



STATE BAR of TEXAS



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Fee Options Provided:

None Reported By Attorney

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COURTS OF ADMITTANCE

Federal:

US Supreme Court

Fifth Circuit Court of Appeals

Texas Eastern District Court

Texas Northern District Court

Other Courts:

None Reported By Attorney

Other States Licensed:

None Reported By Attorney

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REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 416-02718-2016

DALLAS POLICE AND FIRE PENSION SYSTEM,	§	IN THE DISTRICT COURT OF
	§	
PLAINTIFF,	§	
	§	
VS.	§	COLLIN COUNTY, TEXAS
	§	
COLUMBUS A. ALEXANDER, III,	§	
DEFENDANT.	§	416TH JUDICIAL DISTRICT

SPECIAL EXCEPTIONS, MOTION TO COMPEL

AND

MOTION FOR SANCTIONS

On the 16th day of August, 2017, the following
proceedings came on to be heard in the above-entitled
and numbered cause before the Honorable Andrea Thompson;
is that correct, Judge presiding, held in McKinney,
Collin County, Texas;

Proceedings reported by machine shorthand.

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P R O C E E D I N G S

1 THE COURT: 416-02718-2016.

2 State your name and the party you
3 represent, please.

4 MR. MONEY: Brent Money for Columbus A.
5 Alexander, III.

6 MR. MESSER: Andy Messer and Julie Fort
7 for the Pension System, and our client, the CEO, Kelly
8 Gottschalk is here as well.

9 THE COURT: Let's do the special exception
10 first. I didn't take it under advisement. I thought it
11 was settled last time, so.

12 MR. MESSER: Your Honor, there are special
13 exception to Mr. Alexander's Texas constitutional claim,
14 and there's also a special exception to his First
15 Amendment claim. And from the --

16 THE COURT: Okay. Mr. Money, I thought
17 last time you said you had amended or were amending to
18 remove those.

19 MR. MONEY: Yes, Your Honor.

20 Regarding the First Amendment claim, this
21 is a new special exception, but the Texas Constitution
22 exception I have amended twice since our hearing, the
23 first time about a week ago. They reurged concerns
24 about it so I amended it again yesterday and sent to
25

1 Mr. Alexander -- sorry -- to Mr. Messer, and I believe
2 it clearly explains that we are not seeking damages for
3 violation of Texas Constitution. It just says that the
4 Texas Constitution provides for the protection of free
5 speech. That's all it says. And it clearly says, "We
6 are seeking no damages for said violation."

7 MR. MESSER: If I may approach, Your
8 Honor?

9 THE COURT: That's okay. So what is the
10 issue with that?

11 MR. MESSER: The issue, Your Honor, is if
12 you look at what happened at the last hearing, he says
13 he is not intending to fight the special exception and
14 that he's going to remove it. If you look at his
15 pleadings, he hasn't removed it. On one side of his
16 mouth he says there's no recognized cause of action
17 under the Texas Constitution for damages, but then he
18 goes on to say in the footnote, but we're asserting a
19 cause of action for violation of the Texas Constitution.

20 You can't have it both ways. The special
21 exception says this is not a viable cause of action,
22 which he agrees with, then delete it from your petition
23 and --

24 THE COURT: Which petition are you reading
25 from? What was the date it was filed?

1 MR. MESSER: The latest one was yesterday,
2 the third amended counterclaim. The one before that was
3 the second amended counterclaim. They both say the same
4 thing. I have a copy of it with the excerpts if you'd
5 like to see them.

6 On the second amended counterclaim it's on
7 page 21. On the third amended counterclaim it's on
8 page 21, if you'll reference footnote one in both of
9 them.

10 THE COURT: Okay. Are you talking about
11 F?

12 MR. MONEY: Yes, Your Honor.

13 MR. MESSER: Yes, that is where his --

14 THE COURT: So F says, Pursuant to 42 USC
15 1983 and Rule 47(c) of the TRCP is the basis for his
16 cause of action.

17 MR. MESSER: If you look at footnote one
18 it says, Alexander also asserts violation of the Texas
19 Constitution Article I, Section 8 but is not seeking
20 damages for said violation. There's no recognized cause
21 of action allowing recovery of damages, but Alexander
22 alleges the System has violated rights that the Texas
23 Constitution purports to protect. He's asserting a
24 claim.

25 THE COURT: I don't read that that way.

1 His claim is under 42 USC 1983 and the 47(c) of the
2 TRCP.

3 MR. MESSER: We can have an agreement that
4 you're not making a claim under the Texas Constitution
5 for damages that's great.

6 MR. MONEY: I think my pleadings and my
7 prior representations in court have made that clear, but
8 to the extent they have not, we understand that there is
9 no cause of action for damages for violation of the
10 Texas Constitution. But we are asserting that they have
11 violated the constitution even though we're not allowed
12 to sue for that.

13 MR. MESSER: That is ambiguous to me, Your
14 Honor. If this --

15 THE COURT: I don't see how. He only
16 lists -- under F, he specifically lists the statutes
17 that are his cause of action.

18 MR. MESSER: Okay. He's not seeking a
19 remedy for that I understand.

20 The other special exception is to his
21 Federal First Amendment claim, Your Honor. It's the
22 same paragraph. And special exception basically says,
23 this claim consists of three sentences, generic claim
24 that the First Amendment's been violated; a quote of the
25 Federal statute that allows civil rights to be pursued;

1 and then a claim of what his monetary relief is.

2 It doesn't have any of the prima facie
3 elements of a claim under the Civil Rights statute of 42
4 USC Section 1983. There's no facts in here that say
5 there's an unconstitutional policy. There's no facts or
6 allegation of who the policy maker is, and there's no
7 fact showing that there's -- that the unconstitutional
8 policy was a moving force for damages.

9 Those are the three elements of a 1983
10 claim, and none of those are in his latest counterclaim.
11 So we don't think he states a claim on the face of the
12 pleading, and we're asking the Court to sustain our
13 special exception and allow him an opportunity to
14 replead, if he is able, and attempt to state a First
15 Amendment claim.

16 MR. MONEY: And, Your Honor, we have
17 already begun working on -- I just received this late
18 last week, but I intend to and have notified Mr. Messer
19 in writing that I intend to have an amendment that
20 addresses those issues on or before September 1st.

21 I have a vacation later on file. I'm
22 leaving in two days to go out of town, but when I get
23 back, I will have that finished and filed with this
24 court. And it will address all of those issues so I
25 don't really need to argue with his point because I

1 intend to remedy it.

2 MR. MESSER: Your Honor, I have a proposed
3 order granting special exceptions.

4 THE COURT: Okay. Why are we coming here
5 and wasting this court's time on something you-all just
6 agreed to that can be done without wasting your client's
7 money?

8 MR. MESSER: It has not been agreed to
9 until now.

10 THE COURT: You just brought it up.
11 Didn't you just file this first amendment --

12 MR. MESSER: I filed it last week.

13 THE COURT: Okay.

14 MR. MESSER: And he --

15 THE COURT: So he didn't amend like the
16 day you filed it?

17 MR. MESSER: No, he didn't -- it's not
18 that he hasn't amended --

19 THE COURT: Okay. You just brought this
20 up last week. This is Wednesday. You got your hearing
21 set practically before he could have had time to replead
22 it. He's telling you he's going to replead it. I'm
23 going to give him the time to replead it. He said it'll
24 be done by September 1st, but you need to stop wasting
25 taxpayer money coming here on ridiculous things that are

1 being agreed to.

2 MR. MESSER: It wasn't agreed to until --

3 THE COURT: You didn't give him a chance
4 to agree to it. You've taken months to respond to
5 discovery requests, months, and you think that's okay,
6 but you expect him to act in 24 hours or less to amend
7 his pleadings.

8 MR. MESSER: No.

9 THE COURT: Certainly less than a week's
10 time.

11 MR. MESSER: I'm asking him to review it
12 and tell me what your response is going to be.

13 THE COURT: Okay. So as of last night his
14 response apparently to you -- so I don't know why we're
15 even talking about it today. What I should have heard
16 today is he's agreed and he's going to replead it.

17 MR. MESSER: Okay.

18 THE COURT: What else do we have?

19 MR. MESSER: The last thing is --

20 THE COURT: The motion to compel?

21 MR. MESSER: Yes.

22 MR. MONEY: And, Your Honor, I'm not going
23 to spend a lot of time on things that the Court is
24 already well aware of or things that I have put in my
25 motion. But I do want to reiterate this is a lawsuit

1 that the System brought against my client not something
2 that he sought out, and he is just seeking documents to
3 defend his claim.

4 And he asked for these last September, and
5 the Court ordered them produced in May. My client,
6 after receiving the documents after our last hearing,
7 spent the better part of a week while I was in jury
8 trial reviewing the documents that were produced and
9 cross referencing them against the documents that he
10 personally has or that he was able to obtain from his
11 wife.

12 He is a CPA. He's a certified fraud
13 examiner. He is a very detailed, meticulous person and
14 has just a special set of skills to make sure that all
15 the Is are dotted and all the Ts are crossed. And he
16 provided me with a detailed spreadsheet of documents
17 that were missing.

18 Now, in my motion for sanctions on page --
19 on page 3, I stated that there were 15 -- 58 known
20 e-mails between Alexander, Kobel, and System executives
21 from System e-mail accounts that were not produced.

22 In preparation for this hearing,
23 Mr. Alexander has more thoroughly explained his
24 spreadsheet to me. I had misunderstood it. Some of
25 those were duplicates, so there are actually only 22

1 known e-mails and attachments for communications
2 directly between Mr. Alexander and System executives or
3 Kobel and System executives that are from System e-mail
4 accounts.

5 However, there are additional e-mails that
6 are known to exist between System officials and Kobel or
7 Alexander, none of which have been produced. Meeting
8 agendas, which they have produced since the last time,
9 we were -- since I filed this motion. Minutes, System
10 website postings, text messages between my client and
11 members of the System -- not members of the System,
12 excuse me, because that has a meaning -- officials with
13 the System.

14 We've seen no memos, no meeting notes,
15 things that would seem to be -- seem to exist when
16 there's been this number of Public Information Act
17 requests and ongoing litigation about Mr. Alexander.
18 Mr. Alexander has no -- this is not a normal case where
19 he's done a whole lot of business throughout the years
20 or he's been an employee or something like that. The
21 only information about Mr. Alexander that should be --
22 that the System should have are documents that would
23 relate directly to this lawsuit.

24 Because this lawsuit basically was to stop
25 him from making Public Information Act requests, and for

1 the last few years, those are the only communications or
2 interaction he has had with the System.

3 Notably, moving into their response, they
4 claim first that the documents aren't relevant. I think
5 the Court has ruled on that in May. I won't spend time
6 on that. And then they say that electronic information
7 was not requested. Your Honor, my -- my first omnibus
8 discovery requests have about a 25 line definition of
9 documents.

10 So I mean all writings of every kind,
11 source and authorship, originals, nonidentical copies
12 thereof --

13 THE REPORTER: Slow down for me.

14 MR. MONEY: I'm sorry. And I probably
15 don't need to read the entire thing for the Court. But
16 it is a very thorough explanation of what the term
17 documents means. And then it has a list including
18 without limitation. For purposes of illustration and
19 not limitation, the term shall include affidavits,
20 agendas, agreements, analyses, announcements, and it
21 goes on and on and on.

22 We are not asking for electronic
23 information in that we have not asked them to turn over
24 to us personal computers, personal cell phones. We've
25 not asked them to turn over hard drives. That is done

1 in some litigation. We have not asked that. We just
2 asked them to compile all the documents that mention my
3 client, all the documents that mention Ms. Kobel, and
4 all the documents that mention their Public Information
5 Act requests, and give them to us to see, understanding
6 that some of those may be attorney-client privilege.

7 What it seems that they have done is an
8 e-mail -- a server e-mail analysis or they've pulled
9 information from their server, and whatever's on the
10 server is what they got. But they haven't -- it does
11 not seem -- let me back up.

12 I was a city attorney for a while.
13 Mr. Messer has been city attorneys for many entities for
14 a long time. I've done hundreds of Public Information
15 Act requests, and I assume Mr. Messer has done
16 thousands. When you're requested information, you not
17 only just go and see what's on your server, you go to
18 the people who may have relevant documents and you say,
19 I need your documents.

20 Whether they're printed, handwritten,
21 whether they're on a personal device or whether they're
22 on a work device, you need to turn over to me so I can
23 review and determine whether they are producible.
24 Certainly, some of those things will be attorney-client
25 privilege, but they need to be compiled first. It does

1 not seem there was any effort to compile those in this
2 case. It seems like they merely went to the server and
3 pulled off what they could.

4 We know that they did not get at least 22
5 e-mails that we know of and attachments that they had
6 previously sent us or we had previously sent to them.
7 We don't know how many things they missed that were
8 internal e-mails on their server.

9 We also know that there have been personal
10 e-mails and personal text messages between Mr. Alexander
11 and officials at the System that have not been
12 disclosed. We don't know how many personal e-mails or
13 text messages between members of the System -- not
14 members, officials at the System have been exchanged
15 that they did not turn over because it doesn't seem like
16 they've made an effort to do so.

17 They speak to compliance. Texas Public
18 Information Act relating to public retirement system and
19 things that need to be redacted regarding member
20 information. We have not requested member information.
21 We do not want member information. We understand that
22 such things are confidential and such things are not
23 relevant to our claims.

24 What we want are the things where people
25 at the System are talking about Mr. Alexander, Ms.

1 Kobel, or their Public Information Act requests. That's
2 it. So the extent those things need to be redacted, we
3 agree as long as they're redacted in accordance with the
4 Texas Public Information Act requirements for doing so.

5 On Tuesday, February 14th in responding to
6 a Public Information Act request, the CFO of the System,
7 Summer Loveland, who the System claims is a certified
8 public accountant with over 25 years experience as an
9 accountant, sent an e-mail to someone that -- I assume
10 someone that works for her stating, "On the P&L detail
11 names need to be removed from the following accounts."
12 Particularly important, 560 Tettamant/Seay -- Tettamant
13 was the former director, executive director, CEO,
14 whatever the title is -- Alexander, Kobel, Eddington,
15 Mayhew, CDK, M3, Jones, FTI, and Rawlings, which I
16 assume is Mayor Mike Rawlings.

17 No information is given why those things
18 need to be removed. This is in response to a Public
19 Information Act request, which I assume the Court knows
20 you cannot just willy-nilly redact things that you don't
21 want to turn over in a Public Information Act requests
22 anyway. You have to seek Attorney General approval
23 before you redact anything, but it doesn't say redact.
24 It says, "names need to be removed from the following
25 accounts."

1 We're concerned that in response to Public
2 Information Act requests with a litigation pending,
3 they're going through records and removing names that
4 are relevant to this lawsuit and maybe other lawsuits so
5 that maybe they don't have to respond as early to Public
6 Information Act requests or discovery.

7 So finally, Your Honor, we have asked for
8 a third-party computer forensic audit as part of our
9 sanctions and to address the response that Mr. Messer
10 made.

11 The cases that he cites are not cases like
12 this one. They're cases in which in the discovery
13 process a party requests as a tangible item to turn over
14 the hard drive in such-and-such computer or
15 such-and-such personal devices for me to just look
16 through and go on a fishing expedition. That's not
17 procedurally where we are, and it's not factually where
18 we are.

19 Procedurally, where we are is there is a
20 specific set of documents that we have requested and
21 that this court has ordered that they turn over, and not
22 once but twice have they failed to do so. We are asking
23 that rather than giving them a third attempt to do so,
24 the Court appoints someone to respond to these requests
25 and make sure that that is done completely, thoroughly,

1 and within a timely manner.

2 We are not asking to see any documents
3 that may be privileged. We are not asking to see any
4 documents that may be confidential. We are asking for a
5 third party to sift through what the System has, pull
6 out things that say Alexander, Kobel, or that refer to
7 their Public Information Act requests, determine which
8 things are privileged, that do not need to be turned
9 over, and turn over the rest.

10 The cases here, one for instance, I think
11 it's *In Re: Stern* -- *In Re: Stern* actually involves
12 Howard Stern, kind of interestingly. Howard Stern was
13 sued in a Texas court, filed a special appearance saying
14 he didn't -- they didn't have personal jurisdiction over
15 him in court -- in Texas court, and he -- and then they
16 made a public -- I'm sorry -- a production request for
17 his computer hard drives, e-mails, those kinds of
18 things.

19 He objected, and the trial court appointed
20 someone to fly to Los Angeles at Mr. Stern's expense and
21 look through all of his hard drive, pull all of his hard
22 drive data, all of his e-mail server data, everything,
23 and bring it back to Texas. He was given power to
24 determine what things were relevant and not, and the
25 Court -- the appeals court came back and said, number

1 one, the discovery should have been limited just to
2 issues relating to the special appearance, but also,
3 that the Court should not have compelled granting hard
4 drive computer search basically at that stage and to
5 that extent because of where they were in that case
6 procedurally.

7 In this case, this is not us asking for --
8 for access to documents like this just in the normal
9 discovery process. This is us asking for it; it not
10 being provided. The Court compelling it; it not being
11 provided. The Court reurging its compel; it not being
12 provided. And the last time we were here the Court said
13 we're not going to do this again, and we don't know how
14 to go about that; other than, either we don't get what
15 we want and what we've asked for and what this court has
16 ordered, or the Court appoints somebody who knows how to
17 go in and respond to discovery requests and has that
18 person assist the System with doing their job.

19 We do not claim that they have not poured
20 hours into this. We do not claim that they don't know
21 how to do this. This is -- but those things aren't
22 relevant. What's relevant is have they done what the
23 Court has ordered, and they have not.

24 And so we think that this is a just -- a
25 just sanction. It's narrowly tailored to resolve this

1 issue. We're not asking for their pleadings to be
2 struck. We're not asking for an exorbitant monetary
3 penalty. We're just asking for the Court to ensure by a
4 third party that they give us the documents that are
5 responsive and that they pay -- and that they have to
6 pay our fees for the -- well, I didn't go back nine
7 months. I just went back to February -- only the fees
8 that are related specifically to the motion to compel,
9 the motions to show cause, and today's motion.

10 And so we -- that's what we're seeking,
11 Your Honor. Thank you.

12 THE COURT: All right. Mr. Messer?

13 MR. MESSER: Your Honor, on behalf of the
14 Pension System and our firm, we believe -- I'm
15 representing to the Court we have complied with this
16 Court's order.

17 THE COURT: Okay. What about the ones
18 they specifically referenced?

19 MR. MESSER: He is now talking about 22,
20 he says, known e-mails. And that number -- that number,
21 if I could approach, Your Honor, I've got one exhibit I
22 want to introduce. And, really, it's Mr. Money's e-mail
23 to me last night telling me -- answering several
24 e-mails, and I asked him can you provide some
25 information on these 58 known e-mails that you're

1 claiming.

2 So we would offer Respondent's Exhibit
3 Number 1.

4 And so what that e-mail is telling me last
5 night is that in response to e-mails that I've sent to
6 him asking for some information about the claimed 58
7 known e-mails, he responds last night, "It's not 58
8 anymore. It's now 22. There have been redundancy
9 issues that I've just discovered." So now it's 22. We
10 don't -- we don't know what that would be. We have done
11 on behalf of our firm, myself, Julie Fort, an associate,
12 a law clerk, two paralegals, the System's IT director
13 John Holt, their general counsel Josh Mond, we worked
14 diligently in order to comply with this court's order.

15 THE COURT: I think part of the problem
16 they're having and I'm having is you haven't complied
17 with anything that's been asked of you so I share their
18 skepticism.

19 MR. MESSER: Your Honor, we have
20 produced -- these are the boxes of documents that we
21 have produced to them in response to the Court's --

22 THE COURT: A big trolley of documents is
23 worthless if it's not everything that you've been asked
24 for. If what you're required to produce is ten trucks
25 worth of documents, that is a silly display that's

1 supposed to make it look like you did what you were
2 supposed to do. And all I care about is the fact that
3 you're not doing what you're supposed to do, so if
4 you're telling me you need specifically to know what
5 e-mails they're talking about then I think y'all can
6 work that out.

7 But what about the rest of what he is
8 saying hasn't been produced?

9 MR. MESSER: There's nothing else that I
10 know of. There's nothing else.

11 THE COURT: He's got text messages for
12 instance, meeting notes, agendas. There's literally
13 nothing else?

14 MR. MESSER: No, there's literally nothing
15 else. We have given them the agenda --

16 THE COURT: How do they have half of
17 nothing then?

18 MR. MESSER: I don't know what they have,
19 and if we go -- if you want to talk about text messages,
20 that's electronic information that they didn't request
21 specifically, and that can't be what we would be
22 required to produce.

23 And I don't see how it's relevant --
24 frankly, I don't see how any of the open record requests
25 are relevant to his First Amendment constitutional

1 claim. That's the sole remaining claim.

2 THE COURT: But they're exactly what
3 you-all are trying to stop him from doing; isn't that
4 the gist of it?

5 MR. MESSER: Well, the Court's already
6 addressed that. The Court has addressed the open record
7 requests and has made a ruling in summary judgment in
8 April that he has the right to do that. You denied our
9 contract claim. You've granted their --

10 THE COURT: Right. And his response is he
11 had to do all of that to even get to the point where
12 that could be denied, and that the System's been
13 harassing him in his efforts to do that. That's what
14 they're left with now. That's their final claim.

15 MR. MESSER: But what do his open record
16 requests have to do with his First Amendment speech
17 claim?

18 THE COURT: The fact that he makes them
19 and you don't respond to them.

20 MR. MESSER: We've responded to all of
21 them --

22 THE COURT: Okay. So what's missing?

23 MR. MESSER: -- diligently.

24 MR. MONEY: They just sued us for having
25 to respond to them.

1 Your Honor, the -- when he says that we
2 requested electronic documents, first of all, that's not
3 true. We have not requested to have a motherboard or a
4 hard drive or anything like that produced to us. What
5 we have asked for is the definition of documents that is
6 in our request that is lengthy. It includes, among
7 other things, other communications sent or received.

8 We're not asking for actual phones. We're
9 not asking for actual computer hard drives. We have
10 e-mails that they have not sent us. I'll just -- and in
11 a previous hearing you said, Your Honor, that -- to
12 Mr. Messer, "He doesn't have to tell you what your
13 client has. He happens to know some of what your client
14 has. It's your responsibility to get him what your
15 client has and give it to him, and you're not doing
16 that."

17 But for arguments sake, we have an e-mail
18 on September 7th, 2016, October 13th, 2016. We have
19 e-mails from April 20, 2016. There's 22 e-mails and
20 attachments that we know of that were just requests sent
21 or requests responded to that we don't have.

22 We have text messages with -- and I'll
23 just say with a board member regarding Mr. Alexander,
24 regarding this lawsuit that have not been produced to
25 us. The more that I tell him of what I have, he can

1 respond to only those things that he knows about and
2 say, well, that's everything. If I give him a list of
3 everything I know about and say, well, give me these
4 things, he'll give me those things, and then I'll never
5 find out about the things I don't know about.

6 It's not required that I tell him what I
7 know he isn't giving me. It's required him to give me
8 everything he's got, and it doesn't seem the effort has
9 been made to do that.

10 It also says -- the rules say that they
11 have to give us everything that is within the person's
12 possession, custody, or control. The Texas Public
13 Information Act is very clear, the Attorney General has
14 been clear, and courts have been clear that -- and I
15 know this. I'm on city council. If I send a personal
16 text message from my personal cell phone but it relates
17 to a zoning issue that's going on in my city, if someone
18 makes a Public Information Act request about that zoning
19 issue, I've got to turn over that text message.

20 I don't have to turn in my phone. They
21 don't get to look through everything else I've done on
22 my phone, but that text message is a public document.
23 I've been told if I post on Facebook about city related
24 issue, that becomes a public record that is subject to
25 the Public Information Act. Mr. Messer knows this.

1 We want the documents that are within the
2 System's possession, custody or control --

3 THE COURT: You would agree they need to
4 be produced; you're just saying he hasn't asked for
5 them? Is that what you're saying?

6 MS. FORT: Your Honor, if I could maybe
7 provide some clarity. We certainly understand your
8 skepticism. I'd like to explain why we're skeptical and
9 then address --

10 THE COURT: I want you to answer the
11 question I just asked you.

12 MS. FORT: No, I do not agree with his
13 summary about how the Public Information Act requests --

14 THE COURT: I'm an official subject to the
15 Public Information Act requests, and my text messages
16 were part of Public Information Act requests.

17 MS. FORT: Yes, they are -- I agree they
18 are responsive documents, but there are cases that
19 acknowledge that the Act provides no enforcement
20 mechanism for a governmental entity to compel someone to
21 provide something off their personal device. The --

22 THE COURT: So what you're telling me --

23 MS. FORT: -- has a duty --

24 THE COURT: -- what you're -- what you're
25 telling me is then you may have employees that have

1 this, but you're not going to compel them to give them
2 to us?

3 MS. FORT: The law does not allow a
4 governmental entity to compel someone to provide --

5 THE COURT: Okay. So you're asking --

6 MS. FORT: -- something off of their
7 personal device --

8 THE COURT: -- so you're asking --

9 MS. FORT: -- not a government --

10 THE COURT: No, that's -- that's not how I
11 read the AG opinions either. Your personal device if
12 you use it for purposes of your government job, what is
13 included on that is required to be disclosed.

14 You don't just get to do it on your
15 personal cell phone and say it's on my personal cell
16 phone, I don't have to turn it over. That's not how I
17 read the AG opinions on that.

18 MR. MESSER: Governmental employees,
19 officials have privacy notes.

20 THE COURT: Not to do business and try to
21 skirt the PIA by doing that business on their personal
22 phone. It specifically says they're not allowed to do
23 that.

24 MR. MESSER: But there's nothing that says
25 and there's no case that says, and I think it's the

1 opposite, that the government has possession, custody,
2 or control over personal texts on a personal --

3 THE COURT: They have control over their
4 employee who is trying to skirt the PIA by doing it on
5 their personal device. Whatever they do on their
6 personal device that is related to their job is
7 discoverable. It's also subject to the PIA. I think
8 that's very clear.

9 MR. MESSER: Your Honor, that's the very
10 point of the Lauren Miller mayor case with the City of
11 Dallas lingered for years and years and years and years.
12 It's the very point for what a Bexar County
13 Commissioners been doing involved Bexar County, that he
14 will not turn over his information on his personal
15 device because he's claiming constitutional rights, and
16 that the County has no possession, custody, or control
17 over that device, involves privacy rights by those
18 individuals.

19 THE COURT: Okay. So who do you have
20 that's asserting their privacy rights?

21 MR. MESSER: I think on behalf of our
22 entity we have to assert that all of those employees
23 have them unless they want to --

24 THE COURT: No. So what you're telling me
25 is you haven't asked anybody for the information that's

1 been requested, and they haven't denied it, so we don't
2 actually specifically have anyone asserting those
3 rights. You're just blanketly saying somebody may have
4 something and we think they may assert a privacy right.

5 MR. MESSER: If we can back up a minute.
6 Look at his request. He asks for documents. He doesn't
7 ever ask for e-mails or texts by anybody.

8 THE COURT: Okay. What he just read to me
9 doesn't say that.

10 Can you read that again, Mr. Money?

11 MR. MONEY: As used herein, the term
12 documents shall mean all writings of every kind, source
13 and authorship, both originals and nonidentical copies
14 thereof in your possession, custody, or control or known
15 by you to exist, irrespective of whether the writing is
16 one intended for transmitted internally by you or
17 intended for transmitted to any other person or entity,
18 including without limitation any government agency,
19 department, administrative, or private entity or person.

20 The term shall include handwritten,
21 typewritten, printed, photocopies, photographic or
22 recorded matter. It shall include communications in
23 words, symbols, pictures, sound recordings, films,
24 tapes, and information stored in or accessible through
25 computer or other information storage or retrieval

1 systems, together with the codes and/or programming
2 instructions and other materials necessary to understand
3 and use such systems. For purposes of illustration and
4 not limitation, the term shall include -- and then it
5 lists dozens of other things, including other
6 communications sent or received.

7 I could probably look through and find
8 other things that are here, but I think that is
9 pretty -- pretty broad and does include in our day and
10 age text messages.

11 MR. MESSER: If I may approach, Your
12 Honor, I've got his request and I would ask you to look
13 at them.

14 THE COURT: Is that different than what he
15 just read?

16 MR. MESSER: He didn't read his requests.
17 His request -- the request that we're here on are
18 Request for Production 2, all documents --

19 THE COURT: And he just read you the
20 definition of documents that would cover what you're
21 talking about.

22 MR. MESSER: Your Honor, the definition is
23 a page long. It's everything in the world -- it looks
24 like --

25 THE COURT: And yet you're saying it's

1 none of the things that you actually have.

2 **MR. MESSER:** I'm saying if he wants a
3 specific request of electronic information he has to
4 specifically make it and tell us the format under the
5 Rules of Procedure. And if he wants a request for an
6 official --

7 **THE COURT:** Okay. This is the third or
8 fourth time we're having this hearing and you're still
9 wanting to parse words and pretend you don't know what
10 he's asking for.

11 **MR. MESSER:** He hasn't asked for texts or
12 e-mails. This is the very first time he's brought it
13 up.

14 **THE COURT:** He's asked for everything
15 relating to his client.

16 **MR. MESSER:** That's not how I -- I didn't
17 understand that he was asking --

18 **THE COURT:** Wait. This is the fourth time
19 we've had this hearing and this conversation and I
20 certainly understand it.

21 **MR. MESSER:** I couldn't -- I did not
22 understand that implicitly he was asking for text --

23 **THE COURT:** Okay. I'm granting your
24 motion. I'm awarding attorneys' fees in the amount of
25 \$14,573.50. I am not at this time appointing the expert

1 that you have requested.

2 Mr. Messer, I thought I made it clear the
3 last time, I'm done playing games. I don't know if it's
4 you or your client. It appears now to be you that's
5 assisting your client in playing games. We're done. I
6 said last time I was done.

7 You've now cost your client \$14,000 and
8 the taxpayers of the City of Dallas. Four hearings in
9 for you to start trying to parse the definition of his
10 documents, doesn't include what we have talked about at
11 four different hearings, is beyond confounding to this
12 court.

13 He does not have to tell you what he
14 wants. He wants everything related to his client. He
15 happens to be making it easy for you by telling you the
16 types of things that they know of that relate to his
17 client that you are still not producing. Is it clear
18 now what they're asking for?

19 MR. MESSER: I understand that they're
20 seeking electronic information involving --

21 THE COURT: In any form.

22 MR. MESSER: -- in any form involving --

23 THE COURT: They're seeking any
24 communication, electronic or otherwise. If it's on a
25 Big Chief tablet with a pencil, you're going to turn

1 that over.

2 MR. MESSER: I don't totally understand
3 that. It's the personal e-mails and texts on personal
4 devices that I did not see from his requests.

5 THE COURT: Okay. What about this
6 document cleansing that was ordered by Ms. Loveland?

7 MS. FORT: So as we explained in our
8 motion, the System received three separate requests for
9 that document. The first time it was properly produced
10 with only member names redacted. The second time it was
11 late at night. She sent an e-mail to an employee saying
12 remove the names, and when she was looking, she just saw
13 names and said remove the names.

14 It ended up Ms. Kobel -- it wasn't even a
15 request by Mr. Alexander -- Ms. Kobel withdrew that
16 Public Information Act request, and that document was
17 never released because the request was withdrawn.
18 Several months later another request was made for the
19 same information, just a longer time span, and the
20 document was properly produced.

21 It was just late at night, and she made a
22 mistake about telling her assistant which names needed
23 to be removed. They're long documents. It was just a
24 human error, but the document was still produced twice
25 correctly and, yes, the human error happened.

1 The reason that we are skeptical about the
2 22 e-mails is we don't know another way for their server
3 to be searched that their IT director hasn't already
4 done, and when we were here before, they made an issue
5 about a spreadsheet that got -- it should have been 700
6 pages and got spread out to be 6,000 pages.

7 What was not mentioned to the Court was
8 that that spreadsheet had an e-mail that was a cover
9 e-mail, the spreadsheet was an attachment, and it was an
10 internal e-mail of the System saying, hey, this document
11 is huge, can someone help me figure out a way to make
12 this producible in a friendly format for the requester.

13 **THE COURT:** What's your point?

14 **MS. FORT:** That just because they are
15 saying those things --

16 **THE COURT:** They didn't just say them.
17 You gave them garbage. The fact that you have an
18 e-mail --

19 MS. FORT: No, that wasn't --

20 **THE COURT:** I'm speaking. The fact that
21 you have an e-mail from somebody admitting they know it
22 was garbage before you turned it over is not helping
23 you.

24 MS. FORT: It wasn't turned over in
25 response to the Public Information Act request. It was

1 turned --

2 THE COURT: It was turned over in
3 response --

4 MS. FORT: -- over in discovery --

5 THE COURT: Exactly.

6 MS. FORT: -- because the attachment --

7 THE COURT: Which means you knew what you
8 turned over was garbage. You had an e-mail from your
9 own internal people telling you this is a ridiculous
10 spreadsheet, and that's what you opted to turn over
11 on discovery.

12 MS. FORT: We didn't want to --

13 THE COURT: I'm not arguing with you
14 anymore about this.

15 MS. FORT: We couldn't remove it.

16 THE COURT: I'm not arguing with you
17 anymore about this.

18 MR. MESSER: Your Honor, we offer our
19 Exhibit Number 1 and Exhibit Number 2, which are true
20 and accurate copies of all the documents that we have
21 produced.

22 THE COURT: Okay. What about the System
23 website?

24 MR. MESSER: We have produced the agendas
25 and minutes to them on that which are equally

1 accessible.

2 MR. MONEY: And they did produce those
3 since we filed our motion for sanctions, Your Honor, as
4 I mentioned in my opening.

5 THE COURT: Okay.

6 MR. MONEY: I would --

7 THE COURT: The accounting system, has
8 that been produced?

9 MR. MESSER: Every document that they've
10 requested we have produced. It's part of the 26,340
11 pages in Exhibit 2 that we're offering.

12 THE COURT: What's Exhibit 2?

13 MR. MESSER: Exhibit 2 are all the
14 documents --

15 THE COURT: We're not taking that.

16 MR. MESSER: We're offering it, Your
17 Honor.

18 THE COURT: Okay. We're not taking that.
19 If that is what you have produced to them then you have
20 produced it to them. It does not need to be produced to
21 the Court.

22 MR. MESSER: We're just trying to show the
23 Court we have produced --

24 THE COURT: The Court takes judicial
25 notice of your giant dolly of what is potentially

1 useless information to them if it doesn't include what
2 it's supposed to include. But it is useless to the
3 Court as well because I'm not going to sit there and go
4 through that and try to parse out what you did or didn't
5 produce.

6 MR. MESSER: We reoffer Exhibit 1.

7 THE COURT: Exhibit 1 is admitted. Is
8 there anything further?

9 MR. MONEY: Just for the record, Your
10 Honor, not that you need it, but the comment to Rule
11 192, comment number two says, "The definition of
12 documents and tangible things has been revised to
13 clarify that things relevant to the subject matter of
14 the action are within the scope of discovery regardless
15 of their form." Thank you.

16 THE COURT: Do you have an order?

17 MR. MONEY: I don't, Your Honor, because I
18 wasn't sure what you would order today, but I will have
19 one filed by the end of the day. And I will send a copy
20 to Mr. Messer for comment.

21 THE COURT: Thank you. Y'all are excused.

22 MR. MONEY: Thank you.

23 (Proceedings concluded at 9:27 a.m.)

24

25

1 STATE OF TEXAS)
2 COUNTY OF COLLIN)

3 I, Destiny M. Moses, Official Court Reporter
4 in and for the 416th District Court of Collin County,
5 State of Texas, do hereby certify that the above and
6 foregoing contains a true and correct transcription of
7 all portions of evidence and other proceedings requested
8 in writing by counsel for the parties to be included in
9 this volume of the Reporter's Record in the above-styled
10 and numbered cause, all of which occurred in open court
11 or in chambers and were reported by me.

12 I further certify that the total cost for the
13 preparation of this Reporter's Record is \$454.80 and
14 was paid by Messer Rockefeller Fort.

15 WITNESS MY OFFICIAL HAND on this, the 23rd day of
16 August, 2017.

/s/ Destiny M. Moses
Destiny M. Moses
Texas CSR: 8736
Official Court Reporter
416th District Court
Collin County Courthouse
2100 Bloomdale Road
Suite 20030
McKinney, Texas 75071
Expiration: 12/31/2018

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CAUSE NO. 416-02718-2016

DALLAS POLICE AND
FIRE PENSION SYSTEM,

Plaintiff,

v.

COLUMBUS A. ALEXANDER, III,

Defendant.

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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

416th JUDICIAL DISTRICT

ORDER ON DEFENDANT'S MOTION FOR DISCOVERY SANCTIONS

On the 16th day of August, 2017, this Court heard Defendant's Motion for Discovery Sanctions (the "Motion"), and after reviewing the record, evidence, and other documents filed herein, and hearing arguments of counsel, this Court FINDS that Plaintiff has not complied with this Court's May 15, 2017 Order on Defendant's Motion to Compel.

IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff fully comply with the Court's May 15, 2017 Order on or before August 30, 2017 at 5:00 p.m., which includes production of personal and business documents, emails and texts of Plaintiff's Board of Trustees and employees, current and former, since Jan. 1, 2016 to date, on all electronic devices whether contained on plaintiff-owned or privately-owned electronic devices.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that Defendant shall recover attorney fees from Plaintiff in the amount of \$14,573.50 for reasonable and necessary expenses incurred by Defendant related to this discovery dispute and the Motion. Such payment shall be made to Defendant's counsel on or before September 18, 2017 at 5:00 p.m.

All relief not expressly granted herein is hereby denied.

SIGNED this _____ day of 8/18/2017, 2017.

Andrew S. Thompson
JUDGE PRESIDING

THE STATE OF TEXAS
CIVIL CITATION
CASE NO.416-02718-2016

Dallas Police and Fire Pension System vs. Columbus
A Alexander, III

In the 416th District Court
Of Collin County, Texas

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO: Messer, Rockefeller & Fort, P.L.L.C.
Registered Agent: William Andrew Messer
6351 Preston Rd., Suite 350
Frisco, TX 75034, Defendant

GREETINGS: You are commanded to appear by filing a written answer to **Defendant's Fourth Amended Answer and Counterclaim** at or before ten o'clock A.M. on the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 416th District Court of Collin County, Texas at the Courthouse of said County in McKinney, Texas.

Said Plaintiff's Petition was filed in said court, by Brent A. Money, Money Law Firm, 2606 Lee Street, Greenville, TX 75401 (Attorney for Defendant), on September 1, 2017, in this case, numbered 416-02718-2016 on the docket of said court.

The nature of Plaintiff's demand is fully shown by a true and correct copy of **Defendant's Fourth Amended Answer and Counterclaim** accompanying this citation and made a part hereof.

Issued and given under my hand and seal of said Court at McKinney, Texas, on this the 7th day of September, 2017.

ATTEST: Lynne Finley, District Clerk
Collin County, Texas
Collin County Courthouse
2100 Bloomdale Road
McKinney, Texas 75071
972-548-4320, Metro 972-424-1460 ext. 4320



By: Erika Ruiz, Deputy
Erika Ruiz

The law prohibits the Judge and the clerks from giving legal advice, so please do not seek legal advice. Any questions you have should be directed to an attorney.

CAUSE NO. 416-02718-2016

DALLAS POLICE AND
FIRE PENSION SYSTEM,

Plaintiff,

V.

COLUMBUS A. ALEXANDER, III,

Defendant.

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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

416th JUDICIAL DISTRICT

**ORDER GRANTING DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

On the 4th day of April, 2017, the Court heard Defendant/Counterclaimant's Motion for Partial Summary Judgment in the above entitled and numbered cause, and after reviewing the record and other documents filed herein, and hearing arguments of counsel, this Court finds that Defendant/Counterclaimant is entitled to summary judgment as prayed for in his Motion.

It is therefore **ORDERED** that Defendant/Counterclaimant's Motion for Partial Summary Judgment is **GRANTED** in all respects.

It is further **ORDERED** that Defendant/Counterclaimant has the right to make requests to Plaintiff pursuant to the Texas Public Information Act.

It is further **ORDERED** that Defendant/Counterclaimant, pursuant to the Texas Uniform Declaratory Judgments Act, is entitled to recover his reasonable and necessary attorney's fees, said fees to be determined at a subsequent hearing in this case.

All other relief not expressly granted herein is hereby denied.

Andrew S. Thompson 4/6/2017
JUDGE PRESIDING
416th JUDICIAL DISTRICT COURT
COLLIN COUNTY, TEXAS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

DALLAS POLICE AND FIRE §
PENSION SYSTEM, §
Plaintiff, §

vs. §

COLUMBUS A. ALEXANDER, III, §
Defendant and Counter-Plaintiff, §

vs. §

CAUSE NO. 4:17-CV-631-ALM-KPJ

DALLAS POLICE AND §
FIRE PENSION SYSTEM; §
KELLY GOTTSCHALK; JOSHUA §
MOND; SUMMER LOVELAND; §
JULIE FORT; JULIE FORT, §
ATTORNEY, PLLC; MESSER, §
ROCKEFELLER, FORT, PLLC, §
Counter-Defendants. §

DEFENDANT'S FIFTH AMENDED ANSWER AND COUNTERCLAIM

TO THE HONORABLE COURT:

NOW COMES, Columbus A. Alexander, III, (“Alexander”) Defendant and Counter-Plaintiff, complaining of Dallas Police and Fire Pension System (the “System”), Plaintiff and Counter-Defendant, and Kelly Gottschalk, Joshua Mond, Summer Loveland, Julie Fort, Julie Fort, Attorney, PLLC, and Messer, Rockefeller, and Fort, PLLC, Counter-Defendants, and responds to Plaintiff’s Petition with this Fifth Amended Answer and Counterclaim.

A. NATURE OF THIS ACTION

1. This lawsuit against Alexander is an unconstitutional attempt to silence a well-informed critic of the System’s governance at a time when there is a deep distrust between the System and the City of Dallas, multiple criminal investigations ongoing about the System’s

management, and System executives are fighting with city and state officials for continued control of the pension fund and protection of their highly-compensated jobs.

2. This lawsuit is also a tale of malicious retribution against Alexander by System executives and their attorneys who colluded and conspired to force Alexander into silence by threatening him repeatedly, and then filing this lawsuit to stop him and others from making public information inquiries regarding the System's current administration and their attorneys.

3. This is the second attempt by System executives to use the litigation process to silence Alexander. The first lawsuit sought to conceal evidence of criminal activity and mismanagement by former System executives that Alexander uncovered during a 2002 fraud investigation conducted at the System's request.

4. The conduct of the System board of trustees is equally as shameful. As the System's new administration morphed into the old, the newly elected trustees fell into line as did many corrupt trustees before them, determined to maintain control of the System at any price to the City of Dallas, at any cost to its members, and with a conscious indifference or reckless disregard for the constitutional rights of private citizens who would stand in their way.

B. GENERAL DENIAL

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

C. AFFIRMATIVE DEFENSES

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

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

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

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

D. COUNTERCLAIM

NOW COMES, Columbus A. Alexander, III (“Alexander”), Counter-Plaintiff, complaining of Dallas Police and Fire Pension System (the “System”), Kelly Gottschalk, Joshua Mond, Summer Loveland, Julie Fort, Julie Fort Attorney, PLLC, and Messer Rockefeller & Fort, P.L.L.C. (“Counter-Defendants”), and for cause of action would show unto the Court the following:

E. PARTIES

1. Alexander is a United States citizen residing in Dallas, Collin County, Texas, who does business under the name “CA Forensics, LLC”, and is the Defendant in this cause. Alexander also owns and operates a public corruption website (www.dpfps.org) for the anonymous online reporting of crimes or acts of public corruption committed by Dallas elected officials, trustees and employees.

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

3. Kelly Gottschalk is an individual residing in Dallas County, Texas. Service of process may be made upon defendant Gottschalk at her place of business at 4100 Harry Hines Blvd., Suite 100, Dallas, Texas, 75219, or wherever she may be found.

4. Joshua Mond is an individual residing in Collin County, Texas. Service of process may be made upon defendant Mond at his place of business at 4100 Harry Hines Blvd., Suite 100, Dallas, Texas, 75219, or wherever he may be found.

5. Summer Loveland is an individual residing in Dallas County, Texas. Service of process may be made upon defendant Loveland at her place of business at 4100 Harry Hines Blvd., Suite 100, Dallas, Texas, 75219, or wherever she may be found.

6. Julie Fort is an individual residing in Collin County, Texas. Service of process may be made upon defendant Fort at her place of business at 6351 Preston Road, Suite 350, Frisco, Texas, 75034, or wherever she may be found.

7. Julie Fort, Attorney, PLLC, is a Texas professional limited liability company whose primary place of business is 6351 Preston Road, Suite 350, Frisco, Texas, 75034. It can be served at this address via its registered agent for service of process, Julie Fort.

8. Messer, Rockefeller & Fort, P.L.L.C. is a Texas professional limited liability company whose primary place of business is 6351 Preston Road, Suite 350, Frisco, Texas 75034. It can be served at this address via its registered agent for service of process, William Andrew Messer.

F. FACTUAL BACKGROUND

System's Dire Financial Condition

1. The System provides retirement funding for approximately 10,000 active and retired police officers and firefighters. For the past several years, the System has been in turmoil as criminal investigations by both the FBI and the Texas Rangers, litigation with former investment

managers, and media reports have begun to reveal years and possibly decades of mismanagement and misconduct resulting in what has become a desperate financial condition.

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

3. Alexander is a CPA and a Certified Fraud Examiner with more than twenty-five years’ experience investigating fraud and misconduct. His background includes Big 4 public accounting and private-industry experience across a wide-range of industries with client engagements including several local government entities in Texas, notably, the Dallas Police and Fire Pension System.

4. During early 2002, Alexander examined the System’s finances under a contract with System fiduciaries, as discussed more fully below. During the many years since that time, Alexander has been a public corruption watchdog in an unofficial, uncompensated capacity. Alexander acquires and compiles public information and posts it on his public corruption website (www.dpfps.org), and communicates pertinent information to the news media, System members, System board members, Dallas city council members, and the public. His primary sources of information are published news reports, social media, official government websites, and the Texas Public Information Act.

5. The Preamble to the Texas Public Information Act (“TPIA”) states that “each person is entitled...at all times to complete information about the affairs of government and the official acts of public officials and employees.” The policy purpose for the TPIA is “the principle

that government is the servant and not the master of the people.” It then further explains the need for an informed citizenry:

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

6. During early 2016, Alexander sought information from the System that would provide answers to simple but pertinent questions to include. For example, (a) why were System executives authorizing monthly payments to the Argyle Volunteer Fire Department where former System realty advisor CDK's investment manager Jon Donahue was a volunteer firefighter; (b) why did the System hire so many attorneys, including attorney Nicole Knox and law firm Prospere & Russell, whose primary or sole practice was criminal defense; and (c) what was purchased with over \$750,000.00 in System credit card charges?

7. The documents and information Alexander requested are exactly the types of documents and information that the TPIA is designed to make available for the public. The reasons Alexander is requesting these documents and information are the very reasons that the TPIA makes government documents and information available for the public.

8. The System brought this lawsuit in order to avoid governmental transparency requirements imposed by state law, and to harass Alexander who seeks to identify and expose reasons why the Dallas Police & Fire Pension fund is nearing financial collapse.

System Fraud Investigation

9. Former System Administrator Richard Tettamant is publicly credited by current System fiduciaries and executives for the many speculative, high-risk real estate investments that resulted in the rise and rapid fall of the Dallas Police & Fire Pension fund.

10. But this is not news to the many who have followed the seemingly endless stream of media reports during recent years regarding the System's unconventional use of bank loans and pensioner DROP accounts to leverage high-risk real estate and private equity investments, investigations authorized by System executives into the lives of City Council appointees who oppose them, and the many extravagant trips taken by System trustees who chose to simply look the other way. In fact, System trustees have a long history of looking the other way.

11. On March 4, 2002, the System became aware that one of its employees was misusing System funds for her personal benefit, which led to the termination of that employee.

12. On March 29, 2002, System executives advised Alexander that he had been selected to do a fraud examination. Alexander, a CPA and Certified Fraud Examiner, agreed to perform the examination at a substantially reduced rate because of his respect and admiration for the law enforcement and emergency personnel whose retirement funds had been pilfered. A city attorney subsequently requested the scope of Alexander's work be expanded to include all matters related to financial controls, and not just the employee theft.

13. On April 1, 2002, prior to the execution of an agreement with Alexander, System executive Rohan noted to Alexander his concern about the content and distribution of any report prepared in connection with the fraud examination. Rohan further stated that the System was a governmental entity, and that any written report could become a matter of public record. Rohan also stated that only matters related to the employee theft should be included in Alexander's final written report, and that all other matters determined during his engagement should be reported verbally to System executives to avoid publication.

14. On April 8, 2002, Alexander met with System executive Don Rohan, city attorney Everard Davenport, and accounting manager Linda Stevenson for the purpose of executing a Consultant Contract (the "Contract"). Alexander also requested and received approval at that time

for Stevenson to act as primary coordinator for the System during the investigation. During a closed-door meeting held only hours later, Stevenson told Alexander she was concerned for her job, and had decided to start looking for other employment. Stevenson also stated that System Administrator Richard Tettamant had accused her of “causing the problem,” called her “a bitch,” and told her their job during this fraud examination was to “keep their jobs.”

15. Upon the commencement of Alexander’s investigation, he soon learned that the employee of the System who had already been terminated by the System was, in fact, one of several System employees involved in continuing clear misconduct. During this time period, Alexander became aware of (a) unexplained changes to vendor records and payments made by System management after Alexander’s investigation had begun; (b) demonstrably false statements by System employees during the course of this investigation; and (c) misconduct which appeared to be perpetrated throughout all levels of employees at the System.

16. Alexander also learned System executives had retained a private investigations firm to examine the lives, lifestyles, and families of several System employees, and that written reports provided to System executives as a result of these investigations (the “Atwood Reports”) included confidential employee banking records, specifically requested by System executives, and produced without the employees’ knowledge or consent, and without court order.

System Crimes Reported to General Counsel

17. On May 1, 2002, Alexander met with System attorney Gary Lawson of the Dallas law firm Lawson & Fields. At that time, Alexander told Lawson of (a) his awareness of the illegal procurement of employee bank records by System executives; (b) what Alexander had been told about restricting the contents of any report he prepared, as described in Paragraph 13 herein; (c) collusion among System employees in connection with the misconduct by the terminated employee; and (d) the apparent loss and/or destruction of accounting records. Alexander also

requested System attorney Lawson speak with System trustees regarding these matters, and that the System's Board consider creating a Management Oversight Committee.

18. On May 3, 2002, Alexander again met with System attorney Lawson, together with System executives Richard Tettamant, Don Rohan, and Everard Davenport, to discuss a number of issues, including the acts of System executives who had participated in the illegal procurement of employee bank records. At that time, System attorney Lawson stated he wanted all evidence of criminal activity by System executives given to him, including what Alexander had in his file. Alexander refused Lawson's request since these documents had already been incorporated into Alexander's workpapers which, under the terms of his Contract, he was to retain for three years **(EXHIBIT A)**.

19. The participants then discussed the proposed contents of Alexander's anticipated Report of Examination. Alexander advised those present of the instructions he had received on April 1, 2002, from System executive Rohan about the content of any written report, as described in Paragraph 13 herein. At first, Rohan denied having made such statements on April 1, but soon thereafter Rohan admitted he had, in fact, made those remarks. All of those present at the May 3rd meeting then made no attempt to change the previous instructions regarding the written component of his report. The message to Alexander was disappointing but clear.

20. On May 8, 2002, Alexander met with System Administrator Richard Tettamant to review emerging issues from his investigation, and the additional time needed for completion. Alexander also reminded Administrator Tettamant that, under the terms of the Contract as amended, the time period for his investigation was expiring that day, and required extension.

System Crimes Reported to the Board

21. On May 9, 2002, the System held its Regular Board Meeting during which trustees went into closed executive session when it came time to discuss Alexander. Immediately after an

almost two-hour private discussion regarding Alexander, trustee Gary Edge:

“... made a motion not to renew the Contract of CFOpros [i.e., Alexander], and to require receipt of the firm’s report satisfactory to the Board before further payments are made. The motion also included authorization of the expenditure of up to \$50,000 for a new examination of the System’s financial process and internal controls, and authorized the Administrator to conduct a search for a vendor to perform the examination. Wachsman seconded the motion, which was *unanimously approved* by the Board.”

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

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

23. After answering the questions, Rohan told Alexander he wanted him to prepare a report for Administrator Tettamant to review with the Board. Alexander stated that to prepare a report at that time would be premature, since the investigation was ongoing and, as of that time, not complete. Rohan then asked for a report of Alexander’s findings to that date. Alexander agreed to prepare an “Interim Report” which would only contain his preliminary findings as-of May 8,

the date Alexander's Contract expired. At no time during this phone conversation did Rohan advise Alexander of the Board's decision made at their May 9 meeting to not extend Alexander's Contract, and the Board's decision to hire another fraud examiner.

24. On May 17, 2002, Alexander issued his Interim Report to System Administrator Richard Tettamant regarding significant findings and concerns resulting from his investigation, with certified copy to the Board of Trustees (**EXHIBIT B**).

25. On May 21, 2002, following delivery of Alexander's Interim report, a member of the System's Board (believed to be Councilmember Leo Chaney) shared Alexander's written report with a reporter from *the Dallas Morning News*. Also, effective on this date, Dallas City Councilmember Leo Chaney resigned his position as trustee from the System's Board.

26. Also on May 21, in response to media inquiries later that day, trustee Steven Shaw provided *the Dallas Morning News* with information about Alexander's investigation that was false, and known by trustee Shaw to be untrue at that time (**EXHIBIT C**).

System Board Members Circle the Wagons

27. On May 22, 2002, Alexander retained the law firm of Jenkins & Watkins, in part, to advise System attorney Gary Lawson that the System did not have consent to break into or otherwise invade Alexander's locked file trunk, which remained onsite with the System when his investigation was placed "on hold," and was believed by System officials to contain Alexander's proof (obtained by him during the investigation) of crimes by System executives.

28. On May 28, 2002, the System's Board held a Special meeting, and for more than two hours, System trustees and their attorneys met in closed executive session to discuss Alexander, and plans to conceal evidence of criminal activity by the System's executive staff.

29. On May 29, 2002, the System's Special meeting of May 28 reconvened, at which time, trustee Steven Shaw made a motion to open the locked file trunk belonging to Alexander.

System trustee Gary Edge seconded the motion, which was unanimously approved by the Board. System officials then cut the lock from his file trunk, breaking and entering into Alexander's property without his consent and without a court order – a shameful violation by System trustees of his fourth amendment rights protecting illegal search and seizure (**EXHIBIT D**).

30. Also on May 29, as of result of the Board's unlawful breaking and entering into Alexander's property, System trustees and their attorneys learned that Alexander had earlier transferred all evidence of criminal wrongdoing by System executives from his locked file trunk to a law firm, for copy and safekeeping.

System Board Members Double Down

31. On June 25, 2002, following weeks of intimidation and harassment by System private investigators (which included around-the-clock surveillance at his home, rummaging through his trash, and tailing Mr. and Mrs. Alexander when they left their home), the System escalated its efforts by filing suit against Alexander to force his surrender of all documentary evidence of crimes committed by System executives.

32. On July 19, 2002, Alexander's new attorney, Talmage Boston, sent a demand letter to System attorney Eric Calhoun which enclosed a draft Original Answer and Counterclaim for breach of contract and defamation that included many of the same factual allegations included here. Confronted with the real possibility of public disclosure regarding wrongdoing and mismanagement by System executives and fiduciaries, System attorneys began earnestly working to settle the lawsuit filed by the System against Alexander only weeks earlier.

33. On July 24, 2002, System attorney Eric Calhoun wrote a letter to Boston in which he threatened that filing Alexander's Counterclaim would be a violation of Alexander's confidentiality obligations, again emphasizing the System's interest in suppressing information that would notify the public of the System's mismanagement and wrongdoing. Boston replied to

Calhoun by providing pertinent provisions of the Code of Professional Ethics for Certified Fraud Examiners which states:

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

34. On August 7, 2002, the Systems’ Board and Alexander entered into a Settlement Agreement that included the following pertinent points (**EXHIBIT E**):

- The System dismissed with prejudice its lawsuit against Alexander;
- The System reimbursed Alexander for all legal fees and related expenses, and paid Alexander’s outstanding billings; and
- The System issued a written statement on System letterhead, signed by Board Chairman Gerald Brown, to *the Dallas Morning News* and the Association of Certified Fraud Examiners correcting false statements made by System police trustee Steven Shaw on May 21, 2002.

35. On October 27, 2002, and continuing through September 15, 2004, Alexander issued over 100 Public Information Requests regarding the System, almost all of which were answered by written reply by System executives Richard Tettamant or Don Rohan, or System attorney Gary Lawson. All three men were actively involved in the 2002 settlement and yet never refused a response to Alexander’s Public Information Requests or alluded to the 2002 Settlement Agreement as a bar to Alexander’s right to make such requests.

36. It is important to note that the decision by System attorney Gary Lawson to protect rather than prosecute illegal acts by System executives, and the choice by System trustees to look the other way rather than report criminal activity by System executives made all the difference then, and has made all the difference during the many years since as corrupt System officials have

squandered pensioner funds in pursuit of highly-questionable real estate investments made with borrowed funds (contrary to state law), burdensome executive compensation agreements, and unlawful gifts by elected trustees to current System executives that now leave the pension fund unable to keep its promises to Dallas' police and fire pensioners (**EXHIBIT F**).

Alexander's Renewed Interest in the System

37. On February 24, 2015, Alexander was contacted by a retired Dallas police officer who had found Alexander through his public corruption website (www.dpfps.org). The retired police officer shared with Alexander the following concerns that he had previously shared with System trustees in open session during an earlier board meeting:

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

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

38. On December 10, 2015, the System's Board held a regular monthly meeting to discuss, among other items, findings from Public Information Requests from *the Dallas Morning News*. In attendance at this meeting were Alexander and members of the news media. At that time, Alexander learned that System attorney Gary Lawson had paid a consultant during 2013 to do a "forensic trace" on Dallas City Councilmember Scott Griggs, who was also a member of the System's Board of Trustees. According to media reports, the System's 2013 investigation of City Councilmember Griggs came as he was demanding answers from System Administrator Richard Tettamant, and System attorney Gary Lawson.

39. Also during this meeting, reporter Steve Thompson of *the Dallas Morning News* told Alexander that System records obtained by Thompson through Public Information Requests, indicated that System officials during 2013 had also investigated Alexander on the misguided belief Alexander was using the pseudonym "Wylie H Dallas" to mask social media criticism of System Administrator Richard Tettamant.

40. On December 14, 2015, long-time System attorney Gary Lawson resigned. According to media reports, Councilmember Scott Griggs stated "the previous pension system under Richard Tettamant and Gary Lawson were looking to protect their own self-interests, and they could go to extremes to attempt to harm those in their way."

Mounting Pressure from the City and State, News Media, and Law Enforcement

41. On December 2, 2015, System executive Kelly Gottschalk told the Dallas City Council during an open-session briefing that the System had hired a law firm to investigate fund mismanagement dating back at least a decade. Gottschalk also assured city officials that board

members who had signed-off on risky real estate investments made during the System's former administration were "long gone." Contrary to Gottschalk's comments, at least two remained on the Board with both holding positions on System Audit and Investment Advisory Committees - namely Gerald Brown, former Board Chairman and trustee for decades, and long-time trustee John Mays (**EXHIBIT G**).

42. On December 14, 2015, Alexander spoke with Councilmember Philip Kingston regarding his concern that statements by Gottschalk to the Dallas City Council on December 2, 2015, were false and misleading. Alexander also discussed his concern that long-time trustees Gerald Brown and John Mays were complicit with trustees' concealment of crimes committed by System executives during 2002, and offered to provide documents substantiating his concern. Kingston stated he would speak with City Councilmembers, and call back – Kingston never did.

43. On February 2, 2016, Alexander spoke with Councilmember Lee Kleinman, again regarding his concern that statements by Gottschalk to the Dallas City Council on December 2, 2015, were false and misleading. Alexander also discussed his concern that long-time trustees Gerald Brown and John Mays were complicit with Board concealment of crimes committed by System executives during 2002, and offered to provide documents substantiating his concerns. Kleinman stated he would contact the System's investigative law firm, Diamond McCarthy, who would then contact Alexander – Diamond McCarthy never called (**EXHIBIT H**).

44. On April 22, 2016, Dallas Mayor Rawlings announced that Councilmember Lee Kleinman resigned his position as Vice Chair of the System's Board. Rawlings stated that "due to his fiduciary duty as a trustee he (Kleinman) was conflicted from advocating for some of the tougher positions that may need to be taken by the City."

45. On May 5, 2016, System executive director Kelly Gottschalk, along with System General Counsel Joshua Mond, briefed the State of Texas Pension Review Board ("PRB") on

matters regarding the System. In response to questions asked by members of the PRB, System executives responded as follows:

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

However, payment authorized by System executives only weeks earlier to criminal defense attorney Nicole Knox (discovered through Public Information Requests submitted by Alexander) would strongly suggest otherwise. It is important to note System trustees knew or should have known public statements by Gottschalk to the Dallas City Council (months earlier) and now the Texas Pension Review Board were false or misleading, but trustees once again chose to simply look the other way. Confronted with a public relations nightmare, and the real possibility that police and fire trustees would lose control of the fund to city officials, the System’s Board refused to take action against long-time trustees Gerald Brown and John Mays known complicit in crimes committed by former System executives during 2002, and known by System fiduciaries to have signed-off on most if not all of the risky real estate investments made during former System Administrator Richard Tettamant’s decades-long administration.

46. On November 10, 2016, the System's Board held a regular meeting during which State Senator John Whitmire advised trustees on how to battle Dallas Mayor Rawlings before the state legislature. Whitmire spoke regarding governance, and the importance of keeping control of the System's Board and its investments away from the city. Days later, the System hired Senator Whitmire to lobby on its behalf during the state's 2017 legislative session.

47. On December 30, 2016, Dallas Mayor Rawlings announced he had requested the Texas Rangers launch an investigation into conduct he believed "may rise to the level of criminal offenses." Rawlings stated, "anyone brazen enough to commit crimes that harmed those who sacrifice so much to keep our city safe must be brought to justice." Rawlings also said he had worked in "close cooperation" with the FBI regarding the pension woes. The FBI earlier this year executed a search warrant on the offices of a former System investment advisor, CDK Realty Advisors, LP.

48. On December 31, 2016, retired Sgt. Pete Bailey, President of the Dallas Police Retired Officers Association, stated the following on social media:

- "Well ladies and gentlemen, one of the biggest questions on my mind of late has been: why in the world after being named as a defendant in a law suit by the Mayor would the attorney's [sic] paid by the DPF Board not even attempt to oppose the TRO requested by the Mayor?"
- "After all, the ethical obligation is to provide the best possible defense for their client. I finally got the answer. The reason was to protect the Boards [sic] standing in another law suit which was not disclosed."
- "I can only speculate on which suit it could be since our "Transparent" board has not informed us of any other action they initiated or are defending against. I suspect it is the case they filed against a citizen and former contract fraud examiner Columbus Alexander which was filed in July of this year and designed to keep the citizen quiet by suing him into silence."
- "The suit contains information that questions the ethical and legal actions of the board, and is generally very negative regarding the behavior of some members of past boards,

and administrator(s) Tettamant and Rohan. I further suspect this is actually where the Mayor came up with his idea to suggest potential criminal behavior in conjunction with other media information regarding the possible FBI investigation. Cause No. 416-02718-2016, Collin County, Texas, 416th Judicial District.”

49. On January 13, 2017, *the Dallas Morning News* published an article headlined “Meet the fraud examiner who has hunted Dallas’ police and fire pension system for 15 years.” In this article, *the News* reported “Some major names are now looking into how the failing Dallas Police and Fire Pension System spiraled out of control. There’s the FBI. And the Texas Rangers. And Diamond McCarthy, a national law firm hired by the pension system’s current administration. But the name that has hunted the pension system the longest and with the most intensity is one you probably don’t know: Sandy Alexander, a private forensic accountant with a personal passion to expose what he believes was a fraud perpetrated on the public.”

50. On January 20, 2017, *the Dallas Morning News* reported “a federal grand jury is weighing evidence in a criminal case relating to Dallas’ troubled police and fire pension fund, according to the fund’s lawyers. Federal investigators have been looking into the Dallas Police & Fire Pension System for at least a year. In April, FBI agents streamed into its headquarters to serve a search warrant on the investment firm, CDK Realty Advisors, that managed many of the fund’s investments and shared its building.” A spokesperson for the System’s executive director, Kelly Gottschalk, said she declined to comment.

51. On January 25, 2017, the Dallas City Council voted unanimously to approve a resolution noting that “...the System has taken steps that include allowing the System and undisclosed investments to be run by current and former employees who are not fiduciaries of the System, making board decisions without properly posting agendas that adequately describe items to be discussed or actions to be considered, as required by law, and incurring wasteful, uncontrolled, and high administrative expenses.” (**EXHIBIT I**)

52. On January 30, 2017, *the Dallas Observer* published an article headlined “Cops and firefighters, please look hard at your pension fund.” In this article, the Observer reported the System’s lawsuit against Alexander, stating “if you read Alexander’s counter-complaint, you will see that the issues of honesty and transparency run right up into today and involve the current management of the System and members of the board,” noting “some of his evidence (obtained through public information requests) suggests the pension system’s use of an outside law firm to investigate wrongdoing is a sham designed to do just the opposite - to make sure instead that no publicly discoverable documents or evidence will ever be produced.”

53. Leading up to the 2017 legislative session, negotiations between the City and the System commenced in earnest, with the primary negotiating points being how the System would be governed and how the City’s financial obligations to the pensioners would be funded and/or adjusted. The Texas House of Representatives assigned a committee to look at legislative solutions and to facilitate discussions between the City and System.

54. The strife and uncertainty over the System’s future led to a form of panic among the pensioners, with many withdrawing six-figure sums from their DROP (Deferred Option Retirement) accounts far earlier than the System and its investment advisors had anticipated. This created a liquidity crisis, since much of the DROP account funds were not held in easily liquidated cash or securities, but had instead been used to purchase the speculative, high-risk real estate and private equity investments that are at the center of the System’s financial woes.

55. Throughout 2016, System executives faced mounting pressure from pensioners, the City of Dallas, the State of Texas, news media, pending litigation, and criminal investigations by the FBI and Texas Rangers, with each new pressure applied by one party generating media publicity and an equal or greater response from another party.

56. With the eyes of Texas already upon them, the last thing System executives wanted was an informed and skilled watchdog like Alexander closely scrutinizing their actions and dutifully informing the curious public.

The System's Aggressive Stance Against Public Transparency

57. In fact, the System and the Individual System Defendants were so fearful of public scrutiny, they moved to censure and attempted to force the resignation of a city appointed Board member for discussing System financial woes and refused to provide him public information in response to his written request, resulting in him filing a court petition against the System to access documents relevant to the performance of his official duties as a Board member (**EXHIBIT J**).

58. On March 13, 2016, Philip Kingston, a Dallas City Council member and member of the Board of Trustees, was interviewed on WFAA-TV in Dallas, and discussed some of the distressed System investments and their detrimental impact on System finances, which could in turn impact pensioner payments.

59. On March 24, 2016, at the following System Board meeting, Board Chairman Lt. Samuel Friar raised the possibility of censuring Kingston for his public comments and placed the matter on the April 1, 2016 agenda for discussion by the Board.

60. The following day, Kingston requested 15 categories of documents from Defendants Gottschalk and Mond that were relevant to his duties as a member of the Board. He attached a copy of a relevant Texas Attorney General Opinion KP-0021, which states that “a member of a governing body has an inherent right of access to the records of that body when requested in the member’s official capacity and for the member’s performance of official duties.”

61. Several days later, System executives Gottschalk and Mond responded to Kingston’s request with what his court filing described as “a cherry-picked selection of redacted documents responsive to certain categories of his requests.” Chairman Friar explained that the

System was withholding “sales contracts, sales data, names of brokers, prospects or anything else that is sensitive.” There is no explanation for what makes a document “sensitive” or who decides whether any particular document meets that nebulous criteria. Many, if not all, of these categories of documents are plainly and indisputably available to the public under the TPIA, and yet they were aggressively withheld from Dallas City Council appointed trustee Kingston.

62. At the April 1, 2016 special meeting, police and fire trustees demanded a written apology from Kingston, demanded that he withdraw his request for information, and instituted a new policy to restrict System Board member’s future access to System information (**EXHIBIT K**).

63. Alexander was present at this meeting and was shocked to learn that information was being withheld from City Council appointed trustees and concerned by the aggression with which police and fire Board members responded to requests for information it did not want Dallas city officials or the public to examine.

Alexander’s Public Information Act Requests

64. On April 4, 2016, federal investigators served a warrant on the offices of former System investment advisor, CDK Realty Advisors, LP. According to *the Dallas Morning News*, System executive Kelly Gottschalk stated she welcomed “any look into the pension fund’s past,” noting that “we’ve heard loud and clear they want us to look backwards to see if there was any wrongdoing,” and “people want to make sure we’ve learned from our mistakes and are holding people accountable.”

65. On April 6, 2016, encouraged by System executive Kelly Gottschalk’s comments, Alexander again began requesting information from the System pursuant to the Texas Public Information Act. Information requested by Alexander related primarily to payments made by the

System, and contracts, billings and payments to various attorneys, law firms, accounting firms and investigators.

66. For each of the first several Public Information Requests submitted by Alexander, the System made timely and appropriate responses. Some of those responses came directly from Joshua Mond, the System's General Counsel, while some came from Marie Rovira, an associate attorney of Messer, Rockefeller & Fort, PLLC, an outside law firm that the System engaged for certain purposes, including System responses to Public Information Act requests (**EXHIBIT L**).

67. On May 18, 2016, when Alexander's information requests became burdensome to the System's executive staff, and began to hone in on issues that could exacerbate their public relations problems, System executives Gottschalk, Mond, and Loveland reacted aggressively. System executives abruptly stopped all work on Alexander's information requests pending a teleconference regarding Alexander planned for later that week (**EXHIBIT M**).

68. On May 19, 2016, Alexander submitted a Public Information Request to the System for all agreements, billings and payments to Julie Fort, Attorney, PLLC (just as he had for at least six other attorneys, law firms, accounting firms and investigators) after seeing payments to "Julie Fort, Attorney, PLLC" on the System's financial documents (**EXHIBIT N**).

69. On May 20, 2016, System executives Mond, Loveland, and Gottschalk held a meeting to discuss Public Information Requests submitted by Alexander to include attorney Julie Fort's law firm, and the subject of Alexander's May 19th request for information. Upon information and belief, this meeting resulted in an understanding between System executives Joshua Mond, Summer Loveland, and Kelly Gottschalk and attorney Fort to silence Alexander, first through a demand letter, and, if necessary, through the filing of a lawsuit.

70. On May 20, 2016, after meeting with System executives Joshua Mond, Summer Loveland, and Kelly Gottschalk to discuss Alexander, recently retained attorney Julie Fort dug

through her files, found a hastily copied 2002 Settlement Agreement that Alexander had given her in confidence during 2012.

71. On May 23, 2016, just two business days later, attorney Julie Fort sent a demand letter (on Messer, Rockefeller & Fort letterhead) demanding Alexander withdraw his information requests, and alleging the requests were a violation of the 2002 Settlement Agreement between the System and Alexander (**EXHIBIT O**).

Julie Fort's Breach of Confidential Client Information

72. Some might wonder how Julie Fort, an outside attorney only recently engaged by the System, would be able to identify and access a 14-year-old settlement agreement between the System and Alexander that the System's own executive staff seemed unaware of - but Alexander didn't wonder.

73. On or about May 21, 2012, Alexander was engaged by the law firm of McKamie Krueger, LLP, and then City of Duncanville Attorney Julie Fort, to provide forensic accounting services in support of an anticipated lawsuit. At that time, attorney Julie Fort was employed by McKamie Krueger, LLP, whose client was the City of Duncanville, Texas (**EXHIBIT P**).

74. On August 30, 2012, in preparation for his deposition, Alexander had a lengthy conversation with attorney Julie Fort in which he confided to her that he was sued by the System years earlier as a result of conflict with its officials that occurred during a fraud examination. He then provided attorney Fort with a paper copy of the 2002 Settlement Agreement by and between the System and Alexander (**EXHIBIT Q**).

75. Several months later while Alexander's work continued, attorney Julie Fort was abruptly severed from the law firm McKamie Krueger, LLP, and was specifically instructed by her employer not to take anything, specifically the Main Station Duncanville file which included information regarding Alexander and his work. Soon after, attorney Julie Fort began working for

the Messer Law Firm, which would become known as Messer, Rockefeller & Fort, PLLC. During early 2016, attorney Julie Fort by and through her firm, Julie Fort, Attorney, PLLC, and on behalf of her new law firm, Messer Rockefeller & Fort, PLLC, began representing the System with oversight as requested by System executives to Public Information Act requests.

System Executives Stifling Alexander's Free Speech Rights

76. Alexander withdrew his request. Even though he knew the 2002 Settlement did not prohibit him from making TPIA requests, even though he knew that nobody currently at the System had any recollection or copy of the 14-year-old settlement document, even though he knew that Julie Fort stole the 2002 Settlement Agreement from her prior employer, and even though he knew that Julie Fort did not have permission to use attorney-client privileged information acquired during her representation of the City of Duncanville against him in this case (**EXHIBIT R**).

77. During the next several weeks, System attorney Julie Fort's law firm threatened Alexander again following public information inquiries from Alexander's wife regarding the System's current administration and their attorneys (**EXHIBIT S**). Alexander's wife was not a party to the 2002 Settlement Agreement, or any other contract with the System.

78. On September 7, 2016, the state's Attorney General issued Ruling OR2016-20208 in response to a request for exemption issued by System attorneys on July 1, 2016. At that time, attorney Marie Rovira of the law firm Messer Rockefeller & Fort argued that Alexander's wife should not be allowed access to System information publicly available upon request to almost anyone else under the Texas Public Information Act. In its ruling, the Attorney General ordered the immediate release of government records requested by Alexander's wife. Days later, System attorneys sued the Attorney General rather than comply with the AG's ruling which they requested (**EXHIBIT T**), just as they have in at least ten other currently active cases to avoid releasing public information to citizens and the news media.

79. On June 23, 2016, Gottschalk, Mond, Loveland, and Fort, to implement the silencing strategy they had formulated during their May 20th meeting, filed a lawsuit against Alexander under the pretense of acting on behalf of the System. Attorney Julie Fort signed the petition on behalf of her new law firm, Messer, Rockefeller & Fort, PLLC, and attached as an exhibit to the lawsuit Alexander's copy of the 2002 Settlement Agreement, given to attorney Julie Fort in confidence by Alexander during a 2012 pre-deposition meeting, stolen by attorney Julie Fort from her old law firm when she was abruptly severed, and used by Attorney Julie Fort in this lawsuit without the knowledge or consent of her former client, the City of Duncanville, Texas **(EXHIBIT U)**.

80. It is important to note that from Alexander's first 2016 information request on April 6, 2016, until almost three months after this lawsuit was filed, not a single Board meeting agenda or meeting minutes included an entry that would indicate the Board discussed or was even made aware of its lawsuit against Alexander. System executives Kelly Gottschalk, Joshua Mond, and Summer Loveland were staff, but in collusion with attorney Julie Fort, pretended to be acting on behalf of an unknowing Board, thus shrouding themselves under the color of law.

81. Gottschalk, Mond, and Loveland were fully aware of their lack of authority to file a lawsuit on the System's behalf. In the six months prior to the lawsuit against Alexander, the Board voted two separate times in open session to authorize the Executive Director to pursue litigation: January 14, 2016 and March 10, 2016 **(EXHIBIT V)**. Defendants Gottschalk, Mond, and Loveland were present and integrally involved in both meetings, and had actual knowledge that Board authority is required to file a lawsuit on behalf of the System. Defendant Fort was not present, but has been licensed to practice law since 1995, and exclusively represents local governments. She unquestionably knows or should know that Board authority is required to file a lawsuit on behalf of a governmental entity.

82. On September 8, 2016, the System's Board of Trustees held a regular meeting, and for approximately one-hour and forty-minutes met in closed executive session to discuss legal issues. It was during this meeting that the Board discussed *for the first time* information requests submitted by Alexander during 2016, the filing of this lawsuit by System executives and their attorneys without Board discussion or approval, and allegations contained in Alexander's counterclaim. Rather than chastising the System executives for aggressively and falsely asserting themselves as fiduciaries by filing this lawsuit without the prior knowledge, discussion, or approval of the System's Board, the Board either actually or passively ratified their actions by doing nothing to retract it, making the System itself culpable for the executives' actions.

83. On October 13, 2016, long-time System fiduciary John Mays resigned. First elected trustee in 1981, Mays surprised many trustees weeks earlier when, without explanation, he abruptly walked away from the System's board meeting of September 8, notably, just minutes before the Board was to discuss Alexander's counterclaim regarding 2002 criminal activity by former System executives, and System trustees both current and former.

Conclusion

84. This lawsuit differs from most in that it is not primarily a lawsuit, at all. It is blatant *lawfare*, defined by Wikipedia as "a form of asymmetric warfare, consisting of using the legal system against an enemy, such as by damaging or delegitimizing them, tying up their time, or winning a public relations victory." This lawsuit against Alexander was known by System executives to have no legitimate legal purpose, and served only to suppress Alexander's free speech and protect System executives and their highly-compensated jobs at a time when pensioners, the City of Dallas, the State of Texas, news media, law enforcement, and the taxpaying public were finally giving much-deserved scrutiny to the System.

85. As Frederick Douglass said, “To suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker.” In this case, it’s not just Alexander who was damaged by the unconstitutional suppression of his right to free speech; it was the Dallas’ police officers and firefighters whose retirement futures were squandered by System executives, the City of Dallas whose financial future remains uncertain, and state regulators and legislators who did not have the benefit of the information that Alexander could have provided during their pivotal restructuring of the System’s finances and governance.

G. DECLARATORY JUDGMENT

Alexander brings this action, in part, under the provisions of Chapter 37 of the Texas Civil Practice & Remedies Code. Pursuant to 37.004(a), Alexander is a person whose rights, status, or legal relations are affected by a statute (namely the TPIA) and a contract (namely the Settlement Agreement). Alexander seeks a judicial determination of whether he forfeited his rights to make lawful requests under the TPIA when he signed the 2002 Settlement Agreement.

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

Alexander brings a counterclaim seeking damages and against Defendants for committing acts, under color of law, with the intent and for the purpose of depriving Plaintiff of rights secured under the Constitution and laws of the United States; retaliating against Plaintiff for his exercise of constitutionally protected speech; and for refusing or neglecting to prevent such deprivations and denials.¹ This right is protected by 42 USC §1983, which states, in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

¹ Alexander also asserts violation of Texas Constitution Article I, Section 8, but is seeking no damages for said violation. There is no recognized cause of action allowing recovery of damages for violations of the Texas Constitution, but Alexander alleges that the System has violated rights that the Texas Constitution purports to protect.

Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

All counter-defendants were acting either under the color of state law or based on the joint action of the System and private parties colluding and conspiring together to deprive Alexander of his constitutionally-protected right of free speech.

Pursuant to this statute and Rule 47(c) of the Texas Rules of Civil Procedure, Alexander brings an action for actual and punitive damages in an amount exceeding \$1,000,000.00.

I. ATTORNEY FEES

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

PRAYER

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

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

Respectfully submitted,
MONEY LAW FIRM

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

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the counsel of record in the above-styled matter in accordance with the applicable Rules of Civil Procedure on October 27, 2017.

VIA ELECTRONIC FILING AND EMAIL

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