

THE NRA’S AMENDED COUNTERCLAIMS AGAINST CHRISTOPHER COX

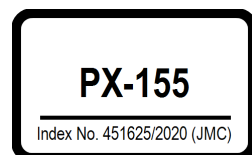
Christopher Cox,
Claimant/Counterclaim Respondent,
v.
National Rifle Association of America,
Respondent/Counterclaimant.
CONFIDENTIAL

I. PRELIMINARY STATEMENT

The NRA asserts its counterclaims against Chris Cox, a faithless former agent, officer, and highly compensated executive of the Association, for his misuse of corporate assets for personal benefit, his conspiring to extort the NRA’s CEO to advance Cox’s personal interest at the expense of the NRA, and his intentional abuse of the trust and confidence placed in him by the NRA’s Board of Directors and its Officers.1 As an officer himself, Cox owed the Association fiduciary duties, including the duties of utmost loyalty, care, and good faith. He was also entrusted to use the NRA’s funds and his senior position within the NRA to advance its public welfare mission. Instead, Cox repeatedly betrayed the NRA and the trust placed in him, enriched himself at the NRA’s expense, and otherwise breached his fiduciary and contractual duties to the NRA and its membership, culminating—in April of 2019—in his surreptitious participation in an attempted coup against the NRA’s Executive Vice President and CEO.

The NRA’s investigation to date has revealed numerous wrongful acts that Cox committed against the NRA. Since as early as—at least—2018, Cox, a fiduciary, abused the trust and confidence placed in him by failing to properly manage the operation and finances of NRA-ILA and engaging in abuse of NRA financial resources by aggrandizing himself, his friends, and his family. Using his senior position as NRA-ILA’s Executive Director, Cox routinely caused the NRA to reimburse him for wildly inappropriate expenses, such as country club membership fees and home decor. The expenses for which Cox reimbursed himself using NRA funds were unlawful, must be repaid, and risk exposing the NRA to regulatory scrutiny. They are also bound to cause the NRA great reputational harm if made public.

1 The NRA hereby demands that its counterclaim be referred to arbitration pursuant to the 2018 CPR Non-Administered Arbitration Rules. The NRA’s counterclaim is properly brought before this Tribunal because it arises out of and relates to the January 1, 2019, Employment Agreement between the NRA and Cox, which at §11 states: “Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration by a sole arbitrator. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of the arbitration shall be Fairfax, Virginia.”



As previously pleaded, in addition, in or around 2019, rather than work to advance the interests of the NRA, Cox worked to advance his own interests by participating in a conspiracy to extort the NRA's Executive Vice President into resigning—a move intended to, *inter alia*, elevate Cox into that role.

Because of Cox's repeated acts of disloyalty and breaches of his fiduciary and contractual duties to the NRA, Cox forfeited his entitlement to any compensation from the NRA for the period starting at the point when such acts first occurred. Accordingly, the NRA asserts these counterclaims against Cox to: (i) obtain disgorgement of his salary since his first act of disloyalty; (ii) set aside the funds transfers that he obtained wrongfully from the NRA; (iii) obtain the return of these funds to the NRA so that they may be used for the purposes for which the NRA's members and donors provided them to the NRA; and (iv) recover damages for the harm that Cox's unlawful behavior has caused and is bound to cause. Given the abuse of his senior position of authority and the long-lasting nature of his wrongful behavior, the NRA also seeks punitive damages against Cox. Executive leaders are in a unique position of trust and power and must be held accountable for abusing that trust. This pleading is made on personal knowledge as to all matters concerning the actions of the NRA and information and belief as to all others.

For the same reasons, Cox has no basis for his claims against the NRA, in which he seeks prospective monthly post-termination payments. For the recitation of the NRA's denials of and defenses to Cox's meritless claims against the NRA, the NRA herein realleges and reincorporates all of the allegations set forth in its prior pleadings.

## **II.** **PROCEDURAL BACKGROUND**

After the NRA suspended Cox's post-termination payments in September 2019 pending further investigation into Cox's misconduct, Cox filed a claim against the NRA in this arbitration seeking, based on a release he signed in July 2019, an order directing the NRA to resume its payments. In its response to the claim, on October 9, 2019, the NRA explained that Cox's right to payments once existed under his Employment Agreement with the NRA, not the release, and that it owes no post-termination payments to Cox because of his prior material breach of the Employment Agreement. In its response, the NRA sought an order denying each and every one of Cox's claims for relief.

Based on additional investigation, the NRA amended its response on November 27, 2019, to also assert: (a) counterclaims against Cox for breaching his fiduciary and contractual duties to the NRA; and (b) an additional defense to his claim.

Cox then applied for and received permission to amend his claims against the NRA to include an additional breach of contract claim—this time based on Cox's Employment Agreement (which the NRA asserted previously was the relevant agreement)—and a claim for indemnification for fees and costs in this arbitration, as well as another matter, and for a potential judgment against Cox in this arbitration. On January 28, 2020, the NRA filed a response to Cox's new claims, which explained that most of the new claims fail as a matter of law or contractual interpretation, and that all of his claims fail on their merits.

The NRA now amends its claims against Cox to redress additional wrongs perpetrated by him. Specifically, the NRA's ongoing investigation has recently revealed that Cox severely abused the NRA's expense reimbursement process and travel and business expense reimbursement policy and that he grossly misused corporate funds. Rather than preserve the NRA's corporate assets to support its Second Amendment mission, Cox abused his position of trust and authority and used NRA funds to pay for his out-of-pocket and lifestyle expenses that had no nexus of any kind to his work for the NRA. For example, he caused the NRA to reimburse him for fancy lighting equipment installed on each floor of his three-story house, claiming falsely that the lighting fixtures and related items (like remotely controlled light dimmers) were necessary for his security. The NRA is a civil rights organization, not Cox's personal piggy bank. Cox must repay to the NRA the funds that he unlawfully obtained from the NRA and the payments that he caused the NRA to make for his benefit under the pretense of legitimate business expense reimbursement.

### **III. PARTIES**

The National Rifle Association of America (the "NRA") is a not-for-profit corporation organized under the laws of New York with its principal place of business located at 11250 Waples Mill Road, Fairfax, Virginia 22030. The NRA may be contacted through its Secretary and General Counsel, John Frazer, at [REDACTED] or john.frazer@nrahq.com. The NRA is represented in this matter by William A. Brewer III, Svetlana M. Eisenberg, and David A. Giroux of Brewer, Attorneys & Counselors, located at 750 Lexington Avenue, 14<sup>th</sup> Floor, New York, New York 10022. They may be contacted at (212) 489-1400, or at wab@brewerattorneys.com, sme@brewerattorneys.com and dag@brewerattorneys.com.

Christopher Cox is the former highly compensated Executive Director of the NRA's Institute for Legislative Action ("NRA-ILA" or "ILA"), which is the NRA's "lobbying" arm. As an officer of the NRA, he was under an obligation to, among other things, discharge the duties of his position in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. Unbeknownst to the NRA at the time, since at least in or around 2018 Cox acted disloyally to the NRA in breach of his statutory, fiduciary, and contractual duties. His acts of waste and disloyalty materially breached his obligations to the NRA and caused—and may further cause—the Association reputational and economic harm. His abuse of the Association's financial resources for personal aggrandizement is yet another reason why the NRA is forced to bring these claims in order to claw back the numerous unlawful transfers of funds for Cox's benefit that Cox extracted out of the NRA.

According to his Arbitration Claim, Cox resides at 428 North Washington Street, Alexandria, Virginia 22314, and may be reached at [REDACTED], or at [REDACTED]. Cox is represented in this matter by Thomas Buchanan and Matthew Saxon of Winston & Strawn LLP, located at 1700 K Street NW, Washington, D.C. 20006. They can be reached at (202) 282-5000, or at tbuchana@winston.com or msaxon@winston.com.

#### IV. NON-PARTY CO-CONSPIRATORS

Cox's co-conspirator David Lehman is ILA's former General Counsel and an employee of Cox's newly formed consulting firm. Like Cox, Lehman had a practice of having the NRA pay for his lunches in eateries near the NRA's offices even though they in no way advanced its Second Amendment mission. Lehman also deleted hundreds of text messages that he sent or received using his NRA-issued mobile devices, despite there being numerous litigation holds in place.

Cox's co-conspirator Lieutenant Colonel Oliver North (Ret.) ("North") was an employee of Ackerman McQueen, is an NRA Board member, and previously served as President of the NRA. In an attempt to deflect scrutiny from North's misconduct and the misconduct of his employer, Ackerman McQueen, he led—on April 24, 2019—an unsuccessful effort to oust Wayne LaPierre from his position as the NRA's Executive Vice President.

Cox's co-conspirators at Ackerman McQueen ("AMc"), the NRA's former advertising agency, include its senior leadership and certain staff. As early as 2015, Cox leaked to AMc confidential NRA information, including by using his personal AOL email account.

Cox's co-conspirator Daniel Boren is a former member of the NRA Board of Directors who participated in the failed extortion attempt on April 24, 2019, by, among other things, coordinating via several text messages and phone calls with Cox the delivery of an ultimatum to LaPierre. Boren resigned from the Board in the face of an ethics complaint filed against him for his role in the extortion attempt described below.

#### V. COX'S FLAGRANT ABUSE OF THE NRA'S EXPENSE REIMBURSEMENT POLICY

Since at least in or around 2018, Cox abused the NRA's expense reimbursement process to enrich himself to the detriment of the NRA. Using his position as an NRA executive and as NRA-ILA's Executive Director, he abused the trust that other NRA Officers and the NRA's Board of Directors placed in him. In violation of legal requirements applicable to expense reimbursements, and a related NRA policy, Cox routinely caused the NRA to reimburse him for expenses that had no nexus of any kind to NRA business.

On top of that, Cox caused his direct reports to use the NRA's bank account to pay off, on a monthly basis, his *personal* credit card. For example, on or about September 28, 2018, his direct report used NRA-ILA's Wells Fargo bank account to make a payment of over \$64,000 to American Express on Cox's behalf. The investigation to date reveals that in the first six months of 2019 alone, he caused the NRA to make payments on his personal American Express card for a total of at least \$ 237,961.97. While Cox might have repaid the portion of his personal credit card bill that he deemed to be his personal purchases (an issue under investigation), his use of a corporate bank account to pay off his personal card balances was not only highly unusual but also outright inappropriate. The NRA is not a bank and is not in the business of providing its officers with interest-free revolving lines of credit.

In addition, some of the expenses for which Cox reimbursed himself using NRA funds—and never repaid to the NRA—were wildly inappropriate, must be repaid, risk exposing the NRA to regulatory scrutiny, and are bound to cause the NRA great reputational harm if made public.

The inappropriate expenses which Cox caused the NRA to reimburse him and that the NRA has uncovered to date range from Cox's country club membership fees and routine local lunches near his office to lavish outings at Landini Brothers, an upscale restaurant and cigar bar in Alexandria, Virginia.

Examples of Cox's abuse of the Association and its members abound. For example, in or around 2018, Cox obtained reimbursement from the NRA for at least \$4,085.00 in expenses associated with outfitting his house with decorative lighting fixtures. Although Cox claimed that the expense was related to a physical security concern, he failed to disclose to the NRA that the contractor who installed these fixtures, along with other equipment at his house, had sent him a spreadsheet that specifically categorized these lighting fixtures and related equipment as "personal" "lighting controls that DO NOT fall under security."

These and any similar expenses that the NRA's investigation and discovery in this case uncovers were of course not only in flagrant violation of Cox's fiduciary duties to the NRA and its members, but also in clear contravention of the NRA's reimbursement policy.

To be reimbursable, expenses had to have been clearly incurred on behalf of and in the interest of the NRA and must have been incurred in accordance with the NRA's ethical standards. In fact, the policy stated that NRA personnel like Cox were expected to exercise care and avoid impropriety or "even the appearance of impropriety" in any expense.

## **VI.**

### **COX'S MATERIAL BREACH OF HIS EMPLOYMENT AGREEMENT AND REPEATED BREACHES OF THE FIDUCIARY AND CONTRACTUAL DUTIES HE OWES THE NRA**

#### **A. The January 2019 Employment Agreement.**

Effective January 1, 2019, Cox and the NRA entered into an agreement pursuant to which Cox agreed to continue to perform as the Executive Director of NRA-ILA (the "Agreement").<sup>2</sup> The agreement was originally negotiated by North and contained gratuitously above-market terms. Fortunately, the final agreement was reworded, and states that, should Cox voluntarily terminate the Agreement, he "shall also be entitled to payment of the base salary then in effect, to continue for one month per each year of employment prior to the voluntary termination date."

The Agreement also states that "[s]alary continuation payments to employee in the event of voluntary termination . . . shall be contingent upon the execution of a mutually satisfactory confidentiality agreement and of a release, waiver and covenant not to sue NRA . . . ."

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<sup>2</sup> Exhibit H.

The Agreement also states that the rights and remedies set forth in it are “not exclusive of any rights, remedies, power and privileges provided by law or at equity.”<sup>3</sup>

As more fully described below, Cox was placed on paid administrative leave on June 20, 2019, pending the outcome of an investigation that could have resulted in his termination for cause without any post-termination pay. He, however, tendered his resignation on June 24, 2019. On July 25, 2019, Cox executed the release called for by the Employment Agreement and has since relied on that instrument, along with one other, as a basis for his breach of contract claim. The “CONFIDENTIAL RELEASE, WAIVER, AND COVENANT NOT TO SUE,”<sup>4</sup> however, does not obligate the NRA to make the payments Cox seeks. In the instrument, Cox releases claims against the NRA, while the NRA merely: (i) acknowledges that Cox’s resignation was “issued in accordance with Section 4(a) of the Employment Agreement, and the parties wish to execute an instrument sufficient to enable such [post-termination] payments” provided for in the Employment Agreement; and (ii) agrees to reimburse him for certain e-discovery costs.

The release, however, is not the only condition precedent to the NRA’s obligation to make post-termination payments under the Employment Agreement. Another precondition, of course, was that Cox perform his end of the bargain under the Employment Agreement, namely to faithfully serve the NRA as ILA’s Executive Director. That he surreptitiously breached his obligations to the Association and abused its financial resources for his personal benefit means that the NRA has no obligation to make any payments to Cox. Further, Cox should disgorge compensation paid to him by the NRA during his period of disloyalty to the Association and its members.

## **B. Concerns at the NRA about AMc and Oliver North.**

In 2018, concerns were raised at the NRA about AMc’s billing practices, particularly that AMc overbilled the NRA on the order of millions of dollars for work purportedly performed on the NRA’s behalf. Concerns were also raised about a contract between AMc and Oliver North pursuant to which North was to be paid compensation for appearing in a series of feature-length NRATV videos being produced by AMc, with the NRA footing the bill for North’s series. Questions were raised as to whether North sufficiently disclosed the details of his contract with AMc to the proper Board committee within the NRA.<sup>5</sup> To investigate these issues, the NRA sought to review AMc’s billing records and repeatedly requested that North and AMc disclose his contract. Rather than cooperate with the NRA, North and AMc decided to deflect scrutiny through false allegations against the Association. Records reveal that during much of the same time, Cox and North were frequently in touch via private email accounts and text messaging.

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<sup>3</sup> Although the Employment Agreement provides for the resolution of certain disputes between the parties through arbitration, the NRA hereby expressly reserves any and all rights related to and arising under the Employment Agreement.

<sup>4</sup> Exhibit I.

<sup>5</sup> Ultimately the NRA discovered that the contract was inappropriate because, rather than being engaged as a third-party contractor, as North and AMc had previously represented, North was engaged as an AMc employee, presenting an irreconcilable conflict of interest. In addition, the specified work on which the NRA based its preliminary approval was not delivered at the bargained-for level.

Ultimately, AMc's refusal to cooperate led the NRA to file a lawsuit against AMc on April 12, 2019, seeking specific performance of the books-and-records inspection right contained in the NRA's contract with AMc. Faced with the impending scrutiny of its actions, AMc and North concocted a plan to demand that LaPierre resign from his leadership position at the NRA, dismiss the suit against AMc, and support North's presidency for another term or they would publicly release unfavorable allegations about LaPierre, other executives on his leadership team, and the Association itself.

Although it was weeks in the planning, the extortion demand was presented on April 24, 2019. On that day, North telephoned an aide to LaPierre and relayed the contents of a "letter" that AMc planned to disseminate publicly if LaPierre failed to comply with the extortionists' demands. North emphasized that the letter described a laundry list of items which—if disclosed—would be "bad" for LaPierre and the NRA. Notably, according to North, the letter would (selectively) disclose travel and related expense records—the same types of records that AMc refused to provide for the NRA's review. AMc and North now threatened to publicize the information in a manner calculated to cause reputational harm to LaPierre, his subordinates, and the NRA. Specifically, North proceeded to make an extortion demand: LaPierre must resign from his position as CEO of the NRA and support North's continued tenure as President—or the "bad" letter manufactured by AMc would be publicized. LaPierre was later informed he also had to meet a third condition: withdraw the NRA's lawsuit against AMc, which sought to enforce the NRA's rightful access to AMc's records. LaPierre learned of this third condition from Cox, who encouraged LaPierre to accept the demands of North and AMc. Cox was a participant in the scheme to blackmail LaPierre. In response to Cox's and his co-conspirators' demands, LaPierre stood his ground, refused to resign, and refused to dismiss the lawsuit.

Following the failed coup attempt, evidence emerged that seemed to place Cox within the conspiratorial scheme. As such, the Association put Cox on indefinite administrative leave, with pay, pending an investigation into the emerging facts and concerns surrounding the events of April 24, 2019, and his role in them.

Thereafter, Cox resigned in an apparent effort to collect severance pay before the details of his involvement in the coup emerged. Had the NRA been aware at the time of Cox's material breaches of his fiduciary and contractual duties or his flagrant misuse of corporate resources for his personal benefit, the NRA would have terminated him for cause. After parting ways with Cox, the NRA learned that Cox was deeply involved in the attempt to extort LaPierre and seize control of the NRA, that he regularly diverted corporate resources to finance his lavish lifestyle, and that his breaches of his fiduciary and contractual obligations are much more substantial than it at first seemed.

Cox was, at the time of the attempted coup, widely seen as the heir apparent to LaPierre, and stood to personally benefit had the coup been successful. In fact, Cox coordinated with North, AMc, and others to extort LaPierre and seize control of the organization, while at the same time breaching his fiduciary duties to protect the financial health of the Association by demanding that the NRA cease efforts to recover millions of dollars owed to it by AMc. Additionally, Cox coordinated with outside counsel to the NRA/NRA-ILA in the attempted coup.

1. **Cox was a central figure in the failed scheme to extort LaPierre and seize control of the NRA.**

Cox played a central role in the scheme to extort LaPierre and the NRA. This scheme was intended to damage the NRA by altering its choices under duress or damaging its reputation. It also, if successful, would have come at great expense to the NRA financially, by causing the dismissal of a claim against AMc. Cox actually delivered the demand to drop the AMc lawsuit.

At least as early as March 29, 2019, Cox exchanged email messages (using his personal AOL email account rather than his NRA email account<sup>6</sup>) and spoke with North on the telephone regarding the Association's scrutiny of AMc's invoices and North's conflict of interest related to decisions concerning AMc.<sup>7</sup> Documentary evidence indicates that, in the days and weeks leading up to the attempted coup, Cox met, spoke, or otherwise communicated with his co-conspirators in furtherance of the plot to extort LaPierre, including discussion of a draft resolution from North to the NRA's Board of Directors. At least one draft of that resolution had North calling for the NRA Board to pledge allegiance to Cox as the next Executive Vice President of the NRA.

On April 24, 2019, the day of the extortion attempt, Cox repeatedly communicated with his co-conspirators.<sup>8</sup> He worked with North and Boren to facilitate the communication of the terms of the extortion demand to LaPierre. In the days and weeks following the failed coup, Cox continued to communicate with his co-conspirators, including with Steven Hart, whom the NRA fired from his position as its outside counsel two days before the extortion attempt.

2. **Cox permitted the misuse of NRA funds in furtherance of the failed coup.**

In addition, a law firm with which Cox worked through ILA was permitted to bill the NRA, under Cox's supervision, for "strategy" sessions leading up to, and following, the failed coup. Under the NRA's Bylaws, ILA's finances are kept separate from the rest of the NRA. Cox and his co-conspirator within ILA, David Lehman, apparently leveraged this autonomy to permit outside counsel to bill the NRA for advising Cox and Lehman—the NRA's faithless servants—in their disloyal activities.<sup>9</sup>

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<sup>6</sup> Cox's use of his personal email account to discuss matters related to the attempted coup was apparently done to prevent the Association from discovering his involvement. Indeed, as Cox explained in 2017 in an unrelated email to Steven Hart (former NRA outside counsel): "I'm moving this [conversation] over to my personal email account as others read my work email." Exhibit A.

<sup>7</sup> Exhibits B – D.

<sup>8</sup> Exhibit E.

<sup>9</sup> Fortunately, at least some of the invoices for the law firm's work in furtherance of the attempted coup were discovered before the Association's funds were used to pay for this unauthorized work.



**C. Cox materially breached his Employment Agreement and his fiduciary duties to the NRA by frustrating the NRA's document preservation and discovery obligations in lawsuits and investigations.**

As an executive, officer, and fiduciary of the NRA, Cox must assist the NRA in complying with its legal obligations, including those related to its legal discovery and data preservation/collection obligations. These obligations continue even though Cox is no longer employed by the NRA. Yet for months, Cox has frustrated the NRA's efforts to collect and preserve information in his possession. Cox's delay tactics appear to have been calculated to prevent the Association from discovering the full extent of Cox's disloyalty to the NRA. In addition, it has come to light that, under Cox's watch, numerous ILA employees deleted or failed to keep records despite their knowledge of several litigation holds.

**D. Cox's disloyalty goes back to 2015.**

On April 2, 2015, NRA Board Member Lt. Col. Robert K. Brown sent an email to other NRA board members voicing a concern about the excessive billing of the NRA's (now former) advertising agency, AMc.<sup>10</sup> Despite the gravity of Lt. Col. Brown's concerns, and despite Cox's fiduciary duty to the NRA to protect its financial interests, on the same day, Cox forwarded the confidential internal email to Nader Tavangar—Executive Vice President and Managing Director of AMc—stating: “FYI – I’m sure you’ve seen this one. Don’t forward with my name on it. See you in the am. Chris.” A few months later, Cox did this again—this time from his personal AOL email account.<sup>11</sup>

**E. The Tribunal should deny Cox's requests for relief.**

Because Cox engaged in a pattern of misconduct, financial abuse, waste, and disloyalty in material breach of his Employment Agreement and fiduciary duties to the NRA, Cox is not entitled to any payments from the NRA.

Furthermore, even were Cox entitled to relief, and he is not, there is no basis in the Employment Agreement for any of his specific requests for relief. There is no basis to require the NRA to pay his full “severance” in a lump sum within seven days of an award being entered in his favor, interest on his “severance,” his arbitration costs and expert fees in the instant proceedings, or his attorneys' fees related to the negotiation of what he calls the “Separation Agreement.” And there is certainly no basis to require the NRA to pay for any liability, claim, loss or cause of action, including attorneys' fees and costs, arising from the NRA's counterclaims.

Cox's material breach of the Employment Agreement antedates any alleged breach by the NRA (although the NRA maintains that it has not breached said agreement).

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<sup>10</sup> Exhibit F.

<sup>11</sup> Exhibit G.

**F. Cox should forfeit and disgorge all compensation and payments from the NRA received while he was acting disloyally.**

As an agent of the NRA, Cox owes fiduciary duties to the NRA as the principal, including duties of utmost care, loyalty, and good faith. Accordingly, because he breached one or more of these duties, he was not entitled to any compensation and, now that his breaches have come to light, must return any compensation paid to him since his first act of disloyalty. An archetype of a faithless servant, Cox repeatedly placed his personal interests and comfort above those of the NRA and its members. When the NRA needed his loyalty the most, Cox—rather than cooperating with the Association to help it fulfill its legal and ethical obligations to regulators and its membership—acted in his own interest, apparently in hopes of advancing his personal career and taking control of the NRA. Rather than cooperate with the Association to ensure that its funds were being used appropriately by its vendors (such as AMc) or its employees (such as Lehman), and rather than helping the Association preserve and collect information in order to fulfill its discovery and disclosure obligations, Cox and his co-conspirators instead frustrated those efforts and themselves participated in such waste and corporate asset abuse. Given Cox's repeated breaches of his fiduciary duties to the NRA and his faithless conduct, Cox should forfeit and disgorge to the NRA all compensation received since his first act of disloyalty.

**VII.**

**THE NRA'S DEFENSES AND AFFIRMATIVE DEFENSES TO COX'S FIRST CLAIM**

1. Cox has failed to state a claim upon which relief can be granted.
2. The agreement Cox refers to as a "severance agreement" (which he erroneously claims gives him a right to post-termination payments) is not a "severance agreement," but is a release. The only payment to which that instrument entitles him—a reimbursement for e-discovery costs—is not at issue in this dispute.
3. Even if the release created some right to the post-termination payments that Cox seeks here, he would not be entitled to them because Cox fraudulently induced the NRA into signing the release by concealing his disloyalty, abuse of corporate expense reimbursement process, and other misconduct; had the NRA known the full extent of his misdeeds and profligacy at the NRA's expense, it would not have signed the release, but rather would have terminated Cox for cause.
4. The NRA has not breached any of its obligations under the Employment Agreement.
5. Cox materially breached the Employment Agreement. His breach antedates the NRA's alleged breach.
6. In addition, Cox has failed to allege any basis for his requests that the NRA pay:
  - a. his full "severance" in a lump sum within 7 days of an award being entered in his favor;
  - b. any interest on the payments that he alleges are due;

- c. his arbitration costs and expert fees under the CPR rules;<sup>12</sup>
- d. his attorneys' fees related to the negotiation of the "Separation Agreement;" or
- e. any liability, claim, loss or cause of action, including attorneys' fees and costs, arising from the NRA's counterclaims.

## **VIII. CLAIMS**

### **First Cause of Action**

#### **Breach of Fiduciary Duties of Loyalty, Care, and Good Faith**

(Including return of compensation under the faithless servant doctrine, return of inappropriately reimbursed expenses, and punitive damages)

1. The NRA incorporates and realleges every allegation in the foregoing pages as if set forth fully herein and hereby asserts the following counterclaim against Cox.
2. Cox was not just any employee of the NRA.
3. He was a high-level (the highest level) executive of ILA—in fact, an officer of the Association—and was supposed to be committed to a singular mission: protecting the Second Amendment rights of NRA members and of all citizens.
4. Cox was a highly compensated and trusted executive and agent of the NRA who owed it fiduciary duties of care, loyalty, and good faith, and who is held to a standard of the utmost good faith and fair dealing with the Association.
5. As the NRA's agent, Cox was obligated to be loyal to his employer and was prohibited from acting in any manner inconsistent with his agency or trust and was, at all times, bound to exercise utmost good faith and loyalty in the performance of his duties.
6. Since in or around a certain date in 2018 or 2019 (if not earlier) to be determined at the arbitration hearing, Cox's misconduct permeated and tainted all his services as an agent and employee of the NRA. He leaked internal confidential information to third parties, misused corporate funds, and condoned inappropriate expense reimbursement practices by his reports.
7. Cox's misconduct constituted a breach of his duties of loyalty, care, and good faith to the NRA, and he acted adversely to the NRA's interests, its reputation, and its fiscal health.

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<sup>12</sup> At page 14 of Christopher Cox's First Amended Arbitration Claim, Cox asks the Tribunal to award "pursuant to CPR Rule 17.3 of the 2018 CPR Non-Administered Arbitration Rules, Claimant's costs, including arbitration costs, attorneys' fees and expert fees, related to this proceeding." Rule 17.3 simply leaves it to the sound discretion of the Tribunal as to if and how to apportion costs at the conclusion of the arbitration proceedings and does not entitle Cox—a faithless fiduciary—to the relief he seeks. To the contrary, given the nature of Cox's misconduct, any cost apportionment made by the Tribunal should be in favor of the NRA, not Cox.

8. Cox was faithless in his performance of services to the NRA and is liable for all compensation received while acting disloyally and the expenses for which he inappropriately obtained reimbursement.
9. Pursuant to the faithless servant doctrine, as an unfaithful agent to the NRA, Cox has forfeited any right to any compensation from the NRA, and consequently must return all compensation received from the NRA since his first act of disloyalty.<sup>13</sup> In addition, he must pay back to the NRA any payments that he obtained by abusing the corporate expense reimbursement policy on the account of expenses that did not serve any NRA business purpose. He also has to account for any expenses which might have related to NRA business but which he failed to document.
10. In addition, the actions he took in breach of his fiduciary duties to the NRA have caused and will likely cause the Association reputational and economic harm. For example, in or around May 2019, the NRA received a letter from Senator Wyden, which was widely publicized in the press, questioning the NRA about the events of April 24, 2019, the extortion attempt, and the salacious allegations used by Cox's co-conspirators. Similarly, the NRA has received a subpoena from the Office of the New York Attorney General seeking records reflecting expense reimbursements obtained by, among others, Cox. As a result, Cox is liable for damages, including punitive damages, to the NRA.

### **Second Cause of Action**

#### **Breach of Contract**

(Including breach of the implied covenant of good faith and fair dealing)

1. The NRA incorporates and realleges every allegation in the foregoing pages as if set forth fully herein and hereby asserts the following counterclaim against Cox.
2. Cox entered into an Employment Agreement with the NRA dated January 1, 2019.
3. Cox was hired to "serve the Association in a leadership role," to "[carry] out the mission of the Association."
4. Cox was not hired to use NRA resources and funds to further his own personal interests, including participating in a coup to extort the CEO of the NRA and seize control of the organization at the expense of the NRA's reputational and financial interests.
5. The Employment Agreement, Section 4(c), specifically states that Cox can be terminated for cause for, among other things, "material failure to perform the duties of [his] position," "fraud, misappropriation, embezzlement or acts of similar dishonesty,"

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<sup>13</sup> The NRA is continuing to investigate whether additional disgorgement is required for any earlier breaches of Cox's fiduciary duties. It therefore reserves the right to amend its counterclaim, assert new counterclaims, and seek additional relief.

- “intentional and willful misconduct that may subject the NRA to criminal or civil liability,” or “breach of any of the material terms of [the Employment Agreement].”
6. Cox breached his Employment Agreement and engaged in conduct that subjected him to termination for cause under each of these foregoing provisions of the Employment Agreement.
  7. Cox also breached the implied covenant of good faith and fair dealing by intentionally seeking to deprive the NRA of the benefits of the bargain between the Association and Cox, namely the services of a loyal employee.
  8. Cox breached his Employment Agreement and caused reputational and economic harm to the NRA. As a result, Cox is liable for damages, including consequential and punitive damages, to the NRA.
  9. Finally, Cox has ongoing obligations under the Employment Agreement, including those contained in Sections 5 and 11 of the Agreement.

### **Third Cause of Action**

#### **Recovery Pursuant to New York NPCL § 720 of Assets Unlawfully Conveyed**

1. The NRA incorporates and realleges every allegation in the foregoing pages as if set forth fully herein and hereby asserts the following counterclaim against Cox.
2. The NRA is a not-for-profit corporation organized under the laws of the State of New York.
3. Because he was an officer of a New York not-for-profit corporation, the New York Not-for-Profit Corporation Law (“NPCL”) provides a basis for redressing Cox’s misdeeds.
4. Specifically, Section 720 of the NPCL empowers the corporate victim—here, the NRA—to bring an action against its officers or key persons like Cox in order to “set aside an unlawful conveyance, assignment or transfer of corporate assets” as long as “the transferee [here Cox] knew of its unlawfulness.”
5. Cox engaged in self-aggrandizing behavior while working at the NRA, using NRA funds for his personal benefit and enrichment, and the benefit of friends and family.
6. Cox repeatedly caused the NRA to make payments for his benefit even though the expenses for which he was obtaining reimbursement were of a purely personal nature, conferred no benefit on the NRA, and/or by far exceeded the nature of expenses allowable under the express terms of the NRA’s internal policy.
7. As a senior executive of the NRA, Cox was aware of the NRA’s internal policies and procedures as well as federal and state laws applicable to the use of the NRA’s funds.

He knew that when he caused the NRA to convey and transfer its corporate funds to him or to his creditors (*e.g.*, American Express) on his behalf, those conveyances and transfers were unlawful.

8. Accordingly, any such unlawful conveyances and transfers are subject to the remedies set forth in Section 720 of the NPCL and should be set aside on that statutory basis.

#### **Fourth Cause of Action**

##### **Conversion**

1. The NRA incorporates and realleges every allegation in the foregoing pages as if set forth fully herein and hereby asserts the following counterclaim against Cox.
2. Cox's acts causing the NRA to make payments to him, or on his behalf, for his benefit under the guise of business expense reimbursements were a wrongful exercise or assumption of authority by Cox over the NRA's property depriving it of possession of its property.
3. In abusing the expense reimbursement process, Cox at all times acted intentionally and without authority, and assumed or exercised control over personal property belonging to the NRA, interfering with the NRA's right of possession.
4. He used his authority and abused the trust placed in him by other NRA Officers and the NRA's Board of Directors to exert dominion over the NRA's funds as if they were his own. By doing so, he denied the NRA its rights.
5. It was the NRA who was the rightful owner of the funds that Cox caused it to transfer to him or to third parties for his benefit. He caused such transfers by wrongful exercise of dominion or control over the NRA's property.
6. As a result, he is liable to the NRA for damages for conversion equal to the value of the funds that he converted.

#### **IX.**

##### **REQUEST FOR RELIEF**

For the forgoing reasons, the NRA respectfully requests that the Tribunal:

1. Enter an award against Cox for damages suffered by the NRA as a proximate cause of Cox's repeated breaches of his fiduciary, contractual, and statutory duties and as a result of his conversion of the NRA's property.
2. Award punitive damages in an amount the Tribunal deems just and proper for, among other things, Cox's repeated breaches of his fiduciary, contractual, and statutory duties and for conversion.

3. Order that Cox disgorge his salary, benefits, and other compensation to the NRA since his first acts of disloyalty, which took place since at least in or around 2018 or an earlier date to be determined at the hearing.<sup>14</sup>
4. Order that, pursuant to Section 720 of the New York NPCL, Cox make the NRA whole with regard to all expenses that he inappropriately caused the NRA to reimburse to him or payments he caused it to make for his benefit by setting aside all such unlawful conveyances, assignments, and transfers.
5. Declare that, despite Cox's material breach of the Employment Agreement, certain of Cox's obligations under the Agreement, including obligations of confidentiality and non-disparagement under Section 5 and with respect to arbitration under Section 11, are ongoing.
6. Enter,
7. including pursuant to CPR Rule 17.3 of the 2018 CPR Non-Administered Arbitration Rules, an award against Cox for the NRA's costs, including attorneys' fees, related to this proceeding.<sup>15</sup>
8. Award pre- and post-judgment interest on any damages award entered in favor of the NRA.
9. Award all other relief as the Tribunal deems just and proper.

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<sup>14</sup> As noted above, the NRA has discovered evidence of Cox breaching his fiduciary duties to the NRA as early as 2015. The NRA reserves the right to seek additional disgorgement of compensation paid to Cox in prior years.

<sup>15</sup> CPR Rule 17.3 states: "Subject to any agreement between the parties to the contrary, the Tribunal may apportion the costs of arbitration between or among the parties in such manner as it deems reasonable, taking into account the circumstances of the case, the conduct of the parties during the proceeding, and the result of the arbitration." *See also* Commentary to CPR Rules ("The Tribunal is empowered to apportion costs, including attorneys' fees and other costs incurred by the parties, between the parties, taking into account the circumstances of the case, the conduct of the parties during the proceeding and the result (Rule 17.3).").

Dated: New York, New York  
February 8, 2020

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