

IN THE UNITED STATES DISTRICT COURT
 FOR THE 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 §

JOINT DISCOVERY/CASE MANAGEMENT PLAN UNDER RULE 26(f)
FEDERAL RULES OF CIVIL PROCEDURE

Please restate the instruction before furnishing the information.

1. State when the parties conferred as required by Rule 26(1), and identify the counsel who conferred.

The parties conferred on July 22, 2010. The counsel who conferred were

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2. List the cases related to this one that are pending in any state or federal court with the case number and court.

- A. “Karen McPeters v. Montgomery County, Texas,” Cause No. 07-09-09142-CV, 9th District Court of Montgomery County, Texas.
- B. “Karen McPeters v. Barbara Gladden Adamick, Montgomery County District Clerk,” Cause No. 09-11-11474-CV, 9th District Court of Montgomery County, Texas. Defendant Adamick notes that this case was the Rule 202 Petition to Investigate Claims in which Plaintiff sought Adamick’s deposition. This petition was denied on March 26, 2010, by Judge Bob Wortham sitting for Judge Edwards as the presiding judge.

3. Briefly describe what this case is about.

Plaintiff is a Montgomery County civil litigant who has filed her Second Amended Complaint regarding the E-filing system that Montgomery County began implementing

in 1997, which requires litigants in designated E-filing cases to pay for filing pleadings with the County's District Courts and the County Courts at Law having concurrent jurisdiction with the District Courts. Plaintiff sues Montgomery County, Texas itself, along with the Honorable Frederick E. Edwards, District Judge, 9th District Court, Montgomery County, Texas; Barbara Gladden Adamick, District Court Clerk of Montgomery County, Texas; and LexisNexis, the company who administers the E-filing system (collectively, the "Defendants"). Plaintiff contends Defendants have refused paper filings and charged litigants and/or their counsel fees in excess of those authorized by Texas statute, allegedly in violation of rights secured by the United States Constitution. (Plaintiff's Second Amended Complaint, ¶¶ 180-204). Plaintiff claims that Defendants violated her fundamental right to equal protection and open courts subjecting Defendants to liability under 42 U.S.C. §1983. Plaintiff also claims the E-filing requirements violate the Texas Constitution, Texas statutes, and RICO. (Plaintiff's Second Amended Complaint, ¶¶ 103-169, 205-222, 264-268). In addition to these claims, Plaintiff brings causes of action for fraud, conspiracy and violation of the Texas Theft Liability Act. (Plaintiff's Second Amended Complaint, ¶¶ 223-263). Against Adamick only, Plaintiff potentially alleges a violation of statutory duties under the Tex. Civ. Prac. & Rem. Code §7.001. Plaintiff seeks the return of all out-of-pocket filing fees, service charges and taxes as well as statutory damages, injunctive relief, punitive damages and attorneys' fees. (Plaintiff's Second Amended Complaint, ¶¶ 269-301).

4. Specify the allegation of federal jurisdiction.

Plaintiff alleges that 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 18 U.S.C. § 1965, and 42 U.S.C. § 1983.

5. Name the parties who disagree and the reasons.

LexisNexis disagrees with Plaintiff's allegation of federal jurisdiction because Plaintiff fails to state a § 1983 claim against LexisNexis to support subject matter jurisdiction under 28 U.S.C. § 1331 and/or § 1343. Section 1983 does not create any substantive rights. *Davenport v. Rodriguez*, 147 F. Supp. 2d 630, 635 (S.D. Tex. 2001). "Before Plaintiff can successfully assert § 1983 as a valid cause of action...Plaintiff must first identify one or more specific constitutionally protected rights that have been infringed." *Id.* Here, Plaintiff purports to allege causes of action for violations of the Due Process and due course of law clauses, Equal Protection clause, the First Amendment guarantee of access-to-courts, and civil conspiracy under § 1983. Plaintiff has failed to allege any valid constitutional claims against LexisNexis; therefore, she cannot rely upon 28 U.S.C. § 1331 (federal question jurisdiction) or § 1343 (jurisdiction over § 1983 claims) to confer subject matter jurisdiction. Because this Court does not have subject matter

jurisdiction over Plaintiff's § 1983 claims against LexisNexis, the Court should refuse to exercise supplemental jurisdiction over Plaintiff's state law claims. *See Energy Inv. P'ship No. 1 v. Sproule Assocs., Inc.*, Civil Action No. 3:00-CV-1252, 2002 U.S. Dist. LEXIS 12367, at *2 (N.D. Tex. July 8, 2002).

Judge Edwards, for the reasons set forth in his motion to dismiss, asserts that Plaintiff lacks federal jurisdiction.

Montgomery County and Adamick, for the reasons set forth in their motion to dismiss, asserts that Plaintiff lacks federal jurisdiction.

6. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.

Plaintiff Karen McPeters seeks to include as additional parties all Montgomery County litigants who were required to E-file on LexisNexis and pay charges to LexisNexis. Depending upon discovery results and class action certification, she may seek to include a number of LexisNexis subscribers in multiple states.

7. List anticipated interventions.

No interventions are anticipated at this time.

8. Describe class-action issues.

Plaintiff contends that LexisNexis has agreements with at least two counties in Texas, as well as agreements with counties in 38 other states. It appears that LexisNexis insists that litigants be mandated to use and pay for its services, regardless of constitutional protections, the doctrine of separation of powers or other statutory provisions concerning permissible filing fees and charges that litigants must pay.

Defendants oppose class certification and believe it is inappropriate.

9. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures.

Plaintiff Karen McPeters provided her initial disclosures on July 21, 2010.
Defendants shall provide their initial disclosures by August 5, 2010.

10. Describe the proposed agreed discovery plan, including:

A. Responses to all of the matters raised in Rule 26(f).

The parties have agreed to the dates in the Scheduling/Docket Control Order, subject to class certification by the Court, and to the Court's ruling on the absolute immunity issues raised by Defendants in their motions to dismiss.

B. When and to whom the plaintiff anticipates it may send interrogatories.

Plaintiff anticipates sending interrogatories to each Defendant after August 5, 2010.

C. When and to whom the defendant anticipates it may send interrogatories.

If necessary, Defendants anticipate sending Plaintiff interrogatories on or before November 5, 2010.

D. Of whom and by what date the plaintiff anticipates taking oral depositions.

Plaintiff anticipates taking the deposition of each defendant within the next 120 days.

E. Of whom and by what date the defendant anticipates taking oral depositions.

If necessary, Defendants anticipate taking the depositions of Plaintiff and Robert L. Mays, Jr. on or before December 5, 2010. However, Defendants oppose being deposed prior to (1) the Court's ruling on their motions to dismiss and (2) Plaintiff's deposition.

F. When the plaintiff (or the party with the burden of proof on an issue) will be able to designate experts and provide the reports required by Rule 26(a)(2)(B), and when the opposing party will be able to designate responsive experts and provide their reports.

Plaintiff will designate her expert by February 4, 2010.
Defendants will designate their experts by March 4, 2010.

G. Expert depositions that the plaintiff (or the party with the burden of proof on an issue) anticipates taking, and their anticipated completion date. *See* Rule 26(a)(2)(B) (expert report).

Plaintiff does not know the completion date for her expert deposition.

H. List expert depositions that the opposing party anticipates taking, and their anticipated completion date. *See* Rule 26(a)(2)(B) (expert report).

Defendants do not know the completion date for their expert deposition.

11. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.

Except as otherwise noted, there is no disagreement at this time.

12. Specify the discovery beyond initial disclosures that has been undertaken to date.

The parties have provided documents as attachment to various court filings. Other than the attachments, there has been no discovery.

13. State the date by which the planned discovery can reasonably be completed.

Planned discovery should be completed by May 4, 2011.

14. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in the Rule 26(f) meeting.

A prompt settlement does not appear to be possible.

15. Describe what each party has done or agreed to do to bring about a prompt resolution.

Plaintiff Karen McPeters made a settlement offer to Montgomery County and Barbara Gladden Adamick. That offer was rejected on July 12, 2010.

16. From the attorneys' discussion with their clients, state the alternative dispute resolution techniques that are reasonably suitable, and state when such techniques may be effectively used in the case.

Plaintiff Karen McPeters does not believe that ADR is suitable in this case, except in the context of a class action settlement. Mediation may be appropriate after Motions for Summary Judgment have been decided. Defendant Montgomery County and Adamick believe mediation may be appropriate after Motions for Summary Judgment have been ruled upon.

17. Magistrate judges may now hear jury and non-jury trials. Indicate the parties' joint position on a trial before a magistrate judge.

The parties do not elect to have the trial before a magistrate judge.

18. State whether a jury demand has been made and whether it was made on time.

Plaintiff made a timely jury demand.

19. Specify the number of hours that it will take to present the evidence in this case.

The number of hours for evidence depends upon whether class actions status is granted. Without class status, evidence should be able to be presented in fewer than 32-40 hours. No estimate can be made of the time needed for evidence in the event that class status is granted.

20. List pending motions that can be resolved at the initial pretrial and scheduling conference.

The parties are not aware of pending motions that can be resolved at the initial pretrial and scheduling conference.

21. List other pending motions.

Each defendant has an amended motion to dismiss now pending. Plaintiff McPeters has until August 15, 2010 to file her response to Defendants' Rule 12(b)(6) motions to dismiss.

22. Indicate other matters peculiar to the case, including discovery issues, that deserve the special attention of the Court at the conference.

The court may wish to address Plaintiff's request for class actions status, although she anticipates filing a Motion to Certify a Class within two weeks. Defendants Adamick and Judge Edwards claim absolute immunity. Thus, they oppose any discovery until the Court rules on their entitlement to absolute immunity.

23. Certify that all parties have filed Disclosure of Interested Parties, as directed in the Order for Conference and Disclosure of Interested Parties, listing the date of filing for original disclosures and any amendments.

Plaintiff Karen McPeters filed her Disclosure of Interested Parties on April 13, 2010.

Defendants Montgomery County and Barbara Adamick filed their Disclosure of Interested Parties on May 17, 2010.

Defendant Reed Elsevier, d/b/a LexisNexis, filed its Disclosure of Interested Parties on June 7, 2010.

Judge Edwards filed his disclosure on July 25, 2010.

24. List the names, bar numbers, addresses and telephone numbers of all counsel.

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Respectfully submitted,

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