EXHIBIT 6

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BY E-MAIL
Thomas M. Buchanan, Esq.
Winston & Strawn LLP
1901 L Street, N.W.
Washington, D.C. 20036-3506

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

Dear Mr. Buchanan:

I write concerning your letter of November 22 seeking payment by the Attorney General of certain costs and fees relating to the third-party subpoena duces tecum, dated August 17, 2021, which the Attorney General served on your client, Mr. Christopher Cox.

We appreciate Mr. Cox's good faith efforts to comply with our subpoena, and the burden imposed by the National Rifle Association's interjection of a direction to Mr. Cox to withhold responsive documents from production to the Attorney General. We understand from your letter that $122,767.90 in legal fees and costs has been incurred, over $107,000 of which is related to the dispute between the NRA and Mr. Cox concerning the NRA's directive.

Mr. Cox's demand relies on N.Y. CPLR 3122(d), which provides that "The reasonable production expenses of a non-party witness shall be defrayed by the party seeking discovery." The Attorney General's Office is prepared to pay the reasonable production expenses of Mr. Cox relating to these documents. However, New York law makes clear that a right to recover costs does not include attorney fees absent specific statutory authority. New York adheres to the "American Rule" regarding payment of attorney fees-that in the absence of a specific fee-shifting statute, attorney fees are the responsibility of the entity incurring them.

In *Baker v. Health Management Systems*, 98 N.Y.2d 80, 88 (2002), the New York Court of Appeals discussed the shifting of attorney fees, noting that fee shifting must be explicitly provided for by statute or court rule, and that statutes or rules which might arguably permit awards of attorney fees must be strictly construed against such an argument:

> The American Rule provides that "attorney's fees are incidents of litigation and a prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties, statute or court rule" (*Hooper Assoc. v AGS Computers*, 74 NY2d 487, 491, *supra*). In

> *Chapel v Mitchell*, we characterized the American Rule as "an implicit legislative judgment regarding the allocation of legal fees" (84 NY2d 345, 349 [1994]). Under the American Rule as applied to statutory entitlement to attorneys' fees, the Supreme Court has held that "we follow `a general practice of not awarding fees to a prevailing party absent explicit statutory authority'" (*Buckhannon Bd. & Care Home, Inc. v West Virginia Dept. of Health & Human Resources*, 532 US 598, 602 [2001] [quoted case omitted] [emphasis added]). This Court has adhered to the same position specifically in the context of a statutory claim for corporate indemnification of legal fees, holding that, **to the extent the indemnification statutes "chang[e] the common-law rule that each party pays his own lawyer, [they are] to be construed strictly."(emphasis added)**

Similarly, in *Chicago Title Insurance Company v. LaPierre*, 140 AD 3d 821 (2d Dept. 2016) the Court explained that New York's American Rule resolves any ambiguity against shifting of attorney fees:

> The "American Rule," which is followed in New York, is that "[a]n attorney's fee is merely an incident of litigation and is not recoverable absent a specific contractual provision or statutory authority" (*Levine v Infidelity, Inc.*, 2 AD3d 691, 692 [2003]; *see Mount Vernon City School Dist. v Nova Cas. Co.*, 19 NY3d 28, 39 [2012]; *Matter of A.G. Ship Maintenance Corp. v Lezak*, 69 NY2d 1, 5 [1986]; *214 Wall St. Assoc., LLC v Medical Arts-Huntington Realty*, 99 AD3d 988, 990 [2012]; *Gorman v Fowkes*, 97 AD3d 726, 727 [2012]). Here, while Executive Law § 135 provides, in relevant part, that "[f]or any misconduct by a notary public in the performance of any of his [or her] powers such notary public shall be liable to the parties injured for all damages sustained by them," the plain language of the statute does not explicitly permit recovery of attorneys' fees and costs. Even if this statute could "arguably support an implied right" to those fees and costs, the public policy of the American Rule "militate[s] against adoption of that interpretation" (*Baker v Health Mgt. Sys.*, 98 NY2d 80, 88 [2002]; *see 214 Wall St. Assoc., LLC v Medical Arts-Huntington Realty*, 99 AD3d at 990).

Again, in *Saul v. Cahan*, 153 AD 3d 951 (2d Dept. 2017), the court held:

> "`Statutes authorizing an award of costs and sanctions are in derogation of common law and, therefore must be strictly construed'" (*State Farm Fire & Cas. v Parking Sys. Valet Serv.*, 85 AD3d 761, 764 [2011], quoting *Saastomoinen v Pagano,* 278 AD2d 218, 218 [2000])

Based upon this governing law, we are unwilling to pay attorney fees related to the production. We will require an itemized list of the costs of production after that has occurred so that we may review it for reasonableness.

By copy of this letter to Svetlana Eisenberg, counsel for the NRA, who was a recipient of your November 22nd letter, we are simultaneously apprising the NRA of the Attorney General's position on Mr. Cox's demand for reimbursement of attorney's fees.

Sincerely,

/s/Emily Stern

Emily Stern
Co-Chief, Enforcement Section
Assistant Attorney General

cc: Svetlana Eisenberg, Esq.
James Sheehan, Chief, Charities Bureau
Stephen Thompson, Assistant Attorney General