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January 11, 2023

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: NYAG v. NRA et al., Index No. 451625/2020

Dear Justice Cohen:

On behalf of the National Rifle Association of America (the “NRA”), pursuant to the Court’s order dated December 21, 2022 (NYSCEF 997) (the “Order”), we submit a response to the NYAG’s Note of Issue, filed on December 22, 2022.

On December 21, 2022, the Court ordered that OAG file “Note of Issue, with any reservations for resolving pending discovery disputes it deems appropriate and permissible under the CPLR and court rules, on or before December 23, 2022.” The NYAG then filed a Note of Issue (NYSCEF 1003). However, the attached “reservations” are deficient on two grounds. First, they must include discovery the NYAG is obligated to disclose to the NRA. Second, the NRA proposes two modifications to the conditions in the NYAG’s proposed Note regarding its own discovery.

I. Conditions to the NOI should allow for outstanding discovery the NRA seeks from the NYAG.

As the NRA advised the Court in its submission dated December 20, 2022 (NYSCEF 934), certain discovery the NRA requested from the NYAG is still not produced and the NRA should be permitted to obtain it post-Note.

First, in several rulings by the Special Master for Discovery, he denied the NRA’s requests for discovery from the NYAG. The NYAG moved for review of those decisions pursuant to CPLR 3104(d), and, where the Court denied the relief, appealed to the Appellate Division. If the Court grants the NRA’s requests, the NYAG should produce the relevant discovery post-Note.

Second, although the NRA received supplemental contention-interrogatory responses from the NYAG two days ago, the NRA is concerned that the supplemented material fails to address deficiencies previously raised. The NRA therefore reserves the right to move for relief

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in connection with the NYAG's contention-interrogatory responses if further meet-confer efforts fail to resolve them.

Third, on December 12, 2022, the NYAG produced over 1,000 pages of her office's communications with witnesses and others during its investigation of the NRA pertaining to the investigation. The NRA is still reviewing these documents and reserves the right to seek post-Note relief directly relating to them.

II. The NYAG's proposed Note contains allowances for its own prospective discovery which are too broad.

In her Note of Issue, the NYAG seeks post-Note discovery with regard to multiple matters. The second of the two paragraphs seeks the following carveout to which the NRA does not object: "Plaintiff and the NRA may proceed with appeals [referring to motions for review pursuant to CPLR 3104(d)] relating to the Special Master's November 29, 2022 decision, or any subsequent ruling modifying or reconsidering the Decision and may proceed with any proceedings relating to or arising from rulings on such appeals."¹

As to the balance of the NYAG-proposed carveout, the NRA objects and proposes the following modifications.

First, the NYAG further requests a carveout to move for relief in connection with matters "including but not limited to" documents that are the subject of previously-commenced motion practice. *See* NYSCEF 1004 (providing that the NYAG may move for relief in connection with "the matters raised in Plaintiff's October 20, 2022 application to the Special Master, **including but not limited to** those pertaining specifically to undisclosed documents which were addressed in the Special Master's November 29, 2022 decision (the "Decision")") (emphasis added). The NRA agrees that the Court may permit post-Note motion practice regarding documents addressed in the Special Master's November 29, 2022 decision (and his subsequent ruling addressing the same documents). The NRA proposes the following language instead: "The NYAG may move for relief in connection with the undisclosed documents which were addressed in the Special Master's November 29, 2022 decision (the "November Decision") or the Special Master's December 27, 2022 decision (the "December Decision")."

Second, the NYAG asks permission to "seek to obtain specific orders of preclusion, in limine or evidentiary rulings relating to the admissibility of evidence on such issues, to permit further documentary and testimonial discovery or such other relief as this Court deems just, proper and appropriate, if any." To the extent that the NYAG wishes to file motions stemming

¹ The NRA similarly has no objection to producing any documents withheld pursuant to its categorical privilege log to the extent, upon additional analysis, they are determined to be not privileged.

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from the disclosure still-disputed documents, the NRA respectfully submits that it may do so based on the carveout above, and no additional allowances are needed. Otherwise, the parties should retain the rights to relief which are prescribed by the applicable rules, and there is no need for any additional allowance benefitting the NYAG.

The NRA thanks the Court for its attention to this matter.

Respectfully submitted,

/s/ Svetlana M. Eisenberg

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