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

MEMORANDUM OF LAW IN SUPPORT OF NON-PARTY EVERYTOWN FOR GUN SAFETY ACTION FUND, INC.'S MOTION TO QUASH AND FOR A PROTECTIVE ORDER

Non-party Everytown for Gun Safety Action Fund, Inc. ("Everytown") respectfully submits this memorandum of law in support of its motion pursuant to CPLR 2304, 3101(a), and 3103 to quash the non-party Amended Subpoena *Duces Tecum* and *Ad Testificandum*, issued by Defendant and Counterclaim Plaintiff the National Rifle Association of America (the "NRA"), dated January 7, 2022 (the "Subpoena"), and for a protective order regarding the same (the "Motion").

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I. PRELIMINARY STATEMENT

The NRA's abusive litigation tactics against non-party Everytown necessitated this Motion.

This is a regulatory enforcement action brought by the People of the State of New York, by Letitia James, Attorney General of the State of New York ("Plaintiff"), alleging that the NRA and four of its current and former senior officials violated New York state laws aimed at preventing abuse of not-for-profit status and misuse of charitable funds. Non-party Everytown is not mentioned even once in Plaintiff's 753-paragraph Amended and Supplemental Verified Complaint (NYSCEF No. 333) (the "Complaint"), nor is Everytown mentioned in the NRA's Amended Verified Answer and Counterclaims (NYSCEF No. 325) (the "Answer"). *Everytown thus has no apparent connection to the actual issues in dispute in this litigation*. Yet in late December 2021, the NRA issued a Subpoena to Everytown calling for production of broad swaths of Everytown documents (including internal correspondence) by January 20, 2022, and a deposition of an Everytown representative to take place on February 2, 2022.

Given the absence of any allegation concerning Everytown in the pleadings, the far-reaching and invasive scope of the Subpoena, and the lack of notice to Everytown of what possibly relevant documents or testimony the NRA could be seeking, Everytown timely objected to the Subpoena. It also recently contacted counsel for the NRA to request that the deadlines in the Subpoena—in particular, the February 2 deposition date—be extended. This was a practical, common-sense request in light of (i) the Office of the Attorney General's ("OAG") position that discovery on the NRA's counterclaims has been stayed, and (ii) the upcoming hearing (and subsequent decision) on the motion to dismiss the NRA's counterclaims, which could end the NRA's justification for the Subpoena, or, at a minimum, significantly alter the scope of what constitutes relevant information for purposes of this lawsuit. (Counsel for the NRA failed to

provide Everytown with this obviously pertinent background information on the status of the NRA's counterclaims.) Had the NRA acceded to this reasonable request, Everytown and the NRA could have continued to meet and confer, waited for Court guidance on what discovery (if any) would be permitted at this stage of the litigation, and with the benefit of that guidance, attempted to reach a resolution on the scope of the Subpoena. Indeed, there may well have been no need for judicial intervention on the Subpoena. But Everytown's request was met with a flat refusal by the NRA, which insisted that Everytown produce a witness to be deposed on February 2 or risk being in contempt.

This is simply not how discovery works. The Court should not countenance the NRA's request to jam a third party with a deposition before the parties to the litigation have resolved their underlying disputes regarding whether discovery is stayed, before the Court has issued a decision on the pending motion to dismiss, and before Everytown and the NRA were able to meaningfully meet and confer to discuss—much less reach agreement on—the scope of Everytown's document production in response to the Subpoena. Indeed, given that the NRA waited until December 30, 2021 to serve the initial subpoena, demanding production of a witness later this week amounts to expedited, emergency discovery, for no good cause whatsoever. Moreover, the NRA's request for expedited discovery from a third party is particularly unjustified given that (1) the Subpoena itself fails to provide the required notice of why the discovery is being sought, (2) the Subpoena is overly broad, unduly burdensome, and calls for utterly irrelevant information, and (3) the status of discovery in the underlying action is anything but certain.

Everytown respectfully submits that the Subpoena should be quashed, and a protective order foreclosing the NRA's requested discovery be granted, pending the Court's ruling on Plaintiff's motion to dismiss the NRA's counterclaims, a resolution of the parties' dispute as to the

status of discovery on those counterclaims, and without prejudice to the NRA issuing a renewed subpoena following such ruling.

II. BACKGROUND

Everytown is a non-partisan 501(c)(4) advocacy organization and the largest gun violence prevention organization in the country. Everytown is not a party to this action and has no involvement in the claims asserted against any parties.

On December 30, 2021, the NRA served Everytown with a wide-ranging subpoena for testimony and documents. Ex. 1.[1] In particular, the subpoena sought a deposition from an Everytown representative by February 2, 2022, on eight topics (the "Testimony Requests"), including, *inter alia*, communications between Everytown and the OAG or Attorney General James regarding the NRA; Everytown's alleged "involvement" in the communication or development of 13 statements made by the Attorney General between 2018 and 2021; a meeting between Everytown and the OAG in February 2019; and communications between Everytown and nine different entities and individuals. *See id.* at 1, 4-7. The document requests in the subpoena (the "Document Requests") largely mirrored the Testimony Requests, each of which sought "[a]ll documents and communications" from Everytown on the same topics for the period of January 1, 2018 to present.[2] *Id.* at 15-20. The subpoena demanded production of these documents by January 20, 2022 (*i.e.*, within three weeks). *Id.* at 2.

Everytown promptly contacted counsel for the NRA, Brewer, Attorneys & Counselors ("Brewer"), to inform them that Everytown was in receipt of the Subpoena. Counsel for Everytown

[1] All references to "Ex." refer to the exhibits attached to the accompanying Affirmation of Caroline Hickey Zalka (the "Zalka Aff.").

[2] On January 10, 2022, the NRA served an amended version of the subpoena on Everytown (dated January 7, 2022), which did not substantively alter any of the requests to Everytown. *See* Ex. 2. For clarity, "Subpoena" refers to the January 7, 2022 amended subpoena.

asked whether the NRA would be willing to extend the document production deadline in the Subpoena while Everytown considered its grounds. Zalka Aff. ¶ 5. By subsequent email communication, Brewer indicated, among other things, that it would only agree to a five-day extension of the document request deadline, and that it "insist[ed]" on Everytown's deposition taking place on February 2, 2022, citing a February 15, 2022 fact discovery cut-off date. Ex. 3. Counsel for Brewer did not indicate at this time that the NRA's counterclaims in the action were subject to a pending motion to dismiss. Zalka Aff. ¶ 7.

On January 19, 2022, Everytown asserted its timely and valid objections to each of the NRA's requests ("Objections") pursuant to CPLR 3122 and offered to meet-and-confer regarding those objections. *See* Ex. 4.

The same day, the OAG sent a letter to the NRA requesting that the NRA withdraw the Subpoena, or, alternatively, hold the Subpoena in abeyance. Ex. 5. The letter stated that 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." *Id.* at 1; *see also* Transcript of Preliminary Conference at 24-25, (Mar. 9, 2021), NYSCEF No. 544 (referring to the NRA's counterclaims, the Court instructed the parties to "hold off on discovery of those claims for now"). Brewer failed to notify Everytown of this highly pertinent fact in the parties' prior meet and confer discussion and follow-up email communications. Zalka Aff. ¶ 7. The OAG also referenced another fact that Brewer failed to advise Everytown of, namely, that there was a scheduled hearing on Plaintiff's motion to dismiss the NRA's counterclaims, to be held on February 25, 2022, which could render all discovery on the NRA's counterclaims moot. Ex. 5 at 1. Finally, the OAG noted the obvious facial deficiencies with the Subpoena, each of which rendered the document improper. These include that the

information sought by the NRA in the Subpoena "mirror[s] the NRA's discovery demands previously directed" to Plaintiff; that the 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"; and that the NRA "appears to be using this [S]ubpoena for the purposes of general discovery and/or to ascertain the existence of documents," which is improper under New York law. *Id.* at 1-2.

On January 24, 2022, the NRA responded to the OAG's letter, indicating that it was refusing to withdraw the Subpoena and arguing that discovery on its counterclaims had not been stayed. *See* Ex. 6.

On January 27, 2022, the NRA—which had previously failed to respond to Everytown's Objections or otherwise contact Everytown since January 12—sent an email to Everytown's counsel "demand[ing]" that Everytown "immediately" designate an individual to testify on behalf of Everytown on February 2, 2022. Ex. 7. Counsel for Everytown promptly responded to the NRA's email and the parties set up a meet and confer for January 28. Ex. 8.

At the ensuing meet and confer discussion, counsel for Everytown informed the NRA that it would not produce an Everytown representative for a deposition on February 2, 2022. Zalka Aff. ¶ 12. Counsel for Everytown noted the clear disagreement between the parties concerning 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). Counsel for Everytown further noted that Plaintiff had recently requested a three-month extension of the fact discovery cut-off date, which, if granted, would serve to allay concerns raised by the NRA regarding the timing of any deposition of Everytown. *Id.* Based on the foregoing, counsel for Everytown requested that the NRA agree to hold the February 2, 2022 requested deposition date in abeyance to allow time for the parties'

discovery dispute to be resolved. *Id.* The NRA rejected this request and reiterated its demand for Everytown to produce a representative to testify at a deposition on February 2. *Id.* Notably, despite claiming that the NRA was entitled to this discovery from Everytown, counsel for the NRA did not provide an explanation as to why it believed the testimony sought was relevant to the underlying litigation.[3] *Id*. Counsel for the NRA made clear, however, that it would not agree to postpone the requested deposition until the resolution of the parties' dispute regarding discovery in the underlying action.

This Motion followed.[4]

III. ARGUMENT

The Court should quash the Subpoena, and grant Everytown's motion for a protective order, because (1) the NRA did not provide Everytown with adequate notice of the circumstances and reasons for the demanded disclosure as required by CPLR 3101(a)(4); (2) the Subpoena seeks disclosure of information that is utterly irrelevant, and the requests in the Subpoena are overly broad and unduly burdensome; and (3) the Subpoena seeks information that, if relevant at all,

[3] On the call, counsel for the NRA merely stated that the NRA was aware of one meeting between the OAG and Everytown in February 2019. Zalka Aff. ¶ 12. This meeting is referenced in Document Request No. 3 and Testimony Request No. 3 of the Subpoena.

[4] While Everytown remains willing to engage in meet and confer discussions with the NRA concerning the Document Requests, the NRA's position that it would not defer a deposition of an Everytown representative beyond February 2 necessitated the filing of this Motion. Under CPLR § 3103(a), service of a motion for protective order, such as this Motion, "shall suspend disclosure of the particular matter in dispute." CPLR § 3103(a); *see* Siegel, NY Prac § 353 [6th ed.] ("[T]he mere making of the motion suspends the scheduled disclosure until the court, disposing of the motion, decides what's to follow.").

relates solely to the NRA's counterclaims, and the status of discovery on those counterclaims is currently in flux.

A. The NRA Has Not Satisfied Its Obligations To Provide Notice Of The Circumstances And Reasons Disclosure Is Required

Under CPLR 3101(a)(4), a party demanding discovery from a non-party must provide adequate notice of the circumstances and reasons for the disclosure sought. *See* CPLR 3101(a)(4). Consequently, courts will find a subpoena defective where the subpoena fails to provide a non-party "with the required explanation of the circumstances or reasons requiring disclosure either on the face of the subpoenas or in any accompanying material." *Gandham v. Gandham*, 170 AD3d 964, 966 [2d Dept 2019].

As noted above, the NRA's Subpoena demands discovery from Everytown on a broad array of topics on an expedited basis. Yet the Subpoena fails to provide any explanation as to why the discovery sought from Everytown is material and necessary to the prosecution of the action. Rather, the Subpoena merely provides an unsupported, conclusory assertion that the discovery sought from Everytown is "required because it is relevant, necessary and material to the prosecution and defense" of the underlying action. Ex. 2 at 2. This plainly does not suffice under New York law. To satisfy the notice requirement, a party must do more than state in conclusory fashion that disclosure is sought from the non-party because the non-party may possess information relevant to the lawsuit. *See Gandham*, 170 AD3d at 965-66 (quashing a subpoena that failed to provide adequate explanation of the reasons for disclosure); *Phoenix Grantor Tr. v. Exclusive Hosp., LLC*, 59 Misc 3d 1231[A], 2018 NY Slip Op 50808[U] [Sup Ct, Queens County 2018] (finding that the notice requirement was not satisfied where "the subpoena vaguely and conclusorily states that such disclosure is sought from [a non-party] because [the non-party] 'posess[es] information material and relevant to the dispute between to [sic] the parties concerning

the matters set forth on Exhibit A,'" and the exhibit did not provide further explanation as to the reasons for obtaining disclosure).

The lack of notice is particularly acute here because Everytown bears no apparent relation to the underlying action. Everytown is not mentioned once in any pleadings, and there is no relevance at all to be gleaned from the Subpoena itself, including the overbroad requests. *See* Section II.B *infra*. The fact that Everytown attended a meeting with the OAG in February 2019 does not cure this lack of notice in the face of the NRA's broad and sweeping discovery demands. Additionally, the Subpoena on its face requests information that is irrelevant to the underlying litigation, and counsel for the NRA has failed to explain (in subsequent communications or meet-and-confer discussions) why the NRA immediately needs this information from Everytown, particularly when party discovery has not yet been substantially completed.

That the NRA also attached the Complaint and the Answer to the Subpoena does not remedy its failure to provide adequate notice. As noted above, neither document mentions Everytown (either by name or by implication), and thus, they do not provide any information as to why, as a non-party, Everytown should be required to produce documents and a representative to be deposed in this litigation. *Cf. Kapon v. Koch*, 23 N.Y.3d 32, 39 [2014] (finding that the notice requirement was satisfied where the subpoenaing party had attached a copy of the complaint to the subpoena, and the complaint detailed the relationship between the non-party and the disputant party).

The NRA's failure to provide Everytown with the required notice under CPLR 3101(a)(4), is, alone, grounds to quash the Subpoena.

B. The Subpoena Seeks Utterly Irrelevant Information And Is Overly Broad And Unduly Burdensome

The NRA "is not entitled to unlimited, uncontrolled, unfettered disclosure." *Asprou v. Hellenic Orthodox Cmty. of Astoria*, 185 AD3d 638, 640 [2d Dept 2020]. Rather, a party may only obtain from a non-party matter that is "material and necessary in the prosecution or defense of an action." CPLR 3101(a)(4). Here, the Subpoena should be quashed because the information sought thereby is utterly irrelevant to the underlying action, and its requests are overly broad and unduly burdensome. *See Skarla v. NPSFT LLC*, 68 Misc 3d 1208[A], 2020 N.Y. Slip Op. 50890[U] [Sup Ct, Queens County 2020] (granting motion to quash where subpoenaing party failed to establish that certain information requested was material and necessary to the action); *Healy v. Carriage House LLC*, 2021 WL 1175108, *4, 2021 NY Misc LEXIS 1385, *7-8 [Sup Ct, NY County Mar. 29, 2021, No. 150133/2014] (granting motion to quash, in part, where subpoenaing party failed to establish that certain information requested was material and necessary to the action). Moreover, the Court should issue a protective order pursuant to CPLR § 3103(a) to preclude disclosure in response to the NRA's demands, which are "palpably improper" in that they "seek irrelevant information, are overbroad and burdensome, [and] fail to specify with reasonable particularity many of the documents demanded." *Skarla*, 68 Misc 3d 1208[A], 2020 N.Y. Slip Op. 50890[U], at *3.

Though the initial burden on a motion to quash is on the moving party to demonstrate that the requested disclosure is "utterly irrelevant" to the lawsuit, *see Hudson City Savings Bank v. 59 Sands Point, LLC*, 153 AD3d 611, 612-13 [2d Dept 2017], that burden is easily met here. The Complaint in this action alleges, among other things, that senior leadership of the NRA diverted millions of dollars from the organization for personal use, in violation of numerous New York state laws, including laws governing the NRA's charitable status. *See* Complaint. The NRA's

Answer asserts seven counterclaims under federal and New York law, the majority of which are premised on alleged unlawful retaliation by the Attorney General based on the NRA's speech and political views. *See* Answer pp. 162-176. Everytown does not feature in either the Complaint or the Answer and the NRA has offered no explanation as to why any documents and testimony from Everytown would lead to any evidence that was "material and necessary" to the litigation. *See supra* Section III.A. As the OAG stated in its January 19 Letter, it is clear that the NRA's main goal is to engage in a fishing expedition of Everytown, its chief viewpoint adversary, and to harass Everytown by subjecting it to an unwarranted and unnecessary deposition.[5] That the NRA, which purports to be a powerful gun rights lobbying organization, would engage in these abusive tactics with Everytown, a not-for-profit gun violence prevention organization, is not surprising. Indeed, this is not the first litigation in which the NRA has issued a wildly overbroad subpoena to Everytown in a transparent effort to raid their adversary's files.[6] But it is black-letter law that the scope of permissible discovery under CPLR 3101 "does not include disclosure demands used as a tool of harassment or for the proverbial fishing expedition to ascertain the existence of evidence." *501 Fifth Ave. Co. v. Marion*, 2013 WL 5511364, *2, 2013 NY Misc LEXIS 4502, *4 [Sup Ct, NY County, Oct. 4, 2013, No. 151409/13] (internal quotation marks omitted).

[5] Indeed, the OAG raised precisely this concern in the January 19 Letter, noting that 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* Ex. 5 at 2 (citing cases).

[6] *See NRA v. Cuomo*, No. 18-cv-566 (N.D.N.Y. 2018), ECF Nos. 290 (Non-Party Everytown for Gun Safety's Opposition to the National Rifle Association of America's Motion to Compel), 353 (Non-Party Everytown for Gun Safety's Opposition to the National Rifle Association of America's Renewed Motion to Compel).

The NRA's improper motivation in issuing the Subpoena is confirmed by the text of the Document and Testimony Requests,[7] which indiscriminately seek information on topics that bear no conceivable connection to this lawsuit. To take one example, in Document Request No. 6, the NRA seeks "[a]ll documents and communications concerning the NRA between (a) [Everytown], 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." *See* Ex. 2, at 19. The request goes on to name nine entities, none of which bear any conceivable connection to this litigation: "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. the Democratic Attorneys General Association." *Id*. at 20. While it is obvious that Everytown's communications (to the extent any exist) with these entities or individuals have no bearing on the NRA's claims or defenses in this action, the NRA demands them anyway (and demands Everytown produce a witness to testify on them) because it wants to see "behind the curtain" at Everytown.

Not surprisingly, the other Document Requests in the Subpoena are equally untethered to the litigation. Even assuming the existence of communications between Everytown and the AG concerning the NRA (Document Request No. 1), the NRA cannot demonstrate that such documents (or testimony regarding the same) would be "material or necessary" to its defense of

[7] As noted above, the Document Requests seek virtually the same information as the Testimony Requests.

this lawsuit, a regulatory action seeking dissolution of the NRA based primarily on financial improprieties by its senior leadership. Nor has the NRA attempted to explain why it believes that Everytown is in possession of communications between Everytown and the AG's *campaign* (Document Request Nos. 4, 5, and 12) and/or relating to Everytown's purported involvement in crafting certain public statements by the AG (Document Request No. 2). Even assuming that such communications (if they existed) would have any probative value to this lawsuit, such communications would presumably have been turned over to the NRA during party discovery. Likewise, the fact that Everytown had a meeting with the OAG on February 14, 2019, does not, standing alone, demonstrate the relevance of that meeting to any of the NRA's counterclaims or defenses, or explain why discovery from Everytown is necessary given that they can obtain discovery on that topic from the parties.

Beyond being irrelevant, the requests in the Subpoena are also facially overbroad. Rather than meaningfully tailoring the requests to obtain "material and necessary" information, each request is for "[a]ll documents and communications" on 12 topics from an over four-year period (January 1, 2018 through the present). Ex. 2 at 15-21. In light of the attenuated relevance (at best) of this information to the underlying litigation, there is simply no reason that Everytown, a non-party, should be required to devote significant resources to searching, collecting, reviewing, and producing documents responsive to these overbroad requests. Nor should Everytown be required to prepare and produce a representative for a deposition, when the testimony provided during such a deposition would be anything but "material and necessary" for the underlying litigation.

Where a discovery request is overly broad and burdensome, "the appropriate remedy is to vacate the entire demand rather than to prune it." *Pascual v. Rustic Woods Homeowners Assn., Inc.*, 173 AD3d 757, 758 [2d Dept 2019]. "The burden of serving a proper demand is upon counsel,

and it is not for the courts to correct a palpably bad one." *Matter of New York Cent. Mut. Fire Ins. Co. v. Librizzi*, 106 AD3d 921, 921-22 [2d Dept 2013] (quoting *Bell v. Cobble Hill Health Ctr., Inc.*, 22 AD3d 620, 621 [2d Dept 2005] (internal quotation marks omitted)).

The NRA's far-reaching demands are unwarranted, seek irrelevant information, and are precisely the sort of overly broad and burdensome discovery requests that courts typically preclude. This Court should do the same, particularly where the NRA's motivation for issuing the Subpoena—rummaging through the files of its political adversary—is transparently improper.

C. The Uncertain Status Of Discovery In The Case Weighs In Favor Of Quashing The Subpoena

The uncertain status of discovery of the NRA's counterclaims further militates in favor of granting the Motion. The OAG's position is that the Court stayed discovery on matters relating to the NRA's counterclaims on March 9, 2021. *See* Ex. 5 at 1. The NRA has indicated it disagrees with the OAG's position, and that, in any event, such a stay would not affect the Subpoena because the Subpoena also seeks information relevant to its defenses. What the NRA cannot deny, however, is that its counterclaims are subject to a pending motion to dismiss, and a hearing on that motion is scheduled for February 25, 2022. *See supra* p. 5.

Even if the Court credits the NRA's unsupported claim that the information sought in the Subpoena relates to both its counterclaims *and* defenses in the action, it is unreasonable for the NRA to insist that an Everytown representative sit for a deposition before the Court has issued a decision on Plaintiff's pending motion to dismiss the NRA's counterclaims. This decision will undoubtedly have a major impact on the scope of discovery in the case going forward, including third-party discovery. Indeed, the fact that the NRA demanded a deposition take place before this hearing underscores the unreasonableness of its position and its lack of good faith in dealing with Everytown.

The NRA claims that the expedited deposition of Everytown is justified by the February 15, 2022 fact discovery deadline in the underlying litigation. But any timing-related issues are of the NRA's own making. Fact discovery in this litigation has been ongoing for *over one year*. Although the NRA claims that it was its prerogative to serve a facially overbroad Subpoena on a non-party at the tail end of discovery, Everytown should not be forced to pay for that decision by being required to produce documents on an expedited basis and a witness to be deposed on minimal notice. Everytown also understands that, on January 21, 2022, Plaintiff filed an order to show cause seeking an extension of the discovery deadline by three months. *See* NYSCEF No. 557. Despite the existing February 15, 2022 fact discovery cut-off date serving as the main justification for the NRA's demand for an expedited Everytown deposition, counsel for the NRA waited nearly a full week to inform Everytown of this request. *See* Zalka Aff. ¶ 11.

At a minimum, the Subpoena should be quashed pending resolution of the parties' dispute concerning the status of discovery regarding the NRA's counterclaims.

IV. CONCLUSION

For the foregoing reasons, the Court should quash the Subpoena and issue a protective order barring the NRA from obtaining the requested discovery from Everytown pending the Court's ruling on Plaintiff's motion to dismiss the NRA's counterclaims, a resolution of the parties' dispute as to the status of discovery on those counterclaims, and without prejudice to the NRA issuing a renewed subpoena following such ruling.[8]

[8] To be clear, Everytown in no way waives any of its Objections to the current Subpoena. To the extent a renewed, narrowed subpoena were to later be issued to Everytown by the NRA (for example, following the Court's ruling on Plaintiff's motion to dismiss), Everytown would evaluate that subpoena, timely raise any valid objections thereto, and seek to resolve any issues through the typical meet-and-confer process. If necessary, any unresolved issues could then be presented to the Court for resolution.

Dated: February 1, 2022
New York, New York

By: *s/ Caroline Hickey Zalka*

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CERTIFICATION

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

1. The foregoing memorandum of law was prepared on a computer using Microsoft Word.

2. The total number of words in the memorandum of law, exclusive of caption, signature block, and this Certification is 4,701.

3. The foregoing document is in compliance with the word count limit set forth in Commercial Division Rule 17.