

**In the Supreme Court of Texas**

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OFFICE OF THE ATTORNEY GENERAL OF TEXAS,  
*Petitioner,*

v.

JAMES BLAKE BRICKMAN, ET AL.,  
*Respondents.*

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

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**JOINT SECOND MOTION TO ABATE**

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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.

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Attorney General of Texas

BRENT WEBSTER  
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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

No. 21-1027

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**APPENDIX**

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**MEDIATED SETTLEMENT AGREEMENT**

**No. D-1-GN-20-006861**

**In the 250<sup>th</sup> 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 w/ permission by TST  
David Maxwell ("Maxwell")

Approved as to form by Maxwell's attorney:

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

Ryan Vassar  
Ryan Vassar ("Vassar")

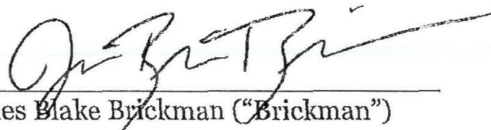
Approved as to form by Vassar's attorney:

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

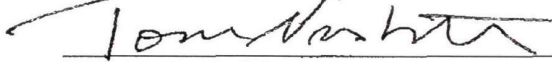
Mark Penley w/ permission by DAT  
Mark Penley ("Penley")

Approved as to form by Penley's attorney:

Don Tittle  
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:

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By: 

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Approved as to form by Defendant's attorney:



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