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

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

PLAINTIFF,

-against-

Case No.:  
451625/2020

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

DEFENDANT.

DATE: June 16, 2022

TIME: 9:30 A.M.

MEETING WITH HIS HONORABLE JUDGE  
SHERWOOD, held remotely, at all parties  
locations, before Karyn Chiusano, a Notary  
Public of the State of New York.

## A P P E A R A N C E S:

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(Appearances continue on following page.)

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## MEETING WITH JUDGE SHERWOOD

JUDGE SHERWOOD: I see anywhere between five and seven items to be discuss today. Before -- and I will tell you what they are and then we will go from there.

We need to close out issues from the April 21st conference. There were some matters that were adjourned essentially or left open to be resolved through meeting and conferring and so on and I just want to get a report on that.

There are two protective order requests from the Office of the Attorney General relating to the depositions of employees or other agents of the Attorney General's Office covered by the initial letter of May 6th and another one from June 3rd.

There's then the NRA and Mr. LaPierre's request for -- with respect to a Notice to Admit, pursuant to Rule 11A and B.

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## 1 MEETING WITH JUDGE SHERWOOD

2 There is the joint request for  
3 depositions after the 29th, which we  
4 just discussed.

5 And I have added the unresolved  
6 matters from our early March 10, 2022  
7 and resulting report from the 23rd of  
8 March in which I either put off or  
9 made rulings, but without prejudice,  
10 based essentially on the need to see  
11 what Justice Cohen did with respect  
12 to the motion to dismiss the  
13 counterclaims. He's now decided that  
14 and I expect that we need to revisit  
15 those issues. That's the full list  
16 that I have.

17 Anything else?

18 MR. SHIFFMAN: Steve Shiffman  
19 from the New York State Attorney  
20 General's Office. Nice meet you this  
21 is my first appearance here.

22 With respect to the NRA's  
23 Notice to Admit, there's a motion for  
24 protective order by the Attorney  
25 General, I don't know if you had that

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2 wrapped into your item.

3 JUDGE SHERWOOD: With respect  
4 to what?

5 MR. SHIFFMAN: The Notice to  
6 Admit and there's related requests to  
7 --

8 JUDGE SHERWOOD: Okay. That is  
9 why I had three.

10 MR. SHIFFMAN: So, we have  
11 three items.

12 JUDGE SHERWOOD: Wrapped up in  
13 item three.

14 MR. SHIFFMAN: Excellent.  
15 Thank you, Your Honor.

16 JUDGE SHIFFMAN: Is there  
17 anything else?

18 MS. ROGERS: Nothing else from  
19 the NRA, Your Honor.

20 JUDGE SHERWOOD: Okay, great.

21 I am sensitive to the fact that  
22 you have other things to do today,  
23 you have deposition. Your time is  
24 tight, so I will move along more  
25 quickly than I normally do, so it's

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not that I want to cut you off and don't want to hear from you, but it's really a desire on my part to accommodate your need to move on to the depositions, okay?

So, with respect to the last compliant conference, what I have -- there were a few outstanding documents that were being -- left to be produced by the 16th of June, I guess that is today, right? I assume that is resolved? Let me just go down the list and then somebody can talk about it.

Then there was an open -- there might have been some open privilege issues relating to Susan LaPierre's cell phone records. There were the W-2 and 1099s of former NRA employees request for information there, those documents. And then billing information from the Brewer Firm, those are the -- those were the four open items on my list.

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Who wants to pick up and talk on those four items there?

MS. ROGERS: Your Honor, on behalf of the NRA, and I don't think the Attorney General will dispute this, we have produced the W-2s, the 1099s, the agreed billing information with respect to outside counsel.

The outstanding documents, I believe, all of those have been checked off. I was corresponding with Ms. Connell about that last night.

There were a couple of documents that -- there are places where documents alludes places in the Member document and it turns out the document really doesn't exist.

And I think that we have squared off those issues.

And on your list of four, the only one that I'm aware of that may not be resolved and that's only because I am not party to meet confer



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2 would be the phone.

3 THE ARBITRATOR: Right. And  
4 that's for Susan LaPierre's phone.

5 Ms. Connell:

6 MS. CONNELL: I largely agree  
7 with Ms. Rogers, I don't know that  
8 there are any more privilege issues  
9 relating to Ms. LaPierre's phone, but  
10 I know my colleague, Mr. Comley was  
11 speaking to Mr. Correll and to Ms.  
12 Eisenberg. If there is any remaining  
13 issue, we will reach out to you, but  
14 we did make some progress with that.  
15 I know there were some back and forth  
16 about search terms and that kind of  
17 thing.

18 JUDGE SHERWOOD: Mr. Correll,  
19 do you want to it weigh in?

20 Unmute yourself.

21 MR. CORRELL: Sorry, I heard  
22 dead silence on that issue since we  
23 basically we spoke last. It was my  
24 understanding that conversations were  
25 occurring between the NRA and the AG

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about search terms and documents and we haven't heard a thing since then. And it was my assumption that the AG has just decided to forego the search of the phone and that they were getting the text messages they needed from other sources through the NRA.

JUDGE SHERWOOD: Let's not debate that right now. As I said, we need to move along very quickly. I'd like you to meet and confer, confirm where you are and come back to me if you need to.

MS. CONNELL: One other thing, I'm sorry. This is Monica Connell.

We are also still engaged in other privileged discussions with the NRA. We may have to bring those to you, but we are still working on it.

JUDGE SHERWOOD: All right.

Next I have the May 6th and June 3rd Attorney General's request for protective orders with respect to depositions. The first one was a

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Notice of Deposition of four non-lawyers and the 6/3 one was protective order with respect to a corporate representative.

Two things about that: With respect to the non-lawyers, I'm going to grant that motion. The law is pretty darn clear that if the attorney work product -- to the extent that there is protection for attorney work product, it covers as well the agents of the attorney. These non-lawyers are obviously agents of the attorney and so under that theory, their -- their activity are protected as well.

I will cite you one of the cases cited by the -- cited by the NRA, the United States versus District Council of the United Carpenters and Joiners. If you look at Star 27 Number 7, the case -- the law there is clear, um, let's see, um, the head note says:

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By its terms, Rule 2863 makes clear that the work product doctrine protects work done in anticipation of litigation for trial by an attorney, as well as a party or other agents of the party or its representatives, materials produced or information possessed by an agent working for an attorney, such as an investigator, may be protected as work product particularly when disclosures of such information would reveal the attorneys' thinking and strategies, i.e., opinion, work product.

So, it's pretty clear. So -- so, the protective order with respect to that will be granted.

With respect to the Corporate Representative, the NRA cites several cases relying on Federal Law Rule 30(b)(6), that provision expressly provides for the disclosures by the government. None of the cases cited are State cases, I believe that we

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2 don't have a comparable provision in  
3 the CPLR.

4 So, I think that the -- the  
5 request for a protective order may be  
6 appropriate, but I do want to give  
7 the -- I want to make sure that I  
8 have this right, I do want to give  
9 the AG an opportunity to weigh in on  
10 the question -- on this question  
11 given that the NRA has pointed to  
12 several Federal cases that would  
13 require an agency to -- to put up  
14 someone with knowledge of -- of the  
15 facts who can testify.

16 MS. CONNELL: Your Honor, my  
17 colleague, Steven Shiffman, will  
18 handle will this.

19 MR. SHIFFMAN: Good morning,  
20 Your Honor. We would like to address  
21 those cases as well as the overall  
22 request to have --

23 JUDGE SHERWOOD: How much time  
24 do you need?

25 MR. SHIFFMAN: Probably three

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2 to four minutes should do it, maybe  
3 less.

4 I think as an initial matter,  
5 as Your Honor pointed out, the cases  
6 that the NRA relies on are ones from  
7 a Federal Court in Florida and some  
8 ones that rely on that.

9 JUDGE SHERWOOD: This isn't a  
10 Federal case.

11 MR. SHIFFMAN: They apply  
12 different standards and is the  
13 standard in this Circuit would show  
14 -- in this State and in the First  
15 Department, which is the standard  
16 enunciated by the court in Liberty  
17 Petroleum. Where here there's been  
18 showing that the examinations will in  
19 intrude upon privilege, the burden  
20 then shifts to the party seeking the  
21 examinations to come forward and show  
22 3 things; they have to show that what  
23 they are seeking is material and  
24 necessary, they have to show that  
25 they have good faith and that they

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show that they don't have another means to get the information that they are seeking. And they haven't done any of those things here.

The cases that are relied on by the NRA don't have the element of needing to show that they can't get it anywhere else. And so, they're inconsistent with the rule that's set forth with the Liberty Petroleum, which is, Your Honor, noted in ruling on the first motion for a protective order relates to both examinations of attorneys from the Attorney General's Office as well as people working with attorneys on the investigation that leads up to the litigation.

So, for that reason, those cases are distinguishable, but I think another factor to consider here is that this 11F notice is one that doesn't specify the topics that the NRA seeks to depose somebody on.

Your Honor has already ruled on

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2 an 11F motion earlier that set forth  
3 22 topics or 23 topics and not  
4 permitted at least at the outset --

5 JUDGE SHERWOOD: I am going to  
6 cut you off. I am going to cut you  
7 off.

8 MR. SHIFFMAN: Okay.

9 JUDGE SHERWOOD: We don't have  
10 time today. Normally, I wouldn't do  
11 that.

12 Here's what I am going to do --

13 MS. ROGERS: Your Honor, I  
14 apologize. Can I be heard for two  
15 minutes?

16 JUDGE SHERWOOD: You may want  
17 to hear from me before you --

18 MS. ROGERS: I'm sorry, Your  
19 Honor.

20 JUDGE SHERWOOD: While I am  
21 inclined to grant the motion, I want  
22 to give the NRA the opportunity to  
23 address the point that I raised  
24 earlier which it appears that the  
25 case that you're talking about are



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all Federal cases based on the Federal Rules of Civil Procedure and not on the CPLR, which I believe does not have the same kind of provision that 30(b)(6) does.

But you can go ahead now, Ms. Rogers.

MS. ROGERS: Thank you, Your Honor. I apologize.

So, you're right that Rule 30(b)(6) and 11F differ slightly, but what the CPLR has that the Federal Rules don't is that it has CPLR 3102 F, which states, and I quote:

Action to which a State is a party.

An action in which the State is properly a party, whether as Plaintiff, Defendant or otherwise, disclosure by the State shall be available as if the State were a private person.

And there is a State case, a First Department Appellate Division

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case that I'd like to point you to us a case on which the Attorney General heavily relies and that is the Katz case and I can get you -- cite that.

JUDGE SHERWOOD: What case?

MS. ROGERS: The Katz case, it's People -v- Katz, 84 A.D. 2d 381, in which a deposition of the Attorney General is sought. And in the Katz case, the trial courts denies that request for a deposition relying on the same Lefkowitz -v- Volkswagon case that the Attorney General cites in its briefing.

And those goes up to the Appellate Division. And the Appellate Division says:

That the standard applied by the Volkswagon court is too strict in light of subsequent Court of Appeals authority.

And so, what the Katz court is it says, look, before you do this deposition, the Attorney General has

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to make some written disclosures in the nature of a Bill of Particulars. And after that, we are going to schedule, and I'll point Your Honor to the exact pages, the pin cite in Katz case where the court explains this, is at the bottom of Page 310 in the Appellate Division report, top of Page 311 --

JUDGE SHERWOOD: I am going to cut you off.

What I'd like to do to is give you both an opportunity to give me something in writing and I will address it then. We just don't have the time this morning.

MS. ROGERS: Thank you, Your Honor.

MR. SHIFFMAN: Your Honor, in addition to the motion for a protective order with respect to an 11F --

JUDGE SHERWOOD: I thought I was going to get away with it.

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2 MR. SHIFFMAN: There's just one  
3 other part to the motion for a  
4 protective order that we didn't  
5 discuss, and that's the NRA has also  
6 sought the deposition of James  
7 Sheehan, the Bureau Chief of the --

8 JUDGE SHERWOOD: Bureau Chief.

9 MR. SHIFFMAN: -- at the  
10 Attorney General's Office and we  
11 have --

12 JUDGE SHERWOOD: That's --  
13 that's --

14 MR. SHIFFMAN: -- that is a  
15 protective order.

16 JUDGE SHERWOOD: Mr. Shiffman,  
17 the ruling I made with respect to  
18 non-lawyers will apply to  
19 Mr. Shiffman also, but they may  
20 well --

21 MR. SHIFFMAN: Mr. Sheehan.

22 JUDGE SHERWOOD: -- be entitled  
23 to a corporate or an agency  
24 representative, I don't know that.  
25 You get to pick them. But if you

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2 want to add a paragraph with respect  
3 to Mr. Sheehan, that's fine.

4 MR. SHIFFMAN: Your Honor, just  
5 for clarification, just for  
6 clarification, was your order with  
7 respect to Mr. Sheehan as covered by  
8 the same ruling that you made earlier  
9 with respect to the other employees  
10 at the Attorney General's Office?

11 JUDGE SHERWOOD: That's what I  
12 just said, yes.

13 MR. SHIFFMAN: Okay, great.

14 JUDGE SHERWOOD: If you want to  
15 drill down on it some more, I am  
16 allowing you to do so, even though  
17 I've already ruled in your favor.

18 MR. SHIFFMAN: I'll avoid  
19 taking that opportunity.

20 MS. ROGERS: The NRA would like  
21 to drill down in its --

22 JUDGE SHERWOOD: Miss Rogers, I  
23 am going to get something from you in  
24 writing. How much time do you want?

25 MS. ROGERS: Can I have a week?

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2 JUDGE SHERWOOD: No problem.

3 MS. ROGERS: Thank you.

4 JUDGE SHERWOOD: And I will  
5 give the AG's Office the same amount  
6 of time.

7 MR. SHIFFMAN: Thank you.

8 JUDGE SHERWOOD: That has to do  
9 with your request for a -- the  
10 deposition of a Corporate  
11 Representative. All right.

12 MR. FLEMING: Your Honor, I  
13 apologize, William Fleming here. I  
14 represent one of the Defendant's in  
15 the case.

16 I assume there's no problem if  
17 we also submitted something in  
18 writing at the same time that Ms.  
19 Rogers has her deadline.

20 JUDGE SHERWOOD: I'm sorry.  
21 There was an echo and I didn't hear  
22 you. Please repeat what you just  
23 said.

24 MR. FLEMING: I was just  
25 confirming that you would have not

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2                   problem if we too submitted something  
3                   in writing at the same time that Ms.  
4                   Rogers did.

5                   JUDGE SHERWOOD: No problem.

6                   MR. FLEMING: Thank you.

7                   JUDGE SHERWOOD: On the same  
8                   subject, obviously?

9                   MR. FLEMING: Yes.

10                  MR. CORRELL: This is Mr.  
11                  Correll for Mr. LaPierre. I would  
12                  like the same accomodation.

13                  JUDGE SHERWOOD: I would  
14                  appreciate it if the individuals  
15                  would coordinate their activities and  
16                  perhaps you could submit a single  
17                  letter representing your joint views  
18                  unless you really have different  
19                  perspectives.

20                  MR. FLEMING: I think that  
21                  should be fine, Your Honor.

22                  Thank you.

23                  JUDGE SHERWOOD: Mr. Correll,  
24                  does that work for you?

25                  MR. CORRELL: That works for me

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Your Honor. Thank you.

JUDGE SHERWOOD: Okay. We have the May 27th NRA request and the May 31st Attorney General's request for a protective order regarding the Rule 11 Notice to Admit. Here's -- here's my take on that, I don't need to go very far here because my understanding of Rule 11A and Rule 11B really is a device that you would -- contemplates sharing of information at the early stage of a case. It seems to me that you are well past that here.

Rule 11A and B says the court may order these. I think -- think -- you're past that point, so I am inclined to deny it, to grant the -- the protective order and not require the AG's Office to -- to provide that Notice to Admit.

The other part of it is that I looked at the, what is it, 83 -- 83 items and I can't for the life of me



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1 understand what the -- what the  
2 relevance of the items requested is  
3 with respect to this case. You want  
4 to know about the interworking -- the  
5 inner workings of the AG's Office,  
6 um, what is -- what's in the AG's  
7 budget and what's not and information  
8 about individuals, this all goes to  
9 the possibility that the Attorney  
10 General might seek an award of  
11 attorneys' fees, or if they say,  
12 well, if we knew it really is in the  
13 context of the sanctions, so -- I  
14 just don't see the relevance of what  
15 you're seeking here. But I am  
16 willing to listen for about a minute  
17 and a half before moving on.

18 MS. ROGERS: Thank you, Your  
19 Honor.

20 Briefly on 11A, 11B, our  
21 thought was that even though the case  
22 has been around for awhile, the rules  
23 specifically contemplates the  
24 situation where a motion to dismiss  
25

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has just gotten rid of some of the claims and you want to clarify and streamline the remaining claims which against which Defendant. So that was our thought there. I am not going to waste my scarce time talking about it. We still have a lot of depositions ahead of us, some clarification could be relevant.

With respect to the request to admit who worked on the case and how much it cost, when we saw on the Attorney General's letter that they don't plan to seek legal fees, except in potentially the context of sanctions, which we understand they don't intend to seek, that might resolve the issue.

We just -- in our experience in regulatory enforcement trials, you often hear arguments like, look how much money and time the government had to spend, tax payer money we had to spend in bringing this defendant

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to heal. If we are going to face arguments like that or request for fees in the same vein, we just want to be equipped to cross-examine those points.

So, if the AG are willing to stipulate and say that there's no plan to put that sort of evidence or argumentation and request for jury, then we don't want 84 things, we do not have an intrinsic interest in how the AG spends their time, but that's the nature of the request.

JUDGE SHERWOOD: Look, what you just mentioned goes to what you -- what might occur in a post-trial situation. In other words, a violation has been found, the government wins and then you're in the remedy stage and it seems to me that may an appropriate time, if the Attorney General is gonna ask for money, that may be an appropriate time to ask for more focus

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information with respect to -- to give you the opportunity to respond to that. But none of that has any relevance at this stage of the case. We don't even know if the Attorney General will prevail, maybe they'll prevail, maybe they won't. That is what a trial is for.

So, this -- at best, giving you the benefit of the doubt and the doubts are substantial, I do think it's premature, so I will deny it. Rather, I will grant the Attorney General's motion for a protective order.

MR. SHIFFMAN: One very small point of clarification. There was also a corresponding request for document production relating to the billing records that was tied in with the Notice to Admit, I just want to clarify that the ruling will also apply to that.

JUDGE SHERWOOD: I am granting

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2 the motion.

3 MR. SHIFFMAN: Thank you very  
4 much, Your Honor.

5 JUDGE SHERWOOD: Hopefully I'm  
6 head of schedule here.

7 We have talked about the  
8 depositions earlier and I don't think  
9 we need to discuss that again. Then  
10 there are the unresolved matters from  
11 the April 10th oral argument that  
12 resulted in a report, Special  
13 Master's report on the 23rd of March.

14 As I said, it seems to me the  
15 issues that were deferred then are  
16 probably ripe for resolution now. It  
17 was not on anybody's list and I am  
18 not so sure you guys want to spend  
19 the time today to address that, but  
20 that's an open item.

21 Let's talk about scheduling.

22 Ms. Rogers, Ms. Connell is she  
23 still with us.

24 MS. CONNELL: I am still with  
25 you. You can't get rid of me that

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1 MEETING WITH JUDGE SHERWOOD

2 easily.

3 JUDGE SHERWOOD: What did you  
4 want to do about those?

5 MS. CONNELL: Your Honor, in my  
6 view, the court's dismissal of the  
7 counterclaim pretty much gets rid of  
8 a lot of open issues with relation --  
9 I assume we're talking about the  
10 previous topics from the --

11 JUDGE SHERWOOD: Yeah.

12 MS. CONNELL: I think it pretty  
13 much gets rid of almost all of those,  
14 except there are a few more, possible  
15 the subject of contention  
16 interrogatories and that hasn't been  
17 appealed and there's no issue there  
18 from our perspective.

19 So, I don't really see the need  
20 to address that, but certainly we  
21 will respond to any application from  
22 the NRA.

23 JUDGE SHERWOOD: The reason I  
24 will raise it is because I've either  
25 deferred or I have, you know, denied

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an NRA request without prejudice to renew following Judge Dolan's decisions. I mean, that's really where we are. And what I really want to know is perhaps the way to go -- go about this is for you to maybe confer and see if there's anything left to be decided among those and then you let me know what's left for me to decide.

Ms. Rogers?

MS. ROGERS: Your Honor, we're happy to meet and confer. We'd also be happy to include in next week's briefing.

I would note that I'm not present for the prior oral argument. In the transcript, it looked like there was some agreement from the Court that certain of these topics would remain relevant even if the counterclaims are dismissed. I understand our time is limited today, so I will certainly go through that

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if the Court would like or I can include it in a briefing, perhaps try to meet and confer with Ms. Connell in the interim and maybe narrow what we need to brief.

JUDGE SHERWOOD: Let's do that. Let's foo that. You just don't have time today.

MS. CONNELL: There's a motion --

JUDGE SHERWOOD: Pardon?

MS. CONNELL: I didn't mean to interrupt, Your Honor.

JUDGE SHERWOOD: What did you say?

MS. CONNELL: There is also the every town motion floating out there.

JUDGE SHERWOOD: That's right. That sounds fair as well. Meet and confer and give me a list of the open items that either side wants me to address and we will move forward with respect to those.

How much time do you need to



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2 turn that around? Probably need

3 about two weeks.

4 MS. ROGERS: That seems fair,  
5 Your Honor.

6 JUDGE SHERWOOD: Pardon?

7 MS. ROGERS: That seems fair to  
8 us, Your Honor.

9 MS. CONNELL: That's fine with  
10 the AG.

11 JUDGE SHERWOOD: I think that's  
12 the whole list.

13 MS. CONNELL: Your Honor, if I  
14 may just flag something. So, you  
15 know we may be coming back to you  
16 within the next week.

17 JUDGE SHERWOOD: I don't want  
18 you to --

19 MS. CONNELL: I'm sorry.

20 JUDGE SHERWOOD: Don't be  
21 sorry. I signed up for this.

22 MS. CONNELL: We have been  
23 having some real disputes during the  
24 depositions it came to a head  
25 yesterday regarding the assertions

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2                   of privilege. We got the rough  
3                   outline -- the rough transcript of  
4                   the deposition from yesterday which  
5                   went quite late, late last night, so  
6                   I'm sorry I didn't have something to  
7                   submit to you today.

8                   But I anticipate that we will  
9                   either be calling you and/or making a  
10                  submissions to you with regard to the  
11                  assertions of privilege and  
12                  instructions on the record and that  
13                  kind of thing, either in the next day  
14                  or two or during the depositions that  
15                  are taking place today or tomorrow or  
16                  next week making our written  
17                  submission.

18                  JUDGE SHERWOOD: I am generally  
19                  around.

20                  MS. CONNELL: Okay.

21                  JUDGE SHERWOOD: I can't  
22                  guarantee on all or each occasion,  
23                  but --

24                  MS. CONNELL: Some of these,  
25                  it's hard to call to get a resolution

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1                   MEETING WITH JUDGE SHERWOOD  
2                   because it is a long string of back  
3                   and forth on the record.

4                   But thank you, Your Honor. I  
5                   just wanted to flag that as an  
6                   option. And we will write to you if  
7                   we reach an agreement regarding  
8                   asking Judge Cohen for some extra  
9                   days.

10                  JUDGE SHERWOOD: Okay.

11                  Anything else, Ms. Rogers?

12                  MS. ROGERS: Not from me, Your  
13                  Honor.

14                  JUDGE SHERWOOD: Thank you,  
15                  all.

16                  (Whereupon, at 10:04 A.M., the  
17                  above matter concluded.)

18                                   °                   °                   °                   °  
19

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## MEETING WITH JUDGE SHERWOOD

## C E R T I F I C A T E

STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK )

I, KARYN CHIOUSANO, a Notary Public  
for and within the State of New York, do  
hereby certify:

That the above is a correct  
transcription of my stenographic notes.

I further certify that I am not  
related to any of the parties to this  
action by blood or by marriage and that I  
am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 20th day of June, 2022.



KARYN CHIOUSANO

[&amp; - attorneys]

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