

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
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697

JUDD E. STONE II
State Bar No. 24076720
Solicitor General
Judd.Stone@oag.texas.gov

LANORA C. PETTIT
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

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697

/s/ Judd E. Stone II
JUDD E. STONE II
Solicitor General
State Bar No. 24076720
Judd.Stone@oag.texas.gov

LANORA C. PETTIT
Principal Deputy Solicitor General

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

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

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")

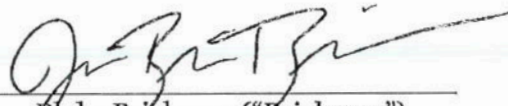
Approved as to form by Vassar's attorney:


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

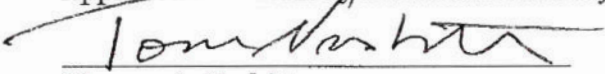

Mark Penley ("Penley")

Approved as to form by Penley's attorney:


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

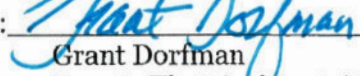

James Blake Brickman ("Brickman")

Approved as to form by Brickman's attorney:


Thomas A. Nesbitt
DeShazo & Nesbitt LLP
809 West Avenue
Austin, Texas 78701
tnesbitt@dnaustin.com

Defendant:

Office of the Attorney General of Texas

By: 
Grant Dorfman
Deputy First Assistant Attorney General
Grant.Dorfman@oag.texas.gov

Christopher D. Hilton
Chief, General Litigation Division
Christopher.Hilton@oag.texas.gov

Office of the Attorney General of Texas
General Litigation Division
P.O. Box 12548
Capitol Station
Austin, Texas 78711-2548

Approved as to form by Defendant's attorney:


William S. Helfand
Lewis Brisbois Bisgaard & Smith LLP
24 Greenway Plaza, Suite 1400
Houston, Texas 77046
bill.helfand@lewisbrisbois.com

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below:

Sylvia Rosales on behalf of Judd Stone
Bar No. 24076720
sylvia.rosales@oag.texas.gov
Envelope ID: 72643318
Status as of 2/10/2023 10:57 AM CST

Associated Case Party: James BlakeBrickman

Name	BarNumber	Email	TimestampSubmitted	Status
Marianne Ross		mross@dnaustin.com	2/10/2023 10:40:01 AM	SENT
TJ Turner		tturner@cstrial.com	2/10/2023 10:40:01 AM	SENT
Thomas ANesbitt		tnesbitt@dnaustin.com	2/10/2023 10:40:01 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Joseph R. Knight	11601275	jknight@ebbklaw.com	2/10/2023 10:40:01 AM	SENT
Don A. Tittle	20080200	don@dontittlelaw.com	2/10/2023 10:40:01 AM	SENT
Thomas Andrew Nesbitt	24007738	tnesbitt@dnaustin.com	2/10/2023 10:40:01 AM	SENT
Carlos Ramon Soltero	791702	csoltero@maynardcooper.com	2/10/2023 10:40:01 AM	SENT
Lanora Pettit	24115221	lanora.pettit@oag.texas.gov	2/10/2023 10:40:01 AM	SENT
William FCole		William.Cole@oag.texas.gov	2/10/2023 10:40:01 AM	SENT
Carrie Patino		carrie.patino@oag.texas.gov	2/10/2023 10:40:01 AM	SENT
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

Name	BarNumber	Email	TimestampSubmitted	Status
Joseph RKnight		jknight@ebbklaw.com	2/10/2023 10:40:01 AM	SENT

Associated Case Party: J. MarkPenley

Name	BarNumber	Email	TimestampSubmitted	Status
Don ATittle		don@dontittlelaw.com	2/10/2023 10:40:01 AM	SENT

Automated Certificate of eService

This automated certificate of service was created by the eFiling system.
The filer served this document via email generated by the eFiling system
on the date and to the persons listed below:

Sylvia Rosales on behalf of Judd Stone
Bar No. 24076720
sylvia.rosales@oag.texas.gov
Envelope ID: 72643318
Status as of 2/10/2023 10:57 AM CST

Associated Case Party: David Maxwell

Name	BarNumber	Email	TimestampSubmitted	Status
Carlos RSoltero		carlos@ssmlawyers.com	2/10/2023 10:40:01 AM	SENT