

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

**AFFIRMATION OF CAROLINE  
HICKEY ZALKA IN SUPPORT  
OF EVERYTOWN’S MOTION TO  
QUASH AND FOR A  
PROTECTIVE ORDER**

CAROLINE HICKEY ZALKA, an attorney duly admitted to the Bar of this State and a partner at the law firm of Weil, Gotshal & Manges LLP (“Weil”), affirms under penalties of perjury pursuant to CPLR 2016 as follows:

1. I submit this Affirmation in support of non-party Everytown for Gun Safety Action Fund, Inc.’s (“Everytown”) motion to quash the Amended Subpoena *Duces Tecum* and *Ad Testificandum*, issued by Defendant and Counterclaim Plaintiff the National Rifle Association of America (the “NRA”) on January 7, 2022 (the “Subpoena”), and for a protective order regarding the same (the “Motion”).

2. On December 30, 2021, the NRA served a subpoena on Everytown. A copy of the the December 30, 2021 subpoena (the “December Subpoena”) is attached hereto as Exhibit 1.<sup>1</sup>

3. On January 10, 2022, Weil, on behalf of Everytown, contacted counsel for the NRA, Brewer, Attorneys & Counselors (“Brewer”) to inform Brewer that Weil represented

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<sup>1</sup> The December Subpoena attached Plaintiff’s Amended and Supplemental Verified Complaint (the “Complaint”) and the NRA’s Amended Verified Answer and Counterclaims (the “Answer”) as Exhibits A and B, respectively. To avoid burdening the Court with unnecessary paper, Exhibit 1 does not include the copies of the Complaint and Answer that were appended to the December Subpoena.

Everytown in connection with the December Subpoena and to schedule a call to discuss the same.

4. On January 10, 2022, the NRA served the amended Subpoena on Everytown. A copy of the Subpoena is attached hereto as Exhibit 2.<sup>2</sup>

5. On January 11, 2022, Weil had a call with Brewer to confirm receipt of the Subpoena. On that call, Weil requested that the NRA extend the document production deadline in the Subpoena (January 20, 2022). Brewer indicated that it would confer with its client and revert, while noting that there was a February 15, 2022 fact-discovery deadline in the underlying litigation that warranted Everytown's deposition taking place on February 2 as noticed.

6. On January 12, 2022, Brewer sent Weil an email indicating, among other things, that (i) the NRA was only willing to agree to a five-day extension of the document production deadline in the Subpoena, and (ii) that the NRA insisted the deposition of an Everytown representative occur on the noticed date in the Subpoena, February 2, 2022. A copy of this email is attached hereto as Exhibit 3.

7. Brewer did not indicate, on the January 11 phone call or the January 12 email, that the NRA's counterclaims were subject to a pending motion to dismiss by Plaintiff, that a hearing on that motion was scheduled for February 25, 2022, and that Plaintiff's position is that discovery on those counterclaims is currently stayed.

8. On January 19, 2022, Everytown served its Objections and Responses to the Subpoena (the "Objections") on the NRA. A copy of the Objections is attached hereto as Exhibit 4.

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<sup>2</sup> Like the December Subpoena, the Subpoena also attached the Complaint and the Answer as Exhibits A and B, respectively. To avoid burdening the Court with unnecessary paper, Exhibit 2 does not include the copies of the Complaint and Answer that were appended to the Subpoena.

9. Also on January 19, 2022, the Office of the Attorney General (“OAG”) sent a letter to the NRA requesting that the NRA withdraw the Subpoena in its entirety. A copy of the OAG’s letter is attached hereto as Exhibit 5.

10. On January 24, 2022, Brewer sent a response letter to the OAG, indicating that it would not withdraw the Subpoena. A copy of Brewer’s January 24 letter is attached hereto as Exhibit 6.

11. On January 27, 2022, Brewer sent Weil an email demanding that Everytown designate a representative to appear at a deposition on February 2, 2022. The email also indicated, among other things, that Brewer would “provide . . . an update on the NYAG’s pending request to extend discovery deadlines.” A copy of Brewer’s January 27, 2022 email is attached hereto as Exhibit 7.

12. On January 28, 2022, Weil sent Brewer a letter in response to Brewer’s January 27 email. The letter indicated, among other things, that Everytown did not intend to produce a witness for a deposition on February 2, in light of the status of the NRA’s counterclaims set forth in the OAG’s January 19 Letter and the upcoming hearing on the motion to dismiss. The letter also noted that Everytown would meet and confer with the NRA regarding the Subpoena, including the request for a deposition of an Everytown representative, in a good faith effort to reach a mutually agreeable path forward, but that Everytown would move to quash the Subpoena in its entirety if the NRA continued to insist that the deposition go forward on February 2. A copy of the January 28, 2022 letter is attached hereto as Exhibit 8.

13. Later that same day, Weil and Brewer had a call to discuss the NRA’s demand for an Everytown representative to testify at a deposition on February 2, 2022. During that call, Weil noted that the NRA and OAG clearly disagreed about the scope and status of discovery on the

NRA's counterclaims in the underlying action, as demonstrated by the January 19 and January 24 Letters. Weil also noted that Plaintiff had recently requested a three-month extension of the fact discovery deadline, which, if granted, would serve to allay concerns raised by the NRA regarding the timing of any deposition of Everytown. Thus, Weil reiterated Everytown's position that it would not produce a witness for a deposition on February 2, 2022, and requested that the NRA agree to postpone such deposition until the parties to the litigation had resolved their dispute regarding discovery on the NRA's counterclaims, or, at a minimum, to the February 25, 2022 hearing on the motion to dismiss. In response, Brewer made clear that it would not agree to postpone the deposition until after the hearing on the motion to dismiss or a determination was made as to whether discovery on the NRA's counterclaims was stayed. Brewer indicated, among other things, that the NRA opposed Plaintiff's request for a three-month extension of the fact-discovery period, and thus, that the February 15, 2022 deadline still governed; that Everytown failed to provide adequate legal authority in its Objections as to the deposition topics in the Subpoena; that the deposition of an Everytown representative was duly noticed for February 2; and that the NRA was entitled to discovery on the deposition topics included in the Subpoena. Brewer also noted that the NRA was aware of a meeting between Everytown and the OAG in February 2019. Weil and Brewer commenced, but did not complete, a discussion of the purported relevance of the testimony requests in the Subpoena, including whether such testimony would be cumulative and duplicative of testimony from the parties. Weil indicated that the parties were at an impasse with respect to the Subpoena and that it would be move to quash the Subpoena and for a protective order before the February 2, 2022 deposition date.

Dated: February 1, 2022  
New York, New York

*s/ Caroline Hickey Zalka*  
Caroline Hickey Zalka

**CERTIFICATION**

I hereby certify pursuant to Commercial Division Rule 17, 22 NYCRR § 202.70(g)(17),  
as follows:

1. The foregoing affirmation was prepared on a computer using Microsoft Word.
2. The total number of words in this affirmation, exclusive of caption, signature block, and this Certification is 1,075.
3. The foregoing document is in compliance with the word count limit set forth in Commercial Division Rule 17.

*s/ Caroline Hickey Zalka*  
\_\_\_\_\_  
Caroline Hickey Zalka

# **EXHIBIT 1**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK - COMMERCIAL DIVISION**

<p>PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>THE NATIONAL RIFLE ASSOCIATION OF AMERICA, WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER, and JOSHUA POWELL,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">and</p> <p>THE NATIONAL RIFLE ASSOCIATION OF AMERICA,</p> <p style="text-align: center;">Defendant-Counterclaim Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK, IN HER OFFICIAL AND INDIVIDUAL CAPACITIES,</p> <p style="text-align: center;">Plaintiff-Counterclaim Defendants.</p>	<p>INDEX NO.: 451625/2020</p> <p style="text-align: center;"><b><u>SUBPOENA DUCES TECUM AND AD TESTIFICANDUM</u></b></p>
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TO: Everytown for Gun Safety Action Fund, Inc.  
450 Lexington Avenue  
New York NY, 10017  
Corporation Service Company  
80 State Street  
Albany NY, 12207-2543

**GREETINGS:**

**PLEASE TAKE NOTICE** that, pursuant to Section 202.70 of the Uniform Civil Rules for the Supreme Court of the State of New York, including Rule 11-f, and article 31 of New York’s Civil Practice Law and Rules (the “CPLR”), Defendant-Counterclaim Plaintiff the National Rifle Association of America (the “NRA”) by and through its undersigned counsel, will take the deposition upon oral examination of Everytown for Gun Safety Action Fund, Inc. (“Everytown”), **on February 2, 2022 at 10:00 a.m. E.T.** or at such other date and time as agreed to by Everytown and the NRA. The deposition will be taken before a notary public or other



person authorized by law to administer oaths, and will continue from day to day thereafter, except for weekends and holidays, until completed. You are invited to attend and cross-examine. The deposition will be on topics material and necessary to the prosecution and defense of the above-referenced action, including the matters identified below.

The deposition will take place at the offices of counsel for the NRA, Brewer, Attorneys & Counselors, 750 Lexington Avenue, 14th Floor, New York, New York, 10022.

**PLEASE TAKE FURTHER NOTICE** that the testimony will be videotaped by an operator from Shreck Video Services c/o Lexitas Legal, 100 Merrick Road, Rockville Centre, New York 11570, and transcribed by a court reporter from Lexitas Legal.

**YOU ARE ALSO HEREBY COMMANDED**, pursuant to the laws of the State of New York and article 31 of the CPLR, including Rule 3120, that all business and excuses being laid aside, to produce all documents specified in the request set forth below, in accordance with the instructions and definitions set forth below, for inspection and copying at the offices of counsel for the NRA, Brewer, Attorneys & Counselors, 750 Lexington Avenue, 14<sup>th</sup> Floor, New York, New York, 10022, **on or before January 20, 2022**, unless agreed upon a different date thereafter by the NRA and Everytown.

**PLEASE TAKE NOTICE** that such disclosure is sought or required because it is relevant, necessary and material to the prosecution and defense of the above-referenced action, as set forth in the pleadings annexed hereto as **Exhibits A and B**.

**PLEASE TAKE FURTHER NOTICE** that failure to comply with this subpoena is punishable as a contempt of Court and may subject you to prosecution under New York law.

Dated: New York, New York  
December 30, 2021

By: /s/ Svetlana M. Eisenberg

William A. Brewer III  
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Svetlana M. Eisenberg  
sme@brewerattorneys.com  
Mordecai Geisler  
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**ATTORNEYS FOR DEFENDANT AND  
COUNTERCLAIM PLAINTIFF THE NATIONAL  
RIFLE ASSOCIATION OF AMERICA**

## I.

**NON-EXCLUSIVE LIST OF MATTERS TO BE ADDRESSED AT THE DEPOSITION  
PURSUANT TO COMMERCIAL DIVISION RULE 11-F**

1. Communications concerning the NRA between (i) You<sup>1</sup> and (ii) (A) the Attorney General, whether in an official or an individual capacity; or (B) James, whether in an official or an individual capacity.

2. For each statement attributed to James and listed in Table A below, Your involvement in the development or communication of such statements.

**Table A**

Statement or Reported Statement by Letitia James (underline indicates emphasis added)	Approximate Date/Event
“The NRA is an <u>organ of deadly propaganda</u> masquerading as a charity for public good.”	July 12, 2018 Press Release <sup>2</sup>
“As Attorney General, Tish James <u>will target the NRA</u> , take on arms manufacturers and dealers, investigate financial backing of gun makers and sellers, and <u>build new models to take on interstate arms trafficking</u> .”	July 12, 2018 Press Release <sup>3</sup>
“Together, we can . . . <u>take on . . . the @nra . . .</u> ”	September 1, 2018 <sup>4</sup>

<sup>1</sup> Capitalized terms are defined in the list of Definitions accompanying the attached requests for documents and other things.

<sup>2</sup> Tish James for Attorney General Press Release, Tish James Announces Attorney General Platform to Protect New Yorkers from Gun Violence, July 12, 2018, <https://www.tishjames2018.com/press-releases/2018/7/12/taking-on-the-scourge-of-gun-violence-and-keeping-new-yorkers-safe/> (Last Visited, October 14, 2021).

<sup>3</sup> *Id.*

<sup>4</sup> @TishJames Twitter post.

Statement or Reported Statement by Letitia James (underline indicates emphasis added)	Approximate Date/Event
“[W]e CAN take down the NRA. We CANNOT waiver on gun control. That’s why I’m running.”	September 3, 2018 <sup>5</sup>
“[The NRA] are nothing more than a <u>criminal enterprise</u> . We are waiting to take on all of the banks that finance them, their investors.”	August 30, 2018, Published Interview with Our Time Press <sup>6</sup>
[T]he NRA . . . is a <u>criminal enterprise</u> .”	September 4, 2018, Video of “Evening with the Candidates” Forum for the Democratic Attorney General Primary Candidates hosted by New York City Bar Association <sup>7</sup>
““NRA . . . needs to be held accountable for the destruction and the loss of lives . . .”	September 27, 2018 <sup>8</sup>
“James said that she made no distinction between the lobbying and charitable arms of the NRA.”	September 27, 2018 <sup>9</sup>
“When I’m Attorney General I’ll take on the <u>@NRA</u> and investigate their status as a non-profit.”	October 8, 2018 <sup>10</sup>
“Tums out they [the NRA] don't like it . . . if you pledge to investigate their status as a non-profit as the next AG of NY.”	October 10, 2018 <sup>11</sup>

<sup>5</sup> @TishJames Twitter post.

<sup>6</sup> Tish James Becomes New York’s Attorney General – First Black Woman Elected to Statewide Office, Our Time Press (Nov. 8, 2018), <https://ourtimepress.com/tish-james-becomes-new-yorks-attorney-general-first-black-woman-elected-to-statewide-office/> (Last Visited, October 14, 2021).

<sup>7</sup> Available at [https://www.youtube.com/watch?v=6n2\\_LHNEUW0](https://www.youtube.com/watch?v=6n2_LHNEUW0) (statement at the 17:50 mark).

<sup>8</sup> <http://liberald.com/stories/nassau-protests-nra-fundraiser.107617> (Oct. 25, 2018) (Last Visited, October 14, 2021).

<sup>9</sup> *Id.*

<sup>10</sup> @TishJames Twitter post.

<sup>11</sup> @TishJames Twitter post.

Statement or Reported Statement by Letitia James (underline indicates emphasis added)	Approximate Date/Event
“The NRA holds [itself] out as a charitable organization, but in fact, [it] really [is] <u>a terrorist organization.</u> ”	October 31, 2018, Published Interview with <i>Ebony</i> <sup>12</sup>
“Let me be clear: when I take office I will investigate the non-profit status of the NRA & take every legal step I can to help ensure another life isn't lost to senseless gun violence. #GunControlNow”	November 8, 2018 <sup>13</sup>
“The NRA is fraught with fraud, abuse, and illegality that has permeated the organization — this is why we filed our lawsuit to remove senior leadership and dissolve the organization last year.”	December 10, 2021 <sup>14</sup>

3. Any of Your meeting(s) or other communications with the Attorney General or any representatives of the Office of the Attorney General of the State of New York, including but not limited to (i) Your February 14, 2019 meeting with representatives of the Office of the Attorney General; and (ii) any other planned, cancelled, or actual such meeting.

4. Your involvement in the development of Campaign materials and/or Campaign fundraising materials, referring to the NRA—directly or indirectly—including but not limited to, any materials referencing the sum or substance of the statements set forth in Table A above.

5. Your involvement in the drafting, contents, timing, and release of any of Campaign statements, Campaign fundraising statements and/or donor solicitations referencing the NRA, directly or indirectly, including but not limited to, the fundraising solicitation issued by James on or about August 6, 2020, a copy of which is annexed hereto as Exhibit C.

<sup>12</sup> Letitia ‘Tish’ James on Becoming New York’s Next Attorney General, EBONY (Oct. 31, 2018) <https://www.ebony.com/news/letitia-tish-james-on-becoming-new-yorks-next-attorney-general/> (Last Visited, October 14, 2021).

<sup>13</sup> @TishJames Twitter post.

<sup>14</sup> [Attorney General James Continues to Fight NRA’s Efforts to Dismiss Corruption Lawsuit | New York State Attorney General \(ny.gov\)](https://www.ny.gov/newsroom/attorney-general-james-continues-to-fight-nra-s-efforts-to-dismiss-corruption-lawsuit)

6. Communications concerning the NRA between (a) You and (b) any of the following Persons or entities—whether directly or indirectly—including but not limited to, any of the Persons' or entities' current or former officers, employees, contractors, investigators, attorneys, agents, representatives, predecessors-in-interest, or designees.

1. Former Governor of New York, Andrew Cuomo;
2. New York State's Department of Financial Services;
3. Maria T. Vullo;
4. Linda Lacewell;
5. Office of the Attorney General for the District of Columbia;
6. Michael R. Bloomberg and/or any other Campaign donor or supporter;
7. Giffords Law Center to Prevent Gun Violence;
8. The Democratic National Committee; and
9. Democratic Attorneys General Association.

7. Communications concerning the NRA—whether directly or indirectly—between the following persons and the Attorney General or James, whether in an official or an individual capacity: (i) Jason Lilien, outside counsel for Everytown and former head of the NYAG's Charities Bureau; (ii) Nicholas Suplina; (iii) Rachel Nash; (iv) Michael-Sean Spence; (v) Michael Kane.

8. Communications concerning the NRA between You and the Campaign.

## **II.** **INSTRUCTIONS**

1. Unless otherwise specified, these Requests apply to all Documents and things in effect, created, recorded, compiled, transmitted, or received from January 1, 2018, through the present.
2. To the extent provided by the CPLR or Commercial Division Rules, the NRA's Requests are intended to be continuing in nature. Responsive Documents or things located any time after a response is due or submitted shall be promptly produced at the place and in the manner specified herein and You are requested and required to supplement Your responses when appropriate or necessary to make correct and complete responses to the full extent provided by the CPLR and/or any other applicable rules or orders of the Court.
3. If there are no Documents or things responsive to any particular request, You shall so state in writing, identifying the number(s) of the Request(s) concerned. To the extent you claim that Documents or things responsive to any particular request are not in Your possession, custody or control, please identify with particularity any Persons and/or entities with possession, custody or control of such Documents or things.
4. To the extent that You have previously produced to the NRA in the above-captioned action (the "Action") or another proceeding Documents or things responsive to any Request, it is not necessary to re-produce those documents provided You identify (i) the Bates numbers of the responsive Documents or things, (ii) the request to which the Documents or things are responsive, and (iii) any applicable privilege log entries relating to such productions. If any such previously produced responsive Documents or things were designated as "confidential" in a separate proceeding, that designation will not be applicable in this Action. If You contend in good faith that a previously produced Document or thing meets the criteria for confidential treatment under the terms of any applicable confidentiality agreement or order in this Action, please identify those

documents or things by Bates number(s) and re-produce those documents with new confidentiality designations and new unique Bates numbers.

5. To the extent You believe that any of the following Requests are vague or ambiguous, You are requested to please notify the NRA immediately and a clarification will be provided.

6. These Requests are intended to include all Documents and things in the possession, custody, or control of Everytown, or subject to Everytown's custody or control, whether directly or indirectly. A Document is deemed to be within Everytown's possession, custody, or control if:

(1) it is within Your actual possession, custody, or control; or (2) it is within the possession of any other person or entity and You have the right to obtain the Document from such person or entity, and You: (a) own the Document in whole or in part; (b) have a right by contract, statute, or otherwise to use, inspect, examine, or copy such Document on any term; or (c) as a practical matter, have been able to use, inspect, examine, or copy such Document when You have sought to do so.

For the avoidance of doubt, these Requests are intended to, in addition to hard copy or paper records, include, but are not be limited to, all Documents and things subject to Your possession, custody, or control that are stored on any computers, tablets, cloud spaces, or cellular devices, including Blackberries, iPhones or other mobile phones, iPads, or other smart phones or devices, whether such devices are owned by You, have been issued to You by another Person or entity, or, regardless of ownership, are being used by your employees or other representatives and agents to conduct Everytown business or business on behalf of Everytown.

7. If any Document or thing requested was formerly in Your possession, custody or control but is no longer available or no longer exists, please submit a statement in writing and under oath that: (i) describes in detail the nature of the Document and its contents; (ii) identifies the Person who prepared the Document; (iii) identifies all Persons who have seen or had possession, custody,



or control of the Document; (iv) specifies the dates on which the Document was prepared, transmitted and/or received; (v) specifies the date on which the Document became unavailable; (vi) specifies the reason why the Document is unavailable, including whether it has been misplaced, lost, destroyed or transferred; (vii) if it has been destroyed or transferred, specifies the conditions of and reasons for such destruction or transfer and the Persons who requested and performed the destruction or transfer; and (viii) identifies all Persons with knowledge of any portion of the contents of the Document.

8. Unless otherwise indicated, the use in these Requests of You, Your name or the name of any party, individual, business organization, or other legal entity, shall specifically include all of that individual's or entity's present or former employees, officers, directors, agents, representatives, members, departments, bureaus, sections, affiliates, subsidiaries, corporate parents, attorneys, and all other persons acting on his, her, its, or their behalf.

9. These Requests seek production of responsive Documents or things in their entirety, without abbreviation, deletion, or redaction. For the avoidance of doubt, each responsive email message or other Document should be produced with all of its respective email or other attachments, and each responsive email attachment should be produced with its respective parent email message and with all email attachments to that respective parent email message. To the extent that You consider an email message and its corresponding email attachment(s) to constitute separate Documents, the NRA requests the production of all Documents attached to each responsive email message, as well as all e-mail messages to which a responsive Document is attached and all other Documents attached to said email messages. For the further avoidance of doubt, all responsive electronic Documents should be produced with all their corresponding metadata, including at minimum the types of metadata listed below in Appendix A. To the extent

that You consider an electronic Document's metadata to constitute a separate Document, the NRA requests the production of all metadata that correspond to each responsive electronic Document and all electronic Documents that correspond to each responsive piece of metadata.

10. Should You interpose an objection to a Request or Requests, please clearly indicate to which part or portion of the Request or Requests the objection is directed and provide all Documents and things to which objection is not made as if such part or portion were propounded as a separate request.

11. For each Document (or portion of a Document) withheld on any ground, You shall insert one or more placeholder page(s) in the production bearing the same document control number(s) borne by the Document withheld, in the sequential place(s) originally occupied by the Document before it was removed from the production. You shall also submit with the production a statement in writing and under oath that provides, for each Document withheld: (i) a description of the nature of the Document and its contents; (ii) the date of the Document; (iii) the Document's authors and recipients; and (iv) the legal ground(s) for withholding it from production. If the legal ground is attorney-client privilege, please also indicate the names of the attorneys involved in the Document or Communication and the nature of their involvement (e.g., as authors). Such statement (or log) shall accompany each production. Further, for any Document withheld on any ground, please include in the relevant production placeholder pages equivalent in number to the page-length of the withheld Document.

12. You are to produce the Documents as they are kept in the regular course of business or to organize and label them to correspond to the numbered categories in the Requests.

13. Unless otherwise specified herein or subsequently agreed to by the NRA and Everytown, all responsive documents must be produced in the form specified in Appendix A.

**III.**  
**DEFINITIONS**

1. “Action” shall mean the above-captioned action, Index No. 451625/2020, in the Supreme Court of the State of New York, Commercial Division, New York County, including: (a) the claims asserted by the Attorney General of New York State against the NRA and other defendants and any defenses asserted thereto, and (b) the counterclaims asserted by the NRA against the Attorney General of New York State and any defenses asserted thereto.
2. “All” and “any” shall be construed so as to bring within the scope of the Requests all Documents which might otherwise be construed to be outside the scope.
3. “You,” and “Your” shall mean Everytown for Gun Safety Action Fund, Inc., and any person acting, or who has so acted, on its behalf, including, but not limited to, any of their former or current agents, representatives, officers, directors, employees, affiliates, independent contractors, attorneys, and each and every person acting on its behalf or at its direction or on whose behalf they were acting with respect to the matters referred to herein.
4. “Communication(s)” shall mean any oral, written, or recorded utterance, notation, or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, emails, text messages (including text messages sent or received over work issued or personal devices), voicemails, conversations, facsimiles, letters, notes (handwritten or otherwise), telegrams, cables, telexes, dialogues, discussions, negotiations, interviews, consultations, telephone calls, agreements, and other understandings, among two or more persons. The term “Communication(s)” includes written summaries of any of the foregoing Communications. Drafts of Communications—including unsent drafts which may or may not have been sent to or received by another person and hence may not thus have been “among two or more persons”—are encompassed by the term “Communication(s).”

5. “Custodian” shall mean any Person that, as of the date of this Subpoena, maintained, possessed, or otherwise kept or controlled a Document and/or a Communication.

6. “Document(s)” has the broadest meaning permitted by the CPLR and any other applicable laws and rules including, without limitation, any written, recorded, graphic, or other matter, whether sent or received or made or used internally, however produced or reproduced and whatever the medium on which it was produced or reproduced (whether on paper, cards, charts, files, printouts, tapes, discs, belts, video tapes, audiotapes, tape recordings, cassettes, or other types of voice recording or transcription, computer tapes, databases, emails, pictures, photographs, slides, films, microfilms, motion pictures, mobile devices, smart phones, or any other medium), and any other tangible item or thing of readable, recorded, or visual material of whatever nature including without limitation originals, drafts, electronic documents with included metadata, and all non-identical copies of each Document (which, by reason of any variation, such as the presence or absence of handwritten notes or underlining, represents a separate Document within the meaning of this term). The foregoing specifically includes information stored electronically, whether in a computer database or otherwise, regardless of whether such Documents are also presently in documentary form.

7. “Attorney General” shall mean the Office of the Attorney General of the State of New York and all other persons acting or purporting to act with, for, or on its, his, or her behalf, including, but not limited to, consultants, advisors, attorneys, or any person acting in an advisory, agency, or consulting capacity, including, but not limited to: (i) Attorney General Letitia James (“James”), in her official and/or individual capacity; and (ii) where applicable, other agencies, offices, bureaus, departments, or divisions of the State of New York and their constituent personnel.

8. The “NRA” shall mean the National Rifle Association of America and any person acting, or who has so acted, on its behalf, including, but not limited to, any of its or their current or former agents, representatives, officers, directors, employees, independent contractors, attorneys, and each and every person acting on their behalf or at their direction or on whose behalf they were acting with respect to the matters referred to herein.

9. “Campaign” shall mean the campaign or campaigns of Letitia James to be (a) elected New York State Attorney General in the 2018 election year, (b) reelected New York State Attorney General in the 2022 election year, or (c) elected Governor of New York in the 2022 election year.

10. “Person” and “persons” includes natural persons, groups of natural persons acting in a collegial capacity (e.g., a committee or counsel), firms, corporations, partnerships, associations, joint ventures, trusts, and any other incorporated or unincorporated business, governmental, public, or legal entity.

11. “Relating to,” or “concerning” shall mean relating to, concerning, reflecting, referring to, having a relationship to, pertaining to, identifying, containing, pertinent to, comprising, setting forth, showing, disclosing, describing, explaining, summarizing, evidencing, or constituting, directly or indirectly, in whole or in part, or to be otherwise factually, legally, or logically connected to, the subject matter of the particular Request.

12. Whenever appropriate, the singular form of a word shall be interpreted in the plural, and vice-versa, and the words “and” and “or” shall be construed either disjunctively or conjunctively, as necessary, to bring within the scope of the Requests all Documents and things that might otherwise be construed to be outside their scope.

**IV.**

**REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:**

All Documents and Communications concerning the NRA between (i) You and (ii) (A) the Attorney General, whether in an official or an individual capacity; or (B) James, whether in an official or an individual capacity.

**REQUEST FOR PRODUCTION NO. 2:**

For each statement attributed to James and listed in Table A below, please produce all Documents and Communications related to Your involvement in the development or communication of such statements, including but not limited to:

- i. Any talking points, scripts, prepared speeches, or prepared remarks for or by James containing such statements or referencing such statements;
- ii. Any transcripts or recordings of such statements by James;
- iii. Any calendar invitations for or photographs from the events at which these statements were made; and/or
- iv. Any of the foregoing types of materials that reflect any statements or contemplated statements by James to the effect of the statements listed in Table A below—or any other statements accusing the NRA of illegal behavior—whether or not they were made during or in furtherance of the Campaign.

**Table A**

Statement or Reported Statement by Letitia James (underline indicates emphasis added)	Approximate Date/Event
“The NRA is an <u>organ of deadly propaganda</u> masquerading as a charity for public good.”	July 12, 2018 Press Release <sup>15</sup>
“As Attorney General, Tish James <u>will target the NRA</u> , take on arms manufacturers and dealers, investigate financial backing of gun makers and sellers, and <u>build new models to take on interstate arms trafficking</u> .”	July 12, 2018 Press Release <sup>16</sup>
“Together, we can . . . <u>take on . . . the @nra . . .</u> ”	September 1, 2018 <sup>17</sup>
“[W]e <u>CAN take down the NRA</u> . We <u>CANNOT</u> waiver on gun control. That’s why I’m running.”	September 3, 2018 <sup>18</sup>
“[The NRA] are nothing more than a <u>criminal enterprise</u> . We are waiting to take on all of the banks that finance them, their investors.”	August 30, 2018, Published Interview with Our Time Press <sup>19</sup>

<sup>15</sup> Tish James for Attorney General Press Release, Tish James Announces Attorney General Platform to Protect New Yorkers from Gun Violence, July 12, 2018, <https://www.tishjames2018.com/press-releases/2018/7/12/taking-on-the-scourge-of-gun-violence-and-keeping-new-yorkers-safe/> (Last Visited, October 14, 2021).

<sup>16</sup> *Id.*

<sup>17</sup> @TishJames Twitter post.

<sup>18</sup> @TishJames Twitter post.

<sup>19</sup> Tish James Becomes New York’s Attorney General – First Black Woman Elected to Statewide Office, Our Time Press (Nov. 8, 2018), <https://ourtimepress.com/tish-james-becomes-new-yorks-attorney-general-first-black-woman-elected-to-statewide-office/> (Last Visited, October 14, 2021).

Statement or Reported Statement by Letitia James (underline indicates emphasis added)	Approximate Date/Event
[T]the NRA . . . <u>is a criminal enterprise.</u> "	September 4, 2018, Video of "Evening with the Candidates" Forum for the Democratic Attorney General Primary Candidates hosted by New York City Bar Association <sup>20</sup>
"NRA . . . needs to be held accountable for the destruction and the loss of lives . . ."	September 27, 2018 <sup>21</sup>
"James said that she made no distinction between the lobbying and charitable arms of the NRA."	September 27, 2018 <sup>22</sup>
"When I'm Attorney General I'll <u>take on the @NRA</u> and investigate their status as a non-profit."	October 8, 2018 <sup>23</sup>
"Turns out they [the NRA] don't like it . . . if you pledge to investigate their status as a non-profit as the next AG of NY."	October 10, 2018 <sup>24</sup>
"The NRA holds [itself] out as a charitable organization, but in fact, [it] really [is] <u>a terrorist organization.</u> "	October 31, 2018, Published Interview with <i>Ebony</i> <sup>25</sup>
"Let me be clear: when I take office I will investigate the non-profit status of the NRA & take every legal step I can to help ensure another life isn't lost to senseless gun violence. #GunControlNow"	November 8, 2018 <sup>26</sup>
"The NRA is fraught with fraud, abuse, and illegality that has permeated the organization — this is why we filed our lawsuit to remove senior leadership and dissolve the organization last year."	December 10, 2021 <sup>27</sup>

<sup>20</sup> Available at [https://www.youtube.com/watch?v=6n2\\_LHNEUW0](https://www.youtube.com/watch?v=6n2_LHNEUW0) (statement at the 17:50 mark).

<sup>21</sup> <http://liherald.com/stories/nassau-protests-nra-fundraiser.107617> (Oct. 25, 2018) (Last Visited, October 14, 2021).

<sup>22</sup> *Id.*

<sup>23</sup> @TishJames Twitter post.

<sup>24</sup> @TishJames Twitter post.

<sup>25</sup> Letitia 'Tish' James on Becoming New York's Next Attorney General, EBONY (Oct. 31, 2018) <https://www.ebony.com/news/letitia-tish-james-on-becoming-new-yorks-next-attorney-general/> (Last Visited, October 14, 2021).

<sup>26</sup> @TishJames Twitter post.

<sup>27</sup> [Attorney General James Continues to Fight NRA's Efforts to Dismiss Corruption Lawsuit | New York State Attorney General \(ny.gov\)](https://www.ny.gov/news/attorney-general-james-continues-to-fight-nra-s-efforts-to-dismiss-corruption-lawsuit)



**REQUEST FOR PRODUCTION NO. 3:**

All Documents and Communications concerning any of Your meeting(s) with the Attorney General, including but not limited to Your February 14, 2019 meeting with representatives of the Attorney General or any other planned, cancelled, or actual meeting between You and the Attorney General, including all Documents and Communications before during or after any such meeting(s), including but not limited to, any emails, texts, voicemails, notes, agendas, handouts, demonstratives, presentations, and/or calendar items.

**REQUEST FOR PRODUCTION NO. 4:**

All Documents and Communications concerning Your involvement in the development of Campaign materials and/or Campaign fundraising materials, referring to the NRA—directly or indirectly—including but not limited to, any materials referencing the statements set forth in Request for Production No. 2, Table A.

**REQUEST FOR PRODUCTION NO. 5:**

All Documents and Communications concerning Your involvement in the drafting, contents, timing, and release of any of Campaign statements, Campaign fundraising statements and/or donor solicitations referencing the NRA, directly or indirectly, including but not limited to, the fundraising solicitation issued by James on or about August 6, 2020, a copy of which is annexed hereto as Exhibit C.

**REQUEST FOR PRODUCTION NO. 6:**

All Documents and Communications concerning the NRA between (a) You and (b) any of the following Persons or entities—whether directly or indirectly—including but not limited to, any of the Persons' or entities' current or former officers, employees, contractors, investigators, attorneys, agents, representatives, predecessors-in-interest, or designees.

- A. Former Governor of New York, Andrew Cuomo;
- B. New York State's Department of Financial Services;
- C. Maria T. Vullo;
- D. Linda Lacewell;
- E. Office of the Attorney General for the District of Columbia;
- F. Michael R. Bloomberg and/or any other Campaign donor or supporter;
- G. Giffords Law Center to Prevent Gun Violence;
- H. The Democratic National Committee; and
- I. Democratic Attorneys General Association.

**REQUEST FOR PRODUCTION NO. 7:**

All Documents and Communications concerning the NRA—whether directly or indirectly—between Jason Lilien and the Attorney General or James, whether in an official or an individual capacity.

**REQUEST FOR PRODUCTION NO. 8:**

All Documents and Communications concerning the NRA between Nicholas Suplina and the Attorney General or James, whether in an official or an individual capacity.

**REQUEST FOR PRODUCTION NO. 9:**

All Documents and Communications concerning the NRA between Rachel Nash and the Attorney General or James, whether in an official or an individual capacity.

**REQUEST FOR PRODUCTION NO. 10:**

All Documents and Communications concerning the NRA between Michael-Sean Spence and the Attorney General or James, whether in an official or an individual capacity.

**REQUEST FOR PRODUCTION NO. 11:**

All Documents and Communications concerning the NRA between Michael Kane and the Attorney General or James, whether in an official or an individual capacity.

**REQUEST FOR PRODUCTION NO. 12:**

All Documents and Communications concerning the NRA between You and the Campaign.

**APPENDIX A****INSTRUCTIONS FOR PRODUCING ELECTRONICALLY STORED INFORMATION**

*Document Image Format.* Documents and ESI are to be produced in Tagged Image File Format (“TIFF”). If a document does not contain redactions, you are directed to produce an extracted text (.TXT) file containing searchable text for each electronic document and an Optical Character Recognition (“OCR”) text file for each imaged paper document along with image load files.

For documents that contain redactions, you are directed to provide an OCR text file for the unredacted portions of such documents.

Every TIFF file in each production must be referenced in the production’s corresponding load file.

The total number of TIFF files referenced in a production’s load file should match the number of TIFF files in the production.

Load files of the static images should be created and produced together with their associated static images to facilitate the use of the produced images by a document management or litigation support database system.

Metadata load files should contain, if available, the non-privileged metadata listed in the following table.

Field Name	Field Description	Document Type
BEGPRODBATE	Beginning Production Number	ALL
ENDPRODBATE	Ending Production Number	ALL
PROD_VOLUME	Production Volume (ex. MOF-PD001)	ALL
BEGPRODATT	Beginning Production Family Number	ALL
ENDPRODATT	Ending Production Family Number	ALL
CUSTODIAN	Custodian of records name. I.E. Doe, John.	ALL

Field Name	Field Description	Document Type
CONFIDENTIALITY	Confidentiality designations (if applicable)	ALL
PARENTID	BeginBates number for the parent email of a family (will not be populated for documents that are not part of a family)	ALL
PAGES	Total page count per document	ALL
FILENAME	Document File Type	EDOCS
FILEEXT	File extension of original document	EDOCS
LOCATION	Original file path for electronic documents or folder path from mailbox for email	ALL
SENT_DATE	Email Sent Date (MM/DD/YYYY)	EMAILS
SENT_TIME	Email Sent Time (HH:MM:SS) GMT	EMAILS
LASTMODDATE	Document Last Modified Date (MM/DD/YYYY)	EDOCS
CREATION_Date	Email: (Empty) Native: Date the document was created.	EDOCS
DATERCVD	Email: Date the email was received. Native: (Empty)	EMAILS
FILESIZE	Document file size in bytes	EDOCS
AUTHOR	Creator of document	EDOCS
SUBJECT	Email Subject	EMAILS
FROM	Author of Email	EMAILS
RECIPIENT	Recipient of Document	EMAILS
CC	Copies on Communications	EMAILS
BCC	BCC	EMAILS
NATIVELINK	Location of native file in volume if provided	EDOCS
MD5HASH	MD5HASH of Electronic Loose File or Attachments	EDOCS
MESSAGEID	Internet message identifier	EMAILS
TEXTPATH	Location of OCR Text File in volume.	ALL

You are not obligated to populate manually the fields in the table that cannot be extracted from a document, with the exception of the custodian.

***Production of Native Files.*** Unless such materials contain privileged or redacted information, Microsoft Excel, Microsoft Project, Microsoft Access, other spreadsheets, and database files should be produced in native format. If these files, however, contain privileged or redacted information, they need not be produced in native format but shall be produced with the

extracted text and metadata fields set forth in these instructions and definitions if possible, except to the extent the extracted text or metadata fields are themselves redacted. Excel files that contain privileged information should be produced as an Excel file in a manner that does not prevent Excel functions from performing, but with privileged information redacted. Each native file produced should be accompanied with its metadata as outlined in the table above, and an image placeholder designating the document was produced in native format. The native file should be produced in a folder labeled with the Bates number of the native file document in the following format:

- a. Single file per document.
- b. Filenames should be of the form:
  - i. <Bates num><designation>.<ext>

Where <Bates num> is the BATES number of the document, <designation> any designation applicable to the document, and <ext> the appropriate extension for the document (.ppt, .xls, etc.);

***Document Unitization and Load Files.*** For files not produced in their native format, each page of a document shall be electronically saved as an image file.

If a document consists of more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as it existed in the original when creating the image files. The producing party shall produce a unitization file ("load file") for all produced documents in accordance with the following formatting:

- a. Document Unitization Load File. Document productions should include Concordance document load files containing the metadata listed in the table above.

b. OCR and Extracted Text Files (.TXT Files). There should be a single text file per document containing all the document's pages. Pages must be separated by form feed character (decimal 12, hex 0xC). Filenames should be of the following form:

- i. <Bates num>.txt
- ii. Where <Bates num> is the BATES number of the first page in the document.
- iii. Text must be encoded in ASCII, except where documents contain characters requiring UTF-8 in order to be read. Such documents shall be produced in UTF-8 format.

**Image Files.** Image files should be single page per image and single image per file. TIFF is the default format unless the following formats are agreed to: jpeg, jpeg2000, gif, png, single image tiff, and bmp. Filenames should be of the following form:

- a. <Bates num>.<ext>
- b. Where <Bates num> is the BATES number of the page, and <ext> is the appropriate extension for the image format (.jpg, .tif, .png, etc.).

**Metadata Load Files.** Filenames should be of the following form:

- a. Comma Separated Value (.CSV) files (commonly .DAT files).
- b. The first line must contain the column/field names.
- c. Every row must have the same number of columns/fields (empty values are acceptable).
- d. Text must be encoded in ASCII.
- e. Values must be enclosed by ASCII character 254.
- f. Multiple entries in a field must be separated by ASCII character 174.

g. New line value in data must be indicated by ASCII character 059.

Values must be separated by ASCII character 020.

**Duplicates.** If you have more than one identical copy of an electronic document (i.e., the documents are exact duplicates as that term is used in the electronic discovery field), only produce a single copy of that document (as long as all family relationships are maintained). You may de-duplicate ESI across each party's custodians or sources. De-duplication will be based on MD5 hash values.

**Encryption.** Please make reasonable efforts to ensure that all encrypted or password-protected documents are successfully processed for review and production, and if produced in native form, that the decrypted document is produced. To the extent encrypted or password-protected documents are successfully processed according to the requirements set forth herein, you have no duty to identify the prior encrypted status of such documents. To the extent such documents are not successfully processed despite use of reasonable efforts, including reasonable efforts to obtain passwords, produce an inventory of such files that are determined to have a reasonable likelihood of containing relevant information as is apparent without decryption such as attachments to responsive files, or metadata suggestive of responsiveness, such as relevant file names, and in any case shall include any containers files such as PST or ZIP files. The inventory shall contain any required metadata and document identifying information, including family relationships, to the extent that such information can be extracted using reasonable efforts during document processing. The inventory shall be produced in accordance with the Load File specifications.



***System and Program Files.*** System and program files, defined as the NIST, need not be processed, reviewed or produced. Additional files may be excluded by mutual agreement of the parties.

***Black and White.*** All files shall be produced in black and white. At a party's request, the parties shall meet and confer regarding production of color image(s) for specific documents.

***Bates Numbering - Document Images.*** Each page of a produced document shall have a unique page identifier ("Bates Number") electronically "burned" onto the image at a location that does not unreasonably conceal or interfere with any information from the source document. Any confidentiality legend, if applicable, shall be "burned" onto each document's image at a location that does not unreasonably obscure any information from the source document.

***Bates Numbering - Native Format Documents.*** Documents produced in Native Format will be produced with a placeholder TIFF image. Each TIFF placeholder will contain the Bates Number and confidentiality designation, if any.

***Production Media.*** Documents shall be produced by FTP site or on CD-ROM, DVD, external hard drive (with standard PC compatible interface), or other readily accessible computer or electronic media (the "Production Media"). Each item of Production Media shall be produced in a Bates labeled folder corresponding to the Bates label on the image placeholder. Each native file produced will be accompanied with its metadata.

***Attachments.*** Email attachments and embedded files or links must be mapped to their parent by the document or production number. If attachments and embedded files are combined with their parent documents, then "BeginAttach" and "EndAttach" fields listing the unique beginning and ending number for each attachment or embedded document must be included.

***Compressed Files.*** Compression file types (e.g., .CAB, .GZ, .TAR, .Z, and .ZIP) shall be decompressed in a reiterative manner to ensure that a zip within a zip is decompressed into the lowest possible compression resulting in individual folders and/or files.

***Embedded.*** If a document has information from another file embedded in it (e.g., a Word document containing an embedded spreadsheet), produce the document with all embedded information, but the NRA reserves the right to request that the embedded file be produced as a standalone file.

***Form of Production for Electronic Messages:*** Electronic messages (defined above) shall be produced in a searchable format that preserves the presentational features of the original messages, such as emojis, images, video files, animations, and the like. Electronic messages must not be converted to rasterized or non-unitized file formats such as PDF or TIFF. In general, messages should be produced in the same format as that in which they were exported for purposes of collection, search, or review. As a general rule, messages can be produced in CSV (Comma Separated Values) format.

***Identifying Sources of Electronic Messages:*** In responding to requests for electronic messages, you should consider any software applications used by the parties and individual custodians of data as potential sources of electronic messages. Even applications that primarily serve other purposes may contain built-in messaging systems. As an example, customer relationship management software and practice management software often include messaging systems. Your search and production should take account all reasonably available sources of electronic messages.

# **EXHIBIT 2**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK - COMMERCIAL DIVISION**

<p>PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>THE NATIONAL RIFLE ASSOCIATION OF AMERICA, WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER, and JOSHUA POWELL,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">and</p> <p>THE NATIONAL RIFLE ASSOCIATION OF AMERICA,</p> <p style="text-align: center;">Defendant-Counterclaim Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK, IN HER OFFICIAL AND INDIVIDUAL CAPACITIES,</p> <p style="text-align: center;">Plaintiff-Counterclaim Defendants.</p>	<p>INDEX NO.: 451625/2020</p> <p style="text-align: center;"><b><u>AMENDED SUBPOENA DUCES TECUM AND AD TESTIFICANDUM</u></b></p>
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TO: Everytown for Gun Safety Action Fund, Inc.  
450 Lexington Avenue  
New York NY, 10017  
Corporation Service Company  
80 State Street  
Albany NY, 12207-2543

**GREETINGS:**

**PLEASE TAKE NOTICE** that, pursuant to Section 202.70 of the Uniform Civil Rules for the Supreme Court of the State of New York, including Rule 11-f, and article 31 of New York’s Civil Practice Law and Rules (the “CPLR”), Defendant-Counterclaim Plaintiff the National Rifle Association of America (the “NRA”) by and through its undersigned counsel, will take the deposition upon oral examination of Everytown for Gun Safety Action Fund, Inc. (“Everytown”), **on February 2, 2022 at 10:00 a.m. E.T.** or at such other date and time as agreed to by Everytown and the NRA. The deposition will be taken before a notary public or other

person authorized by law to administer oaths, and will continue from day to day thereafter, except for weekends and holidays, until completed. You are invited to attend and cross-examine. The deposition will be on topics material and necessary to the prosecution and defense of the above-referenced action, including the matters identified below.

The deposition will take place at the offices of counsel for the NRA, Brewer, Attorneys & Counselors, 750 Lexington Avenue, 14th Floor, New York, New York, 10022.

**PLEASE TAKE FURTHER NOTICE** that the testimony will be videotaped by an operator from Shreck Video Services c/o Lexitas Legal, 100 Merrick Road, Rockville Centre, New York 11570, and transcribed by a court reporter from Lexitas Legal.

**YOU ARE ALSO HEREBY COMMANDED**, pursuant to the laws of the State of New York and article 31 of the CPLR, including Rule 3120, that all business and excuses being laid aside, to produce all documents specified in the request set forth below, in accordance with the instructions and definitions set forth below, for inspection and copying at the offices of counsel for the NRA, Brewer, Attorneys & Counselors, 750 Lexington Avenue, 14<sup>th</sup> Floor, New York, New York, 10022, **on or before January 20, 2022**, unless agreed upon a different date thereafter by the NRA and Everytown.

**PLEASE TAKE NOTICE** that such disclosure is sought or required because it is relevant, necessary and material to the prosecution and defense of the above-referenced action, as set forth in the pleadings annexed hereto as **Exhibits A and B**.

**PLEASE TAKE FURTHER NOTICE** that failure to comply with this subpoena is punishable as a contempt of Court and may subject you to prosecution under New York law.

Dated: New York, New York  
January 7, 2022

By: /s/ Svetlana M. Eisenberg  
William A. Brewer III  
wab@brewerattorneys.com  
Svetlana M. Eisenberg  
sme@brewerattorneys.com  
Mordecai Geisler  
mxg@brewerattorneys.com

**BREWER, ATTORNEYS & COUNSELORS**  
750 Lexington Avenue, 14th Floor  
New York, New York 10022  
Telephone: (212) 489-1400  
Facsimile: (212) 751-2849

**ATTORNEYS FOR DEFENDANT AND  
COUNTERCLAIM PLAINTIFF THE NATIONAL  
RIFLE ASSOCIATION OF AMERICA**

**I.**

**INSTRUCTIONS REGARDING DEPOSITION UPON ORAL EXAMINATION**

1. Under Rule 11-f of the Uniform Rules, You shall designate one or more officers, directors, representatives or agents, or other individuals most knowledgeable, regarding all information known or reasonably available relating to the Matters identified below.

2. Such designation shall include the identity, description or title of such individual(s), and if You designate more than one individual, You shall set out the matters on which each individual will testify.

3. You must make the designations called for by Rule 11-f(c) no later than ten days prior to the deposition.

**II.**

**NON-EXCLUSIVE LIST OF MATTERS TO BE ADDRESSED AT THE DEPOSITION  
PURSUANT TO COMMERCIAL DIVISION RULE 11-F**

1. Communications concerning the NRA between (i) You<sup>1</sup> and (ii) (A) the Attorney General, whether in an official or an individual capacity; or (B) James, whether in an official or an individual capacity.

2. For each statement attributed to James and listed in Table A below, Your involvement in the development or communication of such statements.

**Table A**

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<sup>1</sup> Capitalized terms are defined in the list of Definitions accompanying the attached requests for documents and other things.

Statement or Reported Statement by Letitia James (underline indicates emphasis added)	Approximate Date/Event
“The NRA is an <u>organ of deadly propaganda</u> masquerading as a charity for public good.”	July 12, 2018 Press Release <sup>2</sup>
“As Attorney General, Tish James <u>will target the NRA</u> , take on arms manufacturers and dealers, investigate financial backing of gun makers and sellers, and <u>build new models to take on interstate arms trafficking</u> .”	July 12, 2018 Press Release <sup>3</sup>
“Together, we can . . . <u>take on . . . the @nra . . .</u> ”	September 1, 2018 <sup>4</sup>
“[W]e <u>CAN take down the NRA</u> . We <u>CANNOT</u> waiver on gun control. That’s why I’m running.”	September 3, 2018 <sup>5</sup>
“[The NRA] are nothing more than a <u>criminal enterprise</u> . We are waiting to take on all of the banks that finance them, their investors.”	August 30, 2018, Published Interview with Our Time Press <sup>6</sup>

<sup>2</sup> Tish James for Attorney General Press Release, Tish James Announces Attorney General Platform to Protect New Yorkers from Gun Violence, July 12, 2018, <https://www.tishjames2018.com/press-releases/2018/7/12/taking-on-the-scourge-of-gun-violence-and-keeping-new-yorkers-safe/> (Last Visited, October 14, 2021).

<sup>3</sup> *Id.*

<sup>4</sup> @TishJames Twitter post.

<sup>5</sup> @TishJames Twitter post.

<sup>6</sup> Tish James Becomes New York’s Attorney General – First Black Woman Elected to Statewide Office, Our Time Press (Nov. 8, 2018), <https://ourtimepress.com/tish-james-becomes-new-yorks-attorney-general-first-black-woman-elected-to-statewide-office/> (Last Visited, October 14, 2021).



Statement or Reported Statement by Letitia James (underline indicates emphasis added)	Approximate Date/Event
[T]the NRA . . . <u>is a criminal enterprise.</u> "	September 4, 2018, Video of "Evening with the Candidates" Forum for the Democratic Attorney General Primary Candidates hosted by New York City Bar Association <sup>7</sup>
"NRA . . . needs to be held accountable for the destruction and the loss of lives . . ."	September 27, 2018 <sup>8</sup>
"James said that she made no distinction between the lobbying and charitable arms of the NRA."	September 27, 2018 <sup>9</sup>
"When I'm Attorney General I'll <u>take on the @NRA</u> and investigate their status as a non-profit."	October 8, 2018 <sup>10</sup>
"Tums out they [the NRA] don't like it . . . if you pledge to investigate their status as a non-profit as the next AG of NY."	October 10, 2018 <sup>11</sup>
"The NRA holds [itself] out as a charitable organization, but in fact, [it] really [is] <u>a terrorist organization.</u> "	October 31, 2018, Published Interview with <i>Ebony</i> <sup>12</sup>
"Let me be clear: when I take office I will investigate the non-profit status of the NRA & take every legal step I can to help ensure another life isn't lost to senseless gun violence. #GunControlNow"	November 8, 2018 <sup>13</sup>
"The NRA is fraught with fraud, abuse, and illegality that has permeated the organization — this is why we filed our lawsuit to remove senior leadership and dissolve the organization last year."	December 10, 2021 <sup>14</sup>

<sup>7</sup> Available at [https://www.youtube.com/watch?v=6n2\\_LHNEUW0](https://www.youtube.com/watch?v=6n2_LHNEUW0) (statement at the 17:50 mark).

<sup>8</sup> <http://liherald.com/stories/nassau-protests-nra-fundraiser,107617> (Oct. 25, 2018) (Last Visited, October 14, 2021).

<sup>9</sup> *Id.*

<sup>10</sup> @TishJames Twitter post.

<sup>11</sup> @TishJames Twitter post.

<sup>12</sup> Letitia 'Tish' James on Becoming New York's Next Attorney General, EBONY (Oct. 31, 2018) <https://www.ebony.com/news/letitia-tish-james-on-becoming-new-yorks-next-attorney-general/> (Last Visited, October 14, 2021).

<sup>13</sup> @TishJames Twitter post.

<sup>14</sup> [Attorney General James Continues to Fight NRA's Efforts to Dismiss Corruption Lawsuit | New York State Attorney General \(ny.gov\)](https://www.ny.gov/news/attorney-general-james-continues-to-fight-nra-s-efforts-to-dismiss-corruption-lawsuit)

3. Any of Your meeting(s) or other communications with the Attorney General or any representatives of the Office of the Attorney General of the State of New York, including but not limited to (i) Your February 14, 2019 meeting with representatives of the Office of the Attorney General; and (ii) any other planned, cancelled, or actual such meeting.

4. Your involvement in the development of Campaign materials and/or Campaign fundraising materials, referring to the NRA—directly or indirectly—including but not limited to, any materials referencing the sum or substance of the statements set forth in Table A above.

5. Your involvement in the drafting, contents, timing, and release of any of Campaign statements, Campaign fundraising statements and/or donor solicitations referencing the NRA, directly or indirectly, including but not limited to, the fundraising solicitation issued by James on or about August 6, 2020, a copy of which is annexed hereto as Exhibit C.

6. Communications concerning the NRA between (a) You and (b) any of the following Persons or entities—whether directly or indirectly—including but not limited to, any of the Persons’ or entities’ current or former officers, employees, contractors, investigators, attorneys, agents, representatives, predecessors-in-interest, or designees.

1. Former Governor of New York, Andrew Cuomo;
2. New York State’s Department of Financial Services;
3. Maria T. Vullo;
4. Linda Lacewell;
5. Office of the Attorney General for the District of Columbia;
6. Michael R. Bloomberg and/or any other Campaign donor or

supporter;

7. Giffords Law Center to Prevent Gun Violence;
8. The Democratic National Committee; and
9. Democratic Attorneys General Association.

7. Communications concerning the NRA—whether directly or indirectly—between the following persons and the Attorney General or James, whether in an official or an individual capacity: (i) Jason Lilien, outside counsel for Everytown and former head of the NYAG’s Charities Bureau; (ii) Nicholas Suplina; (iii) Rachel Nash; (iv) Michael-Sean Spence; (v) Michael Kane.

8. Communications concerning the NRA between You and the Campaign.

**III.**  
**INSTRUCTIONS REGARDING REQUEST FOR PRODUCTION**

1. To the extent provided by the CPLR or Commercial Division Rules, the NRA's Requests are intended to be continuing in nature. Responsive Documents or things located any time after a response is due or submitted shall be promptly produced at the place and in the manner specified herein and You are requested and required to supplement Your responses when appropriate or necessary to make correct and complete responses to the full extent provided by the CPLR and/or any other applicable rules or orders of the Court.

2. If there are no Documents or things responsive to any particular request, You shall so state in writing, identifying the number(s) of the Request(s) concerned. To the extent you claim that Documents or things responsive to any particular request are not in Your possession, custody or control, please identify with particularity any Persons and/or entities with possession, custody or control of such Documents or things.

3. To the extent that You have previously produced to the NRA in the above-captioned action (the "Action") or another proceeding Documents or things responsive to any Request, it is not necessary to re-produce those documents provided You identify (i) the Bates numbers of the responsive Documents or things, (ii) the request to which the Documents or things are responsive, and (iii) any applicable privilege log entries relating to such productions. If any such previously produced responsive Documents or things were designated as "confidential" in a separate proceeding, that designation will not be applicable in this Action. If You contend in good faith that a previously produced Document or thing meets the criteria for confidential treatment under the terms of any applicable confidentiality agreement or order in this Action, please identify those documents or things by Bates number(s) and re-produce those documents with new confidentiality designations and new unique Bates numbers.

4. To the extent You believe that any of the following Requests are vague or ambiguous, You are requested to please notify the NRA immediately and a clarification will be provided.

5. These Requests are intended to include all Documents and things in the possession, custody, or control of Everytown, or subject to Everytown's custody or control, whether directly or indirectly. A Document is deemed to be within Everytown's possession, custody, or control if: (1) it is within Your actual possession, custody, or control; or (2) it is within the possession of any other person or entity and You have the right to obtain the Document from such person or entity, and You: (a) own the Document in whole or in part; (b) have a right by contract, statute, or otherwise to use, inspect, examine, or copy such Document on any term; or (c) as a practical matter, have been able to use, inspect, examine, or copy such Document when You have sought to do so. For the avoidance of doubt, these Requests are intended to, in addition to hard copy or paper records, include, but are not be limited to, all Documents and things subject to Your possession, custody, or control that are stored on any computers, tablets, cloud spaces, or cellular devices, including Blackberries, iPhones or other mobile phones, iPads, or other smart phones or devices, whether such devices are owned by You, have been issued to You by another Person or entity, or, regardless of ownership, are being used by your employees or other representatives and agents to conduct Everytown business or business on behalf of Everytown.

6. If any Document or thing requested was formerly in Your possession, custody or control but is no longer available or no longer exists, please submit a statement in writing and under oath that: (i) describes in detail the nature of the Document and its contents; (ii) identifies the Person who prepared the Document; (iii) identifies all Persons who have seen or had possession, custody, or control of the Document; (iv) specifies the dates on which the Document was prepared, transmitted

and/or received; (v) specifies the date on which the Document became unavailable; (vi) specifies the reason why the Document is unavailable, including whether it has been misplaced, lost, destroyed or transferred; (vii) if it has been destroyed or transferred, specifies the conditions of and reasons for such destruction or transfer and the Persons who requested and performed the destruction or transfer; and (viii) identifies all Persons with knowledge of any portion of the contents of the Document.

7. Unless otherwise indicated, the use in these Requests of You, Your name or the name of any party, individual, business organization, or other legal entity, shall specifically include all of that individual's or entity's present or former employees, officers, directors, agents, representatives, members, departments, bureaus, sections, affiliates, subsidiaries, corporate parents, attorneys, and all other persons acting on his, her, its, or their behalf.

8. These Requests seek production of responsive Documents or things in their entirety, without abbreviation, deletion, or redaction. For the avoidance of doubt, each responsive email message or other Document should be produced with all of its respective email or other attachments, and each responsive email attachment should be produced with its respective parent email message and with all email attachments to that respective parent email message. To the extent that You consider an email message and its corresponding email attachment(s) to constitute separate Documents, the NRA requests the production of all Documents attached to each responsive email message, as well as all e-mail messages to which a responsive Document is attached and all other Documents attached to said email messages. For the further avoidance of doubt, all responsive electronic Documents should be produced with all their corresponding metadata, including at minimum the types of metadata listed below in Appendix A. To the extent that You consider an electronic Document's metadata to constitute a separate Document, the NRA requests the production

of all metadata that correspond to each responsive electronic Document and all electronic Documents that correspond to each responsive piece of metadata.

9. Should You interpose an objection to a Request or Requests, please clearly indicate to which part or portion of the Request or Requests the objection is directed and provide all Documents and things to which objection is not made as if such part or portion were propounded as a separate request.

10. For each Document (or portion of a Document) withheld on any ground, You shall insert one or more placeholder page(s) in the production bearing the same document control number(s) borne by the Document withheld, in the sequential place(s) originally occupied by the Document before it was removed from the production. You shall also submit with the production a statement in writing and under oath that provides, for each Document withheld: (i) a description of the nature of the Document and its contents; (ii) the date of the Document; (iii) the Document's authors and recipients; and (iv) the legal ground(s) for withholding it from production. If the legal ground is attorney-client privilege, please also indicate the names of the attorneys involved in the Document or Communication and the nature of their involvement (e.g., as authors). Such statement (or log) shall accompany each production. Further, for any Document withheld on any ground, please include in the relevant production placeholder pages equivalent in number to the page-length of the withheld Document.

11. You are to produce the Documents as they are kept in the regular course of business or to organize and label them to correspond to the numbered categories in the Requests.

12. Unless otherwise specified herein or subsequently agreed to by the NRA and Everytown, all responsive documents must be produced in the form specified in Appendix A.

**IV.  
DEFINITIONS**

1. “Action” shall mean the above-captioned action, Index No. 451625/2020, in the Supreme Court of the State of New York, Commercial Division, New York County, including: (a) the claims asserted by the Attorney General of New York State against the NRA and other defendants and any defenses asserted thereto, and (b) the counterclaims asserted by the NRA against the Attorney General of New York State and any defenses asserted thereto.

2. “All” and “any” shall be construed so as to bring within the scope of the Requests all Documents which might otherwise be construed to be outside the scope.

3. “You,” and “Your” shall mean Everytown for Gun Safety Action Fund, Inc., and any person acting, or who has so acted, on its behalf, including, but not limited to, any of their former or current agents, representatives, officers, directors, employees, affiliates, independent contractors, attorneys, and each and every person acting on its behalf or at its direction or on whose behalf they were acting with respect to the matters referred to herein.

4. “Communication(s)” shall mean any oral, written, or recorded utterance, notation, or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, emails, text messages (including text messages sent or received over work issued or personal devices), voicemails, conversations, facsimiles, letters, notes (handwritten or otherwise), telegrams, cables, telexes, dialogues, discussions, negotiations, interviews, consultations, telephone calls, agreements, and other understandings, among two or more persons. The term “Communication(s)” includes written summaries of any of the foregoing Communications. Drafts of Communications—including unsent drafts which may or may not have been sent to or received by another person and hence may not thus have been “among two or more persons”—are encompassed by the term “Communication(s).”



5. “Custodian” shall mean any Person that, as of the date of this Subpoena, maintained, possessed, or otherwise kept or controlled a Document and/or a Communication.

6. “Document(s)” has the broadest meaning permitted by the CPLR and any other applicable laws and rules including, without limitation, any written, recorded, graphic, or other matter, whether sent or received or made or used internally, however produced or reproduced and whatever the medium on which it was produced or reproduced (whether on paper, cards, charts, files, printouts, tapes, discs, belts, video tapes, audiotapes, tape recordings, cassettes, or other types of voice recording or transcription, computer tapes, databases, emails, pictures, photographs, slides, films, microfilms, motion pictures, mobile devices, smart phones, or any other medium), and any other tangible item or thing of readable, recorded, or visual material of whatever nature including without limitation originals, drafts, electronic documents with included metadata, and all non-identical copies of each Document (which, by reason of any variation, such as the presence or absence of handwritten notes or underlining, represents a separate Document within the meaning of this term). The foregoing specifically includes information stored electronically, whether in a computer database or otherwise, regardless of whether such Documents are also presently in documentary form.

7. “Attorney General” shall mean the Office of the Attorney General of the State of New York and all other persons acting or purporting to act with, for, or on its, his, or her behalf, including, but not limited to, consultants, advisors, attorneys, or any person acting in an advisory, agency, or consulting capacity, including, but not limited to: (i) Attorney General Letitia James (“James”), in her official and/or individual capacity; and (ii) where applicable, other agencies, offices, bureaus, departments, or divisions of the State of New York and their constituent personnel.

8. The “NRA” shall mean the National Rifle Association of America and any person acting, or who has so acted, on its behalf, including, but not limited to, any of its or their current or

former agents, representatives, officers, directors, employees, independent contractors, attorneys, and each and every person acting on their behalf or at their direction or on whose behalf they were acting with respect to the matters referred to herein.

9. “Campaign” shall mean the campaign or campaigns of Letitia James to be (a) elected New York State Attorney General in the 2018 election year, (b) reelected New York State Attorney General in the 2022 election year, or (c) elected Governor of New York in the 2022 election year.

10. “Person” and “persons” includes natural persons, groups of natural persons acting in a collegial capacity (e.g., a committee or counsel), firms, corporations, partnerships, associations, joint ventures, trusts, and any other incorporated or unincorporated business, governmental, public, or legal entity.

11. “Relating to,” or “concerning” shall mean relating to, concerning, reflecting, referring to, having a relationship to, pertaining to, identifying, containing, pertinent to, comprising, setting forth, showing, disclosing, describing, explaining, summarizing, evidencing, or constituting, directly or indirectly, in whole or in part, or to be otherwise factually, legally, or logically connected to, the subject matter of the particular Request.

Whenever appropriate, the singular form of a word shall be interpreted in the plural, and vice-versa, and the words “and” and “or” shall be construed either disjunctively or conjunctively, as necessary, to bring within the scope of the Requests all Documents and things that might otherwise be construed to be outside their scope.

## V.

### **REQUESTS FOR PRODUCTION**

#### **REQUEST FOR PRODUCTION NO. 1:**

All Documents and Communications concerning the NRA between (i) You and (ii) (A) the Attorney General, whether in an official or an individual capacity; or (B) James, whether in an official or an individual capacity.

**REQUEST FOR PRODUCTION NO. 2:**

For each statement attributed to James and listed in Table A below, please produce all Documents and Communications related to Your involvement in the development or communication of such statements, including but not limited to:

- i. Any talking points, scripts, prepared speeches, or prepared remarks for or by James containing such statements or referencing such statements;
- ii. Any transcripts or recordings of such statements by James;
- iii. Any calendar invitations for or photographs from the events at which these statements were made; and/or
- iv. Any of the foregoing types of materials that reflect any statements or contemplated statements by James to the effect of the statements listed in Table A below—or any other statements accusing the NRA of illegal behavior—whether or not they were made during or in furtherance of the Campaign.

**Table A**

Statement or Reported Statement by Letitia James (underline indicates emphasis added)	Approximate Date/Event
“The NRA is an <u>organ of deadly propaganda</u> masquerading as a charity for public good.”	July 12, 2018 Press Release <sup>15</sup>
“As Attorney General, Tish James <u>will target the NRA</u> , take on arms manufacturers and dealers, investigate financial backing of gun makers and sellers, and <u>build new models to take on interstate arms trafficking</u> .”	July 12, 2018 Press Release <sup>16</sup>
“Together, we can . . . <u>take on . . . the @nra . . .</u> ”	September 1, 2018 <sup>17</sup>
“[W]e <u>CAN take down the NRA</u> . We CANNOT waiver on gun control. That’s why I’m running.”	September 3, 2018 <sup>18</sup>
“[The NRA] are nothing more than <u>a criminal enterprise</u> . We are waiting to take on all of the banks that finance them, their investors.”	August 30, 2018, Published Interview with Our Time Press <sup>19</sup>

<sup>15</sup> Tish James for Attorney General Press Release, Tish James Announces Attorney General Platform to Protect New Yorkers from Gun Violence, July 12, 2018, <https://www.tishjames2018.com/press-releases/2018/7/12/taking-on-the-scourge-of-gun-violence-and-keeping-new-yorkers-safe/> (Last Visited, October 14, 2021).

<sup>16</sup> *Id.*

<sup>17</sup> @TishJames Twitter post.

<sup>18</sup> @TishJames Twitter post.

<sup>19</sup> Tish James Becomes New York’s Attorney General – First Black Woman Elected to Statewide Office, Our Time Press (Nov. 8, 2018), <https://ourtimepress.com/tish-james-becomes-new-yorks-attorney-general-first-black-woman-elected-to-statewide-office/> (Last Visited, October 14, 2021).

Statement or Reported Statement by Letitia James (underline indicates emphasis added)	Approximate Date/Event
[T]the NRA . . . <u>is a criminal enterprise.</u> "	September 4, 2018, Video of "Evening with the Candidates" Forum for the Democratic Attorney General Primary Candidates hosted by New York City Bar Association <sup>20</sup>
"NRA . . . needs to be held accountable for the destruction and the loss of lives . . ."	September 27, 2018 <sup>21</sup>
"James said that she made no distinction between the lobbying and charitable arms of the NRA."	September 27, 2018 <sup>22</sup>
"When I'm Attorney General I'll <u>take on the @NRA</u> and investigate their status as a non-profit."	October 8, 2018 <sup>23</sup>
"Tums out they [the NRA] don't like it . . . if you pledge to investigate their status as a non-profit as the next AG of NY."	October 10, 2018 <sup>24</sup>
"The NRA holds [itself] out as a charitable organization, but in fact, [it] really [is] <u>a terrorist organization.</u> "	October 31, 2018, Published Interview with <i>Ebony</i> <sup>25</sup>
"Let me be clear: when I take office I will investigate the non-profit status of the NRA & take every legal step I can to help ensure another life isn't lost to senseless gun violence. #GunControlNow"	November 8, 2018 <sup>26</sup>
"The NRA is fraught with fraud, abuse, and illegality that has permeated the organization — this is why we filed our lawsuit to remove senior leadership and dissolve the organization last year."	December 10, 2021 <sup>27</sup>

<sup>20</sup> Available at [https://www.youtube.com/watch?v=6n2\\_LHNEUW0](https://www.youtube.com/watch?v=6n2_LHNEUW0) (statement at the 17:50 mark).

<sup>21</sup> <http://liherald.com/stories/nassau-protests-nra-fundraiser,107617> (Oct. 25, 2018) (Last Visited, October 14, 2021).

<sup>22</sup> *Id.*

<sup>23</sup> @TishJames Twitter post.

<sup>24</sup> @TishJames Twitter post.

<sup>25</sup> Letitia 'Tish' James on Becoming New York's Next Attorney General, EBONY (Oct. 31, 2018) <https://www.ebony.com/news/letitia-tish-james-on-becoming-new-yorks-next-attorney-general/> (Last Visited, October 14, 2021).

<sup>26</sup> @TishJames Twitter post.

<sup>27</sup> [Attorney General James Continues to Fight NRA's Efforts to Dismiss Corruption Lawsuit | New York State Attorney General \(ny.gov\)](https://www.ny.gov/news/attorney-general-james-continues-to-fight-nra-s-efforts-to-dismiss-corruption-lawsuit)

**REQUEST FOR PRODUCTION NO. 3:**

All Documents and Communications concerning any of Your meeting(s) with the Attorney General, including but not limited to Your February 14, 2019 meeting with representatives of the Attorney General or any other planned, cancelled, or actual meeting between You and the Attorney General, including all Documents and Communications before during or after any such meeting(s), including but not limited to, any emails, texts, voicemails, notes, agendas, handouts, demonstratives, presentations, and/or calendar items.

**REQUEST FOR PRODUCTION NO. 4:**

All Documents and Communications concerning Your involvement in the development of Campaign materials and/or Campaign fundraising materials, referring to the NRA—directly or indirectly—including but not limited to, any materials referencing the statements set forth in Request for Production No. 2, Table A.

**REQUEST FOR PRODUCTION NO. 5:**

All Documents and Communications concerning Your involvement in the drafting, contents, timing, and release of any of Campaign statements, Campaign fundraising statements and/or donor solicitations referencing the NRA, directly or indirectly, including but not limited to, the fundraising solicitation issued by James on or about August 6, 2020, a copy of which is annexed hereto as Exhibit C.

**REQUEST FOR PRODUCTION NO. 6:**

All Documents and Communications concerning the NRA between (a) You and (b) any of the following Persons or entities—whether directly or indirectly—including but not limited to, any of the Persons' or entities' current or former officers, employees, contractors, investigators, attorneys, agents, representatives, predecessors-in-interest, or designees.

- A. Former Governor of New York, Andrew Cuomo;
- B. New York State's Department of Financial Services;
- C. Maria T. Vullo;
- D. Linda Lacewell;
- E. Office of the Attorney General for the District of Columbia;
- F. Michael R. Bloomberg and/or any other Campaign donor or supporter;
- G. Giffords Law Center to Prevent Gun Violence;
- H. The Democratic National Committee; and
- I. Democratic Attorneys General Association.

**REQUEST FOR PRODUCTION NO. 7:**

All Documents and Communications concerning the NRA—whether directly or indirectly—between Jason Lilien and the Attorney General or James, whether in an official or an individual capacity.

**REQUEST FOR PRODUCTION NO. 8:**

All Documents and Communications concerning the NRA between Nicholas Suplina and the Attorney General or James, whether in an official or an individual capacity.

**REQUEST FOR PRODUCTION NO. 9:**

All Documents and Communications concerning the NRA between Rachel Nash and the Attorney General or James, whether in an official or an individual capacity.

**REQUEST FOR PRODUCTION NO. 10:**

All Documents and Communications concerning the NRA between Michael-Sean Spence and the Attorney General or James, whether in an official or an individual capacity.

**REQUEST FOR PRODUCTION NO. 11:**

All Documents and Communications concerning the NRA between Michael Kane and the Attorney General or James, whether in an official or an individual capacity.

**REQUEST FOR PRODUCTION NO. 12:**

All Documents and Communications concerning the NRA between You and the Campaign.



APPENDIX AINSTRUCTIONS FOR PRODUCING ELECTRONICALLY STORED INFORMATION

*Document Image Format.* Documents and ESI are to be produced in Tagged Image File Format (“TIFF”). If a document does not contain redactions, you are directed to produce an extracted text (.TXT) file containing searchable text for each electronic document and an Optical Character Recognition (“OCR”) text file for each imaged paper document along with image load files.

For documents that contain redactions, you are directed to provide an OCR text file for the unredacted portions of such documents.

Every TIFF file in each production must be referenced in the production’s corresponding load file.

The total number of TIFF files referenced in a production’s load file should match the number of TIFF files in the production.

Load files of the static images should be created and produced together with their associated static images to facilitate the use of the produced images by a document management or litigation support database system.

Metadata load files should contain, if available, the non-privileged metadata listed in the following table.

Field Name	Field Description	Document Type
BEGPRODBATE	Beginning Production Number	ALL
ENDPRODBATE	Ending Production Number	ALL
PROD_VOLUME	Production Volume (ex. MOF-PD001)	ALL
BEGPRODATT	Beginning Production Family Number	ALL
ENDPRODATT	Ending Production Family Number	ALL
CUSTODIAN	Custodian of records name. I.E. Doe, John.	ALL
CONFIDENTIALITY	Confidentiality designations (if applicable)	ALL

Field Name	Field Description	Document Type
PARENTID	BeginBates number for the parent email of a family (will not be populated for documents that are not part of a family)	ALL
PAGES	Total page count per document	ALL
FILENAME	Document File Type	EDOCS
FILEEXT	File extension of original document	EDOCS
LOCATION	Original file path for electronic documents or folder path from mailbox for email	ALL
SENT_DATE	Email Sent Date (MM/DD/YYYY)	EMAILS
SENT_TIME	Email Sent Time (HH:MM:SS) GMT	EMAILS
LASTMODDATE	Document Last Modified Date (MM/DD/YYYY)	EDOCS
CREATION_Date	Email: (Empty) Native: Date the document was created.	EDOCS
DATERCVD	Email: Date the email was received. Native: (Empty)	EMAILS
FILESIZE	Document file size in bytes	EDOCS
AUTHOR	Creator of document	EDOCS
SUBJECT	Email Subject	EMAILS
FROM	Author of Email	EMAILS
RECIPIENT	Recipient of Document	EMAILS
CC	Copies on Communications	EMAILS
BCC	BCC	EMAILS
NATIVELINK	Location of native file in volume if provided	EDOCS
MD5HASH	MD5HASH of Electronic Loose File or Attachments	EDOCS
MESSAGEID	Internet message identifier	EMAILS
TEXTPATH	Location of OCR Text File in volume.	ALL

You are not obligated to populate manually the fields in the table that cannot be extracted from a document, with the exception of the custodian.

***Production of Native Files.*** Unless such materials contain privileged or redacted information, Microsoft Excel, Microsoft Project, Microsoft Access, other spreadsheets, and database files should be produced in native format. If these files, however, contain privileged or redacted information, they need not be produced in native format but shall be produced with the extracted text and metadata fields set forth in these instructions and definitions if possible, except

to the extent the extracted text or metadata fields are themselves redacted. Excel files that contain privileged information should be produced as an Excel file in a manner that does not prevent Excel functions from performing, but with privileged information redacted. Each native file produced should be accompanied with its metadata as outlined in the table above, and an image placeholder designating the document was produced in native format. The native file should be produced in a folder labeled with the Bates number of the native file document in the following format:

- a. Single file per document.
- b. Filenames should be of the form:
  - i. <Bates num><designation>.<ext>

Where <Bates num> is the BATES number of the document, <designation> any designation applicable to the document, and <ext> the appropriate extension for the document (.ppt, .xls, etc.);

***Document Unitization and Load Files.*** For files not produced in their native format, each page of a document shall be electronically saved as an image file.

If a document consists of more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as it existed in the original when creating the image files. The producing party shall produce a unitization file (“load file”) for all produced documents in accordance with the following formatting:

- a. Document Unitization Load File. Document productions should include Concordance document load files containing the metadata listed in the table above.
- b. OCR and Extracted Text Files (.TXT Files). There should be a single text file per document containing all the document’s pages. Pages must be separated by form feed character (decimal 12, hex 0xC). Filenames should be of the following form:

- i. <Bates num>.txt
- ii. Where <Bates num> is the BATES number of the first page in the document.
- iii. Text must be encoded in ASCII, except where documents contain characters requiring UTF-8 in order to be read. Such documents shall be produced in UTF-8 format.

**Image Files.** Image files should be single page per image and single image per file. TIFF is the default format unless the following formats are agreed to: jpeg, jpeg2000, gif, png, single image tiff, and bmp. Filenames should be of the following form:

- a. <Bates num>.<ext>
- b. Where <Bates num> is the BATES number of the page, and <ext> is the appropriate extension for the image format (.jpg, .tif, .png, etc.).

**Metadata Load Files.** Filenames should be of the following form:

- a. Comma Separated Value (.CSV) files (commonly .DAT files).
- b. The first line must contain the column/field names.
- c. Every row must have the same number of columns/fields (empty values are acceptable).
- d. Text must be encoded in ASCII.
- e. Values must be enclosed by ASCII character 254.
- f. Multiple entries in a field must be separated by ASCII character 174.
- g. New line value in data must be indicated by ASCII character 059.  
Values must be separated by ASCII character 020.

**Duplicates.** If you have more than one identical copy of an electronic document (i.e., the documents are exact duplicates as that term is used in the electronic discovery field), only produce a single copy of that document (as long as all family relationships are maintained). You may de-duplicate ESI across each party's custodians or sources. De-duplication will be based on MD5 hash values.

**Encryption.** Please make reasonable efforts to ensure that all encrypted or password-protected documents are successfully processed for review and production, and if produced in native form, that the decrypted document is produced. To the extent encrypted or password-protected documents are successfully processed according to the requirements set forth herein, you have no duty to identify the prior encrypted status of such documents. To the extent such documents are not successfully processed despite use of reasonable efforts, including reasonable efforts to obtain passwords, produce an inventory of such files that are determined to have a reasonable likelihood of containing relevant information as is apparent without decryption such as attachments to responsive files, or metadata suggestive of responsiveness, such as relevant file names, and in any case shall include any containers files such as PST or ZIP files. The inventory shall contain any required metadata and document identifying information, including family relationships, to the extent that such information can be extracted using reasonable efforts during document processing. The inventory shall be produced in accordance with the Load File specifications.

**System and Program Files.** System and program files, defined as the NIST, need not be processed, reviewed or produced. Additional files may be excluded by mutual agreement of the parties.

***Black and White.*** All files shall be produced in black and white. At a party's request, the parties shall meet and confer regarding production of color image(s) for specific documents.

***Bates Numbering - Document Images.*** Each page of a produced document shall have a unique page identifier ("Bates Number") electronically "burned" onto the image at a location that does not unreasonably conceal or interfere with any information from the source document. Any confidentiality legend, if applicable, shall be "burned" onto each document's image at a location that does not unreasonably obscure any information from the source document.

***Bates Numbering - Native Format Documents.*** Documents produced in Native Format will be produced with a placeholder TIFF image. Each TIFF placeholder will contain the Bates Number and confidentiality designation, if any.

***Production Media.*** Documents shall be produced by FTP site or on CD-ROM, DVD, external hard drive (with standard PC compatible interface), or other readily accessible computer or electronic media (the "Production Media"). Each item of Production Media shall be produced in a Bates labeled folder corresponding to the Bates label on the image placeholder. Each native file produced will be accompanied with its metadata.

***Attachments.*** Email attachments and embedded files or links must be mapped to their parent by the document or production number. If attachments and embedded files are combined with their parent documents, then "BeginAttach" and "EndAttach" fields listing the unique beginning and ending number for each attachment or embedded document must be included.

***Compressed Files.*** Compression file types (e.g., .CAB, .GZ, .TAR, .Z, and .ZIP) shall be decompressed in a reiterative manner to ensure that a zip within a zip is decompressed into the lowest possible compression resulting in individual folders and/or files.

***Embedded.*** If a document has information from another file embedded in it (e.g., a Word document containing an embedded spreadsheet), produce the document with all embedded information, but the NRA reserves the right to request that the embedded file be produced as a standalone file.

***Form of Production for Electronic Messages:*** Electronic messages (defined above) shall be produced in a searchable format that preserves the presentational features of the original messages, such as emojis, images, video files, animations, and the like. Electronic messages must not be converted to rasterized or non-unitized file formats such as PDF or TIFF. In general, messages should be produced in the same format as that in which they were exported for purposes of collection, search, or review. As a general rule, messages can be produced in CSV (Comma Separated Values) format.

***Identifying Sources of Electronic Messages:*** In responding to requests for electronic messages, you should consider any software applications used by the parties and individual custodians of data as potential sources of electronic messages. Even applications that primarily serve other purposes may contain built-in messaging systems. As an example, customer relationship management software and practice management software often include messaging systems. Your search and production should take account all reasonably available sources of electronic messages.

# **EXHIBIT 3**



**From:** [Svetlana Eisenberg](#)  
**To:** [Harris, Jenna](#)  
**Cc:** [Zalka, Caroline](#); [Cauchi, Andrew](#); [Gianna Cincotti](#); [Mordecai Geisler](#)  
**Subject:** Re: Letitia James v. NRA (Index No. 451625/2020)- Subpoena to Everytown for Gun Safety  
**Date:** Wednesday, January 12, 2022 11:35:06 AM

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Dear Caroline, Jenna, and Andrew,

On behalf of the NRA, I write to follow up on our call yesterday.

During the call, I understood you to request on behalf of your client Everytown for Gun Safety a 3-week extension of its January 20, 2022 deadline—imposed by the CPLR—to produce documents to the NRA pursuant to the NRA's subpoena. Further, you requested that February 10, 2022 become the deadline for Everytown's objections to the subpoena with the idea that documents would be produced later. I understood you to say that you believe that your client needs the extension because you can use the additional time in preparing objections to the subpoena.

As I informed you during the call, unfortunately, the NRA's ability to agree to an extension is limited because of (i) the discovery schedule in the case (fact discovery closes on February 15, 2022); and (ii) the need to review documents Everytown produces for potential use at depositions, including the February 2, 2022 deposition of Everytown.

That said and although the time limits in the CPLR are presumptively reasonable and fair, the NRA will agree to an extension of the document production deadline from **January 20, 2022** to **January 25, 2022**. However, the NRA agrees to such an extension only if Everytown (i) agrees to produce all responsive non-privileged documents (not just serve objections) by the January 25, 2022 date; and (ii) is available to meet and confer about any withheld documents on January 26, 2022.

You mentioned that you believe it may be productive to meet and confer about your client's objections to the subpoena to arrive at a reasonable scope. If the scope of responsive records is unmanageable, the NRA is available to discuss how we can potentially narrow the scope of the requests. If there are any specific sections in the subpoena that impose an undue burden on Everytown, please let the NRA know what they are and the reasons you believe the request is unduly burdensome. We are available to have that discussion tomorrow or otherwise later this week.

Please let us know if Everytown agrees to the proposal outlined above and/or wishes to discuss the reasons why any requests may be, in your view, burdensome.

Separately, although I did not—during our call—understand you to seek an adjournment of the February 2, 2022 deposition, for the avoidance of doubt, I want to mention it here as well. Given the scheduling constraints referenced above, the NRA must insist that the deposition of Everytown proceed on the noticed date, February 2, 2022. In addition, as you know, Everytown's deadline to identify under Rule 11-f its testifying representative(s) is January 23, 2022.

Finally, as I noted on the call in response to your question, there is no reason to think that the fact discovery deadline will be moved. However, I will let you know if an application for an

extension is made by any party and otherwise keep you posted on any scheduling developments relevant to your client's response to the subpoena.

Please do not hesitate to email or call with any questions.

Regards,  
Svetlana

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**From:** Svetlana Eisenberg <sme@brewerattorneys.com>

**Sent:** Tuesday, January 11, 2022 10:11 AM

**To:** Harris, Jenna <Jenna.Harris@weil.com>

**Cc:** Zalka, Caroline <caroline.zalka@weil.com>; Cauchi, Andrew <Andrew.Cauchi@weil.com>; Gianna Cincotti <gmc@brewerattorneys.com>; Mordecai Geisler <mxg@brewerattorneys.com>

**Subject:** Re: Letitia James v. NRA (Index No. 451625/2020)- Subpoena to Everytown for Gun Safety

Good morning Jenna, Caroline, and Andrew. A dial in has been circulated. Please let us know if you did not receive it. Further, attached is the amended subpoena, which was served yesterday. As you can tell from the cover letter, the only difference is added instructions related to Rule 11-f's requirements.

Please let me know if you have any questions.

Thank you.

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---

**From:** Svetlana Eisenberg <sme@brewerattorneys.com>

**Sent:** Monday, January 10, 2022 2:32 PM

**To:** Harris, Jenna <Jenna.Harris@weil.com>

**Cc:** Zalka, Caroline <caroline.zalka@weil.com>; Cauchi, Andrew <Andrew.Cauchi@weil.com>; Gianna Cincotti <gmc@brewerattorneys.com>; Mordecai Geisler <mxg@brewerattorneys.com>

**Subject:** Re: Letitia James v. NRA (Index No. 451625/2020)- Subpoena to Everytown for Gun Safety

Thank you, Jenna. Speak to you then. We will circulate the dial-in in the morning.

Svetlana M. Eisenberg | Partner  
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**From:** Harris, Jenna <Jenna.Harris@weil.com>  
**Sent:** Monday, January 10, 2022 2:31 PM  
**To:** Svetlana Eisenberg <sme@brewerattorneys.com>  
**Cc:** Zalka, Caroline <caroline.zalka@weil.com>; Cauchi, Andrew <Andrew.Cauchi@weil.com>; Gianna Cincotti <gmc@brewerattorneys.com>; Mordecai Geisler <mxcg@brewerattorneys.com>  
**Subject:** RE: Letitia James v. NRA (Index No. 451625/2020)- Subpoena to Everytown for Gun Safety

Hi Svetlana,

We are available at 11:30am tomorrow.

Thanks,  
Jenna



**Jenna Harris**

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767 Fifth Avenue  
New York, NY 10153  
[Jenna.Harris@weil.com](mailto:Jenna.Harris@weil.com)  
+1 212 310 8245 Direct  
+1 646 388 2219 Mobile  
+1 212 310 8007 Fax

---

**From:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>  
**Sent:** Monday, January 10, 2022 10:26 AM  
**To:** Harris, Jenna <[Jenna.Harris@weil.com](mailto:Jenna.Harris@weil.com)>  
**Cc:** Zalka, Caroline <[caroline.zalka@weil.com](mailto:caroline.zalka@weil.com)>; Cauchi, Andrew <[Andrew.Cauchi@weil.com](mailto:Andrew.Cauchi@weil.com)>; Gianna Cincotti <[gmc@brewerattorneys.com](mailto:gmc@brewerattorneys.com)>; Mordecai Geisler <[mxg@brewerattorneys.com](mailto:mxg@brewerattorneys.com)>  
**Subject:** RE: Letitia James v. NRA (Index No. 451625/2020)- Subpoena to Everytown for Gun Safety

Hi Jenna,  
Certainly. I can speak any time after 12 noon today and have availability tomorrow. My assistant (copied) will circulate the dial in once you specify the time that works on your end.  
Thanks.

Svetlana  
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---

**From:** Harris, Jenna <[Jenna.Harris@weil.com](mailto:Jenna.Harris@weil.com)>  
**Sent:** Monday, January 10, 2022 10:23 AM

**To:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>  
**Cc:** Zalka, Caroline <[caroline.zalka@weil.com](mailto:caroline.zalka@weil.com)>; Cauchi, Andrew <[Andrew.Cauchi@weil.com](mailto:Andrew.Cauchi@weil.com)>  
**Subject:** Letitia James v. NRA (Index No. 451625/2020)- Subpoena to Everytown for Gun Safety

Hello Svetlana,

Hope you are well. We represent Everytown for Gun Safety and received the NRA's subpoena, dated December 30, 2021 in connection with the *Letitia James v. NRA* lawsuit filed in New York State court. We would like to schedule a time this week to discuss. Please let us know when you are available.

Best,  
Jenna



**Jenna Harris**

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# **EXHIBIT 4**



**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK - COMMERCIAL DIVISION**

<p>PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>THE NATIONAL RIFLE ASSOCIATION OF AMERICA, WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER, and JOSHUA POWELL,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">and</p> <p>THE NATIONAL RIFLE ASSOCIATION OF AMERICA,</p> <p style="text-align: center;">Defendant-Counterclaim Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK, IN HER OFFICIAL AND INDIVIDUAL CAPACITIES,</p> <p style="text-align: center;">Plaintiff-Counterclaim Defendants.</p>	<p>INDEX NO.: 451625/2020</p>
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**OBJECTIONS AND RESPONSES OF NON-PARTY EVERYTOWN FOR  
GUN SAFETY ACTION FUND, INC. TO THE NATIONAL RIFLE  
ASSOCIATION’S SUBPOENA TO PRODUCE DOCUMENTS**

Pursuant to Rule 3122 of the New York Civil Practice Law and Rules (“CPLR”), non-party Everytown for Gun Safety Action Fund, Inc. (“Everytown”), by and through its undersigned counsel, hereby responds and objects to the Subpoena *Duces Tecum* (the “Subpoena” or “Requests”) issued by Defendant and Counterclaim Plaintiff the National Rifle Association of America (the “NRA”), dated December 30, 2021.

### GENERAL OBJECTIONS

Everytown makes the following objections to the Subpoena, which form a part of Everytown's responses to each and every Request, and are set forth herein to avoid repetition and duplication. Although some or all of these General Objections may be specifically stated in response to a specific Request, failure to mention a General Objection specifically should not be construed as a waiver of any General Objection.

1. Everytown objects to the Subpoena (including the Instructions and Definitions therein) to the extent it attempts to impose obligations extending beyond those imposed or authorized by the CPLR, the Rules of the Commercial Division of the Supreme Court, and/or applicable case law or other rules.

2. Everytown objects to the Subpoena on the grounds that it is overly broad and unduly burdensome to the extent it seeks "[a]ll Documents and Communications" when the production of a subset of all documents would be sufficient to show the pertinent information. Subject to its stated objections, and consistent with Everytown's obligations as a non-party subpoena recipient, any statement that Everytown will produce documents in response to a specific Request means that Everytown agrees to conduct a reasonably diligent search for responsive, non-privileged documents in its possession, custody, and/or control pursuant to mutually agreed search and scope parameters between Everytown and the NRA in writing (the "Search Protocol").

3. Everytown objects to the Subpoena to the extent that it calls for the production of documents that are not in its possession, custody, or control. By responding to the Subpoena, Everytown does not concede that it is in possession, custody, or control of any documents responsive to the Subpoena. Everytown further objects to the Subpoena to the extent it calls for the production of documents that are already in the NRA's possession, custody, or control.

4. Everytown objects to the Subpoena to the extent it seeks documents that are not reasonably calculated to lead to the discovery of relevant and admissible evidence and/or that are not material or necessary in the prosecution or defense of any claim in this action.

5. Everytown objects to the Subpoena as overly broad and unduly burdensome to the extent that it seeks documents not readily retrievable without undue burden and expense, or which are available to the NRA from another source (including public sources or the parties to the above-captioned action) or through a different discovery device that is more convenient, less burdensome, or less expensive. Everytown agrees to produce documents in response to the Subpoena only in accordance with search and scope parameters to be mutually agreed on between Everytown and the NRA.

6. Everytown objects to the Subpoena to the extent that it calls for the production of documents or communications protected from disclosure by any applicable privilege or immunity, including, without limitation, the attorney-client privilege and attorney work product on the ground that such discovery is impermissible under CPLR § 3101. The inadvertent production of any privileged document by Everytown shall not be deemed a waiver of any applicable privilege with respect to such document, or to any other document, or to the subject matter of the document. Everytown reserves the right to redact any material covered by this paragraph and to require the return or destruction of any inadvertently produced documents.

7. Everytown objects to the Subpoena to the extent that it calls for the production of documents that contain confidential and/or proprietary business information. To the extent Everytown produces any such information, Everytown does so for purposes of this litigation only and subject to an appropriate confidentiality and protective order.

8. Everytown does not admit, adopt, or acquiesce in any factual or legal contention, assertion, assumption, characterization, or implication contained in the Subpoena or in any Request. Any use of the definitions contained in the Subpoena by Everytown for the purpose of responding to the Subpoena does not constitute a waiver of this or any other objection.

9. The fact that Everytown agrees to produce (or does not object to producing) documents in response to any Request is not and should not be construed as an admission or acknowledgement that such documents are relevant or admissible in any proceeding herein or that Everytown actually possesses the documents requested or that any such documents exist. Everytown makes these objections and responses without waiver or limitation to Everytown's right to object, on any grounds and in any proceeding, to the use of any information or documents referred to in these responses.

10. Everytown hereby objects and responds to the Subpoena to the best of its present knowledge and reserves its right to revise, correct, amend and/or supplement these objections and responses to the Subpoena.

11. Everytown's General Objections are continuing and are incorporated by reference into its response to each Request, as set forth below.

12. Everytown offers to meet and confer regarding the objections and responses contained herein.

**OBJECTIONS TO DEFINITIONS, INSTRUCTIONS, PRODUCTION  
SPECIFICATIONS AND RELEVANT TIME PERIOD**

1. Everytown objects to the Definitions to the extent that they purport to impose any obligations on Everytown greater than those imposed by CPLR § 3122 and/or any other applicable rules, statutes, or court orders governing the scope, timing, or extent of discovery in the action.

2. Everytown objects to the definition of “You” and “Your” as overbroad, vague, ambiguous, and unduly burdensome to the extent that the definition includes unidentified “former or current agents, representatives, officers, directors, employees, affiliates, independent contractors, attorneys, and each and every person acting on its behalf or at its direction or on whose behalf they were acting with respect to the matters referred to herein.” Everytown will construe the terms “You” and “Your” to mean Everytown for Gun Safety Action Fund, Inc.

3. Everytown objects to the definition of “Attorney General” as overbroad, vague, ambiguous, and unduly burdensome to the extent that the definition includes unidentified “other persons acting or purporting to act with, for, or on its, his, or her behalf, including, but not limited to, consultants, advisors, attorneys, or any person acting in an advisory, agency, or consulting capacity” and “other agencies, offices, bureaus, departments, or divisions of the State of New York and their constituent personnel.” Everytown will construe the term “Attorney General” to mean the Office of the Attorney General of the State of New York, including Attorney General Letitia James.

4. Everytown objects to the definition of “NRA” as overbroad, vague, ambiguous, and unduly burdensome to the extent that the definition includes “any person acting, or who has so acted, on its behalf, including, but not limited to, any of its or their current or former agents, representatives, officers, directors, employees, independent contractors, attorneys, and each and every person acting on their behalf or at their direction or on whose behalf they were acting.” Everytown will construe the term “NRA” to mean the National Rifle Association of America.

5. Everytown objects to the definition of the term “Communication(s)” on the grounds that it is overly broad, vague, ambiguous and purports to expand the definition beyond its ordinary meaning.

6. Everytown objects to the Instructions (including, but not limited to, Instruction Nos. 4, 7, and 11) to the extent that they seek to impose on Everytown any obligation greater than those imposed by the CPLR and/or any other applicable rules, statutes, or court orders governing the scope, timing, or extent of discovery in the action.

7. Everytown objects to Instruction No. 4 as overbroad and unduly burdensome to the extent that it requires Everytown to specifically identify documents produced to the NRA in another proceeding. Everytown offers to meet and confer with the NRA regarding this instruction.

8. Everytown objects to Instruction No. 7 as overbroad, unduly burdensome, and not proportional to the needs of the case. Everytown will not provide any written statement describing the information requested by this Instruction with respect to any document formerly in its “possession, custody, or control” that has been misplaced, destroyed, or otherwise disposed of in the ordinary course of business before receipt of the Subpoena.

9. Everytown objects to Instruction No. 11 to the extent that it seeks to impose on Everytown any obligation greater than those imposed by the CPLR. Everytown will comply with its obligations pursuant to CPLR 3122, the Rules of the Commercial Division of the Supreme Court, and/or applicable case law or other rules.

10. Everytown objects to the Instructions for Producing Electronically Stored Information (“Instructions for Producing ESI”), as set forth in Appendix A to the extent they seek to impose on Everytown any obligation greater than those imposed by the CPLR. Among other things, Everytown objects to the Instructions for Producing ESI to the extent that they call for the production of electronic documents in native format. Everytown offers to meet and confer with the NRA regarding this instruction.

11. Everytown objects to the “January 1, 2018 through the present” period applied to each Request (the “Relevant Time Period”) as overly broad and unduly burdensome to the extent that it requires Everytown to search for, review, and produce documents that are neither relevant to the action nor reasonably calculated to lead to the discovery of admissible evidence. Everytown further objects to the extent that the Relevant Time Period is continuing in nature and requires Everytown to supplement its responses. Everytown is willing to meet and confer regarding a mutually agreed upon Relevant Time Period for the Subpoena.

### **SPECIFIC RESPONSES AND OBJECTIONS**

The foregoing General Objections and Objections to Definitions, Instructions, Production Specifications and Relevant Time Period expressly apply to each of the specific Requests and are incorporated by reference into (and will not necessarily be repeated in) each of the specific responses and objections set forth below.

#### **REQUEST FOR PRODUCTION NO. 1:**

All Documents and Communications concerning the NRA between (i) You and (ii) (A) the Attorney General, whether in an official or an individual capacity; or (B) James, whether in an official or an individual capacity.

#### **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

In addition to the General Objections set forth above, Everytown objects to this Request on the grounds that it is vague, overbroad, unduly burdensome for a non-party and not proportional to the needs of the case to the extent it seeks “[a]ll Documents and Communications concerning the NRA” with any person acting in their individual capacity other than Attorney General Letitia James. Everytown further objects to the definition of Attorney General, as stated above. Everytown also objects to this Request as it is not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020 and calls for information

otherwise obtainable from another source that is more convenient and less burdensome, such as the other parties to the Action.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Request.

**REQUEST FOR PRODUCTION NO. 2:**

For each statement attributed to James and listed in Table A below, please produce all Documents and Communications related to Your involvement in the development or communication of such statements, including but not limited to:

1. Any talking points, scripts, prepared speeches, or prepared remarks for or by James containing such statements or referencing such statements;
2. Any transcripts or recordings of such statements by James;
3. Any calendar invitations for or photographs from the events at which these statements were made; and/or
4. Any of the foregoing types of materials that reflect any statements or contemplated statements by James to the effect of the statements listed in Table A below or any other statements accusing the NRA of illegal behavior whether or not they were made during or in furtherance of the Campaign.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

In addition to the General Objections set forth above, Everytown objects to this Request on the grounds that it is overbroad, unduly burdensome for a non-party, and not proportional to the needs of the case. Everytown also objects to this Request as it is not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020, and the Request seeks documents that are publically available and calls for information otherwise obtainable from another source that is more convenient and less burdensome, such as the other parties to the Action. Everytown further objects to this Request to the extent it would require Everytown to identify “any statements or contemplated statements by James to the effect of the statements listed in Table A below or any other statements accusing the NRA of illegal behavior—



whether or not they were made during or in furtherance of the Campaign.”

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Request.

**REQUEST FOR PRODUCTION NO. 3:**

All Documents and Communications concerning any of Your meeting(s) with the Attorney General, including but not limited to Your February 14, 2019 meeting with representatives of the Attorney General or any other planned, cancelled, or actual meeting between You and the Attorney General, including all Documents and Communications before during or after any such meeting(s), including but not limited to, any emails, texts, voicemails, notes, agendas, handouts, demonstratives, presentations, and/or calendar items.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

In addition to the General Objections set forth above, Everytown objects to this Request on the grounds that it is overbroad, unduly burdensome for a non-party, and not proportional to the needs of the case to the extent it seeks “[a]ll documents and Communications” concerning any meetings with Everytown and the Attorney General, regardless of any connection to the NRA or relevance to the allegations in the above-captioned action, Index No. 451625/2020 and calls for information otherwise obtainable from another source that is more convenient and less burdensome, such as the other parties to the Action.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Request.

**REQUEST FOR PRODUCTION NO. 4:**

All Documents and Communications concerning Your involvement in the development of Campaign materials and/or Campaign fundraising materials, referring to the NRA-directly or indirectly-including but not limited to, any materials referencing the statements set forth in Request for Production No. 2, Table A.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

In addition to the General Objections set forth above, Everytown objects to this Request on the grounds that it is overbroad, unduly burdensome for a non-party, not proportional to the needs of the case, including to the extent it seeks documents related to statements beyond those set forth in Request for Production No. 2, Table A. Everytown further objects to this Request as it is not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020 and calls for information otherwise obtainable from another source that is more convenient and less burdensome, such as the other parties to the Action.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Request.

**REQUEST FOR PRODUCTION NO. 5:**

All Documents and Communications concerning Your involvement in the drafting, contents, timing, and release of any of Campaign statements, Campaign fundraising statements and/or donor solicitations referencing the NRA, directly or indirectly, including but not limited to, the fundraising solicitation issued by James on or about August 6, 2020, a copy of which is annexed hereto as Exhibit C.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

In addition to the General Objections set forth above, Everytown objects to this request on the grounds that the request is overbroad, unduly burdensome for a non-party and not proportional to the needs of the case. Everytown further objects to this Request as it is not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020 and calls for information otherwise obtainable from another source that is more convenient and less burdensome, such as the other parties to the Action.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Request.

**REQUEST FOR PRODUCTION NO. 6:**

All Documents and Communications concerning the NRA between (a) You and (b) any of the following Persons or entities-whether directly or indirectly-including but not limited to, any of the Persons' or entities' current or former officers, employees, contractors, investigators, attorneys, agents, representatives, predecessors-in-interest, or designees.

- A. Former Governor of New York, Andrew Cuomo;
- B. New York State's Department of Financial Services;
- C. Maria T. Vullo;
- D. Linda Lacewell;
- E. Office of the Attorney General for the District of Columbia;
- F. Michael R. Bloomberg and/or any other Campaign donor or supporter;
- G. Giffords Law Center to Prevent Gun Violence;
- H. The Democratic National Committee; and
- I. Democratic Attorneys General Association.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

In addition to the General Objections set forth above, Everytown objects to this Request on the grounds that it is irrelevant, overbroad, unduly burdensome for a non-party, and not proportional to the needs of the case. Everytown also objects to this Request as it is not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020. Everytown further objects to this Request to the extent that it seeks production of information that is already in the custody, control, possession of, or otherwise available to the NRA and previously produced by Everytown in connection with the NRA's subpoena served on January 28, 2019 in connection with its lawsuit, *NRA v. Andrew Cuomo, et al.* (Case No. 1:18-cv-566), filed in the United States District Court for the Northern District of New York.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Request.

**REQUEST FOR PRODUCTION NO. 7:**

All Documents and Communications concerning the NRA-whether directly or indirectly-between Jason Lilien and the Attorney General or James, whether in an official or an individual capacity.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

In addition to the General Objections set forth above, Everytown objects to this Request on the grounds that it is overbroad, unduly burdensome for a non-party, and not proportional to the needs of the case. Everytown objects to this Request to the extent that it is cumulative and duplicative of other Requests. Everytown further objects to this Request to the extent it calls for production of privileged information and/or documents that are not in Everytown's possession, custody, or control, and to the extent it is not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Request.

**REQUEST FOR PRODUCTION NO. 8:**

All Documents and Communications concerning the NRA between Nicholas Suplina and the Attorney General or James, whether in an official or an individual capacity.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

In addition to the General Objections set forth above, Everytown objects to this Request on the grounds that it is overbroad, unduly burdensome for a non-party, and not proportional to the needs of the case. Everytown further objects to this Request to the extent that it is cumulative

and duplicative of other Requests, calls for production of privileged information and/or documents and is not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Request.

**REQUEST FOR PRODUCTION NO. 9:**

All Documents and Communications concerning the NRA between Rachel Nash and the Attorney General or James, whether in an official or an individual capacity.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

In addition to the General Objections set forth above, Everytown objects to this Request on the grounds that it is overbroad, unduly burdensome for a non-party, and not proportional to the needs of the case. Everytown further objects to this Request to the extent that it is cumulative and duplicative of other Requests and is not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Request.

**REQUEST FOR PRODUCTION NO. 10:**

All Documents and Communications concerning the NRA between Michael-Sean Spence and the Attorney General or James, whether in an official or an individual capacity.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

In addition to the General Objections set forth above, Everytown objects to this Request on the grounds that it is overbroad, unduly burdensome for a non-party, and not proportional to the needs of the case. Everytown further objects to this Request to the extent that it is cumulative

and duplicative of other Requests and is not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with Plaintiffs to discuss the scope and relevance of this Request.

**REQUEST FOR PRODUCTION NO. 11:**

All Documents and Communications concerning the NRA between Michael Kane and the Attorney General or James, whether in an official or an individual capacity.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

In addition to the General Objections set forth above, Everytown objects to this Request on the grounds that it is overbroad, unduly burdensome for a non-party, and not proportional to the needs of the case. Everytown further objects to this Request to the extent that it is cumulative and duplicative of other Requests and is not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Request.

**REQUEST FOR PRODUCTION NO. 12:**

All Documents and Communications concerning the NRA between You and the Campaign.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

In addition to the General Objections set forth above, Everytown objects to this Request on the grounds that it is overbroad, unduly burdensome for a non-party, and not proportional to the needs of the case. Everytown further objects to this Request to the extent that it is cumulative and duplicative of other Requests and is not limited to documents and communications relevant to

the allegations in the above-captioned action, Index No. 451625/2020.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Request.

**SPECIFIC RESPONSES AND OBJECTIONS TO NON-EXCLUSIVE LIST OF  
MATTERS TO BE ADDRESSED AT THE DEPOSITION PURSUANT TO  
COMMERCIAL DIVISION RULE 11-F**

**DEPOSITION TOPIC NO. 1:**

Communications concerning the NRA between (i) You and (ii) (A) the Attorney General, whether in an official or an individual capacity; or (B) James, whether in an official or an individual capacity.

**RESPONSE TO DEPOSITION TOPIC NO. 1:**

In addition to the General Objections set forth above, Everytown objects to this Deposition Topic on the grounds that it is vague, overbroad, unduly burdensome for a non-party, including to the extent that it purports to require testimony concerning “[c]ommunications concerning the NRA” because it is not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020, not reasonably tailored to avoid imposing undue burden or expense on Everytown, and the requested information can be more readily obtained from a party to the Action.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Deposition Topic.

**DEPOSITION TOPIC NO. 2:**

For each statement attributed to James and listed in Table A below, Your involvement in the development or communication of such statements.

**RESPONSE TO DEPOSITION TOPIC NO. 2:**

In addition to the General Objections set forth above, Everytown objects to this Deposition Topic on the grounds that it is vague, overbroad, unduly burdensome for a non-party, not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020, and not proportional to the needs of the case to the extent it seeks requested information that is more readily obtained from a party to the Action without burdening a non-party.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Deposition Topic.

**DEPOSITION TOPIC NO. 3:**

Any of your meeting(s) or other communications with the Attorney General or any representatives of the Office of the Attorney General of the State of New York, including but not limited to (i) Your February 14, 2019 meeting with representatives of the Office of the Attorney General, and (ii) any other planned, cancelled or actual such meeting.

**RESPONSE TO DEPOSITION TOPIC NO. 3:**

In addition to the General Objections set forth above, Everytown objects to this Deposition Topic on the grounds that it is vague, overbroad, unduly burdensome for a non-party, is not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020, and is not proportional to the needs of the case to the extent it seeks requested information that is not relevant to the claims, counterclaims or defenses in the Action. Everytown further objects to this Deposition Topic because it is not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020, not reasonably



tailored to avoid imposing undue burden or expense on Everytown, and the requested information can be more readily obtained from a party to the Action.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Deposition Topic.

**DEPOSITION TOPIC NO. 4:**

Your involvement in the development of Campaign materials and/or Campaign fundraising materials, referring to the NRA—directly and indirectly—including but not limited to, any materials referencing the sum or substance of the statements set forth in Table A above.

**RESPONSE TO DEPOSITION TOPIC NO. 4:**

In addition to the General Objections set forth above, Everytown objects to this Deposition Topic on the grounds that it is vague, overbroad, unduly burdensome for a non-party, not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020, not proportional to the needs of the case because it is not reasonably tailored to avoid imposing undue burden or expense on Everytown, and the requested information can be more readily obtained from a party to the Action.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Deposition Topic.

**DEPOSITION TOPIC NO. 5:**

Your involvement in the drafting, contents, timing, and release of any of Campaign statements, Campaign fundraising statements and/or donor solicitations referencing the NRA, directly or indirectly, including but not limited to, the fundraising solicitation issued by James on or about August 6, 2020, a copy of which is annexed hereto as Exhibit C.

**RESPONSE TO DEPOSITION TOPIC NO. 5:**

In addition to the General Objections set forth above, Everytown objects to this Deposition Topic on the grounds that it is vague, overbroad, unduly burdensome for a non-party, not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020, not proportional to the needs of the case because it is not reasonably tailored to avoid imposing undue burden or expense on Everytown, and the requested information can be more readily obtained from a party to the Action.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Deposition Topic.

**DEPOSITION TOPIC NO. 6:**

Communications concerning the NRA between (a) You and (b) any of the following Persons or entities—whether directly or indirectly—including but not limited to, any of the Persons' or entities' current or former officers, employees, contractors, investigators, attorneys, agents, representatives, predecessors-in-interest, or designees.

1. Former Governor of New York, Andrew Cuomo;
2. New York State's Department of Financial Services;
3. Maria T. Vullo;
4. Linda Lacewell;
5. Office of the Attorney General for the District of Columbia;
6. Michael R. Bloomberg and/or any other Campaign donor or supporter;
7. Giffords Law Center to Prevent Gun Violence;
8. The Democratic National Committee; and
9. Democratic Attorneys General Association.

**RESPONSE TO DEPOSITION TOPIC NO. 6:**

In addition to the General Objections set forth above, Everytown objects to this Deposition Topic on the grounds that it is vague, overbroad, unduly burdensome for a non-party, not limited to communications relevant to the allegations in the above-captioned action, Index No.

451625/2020, and not proportional to the needs of the case because it is not reasonably tailored to avoid imposing undue burden or expense on Everytown.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Deposition Topic.

**DEPOSITION TOPIC NO. 7:**

Communications concerning the NRA—whether directly or indirectly—between the following persons and the Attorney General or James, whether in an official or an individual capacity: (i) Jason Lilien, outside counsel for Everytown and former head of the NYAG’s Charities Bureau; (ii) Nicholas Suplina; (iii) Rachel Nash; (iv) Michael-Sean Spence; (v) Michael Kane.

**RESPONSE TO DEPOSITION TOPIC NO. 7:**

In addition to the General Objections set forth above, Everytown objects to this Deposition Topic on the grounds that it is vague, overbroad, unduly burdensome for a non-party, not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020, and not proportional to the needs of the case because it is not reasonably tailored to avoid imposing undue burden or expense on Everytown.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Deposition Topic.

**DEPOSITION TOPIC NO. 8:**

Communications concerning the NRA between You and the Campaign.

**RESPONSE TO DEPOSITION TOPIC NO. 8:**

In addition to the General Objections set forth above, Everytown objects to this Deposition Topic on the grounds that it is vague, overbroad, unduly burdensome for a non-party, not limited to documents and communications relevant to the allegations in the above-captioned action, Index No. 451625/2020, not proportional to the needs of the case because it is not reasonably tailored to avoid imposing undue burden or expense on Everytown and the requested information can be more readily obtained from a party to the Action.

Subject to, and without waiving or otherwise limiting the foregoing General and Specific Objections, each of which is incorporated by reference as though fully set forth herein, Everytown is prepared to meet and confer with the NRA to discuss the scope and relevance of this Deposition Topic.

Dated: New York, New York  
January 19, 2022

Respectfully submitted,

By: /s/ Caroline H. Zalka  
Jonathan D. Polkes (NY 2015527)  
Caroline Hickey Zalka (NY 4263448)  
Andrew J. Cauchi (NY 5391156)  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, NY 10153  
Tel: (212) 310-8000  
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jpolkes@weil.com  
czalka@weil.com  
acauchi@weil.com

*Attorneys for Everytown for Gun Safety  
Action Fund, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 19, 2022, I served a copy of the foregoing Objections and Responses of Non-Party Everytown for Gun Safety Action Fund, Inc. to the National Rifle Association's Subpoena to Produce Documents by e-mail to all counsel of record in the above-captioned litigation.

Dated: January 19, 2022  
New York, New York

By: /s/ Caroline H. Zalka  
Jonathan D. Polkes (NY 2015527)  
Caroline Hickey Zalka (NY 4263448)  
Andrew J. Cauchi (NY 5391156)  
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767 Fifth Avenue  
New York, NY 10153  
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jpolkes@weil.com  
czalka@weil.com  
acauchi@weil.com

*Attorneys for Everytown for Gun Safety  
Action Fund, Inc.*

# **EXHIBIT 5**



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

January 19, 2022

**VIA EMAIL**

Svetlana M. Eisenberg, Esq.  
Brewer, Attorneys & Counselors  
750 Lexington Avenue, 14th Floor  
New York, New York 10022  
[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)

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 Ms. Eisenberg:

We write pursuant to CPLR §§ 2304, 3103, the Court's Individual Practices and Procedures VI(B), and Rule 14 of the Commercial Division Rules, with respect to the NRA's Amended Subpoena Duces Tecum and Ad Testificandum, dated January 7, 2022 (the "Subpoena"), directed to Everytown for Gun Safety Action Fund, Inc. ("Everytown"). For the reasons set forth below, we request that the NRA withdraw the Subpoena in its entirety.

First, the Subpoena seeks documents and testimony from Everytown that relate wholly to the NRA's counterclaims, discovery of which is stayed pursuant to the Court's direction at the March 9, 2021 and the December 10, 2021 conferences. Accordingly, discovery from any party—or nonparty—on those matters (and any objections thereto) should be held in abeyance until such time as the Court has determined the counterclaims may proceed.

Second, the documents and testimony sought in the Subpoena mirror the NRA's discovery demands previously directed to the OAG and (improperly) to Attorney General James, to which the OAG and Attorney General James have already objected on the same grounds, and on the grounds that these requests are overly broad, unduly burdensome, not material or necessary to the prosecution or defense of the action, and not reasonably calculated to lead to discovery of evidence material and necessary to the prosecution or defense of the action.

Third, argument on the OAG's Motion to Dismiss the NRA's counterclaims is scheduled for February 25, 2022, after which discovery on the counterclaims will either proceed apace or become moot.

Page 2  
January 19, 2022

Fourth, we are finalizing the retention of the Special Master, to whom we can shortly address these issues if further intervention is necessary.

Fifth, the NRA appears to be using this subpoena for the purposes of general discovery and/or to ascertain the existence of documents which is not permitted. *See, e.g., Capacity Group of NY, LLC v. Duni*, 186 A.D.3d 1482, 1483 (2nd Dep't 2020), citing *Matter of Terry D.*, 81 N.Y.2d 1042, 1044 (1993) ("Generally, a subpoena duces tecum may not be used for the purpose of discovery or to ascertain the existence of evidence.").

In light of the foregoing, we believe the parties should agree to hold the subpoena and subpoena compliance in abeyance pending a decision on the NYAG's motion to dismiss the NRA's amended counterclaims or, alternatively. We are available to discuss this issue at your earliest convenience.

Please advise by close of business on Friday, January 21, 2022, as to whether the NRA will agree to withdraw the Subpoena or hold it in abeyance pending a decision regarding the NRA's counterclaims.

Very truly yours,  
~~2# rlf# rlf#~~  
Monica Connell  
Assistant Attorney General

cc: All Counsel of Record  
Andrew Cauchi, Esq.  
Jenna Harris, Esq.  
Counsel for Everytown



# **EXHIBIT 6**

**B R E W E R**  
ATTORNEYS & COUNSELORS

January 24, 2022

**VIA EMAIL**

Monica Connell  
Senior Litigation Counsel  
New York State Office of the Attorney General  
28 Liberty Street, New York, NY 10005

Re: *NYAG v. The National Rifle Association of America et al.*,  
Index No. 451625/2020

Dear Monica:

We write in response to your letter dated January 19, 2022 regarding the Amended Subpoena Duces Tecum and Ad Testificandum, dated January 7, 2022 (the “Subpoena”), served by the NRA on Everytown for Gun Safety Action Fund, Inc. (“Everytown”). The OAG requests that the NRA withdraw the Subpoena. The NRA will not withdraw the validly issued Subpoena.

First, contrary to the OAG’s now oft-repeated assertion, there is no automatic stay in place that requires the Subpoena to be “held in abeyance.” You refer to the Court’s direction at the December 10, 2021 hearing. During that hearing, the Court specifically stated “[i]f you all need to make a motion for a stay or a motion to amend the discovery schedule, go ahead.” (NYSCEF No. 511 at 9:2-10). Simply asserting that a stay is in place is inaccurate. More importantly, the Subpoena is not related exclusively to the NRA’s counterclaims but also to its defenses. As such, it is not subject to any potential stay.

Second, the OAG objects that the “documents and testimony sought in the Subpoena mirror the NRA’s discovery demands” directed to the OAG and Attorney General James, to which you “have already objected on the same grounds,” and on the grounds that the Subpoena is, among other things, overly broad, unduly burdensome, and not material or necessary to the prosecution or defense of the action. The OAG’s assertion that the Subpoena “mirrors” discovery demands directed to the OAG and Attorney General James is incorrect and also irrelevant. The OAG has no standing to object to the valid Subpoena issued to Everytown, an unrelated third party. *See Echel Gasoline Corp. v. New York City Dept. of Consumer Affairs*, 108 A.D.2d 717, 718 (2d Dep’t 1985) (“Petitioner has no proprietary interest in the subpoenaed documents and, therefore, does not have standing to challenge a subpoena served on a third party.”); *People v. Weiss*, 671 N.Y.S.2d 604, 606 (Sup. Ct. N.Y. Cnty. 1998) (State lacked standing to quash a defendant’s subpoena served on a third party, who was not the State’s agent).

Indeed, Everytown is represented by its own counsel, who served objections and responses to the Subpoena and offered to meet and confer with the NRA about the same. For the OAG to

B R E W E R

now step in and seek to delay compliance with the Subpoena while lacking any proprietary interest in the subpoenaed documents is inappropriate and procedurally defective.

Third, the anticipated retention of the Special Master is irrelevant to the OAG's lack of standing to lodge objections to the Subpoena.

Fourth, the OAG argues—again, lacking standing to do so—that the NRA is inappropriately using the Subpoena “for the purposes of general discovery and/or to ascertain the existence of documents which is not permitted.” The OAG is wrong and relies on two cases which are inapposite. *Duni* concerned whether the subpoenaing party satisfied procedural requirements of notifying the recipient of the circumstances requiring the requested disclosure; *Duni*'s holding did not turn on the issue of whether a request constitutes impermissibly “general discovery.” Similarly, *Terry D* held that a Family Court subpoena requesting identification of witnesses was an impermissible expansion of discovery in the narrow case where Family Court discovery rules do not require disclosure of witness identities.

Relevant authority, rather, is *Matter of Kapon v. Koch*, 23 N.Y.3d 32 (2014), where the Court of Appeals established a “‘material and necessary’ standard . . . in keeping with this State’s policy of liberal discovery.” *Id.* at 38. The words “material and necessary” as used in CPLR 3101 must be “interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity.” *Id.* “Section 3101(a)(4) imposes no requirement that the subpoenaing party demonstrate that it cannot obtain the requested disclosure from any other source.” *Id.* Thus, “so long as the disclosure sought is relevant to the prosecution or defense of an action, it must be provided by the nonparty.” *Id.*

We are available to discuss the foregoing. The NRA reserves all of its rights.

Sincerely,

/s/ Svetlana M. Eisenberg

William A. Brewer III

Svetlana M. Eisenberg

Mordecai Geisler

BREWER, ATTORNEYS & COUNSELORS

Counsel for the NRA

cc: All Counsel of Record  
Andrew Cauchi, Esq.  
Jenna Harris, Esq.  
Counsel for Everytown

# **EXHIBIT 7**

**From:** [Svetlana Eisenberg](#)  
**To:** [Harris, Jenna](#); [Mordecai Geisler](#)  
**Cc:** [Zalka, Caroline](#); [Cauchi, Andrew](#)  
**Subject:** Re: Letitia James v. NRA (Index No. 451625/2020)- Subpoena to Everytown for Gun Safety  
**Date:** Thursday, January 27, 2022 4:23:09 PM

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Counsel,

On behalf of the NRA, I write to address two matters. First, on December 30, 2021, the NRA issued a notice for the deposition of Everytown pursuant to Commercial Division Rule 11-f on February 2, 2022.

Under the applicable Commercial Division Rule 11-f, Everytown's deadline to designate individuals who consent to testify on its behalf at the deposition is "no later than 10 days prior to the deposition." Everytown is also obligated to disclose before the same deadline the designee(s)' title(s), and, if multiple individuals are designated, the matters on which each individual will testify. The deposition of Everytown occurs in 6 days, but Everytown is yet to provide the required information.

The NRA demands that Everytown do so immediately. There is no authority that suspends Everytown's obligation to appear for the deposition or comply with its pre-deposition Rule 11-f obligations. The NRA reserves all rights.

Second, are you available to meet and confer about Everytown's objections to the NRA's subpoena duces tecum tomorrow, January 28, 2022? During our call, I can also provide you with an update on the NYAG's pending request to extend discovery deadlines.

The NRA reserves all rights.

Regards,  
Svetlana

Svetlana M. Eisenberg | Partner  
Brewer, Attorneys & Counselors  
750 Lexington Avenue, 14th Floor  
New York, New York 10022  
Office Direct: 212.224.8817  
Office Main: 212.489.1400  
Cell: 929.319.1731  
Fax: 212.751.2849  
sme@brewerattorneys.com [www.brewerattorneys.com](http://www.brewerattorneys.com)

BREWER

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---

**From:** Harris, Jenna <Jenna.Harris@weil.com>

**Sent:** Wednesday, January 19, 2022 7:55 PM

**To:** Svetlana Eisenberg <sme@brewerattorneys.com>; Mordecai Geisler <mxcg@brewerattorneys.com>

**Cc:** Zalka, Caroline <caroline.zalka@weil.com>; Cauchi, Andrew <Andrew.Cauchi@weil.com>

**Subject:** Letitia James v. NRA (Index No. 451625/2020)- Subpoena to Everytown for Gun Safety

Svetlana and Mordecai,

Attached please find Everytown's Responses and Objections to the NRA's Subpoena, dated December 30, 2021.

Thanks,  
Jenna



**Jenna Harris**

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
[Jenna.Harris@weil.com](mailto:Jenna.Harris@weil.com)  
+1 212 310 8245 Direct  
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# **EXHIBIT 8**

**Weil, Gotshal & Manges LLP**

767 Fifth Avenue  
New York, NY 10153-0119  
+1 212 310 8000 tel  
+1 212 310 8007 fax

**Caroline Hickey Zalka**  
+1 (212) 310-8527  
Caroline.Zalka@weil.com

January 28, 2022

**VIA EMAIL**

Svetlana M. Eisenberg, Esq.  
Brewer, Attorneys & Counselors  
750 Lexington Avenue, 14th Floor  
New York, New York 10022  
sme@brewerattorneys.com

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 (the “Action”)

Counsel:

On behalf of Everytown for Gun Safety Action Fund, Inc. (“Everytown”), we write in response to your January 27, 2022 email regarding the Amended Subpoena *Duces Tecum* and *Ad Testificandum*, dated January 7, 2022 (the “Subpoena”), issued by the National Rifle Association of America (the “NRA”) in the above-referenced action.

As you know, Everytown served its Objections and Responses to the Subpoena on January 19, 2022 (the “Objections”), in which Everytown asserted timely and valid objections to each of the NRA’s requests for documents and testimony, and offered to meet-and-confer regarding those objections. As you will recall, the Subpoena’s many deficiencies were obvious. Specifically, Everytown objected to the Subpoena as impermissibly targeted to the production of evidence that is wholly irrelevant and immaterial to the prosecution or defense of the action; overly broad; unduly burdensome; duplicative of discovery more readily obtainable from other sources; and an impermissible effort to ascertain the existence of documents (among other grounds). Indeed, the New York State Office of the Attorney General (the “OAG”) sent you a letter requesting that the NRA withdraw the Subpoena for these very reasons. *See* Jan. 19, 2022 Letter from M. Connell to S. Eisenberg (the “January 19 Letter”).

Moreover, the OAG’s January 19 Letter made clear that it would be improper to proceed further with the Subpoena given the procedural status of the Action. It appears that discovery regarding the NRA’s counterclaims is currently stayed, and the original discovery deadline of February 15, 2022, may not remain in effect. We further understand that a hearing regarding these issues and the status of discovery in the Action is being held in the coming weeks. In short, you have no basis to further proceed with the Subpoena at this juncture, nor would it make sense to do so, particularly in light of your obligation to minimize the burden associated with discovery from third-parties and the upcoming Court hearing.



**Weil, Gotshal & Manges LLP**

January 28, 2022

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Notwithstanding this, you “demand[ed]” yesterday that Everytown “immediately” designate an individual to testify on its behalf at a deposition on February 2, 2022. Notably, your e-mail demand failed to address the substance of a single Objection interposed by Everytown and disregarded the uncertain procedural status of the Action with respect to discovery. You are in no position to pound the table, nor is it productive to do so.

At bottom, the NRA waited until the tail end of discovery to serve the Subpoena on Everytown and failed to respond to Everytown’s offer to meet and confer for over a week. And when you finally did respond to that offer in your email yesterday, you indicated that the NRA was only willing to meet and confer on the document requests in the Subpoena. The NRA’s demand that Everytown, a non-party, produce a witness for a deposition on minimal notice before even attempting to discuss Everytown’s objections to both aspects of the Subpoena is completely improper. And any concerns regarding the timing of Everytown’s response to the Subpoena are problems of the NRA’s own making.

To be clear, Everytown does not intend to produce a witness for deposition on February 2. As stated in the Objections, Everytown will meet and confer with the NRA regarding the Subpoena, including the request for a deposition of an Everytown representative, in a good-faith effort to reach a mutually agreeable path forward. However, if the NRA continues to insist that an Everytown representative sit for a deposition by February 2, Everytown will secure a court order to quash the Subpoena in its entirety and ensure that the Court is aware of the NRA’s abusive litigation tactics towards a non-party.

We are willing to meet and confer regarding the Subpoena today or on Monday, January 31. Please confirm your availability on these dates as soon as possible.

Regards,

*s/ Caroline Hickey Zalka*

Caroline Hickey Zalka