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November 22, 2021

VIA NYSECF

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

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

Dear Justice Cohen:

On behalf of the plaintiff, the New York Attorney General (“NYAG”) respectfully writes to ask for a status conference with the Court to discuss the current status of discovery in this matter as well as the issues set forth below.

- **New Proposed Discovery Schedule:** Under the current schedule, fact discovery is set to end on December 17th. NYSCEF 330. Defendant National Rifle Association of America (“NRA”) proposed an amended discovery schedule. The NYAG asked for slight revisions to the same. The parties have agreed to the revised schedule and it is our understanding that the NRA will be submitting the same shortly for Court approval so that we can resolve some issues relating to deposition scheduling in December.
- **NYAG’s Motion to Dismiss the Amended Counterclaims:** After meet and confers, the parties do not agree as to whether the NYAG must respond to the NRA’s Amended Answer and Counterclaims prior to a decision on the NRA’s motion to dismiss the FAC (Motion Sequence No. 18, to be argued on December 10, 2021). If the motion is denied, the NRA may again amend its answer and counterclaims. The parties were not able to resolve the issue. On November 12, 2021, the NYAG wrote to the Court and proposed that, in the interest of expeditiously resolving this dispute, the NYAG is prepared to rest on its motion to dismiss (Motion Sequence No. 13) as applied to the Amended Answer and Counterclaims and to proceed with the motion on an expedited basis. The NRA responded on November 18, 2021, arguing that the Court should order

the NYAG to forego its right to move to dismiss and compel the OAG to file an answer to the Amended Answer and Counterclaims within 14 days. NYSCEF 455. The NYAG asks that the Court set a briefing schedule on the motion to dismiss the counterclaims immediately or following a decision on the NRA's motion to dismiss.

- **The Powell Documents:** Counsel for Defendant Joshua Powell has not completed document production because Mr. Powell is in possession of a tranche of information that potentially contains Mr. Powell's confidential or privileged information but may also contain privileged information from his time as a high-ranking executive within the NRA. On November 3, 2021, his counsel wrote to the Court seeking "the Court's assistance in order to ensure Mr. Powell is able to satisfy his discovery obligations in a timely manner" without potentially facing disqualification by the NRA. NYSCEF 432. The NYAG responded, NYSCEF 435, that Mr. Powell is legally obligated to produce responsive information and that his counsel may identify potentially privileged documents on a privilege log. Further, the NRA and NYAG have agreed to enter into a claw-back agreement, providing additional protection. The NRA did not respond to Mr. Powell's letter. We ask that the Court direct Mr. Powell's counsel to complete his production of responsive information.
- **The Cox Arbitration Documents:** On October 14, 2021, the OAG filed a request for a conference relating to production of documents in response to a subpoena to Christopher Cox, a former high-ranking official within the NRA. NYSCEF 404. The OAG intends to move to compel nonparty Christopher Cox to produce documents pursuant to CPLR 3124. Rather than timely move to quash the Cox subpoena or for a protective order, the NRA waited until immediately before production was expected to effectively block such production on the grounds that it is entitled to pre-review the production and withhold documents that relate to an arbitration between itself and Mr. Cox. Both the NYAG and Mr. Cox offered authority that the arbitration materials cannot be withheld from the NRA's regulator and that the NRA had failed to demonstrate any reason to believe that privileged information would be produced and thus Mr. Cox was required to comply with the subpoena or face legal action. The parties were unable to resolve this after meeting and conferring. Given the authority cited by the NYAG and Mr. Cox, whose letters are annexed as part of NYSCEF 404, the NYAG asks for an order compelling production of responsive documents immediately.

We thank the Court for its attention to these matters.

Respectfully,

/s/ Monica Connell

Monica Connell

Assistant Attorney General

cc: All Counsel of Record