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SUPREME COURT OF TEXAS
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No. 21-0463

IN THE SUPREME COURT OF TEXAS

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

Relators

Original Mandamus Proceeding from
County Court at Law No. 3 at Galveston County, Texas
Cause No. CV-0081158, Hon. Jack Ewing

Response of the Real Parties in Interest to Relators' Motion for Temporary Relief and Stay of Proceedings

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TO THE HONORABLE SUPREME COURT OF TEXAS:

The Real Parties in Interest[1] respectfully ask this Court to deny the Relators' Motion for Temporary Relief and Stay of Proceedings.

INTRODUCTION

This personal-injury and wrongful-death lawsuit stems from the shooting that occurred on May 18, 2018, at Santa Fe High School, in Santa Fe, Texas. The Relators, defendants in the trial court, illegally sold and delivered handgun ammunition to the underage shooter, who went on to kill ten people and injure thirteen others at the school.

Yet the Relators claim immunity. They seek a declaration from this Court that—as a matter of law—they cannot be held liable for selling ammunition to a minor. Under the Relators' view of the law, they can open a store where anyone old enough to know how to use a computer can

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[1] The Real Parties in Interest are plaintiffs 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, and 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 Conard 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, "Real Parties in Interest" or "Plaintiffs").

buy ammunition, institute no safety measures, and face absolutely no accountability. The way they see it, if they intentionally blind themselves to the age of their customers, then they have no way of knowing *which* of their customers are children and which aren't. And then all sales can go through, irrespective of the consequences. What's more, the Relators take this position even though their own conduct shows how easy it is for online ammunition retailers to confirm that their customers are adults.

Here, the predictable consequences of the Relators' conduct have been borne by the Plaintiffs—victims and survivors of the Santa Fe High School shooting. In the proceedings below, Plaintiffs allege that the Relators deliberately crafted a business model under which the age of their ammunition customers would not—indeed, could not—be known, a business model that the Relators think unilaterally exempts them from the operation of a federal statute crafted decades ago to protect the public. Plaintiffs seek to hold the Relators responsible for this decision.

In response, the Relators have resisted even threshold discovery, insisting that they are entirely immune from suit under the Protection of Lawful Commerce in Arms Act (PLCAA). This is incorrect for several reasons. First, PLCAA applies only to certain members of the gun

industry, such as sellers of ammunition, which four of the five Relators plainly are not. Second, PLCAA does not apply when defendants are accused of knowingly violating federal law, which is precisely what Plaintiffs' detailed allegations, presumed true at this threshold stage, say here. And third, although PLCAA does create an affirmative defense to liability, nothing in the statute confers immunity from suit.

Because the Relators lack immunity from suit, there is no basis for their requested stay of proceedings. Plaintiffs respectfully ask that this Court deny the Relators' motion and permit threshold discovery to proceed.

BACKGROUND

The Shooting

On March 2, 2018, 17-year-old Dimitrios Pagourtzis went to LuckyGunner.com and purchased handgun and shotgun ammunition. M.R.000006 ¶¶ 21–22. That website, which is maintained by Relator LuckyGunner, LLC ("LuckyGunner"), did not require Pagourtzis to provide identification, enter his age, or even use a credit card. *Id.* Instead, Pagourtzis used an American Express gift card to purchase the ammunition through LuckyGunner's "100% automated" system. *Id.*;

M.R.000017 ¶ 62. He then chose the "No Adult Signature Required" option for shipment, and his purchase was approved in fewer than 120 seconds. M.R.000020–21 ¶¶ 73, 75; M.R. 000035 ¶ 155. Pagourtzis was so confident that his age would not be checked that he even made the purchase under his own name. M.R.000020 ¶ 74.

Less than two weeks later, Pagourtzis used another prepaid American Express gift card to purchase more shotgun ammunition on LuckyGunner.com. M.R.000007 ¶ 23. Again, he did not have to provide his age, and again the purchase was approved in two minutes. *Id.* In both instances, Relator Red Stag Fulfillment, LLC ("Red Stag")—a fulfillment company started by LuckyGunner's owners—mailed the ammunition to Pagourtzis without verifying his age or requiring that an adult sign for the package. M.R.000021 ¶¶ 75, 77; M.R.000037 ¶ 169.

On May 18, 2018, Pagourtzis used the ammunition that he purchased on LuckyGunner to kill ten people and wound at least thirteen others. M.R.000007 ¶ 24. Christopher Stone, Kyle McLeod, Jared Conard Black, Christian Riley Garcia, Kimberly Vaughan, Sabika Aziz Sheikh, and Cynthia Tisdale were among those who were killed; Clayton Horn, Flo Rice, T.B., and Chase Yarbrough are among those who were injured.

M.R.000007–13 ¶¶ 26–38; M.R.000056 ¶¶ 21–22; M.R.000083 ¶¶ 24–25; M.R.000109–110 ¶¶ 5.4–5.6.

The Relators' Culpability

Because of the clear and obvious risk involved, federal law generally prohibits the possession of handguns and handgun ammunition by children under the age of 18. *See* 18 U.S.C. § 922(x)(2), (5). And for the same reason, it is also illegal to aid or abet, willfully cause, or conspire to cause the illegal possession of handguns or handgun ammunition by children under the age of 18. *See* 18 U.S.C. §§ 2, 371. Likewise, it is prohibited to sell, deliver, or otherwise transfer handgun ammunition to anyone whom the transferor knows or has reasonable cause to believe is under the age of 18. *See* 18 U.S.C. § 922(x)(1)(B).

To circumvent these prohibitions, Relators Jordan Mollenhour and Dustin Gross intentionally developed a method to avoid learning the ages of their ammunition customers. M.R.000016 ¶¶ 55–57; M.R.000035 ¶¶ 155, 158. Acting through Relator MollenhourGross LLC, they designed LuckyGunner.com to fulfill orders automatically, without any way to know their customers' age. M.R.000005 ¶ 15; M.R.000017–18 ¶¶ 62, 64. Similarly, they set up Red Stag to deliver ammunition from

LuckyGunner without requiring that an adult sign for deliveries. M.R.000018 ¶ 64; M.R.000037 ¶ 169.

The only step that LuckyGunner does take with respect to age is requiring its customers to check a "Terms and Conditions" box before completing their purchase, and one of the statements in the site's "Terms and Conditions" is that the customer "is not currently less than twenty-one (21) years old." M.R.000018–19 ¶¶ 67–68.[2]

On March 2, 2018, the Relators' scheme had its intended and inevitable result. The underage Pagourtzis was able to purchase handgun ammunition, under his own name, without providing proof of his age, without obtaining an adult's credit card, and without needing an adult to sign for the delivery—an unlawful transaction that could never have occurred in a brick-and-mortar store. M.R.000020–21 ¶¶ 73–75.

Procedural History

On March 4, 2020, Plaintiffs brought claims against the Relators for their role in enabling one of the worst school shootings in American

[2] This checkbox system is not a meaningful attempt to ascertain the age of customers, and there is no way for customers to enter their actual age. It is the virtual equivalent of a clerk in brick-and-mortar store putting on a blindfold and then telling any customer that walks in the door that they have to say that they are 21 or 18 years of age in order to buy alcohol, cigarettes, or ammunition.

history.[3] Plaintiffs allege that LuckyGunner and Red Stag negligently and illegally sold and delivered ammunition to a minor, having willfully blinded themselves to their customers' ages. M.R.000020–22 ¶¶ 73–79; M.R.000030–33 ¶¶ 126–41. Further, the Relators conspired to profit from and aid the sale of ammunition to juveniles by establishing and maintaining a webstore platform and shipping protocol designed to avoid verifying the single most important characteristic of an ammunition customer under federal law—the customer's age. M.R.000013 ¶ 40; M.R.000037–38 ¶¶ 166–74.

On December 23, 2020, Tennessee-based Relators Red Stag, MollenhourGross, Jordan Mollenhour, and Dustin Gross filed special appearances pursuant to Rule 120a of the Texas Rules of Civil Procedure. *See* M.R.000671–724; M.R.001188–1240; M.R.001501–1555. Plaintiffs then served written jurisdictional discovery on the specially appearing Relators and served written substantive discovery on the remaining Relator, LuckyGunner. *See* M.R.001793–1794 ¶¶ 4–7. No other discovery request has been served on the Relators.

[3] The case below involves several now-consolidated petitions. The petition in the *Yanas* matter was filed on March 4, 2020, M.R.000001–51, and the operative petitions in the other matters were filed soon thereafter, *see* M.R.000052–142.

On January 6, 2021, all the Relators filed motions to dismiss under Rule 91a of the Texas Rules of Civil Procedure, M.R.000162–246, and on February 8, 2021, they filed motions to stay proceedings pending resolution of their Rule 91a motions and Rule 120a special appearances, M.R.000783–799; M.R.001270–1286; M.R.001600–1616. On March 18, 2021, after consolidating the separate cases, *see* M.R.000339–340, the trial court denied the Relators' Rule 91a motions to dismiss. M.R.000475. The Rule 120a special appearances remain pending.

On April 13, 2021, the Relators filed a petition for writ of mandamus and an emergency motion to stay trial court proceedings in the Fourteenth District Court of Appeals. *See In re LuckyGunner LLC*, No. 14-21-00194-CV, slip op. at 1 (Tex. App.—Houston [14th Dist.] May 12, 2021, orig. proceeding) (per curiam) (mem. op.). The court of appeals denied the petition, ruling that the Relators failed "to demonstrate a clear abuse of discretion by the trial court." *Id.* at 2. A petition for writ of mandamus to this Court followed.

ARGUMENT

The Relators argue that they are entitled to a stay of the proceedings below because they enjoy immunity from suit under PLCAA, 15 U.S.C.

§§ 7901–7903. But nothing in the text of PLCAA provides immunity from suit; instead, PLCAA merely creates a defense to liability. This question of PLCAA's effect is likely familiar to this Court, which is currently considering this very issue in *In re Academy, Ltd.* (*Academy*), No. 19-0497 (Tex. argued Oct. 6, 2020).

Because of the overlap between the two cases, and because this Court stayed proceedings in *Academy*, the Relators argue that this Court should stay proceedings here as well. But that ignores the substantially different procedural postures of the two cases. In *Academy*, trial was looming; here, discovery has scarcely begun. A stay here would thus unnecessarily burden the Plaintiffs.

Moreover, because the case below is at the motion-to-dismiss stage, Plaintiffs' detailed allegations are presumed to be true. These allegations, which are to be liberally construed in Plaintiffs' favor, establish that the Relators knowingly violated federal law, thus disqualifying them from PLCAA protection under the statute's express terms. Finally, four of the five Relators are doubly ineligible for PLCAA protection, because they are not sellers of ammunition.

The Relators' requested stay would accomplish nothing beyond needless delay. The motion should be denied.

I. The procedural posture of this case does not recommend a stay.

Although the question whether PLCAA provides a threshold immunity or simply an affirmative defense largely overlaps with one of the issues before the Court in *Academy*, the procedural posture of this case is quite different, and militates against a stay. Most significantly, the underlying litigation in *Academy* was much closer to trial 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 this Court for a stay of proceedings. Motion for Emergency Temporary Relief at 5, *Acad.*, No. 19-0497 (Tex. June 11, 2019). And the trial-court decision that this Court is reviewing in *Academy* is the denial of a motion for summary judgment. *See* Relator's Brief on the Merits at xviii, *Acad.*, No. 19-0497 (Tex. Aug. 15, 2019). In this case, by contrast, no documents have been produced, no depositions have been scheduled, and the Relators are resisting even jurisdictional discovery on their

special appearances. Moreover, all that the trial court has decided so far is that Plaintiffs' causes of action are not baseless. *Cf.* Tex. R. Civ. P. 91a.

Given this procedural posture, it is difficult to understand the Relators' suggestion that discovery isn't "necessary" yet. (Mot. at 13.) Although it is true that discovery is unnecessary to decide a motion to dismiss under Rule 91a, (*see* Mot. at 14), the Relators' motion to dismiss has already been denied, M.R.000475. Now pending are four of the Relators' special appearances, for which some jurisdictional discovery is necessary, and from which the Relators will have a statutory right of appeal. *See* Tex. Civ. Prac. & Rem. Code § 51.014(a)(7). A stay of discovery at this time would prevent Plaintiffs from obtaining even this routine jurisdictional discovery.

The Relators are thus wrong to suggest that the *substantive* similarity between this case and *Academy* counsels the same *procedural* result. (*Cf.* Mot. at 2, 13.) On the contrary, the similarity of legal issues between the two cases means that this Court need not take up this case in order to set out its view of PLCAA. The impending decision in *Academy* will provide sufficient guidance for lower courts to properly apply PLCAA.

Additionally, despite the Relators' assertions to the contrary, further delays in this case would burden and prejudice the Plaintiffs. Take Plaintiff Clayton Horn, for example: he has suffered irreparable physical injuries after being shot numerous times and has incurred substantial medical costs. M.R.000010 ¶ 32; M.R.000041–42 ¶ 197. Similarly, Plaintiff Flo Rice, a former runner, now requires a cane to walk, and struggles with posttraumatic-stress disorder. M.R.000012 ¶ 36. She too has incurred substantial medical costs. M.R.000042 ¶ 200. And Plaintiff Chase Yarbrough, who was shot six times, still has four bullet fragments in his body. M.R.000110 ¶ 5.5; M.R.000137 ¶ 8.1.

Delaying these and other Plaintiffs' ability to recover for their substantial and constantly accruing 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]."). Moreover, delay will prejudice the Plaintiffs' ability to obtain and present evidence and witness statements. *See, e.g.*, *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); *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").

II. The Relators are not immune from suit.

The crux of the Relators' argument is that engaging in routine discovery will vitiate their supposed legal immunity from suit under PLCAA. (*See* Mot. at 1–3.) This argument fails for two independent reasons. First, the Relators do not fall within PLCAA's protective scope: four of the five Relators are not covered by PLCAA at all, since they are not sellers of ammunition, and in any event, PLCAA does not apply to defendants who violated federal gun laws, as the Relators did here. Second, the Relators have not demonstrated that PLCAA confers immunity from suit, as opposed to simply providing gun-industry defendants with an affirmative defense. Accordingly, none of the Relators has a basis to claim that its legal rights would be prejudiced by discovery.

A. The Relators are not protected by PLCAA.

By its terms, PLCAA provides a defense to liability, in certain cases, only to "manufacturers" and "sellers" of firearms and ammunition, as well as to "trade associations." *See* 15 U.S.C. § 7903(5)(A). A seller of ammunition is defined as "a person engaged in the business of selling ammunition . . . in interstate or foreign commerce at the wholesale or retail level." *Id.* § 7903(6)(C). The phrase "engaged in the business" is defined, in relevant part, to cover "a person who devotes time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition." *Id.* § 7903(1). And even for sellers of ammunition, PLCAA does not apply to a claim for negligence per se, *see id.* § 7903(5)(A)(ii), or to "an action in which" the seller "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." *Id.* § 7903(5)(A)(iii).

Although Plaintiffs do not dispute that LuckyGunner is a seller of ammunition, the other Relators are not. As alleged in the operative petition, Red Stag is a shipping and fulfillment company, and

MollenhourGross, Jordan Mollenhour, and Dustin Gross are the parents of both Red Stag and LuckyGunner. *See* M.R.000037 ¶ 169 ("Defendants Mollenhour and Gross established Red Stag in May 2013, through their limited liability company, MollenhourGross, to provide shipping services for Luckygunner."); *see also* M.R.000005–6 ¶¶ 15–17. In fact, the Relators' special appearances in the trial court are based almost entirely on the premise that they do not sell any goods, particularly into Texas. *See, e.g.*, M.R.000682 & n.6 ("[N]one of the alleged acts of selling or directing ammunition into Texas can be attributed to [MollenhourGross, Jordan Mollenhour, or Dustin Gross]."); M.R.000703 ("Red Stag is a third-party warehouse order fulfillment company from Tennessee."). Accordingly, only LuckyGunner could plausibly claim PLCAA protection.[4]

[4] In their mandamus petition, the Relators argue that they are all entitled to PLCAA coverage because "Plaintiffs' pleadings group Defendants together." Pet. for Writ of Mandamus 10; *accord id.* ("Accepting Plaintiffs' allegations as true means *all* the Defendants are 'sellers.'"). But this flips the standard for evaluating a motion to dismiss onto its head. At the Rule 91a stage, all reasonable inferences are to be drawn in favor of plaintiffs, not defendants. In any case, because all the Relators are not in fact sellers of ammunition, this would mean at most that Plaintiffs should amend their petition to include greater specificity; it does not entitle all the Relators to PLCAA coverage. *See also infra* Part III.

This conclusion follows directly from the plain text of PLCAA. Although the Relators make broad claims about PLCAA's "purposes" (*e.g.*, Mot. at 10), it is "the statute's text" that matters. *Jaster v. Comet II Constr., Inc.*, 438 S.W.3d 556, 570 (Tex. 2014). "[I]t frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law." *Id.* (quoting *Rodriguez v. United States*, 480 U.S. 522, 526 (1987)).

As to LuckyGunner, the Plaintiffs have more than sufficiently alleged at the Rule 91a stage that LuckyGunner violated the Youth Handgun Safety Act, 18 U.S.C. § 922(x), by selling handgun ammunition to someone that it deliberately avoided knowing was underage. *See* M.R.000032–33 ¶¶ 139–40; M.R.000036 ¶¶ 160–61. Furthermore, the Plaintiffs have alleged that LuckyGunner and the other Relators conspired to sell and deliver handgun ammunition to juveniles in violation of the Youth Handgun Safety Act. *Id.* Because Plaintiffs are seeking to hold the Relators responsible for violating federal law, PLCAA does not apply. *See* 15 U.S.C. § 7903(5)(A)(ii)–(iii). Consequently, under the plain text of the statute, none of the Relators has a basis to claim PLCAA protection, and thus none is entitled to a stay of proceedings.

As the foregoing discussion should make plain, the Relators' characterization of the Plaintiffs' allegations misstates the basis of Plaintiffs' lawsuit. It is not Plaintiffs' position that the use of a gift card, alone, gives a seller reasonable cause to believe that a purchaser is underage. *Contra* Mot. at 8. Nor are Plaintiffs arguing that the Youth Handgun Safety Act imposes a duty on sellers to "investigate" the "background" of every ammunition purchaser, Mot. at 9. Rather, Plaintiffs contend that the Relators cannot unilaterally remove themselves from the ambit of the Youth Handgun Safety Act by willfully blinding themselves to the age of ammunition buyers when they know that the inevitable result of doing so will be unlawful sales to underage purchasers. *See* M.R.000016–20 ¶¶ 54–72; M.R.000035–38 ¶¶ 158, 160, 168, 171–73. Similarly, Plaintiffs have noted the Relators' compliance with certain states' age-verification laws not because Plaintiffs believe such laws to have nationwide application but simply to show how easy it is to prevent children from buying ammunition online. *See* M.R.000018 ¶ 65; *cf.* Mot. at 8–9.

B. PLCAA provides an affirmative defense, not immunity from suit.

The question whether PLCAA provides immunity from suit or an affirmative defense is currently pending before this Court in *Academy*. *See* Relator's Brief on the Merits, *supra*, at 14–16; Brief for Real Parties in Interest at 6, *Acad.*, No. 19-0497 (Tex. Nov. 12, 2019).

As the real parties in interest in *Academy* argued, the text of PLCAA indicates that it merely provides a defense to liability. The statute is explicitly aimed at "[t]he possibility of imposing liability on [the gun] industry." 15 U.S.C. § 7901(a)(6). 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 text mentions only *types of claims* that may not be brought, not that certain defendants are entitled to immunity. *See* 15 U.S.C. §§ 7902(a), 7903(5). The Relators' inference that PLCAA must operate by providing immunity from suit (*see* Mot. 10–11) ignores the "crucial distinction between a right not to be tried and a right whose remedy requires the dismissal of charges," *Midland Asphalt Corp. v.*

United States, 489 U.S. 794, 801 (1989) (quoting *United States v. Hollywood Motor Car Co.*, 489 U.S. 263, 269 (1982)).

The Relators assert that "[m]ultiple courts" have supported their position, but they provide only one citation, and it is inapt. (Mot. at 12 n.7 (citing *Ileto v. Glock*, 565 F.3d 1126, 1142 (9th Cir. 2009))). In *Ileto*, the Ninth Circuit rejected a *procedural due process* challenge to PLCAA, and in so doing noted that PLCAA "does not impose a procedural limitation" but "creates a substantive rule of law." 565 F.3d at 1142. Although the Ninth Circuit used the word "immunity," the court was not presented with, and did not address, the question whether the "immunity" it spoke of was immunity from suit or immunity as a shorthand for a general affirmative defense from liability.

The idea that PLCAA provides immunity from suit, and that this immunity would be infringed by the Plaintiffs' discovery requests, forms the cornerstone of the Relators' request for a stay.[5] Yet in a footnote, the

[5] *See, e.g.*, Mot. at 1 ("[I]f the case below proceeds, the Defendants will be denied a substantive right granted to them by Congress—that is, immunity from suit under [PLCAA]."); Mot. at 2–3 ("A stay is appropriate because the Defendants' immunity is a substantive right . . . ."); Mot. at 9–10 ("Forcing the Defendants to participate in full-blown pretrial litigation in the face of immunity . . . would defeat the Defendants' substantive right to avoid the burden and expense of litigation based on PLCAA immunity from suit.").

Relators assert that "the potential immunity–affirmative distinction makes no difference in this case." (Mot. 12 n.7.) But that can't be right. For in the absence of immunity from suit, the Relators offer no reason why they deserve extraordinary relief, either in the form of a stay of proceedings or in the form of a writ of mandamus. Without immunity from suit, the Relators are no different from any other civil defendant whose Rule 91a motion was denied.

III. A stay would be judicially inefficient.

Finally, noting that Plaintiffs have expressed an intention to amend their petition, the Relators argue that a stay is necessary to "preserve . . . the state of the pleadings." (Mot. at 14–15.) In fact, Plaintiffs' intended amendment would simply add Relator MollenhourGross as a defendant to Plaintiffs' piercing-the-corporate-veil claim. *See* M.R.001785 n.8. But in any event, if Plaintiffs intend to amend their petition—and they do—there is little reason for this Court to spend its time and resources parsing the specific allegations in the currently operative petition. Instead, this Court should deny the Relators' motion so that discovery can proceed, a record can be developed, and the court below can make a ruling based on the facts of this case—just as happened in *Academy*.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny the Relators' Motion for Temporary Relief and Stay of Proceedings.

DATED: June 11, 2021

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I certify that, on June 11, 2021, a true and correct copy of the Response of the Real Parties in Interest to Relators' Motion for Temporary Relief and Stay of Proceedings was served on all counsel of record via the Court's electronic-notification system:

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Respondent, the Hon. Jack Ewing, was served via email.

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

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

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