Mot. Seq. No. 13

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 Hon. Joel M. Cohen

ATTORNEY GENERAL'S REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION TO DISMISS

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Plaintiff People of the State of New York, by Letitia James, Attorney General of the State of New York ("Attorney General" or "OAG") respectfully submits this reply memorandum of law on behalf of Plaintiff-Counterclaim Defendant Letitia James, Attorney General of the State of New York, in her Official and Individual Capacities, in further support of her motion, brought pursuant to Rule 3211(a)(2) and (7) of the New York Civil Practice Law and Rules, to dismiss Defendant the National Rifle Association of America (the "NRA")'s amended counterclaims with prejudice.

PRELIMINARY STATEMENT

The NRA has failed to rebut the Attorney General's showing in her moving memorandum, NYSCEF 279, that the NRA's Amended Counterclaims are subject to dismissal in their entirety. In its opposition brief, NYSCEF 543, the NRA misstates or ignores relevant law, mischaracterizes the allegations in the Attorney General's Amended and Supplemental Complaint ("Complaint"), and fails to address the fatal weaknesses in its counterclaims.

Enforcement targets rarely agree with a prosecutor's decision to prosecute, and the NRA is no exception. But courts are rightly reluctant to invade the province of prosecutorial decision-making absent clear evidence of a constitutional harm, and the NRA's false allegations of bias and conspiracy, even taken as true for the purpose of this motion, fall far short of satisfying the heavy burden needed to state a viable constitutional claim.

The Court should grant the Attorney General's motion to dismiss the NRA's Amended Counterclaims. The Attorney General's prosecutorial decisions are presumed valid, and the NRA's legal challenges to the OAG's investigation and enforcement action fail as a matter of law. The NRA ignores that, under controlling precedent, it must plead "but-for" causation to state a First Amendment retaliation claim. The NRA has not, and cannot, meet that standard.

The NRA's attempt to save its selective enforcement claims fares no better because it has not adequately alleged it was treated differently than similarly situated charities for impermissible reasons, as it must, and its assertion that strict scrutiny applies here is wrong. The NRA's arguments in support of its constitutional challenge to New York's dissolution statutes are baseless. It is simply incorrect that such challenges are not subject to motions to dismiss. Finally, the Attorney General is entitled to both absolute and qualified immunity, which preclude the monetary relief that the NRA seeks here.

ARGUMENT

I. THE NRA HAS FAILED TO STATE A COUNTERCLAIM FOR RETALIATION

In its opening brief, the OAG demonstrated that the NRA has failed to allege retaliation under either the First Amendment to the U.S. Constitution or Article I, Sections 8 and 9 of the New York State Constitution. NYSCEF 279 at 18-22. In its opposition, the NRA has failed to rebut any of the OAG's arguments but, most simply and dispositively, has failed to plead facts demonstrating that unconstitutional retaliation was the but-for cause of the Plaintiff's enforcement actions, as it must, or that it has suffered a cognizable injury. Accordingly, for the reasons given below and in its opening brief, the NRA's First, Second, Third, and Fourth Counterclaims should be dismissed.

A. The NRA must, but has not and cannot, allege that improper motive was the but-for cause of the OAG's investigation and prosecution of the NRA.

The NRA does not dispute that the test for causation articulated by the Supreme Court in *Nieves v. Bartlett*, 139 S. Ct. 1715 (2019) is controlling. In *Nieves*, the Court held that the party alleging retaliation must demonstrate that "the adverse action against the [party]would not have been taken absent the retaliatory motive." *Id.* at 1722. Here, the NRA's efforts to sidestep this burden all fail.

First, the NRA asserts, without citing to any relevant authority, that "as a matter of law, a motion to dismiss based on causation is premature." NYSCEF 543 at 13. To the contrary, the *Nieves* causation standard has consistently been applied to, and resulted in the dismissal of, claims on a motion to dismiss. *See Avery v. DiFiore*, No. 18-cv-9150, 2019 WL 3564570, at *4-5 (S.D.N.Y. Aug. 6, 2019) (dismissing retaliation claims with prejudice where plaintiff failed to plead 'but-for' causation under *Nieves*); *accord Richards v. City of New York*, No. 20-cv-3348, 2021 WL 3668088, at *3 (S.D.N.Y. Aug. 18, 2021) (holding that plaintiff admitted to engaging in illegal conduct, and thus failed to allege that improper motive was the but-for cause of alleged retaliation, and granting dismissal). The NRA's reliance on *McManus v. Grippen*, 244 A.D.2d 632 (3d Dep't 1997) is misplaced—there, in a decision pre-dating *Nieves*, the court discussed questions of motive and intent at the summary judgment stage, and not causation. *Id.* at 634.

Second, the OAG's arguments that the NRA has either admitted or been found to have engaged in much of the misconduct that prompted the OAG's investigation and prosecution are by no means "stale." NYSCEF 543 at 13. The NRA's Amended Counterclaims do not seriously attack the allegations made against the NRA but instead focus on the remedy of dissolution. Further, as alleged in the Complaint, the decision dismissing the NRA's failed bankruptcy petition demonstrated, among other things, that the NRA's misconduct continues. NYSCEF 275 at 33-34; *see also* NYSCEF 333 at ¶¶ 221, 355–81, 436, 606.

Even setting aside the NRA's failure to contest the extensive allegations of wrongdoing in the Complaint, it has admitted to misconduct alleged by the OAG in its 2019 and 2020 IRS Form 990 filings, made in November 2020 and 2021, respectively. The NRA admits, among other things, that three of the named defendants—LaPierre, Phillips, and Powell, along with various other current and former employees—collectively received hundreds of thousands of dollars in excess

benefits in the form of improperly reimbursed travel and other expenses. NYSCEF 333 at ¶¶ 147-65, 261-67; Connell Ex. A (NRA 2019 IRS Form 990) pp. 86-87;[1] Connell Ex. B (NRA 2020 IRS Form 990) pp. 87-88.

Furthermore, the NRA's self-serving characterizations of its "top-to-bottom review of its operations and governance" do not disguise the fact that the NRA admits that "a handful of [the NRA's] executives and vendors … abused its trust." NYSCEF 325 at Am. Counterclaims p. 145 ¶ 15. Issues with NRA vendors and executives are among the issues that the OAG investigated, resulting in core allegations in the Complaint. *See*, *e.g.*, NYSCEF 333 at ¶¶ 313–54.

Finally, the NRA's argument regarding temporal proximity is beside the point when it cannot come close to plausibly pleading the but-for causation required by *Nieves*. This enforcement action was commenced in August 2020, long after the Attorney General's election and following an investigation. Further, there was an objective basis for commencing an investigation in the first place, including extensive public reporting of misconduct and the NRA's own 2017 IRS 990 filing and audited financials, which noted substantial inaccuracies in earlier mandated filings. *See* *People v. Ackerman McQueen*, 67 Misc. 3d 1206(A) (Sup. Ct. N.Y. Co. 2020). Given its failure to contest the allegations of pervasive misconduct, its post-filing misconduct (NYSCEF 333 at ¶¶ 580-646) and its own admissions of the truth of central allegations

[1] References to "Connell Ex." refer to the exhibits to the Affirmation of Monica A. Connell in Further Support of the Attorney General's Motion to Dismiss the NRA's Amended Counterclaims, dated January 25, 2022. This Court may take judicial notice of the NRA's official filings. *See Kingsbrook Jewish Med. Ctr. v. Allstate Ins*. Co., 61 A.D.3d 13, 19 (2009); *McLean v. Wayside Outreach Dev. Inc*., No. 13-cv-2963, 2014 WL 11350949, at *1 n.1 (E.D.N.Y. Oct. 14, 2014). Here, the NRA's own regulatory filings contain admissions by the NRA that it has made improper payments to its officers and executives over the years, as alleged in the Complaint, in unknown but significant amounts.

of illegal conduct, the NRA cannot plausibly allege that retaliatory motive was the but-for cause of this enforcement action.

The NRA has failed to demonstrate that an unconstitutional motive is the but-for cause of the OAG's investigation and prosecution. For this reason alone, the NRA's retaliation counterclaims should be dismissed.

B. The NRA has not alleged that it suffered any cognizable injury because of the OAG's investigation and prosecution of the NRA's illegal conduct.

To prevail on its retaliation claims, the NRA must demonstrate either "that [its] speech has been adversely affected by the government retaliation or that [it] has suffered some other concrete harm." *Dorsett v. Cty. of Nassau*, 732 F.3d 157, 160 (2d Cir. 2013). The NRA fails to state such a cognizable injury.

With respect to adverse effects on speech, the NRA attempts to distinguish *Curley v. Village of Suffern*, 268 F.3d 65 (2d Cir. 2001). NYSCEF 543 at 17 n.4. But *Curley* is directly on point in holding that the NRA must show "that [its] First amendment rights were actually chilled. The Supreme Court has held that '[a]llegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm.'" *Curley*, 268 F.3d at 73 (quoting *Laird v. Tatum*, 408 U.S. 1, 13-14 (1972)) (internal citation and quotation marks omitted). Here, the NRA has not alleged any change to its level of activism on behalf of the Second Amendment or its other activities—indeed, the NRA repeatedly stated during the bankruptcy proceedings that it was in its "strongest financial position in years." NYSCEF 279 at 19.

Similarly, the NRA's unspecified and conclusory allegations of other harm do not satisfy the NRA's burden of "show[ing] that [it] suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical." *Guan v.*

Mayorkas, 530 F. Supp. 3d 237, 256–58 (E.D.N.Y. 2021) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016)); NYSCEF 279 at 21–22; Am. Counterclaims p. 169 ¶ 83.

With respect to the NRA's claim that it has diverted assets as a result of the OAG's investigation and litigation, that claim is contradicted by the NRA's pleading that it voluntarily undertook a review of—and uncovered violations of—its internal compliance program prior to the Attorney General's campaign statements and the commencement of this investigation. Am. Counterclaims p. 145 ¶ 15. The costs of remedying and defending illegal conduct is not an injury. Moreover, to this day, the NRA continues to report that it has identified and corrected violations of law—after having those violations pointed out to the NRA by the OAG. *See* Connell Ex. B (NRA 2020 IRS Form 990), pp. 87-88.

Finally, the NRA has not alleged that the OAG's sixteen non-dissolution causes of action—seven of which are alleged against current NRA officers, and four of which are alleged against the NRA—violate the Constitution. Nor has it alleged how the resources spent in connection with or in defense of this litigation are not "fairly traceable" to those unchallenged sixteen causes of action as opposed to the two challenged dissolution causes of action. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 412-13 (2013) (holding that respondents failed to meet the "fairly traceable" requirement for standing where alleged injury could result from either a challenged provision or other, unchallenged provisions).

The NRA has failed to allege any injury it has suffered because of the OAG's investigation and litigation.

II. THE NRA HAS FAILED TO STATE A COUNTERCLAIM FOR SELECTIVE ENFORCEMENT

The NRA's Fifth and Sixth Counterclaims are premised on the Attorney General asking this Court to consider dissolution as a potential remedy. Like its First Amendment claim, this claim

fails because the NRA does not—and cannot—adequately plead that, as a matter of law, it has been treated differently from similarly situated charitable organizations due to impermissible considerations.

To establish selective enforcement, courts require meaningful similarity between the plaintiff and comparators. *See*, *e.g.*, *Bower Assoc. v. Town of Pleasant Val.*, 2 N.Y.3d 617, 631 (2004); *Women Prisoners of D.C. Dept. of Corrections v. D.C.*, 93 F.3d 910, 924 (D.C. Cir. 1996) ("[d]issimilar treatment of dissimilarly situated persons does not violate equal protection") (quoting *Klinger v. Dept. of Corrections*, 31 F.3d 727, 731 (8th Cir. 1994)). The NRA has failed to satisfy that standard. The purported comparators cited by the NRA, see Am. Counterclaims p. 154-56 ¶ 38, enforcement matters where the Attorney General did not seek dissolution, are not similar for several reasons. Most notably, all involved settlements in which the charities agreed to overhaul their leadership, and none of the matters involved the scope and range of wrongdoing at issue in this action. The NRA cannot compare itself to resolved matters involving isolated wrongdoing because that is plainly not what the Attorney General alleges here.[2]

The NRA has also failed to allege that the Attorney General had knowledge of violations by other, similarly situated organizations where she declined to pursue dissolution claims, which is a required element of a selective enforcement claim. *LaTrieste Rest. v. Vill. of Port Chester*, 188 F.3d 65, 70 (2d Cir. 1999). ("[S]elective prosecution implies that a selection has taken place.

[2] The NRA's repeated citation that two individual defendants in this action have left the NRA is irrelevant. The Complaint alleges misconduct involving many officers, directors, and employees and an absence of checks by the Board. *See generally* NYSCEF 333. The NRA ignores that the circumstances under which defendant Wilson Phillips left are the basis for allegations of misconduct. Phillips was allowed to retire of his own accord, with benefits, a pension and a lucrative "no show" consulting contract. *Id.* ¶¶ 230–251. Finally, two of the individual defendants are the current NRA chief executive officer and general counsel and secretary to the Board. Their continued direction of the NRA undermines the NRA's argument that this action relates to isolated bad conduct by a handful of former executives.

Absent a showing that the [defendant] knew of other violations, but declined to prosecute them, [the plaintiff] would ordinarily be unable to show that it was treated selectively.") (internal quotation marks and citation omitted).

Further, the NRA has failed to meet its high burden to overcome the presumption of regularity here. It argues without legal support that the Attorney General is not entitled to the presumption of regularity. NYSCEF 543 at 23 n.8. The NRA is mistaken. Courts have long recognized that prosecutorial decisions by government officials are entitled to a presumption of regularity. *See*, *e.g.*, *People v. Dominique*, 90 N.Y.2d 880, 881 (1997); *People v. O'Hara*, 9 Misc.3d 1113(A), at *4 (Sup. Ct. Kings Cnty. 2005) ("A prosecutor generally has wide latitude in selecting whom to prosecute for a crime. … As with any other government official, there exists a presumption of regularity that the prosecutorial agency performs its duty in accordance with the constitution and law.").

Equally unavailing is the NRA's bald claim that strict scrutiny applies to its equal-protection counterclaims. The NRA's attempt to graft a heightened standard of review onto this inquiry finds no support in the law. When assessing a selective-enforcement claim, courts ask whether similarly situated individuals were treated differently, and, if they were, whether there was a rational basis for that disparate treatment. *See, e.g.*, *People v. Blount*, 90 N.Y.2d 998, 999–1000 (1997). This inquiry does not, as the NRA maintains, trigger a strict scrutiny analysis of whether the government action was the least restrictive means available in exercising its authority. NYSCEF 543 at 19-20. The NRA has not cited a single instance where this invented standard was applied to a claim based on the alleged discriminatory application of a facially neutral law. The only cases cited by the NRA in support of this proposition do not mention (let alone address) selective enforcement claims and have no bearing here. *See id*.

The NRA also quotes at length the Court's remarks from the December 10, 2020 oral argument on the Defendants' motions to dismiss the Complaint. *See id*. at 17–19. But this cited colloquy—which touched on whether dissolution would be appropriate in this case if, "hypothetically, … you got rid of all the bad actors"—neither addresses nor supports the NRA's claim that it has been subjected to an unconstitutional application of New York law for impermissible reasons.

Counterclaims Five and Six fail to sufficiently allege the elements of a selective enforcement claim and should therefore be dismissed.

III. THE NRA'S AS-APPLIED CHALLENGE TO THE N-PCL FAILS

In its opening brief, the OAG demonstrated that the NRA's Seventh Counterclaim—seeking a declaratory judgment that Not-for-Profit Corporation Law ("N-PCL") Sections 1101 and 1102 are unconstitutional as applied to the NRA—fails to state a claim because these N-PCL provisions, as applied here, satisfy the test set forth in *United States v. O'Brien*, 391 U.S. 367 (1968). NYSCEF 279 at 30–33. In response, the NRA ignores the OAG's arguments and instead suggests that as-applied challenges are immune from motions to dismiss. NYSCEF 543 at 27-28.

The NRA's argument is meritless. Courts frequently grant motions to dismiss as-applied challenges on the pleadings. *See*, *e.g.*, *Citizens United v. Schneiderman*, 882 F.3d 374, 385 (2d Cir. 2018) (affirming dismissal of as-applied challenge to charity regulation); *see also Liu v. New York City Campaign Fin. Bd.*, No. 14-cv-1687, 2015 WL 1514904, at *9 (S.D.N.Y. Mar. 31, 2015) (dismissing as-applied challenge to campaign finance regulation).

The NRA relies on two cases standing for the unsurprising proposition that, where there are issues of fact, dismissal of an as-applied challenge is inappropriate. *See Klepper v. Christian Coalition of N.Y., Inc.*, 259 A.D.2d 926 (3d Dep't 1999); *Amazon.com, LLC v. N.Y. State Dep't of Taxation & Fin.*, 81 A.D.3d 183 (1st Dep't 2010). But there are no questions of fact here. The

NRA argues for a declaration that the "allegations of [NRA] executive misconduct do not constitute corporate fraud or criminality and that [N-PCL] Sections 1101 and 1102 are unconstitutional as-applied to the NRA absent such a showing." Am. Counterclaims p. 179 ¶ 136. While the OAG disagrees with the NRA's characterization of the Complaint as merely asserting "allegations of [NRA] executive misconduct," Sections 1101 and 1102 are still constitutional under *O'Brien* even if the NRA's characterization is taken at face value.

Sections 1101 and 1102 provide a potential remedy—dissolution—where the plaintiff has met its burden of proof. *See* NYSCEF 279 at 32. Then, once the plaintiff has met its burden under Sections 1101 or 1102, it must prove to the Court, under Section 1109, that dissolution is in the best interest of the public (under 1101) or the not-for-profit's members (under 1102). This regulatory regime satisfies the *O'Brien* standard, and there are no questions of fact barring dismissal here.

If the NRA's argument is taken on its face, it would present justiciability issues for this Court. The NRA is effectively asking this Court to declare Sections 1101 and 1102 unconstitutional as applied to the NRA *if* the NRA's characterizations of the allegations in the Complaint are taken at face value, *if* a trier of fact determines that the NRA is liable to be dissolved after the OAG proves those allegations, and *if* this Court determines that dissolution is appropriate in accordance with N-PCL § 1109. The speculative nature of the NRA's as-applied challenge dooms it. *See Church of St. Paul & St. Andrew v. Barwick*, 496 N.E.2d 183, 189 (N.Y. 1986). The NRA will have the opportunity to defend against the dissolution claims at trial. It will have the opportunity to plead its case to the Court why dissolution is nevertheless not in the best interests of the public or the members. If, as the NRA claims, the as-applied challenge requires further factual development, then it is not ripe.

IV. THE NRA HAS FAILED TO ESTABLISH ASSOCIATIONAL STANDING TO BRING COUNTERCLAIMS ON BEHALF OF ITS MEMBERS

The NRA's associational-rights counterclaims fail because, as demonstrated in Point I, above, the NRA has not sufficiently alleged an injury to its own and its members' right of association impacting its ability to engage in First Amendment protected activities. The asserted injury must be concrete and particularized, as well as actual or imminent, not conjectural or hypothetical. *See*, *e.g.*, *Mental Hygiene Legal Service v. Daniels*, 33 N.Y.3d 44, 50–51 (2019); *Fighting Finest, Inc. v. Bratton*, 95 F.3d 224, 228 (2d Cir. 1996).

Here, the NRA's allegations of harm to the associational rights of itself and its members are vague and speculative. *See* Am. Counterclaims pp. 147-48 ¶ 20 (alleging OAG's investigation is "pretext" to deprive NRA and its members of their associational rights), p. 158 ¶ 50 (alleging dissolution would deprive "millions of members … of their political voice"), p. 161 ¶ 57 (alleging "members and prospective members of the NRA have expressed … concerns of harassment and retaliation … by those who bear animosity toward the NRA and its political speech"). The NRA has not alleged that the Attorney General—as opposed to its own conduct—has caused any members to suspend or curtail their associational activities. *See Bratton*, 95 F.3d at 228. Nor has it alleged that its own associational activities have been hampered. To the contrary, the counterclaims cite the NRA's continuing robust association and advocacy activities. *See* Am. Counterclaims p. 140 ¶ 1. As the NRA has not set forth any legitimate basis for associational standing, those claims fail.

V. THE ATTORNEY GENERAL IS ENTITLED TO BOTH ABSOLUTE AND QUALIFIED IMMUNITY

A. The Attorney General is entitled to absolute immunity for actions in commencing and prosecuting this action.

The NRA has conceded that the Attorney General is entitled to absolute immunity from damages for her decision to commence this litigation against the NRA. NYSCEF 279 at 34; NYSCEF 543 at 28 (citing *Rodrigues v. City of New York*, 193 A.D.2d 79 (1st Dep't 1993)); *see also NRA v. Cuomo*, 525 F. Supp. 3d 382, 397 (N.D.N.Y. 2021). The Attorney General is thus immune to any claim of damages that the NRA alleges resulted from the decision to commence this action. *See*, *e.g.*, Am. Counterclaims pp. 167-73 ¶¶ 70, 83, 94, 103 (seeking damages as a result of the Attorney General's "commencement of this proceeding" or "commencement of this dissolution proceeding"). Its attempt to assert that it has surviving claims arising solely from the Attorney General's campaign statements and the pre-enforcement investigation, and not from this action, is belied by the relief it seeks: declaratory and injunctive relief relating to this ongoing enforcement action, all of which are barred.

B. The NRA's claims for monetary relief are barred by qualified immunity.

The NRA's assertion that qualified immunity cannot be resolved on a motion to dismiss, NYSCEF 543 at 30-31, is simply incorrect. Qualified immunity is an immunity from suit, not just liability, and must be decided "at the earliest possible stage in litigation." *Rubeor v. Town of Wright*, 191 F. Supp. 3d 198, 205 (N.D.N.Y. 2016) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). The analysis does not, as the NRA suggests, require discovery on its counterclaims. NYSCEF 543 at 32. Qualified immunity applies where an official's "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson*, 555 U.S. at 231 (internal quotation marks omitted). That standard does not require a factual inquiry and is easily met here. The NRA does not have a "clearly established"

right to be free from an enforcement action, particularly where a duly authorized investigation found credible evidence of misconduct. In fact, that is precisely the type of conduct that is objectively reasonable.

The NRA's conclusory assertion that it has a clearly established right to be free from selective enforcement is also not sufficient. In *Ashcroft v. al-Kidd*, the Supreme Court held that restating a general constitutional proposition "is of little help in determining whether the violative nature of particular conduct is clearly established" for purposes of immunity. 563 U.S. 731, 742 (2011). The inquiry is context specific. *Salvador v. Lake George Park Comm'n*, No. 98-cv-1987, 2001 WL 1574929, at *4 (N.D.N.Y. Mar. 28, 2001). For example, in *Salvador*, the court dismissed a selective enforcement claim on qualified immunity grounds, despite allegations of defendant's animus, holding that the defense "is based on whether an official's acts were objectively reasonable. … Thus, the motivation of the individual official is irrelevant to the determination of whether he is entitled to qualified immunity." *Id*.

Here, the NRA alleges selective enforcement of the dissolution claims only, not challenging any of the other claims against it, which are based on some or all of the same facts. Nor has it alleged that the claims against its current and former officers are meritless. There is no clearly established right to be free from a particular remedy being sought in a regulatory enforcement action, and the NRA cannot rely upon the alleged motivation of the Attorney General to overcome her entitlement to qualified immunity.

CONCLUSION

For the foregoing reasons, the Attorney General respectfully requests that the Court dismiss the NRA's amended counterclaims in their entirety and grant such other and further relief as it deems just and proper.

Dated: January 25, 2022
New York, New York

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Attorney Certification Pursuant to Commercial Division Rule 17

I, Monica Connell, an attorney duly admitted to practice law before the courts of the State of New York, certify that the Attorney General's Reply Memorandum of Law in Further Support of Motion to Dismiss complies with the word count limit set forth in Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g)) because the memorandum of law contains 4,157 words, excluding the parts exempted by Rule 17. In preparing this certification, I have relied on the word count of the word-processing system used to prepare this memorandum of law and affirmation.

Dated: January 25, 2022
New York, New York

/s/ Monica Connell
Monica Connell