



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
CHARITIES BUREAU

(212) 416-6183
Stephen.Thompson@ag.ny.gov

October 14, 2021

BY NYSCEF

Hon. 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 v. NRA et al.*, Index No. 451625/2020

Dear Justice Cohen:

I write on behalf of the plaintiff in the above-captioned action, the People of the State of New York by the Office of the Attorney General ("OAG"). In accordance with Your Honor's Part Practices and Procedures and Rule 14 of the Commercial Division Rules, please find enclosed the following letters in connection with the OAG's request for a pre-motion conference regarding the OAG's subpoena for documents from non-party Christopher Cox:

- The OAG's letter dated October 7, 2021 and accompanying exhibits.
- The NRA's reply letter dated October 14, 2021.
- Mr. Cox's reply letter dated October 14, 2021 and accompanying exhibits.

Sincerely,

/s/ Stephen C. Thompson
Assistant Attorney General

cc: Counsel of record (by NYSCEF)
Counsel for Mr. Cox (by e-mail)

2021.10.07 OAG Letter



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October 7, 2021

BY NYSCEF

Hon. 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 v. NRA et al.*, Index No. 451625/2020

Dear Justice Cohen:

I write on behalf of the plaintiff in the above-captioned action, the People of the State of New York by the Office of the Attorney General ("OAG"). In accordance with Your Honor's Part Practices and Procedures and Rule 14 of the Commercial Division Rules, the OAG requests a pre-motion conference to address disclosure issues that the OAG and the National Rifle Association ("NRA") have been unable to resolve. The OAG intends to move to compel the NRA and non-party Christopher Cox to produce documents pursuant to CPLR 3124.

In addition to numerous meet and confers and emails between the NRA and the OAG over the past month, the OAG and the NRA met and conferred in good faith on October 5, 2021 in a final, unsuccessful effort to resolve these issues, but now require the Court's intervention. For the reasons given below, it was unnecessary to meet and confer with Mr. Cox prior to submitting this letter because it is the NRA that is obstructing the production of documents from Mr. Cox.

Factual background

Non-party witness Christopher Cox is the former Executive Director of the NRA's Institute for Legislative Action, the chief lobbying and political arm of the NRA. He resigned from the NRA in June 2019 after being placed on administrative leave by Defendant Wayne LaPierre for allegedly participating in an attempt to oust Mr. LaPierre.¹ Since his resignation, Mr. Cox and the NRA have been involved in arbitration over, among other things, Mr. Cox's alleged misuse of NRA money for personal expenses, including for meals and flights. NYSCEF No. 333 at ¶¶ 600-604. It appears that the NRA has applied a different, more exacting methodology to calculate what

¹ See Associated Press, "NRA's top lobbyist resigns amid turmoil within group," June 26, 2019, <https://www.politico.com/story/2019/06/26/nra-lobbyist-chris-cox-resigns-1383846>.

the NRA claimed were Mr. Cox's excess benefits—as a disfavored former employee—than the methodology used with respect to the calculation of Mr. LaPierre's admitted excess benefits. The OAG served Mr. Cox with a subpoena for the production of documents on August 17, 2021, and provided the subpoena to the parties in this action on the same date (attached as Exhibit A, hereinafter the "Cox Subpoena"). The Cox Subpoena seeks, among other things, documents related to the arbitration between Mr. Cox and the NRA, including the NRA's claims and methodology for determining excess benefits it paid to insiders in violation of the Internal Revenue Code and New York Law, which are relevant to the OAG's claims of retaliation, waste, and that the NRA conducted its business in a "persistently fraudulent or illegal manner." N-PCL 1101(a)(2).

Counsel for Mr. Cox promptly and separately informed the NRA of the Cox Subpoena on August 20, 2021, and asked whether the NRA intended to move to quash it (attached as Exhibit B). The NRA did not move or reach out to the OAG in an attempt to resolve any issues. Instead, on September 5, 2021, the day before the Cox Subpoena was returnable, the NRA demanded that Mr. Cox "provide the NRA with any document production anticipated to be made in response to the [Cox Subpoena] for review by the NRA prior to such production" (letter attached as Exhibit C). To date, the OAG has not received *any* documents responsive to the Cox Subpoena.

The NRA maintains that it is entitled to pre-review and withhold Mr. Cox's documents because (1) the relevant rules governing the arbitration between it and Mr. Cox, as well as a private agreement entered into between the two, immunize the documents from disclosure to the NRA's regulator, and (2) Mr. Cox may have documents protected by a privilege belonging to the NRA in his possession, or personally identifying information of NRA members or donors.

The OAG understands that the NRA currently has Mr. Cox's documents in its possession for pre-review prior to production to the OAG. Although the OAG objects to this pre-review, and litigated this issue and won as against the NRA as noted below, we attempted to work out the issue with the NRA on October 5 by asking whether the pre-reviewed documents, at least, were ready for production, or when we could expect to receive them. In response, counsel for the NRA informed us that the NRA has stopped its pre-review because the majority of the documents are allegedly connected to the NRA's arbitration with Mr. Cox, and has not provided a timeline for production. Counsel for the NRA was not able to tell us whether any attorney/client communication or work product privileged documents have been identified as part of its review.

The arbitration materials are not immune from disclosure to the OAG

The NRA seeks to immunize from disclosure documents from its arbitration with Mr. Cox. Exhibit C. But "[e]videntiary material at an arbitration proceeding is not immune from disclosure." *Kamyr, Inc. v. Combustion Eng'g, Inc.*, 554 N.Y.S.2d 619, 620 (1st Dep't 1990).

The NRA's practice of attempting to protect documents from disclosure to its regulator by private agreement has already been litigated during the course of the OAG's investigation, and decided in the OAG's and the public's favor. *See People v. Ackerman McQueen*, No. 451825/2019, 2020 WL 1878107, at *6 (Sup. Ct. N.Y. Cnty. Feb. 21, 2020) ("[T]o allow not-for-profit entities, like the NRA, to shield its conduct through use of an NDA would frustrate OAG's regulatory and law enforcement duties, and its oversight of charities The NRA, through its use of a private contract, cannot demand to preview responsive documents related to a law enforcement investigation."); *see also Grumman Aerospace Corp. v. Titanium Metals Corp. of Am.*, 91 F.R.D. 84, 87–88 (E.D.N.Y. 1981) (parties cannot be permitted to "contract privately for the

confidentiality of documents, and foreclose others from obtaining, in the course of litigation, materials that are relevant to their effort to vindicate a legal position”).

Even if the NRA could protect documents from disclosure to its regulator through private agreement, the relevant arbitration rule cited by the NRA permits disclosure where required by law. Exhibit C. Production of documents in response to a validly issued subpoena is “required by law” within the meaning of standard confidentiality provisions. *See Peskoff v. Faber*, 233 F.R.D. 207, 209 (D.D.C. 2006) (holding that subpoenas for documents and testimony met the “required by law” exception in a confidentiality agreement); *see also Veleron Holding, B.V. v. Stanley*, No. 12-cv-5966, 2014 WL 1569610, at *5 (S.D.N.Y. Apr. 16, 2014) (holding that a “subpoena imposed on [a party] a legal duty to produce the document, which meant that it could be produced without any violation of [arbitration] confidentiality”).

The only authority that the NRA has cited in support of its position that confidential arbitration materials are immune from discovery is dicta from *Those Certain Underwriters at Lloyds, London v. Occidental Gems, Inc.*, 41 A.D.3d 362 (1st Dep’t 2007). In *Occidental*, the First Department upheld Supreme Court’s determination that a special referee’s failure to identify particular documents that should be produced from an arbitration warranted vacatur of the special referee’s directive. *See Occidental*, Index No. 602948/01, 2006 WL 4758800 (N.Y. Sup. Ct. June 5, 2006). The First Department then noted an “important public interest in protecting the rights of parties who submit to confidential arbitration.” *Occidental*, 41 A.D.3d at 365.

Even if the dicta in *Occidental* were binding on this Court, the public interest in protecting the rights of parties who submit to confidential arbitration cannot take precedence over the equally, if not more important interest that the public has in ensuring that the “OAG’s regulatory and law enforcement duties, and its oversight of charities” is not hampered by private agreements to keep documents hidden from regulators. *Ackerman McQueen*, 2020 WL 1878107, at *6.

Finally, counsel for Mr. Cox has stated that the NRA required Mr. Cox to provide all the arbitration materials to the Unsecured Creditors Committee in connection with the NRA’s bankruptcy in Texas. Exhibit B at n.1. The NRA has thus waived any claim of confidentiality it has over the arbitration materials.

The NRA should not be permitted to pre-review all documents responsive to the subpoena

The NRA has asserted a right to pre-review for privilege and donor/member information all of Mr. Cox’s documents responsive to the Cox Subpoena before they are produced to the OAG.

With respect to alleged privileged information, the NRA’s option to protect any such information in Mr. Cox’s possession was to move to quash the Cox Subpoena or for a protective order. It did neither, and instead has completely blocked the production of documents from Mr. Cox. Further, counsel for the NRA has not been able to identify a single piece of privileged information in Mr. Cox’s possession warranting such delay.

With respect to donor or member information, that information is explicitly protected by the terms of the confidentiality order in this action, as proposed by the OAG. NYSCEF No. 394 at ¶ 3(a). Redaction is thus not necessary. If the NRA wants to redact such information, it could do so following production and ask that the OAG substitute the relevant documents. But stalling production by a non-party for over a month to redact information that is already confidential by agreement of the parties is obstructive.

October 7, 2021

Sincerely,

/s/ Stephen C. Thompson
Assistant Attorney General

cc: Counsel for the NRA
Counsel for Mr. Cox

OAG EXHIBIT A

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, INC., WAYNE LAPIERRE,
WILSON PHILLIPS, JOHN FRAZER, and
JOSHUA POWELL

Defendants.

Index No. 451625/2020

**SUBPOENA
DUCES TECUM**

Hon. Joel M. Cohen

The People of the State of New York

To: Christopher Cox
c/o Thomas M. Buchanan, Esq.
Winston & Strawn LLP
1901 L St., N.W.
Washington, D.C. 20036

GREETINGS:

YOU ARE HEREBY COMMANDED, pursuant to the laws of the State of New York, that all business and excuses being laid aside, to produce to the office of the New York State Attorney General, Letitia James, Attention: James Sheehan, 28 Liberty Street, New York, New York 10005, in accordance with the instructions and definitions below, any and all documents requested in the attached Schedule that are in your possession, custody or control, including documents in the possession, custody and control of entities that you own or control in whole or in part. Your production of documents in response to this subpoena may be submitted by mail or electronic mail provided it is received by September 6, 2021, or any agreed upon adjourned date thereafter.

PLEASE TAKE NOTICE that such disclosure is sought or required because it is relevant and material to the prosecution of this action.

PLEASE TAKE FURTHER NOTICE that disobedience of this subpoena by (1) failing to deliver the documents and information requested in the attached schedule on the date, time

and place stated above or any agreed adjourned date and time or (2) failing to provide testimony at the date, time and place stated above or at any agreed adjourned date, may subject you to prosecution under New York or other applicable law.

Dated: August 17, 2021

By: /s James Sheehan

James Sheehan
Chief, Charities Bureau
New York State Attorney General's Office
28 Liberty Street
New York, New York 10005
(212) 416-8490
James.Sheehan@ag.ny.gov

SCHEDULE

A. Instructions

1. Please produce the Documents described in Section C of this schedule, in the accordance with the Instructions (Section A), Definitions (Section B) and format (Section D) described below.
2. Except as otherwise noted, this subpoena applies to all Documents in effect, created, recorded, compiled, transmitted or received from **January 1, 2019 through the present**.
3. The obligation to produce Documents pursuant to this subpoena is a continuing one. Responsive Documents located any time after a response is due or submitted shall be promptly produced at the place and in the manner specified herein.
4. All Documents shall be produced with an accompanying cover letter that includes a description of the Documents being produced and their contents, the source from which the Documents have been produced, and the number(s) of the request(s) in Section C to which each Document produced is responsive. If there are no Documents in Your possession, custody or control that are responsive to any particular request, so state in writing.
5. If any Document requested was formerly in Your possession, custody or control but is no longer available or no longer exists, submit a statement in writing and under oath that: (i) describes in detail the nature of the Document and its contents; (ii) identifies the person who prepared the Document; (iii) identifies all persons who have seen or had possession of the Document; (iv) specifies the dates on which the Document was prepared, transmitted or received; (v) specifies the date on which the Document became unavailable; (vi) specifies the reason why the Document is unavailable, including whether it has been misplaced, lost, destroyed or transferred, and, if it has been destroyed or transferred, specifies the conditions of and reasons for such destruction or transfer and the persons who requested and performed the destruction or transfer; and (vii) identifies all persons with knowledge of any portion of the contents of the Document.
6. If any Document requested is withheld on ground of privilege or other legal doctrine, submit with the production a statement in writing and under oath (e.g., a privilege log) that provides, for each Document withheld: (i) a description of the nature of the Document and its contents; (ii) the date of the Document; (iii) the Document's authors and recipients; and (iv) the legal ground for withholding it from production. If the legal ground is attorney-client privilege, please also indicate the names of the attorneys involved in the Document and the nature of their involvement (e.g., as authors). Such statement (or log) shall accompany each production. Further, for each Document withheld pursuant to this paragraph, the relevant production shall include placeholder pages equivalent in number to the page-length of the withheld Document.
7. Format for Production: Unless otherwise specified and agreed to by the Office of the Attorney General, responsive Documents shall be produced in their original format, whether hard copy or electronic.

B. Definitions

1. “You” or “Your” shall mean Christopher Cox, and any of Your employees, agents, attorneys, representatives, consultants, and any other persons acting on Your behalf.
2. “All” means “each and every.”
3. “And” and “or” shall be construed disjunctively or conjunctively, as necessary to bring within the scope of a request all responses and Documents that might otherwise be deemed outside the scope of that request.
4. “Any” means “any and all.”
5. “Arbitration Proceeding” means the arbitration between You and the NRA before the International Institute for Conflict Prevention & Resolution, Christopher W. Cox v. National Rifle Association of America, Case No. 1G-21-05-S (2019), as well as any scheduling order, preliminary, related or ancillary litigation, discovery, motion practice, rulings, or awards.
6. “Arbitrator” means the individual or individuals overseeing the Arbitration Proceeding, Christopher W. Cox v. National Rifle Association of America, Case No. 1G-21-05-S (2019).
7. “Concerning” or “relating to” means concerning, relating to, referring to, referencing, describing, evidencing, or constituting, either directly or indirectly and in whole or in part.
8. “Documents” is used in the broadest sense of the term and means mean all records and other tangible media of expression of any nature, including: originals, drafts or finished versions; annotated or nonconforming or other copies, however created, produced or stored (manually, mechanically, electronically or otherwise); electronic mail (“email”), instant messages, text messages, Blackberry or other wireless device messages; voicemail; books, papers, files, notes, correspondence, memoranda, reports, records, journals, summaries, registers, account statements, analyses, plans, manuals, policies, telegrams, faxes, wires, telephone logs, telephone messages, or message slips; minutes, notes, records or transcriptions of conversations, communications or meetings; video and audio tapes; disks and other electronic media; microfilm, microfiche; storage devices; press releases; contracts, agreements; calendars, date books, appointment books and diaries; notices and confirmations. A draft or non-identical copy is a separate Document. Documents existing in electronic form shall include all items that may have been removed from the email accounts, directories or other locations in which they are ordinarily stored to any other servers, folders, files, archives, or backup devices, whether or not deleted.

9. "Excess Benefit" shall have the same meaning as defined by the IRS including in Section 4958 of the Internal Revenue Code and such policy statements and guidelines as the IRS may publish.
10. "Excess Benefit Transaction" shall have the same meaning as defined by the IRS including in Section 4958 of the Internal Revenue Code and such policy statements and guidelines as the IRS may publish.
11. "IRS" means Internal Revenue Service, together with any of its divisions, officials, employees, and other Persons acting on its behalf.
12. "Final Arbitration Hearing" means the hearing in the Arbitration Proceeding, currently scheduled to begin in August 2021.
13. "Identify" or "identity" as applied to (i) any natural person means to provide her or his name, titles, aliases, screen names, and contact information, including each of her or his home and business addresses, email addresses, and phone numbers; (ii) any entity means to provide the name, d/b/a names, if any, and contact information; (iii) an account with a financial institution means to provide the name of the institution, its address, the names of the account holders, the account number, the type of account, all signatories on the account, and all individuals authorized to use a credit, debit, or ATM card relating to the account; (iv) a financial transaction means to provide the type of transaction (e.g., donation, grant, withdrawal, deposit, or disbursement), the amount, date, payor, grantor, donor or other party disbursing the funds, the payee, grantee, donee or other party receiving the funds, the reason for the transaction, and any applicable terms or restrictions; (v) an agreement means to provide the terms of the agreement and any amendments; and (vi) any other thing means to describe the thing in detail.
14. "NRA" means the National Rifle Association of America, Inc. (the "NRA") together with (i) any of its directors, officers, agents, employees, consultants, representatives, attorneys, and other persons acting on its behalf, (ii) any predecessors, successors, parent corporations, subsidiaries, divisions, assigns, "d/b/a" names, and affiliates, and (iii) any entities that, directly or indirectly, control, are controlled by, or are under common control with NRA, including by possessing, directly or indirectly, the power to direct or cause the direction of NRA's management and policies, whether through membership, the ownership of voting securities, by contract, or otherwise.
15. "Person" means any natural person or entity, including any corporation, company, limited liability corporation or company, partnership, limited partnership, association, or firm.
16. The singular form of any word shall include the plural and vice versa.
17. Any word used but not defined herein shall be construed consistently with its common meaning.

C. Documents to be Produced

1. All Documents relating to the Arbitration Proceeding, including without limitation:
 - a. All official transcripts of hearings held in connection with the Arbitration Proceeding, including without limitation the transcript of the Final Arbitration Hearing;
 - b. Any Documents used as exhibits during the Arbitration Proceeding, including without limitation any Documents used as exhibits during the Final Arbitration Hearing;
 - c. All submissions made to the Arbitrator during the Arbitration Proceeding, including without limitation briefs, and proffered testimonial and documentary evidence;
 - d. Any expert reports submitted in connection with the Arbitration Proceeding;
 - e. Any rulings from the Arbitrator concerning the Arbitration Proceeding;
 - f. A copy of any confidentiality agreements or orders relating to the Arbitration Proceeding, if any; and
 - g. All Documents relating to any settlement agreement or other stipulations or agreements reached between the parties to the Arbitration Proceeding.
2. All Documents relating to any demand by the NRA for repayment of any monies, benefits or other compensation paid directly or indirectly to You.
3. All Documents relating to any demand by you for repayment of any monies, benefits or other compensation paid directly or indirectly by You.
4. All Documents relating to any claims by the NRA that You received Excess Benefits while You were an NRA employee.
5. All Documents relating to any claims by You that other NRA officers, directors, or employees received Excess Benefits.
6. All Documents relating to any claims by the NRA that you participated in Excess Benefit Transactions with the NRA.
7. All Documents relating to any claims by you that the NRA or any of its officers, directors, or employees participated in Excess Benefit Transactions with the NRA.

D. Format for Production

Unless otherwise specified and agreed to by the Office of Attorney General, all responsive Documents must be produced in Concordance format in accordance with the following instructions.

1. Concordance Production Components. A Concordance production consists of the following component files, which must be produced in accordance with the specifications set forth below in Section 2.
 - A. *Metadata Load File*
 - B. *Extracted or OCR Text Files*
 - C. *Single-Page Image Files*
 - D. *Opticon Load File*
 - E. *Native Files*.
2. Production File Requirements.
 - A. *Metadata Load File*
 - Required file format:
 - UTF-8
 - .dat file extension
 - Field delimiter: (ASCII decimal character 20)
 - Text Qualifier: ¨ (ASCII decimal character 254). Multiple value field delimiter: ; (ASCII decimal character 59)
 - The first line of the metadata load file must list all included fields. All required fields are listed in Attachment 1.
 - Fields with no values must be represented by empty columns maintaining delimiters and qualifiers.
 - **Note:** All Documents must have page-level Bates numbering (except Documents produced only in native format, which must be assigned a Document-level Bates number). The metadata load file must list the beginning and ending Bates numbers (BEGDOC and ENDDOC) for each Document.
 - Accepted date formats:
 - mm/dd/yyyy
 - yyyy/mm/dd
 - yyyymmdd
 - Accepted time formats:
 - hh:mm:ss (if not in 24-hour format, You must indicate am/pm)
 - hh:mm:ss:mmm
 - B. *Extracted or OCR Text Files*
 - You must produce individual Document-level text files containing the full extracted text for each produced Document.

- When extracted text is not available (for instance, for image-only Documents) You must provide individual Document-level text files containing the Document's full OCR text.
- The filename for each text file must match the Document's beginning Bates number (BEGDOC) listed in the metadata load file.
- Text files must be divided into subfolders containing no more than 5000 files.

C. *Single-Page Image Files (Petrified Page Images)*

- Where possible, all produced Documents must be converted into single-page tagged image format ("TIF") files. See Section 7.E below for instructions on producing native versions of Documents You are unable to convert.
- Image Documents that exist only in non-TIF formats must be converted into TIF files. The original image format must be produced as a native file as described in Section 7.E below.
- For Documents produced only in native format, You must provide a TIF placeholder that states "Document produced only in native format."
- Each single-page TIF file must be endorsed with a unique Bates number.
- The filename for each single-page TIF file must match the unique page-level Bates number (or Document-level Bates number for Documents produced only in native format).
- Required image file format:
 - CCITT Group 4 compression
 - 2-Bit black and white
 - 300 dpi
 - Either .tif or .tiff file extension.
- TIF files must be divided into subfolders containing no more than 5000 files. Documents should not span multiple subfolders, a Document with more than 5000 pages should be kept in a single folder.

D. *Opticon Load File*

- Required file format:
 - Field delimiter: , (ASCII decimal character 44)
 - No Text Qualifier
 - .opt file extension
- The comma-delimited Opticon load file must contain the following seven fields (as indicated below, values for certain fields may be left blank):
 - ALIAS or IMAGEKEY – the unique Bates number assigned to each page of the production.
 - VOLUME – this value is optional and may be left blank.
 - RELATIVE PATH – the filepath to each single-page image file on the production media.
 - DOCUMENT BREAK – defines the first page of a Document. The only possible values for this field are "Y" or blank.

- FOLDER BREAK – defines the first page of a folder. The only possible values for this field are “Y” or blank.
- BOX BREAK – defines the first page of a box. The only possible values for this field are “Y” or blank.
- PAGE COUNT – this value is optional and may be left blank.
- **Example:**
 ABC00001,,IMAGES\0001\ABC00001.tif,Y,,,2
 ABC00002,,IMAGES\0001\ABC00002.tif,,,,
 ABC00003,,IMAGES\0002\ABC00003.tif,Y,,,1
 ABC00004,,IMAGES\0002\ABC00004.tif,Y,,,1

E. ***Native Files***

- Non-printable or non-print friendly Documents (including but not limited to spreadsheets, audio files, video files and Documents for which color has significance to Document fidelity) must be produced in their native format.
- The filename of each native file must match the Document’s beginning Bates number (BEGDOC) in the metadata load file and retain the original file extension.
- For Documents produced only in native format, You must assign a single Document-level Bates number and provide an image file placeholder that states “Document produced only in native format.”
- The relative paths to all native files on the production media must be listed in the NATIVEFILE field of the metadata load file.
- Native files that are password-protected must be decrypted prior to conversion and produced in decrypted form.
- You may be required to supply a software license for proprietary Documents produced only in native format.

3. **Production Folder Structure.** The production must be organized according to the following standard folder structure:

- data\ (contains production load files)
- images\ (contains single-page TIF files, with subfolder organization)
 \0001, \0002, \0003...
- natives\ (contains native files, with subfolder organization)
 \0001, \0002, \0003...
- text\ (contains text files, with subfolder organization)
 \0001, \0002, \0003...

4. **De-Duplication.** You must perform global de-duplication of stand-alone Documents and email families against any prior productions pursuant to this or previously related subpoenas.

5. **Paper or Scanned Documents.** Documents that exist only in paper format must be scanned to single-page TIF files and OCR’d. The resulting electronic files should be produced in Concordance format pursuant to these instructions. You must contact the

Assistant Attorney General whose telephone number appears on the subpoena to discuss (i) any Documents that cannot be scanned, and (ii) how information for scanned Documents should be represented in the metadata load file.

6. Structured Data. Structured data includes but is not limited to relational databases, transactional data, and xml pages. Spreadsheets are not considered structured data. You must first speak to the Assistant Attorney General whose telephone number appears on the subpoena.

A. Relational Databases

1. Database tables should be provided in d or other machine-readable, non-proprietary format, with each table in a separate data file. Each data file must have an accompanying data dictionary that explains the meaning of each column name and explains the values of any codes used.

2. Dates and numbers must be clearly and consistently formatted and, where relevant, units of measure should be explained in the data dictionary.

3. Records must contain clear, unique identifiers, and the data dictionary must include explanations of how the files and records relate to one another.

7. Media and Encryption. All Document sets over 2 GB must be produced on CD, DVD, or hard-drive media. All production media must be encrypted with a strong password, which must be delivered independently from the production media. Document sets under 2 GB may be delivered electronically. The OAG offers a secure cloud storage option that can be set up to receive media on a one-time basis, or the OAG will download media from the providing parties' server.

ATTACHMENT 1
Required Fields for Metadata Load File

FIELD NAME	FIELD DESCRIPTION	FIELD VALUE EXAMPLE¹
BEGDOC	Bates number assigned to the first page of the Document.	ABC0001
ENDDOC	Bates number assigned to the last page of the Document.	ABC0002
BEGATTACH	Bates number assigned to the first page of the parent Document in a Document family (<i>i.e.</i> , should be the same as BEGDOC of the parent Document, or PARENTDOC).	ABC0001
ENDATTACH	Bates number assigned to the last page of the last child Document in a family (<i>i.e.</i> , should be the same as ENDDOC of the last child Document).	ABC0008
PARENTDOC	BEGDOC of parent Document.	ABC0001
CHILDDOCS	List of BEGDOCs of all child Documents, delimited by ";" when field has multiple values.	ABC0002; ABC0003; ABC0004...
COMMENTS	Additional Document comments, such as passwords for encrypted files.	
NATIVEFILE	Relative file path of the native file on the production media.	.\Native_File\Folder\...\BEGDOC.ext
TEXTFILE	Relative file path of the plain text file on the production media.	.\Text_Folder\Folder\...\BEGDOC.txt
SOURCE	For scanned paper records this should be a description of the physical location of the original paper record. For loose electronic files this should be the name of the file server or workstation where the files were gathered.	Company Name, Department Name, Location, Box Number...
CUSTODIAN	Owner of the Document or file.	Firstname Lastname, Lastname, Firstname, User Name; Company Name, Department Name...
FROM	Sender of the email.	Firstname Lastname <FLastname @domain >
TO	All to: members or recipients, delimited by ";" when field has multiple values.	Firstname Lastname <FLastname @domain >; Firstname Lastname <FLastname @domain >; ...

¹ Examples represent possible values and not required format unless the field format is specified in Attachment 1.

CC	All cc: members, delimited by ";" when field has multiple values.	Firstname Lastname <FLastname @domain>; Firstname Lastname <FLastname @domain>; ...
BCC	All bcc: members, delimited by ";" when field has multiple values	Firstname Lastname <FLastname @domain>; Firstname Lastname <FLastname @domain>; ...
SUBJECT	Subject line of the email.	
DATERCVD	Date and time that an email was received.	mm/dd/yyyy, yyyy/mm/dd, or yyyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
DATESENT	Date and time that an email was sent.	mm/dd/yyyy, yyyy/mm/dd, or yyyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
CALBEGDATE	Date that a meeting begins.	mm/dd/yyyy, yyyy/mm/dd, or yyyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
CALENDDATE	Date that a meeting ends.	mm/dd/yyyy, yyyy/mm/dd, or yyyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
ATTACHMENTS	List of filenames of all attachments, delimited by ";" when field has multiple values.	AttachmentFileName.; AttachmentFileName.docx; AttachmentFileName.pdf;...
NUMATTACH	Number of attachments.	
RECORDTYPE	General type of record.	IMAGE; LOOSE E-MAIL; E-MAIL; E-DOC; IMAGE ATTACHMENT; LOOSE E-MAIL ATTACHMENT; E-MAIL ATTACHMENT; E-DOC ATTACHMENT
FOLDERLOC	Original folder path of the produced Document.	Drive:\Folder\...\...
FILENAME	Original filename of the produced Document.	Filename.ext
DOCEXT	Original file extension.	html, xls, pdf
DOCTYPE	Name of the program that created the produced Document.	Adobe Acrobat, Microsoft Word, Microsoft Excel, Corel WordPerfect...
TITLE	Document title (if entered).	
AUTHOR	Name of the Document author.	
REVISION	Number of revisions to a Document.	18
DATECREATED	Date and time that a Document was created.	mm/dd/yyyy, yyyy/mm/dd, or yyyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
DATEMOD	Date and time that a Document was last modified.	mm/dd/yyyy, yyyy/mm/dd, or yyyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
FILESIZE	Original file size in bytes.	
PGCOUNT	Number of pages per Document.	
IMPORTANCE	Email priority level if set.	Low, Normal, High

MD5HASH	MD5 hash value computed from native file (a/k/a file fingerprint).	
SHA1HASH	SHA1 hash value	
MSGINDEX	Email message ID	
CONVERSATIONINDEX	Email Conversation Index	

VERIFICATION

This response to the subpoena of the Attorney General of the State of New York dated August __, 2021, including production of the requested Documents, was prepared and assembled under my personal supervision from my records in accordance with the instructions and definitions set forth in such subpoena and is complete and correct to the best of my knowledge and belief. The Documents produced in response to this subpoena are authentic, genuine and what they purport to be.

(Signature of Official)

(Title)

(Type or Print Name of Above Official)

Subscribed and sworn to before me this ____ day of _____ 2021.

Notary Public

My commission expires _____

OAG EXHIBIT B

WINSTON
& STRAWN
LLP

North America Europe Asia

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Washington, DC 20036
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THOMAS M. BUCHANAN

Partner
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tbuchanan@winston.com

September 17, 2021

VIA EMAIL

Svetlana M. Eisenberg
Brewer, Attorneys & Counselors
750 Lexington Ave., 14th Fl.
New York, NY 10022

Re: *Subpoena Duces Tecum*
People of the State of New York by Letitia James v. National Rifle Association of
America, Inc., Index No. 451625/2020 (Sup. Ct. N.Y. Cnty.)

Dear Svetlana:

This letter is in response to the multiple communications we have received from the NRA regarding the New York Attorney General's subpoena duces tecum served on Mr. Cox.

Cox first informed the NRA of the subpoena on August 20, 2021 and asked whether the NRA would be objecting or moving to quash. The NRA did not respond. Cox reminded the NRA of the subpoena on September 4, two days before the production was due, and only then did the NRA begin to object. Yet, the NRA's objections were not filed with the Court even though the NRA, as a party to the arbitration and the pending action, has standing to move to quash. Since the NRA first objected, Cox has provided the NRA an opportunity to review the proposed production and identify documents that needed to be redacted for privilege and First Amendment concerns consistent with his duties based on the Undertaking. He has also provided the NRA ample opportunity to formally move to quash the subpoena. Cox believes that he has fulfilled his obligations under the "Undertaking, the CPR Rules, the Settlement Agreement, and applicable law."

Per Cox's request, the NRA is supposed to inform Cox of the documents it allows to be produced by close of business on September 17. Cox will expeditiously produce those documents to the NYAG. As discussed below, Cox's interprets the applicable law to require production of arbitration related materials including motions, expert reports, briefs, and orders. However, if the NRA disagrees with Cox's interpretation of the law, then the NRA should notify Cox and move to quash the subpoena by September 24, 2021. If the NRA does not move to quash the subpoena, this amounts to a waiver given the ample notice that Cox has provided to the NRA. The NRA



September 17, 2021
Page 2

cannot sit on its hands now, then later object given that it has plenty of notice of the subpoena and the pending production.

As the NRA noted in its September 5 letter, Rule 18 of the 2018 CPR Non-Administered Arbitration Rules that governed the arbitration provides:

Unless the parties agree otherwise, the parties, the arbitrators and CPR shall treat the proceedings, any related discovery and the decisions of the Tribunal, as confidential, except in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, and *unless otherwise required by law* or to protect the legal right of a party. (emphasis added).

The NYAG's subpoena satisfies the exception to Rule 18's general confidentiality requirement that permits disclosure of confidential information if "otherwise required by law." New York law requires that parties served with a subpoena comply with the terms of the subpoena, and a party that fails to comply with a subpoena may be held in contempt of court. *See* CLPR 2308(a). Case law supports this understanding. *See, e.g. Gotham Holdings, LP v. Health Grades, Inc.*, 580 F.3d 664, 665 (7th Cir. 2009) ("even if the [confidentiality] agreement had purported to block disclosure [pursuant to a subpoena], such a provision would be ineffectual. Contracts bind only the parties. No one can 'agree' with someone else that a stranger's resort to discovery . . . will be cut off."); *see also Bailey v. Equifax Credit Info. Servs., Inc.*, 2014 WL 12861571, at *2 (N.D. Ga. Sept. 10, 2014) (same). Indeed, a "subpoena impose[s] . . . a legal duty" to produce documents, which means "they [can] be produced without any violation" of CPR confidentiality rules. *Veleron Holding, B.V. v. Stanley*, 2014 WL 1569610, at *5 (S.D.N.Y. Apr. 16, 2014).

Cox also believes that a New York Court would compel Cox to comply with the NYAG's subpoena because the NYAG brought suit under its powers to enforce New York's charitable organization laws. This situation is similar to *State ex rel. Balderas v. ITT Educ. Servs., Inc.*, 421 P.3d 849 (N.M. Ct. App. 2018). There, the State of New Mexico served subpoenas on two attorneys who had represented students in prior arbitration proceedings against their college during an investigation under the state's Unfair Practices Act. *Id.* at 851. The school objected to the subpoenas, arguing that the disclosure would violate the confidentiality clauses of students' enrollment agreements, which required that "[a]ll aspects of the arbitration proceeding. . . will be strictly confidential," and that there was "a public interest in keeping arbitration proceedings confidential." *Id.* at 851-52. The court concluded that the confidentiality provision was unenforceable as a matter of public policy, holding that "it would be contrary to public policy to allow [the school] to use the confidentiality clause . . . to shield itself from the State's investigation and litigation authorized under [a statute]." *Id.* at 855. The Court would reach the same result here.

Cox does not believe that the cases cited in your September 5 letter compel a different result. Although *Pasternak v. Dow Kim*, 2013 WL 1729564 (S.D.N.Y. Apr. 22, 2013)¹ addresses

¹ *Pasternak* also supports production here because the NRA waived confidentiality when it requested that Cox produce all the arbitration filings to counsel for the Creditor's Committee. The NRA cannot waive confidentiality whenever it

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& STRAWN
LLPSeptember 17, 2021
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CPR Rule 18, a more recent case in the Southern District reached the opposite conclusion when addressing nearly identical arbitration rules. In *Veleron Holding, B.V. v. Stanley*, the court made it very clear that parties “are not free to immunize materials that are relevant to some other dispute from disclosure in connection with a wholly separate dispute resolution proceeding.” 2014 WL 1569610, at *8. There, a non-party to an arbitration obtained via subpoena confidential documents from an arbitration with rules very similar to the CPR rules. *Id.* at *3. The court concluded that otherwise confidential information can still be disclosed when “for example . . . a party is under legal duty to disclose materials and documents[.]” *Id.* at *4. The court further concluded that “[n]o American court of which I am aware would ever accept that a party to an arbitration was shielded by rules . . . from producing documents or evidence in an American lawsuit pursuant to . . . subpoena.” *Id.* at *8. Indeed [the party’s] production of the [award] pursuant to a discovery subpoena duly served in accordance with the Federal Rules of Civil Procedure stands as Exhibit A for that proposition; BNP was a party to the [] Arbitration and is bound by the rules of that Tribunal, yet it could be and was compelled to produce to Morgan Stanley an award that is ‘confidential’ under [the] rules.” *Id.*

Cox plans to expeditiously produce all documents that the NRA agrees he may produce on September 17. Cox will allow the NRA another week to move to quash if the NRA truly believes that the subpoena is not valid and cannot compel the production of certain categories of documents. However, if the NRA has not moved to quash by September 24, then Cox has no choice but to produce the documents based on the applicable law. The NRA’s inaction risks putting Cox at risk of violating a valid subpoena. If the NRA believes it has a legal basis to quash, then it must do so promptly.

Sincerely,

/s/ Thomas M. Buchanan

Cc: Emily Stern, James Sheehan, Erica James, Monica Connell

benefits the NRA and then insist on confidentiality later and force Cox to incur the risk of being held in contempt. “Where a party voluntarily discloses privileged documents to an adversary in one proceeding, it cannot withhold the same documents on the basis of privilege in a subsequent proceeding, even if that subsequent proceeding involves a different adversary.”). 2013 WL 1729564 at *5 (quoting *Chevron Corp. v. Salazar*, 275 F.R.D. 437, 445 (S.D.N.Y. 2011)).

OAG EXHIBIT C

B R E W E R
ATTORNEYS & COUNSELORS

September 5, 2021

VIA ELECTRONIC MAIL

Thomas M. Buchanan
Winston & Strawn LLP
1700 K. Street, N.W.
Washington, DC 20006-3817

***Re: Subpoena Duces Tecum
People of the State of New York by Letitia James v. National Rifle Association
of America, Inc., Index No. 451625/2020 (Sup. Ct. N.Y. Cnty.)***

Dear Mr. Buchanan:

As you know, we represent the National Rifle Association of America (“NRA”) in the above-referenced action (the “Action”). We write regarding the New York Attorney General’s (the “NYAG”) Subpoena Duces Tecum, dated August 17, 2021 (the “Subpoena”) served on your client, Christopher Cox, in the Action.

Reference is made to the Undertaking, executed by Mr. Cox on February 24, 2020, and by you on March 3, 2020 (the “Undertaking”), in connection with the arbitration proceedings initiated by Mr. Cox against the NRA (the “Arbitration”). Pursuant to the Undertaking, Mr. Cox and you undertook, among other things:

- I will not allow any third party to use any discovery materials produced to me by the NRA in these proceedings without the express written consent of the NRA. (Undertaking at p. 1, ¶ 3); and
- In the event that a third party requests any discovery materials produced to me by the NRA in these proceedings, I will not provide, produce, or otherwise share any such discovery materials without first allowing the NRA to review any such materials for responsiveness and any necessary redactions in order to protect the legal privileges of the NRA or its Board and the First Amendment rights of the NRA and its members and donors. (*Id.* at ¶ 5).

Further, pursuant to the Undertaking, Mr. Cox acknowledged and undertook, and undertook to instruct counsel accordingly, in relevant part that “to the extent the NRA produces to me or my counsel discovery materials that are protected by the attorney-client privilege, the attorney work product doctrine, or any other privilege”:

- The NRA and/or its Board of Directors is not waiving any applicable privileges pertaining to any such discovery materials, and the NRA's production to me of

September 5, 2021

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such discovery materials shall not be deemed to constitute waiver of any applicable privileges as to me or any other entity or individual. (Undertaking at p. 1, ¶ 1)

- In the event that a third party requests any such privileged discovery materials produced to me by the NRA in these proceedings, I acknowledge that I do not have, and never had, the authority to waive any applicable privileges on behalf of the NRA or its Board of Directors and I will not produce such documents to the requesting third party without first allowing the NRA to review any such material for responsiveness and any necessary redactions in order to protect the legal privileges of the NRA or its Board and the First Amendment rights of the NRA and its members and donors. (*Id.* at p. 2, ¶ 2).
- I understand that the foregoing applies to any discovery materials that are potentially privileged that are produced to me by the NRA in response to my discovery requests in the aforementioned arbitration proceedings. (*Id.* at p. 2, ¶ 4).

In addition, Rule 18 of the 2018 CPR Non-Administered Arbitration Rules as applicable in the Arbitration (the “CPR Rules”) provides:

Unless the parties agree otherwise, the parties, the arbitrators and CPR shall treat the proceedings, any related discovery and the decisions of the Tribunal, as confidential, except in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, and unless otherwise required by law or to protect a legal right of a party.



Indeed, as a matter of law, documents and communications produced by the NRA to Mr. Cox in the Arbitration remain confidential and must be protected from production to the NYAG, which was not a party to the Arbitration. *See, e.g., Those Certain Underwriters at Lloyds, London v. Occidental Gems, Inc.*, 41 A.D.3d 362 (1st Dep’t 2007) (“The motion court also properly rejected the Special Referee’s recommendation that respondent produce documents and testimony from a confidential arbitration proceeding in Belgium, to which Occidental was not a party.”); *Pasternak v. Dow Kim*, 2013 WL 1729564 (S.D.N.Y. 2013) (motion to compel compliance with non-party subpoena denied when parties to a CPR arbitration agreed to treat the arbitration as confidential under Rule 18 of the CPR Rules, and court held that “[n]othing in the rules or any case law of which the Court is aware permits a non-party to a confidential arbitration to obtain materials from that arbitration . . . [the] subpoena, if enforced, would effectively require the Court to ignore the rules that governed the Dukhon Arbitration. The Court is not willing to do so.”) (citing, *inter alia*, *Occidental Gems, Inc.*).

B R E W E R

September 5, 2021

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The foregoing obligations incumbent upon Mr. Cox are in addition to his pre-existing obligations to maintain the confidentiality of the NRA's privileged documents and communications by virtue of his status as a former officer of the NRA.

Pursuant to Mr. Cox's obligations under the Undertaking, the CPR Rules, [REDACTED], and applicable law, the NRA hereby demands that Mr. Cox provide the NRA with any document production anticipated to be made in response to the Subpoena for review by the NRA prior to such production. The NRA will undertake to review the anticipated production expeditiously for documents protected by the attorney-client privilege, by the work product doctrine or those documents protected by the parties' confidentiality obligations in the Arbitration. See CPLR 3101(b)-(c); *Application of Dauer*, 237 A.D.2d 228 (1st Dep't 1997) (denial of motion to quash subpoena served on non-party insurance company which was former employer of individual defendant modified "to protect attorney-client confidences and attorney work product that might have been generated as a result of regulatory and other legal matters involving the individual defendant"); *In re Ehmer*, 272 A.D.2d 540, 541 (2d Dep't 2000) (information sought from nonparties through subpoena would be protected from disclosure if they "impermissibly tread upon attorney-client privilege or involve attorney work product").

Finally, the NRA notes that a confidentiality order has not yet been issued by the Court in the Action. The NRA requests that, under any circumstance, Mr. Cox refrain from producing confidential documents to the NYAG until such a confidentiality order is in place. Furthermore, the NRA requests that, if such a production is made, any confidential documents be given a stamp identifying them as confidential.

Please call me should you have any questions.

Sincerely,

/s/ Svetlana M. Eisenberg
Svetlana M. Eisenberg

2021.10.14 NRA Letter

B R E W E R
ATTORNEYS & COUNSELORS

October 14, 2021

VIA NYSCEF

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: NYAG v. NRA et al., Index No. 451625/2020
The NRA's Response to the OAG's Pre-motion Letter Dated October 7, 2021

Dear Justice Cohen:

Pursuant to the Commercial Division Rules, I write on behalf of the NRA to respond to the NY OAG's (the "OAG") pre-motion letter, dated October 7, 2021 (the "Letter"). In the Letter, the OAG states its desire to move to compel—pursuant to CPLR 3124—production of materials from a confidential arbitration between the NRA and a third party (Christopher Cox).

The threshold issue is whether the OAG is entitled to obtain such confidential materials.¹ Pursuant to clear First Department precedent (summarized below), the OAG has no such entitlement. In fact, the majority of the materials the OAG seeks are protected from discovery in this action. Despite the above, the NRA offered—as part of a proposed compromise—to allow the production of materials *produced in discovery* in the confidential arbitration. Unfortunately, the NYAG refused, insisting instead on obtaining all other materials related to the arbitration.

Because the OAG has no right to obtain the confidential arbitration materials, the Court should not reach the other issues raised by the OAG. If it did, the Court should find that it must afford the NRA a reasonable opportunity to conduct a review for privileged information or for information protected from disclosure by the United States Constitution. This is particularly true here where Mr. Cox's counsel confirmed that he conducted no such review and is relying on the NRA to do so.

Of course, there is no basis for the OAG's suggestion that the NRA should have reviewed (for privileges and First Amendment redactions) by now the thousands of non-discoverable documents. This is because the NRA objected to production of *any* documents included in Cox's draft production after he confirmed that the documents in his draft were all included because they are responsive to the portion of the OAG's subpoena issued to Cox (the "Subpoena") that calls for confidential arbitration materials. Under these circumstances, it would have been wasteful for the NRA to review and redact thousands of non-discoverable documents for privileges or First Amendment redactions.

¹ In the interest of brevity, this submission focuses on salient issues discussed in the Letter. The NRA disagrees with certain characterizations in the Letter, reserves all rights, and waives none. It also looks forward to an opportunity to address any questions the Court may have at the pre-motion conference.

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Hon. Joel M. Cohen

October 14, 2021

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A. The arbitration was confidential; materials related to it therefore are not subject to disclosure in the action.

Confidential arbitration materials are not discoverable in a collateral or subsequent proceeding. As the First Department held in *Those Certain Underwriters at Lloyds v. Occidental Gems*, 41 A.D.3d 362, 365 (1st Dep’t 2007), there is an “important public interest in protecting the rights of parties who submit to confidential arbitration.” For that reason, the court *held* that “no aspect of the [confidential] arbitration, to which [the producing party was] not a party, may be subject to compulsory disclosure in [the] litigation.” *Id.*; *see also Pasternak v. Dow Kim*, 2013 WL 1729564, *4 (S.D.N.Y. 2013) (motion to compel compliance with non-party subpoena denied where parties to a CPR arbitration agreed to treat the arbitration as confidential under Rule 18 of the CPR Rules; “[n]othing in the rules or any case law of which the Court is aware permits a non-party to a confidential arbitration to obtain materials from that arbitration . . . [The] subpoena, if enforced, would effectively require the Court to ignore the rules that governed the . . . [a]rbitration. The Court is not willing to do so.”).

Here, the NRA and Cox participated in an arbitration that was confidential. Specifically, Rule 18 (“Confidentiality”) of the 2018 CPR Non-Administered Arbitration Rules states that “[u]nless the parties agree otherwise, the parties, the arbitrators and CPR *shall treat the proceedings, any related discovery and the decisions of the Tribunal, as confidential*, except in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, and unless otherwise required by law or to protect a legal right of a party.”

Because the NRA-Cox arbitration was confidential, under *Occidental Gems*, “no aspect” of that arbitration may be subject to compulsory disclosure in this action.

B. The exceptions of CPR Rule 18 do not apply.

Contrary to the OAG’s argument, for three reasons stated below, no exception to the arbitration confidentiality rule applies. First, the OAG cannot show—and in fact does not argue—that this action is a “judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award.” Yet, the plain text of the confidentiality rule requires the OAG to do so. *See* CPR Rule 18 (“Unless the parties agree otherwise, the parties, the arbitrators and CPR shall treat the proceedings . . . as confidential, *except* [1] in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, *and* [2] [a] unless otherwise required by law *or* [b] to protect a legal right of a party.”).

Second, unlike in *Peskoff v. Farber* (cited by the OAG), where records were not protected from disclosure by binding precedent (*see Peskoff* at *209), here, the materials from the confidential arbitration are protected from disclosure by *Occidental Gems*. Surely, a subpoena for privileged records protected from disclosure by CPLR 3101 is not “law.” Nor is the Subpoena

B R E W E R

Hon. Joel M. Cohen

October 14, 2021

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here because it seeks records protected from disclosure by judicial precedent. *See also Pasternak*, 2013 WL 1729564 at *3 (“Even if the Court were to construe the subpoena as proper in scope and otherwise timely, the fact that it seeks testimony and other materials from a confidential arbitration is a barrier that cannot be overcome.”).

Third, as the OAG concedes, the Subpoena has to be “validly issued.” Here, it is not. Because the Subpoena does not cite *any* provision of the CPLR, the NRA asked the OAG to identify the section of the CPLR pursuant to which the OAG issued the Subpoena. The OAG—after repeated follow-up by the NRA—stated that the Subpoena was issued under CPLR 3102. However, CPLR 3102 merely states that “[i]nformation is obtainable by [among other things] discovery and inspection of documents,” whereas CPLR 3101(a)(4) makes clear that where, as here, production is sought from a third party, the subpoena must “*stat[e] the circumstances or reasons . . . disclosure is sought or required.*” Here, the Subpoena states neither. *See also* Letter from the NRA, dated September 22, 2021, NYSCEF 374 p. 3 (pointing out this flaw in the Subpoena).

C. Cases on which the OAG relies are inapposite or distinguishable.

The OAG’s reliance on *Kamyr*, which does not appear to involve an arbitration that is confidential, is misplaced. Moreover, *Kamyr* by its terms—as the Letter apparently concedes—applies only to the “evidentiary material” in the arbitration. Similarly, *People v. Ackerman McQueen*, 2020 WL 1878107 (Sup. Ct. N.Y. Cnty. Feb. 21, 2020), is also inapposite. It dealt with an investigative subpoena issued under a different statute *and* had nothing to do with *arbitration* materials, let alone materials from an arbitration that is *confidential*. Moreover, the NRA disagrees with the ruling (and is appealing that court’s interpretation of the relevant statute), which, in any event, does not constitute binding precedent on this Court.

D. There is no basis for the OAG’s waiver argument.

Waiver occurs when a party knowingly and voluntarily relinquishes a right. Here, the OAG can point to no evidence of a knowing or voluntary relinquishment of any right. No waiver arises from the fact that the NRA and Cox jointly agreed to share pleadings from the confidential arbitration with counsel for the Unsecured Creditors’ Committee (the “UCC”) in the NRA’s recent chapter 11 proceeding. Notably, it was the UCC’s professionals, not the UCC, who asked to see copies of the operative arbitration pleadings. When the NRA asked Cox whether he had any objection to the NRA’s sharing the pleadings with the UCC’s professionals, he advised that he did not. (The OAG’s statement in the Letter that “the NRA *required* Mr. Cox to provide *all* the arbitration materials to [UCC]” is inaccurate in many respects.) Moreover, the Committee’s professionals worked pursuant to the UCC’s Bylaws, which, like a protective order, strictly limited use of the shared information. In fact, when the NRA shared the information, it understood that the professionals would not be sharing the pleadings even with the members of the UCC.

B R E W E R

Hon. Joel M. Cohen
October 14, 2021
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Sincerely,

BREWER, ATTORNEYS & COUNSELORS

/s/ Svetlana M. Eisenberg
Svetlana M. Eisenberg
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**ATTORNEY FOR DEFENDANT AND
COUNTERCLAIM PLAINTIFF THE NATIONAL
RIFLE ASSOCIATION OF AMERICA**

cc: Counsel (via NYSCEF)

2021.10.14 Cox Letter



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THOMAS M. BUCHANAN

Partner
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October 14, 2021

By NYSCEFHon. Joel M. Cohen
Justice of the Supreme Court of the State of New York
Commercial Division, New York County
New York, NY 10007**Re:** *Subpoena Duces Tecum - People of the State of New York by Letitia James v. National Rifle Association of America, Inc.*, Index No. 451625/2020 (Sup. Ct. N.Y. Cnty.)

Dear Justice Cohen:

We represent third-party, Christopher Cox, in the discovery dispute now before the Court. For seventeen years, Cox served as the executive director of the NRA's Institute of Legislative Action and was deemed by many to be the "heir apparent" to Executive Vice President Wayne LaPierre. After Cox voluntarily left the NRA in 2019, a dispute occurred between Cox and the NRA related to his severance. This led to an arbitration between the parties that eventually resolved in August 2021. Around the same time the arbitration resolved, Cox received a subpoena from the New York Attorney General (NYAG) seeking documents related to the arbitration. Based on certain disclosures by the NRA (discussed more fully below), the NYAG believes that the NRA applied a different, "more exacting," methodology to calculate Cox's alleged excess benefits when compared to the calculation of Mr. LaPierre's excess benefits. Cox has no objection to producing the documents. However, the NRA has objected, arguing that the confidentiality of the arbitration, among other things, prohibits production. Cox is prepared to produce whatever documents the Court orders.

Cox believes that much of the information at issue here has already been disclosed outside the arbitration. For instance, in November 2020, the NRA submitted its annual 990 tax form. In that form, the NRA publicly provided the basis for its claims against Cox, including that Cox "improperly used [NRA] funds to pay personal expenses charged to his personal credit card, amounting to unauthorized interest-free advances to himself;" that he "caused expenses to be paid by the NRA . . . for personal and family travel, business trips utilizing unapproved charter of first class travel, tickets for sporting /entertainment events, and meals and hotel expenses that were not approved by the NRA;" and that the NRA was "seeking to recover" more than \$1 million from Cox. Ex. 1 at 2.

WINSTON
& STRAWN
LLPOctober 14, 2021
Page 2

Moreover, at some point before April 5, 2021, the NRA produced its expert report from the Cox arbitration as part of discovery during its bankruptcy case. This 50-page report included the basis for all the NRA's claims against Cox and went into great detail about Cox's alleged violations. In the report, the NRA's expert opined that Cox had improperly sought reimbursement for over \$1.5 million in expenses. The NRA never sought Cox's permission before producing this arbitration document.

On April 5, 2021, which was the start of the hearing on the motion to dismiss the NRA's bankruptcy, the NRA's attorney (inaccurately) stated that "[w]e [the NRA] fired amongst the most effective lobbyist in history, Chris Cox, who led us to the world in which we had a run of decades of success for the National Rifle Association. Our lead lobbyist. We had to suspend him. We had to part ways with him. We had to sue him to recover what was inappropriate benefit that was given to him. I have to be careful with my words because this is a confidential arbitration that remains ongoing. But the existences of the NRA's claims against its former chief lobbyist should not and cannot be lost on this Court. And they are not evidence of misconduct. They are evidence of actually engaging in and complying with our fiduciary duties." Ex. 2 at 7-8.

Then, on April 14, 2021, the NRA wrote Cox's counsel informing them that the "professionals for the Unsecured Creditors' Committee" in the NRA's bankruptcy "asked for copies of the operative pleadings" from the Cox arbitration and that the NRA has "no objection to making such documents available to the UCC's professionals." Ex. 3. After speaking to the Committee's counsel, Cox agreed to send the documents to the Committee's counsel instead of the NRA out of concern that the NRA would cherry-pick just the documents that benefitted the NRA. *Id.* This production included all relevant arbitration filings at the time.

Finally, in its notes to its consolidated financial statement that became publicly available just yesterday, the NRA reported that "[d]uring 2020, the NRA was involved in an arbitration arising from a contractual dispute with a former executive. The matter was settled in August 2021."¹

Cox vehemently denies any wrongdoing. Since much of the information at issue in the NYAG's subpoena has already been disclosed by the NRA outside the arbitration, Cox has no objection to production and is prepared to follow the Court's directive and produce whatever the Court deems proper.

Sincerely,

/s/ Thomas M. Buchanan

¹ Stephen Gutowski, *NRA Finished 2020 in the Black Sue to Massive Spending Cuts After Revenue Falls, Legal Costs Skyrocket*, The Reload, (Oct. 13, 2021, 5:00 a.m.), <https://thereload.com/nra-finished-2020-in-the-black-due-to-massive-spending-cuts-after-revenue-falls-legal-costs-skyrocket/>.

EXHIBIT 1

PUBLIC DISCLOSURE COPY

Form **990****Return of Organization Exempt From Income Tax**

OMB No. 1545-0047

2019**Open to Public Inspection**Department of the Treasury
Internal Revenue Service

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

▶ Do not enter social security numbers on this form as it may be made public.

▶ Go to www.irs.gov/Form990 for instructions and the latest information.

A For the 2019 calendar year, or tax year beginning , 2019, and ending , 20	
B Check if applicable: <input type="checkbox"/> Address change <input type="checkbox"/> Name change <input type="checkbox"/> Initial return <input type="checkbox"/> Final return/terminated <input type="checkbox"/> Amended return <input type="checkbox"/> Application pending	C Name of organization NATIONAL RIFLE ASSOCIATION OF AMERICA
	Doing business as
	Number and street (or P.O. box if mail is not delivered to street address) Room/suite 11250 WAPLES MILL ROAD
	City or town, state or province, country, and ZIP or foreign postal code FAIRFAX, VA 22030
	F Name and address of principal officer: WAYNE R LAPIERRE SAME AS C ABOVE
D Employer identification number 53-0116130	E Telephone number (703) 267-1000
G Gross receipts \$ 302,740,488	H(a) Is this a group return for subordinates? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No H(b) Are all subordinates included? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No," attach a list. (see instructions) H(c) Group exemption number ▶
I Tax-exempt status: <input type="checkbox"/> 501(c)(3) <input checked="" type="checkbox"/> 501(c) (4) ◀ (insert no.) <input type="checkbox"/> 4947(a)(1) or <input type="checkbox"/> 527	J Website: ▶ WWW.NRA.ORG
K Form of organization: <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Trust <input type="checkbox"/> Association <input type="checkbox"/> Other ▶	L Year of formation: 1871 M State of legal domicile: NY

Part I Summary			
Activities & Governance	1 Briefly describe the organization's mission or most significant activities: FIREARMS SAFETY, EDUCATION, AND TRAINING; AND ADVOCACY ON BEHALF OF SAFE AND RESPONSIBLE GUN OWNERS		
	2 Check this box <input type="checkbox"/> if the organization discontinued its operations or disposed of more than 25% of its net assets.		
	3 Number of voting members of the governing body (Part VI, line 1a)	3	73
	4 Number of independent voting members of the governing body (Part VI, line 1b)	4	63
	5 Total number of individuals employed in calendar year 2019 (Part V, line 2a)	5	770
	6 Total number of volunteers (estimate if necessary)	6	150,000
	7a Total unrelated business revenue from Part VIII, column (C), line 12	7a	22,618,742
b Net unrelated business taxable income from Form 990-T, line 39	7b	0	
Revenue	8 Contributions and grants (Part VIII, line 1h)	Prior Year	Current Year
	9 Program service revenue (Part VIII, line 2g)	108,599,726	109,439,440
	10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)	193,010,155	134,011,736
	11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	2,192,041	5,035,760
	12 Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)	48,748,942	42,668,528
Expenses	13 Grants and similar amounts paid (Part IX, column (A), lines 1–3)	352,550,864	291,155,464
	14 Benefits paid to or for members (Part IX, column (A), line 4)	75,661	103,491
	15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)	0	0
	16a Professional fundraising fees (Part IX, column (A), line 11e)	63,864,842	56,740,325
	b Total fundraising expenses (Part IX, column (D), line 25) ▶ 45,441,923	7,798,658	5,269,873
	17 Other expenses (Part IX, column (A), lines 11a–11d, 11f–24e)	283,536,156	241,273,626
	18 Total expenses. Add lines 13–17 (must equal Part IX, column (A), line 25)	355,275,317	303,387,315
19 Revenue less expenses. Subtract line 18 from line 12	(2,724,453)	(12,231,851)	
Net Assets or Fund Balances	20 Total assets (Part X, line 16)	Beginning of Current Year	End of Year
	21 Total liabilities (Part X, line 26)	197,212,080	198,746,752
	22 Net assets or fund balances. Subtract line 21 from line 20	181,180,554	189,092,595
		16,031,526	9,654,157

Part II Signature Block				
Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.				
Sign Here	Signature of officer		Date	
	WAYNE R LAPIERRE, EXECUTIVE VICE PRESIDENT			
Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed PTIN
	Firm's name ▶	Firm's EIN ▶		
	Firm's address ▶	Phone no.		
	May the IRS discuss this return with the preparer shown above? (see instructions) <input type="checkbox"/> Yes <input type="checkbox"/> No			

For Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 11282Y

Form **990** (2019)

Part V

Supplemental Information. Provide additional information for responses to questions on Schedule L (see instructions).

Return Reference - Identifier	Explanation
SCHEDULE L, PART I, LINE 1 - 1A. EXCESS BENEFIT TRANSACTIONS	<p>THE NATIONAL RIFLE ASSOCIATION HAS IDENTIFIED WHAT IT BELIEVES ARE EXCESS BENEFIT TRANSACTIONS IN WHICH IT ENGAGED IN 2019 AND IN PRIOR CALENDAR YEARS OF WHICH IT BECAME AWARE BUT WERE NOT REPORTED ON ITS PRIOR FORMS 990. THESE TRANSACTIONS ARE EXPLAINED BELOW. THERE ARE OTHER TRANSACTIONS IN 2019 AND PRIOR CALENDAR YEARS THAT ARE STILL UNDER REVIEW BY THE NRA AND/OR ARE CURRENTLY SUBJECT TO DISPUTE IN THE FOLLOWING LEGAL PROCEEDINGS:</p> <ol style="list-style-type: none"> 1. PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK V. THE NATIONAL RIFLE ASSOCIATION OF AMERICAN, INC., WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER AND JOSHUA POWELL, PENDING IN THE SUPREME COURT OF THE STATE OF NEW YORK, [ALBANY COUNTY] INDEX NO. 451625/2020; 2. THE NATIONAL RIFLE ASSOCIATION OF AMERICA V. OLIVER NORTH, PENDING IN THE SUPREME COURT OF THE STATE OF NEW YORK, [ALBANY COUNTY] INDEX NO. 903843-20; 3. THE NATIONAL RIFLE ASSOCIATION OF AMERICA AND WAYNE LAPIERRE V. ACKERMAN MCQUEEN, INC., ET. AL., PENDING IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION, CIVIL ACTION NO. 3:19-CV-02074-G; AND 4. NATIONAL RIFLE ASSOCIATION OF AMERICA V. AMC MCQUEEN, INC. AND MERCURY GROUP, INC., PENDING IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA, [VIRGINIA], CASE NOS.: CL19001757, CL19002067 AND CL19002886. <p>THE NRA CANNOT AT THE TIME THIS FORM 990 IS FILED DETERMINE WHETHER THESE OTHER TRANSACTIONS ARE EXCESS BENEFIT TRANSACTIONS.</p>
SCHEDULE L, PART I, LINE 1 - 1B. EXCESS BENEFIT TRANSACTIONS: JOSHUA POWELL	<p>FROM 2016 THROUGH JANUARY 30, 2020, MR. POWELL SERVED THE NRA IN NUMEROUS CAPACITIES: EXECUTIVE DIRECTOR OF GENERAL OPERATIONS, CHIEF OF STAFF AND SENIOR STRATEGIST. THE NRA BELIEVES MR. POWELL WAS IN A POSITION TO SUBSTANTIALLY INFLUENCE ITS AFFAIRS BY EXERCISING OR SHARING THE RESPONSIBILITY FOR SUPERVISION, MANAGEMENT OR ADMINISTRATION OF ITS OPERATIONS. THEREFORE, THE NRA BELIEVES THAT MR. POWELL WAS A DISQUALIFIED PERSON WITHIN THE INTENDMENT OF SECTION 4958 OF THE INTERNAL REVENUE CODE ("CODE"). SEE TREAS. REG. SECT. 53.4958-3(E)(2).</p> <p>MR. POWELL CHARGED TO THE NRA, OR HAD REIMBURSED BY THE NRA, VARIOUS PERSONAL TRAVEL, CELLULAR AND OTHER EXPENSES WHICH MR. POWELL KNEW OR SHOULD HAVE KNOWN WERE NOT APPROPRIATE TO SUBMIT AS BUSINESS EXPENSES. PAYMENT OF THESE EXPENSES WERE NOT INTENDED BY THE NRA TO BE PART OF MR. POWELL'S COMPENSATION AND CONSTITUTE AUTOMATIC EXCESS BENEFITS UNDER TREASURY REGULATIONS SECTION 53.4958-4(C). THE AGGREGATE EXCESS BENEFIT DETERMINED TO BE PROVIDED TO MR. POWELL FROM 2016 THROUGH 2019 WAS \$54,904.45. ON MARCH 15, 2020, THE NRA MADE DEMAND FOR REPAYMENT OF \$57,522.12 (WHICH INCLUDED INTEREST). ON OR ABOUT JULY 9, 2020, MR. POWELL TENDERED A CHECK TO THE NRA FOR \$40,760.20, IN PURPORTED FULL SETTLEMENT. THE NRA HAS REJECTED THE CHECK, SO CORRECTION OF THE EXCESS BENEFIT HAS NOT YET BEEN MADE. THE AMOUNT OF EXCISE TAX DUE UNDER SECTION 4958 BY MR. POWELL IS DETERMINED TO BE \$13,726.11. IN ADDITION, THE NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL HAS CHALLENGED, AS UNREASONABLE, COMPENSATION PAID TO MR. POWELL DURING THE PERIOD FROM 2016 THROUGH 2019.</p>
SCHEDULE L, PART I, LINE 1 - 2. EXCESS BENEFIT TRANSACTIONS: CHRISTOPHER COX	<p>FROM 2002 THROUGH JUNE 26, 2019, MR. COX SERVED AS THE EXECUTIVE DIRECTOR OF THE INSTITUTE FOR LEGISLATIVE ACTION ("ILA"), WHICH IS THE LEGISLATIVE AND POLITICAL DIVISION OF THE NATIONAL RIFLE ASSOCIATION. MR. COX WAS ALSO AN OFFICER OF THE NRA. BECAUSE (I) ILA'S FINANCES WERE MAINTAINED SEPARATELY FROM THOSE OF THE OTHER NRA DIVISIONS, (II) ILA MAINTAINED ITS OWN FISCAL STAFF, AND (III) MR. COX WAS AN OFFICER OF THE ORGANIZATION, THE NRA BELIEVES MR. COX WAS IN A POSITION TO SUBSTANTIALLY INFLUENCE ITS AFFAIRS AND IS THUS A DISQUALIFIED PERSON WITHIN THE INTENDMENT OF CODE SECTION 4958. TREAS. REG. SECT. 53.4958-3(E)(2)(IV), (V).</p> <p>THE NRA HAS BECOME AWARE THAT MR. COX IMPROPERLY USED ASSOCIATION FUNDS TO PAY PERSONAL EXPENSES CHARGED ON HIS PERSONAL CREDIT CARD, AMOUNTING TO UNAUTHORIZED INTEREST-FREE ADVANCES TO HIMSELF. IN ADDITION, MR. COX CAUSED EXPENSES TO BE PAID BY THE NRA, OR REIMBURSED TO HIM, FOR PERSONAL AND FAMILY TRAVEL, BUSINESS TRIPS UTILIZING UNAPPROVED CHARTER OR FIRST CLASS TRAVEL, TICKETS TO SPORTING/ENTERTAINMENT EVENTS, AND MEALS AND HOTEL EXPENSES WHICH WERE NOT APPROVED BY THE NRA. PAYMENT OF THESE EXPENSES WERE NOT INTENDED BY THE NRA TO BE PART OF MR. COX'S COMPENSATION AND THEREFORE CONSTITUTED AN AUTOMATIC EXCESS BENEFIT UNDER TREASURY REGULATIONS SECTION 53.4958-4(C).</p> <p>TO DATE, THE AGGREGATE EXCESS BENEFIT FROM 2015 TO JUNE 26, 2019, DETERMINED TO BE PROVIDED TO MR. COX IS IN EXCESS OF \$1 MILLION, WHICH THE NRA IS SEEKING TO RECOVER. THIS IS BEING DISPUTED BY MR. COX AND, TO DATE, ANY EXCESS BENEFIT RECEIVED BY MR. COX HAS NOT BEEN CORRECTED. THE NRA BELIEVES THAT THE AMOUNT OF EXCISE TAX DUE UNDER CODE SECTION 4958 BY MR. COX WOULD BE APPROXIMATELY \$328,001.50.</p>
SCHEDULE L, PART I, LINE 1 - 3. EXCESS BENEFIT TRANSACTION: DAVID LEHMAN	<p>FROM 2002 THROUGH SEPTEMBER 13, 2019, MR. LEHMAN SERVED AS DEPUTY EXECUTIVE DIRECTOR. AS SUCH, THE NRA BELIEVES MR. LEHMAN WAS IN A POSITION TO SUBSTANTIALLY INFLUENCE ITS AFFAIRS AND ILA'S AFFAIRS BY EXERCISING OR SHARING RESPONSIBILITY FOR SUPERVISION, MANAGEMENT OR ADMINISTRATION OF THEIR OPERATIONS. THEREFORE, THE NRA BELIEVES MR. LEHMAN WAS A DISQUALIFIED PERSON WITHIN THE INTENDMENT OF CODE SECTION 4958. TREAS. REG. SECT. 53.4958-3(E)(2).</p> <p>UPON INFORMATION AND BELIEF, FROM 2015 TO SEPTEMBER 13, 2019, MR. LEHMAN CAUSED THE NRA TO PAY FOR PERSONAL TRAVEL, CLUB, AND MEAL EXPENSES IN THE AGGREGATE AMOUNT OF AT LEAST \$87,595.83. THE NRA HAS NOT YET COMPLETED ITS INVESTIGATION OF THE EXTENT TO WHICH MR. LEHMAN MAY HAVE RECEIVED IMPROPER BENEFITS, BUT IF SUCH EXPENSES ARE SUBSTANTIATED, THEY WERE LIKELY NOT APPROVED NOR INTENDED TO BE COMPENSATION TO MR. LEHMAN BY THE NRA, AND WOULD THUS LIKELY CONSTITUTE AUTOMATIC EXCESS BENEFITS UNDER TREASURY REGULATIONS SECTION 53.4958-4(C).</p>

Return Reference - Identifier	Explanation
SCHEDULE L, PART I, LINE 1 - 4. EXCESS BENEFIT TRANSACTION: WAYNE LAPIERRE	MR. LAPIERRE IS THE EXECUTIVE VICE PRESIDENT AND CHIEF EXECUTIVE OFFICER OF THE NRA. HE IS AN OFFICER AND IS THUS A DISQUALIFIED PERSON WITHIN THE INTENDMENT OF CODE SECTION 4958. TREAS. REG. SECT. 53.4958-3(C)(2). FROM 2015 THROUGH 2019, THE NRA ESTIMATES THAT IT PAID ON BEHALF OF MR. LAPIERRE, DIRECTLY OR INDIRECTLY, TRAVEL EXPENSES FOR MR. LAPIERRE IN THE AGGREGATE AMOUNT OF \$299,778.78. THE NRA HAS DETERMINED TO TREAT THE PAYMENTS AS AUTOMATIC EXCESS BENEFITS UNDER TREASURY REGULATIONS SECTION 53.4958-4(C). MR. LAPIERRE HAS REPAID THIS EXCESS BENEFIT TO NATIONAL RIFLE ASSOCIATION, PLUS INTEREST, AND THEREFORE THE EXCESS BENEFIT HAS BEEN CORRECTED. THE AMOUNT OF EXCISE TAX DUE UNDER CODE SECTION 4958 BY MR. LAPIERRE HAS BEEN ESTIMATED TO BE \$74,944.70. IN ADDITION, THE NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL HAS CHALLENGED, AS UNREASONABLE, COMPENSATION PAID TO MR. LAPIERRE DURING HIS TENURE.
SCHEDULE L, PART I, LINE 1 - 5. EXCESS BENEFIT TRANSACTION: WILSON PHILLIPS	FROM 1993 THROUGH SEPTEMBER 13, 2018, MR. PHILLIPS SERVED AS TREASURER AND CHIEF FINANCIAL OFFICER OF THE NRA. AS SUCH, MR. PHILLIPS WAS A DISQUALIFIED PERSON WITHIN THE INTENDMENT OF CODE SECTION 4958. TREAS. REG. SECT. 53.4958-3(C)(3). THE NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL HAS ALLEGED THAT COMPENSATION PAID TO MR. PHILLIPS DURING AND AFTER TENURE HIS TENURE WAS UNREASONABLE.
SCHEDULE L, PART I, LINE 1 - 6. EXCESS BENEFIT TRANSACTION: JOHN FRAZER	FROM 2015 THROUGH THE PRESENT, MR. FRAZER HAS SERVED AS SECRETARY AND GENERAL COUNSEL OF THE NRA. AS SUCH, MR. FRAZER MAY BE A DISQUALIFIED PERSON WITHIN THE INTENDMENT OF CODE SECTION 4958. TREAS. REG. SECT. 53.4958-3(E)(2). THE NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL HAS ALLEGED THAT COMPENSATION PAID TO MR. FRAZER HAS BEEN UNREASONABLE.
SCHEDULE L, PART I, LINE 1 - 7. EXCESS BENEFIT TRANSACTION: OLIVER NORTH	LT. COL. NORTH SERVED AS PRESIDENT OF THE NATIONAL RIFLE ASSOCIATION AT TIMES IN 2018 AND 2019. WITHIN THE FIVE PRIOR YEARS, HE WAS ALSO A VOTING MEMBER OF ITS BOARD OF DIRECTORS. AS SUCH, MR. NORTH WAS A DISQUALIFIED PERSON WITHIN THE INTENDMENT OF CODE SECTION 4958. TREAS. REG. SECT. 53.4958-3(C)(1), (2). UPON INFORMATION AND BELIEF, DURING CERTAIN TIMES IN 2018 AND 2019, MR. NORTH WAS EMPLOYED BY ACKERMAN MCQUEEN, INC. ("AM"), A THIRD-PARTY VENDOR OF THE NATIONAL RIFLE ASSOCIATION, TO HOST A TELEVISION SHOW PRODUCED BY AM. DURING THE SAME PERIOD, AM INVOICED THE NRA FOR A VARIETY OF EXPENSES WHICH ARE NOW THE SUBJECT OF LITIGATION, BUT ARE BELIEVED TO HAVE INCLUDED SALARY, BENEFITS, AND RELATED PERQUISITES FURNISHED BY AM TO NORTH IN CONNECTION WITH NORTH'S EMPLOYMENT BY AM. NRA PAID ALL THESE INVOICES TO AM. SUCH PAYMENTS MAY CONSTITUTE AN INDIRECT BENEFIT FROM NATIONAL RIFLE ASSOCIATION TO MR. NORTH. TREAS. REG. SECT. 53.4958-4(A)(2)(III). AS FURTHER SET FORTH IN THE SAME LITIGATION, THE NRA HAS REASON TO BELIEVE THAT NORTH FAILED TO PERFORM THE SERVICES FOR WHICH HE HAD BEEN CONTRACTED BY AM, AND FOR WHICH HE MAY HAVE BEEN INDIRECTLY COMPENSATED BY THE NRA. IF THAT IS TRUE, THEN ALL OR PART OF NORTH'S COMPENSATION BY AM, PAID INDIRECTLY BY THE NRA, WOULD CONSTITUTE AN EXCESS BENEFIT PROVIDED BY TO THE NRA TO NORTH. THE PENDING LITIGATION IN WHICH THE FOREGOING MATTERS ARE ALLEGED AND CONTESTED CONSISTS PRINCIPALLY OF: PEOPLE V. NAT'L RIFLE ASS'N OF AM., ET AL., INDEX NO. 451625/2020 (SUP. CT. N.Y. CNTY.); NAT'L RIFLE ASS'N OF AM. V. ACKERMAN MCQUEEN, INC. AND MERCURY GROUP, INC., CONS. CASE NOS. CL19002067; CL19001757; CL19002886 (VA. CIR. CT.); AND, NAT'L RIFLE ASS'N OF AM. V. ACKERMAN MCQUEEN, INC., ET AL., CIV. CASE NO. 3-19-CV-02074-G (N.D. TEX.).
SCHEDULE L, PART I, LINE 1 - 8. EXCESS BENEFIT TRANSACTION: JOSEPH P DEBERGALIS, JR	FROM 2015 THROUGH EARLY 2017, JOSEPH P. DEBERGALIS, JR. WAS AN NRA DIRECTOR. FROM JANUARY 25, 2017 TO THE PRESENT, MR. DEBERGALIS HAS SERVED AS AN NRA EXECUTIVE AND OFFICER, INCLUDING AS THE EXECUTIVE DIRECTOR OF GENERAL OPERATIONS. AS SUCH, MR. DEBERGALIS MAY, AT SOME OR ALL TIMES, HAVE BEEN A DISQUALIFIED PERSON WITHIN THE INTENDMENT OF CODE SECTION 4958. TREAS. REG. SECT. 53.4958-3(C)(1), (E)(2)(IV), (V). THE NRA IS CURRENTLY REVIEWING WHETHER MR. DEBERGALIS MAY HAVE USED BUSINESS CLASS TRAVEL WITHOUT AUTHORIZATION REQUIRED UNDER THE NRA'S TRAVEL POLICY. AT THE TIME OF FILING, THE NRA IS UNABLE TO ESTIMATE THE AMOUNT OF EXCESS COSTS INCURRED, IF ANY. IF SUCH EXPENSES ARE SUBSTANTIATED, THEY WERE LIKELY NOT APPROVED NOR INTENDED TO BE COMPENSATION TO MR. DEBERGALIS BY THE NRA, AND WOULD THUS LIKELY CONSTITUTE AUTOMATIC EXCESS BENEFITS UNDER TREASURY REGULATIONS SECTION 53.4958-4(C).
SCHEDULE L, PART I, LINE 1 - 9. BOARD MEMBER TRAVEL	THE NRA IS CURRENTLY REVIEWING WHETHER IN 2019 AND PRIOR YEARS, VARIOUS BOARD MEMBERS MAY HAVE USED FIRST CLASS OR BUSINESS CLASS TRAVEL WITHOUT AUTHORIZATION REQUIRED UNDER THE NRA'S TRAVEL POLICY. AT THE TIME OF FILING, THE NRA IS UNABLE TO ESTIMATE THE AMOUNT OF EXCESS COSTS INCURRED, IF ANY. SUCH BOARD MEMBERS WOULD HAVE BEEN DISQUALIFIED PERSONS WITHIN THE INTENDMENT OF TREAS. REG. SECT. 53.4958-3(C)(1). IF SUCH EXCESS COSTS ARE SUBSTANTIATED, THEY WOULD THUS LIKELY CONSTITUTE EXCESS BENEFITS UNDER CODE SECTION 4958.

EXHIBIT 2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:) **Case No. 21-30085-hdh-11**
) Jointly Administered
NATIONAL RIFLE ASSOCIATION)
OF AMERICA, et al.,) Dallas, Texas
) April 5, 2021
Debtors.) 1:30 p.m. Docket
)
) TRIAL DAY 1 - AFTERNOON DOCKET
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE HARLIN DEWAYNE HALE,
UNITED STATES CHIEF BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

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transcript produced by transcription service.

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1 DALLAS, TEXAS - APRIL 5, 2021 - 1:30 P.M.

2 THE COURT: Let's go back on the record in the NRA
3 case. Over the lunch hour, my courtroom deputy received a
4 request from the United States Trustee for two minutes, Mr.
5 Garman, just to -- I think to respond to something that was
6 made by the last speaker. So if we could turn it over to Ms.
7 Lambert or Mr. Salitore.

8 MS. LAMBERT: Thank you, Your Honor. The U.S.
9 Trustee wants to clarify that its papers relate to some legal
10 positions that the U.S. Trustee finds would not be
11 supportable in some of the filings. But the U.S. Trustee has
12 taken no position factually on the motion to dismiss or the
13 motion to appoint a trustee. We may do that based on the
14 evidence at some point, but at this point the parties have
15 adequately represented those positions and the U.S. Trustee's
16 advocacy would add nothing. But our silence does not mean
17 that we are opposed to the relief requested.

18 Thank you.

19 THE COURT: Thank you. All right. Mr. Garman, I
20 think before the lunch hour you had said you were going to go
21 first and let Mr. Strubeck go last.

22 MR. GARMAN: Yes, sir.

23 THE COURT: All right. You may proceed.

24 MR. GARMAN: At the outset, Your Honor, can you hear
25 me clearly?

6

1 THE COURT: I can hear you clearly. Thank you.

2 OPENING STATEMENT ON BEHALF OF THE DEBTORS

3 MR. GARMAN: Great. Your Honor, let me get started,
4 then. You know, at the outset, this is why I felt it so
5 important that I get an opening statement, because this is a
6 case in which we are going to be two ships passing in the
7 night. And respectfully, I'm going to ask you to hold the
8 Movants to the testimony that they told you you were going to
9 hear. The testimony you're going to hear will mirror very,
10 very little the presentation of counsel.

11 Your Honor, I feel compelled to begin by talking about
12 the estate over which we are seeking to dismiss, appoint a
13 trustee, or the like. As counsel indicated, we were formed
14 in 1871. And in September, the NRA expects to host -- to
15 hold its 150th anniversary. Its members, members of this
16 organization, include a majority of the Presidents over the
17 last 120 years. Supreme Court Justices. Chief Justices.
18 Governors. Ambassadors. And what's been lost in this
19 discussion so far today is who our board members are, the
20 folks who actually are in control of this organization, not
21 Mr. LaPierre.

22 We have senators. We have congressman. We have Harvard-
23 educated lawyers. We have a disproportionate number of
24 lawyers, candidly. We have sitting lieutenant governors. We
25 have mayors, treasurers, secretaries of state.

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One of those vendors who wouldn't cooperate was Ackerman McQueen, and ultimately we terminated the contract with Ackerman McQueen and brought most of those services in-house.

In September of 2018, still in this condensed timeline, the Brewer firm presents to the board its initial findings. Those are certainly privileged. Those are certainly not something that I'm going to walk through today. But what is important about the outcome of that process is we understand where the State of New York plans to go, we predict the coming fights which have resulted in us being here today, and we begin to prepare for a battle and a war that did in fact come exactly as we expected it to roll out.

In 2019, Your Honor, the course correction continues, but it is implementation of the policies and procedures, taking away the control overrides. In 2018, I'm sorry, 2019, the Audit Committee hires a new auditor. We hire new board counsel. The Audit Committee continues to meet on an ever-more-frequent basis. This is when we sue Ackerman McQueen for the inspection of the books and records, not for a claim. And we begin cleaning house.

Your Honor, this morning it was portrayed to you that Mr. LaPierre fires the people who could be his successors, who threaten his power. Nothing could be further from the truth. Our mission is one of advocacy. We've fired amongst the most effective lobbyist in history, Chris Cox, who led us to the

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1 world in which we had a run of decades of success for the
2 National Rifle Association. Our lead lobbyist. We had to
3 suspend him. We had to part ways with him. We had to sue
4 him to recover what was inappropriate benefit that was given
5 to him.

6 I have to be careful with my words because this is a
7 confidential arbitration that remains ongoing. But the
8 existence of the NRA's claims against its former chief
9 lobbyist should not and cannot be lost on this Court. And
10 they are not evidence of misconduct. They are evidence of
11 actually engaging in and complying with our fiduciary duties.

12 We replaced our CFO, as I talked about, bringing in
13 someone with the qualifications and the skillset to manage an
14 organization of the size and scope of the National Rifle
15 Association.

16 Oliver North, our president at the time, our president at
17 the time, had misrepresented his relationship with Ackerman
18 McQueen. As NRA president, you cannot be paid. As NRA
19 president, it had been misrepresented, the scope of his
20 dealings with Ackerman McQueen, and he had a \$2 million
21 contract in which he was actually an employee of Ackerman
22 McQueen with contractual duties that were superior in
23 obligation to Ackerman McQueen versus what he owed to the
24 National Rifle Association as our president.

25 The Audit Committee. How hard must it have been for that

Cotton - Cross

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1 THE COURT: All right.

2 MR. GRUBER: And Your Honor, this is Mike Gruber.

3 Can I ask a question real quick?

4 THE COURT: Sure.

5 MR. GRUBER: There was some talk about Mr. LaPierre
6 not being available tomorrow again. It would help us as far
7 as preparation, because I don't think Ms. Carroll has long to
8 go tomorrow, but -- and everybody else may know this, but is
9 Mr. LaPierre available tomorrow?

10 MR. GARMAN: Yeah, Mr. Gruber. This is Greg Garman.
11 Sorry if you weren't included in that conversation. Mr.
12 LaPierre is ready to go when you call him.

13 MR. GRUBER: Okay. Thank you. Since it's my
14 witness, I appreciate that. Thank you.

15 MR. GARMAN: Sure. Sorry about that.

16 THE COURT: Okay. We'll be in recess. We're going
17 to start at 9:00 tomorrow. I anticipate we'll go a long day
18 tomorrow. We'll be in recess.

19 (Proceedings concluded at 6:14 p.m.)

20 --oOo--

21 CERTIFICATE

22 I certify that the foregoing is a correct transcript from the
23 electronic sound recording of the proceedings in the above-entitled matter.

24 **/s/ Kathy Rehling**

04/06/2021

25 _____
Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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EXHIBIT 3

From: [Buchanan, Tom](#)
To: [Svetlana Eisenberg](#)
Cc: [Saxon, Matthew](#); [Harding, John](#); kristian.gluck@nortonrosefulbright.com
Subject: Re: Cox v. NRA
Date: Wednesday, April 14, 2021 12:30:24 PM

I spoke to Kristian and we will be providing the documents they requested.

On Apr 13, 2021, at 8:46 AM, Svetlana Eisenberg <sme@brewerattorneys.com> wrote:

Counsel,

The professionals for the Unsecured Creditors' Committee in the NRA/Sea Girt Chapter 11 cases asked for copies of the operative pleadings in the Cox v. NRA arbitration.

The Debtors have no objection to making such documents available to the UCC's professionals.

Please let us know if Mr. Cox has any objections.

I have copied Mr. Gluck, who is one of the attorneys representing the Committee on my email message.

Regards,
Svetlana

Svetlana M. Eisenberg | Partner
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