

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.)

Case No. CL19001757

2019 MAY 23 A 9:21

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA

**MOTION FOR LEAVE TO FILE PORTIONS OF
ANSWER, PLEA IN BAR, AND COUNTERCLAIM
UNDER SEAL**

Defendants, hereby move the Court to enter an Order granting Defendants' Motion for Leave to File Portions of the Answer, Plea in Bar, and Counterclaim Under Seal. As set forth below, good cause exists for the grant of this motion.

AMc and the NRA have entered into a Services Agreement that governs their business relationship. The Services Agreement obligates AMc to protect the confidentiality of "material 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." The definition of Confidential Information is vastly overbroad and does not make any exceptions for information already in the public domain, nor does it make any exceptions for disclosures to a Court in litigation.

Because AMc does not wish to provide the NRA with any possible reason to claim that AMc has breached the "Confidentiality" clause in the Services Agreement, AMc moves to file

its Answer, Plea in Bar and Counterclaim under seal along with a publicly-filed document that redacts the information that could conceivably be deemed confidential by the NRA.

Although the undersigned counsel does not believe that the information to be placed under seal is particularly sensitive or proprietary information, we take these steps to protect the Plaintiff's overbroad designation of the information as "Confidential Information" under the Services Agreement.

Defendants' counsel has consulted with counsel for the NRA concerning how Confidential Information in their pleading should be handled. The NRA has not approved the public disclosure of any potential Confidential Information to be submitted to the Court with this litigation, nor has the NRA defined what information it believes is "confidential." Defendants' counsel has offered to make the Defendants' redacted pleading available for review by the NRA's counsel and the General Counsel of the NRA. The NRA was offered a chance to make additional designations of Confidential Information prior to the public filing of the Defendant's pleading. If the NRA desired, its attorneys could then make additional redactions in the public copy of the Defendants' pleading. After considering this offer for 24 hours,¹ the NRA counsel declined the opportunity to make any additional designations of Confidential Information. Ensuring the protection from the disclosure of potential Confidential Information is apparently no longer worth the effort to the NRA. Defendants' counsel, therefore, has proceeded with their careful plan to file the pleading with this motion to file under seal with a redacted copy available for public disclosure.

¹ Defendants later learned that the 24-hour delay was intended to allow the NRA time to file a second law suit alleging, ironically, that the Defendants have breached their fiduciary duty to protect the NRA's Confidential Information. Nothing could be further from the truth.

Thus, filing the pleading under seal with a redacted version available for the public file is warranted to avoid further compounding the dispute between the parties.

WHEREFORE, Defendants respectfully request that the Court grant this Motion for Leave to File Documents Under Seal and enter an Order permitting Defendants to file a redacted copy of the pleading in the public files of the Court Clerk's Office.

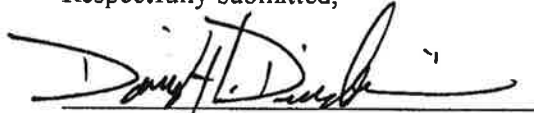
Respectfully submitted,

ACKERMAN MCQUEEN, INC. and
MERCURY GROUP, INC.

By Counsel

Dated: May 23, 2019

Respectfully submitted,




David H. Dickieson (VA Bar #31768)
SCHERTLER & ONORATO, LLP
901 New York Avenue, NW, Suite 500
Washington, DC 20001
Telephone: 202-628-4199
Facsimile: 202-628-4177
ddickieson@schertlerlaw.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on the following counsel via
email and first-class mail addressed to:

James W. Hundley
Robert H. Cox
Amy L. Bradley
BRIGLIA HUNDLEY, PC
1921 Gallows Road, Suite 750
Tysons Corner, VA 22182
jhundley@brighiahundley.com
rcox@brighiahundley.com
abradley@brighiahundley.com


David H. Dickieson.

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Defendants.)

ANSWER, PLEA IN BAR, AND COUNTERCLAIM

The Defendants, Ackerman McQueen, Inc. and Mercury Group, Inc. (collectively "AMc"), by and through the undersigned counsel, submit their Answer, Plea in Bar, and Counterclaim to the Amended Complaint filed by Plaintiff National Rifle Association ("NRA") in the above-captioned case, as follows: ¹

¹ AMc is subject to a confidentiality obligation in the Services Agreement (**Exhibit A**) between the NRA and AMc that is vague and overbroad. It purports to prohibit AMc from disclosing any "materials or information coming to the knowledge of AMc, supplied to AMc by NRA, or otherwise made known to AMc as a result of AMc's providing Services (hereinafter collectively referred to as the "Confidential Information"), without the prior express written permission of NRA." Thus, the Services Agreement definition of "Confidential Information" includes routine public and non-public information that comes to the attention of AMc while working on NRA matters. The Services Agreement also states "AMc may use such Confidential Information only for the limited purpose of providing Services to NRA." [Section IV, CONFIDENTIALITY, A(1) and A(3).] Because the definition of "Confidential Information" is overbroad and vague, any AMc disclosure necessary to its defense in this law suit could be construed as a breach of the Services Agreement.

-footnote continued on next page-

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CITY OF ALEXANDRIA
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RESPONSE TO SPECIFIC ALLEGATIONS OF AMENDED COMPLAINT

With respect to the specific allegations in the Amended Complaint, Defendants provide the following responses:

A. RESPONSE TO PRELIMINARY STATEMENT

Defendants move to strike the Plaintiff's Preliminary Statement as a violation of the rules of pleading. Va. Sup. Ct. Rule 1.4(d) does not allow pleading in narrative form without numbered paragraphs. To the extent any response is required, the allegations set forth in the Preliminary Statement are generally denied.

Specifically, Defendants deny Plaintiff's unnumbered allegation that Defendants have denied access to any information that the NRA is entitled to under the Services Agreement. Defendants deny that it has only "partially complied" with NRA requests and specifically denies that it has "withheld material information about the related party contract with NRA's now former President, Lieutenant Colonel Oliver North (Ret.)."

Defendants admit that the Service Agreement requires the NRA to provide "reasonable notice," before examining "files, books and records" of the Defendants that "pertain to matters

Therefore, AMc and Mercury are responding to the allegations of the NRA with great caution and have redacted from public disclosure any information that could be deemed confidential and will seek to file an unredacted version of the pleading under seal with the Court.

At the same time, the Defendants throughout this pleading request an expedited reply from the Plaintiff, pursuant to Va. Sup. Ct. Rule 3.11, with respect to certain allegations in the Amended Complaint as to whether NRA's introduction of those allegations in a public court filing waives NRA's confidentiality interest in those matters.

The Court should also consider ordering NRA to review the non-disclosed information, and on a paragraph by paragraph basis, permit disclosure or assert why it will be harmed by disclosure.

covered by the parties' contract." Defendants deny that the NRA has followed proper procedures to seek such materials and deny that the NRA has complied with the Examination of Records provision in the Services Agreement, and also deny that the NRA has properly interpreted the scope of its authority to review documents possessed by the Defendants.

Defendants deny the allegation that 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."

Defendants aver as a new matter, specifically requiring a response, that Defendants have complied with every audit request sought by the NRA during the past 38 years and that the most recent audit was completed by the NRA auditor in February 2019 with a determination that Defendants are in compliance and that Defendants do not need to return any funds to the NRA, the same result that has been reached in every other audit over the history of the relationship between the parties.

Defendants aver as a new matter, specifically requiring a response, that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Defendants aver as a new matter, specifically requiring a response, that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Further, Defendants aver as a new matter, specifically requiring a response, that the NRA's public disclosure of the allegations in its Preliminary Statement waives any claim of confidentiality that the Plaintiff may have with respect to the subject matter alleged in the Preliminary Statement.

B. DEFENDANTS' RESPONSE TO PLAINTIFF'S NUMBERED ALLEGATIONS.

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 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.

ANSWER: Defendants admit the allegations contained in Paragraph 1.

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.

ANSWER: Defendants admit that 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 and that it is an advertising and public relations agency and that it has served the interests of the NRA for more than thirty years.

3. Defendant Mercury 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.

ANSWER: Defendants admit that Mercury 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, and that it is a wholly owned subsidiary of Ackerman. Defendants admit that Mercury specializes in public communications strategy and has worked on behalf of advocacy groups such as the NRA. Defendants deny the allegations that Ackerman has acted on behalf of both itself and Mercury at all relevant times and demand strict proof thereof. Furthermore, Defendants *crave oyer* to mandate the disclosure to the Court of the contract referenced and relied upon by Plaintiff in Paragraph 3.

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.

ANSWER: Defendants admit that it has occasionally performed services for the benefit of the NRA Foundation. Defendants have insufficient information to admit or deny the allegations concerning the NRA Foundation's activities or those of "other" organizations. The allegations regarding the NRA Foundation's 501(c)(3) status and its permitted range of activities are legal conclusions which do not require a response.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 4 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

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.

ANSWER: The allegations of Paragraph 5 are legal conclusions which do not require a response.

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.

ANSWER: The allegations of Paragraph 6 are legal conclusions which do not require a response.

7. Venue is proper in this Court pursuant to Virginia Code § 8.01-262 because Mercury's principal 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.

ANSWER: The allegations of Paragraph 7 are legal conclusions which do not require a response.

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.

ANSWER: The allegations of Paragraph 8 are legal conclusions which do not require a response. Furthermore, Defendants *crave oyer* to mandate the disclosure to the Court of the contract referenced and relied upon by Plaintiff in Paragraph 8.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 8 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

FACTUAL BACKGROUND

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, including advertising during election cycles; 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 [footnote omitted].

ANSWER: Defendants admit the allegations contained in Paragraph 9, except they lack knowledge as to the level of trust and confidence that was actually vested in AMc.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 9 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

10. Since at least 1999, AMc’s work on behalf of the NRA has been governed by successive incarnations of a Service 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.

ANSWER: Defendants admit that Service Agreements have existed between the parties. Defendants deny the remaining allegations in Paragraph 10. Furthermore, Defendants *crave oyer* to mandate the disclosure to the Court of the contract referenced and relied upon by Plaintiff in Paragraph 10.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 10 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

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 AM[C].”

ANSWER: Defendants admit that Service Agreements have existed between the parties. Defendants further admit that pricing was based on fair market value as determined by AMc. Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 11.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 11 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

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 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.

ANSWER: Defendants deny the allegations contained in Paragraph 12.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 12 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

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,” NRATV, a concept fervently pitched by AMc. By 2017, the NRA’s aggregate payments to Ackerman and Mercury totaled nearly \$40 million annually.

ANSWER: Defendants admit the allegations contained in the first sentence of Paragraph 13. Defendants deny the remaining allegations in Paragraph 13.

Defendants aver as a new matter, specifically requiring a response, that the “NRA’s aggregate payments to Ackerman” includes a substantial amount of reimbursements to AMc for expenses incurred on behalf of the NRA.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 13 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

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 AM[C] 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”).

ANSWER: Defendants generally admit the allegations contained in Paragraph 14, except they deny the characterization of the negotiations contained in the second sentence of Paragraph 14. To the extent that the allegations purport to interpret a legal document, the Defendants deny the interpretation and assert that the legal document best speaks for itself.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 14 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

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 30, 2017 (as amended May 6, 2018)

● Between the NRA and "AMc" (defined 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.

ANSWER: Defendants deny the allegations contained in Paragraph 15 of the Complaint.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 15 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

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.

ANSWER: Defendants admit the allegation contained in the first sentence of Paragraph 16 in that the NRA conducted annual audits of AMc files and those files were provided to the NRA by AMc. Defendants deny the remaining allegations contained in Paragraph 16.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 16 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

17. In recent years, the State of New York amended its Not-for-Profit Corporation Law (the "NPCL") to clarify requirements for director independence and the ratification of related-party contracts, among other items. After updating its internal policies and controls to 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.

ANSWER: Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 17 and therefore deny those allegations.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 17 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

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 any data "in writing" (such as viewership numbers, clickthrough rates, or related performance metrics) that enable the NRA analyze [sic] the return on its investment in NRATV [footnote: 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.].

ANSWER: Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 18 and therefore deny those allegations. Defendants deny the allegations contained in the fifth bullet point.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 18 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

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 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 party than a common-interest relationship. AMc's counsel replied: "Ackerman views the relationship as adverse."

ANSWER: Defendants deny the allegations contained in Paragraph 19.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 19 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

20. Thereafter, AMc strenuously resisted the NRA's efforts to enforce the Services Agreement, including by embarking on a campaign to "kill the messenger" when the NRA 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 purported to 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.

ANSWER: Defendants deny the allegations contained in Paragraph 20.

Defendants aver as a new matter, specifically requiring a response, that AMc provided NRA auditors with access to all matters requested by the auditors during the various audits of AMc.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 20 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

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.

ANSWER: Defendants deny the allegations contained in Paragraph 21.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 21 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

22. Lieutenant Colonel Oliver North (Ret.) ("Col. North") is a veteran of the United States Marine Corps and the Regan 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 NRATV documentary series. On May 6, 2018, the NRA and AMc amended the Services Agreement (such amendment, the "May 2018 Amendment") to affirm that any contract between AMc and 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. Importantly, Col. North and AMc assured the NRA that Col North's profile and "brand" would be actively leveraged to elicit sponsorships for the North documentary series. This was of vital interest because during recent years, the NRA had spent substantial sums on NRATV based on AMc's advice and representations regarding achievable benefits of an owned-media platform. However, measured against any of the desired outcomes, the returns on the NRA's investment in NRATV were less favorable than AMc predicted. Accordingly, the NRA began to reconsider its willingness to continue its investment in NRATV. If the North documentary series attracted sponsorships, then the costs associated with NRATV could be defrayed, altering the NRA's calculus about whether to continue supporting the platform.

ANSWER: Defendants admit the allegations contained in the first sentence of Paragraph

22. Defendants admit the allegations that Colonel North was President of the NRA. The

allegation in the fourth sentence of Paragraph 22 purports to interpret a legal document which best speaks for itself. Defendants deny the remaining allegations contained in Paragraph 22.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 22 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

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] if a participant.” [footnote omitted] 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 [footnote omitted]; 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.

ANSWER: Defendants are without sufficient information to admit or deny the allegations relating to the NRA’s Conflict of Interest Policy and therefore deny those allegations. The balance of Paragraph 23 contains legal conclusions which require no response.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 23 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

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

ANSWER: Defendants admit that Colonel North entered into a contract with AMc and that the NRA Audit Committee reviewed, approved, and ratified that contract. Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 24 and therefore deny those allegations.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 24 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

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 that turned out to be false, at least for the duration of 2018, as AMc continued to refuse to provide the North Contract pursuant to the Records-Examination Clause. 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.

ANSWER: Defendants deny the allegations contained in Paragraph 25.

Defendants aver as a new matter, specifically requiring a response, that [REDACTED]

[REDACTED]

[REDACTED]

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 25 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

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 – along with other information disclosed for the first time by Col. North – 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 prevented 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.

ANSWER: Defendants deny the allegations contained in Paragraph 26, other than to admit NRA General Counsel Frazer reviewed the North contract in his office at NRA pursuant to the contract.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 26 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

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

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

ANSWER: Defendants admit that they received letters from the NRA General Counsel on March 25 and 26, 2019 requesting certain information related to the North Contract. Defendants deny the characterization and validity of those letters and respond that the documents best speak for themselves.

Defendants aver as a new matter, specifically requiring a response, that Defendants have no duty to provide copies of Third-Party contracts or other business records pursuant to the

services contract, as the Services Agreement only requires that AMc allow properly designated NRA representatives to “examine” such records.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 27 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

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 substantively. It did not.

ANSWER: Defendants admit that they received letters from the NRA General Counsel on March 25 and 26, 2019 requesting certain information related to the North Contract and that AMc acknowledged the receipt of those letters. Defendants deny the remaining allegations contained in Paragraph 28.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 28 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

29. Meanwhile, the NRA began to suspect that the information it previously received regarding the North Contract was incomplete and, therefore, misleading. The May 2018 Amendment classified Col. North as a third-party contractor of AMc, which had two important implications. *First*, an independent contractor is generally perceived to act with greater autonomy than an employee or servant. *Second*, in the event that the NRA terminates the Services Agreement, it incurs different trailing obligations with respect to AMc-Third Party NRA Contracts than with respect to severance of NRA-Dedicated Personnel. Consistent with the general arms-length nature of third-party contracts, the Services Agreement assumes that all “non-cancellable contracts entered into between AMc and third parties for the benefit of the NRA” are just that: non-cancellable. Accordingly, under Section XI.E of the Services Agreement, the NRA agrees to pay the full balance of any compensation owed by AMc under an AMc-Third Party NRA Contract if the NRA terminates the Services Agreement, lest AMc be unfairly saddled with a legacy third-party obligation. By contrast, the Services Agreement treats severance of NRA-Dedicated Personnel in a far less burdensome manner for the NRA, requiring only that AMc and the NRA negotiate a “fair and equitable termination fee” to absorb severance costs.

ANSWER: Defendants deny the allegations contained in Paragraph 29.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 29 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

30. In short, by treating the North Contract as an AMc-Third Party NRA Contract pursuant to the May 2018 Amendment, AMc: (1) made an implicit representation about the degree of independence Col. North could exercise; and (2) imposed a rigid financial liability on the NRA that persists if the Services Agreement is terminated – as opposed to the “fair and equitable”, negotiable severance offset that would apply if Col. North were an AMc employee.

ANSWER: Defendants deny the allegations contained in Paragraph 30.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 30 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

31. On or about February 19, 2019, the NRA learned that Col. North was a salaried employee of Ackerman. Accordingly, Col. North owes a fiduciary duty of loyalty to Ackerman under the laws of many jurisdictions – a fact that was never disclosed to the Audit Committee when it ratified Col. North’s service as fiduciary of the NRA. And under the terms of the May 2018 Amendment, the NRA has incurred a purported trailing liability under the North Contract that was never appropriate, and would not have resulted if the NRA had known that Col. North was an Ackerman employee.

ANSWER: Defendants deny the allegations contained in Paragraph 31.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 31 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

32. Moreover, AMc originally advised the NRA that it had contracted Col. North to host “[t]welve feature-length episodes” of a digital documentary series, to be produced “during each 12 months of a three-year [a]greement,” commencing during or about May 2018. Yet by April 22, 2019 – eleven months into Col. North’s engagement – only three episodes are available, and none are “feature-length.” Instead, as of the date of this filing, the three episodes made available by AMc total 39 minutes, 33 minutes, and 11 minutes in length, respectively.

ANSWER: Defendants deny the allegations contained in Paragraph 32.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 32 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

33. On April 22, 2019, Col. North finally disclosed a copy of his contract to the NRA – even as AMc continued to rebuff the NRA’s requests for material information about the contract. AMc has also withheld documentation regarding sponsorships raised for the North documentary series, and the NRA has no evidence that any substantial sponsorships exist. Viewed in light of the series’ production shortfalls, these facts have troubling implications. The NRA agreed to shoulder a specific financial burden in connection with a specific digital-media project – not to allow its President to be compensated by a for-profit advertising agency for performing generic leadership functions. Importantly, the NRA’s Bylaws do not provide for the President to receive a salary.

ANSWER: Defendants deny the allegations contained in Paragraph 33.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 33 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

34. In the wake of these developments, the NRA again requested that AMc allow it to examine business records that would shed light on “what, exactly, [the NRA] is paying for – and what it is getting.” As of the time of this filing, Ackerman has not responded. Put simply, the NRA is at the end of its rope.

ANSWER: Defendants deny the allegations contained in Paragraph 34.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 34 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

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

ANSWER: Defendants deny the allegations contained in Paragraph 35.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 35 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

36. 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.

ANSWER: Defendants deny the allegations contained in Paragraph 36.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 36 waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph. PLAINTIFF’S DEMAND FOR JURY TRIAL

37. Plaintiff hereby demand a trial by jury regarding all issues of fact in this case.

ANSWER: Paragraph 37 is a statement to which no response is required, but Defendants deny that Plaintiff has a right to a jury trial for equitable claims asserted in the Amended Complaint.

PLAINTIFF’S FIRST CAUSE OF ACTION

31[sic]² Plaintiff incorporates by reference and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

ANSWER: Paragraph 31 (numerically twice by Plaintiff) is an incorporation clause to which Defendants incorporate their collective responses to each and every foregoing paragraph.

² Plaintiff has mis-numbered all paragraphs following Paragraph 37. Defendants will follow the mis-numbering in responding to the allegations.

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

ANSWER: Defendants admit that the allegation that the Services Agreement is a legally enforceable contract, but deny that the Records-Examination Clause is unambiguous. Defendants aver as a new matter, specifically requiring a response, that the LaPierre letters of October 4, 2018 and October 18, 2018 are unambiguous.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 32 [sic] waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

33[sic] 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.

ANSWER: Defendants deny the allegations contained in Paragraph 33.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 33 [sic] waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

34[sic] 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.

ANSWER: Defendants deny the allegations contained in Paragraph 34 [sic].

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 34 [sic] waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

35[sic] 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.

ANSWER: Paragraph 35 [sic] contains legal conclusions which do not require a response. To the extent a response is required, Defendants deny the allegations contained in Paragraph 35 [sic].

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 35 [sic] waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

36[sic] The nature of the obligation imposed by the Records-Examination Clause makes specific performance equitable and practical because the Court need only order AMc to furnish to the NRA: (i) copies of any AMc-Third Party NRA Contracts, including the North Contract; and (ii) business records, in whatever form they were generated in the ordinary course of AMc's business, which are sufficient to convey the information sought by the NRA as described in Paragraph 27 hereof.

ANSWER: Defendants deny the allegations contained in Paragraph 36.

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 36 [sic] waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

37[sic] 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 disclose material information relating to the North Contract threatens to impede the NRA's corporate governance.

ANSWER: Defendants deny the allegations contained in Paragraph 37 [sic].

Defendants aver as a new matter, specifically requiring a response, that the public disclosure of the allegations in Paragraph 37 [sic] waives any claim of confidentiality that the Plaintiff has with respect to the matters alleged in that Paragraph.

38[sic] 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.

ANSWER: Paragraph 38 [sic] contains a request for a court judgment which the Defendants oppose.

WHEREFORE, Defendants respectfully request that the Plaintiff's request for a judgment and award of specific performance be denied and that Defendants be awarded such relief, including attorney fees and costs, as this Court deems just.

AFFIRMATIVE DEFENSES

1. The Amended Complaint fails to state a claim upon which relief may be granted.
2. Plaintiff is estopped from seeking specific performance.
3. Plaintiff has waived any right to the specific performance it has requested.
4. Defendant pleads the affirmative defense of "satisfaction" of the relief requested by the Plaintiff.
5. Plaintiff is barred from any equitable relief based on the doctrine of "unclean hands."
6. Plaintiff's prior breach of contract negates Plaintiff's claim for breach of contract against Defendants.

PLEA IN BAR

(As to Plaintiff's attorneys' authority to bring forth their Complaint)

1. On or about April 12, 2018, this Lawsuit was filed against Ackerman McQueen, Inc. and Mercury Group (collectively "AMC") purportedly on behalf of the National Rifle Association ("NRA"), asking, *inter alia*, this Court to compel the Defendants to produce documents for inspection by the NRA.

[REDACTED]

3. [REDACTED]

Consequently, this Lawsuit was not legally and properly authorized by the NRA Board as required under the New York law governing not-for-profit corporations.

4. The New York law governing nonprofit organizations requires that an organization's board must authorize any corporate action.

5. No individual director or officer, acting alone, could legally authorize the action. The NRA's Executive Vice President therefore lacked legal authority to exercise the NRA board's management responsibilities.

WHEREFORE, the Defendants request that the Court dismiss this Lawsuit based on the lack of authority to bring forth the Complaint on behalf of Plaintiff NRA and to litigate all proceedings subsequent to the Complaint.

COUNTERCLAIM

Ackerman McQueen, Inc. and the Mercury Group (together "Counterclaim Plaintiff" or "AMc"), by and through undersigned counsel, hereby file this Counterclaim against the National Rifle Association ("Counterclaim Defendant" or "NRA") and in support thereof states as follows:

PARTIES

1. AMc is a corporation organized and existing under the laws of the State of Oklahoma. Its principal place of business is 1601 Northwest Expressway, Suite 1100, Oklahoma City, OK 73118. AMc also maintains a key office in Dallas, Texas, the headquarters of NRATV.

2. The Mercury Group is a wholly-owned subsidiary of AMc with its principal place of business in Alexandria, Virginia.

3. The NRA is a not-for-profit corporation organized and existing under the laws of the State of New York, doing business in Virginia.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the matter pursuant to Virginia Code § 8.01-262.

SUMMARY OF COUNTERCLAIM

5. On or about April 12, 2019, an attorney purporting to act on behalf of the NRA filed a Lawsuit against Ackerman McQueen, Inc. and Mercury Group, asking the Court, *inter alia*, to compel the Defendants to produce records and books for inspection by the NRA (the "Lawsuit").

6. On or about April 24, 2019, just three days before the start of the NRA Annual Meeting, the NRA filed a Motion for Leave to Amend Complaint to include seven new paragraphs relating to the NRA's request for information about AMc's contract with NRA President Oliver North.

7. Although the Complaint and the Amended Complaint included numerous pejorative statements about AMc, the NRA did not expressly seek to terminate its contract with

AMc, nor did it seek relief beyond a declaration that AMc has failed to provide access to a small set of documents.

8. The Amended Complaint asserts that certain changes in New York nonprofit laws have motivated the NRA's requests for documentation and audits of AMc's financial records and information concerning its Services Agreement with the NRA. The Amended Complaint implies that these laws impose on the NRA board and officers, for the first time, a fiduciary responsibility to oversee and account for the NRA's assets and its contractual arrangements with employees and outside vendors.

9. On its face, the Amended Complaint reads more like a discovery dispute than a complaint deserving of lawsuit status. However, the Lawsuit has triggered substantial media attention focused on the NRA's spending, policies, and procedures.

10. Upon information and belief, the Complaint and Amended Complaint do not appear to have been properly authorized, and were filed at the direction of Wayne LaPierre, Executive Vice President of the NRA, as [REDACTED]

[REDACTED]

[REDACTED] See Plea in Bar, *supra*.

11. The NRA's Executive Vice President and long-time leader Wayne LaPierre ("LaPierre"), enabled by his chosen attorney, William Brewer of William Brewer Associates and Counselors ("Brewer"), has set the NRA on a course [REDACTED]

[REDACTED]

³ See Wall Street Journal article wherein Brewer states he is "spearheading" this litigation. April 15, 2019

[REDACTED]

12. The NRA's Amended Complaint fails to identify for the Court the legal consequences that the NRA seeks to gain from a decision in this apparent "discovery dispute." Under a Services Agreement between the NRA and AMc dated April 30, 2017 (and modified as of May 6, 2018), [REDACTED]

[REDACTED]

This undisclosed fact in the Amended Complaint provides the NRA's motivation to file the law suit and the need for AMc to file this Counterclaim.

THE SERVICES AGREEMENT

13. This suit arises from the Services Agreement between the parties which is attached hereto as "Exhibit A."

[REDACTED] Section IX of the Services Agreement, provides as follows: "AMc is authorized [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

32. [REDACTED]

[REDACTED]

33. NRA had three to six auditors in AMc's Oklahoma City office reviewing AMc files, records, and documents for approximately nine (9) days in February 2019. Another auditor

examined the records of AMc in November 2018 for an entire day. These audits were preceded by another audit in September 2018 by the NRA.

34. At no time did the auditors claim to AMc that documents were withheld from review.

[REDACTED]

THE PRETEXTS FOR NRA'S LAWSUIT

43. The Amended Complaint asserts that changes in New York nonprofit laws were the motivation for the NRA's requests for documents and audits of AMc's financial records. [Amended Complaint, ¶ 17.] This argument is a pretext: the recent changes in the rules occurred in 2014 and those changes did not alter the long-standing requirement that the NRA's board carefully consider related-party contracts as a non-profit incorporated in New York State.

44. Effective July 1, 2014, the New York Non-Profit Revitalization Act (the "NPRA") amended the N-PCL, including the provisions governing related-party transactions and conflict of interest policies. Further amendments to those provisions were made in 2015 and 2016.

45. However, New York law has contained specific rules regarding related-party transactions that have been in place since at least 1970.

46. NRA's compliance with the related-party transaction rules rests squarely on the NRA itself.

47. AMc has complied with all of the NRA's properly authorized requests to review AMc's books and records. AMc in no way has impaired the NRA's ability to fulfill its duties with respect to its own related-party transactions

NRA DISCLOSES AMC PROPRIETARY INFORMATION.

48. On March 11, 2019, the New York Times ran an article in which the author revealed the existence of the North-AMc Contract and certain features thereof, including AMc's involvement with Col. North. **Exhibit C.** The article misrepresented the facts and disparaged AMc. The New York Times article attributed certain factual assertions to Brewer as the source speaking on behalf of the NRA.

49. On information and belief, Brewer provided misleading information to the New York Times in an effort to undermine the AMc – NRA relationship and to misdirect blame for the terms of the North Contract to AMc.

[REDACTED]

51. The NRA's deliberate false statements to the media regarding AMc's confidential information represented a change in the parties' relationship as well as the fundamental protocol for dealing with the parties' confidential information that had been in existence and honored for decades.

[REDACTED]

53. Frazer's March 14 response (**Exhibit B**) did not deny that the NRA had leaked the information to the New York Times. Instead, the [REDACTED]

[REDACTED]

54. The exchange of correspondence signaled NRA's claim that it could deliberately misuse AMc's confidential information and thereby violate NRA's duty of good faith and fair dealing inherent within the terms of the Services Agreement.

55. NRA's actions described herein, including the filing of the Complaint and Amended Complaint seeking documents that it has already examined or had access to examine when properly requested, have been taken with the strategic intention of injuring AMc's business, its reputation, and its business expectancies.

56. Already, current and prospective clients, financial institutions and insurance providers have begun questioning AMc employees in light of the New York Times article, this Lawsuit, and consequent media reports.

TERMINATION OF CONTRACT

57. On information and belief, the Lawsuit is not intended to obtain documents, but rather, is intended to allow NRA to terminate the Services Agreement for cause.

58. Paragraph XI, F of the Services Agreement deals with the consequences of termination of the Agreement. The section provides:

[REDACTED]

59. NRA's bad faith in initiating this Lawsuit is designed to avoid the payment of a very substantial amount of money in the form of severance and cancellation fees, [REDACTED]

[REDACTED]

COUNT I – BREACH OF CONTRACT

[Breach of Payment Obligations and [REDACTED]

60. The allegations contained in the foregoing paragraphs are incorporated as if fully set forth herein.

[REDACTED]

[REDACTED]

71. The NRA has failed to perform its payment obligations with diligence and good faith and it has failed to fulfill the contractual obligations [REDACTED]

[REDACTED]

72. The NRA breached its payment obligations under the Services Agreement long before any alleged breach by AMc articulated by the NRA in its Amended Complaint.

73. The breaches that occurred have caused AMc to incur damages, the amount of which are not yet fully calculated. The breaches by the NRA are material as that term is defined under the Code of Virginia, § 59-1-507.1.

WHEREFORE, Ackerman McQueen seeks, on its behalf and on behalf of its subsidiary Mercury Group, recovery of contract damages and severance remedies in the amount not less than \$50 million and such other relief as this Court deems just.

COUNT II - BREACH OF CONTRACT

[Breach of Implied Covenant of Good Faith and Fair Dealing]

74. The allegations contained in the foregoing paragraphs are incorporated as if fully set forth herein.

75. Under Virginia law, every contract contains an implied covenant of good faith and fair dealing. Va. Code § 8.1A-304.

76. Pursuant to the Services Agreement Section IV, [REDACTED]

[REDACTED]
[REDACTED] The Services Agreement is silent and does not provide any guidance on how the NRA must treat AMc's confidential proprietary information that it receives from AMc under the Examination of Records" clause.

77. A good faith reading of the Services Agreement does not authorize the NRA to disclose AMc proprietary and confidential information that it gains from the Examination of Records clause.

78. The NRA used its contractual rights under the Services Agreement to gain proprietary information about AMc's business, including information about its contract with Lt. Col. Oliver North.

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

82. The NRA's decision to work with Brewer to release proprietary information gained from AMc to the New York Times is a breach of the NRA's implied covenant of good faith and fair dealing.

83. The NRA compounded its bad faith and unfair dealing by requiring that AMc remain silent in the aftermath of the false and misleading statements made about its contract with Oliver North.

[REDACTED]

85. The NRA has breached its implied contractual duty of good faith and fair dealing by disclosing proprietary information it gained through the contract to a business, Brewer and his public relations unit, that was seeking to take over the services that AMc is providing to the NRA.

86. The breaches that occurred have caused AMc to incur damages, the amount of which are not yet fully calculated. The breaches by the NRA are material as that term is defined under the Code of Virginia, § 59-1-507.1.

WHEREFORE, Ackerman McQueen seeks, on its behalf and on behalf of its subsidiary Mercury Group, recovery of contract damages and severance remedies in an amount not less than \$50 million and such other relief as this Court deems just.

COUNT III - ABUSE OF PROCESS

87. The allegations contained in the foregoing paragraphs are incorporated as if fully set forth herein.

88. NRA has filed suit claiming that it is entitled to receive documents from AMc and Mercury pursuant to a Services Agreement. The NRA failed to attach the Services Agreement to its Complaint or its Amended Complaint. AMc has attached the Services Agreement as **Exhibit A**.

89. Prior to filing suit to obtain certain documents, NRA had already subjected AMc to a detailed audit that ended in February of 2019 after nine days of in-depth analysis of AMc's records undertaken within the offices of AMc's accountants. The team of auditors, upon concluding their audit, informed AMc's representatives that the audit was successfully completed, AMc had provided all requested documents in its possession, and no further documents were needed.

90. Two months later, NRA filed this suit on April 12, 2019 claiming that it seeks access to documents and a declaration that AMc is in breach because of a failure to provide access to those documents.

91. Subsequent to the filing of the Complaint, NRA filed a motion to amend the complaint and attached a copy of the proposed Amended Complaint on April 24, 2019. The Amended Complaint included detailed new allegations about Lieutenant Colonel Oliver North (Ret.) who was simultaneously serving as President of the NRA as well as an employee of AMc. The Amended Complaint did not seek any new relief, nor did it correct any prior allegation.

92. The proposed Amendment was intended to serve an ulterior motive of spreading false statements about the North-AMc Contract immediately prior to the NRA's annual meeting where Lt. Col. North was slated to be reappointed as President of the NRA.

93. The Motion to File the Amended Complaint served its ulterior motive, unrelated to the issues in this case. There was a firestorm of publicity blanketing national news stations concerning the dispute between Lt. Col. North and the NRA. AMc was dragged into the dispute based on the NRA's public disclosure of the North-AMc Contract in the Motion to File the Amended Complaint. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] LaPierre won the power struggle. North was not reappointed as NRA President; AMc's reputation was harmed; and AMc's contract with Lt. Col. North was diminished in value.

94. The NRA's Motion to File the Amended Complaint did not advance the stated cause of obtaining "specific performance" of AMc's duty to provide any documents, but was highly effective in turning the spotlight away from the NRA's troubles and setting up Lt. Col. North and AMc to be the scapegoat in the national news.

95. Such tortious acts that misuse the Court's legitimate judicial functions for ulterior purposes constitute an abuse of process.

96. NRA's use of this Court to falsely demand access to documents that it already possessed and documents that it had not previously requested through the NRA's own required procedures was a pretext designed to cover the ulterior motive of the law suit – to cause damage to AMc's reputation and to facilitate the transfer of AMc's business to Brewer's control without obligating the NRA to pay the severance payment required under the Services Agreement.

97. NRA's abuse of process was further accomplished when it made the bad faith

[REDACTED]

98. NRA used this Court's public proceeding as a vehicle to defame AMc and its employee, Lt. Col. Oliver North, and to accomplish ulterior purposes. Pursuing such ulterior motives constitutes an abuse of process, that was further amplified by the fact that AMc is unable to respond publicly by using any facts that the NRA could claim was "Confidential Information."

99. Lastly, after the NRA's counsel was informed that AMc intended to file a Counterclaim in this Lawsuit, the NRA responded on May 22, 2019, by filing a second law suit. The NRA's second lawsuit gives up any pretext that the dispute between the two parties is about a few documents. The NRA now seeks damages of \$40 million for actions by AMc that the NRA claims began in August 2018, thereby revealing the NRA's pretext in filing this first Lawsuit in April 2019 seeking the North Contract.

100. Continuing its strategy of trying the dispute in the press, the NRA leaked the second lawsuit to the Wall Street Journal before AMc or its attorneys were even told the suit was filed or that any contract breach had occurred.

101. As a result of the abuse of process, AMc has sustained actual and reputational damages to be proven at trial, with such compensatory damages exceeding \$50 million.

WHEREFORE, Ackerman McQueen seeks, on its behalf and on behalf of its subsidiary Mercury Group, recovery of damages in the amount not less than \$50 million for damages to their businesses, punitive damages, attorney fees, costs, and such other relief as this Court deems just.

JURY DEMAND

Counterclaim Plaintiffs demand this matter be heard before a jury on all triable issues.

REQUEST FOR RELIEF

WHEREFORE, for all the foregoing reasons, Defendants/Counterclaim Plaintiffs request the following relief:

- A. Actual and consequential damages arising from breach of contract in the amount of \$50,000,000;
- B. Punitive damages of at least \$50,000,000;
- C. Injunctive relief barring the NRA from taking any further action in derogation of the Services Agreement and the NRA's obligation to comply with all good faith and fair dealing;
- D. Reasonable attorney's fees as allowed under the "American Rule" exception allowing for the award of attorney fees for bad faith litigation;
- E. Court costs; and

F. And such other legal and/or equitable relief to which Counterclaim Plaintiffs may be entitled.

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

Dated: May 23, 2019

Respectfully submitted,



David H. Dickieson (VA Bar #31768)
SCHERTLER & ONORATO, LLP
901 New York Avenue, NW, Suite 500
Washington, DC 20001
Telephone: 202-628-4199
Facsimile: 202-628-4177
ddickieson@schertlerlaw.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on the following counsel via email and first-class mail addressed to:

James W. Hundley
Robert H. Cox
Amy L. Bradley
BRIGLIA HUNDLEY, PC
1921 Gallows Road, Suite 750
Tysons Corner, VA 22182
jhundley@brigliahundley.com
rcox@brigliahundley.com
abradley@brigliahundley.com

A handwritten signature in black ink, appearing to read "David H. Dickieson", written over a horizontal line.

David H. Dickieson.

EXHIBIT A
REDACTED

EXHIBIT B
REDACTED

EXHIBIT C
REDACTED

EXHIBIT D
REDACTED

EXHIBIT E
REDACTED