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On March 24, 2023, Wilson Phillips (“Phillips”) moved to exclude testimony of the NYAG’s proposed expert witness, Eric Hines (“Hines”). NYSCEF Nos. 1680-1683. Among the documents filed in support of Phillips’ motion is a report by Hines (“Hines Report” or “Report”), which contains information designated Confidential by the NRA pursuant to the Protective Order entered in this action (NYSCEF 869).<sup>1</sup> Specifically, the Hines Report reveals the terms of a Confidential Settlement Agreement (the “CSA”). The Report was appended as Exhibit A to the affirmation of Rebecca Loegering dated March 23, 2023 (NYSCEF 1683 (refiled partially redacted on April 5, 2023)).<sup>2</sup>

Pursuant to the Protective Order and Section 216.1(a) of the Uniform Rules for Trial Courts, for the reasons set forth in the NRA’s motion dated March 31, 2023 (NYSCEF 1770 at pages 3-5 [Motion Sequence No. 60]), which addresses, among other documents, the same Report, the NRA respectfully requests that the Court permit sealing/redaction of the relevant passage in the Report.

In considering motions for sealing orders, courts recognize that the need for confidentiality can outweigh the “public’s right to access.” *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.*

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<sup>1</sup> The Hines Report also has been designated Confidential and subject to the restrictions of the Protective Order (NYSCEF 869) by the NRA. Affirmation of S. Eisenberg.

<sup>2</sup> Counsel for Phillips originally filed the Hines’ Report on NYSCEF in unredacted form, in violation of the Protective Order. Counsel for the NRA alerted them to the improper disclosure and asked them to contact the Court to have the document returned and re-filed on NYSCEF with the appropriate redaction. Affirmation of S. Eisenberg dated April 12, 2023. However, a reporter previously had downloaded the unredacted version of the Hines’ Report from NYSCEF and made it publicly available online outside of NYSCEF. The NRA reserves and preserves all of its rights in law and equity, including against Phillips and his counsel. As noted below, under the CSA, damages for breach of the CSA’s confidentiality provision are presumed. Affirmation of S. Eisenberg.

*VI, LLC v. APP Intern. Fin. Co., B.V.*, 814 N.Y.S.2d 110, 113 (1st Dep’t 2006). Here, the interests of the public, including the parties, are served by permitting the redaction of the report. For example, in *In re E. 51st St. Crane Collapse Litig.*, 920 N.Y.S.2d 584, 592 (Sup. Ct. 2011), the court acknowledged the “strong public policy favoring settlement of claims.” *See also Hasbrouck v. BankAmerica Housing Svcs.*, 187 F.R.D. 453, 459 (N.D.N.Y. 1999) (“While protecting the confidentiality of settlement agreements encourages settlement, which is in the public interest, permitting disclosure would discourage settlements, contrary to public interest.”). There are “valid reasons” to keep settlement agreements confidential, particularly where, as here, “the settlement itself was conditioned on confidentiality and [] the settlement documents were not . . . the basis for the court’s adjudication” of an issue. *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 143 (2d Cir. 2004). “[H]onoring the parties’ express wish for confidentiality may facilitate settlement,” whereas failure to seal would render those provisions—which the NRA relied upon when it entered into the settlement—meaningless. *See id.*

The CSA is governed and controlled by Texas law.<sup>3</sup> Pursuant to the CSA, damages for breach of the confidentiality provision of the CSA are presumed.<sup>4</sup> In addition, under the CSA, the United States District Court for the Northern District of Texas has exclusive jurisdiction over the interpretation of the CSA.<sup>5</sup>

The NRA respectfully requests that the Court (i) find that good cause exists to enter the sealing order the NRA seeks regarding the Hines Report; (ii) permit the filing of the Hines’ Report in redacted form to protect confidential information pertaining to the CSA; and (iii) order such

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<sup>3</sup> Affirmation of S. Eisenberg.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

other relief as the Court deems fair, just, and proper with respect to the violation of the Protective Order.

Dated: April 12, 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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