

CAUSE NO. CV-0081158

ROSIE YANAS and CHRISTOPHER  
STONE, individually and as next friends  
of CHRISTOPHER JAKE STONE

Plaintiffs,

VS.

ANTONIOS PAGOURTZIS and ROSE  
MARIE KOSMETATOS

Defendants.

COUNTY COURT AT LAW  
GALVESTON COUNTY, TEXAS

COURT NO. 3

**PLAINTIFFS' OPPOSITION TO THE TENNESSEE DEFENDANTS' MOTION FOR  
PROTECTION AND TO STAY DISCOVERY ACTIVITY AND TO THE TENNESSEE  
DEFENDANTS' MOTION TO STAY PROCEEDINGS**

TO THE HONORABLE JUDGE EWING:

COME NOW, Plaintiffs<sup>1</sup> and respectfully move this Court to deny the Tennessee Defendants' Motion for Protection and to Stay Discovery Activity and Proceedings Pending Resolution of their Rule 91a Motion to Dismiss and their Rule 120a Special Appearances (filed February 8, 2021), and Motion to Stay Proceedings Pending Resolution of their Rule 91a Motion to Dismiss on Petition for Writ of Mandamus (filed March 26, 2021).

This lawsuit seeks to hold accountable all who proximately caused the tragic mass shooting at Santa Fe High School on May 18, 2018. Plaintiffs are victims and survivors of that shooting. In

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<sup>1</sup> Rosie Yanas and Christopher Stone (individually and as next friends of Christopher Jake Stone); William ("Billy") Beazley and Shirley Beazley (individually and as next friends of T.B., a minor); Autumn Tisdale (individually and as a representative of the estate of Cynthia Tisdale); William Tisdale, Jr. (individually and as a representative of the estate of William R. Tisdale, Sr.); Chase Yarbrough; Donna Yarbrough; Troy Yarbrough; and Plaintiffs-Intervenors Mark McLeod and Gail McLeod (individually and as next friends of Aaron Kyle McLeod); Pamela Stanich (individually and as next friend of Jared Conrad Black); Shannan Claussen (individually and as next friend of Christian Riley Garcia); Clayton Horn; Abdul Aziz and Farah Naz (individually and as next friends of Sabika Aziz Sheikh); Flo Rice; and Rhonda Hart (individually and as a representative of the estate of Kimberly Vaughan) (collectively, "Plaintiffs").

March 2020, Plaintiffs amended their petitions to add claims against the five Tennessee Defendants,<sup>2</sup> who are responsible for providing ammunition illegally to the seventeen-year-old shooter. More than a year has passed since then. In that time, the Tennessee Defendants have improperly removed the case to federal court, filed four separate motions to dismiss (three in federal court and one in this Court), and filed special appearances challenging the jurisdiction of this Court.

Were the Tennessee Defendants' dilatory litigation strategy not already clear, they have now filed not one, but two, separate motions to stay proceedings. The first motion, the Tennessee Defendants' Motion for Protection and to Stay Discovery Activity and Proceedings Pending Resolution of their Rule 91a Motion to Dismiss and their Rule 120a Special Appearances (hereinafter "Motion for a Protective Order" or "P.O. Mot."), seeks to avoid any jurisdictional discovery, despite the fact that four of the five Tennessee Defendants have put jurisdiction at issue by challenging the jurisdiction of this Court. The second motion, the Motion to Stay Proceedings Pending Resolution of Their Rule 91a Motion to Dismiss on Petition for Writ of Mandamus (hereinafter "Motion to Stay" or "Stay Mot.") requests a stay pending "final resolution" of a petition for a writ of mandamus that has not even been filed. Stay Mot. at 1. And the Tennessee Defendants foresee themselves taking their petition all the way to the Texas Supreme Court. *See Id. at 1, 8*. The Tennessee Defendants are thus seeking to impose yet another delay on this case, one that could last years.

Taking the Motion to Stay first: the burden is on the defendants to show why this Court should take the drastic step of stopping all proceedings pending final resolution of an as-yet-to-be-

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<sup>2</sup> These defendants are Luckygunner, LLC; Red Stag Fulfillment, LLC; MollenhourGross, LLC; Jordan Mollenhour; and Dustin Gross.

filed petition for mandamus. *See In re Titus County*, 412 S.W.3d 28, 35 (Tex. App.—Texarkana 2013, orig. proceeding). They come nowhere close to meeting their burden, offering only vague statements about why they need this broad protection from *any* discovery and *any* pretrial litigation. They produced no evidence to show that the narrowly drafted discovery requests that are pending were inappropriate or would create an undue burden, and instead argue that Plaintiffs would experience no prejudice from waiting for an unspecified length of time (possibly years). But Plaintiffs have already experienced harm from the defendants' delay tactics, and a stay will only worsen the harm. Three of the plaintiffs in this consolidated case are living with serious physical injuries: they have medical bills, diminished ability to do the things they love, and lost earnings. For those who lost a loved one in the shooting, their pain is ongoing and their need for accountability is urgent. And all Plaintiffs face the reality that their case will become more difficult to prove with the passage of time.

The Motion for a Protective Order fares no better. Rule 120a—under which four of the five Tennessee Defendants challenge the jurisdiction of this Court—expressly authorizes jurisdictional discovery. The operative petitions allege facts that support this Court's personal jurisdiction over each defendant. But instead of focusing on the adequacy of these allegations, the defendants seek to pre-litigate their special appearances. That puts the cart before the horse: the question at this stage is not whether Plaintiffs would prevail on those motions, but whether they have adequately alleged a colorable basis for personal jurisdiction, so that they can take discovery to prove the bases for personal jurisdiction. Plaintiffs have met this threshold requirement, and their jurisdictional discovery requests are narrowly tailored to do just that. There is no basis for a protective order.

For these reasons, Plaintiffs respectfully ask that this Court deny the Tennessee Defendants' motions and permit them to begin discovery.

### **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

This case began on May 24, 2018, when the parents of one of the students murdered at Santa Fe High School, Christopher Jake Stone, filed a petition against Antonios Pagourtzis and Rose Marie Kosmetatos, the parents of the shooter, alleging negligence and gross negligence. *Yanas v. Pagourtzis* (CV-0081158), Plaintiffs' Original Petition and Request for Disclosure. In the years since, six other families of the murdered and three of those who were wounded joined this lawsuit.<sup>3</sup>

On March 4, 2020, the Plaintiffs filed the operative petition, which added claims against the Tennessee Defendants for their role in illegally providing ammunition to Dimitrios Pagourtzis. Since then, the Tennessee Defendants have tried every procedural trick in the book to avoid litigating the merits of this case. Beginning on May 1, 2020, the Tennessee Defendants removed this case to federal court (improperly, as the U.S. District Court determined), *see Tisdale v. Pagourtzis*, No. 3:20-cv-140, 2020 U.S. Dist. LEXIS 228866, at \*7 (S.D. Tex. Dec. 7, 2020), and filed *three* separate motions to dismiss the case (prematurely, as the U.S. District Court determined), *see Order, Yanas v. Pagourtzis*, Case No. 3:20-cv-141 (S.D. Tex. May 18, 2020), attached as Exhibit A to the Affidavit of Clint McGuire ("McGuire Aff.").

After remand to this Court, Defendants Red Stag Fulfilment, LLC, MollenhourGross, LLC, Jordan Mollenhour, and Dustin Gross (collectively, "the Specially Appearing Defendants") filed their special appearances on December 23, 2020, pursuant to Texas Rule of Civil Procedure 120a,

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<sup>3</sup> On March 3, 2021, this court issued a joint order with the Probate Court of Galveston County consolidating the cases stylized PR-0078972-A, CV-0081158, and CV-0086848. For simplicity's sake, this brief cites to the Tennessee Defendants' actions in the *Yanas* case when describing pre-consolidation procedural history, but the Tennessee Defendants took similar (if not identical) steps in the two other since-consolidated cases, *Tisdale v. Pagourtzis* and *Yarbrough v. Pagourtzis*.

arguing that this Court had no jurisdiction over them. Plaintiffs promptly served written substantive discovery on Luckygunner LLC on December 29, 2020, and written jurisdictional discovery on the Specially Appearing Defendants on January 6, 2021. McGuire Aff. ¶¶ 4–5.<sup>4</sup>

On January 6, 2021, all five Tennessee Defendants filed a Rule 91a motion to dismiss. On February 8, 2021, the Tennessee Defendants filed the present Motion for a Protective Order and to Stay Discovery Activity and Proceedings Pending Resolution of their Rule 91a Motion to Dismiss and their Rule 120a Special Appearances. Prior to filing their Motion for a Protective Order, the Tennessee Defendants made no attempts to negotiate with Plaintiffs about the scope of discovery. McGuire Aff. ¶ 8. On March 18, 2021, this Court denied the Tennessee Defendants’ Rule 91a motion to dismiss, thus mooted the portion of the protective-order motion pertaining to the motion to dismiss. Thus, the only portion of the protective-order motion that remains pending is the request to bar all personal jurisdiction discovery. On March 26, 2021, the Tennessee Defendants filed the present Motion to Stay Proceedings Pending Resolution of their Rule 91a Motion to Dismiss on Petition for Writ of Mandamus.

### **STANDARD OF REVIEW**

Both the Motion for a Protective Order and the Motion to Stay seek relief under Texas Rule of Civil Procedure 192.6, which allows “a person from whom discovery is sought” to request “an order protecting that person from the discovery sought.” “To protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights, the court may make any order in the interest of justice.” Tex. R. Civ. P. 192.6(b). As the Tennessee Defendants note in their Motion for a Protective Order (at 5), the Texas Supreme

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<sup>4</sup> Discovery was also served upon the Tennessee Defendants on January 5, 2021 in *Tisdale v. Pagourtzis*, and on January 7, 2021 in *Yarbrough v. Pagourtzis*. McGuire Aff. ¶¶ 6–7.

Court has vested trial courts with “broad discretion” to evaluate requests for protective orders. *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 181 (Tex. 1999). “A party resisting discovery, however, cannot simply make conclusory allegations that the requested discovery is unduly burdensome or unnecessarily harassing. The party must produce some evidence supporting its request for a protective order.” *Id.* In other words, the burden is on the party seeking a protective order or stay to establish the need for such an order. *See Turner v. Williams*, No. 01-17-00494-CV, 2019 Tex. App. LEXIS 1404, at \*30 (Tex. App.—Houston [1st Dist.] Feb. 26, 2019, no pet.) (“A party seeking a protective order must show particular, specific, and demonstrable injury by facts sufficient to justify a protective order.”).

### **ARGUMENT**

Both the Motion for a Protective Order and the Motion to Stay should be denied. This brief first addresses the Motion to Stay, which would stay all discovery and pretrial proceedings, before turning to the non-moot arguments in the Motion for a Protective Order, which concern the pending requests for jurisdictional discovery.

#### **I. This Court Should Not Impose a Stay Pending Mandamus Review.**

The Tennessee Defendants have moved this Court to stay all discovery and all proceedings pending mandamus review of the Court’s denial of their motion to dismiss. The Tennessee Defendants have not shown that proceeding with discovery and pretrial proceedings would constitute an “undue burden” or otherwise justify the issuance of a stay under Texas Rule of Civil Procedure 192.6. The Motion to Stay is just one more in a long line of delay tactics and should therefore be denied.

**A. A Stay Would Allow the Tennessee Defendants to Further Obstruct the Plaintiffs' Path to Justice.**

More than a year after being added as defendants in this case, the Tennessee Defendants now seek to delay proceedings in this case until “final resolution of the . . . Rule 91a Motion to Dismiss on Petition for Writ of Mandamus to the First or Fourteenth Court of Appeals and, if appropriate, the Texas Supreme Court.” Stay Mot. at 1. They seek this relief even though they have not even filed a petition for mandamus yet, and the process could take years.<sup>5</sup> Remarkably, the Tennessee Defendants assert that such a delay would not “unduly” prejudice the plaintiffs. Id. at 6.

Three examples should disabuse the Court of this notion: Plaintiff Clayton Horn has suffered irreparable physical injuries and has incurred substantial medical costs. Third. Am. Pet. (TAP) ¶ 197. Plaintiff Flo Rice, a former runner, now requires a cane to walk, and struggles with posttraumatic-stress disorder. TAP ¶ 36. She too has incurred substantial medical costs. TAP ¶ 200. And plaintiff Chase Yarbrough, who has undergone reconstructive surgery, still has four bullet fragments in his body and continues to suffer pain. Yarbrough Orig. Pet. ¶¶ 5.5, 8.1. Delaying plaintiffs’ ability to recover for their medical costs constitutes substantial prejudice in itself. *See, e.g., Safeco Ins. Co. v. Mont. Eighth Jud. Dist. Ct.*, 2000 MT 153, ¶ 15, 300 Mont. 123, 2 P.3d 834 (“[U]nnecessary delay in the payment of [plaintiff’s] medical costs . . . would certainly prejudice [plaintiff].”); *see also Roethler v. Lutheran Hosps. & Homes Soc’y*, 709 P.2d 487, 490 (Alaska 1985) (“[D]elays might constrain plaintiffs to accept a low settlement offer in order to

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<sup>5</sup> Even after the petition is filed, it may be years before it is ultimately ruled on by the Texas Supreme Court, even if the court of appeals summarily rejects it. In the *In re Academy* litigation that the Tennessee Defendants cite, for example, the original petition for a writ of mandamus was filed in the Fourth District on April 9, 2019. *See In re Acad., Ltd.*, 601 S.W.3d 878, 879 (Tex. App.—San Antonio 2019, orig. proceeding) (mem. op.). Two years later, the issue remains pending. *See Stay Mot. at 8*.

alleviate the financial problems of ongoing medical expenses.”). On top of this, a years-long delay will prejudice the Plaintiffs’ ability to obtain and present evidence and witness statements. *See, e.g., BarTex Rsch. v. FedEx Corp.*, 611 F. Supp. 2d 647, 651–52 (E.D. Tex. 2009) (denying stay motion because delay “could allow for loss of critical evidence as witnesses become unavailable, their memories may fade, and evidence may be lost”); *Pelt v. Johnson*, 818 S.W.2d 212, 217 (Tex. App.—Waco 1991, orig. proceeding) (describing prejudice to parties from “the inevitable dimming of witnesses’ memories,” among other evidentiary issues caused by delay). And finally, there is the intangible—but no less real—harm that all the Plaintiffs suffer from being denied their day in court. In short, the Tennessee Defendants’ assertion that Plaintiffs will experience no prejudice from their attempts to further delay these proceedings is simply wrong.

The Tennessee Defendants’ suggestion that, because the Plaintiffs acquiesced to stay discovery pending *this Court’s* decision of the Rule 91a motion, the Plaintiffs should similarly accede to a stay pending mandamus review, Stay Mot. at 2–3, 7, ignores the reality that this Court’s decision was to be rendered in a matter of weeks, whereas mandamus review could take years, *see supra* note 5.

**B. The Tennessee Defendants Have Not Met Their Burden of Showing that a Stay is Necessary.**

The Tennessee Defendants argue that they should not be required to engage in “full blown pretrial litigation” while attacking this Court’s Rule 91a decision in the appellate courts. Stay Mot. at 5. But they “simply make conclusory allegations that the requested discovery is unduly burdensome or unnecessarily harassing” and do not meet their burden of “produc[ing] some evidence supporting [their] request for a protective order.” *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 181 (Tex. 1999). For this reason, their request should be denied. The Tennessee Defendants’ argument that engaging in pretrial discovery will prejudice them rests exclusively on their baseless



assumption that their yet-to-be-filed mandamus petition will not be summarily dismissed. But there is little reason to think that this is so.

As an initial matter, petitions for mandamus generally do not receive a full hearing. The Courts of Appeals accept them only in “rare cases.” *Kahn v. Baker Nissan N., Inc.*, No. 14-09-00106-CV, 2009 Tex. App. LEXIS 4769, at \*3 (Tex. App.—Houston [14th Dist.] June 25, 2009, orig. proceeding). Nor can the Tennessee Defendants rely on the Supreme Court to take their case: in recent years it has granted only around 6 or 7% of mandamus petitions, including only 3.3% in fiscal year 2019. *See* Douglas S. Lang & Rachel A. Campbell, *Survey of Recent Mandamus Decisions of the Texas Supreme Court*, 6 SMU Ann. Tex. Surv. 387, 390 (2020). In the unlikely event that an appellate court accepts mandamus review, then that court would be in a position to issue a stay of this Court’s proceedings well before this case reached trial.

The Tennessee Defendants’ planned mandamus petition is particularly unlikely to be granted, since it does not meet the legal standard for mandamus review. To obtain mandamus relief, the Tennessee Defendants must establish that (i) this Court abused its discretion in denying their motion to dismiss; and (ii) they have no adequate remedy by appeal. *See Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992). “Mandamus is intended to be an extraordinary remedy, available only in limited circumstances.” *Id.* at 840. Here, the Tennessee Defendants fail to meet either prong of the mandamus test.

First, this Court did not abuse its discretion by denying the Tennessee Defendants’ motion to dismiss. As explained more fully in the Plaintiffs’ opposition to the Rule 91a motion, PLCAA (Protection of Lawful Commerce in Arms Act) protection is available only to sellers of ammunition who do not break the law. Here, four out of the five defendants are not sellers of ammunition; and all of them violated the Youth Handgun Safety Act by providing a 17-year-old

with ammunition. TAP ¶¶ 54–80. There is no authority for the proposition that the four non-seller defendants would fall within PLCAA’s protections, and therefore no basis for their mandamus petition. As for the one defendant—Luckygunner—that falls within PLCAA’s purview, the TAP alleges that Luckygunner violated a federal gun safety law in selling handgun ammunition to Dimitrios Pagourtzis, meaning that Luckygunner cannot avail itself of PLCAA’s protection.

Second, “[m]andamus will not issue where there is ‘a clear and adequate remedy at law, such as a normal appeal.’” *Walker*, 827 S.W.2d at 840 (quoting *State v. Walker*, 679 S.W.2d 484, 485 (Tex. 1984)). Here, the Tennessee Defendants have an adequate legal remedy—appeal of a final judgment—because their immunity argument is simply wrong. Their argument—which asserts that PLCAA provides immunity from suit despite nowhere saying so—relies on two authorities, the legislative purpose of PLCAA and a single district-court decision. *See Stay Mot. at 5*. Neither is apt.<sup>6</sup>

Start with Congress’s intent. The Tennessee Defendants state that one purpose of PLCAA is to avoid imposing “‘unreasonable burdens’ on members of the firearms industry.” *Id.* at 5 (citing 15 U.S.C. § 7901(b)(4)).<sup>7</sup> The Tennessee Defendants would have this Court believe that the “unreasonable burdens” that Congress had in mind were the burdens of pretrial litigation and responding to discovery requests. But they can offer no citation for that proposition, because the text of PLCAA says nothing at all about discovery or motion practice. Instead, Congress was explicit that PLCAA was aimed at “[t]he possibility of *imposing liability* on [the gun] industry.”

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<sup>6</sup> The Tennessee Defendants also cite a decision from the Second Circuit describing Congress’s purpose in adopting the Act. *Stay Mot. at 5* (citing *City of New York v. Beretta*, 524 F.3d 384, 394 (2d Cir. 2008)). But make no mistake: the Second Circuit has explicitly held that PLCAA merely provides a defense to litigation, and does *not* deprive courts of jurisdiction to try cases. *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 127 (2d Cir. 2011).

<sup>7</sup> In fact, the statute is designed to avoid “unreasonable burdens *on interstate and foreign commerce*.” § 7901(b)(4) (emphasis added).

§ 7901(a)(6) (emphasis added). Needless to say, preventing courts from *imposing liability* does not require a grant of immunity, only a legal defense. Moreover, Congress knows how to grant immunity from suit when it wants to do so. *See, e.g.*, 28 U.S.C. § 1604 (“a foreign state shall be immune from the jurisdiction of the courts of the United States”). In contrast, PLCAA’s operative clause mentions only *types of claims* that may not be brought, not that certain defendants are entitled to immunity. 15 U.S.C. § 7902(a) (“A qualified civil liability action may not be brought in any Federal or State court.”). As PLCAA’s primary sponsor and author stated in congressional debate, “[t]his is not a gun industry immunity bill.” 151 Cong. Rec. S9087, S9088 (daily ed., July 27, 2005) (statement of Sen. Craig).

The Tennessee Defendants’ caselaw fares no better. They rely solely on a single decision, *Jefferies v. District of Columbia*, 916 F. Supp. 2d 42 (D.D.C. 2013), *see Stay Mot. at 5*, which says nothing whatever about whether PLCAA provides immunity or a defense. Instead, in *Jefferies*, the court found that PLCAA applied to the suit before it and dismissed the case on the pleadings. *See* 916 F. Supp. 2d at 47. Because the case was dismissed at that stage, the question of defense versus immunity was not even discussed. *See id.* at 43–47.

Without immunity from suit, the Tennessee Defendants’ argument that it is somehow prejudiced by engaging in normal discovery and pretrial litigation falls apart. Because PLCAA simply provides a legal defense, even if this Court’s decision on the Rule 91a motion were incorrect, the Tennessee Defendants’ legal rights would not be prejudiced by their waiting for a final judgment.

The Tennessee Defendants assert that this Court should “follow” the “guidance” of the Texas Supreme Court, which stayed trial court proceedings in the *In re Academy* litigation. *Stay Mot. at 3, 8*. But the Supreme Court’s summary order staying proceedings in that case contains no

reasoning for this Court to apply, nor does it—as the Tennessee Defendants argue—“implicitly acknowledge[] that the threshold nature of the defendant’s PLCAA defense justified a stay of all proceedings,” Stay Mot. 4. See *In re Acad., Ltd.*, No. 19-0947, at \*1 (Tex. June 21, 2019). The order, in its entirety, reads: “Relators’ motion for emergency temporary relief, filed June 11, 2019, is granted. All trial court proceedings in [case caption] are stayed pending further order of this Court.” *Id.* The Tennessee Defendants’ arguments about the order’s hidden meaning are, at best, disingenuous.

In any event, the Tennessee Defendants’ suggestion elides real differences between that case and this one. Most significantly, the litigation in *In re Academy* was much further along than this case is. Academy had, in its words, “endure[d] extensive discovery requests,” including several sets of requests for production, interrogatories, and requests for admission, as well as five depositions, before it asked the Texas Supreme Court for a stay of proceedings. Motion for Emergency Temporary Relief 5, *In re Acad., Ltd.*, No. 19-0947 (Tex. June 11, 2019). Here, by contrast, the Tennessee Defendants are seeking to block discovery at the very outset, when trial is far away.

## **II. Plaintiffs Are Entitled to Jurisdictional Discovery Prior to the Hearing on Defendants’ Rule 120a Motion.**

Turning to the pending Motion for a Protective Order, the Specially Appearing Defendants seek to block Plaintiffs from taking any jurisdictional discovery so that they can litigate their special appearances solely on the pleadings and their own affidavits. This request is contrary to the plain language of Rule 120a(3) and Texas case law. Because the operative petition sets forth a colorable basis for personal jurisdiction over the Specially Appearing Defendants, Plaintiffs are entitled to jurisdictional discovery, and the Motion for a Protective Order must be denied.

### **A. Rule 120a(3) Authorizes Jurisdictional Discovery.**

Although the defendants gloss over this in their brief, jurisdictional discovery is a tool expressly authorized by the plain language of Texas Rule of Civil Procedure 120a(3). For this reason, Texas courts routinely allow plaintiffs to undertake jurisdictional discovery when defendants challenge the jurisdiction of the court.

As with any procedural matter, we start with the text of the relevant rule. Rule 120a(3) states: “The court shall determine the special appearance on the basis of the pleadings, any stipulations made by and between the parties, such affidavits and attachments as may be filed by the parties, *the results of discovery processes*, and any oral testimony.” (emphasis added). Importantly, Texas Rule of Civil Procedure 120a(3) not only authorizes jurisdictional discovery, it also allows courts to “order a continuance [on a special-appearance hearing] to permit affidavits to be obtained or depositions to be taken or discovery to be had or [to] make such other order as is just.” Tex. R. Civ. P. 120a(3). Texas courts have held that the rule means exactly what it says. *See Exito Elecs. Co. v. Trejo*, 142 S.W.3d 302, 306–07 (Tex. 2004) (“Clearly, the parties can participate in [discovery related to the special appearance], and Rule 120a states that the court shall determine the special appearance in part on the basis of ‘the results of discovery processes.’” (quoting Tex. R. Civ. P. 120a(3))); *Said v. Maria Invs., Inc.*, No. 01-08-00962-CV, 2010 Tex. App. LEXIS 959, at \*9 (Tex. App.—Houston [1st Dist.] Feb. 11, 2010, pet. denied) (mem. op.) (“Rule 120a . . . gives the trial court the authority to continue the [special appearance] hearing so that the opponent can obtain any discovery necessary to support its position.”). Here, jurisdictional discovery is necessary for the Plaintiffs to respond to the Specially Appearing Defendants’ arguments. *See McGuire Aff.* ¶¶ 5, 8, 11.

Courts routinely reject defendants’ attempts to evade jurisdictional discovery based on a plain ruling of the text of Rule 120a(3). For instance, in *Mt. McKinley Insurance Co. v. Grupo*

*Mexico*, the defendants argued that they were “under no obligation to respond to [jurisdictional] discovery requests until the trial court ruled on the special appearance.” No. 13-12-00347-CV, 2013 Tex. App. LEXIS 4804, at \*33 (Tex. App.—Corpus Christi—Edinburg Apr. 18, 2013, no pet.) (mem. op.). The court rejected this argument, finding that the defendants’ position was “plainly belied by the rules of civil procedure.” *Id.* (citing Tex. R. Civ. P. 120a(3)).

**B. Plaintiffs Have Alleged a Colorable Basis for Personal Jurisdiction Over Each Specially Appearing Defendant.**

The Specially Appearing Defendants argue that Plaintiffs have not alleged sufficient facts to establish personal jurisdiction over all the defendants and have therefore not satisfied the “threshold requirement” for jurisdictional discovery. P.O. Mot. 9. This argument misconstrues the standard for jurisdictional discovery and ignores allegations in the operative petition that set out a colorable basis for personal jurisdiction over each of the Specially Appearing Defendants.

Texas courts agree with the approach adopted by federal courts that jurisdictional discovery is appropriate where “the movant makes a good-faith showing, provides a colorable basis for, or makes a prima facie case of personal jurisdiction, or provides a reason to believe that discovery would reveal sufficient minimum contacts.” *Barron v. Vanier*, 190 S.W.3d 841, 850 (Tex. App.—Fort Worth 2006, no pet.); *see also Solgas Energy Ltd. v. Global Steel Holdings Ltd.*, No. 04-06-00731-CV, 2007 Tex. App. LEXIS 5164, at \*14–16 (Tex. App.—San Antonio July 3, 2007, no pet.) (mem. op.) (adopting “colorable basis” test). Since Texas is a notice-pleading state, courts construe pleadings “liberally in favor of the plaintiffs” to determine whether sufficient facts were pleaded to give the trial court jurisdiction. *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). Of course, jurisdictional discovery must be calculated to obtain evidence that is material to the inquiry into personal jurisdiction. *See, e.g., Barron*, 190 S.W.3d at 847–50.

And the operative petition cannot be “wholly devoid of jurisdictional facts.” *Kelly v. Gen. Interior Constr., Inc.*, 301 S.W.3d 653, 659 (Tex. 2010).

The Specially Appearing Defendants have argued for the application of a standard for jurisdictional discovery that would require this Court first to conduct a full analysis of whether the operative petition would, on its own, defeat the pending special appearances. *See P.O. Mot. 14*. This proposed standard would create an impossible hurdle for many plaintiffs. *See Lamar v. Poncon*, 305 S.W.3d 130, 139–40 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) (ruling that “trial court erred in denying jurisdictional discovery” where “[t]he discovery sought could lead to admissible evidence [regarding] personal jurisdiction” and the plaintiffs’ inability to prove jurisdiction could “be attributed to the fact that [defendants] refused to participate in even written jurisdictional discovery”). Instead, Plaintiffs need to show only that they have alleged a prima facie case or colorable basis for specific jurisdiction over the Specially Appearing Defendants and that “the categories of information for which [Plaintiffs] request[] discovery relate to specific jurisdiction.” *Barron*, 190 S.W.3d at 849. Plaintiffs more than meet this standard.

With respect to Defendant Red Stag, Plaintiffs allege that this lawsuit arises from Red Stag’s performance of business in Texas, TAP ¶ 14; that Red Stag was established in order to provide shipping services to Luckygunner, TAP ¶ 169; that Red Stag knew that Luckygunner did not require proof of age of customers in most states, TAP ¶ 41; that despite knowing this, Red Stag shipped ammunition to Dimitrios Pagourtzis in Texas without verifying his age or requiring an adult to sign for the package, TAP ¶¶ 75–77; and that Red Stag and Luckygunner had a joint objective—to provide ammunition “to all who approached them, knowing full well that there was a high likelihood that many customers and recipients would be prohibited under federal and state law from purchasing ammunition,” TAP ¶ 171.

With respect to MollenhourGross, LLC and to Jordan Mollenhour and Dustin Gross, who jointly founded both Luckygunner and Red Stag, the Plaintiffs allege that that this lawsuit arises from their business in Texas. TAP ¶¶ 15–17. Specifically, Plaintiffs allege, *inter alia*, that Jordan Mollenhour and Dustin Gross effectively controlled the operations of Luckygunner and Red Stag, TAP ¶ 178; that they set up Red Stag to serve as an instrumentality for Luckygunner, TAP ¶ 180; and that they used MollenhourGross, LLC, Luckygunner, and Red Stag for negligent and unlawful conduct, TAP ¶ 182. For these reasons, Plaintiffs have alleged that Jordan Mollenhour and Dustin Gross are liable for the negligent and illegal actions of Luckygunner and Red Stag and that this Court should pierce the corporate veil with respect to these defendants. TAP ¶¶ 175–84.<sup>8</sup> This is sufficient to establish a colorable basis for personal jurisdiction over Defendants MollenhourGross, LLC, Mollenhour, and Gross. *See Niehaus v. Cedar Bridge, Inc.*, 208 S.W.3d 575, 581 (Tex. App.—Austin 2006, no pet.) (“specific jurisdiction could be asserted over [corporate officers] individually . . . if [plaintiff] offered sufficient evidence to pierce the corporate veil”).

In support of their argument that the petition does not contain sufficient allegations to support jurisdictional discovery, the Specially Appearing Defendants lean heavily on *In re Deutsche Bank Securities Inc.*, but that case centered on a very different (and inadequate) pleading. No. 03-14-00744-CV, 2015 Tex. App. LEXIS 6889 (Tex. App.—Austin July 3, 2015, orig. proceeding, no pet.) (mem. op.). In *Deutsche Bank*, the plaintiff, a Texas retirement system, alleged that “various financial institutions made misrepresentations regarding the underwriting of residential-mortgage-backed securities that the [plaintiff] subsequently purchased.” *Id.* at \*1, \*20–

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<sup>8</sup> While the Piercing the Corporate Veil claim does not name Defendant MollenhourGross, LLC, the Plaintiffs intend to amend their petition to do so.



21. Deutsche Bank filed a special appearance and opposed jurisdictional discovery because the plaintiff “did not allege that it purchased any security from Deutsche or that [it] had any communication with Deutsche regarding the securities,” nor did the plaintiff allege that the defendant “performed any action in Texas.” *Id.* at \*21. The Third District Court of Appeals ruled that jurisdictional discovery was improper where “the plaintiff has made no allegation that the defendant has the type of minimum contacts in the forum needed to satisfy due-process concerns.” *Id.* at \*27. Here, by contrast, Plaintiffs have alleged the bases for personal jurisdiction and pleaded facts supporting these bases, thus clearing any “threshold requirement,” P.O. Mot. 9, for jurisdictional discovery.

**C. Plaintiffs’ Jurisdictional Discovery Requests Are Narrow and Limited to Facts Essential to Justify their Opposition to the Defendants’ Special Appearances.**

In addition to arguing that Plaintiffs are not entitled to any jurisdictional discovery, the Specially Appearing Defendants also argue that Plaintiffs’ jurisdictional discovery requests are an “impermissible ‘fishing expedition.’” P.O. Mot. 14. This argument fails as well. Plaintiffs’ jurisdictional discovery requests seek facts that Texas courts have found relevant to establishing personal jurisdiction. Tellingly, in their brief, the Specially Appearing Defendants do not point to any specific interrogatory or request for documents that is overly broad or that is not calculated to obtain facts relevant to personal jurisdiction. They simply object to having to respond to *any* discovery, and as a result, their protestations are not tethered to the discovery sought in *this* case.

Setting aside the Specially Appearing Defendants’ vague and hyperbolic descriptions, and turning to the discovery requests themselves, it is apparent that the requests directed at each defendant seek only facts that relate to the bases of personal jurisdiction asserted in the operative petition. They are limited in scope and are precisely the type of request allowed under Rule 120a. And it bears noting that, to the extent that the Specially Appearing Defendants believe any

particular request is too broad or not related to personal jurisdiction, they can negotiate to narrow the requests and, if negotiations fail, seek relief from this court as to specific requests.

**1. Plaintiffs' Jurisdictional Discovery Seeks Facts Ascertaining the Nature of the Relationship between Defendant Luckygunner and Defendant Red Stag.**

Taking the question of personal jurisdiction over Defendant Red Stag first, Plaintiffs allege that Defendant Red Stag arranged for the shipment of ammunition into Texas to the 17-year-old Santa Fe shooter, on behalf of a closely related company, with knowledge (or deliberate ignorance) that it shipped many products to people who could not legally possess them, and without verifying the purchaser's age. TAP ¶¶ 75–77. As the Specially Appearing Defendants acknowledge, “[s]pecific’ jurisdiction is proper when the plaintiff alleges a cause of action that grows out of or relates to a contact between the defendant and the forum state.” P.O. Mot. 13. The petition alleges that Red Stag directed tortious conduct into the State of Texas, and that is a sufficient basis for taking jurisdictional discovery.

While it is true that the “[s]hipment of products into the forum state, without more, does not satisfy the minimum contacts requirement” for specific personal jurisdiction, *US LED, Ltd. v. Nu Power Assocs.*, No. H-07-0783, 2008 U.S. Dist. LEXIS 89960, at \*20 (S.D. Tex. Nov. 5, 2008),<sup>9</sup> Plaintiffs have alleged that Red Stag did far more than merely ship products into Texas. Knowing participating in a criminal scheme and the derivation of revenue from sales in the forum state can give a court personal jurisdiction over third-party logistics or fulfillment companies. *See, e.g., Cree, Inc. v. Fastbuy, Inc.*, No. CV 18-01802, 2018 U.S. Dist. LEXIS 222531, at \*9 (C.D.

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<sup>9</sup> Texas’s long-arm statute extends to the outer limits permitted by the due process clause of the U.S. Constitution, and Texas courts “rely on precedent from the United States Supreme Court and other federal courts, as well as [their] own decisions, in determining whether a nonresident defendant has negated all bases of jurisdiction.” *PHC-Minden, L.P. v. Kimberly-Clark Corp.*, 235 S.W.3d 163, 166 (Tex. 2007).

Cal. July 16, 2018) (“Plaintiff alleges that Elogistics imports goods that it knows are counterfeit into California ports, stores the goods in various warehouses around California, and then distributes those goods to buyers. These allegations are sufficient to show that Elogistics purposefully directed its activities toward California.”). Thus, whether a defendant derives income from shipments into a forum state is critical to the personal-jurisdiction analysis. *See, e.g., John Wiley & Sons, Inc. v. Treeakarabenjakul*, No. 09 Civ. 2108, 2009 U.S. Dist. LEXIS 52819, at \*12–14 (S.D.N.Y. June 18, 2009) (“Defendant does not operate a bookselling website, but he projected himself into New York for the purposes of doing business, and concedes he has lost money because he no longer ships books for co-defendant.”).

Plaintiffs’ jurisdictional discovery requests were narrowly tailored to determine the extent of Defendant Red Stag’s contacts with Texas. They include requests to determine the income derived from coordinating shipments to Texas on behalf of Luckygunner, the degree to which Defendant Red Stag works in concert with Luckygunner<sup>10</sup> in intentionally shipping to persons prohibited by federal law from possessing ammunition, and the nature of the relationship between Defendant Red Stag and Defendants Jordan Mollenhour and Dustin Gross. *See, e.g., P.O. Mot. Ex. A5*, at 12–14; *P.O. Mot. Ex. A6*, at 9–16; *P.O. Mot. Ex. B5*, at 9–16; *P.O. Mot. Ex. C5*, at 12–14; *P.O. Mot. Ex. C6*, at 9–16. The requests are reasonably calculated to lead to facts that will assist this Court in determining whether it has personal jurisdiction over Red Stag.

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<sup>10</sup> In its special appearance, Red Stag relies upon cases involving personal jurisdiction over third-party logistics providers. But Red Stag is not a third-party logistics company—it is a closely held, related company that was created initially to serve Luckygunner. *TAP* ¶¶ 176–81. The two companies work in concert, and Red Stag knew, just as Luckygunner knew, that there was a high degree of certainty that many of the products it shipped were being shipped to people who could not legally possess them. Indeed, the few interrogatory responses that the Specially Appearing Defendants did provide make clear that the President and COO of Red Stag was personally responsible for managing the Luckygunner account at the time of the ammunition sales and delivery to Dimitrios Pagourtzis. *See P.O. Mot. Ex. A5*, at 11–12 (*Resp. to Interrog. Nos. 6, 8*).

**2. Plaintiffs’ Jurisdictional Discovery Seeks Facts Ascertaining the Nature of the Relationship Between Defendant Luckygunner and Defendants Jordan Mollenhour, Dustin Gross, and MollenhourGross.**

Turning to the question of whether the jurisdictional discovery requests are appropriate for Defendants MollenhourGross LLC, Jordan Mollenhour, and Dustin Gross: Texas courts recognize that personal jurisdiction may be established over a parent corporation based on the business of its subsidiary if it is shown that “the parent corporation exerts such dominance and control over its subsidiary that the subsidiary is simply a conduit through which the parent conducts its business.” *Daimler–Benz AG v. Olson*, 21 S.W.3d 707, 720 (Tex. App.—Austin 2000, pet. dismiss’d w.o.j.); *see also Niehaus v. Cedar Bridge, Inc.*, 208 S.W.3d 575, 581 (Tex. App.—Austin 2006, no pet.).

Plaintiffs have requested information to better ascertain the nature of the relationship between Defendants Luckygunner and Red Stag on the one hand, and Defendants Jordan Mollenhour, Dustin Gross, and MollenhourGross on the other. *See, e.g.,* P.O. Mot. Ex. A3, at 9–14; P.O. Mot. Ex. A4, at 8–16; P.O. Mot. Ex. A7, at 9–12; P.O. Mot. Ex. A8, at 9–13; P.O. Mot. Ex. B1, at 9–12; P.O. Mot. Ex. B2, at 9–13; P.O. Mot. Ex. B4, at 9–17; P.O. Mot. Ex. C1, at 9–12; P.O. Mot. Ex. C2, at 9–13; P.O. Mot. Ex. C3, at 9–14; P.O. Mot. Ex. C4, at 9–17. These requests speak directly to the factors that Texas courts consider when evaluating whether a “subsidiary is merely an adjunct of its parent”:

whether: (1) distinct and adequately capitalized financial units are incorporated and maintained; (2) daily operations of the two corporations are separate; (3) formal barriers between management of the two entities are erected, with each functioning in its own best interests; and (4) those with whom the corporations come in contact are apprised of their separate identity. Other factors deemed important by the commentators and Texas courts are: (1) common stock ownership; (2) the method and degree of financing of the subsidiary by the parent; (3) common directors or officers; (4) separate books and accounts; (5) common business departments; (6) extent to which contracts between parent subsidiary favor one over the other; and (7) connection of parent’s employee, officer or director to subsidiary’s tort or contract giving rise to suit.

*Hargrave v. Fibreboard Corp.*, 710 F.2d 1154, 1162–63 (5th Cir. 1983) (quoting *Miles v. Am. Tel. & Tel. Co.*, 703 F.2d 193, 195–96 (5th Cir. 1983)). The discovery requests directed at Defendants Jordan Mollenhour, Dustin Gross, and MollenhourGross are thus closely tied to the basis for personal jurisdiction asserted over these three defendants and alleged in the operative petition.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court deny the Tennessee Defendants’ Motion for a Protective Order and Motion for a Stay and direct that the Tennessee Defendants respond to the Plaintiffs’ discovery requests within ten days of the Court’s order.

DATED: April 9, 2021

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*Attorneys in Charge for Plaintiffs Chase  
Yarbrough, Donna Yarbrough, and Troy  
Yarbrough*

**CERTIFICATE OF SERVICE**

I certify that, on April 9, 2021, a true and correct copy of the Plaintiffs' Opposition to the Tennessee Defendants' Motion for Protection and to Stay Discovery Activity and to the Tennessee Defendants' Motion to Stay Proceedings, was served on all counsel of record via the Court's electronic-notification system.

/s/ Clint E. McGuire  
Clint E. McGuire  
MARTINEZ & MCGUIRE PLLC

*Counsel for Plaintiffs Rosie Yanas  
and Christopher Stone, and  
Plaintiffs-Intervenors Mark McLeod,  
Gail McLeod, Pamela Stanich,  
Shannan Claussen, Clayton Horn,  
Abdul Aziz, Farah Naz, and Flo  
Rice.*

CAUSE NO. CV-0081158

ROSIE YANAS and CHRISTOPHER STONE,  
individually and as next friends of  
CHRISTOPHER JAKE STONE,

Plaintiffs,

VS.

ANTONIOS PAGOURTZIS and ROSE MARIE  
KOSMETATOS,

Defendants.

COUNTY COURT AT LAW  
GALVESTON COUNTY, TEXAS

COURT NO. 3

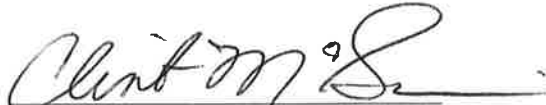
**AFFIDAVIT OF CLINT E. MCGUIRE**

1. My name is Clint E. McGuire. I am an attorney of record for the Plaintiffs and Intervenor Rosie Yanas and Christopher Stone, individually and as next friends of Christopher Jake Stone; Mark McLeod and Gail McLeod, Individually and as next friends of Aaron Kyle McLeod; Pamela Stanich, individually and as next friend of Jared Conard Black; Shannan Claussen, individually and as next friend of Christian Riley Garcia; Abdul Aziz and Farah Naz, individually and as next friends of Sabika Aziz Sheikh; and Clayton Horn and Flo Rice in the above referenced case. I am over the age of eighteen, of sound mind and have never been convicted of a felony. The statements in this affidavit are true and correct and are based on my personal knowledge.
2. Attached as Exhibit A is a true and correct copy of an order entered on May 18, 2018 by the Southern District of Texas in *Yanas v. Pagourtzis*, Case No. 3:20-cv-141, stating that “[t]he defendants have filed Rule 12(b) motions to dismiss without first following this court’s local Rule 6 titled ‘Special Requirements for Motions filed under Rule 12(b).’”
3. On December 23, 2020, Defendants Red Stag, LLC, MollenhourGross, LLC, Jordan Mollenhour, and Dustin Gross (the “Specially Appearing Defendants”), filed Special Appearance, challenging the jurisdiction of this Court.
4. On December 29, 2020, I served written substantive discovery on Defendant Luckygunner LLC.
5. On January 6, 2021, I served written discovery pertaining to personal jurisdiction on the Specially Appearing Defendants.
6. Attached as Exhibit B is a true and correct copy of a proof of service indicating that written discovery was served on Defendant Luckygunner LLC and the Specially



Appearing Defendants in the case previously styled *Tisdale v. Pagourtzis*, PR-0078972-A on January 5, 2021.

7. Attached as Exhibit C is a true and correct copy of a certificate of written discovery stating that written discovery was served on Defendant Luckygunner LLC and discovery pertaining to personal jurisdiction was served on the Specially Appearing Defendants in the case previously styled *Yarbrough v. Pagourtzis*, CV-0086848 on January 7, 2021.
8. On February 8, 2021, the Tennessee Defendants filed motions for protection to stay all discovery in each of the above-referenced cases, and “objections and answers” to the discovery requests. These “answers” did not include the production of a single document in response, and only cursory responses to some of the interrogatories. Prior to the February 8, 2021 filing, I did not receive any communication from defense counsel seeking to narrow the scope of discovery.
9. On March 23, 2021, I emailed Andy Landry, counsel for the Specially Appearing Defendants, informing him of this Court’s ruling on the defendants’ Motion to Dismiss and asking him for defense counsel’s availability on the motion for a protective order. The next day, I received an email from Mr. Landry informing me that the defendants intended to seek mandamus review of the Court’s order on the motion to dismiss and would be filing a motion to stay “in the near future.” A true and correct copy of the email correspondence is attached as Exhibit D.
10. On March 29, 2021, I emailed Andy Landry again, asking for a hearing on the Motion for Protection, and received a reply on the same date, stating “I will check with my folks and get back to you asap.” As of today’s date, I have not received a further reply to my request for a hearing on the Motion for Protection. A true and correct copy of the email correspondence is attached as Exhibit E.
11. Despite exercising due diligence, the Plaintiffs have not been able to obtain necessary discovery in order to respond to the Special Appearances of Red Stag, LLC, MollenhourGross, LLC, Jordan Mollenhour and Dustin Gross. For the reasons laid out in the Plaintiffs’ opposition brief, filed today, the information Plaintiffs seek to obtain by the aforementioned discovery is material to establishing jurisdiction.
12. Further affiant sayeth not.

  
Clint E. McGuire

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this  
9<sup>th</sup> day of April, 2021.



Heather Rybarra  
NOTARY PUBLIC, in and for  
The State of Texas

My Commission Expires: 5/31/2024

# EXHIBIT A

**ENTERED**

May 18, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISIONROSIE YANAS, *et al*,

Plaintiffs,

VS.

ANTONIOS PAGOURTZIS, *et al*,

Defendants.

§  
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CIVIL ACTION NO. 3:20-CV-141

**ORDER**

The defendants have filed Rule 12(b) motions to dismiss without first following this court's local Rule 6 titled "Special Requirement for Motions filed under Rule 12(b)." Accordingly, the court now *sua sponte* grants the plaintiffs leave to file an amended complaint.


The plaintiffs must notify the court by letter by Thursday, May 21, 2020, whether (i) they intend to file an amended complaint; or (ii) they will rely on the complaint that is subject of the motions to dismiss.

If the plaintiffs elect not to file an amended complaint, the motions to dismiss will proceed in regular course and, absent special circumstances, no further opportunities to amend will be granted. The time to file opposing and reply papers in connection with the motions to dismiss shall be governed by the Federal Rules of Civil Procedures and the Southern District's local rules.

If the plaintiffs elect to file an amended complaint, they must do so within 14 days after notifying the court of their intent to do so. The defendants may then

either (i) file an answer to the amended complaint; or (ii) file a motion to dismiss the amended complaint.

SIGNED on Galveston Island the 18th day of May, 2020.

  
\_\_\_\_\_  
JEFFREY VINCENT BROWN  
UNITED STATES DISTRICT JUDGE

# EXHIBIT B


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## Filing Progress

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3. eService
4. Review
5. Process
6. **Acknowledgement**

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## Proof of Service

**Your submission was successful!** Your trace number is **49399008**. The details of your filing are shown below.

You can monitor the status of [this submission](#) by clicking here.

The date and time below will be the official timestamp when this filing is accepted by the clerk.

Filed Date & Time	
Date:	Time   Time Zone:
Tuesday, January 5, 2021	10:46:47 AM

Fee	Est.Amount	Payment Information
<b>ProDoc, Inc. Fees</b>		<b>Account Name:</b> NEW
eFiling/eService Fee	\$3.00	<b>Payment Method:</b> Credit Card
8.25% Sales Tax	\$0.25	<b>Credit Card Type:</b>
<b>Court Fees</b>		<b>Card Number:</b>
<b>The State eFiling System Processing Fees</b>		<b>Card Expiration Date:</b>
Convenience Fee	\$0.09	<b>Transaction Amount:</b> \$3.34
<b>Envelope Total:</b>	<b>\$3.34</b>	<b>Transaction Status:</b>
		<b>Transaction ID:</b> 72058155
		<b>Transaction Order ID:</b> 048827858-0

Personal Information	Envelope Information	
<b>Filer:</b> Lawrence M Tylka	<b>Case Title:</b> William Recie Tisdale, Sr.	<b>Plaintiff(s):</b>
<b>Attorney:</b> Lawrence M Tylka	Individually And As Statutory Beneficiary of Cynthia Tisdale, Deceased, And On Behalf Of All Persons Entitled To Recover For Her Death Under The Texas Wrongful Death Act, And William R. Tisdale, Jr.	William Recie Tisdale, Sr.
<b>Firm or Organization:</b> Tylka Law Center, PC	Plaintiff(s),vs. Dimitrios Pagourtzis, Antonios Pagourtzis And Rose Marie Kosmetatos,Defendant(s)	William R. Tisdale, Jr.
<b>Bar Number:</b> 20359800	<b>Sealed Case:</b> No	<b>Defendant(s):</b>
<b>Address:</b> 1104 E Main Street League City, TX 77573	<b>Court Name:</b> Galveston County - Probate Court	Dimitrios Pagourtzis
<b>Phone:</b> 281-557-1500	<b>Case Category:</b> Probate - Other	Antonios Pagourtzis
	<b>Case Type:</b> Other Probate	Rose Marie Kosmetatos
	<b>Cause Number:</b> PR-0078972-A	<b>Party(s):</b>
		Simm Associates
		Mollenhour
		Gross, LLC
		Lucky Gunner, LLC
		Red Stage
		Fulfillment, LLC
		Jordan
		Mollenhour

<b>Service Recipients</b>
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 » Ron Rodgers  
 ron@rodgerslawgroup.com  
 » Douglas Gosda dgosda@mga-law.com

<b>Document Information</b>
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**Reference Number:** 1004829  
**Comments For Clerk:** Court Cover Letter, Certificate of  
 Discovery, Requests to Defendant

<b>Stand-alone eService</b>
-----------------------------

**Service Document:**

 [Galveston County Court Cover Letter 1-4-21.pdf](#) [Does not  
 contain sensitive data]

**Document Description:** Galveston\_County\_Court\_Cover\_Letter\_  
 1-4-21.pdf

 [Tisdale -Certificate of Discovery.pdf](#) [Does not contain  
 sensitive data]

**Document Description:** Tisdale -Certificate\_of\_Discovery -  
 Jurisdictional - 1-4-20.pdf

 [2020.12.28 Luckygunner Interrogatories.pdf](#) [Does not  
 contain sensitive data]

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 Interrogatories.pdf

 [2020.12.28 Luckygunner Requests for Documents.pdf](#) [Does  
 not contain sensitive data]

**Document Description:** 2020.12.28 Luckygunner Requests for  
 Documents.pdf

 [2020.12.28 MollenhourGross Interrogatories.pdf](#) [Does not  
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**Document Description:** 2020.12.28 MollenhourGross  
 Interrogatories.pdf

 [2020.12.29 MollenGross Requests for Documents.pdf](#) [Does not  
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 for Documents .pdf

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 Requests for Documents.pdf

 [2020.12.29 Dustin Gross Requests for Documents.pdf](#) [Does  
 not contain sensitive data]

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 Documents.pdf

 [2020.12.29 Mollenhour Requests for Documents.pdf](#) [Does not  
 contain sensitive data]

**Document Description:** 2020.12.29 Jordan Mollenhour Requests  
 for Documents.pdf





# EXHIBIT C

**CAUSE NO. CV-0086848**

<b>CHASE YARBROUGH, DONNA</b>	§	<b>COUNTY COURT AT LAW</b>
<b>YARBROUGH AND TROY YARBROUGH</b>	§	
<i>Plaintiffs</i>	§	
	§	
<b>VS.</b>	§	<b>NUMBER 3</b>
	§	
<b>ANTONIOS PAGOURTZIS, ROSE MARIE</b>	§	
<b>KOSMETATOS, DIMITRIOS PAGOURTZIS,</b>	§	
<b>LUCKYGUNNER, LLC d/b/a</b>	§	
<b>LUCKYGUNNER.COM, RED STAG</b>	§	
<b>FULFILLMENT, LLC,</b>	§	
<b>MOLLENHOURGROSS, LLC, JORDAN</b>	§	
<b>MOLLENHOUR, and DUSTIN GROSS,</b>	§	
<i>Defendants</i>	§	<b>GALVESTON COUNTY, TEXAS</b>

**CERTIFICATE OF WRITTEN DISCOVERY**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs file this Certificate of Written Discovery in accordance with the Texas Rules of Civil Procedure and the Galveston County Local Rules, and respectfully shows this Court as follows:

I.

On January 7, 2021, Plaintiffs provided all counsel of record the following written discovery:

1. Plaintiffs' First Request for Production of Documents to Defendant Luckygunner, LLC;
2. Plaintiff Chase Yarbrough's First Set of Interrogatories to Defendant Luckygunner, LLC;
3. Plaintiffs' First Request for Production of Documents Relating to Personal Jurisdiction to Defendant Red Stag Fulfillment, LLC;
4. Plaintiff Chase Yarbrough's First Set of Interrogatories Relating to Personal Jurisdiction to Defendant Red Stag Fulfillment, LLC;
5. Plaintiffs' First Request for Production of Documents Relating to Personal Jurisdiction to Defendant Mollenhour Gross, LLC;

6. Plaintiff Chase Yarbrough's First Set of Interrogatories Relating to Personal Jurisdiction to Defendant Mollenhour Gross, LLC;
7. Plaintiffs' First Request for Production of Documents Relating to Personal Jurisdiction to Defendant Jordan Mollenhour; and,
8. Plaintiffs' First Request for Production of Documents Relating to Personal Jurisdiction to Defendant Dustin Gross.

## II.

The above-referenced discovery requests were forwarded to counsel for Defendants as follows:

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1300 Post Oak Blvd., Suite 2000  
Houston, Texas 77056

E-Service

Douglas T. Gosda  
Manning, Gosda & Arredondo, LLP  
24 Greenway Plaza, Suite 525  
Houston, Texas 77046

E-Service

Respectfully submitted,

**THE CHANDLER LAW FIRM, L.L.P.**

/s/ Sherry Scott Chandler

Sherry Scott Chandler

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Lewis M. Chandler

State Bar No. 24036350

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[lewis@chandlerlawllp.com](mailto:lewis@chandlerlawllp.com)

**ATTORNEYS IN CHARGE**

**FOR YARBROUGH PLAINTIFFS**

**SOUTHERLAND LAW FIRM**

/s/ J. Alfred Southerland

J. Alfred Southerland

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**ATTORNEYS FOR**

**YARBROUGH PLAINTIFFS**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 7<sup>th</sup> day of January, 2021, a true and correct copy of the forgoing was served on all counsel of record via electronic service in accordance with the Texas Rules of Civil Procedure.

/s/ Sherry Scott Chandler

Sherry Scott Chandler

# EXHIBIT D



Alla Lefkowitz &lt;alefkowitz@everytown.org&gt;

---

**Yanas, Beazley, Tisdale and Yarbrough Matters**

---

Clint <clint@mmtriallawyers.com>  
To: Alla Lefkowitz <alefkowitz@everytown.org>

Fri, Apr 9, 2021 at 10:04 AM

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**From:** A M "Andy" Landry III <alandry@grayreed.com>  
**Sent:** Wednesday, March 24, 2021 8:20 AM  
**To:** Clint <clint@mmtriallawyers.com>  
**Subject:** RE: Yanas, Beazley, Tisdale and Yarbrough Matters

Hi Clint

Thanks for your email. Please note we will be seeking a mandamus review of the Court's order on Defendants' Rule 91(a) motions and filing a Motion to Stay in the near future. Please confer with your colleagues and let us know if you are opposed to a stay pending resolution of our appeal of the 91(a) order. If your side is opposed to a stay, we will ask for a hearing on our motion on either April 8, 9, 13 or 14<sup>th</sup>. These dates are in the window you propose for a hearing. Please let us know which you prefer.

As a way, please let me know if you have questions or concerns. Otherwise this will serve as our certificate of conference.

Best regards

Andy

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**From:** Clint <clint@mmtriallawyers.com>  
**Sent:** Tuesday, March 23, 2021 2:00 PM  
**To:** A M "Andy" Landry III <alandry@grayreed.com>  
**Subject:** [EXTERNAL] RE: Yanas, Beazley, Tisdale and Yarbrough Matters

Andy

I hope that this email finds you well.

I assume that you received Judge Ewing's Order on the Motions to Dismiss. I've attached a copy just in case.

In light of the ruling on the Motions, please provide defendants' availability for a hearing in the next 2-3 weeks on the motion for protective order and let me know when we can expect to receive Luckygunner's discovery responses.

Thanks in advance

**Clint E. McGuire**

MARTINEZ &amp; MCGUIRE PLLC

17227 Mercury Drive, Suite B

Houston, Texas 77058

Ph: 281.286.9100 • Fax: 281.286.9105 [clint@mmtriallawyers.com](mailto:clint@mmtriallawyers.com)*Board Certified in Personal Injury Trial Law- Texas Board of Legal Specialization*

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**From:** A M "Andy" Landry III <[alandry@grayreed.com](mailto:alandry@grayreed.com)>

**Sent:** Monday March 1 2021 8:48 AM

[Quoted text hidden]

[Quoted text hidden]



**GRAY REED.**  
ATTORNEYS & COUNSELORS

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20K



# EXHIBIT E



Alla Lefkowitz &lt;alefkowitz@everytown.org&gt;

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**RE: Yanas/Tisdale/Yarbrough**

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Clint <clint@mmtriallawyers.com>  
To: Alla Lefkowitz <alefkowitz@everytown.org>

Thu, Apr 8, 2021 at 10:55 AM

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**From:** A.M. "Andy" Landry III <alandry@grayreed.com>  
**Sent:** Monday, March 29, 2021 1:56 PM  
**To:** Clint <clint@mmtriallawyers.com>  
**Subject:** RE: Yanas/Tisdale/Yarbrough

I will check with my folks and get back with you asap.

**A.M. "Andy" Landry III****Partner**

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Cell 713.203.1605 | [alandry@grayreed.com](mailto:alandry@grayreed.com)  
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**From:** Clint <clint@mmtriallawyers.com>  
**Sent:** Monday, March 29, 2021 1:36 PM  
**To:** A.M. "Andy" Landry III <alandry@grayreed.com>  
**Subject:** [EXTERNAL] FW: Yanas/Tisdale/Yarbrough

Andy,

I just looked at the notice a little closer and see that it doesn't include the Motion for Protection. We would like to have them heard at the same time. If you are agreeable, please amend the notice. If not, let me know so that we can contact the Court and request a hearing date.

Thank you.

**Clint E. McGuire****MARTINEZ & MCGUIRE PLLC**

17227 Mercury Drive, Suite B

Houston, Texas 77058

Ph: 281 286.9100 • Fax: 281 286.9105 [clint@mmtriallawyers.com](mailto:clint@mmtriallawyers.com)*Board Certified in Personal Injury Trial Law- Texas Board of Legal Specialization*

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4/9/2021

Everytown for Gun Safety Mail - RE: Yanas/Tisdale/Yarbrough

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