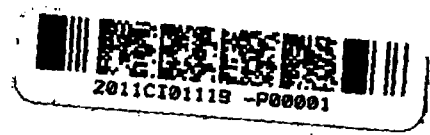


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2011CI-01119

CAUSE NO. _____

4

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

IN THE DISTRICT COURT

225th

JUDICIAL DISTRICT

vs.

CRT
PROCESS DEPT

LEXISNEXIS, a division of
REED ELSEVIER, INC.
Defendants

BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE PRESIDING:

Now comes Karen McPeters ("McPeters"), individually and on behalf of those individuals, persons and entities similarly situated, and files her Plaintiff's Original Petition complaining of LexisNexis, a division of Reed Elsevier, Inc., and states:

DISCOVERY

1. Discovery is to be conducted under Rule 190.3, Texas Rules of Civil Procedure, as Level 2 discovery.

PARTIES

2. Plaintiff **Karen McPeters** is an individual residing in San Antonio, Texas. At all times relevant to this lawsuit, Plaintiff Karen McPeters was a resident of Bexar County, Texas. Karen McPeters brings suit on her behalf and, upon leave of court pursuant to *Tex. R. Civ. P. 42*, on behalf of those individuals, persons and entities similarly situated.

3. Defendant LexisNexis, a division of Reed Elsevier, Inc., is a foreign corporation from the Netherlands, with its principal Texas corporate office in Dallas, Texas, registered to do business in Texas, which may be served with process by certified mail pursuant to *Texas Rules of Civil Procedure* 106(a)(2) by delivering the petition and citation to its registered agent, **C T Corporation System, 350 North St. Paul St., Dallas, Texas 75201.**

JURISDICTION AND VENUE

4. This court has original jurisdiction of the parties and claims pursuant to *Tex. Gov't Code* §24.007. Venue is proper in Bexar County, Texas, pursuant to *Tex. Civ. Prac. & Rem. Code* §15.002 and *Texas Deceptive Trade Practices-Consumer Protection Act* ("DTPA") §17.56. Facts supporting permissive venue are set forth below.
5. Plaintiff was a resident of Bexar County at all times relevant to the claims asserted herein. A substantial part of the events or omissions giving rise to the claims occurred in Bexar County, Texas. Plaintiff received invoices and demands for payment in Bexar County. Plaintiff transmitted payments from Bexar County. Plaintiff complied with mandatory E-filing of documents from Bexar County. Plaintiff received correspondence and threats related to E-filing in Bexar County. *Tex. Civ. Prac. & Rem. Code* §15.002(a)(1); DTPA §17.56(1). No mandatory venue provision applies in this case.
6. The defendant, LexisNexis, is represented by counsel residing in Georgia. Its principal corporate office is in Dallas. Defendant is a subsidiary of a foreign corporation situated in Amsterdam. Plaintiff and her counsel reside in Bexar County.

Summary of the Case

LexisNexis is part of a foreign corporation based in the Netherlands. Since the year 2000, it, or a predecessor, has controlled access to at least one district court in Montgomery County, Texas. At some point, Jefferson County joined in. This happened because a district judge decided to give a blank check to LexisNexis to charge whatever it wanted as a mandatory condition of accessing his court.

The judge's written order is seldom filed in any case, but routinely enforced. The order assures that "a minimal fee is assessed for each filing," ("E-filing") but no fee is set. No one reviews the charges. As a result, LexisNexis charges nearly \$16 for every piece of paper filed. Those charges are unconscionable when compared with the cost of following the Texas Rules of Civil Procedure and when compared with other Texas providers. This is no "minimal fee"; it is an unconscionable fee.

LexisNexis claims to act as the official agent of a District Clerk with authority to regulate access to Texas courts. The Texas Supreme Court never agreed. LexisNexis charges are an unconstitutional barrier to open courts according to authority from both the Texas Supreme Court and the Texas Attorney General. There is no precedent for this barrier. The charges are like a poll tax. Minorities, the poor, elderly and the less educated are likely to be denied their day in court. Is it reasonable to require them to be computer literate? Payment for justice is now a fact of life, but should it be?

FACTS RELEVANT TO STATUTORY CLAIM

7. The LexisNexis charges for on-line E-filing to Karen McPeters, and other similarly situated persons and entities, in Montgomery County were and are concealed. At the time of document filing no charges are shown. Karen McPeters only learned that she was being billed and the amount of the charges, when LexisNexis sent bills to her lawyer beginning about March 6, 2009. Charges to litigants are not found on the Montgomery County District Clerk's web site nor are they found on the web pages of the district judges who make such filing mandatory in their courts, most notably the web page of the Honorable Frederick Edwards, 9th District Court.
8. LexisNexis charges are unconscionable and excessive as compared to (1) the cost of filing under the Texas Rules of Civil Procedure, and (2) the charges of other

providers of E-filing services (Texas On-Line). Approximately 252 counties in Texas do not charge to file a paper copy of a motion or pleading in their district courts, other than filing fees at the time of filing the lawsuit.

9. Texas On-Line charges \$7.24 to E-file a document and shows the charge at the time of filing. LexisNexis charges \$15.98 (including tax) to E-file a document in the two counties that it services and does not disclose its charges at the time of filing. It charges \$7 for filing and \$8 for service; service is mandatory.

10. As an example:

	<u>LexisNexis</u>	<u>Bexar County District Clerk</u>	<u>Texas On-Line</u>
(a) Filing a change of address	\$ 15.98	\$ 0.00	\$ 0.00
(b) Filing vacation letter	15.98	0.00	0.00
(c) Filing motion to compel discovery	15.98	0.00	7.24
(d) Filing a motion to shorten time	15.98	0.00	7.24

11. LexisNexis' charges are unlawful under the *Tex. Gov't Code* §51.317 and *Tex. Gov't Code* §101.061 which set the fees that are allowed to be charged to Texas litigants.
12. LexisNexis' charges duplicate part of the fees charged by the district clerk when each lawsuit is filed. A litigant is forced to pay twice for the same service – filing.
13. LexisNexis previously charged \$5.00 to mail an invoice to each litigant, and now charges \$10.00 to mail an invoice.
14. LexisNexis made unlawful threats for collection including a threat to report each nonpaying litigant to the Texas State Bar and to the judge presiding in the case.
15. LexisNexis misrepresented that mandatory E-filing and charges were lawful when *Tex. R. Civ. Proc. 5* states the requirement for filing court documents. Furthermore, the Texas Supreme Court ruled eighteen years ago that documents are considered

filed when they reach the court. *Jamar v. Patterson*, 868 S.W.2d 318, 319 (Tex. 1993).

16. LexisNexis made deceptive claims that it was an agent of the Montgomery County District Clerk. In fact, LexisNexis stated, "LexisNexis has been acting in furtherance of official duties." The Montgomery County District Clerk denied that claim on August 3, 2010 when it argued to the Ninth Court of Appeals that LexisNexis' charges were not court costs but were actually convenience fees.
17. The charges by LexisNexis are a violation of the Texas constitutional guarantees of open access to the courts as interpreted by the Texas Supreme Court in *LeCroy v. Hanlon*, 713 S.W.2d 335 (Tex. 1986) and by the Texas Attorney General in Opinions GA-0231 and JM-384. Therefore, LexisNexis clearly knew that its conduct was unlawful.
18. Its charges are a constitutional violation, obstructing access to the courts of Texas. *LeCroy* shows LexisNexis' conduct to be unlawful because its charges unreasonably obstruct court access, and duplicate charges by the Montgomery County District Clerk for the same services as those provided by that Clerk.
19. LexisNexis' charges are unconscionable because they violate the rules of procedure, statutes, case law, orders of the Texas Supreme Court and the Montgomery County district court and the Texas constitutional guarantee of unrestricted access to open courts.
20. **A non-U.S. corporation has no authority, through its charges, to either allow or prevent access to Texas courts by the citizens of Texas.**

21. LexisNexis' charges deprive the poor, the less educated, the elderly, and minorities of their day in court by raising a continuing and increasing financial barrier. Further, E-filing requires computer literacy; one cannot compel that skill and experience as a prerequisite for seeking justice.
22. LexisNexis states that a free computer terminal is available in the Montgomery County District Clerk's office so that some litigants can avoid the unconscionable charges if desired. The terminal, however, is no solution for out-of-county litigants and those who seek to file by mail under the *Texas Rules of Civil Procedure*. One cannot reasonably require a litigant to drive to the courthouse each time he or she wishes to file a document. But, the terminal directs users to subscribe to LexisNexis, thus subjecting each to the same charges that are the subject of this litigation.
23. LexisNexis also states that parties have the option of filing a motion to obtain permission to file documents under the *Texas Rules of Civil Procedure* rather than incur unconscionable charges as a condition of litigation in certain Montgomery County district courts. The "option" is found in the body on the seldom-filed 2003 order signed by the Honorable Frederick Edwards. The order is not accessible online, through the District Clerk, LexisNexis, or the web page of any district court.
24. The order actually allows a party to ask for permission to file a document by traditional means *only* when a transmission error or other technical problem has occurred when attempting electronic filing. There is actually no alternative to enduring the avalanche of charges from LexisNexis in a case assigned to the 9th District Court in Montgomery County.

BACKGROUND FACTS

25. On May 18, 2007, Karen McPeters filed an employment discrimination lawsuit in Travis County against Montgomery County, Texas.
26. The case was transferred to Montgomery County on September 10, 2007.
27. On January 27, 2009, the Montgomery County District Clerk notified counsel for Plaintiff McPeters that the case was designated as an E-file case. The clerk stated that E-filing was mandatory, and that all pleadings would have to be filed with LexisNexis. Counsel was told that LexisNexis charged litigants for E-filing and that Plaintiff McPeters would have to pay those charges. Counsel objected, to no avail.
28. Neither the Montgomery County District Clerk nor LexisNexis provides a list of the charges by Reed Elsevier, Inc. Plaintiff McPeters learned of the amount of the charges as she received invoices from LexisNexis.
29. In addition to the statutory filing fee paid to Montgomery County on September 14, 2007, LexisNexis charged Plaintiff McPeters \$15.98 for every item filed, which she has paid.
30. LexisNexis has double-billed Plaintiff McPeters. The Montgomery County District Clerk is obligated to provide all court filing services to Karen McPeters in return for the original \$217.00 filing fee, which she initially paid. Double billing is unlawful. *See Texas Attorney General Opinion JM-384.*

**VIOLATIONS OF TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER
PROTECTION ACT**

Karen McPeters and all similarly situated litigants complain that LexisNexis violated the Texas Deceptive Trade Practices-Consumer Protection Act, and incorporate all paragraphs herein.

31. Plaintiff McPeters is a consumer as that term is defined in §17.45(4) of the Consumer Protection Act because Plaintiff, through her agent, sought and acquired services from Defendant LexisNexis.
32. At all times relevant to this suit Defendant LexisNexis was engaged in trade and commerce, as defined in §17.45(6) of the Consumer Protection Act.

Misrepresentations

33. Defendant LexisNexis made false, misleading and deceptive misrepresentations in the following respects:

(1) LexisNexis falsely represented that it had the right to charge and to collect "filing fees" for civil court documents in the 9th District Court of Montgomery County, Texas;

(2) LexisNexis participated in and profited from a consumer transaction in which LexisNexis and the Montgomery County District Clerk made misrepresentations to Plaintiff, including rejecting pleadings and failing to disclose charges to Karen McPeters, and

(3) LexisNexis asserted an unlawful right to payment, collected unlawful charges, and threatened unlawful collection action.

The unconscionable conduct and misrepresentations are further detailed in paragraphs 7 – 24 above.

Statutory Violations Alleged by Plaintiff

34. Defendant LexisNexis passed off its goods or services as those of another, specifically the Montgomery County District Clerk, violating §17.46(b)(1) of the Consumer Protection Act.
35. Defendant LexisNexis cause confusion or misunderstanding about the source, sponsorship, approval or certification of its goods or services, violating §17.46(b)(2) of the Consumer Protection Act.
36. Defendant LexisNexis cause confusion or misunderstanding about affiliation, connection or association with or certification by, another, violating §17.46(b)(3) of the Consumer Protection Act.
37. Defendant LexisNexis represented that its services had approval or characteristics which they did not have, violating §17.46(b)(5) of the Consumer Protection Act.
38. Defendant LexisNexis represented that an agreement conferred or involved rights or obligations that are prohibited by law, violating §17.46(b)(12) of the Consumer Protection Act.
39. Defendant LexisNexis failed to disclose information concerning its services, which was known at the time of the transactions, when the failure to disclose the information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, violating §17.46(b)(24) of the Consumer Protection Act.

Reliance

40. Plaintiff, through her agent, relied to her detriment upon the misrepresentations enumerated above.

Unconscionable Conduct Alleged by Plaintiff and Others

41. Defendant LexisNexis engaged in unconscionable conduct against Plaintiff McPeters, and all other similarly situated litigants. Each act complained of herein constituted an unconscionable action and course of action, as defined at §17.45(5) of the Consumer Protection Act, which, to Plaintiff's detriment, took advantage of the lack of knowledge, ability, experience, or capacity of Plaintiff to a grossly unfair degree. The resulting unfairness was glaringly noticeable, flagrant, complete and unmitigated.

Producing Cause

42. The deceptive acts and practices of Defendant LexisNexis were and remain a producing cause of economic damages to Plaintiff and each similarly situated person or entity.

Conduct Undertaken Knowingly

43. The unlawful acts and practices described above were committed knowingly, as that term is defined at §17.45(9) of the Consumer Protection Act, because Defendant LexisNexis had actual awareness, at the time of the acts and practices complained of, of the deception, falsity, or unfairness of the acts and practices.
44. LexisNexis knew or should have known that permissible fees and charges are set forth in the *Texas Government Code* and in the *Local Government Code*. 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.

45. 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 or unregulated charges as a condition for access to any court.
46. Accordingly, Plaintiff seeks up to three times the amount of her economic damages pursuant to §17.50(b)(1) of the Consumer Protection Act, as do all others similarly situated.

Court Costs and Attorney's Fees

47. Plaintiff seeks the recovery of her court costs and reasonable and necessary attorney's fees pursuant to §17.50(d) of the Consumer Protection Act.

Notice

48. Plaintiff McPeters gave notice to Defendant LexisNexis, pursuant to §17.505, on August 1, 2010. Notice is effective for all others similarly situated pursuant to *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 178 (Tex. 1999).

CONTROLLING AUTHORITY

49. The Texas Supreme Court agreed that Montgomery County could establish an electronic filing system, pursuant to its Miscellaneous Order No. 97-9155. This Order does not authorize either the charging of fees, the violation of equal rights, or usurpation of legislative power.

50. The last paragraph of page 2 of the Texas Supreme Court's Miscellaneous Order 97-9155 states:

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

51. Montgomery County Local Rules are identical.
52. The Miscellaneous Order of the Supreme Court did not approve rejection of paper filings by Barbara Gladden Adamick, Montgomery County District Clerk. The order did not approve increased mandatory filing fees and service charges by anyone.

EXTENT OF HARM

53. The "Clerk's Check List" also shows that the 410th District Court, Judge K. Michael Mayes presiding, was also a participant in the on-going E-filing enterprise with LexisNexis by its December 12, 2006 order. That court has had more than 2,300 E-file cases with LexisNexis, or its predecessor. Other courts have instructed their district clerks to reject paper filings.

CLASS ACTION

54. Pursuant to Tex. R. Civ. P. 42, Karen McPeters requests the Court to designate her claims of unconscionable conduct under the *Texas Deceptive Trade Practices Act* as a class action, because:

(1) the class of persons subjected to LexisNexis' E-filing plan, and forced to pay fees and charges to LexisNexis, is so numerous (**more than 16,000 since the year 2000**) that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class, namely the unconscionable conduct each litigant was forced to endure and the amount each litigant was 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; and

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

Plaintiff will make additional filings pursuant to *Tex. R. Civ. P. 42(c)*.

DAMAGES

55. Plaintiff McPeters, individually and on behalf of all similarly situated civil litigants, seeks compensation for damages caused by the actions of Defendant LexisNexis.

CONDITIONS PRECEDENT

56. 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 waived by one or more actions, omissions and/or representations by Defendant or its agents.

ATTORNEY'S FEES

57. Plaintiff McPeters hired Robert L. Mays, Jr. as her attorney and agreed to pay his reasonable and necessary attorney's fees, costs and expenses.

58. Plaintiff McPeters requests the court to award damages, attorney's fees, expert witness fees, costs and expenses, as provided for by statute.

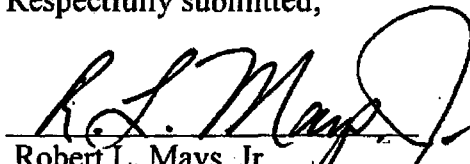
59. Plaintiff is further entitled to prejudgment and post-judgment interest as, when and at the rates allowed by law or equity.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Karen McPeters requests the court to award judgment to Plaintiff McPeters for herself, and on behalf of all other similarly situated persons and entities, against Defendant LexisNexis, including:

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



Robert L. Mays, Jr.
Attorney for Karen McPeters
TBN: 13308200
8626 Tesoro Drive, Suite 820
San Antonio, Texas 78217
Phone: 210-657-7772
FAX: 210-657-7780