

# **EXHIBIT 7**

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

Categorical Privilege Log of Documents Withheld by Aronson Pursuant to the Direction of the National Rifle Association of America on Privilege Grounds<sup>1</sup>

March 8, 2022

CategoryNo.	Date Range	Document Type	Sender(s)/ Recipient(s)/ Copyee(s)	Category Description	Privilege Justification <sup>2</sup>	Documents Withheld
1	Oct. 8, 2020 – Sep. 16, 2021.	Email, PDF,hard copy documents, electronic documents.	Attorneys: In-house and outside counsel for the NRA, including but not limited to John Frazer, Sarah Gervase, Bill Brewer, Sarah Rogers, Don Lan. Troutman Sanders. Client: The National RifleAssociation of America, including but not limited to John Frazer, Sonya Rowling, Craig Spray, Rick Tedrick, and AngelaSt. Onge.	Materials revealing substance ofattorney work product, trial preparation materials, and confidential communications between and among attorneys, client, and/or Aronson as adviser (1) providing legal advice; and/or (2) providing or requesting information to inform such advicepredominantly but not necessarilyexclusively in connection with the preparation of the NRA’s regulatory/tax filings. Information shared by the NRA with Aronson on a confidential basis pursuant to contractual confidentiality undertaking/obligation.	Attorney-Client PrivilegeAttorney Work Product Trial Preparation	45

<sup>1</sup> This categorical privilege log applies to documents that the Association instructed Aronson to withhold on grounds of privileges belonging to the NRA and/or its counsel for all documents teed up by Aronson for production and sent to the Association’s counsel on or before February 23, 2022. Please note that documents have been produced that contain redactions. To the extent the redactions are for privileges, as opposed to First Amendment, confidentiality, or PII, they fall into one of the categories listed herein. The NRA is available to provide information about specific redactions upon request.

<sup>2</sup> The documents are privileged under the attorney-client, work product, trial preparation and / or common interest privileges, and/or a combination of such privileges depending onthe individual document, email, or thread. No waiver of privileges occurred by including Aronson in or sharing these communications with Aronson because it was done in a confidential setting pursuant to an undertaking to maintain materials confidential and with the reasonable understanding that materials would be kept confidential. Moreover, the information was not shared in a manner that would make it more likely for the adversary to acquire them. Separately, on non-waiver of attorney-client privilege in this context, *see, e.g., Ross v. UKI, Ltd.*, 2003 WL 22319573 (S.D.N.Y. Oct. 9, 2003) and *U.S. v. Kovel*, 296 F.2d 918 (2d Cir. 1961). The inclusion of Aronson in the communications was necessary to enable efficient and informed advice to the NRA and/or enable Aronson’s work. Witnesses will testify that they understood these communications to be in furtherance of legal advice and confidential. The Authority provided by the New York State Office of the Attorney General on February 7, 2022 is factually inapposite and does not preclude the invocation of privileges herein.

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2	Sep. 17, 2019 – Oct. 19, 2021.	Email, PDF,hard copy documents, electronic documents.	Attorneys: In-house and outside counsel for the NRA, including but not limitedto Sarah Gervase and Brewer, Attorneys & Counselors. Client: The National Rifle Association of America, including but not limited to John Frazer, Sonya Rowling, Craig Spray, Rick Tedrick, Michael Erstling, Portia Padilla, Tyler Schropp, and Angela St. Onge.	Materials revealing substance of attorney work product, trial preparation materials, and confidential communications between and among attorneys andclient (1) providing legal advice; and/or (2) providing or requestinginformation to inform such advice predominantly but not necessarilyexclusively in connection with the audit of the NRA’s financial statements.  Shared by the NRA with Aronsonon a confidential basis pursuant tocontractual confidentiality undertaking/obligation.	Attorney-Client Privilege  Attorney Work Product  Trial Preparation	5
3	Jan. 30, 2020	PDF, electronic document.	Attorneys: Outside counsel for the NRA, Brewer, Attorneys& Counselors. Client: The National Rifle Association of America.	Outside counsel’s billing statements revealing substance of confidential attorney-client communications, attorney work product, and trial preparation materials concerning active and pending legal matters, shared bythe NRA with Aronson on a confidential basis pursuant to contractual confidentiality undertaking/obligation.	Attorney-Client PrivilegeAttorney Work Product Trial Preparation	1

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4	Mar. 6, 2021.	Email, PDF, electronic documents.	Client: The National Rifle Association of America, including Sonya Rowling, Rick Tedrick, and Portia Padilla.	Materials gathered at the request of the NRA’s bankruptcy counsel in support of the NRA’s application before the Bankruptcy Court for permission to pay Aronson in the ordinary course of business. <sup>3</sup>	Attorney-client privilege Attorney Work Product Trial Preparation Common Interest	5

<sup>3</sup> The documents in this category include multi-email threads that consist of communications over which the NRA claims asserted privileges. The NRA has no objection to Aronson producing the emails within this category exclusively between individuals from Aronson (as long as the understanding emails revealing materials protected by NRA privileges are redacted), although the NRA anticipates that for the reasons set forth in the certification Aronson will assert the same privilege over these documents.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY  
LETITIA JAMES, ATTORNEY GENERAL OF  
THE STATE OF NEW YORK,

Plaintiff,

v.

THE NATIONAL RIFLE ASSOCIATION OF  
AMERICA, WAYNE LAPIERRE, WILSON  
PHILLIPS, JOHN FRAZER, and JOSHUA  
POWELL,

Defendants.

INDEX NO.: 451625/2020

Hon. Joel M. Cohen

**COMMERCIAL DIVISION RULE 11-b CERTIFICATION**

1. I am a partner with the law firm Brewer, Attorneys & Counselors, counsel for the National Rifle Association of America (“NRA”) in the above-captioned action.
2. I provide this certification pursuant to Rule 11-b of the Commercial Division Rules.
3. I understand that, on June 21, 2021, Letitia James, Attorney General of the State of New York (“NYAG”) issued a subpoena duces tecum (the “Subpoena”) to Aronson LLC (“Aronson”).
4. I understand that, in response to the Subpoena, Aronson produced to the NYAG over 18,000 documents.
5. However, there are a handful of documents – listed on the NRA's categorical log for Aronson’s documents – that reveal privileged information belonging to the NRA and/or its counsel. Therefore, the NRA instructed Aronson to withhold such documents from production.
6. As explained in more detail below, the communications that have been withheld are privileged and, pursuant to CPLR 3101(b) and other applicable law, nondiscoverable. In addition,

as discussed in detail below, the invoked privileges have not been waived by virtue of these records/communications having been shared with Aronson.

7. I personally reviewed each document withheld for privilege. No sampling was used in the preparation of the categorical privilege log.

**I.**  
**CATEGORY 1**

8. As noted in the log, documents in Category 1 are:

Materials revealing substance of attorney work product, trial preparation materials, and confidential communications between and among attorneys, client, and/or Aronson as adviser (1) providing legal advice; and/or (2) providing or requesting information to inform such advice predominantly but not necessarily exclusively in connection with the preparation of the NRA's regulatory/tax filings. Information shared by the NRA with Aronson on a confidential basis pursuant to contractual confidentiality undertaking/obligation.<sup>1</sup>

9. Category 1 documents are privileged under CPLR 4503(a), CPLR 3101(c), and CPLR 3101(d)(2).

**A. Attorney-Client Privilege**

10. Under CPLR § 4503(a), “evidence of a confidential communication made between the attorney or his or her employee and the client in the course of professional employment . . . shall not [be] disclose[d], . . . nor shall the client be compelled to disclose such communication, in any action.”

11. Documents in Category 1 are protected from disclosure on, among other things, attorney-client privilege grounds because they contain (i) legal advice to the NRA (Craig Spray,

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<sup>1</sup> Category 1 documents include but are not limited to the following communications: 1) email threads involving the NRA and its counsel informing legal advice on tax issues, and/or seeking information from tax advisers to inform such advice to enable Aronson's preparation of the NRA's Form 990 and other regulatory tax filings; and 2) NRA draft tax filings and related schedules and attachments.

Sonya Rowling, John Frazer, and other representatives of the NRA involved in the preparation of the returns) by various counsel, including, without limitation, John Frazer, Don Lan, Brewer, Attorneys & Counselors, and Troutman Sanders (ERISA counsel for the NRA) in connection with various tax and information returns, including predominantly the NRA's form(s) 990; (ii) confidential communications soliciting, informing, and/or providing such advice. For example, they contain legal advice regarding IRS reporting requirements and the NRA's legal obligations with regard to the particular return and reveal the results of factual investigations conducted to inform the substance of legal advice and the substance of confidential attorney-client communications. Although the presence or absence of such a label is not dispositive, it is notable that some of the documents in Category 1 are expressly labeled "Privileged & Confidential." Documents in category 1 also include draft forms 990 or portions thereof and were included in the Category because, when compared to the final filed version, may reveal the substance of privileged communications and advice. No comparison was conducted because the drafts either differ from the final return (in which case they likely reveal privileged information) or are consistent with the substance of the ultimate return (in which case the NYAG already has them).

12. The above-described communications either included or were subsequently forwarded to Aronson to advance the joint endeavor—by lawyers and tax professionals—of assisting the NRA with complying with its information and tax return obligations. Some of the communications expressly make clear that attorneys require input from the tax professionals to formulate informed and effective legal advice. The necessity for involving Aronson in the communications in other documents can be fairly and reasonably inferred based on the time sensitivity of the endeavor, team work against a filing deadline, and the substantial size of the project that required all-hands-on-deck.

13. When a third party, such as a tax return preparer, is included in a privileged communication, there is no waiver as long as, as here, (i) the client (here, the NRA) had a reasonable expectation of confidentiality under the circumstances, and (ii) the disclosure to the third party (here, Aronson) was necessary to obtain legal advice. *See Ross v. UKI Ltd.*, 2003 WL 22319573 \*3 (S.D.N.Y. 2003) (applying New York law).

14. The communications included in Category 1 occurred in a confidential setting pursuant to an undertaking on the part of Aronson to maintain information shared with Aronson confidential and with the reasonable understanding on the part of the NRA that materials would indeed be kept confidential. In fact, this undertaking is memorialized in Aronson's engagement agreement with the NRA and the NRA understands that Aronson complied with that obligation and safeguarded the information.

15. Further, witnesses will testify that they understood and believed that these communications--involving lawyers and tax advisors--were legally privileged and Aronson was included in the communications to enable the NRA to obtain informed and efficient legal advice in connection with the NRA's preparation of its Form 990 and other regulatory filings.

**B. Attorney Work Product Privilege**

16. CPLR 3101(c) protects from discovery "the work product of an attorney." Under CPLR 3101(c), the "work product of an attorney shall not be obtainable," i.e., the privilege is absolute.

17. As noted above, communications in Category 1 contain work product of various attorneys, including John Frazer, Don Lan, various attorneys at Brewer, Attorneys & Counselors, and an attorney at Troutman Sanders.

18. Furthermore, sharing attorney work-product with a third party (here, Aronson) results in waiver only when there is a likelihood, based on the disclosure, that the material will be revealed



to a litigation adversary under conditions that are inconsistent with the desire to maintain confidentiality. *See Bluebird Partners, L.P. v. First Fidelity Bank, N.A., New Jersey*, 248 A.D.2d 219, 671 N.Y.S.2d 7 (1st Dep't 1998); *Scott v. Beth Israel Medical Center Inc.*, 17 Misc. 3d 934, 847 N.Y.S.2d 436 (Sup 2007); *Matter of Will of Pretino*, 150 Misc. 2d 371, 567 N.Y.S.2d 1009 (Sur. Ct. 1991); *Gramm v. Horsehead Indus., Inc.*, No. 87 Civ. 5122, 1990 U.S. Dist. LEXIS 773 (S.D.N.Y. Jan. 25, 1990).

19. The inclusion of Aronson in the communications within Category 1 did not waive the attorney work product privilege. The communications were not shared in a manner that would make it more likely for a litigation adversary of the NRA to acquire the attorneys' work product. In fact, the communications occurred in a confidential setting pursuant to an undertaking on the part of Aronson to maintain materials confidential and with the reasonable understanding on the part of the NRA that materials would be kept confidential.

### **C. Trial Preparation Privilege**

20. Under CPLR 3101(d)(2), "materials otherwise discoverable under subdivision (a) of this section and prepared in anticipation of litigation or for trial by or for another party, or by or for that other party's representative (including an attorney . . . ), 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." Even where such need and hardship are established, "[i]n ordering discovery of the materials," "the court shall protect against disclosure . . . the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation."

21. Here, many aspects of the advice and communications within Category 1 concern this and other litigation, including without limitation arbitration with C. Cox, and reflect the mental

impressions, conclusions, and opinions of the NRA's attorneys listed above and at times Aronson. For example, many of the communications concern disclosure of matters directly at issue in this litigation, such as analyses of various potential excess benefits (including but not limited to charter or first class flights), discussion of alleged misuse and subsequent return of NRA funds by an employee, accurate regulatory disclosure, and ongoing investigation to ensure compliance.

22. The privilege governing trial preparation materials “is waived upon disclosure to a third party where there is a likelihood that the material will be revealed to an adversary, under conditions that are inconsistent with a desire to maintain confidentiality.” *People v. Kozlowski*, 11 N.Y.3d 223, 246 (2008). For the reasons discussed in Paragraph 19 above, there was no waiver here.

## **II.**

### **CATEGORY 2**

23. Category 2 documents are:

Materials revealing substance of attorney work product, trial preparation materials, and confidential communications between and among attorneys and client (1) providing legal advice; and/or (2) providing or requesting information to inform such advice predominantly but not necessarily exclusively in connection with the audit of the NRA's financial statements. Shared by the NRA with Aronson on a confidential basis pursuant to contractual confidentiality undertaking/obligation.<sup>2</sup>

24. The communications in this category are separate from Category 1 because they do not on their face appear to relate to the preparation of tax or information returns and instead predominantly involved or were shared with Aronson in its capacity as the NRA's outside auditor.

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<sup>2</sup> Category 2 documents include but are not limited to the following communications: 1) ) email threads involving the NRA and its counsel informing legal advice on audit issues, and/or seeking information from advisers to inform such advice to enable Aronson's audit of the NRA's consolidated financial statements; 2) draft court filings in connection with a motion filed in the NRA's bankruptcy hearing, where relief was sought on behalf of the debtors for the benefit of Aronson; and 3) letters summarizing the status of pending, and where applicable, contemplated litigation, although the NRA has not instructed Aronson to withhold or redact most such letters, there are a handful of such letters where counsel's recitations of the status of the facts, and particular posture of the case can be said to reflect mental impressions and trial preparation strategy of the attorneys.

These documents contain and reveal legal advice of NRA counsel, including Sarah Gervase and Brewer, Attorneys & Counselors, with regard to various legal matters, including without limitation potential litigation concerning an apparently contested bequest and disclosure in financial statements.

25. Category 2 documents are therefore privileged under CPLR 4503(a), CPLR 3101(c), and CPLR 3101(d)(2). These documents reveal the substance of confidential attorney-client communications, the substance of attorneys' work product, and mental impressions and legal theories of counsel related to potential or pending litigation.

26. The inclusion of Aronson in the communications in the Category 2 documents did not waive the attorney work product or trial preparation privileges. The communications were not shared in a manner that would make it more likely for the adversary to acquire them. In fact, the communications occurred in a confidential setting pursuant to an undertaking on the part of Aronson to maintain materials confidential and with the reasonable understanding that materials would be kept confidential, as clearly set forth in Aronson's engagement agreement with the NRA.

27. Moreover, the attorney-client privilege pertaining to the communications was not waived to the extent input from the auditor was required to secure effective legal advice.

### **III.** **CATEGORY 3**

28. Category 3 consists of one document:

Outside counsel's billing statement revealing substance of confidential attorney-client communications, attorney work product, and trial preparation materials concerning active and pending legal matters, shared by the NRA with Aronson on a confidential basis pursuant to contractual confidentiality undertaking/obligation.<sup>3</sup>

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<sup>3</sup> The Category 3 document is a billing statement from the NRA's outside counsel revealing privilege materials that concern active and pending legal matters.

29. The document in Category 3 is privileged under CPLR 4503(a), CPLR 3101(c), and CPLR 3101(d)(2).

30. The document is a January 2020 invoice from Brewer, Attorneys & Counselors for services performed in December 2019 on legal matters, including those related directly to the NYAG's then-ongoing investigation of the NRA, which was a precursor to this litigation. The invoice contains detailed time entries of attorneys and other professionals at Brewer for the month of December 2019 and therefore reveals the substance of confidential attorney-client communications, attorney work product (including in connection with the NRA's efforts to comply with and discharge its data preservation and production obligations), and mental impressions and core strategies of counsel formulated in connection with the investigation and in contemplation of this action.

31. For the reasons discussed above with regard to categories 1 and 2, the fact that the invoice was shared with Aronson does not constitute waiver of any of the privileges. The NRA had a reasonable expectation that Aronson would keep the information included in the invoice confidential and that the disclosure of the document with Aronson did not make disclosure to this or any other litigation adversary more likely.

#### **IV.** **CATEGORY 4**

32. Category 4 documents withheld on the basis of privilege include:

Materials gathered at the request of the NRA's bankruptcy counsel in support of the NRA's contemplated application to the Bankruptcy Court for permission to pay Aronson in the ordinary course of business.

33. After the NRA filed its chapter 11 petition, it sought permission from the Bankruptcy Court to use debtors' property to make payments to various ordinary-course professionals, including

Aronson. When Debtors' counsel (the Neligan law firm) began to draft the application, they asked individuals at the NRA, including Rick Tedrick and Sonya Rowling, to gather certain factual information to be considered and/or included in furtherance of the application. The NRA employees gathered the information under and pursuant to counsel's direction, and communications in Category 4 evidence and reveal the results of that work. Because it was gathered at the direction of counsel in contemplation of an application to the bankruptcy court, the compiled materials and communications about them constitute attorney work product and trial preparation material. They also reveal indirectly the substance of confidential attorney-client communications.

34. Category 4 documents are therefore privileged under CPLR 4503, CPLR 3101(c), and CPLR 3101(d)(2).

35. Furthermore, Aronson had a common interest with the NRA with regard to the application because any payments to Aronson while the NRA's chapter 11 case was pending were dependent on (a) the NRA submitting the application; and (b) the bankruptcy court approving it. As a result, and for the legal reasons set forth above, there was no waiver of any of the privileges by virtue of these communications being shared with Aronson.

36. In any event, sharing these communications with Aronson, who the NRA knew would maintain the work product and trial preparation materials confidential, did not make it more likely that the information would become known to a litigation adversary. For that reason, even in the absence of a common interest, the privileges over the records were at all times preserved.

37. The NRA reserves the right to amend the attached Categorical Privilege Log pertaining to Aronson's production in response to the Subpoena. Similarly, I reserve the right to supplement this certification as appropriate and necessary.

Dated: March 8, 2022  
New York, New York

/s/ Svetlana M. Eisenberg  
Svetlana M. Eisenberg  
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**COUNSEL FOR DEFENDANT  
THE NATIONAL RIFLE  
ASSOCIATION OF AMERICA**

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