

Treva Parker-Ayodele

CAUSE NO. DC-17-11306

DALLAS POLICE & FIRE PENSION
SYSTEM,

Plaintiff,

v.

TOWNSEND HOLDINGS, LLC d/b/a
THE TOWNSEND GROUP, RICHARD
BROWN, MARTIN ROSENBERG and
GARY B. LAWSON,

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

298th JUDICIAL DISTRICT

**TOWNSEND’S MOTION TO COMPEL PRODUCTION OF
PLAINTIFF’S COMMUNICATIONS WITH, AND DOCUMENTS PROVIDED TO,
LAW ENFORCEMENT**

Defendants Townsend Holdings, LLC d/b/a The Townsend Group, Richard Brown, and Martin Rosenberg (collectively, “Townsend”) file this Motion to Compel Production of Plaintiff’s Communications with, and Documents Provided to, Law Enforcement (the “Motion to Compel”) against plaintiff Dallas Police & Fire Pension System (“Plaintiff” or “DPFPS”) on the grounds set forth below.

PRELIMINARY STATEMENT

1. This laser-focused motion seeks an order directing Plaintiff to produce a narrow set of documents that are unquestionably relevant to pivotal issues in this case. The documents are written communications and information exchanged with or provided to the Federal Bureau of Investigation about Plaintiff’s real estate portfolio for the defined period of August 31, 2017, through the present. Plaintiff does not dispute the existence of these documents and does not claim that the documents are irrelevant or that collecting them would be burdensome. Yet, Plaintiff refuses to comply with Townsend’s lawfully-served discovery solely on the invented basis that parties in this case need not produce any documents that post-date the filing of the Petition, which

Plaintiff filed on August 31, 2017. Plaintiff's position is invented and groundless and must be overruled.

2. In July 2019, Townsend served the two requests for production that are the subject of this Motion.

3. Townsend crafted the requests to be narrowly tailored in scope and time:

Request No. 205: All documents, from August 31, 2017, to the present, evidencing, relating to, or concerning communications between Plaintiff and any state or federal agency, including the Federal Bureau of Investigation, concerning Plaintiff's real estate investment program, including the losses alleged in this Lawsuit.

Request No. 206: All documents, from August 31, 2017, to the present, produced to or seized by any state or federal government agency, including the Federal Bureau of Investigation, concerning Plaintiff's real estate investment program, including the losses alleged in this Lawsuit.

4. Earlier in the case, before Townsend knew the scope, extent, or duration of the FBI's investigation of Plaintiff, Townsend served requests seeking the same documents, but for the period from October 1, 2004, to August 31, 2017 (the date the Petition was filed). Plaintiff initially refused to produce all responsive documents and forced Townsend to move to compel. In a February 2019 hearing on that motion, Plaintiff backtracked from its prior position and represented to this Court and Townsend that "anything relating to any of this, has already been produced or will be produced," "the documents that we know that the FBI has, has been produced or will be produced," and "we are not holding anything back." Ex. 1 (Feb. 1, 2019 Tr.) at 28:19-22, 31:3-5.

5. Townsend reviewed documents produced by Plaintiff and learned that Plaintiff continued to communicate with and provide documents to the FBI after August 31, 2017 (the end date of the prior requests). Accordingly, Townsend served Requests 205 and 206, which, as noted, are *identical* to the prior requests, except for the timeframe.

6. Plaintiff refuses to produce a single document in response to Townsend’s Requests 205 and 206. Plaintiff does not argue—nor could it argue—that responsive documents are irrelevant or that searching for this narrow set of materials would be unduly burdensome. Instead, Plaintiff’s *lone* objection is that Requests 205 and 206 seek documents that were exchanged with law enforcement after August 31, 2017, the date Plaintiff filed the Petition in this case. Ex. 2 (Sept. 18, 2019 Letter) at 3-4.

7. There is no authority for the counter-intuitive proposition that the relevance of information instantly ceases the day a lawsuit is filed. If that were the rule, a party could hide from its adversary, the court, and the trier-of-fact smoking gun information and skew the proof in a lawsuit. For this reason, courts routinely order parties to produce post-petition materials where, as here, they are relevant or likely to lead to the discovery of admissible evidence.¹ Nor is there merit to Plaintiff’s unsubstantiated and erroneous assertion that the Court has already held that any post-Petition documents are irrelevant to this case.

8. Through this Motion to Compel, and on the grounds set forth below, Townsend respectfully seeks an order compelling Plaintiff to respond in full to Requests 205 and 206 and produce the case-critical documents Plaintiff is trying to conceal.

RELEVANT BACKGROUND

9. Going back decades, Plaintiff developed and executed a high-risk investment strategy with respect to real estate. For years, the strategy paid off with high returns to Plaintiff

¹ See generally Tex. R. Civ. P. 192.3(a); *In re Exmark Mfg. Co., Inc.*, 299 S.W.3d 519, 530–31 (Tex. App.—Corpus Christi 2009, no pet.) (compelling production of documents for timeframe extending “to the present”); *In re Energas Co.*, 63 S.W.3d 50, 55–56 (Tex. App.—Amarillo 2001, no pet.) (compelling production of documents for timeframe extending “to the time of record production”); see also *S.W. Hide Co. v. Goldston*, 127 F.R.D. 481, 484 (N.D. Tex. 1989) (“There is no *per se* rule barring discovery regarding events which occurred after the date the pending action was filed.”); *Pershing Pac. W., LLC v. MarineMax, Inc.*, 2013 WL 941617, at *5 (S.D. Cal. Mar. 11, 2013) (“[P]ost-complaint documents may reflect on events or statements that occurred prior to the lawsuit which may bear on . . . liability.”); *Paolo v. AMCO Ins. Co.*, 2003 WL 24027878, at *2 (N.D. Cal. Dec. 16, 2003) (“[T]he filing date of [plaintiff’s] lawsuit does not control the relevance of the information sought.”).

and big bonuses to the Staff that administered it. Then came the Great Recession, which had substantial impact on Plaintiff's real estate portfolio.

10. This lawsuit is part of Plaintiff's public relations campaign to deflect blame, point fingers, and try to scapegoat others, like Townsend and defendant Gary Lawson, Plaintiff's long-time attorney, for Plaintiff's own investment decision-making.

11. Plaintiff tries hard to hide the fact that, in or around 2016, the Federal Bureau of Investigation ("FBI") began investigating Plaintiff's real estate investment program—including the investments at the heart of this lawsuit—and Plaintiff's relationships with the investment managers and land developers responsible for recommending and managing the bulk of those investments. Consistently over what appears to be a two-year period (possibly more), Plaintiff met with, provided documents to, prepared and submitted "flash drives" to, and communicated with Special Agents from the Bureau (and perhaps others), and even gave the FBI access to its document servers.

12. In 2018, Townsend served two requests for production seeking documents concerning the FBI's investigation into Plaintiff's real estate investment program, including Plaintiff's communications with the FBI (Request 94) and documents provided to the FBI (Request 95).² Because Townsend did not know the scope, magnitude, or duration of Plaintiff's involvement with the FBI, the timeframe for these initial requests was limited to the period between October 1, 2004, and August 31, 2017—the date Plaintiff's Petition was filed. *Id.* at 6.

² Ex. 3 at Request 94 ("All documents evidencing, relating to, or concerning communications between Plaintiff and any state or federal government agency, including the Federal Bureau of Investigation, concerning Plaintiff's real estate investment program, including the losses alleged in this Lawsuit."); *id.* at Request 95 ("All documents produced to or seized by any state or federal government agency, including the Federal Bureau of Investigation, concerning Plaintiff's real estate investment program, including the losses alleged in this Lawsuit.").

13. Initially, Plaintiff refused to produce responsive documents. Townsend moved to compel on December 10, 2018. Ex. 4. Earlier this year, in February 2019, the Court held a hearing on Townsend’s motion. Backpedaling from its initial position, Plaintiff represented that “anything relating to any of this, has already been produced or will be produced,” “the documents that we know that the FBI has, has been produced or will be produced,” and “we are not holding anything back.” Ex. 1 (Feb. 1, 2019 Tr.) at 28:19-22, 31:3-5. Plaintiff did argue, however, that it should not be required to give Townsend access to “drives” or “servers” made available to the FBI. The Court took that issue under consideration. It remains pending, and, to this day, Townsend has been denied access to the electronic data Plaintiff submitted to the FBI.

14. Since February 2019, Plaintiff has produced *some* communications with, and documents provided to, the FBI. They are stunning. They are proverbial smoking guns that, individually and especially collectively, flatly refute key factual allegations and legal assertions set forth in Plaintiff’s Petition.³ They also establish clearly that the FBI’s investigation continued well beyond August 31, 2017, and that Plaintiff continued to communicate with and provide documents to the FBI past that date.

15. Plaintiff does not dispute this, nor could it. The last-in-time FBI-related document Plaintiff produced was dated August 31, 2017. In that document, an FBI agent emailed Plaintiff stating that another agent would come to Plaintiff’s offices to collect additional documents and making plans for additional communications between the FBI and Plaintiff. Plaintiff did not

³ Plaintiff designated these documents as Confidential or Highly Confidential under the Agreed Protective Order. Although Townsend does not believe that the content of these documents is necessary to resolve this Motion to Compel, to the extent the Court would like copies of the documents for *in camera* review, Townsend will supply them to the Court (with copies to counsel for Plaintiff). Townsend also believes that Plaintiff’s designations are unjustified, as the documents do not contain privileged material or protectable trade secrets, and that a motion to seal by Plaintiff, if filed, should not be granted.

produce these documents, and refuses to produce any FBI-related documents post-dating August 31, 2017, apparently taking the position that because Townsend's initial requests sought documents through August 31, 2017, Plaintiff had no obligation to produce other, admittedly responsive documents from after that date in response to those requests.

16. As a result, on July 25, 2019, Townsend served Requests 205 and 206. The requests are identical to Requests 94 and 95, except that they seek documents "from August 31, 2017, to the present." Ex. 5.

17. In refusing to produce any documents responsive to Requests 205 and 206, Plaintiff is obstructing the discovery of plainly relevant, case-critical information that clearly exists.

LEGAL STANDARD

18. Under Texas Rule of Civil Procedure 192.3(a), a party may obtain discovery regarding any non-privileged matter that is "relevant to the subject matter of the pending action" or "reasonably calculated to lead to the discovery of admissible evidence." "The 'relevant to the subject matter' and 'reasonably calculated to lead to admissible evidence' tests are liberally construed to allow the litigants to obtain the fullest knowledge of the facts and issues prior to trial." *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 553 (Tex. 1990). The fact that a discovery request may be burdensome "is not enough to justify protection." *In re Energas Co.*, 63 S.W.3d 50, 55 (Tex. App.—Amarillo 2001, no pet.). Indeed, a party resisting discovery "cannot simply make conclusory allegations that the requested discovery is unduly burdensome," but "must produce some evidence supporting its claim of undue burden." *In re State Farm Lloyds*, 519 S.W.3d 647, 657 (Tex. App.—Corpus Christi 2015, no pet.); *see also In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 181 (Tex. 1999) (same).

19. Not surprisingly, courts have regularly ordered the production of documents relating to government investigations concerning the same subject matter as the litigation before the court. *See, e.g., Dresser-Rand Co. v. Schutte & Koerting Acquisition Co.*, 242 F. Supp. 3d 576, 579 (S.D. Tex. 2017) (ordering production of documents previously produced to the U.S. Attorney’s Office); *Mir v. L-3 Commc’ns Integrated Sys., L.P.*, 315 F.R.D. 460, 462, 472 (N.D. Tex. 2016) (ordering plaintiff to produce copies of plaintiff’s submissions to the U.S. Department of Labor’s office of Federal Contract Compliance Programs during its investigation of defendant’s alleged discrimination against plaintiff); *Munoz v. PHH Corp.*, 2013 WL 684388, at *1, *4 (E.D. Cal. Feb. 22, 2013) (ordering defendant to produce documents provided to Consumer Financial Protection Bureau and concluding “[t]here can be no serious dispute that documents related to the CFPB’s investigation of Defendant[] . . . are relevant to Plaintiffs’ suit based on identical allegations”); *Republic Env’tl. Sys., Inc. v. Reichhold Chems., Inc.*, 157 F.R.D. 351, 352–53 (E.D. Pa. 1994) (ordering plaintiff to produce documents relating to “any environmentally-related investigation, inspection or inquiry by any governmental agency or authority” concerning waste treatment facility at issue in lawsuit); *see also Three Crown Ltd. P’ship v. Salomon Bros.*, 1993 WL 277182, at *2 (S.D.N.Y. July 21, 1993) (“[T]he Court will allow liberal discovery of statements made or documents submitted to a governmental agency prior to the initiation of an investigation of any defendant in this litigation concerning the subject matter of this litigation.”).

ARGUMENT

20. **The Requested Documents Are Unquestionably Relevant.** Plaintiff does not, and cannot, dispute that these documents are relevant to key—potentially dispositive—issues in this case, including allegations of “non-advice” by Townsend, Plaintiff’s knowledge of issues with its investment strategy and losses suffered, and the applicable statutes of limitations. *See,*

e.g., First Amended Petition (“FAP”) ¶¶ 26 (alleging that Townsend “failed . . . to advise DPFP to diversify its investments to avoid large losses”), 64 (alleging that Townsend “failed to advise the Board in writing that [DPFPS’s] over-allocation [to real estate investments] was problematic - or even particularly risky”), 65 (alleging that Townsend “failed to advise the Board that it should obtain appraisals for its real estate investments”).

21. Not surprisingly, with respect to Townsend’s requests seeking the same documents for an earlier time period, Plaintiff represented to this Court that “we are not holding anything back.” Ex. 1 (Feb. 1, 2019 Tr.) at 31:3-5.

22. **Producing the Requested Documents Is Not Unduly Burdensome.** Nor does Plaintiff appear to argue that producing these documents would be unduly burdensome.

23. Townsend carefully crafted the subject requests to be narrow in scope and time. In scope, they are *identical* to earlier requests, so Plaintiff can use the same search terms and architecture it used previously (*e.g.*, names of FBI agents, names of Plaintiff’s employees who communicated with the FBI, names of investments).

24. In terms of duration, the requests seeks responsive documents from August 31, 2017, through the present. These documents are not “archived” or put on “backup tapes.” They are from the most recent two-year period, all of which took place during the pendency of this lawsuit and presumably during whatever “litigation hold” Plaintiff has put in place.

25. **There is No Rule Saying Documents Created After a Petition Is Filed Are Automatically Irrelevant or Non-Discoverable.** Plaintiff’s lone objection appears to be that, either by operation of law or by order of the Court, no documents after August 31, 2017, must be produced. Ex. 2 (Sept. 18, 2019 Letter) at 1-4. Plaintiff’s position lacks merit.

26. **First**, Rule 192.3 allows parties to obtain discovery regarding any non-privileged matters that are “relevant to the subject matter of the pending action” or “reasonably calculated to lead to the discovery of admissible evidence.” Tex. R. Civ. P. 192.3(a). Numerous cases interpreting that standard—and the identical federal standard—confirm that documents post-dating the filing of a petition are discoverable. See *In re Exmark Mfg. Co., Inc.*, 299 S.W.3d 519, 530–31 (Tex. App.—Corpus Christi 2009, no pet.) (compelling production of documents for timeframe extending “to the present”); *In re Energas Co.*, 63 S.W.3d 50, 55–56 (Tex. App.—Amarillo 2001, no pet.) (compelling production of documents for timeframe extending “to the time of record production”); see also *S.W. Hide Co. v. Goldston*, 127 F.R.D. 481, 484 (N.D. Tex. 1989) (“There is no *per se* rule barring discovery regarding events which occurred after the date the pending action was filed.”); *Pershing Pac. W., LLC v. MarineMax, Inc.*, 2013 WL 941617, at *5 (S.D. Cal. Mar. 11, 2013) (“[P]ost-complaint documents may reflect on events or statements that occurred prior to the lawsuit which may bear on . . . liability.”); *Paolo v. AMCO Ins. Co.*, 2003 WL 24027878, at *2 (N.D. Cal. Dec. 16, 2003) (“[T]he filing date of [plaintiff’s] lawsuit does not control the relevance of the information sought.”).

27. **Second**, there is no merit to Plaintiff’s fallback contention that this Court ratified an agreement among the parties that neither side would be required to produce documents that post-date the filing of the Petition. There is no such agreement, there was no such agreement, and the Court never ratified any such agreement.

28. Plaintiff’s contention that the parties agreed to a blanket discovery cut-off date of August 31, 2017, is demonstrably false. The parties agreed to an August 31, 2017 cut-off date for *certain specific requests served by Plaintiff*—the parties *never* agreed to a cut-off date for the requests served by Townsend. Notably, an earlier cut-off date for *Townsend’s* documents is

appropriate, as Plaintiff terminated Townsend as its real estate investment consultant on February 12, 2016. In contrast, Plaintiff claims ongoing damages for losses it has allegedly incurred even since the filing of this suit on August 31, 2017—and, of course, the FBI’s investigation of Plaintiff’s real estate program clearly continued past August 31, 2017.

29. Plaintiff served its first set of requests for production on October 16, 2017, which sought documents “during the period from October 1, 2001 to the present.” Ex. 6 at 2. The parties were unable to reach agreement on the appropriate date range for Plaintiff’s requests and other issues. Plaintiff filed a motion to compel, and the Court held a hearing on August 9, 2018.

30. At the hearing, Townsend agreed to produce documents responsive to the bulk of Plaintiff’s requests for the period from October 1, 2004, to May 2017 (when the parties began settlement discussions). Ex. 7 (Aug. 9, 2018 Tr.) at 21:8-22. The Court then confirmed that Townsend’s production would “begin[] with the effective date of the contract [October 1, 2004], and it will end at the end date of 2017.” *Id.* at 35:6-13. Townsend’s counsel requested clarification as to the end date in 2017, and Plaintiff’s counsel proposed August 31, 2017—the date Plaintiff’s Petition was filed—though he reserved the right to seek later documents, stating: “I would simply say I would reserve after that ..., obviously there could be other stuff.” *Id.* at 36:2-7. The Court accepted the August 31, 2017 end date, stating: “That’s fine. If that was your agreement, I am happy to ratify your agreement for you.” *Id.* at 36:8-10.

31. The parties thereafter signed a Rule 11 agreement confirming that Townsend would produce documents responsive to Plaintiff’s first set of requests for production for the period from October 1, 2004, to August 31, 2017. Ex. 8.

32. Nothing in the parties' agreement or the Court's order ratifying that agreement prevents Townsend from serving requests for documents post-dating August 31, 2017. Notably, even Plaintiff's counsel reserved the right to seek post-Petition documents in future requests.

33. *Third*, in response to *other* requests for production, Plaintiff has produced documents that clearly post-date August 31, 2017, including materials from Board meetings, a confidential investment recommendation, and even an investment policy statement amended as of December 14, 2017.⁴ Plaintiff has implicitly recognized that documents post-dating the Petition in this case may be, and in many cases are, relevant and discoverable—and its arguments to the contrary now are no more than a desperate attempt to shield its most recent (and almost certainly incriminating) communications with the FBI.

CONCLUSION

34. The Court should reject Plaintiff's obvious gambit to prevent Townsend from uncovering the complete truth. Townsend respectfully requests that the Court grant this Motion to Compel in its entirety, order Plaintiff to produce documents responsive to Requests 205 and 206 within 30 days after entry of the Order, and order such other and further relief to which Townsend may show itself justly entitled.

DATED: October 14, 2019

Respectfully submitted,

BAKER & MCKENZIE, LLP

By /s/ Elizabeth L. Yingling
Elizabeth L. Yingling
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Meghan E. Hausler

⁴ Again, Plaintiff designated these documents as Confidential or Highly Confidential under the Agreed Protective Order. To the extent the Court would like copies of these documents for *in camera* review, Townsend will supply them to the Court, with copies to counsel for Plaintiff.

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**ATTORNEYS FOR DEFENDANTS TOWNSEND
HOLDINGS, LLC d/b/a THE TOWNSEND GROUP,
RICHARD BROWN and MARTIN ROSENBERG**

CERTIFICATE OF SERVICE

I hereby certify that via correspondence exchanged between the undersigned and counsel for Plaintiff on September 13, September 18, and September 19, 2019, the parties conferred regarding the subject matter of this motion but were unable to reach agreement. Accordingly, the motion is submitted to the Court for determination.

/s/Melissa Sedrish Rabbani
Melissa Sedrish Rabbani

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on the following via e-service on this 14th day of October, 2019:

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/s/ Elizabeth L. Yingling
Elizabeth L. Yingling

EXHIBIT 1

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MOTION TO COMPEL

REPORTER'S RECORD

VOLUME 1 OF 1 VOLUMES

TRIAL COURT CAUSE NO. DC-17-11306

DALLAS POLICE & FIRE)	IN THE DISTRICT COURT
PENSION SYSTEM)	
)	
vs.)	DALLAS COUNTY, TEXAS
)	
)	
TOWNSEND HOLDINGS, LLC d/b/a)		
THE TOWNSEND GROUP, RICHARD)		
RICHARD BROWN, MARTIN)		
ROSENBERG and GARY B. LAWSON)		298TH JUDICIAL DISTRICT

MOTION FOR SUMMARY JUDGMENT

On the 1st day of February, 2019, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Emily Tobolowsky, Judge Presiding, held in Dallas, Dallas County, Texas. Proceedings reported by machine shorthand and computer-aided transcription.

1 produce them. This is also we are going to put in the
2 record.

3 THE COURT: Thank you.

4 MR. SALES: But it's, basically, we told
5 we'd give them the communications. They are not
6 complaining about that because we've given them and
7 we'll give them this.

8 But the bottom line with the way this
9 whole FBI thing occurred was, yeah, they were
10 investigating whether people, including CDK, who
11 Townsend was supposed to be supervising, had done
12 something wrong. They came in and they gave us a
13 subpoena, which the Court saw. You can see in that
14 subpoena they -- they basically say, please, don't --
15 you know, this is not to be spread or disseminated to
16 anybody as part of their -- the FBI investigation.

17 Our folks initially said, well, we can
18 give you some documents, which we gave them. Those
19 documents, anything relating to any of this, has already
20 been produced or will be produced. There are no -- the
21 documents that we know that the FBI has, has been
22 produced or will be produced.

23 That's a small number of documents.
24 Because what became very clear from the beginning was,
25 they didn't know what they were looking for, so they

1 wanted to come in and just look at our system. So --

2 THE COURT: Are you referring to the FBI?

3 MR. SALES: Yes, Your Honor.

4 THE COURT: Thank you.

5 MR. SALES: So they came in and they --
6 we don't know what they looked -- this is the whole
7 point that was in -- it's in the affidavits that's
8 before the Court. They went in and took images of
9 various documents. We basically said, "Look, we'll let
10 you do that, FBI. You can come image, look what you
11 want in the system, but here's the deal, we want you to
12 tell us before you review because there's going to be
13 privileged stuff in here. There may be other stuff
14 that's in there." They agreed. That's in -- what I
15 have given Your Honor, the little note. There's --
16 that -- that we are not waiving anything, doing anything
17 that we can assert, but it was to facilitate and
18 cooperate with the investigation by the FBI.

19 They have yet to tell us, and we've
20 checked, that they decided to start reviewing any of
21 this stuff. The image he's talking about, we don't have
22 the image. We don't know what they took. They -- we,
23 basically, allowed them to come in and go in through our
24 servers and then pull whatever they wanted.

25 We have no record of what documents they

1 have, what they have imaged, whatever. So this idea
2 that we should just produce the image, we don't have the
3 image. We don't know what it is. That is in the
4 possession of the FBI.

5 So the only thing -- you have category A,
6 which is the documents we know -- we initially gave
7 them, which we have already produced or will be
8 produced, and category B is whatever they have imaged.
9 We don't know what they have reviewed, I mean, when
10 they -- when they -- when they looked at it initially.
11 We don't know what they've imaged. We won't know that
12 until if and when they advise us that they are going to
13 start doing that, and we can assert any claims that we
14 have.

15 So, there's nothing -- it's -- to compel
16 us to produce, we don't even know what we would be
17 producing. I don't know how the Court could compel us
18 to produce what the FBI has if we don't know what it is.

19 So, the point is, we don't know what it
20 is, but that's not holding us back giving them any
21 documents related to any of this stuff. We have been
22 producing this stuff. It's all there.

23 So, if they really want to try get that
24 information, they can contact the FBI as easy as we can.
25 I would be surprised if the FBI is going to tell them

1 what they took or what they are looking into because
2 that's their investigation. So that's the issue on the
3 FBI. There is nothing to compel, and we are not holding
4 anything back, that we are aware of, that's relevant to
5 their defenses or our claims in this case.

6 Just because I don't -- the mere fact
7 that the FBI looked at a document, to me, doesn't mean
8 it's relevant to anything. You have to know what the
9 document is.

10 So that -- that is the FBI --

11 **THE COURT:** Is there a particular
12 category of documents that could have been in the
13 universe that the FBI reviewed that you would argue
14 upfront is simply irrelevant?

15 **MR. SALES:** It's hard to say, Your Honor,
16 because they -- I'm sure they looked -- they were
17 looking at -- we don't really know, to be honest with
18 you. They could have been looking at investment
19 management; they could have been looking at employees,
20 whether there was anything going on. I just don't know,
21 really, what it is. They don't tell us and won't tell
22 us what -- what the -- it's very clear, when you look at
23 the subpoena, CDK was front and center of it.

24 But I will tell you, Your Honor, that
25 every document that -- we have a CDK that we have, has

EXHIBIT 2



DIAMOND McCARTHY LLP

Attorneys & Counselors

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September 18, 2019

Via E-Mail

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Re: *Dallas Police & Fire Pension System v. Townsend Holdings, LLC d/b/a The Townsend Group, Richard Brown, Martin Rosenberg and Gary B. Lawson*, Dallas County, Texas

Melissa:

I am in receipt of your letter that was sent after the close of business at 6:13 p.m. CDT on Friday, September 13, 2019, which includes a demand for a response by close of business on Tuesday, September 17, 2019 coupled with a threatened motion. As in the past, I will refer you to our Court's Local Rule 2.07 outlining the conference procedures required before seeking relief from the Court, as well as Tex. R. Civ. P. 191.2, which requires a moving party to make "a reasonable effort" to resolve disputes without the necessity of court intervention. Your letter, and its arbitrary deadline, does not comply with these requirements.

Regarding DPF's Responses to Townsend's Requests Nos. 205 and 206, you assert that DPF's position relating to the August 31, 2017 cut-off date is "groundless" and that DPF's time limit objections are "bogus". Your contention is erroneous and is surprising given your prior representations to the Court, the parties' binding Rule 11 agreement on the issue, and the Court's ruling entering this cut-off date (at your insistence).

A. The Record

The relevant time frame for discovery in this case was the subject of dispute early on in the discovery process. This dispute was ultimately resolved at the hearing on August 9, 2018 with the establishment of the August 31, 2017 cut-off date, which resulted from an agreement between the parties and which was then ratified and entered by the Court on the record.

Since that time, DPF and Townsend have both operated in accordance with the Court's ruling, which has affected the gathering, reviewing, and production of all electronically stored data and other relevant documents and communications in this lawsuit. However, Townsend's Fourth Requests for Production, including Requests Nos. 205 and 206, now seek to impose discovery obligations in violation of the Court's ruling and the Parties' agreement and go beyond the time frame parameters within which the parties have been operating for the past year. For

these reasons, and those stated below, DFPF is unmoved by this gamesmanship, will stand on its objections regarding the relevant time period and will continue to follow the August 31, 2017 date as ordered by the Court.

1. *Townsend's Opposition to DFPF's Motion to Compel Argued for a February 12, 2016 Discovery Cut-off Date.*

The initial dispute between the parties relating to the discovery cut-off date was a result of *Townsend* refusing to produce documents outside an extremely narrow date range. As a result, DFPF was required to file its Motion to Compel. In responding to DFPF's Motion to Compel, *Townsend* vehemently advocated for a February 12, 2016 discovery cut-off date, the date on which DFPF terminated *Townsend's* services. *See generally*, *Townsend Defendants' Opposition to Plaintiff's Motion to Compel*, filed July 26, 2018 ("Opposition").

Notably, in its Opposition, *Townsend* argued that documents dated after February 12, 2016 "are plainly not relevant" and further reiterated:

Documents dated after February 12, 2016—the date on which Plaintiff terminated *Townsend* as its real estate investment consultant—are not even arguably relevant. The parties had no relationship after that termination.

Opp. ¶30. *Townsend* went on to detail the "massive burden" it would be for *Townsend* to review documents after the filing of this lawsuit and argued:

Plaintiff's request for documents dated *after* the parties were involved in litigation, or anticipated being involved in litigation, is patently unreasonable and demonstrates the capricious and untethered nature of Plaintiff's requests.

Opp. ¶31. The position you now take in your letter stands in complete contradiction to *Townsend's* own representations to DFPF and to the Court.

2. *Motion to Compel Hearing on August 9, 2018: Townsend Advocated for the August 31, 2017 Discovery Cut-Off Date, Upon Which the Court Relied.*

During the motion to compel hearing held on August 9, 2018, *Townsend* further rationalized its position relating to the February 2016 cut-off date, explaining that DFPF's "contention is that the basis for the causes of action are that [*Townsend*] provided shoddy advice during [*Townsend's*] representation of [DFPF]. That ended February 13, 2016." *See* Hrg. Tr. at 21:3–7. Mr. Marroso then backtracked, stating: "I take Mr. Sales' position, I think it's a reasonable one, discovery does not terminate at the time there is an accident. So, we will withdraw our objection to the February 13, 2016 limitation and go up to...the time that [the discussions prior to filing of the suit] commenced...May [of 2017]." *See* Hrg. Tr. at 21:8–22.

Following oral arguments on other discovery-related matters, the Court explained her ruling relating to the relevant time period for discovery:

I think it only appropriate that the range be the full range of the relationship of the parties on the front end...So, it begins with the effective date of the contract, and it will end at the end of 2017.

As I am sure you recall, you objected on the record to the December 31, 2017 cut-off date that the Court originally suggested, and requested the *earlier* August 31, 2017 date. The following discussion occurred on the record:

MS. RABBANI: December 31st? So I think plaintiff, and you can correct me if I'm wrong, agreed to cut it off at the time of the complaint, which was August 31st.

THE COURT: If that's the case, if that's your agreement then - -

MR. SALES: Your Honor, we'll accept August 31st, the filing date as the end date on that.

THE COURT: All right.

MR. SALES: In fact, I would simply say I would reserve after that, depending if we take depositions, obviously there could be other stuff.

THE COURT: That's fine. If that was your agreement, I am happy to ratify your agreement for you.

Hr. Tr. at 35:21–36:10.

Thus, the Court relied on your statements and the parties' prior agreement. Given the clear record on this issue, it is Townsend's new claim that it is entitled to post August 31, 2017 documents that is groundless, not DPF's objections to the relevant time frame.

B. Townsend's Request Nos. 205 and 206

Townsend's Request for Production Nos. 205 and 206 are identical to Request Nos. 94 and 95, with the exception of expressly demanding documents dated *after* the discovery cut-off date of August 31, 2017. These requests directly contradict and violate the agreement reached between the parties on the record, and the Court's ratification of that agreement on the record.


As I have previously advised you, DPF has already produced all non-privileged, responsive documents that relate to, or mention, either the pleaded investments or DPF's real estate investments as a whole within the relevant time period defined by the Court that are responsive to Townsend's Request Nos. 94 and 95—which would likewise be responsive to

Request Nos. 205 and 206. In accordance with the Court's Order and the parties' agreement, DPF_P will not produce documents that were created or dated after August 31, 2017.¹

To the extent DPF_P has inadvertently produced a handful of documents that were created after August 31, 2017, that inadvertent production, in no way amounts to DPF_P recognizing that those documents "are relevant, responsive, and discoverable" as you suggest. Each of DPF_P's written objections, along with the Court's Order, remain valid.

In the event you decide to move forward with a motion to compel, DPF_P reserves its rights to seek the appropriate relief and sanctions from the Court to remedy your knowing violation of both the Court's Order and the agreement that was reached between the parties on the record.

Very truly yours,



Mark K. Sales

cc: William Cobb
Carrie Phaneuf
David Marroso
Elizabeth Yingling
Meghan Hausler

¹ To the extent DPF_P provided any documents to the FBI that were created before August 31, 2017 that are responsive to any of Townsend's document requests, those underlying documents have already been produced to Townsend.

EXHIBIT 3

CAUSE NO. DC-17-11306

DALLAS POLICE & FIRE PENSION SYSTEM,

Plaintiff,

v.

TOWNSEND HOLDINGS, LLC d/b/a THE TOWNSEND GROUP, RICHARD BROWN, MARTIN ROSENBERG and GARY B. LAWSON,

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

298th JUDICIAL DISTRICT

TOWNSEND DEFENDANTS’ FIRST SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF

TO: Plaintiff Dallas Police & Fire Pension System (“DPFPS”), by and through its attorneys of record, J. Gregory Taylor, Bart Sloan, Mark K. Sales, Diamond McCarthy LLP, 2711 Haskell Ave., Suite 3100, Dallas, Texas 75204, and Andrea L. Kim, Rebecca A. Muff, Diamond McCarthy LLP, 909 Fannin, Suite 3700, Houston, Texas 77010.

Pursuant to Texas Rule of Civil Procedure 194, Defendants TOWNSEND HOLDINGS, LLC d/b/a THE TOWNSEND GROUP (“Townsend”), RICHARD BROWN (“Brown”), and MARTIN ROSENBERG (“Rosenberg”), (collectively, the “Townsend Defendants”), serve their First Set of Requests for Production (“Requests”) and request that Plaintiff Dallas Police & Fire Pension System respond to each of the Requests set forth herein and produce all responsive documents and things to the offices of Baker & McKenzie LLP, at 1900 North Pearl Street, Suite 1500, Dallas, Texas 75201, within thirty (30) days of service, as required by Texas Rule of Civil Procedure 196.2(a).

I. DEFINITIONS AND INSTRUCTIONS

1. All definitions and rules of construction contained in the Texas Rules of Civil Procedure and the Texas Rules of Evidence are incorporated herein by reference.

2. Unless otherwise indicated, the use in these Requests of the name or identity of any person, business organization, or other entity shall specifically include all past or present employees, officers, directors, partners, agents, representatives, and attorneys of that person, organization, or entity and its predecessors and successors.

3. For purposes of interpreting or construing the scope of these Requests, the terms shall be given their most expansive and inclusive interpretation unless otherwise specifically limited by the language of an individual Request. This includes, without limitation, the following:

- a. Construing “and” as well as “or” in the disjunctive or conjunctive as necessary to make the Request more inclusive;
- b. Construing the singular form of the word to include the plural and the plural form to include the singular;
- c. Construing the present tense of a verb to include the past tense and vice versa;
- d. Construing the masculine to include the feminine and vice versa; and
- e. Construing the term “including” to mean including, but not limited to.

4. “AEW” shall mean and refer to AEW Capital Management.

5. “Barings/Cornerstone” shall mean and refer to Barings Real Estate Advisors/Cornerstone Real Estate Advisors.

6. “Brown” shall mean and refer to Defendant Richard Brown.

7. “CDK” shall mean and refer to CDK Realty Advisors, LP.

8. “CityScape Investment” shall mean and refer to the development in Phoenix, Arizona, referenced in paragraph 56 of the First Amended Petition.

9. “Clarion” shall mean and refer to Clarion Partners LLC.

10. “Criswell Radovan” shall mean and refer to Criswell Radovan, LLC.

11. “Document” shall mean and refer to the originals, any non-identical duplicates (e.g., due to margin notes, handwritten corrections, modifications, or similar alterations) and any copies or reproductions of any written or recorded matter in your custody, possession, or control, or known by you to exist, including, but not limited to, any information that is prepared by hand or is printed, recorded, reproduced, or transcribed by any process. This includes, but is not limited to, business records, correspondence, communications, memoranda, letters, reports, agreements, telegrams, teletypes, facsimiles, photocopies, photographs, film, microfilm, microfiche, videotapes, data processing input and output, electronic mail of any type (including deleted electronic mail), text messages, SMS messages, computer printouts, presentations, summaries and records of conversations, diaries, tape recordings, maps, surveys, charts, plans, drawings, minutes of meetings or conferences, lists, reports, summaries of interviews or investigations, opinions, reports or summaries of negotiations, leases, title opinions, run sheets, drafts, revisions, contracts, notes, calendars, date books, “day-timers,” checks, expense account records, messages, receipts, and deeds, or any other similar type of instrument.

12. “DPFPS” or “Plaintiff” shall mean and refer to Plaintiff Dallas Police & Fire Pension System, including the DPFPS Staff and any of its members and the DPFPS Board and any of its members.

13. “DPFPS Staff” shall mean the employees and personnel of Plaintiff Dallas Police & Fire Pension System, including, but not limited to, the Executive Team, Benefits Team, Investment Team, Accounting Team, Administrative Team, and Information Team, as detailed on DPFPS’ website and organization chart.

14. “DPFPS Board” shall mean the Board of Trustees of Plaintiff Dallas Police & Fire Pension System and all of its current or former members.

15. “Dry Creek Investment” shall mean and refer to the investment in a property or properties near Boise, Idaho, referenced in paragraphs 30 and 32 of the First Amended Petition.

16. “Eagle Investment” shall mean and refer to the investment in certain properties near Boise, Idaho, referenced in paragraph 32 of the First Amended Petition.

17. “First Amended Petition” shall mean and refer to Plaintiff Dallas Police & Fire Pension System’s First Amended Petition and Demand for Jury Trial.

18. “Hearthstone” shall mean and refer to Hearthstone, Inc.

19. “2004 ICA” shall mean and refer to the Investment Consultant Agreement between Townsend and DPFPS effective as of October 1, 2004, and any amendments, supplements, attachments, or exhibits thereto.

20. “2013 ICA” shall mean and refer to the Investment Consultant Agreement between Townsend and DPFPS effective as of January 1, 2013, and any amendments, supplements, attachments, or exhibits thereto.

21. “Investment” or “Investments” shall have the definition set forth in Paragraph 17 of Plaintiff’s First Set of Requests for Production to Defendants Townsend Holdings, LLC d/b/a The Townsend Group, Richard Brown, and Martin Rosenberg.

22. “Investment Manager” or “Investment Managers” shall have the definition set forth in Paragraph 22 of Plaintiff’s First Set of Requests for Production to Defendants Townsend Holdings, LLC d/b/a The Townsend Group, Richard Brown, and Martin Rosenberg.

23. “Knudson” shall mean and refer to Knudson Luxury Housing.

24. “Knudson Investments” shall mean and refer to homes built by Knudson, and investments managed by or recommended by Knudson.

25. “Land Baron” shall mean and refer to Land Baron Investments, Inc.

26. “Lawsuit” shall mean and refer to the above-styled lawsuit, *Dallas Police & Fire Pension System v. Townsend Holdings, LLC d/b/a The Townsend Group, Richard Brown, Martin Rosenberg, and Gary B. Lawson*, Cause Number DC-17-11306, in the 298th Judicial District Court of Dallas County, Texas.

27. “Loan Program” shall mean and refer to the loan program referenced in paragraph 59 of the First Amended Petition.

28. “Matthews Southwest” shall mean and refer to Matthews Southwest, the developer referenced in Plaintiff’s Responses to the Townsend Defendants’ Requests for Disclosure.

29. “M3” shall mean and refer to M3 Builders, LLC.

30. “Napa Project” shall mean and refer to a series of related investments in Pope Valley, California, referenced in paragraph 46 of the First Amended Petition.

31. “Nampa Investment” shall mean and refer to the investment in certain property or properties near Boise, Idaho, referenced in paragraph 30 of the First Amended Petition.

32. “NEPC” shall mean and refer to NEPC, LLC.

33. “Painted Hills Investment” shall mean and refer to the investment in Tucson, Arizona, referenced in paragraph 45 of the First Amended Petition.

34. “Person” and “Entity” shall mean and refer to natural persons, groups of natural persons acting in a collegial capacity (e.g., a committee or counsel), corporations, partnerships, associations, trusts, joint ventures, and any other incorporated or unincorporated business, governmental, public, or legal entity. A reference to any Person shall include, when applicable,

its subsidiaries, controlled persons, controlling persons, shareholders, officers, directors, employees, agents, or other persons acting, or purporting to act, on its behalf.

35. “Project Holdings” shall mean and refer to Project Holdings LLC.

36. “RHI” shall mean and refer to Robert Harrell Inc.

37. “Rosenberg” shall mean and refer to Defendant Martin Rosenberg.

38. “Sandstone Investment” shall mean and refer to the investment in a ranch in Colorado, referenced in paragraph 40 of the First Amended Petition.

39. “Tettamant” shall mean and refer to Richard Tettamant, former Administrator of the Dallas Police & Fire Pension System.

40. “Townsend” shall mean and refer to Defendant Townsend Holdings, LLC d/b/a The Townsend Group.

41. “Townsend Defendants” shall mean and refer to Defendants Townsend Holdings, LLC d/b/a The Townsend Group, Richard Brown, and Martin Rosenberg, collectively.

42. “WWJ” shall mean and refer to WWJ Project Holdings, LLC.

43. “You” and “Your” shall mean and refer to Plaintiff.

44. All documents and/or other data compilations, which might impact the subject matter of this Lawsuit, shall be preserved, and any ongoing process of document destruction involving such documents should cease. If any document that contained relevant information has been destroyed or is no longer in existence state: the identity of the person(s) preparing it and the sender thereof, the identity of the addressee, the date of preparation, and the date and manner of distribution.

45. These Requests are intended to include all documents in DPFPS’s possession, or subject to DPFPS’s custody or control, whether directly or indirectly. A document is deemed to be within DPFPS’s possession, custody, or control if:

- a. it is within the actual possession, custody, or control of DPFPS; or
- b. it is within the possession of any other employee, Person, or Entity, and DPFPS has the right to obtain the document from the Person or Entity.

46. To the fullest extent permitted, these Requests are continuing in nature. In the event that any information or material comes to DPFPS’s attention, possession, custody, or control, subsequent to the service of their response to these Requests, that is responsive to any of

these Requests, DPFPS is required to supplement its responses and production pursuant to Texas Rule of Civil Procedure 193.5.

47. To the extent any Request is objected to, set forth the complete reasons for the objection. If DPFPS claims a privilege as grounds for not producing documents in response to any Request, produce a privilege log describing the factual basis for the claim of privilege, including relevant dates and persons involved, in sufficient detail so as to permit the Court to adjudicate the validity of the claim.

48. Unless otherwise indicated, the date range for each request is October 1, 2004, through August 31, 2017.

II. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All documents relating to the wrongful acts and omissions by the Townsend Defendants alleged in the First Amended Petition.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2:

All documents relating to Plaintiff's discovery of the wrongful acts and omissions by the Townsend Defendants alleged in the First Amended Petition.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3:

All documents evidencing, relating to, or concerning Plaintiff's assertion in the First Amended Petition that Plaintiff is "not . . . subject to the doctrine of limitations," including but not limited to all documents evidencing, relating to, or concerning whether Plaintiff is a political subdivision of the State of Texas.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4:

All investment management agreements, contracts, or other written agreements between Plaintiff and any of the Investment Managers, including, but not limited to, CDK, Criswell Radovan, Knudson, or Land Baron.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5:

All investment management agreements, contracts, or other written agreements between Plaintiff and AEW.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6:

All investment management agreements, contracts, or other written agreements between Plaintiff and Barings/Cornerstone.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7:

All investment management agreements, contracts, or other written agreements between Plaintiff and Clarion.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8:

All investment management agreements, contracts, or other written agreements between Plaintiff and Hearthstone.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9:

All investment management agreements, contracts, or other written agreements between Plaintiff and Matthews Southwest.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10:

All contracts or other written agreements between Plaintiff and NEPC.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11:

All contracts or other written agreements between Plaintiff and M3.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12:

All contracts or other written agreements between Plaintiff and RHI.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13:

Minutes of any DPFPS Board meeting, workshop, or retreat in which any of the Investments were discussed or voted upon, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14:

Minutes from closed executive sessions of meetings of the DPFPS Board in which any of the Investments were discussed or voted upon, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 15:

Minutes of any Investment Advisory Committee meeting of the DPFPS Board in which any of the Investments were discussed or voted upon, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 16:

Minutes of any DPFPS Board meeting, workshop, or retreat in which Plaintiff's real estate investment strategy was discussed, including but not limited to meetings, workshops, or retreats in which Plaintiff's real estate investment allocation, strategy, goals, policies, or guidelines were discussed or voted upon.

RESPONSE:

REQUEST FOR PRODUCTION NO. 17:

Minutes from closed executive sessions of meetings of the DPFPS Board in which Plaintiff's real estate investment strategy was discussed, including but not limited to sessions in which Plaintiff's real estate investment allocation, strategy, goals, policies, or guidelines were discussed or voted upon.

RESPONSE:

REQUEST FOR PRODUCTION NO. 18:

Minutes of any Investment Advisory Committee meeting of the DPFPS Board in which Plaintiff's real estate investment strategy was discussed, including but not limited to meetings in which Plaintiff's real estate investment allocation, strategy, goals, policies, or guidelines were discussed or voted upon.

RESPONSE:

REQUEST FOR PRODUCTION NO. 19:

All documents relating to Plaintiff's real estate investment allocation, strategy, goals, policies, or guidelines, including but not limited to copies of any written investment policies or guidelines and all communications regarding such policies or guidelines.

RESPONSE:

REQUEST FOR PRODUCTION NO. 20:

All investment consultant agreements, or other agreements relating to the provision of investment advisory services, entered into between Plaintiff and any party other than Townsend.

RESPONSE:

REQUEST FOR PRODUCTION NO. 21:

All documents evidencing, relating to, or concerning Plaintiff's decision to invest in any of the Investments, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 22:

All documents evidencing, relating to, or concerning any recommendations regarding any of the Investments, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 23:

All documents evidencing, relating to, or concerning the performance of any of the Investments, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 24:

All documents evidencing, relating to, or concerning any presentations, memoranda, or other documents containing or referencing recommendations for Plaintiff to invest in the investments at issue in the Lawsuit, including, but not limited to the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 25:

All documents evidencing, relating to, or concerning communications between Plaintiff, the DPFPS Staff, and/or the DPFPS Board and Townsend regarding any of the Investments, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 26:

All documents evidencing, relating to, or concerning communications between Plaintiff and Townsend regarding any of the Investment Managers.

RESPONSE:

REQUEST FOR PRODUCTION NO. 27:

All documents evidencing, relating to, or concerning any recommendations made by Townsend to Plaintiff, the DPFPS Staff, and/or the DPFPS Board regarding any of the Investments, including, but not limited to the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 28:

All documents evidencing, relating to, or concerning any communications between Plaintiff and Townsend relating to Plaintiff's real estate investment strategy, including but not limited to Plaintiff's real estate investment allocation, strategy, goals, policies, or guidelines.

RESPONSE:

REQUEST FOR PRODUCTION NO. 29:

All documents evidencing, relating to, or concerning any communications between Plaintiff and any Investment Manager relating to the performance of Plaintiff's real estate investment portfolio as a whole.

RESPONSE:

REQUEST FOR PRODUCTION NO. 30:

All documents evidencing, relating to, or concerning any communications between Plaintiff and Townsend relating to the performance of Plaintiff's real estate investment portfolio as a whole.

RESPONSE:

REQUEST FOR PRODUCTION NO. 31:

Minutes of any DPFPS Board meeting, workshop, or retreat in which the performance of Plaintiff's real estate investment portfolio as a whole was discussed.

RESPONSE:

REQUEST FOR PRODUCTION NO. 32:

Minutes from closed executive sessions of meetings of the DPFPS Board in which the performance of Plaintiff's real estate investment portfolio as a whole was discussed.

RESPONSE:

REQUEST FOR PRODUCTION NO. 33:

Minutes of any Investment Advisory Committee meeting of the DPFPS Board in which the performance of Plaintiff's real estate investment portfolio as a whole was discussed.

RESPONSE:

REQUEST FOR PRODUCTION NO. 34:

All documents evidencing, relating to, or concerning Townsend's quarterly performance reports, as referenced in paragraph 27 of the First Amended Petition.

RESPONSE:

REQUEST FOR PRODUCTION NO. 35:

All documents evidencing, relating to, or concerning any recommendations by NEPC concerning any of the Investments, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 36:

All documents evidencing, relating to, or concerning Plaintiff's internal communications regarding any of the Investments, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 37:

All documents evidencing, relating to, or concerning any recommendations made by DPFPS Staff or any Staff members to the DPFPS Board regarding any of the Investments, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 38:

All documents evidencing, relating to, or concerning any compensation, fees, rebates, or other monies received by Plaintiff, any DPFPS Staff Member, and/or any DPFPS Board member as a result of or in connection with any of the Investments, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 39:

All documents evidencing, relating to, or concerning any interest any DPFPS Staff member or DPFPS Board member personally obtained in any of the Investments, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 40:

All documents evidencing, relating to, or concerning communications between Plaintiff and any other party, including any Investment Manager, regarding the Investments, including, but not limited to, communications concerning the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 41:

All documents evidencing, relating to, or concerning communications between Plaintiff and AEW regarding the Investments, including, but not limited to, communications concerning the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 42:

All documents evidencing, relating to, or concerning communications between Plaintiff and Barings/Cornerstone regarding the Investments, including, but not limited to, communications concerning the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 43:

All documents evidencing, relating to, or concerning communications between Plaintiff and Clarion regarding the Investments, including, but not limited to, communications concerning the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 44:

All documents evidencing, relating to, or concerning communications between Plaintiff and Hearthstone regarding the Investments, including, but not limited to, communications concerning the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 45:

All documents evidencing, relating to, or concerning site visits or other travel by DPFPS Staff members and/or DPFPS Board members in connection with any of the Investments,

including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 46:

All documents evidencing, relating to, or concerning site visits or other travel by DPFPS Staff members and/or DPFPS Board members with representatives of any Investment Manager.

RESPONSE:

REQUEST FOR PRODUCTION NO. 47:

All documents evidencing, relating to, or concerning audits, appraisals, or valuations of any of the Investments, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 48:

All documents evidencing, relating to, or concerning audits, appraisals, valuations, or other analyses of Plaintiff's real estate investment portfolio as a whole.

RESPONSE:

REQUEST FOR PRODUCTION NO. 49:

All documents evidencing, relating to, or concerning any decision to sell all or a portion of any of the Investments, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 50:

All documents evidencing, relating to, or concerning any and all efforts to sell all or a portion of any of the Investments, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 51:

All documents evidencing, relating to, or concerning any decision to hold all or a portion of any of the Investments, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 52:

All documents evidencing, relating to, or concerning the write-down or write-off of all or a portion of any of the Investments, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 53:

All documents evidencing, relating to, or concerning the realized losses Plaintiff alleges it has suffered on any of the Investments, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 54:

All documents evidencing, relating to, or concerning the unrealized losses Plaintiff alleges it has suffered on any of the Investments, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape, and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 55:

All documents evidencing, relating to, or concerning any Investment Manager's qualifications to act as an investment manager for Plaintiff.

RESPONSE:

REQUEST FOR PRODUCTION NO. 56:

All documents evidencing, relating to, or concerning any legal claim or potential legal claim by Plaintiff against CDK and/or any of CDK's representatives, employees, partners, or agents, including but not limited to any settlement agreement(s) between Plaintiff and CDK and any of its representatives, employees, partners, or agents.

RESPONSE:

REQUEST FOR PRODUCTION NO. 57:

All documents evidencing, relating to, or concerning any legal claim or potential legal claim by Plaintiff against any Investment Manager and/or any of its employees, partners, or agents, including but not limited to any settlement agreement(s) between Plaintiff and any Investment Manager.

RESPONSE:

REQUEST FOR PRODUCTION NO. 58:

All documents evidencing, relating to, or concerning any legal claim or potential legal claim by Plaintiff against NEPC and/or any of NEPC's representatives, employees, partners, or agents, including but not limited to any settlement agreement(s) between Plaintiff and NEPC.

RESPONSE:

REQUEST FOR PRODUCTION NO. 59:

All documents evidencing, relating to, or concerning any legal claim or potential legal claim by Plaintiff against AEW and/or any of AEW's representatives, employees, partners, or agents, including but not limited to any settlement agreement(s) between Plaintiff and AEW.

RESPONSE:

REQUEST FOR PRODUCTION NO. 60:

All documents evidencing, relating to, or concerning any legal claim or potential legal claim by Plaintiff against Barings/Cornerstone and/or any of Barings/Cornerstone's representatives, employees, partners, or agents, including but not limited to any settlement agreement(s) between Plaintiff and Barings/Cornerstone.

RESPONSE:

REQUEST FOR PRODUCTION NO. 61:

All documents evidencing, relating to, or concerning any legal claim or potential legal claim by Plaintiff against Clarion and/or any of Clarion's representatives, employees, partners, or agents, including but not limited to any settlement agreement(s) between Plaintiff and Clarion.

RESPONSE:

REQUEST FOR PRODUCTION NO. 62:

All documents evidencing, relating to, or concerning any legal claim or potential legal claim by Plaintiff against Hearthstone and/or any of Hearthstone's representatives, employees, partners, or agents, including but not limited to any settlement agreement(s) between Plaintiff and Hearthstone.

RESPONSE:

REQUEST FOR PRODUCTION NO. 63:

All documents evidencing, relating to, or concerning any legal claim or potential legal claim by Plaintiff against M3 and/or any of M3's representatives, employees, partners, or agents, including but not limited to any settlement agreement(s) between Plaintiff and M3.

RESPONSE:

REQUEST FOR PRODUCTION NO. 64:

All documents evidencing, relating to, or concerning any legal claim or potential legal claim by Plaintiff against WWJ and/or any of WWJ's representatives, employees, partners, or agents, including but not limited to any settlement agreement(s) between Plaintiff and WWJ.

RESPONSE:

REQUEST FOR PRODUCTION NO. 65:

All documents evidencing, relating to, or concerning any legal claim or potential legal claim relating to the Investments by Plaintiff against any other person not already specified.

RESPONSE:

REQUEST FOR PRODUCTION NO. 66:

All documents evidencing, relating to, or concerning any compensation, fees, salaries, bonuses, reimbursements, or other monies paid by any Investment Manager to Plaintiff, any DPFPS Staff member, and/or any DPFPS Board member.

RESPONSE:

REQUEST FOR PRODUCTION NO. 67:

All documents evidencing, relating to, or concerning compensation, fees, salaries, bonuses, reimbursements, or other monies paid by NEPC or any NEPC representative to Plaintiff, any DPFPS Staff member, and/or any DPFPS Board member.

RESPONSE:

REQUEST FOR PRODUCTION NO. 68:

All documents evidencing, relating to, or concerning compensation, fees, salaries, bonuses, reimbursements, or other monies paid by AEW or any AEW representative to Plaintiff, any DPFPS Staff member, and/or any DPFPS Board member.

RESPONSE:

REQUEST FOR PRODUCTION NO. 69:

All documents evidencing, relating to, or concerning compensation, fees, salaries, bonuses, reimbursements, or other monies paid by Hearthstone or any Hearthstone representative to Plaintiff, any DPFPS Staff member, and/or any DPFPS Board member.

RESPONSE:

REQUEST FOR PRODUCTION NO. 70:

All documents evidencing, relating to, or concerning compensation, fees, salaries, bonuses, reimbursements, or other monies paid by Barings/Cornerstone or any Barings/Cornerstone representative to Plaintiff, any DPFPS Staff member, and/or any DPFPS Board member.

RESPONSE:

REQUEST FOR PRODUCTION NO. 71:

All documents evidencing, relating to, or concerning communications between Plaintiff, including Plaintiff's attorneys, and CDK, and/or CDK's representatives, employees, partners, agents, and attorneys, relating to or concerning the Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 72:

All documents evidencing, relating to, or concerning communications between Plaintiff, including Plaintiff's attorneys, and any Investment Manager, and/or its representatives, employees, partners, agents or attorneys, relating to or concerning the Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 73:

All documents evidencing, relating to, or concerning communications between Plaintiff, including Plaintiff's attorneys, and NEPC and/or its representatives, employees, partners, agents or attorneys, relating to or concerning the Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 74:

All documents evidencing, relating to, or concerning communications between Plaintiff, including Plaintiff's attorneys, and AEW and/or its representatives, employees, partners, agents or attorneys, relating to or concerning the Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 75:

All documents evidencing, relating to, or concerning communications between Plaintiff, including Plaintiff's attorneys, and Hearthstone and/or its representatives, employees, partners, agents or attorneys, relating to or concerning the Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 76:

All documents evidencing, relating to, or concerning communications between Plaintiff, including Plaintiff's attorneys, and Barings/Cornerstone and/or its representatives, employees, partners, agents or attorneys, relating to or concerning the Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 77:

All documents evidencing, relating to, or concerning communications between Plaintiff and any person not party to this Lawsuit relating to or concerning the Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 78:

To the extent in Your possession, custody or control, all documents evidencing, relating to, or concerning communications between Townsend and CDK, M3, Knudson, Criswell Radovan and/or Land Baron.

RESPONSE:

REQUEST FOR PRODUCTION NO. 79:

To the extent in Your possession, custody or control, all documents evidencing, relating to, or concerning communications between or among CDK and M3, Knudson, Criswell Radovan, and/or Land Baron.

RESPONSE:

REQUEST FOR PRODUCTION NO. 80:

Documents evidencing, relating to, or concerning recommendations made to Plaintiff to guarantee loans for, relating to, or concerning Project Holdings.

RESPONSE:

REQUEST FOR PRODUCTION NO. 81:

All documents evidencing, relating to, or concerning any preferential treatment received by “M3-related parties,” as alleged in paragraph 41 of the First Amended Petition.

RESPONSE:

REQUEST FOR PRODUCTION NO. 82:

All documents evidencing, relating to, or concerning Land Baron’s principals’ declaration of bankruptcy, referenced in paragraph 45 of the First Amended Petition, including, but not limited to, any proofs of claim filed by Plaintiff in the bankruptcy and any of Plaintiff’s internal communications regarding the bankruptcy.

RESPONSE:

REQUEST FOR PRODUCTION NO. 83:

All documents evidencing, relating to, or concerning Plaintiff’s decision to act as the fiduciary for any of the Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 84:

All documents evidencing, relating to, or concerning the Loan Program, including all documents evidencing, relating to, or concerning any recommendations related to the Loan Program.

RESPONSE:

REQUEST FOR PRODUCTION NO. 85:

All documents evidencing, relating to, or concerning Project Holdings, including all documents evidencing, relating to, or concerning any recommendations related to Project Holdings.

RESPONSE:

REQUEST FOR PRODUCTION NO. 86:

All documents evidencing, relating to, or concerning any recommendations by NEPC related to the Loan Program and/or to any of the Investments, including, but not limited to, the Eagle, Sandstone, Nampa, Dry Creek, Painted Hills, Project Holdings, Napa Project, CityScape and Knudson Investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 87:

All documents evidencing, relating to, or concerning any legal claim or potential legal claim by Plaintiff against any current or past DPFPS Board member or Staff member, including, but not limited to, Richard Tettamant.

RESPONSE:

REQUEST FOR PRODUCTION NO. 88:

All documents evidencing, relating to, or concerning any settlement agreement(s) between Plaintiff and any current or past DPFPS Board member or Staff member, including, but not limited to, Richard Tettamant.

RESPONSE:

REQUEST FOR PRODUCTION NO. 89:

All documents evidencing, relating to, or concerning any communications between Plaintiff and Tettamant about the Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 90:

All documents evidencing, relating to, or concerning the termination of Tettamant's employment with Plaintiff.

RESPONSE:

REQUEST FOR PRODUCTION NO. 91:

All documents evidencing, relating to, or concerning the quality of Tettamant's performance as Administrator of Plaintiff.

RESPONSE:

REQUEST FOR PRODUCTION NO. 92:

All contracts or other written agreements between DPFPS and Tettamant.

RESPONSE:

REQUEST FOR PRODUCTION NO. 93:

All documents evidencing, relating to, or concerning the termination of DPFPS' relationship with CDK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 94:

All documents evidencing, relating to, or concerning communications between Plaintiff and any state or federal government agency, including the Federal Bureau of Investigation, concerning Plaintiff's real estate investment program, including the losses alleged in this Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 95:

All documents produced to or seized by any state or federal government agency, including the Federal Bureau of Investigation, concerning Plaintiff's real estate investment program, including the losses alleged in this Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 96:

Documents sufficient to show the terms of any engagement agreement or other agreement between Plaintiff and counsel retained by Plaintiff in the Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 97:

All documents evidencing, relating to, or concerning attorneys' fees incurred by Plaintiff in connection with the Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 98:

All documents evidencing, relating to, or concerning Your claim for damages in the Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 99:

All documents evidencing, relating to, or concerning Plaintiff's termination of its relationship with Townsend, including minutes from any closed executive sessions in which the termination of Plaintiff's relationship with Townsend was discussed.

RESPONSE:

REQUEST FOR PRODUCTION NO. 100:

All documents evidencing, relating to, or concerning the negotiation of the 2004 ICA.

RESPONSE:

REQUEST FOR PRODUCTION NO. 101:

All documents evidencing, relating to, or concerning the negotiation of the 2013 ICA.

RESPONSE:

REQUEST FOR PRODUCTION NO. 102:

All documents evidencing, relating to, or concerning the negotiation of Townsend's fee structure.

RESPONSE:

REQUEST FOR PRODUCTION NO. 103:

All documents evidencing, relating to, or concerning the negotiation of CDK's fee structure.

RESPONSE:

REQUEST FOR PRODUCTION NO. 104:

All documents evidencing, relating to, or concerning the negotiation of the fee structure for any Investment Manager.

RESPONSE:

REQUEST FOR PRODUCTION NO. 105:

Documents sufficient to show the compensation, fees, salaries, bonuses, reimbursements, or other monies, paid by Plaintiff to each Investment Manager on a yearly basis.

RESPONSE:

REQUEST FOR PRODUCTION NO. 106:

All documents evidencing, relating to, or concerning communications between Plaintiff and Defendant Brown.

RESPONSE:

REQUEST FOR PRODUCTION NO. 107:

All documents evidencing, relating to, or concerning communications between Plaintiff and Defendant Rosenberg.

RESPONSE:

REQUEST FOR PRODUCTION NO. 108:

All documents evidencing, relating to, or concerning Plaintiff's engagement of Mike Snyder, including but not limited to all communications between Plaintiff and Mike Snyder.

RESPONSE:

REQUEST FOR PRODUCTION NO. 109:

All documents evidencing, relating to, or concerning the resignation of Officer Thomas White from the DPFPS Board.

RESPONSE:

REQUEST FOR PRODUCTION NO. 110:

All documents relating to the City of Dallas' 2013 independent audit of Plaintiff.

RESPONSE:

REQUEST FOR PRODUCTION NO. 111:

All documents evidencing, relating to, or concerning Plaintiff's engagement of Columbus Alexander, including but not limited to all communications between You and Columbus Alexander.

RESPONSE:

REQUEST FOR PRODUCTION NO. 112:

All documents evidencing, relating to, or concerning the "amendments to DPFPS's operational documents" referenced in Paragraph 89 of the First Amended Petition.

RESPONSE:

REQUEST FOR PRODUCTION NO. 113:

All documents evidencing, relating to, or concerning Plaintiff's decision to adopt the DROP Policy Addendum effective January 12, 2017.

RESPONSE:

REQUEST FOR PRODUCTION NO. 114:

All documents evidencing, relating to, or concerning Plaintiff's decision to adopt the Amendment to the DROP Policy Addendum effective June 8, 2017.

RESPONSE:

BAKER & McKENZIE, LLP

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on the following via e-mail on this 24th day of August, 2018:

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EXHIBIT 4

Terri Kilgore

CAUSE NO. DC-17-11306

DALLAS POLICE & FIRE PENSION
SYSTEM,

Plaintiff,

v.

TOWNSEND HOLDINGS, LLC d/b/a
THE TOWNSEND GROUP, RICHARD
BROWN, MARTIN ROSENBERG and
GARY B. LAWSON,

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

298th JUDICIAL DISTRICT

TOWNSEND’S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

IN RESPONSE TO FIRST SET OF REQUESTS FOR PRODUCTION

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TOWNSEND’S MOTION TO COMPEL PRODUCTION OF DOCUMENTS
IN RESPONSE TO FIRST SET OF REQUESTS FOR PRODUCTION

Defendants Townsend Holdings, LLC d/b/a The Townsend Group, Richard Brown, and Martin Rosenberg (collectively, “Townsend”) file this Motion to Compel Documents in Response to First Set of Requests for Production against Plaintiff Dallas Police & Fire Pension System (“Plaintiff” or “DPFPS”) on the grounds set forth below.

I. INTRODUCTION

1. Plaintiff is run by a Board of Trustees and dedicated staff members who act as fiduciaries to the men and women of the Dallas police and fire departments. In the early 2000s, those trustees and staff developed a high-risk, high-return investment strategy designed to leverage the size of the pension’s existing funds and take into account both the number and life expectancy of its beneficiaries and DPFPS’s considered views of the future of the financial markets. For years, that strategy was hugely successful. The trustees and staff were the toast of the town, and they regularly enjoyed fully paid boondoggles to glamorous locations like Honolulu, Las Vegas, and Napa.

2. But markets are cyclical, and Plaintiff’s strategy encountered major obstacles in the wake of the recent Great Recession. In the years following the downturn, the *Dallas Morning News* and other media openly questioned and criticized DPFPS’s real estate investment strategy. The press repeatedly interviewed and exchanged correspondence with Plaintiff’s trustees and staff members. The City of Dallas commissioned an independent audit of Plaintiff’s investment portfolio in 2013, voicing particular concern over Plaintiff’s valuation of certain real estate investments. The Federal Bureau of Investigation (“FBI”) and the Texas Rangers reportedly are investigating Plaintiff and its dealings with a now-defunct real estate investment manager named CDK Realty Advisors (“CDK”).

3. Invoking the old adage, “the best defense is a good offense,” Plaintiff launched a flurry of lawsuits and a public relations campaign blaming others for DPFPS’s decision-making and financial challenges. To date, Plaintiff has sued a former investment manager, a former actuary, and a former outside lawyer, in addition to Townsend.¹ Plaintiff has threatened to sue others. Everyone is at fault, according to Plaintiff, except the trustees and staff who made the investment decisions themselves.

4. In 2017, Plaintiff sued Townsend, a former investment consultant, claiming that Townsend’s acts and omissions led to astronomical losses of over \$500 million. Townsend has served Requests for Production seeking documents concerning Plaintiff’s investment strategies and decision-making, investment performance, internal and external audits, and, of course, the FBI’s ongoing investigation into Plaintiff’s real estate investment program.

5. Plaintiff is obstructing Townsend’s access to this evidence in an effort to skew the proof in this case. While Plaintiff has agreed to provide Townsend certain documents—largely documents that Townsend provided to Plaintiff in the first instance during their 15-year relationship—Plaintiff refuses to make available case-critical documents that are undeniably relevant and unquestionably responsive.

6. Plaintiff’s purported bases for refusing to produce documents are groundless:

¹ Ex. 1 (Defendant and Counter-Plaintiff’s Original Counterclaim, *CDK Realty Advisors, LP v. Dallas Police & Fire Pension Sys.*, No. DC-16-01566 (192nd Dist. Ct., Dallas County, Tex. Apr. 5, 2016)) (counterclaims against CDK, Plaintiff’s primary investment manager, alleging that CDK mismanaged real estate investments and seeking over \$320 million in damages); Ex. 2 (Original Petition & Demand for Jury Trial, *Dallas Police & Fire Pension Sys. v. Buck Global LLC*, No. DC-18-16385 (95th Dist. Ct., Dallas County, Tex. Oct. 30, 2018)) (lawsuit against Buck Consultants, Plaintiff’s actuary and advisor for over 25 years, alleging that Buck “failed to communicate important risk information” and assured Plaintiff “that the Fund was actuarially sound, when in fact it was not” and seeking unspecified damages); First Amended Petition (“FAP”) ¶¶ 119–125 (asserting claims against Gary Lawson, Plaintiff’s former attorney, for breach of fiduciary duty and negligence).

- a. Documents Provided to the FBI: Plaintiff admits that there is an “ongoing investigation” by the FBI concerning its real estate investment program, and also admits that it has made documents available for the FBI to review. Plaintiff, however, refuses to make the same documents available to Townsend or even to identify or describe what documents Plaintiff gave to the FBI. There is no legal basis to deny Townsend this important evidence. Documents provided to federal law enforcement investigating wrongdoing in connection with Plaintiff’s real estate program are, by definition, centrally relevant to the issues in this case. There is minimal (if any) burden to making the documents available to Townsend since they were already provided to the FBI, and Texas law makes clear that any privilege that may otherwise have existed over these documents has been waived through Plaintiff’s provision of the material to the FBI.
- b. Plaintiff’s Real Estate Investments: Townsend sought documents from Plaintiff about each of the real estate investments Plaintiff made during the operative time period. Plaintiff, however, refuses to produce documents concerning investments that are not “specifically pled” in its First Amended Petition. Plaintiff’s contention that only investments “specifically pled” are relevant to this case is contrary to the relevance standard and irreconcilable with Plaintiff’s own argument to this Court when it sought (and obtained) documents from Townsend that concern non-pled investments. These documents—especially about investments that Plaintiff chose not to plead—will prove what everyone knows:

Plaintiff, its trustees, and its staff made each of these investment decisions, remained intimately involved in each, and Plaintiff is merely cherry-picking certain investments in this case in an effort to find a scapegoat to blame.

- c. Dallas Audit: Plaintiff is withholding documents concerning a 2013 audit commissioned by the City of Dallas. As press reports confirm, this audit involved Plaintiff's valuation of the same investments at issue in this case; audit-related documents are relevant, and the universe of responsive documents is very limited.
- d. Trustees: Plaintiff refuses to produce indisputably relevant documents on the ground that documents in the physical possession of current and former trustees are outside Plaintiff's "possession, custody, or control." In other words, Plaintiff says it has no ability to ask its own fiduciary trustees to turn over documents they have. This position is refuted by Texas law, which makes clear documents held by trustees must be produced, as Plaintiff has the right to request and obtain responsive documents from them.
- e. Investment Managers: Plaintiff's refusal to produce documents in the physical possession of its former investment managers is likewise improper; as a practical and legal matter, Plaintiff has the right to request and obtain responsive documents held by its former representatives.
- f. General Objections: Plaintiff's responses include boilerplate general objections, which are incorporated by reference into 113 of its 114

responses (99.1%). Plaintiff refuses to sign a Rule 11 agreement confirming, without qualification, that it is not withholding documents based on these general objections. That refusal is completely inconsistent with the discovery rules—not to mention the position Plaintiff itself took in demanding and obtaining such a Rule 11 agreement from Townsend earlier this year.

7. Townsend is entitled to this evidence to defend itself against the baseless claims leveled by Plaintiff. Plaintiff has no legal basis to conceal it. Townsend respectfully requests an order directing Plaintiff to produce the documents requested herein.

II. BACKGROUND

A. Factual History

8. In the early 2000s, Plaintiff—with former Administrator Richard Tettamant at the helm—developed an investment strategy that was tailored to the size and expectations of the Dallas police and fire departments.

9. Plaintiff hired Townsend in 2001 to act as an investment consultant for the real estate portion of the fund’s vast investment portfolio. Townsend was paid roughly \$175,000 per year for its services, which included providing detailed quarterly reports summarizing the performance of Plaintiff’s various real estate investments.

10. Plaintiff also hired numerous investment managers to identify potential real estate investments and manage those investments once made. In 2002, Plaintiff hired CDK, the entity ultimately responsible for many of Plaintiff’s worst-performing investments. On average, DPFPS paid CDK over \$2 million annually for its services. *See* Ex. 1 (Defendant and Counter-Plaintiff’s Original Counterclaim, *CDK Realty Advisors, LP*. (No. DC-16-01566)) at ¶ 3. Plaintiff also took the “unusual step” of managing certain investments by itself, without an

outside investment manager. *See* Ex. 3 (June 8, 2017 *Dallas Morning News* article) (noting that Plaintiff’s leadership “took the unusual step of managing [certain real estate investments] themselves for years”); Ex. 4 (profile of Richard Tettamant noting that Tettamant had “saved the Pension System millions of dollars in management fees” by “personally overseeing investment properties”).

11. Initially, in the first half of the decade, Plaintiff’s strategy appeared successful, the investments performed well, and Plaintiff’s trustees and staff enjoyed acclaim. Plaintiff’s staff and trustees, including Tettamant, frequently enjoyed lavish all-expenses-paid trips to California, Hawaii, and other locations. *See* Ex. 5 (Jan. 29, 2013 *Dallas Morning News* article); Ex. 6 (Feb. 17, 2013 *Dallas Morning News* articles).

12. Beginning in 2007, Dallas, the United States, and the world suffered from what is now known as the Great Recession. Plaintiff did not escape its impact.

13. As the Great Recession wore on—and even as real estate started to rebound—Plaintiff’s investment portfolio was not the overachiever it formerly had been. As detailed in the First Amended Petition, Plaintiff was forced to write down the value of many of its real estate investments and sell others at a loss. Notably, Plaintiff’s underperformance was not limited to real estate; according to Plaintiff’s newly-hired general consultant, Meketa, Plaintiff’s time-weighted returns for private equity investments are worse than its returns for real estate investments over virtually every time period. Ex. 7 (Meketa 2Q18 Review) at 23.

14. In the years following the downturn, as details of Plaintiff’s investment performance came to light, Plaintiff’s beneficiaries and observers, including the City of Dallas itself, openly questioned Plaintiff’s investment strategy, particularly with respect to real estate. The *Dallas Morning News*, for example, asked why DPFPS had invested so heavily in real estate,

especially in undeveloped land, and questioned whether those investments might cause problems for the fund and its beneficiaries down the road. Tettamant scoffed at the criticism, saying: “Some people call us contrarian; I like to call ourselves innovative . . . We try to look at things differently than the rest of the market. If you follow the herd, you’re going to get market returns.” Ex. 6 (Feb. 17, 2013 *Dallas Morning News* article).

15. In 2013, with Mayor Rawlings voicing particular concern over Plaintiff’s real estate investments, the City of Dallas commissioned an independent audit of Plaintiff’s investment portfolio. Ex. 8 (Jan. 26, 2014 *Dallas Morning News* article).

16. In 2015, Plaintiff fired CDK, the manager responsible for the bulk of Plaintiff’s real estate investments—not to mention many of the “site visits” enjoyed by trustees and staff members. In 2016, the FBI raided CDK’s offices, housed in the same building as Plaintiff, as part of an investigation of CDK and of Plaintiff’s real estate investments. Reports indicate that the Texas Rangers are investigating Plaintiff’s real estate investment program as well.

17. That same year, DPFPS sued CDK. *See* Ex. 1 (Defendant and Counter-Plaintiff’s Original Counterclaim, *CDK Realty Advisors, LP*. (No. DC-16-01566)). Plaintiff has also sued its former actuary, Buck Consultants. *See* Ex. 2 (Original Petition & Demand for Jury Trial, *Dallas Police & Fire Pension Sys.* (No. DC-18-16385)). And, as part of this action, Plaintiff has sued its former outside lawyer, Gary Lawson. Plaintiff has threatened to sue (and, in some cases, has extracted settlements from) others, including investment managers and developers M3, Hearthstone, and WWJ Project Holdings. Ex. 9 (Plaintiff’s Responses to Townsend’s Requests for Disclosure).

18. This case is just another effort to find a scapegoat for Plaintiff’s reckless decision-making. Here, Plaintiff points the finger at Townsend, which served as its real estate investment

consultant between 2001 and 2016, for certain failed investments and claims losses of over \$500 million. As the evidence will show, Townsend is not to blame for the losses to Plaintiff's real estate investment portfolio. To the contrary, it was Plaintiff that developed an aggressive, high-risk strategy to invest heavily in alternative investments such as raw, undeveloped land; invested in risky real estate projects without seeking Townsend's advice; disregarded Townsend's advice, including clear warnings that Plaintiff was exceeding real estate allocation guidelines and should diversify its real estate portfolio by investment type, geographic location, and investment manager; and ignored widespread public criticism of its investment strategy—even launching a public relations campaign to defend its decisions.

B. Procedural History

19. Townsend served its First Set of Requests for Production (“Requests”) on August 24, 2018. Ex. 10.

20. Plaintiff served Objections and Responses to the Requests (“Responses”) on September 24, 2018, which contain boilerplate objections and refusals to produce key categories of documents that are plainly relevant—indeed, pivotal—to Plaintiff's claims and Townsend's defenses. Ex. 11.

21. Despite numerous meet-and-confer exchanges, several disputes remain. What follows are the issues on which the parties could not reach agreement.

22. The foregoing discovery is necessary for Townsend to adequately defend this case—a case in which Plaintiff seeks more than \$500 million in damages. Townsend therefore respectfully requests that the Court grant this Motion and compel Plaintiff to produce documents to which Townsend is clearly entitled.

III. TOWNSEND'S MOTION SHOULD BE GRANTED

A. Townsend Is Entitled To Review The Same Documents Plaintiff Provided To The FBI During Its Investigation Of Plaintiff's Real Estate Investment Program.

23. Request 95 seeks “[a]ll documents produced to or seized by any state or federal government agency,” including the FBI, “concerning Plaintiff’s real estate investment program, including the losses alleged in this Lawsuit.” Ex. 10 (Requests) at 24. These documents are directly relevant—and critically important—to this case.

24. According to multiple media reports, the FBI has undertaken an investigation concerning Plaintiff’s real estate investments and losses—including those at the heart of this lawsuit. *See, e.g.*, Ex. 12 (May 11, 2018 *Dallas Morning News* article); Ex. 13 (Jan. 20, 2017 *Dallas Morning News* article); Ex. 14 (Dec. 30, 2016 *Wall Street Journal* article). For example, the FBI is reportedly investigating Plaintiff’s relationship with CDK, the investment firm that recommended and managed the vast majority of real estate investments identified in the First Amended Petition. *See, e.g.*, Ex. 13 (Jan. 20, 2017 *Dallas Morning News* article); FAP ¶ 27 (CDK “manag[ed] the largest percentage of DFPF’s nearly \$1 billion Real Estate Portfolio”); *see also* FAP ¶¶ 28–29, 30–34, 38–43, 56–57 (detailing CDK-managed investments). Dallas Mayor Mike Rawlings has called for the Texas Rangers to launch a separate state investigation into Plaintiff’s real estate investment program. *See, e.g.*, Ex. 12 (May 11, 2018 *Dallas Morning News* article); Ex. 14 (Dec. 30, 2016 *Wall Street Journal* article).

25. Plaintiff admits that there is an “ongoing investigation” by the FBI concerning its real estate investment program, and that it has made “millions” of documents available for the FBI to review. Ex. 15 (Oct. 29, 2018 Letter) at 4–5; Ex. 16 at (Nov. 9, 2018 Letter) 7–8.² But

² After initially denying that it was aware of any investigation by the Texas Rangers, Plaintiff has now backtracked, and claims to be “investigating” whether any state or federal government

Plaintiff refuses to identify which documents it made available to the FBI or make those same documents available to Townsend for review. *Id.* Plaintiff’s position is meritless.

26. First, documents provided to the FBI “concerning Plaintiff’s real estate investment program” and “the losses alleged in this Lawsuit” are, by definition, relevant. Notably, Plaintiff failed to assert any relevance objection in its response to Request 95, meaning that any such objection has now been waived. Ex. 11 (Responses) at 30; Tex. R. Civ. P. 193.2(e) (“An objection that is not made within the time required . . . is waived unless the court excuses the waiver for good cause shown.”).

27. In meet-and-confer correspondence, however, Plaintiff asserted an untimely—and misplaced—relevance objection, arguing that documents provided to the FBI were “for [the FBI’s] own, undisclosed purposes” and “nothing about the fact of [the FBI’s] review makes such documents relevant.” Ex. 17 (Oct. 19, 2018 Letter) at 4–5. Wrong. Plaintiff’s entire lawsuit hinges on the (false) premise that Townsend is responsible for Plaintiff’s failed real estate investments. According to media reports, the FBI’s investigation involves the same investments and the possible reasons for their failure—including the role played by Plaintiff’s former administrator (Richard Tettamant), primary investment manager (CDK), and others. *See supra* at ¶ 24; Ex. 12 (May 11, 2018 *Dallas Morning News* article) (reporting that Tettamant’s attorney asserted his innocence and claimed that “all of the investment decisions were made by [Plaintiff’s] trustees”). Documents that Plaintiff turned over to the FBI in connection with this

agency other than the FBI is conducting an investigation concerning its real estate investment program. *Compare* Ex. 18 (Nov. 5, 2018 Letter) at 6 *with* Ex. 16 (Nov. 9, 2018 Letter) at 8. For the avoidance of doubt, to the extent that any documents are produced to or seized by the Texas Rangers—or any other government agency—concerning Plaintiff’s real estate investment program, those documents are also responsive to Request 95 and must be produced.

investigation could directly refute Plaintiff's claims and support Townsend's defenses—and are clearly relevant.³

28. Second, there is little-to-no burden on Plaintiff to make these same documents available for inspection and copying by Townsend. Plaintiff acknowledges that it “made millions of non-privileged documents available to the FBI . . . to inspect and copy as it saw fit.” Ex. 17 (Oct. 19, 2018 Letter) at 4. Plaintiff claims, implausibly, that it does not know—and has no way to determine—which specific documents were actually reviewed or copied by the FBI. Ex. 11 (Responses) at 30; Ex. 16 (Nov. 9, 2018 Letter) at 7. Even if that were true, there is no reason not to provide Townsend access to the same universe of documents that Plaintiff made available to the FBI. Because the same documents have already been collected, there should be no additional burden or expense for Plaintiff to make them available to Townsend. Moreover, Townsend is willing to inspect these documents at Plaintiff's offices or assume the cost of having them copied.

29. Third, there is no basis for Plaintiff to withhold documents provided to the FBI on privilege grounds. Plaintiff has studiously avoided Townsend's questions as to whether it is in fact withholding documents on privilege grounds, but it asserted during meet-and-confer exchanges—without support or explanation—that “privilege has not been waived” over

³ Not surprisingly, courts have regularly ordered the production of documents relating to government investigations concerning the same subject matter as the litigation. *See, e.g., Munoz v. PHH Corp.*, 2013 WL 684388, at *1, *4 (E.D. Cal. Feb. 22, 2013) (ordering defendant to produce documents provided to Consumer Financial Protection Bureau and concluding “[t]here can be no serious dispute that documents related to the CFPB's investigation of Defendant[] . . . are relevant to Plaintiffs' suit based on identical allegations”); *Republic Env'tl. Sys., Inc. v. Reichhold Chems., Inc.*, 157 F.R.D. 351, 352-53 (E.D. Pa. 1994) (ordering plaintiff to produce documents relating to “any environmentally-related investigation, inspection or inquiry by any governmental agency or authority” concerning waste treatment facility at issue in lawsuit). The same result is warranted here.

documents provided to the FBI. Ex. 11 (Responses) at 30; Ex. 16 (Nov. 9, 2018 Letter) at 8. Texas law is clear, however, that any privilege that may otherwise have existed over these documents was waived when Plaintiff provided them to the FBI.

30. An “overwhelming” majority of state and federal courts recognize that the disclosure of privileged documents to a government agency waives privilege over those documents, and reject a “selective waiver” approach which would preserve privilege in such instances of compelled disclosure. *S.E.C. v. Brady*, 238 F.R.D. 429, 440 (N.D. Tex. 2006).⁴ As the Texas Court of Appeals has explained, given the inherently “adversarial nature of the relationship between the government and the regulated party . . . [,] it is illogical to argue that any privileged materials disclosed retain their privileged status.” *In re Fisher & Paykel Appliances, Inc.*, 420 S.W.3d 842, 851–52 (Tex. App.—Dallas 2014, no pet.); *see also Westinghouse Elec. Corp. v. Republic of Philippines*, 951 F.2d 1414, 1425 (3d Cir. 1991) (“selective waiver does not serve the purpose of encouraging full disclosure to one’s attorney in order to obtain informed legal assistance; it merely encourages voluntary disclosure to government agencies, thereby extending the privilege beyond its intended purpose”).

31. Texas courts have followed the majority rule. *See Brady*, 238 F.R.D. at 440–41 (holding that defendant waived privilege over materials provided to SEC based on “the great weight of authority which has declined to adopt the selective waiver doctrine”); *In re Fisher &*

⁴ *See U.S. v. Mass. Inst. of Tech.*, 129 F.3d 681, 686–87 (1st Cir. 1997); *In re Steinhardt Partners, L.P.*, 9 F.3d 230, 236 (2d Cir. 1993); *Westinghouse Elec. Corp. v. Republic of Philippines*, 951 F.2d 1414, 1425 (3d Cir. 1991); *In re Martin Marietta Corp.*, 856 F.2d 619, 623–24 (4th Cir. 1988); *In re Columbia/HCA Healthcare Corp. Billing Practices Litig.*, 293 F.3d 289, 302 (6th Cir. 2002); *Burden–Meeks v. Welch*, 319 F.3d 897, 899 (7th Cir. 2003); *In re Pacific Pictures Corp.*, 679 F.3d 1121, 1127–29 (9th Cir. 2012); *In re Qwest Commc’ns Int’l*, 450 F.3d 1179, 1196–97 (10th Cir. 2006); *Permian Corp. v. U.S.*, 665 F.2d 1214, 1221–22 (D.C. Cir. 1981); *Genentech, Inc. v. U.S. Int’l Trade Comm’n*, 122 F.3d 1409, 1417 (Fed. Cir. 1997).

Paykel, 420 S.W.3d at 851 (holding that defendant’s disclosure of reports to government agency constituted waiver); *cf. In re BP Prods. N. Am. Inc.*, 263 S.W.3d 106, 116–17 (Tex. App.—Houston 2006, no pet.) (recognizing that “disclosure can operate as a waiver,” but finding no waiver as to documents that were not actually disclosed to SEC). *Fisher & Paykel* is the most recent Texas state case to address the issue of selective waiver. In that case, a products liability action, defendant asserted that reports it filed with the U.S. Consumer Product Safety Commission pursuant to a mandatory reporting obligation constituted privileged attorney work product. 420 S.W.3d at 849. The court concluded that any privilege that may have existed was waived when defendant disclosed the reports to the Commission, emphasizing that “the weight of authority does not favor recognition in Texas of a doctrine of selective waiver of privilege.” *Id.* at 850–51.

32. Likewise here, Plaintiff’s broad disclosure of documents to the FBI constitutes waiver of any privilege that may have existed over those documents. As a result, there is no basis for Plaintiff to withhold documents responsive to Request 95 on privilege grounds.

33. For the reasons set forth above, Plaintiff should be ordered to produce or make available for inspection all documents responsive to Request 95.

B. Plaintiff Should Produce Documents Relating To Certain “Non-Pled” Investments.

34. Requests 19, 48, and 108 seek documents concerning Plaintiff’s real estate investments during the relevant time period (October 1, 2004 through August 31, 2017), some of which were not specifically identified in the First Amended Petition. Request 19 seeks documents relating to Plaintiff’s “real estate investment allocation, strategy, goals, policies, or guidelines.” Request 48 seeks documents concerning “audits, appraisals, valuations, and other analyses of Plaintiff’s real estate investment portfolio as a whole.” And Request 108 seeks documents and communications relating to Plaintiff’s retention of Mike Snyder, a public relations consultant who was apparently retained to counteract widespread public criticism of Plaintiff’s real estate investments. Ex. 10 (Requests) at 9, 15, 26; *see also* Ex. 19 (July 28, 2013 *Dallas Morning News* article) (describing Snyder’s work as “part of a more than \$1 million legal and public relations campaign waged by the Dallas Police and Fire Pension System,” including his response to online commentary “accus[ing] [pension officials] of mismanaging the more than \$3 billion fund and placing taxpayers at risk”).

35. In response to these Requests, Plaintiff agreed to produce documents relating to the real estate investments that were named in the First Amended Petition, but refused to produce documents concerning “non-pled” investments. Ex. 16 (Nov. 9, 2018 Letter) at 6–8. According to Plaintiff, such documents are irrelevant and unduly burdensome to produce. *Id.* Plaintiff’s objections are baseless. As set forth below, these documents are relevant—as Plaintiff itself acknowledged in demanding (and obtaining) discovery concerning non-pled investments from Townsend—and the Requests are narrowly tailored to avoid any undue burden or expense.

36. Although non-pled investments may not be the basis for Plaintiff’s liability and damages claims, they are nonetheless relevant to those claims and Townsend’s defenses. The

question of whether Townsend, Plaintiff, or someone else is to blame for the failed real estate investments identified in the First Amended Petition requires consideration of, *inter alia*, investments that Plaintiff does not challenge, Plaintiff's overall real estate investment program and strategy, and the fifteen-year relationship between Plaintiff and Townsend.

37. To take just a few examples, discovery concerning non-pled investments could establish:

- a. Losses to Plaintiff's real estate portfolio are attributable not to Townsend, but to Plaintiff's own mismanagement and investments that are not mentioned in the First Amended Petition—including Museum Tower, an ill-fated condominium project in Dallas that has generated widespread criticism and controversy. *See, e.g.*, Ex. 20 (Mar. 15, 2013 *Dallas Morning News* article) (former trustee "'lost faith' in the system's leadership" and expressed "concern[] about the fund's diminishing overall health"); Ex. 21 (July 1, 2015 *Dallas Morning News* article) ("Tettamant[] resigned under pressure last year as it became clear that bad investment decisions, unrealistic financial assumptions and overly generous benefits had jeopardized the fund's health"); Ex. 22 (July 5, 2012 *Dallas Morning News* article) (Plaintiff "faces major challenges with some of its real estate holdings . . . only about 15 percent of the 110 luxury condos in the \$200 million Museum Tower have been sold").
- b. Under Tettamant's leadership, Plaintiff developed and pursued a high-risk, high-return strategy with respect to its entire real estate portfolio—and did so with full knowledge that its strategy was unusually aggressive and risky

for a pension fund. *See, e.g.*, Ex. 22 (July 5, 2012 *Dallas Morning News* article) (“The system has drawn heavy criticism from some for focusing so much on so-called ‘alternative’ investments However, system trustees and staff say, such a large real estate commitment, along with other nontraditional investments, have . . . increased returns and lowered overall risk.”); Ex. 23 (Nov. 4, 2012 *Dallas Morning News* article) (“They’ve been the investor cowboys of local pensions, betting heavily on alternative investments They’ve eagerly defended the strategy, saying it’s the best way to generate high returns required for retirees.”); Ex. 6 (Feb. 17, 2013 *Dallas Morning News* article) (“‘Some people call us contrarian; I like to call ourselves innovative,’ [Tettamant] says. ‘We try to look at things differently than the rest of the market.’”).

- c. Plaintiff was well-aware of public criticism concerning its aggressive real estate strategy, and launched a “public relations” campaign to counteract it. *See, e.g., supra* at ¶ 34; Ex. 22 (July 5, 2012 *Dallas Morning News* article) (“‘It’s time to fight back and set the record straight,’ Tomasovic, a battalion chief in the fire department and a certified public accountant, said in a video posted on the fund’s website Anyone who doesn’t agree with [Plaintiff’s] alternative asset investment strategy, Tomasovic said, ‘is trapped in the mindset of the past.’”).
- d. Plaintiff routinely disregarded Townsend’s advice, including clear warnings that Plaintiff was exceeding real estate allocation guidelines and specific recommendations that Plaintiff diversify its real estate portfolio.

See, e.g., TTG0064065⁵ (2006 investment guidelines drafted by Townsend setting forth allocation ranges for various investment types and emphasizing the importance of diversification); DFPF_TOWNSEND_0006407 (Townsend presentation recommending sales of land investments); DFPF_TOWNSEND_0007505 (Townsend presentation recommending DPFPS to encourage investment managers to strategically sell properties).

Such documents are critical to Townsend’s ability to defend this case.

38. Plaintiff’s relevance objection is also belied by its own position in seeking discovery from Townsend. Plaintiff’s requests for production sought documents and communications relating to “Investments,” defined broadly as “any and all investments made by or relating to [Plaintiff] for which Townsend . . . had any oversight, reporting, management, fiduciary, or similar responsibilities”—including Museum Tower and numerous other investments that were not named in the First Amended Petition. Ex. 24 (Plaintiff’s First Request for Production) (“Plaintiff’s Requests”) at 4. In its initial objections, Townsend agreed to produce documents relating to investments that were specifically identified in the Petition. Plaintiff, however, asserted that “[w]hether or not the request references investments or investment managers or matters not mentioned in Plaintiff’s Petition, discovery regarding such items would be appropriate.” Ex. 25 (May 18, 2018 Letter) at 7. At Plaintiff’s insistence, Townsend has produced tens of thousands of documents, many of which relate to “non-pled” investments such as Museum Tower. *See* Ex. 26 (Rule 11 agreement) ¶ 9. Plaintiff cannot now take the exact opposite position.

⁵ Documents referenced herein by bates number will be made available for the Court’s in-camera review at the hearing, or at any other time the Court requests.

39. The relevance of these documents outweighs the burden of producing them. Requests 19, 48, and 108 do not “implicate each and every document in Plaintiff’s possession,” as Plaintiff contends. Ex. 17 (Oct. 19, 2018 Letter) at 3. Rather, these Requests target discrete categories of documents relating to (i) strategies, guidelines, and other high-level documents concerning Plaintiff’s real estate investment program; (ii) analyses of Plaintiff’s real estate portfolio “as a whole” (in other words, documents that relate to both pled and non-pled investments); and (iii) communications with Mr. Snyder, who appears to have been retained in or around 2013 for the limited purpose of counteracting public criticism of Plaintiff’s real estate investments. *See supra* at ¶ 34.

40. Plaintiff should be ordered to produce all non-privileged documents responsive to Requests 19, 48, and 108.

C. There Is No Basis For Plaintiff To Withhold Documents Concerning The City Of Dallas’ 2013 Audit.

41. Request 110 seeks documents relating to a 2013 audit of Plaintiff conducted by the City of Dallas through the consulting firm Foster & Foster. According to press reports, the purpose of this audit was to “double-check how [Plaintiff] value[d]” certain real estate investments, and Plaintiff was not cooperative—refusing to turn over documents concerning its valuations of certain real estate investments, including investments in Hawaii and Napa County that are expressly referenced in the First Amended Petition. *See, e.g.*, Ex. 8 (Jan. 26, 2014 *Dallas Morning News* article); FAP ¶¶ 35, 46–51.

42. Plaintiff agreed to produce a copy of the final audit report, but has refused to produce any other documents sought by Request 110—including external and internal communications about the audit—on relevance grounds. *See* Ex. 17 at 6 (Oct. 19, 2018 Letter).

43. Request 110 easily satisfies the relevance standard of Texas Rule of Civil Procedure 192.3. Tex. R. Civ. P. 192.3(a) (“a party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action” or “reasonably calculated to lead to the discovery of admissible evidence”). Communications concerning the 2013 audit could show, for example, that Plaintiff was aware of problems with its real estate investments and valuations in or before 2013—*i.e.*, outside the statutory limitations period.⁶ Such communications could also show that Plaintiff’s approach to valuation of its real estate investments—for example, its decision not to have certain investments appraised or marked-to-market on a regular basis—was based on advice from certain investment managers (not Townsend) and Plaintiff’s own desire to avoid publicly reporting significant losses. Given the limited scope of Request 110, which concerns one external audit, any burden associated with this discovery is far outweighed by its relevance.

44. Plaintiff should be ordered to produce documents responsive to the full scope of Request 110.

D. As Texas Law Makes Clear, Plaintiff Must Produce Documents Held By Current And Former Trustees And Investment Managers.

45. Plaintiff has withheld documents that are indisputably relevant to this case on the ground that certain documents in the physical possession of its current and former trustees and investment managers are outside Plaintiff’s “possession, custody, or control.” This objection is meritless.

⁶ The statutes of limitations applicable to Plaintiff’s claims are between two and four years. *See* Tex. Civ. Prac. & Rem. Code §§ 16.003(a), 16.004 (claims for negligence and breach of fiduciary duty subject to two- and four-year statutes, respectively); *Via Net v. TIG Ins. Co.*, 211 S.W.3d 310, 312 (Tex. 2006) (*per curiam*) (breach of contract claim subject to four-year statute). The parties signed a tolling agreement effective as of June 13, 2017. Ex. 27 (Master Standstill and Tolling Agreement). As a result, Townsend contends that any claims that accrued prior to June 13, 2013, are time-barred as a matter of law.

46. Texas law requires a party responding to discovery to produce responsive documents within its “possession, custody, or control,” irrespective of whether such documents are held by third parties. Tex. R. Civ. P. 192.3(b). “Possession, custody, or control” includes “not only actual physical possession, but constructive possession, and the right to obtain possession from a third party such as an agent or representative.” *In re Summersett*, 438 S.W.3d 74, 81 (Tex. App.—Corpus Christi-Edinburg 2013, no pet.) (citing *GTE Commc’ns Sys. Corp. v. Tanner*, 856 S.W.2d 725, 729 (Tex. 1993)); *see also* Tex. R. Civ. P. 192.7 (“Possession, custody, or control of an item means that the person either has physical possession of the item or has a right to possession of the item that is equal or superior to the person who has physical possession of the item.”).

47. As both a practical and legal matter, Plaintiff has the right to request and obtain possession of responsive documents from its current and former trustees and investment managers. Texas law is clear that Plaintiff cannot withhold these documents simply because they are not in its actual physical possession—any other rule would lead to absurd and dangerous policy results.

(1) Documents Held By Plaintiff’s Current And Former Trustees

48. By statute, Plaintiff is administered by a Board of Trustees, which is charged with a fiduciary duty to “hold and administer the assets of the fund for the exclusive benefit of members and their beneficiaries . . . in a manner that ensures the sustainability of the pension system.” Tex. Rev. Civ. Stat. Ann. art 6243a-1 (West 2018). In its First Amended Petition, Plaintiff repeatedly refers to the Board as Townsend’s “client,” alleging, *inter alia*, that Townsend breached its contractual, fiduciary, and professional obligations by failing to provide certain advice and information directly to the Board. *See, e.g.*, FAP ¶¶ 3–5, 22, 24, 29, 36, 40, 45, 53, 54–61, 64–66.

49. Plaintiff thus cannot dispute that its current and former trustees, along with the staff members who support them, are the key witnesses and document custodians in this case. Nor can Plaintiff dispute that trustees regularly used personal email accounts, rather than “dpfp.org” email accounts (presumably maintained by Plaintiff), to conduct business on Plaintiff’s behalf.

50. To take one example, former trustee Steve Umlor regularly used his personal email account to communicate with Plaintiff, Townsend, and Plaintiff’s investment managers. In 2009, for example, Mr. Umlor used his personal account—without copying any “dpfp.org” email address—to communicate with investment advisor L&B Realty Advisors, LLP (“L&B”) regarding a visit to one of Plaintiff’s real estate investments. *See* TTG0148322. In addition, calendar invites for trustees have been sent to trustees’ personal email accounts and Dallas City Council email accounts rather than their “dpfp.org” accounts. *See, e.g.*, TTG0180382; TTG0070722; TTG0090868.

51. Plaintiff, however, refuses to search current or former trustees’ personal email accounts for responsive documents or request that the trustees themselves conduct such searches, asserting that it lacks the “requisite control.” Ex. 16 (Nov. 9, 2018 Letter) at 5. That statement is inaccurate.

52. Plaintiff clearly has the ability and right to obtain documents relating to administration of the Fund from its current and former trustees. Indeed, courts have routinely required entities to instruct officers, directors, board members, and other representatives to preserve and produce responsive documents. *See, e.g., In re Triton Energy Ltd. Sec. Litig.*, 2002 WL 32114464, at *6 (E.D. Tex. March 7, 2002) (applying analogous rules, holding that defendant should have “instruct[ed] its officers and directors to preserve and produce any

documents in their possession, custody, and control,” and ordering defendant to produce “documents from present and former outside directors”); *Grace Bros., Ltd. v. Siena Holdings, Inc.*, 2009 WL 1547821, at *1–2 (Del. Ch. Ct. June 2, 2009) (applying analogous rules, ordering defendant to produce emails between board members, and noting that defendant should have “ask[ed] that the directors look for any relevant emails in their accounts”). If there were any other rule, companies could effectively shield themselves from liability by instructing representatives to use personal email accounts to conduct or communicate about any wrongdoing while keeping their company-issued email accounts clean.

(2) Documents Held By Plaintiff’s Former Investment Managers

53. Requests 78 and 79 seek documents relating to communications with the investment managers responsible for the investments named in Plaintiff’s First Amended Petition: CDK, M3, Knudson, Criswell Radovan, and Land Baron. Plaintiff does not dispute the relevance of these requests, but refuses to request responsive documents from a single one of these managers, contending that Plaintiff “no longer has any legal relationship” with them and thus “does not have control” over their documents. *See* Ex. 17 (Oct. 19, 2018 Letter) at 4.

54. Plaintiff, however, has the ability and right to request the return of its files from investment managers who were retained to perform services on its behalf—regardless of whether their professional relationship has ended. *See, e.g., Moreno v. Autozone, Inc.*, 2008 WL 906510, at *1 (N.D. Cal. Apr. 1, 2008) (applying analogous federal rules and holding “Plaintiff should have the legal right to obtain [] documents from former counsel on demand”); *Spano v. Satz*, 2010 WL 11515691, at *7 (S.D. Fla. May 12, 2010) (plaintiff has duty to request responsive documents from current and former agents, “including her former counsel and . . . all medical providers, and she has a legal right to receive the documents from these individuals”).

55. Indeed, this right is expressly referenced in Plaintiff and several of its investment managers, including CDK, Land Baron, and Knudson. Under those agreements, the investment managers were required to maintain accurate books and records of their activities and to make those records available for inspection and copy at Plaintiff's request and discretion.

DPFP_TOWNSEND_0045874 at 45880, 45886 (CDK); DPFP_TOWNSEND_0048239 at 48242 (Land Baron); DPFP_TOWNSEND_0033025 at 33050 (Knudson).

56. For the reasons set forth above, Plaintiff should be ordered to request and produce any responsive documents held by current and former trustees and former investment managers.

E. Plaintiff Should Make The Same Rule 11 Attestation It Demanded From Townsend: That It Is Not Withholding Documents Based On Its Boilerplate Objections.

57. Plaintiff's Responses contain boilerplate general objections—misleadingly titled “Specific Objections Applicable to Certain Requests as Incorporated”—which are incorporated by reference into 113 of 114 responses (99.1%). These general objections relate to (i) Townsend's instruction that the name of any person or entity “include all past or present employees, officers, directors, partners, agents, representatives, and attorneys” as well as predecessors and successors, (ii) Townsend's definition of “DPFPS Staff,” (iii) Townsend's instruction that Plaintiff provide certain information regarding documents that have been lost or destroyed, and (iv) the time for production specified in the Requests. Plaintiff has refused to sign a Rule 11 agreement confirming, without qualification, that it is not withholding documents based on these general objections. That refusal is improper, and completely inconsistent with the position Plaintiff took in demanding and obtaining such a Rule 11 agreement from Townsend.

58. Earlier this year, Plaintiff filed a motion to compel challenging general objections asserted by Townsend. Plaintiff contended that “[t]hese types of general objections are an improper prophylactic and hypothetical means of objection to specific requests under the Texas

Rules of Civil Procedure,” and requested that the Court order Townsend to withdraw its general objections or deem them waived. Plaintiff’s June 20, 2018 Mot. to Compel at 9–18. At the hearing on Plaintiff’s motion, the Court’s questioning suggested that the appropriate course was for Plaintiff to request a “withholding statement” from Townsend. Ex. 28 (Hearing Tr. July 31, 2018) at 9:7-10:12. As a result, following the hearing, Plaintiff insisted that Townsend sign a Rule 11 agreement confirming that it would not withhold documents based on its general objections, and Townsend agreed. *See* Ex. 29 (Aug. 22, 2018 Letter). The parties executed a Rule 11 agreement on September 10, 2018 providing:

The Townsend Defendants represent that they have not withheld in the past, and agree not to withhold in the future, any documents from production in response to any particular request in the First Request on any basis not set forth in the objections specific to that request. In other words, unless one of the General Objections . . . is specifically set forth in the response to a request (rather than merely being incorporated by reference), the Townsend Defendants are not withholding any documents from production on the basis of such General Objection.

Ex. 26 (Rule 11 agreement) ¶ 2.

59. Remarkably, Plaintiff now refuses to sign a Rule 11 agreement containing the exact same language. After receiving the boilerplate objections accompanying Plaintiff’s Responses, Townsend asked Plaintiff to confirm that it would not withhold documents based on those objections and provided a draft Rule 11 agreement with the same language to which Townsend had previously agreed. Ex. 30 (Oct. 9, 2018 Letter) at 1–2. Plaintiff refused to sign the agreement, and instead proposed revised language that contained numerous qualifiers and provided that Plaintiff “maintains” its general objections. Ex. 15 (Oct. 29, 2018 Letter) at 2.

60. There is no justification for treating Plaintiff’s general objections differently from Townsend’s. Plaintiff attempts to distinguish its boilerplate objections on the ground that they were “incorporated by reference into certain responses.” Ex. 15 (Oct. 29, 2018 Letter) at 2. As

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**ATTORNEYS FOR DEFENDANTS TOWNSEND
HOLDINGS, LLC d/b/a THE TOWNSEND GROUP,
RICHARD BROWN and MARTIN ROSENBERG**

CERTIFICATE OF SERVICE

I hereby certify that via correspondence exchanged between the undersigned and counsel for Plaintiff on October 9, October 19, October 24, October 29, November 5, November 9, November 15, and November 16, 2018, and a telephonic conference on October 24, 2018, the parties conferred regarding the subject matter of this motion but were unable to reach agreement. Accordingly, the motion is submitted to the Court for determination.

/s/Melissa Sedrish Rabbani
Melissa Sedrish Rabbani

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on the following via e-service on this 10th day of December, 2018:

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/s/Elizabeth L. Yingling
Elizabeth L. Yingling

EXHIBIT 5

CAUSE NO. DC-17-11306

DALLAS POLICE & FIRE PENSION SYSTEM,

Plaintiff,

v.

TOWNSEND HOLDINGS, LLC d/b/a THE TOWNSEND GROUP, RICHARD BROWN, MARTIN ROSENBERG and GARY B. LAWSON,

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

298th JUDICIAL DISTRICT

TOWNSEND DEFENDANTS’ FOURTH SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF

TO: Plaintiff Dallas Police & Fire Pension System (“DPFPS”), by and through its attorneys of record, J. Gregory Taylor, Bart Sloan, Mark K. Sales, Diamond McCarthy LLP, 2711 Haskell Ave., Suite 3100, Dallas, Texas 75204, and Rebecca A. Muff, Diamond McCarthy LLP, 909 Fannin, Suite 3700, Houston, Texas 77010.

Pursuant to Texas Rule of Civil Procedure 194, Defendants TOWNSEND HOLDINGS, LLC d/b/a THE TOWNSEND GROUP (“Townsend”), RICHARD BROWN (“Brown”), and MARTIN ROSENBERG (“Rosenberg”), (collectively, the “Townsend Defendants”), serve their Fourth Set of Requests for Production (“Requests”) and request that Plaintiff Dallas Police & Fire Pension System respond to each of the Requests set forth herein within thirty (30) days of service, as required by Texas Rule of Civil Procedure 196.2(a), and produce all responsive documents and things to the offices of Baker & McKenzie LLP, at 1900 North Pearl Street, Suite 1500, Dallas, Texas 75201.

I. DEFINITIONS AND INSTRUCTIONS

1. All definitions and rules of construction contained in the Texas Rules of Civil Procedure and the Texas Rules of Evidence are incorporated herein by reference.

2. Unless otherwise indicated, the use in these Requests of the name or identity of any person, business organization, or other entity shall specifically include all past or present employees, officers, directors, partners, agents, representatives, and attorneys of that person, organization, or entity and its predecessors and successors.

3. For purposes of interpreting or construing the scope of these Requests, the terms shall be given their most expansive and inclusive interpretation unless otherwise specifically limited by the language of an individual Request. This includes, without limitation, the following:

- a. Construing “and” as well as “or” in the disjunctive or conjunctive as necessary to make the Request more inclusive;
- b. Construing the singular form of the word to include the plural and the plural form to include the singular;
- c. Construing the present tense of a verb to include the past tense and vice versa;
- d. Construing the masculine to include the feminine and vice versa; and
- e. Construing the term “including” to mean including, but not limited to.
- f. Construing the term “all” means “any, all, each and every.”

4. “Communication” shall mean and refer to any contact, oral or documentary, formal or informal, at any time or place or under any circumstances whatsoever, whereby information of any nature is transmitted or transferred.

5. “Documents” shall mean and refer to the originals, any non-identical duplicates (e.g., due to margin notes, handwritten corrections, modifications, or similar alterations) and any copies or reproductions of any written or recorded matter in your custody, possession, or control, or known by you to exist, including, but not limited to, any information that is prepared by hand or is printed, recorded, reproduced, or transcribed by any process. This includes, but is not limited to, business records, correspondence, communications, memoranda, letters, reports, agreements, telegrams, teletypes, facsimiles, photocopies, photographs, film, microfilm, microfiche, videotapes, data processing input and output, electronic mail of any type (including deleted electronic mail), text messages, SMS messages, computer printouts, presentations, summaries and records of conversations, diaries, tape recordings, maps, surveys, charts, plans,

drawings, minutes of meetings or conferences, lists, reports, summaries of interviews or investigations, opinions, reports or summaries of negotiations, leases, title opinions, run sheets, drafts, revisions, contracts, notes, calendars, date books, “day-timers,” checks, expense account records, messages, receipts, and deeds, or any other similar type of instrument.

6. “Person” or “Entity” shall mean and refer to natural persons, groups of natural persons acting in a collegial capacity (*e.g.*, a committee or council), corporations, partnerships, associations, trusts, joint ventures, and any other incorporated or unincorporated business, governmental, public, or legal entity.

7. A reference to any Person or Entity shall include, when applicable, its subsidiaries, controlled persons, controlling persons, shareholders, officers, directors, employees, agents, or other persons acting, or purporting to act, on its behalf.

8. “Relating to” means evidences, mentions, constitutes, contains, summarizes, describes, concerns (directly or indirectly), refers to, contradicts, addresses in any way or otherwise deals with the subject matter of the request.

9. “Diamond McCarthy” shall mean and refer to Diamond McCarthy LLP.

10. “DPFPS” or “Plaintiff” shall mean and refer to Plaintiff Dallas Police & Fire Pension System, including the DPFPS Staff and any of its members and the DPFPS Board and any of its members, and all past or present employees, officers, directors, partners, agents, representatives, and attorneys of DPFPS, its predecessors, and its successors.

11. “DPFPS Staff” shall mean the employees and personnel of Plaintiff Dallas Police & Fire Pension System, including, but not limited to, the Executive Team, Benefits Team, Investment Team, Accounting Team, Administrative Team, and Information Team, as detailed on DPFPS’ website and organization chart.

12. “DPFPS Board” shall mean the Board of Trustees of Plaintiff Dallas Police & Fire Pension System and all of its current or former members.

13. The “2015 Investigation” shall mean and refer to services performed pursuant to the terms of the engagement agreement signed on August 20, 2015, and referenced in DPFPS’ January 22, 2018 Objections and Responses to Defendant Lawson’s First Set of Discovery Requests.

14. “Lawsuit” shall mean and refer to the above-styled lawsuit, *Dallas Police & Fire Pension System v. Townsend Holdings, LLC d/b/a The Townsend Group, Richard Brown, Martin Rosenberg, and Gary B. Lawson*, Cause Number DC-17-11306, in the 298th Judicial District Court of Dallas County, Texas.

15. All Documents and/or other data compilations, which might impact the subject matter of this Lawsuit, shall be preserved, and any ongoing process of Document destruction involving such Documents should cease.

16. These Requests are intended to include all Documents in DPFPS's possession, or subject to DPFPS's custody or control, whether directly or indirectly. A Document is deemed to be within DPFPS's possession, custody, or control if:

- a. it is within the actual possession, custody, or control of DPFPS; or
- b. it is within the possession of any other employee, Person, or Entity, and DPFPS has the right to obtain the Document from the Person or Entity.

17. To the fullest extent permitted, these Requests are continuing in nature. In the event that any information or material comes to DPFPS's attention, possession, custody, or control, subsequent to the service of their response to these Requests, that is responsive to any of these Requests, DPFPS is required to supplement its responses and production pursuant to Texas Rule of Civil Procedure 193.5.

18. To the extent any Request is objected to, set forth the complete reasons for the objection. If DPFPS claims a privilege as grounds for not producing Documents in response to any Request, produce a privilege log describing the factual basis for the claim of privilege, including relevant dates and persons involved, in sufficient detail so as to permit the Court to adjudicate the validity of the claim.

II. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 205:

All documents, from August 31, 2017, to the present, evidencing, relating to, or concerning communications between Plaintiff and any state or federal agency, including the Federal Bureau of Investigation, concerning Plaintiff's real estate investment program, including the losses alleged in this Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 206:

All documents, from August 31, 2017, to the present, produced to or seized by any state or federal government agency, including the Federal Bureau of Investigation, concerning Plaintiff's real estate investment program, including the losses alleged in this Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 207:

All documents, from August 31, 2017, to the present, evidencing, relating to, or concerning actual or potential litigation involving one or more of Plaintiff's real estate investments (other than this Lawsuit)—including but not limited to actual or potential legal proceedings or settlement agreements between Plaintiff and any investment manager, real estate developer, investment consultant, real estate consultant, financial consultant, and/or investor.

RESPONSE:

REQUEST FOR PRODUCTION NO. 208:

All documents, from October 1, 2004, to the present, evidencing, relating to, or concerning communications between Plaintiff and any state or federal agency, including the Federal Bureau of Investigation, concerning Plaintiff's financial reporting, including the valuation of any of Plaintiff's real estate, private equity, or other investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 209:

All documents, from October 1, 2004, to the present, produced to or seized by any state or federal government agency, including the Federal Bureau of Investigation, concerning Plaintiff's financial reporting, including the valuation of any of Plaintiff's real estate, private equity, or other investments.

RESPONSE:

REQUEST FOR PRODUCTION NO. 210:

All documents, from October 1, 2004, to the present, evidencing, relating to, or concerning actual or potential litigation involving Plaintiff's Deferred Retirement Option Plan—including but not limited to actual or potential legal proceedings or settlement agreements between Plaintiff and any other Person or Entity.

RESPONSE:

REQUEST FOR PRODUCTION NO. 211:

All documents, from October 1, 2004 to the present, relating to actual or suspected fraudulent conduct by any current or former agent, member, employee, or personnel of DPFPS

relating to Plaintiff's real estate investment program.

RESPONSE:

REQUEST FOR PRODUCTION NO. 212:

All documents, from October 1, 2004 to the present, relating to actual or suspected negligent conduct by any current or former agent, member, employee, or personnel of DPFPS relating to Plaintiff's real estate investment program.

RESPONSE:

REQUEST FOR PRODUCTION NO. 213:

All final reports prepared by or exchanged with Diamond McCarthy relating to the 2015 Investigation.

RESPONSE:

REQUEST FOR PRODUCTION NO. 214:

All draft reports prepared by or exchanged with Diamond McCarthy relating to the 2015 Investigation.

RESPONSE:

REQUEST FOR PRODUCTION NO. 215:

All documents relating to the 2015 Investigation, including but not limited to, documents relating to the draft or final reports prepared by or exchanged with Diamond McCarthy.

RESPONSE:

REQUEST FOR PRODUCTION NO. 216:

All final or draft reports, or summaries thereof, relating to the 2015 Investigation, whether or not prepared by Diamond McCarthy, that were provided in hard copy or electronic form to any third party, including but not limited to the Federal Bureau of Investigation, the Securities and Exchange Commission, the City of Dallas, the Mayor of the City of Dallas, any of

DPFPS' auditors, and the Texas Pension Review Board.

RESPONSE:

REQUEST FOR PRODUCTION NO. 217:

All recordings, transcriptions, summaries, and/or notes of witness interviews conducted by Diamond McCarthy or any other Person or Entity in connection with the 2015 Investigation.

RESPONSE:

REQUEST FOR PRODUCTION NO. 218:

All requests for information or requests for documents delivered to or served upon third parties in connection with the 2015 Investigation.

RESPONSE:

REQUEST FOR PRODUCTION NO. 219:

All documents and information obtained by Diamond McCarthy and/or DPFPS from third parties in connection with the 2015 Investigation.

RESPONSE:

REQUEST FOR PRODUCTION NO. 220:

All communications, from April 1, 2015 through the present, between Kelly Gottschalk and the Federal Bureau of Investigation, including but not limited to any notes or recordings of such communications.

RESPONSE:

BAKER & McKENZIE, LLP

By: /s/ Elizabeth L. Yingling
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HOLDINGS, LLC d/b/a THE TOWNSEND
GROUP, RICHARD BROWN and MARTIN
ROSENBERG**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on the following via e-mail on this 25th day of July, 2019:

J. Gregory Taylor
Bart Sloan
Mark K. Sales
Diamond McCarthy
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Dallas, TX 75204

Rebecca A. Muff
Diamond McCarthy
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William D. Cobb
Carrie Johnson Phaneuf
Cobb Martinez Woodward PLLC
1700 Pacific Avenue, Suite 3100
Dallas, Texas 75201

/s/ Melissa Sedrish Rabbani

Melissa Sedrish Rabbani

EXHIBIT 6

3. The words “and” or “or” shall be construed either conjunctively or disjunctively so as to bring within the scope of these Requests any information that might otherwise be construed to be outside of their scope.

4. Each of these Requests shall be read liberally, so as to be inclusive rather than exclusive.

5. Defendants must comply with Texas Rule of Civil Procedure 193.3(a) with respect to any material or information withheld on the basis of the assertion of a privilege. If you object in whole or in part to any of these Requests, or if you object or refuse to provide any information requested below on the grounds that a Request asks for information that falls within the scope of any discovery privilege or exemption, you must provide sufficient information to permit the parties and the court to evaluate any claimed privilege.

6. Such information includes, but is not necessarily limited to, the following information: author(s); recipient(s); the nature of the document; subject matter; date(s); all persons who received copies of the document; name(s), job title(s), and contact information of the person in possession of the document; the nature of the claim of privilege or immunity; facts that support the claim of privilege or immunity; and individuals and/or entities on whose behalf the privilege is claimed.

7. If any requested document or thing cannot be produced in full, produce it to the extent possible, indicating what document or what portion of that document is being withheld and the reason that document or portion of that document is being withheld.

8. These Requests include and require the production of electronic or magnetic data pursuant to Texas Rule of Civil Procedure 196.4. All electronic or magnetic data shall be produced in native format unless it is not feasible to do so. Such data shall be put onto a CD, DVD, or other storage device and produced with all necessary software to read the data. In the event that you object to the production of any electronically stored information in native format, electronically stored information must still be produced in a form that preserves the electronically searchable characteristics of the original electronic file. Specifically, electronically stored information shall be produced in single page tagged image file format (“.tif”) format with accompanying text files containing the electronically extracted text of each such image and shall also include Summation or Concordance compatible load files, including all metadata concerning the creation and maintenance of the data provided.

9. At a minimum, metadata to be produced with any electronic documents should include: custodian, source device, originating path/file path, creation date, last modified date, last modified time. For email messages, metadata should include, at a minimum, custodian, to, from, cc, bcc, date sent, time sent, subject, date received, time received, attachments, mail folder path, message ID, and extracted message text.

10. Unless otherwise specified, these requests call for documents prepared, received and/or used in any way during the period from October 1, 2001 to the present.

11. Defendants must produce all documents requested that are in Defendants’ possession, custody, or control. Defendants must produce responsive documents as they are kept in the usual course of business or organize and label them to correspond with the request(s) to which they are responsive.

DEFINITIONS

As used herein, the following terms shall have the following meanings:

1. The terms “person” or “persons” mean any natural person, corporation, partnership, association or any other legal or fictitious entity.

2. “Relating to”, “referring to”, and “regarding” means and includes the terms relate to, refer to, constitute, memorialize, summarize, discuss, describe, mention, reflect, contain, concern, embody, identify, evidence, state, deal with, comment on, respond to, set forth, pertain to, analyze, support, or contradict.

3. The terms “document” or “documents” shall be interpreted in the broadest possible sense under the Texas Rules of Civil Procedure and Texas law, and includes all written, recorded, printed, typed, transcribed, filmed, digitized, electromagnetic or graphic matter, and all other tangible things and media upon which any handwriting, typing, printing, drawing, representation, electrostatic or other copy, sound or video recording, magnetic or electrical impulse, visual reproduction or communication is recorded, reproduced or represented. This includes books, papers, records, correspondence, reports, memoranda, electronic mail (i.e., “email”), social media accounts and postings, telephone text messages, articles, newspapers, contracts, tables, tabulations, graphs, charts, diagrams, plans, schedules, appointment books, calendars; diaries, time sheets, reports, studies, analyses, drafts, telegrams, teletype or telecopy messages, files, telephone logs and messages, checks, microfilms, microfiche, pictures, photographs, printouts, electronic data compilations, tapes, diskettes, drives, removable media, notes, minutes or transcripts of proceedings and every means of recording upon any tangible thing any form of communications or representation including letters, words, pictures, sounds or symbols, or any combinations thereof. Documents shall include originals and all nonidentical copies (whether different from the original because of notes made in or attached to such copy, or otherwise), all other data compilations from which information can be obtained (translated, if necessary into usable form) and any preliminary versions, drafts or revisions of any of the foregoing.

4. “Communication” shall mean and include every manner or means of disclosure, transfer or exchange of information (in the form of facts, ideas, inquiries, opinions or otherwise), whether orally or by written or electronic document or face-to-face, by telephone, telecopier, mail, facsimile, personal delivery, overnight delivery or otherwise.

5. “Presentation” means a particular type of Communication that is intended for an audience (e.g., a PowerPoint presentation or oral recitation at a meeting of the Board (as defined below)).

6. “Contract” shall mean any and all written agreements between any two or more persons or entities.

7. “Facts” refer to all events, circumstances, evidence, and opinions that relate to the question or claim at issue.

8. “DPFP” shall mean Plaintiff.

9. “Townsend Individual Defendants” shall mean collectively Richard Brown and Martin Rosenberg.

10. “Townsend,” “Defendants,” “You,” or “Your,” shall mean collectively the Townsend Individual Defendants and Townsend Holdings, LLC d/b/a The Townsend Group, its agents, representatives, officers, directors, employees, partners, corporate agents, and/or any other person acting in concert with Townsend or under Townsend’s control, whether directly or indirectly, including any attorneys.

11. “2001 ICA” shall mean that certain Investment Consultant Agreement between You and DFPF effective October 1, 2001, and any amendments, supplements, attachments, or exhibits thereto.

12. “2004 ICA” shall mean that certain Investment Consultant Agreement between You and DFPF effective as of October 1, 2004, and any amendments, supplements, attachments, or exhibits thereto.

13. “2013 ICA” shall mean that certain Investment Consultant Agreement between You and DFPF effective as of January 1, 2013, and any amendments, supplements, attachments, or exhibits thereto.

14. “ICAs” shall mean collectively the 2001 ICA, the 2004 ICA, and the 2013 ICA.

15. “Plaintiff’s Petition” shall mean Plaintiff’s Original Petition and Request for Disclosure and Demand for Jury Trial filed on August 31, 2017.

16. “Original Answer” shall mean Defendants’ Answer and Affirmative Defenses to Plaintiff’s Original Petition and Request for Disclosure filed on October 6, 2017.

17. “Investment” or “Investments” shall mean any and all investments made by or relating to DFPF for which Townsend and/or the Townsend Individual Defendants had any oversight, reporting, management, fiduciary or similar responsibilities, whether under the ICAs or whether under any other agreements (written or oral) between You and DFPF. At a minimum, “Investment” or “Investments” shall include, but shall not be limited to, the following investments:

- a. The Napa Valley Project, also known as Aetna Springs Resort, Lake Luciana Development, Iron Corral, Barnett Road, Turkey Hill, Lake Luciana LLC, TDB Napa LLC, P&F Napa LLC, and/or Juliana Land LLC;
- b. Knudson Luxury Housing, IV;
- c. Knudson Luxury Housing, V;
- d. Red Cloud House;
- e. Kuikawa #2;
- f. Kaimpelehu #9;
- g. Silverleaf 1802;
- h. Kuikawa #3;
- i. Kuikawa #4;
- j. Top of Mill;
- k. Maniniowali #33;
- l. Red Cloud 12 Lot;
- m. M3 Eagle, also known as AR Boise, American Ranch-Boise, Idaho, American Ranches, and/or Spring Valley;
- n. Sandstone, also known as AR Sandstone, American Ranches, Sandstone Ranch, and/or American Ranch Sandstone;

- o. Dry Creek, also known as JMM Dry Creek LLC, P&F Dray Creek LLD, and/or Boise;
- p. Nampa, also known as Sunnyvale Subdivision, TDB Nampa LLC, and/or P&F Nampa LLC;
- q. P&F Tucson LLC, also known as Painted Hills and/or Tuscon;
- r. Sungate Holdings, LLC, also known as Sungate;
- s. Four Leaf;
- t. The loan program described in paragraph 59 of Plaintiff's Petition, also known as the Added Alpha real estate program;
- u. CityScape, also known as City Scape, RCH CityScape, CityScape South Tower, CityScape North Tower Block 22, CityScape Retail Block 77, RED Downtown, LLC, CityScape Residences, and/or CityScape DPF Partners, LLC
- v. Camel Square;
- w. CS Coffee;
- x. Village Point;
- y. Greenway Station;
- z. The Legends at Village West, also known as The Legends;
- aa. The Beat, also known as Bellview, Belleview and/or Lamar Lofts;
- bb. Bryan Street Lofts, also known as 3030 Bryan Street Lofts;
- cc. Museum Tower, also known as Arts District Tower;
- dd. The Legends-Sparks, Nevada, also known as Sparks Legends;
- ee. 4100 Harry Hines, Dallas, Texas, also known as 4100 Harry Hines, 4100 HH, 4100 Harry Hines back land and/or 4100 HH back land;
- ff. RED Development Line of Credit 1;
- gg. RED Development LLC, also known as RED Development and/or RED;
- hh. RED Consolidated Holdings, LLC, also known as RCH;
- ii. RED DPF Holdings, LLC, also known as RDH;
- jj. RED Development Discretion Program;
- kk. SoSeven, also known as So7, So 7, So Seven, So7 No. 3, Ltd., Parkside at So7, and/or Parkside;
- ll. Riverview, also known as Star Riverside, Riverside, CityView, CityView Apartments, and/or RiverView Apartments;
- mm. The Tribute;
- nn. Creative Attractions, also known as Creative Holdings;
- oo. Southern Cross, also known as Southern Cross Group, and/or Southern Cross Construction; and
- pp. Any other asset in the "Client Account," as that term is defined in Section 2, part (a)(i) of the ICAs.

18. "Tettamant" shall mean Richard Tettamant, former Administrator of the Dallas Police & Fire Pension System.

19. "DPFP Employee" shall mean any employee of Dallas Police & Fire Pension System other than Tettamant or Davenport.

20. The "Board" refers to the Board of Trustees of the Dallas Police & Fire Pension System, including any committee of the Board.

21. “Trustee” refers to a Trustee on the Board of Trustees of the Dallas Police & Fire Pension System.

22. “Investment Manager” or “Investment Managers” shall mean any person or entity providing investment management services to DPFP, including all directors, officers, employees, principals, attorneys, accountants and agents of such person or entity. At a minimum, “Investment Manager” or “Investment Managers” shall include, but shall not be limited to, the following persons and entities:

- a. CDK Realty Advisors, LLC;
- b. CDK Advisors, LLC
- c. Kenneth Cooley;
- d. Jon Donahue;
- e. Brent Kroener;
- f. Marshall Edwards;
- g. M3 Builders, LLC;
- h. M3 Companies, LLC;
- i. W. Scott Schirmer;
- j. William Brownlee;
- k. Jeffrey Davis;
- l. Steven Schussler;
- m. Knudson Companies;
- n. K.C. Knudson;
- o. Scott Bedingfield;
- p. Land Baron Investments, Inc.;
- q. Mike Chernine;
- r. Randy Black;
- s. Criswell Radovan, LLC;
- t. William Criswell;
- u. Brandyn Criswell;
- v. Robert Radovan;
- w. RED Development LLC;
- x. RED Consolidated Holdings, LLC;
- y. RED DPF Holdings, LLC;
- z. Scott Rehorn;
- aa. Michael L. Ebert;
- bb. Dan Lowe;
- cc. Jeff McMahan;
- dd. Steven Maun; and
- ee. Any other real estate investment manager of DPFP.

23. The terms “and,” “or,” and “and/or” shall be construed in these requests either disjunctively or conjunctively as necessary to bring within the scope of these requests documents that might otherwise be construed to be outside of their scope.

24. The use of a word in its singular form shall be deemed to include its use in the plural form, and the use of a word in its plural form shall be deemed to include its use in the singular form.

25. The use of the term “any” includes “all” and “all” includes “any.”

26. The use of any verb in any tense shall be construed as the use of the verb in all tenses, including without limitation, that the use of any verb in the past tense shall be deemed to include its use in the present tense and the use of any verb in the present tense shall be deemed to include its use in the past tense.

REQUESTS FOR PRODUCTION

Defendant is requested to produce the following:

REQUEST NO. 1:

All recommendations Townsend made pursuant to the 2001 ICA that were “definitive and in writing” under Section 2(b), part (xviii) of the 2001 ICA, including any written advice or recommendations to the board of trustees advising or recommending against initial investments or other future investment of capital.

RESPONSE:

REQUEST NO. 2:

All recommendations Townsend made pursuant to the 2004 ICA that were “definitive and in writing” under Section 2(b), part (xvii) of the 2004 ICA, including any written advice or recommendations to the board of trustees advising or recommending against initial investments or other future investment of capital.

RESPONSE:

REQUEST NO. 3:

All recommendations Townsend made pursuant to the 2013 ICA that were “definitive and in writing” under Section 2(b), part (xv) of the 2013 ICA, including any written advice or recommendations to the board of trustees advising or recommending against initial investments or other future investment of capital.

RESPONSE:

REQUEST NO. 4:

All written advice or information Townsend gave to the DFPF Board of Trustees, including all advice regarding diversification of DFPF’s investments to minimize the risk of large losses.

RESPONSE:

REQUEST NO. 5:

All existing email communications between Townsend and Richard Tettamant regarding DFPF investments.

RESPONSE:

REQUEST NO. 6:

All existing email communications between Townsend and any Investment Manager regarding DFPF investments.

RESPONSE:

REQUEST NO. 7:

All Townsend marketing materials given to other clients and potential clients mentioning DFPF or any aspect of its representation of DFPF.

RESPONSE:

REQUEST NO. 8:

Townsend internal memos discussing, addressing, or analyzing any of the Investments.

RESPONSE:

REQUEST NO. 9:

Townsend's assessment of the "value added" by Investment Managers for DFPF in those Investment Managers' pursuit of investment strategies pursuant to Section 2(b), part (xii) of the 2001 ICA.

RESPONSE:

REQUEST NO. 10:

Townsend's assessment of the "value added" by managers for DFPF in those managers' pursuit of investment strategies pursuant to Section 2(b), part (xi) of the 2004 ICA.

RESPONSE:

REQUEST NO. 11:

Townsend's assessment of the "value added" by managers for DPFP in those managers' pursuit of investment strategies pursuant to Section 2(b), part (ix) of the 2013 ICA.

RESPONSE:

REQUEST NO. 12:

All documents relating to Townsend's monitoring the characteristics of individual managers and those managers' accounts over time and the investment performance by manager pursuant to Section 2, parts (viii), (ix), and (xi) of the 2001 ICA.

RESPONSE:

REQUEST NO. 13:

All documents relating to Townsend's monitoring the characteristics of individual managers and those managers' accounts over time and the investment performance by manager pursuant to Section 2, parts (vii), (viii) and (x) of the 2004 ICA.

RESPONSE:

REQUEST NO. 14:

All documents relating to Townsend's monitoring the characteristics of individual managers and those managers' accounts over time and the investment performance by manager pursuant to Section 2, parts (vi), (viii) and (ix) of the 2013 ICA.

RESPONSE:

REQUEST NO. 15:

Townsend's written work product developing performance based or other appropriate fee structures in appropriate circumstances pursuant to Section 2(b) part (vi) of the 2004 ICA, including any advice or recommendations about the appropriateness of the fees being charged to DPFP.

RESPONSE:

REQUEST NO. 16:

Townsend's written work product developing performance based or other appropriate fee structures in appropriate circumstances pursuant to Section 2(b) part (v) of the 2004 ICA, including any advice or recommendations about the appropriateness of the fees being charged to DPFP.

RESPONSE:

REQUEST NO. 17:

Townsend's written work product developing performance based or other appropriate fee structures in appropriate circumstances pursuant to Section 2(b) part (iii) of the 2013 ICA, including any advice or recommendations about the appropriateness of the fees being charged to DPFP.

RESPONSE:

REQUEST NO. 18:

Townsend's written work product related to their monitoring "the occurrence or existence of potential causes for disposition of an interest in real property" pursuant to Section 2(b), part (xx) of the 2004 ICA.

RESPONSE:

REQUEST NO. 19:

Townsend's written work product related to their monitoring "the occurrence or existence of potential causes for disposition of an interest in real property" pursuant to Section 2(b), part (xviii) of the 2013 ICA.

RESPONSE:

REQUEST NO. 20:

All Communications between You and any of the Investment Managers relating to any of the Investments.

RESPONSE:

REQUEST NO. 21:

All Communications between You and Tettamant relating to any of the Investments.

RESPONSE:

REQUEST NO. 22:

All Communications between You and any DFPF Employee relating to any of the Investments.

RESPONSE:

REQUEST NO. 23:

All Communications between You and any Trustee relating to any of the Investments.

RESPONSE:

REQUEST NO. 24:

All Communications between You and any other person not already specified relating to any of the Investments.

RESPONSE:

REQUEST NO. 25:

All Communications between You and any person relating to DFPF.

RESPONSE:

REQUEST NO. 26:

All Communications between You and any person relating to Tettamant.

RESPONSE:

REQUEST NO. 27:

All Communications between You and any person relating to any DPFP Employee.

RESPONSE:

REQUEST NO. 28:

All Communications between You and any person relating to any Trustee.

RESPONSE:

REQUEST NO. 29:

All Communications between You and any person relating to any Investment Manager.

RESPONSE:

REQUEST NO. 30:

All Presentations relating to any of the Investments.

RESPONSE:

REQUEST NO. 31:

All documents Townsend received, created, or otherwise has in its possession, custody, or control relating to any of the Investments.

RESPONSE:

REQUEST NO. 32:

Bank records for any bank accounts help by, for the benefit of, or in connection with any of the Investments.

RESPONSE:

REQUEST NO. 33:

Any due diligence, credit checks, solvency analysis, cash flow analysis, net present value analysis, discounted cash flow analysis, valuation analysis, market analysis, or other analysis that Townsend conducted in connection with any of the Investments.

RESPONSE:

REQUEST NO. 34:

Any due diligence, credit checks, solvency analysis, cash flow analysis, net present value analysis, discounted cash flow analysis, valuation analysis, market analysis, or other analysis that Townsend conducted in connection with any capital calls, disbursement requests, or any transfers of cash relating to any of the Investments.

RESPONSE:

REQUEST NO. 35:

Any due diligence, credit checks, solvency analysis, cash flow analysis, net present value analysis, discounted cash flow analysis, valuation analysis, market analysis, budgets, business plans, pro forma financial statements, or other analysis that Townsend received, obtained, or otherwise has in its possession, custody, or control in connection with any of the Investments.

RESPONSE:

REQUEST NO. 36:

Any due diligence, credit checks, solvency analysis, cash flow analysis, net present value analysis, discounted cash flow analysis, valuation analysis, market analysis, budgets, business plans, pro forma financial statements, or other analysis that Townsend received, obtained, or otherwise has in its possession, custody, or control in connection with any capital calls, disbursement requests, or any transfers of cash relating to any of the Investments.

RESPONSE:

REQUEST NO. 37:

Any employee time records, billing records, calendar entries, or other documents evidencing the time that Townsend actually spent in connection with any loan, investment, or other transaction relating to any of the Investments.

RESPONSE:

REQUEST NO. 38:

Any documents describing, specifying, or providing for the use of funds provided by DFPF or any other entity to any of the Investments.

RESPONSE:

REQUEST NO. 39:

Any Communications describing, specifying, or providing for the use of funds provided by DFPF or any other entity to any of the Investments.

RESPONSE:

REQUEST NO. 40:

Any valuation, appraisal, or broker opinion or value, whether performed internally or by an independent third party relating or pertaining to any of the Investments.

RESPONSE:

REQUEST NO. 41:

Any documents or Communications referring to, relating to, or evidencing any recommendation You made relating to any of the Investments or Investment Entities.

RESPONSE:

REQUEST NO. 42:

Any development, construction, architectural, zoning, or entitlement plans, or similar plans relating to any of the Investments.

RESPONSE:

REQUEST NO. 43:

Any reports, presentations, summaries, or analysis provided by any person in connection with or relating to any of the Investments.

RESPONSE:

REQUEST NO. 44:

Any memorandum, report, summary, or analysis provided to any person employee of DPF, relating or referring to any of the Investments.

RESPONSE:

REQUEST NO. 45:

Any due diligence, investigations, or other analysis regarding whether funds advanced in connection with any of the Investments were used for purposes other than those for which such funds were contributed.

RESPONSE:

REQUEST NO. 46:

Any due diligence, investigations, or other analysis regarding whether funds advanced in connection with any of the Investments were actually used in a manner expressly specified in any business plan pertaining to the respective Investment.

RESPONSE:

REQUEST NO. 47:

Any employee time records, billing records, calendar entries, or other documents evidencing the time that You actually spent in connection with any loan, investment, or other transaction relating to any of the Investments.

RESPONSE:

REQUEST NO. 48:

Any agreement between You or the Townsend Individual Defendants and any DPFP Employee.

RESPONSE:

REQUEST NO. 49:

Any agreement between You or the Townsend Individual Defendants and Tettamant.

RESPONSE:

REQUEST NO. 50:

Any agreement between You or the Townsend Individual Defendants and any Trustee.

RESPONSE:

REQUEST NO. 51:

Any agreement between You or the Townsend Individual Defendants and any Investment Manager.

RESPONSE:

REQUEST NO. 52:

Any agreement between You or the Townsend Individual Defendants and anyone else relating to the Investments.

RESPONSE:

REQUEST NO. 53:

Any documents or Communications relating to, reflecting, or evidencing any due diligence, investigations, or other analysis referring to or relating to whether any loan, promissory note, loan credit facility, or other agreement to lend money between DPFPP and any of the Investment Entities was ever in default.

RESPONSE:

REQUEST NO. 54:

Any documents or Communications reflecting, relating to, or referencing the alleged economic viability of any of the Investments.

RESPONSE:

REQUEST NO. 55:

Any documents that evidence or identify any insurance policies that cover, or sources of indemnity for, any of the Townsend Individual Defendants or any of the directors, officers, principals, or employees of Townsend in the capacity in which they have served with respect to DPFPP during the period from October 2001 through February 2016.

RESPONSE:

REQUEST NO. 56:

Any financial statements of Townsend that relate to Townsend's financial position, income, assets, or liabilities, including but not limited to any audited or unaudited financial statements, and applications for loans, notes, or any other debt borrowings indicating the financial position of Townsend from October 1, 2001 through the present.

RESPONSE:

REQUEST NO. 57:

Any financial statements of the Townsend Individual Defendants that relate to the Townsend Individual Defendants' financial position, income, assets, or liabilities, including but not limited to any audited or unaudited financial statements, and applications for loans, notes, or any other

debt borrowings indicating the financial position of the Townsend Individual Defendants from October 1, 2001 through the present.

RESPONSE:

REQUEST NO. 58:

All documents that refer to or reflect any Communications that Townsend has had with any third parties about the status of DPFP's business relationship with Townsend. This Request includes all emails, notices, and text messages that Townsend has sent to or received from any third parties about the status of DPFP's business relationship with Townsend.

RESPONSE:

REQUEST NO. 59:

Documents sufficient to reflect any compensation, fees, bonuses, and expense reimbursements received/paid (or accrued) to the Townsend Individual Defendants for each year 2001 through 2016 (including copies of any receipts, W-2 forms, 1099 forms and/or other evidence of the amounts) relating to DPFP or the Investments.

RESPONSE:

REQUEST NO. 60:

Any documents or Communications relating to, reflecting, or evidencing any fees paid to You by DPFP or any other person in connection with any of the Investments or Investment Managers.

RESPONSE:

REQUEST NO. 61:

All invoices for fees, services, and other items, including supporting materials and schedules, issued by or on behalf of Townsend to DPFP for each year 2001 through 2016.

RESPONSE:

REQUEST NO. 62:

All invoices for fees, services, and other items, including supporting materials and schedules, issued by or on behalf of the Townsend Individual Defendants to DPFPP for each year 2001 through 2016.

RESPONSE:

REQUEST NO. 63:

All requests for reimbursement of business expenses, personal expenses, or other items, including supporting materials and schedules, issued by or on behalf of Townsend to DPFPP for each year 2001 through 2016.

RESPONSE:

REQUEST NO. 64:

All requests for reimbursement of business expenses, personal expenses, or other items, including supporting materials and schedules, issued by or on behalf of the Townsend Individual Defendants to DPFPP for each year 2001 through 2016.

RESPONSE:

REQUEST NO. 65:

Any minutes, analyses, summaries, reports, and notes related to any of DPFPP's Board of Director, Investment Advisory Committee, and Administrative Advisory Committee meetings (including telephone or video conferences) from 2001 through 2016.

RESPONSE:

REQUEST NO. 66:

Documents sufficient to show all professional certifications, licenses, and credentials held by Townsend for each year 2001 through 2016.

RESPONSE:

REQUEST NO. 67:

Documents sufficient to show all professional certifications, licenses, and credentials held by the Townsend Individual Defendants for each year 2001 through 2016.

RESPONSE:

REQUEST NO. 68:

All documents and Communications relating to or evidencing any actual, pending or threatened litigation or complaints against You during the period 2001 through 2016.

RESPONSE:

REQUEST NO. 69:

All documents and Communications relating to or evidencing any actual, pending or threatened litigation or complaints against the Townsend Individual Defendants during the period 2001 through 2016.

RESPONSE:

REQUEST NO. 70:

All documents and Communications relating to any analyses You performed for or relating to DFPF's investment policies, guidelines, and real estate strategic investment plan.

RESPONSE:

REQUEST NO. 71:

All documents and Communications relating to any analyses the Townsend Individual Defendants performed for or relating to DFPF's investment policies, guidelines, and real estate strategic investment plan.

RESPONSE:

REQUEST NO. 72:

All documents and Communications relating to any analyses You received or obtained for or relating to DPFPP's investment policies, guidelines, and real estate strategic investment plan.

RESPONSE:

REQUEST NO. 73:

Documents sufficient to show all industry practices followed by Townsend relating to the services it performed for DPFPP during the period 2001 through 2016.

RESPONSE:

REQUEST NO. 74:

Documents sufficient to show the name, services provided, and dollar amounts of revenue by year for each of Townsend's top five clients to which where Townsend and/or the Townsend Individual Defendants provided services as investment consultants for each year from 2001 through 2016.

RESPONSE:

REQUEST NO. 75:

All documents relating to any real estate appraisals performed relating to the Investments of which Townsend and/or the Townsend Individual Defendants have knowledge, possession, custody, or control.

RESPONSE:

REQUEST NO. 76:

All Communications relating to any real estate appraisals performed relating to the Investments of which Townsend and/or the Townsend Individual Defendants have knowledge, possession, custody, or control.

RESPONSE:

REQUEST NO. 77:

All documents, including supporting materials and schedules, relating to quarterly reports Townsend provided to DPFP.

RESPONSE:

REQUEST NO. 78:

All Communications between Townsend and any person relating to quarterly reports Townsend provided to DPFP.

RESPONSE:

REQUEST NO. 79:

All documents, including supporting materials and schedules, relating to annual reports Townsend provided to DPFP.

RESPONSE:

REQUEST NO. 80:

All Communications between Townsend and any person relating to annual reports Townsend provided to DPFP.

RESPONSE:

REQUEST NO. 81:

All analyses relating to DPFP's monthly asset allocation reports by or in the possession, custody, or control of Townsend and/or the Townsend Individual Defendants.

RESPONSE:

REQUEST NO. 82:

Documents sufficient to show any code of conduct and/or code of ethics applicable to Townsend and/or the Townsend Individual Defendants during the period of 2001 through 2016.

RESPONSE:

REQUEST NO. 83:

All documents relating to Townsend's and/or the Townsend Individual Defendants' annual certifications to DFPF for each year 2001 through 2016.

RESPONSE:

REQUEST NO. 84:

Documents sufficient to show all seminars hosted, sponsored, or otherwise put on by Townsend that any Trustee attended from 2001 through 2016.

RESPONSE:

REQUEST NO. 85:

Documents sufficient to show all seminars hosted, sponsored, or otherwise put on by Townsend that Tettamant attended from 2001 through 2016.

RESPONSE:

REQUEST NO. 86:

Documents sufficient to show all seminars hosted, sponsored, or otherwise put on by Townsend that any DFPF Employee attended from 2001 through 2016.

RESPONSE:

REQUEST NO. 87:

Documents sufficient to show all seminars hosted, sponsored, or otherwise put on by Townsend that any Investment Manager attended from 2001 through 2016.

RESPONSE:

REQUEST NO. 88:

All documents relating to any entertainment expenses and gifts paid to, paid for, or provided to any Trustee by Townsend and/or the Townsend Individual Defendants from 2001 through 2016.

RESPONSE:

REQUEST NO. 89:

All documents relating to any entertainment expenses and gifts paid to, paid for, or provided to Tettamant by Townsend and/or the Townsend Individual Defendants from 2001 through 2016.

RESPONSE:

REQUEST NO. 90:

All documents relating to any entertainment expenses and gifts paid to, paid for, or provided to any DFPF Employee by Townsend and/or the Townsend Individual Defendants from 2001 through 2016.

RESPONSE:

REQUEST NO. 91:

All documents relating to any entertainment expenses and gifts paid to, paid for, or provided to any Investment Manager by Townsend and/or the Townsend Individual Defendants from 2001 through 2016.

RESPONSE:

REQUEST NO. 92:

All documents relating to all reimbursements, loans, payments, or any other transfers of funds between Townsend or the Townsend Individual Defendants and any Investment Manager.

RESPONSE:

REQUEST NO. 93:

All documents provided to Townsend and/or the Townsend Individual Defendants by any Investment Manager relating to DPFP or the Investments.

RESPONSE:

REQUEST NO. 94:

All documents supporting or relating to any affirmative defenses You asserted in Your Original Answer.

RESPONSE:

DATED: October 16, 2017

Respectfully submitted,

By: /s/ Mark K. Sales
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Counsel for Plaintiff
Dallas Police & Fire Pension System

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2017, a true and correct copy of the foregoing instrument was served on the following counsel via the Efile Service Only as follows:

Elizabeth Yingling
Baker McKenzie
2001 Ross Avenue, Suite 2300
Dallas, Texas 75201

Daniel M. Petrocelli
O'Melveny & Myers LLP
1999 Avenue of the Stars, 8th Floor
Los Angeles, California 90067

/s/ Mark K. Sales _____

EXHIBIT 7

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MOTION TO COMPEL

REPORTER'S RECORD

VOLUME 1 OF 1 VOLUMES

TRIAL COURT CAUSE NO. DC-17-11306

DALLAS POLICE & FIRE)	IN THE DISTRICT COURT
PENSION SYSTEM)	
)	
vs.)	DALLAS COUNTY, TEXAS
)	
)	
TOWNSEND HOLDINGS, LLC d/b/a)		
THE TOWNSEND GROUP, RICHARD)		
RICHARD BROWN, MARTIN)		
ROSENBERG and GARY B. LAWSON)		298TH JUDICIAL DISTRICT

MOTION TO COMPEL

On the 9th day of August, 2018, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Emily Tobolowsky, Judge Presiding, held in Dallas, Dallas County, Texas. Proceedings reported by machine shorthand and computer-aided transcription.

1 documents --

2 THE COURT: Yes.

3 MR. MARROSO: -- our view is, as we've --
4 we've expressed it in the papers. Their contention is
5 that the basis for the causes of action are that we
6 provided shoddy advice during our representation of
7 them. That ended February 13, 2016.

8 I take Mr. Sales' position, I think it's
9 a reasonable one, discovery does not terminate at the
10 time there is an accident. So, we will withdraw our
11 objection to the February 13, 2016 limitation and go up
12 to -- and I think this would be a fair compromise -- we
13 haven't had a chance to further confer, but we -- and I
14 want to be careful about some privileges here, but there
15 were discussions among the parties, prior to the filing
16 of the suit, and we would be willing to cut it off at
17 the time that those discussions commenced.

18 I don't have the exact date, but I think
19 it was --

20 THE COURT: Sometime in 2017.

21 MR. MARROSO: Yes, ma'am. In May, I'm
22 being told.

23 Thank you, Your Honor.

24 THE COURT: Thank you. I have a question
25 for you.

1 favor of you-all meeting and conferring.

2 I don't know that I'm prepared to rule on
3 the other two things that have come up here in the last
4 few minutes, I just haven't had enough time to digest
5 that.

6 I do have a ruling on the range, and I
7 think it only appropriate that the range be the full
8 range of the relationship of the parties on the front
9 end, so it started the end of -- I see that it's
10 effective October, is it, 2004, but it wasn't signed
11 until sometime in 2005. So, it begins with the
12 effective date of the contract, and it will end at the
13 end date of 2017.

14 MS. RABBANI: Your Honor, can I -- for
15 clarification, that date in 2017, would that be the May
16 date on which the plaintiff --

17 THE COURT: No, ma'am. It's the
18 December 31st.

19 MS. RABBANI: Of --

20 THE COURT: 2017, yes.

21 MS. RABBANI: December 31st? So I think
22 plaintiff, and you can correct me if I'm wrong, agreed
23 to cut it off at the time of the complaint, which was
24 August 31st.

25 THE COURT: If that's the case, if that's

1 your agreement then --

2 MR. SALES: Your Honor, we'll accept
3 August 31st, the filing date as the end date on that.

4 THE COURT: All right.

5 MR. SALES: In fact, I would simply say I
6 would reserve after that, depending if we take
7 depositions, obviously, there could be other stuff.

8 THE COURT: That's fine. If that was
9 your agreement, I am happy to ratify your agreement for
10 you.

11 All right. As to the rest of these,
12 maybe you-all can continue to talk. Unfortunately, I
13 have just got to get on with my trial today.

14 So, thank you and --

15 MR. SALES: Your Honor, I'm sorry. We
16 have an Agreed Scheduling Order everybody has signed
17 today. I wonder if we can hand that up for you to sign
18 and enter, and the parties have their deadlines and can
19 go with it.

20 THE COURT: Yes, sir. You-all may be
21 excused.

22 (End of requested proceedings.)

23

24

25

EXHIBIT 8



DIAMOND McCARTHY^{LLP}

Attorneys & Counselors

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Writer's Direct Dial Number
(214) 389-5320

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MSales@diamondmccarthy.com

September 10, 2018

Via E-Mail

Melissa Sedrish Rabbani
O'Melveny & Myers LLP
1999 Avenue of the Stars, 8th Floor
Los Angeles, California 90067

Re: *Dallas Police & Fire Pension System v. Townsend Holdings, LLC d/b/a The Townsend Group, Richard Brown, Martin Rosenberg and Gary B. Lawson*,
No. DC-17-11306, 298th Judicial District Court, Dallas County, Texas

RULE 11 AGREEMENT

Melissa:

This letter constitutes an agreement between Plaintiff Dallas Police & Fire Pension System ("Plaintiff" or "DPFP") and Defendants Townsend Holdings, LLC d/b/a The Townsend Group ("Townsend"), Richard Brown ("Brown") and Martin Rosenberg ("Rosenberg") (collectively, the "Townsend Defendants") pursuant to Texas Rule of Civil Procedure 11 regarding the relief requested by Plaintiff in its Motion to Compel filed on June 20, 2018 (the "Motion").

Regarding Plaintiff's First Request for Production ("First Request") served on October 16, 2017 and the Townsend Defendants' Responses and Objections thereto served on November 15, 2017 (the "Response"), Plaintiff and the Townsend Defendants (collectively, the "Parties") agree as follows:

1. Plaintiff withdraws Request Nos. 1, 9, 12, 56, 57 and 74 in the First Request (without prejudice to Plaintiff's right to seek such information at a later date).

2. The Townsend Defendants represent that they have not withheld in the past, and agree not to withhold in the future, any documents from production in response to any particular request in the First Request on any basis not set forth in the objections specific to that request. In other words, unless one of the General Objections set forth on pages 2-7 of the Response (consisting of 26 numbered paragraphs) is specifically set forth in the response to a request (rather than merely being incorporated by reference), the Townsend Defendants are not withholding any documents from production on the basis of such General Objection.

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3. The Townsend Defendants represent that they have not withheld in the past, and agree not to withhold in the future, any document from production in response to any request in the First Request on the basis that it contains confidential, proprietary or sensitive information, but rather will produce such documents in accordance with the Agreed Protective Order entered April 24, 2018 (unless some objection specific to the request has been made and not resolved by the Court or the Parties).

4. The Townsend Defendants agree that they will comply with the Texas Rules of Civil Procedure regarding any responsive documents that they claim are exempt from production due to a privilege.

5. The Townsend Defendants represent that they have not withheld in the past, and agree not to withhold in the future, any documents from production in response to any particular request in the First Request on the basis that the document already is in Plaintiff's possession.

6. The Townsend Defendants agree to produce documents responsive to the full scope of the following requests in the First Request for the time period October 1, 2004 to August 31, 2017: Request Nos. 2-4, 41, 44, 77-80, 83, 8, 10-11, 13-19, 33-36, 65, 70-71, 81, 30-32, 38-39, 40, 42-43, 45-46, 53-54, 72, 75-76, 5, 21-23, 48-52, 6, 20, 24, 93, 84-87 and 88-92.

7. Regarding Request No. 55 in the First Request, the Townsend Defendants agree to produce responsive, non-privileged documents that show any insurance policies or indemnity agreements in effect between October 1, 2004 and August 31, 2017 that cover directors, officers, principals and/or employees of Townsend for work done related to, or claims asserted by, DPFP.

8. Regarding Request Nos. 66-67 in the First Request, the Townsend Defendants agree to produce documents sufficient to show professional certifications, licenses and credentials held by Townsend, Brown and Rosenberg between October 1, 2004 and August 31, 2017 relevant to the services Townsend, Brown and Rosenberg provided to DPFP.

9. Regarding Request Nos. 7, 25-29 and 58 in the First Request, the Townsend Defendants agree to produce documents for the time period October 1, 2004 through August 31, 2017 that (a) mention or refer to one or more of the Investments or Investment Managers, as defined in Plaintiff's Requests; (b) mention or refer to any DPFP trustee or employee; (c) relate to Plaintiff's real estate investment program more generally; or (d) relate to the substance or quality of the Townsend Defendants' services provided to Plaintiff.

10. Regarding Request Nos. 37, 47 and 59-64 in the First Request, the Townsend Defendants agree to produce documents for the time period October 1, 2004 through August 31, 2017 reflecting compensation, fee and bonus information (including invoices) relating to its request to the extent they seek the services Townsend, Brown and Rosenberg provided to DPFP. Plaintiff withdraws (without prejudice to seeking such documents later) its requests

to the extent they seek calendar entries or expense reimbursement documents.

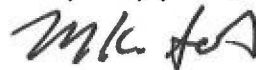
11. Regarding Request Nos. 68 and 69 in the First Request, the Townsend Defendants agree to produce documents for the time period October 1, 2004 through August 31, 2017 reflecting actual, pending or threatened litigation involving the quality of Townsend's, Brown's or Rosenberg's services as real estate investment consultants.

12. Regarding Request Nos. 73 and 82 in the First Request, the Townsend Defendants agree to produce any "Code of Conduct," "Code of Ethics" and written policy manuals or best practices and standards guidelines or check lists applicable to or used by Townsend's employees in providing services to DPFP that were in force between October 1, 2004 and February 12, 2016 (including the codes referenced in the 2004 ICA defined in the First Request).

13. To the extent not expressly addressed in this Rule 11 agreement or otherwise resolved by the Court, the Parties reserve their respective positions regarding the First Request as set forth in DPFP's Motion and the Townsend Defendants' Opposition and Supplemental Opposition to the Motion. The Parties agree to meet and confer as soon as practicable regarding outstanding issues, including a reasonable time for the Townsend Defendants to complete their production.

Please confirm the Townsend Defendants' agreement to this Rule 11 agreement and by signing below and returning a copy to me. Thank you.

Very truly yours,



Mark K. Sales

AGREED:

O'MELVENY & MYERS LLP



mrabbani@omm.com
1999 Avenue of the Stars, 8th Floor
Los Angeles, CA 90067
Telephone: (310) 553-6700

**ATTORNEYS FOR DEFENDANTS
TOWNSEND HOLDINGS, LLC d/b/a
THE TOWNSEND GROUP,
RICHARD BROWN and MARTIN
ROSENBERG**