible experts in digital marketing and advertising. Therefore, there is more than a reasonable basis to believe that Defendants knew, or consciously disregarded, the truth about these matters. Accordingly, the false representations were made knowingly or recklessly and without knowledge of the truth.

151. AMc (including their employees) had a duty to disclose these because of the principal-agency relationship language present in the Services Agreement, and AMc itself on account of the

longstanding relationship of trust and confidence in which the NRA relied on AMc that was separate and apart from the Services Agreement and they had the obligation not to tell “half-truths.”

152. Defendants knew that the NRA was unaware of these facts and did not have an equal opportunity to discovery the facts.

153. The false representations and/or fraudulent non-disclosures have caused the NRA to suffer injury and damage, in an amount to be proven at trial. Had it known the complete truth about NRATV, the NRA would never have invested a dollar in the project, and would have terminated AMc as its agent, and ceased conducting business with the agency. For these reasons, these representations and/or non-disclosures were material and were actually, reasonably, and justifiably relied upon by the NRA.

VII.
SEVENTH CAUSE OF ACTION
CONSPIRACY

(Against AMc and Mercury)

154. AMc, and the senior officers of the firm identified here—was a member of a combination or conspiracy involving two or more persons, one of whom, Dan Boren, was an individual not employed by Defendants

155. The object of the combination or conspiracy was to commit the fraudulent behavior, the attempts to de-railing the resulting NRA investigation, and the attempts to extort Mr. LaPierre and the NRA alleged herein. The members of the combination or conspiracy had a meeting of the minds concerning the object of the combination or conspiracy or the course action.

156. One of the members committed an unlawful and overt act to further the object or course of action, including but not limited to the AMc’s and its executives’ breaches of the Services

Agreement, the fraudulent acts described above, and the breaches of fiduciary duty described above too.

157. The NRA has suffered injury and sustained damages as a result of the conspiracy, in an amount to be proven at trial.

VIII.
EIGHTH CAUSE OF ACTION
ALTERNATIVE CLAIM FOR CONVERSION

(Against AMc and Mercury)

158. Plaintiff incorporates by reference and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

159. The NRA has a right to immediate possession of its Property.

160. AMc has wrongfully exercised or assumed authority over the Property, depriving the NRA of possession.

161. The NRA has repeatedly demanded that AMc return its Property. AMc has refused the NRA's requests.

162. The NRA had a right to immediate possession of its Property as of AMc's notice of termination of the Services Agreement on May 29, 2019. *See Ex. A.*

163. The NRA seeks damages for AMc's conversion of its Property in the amount of money the property was worth at the time the conversion began.

IX.
NINTH CAUSE OF ACTION
ALTERNATIVE CLAIM FOR BREACH OF CONTRACT

(Against AMc and Mercury)

164. Plaintiff incorporates by reference and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

165. The Services Agreement is a legally enforceable contract.
166. The NRA has performed all of its obligations under the Services Agreement.
167. AMc has breached the provisions of Section XI.E. of the Services Agreement by failing to provide the immediate return of the NRA's Property in a reasonable manner by holding the NRA's property hostage quoting outrageous sums of money for the property's return.
168. AMc's breaches have damaged the NRA.
169. Moreover, AMc's breaches are material. Accordingly, the NRA is entitled to damages based on all of its remaining rights to performance under the Services Agreement.²⁴

X.
DEMAND FOR JURY TRIAL

170. Plaintiff hereby demands a trial by jury on all issues of fact to which it is entitled to a jury trial in this cause.

XI.
REQUEST FOR RELIEF

WHEREFORE Plaintiff requests judgment in its favor against AMc:

1. A judgment against each of AMc and Mercury for breach of contract;
2. An award of specific performance to the NRA requiring that:
 - a. AMc furnish copies of all AMc-Third Party NRA Contracts to the NRA within three (3) business days of the entry of such order; and
 - b. Within ten (10) business days of the entry of such order, AMc furnish to the NRA:
 - i. Copies of annual budgets for the years 2016-2018, which AMc alleges were approved by the NRA and were previously provided to the NRA's forensic accountants;

²⁴ See Restatement (Second) of Contracts § 236 (1981).


- ii. A list of all current NRA-Dedicated Personnel (as defined in the NRA's letter correspondence) and, for each such employee, copies of business records sufficient to show the amount or percentage of the employee's time that was dedicated to NRA projects during the period from January 1, 2018, to present;
 - iii. Copies business of records sufficient to show the extent of any costs invoiced to the NRA or the NRA Foundation, during the period from January 1, 2018, to April 1, 2019, which costs were incurred by reason of:
 - 1. The production of the NRATV documentary series "American Heroes;" or
 - 2. Cash or non-cash compensation to Col. North or North-related Staff; or
 - 3. Office space of other perquisites provided to Col. North or North-related Staff; and
 - 4. Whether each item was billed specifically to the NRA, the NRA Foundation, or both entities; and
 - iv. Copies of business records (if any) reflecting Col. North's availability to film American Heroes, any modifications to the American Heroes production schedule during the period from May 2018 to present, and the reasons for those modifications; and
 - v. All materials outstanding pursuant to the Return Clause; and
- 3. An award of judgment in its favor against AMc:
 - a. Ordering that the NRA has proven its ownership rights and that AMc shall return the NRA's Property immediately;
 - b. Granting a pre-trial seizure of NRA Property in the possession of AMc;
 - c. Ordering the sheriff or other proper officer to seize NRA Property and deliver the same to the NRA *pendente lite* under circumstances deemed appropriate;
 - d. Granting NRA preliminary and permanent injunctive relief;
 - e. Alternatively, granting NRA compensatory damages for any NRA Property converted by AMc;

- f. Alternatively, granting NRA specific performance of the return of the NRA's Property or compensatory damages for a material, total breach of contract;
4. Granting the NRA preliminary and permanent injunctive relief, as well as other equitable relief deemed appropriate.
5. Awarding the NRA compensatory damages for breach of contract, breach of fiduciary duty, and fraud totaling in excess of \$75 million;
6. Awarding disgorgement of amounts paid by the NRA to AMc during the course of AMc's breaches of its fiduciary duties;
7. Awarding it punitive or exemplary damages; and
8. Awarding Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted,

NATIONAL RIFLE ASSOCIATION
OF AMERICA

By counsel



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*Counsel for Plaintiff National Rifle Association of
America*

SERVICES AGREEMENT

THIS AGREEMENT, made this 30th day of April, 2017, by and between the National Rifle Association of America (hereinafter referred to as "**NRA**"). A New York Not-For-Profit Corporation, located at 11250 Waples Mill Road, Fairfax, Virginia 22030, and Ackerman McQueen, Inc., an Oklahoma corporation, and its wholly owned subsidiary, Mercury Group Inc., an Oklahoma corporation, (hereinafter collectively referred to as "**AMc**"), whose principal office is located in Oklahoma at 1100 The Tower, 1601 N.W. Expressway, Oklahoma City, Oklahoma 73118.

W I T N E S S E T H :

WHEREAS, AMc is in the business of providing comprehensive communications services including public relations, crisis management, strategic marketing, advertising and creative, as well as owned media and internet services, and warrants and represents that it possesses the capability, necessary personnel, political strength, equipment and other related items to perform such services: and,

WHEREAS, NRA is a Membership Organization and desires to retain AMc as a nonexclusive source for services described herein for NRA upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereto agree as follows:

I. SERVICES

A. Public Relations/Crisis Management /Strategic Marketing Services

Services include a combination of generating earned media, responsive public relations, crisis management and strategic thinking to promote a positive image of the NRA as described below:

- Public relations advice and counsel, including crisis management.
- Ongoing media relations -- solicitation and placement of features in national, regional and local media; liaison with print and broadcast news media on a daily basis for unsolicited inquiries; ongoing media training for NRA officials; Editorial Board meetings; features for outdoor publications.
- Specialized public relations writing services (news releases, columns, editorials), and distribution of same as required (e.g. via wire service or individual contact).
- Research and information retrieval as necessary for NRA issues management at NRA's request and approval.
- Coordination, scheduling and on-site assistance when necessary for NRA officials' speeches and personal appearances.

- Coordination with internal NRA public relations staff in the Executive Office, General Operations and Institute for Legislative Action.
- Development of proactive earned media in national and regional media as it relates to NRA officials' appearances at special events (i.e. National Gun Shows, YHEC, Annual Meetings, etc.).
- Coordination and scheduling appearances for NRA officials and commentators; including on-site assistance (where necessary).
- Develop, produce, and place op-ed pieces for national and regional media coinciding with Special Events and NRA Officials' appearances.
- Advise and counsel with NRA Officials on strategic issues to provoke public debate and frame NRA's point-of-view for the general public.
- Speechwriting services (pivotal speeches for major events are discussed in "Advertising/Creative Services" Section).
- Management of Talent/Spokespersons for NRATV.
- Production and staffing for NRATV.

B. Advertising/Creative Services

The services described below (with the exception of "Media Planning and Placement" which is addressed separately as a subcategory of this Section) will be provided to NRA on a project ("**Job**") basis based on the fair market value of the work as determined by NRA and AMc. When reasonable time is available, cost estimates will be submitted for approval by NRA prior to the initiation of the Job.

- Speechwriting services for NRA dignitaries to be delivered at major events (includes background research, interviews with NRA Officials/Speaker, drafts and rehearsals if appropriate).
- Conceive, copywrite, design and produce local, regional, and national print and broadcast advertising and other appropriate forms of communication to present NRA's message.
- Original photography services and film processing (on location and/or in AMc's photo studio).
- Audio/Visual and Event Management services (i.e. Annual Meetings).
- Video Taping, Editing and Production.
- Music composition and arrangement and audio production.
- Primary Research services (quantitative and qualitative).

C. Media Planning and Placement Services

Detail of AMc's compensation for Media Services are provided in the "Compensation" Section. Services rendered for such are:

- With NRA's approval, plan and order by written contract or insertion order the print space, radio and television time, or other media to be used for advertising, always endeavoring to secure the best available rates. AMc shall remain solely liable for payment, to the extent NRA has paid AMc.
- Incorporate the advertising in the required form and forward it to media with proper instructions for fulfillment of the contract or insertion order.
- Diligently check and verify broadcasts, insertions, displays, or other means used to carry the message to ensure proper fulfillment of all media purchases made by AMc on NRA's behalf.
- For direct response paid media advertising (i.e. Infomercial), provide ongoing analysis and ROI to determine most effective media markets, dayparts, and stations on a time sensitive basis for redirection or concentration of funds as evaluation indicates.
- Carefully audit invoices and make timely payment to media and suppliers for space and time purchased by AMc on NRA's behalf.

D. Owned Media Services

- Full-time online broadcasting services for NRATV.
- Support services for NRATV provided by AMc Interactive include daily creation of graphics, flash animation for daily stories and synchronization to audio/video.
- Ongoing technical support service, unification, and advice for NRAHQ site (e.g. Answer to questions on service provider issues and simple "how-tos"). Application development or re-working requiring complex execution to be estimated on a project basis for NRA approval in advance of work performance.
- Full time marketing services to promote NRATV as well as on-site promotion of NRA programs, activities, and current events.
- Production of America's First Freedom Magazine.

E. Digital Systems Operations Support

- Technology consulting including third party solutions, cloud consulting and reviewing IS efforts.
- Reliability engineering and monitoring including performance monitoring, emergency response and overall efficiency.

- Resource and capacity planning for large scale hardware and software migration initiatives.
- System and database administration, maintenance, updating, monitoring and troubleshooting.

II. COMPENSATION

A. Public Relations/Political Strategy/Strategic Marketing Services

1. During the term of this Agreement, for ongoing Public Relations, Political Strategy and Strategic Marketing, NRA will pay AMc a fee as mutually agreed upon each year.

B. Advertising/Creative/Media Planning and Placement Services

1. During the term of this Agreement, for ongoing study of NRA's business, including account service, creative development and other support functions in connection with the day-to-day administration and operation of NRA's account, NRA will pay AMc 15% commission of the gross media expenditure, or a 17.65% mark-up of the net media billing, for all media researched, planned, placed and administered by AMc on NRA's behalf.
2. For collateral advertising services and products purchased on NRA's behalf from external suppliers (such as separations, engravings, typography, printing, etc.), by a 15% commission if offered, or a 17.65% mark-up of net billing. Estimates of the cost of external services and products are prepared, when reasonable time is available, for approval in advance and are subject to no more than a +/-10% variance provided AMc is authorized to proceed with production within thirty (30) days of the date the estimate is presented. Client changes in job specifications usually will result in the preparation and submission of a revised estimate; however, NRA agrees to assume financial responsibility for all changes specified by NRA then executed by AMc with NRA's knowledge.
3. For art concepts, design layout, photography and film processing, copywriting, music composition and arrangement, audio and video production, etc., by cost quotations submitted for approval in advance, when reasonable time is available, or at the comprehensive art, storyboard, demo music, etc. stage. These quotations are based on the fair market value of the work as determined by AMc and take into consideration, among other things, the hourly rates of the personnel assigned to the project and the required to complete the job. Written estimates are subject to no more than a +/- 10% variance provided they are approved by NRA and AMc is expressly authorized to proceed with production within thirty (30) days of the date the estimate is presented. Client changes in job specifications will

usually result in a revised estimate; however, NRA agrees to assume financial responsibility for all changes specified by NRA, then executed by AMc with NRA's knowledge.

C. Owned Media and Internet Services

During the term of this agreement, AMc will provide owned media and online broadcasting and website management, hosting and creation of NRATV, as well as full time marketing services. NRA will pay AMc a fee as mutually agreed upon each year.

D. Digital Systems Operations Support

During the term of this agreement, AMc will provide digital systems operations support. NRA will pay AMc a fee as mutually agreed upon each year.

E. Other Projects

If AMc undertakes, at NRA's request, additional or special assignments, not included within the services described in this project, the charges made by AMc will be agreed-upon in advance whenever possible. If no specific agreement was made, AMc will charge NRA a fair market price for the work performed.

III. BILLING AND PAYMENT

- A. Mailing and express charges, long distance telephone calls, photocopies, deliveries, sales taxes and reasonable out-of-town travel including transportation, meals and lodging, etc. on NRA's express behalf, shall be billed at AMc's cost. All out of town travel expenses shall require prior written approval in accordance with written procedures established by the NRA Executive Vice President or his designee. Payment of travel expenses not approved in advance may result in denial of reimbursement. Expenses not listed above shall be considered to be normal business expenses of AMc and not billable to NRA unless specifically authorized in writing by the NRA Executive Vice president or his designee.
- B. All sales, use and similar taxes and all import, export and foreign taxes imposed by all applicable governmental authorities shall be billed to NRA at the amount imposed by such governmental authorities. AMc shall not be obligated to contest the applicability of any such taxes to the transactions performed pursuant to this Services Agreement.
- C. Fees shall be billed on or before the 5th of each month. This billing shall include costs specified in paragraph III A.
- D. Special assignments not included in this Agreement which cannot reasonably be included under the monthly fee must be approved in accordance with written procedures established by the NRA Executive Vice President or his designee, and the charges made by AMc shall be agreed upon in advance, where reasonable.

otherwise such charges shall be not greater than the usual and customary charges for such services or expenses in the industry.

- E. All sums payable to AMc under this Services Agreement shall be payable at AMc's corporate headquarters in Oklahoma City, Oklahoma within 30 days of the invoice date. Any amounts not received by AMc within 60 days from the date of the invoice shall bear interest at the rate of 1.0% per month from the date of the invoice until paid. NRA shall notify AMc of any questions concerning any invoices within 10 business days after receipt.

IV. CONFIDENTIALITY

A. AMc

1. AMc shall not disclose, directly or indirectly, to any third party any NRA membership data or mailing lists, any materials or information relating thereto, or any other data, materials or information coming to the knowledge of AMc, supplied to AMc by NRA, or otherwise made known to AMc as a result of AMc's providing Services (hereinafter collectively, referred to as the "**Confidential Information**"), without the prior express written permission of NRA. This Services Agreement shall control AMc's providing fulfillment services to NRA.
 2. AMc shall not make or cause to have made any copies of any NRA Confidential Information without the prior express written authorization of NRA.
 3. AMc may use such Confidential Information only for the limited purpose of providing its Services to NRA.
 4. AMc may disclose such Confidential Information to AMc's employees but only to the extent necessary to provide its Services. AMc warrants and agrees to prevent disclosure of Confidential Information by its employees, agents, successors, assigns and subcontractors.
- B. AMc, its employees and agents, shall comply with any and all security arrangements imposed by NRA respecting access to Confidential Information.
 - C. AMc acknowledges NRA's exclusive right, title and interest in the Confidential Information, and shall not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of such right, title or interest.
 - D. AMc shall cease and desist from any and all use of the Confidential Information, and AMc shall promptly return to NRA, in a manner satisfactory to NRA, any and all Confidential Information, upon the earlier to occur of the following: the completion or termination of the Services Agreement.

V. INDEMNIFICATION/INSURANCE

A. AMc

1. AMc agrees to indemnify, defend and hold harmless NRA from and against any loss, liability and expenses including attorney's fees which NRA shall become obligated to pay in respect to: (a) materials prepared by AMc on behalf of NRA which gives rise to any claims pertaining to libel, slander, defamation, infringement of copyright, title or slogan, or privacy or invasion of rights of privacy; or (b) the public relations services and related activities of any person engaged by AMc as a spokesperson in connection with NRA and its purposes, objectives and activities ("Spokesperson") pursuant to the direction or supervision of AMc. Insurance coverage for the foregoing indemnification obligations shall be maintained by AMc.
2. NRA agrees to give AMc prompt notice of such claims and to permit AMc, through AMc's insurance carrier and/or counsel of AMc's choice, to control the defense or settlement thereof. However, NRA reserves the right to participate in the defense of any such claim through NRA's own counsel and at NRA's own expense.
3. AMc shall take reasonable precautions to safeguard NRA's property entrusted to AMc's custody or control, but in the absence of negligence on AMc's part or willful disregard of NRA's property rights, AMc shall not be held responsible for any loss, damage, destruction, or unauthorized use by others of any such property.
4. AMc shall not be liable to NRA by reason of default of suppliers of materials and services, owners of media, or other persons not AMc employees or contractors unless supplier(s) is under control of AMc or AMc should have reasonably anticipated default.

B. NRA

1. NRA agrees to indemnify, defend and hold harmless AMc, and its directors, officers, employees, agents, contractors and representatives (collectively, the "AMc Indemnified Parties," such directors, officers, employees, agents, contractors and representatives being hereby deemed third party beneficiaries of this indemnity provision), from and against any and all claims, demands, causes of action, suits, liabilities, losses, damages settlements, judgments, and expenses (including attorney's fees), arising from (1) any data, materials, or service performance claims furnished to any AMc Indemnified Party by NRA, or approved by NRA, from which a AMc Indemnified Party prepared any publicity materials or public relations materials, or which were used by a AMc Indemnified Party in the production of advertising which was approved by NRA; (2) any claim, action or proceeding by any person(s), entity(ies), the United States of

America, any state(s), county(ies), or municipality(ies), or any department, agency, board, bureau, commission, attorney general, or other instrumentality(ies) or political subdivision(s) of any of the foregoing, seeking (a) damages (whether actual, exemplary, or both), reimbursement or other compensation for any alleged injury(ies), death(s), or private or public losses, damages or costs related to one or more incidents of violence committed with firearms, or (b) an injunction or other equitable relief with respect to the activities of a AMc Indemnified Party performed on behalf of NRA pursuant to this Agreement or otherwise requested or approved by NRA; or (3) the public relations services and related activities of any Spokesperson pursuant to the direction or supervision of NRA. Insurance coverage for the foregoing indemnification obligations shall be maintained by NRA.

2. AMc agrees to give NRA prompt notice of any matter covered by NRA's indemnity set forth above and to permit NRA, through NRA's insurance carrier and/or counsel of NRA's choice, to control the defense or settlement thereof. However, AMc and the other AMc Indemnified Parties reserve the right to participate in the defense of any such claim through the AMc Indemnified Parties' own counsel and at the AMc Indemnified Parties' own expense.

C. NRA shall reserve the right, in NRA's best interest, to modify, reject, cancel, or stop any and all plans, schedule, and work in progress. In such event AMc shall immediately take proper and responsible action to carry out such instruction; NRA, however, agrees to assume AMc's liability for agreed upon commitments and to reimburse AMc for losses AMc may derive therefrom, and to pay AMc for all internal and external expenses incurred on NRA's behalf with NRA's authorization and to pay AMc charges relating thereto in accordance with the provisions of this Services Agreement.

VI. OWNERSHIP OF PRODUCTS

All creative works developed by AMc in fulfilling its obligations under this Services Agreement shall constitute works made for hire, and shall be the property of NRA. In the event that such works should not be "works made for hire," as such works are defined at 17 U.S.C. § 101, then AMc transfers and assigns to NRA the ownership of all copyright in such works. In the event that AMc should employ a subcontractor, AMc shall arrange for the transfer of such intellectual property to NRA. All other, and further, intellectual property and mailing lists, under any definition, whether common law or statutory, created or developed by AMc in fulfilling its obligations under this Services Agreement, are NRA's sole and exclusive property, and AMc does hereby assign all right, title and interest in same to NRA to the extent that AMc has such rights to assign and transfer. In no event shall AMc be deemed to be assigning or transferring greater rights than it has acquired from any supplier or contractor from who it may have acquired certain elements of the material prepared for NRA.

VII. NO COMPETITION

For the duration of this Service Agreement, AMc shall not represent any other entity in public relations services directly competitive with NRA without NRA's prior written approval.

VIII. EXAMINATION OF RECORDS

During the term of this Services Agreement, AMc authorizes NRA, upon reasonable notice, to examine AMc and Mercury's files, books, and records, with respect to matters covered under this Services Agreement.

IX. AUTHORIZED CONTACTS

AMc is authorized to act upon written communications received from the NRA Executive Vice President or his designee. He or his designee are the only persons within NRA who have the actual authority to issue such communications.

X. MISCELLANEOUS

- A. Severability. If any provision of this Services Agreement shall be held to be void or unenforceable for any reason, the remaining terms and provisions hereof shall not be affected thereby.
- B. Binding Effect; Agents. The provisions of this Services Agreement shall inure to the benefit of and bind the heirs, legal representatives, successors and assigns of the parties hereto. In performing the Services described above and in taking any action necessarily incident thereto, AMc may utilize the services of AMc's employees and/or such agents or independent contractors approved by NRA as AMc deems appropriate.
- C. Section Headings. Section headings contained in this Services Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation thereof.
- D. Integrated Agreement. This Services Agreement, together with any Exhibits hereto, constitute the entire agreement between NRA and AMc relating to the matters covered by this Services Agreement at the time of its signing. This Services Agreement supersedes all prior agreements, including letter agreements and memoranda of understanding.
- E. Survival. The terms, covenants, and conditions of Section IV and Section V shall survive the termination or expiration of this Services Agreement.

XI. TERMINATION

- A. This Services Agreement shall become effective upon the execution hereof.

- B. This Services Agreement shall continue in full force and effect for an initial period of eight (8) months ending 12-31-2017. After the initial period of eight (8) months, NRA or AMc may at their sole and exclusive discretion, terminate this Services Agreement, without any cause whatsoever, upon ninety (90) days written notice. Without such written notice, it is the intention of the parties that the Services Agreement will automatically renew. Any written notice to cancel this Contract shall be effective ninety (90) days from the date the Party giving notice to cancel tenders such written notice to the other Party. In the event of said termination, all further obligations of each party to perform shall cease, except as otherwise specifically provided in this Services Agreement. In said case NRA shall, pursuant to Section III, reimburse AMc for expenses incurred on NRA's behalf up to the date of termination.
- C. This Services Agreement may be terminated by NRA immediately upon written notice if: (1) AMc fails to diligently and in good faith perform any of its obligations contemplated hereunder; (2) AMc breaches any term, promise or covenant hereunder; (3) AMc files for bankruptcy; (4) there occurs any assignment for the benefit of creditors or the placement of any of AMc's assets in the hands of a trustee or receiver; (5) AMc becomes insolvent or bankrupt; (6) AMc is dissolved. If NRA so terminates this Services Agreement, NRA shall have no obligation to make payments except that NRA shall, pursuant to Section III, reimburse AMc for expenses incurred up to the date of said notice of termination.
- D. This Services Agreement may be terminated by AMc immediately upon written notice if (1) NRA fails to diligently and in good faith perform any of its obligations contemplated hereunder; (2) NRA breaches any term, promise or covenant hereunder; (3) NRA files for bankruptcy; (4) there occurs any assignment for the benefit of creditors or the placement of any of NRA's assets in the hands of a trustee or receiver; (5) NRA becomes insolvent or bankrupt; or. (6) NRA is dissolved.
- E. Upon the expiration or termination of this Services Agreement, AMc shall immediately return to NRA, to such place and in such manner as NRA may specify, any and all of NRA's property, materials, documents, Confidential Information, etc., that may be in AMc's possession. All charges for accumulating said materials shall be approved and paid in advance of receipt by the NRA. For all non-cancellable contracts entered into between AMc and third parties for the benefit of the NRA (herein "**AMc-Third Party NRA Contracts**"). the NRA agrees to pay AMc upon such expiration or termination the balance of the compensation payable under such AMc-Third Party NRA Contracts as of the date of expiration or termination so that AMc can fulfill its obligations under said Contracts after expiration or termination. If any AMc-Third Party NRA Contract(s) are cancelable upon payment of a fee and the NRA requests that such Contract(s) be cancelled, the NRA agrees to pay AMc the cancellation fees payable under such Contracts as a condition of AMc cancelling such Contract(s).
- F. In consideration of the dedication of a substantial number of personnel and resources to provide the services under this Agreement (and the necessity to

maintain such staffing levels and resource allocations to enable AMc to continue to provide such services upon any renewals hereof), the NRA agrees to pay AMc a fair and equitable termination fee to compensate it for the inevitable severances and other reasonable costs incurred in conjunction with such expiration or termination. Such termination fees shall be negotiated in good faith by the parties and paid to AMc no later than the last day of this Agreement.

- G. The terms, covenants, and conditions of Section IV and Section V shall survive the termination or expiration of this Services Agreement.

XII. GOVERNING LAW AND CONSENT TO JURISDICTION, VENUE, AND SERVICE

- A. This Services Agreement and any disputes arising thereunder shall be governed by and construed solely under the laws of the Commonwealth of Virginia, or, if applicable by federal law.
- B. AMc consents and agrees that all legal proceedings relating to the subject matter of this Services Agreement shall be maintained exclusively in courts sitting within the City of Alexandria or the County of Fairfax, Commonwealth of Virginia, and AMc hereby consents and agrees that jurisdiction and venue for such proceedings shall lie exclusively with such courts. AMc furthermore consents to the exercise of personal jurisdiction by said courts over AMc.

IN WITNESS WHEREOF, and intending to be legally bound hereby, and further intending to bind their employees, agents, successors and assigns, the parties have executed this Services Agreement the day and date above written.

National Rifle Association (NRA)



Allan D. Cors, President
Print Name/Title

Ackerman McQueen, Inc.



Melanie Montgomery
Print Name/Title
EVP