

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

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PEOPLE OF THE STATE OF NEW YORK, BY  
LETITIA JAMES, ATTORNEY GENERAL OF THE  
STATE OF NEW YORK,

Plaintiff,

-against-

Index No. 451625/2020

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

Motion Sequence No. \_\_\_\_

THE NATIONAL RIFLE ASSOCIATION OF  
AMERICA, WAYNE LAPIERRE, WILSON PHILLIPS,  
JOHN FRAZER, and JOSHUA POWELL

Defendants.

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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. On March 24, 2023, the Office of the Attorney General (the “NYAG”) filed motions to exclude the testimony of the NRA's expert witnesses (Motion Seq. Nos. 1663 and 1689). On March 31, 2023, the NRA moved for a sealing order with respect to certain information contained within some of the documents that the NYAG had filed under seal on March 24, 2023, in connection with her motions. NYSCEF 1769, 1770.

3. Pursuant to Part 3 – Sealing Practices and Procedures, the information that the NRA moved to seal is identified through translucent redactions in exhibits hereto. Specifically,

- a. Documents that reveal the identity of potential whistleblowers or details of their reports are attached hereto as Exhibits 1 through 5. They are (i) reports of the NRA's expert witnesses Ryan Sullivan and Bruce Blacker (affirmative and rebuttal reports), Matthew Lerner (affirmative report), and Amish Mehta (affirmative report); and (ii) relevant portions of transcript of deposition of Amish Mehta. These reports and the entire transcript of Mr. Mehta's deposition were filed by the NYAG under NYSCEF Nos. 1693, 1694, 1695, 1699, and 1709.
- b. Reports of the NRA's security expert witness Lawrence Cunningham are attached as Exhibits 6 and 7. They were filed by the NYAG under NYSCEF Nos. 1674 and 1675.
- c. The relevant portion of the transcript of Mr. Cunningham's deposition is attached as Exhibit 8. The entire transcript of his deposition was filed by the NYAG under NYSCEF No. 1676.
- d. The relevant portions of the transcript of Matthew Lerner's deposition are attached as Exhibit 9. It reveals information pertaining to Jacob Frenkel's 2003 report, which the Court previously, subject to certain conditions, sealed (NYSCEF 1425). The entire transcript of Mr. Lerner's deposition was filed by the NYAG under NYSCEF No. 1708.
- e. A report of proposed NYAG expert witness Eric Hines in which he reveals the terms of a confidential settlement agreement between the NRA and another entity, which was designated Confidential pursuant to the Protective order when the NRA produced it to the NYAG, is attached as Exhibit 10. The report was filed by the NYAG under NYSCEF No. 1669 and, separately, under NYSCEF No. 1711. The

settlement agreement is also at issue in the NRA's pending motion to seal (NYSCEF 1134).<sup>1</sup>

- f. The relevant portion of the transcript of the deposition of the NRA's expert witness Matthew Lerner, in which the NYAG's questioning revealed the terms of the same agreement, is also part of Exhibit 9. As noted above, the entire transcript of Mr. Lerner's deposition was filed by the NYAG under NYSCEF No. 1708.
4. Pursuant to Part 3 – Sealing Practices and Procedures,<sup>2</sup> the passages with regard to which the NRA seeks a sealing order are highlighted in yellow on the exhibits appended hereto.

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<sup>1</sup> As stated in the affirmation and memorandum of law in support of that motion (NYSCEF 1135-1136), the terms of the settlement state that the parties to the settlement are contractually obligated to keep it confidential.

Specifically, the agreement, entitled “Confidential Settlement Agreement,” states:

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

<sup>2</sup> <https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/part3-sealing-practices.pdf>.

5. The passages are also listed in the chart below. The first column of the chart lists the number of the relevant exhibit to this affirmation (as referenced above). Other columns identify the following information:
- The NYSCEF number associated with the Notice of Motion in connection with which the NYAG filed relevant document under seal;
  - The NYSCEF number associated with the document filed under seal by the NYAG and the exhibit letter assigned to it by the NYAG;
  - Description of the document;
  - Pin cite to page(s) (and, where applicable, line(s)) where the information which the NRA seeks to seal appears within the document;
  - A brief description of the basis for the request to seal (as set forth with particularity in the NRA's memorandum of law in support of the sealing motion (NYSCEF 1770)).

| Exhibit No. to this Affirmation | NYSCEF No. of relevant notice of motion | NYSCEF No. of the document as filed by the NYAG/related NYAG Exhibit Number | Description                            | Pin cite(s)                           | Basis  |
|---------------------------------|---|---|--|---------------------------------------|--|
| Exhibit 5                       | 1689                                    | NYSCEF 1709 (Ex. Q)   | Transcript of Amish Mehta's Deposition | Page 283: line 18 – page 294: line 22 | Revealing details of potential whistleblower report. <i>See also</i> NRA memorandum of law in support of the sealing motion NYSCEF 1770 at page 2. |

| Exhibit No. to this Affirmation | NYSCEF No. of relevant notice of motion | NYSCEF No. of the document as filed by the NYAG/related NYAG Exhibit Number | Description                                    | Pin cite(s)                           | Basis  |
|---------------------------------|---|---|--|---------------------------------------|--|
| Exhibit 8                       | 1663                                    | NYSCEF 1676 (Ex. L)   | Transcript of Lawrence Cunningham's deposition | Page 37: line 09 – page 37: line 25   | Safety and security of officer of the NRA. <i>See also</i> NYSCEF 1770 at pages 2-3. |
| Exhibit 8                       | 1663                                    | NYSCEF 1676 (Ex. L)   | Transcript of Lawrence Cunningham's deposition | Page 181: line 06 – page 182: line 02 | Same.  |
| Exhibit 8                       | 1663                                    | NYSCEF 1676 (Ex. L)   | Transcript of Lawrence Cunningham's deposition | Page 184: line 14 – page 185: line 03 | Same.  |
| Exhibit 8                       | 1663                                    | NYSCEF 1676 (Ex. L)   | Transcript of Lawrence Cunningham's deposition | Page 187: line 22 – page 199: line 04 | Same.  |
| Exhibit 8                       | 1663                                    | NYSCEF 1676 (Ex. L)   | Transcript of Lawrence Cunningham's deposition | Page 201: line 08 – page 202: line 06 | Same.  |
| Exhibit 8                       | 1663                                    | NYSCEF 1676 (Ex. L)   | Transcript of Lawrence Cunningham's deposition | Page 203: line 15 – page 204: line 08 | Same.  |
| Exhibit 8                       | 1663                                    | NYSCEF 1676 (Ex. L)   | Transcript of Lawrence Cunningham's deposition | Page 206: line 04 – page 206: line 24 | Same.  |
| Exhibit 8                       | 1663                                    | NYSCEF 1676 (Ex. L)   | Transcript of Lawrence Cunningham's deposition | Page 207: line 12 – page 208: line 11 | Same.  |
| Exhibit 8                       | 1663                                    | NYSCEF 1676 (Ex. L)   | Transcript of Lawrence Cunningham's deposition | Page 209: line 10 – page 212: line 02 | Same.  |

| Exhibit No. to this Affirmation | NYSCEF No. of relevant notice of motion | NYSCEF No. of the document as filed by the NYAG/related NYAG Exhibit Number | Description                                    | Pin cite(s)                           | Basis   |
|---------------------------------|---|---|--|---------------------------------------|---|
| Exhibit 8                       | 1663                                    | NYSCEF 1676 (Ex. L)   | Transcript of Lawrence Cunningham's deposition | Page 229: line 03 – page 230: line 25 | Same.   |
| Exhibit 8                       | 1663                                    | NYSCEF 1676 (Ex. L)   | Transcript of Lawrence Cunningham's deposition | Page 231: line 02 – page 231: line 09 | Same.   |
| Exhibit 8                       | 1663                                    | NYSCEF 1676 (Ex. L)   | Transcript of Lawrence Cunningham's deposition | Page 232: line 24 – page 236: line 25 | Same.   |
| Exhibit 8                       | 1663                                    | NYSCEF 1676 (Ex. L)   | Transcript of Lawrence Cunningham's deposition | Page 237: line 13 – page 239: line 03 | Same.   |
| Exhibit 8                       | 1663                                    | NYSCEF 1676 (Ex. L)   | Transcript of Lawrence Cunningham's deposition | Page 239: line 05 – page 239: line 12 | Same.   |
| Exhibit 8                       | 1663                                    | NYSCEF 1676 (Ex. L)   | Transcript of Lawrence Cunningham's deposition | Page 244: line 16 – page 244: line 18 | Same.   |
| Exhibit 8                       | 1663                                    | NYSCEF 1676 (Ex. L)   | Transcript of Lawrence Cunningham's deposition | Page 244: line 25 – page 244: line 25 | Same.   |
| Exhibit 8                       | 1663                                    | NYSCEF 1676 (Ex. L)   | Transcript of Lawrence Cunningham's deposition | Page 251: line 11 – page 251: line 16 | Same.   |
| Exhibit 9                       | 1689                                    | NYSCEF 1708 (Ex. P)   | Transcript of Matthew Lerner's deposition      | Page 172: line 22 – page 173: line 09 | Terms of confidential settlement agreement. <i>See also</i> NYSCEF 1770 at pages 3-5. |

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|---------------------------------|---|---|--|---|---|
| Exhibit 9                       | 1689                                    | NYSCEF 1708 (Ex. P)   | Transcript of Matthew Lerner's deposition  | Page 185: line 24 – page 186: line 13   | Discussion of Highly Confidential and privileged document at issue on appeal (Jacob Frenkel's report). <i>See also</i> NYSCEF 1770 at page 3. |
| Exhibit 9                       | 1689                                    | NYSCEF 1708 (Ex. P)   | Transcript of Matthew Lerner's deposition  | Page 344: line 10 – page 345: line 05   | Same.   |
| Exhibit 6                       | 1663                                    | NYSCEF 1674 (Ex. J)   | L. Cunningham affirmative expert witness report  | Pages 2, 6 through 13   | Safety and security of officer of the NRA. <i>See also</i> NYSCEF 1770 at pages 2-3.  |
| Exhibit 7                       | 1663                                    | NYSCEF 1674 (Ex. J)   | L. Cunningham rebuttal expert witness report   | Pages 2 through 8   | Same.   |
| Exhibit 10                      | 1663/1689                               | NYSCEF 1669 & 1711 (Ex. E & Ex. S)  | Eric Hines' proposed affirmative expert witness report                                 | Page 64   | Terms of confidential settlement agreement. <i>See also</i> NYSCEF 1770 at pages 3-5.   |
| Exhibit 1                       | 1689                                    | NYSCEF 1693 (Ex. A)   | NRA expert witness report of Ryan Sullivan and Bruce Blacker dated, September 16, 2022 | Page 37 paragraph 72, footnotes 144, 145, 146 and 147 (continued onto page 38.)<br>Page 38 paragraph 73, footnote 148, 149, 150 and 151 (continued onto page 39.)<br>Page 39 paragraph 74, footnote 156 and 157 | Revealing identity of potential whistleblowers or details of their reports. <i>See also</i> NYSCEF 1770 at page 2.                            |

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|---------------------------------|---|---|--|--|-------|
| Exhibit 2                       | 1689                                    | NYSCEF 1695 (Ex. C)   | NRA expert witness report of A. Mehta, September 16, 2022                                    | Page 26 paragraph K (continued onto page 27.)<br>Page paragraph I (a), (b) and (c) | Same. |
| Exhibit 3                       | 1689                                    | NYSCEF 1694 (Ex. B)   | NRA expert witness report of Matthew Lerner, dated September 16, 2022                        | Page 20 paragraph #19-AWP: SP-280.<br>Page 35 paragraph 110 and 111                | Same. |
| Exhibit 4                       | 1689                                    | NYSCEF 1699 (Ex. G)   | NRA expert witness rebuttal report of Ryan Sullivan and Bruce Blacker, dated October 7, 2022 | Attachment A-5, pages 1-2  | Same. |
| Exhibit 5                       | 1689                                    | NYSCEF 1709 (Ex. Q)   | A. Mehta deposition transcript dated November 22, 2022                                       | Page 283: line 18 –<br>page 294: line 22   | Same. |

Dated: April 4, 2023  
New York, New York

/s/ Svetlana M. Eisenberg  
Svetlana M. Eisenberg