

January 25, 2017

RESOLUTION

WHEREAS, the Dallas Police & Fire Pension System (System) has taken steps that include: (1) making risky investments through limited-purpose entities that it has formed without any legal authority, or with which it has partnered without legal authority, under agreements that purport to make information about such entities secret; (2) borrowing to make investments instead of only investing “surplus” as required by law; (3) engaging in extensive, expensive, and unnecessary travel around the world by board members for the ostensible purpose of inspecting investments; (4) authorizing excessive disbursements to pensioners from DROP accounts even when the amount of such disbursements impaired the Dallas Police & Fire Pension System’s ability to pay retirement, disability, and survivor pension benefits; (5) considering the sale of assets to resume DROP disbursements even after temporarily deferring them under a judicial order; (6) authorizing additional millions of dollars in response to “cash calls” from investment enterprises even when such disbursements also impair the Dallas Police & Fire Pension System’s ability to pay retirement, disability, and survivor pension benefits; (7) allowing the system and undisclosed investments to be run by current and former employees who are not fiduciaries of the system; (8) making board decisions without properly posting agendas that adequately describe items to be discussed or actions to be considered, as required by law; and (9) incurring wasteful, uncontrolled, and high administrative expenses;

WHEREAS, the Dallas Police & Fire Pension System’s practices, including overstating asset values, misclassifying risky investments to make them appear safer and to make the system’s investments appear more diversified, entering into opaque investment agreements, and failing to post sufficiently informative agenda items, as required by law, are among the many methods that the System has used to evade state and city oversight that would have prevented many, if not all, of the enumerated improper practices and the current dire financial condition;

WHEREAS, the System has gone to the lengths of hiring a private investigator to conduct a forensic trace on a councilmember trustee who publicly opposed the System’s irresponsible steps and clandestine practices;

WHEREAS, Article 6243a-1 governs the pension funds of police officers and fire fighters to permit the consolidation of the terms of certain pension plans;

WHEREAS, Article 6243a-1 delegates unfettered powers to the System and its board and members, with no meaningful standards or safeguards, and therefore the funds supposedly held in trust by the system must be protected by a duly appointed and authorized fiduciary operating under court supervision;

WHEREAS, several past and current System board members appear to have direct personal financial interests, including sizable balances under the System's Deferred Retirement Option Plan (DROP) program, creating material conflicts between their personal financial interests and the interests of the System and its members, pensioners, and beneficiaries, but they have consistently failed to recuse themselves from board decisions and instead have deliberated and voted on matters subject to those conflicts, and appear determined to continue this practice, and therefore the System and its members and pensioners must be protected by a disinterested and loyal fiduciary;

WHEREAS, some of the persons who administer Article 6243a-1 apparently interpret it to limit or eliminate the city's powers to protect the financial security of its valued first responders, retired first responders, and their families and survivors;

WHEREAS, the System's board has administered plan assets in a manner that impairs the system's ability to achieve its primary fiduciary purpose of paying retirement, disability, and survivor pension benefits;

WHEREAS, Article 6243a-1's lack of limits, checks, and balances on the powers of the pension system board and plan members make it difficult or impossible for the state or the city to obtain necessary records and information needed for adequate oversight of the System, and permitted the System for years to overstate asset values to conceal its deteriorating financial condition from the city, the state, and its own members, directly causing the current emergency situation;

WHEREAS, because of the above and other deficiencies in Article 6243a-1, the Dallas Police & Fire Pension System has escaped any meaningful governance supervision, leading to incurrence of obligations far in excess of assets, increased benefits and features such as shockingly generous DROP returns, without the ability to honor those commitments, and materially diminished morale, security, and retention among important first responders who participate in plans administered by the Dallas Police & Fire Pension System;

WHEREAS, the city has insufficient tools under Article 6243a-1 to enable the city to protect the System's pensioners' retirement, disability, and survivor pension benefits while maintaining its own fiscal health and the safety of its residents;

WHEREAS, this situation has created a crisis posing an imminent and substantial threat to the fiscal health and public safety of the city;

WHEREAS, the System board, if it validly exists, is constitutionally and statutorily required to hold assets of the system in trust but has inexplicably abandoned its fiduciary obligations, as evidenced by, among other things, the board's stated intent to liquidate assets to resume uncontrolled DROP disbursements even while leaving underfunded its ability to pay retirement, disability, and survivor pensions;

WHEREAS, this situation as created an emergency substantially threatening the financial security of valued and courageous first responders who participate in pension plans created based on Article 6243a-1, as well as the financial security of their families;

WHEREAS, this emergency requires substantially increased control and oversight of the System;

WHEREAS, absent extraordinary measures, the Dallas Police & Fire Pension System will soon run out of sufficient funds to pay retirement, disability, and survivor pension benefits;

WHEREAS, the city's extensive and intensive efforts to negotiate agreed plan amendments and joint proposals to be considered by the Legislature to alleviate this emergency have been rejected by the System;

WHEREAS, until there are statutory changes that provide adequate governance tools to the city and/or financial support, the only remaining feasible method of meeting this emergency and of effectively supporting and protecting, for the near and long term, the Dallas Police & Fire Pension System, is extraordinary judicial action including, for example, receivership, declaratory relief, mandamus, and injunction; and,

WHEREAS, the public interest, the city's interest, and fundamental fairness require that the city indemnify and reimburse any and all such councilmembers who take such actions for their consequential expenses, and defend and indemnify them from any liability arising from such actions, and such indemnity, reimbursement, and defense will serve a public purpose; **Now, Therefore,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. That the members of the city council who are also Dallas Police & Fire Pension System board members are strongly encouraged to take all lawful measures, including without limitation retaining outside counsel for the purpose of seeking judicial remedies, to address this dire emergency situation.

Section 2. That the city shall, to the fullest extent permitted by applicable law, indemnify, hold harmless, and defend all such councilmembers who take such actions from and against all losses, claims, actions, demands, obligations, judgments, settlements, damages, liabilities, costs, and/or expenses of any kind (including without limitation attorneys' fees and costs), whether or not involving a third-party claim, to which such councilmembers may become subject that in any way arise from, relate to, and/or result from any such actions.

Section 3. If any such councilmember takes any such actions, including without limitation retaining outside counsel for the purpose of seeking judicial remedies, the city shall pay (as they are incurred) such councilmember's legal and other expenses (including without limitation attorneys' fees and costs, and the costs of any investigation

and/or preparation) incurred in connection therewith; provided, however, that the city attorney will review any such payments to ensure the public purpose is accomplished and the public's investment is protected, and that no payment shall be made without the city attorney's approval on those grounds, which approval shall not be unreasonably withheld.

Section 4. If any such councilmember seeks judicial remedies, such councilmember shall, to the fullest extent permitted by applicable law, apply for an order for payment by any adverse parties of such councilmember's legal expenses (including without limitation attorneys' fees and costs), and such councilmember shall direct payment to the city of any such legal expenses that such councilmember actually and finally recovers from any adverse parties.

Section 5. That the city remains dedicated to providing a secure pension for retired and disabled first responders and their families, and providing for survivors, while not jeopardizing the public treasury, and the city will receive a return benefit from the proposed reimbursement, defense, and indemnity because such legal action is necessary to save the System from looming insolvency, which would severely compromise the morale and retention of the city's first responders and result in substantial claims against the city that would be expensive and time-consuming to defend even though not meritorious, and there would be financial risks to the city.

Section 6. That regardless of any legal action by the city council members who are trustees of the System or by others, the city will continue to seek consensual remedies for this emergency situation.

Section 7. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the city of Dallas, and it is accordingly so resolved.

APPROVED AS TO FORM:

LARRY E. CASTO, City Attorney

By _____
Assistant City Attorney

August 6, 2016

The Honorable Ken Paxton
Texas Attorney General
Open Records Division
P.O. Box 12548
Austin, TX 78711-2548

Dear Attorney General Paxton:

RE: Determination of availability of information requested under the Public Information Act by Julie Kobel

On or about July 1, 2016, the law firm of Messr, Rockefeller & Fort submitted a letter to your attention on behalf of their client, the Dallas Police & Fire Pension System, regarding then recent requests for public information submitted by Julie Kobel (copy of said letter enclosed as Exhibit "A"). Particularly important parts of the aforementioned letter are references to litigation, both past and present, between me, a person separate and apart from Julie Kobel, and their client, the Dallas Police & Fire Pension System.

While seemingly obvious that both Julie Kobel and I most certainly have our separate, individual rights under the Texas Constitution, to include but not limited to Title 5 of the Texas Government Code, I am writing at this time to provide you with a copy of litigation recently filed by me against the Dallas Police and Fire Pension System (copy enclosed without 233 pages of attachments as Exhibit "B").

Important to note I chose to do so at this time, not because the enclosed litigation by and between me and the Dallas Police & Fire Pension System is relevant to Julie Kobel's requests for public information; clearly, it is not; but simply because attorneys for the Dallas Police & Fire Pension System chose to make it an issue in their letter to you of July 1, 2016, as referenced above. As such, you now have both sides of the complaint.

Sincerely,

Columbus A. Alexander, III, CPA
Certified Fraud Examiner

Enclosures (2)

cc: Julie Kobel
P.O. Box 455
Addison, TX 75001

EXHIBIT "A"



July 1, 2016

Via email: julie.kobel@dpfps.org

Julie Kobel
Post Office Box 455
Addison, Texas 75001

RE: Public Information Requests Response; Julie Kobel (6.17.16)

Dear Mr. Kobel:

This letter is in response to your public information requests received by the Dallas Police and Fire Pension System ("DPFP") on June 17, 2016, in which you requested:

- 1601-001 Diamond McCarthy - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and the law firm of Diamond McCarthy, its employees and/or agents, firms or persons acting on behalf of Diamond McCarthy during the period January 1, 2014, thru present.
- 1601-002 Diamond McCarthy - All invoices received by the Dallas Police & Fire Pension System from the law firm of Diamond McCarthy, its employees and/or agents, firms or persons acting on behalf of Diamond McCarthy during the period January 1, 2014, thru present.
- 1601-003 Diamond McCarthy - All detailed billings received by the Dallas Police & Fire Pension System from the law firm of Diamond McCarthy, its employees and/or agents, firms or persons acting on behalf of Diamond McCarthy during the period January 1, 2014, thru present.
- 1601-004 Open Records Requests - Identify all "Open Records Requests" received by the Dallas Police & Fire Pension System during the period January 1, 2014, thru present.
- 1601-005 Attorney General Rulings - Identify all "Open Records Requests" referred by the Dallas Police & Fire Pension System to the Texas Attorney General's office for legal ruling and/or legal opinion during the period from January 1, 2014, thru present.

DALLAS

6351 Preston Rd. • Suite 350
Frisco, TX 75034
P: 972.668.6400 • F: 972.668.6414
Toll Free: 1.855.668.6400

MESSER, ROCKEFELLER & FORT, PLLC
www.txmunicipallaw.com

ABILENE

4400 Buffalo Gap Rd. • Suite 2800
Abilene, TX 79606
P: 325.701.7960 • F: 325.701.7961

- 1601-006 Dallas Morning News - Copies of all "Open Records Requests" received by the Dallas Police & Fire Pension System from the Dallas Morning News, its employees, attorneys, law firms, and/or agents acting on behalf of the Dallas Morning News during calendar year 2015.
- 1601-007 Clark Law Firm - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and Clark Law Firm, its employees and/or agents, firms or persons acting on behalf of Clark Law Firm during the period January 1, 2015, thru present.
- 1601-008 Clark Law Firm- All invoices received by the Dallas Police & Fire Pension System from Clark Law Firm, its employees and/or agents, firms or person acting on behalf of Clark Law Firm during the period January, 1, 2015, thru present.
- 1601-009 Clark Law Firm - All detailed billings received by the Dallas Police & Fire Pension System from Clark Law Firm, its employees and/or agents, firms, or person acting on behalf of Clark Law Firm during the period January 1, 2015, thru present.
- 1601-010 Prospere and Russell - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and the law firm of Prospere and Russell, its employees and/or agents, firms or persons acting on behalf of Prospere and Russell during the period January 1, 2015, thru present.
- 1601-011 Prospere and Russell - All invoices received by the Dallas Police & Fire Pension System from the law firm of Prospere and Russell, its employees and/or agents, firms or persons acting on behalf of Prospere and Russell during the period January 1, 2015 thru present.
- 1601-012 Prospere and Russell-All detailed billings received by the Dallas Police & Fire Pension System from the law firm of Prospere and Russell, its employees and/or agents, firms or persons acting on behalf of Prospere and Russell during the period January 1, 2015 thru present.
- 1601-013 Nicole Knox - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and Nicole Knox, her employees and/or agents, firms or persons acting on behalf of Nicole Knox during the period January 1, 2015, thru present.

- 1601-014 Nicole Knox - All invoices received by the Dallas Police & Fire Pension System from Nicole Knox, her employees and/or agents, firms or persons acting on behalf of Nicole Knox during the period January 1, 2015, thru present.
- 1601-015 Nicole Knox - All detailed billings received by the Dallas Police & Fire Pension System from Nicole Knox, her employees and/or agents, firms or persons acting on behalf of Nicole Knox during the period January 1, 2015, thru present.
- 1601-017 Investigations International - All invoices received by the Dallas Police & Fire Pension System from Investigations International, its employees and/or agents, firms or persons acting on behalf of Investigations International during calendar year 2013.
- 1601-018 Investigations International - All detailed billings received by the Dallas Police & Fire Pension System from Investigations International, its employees and/or agents, firms or persons acting on behalf of Investigations International during calendar year 2013.
- 1601-020 Argyle Volunteer Fire District - All invoices received by the Dallas Police & Fire Pension System from the Argyle Volunteer Fire District, its employees and/or agents, firms or persons acting on behalf of the Argyle Volunteer Fire District during April 2016.
- 1601-021 American Express - All invoices/billings from American Express paid by the Dallas Police & Fire Pension System during April 2016.
- 1601-022 Card Member Service (8732) - All invoices/billings from Card Member Service (8732) paid by the Dallas Police & Fire Pension System during April 2016.

For requests 1601-007, 1601-010, and 1601-020 DPF has no responsive documents. The remaining information DPF believes that the information responsive to your requests is excepted from disclosure under the Texas Public Information Act. DPF desires to withhold records and has requested an open records decision from the Attorney General regarding whether the information is within an exception to public disclosure.

We and/or the Attorney General will notify you once a decision from the Attorney General has been issued. A copy of our request for a decision is enclosed. We will forward any subsequent written communications that we have with the Office of the Attorney General regarding our request.

July 1, 2016
Page 4 of 4

Very truly yours,
MESSER, ROCKEFELLER & FORT, PLLC



MARIE N. ROVIRA
ASSISTANT CITY ATTORNEY

MNR/SG
Enclosures

cc: Office of the Attorney General

via CMRRR #7012 1640 0000 0420 1895



MESSER * ROCKEFELLER * FORT
THE MUNICIPAL LAW FIRM

July 1, 2016

Via CMRRR #7012 1640 0000 0420 1895

The Honorable Ken Paxton
Attorney General of Texas
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Re: Determination of availability of information requested under the Public Information Act by Julie Kobel

Dear General Paxton:

This law firm represents the Dallas Police and Fire Pension System (“DPFP”). DPFP received twenty requests¹ for information (collectively “Requests”) under the Public Information Act (“Act”) from Julie Kobel (“Requestor”). Copies of the Requests were received by DPFP on June 17, 2016, and are attached as ***Exhibit 1***. ***Exhibit 1*** constitutes evidence of the date DPFP received the Requests under section 552.301(e)(1)(C) of the Texas Government Code. Requestor seeks the following and DPFP’s notations are italicized below:

1601-001 Diamond McCarthy - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and the law firm of Diamond McCarthy, its employees and/or agents, firms or persons acting on behalf of Diamond McCarthy during the period January 1, 2014, thru present.

*Responsive documents enclosed as **Exhibit 2**.*

1601-002 Diamond McCarthy - All invoices received by the Dallas Police & Fire Pension System from the law firm of Diamond McCarthy, its employees and/or agents, firms or persons acting on behalf of Diamond McCarthy during the period January 1, 2014, thru present.

*Responsive documents enclosed as **Exhibit 3**.*

1601-003 Diamond McCarthy - All detailed billings received by the Dallas Police & Fire Pension System from the law firm of Diamond McCarthy, its employees and/or agents, firms or persons acting on behalf of Diamond McCarthy during the period January 1, 2014, thru present.

*Responsive documents enclosed as **Exhibit 3**.*

DALLAS

6351 Preston Rd. • Suite 350
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ABILENE

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P: 325.701.7960 • F: 325.701.7961

1601-004 Open Records Requests - Identify all "Open Records Requests" received by the Dallas Police & Fire Pension System during the period January 1, 2014, thru present.

*Responsive documents enclosed as **Exhibit 4**.*

1601-005 Attorney General Rulings - Identify all "Open Records Requests" referred by the Dallas Police & Fire Pension System to the Texas Attorney General's office for legal ruling and/or legal opinion during the period from January 1, 2014, thru present.

*Responsive documents enclosed as **Exhibit 4**.*

1601-006 Dallas Morning News - Copies of all "Open Records Requests" received by the Dallas Police & Fire Pension System from the Dallas Morning News, its employees, attorneys, law firms, and/or agents acting on behalf of the Dallas Morning News during calendar year 2015.

*Responsive documents enclosed as **Exhibit 5**.*

1601-007 Clark Law Firm - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and Clark Law Firm, its employees and/or agents, firms or persons acting on behalf of Clark Law Firm during the period January 1, 2015, thru present.

No responsive documents.

1601-008 Clark Law Firm - All invoices received by the Dallas Police & Fire Pension System from Clark Law Firm, its employees and/or agents, firms or person acting on behalf of Clark Law Firm during the period January, 1, 2015, thru present.

*Responsive documents enclosed as **Exhibit 6**.*

1601-009 Clark Law Firm - All detailed billings received by the Dallas Police & Fire Pension System from Clark Law Firm, its employees and/or agents, firms, or person acting on behalf of Clark Law Firm during the period January 1, 2015, thru present.

*Responsive documents enclosed as **Exhibit 6**.*

1601-010 Prospere and Russell - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and the law firm of Prospere and Russell, its employees and/or agents, firms

or persons acting on behalf of Prospere and Russell during the period January 1, 2015, thru present.

No responsive documents.

1601-011 Prospere and Russell - All invoices received by the Dallas Police & Fire Pension System from the law firm of Prospere and Russell, its employees and/or agents, firms or persons acting on behalf of Prospere and Russell during the period January 1, 2015 thru present.

*Responsive documents enclosed as **Exhibit 7**.*

1601-012 Prospere and Russell - All detailed billings received by the Dallas Police & Fire Pension System from the law firm of Prospere and Russell, its employees and/or agents, firms or persons acting on behalf of Prospere and Russell during the period January 1, 2015 thru present.

*Responsive documents enclosed as **Exhibit 7**.*

1601-013 Nicole Knox - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and Nicole Knox, her employees and/or agents, firms or persons acting on behalf of Nicole Knox during the period January 1, 2015, thru present.

*Responsive documents enclosed as **Exhibit 8**.*

1601-014 Nicole Knox - All invoices received by the Dallas Police & Fire Pension System from Nicole Knox, her employees and/or agents, firms or persons acting on behalf of Nicole Knox during the period January 1, 2015, thru present.

*Responsive documents enclosed as **Exhibit 8**.*

1601-015 Nicole Knox - All detailed billings received by the Dallas Police & Fire Pension System from Nicole Knox, her employees and/or agents, firms or persons acting on behalf of Nicole Knox during the period January 1, 2015, thru present.

*Responsive documents enclosed as **Exhibit 8**.*

1601-017 Investigations International - All invoices received by the Dallas Police & Fire Pension System from Investigations International, its employees and/or agents, firms or persons acting on behalf of Investigations International during calendar year 2013.

*Responsive documents enclosed as **Exhibit 9**.*

1601-018 Investigations International - All detailed billings received by the Dallas Police & Fire Pension System from Investigations International, its employees and/or agents, firms or persons acting on behalf of Investigations International during calendar year 2013.

*Responsive documents enclosed as **Exhibit 9**.*

1601-020 Argyle Volunteer Fire District - All invoices received by the Dallas Police & Fire Pension System from the Argyle Volunteer Fire District, its employees and/or agents, firms or persons acting on behalf of the Argyle Volunteer Fire District during April 2016.

No responsive documents.

1601-021 American Express - All invoices/billings from American Express paid by the Dallas Police & Fire Pension System during April 2016.

*Responsive documents enclosed as **Exhibit 10**.*

1601-022 Card Member Service (8732) - All invoices/billings from Card Member Service (8732) paid by the Dallas Police & Fire Pension System during April 2016.

*Responsive documents enclosed as **Exhibit 11**.*

DPPF seeks a determination from your office confirming that some or all of the requested records and information are exempt from public disclosure pursuant to certain exceptions provided in the Act. Section 552.301(b) of the Texas Government Code prescribes that a written request for an Attorney General's ruling must be made within ten (10) business days after the date the governmental body receives the written request for information. Accordingly, this request for a ruling made on July 1, 2016, is timely and made in accordance with section 552.301(b). DPPF may send additional written comments within the next 5 business days in accordance with section 552.301(e)(1)(A).

Further, in compliance with section 552.303 of the Texas Government Code, copies of the records responsive to the Requests are being produced to your office with this request for a determination. The requested records DPPF claims to be exempt from public disclosure are marked as **Exhibits 2-11**. Pursuant to section 552.301(d) of the Texas Government Code, a copy of this letter is being sent to the Requestor without exhibits.

Background information relevant to the Requests:

In early 2002, DPPF hired Columbus Alexander ("Alexander") d/b/a CFOpros to conduct financial accounting for DPPF. The information concerning Alexander is relevant to these Requests because DPPF has good reason to believe Alexander and Requestor are closely related. **Exhibit 12**. By

mid 2002, a dispute arose between DFPF and Alexander and the parties became involved in a lawsuit filed in Dallas County in which both parties were represented by counsel. The dispute was resolved by the settlement agreement enclosed as **Exhibit 13**. The settlement agreement stated the following: “[t]he Pension System, its trustees, and employees agree not to call upon or contact Mr. Alexander, or use his services and knowledge, in any way in the future, and likewise Mr. Alexander will not call upon or contact the Pension System, its Trustees or employees.” The settlement agreement was executed by all parties and an order to non-suit was entered by the court on August 19, 2002. **Exhibit 13**.ⁱⁱ DFPF has complied with all of its obligations under the settlement agreement, including paying Alexander all sums agreed to in the settlement agreement.

Alexander abided by this agreement until April 6, 2016, when he submitted a public information request to DFPF. **Exhibit 14**. DFPF submitted this request to your office as **OAG Request ID # 616065**. Alexander again violated the settlement agreement by submitting a total of twelve requests from May 16 to May 19, 2016. **Exhibit 15**. In response to these requests, the DFPF sent Alexander notification on May 23, 2016, he was in violation of the settlement agreement. **Exhibit 16**. In response to this notification, Alexander withdrew all outstanding requests on May 27, 2016. **Exhibit 17**.

Then on June 1, June 6, June 8, and June 10, 2016, Requestor submitted four requests to DFPF. **Exhibit 18**. DFPF responded to the June 1 request with a cost estimate letter. **Exhibit 19**. On June 10, 2016, DFPF also sent Alexander, with a copy to the Requestor, a second notification of his violation of the settlement agreement. **Exhibit 20**. DFPF had reason to believe that Requestor has a close relationship with Alexander based on the information contained in **Exhibit 12**, the similarity in format of Alexander and Requestor’s letters, the same “@dpfps.com” email address used by Alexander and Requestor, and the information requested by Alexander and Requestor is nearly identical. On June 16 and 17, 2016, DFPF received notice the Requestor withdrew all requests submitted on June 1, June 6, June 8, and June 10, 2016. **Exhibit 21**.

Subsequently on June 17, 2016, Requestor submitted the twenty Requests at issue. **Exhibit 1**. DFPF, based upon the belief that Alexander himself is submitting or motivating Requestor to submit the requests, filed suit against Alexander on June 23, 2016. **Exhibit 22**. Alexander while under full legal counsel by his attorney, agreed in the 2002 settlement agreement that he would not contact DFPF. Alexander waived his legal right to request public information from DFPF by entering into the settlement agreement. Alexander, himself and through the Requestor, has violated this agreement on numerous occasions. DFPF notified Alexander and Requestor of these defaults prior to filing suit. In addition, Alexander and Requestor have left DFPF in a difficult position – to either comply with the 2002 settlement agreement or violate the Texas Public Information Act.

Brief of Law in Support of Exceptions

DFPF contends that certain information in the requested records is exempt from disclosure based upon the Texas Government Code, Chapter 552, Sections 552.101 and 552.103 and 552.107 and 552.143.

Confidential Information by Law under § 552.101

DPFP asserts that ***Exhibits 2-11*** in their entirety are subject to the confidentiality exception. Section 552.101 of the Texas Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” As previously explained, the 2002 settlement agreement of a court case makes the information sought by these Requests confidential to Alexander and the Requestor, whom Alexander is operating through in an attempt to circumvent the settlement agreement. Therefore, DPFP contends the information sought by the Requests is confidential under 552.101 in conjunction with the 2002 settlement agreement.

Litigation Exception Under § 552.103

DPFP contends that all of the requested records in ***Exhibits 2-11*** are exempt from disclosure under Texas Government Code, Section 552.103, also known as the litigation exception. Section 552.103 provides exemption from required disclosure as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov’t Code § 552.103(a)(c). To establish the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App. - Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App. -Houston [1st Dist.] 1984, writ ref’d n.r.e.); Open Records Decision No. 551 at 4 (1990).

As previously explained and evidenced in ***Exhibits 16 & 20***, DPFP notified Alexander and Requestor of noncompliance with the 2002 settlement agreement and specifically identifying two potential causes of action that require litigation (seeking specific performance and seeking return of money paid to Alexander as consideration for the settlement agreement) well in advance of the June 17, 2016, Requests. Accordingly, litigation was reasonably anticipated on the date DPFP received the Requests and litigation did so commence on June 23, 2016. ***Exhibit 22***. The information at issue in these Requests is related to the litigation because the very act of making the requests in violation of the 2002 settlement agreement is the reason DPFP has filed litigation against Alexander. Therefore, DPFP contends the information in ***Exhibits 2-11*** is confidential under 552.103.

Attorney-Client Privilege under § 552.101 and § 552.107

DPFP contends that the requested records in ***Exhibits 2, 3, 6, 7, & 8*** are excepted from disclosure under the Texas Government Code, Sections 552.107 and 552.101, as it is information which the attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence, Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Sections 552.107 and 552.101 protect the same information as protected under Texas Rule of Evidence 503. *See* Open Records Decision Nos. 676 at 1-3 (2002), 575 at 2 (1990); *see also* *City of Dallas v. Paxton*, 2015 WL 601974 (Tex. App. – Corpus Christi Feb. 12, 2015) *citing* *Abbott v. City of Dallas*, 2014 WL 7466736 (Tex. App. – Austin Dec. 23, 2014). Thus, the standard for demonstrating the attorney-client privilege under the Act is the same as the standard used in discovery under Rule 503. Rule 503 of the Texas Rules of Evidence encompasses the attorney-client privilege and provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

- (A) between the client or the client's representative and the client's lawyer or the lawyer's representative;
- (B) between the client's lawyer and the lawyer's representative;
- (C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;
- (D) between the client's representatives or between the client and the client's representative; or
- (E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1) (2015).

In order to withhold attorney-client privileged information from disclosure under Rule 503, a governmental body must: (1) demonstrate the information constitutes or documents a communication, (2) the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body, (3) demonstrate that the communication was between or among clients, client representatives, lawyers, and lawyer representatives, and (4) the communication was confidential and “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *See* Open Records Decision No. 676 at 7-10; *see also* TEX. R. EVID. 503.

The documents contained in ***Exhibits 2, 3, 6, 7, & 8*** contain information that meets all four elements establishing the attorney-client privilege. First, the information contained in these exhibits was communicated between the four law firms retained by DPFP and DPFP authorized

representatives. The documents in **Exhibits 2, 3, 6, 7, & 8** constitute communications, as they are bills from the attorneys' offices to DPFPP detailing the legal services performed. Second, **Exhibits 2, 3, 6, 7, & 8** constitutes communications made for the purpose of facilitating the rendition of professional legal services because DPFPP, through its authorized representatives, requested legal counsel to perform specified tasks. Additionally, **Exhibits 2, 3, 6, 7, & 8** contain detailed communications and recommended courses of action based upon the results of the tasks performed by the attorney. Third, the communications were confidential between the attorneys and DPFPP representatives and were not intended to be disclosed. Finally, the communications have remained confidential, have not been reviewed by any other party other than the attorneys and DPFPP representatives duly authorized to seek legal advice on DPFPP's behalf. Privilege has not been waived by DPFPP. Therefore, the communications contained in **Exhibits 2, 3, 6, 7, & 8** are excepted from disclosure under Sections 552.101 and 552.107 of the Act because the information contained therein is protected by the attorney-client privilege in its entirety. Alternatively, if your office does not conclude that the entirety of the records in **Exhibits 2, 3, 6, 7, & 8** are excepted from disclosure, DPFPP has provided notations within **Exhibits 2, 3, 6, 7, & 8** for which DPFPP contends is information exempted from disclosure under Sections 552.101 and 552.107 and protected by the attorney-client privilege.

Attorney Work Product Privilege under § 552.101

DPFPP contends information contained in **Exhibits 2, 3, 7, 8, & 9** are subject to the attorney work product privilege. Texas Rule of Civil Procedure 192.5 encompasses the attorney work product privilege in conjunction with 552.101 of the Act. For purposes of Section 552.022 of the Government Code, information is confidential under Rule 192.5 to the extent the information implicates the core work product aspect of the work product privilege. *See* ORD 677 at 9-10. Rule 192.5 defines core work product as the work product of an attorney or an attorney's representative, developed in anticipation of litigation or for trial, which contains the mental impressions, opinions, conclusions, or legal theories of the attorney or the attorney's representative. *See* TEX. R. CIV. P. 192.5(a) and (b)(1). Accordingly, in order to withhold attorney core work product from disclosure under Rule 192.5, a governmental body must demonstrate the material was: (1) created for trial or in anticipation of litigation; and (2) consists of the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative. A document containing core work product information that meets both parts of the work product test is confidential under Rule 192.5, provided the information does not fall within the scope of the exceptions to the privilege enumerated in Rule 192.5(c). *See* *In re Exxon Mobil Corp.*, 97 S.W.3d 653, 357 (Tex. App.—Houston [14th Dist] 2003, no writ) (*citing* *Pittsburgh Corning Corp v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

The first prong of the work product test, which requires a governmental body to show the information at issue was created in anticipation of litigation or created for trial. Documents in **Exhibits 2, 3, 7, 8, & 9** indicate the litigation the attorney invoiced and billed to DPFPP. These attorney bills were created in anticipation of litigation and trial. Thus the first prong is met.

The second prong of the work product test requires the governmental body to show that the materials at issue contain the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative. *See* TEX. R. CIV. P. 192.5(b)(1). The information

highlighted in the attorney fee bills contains mental impressions and opinions of the attorneys which is preparing the case for trial. The highlighted information reveals legal strategy and the direction defense counsel is taking the case, which is the essence of attorney work product. Both prongs of the test to demonstrate attorney work product are met in regards to the highlighted information in *Exhibits 2, 3, 7, 8, & 9*.

Confidentiality of Certain Investment Information under § 552.143

DPFP contends information contained in *Exhibit 6* are subject to withholding under the Section 552.143 of the Government Code which provides in part as follows:

- (a) All information prepared or provided by a private investment fund and held by a governmental body that is not listed in Section 552.0025 (b) is confidential and excepted from the requirements of Section 552.021.
- (b) Unless the information has been publicly released, pre-investment and post investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund is confidential and excepted from the requirements of Section 552.021, except to the extent it is subject to disclosure under Subsection (c).

Information contained in *Exhibit 6* relates to pre and post investment diligence information on a variety of real estate projects. This firm detailed the ownership structures of the referenced entities and provided this information to DPFP. If your office allows DPFP to withhold *Exhibit 6*, DPFP will release the information as required by 552.0025(b) of the Act.

In summary, the DPFP contends that based upon the authorities cited above, all of the requested records and information which have been produced to your office for inspection in *Exhibits 2-11*, are excepted from disclosure, in whole or in part. Thank you for your consideration in this matter.

Very truly yours,
MESSER, ROCKEFELLER & FORT, PLLC



MARIE N. ROVIRA
ATTORNEY FOR THE PENSION

MNR/SG

Enclosures: Exhibits 1-22ⁱⁱⁱ

cc: Julie Kobel

via email: julie.kobel@dpfps.org

Joshua Mond
General Counsel
Dallas Police and Fire Pension System

ⁱ Requestor numbered her requests 1601-001 to 1601-022. However, there is no request numbered 1601-016 or 1601-019.

ⁱⁱ DFPF is attempting to locate the actual court filings and will send to your office within the next five days if located.

ⁱⁱⁱ Exhibit 1: Requests

Exhibit 2:	Documents responsive to request 1601-001
Exhibit 3:	Documents responsive to requests 1601-002 & 1601-003
Exhibit 4:	Documents responsive to requests 1601-004 & 1601-005
Exhibit 5:	Documents responsive to request 1601-006
Exhibit 6:	Documents responsive to requests 1601-008 & 1601-009
Exhibit 7:	Documents responsive to requests 1601-011 & 1601-012
Exhibit 8:	Documents responsive to requests 1601-013, 1601-014, & 1601-015
Exhibit 9:	Documents responsive to requests 1601-017 & 1601-018
Exhibit 10:	Documents responsive to request 1601-021 AMEX - 021
Exhibit 11:	Documents responsive to request 1601-022
Exhibit 12:	Documents evidencing relationship between Requestor and Columbus Alexander
Exhibit 13:	Settlement agreement between DFPF and Columbus Alexander and court docket
Exhibit 14:	Request submitted by Columbus Alexander on April 6, 2016
Exhibit 15:	Requests submitted by Columbus Alexander May 16 to May 19, 2016
Exhibit 16:	First notification of default, May 23, 2016
Exhibit 17:	Withdrawal of all outstanding requests, May 27, 2016
Exhibit 18:	June 1, June 6, June 8, and June 10, 2016, requests from Requestor
Exhibit 19:	Cost estimate letter, June 15, 2016
Exhibit 20:	Second notification of default, June 10, 2016
Exhibit 21:	Withdrawal of outstanding requests, June 16 and 17, 2016
Exhibit 22:	<i>Dallas Police and Fire Pension System v. Columbus Alexander</i> petition, June 23, 2016

EXHIBIT “B”

CAUSE NO. 416-02718-2016

**DALLAS POLICE AND
FIRE PENSION SYSTEM,**

Plaintiff,

V.

COLUMBUS A. ALEXANDER, III,

Defendant.

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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

416th JUDICIAL DISTRICT

DEFENDANT'S ORIGINAL ANSWER AND COUNTERCLAIM

TO THE HONORABLE COURT:

NOW COMES, Columbus A. Alexander, III, (“Alexander”) Defendant and Counter-Plaintiff, complaining of Dallas Police and Fire Pension System (“the System”), Plaintiff and Counter-Defendant, and responds to Plaintiff’s Petition with this Answer and Counterclaim.

A. GENERAL DENIAL

Alexander denies generally all of the material allegations contained in the Petition, and demands strict proof thereof in accordance with law.

B. COUNTERCLAIM

NOW COMES, Columbus A. Alexander, III (“Alexander”), Counter-Plaintiff, complaining of Dallas Police and Fire Pension System (“the System”), Counter-Defendant, and for cause of action would show unto the Court the following:

C. PARTIES

1. Alexander is an individual residing in Dallas, Collin County, Texas, who does business under the name “CA Forensics, LLC”, and is the Defendant in this cause. Alexander also owns and operates a website under the domain name “dpfps.org”, an acronym for Dallas Public Fraud Prevention Services.

2. The System is a Texas governmental pension fund established by the State of Texas in 1933, that provides pension and related benefits to its members who are retired firefighters and police officers with the City of Dallas, with its principal place of business in Dallas, Dallas County, Texas, who is the Plaintiff in this cause, such that no issuance or service of process of this Counterclaim is necessary.

D. NATURE OF THIS ACTION

1. This case is about System mismanagement, failed oversight, and broken promises to those who protect and serve the City of Dallas. Indeed, this case is about crimes and mismanagement committed by former System executives and concealed by System attorneys and trustees, both current and former. Finally, this case is about the suppression of the free speech rights of those that would seek to bring these allegations to the attention of taxpayers and our brave men and women in uniform.

2. This is the System's second attempt to use the litigation process to silence Mr. Alexander. The first lawsuit sought to conceal evidence of criminal activity and mismanagement he uncovered within the System during the course of a fraud examination conducted at the System's request in 2002. This lawsuit seeks to deny Mr. Alexander access to public information and stifle his free speech rights.

E. FACTUAL BACKGROUND

Dire Financial Condition of the Pension System

1. The System provides retirement funding for approximately 9,200 active and retired police officers and firefighters. For the past several years, the System has been in turmoil, as FBI investigations, litigation with System consultants, and media reports have begun to reveal years

and possibly decades of mismanagement and misconduct resulting in what appears to be a desperate financial condition.

2. System executives have publicly expressed concern about the System's ability to fund its pension and retirement obligations to Dallas police and firefighters. Mayor Mike Rawlings has called the System "the billion-dollar hole" (it's actually a \$1.4 billion dollar hole) and "the pension fund gorilla". In late 2015, the System Chairman stated it was "experiencing unprecedented funding issues due, in part, to unfortunate investments that were made a decade ago...." According to one published accounting, the System has \$3 billion in assets, and \$8 billion in liabilities, and could go broke if something dramatic isn't done soon.

3. On December 3, 2015, City Attorney Warren Ernst told the Dallas City Council he does not believe the city should be on the hook for the System's financial mismanagement. System Attorney Josh Mond disagreed, stating "the pension system and the city are jointly responsible to make sure benefits are not impaired or reduced." So it seems the taxpayers of Dallas could be asked to pay more, and Dallas rescue workers and retirees asked to take less.

4. According to the *Dallas Morning News*, Mayor Rawlings has publicly stated that "the fund is looking at the fund managers, auditors and attorneys who should have raised red flags years ago concerning the pension system's investment practices...." At least one auditor did raise red flags. He was fired and sued into silence in 2002 and is now being sued again for continuing to ask questions, this time as a private citizen.

Texas Public Information Act Requests

5. Mr. Alexander is a Dallas citizen and a CPA fraud examiner who briefly examined the System's finances in early 2002 under a contract with the System Board of Trustees, as discussed more fully below. Since the summer of 2002, he has been a System watchdog in an

unofficial, uncompensated capacity. His primary sources of System information are published news reports, the System's website, and the Texas Public Information Act.

6. The Preamble to the Texas Public Information Act ("TPIA") states that "each person is entitled...at all times to complete information about the affairs of government and the official acts of public officials and employees." The policy purpose for the TPIA is "the principle that government is the servant and not the master of the people." It then further explains the need for an informed citizenry:

The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. TEX. GOV'T CODE §552.001(a).

7. The System brought this lawsuit in order to avoid the transparency requirements imposed by state law and to harass Alexander, who seeks to identify and expose some of the reasons that Dallas' retired policemen, retired firefighters, and taxpayers are missing \$1.4 billion.

8. Alexander is seeking information that will provide answers to simple and pertinent questions. For example:

- Who received cash disbursements from the System and for what reasons?
- For what reason did the System hire various law firms, including at least 2 firms whose sole or primary practice area is criminal defense?
- What was purchased with the over \$750,000.00 in credit card transactions since January 2013?
- For what reason did the System hire private investigators?
- Why does the System make monthly payments to the Argyle Volunteer Fire District, where one of the System's former investment managers is a volunteer firefighter?

9. The documents and information Alexander requested are exactly the types of documents and information that the TPIA is designed to make available for the public. The reasons

Alexander is requesting these documents and information are the very reasons that the TPIA makes documents and information available for the public.

10. The retired public servants and taxpayers impacted by the System's management and mismanagement of public and retiree funds have a statutory and moral right to the information Alexander requested.

Alexander's 2002 Fraud Examination of the System

11. Alexander's concern for the System's financial condition goes beyond his personal interest in the well being of police and fire retirees and his interest as a Dallas taxpayer.

12. In March 2002, the System became aware that one of its employees was misusing System funds for her own personal benefit which led to the termination of that employee. Thereafter, the System's top executives and Board of Trustees determined that there was a need to hire a fraud examiner to review the System's accounts payable, pension benefit payments, and employee payroll operations.

13. After interviewing candidates to do the fraud examination, the System selected Alexander, a Certified Fraud Examiner ("CFE"). Alexander agreed to perform the examination at a substantially reduced rate because of his respect and admiration for the law enforcement and emergency personnel whose retirement funds had been pilfered.

14. Alexander, governed by the CFE Code of Professional Standards, attached as **Exhibit "A,"** and the CFE Code of Professional Ethics (the "Code of Ethics"), attached as **Exhibit "B."** Among other things, particularly applicable provisions of the Code of Standards are as follows:

- At the beginning of a fraud examination, CFE's shall reach an understanding with those retaining them about the scope and limitations of the fraud examination.

- Whenever the scope or limitations of a fraud examination or the responsibilities of the parties change significantly, a new understanding shall be reached with the client or employer.
- CFE's shall establish predication and scope priorities at the outset of a fraud examination and continuously reevaluate them as the examination proceeds.

Particularly applicable provisions of the Code of Ethics are as follows:

- a. Fraud examiners must remain free from interference by managers who try to restrict or otherwise control the examination work, or to limit the amount of time available for the assignment.
 - b. Reporting - Client or employer managers should not be allowed to overrule the Certified Fraud Examiner's judgments on the appropriate content of a report.
 - c. The Certified Fraud Examiner should follow the situation until he is reasonably assured that there is no active fraud taking place.
 - d. False statements - Any apparent inaccurate statements should be reviewed and the reasons for the inaccuracies documented. If the inaccuracies seem more than minor discrepancies, a full review may be necessary.
- ... if there is any indication or pattern that property is missing, it is important that the Certified Fraud Examiner review the situation to determine if a full-scale investigation is warranted.

15. On April 1, 2002, prior to the execution of an agreement with Alexander, the System's Assistant Administrator, Don Rohan, specifically stated to Alexander that he was concerned about the content and distribution of any report prepared in connection with the fraud examination. Rohan further stated that the System was a governmental entity, and that all reporting could potentially become a matter of public record, such that only matters related to the terminated employee should be included in Alexander's final written report, and all other matters determined during his engagement regarding the conduct of specific individuals, should be reported verbally to avoid awareness of such conduct, either in the Dallas community or the System's Board of Trustees.

16. On April 8, 2002, the System and Alexander executed a Consultant Contract (the “Contract”), a true and correct copy of which is attached as **Exhibit “C”**. Particularly important parts of the Contract are as follows:

- Consultant shall perform a lawful fraud examination of the System’s accounts payable, pension benefit payments and employee payroll operations ...
- The term of this Contract shall begin on April 8, 2002, with completion by May 1, 2002, provided that upon the request of Consultant, the System may extend the term for good reason.
- The examination will provide reasonable assurance of success in uncovering any fraud in the investigated programs and exposing any weaknesses in the System’s internal controls in those programs ...
- Consultant will report its findings and suggest appropriate improvements for the System’s internal control procedures.
- Consultant shall retain all records relating to this Contract for three years following termination, during which time the System reserves the right to audit such records at its election.

17. In connection with performing his duties under the Contract, Alexander soon learned that the employee of the System who had already been terminated by the System on March 4, 2002, was, in fact, one of many System employees involved in continuing clear misconduct. Upon the commencement of Alexander’s work under the Contract of April 8, 2002, the System’s top management engaged in a course of conduct aggressively attempting to obstruct Alexander’s investigation and failing to produce documents necessary for Alexander to perform his job. During this time period, Alexander became aware of the first time of (a) the illegal procurement of employee bank records by System executives; (b) unexplained changes to vendor records and payments made by System management after Alexander’s investigation had begun; (c) demonstrably false statements by System employees during the course of this investigation; (d) amazingly improper accounting performed by System personnel; and (e) misconduct which

appeared to be perpetrated throughout all levels of employees at the System, from the top executives to the lowest clerk.

18. On April 25, 2002, the System and Alexander entered into a First Amendment to the Contract (the “Amendment”). Under the Amendment, attached as **Exhibit “D,”** the required date for a final report was changed from May 1, 2002, to May 8, 2002.

19. On May 1, 2002, Alexander met with the System’s attorney, Gary Lawson, of the Dallas law firm Lawson & Fields. At that time, Alexander told Lawson of (a) his awareness of the illegal procurement of employee bank records by System executives; (b) what Alexander had been told about restricting the contents of any report he prepared, as described in Paragraph 15 herein; (c) collusion among System employees in connection with the misconduct by the terminated employee; and (d) the apparent loss and/or destruction of accounting records. Alexander also requested Lawson speak with the System’s Administrator, Richard Tettamant, and the System’s Board of Trustees regarding these matters, and that the System’s Board consider the creation of a Management Oversight Committee.

20. On May 3, 2002, Alexander met again with the System’s attorney, Gary Lawson, together with System Administrator Richard Tettamant, System Assistant Administrator Don Rohan, and System attorney Everard Davenport, to discuss a number of issues, including but not limited to the acts of the System executives who had participated in the illegal procurement of employee bank records. At that time, System attorney Lawson stated he wanted all evidence of such acts (herein after referred to as “the Atwood Reports”) delivered to him, including what Alexander had in his file. Alexander refused Lawson’s request since “the Atwood Reports” had already been incorporated into Alexander’s work papers which, under Paragraph 8 of the Contract, Alexander was to retain for three years.

21. Then, the participants discussed the proposed contents of Alexander's report of his investigation. Alexander advised those present of the instructions Alexander had received on April 1, 2002, from System Assistant Administrator Don Rohan about the format of the report, as described in Paragraph 15 herein. At first, Rohan denied having made such statements on April 1, but soon thereafter Rohan admitted he had, in fact, made those remarks. All of those present at the May 3rd meeting then made no attempt to change the previous instructions regarding the written component of Alexander's report.

22. On May 7, 2002, Alexander gave a letter to the System's Accounting Manager, Linda Stevenson, reflecting some of the findings as of that date, and the need for additional time in order to complete his assignment, because of the unexpected problems encountered and the need for further investigation. A copy of such letter is attached as **Exhibit "E."**

23. On May 8, 2002, Alexander met with System Administrator Richard Tettamant to review the emerging issues from his investigation, and the estimated time for completion. Alexander reminded Tettamant that, under the Contract as amended, the time period for his engagement was expiring that day.

Termination of Fraud Examination Contract

24. On May 9, 2002, the System had its Regular Board Meeting, and based on the minutes of that meeting (published later on the System's website, a copy of which is attached as **Exhibit "F"**), the Board went into executive session when it came time to talk about Alexander. Following that session, Board member Gary Edge:

“... made a motion not to renew the Contract of CFOpros [i.e., Alexander], and to require receipt of the firm's report satisfactory to the Board before further payments are made. The motion also included authorization of the expenditure of up to \$50,000 for a new examination of the System's financial process and internal controls, and authorized the Administrator to

conduct a search for a vendor to perform the examination. Mr. Wachsman seconded the motion, which was unanimously approved by the Board.”

25. As of May 13, 2002, no one from the System had advised Alexander of the Board’s decision at the meeting of May 9, 2002. On May 13, Alexander finally spoke with System Assistant Administrator Don Rohan, and was told the fraud investigation was “on hold,” and that the System’s attorney, Gary Lawson, had made a presentation to the System’s Board of Trustees regarding the status of Alexander’s investigation of the terminated employee. At that time, Alexander asked Rohan the following questions:

- When asked if attorney Lawson had submitted Alexander’s May 7, 2002, letter to the Board, Rohan stated he was “unsure.”
- When asked if attorney Lawson had discussed the possibility of collusion with the Board, Rohan stated he was also “unsure.”
- When asked if attorney Lawson had discussed the recent discovery by the System that its 1999 cancelled checks were believed stolen or destroyed, Rohan again stated he was “unsure.”
- When asked if all the Board of Trustee members were present during the Board meeting, Rohan stated “there were enough for a Quorum.”
- When asked if any of the three City Council Board members were present during this executive session of the Board, Rohan replied “No.”

26. After answering the questions, Rohan told Alexander he wanted Alexander to prepare a report for the Administrator to review with the Board of Trustees. Alexander stated that to prepare a report at that time would be premature, since the investigation was ongoing and, as of that time, not complete. Rohan then asked for a report of Alexander’s findings to that date. Alexander agreed to prepare an “Interim Report” which would only contain his macro-level concerns and findings as-of May 8, the date Alexander’s Contract expired. At no time during this extended phone conversation of May 13 did Rohan advise Alexander of the Board’s decision made

at their May 9 meeting regarding the Contract not being renewed, and the Board's decision to hire another fraud examiner.

27. On May 17, 2002, in response to Rohan's request of May 13, Alexander sent his "Interim Report" regarding significant findings to-date from Alexander's fraud examination, to System Administrator Richard Tettamant, and the System's Board of Trustees, (a copy of which is attached as **Exhibit "G"**).

28. Also on May 17, the System's Accounting Manager, Linda Stevenson, requested Alexander return all System records to which Alexander responded in his e-mail (a copy of which is attached as **Exhibit "H"**).

29. On May 21, 2002, following delivery of Alexander's Interim Report, a member of the System's Board of Trustees (believed to be Councilmember Leo Chaney) shared Alexander's "Interim Report" with a reporter from *the Dallas Morning News*. Effective on this date, Councilmember Leo Chaney also resigned from the System's Board (a copy of which is attached as **Exhibit "I"**).

30. Also on May 21, a representative of the System (believed to be Board member Steven Shaw), provided a reporter from *the Dallas Morning News* with information about Alexander, and his fraud examination of the System, that was false, and was known by the System to be false at the time (a copy of the news article is attached as **Exhibit "J"**).

31. On May 22, 2002, System attorney Gary Lawson, sent Alexander a letter along with a Contract Termination Agreement (a copy of which is attached as **Exhibit "K"**). Particularly important parts of Lawson's letter to Alexander are as follows:

- "[Alexander shall] immediately provide Mr. Tettamant and myself [Lawson] with any and all back-up information of the allegations of wrongdoing by other persons at the System's offices [i.e., the Atwood Reports]."

Particularly important parts of the System's proposed Contract Termination Agreement are as follows:

- "If [Alexander] receives a subpoena or other demand requiring or requesting disclosure of any information with regard to [Alexander's] work for the System, [Alexander] shall immediately provide written notice to the System's Administrator and General Counsel of such demand and shall permit sufficient time, as permitted by law, to enable the System, if it chooses, to seek a protective order."

The First Lawsuit and Settlement

32. Also on May 22, Alexander retained the law firm of Jenkins & Watkins, in part, to advise System attorney Lawson that the System *did not have consent* to *break the lock* or otherwise invade Alexander's file trunk, which was left in the System office when his audit was placed "on hold" (a copy of the letter to Lawson is attached as **Exhibit "L"**).

33. On May 28, 2002, the System's Board of Trustees held a Special meeting, and for more than two hours, System executives and Board trustees met in closed executive session regarding Alexander (a copy of minutes later published is attached as **Exhibit "M"**).

34. On May 29, 2002, the System's Special meeting of May 28 reconvened, at which time, trustee Steven Shaw made a motion to open the locked trunk belonging to Alexander. Gary Edge seconded the motion, which was unanimously approved by the Board. The System then cut the lock on Alexander's trunk, and removed property owned by Alexander, *without consent* and *without a court order* (a copy of minutes later published is attached as **Exhibit "N"**).

35. Also on May 29, the System, acting by and through its attorney, executive staff and members of its Board of Trustees, discovered *for the first time* that Alexander had transferred all proof of illegal acts by System executives to his attorney, for copy and safekeeping.

36. On June 25, 2002, the System filed suit against Alexander with statements to the Court regarding Alexander that were false, and were known by the System to be false at the time.

37. On July 19, 2002, Alexander's new attorney, Talmage Boston, sent a demand letter to Calhoun, which enclosed a draft Original Answer and Counterclaim for breach of contract and defamation that included many of the same factual allegations included here. The System began earnestly working to settle the case before the Counterclaim could be filed.

38. On July 24, 2002, System attorney Eric Calhoun wrote a letter to Boston in which he threatened that filing Alexander's Counterclaim would be a violation of Alexander's confidentiality obligations, once again emphasizing the System's interest in suppressing information that would notify the public of System mismanagement and wrongdoing. Boston replied to Calhoun (a copy of which is attached as **Exhibit "O"**) by providing pertinent provisions of the Code of Professional Ethics for Certified Fraud Examiners which states:

“In general, examiners are not legally obligated to blow the whistle on clients or employers. However, circumstances might exist where they are morally and legally justified in making disclosure to appropriate outside parties. Such circumstances include those in which a client or employer has intentionally involved a Certified Fraud Examiner in its illegal or unethical conduct, or when a client or employer has distributed misleading reports based on the Certified Fraud Examiner's work.”

39. As negotiations continued, it became clear that the System's primary interest was “confidentiality” of System wrongdoing uncovered by Alexander during the course and scope of his examination. Alexander and Boston maintained that such a resolution was “not an option” since the System wanted the return of all evidence of wrongdoing by System executives, especially the Atwood Reports. (See July 31, 2002 letter from Boston to Calhoun, a copy of which is attached as **Exhibit "P"**).

40. On August 7, 2002, the System and Alexander entered into a Settlement Agreement (the “Agreement”), a true and correct copy of which is attached as **Exhibit "Q."** Particularly important parts of the Agreement are as follows:

- The System agrees to dismiss with prejudice its lawsuit against Alexander;

- The System agrees to pay Alexander for all outstanding invoices plus expenses to include attorney fees and related cost; and
- The System agrees to issue a written statement signed by Board Chairman, Gerald Brown, to *the Dallas Morning News* correcting false statements made by the System on May 21, 2002.

41. Upon execution of the Agreement, the System dismissed its lawsuit, paid Alexander the amounts owed to him, and issued the agreed written statement. Alexander, pursuant to the Agreement, returned documents that he had obtained from the System during the course of his engagement, ensuring that the System had a full and complete copy of his work papers and the evidence supporting his Interim Report.

Alexander's Private Investigation of the System

42. In September 2002, Alexander, as an interested private citizen and without using any confidential information obtained during the course of his investigation, reviewed published reports regarding the \$43 million reimbursement to the Palladium Company, approved by the Dallas City Council on May 22, 2002, for the proposed Victory Project, and began a study of real estate transactions in and around the proposed Downtown Dallas Victory project ("Victory"). He began compiling important documents on his "dpfps.org" website for public consumption.

43. On September 30, 2002, Alexander met with Boston to review unexpected findings noted during Alexander's review of real estate transactions in and around Victory. During this meeting, System Attorney Gary Lawson called Boston regarding Alexander's purchase of the "dpfps.org" domain (a copy of which is attached as **Exhibit "R"**).

44. On October 4, 2002, Alexander met with System attorney Gary Lawson regarding Alexander's purchase of the "dpfps.org" domain, but the conversation soon changed to highly-questionable System real estate investment activities in downtown Dallas. Particularly important parts of Alexander's discussion with Lawson included the System's April 14, 2000, purchase of

seven commercial real estate properties located in and around the proposed downtown Dallas Victory project (collective, the “Akard Place Property”) as follows: (a) On February 9, 2000, the System’s Board of Trustees received a report from L&B Realty regarding the progress of the due diligence review of the Akard Place Property noting the “40-day review period” would end on March 6, 2000; (b) On April 10, 2000, the System’s Board held an Emergency meeting during which it met in closed executive session for five minutes, and then voted to approve the purchase of the Akard Place Property; (c) However, prior to the 40-day due diligence review by L&B Realty, and almost three months before Trustees voted to approve its acquisition, Articles of Incorporation were filed creating the legal entity that would acquire the Akard Place Property on behalf of the System; and (d) The System later publicly stated in its “2001 Annual Report” to the Mayor and Dallas City Council that “The System acquired [during fiscal year 2001] a four-story office building situated north of downtown Dallas on North Akard Street at the intersection of Cedar Springs Road. The System office occupies the second floor of the building, with the Board room and Conference Center located on the first floor.” In fact, the aforementioned four-story office building was actually purchased by the System on April 14, 2000, as part of seven commercial properties in and around Victory, and not during 2001 as stated in the System’s “2001 Annual Report.” (a copy of open records requests regarding this matter are attached as **Exhibit “S”**).

45. On October 27, 2002, Alexander began his private investigation of the System. Armed with transparency laws mandated by the Texas Public Information Act, Alexander issued, during the next two years, over one-hundred Open Records Requests to the System, with subject areas ranging from audits, litigation, investigations, trustee resignations, competitive bids, term limits, and legal expense to corporate formations, partnerships, related party transactions, and some highly-questionable real estate investments, a partial list of which is published on

Alexander's dpfps.org domain, and incorporated herein by reference, and attached in part as **Exhibit "T"**.

46. On October 1, 2007, federal prosecutors announced conspiracy charges against Dallas City Councilmember Donald Hill and fifteen others. Councilmember Hill, 55, of Dallas was charged with one count of conspiracy to commit bribery concerning a local government receiving federal benefits, four counts of bribery concerning a local government receiving federal benefits, one count of conspiracy to commit extortion, two counts of extortion by public officials, one count of conspiracy to commit deprivation of honest services by wire fraud, two counts of conspiracy to commit money laundering and one count of tax evasion. Hill was elected to the Dallas City Council in 1999, and reelected to the same position in 2002, 2003 and 2005. During his tenure on the Council, Hill served as mayor pro tem, deputy mayor pro tem, vice chair of the Business and Commerce Committee, chair of the Finance and Audit Committee and a member of the Comprehensive Plan Committee. Councilmember Hill was also a Dallas Police and Fire Pension System Trustee, and member of its Investment Advisory Committee (the complete text of the U.S. Attorney's press release is attached as **Exhibit "U"**).

47. In October 2009, a federal jury convicted former Mayor Pro Tem Donald Hill of seven of nine corruption charges against him. Soon thereafter, Alexander's interest in the System waned.

Recent Interest in System

48. Sometime in February 2015, Alexander was contacted by a retired Dallas police officer who had found Alexander through the dpfps.org website. The retired police officer shared with Alexander the following concerns that he had previously shared with the System at a regularly scheduled board meeting:

- “... Councilmember Kleinman said the pension fund was taking a new direction, and that direction was transparency. I hope the rest of the Board embraces this new direction of transparency, and also accepts the fact that the Board has the ultimate responsibility for the investment of funds. I hope we can all work together and move forward to restore the trust and confidence of active and retired members of both departments, and the citizens of Dallas who help fund this pension system.”
- “But in the meantime, I’m concerned about how we got to where we are today. I’m concerned mistakes will be repeated, and business will go on as usual unless there is a change in attitude. How could one person lead us down the path of such a financial downfall? ... I don’t think it was entirely the work of one individual. I’m concerned that whatever investment the administrator wanted, he got from more than one willing Board.”
- “I’m concerned that there might be another Painted Hills fiasco, where we paid over six times what the property appraised for. What kind of due diligence would lead this Board to approve spending \$27 million for a property that had sold the prior year for less than \$4 million?”
- “I’m concerned the Board will be tempted to attend another conference such as Abu Dhabi. A conference that cost over \$100 thousand dollars to attend the year after the fund lost \$820 million. I’m concerned that travel expenses paid for by private account managers unduly influences Board investment decisions. I’m concerned the business-as-usual approach is alive and well.”

Alexander’s interest in the System was rekindled by this discussion and by the evidence that fresh faces on the System Board and City Council were beginning to understand and investigate the reason for the System’s financial troubles.

49. On December 10, 2015, the System’s Board of Trustees held a Regular Board meeting to discuss, among other things, Open Records Requests from *the Dallas Morning News*, (a copy of Board minutes later published is attached as **Exhibit “V”**). In attendance at this meeting were Alexander, and members of the Dallas news media. At that time, Alexander learned the following:

An Attorney for the Dallas Police and Fire Pension System [the System] may have paid a consultant to do a “forensic trace” (during 2013) on City Council member Scott Griggs, who is also a member of the pension fund’s own board... The “forensic trace” on Griggs came just as Griggs was demanding answers from Lawson and former pension [System]

administrator Richard Tettamant (a copy of which is attached as **Exhibit “W”**).

50. Also on December 10, reporter Steve Thompson of *the Dallas Morning News* told Alexander that System records reviewed by Thompson and others indicate that (during 2013) the System, acting by and through its Administrator Richard Tettamant, and attorney Gary Lawson, had also investigated Alexander, for reasons known to the System, but unknown to Alexander or Thompson.

51. Alexander also learned (on this date) that the System (during 2013), acting by and through its attorney, Gary Lawson, had taken legal action against reporter Steve Thompson, and was seeking to investigate a potential claim against Thompson and/or his employer, *the Dallas Morning News* (a copy of which is attached as **Exhibit “X”**).

52. On December 14, 2015, System Attorney Gary Lawson resigned, a copy of which is attached as **Exhibit “Y.”** According to *the Dallas Morning News*, “Attorney Gary Lawson, who last week was accused of signing off on a private online investigation of a Dallas City Council member, has resigned as counsel for the Dallas Police and Fire Pension System [the System].” Further, Councilmember Scott Griggs said “The previous pension system [leaders] under Richard Tettamant and Gary Lawson were looking to protect their own self interests. And they could go to extremes to attempt to harm those in their way” (a copy of the full text of the news article is attached as **Exhibit “Z”**).

53. Beginning in 2014 and continuing to date, the System has made numerous changes to its executive staff. On December 2, 2015, the System’s new executive director, Kelly Gottschalk, briefed the Dallas City Council regarding the state of the System. According to published reports, Kelly told the Dallas City Council that the System had hired a law firm to investigate System mismanagement dating back at least a decade. Kelly also assured the council

that other Board members, including some city council members, who signed-off on the former System Administrator Richard Tettamant's recommendations, were long gone. In fact, no fewer than two remain, namely Gerald Brown, Trustee and Chairman of the System's Investment Advisory Committee and John Mays, Trustee and active member of the System's Investment Advisory Committee.

54. On May 5, 2016, during an oversight meeting with members of the Texas Pension Review Board (the "PRB"), in response to questions by the PRB, System executives stated the following:

- **PRB Question:** "On the real estate portfolio, you [the System] have investments that were managed prior to the realization that that (sic) portfolio was not where it should have been. Do you [the System] have managers, or decisions makers, in place who were associated with those decisions?"
- **System Answer:** In a lengthy reply to the PRB members, both executive director Gottschalk and general counsel Josh Mond failed to disclose that no fewer than two decision making trustees from the former administration active, in part, as Chairman, trustee, and member of the System's Investment Advisory Committee during over a decade of mismanagement and failed oversight, remain on the System's Board, and are active members of the System's Investment Advisory Committee.
- **PRB Question:** "Is the FBI conducting an investigation of your [the System's] office?"
- **System Answer:** "The FBI is conducting an investigation of transactions related to DPFP. I don't, I wouldn't say an investigation of our [the System's] offices."

However, recent payments by the System to criminal defense law firms/attorneys would strongly suggest otherwise. Alexander and the public have a right to know. Copies of System cash disbursement (payment) information, and online advertisements regarding these criminal defense law firms and their attorneys are attached as **Exhibits "AA" and "BB."**

55. In addition, since January 1, 2013, the System has publicly complained about its desperate financial condition, while apparently disbursing more than three-quarters of a million

dollars in credit card payments, a curious event to understand during these most difficult financial times (copies of System cash disbursement (payment) information are attached as **Exhibits “CC”** and **“DD”**).

56. On October 1, 2007, U.S. Attorney Roper said it best when he stated “the citizens of Dallas are entitled to know that their public servants are making official decisions based upon the best interests of the people they represent, and not based upon their own financial interests.”

D. AFFIRMATIVE DEFENSES

First Amendment. Plaintiff’s lawsuit implicates Alexander’s free exercise of rights.

Void as Against Public Policy. The enforcement of the Agreement as requested by the System is against public policy and void.

Unclean Hands. The facts presented herein make clear that the System, acting by and through its former executive staff, general counsel, and Board of Trustees violated the law, and has unclean hands in the very transaction of which it complains.

Breach. The System materially breached the Agreement that forms the basis for its claims.

E. DECLARATORY JUDGMENT

Alexander brings this action, in part, under the provisions of Chapter 37 of the Texas Civil Practice & Remedies Code. Pursuant to 37.004(a), Alexander is a person whose rights, status, or legal relations are affected by a statute (namely the TPIA) and a contract (namely the Settlement Agreement). Alexander seeks a judicial determination of whether he forfeited his rights to make lawful requests under the TPIA when he signed the Settlement Agreement.

F. DAMAGES FOR FREEDOM OF SPEECH VIOLATIONS UNDER 42 USC §1983

Alexander brings a counterclaim for damages as a result of the System's violation of his right to freedom of speech, as protected by the First Amendment to the United States Constitution and Article I, Section 8 of the Texas Constitution. This right is protected by 42 USC §1983, which states, in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

Pursuant to this statute, Alexander brings an action for damages within the jurisdictional limits of this court.

G. ATTORNEY FEES

Pursuant to the Chapter 37 of the Texas Civil Practice & Remedies Code, Alexander requests all costs and reasonable and necessary attorney's fees incurred by or on behalf of Defendant herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just.

PRAYER

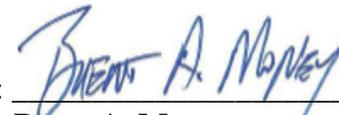
WHEREFORE, defendant Columbus A. Alexander, III, requests the Court grant Alexander the following relief:

1. Judgment against Plaintiff for all damages proven by Defendant at trial;
2. Judgment in favor of Defendant making the declarations requested herein;
3. Attorney's fees and costs; and
4. Defendant be granted such other and further relief, both general and/or specific, at law or in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

MONEY LAW FIRM

By: _____



Brent A. Money

Texas Bar No. 24049530

Lauren A. Hudgeons

Texas Bar No. 20402977

2606 Lee Street

Greenville, Texas 75401

Phone: (903) 455-1600

Fax: (888) 756-4746

Email: brent@moneylawfirm.net

**ATTORNEY FOR DEFENDANT,
COLUMBUS A. ALEXANDER, III**

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the counsel of record in the above-styled matter in accordance with the applicable Rules of Civil Procedure on this the 15th day of July, 2016.

Via Electronic Filing

Julie Y. Fort

MESSER ROCKEFELLER & FORT, PLLC

6351 Preston Road,

Suite 350

Frisco, Texas 75034

ATTORNEY FOR PLAINTIFF,

DALLAS POLICE AND FIRE PENSION SYSTEM


BRENT A. MONEY