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August 18, 2017

Via ECF

Hon. Pamela K. Chen
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Maloney v. Singas
03-CV-0786 (PKC)

Dear Judge Chen:

This office represents Nassau County District Attorney Madeline Singas, the sole defendant in the above-referenced matter. This communication is submitted in accordance with the Court's July 23, 2017, Memorandum & Order (DE 188) ("7/23/17 Order").

As an initial matter, the 7/23/17 Order pointed out that both parties erred with respect to the burden of proof. We thank the Court for its exercise of discretion and fairness in affording the defendant an opportunity to meet her initial burden by supplementing the current record.

In *New York State Rifle & Pistol Assn. v. Cuomo*, 804 F.3d 242 (2d Cir. 2015), the Second Circuit adopted a two-step analysis: (1) whether regulated weapons fall within the protection of the Second Amendment, and (2) determining and applying the appropriate level of constitutional scrutiny. 804 F.3d at 252-53.

That first step – whether or not a weapon is entitled to constitutional protection -- in and of itself, requires a two-part inquiry because the Second Amendment protects weapons that are (1) in common use and are (2) typically possessed by law-abiding citizens for lawful purposes. *Id.* at 254-55.

“Common Use,” the Second Circuit stated, “is an objective and largely statistical inquiry.” *Id.* at 256. And as this Court noted, the evidence of commonality that was offered at the January 2017 trial was elicited from a single source of manufacturing and sales. *See* 7/23/17 Order, DE 188, at 5-6. That data point alone was insufficient to answer the question of commonality.

The analysis regarding typical possession is subjective and requires examination of “broad patterns of use” and the owner’s motives. *NYSRPA*, 804 F.3d at 256.

Both of these queries require fact gathering, in other words, further discovery. Consequently, the defendant would like to avail herself of the opportunity to conduct further research and analysis and to seek additional evidence to present to the Court in support of her position in this litigation.

It is anticipated that more detailed information about the scope of additional research and discovery will be discussed during the requested conference. However, in the event the Court seeks that information prior to holding a conference, same shall be furnished immediately.

In light of the above, the defendant respectfully requests that a conference be scheduled to discuss, among other things, a timeframe for discovery and presentation of further evidence.

Thank you for your time and attention in this matter.

Respectfully submitted,

Liora M. Ben-Sorek
Liora M. Ben-Sorek
Deputy County Attorney

cc: James M. Maloney, Esq. (Via ECF)
Gary L. Donoyan, Esq. (Via ECF)