

**MEMORANDUM**

**ATTORNEY-CLIENT AND WORK PRODUCT PRIVILEGED**

**TO:** Office of the Attorney General, State of Texas

**FROM:** Lewis Brisbois

**DATE:** May 24, 2023

**RE:** Report Regarding Retaliation Claims by Former Employees

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This report is a privileged attorney-client communication which includes attorney work product and is intended only for distribution to, and use by, our client, the Office of the Attorney General (OAG). All information communicated here should be protected to maintain all applicable privileges.

This report is part of Lewis Brisbois Bisgaard & Smith LLP's ("Lewis Brisbois" or the "Firm") continuing review of evidence related to the OAG's terminations of employment of several former OAG political appointees—Jeff Mateer, Ryan Bangert, Lacey Mase, Ryan Vassar, Mark Penley, Blake Brickman, and Darren McCarty ("Complainants"). Four of the Complainants, Vassar, Maxwell, Penley and Brickman, are the plaintiffs in the lawsuit, Cause No. D-1-GN-20-006861, *Brickman*,

*et al.*, v. *Office of the Attorney General of Texas*, in the 250th Judicial District Court of Travis County, Texas (the “Lawsuit”).<sup>1</sup> In the Lawsuit, Plaintiffs allege the Attorney General, Ken Paxton, and other individuals at the OAG retaliated against several of the Complainants for reporting purported violations of law in the Fall of 2020.

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<sup>1</sup> This report refers to Vassar, Maxwell, Penley, and Brickman collectively as “Plaintiffs.”

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## Executive Summary

The evidence we have been able to obtain continues to support the OAG's legitimate, non-retaliatory grounds for firing each Complainant. Moreover, Lewis Brisbois has identified evidence supporting OAG's assertion that it would have taken the same adverse employment action against each of the Complainants even in the absence of any alleged protected activity.<sup>2</sup> Conversely, we have not identified any evidence supporting Complainants' allegations of retaliatory animus by the Attorney General or any agreement between the Attorney General and others at OAG to conspire to retaliate against the Complainants.

### Limits of this Report

This report is based only on interviews, documents, and electronically stored information OAG provided Lewis Brisbois and information Lewis Brisbois obtained during meetings with current OAG employees.<sup>3</sup> Lewis Brisbois' investigation continues and this report does not analyze *all* of the grounds posited by OAG to dismiss the Complainants.<sup>4</sup> Instead, this report evaluates the key reasons given by

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<sup>2</sup> This is not unusual in "whistleblower" cases where, as here, the evidence shows the affected employees are aware of their own conduct for which they are likely to be disciplined or separated and those employees seek out whistleblower protection to avoid the adverse employment action they reasonably anticipate. Here, the evidence strongly suggests that is exactly what these Complainants did.

<sup>3</sup> Sean Shecter of Lewis Brisbois interviewed OAG employees with members of OAG's senior staff also in attendance. Based on the information provided, and some correlation to documentary evidence, we do not believe the presence of OAG staff influenced the information we received in interviews. In addition, references herein to documents that do not contain a Bates Number (*e.g.*, OAG-xxxxxxx) have been previously produced by OAG. As such, the Bates numbers for these documents are within the possession of OAG. Statements in quotes are Sean Shecter's written transcription of what witnesses stated in interviews. They are not direct quotations of the exact statement of any witness.

<sup>4</sup> For example, First Assistant Webster indicated that there were additional grounds to dismiss Penley and Mateer. As to Penley, OAG had questions regarding the firing of OAG employee K. Milton based upon Penley's

OAG for firing the Complainants, based upon the information OAG has provided to Lewis Brisbois.

Accordingly, our analysis and findings herein are subject to revision as we continue our investigation and as we obtain additional information and, possibly, the products of discovery to be propounded on the Complainants to see what, if any, information or documentation the Complainants or third parties may have as substantiation of the Complainants' initial report and allegations of retaliation. This discovery may also reveal additional details about the Complainants' motivation to allege violations of law committed by the Attorney General and if the Complainants' actions violated Texas Disciplinary Rules of Professional Conduct.<sup>5</sup>

Lewis Brisbois has also not yet interviewed the Attorney General or other potentially key OAG officials and employees, or any individual outside of the OAG including, e.g., former OAG employees who may have knowledge of some relevant facts.<sup>6</sup>

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recommendation that Milton was not "rowing in the same direction." In addition, although OAG and Lewis Brisbois completed a review of Complainants' work-issued cellular telephones and did not find any relevant information, Lewis Brisbois and OAG could not analyze Mr. Mateer's work-issued cellular telephone because someone "factory reset" Mr. Mateer's device.

<sup>5</sup> The evidence suggests Complainants may have been motivated by political opportunism or basic job-saving efforts rather than as "whistleblowers." Specifically, in late September 2020—*before* Complainants met with the FBI or any other law enforcement—several Complainants met with State government staff and elected officials, without the Attorney General's knowledge, to purportedly cause political damage to the Attorney General and harm the Attorney General's attorney-client relationship with those governmental officials and employees. OAG Report at 27. However, we have not had an opportunity to speak with anyone who attended these meetings, nor have we been able to confirm the topics discussed, including whether the Complainants reported their allegations against the Attorney General to the FBI. In regard to potential violations of Texas Disciplinary Rules of Professional Conduct, the Complainants may have violated their fiduciary duty to their client, the Attorney General.

<sup>6</sup> For example, although we contacted his counsel, we could not speak with Greg Simpson, OAG's former Director of Human Resources, who may be a key witness. As discussed herein, some members of the Governor's

## **I. General Issues Applicable to the Complainants**

### **A. There is no evidence supporting the allegation that the Attorney General's hiring of First Assistant Webster was part of a conspiracy to retaliate against the Complainants.**

#### **1. No evidence of conspiratorial intent**

The Plaintiffs allege the Attorney General's decision to hire Brent Webster as First Assistant and the actions that First Assistant Webster subsequently took against Complainants were a part of a conspiracy to retaliate against the Complainants. The evidence does not support this theory of First Assistant Webster's hiring and further shows that First Assistant Webster was motivated to act as to each by the Complainants' own misconduct rather than any Complainants' disclosures to law enforcement.

An important piece of the relevant context is that, prior to September 2020, First Assistant Webster had only briefly met the Attorney General while First Assistant Webster was himself on the campaign trail,<sup>7</sup> and once at a baseball game. Both gentlemen had no pre-existing relationship. First Assistant Webster had not worked at OAG before the Attorney General hired Mr. Webster in October 2020.

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staff may also have relevant information.

Further, and as discussed *infra*, we understand OAG has not found information to confirm whether OAG transferred funds to Johnny Sutton, a partner at Ashcroft Sutton Reyes, LLC in Austin, Texas, and former United States Attorney for the Western District of Texas with whom Mr. Mateer provided authorization for the OAG to enter into an outside counsel contract. Nor has OAG found information to confirm whether Mr. Sutton or anyone at OAG ultimately executed a contract between Mr. Sutton and OAG. Because this is an issue that deserves further investigation, particularly when we can utilize the power of subpoena if and when the lawsuit proceeds, we understand OAG continues to investigate this matter and recommend that it continue to do so.

<sup>7</sup> First Assistant Webster ran for a seat on the Texas Court of Criminal Appeals in 2016.

On September 30, 2020, Michele Smith contacted now-First Assistant Webster and asked if Mr. Webster would consider interviewing to be the Attorney General's First Assistant.<sup>8</sup> Later that evening, during a telephone call to set up an interview of Mr. Webster, the Attorney General mentioned that Attorney General could not get in touch with any of his staff. This appeared to Mr. Webster to concern the Attorney General.<sup>9</sup>

We have seen no information in any form to suggest that, as of September 30, 2020, anyone had apprised the Attorney General that any Complainant believed the Attorney General had committed any crime, that any Complainant had met with any law enforcement authority, or that any Complainant had plans to meet with any law enforcement authority.<sup>10</sup>

On October 1, 2020, at the Attorney General's request Mr. Webster met with the Attorney General for breakfast at a restaurant in Austin, to interview for the First Assistant job. This meeting took place before the Complainants sent their October 1, 2020 letter to Simpson and text message to the Attorney General. During that breakfast meeting, the Attorney General told Mr. Webster that some of the Attorney General's senior staff and their subordinates were ignoring the Attorney General's directives and

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<sup>8</sup> Michelle Smith is a long-time political advisor to Attorney General Paxton.

<sup>9</sup> According to First Assistant Webster, the Attorney General believed that if certain highly-placed members of his staff were not responsive, the Attorney General could not have faith that those individuals could run their respective divisions.

<sup>10</sup> Per First Assistant Webster, on September 30, 2020, Brandon Cammack had only told the Attorney General about his receipt of the "Penley Letter," as that term is defined in the OAG Report.

requests for information and that some subordinates had stopped answering the Attorney General's legal questions.

During the same meeting, the Attorney General told Mr. Webster he intended to fire First Assistant Mateer and some of the heads of the OAG's criminal division, including Mr. Penley. Contrary to at least some of the Complainants' assertions, the evidence shows the Attorney General was speaking to Mr. Webster *because* the Attorney General had himself already decided to fire Mr. Mateer and others; he was in fact, interviewing Mr. Webster to potentially fill the role of the Attorney General's First Assistant. Mr. Webster's background in criminal law, including supervising other prosecutors, appealed to the Attorney General because the Attorney General wanted to make changes in the OAG's Criminal Division leadership and the Attorney General believed First Assistant Webster's knowledge and familiarity could help the Attorney General bring reform.

With the express understanding that the Attorney General would need to determine how to part ways with Mr. Mateer, the Attorney General offered the First Assistant position to Mr. Webster later that same day, on October 1, 2022.

According to First Assistant Webster, on the morning of October 2, 2020, the Attorney General called Mr. Webster. During that call, the Attorney General reportedly told Mr. Webster the Attorney General had decided to delay firing then-First Assistant Mateer as well as the Attorney General's reason for doing so. In the interim, the Attorney General offered to hire Mr. Webster as a "special advisor" to the



Attorney General, instead of as First Assistant. This became a moot point when a few hours later, on October 2, 2020, Mr. Mateer resigned from the position of First Assistant. Upon Mr. Mateer's resignation, the Attorney General hired Mr. Webster as First Assistant Attorney General.

The evidence shows that Attorney General Paxton intended to fire at least some of the Complainants *before* anyone informed the Attorney General that any of the Complainants had met with law enforcement or intended to report a violation of law. That is, the Attorney General had no knowledge of any alleged whistleblowing when he decided to separate these highly-placed political appointees. This evidence tends to disprove the presently naked allegation that the Attorney General hired First Assistant Webster with a pre-conceived intent to retaliate against any of the Complainants.

Additionally, and consistent with what current OAG employees advised Lewis Brisbois, the Attorney General was and has at all times been the decision-maker with respect to hiring and firing employees, including senior officials, at OAG. In contrast, First Assistant Webster gathered information and provided his analysis of subordinate employees to the Attorney General. If necessary, First Assistant Webster executed the Attorney General's hiring or firing decision. Overall, First Assistant Webster believes that, under Texas law, the First Assistant's authority is wholly derivative of the Attorney General's authority.

Additionally, according to First Assistant Webster, during the first few months of First Assistant Webster's tenure at the OAG, the Attorney General accompanied First Assistant Webster to many meetings, including those with OAG deputies.

## 2. Investigative leave is not retaliatory

In the Lawsuit, the Plaintiffs allege that placing individuals on investigative leave itself constitutes retaliation. This is neither factually nor legally accurate and, moreover, is contrary to key parts of the OAG's investigative leave policy put into place long before any alleged whistleblowing:

As part of an investigation or official inquiry, the Office of the Attorney General (OAG), in accordance with Section 661.923 of the Texas Government Code, may grant paid leave to an employee who is: **the subject of an investigation being conducted by the OAG; a victim of an act or event that is the subject of an investigation conducted by the OAG; or a witness to an act or event that is the subject of an investigation conducted by the OAG.** A Request for Investigation Leave must be completed and submitted electronically by division management or the Human Resources Division (HRD) to the agency's administrative head or designee, who shall decide whether to grant leave under this policy. If granted, HRD shall enter the approved amount of Investigation Leave into the electronic leave system for the identified employee.

See Email from Simpson to Webster (Oct. 12, 2020) (emphasis added) OAG-0061041-OAG0061045 (policy provides a "cooling off" period to gather relevant facts and information without interference from those directly involved in the matter being investigated). Shelli Gustafson, Senior Human Resources Administrator, explained that the policy allows OAG to "get facts without creating new facts." Notably, pre-existing OAG policy provides that the Attorney General may place an individual on disciplinary leave *without pay*.

As it was utilized in this instance, the employees were still paid their salary while on investigative leave. The Attorney General placed only two Complainants, Maxwell and Mr. Penley, on investigative leave *with pay* on October 2, 2020, after the Attorney General initiated the investigative process on October 1, 2020 by discussing with Mr. Simpson and Mr. De La Garza the Attorney General's concerns about Maxwell and Mr. Penley.<sup>11</sup>

Several documents detail the fact that, after Mr. Webster became First Assistant, Webster and others at OAG went to great lengths to evaluate all the employees as well as the Complainants' claims against the Attorney General to assess the viability of maintaining employment of several individuals, including several of the Complainants.

Consistent with Mr. De La Garza's recommendation to assess each Complainant's conduct and relationship to the OAG individually, First Assistant Webster worked to balance the OAG's investigative procedures as they relate to those being investigated with the need to maintain a productive working environment in the OAG. Simply stated, the Complainants were not working on anything the Attorney General or First Assistant Webster wanted them to work on, and, in addition, the Complainants were creating a toxic environment within the office. Contemporaneous OAG documents confirm these facts. *See, e.g.*, Emails from Webster to Simpson (Oct.

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<sup>11</sup> Mr. De La Garza informed Lewis Brisbois that all the Complainants placed on investigative leave were placed on leave with pay.

12, 2020) OAG-0061041-OAG-0061045; Email from Simpson to Webster and French (October 15, 2020, 12:47 pm CDT) OAG-0061046-OAG-0061047; Email from De La Garza to Webster (October 23, 2020, 7:54 am CDT) OAG-0061060-OAG-0061062; Email from De La Garza to Webster (October 28, 2020, 6:02 pm CDT) OAG-0061072-OAG-0061073; Email from De La Garza to Webster (Nov. 2, 2020, 4:58 pm CDT) OAG-0061089-OAG-0061092.

Mr. De La Garza told Lewis Brisbois that no one, including First Assistant Webster, discussed or suggested firing any of the Complainants because of any information the Complainants had purportedly provided the FBI. Mr. De La Garza also felt First Assistant Webster made “reasonable requests” of the Complainants after Webster joined OAG.

**3. OAG did not conduct its investigation of the Complainants' allegations in a retaliatory manner**

When First Assistant Webster joined OAG as First Assistant, OAG had approximately 4200 employees and over 37,000 cases pending. According to First Assistant Webster, in addition to assessing the Complainant's allegations, First Assistant Webster had to "get up to speed" on OAG's operations and key personnel in charge of maintaining the OAG's many functions. As to the Complainants, First Assistant Webster worked with Tina McLeod, Chief Information Officer, to preserve the Complainants' emails, on First Assistant Webster's first day at OAG.

Then, on October 8, 2020, First Assistant Webster sought to "wall-off" the Complainants to minimize disruption, avoid conflict, and promote efficiency. *See generally*, Email Chain Between Simpson and Webster (Oct. 8-9, 2020) OAG-0063101 -OAG-0063109. First Assistant Webster consulted Mr. Simpson about the specific language to include in the email to the remaining Complainants. *See* Email from Simpson to Webster (Oct. 9, 2020, 8:33 am CDT) ("In an effort to minimize disruption, avoid conflict, and promote efficiency" First Assistant Webster "made the decision to wall off" individuals from "any OAG-related work concerning the claims made against the Attorney General.").

Although internal documentation establishes First Assistant Webster's consultation with internal counsel, Mr. Simpson advised First Assistant Webster not to mention that Webster consulted with "employment lawyers in HR." *Id.* Specifically, Mr. Simpson suggested First Assistant Webster remove that comment because so

stating might dilute the First Assistant’s apparent authority and might also waive applicable privileges. *Id.*

The evidence shows that, from September 2020 until their firings or resignations in October 2020, the Complainants isolated themselves from their subordinates and from the Attorney General. Additionally, the Complainants failed to follow—indeed sometimes clearly purposefully circumvented—the OAG’s chain of command and procedures. According to First Assistant Webster, this conduct alone constituted a “fireable offense,” as it would be in any organization.

On October 11, 2020, Nate Paul’s attorney, Michael Wynne, emailed the Attorney General and First Assistant Webster a notice requesting the OAG institute a “litigation hold.” *See* Email from Mr. Wynne to Webster (Oct. 11, 2020, 7:13 pm CDT). This request was ostensibly related to Nate Paul’s consideration of potential legal action arising from the manner in which the FBI was investigating Nate Paul and his company(s).<sup>12</sup> In response, First Assistant Webster inquired of the OAG’s Human Resources department and Lesley French about the process to initiate a litigation hold. According to First Assistant Webster, Mr. McCarty and Mr. Vassar objected to OAG putting a litigation hold in place.

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<sup>12</sup> We have learned of the existence of an undated draft letter found on the OAG laptop assigned to the Attorney General’s former traveling aide, Drew Wicker, addressed to a “Mr. Horowitz”—likely the Inspector General for the U.S. Department of Justice, Michael Evan Horowitz. The letter notes in significant detail Nate Paul’s complaints of improper treatment by the FBI and OAG’s attempts to investigate those allegations, and requests a review of the FBI’s investigative efforts related to Nate Paul. It is unclear who authored or authorized the draft, or whether a final version of such a correspondence was ever sent. Lewis Brisbois also reviewed travel records indicating the Attorney General flew to Washington D.C. in July and September 2020.

On October 12, 2020, at 9:33 am CDT, Mr. Penley emailed Mr. Simpson and copied Ms. Mase requesting OAG's policies pertaining to the issues of filing a formal complaint and investigative leave. *See* Email from Penley to Simpson (Oct. 12, 2020, 9:33 am CDT) OAG-0061045. Mr. Simpson emailed First Assistant Webster about Mr. Penley's request at approximately 10 am CDT. Email from Simpson to Webster (Oct. 12, 2020, 10 am CDT). In response, Webster asked Mr. Simpson for advice on the interplay between OAG's formal complaint process, investigative leave policy, and the agency's policy concerning internal investigations. *See, generally*, Emails from Simpson to Webster (Oct. 12, 2020) OAG-0061041-OAG-0061045.

According to First Assistant Webster, and as supported by documentary evidence, the First Assistant wanted to understand the relevant policies so he could make an informed decision about the proper procedures for investigating his concerns. *See e.g.* OAG-0061041-OAG-0061045 (noting that "[First Assistant Webster] was reliant on human resources, the Attorney General, [Deputy Reitz], [and Ms. French] to help First Assistant Webster because of the overwhelming nature of the situation at OAG.>").

On October 12, 2020, Mr. Simpson informed First Assistant Webster that OAG's investigative leave policy does not "dictate how investigations will/must be conducted, so the process is flexible and is based on best practices according to the situation." *See id.* OAG's investigation policy also provides that:

- It applies directly to allegations of “fraud, waste, or abuse of authority.”
- “All OAG employees must cooperate with such investigations and may be required to give oral or written statements. Failure to cooperate or and [sic] providing false or misleading information amounts to misconduct and may lead to disciplinary action, up to and including involuntary separation.”
- “Information arising from an investigation or official inquiry shall be shared only on a **need-to-know basis** or as otherwise required by law or as necessary to further the purpose of the investigation or official inquiry.”
- “An employee who feels that he/she has been subjected to retaliation as a result of being involved in an investigation should follow the retaliation policy.”

*Id.* (emphasis added). All OAG employees must cooperate with any investigation. Information concerning an investigation shall be shared only on a “need-to-know basis.” This pre-existing and common workplace provision undermines Plaintiffs’ argument that the Plaintiffs’ exclusion from First Assistant Webster’s initial investigative steps constitutes evidence of retaliation.

In response to Mr. Wynne’s October 11, 2020 request for a litigation hold on behalf of Nate Paul, Ms. French emailed First Assistant Webster at 5:25 pm on October 13, 2020, and recommended instituting a litigation hold, as First Assistant Webster had previously requested. *See also* Email from French to Webster (Oct. 13, 2020, 5:25 pm CDT). Specifically, Ms. French stated:

Our OAG retention policies (which staff are required to follow) are not as strong as a litigation hold. Given the number of OAG staff involved and the documents which may have been created in this matter, a litigation hold would be the proper avenue to secure the documents.



*Id.* On October 14, 2020, First Assistant Webster ordered a litigation hold regarding all matters dealing with the Nate Paul investigation and ordered that anyone who had a conflict of interest regarding the Nate Paul investigation—which certainly included some or all of the Complainants—should not be consulted on the matter. *See* Email from Webster to French (Oct. 14, 2020, 9:11 am CDT).

Mr. Vassar objected to his exclusion from the litigation hold process on October 14, 2020. The next day, October 15, 2020, First Assistant Webster informed Mr. Vassar that Mr. Vassar had a conflict of interest and that Mr. Vassar’s exclusion was proper. *See* Email Chain Between Vassar and Webster (Oct. 15, 2020, 8:45 am CDT).<sup>13</sup>

The First Assistant initiated investigatory steps consistent with OAG policy and general, well-accepted practices for internal workplace investigations. First Assistant Webster found it necessary to institute “wall-offs” in part due to some Complainants’ behavior and a litigation hold in response to requests from Nate Paul’s attorney.

As to the former, Sergeant Amy Gonzales reported that the Complainants’ behavior during the first few weeks of October 2020 “did not meet expectations,” and that each displayed “unacceptable conduct.” First Assistant Webster wanted Sergeant Gonzalez and, later, others—including Deputy Attorney General Aaron Reitz—to serve as witnesses to meetings between him and the Complainants. Sergeant Gonzales recalled that, during meetings with the Complainants shortly after First Assistant

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<sup>13</sup> First Assistant Webster also emailed McCarty “as a courtesy” to let McCarty know he also would be excluded from the litigation hold process. *See* Email from Webster to McCarty (Oct. 15, 2020, 9:28 am CDT).

Webster's appointment, Sergeant Gonzales "felt sorry for [First Assistant Webster]."

Sergeant Gonzales further volunteered that: "if I spoke to [Complainants] like they spoke to [First Assistant Webster] I would expect to get fired."

**B. Complainants' continued employment at OAG became untenable.**

Overall, several OAG employees were reportedly unable to accomplish much, if any, work during the first few days after First Assistant Webster started because some Complainants refused to cooperate or provide information in response to work-related requests. Deputy Reitz observed that the Complainants made the environment on the Eighth floor "sour, tense, and depressing."

Specifically, Deputy Reitz reported that, at one of the first deputy meetings chaired by the Attorney General and First Assistant Webster after the latter's hiring, McCarty stated in an "outburst" that McCarty did not view First Assistant Webster as legitimate. Deputy Reitz also remembered that at the same meeting the Attorney General stated the Attorney General wished for things to be different and that if people in the room believed the Attorney General had made a mistake, he was sorry. According to Deputy Reitz, the Attorney General appeared humble and sincere. Despite the level of contentiousness, Deputy Reitz observed that First Assistant Webster tried "to be focused and stay above the fray, not engaging in the bullshit."

Deputy Reitz recalled speaking with First Assistant Webster and the Attorney General later in October of 2020 about the potential for firing the remaining Complainants, but Deputy Reitz stated the discussions had nothing to do with the

Complainants having claimed to have provided information to authorities. In general, Deputy Reitz and others perceived a need for the OAG to fire the Complainants because the Complainants were, in Reitz's words, "holding the agency hostage," not because Complainants had made allegations against the Attorney General.

Referring to First Assistant Webster's ability to manage OAG, Deputy Reitz asked: "How do you do your job and keep them?... "It was never that we needed to find a problem, they handed us the problem." Deputy Reitz stressed that the Complainants were frustrating the OAG's normal operations which was "hampering OAG's core duties"; and that the Complainants' "deliberate obstruction would not abate...they were going to continue to be a thorn."

For example, on October 7, 2020, Brickman, Bangert, Mase, McCarty, and Vassar emailed the Attorney General and First Assistant Webster to restate their concerns about the OAG's outside counsel contract with Cammack:

We learned yesterday from the Dallas Morning News that you have directed Brandon Cammack to continue as a special prosecutor for this office to investigate a complaint that Travis County referred to our office.... Here, you circumvented our office's long-established outside counsel approval process, over the objections of the executive staff, to engage Mr. Cammack.... Promptly after we informed you that we reported our concerns to law enforcement, you personally directed that Mr. Penley and Mr. Maxwell, who are properly charged with the oversight of this office's criminal enforcement, be placed on investigative leave. Their unassailable qualifications and professionalism speak for themselves.

Despite their absence and inability to act, we feel compelled to send this communication to ensure there is no confusion: this office's continued use of the criminal process, in a matter already determined to be without merit, to benefit the personal interests of Nate Paul, is unconscionable. We do not do this lightly. The Office of Attorney General is a sacred trust. It would be a violation of our own public responsibilities and ethical obligations to stand by while the significant power and resources of the Texas Attorney General's Office are used to serve the interests of a private citizen bent on impeding a federal investigation into his own alleged wrongdoing and advancing his own financial interests.

We urge you to end this course of conduct immediately. We are copying new First Assistant Brent Webster on this letter to make him aware of the serious concerns we have about this continued investigation, and also urge him to take appropriate action.

Email from Brickman to Attorney General and Webster (October 7, 2020, 10:02 am CDT) OAG-0062557-OAG-0062558.

The OAG Report details the reasons why several of the assertions in this email are unfounded or inaccurate. However, the Complainants' continued resistance and "doubling down" on their opposition to the Attorney General's ultimate authority for the OAG only supports Deputy Reitz's opinion—shared by other current employees at OAG—that the Complainants' insubordinate behavior toward the Attorney General and First Assistant Webster, together with other issues regarding the Complainants' job performance - addressed below - made Complainants' continued employment at OAG untenable.

**C. Sergeant Gonzales did not attend meetings to intimidate witnesses.**

Plaintiffs ascribe retaliatory intent to the fact Sergeant Amy Gonzales attended meetings with First Assistant Webster and some of the Complainants while armed—

purportedly in an attempt to intimidate the Complainants. *See* Petition 24, 26. The evidence belies these assertions.

Sergeant Gonzales knew First Assistant Webster from First Assistant Webster's work as a prosecutor in Williamson County from 2011 to 2016. First Assistant Webster desired to have a witness sit in on all of First Assistant Webster's interactions with the Complainants, to catalogue OAG property seized from Mateer's office and those of the other Complainants, to ensure the return of personal property to the Complainants, and to escort individuals out of OAG if and when they resigned or were dismissed. First Assistant Webster selected Sergeant Gonzales for this role because of her law enforcement background, First Assistant Webster's prior work relationship with Sergeant Gonzales, and First Assistant Webster's confidence in Sergeant Gonzales' abilities.

Sergeant Gonzales initially thought it was "weird" for the First Assistant to request that Sergeant Gonzales be a witness. However, after Sergeant Gonzales observed the interactions between First Assistant Webster and some of the Complainants during First Assistant Webster's first few days on the job, Sergeant Gonzales felt she better understood the request. According to Sergeant Gonzales, the Complainants showed a clear lack of respect toward the Attorney General and First Assistant Webster.

Notably, Sergeant Gonzales had no knowledge of the Complainants' allegations against the Attorney General and Sergeant Gonzales reports neither the

Attorney General nor First Assistant Webster instructed Sergeant Gonzalez to do anything to try to intimidate the Complainants. According to Sergeant Gonzales, First Assistant Webster kept his discussions with Sergeant Gonzales at a “high level” and he stressed that Sergeant Gonzales was present “just to be a witness.” Sergeant Gonzales confirmed that First Assistant Webster never instructed Sergeant Gonzales to carry a firearm into any of the meetings with the Complainants and that First Assistant Webster never discussed anything related to the eventual dismissal of the Complainants with Sergeant Gonzales.

Moreover, several witnesses stated it is not unusual to have armed officers on the eighth floor at OAG; General Paxton’s security detail is armed and present whenever the Attorney General is on the floor. Additionally, since OAG is a law enforcement agency, it was not unusual for the Complainants to interact with armed law enforcement personnel. Indeed, several OAG executives were known to lawfully carry firearms.

**D. The press releases the OAG issued after the Complainants alleged wrongdoing are not acts of retaliation.**

Plaintiffs also allege the Attorney General retaliated against them by, among other things, issuing press releases and public statements after the Complainants made public allegations against the Attorney General on October 1, 2020. Specifically, the Plaintiffs allege that, in an effort to intimidate the Plaintiffs, the Attorney General authorized press releases on October 3, October 5, and October 7, 2020. *See* Plaintiff’s Petition at 20-22. This argument has little merit, particularly in light of well-settled law

that responding to press inquiries concerning the separation of employees in his office are within the Attorney General's official duties. *Salazar v. Morales*, 900 S.W.2d 929, 933-34 (Tex. App.—Austin 1995, no pet.) (Texas Attorney General has an “absolute privilege” to comment to the press and public on personnel matters in communications made within his official duties). Moreover, the Attorney General would not have had any reason to discuss any of the Complainants in the media but for the Complainants' having first raised the issue in the media.

## **II. Specific Evidence Regarding Individual Complainants**

As detailed below, the evidence demonstrates that OAG had legitimate, non-retaliatory reasons for dismissing each of the Complainants in October and November 2020.<sup>14</sup>

### **A. Maxwell's and Penley's Investigative Leave and Subsequent Dismissal.**

After the Complainants sent their letter of October 1, 2020, Mr. De La Garza and Ms. Gustafson went to Mr. Simpson's office to “triage the situation.” Mr. Simpson spoke directly with the Attorney General over telephone calls during which the Attorney General sought Mr. Simpson's advice on managing the OAG considering the Complainants' clear dissension.

In addition to their October 1, 2020 letter, the Complainants contacted the Attorney General via text message to request a meeting. Mr. Simpson and Mr. De La

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<sup>14</sup> Other than the information provided in the OAG Report, this report does not provide further information about Bangert and McCarty, who voluntarily resigned on November 4, 2020, and October 26, 2020, respectively.

Garza advised the Attorney General not to meet with any Complainants because Simpson and De La Garza felt the Attorney General's subordinates had no right to summon the Attorney General to a meeting.

At some point during his conversations with Mr. Simpson, the Attorney General notified Mr. De La Garza that OAG should initiate steps to place Mr. Penley and Maxwell on investigative leave with pay, but that the Attorney General would not place any other Complainant on investigative leave. Mr. De La Garza believes the Attorney General was "in his rights" to place Maxwell and Mr. Penley on investigative leave because the Attorney General had articulated specific concerns regarding Maxwell's and Mr. Penley's work performance.

**1. OAG had valid, non-retaliatory reasons for dismissing Maxwell**

The OAG Report details Maxwell's violations of OAG policy, including violations associated with Maxwell's mishandling of the Nate Paul investigation. Lewis Brisbois's investigation has also uncovered additional information regarding Maxwell's tenure at OAG. According to First Assistant Webster, investigation into Maxwell's misconduct began before First Assistant Webster joined OAG and OAG subsequently uncovered wrongdoing by Maxwell and evidence that many of the serious issues of Maxwell's misconduct had been deflected or ignored by First Assistant Mateer. Mr. De La Garza stated that it was well known within OAG that Mr. Mateer "protected" Maxwell. *See also* Email from Simpson to Webster and De La



Garza (Oct. 30, 2020, 5:50 pm CDT) (describing other instances in which Mr. De La Garza had issues with Maxwell's handling of personnel issues).

Mr. De La Garza reported that Maxwell's departure came as a "relief" to Mr. De La Garza because there were "so many issues." Tom Taylor, the current Director of Administration at OAG, Ms. Gustafson, and Mr. De La Garza each reported that Maxwell ran the Criminal Investigation Division ("CID") with little respect for or attention to other people's opinions.

**a. The Segovia Matter**

As detailed below, after CID exonerated Veronica Segovia of wrongdoing, Maxwell punished Segovia anyway without seeking the required approval of OAG Human Resources. Mr. De La Garza also expressed concerns that Maxwell operated in bad faith. Specifically, in May 2020, Mr. De La Garza raised issues associated with Segovia's discharge and subsequent employment discrimination complaint from February 2020. Ms. Gustafson reported the Segovia issue caused by Maxwell was "a big mess to clean up."

The relevant background concerning the Segovia issue can be found in an April 23, 2020, memorandum written by De La Garza to then-First Assistant Mateer (the "Segovia Memorandum"). In January 2020, Maxwell supported OAG placing Segovia on paid investigative leave because of allegations Segovia had inappropriately handled evidence and that Segovia provided misleading information in a statement about the incident. Segovia Memorandum at 3. A subsequent CID investigation

report, signed on January 28, 2020, exonerated Segovia of violating the peace officers' code of conduct. *Id.* Despite this finding, Maxwell persisted in seeking Segovia's demotion or separation:

On January 28, 2020, the day the investigative report was signed, Mr. Maxwell and Mrs. Segovia met in Houston "to discuss the findings of the investigation regarding [her] handling of evidence and [his] concerns about [her] work performance." During the meeting, Director Maxwell explained the "severity and impact" of Segovia's "work deficiencies as a law enforcement officer commissioned by the Office of the Attorney General." At the time of this meeting, Director Maxwell advised Segovia that the OAG would no longer be able to hold her peace-officer commission, which would, in effect, remove her from her Sergeant classification since it requires such a commission. Director Maxwell extended to Segovia an offer to work in Austin in a "non-commissioned capacity" and gave her one week to consider the offer. If she accepted, she would need to both acknowledge acceptance and report to work in Austin by Wednesday, February 5, 2020.

On Monday, February 3, 2020, Director Maxwell contacted Segovia via telephone and told her that since she had still not accepted the offer to transfer to Austin and "based on [her] lack of interest" in the position, he had decided to "rescind the offer of the position in Austin." He offered her the chance to resign and use a month and one day of her accrued leave, but she declined that offer.

*Id.* In February 2020, CID reported Segovia's separation of licensee from the Texas Commission on Law Enforcement (TCOLE). In February 2020, and as amended in August 2020, Ms. Segovia filed a complaint of discrimination with the Equal Employment Opportunity Commission, which included complaints against Maxwell.

Mr. De La Garza reports Maxwell failed to follow OAG Human Resources' policy in ending Segovia's employment as a commissioned officer. In May 2020, OAG sought to settle the matter by agreeing to Segovia's request to have Segovia's

dismissal from OAG notated as an “honorable discharge” with TCOLE. In the Segovia Memorandum, Mr. De La Garza detailed the reasons OAG Human Resources wanted to settle the matter before possible litigation, including the fact that Maxwell did not obtain proper approvals from OAG Human Resources and that a factfinder could interpret Maxwell’s conduct as unlawful. *See* Segovia Memorandum at 5. As to that latter, Mr. De La Garza noted in the Segovia Memorandum that:

Although CID had told Segovia on January 28, 2020, that she had one week to decide whether to accept a non-commissioned position in Austin, Director Maxwell rescinded the offer on February 3, 2020—before the original offer period had actually expired. . . . Despite the OAG being entrusted with enforcing child support orders, the offer made by Director Maxwell to Segovia would have required her to return to Austin, thereby violating her child-support/child-custody orders. Therefore, the offer to return to Austin could be construed as lacking good faith.

*Id.*

**b. Maxwell was insubordinate to First Assistant Webster**

Mr. De La Garza recommended the “honorable discharge” notation for Segovia, but Maxwell refused to assign Segovia’s discharge as “honorable.” Despite Human Resources’ recommendation, Mr. Mateer agreed with Maxwell. Mr. De La Garza believed Maxwell refused the “honorable discharge” designation required under the statute because Maxwell sought to punish Segovia.

In October 2020, the EEOC asked for OAG’s response to Segovia’s complaint. First Assistant Webster was concerned of the possibility the EEOC could make a finding adverse to the OAG.

On November 2, 2020, First Assistant Webster and Deputy Reitz met with Maxwell at OAG. First Assistant Webster asked Maxwell whether Maxwell had obtained approval from Human Resources to offer Segovia an administrative position in Austin in lieu of Segovia's position in Houston. In response, Maxwell stated "probably not."

When First Assistant Webster pointed out that Maxwell's admitted conduct violated OAG Human Resources policy, Maxwell stated:

[i]f you're gonna say or do something, say it or do it....If one of us is wrong, there's no documentation on it....This path you're going down isn't going to work buddy....Do you know how many times I've been in this situation?

See, Deputy Reitz's Nov. 2, 2020, Notes of Meeting with Maxwell at 2, OAG-0061087-OAG-0061088. Mr. De La Garza informed First Assistant Webster that this was not the first time Maxwell had failed to consult with OAG Human Resources on relevant personnel actions. See Email from Simpson to Webster and De La Garza (Oct. 30, 2020, 5:50 pm CDT) OAG-0061077-OAG0061078.<sup>15</sup>

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<sup>15</sup> It appears Maxwell made a regular practice of ignoring regular practice. In the October 30, 2020 email, Mr. De La Garza noted: "The week of August 24, 2020, I was notified by both Lacey Mase and Missy Cary that in a meeting with First Assistant Jeff Mateer, Director Maxwell advised Mateer that CID had handled a complaint of discrimination made by Sgt. David Trachtenburg against his supervisor, Lt. Adam Sierra. During that meeting, Maxwell told Jeff that he had his own people handle the investigation into the complaint. Maxwell stated that he had not notified the Human Resources Division (HRD) of this complaint and HRD had played no role in resolving the complaint. Sgt. Trachtenburg's complaint was that Lt. Sierra had subjected him to harassing and offensive behavior based on Trachtenburg's religion. Trachtenburg is Jewish. Both Lacey and Missy told me that Mateer reminded Maxwell that complaints of discrimination should be handled by HRD. That same week Maxwell called me about this issue and told me that I could discuss this matter with Maj. Robert Sunley in CID, and that Sunley would supply me with the investigation report. Sunley sent me the report on August 27, 2020. This investigation documents a pattern of concerning comments/conduct by Sierra referencing Trachtenburg's religion that could be considered harassing, offensive, and inappropriate. Without any involvement from HRD, Sierra requested a transfer to MFCU and a demotion to Sergeant Investigator. HRD wasn't consulted on this action and I do not know what conversations occurred between Maxwell or other

**c. Maxwell threatened employees who questioned Maxwell's travel budget discrepancies**

Lewis Brisbois has also uncovered issues with Maxwell exceeding his travel budget by approximately \$200,000 in Fiscal Year 2019-2020 and Lewis Brisbois has found that OAG employees informed former First Assistant Mateer about this budget shortfall. Specifically, when Michele Price, current OAG Controller, raised this issue to members of OAG's senior executive team in December 2019 and January 2020, Maxwell became very upset with Price. Ms. Price was uncomfortable describing the specific nature of her interaction with Maxwell over this issue, but according to First Assistant Webster, Ryan Fisher (the Director of Governmental Relations), and Price told First Assistant Webster that after one of these meetings in December 2019 or January 2020—and in front of Mr. Fisher and Ms. French—Maxwell threatened to arrest Price in response to Price raising these budget issues. Price was reportedly visibly upset during the interview when Maxwell confronted her upon learning that she had notified senior management about his significant overspending. First Assistant Webster believed Maxwell's actions constituted a Class A misdemeanor, official oppression, under the Texas Penal Code. *See* Tex. Pen. Code § 39.03.

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CID management and Sierra. It is well established agency policy that only HRD will handle complaints of illegal discrimination and conduct any related investigations.”

**2. OAG had valid, non-retaliatory reasons for firing Mr. Penley**

First Assistant Webster informed Lewis Brisbois that, even before the events of September-October 2020, the Attorney General had serious concerns about Mr. Penley's ability to do Mr. Penley's job as head of the OAG's Criminal Division. Specifically, the Attorney General felt it was extremely important that OAG should have concurrent jurisdiction with district attorneys to prosecute human trafficking cases, but Mr. Penley did not support the Attorney General's view that OAG should have concurrent jurisdiction. To the contrary, Mr. Penley made statements on such policy to the Texas District & County Attorneys Association (TDCAA) and to the Legislature that contradicted the Attorney General's position on the subject.

During the interview with Mr. Penley on November 2, 2020, Deputy Reitz noted the following:

Penley thinks it's a fight not necessarily worth fighting. Fleshes out his view about how these traffickers move so frequently and how local law enforcement isn't equipped to deal with that. Thinks it's very important to build relationships to make this fight it. Penley had high hopes to build these relationships in 2020 but covid killed all those plans. We have neither original nor concurrent jurisdiction, so the hope is that those local guys will call us up and ask for us to help them.

Mr. Reitz's Notes of November 2, 2020 Meeting with Penley OAG-0061079-OAG-0061084. According to First Assistant Webster, the Attorney General wanted Mr. Penley to fight for concurrent jurisdiction, but Mr. Penley failed or refused to do so.

After Mr. Penley released incorrect information as part of his official duties at OAG, the Attorney General wished to place Mr. Penley on administrative leave. As mentioned in the OAG Report, OAG found that Mr. Penley misled:

- Don Clemmer to obtain copies of secret grand jury subpoenas for the unlawful purpose of providing those subpoenas to a third party, namely Johnny Sutton.
- The 460th Criminal District Court Judge, in a court filing, by not disclosing that Penley had within his possession a signed contract between AG Paxton and Cammack that designated Cammack as OAG's outside counsel.

*See, e.g.*, OAG Report at 2.

In addition, after removing the Attorney General's name from the OAG Seal on OAG letterhead, Mr. Penley sent an unauthorized cease-and-desist letter to Brandon Cammack on September 30, 2020, in violation of direct orders from the Attorney General. This is referred to as the "Penley Letter" in the OAG's Report. *See* OAG Report, Ex. 19.

First Assistant Webster believed that Mr. Cammack informed the Attorney General about the Penley Letter on September 30, 2020. Accordingly, the Attorney General lost confidence in Mr. Penley's ability to do his job. Mr. De La Garza reports that from an "HR perspective" these were legitimate, non-retaliatory reasons to dismiss Mr. Penley.

According to Deputy Reitz's notes from the meeting with First Assistant Webster, Reitz and Penley on November 2, 2020, Mr. Penley admitted that:

- Penley met with the Attorney General on September 16, 2020, to discuss the Nate Paul investigation. The Attorney General and Penley did not discuss Mr. Cammack's involvement with the investigation. At this meeting, the Attorney General requested that Mr. Penley write down exactly what documents OAG needed from Nate Paul's attorney, Mr. Wynn, and that the Attorney General would send these requests to Wynn. Nate Paul's attorneys did not trust Mr. Penley because of how Penley acted at the August 12, 2020 meeting. Mr. Penley indicated that he complied with the Attorney General's request. As the meeting ended, the Attorney General instructed Mr. Penley to not do anything further until Mr. Penley heard directly from the Attorney General.
- Mr. Penley did not discuss the Nate Paul issue again until Mr. Penley met with the Attorney General on September 24, 2020. At that meeting, the Attorney General requested that Mr. Penley sign the EAM for Mr. Cammack. Mr. Penley informed the Attorney General that he would not sign the EAM because Mr. Penley did not believe Nate Paul's claims had any merit. Mr. Penley noted that he raised this issue with Mr. Mateer.<sup>16</sup>
- Mr. Penley and the Attorney General met in McKinney, Texas on September 26, 2020. At that meeting, the Attorney General informed Mr. Penley that the Attorney General had been working with Mr. Cammack on the Nate Paul investigation. Mr. Penley refused to answer First Assistant Webster's question of when Mr. Penley found out the Attorney General had signed an outside counsel contract with Cammack. Mr. Penley reiterated that Mr. Penley thought the counsel contract was a "terrible idea" because it might look like Attorney General was bribed by Nate Paul.

Deputy Reitz's Nov. 2, 2020, Notes of Meeting with Mr. Penley OAG-0061079-OAG-0061084.

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<sup>16</sup> OAG found a memorandum to file dated September 25, 2020, on Mr. Mateer's work computer. That document confirms that Mr. Penley informed Mr. Mateer about this conversation. OAG discovered this memorandum only after releasing its August 2021 report.



OAG found a September 28, 2020, memorandum-to-file on Mr. Mateer's computer that confirms most of what Mr. Penley later admitted to First Assistant Webster. In that memorandum, Mr. Mateer notes that Mr. Penley stated that, during their September 26, 2020 meeting, the Attorney General told Mr. Penley that Mr. Mateer had approved hiring Mr. Cammack and the OAG's contract related to that hiring. Mr. Mateer wrote in his September 28, 2020 memorandum:

This not true. In fact, I've repeatedly raised concerns to the Attorney General about hiring Mr. Cammack and told the Attorney General that he should discuss any such hiring or contracting with Mark Penley.

Mr. Mateer's Sept. 28, 2020 Memo. to File OAG-0062490-OAG-0062491.

During a November 2, 2020 meeting with First Assistant Webster and Mr. Penley, Deputy Reitz noted:

- On October 1, 2020, Mr. Penley denied the outside contract with Mr. Cammack.
- Mr. Penley admitted that Mr. Penley was not aware of "Referral #2," as that term is defined in OAG's August 2021 Report. Mr. Penley admitted that Mr. Penley's motion to quash related to information concerning Referral #2.
- Mr. Penley also admitted that when he filed the motion to quash, he had not fully read the outside counsel contract with Mr. Cammack.

Deputy Reitz's Nov. 2, 2020, Notes of Meeting with Penley OAG-0061079-OAG-0061084.

As noted in the OAG Report, on September 16, 2020, Mr. Penley refused to obey the Attorney General's instructions to not do anything regarding the Nate Paul investigation. Two weeks later, Mr. Penley sent the September 30, 2020 "Penley Letter" to Mr. Cammack without the Attorney General's knowledge or authorization.

During Mr. Penley's November 2, 2020 interview with First Assistant Webster and Deputy Reitz, Mr. Penley notified the First Assistant that Mr. Penley had written a memo on September 30, 2020 regarding the Nate Paul investigation. Although Mr. Penley claimed to have saved the memo on the desktop computer in his office, OAG has not been able to find this document on Mr. Penley's computer.<sup>17</sup>

**B. Mr. Mateer authorized an outside counsel contract with Johnny Sutton.**

Lewis Brisbois has also learned that Mr. Mateer provided authorization for the OAG to enter into an outside counsel contract with Johnny Sutton, a partner at Ashcroft Sutton Reyes, LLC in Austin, Texas, and former United States Attorney for the Western District of Texas.

Reportedly, the Attorney General was not aware of Mr. Mateer's request to allocate \$50,000 in public funds to Sutton, but there is clear evidence that is exactly what Mr. Mateer attempted to do. On September 30, 2020, at 8:39 pm CDT, Jeff Mateer emailed Lacey Mase to say: "I authorize the use of \$50,000 from the FY 21

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<sup>17</sup> If this memorandum existed, it is evidence in the Lawsuit and might also be privileged. Lewis Brisbois needs to obtain additional information to evaluate what additional steps may be appropriate to attempt to locate this memorandum.

unobligated reserve for an outside contract with Johnny Sutton.”<sup>18</sup> *See* Bates Nos. OAG-0060990. The next morning, on October 1, 2020, at 4:37 am CDT, Ms. Mase emailed Michele Price, the OAG’s Controller: “Please see Jeff’s approval of \$50,000 from the unobligated reserve for an outside counsel contract that will likely be executed this morning.” *See* Bates Nos. OAG-0060989. On October 1, 2020, Ms. Price responded at 6:34 am CDT that she would work to ensure that the contract was “executed on the funding end.” *See* Bates Nos. OAG-0060989.

We understand OAG has not found information to confirm that OAG transferred funds to Mr. Sutton or that anyone at OAG ultimately executed a contract between Mr. Sutton and OAG. We also understand OAG continues to investigate the matter and we recommend OAG continue to do so.

It is clear Mr. Mateer did not advise the Attorney General or seek the Attorney General’s approval to engage Mr. Sutton or to allocate public funds to Mr. Sutton for any purpose.<sup>19</sup>

The above actions appear inconsistent with Mr. Mateer’s complaints respecting the Brandon Cammack outside counsel contract. Specifically, Mr. Mateer wrote a memorandum to the file on September 25, 2020—four days before providing his own approval for an outside counsel contract with Mr. Sutton:

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<sup>18</sup> According to First Assistant Webster, Mr. Mateer approached the Attorney General and offered to resign on or about September 28, 2020.

<sup>19</sup> Lewis Brisbois has not communicated with Mr. Sutton or Mr. Mateer about this issue.

I cannot and will not override the approval process we have in place at OAG for outside counsel contracts. Those safeguards are in place for a reason – **to protect the Attorney General and the agency**.... I have been told that in addition to Mark others who would be required to sign off on this contract also will not approve it.

OAG needs to be above even the appearance of impropriety. Not following standard procedures would call in to question our impartiality and could expose the agency and the attorney general to unwarranted risk.... OAG should not disregard our internal policies and procedures that are in place to protect the attorney general and the agency.

Mateer Sept. 25, 2020, Memo to File (emphasis added) OAG-0062487-OAG-0062489.<sup>20</sup>

**C. Ryan Vassar’s conduct impeded OAG’s mission and likely violated state or federal Law.**

**1. The DOJ Grant Issue**

Among other issues, the OAG Report indicates that Vassar likely deleted a government document and tampered with evidence. *See, e.g.*, OAG Report at 8. First Assistant Webster also informed Lewis Brisbois about Mr. Vassar’s additional likely misconduct related to information Mr. Vassar provided in response to State Representative Leach’s October 9, 2020, Letter to OAG.

Specifically, on October 9, 2020, State Representative Jeff Leach wrote the Attorney General a letter expressing Representative Leach’s concerns about the allegations the Complainants had levied against the Attorney General:

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<sup>20</sup> Mr. Mateer’s behavior in this instance undermines his subsequent claim that OAG had a specific and defined policy that was not followed in the approval of Mr. Cammack’s hiring as outside counsel.

I formally request that you provide a written report as to what specific steps are being taken by you and your newly appointed First Assistant Attorney General, Brent Webster, to ensure that the effective operations of the agency continue in full force and effect, without delay, without interference and without interruption.

Rep. Leach Oct. 9, 2020, Letter to OAG.

On October 12, 2020, First Assistant Webster asked Ryan Fisher, Director of the OAG's Governmental Relations Division, to begin drafting a proposed response to Representative Leach's inquiry. In turn, Mr. Fisher emailed several individuals, including some of the Complainants, requesting information to assist OAG's response to Representative Leach. *See* Email from Fisher to Vassar and Others (Oct. 13, 2020, 3:02 pm CDT) (OAG-0061050-OAG-0061052).

On October 14, 2020, Mr. Vassar responded: "OAG is currently in the process of obtaining two federal awards: (1) the Medicaid Fraud Control Unit assistance grant from the DHHS Office of Inspector General and (2) the Rape Prevention and Education grant from the DHHS Centers for Disease Control." Email from Vassar to Fisher and French (Oct. 14, 2020, 11:34 am CDT). Mr. Vassar indicated to Lesley French that, "[b]ased on the federal debarment and suspension regulations [,] I do not believe I can approve the current EAMs involving federal grant applications until we have notified our federal partners of the potential exclusion involving the Attorney

General.” Email from Vassar to French (Oct. 14, 2020, 3 pm CDT) OAG-0061048-OAG-0061052.<sup>21</sup>

At the time, Ms. French believed there were many reasons Mr. Vassar’s legal reasoning was wrong, including the fact the Attorney General never personally certified any of these grant applications. Instead, the First Assistant generally approved these applications after obtaining approval from a deputy attorney general, such as Mr. Vassar.

Similarly, Austin Kinghorn, current General Counsel at OAG, also disagreed with Mr. Vassar’s legal reasoning. Mr. Kinghorn concluded that the Attorney General is not a “principal” to the grant programs at issue. As such, grant approvals are not dependent on the Attorney General’s personal certification.

In fact, between 2016 and 2020, Mr. Vassar personally approved 35 similar grants without any issue at all, with the last approvals occurring in June 2020.<sup>22</sup> Seven of the 35 grant approvals required signing forms that contained a certification that the “Applicant” is not “presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, tribal, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification.”

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<sup>21</sup> Mr. Vassar based his conclusion on the following regulations: 2 C.F.R. pt. 180; 2 C.F.R. pt. 2867 (DOJ); 2 C.F.R. pt. 376, 2 C.F.R. §§ 180.335(b)–(c); 2 C.F.R. § 180.800(a), 2 C.F.R. §§ 180.125, .130.

<sup>22</sup> Specifically, according to information provided by OAG and reviewed by Lewis Brisbois, Vassar approved the Medicaid Fraud Control Unit grants three times, in July 2018, July 2019, and June 2020, and the Rape Prevention and Education grants twice, in October 2018 and October 2019.

Mr. Vassar approved all these grant applications without issue, even though Vassar was aware the Attorney General had been indicted for alleged state crimes years earlier, in 2015. In October 2020, after conducting her own legal analysis, Ms. French—who was subordinate to Mr. Vassar—reported her disagreement with Mr. Vassar’s new and revised assessment of the relationship between the Attorney General’s long-pending criminal charges and the OAG’s eligibility for the grants at issue. On or about October 15, 2020, Ms. French informed Mr. Vassar that Mr. Vassar’s purported conclusion that Mr. Vassar could not sign off on the grant applications was incorrect.<sup>23</sup> The same day, Mr. Vassar submitted a formal complaint detailing several accusations against the Attorney General and First Assistant Webster.<sup>24</sup>

Ignoring Ms. French’s advice, on or about October 16, 2020, Mr. Vassar spoke with Mr. Kinghorn and Melissa Foley, Division Chief of Grants Administration, about Mr. Vassar’s belief in the need to “look into” the grant issue. At that time, Mr. Kinghorn was an Assistant Attorney General who reported to Ms. French. Ms. French did not participate in Mr. Vassar’s call with Mr. Kinghorn on this issue. After that call,

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<sup>23</sup> Ms. French references this meeting between her and Mr. Vassar in an October 19, 2020, email between her and First Assistant Webster. See OAG-0061048.

<sup>24</sup> In his complaint, Mr. Vassar did not include any reference to or information about his refusal to approve the federal grants. Lewis Brisbois does not know if Vassar submitted his formal complaint before or after he met with Ms. Mase. According to OAG records, Mr. Vassar filed his complaint at 8:32 am CDT on October 15, 2020. As such, it is likely that Mr. Vassar filed his complaint before meeting with Ms. Mase. Curiously, Mr. Vassar forwarded the complaint to the OAG “formal complaint” email address again at 1:26 pm CDT on October 15, 2020. This might have occurred after he met with Ms. French.

Mr. Kinghorn came to the conclusion that Mr. Vassar's legal reasoning was simply wrong.

During Lewis Brisbois's interview of Mr. Kinghorn, Mr. Kinghorn reported his belief that Mr. Vassar had raised this issue in an effort to obtain leverage as part of an effort to force the Attorney General to resign. Mr. Kinghorn's opinion is buttressed by the fact that Mr. Vassar had approved many of the very same and similar grant applications for several years without expressing any concern.

According to First Assistant Webster, Ms. French informed First Assistant Webster that Mr. Vassar refused to approve certain grant applications, which Ms. French considered an urgent matter because Ms. French believed Vassar was trying to sabotage the grant process, which could result in the elimination of relevant OAG employee positions. Because First Assistant Webster had no prior knowledge of the law and process concerning the approval of these grant applications, First Assistant Webster relied upon Ms. French's advice, including Ms. French's stated belief that Mr. Vassar's reasoning and conclusions were not only flawed but presented in bad faith.

As a result, on October 19, 2020, First Assistant Webster immediately called a meeting to discuss the issue, which Ms. French, Mr. Simpson, Mr. De La Garza, and the Attorney General attended.<sup>25</sup> After that meeting, the Attorney General decided to

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<sup>25</sup> Mr. De La Garza could not remember whether the parties discussed Mr. Vassar at this meeting, but he did recall that without prompting Mr. Simpson brought up his concerns about the way Ms. Mase treated Mr. Simpson. This is discussed in greater detail below.



place Mr. Vassar on investigative leave with pay, which First Assistant Webster then implemented. *See* Email from Webster to Simpson (Oct. 19, 2020).

## **2. After-acquired evidence also supports Mr. Vassar's separation**

On November 16, 2020, Mr. Vassar met with First Assistant Webster and Deputy Reitz to determine the viability of Mr. Vassar's continued employment at OAG. During that meeting, First Assistant Webster asked Mr. Vassar if Mr. Vassar had released confidential grand jury information. Mr. Vassar stated "no." Deputy Reitz's Nov. 16, 2020, Notes of Meeting with Vassar. That statement was demonstrably false.

In fact, OAG records show Mr. Vassar emailed grand jury subpoenas from Travis County to Johnny Sutton on October 1, 2020. *See* Bates Nos. OAG-0060997-OAG-0061030. During the meeting on November 16, 2020, First Assistant Webster also asked Mr. Vassar whether Mr. Vassar had deleted anything. In response, Mr. Vassar stated "no." Deputy Reitz's Nov. 16, 2020, Notes of Meeting with Vassar. OAG later determined Mr. Vassar had deleted Mr. Vassar's email to Mr. Sutton with the attached subpoenas, as the email was not found on Mr. Vassar's seized OAG computer. Mr. Vassar's deletion of a public-record email may also violate state law, including OAG's Records Retention policy, which is mandated by State law.<sup>26</sup>

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<sup>26</sup> For example, in addition to violating Texas law generally requiring the preservation of public records, if Vassar deleted this email in order to conceal it or tamper with an investigation, he may have violated Texas Penal Code sections 37.09 and 37.10. The deletion of emails also violated the litigation hold put in place by First Assistant Webster.

**D. Mr. Brickman's insubordination justified his dismissal.**

According to First Assistant Webster, the Attorney General accepted First Assistant Webster's report and opinion after which the Attorney General directed First Assistant Webster to fire Mr. Brickman because of Mr. Brickman's intentional disobedience, refusal to follow reasonable directives from the First Assistant, poor work product, and Mr. Brickman's use of an unprofessional tone towards management.

In general, several employees, including First Assistant Webster, Mr. De La Garza, and Deputy Reitz, indicated they did not know what Mr. Brickman did at OAG and that Mr. Brickman routinely demonstrated an insubordinate attitude towards First Assistant Webster. Specifically, Deputy Reitz stated Mr. Brickman was "the most obstructive, he was a jerk . . . [h]e was short with Brent [Webster]." Deputy Reitz also reported Deputy Reitz found Mr. Brickman's work product to be deficient and that Deputy Reitz had reported Mr. Brickman's work deficiencies to First Assistant Webster.

In October 2022, First Assistant Webster asked to meet with Mr. Brickman to discuss the status of the Chapter 313 Project, the Texas Economic Development Act provision that offers tax breaks to major companies that relocate new facilities to the state. According to First Assistant Webster, Mr. Brickman yelled back that he refused to meet with Webster without a Deputy Attorney General present. Indeed, it appears

Mr. Brickman repeatedly refused to meet with First Assistant Webster despite direct instructions to do so, as several emails demonstrate.<sup>27</sup> For example:

- On October 6, 2020, at 5:06 pm, First Assistant Webster emailed Mr. Brickman and asked to meet with him without other deputies present. Mr. Webster also asked Brickman to meet with the Attorney General. OAG-0063103.
- Nearly three hours later, Mr. Brickman wrote back and refused to meet with the First Assistant or the Attorney General alone without first knowing the subject matter to be discussed. *Id.* Brickman also stated that Webster retaliated against Brickman by previously asking Mr. Brickman to leave a meeting with the Attorney General, entering Mr. Brickman's office with an armed guard, and asking Brickman to leave his personal cellular telephone in Mr. Brickman's car. *Id.*
- On October 7, 2020, Mr. Webster responded to Mr. Brickman's email and noted that, as Mr. Brickman's supervisor, he needed to be able to meet with all his employees regularly without supervision. Mr. Webster also wrote that he asked Mr. Brickman to put away his cellular telephone because Brickman kept looking at his phone when meeting with the First Assistant and appeared "distracted." Mr. Webster also noted that Mr. Brickman's "*continuing refusal to meet with, or communicate with [the First Assistant] and the General, regarding your job, may result in the termination of your employment.*" OAG-0063089 (emphasis added). Before sending this email to Brickman, Webster consulted with Greg Simpson on the appropriate language to use to address Mr. Brickman's continuing refusal to meet, including the emphasized language noted above. OAG-0063087.
- On October 7, 2020, Mr. Brickman emailed First Assistant Webster back and stated that he was not refusing to meet, but that he wanted to know the topics to be discussed and the need to meet alone. OAG-0063089.

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<sup>27</sup> See e.g., Email from Brittany Hornsey to Brickman (Oct. 5, 2020) OAG-0063082; Email from Webster to Brickman (Oct. 6, 2020) OAG-0062636-OAG-0062639; Email from Webster to Brickman (Oct. 8, 2020) OAG-0062636-OAG-0062639; Email from Brickman to Webster (Oct. 20, 2020).

- On October 8, 2020, at 8:17 am, Webster emailed Brickman and stated “This isn't complicated. I will be in my office at 11:30 am today. I truly hope you decide to come by and talk with me.” OAG-0063101. Nearly an hour later Mr. Brickman responded: “I respectfully disagree. This actually is very complicated. And further complicated by your attempts to intimidate me...and by your insistence that we meet alone about a topic you won't reveal in light of the current circumstances.” *Id.*
- On October 8, 2020, at 11:41 am, Mr. Webster emailed Mr. Simpson to confirm that Mr. Brickman failed to stop by his office. OAG-0063101. Later that day, Webster emailed Simpson to set up a time to discuss Mr. Brickman's continued refusal to meet with the First Assistant. OAG-0063105. Simpson confirmed that he could meet with Webster. *Id.*

On October 19, 2020, Mr. Brickman criticized OAG's response to Chairman Leach's letter in an email to the Attorney General and First Assistant Webster.

Specifically, Mr. Brickman wrote:

I was not asked by either of you to participate in drafting your October 16, 2020 response letter to Chairman Leach, a copy of which was also sent to every member of the Texas legislature. As Deputy Attorney General for Policy and Strategic Initiatives, it is unusual that I was not asked to be involved in communications to the legislature on such an important request. That said, I reviewed your letter for the first time Saturday. It was a misguided combination of misleading statements, material omissions, and praise for work that mostly began well before First Assistant Webster assumed new role on October 5, 2020.

You also attempted, once again, to smear the reputations of the seven most senior OAG staffers who made a good faith report of General Paxton's potential criminal behavior to law enforcement.

Even more troubling is the fact that both of you know that several deputies have repeatedly raised serious concerns (in writing) and filed formal grievances to Human Resources about the functioning of the Office of Attorney General. Your letter ignored those concerns and essentially told every member of the Texas legislature that all is well.

Email from Brickman to the Attorney General and Webster (Oct. 19, 2020).

According to Mr. De La Garza and Deputy Reitz, given Mr. Brickman's intransigence, First Assistant Webster reasonably lacked confidence that Mr. Brickman could perform his high-level position at OAG professionally and with fidelity to the OAG.

On or about October 19, 2020, Mr. De La Garza advised the Attorney General and the First Assistant that OAG had legitimate reasons to terminate Mr. Brickman's employment with OAG. *See* OAG-0063120-21; 0063114-115. Mr. De La Garza prepared a script to guide the First Assistant which Mr. Webster followed when he fired Mr. Brickman.

**E. Ms. Mase's dismissal was based on legitimate, non-retaliatory grounds.**

In the June 21, 2021 response of the United States Attorney's Office ("USAO") to OAG's motion for relief from Judge Ezra's October 2020 Order, the USAO wrote:

Most egregiously, on October 20, 2020, Lacey Mase, Deputy Attorney General for Administration, came into the FBI to provide additional information on the allegations she and the other executive management staff had previously reported. Within hours of her leaving the FBI office, she was fired from her position at OAG without explanation. A fourth Deputy Attorney General, Blake Brickman, who was scheduled to meet with the FBI again on October 21, 2020, was also fired on October 20, 2020.

Response at 25. The evidence Lewis Brisbois reviewed does not support the USAO's implication that OAG dismissed Ms. Mase because of Ms. Mase's reported meeting with the FBI. Instead, the evidence shows OAG lawfully dismissed Ms. Mase because

of her documented history of creating a hostile work environment, harassment of employees under her supervision—including the former Director of Human Resources at OAG, Greg Simpson—and Ms. Mase’s display of poor judgment and decision-making in the final weeks of her employment. On the other hand there is absolutely no evidence indicating anyone at OAG even knew of Ms. Mase’s plan to meet with the FBI, let alone the purpose of such a meeting.

In general, many current OAG employees had a negative view of Ms. Mase. Mr. De La Garza described his working relationship with Ms. Mase as follows: “it was extremely difficult to work with her,” “not a career highlight,” and “lowest professional point working with her.” Tom Taylor indicated that Ms. Mase could “turn on you at any moment.” Mr. Taylor noted that, after First Assistant Webster started on October 5, 2021, Ms. Mase told Mr. Taylor to “watch [his] back.”

In an interview Mr. De La Garza stated that Mr. De La Garza believes Ms. Mase knew she was going to be dismissed from OAG, and so Ms. Mase likely timed her meeting with the FBI to provide the appearance of a connection between that meeting and Ms. Mase firing. There appears to be no evidence to indicate that any individuals at OAG, including First Assistant Webster, knew beforehand that Ms. Mase intended to meet with government authorities on October 20, 2020, shortly before the First Assistant carried out the prior decision to fire Ms. Mase. If First Assistant Webster and others did not know about this meeting, they could not have retaliated against Ms. Mase for attending it.

**1. Ms. Mase sought to use OAG resources to obtain personal legal advice**

Before detailing the lawful reasons to dismiss Ms. Mase from OAG, it is important to understand the nature of Ms. Mase's actions prior to the time the Complainants publicly announced their allegations against the Attorney General.

A few days before the Complainants informed OAG of their meeting with authorities, Mr. Simpson contacted Mr. De La Garza and stated in general terms that there was a potential complaint brewing against a "senior manager." Initially, Mr. De La Garza thought the issue might be a complaint against Maxwell or Mr. Penley. A few days later, Mr. Simpson and Mr. De La Garza had a face-to-face meeting at which Mr. Simpson stated his belief that there were some employees about to file a complaint about "their boss." Mr. Simpson did not provide specific information about who might be making the complaint or its target. However, Mr. Simpson told Mr. De La Garza that Ms. Mase intended to contact Mr. De La Garza via telephone to explain further.

According to Mr. De La Garza, Ms. Mase called Mr. De La Garza on or about September 30, 2020. Mr. De La Garza believes another individual, possibly Mr. Vassar, might have also been on the telephone call. Mr. De La Garza remembers Ms. Mase raising a hypothetical, whereby a whistleblower would disclose to a "government authority" outside of OAG allegations against a senior OAG manager and then inform OAG's Human Resources department of the situation.

Mr. De La Garza thought the conversation was odd and Mr. De La Garza did not understand why Ms. Mase would be asking for such general information,

including how an agency might respond to such a complaint. Mr. De La Garza assumed Ms. Mase was asking on behalf of the agency and that she wanted to know how OAG should respond to such a hypothetical whistleblower complaint. Today, with the benefit of hindsight, Mr. De La Garza believes Ms. Mase asked these questions to obtain Mr. De La Garza's legal advice concerning the Complainants' decision to meet with federal authorities about the Attorney General without notifying OAG.

Based on the hypothetical Ms. Mase provided, Mr. De La Garza told Ms. Mase that Mr. De La Garza thought the hypothetical whistleblower would lack good faith. Specifically, Mr. De La Garza informed Ms. Mase that, if the hypothetical whistleblower already had disclosed information to a government entity outside of OAG, informing Human Resources at OAG only after the fact appeared "contrived and manipulating." In Mr. De La Garza's view the only reason for the whistleblower to inform Human Resources about the prior disclosure was in an effort to obtain "job insurance" from OAG.

In fact, this is what Mr. De La Garza now believes the Complainants did—reporting to federal authorities serious allegations of wrongdoing against the Attorney General and *then* reporting to Human Resources, in an effort by employees already reasonably concerned about their tenure due to their own malfeasance to obtain job security or strengthen an argument that any later dismissal was retaliatory in nature. Mr. De La Garza now feels "used" by Ms. Mase because Mr. De La Garza offered



advice in his official capacity but believes Ms. Mase was acting to protect her own and others' personal interests, not those of the OAG.

**2. The October 19, 2020 meeting and reasons Ms. Mase was fired**

Mr. De La Garza knew that Ms. Mase constantly contacted Mr. Simpson, her subordinate, to request updates on issues from which Ms. Mase had been "walled off." Mr. Simpson told Mr. De La Garza that Ms. Mase became frustrated at Mr. Simpson because Mr. Simpson would not share information with Ms. Mase. At one point, Ms. Mase shouted at Mr. Simpson: "you are fucked, better not collaborate." Overall, Mr. De La Garza viewed Ms. Mase's treatment of Mr. Simpson as "torment, almost threatening."

As mentioned above, on October 19, 2020, First Assistant Webster held a meeting to discuss the Vasser grant issue, which Ms. French, Mr. Simpson, Mr. De La Garza, and the Attorney General attended.

As noted in further detail below, during that meeting Mr. Simpson volunteered Ms. Mase's habit of "cursing him out" and Ms. Mase's abusive interactions with Mr. Simpson. Prior to that meeting, First Assistant Webster had not been aware of Ms. Mase's inappropriate conduct. Mr. De La Garza described what Mr. De La Garza felt was a weight being lifted off Mr. Simpson's shoulders after Mr. Simpson was able to come forward about Ms. Mase's conduct toward him. Overall, Mr. De La Garza found the whole meeting to be "extremely cathartic."

Later in the day on October 19, 2020, First Assistant Webster notified Alejandro Garcia, OAG's Director of Communications, that OAG had placed Mr. Vassar on investigative leave. First Assistant Webster asked Mr. Garcia to call Gracie Hilton, assistant to Mr. Vassar and to Ms. Mase, into First Assistant Webster's office so Webster could explain the situation. As to that meeting, Mr. Garcia reported:

I personally asked Ms. Hilton to report to the First Assistant's office for a brief update. To not concern her, I told Ms. Hilton the meeting was not about her, but she needed to be informed on the situation. Ms. Mase came out of her office (as she overheard) and she asked why Ms. Hilton was being told to go meet with the First Assistant. Ms. Mase asked me, "is it about Ryan Vassar being put on leave?" I said yes. She immediately told Ms. Hilton not to go into the First Assistant's office. I told Ms. Mase to accompany Ms. Hilton if she was so concerned about the situation. Ms. Hilton sat back down in her chair.

Ryan Bangert overheard the situation (as did other employees in the immediate area) and spoke to Ms. Mase – telling her he would accompany Ms. Hilton to the First Assistant's office so she wouldn't be nervous. He then proceeded to take Ms. Hilton to the First Assistant's office.

I reminded Ms. Mase that Ms. Hilton would be fine and if she had any issues, she should address them to the First Assistant. Ms. Mase (in a protective manner of Ms. Hilton) said Ms. Hilton is a child, 23 years old and traumatized by what's going on in the executive floor. I told Ms. Mase I wasn't aware we worked with children. Walking back to her office I expressed my discontent with Ms. Mase about how overprotective gestures can be counterproductive to a young employee's experiences and careers. I reminded her that Ms. Hilton will be fine. By that point Ms. Mase and I amicably agreed to stop discussing the issue. I then walked out of her office.

Oct. 19, 2020, Garcia Memorandum. Mr. Garcia emailed this memorandum to Mr. De La Garza and First Assistant Webster at 5:17 pm on October 19, 2020. Email from Garcia to De La Garza and Webster (Oct. 19, 2020, 5:17 pm CDT).

At 6:14 pm that same day, Mr. Simpson sent an email with an attached memorandum to Mr. De La Garza, which detailed the allegations of Ms. Mase's misconduct which Simpson had raised during the meeting earlier that day. In that memorandum, Mr. Simpson detailed his "stressful and disruptive" interactions with Ms. Mase:

On October 8, 2020, I met with the [Attorney] General, First Assistant, and Tom Taylor in the General's office. After that meeting was over I received a text from Ms. Mase asking how my meeting with the General went. I had not told Ms. Mase about that meeting. I called Ms. Mase on my way home and she said that Blake Brickman had told her that I was in the General's office, and she wanted to know what we talked about. I was vague about what was discussed and stated that we discussed Investigative Leave and a personnel issue. She demanded to know if Blake Brickman was discussed and said she wanted to know if Blake was going to get fired. I didn't want to answer the questions and I hesitated. Ms. Mase loudly and repeatedly told me that she is my supervisor and that I needed to respond to her questions. She again demanded to know what was discussed, what each person said at the meeting, and what exactly was going to happen to Blake. I told Ms. Mase that no one was getting fired, but that Blake may be moved to another office in the WPC [building]. **Ms. Mase was angry at my response and repeatedly stated that moving Blake is "retaliation."** She told me that I should not trust the General and the First Assistant, that I don't know what I'm dealing with, and screamed at me multiple times that I was "fucked." She told me that if I was not giving my advice to the General and First Assistant in writing, I am also "fucked" because they would later mischaracterize my advice to pin blame on me if something went wrong later....

On October 15, I received a phone call from Ms. Mase stating that she'd heard I was in a meeting with the First Assistant and Lesley French and she asked in a confrontational tone what we had discussed. I told her that I was called in to discuss an investigation, but that that conversation did not occur. Ms. Mase quickly got angry and demanded to know why I wasn't telling her that we discussed a litigation hold. She said she "knew" that I was involved with the litigation hold and that it was discussed at the meeting. She said that a litigation hold is something she should have been consulted with because she is the deputy AG for administration. I

told her I didn't know what she was talking about, that it was my understanding that GCD [General Counsel Division] handled lit holds and told her my only knowledge of the lit hold was that I was a recipient of the lit hold. She demanded to know what else we discussed and I told her that we discussed how Investigative Leave is administered and nothing else.

Oct. 19, 2020 Mr. Simpson Memo re: Mase (emphasis added) OAG-0061058. Later, at 6:44 pm, on October 19, 2020, Mr. De La Garza forwarded Mr. Simpson's email and memorandum to First Assistant Webster and Mr. Simpson. Email from De La Garza to Webster (Oct. 19, 2020, 6:44 pm CDT) OAG-0061053-OAG-0061054. In that email, Mr. De La Garza stated the reasons why Mr. De La Garza believed Ms. Mase should be dismissed from OAG. *Id.*

After receiving this email at approximately 9:41 pm on October 19, 2020, First Assistant Webster emailed Ms. Mase and ordered Ms. Mase not to work on OAG matters related to "Nate Paul, General Paxton, or any connected case or OAG matters." Email from Webster to Ms. Mase (Oct. 19, 2020). In that same email, First Assistant Webster wrote:

It has been brought to my attention that you have a meeting with Greg Simpson tomorrow at 10 am. You will not have that meeting and will cease all communications with anyone in HR until you and I are able to discuss this conflict and plans moving forward with the HR department. Are you available to meet with me at 11 am tomorrow?

*Id.* First Assistant Webster reported that he instructed Ms. Mase to "cease all communication" in order to protect Mr. Simpson from further abuse by Ms. Mase. Webster then emailed De La Garza and Simpson about a proposed meeting at 11 a.m. the following day with Ms. Mase. *See* Email from Webster to De La Garza and

Simpson (Oct. 19, 2020). At 10:58 pm, on October 19, 2020, Mase replied to Webster's email and stated she "could not" meet at 11 a.m. the next day,<sup>28</sup> but she could meet later in the afternoon. *See* Email from Mase to Webster (Oct. 19, 2020, 10:58 pm CDT).

Given Ms. Mase's insistence on knowing all interactions between Mr. Simpson and the First Assistant, Ms. Mase's knowledge of OAG placing Mr. Vassar on investigative leave, and the above-mentioned email from First Assistant Webster on October 19, 2020, it seems likely Ms. Mase surmised she would soon be fired or placed on investigative leave. As such, the timing of Ms. Mase's meeting with federal authorities seems more likely to be an effort to obtain the "job insurance" Ms. Mase has discussed with Mr. De La Garza in light of Ms. Mase's reasonable perception of the OAG's pending decision to fire Ms. Mase.

Additionally, Mr. Taylor reported that Ms. Mase had failed to approve a "huge backlog" of expenses related to travel undertaken by OAG employees. We are still investigating the reasons for this backlog and if it is at all related to the budget issues related to Maxwell discussed above.

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<sup>28</sup> Ms. Mase's purported conflict on October 20, 2020, may have been Ms. Mase's meeting with the FBI.

### III. All Complainants are political appointees

All complainants were high-level political appointees, all of whom agreed at the outset of their appointment and were well aware that they served at the pleasure of the elected Attorney General.

As Lewis Brisbois posited in the Lawsuit, the separation of powers doctrine should preclude a claim under the Whistleblower Act in cases where, as here, an elected executive officer fires a highly placed, confidential employee. Thus, and contrary to Complainants' argument that retaliatory intent can be inferred solely from Complainants' dismissals, an elected executive officer—including the Attorney General—could dismiss any Complainant with or without cause at any time.<sup>29</sup>

As discussed in greater detail in OAG's Lawsuit briefing, the OAG enjoys sovereign immunity and the right to fire the Attorney General's employees—especially high-level political appointees—at will. Only the Legislature may change these foundational legal principles. Under the Texas Whistleblower Act, the Legislature waived immunity only “to the extent of liability for the relief” allowed under the Act. Tex. Gov't Code § 554.0035. Such relief, in turn, is available only for “a public employee who in good faith reports a violation of law” by either “the employing governmental entity or another public employee to an appropriate law enforcement

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<sup>29</sup> Specifically, unlike the federal system of government, in which the President of the United States oversees distinct departments within the executive branch, including the U. S. Department of Justice, Texas has a “plural executive” system in which the executive branch powers are distributed amongst several state officials, including the Lieutenant Governor and the Attorney General—the latter of whom is the State of Texas' chief legal officer and who conducts the duties of his office through the OAG.

authority.” *Id.* § 554.002(a). The Legislature expressly defined the term “public employee” to include “an employee or appointed officer” of a governmental entity, but not an elected officer. *Id.* § 554.001(4).

It is well-established that control over personnel decisions within the executive branch is itself a vital executive function. Officers, like the Attorney General, cannot, “alone and unaided . . . execute the laws” passed by the Legislature, let alone make good on their duties to the public in doing so; they “must execute” those laws and promises “by the assistance of subordinates.” *Myers v. United States*, 272 U.S. 52, 117 (1926). As a result, courts have long held “the power of appointing, overseeing, and controlling those who execute the laws” to be a core executive prerogative. *Seila Law LLC v. Cons. Fin. Prot. Bureau*, 140 S. Ct. 2183, 2197 (2020) (citing 1 Annals of Cong. 463 (1789)). “That power, in turn generally includes the ability to remove executive officials.” *Id.* at 2197. Thus, acts of public antagonism by an employee, such as a lawsuit against an officer, “may be particularly disruptive,” and “can interfere with the efficient and effective operation of government.” *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 389, 390 (2011). That is why, “[i]n Texas, employees of any elected official serve at the pleasure of the elected official, regardless of whether there is a statute which specifies at-will status.” *Garcia v. Reeves County*, 32 F.3d 200, 203 (5th Cir. 1994). And, when the employment of confidential or policymaking employees is at issue, even constitutional rights must give way to the “needs of the employer, here

the [OAG], to provide efficient public service.” *Maldonado v. Rodriguez*, 932 F.3d 388, 392 (5th Cir. 2019).

While this legal position is appropriately advanced as a defense to the Lawsuit, it is reportedly immaterial to First Assistant Webster’s recommendations to the Attorney General that led to any Complainant’s firing. First Assistant Webster has identified, and the objective evidence we have been able to review supports, that each Complainant who was fired was fired based upon that individual Complainant’s poor work performance and, in some cases, clear insubordination.

### **Conclusion**

Based on the documentation and information we have been able to review thus far, we continue to find there is significant evidence to show the actions of the OAG toward the Complainants were based on legitimate, non-retaliatory, business grounds.

We will continue our investigation as circumstances allow and we will continue to update our reporting if and as warranted.