FILED: NEW YORK COUNTY CLERK 04/13/2023 12:01 AM

NYSCEF DOC. NO. 1807

INDEX NO. 451625/2020

RECEIVED NYSCEF: 04/13/2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
COMMERCIAL DIVISION

PEOPLE OF THE STATE OF NEW	§	
YORK, BY LETITIA JAMES,	§	
ATTORNEY GENERAL OF THE	§	
STATE OF NEW YORK,	§	
	§	INDEX NO. 451625/2020
Plaintiff,	§	
	§	
v.	§	
	§	
THE NATIONAL RIFLE	§	Motion Sequence No
ASSOCIATION OF AMERICA,	§	
WAYNE LAPIERRE, WILSON	§	
PHILLIPS, JOHN FRAZER, and	§	
JOSHUA POWELL,	§	
	§	
Defendants.	§	

AFFIRMATION IN SUPPORT OF THE NRA'S MOTION FOR A SEALING ORDER

I, Svetlana M. Eisenberg, an attorney duly admitted to practice law before the Courts of the State of New York, affirm under penalty of perjury pursuant to CPLR § 2106 as follows:

- 1. I am a Partner at Brewer, Attorneys & Counselors, counsel for the National Rifle Association of America (the "NRA").
- 2. I submit this affirmation in support of the NRA's motion for a sealing order dated April 12, 2023.
- 3. On March 24, 2023, Wilson Phillips moved to exclude testimony of the NYAG's proposed expert witness, Eric Hines. NYSCEF Nos. 1680-1683.
- 4. Among the documents Mr. Phillips filed in support of that motion is a report of the NYAG's proposed expert witness, Eric Hines.

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5. The report has been designated Confidential and subject to the restrictions of the Protective Order (NYSCEF 869) by the NRA.

- 6. The report contains information about a Confidential Settlement Agreement (the "CSA").
- 7. When the NRA produced the CSA to the parties in this action, the NRA designated it Confidential pursuant to the Protective Order.
- 8. The NRA produced the CSA in this action in reliance on the parties' agreement not to challenge the NRA's Confidential designation of the CSA pursuant to the Protective Order.
 - 9. The CSA is governed and controlled by Texas law.
- 10. Pursuant to the CSA, damages for breach of the confidentiality provision of the agreement are presumed.
- 11. Under the CSA, the United States District Court for the Northern District of Texas has exclusive jurisdiction over the interpretation of the CSA.
- 12. When Mr. Phillips's counsel originally filed Mr. Hines's report on NYSCEF, they filed it in unredacted form, in violation of the Protective Order.
- 13. On April 5, 2023, as soon as the NRA became aware of the issue, I alerted counsel for Mr. Phillips to the improper disclosure and asked them to contact the Court to have the document returned and re-filed on NYSCEF with the appropriate reduction.
 - 14. Attached hereto are true and correct copies of the following documents:
 - a. Email correspondence on April 11, 2022, related to the production of the CSA in which the NRA states that it produces a copy of the confidential settlement agreement specifically in reliance on the NYAG's and others' representations that

FILED: NEW YORK COUNTY CLERK 04/13/2023 12:01 AM INDEX NO. 451625/2020

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they will not challenge the NRA's designation of the CSA Confidential pursuant

to the Protective Order (Exhibits E-F);

b. Email messages from the NRA's counsel on November 18, 2022, and

December 16, 2022, designating reports of the NYAG's proposed expert witness

Eric Hines, including the document at issue in this motion, Confidential pursuant

to the Protective Order entered in this case (NYSCEF 869) (Exhibit A);

c. Email correspondence on April 5, 2023, between counsel for the NRA and counsel

for Mr. Phillips concerning the report and its filing (Exhibits B-D).

Dated: April 12, 2023

New York, New York

/s/ Svetlana M. Eisenberg

Svetlana M. Eisenberg

3