

1 of 17

letter and the Frenkel Report). The Supreme Court confirmed the Special Master's rulings and found, with regard to matters (ii) and (iii) above, that the Special Master's rulings were neither clearly erroneous nor contrary to law.

The NRA respectfully requests that the Appellate Division (i) vacate and reverse the Decision and Order [NYSCEF 858-860]; (ii) compel the NYAG to provide Rule 11-a disclosure to the NRA; (iii) compel the depositions of the NYAG's Commercial Division Rule 11-f corporate representative and J. Sheehan; (iii) hold that the NRA is entitled to a protective order with regard to the NYAG's request for the 2007 anonymous letter and the Frenkel report; and (iv) order such other relief as the Appellate Division deems just and proper.

A true and correct copy of the Decision and Order [NYSCEF 858, 859, 860], dated October 17, 2022, together with the Notice of Entry [NYSCEF 861, 862, 863], dated October 18, 2022 is annexed hereto as Exhibit A. Information Statement is annexed hereto as Exhibit B

Dated: November 17, 2022

Respectfully submitted,

By: /s/ Svetlana M. Eisenberg

William A. Brewer III

wab@brewerattorneys.com

Svetlana M. Eisenberg

sme@brewerattorneys.com

BREWER, ATTORNEYS & COUNSELORS

750 Lexington Avenue, 14th Floor

New York, New York 10022

Telephone: (212) 489-1400

Facsimile: (212) 751-2849

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

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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, JOSHUA POWELL,

Defendants.

INDEX NO. 451625/2020

MOTION DATE 06/24/2022,
07/18/2022,
07/22/2022

MOTION SEQ. NO. 031 032 033

**DECISION + ORDER ON
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 031) 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 745, 746, 747, 748, 749, 750

were read on this motion to

REVIEW ORDER OF SPECIAL MASTER

The following e-filed documents, listed by NYSCEF document number (Motion 032) 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 810, 811, 812, 813, 814

were read on this motion to

REVIEW ORDER OF SPECIAL MASTER

The following e-filed documents, listed by NYSCEF document number (Motion 033) 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 816, 817, 818

were read on this motion to

REVIEW ORDER OF SPECIAL MASTER

Defendant the National Rifle Association (“NRA”) moves pursuant to CPLR 3104(d) to review certain determinations of Special Master O. Peter Sherwood (Ret.) (“Special Master”). Plaintiff the People of the State of New York by the Attorney General (“Plaintiff” or “NYAG”) oppose. The motions are DENIED.

BACKGROUND

The NRA challenges three rulings of the Special Master. *First*, the NRA moves to compel Plaintiff to provide information under newly revised Rule 11(a) of the Rules of the

Commercial Division. *Second*, the NRA moves to compel the depositions of an NYAG representative and the Chief of the Charities Bureau, James Sheehan, Esq. (“Sheehan”). *Third*, the NRA moves to annul the Special Referee’s Order compelling the production of certain documents on the grounds that the NYAG’s request was untimely.

DISCUSSION

A. Legal Standard

The Special Master’s rulings will be upheld unless that are “clearly erroneous or contrary to law” (*Gateway Intern., 360, LLC v Richmond Capital Group, LLC*, 2021 WL 4947028 [N.Y. Sup Ct, New York County 2021] *quoting CIT Project Fin. v Credit Suisse First Boston LLC*, 7 Misc 3d 1002(A) [Sup Ct New York County 2005]). “The Referee’s decision will be upheld if it is both supported by evidence in the record and a proper application of the law” (*Id. citing Those Certain Underwriters at Lloyd’s, London v Occidental Gems, Inc.*, 11 NY3d 843 [2008] [other citations omitted]).

B. The Motions Are Denied

The Court has reviewed the record before the Special Referee and concludes that the challenged decisions should be confirmed.

Request For Statement Pursuant to Commercial Division Rule 11(a)

Rule 11 of the Rules of the Commercial Division (22 NYCRR 202.70) was amended by Administrative Order AO/117/22 dated May 16, 2022 (effective May 31, 2022) to provide, in relevant part, as follows:

- (a) The court may direct plaintiff to produce a document stating clearly and concisely the issues in the case prior to the preliminary conference. If there are counterclaims, the court may direct the party asserting such counterclaims to produce a document stating clearly and concisely the issues asserted in the counterclaims. The court may also direct plaintiff and counterclaim plaintiff to

each produce a document stating each of the elements in the causes of action at issue and the facts needed to establish their case.

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

This Part's Rules adopt the above procedure insofar as it "requires certain information to be exchanged *in advance of the Preliminary Conference*"

(<https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/Practices-Part-3.pdf>

[emphasis added]). The Court agrees with the Special Master that a Rule 11(a) statement is neither necessary nor useful at this more advanced stage of the case, and that it would not be a prudent use of the parties' time and resources.

Request for Depositions of a Rule 11-f NYAG Representative and Mr. Sheehan

The Special Master accepted numerous submissions and held extensive argument on July 7, 2022, concerning the NRA's request to depose a representative of the NYAG and Mr. Sheehan (Eisenberg Aff. Ex. U [NYSCEF 794]). The Special Master's Discovery Order dated July 15, 2022 (Eisenberg Aff. Ex. Q [NYSCEF 790]) found 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" and determined that the NRA "ignore[ed] the predicate for taking the deposition of opposing counsel" in its submissions. The Special Master also determined that certain matters were foreclosed by prior orders and that the NRA could discover other information through contention interrogatories.

A request to depose opposing counsel is “rare” and “disfavored,” and a movant must establish “the information they seek in deposing defendants’ counsel is material and necessary, that they have a good faith basis for seeking it and that the information is not available from another source” (*Liberty Petroleum Realty, LLC v Gulf Oil, L.P.*, 164 AD3d 401, 408 [1st Dept 2018])[citations omitted]; *see also Verdi v Dinowitz*, 204 AD3d 627, 628 [1st Dept 2022] [“The court properly granted defendant’s motion to quash the subpoenas served on three of his counsel. The information sought was irrelevant or available from other sources, including numerous nonparty witnesses who had been deposed and had provided documents”]). Contrary to the NRA’s argument, the fact that *Liberty Petroleum* did not involve Commercial Division Rule 11-f or a governmental agency does not warrant a departure from its guidance and holding. None of the representations made or cases cited by the NRA in its submissions to the Special Master (NYSCEF 777, 778, 784, 786, 787, 788, 791, 792) establish that the deposition of an attorney from the NYAG’s office is warranted.

The NRA’s argument that Mr. Sheehan is a viable deponent because he verified the NYAG’s pleadings is similarly unavailing. CPLR 3020(d)(2) permits for a verification on behalf of a governmental entity “by any person acquainted with the facts” which is “a standard which is not synonymous with ‘personal knowledge’” (*Blake v State*, 134 Misc 2d 892, 893 [Ct Cl 1987] [citations omitted]). The fact that Mr. Sheehan verified the NYAG’s pleadings standing alone is insufficient to warrant a deposition (*Thomas v Good Samaritan Hosp.*, 237 AD2d 429, 429 [2d Dept 1997]). The Court finds that the Special Master’s ruling is neither clearly erroneous nor contrary to law.

Production of Documents is Warranted

The NRA argues that the Special Master's July 15, 2022 Discovery Order (Eisenberg Aff. Ex. H (NYSCEF 806)) compelling production of an anonymous 2007 "whistleblower" letter and the 2003 Frankel Report is improper because the NYAG's requests were untimely, and the documents have not been proven to be material and necessary (Moving Brief at 2 [NYSCEF 809]). The NYAG argues that it learned of the documents during the June 15, 2022, deposition of David Coy (Connell Aff. Ex. A [NYSCEF 817][Coy Transcript]) and timely requested the documents (Opposition Brief at 1-4 [NYSCEF 818]).

The Special Master determined that the "whistleblower" letter and Frankel Report are material and necessary. The Court finds that the Special Master's ruling is neither clearly erroneous nor contrary to law.

* * * *

Accordingly, it is **ORDERED** that the motions to review the Special Master's determinations are **DENIED**.

This constitutes the decision and order of the Court.


<p><u>10/17/2022</u> DATE</p>	<div style="text-align: right;">  <small>20221017155301144COHEN31438F65DE6554DE0B1FC80CD7239CAD6</small> <hr/> JOEL M. COHEN, J.S.C. </div>																									
<p>CHECK ONE:</p>	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <table border="0"> <tr><td><input type="checkbox"/></td><td>CASE DISPOSED</td></tr> <tr><td><input type="checkbox"/></td><td>GRANTED</td></tr> <tr><td><input type="checkbox"/></td><td>SETTLE ORDER</td></tr> <tr><td><input type="checkbox"/></td><td>INCLUDES TRANSFER/REASSIGN</td></tr> </table> </td> <td style="width: 10%; text-align: center; vertical-align: middle;"> <input checked="" type="checkbox"/> </td> <td style="width: 10%; text-align: center; vertical-align: middle;"> DENIED </td> <td style="width: 50%; vertical-align: top;"> <table border="0"> <tr><td><input checked="" type="checkbox"/></td><td>NON-FINAL DISPOSITION</td></tr> <tr><td><input type="checkbox"/></td><td>GRANTED IN PART</td></tr> <tr><td><input type="checkbox"/></td><td>SUBMIT ORDER</td></tr> <tr><td><input type="checkbox"/></td><td>FIDUCIARY APPOINTMENT</td></tr> </table> </td> <td style="width: 20%; vertical-align: top;"> <table border="0"> <tr><td><input type="checkbox"/></td><td>OTHER</td></tr> <tr><td><input type="checkbox"/></td><td>REFERENCE</td></tr> </table> </td> </tr> </table>	<table border="0"> <tr><td><input type="checkbox"/></td><td>CASE DISPOSED</td></tr> <tr><td><input type="checkbox"/></td><td>GRANTED</td></tr> <tr><td><input type="checkbox"/></td><td>SETTLE ORDER</td></tr> <tr><td><input type="checkbox"/></td><td>INCLUDES TRANSFER/REASSIGN</td></tr> </table>	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input checked="" type="checkbox"/>	DENIED	<table border="0"> <tr><td><input checked="" type="checkbox"/></td><td>NON-FINAL DISPOSITION</td></tr> <tr><td><input type="checkbox"/></td><td>GRANTED IN PART</td></tr> <tr><td><input type="checkbox"/></td><td>SUBMIT ORDER</td></tr> <tr><td><input type="checkbox"/></td><td>FIDUCIARY APPOINTMENT</td></tr> </table>	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<table border="0"> <tr><td><input type="checkbox"/></td><td>OTHER</td></tr> <tr><td><input type="checkbox"/></td><td>REFERENCE</td></tr> </table>	<input type="checkbox"/>	OTHER	<input type="checkbox"/>	REFERENCE
<table border="0"> <tr><td><input type="checkbox"/></td><td>CASE DISPOSED</td></tr> <tr><td><input type="checkbox"/></td><td>GRANTED</td></tr> <tr><td><input type="checkbox"/></td><td>SETTLE ORDER</td></tr> <tr><td><input type="checkbox"/></td><td>INCLUDES TRANSFER/REASSIGN</td></tr> </table>	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input checked="" type="checkbox"/>	DENIED	<table border="0"> <tr><td><input checked="" type="checkbox"/></td><td>NON-FINAL DISPOSITION</td></tr> <tr><td><input type="checkbox"/></td><td>GRANTED IN PART</td></tr> <tr><td><input type="checkbox"/></td><td>SUBMIT ORDER</td></tr> <tr><td><input type="checkbox"/></td><td>FIDUCIARY APPOINTMENT</td></tr> </table>	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<table border="0"> <tr><td><input type="checkbox"/></td><td>OTHER</td></tr> <tr><td><input type="checkbox"/></td><td>REFERENCE</td></tr> </table>	<input type="checkbox"/>	OTHER	<input type="checkbox"/>	REFERENCE		
<input type="checkbox"/>	CASE DISPOSED																									
<input type="checkbox"/>	GRANTED																									
<input type="checkbox"/>	SETTLE ORDER																									
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN																									
<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION																									
<input type="checkbox"/>	GRANTED IN PART																									
<input type="checkbox"/>	SUBMIT ORDER																									
<input type="checkbox"/>	FIDUCIARY APPOINTMENT																									
<input type="checkbox"/>	OTHER																									
<input type="checkbox"/>	REFERENCE																									
<p>APPLICATION:</p>																										
<p>CHECK IF APPROPRIATE:</p>																										

EXHIBIT B

Supreme Court of the State of New York

Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance	
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK, <div style="text-align: center;">- against -</div> THE NATIONAL RIFLE ASSOCIATION OF AMERICA, INC., WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER, and JOSHUA POWELL		Date Notice of Appeal Filed	
Case Type		Filing Type	
<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration	<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278	<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review
Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.			
<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial	<input type="checkbox"/> Contracts
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input checked="" type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input type="checkbox"/> Torts

Informational Statement - Civil

Appeal			
Paper Appealed From (Check one only):		If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.	
<input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgement <input type="checkbox"/> Amended Order <input checked="" type="checkbox"/> Decision <input type="checkbox"/> Decree	<input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment	<input type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment	<input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify):
Court: Supreme Court		County: New York	
Dated: 10/17/2022		Entered: 10/18/2022	
Judge (name in full): Joel M. Cohen, J.S.C.		Index No.: 451625/2020	
Stage: <input type="checkbox"/> Interlocutory <input checked="" type="checkbox"/> Final <input type="checkbox"/> Post-Final		Trial: <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury	
Prior Unperfected Appeal and Related Case Information			
Are any appeals arising in the same action or proceeding currently pending in the court? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, please set forth the Appellate Division Case Number assigned to each such appeal. 2022-05185; 2022-03159; 2022-01488; 2022-05187 Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:			
Original Proceeding			
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus			Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:			
Proceeding Transferred Pursuant to CPLR 7804(g)			
Court: Choose Court		County: Choose County	
Judge (name in full):		Order of Transfer Date:	
CPLR 5704 Review of Ex Parte Order:			
Court: Choose Court		County: Choose County	
Judge (name in full):		Dated:	
Description of Appeal, Proceeding or Application and Statement of Issues			
Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.			
PLEASE SEE ATTACHMENT A			

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

PLEASE SEE ATTACHMENT B

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	People of the State of New York, by Letitia James, Attorney General of the State of New York	Plaintiff	Respondent
2	The National Rifle Association of America	Defendant	Appellant
3	Wayne LaPierre	Defendant	None
4	Wilson Phillips	Defendant	None
5	John Frazer	Defendant	None
6	Joshua Powell	Defendant	None
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Monica Connell, New York State Office of the Attorney General

Address: 28 Liberty Street

City: New York City

State: NY

Zip: 10005

Telephone No: 212-416-8965

E-mail Address: monica.connell@ag.ny.gov

Attorney Type: ☐ Retained ☐ Assigned ☒ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name: William A. Brewer III and Svetlana M. Eisenberg, Brewer, Attorneys and Counselors

Address: 750 Lexington Avenue, 14th Floor

City: New York City

State: NY

Zip: 10002

Telephone No: 212-489-1400

E-mail Address: wab@brewerattorneys.com; sme@brewerattorneys.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name: P. Kent Correll, Correll Law Group

Address: 250 Park Avenue, 7th Floor

City: New York City

State: NY

Zip: 10177

Telephone No: 212-475-3070

E-mail Address: kent@correlllawgroup.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name: Seth Farber, Winston & Strawn, LLP

Address: 200 Park Avenue

City: New York City

State: NY

Zip: 10166

Telephone No: 212-294-4611

E-mail Address: sfarber@winston.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name: William B. Fleming, Gage, Spencer & Fleming, LLP

Address: 410 Park Avenue, Suite 810

City: New York City

State: NY

Zip: 10022

Telephone No: 212-768-4900

E-mail Address: fleming@gagespencer.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name: Thomas P. McLish/Akin Gump

Address: 2001 K Street, N.W.

City: Washington

State: D.C.

Zip: 20006

Telephone No: 202-887-4324

E-mail Address: tmclish@akingump.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

**Attachment A to Information Statement
Filed by the National Rifle Association of America
Pursuant to 22 N.Y.C.R.R. 1250.3(a)**

Page 2– “Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.”

The NRA appeals from the portions of the decision and order on motion (entered on October 18, 2022) by Hon. Joel M. Cohen [NYSCEF 858-860] denying the NRA's CPLR 3104(d) motions (Motion Sequence Nos. 31-33) for review of three rulings issued by the Special Master for Discovery. The Special Master had (i) denied the NRA's motion to compel the NYAG to provide disclosure pursuant to Commercial Division rule 11(a); (ii) denied the NRA's motion to compel the depositions of (a) the NYAG's Commercial Division Rule 11-f corporate representative; and (b) James Sheehan; and (iii) denied the NRA's motion for a protective order against the NYAG's request for the production of certain documents (the 2007 anonymous letter and the Frenkel Report). The Supreme Court confirmed the Special Master's rulings and found, with regard to matters (ii) and (iii) above, that the Special Master's rulings were neither clearly erroneous nor contrary to law.

The NRA respectfully requests that the Appellate Division (i) vacate and reverse the portions of the Decision and Order [NYSCEF 858-860] from which the NRA appeals; (ii) compel the NYAG to provide Rule 11-a disclosure to the NRA; (iii) compel the depositions of the NYAG's Commercial Division rule 11-f corporate representative and J. Sheehan; (iii) hold that the NRA is entitled to a protective order with regard to the NYAG's request for the 2007 anonymous letter and the Frenkel report; and (iv) order such other relief as the Appellate Division deems just and proper.

**Attachment B to Information Statement
Filed by the National Rifle Association of America
pursuant to 22 N.Y.C.R.R. 1250.3(a)**

Page 3— “Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.”

A. The issues proposed to be raised on the appeal are:

1. Whether the court below erred in denying the NRA's motion pursuant to CPLR 3104(d) for review of the Special Master's rulings that:
 - (i) denied the NRA's motion to compel the NYAG to provide disclosure pursuant to Commercial Division rule 11(a);
 - (ii) denied the NRA's motion to compel the deposition of the NYAG's Commercial Division Rule 11-f corporate representative;
 - (iii) denied the NRA's motion to compel the deposition of James Sheehan; and
 - (iv) denied the NRA's motion for a protective order with regard to the 2007 anonymous letter and the Frenkel Report, even though (1) the documents are not necessary or material to the action; and (2) the NYAG's request for the documents was untimely.¹

B. The grounds for reversal or modification to be advanced are:

1. The lower court erred by:
 - a. disregarding apposite authorities and otherwise failing to apply the controlling procedural legal standard under CPLR 3104(d) in reviewing the Special Master's rulings;
 - b. disregarding controlling authorities, relying on inapposite authorities, and otherwise failing to apply the controlling substantive law governing the

¹ In a separate ruling, which is the subject of a separate CPLR 3104(d) motion, the Special Master ordered the NRA to produce the privileged Frenkel report, even though, in briefing the underlying motion before the Special Master and the Court, (i) the NRA expressly reserved its right to withhold the report on privilege grounds after asserting privileges with regard to the report at a deposition; and (ii) the NYAG did not contest the privilege assertion; rather, stated that issues related to privilege assertions at that and other depositions would be briefed separately.

The NRA does not believe that, in issuing the Decision and Order subject to this appeal, the lower court reached or addressed any privilege issues, because they were not briefed by either side. To the extent the NYAG were to argue otherwise, the NRA contests such an assertion and argues that it would have been reversible error for the lower court to hold that the Frenkel report is not privileged.

court's interpretation of CPLR 3103 and Commercial Division Rules 11(a) and 11-f;

- c. failing to take into account that the NYAG's Commercial Division Rule 11(a) disclosure the NRA seeks would be prudent because, among other things, it would save the NRA's time and resources;
- d. disregarding the NRA's argument that the NYAG's request for the anonymous letter and the Frenkel report was untimely because the NYAG had been on notice of the existence of both documents for nearly six month; and

- 2. The lower court committed reversible error in failing to:
 - a. compel the NYAG's Commercial Division Rule 11(a) disclosure;
 - b. compel the NYAG's Commercial Division Rule 11-f deposition and the deposition of J. Sheehan;
 - c. issue a protective order with regard to the NYAG's belated request for the production of irrelevant records; and
 - d. grant the NRA's request to vacate and reverse the Special Master's rulings.

C. The specific relief sought on appeal is:

- 1. The NRA requests that the Appellate Division:
 - a. vacate and reverse the portions of the Decision and Order [NYSCEF 858-860] from which the NRA appeals;
 - b. compel the NYAG to provide Rule 11-a disclosure to the NRA;
 - c. compel the depositions of the NYAG's Commercial Division rule 11-f corporate representative and J. Sheehan;
 - d. hold that the NRA is entitled to a protective order with regard to the NYAG's request for the 2007 anonymous letter and the Frenkel report; and
 - e. order such other relief as the Appellate Division deems just and proper.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Appeal and related documents was electronically served via the Court's electronic case filing system upon all counsel of record on November 17, 2022.