

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 §

**OPPOSED MOTION FOR LEAVE TO AMEND COMPLAINT**

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

Now comes Karen McPeters (“McPeters”) and files her Motion for Leave to Amend Complaint.

1. Plaintiff McPeters does not believe that a Motion for Leave to Amend Complaint is required, but in an abundance of caution, if necessary, files her Motion for Leave to file her Second Amended Complaint. A copy of her amended complaint is attached.
2. Plaintiff McPeters filed (perhaps erroneously) her Second Amended Complaint as docket entry 19 on June 6, 2010.
3. Counsel for Montgomery County has communicated her belief that her consent is required in order for Plaintiff to file her Second Amended Complaint.

4. As the court will recall, Defendant Montgomery County filed its original Motion to Dismiss (Doc. No. 8), plaintiff filed an amended complaint (Doc. No. 11), and the court granted leave for Montgomery County to file an Amended Motion to Dismiss in excess of 25 pages (Doc. No. 18) on June 2.
5. Under Fed. R. Civ. P. 15(a)(3) if the court grants leave to amend a pleading, the responsive pleading must be filed either within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later, unless the court orders otherwise.
6. Defendant Montgomery County filed its Amended Motion to Dismiss (Doc. No. 13) on June 1, 2010. It contained exhibits not included in the original motion.
7. On June 6, 2010, Plaintiff McPeters filed both her Second Amended Complaint (Doc. 19) and Response to Motion to Dismiss (Doc. No. 20). Both documents were filed as her response to the Amended Motion to Dismiss.
8. If the court finds that FRCP 15(a)(3) did not permit Plaintiff McPeters' to file her Second Amended Complaint, then Plaintiff McPeters requests leave to file her Second Amended Complaint. The amendment to the complaint is appropriate, because Montgomery County added additional extrinsic material to its Amended Motion to Dismiss, and raised other objections to Plaintiff McPeters' First Amended Complaint.
9. In addition, LexisNexis filed its 12(b)(6) Motion to Dismiss on June 7 (Doc. No. 22). Plaintiff McPeters files her Second Amended Complaint as part of her response to LexisNexis.

10. In the event a motion for leave is not required, Plaintiff McPeters requests that this motion be denied as moot.

11. If the court decides to grant any motion to dismiss, Plaintiff McPeters requests the court to grant motion for leave to amend.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Karen McPeters requests the court to either rule this motion as moot, or to grant her leave to file her Second Amended Complaint.

Respectfully submitted,

/S/ Robert L. Mays, Jr.  
Robert L. Mays, Jr.  
Attorney in Charge  
TBN: 13308200  
So. Dist. ID: 11606  
8626 Tesoro Drive, Suite 820  
San Antonio, Texas 78217  
Phone: 210-657-7772  
FAX: 210-657-7780

#### CERTIFICATE OF CONFERENCE

I certify that I conferred with opposing counsel on June 8, 2010. All counsel for Defendants were opposed to this Motion. The motion is presented to the court for its determination.

#### CERTIFICATE OF SERVICE

I certify that on June 9, 2010, after filing this motion and proposed order, each counsel for Defendants will be served via the court's ECF system.

/S/ Robert L. Mays, Jr.  
Robert L. Mays, Jr.