



STATE OF NEW YORK  
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January 18, 2023

**VIA NYSCEF**

Honorable Joel M. Cohen  
Justice of the Supreme Court of the State of New York State  
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:

On behalf of the Plaintiff, the People of the State of New York, the Office of the Attorney General of the State of New York ("OAG") respectfully writes in response to the letter submitted on January 11, 2023, by Defendant National Rifle Association of America ("NRA") (NYSCEF 1065) in response to Plaintiff's note of issue, filed on December 22, 2022 (NYSCEF 1003-1004, the "Note of Issue").

As per the Court's direction at a December 12, 2022 conference and by written order (NYSCEF 997), on December 22, 2022, Plaintiff timely filed the Note of Issue with "reservations for resolving pending discovery disputes it deems appropriate and permissible under the CPLR and court rules." (NYSECF 997). This Court's order provided that "Defendants may respond [to the Note of Issue] as permitted under the CPLR and court rules." On January 11, 2023, the last date for any party to seek to vacate the Note of Issue, the NRA submitted a letter to the Court, which purports to object to the reservations in the Note of Issue.

As a threshold matter, the NRA's January 11, 2023 letter should be disregarded because it does not comply with the Court's directives and the applicable rules. Rule 202.21(d) of the Uniform Civil Rules of the Supreme Court and County Court permits a party "upon motion supported by affidavit" to obtain permission to continue pretrial proceedings post-filing the note of issue where "unusual or unanticipated circumstances develop subsequent to filing a note of issue and certificate of readiness." Rule 202.21(e) permits a party to seek to vacate a note of issue within 20 days after service of a note of issue and certificate of readiness. Both provisions require submission of an affidavit showing, pursuant to either (a) Rule 202.21(d), "that a pretrial

proceeding has not been completed for any reason beyond the control of the party;” or (b) Rule 202.21(e), “in what respects the case is not ready for trial” and requires the court to find that “a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in some material respect.” The NRA submission was not made by motion on notice and the NRA failed to provide any evidence in a supporting affidavit to justify relief under either provision. For these reasons, the NRA’s objections should be disregarded.

In addition, the NRA’s objection should be rejected as unfounded.<sup>1</sup> The NRA seeks to preserve the right to take further discovery post-Note of Issue based on vague statements that it “may” have issues with the Plaintiff’s contention interrogatory responses, which were served a month before the filing of the Note of Issue. The NRA and Plaintiff met and conferred and Plaintiff agreed to clarify two of its interrogatory responses, which it has done. The NRA also points to Plaintiff’s production of “over 1,000 pages” from the OAG and “reserves the right to seek post Note relief directly relating to them.” Plaintiff’s production consisted of a category of documents identified on Plaintiff’s December 3, 2021 privilege log, and the NRA first sought production of the documents in October 2022. The Special Master ordered production of the listed OAG communications with witnesses and their counsel, and, rather than pursue an appeal,<sup>2</sup> Plaintiff produced *all* such records promptly on December 12, 2022. The NRA’s assertion now, weeks later, that there *may* be issues relating to Plaintiff’s discovery are insufficient to support the relief it seeks. *Jablonsky v. Nerlich*, 189 A.D.3d 1561, 1563 (2d Dep’t 2020) (affirming refusal to vacate note of issue because allegedly outstanding discovery “must be legitimate and pending, and not resolved or contrived”) (internal citations and quotations omitted).

Finally, the NRA’s proposed modifications to the carve-out in the Note of Issue are not warranted. The NRA inappropriately attempts to limit the carve-out to only allow Plaintiff to seek discovery of documents withheld by the NRA. These discovery issues are the subject of the NRA’s motions for review of the Special Master’s November 29, 2022 and December 27, 2022. (NYSECF Motion Seq. Nos. 37-41). The motions concern the NRA’s selective withholding of documents and blocking of testimony as purportedly privileged on subjects that the NRA now admits it will seek to introduce at trial. The NRA seeks to have its cake and eat it too: it wants to assert the remedial steps it took as part of its self-styled “course correction” while simultaneously shielding such facts from discovery. The NRA’s proposal to modify the Note of Issue ignores that Plaintiff has sought and continues to seek to obtain specific orders of preclusion, or *in limine* or evidentiary rulings, relating to the admissibility of evidence on such issues. Plaintiff has also sought, in the alternative, orders permitting Plaintiff such further testimonial discovery and other

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<sup>1</sup> Contrary to the NRA’s assertion, outstanding appeals do not justify an unspecified amendment to the Note of Issue. In the event this Court or the Appellate Division orders production as a result of an appeal of a decision by the Special Master or this Court, such orders would have to be followed by all parties regardless of the language of the carve-out in the Note of Issue.

<sup>2</sup> Plaintiff sought reconsideration of certain other aspects of the Special Master’s November 29, 2022 ruling that required Plaintiff to produce other categories of documents withheld as privileged. The Special Master reversed his ruling.

relief as this Court deems appropriate in light of the NRA's conduct, which would not be remedied by document production alone. Accordingly, the NRA's request to limit the carve-out to document discovery is without merit.

In conclusion, the NRA has not timely filed an appropriate motion for relief to either vacate or modify the Note of Issue. The NRA has not set forth a basis, in form or substance, for amending or changing the reservation identified by the Plaintiff therein. It is respectfully submitted that none of the reasons advanced by the NRA justifies vacating, amending or otherwise making an unspecified change to the Note of Issue and certificate of readiness.

We thank the Court for its attention to these matters.

Respectfully,

*/s/ Monica Connell*  
Monica Connell  
Assistant Attorney General

cc: All Counsel of Record