

B R E W E R
ATTORNEYS & COUNSELORS

December 20, 2022

VIA NYSCEF

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

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 et al.*,
Index No. 451625/2020

Dear Justice Cohen:

Pursuant to the Court's instructions on December 13, 2022, the NRA describes in Appendix A discovery that the NYAG has yet to produce. The NRA requests that—if the Court accepts the NYAG's Note of Issue as emailed by the NYAG to chambers earlier today—the Court issue an order permitting the NRA to continue to pursue the discovery matters referenced in Appendix A.

Other than the important discovery being pursued by the NRA, the case is trial ready. Taking into account the OAG's investigation, the OAG has spent over three years in discovery, which included over 12 transcribed interviews, over 25 depositions (indeed multiple depositions of many witnesses), and unfettered document discovery pursuant to which the NYAG collected millions of pages of material. In addition, the NYAG took depositions of the NRA's expert witnesses. Therefore, the only discovery that remains is that listed in Appendix A, which is owed by the OAG to the NRA.

Respectfully submitted,

/s/ Svetlana M. Eisenberg
William A. Brewer III
Svetlana M. Eisenberg
Noah B. Peters

cc: Parties' Counsel of Record (via NYSCEF)

Enclosure

Appendix A

The NRA requests that—despite the NYAG’s submission of the Proposed Note of Issue—the Court issue an order permitting the NRA to continue to pursue discovery and relief from the Special Master for Discovery or the Court, as applicable, in connection with matters referenced below.

A. The NYAG's Responses to the NRA's Contention Interrogatories are deficient.

On December 8, 2022, the NRA informed the NYAG that the NYAG's responses to the NRA's contention interrogatories, dated November 22, 2022, are deficient. For example, the NYAG's Thirteenth Cause of Action is that the NRA allegedly engaged in unauthorized related party transactions in violation of certain provisions of the N-PCL and the EPTL. On October 19, 2022, the NRA served a contention interrogatory seeking, inter alia, a list of related party transactions that the NYAG contends were unauthorized and which support the relief she seeks against the NRA. In her response, the NYAG asserts boilerplate objections and (i) refers the NRA to her complaint, (ii) her proposed expert witnesses’ reports; and (iii) a *non-exhaustive* list of such transactions.

As the NRA explained during a meet and confer call, which occurred on December 12, 2022, and in subsequent correspondence, the NYAG's response is deficient. On December 17, 2022, the NYAG informed the NRA that she “will supplement [her] responses to Interrogatory Nos. 1 and 8 to provide a list of the wrongful related party transactions that Plaintiff intends to rely on at trial.” The NYAG did not specify the date by which it is willing to do so.

The NYAG's responses to the NRA's contention interrogatories are deficient for additional reasons (summarized in the NRA's correspondence to the NYAG dated December 14, 2022 (attached as Exhibit A)). In correspondence on December 17, 2022, the NYAG stated her willingness to provide supplemental responses to some of the NRA's contention interrogatories but not to others. The NRA requests that the NRA be permitted to pursue responses to its contention interrogatories to which it is entitled and, to the extent efforts to resolve disputes amicably fail, relief from the Special Master and/or the Court.

B. The NYAG's Communications with Witnesses and Their Counsel

For over two years, the OAG withheld from production documents reflecting NYAG's communications with witnesses and their counsel generated during the NYAG's investigation of the NRA. On November 29, 2022, Judge Sherwood ordered the production of such documents. On December 12, 2022, the NYAG produced over 5,900 pages of such communications. The NRA is reviewing the records and requests permission to seek additional discovery from the NYAG or

others, as appropriate, after it completes review of this belated production of information.

C. The NYAG's Communications with Law Enforcement Agencies

On October 20, 2022, the NRA moved for an order to compel the NYAG to produce her communications with other law enforcement agencies. The NYAG withheld such records on the grounds of alleged public interest, investigative and other privileges.

On November 29, 2022, the Special Master for Discovery ordered that documents reflecting these communications be produced. The NYAG then asked Judge Sherwood to reconsider his ruling and submitted documents for in camera review. On December 12, 2022, the NRA opposed the motion for reconsideration on procedural and substantive grounds, objected to the NYAG's belated request for review of such records in camera, and also moved to compel production of certain information.

As a result, the NRA's motion to compel production of documents reflecting the NYAG's communications with other law enforcement agencies about the NRA, the NYAG's motion for reconsideration of the Special Master's ruling dated November 29, 2022, and the NRA's requests for additional relief dated December 12, 2022, are *sub judice*.

Should the Special Master deny the NYAG's motion for reconsideration, the NRA will review the NYAG's production of records (there are over 1,100 such records, according to the NYAG's privilege log) and may propound additional discovery requests to the NYAG to the extent the production reveals previously unknown information that requires follow up.

In the unlikely event the Special Master grants the NYAG's motion for reconsideration or holds that the NYAG's communications with other law enforcement agencies are not discoverable, under the so-ordered stipulation concerning the Appointment of the Special Master for Discovery (NYSCEF 579), the NRA will have 5 business days within which to seek the Court's review of the Special Master's ruling pursuant to CPLR 3104(d). NYSCEF 579 Paragraph 7.

D. Deficiencies in the NYAG's Privilege Log

1. Identity of the Law Enforcement Agency with Which the NYAG Communicated about the NRA

The NYAG informed the NRA and the Special Master on December 8, 2022, that its privilege log listed "approximately 3" communications about the NRA with an unidentified law enforcement agency. The NYAG, however, refuses to identify the law enforcement agency, claiming—without basis—that the identity of the agency was intended to remain by the NYAG and that agency confidential and that such an expectation is sufficient to shield the records from discovery. The NRA is seeking an

order from the Special Master compelling the NYAG to identify the identity of the agency and other specific details about their communications.

If, as the NRA expects, the order is granted, the NRA will review information that is produced by the NYAG and serve further discovery requests as appropriate.

2. Timeframes or Records Withheld by the NYAG

The NYAG served an amended privilege log on the NRA on May 25, 2022. Like her original categorical privilege log, it listed 5 categories of records withheld by the NYAG pursuant to certain claimed privileges, but failed to identify the timeframe during which the communications in each category occurred. Instead, the NYAG listed the timeframe of all records in each category as September 1, 2018 through August 6, 2020.

On October 20, 2022, the NRA sought an order from the Special Master compelling the NYAG to specify the true timeframes of the communications within each category. (At the oral argument on the motion on November 14, 2022, the NYAG did not deny that the timeframes she listed merely represent the search parameters her office used to capture records that she listed on the log.)

In his order dated November 29, 2022, the Special Master denied such relief. The NRA's deadline to file a motion for review of the Special Master's ruling pursuant to CPLR 3104(d) is December 20, 2022.

3. The NYAG's Communications with Everytown

On October 20, 2022, the NRA sought an order to compel the NYAG to conduct a more thorough search for her communications about the NRA with Everytown for Gun Safety and to produce or log such records. (The NYAG concedes that it met with Everytown about the NRA in February 2019, and the NYAG's categorical privilege log certification indicates that the NYAG attempted to capture records of her communications with Everytown on her privilege log. But the privilege log does not reveal any such communications, suggesting that the manner in which the NYAG searched for them was deficient.)

In his order dated November 29, 2022, the Special Master denied the NRA's motion, holding that the defenses to which such information relates are not "viable." The NRA's deadline to file a motion for review of the Special Master's ruling pursuant to CPLR 3104(d) is December 20, 2022. Should the NRA prevail on its motion for review, once the NYAG reveals the information the NRA seeks, the NRA seeks permission to seek additional information from the NYAG or others to the extent that the produced material reveals previously unknown information.

4. NYAG's Post-August 6, 2020 Communications

On October 20, 2022, the NRA sought an order from the Special Master to compel the NYAG to supplement her privilege log and/or production with regard to any communications with witnesses or law enforcement agencies about the NRA after August 6, 2020, the date on which the NYAG filed this action. The NYAG is obligated to supplement her production or privilege log, as applicable, pursuant to CPLR 3101(h). The Special Master denied the NRA's motion. The NRA's deadline to appeal the Special Master's ruling pursuant to CPLR 3104(d) is December 20, 2022. Should the NRA prevail on its motion for review, once the NYAG reveals the information the NRA seeks, the NRA seeks permission to request additional information from the NYAG or others to the extent that the produced material reveals previously unknown information.

5. Identity of Senders and Recipients of Communications on the NYAG's Privilege log

On October 20, 2022, the NRA sought an order from the Special Master compelling the NYAG to list senders and recipients of the withheld communications to obtain information needed to assess the claimed privileges. The Special Master's Decision dated November 29, 2022, did not grant the relief. The NRA's deadline to seek review pursuant to CPLR 3104(d) of the decision is December 20, 2022. Should the NRA prevail on its motion for review, once the NYAG reveals the information the NRA seeks, the NRA seeks permission to request additional information from the NYAG or others to the extent that the produced material reveals previously unknown information.

E. The NYAG's Reimbursement of the NRA with Regard to Fees and Expenses of Aronson

On June 21, 2021, the NYAG served on Aronson—the NRA's outside auditor and tax preparation advisor—a subpoena *duces tecum*. In complying with the subpoena, Aronson incurred fees and costs for which it was paid and reimbursed by the NRA. On October 20, 2022, the NRA sought an order from the Special Master compelling the NYAG to reimburse the NRA for such fees and costs pursuant to the Commercial Division rules and the CPLR. The Special Master denied the motion without prejudice and directed the parties to meet and confer in an effort to amicably resolve the dispute. On December 16, 2022, the NRA produced to the NYAG records the NYAG had requested to review in advance of the meet and confer call. If efforts to settle on a mutually acceptable amount fail, the NRA will need to seek relief from the Special Master.

EXHIBIT A TO APPENDIX A TO LETTER DATED
DECEMBER 20, 2022

Svetlana Eisenberg

From: Svetlana Eisenberg
Sent: Wednesday, December 14, 2022 7:31 AM
To: Sash, Sharon
Cc: Connell, Monica; Stern, Emily; Wang, William; Noah Peters; Michael Puerto; kent@correllawgroup.com; William Fleming
Subject: RE: NYAG's Responses to NRA's Interrogatories - Meet and Confer

Sharon, Stephen, and Will,

Thank you for the meet and confer concerning the NYAG's responses to interrogatories.

Overall, we reiterate that the NYAG's responses to the NRA's interrogatories are deficient and the NYAG's obligations under the CPLR mandate that the NYAG amend her responses as soon as possible.

Below are the questions discussed on the meet and confer. Please let us know when the NYAG will provide responses.

First, the NYAG asserts general objections which are then incorporated by reference in interrogatory-specific objections. To the extent the general objections are intended to point out what you perceive as a problem with the NRA's interrogatories, please let us know what it is so that we may address it. Otherwise, the NRA asks that you withdraw them.

Second, your last general objection is based on the number of interrogatories served by the NRA. Please advise if the NYAG is relying on that objection to hold back information from her responses to the NRA's interrogatories. I understood you to say on the call that the answer is no. Please confirm.

Third, wherever the NYAG's responses to the NRA's interrogatories refer to the complaint, such references are problematic for two reasons.

First, the pleading specifically and repeatedly states that it contains merely a non-exhaustive lists of occurrences or transactions that the NYAG asserts were improper. Referring to the complaint for that reason is not a meaningful response.

Second, the reference is problematic to the extent there are transactions or occurrences that are alleged in the complaint that the NYAG no longer plans to put at issue at trial. As you know, a purpose of contention interrogatories is to narrow issues for trial.

Fourth, wherever the NRA's interrogatories request the NYAG to specify transactions or occurrences which the NYAG intends to put at issue at trial (or asks for the identity of individuals whose conduct the NYAG intends to put at issue at trial) in connection with her various claims (related party transactions, conflicts of interest, etc.), your responses repeatedly state that such transactions, occurrences etc. "include" enumerated transactions, occurrences and so on.

At this stage of the case, the NYAG must advise the NRA of the transactions and occurrences on which she intends to proceed at trial. Providing a non-exhaustive list is improper.

Fifth, in response to the NYAG's Contention Interrogatory No. 6, the NYAG states:

"With respect to the Prayer for Relief section of the Second Amended complaint, to the extent that Plaintiff asserts claims in equity and seeks an equitable accounting, the amount of restitution and damages due and owing by Defendant NRA, will be determined at trial, no additional computation of damages or other information sought in the Interrogatory can be provided at this time."

The NRA has the following questions about this statement:

- Does plaintiff assert "claims in equity" against the NRA? What is it/are they?
- Does plaintiff seek "equitable accounting" as against the NRA? Under which of the causes of action? Pursuant to what law? In relation to what occurrences or transactions?
- Does plaintiff seek restitution from the NRA? Under what claim? Pursuant to what law? To whom according to plaintiff does the NRA allegedly owe restitution?
- Does plaintiff contend that the NRA is liable for damages? Under what claim? (You previously represented that the NYAG is not seeking damages from the NRA under the 13th cause of action (allegedly unauthorized related party transactions).) Pursuant to what law? With regard to which alleged transactions or occurrences?
- How does plaintiff delineate between restitution and damages as those terms are used in your response to this interrogatory?

Sixth and finally, the NYAG's assertion of privileges in response to the NRA's interrogatories is improper. As you are aware, the privileges protect communications, not underlying information. To the extent that the Attorney General refuses to provide complete answers to the contention interrogatories that selective disclosure effects an "at issue" waiver of privileges asserted. Therefore, the Association is

entitled to further discovery as to your privileged communications. Please specify what information you are withholding based on privileges, or withdraw such objections.

Regards,
Svetlana

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From: Svetlana Eisenberg <sme@brewerattorneys.com>
Sent: Sunday, December 11, 2022 1:00 PM
To: Sash, Sharon <Sharon.Sash@ag.ny.gov>
Cc: Connell, Monica <Monica.CConnell@ag.ny.gov>; Stern, Emily <Emily.Stern@ag.ny.gov>; Wang, William <William.Wang@ag.ny.gov>; Noah Peters <nbp@brewerattorneys.com>; Michael Puerto <mpuerto@brewerattorneys.com>
Subject: Re: NYAG's Responses to NRA's Interrogatories - Meet and Confer

Sharon, that time works for us. We will send a dial in number in the morning.
Thank you.
Svetlana

Svetlana M. Eisenberg | Partner
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Attorneys and Counselors asserts in respect of this communication all applicable confidentiality, privilege, and/or privacy rights to the fullest extent permitted by law. Thank you.

From: Sash, Sharon <Sharon.Sash@ag.ny.gov>
Sent: Friday, December 9, 2022 4:14 PM
To: Svetlana Eisenberg <sme@brewerattorneys.com>
Cc: Connell, Monica <Monica.Connell@ag.ny.gov>; Stern, Emily <Emily.Stern@ag.ny.gov>; Wang, William <William.Wang@ag.ny.gov>
Subject: FW: NYAG's Responses to NRA's Interrogatories - Meet and Confer

Svetlana,

Can we set a time to meet and confer regarding the interrogatories (including the NRA's responses to the OAG's interrogatories) on Monday afternoon? Does 2:00 pm work?

Thanks,

Sharon

Sharon Sash | Assistant Attorney General
New York State Office of the Attorney General
Charities Bureau | Enforcement
28 Liberty Street, 19th Floor | New York, New York 10005
Tel: (212) 416-6235 | Fax: (212) 416-8393 | Sharon.Sash@ag.ny.gov

From: Svetlana Eisenberg <sme@brewerattorneys.com>
Sent: Thursday, December 8, 2022 2:10 PM
To: Wang, William <William.Wang@ag.ny.gov>
Cc: William Fleming <WFleming@gagespencer.com>; Connell, Monica <Monica.Connell@ag.ny.gov>; Sargent, Nina <Nina.Sargent@ag.ny.gov>; Loegering, Becca <rloegering@winston.com>; Bannon, Patrick <PBannon@winston.com>; mwerbner@werbnerlaw.com; McLish, Thomas <tmclish@akingump.com>; hevans@akingump.com; samantha.block@akingump.com; MacDougall, Mark <mmacdougall@akingump.com>; kent@correlllawgroup.com; Stern, Emily <Emily.Stern@ag.ny.gov>; Farber, Seth <SFarber@winston.com>; Loegering, Becca <rloegering@winston.com>; kent@correlllawgroup.com; Noah Peters <nbp@brewerattorneys.com>
Subject: NYAG's Responses to NRA's Interrogatories - Meet and Confer

[EXTERNAL]

Monica and Will,
Please see attached letter from the NRA.
Regards,
Svetlana

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From: Wang, William <William.Wang@ag.ny.gov>
Sent: Tuesday, November 22, 2022 10:30 PM
To: Svetlana Eisenberg <sme@brewerattorneys.com>
Cc: William Fleming <WFleming@gagespencer.com>; Connell, Monica <Monica.Connell@ag.ny.gov>; Sargent, Nina <Nina.Sargent@ag.ny.gov>; Loegering, Becca <rloegering@winston.com>; Bannon, Patrick <PBannon@winston.com>; mwerbner@werbnerlaw.com <mwerbner@werbnerlaw.com>; McLish, Thomas <tmclish@akingump.com>; hevans@akingump.com <hevans@akingump.com>; samantha.block@akingump.com <samantha.block@akingump.com>; MacDougall, Mark <mmacdougall@akingump.com>; kent@correlllawgroup.com <kent@correlllawgroup.com>; Stern, Emily <Emily.Stern@ag.ny.gov>; Farber, Seth <SFarber@winston.com>; Loegering, Becca <rloegering@winston.com>; kent@correlllawgroup.com <kent@correlllawgroup.com>
Subject: NYAG's Responses & Objections to the NRA's Contention Interrogatories

Counsel,

Attached please find the NYAG's Responses & Objections to Defendant NRA's Contention Interrogatories.

Regards,

Will

William Wang | Assistant Attorney General
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