

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,

INDEX NO.: 451625/2020

Plaintiff,

-against-

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

Defendants.

and

THE NATIONAL RIFLE ASSOCIATION OF
AMERICA,

Defendant-Counterclaim Plaintiff,

-against-

LETITIA JAMES, ATTORNEY GENERAL OF
THE STATE OF NEW YORK, IN HER
OFFICIAL AND INDIVIDUAL CAPACITIES,

Plaintiff-Counterclaim Defendants.

**AFFIRMATION OF SVETLANA M. EISENBERG IN SUPPORT OF THE NRA'S
MOTION PURSUANT TO CPLR 3104(d) FOR REVIEW OF THE SPECIAL MASTER'S
DISCOVERY ORDER DATED OCTOBER 25, 2022**

I, SVETLANA M. EISENBERG, an attorney duly admitted to practice law in the courts of the State of New York, hereby affirm the following under penalty of perjury pursuant to CPLR § 2106:

1. I am a Partner with the firm Brewer, Attorneys & Counselors, counsel for the National Rifle Association of America (the "NRA") in the above-captioned action.

2. I respectfully submit this Affirmation in support of the NRA's motion pursuant to CPLR 3104(d) for review of the Special Master's discovery order dated October 25, 2022.

3. Attached as Exhibit A is a true and correct copy of the Notes regarding the 2007 letter.

4. Attached as Exhibit B is a true and correct copy of portions of Mr. David Coy's deposition transcript.

5. Attached as Exhibit C is a true and correct copy of email correspondence evidencing requests submitted to the NRA by the NYAG.

6. Attached as Exhibit D is a true and correct copy of the NYAG's letter application to the Special Master to compel production, dated July 6, 2022.

7. Attached as Exhibit E is a true and correct copy of the NRA's letter response to the NYAG's application to the Special Master to compel production, dated July 12, 2022.

8. Attached as Exhibit F is a true and correct copy of the Special Master's Discovery Order dated July 15, 2020.

9. Attached as Exhibit G is a true and correct copy of the NRA's Motion to the Commercial Division for Review of the Special Master's Discovery Order, dated July 22, 2022.

10. Attached as Exhibit H is a true and correct copy of the NYAG's opposition to the NRA's Motion for Review of Special Master's Discovery Order, dated August 03, 2022.

11. Attached as Exhibit I is a true and correct copy of a letter from the NYAG to the NRA regarding production of the Frenkel Report, dated October 23, 2022.

12. Attached as Exhibit J is a true and correct copy of transcript portions from the hearing with Special Master on July 07, 2022.

13. I am familiar with the facts and circumstances of this action, either because I personally participated in the events described or through my conversations with my colleagues at Brewer and my review of the case file

Dated: November 1, 2022
New York, New York

/s/ Svetlana Eisenberg
Svetlana Eisenberg

By: /s/ Svetlana S. Eisenberg
Svetlana S. Eisenberg
Attorney for Defendant Counterclaim-Plaintiff
The National Rifle Association of America

4885-8629-3309.1
2277-18

EXHIBIT “A”

Audit Committee Meeting – Questions for Staff

The Audit Committee is charged with reviewing and making appropriate inquiry regarding the anonymous letter that BOD members received prior to the April 2007 NRA Annual Meeting. Pursuant to this charge, following is a series of questions derived from the letter. These inquiries are arranged in paragraph-by-paragraph order, starting at the beginning of the letter.

Paragraph 1: This paragraph alleges that the whistle-blowing procedures currently in place are inadequate. Please review the policy for the committee, and the protection contained in the policy for whistleblowers. Has the policy been adequately publicized to NRA employees? How has it been publicized? What are the pros-and cons of establishing a whistle-blowing “hotline” administered by an outside third party? What would the out-of-pocket costs be for NRA to contract for such a service?

Paragraph 2: Does NRA have appropriate personnel policies in place regarding employee terminations and resignations? Are these policies being followed? Are personnel situations properly documented in accordance with these policies? Are the financial assets of NRA at risk due to any improper terminations of employees?

Paragraph 3: Have NRA’s expenditures for promotional activities and for consultants been properly documented and approved in accordance with NRA policies? Have prior expenditures for promotional activities and consultants been properly budgeted, and subjected to review during this process? Have the results derived from the use of these monies been discussed with the Finance Committee?

Paragraph 4: What are the financial arrangements associated with the annual cruises? Are all expenditures for such activities properly budgeted for and approved in accordance with NRA policies? What is the business purpose behind these events? Is NRA in compliance with IRS regulations concerning the expenditure of funds on such events?

Paragraph 5: What is the reference to “I.I. and I.S.”? Have the vendors NRA uses to book travel arrangements and rental cars been properly approved? Have all travel expenditures been properly documented and approved? Have expenditures for entertainment expenses been properly documented in accordance with NRA policies and IRS regulations? Have such expenditures been properly budgeted and reviewed with the Finance Committee? Have these expenditures been within NRA and IRS limits?

Paragraph 6: Please review the findings of Jacob Frenkel’s report on these expenditures, and the disposition of the several aspects of this situation. Please advise the committee regarding the procedures NRA put into place subsequent to this report. Are these procedures being followed? Have there been any recent modifications or enhancements to these procedures? Did the anonymous letter of complaint identify any expenditures of monies that were not reviewed by Jacob Frenkel? If so, what were these items?

Paragraph 7: Are salaries and wages to NRA employees being paid in accordance with NRA policies? Is NRA's wage and salary scale being followed? Are the wages being paid by NRA for various positions in the organization appropriate? Does NRA have sufficient and proper documentation in employee files for all payroll related activities?

Paragraph 8: Who is "Survival Inc.?" What is the business purpose for expenditures to them? Has this vendor been properly approved in accordance with NRA policies? In general, are all vendors and suppliers to NRA properly approved? Is the business case analysis process and the RFP schedule being followed for all vendors? Are exceptions to these policies properly documented? Are the procedures established by NRA's Purchasing Procedures Manual being followed with all of our vendors?

Paragraph 9: The matter of salaries and wages and related documentation was asked with regard to paragraph 7 of the letter. Regarding NRA's American Express accounts, in whose name were these accounts established? What was the business purpose for this choice? Is this arrangement subject to the RFP process? Are there any benefits (frequent flyer miles, etc.) for the NRA American Express accounts? If so, what use is made of these benefits?

Paragraph 10: Have Ackerman and PM Consulting been properly approved as vendors? Are expenditures to these firms properly documented in all respects? Is business with these vendors at "arms length"? Are the procedures established by NRA's Purchasing Procedures Manual being followed with all of our consultants?

Paragraph 11: Please review for the committee the Palladium Press situation (in brief, but also from its inception up to its current status). Please also speak to the aggregate (cumulative) net cash flow from this situation.

Paragraph 12: Final paragraph – nothing in this section raises any issues for the Audit Committee.

EXHIBIT “B”

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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 15, 2022

TIME: 9:34 A.M.

-----X
CONFIDENTIAL VIDEOTAPED DEPOSITION of
THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
INC., by a Witness, DAVID COY, taken by the
Plaintiff, pursuant to a Court Order and to
the Federal Rules of Civil Procedure, held
remotely, by all parties, before Karyn
Chiusano, a Notary Public of the State of
New York.

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1 CONFIDENTIAL ~ DAVID COY

2 THE WITNESS: I'm sorry.

3 A. I have no recollection of
4 accessing this document in 2017.

5 Q. Does the name -- do you know
6 who Jacob Frenkel is?

7 A. Yes.

8 Q. Who is Jacob Frenkel?

9 A. Jacob Frenkel is an attorney
10 that Mr. Schulman engaged to examine the --
11 in Washington, D.C., that Mr. Schulman
12 engaged regarding a matter that came before
13 the Audit Committee in 2002.

14 Q. Who is Mr. Schulman?

15 A. Mr. Schulman is the former
16 deceased -- he is deceased and former
17 counsel to the NRA Board of Directors.

18 Q. And do you have any
19 recollection of a report by Jacob Frenkel
20 on expenditures?

21 A. Yes.

22 Q. What do you recall?

23 MS. EISENBERG: I instruct you
24 not to answer on privilege grounds.

25 A. This most definitely involved

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1 CONFIDENTIAL ~ DAVID COY

2 legal counsel. It was privileged.

3 And as counsel has directed me,
4 I am not going to answer that question.

5 Q. And that was from 2002?

6 A. Yes.

7 Q. Did Jacob Frenkel provide any
8 services to the NRA other than those that
9 you just testified to?

10 MS. EISENBERG: Objection.

11 A. To my knowledge, no.

12 Q. I direct your attention to
13 where it says Paragraph 5. What is the
14 reference to II and IS? Do you see that?

15 A. Yes.

16 Q. Sitting here today, do you know
17 what II and IS is?

18 A. I don't recall.

19 Q. Do you recall references in the
20 Attorney General's complaint to II and IS?

21 MS. EISENBERG: Objection.

22 (Witness reviews document.)

23 A. Yes, I do.

24 Q. And do you recall the context
25 of those references?

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1 CONFIDENTIAL ~ DAVID COY

2 MS. EISENBERG: Objection.

3 A. No, I do not.

4 Q. Going back to Jacob Frenkel,
5 did you say that he was retained by counsel
6 for the Board?

7 MS. EISENBERG: Objection.

8 A. Mr. Schulman is the one who
9 brought him in to perform this service for
10 us.

11 Q. And Mr. Schulman was counsel
12 for the Board?

13 A. Yes.

14 Q. Not counsel for the
15 organization as a whole?

16 MS. EISENBERG: Objection.

17 A. My understanding is
18 Mr. Schulman was counsel for the Board.

19 Q. And was there a written report?

20 MS. EISENBERG: Objection.

21 A. From Mr. Frenkel?

22 Q. Yes.

23 A. Yes, there was.

24 Q. Did the Audit Committee take
25 any action in response to Mr. Frankel's

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1 CONFIDENTIAL ~ DAVID COY

2 report?

3 MS. EISENBERG: I instruct you
4 to be careful to not reveal the
5 substance of any privileged
6 communications, but to the extent you
7 can answer the question without doing
8 so, please go ahead.

9 A. This was a privileged
10 communication.

11 Q. I wasn't asking about a
12 communication, sir. I was asking about
13 action.

14 MS. EISENBERG: Objection.
15 Please don't argue with the
16 witness.

17 MS. FUCHS: I was not arguing.

18 MS. EISENBERG: Ask your
19 question again.

20 Q. Did the Audit Committee take
21 any action in response to Mr. Frankel's
22 report?

23 MS. EISENBERG: Same
24 instruction, Professor Coy.

25 A. Whatever was said regarding

EXHIBIT “C”

RE: NRA- Additional Documents

Svetlana Eisenberg <sme@brewerattorneys.com>

Tue 6/28/2022 7:50 AM

To: Connell, Monica <Monica.CConnell@ag.ny.gov>; Fuchs, Yael <Yael.Fuchs@ag.ny.gov>; Sarah Rogers <sbr@BrewerAttorneys.com>

Cc: Stern, Emily <Emily.Stern@ag.ny.gov>

Monica,

The document was produced in December 2021. There is no basis for your suggestion that your office only learned about the document on June 15, 2022.

The metadata shows that the document was created in 2007. The metadata fields to which you refer are from the file system in which the document was collected.

The Application Create/Last Modified dates, which is what indicates when a document was created, clearly refer to 2007:

Document Date	Application Create Date	Application Last Modified	Creation Date	Modification Date
10/19/2017 02:47 UTC	09/06/2007 05:08 UTC	09/06/2007 05:49 UTC	10/19/2017 02:47 UTC	10/19/2017 02:47 UTC

In sum, there is no basis for the statement that the document "may have dated from 2017."

Should you wish to confer further, please call me at 212-224-8817 this afternoon.

Regards,

Svetlana

Svetlana M. Eisenberg | Partner
Brewer, Attorneys & Counselors
750 Lexington Avenue, 14th Floor
New York, New York 10022
Office Direct: 212.224.8817
Office Main: 212.489.1400
Cell: 929.319.1731
Fax: 212.751.2849
sme@brewerattorneys.com www.brewerattorneys.com

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From: Connell, Monica <Monica.CConnell@ag.ny.gov>

Sent: Monday, June 27, 2022 8:50 PM

NYSCEF DOC. NO. 805

RECEIVED NYSCEF: 07/02/2022

To: Svetlana Eisenberg <sme@brewerattorneys.com>; Fuchs, Yael <Yael.Fuchs@ag.ny.gov>; Sarah Rogers <sbr@brewerattorneys.com>
Cc: Stern, Emily <Emily.Stern@ag.ny.gov>
Subject: Re: NRA- Additional Documents

Thank you Svetlana. As you know, there was some metadata that indicated the document may have dated from 2017. Further, we only learned about the existence of these highly relevant documents during the deposition of Mr. Coy. Given your response, I take it that further efforts to meet and confer would be pointless. If I am wrong, please let me know tonight.

Regards,

Monica

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From: Svetlana Eisenberg <sme@brewerattorneys.com>
Sent: Monday, June 27, 2022 8:45:33 PM
To: Fuchs, Yael <Yael.Fuchs@ag.ny.gov>; Sarah Rogers <sbr@brewerattorneys.com>
Cc: Connell, Monica <Monica.CConnell@ag.ny.gov>; Stern, Emily <Emily.Stern@ag.ny.gov>
Subject: Re: NRA- Additional Documents

[EXTERNAL]

Counsel,

The NRA has no obligation to search for or produce the documents described in your email message. As a threshold matter, the document you marked as an exhibit was prepared—and the letter to which it responds was received—in 2007. This is confirmed by, among other things (i) Professor Coy's testimony, (ii) the face of the exhibit ("The Audit Committee is charged with reviewing and making appropriate inquiry regarding the anonymous letter that BOD members received *prior to the April 2007 NRA Annual Meeting*."), and (iii) the September 6, 2007 "application create" and "application last modified" dates (made available to the NYAG by the NRA along with the record's other metadata). The records the NYAG requests are well outside the universe of records that are discoverable under the CPLR.

In any case, the NYAG's RFPs you cite—with one exception—expressly call *only* for records that were "in effect, created, recorded, compiled, transmitted or received [after] January 1, 2015." See also NRA's Responses and Objections ("The NRA further objects to . . . Request [38] as unduly burdensome with respect to the instructions 'regardless of the time period,' 'from 2010 to present,' and 'from 1997 to present.' For purposes of its response, the NRA will construe this Request to seek documents from January 1, 2015, to the commencement of this Action.").

Of course, to the extent any non-privileged documents you describe exist and post-date January 1, 2015, the NRA searched for and, as applicable, produced them to the NYAG pursuant to the search terms protocol agreed to by the NYAG.

The NRA reserves all rights and waives none.

Regards,

Svetlana

Svetlana M. Eisenberg | Partner
Brewer, Attorneys & Counselors
750 Lexington Avenue, 14th Floor
New York, New York 10022

NYSCEF DOC. NO. 805

RECEIVED NYSCEF: 07/02/2022

Office Direct: 212.224.8817

Office Main: 212.489.1400

Cell: 929.319.1731

Fax: 212.751.2849

sme@brewerattorneys.com www.brewerattorneys.com

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From: Fuchs, Yael <Yael.Fuchs@ag.ny.gov>

Sent: Tuesday, June 21, 2022 2:15 PM

To: Svetlana Eisenberg <sme@brewerattorneys.com>; Sarah Rogers <sbr@brewerattorneys.com>

Cc: Connell, Monica <Monica.Connell@ag.ny.gov>; Stern, Emily <Emily.Stern@ag.ny.gov>

Subject: NRA- Additional Documents

Svetlana, Sarah:

As you are aware, the deposition of NRA board member and Audit Committee Vice Chair David Coy on June 15, 2022, Mr. Coy testified that he drafted the attached document, which relates to an "anonymous letter that BOD members received prior to the April 2007 NRA Annual Meeting." The document purports to be a "series of questions derived from the letter." The nature of the questions suggests that the letter raised issues related to those raised in the present litigation, including the adequacy of and compliance with numerous NRA policies and procedures, and the expenses generated by particular vendors, including I.I. & I.S. and Ackerman McQueen. As such, this letter and any response thereto is highly relevant to the present litigation, as well as responsive to, without limitation, Requests No. 2, 4, 15, 16, 17, 26, 38 (including 38(h)), and 62 of the Request for Production dated June 25, 2021.

We request that you please produce the following Document, no later than Friday June 24, and reserve all rights with respect thereto:

All documents relating to the anonymous letter ("the Letter") referenced in the document bearing bates number NRA-NYAG-CPOMMDIV-00686689, including without limitation:

- a. The Letter received by NRA board members;
- b. Any board minutes or reports relating to the Letter;
- c. All Communications relating to the Letter;
- d. All documents consisting of or relating to any response to the Letter;
- e. The report from Jacob Frenkel referenced in Paragraph 6 of NRA-NYAG-CPOMMDIV-00686689, and all Documents related thereto.

For your reference, as was shown at the deposition, the metadata for the document shows a creation date of 2017. Mr. Coy testified that he didn't know why the metadata would show 2017, and further testified that he did in fact receive a letter, mailed to his home, in or around 2007.

Please let me know if you have any questions regarding the above.

Regards,
Yael

Yael Fuchs | Assistant Attorney General
Co-Chief, Enforcement Section, Charities Bureau
New York State Office of the Attorney General
28 Liberty Street, New York, NY 10005
Tel: (212) 416-8391 | yael.fuchs@ag.ny.gov

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EXHIBIT “D”



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
CHARITIES BUREAU

212.416.8965
Monica.Connell@ag.ny.gov

July 6, 2022

VIA EMAIL

Hon. O. Peter Sherwood, Special Master
360 Lexington Avenue
New York, NY 10017
psherwood@ganfershore.com

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 Judge Sherwood:

On behalf of the Plaintiff, the People of the State of New York, the Office of the Attorney General of the State of New York ("OAG") respectfully submits this letter in support of the applications set forth below.

General Ledgers:

During its bankruptcy proceeding, the NRA included on its list of exhibits, and concurrently produced to the OAG, its full general ledgers in the form of spread sheets it maintains that showed cash flow to and from the NRA. The proceedings before the bankruptcy court concerned whether the NRA's bankruptcy petition was brought in good faith and involved discovery related to the NRA's finances, as this action does. Accordingly, in this action, Plaintiff again sought the general ledgers, both in the form of a request for documents produced during the bankruptcy to be re-produced in this action and in a specific request. *See* Exhibit A (Defendant NRA's objections and responses to the Plaintiff's first requests for production, Nos. 9 and 19(b), (c), and (e)). Although the NRA readily produced the ledgers in the bankruptcy as part of its production of proposed exhibits and readily re-produced almost all of the other bankruptcy production in this action, it did not produce the ledgers here. The parties conferred on this issue a number of times including most recently by email. *See* Exhibit B (email chain beginning June 30, 2022).

The NRA had previously objected to producing the general ledgers in this action, apparently believing that the names of donors are in the ledgers and the confidentiality order here, unlike that in the bankruptcy proceeding, is insufficient protect the same. It also asserted

Hon. O. Peter Sherwood

July 6, 2022

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that redacting the names of individual donors would be unduly burdensome. In an effort to resolve this issue, Plaintiff proposed that the NRA produce the same general ledgers redacting all entries showing incoming monies, disclosing only NRA expenditures. The NRA has not indicated that this would be difficult to do.

Production of the ledgers limited to outgoing monies paid by the NRA will likely be sufficient to answer central questions regarding NRA funds paid to favored vendors and NRA insiders that are relevant to the allegations of waste and improper administration of the NRA's assets. This evidence is crucial and NRA witnesses and documents produced so far have not sufficiently addressed these matters.

For example, the general ledgers should demonstrate NRA funds paid to a group of related entities and individuals, through NRA Executive Vice President Wayne LaPierre's office's budget, and other budgets centers within the NRA, to a group of related entities and individuals owned by or affiliated with non-party David McKenzie. Evidence indicates that the NRA has paid the McKenzie entities thus far well over \$100 million, often with verbal approvals in excess of contracted amounts in violation of NRA policies. The evidence also indicates that payments to the McKenzie entities were internally allocated to various NRA cost centers and dispersed through payments to various affiliated business entities, some located within the same offices within the NRA headquarters, with the same staff, same leadership, and little to no division in their work. This internal accounting obfuscates the magnitude of the amounts paid by the NRA to these businesses. Indeed, there is evidence to suggest that the NRA paid monies to at least one of McKenzie's businesses, Associated Television Inc. ("ATI")¹, without receiving promised services in return. Witnesses have been unable to testify as to what monies were paid to these entities and insiders and when such payments stopped, if they have. It was only *during* his testimony at the bankruptcy trial that Defendant LaPierre revealed for the first time his relationship with David McKenzie, including gratis use of McKenzie's luxury yachts. During his testimony in this action, Mr. LaPierre revealed previously undisclosed information that further establishes a conflict of interest. Mr. LaPierre testified to having received additional expensive gifts and favors from the McKenzies, including paid luxury vacations to numerous exotic locales around the globe for himself and his wife and his wife's use of McKenzie's yachts for "girls" and family trips.

¹ Mr. LaPierre testified at his deposition on June 27 and 28, 2022, that ATI produced the Crime Strike television series for the NRA. He claims to have filmed segments of this show while in Monaco, the Bahamas or on board the McKenzie's yacht, thus making his receipt of such free luxury travel, at least in part, a business expense. Mr. LaPierre had not seen the episodes of Crime Strike he allegedly filmed since 2014 and does not know if they aired. Plaintiff asked for information relating to the Crime Strike show, including videos, from the NRA in Plaintiff's first request for production, no. 38. None were produced. Plaintiff has narrowed the request to episodes including the video filmed in Monaco, the Bahamas or on board a yacht and any evidence showing that such episodes were actually aired. While producing some correspondence with ATI, the NRA has refused to produce the limited video footage sought or to confirm that it does not have information regarding whether such episodes aired. See Ex. B. Plaintiff also asks for an order directing the NRA to produce the requested episodes and evidence, if it has any, of such episodes ever airing.

Hon. O. Peter Sherwood

July 6, 2022

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The general ledgers are essential for establishing expenditures to a myriad of vendors that the OAG believes, based on testimony and other evidence in this litigation, plainly constitute corporate waste. Now the NRA objects to the demand for general ledgers as “untimely”, although the Plaintiff has been seeking the general ledgers since its first request for production, and “overbroad”, although it has not set out any specifics as to how again producing these discrete spread sheets for the relevant time period when the NRA’s expenditures during this time period are at the heart of most of the Plaintiff’s allegations, would be overbroad.

In light of the fact that the general ledgers were demanded by the Plaintiff in a timely manner, can be readily produced, and are material and necessary to the claims in this action, we ask for an order directing that general ledgers from 2015 to the present be produced with the redactions proposed above.

Documents Relating to Relevant Whistleblower Complaint to Board

During the deposition of NRA Vice-President, long time Board member and Audit Committee Vice Chair David Coy on June 15, 2022, Mr. Coy testified that he drafted a document relating to an “anonymous letter that BOD members received prior to the April 2007 NRA Annual Meeting.” The document purports to be a “series of questions derived from the letter.” *See* Exhibit C (Coy’s questions for the Audit Committee). The document indicates that in 2007, a whistleblower raised some of the identical claims of corruption, waste and lack of adequate internal controls to the entire NRA Board that the Plaintiff is alleging has more recently occurred and in some instances is still occurring within the NRA. As such, this letter and any response thereto is highly relevant to the present litigation, as well as responsive to, without limitation, Requests No. 2, 4, 15,16, 17, 26, 38 (including 38(h)), and 62 of the Request for Production dated June 25, 2021.

Metadata produced in connection with the documents indicates a creation date in 2017. Mr. Coy testified that he didn’t know why the metadata would show 2017, and further testified that he did in fact receive a letter, mailed to his home, in or around 2007. However, he explained that in order to testify truthfully as to the anonymous letter and the Audit Committee’s response thereto, he would need to see if he still had the letter and review other information he may have. *See* Deposition of David Coy, Exhibit D, pp. 211-235, at pp. 211 (“Beyond that, I -- in order to appropriately answer, because I did swear an oath to tell the truth and I will do that, but I need to see -- I -- I have to reconstruct this.”); 215 (not recalling if he was in possession of the anonymous letter); 215-216 (“I need to look at the documents, if we can find them, if they are able to be found, so I can answer the questions truthfully. That is what – that is the oath I swore to do”).²

Accordingly, Plaintiff served demands for relevant information relating to the letter and the Audit Committee’s response thereto. *See* Exhibit E (June 22, 2022 demand). The NRA did not initially respond to the demand. Follow up efforts to resolve this issue were unsuccessful.

² Mr. Coy’s deposition, as well as other depositions, have included improper assertions of privilege and speaking objections. Those will be the subject of a separate application.

Hon. O. Peter Sherwood

July 6, 2022

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See Exhibit B (email chain beginning June 30, 2022). The NRA stated that it had tried to chase down “a rumored, fifteen-year-old letter at the NYAG’s request” but did not specify what efforts it made, whether it had inquired of Mr. Coy (who was represented at his deposition by NRA counsel), regarding the documents he indicated he would need to check to testify truthfully, whether it had identified any of the documents sought and didn’t respond to the related requests at all.

The NRA itself is the primary source of documents relevant to this case. Testimony by some individual NRA witnesses, like David Coy and Wayne LaPierre, has revealed the existence of documents that are material and necessary to the action but which have not been produced. If the NRA refuses to produce such documents, the Plaintiff will seek curative instructions but hopes that the same is not necessary. To the extent that any Defendant will attempt to use documents or evidence that the NRA appropriately responded to the whistleblower complaint received by anonymous letter in 2007, we reserve all rights to seek preclusion.

Plaintiff asks for an order directing the NRA to produce documents responsive to the demands set forth in Exhibit E by a date certain and do confirm that it sought the same from Audit Committee members, the Board Secretary, and from NRA records.

An Extension of the Seven Hour Limitation for the 11-f Notice of the NRA

Plaintiff has noticed the corporate representative deposition of the NRA. *See* Exhibit F (Plaintiff’s 11-f Notice to the NRA). Under Rule 11-d of the Commercial Division rules, there is a 7-hour limitation for depositions, but that limit may be altered by the court upon a showing of good cause. Good cause exists here. Plaintiff’s 11-f Notice has 24 topics.³ The parties have met and conferred and the NRA has agreed to produce a witness(es) knowledgeable and prepared to testify on every topic. However, the NRA has indicated that it will only produce its corporate representative for one day of deposition.

Plaintiff intends to take a focused and efficient deposition, but we reasonably anticipate needing more than 7 hours to cover the almost two dozen key areas in the 11-f notice, all drawn from Plaintiff’s Complaint. These topics include, for example, the NRA’s procedures for preparation, review (especially Board Review), authorization and signing of the NRA’s annual regulatory filing, including IRS Forms 990 and supporting schedules, misstatements on the NRA’s Form 990s and amendments to the 990s (Topic 3); excess benefits paid to and private inurement received by the individual Defendants and others within the NRA, including the NRA’s calculations where it has admitted the same occurred (Topic 5); and the use of vendors to disguise payments to or on behalf of NRA insiders (Topic 8). Seven hours does not permit sufficient time for even the most focused examination of these and other complex topics.

In addition, the NRA has indicated that it may produce more than one deponent to testify as a corporate representative, one of whom will be its General Counsel, Defendant John Frazer. The NRA is entitled to do so, but we must factor in additional time to inquire of the preparation of

³ Plaintiff has withdrawn Topic 2, with limitations noted in a separate submission filed today.

Hon. O. Peter Sherwood

July 6, 2022

Page 5

different witnesses. Mr. Frazer appeared as the NRA's corporate representative for deposition during the bankruptcy proceeding and based on that deposition, we also reasonably anticipate that privilege issues may arise in his deposition as an NRA representative.. This will likely increase the time needed for the 11-f deposition. Accordingly, we ask that the Court permit 14 hours to depose the NRA.

CONCLUSION

In light of the foregoing, it is respectfully that Your Honor grant the relief sought in this application in its entirety.

Respectfully,

/s/ Monica Connell

Monica Connell

Assistant Attorney General

cc: All Counsel of Record

EXHIBIT B

From: [Connell, Monica](#)
To: [Sarah Rogers](#)
Cc: [Thompson, Stephen](#); [Conley, Jonathan](#)
Subject: RE: Follow Up Meet and Confer
Date: Tuesday, July 5, 2022 10:00:00 AM
Attachments: [image003.png](#)

Sarah,

Discovery extensions have been needed throughout this case as a result of the NRA's discovery conduct as well as to accommodate witnesses and defense counsel. This is evidenced by court filings and many of the stipulations themselves. We agreed that we had no intention of serving a whole new set of document requests. We didn't and we haven't waived any right to follow up regarding various demands or newly discovered documents.

Where we identify documents that should have been produced if they exist but were not and/or that arose during a deposition, we reserved and reserve the right to make the request. We appreciate your efforts, including in looking for documents that an NRA Second Vice President, Chair of the Finance Committee and Vice-Chair of the Audit Committee testified about.

The requests below are for documents demanded in our initial requests for production where negotiation has not led to production and where recent testimony demonstrates their necessity. The NRA's position is clear except for one last question: Mr. LaPierre testified about video for Crime Strike being filmed about Mr. McKenzie's yachts and/or in Monaco and the Bahamas and that he did not know if such videos aired. Our initial demands asked for Crime Strike video. Has the NRA maintained the Crime Strike videos?

Thanks,

Monica

From: Sarah Rogers <sbr@BrewerAttorneys.com>
Sent: Tuesday, July 5, 2022 9:41 AM
To: Connell, Monica <Monica.CConnell@ag.ny.gov>
Cc: Thompson, Stephen <Stephen.Thompson@ag.ny.gov>; Conley, Jonathan <Jonathan.Conley@ag.ny.gov>
Subject: RE: Follow Up Meet and Confer

[EXTERNAL]

Monica,

When the NRA first agreed before the Special Master to extend the discovery schedule, the parties stipulated that there would be no new document requests served. The NRA has repeatedly, and in good faith, accommodated requests for updated productions of Board meeting materials and the like, and has even attempted to chase down a rumored, fifteen-year-old letter at the NYAG's request. However, your office's demand for the NRA's general ledger is overbroad and untimely. The NRA declines to produce it. Enough is enough – document discovery must end.

The NRA conducted a diligent search for correspondence among itself, MMP and MMP's affiliates, and ATI concerning disputed invoices, fee increases, and other relevant topics reflected in our search terms. The NRA's recent, supplemental production captured correspondence exchanged solely among outside counsel, which may not have transited the NRA's electronic systems and may therefore have been omitted from the NRA's prior production. The NRA is not aware of additional responsive, relevant correspondence with these entities which remains un-produced.

We are not aware of a discovery device that requires the NRA, or its counsel, to summarize CrimeStrike video materials, and we are not aware of any responsive, nonprivileged summaries of the type you describe.

Regards,
Sarah

From: Connell, Monica <Monica.Connell@ag.ny.gov>
Sent: Thursday, June 30, 2022 2:21 PM
To: Sarah Rogers <sbr@brewerattorneys.com>
Cc: Thompson, Stephen <Stephen.Thompson@ag.ny.gov>; Conley, Jonathan <Jonathan.Conley@ag.ny.gov>
Subject: Follow Up Meet and Confer

Sarah,

In the bankruptcy proceeding, the NRA produced its general ledgers. We demanded the same in this action. The NRA did not provide the same, even the ones produced during the bankruptcy. Although they had already been produced to the Plaintiff and others in the bankruptcy, the NRA was concerned about the general ledgers' inclusion of donor names. We suggested that any confidentiality concerns be addressed through redactions in the native excel, but did not hear back regarding that suggestion. We again demand production of the NRA's general ledgers but suggest that providing only outgoing payments (that is, payments from the NRA out to vendors etc.) would be away to quickly address the NRA's concern.

In regard to the NRA's objection to the demands relating to ATI and to the Crime Strike production, we reiterate our request for correspondence from your / the NRA's side to ATI or its counsel in the form of letters or emails. While we don't waive any rights, with regard to your assertion that it would be too voluminous to produce the episodes of Crime Strike we had previously demanded, we would propose limiting such production to materials Mr. LaPierre alleges were filmed in 2018, as well as any materials filmed in connection with any stay on any of Mr. McKenzie's yachts (for example, the Monaco filming Mr. LaPierre referenced in his testimony). In addition, can you respond to our request for a summary of the materials provided by ATI, including any information about whether produced material actually aired? (E.g., airing dates for commercial spots filmed at the California rental).

Can you please respond by seven this evening as to the NRA's willingness to produce the above and

we can discuss a timetable for production or place these matters before the Special Master?

Thank you,

Monica



Monica Connell

Senior Litigation Counsel

New York State Office of the Attorney General

28 Liberty Street, 19th Floor | New York, NY 10005

Tel: (212) 416-8965 | Monica.Connell@ag.ny.gov

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EXHIBIT “F”

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

DISCOVERY ORDER

In the Special Master Report on the July 7, 2022, Hearing (“July Report”), I denied the NRA’s demand to take the deposition of a “corporate representative” of the Office of the Attorney General of New York (“OAG”). The OAG is counsel for plaintiff, the People of the State of New York, by Latitia James, Attorney General of the State of New York (“People”). I also granted the People’s request for a protective order. I specifically denied the demand as to Topics 4-5 as foreclosed by Justice Cohen’s Decision and Order dismissing the NRA’s counterclaims (“Cohen Order”) where he dismissed the NRA’s allegation that the OAG’s actions in this case amounts to unconstitutional retaliation against the NRA. In reaching that decision Justice Cohen held that the NRA failed to allege the essential causal elements of the claim of unconstitutional retaliation. He also held that, although not yet proved, there were “objectively founded” nonretaliatory grounds alleged in the People’s complaint, including reports of “fraud, waste and looting within the NRA” (Cohen Order at 5).

I also denied the NRA's demand as to Topics 1-3 seeking disclosure of "all steps taken by [the OAG] (1) to identify, preserve, collect and produce Documents [and [2] . . . comply" with various discovery demands of the NRA and also to probe into the OAG's "Responses and Objections" to various NRA discovery requests.

Apart from the fact that the NRA has not met the heightened standards for obtaining discovery of counsel for an adversary and is seeking information that is protected by privileges held by the OAG in connection with its investigation, the OAG has already certified that it has produced all discoverable information gathered during its investigation and identified what was withheld and why. In light of these circumstances, I concluded that the NRA was not entitled to take the deposition of a representative of the OAG. Nevertheless, I gave defendants one last opportunity to show that there are matters as to which the NRA is entitled to inquire at a deposition.

In correspondence dated July 12, 2022, the NRA and defendant John Frazer argue they should be allowed to ask questions regarding "steps taken by the NYAG to collect documents and respond to discovery in the case". Ignoring the predicate for taking the deposition of opposing counsel, the NRA states it "aims to ask 'questions about document production' such as the provance of 'documents in the production that lack metadata'" (Letter of NRA dated July 12, 2022 at p. 3) ("NRA July 12, 2022 Letter").

The OAG has certified that it has produced all discoverable information gathered from the NRA and third parties during the investigation except for identified information withheld on grounds of privilege¹ (*see* OAG letter dated July 5, 2022 at p. 3) (OAG July 5, 2022 Letter). The

¹ The NRA explains it recently discovered that communications between NRA director Phillip Journey and the OAG was not disclosed and was not listed as privileged. The NRA implies that the OAG may not have produced all discoverable information in its investigation file. However, as the NRA states, the communication occurred "during the pendency of this case" and therefore after the investigation file was complied. In any event, the OAG has a continuing obligation to

production should have included metadata if the OAG collected any. The NRA may inquire into the issue by interrogatory rather than by deposing opposing counsel.

The NRA also seeks to inquire into “the NYAG’s public statements concerning the NRA” in connection with its affirmative defense of unconstitutional animus (NRA July 12, 2022 Letter at p. 3). Inquiry as to this matter is foreclosed by Justice Cohen’s Order where he held, “the narrative that the Attorney General’s investigation into these undeniably serious matters [of wrongdoing at the highest levels] was nothing more than a politically motivated – and unconstitutional – witch hunt is simply not supported by the record (*id* at p. 2) (*see also id* at p. 5) “There are no factual allegations suggesting that the stated concerns driving the investigation – reports of fraud, waste and looting within the NRA – were imaginary or not believed by the Attorney Generals”; and *id* at 11 “[T]he NRA’s own internal investigation uncovered evidence of impropriety”).

Finally, the NRA seeks to inquire about the factual predicates for general and conclusory allegations in the People’s complaint. As I have noted previously, inquires into a parties allegations are best explored through contention interrogatories. And if the plaintiff fails to provide full and complete responses it risks preclusion of withheld evidence at trial.

In a separate letter also dated July 12, 2022, the NRA, requests that the OAG’s request for production of an “‘anonymous letter’ vintaged 2007” and “an even-older document, the Frankel Report (the 2003 Report)” be denied on ground the requests are unreasonable, untimely and unsanctioned by the CPLR.

produce non-privileged information. Accordingly, the OAG shall produce the communications referred to if it has not already done so and the NRA may propound an interrogatory and document production request on the issue.

CPLR 3101(a) provides that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action . . .” The New York Court of Appeals has held that “the phrase must be interpreted liberally to require disclosure, upon request of any facts bearing on the controversy. . . The test is usefulness and reason” *Allen v Crowell – Collier Pub. Co.*, 21 NY 2d 403, 406 (1968). There is no dispute that the requested documents are material and necessary or may lead to discovery of matter that is material and necessary. The “vintaged” documents are readily available. In fact, counsel for the NRA conceded at oral argument that they have possession of the documents. Whether these documents will be in admissible in evidence at a trial because they concern matters alleged to be too remote in time, is not grounds for denial of a request for production. The documents shall be produced.

Dated: New York, New York
July 15, 2022

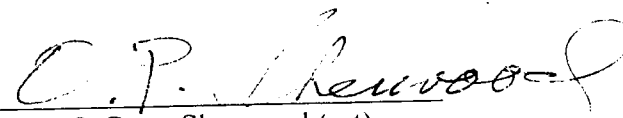

Hon. O. Peter Sherwood (ret)

EXHIBIT “G”

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I. PRELIMINARY STATEMENT

The National Rifle Association of America (the “NRA”) seeks review of a discovery order by the Special Master granting the Office of the Attorney General’s (the “NYAG” or the “OAG”)) request for an “anonymous letter” vintaged 2007 (the “2007 Letter”) and an even older document vintaged 2003 (the “2003 Report,” and, collectively with the 2007 Letter, the “Documents”). For the reasons set forth below, the Special Master should have denied the NYAG’s demands for decade-old documents as untimely and unsanctioned by the CPLR. In ruling otherwise, the Special Master committed multiple errors. Accordingly, the NRA respectfully submits that there are several independent bases for reversing the Special Master’s Discovery Order and issuing an order under CPLR 3103 to protect the NRA from the NYAG’s untimely and otherwise unreasonable demands.¹

II. BACKGROUND

The NYAG filed this action on August 6, 2020 (NYSCEF 1) and served her First Set of Requests for the Production of Documents in June 2021 (Exhibit A).²

After two previous extensions sought by the NYAG,³ discovery was set to close on June 1, 2022,⁴ but, at the NYAG’s request, the Special Master and the Court extended fact

¹ The objections set forth here are threshold matters. In the event the Court were to order the NRA to produce the dated records to the NYAG, the NRA reserves the right to object to the NYAG’s request for the production of the Documents on other grounds, including privileges. Of course, if the Court were to deem the Documents discoverable, the NRA would provide a privilege log for any documents withheld on privilege grounds.

² References to exhibits are to exhibits attached to the affirmation of Svetlana M. Eisenberg, dated July 22, 2022.

³ NYSCEF 463 (extending previously set date for the close of discovery and other deadlines), 607 (same), 645 (same), 740 (same).

⁴ See NYSCEF 607.

discovery past June 1, 2022, to accommodate scheduling issues with regard to depositions the NYAG wished to take. Exhibit B. Importantly, in agreeing to extend the close of fact discovery, the Special Master specifically noted at the oral argument that the NYAG could propound new discrete requests for documents only if the subsequent depositions were the first time she learned of the existence of such documents. Exhibit C at 19:15-20:7.

Previously, in December of 2021, in response to the NYAG's extensive requests, the NRA produced to the NYAG a set of notes prepared by a member of the Audit Committee of the NRA's Board. Exhibit D. Those notes expressly refer to an anonymous letter to the Board (circa 2007) and a report from an attorney (Jacob Frenkel). *Id.* The Documents did not fall within the temporal limits of the documents requested by the NYAG. Exhibit A. In any event, the NYAG did not request the Documents before June 1, 2022.

Instead, the NYAG waited until June 21, 2022 to make the request. Exhibit E.

After the NRA explained to the NYAG that the Documents are not covered by the NYAG's previous RFPs and that the new request was untimely—in fact emailed weeks after the date that with few exceptions served as the date for the close of fact discovery—the NYAG moved before the Special Master for an order compelling the NRA to produce the belatedly requested documents. Exhibit F. The NRA opposed the motion. Exhibit G. The Special Master, however, granted the NYAG's motion and ordered the NRA to produce the Documents. Exhibit H. In doing so, the Special Master entirely disregarded the NRA's arguments and erred in holding that the NYAG met her burden of demonstrating that the Documents are material and necessary to the prosecution or defense of this action.

III. ARGUMENT

A. Under CPLR 3104(d), the standard of review is *de novo*.

In this motion, the NRA seeks relief from the Court pursuant to CPLR 3104(d). That rule

states in part:

Review of order of referee. Any party . . . may apply for review of an order made under this section by a referee.⁵ The application shall be by motion made in the court in which the action is pending within five days after the order is made. . . . It shall set forth succinctly the order complained of, the reason it is objectionable and the relief demanded.

The Special Master's Discovery Order is "objectionable" within the meaning of CPLR 3104(d) and should be vacated. In reviewing the Discovery Order, the Court must consider the issues *de novo*. The Court of Appeals stated in a 2008 opinion that when a court, as here, appoints a special referee for discovery, the appointment does not take away from—or limit—the Court's power to review the issues *de novo*, and, in fact, the Court can disagree with the referee even if the latter's findings of fact find support in the record. *Those Certain Underwriters at Lloyds v. Occidental Gems*, 11 N.Y.3d 843, 845 (2008) ("[w]hen the . . . [C]ourt appoint[ed] a special referee it [did not waive] its discretion and [did not limit] its review"); *see also* Kyle Bisceglie, LexisNexis Practice Guide: New York E-discovery and Evidence § 9.01 (2016) ("A trial court that refers a discovery matter to a referee does not, by making the reference, thereby limit its review of the referee's order."); CPLR 3104(d).

Here, there is no support for the Special Master's rulings. Therefore, they should be reversed.

⁵ NYSCEF 579, Order Appointing Special Master at ¶ 8 ("Rulings by the Special Master shall be reviewed in accordance with the review accorded to referee's decisions as set forth in CPLR § 3104(d).").

B. The Special Master's ruling should be reversed because, in compelling the Documents' production, he erred in disregarding the NRA's objection that the NYAG's requests for the Documents are untimely.

1. The demand in the NYAG's email message dated June 21, 2022 is new.

In the email message to the NRA's counsel on June 21, 2022 regarding the Documents (Exhibit E), the NYAG contended that the Documents should have been produced in response to the NYAG's RFPs served in June 2021. Not so. With one exception, each of the RFPs the NYAG cited was expressly limited to records "created, recorded, compiled, transmitted or received" after January 1, 2015 (Exhibit A at pg. 1), whereas the Documents the NYAG now demands were prepared in 2007 and 2003. Only one of the requests the NYAG cited sought records pre-dating January 1, 2015, but the NRA objected to the request on July 15, 2021, as unduly broad and overly burdensome and notified the NYAG in writing that it will deem the request to demand only post-January 1, 2015 records. Exhibit I at pgs. 46-47. Therefore, the NYAG's request in her email message dated June 21, 2022 was new.

2. The NYAG has no excuse for the untimely request.

Although the NYAG contends that she could not have known about the Documents until David Coy's deposition on June 15, 2022 (Exhibit C at 126:20-127:2), that contention is inaccurate. In fact, one of the exhibits the NYAG used at Professor Coy's deposition—which the NRA produced to the NYAG in December 2021 (Exhibits D, J)—clearly and expressly refers to each of the two Documents. Therefore, the NYAG could have made this additional request months ago. *See id.* At a video conference before the Special Master, the NYAG contended in effect that she did not notice the reference to the Documents in the information produced to her in December 2021 until the time of Prof. Coy's deposition on June 15, 2022, and suggested that the belated nature of the new request is justified in light of the number of documents that the NRA

produced to the NYAG. Exhibit C at 126:20-127:2 (asserting that the document was “embedded in documents we received at the end of December”). That argument, of course, misses the point. The NYAG chose to serve on the NRA extensive, burdensome, and overly broad requests which resulted in the production of hundreds of thousands of records, all of this at great expense to the NRA. Having chosen to conduct discovery in that manner, the NYAG cannot now obtain extra time to request even more documents because it did not timely review the material it requested.

The NYAG's assertions that the document was somehow unclear are similarly a red herring. As Exhibit D demonstrates, the document the NYAG had as early as December 2021 expressly refers to each of the two Documents. Exhibit D at pg. 1 (first (unnumbered) paragraph [referring to the anonymous letter Board members received prior to the 2007 Annual Meeting] and paragraph referring to “Paragraph 6” [referring to “findings of Jacob Frenkel’s report on . . . expenditures”])).

3. The Special Master’s ruling should be reversed because, in compelling the production of the Documents, the Special Master did not address the NRA’s objection to the untimely nature of the NYAG’s new request.

In opposing the NYAG's request for an order compelling production of the Documents, the NRA argued, among other things, that, for the reasons stated above, the NYAG's request was inappropriate because it was untimely. Exhibit G at page 1. In fact, in issuing the Discovery Order, the Special Master specifically listed untimeliness as one of the NRA's objections. Exhibit H at pg. 4.

Yet, in ruling on the NYAG's motion and in his discussion of the issue during a prior video conference, the Special Master failed to address the NRA's timeliness objection. As a result, at a

minimum, the Court should remand the matter to the Special Master for a specific ruling on that objection.

C. The Special Master's ruling should also be reversed because he erred in holding that "[t]here is no dispute that the requested documents are material and necessary."

In a separate and independent argument in opposition to the NYAG's motion, the NRA argued before the Special Master that "the 2007 Letter and the 2003 Report lay well . . . outside the scope of any conceivable, relevant discovery timeframe." Exhibit G at pg. 1.

The NYAG's submission to the Special Master argued in a conclusory manner that the 2007 letter is "highly relevant" because it allegedly "indicates that in 2007, a whistleblower raised some of the identical claims of corruption, waste and lack of adequate internal controls to the entire NRA Board that the Plaintiff is alleging has more recently occurred and in some instances is still occurring within the NRA." Exhibit F at pg. 3.

This single assertion is unavailing. Whether matter is "necessary and material" to the prosecution or defense of an action under CPLR 3101(a) turns on the elements of the asserted claims and defenses. As the party seeking discovery, the NYAG must demonstrate that the Documents she seeks are necessary and material to proving or disproving an element of a claim or a defense. The NYAG made no attempt to explain how the Documents meet that standard. Exhibit F.⁶ Should the Court permit the NYAG to make a belated proffer, the NRA

⁶ To the extent the NYAG spoke about the issue at the video conference before the Special Master, her explanation there was similarly conclusory and vague. See exhibit C at pgs. 127:16-22 (asserting in a conclusory manner that the information is "very relevant"); *id.* at pgs. 127:23-128:23 (referring to unspecified "motion papers" by the NRA—which she did not cite or even mention in her written submission (Exhibit F)—that the NYAG apparently believes may be contradicted by the Documents).

seeks leave to file a reply memorandum of law in further support of this motion so that it may properly respond to the NYAG's previously unasserted arguments.

In fact, the NYAG made no attempt to establish the Documents' relevance to any element of any claim or any defense in this action. That is not surprising. Her claims are based on allegations of misconduct from 2015 through present.⁷ The framing of her own complaint renders the evidence the NYAG seeks—documents prepared in 2003 and 2007—completely *irrelevant* to such claims and defenses.

IV. CONCLUSION

For the foregoing reasons, the NRA respectfully requests that the Court (i) issue an order holding that the Documents are not discoverable and that the Special Master erred in holding otherwise; and (ii) grant any other relief the Court deems just and proper.

Dated: July 22, 2022

Respectfully submitted,

By: /s/ Svetlana M. Eisenberg
William A. Brewer III
wab@brewerattorneys.com
Sarah B. Rogers
sbr@brewerattorneys.com
Svetlana M. Eisenberg
sme@brewerattorneys.com
Blaine E. Adams
bea@brewerattorneys.com

BREWER, ATTORNEYS & COUNSELORS
750 Lexington Avenue, 14th Floor
New York, New York 10022

⁷ See Second Amended and Verified Complaint, NYSCEF 646 *passim*.

Telephone: (212) 489-1400

Facsimile: (212) 751-2849

**COUNSEL FOR THE NATIONAL RIFLE
ASSOCIATION OF AMERICA**

Certification of Compliance with Word Count

I, Svetlana M. Eisenberg, an attorney duly admitted to practice law before the courts of the State of New York, certify that the foregoing memorandum of law complies with the word count limit set forth in the Order for Appointment of a Special Master for Discovery dated February 7, 2022, because the memorandum of law contains fewer than 3,000 words. In preparing this certification, I relied on the word count of the word-processing system used to prepare this memorandum of law.

By: Svetlana M. Eisenberg
Svetlana M. Eisenberg

EXHIBIT “H”

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

Mot. Seq. No. 33

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, INC., WAYNE LAPIERRE,
WILSON PHILLIPS, JOHN FRAZER, and
JOSHUA POWELL,

Defendants.

Index No. 451625/2020
Hon. Joel M. Cohen

**THE ATTORNEY GENERAL'S MEMORANDUM OF LAW IN OPPOSITION TO THE
NRA'S MOTION PURSUANT TO CPLR 3104(d) FOR REVIEW OF THE SPECIAL
MASTER'S DISCOVERY ORDER GRANTING THE ATTORNEY GENERAL'S
REQUEST FOR PRODUCTION OF THE REQUESTED DOCUMENTS**

LETITIA JAMES
Attorney General of the
State of New York
28 Liberty St.
New York, NY 10005

Monica A. Connell
Assistant Attorneys General

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Plaintiff, the People of the State of New York, by Letitia James, Attorney General of the State of New York, through the Office of the Attorney General (“OAG”), submits this memorandum of law in opposition to the NRA’s motion pursuant to CPLR 3104(d) for review of the Special Master’s order granting the OAG’s request for production of an anonymous 2007 whistleblower letter and information relating to the letter and the Audit Committee’s response thereto (collectively, the “Requested Documents”). For the reasons set forth below, the NRA’s motion should be denied.

PRELIMINARY STATEMENT

The NRA’s appeal of the Special Master’s order granting the OAG’s request for production of the Requested Documents is without merit. The NRA’s contention that the Special Master “entirely disregarded the NRA’s arguments and erred in holding that the NYAG met her burden of demonstrating that the [Requested Documents] are material and necessary to the prosecution or defense of this action” (NYSCEF 809 at 2) is not supported by the record. To the contrary, the Special Master’s decision (NYSCEF 806) is well-founded and the NRA has failed to muster any legitimate argument as to why the decision should be overturned and why the disclosure of relevant and material information limited.

FACTUAL AND PROCEDURAL BACKGROUND

On June 15, 2022, Plaintiff deposed David Coy, a longstanding member of the NRA’s leadership under Defendant Wayne LaPierre. Mr. Coy has been an NRA Board member almost continuously since 1998 and has been a member of the NRA Audit Committee since approximately 2001. Mr. Coy is currently Second Vice President of the NRA and Vice Chair of the Audit Committee. During the entirety of Mr. Coy’s tenure as an NRA Board member, Defendant Wayne LaPierre has been the NRA Executive Vice President, the Association’s highest officer, and until December 2018, Defendant Wilson Phillips was the NRA’s Chief Financial Officer and Treasurer.

Mr. Coy is one of a number of longstanding Audit Committee and Board members who have served in key roles under the NRA's current leadership over the past decades. The NRA Audit Committee is charged with, among other things, considering whistleblower complaints.

During his deposition, Mr. Coy provided sworn testimony in which he acknowledged authoring a memorandum which referenced an "anonymous letter that BOD members received prior to the April 2007 NRA Annual Meeting." NYSCEF 802 ("Coy's memorandum"). This letter (the "Whistleblower Letter") apparently raised a series of complaints about violations of the NRA's internal financial and governance controls and as such, it constituted a whistleblower complaint. *See, e.g.*, NYSCEF 802 at 2 (acknowledging, "The Audit Committee is charged with reviewing and making appropriate inquiry regarding the anonymous letter that BOD members received prior to the April 2007 NRA Annual Meeting.")

The NRA did not produce the Whistleblower Letter to the OAG in response to its Requests for Production. However, it did produce a memorandum, entitled "Audit Committee – Questions for Staff" (the "Memorandum") which was undated and which referred to the Whistleblower Letter. The Memorandum, with some metadata indicating a creation or modification date of 2017, had been produced by the NRA in December 2021 along with approximately 120,000 other documents.

Given that the circumstances surrounding the creation of the Memorandum were unclear, Plaintiff asked Mr. Coy about the same and Mr. Coy testified that he prepared the memorandum for discussion with the Audit Committee regarding the concerns raised in the Whistleblower Letter. NYSCEF 802. Mr. Coy also testified that he may have in his possession the Whistleblower Letter and related documents, including "the Frenkel report," which was referred to in the Memorandum, and which he used as part of his consideration of the Whistleblower Letter. He

stated that to testify truthfully about the Whistleblower Letter and the Audit Committee's response thereto, he would need to see if he still had the Whistleblower Letter and review other relevant information he may have. *See* Affirmation of Monica Connell ("Connell Aff."), Exhibit 1 (July 6, 2022 OAG Letter application attaching excerpts of testimony of David Coy as Ex. D thereto, pp. 211-235).

Following Mr. Coy's deposition, the OAG promptly requested production of the Whistleblower Letter and related documents. *See* NYSCEF 803, pp. 4-5 (June 21, 2022 email). Upon the NRA's refusal to produce such information after meeting and conferring, Plaintiff moved to compel by letter dated July 6, 2022. Connell Aff., Ex A. As Plaintiff's submission (Connell Aff., Ex. 1) demonstrates, the Requested Documents are clearly relevant and material. Mr. Coy's memorandum establishes that, in 2007, the Whistleblower Letter raised some of the *identical* claims of corruption, waste and lack of adequate internal controls that the Plaintiff is alleging in this action. *Id.*

The Special Master heard argument on July 7, 2022. NYSCEF 801. At that argument, the NRA confirmed that Mr. Coy considered the Frenkel report in reviewing the Whistleblower Letter and that the NRA has the Frenkel report at hand but has not produced the same. *See* NYSCEF 794 (July 7, 2022 Transcript) pp. 134-35 ("[THE SPECIAL MASTER:] I take it, Ms. Eisenberg, that you have a copy of the Frankle [sic] report. Do I have that right or not? MS. EISENBERG: I do, and it's from 2003, your Honor. It's completely irrelevant.").¹ Further, the NRA has not stated that it does not have the Whistleblower Letter. Mr. Coy also testified that he may have it now. In any

¹ It has been more than a month that the Plaintiff has been seeking the Requested Documents. The NRA notes in a footnote in its current motion that it "reserves the right" to assert privilege regarding some or all of such documents. NYSCEF 809, p. 1 fn. 1. However, it chose not to set forth a basis for any potential privilege either before the Special Master or here, as a reason to overturn the Special Master's report. Accordingly, such hypothetical argument 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.

event, Plaintiff asked only for a narrow, focused search. It has requested that the NRA merely ask Mr. Coy and certain Audit Committee members for the anonymous letter, the board minutes or reports relating to the letter, and communications relating thereto that they can easily access. *See* NYSCEF 794 (July 7, 2022 Transcript) pp. 130-32.

At the NRA's request, the Special Master permitted the NRA to make a subsequent written submission. In its July 12, 2022 letter, the NRA sought the denial of the OAG's demands for the Requested Documents. NYSCEF 805. However, it failed to establish that the Requested Documents were unavailable or irrelevant.

On July 15, 2022, the Special Master denied the NRA's request and ordered production of the Requested Documents, finding that the documents were both readily available and undisputedly met the disclosure criteria set forth in the CPLR 3101(a). NYSCEF 806. The NRA has appealed that determination to this Court. For the reasons set forth below, it is respectfully submitted that the NRA's application should be denied.

ARGUMENT

I. The Requested Documents are Material and Necessary

CPLR 3101 sets forth the scope of disclosure during discovery. CPLR 3101(a) provides, "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." In ordering the production of the Requested Documents, the Special Master, relying on the standard set forth in CPLR 3101(a), noted, "[t]here is no dispute that the requested documents are material and necessary or may lead to discovery of matter that is material and necessary." NYSCEF 806 pp. 3-4. The Special Master's assessment of the materiality of the Requested Documents to this action is accurate.

First, the Requested Documents are material and necessary because they bear on the truth of many of the Plaintiff's allegations and the NRA's defense that it operated in compliance with New York State law and that the "top-to-bottom review of its operations and governance" was essentially unnecessary. NYSCEF 629 (NRA Amended Answer) p. 183. Mr. Coy's testimony, coupled with the memorandum he prepared following receipt of the Whistleblower Letter, establish that in 2007 and perhaps much earlier, a whistleblower raised a series of concerns about corruption, waste, and lack of adequate internal controls that closely mirror the allegations made by the OAG in this action.

The Requested Documents will provide detail on the nature of the whistleblower complaints, the NRA's consideration of the same and its response thereto. The Requested Documents demonstrate that the NRA was long on notice of many of the specific violations of which the NRA is accused in this action, but failed to address or remedy them. For example,

- According to Mr. Coy's memorandum, the Whistleblower Letter raised concerns about travel and entertainment spending generally and particularly about amounts billed by an entity known as "II & IS." Here, Plaintiff asserts claims based upon Defendants' abuse of travel reimbursement expenses generally and, in particular, regarding Defendant Wayne LaPierre's use of private charter travel booked, with the aid of Defendant Wilson Phillips, through LaPierre's private travel consultant. Among the allegations are that the Defendants asked the consultant to invoice her billing through two different entities, including one named "II & IS". This was part of a scheme to hide millions of dollars of LaPierre's private travel expenditures. *See* NYSCEF 646 (Second Am. and Verified Complaint) ¶¶ 183-97.
- Mr. Coy's memorandum reflects that the whistleblower complained in 2007 that the NRA's whistleblower policies were inadequate. NYSCEF 802, ¶ 1. It is not clear from the Memorandum if the whistleblower raised specific concerns about instances of whistleblowing and retaliation. Here, the Plaintiff has alleged that the NRA lacked a legally sufficient whistleblower policy, that key NRA directors and officers were unaware of the terms of any whistleblower policy, and that the NRA has engaged in unlawful whistleblower retaliation. *See* NYSCEF 646 ¶¶ 117-118 and 461-493; *see also* 8, 11, 45, 68, 700.
- Mr. Coy's memorandum indicates that the whistleblower raised issues about whether the NRA's contractual relationship with vendors like Ackerman McQueen and PM Consulting (a predecessor to Membership Marketing Partners or "MMP")

were properly approved, whether expenditures are properly documented, whether the NRA's internal procurement policy was being followed and whether the transactions are actually "arms length." NYSCEF 802, ¶ 10. In this action, Plaintiff has pled, and evidence establishes, that the NRA's relationships with favored vendors like Ackerman McQueen and MMP were not properly approved, documented or overseen and were not arms-length transactions. *See* NYSCEF 646 ¶¶ 313-342; 594-602.

These are just some examples. The fact that the NRA leadership has long had notice of these issues and failed to cure them undercuts the NRA's defenses that it was unaware of misconduct and that the allegations outlined in the Complaint herein are untrue, isolated or the product of misconduct by a few executives without the knowledge of NRA leadership.

Likewise, the Requested Documents are material and necessary because they plainly rebut the NRA's defense that its compliance program was initiated and overseen by the "tone from the top," namely Defendant LaPierre. *See, e.g.,* LaPierre Transcript, June 27, 2022, p. 130 ("it's in the tone of my attitude towards this whole thing. We are going to get it correct and I don't care who it offends. I don't care if it was some of the most-trusted vendors. I don't care if they were -- if I lost every friend that I ever made, we are going to get it right. And this was the tone that I was setting for the whole Association."). Concerns about LaPierre's travel expenditures, conflicts of interest, and negotiations with favored vendors were clearly of long duration and continued after the Whistleblower Letter.

Because the Requested Documents are plainly relevant to the prosecution of this action, the Special Master's order should be upheld and the Documents should be produced.

II. The Requested Documents are Readily Available

In his July 15, 2022 order granting the OAG's demand for production of the Requested Documents, the Special Master correctly cited to the fact that the documents "are readily available." A document is "readily available" unless the producing party demonstrates an undue burden in its production. *Silverman v. Shaoul*, 30 Misc. 3d 491, 495 (Sup. Ct. N.Y. Co. 2010).

Here, the NRA is unable to make that showing; it has not, because it cannot, show that it would be unduly burdensome for it to produce a limited number of documents to which it has access. Accordingly, complying with the Special Master's order to produce the Requested Documents would be neither burdensome nor costly for the NRA. Not only can the documents be easily produced by the NRA, but the NRA has also not cited to any basis for it to withhold the documents based on privilege. As such, the NRA cannot resist their production on those grounds.

III. The OAG Could Not Have Known About the Existence of the Requested Documents Earlier and the OAG's Present Demand for Such Documents was Appropriate

In opposing production of the Requested Documents, the NRA argues that the OAG "could have made this additional request months ago." NYSCEF 809 at 4. This argument is without merit and is clearly unsupported by the record.²

CPLR 3101(a) provides that "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." New York has a strong public policy of open discovery of relevant materials. *Forman v. Henkin*, 30 N.Y.3d 656, 661 (2018). The Court of Appeals has emphasized that "[t]he words, 'material and necessary', are ... to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason." *Id.*, quoting (*Allen v. Crowell-Collier Publ. Co.*, 21 N.Y.2d 403, 406 (1968)).

² Plaintiff need not have specifically demanded the Requested Documents earlier as the existence and import of them only became clear upon Mr. Coy's testimony. In any event, it did. They fall within multiple of Plaintiff's requests for production, specifically 2, 4, 15, 16, 17, 26, 38 (especially subsection (h)) and 62. Although most of those demands are limited in time, request 38 encompasses documents, including any Communications from 1997 to the present, relating to concerns about the NRA's business dealings with entities owned in whole or in part by the McKenzie family, including but not limited to MMP.

It was entirely appropriate for the OAG to make its demand for the Requested Documents at the time and in the manner that it did. Mr. Coy's memorandum was produced in December 2021 along with over 120,000 other documents. *See* NYSCEF 557, pp. 2 and 11. It was produced with conflicting metadata that Mr. Coy and the NRA claim is erroneous. Mr. Coy's June 15, 2022 testimony about the import, existence and availability of the Requested Documents justified the Plaintiff in demanding for the same at that time.

Further, in his deposition, Mr. Coy testified that he would need to review the Whistleblower Letter and other information that he may have in order to be able to provide truthful testimony on the subject. Plaintiff promptly made a targeted request for the specific documents about which he testified. Far from being remiss, Plaintiff did not seek to enforce broad blanket demands but instead made a timely and focused demand for clearly material and relevant information.

The Special Master's determination that the Requested Documents were material and relevant and should be produced is well supported by the law and record here and is in line with New York's policy on open discovery.

CONCLUSION

For the foregoing reasons, the Special Master's decision calling on the NRA to produce the Requested Documents was well-founded and proper. The Requested Documents are both highly relevant and readily available and the NRA has failed to put forward any justification to overturn the decision. Accordingly, Plaintiff asks that the NRA's application be denied and the Special Master's determination be upheld, along with such other and further relief as the Court deems just, proper, and appropriate.

Dated: August 3, 2022
New York, New York

LETITIA JAMES
*Attorney General
of the State of New York*

/s/ Monica Connell

Monica A. Connell
Assistant Attorney General
NYS Office of the Attorney General
28 Liberty Street
New York, New York 10005
(212) 416-8965
Monica.Connell@ag.ny.gov

MEGHAN FAUX, *Chief Deputy Attorney General for Social Justice*
JAMES SHEEHAN, *Chief of Enforcement Section, Charities Bureau*
EMILY STERN, *Co-Chief of Enforcement Section, Charities Bureau*

Of Counsel

Attorney Certification Pursuant to Commercial Division Rule 17

I, Monica Connell, an attorney duly admitted to practice law before the courts of the State of New York, certify that Plaintiff's Memorandum of Law in Opposition to the NRA's Motion Pursuant to [CPLR 3104\(d\)](#) for Review of the Special Master's Discovery Order Granting the Attorney General's Request for Production of the Requested Documents complies with the word count limit set forth in Rule 17 of the Commercial Division of the Supreme Court ([22 NYCRR 202.70\(g\)](#)) because the memorandum of law contains 2686 words, excluding the parts exempted by Rule 17. In preparing this certification, I have relied on the word count of the word-processing system used to prepare this memorandum of law and affirmation.

Dated: August 3, 2022
New York, New York

/s/ *Monica Connell*

Monica Connell

EXHIBIT “I”



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
CHARITIES BUREAU

212.416.8965
Monica.Connell@ag.ny.gov

October 23, 2022

VIA NYSCEF AND EMAIL

Samuel A. Blaustein, Esq.
Principal Court Attorney:
Supreme Court, NY County
60 Centre Street, Room 570
New York, NY 10007
Telephone: 646-386-4927

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

October 23, 2022

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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.

October 23, 2022

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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

EXHIBIT “J”

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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,

-against-

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

Defendants.

Index No. 451625/2020

July 7, 2022

9:36 a.m.

VIRTUAL HEARING

B E F O R E:

HON. O. PETER SHERWOOD

1 Proceedings

2 the anonymous letter, or board minutes
3 or reports relating to the letter, and
4 the issues Mr. Coy raised or
5 communications thereto that they can
6 easily access.

7 Mr. Coy testified that there was
8 a report from Jake and Frankle
9 regarding the issues raised in the
10 letter and how the audit committee
11 wanted to respond to the letter. A
12 separate issue, which I hoped to have
13 briefed in front of you today, is the
14 instructions not to answer to Mr. Coy
15 and others that kind of limited our
16 ability to find out what, if anything,
17 the audit committee did in response to
18 this whistleblower complaint.

19 We think that really just going
20 back to Mr. Coy and the audit
21 committee members saying hey, do you
22 have this letter, did you get this
23 letter, did you have any
24 communications about it, did the audit
25 committee minutes reflect this, did

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1 Proceedings

2 is not. Under the special master's
3 stipulation, the NRA has procedural
4 rights, we have an opportunity under
5 the stip to put in our written
6 submission, and I would very much like
7 to do that, unless you can dispose of
8 it in my favor.

9 THE COURT: Well, I'm --

10 MS. CONNELL: Can I just say, I
11 don't believe, and I would have to go
12 back, but Mr. Coy testified that the
13 Frankle report was a response to this.
14 That was his answer. Now, if the
15 Frankle report ends up being from
16 2002 --

17 THE COURT: Ms. Connell -- I take
18 it, Ms. Eisenberg, that you have a
19 copy of the Frankle report.

20 Do I have that right or not?

21 MS. EISENBERG: I do, and it's
22 from 2003, your Honor. It's
23 completely irrelevant.

24 THE COURT: Which is why I said
25 with some confidence that you happened

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1 Proceedings

2 to have it because you knew the date.

3 So I'm going to give you the
4 opportunity to respond to the Attorney
5 General's request for this
6 whistleblower information, and I can
7 deal with it then. You're telling me
8 that it is premature, and you have a
9 point. I would simply urge that you
10 meet and confer. We've spent a whole
11 lot of time pursuing your procedural
12 rights. Maybe you can resolve it.
13 And if you can, that would be great.
14 If not, you can certainly exercise
15 your procedural rights, and we will
16 address that.

17 Okay?

18 I think we're about done.

19 MS. CONNELL: Your Honor, there's
20 two more issues in that July letter.

21 THE COURT: I'm sorry.

22 MS. CONNELL: One is --

23 THE COURT: The length of the
24 deposition?

25 MS. CONNELL: That and the Crime