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JULIE YVONNE FORT

Messer Law Firm, PLLC

Primary Practice Location: Mckinney, TX

6351 Preston Rd Ste 350
Frisco, TX 75034

Practice Areas: Government/Administrative

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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: Julie Fort
Messer Rockefeller & Fort PLLC
6351 Preston Road Suite 200
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 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.

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.

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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: 
Brent A. Money
Texas Bar No. 24049530

2606 Lee Street
Greenville, Texas 75401
Phone: (903) 455-1600
Fax: (888) 756-4746
Email: brent@moneylawfirm.net

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


CERTIFICATE OF SERVICE

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

VIA ELECTRONIC FILING AND EMAIL

WM. ANDREW MESSER - andy@txmunicipallaw.com
JULIE Y. FORT - julie@txmunicipallaw.com
BRETT GARDNER - brett@txmunicipallaw.com
MESSER, ROCKEFELLER & FORT, PLLC
6371 Preston Road, Suite 200
Frisco, TX 75034
(972)668-6400 – TELEPHONE
(972)668-6414 – FACSIMILE

DAVID H. HARPER - David.Harper@haynesboone.com
BENJAMIN L. MESCHES - Ben.Mesches@haynesboone.com
SALLY DAHLSTROM - Sally.Dahlstrom@haynesboone.com
HAYNES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
214-651-5000 (telephone)
214-200-0463 (facsimile)



BRENT A. MONEY