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On January 23, 2023, the NRA filed a reply memorandum of law in support of its motion for review of certain decisions by the Special Master for Discovery (NYSCEF 1110). The memorandum of law was accompanied by an affirmation of Noah B. Peters (NYSCEF 1111), which cited portions of depositions taken in this action (Exhibits A-C, E-I, L, and M, NYSCEF 1112-1114, 1116-1120, 1123, 1124).

To the modest extent that the cited portions of the attached depositions contain confidential information, pursuant to Section 216.1(a) of the Uniform Rules for Trial Courts and the Protective Order entered by the Court in this Action (the “Protective Order”) (NYSCEF 869), the NRA moves for a sealing order to permit narrowly tailored redactions (the “Redactions”). For the compelling reasons below, good cause exists for this relief. In accordance with the Court’s individual rules, a spreadsheet of the Redactions is appended as Appendix A hereto.

I. **BACKGROUND**

Under the Protective Order, under certain circumstances, a party may designate portions of a deposition transcript “Confidential.”¹ Under the same order, where passages so designated are filed with the Court, within seven days of the filing, the designating party shall move for an order permitting her to redact them.²

¹ NYSCEF 869, Paragraph 13.

² *Id.* Paragraph 14.

Here, pursuant to the Protective Order, the NRA designated “Confidential” select portions of certain depositions taken by the NYAG.³ On January 23, 2023, the NRA appended sections of some such depositions to the affirmation of Noah B. Peters.⁴ The NRA filed the affirmation and the deposition excerpts in further support of a separate motion the NRA previously filed with the Court.⁵ Now, as contemplated in the Protective Order, the NRA seeks a limited sealing order to protect (i) information pertaining to the identity of potential whistleblowers and the substance of their reports; and (ii) information pertaining to two confidential settlement agreements.

II.

ARGUMENT

A. The Court is authorized to enter a sealing order where appropriate.

The Court may enter a sealing order under Section 216.1(a) of the Uniform Rules for Trial Courts “upon a written finding of good cause, which shall specify the grounds thereof.” 22 N.Y.C.R.R. § 216.1(a). “[I]n determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties.” *Id.* (citing 22 N.Y.C.R.R. § 216.1(a)); *see also* NYSCEF 770 at pages 4-5 (the Court recognizing its authority to enter a sealing order in connection with a separate motion). Notwithstanding the “broad presumption that the public is entitled to access to judicial proceedings and court records,” *Mosallem v. Berenson*, 905 N.Y.S.2d 575, 578 (1st Dep’t 2010), sealing orders can be granted if they are

³Affirmation of Svetlana M. Eisenberg dated January 30, 2023 (“Affirmation”), Paragraph 8. Although the Protective Order contemplates that any party may challenge a confidentiality designation, there has been no such challenge here.

⁴ NYSCEF 1111 et seq.

⁵ NYSCEF 981 et seq; NYSCEF 1030 et seq.

“narrowly tailored to serve compelling objectives,” such as a need for confidentiality that outweighs the public’s right to access. *Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 711 N.Y.S.2d 419, 423 (1st Dep’t 2000); *see also Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 814 N.Y.S.2d 110, 113 (1st Dep’t 2006). “[B]ecause confidentiality is the exception and not the rule, ‘the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access.’” *Maxim, Inc. v Feifer*, 43 N.Y.S.3d 313, 315 (1st Dep’t 2016).

B. Good cause exists for redacting information pertaining to the identity of potential whistleblowers and the substance of their reports.

Certain passages within the portions of depositions cited by the NRA reveal the identity of potential whistleblowers or certain details of their reports. Good cause exists for redacting such information. As reflected in New York laws⁶ and the NRA’s internal policies, it is important to ensure that the identity of whistleblowers and the substance of any whistleblower reports remain confidential. Here, the NRA seeks to redact only the lines of the testimony that entail such information. As a result, the interests of the parties and the public will be served by permitting the limited redactions.⁷

⁶ N-PCL 715-b; EPTL 8-1.9.

⁷ The NRA makes this request to seal the information without prejudice to its right to contest the NYAG’s substantive allegations in this action about alleged whistleblowing, including whether a particular communication falls within the purview of the New York statutes the NYAG cites.

C. Good cause exists for redacting information pertaining to confidential settlement agreements.

Some passages in the transcripts cited by the NRA reveal the terms of settlements that the parties to the settlements are contractually obligated to keep confidential. Specifically, the first of the two agreements, marked “Strictly Confidential” on every page, states:

Nondisclosure of Settlement Terms. The Parties acknowledge and expressly agree to abide by the provisions of Rule 18 (“Confidentiality”) of the 2018 CPR Non-Administered Arbitration Rules.^[8] They also acknowledge and agree that the terms of this Settlement Agreement and correspondence regarding this Settlement Agreement are and shall remain strictly confidential. Furthermore, the Parties agree not to disclose the terms of this Settlement Agreement except (i) to his/its attorneys, accountants, and analogous professionals on a confidential basis; (ii) as required to comply with tax, not for-profit, regulatory, or related disclosure or reporting requirements; (iii) as necessary to enforce the Settlement Agreement; and (iv) as required by law, pursuant to a valid subpoena, or other valid legal process. In the event either Party is required by applicable law, pursuant to a valid subpoena, or pursuant to other valid legal process to disclose any of the terms of this Settlement Agreement, it/he shall promptly notify the other Party in writing so that the other Party may seek a protective order or other appropriate remedy; moreover, each Party shall cooperate reasonably with the other Party to facilitate the other Party’s efforts to prevent or limit disclosure or assert any applicable privileges, immunities or protections.⁹

Similarly, the second agreement, entitled “Confidential Settlement Agreement,” states:

Confidentiality. The Parties acknowledge and agree that this Agreement, its terms, and the negotiations leading hereto shall be

⁸ The relevant rule stated at the time: “Unless the parties agree otherwise, the parties, the arbitrators and CPR shall treat the proceedings, any related discovery and the decisions of the Tribunal, as confidential, except in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, and unless otherwise required by law or to protect a legal right of a party. To the extent possible, any specific issues of confidentiality should be raised with and resolved by the Tribunal.”

⁹ Affirmation, Paragraph 12.

deemed confidential and may not be disclosed beyond legal counsel and accountants, auditors, insurers or reinsurers, claims administrators, lenders, affiliates, parent companies, and directors, owners, officers, and/or employees of the Parties on a need-to-know basis, except as necessary for: (a) tax or audit purposes; (b) reinsurance; (c) to enforce the terms and conditions of this Agreement; (d) any financing entities; and (e) as otherwise required by law or regulation. Any Party served with a subpoena, discovery request, or other similar legal instrument that could lead to disclosure of the terms of this Agreement shall provide reasonable notice of same to the other Parties, which have the right to move to quash said subpoena or discovery request. In furtherance of this confidentiality agreement, the Parties shall not file this document in any proceeding, even any proceeding to enforce the terms herein, without first seeking leave of Court to do so under seal or with full consent of the other Parties hereto. The Parties agree that for any claims brought pursuant to this paragraph, damages are presumed. Subject to the above, the Parties agree that the only written statement, oral statement or media statements to be issued by the Parties shall be that: “[Party A] and [Party B] have resolved their disputes. Therefore, all litigation matters between them are concluded.” No other statements shall be made by the Parties concerning the [subject matter of the agreement].¹⁰

Notably, although the agreements themselves are not at issue in this motion, in producing them in this action, the NRA designated the documents “Confidential” under the Protective Order or otherwise ensured that any nonparties producing such agreements to the NYAG and others in this action do so.¹¹

In considering motions for sealing orders, courts recognize that the need for confidentiality can outweigh the “public’s right to access.” *Danco Labs., Ltd. v. Chemical Works of Gedeon Richter, Ltd.*, 711 N.Y.S.2d 418, 423 (1st Dep’t 2000); *see also Gryphon Dom. VI, LLC v. APP Intern. Fin. Co., B.V.*, 814 N.Y.S.2d 110, 113 (1st Dep’t 2006). Here, the

¹⁰ Affirmation, Paragraph 13.

¹¹ Affirmation, Paragraph 15.

interests of the public, including the parties, are served by permitting the Redactions. For example, in *In re E. 51st St. Crane Collapse Litig.*, 31 Misc. 3d 406, 416, 920 N.Y.S.2d 584, 592 (Sup. Ct. 2011), the court acknowledged the “strong public policy favoring settlement of claims.” *See also Hasbrouck v. BankAmerica Housing Svcs.*, 187 F.R.D. 453, 459 (N.D.N.Y. 1999) (“While protecting the confidentiality of settlement agreements encourages settlement, which is in the public interest, permitting disclosure would discourage settlements, contrary to public interest.”). There are “valid reasons” to keep settlement agreements confidential, particularly where, as here, “the settlement itself was conditioned on confidentiality and [] the settlement documents were not . . . the basis for the court’s adjudication” of an issue. *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 143 (2d Cir. 2004). “[H]onoring the parties’ express wish for confidentiality may facilitate settlement,” whereas failure to seal would render those provisions—which the NRA relied upon when it entered into the settlements—meaningless. *See id.*

III. **CONCLUSION**

For the reasons above, the NRA requests that the Court enter an order (i) finding in writing—as contemplated by the applicable rules—that good cause exists for the redactions the NRA seeks; (ii) permitting the filing of the redacted passages under seal; and (iii) issuing such other relief as the Court deems fair, just, and appropriate.

Dated: January 30, 2023
New York, NY

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH WORD COUNT REQUIREMENT

I certify that the foregoing memorandum of law filed on behalf of the National Rifle Association of America complies with the applicable word count limit. Specifically, the memorandum of law contains fewer than 7,000 words.

In preparing this certification, I relied on the word count function of the word-processing system used to prepare this memorandum of law.

By: Svetlana M. Eisenberg
Svetlana M. Eisenberg

**COUNSEL FOR THE
NATIONAL RIFLE ASSOCIATION
OF AMERICA**

EXHIBIT NO.	NYSCEF NO.	DESCRIPTION	PAGE:LINE	BASIS
Exhibit E ¹	1117	7/14/2022 Deposition of Sonya Rowling	409:11- 410:22	Reveals identity of potential whistleblowers and substance of their reports. N-PCL 715-b; EPTL 8-1.9; <i>Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.</i> , 711 N.Y.S.2d 419, 423 (1st Dep't 2000); 22 N.Y.C.R.R. § 216.1(a).
Exhibit I	1120	06/28/2022 Deposition of Wayne LaPierre – Day 2	430:06- 434:25	Reveals terms of a confidential settlement agreement. <i>In re E. 51st St. Crane Collapse Litig.</i> , 920 N.Y.S.2d 584, 592 (Sup. Ct. 2011); <i>Hasbrouck v. BankAmerica Housing Svcs.</i> , 187 F.R.D. 453, 459 (N.D.N.Y. 1999); <i>Gambale v. Deutsche Bank AG</i> , 377 F.3d 133, 143 (2d Cir. 2004); 22 N.Y.C.R.R. § 216.1(a).

¹ References to exhibit numbers are to exhibits to the affirmations of Noah B. Peters dated January 23, 2023 (NYSCEF 1111) and Svetlana M. Eisenberg dated January 30, 2023.

EXHIBIT NO.	NYSCEF NO.	DESCRIPTION	PAGE:LINE	BASIS
Exhibit I	1120	06/28/2022 Deposition of Wayne LaPierre – Day 2	435:01- 443:25	Reveals terms of a confidential settlement agreement. <i>In re E. 51st St. Crane Collapse Litig.</i> , 920 N.Y.S.2d 584, 592 (Sup. Ct. 2011); <i>Hasbrouck v. BankAmerica Housing Svcs.</i> , 187 F.R.D. 453, 459 (N.D.N.Y. 1999); <i>Gambale v. Deutsche Bank AG</i> , 377 F.3d 133, 143 (2d Cir. 2004); 22 N.Y.C.R.R. § 216.1(a).
Exhibit L	1123	7/12/22 Deposition of John Frazer	202:2-206:2	Reveals identity of potential whistleblowers and substance of their reports. N-PCL 715-b; EPTL 8-1.9; <i>Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.</i> , 711 N.Y.S.2d 419, 423 (1st Dep't 2000); 22 N.Y.C.R.R. § 216.1(a).
Exhibit L	1123	7/12/22 Deposition of John Frazer	207:25- 212:21	Reveals identity of potential whistleblowers and substance of their reports. N-PCL 715-b; EPTL 8-1.9; <i>Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.</i> , 711 N.Y.S.2d 419, 423 (1st Dep't 2000); 22 N.Y.C.R.R. § 216.1(a).