

CONSOLIDATED CAUSE NO. CV-0081158

ROSIE YANAS et al.,	§	
<i>Plaintiffs,</i>	§	
	§	
MARK MCLEOD and GAIL MCLEOD,	§	
Individually and as Next Friends of	§	
AARON KYLE MCLEOD, et al,	§	
<i>Plaintiff-Intervenors,</i>	§	IN COUNTY COURT AT LAW NO. 3
	§	
vs.	§	
	§	
DIMITRIOS PAGOURTZIS, et al,	§	
<i>Defendants.</i>	§	
_____ /	§	OF GALVESTON COUNTY, TEXAS
	§	
WILLIAM “BILLY” BEAZLEY	§	
AND SHIRLEY BEAZLEY,	§	
INDIVIDUALLY AND	§	
AS NEXT FRIENDS OF T.B., A	§	
MINOR, <i>Plaintiffs</i>	§	
	§	
vs.	§	
	§	
ANTONIOS PAGOURTZIS, et al,	§	
<i>Defendants.</i>	§	

DEFENDANTS MOLLENHOUR GROSS LLC’S,
JORDAN MOLLENHOUR’S AND DUSTIN GROSS’S SPECIAL APPEARANCE
UNDER TEXAS RULE OF CIVIL PROCEDURE 120A

Pursuant to TEX. R CIV. P. 120a, Defendants MOLLENHOUR GROSS LLC (“MG”), JORDAN MOLLENHOUR (“Mollenhour”), and DUSTIN GROSS (“Gross”) (collectively, the “MG Defendants”) file this Special Appearance and object to the exercise of personal jurisdiction over them. The MG Defendants ask the Court to sustain their Special Appearance under Rule 120a and dismiss the claims against them for lack of personal jurisdiction.

I. SUMMARY

1. This lawsuit arises from Dimitrios Pagourtzis’s criminal shooting at Santa Fe High School on May 18, 2018. Plaintiffs are victims of Pagourtzis’s crimes.¹

2. This lawsuit was filed on May 24, 2018. The consolidated action includes two plaintiff groups – the “**Yanas Plaintiffs**” and the “**Beazley Plaintiffs**.”² Both plaintiff groups originally named Pagourtzis and his parents as defendants, alleging various negligence and intentional torts. On March 4, 2020, the Yanas Plaintiffs filed their Third Amended Petition and Request for Disclosure (the “**Yanas TAP**”). On April 13, 2020, the Beazley Plaintiffs filed their First Amended Petition and Request for Disclosure (the “**Beazley FAP**”). Both petitions add five Tennessee residents as defendants: (1) Luckygunner, LLC (“**LuckyGunner**”), (2) Red Stag Fulfillment, LLC (“**Red Stag**”), (3) MG, (4) Jordan Mollenhour, and (5) Dustin Gross (collectively, the “**Tennessee Defendants**”).

3. On May 1, 2020, before answering and without waiving any special appearance, the MG Defendants timely removed this case to the United States District Court for the Southern District of Texas, Galveston Division pursuant to 28 U.S.C. §§ 1331 and 1441(c). *See* Notice of Removal, *see also Antonio v. Rico Marino, S.A.*, 910 S.W.2d 624, 629 (Tex. App.—Houston [14th

¹ As used herein, the term “**Plaintiffs**” means, collectively, the Plaintiffs and Plaintiff-Intervenors and the Plaintiffs in Case Number 18-CV-1560, filed on November 9, 2018 and consolidated into the above-captioned matter on November 13, 2019. *See* Order on Unopposed Mot. to Transfer and Consolidate. The term “**Yanas Plaintiffs**” means the claimants in the Third Amended Petition, filed on March 4, 2020 (Rosie Yanas and Christopher Stone, individually and as next friends of Christopher Jake Stone; Mark McLeod and Gail McLeod, individually and as next friend of Aaron Kyle McLeod; Pamela Stanich, individually and as next friend of Jared Conrad Black; Shanna Claussen, individually and as next friends of Christian Riley Garcia; Clayton Horn; Rhonda Hart, individually and as the representative of the estate of Kimberly Vaughan; Abdul Aziz and Farah Naz, individually and as next friends of Sabika Aziz Sheikh, and Flo Rice, even though such plaintiffs also include parties who intervened into the case). The term “**Beazley Plaintiffs**” means the claimants in the First Amended Petition filed on April 13, 2020 (William Beazley and Shirley Beazley).

² *Supra* at fn. 1.

Dist.] 1995, no writ) (defendant can remove to federal court before filing its special appearance without waiver); *see also* 28 U.S.C. § 1446(b)(2)(B). On December 7, 2020, the United States District Court rendered an order remanding this case and sent a certified copy of the order to the clerk of the court. *See* Certified Copy of Remand Order. The Plaintiffs served and filed a certified copy of the remand order on December 18, 2020, making the MG Defendant’s deadline to answer or otherwise respond to the Yanas TAP and the Beazley FAP on January 4, 2021. *See* Tex. R. Civ. P. 237a (providing answer deadline for cases remanded from federal court).³

4. The MG Defendants object to being haled into court in Texas and ask the Court to dismiss the claims against them for lack of personal jurisdiction. Texas courts may exercise personal jurisdiction over a nonresident *only* if “(1) the Texas long-arm statute authorizes the exercise of jurisdiction, and (2) the exercise of jurisdiction is consistent with federal and state constitutional due-process guarantees.” *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007); *Old Republic Nat’l Title Ins. Co. v. Bell*, 549 S.W.3d 550, 558–59 (Tex. 2018).

5. The Court should grant the MG Defendants’ Special Appearance because:

- **The MG Defendants are *all non-residents of Texas*.** The Plaintiffs’ petitions do not allege facts sufficient to support personal jurisdiction over the MG Defendants in a Texas state court because they have not pleaded any act or omission by the MG Defendants – as opposed to *other* parties – that is sufficient to subject the MG Defendants to general or specific jurisdiction in Texas. The MG Defendants’ only alleged connection to this lawsuit is that they own and/or manage two other defendants, LuckyGunner and Red Stag.⁴ That connection is not enough to satisfy the Plaintiffs’ initial burden.

³ *See also Kashan v. McLane Co.*, No. 03-11-00125-CV, 2012 WL 2076821, *1 (Tex. App.—Austin, June 7, 2012) (“Rule 237a places the burden on the plaintiff to file the remand order with the state trial court and to provide written notice to the attorneys of record for all adverse parties. This requirement serves to provide a . . . certain answer date . . .”).

⁴ LuckyGunner, an online ammunition seller, is alleged to have sold ammunition to defendant Dimitrios Pagourtzis. Red Stag, a third-party logistics company, is alleged to have packaged and mailed the LuckyGunner ammunition order to Pagourtzis via FedEx.

- **The MG Defendants do not have minimum contacts with Texas.** Even if the Plaintiffs had pleaded adequate connections with Texas (and they did not), the MG Defendants submit with this Special Appearance affidavits negating all potential bases for personal jurisdiction over them in Texas. (*See* Affidavit of Jordan Mollenhour, attached as Exhibit A; Affidavit of Dustin Gross, attached as Exhibit B; and Affidavit of Jordan Mollenhour on behalf of Mollenhour Gross LLC, attached as Exhibit C.) As these affidavits show, the MG Defendants have no connections to Texas sufficient to hale them into Texas court for purposes of general or specific personal jurisdiction.
- **Exercising jurisdiction over the MG Defendants would deprive them of due process.** Because the MG Defendants had no dealings with Texas or the underlying events of this case and there is no other legitimate basis to subject them to jurisdiction under the facts of this case that would withstand constitutional scrutiny, serious due process concerns will arise if the court were to exercise jurisdiction.

II. PERTINENT FACTUAL ALLEGATIONS

6. Plaintiffs sue the MG Defendants for negligence and negligence *per se* and include derivative claims of civil conspiracy and gross negligence. (Yanas TAP at ¶¶ 125-141, 152-165, 166-174, 185-189; Beazley FAP at ¶¶ 41-49, 50-51, 75-78, 79-80.) Plaintiffs’ petitions include the bare-bones conclusions that this lawsuit arises from the MG Defendants’ “performance of business and commission of a tort in the State of Texas” [Yanas TAP at ¶¶ 15, 16, 17], or that the Court “has personal jurisdiction over the LuckyGunner Defendants because the Defendants purposefully availed themselves of the privileges and benefits of conducting business in Texas...[or] because the Defendants committed a tort, which is the subject of this suit, in whole or in part in Texas.” (Beazley FAP at ¶¶ 16, 19, 21.) But Plaintiffs’ petitions provide no factual allegations to demonstrate the MG Defendants actually performed business or any other conduct in Texas, or otherwise purposefully availed themselves of Texas.

7. Rather, Plaintiffs allege Mollenhour and Gross are individuals and non-residents of Texas. (Yanas TAP at ¶¶ 16, 17; Beazley FAP at ¶¶ 17, 18.) They also allege MG is a Tennessee limited liability company. (Yanas TAP at ¶ 15; Beazley FAP at ¶ 16.) And, the Plaintiff claim Mollenhour, Gross, and MG do not have regular places of business [and do not have *any* places of

business] in Texas, and are *only* amenable to service in Tennessee. (Yanas TAP at ¶¶ 15, 16, 17; Beazley FAP at ¶¶ 16, 17, 18.) Plaintiffs allege Mollenhour and Gross are the members of MG, and, in turn, MG is the sole member of LuckyGunner and Red Stag (two separate Tennessee limited liability companies). (Yanas TAP at ¶ 176; *see also id.* at ¶¶ 13, 14.) Each of the Tennessee Defendants is a separate legal entity or individual.

8. The Yanas TAP alleges the following business activity with respect to the MG Defendants: “[u]pon information and belief, Defendants Mollenhour and Gross launched [defendant] Luckygunner in 2009 through their limited liability company, MollenhourGross” [Yanas TAP at ¶ 58]; and “Mollenhour and Gross established Red Stag in May 2013, through their limited liability company, MollenhourGross, to provide shipping services for Luckygunner.” (*Id.* at ¶ 169.) These allegations only reaffirm Tennessee (non-Texas) business activity, as LuckyGunner and Red Stag are separate Tennessee limited liability companies. (*Id.* at ¶¶ 13, 14; Beazley FAP at ¶¶ 14, 15.) The Beazley FAP alleges Mollenhour and Gross formed MG, and formed LuckyGunner and Red Stag – again, all separate Tennessee legal entities. (Beazley FAP at ¶ 81.)

9. Plaintiffs’ petitions refer to Mollenhour, Gross and the companies MG and LuckyGunner “collectively” as the “Luckygunner Defendants.” (Yanas TAP at ¶ 18; Beazley FAP at ¶ 19.) Plaintiffs do not, however, allege the MG Defendants had any individual or independent contacts with Texas or Pagourtzis, a Texas resident, outside of their ownership of LuckyGunner. (*See* Yanas TAP at ¶ 135; Beazley FAP at ¶ 41.) Instead, Plaintiffs contend Pagourtzis purchased ammunition from LuckyGunner through LuckyGunner’s website, and that he used the ammunition purchased from LuckyGunner to perpetrate his crimes. (Yanas TAP at ¶¶ 13, 21, 22 23, 24, 37, 73-76, 100; Beazley FAP at ¶¶ 14, 30-32, 45, 48.)

10. Plaintiffs’ petitions also allege that the MG Defendants and LuckyGunner conspired with each other. (Yanas TAP at ¶¶ 40, 69, 139; *see also id.* ¶¶ 166-174; Beazley FAP at ¶¶ 34, 71, 79-80.) Plaintiffs name Red Stag in this alleged conspiracy. (Yanas TAP at ¶ 171; Beazley FAP at ¶ 79.) The petitions also include a “Piercing the Corporate Veil” claim against Mollenhour and Gross, individually. (Yanas TAP at ¶¶ 175-184; Beazley FAP at ¶¶ 81-82.) None of these conclusory allegations suffice to hale the MG Defendants into Texas.

III. ARGUMENT AND AUTHORITY

A. Under Rule 120a, Plaintiffs bear the initial pleading burden to establish personal jurisdiction—a burden that Plaintiffs cannot meet.

11. In a special appearance, the plaintiff carries the initial burden to allege facts that could support a Texas court’s exercise of personal jurisdiction over a defendant. *Kelly v. Gen. Interior Const., Inc.*, 301 S.W.3d 653, 658 (Tex. 2010). If the plaintiff meets its initial burden, the burden then shifts to the defendant to negate all bases of personal jurisdiction alleged by the plaintiff. *Id.* If, however, the plaintiff fails to meet its initial burden, the defendant need only prove that it is not a Texas resident to negate jurisdiction. *See id.* at 658-59.

12. Neither the Yanas TAP nor the Beazley FAP contain allegations demonstrating any tortious act or business conduct by any of the MG Defendants in Texas. *See Old Republic Nat’l Title Ins. Co. v. Bell*, 549 S.W.3d 550, 558–59 (Tex. 2018) (the long-arm statute is satisfied when a defendant commits a tort in whole or in part in Texas); *Kelly*, 301 S.W.3d at 657–58, 660-61 (merely pleading a defendant violated Texas law is not enough to confer personal jurisdiction in Texas without showing some relevant act by defendant occurring in Texas).

13. When, as here, a plaintiff fails to allege any act by a defendant in Texas, a defendant can sustain its burden of negating all basis of personal jurisdiction by proving it is a non-resident. *Siskind v. Villa Found. for Educ., Inc.*, 642 S.W.2d 434, 438 (Tex. 1982) (defendants sustained

their burden by proving nonresident status where plaintiff did not allege any act by individuals in Texas). Here, the Yanas TAP and Beazley FAP do not allege any act or omission by the MG Defendants occurring in Texas or any other connection to the state that would support the Plaintiffs' conclusory statement that the MG Defendants "do business" in Texas. To the contrary, Plaintiffs allege facts supporting only that the MG Defendants do business in Tennessee and are not amenable to service in Texas. And, the Yanas TAP and Beazley FAP plead the MG Defendants are residents of Tennessee – *not* Texas. (Yanas TAP at ¶¶ 15-17; Beazley FAP at ¶¶ 16-18.) As a result, Plaintiffs have failed to meet their initial pleading burden; conversely, their allegations affirm only that all of the MG Defendants are not subject to personal jurisdiction in Texas. (*Id.*) Removing any doubt that the Plaintiffs cannot establish their initial burden, each of the MG Defendants submits an affidavit with this special appearance establishing they are residents of Tennessee. *Kelly*, 301 S.W.3d at 658-59.

14. Because the plaintiffs failed to meet their initial burden, and the MG Defendants have established they are not Texas residents, the Court should conclude the MG Defendants have negated jurisdiction and dismiss the claims against them under Rule 120a. *See id.* at 658-59.

B. Plaintiffs cannot establish "general" or "specific" personal jurisdiction over the MG Defendants.

15. Even assuming the Plaintiffs had carried their initial burden under Rule 120a (and they did not), the Plaintiffs cannot establish personal jurisdiction over the MG Defendants.

16. A court may have either "general" or "specific" personal jurisdiction. *Bell*, 549 S.W.3d at 559. These analyses require the Court to determine whether the defendants have "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.* (citing *Int'l Shoe Co.*, 326 U.S. at 316

and *Moki Mac River Expeditions*, 221 S.W.3d at 575).⁵ A defendant establishes minimum contacts with a state when it “purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.” *Bell*, 549 S.W.3d at 559 (citing *Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 338 (Tex. 2009)). The analytical framework for jurisdiction is well-known: (1) only the defendant’s contacts with the forum are relevant, not the unilateral activity of another party or a third person; (2) the contacts relied upon must be purposeful rather than random, fortuitous, or attenuated; and (3) the defendant must seek some benefit, advantage or profit by availing itself of the jurisdiction. *Bell*, 549 S.W.3d at 559.

17. General personal jurisdiction is established when a defendant’s contacts “are so ‘continuous and systematic’ as to render [it] essentially at home in the forum State.” *M & F Worldwide Corp. v. Pepsi-Cola Metro. Bottling Co., Inc.*, 512 S.W.3d 878, 885 (Tex. 2017; *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014)). The inquiry requires a demanding minimum contacts analysis with a “substantially higher threshold [than specific jurisdiction]” demonstrating contacts so pervasive that the defendant would be subject to jurisdiction in the state for any dispute. *PHC-Minden, L.P. v. Kimberly-Clark Corp.*, 235 S.W.3d 163, 168 (Tex. 2007); *Searcy*, 496 S.W.3d at 72-73.

18. Specific personal jurisdiction in Texas over a nonresident defendant requires (1) the defendant’s purposeful availing of the privilege of conducting activities within the forum

⁵ A personal jurisdiction analysis requires an examination of both state and federal law. *Searcy v. Parex Res., Inc.*, 496 S.W.3d 58, 66 (Tex. 2016). The broad language of the Texas long-arm statute permits the trial court’s jurisdiction to “reach as far as the federal constitutional requirements of due process will allow.” *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 575 (Tex. 2007) (internal quotation marks omitted); *see also* Tex. Civ. Prac. & Rem. Code § 17.042. However, allegations that suffice under the Texas long-arm statute—for example, an assertion that the defendant committed a tort in Texas—do not necessarily satisfy constitutional due process requirements. *See Michiana Easy Livin’ Country, Inc. v. Holten*, 168 S.W.3d 777, 788 (Tex. 2005).

state, thus invoking the benefits and protections of its laws, and (2) a “substantial connection” between those purposeful activities and the operative facts of the litigation, also called “relatedness.” *M & F Worldwide Corp.*, 512 S.W.3d at 890.

19. The first prong, purposeful availment, requires contacts that the defendant “purposefully directed” into the forum state. *Searcy*, 496 S.W.3d at 67 (citing *Michiana Easy Livin’ Country, Inc. v. Holten*, 168 S.W.3d 777, 785 (Tex. 2005)). The second prong, relatedness, “lies at the heart of specific jurisdiction by defining the required nexus between the nonresident defendant, the litigation, and the forum.” *Moki Mac River Expeditions*, 221 S.W.3d at 579. In other words, specific personal jurisdiction can be established if the defendant’s alleged liability arises out of the activity conducted within the forum. *Id.* at 576.

i. Plaintiffs cannot support a “general” personal jurisdiction finding.

20. Plaintiffs have not alleged any purposeful contacts between the MG Defendants and Texas, let alone contacts that are “continuous and systematic” so as to render them “at home” in Texas. *See Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (“For an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.”) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011)); *see also See Old Republic Nat’l Title Ins. Co. v. Bell*, 549 S.W.3d 550, 565 (Tex. 2018).

21. The Yanas TAP and Beazley FAP make clear that the MG Defendants are “at home” in Tennessee, not Texas. (Yanas TAP at ¶ 15-17, 176; Beazley FAP at 16-18.) Ostensibly, Plaintiffs’ general personal jurisdictional allegations are solely that the MG Defendants “conduct business” in Texas or “purposefully availed themselves of the privileges and benefits of conducting business in Texas.” (Yanas TAP at ¶¶ 15, 16, 17; Beazley FAP at ¶¶ 16, 19, 21.) This is not

enough. *See Searcy*, 496 S.W.3d at 72-73 (finding no general personal jurisdiction over foreign company where company had no bank accounts, offices, property, employees or agents in Texas, and where company's meetings in Texas with a Texas company were not so continuous and systematic to deem it essentially at home in Texas).

22. To be clear, the standard locations where a company is at home are its place of incorporation and principal place of business. *Daimler AG*, 571 U.S. at 137, 139 (applying the same standard to a corporation and limited liability company). While a corporation may be at home in other locations “in an exceptional case,” the general jurisdiction inquiry “calls for an appraisal of a corporation’s activities in their entirety, nationwide and worldwide” because “[a] corporation that operates in many places can scarcely be deemed at home in all of them.” *Id.* at 139 n.19, 20. As an illustration of these principals, FedEx Corporation (which is incorporated in Delaware and has its principal place of business in Tennessee) and FedEx Corporation Services, Inc. are not sufficiently “at home” in Texas to subject them to general jurisdiction here. *FedEx Corp. v. Contreras*, No. 04-19-00757-CV, 2020 WL 4808721, at *8 (Tex. App.—San Antonio, Aug. 19, 2020) (concluding no general or specific jurisdiction and that allegations of ownership of subsidiary freight company were insufficient to establish jurisdiction).

23. The MG Defendants’ contacts with Texas are insufficient to render them subject to general personal jurisdiction in Texas. To negate any contention this Court could exercise general personal jurisdiction over them, individual defendants Mollenhour and Gross submit affidavits affirming the following facts:

- They are residents of Tennessee. (Affidavits of Jordan Mollenhour and Dustin Gross, attached as Exhibit A and Exhibit B at ¶ 1; *see also* Yanas TAP at ¶¶ 16, 17; Beazley FAP at ¶¶ 17, 18.)
- They are not residents of Texas. (Ex. A and Ex. B at ¶ 2.)

- They do not own property in Texas. (*Id.* at ¶ 3.)
- They do not pay income taxes in Texas. (*Id.* at ¶ 4.)
- They conduct business from their home state of Tennessee. (*Id.* at ¶ 5.)
- They do not conduct business in Texas. (*Id.* at ¶ 6.)
- They do not maintain and have never maintained an office in Texas. (*Id.* at ¶ 7.)
- They are members of Mollenhour Gross, LLC, which is a Tennessee limited liability company. (*Id.* at ¶ 8.)

24. Likewise, defendant MG affirms the following facts:

- MG operates as a private investment firm in Knoxville, Tennessee. (Declaration of Jordan Mollenhour on behalf of Mollenhour Gross, LLC, attached as Exhibit C at ¶ 3.)
- MG does not conduct business in Texas. (*Id.* at ¶ 4.)
- MG does not maintain, and has never maintained an office or other physical facility in Texas. (*Id.* at ¶ 5.)
- MG is not currently, and never has registered to do business in Texas. (*Id.* at ¶ 6.)
- MG does not currently employ, and never has employed employees in Texas. (*Id.* at ¶ 7.)
- MG does not maintain, and never has maintained a bank account in Texas. (*Id.* at ¶ 8.)
- MG does not own, and never has owned, real property interests in Texas. (*Id.* at ¶ 9.)

25. Plaintiffs cannot overcome these facts. Accordingly, the Court cannot exercise “general” personal jurisdiction over the MG Defendants.

ii. Plaintiffs cannot support a “specific” personal jurisdiction finding.

26. Nor can Plaintiffs support a “specific” personal jurisdiction finding in the face of federal due process requirements. Federal due process requires both (1) minimum contact with

Texas and (2) a finding that exercising personal jurisdiction would not offend “traditional notions of fair play and substantial justice.” *See Moki Mac*, 221 S.W.3d at 575. Rather than allege any facts supporting either purposeful availment or relatedness as against the MG Defendants individually, Plaintiffs’ claims are solely predicated on LuckyGunner’s alleged sale of ammunition to a Texas resident. The Plaintiffs allege:

- Pagourtzis visited defendant LuckyGunner’s website where he ordered and purchased ammunition [Yanas TAP at ¶¶ 21-24, 100; Beazley FAP ¶¶ 30-32, 45, 48];
- LuckyGunner approved the order and sold the ammunition to Pagourtzis [Yanas TAP at ¶¶ 73-78, 128, 133, 153, 187; Beazley FAP ¶¶ 31, 32, 45, 48];
- LuckyGunner then sent the order for fulfillment and mailing by Red Stag [Yanas TAP at ¶¶ 62, 75, 76];
- Neither LuckyGunner nor Red Stag attempted to verify or obtain proof of Pagourtzis’ age before shipping him the ammunition that he ordered [Beazley FAP at ¶¶ 47, 49]
- Red Stag fulfilled and mailed the order via FedEx to Pagourtzis [Yanas TAP at ¶¶ 41, 75-77, 131, 134, 156; Beazley FAP at ¶¶ 33];
- Pagourtzis used the ammunition “sold” and “shipped” to him by LuckyGunner to perpetrate his crimes. (Yanas TAP at ¶ 80.)

27. Under these circumstances, the only defendant that, potentially, could be found to have purposeful contact with Texas is LuckyGunner through its sale of goods into Texas.⁶ In contrast to LuckyGunner, the MG Defendants are not alleged to have individually directed any sales, contacts, or other activity into Texas. *See PHC–Minden*, 235 S.W.3d at 172-73 (holding that the contacts of distinct legal entities, including parents and subsidiaries, must be assessed

⁶ While Red Stag is alleged to have fulfilled (*i.e.*, packaged and mailed) the LuckyGunner order via FedEx to Pagourtzis, such acts, being directed by its client, LuckyGunner, are not purposeful availment by Red Stag. *See Michiana Easy Livin’ Country, Inc.*, 168 S.W.3d at 785. Regardless, none of the alleged acts of selling or directing ammunition into Texas can be attributed to any of the MG Defendants.

separately for jurisdictional purposes); *Searcy*, 496 S.W.3d at 67 (finding only the objecting, non-resident defendant's contacts with the forum were relevant to the personal jurisdiction inquiry, because a non-resident should not be called to court in a jurisdiction solely as a result of the unilateral activity of another party); *FedEx Corp.*, No. 04-19-00757-CV, 2020 WL 4808721, at *5 (requiring proof of parent company's Texas-specific contacts).

28. Because there are no allegations that the MG Defendants sold goods into Texas, or otherwise performed any business conduct in Texas related to the sale of ammunition or the sale at issue in this case, the purported minimum contacts stemming from the alleged sale could *only* be imputed to the MG Defendants through LuckyGunner *if* the corporate veil is pierced. *See PHC–Minden*, 235 S.W.3d at 172-73.

iii. Plaintiffs cannot establish personal jurisdiction over the MG Defendants under the Texas “jurisdictional” veil piercing standard.

29. Plaintiffs' veil piercing allegations are riddled with omissions and missteps, which simply do not plead, and cannot establish, a valid basis to confer personal jurisdiction over the MG Defendants in Texas.

30. The MG Defendants are (1) a holding company and (2) the two individual owner/members of that holding company. Because Texas law creates a presumption of corporate separateness between legal entities, Plaintiffs bear the burden of establishing jurisdictional veil piercing. *TMX Fin. Holdings, Inc. v. Wellshire Fin. Servs., LLC*, 515 S.W.3d 1, 6 (Tex. App.—Houston [1st Dist.] 2016); *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 798 (Tex. 2002).

31. Texas recognizes two separate standards for veil piercing: (1) jurisdictional veil piercing; and (2) substantive veil piercing. *PHC-Minden, L.P.*, 235 S.W.3d at 174. Texas courts apply only a “jurisdictional” veil-piercing analysis to foreign defendants to determine whether the

contacts of a subsidiary can be imputed to a foreign parent. *Id.* Thus, only jurisdictional veil piercing is at issue in the MG Defendants' Special Appearance.

32. Plaintiffs have not and cannot meet this standard. "The rationale for exercising jurisdiction is that the parent corporation exerts such domination and control over its subsidiary 'that they do not in reality constitute separate and distinct corporate entities but are one and the same corporation for purposes of jurisdiction.'" *BMC Software Belgium, N.V.*, 83 S.W.3d at 798 (citing *Hargrave v. Fibreboard Corp.*, 710 F.2d 1154, 1159 (5th Cir. 1983)).

33. This is fundamentally an "alter-ego" analysis. Where a parent company and its subsidiary observe corporate formalities, Texas courts do not disregard those formalities to fuse those separate companies for jurisdictional purposes. *See PHC-Minden, L.P.*, 235 S.W.3d at 172 (following *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 335 (1925) and *Hargrave*, 710 F.2d at 1160 ("Cannon stands for the proposition that so long as a parent and subsidiary maintain separate and distinct corporate entities, the presence of one in a forum state may not be attributed to the other.")). To "fuse" a parent company and its subsidiary for jurisdictional purposes, a plaintiff must be able to establish the parent controls the internal business operations and affairs of the subsidiary to the extent that the two entities effectively cease to be separate. *BMC Software Belgium, N.V.*, 83 S.W.3d at 799; *PHC-Minden, L.P.*, 235 S.W.3d at 175. Indeed, the degree of control the parent exercises must be greater than that normally associated with common ownership and directorship; the evidence must show that the two entities cease to be separate so that the corporate fiction should be disregarded to prevent fraud or injustice. *PHC-Minden, L.P.*, 235 S.W.3d at 175.

34. "A subsidiary corporation will not be regarded as the alter ego of its parent merely because of stock ownership, a duplication of some or all of the directors or officers, or an exercise

of the control that stock ownership gives to stockholders.” *Id.* (citing *Gentry v. Credit Plan Corp. of Houston*, 528 S.W.2d 571, 573 (Tex. 1975)). Other considerations include the existence of separate headquarters, the observance of corporate formalities, and the degree of the parent’s control over the general policy and administration of the subsidiary. *PHC-Minden, L.P.*, 235 S.W.3d at 175 (finding subsidiaries contacts were not imputable to parent where the two entities maintained separate headquarters, the subsidiary controlled its own day to day operations, and established its own procedures and policies, and even where subsidiary officers received their paychecks from the parent).

35. Both the Yanas TAP’s and the Beazley FAP’s veil piercing allegations are insufficient to support jurisdictional veil piercing, and they are fundamentally flawed. First, Plaintiffs named only individuals Mollenhour and Gross as parties to the veil piercing count—but they omit the parent company, MG. (Yanas TAP at ¶¶ 175-184; Beazley FAP at ¶¶ 81-82.) In other words, Plaintiffs entirely ignored the existence of MG and did not even allege the corporate veil could be pierced between MG, the alleged “parent” of LuckyGunner (the entity with alleged contacts).

36. Plaintiffs’ failure to include MG in their veil piercing theory is fatal to a finding of personal jurisdiction over the MG Defendants because (1) no other basis except veil piercing exists to subject the holding company, MG, to personal jurisdiction in Texas, and (2) it precludes a finding of “alter-ego” between LuckyGunner and the individual defendants, Mollenhour and Gross. The Yanas TAP affirms this point by reiterating that individuals Mollenhour and Gross are the managing members of MG (not LuckyGunner). And MG was the managing member of LuckyGunner. (Yanas TAP at ¶ 176.) Plaintiffs have skipped two obvious factual prerequisites to any viable Texas jurisdictional veil piercing theory—namely, they must first establish

LuckyGunner is somehow the alter ego of MG (a holding company) and, second, that MG is somehow an alter ego of the individuals Mollenhour and Gross.

37. At bottom, Plaintiffs have not properly alleged an “alter-ego” theory, and their hodge-podge of allegations amount to a “group-of-entities-and-individuals-were-somehow-involved-here” accusation. (*See* Yanas TAP ¶¶ 177-182; Beazley FAP ¶¶ 81-82.) In other critical respects, the Yanas TAP serves to undercut personal jurisdiction by affirming that all of the defendants maintain separate offices and addresses for service of process. (Yanas TAP at ¶¶ 13-17.)

38. To refute Plaintiffs’ vague veil-piercing claims and negate any bases for finding specific personal jurisdiction, the defendants Mollenhour and Gross affirm the following facts:

- LuckyGunner is operated and controlled by its own management team, which is headed by its Chief Executive Officer, Jake Felde. (Ex. A and Ex. B at ¶ 12.)
- Red Stag is operated and controlled by its own management team, which is headed by its President, Eric McCollom. (*Id.* at ¶ 16.)
- Mollenhour and Gross are not members of LuckyGunner or Red Stag, rather, MG was the sole member of LuckyGunner and is the sold member of Red Stag. (*Id.* at ¶¶ 9, 13.)
- Mollenhour and Gross do not control the business operations of LuckyGunner or Red Stag. (*Id.* at ¶¶ 10, 12, 14, 16.)
- Mollenhour and Gross are not officers or directors of LuckyGunner or Red Stag. (*Id.* at ¶¶ 11, 15.)
- Mollenhour and Gross did not direct the sale of ammunition by LuckyGunner to Dimitrios Pagourtzis in 2018, and did not direct the shipment by Red Stag for such orders. (*Id.* at ¶ 17.)

39. Defendant MG affirms the following facts regarding its business relationship to LuckyGunner and Red Stag, which also negate any bases for finding specific personal jurisdiction over it in this case:

- MG has held equity interests in a variety of companies and investments, including Red Stag, and at the time of the events in question, LuckyGunner. (Ex. C at ¶ 10.)
- MG has never controlled the business operations of its current and former investments Red Stag and LuckyGunner. (*Id.* at ¶¶ 11-13.)
- MG observed and observes corporate and business formalities with respect to itself and its investments, including Red Stag and its former investment LuckyGunner. (*Id.* at ¶ 15.)
- Each of MG, LuckyGunner, and Red Stag file separate annual reports. (*Id.* at ¶ 16.)
- Each of MG, LuckyGunner, and Red Stag have separate bank accounts from each other and do not share bank accounts. (*Id.* at ¶ 17.)
- MG has a principle place of business that is separate from LuckyGunner and from Red Stag. (*Id.* at ¶ 18.)
- MG did not direct the sales of ammunition by LuckyGunner to Dimitrios Pagourtzis in 2018, and did not direct any shipment by Red Stag for such orders. (*Id.* at ¶ 19.)

40. In summary, under Texas law, Plaintiffs must be able to establish specific facts supporting “alter-ego,” *i.e.*, that the MG Defendants are not separate and distinct from LuckyGunner but one and the same. *See PHC-Minden, L.P.*, 235 S.W.3d at 175 (“to fuse” entities for jurisdictional purposes, a plaintiff must be able to prove that one entity controls the internal business operations and affairs of the other entity to an extent greater than that normally associated with a parent/subsidiary relationship to the extent that the two entities cease to be separate).

41. Plaintiffs cannot establish alter-ego between the MG Defendants and LuckyGunner because they are all separate and distinct from each other, and the MG Defendants simply do not control LuckyGunner or its sales.

C. Plaintiffs’ “civil conspiracy” allegations negate any basis for Texas jurisdictional veil piercing.

42. Plaintiffs have alleged the five defendants—individuals Mollenhour and Gross,

MG, LuckyGunner and Red Stag—are all separate and distinct from each other in their “civil conspiracy” claim. This is an additional jurisdictional roadblock for any veil-piercing theory.

i. Civil conspiracy is not an independent or alternative basis for personal jurisdiction.

43. First and foremost, the Texas Supreme Court has rejected personal jurisdiction based on a civil conspiracy allegation. *Nat’l Indus. Sand Ass’n v. Gibson*, 897 S.W.2d 769, 773 (Tex. 1995); *M & F Worldwide Corp.*, 512 S.W.3d at 886-87 (noting that a nonresident’s alleged conspiracy with a Texas resident does not confer personal jurisdiction over the nonresident in Texas). Thus, to the extent the MG Defendants are alleged to have been involved in a “civil conspiracy,” that argument does not establish personal jurisdiction in Texas. The Texas Supreme Court has held that “[t]he mere existence or allegation of a conspiracy directed at Texas is not sufficient to confer jurisdiction.” *Bell*, 549 S.W.3d at 560; *Nat’l Indus. Sand Ass’n v. Gibson*, 897 S.W.2d 769, 773 (Tex. 1995). Thus, jurisdiction may not be premised “solely upon the effects or consequences of an alleged conspiracy in the forum state”; instead, it is the defendant’s conduct and connection with the forum that is critical. *Michiana Easy Livin’ Country*, 168 S.W.3d at 789. Furthermore, “[j]urisdiction cannot turn on whether a defendant denies wrongdoing—as virtually all will. Nor can it turn on whether a plaintiff merely alleges wrongdoing—again as virtually all will.” *Bell*, 549 S.W.3d at 560 (quoting *Michiana Easy Livin’ Country*, 168 S.W.3d at 791).

ii. Plaintiffs’ civil conspiracy claim negates any jurisdictional veil-piercing theory.

44. Conspiracy requires Plaintiffs to allege the “specific intent [of two or more parties] to agree to accomplish something unlawful or to accomplish something lawful by unlawful means.” *First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 222 (Tex. 2017) (citing *ERI Consulting Eng’rs, Inc. v. Swinnea*, 318 S.W.3d 867, 881 (Tex. 2010)) (emphasis

added).

45. To establish a conspiracy to commit the underlying tort, Plaintiffs must plead and prove: (1) *two or more persons* acted in combination; (2) the persons sought to accomplish an object or course of action; (3) the persons reached a meeting of the minds on that object or course of action; (4) at least one unlawful, overt act was taken in pursuit of that object or course of action; and (5) damages proximately resulted. *Landry's, Inc. v. Animal Legal Def. Fund*, 566 S.W.3d 41, 65 (Tex. App.—Houston [14th Dist.] 2018), *reh'g denied* (Dec. 31, 2018) (emphasis added). An actionable civil conspiracy exists only as to those parties who are aware of the intended harm or proposed wrongful conduct at the outset of the combination or agreement. *First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 222-23 (Tex. 2017).

46. The fundamentals of a Texas civil conspiracy claim destroy Texas jurisdictional veil piercing for this simple reason: While jurisdictional veil piercing requires an “alter-ego” (one in the same) between the non-resident defendant without jurisdictional ties and the defendant with jurisdictional ties, a “civil conspiracy” by definition requires the existence of separate and distinct defendants. Here, Plaintiffs allege a civil conspiracy existed between (1) LuckyGunner, (2) Red Stag, (3) MG, (4) Mollenhour, and (5) Gross:

- The petitions state that the “Luckygunner Defendants” (*i.e.*, Mollenhour, Gross, MG, and LuckyGunner) “conspired to profit from and aid the sale of ammunition to juveniles” and “agreed and conspired to set up their business to avoid knowing whether or not their customers were old enough to purchase or possess handgun ammunition[,]” and “conspired to violate the federal restrictions on handgun ammunition purchases by minors.” (Yanas TAP at ¶¶ 40, 69, 139; *see also id.* ¶¶166-174; *see also* Beazley FAP at ¶¶ 34, 71, 79-80.)
- The Yanas TAP then alleges “[u]pon information and belief, the Luckygunner Defendants and Defendant Red Stag had a joint objective: to sell and deliver ammunition to all who approached them[.]” (Yanas TAP at ¶171.)

- The Beazley FAP alleges the Luckygunner Defendants and Red Stag, “in combination with each other, agreed to sell and deliver ammunition to consumers without verifying legal age.” (FAP at ¶ 80.)

47. In short, Plaintiffs allege the “Luckygunner Defendants” conspired with each other, and conspired with Red Stag—all predicated on the fact that the defendants are separate and distinct. Separate and distinct defendants, however, cannot simultaneously be alter egos of one another and also conspire with each other, because one cannot conspire with one’s self. *See Atl. Richfield Co. v. Misty Prod., Inc.*, 820 S.W.2d 414, 420 (Tex. App.—Houston [14th Dist.] 1991), *writ denied* (Apr. 22, 1992) (“As a matter of law, a parent corporation cannot conspire with its fully owned subsidiary.”); *Wilhite v. H.E. Butt Co.*, 812 S.W.2d 1, 5 (Tex.App.-Corpus Christi 1991, no writ) (“As a matter of law, a corporation or other company cannot conspire with itself, no matter how many of its agents participate in the complained of action.”).

48. As a result, Plaintiffs have pled themselves out of any jurisdictional veil-piercing theory, and any alleged veil-piercing basis for personal jurisdiction over the MG Defendants is facially implausible even if all allegations in the Yanas TAP and Beazley FAP are accepted as true.

D. The Plaintiffs’ petitions do not warrant leave to conduct jurisdictional discovery against the MG Defendants.

49. Jurisdictional discovery would not add any facts significant enough to change the personal jurisdiction analysis with respect to the MG Defendants. Furthermore, Plaintiffs have not alleged any facts sufficient to hale the MG Defendants into Texas court. Allowing jurisdictional discovery under these circumstances would be an improper fishing expedition. *In re Deutsche Bank Sec. Inc.*, No. 03-14-00744-CV, 2015 WL 4079280, *9 (Tex. App.—Austin, July 3, 2015) (“Requiring a foreign defendant to respond to the types of extensive personal-jurisdiction requests at issue in this case when the plaintiff has made no allegation that the defendant has the type of

minimum contacts in the forum needed to satisfy due-process concerns would allow for improper fishing expeditions”).

50. The Texas Supreme Court has held that such fishing expeditions are impermissible where the “information sought does not appear reasonably calculated to lead to the discovery of evidence that has a tendency ‘to make the existence of any fact that is of consequence to the determination of the action more probable or less probable.’” *In re Nat’l Lloyds Ins. Co.*, 449 S.W.3d 486, 489 (Tex. 2014). Further, “special-appearance depositions are justified only when the plaintiff can identify some additional, non-cumulative information that is relevant to the jurisdictional inquiry which the deposition is likely to produce.” *In re Miscavige*, 436 S.W.3d 430, 439 (Tex. App.—Austin, 2014) (citing *Moncrief Oil International, Inc. v. OAO Gazprom*, 414 S.W.3d 142, 157–58 (Tex.2013)). Plaintiffs have not alleged, nor can they identify further information relevant to the jurisdictional inquiry.

51. As detailed above, Plaintiffs have not alleged facts to support personal jurisdiction against the MG Defendants under a general or specific analysis. In any event, Plaintiffs have also pled themselves out of a jurisdictional veil piercing finding. And finally, Plaintiffs cannot—no matter what they seek in discovery—overcome the attested facts in the MG Defendants’ affidavits, which negate all bases for finding personal jurisdiction in this case.

52. Discovery would only serve to cause undue burden on the MG Defendants, unnecessary expense, harassment, annoyance, and invasion of their personal, constitutional, and property rights. *See* Tex. R. Civ. P. 192.6. Accordingly, jurisdictional discovery would be improper in this case, and the Court should sustain the MG Defendants’ Special Appearance.

53. The MG Defendants reserve the right to amend their Special Appearance and/or file additional papers in support thereof, if and as necessary, in accordance with the Texas Rules

of Civil Procedure.

IV. CONCLUSION

Plaintiffs' petitions fail to establish that personal jurisdiction exists in Texas over Tennessee residents, the MG Defendants (Jordan Mollenhour, Dustin Gross, and Mollenhour Gross, LLC). The MG Defendants' affidavits negate all possible bases for personal jurisdiction against them. Therefore, the MG Defendants respectfully request (1) that their Special Appearance be set for hearing on notice to Plaintiffs, (2) that upon such hearing this Special Appearance be sustained, and (3) that the entire proceeding against them be dismissed.

Respectfully submitted,

GRAY REED & MCGRAW LLP

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**ATTORNEYS FOR MOLLENHOUR GROSS,
LLC, JORDAN MOLLENHOUR, AND DUSTIN
GROSS**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was duly furnished to the following counsel of record via email and eFileTexas on this 23rd day of December, 2020, in accordance with the Texas Rules of Civil Procedure:

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/s/ A.M. "Andy" Landry III
A.M. "Andy" Landry III

EXHIBIT A

Affidavit of Jordan Mollenhour

**AFFIDAVIT OF JORDAN MOLLENHOUR IN SUPPORT OF
HIS SPECIAL APPEARANCE**

I, Jordan Mollenhour, being duly sworn on oath, depose and state as follows:

1. I am over eighteen and am competent to make the following statements based upon my personal knowledge. I am an individual resident of Tennessee.
2. I am not a resident of Texas.
3. I do not own property in Texas.
4. I do not pay income taxes in Texas.
5. I conduct business from my home state of Tennessee.
6. I do not conduct business from Texas.
7. I do not maintain, and have never maintained an office in Texas.
8. I am a member of Mollenhour Gross, LLC ("MG"), which is a Tennessee limited liability company.
9. At the time of the events giving rise to Plaintiffs' lawsuit, MG was the sole member of LuckyGunner, LLC ("LuckyGunner"), which is a Tennessee limited liability company. On or about September 30, 2020, LuckyGunner's sole member became 2A Group, LLC, which is a Tennessee limited liability company. I am the sole member of 2A Group, LLC.
10. I do not now, and I did not at the time of the alleged sales of ammunition to Dimitrios Pagourtzis, control the business operations of LuckyGunner.
11. I am not now, and I was not at the time of the alleged sales of ammunition to Dimitrios Pagourtzis, an officer or director of LuckyGunner.
12. LuckyGunner is operated and controlled by its own management team, which is headed by its Chief Executive Officer, Jake Felde.
13. MG is the sole member of Red Stag Fulfillment, LLC ("Red Stag"), which is a

Tennessee limited liability company.

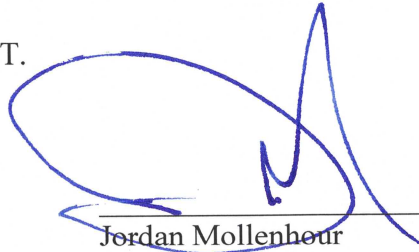
14. I do not now, and I did not at the time of the alleged sales of ammunition to Dimitrios Pagourtzis, control the business operations of Red Stag.

15. I am not now, and I was not at the time of the alleged sales of ammunition to Dimitrios Pagourtzis, an officer or director of Red Stag.

16. Red Stag is operated and controlled by its own management team, which is headed by its President, Eric McCollom.

17. I did not direct the sales of ammunition by LuckyGunner to Dimitrios Pagourtzis in 2018, and I did not direct the shipment by Red Stag of such orders.

FURTHER AFFIANT SAYETH NOT.


Jordan Mollenhour

I, Gina Perkins, a notary public of Knox County, Tennessee, certify that Jordan Mollenhour, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he executed the same voluntarily for and as the act of said corporation.

Subscribed and sworn before me on December 23, 2020.


Notary Public, State of Tennessee



EXHIBIT B

Affidavit of Dustin Gross

**AFFIDAVIT OF DUSTIN GROSS IN SUPPORT OF
HIS SPECIAL APPEARANCE**

I, Dustin Gross, being duly sworn on oath, depose and state as follows:

1. I am over eighteen and am competent to make the following statements based upon my personal knowledge. I am an individual resident of Tennessee.

2. I am not a resident of Texas.

3. I do not own property in Texas.

4. I do not pay income taxes in Texas.

5. I conduct business from my home state of Tennessee.

6. I do not conduct business from Texas.

7. I do not maintain, and have never maintained an office in Texas.

8. I am a member of Mollenhour Gross, LLC ("MG"), which is a Tennessee limited liability company.

9. At the time of the events giving rise to Plaintiffs' lawsuit, MG was the sole member of LuckyGunner, LLC ("LuckyGunner"), which is a Tennessee limited liability company. On or about September 30, 2020, LuckyGunner's sole member became 2A Group, LLC, which is a Tennessee limited liability company. Jordan Mollenhour is the sole member of 2A Group, LLC.

10. I do not now, and I did not at the time of the alleged sales of ammunition to Dimitrios Pagourtzis, control the business operations of LuckyGunner.

11. I am not now, and I was not at the time of the alleged sales of ammunition to Dimitrios Pagourtzis, an officer or director of LuckyGunner.

12. LuckyGunner is operated and controlled by its own management team, which is headed by its Chief Executive Officer, Jake Felde.

13. MG is the sole member of Red Stag Fulfillment, LLC ("Red Stag"), which is a

Tennessee limited liability company.

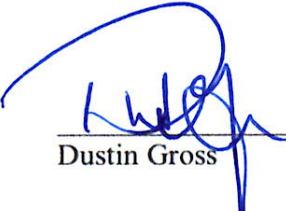
14. I do not now, and I did not at the time of the alleged sales of ammunition to Dimitrios Pagourtzis, control the business operations of Red Stag.

15. I am not now, and I was not at the time of the alleged sales of ammunition to Dimitrios Pagourtzis, an officer or director of Red Stag.

16. Red Stag is operated and controlled by its own management team, which is headed by its President, Eric McCollom.

17. I did not direct the sales of ammunition by LuckyGunner to Dimitrios Pagourtzis in 2018, and I did not direct the shipment by Red Stag of such orders.

FURTHER AFFIANT SAYETH NOT.


Dustin Gross

I, Terry Massey a notary public of Knox County, Tennessee, certify that Dustin Gross, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he executed the same voluntarily for and as the act of said corporation.

Subscribed and sworn before me on December 22, 2020.

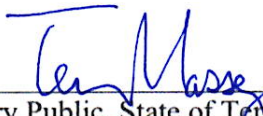

Notary Public, State of Tennessee



EXHIBIT C

Affidavit of Jordan Mollenhour on behalf of
Mollenhour Gross, LLC

**AFFIDAVIT OF JORDAN MOLLENHOUR IN SUPPORT OF
MOLLENHOUR GROSS, LLC'S SPECIAL APPEARANCE**

I, Jordan Mollenhour, being duly sworn on oath, depose and state as follows:

1. I am over eighteen and am competent to make the following statement based upon my personal knowledge.
2. I am a member of Mollenhour Gross, LLC ("MG"), which is a Tennessee limited liability company. I am familiar with MG's business operations.
3. MG operates as a private investment firm in Knoxville, Tennessee.
4. MG does not conduct business in Texas.
5. MG does not maintain, and has never maintained an office or other physical facility in Texas.
6. MG is not currently, and never has registered to do business in Texas.
7. MG does not currently employ, and never has employed employees in Texas.
8. MG does not maintain, and never has maintained a bank account in Texas.
9. MG does not own, and never has owned, real property interests in Texas.
10. MG has held equity interests in a variety of companies and investments, including LuckyGunner, LLC ("LuckyGunner") and Red Stag Fulfillment, LLC ("Red Stag"). At the time of the events giving rise to Plaintiffs' lawsuit, MG was the sole member of LuckyGunner. As of September 30, 2020, MG is no longer the sole member of LuckyGunner. LuckyGunner's sole member became 2A Group, LLC, which is a Tennessee limited liability company. I am the sole member of 2A Group, LLC. MG remains the sole member of Red Stag.
11. MG does not control, and has never controlled, the internal business operations of its investment Red Stag and its previous investment LuckyGunner.

12. LuckyGunner is operated and controlled by its own management team, which is headed by its Chief Executive Officer, Jake Felde.

13. Red Stag is operated and controlled by its own management team, which is headed by its President, Eric McCollom.

14. MG is operated and controlled by its own management team, which is headed by Jordan Mollenhour and Dustin Gross.

15. MG observes corporate and business formalities with respect to itself and its investments, including, for example, LuckyGunner and Red Stag.

16. Each of MG, LuckyGunner, and Red Stag file separate annual reports.

17. Each of MG, LuckyGunner, and Red Stag have separate bank accounts from each other and do not share bank accounts.

18. Each of MG, LuckyGunner, and Red Stag have separate principal places of business.

19. MG did not direct the sales of ammunition by LuckyGunner to Dimitrios Pagourtzis in 2018, and MG did not direct the shipment by Red Stag for such orders.

FURTHER AFFIANT SAYETH NOT.


Jordan Mollenhour

I, Gina Perkins, a notary public of Knox County, Tennessee, certify that Jordan Mollenhour, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he executed the same voluntarily for and as the act of said corporation.

Subscribed and sworn before me on December 23, 2020.


Notary Public, State of Tennessee

