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December 20, 2022

By NYSCEF

Honorable Joel M. Cohen  
Supreme Court of the State of New York  
New York County  
Commercial Division  
60 Centre Street, Room 570  
New York, New York 10007

Re: *People of the State of New York v. The National Rifle Association, et al.*,  
Index. No. 451625/2020

Dear Justice Cohen:

We represent Defendant John Frazer. I write to respond to Plaintiff's email below to clarify my referenced communication to counsel yesterday.

At last week's conference, Your Honor directed Plaintiff to file a conditional Note of Issue which identified the discovery issues that are still unresolved and outstanding. The issues discussed pertained entirely to disputes between the NYAG and the NRA, although Mr. Frazer has requested that Plaintiff clarify three identical interrogatory responses as well.

Late on Friday night, Plaintiff circulated a draft Note of Issue and Certificate of Readiness which included an Addendum reserving the opportunity to seek relief which included additional documentary and testimonial discovery. The draft would enable Plaintiff to seek this relief by application made as late as February 3. It also proposed February 10 as the date to file motions for summary judgment, and March 3 as the date to file motions directed to experts.

I responded on Monday. I expressed my concern that Plaintiff's carve outs not only could change the evidentiary record, but scheduled motion practice for doing so to a date which meant that the issues wouldn't be resolved until after the February 10 filing date for motions for summary judgment. I suggested a motion schedule to obviate that problem. I requested that Plaintiff agree that motions directed to experts be filed on the February 10 date, and motions for summary judgment be scheduled for 30 days after decisions on both (i) the motions raised in your proposed carve out and (ii) motions directed to expert witnesses. The idea was to finalize beforehand the record on which the summary judgment motions would be based. Plaintiff rejected the request.

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I recognize that Your Honor expressed at last week's conference that you would permit parties to supplement their summary judgment motions if needed due to subsequent discovery determinations. However, upon revelation of the potential size and scope (and lateness) of changes to the discovery record resulting from Plaintiff's proposed relief, as well as the benefit of knowing which expert testimony will be part of the record, I proposed what I viewed to be a common sense solution, outlined above, to avoid a disjointed summary judgment process.

Respectfully submitted,

*/s/ William B. Fleming*

William B. Fleming

Cc: Counsel of Record (by NYSCEF)