

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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	:	Index No.: 451625/2020
<b>PEOPLE OF THE STATE OF NEW</b>	:	
<b>YORK,</b>	:	Hon. Joel M. Cohen
	:	
<i>Plaintiff,</i>	:	Motion Sequence No. 023
	:	
<b>v.</b>	:	
	:	
<b>THE NATIONAL RIFLE ASSOCIATION</b>	:	
<b>OF AMERICA, INC., ET AL.,</b>	:	
	:	
<i>Defendants.</i>	:	
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**THIRD-PARTY CHRISTOPHER W. COX'S MEMORANDUM OF LAW  
IN RESPONSE TO PLAINTIFF'S ORDER TO SHOW CAUSE**

Third-party Christopher W. Cox submits this memorandum of law responding to the New York Attorney General's Memorandum of Law in Support of its Order to Show Cause ([Dkt. 520](#)). For the reasons discussed below, Cox does not object to producing the documents requested by the NYAG, but requests that the Court order that the NYAG and/or the NRA to pay Cox's reasonable expenses.

### **FACTS**

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, which led to an arbitration between the parties that eventually resolved in August 2021.

As part of its investigation of the NRA, the NYAG served Cox with a subpoena on August 17, 2021 for certain information related to the arbitration proceeding between the NRA and Cox that involved issues related to Cox's employment. ([Dkt. 402 at 7](#)). On August 20, Cox emailed the NRA about the subpoena and asked the NRA to inform Cox if "you are objecting and will be moving to quash." ([Dkt. 519](#)). Cox had hoped that by this email he would avoid being involved in any dispute between the NYAG and NRA about the scope of the subpoena because the NRA, as a party to the arbitration and the pending action, had standing to move to quash the subpoena if it so desired. The NRA did not respond to Cox at that time or move to quash. Rather, the day before Cox was required to produce the documents to comply with the subpoena, the NRA, for the first time, insisted that Cox withhold documents and threatened Cox with legal action if he moved forward with the production. This placed Cox in a pickle: either face a claim or lawsuit from the NRA or contempt proceedings from the NYAG. Cox could no longer avoid incurring fees and

was required to engage with the parties. The NRA's demand that Cox not make a timely and complete production sparked a month-long dispute between the NRA, the NYAG, and Cox concerning whether Cox was permitted to produce the documents. (*See, e.g.*, [Dkt. 402](#)). The NYAG threatened Cox with contempt if he did not produce the documents and the NRA threatened him with being in "violation of multiple obligations to the NRA" if he did produce the documents. In Cox's attempt to reach a sensible solution and protect himself, Cox incurred significant fees for a dispute that he never should have had to engage in. Thus, Cox seeks to recover fees related to engaging with both the NRA and the NYAG in response to the subpoena.

### ARGUMENT

Under NY CPLR § 3122(d) "the reasonable production expenses of a non-party witness shall be defrayed by the party seeking discovery." Courts have concluded that this includes "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*, 114 N.Y.S.3d 824, 827 (N.Y. Sup. 2019). Although some courts have concluded that this does not typically include fees associated with conferring with counsel, preparing objections, and the like,<sup>1</sup> the Guidelines for Discovery of Electronically Stored Information (Appendix A to the New York County Commercial Division Rules) does not have that distinction. Rather, the Guidelines state that the "requesting party *shall* defray the reasonable production expenses," including "fees charged by outside counsel and e-discovery consultants." *Id.* (emphasis added).

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<sup>1</sup> *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.” To the extent the Court does not order the NYAG to pay all of Cox’s fees associated with the subpoena, Cox requests that the NRA be ordered to pay any remaining attorneys’ fees related to the disputes surrounding the subpoena for the reasons discussed in Cox’s letter motion dated December 6, 2021. (Dkt. 494).

### **CONCLUSION**

For the foregoing reasons, Cox respectfully requests that this Court enter an order requiring the NYAG and the NRA to pay the reasonable production expenses related to compliance with the subpoena.

Dated: New York, New York  
December 22, 2021

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**CERTIFICATE OF COMPLIANCE**

1. The following statement is made in accordance with N.Y.C.R.R. § 202.70, Rule 17.
2. The foregoing Memorandum was prepared in the processing system Microsoft Word, with Times New Roman typeface, 12-point font.
3. Relying on the word count of the word-processing system, the total number of words in this document, exclusive of the caption, table of contents, table of authorities, and signature block is 770 words.

Dated: New York, New York  
December 22, 2021

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