



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
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December 20, 2022

Honorable 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, Inc. et al.*,  
Index No. 451625/2020

Dear Justice Cohen:

Plaintiff People of the State of New York (“Plaintiff”), by the Office of the Attorney General of the State of New York (“OAG”) writes to memorialize a submission made by email to Your Honor this morning pertaining to the filing of the Note of Issue and Certificate of Readiness in this action.

On December 12, 2022, Plaintiff moved by order to show cause pursuant to Rule 202.21 for relief in regard to the Note of Issue and Certificate of Readiness. Plaintiff asked to be allowed to file the Note of Issue and Certificate of Readiness, but with a carve out for certain motion practice relating to issues which have been raised with the Special Master but not resolved, or for similar alternative relief. NYSCEF 922-32.

On that same day, Your Honor held a telephone conference with the parties at which the Court agreed that such relief would be appropriate, extended the December 13, 2022 Note of Issue date by one week and directed the parties to submit a proposed Note of Issue and proposed carve out language by December 20, 2022. Your Honor also extended the due date for summary judgment motions and agreed in principle with not having motions directed to experts (there are 11 experts in this case) due until after submission of the summary judgment motion. Pursuant to the Fifth Revised Scheduling Order (NYSCEF 829), summary judgment and expert motions are currently due on the same day.

On December 16, 2022 and again on December 19, 2022, Plaintiff circulated a proposed note of issue and addendum including a full listing of counsel and proposed carve out language. As of this morning’s submission, Plaintiff received a response from counsel for defendant

Wilson Phillips, who indicated that the new dates for summary judgment and perhaps for the expert motions should be included and asked whether Plaintiff proposed a separate order from Your Honor in addition to the proposed Addendum. Yesterday, counsel for Defendants John Frazer and Wayne LaPierre indicated that they both do not agree that the Note of Issue (which is currently due today) should be filed at this point on the basis of allegedly outstanding discovery issues and other grounds. We did not hear from counsel for Defendants NRA or Joshua Powell as of this morning.

Given that there appears to be a fundamental disagreement with how to proceed, Plaintiff submitted the Proposed Note of Issue, Addendum and a Proposed Order incorporating the proposed carve out language, with the date for summary judgment filing, as well as proposed expert motion date. Copies of the same are attached hereto. We submitted the papers to the Court in Microsoft Word as per Mr. Blaustein's request.

We asked and continue to ask that the Court endorse the proposed order and permit the filing of the Note of Issue and Certificate of Readiness as per the attached forms. In the alternative, we ask that the Court sign the order to show cause submitted on December 12, 2022 and/or hold a conference to resolve issues pertaining to the filing of the Note of Issue.

Since our submission this morning, Defendants NRA, LaPierre and Frazer have made submissions either opposing the filing of the Note of Issue until an unspecified date and/or asking for relief pertaining to a broad array of allegedly outstanding discovery issues. Plaintiff objects to a broad reopening of general discovery. We regret that the parties were unable to resolve this.

Respectfully,

*/s/ Monica Connell*

Monica Connell  
Senior Litigation Counsel  
Assistant Attorney General

cc: All Counsel of Record

NOTE OF ISSUE

For use of clerk

Calendar No. (if any) \_\_\_\_\_
Index No. \_\_\_\_\_
Supreme Court, New York County, New York
Name of assigned Judge Hon. Joel M. Cohen

PEOPLE OF THE STATE OF NEW YORK, BY
LETITIA JAMES, ATTORNEY GENERAL OF
THE STATE OF NEW YORK,

Plaintiff(s)

- against -

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

Defendant(s)

NOTICE FOR TRIAL

- Trial by jury demanded
of all issues
of issues specified below or attached hereto
Trial without jury
Filed by attorney for Plaintiff
Date summons served August 6, 2020
Date service completed August 25, 2020
Date issue joined 10/30/2020

NATURE OF ACTION OR SPECIAL PROCEEDING

- Tort: Motor vehicle negligence
Medical malpractice
Other tort
Contract
Contested matrimonial
Uncontested matrimonial
Tax certiorari
Condemnation
Other(not itemized above) specify Regulatory enforcement action.
This is a class action
Amount demanded:\$
Other relief:

Special preference claimed under
On the ground that

Insurance Carrier(s) if known

Attorney(s) for Plaintiff(s) See Attached Addendum
Office and P.O. Address

Phone No.

Attorney(s) for Defendant(s) See Attached Addendum
Office and P.O. Address

Phone No.

NOTE: The clerk will not accept this note of issue unless accompanied by a certificate of readiness.

CERTIFICATE OF READINESS FOR TRIAL

(Items 1-7 must be checked )

For use of clerk

Table with 4 columns: Item description, Completed, Waived, Not Required. Rows include: 1. All pleadings served, 2. Bill of particulars served, 3. Physical examinations completed, 4. Medical reports exchanged, 5. Appraisal reports exchanged, 6. Compliance with section 202.16 of the Rules of the Chief Administrator (22 NYCRR 202.16) in matrimonial actions, 7. Discovery proceedings now known to be necessary completed.

8. There are no outstanding requests for discovery. \*\*\*See attached sheet. Pursuant to Rule 202.21 and the Order of the Hon. Joel M. Cohen, this note of issue and certificate of readiness are filed with the continuing proceedings described therein.
9. There has been a reasonable opportunity to complete the foregoing proceedings
10. There has been compliance with any order issued pursuant to section 202.12 of the Rules of the Chief Administrator (22 NYCRR 202.12).\*\*\*See attached sheet. Pursuant to Rule 202.21 and the Order of the Hon. Joel M. Cohen, this note of issue and certificate of readiness are filed upon the condition of the continuing proceedings described therein.

11. If a medical malpractice action, there has been compliance with any order issued pursuant to section 202.56 of the Rules of the Chief Administrator (22 NYCRR 202.56)

12. The case is ready for trial
Dated: December 20, 2022
New York, New York

Handwritten signature of the Plaintiff's attorney.

Signature/Print Name:
Attorney for: Plaintiff

Office Address: NYS Attorney General
28 Liberty Street
New York, NY 10005

State of New York, County of ss.:
being duly sworn, deposes, and says that deponent is not a party to the action and is over 18 years of age, resides at New York. That on , 20, deponent served the within note of issue and certificate of readiness on , the attorney for , at , the address designated by the attorney for service, by depositing a true copy thereof, properly enclosed in a post-paid wrapper, in an official depository of the U.S. Postal Service within the State of New York.

Sworn to before me on
, 20

Print Name:

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,

v.

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

Defendants.

Index No. 451625/2020

**ADDENDUM TO NOTE OF  
ISSUE AND CERTIFICATE  
OF READINESS**

**Counsel for the Parties:**

**Plaintiff:**

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**Defendants:**

The National Rifle Association of America  
By BREWER, ATTORNEYS AND COUNSELORS  
750 Lexington Avenue, 14th Floor  
New York, New York 10005  
Tel. (212) 527-2587  
Att: Svetlana Eisenberg  
[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)

Noah Peters  
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Defendant Wayne LaPierre  
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Defendant Wilson Phillips  
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Att: Seth C. Farber  
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Becca Loegering  
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WERBNER LAW  
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Att: Mark Werbner  
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Defendant John Frazer  
GAGE, SPENCER & FLEMING LLP  
410 Park Avenue  
New York, New York 10022  
Tel. (212) 768-4900  
Att: William B. Fleming  
[WFleming@gagespencer.com](mailto:WFleming@gagespencer.com)

Defendant Joshua Powell  
By AKIN GUMP STRAUSS HAUER & FELD  
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Washington, DC 20006-1037  
Tel. (202) 887-4000  
Att: Mark MacDougall  
[mmacdougall@akingump.com](mailto:mmacdougall@akingump.com)  
Samantha Block  
[samantha.block@akingump.com](mailto:samantha.block@akingump.com)

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,

v.

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

Defendants.

Index No. 451625/2020

**PROPOSED ORDER  
REGARDING THE NOTE  
OF ISSUE AND  
CERTIFICATE OF  
READINESS**

WHEREAS on December 12, 2022, Plaintiff moved by order to show cause for relief in the form of an order (i) permitting Plaintiff to file the Note of Issue and Certificate of Readiness on December 13, 2022 or such other date as is set by the Court but, pursuant to Rule 202.21(d), under the condition that Plaintiff may pursue motion practice and obtain such relief as the Court deems appropriate as a result of Defendant National Rifle Association of America’s (“NRA”) discovery conduct and may file the certificate of readiness with this reservation noted; (ii) in the alternative, scheduling a conference and permitting Plaintiff to file the Note of Issue and Certificate of Readiness, but complete any necessary discovery granted by the Court thereafter under Rule 202.21(e) or extending Plaintiff’s time to file the note or issue pending a decision by the Court following such conference; or (iii) granting such other and further relief as the Court deems just, fair and appropriate; and

WHEREAS the Court held a telephone conference on December 12, 2022 at which it

became apparent that there is a remaining discovery issue which has been raised by the Plaintiff with the Special Master but not yet resolved and raised which was raised with the Court prior to the Note of Issue due date;

NOW, THEREFORE, IT IS SO ORDERED that pursuant to Rule 202.21(d) of the Uniform Civil Rules for the Supreme Courts and County Courts (“Rule 202.21”), the Note of Issue and Certificate of Readiness in this action may be filed under the condition, and with acknowledgement, that the following proceedings are ongoing:

- Plaintiff People of the State of New York by Letitia James, Attorney General of the State of New York, may move for relief in connection with the matters raised in Plaintiff’s October 20, 2022 application to the Special Master, including those pertaining specifically to undisclosed documents which were addressed in the Special Master’s November 29, 2022 decision (the “Decision”) holding that information Defendant National Rifle Association has withheld from discovery as privileged that relate to matters the NRA has placed at issue and the NRA’s “good faith” defense in this action are presumptively discoverable. *See* Ruling of Special Master, dated November 29, 2022, at 2-8 (discussing Plaintiff’s motion to compel). Plaintiff may seek to obtain either specific orders of preclusion, *in limine* or evidentiary rulings relating to the admissibility of evidence on such issues, or obtaining such documentary and testimonial discovery or such other relief as this Court deems just, proper and appropriate, if any. Plaintiff may make any such application on or before February 3, 2023.
- Plaintiff and the NRA may proceed with appeals relating to the Special Master’s November 29, 2022 decision, or any subsequent ruling modifying or reconsidering the Decision, with such papers being due on December 20, 2022 and opposition papers due on January 10, 2023, and may proceed with any proceedings relating to or arising from rulings on such appeals.
- Motions for summary judgment shall be filed on or before February 10, 2023. Any party who believes that they may not be able to move for or defend a summary judgment motion due to any outstanding discovery-related issue may make an application to the Court for an extension of the schedule, showing why such extension is necessary. Motions directed to experts shall be file on or before March 3, 2023.

SO ORDERED

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J.S.C