

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF TEXAS
 HOUSTON DIVISION

KAREN McPETERS, individually, and on §
 behalf of those individuals, persons and entities §
 who are similarly situated §
 Plaintiff §

vs.

§ CIVIL ACTION NO. 4:10-CV-01103

§
 §
 § **JURY**

THE HONORABLE FREDERICK E. §
EDWARDS; BARBARA GLADDEN §
ADAMICK, DISTRICT CLERK; §
MONTGOMERY COUNTY, TEXAS, and §
REED ELSEVIER, INC. d/b/a LexisNexis §
 Defendants §

SECOND AMENDED COMPLAINT

TO THE HONORABLE KEITH P. ELLISON, U.S. DISTRICT JUDGE:

Now comes Karen McPeters (“McPeters”), individually and on behalf of those individuals, persons and entities similarly situated, and files her Second Amended Complaint, against The Honorable **Frederick E. Edwards**, District Judge, 9th District Court, Montgomery County, Texas; **Barbara Gladden Adamick**, District Court Clerk of Montgomery County, Texas; **Montgomery County, Texas** through County Judge, Alan B. Sadler, and David K. Walker, Montgomery County Attorney, and **Reed Elsevier, Inc. d/b/a/ LexisNexis**.

1. Defendants, jointly and severally, have violated Karen McPeters’ separation of powers, equal rights, and due process protections of the U.S. Constitution, and the Bill of

Rights, Amend. XIV. Defendants, jointly and severally, have violated Karen McPeters' equal rights, open courts and due course of law protections of the Bill of Rights, Art. 1, §§§§ 3, 13, 19 and 29, and Art. II, §1 of the Texas Constitution.

2. Defendants have received income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United State Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in the acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.
3. Karen McPeters brings suit on her behalf and on behalf of those individuals, persons and entities similarly situated.

JURISDICTION

4. This Court has jurisdiction to hear this complaint and to adjudicate the claims stated herein under 28 U.S.C. § 1331 and 1343. Also, jurisdiction is conferred by the U.S. Constitution, Art. XIV, and Federal Statutes, 18 U.S.C. § 1965, and 42 U.S.C. § 1983.

PARTIES

5. **Plaintiff, Karen McPeters**, is an individual involved in litigation in Montgomery County, Texas, in which Montgomery County, Texas is the Defendant.
6. **Defendant 1 is The Honorable Frederick E. Edwards**, individually and in his capacity as the District Judge of the 9th District Court, Montgomery County, Texas, who has been served with process by serving his attorney, Allison Miller.

7. **Defendant 2** is **Barbara Gladden Adamick**, individually and as the District Court Clerk of Montgomery County, Texas, who has been served with process at the Montgomery County Courthouse, 301 North Main, Conroe, Texas 77301.
8. **Defendant 3** is **Montgomery County, Texas**, a political sub-division of the State of Texas, which has been served with process by serving its agents, County Judge, Alan B. Sadler, 301 N. Thompson Street, Ste. 210, Conroe, Texas, and David K. Walker, Montgomery County Attorney, 207 West Phillips, Ste. 100, Conroe, Texas 77301.
9. **Defendant 4** is **Reed Elsevier, Inc. d/b/a LexisNexis**, a foreign corporation with offices in Newton, Massachusetts, registered to do business in Texas, which accepted service through its registered agent, C T Corporation System, 350 North St. Paul St., Dallas, Texas 75201.

FACTS AND LAW

10. Karen McPeters is the plaintiff in Cause No. 07-09-09142-CV, styled “Karen McPeters v. Montgomery County, Texas,” a civil employment discrimination lawsuit in the 9th District Court of Montgomery County, Texas.
11. Judge Frederick E. Edwards presides over the 9th District Court of Montgomery County, Texas (referred to herein as “Montgomery County”).
12. On February 10, 2003 Judge Edwards signed an order concerning electronic filing (“E-filing”), an administrative task, in Montgomery County. *See* Exhibit “A.”
13. It is sometimes referred to herein as the “2003 Order.”
14. The 2003 Order was signed with two blanks line on the first page of the order.

15. Judge Frederick Edwards required Karen McPeters, as a party to a civil lawsuit, to **exclusively** use *LexisNexis fileandserve* (hence “LexisNexis”), an on-line electronic filing service, to file and serve documents and pleadings in her lawsuit.
16. LexisNexis is a division of Reed Elsevier, Inc.
17. Montgomery County has an agreement with LexisNexis to provide E- filing services.
See Exhibit “B.”
18. LexisNexis charges filing fees, service charges, taxes and other charges (hence “fees and charges”) to a litigant for each document filed on-line.
19. LexisNexis is personally and independently responsible for the amount billed to litigants for fees and charges for use of E-filing services.
20. Barbara Gladden Adamick, the District Court Clerk of Montgomery County, directed many civil litigants, including Karen McPeters, that **each is required to exclusively use LexisNexis for on-line E-filing**. Barbara Gladden Adamick is sometimes referred to herein as the District Clerk.
21. Barbara Adamick’s direction to civil litigants is based on Judge Edward’s 2003 E-filing order.
22. For each new civil lawsuit that qualifies under the provisions of the 2003 Order, the District Clerk or her deputy apparently enters the new cause number in the blanks on a copy of Judge Edward’s 2003 E-filing order, without review by Judge Edwards.
23. There is no standing order, signed by all of the District Judges in Montgomery County, establishing E-filing requirements for one, or more, of the courts of Montgomery County.

24. Judge Edwards falsely and fraudulently misrepresented his authority to issue the 2003 Order on E-filing and was part of a scheme to defraud Karen McPeters and other similarly situated litigants, because the 2003 Order was a legislative act increasing filing fees.
25. Judge Edwards had no authority to issue his 2003 E-filing order the effect of which was to mandate payment by litigants of fees and charges billed by LexisNexis.
26. Barbara Adamick stated that the E-filing order existed, and that Karen McPeters was mandated to use E-filing.
27. Karen McPeters objected, but relied upon that misrepresentation in paying the illegal fees and charges of LexisNexis. *See* Document 13-9, page 1, date 1/27/09.
28. The misrepresentation was both a factual and proximate cause of her paying the bills from LexisNexis.
29. The Montgomery County District Clerk did not E-file a copy of Judge Edward's 2003 E-filing order in Cause Number 07-09-09142 ("McPeters I").
30. McPeters I was filed May 18, **2007**.
31. Karen McPeters did not receive or see a copy of the 2003 Order in McPeters I, until May 5, **2010**, document 13-2 filed herein.
32. The 2003 E-filing order purports to require Karen McPeters to use E-filing exclusively.
33. If the E-filing order is to apply to her, Karen McPeters should get a copy.
34. Not all acts performed by judges, even those that are essential to the operation of the courts, are protected by judicial immunity. *Forrester v. White*, 484 U.S. 219, 228 (1988). Ministerial or administrative tasks performed by judges are not protected by

immunity, because they are not sufficiently judicial in nature. *Forrester*, 484 U.S. at 227-228. When it appears certain that no one invoked the judicial machinery for any purpose, then the judge's actions are not judicial acts. *Harper v. Merckle*, 638 F.2d 848, 859 (5th Cir. 1981)

35. Barbara Gladden Adamick, the District Clerk of Montgomery County, enforced the requirement for Karen McPeters, and other similarly situated civil litigants, to use on-line E-filing by:

- (a) refusing to file a document tendered to her in person;
- (b) returning **unfiled** any document tendered to her by mail for filing, and
- (c) returning a document **tendered to, and filed by, the District Clerk**, with a purported cancellation of the District Clerk file mark, and a letter directing the preparer of the document to file the document through LexisNexis.

See Exhibits "C" and "D."

36. In Exhibit "D," Karen McPeters understood the blue "VOID," stamped over the District Clerk file stamp, to mean what it said. Her Rule 202 Petition was dismissed -- VOID.

37. Defendant Adamick contends that Karen McPeters should not have taken the returned petition at face value. Karen McPeters cannot guess the meaning of the "VOID" stamp over the District Clerk's file-mark on a pleading.

38. Barbara Gladden Adamick, the District Clerk, has disregarded the known and obvious consequences of her actions, as stated in the previous paragraphs.

39. Persons with derived judicial immunity are only protected by judicial immunity for performing judicial acts. *Dallas County v. Halsey*, 87 S.W.3d 552, 554 (Tex. 2002). An

official can assert judicial immunity for enforcing or executing certain orders of the court. For judicial immunity to apply in this context, the order being enforced or executed must be one for which the judge is absolutely immune from suit. *Mays v. Sudderth*, 97 F.3d 107, 114 (5th Cir. 1996). Thus, an official has judicial immunity for complying with a court's order only if the order was a discretionary act normally performed by a judge and issued within the court's jurisdiction. *Southwest Guaranty Trust v. Providence Trust*, 970 S.W.2d 777, 782-83 (Tex. App.-Austin 1998, pet. denied). This is not the case here, because the District Clerk's obligation to file pleadings is not discretionary.

40. The purpose of filing documents is to place them in the court's record of the lawsuit. *Todd v. Nello L. Teer Co.*, 308 F.2d 397, 400 (5th Cir. 1962).
41. Karen McPeters was billed and required to pay fees and charges to LexisNexis.
42. LexisNexis delivered more than two (2) bills to Karen McPeters through the U.S. Mail, and she paid them.
43. LexisNexis delivered more than two (2) bills to Karen McPeters electronically by email through the Internet, and she paid them.
44. The Montgomery County District Clerk, or one of her deputies, stated that Judge Edwards mandated LexisNexis E-filing.
45. Karen McPeters paid LexisNexis \$444.71 as of April 4, 2010. Karen McPeters paid \$217.00 on Sept. 27, 2007 to file McPeters I and \$237.00 on Nov. 20, 2009 to file McPeters II in Montgomery County. Karen McPeters has paid an amount almost equal to both statutory court filing fees to LexisNexis for McPeters I and II.

THE THREAT

46. Karen McPeters was induced and forced to enroll with LexisNexis by actual or threatened force of law. That threat is represented by Document 13-2 filed herein (the 2003 Order in Cause No. 07-09-09142-CV), and paragraph 115 below. That threat implicitly includes the mandated requirement to pay LexisNexis.
47. One aspect of the threat was that documents in her case would not be filed properly, and would not be filed timely, because documents tendered in person would be rejected, and documents mailed in would be returned unfiled. That threat was enforced.
48. The judicial sanctions threat included dismissal, contempt and incarceration as the next step for non-compliant, recalcitrant litigants, or their counsel. All believed the threat.
49. Bolstering Judge Edwards' threat was the statutory requirement that any suit against the county had to be filed in that county. *Tex. Civ. Prac. & Rem. Code* § 15.015.
50. The Montgomery County trap was complete. Just like any civil litigant unwary enough to venture into its District Courts, Karen McPeters had no alternative except to pay. Every other hapless, similarly situated litigant in Montgomery County has met a similar fate.
51. More than 10,000 litigants have been forced to pay the illegal charges by LexisNexis.
52. Document 13-2 requires E-filing in 07-09-09142-CV. The last paragraph of page 2 of the Texas Supreme Court's Miscellaneous Order (Document 13-1, page 4, paragraph 8) states:

The Court intends to issue, file and serve orders, rulings, and other documents in the assigned cases electronically, rather on paper. (sic)

Montgomery County Local Rules are identical.

53. Despite this requirement, Barbara Adamick fraudulently did not file document 13-2 in McPeters I, and failed to provide document 13-2 to Karen McPeters.
54. Document 13-2 is the first time (May 5, 2010) that Karen McPeters had seen this order in case 07-09-09142-CV, even though the District Clerk represents to this Court that the document is part of the records in her office. *See* stamped certificate on Document 13-2, lower right corner of page 2, dated April 28, 2010.
55. Furthermore, **as of May 15, 2010**, Barbara Adamick **still had not filed** document 13-2 in the LexisNexis case filing system in Cause Number 07-09-09142-CV. *See* Exhibit “H.” This is despite its supposed mandate in Local Rules. *See* Document 13-1 herein, page 4, paragraph 8. The 2003 Order was not included in the transmission of the record to the 9th Court of Appeals in 2009 after Judge Edwards’ dismissed Karen McPeters’ first case (“McPeters I”).
56. Additional proof of the ongoing fraud is shown by comparing document 13-10, page 23 herein with Exhibit “I.” The “Clerk’s Check List” shows that the 2003 Order in 09-11-11474-CV was mailed on Nov. 25, 2009. Karen McPeters did receive Exhibit “A.”
57. The “Clerk’s Check List” does not show the 2003 Order was filed on LexisNexis, and **IT WAS NEVER FILED**. *See* Exhibit “G” for the Motion with 2003 Order, and Exhibit “I,” the Docket Sheet for 09-11-11474 as of 5-15-2010 showing that the 2003 Order was never entered.
58. The “Clerk’s Check List” also shows that apparently the 410th District Court, Judge K. Michael Mayes presiding, was also involved in the on-going fraud by its December 12,

2006 order. That order has not been produced. LexisNexis shows 2,057 cases in that court as of May 17, 2010.

BADGES OF FRAUD

59. Exhibit “A” and pages 4-5 of Exhibit “G” purport to be the same document – the same 2003 Order. A cursory inspection proves the falsity of that conclusion. Exhibit “A” was provided by mail to Karen McPeters in 2009. The second hand written case number on page 1 contains “-CV” after the number. In Exhibit “G,” pages 4-5 (filed by Montgomery County in LexisNexis), the second hand written case number omits the “-CV.” Careful inspection of the hand written number in both exhibits, compared with the typed wording above and below, reveals each “order” to be a different document.

RELIANCE

60. Karen McPeters relied upon the material representations of the Montgomery County District Clerk and her deputies that (a) E-filing was required, and (b) Judge Edwards had the authority to mandate E-filing. *See* Exhibit “C.”
61. Neither was true. First, in an E-filing system documents and orders are E-filed. Document 13-2 was not E-filed. An order that is not filed cannot apply to litigants.
62. To be effective, all orders must be made on the record, either in writing or in open court. *Fenton v. Freedman*, 748 F.2d 1358, 1360 (9th Cir. 1984).
63. Second, a 2003 “order” cannot order actions by a litigant filing a lawsuit in 2007. Judge Edwards had no jurisdiction over a non-existent case, because a court has no jurisdiction over the parties in a case until a case has been filed. *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990); *Bradley v. Fisher*, 80 U.S. 335, 351-52 (1871).

64. More importantly, Judge Edwards cannot mandate E-filing that requires litigants to pay fees not set forth in the Texas Government Code, Chapter 51. The reason that he cannot is because his 2003 Order violates the separation of powers doctrine under the Texas and U.S. Constitutions. The Texas legislature sets court filing fees.
65. The focus is not on whether the judge's specific act was proper or improper, but on whether the judge had jurisdiction to perform the act. *Hawkins v. Walvoord*, 25 S.W.3d 882, 890 (Tex. App. – El Paso 2000, pet. denied); *Stump v. Sparkman*, 435 U.S. 349, 356 (1978).
66. The legislature sets filing fees. The legislature has not attempted to delegate filing fee setting authority to Judge Edwards. Judge Edwards has simply usurped that authority.
67. Therefore, Judge Edwards' order mandating E-filing cannot stand, because it violates the separation of powers doctrine.
68. Judge Edwards has purported to allow LexisNexis to set filing fees through its contract with Montgomery County. On information and belief, there is no limit to, and no oversight of, the amounts that LexisNexis can and does charge. On information and belief, **no one** reviews LexisNexis' "mandatory" charges to litigants.
69. Simply put, Judge Edwards cannot delegate an authority that he does not possess. *Zimmerman v. Ottis*, 941 S.W.2d 259 (Tex. App.-Corpus Christi 1996, no pet.)
70. The Montgomery County District Clerk, or one of her deputies, does not sign bills from LexisNexis, as is required by statute. *Tex. Gov't Code* § 51.320.

71. LexisNexis is the **agent** of the Montgomery County District Clerk, Barbara Adamick. See document 13-1 herein (Local Rule), page 4, paragraph 7. The bills must be signed, and they are not.
72. The Texas Supreme Court agreed that Montgomery County could establish an electronic filing system, pursuant to its Miscellaneous Order No. 97-9155 (Document 13-1). This Order does not authorize either violation of equal rights, or usurpation of legislative power.
73. The District Clerk is required by statute to accept and file documents tendered to her, *Tex. Gov't Code* § 51.303(a) and *Texas Rules of Civil Procedure* 21 and 74.
74. Judge Edwards may not order the District Clerk to ignore her statutory duties or the Rules of Civil Procedure. The Texas Rules of Civil Procedure prevail over local rules. *Approx. \$1,589.00 v. State*, 230 S.W.3d 871 (Tex. App.-Houston [14th Dist.] 2007, no pet.); *Approx. \$14,980.00 v. State*, 261 S.W.3d 182 (Tex. App.-Houston [14th Dist.] 2008, no pet.).

However, even if a conflict exists between the local rules and [rule 683, the rules of civil procedure](#) would prevail. See [TEX.R. CIV. P. 3a\(1\)](#). The Texas Rules of Civil Procedure have the dignity of statutory provisions and should be observed as such. [Centennial Ins. Co. v. Commercial Union Ins. Cos.](#), 803 S.W.2d 479, 482 (Tex.App.-Houston [14th Dist.] 1991, no writ). No other court is empowered to enact rules that are inconsistent with the rules promulgated by the Texas Supreme Court. *Id.* Further, [Texas Rule of Civil Procedure 3a](#) provides that any proposed local rule or amendment should not be inconsistent with the rules of civil procedure. [TEX.R. CIV. P. 3a\(1\)](#). Clearly, if a conflict exists, the Texas Rules of Civil Procedure prevail over the local rules of Hidalgo County, meaning that the local rules must be read within the context of [rule 683](#).

Emex Holdings, LLC v. Naim, **Not Reported in S.W.3d, 2010 WL 2163139 *3 (Tex.App.-Corpus Christi, 2010, May 27, 2010)**

75. And, when a rule of civil procedure promulgated by the Texas Supreme Court conflicts with a statute, the rule must yield. *Few v. Charter Oak Fire Ins. Co.*, 463 S.W.2d 424

- (Tex. 1971); *Purolator Armored, Inc. v. Railroad Comm'n*, 662 S.W.2d 700, 702-03 n.4 (Tex. App.--Austin 1983, no writ); *Drake v. Muse, Currie & Kohen*, 532 S.W.2d 369, 370 (Tex. Civ. App.--Dallas 1975, writ ref'd n.r.e.); *C.E. Duke's Wrecker Serv., Inc. v. Oakley*, 526 S.W.2d 228 (Tex. Civ. App.--Houston [1st Dist.] 1975, writ ref'd n.r.e.).
76. LexisNexis' fees and charges are not authorized by law, *Tex. Gov't Code* §101.061, and *Tex. Gov't Code* §51.317 and 51.318.
77. The Texas legislature considered electronic filing in 1987 in *Tex. Gov't Code* § 51.801-51.807. It made no provision for additional mandatory filing fees. *See* paragraph 273.
78. The "public access terminal" in the Montgomery County District Clerk's office, offered in lieu of E-filing (in the secret 2003 Order not produced for three years to Karen McPeters), unconstitutionally restricts each litigant's access to the courts. If Judge Edwards has 1,161 active E-filing cases, then **each litigant would be entitled to 10 minutes of time every two months**. This assumes a 10-minute session per litigant, 9 hours per day, times 43 business days in two months. In 2001 Judge Edwards had 1,500 E-File cases. LexisNexis shows 6,617 cases in the 9th District Court on May 17, 2010.
79. The "public access terminal" requires knowledge of computers and access to diskettes, which unreasonably discriminates against the uneducated, the poor and the elderly.
80. Parties have a duty to monitor the progress of the case that they may want to appeal. *Kuhn v. Sulzer Orthopedics, Inc.*, 498 F.3d 365, 371 (6th Cir. 2007); *Delaney v. Alexander*, 29 F.3d 516, 518 (9th Cir. 1994); *Latham v. Wells Fargo Bank*, 987 F.2d 1199, 1201 (5th Cir. 1993). Montgomery County's public access terminal denies litigants access to the courts, because of the unreasonable time constraints.

**ONLY THE TEXAS LEGISLATURE MAY DETERMINE THE AMOUNT
OF MANDATORY COURT FILING FEES, AND WHO SHALL BENEFIT
FROM RECEIVING THOSE FEES.**

81. Montgomery County has financially benefitted from its agreements with LexisNexis. LexisNexis agreed to pay, and upon information and belief has paid and continues to pay, Montgomery County \$1.00 for each filing, and \$1.00 for each service charge of each document by each E-filing litigant.
82. LexisNexis' current charges are \$7.00 for filing fees, \$8.00 for service charges for any document filed on-line, and a \$10.00 charge for providing a paper invoice to a litigant. LexisNexis has financially benefitted from its agreement with Defendants.
83. On information and belief, LexisNexis has charged the fees and charges to more than ten thousand individuals, persons and entities in litigation in Montgomery County, Texas, in Jefferson County, Texas, in Fulton County, Georgia, and to litigants in Michigan. There are 38 states that use LexisNexis E-filing. Some or all charges may be unlawful.
84. On information and belief, Montgomery County has financially benefitted from its agreement with LexisNexis, and its previous providers of on-line electronic filing, since 1997.

INVESTIGATION

85. On November 24, 2009, Karen McPeters filed a Rule 202 Petition ("Tex. R. Civ. P. 202"), Cause No. 09-11-11474-CV ("McPeters II") in Montgomery County. The petition was to investigate and determine the administrative remedies for refund of the LexisNexis fees and charges. *See* Exhibit "D."

86. Karen McPeters' Rule 202 Petition was assigned to Judge Edwards.
87. Karen McPeters attempted to set the hearing provided for under Rule 202 on January 8, 2010 via a hearing notice filed on-line with LexisNexis, and by email with Judge Edwards' court staff. *See* Exhibits "E" and "F."
88. Pursuant to Rule 202.3, Karen McPeters served Defendant Barbara Adamick with the petition and a notice of the hearing in accordance with Tex. R. Civ. P. 21a.
89. The Montgomery County District Clerk prepared and provided a copy of the 2003 E-filing order to Plaintiff McPeters in McPeters II. *See* Exhibit "A".
90. The Montgomery County District Clerk did not file a copy of Exhibit "A" on-line with LexisNexis in McPeters II – **not then, not now**.
91. Judge Edwards did not set the Rule 202 hearing on his January 8, 2010 docket.
92. The Montgomery County District Clerk returned the filed copy of the Rule 202 Petition with the word "VOID" stamped in blue over the original District Clerk file stamp. *See* Exhibit "D."
93. Defendant Barbara Gladden Adamick, Montgomery County District Clerk, violated the Texas Rules of Civil Procedure by voiding Karen McPeters' filing in McPeters II.
94. Judge Bob Wortham, Jefferson County, Texas was assigned and held a hearing in McPeters II on March 26, 2010.
95. The action of Defendant Barbara Gladden Adamick, Montgomery County District Clerk, was objectively unreasonable in light of clearly established law at the time of her action, to wit: voiding Karen McPeters' filing in McPeters II violated her ministerial duty. Karen McPeters assumed the VOID document sent by the District Clerk

accurately represented true and correct information in the clerk's office. Apparently, again, it did not.

96. Based on provisions in the 2003 Judge Edwards order, the following classes of individuals and entities do not pay the same fees and charges to LexisNexis that Karen McPeters has been forced to pay:

- (a) The State of Texas
- (b) Child Protective Services
- (c) Adoption Actions, and
- (d) New divorce and annulment cases that are resolved within 90 days.

97. Judge Edwards' 2003 Order was objectively unreasonable in light of clearly established law at the time he entered the order, to wit: one may not discriminate against certain classes of civil litigants in deciding who must use on-line E-filing. One may not discriminate in favor of all criminal litigants, and other classes of civil litigants. Doing so violates Karen McPeters' rights, and other similarly situated persons' equal protection rights.

98. The actions of Barbara Adamick, District Clerk, pursuant to Judge Edwards' 2003 Order were objectively unreasonable in light of clearly established law at the time she applied the 2003 Order to Montgomery County civil litigants, and ordered the respective cases to E-filing, to wit: one may not discriminate against certain classes of civil litigants in deciding who must use on-line E-filing . One may not discriminate in favor of all criminal litigants, and other classes of civil litigants. Doing so violates Karen McPeters' rights, and other similarly situated persons' equal protection rights.

99. The actions of the District Clerk under Judge Edwards' 2003 Order were objectively unreasonable in light of clearly established law at the time she applied the 2003 Order to Karen McPeters when she refused to file tendered documents and returned other documents with the file-stamp designations shown as being voided.
100. “[T]he date of filing is when the document is first tendered to the Clerk [even if no filing fee is paid].” *Jamar v. Patterson*, 868 S.W.2d 318, 319 (Tex. 1993); *Tate v. E.I. DuPont de Nemours & Co.*, 934 S.W.2d 83, 84 (Tex. 1996).
101. On information and belief, Montgomery County, as a civil litigant, does not pay the same fees and charges to LexisNexis that Karen McPeters has been forced to pay.
102. On information and belief, no criminal defendant pays the same fees and charges to LexisNexis that Karen McPeters has been forced to pay.

FIRST CAUSE OF ACTION
RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

As her first cause of action, Karen McPeters complains that Defendants, jointly and severally, violated 18 U.S.C. §§ 1961-1968 (“RICO”), and incorporates all paragraphs herein.

103. Defendants, jointly and severally, have engaged in actions with a common purpose (“Plan”). The Plan constitutes an enterprise with a common purpose –mandating that Karen McPeters, and similarly situated litigants, and their attorneys, participate in E-filing in Montgomery County. E-filing causes additional costs for litigants.

Association-in-Fact

104. The Plan, mandatory, enforced E-Filing, has as its participants, Judge Edwards (purportedly issuing a 2003 Order for each qualifying civil litigant), Barbara Adamick (rejecting paper filings and voiding prior filed pleadings to force E-filing), Montgomery County (through its Nov. 5, 2007 agreement with LexisNexis to mandate attorney compliance through Barbara Adamick), and LexisNexis (providing E-filing services, with a mandatory cost, to Montgomery County civil litigants in furtherance of the Plan), the “E-file Racket.”
105. The E-File Racket is an on-going organization and activity occurs daily. The members function as a continuing unit as is shown by the hierarchical and/or consensual decision-making structure, with Judge Edwards as its head, Barbara Adamick and Montgomery County as enforcer, and LexisNexis as its collector. Defendants are an association-in fact using money derived from a pattern of racketeering activity to conduct the enterprise though a pattern of racketeering activity. LexisNexis uses the funds from its 11/5/2007 sole source contract with Montgomery County to prevent competition from lower cost providers, such as Texas On-Line, thereby causing Karen McPeters’ direct injury, higher filing costs. *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 126 S. Ct. 1991, 1993 (2006).

Pattern of Racketeering

106. The pattern of racketeering is LexisNexis’ submission of bills to civil litigants and attorneys, because the mandatory “filing fees and service charges” are not authorized by statute. Collections by LexisNexis complete the pattern of racketeering. Congress

wanted to reach both “legitimate” and “illegitimate” enterprises. *Sedima v. Imrex Company, Inc.*, 473 U.S. 479, 498, 105 S. Ct. 3275, 3286 (1985)

Continuity

107. Mandatory E-filing is an on-going enterprise because it has operated more than 10 years, and by Montgomery County’s Rule 12(b)(6) motion, they plan to continue. There have been more than twenty predicate acts for Karen McPeters, and, upon information and belief, have been more than two predicate acts each for the more than 6,600 civil cases, and the 13,200 civil litigants (victims) who have appeared before Judge Edwards.
108. The on-going enterprise conclusion is appropriate, because defendants maintain they are not doing anything wrong. *Strain v. Kaufman County District Attorney’s Office*, 23 F. Supp. 2d 685 (N.D. Tex. 1998); *Pan American Maritime, Inc. v. Esco Marine, Inc.*, 2005 WL 1155149 (S.D. Tex 2005)

Legal Injury

109. The Plan results in the factual and proximate causation of litigants being forced to pay illegal filing fees, service charges and taxes, not authorized by statute, and exceeding the amounts required by statute. Filing fees are statutorily required when one files a lawsuit. *Tex. Gov’t Code* § 51.317.

Scope of Injury

110. A few other Texas counties apparently mandate on-line filing fees for motions and other civil filings, also violating the rights of litigants, as do Montgomery County and Jefferson County. Both Montgomery and Jefferson counties use LexisNexis.

111. The Plan violates RICO. *Boyle v. United States*, 129 S. Ct. 2237, 173 L.Ed.2d 1265 (S. Ct. 2009).
112. Judge Edwards' stated objective has been to force certain civil litigants, but not others, into exclusively on-line E-filing in Montgomery County.
113. Judge Edwards' act of forcing on-line E-filing through a 2003 Order, for cases filed after Feb. 10, 2003, is an "ultra vires" act, performed in the clear absence of all jurisdiction.
114. Defendants, jointly and severally, have required Karen McPeters to pay fees and charges when identical civil litigants in almost all other Texas counties have not been required to pay those fees and charges.
115. Judge Edwards knew that his actions were unconstitutional and stated his willingness to use **force** to mandate attorney participation in the scheme to defraud. In August 2001, he wrote:
- The judge has to be the one to herd, cajole or even **threaten** the ensemble of participants [litigants and their attorneys] into the 21st century. (emphasis and ellipsis added)
- "A Judge's Perspective of E-filing," Seventh National Court Technology Conference, Baltimore, Maryland, Aug. 2001.
116. In their Rule 12(b)(6) motion, Defendants Montgomery County and Barbara Adamick contend their conduct is legal. By clear implication, they plan to continue their illegal scheme to defraud by means of false and fraudulent misrepresentations, as they have for thousands of litigants since 1997.

117. LexisNexis is personally and independently responsible for the amount billed to litigants for fees and charges for use of E-filing services.
118. LexisNexis' apparent justification is the unconstitutional delegation of legislative authority to it by Judge Edwards, which authority Judge Edwards does not possess.
119. The payment requirement to LexisNexis violates Karen McPeters', and similarly situated litigants', equal protection rights, clearly established constitutional rights under the U.S. and Texas Constitutions at the time of Defendants' actions. It violates separation of powers.
120. Defendant Adamicks' actions are objectively unreasonable because they are contrary to the statutory duties of the Montgomery County District Clerk.
121. Montgomery County has financially benefitted from the Plan and the "ultra vires" acts of Defendants Edwards and Adamick. Montgomery County has deprived Karen McPeters and similarly situated civil litigants of her constitutional rights to her property, her money, by mandating filing fees other than those set by statute.
122. Montgomery County signed an agreement with LexisNexis on November 5, 2007.
123. In the agreement, Montgomery County agreed to

7. Law Firm Participation

Address the requirement of attorneys to electronically file within all case types noted in the Implementation Plan. Under this requirement the attorneys will be mandated to participate in the electronic submittal of documents through the File & Serve System as a subscriber.

and

9. Electronic Filing Court Order or Court Rules

Address the court/judicial order that will mandate complete participation by attorneys in electronic filing and service in all designated case class and case types listed under case identification. *See* Exhibit “B,” page 15.

124. The Montgomery County agreement was adopted and affirmed on November 5, 2007, by the four Precinct Commissioners and the County Judge of Montgomery County. Thus, Montgomery County was an active and willing participant in the illegal scheme set forth herein. *See* Exhibit “B,” page 22.
125. The unconstitutional order of Judge Edwards, the failure of the District Clerk to file the 2003 Order in Cause No. 07-09-09142-CV, the failure to file the 2003 Order in Cause No. 09-11-11474-CV, and the repeated assurances of the deputies in the District Clerk’s office served to “lull” the plaintiff into a false sense of security, postpone inquiry or complaint and to lessen the suspect appearance of the fraudulent activities of Judge Edwards, the District Clerk, Montgomery County and LexisNexis. *See* Exhibit “C.”
126. As an example, on October 2, 2009, Karen McPeters filed her Notice of Appeal in person in the litigation described in paragraph 10 above (“McPeters I”).
127. The District Clerk cancelled her filing, an “ultra vires” act; Karen McPeters had to re-file the Notice of Appeal on October 7, 2009 on LexisNexis, and pay its fees and charges. *See* Docket 13-9, page 1, entry on 10/5/09.
128. On November 24, 2009, Karen McPeters filed her Rule 202 Petition (“McPeters II”).
129. On or about January 6, 2010, the Montgomery County District Clerk cancelled her filing, an “ultra vires” act.

130. On or about February 8, 2010, the District Clerk failed to perform a purely ministerial act by failing to file (and returning) plaintiff's counsel's vacation letter in *McPeters II*. *See* Docket 13-9, page 1, entry on 10/8/09.
131. The District Clerk failed to file a letter designation of the record for the Ninth Court of Appeals.
132. The Montgomery County District Clerk has disregarded the known and obvious consequences of her actions. She and Judge Edwards have denied Karen *McPeters*' due process rights as those are set forth in the Texas Rules of Civil Procedure and the Constitution.
133. *McPeters II* clearly provided Barbara Gladden Adamick, the Montgomery County District Clerk, with notice of her complaints and an opportunity to respond.
134. Her response was to cancel Karen *McPeters*' filing by marking it "VOID," and returning it.
135. Defendants, jointly and severally, have continued the Plan, not only with Karen *McPeters*, but also with thousands of individuals, persons and entities that have engaged in civil litigation in Montgomery County.
136. The relationship is that each Montgomery County litigant who is a civil litigant, is ensnared by the secret 2003 Order. Each files documents with LexisNexis; there are thousands of filings by qualifying litigants over the approximately 13 years since the Plan has been in place.
137. The Plan is continuing and will continue because Defendants claim they have done nothing wrong.

138. Karen McPeters, and all similarly situated litigants, have been forced to pay filing fees in excess of a fair and reasonable amount for filing fees, because that amount is specified by statute by the Texas Legislature and signed into law by the Governor.
139. On information and belief, Defendants' Plan has been in place since 1997.
140. Defendants, jointly and severally, have obtained property (monetary payments) from Karen McPeters, with her consent, induced by threatened force (paragraph 115) and fear that her case, McPeters I, would be dismissed for failure to use LexisNexis *fileandserve*, and pay LexisNexis' charges.
141. Karen McPeters has suffered direct injury, and Defendants injured Karen McPeters by using the U.S. Mail to bill her. Each billing and required payment violated RICO by forcing Karen McPeters to pay LexisNexis, and through the agreement between LexisNexis and Montgomery County, to also pay Montgomery County. The communication violated federal law, because the 2003 Order (a) violated her rights to equal protection compared to other litigants not required to E-file, and (b) was void as violating the separation of powers doctrine. The charges were not authorized by statute. *Texas Gov't Code* § 51.801-51.807 for E-filing.
142. The E-filing requirement in the 2003 Order included required payments (obligations) to LexisNexis. It was a scheme to defraud by furnishing for unlawful use a spurious obligation of litigants to pay for the purpose of executing the scheme. The actions of Defendants, jointly and severally, violated 18 U.S.C. § 1341.
143. Karen McPeters has suffered direct injury, and Defendants injured Karen McPeters by using the Internet to send bills to her via email. Each billing and required payment

violated RICO by forcing Karen McPeters to pay LexisNexis, and through the agreement between LexisNexis and Montgomery County, to also pay Montgomery County. The communication violated federal law because the 2003 Order (a) violated her rights to equal protection, and (b) was void as violating the separation of powers doctrine. The charges were not authorized by statute.

144. The E-filing requirement in the 2003 Order included required payments to LexisNexis; it sent monthly invoices. The scheme to defraud was the transmittal by wire in interstate commerce of writings for the purpose of executing the scheme. Defendants, jointly and severally, 18 U.S.C. § 1343.
145. Defendants obstructed, delayed or affected commerce by requiring and obtaining payment from Karen McPeters in furtherance of their Plan under the color of official right, violating 18 U.S.C. § 1951. Each billing and required payment violated RICO by forcing Karen McPeters to pay LexisNexis, and through the agreement between LexisNexis and Montgomery County, to also pay Montgomery County. LexisNexis obtained Karen McPeters' property with her consent induced by wrongful use of threatened force, or fear, under color of official right. *See* paragraph 115.
146. Karen McPeters had a well-founded fear of the denial of any judicial remedy to her by Judge Edwards. Judge Edwards wrongfully dismissed her case, 07-09-09142-CV, ("McPeters I"), for want of prosecution. That case was reversed and remanded for trial on May 27, 2010 in Cause No. 09-09-00451-CV, *Karen McPeters v. Montgomery County, Texas* (Tex. App.-Beaumont 2010).

147. The color of official right was Judge Edwards' 2003 Order. The 2003 Order (a) violated her rights to equal protection, and (b) was void as violating the separation of powers doctrine. The charges were not authorized by statute. The E-filing requirement in the 2003 Order included required payments to LexisNexis.
148. Defendants, jointly and severally, violated 18 U.S.C. § 1349. Each billing and required payment violated RICO by forcing Karen McPeters to pay LexisNexis, and through the agreement between LexisNexis and Montgomery County, to also pay Montgomery County. The conspiracy violated federal law because the 2003 Order (a) violated her rights to equal protection, and (b) was void as violating the separation of powers doctrine. The charges were not authorized by statute. The E-filing requirement in the 2003 Order included required payments to LexisNexis.
149. All reasonable officials similarly situated to Judge Edwards, District Clerk Adamick and Montgomery County would have known that the Plan clearly violated the U.S. Constitution, the Texas Constitution and clearly defined rights under state and federal statutes as enumerated herein.
150. Any reasonable official, including Judge Edwards, would have known that his actions violated the **separation of powers doctrine** under the Texas Constitution and under the U.S. Constitution.
151. That is, Judge Edwards may not usurp the legislative power to set court filing fees, as set forth in Texas Government Code, Chapter 51, and he may not delegate this usurped power to a private entity, LexisNexis.

152. Likewise, Montgomery County may not promote and ratify Judge Edwards' unconstitutional usurpation of legislative power by entering into an agreement with LexisNexis for him to do so, and agreeing to force all attorneys to participate.
153. Each of the Precinct Commissioners and the County Judge of Montgomery County affirmed and ratified Judge Edwards' actions on November 5, 2007, in their agreement with LexisNexis. *See* Exhibit "B," page 22. The agreement was also to have Judge Edwards violate the doctrine of separation of powers.
154. That action clearly makes Montgomery County a party to each RICO violation alleged herein.
155. No reasonable public official, under the same or similar circumstances, would have taken the actions that caused the violations enumerated herein.
156. Karen McPeters incorporates her fraud and conspiracy claims (below) in this RICO cause of action.

SECOND CAUSE OF ACTION
VIOLATION OF SEPARATION OF POWERS DOCTRINE
UNDER ARTICLE II, §1 OF THE TEXAS CONSTITUTION

As her second cause of action, Karen McPeters alleges violation of the separation of powers doctrine by Defendants, jointly and severally, and incorporates all paragraphs herein.

JUDGE EDWARDS' 2003 ORDER VIOLATES THE DOCTRINE OF
SEPARATION OF POWERS

SEPARATION OF POWERS

157. *State v. Rhine*, 297 S.W.3d 301, 305 (Tex. Ct. Crim. App. 2009) discusses separation of powers.

158. As in *Rhine*, Plaintiff McPeters asserts that Judge Edwards has unconstitutionally usurped the powers of the legislative branch of the Texas Constitution. The unconstitutional assumption of power by Judge Edwards implicates [Article II, § 1, of the Texas Constitution](#). That article provides that

[t]he powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

159. [TEX. CONST. art. II, § 1](#). McPeters agrees that this section permits the delegation of authority from the legislature to an executive-branch agency. McPeters' view is in accord with the precedent of the Court of Criminal Appeals and also that of the Texas Supreme Court. See, e.g., [Ex parte Ferguson, 112 Tex.Crim. 152, 15 S.W.2d 650 \(Tex.Crim.App.1929\)](#); [Land v. State, 581 S.W.2d 672 \(Tex.Crim.App.1979\)](#); [Ex parte Leslie, 87 Tex.Crim. 476, 223 S.W. 227 \(Tex.Crim.App.1920\)](#). See also [Tex. Boll Weevil Eradication Found., Inc. v. Lewellen, 952 S.W.2d 454 \(Tex.1997\)](#). As the Court stated in [Land v. State](#), "[t]here are many powers which the Legislature may delegate to other bodies ... where the Legislature cannot itself practically or efficiently perform the functions required." [Land, 581 S.W.2d at 673](#) (quoting [Texas National Guard Armory Board v. McCraw, 132 Tex. 613, 126 S.W.2d 627, 635 \(1939\)](#).)

160. In [Armadillo Bail Bonds v. State, 802 S.W.2d 237 \(Tex.Crim.App.1990\)](#), the Court provided a test for determining when the separation of powers is violated.

We have held repeatedly that the separation of powers provision may be violated in either of two ways. First, it is violated when one branch of government assumes, or is delegated, *to whatever degree*, a power that is more 'properly attached' to another branch. The provision is also violated when one branch *unduly* interferes with another branch so that the other branch cannot *effectively* exercise its constitutionally assigned powers.

[Id. at 239](#) (emphasis in original; internal citations omitted). Thus, if a state agency has been delegated a power that is more properly attached to the legislature, then the statute is unconstitutional.

161. **Likewise, there can be no constitutional delegation of powers by the legislature to the judiciary. And, in this case, the legislature did not even attempt to delegate its powers to Judge Edwards. He “assumed” the powers.**
162. **As soon as Judge Edwards mandated that almost every attorney in litigation in Montgomery County must use and pay for LexisNexis, he mandated that they (and their clients) pay additional filing fees. He mandated service charges; he mandated other costs for LexisNexis. This he may not do.**

Powers Properly Attached to the Legislature

163. The Texas Constitution vests law-making power in the legislature. [TEX. CONST. art. III, § 1](#). [Boykin v. State, 818 S.W.2d 782, 785 \(Tex.Crim.App.1991\)](#); [Copeland v. State, 92 Tex.Crim. 554, 244 S.W. 818, 819 \(Tex.Crim.App.1922\)](#). See also [Russell v. Farquhar, 55 Tex. 355, 359 \(1881\)](#). Only the legislature can exercise that power, subject to restrictions imposed by the constitution. [TEX. CONST. art. II, § 1](#). These restrictions must be express or clearly implied. [Jones v. State, 803 S.W.2d 712, 716 \(Tex.Crim.App.1991\)](#) (citing [Gov't Servs. Ins. Underwriters v. Jones, 368 S.W.2d 560, 563 \(Tex.1963\)](#)).
164. The legislature also declares the public policy of the state and may depart from established public policy, reshape it, or reform it. [State v. Dallas, 319 S.W.2d 767, 774 \(Tex.Civ.App.-Austin 1958\)](#) (citing [McCain v. Yost, 155 Tex. 174, 284 S.W.2d 898, 900 \(1955\)](#)); [Reed v. Waco, 223 S.W.2d 247, 253 \(Tex.Civ.App.-Waco 1949\)](#). It may do this as long as constitutional guarantees are not abridged. [Reed, 223 S.W.2d at 253](#). The legislature may enact laws that enhance the general welfare of the state and resolve political questions, such as the boundaries of political subdivisions, subject to constitutional limits. [Carter v. Hamlin Hosp. Dist., 538 S.W.2d 671, 673 \(Tex.Civ.App.-Eastland 1976\)](#); see [Hunter v. City of Pittsburgh, 207 U.S. 161, 178-79, 28 S.Ct. 40, 52](#)

[L.Ed. 151 \(1907\)](#). It also has exclusive dominion over the fixing of penalties for offenses under the state's penal laws. See [Sasser v. State, 131 Tex.Crim. 347, 98 S.W.2d 211, 212 \(Tex.Crim.App.1936\)](#); [David v. State, 453 S.W.2d 172, 179 \(Tex.Crim.App.1970\)](#), *vacated on other grounds in* [David v. Texas, 408 U.S. 937, 92 S.Ct. 2862, 33 L.Ed.2d 755 \(1972\)](#); [Grant v. State, 505 S.W.2d 279, 282 \(Tex.Crim.App.1974\)](#).

165. The legislature may delegate some of its powers to another branch, but only if those powers are not more properly attached to the legislature. For example, legislative power cannot be delegated to the executive [judicial] branch, either directly or to an executive agency [private company – LexisNexis]. The issue becomes a question of the point at which delegation becomes unconstitutional. The Texas Supreme Court has described the problem: “the debate over unconstitutional delegation becomes a debate not over a point of principle but over a question of degree.” [Tex. Boll Weevil Eradication Found., Inc., 952 S.W.2d at 466](#). The Court, in [Ex parte Granviel, 561 S.W.2d 503 \(Tex.Crim.App.1978\)](#), stated that sufficient standards are necessary to keep the degree of delegated discretion below the level of legislating.
166. Generally, a legislative body, after declaring a policy and fixing a primary standard, may delegate to the administrative tribunal or officer power to prescribe details, [Margolin v. State, 151 Tex.Cr.R. 132, 205 S.W.2d 775 \(1947\)](#); [Williams v. State, 146 Tex.Cr.R. 430, 176 S.W.2d 177 \(1943\)](#), such as to establish rules, regulations or minimum standards reasonably necessary to carry out the expressed purpose of the act. [Beall Medical Surgical Clinic and Hospital, Inc. v. State Board of Health, 364 S.W.2d 755 \(Tex.Civ.App. Dallas, 1963\)](#), and cases there cited.
167. **Filing fees and other costs are the purview of the legislature, set in the Government Code, §51.317. Delegation of power by the legislature is not the usurping of power by the judiciary. Judge Edwards may not unconstitutionally usurp legislative power by his 2003 Order.**

168. The courts have held that even the legislature may not restrict access to the courts.

Increases to filing fees have previously been limited under Article I, Sect. 13 of the Texas Constitution. *LeCroy v. Hanlon*, 713 S.W.2d 335, 341 (Tex. 1986). Citizens must have access to those courts unimpeded by unreasonable financial barriers, so that the legislature cannot impose a litigation tax in the form of increased filing fees to enhance the state's general revenue. *Tex. Assoc. of Business v. Tex. Air Control Bd.*, 852 S.W.2d 440, 448 (Tex. 1993). The prepayment requirement ... like the filing fees ... constitutes an unreasonable interference with access to the courts. *State v. Flag-Redfern Oil Co.*, 852 S.W.2d 480, 485 (Tex. 1993).

169. If the court holds that Judge Edwards' 2003 Order is not a breach of the doctrine of separation of powers, then Judge Edwards' order simply violates the open courts provision of the Texas Constitution. It is still impermissible. The job of the judiciary is to balance the cost of mandatory filing fees versus the requirement for open courts. Its job is not to set the filing fees, or to delegate that authority to an unaccountable, non-governmental entity.

Qualified Immunity

170. The threshold inquiry in a qualified-immunity analysis is whether Karen McPeters' allegations, if true, establish a constitutional violation. *Scott v. Harris*, 550 U.S. 372, 377, 127 S. Ct. 1769, 1774 (2004). The second inquiry is whether the constitutional right was clearly established, that is, whether it would be clear to a reasonable officer that her conduct was unlawful in the situation she confronted. *Saucier v. Katz*, 533 U.S. 194, 202 (2001).

171. Defendants Edwards, Adamick, Montgomery County and LexisNexis knew, or should have known, that court filing fees are set by the state legislature. *Tex. Gov't Code* §51.317, § 51.318 and *Tex. Gov't Code* §101.061-101.0617.

172. Defendants Edwards, Adamick, Montgomery County and LexisNexis knew, or should have known, that court filing fees are set by the state legislature, because court filing fee information is codified in Vernon's Texas Codes Ann. (2003), and each section contains the legislative history of that provision.
173. Defendants Edwards, Adamick, and Montgomery County knew that LexisNexis would be charging litigants for E-filing and that Montgomery County would receive payments from LexisNexis derived from the charges to litigants.
174. Judge Edwards cannot order litigants to pay more filing fees. He cannot force them into a position [by mandating E-filing], so that some litigants are required to pay more filing fees than are provided for by statute.
175. Defendants Edwards, Adamick, Montgomery County and LexisNexis knew, or should have known, that Judge Edwards' Feb. 2003 Order was an unconstitutional usurpation of legislative power. His order violated the separation of powers doctrine upon which our government at both the state and national level is based.
176. Each defendant knew, or should have known, that Judge Edwards did not have the authority to mandate litigants to pay filing fees and service charges to LexisNexis, because one may not do indirectly that which he cannot do directly. *Head v. State*, 4 S.W.3d 258, 261 (Tex. Ct. Crim. App. 1999); *McAllen Medical Center v. Cortez*, 66 S.W.3d 227, 234 (Tex. 2001).
177. Judge Edwards knew that his actions were unconstitutional. In August 2001, he wrote:
- "Power has many shapes. It is money; it is information; it is authority. The true definition of power is the authority to control money and information. A Judge or administrator that controls the money and information thus has true power in the justice system."
- "A Judge's Perspective of E-filing," Seventh National Court Technology Conference, Baltimore, Maryland, Aug. 2001.

The separation of powers doctrine exists to prevent the abuses enumerated herein.

178. Furthermore, Barbara Adamick, the District Clerk, is required by statute and rule to accept and file documents tendered to her, *Tex. Gov't Code* § 51.303(a) and *Texas Rules of Civil Procedure* 21 and 74.
179. Therefore, it would be clear to a reasonable officer that her conduct was unlawful in the situation she confronted. *Saucier v. Katz*, 533 U.S. 194, 202 (2001); *Poteet v. Sullivan*, 218 S.W.3d 780, 787 (Tex. App.-Ft. Worth 2007, review den'd, cert. den'd); *Scott v. Harris*, 550 U.S. 372, 377, 127 S. Ct. 1769, 1774 (2007); *Newman v. Kock*, 274 S.W.3d 697 (Tex. App.-San Antonio, no pet.).

THIRD CAUSE OF ACTION
VIOLATION OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS RIGHTS
UNDER 42 U.S.C. §1983 AND THE U.S. CONSTITUTION

As her third cause of action, Karen McPeters complains of the violation of her right to procedural and substantive due process rights by Defendants, jointly and severally, and incorporates all paragraphs herein.

180. 42 U.S.C. § 1983 provides:

Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

181. *Monnell v. Dept. of Social Services*, 436 U.S. 658, 691, 98 S. Ct. 2018 (1978) states the requirements for section 1983 liability: (1) the execution of a government's policy or custom, (2) that is made by the government's lawmakers or those whose edicts or acts may fairly be said to represent official policy, (3) that inflicts constitutional injury.
182. The Nov. 5, 2007 agreement between Montgomery County and LexisNexis was endorsed by all four commissioners and the county judge of Montgomery County. It was official policy. Montgomery County, Edwards and Adamick executed that policy, together with LexisNexis. *See* Exhibit "B," page 22.
183. It inflicted constitutional injury on Karen McPeters and all similarly situated persons by imposing unconstitutional fees and charges on them as is set forth herein. Montgomery County is liable under Section 1983, and Karen McPeters is entitled to injunctive relief. *Democracy Coalition v. City of Austin*, 141 S.W.3d 282, 289 (Tex. App.-Austin 2004, 2005 WL 2978378 (2005))
184. In 1993, the Supreme Court held that heightened factual specificity is not required against municipalities, and in 2002, the Court held that unless a specific statute imposes a heightened pleading requirement, FRCP 8(a)'s requirement of a "short and plain statement" applies. *Swierkiewicz v. Sorema*, 534 U.S. 506, 513 (2002); *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993). Together they cast doubt on any heightened pleading requirement in civil-rights cases. *Educadores Puertorriqueños en Acción v. Hernández*, 367 F.3d 61, 66-67 (1st Cir. 2004).

185. However, in brief, categories determining a “rational basis” are set by the legislature. Judge Edwards was acting in violation of the separation of powers doctrine under the Texas and U.S. Constitutions. Montgomery County’s 11/5/2007 agreement with Lexis Nexis was to implement Judge Edwards’ void 2003 Order. Defendants violated the open courts provision of the Texas Constitution. No defendant can set or enforce “categories of litigants.” Defendants’ actions violated Karen McPeters’ equal protection, and substantive and procedural due process rights.

186. Injunctive relief is available because neither Judge Edwards nor Barbara Adamick was acting as a judicial officer. The tasks were administrative, not judicial. There is no judicial immunity. *Mays v. Sudderth*, 97 F.3d 107, 114 (5th Cir. 1996); *Southwest Guaranty Trust v. Providence Trust*, 970 S.W.2d 777, 782-83 (Tex. App. – Austin 1998, pet. denied).

187. Amendment XIV, to the U.S. Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

188. The Defendants, jointly and severally, violated Plaintiff McPeters’ procedural and substantive due process rights under 42 U.S.C. § 1983 and the U.S. Constitution. Defendants denied Plaintiff McPeters her equal protection rights by failing to treat her and all similarly situated civil litigants the same, and by preventing them from

filing paper pleadings in person. Defendants' actions were and are an intentional violation of Karen McPeters' procedural and substantive due process rights.

189. Judge Edwards, and the other Defendants, may not attempt to enforce a 2003 Order against Karen McPeters that is not filed of record in 07-09-09142-CV or 09-11-11474-CV. There is no filing in either case.
190. Judge Edwards is not the legislature. He may not establish categories of litigants without violating their equal protection and due process rights.
191. The Montgomery County District Clerk's refusal to accept paper filings from Karen McPeters, and similarly situated litigants, was and is an official policy, and was and continues to be a part of the Plan and the 2003 Order of Judge Edwards.
192. Barbara Gladden Adamick had actual knowledge of the policy both due to Judge Edwards' 2003 Order and McPeters II petition.
193. The policy caused the constitutional violation, the denial of Karen McPeters' rights to equal protection, and due process under Amendment XIV to the U.S. Constitution.
194. The 2003 Order of Judge Edwards is a constitutional violation. The order violates the separation of powers doctrine, both federal and state, or, in the alternative, violates the open courts provision of the Texas Constitution.
195. Judge Edwards 2003 Order was not an act taken by him in his judicial capacity. The 2003 Order was an administrative act, not a judicial act, and, as such, provides no protection (judicial immunity) to Judge Edwards. *See* paragraph 34.
196. Likewise, the actions by Barbara Adamick, taken pursuant to the 2003 Order, afford no judicial immunity to her.

197. Karen McPeters first objected to E-filing with Judge Edwards on 1/27/09. *See* Docket 13-9, page 1, entry 1-27-09. Afterwards, until document 13-2 herein was filed on May 4, 2010, Karen McPeters had not seen the order purportedly requiring her to E-file in Montgomery County in Cause No. 07-09-09142-CV.
198. Defendants aver that Karen McPeters had the opportunity request permission from Judge Edwards to conventionally file documents. One cannot avail oneself of the “remedy” in an unseen order. **Karen McPeters has finally seen the order -- after three years. Secret orders are not part of American jurisprudence.**
199. Second, the 2003 Order is **still not E-filed** with LexisNexis in 07-09-09142. One cannot appeal an unfiled order. *See* Exhibit “H,” the docket sheet in that case. **No administrative remedy exists for an unfiled order.**
200. Likewise, one cannot be controlled by an unfiled order. The May 2, 1997 document, “Approval of Local Rule for Electronic Filing and Service of Pleadings in the District Courts and County Courts at Law, Montgomery County, Texas,” states in document 13-1, page 4, paragraph 8:
- The Court intends to issue, file and serve orders, rulings and other documents in the assigned cases electronically, rather on paper. (sic)**
201. Karen McPeters was entitled to rely on the representation that all orders, and rulings applying to her case were on-line.
202. Third, Karen McPeters is entitled to her constitutional rights, with or without the approval of Judge Edwards. Judge Edwards is not able to make the determination

that she **must** E-file and pay. Only the legislature can do that. See paragraph 157-169 herein.

203. Finally, Karen McPeters does have a remedy. She is asserting that remedy herein.

204. Judicial immunity, even if it existed, does not bar claims for injunctive relief, or for attorney's fees for injunctive relief under 42 U.S.C. § 1983. *Pulliam v. Allen*, 466 U.S. 522, 541, 543 (1984).

FOURTH CAUSE OF ACTION
VIOLATION OF EQUAL PROTECTION, OPEN COURTS AND DUE COURSE OF
LAW UNDER ARTICLE 1, SECTIONS 1, 3, 19 AND 29 OF THE TEXAS
CONSTITUTION

As her fourth cause of action, Karen McPeters complains that her rights under the Texas Constitution, Bill of Rights, Art. 1, § 3, § 13, §19 and §29, to equal rights, open courts and due course of law have been violated, and incorporates all paragraphs herein.

205. Art. 1, § 3 provides:

All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

206. Defendants cannot discriminate against Karen McPeters and similarly situated civil litigants by requiring them to E-file, while others need not E-file. Existing case law concerning equal rights (equal protection) relates to either the application of legislative enactments, or administrative agency actions. Thus, *Allred's Produce v. U.S. Dept. of Agriculture*, 178 F.3d 743, 748 (5th Cir. 1999), *Romer v. Evans*, 517 U.S. 620, 631 (1996); *M.L.B. v. S.L.J.*, 519 U.S. 102, 115-116 (1996); and

Nordlinger v. Hahn, 505 U.S. 1, 15, 112 S. Ct. 2326 (1992), cited by Defendants, are not on point.

207. *Allred's Produce* was the review of an administrative agency's choice of sanctions. Allred's Produce claimed selective (discriminatory) enforcement under the Perishable Agricultural Commodities Act (for failure to make prompt payment). The "unjustifiable standard, such as race, religion, or other arbitrary classification," refers to legislative enactments and the administrative agency's enforcement of the legislation.

208. Judge Edwards is not the legislature. Judge Edwards' different treatment of similarly situated individuals is actionable, because the judiciary [Judge Edwards] may not classify any persons. The judiciary may simply determine whether or not a classification impermissibly violates equal protection. One may not determine the classification (legislation) and then rule on its validity (judicial).

209. The specific quotation in *Romer*, 517 U.S. at 631, is:

We have attempted to reconcile the principle with the reality by stating that, if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end. (citations omitted)

Judge Edwards' 2003 Order is not a legislative classification.

210. In *M.L.B. v. S.L.J.*, the equal protection scrutiny applied to the \$25.00 filing fee (enacted by the Oregon legislature). The court found the applicable equal protection standard "is that of rational justification," a requirement we found satisfied by Oregon's need for revenue to offset the expenses its court system. Again, the focus is on the legislative enactment.

211. Finally, *Nordlinger*, 505 U.S. at 15 held:

To be sure, the Equal Protection Clause does not demand for purposes of rational-basis review that a legislature or governing decision maker actually articulate at any time the purpose or rationale supporting its classification. [*United States Railroad Retirement Bd. v. Fritz*, 449 U.S., at 179, 101 S.Ct., at 461](#). See also [*McDonald v. Board of Election Comm'rs of Chicago*, 394 U.S. 802, 809, 89 S.Ct. 1404, 1408, 22 L.Ed.2d 739 \(1969\)](#) (legitimate state purpose may be ascertained even when the legislative or administrative history is silent). Nevertheless, this Court's review does require that a purpose may conceivably or "may reasonably have been the purpose and policy" of the relevant governmental decision maker. [*Allied Stores of Ohio, Inc. v. Bowers*, 16 358 U.S. 522, 528-529, 79 S.Ct. 437, 442, 3 L.Ed.2d 480 \(1959\)](#). See also ****2335** [*Schweiker v. Wilson*, 450 U.S. 221, 235, 101 S.Ct. 1074, 1083, 67 L.Ed.2d 186 \(1981\)](#) (classificatory scheme must "rationally advanc[e] a reasonable and *identifiable* governmental objective" (emphasis added))

212. Judge Edwards is not a relevant governmental decision maker; he is a judge. Judge Edwards may not treat civil litigants differently. Any classification by him violates separation of powers and thus equal protection of the laws.

213. Art. 1, § 13 provides:

All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Defendants' requirement for Karen McPeters, and similarly situated civil litigants, to pay more than other litigants restricts her, and their, access to the courts of the State of Texas, and violates their constitutional rights. *See* paragraph 168.

214. Montgomery County misquotes *Federal Sign*. In *Cronen v. Davis*, 2007 WL 765453 (Tex. App.-Corpus Christi 2007) the court stated:

The Open Courts provision provides that "[a]ll courts shall be open, and every person for any injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." *Id.* The Texas Supreme Court has held that the Open Courts provision affords individuals three distinct protections. [*Fed. Sign v. Tex. S. Univ.*, 951 S.W.2d 401, 410 \(Tex.1997\)](#). First, courts must actually be open and operating. *Id.* (citing *Runge & Co. v. Wyatt*, 25 Tex. 291, 294 (1860)). Second, citizens must have access to the courts unimpeded by unreasonable financial barriers. *Id.* (citing [*LeCroy v. Hanlon*, 713 S.W.2d 335, 342 \(Tex.1986\)](#)). Third, the law must afford meaningful legal remedies to our citizens, so the

Legislature may not abrogate the right to assert a well-established common law cause of action. *Id.* (citing [Tex. Ass'n of Bus. v. Air Control Bd., 852 S.W.2d 440, 448 \(Tex.1993\)](#); [Moreno v. Sterling Drug, Inc., 787 S.W.2d 348, 355-57 \(Tex.1990\)](#)). In addition, the Texas Supreme Court has held that the Open Courts provision "applies only to statutory restrictions of a cognizable common law cause of action." *Id.* (quoting [Peeler v. Hughes & Luce, 909 S.W.2d 494, 499 \(Tex.1995\)](#); [Moreno, 787 S.W.2d at 355-56](#)).

The claims in this case are based on the second distinct protection, not the third that Montgomery County discusses.

215. Any fee charged by LexisNexis imposes an unreasonable financial barrier. Because Judge Edwards made use of LexisNexis mandatory, (1) any fee is unreasonable because it is not set by the legislature (is not in the Government Code); (2) there is no review of the fee by any branch of government; and (3) under separation of powers, Judge Edwards cannot mandate the fee and then allow LexisNexis to charge whatever it desires.

216. As an example, LexisNexis currently charges \$10.00 to mail each LexisNexis subscriber a paper invoice to pay filing fees and service costs. That charge is *prima facie* financially unreasonable.

217. Montgomery County acting through its commissioners and county judge in its November 5, 2007 contract with LexisNexis has approved and ratified the conduct of Barbara Adamick and Judge Fred Edwards.

218. Art. 1, § 19 provides:

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disenfranchised, except by the due course of the law of the land.

Defendants violated Karen McPeters' and similarly situated civil litigants' due process rights by the enforcement of a void order against them. Karen McPeters due process rights were violated when Barbara Adamick cancelled her petition in McPeters II and returned documents unfiled in McPeters I and II.

219. Furthermore, because the 2003 Order affects Karen McPeters' property rights by requiring her to pay money to LexisNexis, she is entitled to notice. She still has not received that notice in Cause No. 07-09-09142 or 09-11-11474; the 2003 Orders **still** have not been filed with LexisNexis. Coupled with notice, she is entitled to a hearing. Karen McPeters has never been offered a hearing on the mandated requirement for her to pay LexisNexis.

220. Karen McPeters is not obligated to ask for leave of court to file paper pleadings. When the choice is file paper pleadings, or pay fees to LexisNexis that are outside the Government Code, so that she can file on-line, Karen McPeters is entitled under the Texas Constitution to select the no-cost option. Open courts constitutionally guarantees her right to file paper pleadings. If E-filing were without additional cost, or, if the legislature passed a bill and the governor signed it, the result would be different and Karen McPeters would not object.

221. Consider the irony – Judge Edwards orders E-filing coupled with fees, and then he decides whether or not you have to pay. Separation of powers prohibits his participation in both decisions. The legislature decides one. The judiciary decides the other.

222. Art. 1, § 29 provides:

To guard against transgressions of the high powers herein delegated, we declare that everything in this “Bill of Rights” is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

Defendants Judge Frederick Edwards, District Clerk Barbara Adamick and Montgomery County, violated Karen McPeters’ rights guaranteed by the Texas Bill of Rights. They have no sovereign immunity. The drafters of the constitution never foresaw that a member of the judiciary would purport to give away legislative rights (to set court filing fees) to a privately held entity – LexisNexis.

FIFTH CAUSE OF ACTION
VIOLATION OF TEXAS THEFT LIABILITY ACT

As her fifth cause of action, if necessary, Karen McPeters complains that Defendants, jointly and severally, violated Tex. Civ. Prac. & Rem. Code § 134.001, et. seq., and seeks the statutory penalties against them, as is provided therein, and incorporates all paragraphs herein.

223. In addition, Karen McPeters specifically pleads theft. A person commits the offense of theft “if he unlawfully appropriates property with intent to deprive the owner of property.” [TEX. PENAL CODE ANN. § 31.03](#)(a) (Vernon 2003). “Appropriation of property is unlawful if ... it is without the owner's effective consent....” [Id. § 31.03](#)(b)(1). “ ‘Effective consent’ includes consent by a person legally authorized to act for the owner. Consent is not effective if ... induced by deception or coercion....” [Id. § 31.01\(3\)\(A\)](#). “ ‘Deception’ means: (A) creating or confirming by words or conduct a false impression of law or fact that is likely to affect the judgment of another in the transaction, and that the actor does not believe to be true; [or] (B) failing to correct a false impression of law or fact that is likely to affect the judgment of another in the transaction, that the actor previously created or confirmed by words or conduct, and

that the actor does not now believe to be true...." *Id.* [§ 31.01\(1\)\(A\), \(B\)](#). " 'Coercion' means a threat, however communicated ... to expose a person to hatred, contempt, or ridicule [or] to harm the credit or business repute of any person ..." § 1.07(9)(D), (E).

Roberts v. State, --- S.W.3d ----, 2010 WL 956129, Tex. App.-San Antonio, 2010.

Under Texas law, extortion is subsumed under the theft statute. *Id.* [§ 31.02](#).

224. The aggregate amount of the LexisNexis charges to Plaintiff McPeters, and similarly situated persons, constitute a first degree felony under Texas law. See Tex. Pen. Code Ann. §§ 31.09, 31.03 (e)(7) (Vernon 2003).
225. Damages awarded for felony theft in the third degree or higher under the Texas Penal Code, chapter 31, are exempt from the cap on exemplary damages. Tex. Civ. Prac. & Rem. Code § 41.008(b), (c)(13); *Cooper v. Sony Music Entm't, Inc.*, No. 01-0941 (S. Dist. Tex. 2002)(no pub.; 2-22-02).
226. Karen McPeters pleads that Defendants' actions, jointly and severally, constitute extortion. Judge Edwards threatened the use of force in 2001. Like his 2003 Order which is alleged to apply to her and her claims, Karen McPeters has no reason to disbelieve Judge Edwards' threat.

SIXTH CAUSE OF ACTION FRAUD

As her sixth cause of action, if necessary, Karen McPeters complains that Defendants, jointly and severally, committed fraud against her and similarly situated litigants, and seeks damages, and incorporates all paragraphs herein.

Judge Edwards

227. Judge Edwards knew that his representations about the 2003 Order and the requirement to pay LexisNexis were false when made or made them recklessly and as a positive assertion without any knowledge of the truth. He issued the order.

228. Judge Edwards intended that Karen McPeters and any civil litigant rely on his misrepresentations. Karen McPeters did rely on his misrepresentations. She acted by paying the fees and charges, and justifiably relied on his misrepresentation about the validity of the 2003 Order and the requirement to pay.
229. She suffered injury, as did all similarly situated litigants. *Ernst & Young, LLP v. Pac. Mut. Life Ins. Co.*, 51 S.W.3d 573, 577 (Tex. 2001).

Barbara Adamick

230. Barbara Adamick knew that the representations about the 2003 Order and the requirement to pay LexisNexis were false when made or made them recklessly and as a positive assertion without any knowledge of the truth. She refused filings.
231. Barbara Adamick intended that Karen McPeters rely on her misrepresentations. Karen McPeters did rely on her misrepresentations. She acted by paying the fees and charges, and justifiably relied on her misrepresentations about the validity of the 2003 Order and the requirement to pay. Barbara Adamick never E-filed the 2003 Order on LexisNexis.
232. Karen McPeters suffered injury, as did all similarly situated litigants.

Montgomery County

233. Montgomery County knew that the representations about the 2003 Order and the requirement to pay LexisNexis were false when made or made them recklessly and as a positive assertion without any knowledge of the truth. It signed the 2007 Agreement.
234. Montgomery County intended that Karen McPeters rely on its misrepresentations. Karen McPeters did rely on them. She acted by paying the fees and charges, and

justifiably relied on its misrepresentations about the validity of the 2003 Order.

Montgomery County never required Barbara Adamick to fulfill her statutory duties.

235. Karen McPeters suffered injury, as did all similarly situated litigants.

LexisNexis

236. LexisNexis knew that the representations about the 2003 Order and the requirement to pay LexisNexis were false when made or made them recklessly and as a positive assertion without any knowledge of the truth. It included the requirement for the 2003 Order in its contract with Montgomery County. *See* Exhibit “B,” page 15.

237. LexisNexis intended that Karen McPeters rely on its misrepresentations. Karen McPeters did rely on its misrepresentations. She acted by paying the fees and charges, and justifiably relied on its misrepresentations about the validity of the 2003 Order and the requirement to pay.

238. She suffered injury, as did all similarly situated litigants.

All Defendants

239. The 2003 Order by Judge Edwards was fraudulent because he did not have the authority to enter the order. He did not have the authority to enter the order because he knew that LexisNexis would charge fees, Montgomery County was to receive part of those fees, and the order forced litigants to use E-filing with LexisNexis. Mandatory fees are set by the legislature. Judge Edwards’ order violates the separation of powers doctrine.

240. Judge Edwards knew that litigants and their counsel would have to pay the fees and charges of LexisNexis. Judge Edwards usurped legislative power and required E-filing by all qualifying litigants.

241. The mandatory requirement to use LexisNexis was a false material representation by Judge Edwards, Barbara Adamick and Montgomery County. Other, less expensive, on-line providers exist.
242. Judge Edwards issued the order. Barbara Adamick repeated the substance of the order to litigants and enforced the order by rejecting paper filings.
243. Barbara Adamick knew that by rejecting the paper filings of litigants that each litigant would be forced to file on LexisNexis and to pay fees and charges. Barbara Adamick obtained less work for her staff and more revenues for Montgomery County, her employer.
244. She fraudulently misrepresented her purported right to force litigants to pay for services that are legally required to be rendered free by the District Clerk – filing documents. She fraudulently misrepresented her duties under the law to litigants in Montgomery County, a material false representation.
245. The statements about mandatory E-filing were made to all Montgomery County litigants. Judge Edwards repeated the statements at the Seventh National Court Technology Conference in Baltimore, Maryland, in August 2001.
246. LexisNexis benefitted from the scheme by ensuring that it would be paid on every filing by every qualifying litigant in Montgomery County. The requirement is in its contract with Montgomery County, Nov. 5, 2007. *See* Exhibit “B.” Each bill from LexisNexis is an overt act in furtherance of the scheme to defraud. Barbara Adamick enforced the scheme by refusing to file documents and pleadings, thereby violating her statutory duties. *Williams v. WMX Techs.*, 112 F.3d 175, 177 (5th Cir. 1997).

SEVENTH CAUSE OF ACTION
CONSPIRACY

As her seventh cause of action, if necessary, Karen McPeters complains that Defendants, jointly and severally, engaged in an actionable conspiracy, a violation of 18 U.S.C. § 1962(d), and seeks damages, and incorporates all paragraphs herein.

247. Defendants have engaged in a conspiracy to force litigants, including Karen McPeters, to pay illegal fees, had a meeting of their minds on the course of action, have had tens of thousands of unlawful overt acts, and thereby damaged Karen McPeters and all similarly situated litigants. *Juhl v. Airington*, 936 S.W.2d 640, 644 (Tex. 1996). Defendants had a specific intent to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means.

Judge Edwards

248. The 2003 Order by Judge Edwards was fraudulent because he did not have the authority to enter the order. He did not have the authority to enter the order because he knew that LexisNexis would charge fees; he knew Montgomery County was to receive part of those fees; and the order forced litigants to use and pay for E-filing with LexisNexis. Mandatory fees are set by the legislature. Judge Edwards' order violates the separation of powers doctrine.

249. Judge Edwards knew that litigants and their counsel would have to pay the fees and charges of LexisNexis. Judge Edwards usurped legislative power and mandated and obtained E-filing by all qualifying litigants.

250. Judge Edwards agreed to participate in the conspiracy between LexisNexis and Montgomery County by issuing the 2003 Order, his initial overt act which was the objective manifestation of an agreement to participate in the conduct of the affairs of the enterprise, the Plan. He knew that his order would be applied to litigants in his court on a continuing basis. Each new 2003 Order was an overt act. He knew each order would generate revenues for LexisNexis. He knew that Montgomery County would receive payments from LexisNexis and, without the payments to Montgomery County, he would not issue the order.
251. The mandatory requirement to use LexisNexis (or the E-service provider designated by the county) was a false material representation by Judge Edwards; he did not have the authority.

Barbara Adamick

252. Judge Edwards issued the order. Barbara Adamick repeated the substance of the order to litigants and enforced the order by rejecting paper filings and cancelling file-stamps, each act an objective manifestation of an agreement to participate in the conduct of the affairs of the Plan.
253. Barbara Adamick knew that by rejecting the paper filings of litigants that each litigant would be forced to file on LexisNexis and to pay fees and charges.
254. Barbara Adamick obtained less work for her staff and more revenues for Montgomery County, her employer.
255. She fraudulently misrepresented her purported right to force litigants to pay for services that are legally required to be rendered free by the District Clerk – filing

documents. She fraudulently misrepresented her duties under the law to litigants in Montgomery County, a material false representation.

256. The statements about mandatory E-filing were made to all Montgomery County litigants. The mandatory requirement to use LexisNexis was a false material representation by Barbara Adamick to all qualifying civil litigants.

Montgomery County

257. Montgomery County knew about the essential nature of the conspiracy. It entered into the Nov. 5, 2007 agreement with LexisNexis in furtherance of the Plan.
258. That agreement is the objective manifestation of Montgomery County to participate in the affairs of the Plan, as well as an overt act in furtherance of the conspiracy. Each public official subscribed to and ratified the Nov. 5, 2007 agreement. The mandatory requirement to use LexisNexis was a false material representation by Montgomery County.
259. Montgomery County had the alternative of participating with Texas On-Line for E-filing. It is voluntary and costs significantly less than LexisNexis. Instead, Montgomery County elected to participate in the conspiracy to share in the funds extorted from litigants in Montgomery County.

LexisNexis

260. LexisNexis knew about the essential nature of the conspiracy. It entered into the Nov. 5, 2007 agreement with Montgomery County in furtherance of the Plan.
261. That agreement is the objective manifestation of LexisNexis to participate in the affairs of the Plan, as well as an overt act in furtherance of the conspiracy.

LexisNexis benefitted from the scheme by ensuring that the agreement provided that it would be paid on every filing by every qualifying litigant in Montgomery County. The requirement is in its contract with Montgomery County, Nov. 5, 2007. *See* Exhibit “B.”

262. Each bill from LexisNexis is an overt act in furtherance of the scheme to defraud. On information and belief, LexisNexis has billed for tens of thousands of transactions.
263. The mandatory requirement to use LexisNexis was a false material representation by LexisNexis.

EIGHTH CAUSE OF ACTION
VIOLATION OF STATUTORY DUTIES

As her eighth cause of action, if necessary, Karen McPeters complains that Barbara Adamick, Montgomery County District Clerk, failed to perform her statutory duties, seeks the statutory penalties against her provided by Tex. Civ. Prac. & Rem. Code § 7.001, and incorporates all paragraphs herein.

264. The Texas Rules of Civil Procedure Rule 21 and 74 require the District Clerk to accept paper filings. Karen McPeters has a claim because Barbara Adamick cancelled her Notice of Appeal,” a paper filing on October 2, 2009. That cancellation interfered with Karen McPeters appeal in McPeters I, and Karen McPeters had to refile the Notice on LexisNexis on October 7, 2009.
265. Karen McPeters’ appeal was successful on May 27, 2010 in which the Ninth Court of Appeals reversed and remanded Judge Edwards’ dismissal of Karen McPeters lawsuit (“McPeters I”).

266. Karen McPeters had to refile the “Notice of Appeal” on LexisNexis, and pay LexisNexis, before Barbara Adamick would recognize the filing and transmit it to the Fourth Court of Appeals as part of the Clerk’s Record.

CLASS ACTION

267. Pursuant to Fed. R. Civ. P. 23, Karen McPeters requests the Court to designate this case as a class action, because

(1) the class of persons (Montgomery County civil litigants) subjected to the Plan by Defendants, and forced to pay fees and charges to LexisNexis, is so numerous (**more than 10,000**) that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class, namely how much was each litigant required to pay for on-line E-filing;

(3) the claims of the representative party, Karen McPeters, are typical of the claims of the class (Karen McPeters paid LexisNexis \$444.71 for her Montgomery County litigation – McPeters I and II, and the charges are on-going); and

(4) Karen McPeters will fairly and adequately protect the interests of the class.

268. The parties opposing the class, the Defendants, have acted on grounds, the Plan, that apply generally to the class, so that final injunctive relief is appropriate respecting the class as a whole.

INJUNCTIVE RELIEF REQUESTED

269. Karen McPeters requests a permanent injunction prohibiting Defendants, including **Barbara Gladden Adamick, District Clerk of Montgomery County** and

Frederick E. Edwards, District Judge of Montgomery County, from continuing their Plan.

270. Plaintiff McPeters has alleged her causes of action as are stated herein.
271. She has suffered immediate and irreparable injury, and has no adequate remedy at law. Karen McPeters continues to be charged unconstitutional fees and charges.
272. Karen McPeters has no administrative remedy, because (a) no mechanism exists for a refund from Lexis Nexis, (b) she was denied a deposition to determine if any other remedy existed, and (c) a motion to exclude her case from E-filing is inadequate because Judge Edwards cannot decide to grant or deny Karen McPeters her equal protection rights; they are constitutionally protected, and (d) no administrative remedy will correct Judge Edwards' unconstitutional order.
273. There is a substantial likelihood that Karen McPeters will succeed on the merits of her case, because the correct fees for filings in District Court are set forth by statute. The statutes fixing official fees are strictly construed against allowing a fee by implication, as regards both the fixing of the fee and the officer entitled thereto. *Moore v. Sheppard*, 144 Tex. 537, 540, 192 S.W.2d 559, 560 (Tex. 1946)
274. The injury faced by Plaintiff McPeters outweighs the injury that would be sustained by the Defendants as a result of the injunctive relief. Defendants would only have to comply with the Texas statutes on fees that can be legally charged to litigants.
275. The granting of injunctive relief would not adversely affect public policy or public interest, because litigants would then be afforded their constitutional rights.

276. The relief requested against Judge Edwards concerns acts outside his judicial immunity.
277. Karen McPeters requests a permanent injunction prohibiting **Barbara Gladden Adamick, District Clerk of Montgomery County** from
- (a) acting to apply any order to a case not existing at the time of the order,
 - (b) failing to enter orders in a case that affect the rights of the parties to the case,
 - (c) refusing to accept and file pleadings on paper tendered to her,
 - (d) requiring litigants to prepare scanned documents or pdf files to be uploaded into any E-filing system adopted by Montgomery County, and
 - (e) voiding District Clerk file-stamp designations on pleadings.

See, for example, Fed. R. Civ. P. 79.

278. Karen McPeters requests a permanent injunction prohibiting **Frederick E. Edwards, District Judge of Montgomery County** from
- (a) purporting to order either the District Clerk, or her deputies, to enter a cause number into a order signed prior to the existence of the case; and
 - (b) requiring the District Clerk to apply that order to any case not in existence as of the date of the order, and
 - (c) ordering any action mandating filing fees and service costs to litigants.

This request does not attempt to proscribe any constitutionally valid Standing Order adopted by all of the District Judges of Montgomery County.

279. Karen McPeters further requests that the permanent injunction prohibit **Frederick E. Edwards, District Judge of Montgomery County** from entering orders in any case

that requires the Montgomery County District Clerk to violate her statutory duties, including:

(a) ordering the District Clerk to refuse to accept and file pleadings on paper tendered to the District Clerk, and

(b) ordering the District Clerk to void any District Clerk file-stamp designations on previously filed pleadings, and require that they be filed on-line by the document author with an E-filing provider designated for Montgomery County.

280. Karen McPeters further requests that this Court order Barbara Adamick to send a letter to each civil litigant that she will accept conventional filings (paper) in all cases. Karen McPeters further requests that Judge Edwards, and Judge Mayes (if applicable), be ordered to announce at docket call for a period of two (2) weeks that the District Clerk will accept conventional filings in all cases.

281. In the alternative, and only if necessary, Karen McPeters requests a declaratory judgment, pursuant to Fed. R. Civ. P. 57, ordering relief equivalent to the requested injunctive relief.

282. Karen McPeters further requests that the permanent injunction order Montgomery County to adopt the E-filing requirements (county and district court templates) set forth at www.uscourts.state.tx/jcit/Efiling/EfilingHome.asp, in the event that it elects to utilize E-filing , to prevent future unlawful actions, such as those described herein. Those templates are the standard set approved by the Texas Supreme Court.

283. The injunction should also recite that the Miscellaneous Order 97-9155 of the Texas Supreme Court, as applied by Montgomery County, is void.

DAMAGES
COMPENSATORY AND STATUTORY DAMAGES

284. Plaintiff McPeters, individually and on behalf of all similarly situated civil litigants, seeks compensation for damages proximately caused by the joint and several activities of the Defendants and their unlawful Plan, including out-of-pocket filing fees, service charges, and taxes. Plaintiff McPeters requests statutory damages.

EXEMPLARY DAMAGES

285. Plaintiff McPeters seeks the imposition of exemplary damages upon proof of Defendants' bad faith, callous indifference, intentional and collective misconduct, malice and recklessness, all factors recognized as justifying exemplary damages in litigation under 42 U.S.C. § 1983.

286. In *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 274 (1984) the dissent distinguishes holding a municipality liable under a respondeat superior theory versus an official policy of the entity. Here the agreement between Montgomery County and LexisNexis was adopted and ratified by the elected officials of Montgomery County. See Exhibit "B," page 22.

287. Justice Brennan wrote:

The Court thus relies on 19th-century case law for the proposition that municipalities may not be held liable for punitive damages, without distinguishing between the common situation in which municipal liability is predicated on a theory of *respondeat superior*, and the more unusual situation in which the violation is committed in accordance with official governmental policy. See *ante*, at 2756-2758. Only in the latter situation have we held that a municipality may be sued under § 1983, [*Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690-691, 98 S.Ct. 2018, 2035-2036, 56 L.Ed.2d 611 \(1978\)](#). It is in the latter context that the Court's cited precedent is least relevant, and that its concern for "blameless or unknowing taxpayers," *ante*, at 2760, is least compelling. Indeed, when the elected representatives of the people adopt a municipal policy that

violates the Constitution, it seems perfectly reasonable to impose punitive damages on those ultimately responsible for the policy-the citizens.

288. Because the Newport holding related to a municipality, not a county, because the Nov. 5, 2007 agreement was official policy, and under *Monell* above, Karen McPeters argues that Montgomery County is indeed liable for punitive damages.
289. In the alternative to the above paragraph, and only if necessary, based on Defendants' malice, as is set forth in § 41.003 (a)(2) of the Texas Civil Practice & Remedies Code, Plaintiff seeks exemplary damages, specifically awarded as to each individual Defendant pursuant to § 41.006 of the Code and based upon consideration by the jury of the six factors found at § 41.011 of the Code. Plaintiff McPeters seeks an amount of exemplary damages equal to two times the total amount of economic damages found by the jury, plus the sum of \$200,000.00, pursuant to § 41.008 of the Code.
290. The Tex. Civ. Prac. & Rem. Code, Chapter 101 does indeed prohibit punitive damages. It is the Texas Tort Claims Act. Karen McPeters is not asserting a claim under the TTCA.
291. Evidence of conduct justifying exemplary damages includes the fact that the Defendants *persisted in forcing Karen McPeters and other similarly situated litigants to pay unconstitutional fees and charges.*

OTHER DAMAGES

292. Plaintiff McPeters has been damaged by the actions of Montgomery County, by and through its county judge, commissioners, supervisors, agents and employees (throughout this petition “Montgomery County”) and all other Defendants.
293. As a direct and/or proximate result of the actions of the Defendants, Plaintiff has sustained actual and legal damages for which Plaintiff is entitled to have this Court grant a judgment against the Defendants, jointly and severally.
294. The herein-described wrongful actions, statements, and/or omissions by Defendants are the producing cause of Plaintiff McPeters’ herein-described damages.
295. Defendants’ actions have been knowing, willful, and with complete indifference to the rights of Plaintiff McPeters, and all other similarly situated civil litigants in Montgomery County. The actions have been intentional and without just cause or excuse.
296. Plaintiff McPeters is entitled to actual and statutory damages.
297. All actions complained of herein have been ratified by the Defendants, jointly and severally, including Montgomery County and its commissioners, through acceptance of the benefits and the failure to repudiate the violations described herein.
298. All conditions precedent herein required of Plaintiff, have been performed or complied with or has occurred, or in the alternative, and only if necessary, any such condition precedent which has not been performed, complied with, or has not occurred, was dispensed with, waived, or wrongfully prevented by one or more actions, omissions and/or representations by Defendants or its or their agents.

299. Plaintiff McPeters hired Robert L. Mays, Jr. as her attorney and agreed to pay his reasonable and necessary attorney's fees, costs and expenses.
300. Plaintiff McPeters requests the court to grant her a permanent injunction, and award damages, equitable relief, attorney's fees, expert witness fees, costs and expenses, pursuant to statutory provisions, including without limitation 18 U.S.C. § 1964 (c), and 42 U.S.C. § 1988, and Fed. R. Civ. P. 23 and 54.
301. Plaintiff is further entitled to prejudgment and post- judgment interest as, when and at the rates allowed by law or equity. Plaintiff's damages are within the jurisdictional limits of this Court.
302. All exhibits are incorporated herein by reference for all purposes.

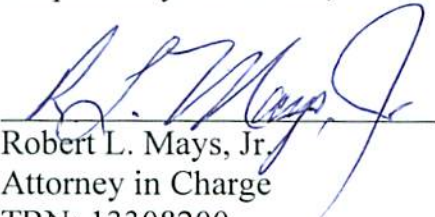
WHEREFORE, PREMISES CONSIDERED, Plaintiff Karen McPeters requests the court to award judgment to Plaintiff McPeters against Defendants, jointly and severally, and to grant her permanent injunctions as are requested above. She further requests recovery of the herein described damages, for herself, and on behalf of all other similarly situated individuals, persons and entities, including, without limitation:

- (i) actual damages;
- (ii) statutory damages;
- (iii) exemplary damages;
- (iv) prejudgment interest;
- (v) reasonable attorney's fees, and expenses;
- (vi) expert witness fees;
- (vii) costs of court;

- (viii) post-judgment interest, and
- (ix) for such other relief, whether in whole or in part, whether general or special, at law or in equity, to which Plaintiff Karen McPeters may, by this pleading or proper amendment hereto, show herself entitled.

A TRIAL BY JURY IS RESPECTFULLY DEMANDED.

Respectfully submitted,



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