

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY
LETITIA JAMES, ATTORNEY GENERAL OF THE
STATE OF NEW YORK,

Plaintiff,

v.

THE NATIONAL RIFLE ASSOCIATION OF
AMERICA, WAYNE LAPIERRE, WILSON PHILLIPS,
JOHN FRAZER, and JOSHUA POWELL,

Defendants.

Index No. 451625/2020
Hon. Joel M. Cohen

**DEFENDANT WILSON PHILLIPS’S RESPONSE TO PROPOSED FINAL
JUDGMENTS OF PLAINTIFF, THE PEOPLE OF THE STATE OF NEW YORK, AND
DEFENDANT NATIONAL RIFLE ASSOCIATION OF AMERICA (“NRA”)**

Defendant Wilson Phillips submits this response to the Proposed Final Judgments submitted by Plaintiff and by the NRA. Specifically, Mr. Phillips objects to certain portions of those judgments that are directed to him, as explained below.

I. Objections to Plaintiff’s Proposed Final Judgment

Mr. Phillips objects to the request in Plaintiff’s Proposed Final Judgment that Plaintiff be awarded costs and taxable disbursements “for each of the jury and bench trials in this action,” insofar as that request is directed at him. CPLR §8101 provides for an award of costs to a party in whose favor a judgment is entered “unless the court determines that to so allow costs would not equitable, under all the circumstances.” In turn, CPLR §8301 provides, “A party to whom costs are awarded in an action . . . is entitled to tax his necessary disbursements.” Under the circumstances of this case, an award of costs (and the taxation of disbursements that would go with

it) against Mr. Phillips would not be equitable for several reasons.

To begin with, the length and complexity of this litigation were the products of the strategy and tactics of Plaintiff and the NRA – not Mr. Phillips. Those parties litigated innumerable discovery disputes before the Special Master, many of which were appealed to this Court. Mr. Phillips litigated none. Similarly, the vast majority of the dispositive motions (whether measured by number of motions, number of pages or number of hours of oral argument time) involved the NRA and Plaintiff – not Mr. Phillips. Finally, the jury trial and bench trial in this action followed a similar pattern. During the jury trial, the overwhelming majority of trial time was consumed by Plaintiff and by the NRA – not Mr. Phillips. As to the bench trial, Mr. Phillips stipulated to the remaining issues of non-monetary relief, thereby relieving the Court of the burden of having to include him as a party in that proceeding.

An award of costs and disbursement as to Mr. Phillips would be also inequitable for the additional reason that Plaintiff received only a fraction of the relief sought against him. Although Plaintiff argued that Plaintiff was responsible for more than \$100 million in damages for breaches of duties to the NRA, the jury entered an award in Plaintiff's favor of only \$2 million. Furthermore, the jury determined that the NRA suffered no damages at all on the related party transactions cause of action against Mr. Phillips and this Court dismissed the cause of action against him for failing properly to administer the NRA's charitable assets.

II. Objection to the NRA's Proposed Final Judgment

Mr. Phillips objects to the NRA's Proposed Final Judgment insofar as it provides, "Plaintiff shall either (i) use best efforts to commence collection [from Mr. Phillips] of this sum within thirty (30) days of the entry of this final judgment, or (ii) assign collection rights to the NRA." This Court lacks authority to order Plaintiff to assign its collection rights. Even if the Court had such

authority, there is no reason why it should do so in this case and, in particular, no reason why the Court should order Plaintiff (a State regulator) to transfer those rights to the NRA (its regulated entity, which was itself found by the jury to have violated New York law).

CONCLUSION

For the reasons set forth above, the Final Judgment as to Mr. Phillips should not include an award of costs or taxable disbursements and should not include a provision for assignment of collection rights to the NRA.

Dated: October 16, 2024
New York, New York

Respectfully submitted,

By: /s/ Seth C. Farber

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CERTIFICATE OF COMPLIANCE

1. I am an attorney at the law firm of Winston & Strawn LLP, am admitted to practice in the State of New York, and have appeared on behalf of Defendant Wilson Phillips.

2. This Response to Proposed Final Judgments of Plaintiff and the NRA was prepared in the processing system Microsoft Word, with Times New Roman typeface, 12-point font.

3. Pursuant to the Rules of the Commercial Division of the Supreme Court (22 NYCRR § 202.70(g)), I certify that this memorandum of law complies with the word count limit set out in Rule 17, as it contains 612 words (excluding the parts of the brief exempted by Rule 17).

Dated: October 16, 2024
New York, New York

By: /s/ Lisa Coutu
Lisa Coutu