

VIRGINIA :

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

NATIONAL RIFLE ASSOCIATION  
OF AMERICA,

Plaintiff,

v.

ACKERMAN MCQUEEN, INC.

And

MERCURY GROUP, INC.

Defendants.

Consolidated Case Nos.

CL19001757;

CL19002067;

CL19002886.

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**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO  
DEFENDANTS' MOTION TO COMPEL THE PRODUCTION OF NRA DOCUMENTS**

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Pursuant to Virginia Supreme Court Rule 4:12(a), Plaintiff the National Rifle Association of America (the “NRA”), by and through its undersigned counsel, hereby files this Memorandum of Law in Opposition to Defendants’ Motion to Compel the Production of NRA Documents against Defendants Ackerman McQueen, Inc. (“Ackerman”) and Mercury Group, Inc. (“Mercury” and, together with Ackerman, “AMc”).

**I.**  
**BACKGROUND**

Discovery in this matter has been challenging. Not due to the NRA’s document production efforts, but because of AMc’s deficient productions and refusal to cooperate with discovery since the NRA first served its requests for discovery over seven (7) months ago. To illustrate, the NRA has produced over 28,000 documents to AMc that are responsive to many of AMc’s Requests for Production. The NRA continues to process for review for responsiveness and privilege over ***thirteen (13) million documents*** it has collected from NRA employees, officers and directors in this case. This herculean task was undertaken to ensure that the NRA made reasonably diligent efforts to capture all potentially responsive documents, in accordance with the NRA’s legal obligations. The NRA’s will produce its next set, Volume 14, within weeks.

The same cannot be said of AMc’s efforts. While, as of the date of this filing, AMc has also produced approximately 28,000 documents, there are serious issues with the several productions. Many of the documents still lack requisite metadata, despite AMc’s obligation to provide it, many documents were illegible and incomplete, and the majority are only tangentially responsive to the NRA’s requests. Moreover, AMc has *still* only produced documents from seven (7) custodians, and only from their official AMc email accounts and not from personal email accounts or devices from which the NRA understands AMc employees conducted business or conduct relevant to this case. AMc has not produced *any* documents from key individuals such as

CEO Revan McQueen, Executive Vice President Melanie Montgomery, and Chief Financial Officer William Winkler. As a result, the NRA has repeatedly reiterated its concerns about the pace and manner of AMc's document production. Thus, while the number of produced documents is not insignificant, the utility of AMc's productions is deficient and prejudicial to the NRA's ability to litigate its case.

Nevertheless, despite AMc's ongoing failure to comply with its discovery obligations, AMc now claims that the NRA's production is lacking. However, as further detailed below, most of the categories of documents that AMc claims the NRA's productions are supposedly lacking or insufficient are unsubstantiated. Indeed, the NRA has produced numerous documents in response to the specified Requests for Production that AMc is now seeking to compel production for. These undisputed facts reveal that AMc has not actually reviewed many, if not substantially all, of the documents for which the NRA has expended time and expense to collect, process, sort, review, and produce.

In addition, for the few categories of Requests where the NRA has declined to produce documents, the NRA properly objected based on the attorney-client privilege or the work product doctrine. For example, AMc seeks to move to compel production of communications between Brewer Attorneys & Counselors (the "Brewer firm") and its client, the NRA. Obviously, most if not all of these documents are protected from discovery, and are moreover irrelevant and would not reasonably lead to the discovery of admissible evidence. Accordingly, the NRA stands on its objections.

In sum, the NRA has complied with its discovery obligations and done so in a good faith manner given the substantial volume of documents in this case. Just as AMc claims it is supposedly

doing at the moment,<sup>1</sup> the NRA continues to collect, process, sort, review and produce documents that are responsive to AMc's requests and will finalize the entirety of its document production before the deadline for the close of discovery. For all these reasons, the Court should deny Defendants' Motion to Compel.

## II.

### ARGUMENT

#### **A. The NRA Has Produced Thousands Of Documents In Response To AMc's Requests for Production of Documents.**

The parties' discovery is governed by Virginia Supreme Court Rule 4:1(b), which defines the scope of discovery as follows:

Parties may obtain discovery regarding any matter, not privileged, *which is relevant* to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party [...].

(emphasis added). Requests for production may ask for, "any designated tangible things which constitute or contain matters within the scope of Rule 4:1(b)" above. Va. Sup. Ct. R. 4:9(a). Ultimately, "the grant or denial of discovery requests is within the discretion of the circuit court." *Rakes v. Fulcher*, 210 Va. 542, 546 (1970).

The NRA has produced over 28,000 documents that are responsive to AMc's Requests. As further discussed below, within these productions, the NRA has provided certain documents regarding the leaks of confidential NRA information, Wayne LaPierre's handwritten notes, Gayle Stanford's documents, and more, despite AMc's assertions to the contrary.

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<sup>1</sup> Defendant's Memorandum of Law in Support of Motion to Compel Production of NRA Documents, page 2.

1. **The NRA Produced An Initial Set Of Mr. Wayne LaPierre's Boxes Full of Handwritten Notes And Is Diligently Working To Produce The Remainder.**

The NRA produced several of Wayne LaPierre's responsive notepads on January 21, 2020, and expects to produce additional handwritten notes from him within the next two weeks.<sup>2</sup> As the NRA explained to AMc during the November 11, 2019 meet-and-confer between the parties, counsel for the NRA had to review and decipher Mr. LaPierre's handwriting on approximately 4,000 documents for this production along. This was a time and labor-intensive task, especially as there was no way to narrow the scope of the review by, for example, using search terms. And there are more handwritten notepads presently undergoing this pain-staking process. Accordingly, the NRA is diligently working to complete its review of Mr. LaPierre's notes and intends to produce the responsive, non-privileged remainder as soon as practicable and before the close of fact discovery.

2. **The NRA Already Produced Documents responsive to AMc's requests regarding the NRA's leak allegations.**

Within the 28,000 documents already produced to AMc to date exist dozens of communications between NRA employees and others, including press organizations, regarding the AMc's leaks of confidential NRA information. Indeed, Vol. 10 of the NRA's production contained over 100 emails between the NRA and the press having to do with these leaks, which included numerous press inquiries regarding the same. The NRA has also produced the specific documents that the NRA contends were leaked to the media.

Of course, the NRA's position is that one or more AMc employees leaked the confidential financial information to the press. To prove this, the NRA has naturally sought documents *from*

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<sup>2</sup> The notes were produced in Volume ("Vol.") 13 of the NRA's productions.

*AMc*, namely any communications between *AMc* employees and the press regarding NRA matters during the timeframe the leaks occurred.<sup>3</sup> Yet, to date, *AMc* has barely provided documents responsive to these requests. The NRA therefore has no way of obtaining documents and information that would tend to show the source of the leaks and who at *AMc* conspired to leak the information, as well as documents to show how *AMc* leaked the information. Obviously, such evidence of the leaking activities would be within *AMc*'s sole possession, custody, or control.

As stated in the NRA's Response to *AMc*'s Request for Interrogatory No. 8, 9 and 10:<sup>4</sup> (1) the NRA's Complaints allege that media sources published the NRA's confidential information, which the NRA did not furnish, and which information was related to financial matters on which *AMc* worked and about which *AMc* and its agents possessed knowledge; (2) the NRA sought declarations from certain *AMc* employees who have had access to the NRA's confidential information attesting that they did not disclose or cause it to be disclosed, which *AMc* declined to provide; (3) the NRA repeatedly requested *AMc* for the same information it seeks from the NRA, namely, that *AMc* inform the NRA of whether any *AMc* employee was aware of the leaked information; and, (4) the information *AMc* seeks is unavailable to the NRA and exclusively available to *AMc*. In accordance with Virginia Supreme Court Rule 4:1(e), the NRA's good faith efforts to review all potentially responsive documents remain ongoing, any additional responsive documents will be produced as soon as practicable, and no later than the close of fact discovery.

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<sup>3</sup> See Ex. C to Defendants' Brief in Support of Motion to Compel, Plaintiff's Third Set of Requests for Production, Requests Nos. 52 and 53, served on November 1, 2019.

<sup>4</sup> Exhibit ("Ex.") A, Plaintiffs Objections and Responses to Defendant Ackerman McQueen's First Set of Requests for Interrogatories, Responses to Requests Nos. 8, 9 and 10, served on August 20, 2019.

AMc also claims that the NRA is supposedly using the attorney-client privilege “as a shield and a sword.”<sup>5</sup> It is unclear why, as it is well settled that the predominant purpose of the attorney-client privilege is to afford “all communications between attorney and client absolute and complete protection from disclosure.” *Billings v. Stonewall Jackson Hosp.*, 635 F. Supp. 2d 442, 444–45 (W.D. Va. 2009) (denying plaintiff’s motion to compel production of documents that were protected from disclosure by the attorney-client privilege); *citing In re Allen*, 106 F.3d 582, 600 (4th Cir.1997). For the privilege to apply, certain elements are required, including that (1) an attorney-client relationship must exist, and (2) and the communication must be for the purpose of seeking legal advice. *Id.* at 445; *citing United States v. Tedder*, 801 F.2d 1437, 1442 (4th Cir.1986).

During the deposition of the NRA’s General Counsel, John Frazer, Defendants asked Mr. Frazer to divulge information that was discussed in the context of litigation and between counsel and his client- which is clearly protected by the attorney client privilege. It is clear from the testimony that any information he had regarding the leaks was obtained through privileged communications with counsel. The information is therefore protected. As stated above, the NRA set forth the basis for its contention that AMc leaked the NRA’s confidential information in its Complaint and in correspondence with AMc.

Finally, as AMc points out in its Memorandum of Law in Support of Defendants’ Motion to Compel Production of NRA Documents, the NRA has *already* represented that it has no documents regarding the leaks concerning Mr. LaPierre’s niece’s child. Again, as stated during

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<sup>5</sup> Defendant’s Memorandum of Law in Support of Motion to Compel Production of NRA Documents, page 9.

the parties' meet and confer on November 11, 2019, Mr. LaPierre did not reference any documents regarding the incident during his deposition, and second, following a reasonable search, no such documents exist.

**3. The NRA provided to AMc all documents produced by Gayle Stanford in response to the subpoena.**

Notwithstanding the fact that AMc's requests for documents regarding Mr. LaPierre's travel expenses are wholly unrelated to the claims and defenses at issue in this case, as soon as AMc requested, the NRA produced to AMc all documents it received in response to its subpoena to Ms. Stanford. As to any additional documents regarding Ms. Stanford's services to the NRA, the NRA informed Defendants on June 27, 2019 that the NRA will not produce documents responsive to Request No. 16, as the Request seeks documents that are not relevant to the subject matter of this litigation.<sup>6</sup> See *Stultz v. Virginia Dep't of Motor Vehicle*, No. CV 7:13CV00589, 2014 WL 12775011, at \*1 (W.D. Va. Oct. 8, 2014) (denying motion to compel documents that were irrelevant to subject matter of claims). The NRA objected to the Request on several bases, including on the basis that such documents are equally -or more- available to Defendants and their counsel. Indeed, Defendants are required to produce any payments that AMc made to Ms. Stanford in connection with NRA business.

Whether Ms. Stanford complies with AMc's requests in its subpoena is a matter for resolution between AMc and Ms. Stanford.

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<sup>6</sup> Plaintiff's Objections and Responses to Defendants' First Set of Requests for Production of Documents (-1757), Response to Request No. 16.



4. **Documents between the Brewer firm and its client, the NRA, are generally privileged, and the NRA stands on its objections.**

AMc also requests documents regarding work performed by the Brewer firm on behalf of the NRA. It goes without saying that communications between a client, the NRA, and individuals within the law firm representing it, the Brewer firm, are in large part presumptively privileged *Billings v. Stonewall Jackson Hosp.*, 635 F. Supp. 2d 442, 444–45 (W.D. Va. 2009). In addition, documents and communications regarding any services provided by the Brewer firm’s public relations department are also likely to mostly fall within the umbrella of the attorney-client protection from discovery. Such work is generally, if not always, provided in tandem with legal advice and legal representation. The fact that AMc contends that the Brewer Firm “manufactured the NRA’s claims against AMc as part of an effort to seize the business previously handled by AMc and redirect it to the public affairs arm” of the firm does not in any way waive such privilege. Finally, the requested documents are also beyond the scope of the claims and defenses at issue in this litigation.<sup>7</sup> Defendants’ requests for these documents should be denied.

Under Virginia law, attorney-client privilege “attaches to communications of the client made to the attorney’s agents . . . when such agent’s services are indispensable to the attorney’s effective representation of the client.”<sup>8</sup> When a lawyer retains third party to assist the lawyer in giving legal advice to a client, communications with that third party are also protected by attorney-client privilege. *See United States v. Bornstein*, 977 F.2d 112, 115 (4th Cir. 1994) (stating that, where a lawyer hired an accountant, whether the “accountant’s workpapers” were covered by

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<sup>7</sup> *Stultz v. Virginia Dep’t of Motor Vehicle*, No. CV 7:13CV00589, 2014 WL 12775011, at \*1 (W.D. Va. Oct. 8, 2014).

<sup>8</sup> *See Commonwealth v. Edwards*, 370 S.E. 2d 296, 301 (Va. 1988).

attorney-client privilege depends upon whether those workpapers were created “for the benefit of . . . allow[ing the lawyer] to give legal advice.”) (citation omitted). A party may not obtain “discovery of documents and tangible things . . . prepared in anticipation of litigation or for trial by or for another party or by or for that other party’s representative (including his attorney, consultant, indemnitor, insurer, or agent)” unless that party makes a showing of “substantial need” and an inability to “obtain the substantial equivalent of the materials by other means” without “undue hardship.” Rule 4.1(b)(3); Fed. R. Civ. P. 26(b)(3); *Calvin Klein Trademark Trust v. Wachner*, 198 F.R.D. 53, 55 (S.D.N.Y. 2000) (holding that public relations advice obtained by law firm in connection with litigation was protected work product to extent it revealed strategy about the conduct of the litigation). The fact that AMc contends that the Brewer Firm “manufactured the NRA’s claims against AMc as part of an effort to seize the business previously handled by AMc and redirect it to the public affairs arm” of the firm does not in any way waive such privilege.

AMc’s request for legal invoices from the Brewer Firm is similarly fated. The NRA will not produce its invoices for legal services to the NRA because, aside from being unrelated to the claims and defenses at issue in this case, such information is protected by the attorney client privilege. Defendants cite *Chaudhry v. Gallerizzo*, 174 F.3d 394, 403 (4th Cir. 1999), in which the United States Court of Appeals for the Fourth Circuit held that the defendant’s attorney’s legal bills were protected from disclosure because the bills revealed facts about the attorney’s legal research for her client. The appeals court held that “[s]ince the records would divulge confidential information regarding legal advice, they constitute privileged communications and, as such, should not be disclosed. *Id.* The Court of Appeals also cited a Ninth Circuit case, which stated that “correspondence, bills, ledgers, statements and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided,

such as researching particular areas of law, fall within the privilege. *Id.* at 402, *citing Clarke v. American Commerce National Bank*, 974 F.2d 127 (9th Cir.1992). *See also In re Grand Jury Subpoena*, 341 F.3d 331, 335 (4th Cir. 2003) (holding that information that would reveal the specific nature of legal advice is protected from discovery by the attorney-client privilege). Defendants do not provide any compelling reasons as to why these documents must be produced.

**B. The NRA's good faith document production efforts are ongoing and compliant with the NRA's discovery obligations.**

As discussed above, the NRA has already produced documents responsive to the Requests for which AMc seeks to compel production. For example, contrary to AMc's contentions, the NRA has already produced over one hundred (100) documents regarding concerns with vendor compliance. As to AMc's request for documents regarding "government investigations or inquiries of Wayne LaPierre's interactions with AMc or any other vendor doing business with the NRA," the NRA has already represented to AMc that following a reasonable search, the NRA has not identified any additional documents responsive to this Request that are not otherwise protected from disclosure.<sup>9</sup> The remaining categories of documents which AMc is seeking to obtain have likewise been partially produced.<sup>10</sup>

As to the documents to which the NRA objects on the basis of privilege, the NRA stands on its objections as further discussed above. Also, the NRA is diligently working to produce a

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<sup>9</sup> *See* Ex. B, Letter from B. Landes to D. Schertler, dated Nov. 11, 2019.

<sup>10</sup> The NRA has likewise produced non-objectionable, non-privileged (-2067) Requests Nos. 8; 9; 10; 13; 17. There is no (-2067) Request No. 25. As to documents responsive to (-1757) Requests Nos. 35; and 37, the NRA is currently reviewing potentially responsive documents and will produce them as soon as practicable.

privilege log, detailing the individual and specific reasons for which each document that is responsive to these requests is also protected from discovery by the attorney-client privilege or work product doctrine, or any other applicable protection. The NRA expects AMc to also provide a detailed privilege log. To date, only the NRA has produced one.

In sum, the NRA is diligently working on finalizing its document production before the deadline for discovery in this matter. AMc's allegations that the NRA failed to "search the email boxes of NRA custodians" for responsive documents is unfounded. As AMc is aware, the NRA has produced documents from the inboxes of more than 50 custodians, including from some employees' personal email inboxes. In compliance with its discovery obligations, the NRA has collected documents from its employees and the Board of Directors, from both their business accounts and from personal devices where appropriate. The NRA has so far collected over 13 million documents. Responsive documents are under review and will be produced to AMc as soon as practicable.

III.

**CONCLUSION**

For the foregoing reasons, Plaintiff the NRA hereby requests that this court deny Defendants' Motion to Compel Production of Documents.

Dated: January 30, 2020

Respectfully submitted,

NATIONAL RIFLE ASSOCIATION  
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By counsel



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**CERTIFICATE OF SERVICE**

I hereby certify that on January 30, 2020, I caused the foregoing Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Compel the Production of NRA Documents to be served via electronic mail and first-class mail upon:

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# **Exhibit A**

**VIRGINIA:**

**IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA**

**NATIONAL RIFLE ASSOCIATION  
OF AMERICA,**

**Plaintiff,**

**v.**

**Case Nos. CL19001757  
CL19002067**

**ACKERMAN MCQUEEN, INC.**

*and*

**MERCURY GROUP, INC.,**

**Defendants.**

**PLAINTIFF'S RESPONSES AND OBJECTIONS TO DEFENDANT ACKERMAN  
MCQUEEN, INC.'S FIRST SET OF INTERROGATORIES**

Pursuant to the Rules of the Supreme Court of Virginia ("Rules") 4:1 and 4:8, Plaintiff/Counterclaim Defendant the National Rifle Association of America (the "NRA") submits the following Responses and Objections to Defendant Ackerman McQueen, Inc.'s ("Ackerman's") First Set of Interrogatories (the "Interrogatories"), which Ackerman served in the case styled: *Nat'l Rifle Ass'n v. Ackerman McQueen, et al.*, No. CL19002067. These Responses and Objections are based on information currently available to the NRA. The NRA reserves the right to amend and supplement its Responses and Objections in accordance with the applicable rules. The NRA notes that while Ackerman has titled these as their "First Set of Interrogatories to Plaintiff National Rifle Association of America," Ackerman previously served a set of 23 interrogatories on June 14, 2019.

The information supplied in these Responses and Objections is not based solely on the knowledge of the executing party, but may include knowledge of the Plaintiff's other agents and



representatives. The word usage and sentence structure may be that of the attorney assisting in the preparation of these answers and thus does not necessarily purport to be the precise language of the executing party.

## I. GENERAL OBJECTIONS

The General Objections set forth below apply to each of the numbered Interrogatories, whether or not specifically stated in Plaintiff's response or objections to each Interrogatory.

1. The NRA objects to the Interrogatories to the extent that the total number of interrogatories served exceeds the number of interrogatories permitted under the applicable rules. Ackerman served 23 interrogatories on June 14, 2019, and 20 interrogatories on July 17, 2019.<sup>1</sup> Pursuant to Rule 4:8(g), Ackerman may serve no more than 30 interrogatories on the NRA. Accordingly, and because the NRA already has responded to Ackerman's first set of interrogatories – which were propounded in the now-consolidated matter: *Nat'l Rifle Ass'n v. Ackerman McQueen, et al.*, No. CL19001757 (filed April 11, 2019) – Ackerman is only entitled to a response from the NRA to seven of its Interrogatories. By responding to all 20 interrogatories, the NRA is not waiving its objections. The NRA reserves the right to challenge the additional interrogatories, and to contend that Ackerman has served more interrogatories than the Rules permit.

2. The NRA objects to the Definitions and Instructions, and to the Interrogatories, to the extent that they seek to impose obligations on the NRA greater than those imposed or authorized by the Code of Virginia or the Rules.

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<sup>1</sup> Ackerman served 23 interrogatories on the NRA on June 14, 2019, in the matter styled: *Nat'l Rifle Ass'n v. Ackerman McQueen, et al.*, No. CL19001757 (filed April 11, 2019). The NRA responded to all 23 interrogatories on July 27, 2019. Now, Ackerman serves 20 more interrogatories in the matter styled *Nat'l Rifle Ass'n v. Ackerman McQueen, et al.*, No. CL19002067 (filed May 22, 2019), though the matter has already been consolidated with the earlier-filed action on July 10, 2019, by Order of the Circuit Court of the City of Alexandria.

3. The NRA objects to the Interrogatories to the extent they seek information or documents which are privileged, exempt, or protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable statutory or common law privilege, prohibition, limitation, immunity, or exemption from discovery. Nothing contained in these Responses and Objections is intended to be, or should in any way be deemed as, a waiver of the attorney- client privilege, attorney work product doctrine, or any other applicable privilege, immunity, prohibition, limitation, or exemption. The NRA's response to any Interrogatory, or the production of any document in response to any Request – as contemplated by Ackerman in its Instructions at Paragraph Four, and Rule 4:8(f) – is not, and shall not be deemed or construed as, a waiver of any privilege, right, or objection on the part of the NRA with respect to any such document or information.

4. The NRA objects to the Interrogatories to the extent that they call for the production or disclosure of “Confidential Information” as that term is defined in Section IV.A. of the Services Agreement, dated April 30, 2017 (as modified by Amendment No.1, dated May 6, 2018).<sup>2</sup> Nothing contained in these Responses and Objections is intended to be, or should in any way be deemed as, a waiver of the protections afforded to Confidential Information pursuant to the Services Agreement. The NRA submits its Responses and Objections with the understanding that AMc will honor its confidentiality obligations.

5. The NRA objects to the Interrogatories to the extent that they are overly broad and unduly burdensome. In particular, the NRA objects to the Definitions and Instructions as overbroad and unduly burdensome to the extent they purport to define the terms “NRA,” “You,”

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<sup>2</sup> Confidential Information is defined in the Services Agreement to include “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” to the NRA.

and “Your,” because the inclusion of agents and “others acting on [the NRA’s] behalf,” in the definition of such terms would require the NRA to seek documents from persons outside of its control, including Defendants Ackerman and Mercury Group, Inc. (together, “AMc”) who have served as agents to the NRA. Accordingly, the NRA’s Responses and Objections to the Interrogatories will define the terms “NRA,” “Plaintiff,” “you” or “your” to mean the National Rifle Association of America and any of its officers, directors or employees, unless otherwise stated in a specific response.

6. The NRA objects to the Interrogatories to the extent they subject the NRA to unreasonable burden and expense, including, but not limited to, the burden and expense of collecting or distilling information which is equally – or more readily – available to AMc.

7. The NRA objects to the Interrogatories to the extent they seek information not in its possession, custody, or control, or require the NRA to make unreasonable inquiries of persons or other entities. The NRA further objects to the Interrogatories to the extent that AMc already has the requested information within AMc’s possession, custody, or control.

8. The NRA objects to the Interrogatories to the extent they are vague, ambiguous and/or unintelligible.

9. The NRA objects to the Interrogatories to the extent they seek information that is neither relevant to the subject matter of the litigation nor reasonably calculated to lead to the discovery of admissible evidence.

10. The NRA objects to the Interrogatories to the extent they seek information that violates the right of privacy guaranteed by law to the NRA and/or third parties.

11. All objections previously noted or filed separately are incorporated herein in their entirety by reference as if set forth verbatim; none are waived.

12. The information provided in these Responses and Objections reflects the NRA's current knowledge, information and belief. The NRA reserves the right to change, modify, amend or supplement these Responses and Objections as warranted based upon, among other things, discovery of additional facts and materials and other developments or proceedings in this action.

13. The NRA's failure to make a specific objection to a particular individual Interrogatory is not, and shall not be construed as, an admission that responsive information exists. Likewise, any statement or other indication herein that the NRA will produce any information or documentation or will make any documents available for inspection and copying in response to an individual Interrogatory does not mean that the NRA, in fact, has any such information or documents, or that any such information or documents exist, but instead reflects an intention, subject to and without waiving any objections, to conduct a reasonably diligent search for responsive information in the NRA's possession, custody, or control.

14. Objections to these Interrogatories are made without waiver, and with preservation, of all objections as to competency, relevance, materiality, privilege and admissibility of the responses and the subject matter of such responses as evidence for any purpose in any proceeding, including trial, and in any other action.

15. Objections to these Requests are made without waiver, and with preservation, of the right to object to the use of these Interrogatories and the subject matter of these Interrogatories on any ground in any proceeding in this action, including trial, and in any other action.

16. Objections to these Interrogatories are made without waiver, and with preservation, of the right to object on any grounds at any time to a demand or request for further or other responses (a) to these Interrogatories or (b) relating to the subject matter of these

Interrogatories.

17. Objections to these Interrogatories are made without waiver, and with preservation, of the right to revise, correct, add to, supplement, or clarify these Responses and Objections.

18. In providing these responses to the Interrogatories, the NRA reserves and does not waive: (a) any objection as to the vagueness, ambiguity, or other infirmity in the form of an Interrogatory and any objection based on the undue burden imposed by an Interrogatory; (b) any rights to object on any grounds to the use of any of the responses, objections, documents, or their subject matter, in any subsequent proceeding; and (c) any rights to object on any ground to any further discovery requests involving or relating to the subject matter of the Requests.

19. All of the NRA's objections to the Requests shall be deemed to be continuing and are hereby incorporated into each of the responses and objections to the specific Requests set forth below.

## **II. SPECIFIC OBJECTIONS AND RESPONSES**

### **INTERROGATORY NO. 1**

Identify each person whom you believe has or may have knowledge of the facts and circumstances that are the subject matter of the Complaint and the Counterclaim in this case.

### **RESPONSE TO INTERROGATORY NO. 1**

The NRA incorporates its General Objections. The NRA also objects to this Interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

In addition, the NRA objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement; the disclosure of Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA's Confidential Information pursuant to AMc's obligations under the Services Agreement.

Furthermore, the NRA objects to this Interrogatory as overbroad and unduly burdensome to the extent that it purports to require the NRA to provide an exhaustive list of individuals with knowledge of any of the facts recounted in the Complaint and alleged in the Counterclaim, including individuals whose knowledge is *de minimis* or incidental, or was acquired under circumstances that make such individuals difficult to identify (*e.g.*, knowledge relayed indirectly, as part of a communication to which the NRA was not a party). The NRA will not purport to identify such individuals. Likewise, based on overbreadth and undue burden, the NRA will not purport to identify individuals whose knowledge concerns facts that are not material to the parties' claims or defenses.

This Interrogatory is overbroad and unduly burdensome on the additional basis that it calls for names of litigation counsel or their agents, consultants, or experts; the burden of identifying these individuals, and the risk that doing so would expose counsel's thought processes or litigation strategies, exceeds the potential relevance of such information. Accordingly, the NRA will exclude the names of litigation counsel and their agents, consultants, and experts from its response.

Moreover, the NRA objects to this Interrogatory to the extent that the term "agent" is vague and ambiguous.

Finally, the NRA objects to this Interrogatory as premature because it seeks the NRA's ultimate position on its contentions, even though discovery is in the earliest stages: AMc has yet to produce a single document to the NRA. The NRA should not be required to answer this Interrogatory until after designated discovery is completed, or a pre-trial conference is held. *See* Rule 4:8(e).

Subject to the foregoing objections and General Objections, the NRA responds to this Interrogatory by stating that it continues to investigate the subject matter of the Complaint and counterclaims filed under docket number CL19002067, and by identifying individuals whom it has determined, based on a reasonably diligent inquiry, are likely to possess substantive knowledge of the Complaint and counterclaims:

<b>LAST</b>	<b>FIRST</b>	<b>Relationship</b>
Arulanandam	Andrew	NRA employee
Boren	Dan	NRA Director
Cummins	Emily	Former NRA employee
Erstling	Michael	NRA employee
Frazer	John	NRA Secretary and General Counsel
Hallow	Millie	NRA employee
Hart	Steve	Former outside counsel to NRA
LaPierre	Wayne	NRA CEO and Executive Vice President
McQueen	Angus	AMc Founder
McQueen	Revan	AMc CEO
Montgomery	Melanie	AMc EVP, Management Supervisor
North	Oliver	NRA Director; Former Pres. NRA; employee of AMc
Padilla	Portia	NRA employee

Phillips	Wilson	Former CFO & Treasurer, NRA
Powell	Joshua	NRA employee
Reno	Duane	NRA employee
Rowling	Sonya	NRA employee
Spray	Craig	NRA employee
Supernaugh	Lisa	NRA employee
Tavangar	Nader	AMc EVP, Managing Director – Mercury Group
Tedrick	Rick	NRA CFO
Winkler	Bill	AMc CFO

**INTERROGATORY NO. 2**

With respect to each person identified in response to Interrogatory No. 1, that is an NRA employee or agent, describe specifically that person’s knowledge of the facts and circumstances of the subject matter of the Complaint and/or the Counterclaim and that person’s basis for that knowledge.

**RESPONSE TO INTERROGATORY NO. 2**

The NRA incorporates its General Objections. The NRA also objects to this Interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

In addition, the NRA also objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement; the disclosure of Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA’s Confidential



Information pursuant to AMc's obligations under the Services Agreement.

The NRA objects to this Interrogatory to the extent that the term "agent" is vague and ambiguous.

Furthermore, the NRA objects to this Interrogatory to the extent that the information sought is already known to or in the possession of Defendant AMc, and is readily accessible to Defendant AMc. Accordingly, the NRA will not purport to set forth the knowledge held by Defendant nor the "basis for" Defendant's knowledge.

Moreover, the NRA objects to this Interrogatory because it calls for speculation to the extent that AMc has previously acted as an agent of the NRA, and the Interrogatory purports to seek the NRA's disclosure of the knowledge held by AMc in that capacity. The NRA declines to speculate as to AMc's knowledge.

Subject to the foregoing objections and General Objections, the NRA responds to this Interrogatory by re-stating that it continues to investigate the subject matter of the consolidated cases, and by identifying the following employees or agents of the NRA:

<b>LAST</b>	<b>FIRST</b>	<b>KNOWLEDGE</b>	<b>BASIS</b>
Arulanandam	Andrew	NRA's requests for AMc books and records	NRA job responsibilities.
Erstling	Michael	Payments to AMc and lack of detail in AMc's invoices	NRA job responsibilities.
Frazer	John	NRA's requests for AMc books and records; NRA's knowledge of terms of North contract prior to obtaining copy of contract.	Facilitated attempts to examine AMc records; conducted circumscribed review of North contract after months of requests; corresponded with AMc re AMc's obligations re the NRA's Confidential

			Information
Hallow	Millie	NRA's requests for AMc books and records; NRA's knowledge of terms of North contract prior to obtaining copy.	Communications with AMc, North, prior to entry of North contract.
LaPierre	Wayne	NRA's requests for AMc books and records; NRA's knowledge of terms of North contract prior to obtaining copy.	Communications with AMc, North, prior to entry of North contract.
Padilla	Portia	Payments to AMc and lack of detail in AMc's invoices	NRA job responsibilities.
Phillips	Wilson	Payments to AMc and lack of detail in AMc's invoices	Role in NRA Finance Dept.
Powell	Joshua	NRA requests for AMc books and records	Requested books and records from AMc on behalf of NRA
Reno	Duane	AMc alleges that Mr. Reno received an email message from Nader Tavangar on April 30, 2019.	AMc's Counterclaim ¶ 46, dated June 19, 2019.
Rowling	Sonya	Payments to AMc and lack of detail in AMc's invoices	NRA job responsibilities.

Spray	Craig	NRA's requests for AMc books and records; payments to AMc and lack of detail in AMc's invoices	NRA job responsibilities.
Supernaugh	Lisa	AMc alleges that Ms. Supernaugh received an email message from Nader Tavangar on April 30, 2019.	AMc's Counterclaim ¶ 46, dated June 19, 2019.
Tedrick	Rick	Payments to AMc and lack of detail in AMc's invoices	NRA job responsibilities.

**INTERROGATORY NO. 3**

With respect to each person identified in response to Interrogatory No. 1, that is not an NRA employee or agent, describe specifically that person's knowledge of the facts and circumstances of the subject matter of the Complaint and Counterclaim and that person's basis for that knowledge.

**RESPONSE TO INTERROGATORY NO. 3**

The NRA incorporates its General Objections. The NRA also objects to this Interrogatory to the extent it seeks descriptions of information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

In addition, the NRA also objects to this Interrogatory to the extent it seeks disclosure of "facts and circumstances of the subject matter of the Amended Complaint" comprising Confidential Information as that term is defined in the Services Agreement; the disclosure of Confidential Information in response to this Request does not, and shall not be deemed to,

waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA's Confidential Information pursuant to AMc's obligations under the Services Agreement.

Furthermore, the NRA objects to this Interrogatory as oppressive and unduly burdensome to the extent it seeks the "basis" for knowledge alleged to be held by persons other than NRA employees or officers, and outside of the NRA's control.

Moreover, the NRA objects to this Interrogatory to the extent that the term "agent" is vague and ambiguous.

The NRA objects to this Interrogatory to the extent that the information sought is equally – or in some cases, more readily – available to Defendant AMc from other sources, such as its own files and employees, and to the extent the Interrogatory calls for speculation. The NRA also objects to the Interrogatory to the extent that the information sought is already known to, or is in the possession of, Defendant AMc, and is readily accessible to Defendant AMc because the persons identified are employees or agents of Defendant AMc.

Subject to the foregoing objections and General Objections, the NRA responds to this Interrogatory by identifying the following persons who may possess the knowledge indicated:

<b>LAST</b>	<b>FIRST</b>	<b>KNOWLEDGE</b>	<b>BASIS</b>
Boren	Dan	AMc's accounting for time/services of personnel.	Boren stated in an email message that : They [Ackerman] 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."

The NRA continues to investigate the subject matter of the litigation and will supplement its response with additional responsive information it may acquire, pursuant to Rule 4:1(e).

**INTERROGATORY NO. 4**

Identify and describe in detail any communications regarding “concerns that Ackerman and Mercury were regularly taking advantage of their favored position and the numerous roles they played for the NRA,” as alleged in Paragraph 16 of the Complaint.

**RESPONSE TO INTERROGATORY NO. 4**

The NRA incorporates its General Objections. The NRA also objects to this Interrogatory to the extent it seeks information about communications which are protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

In addition, the NRA objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement; the disclosure of Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA’s Confidential Information pursuant to AMc’s obligations under the Services Agreement.

Subject to the foregoing objections and General Objections, the NRA responds to this Interrogatory as follows: in 2018, when the NRA sought access to records regarding AMc’s business and accounting practices, AMc’s responses became evasive and hostile. As stated in the Complaint, the NRA was concerned about the amount and proportion of its funds paid to AMc, particularly in those instances in which documents sufficient to substantiate the invoiced charges were not available to the NRA. One specific concern related to the NRA’s reimbursement payments to AMc for out-of-pocket expenses that AMc claimed it incurred in

the performance of its services for the NRA account. Another concern related to the NRA's payments to AMc of certain AMc staff salaries, for AMc personnel who worked exclusively on the NRA account. Specifically, the NRA developed concerns that it was paying the salary of AMc personnel who worked for *other* AMc clients. A third concern among NRA employees and executives was AMc's unwillingness or inability to help the NRA validate AMc's "fair market value" analyses, which AMc used to determine its charges to the NRA for those services for which the NRA was required to pay the "fair market value" under the contract. The NRA continues to investigate the subject matter of the litigation and will supplement its response with additional responsive information it may acquire pursuant to Rule 4:1(e).

**INTERROGATORY NO. 5**

Identify the specific employees of Defendants that the NRA believes were "allocating substantial time to non-NRA clients" even though these employees were "NRA-Dedicated Personnel," as alleged in Paragraph 16 of the Complaint, and include in your response all facts relating to or supporting that contention.

**RESPONSE TO INTERROGATORY NO. 5**

The NRA incorporates its General Objections. In addition, the NRA objects to this Interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

The NRA also objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement; the disclosure of Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The

NRA expects that AMc will maintain the confidentiality of the NRA's Confidential Information pursuant to AMc's obligations under the Services Agreement.

The NRA further objects to this Interrogatory on the basis that the specific identities of the individual AMc employees who were assigned by AMc to perform work on non-NRA accounts, is unavailable to the NRA; that information is exclusively available to Defendant AMc. Defendant AMc was required to produce to the NRA the information it now purports to seek from the NRA. On June 29, 2019, the NRA served its first set of discovery requests on AMc. Among the NRA's discovery requests was Request for Production No. 12, which sought "[d]ocuments sufficient to identify all NRA-Dedicated Personnel (as defined in Paragraph 14 of the NRA's Complaint) as of June 19, 2019, and all projects or accounts on which each individual worked, and the amount or percentage of time dedicated to each such project or account." AMc responded on July 25, 2019, that it would produce responsive documents "after a protective order has been issued to protect the confidential and proprietary nature of the documents." Despite that assertion, AMc is withholding production of the very information it now purports to inquire about. AMc has represented to the NRA that no documents will be forthcoming in response to the NRA's requests for production until the NRA agrees to exclude certain of its counsel from viewing certain of AMc's "highly confidential" documents. AMc has not asserted that the documents requested by Request for Production No. 12 are highly-confidential, but it nevertheless represented on August 2, 2019, that it does not intend to produce any documents, highly-confidential or otherwise, until the NRA accedes to its demand and signs a so-called "protective order" that is unreasonable and unfairly prejudicial to the NRA's case.

Relatedly, the Interrogatory is objectionable because responding to it would require the NRA to speculate as to facts in Defendants' sole possession. Specifically, AMc's

Interrogatory seeks information held by, and regarding, AMc's own employees. The NRA declines to speculate as to which members of AMc's staff possess knowledge that AMc was required to furnish *to the NRA* more than two weeks ago, and that AMc continues to withhold in defiance of its responsibility to engage in the discovery process.

Additionally, the NRA objects to this Interrogatory as premature because it seeks the NRA's ultimate position on its contentions, even though discovery is in the earliest stages: AMc has yet to produce a single document to the NRA. The NRA should not be required to answer this Interrogatory until after designated discovery is completed, or a pre-trial conference is held. *See* Rule 4:8(e).

Subject to the foregoing objections and General Objections, the NRA responds to this Interrogatory by re-stating that it continues to investigate the subject matter of the Complaint and counterclaims. In addition, the NRA responds to this Interrogatory by pointing Defendant AMc to an email authored by Daniel Boren, an executive of AMc's client, the Chickasaw Nation, in which Boren specifically states that NRA-dedicated personnel may have been deployed to perform services on the Chickasaw Nation account. *See* Exhibit A.

#### **INTERROGATORY NO. 6**

Identify the specific "employees, executives, and board members," as well as anyone else, that raised concerns that "AMc's expenses and activities required greater oversight," as alleged in Paragraph 16 of the Complaint, and describe in detail any communications referring to or relating to the "concerns," including when each concern was brought to the attention of the NRA and the circumstances of how it was first brought to the attention of the NRA.

#### **RESPONSE TO INTERROGATORY NO. 6**

The NRA incorporates its General Objections. In addition, the NRA objects to this



Interrogatory to the extent that the communications referring to or relating to “concerns” about AMc’s activities and expenses are protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

The NRA also objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement; the disclosure of Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA’s Confidential Information pursuant to AMc’s obligations under the Services Agreement.

Subject to the foregoing objections and General Objections, the NRA responds to this Interrogatory as follows: The NRA continues to investigate the subject matter of the litigation and will supplement its response with additional responsive information it may acquire pursuant to Rule 4:1(e). The NRA refers AMc to the NRA’s response to Interrogatory No. 4, *supra*, and states that the NRA will produce communications responsive to this Interrogatory, pursuant to Rule 4:8(f).

#### **INTERROGATORY NO. 7**

Identify each employee or agent of the Defendants that the NRA believes has “leaked” information about the NRA, and specifically what information was leaked, who that information was leaked to, and when the leak occurred.

#### **RESPONSE TO INTERROGATORY NO. 7**

The NRA incorporates its General Objections. In addition, the NRA objects to this Interrogatory to the extent it seeks information protected from disclosure by the attorney-

client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

The NRA also objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement; the disclosure of Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA's Confidential Information pursuant to AMc's obligations under the Services Agreement.

The NRA further objects to this Interrogatory on the basis that the specific identities of the AMc employees or agents who are alleged to have leaked is exclusively available to Defendant AMc. Indeed, Defendant AMc was required to produce to the NRA the information it now purports to seek request. On June 29, 2019, the NRA served its first set of requests for production of documents on AMc. Among the NRA's requests for production to AMc was request number nine, seeking communications between AMc and certain news outlets which have published or are suspected to be in possession of the NRA's confidential information. AMc has neglected to produce the requested documents. AMc asserted objections based on relevance and privilege, and stated that it would produce responsive documents "after a protective order has been issued to protect the confidential and proprietary nature of the documents."

Despite that assertion, AMc has stated that no documents will be forthcoming in response to the NRA's requests for production until the NRA agrees to exclude certain of its counsel from viewing AMc's "highly confidential" documents. AMc has not asserted that the documents requested by the NRA's request for production number nine are highly-

confidential, but it nevertheless represented on August 2, 2019, and again on August 8, 2019, that it does not intend to produce any documents, highly-confidential or otherwise, until the NRA accedes to its demand and signs a so-called “protective order” that is unreasonable and unfairly prejudicial to the NRA’s rights.

Relatedly, the Interrogatory is objectionable because responding to it would require the NRA to speculate as to facts in Defendants’ sole possession. Specifically, AMc’s Interrogatory seeks information held by, and regarding, AMc’s own employees and agents. The NRA declines to speculate as to who among AMc staff and agents possess the knowledge that AMc was required to furnish *to the NRA* more than two weeks ago, and that AMc continues to withhold in defiance of its responsibilities.

Subject to the foregoing objections and General Objections, the NRA responds to this Interrogatory as follows: The NRA states that the following articles are believed to reflect information leaked by, or with the knowledge and consent of, AMc:

<b>HEADLINE</b>	<b>PUBLICATION &amp; DATE</b>
NRA Chief Wayne LaPierre Questioned on Travel Expenses.	The Wall Street Journal, May 2, 2019
Leaked Letters Reveal Details of NRA Chief’s Alleged Spending	The Wall Street Journal, May 11, 2019
“Leaked Documents Reveal ‘Mindboggling’ Spending at the National Rifle Association	Rolling Stone, May 17, 2019
Inside the NRA’s finances: Deepening debt, increased spending on legal fees — and cuts to gun training	The Washington Post, June 14, 2019
NRA Chief Sought Purchase of \$6 Million Mansion in Wake of Parkland Shooting	The Washington Post, August 7, 2019
NRA Chief Sought Help of Group’s Ad Agency in Trying to Buy \$5 Million Mansion	The Wall Street Journal, August 6, 2019

“Leaked Documents: NRA Racked up \$24 Million in Legal Bills”	The Daily Beast, May 12, 2019
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The NRA continues to investigate the subject matter of the litigation and will supplement its response with additional responsive information it may acquire pursuant to Rule 4:1(e).

**INTERROGATORY NO. 8**

Identify the specific “sources” that “advised” the NRA “that leaks were emanating from AMc,” as alleged in Paragraph 23 of the Complaint, and describe in detail the content and circumstances of every communication in which “sources” advised the NRA “that leaks were emanating from AMc.”

**RESPONSE TO INTERROGATORY NO. 8**

The NRA incorporates its General Objections. In addition, the NRA objects to this Interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

The NRA also objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement; the disclosure of Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA’s Confidential Information pursuant to AMc’s obligations under the Services Agreement.

Subject to the foregoing objections and General Objections, the NRA responds to this Interrogatory by re-stating that it continues to investigate the subject matter of the litigation, and by referring AMc to the Complaint, which alleges, *inter alia*, that media sources described or

published the NRA's confidential information; the NRA did not furnish that confidential information; and the confidential information related to matters on which AMc had worked, and about which AMc and its agents possessed knowledge.

**INTERROGATORY NO. 9**

Identify and describe in detail all efforts by the NRA to investigate or determine the source of wrongfully "leaked" or "disseminated" NRA information or records and the results of such investigations.

**RESPONSE TO INTERROGATORY NO. 9**

The NRA incorporates its General Objections. In addition, the NRA objects to this Interrogatory to the extent it seeks information about the NRA's investigative processes, or results, which are protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

The NRA also objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement; the disclosure of Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA's Confidential Information pursuant to AMc's obligations under the Services Agreement.

Subject to the foregoing objections and General Objections, the NRA responds to this Interrogatory by re-stating that it continues to investigate the subject matter of the litigation. The NRA also directs AMc to the NRA's request to AMc, on May 6, 2019, that AMc secure declarations from certain AMc employees who have had access to the NRA's Confidential

Information. The NRA sought declarations from seven AMc executives attesting, under penalty of perjury, that they did not disclose NRA Confidential Information, nor cause NRA Confidential Information to be relayed to certain media outlets, without the NRA's express permission. The executives from whom the NRA sought declarations are Angus McQueen, Bill Powers, Bill Winkler, Tony Makris, Nader Tavangar, Melanie Montgomery and Revan McQueen. On May 7, 2019, AMc's attorneys informed the NRA that it declined to provide the requested declarations.

The NRA learned of another leak of NRA Confidential Information after an investigation by the Washington Post cited a purported analysis of the NRA's financial condition, neither authored nor authorized by the NRA. The document, titled "Analysis of the 2018 NRA Consolidated Financial Statement," included NRA Confidential Information and other (in instances, inaccurate) information. By email dated June 17, 2019, from Andrew Arulanandam of the NRA to Melanic Montgomery of AMc (copying Angus McQueen, Revan McQueen, and AMc attorney David Schertler), the NRA requested that AMc inform it of whether any "Ackerman employee was aware of that document, authorized it being produced, or had any knowledge of it being provided to The Washington Post," and requested that AMc provide declarations that attest to the accuracy of its responses. AMc again declined to cooperate with the NRA's investigation of the source(s) of leaks of NRA Confidential Information.

#### **INTERROGATORY NO. 10**

Identify which persons or entities "AMc conspired with [] to disseminate select" NRA records, as alleged in Paragraph 24 of the Complaint, and specifically what information was disseminated, the circumstances of the alleged conspiracy, and the identities of the persons involved.

#### **RESPONSE TO INTERROGATORY NO. 10**

The NRA incorporates its General Objections. In addition, the NRA objects to this Interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

The NRA also objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement; the disclosure of Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA's Confidential Information pursuant to AMc's obligations under the Services Agreement.

The NRA further objects to this Interrogatory on the basis that a portion of the information sought is unavailable to the NRA, and is exclusively available to Defendant AMc. Specifically, only AMc is positioned to know the circumstances of its conspiracy to disseminate the letters referenced *supra*. In fact, the NRA has sought to learn the circumstances of the conspiracy to disseminate selective information to NRA stakeholders, in its Request for Production Number 48, served on August 1, 2019, and AMc is actively obstructing the NRA's acquisition of that information. AMc has represented to the NRA that no documents will be forthcoming in response to the NRA's requests for production until the NRA agrees to exclude certain of its counsel from viewing the documents that AMc intends to designate "highly confidential." AMc has not asserted that the documents requested by the NRA's Request for Production No. 48 are highly-confidential, but it nevertheless represented on August 2, 2019, and again on August 8, 2019, that it does not intend to produce *any* documents, highly-confidential or otherwise, until the NRA accedes to AMc's demand by signing a so-called "protective order" that is unreasonable and unfairly prejudicial to the

NRA's case.

Subject to the foregoing objections and General Objections, the NRA responds to this Interrogatory by re-stating that it continues to investigate the subject matter of the Complaint and counterclaims. In addition, as previously noted by the NRA, at least three letters were received by NRA executives from AMc executive William ("Bill") Winkler, and the NRA has produced those documents (the "Winkler Letters") *back* to AMc as exhibits to Plaintiff's Second Set of Requests for Production to Defendant, Ackerman, served on August 1, 2019. Accordingly, and pursuant to Rule 4:8(f), the NRA has responded to the sub-part of this Interrogatory requesting the content of information disseminated, with respect to the three letters that the NRA previously identified. With respect to information disseminated to a subset of Board members, as alleged in the Complaint ¶ 24, the NRA responds that former counsel to the NRA Board of Directors, Steven J. Hart, conspired with AMc to distribute the Winkler Letters to Oliver North, Richard Childress, Carolyn Meadows, Charles Cotton, Allan Cors, Jim Porter and Pete Brownell. In addition, the NRA responds by referring AMc to the Complaint, ¶¶ 26 and 37, in which the NRA identifies Oliver North as a co-conspirator with AMc. The Complaint alleges that AMc caused North to telephone an aide of Wayne LaPierre and threaten to relay information that AMc was purportedly prepared to disseminate, including NRA Confidential Information known to the NRA and to AMc.

**INTERROGATORY NO. 11**

Identify and describe in detail the entire factual bases for your contention that "AMc directly or indirectly disclosed the NRA's confidential information [to the] The New York Times, The Wall Street Journal, The Daily Beast, [and/or] Rolling Stone," as alleged in Paragraph 30 of the Complaint.



## **RESPONSE TO INTERROGATORY NO. 11**

The NRA incorporates its General Objections. In addition, the NRA objects to this Interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

The NRA also objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement; the disclosure of Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA's Confidential Information pursuant to AMc's obligations under the Services Agreement.

Additionally, the NRA objects to this Interrogatory as premature because it seeks the NRA's ultimate position on its contentions, even though discovery is in the earliest stages: AMc has yet to produce a single document to the NRA. The NRA should not be required to answer this Interrogatory until after designated discovery is completed, or a pre-trial conference is held. *See* Rule 4:8(e).

Subject to the foregoing objections and General Objections, the NRA responds to this Interrogatory as follows: The NRA's confidential information, to which AMc had access, was described by representatives of, or published by, the named media outlets, including, for example, in the articles identified in the NRA's response to Interrogatory Seven, *supra*. The NRA continues to investigate the subject matter of the litigation and will supplement its response with additional responsive information it may acquire pursuant to Rule 4:1(e).

## **INTERROGATORY NO. 12**

Describe all communications between any employee, representative, agent, or director of the NRA and representatives of any press and/or media organizations with respect to any of the events alleged in the Complaint. Your response should include the date of the communication, the parties to the communication, how it was made, and the content of the communication(s).

**RESPONSE TO INTERROGATORY NO. 12**

The NRA incorporates its General Objections. In addition, the NRA objects to this Interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

The NRA also objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement, including, in particular, information which AMc - as a representative of the NRA - may have learned from the NRA and communicated with any press and/or media organization. The disclosure of Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA's Confidential Information pursuant to AMc's obligations under the Services Agreement.

The NRA further objects to this Interrogatory as overbroad and unduly burdensome due to its unrestricted scope, because it requests the NRA to "[d]escribe" "all communications" between any of Plaintiff's representatives, employees, agents or directors and members of the press, "with respect to the events alleged in the Amended Complaint," absent any limitation calculated to yield evidence probative of any subject of the claims or counterclaims. For example, one event alleged in the Amended Complaint is the NRA's 2019 Annual Meeting, which itself is the subject of thousands of individual communications between the NRA's professional public relations staff

and members of the news media, the description of which would require great time and expense not proportional to the probative value thereof.

The Interrogatory is also overbroad and unduly burdensome on the basis that it seeks description of communications with any “representatives of any press and/or media organizations,” of which there are thousands, on the one hand, and “any employee, representative, agent, or director of the NRA,” of which there are hundreds, on the other. The expense and effort of reviewing the communications of each of the hundreds of employees, representatives, agents or directors of the NRA for communications with any news or media outlet or the representative of such an outlet, is not reasonably proportional to the needs of the case.

Moreover, the Interrogatory is objectionable to the extent it seeks information already in the possession of Defendant AMc, or more readily available to AMc than to the NRA, because AMc was one of the NRA’s agents and its primary public relations advisor and representative during the occurrence of nearly every event detailed in the Amended Complaint. Notably, the NRA requested these communications from AMc in its Request for Production No. 8, served June 29, 2019. AMc has neglected to produce the requested documents. AMc asserted objections based on relevance and privilege, and stated that it would produce responsive documents “after a protective order has been issued to protect the confidential and proprietary nature of the documents.” Despite that assertion, AMc has refused to agree to a reasonable protective order, insisting to the NRA that no documents will be forthcoming in response to the NRA’s requests for production until the NRA agrees to exclude certain of its counsel from viewing AMc’s “highly confidential” documents. AMc has not asserted that the documents requested by the NRA in its Request for Production No. 8 are highly-confidential, but it nevertheless represented on August 2, 2019, and again on August 8, 2019, that it does not intend to produce *any* documents, highly-confidential or otherwise, until the NRA accedes to

its demand and signs a so-called “protective order” that is unreasonable and unfairly prejudicial to the NRA’s rights.

Subject to the foregoing objections and the General Objections, the NRA responds to this Interrogatory by stating that it will produce communications issued after the filing of the Complaint on May 22, 2019, about the subject matter of the Complaint, pursuant to Rule 4:8(f).

**INTERROGATORY NO. 13**

Identify and describe in detail the factual bases for your contention that AMc caused North to “relay an extortion threat to the NRA on April 24, 2019,” as alleged in Paragraph 48 of the Complaint.

**RESPONSE TO INTERROGATORY NO. 13**

The NRA incorporates its General Objections. In addition, the NRA objects to this Interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

The NRA also objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement; the disclosure of Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA’s Confidential Information pursuant to AMc’s obligations under the Services Agreement.

In addition, the NRA objects to this Interrogatory on the grounds that the information sought is equally – or more readily – available to AMc, because it is in the custody, possession

or control of AMc's employee and agent, Col. Oliver North.

Additionally, the NRA objects to this Interrogatory as premature because it seeks the NRA's ultimate position on its contentions, even though discovery is in the earliest stages: AMc has yet to produce a single document to the NRA. The NRA should not be required to answer this Interrogatory until after designated discovery is completed, or a pre-trial conference is held. *See* Rule 4:8(e).

Subject to the foregoing objections and General Objections, the NRA responds to this Interrogatory by re-stating that it continues to investigate the subject matter of the Complaint and counterclaims, and by reiterating the allegations of the Complaint. On April 24, 2019, Oliver North telephoned an aide of NRA CEO Wayne LaPierre and relayed the contents of a letter that AMc purportedly planned to disseminate. Compl. ¶ 26. North described allegations the letter would contain, including false depictions of NRA finances; sexual harassment accusations; and information about expenses that AMc had charged to the NRA - information which was also utilized in letters issued by AMc executive Bill Winkler around the same time. *Id.* North described that the letter would be "bad" for LaPierre and the NRA. *Id.* On the phone call to LaPierre's aide, North purported to speak for AMc by stating that AMc would refrain from publicizing the aforementioned information if LaPierre agreed to withdraw the NRA's lawsuit against AMc, and take other steps described more fully in the Complaint. *Id.* at ¶ 27.

#### **INTERROGATORY NO. 14**

Identify and describe in detail any and all damages the NRA claims it has sustained as a result of AMc's alleged conduct as described in the Complaint, including the estimated monetary value of the alleged damages.

#### **RESPONSE TO INTERROGATORY NO. 14**

The NRA incorporates its General Objections. In addition, the NRA also objects to this Interrogatory purporting to seek “detail” regarding “any and all damages the NRA claims it has sustained,” to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

The NRA also objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement; the disclosure of Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA’s Confidential Information pursuant to AMc’s obligations under the Services Agreement.

The NRA further objects to this Interrogatory as premature because (a) the NRA needs to conduct certain discovery in connection with its damages analysis and (b) issues concerning the NRA’s alleged damages will be the subject of expert analysis and testimony, the disclosure of which is not required at this preliminary stage of discovery. This Interrogatory is also premature because it seeks the NRA’s ultimate position on its contentions, even though discovery is in the earliest stages: AMc has yet to produce a single document to the NRA. The NRA should not be required to answer this Interrogatory until after designated discovery is completed, or a pre-trial conference is held. *See* Rule 4:8(e).

Subject to the foregoing objections and the General Objections, the NRA responds to this Interrogatory by referring Defendant AMc to the NRA’s allegations as set forth in its Amended Complaint, on pages 15 through 19. The NRA continues to investigate the subject matter of the litigation and will supplement its response with additional responsive information it may acquire pursuant to Rule 4:1(e).

**INTERROGATORY NO. 15**

Describe in detail the findings and conclusions of each examination of AMc's records pursuant to Section VIII since 2014, and specify whether any negative findings and conclusions of such examinations were communicated to AMc.

**RESPONSE TO INTERROGATORY NO. 15**

The NRA incorporates its General Objections. In addition, the NRA objects to this Interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved. Specifically, to the extent this Interrogatory seeks the findings and conclusions of examinations of AMc records conducted in 2018 and 2019, the NRA objects on the basis that the information sought is protected by attorney-client privilege and the work-product doctrine.

The NRA also objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement; the disclosure of Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA's Confidential Information pursuant to AMc's obligations under the Services Agreement.

Additionally, the NRA objects to this Interrogatory as premature because it seeks the NRA's ultimate position on its contentions, even though discovery is in the earliest stages: AMc has yet to produce a single document to the NRA in response to the NRA's requests for production of documents, served June 29, and August 1, 2019. The NRA should not be required to answer this Interrogatory until after designated discovery is completed, or a pre-trial conference is held.

*See* Rule 4:8(c).

The NRA further objects to this Interrogatory as premature because (a) the NRA continues to analyze data it has collected in connection with its reviews of AMc records and (b) issues arising from those reviews are expected to be the subject of expert analysis and testimony, the disclosure of which is not required at this preliminary stage of discovery.

Subject to the foregoing objections and General Objections, the NRA responds that it will produce communications responsive to this Interrogatory, pursuant to Rule 4:8(f). The NRA further responds that it continues to investigate the subject matter of the litigation and will supplement its response with additional responsive information it may acquire pursuant to Rule 4:1(e).

**INTERROGATORY NO. 16**

Describe in detail the status of any government investigation of the NRA ongoing during 2019 and specify the actions taken by AMc that may relate to each such investigation.

**RESPONSE TO INTERROGATORY NO. 16**

The NRA incorporates its General Objections. In addition, the NRA objects to this Interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

The NRA also objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement; the disclosure of Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA's Confidential



Information pursuant to AMc's obligations under the Services Agreement.

The NRA also objects to Interrogatory No.16 as overbroad, irrelevant, harassing, and potentially propounded in bad-faith with the intention of "fishing" for potentially salacious information not probative of any claim or defense at issue in this litigation.

Furthermore, the NRA objects to the Interrogatory to the extent that it seeks information that is more readily available to AMc than it is to the NRA. In particular, the Interrogatory purports to request that the NRA furnish to AMc the facts of AMc's own alleged actions "that may relate to such investigation[s]." On the same basis, the NRA objects to the extent that the Interrogatory purports to require the NRA to collect information that is not in its possession, custody or control, and relatedly, because it calls for improper speculation on the part of the NRA.

#### **INTERROGATORY NO. 17**

Identify each NRA employee, director or agent who was receiving compensation or having expenses paid by both the NRA and AMc, specifying the amounts received from the NRA in 2015, 2016, 2017, 2018 and 2019, and the amounts received from AMc in each of those same years.

#### **RESPONSE TO INTERROGATORY NO. 17**

The NRA incorporates its General Objections. In addition, the NRA objects to this Interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

The NRA also objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement; the disclosure of

Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA's Confidential Information pursuant to AMc's obligations under the Services Agreement.

In addition, the NRA objects to this Interrogatory because it is over broad to the extent it fails to identify any particular employees, directors, or agents who – AMc appears to suggest – are the recipients of AMc payments, and because it fails to identify which such payments to these non-parties, if any, are relevant to or probative of any of the claims or defenses alleged in this litigation.

Moreover, the NRA objects to this Interrogatory to the extent that the use of the term “agent” renders the Request ambiguous and overbroad. For example, the NRA cannot determine whether any of its contractors hired by the NRA during the previous four years simultaneously performed work for AMc.

Furthermore, the NRA objects to this Interrogatory on the basis that the information purportedly sought is equally – or more readily – available to AMc. To the extent that this Interrogatory seeks to impose a duty on the NRA to conduct some sort of survey of all of its employees, agents and directors who served at or worked with the NRA over the preceding four years to collect the requested information, the NRA further objects on the basis of undue burden and because AMc is presumably already in possession of records identifying AMc's own disbursements to such persons. Indeed, the NRA sought information from AMc regarding AMc payments in its repeated document-examination requests during 2018 and 2019, which AMc rebuffed. The NRA declines to undertake any such information collection effort and declines to speculate as to the contents of the AMc records to which the NRA has been denied access. Accordingly, the NRA declines to answer that portion of the Interrogatory which requires the NRA

to identify each employee, director or agent who was receiving compensation or having expenses paid by AMc, and to identify the amounts such persons received from AMc.

Specifically, with respect to NRA employees, the NRA is in possession of records identifying the compensation or reimbursements paid to the employees *by the NRA*. The NRA is not in possession of records from which it can discern AMc's direct payments, if any, to such employees. With respect to directors and agents, the NRA is likewise aware of payments or reimbursements that it issued to its directors and agents, but similarly is not in possession of records of payments or compensation paid by AMc.

Subject to the foregoing objections and General Objections, the NRA responds to this Interrogatory as follows: The NRA is aware that Tyler Schropp, a former Ackerman employee who began work with the NRA in or about 2010, continued to submit expense reimbursements through Ackerman until 2018. In addition, during his tenure as NRA President, Lt. Col. Oliver North received occasional expense reimbursements from the NRA; the NRA understands that he simultaneously received a salary from Ackerman. The NRA continues to investigate the subject matter of the litigation and will supplement its response with additional responsive information it may acquire pursuant to Rule 4:1(e).

#### **INTERROGATORY NO. 18**

Identify and describe in detail any instances since 2014 where the NRA has disputed an AMc invoice and how that dispute was resolved.

#### **RESPONSE TO INTERROGATORY NO. 18**

The NRA incorporates its General Objections. In addition, the NRA objects to this Interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or

privilege from discovery, none of which are waived, and all of which are reserved.

The NRA also objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement; the disclosure of Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA's Confidential Information pursuant to AMc's obligations under the Services Agreement.

The NRA further objects to this Interrogatory to the extent that the information sought is equally – or more readily – available to AMc as it is to the NRA, and the Interrogatory places an undue burden on the NRA to analyze five years of communication with AMc, to the extent that AMc has the same information available to it in its own records.

Subject to the foregoing objections and General Objections, the NRA responds to this Interrogatory as follows: Between August and October of 2018, the NRA sought information from AMc to, *inter alia*, substantiate certain of the billed items in AMc invoices issued between January 1, 2015 and the present. Communications between AMc and the NRA regarding the NRA's requests for sufficient information to substantiate invoiced amounts ultimately resulted in the NRA's issuance of new invoicing guidelines to AMc on October 4, 2018, with which Ackerman failed to comply. The NRA sought specific backup for AMc invoices dated May 1, June 12, and July 9, 2019, by letters dated June 5, June 25 and July 23, 2019, respectively. On December 21, 2018, the NRA requested information from AMc to substantiate the passthrough expenses invoiced to the NRA for AMc talent and employees engaged in NRA projects. On March 25 and 26, 2019, the NRA specifically requested information from AMc to delineate and substantiate the amounts invoiced to it in connection with the NRA project "American Heroes." Indeed, even after Lt. Col.

North belatedly furnished the NRA with a copy of his Ackerman contract, the NRA's request for basic information about the burdens imposed upon the NRA in connection with the American Heroes project remain unanswered.<sup>3</sup>

**INTERROGATORY NO. 19**

Identify and describe in detail any and all actions taken by the NRA Board or any NRA Board committee to authorize any change in, or termination of, the NRA/AMc Services Agreement and/or any decision to authorize litigation against AMc.

**RESPONSE TO INTERROGATORY NO. 19**

The NRA incorporates its General Objections. In addition, the NRA objects to this Interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

The NRA also objects to this Interrogatory to the extent it seeks disclosure of Confidential Information as that term is defined in the Services Agreement; the disclosure of Confidential Information in response to this Request does not, and shall not be deemed to, waive the protections afforded such information pursuant to the Services Agreement. The NRA expects that AMc will maintain the confidentiality of the NRA's Confidential Information pursuant to AMc's obligations under the Services Agreement.

Moreover, the NRA objects to this Interrogatory to the extent it purports to assert that the NRA required a specific and additional approval by its Board of Directors to make business decisions that the NRA was already authorized to make. No particular resolution or

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<sup>3</sup> See Letter from John Frazer, Gen. Counsel, NRA, to Steve Ryan, counsel to AMc, McDermott Will & Emery (Mar. 26, 2019).

special blessing of the Board of Directors was or is required for the NRA to change or terminate a vendor agreement, or embark on litigation against a vendor that fails to meet its contractual obligations.

Subject to the foregoing objections and General Objections, the NRA responds to this Interrogatory by stating that to date, the Board has not adopted any formal resolution with respect to the NRA/AMc Services Agreement or litigation against AMc.

**INTERROGATORY NO. 20**

Identify any expert that the NRA expects to testify at trial, the qualifications of the expert, the sum and substance of each opinion that the expert is expected to provide, and the basis for each such opinion.

**RESPONSE TO INTERROGATORY NO. 20**

The NRA incorporates its General Objections. In addition, the NRA objects to this Interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable exemption, immunity, or privilege from discovery, none of which are waived, and all of which are reserved.

Moreover, the Interrogatory is premature and the NRA will amend and supplement its response at the appropriate time.

Dated: August 20, 2019

Respectfully submitted,

NATIONAL RIFLE ASSOCIATION  
OF AMERICA  
By counsel



James W. Hundley (VSB No. 30723)  
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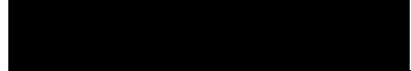
*Counsel for the National Rifle Association of  
America*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 20, 2019, I caused the foregoing Plaintiffs Responses and Objections to Defendant Ackerman McQueen, Inc.'s First Set of Interrogatories to be served via electronic mail and first-class mail upon:

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**VIRGINIA:**

**IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA**

**NATIONAL RIFLE ASSOCIATION OF  
AMERICA,**

**Plaintiff,**

**v.**

**ACKERMAN MCQUEEN, INC.**

*and*

**MERCURY GROUP, INC.**

**Defendants.**

**Case No. CL19001757  
CL19002067**

**DECLARATION OF JOSH POWELL**

I declare under penalty of perjury that the foregoing responses to the Interrogatories are true and correct to the best of my knowledge and belief.

Date: 8/19/2019

Signed: 

Josh Powell  
Chief of Staff & Senior Strategist  
National Rifle Association of America

# EXHIBIT A

mail

Dan Boren <danboren1@chickasaw.net>

**wd: NRA lawsuit against Ackerman McQueen [CONFIDENTIAL]**

Dan Boren <Dan.Boren@chickasaw.net>  
To: "danboren1@gmail.com" <danboren1@gmail.com>

Thu, May 30, 2019 at 12:36 PM

Hon. Dan Boren  
President  
Corporate Development  
Chickasaw Nation  
Department of Commerce  
4001 N. Lincoln Blvd.  
Oklahoma City, OK 73105  
405-767-8921  
Dan.Boren@Chickasaw.net<mailto:Dan.Boren@Chickasaw.net>

Begin forwarded message:

From: Dan Boren <Dan.Boren@chickasaw.net<mailto:Dan.Boren@chickasaw.net>>  
Date: April 15, 2019 at 8:35:29 PM CDT  
To: BILL LANCE <Bill.Lance@chickasaw.net<mailto:Bill.Lance@chickasaw.net>>  
Subject: Fwd: NRA lawsuit against Ackerman McQueen [CONFIDENTIAL]

I reread this again. I bet Ackerman 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 accounts

Hon. Dan Boren  
President  
Corporate Development  
Chickasaw Nation  
Department of Commerce  
4001 N. Lincoln Blvd.  
Oklahoma City, OK 73105  
405-767-8921  
Dan.Boren@Chickasaw.net<mailto:Dan.Boren@Chickasaw.net>

Begin forwarded message:

From: "Frazer, John" <John.Frazer@nrahq.org<mailto:John.Frazer@nrahq.org>>  
Date: April 15, 2019 at 10:11:42 AM CDT  
To: "Frazer, John" <John.Frazer@nrahq.org<mailto:John.Frazer@nrahq.org>>  
Subject: NRA lawsuit against Ackerman McQueen [CONFIDENTIAL]

Dear Board and Executive Council members:

Please see Wayne LaPierre's note below regarding the attached complaint filed this past Friday. Beneath Wayne's note is a Wall Street Journal article that appeared online today.

Sincerely,

John Frazer  
Secretary and General Counsel  
National Rifle Association of America  
11250 Waples Mill Rd.

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Fairfax, VA 22030  
(703) 267-1254  
john.frazier@nrahq.org <mailto:john.frazier@nrahq.org>

This e-mail and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed, and may be privileged. If you have received this e-mail in error, please notify the sender immediately, delete the message from your computer, and do not disseminate, distribute, or copy it.

Dear NRA Board of Directors:

Today, an article in The Wall Street Journal reported on a business dispute between the NRA and one of our vendors, Ackerman McQueen. Ackerman has been a longtime partner and valued advisor to the NRA. And, although we appreciate the many years of successful partnership we have shared with Ackerman, this action was necessary because of a failure to comply with multiple requests for documents and information relating to its work for our Association. We hope to get this matter resolved in the best interest of all parties involved.

As most of you know, the NRA requested that all of our vendors commit to providing detailed reports and records relating to their work for our organization. This is part of the NRA's Compliance Review Process and our determination to adopt best practices in the areas of accounting and governance.

Today's reporting also touched upon other concerns, including efforts undertaken by the Office of the Executive Vice President to protect the NRA's legal, regulatory and reputational interests. As was reported, I have supported the work of the firm Brewer, Attorneys & Counselors, to represent our interests on several related fronts. Centralizing these services allows us to gain strategic advantages, operational efficiencies, recognize cost savings, and improve our advocacy on these many fronts.

I look forward to working closely with all of our vendors – in advertising, marketing, and other areas – to maximize their value to our Association. I also look forward to continuing my work with all of you – our board of directors.

Our goal is to ensure we are doing everything possible to protect our Second Amendment, further the interests of the NRA, drive brand awareness and membership, and operate in full compliance with all applicable regulations. The NRA will also continue our advocacy at every level – and we will not make any apologies for that. Our members and our mission come first - always.

Wayne

<https://www.wsj.com/articles/nra-files-suit-against-ad-agency-in-rift-with-key-partner-11555320601>  
NRA Files Suit Against Ad Agency in Rift With Key Partner  
Gun-rights group accuses Ackerman McQueen of refusing to comply with requests to justify its billings  
By  
Mark Maremont

April 15, 2019 5:30 a.m. ET

The National Rifle Association filed a lawsuit accusing its longtime advertising agency Ackerman McQueen Inc. of refusing to comply with demands to justify its billings, an extraordinary public break with the gun-rights group's largest outside partner.

The lawsuit, filed late Friday, comes amid an unusual battle unfolding behind the scenes at the NRA's 76-member board, which some say pits a small group of pro-Ackerman McQueen directors against other board members and an outside NRA attorney.

The dispute in part is about how the NRA, with an annual budget of more than \$300 million, is spending money during a period when its finances have been tight. The NRA ran at a deficit in its two most recently reported years.

Oklahoma City-based Ackerman McQueen has been the NRA's ad agency since the 1980s and has been widely credited with helping to transform the NRA from a grass-roots operation to a powerful national advocacy group. In recent years the ad firm has also produced the organization's NRATV <[https://www.nratv.com/?mod=article\\_inline](https://www.nratv.com/?mod=article_inline)>, a video outlet that mainly focuses on conservative and pro-gun rights commentary.

NRA filings show it paid Ackerman McQueen \$42.6 million in 2017, the most recent year available, making it by far the group's largest vendor.

The lawsuit is "frivolous, inaccurate and intended to cause harm to the reputation of our company," Ackerman

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McQueen said in a statement. "We will defend our position and performance aggressively and look forward to continuing to serve the NRA's membership."

An Ackerman McQueen spokeswoman added that an NRA-hired forensic auditing firm spent three weeks reviewing the firm's records and was "given every single thing they requested."

In the lawsuit, filed in Circuit Court in Alexandria, Va., the NRA said Ackerman McQueen was obliged to provide access to records underlying its bills. But since the middle of 2018, it said the NRA's requests for such documents had been met with partial compliance or "rebuffed or baldly ignored... This situation cannot continue."

The NRA is concerned the ad firm may be overcharging for certain items, the lawsuit said, such as invoicing for the full salaries of Ackerman McQueen employees who were "allocating substantial time to non-NRA clients."

The NRA also alleged it hadn't received complete information about an NRATV contract between Ackerman McQueen and retired Lt. Col. Oliver North, the Iran-Contra figure who became NRA president in May 2018.

Though the NRA president's post is largely ceremonial, the lawsuit said, Mr. North was hired last year by Ackerman McQueen to host a documentary program on NRATV—"Oliver North's American Heroes."

As a nonprofit, the NRA said it must approve and disclose its top officials' pay. The NRA initially agreed to reimburse the ad firm for costs related to Mr. North's TV contract, but when the organization later sought contract details, Ackerman McQueen balked and Mr. North for months wouldn't provide documents without the ad firm's approval, the NRA alleged.

Attempts to reach Mr. North through his assistant and his attorneys were unsuccessful.

"It's stunning that a trusted partner for all these years is just refusing to cooperate," said William A. Brewer III, an outside NRA lawyer. He said Ackerman McQueen is the only vendor resisting the NRA's push for such records. Some NRA board members have publicly raised questions [about whether the NRA should cut back spending on Ackerman McQueen's NRATV platform](https://www.nytimes.com/2019/03/11/us/nra-video-streaming-nratv.html?mod=article_inline), concerned that much of its content reflects conservative political views not directly related to the group's core Second Amendment message.

The NRA said in the lawsuit it had sought information on how well NRATV was faring, but claimed Ackerman McQueen refused to provide the NRA with certain requested data in writing, such as unique visitors, "that enable the NRA [to] analyze the return on its investment in NRATV."

The Ackerman McQueen spokeswoman said, "The NRA has had consistent access to any document regarding NRATV analytics."

In a Shakespearean twist, the outside NRA lawyer spearheading the lawsuit, Mr. Brewer, is related to Ackerman McQueen's two top officials, who are his brother-in-law and father-in-law.

Ackerman McQueen said it told the NRA three months ago that the family relationship meant that Mr. Brewer had an "irreconcilable conflict of interest" and that he had "demonstrated, in words and deeds, his animus" for the company and those family members.

The pro-Ackerman board faction also is blaming some of the discord on Mr. Brewer, whose firm, Brewer Attorneys & Counselors, started working for the NRA last year and has since become a major NRA vendor, according to people familiar with the matter.

Mr. Brewer's firm is representing the NRA in federal litigation against New York Gov. Andrew Cuomo and other New York state officials. The NRA accuses New York of violating its First Amendment rights [by warning financial-services firms regulated by the state to avoid doing business](https://www.wsj.com/articles/nra-sues-new-york-after-insurance-crackdown-1526075373?mod=article_inline) [with the gun-rights group](https://www.wsj.com/articles/new-york-bans-nra-insurance-program-and-fines-broker-1525273379?mod=article_inline&mod=article_inline). The defendants deny the allegations.

The pro-Ackerman McQueen faction, which people said includes Mr. North, has circulated complaints inside the NRA board that Mr. Brewer's firm is charging unusually high fees—about \$1.2 million a month by some internal estimates—and is justifying those in part by exaggerating the risks that New York officials pose to the group, according to the people familiar with the matter.

"I've never seen this much agitation on the board," said Todd Rathner, an NRA board member for 20 years, who said he thinks the dissidents are attacking Mr. Brewer as a way to undermine NRA CEO Wayne LaPierre and "I'm disgusted by it."

Mr. LaPierre backed Mr. Brewer in a statement released through an NRA spokesman, saying: "I am proud of the essential work the Brewer legal team is doing for the NRA." He added that all of the law firm's invoices are closely reviewed by the NRA's legal and finance departments.

Mr. Brewer defended his fees in an interview, saying "we're a premium law firm, we make no bones about that." He also said his firm is doing work for the NRA well beyond the New York litigation. Among its tasks, he said, is helping the NRA respond to numerous congressional demands for records related to its dealings with Russia [. The NRA also is helping the NRA respond to numerous congressional demands for records related to its dealings with Russia](https://www.wsj.com/articles/maria-butina-pleads-guilty-to-conspiracy-to-influence-u-s-politics-11544719313?mod=article_inline).


As for Mr. Brewer's family relationships, his law firm in a statement said that has "no bearing whatsoever on the NRA's litigation strategy," calling that argument a red herring.


Tom King, an NRA board member who heads a New York state gun organization, said he backs Mr. Brewer's legal

effort in New York: "However much money it takes is well spent, because it's for the survival of the NRA." Mr. King, speaking before the lawsuit was filed, said Ackerman McQueen has long been "very important to the NRA" and he expects the subject of the firm's budget to come up at the group's annual meeting later this month. As for the ad firm's NRATV content, Mr. King said, "If you took a poll of most board members, they'll tell you they like NRATV."

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**2 attachments**

 2157\_001.pdf  
725K

 ATT00001.htm  
1K

VIRGINIA:

IN THE CIRCUIT COURT FOR THE  
CITY OF ALEXANDRIA

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

Civil Case No. 0219001757

FILED  
 CLERK OF COURTS  
 CITY OF ALEXANDRIA  
 JUN 19 12 @ 3:00  
 COURT REPORTER  
 BY  
 REPUTY CLERK

COMPLAINT

COMES NOW the Plaintiff, the National Rifle Association of America (the "NRA"), and files this Complaint against Defendants Ackerman McQueen, Inc. ("Ackerman") and Mercury Group, Inc. ("Mercury" and, collectively with Ackerman, "AMc"), based on personal information as to its own actions and on information and belief as to all other matters, as follows:

PRELIMINARY STATEMENT

The NRA seeks specific performance of an unambiguous books-and-records inspection right contained in a longstanding contract with one of its most important third-party vendors: the advertising agency Ackerman McQueen.

The NRA and Ackerman have collaborated fruitfully for decades. Together, the parties crafted iconic, impactful Second Amendment messaging that featured Charlton Heston (“from my cold, dead hands”) and other important constitutional rights advocates. The impasse between them which gives rise to this lawsuit is simple, and baffling: the NRA requested access to material, readily available records that Ackerman and Mercury are contractually obligated to provide. Defendants refused to provide them.

For the better part of a year, the NRA has negotiated with AMc and appeased its demands in an effort to coax compliance with the parties’ contract. However, the NRA’s patience has run out. Confronting escalating concerns about AMc’s activities and accounting practices, the NRA seeks access to basic business records—including *budgets purportedly approved by the NRA*, copies of *material contracts for which the NRA is purportedly liable*, and *readily available performance data*—all to inform the judgment of its fiduciaries. The NRA has an undisputed contractual right to examine these documents. Indeed, its contract with AMc entitles the NRA, upon “reasonable notice,” to examine any and all “files, books, and records” of both Ackerman and Mercury which pertain to matters covered by the parties’ contract. Since July 2018, the NRA has provided more-than-reasonable notice of its desire to view key items. In some instances, AMc has affected partial compliance with the NRA’s requests—in other cases, it has rebuffed or baidly ignored the NRA’s letters. This situation cannot continue.

There is no adequate remedy at law which would compensate the NRA for the risks and burdens posed by AMc’s concealment of material business records. Fortunately, there is a straightforward remedy at equity: specific performance by Ackerman and Mercury of their obligation to furnish documents. This is the relief the NRA seeks.



### PARTIES

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

3. Defendant Mercury Group, Inc. ("Mercury" and, collectively with Ackerman pursuant to the Services Agreement, "AMC") is a nonresident 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 Ackerman which specializes in public-communications strategy, including on behalf of advocacy groups such as the NRA. At all relevant times, Ackerman has acted on behalf of both itself and Mercury pursuant to the Services Agreement (defined below) between Ackerman and the NRA.

### RELEVANT NONPARTIES

4. The NRA Foundation, Inc. (the "NRA Foundation") is a 501(c)(3) tax-exempt organization that raises tax-deductible contributions in support of a wide range of firearm-related public interest activities of the NRA and other organizations that defend and foster the Second

Amendment rights of law-abiding Americans. Over the course of its contractual relationship with the NRA, Ackerman has occasionally performed services for the benefit of the NRA Foundation and issued corresponding invoices to the NRA Foundation. Because of its 501(c)(3) designation, the NRA Foundation is permitted to engage in, and fund, a narrower range of activities and communications than the NRA.

#### **JURISDICTION AND VENUE**

5. The Court has jurisdiction over the NRA's claims in this matter as the claims are subject to a court of general jurisdiction.

6. This Court has jurisdiction over Ackerman and Mercury pursuant to Virginia Code § 8.01-328.1 because Ackerman and Mercury have both transacted business in the Commonwealth of Virginia and contracted to supply services in the Commonwealth of Virginia.

7. Venue is proper in this Court pursuant to Virginia Code § 8.01-262 because Mercury's principle place of business is located in Alexandria, there exists a practical nexus to this forum, and/or a part of this cause of action arose in Alexandria.

8. Additionally, jurisdiction and venue are proper in this Court because Ackerman and Mercury have both contractually consented with the NRA to exclusive jurisdiction and venue of courts sitting within Virginia and waived any objection to venue in Alexandria, Virginia regarding the matters presented herein.

#### **FACTUAL BACKGROUND**

**A. For More Than Thirty Years, the NRA Has Relied on AMc to Provide Public-Affairs Advice and Services Under Carefully Negotiated Contracts.**

9. For decades, AMc and the NRA have collaborated closely regarding public affairs and messaging. Over that time, the NRA vested extensive trust and confidence in AMc, relying

upon the agency to perform work 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.<sup>1</sup>

10. Since at least 1999, AMc’s work on behalf of the NRA has been 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. The Services Agreement between the NRA and AMc dated May 1, 1999 (the “Previous Services Agreement”) as well as the current, operative Services Agreement dated April 30, 2017 (as amended May 6, 2018, the “Services Agreement”) provide that certain categories of services, such as Owned Media and Internet Services, are compensated with an agreed annual fee, while others are required to be invoiced on an *ad hoc* basis based on estimates furnished by AMc and approved by the NRA.

11. Both the Previous Services Agreement and the current Services Agreement have obligated AMc to adjust its pricing based on the “fair market value” or “fair market price” of the services performed. For example, the Previous Services Agreement contained the straightforward assurance by AMc, “we will charge you a fair market price for the work performed.” Similarly, the Previous Services Agreement and the current Services Agreement require 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.”

12. Anticipating that AMc would, from time to time, incur out-of-pocket expenses in the course of its work, but mindful of the NRA’s mandate to steward its funds in the interest of its

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<sup>1</sup> 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>.

public mission, the parties bargained for an expense-reimbursement protocol whereby travel and related expenses incurred by AMc could be paid by the NRA—but only upon prior written approval from the NRA in accordance with the NRA’s expense-reimbursement procedures.

13. The NRA’s collaboration with AMc has generated important, iconic Second Amendment advocacy. In recent years, the trust and confidence it placed in AMc led the NRA to invest in an expanding suite of services which were —according to AMc’s assurances—fairly priced. For example, the NRA agreed to experiment with an “owned media company,” NRA TV, a concept fervently pitched by AMc. By 2017, the NRA’s aggregate payments to Ackerman and Mercury totaled nearly \$40 million annually.

14. 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 NRA terminated the Services Agreement. Among other things, upon the NRA’s termination, the Services Agreement requires that the NRA compensate AMc for outstanding liabilities to both third-party contractors and employees. Specifically, the NRA must: (i) 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”); and (ii) pay AMc a termination fee to cover severance payments owed to AMc employees who are “dedicat[ed] . . . to provide services [to the NRA]” and need to be laid off if the Services Agreement is terminated (the “NRA-Dedicated Personnel”).

**B. The NRA Bargained for Transparent Insight Into AMc's Books and Records.**

15. The NRA bargained for transparency into AMc's files, books and records to ensure that the NRA, a not-for-profit, could appropriately monitor the use of its funds. 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:

Services Agreement  
Dated April 2017, as amended May 2018  
Between the NRA and AMc (deemed to include both Ackerman and Mercury)

**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.

16. For years, the NRA conducted annual audits of certain AMc files pursuant to the Records-Examination Clause. Frequently, the audited records consisted of "samples" assembled in advance by AMc. During 2018, the NRA sought to expand its insight into AMc's activities and its spending— including full access to certain categories of records rather than sample subsets gathered by AMc. Surprisingly and unfortunately, that effort ignited the parties' current dispute.

**C. In Response to Concerns From NRA Employees and Stakeholders, the NRA Attempts to Exercise Its Contractual Record-Examination Right—But Is Rebuffed.**

17. In late 2016, 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 comply with the New York amendments, the NRA decided to strengthen its procedures for documentation and verification of compliance with vendor contracts. Beginning in August 2018, the NRA sent letters to hundreds of vendors—including AMc—that set forth updated invoice-support

requirements and provided detailed guidance regarding, for example, expense reimbursement procedures.

18. During the course of this process, the NRA developed concerns that AMc's expenses and activities required closer oversight. Specific concerns that the NRA sought to investigate included:

- "Out of pocket" expenses that lacked meaningful documentation of NRA approvals, receipts, or other support, despite the requirements set forth in the Services Agreement;
- Lack of transparency regarding AMc's annual budgets under the Services Agreement, as well as its adherence to those budgets;
- Lack of transparency regarding "fair market value" determinations;
- 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;
- Refusal to provide certain requested data "in writing" (such as unique visitors, viewership numbers, clickthrough rates, or related performance metrics) that enable the NRA analyze the return on its investment in NRATV.<sup>2</sup>

19. During early- and mid-2018, the NRA sought information from AMc pursuant to the Records-Examination Clause on a common-interest basis to advance the parties' mutual interests in connection with an ongoing lawsuit. However, after the NRA began to request access to records that would shed light on the above topics, AMc's responses became evasive and hostile. In fact, 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 for which AMc had already invoiced the NRA. During a telephone call

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<sup>2</sup> 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.

on September 19, 2018, after AMc's counsel insisted that the NRA pay AMc's legal fees without any insight into why the fees had been incurred, the NRA's counsel observed that AMc's posture seemed more consistent with an adverse than a common-interest relationship. AMc's counsel replied: "Ackerman views the relationship as adverse."

20. Thereafter, AMc strenuously resisted the NRA's efforts to enforce the Services Agreement, including embarking on a campaign to "kill the messenger" when the NRA sought access to documents or proposed reductions in AMc's budget. At first, AMc scapegoated the NRA's outside 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 forbid the accountants from disclosing simple, material information to the NRA—including copies of annual budgets that the NRA allegedly approved. When the NRA's General Counsel sought additional information in follow-up to the forensic audit, AMc ignored his letters.

**D. AMc Is Concealing Material Information From the NRA, Including a Large Related-Party Contract.**

21. The NRA brings this action not only because AMc has flagrantly disregarded its contractual obligations, but because the NRA has recently grown concerned that the records AMc is withholding include information material to the NRA's not-for-profit governance and its stewardship of its members' donations.

22. Lieutenant Colonel Oliver North (Ret.) ("Col. North") is a veteran of the United States Marine Corps and the Reagan administration, a longstanding advocate for the Second Amendment, and a member of the NRA Board of Directors. During May 2018, the NRA

announced that Col. 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 Col. North prepared to assume the presidency of the NRA, he separately discussed a potential engagement by AMc as the host of an NRA TV documentary series. On May 6, 2018, the NRA and AMc amended the Services Agreement to affirm that any contract between AMc and Col. 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 Col. North as a third-party contractor—but not, necessarily, an employee—of AMc.

23. 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.”<sup>3</sup> 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,<sup>4</sup> 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.

24. Aware that Col. North 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

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<sup>3</sup> See N.Y. N-PCL § 715.

<sup>4</sup> *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](https://www.charitiesnys.com/pdfs/Charities_Conflict_of_Interest.pdf), at 3.



Contract and ratified the relationship pursuant to New York law—subject to carefully drawn provisos designed to avoid any conflicts of interest.

25. At the time it ratified Col. 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 thereafter, AMc continued to refuse to provide the North Contract pursuant to the Records-Examination Clause. Meanwhile, Col. 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.

26. 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 which was provided to the Audit Committee had been complete and accurate. Among other things, the NRA's brief, limited review of the North Contract gave rise to questions regarding: (i) whether Col. 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 Col. 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.

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

- 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.

28. 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 to respond. AMc has not done so. Put simply, the NRA is at the end of its rope.

**E. AMc's Disregard of Its Contractual Obligations Will Continue to Damage the NRA.**

29. 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 permit a fulsome review of the North Contract threatens to impede the NRA's corporate governance process.

30. 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—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.

**DEMAND FOR JURY TRIAL**

31. Plaintiff hereby demands a trial by jury regarding all issues of fact in this case.

**FIRST CAUSE OF ACTION**

**BREACH OF CONTRACT AND REQUEST FOR SPECIFIC PERFORMANCE  
(Against All Defendants)**

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

32. The Services Agreement is a legally enforceable contract. The Records-Examination Clause is unambiguous.

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

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

35. There is no adequate remedy at law for AMC's refusal to permit examination of records (whether they reside at Ackerman or Mercury) pursuant to the Services Agreement. The information sought by the NRA pursuant to the Records-Examination Clause resides uniquely

within the possession of Ackerman and/or Mercury, and cannot be acquired by the NRA on the open market for any sum of money.

36. 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; 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 27 hereof.

37. Defendants' breaches of the Services Agreement have 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 permit a fulsome review of the North Contract threatens to impede the NRA's corporate governance.

38. 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.

#### **REQUEST FOR RELIEF**

Wherefore, for all the foregoing reasons, Plaintiff requests relief as follows:

- a. A judgment against each of Ackerman and Mercury for breach of contract;
- b. 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;
  - 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 or 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

- c. Such other and further relief to which the NRA may be entitled at law or in equity.

Respectfully submitted,



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Robert H. Cox (VA Bar No. 33118)  
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**ATTORNEYS FOR THE NATIONAL RIFLE  
ASSOCIATION**

# **Exhibit B**

**B R E W E R**  
ATTORNEYS & COUNSELORS

November 18, 2019

**VIA EMAIL**

David Dickieson  
David Scherlter  
Joseph Gonzalez  
Schertler & Onorato, LLP  
901 New York Avenue, N.W., Suite 500  
Washington, DC 20001

**Re: Meet-and-confer of November 11, 2019, and preceding communications.**

Counsel:

As you know, on October 24, 2019, the NRA reiterated its concerns about the pace of Ackerman's document production and about the deficiencies of the volumes produced to date. Instead of responding to the NRA's concerns about the discovery challenges facing both of our clients, your response on October 29, 2019:

1. "[S]uggest[ed] that the NRA simply dumped documents from another litigation on AMc," which would – you wrote – "be sanctionable conduct." In fact, AMc specifically demanded that the NRA produce every one of those documents.
2. Dismissed the NRA's concerns about the pace of AMc's production as "without merit and grounded in distortion" even though, at the time of your writing, AMc had only presented assorted pages of AMc documents in a format not acceptable for commercial litigation.
3. Recognized AMc's failure to produce renderable documents per industry standards, but blamed your client's failure on the NRA.

A companion letter that you issued the same day (a purported "Deficiency Letter") identified supposed omissions in the NRA's document productions. The listed demands in your Deficiency Letter revealed that AMc had not actually reviewed many of the documents for which the NRA has expended time and expense to collect, process, sort, review and produce. Your letter demanded documents that the NRA had already produced to you, including documents produced weeks prior to the issuance of your Deficiency Letter. Notwithstanding that the NRA has issued eight supplemental productions (vols. 2-9) and is issuing its ninth supplemental production (vol. 10) in short order, you groundlessly averred that the NRA had violated its duty under the Rules of the Court to supplement its production.

On November 11, 2019, the parties met-and-conferred to set the record straight. The NRA informed you that:



# B R E W E R

**Messrs. Dickieson, Schertler & Gonzalez**

November 18, 2019

Page 2

1. the NRA has already produced to you many of the documents sought by the 20 distinct demands you set forth in your Deficiency Letter (*see* my email of Nov. 11, 2019, identifying previously produced documents);
2. you are not entitled to a number of the documents you demand; and
3. the NRA continues to collect, process, sort, review and produce documents that are responsive to your discovery requests.

With respect to the information that the NRA agreed to provide in follow-up to the meet-and-confer of November 11, 2019, the NRA states as follows (utilizing the numbering in your Deficiency Letter):

(No. 1) The NRA is not presently aware of a recorded statement or communication regarding the alleged incident in which an NRA employee's child is said to have applied removable stickers to the wall of a Four Seasons hotel room. The NRA is producing the 13-page document you have specifically requested in its production Vol. 10.

(No. 3) You requested that the NRA keep you abreast of developments with Ms. Stanford. We transmitted Ms. Stanford's production to you on Tuesday, November 12, 2019. Please inform us whether or not you have served Ms. Stanford with your subpoena. We await a re-notice of deposition to the extent you intend to depose her and have selected a particular date.

(No. 5) We expect to complete our review of notepads used by Mr. LaPierre by December 6, 2019.

(No. 7) We continue to process documents associated with the audit committee and will produce any responsive information on a rolling basis, as swiftly as possible.

(No. 10) We believe that the NRA has produced all documents responsive to RFP No. 28 which are relevant to any claim or defense, not privileged, and not otherwise protected from disclosure. (Note: your Deficiency Letter mistakenly refers to RFP No. 27.)

During the meet-and-confer, the parties made certain representations. **The NRA represented that:**

- the NRA would provide bates numbers and other information about the already-produced documents which AMc claimed had been withheld – *the NRA provided that information the same day, as promised;*
- the NRA would expeditiously transmit Ms. Stanford's production to AMc – *the NRA provided Ms. Stanford's production to you within one day of that representation;*
- the NRA would apprise you of the status of its review of five categories of documents by Friday, November 15, 2019 – *on Nov. 15th, the NRA informed you that the requested info would be ready on Monday, November 18 and the NRA has transmitted it to you via this communication;*

# B R E W E R

**Messrs. Dickieson, Schertler & Gonzalez**

November 18, 2019

Page 3

- the NRA would issue its next production (vol. 10) the week of Nov. 11, or otherwise early in the week of Nov. 18, 2019 – *we intend to produce Vol. 10 on or before Wednesday, Nov. 20, 2019.*

**Ackerman represented that:**

- it would provide the NRA a cover page to a "board book" in order to permit the NRA to conduct a specific search for the information Ackerman requested. *We await receipt of that document.*
- it would apprise the NRA of certain information today, including, *inter alia*, the employment status of Oliver North, the status of production of the documents provided to FRA by AMc, and comments on the proposed ESI protocol we shared with you. *We look forward to receiving this information today.*

Separately, on Tuesday Nov. 12, in response to the NRA's promised email the evening prior, you informed the NRA that AMc would review the NRA's email in more detail before getting back to the NRA. *We welcome the opportunity to address your questions.*

Finally, I can no longer ignore that a number of your letters and emails include an unfounded allegation that I or my colleagues are guilty of some form of misconduct. In your most recent letters, you accuse us of potentially "sanctionable conduct" (Oct. 29, 2019, Response Letter), and of "violations of [ ] duty" under the Rules of the Court for failure to supplement our production (Oct. 29, 2019, Deficiency Letter). In the preceding months you have casually leveled equally serious accusations: you have baselessly suggested that we have "misled" you (Aug. 6, 2019); violated a Court order (Sep. 7, 2019); and otherwise acted in "bad faith" (Jul. 11, 2019 & Sep. 7, 2019). These allegations are false. Please stop making them.

Sincerely,



Beth Landes

cc: Michael Collins (by email)  
Jim Hundley (by email)  
Bob Cox (by email)