

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,

Plaintiff,

V.

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

Defendants.

§
§ Index No. 451625/2020
§ Hon. Joel M. Cohen
§
§ Motion Sequence No. _____

MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO SEAL

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT THE NATIONAL RIFLE ASSOCIATION OF AMERICA'S
MOTION TO SEAL NYSCEF 1326, 1427, 1430, 1437, 1451, 1453, 1455, 1456

BREWER, ATTORNEYS & COUNSELORS

Christopher T. Zona
BREWER, ATTORNEYS & COUNSELORS
750 Lexington Ave, 14th Floor
New York, New York 10022
Phone: (212) 489-1400
Fax: (212) 751-2849
ctz@brewerattorneys.com

*Counsel for Defendant the
National Rifle Association of America*

TABLE OF CONTENTS

TABLE OF CONTENTS..... ii

BACKGROUND 1

LAW & ARGUMENT..... 2

 I. The Court Is Authorized To Enter A Sealing Order Where Appropriate. 2

 II. Good Cause Exists For Sealing The Requested Documents. 2

DESCRIPTION OF REQUESTED REDACTIONS..... 3

CONCLUSION..... 3

CERTIFICATION OF COMPLIANCE 5

CERTIFICATE OF SERVICE 6

COMES NOW Defendant the National Rifle Association of America (“NRA”) and submits this memorandum of law in support of its motion to seal portions of NYSCEF 1326, 1427, 1430, 1437, 1451, 1453, 1455, and 1456.

BACKGROUND

On March 10, 2023, the NRA filed a motion to exclude the testimony of the NYAG’s proposed expert witness, Erica Harris (Mot. Seq. 047; NYSCEF 1320-1329). Contained within a document attached as Exhibit D to the affirmation in support of the motion (NYSCEF 1326) is information that is considered Confidential by the NRA pursuant to the Protective Order entered in this action (NYSCEF 869).

On March 14, 2023, the NRA filed a motion to preclude evidence under CPLR 3126 (Mot. Seq. 048; NYSCEF 1426-1440). Contained within the memorandum of law in support of the motion (NYSCEF 1427) and documents attached as Exhibit B and Exhibit I to the affirmation in support of the motion (NYSCEF 1430, 1437) is information that is considered Confidential by the NRA pursuant to the Protective Order entered in this action (NYSCEF 869).

On March 17, 2023, the NRA filed a motion to exclude the testimony of the NYAG’s proposed expert witness, Jeffrey Tenenbaum (Mot. Seq. 050; NYSCEF 1450-1457). Contained within the memorandum of law in support of the motion (NYSCEF 1451) and documents attached as Exhibit A, Exhibit C, and Exhibit D to the affirmation in support of the motion (NYSCEF 1453, 1455, 1456) is information that is considered Confidential by the NRA pursuant to the Protective Order entered in this action (NYSCEF 869).

Pursuant to the Protective Order and Section 216.1(a) of the Uniform Rules for Trial Courts, the NRA respectfully requests that the Court seal portions of NYSCEF 1326, 1427, 1430, 1437, 1451, 1453, 1455, and 1456. For the reasons below, good cause exists for the narrowly tailored relief the NRA seeks.

LAW & ARGUMENT

I. 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.” *Id.* “[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 NYCRR §216.1(a)); *see, e.g.*, NYSCEF 770 at 4-5 (recognizing the Court’s authority to enter a sealing order). Sealing orders can be granted if they are “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); *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).

II. Good Cause Exists For Sealing The Requested Documents.

Certain passages within the above-referenced documents reveal the identities of potential whistleblowers. Good cause exists for sealing and/or redacting such information. As reflected in New York laws (N-PCL §715-b; EPTL §8-1.9) and the NRA’s internal policies, it is an important public policy and in the public’s interest to ensure that the identities of whistleblowers remain confidential.

Here, the NRA seeks to redact only portions of the above-referenced documents that entail such information—specifically, the identities of potential whistleblowers. The NRA seeks only narrowly-tailored redactions to the documents at issue—this is not a motion to seal entire

documents. Thus, the interests of the parties, potential whistleblowers, and public will all be served by permitting limited redactions.

DESCRIPTION OF REQUESTED REDACTIONS

As required by the individual practices of the Honorable Joel M. Cohen, the worksheet below itemizes the passages at issue in this motion and the NRA has separately provided the Court and Parties with the proposed redactions of each document to illustrate the redactions the NRA seeks to make to each document.

<u>NYSCEF</u>	<u>Description</u>	<u>Requested Redactions</u>	<u>Basis</u>
1326 (Mot. 047)	Ex. D to Mot. 047: Sullivan & Blacker Rebuttal Report	Attch. A-5, p. 1-2 (see proposed redactions)	Identifies potential whistleblowers.
1427 (Mot. 048)	Memorandum Of Law In Support Of Motion To Preclude Evidence Under CPLR 3126	p. 14 (see proposed redactions)	Identifies potential whistleblowers.
1430 (Mot. 048)	Ex. B to Mot. 048: NYAG Contention Interrogatory Responses	p. 8 (see proposed redactions)	Identifies potential whistleblowers.
1437 (Mot. 048)	Ex. I to Mot. 048: Email Correspondence	p. 8 (see proposed redactions)	Identifies potential whistleblowers.
1451 (Mot. 050)	Memorandum Of Law In Support Of Motion To Exclude Evidence From Jeffrey Tenenbaum	p. 6 (see proposed redactions)	Identifies potential whistleblowers.
1453 (Mot. 050)	Ex. A to Mot. 050: Expert Disclosure and Report of J. Tenenbaum	pp. 47-51, 58 (see proposed redactions)	Identifies potential whistleblowers.
1455 (Mot. 050)	Ex. C to Mot. 050: Sullivan & Blacker Rebuttal Report	Attch. A-5, p. 1-2 (see proposed redactions)	Identifies potential whistleblowers.
1456 (Mot. 050)	Ex. D to Mot. 050: Lerner Rebuttal Report	p. 21 (see proposed redactions)	Identifies potential whistleblowers.

CONCLUSION

For the foregoing reasons, the NRA respectfully requests that the Court: (i) reach a written finding consistent with the applicable rule that good cause exists to enter a sealing order with

regard to the information and documents referenced herein; (ii) enter such a sealing order; (iii) allow the NRA to refile NYSCEF 1326, 1427, 1430, 1437, 1451, 1453, 1455, and 1456 in redacted form (consistent with the proposed redactions provided separately); and (iv) order such other relief as the Court deems fair, just, and appropriate.

During the pendency of this motion, the NRA respectfully requests the Court direct the Clerk of the Court to disable or otherwise disallow public access to NYSCEF 1326, 1427, 1430, 1437, 1451, 1453, 1455, and 1456 on the Court's e-filing system until there is a determination on sealing and redacted versions can be refiled.

Respectfully submitted,

Dated: April 6, 2023
New York, New York

/s/ Christopher T. Zona
Christopher T. Zona
BREWSTER, ATTORNEYS & COUNSELORS
750 Lexington Ave, 14th Floor
New York, New York 10022
Phone: (212) 489-1400
Fax: (212) 751-2849
ctz@brewerattorneys.com

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

CERTIFICATION OF COMPLIANCE

I hereby certify pursuant to Rule 17 of the Rules of Practice for the Commercial Division of the Supreme Court of the State of New York that the total number of words in the foregoing document, exclusive of the caption, table of contents, table of authorities and signature block, is less than 7,000 words according to the “Word Count” function of Microsoft Word, the word-processing system used to prepare the document, and thus that the document complies with the word count limit set forth in Rule 17.

Dated: April 6, 2023
New York, New York

/s/ Christopher T. Zona
Christopher T. Zona

CERTIFICATE OF SERVICE

I, Christopher T. Zona, hereby certify that, on April 6, 2023, a true and correct copy of the foregoing document was electronically transmitted and served upon all counsel of record via this Court's electronic case filing system.

Dated: April 6, 2023
New York, New York

/s/ Christopher T. Zona
Christopher T. Zona