

Exhibit B

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

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PEOPLE OF THE STATE OF NEW	:	
YORK, by LETITIA JAMES,	:	
ATTORNEY GENERAL OF THE	:	
STATE OF NEW YORK,	:	
	:	
	:	Index No. 451625/2020
- against -	:	
Plaintiff,	:	STIPULATION AND
THE NATIONAL RIFLE	:	ORDER FOR THE
ASSOCIATION OF AMERICA,	:	PRODUCTION AND
INC., WAYNE LAPIERRE,	:	EXCHANGE OF
WILSON PHILLIPS, JOHN	:	CONFIDENTIAL
FRAZER, and JOSHUA POWELL. Defendants.	:	INFORMATION
-----	x	

This matter having come before the Court by stipulation of plaintiff, the people of the State of New York, by Letitia James, the Attorney General of the State of New York ("OAG"), and defendants, The National Rifle Association Of America, Inc., Wayne LaPierre, Wilson Phillips, John Frazer, and Joshua Powell (individually "Party" and collectively "Parties") for the entry of a protective order pursuant to CPLR 3103(a), limiting the review, copying, dissemination and filing of confidential and/or proprietary documents and information to be produced by either party and their respective counsel or by any non-party in the course of discovery in this matter to the extent set forth below; and the parties, by, between and among their respective counsel, having stipulated and agreed to the terms set forth herein, and good cause having been shown;

IT IS hereby ORDERED that:

1. This Stipulation is being entered into to facilitate the production, exchange and discovery of documents and information that the Parties and, as appropriate, non-parties, agree merit confidential treatment (hereinafter the "Documents" or "Testimony").

2. Any Party or, as appropriate, non-party, may designate Documents produced, or Testimony given, in connection with this action as “confidential,” either by notation on each page of the Document so designated, statement on the record of the deposition, or written advice to the respective undersigned counsel for the Parties hereto, or by other appropriate means.

3. As used herein:

(a) “Confidential Information” shall mean all Documents and Testimony, and all information contained therein, and other information designated as confidential, if such Documents or Testimony, based upon a good faith determination by the Producing Party, contain trade secrets, proprietary business information, competitively sensitive information, ~~or~~ personally identifying information of a confidential nature such as birth date, home address, social security number, or other personally sensitive information including, without limitation, information identifying members of or donors to the National Rifle Association (the “NRA”) (such information, collectively, “Personally Identifying Information”), or other information the disclosure of which would, in the good faith judgment of the Party or, as appropriate, the non-party designating the material as confidential, be detrimental to the conduct of that Party or non-party’s business or the business of any of that Party or non-party’s customers, clients, donors or stakeholders. Information other than Personally Identifying Information, whether documents or testimony, shall not be designated as “Confidential Information” if it has been previously disclosed publicly by the Producing Party.

Commented [CM1]: This language is objected to by the OAG.

(b) “Producing Party” shall mean the parties to this action and any non-parties

producing “Confidential Information” in connection with depositions, document production or otherwise, or the Party or non-party asserting the confidentiality privilege, as the case may be.

(c) “Receiving Party” shall mean the Parties to this action and/or any non-party receiving “Confidential Information” in connection with depositions, document production, subpoenas or otherwise.

4. The Receiving Party may, at any time, notify the Producing Party that the Receiving Party does not concur in the designation of a document or other material as Confidential Information. If the matter is not resolved or the Producing Party does not agree to declassify such document or material within seven (7) days of the written request, the Producing Receiving Party must move before the Court for an order seeking a judicial determination whether those documents or materials may be treated as Confidential Information. If no such motion is filed, such documents or materials shall not continue to be treated as Confidential Information. If such motion is filed, the documents or other materials shall be deemed Confidential Information unless and until the Court rules otherwise or the parties agree to a resolution of the dispute. Notwithstanding anything herein to the contrary, the Producing Party bears the burden of establishing the propriety of its designation of documents or information as Confidential Information.

Commented [CM2]: This paragraph reverses the standard forms order which places the burden on the receiving party to apply to the court for relief when a confidentiality designation is challenged. The NRA objects to this reversal.

5. Notwithstanding the producing Party’s designation, documents and information produced to the OAG that has been designated as “Confidential Information” may be subject to disclosure to the extent required by law pursuant to, without limitation, New York Public Officers Law § 87 and New York Criminal Procedure Law § 245.

Commented [CM3]: This paragraph was added by the OAG. The NRA added the redlined language, to which the OAG objects.

(a) Upon a request by the Producing Party, the OAG will deem “Confidential Information” produced to the OAG to be subject to a request by that Producing Party for an

exemption under New York Public Officers Law § 87(2)(d), which provides certain protections from disclosure under the Freedom of Information (“FOIL”) as outlined in New York Public Officers Law § 89(5). Unless such “Confidential Information” has been declassified in accordance with paragraph 4 above, “upon the request of any person for a record excepted from disclosure,” the OAG will provide notice to the Producing Party of its intention to determine whether the exception will be granted or whether any other exemptions under FOIL apply; permit the Producing Party, within ten business days of receipt of such notice, to submit a written statement of the necessity for granting or continuing the exception; and within seven days of the OAG’s receipt of the Producing Party’s written statement, or of the expiration of the ten-day period for the Producing Party’s submission of such statement, issue a written determination granting, continuing or terminating the exception and stating reasons therefor. Finally, in connection with any FOIL request, the OAG will provide the Producing Party with a reasonable opportunity to object, or seek court protection, as provided in New York Public Officers Law § 89(5)(b), in addition to any other remedy which may exist at law or in equity.

(b) Where the OAG is required pursuant to New York Criminal Procedure Law § 245.20(2) to disclose “Confidential Information” in connection with a criminal matter, the OAG will notify the recipient of the Producing Party’s confidentiality designation, will provide them with a copy of this Agreement. Notwithstanding the foregoing, any legally required disclosure by the OAG of Confidential Information, whether pursuant to New York Criminal Procedure Law § 245.20(2) or otherwise, must be preceded by written notice to the Producing Party as set forth in Paragraph 22 hereof; provided, however, that the OAG will not be deemed to have violated this Stipulation for failing to provide notice to the Producing Party

if the notice protocol set forth in Paragraph 22 would violate any statute, court order, or other binding authority precluding disclosure.

6. Except with the prior written consent of the Producing Party, by Order of the Court or otherwise required by law, including without limitation as set forth in paragraph 5 above, Confidential Information shall not be furnished, shown or disclosed to any person or entity except to:

(a) personnel of the Parties actually engaged in assisting in the preparation of this action for trial or other proceeding herein and who have been advised of their obligations hereunder;

(b) counsel for the Parties to this action and their associated attorneys, paralegals and other professional and non-professional personnel (including support staff and outside copying services) who are directly assisting such counsel in the preparation of this action for trial or other proceeding herein, are under the supervision or control of such counsel, and who have been advised by such counsel of their obligations hereunder;

(c) expert witnesses or consultants retained by the Parties or their counsel to furnish technical or expert services in connection with this action or to give testimony with respect to the subject matter of this action at the trial of this action or other proceeding herein; provided, however, that such Confidential Information is furnished, shown or disclosed in accordance with paragraph 7 hereof;

(d) the Court and court personnel;

(e) an officer before whom a deposition is taken, including stenographic reporters and any necessary secretarial, clerical or other personnel of such officer;

(f) witnesses, if furnished, shown

or disclosed in accordance with paragraphs __ and __, respectively, hereof;

(g) any other person agreed to by the Producing Party.

7. Confidential Information shall be utilized by the Receiving Party and its counsel only for purposes of this litigation, regulation of the regulated entity, and any other litigation, investigations, and/or referrals concerning or arising out of the same facts and circumstances, and otherwise for no other purposes.

Commented [CM4]: The NRA would like this phrase omitted.

8. Before any disclosure of Confidential Information is made to an expert witness, consultant, or witness pursuant to paragraph 6 hereof, counsel for the Receiving Party making such disclosure shall provide to such person a copy of this Stipulation and obtain the person's written agreement, in the form of Exhibit A attached hereto, to comply with and be bound by its terms. ~~Counsel for the Receiving Party obtaining the certificate shall supply a copy to counsel for the other Parties at the time designated for expert or fact disclosure, as appropriate, except that any certificate signed by a person who is not expected to be called as a witness at trial is not required to be supplied.~~

Commented [CM5]: The OAG objects to this provision.

9. All depositions shall presumptively be treated as Confidential Information and subject to this Stipulation during the deposition and for a period of fifteen (15) days after a transcript of said deposition is received by counsel for each of the Parties. At or ~~4~~before the end of such fifteen day period, the deposition shall be classified appropriately. If any portion of a deposition designated as Confidential Information is challenged, it shall be subject to the procedures set forth in paragraph 5, *supra*.

10. Should the need arise for any Party or, as appropriate, non-party, to

disclose Confidential Information during any hearing or trial before the Court, including through argument or the presentation of evidence, such Party or, as appropriate, non-party may do so only after taking such steps as the Court, upon motion of the Producing Party, shall deem necessary to preserve the confidentiality of such Confidential Information. If the parties cannot reach agreement and the Producing Party fails to move, in accordance with the procedure set forth *supra* in paragraph 4, the information may be disclosed as if it is not Confidential Information.

Commented [CM6]: The NRA objects to this provision.

11. This Stipulation shall not preclude counsel for any Party from using in this action any Documents or Testimony which has been designated as “Confidential Information” under the terms hereof. Any witness, who is given access to Confidential Information shall, prior thereto, be provided with a copy of this Stipulation and shall execute a written agreement, in the form of Exhibit A attached hereto, to comply with and be bound by its terms. In the event that, upon being presented with a copy of the Stipulation, a witness refuses to execute the agreement to be bound by this Stipulation, the Court shall, upon application, enter an order directing the witness’s compliance with the Stipulation upon such terms as may be just and permitting the witness reasonable opportunity to be heard should he or she so desire.

12. A Party may designate as Confidential Information subject to this Stipulation any document, information, or deposition testimony produced or given by any nonparty to this case, or any portion thereof. In the case of Documents, produced by a non-party, designation shall be made by notifying all counsel in writing of those documents which are to be stamped and treated as such at any time up to fifteen (15) days after actual receipt of copies of those documents by counsel for the Party asserting the confidentiality privilege. In the case of deposition Testimony,

designation shall be made by notifying all counsel in writing of those portions which are to be stamped or otherwise treated as such at any time up to fifteen (15) days after the transcript is received by counsel for the Party (or, as appropriate, non-party) asserting the confidentiality. Prior to the expiration of such fifteen (15) day period (or until a designation is made by counsel, if such a designation is made in a shorter period of time), all such Documents and Testimony shall be treated as Confidential Information.

13. Any Party or, as appropriate, non-party, who seeks to file with the Court (i) any deposition transcripts, exhibits, answers to interrogatories, or other documents which have previously been designated as comprising or containing Confidential Information, or (ii) any pleading, brief or memorandum which reproduces, paraphrases or discloses Confidential Information shall file the document, pleading, brief, or memorandum on the NYSCEF system in redacted form until the Court renders a decision on any motion to seal (the "Redacted Filing"). If the Producing Party fails to move to seal within seven (7) days of the Redacted Filing, the Party (or, as appropriate, non-party) making the filing shall take steps to replace the Redacted Filing with its corresponding unredacted version.

(a) In the event that the Party's (or, as appropriate, non-party's) filing includes Confidential Information produced by a Producing Party that is a non-party, the filing Party shall so notify that Producing Party within twenty four (24) hours after the Redacted Filing by providing the Producing Party with a copy of the Redacted Filing as well as a version of the filing with the relevant Producing Party's Confidential Information unredacted.

(b) If the Producing Party makes a timely motion to seal, and the motion is granted, the filing Party (or, as appropriate, non-party) shall ensure that all documents (or, if directed by the court, portions of documents) that are the subject of the order to seal are filed in

accordance with the procedures that govern the filing of sealed documents on the NYSCEF system. If the Producing Party's timely motion to seal is denied, then the Party (or, as appropriate, non-party) making the filing shall take steps to replace the Redacted Filing with its corresponding unredacted version.

(c) Any Party filing a Redacted Filing in accordance with the procedure set forth in this paragraph 12 shall, contemporaneously with or prior to making the Redacted Filing, provide the other Parties and the Court with a complete and unredacted version of the filing.

(d) All pleadings, briefs or memoranda which reproduce, paraphrase or disclose any materials which have previously been designated by a party as comprising or containing Confidential Information shall identify such documents by the production number ascribed to them at the time of production.

14. With the exception of any person or law enforcement agency that receives Confidential Information pursuant to a disclosure by the OAG ~~required by law~~, including as set forth in paragraph 5 above, any person receiving Confidential Information shall not reveal or discuss such information to or with any person not entitled to receive such information under the terms hereof. Any person that receives Confidential Information shall use reasonable measures to store and maintain the Confidential Information so as to prevent unauthorized disclosure.

15. Any document or information that may contain Confidential Information that has been inadvertently produced without identification as to its "confidential" nature as provided in paragraphs 2 and/or 11 of this Stipulation, may be so designated by the party asserting the confidentiality privilege by written notice to the undersigned counsel for the Receiving Party identifying the document or information as "confidential" within a reasonable

time following the discovery that the document or information has been produced without such designation.

16. Extracts and summaries of Confidential Information shall also be treated as confidential in accordance with the provisions of this Stipulation.

17. The production or disclosure of Confidential Information shall in no way constitute a waiver of each Producing Party's right to object to the production or disclosure of other information in this action or in any other action. Nothing in this Stipulation shall operate as an admission by any Party or non-party that any particular document or information is, or is not, confidential. Failure to challenge a Confidential Information designation shall not preclude a subsequent challenge thereto.

18. This Stipulation is entered into without prejudice to the right of any Party or non-party to seek relief from, or modification of, this Stipulation or any provisions thereof by properly noticed motion to the Court or to challenge any designation of confidentiality as inappropriate under the Civil Practice Law and Rules or other applicable law.

19. This Stipulation shall continue to be binding after the conclusion of this litigation except that there shall be no restriction on documents that are used as exhibits in Court (unless such exhibits were filed under seal); and (b) that a Receiving Party may seek the written permission of the Producing Party or further order of the Court with respect to dissolution or modification of the Stipulation. The provisions of this Stipulation shall, absent prior written consent of the parties, continue to be binding after the conclusion of this action.

20. Nothing herein shall be deemed to waive any privilege recognized by law,

or shall be deemed an admission as to the admissibility in evidence of any facts or documents revealed in the course of disclosure.

21. Within sixty (60) days after the final termination of this litigation by settlement or exhaustion of all appeals, at the request of the Producing Party, Confidential Information produced or designated and all reproductions thereof shall be returned to the Producing Party or, at the Receiving Party's option, shall be destroyed. In the event that any Receiving Party chooses to destroy physical objects and documents, such Party shall certify in writing within sixty (60) days of the final termination of this litigation that it has undertaken its best efforts to destroy such physical objects and documents, and that such physical objects and documents have been destroyed to the best of its knowledge. Notwithstanding anything to the contrary, counsel of record for the Parties may retain one copy of documents constituting work product, a copy of pleadings, motion papers, discovery responses, deposition transcripts and deposition and trial exhibits. This Stipulation shall not be interpreted in a manner that would violate any applicable rules of professional conduct. Nothing in this Stipulation shall prohibit or interfere with the ability of counsel for any Receiving Party, or of experts specially retained for this case, to represent any individual, corporation or other entity adverse to any Party or non-party or their affiliate(s) in connection with any other matter. Nothing in this Stipulation shall be construed as requiring the destruction or return of documents that the OAG is obligated to maintain in accordance with any applicable law or regulation or policy.

22. If a Receiving Party is called upon to produce Confidential Information in order to comply with a court order, subpoena, or other direction by a court, administrative agency, or legislative body, the Receiving Party from which the Confidential Information is

sought shall (a) give written notice by overnight mail and either email or facsimile to the counsel for the Producing Party within five (5) business days of receipt of such order, subpoena, or direction, and (b) give the Producing Party five (5) business days to object to the production of such Confidential Information, if the Producing Party so desires. Notwithstanding the foregoing, nothing in this paragraph shall be construed as requiring any party to this Stipulation to subject itself to any penalties for noncompliance with any court order, subpoena, or other direction by a court, administrative agency, or legislative body.

23. This Stipulation may be changed by further order of this Court, and is without prejudice to the rights of a Party to move for relief from any of its provisions, or to seek or agree to different or additional protection for any particular material or information.

24. This Stipulation may be signed in counterparts, which, when fully executed, shall constitute a single original, and electronic signatures shall be deemed original signatures.

[FIRM]

[FIRM]

By: _____

By: _____

New York, New York

New York, New York

Tel: _____

Tel: _____

Attorneys for Plaintiff

Attorneys for Defendant

Dated: _____

SO ORDERED

J.S.C.

EXHIBIT "A"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

----- X
_____, Plaintiff, : Index No. _____
: **AGREEMENT WITH**
: **RESPECT TO**
- against - : **CONFIDENTIAL**
: **MATERIAL**
_____, :
Defendant. :
----- X

I, _____, state that:

1. My address is _____.
2. My present occupation or job description is _____.
3. I have received a copy of the Stipulation for the Production and Exchange of Confidential Information (the "**Stipulation**") entered in the above-entitled action on _____.
4. I have carefully read and understand the provisions of the Stipulation.
5. I will comply with all of the provisions of the Stipulation.
6. I will hold in confidence, will not disclose to anyone not qualified under the Stipulation, and will use only for purposes of this action, any Confidential Information that is disclosed to me. 7. I will return all Confidential Information that comes into my possession, and documents or things that I have prepared relating thereto, to counsel for the party by whom I am employed or retained, or to counsel from whom I received the Confidential Information.

[UCS rev. 6/2016]

8. I hereby submit to the jurisdiction of this court for the purpose of enforcement of the Stipulation in this action.

Dated: _____

[UCS rev. 6/2016]

