

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

James Blake Brickman,
et al.,

Plaintiffs,

v.

Office of the Attorney General
of Texas,

Defendant.

In the District Court of

Travis County, Texas

250th Judicial District

**OFFICE OF THE ATTORNEY GENERAL’S MOTION FOR ENTRY OF JUDGMENT
AND TO VACATE THE COURT’S JANUARY 19, 2024 ORDER**

Defendant, the Office of the Attorney General of Texas (“OAG”) moves for entry of judgment on Plaintiffs’ sole remaining claim under the Texas Whistleblower Act and to vacate the Court’s orders dated December 22, 2023 ordering depositions of apex witnesses and January 19, 2024 (“Supplemental Order”) compelling the depositions of four apex witnesses on dates certain.

On January 18, 2024, the OAG filed an amended answer affirmatively representing the OAG elects not to defend Plaintiffs’ claims of liability or damages in this action. Consistent with Texas Rule of Civil Procedure 305, the OAG shared a proposed judgment on liability with Plaintiffs. Despite providing Plaintiffs every form of relief Plaintiffs have requested and could recover under their sole statutory cause of action,¹ Plaintiffs demand to continue to litigate.

Plaintiffs refuse to take “no contest” for a response that allows the immediate entry of judgment in Plaintiffs’ favor, just as they plead for. Instead, Plaintiffs continue to **pretend** they must litigate *undisputed* issues. Accordingly, the OAG moves this Court to enter judgment

¹ In their second amended petition, Plaintiffs seek “exemplary damages,” but exemplary damages are not available under the Whistleblower Act. *See* Tex. Gov’t Code § 554.003. While the Whistleblower Act previously authorized plaintiffs to recover exemplary damages, the Legislature amended the Act in 1995 to remove statutory authority for exemplary damages. *See* Acts 1995 74th Leg., R.S. ch. 721, § 3, eff. June 15, 1995 and *Lubbock Cty. V. Strube*, 953 S.W.2d 847, 859 n.3 (Tex. App.—Austin 1997, pet. denied).

on liability, subject to the Court's entry of a final judgment upon the Court's determination of damages, including attorneys' fees.

Additionally, in the light of OAG's amended answer, the Court's improvidently entered supplemental order in both procedurally improperly and substantively cannot stand. Given that there remains no disputed issue of fact on liability or damages between the parties, there can be no reason in law or logic for any depositions or any other discovery on a question of liability that is no longer extant—much less the depositions of four *apex* witnesses. Moreover, the supplemental order was improperly issued based on a single email from Plaintiffs' attorneys less than 24 hours earlier and without constitutional due process guarantees of notice, hearing, or an opportunity for the OAG to respond.² In support, the OAG shows the following:

Certificate of Conference

Prior to filing this motion and seeking emergency relief, as evidence in part by Exhibit 1 to this motion, counsel for the OAG conferred with all Plaintiffs' counsel by email and with two of Plaintiffs' counsel by phone in an effort to resolve the issues presented by this motion or, at the very least, to alleviate the need for emergency consideration by the Court.³ Unfortunately, without explanation or any counterproposal, Plaintiffs simply refuse to confer other than to refuse to cooperate to either alleviate the emergency created by the Court's entry of the Court's January 19, 2024 order or the issue of the propriety of the Court's prompt entry of judgment in favor of all Plaintiffs under Rule 305 of the Rules of Civil Procedure.

² Given the proper notice and time required under Rule 21 and this Court's local rules, the OAG would have pointed out what Plaintiff's counsel email request failed to reveal: That, when counsel wrote his email request, Plaintiffs were already fully aware that Defendant did not intend to dispute any issue of fact in the lawsuit.

³ In light of the OAG's decision not to contest any fact issue in this case and the OAG's agreement to the entry of judgment in favor of all Plaintiffs, it is beyond reasonable argument that Plaintiffs *need* any discovery, let alone that Plaintiffs' request for depositions must be fulfilled on such a short schedule.

Accordingly, the Court's intervention on these issues is necessary and **the Court should, at the very least, address the OAG's request to vacate the Court's January 19, 2024 order by no later than the close of the business day on day by January 25, 2024.**

Background

The OAG filed an amended answer on January 18, 2024, which is incorporated here by reference, and in which the OAG made it crystal clear the OAG does not contest any of Plaintiffs' factual allegations and that no fact issue remains in this case. The OAG also consented to the entry of a judgment consistent with the statutory limits of the Texas Whistleblower Act. In fact, it appears that Plaintiffs' counsel's receipt of this statement of no contest was what prompted Plaintiff's counsel's email shortly after service of the amended answer.

Quite shortly after the OAG filed that amended pleading, and without conferring with counsel for the OAG based on the changed circumstances existing at the time, one of Plaintiffs' attorneys emailed the Court at 1:18 p.m. suggesting *only* that the OAG's counsel would not agree to a schedule for depositions and requesting the entry of an order setting oral deposition dates. Exhibit 2, January 18, 2024 email from Plaintiffs' counsel with requested order. Notably, in that email, **Plaintiffs' counsel failed to apprise the Court that the OAG's amended answer, to which Plaintiffs' counsel only vaguely referred, removed any disputed fact issue from the case.** Less than 24 hours later, and without allowing a response from Defendant/non-movant, the Court emailed the parties a signed copy of the order submitted by Plaintiffs. Exhibit 3, January 19, 2024 email from Court with Supplemental Order attached as entered.

Also, less than 24 hours after Plaintiffs' counsel's email which the Court treated as a motion despite the fact the email did not comply with the local rules for a motion, at about the same time as the Court entered its order without permitting Defendant time to respond, the OAG submitted a written email response **expressly requesting the Court require Plaintiffs to comply with Rule**

21 of the Texas Rules of Civil Procedure. Exhibit 4, January 19, 2024 email from OAG’s counsel WSH to Court.

The OAG has since provided Plaintiffs’ counsel with a proposed judgment for approval, offering Plaintiffs every form of relief they have requested and can recover under Texas law.

Argument and Authority

I. The Court Should Enter Judgment.

This Court should enter judgment on Plaintiffs’ sole claim under the Texas Whistleblower Act. The OAG has unequivocally elected not to dispute Plaintiffs’ lawsuit as to any issue and, consistent with that position, affirmatively consents to the immediate entry of judgment. *See* Amended Answer at 5. This ends the litigation of Plaintiffs’ claims and moots any dispute over any purportedly necessary discovery.

An issue becomes “moot if, since the time of filing, there has ceased to exist a justiciable controversy between the parties—that is, if the issues presented are no longer ‘live’ or if the parties lack a legally cognizable interest in the outcome.” *Abbott v. Mexican-Am. Legis. Caucus*, 647 S.W.3d 681, 689 (Tex. 2022) (quoting *Heckman v. Williamson Cnty.*, 69 S.W.3d 137, 162 (Tex. 2012)); accord *Elec. Reliability Council of Texas, Inc. v. Panda Power Generation Infrastructure Fund, LLC*, 619 S.W.3d 628, 636–37 (Tex. 2021) (noting that a case may become “procedurally moot” when developments following an order preclude particular relief even where the “parties’ controversy over the substantive issue remained live”). “Put simply, an issue is moot when, as is the case here, the court’s action on the merits cannot affect the parties’ rights or interests” with regard to that issue. *Heckman*, 369 S.W.3d at 162.

Because the OAG does not and will not dispute liability or damages on Plaintiffs’ sole claim under the Texas Whistleblower Act, any “justiciable controversy between the parties” that may have previously existed with respect to that claim is “no longer ‘live’” and no action from this

Court “can[] affect the parties’ rights or interests.” *Id.* Indeed, there is nothing left for this Court to adjudicate with respect to Plaintiffs’ claim other than to consider Plaintiffs’ uncontroverted evidence of damages and to render a judgment. There is no basis in law or logic to hold that this litigation is still justiciable—or for this Court to allow Plaintiffs to continue to increase the parties’ attorneys’ fees and waste judicial resources. The lack of adversity between the parties with respect to the single cause of action renders any further proceedings on liability moot, and, since the OAG does not intend to contest Plaintiffs’ evidence of damages, there is plainly and simply nothing left for the Court to do with respect to liability but enter judgment. To the contrary, it is well established that not contesting liability or damages, as the OAG has done here, “all the objections to the petition [are] waived,” including applicable defenses. *Cartwright v. Roff*, 1 Tex. 78, 82 (1846). This renders Plaintiffs’ claims ripe for the immediate entry of judgment as the OAG proposes here.

II. The Court Should Vacate Its January 19, 2024 Supplemental Order.

A. The Order is Inappropriate Because OAG Does Not Contest Liability and Damages.

Reconsideration of the Court’s order re-setting the date for depositions is warranted, at a minimum, because the OAG no longer contests liability and damages on the sole claim asserted in Plaintiffs’ operative petition. As explained more fully below, the lack of adversity between the parties with respect to the single remaining cause of action renders any further proceedings on liability unnecessary and improper. There is nothing left for the Court to do with respect to liability but enter judgment. And because no live dispute exists between the parties with respect to liability or damages, it follows *a fortiori* that no depositions are necessary to resolve any previously disputed questions of fact, much less *four* apex depositions of individuals who have no knowledge—to say nothing of superior or unique knowledge—of the plaintiffs’ damages. *Cf. Univ. Health Servs., Inc. v. Thompson*, 24 S.W.3d 570, 580 (Tex. App.—Austin 2000, no pet.).

No doubt “the scope of discovery is broad,” but discovery requests “must show a reasonable expectation of obtaining information that will aid the dispute’s resolution.” *In re CSX Corp.* 124 S.W.3d 149, 152 (Tex. 2003). Here, no discovery could or will “aid the dispute’s resolution,” precisely because any dispute is *already* resolved, save for the ministerial act of entering judgment on liability—an act the OAG also moves this Court to undertake—and calculating damages based on any (uncontested) evidence Plaintiffs may choose to submit. Expending party and judicial resources on depositions and discovery in a case involving no contested issues of fact is contrary to the mandate of judicial economy and runs counter to the very purpose of the Rules of Civil Procedure: to “obtain a just, fair, equitable, and impartial adjudication of the rights of litigants...with as great expedition and dispatch and at the least expense both to the litigants and to the state as may be practicable.” Tex. R. Civ. P. 1.

Indeed, there are only two possible – but no legitimate – purposes for authorizing further discovery, including depositions of the four apex deponents at issue. The first possibility would be to harass the apex witnesses by distracting them from their daily duties of managing 4,200 employees and the over 30,000 active cases the State of Texas is currently litigating. Any time spent by these high-level public servants preparing for depositions in a case in which no fact issues remain necessarily hinders the operation of the OAG. The second and more nefarious possibility is that further discovery is an effort by Plaintiffs’ counsel to improperly drive up their attorneys’ fees through unnecessary and improper discovery. Having been made for the purpose of avoiding visiting significant and unnecessary costs on the public fisc, the OAG’s decision not to contest any issue in this case, including attorneys’ fees should not be allowed to create a perverse incentive for Plaintiffs’ counsel to unreasonably pad their billing with unnecessary discovery when not a single fact issue remains to be determined. Under either of these impermissible approaches, it is clear Plaintiffs wish to continue litigating solely to benefit themselves, their attorneys, and their apparent

political vendetta to the detriment of the State’s taxpayers. Because, under these changed circumstances, none of these apex witnesses can be shown by Plaintiffs – as is their burden – to have any unique or superior knowledge of any remaining *disputed* fact issue, because there are none. *See In re Am. Airlines, Inc.*, 634 S.W.3d 38, 40 (Tex. 2021) (orig. proceeding) (per curiam) (quoting *Crown Cent. Petroleum Corp. v. Garcia*, 904 S.W.2d 125, 128 (Tex. 1995) (orig. proceeding)). Accordingly, the Court should grant this motion to vacate the order re-setting dates for depositions.

B. The Court Should Vacate the Order Because the OAG Was Deprived Basic Due Process and Plaintiffs Failed to Comply with the Rules of Civil Procedure.

An order vacating the Court’s January 19, 2024 order is also necessary because not only is the necessity of the December 23, 2023 Order requiring depositions superseded by the OAG’s election to allow the entry of judgment and choice not to contest any fact issue in the case, the Court’s consideration *and* entry of the January 19, 2024 order deprived the OAG of due process and Plaintiffs violated the applicable Rules of Civil Procedure and local rules.

1. Both the Texas and United States Constitutions guarantee due course of law, i.e. due process. *See*, U.S. CONST. amend. V, XIV and TEX. CONST. art. I, § 19.⁴ In matters of procedural due process, Texas courts traditionally follow contemporary federal due process interpretations of procedural due process issues, *id.* at 252–53 and consider federal interpretations of procedural due process to be persuasive authority in applying Texas’s due course of law guarantee. *Univ. of Tex. Med. Sch. v. Than*, 901 S.W.2d 926, 929 (Tex. 1995). The Supreme Court of Texas has recognized that this due course of law provision “at minimum requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* at 930; *see also Mullane v. Cent. Hanover*

⁴ While the Texas Constitution is textually different in that it refers to due course rather than due process, Texas courts regard these terms as without meaningful distinction. *Mellinger v. City of Houston*, 3 S.W. 3d 249, 252-52 (Tex. 1887).

Bank & Tr. Co., 339 U.S. 306, 314 (1950). Notice is “[a]n elementary and fundamental requirement of due process.” Due course of law also includes an opportunity to be heard on questions of law. *Perry v. Del Rio*, 67 S.W.3d 85, 92 (Tex. 2001); *see also*, *Gross v. Lopez*, 419 U.S. 565, 574 (1975).

The Court’s entry of the order violates these principles. Rather than filing a written motion as expressly required under Rule 21, Plaintiffs sent an email on January 18, 2024, at 1:18 p.m. requesting the Court enter Plaintiff’s proposed, attached order setting several oral depositions, Exhibit 2. Plaintiffs also failed to set that request for hearing or submission as expressly required by Travis County Local Rules of Civil Procedure Rule 1.4, 2.3, 2.4, 7.1 and Tex. R. Civ. P. 21(b) or seek emergency consideration under Local Rule 7.5.

Moreover, Plaintiffs’ counsel **inaccurately** represented to the Court such an order was necessary because Defendant’s counsel had purportedly failed to confer with Plaintiffs’ counsel regarding depositions. That is not true. After reviewing Plaintiff’s counsel’s email inquiring about potential depositions after the holiday weekend, OAG’s counsel wrote to confer with Plaintiffs’ counsel. Then, after becoming aware of the OAG’s decision not to contest any issue in the lawsuit, instead of engaging with the OAG’s counsel, *and without revealing that fact to the Court*, one of Plaintiff’s counsel wrote an email asking for entry of an order setting depositions—on which order Plaintiffs’ counsel failed to confer with the OAG’s counsel before submitting to the Court by email. Oddly, and certainly in derogation of the basic right of due process, the Court not only failed to give Defendant notice of a date by which to respond, the Court proceeded to enter an order without even waiting a full court-business day to see if Defendant would respond to Plaintiffs’ email to the Court (as it did less than 24 hours after Plaintiff’s counsel’s email). In so doing, the Court clearly deprived the OAG of constitutionally guaranteed minimum due process guarantees.

Indeed, considering that the OAG's amended answer and election not to contest liability or damages renders moot the question of whether Plaintiffs are entitled to take any depositions and pursue further discovery in this case, the failure to provide an opportunity to be heard was both prejudicial and contrary to principles of judicial economy. Again, the right to basic due process includes an opportunity to be heard on this question of law. *Perry*, 67 S.W.3d at 92. Therefore, notice and a hearing was required prior to the Court's issuance of an order concerning Plaintiff's request to take depositions in this uncontested case.⁵

2. Plaintiffs' motion also violated Rule 21 of the Texas Rules of Civil Procedure, and this Court's local rules "Our rules of civil procedure prescribe guidelines to ensure the parties receive notice **and a meaningful opportunity to be heard.**" *B. Gregg Price, P.C. v. Series 1 - Virage Master LP*, 661 S.W.3d 419, 423 (Tex. 2023) (emphasis added). Accordingly, Rule 21 requires no less than three days' notice before a court rules on any application to the court for an order. As the Third District Court of Appeals has made clear, Rule 21 generally requires motions to be written and presented at least three days before a hearing.⁶ *Woollett v. Matyastik*, NO. 03-99-00069-CV, 1999 Tex. App. LEXIS 9677, at *4 (Tex. App.—Austin Apr. 2, 1999, no pet.). Without such notice, OAG was deprived of the opportunity to present evidence or a meaningful argument in response. *Id.*

Additionally, Travis County Local Rule 2.7 operates to extend Rule 21's three-day notice period to a 10-day notice period by requiring that "[n]o setting will be accepted after the Friday preceding the announcement period except by agreement of all parties." Travis Co. R. 2.7. The

⁵ Further, had the Court allowed response, OAG's counsel would have pointed out conflicts with some of the dates unilaterally selected by Plaintiffs' counsel and endorsed by the Court even if, purely *arguendo*, any discovery was appropriate and that, as discussed *supra*, these changed circumstances *at least* obviated the need for apex depositions.

⁶ As in *Woollett*, "[n]othing in the record suggests that an emergency existed which required the court to act without notice to the parties," *Id.*, at *4, because no emergency, or any circumstance even approaching an "emergency" that could excuse the clear denial of basic due process existed.

"announcement period" is the week before the hearing. *Id.* 3.2(a). Accordingly, a hearing on Plaintiffs' proposed supplemental order should not have taken place prior to the week beginning Monday, January 29.

As Defendant's counsel's email response set out, Plaintiffs' application for the entry of an order could have, and should have, been filed with the Court, properly noticed, and set for a hearing. Under the circumstances, which clearly do not demonstrate any emergency, anything less is a clear denial of basic due process.

Prayer

For all the foregoing reasons, OAG respectfully requests that the Court enter the attached Proposed Judgment, subject to the Court's determination of Plaintiffs' damages and attorneys' fees. OAG also respectfully requests the Court to reconsider and vacate its December 22, 2023 January 19, 2024 Supplemental Order compelling depositions of four apex witnesses, which was issued without due process guarantees of notice and opportunity to respond as well as in violation of Rule 21 and, if Plaintiffs continue to seek an order compelling and setting depositions, require Plaintiffs' compliance with the Rules to afford Defendant a reasonable opportunity to respond and be heard.

Respectfully submitted,

Lewis Brisbois Bisgaard & Smith LLP

/s/ William S. Helfand

William S. Helfand

Texas Bar No. 09388250

24 Greenway Plaza, Suite 1400

Houston, Texas 77046

(713) 659-6767 Telephone

(713) 759-6830 Facsimile

bill.helfand@lewisbrisbois.com

Attorneys for Defendant,

Office of the Attorney General of Texas

Certificate of Service

I served a true and correct copy of this motion on all counsel of record by and through the Court's electronic filing system on January 23, 2024.

/s/ William S. Helfand
William S. Helfand

EXHIBIT 1

Helfand, Bill

From: Helfand, Bill
Sent: Tuesday, January 23, 2024 12:05 PM
To: Don Tittle; Tom Nesbitt
Cc: TJ Turner; jknight@ebbklaw.com
Subject: RE: D-1-GN-20-006861 Brickman, et al. v. Office of the Attorney General of TX

Gentlemen,

I appreciate that everyone has other matters to which they must attend, but if we are not going to agree on a path forward – even a temporary one - I must get the issue of the Court's January 19, 2024 order, entered in derogation of Rule 21 and the local rules, before the Court without further delay.

While the motion I intend to file will address both matters, the emergency nature is not specifically the OAG's request to enter a judgment – as I have proposed and on which I have invited your comments – but rather the issue of whether any discovery is appropriate and, even if, purely *arguendo*, it is that the Plaintiffs and the court should have afforded the OAG the due process required by the state and local rules before the Court entered the January 19th order setting these depositions.

Accordingly, if the Plaintiffs are all willing to agree to set aside the January 19, 2024 order, without prejudice to requesting such relief later by filing and setting a motion that accords with the state and local rules, to allow us more time to confer about the prospect of the entry of an agreed judgment on liability and a procedure to get the issue of damages decided by Judge Mauzy, as assigned, I don't need to seek an emergency hearing and, possibly, mandamus relief and a stay order.

Please let me know if we can agree to do at least this today, so we may continue a discussion on how to get this case to a final judgment in favor of all plaintiffs as promptly and expeditiously as possible.

Absent an agreement, I will have to seek an emergency hearing from the Court. Accordingly, one way or another, please let me hear from you as to the Plaintiffs' joint or several position(s) in the next few hours.

Thank you,

Bill

Bill Helfand
Partner

Lewis, Brisbois, Bisgaard & Smith
Houston and Salt Lake City
832.460.4614 Direct

Helfand, Bill

From: Tom Nesbitt <tnesbitt@dnaustin.com>
Sent: Tuesday, January 23, 2024 12:00 PM
To: Helfand, Bill
Cc: TJ Turner; don@dontittlelaw.com; jknight@ebbklaw.com
Subject: [EXT] RE: D-1-GN-20-006861 Brickman, et al. v. Office of the Attorney General of TX

Bill:

All Plaintiffs will oppose a motion to vacate the January 19 supplemental order.

Also, all Plaintiffs will oppose a motion for entry of judgment at this time.

Tom

Tom Nesbitt

(512) 617-5562 direct

EXHIBIT 4

From: Tom Nesbitt <tnesbitt@dnaustin.com>
Sent: Thursday, January 18, 2024 1:18 PM
To: batool.fatima@traviscountytx.gov; elliott.Beck2@traviscountytx.gov
Cc: Michelle Williamson; TJ Turner; don@dontittlelaw.com; jknight@ebbklaw.com; Helfand, Bill; Garrard, Dawn; Wood, Sean; Jones, Courtney
Subject: [EXT] RE: Hearing 12/20; D-1-GN-20-006861 Brickman, et al. v. Ken Paxton Attorney General of TX
Attachments: Emails Seeking Deposition Dates.pdf; 20240118 Supplemental Order.docx; 511714.pdf



This message needs your attention

- You've never replied to this person.

Report or Mark as Safe

Ms. Fatima and Mr. Beck:

I write pursuant to Judge Soifer's December 22 order (which is attached) to request a supplemental order setting the dates of the depositions of Ken Paxton, Brent Webster, Lesley French Henneke and Michelle Smith. The following email is addressed to Judge Soifer, but I am not copying her on this email. I am copying all counsel of record.

Judge Soifer:

On December 22, this Court ordered that Kenneth Warren Paxton, Brent Webster, Lesley French Henneke and Michelle Smith appear for depositions not earlier than January 16 and not later than February 9, 2024. The Court further ordered the parties to promptly negotiate in good faith to schedule these depositions on dates consistent with the Court's order. The Court further ordered the parties to notify the Court if the parties had reached impasse in such negotiations and request a supplemental order setting the already-ordered depositions on specific dates.

OAG sought mandamus relief from your order in both the 3rd Court of Appeals and the Texas Supreme Court and lost in both attempts.

Plaintiffs have made several attempts to negotiate in good faith to schedule the depositions pursuant to this Court's order. Plaintiffs have offered numerous deposition dates between January 16 and February 9 (see enclosed email communications). Efforts to confer have been fruitless. OAG has offered no dates for depositions. None whatsoever. As such, per the Court's order, Plaintiffs are requesting the Court to issue a supplemental order setting specific deposition dates. A proposed order in Microsoft Word is enclosed.

Finally, the OAG filed a pleading today and issued a press release claiming this case is over. This case is not over. The Court's December 22 order remains in effect. And we ask the Court to supplement it with dates for the depositions this Court already ordered.

Tom Nesbitt

Counsel for Plaintiff James Blake Brickman

(512) 617-5562 direct

JAMES BLAKE BRICKMAN,	§	IN THE DISTRICT COURT
DAVID MAXWELL,	§	
J. MARK PENLEY, and	§	
RYAN M. VASSAR	§	
Plaintiffs,	§	
	§	TRAVIS COUNTY, TEXAS
vs.	§	
	§	
OFFICE OF THE ATTORNEY GENERAL	§	
OF THE STATE OF TEXAS	§	
Defendant	§	250th JUDICIAL DISTRICT

SUPPLEMENTAL ORDER SETTING TIME AND PLACE OF DEPOSITIOS OF KEN PAXTON, BRENT WEBSTER, LESLEY FRENCH HENEKE AND MICHELLE SMITH

On December 22, 2023, the Court ordered that Warren Kenneth Paxton, Brent Webster, Lesley French Henneke and Michelle Smith appear for oral depositions no later than February 9, 2024, and ordered the parties to negotiate in good faith to schedule these depositions consistent with this order. OAG failed to negotiate in good faith to schedule these depositions. This Court’s December 22, 2023 order is hereby supplemented as follows:

Warren Kenneth Paxton is ORDERED to appear for and answer questions in his oral deposition on February 1, 2024 at 9:00 a.m. at Cain & Skarnulis, PLLC, 303 Colorado Street, Suite 2850, Austin, Texas 78701.

Brent Webster is ORDERED to appear for and answer questions in his oral deposition on February 2, 2024 at 9:00 a.m. at Cain & Skarnulis, PLLC, 303 Colorado Street, Suite 2850, Austin, Texas 78701.

Lesley French Henneke is ORDERED to appear for and answer questions in her oral deposition on February 7, 2024 at 9:00 a.m. at Cain & Skarnulis, PLLC, 303 Colorado Street, Suite 2850, Austin, Texas 78701.

Michelle Smith is ORDERED to appear for and answer questions in her oral deposition on February 9, 2024 at 9:00 a.m. at Cain & Skarnulis, PLLC, 303 Colorado Street, Suite 2850, Austin, Texas 78701.

Signed this ____ day of January, 2024

Jan Soifer
District Judge

EXHIBIT 5

From: Batool Fatima <Batool.Fatima@traviscountytx.gov>
Sent: Friday, January 19, 2024 10:06 AM
To: Tom Nesbitt; TJ Turner; don@dontittlelaw.com; jknight@ebbklaw.com; Helfand, Bill; Garrard, Dawn; Wood, Sean; Jones, Courtney
Cc: Elliott Beck
Subject: [EXT] RE: Hearing 12/20; D-1-GN-20-006861 Brickman, et al. v. Ken Paxton Attorney General of TX
Attachments: Brickman v OAG Supplemental Depo Order - executed.pdf



This message needs your attention

- You've never replied to this person.

Report or Mark as Safe

Good morning:

Attached please find the signed Order.

Best,

Batool Fatima

Judicial Executive Assistant
345th Judicial District Court - The Honorable Jan Soifer
P.O. Box 1748
Austin, Texas 78767
(512) 854-9712

From: Tom Nesbitt <tnesbitt@dnaustin.com>
Sent: Thursday, January 18, 2024 1:18 PM
To: Batool Fatima <Batool.Fatima@traviscountytx.gov>; Elliott Beck <Elliott.Beck2@traviscountytx.gov>
Cc: Michelle Williamson <Michelle.Williamson@traviscountytx.gov>; TJ Turner <tturner@cstrial.com>; don@dontittlelaw.com; jknight@ebbklaw.com; bill.helfand@lewisbrisbois.com; dawn.garrard@lewisbrisbois.com; sean.wood@lewisbrisbois.com; courtney.jones@lewisbrisbois.com
Subject: [CAUTION EXTERNAL] RE: Hearing 12/20; D-1-GN-20-006861 Brickman, et al. v. Ken Paxton Attorney General of TX

CAUTION: This email is from OUTSIDE Travis County. Links or attachments may be dangerous. Click the Phish Alert button above if you think this email is malicious.

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OAG sought mandamus relief from your order in both the 3rd Court of Appeals and the Texas Supreme Court and lost in both attempts.

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Finally, the OAG filed a pleading today and issued a press release claiming this case is over. This case is not over. The Court's December 22 order remains in effect. And we ask the Court to supplement it with dates for the depositions this Court already ordered.

Tom Nesbitt
Counsel for Plaintiff James Blake Brickman
(512) 617-5562 direct

JAMES BLAKE BRICKMAN,	§	IN THE DISTRICT COURT
DAVID MAXWELL,	§	
J. MARK PENLEY, and	§	
RYAN M. VASSAR	§	
Plaintiffs,	§	
	§	TRAVIS COUNTY, TEXAS
vs.	§	
	§	
OFFICE OF THE ATTORNEY GENERAL	§	
OF THE STATE OF TEXAS	§	
Defendant	§	250th JUDICIAL DISTRICT

SUPPLEMENTAL ORDER SETTING TIME AND PLACE OF DEPOSITIOS OF KEN PAXTON, BRENT WEBSTER, LESLEY FRENCH HENEKE AND MICHELLE SMITH

On December 22, 2023, the Court ordered that Warren Kenneth Paxton, Brent Webster, Lesley French Henneke, and Michelle Smith appear for oral depositions no later than February 9, 2024, and ordered the parties to negotiate in good faith to schedule these depositions consistent with this Order. OAG failed to negotiate in good faith to schedule these depositions. This Court’s December 22, 2023, Order is hereby supplemented as follows:

Warren Kenneth Paxton is ORDERED to appear for and answer questions in his oral deposition on February 1, 2024, at 9:00 a.m. at Cain & Skarnulis, PLLC, 303 Colorado Street, Suite 2850, Austin, Texas 78701.

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Lesley French Henneke is ORDERED to appear for and answer questions in her oral deposition on February 7, 2024, at 9:00 a.m. at Cain & Skarnulis, PLLC, 303 Colorado Street, Suite 2850, Austin, Texas 78701.

Michelle Smith is ORDERED to appear for and answer questions in her oral deposition on February 9, 2024, at 9:00 a.m. at Cain & Skarnulis, PLLC, 303 Colorado Street, Suite 2850, Austin, Texas 78701.

SIGNED on January 19, 2024.



Jan Soifer, Judge Presiding

EXHIBIT 6

From: Helfand, Bill
Sent: Friday, January 19, 2024 10:07 AM
To: batool.fatima@traviscountytexas.gov; eliott.Beck2@traviscountytexas.gov
Cc: Michelle Williamson; TJ Turner; don@dontittlelaw.com; jknight@ebbklaw.com; Tom Nesbitt; Wood, Sean; Jones, Courtney
Subject: RE: Hearing 12/20; D-1-GN-20-006861 Brickman, et al. v. Ken Paxton Attorney General of TX

Ms. Fatima and Mr. Beck,

While Mr. Nesbitt's request is clearly an improper effort to circumvent the rules of procedure, if you find it appropriate at all to submit Mr. Nesbitt's email to Judge Soifer, instead of requiring him to follow the rules of procedure to file a motion for any relief his client seeks, please pass the following information to Judge Soifer on behalf of the OAG:

First, it is inappropriate for a litigant to request any order, supplemental or otherwise, via email to the court clerk let alone the judge. To the extent one or more Plaintiffs believe they are entitled to the entry of any order, Plaintiffs should be directed to file a motion with the Court, to permit both parties to submit briefing on the issue that addresses the current circumstances.

Indeed, as Mr. Nesbitt points out, the circumstances of this lawsuit have changed significantly since the entry of the prior order to which Plaintiff's counsel refers, although Plaintiff's counsel does not comply with his duty of candor to report that OAG has answered Plaintiffs' amended petition by responding that the OAG does not choose to defend Plaintiffs' allegations of liability or damages, as any litigant is privileged to do. Of course, even that prior order did not invite counsel to seek additional relief from the Court by email.

To be sure, **there are no remaining disputed issues in this lawsuit.** Accordingly, no discovery is necessary or appropriate. Indeed, Since there are no disputed issues to "discover," Plaintiff's counsel's demand for depositions lays bare the apparent illegitimate effort to utilize a lawsuit in which there are no disputed issues and the Defendant does not oppose entry of a judgment against it within the jurisdictional limits of the statutory cause of action, to harass and expose the Defendant (i.e. the State of Texas) to unnecessary expense for purposes that can only be for other than resolving any claim in this lawsuit, which, again, the OAG chooses not to defend. Of course, Plaintiff's counsel's request also increases Plaintiff's counsel's fees without proper purpose, all at the expense of the people of the State of Texas.

If, notwithstanding the OAG's clear answer that the OAG chooses not to contest any allegation in this case and does not contest the immediate entry of judgment within the jurisdictional limits of the statutory cause of action, one or more Plaintiffs believes some discovery in this lawsuit is permissible and appropriate in lieu of the immediate entry of a judgment in favor of Plaintiffs, the Court should require any such Plaintiff(s) to submit a motion explaining the legal basis for discovery and allow Defendant to respond and, should the Court deem it necessary, to appear before the Court for hearing on these changed circumstances – which clearly render any request for discovery moot – before the Court considers, let alone enters, any further orders.

Respectfully,

Bill

Bill Helfand

Partner

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

James Blake Brickman,
et al.,

Plaintiffs,

v.

Office of the Attorney General
of Texas,

Defendant.

In the District Court of

Travis County, Texas

250th Judicial District

ORDER GRANTING THE OFFICE OF THE ATTORNEY GENERAL'S MOTION FOR ENTRY OF JUDGMENT AND TO VACATE THE COURT'S JANUARY 19, 2024 ORDER

The Office of the Attorney General of Texas's motion for reconsideration of the Court's January 19, 2024 order is GRANTED. It is therefore:

ORDERED that the Court's January 19, 2024, order concerning Plaintiffs' request to take oral depositions is hereby **VACATED** in its entirety. It is, further,

ORDERED that Plaintiff shall comply with Texas Rule of Civil Procedure 21 and the Court's local rules regarding any request for the court to issue orders or provide any other relief appropriate to this case.

IT IS ALSO ORDERED that Defendant's Motion for Entry of Judgment is GRANTED and the Court will separately enter the proposed judgment on liability forthwith, subject to a final judgment upon the Court's determination of Plaintiffs' damages, including attorney's fees.

SIGNED this _____ day of _____, 2024.

JUDGE PRESIDING