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October 23, 2022

VIA NYSCEF AND EMAIL

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Hon. O. Peter Sherwood, Special Master
Ganfer Shore Leeds & Zauderer LLP
360 Lexington Avenue
New York, NY 10017

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 Mr. Blaustein and Judge Sherwood:

Plaintiff the People of the State of New York, by the Office of the Attorney General of the State of New York ("OAG"), respectfully write to ask for a conference to discuss a discovery issue that may result in motion practice. Specifically, Plaintiff seeks relief with regard to the National Rifle Association of America's ("NRA") non-compliance with the Court's October 17, 2022 Order. We have met and conferred and have been unable to resolve this issue.

Following Briefing and Argument Before the Special Master, the NRA was Directed to Produce the Documents Sought

By letter dated July 6, 2022, Plaintiff moved to compel production of certain documents revealed at the deposition of long-time board member, NRA audit and finance committee member and current NRA second vice president David Coy. *See* NYSCEF 818 for discussion of procedural background relevant to these requests. The documents sought included a whistleblower complaint, a document referred to as the "Frenkel report" and documents relating to the audit committee's consideration of the same. At a previously-scheduled appearance on July 7, 2022, the NRA acknowledged that it had the Frenkel report and asserted various

arguments against its production. *See* NYSCEF 794 at 135-36 (Transcript of July 7, 2022 argument in which NRA counsel acknowledges possession of the Frenkel report). The Special Master permitted the NRA to make a submission regarding the same. Following submissions before the Special Master and argument, on July 15, 2022, the Special Master considered the arguments advanced against production by the NRA and granted the Plaintiff's motion to compel, directing that the "documents shall be produced."

The NRA's Appeal of the Special Master's Order is Denied but the NRA Refuses to Produce the Documents Sought.

The NRA appealed the Special Master's July 15, 2022 order. A copy of that order is annexed hereto. It filed a memorandum of law and an affirmation with numerous exhibits. At no point did the NRA assert that the documents, or particularly the Frenkel report, were privileged. Instead, it noted in a footnote in its memorandum that it "reserves the right" to assert privilege regarding some or all of such documents. *See* NYSCEF 809, p. 1 fn. 1.

However, as Plaintiff noted in opposition to the appeal, *see* NYSCEF 818, the NRA did not claim that any of the documents sought actually were privileged and chose not to set forth a basis for any potential privilege either before the Special Master or the Court, as a reason to overturn the Special Master's report. Accordingly, Plaintiff asserted that such hypothetical argument, which had not been advanced before wither the Special Master or the Court, should not be considered as a basis for granting a protective order or disturbing the Special Master's direction that the NRA produce the requested documents.

By Order dated October 17, 2022, the Court denied the NRA's appeal of Judge Sherwood's July 15, 2022 order. *See* NYSCEF 859 (copy attached hereto). In response to that Order, Plaintiff asked the NRA to comply and produce the requested documents. In particular, Plaintiff sought the production prior to the upcoming close of expert discovery. The NRA did produce the whistleblower complaint, which has proven material and relevant to this action and in regard to the upcoming depositions of experts, which begin on October 24, 2022.

However, the NRA has not produced the other relevant documents and, in regard to the Frenkel report, has indicated that it refuses to produce the same as it now contends that the report is privileged. Plaintiff's efforts to resolve this issue have been fruitless. We asked the NRA to notify the OAG as to when it will file its appeal and/or seek a stay of the Court's order and stood prepared to go to the Appellate Division. The NRA indicated that it was considering the matter but did respond to the Plaintiff regarding any plan to appeal or seek a stay.

As a potential resolution, Plaintiff proposed that the parties agree to a special procedure previously consented to in connection with certain Aronson documents, which the NRA asserted were privileged notwithstanding the Special Master's and the Court's determination otherwise. Given the NRA's stated intent to seek an appeal regarding the ruling relating to the Aronson documents, Plaintiff proposed and the NRA agreed to an arrangement by which the NRA produced such disputed documents, which would be treated as highly confidential and given certain protections and which the NRA may claw back in the event it files and wins its appeal.

Plaintiff offered the same arrangement with regard to the Frenkel report and did not initially receive a response.

Finally, close to midnight on Friday, October 21, 2022, the NRA notified Plaintiff that “Although Judges Sherwood and Cohen overruled the NRA's relevance and timeliness objections ... neither determined that the report is not privileged” and that “As a result, the NRA will add to its privilege log an entry pertaining to the report (which the NRA will supply shortly). To the extent the NYAG insists on an unwarranted interpretation of Judge Sherwood's and/or Judge Cohen's orders, the NRA proposes that the parties seek any needed clarifications from the Court and/or the Special Master.”

The NRA is Violating a Mandate of the Court and Plaintiff Seeks Appropriate Relief

The Special Master ruled and the Court affirmed that the Frenkel report (and other documents sought) *must be produced*. The NRA's conduct violates these Orders and the NRA appears to be in contempt of Court. We do not believe that any clarification is needed.

Plaintiff intends to enforce the Court's order. At argument on September 29, 2022, the Court expressed the clear desire to wind down outstanding discovery disputes and directed that the parties confer with both of you in that regard. For that reason, and in compliance with the Court's rules, we file this letter on the docket but also write to request a conference with you to discuss this matter. Resolution of this is time sensitive as the first expert deposition is taking place on Monday, October 24, 2022 and Plaintiff will suffer prejudice if unable to use the Frenkel report in expert discovery.

Conclusion

The NRA was directed to produce the documents including the Frenkel report and that order was affirmed. The NRA has refused to obey those orders. We seek a conference to obtain compliance and for such other relief as may be appropriate.

Respectfully,

/s/ Monica Connell

Monica Connell

Assistant Attorney General

cc: All Counsel of Record