NO. _____

In the Supreme Court of Texas

IN RE LUCKYGUNNER, LLC, RED STAG FULFILLMENT, LLC, MOLLENHOUR GROSS, LLC, JORDAN MOLLENHOUR, AND DUSTIN GROSS,
Relators

Original Proceeding
from County Court at Law No. 3 at Galveston County, Texas,
Consolidated Cause No. CV-0081158, the Honorable Jack Ewing

MOTION FOR TEMPORARY RELIEF AND STAY OF PROCEEDINGS

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Respondent	Hon. Jack Ewing, Judge Presiding Galveston County Court at Law No. 3 600 59th Street, Suite 2205 Galveston, Texas 77551-4180

Real Parties in Interest

Plaintiff	Rosie Yanas and Christopher Stone, Individually and as next friends of Christopher Jake Stone
Plaintiff-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
Plaintiff-Intervenors	Shanna Claussen, Individually and as next friends of Christian Riley Garcia
Plaintiff-Intervenors	Clayton Horn
Plaintiff-Intervenors	Rhonda Hart
Plaintiff-Intervenors	Rhonda Hart, Individually and as representative of the Estate of Kimberly Vaughan
Plaintiff-Intervenors	Abdul Aziz and Farah Naz, Individually and as next friends of Sabika Aziz Sheikh
Plaintiff-Intervenors	Flo Rice
Plaintiff-Consolidated Case	William "Billy" Beazley and Shirley Beazley, Individually and as next friends of T.B., a minor
Plaintiff-Consolidated Case	Estate of Cynthia Tisdale, Deceased, by and through Executrix Autumn Tisdale and on behalf of all persons entitled to recover for her death under the Texas Wrongful Death Act

Plaintiff-Consolidated Case	Estate of William Regie Tisdale, Sr., by and through William R. Tisdale, Jr.
Plaintiff-Consolidated Case	William Tisdale, Jr., individually
Plaintiff-Consolidated Case	Autumn Tisdale, Individually
Plaintiff-Consolidated Case	Chase Yarbrough
Plaintiff-Consolidated Case	Donna Yarbrough
Plaintiff-Consolidated Case	Troy Yarbrough
Defendant	Antonios Pagourtzis
Defendant	Rose Marie Kosmetatos

Counsel for Real Parties in Interest

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TO THE HONORABLE SUPREME COURT OF TEXAS:

Pursuant to Texas Rules of Appellate Procedure 52.10(a) and (b), LuckyGunner, LLC, Red Stag Fulfillment, LLC, Mollenhour Gross, LLC, Jordan Mollenhour, and Dustin Gross (collectively, "Defendants"), request a stay of all proceedings in Consolidated Cause No. CV-0081158, *Rosie Yanas et al. v. Antonios Pagourtzis, et al.*, in Galveston County Court at Law No. 3, pending resolution of the Defendants' contemporaneously filed Petition for Writ of Mandamus.

SUMMARY OF MOTION

This Motion seeks a stay of all proceedings while the Court considers the Defendants' Petition for Writ of Mandamus. A stay is appropriate because the Defendants are likely to succeed on the merits and, if the case below proceeds, the Defendants will be denied a substantive right granted to them by Congress – that is, immunity from suit under the Protection of Lawful Commerce in Arms Act ("PLCAA"). *See* 15 U.S.C. §§7901-7903.

These consolidated lawsuits arise from the criminal shooting at Santa Fe High School in May 2018. (M.R.00001-51, M.R.000052-77, M.R.000078-103, M.R.000104-142, M.R.000339-340). The lawsuits seek to hold the Defendants liable for the 17-year-old shooter's crimes because

the Defendants allegedly sold ammunition used in the shooting. As explained in the Petition for Writ of Mandamus, such claims are preempted and barred by the PLCAA.

The Defendants moved to dismiss, asserting their immunity from suit under the PLCAA. *See* TEX. R. CIV. P. 91a; M.R.000162-192, M.R.000193-219, M.R.000220-246. The trial court denied the motion. M.R.000475. The Defendants now seek mandamus relief from the trial court's refusal to dismiss the claims against them. *See* Pet. §I-III.[1] This Motion seeks a stay of all proceedings while the Court considers the Defendants' Petition for Writ of Mandamus.

This Court recently stayed proceedings in a different matter involving the PLCAA while it considers a petition for writ of mandamus. *In re Academy, Ltd. d/b/a Academy Sports & Outdoors* (Case Nos. 19-0497 and 19-0637). The Court should do the same here. A stay is

[1] Rule 91a motions may raise affirmative defenses. *See Bethel v. Quilling, Lownds, Winslett & Moser, P.C.*, 595 S.W.3d 651, 656 (Tex. 2020) (affirming dismissal based on attorney immunity). The denial of a Rule 91a motion to dismiss is reviewable by mandamus. *In re Essex Ins. Co.*, 450 S.W.3d 524, 526 (Tex. 2014) (reviewing denial of motion to dismiss by mandamus). There is no adequate remedy on appeal where a trial court refuses to enforce immunity through a motion to dismiss, as here. *See In re Perry*, 60 S.W.3d 857, 861-62 (Tex. 2001) (granting writ to correct erroneous denial of legislative immunity); *Marshall v. Wilson*, 616 S.W.2d 932, 934 (Tex. 1981) (statute immunized defendant).

appropriate because the Defendants' immunity is a substantive right and "the very act of proceeding to trial—regardless of the outcome—would defeat the substantive right involved." *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 465 (Tex. 2008); *see, e.g., In re Ford Motor Co.*, 165 S.W.3d 315, 322 (Tex. 2005) (granting temporary stay to review denial of motion for continuance because attorney needed to attend Legislature); *In re Automated Collection Techs., Inc.*, 156 S.W.3d 557, 558 (Tex. 2004) (granting temporary stay to review order refusing to enforce forum selection clause); *In re Allied Chem. Corp.*, 227 S.W.3d 652, 658 (Tex. 2007) (granting temporary stay to review discovery rulings that curtailed defendant's ability to prepare defense); *cf.* TEX. CIV. PRAC. & REM. CODE §51.014 (automatic stay of underlying proceedings when denial of governmental immunity is appealed).

PROCEDURAL BACKGROUND

On January 6, 2021,[2] the Defendants timely moved to dismiss all of the Plaintiffs' claims, arguing the Plaintiffs' own pleadings supported the

[2] The Plaintiffs named the Defendants as parties in spring 2020. Thereafter, the Defendants removed each case to the United States District Court for the Southern District of Texas, Galveston Division, pursuant to 28 U.S.C. §§1331, 1441(c) and 1446. (M.R.000606-000626, M.R.001150-001166, M.R.001460-1479). The United States District Court remanded the cases on December 7, 2020. (M.R.000143-000161). The Plaintiffs filed the remand order in mid-December, starting TEX. R. CIV. P. 237a's

application of the PLCAA to this case, among other grounds.[3] *See* TEX. R. CIV. P. 91a.

The trial court denied the Defendants' Rule 91a Motion to Dismiss on March 18. (M.R.000475, M.R.000410-000473, Tr. 60:8-62:6).

On March 26, the Defendants moved the trial court to stay all proceedings, advising the court they intended to pursue a petition for writ of mandamus.[4] (M.R.000476-000486).

On April 13, the Defendants filed an original proceeding in the Fourteenth Court of Appeals.[5] The Defendants contemporaneously moved the court of appeals to stay the underlying proceedings on an

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fifteen-day response deadline. (M.R.000627-000648, M.R.000649-000670, M.R.001167-001186, M.R.001480-001500).

[3] [*Yanas* Motion to Dismiss] M.R.000193-000219; [*Tisdale* Motion to Dismiss] M.R.000193-000219; [*Yarbrough* Motion to Dismiss] M.R.000220-000246. Before answering, four of the Relators/Defendants – Red Stag, MG, Mr. Mollenhour and Mr. Gross – filed sworn special appearances asking the Court to dismiss for lack of personal jurisdiction. (e.g., M.R.000671-702, M.R.000703-724, M.R.001187-1218, M.R.001219-1240, M.R.001501-1534, M.R.001535-1555). The court has not yet ruled on the special appearances. *See* TEX. R. CIV. P. 91.a (no waiver of special appearance by moving for dismissal).

[4] The trial court heard argument on the motion on April 14. To date, the trial court has not ruled on the motion to stay. The trial court is unlikely to do so given the recent Rule 11 Agreement between the parties. *See* Ex. A.

[5] A link to the comprehensive briefing in the Fourteenth Court of Appeals is available here: https://search.txcourts.gov/Case.aspx?cn=14-21-00194-CV&coa=coa14 (last visited June 2, 2021).

"emergency" basis because Plaintiffs issued voluminous merits-based and jurisdictional discovery and there was no stay in place in the trial court at the time the Defendants filed their original proceeding in the Fourteenth Court of Appeals.[6]

The court of appeals denied the Defendants' petition for writ of mandamus. *See In re LuckyGunner, LLC*, No. 14-21-00194-CV, 2021 WL 1904703, at *1 (Tex. App.—Houston [14th Dist.] May 12, 2021, orig. proceeding) (per curiam) (Appx. B). The panel consisted of Justices Jewell, Bourliot, and Hassan. The court of appeals contemporaneously dismissed the Defendants' motion to stay as moot. *Id.*

Thereafter, counsel for the Defendants and counsel for Plaintiffs agreed under Rule 11 that, if the Defendants filed their petition for writ of mandamus and motion to stay in the Texas Supreme Court by no later than June 3, 2021, Plaintiffs would agree to stay the proceedings in the

[6] In early February 2021, the Defendants moved for protection from discovery based on two threshold issues – their Motions to Dismiss under Rule 91a and the specially appearing defendants' Special Appearances. (M.R.000783-001127, M.R.001270-001428, M.R.001600-001757). The trial court granted the Defendants' proposed order before receiving briefing from the Plaintiffs. (M.R.000344-000346). The Court withdrew its order during the dismissal hearing and explaining that, if necessary, it would address the Defendants' grounds for protection after receiving briefing from the Plaintiffs. (M.R.000410-000473, Tr. at 60:8-62:6, M.R.000474). As a result, there was no stay in place in the trial court at the time the Defendants moved to stay and filed their petition for writ of mandamus in the Fourteenth Court of Appeals.

trial court until the Supreme Court rules on this motion to stay. *See* Ex. A.

ARGUMENT AND AUTHORITIES

Texas Rule of Appellate Procedure 52.10(b) empowers this Court to stay the underlying proceedings pending mandamus review. A stay is necessary to "spare private parties and the public the time and money utterly wasted enduring eventual reversal of improperly conducted proceedings" and "preserve important substantive and procedural rights from impairment or loss." *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004).

I. A stay is appropriate under settled law.

A stay is appropriate because the Defendants are likely to succeed. *See* Pet. §I-III.

Congress enacted the PLCAA in 2005 with bipartisan support. The PLCAA prohibits lawsuits, like this one, against firearms and ammunition manufacturers, distributors, sellers, dealers, and importers for damages arising from the criminal misuse of firearms and ammunition by third parties. 15 U.S.C. §7903(5)(a); 15 U.S.C. §7901(b)(1). The PLCAA provides that covered actions "*may not be*

brought in any Federal or State court." 15 U.S.C. §7902(a) (emphasis added).

In this suit, the Plaintiffs seek to hold the Defendants liable for the shooter's criminal misuse of ammunition allegedly sold by the Defendants. The Plaintiffs' claims fall squarely within the PLCAA's definition of a barred "qualified civil liability action." 15 U.S.C. §§7903(5)(A), 7903(4), 7902.

PLCAA immunity is not without exceptions, but none apply here. Pet. at §I-II. To avoid PLCAA preemption in this case, the Plaintiffs must show that the Defendants knowingly violated an existing state or federal law when they sold ammunition to the shooter. Plaintiffs seek to meet this burden by claiming the Defendants violated 18 U.S.C. § 922(x), which makes it illegal to transfer certain ammunition to a person the transferor "knows" or has "reasonable cause to believe" is a juvenile. However, rather than plead facts demonstrating a violation of 18 U.S.C. § 922(x), the Plaintiffs instead pleaded facts defeating their own claim. Pet. at §I-III.

For instance, the Plaintiffs claim that the Defendants violated 18 U.S.C §922(x) by knowingly selling ammunition to the underage shooter;

yet, they allege that the only information the Defendants knew about the shooter's age was that he had represented he was over 21 at the time of the online sale. *See* Pet. at §II. The Defendants received no information suggesting this was false. *See id.* Thus, the Plaintiffs' allegations cannot sustain a violation of 18 U.S.C §922(x).

The Plaintiffs also claim that the Defendants had "reasonable cause to believe" the shooter was a juvenile because he paid with a gift card. *See* Pet. at §II. They claim that the Defendants should have inferred both the shooter's age and criminal intent from the mere fact that he paid with a gift card. *Id.* This is not a reasonable inference. *See* TEX. R. CIV. P. 91a (allowing only reasonable inferences). Thus, again, the Plaintiffs' allegations cannot sustain a violation of 18 U.S.C §922(x). The trial court had no discretion but to dismiss under settled law. *See* Pet. at §I-III.

The trial court's order effectively imposes new obligations and burdens on ammunition sellers in Texas by judicial fiat instead of through the legislative process. The Plaintiffs advocated for this improper result when they (1) urged the trial court to infer both criminal intent and age from the shooter's payment method (a gift card) and (2) pointed to statutes enacted in *other* states—Illinois, New Jersey and

Connecticut—to argue the sale in this case should have proceeded differently (with ID verification). *See* Pet. at §II. But, as noted above, inferring both age and criminal intent from the use of a gift card cannot be deemed a reasonable inference. *See* TEX. R. CIV. P. 91a (allowing only reasonable inferences). And, the policy choices made by other states' legislatures do not control ammunition sales in Texas, let alone make the Plaintiffs' claims against the Defendants "an action in which a manufacturer or seller of a qualified product *knowingly* violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought." 15 U.S.C. §§ 7903(5)(A)(ii), (iii) (emphasis added). Nor does the plain language of the operative phrase in Section 922(x)(1) – "reasonable cause to believe" – include a duty to corroborate a purchaser's representation or investigate his or her background (as the Plaintiffs asked the trial court to conclude in this case). *See* Pet. at §II. The Plaintiffs' claims against the Defendants should have been dismissed based on the pleadings.

Forcing the Defendants to participate in full-blown pretrial litigation in the face of immunity, or perhaps even a trial itself, while this

Court considers the mandamus petition would defeat the Defendants' substantive right to avoid the burden and expense of litigation based on PLCAA immunity from suit. *See Robinett v. Carlisle*, 928 S.W.2d 623 (Tex. App. – Fort Worth 1996, writ denied) (immunity is a substantive right) (citing *Schultea v. Wood*, 47 F.3d 1427, 1430 (5th Cir. 1995) (describing qualified immunity as a "substantive right of officials sued for money damages to be free both of individual liability and the discovery process")).

Among the stated purposes of the PLCAA is "[t]o prevent the use of … lawsuits to impose unreasonable burdens" on members of the firearms industry. 15 U.S.C. §7901(b)(4); *see also City of New York v. Beretta*, 524 F.3d 384, 394-95 (2d Cir. 2008) ("Congress explicitly found that the third-party suits that the Act bars are a direct threat to the firearms industry," and a "rationally perceived substantial effect on the industry [because] of the litigation that the Act seeks to curtail."). Indeed, lawsuits, like this one, seeking damages resulting from the criminal use of non-defective ammunition "may not be brought in any Federal or State court." 15 U.S.C. §7902(a). Claims seeking damages against firearms industry members for the harm caused by criminals are subject to PLCAA-based

dismissal at the pleadings stage and without discovery. *See, e.g.*, *Phillips v. LuckyGunner, LLC*, 84 F. Supp. 3d 1216, 1220 (D. Colo. 2015) (dismissing case against LuckyGunner stemming from a criminal shooting at a movie theater).

There can be no dispute: Congress acted to prevent the use of the judicial branch to circumvent the legislative branches of government "through judgments or judicial decrees." 15 U.S.C. §7901(a)(8). It did so by granting the Defendants a substantive right of immunity from liability and to avoid being subjected to costly litigation or, potentially, a trial in this case.

Absent the requested stay, the Defendants will be unfairly prejudiced by being forced to litigate—destroying their "entitlement not to stand trial or face the other burdens of litigation." *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985); *see also Saucier v. Katz*, 533 U.S. 194, 201 (2001) (immunity from suit "is effectively lost if a case is erroneously permitted to go to trial"); *McSurely v. McClellan*, 697 F.2d 309, 317 n.13 (D.C. Cir. 1982) (Scalia and Wald, JJ.) ("compelling a [defendant] to proceed to trial . . . will generally constitute irreparable injury not

because of the expense of litigation, but because of the irretrievable loss of immunity from suit").

Prejudice to the Defendants is not just a theoretical problem. If a stay is not granted, the immense over-breadth of the discovery Plaintiffs served thus far will impose the very burdens of litigation the PLCAA is intended to protect against. (M.R.000783-001127, M.R.001270-001428, M.R.001600-001757). The Plaintiffs have actively pursued discovery in the trial court, and argued that the Defendants are not entitled to protection from discovery. (M.R.001768, M.R.001774 - M.R.0001812).[7] A stay pending resolution of the mandamus appeal is needed to preserve

[7] Plaintiffs have also argued that a stay is inappropriate because the PLCAA is not an immunity but an affirmative defense. (*See* Response of the Real Parties in Interest to Relators' Emergency Motion to Stay Proceedings, at p. 14 §B; https://search.txcourts.gov/Case.aspx?cn=14-21-00194-CV&coa=coa14 (last visited June 2, 2021)). Multiple courts addressing this issue disagree, holding the PLCAA is an immunity from suit. *See v. Glock, Inc.*, 565 F.3d 1126, 1142 (9th Cir. 2009) (the PLCAA "does not impose a procedural limitation; rather, it creates a substantive rule of law granting ***immunity*** to certain parties against certain types of claims.") (emphasis added). But the potential immunity-affirmative distinction makes no difference in this case. Unlike *Academy*, the Defendants pleaded the PLCAA as an affirmative defense and moved to dismiss all of the Plaintiffs' claims, arguing that the Plaintiffs' own pleadings supported the application of the PLCAA. *See, e.g., Bethel*, 595 S.W.3d at 658 (dismissing petition pursuant to Rule 91a based on attorney immunity); *see also City of Dallas v. Sanchez*, 494 S.W.3d 722, 727 (Tex. 2016) (dismissing petition pursuant to Rule 91a based on governmental immunity); *Sabre Travel Int'l, Ltd. v. Deutsche Lufthansa AG*, 567 S.W.3d 725, 736-41 (Tex. 2019) (considering a federal preemption defense in the context of a Rule 91a motion).

the status quo.

This Court recognized the validity of similar arguments in *In re Academy, Ltd.* by staying all discovery and other proceedings while it addresses the scope and application of the PLCAA in that case. The Court should do the same here.

II. Under the procedural posture of this case, a stay is not burdensome or unduly prejudicial to the Plaintiffs.

The procedural posture of this case is well-suited for a stay. Unlike the Defendants—who would be harmed by responding to far ranging discovery in the face of federal statutory immunity—the Plaintiffs suffer no similar prejudice as a result of a stay. Plaintiffs cannot in good faith claim otherwise: they waited nearly two years to sue the Defendants. Nor is discovery necessary to any pertinent issue at this early stage in the proceedings against the Defendants. Multiple courts have dismissed cases under the PLCAA without discovery. *See, e.g.*, *Gilland v. Sportsmen's Outpost, Inc.*, No. X04CV095032765S, 2011 WL 2479693, at *13, 24 (Conn. Super. May 26, 2011) (dismissing case without discovery); *Phillips*, 84 F. Supp. 3d at 1221-28 (same); *Bannerman v. Mountain State Pawn, Inc.*, No. 3:10-CV-46, 2010 WL 9103469, at *3, 8-9 (N.D. W. Va.

Nov. 2010) (same); *Travieso v. Glock Inc.*, No. CV-20-00523-PHX-SMB, 2021 WL 913746 (D. Ariz. Mar. 10, 2021) (same).

Rule 91a itself counsels that motions to dismiss shall be heard on the pleadings alone. TEX. R. CIV. P. 91a.6. Discovery plays no role in resolving the Rule 91a motions on mandamus review. *See In re Houston Specialty Ins. Co.*, 569 S.W.3d 138 (Tex. 2019). "Forcing parties to conduct discovery when the claimant's allegations conclusively establish the existence of an affirmative defense would be a significant waste of state and private resources." *Bethel*, 595 S.W.3d at 656.

Further, the events underlying this case are more recent than those at issue in Case Nos. 19-0497 and 19-0637, *In re Academy, Ltd. d/b/a Academy Sports + Outdoors*. Academy involved a 2017 incident. The case arrived at the Texas Supreme Court in 2019. Proceedings in the underlying cases have been stayed ever since. This case involves a 2018 incident. If a stay did not amount to unreasonable prejudice in *Academy*, then it likewise cannot here.

Finally, recent developments in the trial court make clear that a stay is necessary to preserve this Court's jurisdiction and the state of the pleadings. *See City of Dallas v. Wright*, 120 Tex. 190, 36 S.W.2d 973, 975

(1931) (holding that an appellate court can grant a stay if necessary to preserve the subject matter of the appeal and protect its own jurisdiction). Rule 91a limits this Court's review to the Plaintiffs' petitions presently on file. TEX. R. CIV. P. 91a.5 ("In ruling on the motion, the court must not consider a nonsuit or amendment not filed as permitted by paragraphs (a) or (b)."). Yet, in a recent trial court filing, the Plaintiffs acknowledged deficiencies in their pleadings and announced their intent to amend. (M.R.011985 at n.8.). It is hard to envision a more impractical situation than for this lawsuit to be split into parallel universes in which the parties are litigating in this Court over one set of petitions and litigating in the trial court over another set of petitions. A stay of proceedings is required to prevent such a result.

CONCLUSION AND PRAYER

For all of the foregoing reasons, the Defendants request the Court stay further proceedings in Consolidated Cause No. CV-0081158, *Rosie Yanas et al. v. Antonios Pagourtzis, et al.*, in Galveston County Court at Law No. 3 pending review of the petition for writ of mandamus.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 52.10(A)

In accordance with Texas Rule of Appellate Procedure 52.10(a), I certify that I have made a diligent effort to notify all parties by expedited means (such as by electronic mail, telephone or fax) that a motion for temporary relief has been or will be filed.

/s/ Kelly H. Leonard
Kelly H. Leonard

CERTIFICATE OF COMPLIANCE WITH WORD COUNT

In accordance with Texas Rules of Appellate Procedure, I certify that this Motion contains 3,234 words.

/s/ Kelly H. Leonard
Kelly H. Leonard

CERTIFICATE OF COMPLIANCE WITH RULE 10.1(5)

I certify that I conferred with opposing counsel regarding the relief requested in this motion on May 18, 2021, and that the Real Parties are opposed to this motion.

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed and served on all counsel of record by electronic filing on this 3rd day of June, 2021 in accordance with the Texas Rules of Appellate Procedure:

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s/ Kelly H. Leonard
Kelly H. Leonard

AFFIDAVIT

1. My name is Kelly H. Leonard. I am an attorney of record for the Relators, LuckyGunner, LLC, Red Stag Fulfillment, LLC, Mollenhour Gross, LLC, Jordan Mollenhour, and Dustin Gross. 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. In compliance with Rule 10.2(a) of the Texas Rules of Appellate Procedure, I have reviewed the attached document entitled Agreement Pursuant to Texas Rule of Civil Procedure 11, dated May 24, 2021, and verify that it is a true and correct copy of Rule 11 Agreement relied upon in this motion.

3. Further affiant sayeth not.

Kelly H. Leonard

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority in Harris County, Texas, on this 2nd day of June, 2021.

RAE LYNN CUDDIHY
NOTARY PUBLIC, STATE OF TEXAS
MY COMM. EXP. 05/19/2023
NOTARY ID 7570-5

NOTARY PUBLIC, in and for
The State of Texas

My Commission Expires: _____

EXHIBIT A TO MOTION TO STAY

GRAY REED
ATTORNEYS & COUNSELORS

A.M. "ANDY" LANDRY III
PARTNER
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ALANDRY@GRAYREED.COM

May 24, 2021

AGREEMENT PURSUANT TO TEXAS RULE OF CIVIL PROCEDURE 11

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Darrell Apffel
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Via Email: Darrell@apffellegal.com

Re: Cause No. CV-0081158, *Rosie Yanas and Christopher Stone, individually and as next friends of Christopher Jake Stone, et al., v. Antonios Pagourtzis, et al.*, Pending in Court No. 3, County Court at Law, of Galveston County, TX

Galveston County - County Court at Law No. 3

Dear Counsel:

Under Rule 11, the parties agree to the following:

WHEREAS, there is no stay currently in place in this matter or an agreement to stay proceedings;

WHEREAS, the Tennessee Defendants intend to file a petition for writ of mandamus to the Texas Supreme Court by no later than June 3, 2021;

EXHIBIT A TO MOTION TO STAY

WHEREAS, the Tennessee Defendants intend to file a motion to stay proceedings in the Texas Supreme Court by no later than June 3, 2021; and

WHEREAS, the Plaintiffs intend to oppose the Tennessee Defendants' petition for writ of mandamus and motion to stay.

THEREFORE, in the interest of judicial economy, Plaintiffs agree that, if the Tennessee Defendants file their petition for writ of mandamus and motion to stay in the Texas Supreme Court by no later than June 3, 2021, Plaintiffs will agree to stay all proceedings in the trial court from the effective date of this agreement until the Texas Supreme Court rules on the Tennessee Defendants' motion to stay.

The Tennessee Defendants will move to stay all proceedings in the Texas Supreme Court notwithstanding this agreement, which is intended only to permit the court additional time to consider a stay in lieu of presenting the motion to stay as an "emergency" under Tex. R. App. P. 10.2(a).

Further, Plaintiffs and the Tennessee Defendants agree they will not rely on this Rule 11 agreement in the Texas Supreme Court as grounds for granting or denying a stay of proceedings, *e.g.*. to moot or obviate the need for a stay during the pendency of the proceedings. For avoidance of any doubt, the purpose of this letter is not to moot the need for a stay, but to permit the Court to consider the motion on the deadlines prescribed by Tex. R. App. P. 10.2(a) ("A court should not hear or determine a motion until 10 days after the motion was filed, unless . . . (3) the motion is an emergency").

Please sign below to confirm our agreement. I appreciate your professional courtesy and prompt attention to this matter.

Very truly yours,

A.M. "Andy" Landry III

Agreed on this 26th day of May, 2021:

Clint E. McGuire
MARTINEZ & MCGUIRE, PLLC
State Bar No. 24013139
Attorney for Plaintiffs Rosie Yanas and Christopher Stone and Plaintiff-Intervenors Mark McLeod, Gail McLeod, Pamela Stanich, Shannan Claussen, Clayton Horn, Abdul Aziz, Farah Naz and Flo Rice in Cause No. CV-0081158

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Alton C. Todd
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Attorneys for Plaintiff-Intervenor Rhonda Hart in Cause No. CV-0081158

Sherry Scott Chandler
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4141 Southwest Freeway, Suite 300
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Attorneys for Plaintiffs in Cause No. CV-0086848

Darrell Apffel
Apffel Legal
104 Moody Ave. (21st)
Galveston, Texas 77550
Attorney for Beazley Plaintiffs in Cause No. CV-0081158

Agreed on this _____ day of _____, 2021:

_____

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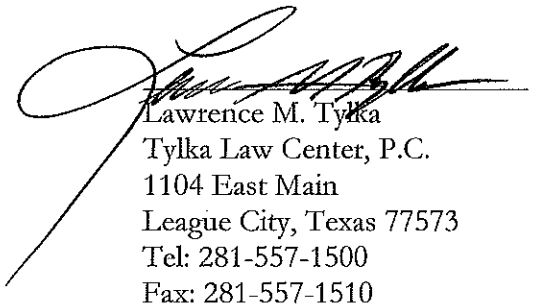
State Bar No. 24013139
Attorney for Plaintiffs Rosie Yanas and Christopher Stone and Plaintiff-Intervenors Mark McLeod, Gail McLeod, Pamela Stanich, Shannan Claussen, Clayton Horn, Abdul Aziz, Farah Naz and Flo Rice in Cause No. CV-0081158



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cc:	Andy Lothson	*Via Email:*	alothson@smbtrials.com
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