

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, WAYNE LAPIERRE, WILSON
PHILLIPS, JOHN FRAZER, and JOSHUA
POWELL,

Defendants.

Index No. 451625/2020
Hon. Joel M. Cohen

ORDER FOR
APPOINTMENT OF A
SPECIAL MASTER
FOR DISCOVERY

WHEREAS, the Court proposed that the parties consider the retention of a private special referee (hereinafter referred to as a "Special Master") to assist in resolving disclosure disputes between the parties;

WHEREAS, pursuant to CPLR § 3104(b), the Court may permit all of the parties in an action to stipulate that a named attorney may act as Special Master to supervise disclosure;

WHEREAS, the parties agree that the appointment of a Special Master to assist in overseeing discovery, including hearing and resolving disclosure disputes, in this action serves the interests of efficiency and judicial economy;

WHEREAS, the parties agree that Hon. O. Peter Sherwood (Ret.) should be appointed, pursuant to CPLR § 3104, as a Special Master to supervise disclosure in this action;

WHEREAS, the plaintiff, the People of the State of New York, through their

attorney, the Attorney General Letitia James (the “OAG”) and the National Rifle Association of America (the “NRA”) further agree to split the fees and costs of the Special Master for his services in this action on the terms further detailed below; and

WHEREAS, Hon. O. Peter Sherwood (Ret.) has consented to serving as a Special Master in this action, subject to the terms and conditions of the parties’ agreement on his fees and costs as set forth below and subject to the Court’s approval.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the parties to this action through their respective undersigned counsel as follows:

1. Hon. O. Peter Sherwood (Ret.) is hereby appointed as the Special Master pursuant to CPLR § 3104(b) to supervise disclosure in this action as set forth below.

2. Scope of the Special Master’s Duties. The Special Master has authority to supervise all pending and future disputes related to disclosure in this action to the extent permitted for appointed referees under CPLR § 3104(c), including, without limitation, disputes regarding written disclosure, document productions, privilege logs and claims of privilege, ESI protocols and searches, confidentiality designations, scheduling and sequencing disputes, and overseeing disputes regarding depositions including deposition timing, procedure, and time limitations, as well as third-party discovery to the extent consistent with the Court’s authority under applicable law. The Special Master’s authority does not include authority to stay any discovery or lift any discovery stay(s) set by the Court.

3. Procedure for Submissions to the Special Master. The Special Master shall establish, in consultation with the parties, procedures for submissions to the Special Master, including the filing of and time periods for submissions to the

Special Master and decisions by the Special Master on such submissions. Unless directed otherwise by the Special Master, and except as set forth in Paragraph 14 below, the following procedures shall apply: (a) all disputes presented to the Special Master shall be in writing, submitted by electronic mail, with copies to all counsel of record, and shall contain no more than 3,000 words (excluding exhibits); (b) responses to any submissions to the Special Master shall be submitted within four (4) business days of the initial submission, in writing, submitted by electronic mail, with copies to all counsel of record, and shall contain no more than 3,000 words (excluding exhibits); (c) oral argument, if ordered, will occur within four (4) business days of the response submission at a date, time and location (including via electronic means) to be set by the Special Master upon the initial submission of the dispute with notice to all counsel of record; and (d) the Special Master shall use best efforts to rule on all disputes within five (5) business days of the argument or submission thereon.

4. Procedure for Addressing Disputes at Depositions. For disputes that arise during the course of a deposition that may require immediate resolution, the Special Master shall establish procedures, in consultation with the parties, addressing the means of communicating with the Special Master under such circumstances, presenting the issues and obtaining and memorializing the ruling.

5. Proper Notice Given to All Parties. For any dispute, the moving party shall promptly provide copies of any submissions to the Special Master made pursuant to paragraph 3 above to all counsel of record by electronic mail, consistent with any procedures established by the Special Master.

6. Compensation. The Special Master's fees and billing arrangements, including the allocation of fees and costs, are as follows:

- a) The Special Master shall be compensated at an hourly rates of (i) \$800.00 for his services, (b) up to \$500 for associate's services if the Special Master deems them necessary, and (c) up to \$400 for paralegal's services if the Special Master deems them necessary ("Professional Fees"), and shall be reimbursed for any reasonable out-of-pocket expenses. The Special Master also requires an Evergreen retainer of \$25,000. The Special Master's fee schedule is attached hereto as Exhibit 1.
- b) Plaintiff, on the one hand, and the NRA, on the other, shall each be responsible for half of the total amount of the Special Master's fees and expenses incurred in connection with addressing any disputes that are presented by the Plaintiff or the NRA, unless the Special Master or the Court directs otherwise. The Plaintiff and the NRA shall also be responsible for payment of the Special Master's \$25,000 retainer, with half to be paid by the Plaintiff and half to be paid by the NRA.
- c) The individual defendants (Wayne LaPierre, Wilson Phillips, John Frazer and Joshua Powell) shall have no responsibility for payment of the Special Master's retainer or any portion of the Special Master's fees and expenses.
- d) The Special Master shall prepare monthly invoices for his services and send a copy of such invoice to Plaintiff, on the one hand, and the NRA, on the other, containing a request for the portion of the Special Master's fees and expenses for which such party is responsible; and

e) To the extent a dispute arises concerning the allocation of the Special Master's fees and expenses, the parties shall submit such dispute to the Special Master in the first instance.

7. Special Master's Rulings. The Special Master shall report all rulings on disclosure matters in writing accompanied by a statement of reasons (the "Ruling") and shall provide copies of the Ruling to all parties by electronic mail. The Ruling shall set forth instructions for compliance therewith, including a reasonable deadline for compliance. Absent instructions to the contrary, such reasonable compliance deadline shall be at least five (5) business days from the date the Special Master provides the Ruling to the parties. The Ruling of the Special Master shall be deemed so ordered by the Court and for all purposes considered entered as an Order of the Court unless a party seeks review of the Ruling by the Court within five (5) business days pursuant to the procedures established by Paragraph 7 of this Stipulation. Where no review of the Ruling is sought, the Ruling shall be filed electronically by the moving party. Where a party claims there has been noncompliance with or a violation of a Ruling, the Special Master shall promptly upon being notified establish an expedited procedure for addressing that claim.

8. Review of the Special Master's Rulings. Any party may apply for review by the Court of any Ruling by filing a written motion (the "Motion") with the Court of no more than 3,000 words (excluding exhibits) within five (5) business days of receipt of the Special Master's Ruling. Opposition papers may be no more than 3,000 words (excluding exhibits). The Court may grant excess words or additional time upon the request of a party or upon the Court's own motion. No replies shall be submitted without leave of the Court. The Ruling that

is subject to review by the Court must be attached as an exhibit to the Motion. The moving party shall provide a courtesy copy by electronic mail to the Special Master of all submissions to the Court. Rulings by the Special Master shall be reviewed in accordance with the review accorded to referee's decisions as set forth in CPLR § 3104(d). Subject to an order of the Court to the contrary, the filing of such Motion shall suspend the obligation to comply with the Ruling until the Court rules on the Motion.

9. Communications with the Court. The Special Master may communicate *ex parte* with the Court at any time, provided that the Special Master shall not communicate *ex parte* with the Court regarding any settlement discussions between any parties without the written approval of all relevant parties.

10. Retention of Materials. The Special Master shall maintain orderly files consisting of all documents submitted to him by the parties and any of his rulings, findings, and/or recommendations.

11. Transcripts of Arguments Before Special Master. Unless the parties agree otherwise, the parties shall arrange for all arguments before the Special Master to be transcribed by a court reporter and shall obtain such transcripts on an expedited basis. The costs of transcription for disputes between the Plaintiff and the NRA shall be split evenly between Plaintiff, on the one hand, and the NRA, on the other.

12. Qualification. The Special Master will submit an affidavit to the Court and the parties contemporaneous with the submission of this stipulation and order disclosing that he meets the qualifications of NY Jud § 14. The Special Master and the parties shall notify the Court if they later become aware of any

grounds for disqualification.

13. Good Faith Conferral. The parties remain obligated to meet and confer in good faith to resolve disclosure disputes prior to submitting any disclosure issue to the Special Master. The moving party shall include a representation in its submission to the Special Master that the party has conferred with opposing counsel in a good faith effort to resolve the issues raised in the submission or shall indicate good cause why no such consultation occurred.

14. Confidentiality. The parties shall provide the Special Master with a copy of the Stipulation and Order for the Production and Exchange of Confidential Information (NYSCEF 394) (the "Confidentiality Order"). The Special Master shall be permitted access to Confidential Information pursuant to Paragraph 8 of the Confidentiality Order.

15. To the extent that a disclosure dispute calls for the Special Master to conduct an *in camera* review of information over which a party asserts a claim of privilege, such party may redact any information over which the privilege is asserted in the copy transmitted to opposing counsel and shall provide both redacted and unredacted copies of such submission to the Special Master. Disclosure of privileged material by any party to the Special Master shall not constitute a waiver of privilege or any other right of protection in this action, nor shall disclosure constitute a waiver of privilege or any other right of protection in any other proceeding or matter, including federal, state, administrative and regulatory proceedings and matters.

16. This Stipulation does not otherwise constitute a waiver of claims or defenses by any party, nor does it constitute waiver of any right of appeal from any ruling of the Court.

17. This Stipulation may be signed in counterparts, each of which shall be deemed an original, and signatures transmitted by facsimile or other electronic means shall be deemed to be valid signatures and shall have the same force and effect as an original.

Dated: New York, New York
January __, 2022

*For Plaintiff People of the State of New
York & Counterclaim Defendant
Letitia James, Attorney General*

ATTORNEY GENERAL
OF THE STATE OF NEW YORK

*For Defendant/Counterclaim Plaintiff
The National Rifle Association of
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SO ORDERED: _____

HON. JOEL M. COHEN, J.S.C.

