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December 9, 2021

VIA CERTIFIED MAIL

Attorney General John O'Connor
Office of the Oklahoma Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

RE: *In re David Ostrowe* – Notice of Anticipated Tort Claims, 51 O.S. § 151 *et seq.*

Dear General O'Connor:

This letter shall serve as Mr. David Ostrowe's notice of tort claims against the Office of Oklahoma Attorney General ("AG Office"), former Attorney General Michael J. Hunter ("Hunter"), investigator Thomas Helm ("Helm"), as well as any and all employees and/or agents of the AG Office who participated, in whole or in part, in connection with State of Oklahoma v. David Ostrowe, Oklahoma County District Court Case No. CF-2020-6011, and State of Oklahoma v. David Ostrowe, Oklahoma County District Court Case No. CJ-2020-6012, collectively the "Criminal Proceedings."

By submitting this notice of tort claims letter, Mr. Ostrowe is not acknowledging, expressly or implicitly, that the anticipated claims set forth herein are governed or controlled by the Governmental Tort Claims Act (the "Act"), including sub-provisions related to sovereign immunity (§ 152.1) and/or monetary limitations on liability (§ 154). *See also* 51 O.S. § 158(C) ("If a policy or contract of liability insurance covering the state or political subdivision or its employees is applicable, the terms of the policy govern the rights and obligations of the state or political subdivision and the insurer with respect to the investigation, settlement, payment and defense of claims or suits against the state or political subdivision or its employees covered by the policy.")¹ Accordingly, the letter shall not be construed as a waiver of Mr. Ostrowe's anticipated position that the Act should be found to be inapplicable, either in whole or in part.

¹ For example, in *Brewer ex rel. Brewer v. Independent School Dist. No. 1*, 1993 OK 17, 848 P.2d 566, the Oklahoma Supreme Court found that the availability of private insurance constituted a waiver of sovereign immunity and, by extension, the applicable limitations set forth under the Act. Regarding liability insurance specifically, the Oklahoma Supreme Court "conclude[d] that the 'extent of coverage' refers to not only the dollar amount available under the policy, but also the

Notice of Anticipated Tort Claims

Subject to the foregoing objections, which are expressly reserved, Mr. Ostrowe hereby gives notice of his anticipated tort claims against the political subdivisions and individuals named herein in conformance with 51 O.S. § 156(E):

Date/Time of Claim: December 17, 2020²

Place of Claim: Oklahoma County, State of Oklahoma

Circumstances of Claim: The anticipated claims against the AG Office, Hunter, and/or Helm, as well as the Oklahoma Tax Commission (the “OTC”), former-OTC Commissioner Charles T. Prater (“Charles Prater”) and others, may include: (i) malicious prosecution; (ii) abuse of process; (iii) libel; (iv) slander; (v) actual and/or constructive fraud; (vi) professional negligence; (vii) negligent supervision, training and/or retention; (viii) intentional infliction of emotional distress; (ix) deprivation of rights (42 U.S.C. § 1983); and/or (x) civil conspiracy.

Facts Common to All Anticipated Claims

The Attorney General is the “chief law officer” of the State of Oklahoma. 74 O.S. § 18. The powers of the AG Office, including use of the multicounty grand jury, are profound. *See, e.g.*, 74 O.S. § 18b (outlining duties of the Attorney General). Under Hunter, the AG Office became a place where political favorites went to get revenge or get a favor, and not where victims felt safe to get justice. Public corruption, magnified by Hunter’s abuse of the multicounty grand jury, cannot stand.

risks insured against by the policy. Thus, the language of the policy becomes important to define the extent of coverage which in turn directly affects the [political subdivision’s] immunity.” In this regard, the political subdivisions and individuals identified herein are hereby advised to place all liability insurer(s), including excess and/or umbrella insurer(s), on notice of the anticipated claims described herein, as the damages sustained by Mr. Ostrowe are grotesquely significant.

² This is simply the date the Criminal Proceedings were initiated against Mr. Ostrowe by the AG Office. Mr. Ostrowe disputes that his claims began to accrue on this date. Rather, Mr. Ostrowe believes his claims began to accrue on or about May 28, 2021, when the Notices of Dismissal were filed in the Criminal Proceedings. Thus, the use of this date shall not be construed, in whole or in part, as an admission or concession by Mr. Ostrowe that his claims began to accrue on December 17, 2020.

All persons holding the office of Attorney General, including Hunter, are required to take an oath promising to “support, obey, and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and that [they] will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to [their] office, other than the compensation allowed by law; [they] further swear (or affirm) that [they] will faithfully discharge [their] duties as . . . to the best of [their] ability.” Okla. Constitution at Art. 15, § 1; *see also* 74 O.S. § 18a (“Before the Attorney General enters upon the duties of his office, he shall execute the constitutional oath of office, which oath shall be filed in the office of the Secretary of State.”).

By maliciously prosecuting Mr. Ostrowe, Hunter knowingly broke the oath he took to the State of Oklahoma and, in turn, the trust of the citizens of Oklahoma. Rather than let evidence and truth be the guideposts for criminal prosecutions, Hunter weaponized the AG Office for self-advancement no matter the cost. In the case of Mr. Ostrowe, Hunter started with the premise that someone close to Gov. J. Kevin Stitt (the “Governor”), with whom Hunter had heated conflicts on a number of notable issues including renewal of the tribal gaming compacts as well as the opioid litigation, needed to be indicted. From there, Hunter and his cronies worked backwards to find a reason for an indictment, no matter how pretextual or contrived the underlying allegations turned out to be.

Mr. Ostrowe is a successful business owner in Oklahoma City, OK. In 2018, he was asked by the Governor to serve the State of Oklahoma as Secretary of Digital Transformation, a cabinet-level position. As an Eagle Scout and former Naval Aviator for the United States Naval Reserves, Mr. Ostrowe has always felt a calling of service to Country and State. When the Governor called on behalf of Oklahoma, Mr. Ostrowe once again answered.

Though serving as a cabinet secretary was more than a full-time job, Mr. Ostrowe was not compensated for his work. In fact, Mr. Ostrowe was the only cabinet secretary who was working full-time without a paycheck. But Mr. Ostrowe was not motivated by money but rather a duty to serve. To fulfill that duty, Mr. Ostrowe worked tirelessly for Oklahoma,

achieving remarkable success in a short amount of time. Mr. Ostrowe's achievements were not always well-received by those in state government who ate heartily from the deep trench of the status quo.

One of the tasks assigned to Mr. Ostrowe was to identify state government roles and/or expenses that were wasteful. From 2018 to 2020, Mr. Ostrowe reported to John Budd, then-Chief Operating Officer for the State. State agencies had their own executive reporting requirements. Those agencies without boards reported directly to cabinet secretaries like Mr. Ostrowe. Agencies with boards, such as the OTC, reported directly to those boards with cabinet secretaries providing guidance and direction, usually to agency directors, on an as-needed basis. In this instance, the OTC fell within Mr. Ostrowe's ambit.

Regarding the OTC specifically, there were three (3) paid commissioners, each of whom was earning a salary of approximately \$147,000.00 per year, plus benefits, for very little work. Though these OTC commissioners' self-proclaimed themselves as "tax judges," they were actually tasked with reviewing rulings made by administrative law judges ("ALJs"). In recent memory, not one ALJ ruling has been overturned by the well-paid OTC commissioners, who -rather than carefully analyze the issues - generally acted as rubber-stamps. Wasteful government spending at its finest.

From 2018-2020, the Governor's proposed budget was overseen by Sec. Mike Mazzei. At the time, Sec. Mazzei would negotiate budgetary items with Rep. Kevin Wallace, Appropriations Chair for the House, and Sen. Roger Thompson, Appropriations Chair for the Senate. Not once did Mr. Ostrowe ask, directly or indirectly, for Sec. Mazzei to present a proposed budget that reduced the State Legislature's appropriation to the OTC.

Following the 2020 Legislative Session, the Governor vetoed the budget passed by the State Legislature, which was overridden by both the House and the Senate. The budget vetoed by the Governor, but passed by the House and Senate, cut the OTC's budget by Ten Percent (10.00%) - by far the largest budget cut to an agency for that fiscal year. The AG Office, on the other hand, received an increase in appropriations from the State Legislature, despite outsourcing most of its meaningful cases to high-profile

lawyers, ultimately costing the State of Oklahoma millions of dollars in attorney's fees.

Beginning in September of 2020, the Office of Management and Enterprise Services ("OMES"), under the leadership of Director Steven Harpe, started a podcast series focusing on leadership in state government. One of those podcasts in October of 2020 featured Mr. Ostrowe.

In this podcast, Mr. Ostrowe was critical of the OTC and the three commissioners – criticism largely based on the results of recent audits conducted after the OTC changed directors. After this podcast was made public, one of the OTC's commissioners instructed then-Director Jay Doyle to contact Director Harpe at OMES to have the podcast immediately removed. This particular OTC commissioner coupled his demand with a threat that if the podcast was not removed, the OTC would start an "anti-Ostrowe media campaign" in order to "set the record straight."

Mr. Ostrowe had occasion to observe the inner-workings of the OTC on a routine basis. One of his tasks as a cabinet secretary was to review citizen tax issues and address those with the OTC, either at the request of the Governor or the Legislature.

One particular tax issue involved Sen. Jason Smalley, a member of Sen. Thompson's political party. At Sen. Thompson's request, Mr. Ostrowe met Sen. Thompson at Broadway 10, a steakhouse in Oklahoma City, to discuss penalties and interest that were being assessed against a corporate entity owned and/or controlled by Sen. Smalley, an individual with whom Mr. Ostrowe had no relationship (personally or professionally). The OTC's director – at the time, Jay Doyle – had the discretion to handle tax interest and penalty abatement. After Sen. Thompson indicated during the meeting at Broadway 10 that handling this issue would be considered a "personal favor" to him, Mr. Ostrowe told Sen. Thompson that he would discuss the issue with Director Doyle and the three (3) tax commissioners.

Thereafter, Mr. Ostrowe relayed Sen. Thompson's position to Director Doyle and the three (3) tax commissioners. Mr. Ostrowe's advice, which was non-binding given the lack of any procedural or statutory mechanism providing a cabinet secretary with the ability to force a state agency to act, was

to accommodate the request only if the law so allowed. Mr. Ostrowe was concerned that by not accommodating Sen. Thompson's request, the OTC could once again be "punished" by the Legislature during the appropriations process.

In connection with the Criminal Proceedings, the AG Office only presented the testimony of Charles Prater regarding the foregoing events. However, Thomas Helms ("Helms"), the investigator for the AG Office, also interviewed Director Doyle and then-Commissioner Clark Jolley over the same subject matter. Selectively presenting evidence to the multi-county grand jury was one of the hallmarks of Hunter's reign of corruption. Alternatively, Hunter and the AG Office recklessly and/or negligently failed to consider exculpatory evidence and testimony before initiating the Criminal Proceedings against Mr. Ostrowe.

Charles Prater was appointed to the OTC by the Governor over the objections of many. For example, the State Chamber of Commerce privately advised that Charles Prater had "serious credibility issues." Relatedly, State Auditor Cindy Byrd ran against Charles Prater for the Auditor position. She had serious concerns with his honesty and credibility. During the campaign for State Auditor, Charles Prater routinely referred to Oklahoma County District Attorney David Prater as "his cousin" in his stump speeches. Yet, very tellingly, District Attorney Prater denied any relation.

Unfortunately, Prater was being considered to replace commissioner Tom Kemp, who died leaving an immediate vacancy. The OTC could not meet with only two members. Thus, the decision was made to appoint Prater.

In May of 2019, the Governor terminated Tax Director Tony Mason. According to third-party audits, the OTC was losing approximately \$300 million per year under Mason's leadership and nothing was being done to address the deficiencies. Mr. Ostrowe suggested that Jay Doyle should be considered a candidate to replace Mason. After successful interviews, Director Doyle was hired in September of 2019.

During the 2020 Legislative Session, then-Secretary of State Mike Rogers ran a bill to add two (2) tax commissioners to the board and reduce their salaries. Mr. Ostrowe, however,

viewed the tax commissioners as yet another example of wasteful state spending, especially given their proclivity to rubber-stamp decisions rather than carefully analyze them. For that reason, Mr. Ostrowe advocated removal of the tax commissioners and, in turn, having the Director of the OTC report directly to the Governor. Mr. Ostrowe's proposal was consistent with how most state agencies were, and continue to be, structured.

In advance of the 2021 Legislative Session, Mr. Ostrowe's proposal, effectively eliminating the cushy six-figure incomes of the three (3) tax commissioners, was picking up steam. Put another way, Mr. Ostrowe was actively trying to save Oklahoma taxpayers nearly \$1 million dollars in wasted compensation while also enhancing constituent services. Of course, his proposal would have left the commissioners unemployed. Word got out.

Rather than run that risk, Hunter was tapped to go after Mr. Ostrowe, which would equally satisfy Hunter's own political motivations and machinations. At the time, and well-known in political circles, Hunter had already been privately reaching out to donors to support him in a 2022 primary bid against the Governor. Maliciously indicting one of the Governor's cabinet secretaries on baseless charges was an easy way for Hunter to score political points (to advance his gubernational aspirations) and settle political scores. Settling these political scores largely stemmed from, as indicated above, profound disagreements between the AG Office and the Governor regarding the tribal gaming compacts and the opioid litigation. One cannot rule out the likelihood that Hunter stood to personally profit from taking positions adverse to the Governor in both matters.

Nearly one week before Christmas, and just six weeks prior to the beginning of the 2021 Legislative Session, the Criminal Proceedings were initiated against Mr. Ostrowe.

The Criminal Proceedings were born out of the multicounty grand jury, which was the most powerful weapon within Hunter's arsenal. *See* 74 O.S. § 18b(A)(19) (the Attorney General has the power "[t]o convene multicounty grand juries in such manner and for such purposes as provided by law[.]"). The multicounty grand jury was largely predicated on an outcome-oriented "investigation" by Helm, an investigator at the AG Office who was tasked by Hunter and

others with finding shreds of support for their pre-determined indictment of Ostrowe.

In connection with his outcome-oriented investigation, Helm called Mr. Ostrowe to discuss the contrived allegations being made against him. During the call, Mr. Helm advised Mr. Ostrowe that he “did not need a lawyer.” When Mr. Ostrowe declined to discuss specifics, an exasperated Mr. Helm confessed to Ostrowe that he was “sick of all the political bull----.” Nonetheless, Ostrowe was indicted the next day.

Testimony delivered directly to the multicounty grand jury was the product of carefully-coached innuendos and, in certain instances, outright falsehoods. For example, multiple material misrepresentations were made to the multicounty grand jury, including: **(i)** misrepresenting Mr. Ostrowe’s role in state government, **(ii)** misrepresenting Mr. Ostrowe’s relationship with the Governor, and **(iii)** misrepresenting Mr. Ostrowe’s ability to direct appropriations, which was and always has been exclusively a function of the State Legislature. In sum, the multicounty grand jury process that led to the Criminal Proceedings failed, delivering an injustice of immeasurable magnitude.

Initiation of the Criminal Proceedings imperiled Mr. Ostrowe’s personal freedom, shattered his hard-earned reputation, and jeopardized him financially. Specifically, the Criminal Proceedings directly and proximately caused Mr. Ostrowe to lose private sector financial opportunities that were in the closing stages when the Criminal Proceedings were initiated. These lost private sector opportunities came at an estimated cost of \$60 million dollars to Mr. Ostrowe.

**Identity of State Agency(ies)
Involved:**

In addition to the political subdivision (the AG Office) and individuals (Hunter and Helm) named above, the following political subdivisions and individuals are identified: **(i)** Charles Prater, individually and his capacity as former Commissioner for the OTC; **(ii)** the OTC; and **(iii)** other former and/or current employees and/or agents at the OTC who participated, entirely or partially, in the scheme to indict Mr. Ostrowe. The identification of these political subdivisions and individuals is non-exhaustive and based on the limited information available to Mr. Ostrowe.

Despite persistent requests for the voluntary disclosure of non-privileged documents, the AG Office led by General O'Connor has steadfastly refused to cooperate in rooting out the corruption that ran rampant under Hunter. *See* Litigation Hold Letter to AG Office dated 6/1/2021; Letter to AG Office dated 9/16/2021; and Letter to AG Office dated 10/1/2021. Accordingly, Mr. Ostrowe reserves the right to identify political subdivision(s) and/or individual(s) who, during discovery, are determined to be potentially liable, in whole or in part.

**Amount of Compensation
and/or Other Relief Demanded:**

Mr. Ostrowe seeks actual damages for reputational harm, emotional distress, lost wages, and lost business opportunities in an amount exceeding \$60 million dollars, *plus* statutory interest, litigation costs, attorney's fees, and punitive damages in an amount to be determined by the jury.

**Name/Contact Information
of Claimant:**

Mr. Ostrowe is an individual domiciled in Oklahoma County, State of Oklahoma, who may be contacted by and through the undersigned counsel.

**Contact Information for
Claimant's Counsel:**

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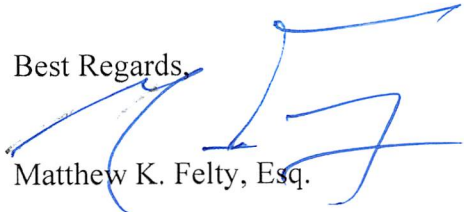
Medicare Reporting:

N/A

Conclusion

The AG Office, as well as the political subdivisions and individuals copied below, have 90 days to respond to the anticipated claims set forth above. *See* 51 O.S. § 157(A). If the claims are rejected, in whole or in part, Mr. Ostrowe stands ready to file suit. We look forward to your prompt response.

Best Regards,


Matthew K. Felty, Esq.

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