

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

PEOPLE OF THE STATE OF NEW YORK, BY  
LETITIA JAMES, ATTORNEY GENERAL OF  
THE STATE OF NEW YORK,

Plaintiff,

v.

THE NATIONAL RIFLE ASSOCIATION OF  
AMERICA, INC., WAYNE LAPIERRE,  
WILSON PHILLIPS, JOHN FRAZER, and  
JOSHUA POWELL

Defendants.

Index No. 451625/2020

Motion Seq. No. \_\_\_\_

**AFFIRMATION OF GOOD FAITH AND IN SUPPORT OF PLAINTIFF'S  
ORDER TO SHOW CAUSE EXTEND PRETRIAL SCHEDULE DUE TO DEFENDANT  
NRA'S DISCOVERY NON-COMPLIANCE AND FOR RELATED RELIEF**

MONICA CONNELL, an attorney duly admitted to the Bar of this State, affirms under penalties of perjury pursuant to Civil Practice Law and Rules 2016 as follows:

1. I am an Assistant Attorney General and Senior Litigation Counsel in the Office of the Attorney General of the State of New York ("OAG"), who has brought this action and appears on behalf of the People of the State of New York.

1. I submit this Affirmation in support of Plaintiff's application by order to show cause seeking expedited relief in the form of an Order extending each of the deadlines in the current Scheduling Order (NYSCEF 463) by three months from the certified completion of the document production and delivery of privilege logs by Defendant National Rifle Association ("NRA"). This extension is necessary due to the NRA's long delayed and still ongoing document production, failure to deliver privilege logs and related discovery failures that have

substantially impaired the OAG's ability to prepare for the upcoming depositions in this matter. The requested extension will allow the Special Master O. Peter Sherwood, upon his appointment, to address the OAG's request for an order compelling the NRA to complete its document production, including documents post-dating the filing of this action, and privilege logs, by February 2, 2022 or such other date set by the Special Master.

2. The OAG also asks the Court for an Order compelling the NRA to comply with directions of the Court concerning the following: (1) the review and production of certain documents relating to former NRA executive Christopher Cox and his arbitration with the NRA; and (2) the review and production of certain documents relating to Defendant Joshua Powell. The OAG asks the Court to compel the NRA to comply with such directions by January 28, 2022 or such other date set by the Court.

3. I am familiar with the facts and circumstances set forth in this Affirmation, which are based upon my personal knowledge and information contained in the files of the OAG.

**The NRA's Failure to Comply with Discovery Deadlines, and Belated, Ongoing and Incomplete Document Production**

4. In January 2021, the parties agreed upon—and the Court verbally approved—a scheduling order later entered on the docket ("Scheduling Order No. 1") (NYSCEF 330). Under that schedule, the deadline for the completion of document production by the parties was October 8, 2021, and the deadline for the completion of all fact discovery was December 17, 2021.

5. The Plaintiff served its initial Requests for Production upon the NRA on or about June 25, 2021 ("OAG RFP"), with responses due on July 15, 2021. When the NRA served its responses and objections, it did not produce any documents. Instead, it asserted boilerplate objections to almost all of the requests and stated that notwithstanding such objections, "it will

conduct a reasonably diligent search of available and accessible sources and will produce documents responsive to this Request at a mutually agreeable time and place, to the extent such documents exist.” A copy of the NRA’s responses to the OAG RFP is annexed hereto as Exhibit A.

6. The OAG notified the NRA that it wanted to receive responsive documents as soon as possible. At a July 30, 2021 meet and confer requested by the OAG, the OAG objected to the NRA’s delay in production and the NRA’s responses to the OAG RFP. Much of the subject of that meet and confer is set forth in an August 4, 2021 letter to NRA’s counsel, annexed hereto as Exhibit B. The OAG continued to affirmatively request and participate in meet and confers with the NRA thereafter in efforts to obtain compliance. Despite these efforts, the parties failed to resolve all outstanding issues.

7. On September 21, 2021, in advance of a scheduled conference, the OAG wrote to the Court regarding the NRA’s failure to produce and outlining the OAG’s attempts to meet and confer. At that point, the NRA had produced a total of 37 documents. A copy of that letter is annexed hereto as Exhibit C.

8. Later that evening, seemingly in response to the OAG’s letter, the NRA produced some additional documents.

9. Ultimately, for reasons set forth below, the OAG agreed to a rolling document production by the NRA. However, the NRA could not complete its production when it was due or even by the October 8, 2021 document production deadline agreed to in Scheduling Order No. 1. In an effort to accommodate the NRA, the OAG agreed to extend the NRA’s deadline to complete document production to November 8, 2021. That was the last extension of the NRA’s document production agreed to by the OAG.

10. The NRA did not complete its document production by November 8, 2021. In subsequent meet and confers, the NRA indicated that it needed until the end of November to complete document production. Then it indicated that it needed until December 15, 2021. The OAG did not agree to this extension. Nevertheless, given the absence of documents, and other discovery disputes being litigated by the parties, the OAG agreed to the NRA's proposal to extend the deadlines in Scheduling Order No. 1 by approximately two months.

11. The new order ("Extended Scheduling Order") (NYSCEF 463) set December 20, 2021 as the deadline for all document production by the parties and February 15, 2022 as the end date for all fact discovery. The OAG did not agree to extend the NRA's responses to the June 2021 OAG RFP to December 20, 2021. In any event, the NRA has not complied with that or any other relevant deadline for its production.

12. The OAG served supplemental requests on November 30, 2021. A true and correct copy of those demands is annexed hereto as Exhibit D.

13. Between July and November 30, 2021, the NRA produced approximately 38,000 documents. This figure includes the re-production by the NRA of the thousands of documents previously produced in its bankruptcy proceeding in the United States Bankruptcy Court for the Northern District of Texas entitled *In Re National Rifle Association of America and Sea Girt LLC*, Jointly Administered, Case No. 21-30085-hdh11 (Bankr. S.D. Tex.).

14. Beginning in December 2021, the NRA began to make a series of voluminous productions to the OAG that continue even as of the date of this filing. Those productions, and the number of documents contained therein are set forth below:

<b>Date of Production</b>	<b>Number of Documents</b>
12/6/2021	75,672
12/17/2021	13,997
12/18/2021	13,392
12/19/2021	9,095
12/21/2021	4,015
12/23/2021	1,064
12/28/2021	919
12/29/2021	4,900
1/3/2022	226
1/11/2022	295
1/11/2022	114
1/12/2022	19,113
1/13/2022	16,755
1/16/2022	3,119
1/19/2022	17,565 (over 100,000 pages)
1/20/2022	undetermined, upload in process

The NRA has made these productions by email. In almost every instance the production is made without warning and without any cover letter or other method of identifying what is being produced or what is being withheld in the given production. As evidenced by the chart above, the NRA has produced substantially more documents in January 2022 than it did between July and the end of November, and its productions of responsive documents remain ongoing.

15. The OAG inquired of the NRA but the NRA would not, or could not, inform the OAG when its production will be complete. Even as of January 18, 2022, the NRA admitted that its productions were not complete. The OAG endeavored to work collaboratively with the NRA with regard to search terms. However, the OAG's recommendations that the NRA revisit terms with the OAG after review began if non-responsiveness rates were high were largely ignored, ultimately resulting in voluminous productions containing many thousands of spam and other irrelevant emails, unnecessarily wasting the NRA's and the OAG's time and resources.

16. On January 4 and 7, 2021, the OAG wrote to the NRA to follow up on a December meet and confer and request the status of high priority documents still missing from the NRA production. The OAG noted:

[A]s we have had an opportunity to review the productions, it has become increasingly clear—particularly with respect to the collection and production of non-email documents and the categories of documents we have repeatedly discussed since last September—that the NRA's responses to our document requests are inadequate.

One of the reasons we requested a rolling production was in order to assess the adequacy of the NRA's production in real time to meet and confer sooner rather than later on how to address issues. Instead, the NRA has left us little time to meaningfully review the productions ahead of the start of fact witness depositions. Without waiving other objections as to the adequacy of the production, below I highlight some areas where the prejudice to us is most acute, and where we need responses ASAP in light of the depositions starting next week.

A true and correct copy of that email is annexed hereto as Exhibit E (January 4-7, 2022 email chain). As discussed below, many of the high priority categories of documents identified in the January 7<sup>th</sup> email are still outstanding.

17. The NRA's document production has continued months after it was due to be completed and almost a month after the end date for party document production in the Extended Scheduling Order.

18. The NRA has long been on notice that nearly thirty depositions by the OAG were scheduled to take place before the current end of fact discovery on February 15, 2022.

19. Two depositions noticed by the OAG took place in the last week. In both instances, the OAG was forced to proceed without document production being complete and with hundreds or thousands of responsive documents, including documents relevant to the witness, being produced just before the deposition.

**The NRA Has Not Produced A Privilege Log**

20. The NRA has not produced a single privilege log. See Ex. E (January 4<sup>th</sup> email included as part of January 7, 2022 email chain). At a December 22, 2021 meet and confer, counsel for the NRA indicated that it could not even predict when it would produce a privilege log and it has not produced one yet. A privilege log is particularly important here given the role that according to multiple witnesses the NRA counsel, the Brewer firm, had in addressing key governance and compliance matters that are at issue in this matter.

**The NRA's Method of Production Delays and Obfuscates What it is Producing**

21. The NRA has almost entirely failed to provide the OAG with any indication as to what documents are included in its productions.

22. For example, the NRA has failed to produce documents as they are kept in the regular course of business or to organize and label them to correspond to the categories in the OAG RFP.

23. The OAG asked for the NRA to comply with its obligations under CPLR 3122(c), to begin rolling production and to clarify what it was producing and what it was withholding. In a September 24, 2021 email, the OAG noted that

While we appreciate the NRA's production of documents on Tuesday, approximately 800 of the 1,900 documents we received were duplicates of documents that have already been

produced to us. Furthermore, the documents do not appear to have been produced with any cognizable order, with emails in a chain scattered in the production without regard to custodian or date. We wish to avoid such confusion and duplication going forward, and, further to Monica's email below to which we have received no response, would like to confer on the best way for productions to be rolled out to ensure that the NRA is complying with CPLR 3122(c).

A true and correct copy of a September 21, 2022 email chain is annexed hereto as Exhibit F.

24. During meet and confers, the OAG learned that the NRA was not producing responsive documents for each demand nor was it producing documents in the manner they are kept in the ordinary course of business. Instead, the NRA had digitized potentially responsive materials it gathered and intended to identify responsive documents solely by using search terms and regardless of how the documents were maintained in the ordinary course of business.

25. In an effort to obtain document production more quickly, the OAG requested that the NRA produce by categories those documents that should be readily identifiable and available for production while also agreeing to search terms to identify responsive documents the location of which was not immediately evident (*e.g.*, emails). In an August 2021 email, the OAG specifically outlined categories of documents that the NRA should be able to produce readily. The OAG followed up with this request on several occasions, including on September 28, 2021. Exhibit G (August 2021 email chain); Exhibit F (September 2021 email chain). As of this date, even in the recent batches of tens of thousands of documents produced to the OAG in the last two weeks, it appears that the NRA has not produced such documents by category. Instead, to the extent that NRA has produced documents falling into these readily identified categories, they are randomly distributed in voluminous productions, making it exceedingly difficult to locate them.

26. One important example of the NRA's failure to produce whole categories of documents is the OAG's demand that the NRA produce documents provided to the NRA Board



and its key committees during the relevant period. The OAG asked the NRA to search for these categories of documents in the electronic files that the NRA maintained for the purpose of these board communications, which the OAG understands are separate from the NRA's email system. It does not appear that the NRA has undertaken any search for these documents, but instead ran search terms for communications in the NRA's email system. The NRA frequently used an encrypted electronic transmission service called "SendInc." to transmit sensitive information to board members. The NRA has produced 839 documents with secure@sendinc.net in the "From" field. These electronic transmissions indicate that documents were transmitted between the NRA and board members via SendInc. But the NRA has not produced the attachments referenced in the electronic transmissions, i.e., the documents and substantive materials sent to or received from the Board. The OAG has repeatedly asked the NRA to produce such information or, if it is located elsewhere in the production, to identify the same. The NRA has still not provided this outstanding information. *See* Ex. E.

**The NRA Is in Violation of This Court's Directions With Regard to the Review and Production of Information from Cox and Powell**

27. **The Cox Documents:** The OAG subpoenaed documents from former NRA executive Christopher Cox relating to his arbitration with the NRA ("Cox Documents") in August 2021. At the December 10, 2021 conference, the Court indicated that it "hadn't heard anything" to make it disagree with the OAG's entitlement to such materials and directed expedited briefing on a motion to compel. NYSCEF 402; Connell Aff. H (December 10, 2021 Conference) pp. 26-27.

28. On January 4, 2022, this Court granted the OAG's motion to compel and ordered that the NRA and/or former NRA executive Christopher Cox begin a rolling production of the Cox Documents.. Specifically, in light of the upcoming depositions, the Court directed that the

documents be produced “as soon as they are ready. So the first slug should go out this week, if it's already been done, or no later than next week.” NYSCEF 540 (January 4, 2022 Transcript), p. 42.

29. Just hours prior to this filing, Mr. Cox produced to the OAG responsive documents that the NRA had finally completed reviewing despite having had Mr. Cox’s complete proposed production since at least October 2021. NYSCEF 540, pp. 41-42. The OAG has not yet been able to review these documents to determine the sufficiency of the production. This production is not sufficient compliance with the Court’s order because the NRA has not produced a privilege log or otherwise informed the OAG what documents it required Mr. Cox to withhold from production or the basis for withholding the documents.

30. The OAG has already suffered prejudice by the delayed production of the Cox documents due to the NRA’s dilatory conduct. The OAG had to proceed with the deposition of former NRA Treasurer and CFO Craig Spray on January 14, 2022, without the benefit of the documents.

31. **The Powell Documents:** The OAG has been endeavoring to obtain a tranche of documents from Defendant Joshua Powell since July 2021. Powell withheld the documents as containing potentially privileged information. The problem presented was that the potentially privileged documents were interspersed in the same tranche, with the privilege owned by the NRA in regard to some documents and the privilege owned by Powell in regard to others. Powell proposed an initial privilege review by an independent attorney. Production to the OAG was being blocked because Mr. Powell and the NRA could not agree on a process for conducting a privilege review of these documents.

32. Ultimately, the issue was presented to the Court. At the status conference held on December 10, 2021, the Court directed the NRA and Defendant Powell to proceed expeditiously with a review and production process concerning the materials in Mr. Powell's possession which the NRA sought to pre-review for privilege ("Powell Documents"). NYSCEF 432, 435, 464; Ex. H (December 10, 2021 Transcript). The Court specifically directed that in light of the upcoming depositions, "everything should move quickly." *Id.*, pp. 19-20.

33. Defendant Powell's counsel informed the OAG that, following the status conference, they proceeded with having contract attorneys prepare the documents and, on January 12, 2022, they sent a letter to the NRA to coordinate review and production. Powell's counsel also informed the OAG that the NRA did not respond until January 18, 2022, at which point the NRA sent a letter (not copying the OAG) objecting to the procedure proposed by Defendant Powell's counsel, which the Court considered a "rational compromise and a practical one" at the December 10<sup>th</sup> status conference. Ex. H, pp. 12-13. Thus, the NRA has defied the Court's directive to move quickly and little to no headway has taken place and no production of the Powell Documents has been made. The OAG is faced with again making an application to the Court to obtain these documents. The OAG was also forced to adjourn the deposition of Defendant Powell, which was scheduled to take place on January 22, 2022, because it has been unable to obtain these documents.

#### **The NRA Has Delayed Production of Communications with its Independent Auditor**

34. The OAG has sought, inter alia, certain communications and information exchanged between the NRA and the NRA's independent auditor. ("Aronson Communications"). The OAG asked for such documents in OAG RFP 23 (calling for production of all communications with the NRA's external auditor, Aronson). Ex. A. As of the date of this filing, it does not appear that the NRA has produced the Aronson Communications.

35. The OAG issued a subpoena to Aronson on June 21, 2021, which called for production of the Aronson Communications to extent found in Aronson's files. Aronson's production has been greatly delayed because the NRA has insisted on pre-reviewing the Aronson Communications, even though the NRA should have copies of all such documents in its possession. This has resulted in a months-long process in which Aronson has pulled relevant tranches of documents and given them to the NRA and its affiliate, the NRA Foundation, for privilege review. According to Aronson's counsel, this process has taken in excess of five weeks for a single tranche. In the meantime, the NRA has not produced important documents relating to the nature and sufficiency of its independent audit and has effectively blocked production of the same from the auditor itself. The NRA has not responded to the OAG's requests as to whether the NRA is producing this material in its ongoing production. Aronson is scheduled to be deposed on February 2, 2022.

**The NRA's Failure to Timely Prioritize Production of Materials to Permit Certain Depositions to Proceed and Prejudicial Partial Production of Documents on the Eve of Depositions**

36. The OAG asked the NRA to prioritize productions that would permit the completion of scheduled depositions. The NRA failed to do so and continues to produce documents relevant to witness testimony on the eve of depositions. The OAG has been forced to adjourn depositions because it did not receive responsive information in time and, to the extent it has proceeded with certain depositions as scheduled, it has been prejudiced by the NRA's incomplete and ongoing production. Below are several examples of specific depositions for which the OAG has suffered prejudice:

- a. **NRA Security Chief Jim Staples:** The OAG asked the NRA to prioritize production of documents in relation to NRA Security Chief Jim Staples. Ex. F

(September email chain). Mr. Staples was supposed to be deposed on September 28, 2021. The OAG asked that documents relevant to Mr. Staples and NRA security be produced on a priority basis. Yet the NRA did not complete production of security-related documents by that time and, just prior to the deposition, the NRA discovered multiple boxes of security-related information in Staples' possession that had not previously been reviewed or produced. *Id.* The OAG was forced to adjourn the deposition for many months. Mr. Staples is currently scheduled to be deposed on January 26, 2022. Yet on January 19, 2022, among the more than 17,000 documents the NRA produced were approximately 2,300 new documents relevant to Mr. Staples. Moreover, it is not clear whether the productions relevant to Mr. Staples are complete.

- b. **NRA Managing Director, Executive Operations Mildred Hallow:** The OAG also asked the NRA to prioritize production of documents in relation to Mildred Hallow. Ex. F (September email chain). The OAG was forced to adjourn Ms. Hallow's original deposition by several months because it did not receive responsive information in time. Given the approaching end date of discovery, the OAG nevertheless proceeded with Ms. Hallow's rescheduled deposition on January 20, 2022 without the NRA's document production being completed. Just prior to her deposition on January 20th, the NRA produced thousands of pages of documents, including text messages and other documents relating to Ms. Hallow which are highly relevant to the allegations in the Amended and Supplemental Complaint.

c. **Former NRA CFO and Treasurer Craig Spray:** The OAG requested information relating to the NRA's former Treasurer and CFO Craig Spray, including relevant text messages, documents related to Mr. Spray's termination by the NRA, and communications related to the negotiation of all post-employment agreements with Mr. Spray. The NRA failed to produce responsive text messages until the evening before Mr. Spray's deposition. The NRA also belatedly produced the post-employment agreement under which it has paid Mr. Spray following his termination by the NRA. Further, the NRA did not produced in advance of Mr. Spray's deposition communications relating to the negotiation of that agreement, or any other post-employment agreements with Mr. Spray. Mr. Spray claims that he was sidelined within the NRA when he raised questions about the NRA's regulatory filings. He was not informed that the NRA was filing for bankruptcy until the day the bankruptcy petition was filed. Wayne LaPierre fired him shortly after. However, the NRA sought Mr. Spray's cooperation in regard to the bankruptcy and this enforcement action. Thus this information is highly relevant and probative here. The NRA's conduct prejudiced the Plaintiff in limiting the OAG's ability to prepare adequately for his deposition.

37. The OAG's used its best efforts to obtain full, complete and timely document production from the NRA but has been unable to do so.

**Appointment of a Special Master**

38. At the status conference held on December 10, 2021, the Court again recommended appointment of a discovery special master and specifically mentioned Justice

Peter O. Sherwood. A true and correct copy of that transcript is annexed hereto as Exhibit H, at pp. 3-4, 20, 33-34, 36-37.

39. On January 12, 2022, the parties reported to the Court that they had agreed to the appointment of Justice Sherwood as Special Master.

40. The parties are in the process of finalizing the proposed stipulation and order for Justice Sherwood's appointment. They intend to provide their proposal to Justice Sherwood for his review and then submit to the Court for review and approval.

**The OAG Has Been Unable to Resolve the Discovery Disputes with the NRA**

41. The OAG has met and conferred with the NRA multiple times, including repeatedly in December 2021 and January 2022, to try to resolve completion of the NRA's document production and the specific issues having to do with the document productions. The OAG also wrote to the NRA to ask about production of particular documents. The parties have been able to resolve a number of discovery dispute amicably in this action, but have not been able to do so with regard to the timeliness and sufficiency of the NRA's document production, which does not comply with the NRA's obligations under the Civil Practice Law and Rules and the agreed upon Scheduling Orders.

42. In light of the foregoing, the OAG has moved this Court to extend the deadlines in the current Scheduling Order by three months from the certified completion of the NRA's document production, including privilege logs. The OAG has been forced to seek this relief due the NRA's discovery delays. The extension of time will allow the soon to be appointed Special Master, Hon. O. Peter Sherwood to address the OAG's request to direct the NRA to complete its production of documents and privilege logs by February 2 or such other date as set by the Special Master. It will also allow the OAG to re-schedule depositions to allow the office a

reasonable time to review the NRA's belated and apparently ongoing document production in advance of those depositions.

**The NRA's Refusal to Extend the Discovery Deadlines**

43. On January 18, 2022, having just received tens of thousands of documents from the NRA in a late production, still not having categories of documents or certainly highly relevant documents, and with no production of privilege logs, the OAG asked the NRA to meet and confer regarding the discovery schedule. The OAG asked the NRA to consent to an extension of the dates for discovery set out in the Extended Scheduling Order and to communicate its position by that evening. The NRA responded with a letter served late on the night of January 21, 2022. A true and correct copy of that letter is annexed hereto as Exhibit I. The NRA refused to consent to a discovery extension.

44. On January 19, 2022, the OAG asked for the other Defendants' consent to an extension of the discovery period. Defendant Joshua Powell consented to the extension. Defendant Wilson Phillips was willing to consent to an extension of the discovery schedule provided assurance "that there are appropriate corresponding extensions of subsequent deadlines." Defendants Wayne Lapierre and John Frazer did not respond to a request for their consent.

45. This is the OAG's first request to enlarge the dates in the Extended Scheduling Order. No prior application for this relief has been made.

Dated: New York, New York  
January 21, 2022

*/s/ Monica Connell*  
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Monica Connell