

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION**

**RODNEY MAHAN, JOHN H.  
HENLEY, III, JOEL BARTON, JR.,  
JOHN RIGGINS, AND JUSTIN SIKES**  
*Plaintiffs*

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V.

**CIVIL ACTION NO. 9:20-CV-00119**

**THE TEXAS DEPARTMENT OF  
PUBLIC SAFETY, STEVEN MCCRAW,  
AND STEVEN MACH**  
*Defendants*

**JURY DEMANDED**

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

TO THE HONORABLE RON CLARK:

Plaintiffs, Rodney Mahan, John H. Henley, III, Joel Barton, Jr., John Riggins, and Justin Sikes (“Plaintiffs” or the “Troopers”), file this First Amended Complaint and would respectfully show the Court as follows:

**NATURE OF THE CASE**

1. Four veteran Texas Department of Public Safety Troopers reported to their immediate superiors and then to the Office of the Inspector General that Department of Public Safety Sergeant Robert Shugart was enforcing an unlawful quota system for arrests and traffic stops at the Center and Nacogdoches duty stations, whereby officers under Sgt. Shugart’s command were expected to make more than a certain number of arrests and traffic stops or be subjected to ridicule and harassment by Sgt. Shugart—a clear violation of Texas law. Sgt. Shugart also offered monetary and other prizes to the troopers that had the most arrests and traffic stops in a period, in violation of Texas law and Texas Department of Public Safety policy.

2. Following their reporting of Sgt. Shugart's unlawful activity, Sgt. Shugart and others within the Texas Department of Public Safety—including senior members of the department's leadership—undertook a systematic campaign of retaliation and intimidation to silence and punish the Troopers for speaking out about the unlawful quota system. Other troopers who participated in the OIG investigation were also retaliated against for speaking out about Sgt. Shugart's activities. Among other acts of retaliation, the Troopers were transferred to other duty stations away from their families, denied promotion opportunities, violently berated in front of others, denied vacation, and forced to work dangerously long hours, all in violation of policy.

3. The Troopers file suit pursuant to 42 U.S.C. § 1983 and in accordance with the *Ex Parte Young* doctrine against state actors in their official capacities for prospective injunctive relief to prevent continued for violations of their First Amendment rights to free speech and their First Amendment rights to petition and seek a declaratory judgment. The Troopers also file suit for violations of *Texas Whistleblower Act*.

#### PARTIES

4. Plaintiff Rodney Mahan is a Corporal with the Texas Department of Public Safety. Corporal Mahan has 32 years of service with the Texas Department of Public Safety. Corporal Mahan resides in Nacogdoches County, Texas.

5. Plaintiff John H. Henley, III is a Senior Trooper with the Texas Department of Public Safety. Trooper Henley has 25 years of service with the Texas Department of Public Safety. Senior Trooper Henley resides in Nacogdoches County, Texas.

6. Plaintiff Joel Barton, Jr. is a Trooper III with the Texas Department of Public Safety. Trooper Barton has 12 years of service with the Texas Department of Public Safety. Trooper Barton resides in Nacogdoches County, Texas.

7. Plaintiff John Riggins is a Trooper with the Texas Department of Public Safety. Trooper Riggins has 16 years of service with the Texas Department of Public Safety. Trooper Riggins resides in Nacogdoches County, Texas.

8. Plaintiff Justin Sikes is a Trooper with the Texas Department of Public Safety. Trooper Sikes has 5 years of service with the Texas Department of Public Safety. Trooper Sikes resides in Angelina County, Texas.

9. Defendant THE TEXAS DEPARTMENT OF PUBLIC SAFETY (“Defendant” or “DPS”) is an agency of the State of Texas. DPS has appeared through counsel in this case. DPS may be served with this First Amended Complaint through its counsel of record.

10. Defendant Steven C. McCraw is the Director of the Texas Department of Public Safety. Director McCraw is sued in his official capacity in accordance with the *Ex Parte Young* doctrine. He may be served with process at 5805 North Lamar Blvd., Austin, Texas 78752, or PO Box 4087, Austin TX 78773.

11. Defendant Steven P. Mach is the Chairman of the Texas Public Safety Commission, the governmental body that oversee the Texas Department of Public Safety. Chairman Mach is sued in his official capacity in accordance with the *Ex Parte Young* doctrine. Chairman Mach may be served with process at P.O. Box 130630, Houston, Texas 77219-0630.

#### JURISDICTION AND VENUE

12. Pursuant to 28 U.S.C. §§ 1331 and 1343, this Court has federal question jurisdiction because the action is brought pursuant to 42 U.S.C. § 1983 and the *Ex Parte Young* doctrine for violations of Plaintiffs’ rights guaranteed to them by the United States Constitution, specifically their First Amendment rights to free speech and petition.

13. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over Plaintiffs' claims based on Texas law.

14. Venue is proper in the U.S. District Court for the Eastern District of Texas, Lufkin Division, pursuant to 28 U.S.C. § 1391(b) because the unlawful practices alleged below were committed therein.

#### CONDITIONS PRECEDENT

15. All conditions precedent has been performed or have occurred.

#### FACTS

**A. Sgt. Shugart was “hostile,” “discourteous,” and “unprofessional” to subordinates implemented an illegal quota system for arrests and traffic stops at the Center duty station.**

16. After assuming of command of the Center DPS Duty Station, in 2016, Sgt. Shugart almost immediately began to berate, belittle, and harass troopers under his command. Indeed, Dwight D. Mathis, the Chief of the DPS Highway Patrol Division, would later describe Sgt. Shugart's conduct towards his subordinates as “hostile,” “discourteous,” and “unprofessional”, and in direct violation of four of the DPS Ten General Orders, specifically:

Rule 2: To practice, at all times, the moto of the Department: “Courtesy, Serve, Protection.”

Rule 4: To know and obey at all time the U.S. and state constitutions, federal and state laws, and lawful orders and instructions.

Rule 7: To conduct my duties in a straightforward, honest, and respectful manner, relying upon poise, competence, and soundness of character.

Rule 10: To conduct myself, on and off duty, in a manner that merits the voluntary praise of those with whom I come in contact, so that my actions reflect well upon myself, the department, and the State of Texas.

17. In addition to creating an abusive and oppressive work environment, Sgt. Shugart also implemented a “program” where he demanded that troopers under his command make a certain number of traffic stops or arrests, or else face his wrath.

18. Trooper Sikes was stationed at the Center duty station under Sgt. Shugart. Although he reported to the Center Duty station and Sgt. Shugart, Trooper Sikes was one of two troopers assigned to cover San Augustine County, which is smaller in population than Shelby County, where the Center duty station is physically located.

19. As with other troopers under his command at the Center duty station, Sgt. Shugart was hostile, discourteous, and unprofessional to Trooper Sikes. One day Sgt. Shugart called Trooper Sikes into his office and told Trooper Sikes, “you give me 15 stops a day and 15 drunks a year, I’ll stop f\*\*king with you.” Trooper Sikes asked for that to be put in writing and Sgt. Shugart screamed “Get out!”

20. Moreover, Sgt. Shugart told Trooper Sikes—one of only two troopers responsible for patrolling the entirety of San Augustine County—that he should not go to San Augustine County. Rather, Sgt. Shugart told Trooper Sikes to “stay in Center and get more stops.” Sgt. Shugart wanted Trooper Sikes to prioritize his number of stops over patrolling San Augustine County—the county that Trooper Sikes was supposed to protect and serve.

21. Sgt. Shugart told another Center trooper under his command, “you give me 12 stops a day and 12 drunks a year, I’ll leave you alone.” In other words, Sgt. Shugart expected that Trooper Smith make 12 traffic stops per day and make 12 DWI arrests per year or else Sgt. Shugart would make life hell for Trooper Smith.

22. Sgt. Shugart also demanded that another Center trooper make 15 stops a day and arrest 15 “drunks” a year.

23. Quota systems, like Sgt. Shugart's, that evaluate, promote, compensate, or discipline peace officers based on a predetermined or specified numbers of traffic violations are **illegal** under Texas law. *See* TEX. TRANSP. CODE § 720.002. Further, state agencies, including DPS, may not require or suggest to a peace officer that the peace officer is required or expected to issue a predetermined or specified number of any type or combination of types of traffic citations within a specified period. *See id.* Indeed, any official who violates this law is subject to immediate removal from their position. *See* TEX. TRANSP. CODE § 720.002(e).

24. In 2017, Sgt. Shugart transferred to the Nacogdoches duty station.

**B. Sgt. Shugart arrived at the Nacogdoches duty station and implemented a similar illegal quota system for arrests and traffic stops and awarded monetary prizes to troopers who had the most arrests and traffic stops.**

25. Upon his arrival at the Nacogdoches Duty Station in 2017, Sgt. Shugart began to implement the same "program" where troopers under his command were expected to make a certain amount of arrests and traffic stops each month. Sgt. Shugart also began holding competitions where Troopers were given prizes, including monetary prizes, gift cards, and coolers, for the highest number of arrests and traffic stops. In these "competitions," troopers in the same small office were pitted against each other. Troopers with the highest numbers of arrests and citations were rewarded, while troopers with the lowest numbers of arrests and citations were harassed, ridiculed, and denied benefits by Shugart.

26. For example, in February 2018, Sgt. Shugart and Captain Michelle McDaniel, the area commander, held an award's ceremony and gave a gift card, tumbler, and a plaque to a trooper in the Nacogdoches office for the most criminal arrests in the area.

27. Corporal Mahan and Troopers Barton, Henley, and Riggins refused to participate the in the competitions. They simply continued to do what they swore an oath to do: protect and serve.

**C. The Troopers reported Sgt. Shugart’s illegal quota system and other violations of DPS policy to their superiors, who purportedly conducted an internal investigation that turned out to be a cover-up.**

28. In September 2018, Troopers Henley and Riggins met with Captain McDaniel. Troopers Henley and Riggins reported the quota system and prizes, as well as other ongoing personnel issues with Sgt. Shugart. Trooper Riggins then met with Major Terry Truett, the Division Commander for the Southeast Texas Region (Region 2).

29. Following these meeting, Major Truett assigned Lieutenant Carl Currie, a subordinate in Truett’s Houston Office, to investigate the ongoing issues at the Nacogdoches duty station.<sup>1</sup> The process is known internally as a Division Referral.

30. On or about October 15, 2018, Lt. Currie did meet with Trooper Barton and the others in the Lufkin office to discuss their concerns about Sgt. Shugart and the quota system as part of what they believed to be a serious investigation by their chain of command. In reality, Lt. Currie’s “investigation” was nothing more than a cover-up and white washing of Sgt. Shugart’s unlawful conduct.

**D. Sgt. Shugart retaliates against the Troopers for reporting him to the Regional Commander; the Regional Commander and other DPS officials do nothing.**

31. On October 25, 2018, 10 days after the Troopers met with Lt. Currie, Sgt. Shugart called Trooper Barton into his office and instructed him to close the door. Sgt. Shugart then told Trooper Barton that he “was fully aware of the investigation.” Sgt. Shugart also accused Barton of “going rogue.”

32. Later the same day, Sgt. Shugart exploded on Trooper Riggins in the Nacogdoches office. Shugart berated Riggins because a door was closed. During his rage, Sgt. Shugart put his finger in Trooper Riggins’ face and screamed and yelled at Trooper Riggins in front of his colleagues.

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<sup>1</sup> Major Truett offices in the Houston DPS office.

Following these two incidents, Trooper Barton contacted Lt. Currie and informed Lt. Currie about what Sgt. Shugart had told him and about Sgt. Shugart exploding on Trooper Riggins. Troopers Barton and Riggins also informed their Lieutenant about these incidents.

33. After this point, Sgt. Shugart repeatedly retaliated against Corporal Mahan and Troopers Barton, Henley, and Riggins. Sgt. Shugart also harassed and berated the Troopers. Sgt. Shugart even stalked the Troopers by following them around in his unmarked DPS car.

34. In January 2019, while Lt. Currie was purportedly still investigating, Trooper Barton tried to apply for a promotion to a position on the DPS Hostage Negotiation Team. Trooper Barton's application was time sensitive and needed Sgt. Shugart's approval. Sgt. Shugart never responded to Trooper Barton, so Trooper Barton was unable to submit his application. Thus, Trooper Barton was denied the promotion.

35. Thereafter, Lt. Currie concluded his investigation. In announcing the results of Lt. Currie's "investigation," Major Truett told the Troopers the issues were nothing more than "miscommunications." Lt. Currie's report did not mention the illegals quotas, monetary awards, and retaliation. In other words, Lt. Currie completely and, no doubt, purposefully omitted the most serious complaints from his report.

**E. The Troopers filed an official complaint; the Office of the Inspector General launched an investigation; Sgt. Shugart, Captain McDaniel, and other within DPS retaliated against the Troopers.**

36. Because of the continued harassment, and the fact that Lt. Currie and Major Truett did nothing, Corporal Mahan and Troopers Barton, Henley, and Riggins filed an official complaint letter with DPS, specifically with Kevin Meade, DPS's Chief Dispute Resolution Officer. The official complaint was filed on February 8, 2019.



37. On or about April 1, 2019, Lieutenant Ric Lopez (“OIG Lopez”), with the Office of the Inspector General, began a new investigation. The Troopers provided documents, affidavits, statements, and other evidence to OIG Lopez as part of the investigation.

38. On April 4, 2019, Corporal Mahan and Troopers Barton and Riggins observed Sgt. Shugart spying on them while they were on break. Trooper Riggins then called Sgt. Shugart; Sgt. Shugart told Trooper Riggins that he was “watching them; we’re all watching y’all.” The Troopers then contacted OIG Lopez about this incident.

39. Because of this incident and other acts of retaliation by Sgt. Shugart, OIG Lopez asked Jason Taylor, the Region Commander, to remove Sgt. Shugart as the Nacogdoches area sergeant until the investigation was completed. *See DPS General Manual* § 07.42.09 (“Department employees shall not retaliate against individuals who participate in the administrative complaint process as either a complainant or witness.”). OIG Lopez’s request was refused.

40. Trooper Sikes did not want to speak with OIG Lopez originally because he was fearful of retaliation from Sgt. Shugart and others in DPS. Trooper Sikes, however, was told that he was required to speak with OIG Lopez

41. When he met with OIG Lopez, Trooper Sikes told him “I don’t want to talk to you because I know that I’ll be retaliated against.” After OIG Lopez assured Trooper Sikes that there would be no retaliation, Trooper Sikes told OIG Lopez about the quotas that Sgt. Shugart placed on him and other Troopers in the Center duty station and the hostile and oppressive environment Sgt. Shugart created. Trooper Sikes also told OIG Lopez about Sgt. Shugart telling him not to go to San Augustine County but to stay in Shelby County where he could get more traffic stops.

42. On April 18, 2019, Stephen Shires, the Shelby County District Attorney, sent an urgent letter to Assistant Attorney General Lance Kutnick, the Chief of the Criminal Prosecutions

Division for the Texas Attorney General's Office concerning Sgt. Shugart.<sup>2</sup> Attorney Shires asked Assistant AG Kutnick to initiate a criminal investigation into Sgt. Shugart's quota system as well as possible abuse of official capacity, official oppression, and obstruction-retaliation by Sgt. Shugart.

43. Specifically, Attorney Shires stated:

I have reviewed statements from a number of Troopers that raise concerning questions about the tactics that Sgt. Shugart employed here in Shelby County, and elsewhere in East Texas. From their statements, it appears that Sgt. Shugart was mandating that the Troopers under his command maintain a quota of stopping cars and/or making arrests in clear violation of TEX. TRANSP. CODE Ann. §720.002 (Lexis-Nexis 2019). It appears from their statements that he rewarded Troopers that "met their quota" with prizes.

Further, I am concerned that there may be additional issues that arise regarding the Troopers that did not toe the line. The activities in question could possibly implicate Chapter 39 of the Texas Penal Code, specifically - Section 39.02 (Abuse of Official Capacity) and Section 39.03 (Official Oppression). Finally, the activities may also violate TEX. PENAL CODE Ann. §36.06 (Lexis-Nexis 2019)- Obstruction-Retaliation.

.... Also, very importantly, it is my understanding that an investigation is currently being conducted by OIG Lieutenant Ric Lopez. Lt. Lopez will certainly have much more information than I have, including recorded statements that contain additional detail. I have not spoken to Lt. Lopez, nor have I seen any work product from him. However, as I said, it is my understanding that he has a great deal more information concerning this matter.

44. Shortly after Shires' letter, Captain McDaniel ordered to Corporal Mahan and Trooper Riggins to report to Beaumont for an immediate meeting with her. At the meeting, in May 2019, Captain McDaniel told Corporal Mahan and Trooper Riggins that they were being transferred effective immediately to Houston County. During Trooper Riggins' meeting with Captain McDaniel, she explicitly referenced the Division Referral and the OIG investigation as the reasons why Corporal Mahan and Trooper Riggins were being transferred.

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<sup>2</sup> The Criminal Prosecutions Division is responsible for investigating abuses of office by state officials and employees.

45. Importantly, Corporal Mahan and Trooper Riggins both live in Nacogdoches County; thus, the transfer to Houston County and long travel-time placed a tremendous burden on Trooper Riggins and Corporal Mahan and their families. In fact, Trooper Riggins was involved in a serious traffic wreck while traveling between his home and Houston County due to fatigue.

46. Moreover, the transfer of Corporal Mahan and Trooper Riggins to Houston County left the Nacogdoches County Office critically understaffed, with only 7 troopers—there are supposed to be 11 DPS troopers in Nacogdoches. The understaffing situation was so serious that Nacogdoches County Sherriff Jason Bridges sent a letter directly to Director McCraw requesting an explanation because Nacogdoches County Sheriff’s Deputies rely on troopers for backup and support under a multitude of circumstances. **In short, the retaliation of Sgt. Shugart, Captain McDaniel, and others in DPS was putting the lives and safety of Nacogdoches County residents at risk.**

47. Sgt. Shugart continued to retaliate against Troopers Barton and Henley—who were among the most senior troopers remaining in Nacogdoches—by making them work the least desirable shifts such as the late nights. Sgt. Shugart also constantly told Troopers Barton and Henley that “we are watching you, watching everything you do.” Sgt. Shugart even admonished an office secretary for helping Trooper Riggins with some paperwork on a case pending in the Nacogdoches County Court at Law. Sgt. Shugart ordered the secretary not to assist Trooper Riggins anymore.

48. Trooper Sikes also experienced retaliation. For example, in September and October 2019—after he had spoken to OIG Lopez, DPS supervisors hid in unmarked cars and watched Trooper Sikes’ aunt’s house to make sure that Trooper Sikes was staying there and also watched Trooper Sikes’ home in Lufkin. The “observation” was so obvious that neighbors started talking about it and asking Trooper Sikes what he had done.

49. That fall, Trooper Sikes formally requested to have his office placed in a school—part of a safe school’s program implemented by Governor Abbott in the wake of the Santa Fe school shooting. Two sergeants in the area had been granted this ability, which allowed them to reside full-time in Lufkin with their families, as opposed to the more rural counties where their formal duty stations were located.

50. If Trooper Sikes’ request had been granted, he could have resided full-time with his wife and young children in Lufkin, while still working in San Augustine County. Of course, Trooper Sikes’ request was at first ignored and then denied.

51. In November 2019, Trooper Sikes met with Captain McDaniel and complained of ongoing retaliation and stalking. Nothing was done.

52. Because of these acts of retaliation, Trooper Sikes made the difficult decision not to apply for promotions or other benefits because he knew that he would always be denied.

**F. Once the OIG investigation was completed, the Chief of the Highway Patrol Division found that the Trooper’s complaints to be true and sustained them; yet, the retaliation by Sgt. Shugart, Captain McDaniel, Major Truett, and other continued.**

53. In September 2019, the Troopers were notified that OIG Lopez had completed his investigation and his report had been submitted to then Chief of the Highway Patrol Division, Ron Joy, for review.

54. On October 3, 2019, during an area-wide meeting, the Troopers and other troopers were informed that the investigation of Sgt. Shugart was “over and he was not going anywhere.” Those in attendance were then told that they were not authorized to contact the Office of the Inspector General anymore without approval from the chain of command. In other words, troopers were told that they were no longer able to report wrongdoing within DPS to the office who is responsible for investigating wrongdoing within DPS! *See DPS General Manual* § 7.42.03.1 (“individuals

may submit complaints regarding employee misconduct directly to the Office of Inspector General”).

55. Unsurprisingly, the retaliation grew worse following this meeting. On December 10, 2019, Trooper Barton sent a memo to his supervisor and OIG Lopez asking for the retaliation to stop.

56. On April 3, 2020, new appointed Chief Mathis sent a letter to Sgt. Shugart with his findings based on the OIG’s investigation. **The investigation found that the Troopers complaints about Shugart awarding improper gifts at Center and Nacogdoches were true.** The investigation also found that **“Between 2016 and 2019, Sergeant Shugart displayed a pattern of hostile, discourteous and unprofessional behavior towards subordinates assigned to the [Nacogdoches] and [Center] duty stations.”**

57. Chief Mathis went on to note that the **sustained** conduct by Sgt. Shugart violated four separate provisions of the DPS General Manual: Chapter 6, Section 06.23.00, Gift Prohibitions and Acceptance; Chapter 5, Section 05.06.04 Competency to Perform Duty; Chapter 5, Section 05.17.00 Courtesy; Chapter 6, Section 06.10.01 DPS Ten General Order.

58. As noted above, Sgt. Shugart also violated the following DPS General Orders:

- Rule 2: To practice, at all times, the moto of the Department: “Courtesy, Serve, Protection.”
- Rule 4: To know and obey at all time the U.S. and state constitutions, federal and state laws, and lawful orders and instructions.
- Rule 7: To conduct my duties in a straightforward, honest, and respectful manner, relying upon poise, competence, and soundness of character.
- Rule 10: To conduct myself, on and off duty, in a manner that merits the voluntary praise of those with whom I come in contact, so that my actions reflect well upon myself, the department, and the State of Texas.

59. Chief Mathis found that Sgt. Shugart's conduct was "in direct violation of the Public Safety Commission Rules, Title 37, Texas Administrative Code, Section 1.115, and of the General Manual, Chapter 6, Section 06.30.02" and, thus, Sgt. Shugart's conduct constituted "Major Infractions."

60. Despite violating four separate DPS rules and four of the ten DPS General Orders, Sgt. Shugart was only suspended for three days without pay.

61. Sgt. Shugart then appealed Chief Mathis' findings and his suspension. On April 28, 2020, the appeal was denied.

62. Finally, on May 6, 2020, Chief Mathis issued a memo to the Troopers with the respect to the OIG's investigation of Shugart—almost 9 months after the OIG's investigation had been completed. In the memo, Chief Mathis noted that **"Sergeant Shugart acted in a manner contrary to the Department's rules, regulations, and expectations of its employees."**

63. The next day—May 7, 2020—the Troopers received a Memo from Major Truett. During individual meetings with their superiors, the Troopers were told that rather than removing Shugart, the Troopers would be permitted to seek transfers and that there their transfer requests would be granted. The Troopers were also told that if choose to stay in Nacogdoches County—where they and their families live—or transfer to a neighboring county, then they would be forced to participate in a one-on-one mediation with Sgt. Shugart, the same man who tormented them for reporting his illegal activity.

64. Further, as part of Major Truett's memo, the Troopers were given highlighted portions of the DPS General Manual, with portions highlighted in a deliberate effort to silence them about everything that had transpired.

65. During a meeting with Trooper Henley, Major Truett stated: “the reason I wanted [the policy about not discussing department matters with unauthorized persons] in there, there’s just been a lot of out of school talking. I mean, we’ve had sheriff’s contacting – we’ve been having sheriffs writing letters. . . . an investigation shows that Sgt. Shugart’s been sustained. Regardless, it’s the department’s business. . . . All the talking needs to stop, and we need to move forward.”

66. When Trooper Henley asked for a copy of OIG Lopez’s report, Truett said “That – that letter that you got is all the department will send you.”

67. In another conversation, Major Truett stated that if OIG Lopez had asked him about removing Sgt. Shugart, “my answer would have been no, absolutely not.”

68. Major Truett told Trooper Barton, “Should you decide you don’t want to work for Sgt. Shugart anymore, you’ll be given the chance to voluntarily transfer out of the area outside of the normal transfer process. And you can pick anywhere in the region you want to go.”

69. When Troopers Henley and Barton asked about why certain events were left out of Lt. Currie’s report, Major Truett stated bluntly “I instructed him not to investigate that specific incident.”

70. Shockingly, when speaking with Trooper Barton, **Major Truett and the area lieutenant stated that they did not know that giving out monetary awards and prizes for the most stops and arrests was a policy violation.** The fact that senior DPS commanders “would have never thought that was a policy violation” is both surprising and concerning considering that there is a law that prohibits rewarding or incentivizing law enforcement officers for getting certain numbers of citations. *See* TEX. TRANSP. CODE § 720.002.

71. When the lieutenant stated that he had never given out such prizes himself, **Captain McDaniel chimed in, “There are other sergeant areas that have.”**

72. Unfortunately, Major Truett's promise of transfer was short lived. In fact, it was so short lived that Trooper Barton's transfer request was denied the following week!

73. More concerning, DPS officials have begun to engage in further retaliation towards the Troopers, including initiating sham investigations into past events. This retaliation is designed to force the Troopers to retire or leave DPS, all because they dared to reporting illegal activity by their superiors.

### LEGAL CLAIMS

#### COUNT ONE: EX PARTE YOUNG ACTION FOR INJUNCTIVE AND DECLARATORY RELIEF AGAINST DIRECTOR MCCRAW AND CHAIRMAN MACH

74. Plaintiffs file suit seeking prospective, injunctive relief and declaratory relief from a state actors based on ongoing violations of their First Amendment rights to free speech and petition.

*See Ex Parte Young*, 209 U.S. 123 (1908); *K.P. v. LeBlanc*, 729 F.3d 427, 439 (5th Cir. 2013).

75. Plaintiffs file suit against Director McGraw and Chairman Mach, state officers acting in their official capacity. *See id.*

#### REQUEST FOR PERMANENT INJUNCTIVE RELIEF

76. The Troopers seek a permanent injunction from this Court ordering Director McGraw and Chairman Mach to issue order that prohibits their subordinates: Sgt. Shugart, Captain McDaniel, Major Truett, and other employees within the DPS from retaliating and continuing to retaliate against the Troopers for their exercise of their First Amendment Rights of free speech and to petition in reporting Sgt. Shugart's unlawful quota and awards systems and participating in OIG investigation.



**A. Prospective Relief from Retaliation for Exercising First Amendment Rights to Free Speech**

77. The Troopers, public employees, engaged in protected speech by filing their official complaint with the Office of the Inspector General. *See Connick v. Meyer*, 461, U.S. 138, 146 (1983) (citing *Givhan v. Western Line Consolidated School District*, 439 U.S. 410 (1979)) (noting that “First Amendment protection applies when a public employee arranges to communicate privately with his employer, rather than to express his views publicly.”).

78. The speech was on a topic of public concern. Specifically, the speech concerned ongoing, unlawful activity within the DPS, a state agency.

79. Sgt. Shugart, Captain McDaniel, Major Truett, and others within DPS, all of whom are under the command of Director McCraw and Chairman Mach, retaliated against the Troopers, as set forth above, for exercising their First Amendment right to free speech.

80. The retaliatory actions of Sgt. Shugart, Captain McDaniel, Major Truett, and others within DPS caused and continue to cause the Troopers injuries and damages that would chill a person of ordinary firmness.

81. The retaliatory actions of Sgt. Shugart, Captain McDaniel, Major Truett, and others within DPS were substantially motivated by the Troopers’ reports to the OIG and the exercise of their First Amendment rights.

82. The retaliatory actions of Sgt. Shugart, Captain McDaniel, Major Truett, and others within DPS are ongoing and continuing. For example, the OIG has now launched an investigation trying to discipline Trooper Riggins for the events around one of Sgt. Shugart’s acts of retaliation! Additionally, Trooper Henley has been banned from the Nacogdoches office and cannot go there even on official business.

**B. Protection Relief from Retaliation for Exercising First Amendment Rights to Petition**

83. The right “to petition for a redress of grievances [is] among the most precious of the liberties safeguarded by the Bill of Rights.” *United Mine Workers v. Illinois State Bar Association*, 389 U.S. 217 (1967).

84. In filing the complaint regarding Sgt. Shugart’s unlawful quota system, the Troopers exercised their First Amendment right to petition.

85. Sgt. Shugart, Captain McDaniel, Major Truett, and others within DPS retaliated against the Troopers, as set forth above, for exercising their First Amendment right to petition. Further, the retaliatory actions of Sgt. Shugart, Captain McDaniel, Major Truett, and others within DPS caused the Troopers injuries that would chill a person of ordinary firmness.

86. The retaliatory actions of Sgt. Shugart, Captain McDaniel, Major Truett, and others within DPS were substantially motivated by the Troopers reports to the OIG and exercise of their First Amendment rights.

87. The retaliatory actions of Sgt. Shugart, Captain McDaniel, Major Truett, and others within DPS are ongoing and continuing. For example, the OIG has now launched an investigation trying to discipline Trooper Riggins for the events around one of Sgt. Shugart’s acts of retaliation! Additionally, Trooper Henley has been banned from the Nacogdoches office and cannot go there even on official business.

**REQUEST FOR DECLARATORY JUDGMENT**

88. As recently noted by the Supreme Court of the United States, “public employees do not renounce their citizenship when they accept employment, and this Court has cautioned time and again that public employers may not condition employment on the relinquishment of constitutional rights.” *Lane v. Franks*, 573 U.S. 228 (2014). “There is considerable value, moreover, in

encouraging, rather than inhibiting, speech by public employees. For “[g]overnment employees are often in the best position to know what ails the agencies for which they work.” *Id.* (citing *Waters v. Churchill*, 511 U. S. 661, 674 (1994) (plurality opinion)).

89. Therefore, the Troopers also seek a Declaratory Judgment from this Court finding that the provisions within the DPS’s *General Policy Manual*—in particular the provisions Major Truett highlighted in his memo to the Troopers, 06.30.02.6 and 06.30.02.13—are unconstitutional as applied, to the extent that it prohibits the Troopers and other DPS employees, who are all public employees, from exercising their First Amendment Rights to free speech and to petition, including reporting complaints to OIG and seeking legal counsel.

COUNT TWO: VIOLATION OF THE TEXAS WHISTLEBLOWER ACT AGAINST DPS<sup>3</sup>

90. The Troopers, veteran law enforcement officers with the DPS, are public employees.

91. The Troopers were employed by the Texas Department of Public Safety, a state agency, and a governmental unit.

92. Sgt. Shugart is also employed by DPS and acted in his official capacity in implementing the quota system and prize system.

93. The Troopers reported that Sgt. Shugart was violating state law and DPS policy by implementing a quota system for arrests and traffic stops and paying those with the most stops and arrests with monetary and other prizes. *See* TEX. TRANSP. CODE § 720.002. This was later confirmed by OIG Lopez’s investigation.

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<sup>3</sup> Counsel for Plaintiffs and the Texas Department of Public Safety have spoken regarding the general immunity from suit in federal court with respect to the *Texas Whistleblower Act* claims. Based on those conversations, the Texas Department of Public Safety has and will agree to this Court exercising supplemental jurisdiction over Plaintiff’s *Texas Whistleblower Act* claims.

94. The Troopers made their report in good faith to the appropriate law enforcement authority, the OIG and their superiors within the DPS.

95. The Trooper's reporting of Sgt. Shugart resulted in adverse personnel action being taken against them, as set forth above. In fact, the transfers of Corporal Mahan and Trooper Riggins are presumptively retaliatory. *See* TEX. GOV'T CODE § 554.004(a).

#### DAMAGES

96. Plaintiffs seek to recover the following monetary damages based on the *Texas Whistleblower Act*:

- a. Past economic damages in the form of lost promotions and vacation time;
  - b. Future economic losses in the form of future lost earning and loss of earning capacity;
- and
- c. Damages for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life.

#### ATTORNEY'S FEES

97. Plaintiffs seek to recover their reasonable and necessary attorney's fees and expenses to protect their constitutional rights. *See Warnock v. Pecos Cnty., Tex.*, 88 F.3d 341, 343 (5th Cir.1996) ("Claims for fees associated with prospective relief and fees that may be awarded as costs are not barred by the Eleventh Amendment.") (citing *Hutto v. Finney*, 437 U.S. 678, 692, 98 S.Ct. 2565, 57 L.Ed.2d 522 (1978)); *accord Jones v. Tex. Juvenile Justice Dep't*, 646 Fed. Appx. 374, 377 (5th Cir. 2016) (noting that claims for costs and attorney's fees in an *Ex Parte Young* action are not barred by the Eleventh Amendment); *see also* 42 U.S.C. § 1988.

98. Plaintiffs also seek to recover their reasonable and necessary attorney's fees in prosecuting their claims under the *Texas Whistleblower Act*. *See* TEX. GOV'T CODE § 554.003(a)(4).

INTEREST AND COURT COSTS

- 99. Plaintiffs seek to recover prejudgment and post-judgment interest at the highest lawful rate.
- 100. Plaintiffs seek to recover their court costs.

JURY TRIAL DEMAND

- 101. Plaintiffs demand a jury trial.

PRAYER

WHEREFORE, Plaintiffs respectfully pray for judgment against Defendants for the following:

- a. Economic damages;
- b. Non-Economic damages;
- c. Permanent injunction;
- d. Declaratory judgment;
- e. Attorneys' fees and expenses;
- f. Prejudgment and post-judgment interest;
- g. Court costs; and
- h. Such other and further relief, at law or in equity, to which Plaintiffs may show themselves justly and lawfully entitled.

Respectfully submitted,

**FRANKLIN LAW FIRM, PLLC**



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing instrument has been filed electronically in accordance with the rules of this Court on this the 26<sup>th</sup> day of June, 2020, and served on the Counsel of Record listed below.

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