IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-50719

MARY LOUISE SERAFINE,

Plaintiff – Appellant

v.

KARIN CRUMP, In her Individual and Official Capacities as Presiding Judge of the 250th Civil District Court of Travis County, Texas; DAVID PURYEAR, In his Individual and Official Capacities as Justice of the Third Court of Appeals at Austin, Texas; MELISSA GOODWIN, In her Individual and Official Capacities as Justice of the Third Court of Appeals at Austin, Texas; BOB PEMBERTON, In his Individual and Official Capacities as Justice of the Third Court of Appeals at Austin, Texas,

Defendants – Appellees

Appeals from the United States District Court
for the Western District of Texas
USDC No. 1:17-CV-1123

(Filed Feb. 6, 2020)

Before OWEN, Chief Judge, and BARKSDALE and DUNCAN, Circuit Judges.

PER CURIAM:*

For this action filed pursuant to 42 U.S.C. § 1983, Mary Louise Serafine, a lawyer proceeding *pro se*, lacks standing to seek prospective declaratory and injunctive relief against a judge and three justices who presided over state-court proceedings in which she was a party. DISMISSED.

I.

Serafine first appeared before Appellee Travis County district-court Judge Crump in 2012, in her case which alleged her neighbors: removed a chain-link fence separating her and their properties, and replaced it with a wooden one, which encroached upon her property; and trespassed upon, and damaged, her property in the course of digging a drainage system. *See Serafine v. Blunt*, No. 03–16–00131–CV, 2017 WL 2224528, at *1 (Tex. App. 19 May 2017). After an appeal from the denial of a motion to dismiss various counterclaims, "Serafine's claims were tried to a jury in 2015, after which the jury unanimously decided against Serafine on every claim". *Id.* Following trial, Judge Crump "determined the boundary line between the properties, granted [a defendant's] motion for sanctions, and rendered final judgment denying Serafine relief on all her claims". *Id.*

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* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

Serafine challenged the final judgment in the Texas Third Court of Appeals. *See id.* Justices Goodwin, Pemberton, and Puryear, the other Appellees, affirmed the final judgment, but reversed and remanded for the limited purpose of the trial court's determining the amount, and then entering an award, of sanctions and attorney's fees to Serafine regarding defendants' dismissed counterclaims. *Id.* at *8. The Texas Supreme Court denied Serafine's petition for discretionary review.

In this action, Serafine, proceeding *pro se*, filed her operative "First Amended Complaint" in December 2017, seeking prospective declaratory and injunctive relief against Appellees, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202. Serafine alleged they repeatedly violated, and will continue to violate, her rights by, *inter alia*: knowingly creating false orders, judgments, and opinions; and acting in bad faith. She requested the district court, *inter alia*: "[i]ssue a declaratory judgment [stating Appellees'] policy, practice, and custom of denying and affirming denial of procedural due process . . . violate the Fourteenth Amendment of the U.S. Constitution"; and "[d]etermine that [Appellees'] judicial oath[s], as a matter of law, constitute[ ] a declaratory decree to which [they] consented, and that [their] violation of th[ose] oath[s] entitles [her] to injunctive relief". (Regarding Serafine's requested categorization of Appellees' judicial oaths as declaratory decrees, 42 U.S.C. § 1983 provides: "in any action brought [pursuant to that statute] 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".)

Appellees moved to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) (requesting dismissal based, *inter alia*, on sovereign immunity and lack of standing) and 12(b)(6) (requesting dismissal for failure to state a claim). A magistrate judge's report and recommendation (R&R) recommended, *inter alia*, that the action be dismissed for lack of subject-matter jurisdiction. Adopting the R&R, the district court dismissed the action on that jurisdictional basis.

II.

"We review *de novo* a district court's dismissal . . . for lack of subject matter jurisdiction." *Richard v. Hoechst Celanese Chem. Grp., Inc.*, 355 F.3d 345, 349 (5th Cir. 2003) (citation omitted). Along that line, it goes without saying that we may *sua sponte* consider Article III standing, *e.g.*, *Bauer v. Texas*, 341 F.3d 352, 357 (5th Cir. 2003) (citation omitted), and similarly may dismiss for lack of standing regardless of whether the district court addressed that basis, *e.g.*, *Friends of St. Frances Xavier Cabrini Church v. FEMA*, 658 F.3d 460, 466 (5th Cir. 2011) (per curiam) (citation omitted).

It also goes without saying that, to establish Article III standing, a party must demonstrate a case or controversy. *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 471–76 (1982). To do so, a party must "show that he

personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant" that "fairly can be traced to the challenged action and is likely to be redressed by a favorable decision". *Id.* at 472 (internal quotation marks and citations omitted).

"[T]he Supreme Court made clear [in *City of Los Angeles v. Lyons*, 461 U.S. 95, 101–03 (1983),] that plaintiffs may lack standing to seek prospective relief even though they have standing to sue for damages". *Soc'y of Separationists, Inc. v. Herman*, 959 F.2d 1283, 1285 (5th Cir. 1992) (en banc). In *Lyons*, the Supreme Court explained: "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects". *Lyons*, 461 U.S. at 102 (alteration and omission in original) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495–96 (1974)). (Although *Lyons* dealt with injunctive relief, this reasoning applies equally to declaratory relief. *See Herman*, 959 F.2d at 1285 (citations omitted).)

Along that line, our court has held: "To obtain equitable relief for past wrongs, a plaintiff must demonstrate either continuing harm or a real and immediate threat of repeated injury in the future". *Id.* To have standing when "seeking injunctive or declaratory relief", plaintiff must allege: facts "from which it appears there is a substantial likelihood that he will suffer injury in the future", demonstrating "a substantial and continuing controversy between two adverse parties"; "facts from which the continuation of the dispute may

be reasonably inferred"; and the controversy is "real and immediate, . . . creat[ing] a definite, rather than speculative threat of future injury". *Bauer*, 341 F.3d at 358 (citations omitted).

Our court has addressed standing in the context of an action seeking prospective relief against a state-court judge on three occasions. *See id.* at 354; *Herman*, 959 F.2d at 1284; *Adams v. McIlhany*, 764 F.2d 294, 295 (5th Cir. 1985). Collectively, as discussed below, our decisions establish: a plaintiff's suing a state-court judge and seeking prospective declaratory or injunctive relief must show a significant likelihood she will encounter the same judge in the future, under similar circumstances, with a likelihood the same complained-of harm will recur.

In *Adams*, filed pursuant to 42 U.S.C. § 1983, the state-court judge had sentenced plaintiff to 30-days' imprisonment for contempt, after she questioned his integrity in a letter. *Adams*, 764 F.2d at 295. After affirming dismissal of plaintiff's claim for monetary damages on absolute-judicial-immunity grounds, *id.* at 297, our court addressed her claims for declaratory and injunctive relief, which the district court had dismissed for lack of standing, *id.* at 299. Because plaintiff had been released from jail, our court held the contempt citation and period of incarceration were insufficient to establish the requisite case or controversy. *Id.* Regarding declaratory relief, our court held: "The fact that it is most unlikely that [plaintiff] will again come into conflict with [the judge] in circumstances similar to the ones presented here, and with the same results,

precludes a finding that there was sufficient immediacy and reality here to warrant an action for declaratory relief". *Id.* (internal quotation marks and citation omitted).

In *Herman*, also filed pursuant to 42 U.S.C. § 1983, plaintiffs, including Murray-O'Hair, requested declaratory and injunctive relief and damages from numerous defendants, including two state-court judges, after Murray-O'Hair was held in contempt for refusing, as a prospective juror, to make an affirmation. *Herman*, 959 F.2d at 1284–85. Our court held she lacked standing to obtain prospective relief, reasoning: she "suffer[ed] no continuing harm"; she could not "show a real and immediate threat that she will again appear before [the judge] as a prospective juror and that [the judge] will again exclude her from jury service and jail her for contempt"; and "[t]here are over half a million residents in Travis [C]ounty[, Texas,] and twenty trial judges[, making] [t]he chance that [she] will be selected again for jury service and that [the judge] will be assigned again to oversee her selection as a juror . . . slim". *Id.* at 1285. Finally, our court noted: "Even if [she] were likely to appear before [the judge] in the future, there is little indication that they would interact in the same fashion." *Id.* at 1285–86.

In *Bauer*, plaintiff's action against a state probate judge, filed pursuant to 42 U.S.C. § 1983, sought a declaratory judgment that a statute related to guardianship was unconstitutional. *Bauer*, 341 F.3d at 354. Our court held plaintiff lacked standing because "there d[id] not exist a 'substantial likelihood' and a 'real and

immediate' threat that [plaintiff] w[ould] face injury from [defendant] in the future". *Id.* at 358. Citing *Adams* and *Herman*, our court stated it had "often held that plaintiffs lack standing to seek prospective relief against judges where the likelihood of future encounters is speculative". *Id.* (citations omitted).

Again, taken together, these decisions establish that, to have standing to seek prospective declaratory or injunctive relief against a state-court judge, plaintiff must demonstrate a substantial likelihood she will encounter the same judge, in sufficiently similar circumstances, and with sufficiently similar results to establish an immediate, rather than speculative, threat of repeated injury. *See Bauer*, 341 F.3d at 358; *Herman*, 959 F.2d at 1285–86; *Adams*, 764 F.2d at 299.

In her operative complaint, Serafine claims Appellees violated her Fourteenth Amendment rights by, *inter alia*: "knowingly creating orders, judgments, and opinions that made materially false statements of dispositive facts"; creating judicial documents that made statements in bad faith; repeatedly denying or affirming denial of her rights to notice, hearings, an opportunity to defend, and to appeal; ignoring motions; tampering with court records; and allowing incorporation of perjury. She alleges Appellees "appear[ ] to have acted in concert", or that Appellee Judge Crump knew she was "protected by" the Appellee Justices. In addition, Serafine alleges these actions are "part of a pattern complained of locally by other lawyers". Finally, she alleges: "unless deterred[, Appellees] will continue to violate[ ] [her] rights under the Fourteenth

Amendment"; "[b]ecause the wrongful acts of [Appellees] were repeated and egregious, they demonstrate the necessity for . . . prospective relief"; "[her] underlying civil matters can be expected to continue in both courts"; and "[she] as a local attorney will appear in [Appellees'] courts in additional matters".

Although Serafine alleges many and varied violations, her allegations do not establish Article III standing. Regarding her seeking prospective declaratory and injunctive relief based on potential future litigation, two Appellees (Justices Pemberton and Puryear) no longer serve as judges. Moreover, this makes impossible Serafine's again appearing before the panel (consisting of the three appellee justices) against which she levels charges in her operative complaint. As for Appellee Justice Goodwin, appellate panels are rotated, minimizing the chance Serafine will appear before her; and, similarly, because there are multiple trial judges in Travis County, Texas, there is little chance she will appear, again, as a similarly situated party before Judge Crump. *See Herman*, 959 F.2d at 1285–86; *see also* Tex. Gov't Code § 22.222(b). Taken together, these factors demonstrate there is not a substantial likelihood Serafine "will again come into conflict with [Appellees] in circumstances similar to the ones presented here, and with the same results". *See Adams*, 764 F.2d at 299.

Concerning the 2017 state-court remand, the record does not clarify the current state of the case. But even if it has not been resolved, the remand was solely for the purpose of awarding Serafine sanctions and

attorney's fees. *Serafine v. Blunt*, No. 03–16–00131–CV, 2017 WL 2224528, at *8 (Tex. App. 19 May 2017). This does not provide an opportunity to treat Serafine as she alleges Appellees previously did. The remaining justice in service, Justice Goodwin, of course, will not be involved with this state district-court matter. And, even in the unlikely event Judge Crump remains assigned to the matter following Serafine's suing her, there is no reasonable basis on which to assume Serafine will be subject to the sort of alleged conduct about which she complains. As such, Serafine has not established for the remand that she suffers a continuing harm or a substantial likelihood of a real and immediate threat of future injury by Appellees. *See Herman*, 959 F.2d at 1285–86.

III.

For the foregoing reasons, the appeal is DISMISSED.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARY LOUIS SERAFINE, PLAINTIFF,	§	
v.	§	
KAREN CRUMP, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS PRESIDING JUDGE OF THE 250TH §CIVIL DISTRICT COURT OF TRAVIS COUNTY, TEXAS; AND DAVID PURYEAR, MELISSA GOODWIN, AND BOB PEMBERTON, IN THEIR OFFICIAL CAPACITIES AS JUSTICES OF THE THIRD COURT OF APPEAL AT AUSTIN, TEXAS, DEFENDANTS.	§	CAUSE NO. A-17-CV-1 123-LY

ORDER ON REPORT AND RECOMMENDATION

(Filed: Jul. 30, 2018)

Before the court are (1) Defendant Karin Crump's Motion to Dismiss Plaintiff's First Amended Complaint pursuant to Rule 12(b)(1) and 12(b)(6) filed January 4, 2018 (Doc. #9), Plaintiff's Opposition to Motion to Dismiss of Defendant State-Court Judge Karin Crump filed January 18, 2018 (Doc. #10), and

Defendant Crump's Reply filed January 25, 2018 (Doc. #16); and (2) Third Court of Appeals Justices Melissa Goodwin, David Puryear, and Robert Pemberton's Motion to Dismiss Complaint on the Basis of Official, Qualified, Eleventh Amendment and Judicial Immunity, Absence of Standing, and Request for Attorneys' Fees in the Amount of $1,000.00 filed January 19, 2018 (Doc. #14); Plaintiff's Response filed February 12, 2018 (Doc. #20), Defendants' Reply filed February 14, 2018 (Doc. #21), and Plaintiff's Surreply filed February 23, 2018 (Doc. #26). The motions responses, and replies were referred to the United States Magistrate Judge for a Report and Recommendation as to the merits pursuant to 28 U.S.C. § 636(b), Rule 72 of the Federal Rules of Civil Procedure, and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas.

The magistrate judge filed his Report and Recommendation on April 4, 2018 (Doc. #30), recommending that this court grant Defendant Crump's motion to dismiss, grant the Third Court of Appeals Justices' motion to dismiss and deny their request for sanctions, deny Plaintiff's request for leave to amend the complaint, and dismiss Plaintiff's First Amended Complaint without prejudice for lack of subject-matter jurisdiction.

Also before the court are (1) Defendants' Joint Motion for Reconsideration and Withdrawal of Order Setting Initial Pretrial Conference filed May 10, 2018 (Doc. #39) and Plaintiff's Response filed May 17, 2018 (Doc. #45); (2) Plaintiff's Motion for Limited

Jurisdictional Discovery filed May 10, 2018 (Doc. #40), Defendants' Joint Response filed May 14, 2018 (Doc. #42), and Plaintiff's Reply filed May 15, 2018 (Doc. #43); (3) Plaintiff's Motion for Hearing filed May 10, 2018 (Doc. #41), Defendants' Joint Response filed May 14, 2018 (Doc. #42), and Plaintiff's Reply filed May 15, 2018 (Doc. #44); (4) Plaintiff's Motion to Compel Rule 26 Disclosures filed May 28, 2018 (Doc. #46), Defendants' Joint Response filed June 5, 2018 (Doc. #49), and Plaintiff's Reply filed June 13, 2018 (Doc. #52); (5) Defendants' Joint Motion to Stay Discovery Pending Ruling on and Disposition of the Report and Recommendation of United States Magistrate Judge filed June 5, 2018 (Doc. #49), Plaintiff's Response filed June 12, 2018 (Doc. #50), Defendants' Joint Reply filed June 19, 2018 (Doc. #53), and Plaintiff's Surreply filed June 25, 2018 (Doc. #56); (6) Advisory to the Court by Third Court of Appeals Justices Melissa Goodwin, David Puryear, and Robert Pemberton filed June 27, 2018 (Doc. #57) and Plaintiff's Response filed June 28, 2018 (Doc. #58); (7) Plaintiff's Request for Oral Hearing on Plaintiff's Motion to Compel Disclosures filed July 17, 2018 (Doc. #59), Fourth Amended Response to Plaintiff's Request for Hearing on Her Motion to Compel and Objections to Plaintiff's Deposition Notice, Interrogatories, and Admissions Requests filed July 24, 2018 (Doc. #68), and Judge Karin Crump's Response to Plaintiff's Motion for Oral Hearing on Plaintiff's Motion to Compel Disclosures filed July 24, 2018 (Doc. #67); and (8) Objections to Plaintiff's Deposition Notice to Justice Melissa Goodwin and to Plaintiff's Request for a Hearing filed July 18, 2018 (Doc. #60) and

Plaintiff's Motion to Strike Defendant Goodwin's Document 60 or Alternatively to Re-Open Briefing and Allow Plaintiff 14 Days to Respond filed July 19, 2018 (Doc. #61).

Plaintiff's Objections to Magistrate Judge's Report and Recommendations were filed April 18, 2018 (Doc. #31). The Third Court of Appeals Justices' Response to Plaintiffs's Objections to Report and Recommendation was filed April 24, 2018 (Doc. #32). Defendant Crump's Response to Plaintiff's Objections to the United States Magistrate Judge's Report and Recommendation was filed April 25, 2018 (Doc. #33). In light of Plaintiff's objections, the court has undertaken a *de novo* review of the entire case file and finds that the magistrate judge's Report and Recommendation should be approved and accepted by the court for substantially the reasons stated therein.

Plaintiff Mary Louise Serafine challenges the magistrate judge's application of Fifth Circuit and U.S. Supreme Court precedent, and argues that the magistrate judge fails to analyze the actual allegations in her complaint. The court disagrees and concludes that the magistrate judge has properly applied federal-court precedent in his analysis of Serafine's facts and claim's as asserted in Plaintiff's First Amended Complaint. Therefore,

IT IS ORDERED that Plaintiff's Objections to Magistrate Judge's Report and Recommendations were filed April 18, 2018 (Doc. #31) are **OVERRULED.**

IT IS FURTHER ORDERED that the Report and Recommendation of the United States Magistrate Judge (Doc. #20) is **ACCEPTED AND ADOPTED** by the court for as stated herein.

IT IS FURTHER ORDERED that Defendant Karin Crump' s Motion to Dismiss Plaintiff's First Amended Complaint pursuant to Rule 12(b)(1) and 12(b)(6) filed January 4, 2018 (Doc. #9) is **GRANTED.**

IT IS FURTHER ORDERED that Third Court of Appeals Justices Melissa Goodwin, David Puryear, and Robert Pemberton's Motion to Dismiss Complaint on the Basis of Official, Qualified, Eleventh Amendment and Judicial Immunity, Absence of Standing, and Request for Attorneys' Fees in the Amount of $1,000.00 filed January 19, 2018 (Doc. #14) is **GRANTED** as to the request for dismissal for lack of subject-matter jurisdiction, and **DENIED** as to the request for stay and sanctions.

IT IS FURTHER ORDERED that Plaintiff Mary Louis Serafine's First Amended Complaint is **DISMISSED WITHOUT PREJUDICE** for lack of subject-matter jurisdiction.

IT IS FURTHER ORDERED that Defendants' Joint Motion for Reconsideration and Withdrawal of Order Setting Initial Pretrial Conference filed May 10, 2018 (Doc. #39) is **DENIED.**

IT IS FURTHER ORDERED that Plaintiffs Motion for Limited Jurisdictional Discovery filed May 10, 2018 (Doc. #40) is **DENIED.**

IT IS FURTHER ORDERED that Plaintiff's Motion for Hearing filed May 10, 2018 (Doc. #41), Defendants' Joint Response filed May 14, 2018 (Doc. #42) is **DENIED.**

IT IS FURTHER ORDERED that Plaintiff's Motion to Compel Rule 26 Disclosures filed May 28, 2018 (Doc. #46) is **DENIED.**

IT IS FURTHER ORDERED that Defendants' Joint Motion to Stay Discovery Pending Ruling on and Disposition of the Report and Recommendation of United States Magistrate Judge filed June 5, 2018 (Doc. #49) is **DENIED.**

IT IS FURTHER ORDERED that Plaintiff's Request for Oral Hearing on Plaintiff's Motion to Compel Disclosures filed July 17, 2018 (Doc. #59) is **DENIED.**

IT IS FINALLY ORDERED that Plaintiff's Motion to Strike Defendant Goodwin's Document 60 or Alternatively to Re-Open Briefing and Allow Plaintiff 14 Days to Respond filed July 19, 2018 (Doc. #61) is **DENIED.**

A Final Judgment shall be rendered subsequently.

Signed this 30th day of July 2018

/s/ Lee Yeakel
LEE YEAKEL
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARY LOUIS SERAFINE, PLAINTIFF,	§	
v.	§	
KAREN CRUMP, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AS PRESIDING JUDGE OF THE 250TH §CIVIL DISTRICT COURT OF TRAVIS COUNTY, TEXAS; AND DAVID PURYEAR, MELISSA GOODWIN, AND BOB PEMBERTON, IN THEIR OFFICIAL CAPACITIES AS JUSTICES OF THE THIRD COURT OF APPEAL AT AUSTIN, TEXAS, DEFENDANTS.	§	CAUSE NO. A-17-CV-1 123-LY

FINAL JUDGMENT

(Filed: Jul. 30, 2018)

Before the court is the above entitled cause of action. On this date, the court rendered an order dismissing Plaintiff's First Amended Complaint without prejudice for lack of subject-matter jurisdiction. Accordingly, the court renders the following Final Judgment pursuant to Federal Rule of Civil Procedure 58.

IT IS HEREBY ORDERED that Defendants are awarded costs.

IT IS FURTHER ORDERED that the case is hereby **CLOSED.**

Signed this 30th day of July 2018.

/s/ Lee Yeakel
LEE YEAKEL
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-50719

MARY LOUISE SERAFINE,

Plaintiff - Appellant

v.

KARIN CRUMP, In her Individual and Official Capacities as Presiding Judge of the 250th Civil District Court of Travis County, Texas; DAVID PURYEAR, In his Individual and Official Capacities as Justice of the Third Court of Appeals at Austin, Texas; MELISSA GOODWIN, In her Individual and Official Capacities as Justice of the Third Court of Appeals at Austin, Texas; BOB PEMBERTON, In his Individual and Official Capacities as Justice of the Third Court of Appeals at Austin., Texas,

Defendants - Appellees

Appeals from the United States District Court
for the Western District of Texas

ON PETITION FOR REHEARING

(Filed: Mar. 17, 2020)

Before OWEN, Chief Judge, and BARKSDALE, and DUNCAN, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is denied.

ENTERED FOR THE COURT

/s/ Rhesa H. Barksdale

UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

Mary Louise Serafine, Plaintiff, v. Karin Crump, in her individual and official capacities as Presiding Judge of the 250th Civil District Court of Travis County, Texas, and David Puryear, Melissa Goodwin, and Bob Pemberton, in their individual and official capacities as justices of the Third Court of Appeals at Austin, Texas, Defendants.	Civil Action No. 1:17-cv-01123-LY

FIRST AMENDED COMPLAINT

(Filed Dec. 21, 2017)

Pursuant to Federal Rule of Civil Procedure 15, this amendment adds three defendants, as to which the statute of limitations has not run, and is timely filed within 21 days of service of the original Complaint.

Plaintiff Mary Louise Serafine ("Plaintiff"), seeking to vindicate her civil rights, and for the benefit of all others similarly situated, files this complaint

pursuant to 42 U.S.C. § 1983, for violations of the Fourteenth Amendment of the U.S. Constitution.

I. Nature of Suit and Preliminary Allegations

1. Defendants are judicial officers in the lower state courts of Texas. In 2012, Plaintiff brought suit and brought appeal in Defendants' courts, seeking affirmative relief in two civil matters pertaining to her real property and to defend against three counterclaims. Plaintiff was largely represented by experienced counsel (until the untimely death during the second appeal of then-lead counsel), but also acted as an attorney on her own behalf.

2. Defendants repeatedly and knowingly violated, and unless deterred will continue to violate, Plaintiff's rights under the Fourteenth Amendment of the U.S. Constitution, including deprivation of property and civil rights, without due process of law and in denial of equal protection of the laws.

3. Defendants accomplished the violation by knowingly creating orders, judgments, and opinions that made materially false statements of dispositive facts—facts of which Defendants had direct, personal, and contrary percipient knowledge because the true facts took place before Defendants themselves.

4. Defendants' judicial documents otherwise repeatedly made statements that, if not wholly false, were made in bad faith. For example, Defendant Judge Crump denied one of Plaintiff's bills of exception because the exhibit was not offered "at trial." But she knew the document came into

existence and the proceeding arose only weeks *after* trial.

5. The examples below do not seek to re-litigate underlying substance. Rather, Plaintiff seeks the declaratory and injunction relief against state judicial officers provided by Section 1983, as protection against future denials of due process through adulteration of judicial documents.

6. For example, Defendants created judicial documents falsely reporting

   a. that the $10,000 monetary sanction against Plaintiff had been heard, when Defendants knew it had not been heard;

   b. that "findings" were made when Defendants knew that no such "findings" were made;

   c. that Plaintiff's "claims" had been "dismissed," when Defendants knew those claims were never dismissed;

   d. that a "motion" for sanctions against Plaintiff had been granted, when Defendants knew that no motion related to the order had ever been filed or made; and

   e. that Defendants Puryear, Goodwin, and Pemberton had reviewed the "entire record" and located there "ample evidence" for the "findings," when Defendants knew that no such evidence existed in the record or anywhere else.

7. Defendants repeatedly denied or affirmed denial of Plaintiff's right to procedural due process, including the right to notice, hearing, opportunity to defend, and right to appeal before depriving

Plaintiff of her property and right to meaningful court process and trial by jury. All Defendants repeatedly rendered *de facto* denials of properly-presented motions and pleas by ignoring them, leaving an empty record. Defendants tampered with or affirmed tampering with court records, such as unlawfully issuing or affirming orders to the court reporter to remove proper exhibits, and otherwise eliminating documents from the record. Defendants allowed incorporation of perjury into the record and made rulings based on it. Defendant Judge Crump engaged in *ex parte* communication with Plaintiff's opponents and issued orders accordingly, such as eliminating most of Plaintiff's trial exhibits, as to which remaining Defendants ignored Plaintiff's appeal.

8. Defendants appeared to have acted in concert; certainly Defendant Judge Crump acted so incautiously as to give the appearance of knowing she was protected by the intermsediate court.

9. Defendants' actions are not isolated to this case. They are part of a pattern complained of locally by other lawyers. National commentators condemn similar examples of adulterating judicial documents with materially false or misleading statements of fact because they are so hard to remediate.

10. Defendants' wrongful conduct lies outside their jurisdiction or discretion. Their conduct is not the result of legal mistake, incompetence, or impairment, but is knowing malfeasance. Because the wrongful acts of Defendants were repeated

and egregious, they demonstrate the necessity for the *prospective* relief requested here.

11. Plaintiff's underlying civil matters can be expected to continue in both courts. And Plaintiff as a local attorney will appear in Defendants' courts in additional matters, likely against the same counsel or parties.

12. Where, as here, the deprivation of Plaintiff's rights lies ultimately in the intermediate court of appeals, it falls to the federal courts to enforce the Fourteenth Amendment because no other remedy exists. The Texas Supreme Court exercises only discretionary review of appellate cases and disavows being an "error correction" court. Unlike its sister court, the Court of Criminal Appeals, and unlike the U.S. Supreme Court, the Texas Supreme Court lacks statutory supervisory power over its lower courts. The state court system therefore provides no adequate relief or protection from this type of deprivation of civil rights. In any event, appeal was taken from the appellate decision in the instant case and review was denied.[1]

13. Neither the *Younger* abstention nor *Rooker-Feldman* doctrine should be applied in this case. Should the Court determine that precedent dictates that either one does apply, Plaintiff urges that such precedent should be overruled; the law should be changed in the interest of justice.

14. Plaintiff seeks a declaratory decree. Plaintiff urges that Defendants have violated the judicial oath

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[1] Plaintiff is entitled to seek rehearing of the Texas Supreme Court's denial of review.

and that such a violation amounts to violating a prior declaratory decree. As a result, Plaintiff is entitled to an appropriate injunction. In the alternative, if a declaratory decree is unavailable, Plaintiff is likewise entitled to injunction.

15. As a direct result of Defendants' wrongful conduct—and only that conduct—Plaintiff sustained attorney disciplinary proceedings in three jurisdictions and remains under investigation after more than two years. A proper declaratory decree would undue this unjust harm.

II. Jurisdiction and Venue

16. Plaintiff brings suit pursuant to the Civil Rights Act of 1871, codified at 42 U.S.C. § 1983, and the Declaratory Judgment Act, codified at 28 U.S.C. §§ 2201 and 2202, for violations of the Fourteenth Amendment to the United States Constitution.

17. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a), 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 1983. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 124(d)(1).

III. Parties

18. Plaintiff is a resident of Travis County, Texas and a licensed attorney in Texas, California, New York, and the District of Columbia.

19. Defendant Karin Crump ("Judge Crump") at all relevant times acted and does act under color of

state law as the presiding judge of the 250th Civil District Court of Travis County, a state trial court.

20. Defendants David Puryear, Melissa Goodwin, and Bob Pemberton (collectively, the "Panel") at all relevant times acted and do act under color of state law as justices of the Third Court of Appeals at Austin (the "Third Court"), an intermediate state court of appeal.

21. On information and belief, some or all defendants are residents of Travis County, Texas.

IV. Factual Background

22. Virtually all of the evidence in this matter is contained in the documents and record in appellate Case No. 03-16-00131.[2] The underlying case in the

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[2] The appellate record consists of the following:

REPORTER'S RECORDS
[vol. or supp. no.].RR:[pg. no.]

CLERK'S RECORDS

CR: [pg. no.]	refers to record filed 5-9-16 (1096 pp.)
CRSuppI:[pg. no.]	refers to that filed 5-27-16 (250 pp.)
CRSuppII: [pg. no.]	refers to that filed 6-21-16 (41 pp.)
CRSuppIII:[pg. no.]*	refers to that filed 7-8-16 (166 pp.)
CRSuppIV:[pg. no.] *	refers to that filed 7-8-16 (31 pp.)
CRSuppEx:[pg. no.]**	refers to that filed 7-21-16 (one exhibit)
CRSuppV:[pg. no.] *	refers to that filed 9-1-16 (780 pp.)
CRSuppVI:[pg. no.] **	refers to that filed 9-14-16 (77 pp.)
CRSuppVII:[pg. no.]**	refers to that filed 9-14-16 (104 pp.)

* No supplement number shown on title page.
** No title page is shown on this exhibit supplement.

REVISED REPORTER'S RECORDS
[vol. or supp. no.].RevisedRR:[pg. no.]
Defendant Crump ordered the court reporter to revise Volumes 1, 7, and 16 of the reporter's record and remove exhibits.

trial court involved Cause No. D-1-GN-13-004023 and Cause No. D-1-GN-12-001270.[3]

The Counts below are examples.

Count I
Entering false statements into court records.

23. All of the foregoing is incorporated herein by reference as though pled in full.

24. Defendant Panel rendered a published opinion known as *Serafine v. Blunt et al.*, No. 03-16-00131 (Tex. App.—Austin, May 19, 2017) (the "Opinion").

Unlawful $10,000 Sanction Against Plaintiff without Due Process

25. Defendant Panel affirmed Defendant Judge Crump's entry of a $10,000 sanction against Plaintiff. Defendant Panel's Opinion states

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[3] Defendants in the underlying law suits are identified and referred to as follows: "Viking Ltd." is Viking Fence Company, Ltd. d/b/a Viking Fence Co.

"Viking GP" is Viking GP, LLC, the general partner of Viking Ltd. "Viking" is Viking Ltd. and Viking GP collectively.

"Lockhart" is Scott Lockhart and Austin Drainage and Foundation, LLC d/b/a Austin Drainage and Landscape Development.

"Blunts" refers to Alexander Blunt and Ashley Blunt.

"Chavarrias" refers to Salvatore Chavarria and Jennifer Chavarria, exclusive members/owners of Viking GP.

"Clanin" refers to James Clanin, claimed by Viking Ltd. to be its "independent contractor."

a. that there was a hearing and motion on the sanction ("At the hearing on Viking's motion for sanctions. . . ."); and

b. that Defendant Panel had reviewed the "entire record" and found "ample evidence to support the trial court's findings and conclusions about [Plaintiff's] the groundless claims."

Op. 14.

26. These statements by Defendant Panel were and are false. In reality, there was no motion, no hearing, and no evidence that any of Plaintiff's claims were groundless, in the record or elsewhere. No party so asserted at any time. Indeed, the very words and concepts used by Defendant Judge Crump to describe her "findings" simply do not appear in Viking's motion (CR:574-580) or any motion, in the transcript of the claimed hearing (13.RR) or any hearing, or elsewhere in the entire record.

27. Listed below are the words and concepts Defendant Crump used in her order sanctioning Plaintiff's allegations: specifically that Plaintiff's allegations about the Chavarrias were "vague"; and that Plaintiff's allegations about their specific unlawful business practices could not be proved, such as those of

a. "independent contractors,"

b. "affiliated corporations,"

c. "the corporate form,"

d. "the liability shield,"

e. "agency,"

f. "alter ego,"

g. "corporate fiction," and

h. "a scheme."

28. A simple word search shows that none of the above words or concepts in quotation marks appeared in Viking's motion for sanctions or at the claimed hearing. Defendants assertions are fabrication. (Moreover, the Chavarrias had made no motion for sanctions and had not been a party to the litigation for many months.) There is simply no overlap between what Viking's motion for sanctions pled and what anyone spoke at the hearing, on the one hand, and what the trial court alleged as its grounds for granting the $10,000 windfall to Viking.

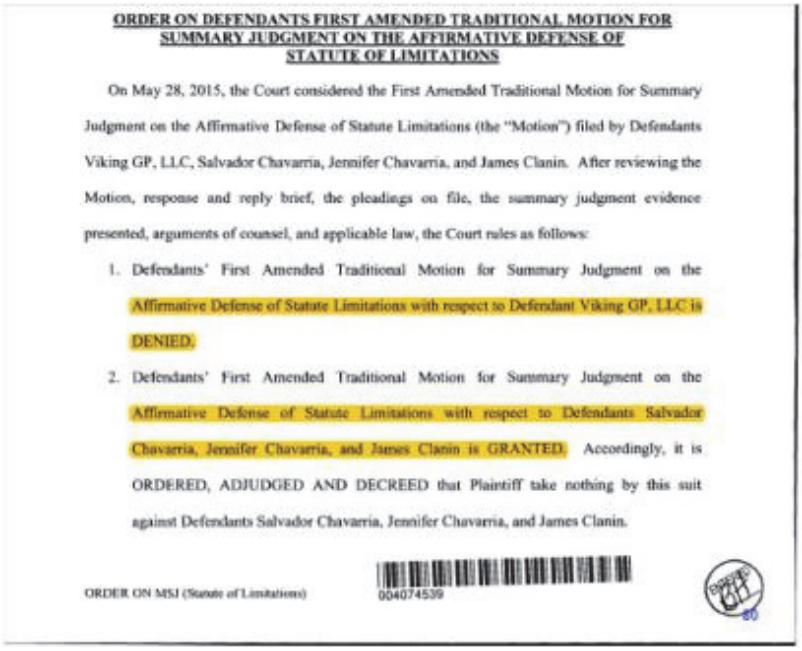
29. The same hearing transcript shows that there was no notice of any hearing on sanctions, Serafine did not testify, the Chavarrias and Clanin were not present, they had not moved for sanctions, no witnesses were called to prove Plaintiff's alleged bad faith or that the Chavarrias experienced harassment, or to meet any defendant's burden of overcoming the presumption that pleadings are filed in good faith. Even if Plaintiff had called herself as a witness at the hearing, what would she have testified to? With Viking's motion not specifying any of the grounds that Defendant Crump later picked as justifying the sanctions, Serafine would have had to divine the grounds somehow in order to testify.

30. It is important to note what Viking's motion for sanctions actually did allege: It claimed that Plaintiff engaged in "abusive litigation tactics," "six depositions," "numerous hearings," "211 discovery requests," required "disclosure of net worth," and advanced a "pretense." CR:574-580. These are the only allegations of which Serafine could possibly have had any notice. But none of these words appears in the sanctions Order (CR:852-857) and none were spoken at or appear in documents at the hearing (13.RR).

31. All Defendants were fully aware that their statements in judicial documents were false.

32. Likewise Defendant Panel falsely reported that Plaintiff's "specific claims were disposed of on summary judgment and which the trial court concluded were made in bad faith, with knowledge that they were groundless, and for the purpose of harassment." Op. 14.

33. In reality, Plaintiff's sanctioned "claims" were not "disposed of on summary judgment." No summary judgment to dismiss "claims" was moved or granted. The Chavarrias and Viking GP filed only an MSJ on their procedural affirmative defense of statute of limitations—not to dismiss a single "claim." Indeed the identical claims against Viking GP went forward, as Defendant Crump's summary judgment order shows: CR:80-81.



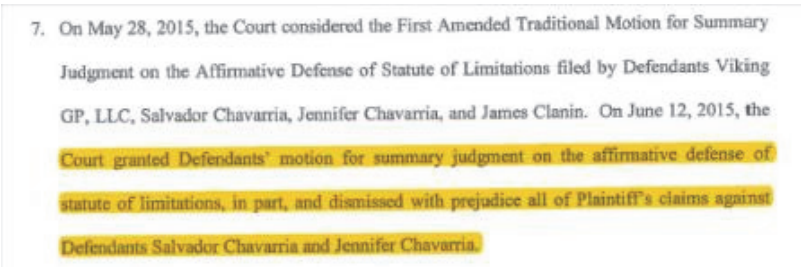
ORDER ON DEFENDANTS FIRST AMENDED TRADITIONAL MOTION FOR SUMMARY JUDGMENT ON THE AFFIRMATIVE DEFENSE OF STATUTE OF LIMITATIONS

On May 28, 2015, the Court considered the First Amended Traditional Motion for Summary Judgment on the Affirmative Defense of Statute Limitations (the "Motion") filed by Defendants Viking GP, LLC, Salvador Chavarria, Jennifer Chavarria, and James Clanin. After reviewing the Motion, response and reply brief, the pleadings on file, the summary judgment evidence presented, arguments of counsel, and applicable law, the Court rules as follows:

1. Defendants' First Amended Traditional Motion for Summary Judgment on the Affirmative Defense of Statute Limitations with respect to Defendant Viking GP, LLC is DENIED.
2. Defendants' First Amended Traditional Motion for Summary Judgment on the Affirmative Defense of Statute Limitations with respect to Defendants Salvador Chavarria, Jennifer Chavarria, and James Clanin is GRANTED. Accordingly, it is ORDERED, ADJUDGED AND DECREED that Plaintiff take nothing by this suit against Defendants Salvador Chavarria, Jennifer Chavarria, and James Clanin.

ORDER ON MSJ (Statute of Limitations) 004074539

34. Nothing above speaks to any "claims." Yet Defendant Judge Crump in her later sanctions order states that the MSJ on SOL grounds was granted only "in part" and that Plaintiff's "claims" were "dismissed with prejudice" (CR:852-857):



7. On May 28, 2015, the Court considered the First Amended Traditional Motion for Summary Judgment on the Affirmative Defense of Statute of Limitations filed by Defendants Viking GP, LLC, Salvador Chavarria, Jennifer Chavarria, and James Clanin. On June 12, 2015, the Court granted Defendants' motion for summary judgment on the affirmative defense of statute of limitations, in part, and dismissed with prejudice all of Plaintiff's claims against Defendants Salvador Chavarria and Jennifer Chavarria.

35. In reality, none of Plaintiff's claims were dismissed on the merits.

36. Defendant Panel knowingly reported the same falsehood in its Opinion. Op. 14.

Plaintiff's Formal Bill of Exceptions

37. The formal bill of exceptions provided by Texas Rule of Appellate Procedure 33.2 provides a method of placing into the appellate record documents and testimony excluded by the trial court. Plaintiff and her counsel verified and ***timely*** filed nine formal bills of exception covering Defendant Judge Crump's exclusion at trial of any rebuttal by Plaintiff, most exhibits, all damages testimony by Plaintiff, and other rulings to be appealed.

38. Defendant Panel, in a footnote, stated in its Opinion:

> While Serafine filed a formal bill of exceptions several months after trial attempting to make an offer of proof, the trial court refused her bill of exceptions, and Serafine does not appeal such refusal. See Tex. R. App. P. 33.2. Therefore, her bill of exceptions and its offer of proof contained therein present nothing for our review. [citation omitted]

Op. 19, n. 8.

39. This statement was materially false and misleading. In reality, Plaintiff had twice properly appealed the denial by motion as case law provides for this specific matter—the second motion alternatively speaking as a mandamus petition. Plaintiff's opponents fully joined issue. Many hundreds of pages of briefing ensued. Defendant Panel then

denied or dismissed both motions or the petition in writing.

40. Defendant Panel knew or had to know its statement in footnote 8 was false.

41. This decision by Defendant Panel effected a denial of the right to appeal the sham trial. It also automatically placed into the record Defendant Crump's alternative "Judge's Bill of Exceptions" (signed 7/28/2016), which—not arguing here its errors—imported other materially false statements into the record and, most tellingly, ***eliminated the evidence from the formal bills.***.

42. For example, Defendant Crump's "Judge's Bill" claimed that "Serafine requested to offer the entirety of Plaintiffs Exhibit 106 (a 280-page document) into the record for no specific purpose." In reality, Plaintiff's counsel Mr. Bass offered the exhibit for the purpose of the bill of exception or offer of proof, and then and there Defendant Crump approved it for that purpose, later reneging.

43. In another example, in July 2016 Defendant Judge Crump signed an order claiming that she had filed in the clerk's record all her written orders that should have been filed. In reality, Defendant Crump had refused to file a critically important pretrial evidentiary order and ignored multiple motions by Plaintiff attempting to have it filed. *See* CR:940-1036, CR:1037-1048. Two justices of Defendant Panel later dismissed in a written order Plaintiff's motion to place the order in the appellate record.

44. Defendants followed a pattern and practice of denial of due process and right to appeal by knowingly making false statements in judicial documents.

Count II
Denials of mandatory or statutory hearings.

45. All of the foregoing is incorporated herein by reference as though pled in full.

46. Defendant Panel ratified or refused to review many denials of the opportunity to be heard and the denial of due process, by relying on various pretexts and false statements—for example that Plaintiff "waived" the lack of a hearing on the boundary by not attempting to present evidence about the boundary, when Defendant Panel knew that Plaintiff had made such attempt and Defendant Crump explicitly rejected it saying she would take no evidence.

47. Defendant Panel had full knowledge of this but affirmed the denial of all hearings on various pretexts, thereby signaling to the trial courts a high tolerance for disregard of the opportunity to be heard.

48. Defendant Judge Crump was required by law to hold a hearing prior to entering against Plaintiff (a) the large money sanction, (b) the evidentiary sanction excluding most of Plaintiff's trial exhibits, (c) the expungement of Plaintiff's *lis pendens* notice, (d) the setting of the boundary, and (e) the initial refusal of Plaintiff's formal bill of exceptions, among other matters.

49. These mandatory or even statutory requirements for hearings were ignored by Defendant Judge Crump, along with proper motions requesting relief.

Count III
Other Denials of Procedural Due Process

Refusals to rule

50. All of the foregoing is incorporated herein by reference as though pled in full.

51. All Defendants refused to rule on properly-presented motions and arguments. Defendant Panel refused to opine on the briefed and even undisputed fact that none of the "findings" on which Defendant Crump imposed the $10,000 sanction against Plaintiff was sanctionable conduct. Whether it was is immaterial here. But repeated refusals to rule are contrary to due process.

52. Defendant Judge Crump was required to but refused to rule on Plaintiff's written objections to trial evidence; on Plaintiff's motion for the promised hearing on the boundary before setting it; on Plaintiff's motion to vacate Defendant Crump's unlawful expungement of *lis pendens* without the statutory hearing, 20-day notice, or motion required by Prop. Code 12.0071(d). CR:838-851. Defendant Judge Crump even ordered the Blunts to file a response, which they did. CR:858-61. Plaintiff sought a ruling on the motion, CR:1032-1036, but Defendant Crump ignored it.

53. There is perhaps some discretion not to rule, certainly by tradition. This conduct is outside the

bounds. There is no discretion to refuse to rule virtually always on critical matters to one party's detriment.

Inducing detrimental reliance by false promises, as to Defendant Judge Crump

54. All of the foregoing is incorporated herein by reference as though pled in full.

55. While judicial discretion is wide, it does not encompass chicanery.

56. Defendant Judge Crump announces and has announced instructions and rulings on which Plaintiff and/or her counsel relied or do rely, and Defendant Crump then reneges on those instructions and rulings, depriving Plaintiff of her rights.

57. On December 3, 2015 Defendant Crump entered a judgment as to which she had earlier announced—on November 10, 2015—that all parties would have a 10-day window in which to submit briefing, evidence, and "proposed judgments." This caused Plaintiff to refrain from further objection. Instead, Defendant Crump ignored the announced 10-day deadline and entered written orders after only 72 hours. The substance of those orders is immaterial here. But Defendant Crump repeatedly announced rulings and deadlines and reneged only to Plaintiff's detriment, ignoring motions to correct.

58. Near the end of trial Defendant Crump induced Plaintiff to agree to submitting the undetermined boundary question to Defendant Crump, by promising there would be a hearing on the matter. In

reality, Defendant Crump did not hold a hearing (within any meaning of that word). In any case, at the start of the only post-trial hearing that was held on any matter, Defendant Crump announced she had already decided the boundary anyway. There had been no motion, no briefing, no argument, and no claim by Plaintiff's opponents for any particular boundary.

59. During trial Defendant Judge Crump induced Plaintiff's counsel to believe he would be allowed to present rebuttal and could also recall Plaintiff to the stand a second time during Plaintiff's case in chief. Instead, Defendant Crump reneged. Post-trial motions that would have corrected this were ignored by Defendant Crump.

V. Prayer

Plaintiff prays that the Court will:

1. Assume jurisdiction over this matter;

2. Issue a declaratory judgment that sets forth, as a matter of law, that Defendants' policy, practice, and custom of denying and affirming denial of procedural due process—including denial of meaningful notice, hearing, and appeal, creation of judicial documents containing false statements of fact and bad faith rulings, tampering with the record, engaging in *ex parte* communication, and other conduct according to proof—violate the Fourteenth Amendment of the U.S. Constitution, including the Due Process and/or Equal Protection Clauses.

3. Determine that Defendants' judicial oath, as a matter of law, constitutes a declaratory decree to

which Defendant consented, and that Defendants' violation of that oath entitles Plaintiff to injunctive relief consistent with any declaratory relief;

4. Grant Plaintiff her costs and attorneys' fees to the extent allowed by law; and

5. Grant such other and further relief as the Court determines is just and proper.

Respectfully submitted,
/s/ M.L. Serafine
Mary Louise Serafine, State Bar No. 24048301
Mary Louise Serafine, Attorney & Counselor at Law
P.O. Box 4342, Austin, Texas 78765
Tel: 512-220-5452
Email: mlserafine@gmail.com
Attorney for Plaintiff

Proof of Service

Pursuant to Federal Rule of Civil Procedure 5(a) and (b) and Local Rule CV-5, the foregoing document has been filed and simultaneously served through the Court's electronic filing system on the counsel below on this the ***21st day of December, 2017.***

Anthony J. Nelson, Esq.
OFFICE OF DAVID A. ESCAMILLA
TRAVIS COUNTY ATTORNEY
P. O. Box 1748
Austin, Texas 78767
(512) 854-9415
(512) 854-4808 FAX
Attorneys for Defendant the Honorable Karin Crump

The remaining three defendants added by this amendment have not yet been served with summons, or with requests for waiver of summons, but will be so served promptly after the Holidays and through their counsel, if known.

/s/ M.L. Serafine
Mary Louise Serafine, State Bar No. 24048301
Mary Louise Serafine, Attorney & Counselor at Law
P.O. Box 4342, Austin, Texas 78765
Tel: 512-220-5452
Email: mlserafine@gmail.com
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Mary Louise Serafine, Plaintiff, v. Karin Crump, in her individual and official capacities as Presiding Judge of the 250th Civil District Court of Travis County, Texas, and David Puryear, Melissa Goodwin, and Bob Pemberton, in their individual and official capacities as justices of the Third Court of Appeals at Austin, Texas, Defendants.	§	Civil Action No. 1: 17-cv-01123-LY

SECOND AMENDED COMPLAINT

(Filed Aug. 28, 2018)

Plaintiff Mary Louise Serafine ("Plaintiff"), seeking to vindicate her civil rights, and for the benefit of all others similarly situated, files this complaint pursuant to 42 U.S.C. §1983, for violations of the Fourteenth Amendment of the U.S. Constitution. The original complaint (Doc. 1) was filed on November 28, 2017.

I. Nature of Suit

This suit seeks to enforce against defendant judges—in a proceeding still in progress in Texas state courts—the rights of due process promised by the Fourteenth Amendment, including notice, the right to be heard before a neutral arbiter, the right to appeal, the right to put on evidence, and the right to adjudications based on *stare decisis*, to public rather than *ex parte* proceedings, and to have an accurate record of proceedings, among features of fundamental fairness. Defendant judges here fail to comply with even the most minimal requirements of due process, and that failure is deliberate, consistent, coordinated, and extreme. As detailed below, they have conducted sham proceedings in which they have already determined the outcome; they act without reference to evidence or law. It is not easy to accomplish this and still create orders, opinions, and other court documents that at least by tradition are expected to recite evidence, facts, procedural history, and law. Thus, aggravating the mere deprivation of notice, hearing, and other requirements of due process, Defendants here wrote and filed court documents in which they knowingly made false and bad faith statements; they fabricated events and facts, they ignored or disavowed actual events and facts; and they tampered with the record. Defendants will continue unless stopped. Plaintiff claims the protection of Section 1983, which provides a "proceeding for redress" on a claim of "deprivation of rights" "against a judicial officer" who acted in his "judicial

capacity."[1] Plaintiff seeks only *prospective* declaratory and injunctive relief. Plaintiff does not seek money damages; does not seek a declaration or injunction to vacate a state judgment; does not seek to stay a proceeding or any enforcement; does not seek to discipline or remove a judge; does not sue the state, the county, or a court; and does not claim that a state judge enforced an unconstitutional statute.

II. Preliminary Allegations

1. Defendants are judicial officers in the lower state courts of Texas. In 2012, Plaintiff brought suit and brought appeal in Defendants' courts, seeking affirmative relief in two civil matters pertaining to her real property and to defend against three counterclaims. Plaintiff was largely represented by experienced counsel (until the untimely death during the second appeal of then-lead

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[1] In relevant part, Section 1983 provides:

> Every person who, under color of any statute . . . of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . 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.***

42 U.S.C. §1983 (1996) (emphases added).

counsel), but also acted as an attorney on her own behalf.

2. Defendants repeatedly and knowingly violated, and unless deterred will continue to violate, Plaintiff's rights under the Fourteenth Amendment of the U.S. Constitution, including deprivation of property and civil rights, without due process of law and in denial of equal protection of the laws.

3. Defendants accomplished the violations and camouflaged them by creating orders, judgments, and opinions that made materially false statements of dispositive facts—facts of which Defendants had direct, personal, and contrary percipient knowledge because the true facts took place before Defendants themselves.

4. Defendants' judicial documents otherwise repeatedly made statements that, if not wholly false, were made in bad faith. For example, Defendant Judge Crump denied one of Plaintiff's bills of exception because the exhibit was not offered "at trial." But she knew the document came into existence and the proceeding arose only weeks *after* trial.

5. The examples below do not seek to re-litigate underlying substance. Rather, Plaintiff seeks the declaratory and injunction relief against state judicial officers provided by Section 1983, as protection against future denials of due process through adulteration of judicial documents.

6. For example, Defendants created judicial documents falsely reporting

1. that the $10,000 monetary sanction against Plaintiff had been heard, when Defendants knew it had not been heard;

2. that "findings" were made when Defendants knew that no such "findings" were made;

3. that Plaintiff's "claims" had been "dismissed," when Defendants knew those claims were never dismissed;

4. that a "motion" for sanctions against Plaintiff had been granted, when Defendants knew that no motion related to the order had ever been filed or made; and

5. that Defendants Puryear, Goodwin, and Pemberton had reviewed the "entire record" and located there "ample evidence" for the "findings," when Defendants knew that no such evidence existed in the record or anywhere else.

7. Defendants repeatedly denied or affirmed denial of Plaintiff's right to procedural due process, including the right to notice, hearing, opportunity to defend, and right to appeal before depriving Plaintiff of her property and right to meaningful court process and trial by jury. All Defendants repeatedly rendered *de facto* denials of properly-presented motions and pleas by ignoring them, leaving an empty record. Defendants tampered with or affirmed tampering with court records, such as unlawfully issuing or affirming orders to the court reporter to remove proper exhibits, and otherwise eliminating documents or delaying their entry into the appellate record. The clerk

needed Judge Crump's permission to release a particular exhibit but was refused. Defendants allowed incorporation of perjury into the record and made rulings based on it. Defendant Judge Crump engaged in *ex parte* communication with Plaintiff's opponents and issued orders accordingly, such as eliminating most of Plaintiff's trial exhibits, as to which remaining Defendants ignored Plaintiff's appeal.

8. Defendants appeared to have acted in concert; certainly Defendant Judge Crump acted so incautiously as to give the appearance of knowing she was protected by the intermsediate court.

9. Defendants' actions are not isolated to this case. They are part of a pattern complained of locally by other lawyers. National commentators condemn similar examples of adulterating judicial documents with materially false or misleading statements of fact because they are so hard to remediate.

10. Defendants' wrongful conduct lies outside their jurisdiction or discretion. Their conduct is not the result of legal mistake, incompetence, or impairment, but is knowing malfeasance. Because the wrongful acts of Defendants were not isolated, random, or minor events, but were repeated and egregious, they demonstrate the necessity for the *prospective* relief requested here.

    1. Prospective relief is needed because Plaintiff's state-court case is on remand. Of necessity there will be hearings and discovery as part of the adjudication of the SLAPP

damages on remand *that are due to Plaintiff*. These should approach $100,000 or more, including sanctions to which Plaintiff is already entitled but which Defendant Judge Crump refused to award. There would be little point for Plaintiff—or any other litigant in a similar situation—to bring important proceedings before Defendants here, or the judges with whom the evidence shows they collaborate, when these Defendants have already worked at length to deprive Plaintiff of the opportunity to present evidence and to have an accurate record and truthful orders and opinions.

2. On remand there will also be collection proceedings and any appeals to which Plaintiff or another party is entitled.

3. The favored party in the state-court case has already made unlawful collection demands on Plaintiff, clearly counting on the same sham proceedings in their favor in the future that they enjoyed in the past.

11. Plaintiff's underlying civil matters can be expected to continue in both state courts, trial and appellate. Plaintiff as a local attorney will appear in Defendants' courts in additional matters.

12. The Texas Supreme Court exercises only discretionary review of appellate cases and disavows being an "error correction" court. Unlike its sister court, the Court of Criminal Appeals, and unlike the U.S. Supreme Court, the Texas Supreme Court lacks statutory supervisory power over its lower courts. The state court system therefore

provides no adequate relief or protection from this type of deprivation of civil rights. In any event, appeal was taken from the appellate decision in the instant case and review by the Texas Supreme Court was denied. On February 16, 2018—almost 12 weeks after the filing of this case on November 28, 2017—the Texas Supreme Court denied rehearing of Plaintiff's petition for review.

13. Neither the *Younger* abstention nor *Rooker-Feldman* doctrine should be applied in this case. Should the Court determine that precedent dictates that either one does apply, Plaintiff urges that such precedent should be overruled; the law should be changed in the interest of justice.

14. Plaintiff seeks a declaratory decree. Plaintiff is also entitled to injunction because a declaratory decree was unavailable, and remains unavailable, in the state court action. This so because Defendants herein were not parties in the state court action; they were the adjudicators of that action and thus could not be made parties. None of the claims or counterclaims in the state court action concerned conduct by Defendants here. Even if a declaratory decree had been available procedurally—which it was not—Plaintiff could not possibly have anticipated Defendants' due process violations until after they had occurred. Plaintiff is also entitled to injunction because Defendants have violated a prior declaratory decree, that is, the judicial oath.

15. As a direct result of Defendants' wrongful conduct—and only that conduct—Plaintiff sustained

attorney disciplinary proceedings in three jurisdictions, which continued over a two-and-a-half year period. Eventually all three jurisdictions—California, New York, and the District of Columbia—after independent investigations, completely exonerated Plaintiff, found no wrongdoing on Plaintiff's part, and closed their proceedings.

II. Jurisdiction and Venue

16. Plaintiff brings suit pursuant to the Civil Rights Act of 1871, codified at 42 U.S.C. § 1983, and the Declaratory Judgment Act, codified at 28 U.S.C. §§ 2201 and 2202, for violations of the Fourteenth Amendment to the United States Constitution.

17. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a), 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 1983. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 124(d)(1).

III. Parties

18. Plaintiff is a resident of Travis County, Texas and a licensed attorney in Texas, California, New York, and the District of Columbia.

19. Defendant Karin Crump ("Judge Crump") at all relevant times acted and does act under color of state law as the presiding judge of the 250th Civil District Court of Travis County, a state trial court.

20. Defendants David Puryear, Melissa Goodwin, and Bob Pemberton (collectively, the "Panel") at all relevant times acted and do act under color of state law as justices of the Third Court of Appeals at Austin (the "Third Court"), an intermediate state court of appeal.

21. On information and belief, some or all defendants are residents of Travis County, Texas.

IV. Factual Background

22. Virtually all of the evidence in this matter is contained in the documents and record in appellate Case No. 03-16-00131.[2] The underlying case in

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[2] The appellate record consists of the following:

REPORTER'S RECORDS
[vol. or supp. no.].RR:[pg. no.]

CLERK'S RECORDS

CR: [pg. no.]	refers to record filed 5-9-16 (1096 pp.)
CRSuppI:[pg. no.]	refers to that filed 5-27-16 (250 pp.)
CRSuppII: [pg. no.]	refers to that filed 6-21-16 (41 pp.)
CRSuppIII:[pg. no.]*	refers to that filed 7-8-16 (166 pp.)
CRSuppIV:[pg. no.]*	refers to that filed 7-8-16 (31 pp.)
CRSuppEx: [pg. no.]**	refers to that filed 7-21-16 (one exhibit)
CRSuppV:[pg. no.]*	refers to that filed 9-1-16 (780 pp.)
CRSuppVI:[pg. no.]**	refers to that filed 9-14-16 (77 pp.)
CRSuppVII:[pg. no.]**	refers to that filed 9-14-16 (104 pp.)

*No supplement number shown on title page.
**No title page is shown on this exhibit supplement.

REVISED REPORTER'S RECORDS
[vol. or supp. no.].RevisedRR:[pg. no.]
Defendant Crump ordered the court reporter to revise Volumes 1, 7, and 16 of the reporter's record and remove exhibits.

the trial court involved Cause No. D-1-GN-13-004023 and Cause No. D-1-GN-12-001270. No Defendant in this action was a defendant in the aforementioned cases.

1. The above-mentioned case and causes, including but not limited to all proceedings growing out of that case and causes, such as the remand, are sometimes referred to herein collectively as the "state court action."

The Counts below are examples.

Count I
Entering false statements into court records.

23. All of the foregoing is incorporated herein by reference as though pled in full.

24. Defendant Panel rendered a published opinion known as *Serafine v. Blunt et al.*, No. 03-16-00131 (Tex. App.—Austin, May 19, 2017) (the "Opinion").

$10, 000 Sanction Against Plaintiff Without Due Process

25. Defendant Panel affirmed Defendant Judge Crump's entry of a $10,000 sanction against Plaintiff. Defendant Panel's Opinion states

    1. that there was a hearing and motion on the sanction ("At the hearing on Viking's motion for sanctions. . . ."); and

    2. that Defendant Panel had reviewed the "entire record" and found "ample evidence

> to support the trial court's findings and conclusions about [Plaintiff's] the groundless claims."

Op. 14.

26. These statements by Defendant Panel were and are false. In reality, there was no motion, no hearing, and no evidence that any of Plaintiff's claims were groundless, in the record or elsewhere. No party so asserted at any time. Indeed, the very words and concepts used by Defendant Judge Crump to describe her "findings" simply do not appear in Viking's motion (CR:574-580) or any motion, in the transcript of the claimed hearing (13.RR) or any hearing, or elsewhere in the entire record.

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    2. "affiliated corporations,"
    3. "the corporate form,"
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    5. "agency,"
    6. "alter ego,"
    7. "corporate fiction," and
    8. "a scheme."

28. A simple word search shows that none of the above words or concepts in quotation marks

appeared in Viking's motion for sanctions or at the claimed hearing. Defendants assertions are fabrication. (Moreover, the Chavarrias had made no motion for sanctions and had not been a party to the litigation for many months.) There is simply no overlap between what Viking's motion for sanctions pled and what anyone spoke at the hearing, on the one hand, and what the trial court alleged as its grounds for granting the $10,000 windfall to Viking.

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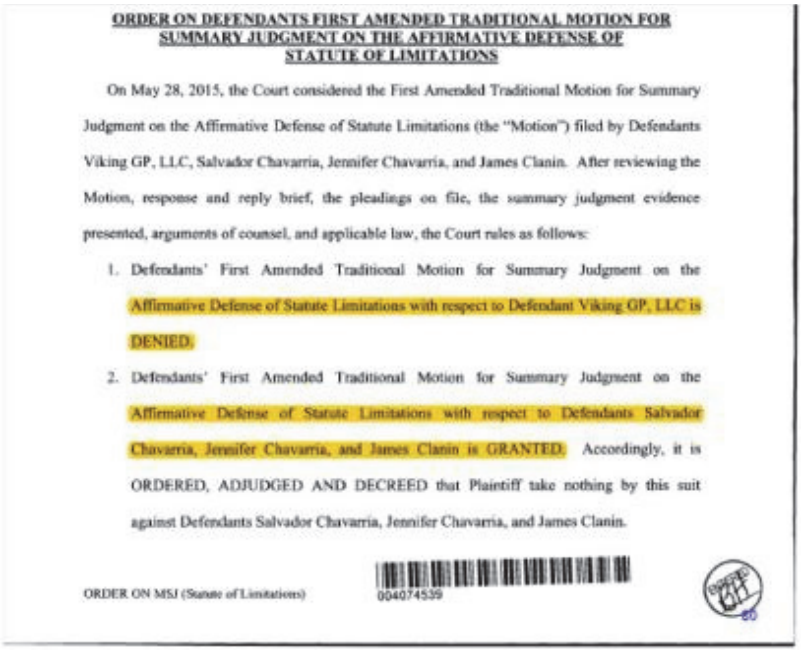
(CR:852-857) and none were spoken at or appear in documents at the hearing (13.RR).

31. All Defendants were fully aware that their statements in judicial documents were false.

32. Likewise Defendant Panel falsely reported that Plaintiff's "specific claims were disposed of on summary judgment and which the trial court concluded were made in bad faith, with knowledge that they were groundless, and for the purpose of harassment." Op. 14.

33. In reality, Plaintiff's sanctioned "claims" were not "disposed of on summary judgment." No summary judgment to dismiss "claims" was moved or granted. The Chavarrias and Viking GP filed only an MSJ on their procedural affirmative defense of statute of limitations—not to dismiss a single "claim." Indeed the identical claims against Viking GP went forward, as Defendant Crump's summary judgment order shows: CR:80-81.



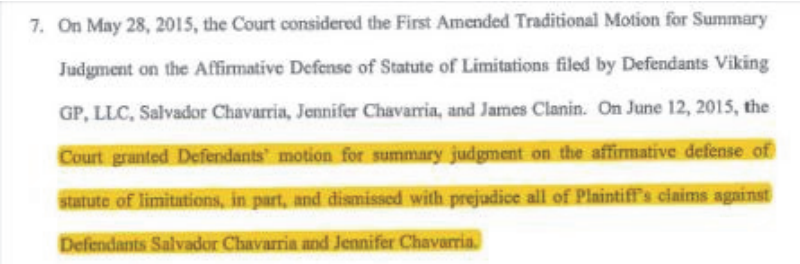
ORDER ON DEFENDANTS FIRST AMENDED TRADITIONAL MOTION FOR SUMMARY JUDGMENT ON THE AFFIRMATIVE DEFENSE OF STATUTE OF LIMITATIONS

On May 28, 2015, the Court considered the First Amended Traditional Motion for Summary Judgment on the Affirmative Defense of Statute Limitations (the "Motion") filed by Defendants Viking GP, LLC, Salvador Chavarria, Jennifer Chavarria, and James Clanin. After reviewing the Motion, response and reply brief, the pleadings on file, the summary judgment evidence presented, arguments of counsel, and applicable law, the Court rules as follows:

1. Defendants' First Amended Traditional Motion for Summary Judgment on the Affirmative Defense of Statute Limitations with respect to Defendant Viking GP, LLC is DENIED.
2. Defendants' First Amended Traditional Motion for Summary Judgment on the Affirmative Defense of Statute Limitations with respect to Defendants Salvador Chavarria, Jennifer Chavarria, and James Clanin is GRANTED. Accordingly, it is ORDERED, ADJUDGED AND DECREED that Plaintiff take nothing by this suit against Defendants Salvador Chavarria, Jennifer Chavarria, and James Clanin.

ORDER ON MSJ (Statute of Limitations) 004074539

34. Nothing above speaks to any "claims." Yet Defendant Judge Crump in her later sanctions order states that the MSJ on SOL grounds was granted only "in part" and that Plaintiff's "claims" were "dismissed with prejudice" (CR:852-857):



7. On May 28, 2015, the Court considered the First Amended Traditional Motion for Summary Judgment on the Affirmative Defense of Statute of Limitations filed by Defendants Viking GP, LLC, Salvador Chavarria, Jennifer Chavarria, and James Clanin. On June 12, 2015, the Court granted Defendants' motion for summary judgment on the affirmative defense of statute of limitations, in part, and dismissed with prejudice all of Plaintiff's claims against Defendants Salvador Chavarria and Jennifer Chavarria.

35. In reality, none of Plaintiff's claims were dismissed on the merits.

36. Defendant Panel knowingly reported the same falsehood in its Opinion. Op. 14.

Plaintiff's Formal Bill of Exceptions

37. The formal bill of exceptions provided by Texas Rule of Appellate Procedure 33.2 provides a method of placing into the appellate record documents and testimony excluded by the trial court. Plaintiff and her counsel verified and ***timely*** filed nine formal bills of exception covering Defendant Judge Crump's exclusion at trial of any rebuttal by Plaintiff, most exhibits, all damages testimony by Plaintiff, and other rulings to be appealed.

38. Defendant Panel, in a footnote, stated in its Opinion:

> While Serafine filed a formal bill of exceptions several months after trial attempting to make an offer of proof, the trial court refused her bill of exceptions, and Serafine does not appeal such refusal. See Tex. R. App. P. 33.2. Therefore, her bill of exceptions and its offer of proof contained therein present nothing for our review. [citation omitted]

Op. 19, n. 8.

39. This statement was materially false and misleading. In reality, Plaintiff had twice properly appealed the denial by motion as case law provides for this specific matter—the second motion alternatively speaking as a mandamus petition. Plaintiff's opponents fully joined issue. Many hundreds of pages of briefing ensued. Defendant

Panel then denied or dismissed both motions or the petition in writing.

40. Defendant Panel knew or had to know its statement in footnote 8 was false.

41. This decision by Defendant Panel effected a denial of the right to appeal the sham trial. It also automatically placed into the record Defendant Crump's alternative "Judge's Bill of Exceptions" (signed 7/28/2016), which—not arguing here its errors—imported other materially false statements into the record and, most tellingly, ***eliminated the evidence from the formal bills.***.

42. For example, Defendant Crump's "Judge's Bill" claimed that "Serafine requested to offer the entirety of Plaintiffs Exhibit 106 (a 280-page document) into the record for no specific purpose." In reality, Plaintiff's counsel Mr. Bass offered the exhibit for the purpose of the bill of exception or offer of proof, and then and there Defendant Crump approved it for that purpose, later reneging.

43. In another example, in July 2016 Defendant Judge Crump signed an order claiming that she had filed in the clerk's record all her written orders that should have been filed. In reality, Defendant Crump had refused to file a critically important pretrial evidentiary order and ignored multiple motions by Plaintiff attempting to have it filed. *See* CR:940-1036, CR:1037-1048. Two justices of Defendant Panel later dismissed in a written order Plaintiff's motion to place the order in the appellate record.

44. Defendants followed a pattern and practice of denial of due process and right to appeal by knowingly making false statements in judicial documents.

Count II
Denials of mandatory or statutory hearings.

45. All of the foregoing is incorporated herein by reference as though pled in full.

46. Defendant Panel ratified or refused to review many denials of the opportunity to be heard and the denial of due process, by relying on various pretexts and false statements—for example that Plaintiff "waived" the lack of a hearing on the boundary by not attempting to present evidence about the boundary, when Defendant Panel knew that Plaintiff had made such attempt and Defendant Crump explicitly rejected it saying she would take no evidence.

47. Defendant Panel had full knowledge of this but affirmed the denial of all hearings on various pretexts, thereby signaling to the trial courts a high tolerance for disregard of the opportunity to be heard.

48. Defendant Judge Crump was required by law to hold a hearing prior to entering against Plaintiff (a) the large money sanction, (b) the evidentiary sanction excluding most of Plaintiff's trial exhibits, (c) the expungement of Plaintiff's *lis pendens* notice, (d) the setting of the boundary, and (e) the initial refusal of Plaintiff's formal bill of exceptions, among other matters.

49. These mandatory or even statutory requirements for hearings were ignored by Defendant Judge Crump, along with proper motions requesting relief.

Count III
Other Denials of Procedural Due Process

Refusals to rule

50. All of the foregoing is incorporated herein by reference as though pled in full.

51. All Defendants refused to rule on properly-presented motions and arguments. Defendant Panel refused to opine on the briefed and even undisputed fact that none of the "findings" on which Defendant Crump imposed the $10,000 sanction against Plaintiff was sanctionable conduct. Whether it was is immaterial here. But repeated refusals to rule are contrary to due process.

52. Defendant Judge Crump was required to but refused to rule on Plaintiff's written objections to trial evidence; on Plaintiff's motion for the promised hearing on the boundary before setting it; on Plaintiff's motion to vacate Defendant Crump's unlawful expungement of *lis pendens* without the statutory hearing, 20-day notice, or motion required by Prop. Code 12.0071(d). CR:838-851. Defendant Judge Crump even ordered the Blunts to file a response, which they did. CR:858-61. Plaintiff sought a ruling on the motion, CR:1032-1036, but Defendant Crump ignored it.

53. There is perhaps some discretion not to rule, certainly by tradition. This conduct is outside the

bounds. There is no discretion to refuse to rule virtually always on critical matters to one party's detriment.

Inducing detrimental reliance by false promises

54. All of the foregoing is incorporated herein by reference as though pled in full.

55. While judicial discretion is wide, it does not encompass chicanery.

56. Defendant Judge Crump announces and has announced instructions and rulings on which Plaintiff and/or her counsel relied or do rely, and Defendant Crump then reneges on those instructions and rulings, depriving Plaintiff of her rights.

57. Judge Crump's actions to induce detrimental reliance are knowing, deliberate, and intentional. To give an example: At a hearing on November 10, 2015 Defendant Judge Crump announced a 10-day window for submitting to her the parties' briefing, evidence, affidavits, and proposed judgments on the ultimate and highly contentious issues that deprived Plaintiff of significant land and money. Judge Crump's announcement of at least some chance to submit—as she said specifically—"briefing," "evidence," "affidavits," and a "proposed final judgment"—caused Plaintiff to refrain from further objection. Judge Crump announced this 10-day deadline at a hearing on November 10th, thus yielding a deadline of ***November 20th.*** From the court reporter's transcript for that hearing, here is Judge Crump

confirming the November 20th deadline four separate times, reiterating that it was for "briefing," "evidence," "affidavits," and a "proposed final judgment." Indeed she further asked for and obtained the parties' agreement to November 20th as the deadline date: (emphases and brackets added)

> THE COURT: This . . . briefing will be all that I will consider, the briefing provided to the Court on or before ***November the – the 20th.*** So if you are seeking something that requires evidence, then you'll need to submit it by affidavit. 13.RR:51

> THE COURT: You should certainly send your proposed judgment to me ***on or before November 20th.*** Can everyone get your proposed final judgment to me by ***November 20th?*** [Parties answer yes.] 13.RR:77

> THE COURT: [Referring to] . . . the final judgment, the full terms of which the Court has not yet determined but will after receiving everyone's proposed final judgment on or before ***November 20th***, ***which is the same deadline*** for any final pleadings, arguments, pertaining to the sanctions or attorneys' fees issues. Okay. So everything's got to be to me ***on or before the 20th.*** 13.RR:79-80

Plaintiff and her counsel had no choice except to accede to the tight deadline and try to prepare affidavits, briefing, and proposed judgment language to protect Plaintiff's property and other interests. But after only 72 hours had passed, Judge Crump entered into the record a pair of final orders that transferred Plaintiff's real property to defendants and cancelled the protection from sale provided by a *lis pendens* notice. Judge Crump's orders were then entered into property records almost immediately, and no party had served or filed any briefing, evidence, affidavits, or proposed judgments. Indeed the deadline was still a week away. Judge Crump knowingly and intentionally ignored all statutory due process protections for cancellation of a *lis pendens* notice—the 21-day notice, hearing, and written motion. All subsequent filings by Plaintiff seeking to remedy these rulings were ignored by Judge Crump. Plaintiff's proper motions seeking rulings from Judge Crump were ignored, as were written objections, required to preserve error. On the appeal of all of the foregoing issues, Defendants Puryear, Goodwin, and Pemberton refused to consider them; alternatively they found everything "waived," or knowingly, falsely reported that Serafine or her counsel had failed to attempt to present evidence or failed to make a bill of exceptions. The actual substance any particular order or ruling is immaterial here. Rather, as matter of due process and fundamental fairness, Plaintiff was entitled to rely on court-announced deadlines (as well as statutory notice and hearing provisions) in order to present evidence, and was entitled to a bona fide appeal of their denial. All Defendants knowingly and

intentionally, and with concerted effort, disregarded due process.

1. As an example of only one of Plaintiff's subsequent filings seeking undo one of the deprivations of due process, Plaintiff filed a motion to vacate the cancellation—without the statutory 21-day notice, motion, and hearing—of the *lis pendens* notice. Judge Crump announced a briefing deadline for defendants' response, triggering another deadline for Plaintiff to reply. This caused Plaintiff and her counsel to avoid seeking mandamus. Within 48 hours of the announced deadline, however, Judge Crump entered judgment. Incorporated into the judgment was the un-noticed, un-heard, and un-moved cancellation of the *lis pendens* notice. Judge Crump ignored Plaintiff's subsequent motion to reconsider. On appeal, Defendants Puryear, Goodwin, and Pemberton effectively reported facts that did not occur, then declared all of the statutory due process protections—the 21-day notice, motion, and hearing—were "waived."

58. Near the end of trial Defendant Crump induced Plaintiff and her counsel to agree to submitting the undetermined boundary question to Defendant Crump, by promising there would be a hearing on the matter. In reality, Defendant Crump did not hold a hearing within any meaning of that word. At the start of the only post-trial hearing that did occur—noticed only for defendants' statutory attorneys fees requests—Judge Crump announced she had already decided the boundary

anyway. There had been no motion, no briefing, no argument, no claim, and no pleading by Plaintiff's opponents for any particular boundary. As a matter of due process, if Plaintiff had wanted to dispute the boundary that Judge Crump had drawn in favor of the other parties, it would be impossible for Plaintiff to do so, because there was no claim to any boundary in any pleading or motion at any time. Judge Crump at all times knew, understood, and facilitated this. Defendants Puryear, Goodwin, and Pemberton denied any appeal of the issue.

59. During trial Defendant Judge Crump induced Plaintiff's counsel to believe he would be allowed to call Plaintiff's testimony for rebuttal. He reserved time for it. Instead, Defendant Crump reneged, and summarily denied rebuttal entirely. Plaintiff's counsel made an offer of proof, obtained a ruling that rebuttal was denied, 12.RR:32, and later filed a formal bill of exceptions (essentially an alternative offer of proof). All post-trial motions seeking remedy were ignored. Defendants Puryear, Goodwin, and Pemberton, based on their own falsely reported facts, found "waiver." *See* 12.RR:32-33; CRSuppV:448; other record evidence; all documents and transcripts related for Plaintiff's bill of exceptions.

    1. Plaintiff and her counsel filed a formal bill of exceptions on the denial of rebuttal, a proceeding that specially preserves error and evidence. The statute requires a hearing. Judge Crump emailed the parties to obtain potential hearing dates. Almost immediately,

Judge Crump then entered an order denying the bill of exceptions in its entirety.

Deprivation of rights in collaboration with other district judges

60. Based on Judge Crump's statements on the record, 6.RR:13, and the issuing of coordinated orders among them, other Travis County judges—Judge Amy Clark Meachum, Judge Tim Sulak, and also, but only on information and belief, Judge Darlene Byrne—aided and assisted Judge Crump, acting, in effect, as a panel rather than as an independent courts. Judge Darlene Byrne was significantly conflicted. On information and belief, that conflict influenced Judges Crump, Meachum, and Sulak.

61. On information and belief, the judges and favored defendants were assisted by court administrator Warren Vavra, who ensured assignment of matters to only these same judges, despite the "central docket" procedure that normally controls.

62. The precise details of various motivations for denials of due process are irrelevant. The Fourteenth Amendment and Section 1983 protect constitutional due process rights, regardless of any explanation that Plaintiff might prove. It is enough to show, regardless of motivations, that Plaintiff was deprived of discovery, the opportunity to present evidence, a neutral arbiter, and a record of proceedings, in order to be entitled to prospective relief to prevent re-occurrence.

63. A hearing transcript taken down by the court reporter for Judge Byrne disappeared for two years, although in reality it existed at that time and exists today. This eliminated evidence of Judge Byrne's conflict and collaboration with defendants in the state case and Plaintiff's ability to try to remedy it. The tape recording of the hearing also disappeared for the same period.

64. In the instant case, the court reporter has evaded all contact for many months and later evaded the process server for Plaintiff's subpoenaing of her deposition. The deposition did not take place.

V. Prayer

Plaintiff prays that the Court will:

1. Assume jurisdiction over this matter;

2. Render such findings of fact and conclusions of law as to establish the need to award Plaintiff certain declaratory and injunctive relief as is necessary to secure for Plaintiff, and others similarly situated, those rights under the Fourteenth Amendment of the U.S. Constitution—including findings that Defendants executed a policy, practice, or custom of denying procedural due process, or affirming denial of due process, such as denying meaningful notice, hearing, and appeal; entering into the record judicial documents containing false statements of fact and bad faith rulings, made intentionally; tampering with the record; engaging in ex parte communication; and other conduct according to proof.

3. Issue accordingly a prospective declaratory decree that sets forth the due process rights to which Plaintiff is entitled in future proceedings. Plaintiff, for example, is entitled to be free of ex parte communication and ex parte proceedings; and is entitled to notice and hearings, to impartial arbiters, to present evidence, to obtain rulings, and to an accurate and complete record at her own expense. Plaintiff does not seek to enlarge her rights beyond those accorded by law to any other citizen, but seeks only to have declared those rights to which she is entitled and was, according to proof, denied.

4. Determine that such declaratory relief was previously unavailable to Plaintiff, and that therefore injunctive relief is warranted.

5. Alternatively, determine that Defendants' judicial oath, as a matter of law, constitutes a declaratory decree to which Defendants consented, and that Defendants' violation of that oath entitles Plaintiff to injunctive relief.

6. Issue an injunction consistent with the declaratory decree.

7. Grant Plaintiff her costs and attorneys' fees to the extent allowed by law; and

8. Grant such other and further relief as the Court determines is just and proper.

Respectfully submitted,
/s/ M.L. Serafine
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Certificate of Service

Pursuant to Federal Rule of Civil Procedure 5(a) and (b) and Local Rule CV-5, the foregoing document has been filed and simultaneously served through the Court's electronic filing system on the counsel below on this the 28th day of August, 2018.

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By: /s/ M.L. Serafine
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