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December 20, 2022

Via NYSCEF

Hon. Joel M. Cohen
Supreme Court of the State of New York
New York County, Commercial Division
60 Centre Street
New York, NY 10007

Re: *People v. Nat'l Rifle Ass'n of Am., Wayne LaPierre, Wilson Phillips,
John Frazer and Joshua Powell*, Index No. 451625/2020 (Sup. Ct., N.Y. County),
Part 3 (Cohen, J.)

Dear Justice Cohen,

I write on behalf of Defendant Wayne LaPierre in response to Ms. Connell's email regarding the note of issue and certificate of readiness.

As I informed all counsel yesterday, in writing, it is Mr. LaPierre's position that the proper way to proceed would be to extend the note of issue date to allow time for all disclosure issues to be resolved and to set new dates for motions directed to experts and motions for summary judgment, in that order, to follow within a reasonable amount of time after the filing of the note of issue.

In addition, I specifically requested that, if all parties are not prepared to agree on extension of the deadline (or if the Court is not prepared to order it), that any carve-out should include the additional outstanding items:

(1) service and filing of answers to plaintiff's amended pleading by January 3, 2023, as required by CPLR 3025(d), in light of Your Honor's Order Amending Caption (NYSCEF 921), amending the caption and deeming all references to the "National Rifle Association of America, Inc." to mean the "National Rifle Association of America." (Mr. LaPierre intends to amend his answer to change responses to allegations that contained references to the "National Rifle Association of America, Inc." to account for the changes ordered by the Court. For example, in paragraph 18 of the complaint, plaintiff, having defined "NRA" as the "National Rifle Association of America, Inc." alleges: "The NRA's principal place of business is at 11250 Waples Mill Road, Fairfax, Virginia 22030. The NRA is recognized as tax-exempt under Section 501(c)(4) of the Internal Revenue Code." In his answer to the complaint, Mr. LaPierre denied the allegation because the purported corporate entity to which the allegation referred did not legally exist. With the Court-ordered change in the definition of the term "NRA," Mr. LaPierre must now admit that allegation. Mr. LaPierre would be prejudiced if he were not allowed to amend his answer in light of the changed meaning of the term "NRA."); and

(2) issues Mr. LaPierre has with plaintiff's responses and objections to his contention interrogatories; and

(3) issues relating to payment of production expenses for nonparty Susan LaPierre pursuant to CPLR 3111, 3122 and Commercial Division Rule 11-c(e).

In addition, there is the outstanding matter of a request by plaintiff to Mr. LaPierre for disclosure of certain tax information, which should also be included in any carve-out.

Having said that, I believe that the carve-outs plaintiff is proposing, taken together with the additional carve-outs that have been proposed by other parties are unworkable, and that, as a result, the better solution would be to simply extend the date for the note of issue to give the parties the opportunity to complete disclosure and resolve all outstanding disclosure issues, rather than filing a note of issue certifying that (1) all pleadings have been served, (2) discovery proceedings now known to be necessary have now been completed, and (3) there are no outstanding requests for discovery – none of which is true, which renders the note of issue illusory and meaningless, or almost meaningless, and leaves resolution of these outstanding disclosure issues open ended, which I don't think is a good thing for anybody.

At the very least, in order for the certificate of readiness to be correct in representing that all pleadings have been served, the Court should extend the deadline for filing the Note of Issue to January 4, 2023, by which time all pleadings will have been served. That brief extension will not cause a prejudice to anyone and may give plaintiff and the NRA an opportunity to resolve some of the outstanding issues regarding discovery, so that the carve-out will be as narrow as possible.

Thank you for your attention to this matter.

Respectfully submitted,

/s/ P. Kent Correll

P. Kent Correll
Counsel for Defendant Wayne LaPierre

cc: All Counsel of Record (via NYSCEF)