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On March 20, 2023, in opposing the relief sought by Josh Powell in motion Sequence No. 46, the NYAG and the NRA filed in fully redacted form several Confidential documents (the “Documents”) produced by the NRA, including (i) a spreadsheet prepared by a forensic accounting firm retained by the NRA in 2019 in connection with its attempted inspection of a former vendor’s books and records (NYSCEF 1576) (attached to affirmation of Svetlana M. Eisenberg dated March 27, 2023 as Exhibit 2); (ii) a document prepared by a group of employees at the NRA in July 2018 regarding activities suspected to violate the NRA's policies (Exhibit H to John Frazer’s affidavit, NYSCEF 1598) (attached to Eisenberg affirmation as Exhibit 3); and (iii) a series of American Express credit card statements (NYSCEF 1609 through 1643), which were attached as Exhibits A through JJ to Sonya Rowling’s affidavit dated March 13, 2023 (NYSCEF 1608), detailing expenses of a various card users, including Directors and employees of the NRA (attached to Eisenberg affirmation as Exhibits 4 through 39).¹

Pursuant to the Protective Order entered in this action (NYSCEF 869) and Section 216.1(a) of the Uniform Rules for Trial Courts, the NRA seeks an order sealing the Documents. There is good cause for the sealing of the Documents. Such an order, which can be narrowly tailored, will serve the interests of the parties in this action and the public.

¹ Some of the Documents at issue in this motion, which were appended to the NRA's filing, inadvertently had been produced without a confidential designation. Contemporaneously with this motion, the NRA is clawing back the documents to re-produce them with such a designation. Other copies of the same or comparable documents were designated Confidential pursuant to the Protective Order when they were produced. E.g., NRA-NYAGCOMMDIV-00056504-6505; NRA-NYAGCOMMDIV-00056521-6522; NRA-NYAGCOMMDIV-00056518-6519; NRA-NYAGCOMMDIV-00080354-0355; NRA-NYAGCOMMDIV-00385285-5286; NRA-NYAGCOMMDIV-00887198-7199; NRA-NYAGCOMMDIV-00056633-6634; NRA-NYAGCOMMDIV-00056524-6525; NRA-NYAGCOMMDIV00056508-6509; NYSCEF 1609-10, 1612-15, 1612-20, 1624-27, 1631-38, 1641.

I.
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.” *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 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 “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 sealing the Documents.

Here, the interests of the public and the parties each militate in favor of the sealing order.

1. Good cause exists for sealing the FRA Report.

Exhibit BA (NYSCEF 1576) to the affirmation of Alexander Mendelson (NYSCEF 1522) details travel information of individuals other than Joshua Powell, including numerous individuals that have not worked for the NRA. In addition, the extensive MS Excel spreadsheet contains multiple sheets and voluminous information, including FRA's inferences and speculation about

these individuals. Importantly, the majority of the information has no relevance to the pending motion. See NYSCEF 1585. Because the spreadsheet conveys private information pertaining to matters irrelevant to the pending motion practice, the need for confidentiality outweighs the public's right to access. See *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).²

2. Good cause exists for sealing the memorandum regarding concerns about potential violations of the NRA's policies.

Exhibit H to John Frazer's affidavit dated March 20, 2023 is a list of concerns prepared by a group of whistleblowers regarding suspected violations of the NRA's policies. Good cause exists for sealing this document. As reflected in New York laws (N-PCL 715-b; EPTL 8-1.9) and the NRA's internal policies, it is important to ensure that the substance of any whistleblower reports—just like their identity—remain confidential. As a result, the interests of the parties and the public will be served by sealing it.

3. Good cause exists for sealing AmEx credit card statements.

Exhibits A through JJ to Sonya Rowling's affidavit dated March 13, 2023 (NYSCEF 1608) are a series of credit card statements detailing travel, whereabouts, and purchases pertaining to

² In addition, under the NRA's agreement with the forensic accounting company, the NRA “shall (a) protect and safeguard the confidentiality and integrity of the other Parties' Confidential Information with at least the same degree of care as it would protect and safeguard its own Confidential Information; (b) not disclose another Party's Confidential Information to any person or entity other than Permitted Recipients; and (c) not use another Party's Confidential Information except solely for the purpose of fulfilling its obligations under this Agreement” See Exhibit 1 to affirmation of S. Eisenberg (also defining “[c]onfidential Information” to mean “any information or data that is (a) marked 'Privileged' or 'Confidential;’ (b) non-public, proprietary, or related to the privileged matters described in the Agreement; or (c) disclosed by one Party (or its Permitted Recipients) to another Party (or its Permitted Recipients) in the course of the performance of this Agreement, whether in writing or electronically with the reasonable expectation that such information is ‘confidential’.”

individuals other than Joshua Powell, including individuals not party to this action. As a result, the interests of the parties and the public will be served by sealing them. As with the report of the forensic accounting firm, the majority of information in these exhibits bears no relevance to the motion practice at hand.

4. Good cause exists for sealing passages in relevant memoranda of law and other filings to the extent they quote the Documents.

In certain of the memoranda of law or related papers in response to Josh Powell's motion for summary judgment (NYSCEF 1585 and 1587), the NYAG and the NRA quoted from or cited passages from the Documents. For the foregoing reasons, good cause exists to permit redactions of the memoranda of law and other documents filed by the parties to the extent they reveal the substance of the Documents.

II.
CONCLUSION

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 (A) the Documents; and (B) the relevant memoranda of law, affirmations, or affidavits to the extent they quote or describe the Documents; (ii) enter such a sealing order, and (iii) order such other relief as the Court deems fair, just, and appropriate.

Dated: March 27, 2023
New York, New York

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
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