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On February 10, 2023, March 20, 2023, and April 10, 2023, Joshua Powell (“Powell”) and the NYAG filed papers in support of and in opposition to his motion for summary judgment. In certain of these filings, the parties included, quoted, or cited passages from a deposition taken in this action, including several that (i) reveal the identity of potential whistleblowers and the details of their reports; and (ii) were designated confidential by the NRA pursuant to the Protective Order (NYSCEF 869). Such filings are listed in the affirmation of Svetlana M. Eisenberg dated April 17, 2022, accompanying this memorandum of law.<sup>1</sup>

To the extent that the cited portions of the deposition contain information revealing the identity of potential whistleblowers or the substance of their reports, pursuant to Section 216.1(a) of the Uniform Rules for Trial Courts and the Protective Order (NYSCEF 869), the NRA moves for a sealing order to permit the narrowly tailored redactions (the “Redactions”). For the compelling reasons below, good cause exists for this relief.

## **I.** **BACKGROUND**

Under the Protective Order, under certain circumstances, a party may designate portions of a deposition transcript “Confidential.”<sup>2</sup> Under the same order, where passages so designated are filed with the Court, within seven days of the filing, the designating party shall move for an order permitting her to redact them.<sup>3</sup>

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<sup>1</sup> Affirmation of Svetlana M. Eisenberg dated April 17, 2023 (“Eisenberg Aff.”), Paragraph 5(a)-(d).

<sup>2</sup> NYSCEF 869, Paragraph 13.

<sup>3</sup> *Id.* Paragraph 14. This motion is filed within seven days of Josh Powell’s reply memorandum of law in further support of his motion for summary judgment.

The NRA seeks a limited sealing order to protect information pertaining to the identity of potential whistleblowers and the substance of their reports.

## **II.** **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.” 22 N.Y.C.R.R. § 216.1(a). “[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 redacting information pertaining to the identity of potential whistleblowers and the substance of their reports.**

Certain passages within the portions of the deposition reveal the identity of potential whistleblowers and certain details of their reports. Good cause exists for redacting such

information. As reflected in New York laws<sup>4</sup> and the NRA's internal policies, it is important to ensure that the identity of whistleblowers and the substance of any whistleblower reports remain confidential. Here, the NRA seeks to redact only the lines of the testimony (and corresponding lines within parties' filings) that entail such information. As a result, the interests of the parties and the public will be served by permitting the limited redactions.<sup>5</sup>

### **III.** **CONCLUSION**

For the reasons above, the NRA requests that the Court enter an order (i) finding in writing—as contemplated by the applicable rules—that good cause exists for the redactions the NRA seeks; (ii) permitting the filing of the redacted passages under seal; and (iii) issuing such other relief as the Court deems fair, just, and appropriate.

Dated: April 17, 2023  
New York, New York

Respectfully Submitted,

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<sup>4</sup> N-PCL 715-b; EPTL 8-1.9.

<sup>5</sup> The NRA makes this request to seal the information without prejudice to its right to contest the NYAG's substantive allegations in this action about alleged whistleblowing, including whether a particular communication falls within the purview of the New York statutes the NYAG cites.

**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  
Svetlana M. Eisenberg

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