

Exhibit 1R



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By NYSCEF

Hon. 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 submitted for Your Honor's consideration on October 14, 2021. Cox seeks to participate in the December 10, 2021 hearing to discuss issues related to the subpoena. In particular, Cox, pursuant to CPLR §2304, seeks an order from the Court requiring the NYAG to pay Cox's "reasonable production expenses" consistent with NY CPLR § 3122(d) and the National Rifle Association of America, Inc. ("NRA")

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. Pursuant to Cox's Employment Agreement, [REDACTED]

¹ Ex. 3, April 8 AM Tr. 25:23 – 26:12 (“BY MR. SHEEHAN: Q And the NRA has been involved in an arbitration proceeding with Mr. Cox since the fall of 2019, correct?”)

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[REDACTED]
[REDACTED]
Specifically, on November 6, 2019, John Frazer, the NRA's General Counsel wrote that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

On August 17, 2021, the NYAG served another subpoena on Cox for certain information related to the arbitration proceeding between the NRA and Cox that involved issues related Cox's employment. ([Dkt. 402 at 7](#)). Cox was prepared to produce the documents to the NYAG, but the day before Cox intended to produce, the NRA insisted that Cox withhold documents and threatened Cox with legal action. This sparked a month-long dispute between the NRA, the NYAG, and Cox concerning whether Cox was permitted to produce the documents. (*See e.g., id.*). The Parties and Cox ultimately submitted the discovery dispute for the Court's consideration on October 14, 2021. (*Id.*). This letter campaign was extensive, including dozens of emails and several formal letters, and Cox incurred significant fees for a dispute that he did not initiate.

[REDACTED]
[REDACTED]
[REDACTED] The NRA argued that Cox's invoices needed to be paid by the NYAG pursuant to "CPLR 3122(d) and Guideline V. of Appendix A to the New York County Commercial Division Rules, Guidelines for Discovery of Electronically Stored Information ('ESI') from Nonparties." According to the NRA, "[t]he rule and the guideline make clear that the two invoices, to the extent they constitute Mr. Cox's [REDACTED] in connection with the Subpoena should be paid by the NYAG as the [REDACTED] Ex. 4, October 26, 2021 email).

Subsequently, Cox sought payment from the NYAG and the NYAG agreed to only pay reasonable costs of production, but none of Cox's attorneys' fees. (Ex. 6). Cox now seeks clarification from the Court concerning Cox's "reasonable production expenses" and an order that the NYAG pay those reasonable expenses and [REDACTED]
[REDACTED]

NY CPLR § 3122(d) provides that "the reasonable production expenses of a non-party witness shall be defrayed by the party seeking discovery." Courts have concluded that this includes

[MR. LAPIERRE] A That is correct.

Q And the NRA has spent over \$6 million to the Brewer firm to litigate that contract, is that correct?

A That -- I'm not sure of the exact figure, but that -- we have been paying the Brewer firm to litigate that.

Q Is six million about what you would expect?

A It's quite possible it's in that range.

Q And the NRA has also paid \$1.8 million in fees to Mr. Cox's counsel, correct?

A Yes, I believe we have.")

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“the actual copying or reproduction of the documents” as well as the “labor related costs in the search, retrieval and production of the documents” and the “expense of an e-discovery professional.” *Matter of Khagan*, 66 Misc. 3d 335, 338, 114 N.Y.S.3d 824, 827 (N.Y. Sur. 2019). However, this does not typically include fees associated with conferring with counsel, preparing objections, and the like. *Id.* at 342, 830. *See also Peters v. Peters*, No. 600456/2004, 2016 WL 3597629, at *2 (N.Y. Sup. Ct. July 05, 2016) (awarding costs and fees incurred for “gathering and reviewing documents for production,” but declining to award fees “with respect to time spent conferring with defendant’s counsel or determining which documents to withhold on the basis of privilege or relevancy.”)

Based on this understanding of NY CPLR § 3122(d), Cox requests that the NYAG be required to pay the “reasonable production expenses” associated with responding to the subpoena, including, to date, the fees associated with the search, retrieval, and categorization of the proposed production, and e-discovery support. To date this amounts to \$15,678.75. The NYAG should also be ordered to pay for the eventual cost of production if the NYAG’s motion to compel is granted.

Additionally, [REDACTED]

[REDACTED] (Ex. 1, Employment Agreement § 6). The remaining outstanding amount is currently \$107,089.15 (and counting) for the significant negotiations and letter campaign Cox was forced to participate in since the NYAG first served its subpoena on Cox. A redacted copy of Cox’s bills are attached as Ex. 5.

For the foregoing reasons, third-party Cox’s letter motion to fix conditions regarding the third-party subpoena served on Cox should be granted and Cox’s fees paid by the NYAG and NRA. Cox respectfully requests that this letter motion be considered at the December 10 hearing when the other issues involving the Cox subpoena are resolved. Cox raised this issue several weeks ago with the NRA and NYAG and has patiently tried to work with each party but believes the Court’s assistance is now necessary to resolve the matter.

Sincerely,

/s/ Thomas M. Buchanan