



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
CHARITIES BUREAU

212.416.8965
Monica.Connell@ag.ny.gov

December 8, 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 People of the State of New York, the Office of the Attorney General of the State of New York ("NYAG") respectfully writes in brief response to the December 3, 2021 letter from counsel for Defendant National Rifle Association of America ("NRA")(NYSCEF 464).

The NRA's letter was submitted in response to the NYAG's November 22, 2021 letter (NYSCEF 457) requesting a status conference and raising issues that have arisen during the course of discovery. In its letter, the NRA raises two new issues which are not ripe for the Court's consideration. The NYAG wishes to briefly address solely those issues.

First, the NRA complains that the Attorney General Letitia James herself has not responded to its Second Request for Production of Documents ("NRA's Second RFPs"), which it admits were directed to the Attorney General in her official and individual capacities, and not the Plaintiff herein. But discovery from the Attorney General is not appropriate at this time because the Attorney General has not yet answered the NRA's pleading, issue has not been joined as to her, and the parties disagree as to whether any answer is due from her given that the NYAG has moved to dismiss the NRA's current counterclaims (as further discussed below). Further, the stipulation that the NRA cites (NYSCEF 288) extending the NRA's time to oppose the NYAG's motion to dismiss the NRA's counterclaims in this action (Mot. Seq. 13) does not overcome this Court's order at the March 9, 2021 conference that discovery on the counterclaims be stayed.

The NRA could have, but never sought relief from the Court requiring the Attorney General to answer or move in response to the counterclaims *while* the NRA's second CPLR

3211(a) motion to dismiss was pending herein. Absent such a directive, the NRA's motion to compel discovery is premature. Further, the NRA never moved to lift the Court's stay and permit pre-answer discovery. Finally, following a meet and confer wherein this issue was raised but not resolved, the NYAG itself wrote the Court on November 12, 2021, suggesting a process that would expedite addressing the propriety of the NRA's counterclaims (NYSCEF 437). The NYAG proposed, consistent with caselaw, deeming the NYAG's previously filed motion to dismiss to be asserted as against the Amended Answer and Counterclaims and setting an expedited briefing schedule. If any of the NRA's counterclaims survive the motion to dismiss, discovery could then be addressed.¹

Second, the NRA complains that the NYAG has not produced a privilege log in connection with the NYAG investigatory file. In fact, at the time the NRA submitted its letter to the Court, the parties had been in communication regarding the NYAG's log, were supposed to speak regarding the same and the NYAG served the privilege log on Friday afternoon. By contrast, the NRA unilaterally determined that it would not complete substantial compliance with the NYAG's discovery demands, dated June 25, 2021, until December 15th and has never served any privilege logs pertaining to its rolling productions. In any event, the NYAG respectfully submits that this issue is either moot or not ripe for Court consideration.

We thank the Court for its attention to these matters.

Respectfully,

/s/ Monica Connell

Monica Connell
Assistant Attorney General

cc: All Counsel of Record

¹ The NYAG has, in essence, twice moved to dismiss the counterclaims herein. The NRA asserted substantially identical claims in a federal action it filed in the Northern District of New York in 2020. *NRA v. James*, 1:20-cv-00889 (N.D.N.Y.). The NRA voluntarily dismissed that action on June 4, 2021, while a fully briefed motion to dismiss was pending. On February 23, 2021, the NRA filed an Answer with Counterclaims in this action (NYSCEF 231), and asserted counterclaims against the Attorney General in her official and individual capacities. On June 24, 2021, the NYAG moved to dismiss the NRA's counterclaims (NYSCEF 264-269). On July 20, 2021, the NRA filed its Amended Answer and Counterclaims (NYSCEF 325). On August 16, 2021, the NYAG filed an Amended and Supplemental Complaint (NYSCEF 333). The NRA, LaPierre and Frazer have again moved to dismiss under CPLR 3211. Those motions are fully submitted and will be argued on December 10, 2021.