

CAUSE NO. \_\_\_\_\_

JAMES CATAZARO *and*  
JIM LYDE,  
*Plaintiffs,*

v.

TEXAS EDUCATION AGENCY,  
*Defendant.*

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION**

TO THE HONORABLE COURT:

COME NOW Plaintiffs, James Catazaro and Jim Lyde, complaining of the conduct of defendant. For causes of action, plaintiffs respectfully show as follows:

I.

Plaintiffs intend for this suit to be conducted under Discovery Level 3, pursuant to TEX. R. CIV. P. 190.

II.

Plaintiffs request that defendant serve upon plaintiffs, within 50 days of receipt of this petition, disclosure of information required by TEX. R. CIV. P. 194.2.

III.

Plaintiff, Jim Lyde, is a resident of Travis County, Texas and plaintiff, James Catazaro, is a resident of Williamson County, Texas. Each plaintiff was an employee of defendant, Texas Education Agency. Plaintiffs were each, at all relevant times, a "public employee," as defined in TEX. GOV. CODE §554.001.

## IV.

Defendant, Texas Education Agency (“TEA”) is a “state governmental entity,” as defined by TEX. GOV. CODE §554.001. Defendant, TEA, may be served with process by serving its Commissioner, Mr. Robert Scott, at his usual place of business, 1701 N. Congress Avenue, Austin, Travis County, Texas 78701.

## V.

Plaintiffs were employed by, worked for, and were wrongfully terminated from their employment by defendant in Travis County, Texas. Venue is proper in Travis County, Texas, pursuant to, *inter alia*, TEX. GOV. CODE §554.007.

FACTS

## VI.

Plaintiffs Jim Lyde and James Catazaro were each employees of TEA in its Office of Inspector General (“OIG”) and had good work records. In fact, as late as March, 2008, each received excellent performance evaluations for their work, and plaintiff Catazaro received a merit pay increase based on his performance. That changed after plaintiffs began speaking out on topics of public concern and, in good faith, reporting violations of law. The hostility of their supervisors culminated when plaintiffs were each put on administrative leave, as a precursor to their termination, on Friday, June 27, 2008, several days after they spoke out and reported what they believed to be improper and illegal activity to the Texas Legislature (through the office of a member of the Texas House of Representatives). Plaintiffs’ terminations also occurred after state law enforcement investigators and representatives of the United States Department of Education were informed of their reports and concerns. All of the retaliation and hostile treatment began after plaintiffs began speaking out and reporting, within TEA, about what they believed in good faith to be violations of

law, the improper handling of allegations of fraud, waste, and abuse of taxpayer funds, and other topics of public concern.

## VII.

Commencing in approximately March-April, 2008, and by way of example only, plaintiffs began making reports that TEA was not permitting the Office of Inspector General to follow the law and properly investigate violations of law and/or that the law was being violated at TEA with regard to these investigations and other matters of public concern. Plaintiffs reported and spoke out that violations of contracting rules were going un-investigated, that TEA policies were not being complied with, that public money was being misused, and that they were prevented from investigating these illegalities. These reports began in March 2008 and continued until the time of their termination.

## VIII.

Many of the plaintiffs' reports and free speech activities involved their speech that allegations of fraud, waste and abuse were going unchecked and un-investigated within TEA. Plaintiffs began reporting that they were not being permitted to independently investigate fraud, waste and abuse and that, as a result, the integrity of the educational system and the proper expenditure of the taxpayers' money directed to education was being compromised. Plaintiffs' speech and reports concerned OIG's duties, including the duty to help insure "the integrity of the assessment system" and "conducting investigations upon complaints that allege fraud, waste, or abuse." Similarly, TEA policies state that TEA's OIG employees [such as plaintiffs] are to perform "audits and investigations of all suspected fraudulent acts . . . ."

## IX.

Contrary to law and sound policy, TEA was not permitting such fair or proper investigations or audits. Plaintiffs' reports and/or speech addressed the fact that TEA's OIG had not been authorized to conduct and had not conducted such investigations into allegations of fraud, waste, and/or misuse of public money since Mr. Robert Scott assumed control of the agency as Commissioner of Education.

## X.

By way of further example, plaintiffs' spoke out, in good faith, on topics of public concern involving the fraud, waste and/or misuse of taxpayer funds and/or violations of law involving, *inter alia*, the following:

- Refusal of TEA to permit the appropriate and fair investigation of a charter school. TEA supervisors, including a member of the Commissioner's staff, refused to permit allegations to be properly investigated. Upon information and belief, after plaintiffs spoke out on this, no further investigations were allowed to be conducted surrounding these allegations and the TEA has released more taxpayer monies to the school. The Commissioner's representative stated that the allegations were not serious enough to warrant the Commissioner authorizing the OIG to conduct an investigation.
- Violations of law and policy regarding the selection of school districts for monitoring, pursuant to state law that requires that school districts for certain types of monitoring be selected *randomly*. Contrary to this law, TEA Commissioner's office staff specifically instructed the OIG to include and add a specific school district to its "random" monitoring list of the school districts to be monitored, instructing plaintiffs to conduct TEA business in an inappropriate, and perhaps illegal, fashion. Commissioner's Office staff specifically instructed OIG staff members to add a specific school district to the Random Monitoring List as one of the 121 school districts to be monitored in 2008. Even though plaintiff Catazaro resisted, notifying the Commissioner staff that the districts must be "randomly" selected, the district was added as a "random" selection. Plaintiffs and the OIG staff were then prevented from investigating the matter. Instead, OIG staff was told that the randomized process was conducted by the Commissioner's Office and no such challenge or review would be conducted by OIG members.
- Refusal to allow plaintiffs, and/or the OIG, to properly investigate allegations of illegal kickbacks involving taxpayer's funds, possible falsification of student attendance records,

and/or hiring or other contract issues involving possible misuse of taxpayer funds and alleged violations by contractors or persons with alleged ties to employees of the Commissioner's and/or TEA staff.

- Possible violations of law regarding job openings. The Commissioner's Office advertised job positions for Test Monitors in February, 2008. The TEA was to accept applications until February 15, 2008. However, the Commissioner's Office stopped accepting applications on February 12, 2008. OIG staff was not allowed to review this matter.
- Refusal to allow plaintiffs, and/or the OIG, to properly investigate allegations of illegal contracts/kickbacks involving taxpayer funds. Plaintiffs were prevented from investigating a suspect contract involving the Commissioner of Education and an Education Service Center.
- Refusal to allow plaintiffs, and/or the OIG, to properly investigate allegations of illegal contracts kickbacks involving taxpayer funds. Plaintiffs were prevented from investigating a contracting complaint made by the State School Board to the TEA. The OIG was not authorized to review any information or findings.
- Refusal to allow plaintiffs, and/or the OIG, to properly investigate allegations of fraud, waste, and misuse of taxpayer funds. Plaintiffs were prevented from providing investigative assistance to the Financial Audits Division. The Commissioner's representative stated that the allegations were not serious enough to warrant the Commissioner OIG participation.
- Refusal to allow plaintiffs, and/or the OIG, to attend Monitoring Investigation and Interventions Steering Committee meetings where allegations of fraud, waste, and misuse of taxpayer funds were discussed.
- Refusal to allow plaintiffs, and/or the OIG, to properly complete ongoing investigations. The Commissioner's representative ordered the closure of an investigation without allowing a full investigation into the allegations. The order was issued even after the representative was notified the case was not completed, no conversations had occurred with the suspect, and the agency had not responded to the written and signed complaint to the agency.
- Refusal to allow plaintiffs, and/or the OIG, to conduct investigations. For example, an e-mail to the Inspector General concerned funds of a school district being inappropriately used for a history activity. This allegation was sent to the Commissioner's Office Staff (including the Complaint Manager), and the OIG was instructed not to respond to the author of the e-mail and not to begin any investigatory activities into the allegations.
- Refusal to allow plaintiffs, and/or the OIG, to properly conduct investigations into allegations of fraud, waste, and misuse of taxpayer funds. For example, allegations of fraud came to the OIG's attention involving the TEA's Monitor Pool. One of the allegations was that monitors

may have been influenced to overcharge TEA and/or school districts with inflated billings. The Commissioner's Office would not authorize an investigation into these allegations.

- Preventing plaintiffs, and/or the OIG, to properly investigate complaints of waste in the Complaint Management Tracking System. The System was developed at a budgeted cost of over \$650,000 with over a year to implement. The OIG instituted a similar system virtually for free, using available TEA computer technology and software products. Instead, OIG staff was told this was a project of the Commissioner's Office and no there would be no OIG investigation or review.
- Reassigning investigations of plaintiffs, and/or the OIG. The OIG has Commissioner's authorization to conduct an investigation into allegations concerning the selling of education credits. The criminal allegations were referred by the OIG to the Harris County District Attorney's Office. After an initial investigation by the Harris County DA, a superintendent was arrested. For many months and after the arrest, the OIG was working this case. This case was reassigned to another investigative division which has not discussed the case with the OIG investigators.
- Another example of reassigned investigations involved possible superintendent kickbacks and falsification of student attendance records at a charter school. These allegations were uncovered during an OIG investigation. The allegations and investigation were reassigned to another Division and were not discussed in any OIG written reports. Nothing was done on the referral until OIG staff followed up after 6 weeks and conferred with supervisors.
- Plaintiffs, and/or the OIG, were prevented from investigating allegations involving the personal association of the Commissioner with the director of one of the agency's Divisions. The allegation was that the director was a direct hire of someone whose qualifications were suspect. The OIG staff was told that the Commissioner's Office instructed OIG not to investigate the allegation.

## XI.

This petition gives examples and brief descriptions of the reports and activities plaintiffs made. Plaintiffs submitted in writing to TEA a more complete explanation of their reports as part of defendants' grievance or appeal process, which plaintiffs initiated because they wanted to be able to return to their jobs. Plaintiffs exhausted all applicable grievance or appeal procedures of TEA.

CAUSES OF ACTION  
XII.

The termination of, and retaliation against, plaintiffs violated their rights in TEX. GOV. CODE, Chapter 554, which states that a public employee may not be retaliated against for reporting a violation of law to an appropriate authority in good faith. Plaintiffs' reports concerning violations of law were made in good faith to appropriate authorities and/or to authorities they believed in good faith to be appropriate. By retaliating against plaintiffs for reporting violations of law, defendant violated plaintiffs' rights pursuant to Texas law.

XIII.

In addition to, and/or independently from, all that has been pleaded above, the termination of, and retaliation against, plaintiffs violated their rights protected by Article I, §8, of the Texas Constitution, which protects the free speech rights of citizens and public employees. By retaliating against plaintiffs for speaking out on topics of public concern, defendant violated plaintiffs' free speech rights under the Texas Constitution.

RELIEF SOUGHT  
XIV.

Plaintiffs are entitled to appropriate declaratory relief and/or injunctive relief requiring defendant to reinstate them to their former position of employment, with all benefits and emoluments of their positions which they would have received if defendant's retaliation had not occurred, and further injunctive relief prohibiting any future acts of retaliation or harassment and otherwise making plaintiffs whole, as if defendant's illegal acts of harassment and termination had not occurred.

XV.

As a proximate result of defendant's improper and illegal actions under the Texas Whistleblower Act (Chapter 554 of the Texas Government Code), plaintiffs have suffered damages. In this connection, plaintiffs have suffered and will continue to suffer loss of wages and/or earning capacity, as a result of defendant's harassment and retaliation. Plaintiffs have also endured considerable suffering and other compensable injuries as a result of their termination, in the past, and will continue to suffer such in the future. Plaintiffs have also suffered mental anguish, emotional pain, inconvenience, loss of enjoyment of life, and other non-pecuniary damages in the past and will continue to suffer such in the future. Plaintiffs' damages are in excess of the minimum jurisdictional limits of this Court.

XVI.

Plaintiffs are also entitled to the maximum amount of pre- and post-judgment interest, as permitted by law.

XVII.

As a result of defendant's illegal actions, plaintiffs have been forced to retain legal counsel to remedy defendant's wrongful and illegal acts. Plaintiffs are entitled to recover all reasonable and necessary attorney's fees and expenses incurred in preparing and maintaining this action including but not limited to reasonable and necessary attorney's fees and expenses occasioned by any appeal taken or necessitated by defendant's conduct.

XVIII.

Plaintiffs have met all jurisdictional prerequisites to pursue their claims.

