

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
(Cohen, J.)

Mot. Seq. No. 43

**PLAINTIFF'S PARTIAL OPPOSITION TO
THE NRA'S MOTION FOR A SEALING ORDER**

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ARGUMENT

Plaintiff People of the State of New York, by Letitia James, Attorney General of the State of New York, respectfully submits this memorandum of law in partial opposition to the motion of Defendant National Rifle Association of America (“NRA”) for a sealing order pertaining to deposition transcripts the NRA submitted in support of its motion for review of an order by the Special Master. Mot. Seq. No. 43.

The NRA seeks to seal portions of deposition transcripts submitted in support of its motions (Mot. Seq. Nos. 37 and 41) for review of orders by the Special Master that the NRA failed to establish privilege over documents related to the NRA’s purported “course correction.” *See* NYSCEF 961, 1034.¹ The information the NRA seeks to seal falls into two categories:

1. Information related to NRA whistleblowers; and
2. Information related to settlement agreements the NRA has entered into.

As an initial matter, Plaintiff does not object to the NRA’s request to seal the information contained in Exhibit LR, NYSCEF 1148, as it relates to non-public information about a whistleblower. However, Plaintiff requests that, should the Court order sealing, the sealing be temporary and revisited in the event the information becomes relevant to summary judgment motion practice or at trial.

However, Plaintiff objects to the NRA’s motion to seal information in Exhibits ER (NYSCEF 1141) and IR (NYSCEF 1146). “New York’s presumption of public access [to court

¹ While the affirmation submitted by the NRA in support of its sealing motion provides only excerpts of the depositions cited by the NRA, the full deposition transcripts were attached to the papers submitted in support of the NRA’s motions in Mot. Seq. Nos. 37 and 41. *See* NYSCEF 1111 through 1124. The NRA has not moved to seal any portions of the deposition transcripts other than those in exhibits ER, IR, and LR to Ms. Eisenberg’s affirmation. NYSCEF 1141, 1146, 1148. The NRA has thus waived any claim of confidentiality over the remainder of the transcripts. NYSCEF 869 ¶ 14.

records] is broad.” *Danco Labs., Ltd. V. Chem. Works of Gedeon Richter, Ltd.*, 274 A.D.2d 1, 7 (1st Dep’t 2000). “[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.” NYSCEF 756 at 5 (quoting *Maxim, Inc. v. Feifer*, 145 AD3d 516, 517 (1st Dep’t 2016)) (internal quotation marks omitted).

With respect to Exhibit ER, the information the NRA seeks to seal was made public during the hearing in the NRA’s bankruptcy proceedings in 2021. *See* Affirmation of Stephen Thompson dated February 9, 2023, Ex. A at 80-86, Ex. B at 67. Thus, sealing is inappropriate here.

And with respect to Exhibit IR, the only bases the NRA alleges for sealing information related to the settlement agreements are that they were confidential and that permitting the confidentiality of settlement agreements is in the public interest. NYSCEF 1135 at 7-9. But “while there is a strong public interest in encouraging the settlement of private disputes, conclusory claims of the need for confidentiality of settlement agreements are insufficient to seal a record.” *Matter of Hofmann*, 284 A.D.2d 92, 94 (1st Dep’t 2001); *accord In re Levy*, 51 Misc.3d 1206(A), 2016 WL 1337150, at *1 (Sup. Ct. Dutchess Cnty. April 5, 2016) (finding that “the record is devoid of any justification for prohibiting disclosure of any of the terms of the settlement other than the parties’ settlement is contingent upon an agreement of confidentiality”); *Marasco v. ExxonMobil Oil Corp.*, 75 Misc.3d 1226(A), 2022 WL 2922525, at *6 (Sup. Ct. Westchester Cnty. July 25, 2022) (finding that “defendants have not articulated a compelling interest that would likely be harmed by permitting public access to [settlement] documents”). Sealing is particularly inappropriate “where the propriety of acts of fiduciaries and their attorneys are in question, [as they] are matters of legitimate public concern.” *Hofmann*, 284 A.D.2d at 94.

Information related to the NRA's settlement agreements is relevant to Plaintiff's claims that the individual defendants have breached their fiduciary duties, and that the defendants, including the NRA, have improperly administered the NRA's charitable assets—the public deserves to understand the issues raised by Plaintiff in this litigation. *See id.* The NRA has simply not sustained its burden to show compelling circumstances justifying the sealing of the portions of the depositions it identifies.

Plaintiff requests that the portion of the NRA's motion to seal related to Exhibits ER and IR be denied.

CONCLUSION

For the foregoing reasons, Plaintiff asks that the Court deny such portions of the NRA's motion to seal (Mot. Seq. 43) that would seal Exhibits ER and IR, together with such other and further relief as the Court deems just and appropriate.

Dated: February 9, 2023
New York, New York

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/s/ Stephen Thompson

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Of Counsel

Attorney Certification Pursuant to Commercial Division Rule 17

I, Stephen Thompson, an attorney duly admitted to practice law before the courts of the State of New York, certify that this memorandum of law complies with the word count limit set forth in Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g)) because the memorandum of law contains 789 words, excluding the parts exempted by Rule 17. In preparing this certification, I have relied on the word count of the word-processing system used to prepare this memorandum of law and affirmation.

Dated: February 9, 2023
New York, New York

/s/ Stephen Thompson
Stephen Thompson