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May 9, 2022

VIA NYSECF

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, People of the State of New York by Attorney General Letitia James, the Office of the Attorney General ("OAG"), writes to notify the Court that it would like its motion to dismiss Defendant National Rifle Association of America's ("NRA") counterclaims (Motion Sequence No. 13), to be deemed as asserted against the NRA's most recent amended counterclaims (NYSCEF 629). Additionally, the OAG requests an opportunity to submit a short supplemental letter brief (of no more 1,250 words) on or before May 17, 2022 to address discrete new factual allegations in the NRA's current amended counterclaims. The NRA has declined its consent to the OAG's proposal for limited supplemental briefing.

Brief Statement of Relevant Procedural History

Since the commencement of this action, the NRA has asserted various iterations of its counterclaims. On February 23, 2021, the NRA answered the Complaint and asserted counterclaims against the Attorney General in both her official and individual capacities. (NYSCEF 228). The OAG moved to dismiss the counterclaims. (NYSCEF 264-279). In response to that motion to dismiss, on July 20, 2021, the NRA filed an Amended Answer and Counterclaims. (NYSCEF 325). The OAG responded to that amended pleading by deeming its motion to dismiss (Motion Seq. No.13) to be asserted as against the amended counterclaims.

The motion to dismiss the amended counterclaims was fully briefed and the Court heard argument on February 25, 2022. That motion is pending a decision by the Court. After the Court's March 2, 2022 decision denying in part, and granting in part, the NRA's motion dismiss

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the OAG's claims, on April 15, 2022, the NRA answered the complaint and again amended its counterclaims. (NYSCEF 629). This current pleading presents essentially identical legal issues as the OAG addressed in its prior motion to dismiss except for limited new allegations that were not before the Court in Motion Sequence No. 13.¹

Rather than re-file an essentially identical motion, the OAG proposed to the NRA that the parties rest on their respective prior motion papers but agree to an expedited briefing schedule for limited supplemental briefing to address any new matter presented. In an email received earlier this afternoon, the NRA stated that it will not agree to this proposal. Counsel for the NRA wrote: "If the NYAG moves to dismiss the NRA's counterclaims, we will want to brief a full opposition, so I suspect we cannot agree on an abbreviated supplemental briefing scheme."

Submission of Supplemental Letter Briefing on an Expedited Basis is Appropriate Here

The NRA's current amended counterclaims suffer from the same legal flaws that the OAG argued required dismissal of the NRA's prior counterclaims and which the Court considered at the February 25, 2022 oral argument on Motion Sequence No. 13. Since the new allegations are limited and discrete, a new round of plenary briefing is neither necessary nor efficient. Rather, the OAG proposes relying on the prior motion papers with the addition of a short submission (of no more than 1,250 words) that highlights for the Court any additional matters that require consideration.

The prior motion to dismiss was fully briefed, reviewed by the Court and the subject of a lengthy argument. Given that the core legal issues are almost entirely identical, application of the prior motion to dismiss to this newly amended pleading, as was previously done in this action as against the NRA's previous amendment of its counterclaims, is entirely appropriate. *See, e.g., Uptown Healthcare Mgmt. Inc. v. Allstate Ins. Co.*, 117 A.D.3d 542, 543 (1st Dep't 2014); *Sage Realty Corp. v. Proskauer Rose LLP*, 251 A.D.2d 35, 38 (1st Dep't 1998).

Further, proceeding by supplemental briefing spares the parties and the Court the time and resources of unnecessarily duplicative motion practice. It is within the inherent power of this Court to oversee matters before it, including briefing. *Bankers Tr. Co. v. Braten*, 101 Misc. 2d 227, 237, (Sup. Ct. N.Y. Co. 1979) ("inherent power is not limited to the exercise of purely judicial functions. Quite to the contrary... [it] is nonadjudicatory. ... It relates to the administration of the business of the court."); *People v. Smith*, 23 Misc. 3d 1140(A), (Crim. Ct. N.Y. Co. 2009) (recognizing inherent power of court to waive formal requirement relating to reargument where it has "spared the unnecessary formality of extended written motion practice and additional calendar appearances."); *see also Plachte v. Bancroft Inc.*, 3 A.D.2d 437, 438 (1st Dep't 1957).

The OAG submits that requiring submission of new briefing on issues that were previously fully briefed is not necessary, nor is it a good use of the parties' or the Court's time

¹ The NRA's current amended counterclaims supersede other amended versions of its counterclaims filed on March 23, 2022 (*see* NYSCEF 622, NRA Verified Answer to the Amended and Supplemental Complaint and Counterclaims) and on April 12, 2022 (*see* NYSCEF 628, First Amended Verified Answer to Amended and Supplemental Complaint and Counterclaims).

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and resources. It is respectfully submitted that a brief period for submission of a supplemental briefing to address only those new matters presented in the NRA's current amended counterclaims is the most expeditious way to proceed.

We propose a supplemental moving brief by the OAG of no more than 1,250 words to be submitted by May 17, 2022; assuming that the NRA will want to respond, a supplemental opposition brief of the same length submitted by May 24, 2022; and a supplemental reply brief by OAG by May 27, 2022.

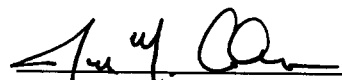
Respectfully,

/s/ Monica Connell

Monica Connell
Assistant Attorney General

cc: All Counsel of Record

The proposed supplemental briefing schedule and corresponding word limits is SO ORDERED.



Date: 5/12/2022

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