

No. 21-1027

In the Supreme Court of Texas

OFFICE OF THE ATTORNEY GENERAL OF TEXAS,
Petitioner,

v.

JAMES BLAKE BRICKMAN, ET AL.,
Respondents.

On Petition for Review
from the Third Court of Appeals, Austin

JOINT SECOND MOTION TO ABATE

KEN PAXTON
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First Assistant Attorney General

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Principal Deputy Solicitor General

WILLIAM F. COLE
Assistant Solicitor General

Counsel for Petitioner

TO THE HONORABLE SUPREME COURT OF TEXAS:

Petitioner and respondents jointly move the Court to further defer consideration of the petition for review to enable the parties to finalize and fund a settlement agreement.

Petitioner filed the petition for review on January 5, 2022. The Court requested a response on February 18 and briefs on the merits on May 27. Petitioner's brief on the merits was filed on July 27, respondents' brief on the merits was filed on September 15, and petitioner's reply was filed on September 30. Petitioners and three of the four respondents initially moved the Court to abate the petition on January 26, 2023. The petition for review remains under consideration by the Court.

The parties have since executed a settlement agreement. Ex. 1. Because uncertainty regarding whether this Court will grant or deny the petition for review was a material factor affecting the parties' agreement, the parties jointly respectfully move the Court to further abate consideration of the petition pending the finalization and funding of that agreement. Following finalization and funding of the agreement, the parties will move the Court to dispose of this case pursuant to Texas Rule of Appellate Procedure 56.3. Should the parties prove unable to obtain funding, they will jointly move the Court to lift the abatement order.

PRAYER

The Court should abate the petition for review.

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

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/s/ Judd E. Stone II
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WILLIAM F. COLE
Assistant Solicitor General

Counsel for Petitioner

CERTIFICATE OF CONFERENCE

On February 10, 2023, I conferred with Thomas A. Nesbitt, lead counsel for plaintiff James Blake Brickman, via tnesbitt@dnaustin.com; Don Tittle, counsel for plaintiff J. Mark Penley, via don@dontittlelaw.com; T.J. Turner, counsel for plaintiff David Maxwell, via tturner@cstrial.com; and Joseph R. Knight, counsel for plaintiff Ryan M. Vassar, via jknight@ebbklaw.com. Respondents agree with the relief requested and join the motion.

/s/ Judd E. Stone II
JUDD E. STONE II

CERTIFICATE OF SERVICE

On February 10, 2023, this document was served electronically on Thomas A. Nesbitt, lead counsel for plaintiff James Blake Brickman, via tnesbitt@dnaustin.com; Don Tittle, counsel for plaintiff J. Mark Penley, via don@dontittlelaw.com; T.J. Turner, counsel for plaintiff David Maxwell, via tturner@cstrial.com; and Joseph R. Knight, counsel for plaintiff Ryan M. Vassar, via jknight@ebbklaw.com.

/s/ Judd E. Stone II
JUDD E. STONE II

CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this document contains 227 words, excluding the portions of the document exempted by Rule 9.4(i)(1).

/s/ Judd E. Stone II
JUDD E. STONE II

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APPENDIX

MEDIATED SETTLEMENT AGREEMENT

No. D-1-GN-20-006861

In the 250th District Court, Travis County, Texas

| | | |
|--------------------------------------|---|----------------------|
| James Blake Brickman <i>et al.</i> , | § | In the 250th |
| | § | |
| Plaintiffs | § | |
| | § | |
| v. | § | District Court |
| | § | |
| Office of the Attorney General, | § | |
| | § | |
| Defendant | § | Travis County, Texas |

Mediated Settlement Agreement

The undersigned (the “Parties”) mediated with Patrick Keel. After consulting with their attorneys, the Parties and their attorneys now sign this document to memorialize the terms of their agreement under § 154.071 of the Texas Civil Practice & Remedies Code and Rule 11 of the Texas Rules of Civil Procedure.

Although the mediator assisted in drafting this agreement, the Parties and their attorneys thoroughly reviewed the document and made or had the opportunity to make any changes to it that the Parties desired. The Parties sign this agreement of their own free will and without duress, relying on their own understanding of the agreement and the advice of their attorneys.

The agreement is:

1. In exchange for mutual releases with all four plaintiffs, the Office of the Attorney General (“OAG”) will pay a total of \$3,300,000 and structure a portion of this sum as 27 months’ back pay to Ryan Vassar and take such additional steps as are necessary for Vassar to receive 27 months’ service credit toward the state retirement plan.
2. OAG will permanently remove this press release from its website: <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-releases-statement-recent-allegations>.
3. A recital in the settlement agreement will state: “WHEREAS, Attorney General Ken Paxton accepts that plaintiffs acted in a manner that they thought was right and apologizes for referring to them as ‘rogue employees.’”
4. The Parties will not ask that the 3rd Court of Appeals opinion issued October 21, 2021 be withdrawn.
5. OAG will take whatever steps necessary to lift the abatement in the SOAH proceeding and it will no longer oppose Mr. Maxwell’s petition to correct his F5 report.
6. This agreement is contingent upon all necessary approvals for funding.


6. This agreement is contingent upon all necessary approvals for funding.
7. The Parties will jointly notify the Supreme Court of Texas that the Parties have agreed to settle and request that the court extend the abatement until all settlement papers have been finalized and funded.
8. The Parties will execute a formal settlement agreement containing these terms, as well as terms typical in settlements of this nature, including, but not limited to, no admission of liability or fault by any Party.

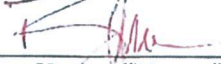
Signed on the dates indicated by the electronic signatures below.

Plaintiffs:


David Maxwell ("Maxwell")

Approved as to form by Maxwell's attorney:


TJ Turner
Cain & Skarnulis PLLC
303 Colorado St., Suite 2850
Austin, Texas 78701
tturner@estrial.com

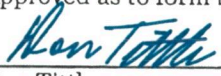

Ryan Vassar ("Vassar")

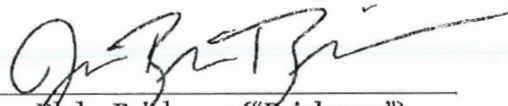
Approved as to form by Vassar's attorney:


Joseph R. Knight
Ewell, Brown, Blanke & Knight LLP
111 Congress Avenue, 28th Floor
Austin, Texas 78701
jknight@ebbklaw.com

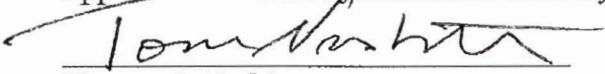

Mark Penley ("Penley")

Approved as to form by Penley's attorney:


Don Tittle
Law Offices of Don Tittle PLLC
8350 N. Central Expy., Suite M1085

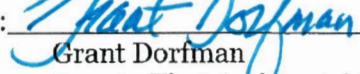

James Blake Brickman ("Brickman")

Approved as to form by Brickman's attorney:


Thomas A. Nesbitt
DeShazo & Nesbitt LLP
809 West Avenue
Austin, Texas 78701
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Defendant:

Office of the Attorney General of Texas

By: 
Grant Dorfman
Deputy First Assistant Attorney General
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Office of the Attorney General of Texas
General Litigation Division
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Austin, Texas 78711-2548

Approved as to form by Defendant's attorney:


William S. Helfand
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bill.helfand@lewisbrisbois.com

Automated Certificate of eService

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Associated Case Party: James BlakeBrickman

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| Thomas ANesbitt | | tnesbitt@dnaustin.com | 2/10/2023 10:40:01 AM | SENT |

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| Judd Stone | 24076720 | judd.stone@oag.texas.gov | 2/10/2023 10:40:01 AM | SENT |
| Kiara Dial | | kdial@cstrial.com | 2/10/2023 10:40:01 AM | SENT |

Associated Case Party: Ryan M. Vassar

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Associated Case Party: J. MarkPenley

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| Don ATittle | | don@dontittlelaw.com | 2/10/2023 10:40:01 AM | SENT |

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Associated Case Party: David Maxwell

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