



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
CHARITIES BUREAU

(212) 416-6235  
Sharon.Sash@ag.ny.gov

February 4, 2022

**BY NYSCEF**

Hon. Joel M. Cohen  
Justice of the Supreme Court of the State of New York  
Commercial Division, New York County  
60 Centre Street  
New York, NY 10007

Re: *People v. NRA et al.*, Index No. 451625/2020

Dear Justice Cohen:

We write on behalf of the plaintiff in the above-captioned action, the People of the State of New York by the Office of the Attorney General ("OAG"). In accordance with Your Honor's Part Practices and Procedures and Rule 14 of the Commercial Division Rules, please find enclosed the following letters in connection with the OAG's request for a pre-motion conference regarding its application for a protective order with respect to the NRA's noticed Rule 11-f deposition:

- The OAG's letter dated January 30, 2022, and accompanying exhibit.
- The NRA's reply letter dated February 3, 2022, and accompanying exhibits.

These letters are being directed to the Court's attention while we await the Court's approval of the fully-executed proposed Order for Appointment of a Special Master, which was filed yesterday (Dkt. # 576). It is the OAG's understanding that this matter will be referred to the Special Master at that time.

Respectfully Submitted,

/s/ Sharon Sash  
Assistant Attorney General

cc: Counsel of record (by NYSCEF)

# 2022.01.30 OAG Letter



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 30, 2022

**VIA NYSCEF**

Honorable Joel M. Cohen  
Justice of the Supreme Court of the State of New York State  
Commercial Division, New York County  
60 Centre Street  
New York, NY 10007

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 Justice Cohen:

On behalf of the Plaintiff, the People of the State of New York, the Office of the Attorney General of the State of New York ("OAG") respectfully writes in accordance with the Court's Practices and Procedures Rule VI(B), Rule 14 of the Rules of the Commercial Division, and CPLR 3103, to move for a protective order, prohibiting Defendant National Rifle Association of America ("NRA") from deposing the OAG pursuant to its Amended Notice of Rule 11-f Oral Examination of the Office of the Attorney General of the State of New York ("11-f Notice").<sup>1</sup>

**The NRA's Amended 11-f Notice and the OAG's Objections**

The NRA served the 11-f Notice on December 31, 2021<sup>2</sup> seeking a deposition of the OAG on February 1, 2022. On January 20, 2022, the OAG served detailed written objections to the 11-f Notice in its entirety. The objections identified fundamental defects in the 11-f Notice, including that it is unclear as to whom it is directed. The notice purports to seek testimony from a representative of the OAG, which the NRA erroneously treats as the plaintiff in this action. The NRA also improperly seeks testimony on behalf of the Attorney General, in her individual and official capacities. She also is not the plaintiff in this action.

On the whole, the 11-f Notice seeks discovery from counsel for a party, and improperly seeks

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<sup>1</sup> This application is directed to the Court because the NRA objected to the OAG's request to adjourn the 11-f deposition without prejudice to allow the issues addressed herein to be presented to the Honorable O. Peter Sherwood, whose formal appointment as Special Master for Discovery is imminent.

<sup>2</sup> The NRA also served certain other discovery demands to which the OAG lodged similar objections to those set forth herein. The NRA has not yet pursued enforcement of many such objectionable requests but should the Court permit the Plaintiff to file its motion, Plaintiff reserves the right to seek a protective order with respect to some or all of those demands.

Hon. Joel M. Cohen

Page 2

information that is protected OAG work product and pursuant to other privileges, including the law enforcement and deliberative process privileges. Further, the OAG objected because many of the delineated topics (the “Matters”) relate solely to the NRA’s Counterclaims. This Court has repeatedly stated that discovery on the counterclaims will proceed on a separate track and recently asked for expedited briefing should the counterclaims survive dismissal.<sup>3</sup> Argument on the motion to dismiss the Counterclaims is on February 25, 2022. In addition, the NRA’s notice improperly identifies a “Non-Exclusive List of Matters to Be Addressed at the Deposition.”

On January 28, 2022, the parties held a meet and confer to discuss whether motion practice related to the Amended 11-f Notice would be necessary. The OAG notified the NRA that if an agreement could not be reached, the OAG intended to seek a protective order but proposed adjourning the 11-f deposition so that the parties could submit this and related discovery disputes to the Special Master. Further, the OAG stated that having timely notified the NRA of its objection to proceeding, it would not be in good faith for the NRA to incur expenses related to proceeding with the deposition. On January 29, 2022, the NRA refused to adjourn the deposition. The OAG promptly commenced this pre-motion process, but consents to the Court’s referral of this dispute to the Special Master upon his formal engagement.

**A Protective Order Should Issue Preventing a Rule 11-f Deposition of OAG**  
CPLR § 3103(a) provides that a court may, in its discretion, issue a protective order “to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.” In determining whether a protective order should issue, a court must weigh the need for discovery against the detrimental effects of disclosure “in light of the facts of the particular case before it.” *Cynthia B. v. New Rochelle Hosp. Med. Ctr.*, 60 N.Y.2d 452, 461 (1983); *Jones v. Maples*, 257 A.D.2d 53, 56-57 (1st Dep’t 1999). During the pendency of a motion for a protective order, disclosure obligations related to the challenged discovery are suspended. CPLR § 3103(b). A protective order is required here because the NRA’s Amended 11-f Notice improperly seeks wide-ranging discovery that is intrusive, harassing and unnecessary.

First, as a foundational matter, the Notice has a critical defect. It is directed to the OAG, counsel for the Plaintiff, and incoherently and broadly defines “OAG”, “You” and “Your” as encompassing:

“[OAG], Letitia James, the plaintiff and counter-defendant and in the Action, and all other persons acting or purporting to act with, for, or on its, her or their behalf, including, but not limited to, any of its or her constituent Bureaus, such as. . . any person acting in

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<sup>3</sup> NYSCEF 544 (Mar. 9 2021 Tr.) p. 25 (“Why don’t we just ...hold off on discovery on [the counter]claims for now. ...certainly if these counterclaims survive a motion to dismiss here, the [NRA] will have time to finish its discovery, even if it goes beyond these dates.”); NYSCEF 511 (Dec. 10 Tr.) pp. 7-8 (“my understanding was that the parties have held off on discovery on the counterclaim until the motion to dismiss was decided, ... in this case, you’ve got enough to do on the main claim that I would be okay with a discovery proceeding in two tracks ... I mean, I’d like to get this briefed quickly and decided quickly so we can get on with it.”).

Hon. Joel M. Cohen

Page 3

an advisory, agency, or consulting capacity, including, but not limited to: (i) the current Attorney General Letitia James (“James”), in her official and/or individual capacity, and/or any former Attorney General (collectively, the “Attorney General”) and (ii) where applicable, other agencies, offices, bureaus, departments, or divisions of the State of New York or their constituent personnel.

However, the plaintiff in this civil enforcement action is the People of the State of New York, by the Attorney General, through the OAG, acting in its protective law enforcement capacity.

*Second*, the 11-f Notice, even if limited to the OAG, improperly seeks testimony from Plaintiff’s counsel without establishing that the information sought is “material and necessary,” cannot be obtained elsewhere, and there is a “good faith basis” for seeking it. *Liberty Petroleum Realty, LLC v. Gulf Oil, L.P.*, 164 A.D.3d 401, 406 (1st Dep’t 2018). Plaintiff has produced to the NRA its entire discoverable investigative file, comprised of documents and testimony obtained in its investigation, and a privilege log with an accompanying Commercial Division Rule 11-b Certification that provides detailed information about sources of information that is not otherwise discoverable. *See People v. Richmond Capital Group LLC*, Index No. 451368/2020 (N.Y. Supreme Ct.).<sup>4</sup> Upon the OAG’s *prima facie* showing that a deposition “will not lead to legitimate discovery,” the NRA bears the burden to establish entitlement to the deposition it seeks. *Liberty Petroleum Realty, LLC*, 164 A.D.3d at 406-08. It has not done so.

*Third*, the NRA’s 11-f Notice seeks improperly to invade the OAG’s work product and other privileges applicable herein. The Matters inquire into the OAG’s thought processes, legal theories, and information about how the OAG conducted its investigation and will prosecute the enforcement action, which are not discoverable. Testimony on those subjects directly implicates law enforcement and related privileges and the OAG’s deliberative process in commencing and conducting its enforcement actions. *See In re EEOC*, 207 Fed. Appx. 426, 432 (5<sup>th</sup> Cir. 2006) (attorney-client and attorney work product privileges prevented testimony and document disclosure from EEOC in the context of a lawsuit by EEOC for alleged violations of federal law); *S.E.C. v. Morelli*, 143 F.R.D. 42, 47 (S.D.N.Y. 1992) (“the mere request” to depose opposing counsel is good cause for a protective order, because it “involves forays into the area most protected by the work product doctrine – that involving an attorney’s mental impressions or opinions.”). For example, Matters 10-22 seek information that is essentially a roadmap or order of proof for the OAG’s focus and theories in this action, including seeking information that is available from other sources such as non-parties or through documents already produced in the action. *See Liberty Petroleum Realty, LLC*, 164 A.D.3d at 406.

*Fourth*, the notice is improper with respect to the proposed Matters identified. In addition to failing to define all matters about which the NRA intends to inquire, as required by Rule 11-f(b), many of the proposed Matters are only relevant to the NRA’s Counterclaims. If any or all of the Counterclaims are dismissed following argument on February 25, that will significantly limit discovery. Consideration of a Rule 11-f deposition should be adjourned until the Court rules.

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<sup>4</sup> A copy of this decision is attached at Exhibit A.

Hon. Joel M. Cohen

Page 4

We thank the Court for its attention to these matters.

Respectfully,

*/s/ Monica Connell*

Monica Connell

Assistant Attorney General

cc: All Counsel of Record

OAG Ex. A

People of the State of New York v. Richmond Capital Group LLC, 2021 WL 5412143...

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2021 WL 5412143 (N.Y. Sup.), 2021 N.Y. Slip Op. 32367(U) (Trial Order)  
Supreme Court of New York.  
New York County

**\*\*1** PEOPLE OF THE STATE OF NEW YORK, By Letitia James, Attorney General of the State of New York,  
Petitioner,  
v.

RICHMOND CAPITAL GROUP LLC, Ram Capital Funding LLC, Viceroy Capital Funding Inc. Also Doing  
Business as Viceroy Capital Funding and Viceroy Capital LLC, Robert Giardina, Jonathan Braun, TZVI Reich,  
Michelle Gregg, Respondents.

No. 451368/2020.  
November 19, 2021.

**\*1** Part 53  
Motion Date \_\_\_\_\_  
Motion Seq. No. 010

**Decision + Order on Motion**

Present: Hon. [Andrew Borrok](#), Justice.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578 were read on this motion to/for DISCOVERY.

Richmond Capital Group, LLC, Robert Giardina, and Michelle Gregg's (Richmond Capital Group, LLC, together with Mr. Giardina and Mr. Gregg, hereinafter, collectively, the **Richmond Capital Respondents**) motion to (i) compel the People of the State of New York, by Letitia James, Attorney General of the State of New York (NYAG) to produce unredacted notes of its oral communications with nonparty merchant witnesses, (ii) compel NYAG to produce unredacted copies of communications previously produced invoking the law enforcement privilege with such nonparty merchant witnesses, and (iii) grant the Richmond Capital Respondents leave to recall any and all nonparty merchant witnesses for deposition upon such production, is denied in its entirety. The documents requested are protected from discovery under New York law because they are either materials prepared in anticipation of litigation or are protected by law enforcement immunity, and the Richmond Capital Respondents have failed to **\*\*2** demonstrate substantial need for, or any entitlement to, such documents. The motion for recalling witnesses for deposition is denied as moot.

This proceeding arises out of NYAG's investigation into the Respondents' business of marketing, issuing, and collecting merchant cash advances (MCAs). NYAG alleges that these MCAs are "in fact fraudulent, usurious loans with interest rates in the triple and even quadruple digits, far above the maximum rate permissible for a loan under New York law" (Amended Petition; NYSCEF Doc. No. 426, ¶ 1). NYAG commenced this proceeding pursuant to [New York Executive Law § 63\(12\)](#), which gives NYAG the authority to bring a proceeding to enjoin fraudulent or illegal acts or fraud and illegality in the carrying on, conducting, or transaction of business. On June 2, 2021, the court denied the Respondents' motions to dismiss and provided the Respondents "an opportunity to do some limited discovery" (Tr. of June 2, 2021 Hearing; NYSCEF Doc. No. 472, at 40:22-23).

Pursuant to [CPLR 3101\(d\)\(2\)](#), "materials otherwise discoverable...and prepared in anticipation of litigation or for trial by or for another party...may be obtained only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means." Witness statements "are trial preparation materials and not absolutely privileged" (*People v*






People of the State of New York v. Richmond Capital Group LLC, 2021 WL 5412143...

*Kozlowski*, 11 NY3d 223, 245 [2008]). Production of such materials is not proper, however, where the party seeking production has failed “to seek interview with the [witnesses] at an earlier time or stated whether they ever made an independent attempt to secure the relevant statements, a requirement for obtaining an attorney’s trial preparation materials” (*id.*, 245-246).

\*2 \*\*3 Law enforcement privilege is codified in  NY Pub Off § 87(2)(e)(i)-(iv), which allows an agency to deny access to records or portions thereof that

“are compiled for law enforcement purposes and which, if disclosed, would: (i) interfere with law enforcement investigations or judicial proceedings; (ii) deprive a person of a right to a fair trial or impartial adjudication; (iii) identify a confidential source or disclose confidential information relating to a criminal investigation; or (iv) reveal criminal investigative techniques or procedures, except routine techniques and procedures.”

This privilege “is qualified and must be balanced with the substantial need for the information sought” ( *Colgate Scaffolding & Equip. Corp. v York Hunter City Servs., Inc.*, 14 AD3d 345, 346 [1st Dept 2005]). Public interest privilege “permits appropriate parties to protect information from ordinary disclosure, as an exception to liberal discovery rubrics” and “envelops confidential communications between public officers, and to public officers, in the performance of their duties, where the public interest requires that such confidential communications or the sources should not be divulged” ( *In re World Trade Ctr. Bombing Litig.*, 93 NY2d 1, 8 [1999] [internal quotation marks and citation omitted]). “The balancing that is required goes to the determination of the harm to the overall public interest. Once it is shown that disclosure would be more harmful to the interests of the government than the interests of the party seeking the information, the overall public interest on balance would then be better served by nondisclosure” (*City of New York v Keene Corp.*, 304 AD2d 119, 122 [1st Dept 2003], quoting  *Cirale v 80 Pine St. Corp.*, 35 NY2d 113, 118 [1974]).

The Richmond Capital Respondents have failed to identify any right to, let alone substantial need for, the notes of oral communications between NYAG and nonparty merchant witnesses. In some instances, they have failed to show that such notes even exist. The excerpt of NYAG’s \*\*4 privilege log, dated September 20, 2021 (the **Privilege Log**; NYSCEF Doc. No. 541) explicitly states that the “documents listed below are handwritten attorney notes taken by the Office of the New York State Attorney General (NYAG) contemporaneous with telephone interviews with nonparty witnesses concerning the NYAG’s investigation of Respondents or concerning the above-noted proceeding.” It does not claim to document every phone call between NYAG and nonparty witnesses, nor can it be assumed from the evidence produced that notes were made of every such phone call. To the extent that the Richmond Capital Respondents allege that notes have been improperly withheld because phone calls were requested for dates that do not appear in the privilege log, no evidence has been offered to show that such notes were ever made.

Richmond Capital Respondents objection to NYAG’s withholding of such notes as privileged fails. The notes are plainly created in anticipation of litigation. The assertion that such an argument is “disingenuous” is unpersuasive, at best, and is contrary to established New York law (see Aff. of Anthony Varbero, counsel for the Richmond Capital Respondents; NYSCEF Doc. No. 539, ¶ 16). The argument that, because such notes contain quotations attributed to the Richmond Capital Respondents, they cannot be withheld, is unsupported by caselaw. As the Richmond Capital Respondents admit, these nonparty witnesses were and are available for and have been subject to deposition (*id.*, ¶ 18). The Richmond Capital Respondents have failed to demonstrate that they could not obtain the information they seek at deposition or by otherwise asking of the nonparty witnesses. Nor have they demonstrated undue hardship in obtaining the same or substantially similar information. In fact, they wholly fail to demonstrate any attempt to procure the information sought from the nonparty witnesses. Accordingly, the Richmond Capital Respondents have failed to demonstrate entitlement to materials created by NYAG in \*\*5 anticipation of litigation, and the branch of the motion ordering production of such documents is denied.

\*3 NYAG asserts that, in addition to the investigation that gave rise to this proceeding, it has “investigated and inquired into possible fraud and illegality committed by other entities in the MCA and business funding industries that are not party” to this proceeding (Nonparty Investigations) (Aff. of John Figura, Assistant Attorney General in the Office of NYAG; NYSCEF Doc. No. 557, ¶ 45). NYAG further asserts that its communications with merchants, including nonparty merchant witnesses in this proceeding, concern ongoing Nonparty Investigations (*id.*, ¶ 46). NYAG has redacted certain information in emails

**People of the State of New York v. Richmond Capital Group LLC, 2021 WL 5412143...**

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with nonparty witnesses as it relates to Nonparty Investigations (*id.*, ¶ 48), and informed Respondents of the reason for such redactions by letter dated August 31, 2021 (NYSCEF Doc. No. 577, at 2 [“Petitioners have redacted from these communications references to other investigations conducted by the NYAG that do not concern respondents pursuant to the law enforcement privilege under New York law”]).

The Richmond Capital Respondents assertion that they have a “compelling need for the information” (NYSCEF Doc. No. 539, ¶ 32) fails. The sole basis for such assertion appears to be the speculative assertion that “Petitioner removed a substantive portion of this communication about the pending civil case for purposes of preventing scrutiny by the Respondents” (*id.*, ¶ 27). The Richmond Capital Respondents provide no support for their *ipse dixit* assertion. Thus, the branch of the motion ordering production of such unredacted documents is denied. The branch of the motion for leave to recall witnesses for deposition must also be denied as moot.

**\*\*6** It is hereby ORDERED that the motion of Richmond Capital Group, LLC, Robert Giardina, and Michelle Gregg to compel production of documents and for leave to recall witnesses for deposition is denied.

**11/19/2021**

**DATE**

<<signature>>

**ANDREW BORROK, JSC**

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# 2022.02.03 NRA Letter

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

February 3, 2022

**VIA NYSCEF**

Hon. Joel M. Cohen  
Supreme Court of the State of New York  
60 Centre Street  
New York, NY 10007

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

Dear Justice Cohen:

On behalf of the NRA, we respectfully urge the Court to deny the OAG's contemplated motion for a protective order and to grant the NRA's motion to compel the OAG's rule 11-f deposition.

Under CPLR 3103(a), "[t]he court may . . . make a protective order" to "prevent *unreasonable* . . . prejudice to any person." The OAG asks the Court to "prohibit" the NRA from deposing its representative. The motion is late and lacks merit. In fact, although the OAG argues that the deposition is "intrusive," it fails to allege—let alone show—that by appearing for the deposition the OAG will suffer prejudice that is unreasonable within the meaning of the rule. Discovery is "intrusive," but, having filed this action against the NRA, the OAG—like all litigants—must comply with her discovery obligations. As a result, instead of issuing a protective order, the Court should compel—pursuant to CPLR 3124—the OAG to appear for the deposition.

**NRA's Rule 11-f Deposition Notice.** Under Rule 11-f of the Commercial Division rules, "a [deposition] notice . . . may name as a deponent a . . . governmental . . . agency." The notice can "enumerate the matters upon which the [deponent] is to be examined." On December 31, 2021, the NRA served the enclosed rule 11-f notice for a deposition, to take place on February 1, 2022, of the "Office of the Attorney General of New York State" about the following topics (the "Topics"):

1. OAG's steps to comply with its document preservation and production obligations (Topics 1 and 2) and its objections to the NRA's requests for documents (Topic 3);
2. OAG's and Letitia James's statements about the NRA, including her accusations in 2018 that the NRA is a "criminal enterprise" and in 2021 that the "NRA is fraught with fraud . . . and illegality" (Topics 4 and 5);
3. OAG's communications *about the NRA* with Everytown and other government officials known for their opposition to the NRA's political speech (Topics 8 and 9);
4. Matters related to the OAG's investigation of the NRA, including the timing of its commencement (including in relation to the communications addressed in Topics 8 and 9), its investigative interviews, and OAG's communications with fact and expert witnesses (Topics 6-8);
5. Alleged grounds for the OAG's requests for judicial dissolution of the NRA (Topics 10-11); and

B R E W E R

6. OAG's various factual allegations in her complaint (Topics 12-22).

**CPLR 3101 requires the OAG's deposition.** The NRA must inquire about the Topics in order to prepare for trial. CPLR 3101 (entitling parties to discover all information that is necessary and material to the prosecution or defense or an action). In this action, the OAG seeks to dissolve the NRA based on an alleged “pattern of illegal activity.” The OAG does so in part on behalf of the NRA's directors. N-PCL 1102. Therefore, in discovery, the NRA must obtain the information on which James and OAG base their various public accusations against the NRA. After all, the OAG may offer it at trial against the NRA. The NRA must also discover facts that show that the OAG harbors an adverse animus against the NRA and the very people (its directors) on whose behalf the OAG seeks dissolution. *Pokoik v. Norsel Realities*, 2017 WL 1347549, 2017 N.Y. Slip Op. 50459(U) (Supreme Court, New York County 2017) (because “derivative actions bind absent interest holders [and for that reason] take on ‘the attributes of a class action,’” a plaintiff “must . . . demonstrate that [she] will fairly and adequately represent the interests of the [corporate stakeholders in whose shoes she stands], and that [she] is free of adverse personal interest or animus”; “[i]f a plaintiff cannot demonstrate such representation, the derivative causes of action will be dismissed”). That is because if the OAG harbors an animus against the very individuals on whose behalf she seeks to dissolve the NRA, she lacks standing to do so. For example, if James accused the NRA of being a criminal enterprise without any basis for the allegation, the absence of such a basis would tend to demonstrate the animus that defeats standing. And, of course, the NRA is entitled to learn if adequate discovery was produced and any materials were unjustifiably withheld by the NYAG.

**The Court should deny any motion by the OAG for a protective order as procedurally defective.** The OAG knew of the deposition for four weeks, yet, to date failed to seek a protective order. Rather, she served meritless objections to the Topics and refused to appear for the deposition. The OAG cited CPLR 3122, but that provision does not suspend the OAG's obligation to appear. Instead, CPLR 3122 applies only to requests for documents under CPLR 3120 and physical or mental examinations under CPLR 3121. And the OAG's objections merely serve to put the NRA on notice and would have been waived if not made. CPLR 3112. They alone do not suspend the obligation to appear. In short, the OAG offers no justification for her failure to appear, her belated promotion letter, or the fact that no motion for a protective order was filed to date. The Court can deny the OAG's motion on this basis alone.

**In addition, the OAG's objections lack merit.** The first objection is a red herring. The notice is addressed to the “Office of the Attorney General of New York State.” That “OAG” and “You” is defined broadly does not render the notice “critically defective.” To the contrary, the definition helps notify the OAG of the topics about which its representative(s) will be questioned at the deposition. For example, the Topic 1 concerns document preservation, collection, and production undertaken by the OAG. No unreasonable prejudice arises from the OAG being questioned about its compliance with its discovery obligations, which undoubtedly apply broadly to the “Office of the Attorney General,” to Letitia James, to her predecessors, to the OAG's Charities Bureau, as well as to any consultants, accountants, and advisors acting on their behalf.

## B R E W E R

The OAG's second argument—about an allegedly “improper” attempt to depose “Plaintiff’s counsel” without a showing of need and good faith—fails for three reasons. First, it mischaracterizes the procedural setting of this lawsuit and the OAG's role in it. The First Department case on which the OAG primarily relies—*Liberty Petroleum Realty*—illustrates this clearly. In that tortious interference case, plaintiff noticed the deposition of defendants’ counsel to inquire about his communications with them in connection with their inducement of the contractual breach that formed the basis of the claims. The court cautioned that before a deposition of an attorney can proceed, the party seeking discovery must show that the information could not be obtained elsewhere and the deposition was not a tactic to disqualify the lawyer from representing the defendants in the litigation. Here, the rules specifically and unambiguously permit the NRA to depose the OAG. Second, the OAG cannot in good faith suggest that it cannot be questioned about the degree to which political calculations or anti-second amendment sentiment animated its actions against the NRA. For the OAG to argue that any such discussions were privileged is without merit. In fact, a United States Bankruptcy Judge rejected similar arguments by the NYAG just last year. (Enclosed transcript at page 29.) Third, even if, to proceed with the deposition, the NRA must make the showing required in *Liberty Petroleum*, the Topics on their face make clear that the information cannot be obtained elsewhere.

The OAG's third argument also fails. The deposition should not be prohibited because the NRA allegedly “seeks improperly to invade the OAG's work product and other privileges.” The OAG claims that its thought processes, legal theories and information about how it conducted its investigation or plans to try the case is not discoverable. The OAG, however, does not argue that this concern implicates topics 1 through 5, 8, or 9. In any case, the objection lacks merit. In *In re EEOC*, the Fifth Circuit precluded questioning about the *substance* of discussions about the merits of the case and the credibility of a witness *between and among EEOC attorneys*. The NRA does not intend to inquire about the substance of conversations between OAG attorneys about the strength or weakness of the OAG's case. That the Topics may have been discussed in privileged conversations between them does not mean that the OAG cannot be asked about them at the deposition. In addition, in *In re EEOC*, the court noted that the information the defendant sought from EEOC was irrelevant because lack of good faith was not a required element of its claim for attorney fees. The inquiry therefore turns on the elements of claims and defenses at issue in the action. Here, the bases of the OAG's allegations against the NRA and the OAG’s animus towards the stakeholders on whose behalf it seeks to dissolve the NRA go to the heart of the OAG's claims and the NRA's defenses.

Finally, the OAG's fourth objection is waived (the objections did not state that the topics relate “solely” to counterclaims) and, in any case, for the reasons discussed above, is also unavailing. This is because each Topic relates to an OAG claim or an Association defense.

**B R E W E R**

Respectfully submitted,

/s/ Svetlana M. Eisenberg

William A. Brewer III

Svetlana M. Eisenberg

**BREWER, ATTORNEYS & COUNSELORS**

750 Lexington Avenue, 14th Floor

New York, New York 10022

Telephone: (212) 489-1400

Facsimile: (212) 751-2849

**COUNSEL FOR DEFENDANT**

**THE NATIONAL RIFLE ASSOCIATION OF  
AMERICA**

cc: All Counsel of Record (via NYSCEF)

Enclosures

# NRA Enclosure 1



**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.

**and**

**THE NATIONAL RIFLE ASSOCIATION  
OF AMERICA,**

**Defendant-Counterclaim  
Plaintiff,**

**v.**

**LETITIA JAMES, ATTORNEY  
GENERAL OF THE STATE OF NEW  
YORK, IN HER OFFICIAL AND  
INDIVIDUAL CAPACITIES,**

**Plaintiff-Counterclaim  
Defendants.**



**INDEX NO. 451625/2020**

**AMENDED NOTICE OF RULE 11-F ORAL EXAMINATION OF  
THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK**

**PLEASE TAKE NOTICE** that, pursuant to Section 202.70 of the Uniform Civil Rules for the Supreme Court (“Uniform Rules”), including Rule 11-f of the Rules of the Commercial Division, and article 31 of Civil Practice Law and Rules (the “CPLR”), Defendant and

Counterclaim Plaintiff the National Rifle Association of America (“NRA”) by and through its undersigned counsel, will take the deposition upon oral examination of the Office of the Attorney General of New York State, before a Notary Public or other person authorized by the laws of the State of New York to administer oaths, regarding evidence that is material and necessary in the prosecution and defense in this 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, 14<sup>th</sup> Floor, New York, New York, 10022, on **February 1, 2022 at 9:00 a.m. E.T.** or on such other date and at such time as may be agreed to among counsel for the parties, and shall continue from day to day thereafter, except for weekends and holidays, until completed.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to Section 202.15 of the Uniform Rules, the deposition will be recorded by videotape by Shreck Video Services c/o Lexitas Legal, 100 Merrick Road, Rockville Centre, New York 11570, and transcribed by a court reporter from Lexitas Legal.

**PLEASE TAKE FURTHER NOTICE** that the NRA reserves its right to supplement this Amended Notice.

**I.****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. “Amended Complaint” shall mean the Amended and Supplemental Complaint, filed in the Action on August 16, 2021.

4. “OAG,” “You,” and “Your” shall mean the Office of the Attorney General of New York State, Letitia James, the plaintiff and counter-defendant and in the Action, and all other persons acting or purporting to act with, for, or on its, her or their behalf, including, but not limited to, any of its or her constituent Bureaus, such as the Charities Bureau, consultants, accountants, advisors, attorneys, or any person acting in an advisory, agency, or consulting capacity, including, but not limited to: (i) the current Attorney General Letitia James (“James”), in her official and/or individual capacity, and/or any former Attorney General (collectively, the “Attorney General”) and (ii) where applicable, other agencies, offices, bureaus, departments, or divisions of the State of New York or their constituent personnel.

5. “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.

6. “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 devices issued by You or personal devices), conversations, facsimiles, letters, telegrams, cables, telexes, dialogues, discussions, negotiations, interviews, consultations, telephone calls, agreements, and any other understandings, among two or more persons. The term “Communication(s)” includes written summaries of any of the foregoing types of 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).”

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

8. “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.

9. The “Bankruptcy Case” shall mean the bankruptcy proceeding styled as *In re National Rifle Association of America and Sea Girt, LLC*, Case No. 21-30085-HDH11 (Bankr. N.D. Tex.).

10. “Investigation” shall mean any investigation, inquiry, inquest, examination, inspection, audit, survey, surveillance, interrogation, enforcement action, or other work performed or undertaken by You relating to the affairs, management, governance, accounts, membership, or conduct of the NRA, before or after commencement of the Action, including, but not limited to: (i) any investigation commenced, or sought to be commenced, during the tenure of former New York State Attorney General Eric Schneiderman; (ii) any investigation(s) or adverse action(s) against the NRA referenced by, promised by, or known to Attorney General James (then candidate James) during her campaign for New York State Attorney General in 2018; (iii) the investigation referenced in the OAG’s “Document Preservation for New York State Attorney General Investigation” dated April 26, 2019; and/or (iv) any investigation of the NRA continuing after the commencement of the Action.

11. The “NRA” shall mean the National Rifle Association of America, as defined by the OAG in the OAG’s First Request for Production of Documents to Defendant National Rifle Association of America (at page 6, Particular Definitions, paragraph 17).

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

13. The terms “Person,” “persons,” “Individual,” “Individuals,” “Entity,” and “Entities” include 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.

14. “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 a particular matter.

15. 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 Matter that might otherwise be construed to be outside its scope.

**II.****INSTRUCTIONS**

1. Unless otherwise specified (e.g., Matter 21), the Matters for deposition concern the time period January 1, 2015 to the current date.
2. 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.
3. 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.
4. You must make the designations called for by Rule 11-f(c) no later than ten days prior to the deposition.

**III.**  
**NON-EXCLUSIVE LIST OF MATTERS TO BE ADDRESSED AT THE**  
**DEPOSITION (IDENTIFIED PURSUANT TO COMMERCIAL DIVISION**  
**RULE 11-F)**

You are obligated, at the noticed deposition, to provide complete and binding testimony on Your behalf, pursuant to Rule 11-f of the New York Commercial Division Rules (Section 202.70), including, but not limited to, on the following Matters:

1. All steps taken by You to identify, preserve, collect, and produce Documents, Communications, and other information in response to: (a) the NRA's First Requests for Production of Documents, dated February 3, 2021 ("NRA's First RFP"), (b) the NRA's Second Requests for Production of Documents, dated October 14, 2021 ("NRA's Second RFP"), and (c) Debtors' First Requests for the Production of Documents, dated February 25, 2021 ("NRA Bankruptcy RFP"), served on the OAG in the Bankruptcy Case, including but not limited to, Custodians interviewed and Documents and Communications withheld from production and the grounds for such withholding.

2. All steps taken by You to comply with (a) NRA's First RFP, (b) NRA's Second RFP, and (c) NRA Bankruptcy RFP, including but not limited to, concerning (i) the identities of Custodians from whom Documents, Communications, and other information were collected, (ii) the devices from which Documents, Communications, and other information were collected, and (iii) the OAG's files that were searched for Documents, Communications, and other information.

3. The contents of the OAG's (a) Responses and Objections, dated February 18, 2021, to the NRA's First RFP, and (b) Responses and Objections, dated November 10, 2021, to the NRA's Second RFP.



4. Facts and circumstances concerning the drafting, contents, timing, and release of any public statements concerning the NRA by (a) the OAG, and/or (b) James, whether in an official or an individual capacity.

5. All statements made by and/or attributed to James or others at the OAG about dissolution, injunctive, or other relief she/the OAG intends to seek or seeks against the NRA, including but not limited to the statements listed in Table A and other statements that are in sum and substance the same as the statements listed in Table A. This Matter includes but is not limited to any factual or legal bases—written or otherwise—for such statements and all communications relating or evidencing any such bases.

**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>1</sup>
“As Attorney General, Tish James <u>will target the NRA, take on arms manufacturers and dealers, investigate financial backing of gun makers and sellers, and build new models to take on interstate arms trafficking.</u> ”	July 12, 2018 Press Release <sup>2</sup>

<sup>1</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>2</sup> *Id.*

Statement or Reported Statement by Letitia James (underline indicates emphasis added)	Approximate Date/Event
“[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>3</sup>
“Together, we can . . . <u>take on . . . the @nra . . .</u> ”	September 1, 2018 <sup>4</sup>
“[W]e CAN <u>take down the NRA</u> . We CANNOT waiver on gun control. That’s why I’m running.”	September 3, 2018 <sup>5</sup>
“[T]he 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>6</sup>
““NRA . . . needs to be held accountable for the destruction and the loss of lives . . . ”	September 27, 2018 <sup>7</sup>
“James said that she made no distinction between the lobbying and charitable arms of the NRA.”	September 27, 2018 <sup>8</sup>

<sup>3</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>4</sup> @TishJames Twitter post.

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

<sup>6</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>7</sup> <http://liherald.com/stories/nassau-protests-nra-fundraiser,107617> (Oct. 25, 2018) (Last Visited, October 14, 2021).

<sup>8</sup> *Id.*

Statement or Reported Statement by Letitia James (underline indicates emphasis added)	Approximate Date/Event
“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>9</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>10</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>11</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>12</sup>
Attorney General James’s statement in announcing her candidacy for Governor of New York that she has “worked to <u>eliminate</u> the NRA”	October 29, 2021 <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>9</sup> @TishJames Twitter post.

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

<sup>11</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>12</sup> @TishJames Twitter post.

<sup>13</sup> New York Attorney General Letitia James Announces She Will Run for Governor (ijr.com) (last visited December 31, 2021).

<sup>14</sup> Attorney General James Continues to Fight NRA’s Efforts to Dismiss Corruption Lawsuit | New York State Attorney General (ny.gov) (last visited December 30, 2021).

6. The Investigation, including but not limited to: (a) facts, circumstances, Documents and Communications concerning authorization of the commencement of the Investigation and the relevant specific date(s) of such commencement; and (b) customary internal protocols at the OAG that bear on commencement of an investigation and its authorization. Matters to which subsections (a) and (b) in the preceding sentence relate include but are not limited to (i) the “Attorney General grant[ing of] the authority to the charities bureau to . . . open the investigation [of the NRA] . . . on April 19, 2019” (*see* Transcript of William Wang’s Deposition on March 23, 2021 at pp. 65:18-66:1), and (ii) the “preinvestigative inquiry stage with regard to the NRA,” which—according to Mr. Wang’s testimony—began “between November and December” 2018 (*see* Transcript of William Wang’s Deposition at pp. 64:12-17).

7. Interviews conducted by the OAG or any of Your staff, attorneys, investigators, or other representatives, during and in connection with the Investigation.

8. All communications—whether direct or indirect—concerning the NRA between the OAG and any of the following Persons or Entities, including but not limited to, any of their contractors, investigators, current or former officers, employees, attorneys, agents, representatives, predecessors-in-interest, affiliates, or designees:

- A. Andrew Cuomo;
- B. Maria Vullo;
- C. Linda Lacewell;
- D. Laura Wood;
- E. Erica Harris;
- F. Michael R. Bloomberg and/or any other Campaign donor or supporter;

- G. Everytown, including but not limited to, Jason Lilien, Nicholas Suplina, Rachel Nash, Michael-Sean Spence, and/or Michael Kane;
- H. Office of the Governor of the State of New York;
- I. Office of the Attorney General for the District of Columbia;
- J. New York State Department of Financial Services;
- K. Tim Mak;
- L. Moms Demand Action and/or Moms Demand Action for Gun Sense in America;
- M. Giffords Law Center to Prevent Gun Violence;
- N. The Democratic National Committee;
- O. Democratic Attorneys General Association; or
- P. Former or current members of the NRA's Board of Directors, NRA Officers, employees, vendors, including but not limited to,
  - a. Wilson "Woody" Phillips,
  - b. Joshua Powell,
  - c. Wayne LaPierre,
  - d. John Frazer,
  - e. Christopher Cox,
  - f. Oliver North,
  - g. Mike Marcellin,
  - h. Mildred Hallow,
  - i. Peter Brownell,
  - j. Richard Childress,
  - k. Daniel Boren,
  - l. Esther Schneider,
  - m. Roscoe "Rocky" Marshall,

- n. Phillip Journey,
- o. Lockton Affinity Series of Lockton Affinity, LLC, and Kansas City Series of Lockton Companies, LLC,
- p. Associated Entertainment Releasing d/b/a Associated Television International,
- q. Membership Marketing Partners,
- r. Concord Social and Public Relations, LLC,
- s. Allegiance Creative Group, LLC,
- t. Ackerman McQueen, Inc.,
- u. Tony Makris,
- v. Aronson, LLC,
- w. RSM US LLP,
- x. J. Stephen Hart,
- y. Michael Volkov, and
- z. Cooper & Kirk LLP.

Q. Any witnesses whose testimony or out-of-court statements You may offer in evidence at trial or any pretrial hearing in this Action.

9. All Your meeting(s) and Communications with Everytown, including but not limited to, the OAG's meeting with Everytown on February 14, 2019, or any other planned, cancelled, or actual meeting(s) between the OAG and Everytown.

10. The alleged grounds for the OAG's request for judicial dissolution of the NRA under N-PCL § 1101, set forth in the Amended Complaint, including but not limited to, the allegations concerning "the NRA's [alleged] pattern of conducting its business in a persistently fraudulent or illegal manner, abusing its powers contrary to the public policy of New York and its tax exempt status, and failing to provide for the proper administration of its trust assets and

institutional funds” (Amended Complaint at ¶ 14; see also Amended Complaint First Cause of Action).

11. The alleged grounds for the OAG’s request for judicial dissolution of the NRA under N-PCL § 1102, set forth in the Amended Complaint, including but not limited to, the allegations that “directors or members in control of the NRA have [allegedly] looted or wasted the corporation assets, have operated the NRA solely for their personal benefit, or have otherwise acted in an illegal, oppressive or fraudulent manner” (Amended Complaint at ¶ 14; see also Amended Complaint Second Cause of Action).

12. Bases for Your position that the interest of the public will be served by the NRA's dissolution.

13. Bases for Your position that the NRA's dissolution will benefit the members of the NRA and its other stakeholders.

14. The allegations set forth in the Amended Complaint that Wayne LaPierre “dominates and controls the NRA Board as a whole through his control of business, patronage and special payment opportunities for board members, and his public allegations to the NRA membership of a ‘criminal conspiracy’ against board members and officers who question his activities.” (Amended Complaint at ¶ 62).

15. The allegations set forth in the Amended Complaint concerning “Related Party Transactions with Board Members” referring to “Board Member No. 1,” “Board Member No. 2,” “Board Member No. 3,” “Board Member No. 4,” and “Board Member No. 5.” (Amended Complaint at ¶¶ 382-412).

16. The allegations set forth in the Amended Complaint that the individual defendants took steps to conceal their misconduct from the Board of Directors and the Audit Committee.

(Amended Complaint at ¶¶ 160, 178-179, 186, 188-190, 235, 238, 242, 277, 278, 281, 313.).

17. The allegations set forth in the Amended Complaint relating to the “Top Concerns Memo” and the “NRA Whistleblowers” who authored the Memo. (Amended Complaint at ¶¶ 507-513).

18. The allegations set forth in the Amended Complaint that: (a) although the NRA’s Board of Directors had a compensation committee and hired compensation consultants, it did not adequately benchmark peer compensation or memorialize “evidence” of scrutiny given to executive performance; (b) forms filed by the NRA with the IRS failed to properly account for expense reimbursements as compensation, and the NRA’s executive salaries amounted to per se improper excess-benefit transactions; (c) the NRA’s Audit Committee “failed to exercise proper duty of care” in approving related party transactions and conflicts of interest, and failed to diligently supervise or audit the NRA’s outside auditors; (d) the Audit Committee made an ultra vires decision to indemnify a board member for legal fees in 2019, a decision that should have been left to the full Board; (e) the Audit Committee failed to implement an effective compliance program; (f) the Board of Directors, subsequent to the NRA’s bankruptcy filing, approved Wayne LaPierre’s decision to have the NRA seek bankruptcy protection; and (g) Board members used first class or business travel without authorization. (Amended Complaint at ¶¶ 413-429, 432-434, 517, 537-562, 600-604, 616.)

19. The allegations set forth in the Amended Complaint that (a) Defendants Powell and LaPierre “harassed and retaliated against” unnamed whistleblowers and Board members “who raised issues covered by the policy [and] suffered intimidation, harassment, discrimination, or other retaliation, including attempted revocation of NRA membership”; and (b) the “Audit Committee failed to make any record or take any action responding to whistleblower concerns.”



(Amended Complaint at ¶ 723.)

20. Your allegations set forth in the Amended Complaint that LaPierre allegedly “impeded [“Dissident No. 1”’s] participation in the NRA’s affairs” and “influenc[ed]” the decision of a Board committee to decline to re-nominate “Dissident No. 1.” (Amended Complaint at ¶¶ 486, 488.)

21. Your allegations set forth in the Amended Complaint that that the NRA failed to include required information and made “false statements” in its IRS Forms 990, in 2014 through 2019, that were reported in the NRA’s CHAR500 reports, concerning: (a) transactions with interested persons, (b) compensation and to Officers and Directors, (c) payments to vendors, (d) governance, management and disclosure, and (e) fundraising expenses, fundraisers and amounts paid thereto. (Amended Complaint at ¶¶ 567-568.)

22. Your allegations set forth in the Amended Complaint concerning alleged “Ongoing Violations of NRA Policy and Procedures,” including but not limited to, the allegation that “the NRA has, for years, been paying MMP, Allegiance, and Concord in excess of stipulated contractual amounts, and outside of the NRA’s policy governing contract procurement, with the full knowledge and approval of LaPierre.” (Amended Complaint at ¶¶ 605-614.)

23. Facts and circumstances leading to the OAG’s decisions not to seek dissolution in the enforcement actions referenced in Table B below.

**Table B**

<p>A. Press Release, New York Attorney General Sues Former NARAL President for Siphoning Over \$250,000 from Charity for Personal Use (Jun 29, 2012), <a href="https://ag.ny.gov/press-release/2012/office-attorney-general-sues-former-naral-president-siphoning-over-250000-charity">https://ag.ny.gov/press-release/2012/office-attorney-general-sues-former-naral-president-siphoning-over-250000-charity</a></p>
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B. Press Release, A.G. Schneiderman Obtains \$950k Settlement from Former National Arts Club Leaders for Years of Self-Dealing (Jul. 10, 2013), <https://ag.ny.gov/press-release/2013/ag-schneiderman-obtains-950k-settlement-former-national-arts-club-leaders-years>

C. Press Release, A.G. Schneiderman Sues to Remove Board of Thoroughbred Retirement Foundation That Put Horses in Danger and Finances in Ruin (May 3, 2012), <https://ag.ny.gov/press-release/2012/ag-schneiderman-sues-remove-board-thoroughbred-retirement-foundation-put-horses>

D. Press Release, A.G. Schneiderman Announces Settlement of Lawsuit Against Yisroel Schulman, Former Director of NYLAG, For Breaching His Fiduciary Duty to NYLAG and Other Charities (Nov. 29, 2017), <https://ag.ny.gov/press-release/2017/ag-schneiderman-announces-settlement-lawsuit-against-yisroel-schulman-former>

E. Press Release, A.G. Schneiderman Announces \$1.025 Million Settlement with Trustees of Nonprofit that Squandered Assets Intended for Underprivileged Children (Apr. 29, 2015), <https://ag.ny.gov/press-release/2015/ag-schneiderman-announces-1025-million-settlement-trustees-nonprofit-squandered>.

F. Press Release, A.G. Schneiderman & Comptroller DiNapoli Announce Agreement with Met Council to Restore Charity's Operations (Dec. 19, 2013), <https://ag.ny.gov/press-release/2013/ag-schneiderman-comptroller-dinapoli-announce-agreement-met-council-restore>.

G. Press Release, A.G. Schneiderman Sues Former Leader Of Historic National Arts Club For Years Of Self-Dealing (Sep. 21, 2014), <https://ag.ny.gov/press-release/2012/ag-schneiderman-sues-former-leader-historic-national-arts-club-years-self-dealing>

Dated: New York, New York  
December 31, 2021

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**

# NRA Enclosure 2

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

**PLAINTIFF'S RESPONSES AND  
OBJECTIONS TO DEFENDANT  
NRA'S AMENDED NOTICE OF  
RULE 11-F ORAL  
EXAMINATION OF  
THE OFFICE OF THE  
ATTORNEY GENERAL OF THE  
STATE OF NEW YORK**

Pursuant to Rules 3106 and 3122 of the Civil Practice Law and Rules, and Rule 11-f of the Rules of the Commercial Division of the Supreme Court, Plaintiff, the People of the State of New York, by their attorney, LETITIA JAMES, Attorney General of the State of New York, hereby object and respond to Defendant National Rifle Association of America, Inc.'s ("Defendant NRA") Amended Notice of Rule 11-F Oral Examination of the Office of the Attorney General of the State of New York (the "Amended Notice"), as follows.

**GENERAL OBJECTIONS**

The following general responses and objections ("General Objections") are incorporated into each specific response and objection as if fully set forth therein:

1. These objections apply to the Amended Notice in its entirety, including to Defendant NRA's Instructions, Definitions, and Non-Exclusive List of Matters to Be Addressed at the Deposition (Identified Pursuant to Commercial Division Rule 11-f) ("Matter" or "Matters") as if such objections were set forth in full in the response to each of the above

delineated Matters and are not necessarily repeated in response to each individual Matter. The assertion of the same, similar, or additional objections in Plaintiff's specific objections to an individual Matter, or the failure to assert any additional objection to a Matter, does not and shall not be deemed to waive any of Plaintiff's objections as set forth in this section.

2. Plaintiff objects to the Amended Notice to the extent that the Matters for Deposition therein relate to Defendant NRA's Counterclaims. Discovery on said Counterclaims is stayed pursuant to order of the Court and stipulation of the parties. The Court reaffirmed the stay of discovery on the Defendant NRA's Counterclaims during a status conference that took place to address on December 10, 2021. The Defendant NRA is not entitled to take a deposition of the Office of the Attorney General while this stay of discovery is pending.

3. Plaintiff objects to the Amended Notice, Instructions, Definitions, and to the Matters in their entirety and to each and every Matter, including but not limited to purporting to be directed to "OAG", "You", or "Your" where "OAG", "You" or "Your" are defined as:

"[T]he Office of the Attorney General of New York State, Letitia James, the plaintiff and counter-defendant and in the Action, and all other persons acting or purporting to act with, for, or on its, her or their behalf, including, but not limited to, any of its or her constituent Bureaus, such as the Charities Bureau, consultants, accountants, advisors, attorneys, or any person acting in an advisory, agency, or consulting capacity, including, but not limited to: (i) the current Attorney General Letitia James ("James"), in her official and/or individual capacity, and/or any former Attorney General (collectively, the "Attorney General") and (ii) where applicable, other agencies, offices, bureaus, departments, or divisions of the State of New York or their constituent personnel."

The plaintiff in this action is the People of the State of New York, who are represented by the Attorney General Letitia James, through the Office of the Attorney General, acting in her representative and protective capacity. The Amended Notice is improper and overbroad in that it seeks testimony from government agencies and their respective current and former personnel concerning information on which they are not competent or proper witnesses. Further, Defendant

NRA has made no showing as to why a deposition of Plaintiff even as defined in the Amended Notice is material or necessary to the prosecution or defense of this action.

4. Plaintiff objects to the Amended Notice and these Matters in their entirety and to each and every Matter to the extent that they purport to be directed to actions of Attorney General Letitia James in either her individual or official capacity. She is not a proper party, in either capacity, to whom discovery is to be directed at this time. In addition, she is not, in her individual capacity, a corporate entity to which CPLR 3106 and the Rules of the Commercial Division Rule 11-f apply. The Attorney General, in her individual and official capacity, reserves all rights and objections to this Amended Notice should it be lodged at a future time. To the extent it is deemed appropriately directed to her at this time, she joins in the objections asserted by the Plaintiff herein without waiver of other and further potential objections.

5. Plaintiff objects to the Amended Notice, Instructions, Definitions, and to the Matters in their entirety and to each and every Matter, including but not limited to the purported definition of “Investigation”.

6. Plaintiff objects to the Amended Notice and to each of the Matters to the extent that they seek information that is not relevant to, nor reasonably calculated to lead to, discovery of evidence relevant to, the allegations asserted in the Amended and Supplemental Verified Complaint, dated August 16, 2021 (the “Complaint”).

7. Plaintiff objects to the Notice to the extent that the Matters for Deposition therein represent an improper attempt by Defendant NRA to circumvent well-established limitations on the use of contention interrogatories before discovery has been substantially completed. Many of the Matters for Deposition request support for the Attorney General’s allegations asserted in her Amended Complaint, information which, to the extent discoverable, should be ascertained at the

close of discovery by way of interrogatories seeking the claims and contentions of the opposing parties pursuant to Commercial Division Rule 11-a(d).

8. Plaintiff objects to the Amended Notice and to each of these Matters to the extent that they are not sufficiently limited in time and/or scope.

9. Plaintiff objects to the Amended Notice to the extent that the Definitions and Instructions are overbroad, vague, ambiguous, confusing, and improper.

10. Plaintiff objects to the Amended Notice and to each of the Matters to the extent that they seek to impose obligations that are broader than or inconsistent with those set forth in the Civil Practice Law and Rules.

11. Plaintiff objects to the Amended Notice and to the Matters for failing to comply with Rule 11-f of the Rules of the Commercial Division to the extent that the Amended Notice purports to be a non-exclusive list of the matters to be covered in the deposition.

12. Plaintiff objects to the Amended Notice and to the Matters to the extent that they seek information not within Plaintiff's knowledge.

13. Plaintiff objects to the Amended Notice and to each of these Matters to the extent that they seek information which is privileged on various grounds, including attorney client privilege, work product privilege, concerns information prepared in anticipation of litigation or for trial, is confidential, sensitive, or is covered by the public interest privilege, deliberative process privilege, common interest privilege, and/or law enforcement privilege, relates to the privacy interests of nonparties, or is otherwise protected from disclosure by law. The inadvertent production of any document or information that is privileged, was prepared in anticipation of litigation, or is otherwise immune from discovery shall not constitute a waiver of any privilege or of any other ground for objecting to discovery with respect to that document or information or of



Plaintiff's right to object to the use of that information during any proceeding in this litigation or otherwise.

14. By responding to the Amended Notice and to each of these Matters, Plaintiff does not concede the materiality of the subject matters to which they refer. These responses are made expressly subject to, and without waiving or intending to waive, any questions or objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence or for any other purpose, of any of the documents or information produced in response hereto, or of the subject matter thereof, in any proceeding including the trial of this action or any subsequent proceeding.

15. Plaintiff objects to the Amended Notice and to each of the Matters to the extent it is overly broad, unduly burdensome, vague, ambiguous, or improper.

16. The responses set forth below are based on information currently available to Plaintiff, who reserves the right to supplement, amend, or correct these responses.

### **MATTERS**

#### **Matter 1:**

All steps taken by You to identify, preserve, collect, and produce Documents, Communications, and other information in response to: (a) the NRA's First Requests for Production of Documents, dated February 3, 2021 ("NRA's First RFP"), (b) the NRA's Second Requests for Production of Documents, dated October 14, 2021 ("NRA's Second RFP"), and (c) Debtors' First Requests for the Production of Documents, dated February 25, 2021 ("NRA Bankruptcy RFP"), served on the OAG in the Bankruptcy Case, including but not limited to, Custodians interviewed and Documents and Communications withheld from production and the grounds for such withholding.

#### **Response to Matter 1:**

Plaintiff objects to this Matter to the extent that it seeks testimony from "You" as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest

privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, is overly broad and unduly burdensome, is not material and necessary to the prosecution or defense of the action, and is not reasonably calculated to lead to discovery of evidence material and necessary to the prosecution or defense of the action. Further, Plaintiff objects to the Matter on the same grounds that the Plaintiff has previously objected in its responses and objections to the NRA's First RFP, the NRA's Second RFP (including as amended by Plaintiff on December 3, 2021) and the NRA Bankruptcy RFP, which are incorporated by reference herein.

**Matter 2:**

All steps taken by You to comply with (a) NRA's First RFP, (b) NRA's Second RFP, and (c) NRA Bankruptcy RFP, including but not limited to, concerning (i) the identities of Custodians from whom Documents, Communications, and other information were collected, (ii) the devices from which Documents, Communications, and other information were collected, and (iii) the OAG's files that were searched for Documents, Communications, and other information.

**Response to Matter 2:**

Plaintiff objects to this Matter to the extent that it seeks testimony from "You" as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, is overly broad and unduly burdensome, is not material and necessary to the prosecution or defense of the action, and is not reasonably calculated to lead to discovery of evidence material and necessary to the prosecution or defense of the action. Further, Plaintiff objects to the Matter on the same grounds that the Plaintiff has previously objected in its responses and objections to the NRA's First RFP, the

NRA's Second RFP (including as amended by Plaintiff on December 3, 2021) and the NRA Bankruptcy RFP, which are incorporated by reference herein.

**Matter 3:**

The contents of the OAG's (a) Responses and Objections, dated February 18, 2021, to the NRA's First RFP, and (b) Responses and Objections, dated November 10, 2021, to the NRA's Second RFP.

**Response to Matter 3:**

Plaintiff objects to this Matter to the extent that it seeks testimony from "You" as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, is overly broad and unduly burdensome, is not material and necessary to the prosecution or defense of the action, and is not reasonably calculated to lead to discovery of evidence material and necessary to the prosecution or defense of the action. Further, Plaintiff objects to the Matter on the same grounds that the Plaintiff has previously objected in its responses and objections to the NRA's First RFP, the NRA's Second RFP (including as amended by Plaintiff on December 3, 2021) and the NRA Bankruptcy RFP, which are incorporated by reference herein.

**Matter 4:**

Facts and circumstances concerning the drafting, contents, timing, and release of any public statements concerning the NRA by (a) the OAG, and/or (b) James, whether in an official or an individual capacity.

**Response to Matter 4:**

Plaintiff objects to this Matter to the extent that it seeks testimony from “You” as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, is overly broad and unduly burdensome, is not material and necessary to the prosecution or defense of the action, and is not reasonably calculated to lead to discovery of evidence material and necessary to the prosecution or defense of the action. Moreover, Plaintiff objects to the Matter to the extent that the Matter is deemed to relate to Defendant NRA’s counterclaims, about which the Court has ruled discovery is stayed and regarding which the NRA has stipulated discovery is stayed.

**Matter 5:**

All statements made by and/or attributed to James or others at the OAG about dissolution, injunctive, or other relief she/the OAG intends to seek or seeks against the NRA, including but not limited to the statements listed in Table A and other statements that are in sum and substance the same as the statements listed in Table A. This Matter includes but is not limited to any factual or legal bases—written or otherwise—for such statements and all communications relating or evidencing any such bases.

**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>1</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>2</sup>

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<sup>1</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>2</sup> *Id.*

Statement or Reported Statement by Letitia James (underline indicates emphasis added)	Approximate Date/Event
“[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>3</sup>
“Together, we can . . . <u>take on . . . the @nra . . .</u> ”	September 1, 2018 <sup>4</sup>
“[W]e CAN <u>take down the NRA</u> . We CANNOT waiver on gun control. That’s why I’m running.”	September 3, 2018 <sup>5</sup>
“[T]he 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>6</sup>
““NRA . . . needs to be held accountable for the destruction and the loss of lives . . . ”	September 27, 2018 <sup>7</sup>
“James said that she made no distinction between the lobbying and charitable arms of the NRA.”	September 27, 2018 <sup>8</sup>

<sup>3</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>4</sup> @TishJames Twitter post.

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

<sup>6</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>7</sup> <http://liherald.com/stories/nassau-protests-nra-fundraiser,107617> (Oct. 25, 2018) (Last Visited, October 14, 2021).

<sup>8</sup> *Id.*

Statement or Reported Statement by Letitia James (underline indicates emphasis added)	Approximate Date/Event
“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>9</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>10</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>11</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>12</sup>
Attorney General James’s statement in announcing her candidacy for Governor of New York that she has “worked to <u>eliminate</u> the NRA”	October 29, 2021 <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>9</sup> @TishJames Twitter post.

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

<sup>11</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>12</sup> @TishJames Twitter post.

<sup>13</sup> New York Attorney General Letitia James Announces She Will Run for Governor (ijr.com) (last visited December 31, 2021).

<sup>14</sup> Attorney General James Continues to Fight NRA’s Efforts to Dismiss Corruption Lawsuit | New York State Attorney General (ny.gov) (last visited December 30, 2021).

**Response to Matter 5:**

Plaintiff objects to this Matter to the extent that it seeks testimony from “You” as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, is overly broad and unduly burdensome, is not material and necessary to the prosecution or defense of the action, and is not reasonably calculated to lead to discovery of evidence material and necessary to the prosecution or defense of the action. Moreover, Plaintiff objects to the Matter to the extent that the Matter is deemed to relate to Defendant NRA’s counterclaims, about which the Court has ruled discovery is stayed and regarding which the NRA has stipulated discovery is stayed.

**Matter 6:**

The Investigation, including but not limited to: (a) facts, circumstances, Documents and Communications concerning authorization of the commencement of the Investigation and the relevant specific date(s) of such commencement; and (b) customary internal protocols at the OAG that bear on commencement of an investigation and its authorization. Matters to which subsections (a) and (b) in the preceding sentence relate include but are not limited to (i) the “Attorney General grant[ing of] the authority to the charities bureau to . . . open the investigation [of the NRA] . . . on April 19, 2019” (*see* Transcript of William Wang’s Deposition on March 23, 2021 at pp. 65:18-66:1), and (ii) the “preinvestigative inquiry stage with regard to the NRA,” which—according to Mr. Wang’s testimony—began “between November and December” 2018 (*see* Transcript of William Wang’s Deposition at pp. 64:12-17).

**Response to Matter 6:**

Plaintiff objects to this Matter to the extent that it seeks testimony from “You” as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest



privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, is overly broad and unduly burdensome, is not material and necessary to the prosecution or defense of the action, and is not reasonably calculated to lead to discovery of evidence material and necessary to the prosecution or defense of the action. Moreover, Plaintiff objects to the Matter to the extent that the Matter is deemed to relate to Defendant NRA's counterclaims, about which the Court has ruled discovery is stayed and regarding which the NRA has stipulated discovery is stayed.

**Matter 7:**

Interviews conducted by the OAG or any of Your staff, attorneys, investigators, or other representatives, during and in connection with the Investigation.

**Response to Matter 7:**

Plaintiff objects to this Matter to the extent that it seeks testimony from "You" as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, is overly broad and unduly burdensome, is not material and necessary to the prosecution or defense of the action, and is not reasonably calculated to lead to discovery of evidence material and necessary to the prosecution or defense of the action. Notwithstanding the foregoing, and without waiving the objections stated herein, Plaintiff states that it has already produced to the NRA in this action all discoverable factual information from the investigation with the exception of documents and information that are protected from disclosure by one or more of the aforementioned privileges or otherwise under the law.

**Matter 8:**

All communications—whether direct or indirect—concerning the NRA between the OAG and any of the following Persons or Entities, including but not limited to, any of their contractors, investigators, current or former officers, employees, attorneys, agents, representatives, predecessors-in-interest, affiliates, or designees:

- A. Andrew Cuomo;
- B. Maria Vullo;
- C. Linda Lacewell;
- D. Laura Wood;
- E. Erica Harris;
- F. Michael R. Bloomberg and/or any other Campaign donor or supporter;
- G. Everytown, including but not limited to, Jason Lilien, Nicholas Suplina, Rachel Nash, Michael-Sean Spence, and/or Michael Kane;
- H. Office of the Governor of the State of New York;
- I. Office of the Attorney General for the District of Columbia;
- J. New York State Department of Financial Services;
- K. Tim Mak;
- L. Moms Demand Action and/or Moms Demand Action for Gun Sense in America;
- M. Giffords Law Center to Prevent Gun Violence;
- N. The Democratic National Committee;
- O. Democratic Attorneys General Association; or
- P. Former or current members of the NRA's Board of Directors, NRA Officers, employees, vendors, including but not limited to,
  - a. Wilson "Woody" Phillips,
  - b. Joshua Powell,

- c. Wayne LaPierre,
- d. John Frazer,
- e. Christopher Cox,
- f. Oliver North,
- g. Mike Marcellin,
- h. Mildred Hallow,
- i. Peter Brownell,
- j. Richard Childress,
- k. Daniel Boren,
- l. Esther Schneider,
- m. Roscoe “Rocky” Marshall,
- n. Phillip Journey,
- o. Lockton Affinity Series of Lockton Affinity, LLC, and Kansas City Series of Lockton Companies, LLC,
- p. Associated Entertainment Releasing d/b/a Associated Television International,
- q. Membership Marketing Partners,
- r. Concord Social and Public Relations, LLC,
- s. Allegiance Creative Group, LLC,
- t. Ackerman McQueen, Inc.,
- u. Tony Makris,
- v. Aronson, LLC,
- w. RSM US LLP,
- x. J. Stephen Hart,

y. Michael Volkov, and

z. Cooper & Kirk LLP.

Q. Any witnesses whose testimony or out-of-court statements You may offer in evidence at trial or any pretrial hearing in this Action.

**Response to Matter 8:**

Plaintiff objects to this Matter to the extent that it seeks testimony from “You” as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, is overly broad and unduly burdensome, is not material and necessary to the prosecution or defense of the action, and is not reasonably calculated to lead to discovery of evidence material and necessary to the prosecution or defense of the action. Moreover, Plaintiff objects to the Matter to the extent that the Matter is deemed to relate to Defendant NRA’s counterclaims, about which the Court has ruled discovery is stayed and regarding which the NRA has stipulated discovery is stayed. Plaintiff also objects to identification of witnesses whose out of court statements they may use at trial as such determinations have not yet been made and renders this demand as premature. Further, Plaintiff objects to identification of statements that may be introduced as impeachment or rebuttal testimony at trial, which determination cannot be made until trial is ongoing,

**Matter 9:**

All Your meeting(s) and Communications with Everytown, including but not limited to, the OAG’s meeting with Everytown on February 14, 2019, or any other planned, cancelled, or actual meeting(s) between the OAG and Everytown.

**Response to Matter 9:**

Plaintiff objects to this Matter to the extent that it seeks testimony from “You” as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, is overly broad and unduly burdensome, is not material and necessary to the prosecution or defense of the action, and is not reasonably calculated to lead to discovery of evidence material and necessary to the prosecution or defense of the action. Moreover, Plaintiff objects to the Matter to the extent that the Matter is deemed to relate to Defendant NRA’s counterclaims, about which the Court has ruled discovery is stayed and regarding which the NRA has stipulated discovery is stayed.

**Matter 10:**

The alleged grounds for the OAG’s request for judicial dissolution of the NRA under N-PCL § 1101, set forth in the Amended Complaint, including but not limited to, the allegations concerning “the NRA’s [alleged] pattern of conducting its business in a persistently fraudulent or illegal manner, abusing its powers contrary to the public policy of New York and its tax exempt status, and failing to provide for the proper administration of its trust assets and institutional funds” (Amended Complaint at ¶ 14; see also Amended Complaint First Cause of Action).

**Response to Matter 10:**

Plaintiff objects to this Matter to the extent that it seeks testimony from “You” as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest

privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, and is overly broad and unduly burdensome. Plaintiff objects to this Matter to the extent that it seeks support for the Attorney General's allegations asserted in her Amended Complaint, information which, to the extent discoverable, should be ascertained at the close of discovery by way of interrogatories seeking the claims and contentions of the opposing parties pursuant to Commercial Division Rule 11-a(d). Moreover, Plaintiff objects to the Matter to the extent that the Matter is deemed to relate to Defendant NRA's counterclaims, about which the Court has ruled discovery is stayed and regarding which the NRA has stipulated discovery is stayed.

**Matter 11:**

The alleged grounds for the OAG's request for judicial dissolution of the NRA under N-PCL § 1102, set forth in the Amended Complaint, including but not limited to, the allegations that "directors or members in control of the NRA have [allegedly] looted or wasted the corporation assets, have operated the NRA solely for their personal benefit, or have otherwise acted in an illegal, oppressive or fraudulent manner" (Amended Complaint at ¶ 14; see also Amended Complaint Second Cause of Action).

**Response to Matter 11:**

Plaintiff objects to this Matter to the extent that it seeks testimony from "You" as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, and is overly broad and unduly burdensome. Plaintiff objects to this Matter to the extent that it seeks support for the Attorney General's allegations asserted in her Amended Complaint, information which, to the extent

discoverable, should be ascertained at the close of discovery by way of interrogatories seeking the claims and contentions of the opposing parties pursuant to Commercial Division Rule 11-a(d). Moreover, Plaintiff objects to the Matter to the extent that the Matter is deemed to relate to Defendant NRA's counterclaims, about which the Court has ruled discovery is stayed and regarding which the NRA has stipulated discovery is stayed.

**Matter 12:**

Bases for Your position that the interest of the public will be served by the NRA's dissolution.

**Response to Matter 12:**

Plaintiff objects to this Matter to the extent that it seeks testimony from "You" as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, and is overly broad and unduly burdensome. Plaintiff objects to this Matter to the extent that it seeks support for the Attorney General's allegations asserted in her Amended Complaint, information which, to the extent discoverable, should be ascertained at the close of discovery by way of interrogatories seeking the claims and contentions of the opposing parties pursuant to Commercial Division Rule 11-a(d). Moreover, Plaintiff objects to the Matter to the extent that the Matter is deemed to relate to Defendant NRA's counterclaims, about which the Court has ruled discovery is stayed and regarding which the NRA has stipulated discovery is stayed.

**Matter 13:**

Bases for Your position that the NRA's dissolution will benefit the members of the NRA and its

other stakeholders.

**Response to Matter 13:**

Plaintiff objects to this Matter to the extent that it seeks testimony from “You” as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, and is overly broad and unduly burdensome. Plaintiff objects to this Matter to the extent that it seeks support for the Attorney General’s allegations asserted in her Amended Complaint, information which, to the extent discoverable, should be ascertained at the close of discovery by way of interrogatories seeking the claims and contentions of the opposing parties pursuant to Commercial Division Rule 11-a(d). Moreover, Plaintiff objects to the Matter to the extent that the Matter is deemed to relate to Defendant NRA’s counterclaims, about which the Court has ruled discovery is stayed and regarding which the NRA has stipulated discovery is stayed.

**Matter 14:**

The allegations set forth in the Amended Complaint that Wayne LaPierre “dominates and controls the NRA Board as a whole through his control of business, patronage and special payment opportunities for board members, and his public allegations to the NRA membership of a ‘criminal conspiracy’ against board members and officers who question his activities.” (Amended Complaint at ¶ 62).

**Response to Matter 14:**

Plaintiff objects to this Matter to the extent that it seeks testimony from “You” as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney



work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous and is overly broad and unduly burdensome. Plaintiff objects to this Matter to the extent that it seeks support for the Attorney General's allegations asserted in her Amended Complaint, information which, to the extent discoverable, should be ascertained at the close of discovery by way of interrogatories seeking the claims and contentions of the opposing parties pursuant to Commercial Division Rule 11-a(d).

**Matter 15:**

The allegations set forth in the Amended Complaint concerning "Related Party Transactions with Board Members" referring to "Board Member No. 1," "Board Member No. 2," "Board Member No. 3," "Board Member No. 4," and "Board Member No. 5." (Amended Complaint at ¶¶ 382-412).

**Response to Matter 15:**

Plaintiff objects to this Matter to the extent that it seeks testimony from "You" as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, and is overly broad and unduly burdensome. Plaintiff objects to this Matter to the extent that it seeks support for the Attorney General's allegations asserted in her Amended Complaint, information which, to the extent discoverable, should be ascertained at the close of discovery by way of interrogatories seeking the claims and contentions of the opposing parties pursuant to Commercial Division Rule 11-

a(d).

**Matter 16:**

The allegations set forth in the Amended Complaint that the individual defendants took steps to conceal their misconduct from the Board of Directors and the Audit Committee. (Amended Complaint at ¶¶ 160, 178-179, 186, 188-190, 235, 238, 242, 277, 278, 281, 313.).

**Response to Matter 16:**

Plaintiff objects to this Matter to the extent that it seeks testimony from “You” as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, and is overly broad and unduly burdensome. Plaintiff objects to this Matter to the extent that it seeks support for the Attorney General’s allegations asserted in her Amended Complaint, information which, to the extent discoverable, should be ascertained at the close of discovery by way of interrogatories seeking the claims and contentions of the opposing parties pursuant to Commercial Division Rule 11-a(d).

**Matter 17:**

The allegations set forth in the Amended Complaint relating to the “Top Concerns Memo” and the “NRA Whistleblowers” who authored the Memo. (Amended Complaint at ¶¶ 507-513).

**Response to Matter 17:**

Plaintiff objects to this Matter to the extent that it seeks testimony from “You” as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest

privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, and is overly broad and unduly burdensome. Plaintiff objects to this Matter to the extent that it seeks support for the Attorney General's allegations asserted in her Amended Complaint, information which, to the extent discoverable, should be ascertained at the close of discovery by way of interrogatories seeking the claims and contentions of the opposing parties pursuant to Commercial Division Rule 11-a(d).

**Matter 18:**

The allegations set forth in the Amended Complaint that: (a) although the NRA's Board of Directors had a compensation committee and hired compensation consultants, it did not adequately benchmark peer compensation or memorialize "evidence" of scrutiny given to executive performance; (b) forms filed by the NRA with the IRS failed to properly account for expense reimbursements as compensation, and the NRA's executive salaries amounted to per se improper excess-benefit transactions; (c) the NRA's Audit Committee "failed to exercise proper duty of care" in approving related party transactions and conflicts of interest, and failed to diligently supervise or audit the NRA's outside auditors; (d) the Audit Committee made an ultra vires decision to indemnify a board member for legal fees in 2019, a decision that should have been left to the full Board; (e) the Audit Committee failed to implement an effective compliance program; (f) the Board of Directors, subsequent to the NRA's bankruptcy filing, approved Wayne LaPierre's decision to have the NRA seek bankruptcy protection; and (g) Board members used first class or business travel without authorization. (Amended Complaint at ¶¶ 413-429, 432-434, 517, 537-562, 600-604, 616.)

**Response to Matter 18:**

Plaintiff objects to this Matter to the extent that it seeks testimony from "You" as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, and is overly broad and unduly

burdensome. Plaintiff objects to this Matter to the extent that it seeks support for the Attorney General's allegations asserted in her Amended Complaint, information which, to the extent discoverable, should be ascertained at the close of discovery by way of interrogatories seeking the claims and contentions of the opposing parties pursuant to Commercial Division Rule 11-a(d).

**Matter 19:**

The allegations set forth in the Amended Complaint that (a) Defendants Powell and LaPierre "harassed and retaliated against" unnamed whistleblowers and Board members "who raised issues covered by the policy [and] suffered intimidation, harassment, discrimination, or other retaliation, including attempted revocation of NRA membership"; and (b) the "Audit Committee failed to make any record or take any action responding to whistleblower concerns." (Amended Complaint at ¶ 723.)

**Response to Matter 19:**

Plaintiff objects to this Matter to the extent that it seeks testimony from "You" as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, and is overly broad and unduly burdensome. Plaintiff objects to this Matter to the extent that it seeks support for the Attorney General's allegations asserted in her Amended Complaint, information which, to the extent discoverable, should be ascertained at the close of discovery by way of interrogatories seeking the claims and contentions of the opposing parties pursuant to Commercial Division Rule 11-a(d).

**Matter 20:**

Your allegations set forth in the Amended Complaint that LaPierre allegedly "impeded

["Dissident No. 1"'s] participation in the NRA's affairs" and "influenc[ed]" the decision of a Board committee to decline to re-nominate "Dissident No. 1." (Amended Complaint at ¶¶ 486, 488.)

**Response to Matter 20:**

Plaintiff objects to this Matter to the extent that it seeks testimony from "You" as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, and is overly broad and unduly burdensome. Plaintiff objects to this Matter to the extent that it seeks support for the Attorney General's allegations asserted in her Amended Complaint, information which, to the extent discoverable, should be ascertained at the close of discovery by way of interrogatories seeking the claims and contentions of the opposing parties pursuant to Commercial Division Rule 11-a(d).

**Matter 21:**

Your allegations set forth in the Amended Complaint that that the NRA failed to include required information and made "false statements" in its IRS Forms 990, in 2014 through 2019, that were reported in the NRA's CHAR500 reports, concerning: (a) transactions with interested persons, (b) compensation and to Officers and Directors, (c) payments to vendors, (d) governance, management and disclosure, and (e) fundraising expenses, fundraisers and amounts paid thereto. (Amended Complaint at ¶¶ 567-568.)

**Response to Matter 21:**

Plaintiff objects to this Matter to the extent that it seeks testimony from "You" as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney

work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, and is overly broad and unduly burdensome. Plaintiff objects to this Matter to the extent that it seeks support for the Attorney General's allegations asserted in her Amended Complaint, information which, to the extent discoverable, should be ascertained at the close of discovery by way of interrogatories seeking the claims and contentions of the opposing parties pursuant to Commercial Division Rule 11-a(d).

**Matter 22:**

Your allegations set forth in the Amended Complaint concerning alleged "Ongoing Violations of NRA Policy and Procedures," including but not limited to, the allegation that "the NRA has, for years, been paying MMP, Allegiance, and Concord in excess of stipulated contractual amounts, and outside of the NRA's policy governing contract procurement, with the full knowledge and approval of LaPierre." (Amended Complaint at ¶¶ 605-614.)

**Response to Matter 22:**

Plaintiff objects to this Matter to the extent that it seeks testimony from "You" as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, and is overly broad and unduly burdensome. Plaintiff objects to this Matter to the extent that it seeks support for the Attorney General's allegations asserted in her Amended Complaint, information which, to the extent discoverable, should be ascertained at the close of discovery by way of interrogatories seeking the claims and contentions of the opposing parties pursuant to Commercial Division Rule 11-

a(d).

**Matter 23:**

Facts and circumstances leading to the OAG's decisions not to seek dissolution in the enforcement actions referenced in Table B below.

**Table B**

- |   |
|---|
| <p>A. Press Release, New York Attorney General Sues Former NARAL President for Siphoning Over \$250,000 from Charity for Personal Use (Jun 29, 2012), <a href="https://ag.ny.gov/press-release/2012/office-attorney-general-sues-former-naral-president-siphoning-over-250000-charity">https://ag.ny.gov/press-release/2012/office-attorney-general-sues-former-naral-president-siphoning-over-250000-charity</a></p> |
|---|



- |  |
|--|
| B. Press Release, A.G. Schneiderman Obtains \$950k Settlement from Former National Arts Club Leaders for Years of Self-Dealing (Jul. 10, 2013), <a href="https://ag.ny.gov/press-release/2013/ag-schneiderman-obtains-950k-settlement-former-national-arts-club-leaders-years">https://ag.ny.gov/press-release/2013/ag-schneiderman-obtains-950k-settlement-former-national-arts-club-leaders-years</a>  |
| C. Press Release, A.G. Schneiderman Sues to Remove Board of Thoroughbred Retirement Foundation That Put Horses in Danger and Finances in Ruin (May 3, 2012), <a href="https://ag.ny.gov/press-release/2012/ag-schneiderman-sues-remove-board-thoroughbred-retirement-foundation-put-horses">https://ag.ny.gov/press-release/2012/ag-schneiderman-sues-remove-board-thoroughbred-retirement-foundation-put-horses</a>                                     |
| D. Press Release, A.G. Schneiderman Announces Settlement of Lawsuit Against Yisroel Schulman, Former Director of NYLAG, For Breaching His Fiduciary Duty to NYLAG and Other Charities (Nov. 29, 2017), <a href="https://ag.ny.gov/press-release/2017/ag-schneiderman-announces-settlement-lawsuit-against-yisroel-schulman-former">https://ag.ny.gov/press-release/2017/ag-schneiderman-announces-settlement-lawsuit-against-yisroel-schulman-former</a> |
| E. Press Release, A.G. Schneiderman Announces \$1.025 Million Settlement with Trustees of Nonprofit that Squandered Assets Intended for Underprivileged Children (Apr. 29, 2015), <a href="https://ag.ny.gov/press-release/2015/ag-schneiderman-announces-1025-million-settlement-trustees-nonprofit-squandered">https://ag.ny.gov/press-release/2015/ag-schneiderman-announces-1025-million-settlement-trustees-nonprofit-squandered</a> .              |
| F. Press Release, A.G. Schneiderman & Comptroller DiNapoli Announce Agreement with Met Council to Restore Charity's Operations (Dec. 19, 2013), <a href="https://ag.ny.gov/press-release/2013/ag-schneiderman-comptroller-dinapoli-announce-agreement-met-council-restore">https://ag.ny.gov/press-release/2013/ag-schneiderman-comptroller-dinapoli-announce-agreement-met-council-restore</a> .  |
| G. Press Release, A.G. Schneiderman Sues Former Leader Of Historic National Arts Club For Years Of Self-Dealing (Sep. 21, 2014), <a href="https://ag.ny.gov/press-release/2012/ag-schneiderman-sues-former-leader-historic-national-arts-club-years-self-dealing">https://ag.ny.gov/press-release/2012/ag-schneiderman-sues-former-leader-historic-national-arts-club-years-self-dealing</a>   |

**Response to Matter 23:**

Plaintiff objects to this Matter to the extent that it seeks testimony from “You” as defined in the Amended Notice. Plaintiff further objects to this Matter to the extent that it seeks information protected from disclosure by various privileges, including the attorney client privilege, attorney work product privilege, deliberative process privilege, public interest privilege, common interest privilege, and/or law enforcement privilege, on the ground that it was prepared in anticipation of litigation or for trial, on the ground that it is vague and ambiguous, is overly broad and unduly burdensome, is not material and necessary to the prosecution or defense of the action, and is not reasonably calculated to lead to discovery of evidence material and necessary to the prosecution or defense of the action. Plaintiff objects to this Matter to the extent that it seeks support for the Attorney General’s allegations asserted in her Amended Complaint, information which, to the extent discoverable, should be ascertained at the close of discovery by way of interrogatories seeking the claims and contentions of the opposing parties pursuant to Commercial Division Rule 11-a(d). Moreover, Plaintiff objects to the Matter to the extent that the Matter is deemed to relate to Defendant NRA’s counterclaims, about which the Court has ruled discovery is stayed and regarding which the NRA has stipulated discovery is stayed.

Dated: New York, New York  
January 20, 2022

LETITIA JAMES  
Attorney General of the State of New York  
*Attorney for Plaintiff*

By: /s/ Monica Connell  
MONICA CONNELL  
Assistant Attorney General  
28 Liberty Street  
New York, New York 10005  
Telephone: (212) 416-8965  
Email: Monica.Connell@ag.ny.gov

To:

Svetlana Eisenberg, Esq.  
Mordecai Geisler, Esq.  
Brewer, Attorneys and Counselors  
*Attorney for Defendant National Rifle  
Association of America, Inc.*  
750 Lexington Avenue, 14<sup>th</sup> Floor  
New York, NY 10022  
Tel. 212-489-1400  
Email: [sbr@brewerattorneys.com](mailto:sbr@brewerattorneys.com)

# NRA Enclosure 3

IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE NORTHERN DISTRICT OF TEXAS  
 DALLAS DIVISION

In Re: ) **Case No. 21-30085-hdh-11**  
 ) Jointly Administered  
 NATIONAL RIFLE ASSOCIATION )  
 OF AMERICA, et al., ) Dallas, Texas  
 ) March 19, 2021  
 Debtors. ) 9:00 a.m. Docket  
 )  
 ) MOTION TO COMPEL DISCOVERY  
 ) (#372)  
 ) MOTION FOR PROTECTIVE ORDER  
 ) (#382)  
 )

TRANSCRIPT OF PROCEEDINGS  
 BEFORE THE HONORABLE HARLIN DEWAYNE HALE,  
 UNITED STATES CHIEF BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Debtors: Gregory Eugene Garman  
 William McCarty Noall  
 GARMAN TURNER GORDON, LLP  
 7251 Amigo Street, Suite 210  
 Las Vegas, NV 89119  
 (725) 777-3000

For the Debtors: John D. Gaither  
 NELIGAN, LLP  
 325 N. St. Paul, Suite 3600  
 Dallas, TX 75201  
 (214) 840-5333

For the Office of the Gerrit M. Pronske  
 New York State Attorney Eric M. Van Horn  
 General: SPENCER FANE, LLP  
 5700 Granite Parkway, Suite 650  
 Plano, TX 75024  
 (972) 324-0300

For the Office of the Monica Connell  
 New York State Attorney OFFICE OF THE ATTORNEY GENERAL-  
 General: NEW YORK  
 28 Liberty Street  
 New York, NY 10005  
 (212) 416-8401

1 APPEARANCES, cont'd.:

2 For the U.S. Trustee: Lisa L. Lambert  
3 OFFICE OF THE UNITED STATES  
4 Trustee  
5 1100 Commerce Street, Room 976  
6 Dallas, TX 75242  
7 (214) 767-8967

8 For Phillip Journey, Marcus Jermaine Watson  
9 Roscoe B. Marshall, BONDS ELLIS EPPICH SCHAFFER JONES,  
10 Jr., et al.: LLP  
11 420 Throckmorton Street,  
12 Suite 1000  
13 Fort Worth, TX 76102  
14 (817) 529-2861

15 For Official Committee of Kristian W. Gluck  
16 Unsecured Creditors: NORTON ROSE FULBRIGHT US, LLP  
17 2200 Ross Avenue, Suite 3600  
18 Dallas, TX 75201-7932  
19 (214) 855-8210

20 Recorded by: Shanette D. Green  
21 UNITED STATES BANKRUPTCY COURT  
22 1100 Commerce Street, Room 1254  
23 Dallas, TX 75242  
24 (214) 753-2088

25 Transcribed by: Kathy Rehling  
311 Paradise Cove  
Shady Shores, TX 76208  
(972) 786-3063

25 Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

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1 DALLAS, TEXAS - MARCH 19, 2021 - 9:02 A.M.

2 THE COURT: Good morning. This is the Bankruptcy  
3 Court in Dallas in the National Rifle Association of America  
4 case. I'll take appearances.

5 MR. GARMAN: Good morning, Your Honor. This is Greg  
6 Garman and William Noall of Garman Turner Gordon appearing  
7 for the Debtors. And I believe our colleague, Mr. Gaither,  
8 is on the line also.

9 THE COURT: Welcome back.

10 MR. GARMAN: Thank you.

11 MR. PRONSKE: Good morning, Your Honor. Gerrit  
12 Pronske and Eric Van Horn with Spencer Fane for the New York  
13 Attorney General, and Monica Connell from the New York  
14 Attorney General's Office, who will be arguing this morning.

15 THE COURT: Welcome.

16 MS. CONNELL: Thank you, Your Honor.

17 MR. WATSON: Good morning, Your Honor. Jermaine  
18 Watson; Bonds Ellis Eppich Schafer Jones, LLP; on behalf of  
19 Judge Journey and Rocky Marshall.

20 THE COURT: Nice background you've got there, Mr.  
21 Watson.

22 MR. WATSON: Thank you, Judge.

23 MR. GLUCK: Good morning, Your Honor. Kristian  
24 Gluck of Norton Rose Fulbright, proposed counsel for the  
25 Official Committee of Unsecured Creditors.

4

1 THE COURT: Welcome.

2 MR. GLUCK: Good morning.

3 THE COURT: Anyone else wish to make an appearance?

4 We --

5 MS. LAMBERT: Judge Hale, this is Lisa Lambert for  
6 the United States Trustee.

7 THE COURT: Welcome back. Anyone else wish to make  
8 an appearance?

9 We've had a chance to review everybody's papers. Why  
10 don't we start with the NRA, Mr. Garman, and then we'll hear  
11 from the Attorney General of New York, and then anyone else  
12 that wishes to say something. Then we'll circle back, Mr.  
13 Garman, and give your side a short pass, and then Mr.  
14 Pronske's side one more pass.

15 I think everybody received the message, I've got a  
16 medical thing I've got to do later in the morning, so we  
17 really only have about an hour for the hearing, and then I  
18 want to recess, visit with my law clerks, and hopefully come  
19 back and give you a ruling this morning.

20 MR. GARMAN: Yes, sir. Thank you. Let me try and  
21 be brief.

22 Your Honor, I spent twelve hours yesterday in a  
23 conference room at the National Rifle Association, where the  
24 New York Attorney General, as Movant, took the deposition of  
25 our chief legal officer in his individual capacity. Our



5

1 general counsel. That follows Monday, in which Mr. Frazer,  
2 the general counsel, sat for a 30(b)(6) witness all day, and  
3 Mr. Frazer is going again on another day.

4 The simple reality is that lawyers are not immune from  
5 discovery, beginning with a 30(b)(6).

6 Your Honor, 30(b)(6) on its face permits the deposition  
7 of a government agency. That's codified in the statute.  
8 It's perhaps the most important deposition we can take.

9 This Debtor did not take the position that the New York  
10 Attorney General's regulatory proceeding was stayed by this  
11 bankruptcy case. But they voluntarily chose to come to this  
12 Court to seek affirmative relief, relief on which they bear a  
13 burden of proof. When you look at the inquiries, the topics  
14 we identified for the 30(b)(6), they are carefully tailored  
15 and narrowly construed to provide us the ability to defend  
16 ourselves against allegations that are relatively sweeping  
17 and general in nature by way of the motion.

18 The New York Attorney General comes before this Court and  
19 they have identified that they represent certain regulatory  
20 agencies who have oversight over the National Rifle  
21 Association. It is those regulatory authorities, those  
22 regulatory components, which is the basis for the relief that  
23 they seek.

24 On top of that, these parties agreed to a discovery plan.  
25 And that discovery plan on its face contemplates -- and I

6

1 refer to Docket 327-2 on Page 5, for the Court's reference;  
2 Notice of Depositions -- it was agreed amongst the parties in  
3 Subsection B(iii) that "The NRA may notice and conduct a  
4 maximum of seven depositions of Movants (including one  
5 30(b)(6) deposition of each Movant)."

6 On top of being statutorily -- or, I'm sorry, by Rule  
7 entitled to take a 30(b)(6), we had an agreement amongst the  
8 parties that we would be entitled to take a 30(b)(6).

9 We are now six business days from the open of opening  
10 statements in this trial, and it is imperative that the  
11 Debtors be permitted to understand the nature of the  
12 allegations that we are going to be required to defend  
13 against.

14 And Your Honor, then I'll just turn to the document  
15 requests. Your Honor, under Rule 34, we made targeted and  
16 specific requests for documents. If you look at Request #1,  
17 Request #1 said, You make a particular allegation in what I  
18 believe was Paragraph 47; we need the documents demonstrating  
19 and evidencing the contentions you make. Because they bear a  
20 burden of proof. They are the Movants. They voluntarily  
21 chose to seek this relief.

22 What we got back was what has been represented to me, and  
23 that I understand it to be, simply the identical file that  
24 was previously produced in the ancillary proceeding. There  
25 are point -- there are a limited number of examples in which

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1 they say, Here are some documents that are responsive. But  
2 on the whole, the response says, Here are 1.7 million pages.  
3 We will use some of these at trial. We will tell you within  
4 the Rules what exhibits we plan to use at trial. But we have  
5 -- we have no further organization or identification of the  
6 documents.

7 I don't come before the Court asking the impossible. It  
8 would be impossible for the New York Attorney General to come  
9 forward and say, Of these 1.7 million documents, each of  
10 these individual documents would be responsive to requests.  
11 We're on shortened time here. Our position, I think, is  
12 principled, and I believe our position is reasonable. But we  
13 are entitled under Rule 34 to the categories, to the  
14 organization of these documents. And Your Honor, it is  
15 imperative that we get it. It was agreed to that we would  
16 engage in discovery.

17 The attorneys have, candidly, done, I think, as good as  
18 we could have done in meet-and-confers. I think the  
19 attorneys have -- we disagree over the topics of our clients,  
20 but I think that we work well together, and I appreciate the  
21 cooperation from the counsel on the other side of the virtual  
22 bench.

23 But, Your Honor, I think these are incredibly  
24 straightforward requests. I think the documents need to be  
25 supplemented in a way that we at least understand the

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1 categories, the organization of the documents. They need to  
2 comply with Rule 34. I'm only asking for compliance with  
3 Rule 34.

4 And on the 30(b)(6)-- this is the most important topic to  
5 me today -- I simply don't understand what possible basis  
6 there could be other than it's inconvenient because the  
7 parties have been working on other lawyers. I've had cases  
8 in which I brought in third-party witnesses under Rule  
9 30(b)(6) and the information was only known to lawyers. The  
10 Rules contemplate this, and I believe the totality of case  
11 law stands for the proposition that simply because the  
12 information is contained in a lawyer's head does not relieve  
13 you of the obligation to prepare and designate a witness to  
14 reasonable topics, which we've identified.

15 THE COURT: Thank you, Mr. Garman. As I mentioned,  
16 you'll have another pass after everybody's been heard.

17 MR. GARMAN: Thank you, sir.

18 THE COURT: I'll hear from the Attorney General now.

19 MS. CONNELL: Thank you, Your Honor. Good morning.

20 Your Honor, first I would like to address the first point  
21 brought up by Counsel, which is the deposition of Mr. Frazer,  
22 who is general counsel to the Debtor, NRA, and also their  
23 secretary to the board.

24 Mr. Frazer has been deposed in this action. He was  
25 designated by the NRA as a 30(b)(6) witness on various

1 topics. That does not mean that the 30(b)(6) notice by the  
2 NRA is appropriate. Excuse me, by the Debtors is  
3 appropriate. Your Honor, actually, if you look at the  
4 request on its face, it's pretty extraordinary.

5 It is my understanding that U.S. Trustee Bill Neary  
6 routinely gets 30(b)(6) deposition notices asking for the  
7 reasons behind certain determinations he makes, and he  
8 doesn't submit to them. This is the same thing.

9 Your Honor, the Debtors have served a notice of  
10 deposition upon the Attorney General's Office which asks for  
11 only the attorneys' mental thought processes, their work  
12 product, and also information which tactically can only be  
13 designed to obtain litigation -- obtain information relevant  
14 to other litigation. And I would look, for example -- and  
15 during the meet-and-confer we tried to look at specific  
16 examples -- at like #16, which asks for the factual basis for  
17 your decision, meaning the Attorney General's Office's  
18 decision, to seek dissolution of the NRA, including, without  
19 limitation, the factual basis for your disparate enforcement  
20 approach to the NRA vis-à-vis 18 not-for-profit entities.

21 This is attorney work product, Your Honor. It asks for  
22 discovery about the decisions attorneys within our office  
23 make, the mental strategies they make, the determinations  
24 that they've made in other cases. And that is purely  
25 privileged materials.

10

1           And I just want to correct -- or, I'd like to clarify  
2 something. The Attorney General's Office does not represent  
3 some regulatory agencies. The Attorney General was charged  
4 under New York law with overseeing not-for-profit entities.  
5 It is staffed primarily with attorneys, about 30 attorneys,  
6 who conduct the investigations themselves, who conduct any  
7 enforcement proceedings themselves, any subsequent  
8 proceedings themselves. There is a small team of attorneys  
9 who have conducted, including myself, who have conducted the  
10 entire investigation of the NRA that is ongoing in New York  
11 State, the state enforcement action. They have also  
12 conducted and are acting as trial counsel here, and they've  
13 acted as counsel in other proceedings that have sprung from  
14 the state enforcement action.

15           So what is really sought is the deposition of opposing  
16 counsel on their mental thoughts and strategies. It has  
17 never been and is not the Attorney General's position that a  
18 governmental entity cannot be subject to a 30(b)(6)  
19 deposition. It certainly can, in the appropriate case and  
20 with the appropriate topics. That is not what we have here.

21           I would say, Your Honor, too, to look at every single one  
22 of these demands asks for the Attorney General's Office to  
23 sort through the documents produced and identify those that  
24 we think are most telling or we're most likely to rely on or  
25 most support particular contentions. That falls squarely

11

1 under the case law we have cited in our brief in privileged  
2 materials. And that is what cannot be sought.

3 Mr. Garman has mentioned that there are times when  
4 deposition of an attorney can be sought. That's certainly  
5 true. But trial counsel for a regulatory entity, to discover  
6 only privileged information, is not an instance where a  
7 30(b)(6) deposition can be sought.

8 And I would say, Your Honor, that Counsel has chosen --  
9 all -- both sides have chosen how we would like to proceed in  
10 discovery here. The document requests that they made were  
11 responded to appropriately. When Counsel asked for all  
12 documents demonstrating misconduct within the NRA, which is  
13 essentially what Document Demand #1 was, we gave them, as  
14 they requested, the entire discoverable investigatory file  
15 that had previously been given to the NRA in February. Then  
16 we gave them additional documents we've gotten since then,  
17 and we'll continue to supplement, because we're getting  
18 discovery in this bankruptcy proceeding.

19 During the meet-and-confer, when they discussed concerns  
20 about the volume, we agreed to voluntarily read some of their  
21 demands differently than written so that we would specify  
22 particular classes of documents and categories that we intend  
23 to rely upon at the hearing. And we'll continue to do so.

24 And I also think, Your Honor, the information we're  
25 relying upon and proceeding upon and will proceed upon before

12

1 you is coming out at the depositions and in the exhibits that  
2 we're using.

3 We are not trying to play hide-the-ball. We have given  
4 them the universe of documents from which -- on which we're  
5 going to rely. We have specified categories, classes, and  
6 specific documents we're going to rely upon. And we're  
7 updating them on that. All of that is voluntarily --  
8 voluntary, Your Honor.

9 And I would further say, Your Honor, that what is at  
10 issue in this case is the actions or non-actions of Debtors.  
11 And so what we've been looking at is what have they done and  
12 what have they not done, and that is information that is  
13 uniquely in their possession. So when they talk about the  
14 volume of information that has been produced -- and it  
15 certainly is a lot; I do feel for Mr. Garman on that -- what  
16 they're talking about is information that is largely  
17 information that came from the Debtors. It's largely  
18 information they've known for more a year. We've examined,  
19 with counsel present, many witnesses from Debtor NRA. And it  
20 is largely information about occurrences and transactions  
21 that Mr. Garman's client should be well familiar with.

22 There is no independent knowledge by any Attorney General  
23 witness. And, again, it could only be Counsel that could  
24 testify here.

25 And to clarify what evidence we think most demonstrates



13

1 our contentions, our contentions for particular assertions in  
2 the state enforcement complaint, that would be us sorting  
3 through the documents produced and saying, here are the  
4 things that we think most support that. And that, again, is  
5 prohibited.

6 And, again, Your Honor, I would point to some of the  
7 demands here, which are really overbroad and unduly  
8 burdensome to the extent that they ask us, really, to answer  
9 discovery in ongoing litigation other than what's before the  
10 bankruptcy court. They are not targeted.

11 So, going back to this, Your Honor, it is true that, to  
12 Mr. Garman's central contention, it is true that attorneys  
13 can be deposed. But where you're seeking to depose opposing  
14 counsel, there is a very high test to pass. It's the *Shelton*  
15 test. We lay that out in our papers. I don't believe that  
16 Debtors' counsel really addressed it in theirs. And it's a  
17 three-part test. It includes, Your Honor, that there must be  
18 no other way for the Debtors to get this information; that  
19 the information sought must be nonprivileged; and that the  
20 information would not pose an undue burden, I believe is the  
21 third category.

22 They can't meet any of these. But I would suggest to you  
23 the most dangerous is the privilege. If attorneys from  
24 government entities who are regulators and who are trial  
25 counsel are going to be deposed about their mental thought

1 processes and the selection of documents, that opens a  
2 floodgate for depositions on all regulators in all actions.  
3 And that's certainly not what the case law holds. It's not  
4 what it recommends.

5 And I again, Your Honor, would refer you to the cases we  
6 cite that talk about specific requests like some of the ones  
7 here that ask for an attorney from the Government to explain  
8 or sort through documents and explain why certain support  
9 contentions or rebut contentions. That's clearly work  
10 product, and it's privileged.

11 So, Your Honor, on the first hand, I think this is a  
12 pretty extraordinary 30(b)(6) when you look at who it's aimed  
13 at and the requests it's making, and I would urge the Court  
14 to please look closely at the topics.

15 I would point you again to #17: What's our intention to  
16 distribute the NRA's remaining and future assets, as set  
17 forth in the state lawsuit complaint, and what specific  
18 entities do we want to distribute them to? Your Honor, that  
19 has no relevance here. It's a future hypothetical. And it  
20 would, in the future, go to what the Attorney General's  
21 Office would be thinking about in terms of recommending to a  
22 court if something happened in the future. I don't  
23 understand how this demand is properly the subject of a  
24 30(b)(6) deposition notice here.

25 THE COURT: Let me ask you about that one

15

1 specifically, --

2 MS. CONNELL: Sure.

3 THE COURT: -- since you all think that you are  
4 going to have cause to dismiss the bankruptcy case you're  
5 going to put on, and that the dismissal statute provides that  
6 if I think that the appointment of a trustee would be better  
7 for the estate and creditors, I think is -- that's a  
8 paraphrase, but it takes into account creditors and the  
9 estate -- isn't that relevant, what the Attorney General is  
10 intending to do with the assets of the NRA versus what might  
11 happen in a bankruptcy context and whether we would be better  
12 off with a trustee? That seems to me to be highly relevant.  
13 Am I mistaken on that?

14 MS. CONNELL: Well, Your Honor, I -- respectfully, I  
15 think you are, because before we would ever get to that, that  
16 wouldn't at the Attorney General's behest, we would have to  
17 go through the state enforcement trial, which is ongoing, of  
18 course. We're in discovery there. And we would have to  
19 prove to a court in New York State that judicial dissolution  
20 would be in the best interest of the people of the state of  
21 New York and/or the members of the NRA. If we meet that high  
22 standard, then we would have to go through and identify how  
23 to distribute assets to entities that are -- that have the  
24 same charitable mission as the NRA.

25 This is all information that would occur if and when

1 there's judicial dissolution and would need judicial  
2 approval. So that's not something that is really relevant to  
3 the motion to dismiss or the motion for a trustee. So, --

4 THE COURT: But in the choices, the two choices, so  
5 you want the case dismissed, but shouldn't I be thinking  
6 about what you might do with those assets if you dissolve and  
7 distribute the assets of the NRA, versus appointing a trustee  
8 that might administer the assets of the NRA and distribute  
9 them according to the Bankruptcy Code? Shouldn't I be  
10 thinking about that as --

11 MS. CONNELL: Actually, Judge, on the motion to  
12 dismiss, I don't think you should. Our allegation is that  
13 this bankruptcy was filed in -- not in good faith. It was  
14 filed in bad faith, to avoid enforcement litigation and other  
15 litigation.

16 And we also now know and now have raised an issue, which  
17 has been the subject of, you know, unfortunately, most of the  
18 depositions that have taken place in the prolonged 341  
19 hearing, which is whether the Debtors had the authority to  
20 commence the bankruptcy to begin with.

21 So, I don't know that we should be discussing what a New  
22 York state court would do if we meet our burden down the road  
23 if we don't even know if yet the Debtors had the authority to  
24 commence the bankruptcy here, and if that bankruptcy was  
25 commenced in good faith, which we allege it was not.

1           If you recall, the NRA made very public statements, as we  
2           alleged in our motion, that they were, quote, dumping New  
3           York and that this bankruptcy was commenced to avoid New York  
4           and move operations to Texas because of the regulatory  
5           environment in New York.

6           So, Your Honor, I think that when you're -- when -- if we  
7           were to allow the deposition of a New York State Attorney  
8           General as to topics on their thought processes and their  
9           research, their mental work that have gone into the state  
10          enforcement complaint that will go -- that will theoretically  
11          at some point go into the litigation of the state enforcement  
12          action and that are ongoing here, we're allowing the  
13          deposition of trial counsel without the Debtors having  
14          overcome the high hurdle that they need to under the *Shelton*  
15          case that we cited in our brief. And I don't think that's  
16          appropriate.

17          And I further think, Your Honor, going back to Mr.  
18          Garman's comments about the burden and about preparation, the  
19          fact is the Debtors served discovery demands. We have  
20          responded appropriately to those demands, we believe. We  
21          voluntarily amended our responses to those demands. We did  
22          not have a subsequent meet-and-confer, so I didn't know until  
23          we sat, really, we sat here dealing with this motion that  
24          they wanted an index or something to the -- or, a better  
25          index to the investigatory file that was produced, which is

1 something we could certainly discuss.

2 But, you know, when you ask for the investigatory file  
3 and we give it to you, it's hard for us to hear that  
4 complained about. When you ask us to specify and we specify,  
5 but it's not the specification you wanted, that's hard to  
6 respond to. Your Honor, they did get the universe, and then  
7 they're getting the specifications of what we're talking  
8 about.

9 Furthermore, they have notice through the state  
10 enforcement complaint of the universe of bad conduct that  
11 we've alleged there, and in our motion, what we're talking  
12 about here, we gave specific examples. I just don't think  
13 that they can or -- that they can or that they have met the  
14 burden they need to meet to depose trial counsel here. And I  
15 think, like the U.S. Trustee, a 30(b)(6) deposition looking  
16 at asking an attorney to come in and say why did you make  
17 that decision, why did you make that call, what's that based  
18 on, just isn't appropriate here.

19 And Your Honor, one further thing. In regard to the  
20 agreement that's referenced by Counsel, we negotiated that  
21 agreement with Ms. Rogers of the Brewer firm, and we were  
22 clear in that agreement that we reserved all rights to object  
23 to discovery. When we negotiated the agreement, we were very  
24 clear up front. We identified the witnesses we intended to  
25 depose. The Debtors declined to do so. We asked them to do

19

1 so. They would not. And Mr. Pronske can speak to this as  
2 well, too. But we, in the face of not knowing what -- who  
3 they wanted to depose or what they were going to ask or, you  
4 know, and our saying, We don't know who you could depose  
5 within the Attorney General's Office we'd agree to, what are  
6 you thinking about, and getting nothing, so we just reserved  
7 our rights to object. And we got this demand. I sent a  
8 lengthy letter on March 12th. We got it late at night on  
9 March the 9th. I think it was (indecipherable). We sent a  
10 lengthy letter on March the 12th, saying that this was very  
11 complex and we were looking closely at each topic to see if  
12 we thought any of them were appropriate. And then we gave  
13 them a lengthy and thoughtful objection. And the response  
14 was a very brief meet-and-confer, and here we are.

15 So, Mr. Pronske, I don't know if you have anything to add  
16 to my discussion of the agreement.

17 MR. PRONSKE: Your Honor, may I address the Court as  
18 to the agreement?

19 THE COURT: Briefly.

20 MR. PRONSKE: Your Honor, we reached an agreement on  
21 February 23rd, and it has the paragraph that Mr. Garman  
22 referenced to take 30(b)(6) witness, but what he left out  
23 was, two paragraphs later, it says -- we specifically dealt  
24 with the ability to object, and we agreed that nothing  
25 contained herein shall waive any rights of either the Movants

1 or the NRA to object to discovery, including any person to be  
2 deposed who are not specifically listed above or the subject  
3 matter of any 30(b)(6) deposition.

4 The words "who are not specifically listed above" was in  
5 the very last draft, and we added that for the specific  
6 purpose of being able to object to 30(b)(6) witnesses. We  
7 wrote that in email and had discussions about that. So, and  
8 Mr. Garman was not involved. At that time, it was Sarah  
9 Rogers with the Brewer firm was negotiating this agreement.  
10 But we specifically made it very clear.

11 And we also -- we were, as of February 23rd, we were  
12 getting daily requests that we serve them with our 30(b)(6)  
13 so that they would know who was going to be deposed and  
14 objections could be timely made. And we reached an agreement  
15 that we would both serve 30(b)(6) notices the following  
16 Monday, which was February the 26th. We did serve ours on  
17 February 26th. They waited two weeks later after we agreed  
18 to serve the 30(b)(6) notices. And so it appears that we're  
19 all kind of in an emergency position today, but it's because  
20 they waited two weeks longer than we agreed to to serve the  
21 30(b)(6) notices.

22 That's all I've got. Thank you, Your Honor.

23 THE COURT: Thank you. I'll now hear from any other  
24 party in interest briefly if you want to weigh in on this  
25 matter, and then we'll return to Mr. Garman and then Ms.



21

1 Connell.

2 Anything from the Committee, Mr. Watson, or the United  
3 States Trustee? All right.

4 MR. GLUCK: Your Honor, Kristian Gluck for the  
5 Official Committee. I mean, I think I mentioned this at the  
6 last hearing we had. I mean, clearly, if there is a  
7 deposition, the Committee wants to participate.

8 With respect to the files that we've heard so much about,  
9 my understanding is that they are supposed to be coming our  
10 way, but we have not received those yet. So I know Your  
11 Honor entered the protective order this morning, and I'm  
12 hopeful that those documents will be forthcoming. I think I  
13 see Ms. Connell's head nodding. But we just want to be able  
14 to review them, acknowledging that it's 1.7 million pages.  
15 So we'll do our best to get through them as quickly as  
16 possible, but we just reiterate that request.

17 THE COURT: Maybe you could assign that to Ms. Smith  
18 over the weekend, Mr. Gluck, something to look at.

19 MR. GLUCK: Absolutely. She's in Broken Bow,  
20 Oklahoma, Your Honor, and I'm sure she would love to do that.

21 THE COURT: All right.

22 MR. WATSON: Your Honor, briefly, on behalf of --  
23 Jermaine Watson; Bonds Ellis; on behalf of Judge Journey and  
24 Rocky Marshall.

25 We have received the document request from the New York

22

1 A.G.'s, and we also conducted Judge Journey's deposition last  
2 night. But as to the particular matter in front of you,  
3 Judge, we don't have a -- we don't have a position.

4 THE COURT: Thank you. Thank you, Mr. Watson.  
5 Anything from the UST, Ms. Lambert?

6 MS. LAMBERT: No, Your Honor. The comments that  
7 have been made regarding depositions of government officials  
8 in this context, of course, the United States Trustee has the  
9 Touhy Doctrine and the Touhy statute, but this -- the issues  
10 are the same, and so they're overlapping concepts.

11 THE COURT: Thank you. Mr. Garman, you get to go  
12 last on this pass. I think both you and the Attorney  
13 General, this ought to be a shorter pass.

14 MR. GARMAN: Yes, sir. I'll be brief.

15 Your Honor, first and foremost, I want to clarify. I  
16 would prefer not to have the deposition of a lawyer. I  
17 intentionally did not ask for a lawyer. We submitted a  
18 single 30(b)(6) request. That 30(b)(6) -- the reason I  
19 referenced the agreement -- and by the way, I was involved in  
20 the agreement from the very first conversation we had on it.  
21 Once we came to terms, I no longer got on the calls to work  
22 through the details. But I was involved from the very outset  
23 of this.

24 We identified in the agreement the one witness that we  
25 want to take from the New York Attorney General as a

23

1 30(b)(6). I would strongly prefer it not be a trial lawyer.  
2 I would strongly prefer that they educate a witness as to the  
3 discrete topics that we identified. I've spent days  
4 educating 30(b)(6) witnesses, and we have now sat for two  
5 full days -- or, we're sitting today for the second full day  
6 of 30(b)(6) witnesses sought by the other side. I'm not  
7 seeking anything extraordinary. They are the Movant. They  
8 have a burden of proof.

9 And if you look at the requests that we made for the  
10 topics, Your Honor, they are -- they are, I believe,  
11 thoughtful. They are, I believe -- I believe that they are  
12 intended to get to the elements of the issues. And I think  
13 that the Court highlighted Paragraph 17, Request 17. You  
14 will hear me argue, you will hear me argue that the  
15 protection of the assets for the benefit of our  
16 constituencies, whether they be creditors, whether they be  
17 members of the NRA, and the future existence of the entity,  
18 will be entirely relevant to the argument that I advance.  
19 And I believe that questions about distributing the assets of  
20 the NRA to charity go exactly to the good faith, or bad  
21 faith, as the burden might be, under the filing of our  
22 petition.

23 Your Honor, I'm a bit surprised to hear Counsel say that  
24 she didn't understand until today that we were fighting about  
25 the categorization and production of documents and the 1.7

1 [million]. It is the motion that we filed.

2 Your Honor, it's always difficult when you are -- when  
3 the Government files a motion. It doesn't relieve them of  
4 their burden, and it doesn't deny the Debtor due process in  
5 preparing its defense. We are entitled to ask the specific  
6 questions. And when you look at them, they are, what  
7 allegations, what conduct, what operative facts support your  
8 contentions? I am entitled to those operative facts, both by  
9 way of document requests, and more importantly, by way of  
10 witness testimony.

11 And so, Your Honor, I think that they're trying to couch  
12 this in a way that I think is not square with our request.  
13 It's not an extraordinary request to seek trial counsel or  
14 any lawyer. One 30(b)(6) notice is all I sent to the  
15 Movants, and they are obligated to prepare the witness,  
16 whether lawyer or non-lawyer, whether within the group that  
17 they have, the office that they have, or it could be a third  
18 party. They can educate a witness under the Rule to answer  
19 my questions, and I think that that would easily protect the  
20 fear that they've highlighted.

21 But Your Honor, I think if you look at both our document  
22 requests and, more importantly, the 30(b)(6), we have been  
23 fair and appropriate, and we are simply seeking due process  
24 to ensure that we're prepared for trial.

25 THE COURT: Thank you, Mr. Garman. Ms. Connell, you

25

1 get to go last.

2 MS. CONNELL: Thank you. I'll try and keep it  
3 brief, Your Honor.

4 It is true that we were served with only one 30(b)(6)  
5 topic. Excuse me. Notice. But it had 17 topics. And those  
6 topics, like the Debtors' document requests, frequently  
7 request all evidentiary information of misconduct, all  
8 incidents. When we read that, we have to read -- known to  
9 the New York Attorney General -- we have to read that as  
10 calling in the universe included in the 163-page complaint in  
11 the New York state enforcement action, which we have been  
12 clear we do not intend to try and bring that entirety here.  
13 It could not be done in six days.

14 But Your Honor, it includes -- it asks for that, so we  
15 have to give them that information. We don't have an option  
16 not do.

17 And we have done what we can do to also address their  
18 concerns about what are we going to rely upon. And so we've  
19 answered what they want. If they want specific categories,  
20 we've given them that. They didn't want interrogatories. An  
21 interrogatory might be a way to work around this. But that  
22 hasn't -- that hasn't been proposed.

23 The fact is, Your Honor, that we've been trying to work  
24 with them at every step. And I -- what I thought I heard  
25 today and in this motion was that they wanted an index, which

1 I believe I -- I thought they had gotten with the production.  
2 But that's something else. An index is something, too, that  
3 could be a workaround, if that's what they wanted.

4 We got 1,200 documents from the NRA on Tuesday. We just  
5 found out there were 15,000 more documents withheld. I have  
6 no idea of the number of pages that we got -- that we got  
7 some of yesterday and we should be getting today. They have  
8 no index or no foreseeable order, and they're not tied to any  
9 document requests. Unfortunately, that's part of what we  
10 deal with in litigation.

11 But just to bring it back, you know, this is an unusual  
12 case because it's a bankruptcy that was filed in response to  
13 a state enforcement action, a 15-month proceeding, and the  
14 pending litigation in New York. It's the Debtor NRA's fourth  
15 attempt to try and get that action out of New York or stop  
16 that action from proceeding. They know what the incidents  
17 are and what the facts are that are alleged in the state  
18 enforcement action and here, and now what they're trying to  
19 get is the mental impressions of the Attorney Generals that  
20 have tried the case.

21 And to be very clear, Your Honor, the attorneys who  
22 investigated and spoke to the witnesses and who reviewed  
23 documents are the same attorneys who are arguing before you,  
24 who are arguing before Judge Cohen in the New York state  
25 Court, appearing before Judge D'Agostino in the Northern

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1 District court, appearing before the Judicial Panel on Multi-  
2 District litigation. We're the same attorneys.

3 So that's the only option. Really, someone couldn't be  
4 prepared to talk about our -- or the NY AG's thought  
5 processes in believing that there were grounds for something  
6 and asserting that a certain thing exists as a legal matter.  
7 So, for example, why were certain related-party transactions,  
8 meaning insider deals, violative of Not-For-Profit  
9 Corporation Law 715, and how do you allege that's true?  
10 That's an attorney, Your Honor. That's calling for an  
11 attorney's thoughts and processes. And it would be very  
12 difficult to prep a witness to answer that question  
13 thoroughly, if not impossible.

14 So, Your Honor, I would ask that -- I would submit that  
15 this is an extraordinary demand, I would ask that it be  
16 denied, and I would ask for a protective order, in the  
17 alternative, putting it off.

18 I do think that this is not the only way to proceed, to  
19 the extent that the Debtors want some more specificity. This  
20 is not the best way to do it, and certainly they haven't  
21 complied with the legal requirements to do so.

22 THE COURT: Thank you.

23 MS. CONNELL: Thank you, Your Honor.

24 THE COURT: Thank you. We'll take a recess and come  
25 back and give you a ruling. I just suggest you hold on. I'm

28

1 not sure exactly how long that's going to take. I could see  
2 it taking up to a half an hour. Thank you.

3 (A recess ensued from 9:39 a.m. until 9:55 a.m.)

4 THE COURT: Let's go back on the record. I'll give  
5 you a minute to get settled.

6 (Pause.)

7 THE COURT: The Court's ruling will be as follows.  
8 I guess I'll make a couple of observations and then give you  
9 a ruling.

10 The Rules clearly allow for a 30(b)(6) deposition of a  
11 governmental entity. And the case law, I think both sides  
12 acknowledge that the case law allows for the examination of  
13 an attorney.

14 However, I don't see this request, the one directed to  
15 the Attorney General of New York, as quite the same as the  
16 general counsel of the NRA being deposed, because I believe  
17 that he would have facts that wouldn't be covered by an  
18 attorney-client privilege.

19 This case is somewhat unique. The Attorney General does  
20 not have independent knowledge of the facts. The knowledge  
21 of facts that the Attorney General has appears to largely  
22 come from the investigatory file which was turned over to the  
23 NRA in February.

24 The majority of the topics in the document request appear  
25 to focus on the mental impression of trial attorneys and I



1 don't think can be the subject of the deposition.

2 Some topics are appropriate and can go forward. Topic  
3 #1, which has to do with the prep of a witness and background  
4 of a witness and things like that.

5 Topic #13, which is communications to various parties, I  
6 don't think touches on mental impression. Now, I do say on  
7 Topic 13 that there may be privileges there, for example,  
8 between the Attorney General of New York and the Governor of  
9 New York. I'm not deciding that this morning, but I do make  
10 that observation. But I don't think there are going to be  
11 privileges with communications between the Attorney General  
12 of New York and, for example, Ackerman, and then several  
13 other parties that are in that list.

14 And then I guess I just disagree with the Attorney  
15 General's position this morning on Topic 17. I think Topic  
16 17 is relevant in the hearing that we're going to have,  
17 because I think what the intention and the place where assets  
18 of the NRA, if it's dissolved by the New York action, will go  
19 would be relevant in my consideration as to whether dismissal  
20 would be an appropriate remedy or the appointment of a  
21 trustee, if cause is shown on the hearing that begins on  
22 March 29.

23 And I do take the Attorney General up on her offer this  
24 morning. I actually think it would be very helpful to  
25 everyone, particularly on the deposition that's set for

30

1 Tuesday, if a more fulsome and helpful index is provided to  
2 the NRA by 5:00 p.m. on Monday.

3 Mr. Pronske and Mr. Garman, I'll just give you all the  
4 job just to prepare a pretty simple order on this and get it  
5 over here. But I expect, even if an order is not signed, I  
6 expect compliance with this oral ruling.

7 Thank you very much. We'll be in recess.

8 (Proceedings concluded at 9:59 a.m.)

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CERTIFICATE

21 I certify that the foregoing is a correct transcript from  
22 the electronic sound recording of the proceedings in the  
above-entitled matter.

23 **/s/ Kathy Rehling**

**04/05/2021**

24

\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

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31

1 INDEX

2 PROCEEDINGS 3

3 WITNESSES

4 -none-

5 EXHIBITS

6 -none-

7 RULINGS 28

8 Motion for Protective Order and to Stay Rule 30(b) (6)  
9 Deposition filed by Interested Party Attorney General  
of the State of New York (382)10 Debtors' Emergency Motion to Compel Ackerman McQueen,  
11 Inc. to Produce a Representative Under Fed. R. Civ. P.  
30(b) (6) filed by Debtor National Rifle Association of  
12 America, Jointly Administered Party/Debtor Sea Girt,  
LLC (391)

13 END OF PROCEEDINGS 30

14 INDEX 31

15

16

17

18

19

20

21

22

23

24

25