

CAUSE NO. DC-C2017-00365

KATRINA AHRENS, S.A., and M.A.,	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
DALLAS POLICE ASSOCIATION,	§	
DPA’S ASSIST THE OFFICER	§	
FOUNDATION, INC., FREDERICK	§	
FRAZIER, CITY OF DALLAS, ZAK	§	18th JUDICIAL DISTRICT
PRODUCTS II, LLC, MICHAEL MATA,	§	
BOB GORSKY, LYON, GORSKY &	§	
GILBERT, LLP, and RONALD C. DEVINE,	§	
	§	
Defendants,	§	
	§	
-and-	§	
	§	
JUSTIN DART,	§	
	§	
Intervenor.	§	JOHNSON COUNTY, TEXAS

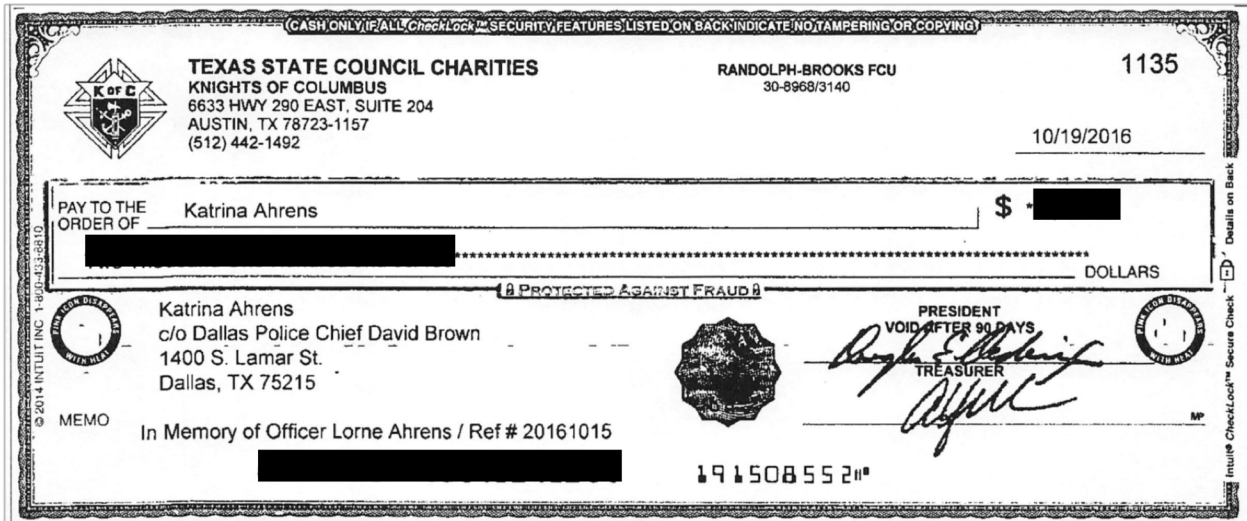
PLAINTIFES’ FIFTH AMENDED PETITION

Plaintiff Detective Katrina Ahrens (“Det. Ahrens”), and her minor children S.A. and M.A., file this Fifth Amended Petition against Defendants: (1) Dallas Police Association (the “DPA”); (2) DPA’s Assist the Officer Foundation, Inc. (the “ATO”); (3) Frederick Frazier; (4) the City of Dallas (the “City”); (5) ZAK Products II, LLC (“ZAK”); (6) Michael Mata; (7) Bob Gorsky; (8) Lyon, Gorsky & Gilbert, LLP (“LGG”); and (9) Ronald C. Devine as follows:

STATEMENT OF THE CASE

Det. Ahrens is a detective with the Dallas Police Department (“DPD”). Immediately after her late husband, Senior Corporal Lorne Ahrens of the DPD, was murdered during the July 7, 2016 sniper attack in downtown Dallas, the public began graciously donating their hard-earned money to her family and to the families of the other four officers who lost their lives that night. The vast majority of these gifts were made to her and the others through the ATO, a non-profit entity operated by the DPA, because City leaders, and the ATO’s and the DPA’s leaders, Frazier and Mata, solicited the public for donations on the ATO’s behalf to be provided directly to the families with no strings attached. People selflessly mailed checks and cash to Det. Ahrens and donated funds to her and her family through the ATO’s website.

It has been more than two years since Det. Ahrens lost her late husband and her children lost their father. And despite the ATO taking on the role as the intermediary between donors and the families of the five fallen officers, Det. Ahrens and her family have not received a dime of the donations made through the ATO. Instead, it has come to light that the ATO has stolen and cashed checks written to Det. Ahrens personally, an example of which is shown below:



This check is one of many made payable directly to Det. Ahrens and her family, as well as other fallen officers' loved ones, that the ATO illegally endorsed, deposited in its bank account, and concealed until its own bank hired an auditor who exposed this scheme.

The ATO has also “lost” a substantial sum of the public’s cash donations and is holding donations meant for Det. Ahrens and her family hostage, refusing to transfer them to her unless she agrees to the ATO’s conditions, like keeping quiet and releasing the ATO and its leaders from all liability. As part of its scheme, and with the assistance of its attorneys—attorneys who concurrently represented Det. Ahrens at the time—the ATO even entered into a contract with the City to illegally intercept, open, read, and seize mail directed to Det. Ahrens and her family, then deposit any money within such mail into the ATO’s bank account without Det. Ahrens’ knowledge or consent. Although the ATO signed the contract in October 2016, its Co-Chairman and DPA President Mata falsely represented to the media in late June 2017 that the mail “has nothing to do with us”¹

Det. Ahrens has been demanding that the ATO transfer the public’s donations to her for nearly two years, but the ATO has repeatedly refused. It has actively concealed records of the donations from Det. Ahrens and the public, seemingly because it knows transparency will reveal further reprehensible conduct by the ATO—a charitable organization—and its leaders. Indeed, Det. Ahrens only learned of the ATO’s theft of checks made payable directly to her from a third party to this lawsuit; that is because the ATO has repeatedly refused to comply with its discovery obligations. The ATO even deposited numerous checks made payable to a completely unrelated charity into its own bank account. And Det. Ahrens recently learned the ATO has been transferring

¹ <https://www.nbcdfw.com/news/local/DFW-Widow-of-Fallen-Dallas-Officer-Files-Lawsuit-431220203.html> (last visited May 10, 2018).

thousands of dollars from its own bank account to the DPA's bank account—i.e., it has commingled the donations it is holding hostage with the police union's funds.

DISCOVERY CONTROL PLAN

1. Det. Ahrens intends to conduct discovery under a Level 3 Discovery Control Plan.

PARTIES

2. Det. Ahrens is an individual residing in Johnson County, Texas. She moved with her family to Johnson County in 1979. She grew up in Johnson County, attending elementary school, middle school, and high school at Burleson Independent School District schools. She moved from Johnson County after high school but returned in 2005 where she has continuously resided since.

3. S.A. and M.A. are the minor children of Det. Ahrens and Sr. Cpl. Lorne Ahrens.

4. The DPA is a Texas nonprofit corporation, a union, with a principal place of business in Dallas County, Texas. The DPA has been served with Citation and appeared in this case.

5. The ATO is a Texas nonprofit corporation with a principal place of business in Dallas County, Texas. The ATO has been served with Citation and appeared in this case.

6. Frazier is an individual residing in Collin County, Texas. He has been served with Citation and appeared in this case.

7. The City is a municipal agency with its principal place of business in Dallas County, Texas. The City has been served with Citation and appeared in this case.

8. ZAK is a Delaware limited liability company with its principal place of business in Dallas County, Texas. ZAK has been served with Citation and appeared in this case.

9. Mata is an individual residing in Collin County. He has been served with Citation and appeared in this case.

10. Gorsky is a Texas attorney with his principal place of business located at 12001 N. Central Expressway, Suite 650, Dallas, Texas 75251. He has been served with Citation and appeared in this case.

11. LGG is a Texas law firm at which Gorsky is a general partner. Its principal place of business is located at 12001 N. Central Expressway, Suite 650, Dallas, Texas 75251. LGG has been served with Citation and appeared in this case.

12. Ronald C. Devine is an individual residing in Fairfax County, Virginia. He has been served with Citation and appeared in this case.

JURISDICTION AND VENUE

13. Jurisdiction is proper in this Court because the amount in controversy exceeds the minimum jurisdictional threshold of this Court. The damages sought are within the jurisdictional limits of the Court. Pursuant to Rule 47(c), Det. Ahrens seeks monetary relief over \$1,000,000. She also seeks injunctive relief as described below. The Court granted her a temporary injunction on February 23, 2018.

14. Venue is mandatory in Johnson County under TEX. CIV. PRAC. & REM Code §§ 15.004, 15.005, and 15.017. Det. Ahrens and her children resided in Johnson County at the time of the accrual of their invasion of privacy claims, and elect Johnson County—their longtime county of residence—as the venue for this case. Plaintiffs’ claims in this Fifth Amended Petition do not involve an “express trust” as defined in TEX. PROP. CODE § 111.004, or any trust subject to the Texas Trust Code. *See* TEX. PROP. CODE § 111.003. This suit is neither against a trustee nor “concerning” a trust, as that term is used in the Texas Trust Code. *See* TEX. PROP. CODE § 115.001. In this Fifth Amended Petition, Plaintiffs makes no claim to any donations or other gifts residing in a “trust” account.

FACTUAL BACKGROUND

I. Det. Ahrens' husband, DPD Sr. Cpl. Lorne Ahrens, is murdered in the line of duty during the July 7, 2016 sniper attack in downtown Dallas.

15. Det. Ahrens is a detective in the Crimes Against Persons Division of the DPD and a longtime resident of Johnson County. She originally moved to Burleson, Texas in 1979 with her family, and attended elementary, middle, and high school at Burleson Independent School District schools. After graduating from Burleson High School, Det. Ahrens moved away and met her late husband, Sr. Cpl. Ahrens, who she married in 2004.

16. Det. Ahrens moved back to Burleson in 2005 to raise a family with Sr. Cpl. Ahrens. Sadly, their marriage was cut short. On July 7, 2016, after over 14 years of service with the DPD, Sr. Cpl. Ahrens was shot numerous times in the line of duty during an ambush on a peaceful protest in downtown Dallas. He passed away the following morning, leaving behind Det. Ahrens and their two minor children, S.A. and M.A., who continue to reside in Burleson.

17. Four other officers (three DPD officers and one Dallas Area Rapid Transit officer) were killed during the attack, and nine officers and two civilians were injured. The July 7, 2016 ambush was the deadliest incident for law enforcement officers in the U.S. since the September 11, 2001 attacks. It occurred just days after the killing of two African American men by police officers in Louisiana and Minnesota, and during a peaceful protest organized in response to those killings. Unsurprisingly, the attack garnered extensive media attention, both nationally and abroad. Sadly, Defendants saw this tragedy as an opportunity to benefit themselves.

II. Frazier, Mata, the ATO, and the DPA scheme to benefit themselves.

18. Frazier, Mata, the ATO, and the DPA were and are the ringleaders of the avalanche of unlawful actions taken against Det. Ahrens' family (and the other families) after the shooting. The DPA is the self-proclaimed oldest and largest Dallas police union, and the ATO is its

charitable arm.² They share office space, employees, and volunteers (paid via time donated by other officers), and generally act as one entity. Veteran DPD officers Frazier and Mata have controlled the ATO and the DPA at all relevant times and have directed and personally participated in both entities' actions following the attack.³

A. Frazier, Mata, the ATO, and the DPA seek public donations they claim are for the benefit of the families of the five fallen.

19. Directly after the attack, and as part of a scheme to benefit from it, Frazier, Mata, the ATO, and the DPA inserted themselves into the front line of the response. From the beginning, they unilaterally interposed the ATO between the many generous donors to the families of the five fallen and the families themselves. They setup an outlet for public donations through the ATO's website and began making local and national media appearances appealing to the general public for charitable donations specifically for the benefit of the families of the five fallen officers. They also made these solicitations on social media, at events, and through word-of-mouth marketing.

20. The solicitation for contributions from the public contained on the homepage of the ATO's website stated:

As Chief Brown expressed his heartbreak over the loss of five fallen 'Guardians of Freedom', the City of Dallas mourns. Five families will not see their loved ones again, while the reasoning behind their loss goes beyond reason.

We owe it to the living to remember. The Dallas Police Department, on behalf of the Assist the Officer Foundation, thanks you for remembering them, with your prayers, with your support, with your contributions.

DONATE NOW

² Det. Ahrens has been a dues-paying member of the DPA since 1999, including at the time of Sr. Cpl. Ahrens' death. Sr. Cpl. Ahrens was also a dues-paying member of the DPA.

³ Frazier and Mata have been co-Chairmen of the ATO since before the shooting, Frazier advanced from his position as the First VP of the DPA when the shooting occurred to its interim President shortly afterward, and Mata is currently the DPA's President. Frazier is also the Chairman of the DPA's political arm, the Dallas Police Officer's Political Action Committee.

To make a donation, click the ‘Donate Now’ button or mail your check/money order to the address below.⁴

21. No solicitation made by Frazier, Mata, the ATO, or the DPA, including the website solicitation, placed a restriction on how the donated funds would be turned over to the families of the five fallen officers. The public solicitations simply represented any donations would be divided among the families of the five fallen officers and were for their benefit—not Frazier’s, Mata’s, the ATO’s, or the DPA’s benefit.

B. Frazier, Mata, the ATO, the DPA, and their long-time attorneys, Gorsky and LGG—who were also Det. Ahrens’ attorneys at the time—discuss their plan to impose unilateral restrictions on donations and steal Det. Ahrens’ mail and the donations within it.

22. The public’s response to the attack was very generous. Shortly after the shooting, individuals and companies raised millions for the families of the five fallen officers. But while the public donated its hard-earned money, Frazier, Mata, the ATO, and the DPA continued to act on their scheme to benefit themselves against Plaintiffs’ interests.

23. At least as early as August 2016, and without Det. Ahrens’ knowledge or consent, Frazier, Mata, the ATO, the DPA, and the ATO and DPA’s longtime attorneys, Gorsky and LGG, began discussions with the City regarding entering into an illegal contract whereby the City—i.e., Det. Ahrens’ employer—would intercept and deliver Det. Ahrens’ mail to the ATO for the purpose of the ATO opening, reading, and depositing any donations it found within the mail into the ATO’s bank account, regardless of who the donations were for. Stated differently, numerous individuals and entities Det. Ahrens trusted set out to steal her and her family’s mail and its contents, including money, behind her back.

⁴ This solicitation was on the homepage of the ATO’s website at least through late January 2017, and the solicitations for donations to the ATO using the July 2016 shooting have continued well past then. *See* ¶ 44 (discussing September 2017 golf tournament).

24. During this time Frazier, Mata, the ATO, and the DPA continued, as part of their overall scheme, to devise their plan to impose their own unilateral restrictions on the public's donations, contrary to their solicitations for those donations. They did all of this with the assistance and representation of Gorsky and LGG who, while representing Frazier, Mata, the ATO, and the DPA on the one hand, simultaneously represented Det. Ahrens on the other hand—a clear breach of their fiduciary duties. Indeed, Gorsky and LGG had represented Det. Ahrens and her family for many years, including in connection with drafting her Will after the shooting, which was signed in November 2016, and in connection with issues related to the autopsy report and death scene images of Sr. Cpl. Ahrens. In fact, they even drafted Sr. Cpl. Ahrens' Will in 2006, which left all of his property to Det. Ahrens.⁵ This makes Gorsky and LGG's assistance to Frazier, Mata, the ATO, and the DPA even more disloyal to Det. Ahrens—they actively and knowingly advised against Sr. Cpl. Ahrens' and Det. Ahrens' wishes that they themselves documented.

25. Gorsky and LGG did not inform Det. Ahrens of the discussions leading up to or the ultimate contract between the ATO and the City to steal her mail. They also kept secret their other conduct contrary to Det. Ahrens' interest, such as advising Frazier, Mata, the ATO, and the DPA regarding the ATO's self-imposed restrictions on public donations. Showing he knew this conduct was improper, Gorsky has since even falsely claimed he “was not involved in the trust decisions” despite clear evidence to the contrary. In short, Gorsky and LGG chose to advocate directly against Det. Ahrens' interests and wishes without her knowledge and in favor of their other, more long-standing clients.⁶

C. The ATO and the City contract behind Det. Ahrens' back to take, open, and read her mail then deposit donations within it into the ATO's bank account.

⁵ Det. Ahrens has been granted Letters Testamentary for the Estate of Sr. Cpl. Ahrens and is the Independent Executrix of the Estate.

⁶ Gorsky and LGG claim they have represented the DPA for 40 years. They have represented the ATO for well over a decade.

26. Frazier, Mata, the ATO, the DPA, Gorsky, and LGG’s clandestine discussions and negotiations with the City ultimately led to the ATO and the City entering into a contract, labeled a “Donations Management Agreement”, Administrative Action 166801 (the “Illegal Agreement”), which states it has an effective date of October 21, 2016.⁷ Under the Illegal Agreement, the ATO and the City agreed the City would intercept and then deliver mail directed to Det. Ahrens and her family (as well as mail addressed to the families of the other four fallen officers, the fallen DART officer, and the injured officers) to the ATO without her knowledge or consent. The ATO and the City also agreed the ATO would open, read, and record the contents of Det. Ahrens’ mail and deposit any donations found within her mail into the ATO’s bank account, regardless of whether the checks or other form of payment were made payable to Det. Ahrens or her family. Notably, the mail sent to Det. Ahrens often contained personal, sincere, and thoughtful messages that uplifted her spirits and brought her great comfort during a difficult time, but due to the ATO and the City’s theft, it was delayed for months, often resulting in Det. Ahrens missing events honoring her late husband due to lack of knowledge.⁸ The delay even resulted in numerous checks becoming void as expired, which meant donations were lost due to the ATO and the City’s actions.

27. The Illegal Agreement—which notably required the ATO to disburse the donations it seized through opening Det. Ahrens’ mail to the beneficiaries without any restrictions or delay—required the ATO to keep a detailed log of the letters and money it unlawfully seized and stole.

⁷ Ex. A. Interim Chief of Police David Pughes, the City Attorney, and the Assistant City Manager all approved the Illegal Agreement, which also reflects it was “recommended by” Pughes.

⁸ As a specific example, the City and/or the ATO handed Det. Ahrens an open letter on February 22, 2017 from the Martin Luther King Jr. Community Center dated December 22, 2016. The letter requested Det. Ahrens’ presence at an awards gala on January 14, 2017 honoring Sr. Cpl. Ahrens. It also invited her to attend the MLK Parade on January 16, 2017. But because she received the letter two months after it was sent, she was—by no fault of her own—unaware of the gala. And since she was unaware of it, she did not attend. This, of course, reflected negatively on Det. Ahrens who would have gladly attended the gala and parade had she been aware of them.

The log, which the ATO agreed to provide to the City within 90 days of the Illegal Agreement's October 21, 2016 effective date, was to include:

- (a) the amount of the donations;
- (b) the form of the donation (cash, check etc.), and check or tracking number, if any;
- (c) the donor's name and address;
- (d) the donor's designation for the funds;
- (e) copies of all cancelled checks; and
- (f) copies of bank reconciliation statements for the accounts the funds were deposited in.

D. The ATO steals and cashes checks written directly to Det. Ahrens.

28. Although the ATO and the City refused to provide Det. Ahrens the log *of her own stolen mail and its contents*, the Texas Attorney General ordered the City to provide her a copy. It then became obvious why the ATO and the City desired to keep the log private: the log revealed, among other things, that the ATO deposited numerous checks written directly to Det. Ahrens *into its own bank account*—i.e., the ATO stole money from Det. Ahrens and tried to hide that fact.

29. The ATO's own bank was so troubled by this clear theft that it hired a third-party accounting firm to audit the ATO's accounts. The audit revealed not only that the ATO deposited numerous checks written to Det. Ahrens or her family into its own bank account, but also that Det. Ahrens was not the only victim of the ATO's theft. Indeed, the bank confirmed it sent other parties letters similar to the one sent to Det. Ahrens informing her of the theft. These other parties notably included a completely unrelated charitable organization that also solicited donations for the fallen officers' loved ones. Stated differently, the ATO deposited checks written to an entirely different charitable organization that it took from mail that was not meant for it.

30. The ATO's own "report applying agreed-upon procedures" it commissioned from an accounting firm roughly three months after the shooting—which made clear it was not an audit

but merely “procedures” directed by the ATO—even revealed over \$8,000 in cash donations were “missing” as early as September 2016. It also stated that from July 7, 2016 to September 12, 2016: (a) the ATO recorded 584 duplicate donations totaling \$570,763; (b) the ATO’s records failed to include 23 checks totaling \$63,354; (c) the ATO’s deposits were \$2,248 less than what its records indicated; (d) the ATO deposited a check and money order without the donors’ signatures; and (e) many phone donations were allocated equally between the families because the ATO’s records lacked a designation. Notably, the substantial sum of “missing” cash as of only a few months after the attack is only representative of what the ATO actually logged at the time. Det. Ahrens believes the number is much higher than \$8,000 because, on information and belief, Frazier had a stack of possibly hundreds of thousands of dollars in cash lying on his desk shortly after the shooting.

III. Frazier, Mata, the ATO, the DPA, ZAK, and Devine seek to capitalize on Sr. Cpl. Ahrens’ name and likeness without Det. Ahrens’ permission.

31. Around the time Frazier, Mata, the ATO, the DPA, and the City were scheming to control public donations to Det. Ahrens’ family and her mail, they were also working with ZAK and Devine to capitalize on Sr. Cpl. Ahrens’ name.

32. ZAK, a Berkshire Hathaway company, is a Dallas-based provider of auto products to auto service centers and car dealerships across the U.S. It is an official NASCAR partner and has collaborated with the DPD to provide products to the DPD vehicle service center for use on the DPD fleet.

33. Realizing the significant media attention given to the shooting of the officers and seeking to capitalize on Sr. Cpl. Ahrens’ persona after his death, ZAK launched an ad campaign promoting itself as “backing the blue”—i.e., supporting Dallas (and other) police officers.

34. The “ZAK Backs the Blue” marketing campaign focused almost exclusively on the five officers that were killed in the July 2016 shooting and used NASCAR—an extremely lucrative advertising channel for automotive products—as the marketing medium. Rather than wrap a car

primarily with ZAK's logo, ZAK commissioned a ZAK Backs the Blue racecar to be driven by Matt DiBenedetto of BK Racing in the #83 Toyota Camry at the November 6, 2016 NASCAR Sprint Cup race at the Texas Motor Speedway in Fort Worth.

35. Devine was BK Racing's President and individually directed and personally participated in all decisions made in connection with the misappropriation of Sr. Cpl. Ahrens' name.

36. As shown below, the wrap of the #83 car contained, in large black capitalized font, "LORNE AHRENS" and his DPD badge number on top of the car's trunk:



37. The wrap also listed Sr. Cpl. Ahrens' badge number in the replica badge below his name and badge number, and on both rear fenders.

38. ZAK and Devine worked with Frazier, Mata, the ATO, and the DPA on this project. None of them contacted Det. Ahrens to request her permission to use Sr. Cpl. Ahrens' name (or badge number) on the ZAK Backs the Blue car, and she never provided it. Nevertheless, they scheduled an unveiling of the ZAK Backs the Blue racecar to promote it being driven at the AAA Texas 500.

39. The unveiling itself was heavily advertised and was held on November 2, 2016 at Toyota of Dallas. Frazier was in attendance. ZAK advertised the unveiling as an event to honor the fallen officers from the July 2016 attack with the first-ever police-sponsored NASCAR racecar.

40. At the event, ZAK's CEO and the DPD interim police chief gave remarks, ZAK sold raffle tickets for pit passes and ZAK's merchandise, and ZAK showcased and unveiled the ZAK Backs the Blue car. ZAK also offered event attendees the opportunity to take their photo by the racecar, which was owned by Devine's company, BK Racing.

41. Following the promotional unveiling event at Toyota of Dallas, the ZAK Backs the Blue racecar was promoted and driven at the November 6, 2016 NASCAR race at the Texas Motor Speedway, which holds over 180,000 fans. Frazier and Devine were in attendance. The highly popular race was nationally televised and broadcast via radio, which exponentially increased the exposure of ZAK and Devine's use of Sr. Cpl. Ahrens' name.

42. Leading up to the race, and still after the race, ZAK has used images of the ZAK Backs the Blue car to promote itself and its products. Many of these depictions also include Sr. Cpl. Ahrens' name. At the race itself, a representative of BK Racing asked Det. Ahrens' colleague to ask her for permission to use Sr. Cpl. Ahrens' name on a replica die-cast of the car, showing at least BK Racing knew it needed Det. Ahrens' consent to use his name. At the demand of Det. Ahrens, however, the third-party responsible for producing the die-cast replicas has since halted and cancelled production given Det. Ahrens did not consent.

43. Sr. Cpl. Ahrens' Will left Det. Ahrens all of his property. Because Sr. Cpl. Ahrens' persona has commercial value, Det. Ahrens registered a claim with the Texas Secretary of State for use of his name, voice, signature, photograph, or likeness on November 28, 2016. On December 5, 2016, she received confirmation of registration of her claim for use of Sr. Cpl. Ahrens' name, voice, signature, photograph, or likeness from the Texas Secretary of State.

44. This is one example of Frazier, Mata, the ATO, and the DPA's misappropriation of Sr. Cpl. Ahrens' name and likeness. They have used Sr. Cpl. Ahrens' name and likeness without Det. Ahrens' permission in connection with other fundraising events, including a golf tournament

as late as September 25, 2017 at which funds were raised by exploiting Sr. Cpl. Ahrens' name and image. Understanding it needed Det. Ahrens' permission, the ATO asked, but waited until the day of the tournament to do so. She did not consent, but the ATO knowingly and intentionally exploited Sr. Cpl. Ahrens' persona anyway. No portion of these funds raised by displaying Sr. Cpl. Ahrens' name and image without permission have been turned over to Det. Ahrens.

IV. Frazier, Mata, the ATO, and the DPA try to coerce Det. Ahrens into agreeing to their self-imposed restrictions on funds donated to her, and even threaten someone close to her.

45. The ATO is merely an intermediary; a financial conduit between donors and the beneficiaries. As discussed above, all solicitations for donations to the families of the five fallen officers simply asked for donations and stated they would be split amongst the families. There were no restrictions, express or implied on any donor's gift.

46. But Frazier, Mata, the ATO, and the DPA once again imposed their will on Det. Ahrens' family and the other families without authority. Despite the representations made to donors, the ATO—led by Frazier and Mata—decided to hold the donations hostage unless Det. Ahrens agreed to their many self-imposed restrictions on how they would be disbursed. They had no authority to do so.

47. Det. Ahrens tried for many months to resolve these issues privately. But after many attempts, it became obvious Frazier, Mata, the DPA, and the ATO, counseled by Gorsky and LGG, were not going to cooperate. They demanded that Det. Ahrens agree to a non-disparagement clause and release them from any and all liability for their well-documented misconduct, which is still being uncovered despite their refusal to cooperate in the discovery process.⁹

⁹ The ATO has blatantly and unabashedly failed to even remotely comply with its discovery obligations so far in this suit, seemingly with bad-faith intent to conceal the existence of relevant documents from Det. Ahrens.

48. In an attempt to avoid public knowledge of their misconduct, they even threatened a person close to Det. Ahrens that if she were to blow the whistle and file suit, they would spread false and hurtful rumors. Unwilling to concede to their extortionist conduct, Det. Ahrens filed suit. And sure enough, immediately after filing, many negative and nasty posts surfaced on social media libeling Det. Ahrens and her late husband. Det. Ahrens believes these false rumors were initiated by the ATO and the DPA.

49. The amount of donations reported in the media does not correspond with what Det. Ahrens was told she would receive. The few records provided by the ATO to date contain countless inconsistencies, including “missing” cash and stolen checks. Despite Frazier stating in a September 2016 news article that an audit of the public’s donations would take place that week, an audit was never conducted. And although the ATO was required to provide the City with a detailed log of all donations received through the unlawful seizure of Det. Ahrens’ mail by late January 2017 (as discussed above), no log was provided to the City until Det. Ahrens made requests after she learned of the Illegal Agreement.

50. Det. Ahrens lost her husband, and S.A. and M.A. lost their father, over two years ago but still have not received the donations they are so thankful for. Frazier, Mata, the ATO, and the DPA have placed their interests above the Ahrens family’s interests and the donors’ interests and repeatedly sought to impose their will with no legal basis, and with the help of Gorsky and LGG. Det. Ahrens’ family is entitled to the donated funds held by the ATO and the DPA with no strings attached, and to an accounting to determine whether the public’s generous donations are being honored. Det. Ahrens’ family also seeks appointment of an independent auditor to review and investigate the ATO’s financial records.

V. The City’s unlawful retaliation against Det. Ahrens and her children.

51. The City purports to value ethical behavior. For instance, the current City Manager wrote to all City employees:

What saddens me the most is that the ill intent of a few people will damage the public's trust. This criminal activity may cause citizens to question other employees who are dedicated to their jobs. This goes to the very heart of the core value of **Ethics**. I am writing you to be certain you fully understand how critical it is to be ethical. At all times.

As public servants we are held to a higher standard, as we should be. The public trusts us to conduct ourselves in an ethical manner. Our duties and responsibilities to the City may occur from 8:00 am to 5:00 pm but we are public servants 24 hours a day, 7 days a week. Our integrity, ethics, and trustworthiness do not take a break.

If you know of criminal activity or see it: report it! Witnessing illegal activity and not reporting it, is just as criminal. This calls to question your commitment and character as a public servant. That is not the type of employees we are, nor the type of employees we need.

52. Det. Ahrens is long-serving officer with the DPD. After she became aware of what she reasonably believed to be the unethical and unlawful activity described in extensive detail above, she reported the activity to appropriate law-enforcement authorities, including her DPD chain of command, the City Manager, and City Attorney's Office.

53. But rather than thank her for her reporting, the City has taken adverse personnel actions against her, and it would have not done so but for her disclosure of the City's and other Defendants' misconduct.

54. The City has discriminated against Det. Ahrens in comparison to similarly situated employees and has stated reasons for its adverse employment actions against her that are false. For example, the DPD has commenced an investigation into Det. Ahrens' decision not to expressly note in a particular prosecution report that a sexual assault claimant had a history of prostitution. Yet, having worked as a detective investigating sexual assaults for many years, she did not emphasize the victim's prostitution history in accordance with her and her unit's well-established practice. The DPD used the pending investigation as an excuse to remove Det. Ahrens from the detective role she has served in for years. In doing so, Det. Ahrens was told by supervisors that

she had to be removed from her detective role pending the outcome of the investigation. But that stated excuse is false—numerous other DPD officers having similar open investigations continue to act as detectives.

55. Worse, after removing Det. Ahrens from her detective role, the City reassigned her to a position training other police officers in responding to “active shooter” scenarios. The City’s decision is outrageous: Det. Ahrens’ husband was murdered by an “active shooter”; her husband was himself a City employee; and her children with her murdered husband know their father was murdered by an “active shooter.” Yet, among the many positions the City could have put Det. Ahrens in—assuming its decision to do so had not itself constituted unlawful retaliation—it chose the one that would force her to face her husband’s death over and over again, on a daily basis.

56. In further contrast to the City’s treatment of Det. Ahrens, the City has essentially ignored its own and Defendants Frazier and Mata’s misconduct. The City’s retaliation against Det. Ahrens and her children is part of coordinated efforts to compel her to cease enforcing their rights.

57. Within 10 business days after Det. Ahrens learned that the City had taken adverse personnel actions against her, she initiated a grievance in accordance with the City’s rules. To Det. Ahrens’ knowledge, the City has not made any effort to rectify its retaliation against her. Indeed, the City unlawfully took additional adverse employment action against her immediately after she initiated a grievance under the City’s rules.

CAUSES OF ACTION

Count 1: Violations of the Texas Theft Liability Act

(Plaintiffs against the ATO)

58. Plaintiffs incorporate by reference the preceding paragraphs.

59. Det. Ahrens was entitled to possession of the checks and donations made directly to her and her family through title to the personal property and a greater right of possession than the ATO.

60. The ATO unlawfully appropriated Plaintiffs' money with an intent to deprive them of that money and without Det. Ahrens' consent. *See* TEX. PENAL CODE § 31.03. To Plaintiffs' current knowledge, the value of the stolen property was between \$2,500 and \$30,000. *Id.* § 31.03(e)(4). Because the ATO was a public servant at the time of the offense, the theft constitutes a third-degree felony. *Id.* § 31.03(f)(1).

61. Plaintiffs sustained damages as a result. They seek their actual damages, additional statutory damages of \$1,000, attorneys' fees and expenses, pre- and post-judgment interest, court costs, and exemplary damages.

62. Because the ATO's conduct constitutes felony theft in the third degree, the statutory cap on exemplary damages does not apply to Plaintiffs' claim under the Texas Theft Liability Act. TEX. CIV. PRAC. & REM. CODE § 41.008(c)(13). They seek uncapped exemplary damages.

Count 2: Tortious Interference with Gift

(Plaintiffs against the ATO, the DPA, Frazier, Mata, and the City)

63. Plaintiffs incorporate by reference the preceding paragraphs.

64. As described in detail above, the ATO, the DPA, Frazier, Mata, and the City have, by tortious means, intentionally interfered with and prevented Plaintiffs from receiving gifts from third parties that they otherwise would have received.

65. The ATO, the DPA, Frazier, Mata, and the City's wrongful acts and omissions were intentional, willfully negligent, or done with conscious indifference or reckless disregard for the safety of others.

66. The ATO, the DPA, Frazier, Mata, and the City's tortious interference caused Plaintiffs injury. Plaintiffs seek their actual damages, pre- and post-judgment interest, court costs, and exemplary damages.

Count 3: Conversion

(Plaintiffs against the ATO, the DPA, Frazier, Mata, and the City)

67. Plaintiffs incorporate by reference the preceding paragraphs.

68. Det. Ahrens had the right to immediate possession of donations held by the ATO, the DPA, Frazier, and Mata at the time of conversion, and those Defendants have never had a title claim to any of those funds. Det. Ahrens currently has a right to immediate possession of the funds held hostage by the ATO, the DPA, Frazier, and Mata, including checks written directly to Det. Ahrens and her family that were deposited into the ATO's bank account.

69. The converted donations were delivered to the ATO, the DPA, Frazier, and Mata for temporary safekeeping. They were intended to be kept segregated in an intact fund. They were also designated for Det. Ahrens and her family.

70. As described in detail above, the ATO, the DPA, Frazier, and Mata wrongfully exercised dominion or control over the donations. Funds belonging to Det. Ahrens and her family were taken without her consent, and any funds the ATO, the DPA, Frazier, and Mata may have acquired possession of legally have been used in a way that departs from the conditions under which they were received. Det. Ahrens has demanded on several occasions that all donations be turned over to her, but these Defendants have refused her demands.

71. The ATO, the DPA, Frazier, and Mata's acts and omissions were of wanton and malicious nature. They were intentional, willfully negligent, or done with conscious indifference or reckless disregard for the safety of others.

72. The ATO, the DPA, Frazier, and Mata's conversion caused Plaintiffs injury. They seek their actual damages, including all donations of theirs these Defendants converted plus interest, pre- and post-judgment interest, court costs, and exemplary damages.

73. Plaintiffs had ownership rights in and the legal right to possess their mail, which is their personal property. The ATO, the DPA, Frazier, Mata, and the City wrongfully exercised dominion and control over Plaintiffs' mail in a manner inconsistent with their rights.

74. The ATO, the DPA, Frazier, Mata, and the City's conversion caused injury to Plaintiffs. They seek their actual damages, including all donations of theirs these Defendants converted plus interest, pre- and post-judgment interest, court costs, and exemplary damages.

Count 4: Money Had and Received

(Plaintiffs against the ATO and the DPA)

75. Plaintiffs incorporate by reference the preceding paragraphs.

76. As described in detail above, the ATO and the DPA hold money that, in equity and good conscience, belongs to Plaintiffs.

77. Plaintiffs are entitled to recover as actual damages donations received by the ATO and the DPA that belong to them. They seek these actual damages as well as pre- and post-judgment interest, court costs, and exemplary damages.

Count 5: Breach of Fiduciary Duties

(Plaintiffs against the ATO, the DPA, Frazier, Mata, the City, Gorsky, and LGG)

78. Plaintiffs incorporate by reference the preceding paragraphs.

79. Plaintiffs had a fiduciary relationship with the ATO, the DPA, Frazier, and Mata. Gorsky and LGG owed duties to Det. Ahrens as their current client after the shooting, including a duty of reasonable prudence and fiduciary duties of loyalty, candor, full disclosure, good faith, and to timely disclose a conflict of interest.

80. As described in detail above, the ATO, the DPA, Frazier, and Mata breached their fiduciary duties to Plaintiffs. Gorsky and LGG breached their fiduciary duties to Det. Ahrens by, among other things, advising the ATO, the DPA, Frazier, and Mata on the unilateral restrictions placed on the donations, which were not only contrary to the solicitations themselves but also the interests of Det. Ahrens and the express instructions documented by Gorsky and LGG in Sr. Cpl. Ahrens' Will. Gorsky and LGG also breached their fiduciary duties to Det. Ahrens by negotiating the Illegal Contract with the City on behalf of the ATO.

81. The City induced the ATO, the DPA, Frazier, and Mata's breach of their fiduciary duties to Plaintiffs. The ATO, the DPA, Frazier, and Mata's acts and omissions were intentional, willfully negligent, or done with conscious indifference or reckless disregard for the safety of others.

82. The ATO, the DPA, Frazier, and Mata's breaches resulted in injury to Plaintiffs and benefit to them. Plaintiffs seek their actual damages, an accounting, pre- and post-judgment interest, court costs, and exemplary damages from the ATO, the DPA, Frazier, Mata, and the City.

83. Gorsky and LGG's breaches resulted in injury to Det. Ahrens and benefit to them. She seeks her actual damages, including the amount of all donations Gorsky and LGG advised the ATO it could withhold from her and her family, fee forfeiture, pre- and post-judgment interest, and court costs from Gorsky and LGG.

Count 6: Invasion of Privacy through Intrusion on Seclusion

(Det. Ahrens against the ATO, the DPA, Frazier, Mata, and the City)

84. Det. Ahrens incorporates by reference the preceding paragraphs.

85. The ATO, the DPA, Frazier, Mata, and the City's interception, opening, reading, and seizure of mail sent to Det. Ahrens and her family constitutes intentional intrusion on her solitude, seclusion, and private affairs.

86. The ATO, the DPA, Frazier, Mata, and the City's intrusion was highly offensive to a reasonable person. Their acts and omissions were intentional, willfully negligent, or done with conscious indifference or reckless disregard for the safety of others.

87. The ATO, the DPA, Frazier, Mata, and the City's intrusion caused Det. Ahrens injury. She seeks her actual damages, pre- and post-judgment interest, court costs, and exemplary damages.

Count 7: Right to be Secure from Searches and Seizures (Tex. Const. Art. 1, § 9)

(Det. Ahrens against the ATO, the DPA, Frazier, Mata, and the City)

88. Det. Ahrens incorporates by reference the preceding paragraphs.

89. The ATO, the DPA, Frazier, Mata, and the City's warrantless interception, opening, reading, and seizure of mail directed to Det. Ahrens violates her right under Article I, § 9 of the Texas Constitution to a legitimate and reasonable expectation of privacy in the contents of letters and sealed packages sent to her and her family.

90. The ATO, the DPA, Frazier, Mata, and the City's acts and omissions were intentional, willfully negligent, or done with conscious indifference or reckless disregard for the safety of others.

91. Det. Ahrens seeks a declaratory judgment that the ATO, the DPA, Frazier, Mata, and the City's actions are unconstitutional in violation of her rights under the Texas Constitution.

Count 8: Misappropriation of Name or Likeness (TEX. PROP. CODE § 26.001 et seq.)

(Det. Ahrens against ZAK, Devine, the ATO, the DPA, Frazier, and Mata)

92. Det. Ahrens incorporates by reference the preceding paragraphs.

93. Det. Ahrens is the sole owner of the rights to Sr. Cpl. Ahrens' name, voice, signature, photograph, likeness, and overall persona.

94. Sr. Cpl. Ahrens' name, along with the rest of his persona, has commercial value. This commercial value is evidenced by, among other things, ZAK and Devine's use of Sr. Cpl. Ahrens' name to promote sales of their goods and services.

95. ZAK and Devine used Sr. Cpl. Ahrens' name to advertise, sell, and solicit the purchase of their products, merchandise, and services without Det. Ahrens' consent or authorization. The ATO, the DPA, Frazier, and Mata used Sr. Cpl. Ahrens' name and likeness, including for the purpose of advertising services. They did so without Det. Ahrens' permission.

96. The ATO, the DPA, Frazier, and Mata's acts and omissions were intentional, willfully negligent, or done with conscious indifference or reckless disregard for the safety of others.

97. Under TEX. PROP. CODE § 26.013, Det. Ahrens is entitled to all damages sustained as a result of these Defendants' use of Sr. Cpl. Ahrens' name, or \$2,500, whichever is greater, as well as their profits from the use of Sr. Cpl. Ahrens' name. She also seeks her reasonable attorneys' fees and expenses, court costs, and exemplary damages.

Count 9: Misappropriation of Name or Likeness (Texas common law)

(Det. Ahrens against ZAK and Devine)

98. Det. Ahrens incorporates by reference the preceding paragraphs.

99. Det. Ahrens is the sole owner of the property rights to Sr. Cpl. Ahrens' name, voice, signature, photograph, and likeness.

100. Sr. Cpl. Ahrens can easily be identified by the ZAK Backs the Blue racecar through his name. Sr. Cpl. Ahrens' name, along with the rest of his persona, has commercial value. This commercial value is evidenced by, among other things, ZAK and Devine's use of Sr. Cpl. Ahrens' name to promote sales of their goods and services.

101. ZAK and Devine used and exploited Sr. Cpl. Ahrens' name for its associated value. ZAK and Devine received commercial benefit from using Sr. Cpl. Ahrens' name. By

misappropriating Sr. Cpl. Ahrens' name, ZAK and Devine received the benefit of selling products and services and increasing consumer and public goodwill. They also received an endorsement from Sr. Cpl. Ahrens without asking permission or paying a fee.

102. ZAK and Devine's misappropriation caused Det. Ahrens damages.

Count 10: Unfair Competition - Passing Off (Texas common law)

(Det. Ahrens against ZAK and Devine)

103. Det. Ahrens incorporates by reference the preceding paragraphs.

104. ZAK and Devine's misappropriation of Sr. Cpl. Ahrens' name without Det. Ahrens' consent or authorization constitutes common law unfair competition. Their use of Sr. Cpl. Ahrens' name is likely to mislead their consumers to believe Sr. Cpl. Ahrens endorsed, approved, or is or was otherwise associated with ZAK or Devine or their products and services.

105. ZAK and Devine's unlawful use places Sr. Cpl. Ahrens' reputation and memory in the hands of ZAK and Devine, who Det. Ahrens cannot control, and wrongfully diverts the benefit of Sr. Cpl. Ahrens' goodwill to ZAK and Devine.

106. ZAK and Devine's use of Sr. Cpl. Ahrens' name without consent was and is willful, with malice, and in bad faith. Their unfair competition caused Det. Ahrens damages.

Count 11: Unjust Enrichment

(Plaintiffs against the ATO, the DPA, ZAK, and Devine)

107. Plaintiffs incorporate by reference the preceding paragraphs.

108. ZAK and Devine wrongfully secured benefits from the use and exploitation of Sr. Cpl. Ahrens' name and likeness by the taking of an undue advantage. The ATO and the DPA wrongfully secured benefits through their retention of funds charitably donated to Det. Ahrens and her family. These benefits would be unconscionable to retain.

109. The ATO, the DPA, ZAK, and Devine's unjust enrichment caused Plaintiffs damages.

Count 12: Constructive Trust

(Plaintiffs against the ATO and the DPA)

110. Plaintiffs incorporate by reference the preceding paragraphs.

111. The ATO and the DPA breached a special trust or fiduciary relationship or engaged in actual or constructive fraud.

112. The ATO and the DPA have become unjustly enriched as a result.

113. An identifiable *res* can be traced back to the funds and profits the ATO and the DPA received through their misconduct.

Count 13: Retaliation (Texas Whistleblower Act, TEX. GOV'T CODE § 554.001 et seq.)

(Det. Ahrens against the City)

114. Det. Ahrens incorporates by reference the preceding paragraphs.

115. Det. Ahrens is a public employee.

116. Det. Ahrens made good faith reports of violations of law by her employing governmental entity and other public employees.

117. Det. Ahrens made the reports to an appropriate law-enforcement authority.

118. Those adverse personnel actions would not have been taken but for Det. Ahrens' reporting of Defendants' misconduct.

119. Det. Ahrens has suffered damages, including loss of fringe benefits and non-economic damages, as a result of the City's retaliation in violation of the Texas Whistleblower Act.

Count 14: Aiding & Abetting through Conspiracy

(Plaintiffs against all Defendants)

120. Plaintiffs incorporate by reference the preceding paragraphs.

121. Each of the Defendants was a member of a combination of two or more persons.

122. The object of the combination was to accomplish unlawful purposes and a lawful purpose by unlawful means.

123. The members had a meeting of the minds on the object or course of action.

124. At least one of the Defendants committed at least one unlawful, overt act to further the object or course of action.

125. Plaintiffs suffered injury as a proximate result of the at least one wrongful act.

126. Each of the Defendants is therefore jointly and severally liable for all acts done by any of them in furtherance of the unlawful combination.

Count 15: Aiding & Abetting through Assisting and Participating

(Plaintiffs against all Defendants)

127. Plaintiffs incorporate by reference the preceding paragraphs.

128. As set forth in this Petition, each of the Defendants accomplished a tortious result.

129. Each of the Defendants provided substantial assistance to their fellow Defendants in accomplishing the tortious results.

130. Each Defendants' own conduct, separate from their fellow Defendants, was a breach of duty to Det. Ahrens, S.A., and/or M.A.

131. Each of the Defendants' participation was a substantial factor in causing the tortious results accomplished by their fellow Defendants.

132. Each of the Defendants is therefore jointly and severally liable for all damages suffered by Plaintiffs as a result of the tortious results they accomplished.

EXEMPLARY DAMAGES

133. Plaintiffs incorporate by reference the preceding paragraphs.

134. Plaintiffs seek exemplary damages as outlined above.

135. Plaintiffs are entitled to exemplary damages because harm to them resulted from Defendants' fraud or malice.

136. The limitation on exemplary damages established by TEX. CIV. PRAC. & REM. CODE § 41.008(b) is inapplicable because Plaintiffs seek exemplary damages based on conduct described as a felony in the following sections of the Penal Code, and the conduct was committed knowingly or intentionally: Section 32.45 (misapplication of fiduciary property or property of financial institution); and Chapter 31 (theft) the punishment level for which is a felony of the third degree or higher.

APPLICATION FOR INJUNCTIVE RELIEF

137. Plaintiffs incorporate by reference all allegations in the preceding paragraphs.

138. As set forth in detail above, Plaintiffs have established a probable right to the relief they seek upon final trial of this case, including their claims for tortious interference with gifts, conversion, money had and received, breach of fiduciary duty, invasion of privacy, and constructive trust, for which Det. Ahrens has received a temporary injunction.

139. If the ATO, the DPA, Frazier, and Mata are not enjoined from using, transferring, or disbursing the donations allocated for Det. Ahrens' family (the "Ahrens Donations"), Plaintiffs will suffer irreparable injury, loss, or damage. Plaintiffs seek to enjoin these Defendants from disposing of property that they contend will become *res* of a constructive trust. A final judgment in this matter could be rendered ineffectual and Plaintiffs will suffer irreparable damage thereby unless these Defendants are restrained from disposing of the Ahrens Donations. For example, there is a danger the Ahrens Donations will be reduced or diverted pending trial. Even if damages could be subject to the most precise calculation, that fact would become irrelevant if these Defendants are permitted to dissipate funds that would otherwise be available to pay a judgment.

140. Courts have long recognized the principle that funds which may be subject to a constructive trust should be preserved pending a trial on the merits. The Ahrens Donations therefore should be held in status quo until trial.

141. Plaintiffs request the Court preserve the status quo by temporarily enjoining Defendants and all other persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise from directly or indirectly using or transferring any of the Ahrens Donations.

ATTORNEYS' FEES

142. Plaintiffs incorporate by reference the preceding paragraphs.

143. Det. Ahrens retained counsel to represent her in this action and agreed to pay the firm reasonable and necessary attorneys' fees. Det. Ahrens is entitled to recover her attorneys' fees from Defendants under at least TEX. PROP. CODE § 26.013(a)(4), TEX. CIV. PRAC. & REM. CODE § 37.009, TEX. CIV. PRAC. & REM. CODE § 134.005, and TEX. GOV'T CODE § 554.003(a)(4).

144. The Attorney Ad Litem was appointed by the Court pursuant to the demand of the ATO, DPA, and Frazier, and requests a reasonable fee for legal services, including pursuant to TEX. CIV. PRAC. & REM. CODE § 134.005.

DEMAND FOR JURY TRIAL

145. Plaintiffs demand a trial by jury.

PRAYER FOR RELIEF

Plaintiffs pray that the Court enter judgment awarding them the following relief:

- A. Temporary and permanent injunctions;
- B. Actual damages, including damages for mental anguish, front pay, and fringe benefits;
- C. Statutory damages;
- D. Fee forfeiture;

- E. Damages and profits pursuant to TEX. PROP. CODE § 26.013;
- F. An accounting of all donations received by the ATO;
- G. Appointment of an auditor under Rule 172;
- H. Injunctive relief pursuant to TEX. GOV'T CODE § 554.003(a)(1);
- I. All relief Det. Ahrens is entitled to under TEX. GOV'T CODE § 552.001 *et seq.*;
- J. Attorneys' fees and expenses;
- K. Costs;
- L. Exemplary damages (uncapped as described above);
- M. Pre- and post-judgment interest; and
- N. All other relief they are entitled to.

Dated: December 10, 2018

GRIFFITH BARBEE PLLC

/s/ Casey Griffith
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-and-

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/s/ J. Greg Coontz
 J. GREG COONTZ
 State Bar No. 04770400
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**Attorney Ad Litem for S.A. and M.A.,
 Det. Ahrens' minor children**

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Cleburne, Texas 76031
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lane@rugeleylaw.com

Counsel for Det. Ahrens

CERTIFICATE OF SERVICE

I certify that on December 10, 2018 a copy of this document was served on all counsel of record via the Court's electronic document delivery system and pursuant to the Texas Rules of Civil Procedure.

/s/ Casey Griffith

Casey Griffith

Exhibit A



CITY OF DALLAS

ADMINISTRATIVE ACTION

See Administrative Directive 4-5 [Sections 6 Through 11] for Additional Guidelines and Routing

ADMINISTRATIVE ACTION

166801

EFFECTIVE DATE

10/21/16 *RB*

1. Place an "X" in the appropriate box, complete and submit this form for the approval of:

- a. Low bid contracts of not more than \$70,000
- b. Change orders for low bid contracts: \$50,000 or less (may not increase original contract price by more than 25%)
- c. Professional/Personal/Planning/Other Service contracts: \$50,000 or less.
- d. Amendments to non-bid contracts: \$50,000 or less, per City Code Sec. 2-34
- e. WRR-FM expenditures: \$50,000 or less per City Code Sec. 2-79© of the City Code.
- f. Other (explain on attachment)

RECEIVED
 OCT 21 PM 1:11
 CITY SECRETARY
 DALLAS, TEXAS

2. Attach all supporting documents including bid information as required. Approval shall be obtained before services are rendered.

3. Is this expenditure related to a construction project? Yes No

4. Any Administrative Actions to this vendor in the last 12 months? (If yes, attach explanation) Yes No

5. Is Form 1295 - Certificate of Interested Parties required to comply with House Bill 1295 attached (if applicable)? Yes No

Vendor Name: Assist the Officer

Subject: Donations Management Agmt **Department:** Dallas Police Department

Action Requested: An agreement with the City of Dallas and Assist the Officer, a Texas nonprofit corporation to open mail, receive and disburse donations for the four fallen officers from the shooting on July 7, 2016. There is no cost consideration to the City.

Contract Term: _____ **Effective Date:** _____ **To one year after effective date**

Background: In response to the shootings in Dallas, Texas on July 7, 2016, the City has received numerous of donations intended for the families of the four slain Dallas police officers: Senior Cpl. Lorne Ahrens, Officer Michael Krol, Sgt. Michael Smith, and Officer Patricio Zamarripa. The donated funds shall not be deposited into City accounts, but immediately turned over to the Assist the Officer as detailed herein to avoid any delay in disbursing the Funds to the Officers' beneficiaries. Assist the Officer has already established accounts to receive donations on behalf of the estates of the Officers and has established a process to receive, document, and disburse Funds to the beneficiaries.

FUND	DEPT	UNIT	ACTV	OBJ	PROGRAM	ENCUMBRANCE	VENDOR	AMOUNT
								\$0.00 <i>RB</i>

Project No.: _____ **Commodity Code:** _____ **Financing:** _____

Change Order No.	Original CR/AA No.	Original CR/AA Date	Original CR/AA Amount	Total Previous Change Orders	Change Amount Including this Order	Total Change Order Percentage

MWBE INFORMATION- Prime and Subcontractors use this section for low bid contracts greater than \$50,000 but less than \$70,000.

Indicate Amount to Each Group	African-American	Hispanic	Caucasian-Female	Other Minority	MWBE Certification Number
	\$ <i>16</i>	\$	\$	\$	

Approval: Approved as being in accordance with the Budget and Chapter 2 of the Dallas City Code.

David Rugh 10-21-16 *Robin V. ...* 10/31/16
 By Department Director DATE Approved as to form by City Attorney DATE

E. P. Campbell 10/21/2016
 By Assistant City Manager DATE

DONATIONS MANAGEMENT AGREEMENT

STATE OF TEXAS §
COUNTY OF DALLAS §

This contract ("Contract") is made and entered into by and between the City of Dallas ("City"), a Texas municipal corporation, and Assist the Officer, a Texas nonprofit corporation ("Agency").

WHEREAS, in response to the shootings in Dallas, Texas on July 7, 2016, the City has received numerous of donations intended for the families of the four slain Dallas police officers: Senior Cpl. Lorne Ahrens, Officer Michael Krol, Sgt. Michael Smith, and Officer Patricio Zamarripa, as well as police officers with the Dallas Police Department, DART, and El Centro College who were injured in the shooting (collectively, the "Officers");

WHEREAS, some of the donations are made payable to the "City of Dallas" or "Dallas DPD," but the clearly expressed intent of the donor is that the donations be used for the benefit of one or more of the Officers; accordingly, the donated funds ("Funds") shall not be deposited into City accounts, but immediately turned over to the Agency as detailed herein to avoid any delay in disbursing the Funds to the Officers;

WHEREAS, the Agency has already established accounts to receive donations on behalf of the estates of the Officers and has established a process to receive, document, and disburse Funds to the beneficiaries thereof; and

WHEREAS, the Agency is willing to process and disburse the Funds received by the City on behalf of the estates of the Officers.

NOW, THEREFORE, the City and the Agency understand and agree as follows:

1. **INCORPORATION OF RECITALS.** City and the Agency hereby agree that the recitals set forth above are true and correct and form the basis upon which the Parties have entered into this Contract.
2. **TERM.** The term of this Contract begins on the date the Contract is executed by the City ("Effective Date") and terminates one year thereafter, unless terminated earlier as provided in this Contract.
3. **DUTIES AND RESPONSIBILITIES OF THE PARTIES.**
 - a. **Intake.** From time to time, City will securely deliver all donations to Agency to be processed. Agency will be responsible for opening all mail and recording donations in accordance to Agency's policies and procedures. Donations will be deposited with Texas Capital Bank ("Bank").
 - b. **Records.**
 - i. Within 90 days of the Effective Date, Agency will provide City, or will direct the Bank to provide City, with a log containing:
 - a. the dollar amount of donated Funds;
 - b. whether the donation of Funds was made in cash, check, or other form;
 - c. check number or other tracking number;

- d. name of donor;
- e. donor's designated purpose for the Funds;
- f. donor's remittance address;
- g. copies of all cancelled checks; and
- h. copies of bank reconciliation statements for the account(s) in which the Funds are deposited.

ii. **Correspondence.** On or before the termination date of this Contract, Agency shall provide to City (i) copies of all correspondence received in connection with the donations, (ii) copies of any thank you letters or other correspondence between Agency and the donors, and (iii) a summary of payments to beneficiaries that can be tied back to the Funds. Additionally, Agency will respond to any inquiries received by City as to the status of any particular donation.

iii. **Contact.** The reporting items and correspondence listed in (b) and (c) above shall be sent to Edward Scott, City Comptroller, and Mandy Shreve with DPD. For purposes of this section, written notice may be delivered via email at edward.scott@dallascityhall.com and mandy.shreve@dpd.ci.dallas.tx.us.

- c. **Deposit.** Agency shall deposit the Funds in FDIC insured bank accounts specifically designated for receipt and disbursement of the Funds.
- d. **Disbursements.** Agency will only disburse Funds from the accounts to legally authorized representatives of the Officers.
- e. **Fees.** Agency agrees to perform the services described herein without compensation of any kind. All Funds will be used solely for the benefit of the Officers.

4. DEFAULT AND TERMINATION.

- a. **In General.** Agency shall be in default under this Contract if Agency breaches any term or condition of this Contract. In the event that such a breach remains uncured after 10 calendar days following written notice by City, City shall have the right to terminate this Contract effective immediately upon written notice of such intent to Agency, and/or to pursue any other legal remedies available to City.
- b. **Waiver of Breach Not Waiver of Subsequent Breach.** The waiver of a breach of any term, covenant, or condition of this Contract shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

5. GENERAL PROVISIONS

- a. **Agency an Independent Contractor.** Agency shall operate hereunder as an independent contractor and not as an officer, agent, servant or employee of City. The doctrine of respondeat superior shall not apply as between City and Agency, or its officers, members, agents, servants, employees, contractors, clients, licensees or invitees, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Agency. City does not have the legal right to control the details of the tasks performed hereunder by Agency, its officers, members, agents, employees, contractors, licensees or invitees.

- b. **Venue and Choice of Law.** This Contract is made subject to the charter and ordinances of City, as same may be amended from time to time, and all applicable laws of the State of Texas, as amended. This Contract is performable in Dallas County, Texas, and venue for any legal action under this Contract shall lie exclusively in the state and federal courts of Dallas County, Texas. In construing this Contract, the laws and court decisions of the State of Texas without regard to choice of law decisions or laws shall control.
- c. **Severability.** The provisions of this Contract are severable, and, if for any reason a clause, sentence, paragraph or other part of this Contract shall be determined to be invalid by a court or Federal or state agency, board or commission having jurisdiction over the subject matter thereof, such invalidity shall not affect other provisions which can be given effect without the invalid provision.
- d. **Written Agreement Entire Contract.** This written instrument constitutes the entire agreement by the Parties hereto concerning the work and services to be performed under this Contract. Any prior or contemporaneous oral or written agreement, which purports to vary the terms of this Contract, shall be void. Any amendments to the terms of this Contract must be in writing and must be executed by each Party to this Contract. This Contract may be signed in any number of counterparts, each of which is an original and all of which taken together form one single document.
- e. **Assignment.** Neither party may assign all or any part of its rights, privileges, or duties under this Contract without the prior written approval of the other party. Any attempted assignment of same without approval shall be void, and shall constitute a breach of this Contract.
6. **INSURANCE AND BONDING.** Agency will maintain Insurance Requirements outlined in attachment ORM- FRM-504. Agency will not disburse the Funds until the applicable insurance policy is in effect.
7. **NOTICE.** All notices required or permitted by this Contract must be in writing and are deemed delivered on the earlier date of the date actually received or the third day following deposit in a United States Postal Service post office or receptacle; with proper postage, certified mail return receipt requested; and addressed at the address set out below.

City:
 City of Dallas
 1500 Marilla
 Dallas, TX 75201
 Attn: Edward Scott

Agency:
 Assist the Officer
 1412 Griffin Street East
 Dallas, TX 75215
 Attn: Frederick Frasier

8. **NOTICE OF CONTRACT CLAIM.**

This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of breach of contract claim against City. Section 2-86

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of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Agreement and the Grant Documents as if written word for word therein. Agency shall comply with the requirements of Section 2-86 as a precondition of any claim relating to this Contract.

EXECUTED this the 21st day of October 2016, by CITY, signing by and through its City Manager, duly authorized to execute same by Administrative Action No. 16-0801, approved on October 21, 2016, and by AGENCY, acting through its duly authorized officials.

APPROVED AS TO FORM:
LARRY E. CASTO
City Attorney

BY [Signature]
Assistant City Attorney

CITY OF DALLAS
A. C. GONZALEZ
City Manager

[Signature]
Assistant City Manager

Recommended By:

[Signature]
David Pughes
Interim Chief of Police

AGENCY:

THE ASSIST THE OFFICER FOUNDATION,
a Texas nonprofit corporation

BY [Signature]
NAME Frederick E. Frazier
TITLE Chairman

Insurance Requirements

SECTION A. Prior to the approval of this contract by the CITY, CONSULTANT shall procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to CITY. The insurance shall be evidenced by delivery to the CITY, at the address shown in REQUIRED PROVISIONS b.(i), certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, the CITY shall be entitled to receive without expense, copies of the policies and all endorsements. CITY HAS NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT OR AGREEMENT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY and no officer or employee shall have authority to waive this requirement.

SECTION B. The CITY reserves the right to review the insurance requirements of this section during the effective period of the contract and to modify insurance coverages and their limits when deemed necessary and prudent by City's Office of Risk Management based upon economic conditions, recommendation of professional insurance advisors, changes in statutory law, court decisions or other relevant factors. The CONSULTANT agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either party to the contract). Upon request by CITY, CONSULTANT shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.

SECTION C. REQUIRED PROVISIONS

The CONSULTANT agrees that with respect to the below required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- a. Name the City of Dallas and its officers, employees and elected representatives as additional insureds to all applicable coverages.
- b. State that coverage shall not be canceled except after thirty (30) days written notice to:
 - (i), Attention: Mandy Shreve, Project Manager, 320 E. Jefferson, Room 309, Dallas, Texas 75203 and
 - (ii) Director, Office of Risk Management, 1500 Marilla, 6A-South, Dallas, Texas 75201.
- c. Waive subrogation against the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- d. Provide that the CONSULTANT'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
- e. Ensure that all certificates of insurance identify the service or product being provided and name the City department shown in REQUIRED

PROVISIONS b.(i) as the Certificate Holder.

SECTION D. INSURANCE COVERAGE REQUIRED

Subject to CONSULTANT'S right to maintain reasonable deductibles, CONSULTANT shall obtain and maintain in full force and effect for the duration of this contract and any extension hereof, at CONSULTANT'S sole expense, insurance coverage in the following type(s) and amounts:

1. If vehicles will be used in the performance of services under the contract, then, Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$500,000 per occurrence.
2. Commercial Crime Insurance to provide coverage for a) Employee Dishonesty, blank form, b) Theft, Disappearance and Destruction of money and securities, c) Computer Fraud, d) Electronic Transfer of Funds and e) Forgery and Alterations. The minimum limit would be \$1,000,000 per and apply separately to each coverage including Loss Payee clause to the City.
3. Non Profit Management Liability (D&O) Insurance for mismanagement of funds. The minimum limit would be \$1,000,000.

NOTE: If the insurance described above is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than twenty-four (24) months following completion of the contract and acceptance by the City. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to this contract.

SECTION E. (1) Without limiting any of the other obligations or liabilities of the CONSULTANT, the CONSULTANT shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the term of the contract, levels of insurance that are necessary and appropriate for the services being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name the CONSULTANT as an additional insured. (2) The CONSULTANT shall obtain and monitor the certificates of insurance from each Subcontractor. The CONSULTANT must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

SECTION F. Approval, disapproval or failure to act by the CITY regarding any insurance supplied by the CONSULTANT or its subcontractors shall not relieve the

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CONSULTANT of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate the CONSULTANT from liability.

SECTION G. INDEMNITY

The CONSULTANT agrees to defend, indemnify and hold CITY, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by CONSULTANT'S breach of any of the terms or provisions of this contract, or by any negligent or strictly liable act or omission of CONSULTANT, its officers, agents, employees, or subcontractors, in the performance of this contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of CITY, its officers, agents or employees and in the event of joint and concurrent negligence or fault of CONSULTANT and CITY, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the CITY under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.