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June 1, 2022

VIA EMAIL

Hon. O. Peter Sherwood, Special Master
360 Lexington Avenue
New York, NY 10017

Re: *People v. Nat'l Rifle Ass'n of Am., Inc., Wayne LaPierre, Wilson Phillips, John Frazer and Joshua Powell*, Index No. 451625/2020 – Request for Order Directing Plaintiff to Comply with Rule 11(a) and (b) of Section 202.70(g) of the Uniform Rules of the Supreme Court and County Courts (Rules of Practice for the Commercial Division), as Amended May 16, 2022, Effective May 31, 2022

Dear Judge Sherwood,

On May 16, 2022, the Chief Administrative Judge of the Courts issued an administrative order amending Rule 11 of section 202.70(g) of the Uniform Rules for the Supreme Court and County Courts (Rules of Practice for the Commercial Division), effective May 31, 2022 (attached). The order amends the rule to read, in pertinent part, as follows:

Rule 11. Discovery.

(a) The court may direct plaintiff to produce a document stating clearly and concisely the issues in the case prior to the preliminary conference The court may also direct plaintiff ... to ... produce a document stating each of the elements in the causes of action at issue and the facts needed to establish their case.

(b) The court may further direct, if a defendant filed a motion to dismiss and the court dismissed some but not all of the causes of action, plaintiff and counterclaim plaintiff to revisit the documents to again state, clearly and concisely, the issues remaining in the case, the elements of each cause of action and the facts needed to establish their case. ***

I write on behalf of defendant Wayne LaPierre to request that Your Honor order plaintiff to comply with the rule.

Thank you for your attention to this matter. We will of course make ourselves available for a conference at Your Honor's earliest convenience to discuss this matter.

Hon. O. Peter Sherwood

June 1, 2022

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Very truly yours,

/s/ P. Kent Correll

P. Kent Correll

Counsel for Defendant Wayne LaPierre

Attachment

cc: All Counsel of Record (via email)

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend Rule 11 of section 202.70(g) of the Uniform Rules for the Supreme and County Courts (Rules of Practice for the Commercial Division), effective May 31, 2022, to read as follows (new material underlined, deletions in strikethrough):

Preamble to Rule 11. Acknowledging that discovery is one of the most expensive, time-consuming aspects of litigating a commercial case, the Commercial Division aims to provide practitioners with a mechanism for streamlining the discovery process to lessen the amount of time required to complete discovery and to reduce the cost of conducting discovery. It is important that counsel's discovery requests, including depositions, are both proportional and reasonable in light of the complexity of the case and the amount of proof that is required for the cause of action.

Rule 11. Discovery.

(a) The court may direct plaintiff to produce a document stating clearly and concisely the issues in the case prior to the preliminary conference. If there are counterclaims, the court may direct the party asserting such counterclaims to produce a document stating clearly and concisely the issues asserted in the counterclaims. The court may also direct plaintiff and counterclaim plaintiff to each produce a document stating each of the elements in the causes of action at issue and the facts needed to establish their case.

(b) The court may further direct, if a defendant filed a motion to dismiss and the court dismissed some but not all of the causes of action, plaintiff and counterclaim plaintiff to revisit the documents to again state, clearly and concisely, the issues remaining in the case, the elements of each cause of action and the facts needed to establish their case.

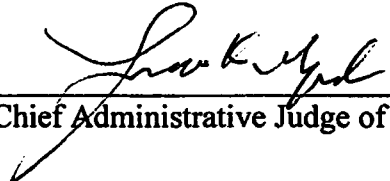
(c) Any written description of a party's claims/defenses provided under this Rule is not binding and does not limit the scope of a party's pleadings.

~~(a)~~(d) The preliminary conference will result in the issuance by the court of a preliminary conference order. Where appropriate, the order will contain specific provisions for means of early disposition of the case, such as (i) directions for submission to the alternative dispute resolution program, including, in all cases in which the parties certify their willingness to pursue mediation pursuant to Rule 10, provision of a specific date by which a mediator shall be identified by the parties for assistance with resolution of the action; (ii) a schedule of limited-issue discovery in aid of early dispositive motions or settlement; and/or (iii) a schedule for dispositive motions before disclosure or after limited-issue disclosure.

~~(b)~~(e) The order will also contain a comprehensive disclosure schedule, including dates for the service of third-party pleadings, discovery, motion practice, a compliance conference, if needed, a date for filing the note of issue, a date for a pre-trial conference and a trial date.

~~(e)~~(f) The preliminary conference order may provide for such limitations of interrogatories and other discovery as may be necessary to the circumstances of the case. Additionally, the court should consider the appropriateness of altering prospectively the presumptive limitations on depositions set forth in Rule 11-d.

~~(d)~~(g) The court will determine, upon application of counsel, whether discovery will be stayed, pursuant to CPLR 3214(b), pending the determination of any dispositive motion.



Chief Administrative Judge of the Courts

Date: May 16, 2022

AO/117/22