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November 9, 2020

VIA NYSECF

Honorable Joel M. Cohen
Justice of the Supreme Court of the State of New York
Commercial Division, New York County
60 Centre Street
New York, NY 10007

Re: *People of the State of New York, by Letitia James, Attorney General of the State of New York v. The National Rifle Association of America, Inc. et al.*, Index No. 451625/2020

Dear Justice Cohen:

Plaintiff, the Attorney General, respectfully submits this letter

- a) on behalf of all parties, to respond to the November 6, 2020 email from the Court to address their respective positions on the process and timing for briefing motion sequence nos. 1, 3, 4 and 5 (the “Pending Motions”), *see* Section I; and
- b) on behalf of the Attorney General, to request a preliminary conference, *see* Section II.

I. The Pending Motions

The Attorney General’s Position

The Pending Motions were brought separately by the National Rifle Association of America, Inc. (“NRA”) and Messrs. Frazer and LaPierre (collectively, the “Moving Defendants”) to dismiss, stay or transfer this case. Whether denominated a motion to change venue or a motion to dismiss based upon CPLR § 3211(a), the Pending Motions principally deal with threshold issues relating to the proper forum for this action (*e.g.*, *forum non conveniens* pursuant to CPLR § 327, improper venue pursuant to CPLR § 3211(a)(1), prior pending action in federal court pursuant to CPLR § 3211(a)(4) or stay pursuant to CPLR § 2201). The Attorney General believes that consolidation of briefing and argument on these motions, which raise interrelated issues about the propriety of proceeding with the Attorney General’s complaint in New York County, will allow for the speedy and efficient resolution of the Pending Motions.

In accordance with Justice Cohen's Part rules, which encourage cooperation among parties and consolidation of motion practice where appropriate, on November 6, 2020, the Attorney General sought the consent of the Moving Defendants to the following process and schedule for addressing the Pending Motions:

1. The Attorney General will submit one set of papers in response to the Pending Motions, including a single memorandum of law, **by December 10, 2020.**
2. The Moving Defendants will submit one joint set of reply papers on the Motions, including a single memorandum of law, **by December 24, 2020.**
3. Concerning further motions to change venue, Messrs. Frazer and LaPierre agree to join the NRA's motion, sequence no. 5, unless they have new arguments that have not been made by the NRA. In that circumstance, Messrs. Frazer and LaPierre will make one joint motion on or before November 15. The Attorney General's response to any such joint submission will be made as part of its consolidated responsive submission **by December 10** (see paragraph 1 above).
4. The return date on all Pending Motions, including any further motions by Messrs. Frazer and LaPierre to change venue (as addressed above in paragraph 3), will be **December 28, 2020.** The date for oral argument on the Pending Motions will be determined by the Court.
5. In accordance with Justice Cohen's individual rules, the parties reserve the right to ask the Court for an expansion of the word limit for the memoranda of law and affidavits, which they will be submitting as part of this consolidated briefing process.

As detailed below, the Moving Defendants do not consent to the Attorney General's proposal and offer an alternative approach that the Attorney General believes will unnecessarily protract consideration of these threshold motions and unduly delay this action.

If the Court elects to modify the Attorney General's proposal, the Office respectfully requests that it be permitted to submit opposition papers no earlier than the first week of December due to the time and resources required for briefing these various motions. The Attorney General defers making a request for an expansion of the page limits, if any, to closer in time to the submission of its opposition papers.

Moving Defendants' Positions

The Moving Defendants concur that it would be sensible to consolidate pending and anticipated venue and dismissal motions where practicable. However, the Moving Defendants note that pending dismissal motions (Motion Sequences 1, 3, and 4) (the "Dismissal Motions") raise a greater number of legal issues, of greater complexity, than the NRA's venue motion (Motion Sequence 5) (together with any subsequent similar motions filed by other defendants, the "Venue Motions"). The Moving Defendants submit that before addressing the Dismissal Motions, the parties and Court should resolve the threshold issue of whether this case is before the correct tribunal or, in the alternative, whether it must be transferred to Albany in accordance with New York's statutory mandatory venue provision for corporate dissolution lawsuits. *See*

N.Y. N-PCL § 1110. Although the Attorney General contends that the Venue Motions and Dismissal Motions raise “interrelated issues,” the truth is that the Dismissal Motions focus predominantly on arguments pursuant to CPLR §§ 327, 3211(a)(4), and 2201, and only briefly address the venue requirement in N.Y. N-PCL § 1110. *See, e.g.*, NYSCEF No. 99. Thus, there is no reason why the Venue Motions and Dismissal Motions must be heard at the same time, and the alternative timetable proposed by the Moving Defendants (see below) would not delay or protract matters unreasonably. The Moving Defendants are also mindful of upcoming holidays.

In view of these considerations, the Moving Defendants propose the following:

- 1. All remaining Venue Motions filed by Friday, Nov. 12, 2020.** Although the Moving Defendants are mindful of the Court’s preference for consolidated briefing and will aim to keep their papers as succinct and nonduplicative as possible, Defendant LaPierre does intend to file his own Venue Motion, distinct from the one lodged by the NRA as Motion Sequence No. 5. He will file these motion papers no later than next Friday, 11/12. To the extent that Defendant Frazer additionally raises venue arguments, he will either (i) join the NRA’s pending motion, or (ii) likewise submit, no later than Friday, succinct additional, nonduplicative briefing.
- 2. The Attorney General will submit opposition papers to the Venue Motions no later than December 4, 2020.** The Moving Defendants have no objection to a consolidated opposition encompassing all venue arguments and will consent to a page-limit extension as necessary.
- 3. The Moving Defendants will submit replies in support of their Venue Motions by December 15, 2020.** Reply papers will be consolidated or otherwise nonduplicative. The return date for the Venue Motions will be **December 21, 2020**.
- 4. The Attorney General submit opposition papers to the Dismissal Motions no later than January 11, 2021.** As with respect to the Venue Motions, the Moving Defendants have no objection to consolidated briefing in connection with the Dismissal Motions or an expanded page limit accommodating the same. Defendants’ replies will likewise be consolidated or nonduplicative.
- 5. The Moving Defendants will submit replies in support of the Dismissal Motions no later than January 20, 2021,** and the return date for the Dismissal Motions will be **January 25 or 26, 2021**.

The Moving Defendants strongly prefer the above schedule and maintain that the Venue Motions should be heard as a threshold predicate to the Dismissal Motions—in order to ensure that the parties are before the correct court. However, in the event that the Court prefers a single round of consolidated briefing encompassing arguments raised in both the Venue Motions and Dismissal Motions, then the Moving Defendants seek leave to file a single consolidated opening brief¹ on both sets of issues no later than **Monday, November 23, 2020**, with opposition papers

¹ The Moving Defendants will endeavor to submit consolidated briefs going forward but reserve the right to make separate submissions where distinct defendants are distinctly postured or advance distinct arguments.

due **December 21, 2020**, reply papers due **January 11, 2021** and a return date of **January 18, 2021**.

II. Request for a Preliminary Conference

The Attorney General respectfully requests that the Court hold a preliminary conference to set a schedule for the pretrial proceedings in this matter, including any further motions the defendants intend to make at the pleadings stage and discovery. The Attorney General is confident that the complaint will survive the motions, but regardless of the outcome of the Pending Motions, this case will be proceeding. Two defendants have not moved to dismiss the complaint and none of the defendants sought, nor could they establish a basis for, an interim stay of the proceedings during the pendency of the motion practice.

Respectfully,

/s/Emily Stern

Emily Stern
Co-Chief, Enforcement
Section
Assistant Attorney General

cc: All Counsel of Record