

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

NATIONAL RIFLE ASSOCIATION,

Plaintiff,

v.

OLIVER NORTH,

Defendant.

Index No. 903843-20

Hon. Richard Platkin

DEFENDANT'S ANSWER

Defendant LtCol Oliver North USMC (Ret.), by his undersigned counsel, hereby submits his Answer to the Complaint in this action.

PRELIMINARY STATEMENT

1. The National Rifle Association of America ("NRA") invites this Court to grant the NRA permission to retaliate against North for reporting potential financial misconduct and inadequate governance to other officers and directors of the NRA. Such retaliation is barred by New York law, which protects those who in good faith report "any action or suspected action taken by or within the corporation that is illegal, fraudulent or in violation of any adopted policy of the corporation" from suffering "retaliation."

2. Around the time North became President of the NRA in September 2018, he heard disgusting allegations of financial misconduct related to the use of NRA member dues. In particular, he discovered that the NRA had been making extraordinary payments to the law firm of its outside counsel William A. Brewer III based on enormous legal bills submitted by Brewer's law firm. The NRA had been paying Brewer's law firm over \$1 million per month beginning April 2018, increasing to \$1.8 million per month beginning in July 2018. North

learned the NRA paid Brewer's law firm nearly \$20 million through February 2019. That figure has recently been reported to have reached \$54 million between April 2018 and June 2020.¹

3. Shocked by the magnitude of these legal fees, North sought the advice of the then-NRA Board Counsel and exercised his fiduciary duty to the NRA's Board, members, and donors by reporting these potentially excessive legal fees to other officers and directors of the NRA, and demanding the NRA conduct an outside, independent, confidential investigation. North later learned of allegations that the so-called CEO of the NRA, Wayne LaPierre, had corruptly received hundreds of thousands of dollars in clothing and personal air, limo, and other travel charges, as well as other benefits. Allegations also surfaced in the press that the NRA was in violation of the laws governing tax-exempt organizations.

4. Brewer and LaPierre were apparently upset by North's reporting these matters to others at the NRA, including to the Audit Committee, and by North's formation of an NRA Board special committee to investigate these matters and take corrective action. Brewer and LaPierre acted to protect their own interests—and not the interests of the NRA—by blocking each of North's attempts to investigate these matters.

5. Brewer and LaPierre also embarked on a scheme to denounce North, to defame him, and to expel him from the NRA. They engaged in repeated acts of retaliation including but not limited to:

- a. Blocking North's re-nomination as President of the NRA;
- b. Disbanding the NRA Board special committee formed by North before it could do any work;

¹ "NRA Put Faith in Bill Brewer's New York Connections, According to Court Filing," *The Trace*, <https://www.thetrace.org/rounds/nra-put-faith-in-bill-brewers-new-york-connections-according-to-court-filing/>

- c. Inventing and publicly disseminating a false story that North had engaged in a “coup” and tried to “extort” LaPierre;
- d. Denying North indemnification that had been provided to other officers and directors of the NRA in connection with investigations and lawsuits related to the NRA, including investigations into the potential financial misconduct and inadequate governance reported by North; and
- e. Attempting to force North to resign from the NRA Board.

6. In yet another act of retaliation, the NRA now seeks to expel North from its membership pursuant to a baseless complaint purportedly made by a LaPierre crony, Thomas J. King. The complaint purportedly drafted and sworn to by King focuses on North’s reporting of potential financial misconduct and inadequate governance to other officers and directors of the NRA, but characterizes those reports as part of a “conspiracy” by North and his then-employer, Ackerman McQueen.

7. Unsurprisingly, the NRA Ethics Committee, which is controlled and dominated by LaPierre and Brewer, determined that the complaint purportedly drafted and sworn to by King should not be dismissed, and a secret, three-person Hearing Board was formed which set a hearing date for August 12, 2020.

8. The NRA alleges that North raised his whistleblower concerns for the first time in May 2020, “eight months” after he received notice of the complaint purportedly drafted and sworn to by King, and that North raised these “contrived” whistleblower concerns “[i]n obvious anticipation of an adverse outcome and apparently unwilling to defend his actions or conduct.” Nothing could be further from the truth.

9. *First*, North has consistently raised his concerns about the NRA's retaliation in numerous letters to NRA officers and directors, including the NRA's general counsel, since Spring 2019.

10. *Second*, North specifically sought whistleblower protection from the NRA in a letter to the NRA's general counsel dated October 25, 2019. *See Exhibit 1*.

11. *Third*, on June 1, 2020, North submitted to the NRA Hearing Board a presentation in defense of the baseless allegations in the complaint purportedly drafted and sworn to by King. *See Exhibit 2*. The defense presentation includes statements from numerous witness with firsthand knowledge of the matters at issue. They all indicate that North acted consistent with his fiduciary duty when he reported potential financial misconduct and inadequate governance. The defense presentation also includes a lengthy analysis by Harvey Pitt, an expert on corporate governance. Mr. Pitt was the former General Counsel and Chairman of the SEC. In a 22-page analysis, Mr. Pitt ultimately concluded:

The efforts by LtCol North discussed above—and that are the purported subject of this hearing—were undertaken in conformity with LtCol North's fiduciary, legal, and ethical responsibilities. They were an effort to ensure that the NRA, an organization to which LtCol North has been devoted for over two decades, adheres to its fiduciary, legal and moral responsibilities. Whether or not the concerns that LtCol North communicated to the NRA Board will be found by an independent forum to be supported by sufficient factual and legal evidence, these issues were of paramount concern to the well-being of the NRA, raise important policy issues on which the *collective* judgment of the NRA should be focused, and they deserved to be treated dispassionately, independently, and with appropriate effort. They most certainly did not and do not warrant the institution of this proceeding, or the retaliation that has been visited on NRA former Board members and officers who have sought only a fair consideration of the issues raised.

12. North's conduct qualifies him as a whistleblower under New York law, and this Court must not issue an order allowing North to suffer retaliation for that conduct. The NRA

appears to concede as it must that North reported potential financial misconduct and inadequate governance to other officers and directors of the NRA. Rather, the NRA only contends that North is not entitled to whistleblower protections because it alleges North's reports were not made in good faith.

13. As evidenced by the legal advice North sought at the time he reported the potential misconduct, the corroborating witness statements submitted by North in defense of the complaint purportedly drafted and sworn to by King, and the expert opinion of Mr. Pitt, North at all times acted in good faith, and in the best interest of the NRA, its Board, and its members.

ANSWER

In response to the specific, numbered paragraphs of the NRA's Complaint, North responds as follows:

1. North admits the NRA is a 501(c)(4) organization with Bylaws. North lacks sufficient information to admit or deny the allegations in the remaining sentences of Paragraph 1.

2. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 2.

3. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 3.

4. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 4.

5. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 5.

6. North admits that a complaint dated August 5, 2019, was purportedly drafted and sworn to by Thomas J. King, and that complaint seeks to expel North from the NRA's membership. North lacks sufficient information to admit or deny the remaining allegations in the first sentence of Paragraph 6.

7. North admits that he received notice of the complaint purportedly drafted and sworn to by King in September 2019, and that on October 25, 2019, at the latest, North put the NRA on notice of his whistleblower status under Section 715-B of New York's Not-For-Profit Corporation Law, and for the same conduct described in the complaint purportedly drafted and sworn to by King. *See Exhibit 1.* North further admits that on May 18, 2020, North reserved all rights to enforce Section 715-B in the event the NRA moved forward with its proceedings to involuntarily terminate North's membership in the NRA. *See Exhibit 3.* North denies that he anticipated an adverse outcome as a result of the proceedings related to the complaint purportedly drafted and sworn to by King and that he was unwilling to defend his actions or conduct, and admits that he in fact complied with all deadlines and procedures dictated by the NRA and submitted substantial evidence in his defense. *See Exhibit 2.* North denies any remaining allegations in Paragraph 7.

8. North admits that the NRA seeks a declaratory judgment but denies that the NRA is entitled to the declaration described in Paragraph 8.

9. North admits that the NRA seeks a declaratory judgment but denies that the NRA is entitled to the declaration described in Paragraph 9.

Jurisdiction and Venue

10. The allegations in Paragraph 10 are conclusions of law to which no response is required. To the extent that any response is required, North denies the allegations.

11. The allegations in Paragraph 11 are conclusions of law to which no response is required. To the extent that any response is required, North denies the allegations.

Parties

12. North admits that the NRA is a New York not-for-profit corporation with its principal place of business in Fairfax, Virginia.

13. North admits that he is an individual who resides in Virginia, is a member of the NRA and of the NRA's Board of Directors, and has served as the NRA's President.

NRA's Factual Allegations

14. North admits that the NRA is a New York not-for-profit corporation. North lacks sufficient information to admit or deny the remaining allegations in Paragraph 14.

15. North admits that he is an individual who resides in Virginia, is a member of the NRA and of the NRA's Board of Directors, and has served as the NRA's President. North further admits that a complaint dated August 5, 2019, was purportedly drafted and sworn to by Thomas J. King, and that complaint seeks to expel North from the NRA's membership pursuant to Article III section 11 of the NRA Bylaws. North further admits that on May 18, 2020, North reserved all rights to enforce Section 715-B in the event the NRA moved forward with its proceedings to involuntarily terminate North's membership in the NRA. *See Exhibit 3.* North denies that he is an employee of Ackerman McQueen. North denies any remaining allegations in Paragraph 15.

16. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 16.

17. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 17.

18. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 18.

19. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 19.

20. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 20.

21. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 21.

22. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 22.

23. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 23.

24. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 24.

25. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 25.

26. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 26.

27. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 27.

28. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 28.

29. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 29.

30. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 30.

31. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 31.

32. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 32.

33. North states that the NRA's Bylaws speak for themselves and therefore no response is necessary. To the extent necessary, North denies any remaining allegations in Paragraph 33.

34. North admits that a complaint dated August 5, 2019, was purportedly drafted and sworn to by Thomas J. King, and that the complaint seeks to expel North from the NRA's membership.

35. North admits that the NRA's disciplinary proceeding involving North is intended to be confidential to protect North's privacy. North further admits that the NRA breached the confidentiality of the disciplinary proceedings by publicizing the complaint purportedly drafted and sworn to by King in public court filings twice within a month of its being made. *See* NY St Cts Elec Filing [NYSCEF] Doc No. 49, King Affidavit, in *National Rifle Association of America v. Letitia James*, Sup Ct, NY County, index No. 158019/2019; NYSCEF Doc No. 49 at 4 n.1, Reply Memorandum, and Doc No. 45, King Affidavit, in *National Rifle Association of America v. North*, Sup Ct, NY County, index No. 653577/2019. The second sentence of Paragraph 35

expresses an opinion to which no response is necessary. To the extent any further response is necessary, North denies any remaining allegations of Paragraph 35.

36. North denies the allegations in Paragraph 36.

37. The allegations in Paragraph 37 purport to describe statutes and written NRA policies, which speak for themselves. To the extent any further response is necessary, North denies the allegations in Paragraph 37.

38. North admits that the Audit Committee of the NRA Board of Directors passed a resolution approving North's contract with Ackerman McQueen in September 2018. North denies the remaining allegations in Paragraph 38.

39. North denies the allegations in Paragraph 39.

40. North denies the allegations in Paragraph 40.

41. North denies the allegations in Paragraph 41.

42. North denies the allegations in Paragraph 42.

43. North denies the allegations in Paragraph 43.

44. North admits that he reported potential financial misconduct and inadequate governance at the NRA to other NRA directors and officers, including the NRA's Audit Committee, and that North's conduct is protected from retaliation under New York law. North denies the remaining allegations in Paragraph 44.

45. North denies the allegations in Paragraph 45.

46. North denies the allegations in Paragraph 46.

47. North denies the allegations in Paragraph 47.

48. North denies the allegations in Paragraph 48.

49. North denies the allegations in Paragraph 49.

50. North denies the allegations in Paragraph 50.
51. North denies the allegations in Paragraph 51.
52. North denies the allegations in Paragraph 52.
53. North lacks sufficient information to admit or deny the allegations in Paragraph 53.
54. North denies the allegations in Paragraph 54.
55. North denies the allegations in the first sentence of Paragraph 55. North admits that a new NRA president was nominated and elected in April 2019.
56. North lacks sufficient information to admit or deny the allegations in Paragraph 56.
57. No response is necessary because the allegations in Paragraph 57 purport to describe the contents of a letter dated May 31, 2019, which speaks for itself. To the extent a response is necessary, North denies the allegations in Paragraph 57.
58. North admits that he continues to serve on the NRA Board of Directors. No response is necessary to the allegations purporting to describe a letter dated June 12, 2019, in the second sentence of Paragraph 58 because the letter speaks for itself. To the extent a response is necessary, North denies the allegations in Paragraph 58.
59. North admits that a complaint dated August 5, 2019, was purportedly drafted and sworn to by Thomas J. King. No response is necessary to the remaining allegations in Paragraph 59, which purport to describe the contents of the complaint purportedly drafted and sworn to by King, which speaks for itself. To the extent a response is necessary, North denies the remaining allegations in Paragraph 59.

60. North lacks sufficient information to admit or deny the allegations in Paragraph 60.

61. North admits that he received a letter dated September 18, 2019, from John Frazer, notifying North that NRA Ethics Committee had resolved that the charges in the August 5, 2019, complaint purportedly drafted and sworn to by King, “would warrant expulsion, and that the defendant be expelled in the event the charges are proved or a hearing is not requested.” North further admits that Frazer’s September 18, 2019, letter included the complaint purportedly drafted and sworn to by King, its exhibits, and a copy of the NRA Bylaws. No response is necessary to the allegations in the third sentence of Paragraph 61, which purport to describe the contents of Frazer’s September 18, 2019, letter, which speaks for itself. To the extent any further response is necessary, North denies any remaining allegations in Paragraph 61.

62. North admits that he timely demanded a hearing on the allegations in the complaint purportedly drafted and sworn to by King.

63. North admits that he received a letter dated May 1, 2020, from the Acting Secretary of the NRA Committee on Hearings, Jacqueline Mongold, providing North with “formal notice” under the NRA Bylaws that an NRA Hearing Board would convene at NRA headquarters in Fairfax, VA, for the purpose of making a recommendation to the NRA Board of Directors regarding the complaint purportedly drafted and sworn to by King. North lacks sufficient information to admit or deny the remaining allegations in Paragraph 63.

64. No response is necessary to the allegations in Paragraph 64, which purport to describe the contents of a letter dated May 1, 2020. To the extent a response is necessary, North denies the allegations in Paragraph 64.

65. No response is necessary to the allegations in Paragraph 65, which purport to describe the contents of a letter dated May 1, 2020. To the extent a response is necessary, North denies the allegations in Paragraph 65.

66. No response is necessary to the allegations in Paragraph 66, which purport to describe the contents of a letter dated May 1, 2020. To the extent a response is necessary, North denies the allegations in Paragraph 66.

67. No response is necessary to the allegations in Paragraph 67, which purport to describe the contents of a letter dated May 1, 2020. To the extent a response is necessary, North denies the allegations in Paragraph 67.

68. North admits that on October 25, 2019, at the latest, North put the NRA on notice of his whistleblower status under Section 715-B of New York's Not-For-Profit Corporation Law for, among other things, the same conduct described in the complaint purportedly drafted and sworn to by King. *See Exhibit 1.* North further admits that on May 18, 2020, North reserved all rights to enforce Section 715-B in the event the NRA moved forward with its proceedings to involuntarily terminate North's membership in the NRA. *See Exhibit 3.* North denies any remaining allegations in Paragraph 68.

69. North admits that on May 18, 2020, North reserved all rights to enforce Section 715-B in the event the NRA moved forward with its proceedings to involuntarily terminate North's membership in the NRA. *See Exhibit 3.* North denies any remaining allegations in Paragraph 69.

70. North admits that on May 18, 2020, North reserved all rights to enforce Section 715-B in the event the NRA moved forward with its proceedings to involuntarily terminate

North's membership in the NRA. *See Exhibit 3.* North denies any remaining allegations in Paragraph 70.

71. North lacks sufficient information to admit or deny the allegations in Paragraph 71.

72. No response is necessary to the allegations in the first two sentences of Paragraph 72, which purport to quote and describe the purpose of New York's whistleblower statute, which speaks for itself. North lacks sufficient information to admit or deny the allegations in the third sentence of Paragraph 72. To the extent any further response is necessary, North denies any remaining allegations in Paragraph 72.

73. North lacks sufficient information to admit or deny the allegations in Paragraph 73.

74. North lacks sufficient information to admit or deny the allegations in Paragraph 74.

75. North denies the allegations in Paragraph 75.

76. North denies the allegations in Paragraph 76.

77. North denies the allegations in Paragraph 77.

Causes of Action

78. North restates, realleges, and incorporates by reference herein his responses to all prior paragraphs of this Answer, as well as his Preliminary Statement, as if fully set forth herein.

79. Paragraph 79 contains a legal conclusion as to which no response is required.

80. North admits that a complaint dated August 5, 2019, was purportedly drafted and sworn to by Thomas J. King, and that the complaint seeks to expel North from the NRA's membership pursuant to Article III section 11 of the NRA Bylaws.

81. North denies the allegations in Paragraph 81.

82. North lacks sufficient information to admit or deny the allegations in Paragraph 82.

83. North admits that the NRA alleges in this lawsuit that North is not a whistleblower. North denies the remaining allegations in Paragraph 83.

84. No response is necessary to the allegations in Paragraph 84 purporting to characterize the NRA Bylaws, which speak for themselves. To the extent a response is necessary, North denies the allegations in Paragraph 84.

85. North denies the allegations in Paragraph 85.

86. North restates, realleges, and incorporates by reference herein his responses to all prior paragraphs of this Answer, as well as his Preliminary Statement, as if fully set forth herein.

87. Paragraph 87 contains a legal conclusion as to which no response is required.

88. North lacks sufficient information to admit or deny the allegations in Paragraph 88.

89. North lacks sufficient information to admit or deny the allegations in Paragraph 89.

90. North denies the allegations in Paragraph 90.

91. North admits he is a member of the NRA Board. North denies the remaining allegations in Paragraph 91.

92. North denies that the NRA is entitled to the relief that it requests.

Demand for Relief

North denies the NRA is entitled to any of the relief that it seeks in this lawsuit. North further denies all allegations in the Complaint that are not addressed above.

Defenses

Without admitting any wrongful conduct by North; without conceding that North has any evidentiary burden of proof; without assuming the responsibility for any burden of proof on any of the following defenses; and without relieving the NRA of its burden of proof, North asserts the following defenses to the NRA's claim. For each defense, North reasserts and reincorporates all other paragraphs of this Answer including the Preliminary Statement. North hereby gives notice that he intends to rely upon any other and additional defense that is now or may become available during discovery, and hereby reserves the right to amend this Answer to assert any such defense.

First Defense

The NRA's claims are barred because this Court lacks jurisdiction.

Second Defense

The NRA's claims are barred in whole or in part because the NRA failed to state a claim upon which relief can be granted.

Third Defense

The NRA's claim is barred in whole or in part by the equitable doctrines of laches, waiver, acquiescence, ratification, and/or unclean hands.

Fourth Defense

North relied in good faith on professional advice from counsel to the Board of Directors of the NRA.

Fifth Defense

The NRA's claim is barred because the NRA acted in bad faith.

Dated: July 22, 2020

Respectfully submitted,

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