

JAMES BLAKE BRICKMAN,
DAVID MAXWELL,
J. MARK PENLEY, and
RYAN M. VASSAR
Plaintiffs,

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IN THE DISTRICT COURT OF

v.

TRAVIS COUNTY, TEXAS

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF TEXAS

Defendant.

250th JUDICIAL DISTRICT

**PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION AND VERIFIED MOTION
FOR TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

“The Texas Whistleblower Act protects public employees who make good faith reports of violations of law by their employer to an appropriate law enforcement authority. An employer may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who makes a report under the Act.”¹

This correct statement of Texas law is taken directly from the Texas Attorney General’s website and can be found there as of the date of this pleading. It is sadly ironic, then, that Attorney General Warren Kenneth Paxton -- the Chief Law Enforcement Officer for the State of Texas -- has flagrantly violated and apparently believes he is above the very law he promotes on his own website. Plaintiffs are dedicated, respected, public servants, officers of the court, and—until the events that are the basis of this Whistleblower Suit transpired—honorably served in the most senior levels of the Office of the Texas Attorney General (“OAG”).

¹ <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/general-oag/WhistleblowerPoster.pdf>

The Texas Legislature passed the Texas Whistleblower Act in 1983 to prevent the very conduct by Attorney General Ken Paxton that forms the basis of this case. The most senior members of the OAG believed in good faith that Paxton was breaking the law and abusing his office to benefit himself as well as his close friend and campaign donor, Austin businessman Nate Paul, and likely the woman with whom, according to media reports, Paxton has carried on a lengthy extramarital affair. On September 30, 2020, the Plaintiffs, along with three other Executive Deputies and the First Assistant Attorney General, reported the facts underlying Paxton's illegal conduct to law enforcement, as was their duty. Thus, they became "whistleblowers" (collectively "Whistleblowers"). On October 1, they reported the fact of their whistleblower report of the previous day to the OAG Human Resources Division and to Paxton.

Paxton responded to the report immediately and with ferocity, as though he was trying consciously to show Texans exactly what retaliation against whistleblowers looks like. Paxton falsely smeared the whistleblowers publicly in the manner calculated to harm them most, threatened them, tried to intimidate them, and engaged in all manner of retaliation ranging from serious to petty to pathetic. Then, within about a month of learning of their whistleblowing, Paxton and his OAG fired the Plaintiffs. Less than two months after they reported Paxton's wrongdoing, none of the Whistleblowers remains employed at the OAG. It is hard to imagine more flagrant violations of the Texas Whistleblower Act.

At the crux of this case is Texas' core and necessary government policies of transparency, honesty, and integrity—as opposed to corruption and favoritism—within the State's highest law enforcement office and instruments. Plaintiffs hope that this lawsuit following upon their direct, good-faith complaints both to the current elected office holder at the helm of the OAG and to proper law enforcement agencies will help to restore integrity to this exceedingly important office.

Plaintiffs James Blake Brickman, David Maxwell, J. Mark Penley, and Ryan M. Vassar file this Original Petition against the Office of the Attorney General of the State of Texas. Plaintiffs respectfully show the Court the following:

I. Parties

1. Until they were fired and otherwise retaliated against by the Office of the Attorney General at the instruction of Ken Paxton shortly after reporting to law enforcement their concerns about Paxton’s criminal conduct, the four Plaintiffs were among Paxton’s most senior staff, each of them hand-picked by Paxton himself, and each of whom directly interacted with Paxton on a frequent basis.

2. Plaintiff James Blake Brickman (“Brickman”) was the Deputy Attorney General for Policy & Strategy Initiatives from February 2020 until he was wrongfully terminated October 20, 2020. Brickman is a lawyer and veteran public servant. Prior to being recruited to the OAG by Paxton, Brickman served as the Chief of Staff for the Governor of Kentucky, a Republican, for four years. Earlier in his career, he also served as Chief of Staff to a United States Senator, a Republican, in Washington, D.C., attorney in private practice, and as a federal law clerk to the Honorable Amul R. Thapar (now a sitting judge on the Court of Appeals for the Sixth Circuit). Before Brickman made a good faith report to an appropriate law enforcement authority of criminal wrongdoing by Paxton, Paxton regularly and publicly lauded Brickman’s work. Just by way of example, in May, Paxton publicly praised Mr. Brickman’s work in the monthly meeting of senior OAG staff. Paxton presented Brickman with a book on which Paxton inscribed a note saying he was “so grateful [Brickman] joined our team.” Paxton praised Brickman as an “amazing addition” to the AG’s office. Brickman relocated to Austin, with his wife and three young children, to take his job at OAG at Paxton’s request and is a resident of Travis County, Texas.

3. Plaintiff David Maxwell (“Maxwell”) is and has been a law enforcement professional. Until he was wrongfully terminated on November 2, 2020, Maxwell served as the Deputy Director, and then the Director, of Law Enforcement Division for the OAG for approximately 10 years, collectively, where he oversaw 350 employees. Maxwell’s storied 48-year career in law enforcement in the State of Texas includes over 38 years with the Texas Department of Public Safety – 24 years as a Texas Ranger. Maxwell has been involved in investigating some of the most serious criminal matters and conduct in this State for decades and has a well-earned reputation as an honest, thorough, and tough law enforcement investigator. Maxwell is a resident of Burnet County, Texas.

4. Plaintiff J. Mark Penley (“Penley”) was the Deputy Attorney General for Criminal Justice at the OAG from October 8, 2019 until November 2, 2020, when he was wrongfully terminated. He supervised the Criminal Prosecutions, Special Prosecutions, Criminal Appeals, and Crime Victims Services Divisions which were comprised of approximately 220 employees. Penley has 36 years of legal experience and is a retired federal prosecutor. Penley is a resident of Dallas County, Texas.

5. Plaintiff Ryan M. Vassar (“Vassar”) was the Deputy Attorney General for Legal Counsel at the OAG. In that role, until he was retaliated against and wrongfully terminated, Vassar served as the chief legal officer for the OAG. He represented the OAG before other state and federal governmental bodies and oversaw 60 attorneys and 30 professional staff across 5 different divisions, which are responsible for rendering approximately 50,000 legal decisions each year. Vassar served in different roles at the OAG for over 5 years. Before joining the OAG, Vassar served as a law clerk for three years at the Supreme Court of Texas. Vassar is a resident of Travis County, Texas.

6. Defendant Office of the Attorney General of the State of Texas (“OAG”) is an agency of the State of Texas. OAG was served with process on or about November 20, 2020 and has filed an answer in this case.

II. Jurisdiction, Venue, Rule 47 Disclosure, and Discovery Control Plan

7. This Court has jurisdiction because the amount in controversy exceeds the minimum jurisdictional limit of this Court. In addition, the Texas Whistleblower Act waives any immunity that might otherwise deprive this Court of jurisdiction. TEX. GOV’T CODE §554.0035 (“A public employee who alleges a violation of this chapter may sue the employing state or local governmental entity for the relief provided by this chapter. Sovereign immunity is waived and abolished to the extent of liability for the relief allowed under this chapter for a violation of this chapter.”). Furthermore, each of the Plaintiffs exhausted any administrative remedies having participated in formal complaint procedures within the OAG with such procedures concluding without resolution.

8. Venue is proper in Travis County because the Texas Whistleblower Act provides that a public employee of a state governmental entity may sue in a district court of the county in which the cause of action arises or in a district court of Travis County. TEX. GOV’T CODE §554.007(a). This cause of action arises in Travis County, Texas as all Plaintiffs were employed in Travis County, and worked at OAG offices near the Capitol Building in Austin, Texas in Travis County, were fired or constructively terminated in Travis County, and were subject to acts of retaliation in Travis County. Venue is also proper under §15.002 TEX. CIV. PRAC. & REM. CODE because all or a substantial part of the events or omissions giving rise to this claim occurred in Travis County, Texas.

9. Pursuant to TEX. R. CIV. P. 47(c)(4), Plaintiffs seek monetary relief of over \$1,000,000.

10. Plaintiffs intend for discovery to be conducted in accordance with a discovery control plan under TEX. R. CIV. P. 190.4 (Level 3).

III. Facts

Ken Paxton's Donor and Friend, Nate Paul

11. On August 14, 2019, FBI agents executed a search warrant at the home of Austin real-estate investor Nate Paul. That same day, agents executed search warrants at two separate office locations of Nate Paul's real estate business, World Class Holdings. A long-serving and highly respected United States Magistrate Judge issued those warrants on August 12. A fourth search warrant was executed a few days later at a records storage unit rented by Paul's company.

12. Paul has had many well-documented troubles in 2019 and 2020 in addition to the execution of search warrants at his home and offices by federal law enforcement. Paul is an Austin businessman who invests in real estate through his company, World Class Holdings and through single-purpose limited liability companies controlled by Paul and/or World Class Holdings. In 2019 and 2020, according to media reports, at least 16 Paul-controlled entities have filed for bankruptcy protection, and lenders have initiated foreclosure proceedings on over \$250 million in delinquent debt held by over two dozen of Paul's companies.

13. Also in 2020, Paul created a company for the purpose of suing a local charity, the charity's lawyer, and a court-appointed receiver. The district judge presiding over the case dismissed the case shortly after the suit was filed, ruled that the suit was groundless and filed in bad faith for the purpose of harassment, and sanctioned Paul's company and his lawyer over \$225,000 for the frivolous and malicious use of the justice system.

14. Mr. Paul also spent time in 2020 making requests—both formally and informally—that the Travis County District Attorney and the Office of the Attorney General of the State of

Texas launch criminal investigations of Mr. Paul's perceived adversaries. By way of example, Mr. Paul made formal written requests for criminal investigations of:

- a. The federal magistrate judge who issued the search warrants authorizing the search of Paul's offices and homes;
- b. The FBI agents and state law enforcement agents who carried out the searches;
- c. The Assistant United States Attorney who had obtained the search warrants from the federal magistrate judge;
- d. A federal bankruptcy judge;
- e. A local charity that was a co-investor with Paul-controlled entities in two properties;
- f. The local charity's lawyer;
- g. A credit union that held a lien on one of Paul's entities' properties; and
- h. The receiver appointed by the Travis County Court to take control of certain properties pending resolution of the lawsuit between the charity and Paul-controlled entities.

15. Despite a very busy 2019 and 2020, Mr. Paul, age 33, also found time to enjoy his personal friendship with the Attorney General of the State of Texas, Ken Paxton, age 57.

16. Just by way of example, in 2020, Paxton and Paul met regularly in Austin, Texas, in meetings usually without Paxton's staff or security detail present, and in meetings that were not included on Paxton's official schedule.

17. Nate Paul is also a major donor to Paxton's campaign. On or about October 29, 2018, Paul made a \$25,000 contribution to Paxton's political campaign committee. It has also been publicly reported that the political action committee of a law firm representing Nate Paul's interests in litigation between Nate Paul-related entities and the Mitte Foundation made a \$25,000 contribution to Paxton's campaign on or about June 30, 2020, which was 22 days after the OAG intervened in the litigation.

18. According to an Associated Press article dated November 5, 2020, Paxton “had an extramarital affair with a woman whom he later recommended for a job” with Paul, and whom Paul in fact employed. According to the same news article, the woman previously worked for a Republican Texas State Senator.

Paxton Abused the Office of the Texas Attorney General to Benefit Paul

19. During the Spring and Summer of 2020, Paxton began taking more interest in legal matters involving Nate Paul and applying more pressure on the Plaintiffs and the other Whistleblowers to use the personnel, legal authority and other resources of the OAG to advance the legal and personal interests of Nate Paul and his business activities. Paxton showed a pattern of not listening to the Whistleblowers, including Plaintiffs, when they raised valid objections to his instructions regarding Nate Paul’s legal matters that were brought before the OAG. Plaintiffs, along with the other Whistleblowers, became increasingly concerned over time as the Attorney General became less rational in his decision making and more unwilling to listen to reasonable objections to his instructions, and placed increasing, unusual priority on matters involving Paul.

20. The Whistleblowers, including Plaintiffs, ultimately formed a good faith belief that Paxton had violated Texas criminal law, including but not limited to the laws regarding bribery, improper influence, and abuse of office as follows:

- a. Texas Penal Code section 36.02 defines bribery as a second degree felony. The offense of bribery occurs if a person “intentionally or knowingly . . . solicits, accepts or agrees to accept from another: (1) any benefit as consideration for the recipient’s decision, opinion, recommendation, vote or other exercise of discretion as a public servant . . . ; and (3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official;

- b. Texas Penal Code, section 36.03, Coercion of Public Servant or Voter, states that an offense occurs if a person, by means of coercion, “(1) influences or attempts to influence a public servant in a specific exercise of his official power or a specific performance of his official duty or influences or attempts to influence a public servant to violate the public servant’s known legal duty.” An offense under TPC 36.03 is a Class A misdemeanor; and
- c. Texas Penal Code, section 39.02(a)(2) Abuse of Official Capacity, states that a public servant commits an offense, “with intent to obtain a benefit . . . , he intentionally or knowingly: misuses government property, services, personnel, or any other thing of value belonging to the government” If the value of the thing misused is \$2,500 or more but less than \$30,000, the offense is classified as a state jail felony.

21. Paxton’s abuse of the OAG to benefit Paul began in or around November 2019. But as 2020 progressed, Paxton’s efforts on Paul’s behalf became increasingly reckless, bold, and apparent to Plaintiffs.

Paxton Intervened in Nate Paul’s Open Record Requests

22. A state agency that receives a request for records under the Texas Public Information Act and wishes to withhold documents responsive to that request based on statutory exceptions must request a ruling from the OAG as to whether the asserted exceptions are applicable. The OAG issues approximately 30,000 to 40,000 open records decisions each year, but Plaintiffs are only aware of Paxton taking a personal interest in decisions that related to Paul.

23. In the Fall of 2019, lawyers for Paul issued an open records request to the Texas State Securities Board for records related to the search of Paul’s properties in August 2019 and the

Board requested an open records decision from the OAG. On or about November 25, 2019, and despite Paxton's pressure on Whistleblower Ryan Bangert to release the records, OAG issued a ruling that all records related to this request were **not** subject to disclosure due to a pending investigation against Paul.

24. On or about March 13, 2020, lawyers for Paul issued an open records request to the Texas Department of Public Safety ("DPS") for records related to the search of Paul's properties in August 2019. Because the search of Paul's properties in August 2019 was conducted by the Federal Bureau of Investigation, the FBI filed a brief with the OAG concerning this request, and also sent a redacted version of the brief to Paul's lawyers.

25. Paxton contacted Ryan Vassar, Deputy Attorney General for Legal Counsel, several times related to this request. In meetings between Paxton and Vassar, Paxton revealed that he had spoken personally with Paul about the activities that occurred on the day the search warrants of Paul's properties were executed. Paxton stated that he did not want to use the OAG to help the FBI or DPS in any way.

26. Longstanding OAG precedent and sound principles indicated that disclosure of the documents should be prevented, but Paxton directed Vassar to find a way to release the information. Vassar struggled with this directive because allowing disclosure of the information requested by Paul would overturn decades of settled expectations among sister law enforcement agencies, compromise the OAG's own law enforcement information, and likely spark innumerable lawsuits challenging the newly announced application of the law.

27. Paxton then personally took the file, including all the responsive documents, which included documents sealed by a federal court, and did not return it for approximately seven to ten

days. Paxton also directed that the final opinion, issued on June 2, 2020, take no position on whether the documents should be released.

28. On or about May 20, 2020, lawyers for Paul issued an open records request to the OAG for the un-redacted FBI brief referenced above. Paxton asked Vassar for a copy of the un-redacted FBI brief, and directed Vassar to find a way to release the un-redacted FBI brief in a July 24, 2020 opinion, which ultimately concluded that the FBI brief must be released.

Paxton Intervened in Civil Litigation Involving Nate Paul

29. The OAG has approximately 35,000 open civil litigation cases each year, but Paxton has only taken a personal interest in one case. That case involves Paul.

30. The Roy F. and Joann Cole Mitte Foundation (“Mitte Foundation”) is a non-profit corporation and charitable foundation located in Austin, Texas. The Mitte Foundation invested in and was a limited partner of several entities associated with World Class Holdings, Nate Paul’s company. In 2018, the Mitte Foundation filed suit against several of those entities controlled by Paul’s World Class Holdings claiming, among other things, that the Mitte Foundation was being denied access to the books and records of the companies. That litigation grew and ultimately resulted in the court appointment of a receiver over the World Class entities.

31. The Financial Litigation and Charitable Trust Division of the OAG has the power to intervene in any litigation involving charities if doing so will protect the assets of the charity.² Around January 2020, lawyers in the Charitable Trust division of the OAG filed a notice with the court declining to intervene in the case. Paxton was not involved in this decision. However, Paxton began to take a deep personal interest in this case in May and June of 2020 and had several discussions with OAG staff about intervening in the case. OAG staff advised Paxton that OAG

² See Tex. Prop. Code § 123.001, *et seq*

had no interest in intervening in the case, as the Mitte Foundation was the plaintiff in the case and instituted the suit to protect the charity's interest, making OAG's intervention unnecessary.

32. Against the advice of OAG staff, including some of the Whistleblowers, and contrary to OAG's prior decision not to intervene, Paxton directed the Charitable Trusts Division to intervene in the lawsuit on or about June 8, 2020 in order to exert pressure on the parties to settle.

33. On or about July 6, 2020, Paxton asked Brickman to review the pleadings in the case. On or about July 6, 2020, Brickman informed Paxton that OAG had no interest in the case and should not waste resources of the OAG intervening in a dispute in which the charity – which the OAG should have wanted to protect – was the plaintiff and represented by capable counsel in a legitimate dispute. Additionally, Brickman informed Paxton that the parties reached a settlement agreement in August 2019, which Paul subsequently breached.

34. On or about July 22, 2020, then-First Assistant Jeff Mateer and Brickman talked Paxton out of personally attending and appearing before the Travis County District Court in this matter, which would have been an unprecedented event as Paxton has not appeared in any court on behalf of the OAG in years.

35. Plaintiffs saw that Paxton was seeking to exert influence in the case not to assist the charity, but to pressure the charity to reach a settlement favorable to the World Class entities.

36. On or about October 1, 2020, then-Deputy Attorney General for Civil Litigation and Whistleblower Darren McCarty directed the Financial Litigation and Charitable Trusts Division to withdraw from the case.

Paxton Directed a Legal Opinion to Benefit Nate Paul

37. On or about July 31, 2020, Paxton contacted Whistleblower Bangert and asked him to look into whether restrictions on in-person gatherings due to COVID prevented the foreclosure sales of properties. Bangert consulted Vassar. After hearing their researched views on this subject, Paxton made clear that he wanted OAG to express a specific conclusion: that foreclosure sales should not be permitted to continue. On August 2, 2020 at approximately 1:00 a.m., OAG issued an informal legal opinion concluding that foreclosure sales should not be permitted to continue in light of the then-existing restrictions on in-person gatherings to prevent the spread of COVID-19. Unbeknownst to Plaintiffs at the time, this opinion favored persons such as Paul who hoped to stave off foreclosure sales. According to media reporting, on the very next day, Monday, August 3, 2020, lawyers for Paul showed Paul's creditors a copy of Paxton's opinion to prevent the foreclosure sales of Paul's properties that were scheduled for August 4, 2020.

Paxton Plotted OAG Investigations into Nate Paul's Adversaries

38. The OAG has approximately 400 open criminal cases and 2,000 open criminal investigations each year. Paxton rarely showed an interest in any pending criminal investigations, but he showed an extraordinary interest in the investigation sought by Paul.

39. In May of 2020, Paxton contacted the Travis County District Attorney and requested a meeting to help Nate Paul present a criminal complaint. A meeting was held with the DA's staff. Paxton attended the meeting along with Paul and his attorney. Paul also submitted a written complaint accusing federal law enforcement, a federal magistrate judge, Texas state law enforcement, and a prosecutor with the U.S. Attorney's office of violating his rights.

40. By letter dated June 10, 2020, The Travis County DA's Office referred Paul's criminal complaint to the OAG. Paxton assigned the matter to Plaintiffs Maxwell and Penley for investigation.

41. Maxwell scheduled an initial meeting with Paul and his attorney, Michael Wynne, at which they stated their contentions that the federal search warrants executed in August 2019 had been altered by a federal prosecutor after they were signed by the federal magistrate judge.

42. Penley and Maxwell held a second meeting, at which Paul and Wynne gave a further explanation of their complaints and produced a thumb drive containing documents which they contended would support their claims. Wynne conveyed that he had presented his concerns about the alleged alterations of the search warrants, which were under seal at the federal District Clerk's office, to the magistrate judge at a hearing in February 2020, and that the judge had released some documents to him. Maxwell and Penley advised that many of Paul's complaints were outside state jurisdiction, as Paul and Wynne were relating alleged violations of the Federal Rules of Criminal Procedure, and that their complaint that some or all of the search warrants had allegedly been altered by a federal prosecutor after they were signed by the federal magistrate judge could be best investigated by the U.S. Department of Justice Inspector General's Office ("DOJ IG").

43. The next day, Maxwell and Penley consulted with forensic experts in the OAG Criminal Investigation Division ("CID") and determined that no credible evidence existed to support any state law charges.

44. In or around this time, Paul leaked the fact that the OAG was investigating his complaint against federal officials to the media.

45. Soon thereafter, Paxton, Paxton's assistant, Penley, Maxwell, Paul, Wynne, and two CID forensic experts attended a third meeting regarding Paul's complaints. When Penley announced his recommendation that the investigation be closed, Paul, Paul's attorney and Paxton pushed back. As a result of Paxton's surprising response, Penley thereafter requested additional documents from Paul's counsel, but the attorney never provided those documents despite repeated requests. After the third meeting, it was obvious that Paxton was dissatisfied with Maxwell's and Penley's opinions and recommendation.

46. On August 18, 2020, Paxton contacted Vassar, asking him to explain how the OAG could retain outside legal counsel. Vassar obliged, explaining that the OAG's approval process requires authorization from no less than 10 different OAG personnel. Various stages throughout the OAG's review process provide that: a contract must be drafted; it must be approved; conflicts must be cleared; and funding must be obligated. Vassar also explained that retaining outside counsel is usually limited to matters in which the OAG does not have the necessary experience (*e.g.*, patent law), license requirements (*e.g.*, patent law or pro hac vice admission), or where an actual or apparent conflict of interest may arise in the matter.

47. On or about August 26, 2020, Paxton contacted Vassar again and asked if retaining outside counsel to investigate criminal allegations was permissible. Vassar explained that Texas law contemplates two unique scenarios involving the appointment of a special or outside prosecutor. The first scenario involves a situation where a prosecutor may recuse herself to allow the trial court to appoint an attorney pro tem as a prosecuting attorney. Tex. Code Crim. Pro. art. 2.07(a); *see also* Tex. Att'y Gen. Op. KP-0273 (2019). Paxton stated that a court-appointed attorney pro tem was not acceptable. The second scenario involves a situation where a prosecuting attorney may "request the assistance of the attorney general, and the attorney general may offer to

the prosecuting attorney the assistance of his office.” Tex. Gov’t Code §§ 41.102(b); 402.028(a). Vassar cautioned, however, that he would need to defer to Penley on whether engaging outside counsel in this situation would be appropriate, based on the allegations that had been made. Paxton then asked Vassar to contact two potential candidates who may be willing to serve as outside legal counsel.

48. On or about August 26, 2020, Vassar began contacting the two potential candidates who Paxton said might be willing to serve as outside counsel. During these contacts, Vassar explained the outside counsel process and asked both potential candidates to provide him with their proposed hourly rates and an estimate of the cost for conducting an investigation. One of the candidates was Brandon R. Cammack, a Houston criminal defense attorney who had been licensed only 5 years and never served as a prosecutor. The other candidate was a veteran former state and federal prosecutor with decades of experience.

49. On or about September 3, 2020, Paxton announced his decision to retain Cammack as outside counsel. Paxton instructed Vassar to draft an outside counsel contract and send it to Cammack that same day. Paxton stated that this needed to be done immediately because the Travis County District Attorney-elect would not be cooperative with this investigation and may rescind the referral to the OAG. Vassar followed Paxton’s order, obtained a copy of the criminal referral, for the first time, and prepared a draft contract for Cammack to review. At Paxton’s direction, Vassar also sent a copy of the draft agreement to Paxton that same day.

50. On or about September 4, 2020, Cammack notified Vassar that the contract terms were acceptable. Vassar then forwarded the draft agreement to the General Counsel Division to begin the OAG’s internal review and approval process.

51. On or about September 23, 2020, Cammack contacted Vassar and asked him if Cammack could obtain an email address from the OAG or some other official documentation to identify himself as an attorney working for the OAG, because a certain prosecutor's office was asking for verification of Cammack's relationship with the OAG. Vassar explained to Cammack that his contract had not been approved yet, but that he would discuss potential ways to document Cammack's involvement in an investigation with relevant OAG personnel. Later that same day, Paxton called Vassar, asking if Cammack could obtain an OAG email address and asking why Cammack's contract had not been approved yet. Vassar explained that the process can take time due to the multiple approvals required. Paxton asked who was currently reviewing the agreement and exclaimed that he was "tired of his people not doing what he had asked." Upon checking the OAG's contract-approval application, Vassar identified that Penley was currently reviewing the agreement. Paxton then ended the call.

52. On or about September 24, 2020, Penley refused to sign a memo to approve the hiring of Cammack to take over the investigation of Paul's complaint. Penley believed that the claim alleging alterations to search warrants was unsupported by credible evidence.

53. Plaintiffs later learned that, on or about September 3, 2020, Paxton had asked Cammack, to begin work as an outside counsel despite not having a contract approved to retain him.

54. Matters came to a head during the week of September 28, when Cammack obtained 39 grand jury subpoenas from the Travis County Grand Jury. All of the subpoenas were outside the appropriate scope of the June 10 referral from the Travis County District Attorney's office concerning Paul's complaints against federal law enforcement and judicial officials. Some of the subpoenas caused the Whistleblowers, including Plaintiffs, to believe Cammack, Paul and Paxton

were using them to obtain documents related to Paul's civil cases. The Whistleblowers learned that one of the subpoenas was served on an entity that was involved with one of Paul's properties and Cammack was accompanied by Paul's attorney, Michael Wynne, when that subpoena was served. On September 30, the Whistleblowers learned of a second grand jury subpoena served on an entity that had business dealings with Paul. Other subpoenas were designed to harass law enforcement agents and federal prosecutors. The subpoenas shocked the Whistleblowers because they were highly improper and far outside the bounds of any reasonable investigation. Paxton and Paul were using their so-called "special prosecutor" to bring the weight of the OAG to bear on Paul's enemies.

Plaintiffs Make a Good Faith Reports about Paxton's Abuse of Power to Law Enforcement

55. On September 30 and October 1, the Whistleblowers, including Plaintiffs, having concluded that Paxton appeared to be using the resources and authority of the OAG to benefit the personal and financial interests of his friend and campaign donor, Nate Paul, made good faith reports of criminal activity by Paxton to appropriate law enforcement authorities. On October 1, seven of the eight Whistleblowers signed and sent to the OAG's Director of Human Resources a letter notifying OAG that they had reported to an appropriate law enforcement authority a good faith belief of suspected violations of law committed by Paxton and OAG. Plaintiff Maxwell did not sign the October 1 letter because he was out of state on vacation at the time the letter was drafted, but he was in complete agreement with the letter. He sent a separate written notice to Human Resources regarding his whistleblower complaint to an appropriate law enforcement authority. Plaintiff Maxwell would have signed the letter had he been present to do so. The October 1 letter states:

This letter is intended to serve as notice to the Office of the Attorney General that on September 30, 2020, we, the undersigned individuals, reported to an appropriate law enforcement authority a potential violation of law committed by Warren K. Paxton, Jr., in his official capacity as the current Attorney General of Texas. We have a good faith belief that the Attorney General is violating federal and/or state law, including prohibitions relating to improper influence, abuse of office, bribery, and other potential criminal offenses. Each signatory below has knowledge of facts relevant to these potential offenses and has provided statements concerning those facts to the appropriate law enforcement authority. Additionally, today, October 1, 2020, the undersigned notified the Attorney General via text message that they have reported the violations to the appropriate law enforcement authority. A copy of the text message is attached hereto.

Paxton and OAG Take Immediate Adverse Employment Actions

56. Paxton swiftly began retaliating against the Whistleblowers both individually and as a group. Paxton's acts were deliberately calculated to try to impugn these public servants, denigrate their legitimate, good-faith complaints about Paxton's corruption, attempt to silence or divide them, and deter others from making such complaints about Paxton's unlawful conduct.

Friday, October 2 -- Paxton Suspends and Later Terminates Penley and Maxwell

57. On October 2, one day after the letter to OAG Human Resources, Plaintiffs Penley and Maxwell were placed on "investigative leave" at the direction of Paxton. Their email accounts and building access badges were disabled. Paxton and the OAG refused to tell Penley or Maxwell what was being investigated or even whether they were accused of wrongdoing of any kind. For the next 2 weeks, the OAG made no attempts to interview Penley or Maxwell as part of any alleged investigation. On October 15, newly appointed First Assistant Brent Webster³ extended Penley's and Maxwell's respective investigative leaves to Monday, November 2, again without giving any explanation for placing them on that status or disclosing the reason for the investigation or the scope of it. Penley made several requests, by phone call and email, seeking that information, but never received a response from Paxton, Webster or anyone else at the OAG.

³ Whistleblower Jeff Mateer, the previous First Assistant Attorney General, resigned on October 2, 2020.

Saturday, October 3 – Paxton and OAG Smear the Whistleblowers

58. On Saturday, October 3, the OAG Communications Department issued the following statement:

The complaint filed against Attorney General Paxton was done to impede an ongoing investigation into criminal wrongdoing by public officials including employees of this office. Making false claims is a very serious matter and we plan to investigate this to the fullest extent of the law.

59. This statement was blatantly false in numerous respects and clearly intended to intimidate and retaliate against the Whistleblowers. First, the reports to law enforcement were not made “to impede an ongoing criminal investigation.” Rather, the Whistleblowers’ reports to law enforcement were made based on their good faith belief that Attorney General Paxton was abusing the Office of Attorney General to benefit a campaign donor and private individual.

60. Further, there was no OAG investigation into “employees of this office” as Paxton claimed in his press release. Paxton was trying to mislead the public into believing that the Whistleblowers themselves were under investigation for criminal misconduct when they went to law enforcement with their concerns about Paxton. This false statement was clearly intended to punish the Whistleblowers by smearing and discrediting them.

61. Paxton also asserted in the October 3 statement that the Whistleblowers made “false claims” to law enforcement. This too was a lie. The Whistleblowers provided only accurate information to law enforcement. Moreover, Paxton did not even know on October 3 what information the Whistleblowers had provided to law enforcement. Paxton was certainly aware of his own corrupt conduct and worried about it being exposed, but he did not know what specifically the Whistleblowers had reported and therefore had no basis upon which to accuse eight of his most senior staff of making false claims to law enforcement. Nor did he seek any transparency, the

appointment of any truly neutral or objective special investigator, contact any proper law enforcement agency, or act in any way as a proper steward of the OAG would act.

62. Paxton punctuated his October 3 statement by threatening the Whistleblowers. The final sentence of his official statement read, “Making false claims is a serious matter and *we plan to investigate this to the fullest extent of the law.*” (Emphasis added).

63. It is hard to imagine a more egregious act of retaliation against a whistleblower than what Paxton began on Saturday morning, October 3. The life’s work of each of the Whistleblowers was the law or law enforcement or both. Their credibility and integrity are their essential stock-in-trade. Paxton’s statement was a pack of lies intended to hit the Whistleblowers where he thought it would hurt them most: false claims that the Whistleblowers made untrue accusations to law enforcement and had impeded a lawful investigation and a threat of investigation and legal consequences. The potential and certainly-intended effect would be to chill further revelations about Paxton’s wrongdoing and try to smear the good name, character, and reputation of these public servants. Paxton’s actions were straight out of the playbook he had been running against the enemies of his friend and donor Nate Paul. Now, on a Saturday morning less than 48 hours after learning of the Whistleblowers’ reports to law enforcement, Paxton was running the same play against his own senior deputies, the Plaintiffs here.

October 5 and 7 -- More Retaliation

64. Over the weekend of October 3-4, media continued reporting about the relationship and connections between Paxton and Nate Paul and Paxton’s personal involvement in the use of his office to investigate and attack Paul’s enemies. In response to this more detailed reporting, Paxton again treated the official, taxpayer-funded Communications Department of the OAG as an

instrument of retaliation. The OAG Communications Division released this official statement on Monday, October 5 at Paxton's direction (incorrect capitalization in original):

The Texas attorney general's office was referred a case from Travis county regarding allegations of crimes relating to the FBI, other government agencies and individuals. My obligation as attorney general is to conduct an investigation upon such referral. Because employees from my office impeded the investigation and because I knew Nate Paul I ultimately decided to hire an outside independent prosecutor to make his own independent determination. Despite the effort by rogue employees and their false allegations I will continue to seek justice in Texas and will not be resigning.

65. The first two sentences of Paxton's October 5 statement were intended to mislead the public into believing that, in conducting the investigations of Nate Paul's enemies, OAG was merely carrying out a legal obligation to investigate a matter referred from the Travis County District Attorney. Of course, this lie by Paxton was calculated to counter the emerging truth that Paxton was personally orchestrating the use of the OAG to attack Paul's enemies.

66. Two days later, the OAG Communications Division released another official statement at Paxton's direction, reiterating some of the prior statement's untruths and falsely implying that the Cammack contract had been approved through proper OAG procedures:

Employee, Ryan Vassar, drafted the contract for outside counsel and communicated directly with Independent Counsel Brandon Cammock to assist in the execution of the contract. The Attorney General signed the contract.

Mr. Vassar included the job description in this contract that legally authorized Independent Counsel Brandan Cammock to act. Mr. Vassar also provided this contract directly to Attorney General Paxton for his signature.

67. This official communication omits the key facts that what Vassar circulated to both Cammack and Paxton was clearly labeled a "draft" contract, prepared at Paxton's direct command; that (as Paxton well knows) Vassar lacks authority to individually authorize retention of outside counsel; and that the required OAG approvals for the Cammack contract were *never* obtained. Vassar demanded correction of the false statement, but his request was ignored.

68. It was not only the Whistleblowers who were alarmed by Paxton's false October 5 and 7 statements. Margaret Moore, the District Attorney of Travis County, rightly and justly called Paxton out on his misleading statements. In response to Paxton's October 5 and 7 statements, Travis County D.A. Moore wrote to Paxton on October 9:

On June 10, 2020, my office sent to David Maxwell [the then-current Deputy Director of Law Enforcement Division for the OAG] a letter referring a Request to Investigate (RTI) filed in our office by Nate Paul. You asked my office to hear his complaints. The referral to the OAG was made with your approval. We did not conduct any investigation into the merits of the matters complained of....

The referral cannot and should not be used as any indication of a need for investigation, a desire on the Travis County D.A.'s part for an investigation to take place, or an endorsement of your acceptance of the referral.

My office has closed this file and will take no further action. Furthermore, I have instructed my employees to have no further contact with you or your office regarding this matter.

69. The District Attorney closed her letter to Paxton by expressing her evident alarm at Paxton's conduct:

Any action you have already taken or will take pursuing this investigation is done solely on your own authority as provided by Texas law. The newly surfaced information raises serious concerns about the integrity of your investigation and the propriety of your conducting it.

Sincerely,



Margaret Moore

Cc: Brent Webster

70. On November 11, 2020, Paxton repeated in the *New York Times* the lie that that his investigation of the magistrate judge and state and federal law enforcement officials was initiated by the Travis County District Attorney.

**Monday, October 5 – Wednesday, October 28 –
Paxton Removes Duties, Tries to Intimidate Whistleblowers**

71. On Friday October 2, 2020, First Assistant Attorney General Jeff Mateer, who was one of the Whistleblowers, resigned. Paxton quickly hired Brent Webster, who was previously with the Williamson County, Texas D.A.'s office, to replace Mateer as First Assistant Attorney General. October 5 was Webster's first day on the job. At 9:00 a.m., Webster began his first day by dismissing Plaintiff Brickman from a very important legislative meeting with Attorney General Paxton. In an obvious effort to embarrass Brickman, Webster waited until the meeting began and then instructed Brickman, with great ceremony but without explanation, to leave the meeting. As the Deputy Attorney General for Policy and Strategic Initiatives, Brickman had always participated in these meetings with the First Assistant and/or Attorney General Paxton. Removing Brickman from the meeting was clearly intended to diminish Brickman's duties and responsibilities to punish him, to try to intimidate and embarrass or humiliate him, and to send a message to other employees that Brickman was being punished and stripped of responsibilities and thereby deter similar attempts to complain about or hold Paxton accountable for his official misconduct.

72. Later that same morning, First Assistant Brent Webster arrived at Brickman's office escorted by an armed peace officer who identified herself as Sergeant Amy Biggs. Mr. Webster repeatedly insisted that he speak alone with Brickman. Brickman politely offered to meet with Mr. Webster in the presence of other deputies but prudently and respectfully declined to meet with Mr. Webster alone or in the presence only of the armed guard accompanying Webster. Confronting Brickman – in needless and unprecedented, banana republic-like, fashion with an armed guard – and insisting on meeting alone for unspecified reasons was clearly an attempt by Webster to intimidate Brickman.

73. About thirty minutes later, Webster came by Brickman's office, saw him talking on his cell phone, and instructed Brickman to take his cell phone to his car and leave it there. At the time, Brickman was talking on his cell phone with a colleague, Senior Counsel to Attorney General Paxton, Zina Bash. Webster's instruction to take the phone to the car was not consistent with any rule or policy of the office. Other employees also carry and use personal cell phones. In fact, Paxton himself carries multiple personal cell phones, including routinely cycling through "burner" cell phones. This needless instruction to Brickman was not just a bush-league attempt at intimidation; not having his cell phone posed a significant issue for Brickman because his school-age children only have his personal cell phone number. Additionally, Brickman is the guardian for his 96 year-old grandmother who suffered a recent fall and broke her back, and Brickman coordinates her care.

74. Still on Monday, October 5, Brickman learned that the Scheduler, a position that reported to Brickman, had been replaced without any involvement by Brickman. This was yet another power play by Webster, clearly intended to demote and demean Brickman by removing responsibilities.

75. After Mateer resigned and Maxwell and Penley were placed on leave, the remaining Whistleblowers and other employees of the OAG watched as their colleagues were systematically retaliated against, mistreated, placed on leave, harassed and fired.

76. On October 8, 2020, during a regular meeting of the OAG's deputies, directors, and other senior members, Whistleblower McCarty asked Webster and Paxton whether the OAG would continue to make disparaging remarks to the media about the Whistleblowers. Paxton did not respond and Webster expressly refused to answer.

77. On October 13, Paxton conducted an interview with the Southeast Texas Record in which he once again maligned the Whistleblowers, stating that his deputies and former first assistant engaged in “an effort to cover up the reality of what really happened [with Paul].”

78. Several of the Whistleblowers had job duties removed, were excluded from regular meetings, and encountered the armed guard that had begun accompanying Webster. Some indicated in formal complaints to the OAG that they believed their OAG issued electronic devices were being monitored and were told that they were “under investigation.” The Whistleblowers also received “litigation hold” letters concerning Paul that instructed them to preserve all correspondence and documents related to his complaints. Someone even placed empty boxes near the offices of some of the Whistleblowers. All of these actions were overt and intended to dissuade other OAG employees from engaging in protected conduct and to create a hostile work environment to persuade the remaining Whistleblowers to resign. It worked.

79. On October 19, Ryan Vassar, one of the Whistleblowers, received an email from Webster asking to meet in Webster’s office at 1:00. Vassar, who was working remotely at the time, acknowledged Webster’s email and reported to Webster’s office. Webster invited Vassar into his office and left the door open while armed guard, Amy Biggs, sat in a chair outside the door. After a meaningless, five-minute conversation, Webster announced that he was placing Vassar on investigative leave for two weeks. Vassar asked multiple times why he was being investigated, but Webster refused to answer. Webster, instead, said that the investigation was “open-ended.” At the end of the meeting, Webster directed Vassar to leave his agency-issued laptop and cell phone on Webster’s desk. Webster and Sergeant Biggs then escorted Vassar to his office to collect his personal belongings, parading him around the building in front of his colleagues in what could have only been intended to demean Vassar and intimidate him and the other Whistleblowers. After

collecting his belongings, Sergeant Biggs then accompanied Vassar in the elevator and escorted him outside the building. Vassar's leave was supposed to end on November 2, 2020, but his earlier request for clarification went unanswered by anyone at the OAG until the next day, November 3, 2020, when the Human Resources Division notified him that his leave had been extended for another 80 hours. Thus, Vassar was, without justification or explanation, completely stripped of his job responsibilities and constructively discharged.

80. On October 20, Plaintiff Brickman and Whistleblowers Lacey Mase were wrongfully terminated by Paxton and Webster for making their whistleblower report.

81. On October 26, Whistleblowers Darren McCarty resigned.

82. On October 28, Whistleblowers Ryan Bangert resigned.

83. Vassar's second 80-hour investigative leave period was set to expire on November 16. However, on November 13—the day after this lawsuit was filed—Vassar was summoned to the Price Daniel building on four hours' notice. After responding that he was out of town and unable to make the suddenly scheduled meeting, Vassar was directed to report at 8:00 AM the following Monday, November 16.

84. Upon his arrival that morning, the retaliation immediately resumed. Vassar was escorted to the eighth floor of the building, where an armed officer required Vassar to surrender his mobile phone and subjected him to a physical search for recording devices (no word on what OAG was afraid might be recorded). After a half-hour wait, Vassar was escorted into the office of First Assistant Webster, with the armed officer prominently standing guard outside the door. Webster stated that his investigation of Vassar was 99% complete and then proceeded to interrogate him on various subjects. When Webster was finished, the armed officer escorted Vassar back down the elevator and outside the building.

85. Then Vassar was ordered to report back to the Price Daniel Building the next day, November 17, at 10:00 AM. Vassar arrived promptly at 10:00 AM.. Webster and HR personnel arrived at 10:30 AM. Webster then fired Vassar for false and pretextual reasons. And just like that—less than two months after their legally protected, good-faith report to law enforcement authorities, OAG had run off all eight whistle blowers.

**Paxton Uses His Report to the Texas Legislature as a Tool to Further Retaliate
Against the Whistleblowers.**

86. Texas State Representative Jeff Leach is the Republican Chairman of the House Committee on Judiciary and Civil Jurisprudence. Rep. Leach represents parts of Collin County, where Paxton is from. Rep. Leach has been a political ally of Paxton's. On October 9, 2010, Rep. Leach wrote to Paxton, "Texans have good reason to be concerned that the important work of [the Office of the Attorney General] may not be possible under your continued leadership. If there is any truth whatsoever to the factual and legal claims of your own senior staff, I believe you must voluntarily resign your position and urge you to do so."

87. Rep. Leach expressed that his paramount concern was that the operations of the OAG "continue without interruption and the trust of the people of Texas in their Chief Law Enforcement Officer must be restored." Rep. Leach requested that Paxton provide a written report to all members of the Texas Legislature as to what specific steps are being taken by Paxton and Brent Webster to ensure that the effective operation of the OAG continue in full force and effect. Rep. Leach asked for the report to be provided within seven (7) days.

88. OAG Director of Legislative Affairs Ryan Fisher emailed various staffers requesting their input into the letter. Although several of the Whistleblowers raised concerns with the operation of the office and the effect of the retaliation on pending matters, none of this criticism

made its way into the response to Chairman Leach, which on information and belief was written by Paxton and Webster – not Fisher.

89. Paxton sent his written report to Chairman Leach and the 181 members of Texas Legislature on October 16, 2020. The report was a barely-two-page, self-aggrandizing letter that failed to respond to Rep. Leach's inquiry in any substantive respect. The letter was a combination of misleading statements, material omissions, and praise for work that mostly began well before First Assistant Webster assumed his new role on October 5, 2020 and that had no bearing on the concern raised by Rep. Leach in his October 9 letter.

90. Paxton used the report requested by Rep. Leach to again defame and retaliate against the Whistleblowers. Paxton's letter began with a lie and a smear: "Thank you for your October 9 letter asking whether OAG operations continue apace despite the false claims made by some OAG employees." Rep. Leach never said the allegations the Whistleblowers took to law enforcement were "false claims." Paxton was yet again making that allegation to smear and discredit the Whistleblowers, and he was using a formal, written report requested by a leader in the Texas House of Representatives to amplify his attacks on the Whistleblowers.

91. Notably, in his response to a request for specific steps he was taking to ensure the office was functioning effectively, Paxton failed to even inform Rep. Leach that at least five of the Whistleblowers had recently filed formal internal grievances alleging that Paxton was harassing and using his office to punish the Whistleblowers. Those complaints from high-ranking deputies were filed in writing and addressed serious concerns about the functioning of the Office of Attorney General. Yet Paxton's report to the Legislature made no mention of the complaints. Paxton's report to the Legislature was to the effect of, "all is well."

October 9 -- Paxton Claims to Shut Down Cammack Investigation of Nate Paul Enemies

92. At the end of a busy Friday, October 9, Paxton claimed to be concluding the Cammack investigation of Nate Paul's enemies. OAG issued a statement from Paxton saying, "In this case, we can only investigate in response to a request for assistance from the District Attorney's office. This investigation is now closed." Subsequent events suggest this was yet another effort by Paxton to mislead the public.

October 19 -- Paxton and Webster Indicate they Will Reopen Investigation of Nate Paul's Enemies

93. Although Paxton told the public on October 9 that the investigation into Nate Paul's enemies "is now closed," after 9:00 p.m. on October 19, several of the Whistleblowers received an odd email from First Assistant Attorney General Brent Webster. It read in part, "Given your conflicts, you are instructed not to work on any OAG business relating to your allegations against Nate Paul, General Paxton, or any connected cases or OAG matters."

94. Plaintiffs were puzzled by what matters still pending in the OAG might relate to Nate Paul or Paxton. One Plaintiff, Blake Brickman, wrote back the next morning seeking clarification. Brickman wrote to Webster:

Good morning Brent -

I am confused by your email and would like some clarification to ensure that I comply with your directive.

1. I am not aware of any open OAG matters involving Nate Paul. I believe all such matters have been closed. Please advise if that is not the case and please specify exactly what open Nate Paul related matters you reference in your email so I can fully understand and comply with the directive in your email.

2. As many other senior OAG officials have told General Paxton repeatedly over the course of the last several months, General Paxton has a "personal conflict" with respect to any Nate Paul related matter.

I sincerely hope that your email does not mean that OAG will reopen past matters - or open new matters - that benefit Nate Paul and his business interests under your watch as First Assistant.

Sincerely,

Blake Brickman

95. Brent Webster responded without answering Brickman's questions. Rather, Webster wrote, "Let's meet at 1:30 in my office to discuss this." Brickman expressed reluctance to meet with Webster to speak about Nate Paul related matters. Brickman offered to meet with Webster at 1:30 with a fellow deputy attorney general present. Brickman also pointed out that, since the directive to stay away from Nate Paul or "related" matters was made in writing, it was appropriate that he receive in writing a response identifying those matters. But Webster was adamant that they meet alone to discuss these unknown Nate Paul related matters that Webster was instructing Brickman to stay away from.

96. Webster had no intention of telling Brickman about the Nate Paul matters he was referring to in his email from the night before. When Brickman arrived at Webster's office, Webster, an armed guard, and a human resources employee were present. Webster brought Brickman into the office and fired him. Webster said Brickman had been "insubordinate."

November 2 – OAG and Paxton terminate Maxwell and Penley

97. On or about October 23, 2020, 3 weeks after Maxwell was put on investigative leave, the OAG collected Maxwell's agency issued laptop and cell phone. On October 28, nearly 1 month after he was put on investigative leave, the OAG requested Maxwell provide his passwords.

98. On or about the afternoon of October 28, 2020, nearly 1 month after Penley was put on investigative leave, Penley received a request to return the following day his agency issued laptop and cell phone, and Penley complied.

99. On Friday October 30, 2020, Penley and Maxwell were instructed to report to separate buildings at the Austin office of the OAG on November 2, 2020 at 9 a.m. OAG's Human Resources department sent the following email to Maxwell:

Director Maxwell:

Please be advised that you are directed to report to the William P. Clements Building on Monday, November 2, 2020 at 9:00 a.m. Please proceed to 205J (large training room) on the 2nd floor. Please confirm receipt of this email. Thank you for your cooperation.

HR-Help

100. Penley asked what the purpose of the meeting was and was only told it was "work-related."

101. Maxwell and Penley appeared as requested at the OAG's Austin office on November 2, 2020, and they both experienced even more irregularities, harassment, and retaliation. Contrary to Texas law and Paxton's instituted written policy preventing the disarming of licensed peace officers, Brent Webster issued orders to OAG staff to prevent Maxwell from entering if armed, despite Maxwell's status and distinguished career. The OAG violated Maxwell's rights as a licensed peace officer, with a valid License to Carry, to possess a legal weapon at a State Office, contrary to Article 30.06. Penley was escorted up the elevator and into the Executive Conference Room by an armed guard, who remained stationed outside the room throughout the meeting, which lasted from about 9 a.m. to 5 p.m.

102. Penley and Maxwell were subjected to hostile conditions and conduct throughout the entire day. Webster refused to tell Penley or Maxwell why they had been placed on

investigative leave, the reason for the investigation or the scope of it. He also denied Penley's request to have one of the other Whistleblowers attend the meeting as a witness. Instead, Webster proceeded to interrogate Penley and Maxwell in a hostile and aggressive manner. The OAG engaged in a charade under the guise of an administrative investigation interview, but it was apparent that the Whistleblowers' complaints about Paxton's misconduct were the driving force for the events of November 2. Webster pressured both Maxwell and Penley to resign, which they refused to do. At the end of the day, the OAG wrongfully terminated Maxwell's and Penley's employment in retaliation for their protected complaints of illegal conduct by Paxton.

Plaintiffs File Formal Complaints with OAG

103. On October 16 and again on October 29, Plaintiff Brickman initiated action under any applicable grievance or appeal procedure of the OAG relating to suspension or termination of employment or adverse personnel action pursuant to TEX. GOV'T CODE §554.006(a). Although the agency had 60 days to investigate his complaint pursuant the Whistleblower Act, OAG HR responded to the October 16 complaint in less than 24 hours stating that there was no complaint procedure available to Deputy Attorney Generals like Brickman and immediately dismissing the complaint.

104. On October 12 and again on November 10, 2020, Plaintiff Penley initiated action under any applicable grievance or appeal procedure of the OAG relating to suspension or termination of employment or adverse personnel action pursuant to TEX. GOV'T CODE §554.006(a). OAG HR responded to the Friday, October 12 complaint by letter dated October 16 stating that there was no complaint procedure available to Deputy Attorney Generals like Penley and immediately dismissing the complaint. Penley subsequently inquired whether there was another internal administrative procedure at the OAG by which he could appeal his wrongful

termination claim other than the formal complaint process under which he had attempted to initiate a complaint on October 12. By letter dated November 10, the Formal Complaint Officer replied:

....This letter is to inform you that there is no other internal administrative procedure at the Office of the Attorney General other than the formal complaint process by which you may appeal your termination....

105. On November 10, Penley initiated another grievance by submitting a formal complaint about his wrongful termination.

106. On October 13 and again on November 4, 2020, Plaintiff Maxwell initiated action under any applicable grievance or appeal procedure of the OAG relating to suspension or termination of employment or adverse personnel action pursuant to TEX. GOV'T CODE §554.006(a).

107. On October 15, 2020, Plaintiff Vassar initiated an action under any applicable grievance or appeal procedure of the OAG relating to suspension or termination of employment or adverse personnel action pursuant to TEX. GOV'T CODE §554.006(a). His formal complaint detailed a litany of unlawful and retaliatory actions taken against him by Paxton and OAG since his good-faith report to appropriate law enforcement authorities of legal violations by the OAG and by the Attorney General Ken Paxton. Although the agency had 60 days to investigate his complaint pursuant the Whistleblower Act, OAG HR responded to the October 15 complaint the very next day stating that there was no complaint procedure available to Deputy Attorney Generals such as Vassar and immediately closing the complaint.

November 5 – the Smear Campaign Continues

108. On November 5, 2020, Paxton's campaign spokesperson, Ian Prior, who is not an OAG employee and is therefore without knowledge on any OAG personnel matters, referred to Plaintiffs in a news article as "desperate former employees trying to spin a false narrative".

109. On November 11, 2020, the New York Times reported:

Mr. Paxton told the New York Times in a statement that the latest controversy was created by members of his staff who had opposed his decisions without having all the facts and who made ‘their disagreement noisy and public’ in an attempt to undermine the integrity of the office.

IV. Cause of Action

Count 1: Violation of Texas Whistleblower Act

110. Plaintiffs incorporate and re-allege paragraphs 1-109 above.

111. Plaintiffs were all public employees employed by the OAG, which is a state governmental entity and unit of the State of Texas.

112. Plaintiffs all in good faith made reports to law enforcement authorities of violations of criminal law by the OAG and by the Attorney General Ken Paxton. The OAG and Paxton specifically were aware of Plaintiffs’ good faith reports to law enforcement.

113. Plaintiffs were subsequently subjected to adverse personnel actions by OAG and Paxton -- including demotion, suspension, removal of work assignments, hostile work environment, constructive termination and termination of employment – because of the reports they made. The adverse employment actions would not have been taken against them had they not made the good-faith reports to law enforcement. Each of the adverse employment actions was committed within 90 days of the reports to law enforcement, and in some cases within 1 business day of Paxton’s learning of the reports. Thus, under Texas law, there is a presumption that the adverse employment actions were taken because the employee made the report to law enforcement. TEX. GOV’T CODE §554.004(a). In addition, the circumstances of the actions prove that the adverse actions were taken because of the reports of Attorney General Paxton’s criminal conduct to law enforcement.

114. The adverse employment actions have caused Plaintiffs damages, including but not limited to past lost wages, past and future lost benefits, loss of future earnings and earning capacity, harm to his reputation, emotional pain, mental anguish, and loss of enjoyment of life.

115. Plaintiffs seek legal and other equitable remedies, reinstatement to their former positions or equivalent positions and to have lost fringe benefits and seniority rights reinstated, including but not limited to the vesting of retirement benefits.

116. Plaintiffs have all invoked any available grievance or appeal procedure.

117. All conditions precedent have been met, waived, or otherwise been satisfied to Plaintiffs' filing suit.

V. Verified Motion for Temporary Injunction

118. Plaintiffs incorporate by reference paragraphs 1 -117 above and the declarations attached hereto respectively verifying them.

119. Plaintiffs file the verified motion for temporary injunction asking the Court to order reinstatement of Plaintiffs pending trial of this case.

A. Temporary Injunction Standards

120. An applicant for temporary injunction must (a) plead a cause of action; (b) show a probable right to recover on that cause of action; and (c) show a probable, imminent, and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

121. As the Texas Supreme Court has stated in *Walling v. Metcalfe*, 863 S.W.2d 56, 58 (Tex. 1993):

The decision to grant or deny a temporary writ of injunction lies in the sound discretion of the trial court, and the court's grant or denial is subject to reversal only for a clear abuse of that discretion. At the hearing for a temporary writ of injunction, the applicant is not required to establish that she will prevail on final trial; the only question before the trial court is whether the applicant is entitled to preservation of the status quo pending trial on the merits.

122. In the context of an injunction, the status quo is defined as "the last, actual, peaceable, non-contested status that preceded the pending controversy." *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004); *Intercontinental Terminals Co., LLC v. Vopak N. Am., Inc.*, 354 S.W.3d 887, 892 (Tex. App.—Houston [1st Dist.] 2011, no pet.).

123. In a Texas Whistleblower Act case in which a plaintiff seeks a temporary injunction, preserving the status quo means restoring the plaintiff to the position the plaintiff held before the allegedly retaliatory act. *City of Galveston v. Humphrey*, 2001 Tex. App. LEXIS 1365 *8 (Tex. App. – Houston [1st Dist.] 2001, no pet.).

B. Plaintiffs Have a Probable Right to Recovery.

124. To establish a claim under the Texas Whistleblower Act, a plaintiff must plead: (1) that he was a public employee, (2) that he reported what he in good faith believed was a violation of law committed by his employing governmental entity or another public employee, (3) that the report was made to what the employee in good faith believed was an appropriate law enforcement authority, and (4) that his employing governmental entity took an adverse personnel action against him because of the report. TEX. GOV'T CODE §554.001 *et. seq.*; *Tex. Dep't. of Human Servs. v. Okoli*, 440 S.W.3d 611, 614 (Tex. 2014); *Resendez v. Tex. Comm'n on Envtl. Quality*, 391 S.W.3d 312, 322 (Tex. App. – Austin 2012, reversed on other grounds).

125. As described in the foregoing verified recitation of the facts and as will be demonstrated in the hearing on this motion, Plaintiffs have a probable right of recovery.

126. All of the Plaintiffs were public employees employed by the Office of the Attorney General of the State of Texas, which is a state governmental entity and unit of the State of Texas.

127. Each of the Plaintiffs formed a good faith belief that Paxton and the OAG violated laws regarding bribery, improper influence, and abuse of office by using OAG's and Paxton's

extraordinary influence and power to aid Paxton's close friend and donor and to attack the friend and donor's criminal investigators and civil adversaries.

128. On September 30, 2020, each of the Plaintiffs in good faith made reports to law enforcement authorities of suspected violations of criminal law by the OAG and by Paxton.

129. On October 1, 2020, OAG and Paxton learned of Plaintiffs' good faith reports to law enforcement because seven of the eight OAG whistleblowers, including Plaintiffs Brickman, Penley and Vassar, signed and sent to the OAG's Director of Human Resources a letter notifying OAG of their good faith report to an appropriate law enforcement authority of suspected violations of law committed by Paxton and OAG. Plaintiff Maxwell did not sign the October 1 letter but sent a separate written notice to Human Resources regarding his good faith whistleblower report to an appropriate law enforcement authority.

130. OAG and Paxton learned of Plaintiffs' good faith reports on October 1, 2020, and took the adverse employment actions with knowledge of them. Each of the acts of retaliation alleged, including the termination of all of the Plaintiffs, occurred within 90 days of their reports to law enforcement. Thus, under Texas law, there is a presumption that the OAG took these adverse employment actions because the Plaintiffs made their reports to law enforcement. TEX. GOV'T CODE §554.004(a).

131. Even without the applicability of the presumption, Plaintiffs are likely to succeed on the merits of establishing a causal connection between their reports to law enforcement and the termination of their employment and other retaliation by OAG.

132. Circumstantial evidence can be sufficient to establish a causal link between the adverse employment action and the reporting of illegal conduct. *Tex. Dep't of Criminal Justice v. McElyea*, 239 S.W.3d 842, 855-56 (Tex. App.—Austin 2007, pet. denied). Such evidence

includes (1) knowledge of the report of illegal conduct, (2) expression of a negative attitude toward the employee's report of the conduct, (3) failure to adhere to established company policies regarding employment decisions, (4) discriminatory treatment in comparison to similarly situated employees, and (5) evidence that the stated reason for the adverse employment action was false. *Id.* A plaintiff need not present evidence involving all five categories to prove causation. *See Continental Coffee Prods. Co. v. Cazarez*, 937 S.W.2d 444, 452 (Tex. 1996).

133. The evidence is overwhelming that OAG retaliated against Plaintiffs because of their reports to law enforcement. For example, on October 2, one day after the letter to OAG Human Resources, Plaintiffs Penley and Maxwell were placed on “investigative leave” at the direction of Paxton. OAG disabled their email accounts and building access badges. Paxton and the OAG refused to tell Penley or Maxwell what was being investigated or whether they were accused of wrongdoing.

134. On Saturday, October 3 and Monday October 5, the OAG Communications Department issued public statements that were false and misleading and that were intended to intimidate and retaliate against whistleblowers, including the Plaintiffs. For example, in official OAG statements on October 3 and 5, 2020 directly related to Plaintiffs’ reports to law enforcement, OAG referred to the Plaintiffs as “rogue employees” and accused Plaintiffs of making “false reports” to law enforcement. OAG also accused Plaintiffs publicly of making their reports to law enforcement “to impede an ongoing investigation into criminal wrongdoing by public officials including employees of this office.” OAG also threatened Plaintiffs by stating publicly in regard to their reports to law enforcement that “making false claims is a very serious matter and we plan to investigate this to the fullest extent of the law.”

135. On Monday, October 5, OAG retaliated further against Plaintiff Brickman by removing responsibilities and authority. For example, on Monday October 5, Plaintiff Brickman was abruptly dismissed from a legislative meeting with Attorney General Paxton. The manner in which Plaintiff Brickman was dismissed from the meeting suggests a motive to intimidate and retaliate and send a message to Brickman and to others that whistleblowing would be punished. Also on October 5, the OAG's new First Assistant, Brent Webster, arrived at Brickman's office escorted by an armed peace officer in a manner calculated to intimidate and retaliate against Plaintiff Brickman. About thirty minutes later, First Assistant Webster instructed Brickman, contrary to any policy and contrary to normal practice for all other employees, to take his cell phone to his car and leave it there. Still on Monday, October 5, Brickman learned that Paxton's scheduler, a position that reported to Brickman, had been replaced without any involvement by Brickman.

136. On October 7, 2020, OAG issued a public statement falsely insinuating that Vassar had approved of the hiring of a so-called "special prosecutor" to investigate a federal magistrate judge, and federal and state prosecutors.

137. On October 19, Plaintiff Vassar was placed on leave for investigative reasons. Plaintiff Vassar learned of the leave at a meeting OAG First Assistant Webster called and during which Webster posted an armed guard just outside the open door to Webster's office. Webster refused to answer when Plaintiff Vassar asked why he was being investigated. Webster would only say the investigation was "open-ended." OAG had Plaintiff Vassar escorted from the building by the armed guard in front of his colleagues and coworkers in what was an effort intended to demean and intimidate Vassar and send a message of warning to other actual or would-be whistleblowers.

138. On October 20, 2020, OAG fired Plaintiff Brickman. That same day, OAG fired Lacey Mase, who was one of the 7 signers of the October 1 whistleblower letter.

139. On October 26, 2020, Darren McCarty, one of the signers of the October 1 whistleblower letter resigned. On October 28, 2020, another signatory, Ryan Bangert, resigned.

140. On November 2, 2020, OAG fired Plaintiff Maxwell and Plaintiff Penley.

141. On November 17, 2020, OAG fired Plaintiff Vassar.

142. By November 17, 2020, four of the seven signers of the October 1 whistleblower letter had been fired, and the other three had resigned. In addition, Plaintiff Maxwell, who did not sign the October 1 letter but communicated separately that he had made a report to law enforcement, had also been fired – all within seven (7) weeks of their good faith reports to law enforcement.

143. In addition, OAG's conduct toward Plaintiffs failed to adhere to its established policies and processes regarding employment decisions. For example, an armed guard was used to try to intimidate some of the Plaintiffs. Plaintiff Brickman was instructed, contrary to OAG policy, to take his cell phone to his car and leave it there. Plaintiff Brickman was also stripped of authority and responsibilities. Some of Plaintiffs were placed on investigative leave without explanation and in contravention OAG policy and practice.

C. Plaintiffs Can Show Probable, Imminent, Irreparable Harm.

144. An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

145. An adequate remedy at law is one that is “as complete, practical, and efficient to the *prompt* administration of justice as is equitable relief.” *Intercontinental Terminals Co., LLC v.*

Vopak N. Am., Inc., 354 S.W.3d 887, 895 (Tex. App.—Houston [1st Dist.] 2011, no pet.)(emphasis added). “Thus, if damages do not provide as complete, practical and efficient a remedy as may be had by injunctive relief, the trial court does not err in granting temporary injunction so long as the other elements of injunctive relief are satisfied.” *Id.*

146. Threatened injury to reputation and good will are frequently the basis for temporary injunctive relief. *Id.* (citing *Lifeguard Benefit Servs. v. Direct Med. Network Solutions, Inc.*, 308 S.W.3d 102, 118; *Frequent Flyer Depot, Inc. v. Am. Airlines, Inc.*, 281 S.W.3d 215, 228 (Tex. App.—Fort Worth 2009, pet. denied); *T-N-T Motorsports, Inc. v. Hennessey Motorsports, Inc.*, 965 S.W.2d 18, 24 (Tex. App.—Houston [1st Dist.] 1998, pet. dism'd); *Townson v. Liming*, No. 06-10-00027-CV, 2010 Tex. App. LEXIS 5459, 2010 WL 2767984, at *2-3 (Tex. App.—Texarkana July 14, 2010, no pet.) (mem. op.); *Lionheart Co., Inc. v. PGS Onshore, Inc.*, No. 10-06-00303-CV, 2007 Tex. App. LEXIS 4628, 2007 WL 1704906, at *2 (Tex. App.—Waco June 13, 2007, no pet.) (mem. op.); *RenewData Corp. v. Strickler*, No. 03-05-00273-CV, 2006 Tex. App. LEXIS 1689, 2006 WL 504998, at *15-16 (Tex. App.—Austin Mar. 3, 2006, no pet.) (mem. op.).

147. Also, “[i]f damages cannot compensate for any wrong committed by [the defendant], or if the damages are not measurable by any certain pecuniary standard, then the injury is irreparable and the injunction should issue.” *Townson v. Liming*, No. 06-10-00027-CV, 2010 Tex. App. LEXIS 5459, at *8-9 (Tex. App.—Texarkana July 14, 2010, no pet.). “Certain” means “fixed, settled, and indisputable.” *Id.* The value of “lost business contacts and collaborations” and lost employment opportunities are “anything but fixed, settled, and indisputable.” *Id.*

148. In addition, the Texas Whistleblower Act expressly provides reinstatement as a remedy for a retaliatory termination. The legislature has therefore acknowledged that money damages alone cannot in some situations remedy a retaliatory discharge of a whistleblower.

149. Money damages alone cannot adequately remedy the retaliatory discharges and other retaliatory actions in this case. OAG's retaliation consists of firing and publicly accusing Plaintiffs of serious personal and professional misconduct in a manner likely to foreclose other professional opportunities. By way of example, OAG retaliated against Plaintiffs by publicly accusing Plaintiffs, all of whom are either lawyers or law enforcement officials, of making false reports to law enforcement and doing so to interfere with an OAG investigation. The harm to Plaintiffs from losing their jobs in this highly public and disparaging way will be exacerbated by continued unemployment and will be avoided or mitigated in significant respect by reinstatement to their positions. The kind of harm being inflicted on Plaintiffs by remaining terminated from their positions at OAG under these circumstances is extremely difficult if not impossible to measure by a certain pecuniary standard.

150. In addition, the retaliation by OAG and Plaintiffs' loss of employment will cause continued harm such as loss of reputation and goodwill in their professions unless a temporary injunction is issued reinstating them to their jobs. Plaintiffs have demonstrated that, without a temporary injunction, they will suffer loss of goodwill and reputation with other lawyers, OAG colleagues, potential clients and others in their industry and that such injury is difficult to calculate or monetize. Plaintiffs, whose careers have consisted largely of public service legal and law enforcement positions, are particularly susceptible to the kind of harm the retaliation by the OAG inflicts on them while they remain terminated. This loss of goodwill and reputation constitutes irreparable injury.

151. In addition, an injury is irreparable if it cannot be adequately remedied at law – i.e., if the applicant cannot be adequately compensated in damages or if damages are very difficult to measure by any certain pecuniary standard. Many of the kinds of damages Plaintiffs seek in this case will be very difficult to measure by a pecuniary standard. Plaintiffs, if they prevail, may be awarded, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to their reputation, and loss of future earning capacity associated with being terminated abruptly and with the public smearing of Plaintiffs by OAG. An injunction ordering reinstatement pending trial could lessen many of these kinds of harm, which are very difficult to measure by any certain pecuniary standard.

152. In addition, reinstating Plaintiffs pending trial will mitigate the chilling effect that OAG's retaliation and public statements have had and will have continue to have on witnesses, including both present and former OAG employees.

153. In addition, the delay that will be occasioned by OAG's interlocutory appeal or other procedural tactics will prevent a legal remedy or reinstatement upon final judgment from providing an adequate remedy.

154. All of the harm described above that Plaintiffs would sustain without temporary injunctive relief is imminent. The harm is in fact happening already, and this injunction seeks to avoid further injury in the interim between the issuance of this order and entry of final judgment.

155. For these reasons, Plaintiffs seek a temporary injunction decreeing that Defendant Office of the Attorney General of the State of Texas, and its officers, agents, servants, employees, and attorneys and those acting in active concert or participation with them who receive actual notice of the order by personal service or otherwise be ORDERED:

1. To immediately REINSTATE Plaintiff James Blake Brickman to the position of Deputy Attorney General for Policy & Strategy Initiatives in the OAG and to compensate him starting immediately by paying him at the rate of pay and level of benefits, including health care and retirement benefits and all other perquisites of employment as were in effect as of September 30, 2020;
2. To immediately REINSTATE Plaintiff David Maxwell to the position of Director of the Law Enforcement Division in the OAG and to compensate him starting immediately by paying him at the rate of pay and level of benefits, including health care and retirement benefits and all other perquisites of employment as were in effect as of September 30, 2020;
3. To immediately REINSTATE Plaintiff J. Mark Penley to the position of Deputy Attorney General for Criminal Justice at the OAG and to compensate him starting immediately by paying him at the rate of pay and level of benefits, including health care and retirement benefits and all other perquisites of employment as were in effect as of September 30, 2020;
4. To immediately REINSTATE Plaintiff Ryan M. Vassar to the position of Deputy Attorney General for Legal Counsel at the OAG and to compensate him starting immediately by paying him at the rate of pay and level of benefits, including health care and retirement benefits and all other perquisites of employment as were in effect as of September 30, 2020;
5. To RETAIN Plaintiffs Brickman, Maxwell, Penley, and Vassar in those positions of employment at that rate of pay and benefits, including any pay or benefits increases, but not decreases, that would, in the ordinary course of the affairs of the OAG, be provided to employees in such Plaintiff's position, except that Defendant may terminate a Plaintiff's employment if, and only if, Defendant obtains an order from this Court for good cause found after written motion, notice to Plaintiffs, and a hearing; and
6. To grant such other injunctive relief as the Court may deem appropriate.

VI. Jury Demand

156. Having tendered the appropriate fee, Plaintiffs hereby demand a trial by jury.

VII. Attorneys' Fees

157. Plaintiffs have retained the undersigned attorneys to prosecute this case and seek to be awarded their reasonable and necessary attorneys' fees and costs of court.

VIII. Civil Penalty

158. Pursuant to TEX. GOV'T CODE §554.008(a), Plaintiffs hereby request the District Attorney of Travis County, Texas to intervenene in this suit and seek the imposition of a civil penalty of \$15,000 against any supervisor, including Ken Paxton, for each adverse personnel action taken against any Plaintiff in violation of the Texas Whistleblower Act.

IX. Request for Disclosure

159. Under Texas Rule of Civil Procedure 194, Plainitffs request that Defendant disclose, within fifty (50) days of the service of this request, the information and materials described in Rule 194.2(a) through (l).

X. Damages, Conclusion and Prayer

Plaintiffs respectfully request that they have judgment against Defendants for:

1. A temporary injunction as described in Section V. herein;
2. A permanent injunction ordering reinstatement and all other equitable relief to which Plaintiffs may be entitled;
3. Actual damages;
4. Compensation for wages lost during the period of suspension or termination, including back pay and lost benefits;
5. Compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, including injury to Plaintiffs' reputations;
6. Recovery for future lost earning capacity;
7. Injunctive relief ordering Plaintiffs reinstated to their former positions or equivalent positions;

8. Exemplary damages;
9. Reasonable attorneys' fees for prosecution of this case at trial and on appeal;
10. All costs of expert witnesses and other costs of litigation;
11. Pre-judgment interest as required by Chapter 304 of the Texas Finance Code or other applicable laws;
12. Post-judgment interest at the maximum legal rate; and
13. All other relief to which Plaintiffs may be entitled at law, or in equity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify the foregoing document has been served on the following counsel of record via email on the 17th day of December, 2020:

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